

1990—No. 779

**SUPREME COURT RULES (AMENDMENT No. 249) 1990**

NEW SOUTH WALES



*[Published in Gazette No. 167 of 14 December 1990]*

1. These rules are made by the Rule Committee on 10 December 1990.
2. Amendment No 234 published in the Gazette on 15 December 1989 is rescinded.
3. The Supreme Court Rules 1970 are amended as follows—
  - (a) Part 1 rule 3  
From the matter relating to Part 77 omit the words "*Crimes (Confiscation of Profits) Act 1985*" and the matter beside those words and insert instead—

in the column "Statute" -	in the column "Division" -	in the column "Rules"-
<i>Confiscation of Proceeds of Crime Act 1989</i>	26	85 - 87G".
  - (b) Part 1 rule 3  
Next under "Prisoners (Interstate Transfer) Act 1982" in the matter relating to Part 77 insert -

in the column "Statute" -	in the column "Division" -	in the column "Rules"-
<i>Proceeds of Crime Act 1987 (Commonwealth)</i>	26A	87H-87J".

## (c) Part 77

Omit Division 26 and insert instead -

*DIVISION 26. - Confiscation of Proceeds of Crime Act  
1989.*

Assignment of business.

85. Proceedings in the Court under the Confiscation of Proceeds of Crime Act 1989 (the "subject Act") are assigned to the Criminal Division.

Statement in summons or notice of motion

86. The applicant for an order under the subject Act shall file with his summons or notice of motion a statement in summary form of the general nature of the facts and circumstances relied on.

Notice of discharge of order (s. 26)

87. Notice of discharge of an order mentioned in section 26(2) of the subject Act shall be given by the appropriate officer on whose application the order was registered by filing a notice stating that the order was discharged and annexing a sealed copy of the order quashing or discharging on appeal.

Form of acceptance, etc. of allegation (s. 31)

87A. An allegation may be accepted or a matter may be indicated for the purposes of section 31 (5) (b) in Form 89D or Form 89E whichever is appropriate.

Form (s. 44 (2))

87B. The form prescribed for the purposes of section 44 (2) of the subject Act is Form 89E

Examination order: prescribed officer (s. 45)

87C. An officer prescribed for the purposes of section 45 (1) (c) of the subject Act is a master or a registrar.

Notice (s.56(2))

87D. Notice of an application for the purpose of section 56 (2) shall be given by serving the notice of motion by which the application was made upon each other person who is entitled, by virtue of section 45 (3) (a)-(c), to make an application under section 45 in relation to the restraining order.

Information for production order or search warrant (s.58 (1) and 66 (1))

87E. An information setting out the grounds mentioned in sections 58 (1) or 66 (1) may be laid before the Court by filing an affidavit setting out those grounds.

Registration of interstate orders (s. 77)

87F. (1) A register of orders to which section 77 of the subject Act applies shall be kept in the registry.

(2) A copy mentioned in section 77(2) of the subject Act is registered when it is included in the register.

(3) The registration of an order mentioned in section 82(1) of the subject Act is cancelled when the registrar notes its cancellation on the copy order included in the register.

Certifying facsimile copy (s. 85 (1))

87G. A facsimile copy of a sealed copy is certified for the purposes of section 85 (1) of the subject Act if it includes a facsimile copy certificate in form 89G.

**DIVISION 26A. - *Proceeds of Crime Act 1987***  
*(Commonwealth)*

**Assignment of business**

87H. Proceedings in the Court under the Proceeds of Crime Act 1987 (the "subject Act") are assigned to the Criminal Division. Statement in summons or notice of motion

87I. The applicant for an order under the subject Act shall file with his summons or notice of motion a statement in summary form of the facts and circumstances relied on.

Information for production order or search warrant (s. 66 (1) and 71(1))

89J. An information setting out the grounds mentioned in sections 66(1) or 71(1) may be laid before the Court by filing an affidavit setting out those grounds.

**(d) SCHEDULE F Forms 89F and 89G**

Omit the forms and insert instead -

**FORM 89D**

*(Defendant's notice under s.31(5) of the Confiscation of Proceeds of Crime Act 1989)* *P.77, r.87A*

The defendant (name) accepts the allegations in the statement, a copy of which is annexed hereto marked "A", (where applicable) except so far as it is alleged that -

*(set out the allegations)*

as to which the defendant says -

*(set out the matter on which the defendant proposes to rely).*

Dated:

Defendant

**1990 - No. 779**

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**FORM 89E**

*(Prosecution's notice under s. 31 (5) of the Confiscation of Proceeds of Crime Act 1989)* P.77, r.87A

The prosecution accepts the allegations in the statement, a copy of which is annexed hereto marked "A", (where applicable) except so far as it is alleged that -

*(set out allegations)*

Dated:

Solicitor for  
Public Prosecutions  
(or as the case may require)

**FORM 89F**

*(Notice under section 44(2) of the Confiscation of Proceeds of Crime Act 1989)* P.77, r.87B

To: *(name and address):*

*Where the notice is added to the minute of order -*  
On *(date)* the Court made the above order.

OR

*Where the order is annexed -*

On *(date)* the Court made the order annexed hereto. *and make an annexure note on the minute of order.*

**FORM 89G.**

*(Certificate under section 85(1) of the Confiscation of Proceeds of Crime Act 1989)* P.77, r.87G

I certify that this copy order is a true sealed copy of an order of the *(name of court which made the order)*.

OR

I certify that this copy amendment to an order is a true sealed copy of an amendment to an order of the *(name of court which made the order)*.

*(as the case require may require)*

Dated:

*(signature)*

**(e) SCHEDULE F**

From the Index to the Forms omit the matter relating to forms 89D and 89G and insert instead -

89D. Defendant's notice under s. 31(5) of the Confiscation of Proceeds of Crime Act 1989 (P.77, r.87A).

89E. Prosecution's notice under s. 31(5) of the Confiscation of Proceeds of Crime Act 1989 (P.77, r.87A).

89F. Notice under 44(2) of the Confiscation of Proceeds of Crime Act 1989 (P.77, r.87B).

89G. Certificate under section 85(1) of the Confiscation of Proceeds of Crime Act 1989 (P.77, r.87G).

4. Paragraph 3 of this Amendment shall take effect on and from the commencement of the Confiscation of Proceeds of Crime Act 1989.

5. The Supreme Court Rules 1970 are further amended as follows -

(a) Part 22 rule 4

Omit the rule and substitute instead—

**Time for payment**

4. An offer providing for the payment of a sum of money, or for the doing of any other act, shall, unless the notice of offer otherwise provides, be taken to provide for the payment of that sum or the doing of that act within 28 days after acceptance of the offer.

(b) Part 22 rule 5(1)(a)

Omit the paragraph and substitute instead—

(a) where the offer provides for payment of a sum of money or the doing of any other act and the sum is not paid to the offeree or into Court or the act is not done within 28 days after acceptance of the offer or withln such other time as the offer provides; or

(c) Part 22 rule 8(1)(a)

Omit paragraph (a) and insert instead -

(a) such judgment or order as is appropriate to give effect to the terms of the accepted offer; or

(d) Part 52 rule 17

In each of subrules (4) (5) and (7) after "obtains" insert "an order or".

(e) Part 52 rule 17(7)(a)

After "the amount" insert "payable under the order or".

6. Supreme Court Rules 1970 are further amended as follows -

(a) Part 51 rules 21, 22, 23 and 24

Omit the rules and insert instead -

**Collection of papers**

21(1) Upon the filing of notice of appeal, the registrar -

(a) may obtain from the Court Reporting Branch the original of the transcript (if any) of the proceedings in the court below; and

(b) shall obtain from the proper officer of the court below -

- (i) the exhibits;
- (ii) the list of exhibits and certificate under rule 19;
- (iii) all the other documents before the court below, together with a list of them, certified by the proper officer of the court below; and
- (iv) the reasons for judgment (if any) or the summing up (if any) in the court below certified by the proper officer of the court below.

(2) Where oral evidence was given in the court below but was not transcribed in the Court Reporting Branch -

- (a) if notes of the evidence were taken by or for the judge, justice or other person presiding in the court below, the appellant shall, subject to any direction in the court below, obtain a copy of the notes and deliver the copy to the registry; or
- (b) if notes of the evidence are not obtainable pursuant to paragraph (a), the registrar shall obtain a report of the evidence from the associate or other proper officer of the court below.

(3) The registrar shall retain the documents obtained under subrules (1) and (2) and subrule 14 (c) until the settlement of the appeal index and shall, unless the appeal book is prepared by the registrar, thereupon allow the party who is required to prepare the appeal book to have custody of such of those documents as are necessary for that purpose.

(4) The party having custody of documents pursuant to subrule (3) shall return them intact to the registrar upon completion of the appeal book.

(5) Subject to subrule (3), the registrar shall retain the documents obtained under subrule (1) until disposal of the appeal and shall thereupon return them to the offices or persons from whom he obtained them.

(6) The appellant shall, not later than seven days before the date appointed to settle the papers file and serve on the respondent a draft index of the proposed contents of the appeal book in Form 61A.

(7) If the appellant fails to comply with subrule (6) the registrar shall himself prepare the draft index.

**Settlement of index**

22 (1) The registrar shall settle the index and in doing so shall have regard to the issues of fact and of law that appear from the grounds of appeal cross-appeal or contention.

(2) The registrar shall endeavour in settling the index to -

- (a) exclude from the appeal book documents that are irrelevant or unnecessary; and
- (b) reduce, as far as possible, the number and the length of documents to be included in the appeal book taking care to avoid the inclusion of merely formal documents or formal parts of documents and unnecessary duplication.

(3) The registrar shall note any correction to the transcript or notes or report of evidence, unless objected to by any party.

(4) An index may, with the consent of all parties, be settled by the registrar in the absence of the parties, and shall be settled by the registrar notwithstanding the absence of any party, unless he considers it undesirable to do so.

(5) Where the appellant has filed and served a draft index in accordance with rule 21 (6) and has appeared at the appointment to settle the index the appellant shall, within seven days after the index has been settled, file a clean copy of the index as settled and serve a copy on all other parties to the appeal.

(6) Where the index has been settled in the absence of the appellant the registrar shall serve a copy of the index on each Party.

(7) Any party dissatisfied with the index so settled may seek a review of the registrar's decision pursuant to Part 61 rule 3.

**Settlement of appeal papers**

23 (1) At the appointment to settle the papers the registrar shall, so far as practicable -

- (a) enquire of the parties, or the parties present, whether there is likely to be any amendment to the grounds of appeal, cross-appeal or contention and give any directions that may be appropriate;

- (b) clarify, so far as necessary, any grounds of appeal, cross-appeal or contention which appear to him to be unclear, irrelevant or inapplicable and give any directions that may be appropriate;
- (c) ascertain whether any other appeal or cross-appeal has been brought or is likely to be brought against the decision in question and take such steps as he considers appropriate to achieve a consolidation of all such proceedings;
- (d) ascertain whether any notice of contention has been or is likely to be filed by any respondent or cross respondent;
- (e) ensure that all necessary parties have been joined in the proceedings either as appellants or respondents and have been served with the notice of appeal or cross-appeal as the case may be;
- (f) determine the number of copies of the papers required;
- (g) where the appeal papers are to be prepared in the registry, obtain from the appellant an order for that number of copies.

(2) If, at the appointment to settle the papers, any party objects to a proposed correction of the transcript, the registrar shall refer the question to the associate or other proper officer of the court below for the directions of the judge, justice or other person presiding in the court below.

(3) The registrar shall also endeavour to satisfy himself that the appeal and any cross-appeal are competent and, if not so satisfied, he may decline to proceed with the settlement of the index unless and until an application for leave to appeal or an application to strike out the notice of appeal or cross-appeal as the case may be has been heard and determined.

#### **Preparation of appeal books**

24(1) The appeal book shall, unless a judge or the registrar otherwise directs, be prepared by the appellant in accordance with this rule.

(2) The appeal book shall be printed or reproduced by a photocopying, roneograph, or some other multi-graphlc process which gives uniform copies of pages in a clear and legible type.

(3) The pages of the appeal book shall be numbered consecutively and, where the book exceeds 300 pages, it shall be bound in separate volumes of not more than 250 pages.

(4) The contents of the appeal book shall be printed, or otherwise reproduced, upon one side of the paper with a 50 millimetres margin on the left hand side of each page and evenly marked in the margin with the letters "A" to "Z". The book may be bound by means of either a flexibinding or spiral binding process.

(5) The appeal book shall have a title page setting out the full and correct title of the proceedings, including the title of the court below, names of the solicitors for each party, the address for service for each party, and the telephone, telex, facsimile and reference number of each party.

(6) After the title page of the appeal book there shall follow an index, consisting of a complete list of documents contained in the record before the Court as settled under rule 22 indicating, in the case of each document, whether its text is reproduced and included in the book or not, and if it is reproduced and included, indicating the page of the book on which it appears.

(7) The index to an appeal book shall comply with the index prepared under rule 22.

(8) The index shall give the date of each document and shall give, in the case of exhibits, the exhibit mark and, in the case of documents marked only for identification, the mark with the letters "MFI" followed by the relevant number.

(9) In the index, the exhibits shall be arranged in the order in which they have been lettered or numbered and there shall be a reference to the page of the appeal book on which the tendering of the exhibits is recorded.

(10) Where the appeal book is bound in two or more volumes, each volume after the first shall contain, at the beginning thereof, an index of the entire book, unless otherwise directed by the registrar.

(11) The documents in an appeal book shall be arranged in the following order -

- (a) process and pleadings including the original pleading or process in each case of every party as well as that pleading or process as last amended at the trial and any intermediate versions of that pleading or process where that pleading or process is relevant to the proposed grounds of appeal, cross-appeal or contention;
- (b) other documents before the court below;
- (c) evidence, oral and affidavit, including where the trial is with a jury the transcript of the return of the jury's verdict;
- (d) where the trial is with a jury the form of any written questions submitted to the jury for their determination;
- (e) exhibits:-
  - (i) exhibits shall be arranged, not in the order in which they have been lettered or numbered as exhibits, but in chronological order according to the dates borne by the documents, or in the case of manifestly or admittedly misdated documents, their known dates;
  - (ii) if a document is undated it shall be placed in the sequence contended for by the appellant, but the appellant shall inform the respondent of the position or order proposed for the document and the respondent may require that a "date and order disputed" be inserted in the index against the document;
  - (iii) if the exhibits include correspondence between, or among, two or more persons which should be read consecutively and not interspersed among other documents, the documents forming the correspondence may be arranged in chronological order and given a position together, at a convenient place, in relation to the other exhibits;
  - (iv) if the exhibits include medical reports by a group of doctors or by one doctor tendered on behalf of a party which should be read consecutively and not interspersed among other documents, those medical reports may be arranged in chronological order and given a position together, at a convenient place, in relation to the other exhibits;

- (v) any photographic exhibits unless irrelevant to the proposed grounds of appeal, cross-appeal or contention;
- (vi) any plans, unless irrelevant to the proposed grounds of appeal cross-appeal or contention and if possible such plans shall be reduced in size so as to be included in the appeal book;
- (vii) interrogatories, answers and affidavits of documents shall not be copied, except so far as they were put in evidence;
- (f) the reasons for judgment or summing up of the primary judge or court;
- (g) the formal judgment of the primary judge or court;
- (h) the notice of appeal, notice of cross-appeal or notice of contention;
- (i) order of the Court granting leave to appeal if applicable;
- (j) a certificate that the transcript has been examined and is correct, signed by the solicitors for the parties.

(12) The appeal book shall be prepared and produced in a manner satisfactory to the registrar.

(13) Where in the course of the settlement of the index one party objects to the inclusion of material on the ground that it is unnecessary or irrelevant and another party nevertheless insists upon it being included, such material shall be included but the appeal book, as finally printed shall, with a view to the subsequent adjustment of the costs of and incidental to the printing and inclusion of such material, indicate in the index that fact, and the party by whom the inclusion of the material was objected to.

- (b) Part 51 rule 25(b)  
Omit "three" and insert instead "four".
- (c) Omit Form 61A and insert instead -

P.51 r.21 (6)

Form 61A

## INDEX

(Follow the order of arrangement prescribed by Part 51 rule 14 (1), for example.)

No.	Document	Text Included	Date	Page
1	Statement of Claim	Y	17-2-77	
2	Defence (if relevant to the appeal)	Y		
3	Amended Statement of Claim	Y	10-6-77	
4	Affidavit of (name) except paragraph 3	Y	27-7-77	
5	Statement under Part 33 r.8A	Y	27-7-77	
6	Transcript of evidence taken before Mr. Justice (name)	Y	1-3-78	
		Y	2-3-78	
		Y	6-3-78	
7	LEE, John Examined Cross-Examined JONES, Dr Henry Examined Cross-Examined Re-Examined Further cross-examined Exhibits - mark, description and page of appeal book where tender recorded <u>(In the draft index, list all exhibits, whether relevant to the appeal or not)</u>			
	"A" Reports to Dr H. Jones	Page	28-1-75 16-4-75	
	"B" Discharge summary from Royal North Shore Hospital (inclusion objected to by respondent as irrelevant and insisted upon by appellant)	Y	27-7-73	
	"C" Copies of wage records	Y	21-9-76	
	"1" Reports of Dr J. Smith	Y	29-10-75	
	"2" Reports of Dr J. Styles	N		
	"MFI 1" Plan by A. Brown	Y	1-3-78	
8	Reasons for judgment of Mr Justice (name)	Y	10-3-78	
9	Minute of Judgment	Y	31-3-78	
10	Notice of Appeal	Y	31-3-78	
11	Notice of Cross-Appeal	Y	4-4-78	
12	Solicitors' certificate of examination of transcript	Y	1-5-78	

Solicitor for the respondent  
(plaintiff)  
(name)DX 222 Sydney  
telephone 222 2222  
22 Pitt Street, SydneySolicitor for the appellant  
(defendant)  
(name)DX 333 Sydney  
telephone 333 3333  
33 Pitt Street, Sydney.

To the Registrar of the Court of Appeal:

(Where the appeal books are to be prepared by the Registry, add -  
I, (name of solicitor) request you to prepare (number, to be left blank in  
the index) copies of the appeal papers and acknowledge my liability to pay the  
Court fees payable in respect of their preparation.)No part of any affidavit listed above was struck out or rejected or not  
read or expressly admitted for a limited purpose only, except as shown above.  
Filed 7 May, 19

Appellant's solicitor

7. Paragraph 6 of this Amendment shall take effect on 1st January 1991.

**EXPLANATORY NOTE**

(This note does not form part of the rules).

1. The purpose of the amendments contained in paragraph 3 is -
  - (a) to prescribe procedure under the Confiscation of Proceeds of Crime Act 1989 (consequently on the repeal by that Act of the Crimes (Confiscation of Profits) Act 1985) and the Proceeds of Crime Act 1987 of the Commonwealth; and
  - (b) to make other provisions of a minor, consequential or ancillary nature.
2. The purpose of the amendments contained in paragraph 5 is -
  - (a) to ensure that the rules relating to offers of compromise extend to offers to do acts as well as to pay money; and
  - (b) where an accepted offer specifies a time within which it is to be carried out, to substitute that time for the period of 28 days after acceptance as the time during which the acceptance may be withdrawn if the offer has not been carried out.
3. The purpose of the amendments contained in paragraph 6 is -
  - (a) to reduce delay in preparation of the Appeal Book Index by allowing the Registrar to prepare it in the absence of the parties;
  - (b) to provide for the printing of the Appeal Books otherwise than by the court;
  - (c) to ensure that irrelevant material is excluded from Appeal Books; and
  - (d) to provide for the logical arrangement of material in Appeal Books and in the Appeal Book Index.
4. Words and figures underlined in the above rules are intended be represented in italics when printed.

M. A. Blay, Secretary of the Rule Committee

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