

1992—No. 159

SUPREME COURT RULES (AMENDMENT No. 263) 1992

NEW SOUTH WALES



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1. These rules are made by the Rule Committee on 23 March 1992.
2. The Supreme Court Rules 1970 are amended as follows:

SCHEDULE H Part 1

Under the matter relating to the Dairy Industry Authority Act 1970 insert:

in the column	in the column	in column 2—
“Act”—	“Section (unless otherwise stated)”—	
“Dividing Fences Act 1991	19 (2) 19 (3)	Appeal Order directing a magistrate or a local land board to perform functions.”

3. The Supreme Court Rules 1970 are further amended as follows:

- (a) Part 52 rule 9 (1)

After paragraph (c) insert:

(c1) a party may tax costs under rule 14 (1) or rule 15 (1) after the conclusion of the proceedings;

- (b) Part 52 rules 14 and 15

Omit the rules and insert instead:

Non-admission of fact

14. (1) Where a party to any proceedings (in this rule called the “disputing party”) serves a notice disputing a fact under Part 18 rule 2 (2) and afterwards that fact is:

- (a) proved in the proceedings; or
- (b) admitted for the purpose of the proceedings by the disputing party,

the disputing party shall, unless the Court otherwise orders, pay the costs of the party upon whom the notice is served, taxed on an indemnity basis, occasioned by:

- (c) proof of the fact; or
- (d) preparation for the purpose of proving the fact, as the case may be.

(2) An entitlement to costs under this rule shall not be affected by any order as to costs unless that order refers to the notice by the disputing party giving rise to the entitlement.

(3) Subject to subrule (4), a party whose costs are payable under subrule (1) may tax the costs and, if the taxed costs are not paid within 4 days of the signing of the certificate of taxation, may enter judgment for the taxed costs.

(4) A party may not, except with the leave of the Court, make an application to proceed with the taxation of the costs until after the conclusion of the proceedings.

(5) This rule has effect notwithstanding rules 13A, 16, 17, 18, 21B, 21D, and 21E (4) and (5).

Non-admission of document

15. (1) Where a party to any proceedings (in this rule called the “disputing party”) serves a notice disputing the authenticity of a document under Part 18 rule 4 (2) or under Part 18 rule 5 (2), and afterwards the authenticity of a document is:

- (a) proved in the proceedings; or
- (b) admitted for the purpose of the proceedings by the disputing party,

the disputing party shall, unless the Court otherwise orders, pay the costs of the party upon whom the notice is served, taxed on an indemnity basis, occasioned by:

- (c) proof of the authenticity of the document; or
- (d) preparation for the purpose of proving the authenticity of a document,

as the case may be.

(2) An entitlement to costs under this rule shall not be affected by any order as to costs unless that order refers to the notice by the disputing party giving rise to the entitlement.

(3) Subject to subrule (4), a party whose costs are payable under subrule (1) may tax the costs and, if the taxed costs are not paid within 4 days of the signing of the certificate of taxation, may enter judgment for the taxed costs.

(4) A party may not, except with the leave of the Court, make an application to proceed with the taxation of the costs until after the conclusion of the proceedings.

(5) This rule has effect notwithstanding rules 13A, 16, 17, 18, 21B, 21D, and 21E (4) and (5).

4. Amendment 3 shall not apply to notices disputing facts or the authenticity of documents served prior to 1 May 1992.

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

(a) Part 22 rules 7 (2) and (3)

Omit the subrules and insert instead:

(2) Where an offer has not been accepted, then, subject to subrule (3), no communication with respect to the offer shall be made to the Court at the trial or, as the case may require, to the arbitrator.

(3) An offer made in accordance with this Part may be disclosed to the Court or, as the case may require, to the arbitrator:

- (a) for the purposes of Part 52 rule 17 (4) or (5)—after all questions of liability and the relief to be granted have been determined;
- (b) as provided by Part 52 rule 17 (8);
- (c) where a notice of offer provides that the offer is not made without prejudice; or
- (d) in so far as disclosure is necessary to enable the offer to be taken into account for the purposes of section 94 (3) of the Act.

(b) Part 36 rule 2 (3)

Omit the subrule and insert instead:

(3) Subrule (1) applies subject to:

- (a) the Act;
- (b) the rules;
- (c) any direction of the Court; and
- (d) any agreement between the parties.

(c) Part 36 rule 4A

After subrule (2) insert:

(2A) If an intended witness, to whose evidence a statement under subrule (1) relates, does not give evidence, no party may put the statement in evidence at the hearing without leave of the court.

(d) Part 36 rule 4A (4)

(i) Omit from paragraph (b) “.” and insert instead “; and”.

(ii) After paragraph (b) insert:

(c) whether or not the statement or any part of it is referred to during the evidence in chief of the witness, any party may put the statement or any part of it in cross-examination of the witness.

6. The Supreme Court Rules 1970 are further amended as follows:

(a) Part 60 rule 1A (1) (a)

After “regulations” insert “and Acts and regulations of the Commonwealth”.

(b) Part 77 rule 87L

After subrule (2) insert:

(2A) Proceedings for registration of an order to which section 34 (1) of the subject Act applies shall be commenced by summons joining as defendant the person against whom the order was made.

(2B) The plaintiff may, unless the Court otherwise orders, proceed without service of the summons on the defendant.

(2C) Where the plaintiff adds to the summons a request that the application be granted under this subrule, the Court may make the order in the absence of the public and without any attendance by or on behalf of the plaintiff.

(2D) The plaintiff shall file with the summons an affidavit setting out such particulars as are necessary to enable the court to comply with section 23A (2) of the Proceeds of Crime Act 1987 of the Commonwealth.

(2E) Where an order is made under section 34 (4) for registration of an order, the plaintiff shall serve a minute of the order for registration and the registered order on the defendant.

(c) SCHEDULE D Part 1

(i) After “Powers under Acts and regulations” insert “and Acts and regulations of the Commonwealth”.

(ii) After the matter relating to Act No. 219 of 1986 insert:

in column 1 in column 2 in column 3—

“Act No. 85, 1987
(Commonwealth);
Mutual Assistance
in Criminal Matters
Act 1987—

Section 34 (4)

Order for
registration of a
foreign forfeiture
order, a foreign
pecuniary penalty
order or a
foreign restraining
order.

.....

Section 34 (8)

Order for
registration of
amendment to a
foreign forfeiture
order, a foreign
pecuniary penalty
or foreign a
restraining order.

Section 34 (13)

Order cancelling
registration.

.....

Act No. 87, 1987
(Commonwealth);
Proceeds of Crime
Act 1987—

Section 23A (2)

Direction to DPP
to give or
publish notice of
registration.

..... ”

7. The Supreme Court Rules 1970 are further amended as follows:

(a) Part 77 rule 86

(i) Omit “The” and insert instead “(1) The”.

(ii) After subrule (1) insert:

(2) This rule shall not apply to an application under
section 77 or section 82 of the subject Act.

(b) Part 77 rule 87

After “filing” insert “, in the court in which the order was registered.”.

(c) Part 77 rule 87F (1)

After “applies” insert ‘(“interstate orders”).’.

(d) Part 77 rule 87F

After subrule (2) insert:

(2A) Proceedings for registration of an interstate order shall be commenced by summons joining as defendant the person against whom the order was made.

(2B) The plaintiff may, unless the Court otherwise orders, proceed without service of the summons on the defendant.

(2C) Where the plaintiff adds to the summons a request that the application be granted under this subrule, the Court may make the order in the absence of the public and without any attendance by or on behalf of the plaintiff.

(2D) Where an order is made for registration of an interstate order, the plaintiff shall forthwith serve a minute of the order and the interstate order on the defendant.

(e) SCHEDULE D Part 1

After the matter relating to Corporations Law insert:

in column 1 in column 2 in column 3—

“Act No. 90, 1989;
Confiscation of
Proceeds of Crime
Act 1989—

Section 77

Order for
registration of
interstate
forfeiture order
etc.

.....

Section 82 (1)

Order for
cancellation of
registration of
interstate
forfeiture order
etc.

.....

1992—No. 159

8. The Supreme Court Rules 1970 are further amended as follows:

(a) Part 12 rule 4 (j)
Omit “.” and insert instead “; and”.

(b) Part 12 rule 4

After paragraph (i) insert:

(k) the Exotic Diseases of Animals Act 1991.

(c) SCHEDULE D Part 1

Under the matter relating to Corporations Law, insert:

in column 1 in column 2 in column 3—

“Act No. 73, 1991;
Exotic Diseases of
Animals Act
1991—

Section 62 Disputed claims
 for compensation

9. The Supreme Court Rules 1970 are further amended as follows

SCHEDULE D Part 1

After the matter relating to Act No. 68 of 1973 insert:

in column 1 in column 2 in column 3—

“Act No. 18, 1977;
Jury Act 1977—

Section 38 (1) (b) Excusing juror

EXPLANATORY NOTE

(This note does not form part of the rules)

1. The object of the amendment contained in paragraph 2 is to assign to the Administrative Law Division:

(a) appeals under the Dividing Fences Act 1991; and
(b) proceedings for orders directing a magistrate or a local land board to perform any of the functions of the Local Court or the board under that Act, other than under section 13 (2) of that Act.

2. The object of amendment 3 (a) is ancillary to amendment 3 (b).

3. The object of amendment 3 (b) to rule 14 is to provide that:

(a) where a notice to admit a fact is given under Part 18 rule 2;

1992—No. 159

- (b) the party receiving the notice serves a notice disputing the fact on the party giving the notice to admit; and
- (c) the fact is subsequently proved or admitted,

the party who gave the notice to admit shall be entitled to have his costs of proving or preparing to prove the fact paid by the other party, taxed on an indemnity basis, regardless of the outcome of the case, unless the Court otherwise orders.

4. The object of amendment 3 (b) to rule 15 is to provide that:

- (a) where:
 - (i) discovery and inspect of a document is given under Part 23; or
 - (ii) a notice to admit the authenticity of a document is given under Part 18 rule 5;
- (b) the party who receives discovery and inspection or the notice to admit serves a notice disputing the authenticity of the document on the party giving the discovery and inspection or notice to admit; and
- (c) the authenticity is subsequently proved or admitted,

the party who received the notice disputing authenticity shall be entitled to have his costs, of proving or preparing to prove the authenticity, paid by the other party, taxed on an indemnity basis, regardless of the outcome of the case, unless the Court otherwise orders.

5. The object of amendment 5 (a) is to ensure that offers of compromise made under Part 22 of the Supreme Court Rules 1970 are not prevented by section 117 of the Evidence Act 1992 from being used on the question of costs.

6. The object of amendment 5 (b) is to qualify the operation of Part 36 rule 2 (1) (which requires in most cases that evidence of any witness on any issue at a trial shall be given orally before the Court) by making it subject to the Supreme Court Act 1970, the Supreme Court Rules 1970, any direction of the Court, and any agreement between the parties.

7. The object of amendments 5 (c) and (d) is to:

- (a) prevent any statement of a witness's proposed evidence which has been served on other parties from being put in evidence at the hearing without the leave of the Court;
- (b) to empower the Court to direct that a statement of a witness's evidence, which has been served by the party proposing to call the witness on the other parties, to stand as the evidence in chief of the witness whose statement is, or as part of such evidence; and
- (c) to allow any party to put a statement of a witness's proposed evidence, or any part of it, in cross-examination of the witness, whether or not that statement or any part of it is referred to in evidence in chief of that witness.

8. The object of amendments 6 (a) and 6 (c) (i) is to amend Schedule D to the Supreme Court Rules 1970 (which sets out powers of the Court exercisable by masters) and the reference to Schedule D in Part 60 rule 1A (1) of the rules so that Schedule D may contain references to Acts and regulations of the Commonwealth in addition to references to NSW Acts and regulations.

1992—No. 159

9. The object of amendment 6 (d) is to:

- (a) require proceedings for registration of a foreign forfeiture order or a foreign pecuniary penalty order under the Mutual Assistance in Criminal Matters Act 1987, of the Commonwealth, to be commenced by summons, joining as defendant the person against whom the order was made;
- (b) dispense with the necessity to serve the summons on the defendant;
- (c) allow the application for registration to be heard in the absence of the public without attendance by the plaintiff, and
- (d) require an applicant for registration to file with the summons an affidavit setting out such particulars as are necessary to enable the Court to comply with section 23A (2) of the Proceeds of Crime Act 1987 of the Commonwealth (which requires the Court to direct the DPP to give or publish notice of the registration to certain specified persons whom the court has reason to believe may have an interest in the property).

10. The object of amendment 6 (c) (ii) is to enable masters to exercise the power of the Court in:

- (i) ordering:
 - (A) registration of a foreign forfeiture order;
 - (B) registration of a foreign pecuniary penalty order
 - (C) registration of an amendment to an interstate forfeiture order or to an interstate restraining order; and
 - (D) cancellation of registration,
- under the Mutual Assistance in Criminal Matters Act 1987 of the Commonwealth; and
- (ii) making the directions referred to in section 23A (2) of the Proceeds of Crime Act 1987 of the Commonwealth.

11. The object of amendment 7 (a) is to exempt applications under the Confiscation of Proceeds of Crime Act 1989 for registration of

- (a) interstate forfeiture orders;
- (b) interstate registration orders; and
- (c) amendments thereto,

from the requirement to file with the application a statement in summary form of the general nature of the facts and circumstances relied on.

12. The object of amendment 7 (b) is to require notice of discharge of a pecuniary penalty order under the Confiscation of Proceeds of Crime Act 1989, being an order registered under the Service and Execution of Process Act 1901 of the Commonwealth, to be filed in the court in which the order is registered.

13. The object of amendments 7 (c) and (d) is to:

- (a) require proceedings for registration, under the Proceeds of Crime Act 1989, of an interstate forfeiture order or of an interstate restraining order to be commenced by summons and to provide who is to be named as a defendant
- (b) dispense with the necessity to serve the summons on the defendant;
- (c) allow the application for registration to be heard in the absence of the public without attendance by the plaintiff, and

1992—No. 159

(d) require service of the order for registration and of the interstate order on the defendant.

14. The object of amendment 7 (e) is to give power to masters to exercise the power of the Court in ordering:

- (i) registration of an interstate forfeiture order;
- (ii) registration of an interstate restraining order;
- (iii) registration of an amendment to an interstate forfeiture order or to an interstate restraining order; and
- (iv) cancellation of registration of an interstate forfeiture order or of an interstate restraining order.

15. The object of amendment 8 is to assign to the Common Law Division proceedings under the Exotic Diseases of Animals Act 1991 and to enable masters to exercise the powers of the Court under section 62 of that Act.

16. The object of amendment 9 is to enable a master to exercise the power of the Court to excuse a juror.

M. A. Blay, Secretary of the Rule Committee.
