

1992—No. 401

SUPREME COURT RULES (AMENDMENT No. 265) 1992

NEW SOUTH WALES



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1. These rules are made by Rule Committee on 20 July 1992.
2. The Supreme Court Rules 1970 are amended as follows:

Part 51 rule 17A

Omit the rule and insert instead:

Competency

17A. (1) A respondent who objects to the competency of an appeal shall, by motion on notice filed and served on all other parties to the appeal within 21 days after service upon the respondent of the notice of appeal, apply to the Court of Appeal for an order striking out the appeal as incompetent.

(2) If the respondent fails to comply with subrule (1), but the appeal nevertheless is dismissed as incompetent, he shall not, unless the Court of Appeal otherwise orders, receive any costs of the appeal, and the Court of Appeal may order that he pay to the appellant any costs of the appeal proving useless or unnecessary.

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

(a) Part 25 rule 7A (2):

Omit the subrule and insert instead:

(2) In this Division:

(a) “party concerned” means the party mentioned in subrule (1); and

(b) “occupational rehabilitation service” has the meaning which it has for the purposes of section 59 of the Workers Compensation Act 1987.

(b) Part 25 rule 7B (1):

Omit the subrule and insert instead:

(1) The Court may make orders for testing the party concerned for the purpose of assessing the extent of impairment of the party’s earning capacity, including an order to submit to tests, pursuant to the direction of a

medical practitioner, during a specified period and at a specified place, being:

- (a) a hospital;
- (b) a rehabilitation centre conducted by a hospital; or
- (c) some other suitable place,

at which:

- (d) treatment by way of rehabilitation; or
- (e) an occupational rehabilitation service,

is afforded.

(c) Part 25 rule 7B (2):

Omit “subrule (2)” and insert instead “subrule (1)”.

4. The Supreme Court Rules are further amended as follows:

Part 80 rule 62

After subrule (6) insert:

(6A) Where:

- (a) the examination of a person under section 541 of the Code is held wholly or partly in public; and
- (b) a written record or transcript of the questions put to the person and the answers given by the person at the examination is filed in the registry,

the registrar shall, upon application by the person made within 3 years of the date of the conclusion of the examination and payment of the prescribed fee, furnish to the person a copy of the written record or transcript of such part of his examination as is held in public.

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

(a) Part 45 rule 13

Omit the rule and insert instead:

Conditions of sale of property

13. (1) Subject to subrule (2), the Sheriff shall sell property under a writ, or require any auctioneer appointed by him to sell the property:

(a) on terms as to payment that the purchaser shall

Pay:

- (i) an amount equal to at least 10% of the purchase price by way of deposit immediately upon the sale; and
- (ii) the balance of the purchase price:

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- (A) in the case of land, within such period not exceeding six weeks after the sale; and
- (B) in any other case, within such period not exceeding two working days after the sale,
as the Sheriff may determine prior to the sale; or
- (b) on terms as to payment that the purchaser shall pay the whole of the purchase price immediately upon the sale.

(2) Where a sale of property under a writ is partly of land and partly of other property, the other property may be sold on the same terms as to payment as the land.

(3) The Sheriff shall require payment for property sold under a writ to be in cash, by bank draft or, if the Sheriff so approves, by credit card.

(4) Where payment is made by credit card, any charge made to the Sheriff or the auctioneer in respect of the payment shall form part of the costs of the execution.

[cf. D.C.R. 1973, Pt. 35, r. 9 and Pt. 36, r. 11B]

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

(a) Part 77 rule 18

After “birth” wherever appearing insert “or stillbirth”.

(b) SCHEDULE F Form 89A

(i) Omit “birth of born on” and insert instead “birth (or stillbirth) of born (or stillborn) on”.

(ii) After “*for place of birth*” insert “*or stillbirth*”

(iii) omit:

 Date of birth:

 Place of birth: (*in full*)

 and insert instead:

 Date of birth (*or stillbirth*):

 Place of birth (*or stillbirth*): (*in full*)

(iv) After “*born*” insert “*or stillborn*”.

(v) Omit “*Date of birth of each child*” and insert instead “*Date of birth or stillbirth of each child*”

(vi) After “*sought*” insert ‘*or “stillborn” if applicable*’.

EXPLANATORY NOTE

(This note does not form part of the rules)

1. The object of the amendment contained in paragraph 2 is to:
 - (a) make provision for an application to strike out an appeal as incompetent; and
 - (b) provide costs sanctions against the party who fails to make an application where the appeal is nevertheless dismissed as incompetent,
2. The object of the amendment contained in paragraph 3 (a) is to omit from the rules definitions which relied upon definitions formerly contained in the Workers Compensation Act 1987 and to include instead a new definition which has been included in that Act.
3. The object of the amendment contained in paragraph 3 (b) is to alter the types of places at which the Court may order testing of a party to be carried out for the purpose of assessing the extent of impairment of that party's earning capacity.
4. The object of the amendment contained in paragraph 3 (c) is to correct an incorrect reference to a subrule.
5. The object of the amendment contained in paragraph 4 is to entitle a person examined publicly under section 541 of the Companies (New South Wales) Code or section 597 of Corporations Law to obtain a copy of any written record or transcript of the examination filed in the Court upon application made within 3 years of the date of the conclusion of the examination.
6. The objects of the amendment contained in paragraph 5 are:
 - (a) to extend to 6 weeks the maximum time that may be allowed to a purchaser of land on a Sheriff's sale;
 - (b) where a sale of property under a writ is partly of land and partly of other property to allow the other property to be sold on the same terms as to payment as the land;
 - (c) to omit a superfluous subrule (Part 45 rule 13 (5)).
7. The object of the amendment contained in paragraph 6 is to amend the rules relating to applications under section 13 of the Registration of Births, Deaths and Marriages Act 1973 (which section relates to orders that the birth or stillbirth of a child be registered under that Act) so that those rules govern applications in respect of stillbirths (they previously governed applications in respect of births only).
8. Words and figures underlined in the above rules are intended to be represented in italics when printed.

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