

**SUPREME COURT RULES AMENDMENT No. 268 1992**

**NEW SOUTH WALES**



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1. These rules are made by the Rule Committee on 26 October 1992.

2. The Supreme Court Rules 1970 are amended as follows:

(a) Part 1 rule 3

In the matter relating to Part 77 insert, next under "Listening Devices Act 1984":

in the Column "Statute"— <i>Mining Act 1992</i>	in the Column "Division"— 37	in the Column "Rules"— 103
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(b) Part 9 rule 7B

Omit "1973" and insert instead "1992".

(c) Part 32 Division 4

(i) Omit "appellant" where appearing and insert instead "plaintiff".

(ii) Omit "respondent" where appearing and insert instead "defendant".

(iii) Omit rules 22 and 22A and insert instead:

**Application**

22. (1) This Division applies to proceedings under sections 325 and 326 of the Mining Act 1992 (the "Mining Act").

(2) The rules, other than this Division, so far as applicable, apply to proceedings to which this Division applies.

(iv) In rules 23, 26, 27A and 31 after "determination", where appearing, insert "or direction".

(v) Omit rule 24 and insert instead:

**Time to apply to state a case**

24. An application under section 325 (1) of the Mining Act (which subsection relates to an application to state a

case) must be made within 28 days after the determination direction of the warden.

- (vi) From rule 25 omit “159” and insert instead “325”.
- (vii) From the headnote to rule 27A omit “applicant’s” and insert instead “plaintiff’s”
- (viii) From rule 33 omit “159 (7)” where appearing and insert instead “325 (6)”.
- (ix) From rule 33 (3) omit “prescribed” and insert instead “designated”.
- (x) From the footnote to rule 35 omit “7” and insert instead “383”.

(d) Part 77

After Division 36 insert:

**DIVISION 37—Mining Act 1992 (s. 319)**

**Entry of order of Warden’s Court**

103 (1) Proceedings for entry in the Court under section 319 of the Mining Act 1992 of an order for the payment of money shall be commenced by summons in the Common Law Division joining as defendant the person against whom the order

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

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

(4) Where an order for entry is made in proceedings to which this rule applies, the plaintiff shall forthwith serve on the defendant a minute of:

- (a) the order for entry; and
- (b) the order which is the subject of the proceedings.

(5) An order mentioned in section 319 of the Mining Act 1992 is entered when a copy of the order (being a copy sealed by the court that made the order) is filed in accordance with an order of the Court.

(e) SCHEDULE H Part 1

From the matter relating to the Mining Act 1973:

- (i) omit “1973” and insert instead “1992”; and
- (ii) omit “159” and insert instead “325”.

3. The amendments contained in paragraphs 2 (b), (c) and (e) shall not apply to an application for determination of a stated case to which the Mining Act 1973 applies.

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

**SCHEDULE F Form 69B**

- (i) Omit “amount);” and insert instead “amount));”
- (ii) Omit “(d)” and insert instead “(c)”.

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

**(a) SCHEDULE F Form 47**

Omit:

- (12) an amount equal to two-thirds of the amount prescribed by item 49 (a) of Table 3 of Schedule G.

and insert instead:

- (12) the amount prescribed by Part 37 rule 3A.

**(b) SCHEDULE F Form 48**

**(i) Paragraph (c) (ii)**

Omit “.” and insert instead “;”.

**(ii) After paragraph (c) (ii) insert:**

- (iii) you may produce this subpoena and the documents and things described in the schedule to a clerk of the Court at the above place by hand or by post, in either case so that he receives them not later than two days before the first date on which you are required so to attend;

**(iii) Omit:**

- (13) an amount equal to two-thirds of the amount prescribed by item 49 (a) of Table 3 of Schedule G.

and insert instead:

- (13) the amount prescribed by Part 37 rule 3A.

6. The amendments contained in paragraph 5 shall not apply in respect of subpoenas filed in the Court before 1 February 1993.

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

**SCHEDULE D Part 3**

After paragraph 17 insert:

17A. Trial (except with a jury) of proceedings in the Common Law Division on a claim in which:

- (a) damages are claimed in respect of the death of or personal injuries to any person;
- (b) damages are claimed in respect of damage to property and:
  - (i) the proceedings include a claim in respect of the death of or personal injuries to any person; and
  - (ii) if separate proceedings were brought in respect of:
    - (A) the claim referred to in subparagraph (i); and
    - (B) the claim in respect of damage to property, some common question of fact would arise in both claims; or
- (c) contribution is claimed under Part III of the Law Reform (Miscellaneous Provisions) Act 1946 in respect of damages of the nature referred to in paragraph (a) or (b).

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

(a) SCHEDULE D Part 1

From the matter relating to section 52 (3) of Act No. 47, 1988, omit “52 (3)” and insert instead “52 (3), 52 (4)”.

(b) SCHEDULE E Part 1

(i) Under the matter relating to Part 5 insert:

in Column 1— “Part 8— Rule 10, 11 (2) and (4)	in Column 2— Addition, etc., of parties on death etc.	in Column 3— ....”
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(ii) Under the matter relating to Part 24 insert:

in Column 1— “Part 25— Rule 8	in Column 2— Inspection of property etc.	in Column 3— ....”
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(c) SCHEDULE E Part 2

(i) From paragraph 8 omit “\$5,000” and insert instead “\$10,000”.

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

Part 55 rule 11 (3)

Omit the subrule and insert instead:

(3) Where:

- (a) it appears to the District court on its own view that a person is guilty of contempt of court, whether committed in the face or hearing of the District Court or not, and the District Court refers the matter to the Court for determination under section 203 (1) of the District Court Act 1973; or
- (b) it appears to a Local Court on its own view that a person is guilty of contempt of court, whether committed in the face or hearing of the Local Court or not, and the Local Court refers the matter to the Court for determination under section 76A of the Local Courts (Civil Claims) Act 1970,

the registrar must commence proceedings for punishment of the contempt, and no direction from the Court shall be necessary to enable the registrar to do so.

10. The Supreme Court rules 1970 are further amended as follows:

(a) Part 82 rule 5 (1)

Omit “.” from subparagraph (i) (iii) and insert instead “; and”.

(b) After paragraph (i) insert:

- (j) evidence of the public interest to be served by the appointment of the applicant as a notary.

### EXPLNATORY NOTE

(This note does not form part of the rules)

1. The object of the amendments contained in paragraphs 2 (a), (b), (c) and (e) are to amend the rules to take into account differences between the Mining Act 1992 and the Mining Act 1973
2. The object of the amendment contained in paragraph 1 (d) is to provide for the entry in the Court of orders for the payment of money made by a Warden's Court.
3. The object of paragraph 2 is to continue the existing rules in respect of applications for determination of stated cases to which the Mining Act 1973 continues to apply.
4. The objects of the amendment contained in paragraph 4 are to insert a closing bracket and to correct an error in the numbering of the paragraph of a Form.
5. The objects of the amendments contained in paragraph 5 and 6 are to:
  - (i) replace a reference in Forms 47 and 48 (subpoenas) to an item in Schedule G with a reference to the appropriate rule;

(ii) add a paragraph to Form 48 (subpoena) which was omitted when amending that Form in Amendment No. 267; and

(iii) restrict the amendments to subpoenas filed on or after 1 February 1993.

6. The object of the amendment contained in paragraph 7 is to allow masters to exercise the powers of the Court in a trial of proceedings in the Common Law Division without a jury in which a claim is made for:

(i) damages in respect of death or personal injuries;

(ii) damages in respect of damage to property and the proceedings include a claim of the type mentioned in (i) and some common question of fact arises; and

(iii) contribution under Part III of the Law Reform (Miscellaneous Provisions) Act 1946 in respect of damages of the nature referred to in paragraphs (i) or (ii).

7. The object of the amendment contained in paragraph 8 (a) is to enable a master to exercise the powers of the Court in giving leave to commence proceedings more than 3 years after the date by which a claim must be made in accordance with section 43 of the Motor Accidents Act 1988.

8. The objects of the amendments contained in paragraph 8 (b) and (c) are to enable registrars to exercise the powers of the Court in:

(a) making orders in relation to addition, removal or rearrangement of parties on the death or bankruptcy of a party where the cause of action survives;

(b) hearing proceedings where the only matter in question is a matter of costs not exceeding \$10,000 (in place of the present limit of \$5,000).

9. The object of the amendment contained in paragraph 9 is to prescribe the procedure to be adopted where it appears to the Local Court that a person is guilty of contempt and the Local Court refers the alleged contempt to the Court under section 76A of the Local Courts (Civil Claims) Act 1970.

10. The object of the amendment contained in paragraph 10 is to require evidence, in support of an application to be appointed as a public notary, of the public interest to be served by the applicant's appointment.

11. Words or figures underlined in the above rules are intended to be represented in italics if printed.

M. A. BLAY,  
Secretary of the Rule Committee

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