

## SUPREME COURT RULES (AMENDMENT No. 260) 1992

NEW SOUTH WALES



*[Published in Gazette No. 26 of 21 February 1992]*

1. These rules are made by the Rule Committee on 17 February 1992.
2. The Supreme Court Rules 1970 are amended as follows:  
Schedule J  
Omit “after 31 August 1991 ..... 15” and insert instead:  

in Column 1	in Column 2
“the beginning of 1 September 1991	
to the end of 28 February 1992	15
after 28 February 1992.....”	13
3. The Supreme Court Rules 1970 are further amended as follows:
  - (a) Part 50 rule 10  
Omit “company or”.
  - (b) Part 64 rule 1  
Omit the rule and insert instead:

### **Interpretation**

1. In this Part:

“**business name**” means a name, style, title or designation under which a person carries on a business, not being a name consisting of the name of that person and the name of each other person, if any, in association with whom that person carries on business, without any addition.

“**registered office**”, in relation to a limited partnership, means the registered office of the limited partnership for the time being shown in the register kept under the Partnership Act 1892.

## (c) Part 64 rule 2 (1)

Omit the subrule and insert instead:

2. (1) Where a claim for relief is made against any person in respect of anything done or omitted or suffered in the course of, or otherwise relating to, a business carried on within the State by that person under a business name and that business name is not, on the date on which proceedings in the Court for that relief are commenced:

- (a) registered under and for the purposes of the Business Names Act 1962 in relation to that person; or
- (b) the firm-name of a limited partnership, within the meaning of Part 3 of the Partnership Act 1892, in which that person is a partner,

then, subject to this Part:

- (c) the proceedings may be commenced and prosecuted against that person in that business name;
- (d) that business name shall, for the purpose of the proceedings, be a sufficient designation of that person in any process or other legal document or instrument; and
- (e) any judgment given or order made in the proceedings may be enforced against that person or, where there are two or more such persons, against any of them.

## (d) Part 64 rule 3

Omit the headnote and insert instead **“Service where unregistered business name”**.

## (e) Part 64 rule 3 (1)

Omit the subrule and insert instead:

3. (1) Where a claim for relief is made against any person in respect of anything done or omitted or suffered in the course of, or otherwise relating to, a business carried on within the State by that person under a business name which is not:

- (a) registered under and for the purposes of the Business Names Act 1962 in relation to that person; or

- (b) the firm-name of a limited partnership, within the meaning of Part 3 of the Partnership Act 1892, in which that person is a partner,

any originating process or other document in or relating to proceedings in the Court for that relief may be served on that person:

- (c) by leaving a copy of it at a place within the State where the business is carried on with some person apparently engaged (whether as servant or otherwise) in the business and apparently of or above the age of 16 years; or
- (d) by sending a copy of it by certified mail addressed to the business name or to the person to be served and addressed to a place within the State where the business is carried on.

(f) Part 64

After rule 3 insert:

**Service upon Limited Partnership**

3A. Where a claim for relief is made against any person in respect of anything done or omitted or suffered in the course of, or otherwise relating to, a business carried on within the State by a limited partnership, within the meaning of Part 3 of the Partnership Act 1892, in which that person is a partner, any originating process or other document in or relating to proceedings in the Court for that relief may be served on that person by leaving a copy of it at the registered office of the limited partnership or by sending a copy of it by certified mail addressed to the firm-name of the limited partnership at the registered office of the limited partnership.

- 4. The Service and Execution of Process Act (Courts other than the Supreme Court) Rules 1972 are amended as follows:

Rule 8 (b)

Omit “\$233.00” and insert instead “\$280.00”.

- 5. Paragraph 4 has effect in respect of business done on or after 18 October 1991.
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**EXPLANATORY NOTE**

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

1. The object of the amendment contained in paragraph 2 is to prescribe the interest on judgment debts and certain other cases at 13% as of 1 March 1992.
2. The object of the amendment contained in paragraph 3 (a) is to remove a superfluous reference to a company name.
3. The object of the amendment contained in paragraph 3 (b) is to add a definition of “registered office” in relation to a limited partnership.
4. The object of the amendments contained in paragraph 3 (c), 3 (d) and 3 (e) is to exclude businesses carried on under the firm name of a limited partnership from the provisions of the rules relating to:
  - (a) proceedings against; and
  - (b) service of documents in, or relating to, proceedings against,a business which is not registered under the Business Names Act 1962.
5. A further object of the amendment contained in paragraph 3 (e) is to restrict the provisions of the rules, relating to service on a business not registered under the Business Names Act 1962, to the service of documents in or relating to proceedings relating to that business.
6. The object of the amendment contained in paragraph 3 (f) is to provide for service of documents upon a limited partnership in or in relation to proceedings concerning the business carried on by the partnership.
7. The object of the amendment contained in paragraph 4 is to increase the amount of solicitors’ fees that may be recovered by a party for registering and enforcing a judgment under the Service and Execution of Process Act 1901 of the Commonwealth, in courts other than the Supreme Court. The rate of increase corresponds to that recently applied by the Legal Fees and Costs Board to solicitors’ fees and has effect from the same date.

M. A. BLAY,  
Secretary of the Rule Committee

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