

**SUPREME COURT RULES (AMENDMENT No. 273) 1993—  
RULE**

NEW SOUTH WALES



*[Published in Gazette No. 49 of 21 May 1993]*

1. These rules are made by the Rule Committee on 17th May, 1993.
2. The Supreme Court Rules 1970 are amended as follows:
  - (a) Part 12 rule 4
    - (i) From paragraph (k) omit “and”.
    - (ii) From paragraph (1) omit “.” and insert instead “;”.
    - (iii) After paragraph (1) insert:
      - (m) Sections 12, 13, 19 (1) and (2), and 20 of the National Crime Authority (State Provisions) Act 1984;
      - (n) Regulation 5 of the National Crime Authority (State Provisions) Regulation 1986;
      - (o) Sections 22, 23, 30 and 31 of the National Crime Authority Act 1984 (Commonwealth);
      - (p) Regulation 7 of the National Crime Authority Regulations (Commonwealth);
      - (q) Section 39R of the Drug Misuse and Trafficking Act 1985;
      - (r) Section 39 of the Travel Agents Act 1986;
      - (s) Part 11 of the Criminal Procedure Act 1986.
  - (b) Part 12 rule 7 (a)

Omit “53D” and insert instead “53 (3D)”.
  - (c) Part 75 rule 3

Omit paragraphs (b)–(f).
  - (d) Part 77 rules 84A, 85, 87H, 87K and 87M

Omit “Criminal Division” where appearing and insert instead “Common Law Division”.

## (e) Part 77

After rule 84A insert:

**Statement in summons or notice of motion**

84AA. 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.

3. The amendments contained in paragraphs 2 (a) and 2 (c)–(d) shall not apply to proceedings commenced before 14th June, 1993.

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

## (a) Part 52 rule 24 (2)

Omit paragraphs (c) and (d) and insert instead:

- (c) in proceedings commenced after 31st October, 1980, but on or before 31st March, 1983, a plaintiff recovers a sum not more than \$3,000;
- (d) in proceedings commenced after 31st March, 1983, but on or before 30th June, 1993, a plaintiff recovers a sum not more than \$10,000: or
- (e) in proceedings commenced after 30th June, 1993, a plaintiff recovers a sum not more than \$75,000,

## (b) Part 52 rule 24 (3)

Omit paragraphs (c) and (d) and insert instead:

- (c) in respect of proceedings commenced after 31st October, 1980, but on or before 31st March, 1983:
  - (i) where he recovers a sum more than \$3,000 but not more than \$6,000, be only a half of the whole amount;
  - (ii) where he recovers a sum, in respect of damages for personal injuries, more than \$6,000 but not more than \$7,500, be only three-quarters of the whole amount;
- (d) in respect of proceedings commenced after 31st March 1983, but on or before 30th June, 1993, where he recovers a sum more than \$10,000 but not more than \$50,000, be only a half of the whole amount; and
- (e) in respect of proceedings commenced after 30th June, 1993:

- (i) where he recovers a sum more than \$75,000 but not more than \$150,000, be only a half of the whole amount;
    - (ii) where he recovers a sum more than \$150,000 but not more than \$175,000, be only two-thirds of the whole amount;
  - (c) Part 52 rule 24 (5)
    - Omit paragraphs (b) and (c) and insert instead:
      - (b) in proceedings commenced after 28th September 1973, but on or before 31st March 1983, the plaintiff recovers a sum not more than \$7,500;
      - (c) in proceedings commenced after 31st March 1983, but on or before 30th June, 1993, the plaintiff recovers a sum not more than \$50,000; or
      - (d) in proceedings commenced after 30th June, 1993, the plaintiff recovers a sum not more than \$150,000,
  - (d) Part 52 rule 24 (6)
    - Omit paragraphs (b) and (c) and insert instead:
      - (b) unless the claim is for unliquidated damages, after 28th September 1973, but on or before 31st March 1983, the plaintiff claims a sum not more than \$7,500;
      - (c) after 31 March 1983, but on or before 30th June, 1993, the plaintiff claims a sum not more than \$50,000; or
      - (d) after 30th June, 1993, the plaintiff claims a sum not more than \$150,000.
5. The Supreme Court Rules 1970, are further amended as follows:
- (a) Part 65A rule 3
    - (i) renumber rule 3 as rule 3 (1).
    - (ii) After subrule (1) insert:
      - (2) This rule does not apply to a cancellation or suspension in Australia within the meaning of the Mutual Recognition Act.
  - (b) Part 65C rule 3
    - (i) Add to the end of the headnote “, **other than under the Mutual Recognition Act**”.
    - (ii) In subrule (4), after “require,”, insert “in Form 70AA,”.

(iii) Omit subrule (5) (c) and insert instead:

(c) The Prothonotary shall enter or cause to be entered in the Roll of Barristers or the Roll of Solicitors in this State, as the case may require, the name of the persons admitted; and

(iv) After subrule (5) insert:

(6) This rule does not apply to proceedings commenced by notice under Section 19 (1) of the Mutual Recognition Act.

(c) Part 65C rule 4

Omit the rule and insert instead:

**Application under the Mutual Recognition Act**

4. (1) This rule applies to proceedings commenced by notice under Section 19 (1) of the Mutual Recognition Act.

(2) The notice must, unless the Court otherwise orders:

- (a) be lodged by filing it in the registry at Sydney;
- (b) show the name, residential address and business address of the applicant;

(c) where the applicant is represented by a solicitor:

(i) the name, address and telephone number of the solicitor; and

(ii) if that solicitor has another solicitor as agent in the proceedings—the name, address and telephone number of the agent;

(d) show an address for service;

(e) be dated not more than 14 days before the date on which it is filed; and

(f) be accompanied by a certificate which:

(i) evidences the existing registration which gives rise to the entitlement of the applicant under the Mutual Recognition Act to entry in the Roll of Banisters or the Roll of Solicitors;

(ii) is given by the proper officer of:

(A) The Supreme Court; or

(B) a body, having functions similar to the Solicitors Admission Board or the Barristers Admission Board,

of the State or Territory where such existing registration occurred; and

(iii) is dated not more than 28 days before the date on which it is filed,

unless the document mentioned in Section 19 (3) of the Mutual Recognition Act, accompanying the notice, fulfils the requirements of this paragraph.

(3) The applicant shall, on or before the day of filing, serve the notice and accompanying documents:

- (a) where the application is for enrolment as a barrister—on the Barristers Admission Board and the New South Wales Bar Association; or
- (b) where the application is for admission as a solicitor—on the Solicitors Admission Board and the Law Society of New South Wales,

and shall file an affidavit of service within 14 days of filing the notice.

(4) The applicant shall:

- (a) prior to; or
- (b) within 14 days after,

filing the notice, attend at the office of the Supreme Court of his or her State or Territory and take the oath of office as barrister or solicitor, as the case may require, in Form 70AA, and cause the certificate included in that form to be completed and shall:

- (c) at the time of; or
- (d) within 14 days after, filing the notice, file the form of oath and the certificate and, on the same day, serve them on the Barristers Admission Board or the Solicitors Admission Board, as the case may require.

(5) Notwithstanding Part 36 rule 3:

- (a) the statements and other information in the notice which are verified by statutory declaration;
- (b) the document mentioned in Section 19 (3) of the Mutual Recognition Act, certified under Section 19 (4) of that Act, accompanying the notice; and
- (c) the certificate referred to in subrule (2) (f),

are admissible in evidence and, unless the Court otherwise orders, shall not be the subject of oral evidence by the applicant.

(6) Part 4, rules 1 to 3 and Part 7. rule 6 shall not apply to proceedings to which this rule applies unless the Court otherwise orders.

(7) The application for enrolment made by the notice may be determined or dealt with by the Court in the absence of the public and without any attendance by or on behalf of the applicant.

(8) If the Court is satisfied that the applicant is entitled to enrolment, it shall order that the applicant be admitted as a barrister or as a solicitor as the case may require, and:

- (a) the Prothonotary shall enter or cause to be entered in the Roll of Barristers or the Roll of Solicitors, as the case may require, the name of the person admitted; and
- (b) the person admitted shall be entitled to receive a certificate bearing the seal of the Court.

(d) SCHEDULE F

After Form 70 insert:

Form 70AA

*P. 65C. rr. 3 (4), 4 (4).*

OATH OF OFFICE

I, *(name)* of *(address)* do swear that *(if the oath is taken in relation to proceedings commenced or proposed to be commenced under the Mutual Recognition Act, add if I am enrolled as a barrister (or solicitor) by the Supreme Court of New South Wales)* I will truly and honestly conduct myself in the practice of a barrister *(or solicitor)* of the Supreme Court of New South Wales and I shall faithfully serve as such in the administration of the laws and the usages of that State according to the best of my knowledge, skill and ability.

*(Signature of person taking oath)*

.....  
CERTIFICATE

I, *(name)* of *(address)*, certify that I duly administered the above oath on *(date)*

*(date)*

*(Signature of a person administering oath)*

.....  
(Office of person administering oath)

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

(a) Part 80

After rule 1A insert:

**Corporations Law: affidavit (s459E (3))**

1B. An affidavit referred to in Section 459E (3) of the Corporations Law must:

(a) be made:

- (i) by the person serving the demand;
- (ii) where the demand is served by more than one person—by one of those persons;
- (iii) where the, or a, person serving the demand is a corporation—by a member or officer of the corporation having knowledge of the facts so far as they are known to the corporation; or
- (iv) where the person serving the demand is the Crown—by an officer of the Crown having knowledge of the facts so far as they are known to the Crown;

(b) set out the facts entitling the deponent under paragraph (a) to make the affidavit;

(c) state the source of the deponent's knowledge of the matters stated in the affidavit concerning the debt or debts;

(d) state that the deponent believes those matters to be true; and

(e) state that the deponent believes that there is no genuine dispute about the existence or amount of the debt or debts to which the demand relates.

**Corporations Law: affidavit (s459Q (c))**

1C. An affidavit referred to in Section 459Q (c) of the Corporations Law must:

(a) be made:

- (i) by the plaintiff;
- (ii) where there is more than one plaintiff—by one of them;
- (iii) where the, or a, plaintiff is a corporation by a member or officer of the corporation having knowledge of the facts so far as they are known to the corporation; or

- (iv) where the plaintiff is the Crown—by an officer for the Crown having knowledge of the facts so far as they are known to the Crown;
- (b) set out the facts entitling the deponent under paragraph (a) to make the affidavit;
- (c) state the source of the deponent's knowledge of the matters stated in the affidavit concerning the debt or debts;
- (d) state that the deponent believes those matters to be true; and
- (e) state that the deponent believes that there is no genuine dispute about the existence or amount of the debt or debts to which the demand relates.

### **EXPLANATORY NOTE**

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

1. The object of the amendments contained in paragraphs 2 (a) and 2 (c) to (d) is to assign to the Common Law Division proceedings under:
  - (a) Section 39R of the Drug Misuse and Trafficking Act 1985;
  - (b) Section 39 of the Travel Agents Act 1986;
  - (c) Part 11 of the Criminal Procedure Act 1986;
  - (d) the Drug Trafficking (Civil Proceedings) Act 1990;
  - (e) the Confiscation of Crime Act 1989;
  - (f) the Proceeds of Crime Act 1987 (Commonwealth);
  - (g) the Crimes (Superannuation Benefits) Act 1989 (Commonwealth);
  - (h) Sections 12, 13 19 (1) and (2), and 20 of the National Crime Authority (State Provisions) Act 1984;
  - (i) regulation 5 of the National Crime Authority (State Provisions) Regulation 1986;
  - (j) Sections 22, 23, 30 and 31 of the National Crime Authority Act 1984 (Commonwealth); and
  - (k) regulation 7 of the National Crime Authority Regulations (Commonwealth);
2. The object of the amendment contained in paragraph 2 (b) is to correct an incorrect reference to a Section.
3. The object of the amendment contained in paragraph 2 (e) is to require the applicant for an order under the Drug Trafficking (Civil Proceedings) Act 1990 to file with his summons or notice of motion a statement in summary form of the general nature of the facts and circumstances relied on.
4. The object of the amendment contained in paragraph 4 (a) is to prevent a plaintiff who recovers the sum of not more than \$75,000 in proceedings commenced after 30th June, 1993, from being entitled to payment of costs, unless the Court otherwise orders.



5. The object of the amendment contained in paragraph 4 (b) is to:

- (a) reduce the costs entitlement of a plaintiff, who recovers between \$75,000 and \$150,000 in proceedings commenced after 30th June, 1993, to one half of the amount the plaintiff would otherwise be entitled to; and
- (b) reduce the costs entitlement of a plaintiff, who recovers between \$150,000 and \$175,000 in proceedings commenced after 30th June, 1993, to two-thirds of the amount the plaintiff would otherwise be entitled to, unless the Court otherwise orders.

6. The object of the amendment contained in paragraph 4 (c) is to prevent a plaintiff from being allowed the costs of briefing more than one counsel where the plaintiff in proceedings commenced after 30th June, 1993, recovers not more than \$150,000, unless the Court or the taxing officer otherwise orders.

7. The object of the amendment contained in paragraph 4 (d) is to prevent a defendant from being allowed the costs of briefing more than one counsel in proceedings commenced after 30th June, 1993, where the amount claimed by the plaintiff does not exceed \$150,000, unless the Court or the taxing officer otherwise orders.

8. The object of the amendment contained in paragraphs 5 (a) and (b) are to amend:

- (a) Part 65A rule 3 (which relates to suspension of barristers and solicitors whose names are removed from a roll kept outside the State or who are suspended from practice outside the State); and
- (b) Part 65C rule 3 (which relates to admission of interstate barristers and solicitors),

for consistency with the Mutual Recognition Act 1992 of the Commonwealth and with the amendments contained in paragraph 5 (c).

9. The object of the amendments contained in paragraphs 5 (c) and (d) is to prescribe the procedure for applying for admission as a barrister or solicitor under the Mutual Recognition Act 1992 of the Commonwealth.

10. The object of the amendments contained in paragraph 6 is to prescribe certain requirements relating to the deponent and contents of an affidavit under Section 459E (3) or Section 459Q (c) of the Corporations Law.

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

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