

1993—No. 248

SUPREME COURT RULES (AMENDMENT No. 274) 1993

NEW SOUTH WALES



[Published in Gazette No. 65 of 25 June 1993]

1. These rules are made by the Rule Committee on 21 June 1993.

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

SCHEDULE H Part 1

In alphabetical order insert:

in the column	in the column	in column 2—
“Act”—	“Section— (unless otherwise stated)”—	
Community Services (Complaints, Appeals and Monitoring) Act 1993	67	Appeal against decision of Tribunal

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

Part 73 rule 16

Omit “rule” and insert “Division”.

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

Part 36 rule 13C

(i) From subrule (1) omit “72 dated 27 November 1991” and insert instead “75 dated 27 October 1992”.

(ii) From subrule (3) omit “one month” and insert instead “6 weeks”.

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

(a) Part I rule 3

(i) From the matter relating to Part 77, omit “*Co-operation Act 1924*” and insert instead “*Co-operation Act 1923*”.

1993—No. 248

(ii) In the matter relating to Part 77, insert next under “Co-operation Act 1923”:

in the column “Statute”— “ <i>Co-operatives Act 1992</i> ”	in the column “Division”— 24A	in the column “Rules”— 83A, 838”
--	-------------------------------------	--

(b) Part 77

After Division 24 insert:

DIVISION 24A—Co-operatives Act 1992

Assignment of business proceedings

83A. Proceedings in the Court on an application for relief under the Co-operatives Act 1992 (the “subject Act”) are assigned to the Equity Division.

Applicability of Part 80

83B. The provisions of Part 80 relating to applications under the Companies Code and the Corporations Law shall, so far as applicable and making such changes as it is necessary to make, apply to applications under the subject Act.

(c) Part 80 rule 2

Renumber the rule as “2 (1)”, and after it insert:

(2) Nothing in subrule (1) prevents an application for relief under the Code being made by motion in existing proceedings.

(d) SCHEDULE E Part 2

After paragraph 33 insert:

34. Orders under clause 10 of Schedule 4 to the Co-operatives Act 1992 (which relates to the remuneration of a receiver, etc.).

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

Part 52 rule 4

Omit subrule (2) and insert instead:

(2) Subject to subrule (5), the Court shall not, in the exercise of its powers and discretions under section 76 of the Act, make any order for costs against a person who is not a party.

(3) Subject to subrule (4), a person shall not be made a party for the purpose of making an application for costs against the person.

1993—No. 248

(4) Subrule (3) shall not apply:

- (a) where the person is otherwise a proper party; or
- (b) to a claim for relief against the person under section 78 of the Act.

(5) Subrule (2) shall not limit the power of the Court to make any order:

- (a) under Part 42 rule 7 (f) or Part 52 rule 66;
- (b) for payment by a relator in proceedings of the whole or any part of the costs of a party to the proceedings;
- (c) for payment by a person who:
 - (i) is bound by an order made, or judgment given, by the Court in proceedings or is bound by an undertaking given to the Court in proceedings; and
 - (ii) fails to comply with the order or the judgment or breaches the undertaking,

of the whole or any part of the costs of a party to the proceedings occasioned by the failure or the breach;

- (d) for payment by a person who has committed contempt of court or an abuse of process of the Court of the whole or any part of the costs of a party to proceedings occasioned by the contempt or abuse of process;
- (e) in exercise of its supervisory jurisdiction over its own officers; or
- (f) against a person who purports without authority to conduct proceedings in the name of another person.

(6) Save as mentioned in subrules (1) to (5). this Part has effect subject to the Act and to the rules and subject to any other Act.

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

(a) Part 75

After rule 3D, insert:

Bail application

3E. An application to the Court:

- (a) for bail pursuant to section 22 of the Bail Act 1978, where the accused person is not then appearing before the Court; or
- (b) pursuant to Part 6 of the Bail Act 1978, if made by or on behalf of an accused person,

shall be in Form 74AF

(b) SCHEDULE F

After Form 74AE, insert:

Form 74AF

P 75. r. 3E.

(No heading or title)

BAIL ACT 1978

**APPLICATION TO THE SUPREME COURT OR THE
COURT OF CRIMINAL APPEAL FOR BAIL OR
VARIATION OF BAIL**

1. I, (full name)
of
..... (address) (..... Phone No.)
make application:
 - (a) for bail [*delete if inapplicable*]
or
 - (b) to vary existing bail conditions [*delete if inapplicable*]
2. What is your date of birth?
3. Do you need an interpreter? Yes No
If Yes, what language?
4. If you are an Aborigine or Torres Strait Islander:
 - (a) do you want the Aboriginal Legal Service to represent you in your bail application?
 Yes No
 - (b) *if Yes, do not answer Question 5.*
5. Do you want the Legal Aid Commission to represent you in your bail application?
 Yes No
If No, who will represent you at the bail hearing?
.....
..... (name of solicitor and firm)

6. On what charges are you seeking bail or variation of bail conditions?

.....

.....

.....

7. (a) What is the date of your next appearance in Court on these charges?

(b) In which Court are you appearing next?

* Court of Criminal Appeal/*Supreme Court/
*District Court/*Local Court

*[*delete whichever is applicable]*

at

8. Have you had a committal hearing at the Local Court?

Yes No

(a) If Yes:

(i) What was the date?

(ii) Which Local Court?

(b) If No, has a date been set for the committal hearing at the Local Court?

Yes No

If Yes:

(i) What was the date?

(ii) Which Local Court?

(c) Have you been committed for *trial/*sentence?

Yes No

If Yes, which Court?

*Supreme Court/*District Court at

(d) Are you presently on appeal after *trial/*sentence?

Yes No

If Yes, which Court?

*Court of Criminal Appeal/*District Court

*[*delete whichever is inapplicable]*

Are there any co-accused (or co-defendants) in this matter?

Yes No

If Yes. who?

.....
.....
.....

10. Are you presently in custody?

Yes No

If Yes, please answer the following:

(a) What date were you taken into custody of these charges?

(b) Are you presently serving a sentence?

Yes No

If Yes, when are you due for release?

(c) Which gaol are you presently in?

(d) If released on bail, where do you intend to live?

.....

..... (address) (..... Phone No.)

11. Who is the police officer in charge of your case?

.....

12. If you are applying for a variation of bail conditions already granted on these matters, what variation are you asking for?.....

.....

.....

.....

13. Is this your 1st 2nd 3rd 4th More application to the Supreme Court in relation to bail in this matter?

1993—No. 248

14 If this is not your first application to the Supreme Court in relation to bail in this matter, please state the special facts or special circumstances which justify the making of this further application.

**YOUR APPLICATION WILL NOT BE ENTERTAINED
UNTIL A SATISFACTORY ANSWER IS GIVEN TO
THIS QUESTION.**

REPRESENTATIVES OF THE LEGAL AID COMMISSION (OR, WHERE APPLICABLE, THE ABORIGINAL LEGAL SERVICE) WILL ASSIST APPLICANTS WITH THIS QUESTION IF REQUIRED

.....
.....
.....
.....
.....
.....
.....
.....

15 If this form is completed by a solicitor on behalf of the applicant, what approximate time is it anticipated that the bail hearing will take?

.....
.....

16 Any other comments you wish to make

.....
.....
.....
.....
.....
.....
.....
.....

Signed Date 199

(Form 4 is not applicable)

8. The Criminal Appeal Rules are amended as follows:

After rule 37 insert:

Bail application

38. An application to the Court of Criminal Appeal:

- (a) for bail pursuant to section 22 of the Bail Act 1978, where the accused person is not then appearing before the Court; or
- (b) pursuant to Part 6 of the Bail Act 1978, if made by or on behalf of an accused person, shall be in Form 74AF of the Supreme Court Rules 1970.

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 appeals under section 67 of the Community Services (Complaints, Appeals and Monitoring) Act 1993, which relates to appeals against a decision of the Tribunal established under that Act.

2. The object of the amendment contained in paragraph 3 is to replace an erroneous reference to a rule with a reference to a Division.

3. The objects of the amendments contained in paragraph 4 are to:

- (a) enable an expert witness's report to be used at a trial with a jury, in the same circumstances as they are presently used in a trial without a jury, without the expert having to attend to give evidence; and
- (b) provide that notice requiring attendance for cross examination by an expert, whose report has been served, must be served not later than 6 weeks after proceedings are first called over before the registrar,

in proceedings included in the second list the subject of Practice Note No. 75.

4. The objects of the amendments contained paragraphs 5 (a) and 5 (b) are to:

- (a) correct an incorrect reference to an Act in Part I of the Supreme Court Rules 1970;
- (b) make amendments consequential and ancillary to the amendments contained in paragraphs 5 (b) and 5 (c);
- (c) assign to the Equity Division proceedings in the Court on an application for relief under the Co-operatives Act 1992; and
- (d) apply the provisions of Part 80 of the Supreme Court Rules 1970 [which relates to the Companies (New South Wales) Code (the "Code") and to the Corporations Law] so far as applicable, and making such changes that may be necessary, to applications under the Co-operatives Act 1992.

1993—No. 248

5. The object of the amendments contained paragraph 5 (c) is to make it clear that Part 80 rule 2 (which requires that proceedings in the Court on an application for relief under the Code shall be commenced by summons) do not prevent an application for relief under the Code being made by motion in existing proceedings.

6. The object of the amendment contained paragraph 5 (d) is to allow registrars to exercise the powers of the Court in making orders under Clause 10 of Schedule 4 to the Co-operatives Act 1992 (which relates to the remuneration of a receiver etc).

7. The object of the amendment contained in paragraph 6 is to restrict the power of the court in making a costs order against a person who is not a party.

8. The object of the amendments contained in paragraphs 7 and 8 is to prescribe the form to be used for applications to the Supreme Court or to the Court of Criminal Appeal:

- (a) for bail pursuant to section 22 of the Bail Act 1978, where the accused person is not then appearing before the Court; or
- (b) pursuant to Part 6 of the Bail Act 1978, if made by or on behalf of an accused person

9. Words and figures underlined in the above rules are intended to be presented in italics when printed.

M. A. Blay, Secretary of the Rule Committee