

SUPREME COURT RULES (AMENDMENT No. 279) 1993

NEW SOUTH WALES



[Published in Gazette No. 104 of 24 September 1993]

1. These rules are made by the Rule Committee on 20 September 1993.

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

(a) Part 1 rule 3

From the matter relating to Part 72A Division 2 omit “*Payment into Court—rr 11–20*” and insert instead “*Offer of Compromise—rr 11–21*”.

(b) Part 72A rule 6

(i) Omit “of” where secondly appearing.

(ii) Omit paragraphs (a), (b) and (c) and insert instead:

(a) describing the nature of the case with particularity sufficient for an understanding of the matters in subparagraphs (b), (c), (d) and (e);

(b) identifying the question of law;

(c) of the circumstances and manner in which the determination of the question of law could substantially affect the rights of one or more parties to the arbitration agreement;

(d) where applicable—of the manifest error of law on the face of the award; and

(e) where applicable—of the error of law made by the arbitrator and of why the determination of the question may add, or be likely to add, substantially to the certainty of commercial law.

(c) Part 72A

Omit Division 2 and insert instead:

DIVISION 2—Offer of Compromise

Application of Division

11. This Division applies except so far as is otherwise agreed in writing by the parties to the arbitration agreement.

Interim awards

12. (1) In arbitration proceedings the arbitrator shall, unless the parties otherwise request, make an interim award dealing with all questions of liability and the relief to be granted and, before making any provision in an award with respect to the costs of the arbitration, give the parties an opportunity to be heard on the question of the costs of the arbitration.

(2) Subrule (1) shall not apply where an offer has been accepted in accordance with this Division.

Mode of making offer

13. (1) An offer of compromise is made to a party under this Division by serving a notice of the offer on the party.

(2) A notice of offer shall be in writing and bear a statement to the effect that the offer is made in accordance with this Division.

Application

14. Any party may make to any other party an offer to compromise any claim to which the arbitration agreement applies on the terms specified in the notice of offer.

Time for making or accepting offer

15. (1) An offer may be made at any time before the time prescribed by subrule (8) in respect of the claim to which it relates.

(2) A party may make more than one offer.

(3) An offer may be expressed to be limited as to the time it is open to be accepted but the time expressed shall not be less than 28 days after it is made.

(4) An offeree shall, within 3 days after service, serve a written acknowledgment of receipt on the offeror.

(5) An offeree may accept the offer by serving notice of acceptance in writing on the offeror before:

- (a) the expiration of the time specified in accordance with subrule (3) or, if no time is specified the expiration of 28 days after the offer is made; or

- (b) the time prescribed by subrule (8) in respect of the claim to which the offer relates,

whichever is sooner.

(6) An offer shall not be withdrawn during the time it is open to be accepted.

(7) An offer is open to be accepted within the period referred to in subrule (5) notwithstanding that during that period the party to whom the offer (the “first offer”) is made makes an offer (the “second offer”) to the party who made the first offer, whether or not the second offer is made in accordance with this Division.

(8) The time prescribed for the purposes of subrules (1) and (5) and rule 19 (1) and (2) is after the arbitrator has:

- (a) made decisions on all questions of liability and the relief to be granted in respect of the claim to which the offer relates; and
- (b) communicated the decisions to one or more of the parties.

Time for payment

16. An offer providing for the payment of a sum of money, or for the doing of any other act, shall, unless the notice of offer otherwise provides, be taken to provide for the payment of that sum or the doing of that act within 28 days after acceptance of the offer.

Withdrawal of acceptance

17. (1) A party who accepts an offer may, by serving a notice of withdrawal on the offeror, withdraw the acceptance where the offer provides for payment of a sum of money or the doing of any other act and the sum is not paid to the offeree or the act is not done within 28 days after acceptance of the offer or within such other time as the offer provides.

(2) On withdrawal of an acceptance all steps in the arbitration taken in consequence of the acceptance shall have such effect only as the arbitrator may direct.

(3) On withdrawal of an acceptance the arbitrator may:

- (a) give directions under subrule (2);
- (b) give directions for restoring the parties as nearly as may be to their positions at the time of the acceptance; and
- (c) give directions for the further conduct of the arbitration.

Offer without prejudice

18. An offer made in accordance with this Division shall be taken to have been made without prejudice, unless the notice of offer otherwise provides.

Disclosure of offer to arbitrator

19. (1) No statement of the fact that an offer has been made shall be contained in any document delivered to the arbitrator before the time prescribed by rule 15 (8).

(2) Where an offer has not been accepted, no communication with respect to the offer shall be made to the arbitrator before the time prescribed by rule 15 (8).

(3) Subrules (1) and (2) shall not apply where a notice of offer provides that the offer is not made without prejudice.

Failure to comply with accepted offer

20. Where a party to an accepted offer fails to comply with the terms of the offer, then, unless for special cause the Court otherwise orders, the other party shall on application to the Court be entitled, as he may elect, to:

- (a) such judgment or order as is appropriate to give effect to the terms of the accepted offer; or
- (b) where the party in default is the claimant, an order that the arbitration be stayed and, where the party in default is opposing the claim, an order declaring the compromise constituted by the acceptance of the offer to be of no effect and that the claimant be at liberty to proceed with the arbitration.

Costs where offer not accepted

21. In any exercise of discretion as to costs the arbitrator shall consider whether the offeror was at all material times willing and able to carry out the offeror's part of what was proposed in the offer.

- (d) SCHEDULE F Forms 71A and 71B

Omit the forms.

- (e) SCHEDULE F

From the Index to the Forms omit the matter relating to Forms 71A and 71B.

3. Paragraphs 2 (a), (c), (d) and (e) of this Amendment shall not apply to any arbitration proceedings in which a party has brought money into Court pursuant to Part 72A before the Amendment takes effect.

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

(a) Part 38 rule 4A (1)

Omit the rule.

(b) Part 51 rule 24 (4)

Omit “upon one side of the paper”.

(c) Part 65 rule 2 (3)

Omit the subrule and insert instead:

(3) Subject to the rules:

(a) the writing on a document may be on:

(i) only one face of the paper; or

(ii) both faces of the paper,

but shall not, so far as practicable, be on:

(iii) only one face of some of the paper; and

(iv) both faces of some of the paper;

(b) a document shall be securely fastened:

(i) along the left hand side; or

(ii) where there is writing on only one face of the paper—at the top left hand corner,

without obscuring the writing or the margin;

(c) on each face of the paper which bears writing, a margin of not less than 25 millimetres shall be kept clear on the left hand side; and

(d) the pages of a document, and of an affidavit with an annexure or annexures, shall be consecutively numbered.

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

(a) Part 82 rule 18

Omit the rule and insert instead:

Annual Statement

18. The particulars prescribed for the purpose of section 10 (1) of the subject Act are the notary’s name, the notary’s firm name (if any) and the notary’s address and these may be supplied in Form 168.

(b) SCHEDULE F Form 160

(i) Omit “19” and insert instead “18”.

(ii) Omit “Address for services:” and insert instead:

Address:

Firm name:

6. The Supreme Court Rules 1970 are further amended as follows:
Part 52 rule 17 (2)
Omit “that term” and insert instead “that offer”.
7. The Supreme Court Rules 1970 are further amended as follows:
Part 55 rule 11 (3)
 - (i) From paragraph (a) omit “or” where lastly appearing.
 - (ii) From paragraph (b) omit “1970”, and insert instead “1970; or”.
 - (iii) After paragraph (b) insert:
 - (c) it appears to a court on its own view that a person is guilty of contempt of the court, whether during a proceeding before the court or otherwise, and the court refers the matter to the Court for determination under section 152A of the Justices Act 1902.
8. The Supreme Court Rules 1970 are further amended as follows:
Part 51 rule 9 (b) (ii)
Omit “without” and insert instead “with”.
9. The Supreme Court Rules 1970 are further amended as follows:
SCHEDULE D Part 3 paragraph 4
Omit all the material after “Appeal” and insert instead “.”.
10. The Supreme Court Rules 1970 are further amended as follows:
Part 72B rule 1 (1)
Omit paragraphs (a) and (b).
11. The Supreme Court Rules 1970 are further amended as follows:
(a) SCHEDULE D Part 1
 - (i) From the matter relating to Part 5.4 of the Corporations Law, omit from column 2 “by the Court”.
 - (ii) After the matter relating to Part 5.4 of the Corporations Law, insert:

in column 1:	in column 2:	in column 3:
Section 461	Winding up	Where the application is not opposed
Part 5.4B	Winding up	Except ss. 472 (2) (3) and (6) 486A, 486B and 487.

(b) SCHEDULE E Part 2

- (i) After paragraph 28 (a) insert:
 - (aa) section 429 (3) (which relates to extending the period for a report);
- (ii) after paragraph 28 (ba) insert:
 - (bb) section 459R (which relates to extending the period for determination of a winding up application);
- (iii) after paragraph 28 (c) insert:
 - (ca) section 473 (1), where the application is not opposed;
- (iv) after paragraph 28 (e) insert:
 - (ea) section 473 (7), where the application is not opposed;
- (v) after paragraph 28 (i) insert:
 - (ia) section 542 (3) (which relates to destruction of books);

EXPLANATORY NOTE

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

1. The objects of the amendment contained in paragraph 2 are:
 - (a) to add certain particulars to the particulars which must be supplied with a summons by which proceedings are commenced for leave to appeal from the decision of an arbitrator under the Commercial Arbitration Act 1984;
 - (b) to rescind the rules relating to payment into Court of an amount offered in settlement of a claim the subject of arbitration proceedings under the Commercial Arbitration Act 1984 and replace them with rules enabling a party to make an offer of compromise; and
 - (c) to make other provisions of a minor, consequential or ancillary nature.
2. The object of paragraph 3 is to restrict the application of the amendments relating to offer of compromise contained in paragraph 2 to proceedings in which money has not been paid into Court.
3. The objects of the amendment contained in paragraph 4 are to allow documents for use in the Court to bear writing on both sides of the page and to provide for ancillary and consequential matters.
4. The objects of the amendments contained in paragraph 5 are to:
 - (a) prescribe a notary's name, firm name (if any) and address as the particulars required to be lodged with the registrar annually under section 10 of the Public Notaries Act 1985;

- (b) to substitute a correct reference to a section in the form prescribed for furnishing a notary's particulars; and
- (c) to substitute references to a notary's address and firm name for a reference to the notary's address for service in the prescribed form.

5. The object of the amendment contained in paragraph 6 is to provide that, where a notice of offer of compromise under Part 52 rule 17 is made which purports to negative or limit the operation of Part 22 rule 17 (1) (which allows a plaintiff who accepts an offer in accordance with Part 22 to tax his costs), the offer shall be of no effect for any purpose under Part 22 or Part 52 rule 17.

6. The object of the amendment contained in paragraph 7 is to prescribe the procedure to be adopted where:

- (a) it appears to a court, on its own view, that a person is guilty of contempt of that court; and
- (b) that court refers the alleged contempt to the Supreme Court under section 152A of the Justices Act 1902.

7. The object of the amendment contained in paragraph 8 is to correct a typographical error.

8. The object of the amendment contained in paragraph 9 is to remove the necessity for the consent of all the parties who have an address for service in proceedings where a non jury matter is referred to a Master as referee by order of a Judge.

9. The objects of the amendment contained in paragraph 10 are to omit a superseded rule and to omit a rule restricting the operation of the Arbitration (Civil Actions) Act 1983 to proceedings set down for trial at Sydney.

10. The objects of the amendments contained in paragraph 11 are to enable masters and registrars to exercise certain powers of the Court under the Corporations Law.

11. 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
