

1993—No. 564

SUPREME COURT RULES (AMENDMENT No. 280) 1993

NEW SOUTH WALES



[Published in Gazette No. 127 of 19 November 1993]

1. These rules are made by the Rule Committee on 15 November 1993.
2. The Supreme Court Rules 1970 are amended as follows:
 - (a) Part 34 rule 3 (1) (a):
Omit “if” and insert instead “subject to paragraph (a) (1), if”.
 - (b) Part 34 rule 3 (1):
After paragraph (a) insert:
 - (a1) in the case of proceedings commenced by statement of claim and entered in the Construction List:
 - (i) if the requisition is filed by the plaintiff—on the day of filing notice of motion for an order for entry in the Construction List; or
 - (ii) if the requisition is filed by a defendant—not later than 14 days after the proceedings are entered in the Construction List;
- (6) Part 34 rule 3 (1) (b):
Omit “.” and insert instead “;”.
3. The amendments contained in paragraph 2 (a) or (b) shall not apply to proceedings entered in the Construction List prior to 1 January 1994.
4. The Supreme Court Rules 1970 are further amended as follows:

SCHEDULE E Part 2

After clause 34 insert:

35. Orders under section 14 of the Adoption Information Act 1990.

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

Part 36 rules 13A (3) (b) and 13B (2) (b):

Omit “beginning” where appearing and insert instead “first call-over held in respect”.

6. The amendment contained in paragraph 5 shall not apply to proceedings in which the first call-over for the sittings in which the proceedings be included commences prior to 1 January 1994.

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

(a) Part 1 rule 3

In the matter relating to Part 75 Division 1, omit “3” and insert instead “3F”.

(b) Part 1

After rule 9B, insert:

Filing prescribed bail forms by fax

9C. A document, which concerns an application relating to bail and the form of which is prescribed by the rules, shall be sufficiently filed if a copy of the document, produced in the Sydney registry by a facsimile transmission machine, is filed.

(c) Part 75 rule 3E

Omit “shall be in Form 74AF.” and insert instead:

shall be:

(c) in the case of an application for a variation of bail condition—in form 74AF; or

(d) in any other case—in form 74AG.

(d) Part 75

After rule 3E, insert:

Acceptable person information

3F. A person who wishes to have a determination made that he or she is an acceptable person, for the purposes of a condition referred to in section 36 (2) (b), (d), (f), or (h) of the Bail Act 1978, must file an information form, verified by statutory declaration, in Form 74AH.

(e) SCHEDULE F

Omit Form 74AF and insert instead:

Form 74AF

P. 75, r. 3E (c).

(No heading or title)

BAIL ACT 1978

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

1. I, (full name)
of
..... (address) (..... PhoneNo)
make application to vary existing bail conditions
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 variation 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 variation application?
 Yes No
If No, who will represent you at the bail variation hearing?..
.....
..... (name of solicitor and firm)
6. On what charges are you seeking a variation of bail conditions?
.....
.....
.....
.....

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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 inapplicable]*

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]*

9. 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 in custody only because you have not complied with a condition of the bail which you are seeking to have varied? Yes No

(c) Are you presently serving a sentence? Yes No
If Yes, when are you due for release?

(d) Which gaol are you presently in?

(e) 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. By what Court was the bail granted which you seek to have varied?

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

*[*delete whichever is inapplicable]*

13. What variation are you asking for?

.....

.....

.....

14. On the previous grant of bail, was there any surety involved?

Yes No

If Yes, please state the name and address of each surety

.....

.....

.....

.....

NOTE

If a surety was involved, unless the surety appears in person at the hearing of this application and consents to it, you will be required to produce at court at the hearing of this application:

- (a) evidence of notification of the surety of the date of listing of this application and of the nature of the variation sought; AND
- (b) the written consent of the surety to that variation.

15. If this application is to the Supreme Court:

(a) Is this your 1st 2nd 3rd 4th More application to the Supreme Court in relation to variation of bail in this matter?

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

IF THIS APPLICATION IS TO THE SUPREME COURT, 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.

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.....

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

.....
.....

17. Any other comments you wish to make

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

Signed..... Date 199.....

Form 74AG

P. 75, r. 3E (d).

(No heading or title)

BAIL ACT 1978

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

1. I, (full name)
of
..... (address) (..... Phone No)
make application for bail
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?
.....
.....
.....

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 inapplicable]*

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]*

9. 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?

If this application is to the Supreme Court:

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

(b) 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.

IF THIS APPLICATION IS TO THE SUPREME COURT, 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.

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

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

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

14. Any other comments you wish to make

.....

.....

Signed Date 199

Form 74AH

P. 75, r. 3F:

(No heading or title)

ACCEPTABLE PERSON—INFORMATION FORM

ACCUSED NAME:

AMOUNT OF SECURITY/CASH REQUIRED:

PROPOSED ACCEPTABLE PERSON:

ADDRESS:

OCCUPATION:

SOURCE OF IDENTIFICATION:

1. How long have you known the accused?
2. What is the nature of your acquaintance with the accused?
3. Have you had any criminal convictions? Yes No
4. Do you have any criminal charges outstanding? Yes No
5. Do you have any bankruptcy proceedings pending/in process? Yes No
6. If Yes to any of the above three questions, provide details here

7. Are you currently surety in any other matter? Yes No
8. If Yes, provide details

.....

.....
.....
.....
9. IF YOU PROPOSE TO ENTER INTO AN AGREEMENT WITHOUT SECURITY TO FORFEIT AN AMOUNT OF MONEY. Provide full details of your financial resources to pay the amount required, should the accused fail to comply with the Bail Undertaking (eg. Bank accounts, furniture etc)

.....
.....
10. IF YOU PROPOSE TO DEPOSIT AN ACCEPTABLE SECURITY. What security are you providing?

.....
.....
.....
.....
11. IF YOU PROPOSE TO DEPOSIT CASH. Is this your money? Yes No
Provide details of where you obtained the money

.....
.....
.....
.....
.....
I hereby offer myself for consideration as an acceptable person under the provisions of the Bail Act 1978, and I understand that should any answer that I have given be untrue or wilfully misleading I may be charged with a Criminal Offence.

I further understand that if the Accused person fails to comply with any conditions of his/her Bail Undertaking then the money/security that I am lodging may be forfeited to the Crown, and, should I desire to be discharged from my obligation under the Bail Act 1978, I must make application to the Court whilst the accused person is present before the Court.

I do solemnly and sincerely declare and affirm that the answers that I have given in this document are true and correct to the best of my knowledge, information and belief. AND I make this solemn declaration as to such matters according to the Oaths Act 1900, and subject to the punishment by law provided for any wilfully false statement in any such declaration.

PROPOSED ACCEPTABLE
PERSON

Declared this _____ day of _____ 199____, at the Supreme Court, Queen's Square, Sydney before me

JUSTICE OF THE PEACE

(f) SCHEDULE F, Index of forms

- (i) After the matter relating to Form 62AC, insert:
 - 62AD. Notice of objection to a bill (P. 52, r. 50A (5)).
 - 62AE. Certificate of Taxation (P. 52, r. 50A (7)).
- (ii) After the matter relating to Form 69, insert:
 - 69A. Order (P. 59A, r. 5).
 - 69B. Notice of registration of judgement (P. 59A, r. 7).
- (iii) After the matter relating to Form 70, insert:
 - 70AA. Oath of office (P. 65C. rr. 3 (4), 4 (4)).
- (iv) After the matter relating to Form 74AE, insert:
 - 74AF. Application to the Supreme Court or the Court of Criminal Appeal for variation of bail (P. 75, r. 3E (c)).
 - 74AG. Application to the Supreme Court or the Court of Criminal Appeal for bail (P. 75, r. 3E (d)).
 - 74AH. Acceptable person—Information form (P. 75, r. 3F).

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

(a) Part 1 rule 3

In the matter relating to Part 75 Division 1, omit “3F” and insert instead “3G”.

(b) Part 75

After rule 3F, insert:

Application that proceedings be not conducted by video link

3G. An application for an order, under section 110A of the Act, that proceedings concerning bail are not to be conducted by video link:

- (a) shall be in form 74AI;
- (b) shall be filed with the application, made pursuant to section 22 or Part 4 of the Bail Act 1978, to which it relates; and
- (c) 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.

(c) SCHEDULE IF Forms 74AF and 74AG

omit:

Signed Date 199.....

and insert instead:

NOTE

(a) *This note applies only if:*

- (i) *this application is to the Supreme Court and will be heard in Sydney;*
- (ii) *you are a male; and*
- (iii) *at the time this application is filed in the Court, you are in custody but are NOT in:*
 - (A) *a detention centre within the meaning of the Children (Detention Centres) Act 1987; or*
 - (B) *the Parramatta Correctional Centre, the Parklea Correctional Centre or the Silverwater Correctional Complex.*

- (b) *Subject to paragraph (c), the hearing of this application will be conducted by means of video link facilities without your personal attendance at Court. Video link facilities allow two-way audio and visual communication of television standard between the Court and the Long Bay correctional Complex, including private communication between you and your legal representative. If you are in a country correctional centre, you will be sent to the Long Bay Correctional Complex for the hearing.*

(c) *The Court may, if it is in the interests of justice to do so, order that the hearing of this application is not to be conducted by video link. An application for such an order:*

- (i) *must be in the prescribed form, which is available on request;*
- (ii) *must be filed with this application, together with any supporting documents;*
- (iii) *will be dealt with before this application is placed in the list for hearing; and*
- (iv) *may be dealt with by the Court in the absence of the public and without any attendance by or on behalf of yourself.*

Signed..... Date199.....

(d) SCHEDULE F

After Form 74AH, insert:

Form 74AI

P. 75, r. 36.

(No heading or title)

Supreme Court Act 1970

**APPLICATION TO THE SUPREME COURT FOR AN ORDER
THAT THE HEARING OF AN APPLICATION CONCERNING
BAIL BE NOT CONDUCTED BY VIDEO LINK**

The hearing in Sydney of an application to the Supreme Court for bail or variation of bail by a male who, at the time this application is filed in the Court, is in custody but is not in:

- (a) *a detention centre within the meaning of the Children (Detention Centres) Act 1987; or*
- (b) *the Parramatta Correctional Centre, the Parklea Correctional Centre or the Silverwater Correctional Complex,*

will be conducted by means of video link facilities without the applicant's personal attendance at Court, unless the Court in the interests of justice otherwise orders.

video link facilities allow two-way audio and visual communication of television standard between the court and the Long Bay Correctional Complex, including private communication between the applicant and the applicant's legal representative. If you are in a country correctional centre, you will be sent to the Long Bay Correctional Complex for the hearing.

If you intend to apply to the Supreme Court for bail or variation of bail and wish to also apply for an order that the hearing of the application be not conducted by video link facilities, you must complete this form and file it and any supporting documents with the application relating to bail.

The application that video link facilities be not used:

- (a) will be dealt with before the application relating to bail is placed in the list for hearing; and
- (b) may be dealt with by the Court in the absence of the public and without any attendance by or on behalf of yourself

I (full name)

of

..... (address) (.....Phone No)
make application for an order that the hearing of my application for bail

or variation of bail be not conducted by video link.

Why, **in the interests of justice**, should the hearing of your application for bail or variation of bail not be conducted by video link?

.....

.....

.....

Signed Date 199.....

(e) SCHEDULE F Index of forms

After the matter relating to Form 74AH insert:

74AI. Application to the Supreme Court for an order that the hearing of an application in relation to bail be not conducted by video link (P. 75, r. 3G).

9. The amendments contained in paragraph 8 shall not apply to applications filed before the commencement of the Supreme Court (Video Link) Amendment Act 1992.

10. The Criminal Appeal Rules are amended as follows:

(a) Rule 37

Omit “shall be in Form 74AF of the Supreme Court Rules 1970.” and insert instead:

shall be:

- (c) in the case of an application for a variation of bail conditions—in form 74AF of the Supreme Court Rules 1970; or
- (d) in any other case—in form 74AG of the Supreme Court Rules 1970.

(b) After rule 38, insert:

Acceptable person information

39. A person who wishes to have a determination made that he or she is an acceptable person, for the purposes of a condition referred to in section 36 (2) (b), (d), (f), or (h) of the Bail Act 1978, must send to the Registrar:

- (a) an information form, verified by statutory declaration, in Form 74AH of the Supreme Court Rules 1970; or
- (b) a copy of the document referred to in paragraph (a).

EXPLANATORY NOTE

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

1. The object of the amendments contained in paragraphs 2 (a) and (b) is to provide that the time for filing a requisition for trial with a jury in proceedings commenced by statement of claim and entered in the Construction List after 31 December 1993 shall be:

- (i) if the requisition is filed by the plaintiff—on the day of filing notice of motion for an order for entry in the Construction List; or
- (ii) if the requisition is filed by a defendant—not later than 14 days after the proceedings are entered in the Construction List.

2. The object of the amendment contained in paragraph 2 (c) is to correct a punctuation error.

3. The object of the amendment contained in paragraph 4 is to enable registrars to exercise the powers of the Court in making orders for the supply of information under section 14 of the Adoption Act 1990.

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4. The object of the amendment contained in paragraph 5 is to:
 - (a) require experts' reports and hospital reports covering evidence to be given in proceedings:
 - (i) in which damages are claimed in respect of death of a person or in respect of personal injuries; and
 - (ii) where the place of trial is a place other than Sydney,
to be served not later than 21 days before the first call-over is held in respect of the sittings (in place of the present time of 21 days before the beginning of the sittings); and
 - (b) require notice for an expert witness to attend for cross-examination in a proceeding mentioned in paragraph (a) not later than 7 days before the date on which the first call-over in respect of the proceedings is held (in place of the present time of 7 days before the beginning of the sittings).
5. The object of the amendments contained in paragraphs 7 to 10 are:
 - (a) to prescribe separate forms for applications for bail and for variation of bail in place of a single form presently used;
 - (b) to include on the application form for variation of bail a note that any surety must be notified of, or appear at the hearing of, any application for variation of bail;
 - (c) to prescribe an information form in respect of a proposed acceptable person in respect of bail;
 - (d) to prescribe a form of application for an order that the hearing of an application in relation to bail be not conducted by video link;
 - (e) to include notes giving relevant details of the operation of the video link procedure in application forms concerning bail; and
 - (f) to allow the filing of applications concerning bail by fax.

M. A. Blay, Secretary of the Rule Committee