

SUPREME COURT RULES (AMENDMENT No. 270) 1993

NEW SOUTH WALES



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1. These Rules are made by the Rule Committee on 15 February 1993.
2. The Supreme Court Rules 1970 are amended as follows:
Part 75 rule 3 (f)
Omit “13” and insert instead “11”.
3. The Supreme Court Rules 1970 are further amended as follows:
Part 32 Division 4
Omit “determination or direction” where appearing and insert instead “decision”.
4. The Supreme Court Rules 1970 are further amended as follows:
 - (a) Part 1 rule 8
Next under the definition of “corporation” insert:
 “costs determination” means a determination made under
 section 180 of the Legal Profession Act 1987.
 - (b) Part 7 rule 4 (1) (a) (i)
After “;” insert “and”.
 - (c) Part 7 rule 4 (1) (a) (ii)
Omit the subparagraph and insert instead:
 (ii) the amount for costs fixed by any costs determination; and
 - (d) Part 7 rule 4 (4)
Omit “the prescribed amount for costs” and insert instead “the
amount for costs fixed by any costs determination”.
 - (e) Part 37 Rule 3A (1)
Omit the rule and insert instead:
 (1) Where a subpoena is served on a medical expert who is to
 give evidence of medical matters and he is not called as a witness,
 he shall, unless the Court otherwise orders, be entitled to be paid:

(a) in respect of a subpoena served before 29 March 1993—an amount equal to two-thirds of the amount prescribed by 49 (a) of Table 3 of Schedule G; or

(b) in respect of any other subpoena—the amount prescribed in item 6 of Schedule G1,

in addition to any amount paid under rule 3.

(f) Part 52 rule 1

Under the definition of “certificate” insert:

“**contentious business**” has the same meaning as it has in section 173 of the Legal Profession Act 1987.

“**non-contentious business**” has the same meaning as it has in section 173 of the Legal Profession Act 1987.

(g) Part 52 rule 24 (1) (c) (iii)

Omit the subparagraph.

(h) Part 52 rule 32

Omit subrule (2) and insert instead:

(2) This Division applies to the taxation of a bill for non-contentious business but applies subject to any determination made by the Legal Fees and Costs Board under section 179 of the Legal Profession Act 1987.

(i) Part 52 rule 49 (1) (c)

Omit the paragraph and insert instead:

(c) where an amount is claimed for skill, care and responsibility, in short paragraphs, a description (having regard to the matters mentioned in rule 67 (3) and to the provisions of any applicable determination made under section 179 or section 180 of the Legal Profession Act 1987) of work done justifying the allowance of the amount; and

(j) Part 52 rule 67 (1)

After “Schedule G” insert “or of any costs determination, as the case requires,”.

(k) Part 52 rule 67 (2)

Omit paragraphs (i) and (ii) and insert instead:

(c) in relation to items not mentioned in; or

(d) of an amount higher than that prescribed by,

Tables 1 and 2 of Schedule G or the equivalent part or parts of any costs determination, as the case requires.

- (l) Part 52 rule 67 (3)
After “Schedule G” insert “or in any costs determination, as the case requires”.
 - (m) Part 52 rule 67 (4)
Omit the subrule.
 - (n) Part 52 rule 67 (5)
After “Schedule G”, where firstly appearing, insert “or the equivalent part of any costs determination, as the case requires,”.
 - (o) Part 52 rule 67 (5)
After “Schedule G”, where secondly appearing, insert “or the equivalent part of any costs determination, as the case requires”.
 - (p) Part 52 rule 67 (7)
After “Schedule G” where appearing, insert “or the equivalent part of any costs determination, as the case requires,”.
 - (q) Part 52 rule 68 (1)
After “Schedule G” insert “or in any costs determination, as the case requires,”.
 - (r) Part 52 rule 68 (3)
After “Table 5” insert “of Schedule G or the equivalent part of any costs determination, as the case requires”.
 - (s) Part 52 rule 68 (5)
After “Schedule G” insert “or the equivalent part of any costs determination, as the case requires,”.
 - (t) SCHEDULE G1
 - (i) Omit, where first appearing, “P37, r. 7A (4).” and insert instead:
P37, rr. 3A (1) (b), 7A (4).”.
 - (ii) After item 5 insert:
6. The prescribed amount under Part 37 rule 3A (1) (b) is \$167.
5. The Supreme Court Rules 1970 are further amended as follows:
Part 14A rule 4 (1)
After “appearance” insert “or, in proceedings commenced by statement of claim, on his defence”.
6. The Supreme Court Rules 1970 are further amended as follows:
(a) Part 12 rule 4 (k)
Omit “.” and insert instead “; and”

(b) Part 12 rule 4

After paragraph (k) insert:

(1) section 40 (1) of the Crimes (Aviation) Act 1991 of the Commonwealth.

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

SCHEDULE H Part 1

Under the matter relating to the Business Names Act 1962, insert:

in the column	in the column	in column 2—
“Act”—	“Section (unless otherwise stated)”—	
“Casino Control Act 1992	33	Order compliance or punish failure to comply
	34	Granting, rescinding or varying injunction
	155	Appeal”

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

(a) SCHEDULE F Forms 46, 46A and 46B

From Note (2) to each of the forms, omit where appearing “6” and insert instead “4”.

(b) SCHEDULE F Form 48

(i) From Note (3) omit where appearing “6” and insert instead “4”.

(ii) From Notes (3) and (4) omit “(ii)” where appearing and insert instead “(iii)”.

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

(a) Part 1 rule 3

In the matter relating to Part 77, insert in alphabetical order:

In the column	In the column	In the column
“Statute”—	“Division”—	“Rules”—
“Crimes (Superannuation Benefits) Act 1989 (Commonwealth)	26C	87M, 87”

(b) Part 77

After Division 26B insert:

DIVISION 26C—Crimes (*Superannuation Benefits*) Act 1989
(*Commonwealth*)

Assignment of business

87M. Proceedings in the Court under the Crimes (Superannuation Benefits) Act 1989 of the Commonwealth (the “subject Act”) are assigned to the Criminal Division.

Statement in summons or notice of motion

87N. 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 facts and circumstances relied on.

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

(a) Part 1 rule 3

- (i) From the matter relating to Part 77, omit “*Confiscation of Proceeds of Crime Act 1989* 26 85–87G”.
- (ii) In the matter relating to Part 77, insert next under *Community Welfare Act 1987*:

in the column	in the column	in the column
“Statute”—	“Division”—	“Rules”—
“ <i>Confiscation of Proceeds of Crime Act 1989</i> ”	26	85–87G

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

(a) Part 1 rule 3

- (i) From the matter relating to Part 77, omit “Auctioneers and Agents Act 1941 3 7–11”.
- (ii) In the matter relating to Part 77, insert in alphabetical order:

in the column	in the column	in the column
“Statute ”—	“Division”—	“Rules”—
“ <i>Property, Stock and Business Agents Act 1941</i> ”	3	7–11”

(b) Part 45 rule 6 (1)

Omit “, licensed under the Auctioneers and Agents Act 1941, to sell the property” and insert instead “to sell the property, where necessary being a person who holds an appropriate licence under the Property, Stock and Business Agents Act 1941”.

(c) Part 45 rule 17 (1)

Omit “, licensed under the Auctioneers and Agents Act 1941 to sell the land” and insert instead “to sell the land. being a person who holds an appropriate licence under the Property, Stock and Business Agents Act 1941”.

(d) Part 77 rule 7

Omit the rule and insert instead:

Assignment of business

7. Proceedings in the Court under the Property, Stock and Business Agents Act 1941 (“the subject Act”), are assigned to the Common Law Division.

(e) Part 77 Division 3

(i) From the heading omit “*Auctioneers and*” and insert instead “*Property, Stock and Business*”.

(ii) Omit “Auctioneers Act” where appearing and insert instead “subject Act”.

12. The amendments contained in paragraph 11 shall take effect on and from the commencement of Schedule 2 to the Auctioneers and Agents (Amendment) Act 1992.

EXPLANATORY NOTE

(This note does not form part of the Rules)

1. The object of the amendment contained in paragraph 2 is to amend a reference to a Part of the Criminal Procedure Act 1986, which is renumbered by the Statute Law (Miscellaneous Provisions) (No. 2) Act 1992.
2. The object of the amendment contained in paragraph 3 is to substitute “decision” for “determination or direction” wherever appearing in Part 32 Division 4 of the rules (which Division relates to the Mining Act 1992) following a similar substitution in the Mining Act 1992.
3. The object of the amendments contained in paragraph 4, other than those contained in paragraphs 4 (e) and (f), is to take account of the fact that:
 - (a) the remuneration of solicitors for non contentious business: and

- (b) the maximum amount of costs payable in respect of contentious business transacted by solicitors in or for the purposes of proceedings (other than criminal proceedings) before the Court, are now determined under ss. 179 and 180 respectively of the Legal Profession Act 1987 by the Legal Fees and Costs Board, rather than by the Court.
4. The object of the amendments contained in paragraphs 4 (e) and (f) is to prescribe the amount that must be paid to a medical expert, subpoenaed to give evidence on medical matters, who is not called as a witness.
 5. The object of the amendment contained in paragraph 5 is to make it clear that a defendant may include a requirement in his defence that proceedings be entered in the Construction List
 6. The object of the amendment contained in paragraph 6 is to assign to the Common Law Division applications to the Court under section 40 (1) of the Crimes (Aviation) Act 1991.
 7. The object of the amendment contained in paragraph 7 is to assign to the Administrative Law Division proceedings under ss. 33 and 34 of the Casino Control Act 1992 and appeals under s. 155 of that Act.
 8. The objects of the amendments contained in paragraph 8 are to:
 - (a) substitute the new address for the Exhibits Clerk for the old address in the notes to certain subpoenas to produce documents; and
 - (b) to correct subparagraph references in the notes to Form 48.
 9. The objects of the amendments contained in paragraph 9 are to assign to the Criminal Division proceedings in the Court under the Crimes (Superannuation Benefits) Act 1989 and to require that an applicant for an order under the Act file with his summons or notice of motion a statement in summary form of the facts and circumstances relied on.
 10. The object of the amendment contained in paragraph 10 is to correct the order in which an entry occurs in Part 1 rule 3.
 11. The objects of the amendments contained in paragraphs 11 and 12 are to take account of the new licensing provisions contained in the Auctioneers and Agents (Amendment) Act 1992 and the change of name of the Auctioneers and Agents Act 1941.
 12. Words or figures underlined in the above rules are intended to be represented in italics if printed.

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