

1994—No. 266

**SUPREME COURT ACT 1970—RULES\***

(Supreme Court Rules (Amendment No. 285) 1994)

NEW SOUTH WALES



*[Published in Gazette No. 83 of 24 June 1994]*

1. These rules are made by the Rule Committee on 20 June 1994.

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

Part 60 rule 17 (a)

Omit “5, 8, 9 and 17” and insert instead “3A, 4 (a), 8, 9, 17 and 17A”.

3. The amendment contained in paragraph 2 shall not apply to a trial conducted by a master pursuant to former paragraph 5 of Schedule D Part 3.

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

(a) Part 1A rule 2 (4)

After “in”, insert “the fixed”.

(b) Part 51

(i) Omit subrule 8 (3).

(ii) After rule 8 insert:

**Judiciary Act 1903 of the Commonwealth (s. 78B)**

8A. Where a ground of appeal involves a matter arising under the Constitution of the Commonwealth or involves its interpretation:

(a) the statement of the ground in a notice of appeal shall indicate that it involves a matter within section 78B of the Judiciary Act 1903 of the Commonwealth; and

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• This rule includes amendments contained in the correction notice published in Gazette No. 88 of 17.94. p. 3382 (1994—No. 316).

(b) the appellant shall, forthwith after obtaining an appointment under rule 5 (3), give the notices required by that section and promptly file an affidavit of service of the notices.

(iii) After subrule 22 (2) insert:

(2A) The registrar may extend the time for filing or serving, or grant leave to amend, the notice of appeal, cross-appeal or contention where this is consented to or not opposed by the parties present. The settled index shall note the extension or amendment.

(iv) After rule 32A insert:

**Hearing in fixed vacation**

32B. (1) An application for an order under Part 1A rule 2 (4) that an appeal or other proceeding in the Court of Appeal be heard during the fixed vacation shall, unless the Court otherwise orders, be made by filing:

- (a) an affidavit showing the grounds upon which the application is based;
- (b) a draft order; and
- (c) where applicable—a draft of the summons, notice of appeal, or notice of motion proposed to be filed.

(2) The applicant may proceed without service of the documents on any party.

(3) The registrar shall deliver the documents to the vacation Judge of Appeal for determination of the application.

(4) The application may be determined or dealt with by the Court in the absence of the public and without any attendance by or on behalf of any person.

**Consent adjournments of matters in Monday motions list**

32C. (1) Where:

- (a) a motion or summons is returnable in a Monday motions list;
- (b) the counsel or solicitor for each party who is not a submitting party signs a consent (which need not be in the form of a Court document) to the motion or summons being adjourned to a specified Monday on which the Court of Appeal will be taking a motions list; and

1994—No. 266

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(c) each consent is filed, or a copy of it is produced in the Sydney Registry by a facsimile transmission machine, before 1 pm on the Friday preceding the original return date,

the registrar shall adjourn the proceedings to the agreed date.

(2) Costs of the adjournment shall be costs in the proceedings unless all parties other than submitting parties have otherwise agreed.

(c) Part 60 rule 10

From the rule omit “as of right”.

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

(a) Part 1 rule 3

After the matter relating to Part 52 insert:

**PART 52A—COSTS**

DIVISION 1—*Preliminary*—rr, 1–10

DIVISION 2—*Entitlement*—rr, 11–30

DIVISION 3—*Party and party basis*—rr, 31–37

DIVISION 4—*General*—rr, 38–50

(b) Part 1 rule 8 (1)

(i) Insert each of the following in alphabetical order in the definitions:

“**assess**”, when used in relation to costs assessed otherwise than by the Court, means assess in accordance with Part 11 of the Legal Profession Act 1987.

“**certificate of determination**” means a certificate issued under section 208J of the Legal Profession Act 1987; and

(ii) In the definition of “costs determination”, after “1987” insert “as in force from time to time prior to 1 July 1994”.

(c) Part 7 rule 4

(i) Omit subrule (1) (a) (ii) and insert instead:

(ii) an amount for costs equal to:

(A) if the originating process is filed prior to 1 July 1994—the amount fixed by a costs determination in force at the date of filing; or

(B) otherwise—the amount fixed by a costs determination in force on 30 June 1994,

notwithstanding the repeal of the costs determination; and

- (iii) if the amount fixed by the costs determination does not include the fee paid on filing the originating process—an amount equal to that fee; and
- (ii) From subrule (4), omit “fixed by any costs determination” and insert instead “referred to in subrule (1) (a)”.
- (d) Part 14 rule 3
  - (i) From paragraph (d) omit “.” and insert instead “;”.
  - (ii) After paragraph (d) insert:
    - (e) Part 52A rule 9 (1) (payment of costs: interlocutory orders).
- (e) Part 22
  - (i) From rules 1 and 3 (8), omit “52 rule 17”, wherever occurring, and insert instead “52A rule 22”.
  - (ii) From rule 7 (3) (a), omit “52 rule 17 (4) or (5)” and insert instead “52A rule 22 (4) or (6)”.
  - (iii) From rule 7 (3) (b), omit “52 rule 17 (8)” and insert instead “52A rule 22 (9)”.
  - (iv) From rule 9, omit “52 rule 17” and insert instead “52A rule 22”.
- (f) Part 40
 

After rule 11 insert:

**Filing certificate under s. 208J (3) of Legal Profession Act 1987**

12. (1) A certificate to be filed in the Court under section 208J (3) of the Legal Profession Act 1987 shall be filed:

  - (a) where the certificate relates to costs of proceedings in the Court—in the proceedings; or
  - (b) otherwise—in the Common Law Division.

(2) There shall be filed with the certificate:

  - (a) an affidavit, sworn not later than 14 days before filing the certificate, stating:
    - (i) that the operation of the determination which the certificate sets out is not subject to any suspension under s. 208N (1) of the Legal Profession Act 1987 which has not been ended under s. 208N (2); and
    - (ii) how much of the amount of costs included in the certificate has not been paid; and
  - (b) a draft minute of the judgment which is to be entered.

(3) A document filed under subrule (2) with a certificate that does not relate to costs of proceedings in the Court shall be entitled between:

(a) as plaintiff, the person to whom the costs included in the certificate are payable; and

(b) as defendant, the person by whom the costs are payable.

(4) Where a certificate is filed and subrule (2) is complied with, judgment shall be entered for the amount of the unpaid costs.

(g) Part 44 rule 6 (b)

Omit “taxed” and insert instead “assessed”.

(h) Part 44 rule 6 (d)

After “of the costs” insert “unless a certificate of determination issues in respect of the costs and the certificate is not filed in the Court”.

(i) Part 44 rule 7 (1) (c)

(i) Omit “.” and insert instead “,”.

(ii) After subparagraph (vii) insert:

and containing and verifying a statement:

(viii) that the judgment was not entered as a result of the filing of a certificate under section 208J (3) of the Legal Profession Act 1987; or

(ix) that the judgment was entered as a result of the filing of a certificate under section 208J (3) of the Legal Profession Act 1987 and that the determination which the certificate sets out is not subject to any suspension under section 208N (1) of that Act which has not been ended under section 208N (2).

(j) Part 44 rule 10

(i) Renumber the rule as 10 (1).

(ii) After subrule (1) insert:

(2) The costs referred to in subrule (1) (a) shall not be included in the amount for which a writ of execution may be issued if a certificate of determination issues in respect of the costs of the prior writ and that certificate is not filed in the Court.

(k) Part 45 rule 16 (2) (a) (ii)

Before “the costs”, insert “subject to Part 52A rule 46.”.

**1994—No. 266**

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(l) Part 45 rule 16 (2) (a) (iii)  
Before “an”, insert “subject to Part 52A rule 46.”.

(m) Part 45 rule 19 (b)  
Before “the costs”, insert “subject to Part 52A rule 46.”.

(n) Part 45 rule 19 (c)  
Before “an amount”, insert “subject to Part 52A rule 46.”.

(o) Part 45 rule 24 (1)  
Omit the balance of the subrule following paragraph (c) and insert instead:  
or within such later time as may be consented to in writing by the debtor, file:  
(d) evidence of an agreement with the debtor as to the amount of the creditor’s costs of the execution; or  
(e) a bill of those costs for taxation or an application for assessment of those costs, as the case requires.

(p) Part 45 rule 24  
After subrule (1) insert:  
(1A) The court may, on the application of a creditor at whose request a writ of execution has issued, order that the debtor pay the creditor’s costs of the execution.

(q) Part 46 rule 12 (1)  
After “directs,” insert “be payable by the judgment debtor to the judgment creditor and shall”.

(r) Part 46 rule 12  
After subrule (3), insert:  
(4) This rule is subject to Part 52A rule 46 (which relates to a certificate filed under section 208J (3) of the Legal Profession Act 1987).

(s) Part 51 rule 5  
From the footnote omit “52 r. 11C” and insert instead “52A r. 14”.

(t) Part 51 rule 6  
From the heading omit “**52 r 11A & 11B**” and insert instead “**52A rr 12 & 13**”.

(u) Part 51 rule 13B  
From the heading omit “52 r 11A” and insert instead “52A r 12”.

## (v) Part 51A

(i) After rule 2 insert:

**Leave to appeal or cross-appeal**

2A. (1) An application for leave to appeal and, subject to subrule (2), to cross-appeal shall be made by summons.

(2) A party served with a summons for leave to appeal who wishes to apply for leave to cross-appeal may do so by motion on the hearing of the summons, supported by an affidavit stating the questions involved and the reasons why leave should be given, without filing or serving a summons or notice of the motion.

(3) The summons for leave to appeal shall be filed within 14 days after the material date or within such extended time as the Court may fix.

(4) A summons for leave to cross-appeal shall be filed within 14 days after service of the summons instituting the appeal, or the summons for leave to appeal, or within such further time as the Court may fix.

(5) The Court may extend time under subrule (3) or (4) at any time.

(6) The applicant shall file with or subscribe to the summons a statement of:

- (a) the nature of the case;
- (b) the questions involved; and
- (c) the reasons why leave should be given.

(7) The applicant for leave to appeal shall, not later than 3 days before the date fixed for the hearing of the application for leave to appeal, file a copy of the reasons for decision in the tribunal below unless:

- (a) the registrar otherwise directs; or
- (b) the tribunal below has not given, and does not intend to give, written reasons.

(8) The Court may give leave to appeal or to cross-appeal on terms.

(9) A party applying to the Court for an extension of time under subrule (3) or (4) shall lodge with his or her notice of motion or summons a draft, completed as far as possible, of the summons under subrule (1) and the statement under subrule (7), to be filed if an extended time is fixed.

cf. Pt. 51 r 3.

- (ii) Renumber rule 3 (2) as 3 (3).
- (iii) After subrule 3 (1) insert:
  - (2) Where an appeal is instituted pursuant to leave to appeal, the appeal must be instituted within 14 days after the leave is given or within such extended or abridged time as the Court may fix.
- (iv) In rule 5, after “summons” insert “instituting the appeal”.
- (v) In rule 6 (1), after “defendant”, insert “to the appeal”.
- (vi) After rule 6 insert:

**Directions for service**

- 6A. Where the Court makes an order granting:
  - (a) leave to appeal or to cross-appeal; or
  - (b) an extension of time for:
    - (i) appealing or cross-appealing; or
    - (ii) applying for leave to appeal or to cross-appeal,
- the Court may, at the same time or afterwards, give directions for service other than personal service of any summons or notice of cross-appeal by which, pursuant to the order, proceedings are commenced for an appeal or for leave to appeal or to cross-appeal, and of any other document in the proceedings so commenced.
- (vii) From rule 11A. omit “on the defendant” and insert instead “instituting the appeal on the defendant or within 14 days after leave to cross-appeal is given”.
- (viii) Renumber rule 11A as 12.
- (ix) Omit rule 11B and insert instead:

**Notice of contention**

13. Where a defendant wishes to contend that the decision of the tribunal below should be affirmed on grounds other than those relied upon by the tribunal below but does not seek a discharge or variation of any part of the decision of the tribunal below, the defendant need not file a notice of cross-appeal but, not later than:

- (a) 28 days after service of the summons instituting the appeal on the defendant; or
- (b) 14 days after leave to cross-appeal is given,

the defendant must:

- (c) file notice of that contention stating, briefly but specifically, the grounds relied upon in support of the contention; and
- (d) serve the notice of contention on each other party to the appeal.

(w) Part 52

(i) Rules 1 and 1A

Renumber rule 1A as 1B and rule 1 as 1A.

(ii) Before rule 1A insert:

**Application**

1. (1) This Part shall have no further operation after 30 June 1994 except:

- (a) ~~a~~ provided by the Legal Profession Act 1987 or the regulations made under it;
- (b) ~~a~~ provided by subrule (2); or
- (c) ~~a~~ otherwise ordered by the Court in relation to particular proceedings.

(2) This rule shall not effect any right, privilege, obligation, liability or disentitlement acquired, accrued or incurred on or before 30 June 1994.

(3) Subject to subrules (1) and (2), the provisions of this Part apply, subject to their terms, to and in respect of

- (a) costs payable or to be taxed under any order of the Court or under the rules; and
- (b) costs to be taxed in the Court under any Act.

(iii) Rule 3

Omit the rule.

(x) Part 52A

After Part 52 insert:

**PART 52A—COSTS**

**Division 1—Preliminary**

**Application**

1. (1) The provisions of this Part apply, subject to their terms, to and in respect of

- (a) costs payable or to be assessed under any order of the Court or under the rules; and

(b) costs to be:

- (i) taxed in the Court; or
- (ii) assessed,  
under any Act.

cf. Costs Rules, r. 1.

(2) The application of this Part is subject to the Legal Profession Act 1987 (“the subject Act”), and the regulations made under it.

#### **Interpretation—general**

2. In this Part, unless the context or subject matter otherwise indicates or requires:

“**certificate of determination**” means a certificate issued under section 218 (5) of the subject Act;

“**non-contentious business**” has the same meaning as it has in section 173 of the subject Act;

“**party and party basis**” means the basis of assessment set out in Division 6 of Part 11 of the subject Act;

“**trustee**” includes an executor of a will and an administrator of the estate of a deceased person.

cf. R.S.C. (Rev.) 1965, O. 62. r. 1 (1).

#### **Interpretation—“fund”**

3. In this Part:

(a) a reference to a fund, being a fund out of which costs are to be paid, or being a fund held by a trustee, extends to any property held for the benefit of any person or class of persons, or held on trust for any purpose; and

(b) a reference to a fund held by a trustee extends to any property to which he or she is entitled as trustee, whether alone or together with any other person and whether the property is for the time being in the possession of the trustee or not.

cf. R.S.C. (Rev.) 1965, O. 62, r. 1 (2).

#### **Powers of the Court generally**

4. (1) The powers and discretions of the Court under section 76 of the Act (which relates to costs generally) shall be exercised subject to and in accordance with this Part.

cf. R.S.C. (Rev.) 1965, O. 62, r. 2 (4).

(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.

(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 rule 43 or Part 42 rule 7 (f);
- (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.

#### **Time for dealing with costs**

5. The Court may, in any proceedings, exercise its powers and discretions as to costs at any stage of the proceedings or after the conclusion of the proceedings.

cf. R.S.C. (Rev.) 1965, O. 14, r. 7 (1); O. 62, r. 4 (1).

**Assessed costs and other provision**

6. (1) Subject to this Part, where, by or under these rules, or any order of the Court, costs are to be paid to any person, that person shall be entitled to assessed costs.

cf. R.S.C. (Rev.) 1965, O. 62, r. 9(1).

(2) Where the Court orders that costs be paid to any person, the Court may, at any time prior to the costs being referred by the registrar for assessment, further order that, as to the whole or any part (specified in the order) of the costs, instead of assessed costs, that person shall be entitled to:

- (a) a proportion specified in the order of the assessed costs;
- (b) the assessed costs from or up to a stage of the proceedings specified in the order; or
- (c) a gross sum specified in the order instead of the assessed costs.

cf. R.S.C. (Rev.) 1965, O. 62, r. 9(4).

**Costs in other courts**

7. Where, in proceedings remitted, removed or otherwise transferred to or into the Court, or in proceedings on an appeal to the Court, the Court makes an order as to the costs of proceedings before another court or before a tribunal, the Court may:

- (a) specify the amount of the costs to be allowed; or
- (b) order that the costs be assessed.

**Order for payment**

8. Subject to this Part, a party to the proceedings in the Court shall not be entitled to recover any costs of or incidental to the proceedings from any other party to the proceedings except under an order of the Court.

cf. R.S.C. (Rev.) 1965, O. 62, r. 3(1).

**Order for costs—when payable**

9. (1) Where, before the conclusion of any proceedings, the Court makes an order for the payment of costs or a motion is refused with costs, the costs shall not, unless the Court otherwise orders, be payable until after the conclusion of the proceedings.

cf. R.S.C. (Rev.) 1965, O. 62, r. 8(1), after S. 1 1986 No. 632.

(2) Where, in any proceedings, it appears to a registrar, on application, that there is no likelihood of any further order being made in the proceedings, the registrar may order that any costs ordered to be paid shall be payable forthwith.

cf. R.S.C. (Rev.) 1965, O. 62, r. 8(9), after S. 1. 1986 No. 632.

**Default judgment**

10. (1) Where judgment is entered for costs under Part 17 (which relates to judgment on default of appearance or of defence) the costs shall not be assessed costs but shall be in accordance with the prescribed scale.

cf. R.S.C. (Rev.) 1965, O. 26. r. 9 (3).

(2) Subrule (1) does not apply to a judgment given under Part 17 rule 9.

**Division 2—Entitlement****Following the event**

11. If the Court makes any order as to costs, the Court shall, subject to this Part, order that the costs follow the event, except where it appears to the Court that some other order should be made as to the whole or any part of the costs.

cf. R.S.C. (Rev.) 1965, O. 62, r. 3 (2).

**Submitting appearance (Court of Appeal)**

12. (1) Subject to rule 14, where a respondent or opponent adds to that party's notice of appearance a statement pursuant to Part 51 rule 13B (which relates to a submitting appearance) and takes no active part in the proceedings, the appellant or claimant shall, unless the Court otherwise orders, pay the respondent's or the opponent's costs as a submitting party.

(2) Any costs that an appellant or claimant is liable to pay pursuant to subrule (1) to a submitting party properly joined in proceedings shall, unless the Court otherwise orders, be included in any costs payable by any other respondent or opponent to the appellant or claimant in respect of those proceedings.

**Common representations**

13. Where in proceedings in the Court of Appeal:

- (a) respondents to an appeal;
- (b) opponents to an application for leave to appeal; or
- (c) opponents to proceedings commenced by summons claiming relief under section 48 (2) (b), (c), (d), (e) or (g) of the Act,

have arranged common representation and they are entitled to recover their costs from another party, those costs shall include the costs of arranging the common representation.

**Discontinuance of appeal**

14. (1) Where an appeal is taken to be discontinued under Part 51 rule 5 (4), the appellant shall, unless the Court of Appeal otherwise orders, pay the respondent's costs of the appeal.

(2) The costs payable under subrule (1) shall not include the costs of any work which could reasonably have awaited the filing of a notice of appeal with appointment, unless the Court of Appeal otherwise orders.

**Amendment of pleading etc. without leave**

15. Where a party amends a pleading, summons or cross-claim to which Part 6 Division 3 applies without leave, unless the Court otherwise orders, he or she shall, after the conclusion of the proceedings, pay the costs of and occasioned by the amendment.

cf. R.S.C. (Rev.) 1965, O. 62, r. 3 (3).

**Interlocutory application**

16. Subject to this Part the costs of any application or other step in any proceedings shall, unless the Court otherwise orders, be paid and otherwise dealt with in accordance with the provisions of this Part or the provisions of any order relating to the general costs of the proceedings.

**Extension of time**

17. Where a party applies for an extension of time, unless the Court otherwise orders, he or she shall, after the conclusion of the proceedings, pay the costs of and occasioned by the application, or any order made on or in consequence of the application.

cf. R.S.C. (Rev.) 1965, O. 62, r. 3 (4).

**Defence of tender**

18. Where it is a fact that the defendant has paid money into Court under Part 15 rule 24, the Court may, in exercising its discretion as to costs, take into account that fact and the amount of the money paid into Court.

**Non-admission of fact**

19. (1) Where a party to any proceedings (in this rule called the "disputing party") serves a notice disputing a fact under Part 18 rule 2 (2) and afterwards that fact is:

- (a) proved in the proceedings; or
- (b) admitted for the purpose of the proceedings by the disputing party,

unless the Court otherwise orders, the disputing party shall, after the conclusion of the proceedings, pay the costs of the party upon whom the notice is served, assessed on an indemnity basis, occasioned by:

- (c) proof of the fact; or
- (d) preparation for the purpose of proving the fact, as the case may be.

(2) An entitlement to costs under this rule shall not be affected by any order as to costs unless that order refers to the notice by the disputing party giving rise to the entitlement.

(3) This rule has effect notwithstanding rules 18, 21, 22, 23, 28, 29, and 30 (4) and (5).

cf. R.S.C. (Rev.) 1965, O. 62, r. 3 (53).

#### **Non-admission of document**

20. (1) Where a party to any proceedings (in this rule called the “disputing party”) serves a notice disputing the authenticity of a document under Part 18 rule 4 (2) or under Part 18 rule 5 (2), and afterwards the authenticity of a document is:

- (a) proved in the proceedings; or
- (b) admitted for the purpose of the proceedings by the disputing party,

unless the Court otherwise orders, the disputing party shall, after the conclusion of the proceedings, pay the costs of the party upon whom the notice is served, assessed on an indemnity basis, occasioned by:

- (c) proof of the authenticity of the document; or
- (d) preparation for the purpose of proving the authenticity of a document,

as the case may be.

(2) An entitlement to costs under this rule shall not be affected by any order as to costs unless that order refers to the notice by the disputing party giving rise to the entitlement.

(3) This rule has effect notwithstanding rules 18, 21, 22, 23, 28, 29, and 30 (4) and (5).

cf. R.S.C. (Rev.) 1965, O. 62, r. 3 (6).

**Discontinuance**

21. Where, pursuant to Part 21 rule 2, a party to any proceedings discontinues the proceedings without leave as to the whole or any part of the relief claimed by him against any other party, the discontinuing party shall, unless:

- (a) the Court otherwise orders; or
- (b) the notice of discontinuance contains a statement under Part 21 rule 5 (3),

pay the costs of the party against whom the discontinued claim is made, occasioned by the discontinued claim and incurred before service of notice of the discontinuance.

cf. R.S.C. (Rev.) 1965, O. 62, rr. 3 (7), 10 (1).

**Offer of compromise**

22. (1) Upon the acceptance of an offer of compromise in accordance with Part 22 rule 3 (5), the defendant shall, unless the Court otherwise orders, pay the costs in respect of the claim by the plaintiff against the defendant up to and including the day the offer was accepted.

(2) If a notice of offer contains a term which purports to negative or limit the operation of subrule (1), that offer shall be of no effect for any purpose under Part 22 or this rule.

(3) Subrules (4)–(6) apply to an offer which has not been accepted at the time prescribed by Part 22 rule 3 (8).

(4) Where an offer is made by a plaintiff and not accepted by the defendant, and the plaintiff obtains an order or judgment on the claim to which the offer relates no less favourable to the plaintiff than the terms of the offer, then, unless the Court otherwise orders, the plaintiff shall, subject to rule 33, be entitled to an order against the defendant for the plaintiff's costs in respect of the claim from the day on which the offer was made, assessed on an indemnity basis in addition to his costs incurred before and on that day, assessed on a party and party basis.

(5) For the purpose of subrule (4), where the offer was made on the first or a later day of the trial of the proceedings, then, unless the Court otherwise orders, the plaintiff shall be entitled to the plaintiff's costs in respect of the claim from 11 a.m. on the day following the day on which the offer was made, assessed on an indemnity basis, in addition to the plaintiff's costs incurred before that time, assessed on a party and party basis.

(6) Where an offer is made by a defendant and not accepted by the plaintiff, and the plaintiff obtains an order or judgment on the claim to which the offer relates not more favourable to him than the terms of the offer, then, unless the Court otherwise orders, the plaintiff shall, subject to rule 33, be entitled to an order against the defendant for the plaintiff's costs in respect of the claim up to and including the day the offer was made, assessed on a party and party basis, and the defendant shall be entitled to an order against the plaintiff for the defendant's costs in respect of the claim thereafter assessed on a party and party basis.

(7) For the purpose of subrule (5), where the offer was made on the first or a later day of the trial of the proceedings, then, unless the Court otherwise orders, the plaintiff shall be entitled to his costs in respect of the claim up to 11 a.m. on the day following the day on which the offer was made, assessed on a party and party basis, and the defendant shall be entitled to his costs in respect of the claim thereafter, assessed on a party and party basis.

(8) Where a plaintiff obtains an order or judgment for the payment of a debt or damages and:

- (a) the amount payable under the order or for which judgment is given includes interest or damages in the nature of interest; or
- (b) by or under any Act the Court awards the plaintiff interest or damages in the nature of interest in respect of the amount,

then, for the purpose of determining the consequences as to costs referred to in subrules (4) and (6), the Court shall disregard so much of the interest as relates to the period after the day the offer was made.

(9) For the purpose only of subrule (8), the Court may be informed of the fact that the offer was made, and of the date on which it was made, but shall not be informed of its terms.

(10) Subrules (4) and (6) shall not apply unless the Court is satisfied by the party making the offer that the party was at all material times willing and able to carry out what the party offered.

#### **Dismissal**

23. Where a party makes a claim for relief and the Court orders that the claim be dismissed under Part 34 rule 6A (which relates to dismissal on the plaintiff's application) or Part 34 rule 7 (which relates to dismissal on the defendant's application), he or she shall pay the costs of the party against whom the dismissed claim is made, occasioned by the dismissed claim.

**Offer to contribute**

24. The Court may take an offer to contribute into account in determining whether it should order that the offeree should pay the whole or part of:

- (a) the costs of the offeror;
- (b) any costs which the offeror is liable to pay to the plaintiff.

**Disobedience to rule, judgment or order**

25. Where any person fails to comply with any provision of the rules or any judgment or order of the Court, the Court may order him to pay the costs of any other person occasioned by the failure.

**Discovery before suit**

26. The Court may, in proceedings in respect of any claim for relief, include in any order for costs the costs of a party to the proceedings of proceedings under Part 3 in respect of that claim for relief including payments of conduct money and payments on account of expenses and loss under that Part.

**Injunction**

27. Where the Court grants an interlocutory injunction and afterwards grants a further interlocutory injunction continuing the first injunction with or without modification, an order as to the costs of the further injunction shall, unless the Court otherwise orders, include the costs of the first injunction.

cf. 42 W.N. (N.S.W.) 26.

**Patents, trade marks and designs**

28. Where:

- (a) an action or counterclaim for infringement of a patent, of a registered trade mark, or of the monopoly in a registered design;
- (b) an application or counterclaim for revocation of a patent; or
- (c) an application for cancellation of the registration of a design or counter-claim for the rectification of the Register of Designs,

proceeds to hearing, costs shall not be allowed to the parties delivering any particulars of breaches or of objections in respect of any issues raised in those particulars and relating to that patent, trade mark or design except in so far as those issues or particulars are certified by the Court to have been proved or to have been reasonable and proper.

cf. R.S.C. (Rev.) 1965. O. 62, App. 2, Part 7. para. 4 (3).

**Gift to interested witness**

29. Where a beneficial gift is, by reason of the Court's satisfaction under section 13 (2) (c) of the Probate Act, not void, the applicant for relief shall, unless the Court otherwise orders, pay the costs of and occasioned by the application and any order made on or in consequence of the application.

**Arbitration (Civil Actions) Act 1983 (cf. P. 72B)**

30. (1) Where proceedings are heard and determined under section 18 (3) (b) of the Arbitration (Civil Actions) Act 1983 (the "Arbitration Act") and the determination of the Court is substantially more favourable to the applicant for the order for rehearing (the "applicant") than is the determination of the arbitrator, the Court may order that the fee paid by the applicant for filing the application be refunded to the applicant wholly or to the extent specified by the Court.

(2) Where a party is required to pay the costs of another party in respect of a rehearing under section 18 (3) (b) of the Arbitration Act, those costs shall not include the fee paid for filing the application for the order for the rehearing unless the Court so directs.

(3) The Court shall not give a direction under subrule (2) unless it is of opinion that the party ordered to pay the costs unreasonably caused the making of the application for the order for the rehearing.

(4) Subject to subrule (5), where proceedings are heard and determined under section 18 (3) (b) of the Arbitration Act, and the determination of the Court is not substantially more favourable to the applicant than is the determination of the arbitrator, the Court:

- (a) shall not make any order for the payment by any other party of the applicant's costs incurred by reason of the rehearing; and
- (b) shall order the applicant to pay the costs of every other party incurred by reason of the rehearing.

(5) The Court may in respect of a rehearing certify that the special circumstances of the case require the Court:

- (a) to make an order referred to in subrule (4) (a), in which case the Court may make that order; or
- (b) to refrain from making an order referred to in subrule (4) (b), in which case the Court may refrain from making that order.

**Division 3—Party and party basis****Application**

31. This Division applies to costs which by or under any Act or the rules or any order of the Court are to be paid to a party to any proceedings either by another party to the proceedings or out of a fund.

cf. R.S.C. (Rev.) 1965, O. 62, r. 28(1).

**Party and party basis**

32. Costs payable by or under the rules or any order of the Court shall be payable on a party and party basis unless the rules or an order provide that they are payable on an indemnity basis.

**Claims for money**

33. (1) This rule:

- (a) applies to proceedings in the Common Law Division or the Commercial Division on a claim for debt, damages or other money;
- (b) does not apply:
  - (i) where the claim is not only for debt, damages or other money but also for possession of land or delivery of goods;
  - (ii) where the proceedings can be brought only in the court;
  - (iii) to proceedings remitted, removed or otherwise transferred to or into the Court.

(2) Where:

- (a) in proceedings commenced on or before 28 September 1973, a plaintiff recovers a sum not more than \$300;
- (b) in proceedings commenced after 28 September 1973 but on or before 31 October 1980, a plaintiff recovers a sum not more than \$1,000;
- (c) in proceedings commenced after 31 October 1980, but on or before 31 March 1983, a plaintiff recovers a sum not more than \$3,000;
- (d) in proceedings commenced after 31 March 1983, but on or before 30 June 1993, a plaintiff recovers a sum not more than \$10,000; or
- (e) in proceedings commenced after 30 June 1993, a plaintiff recovers a sum not more than \$75,000,

he shall not be entitled to payment of his costs of the proceedings unless, it appearing to the Court that he had sufficient reason for commencing or continuing proceedings in the Court, the Court makes an order for payment.

cf. Act No. 21, 1899, s. 267.

(3) Without limiting the generality of subrule (2), it shall be taken to be a sufficient reason if the plaintiff had reasonable grounds at the relevant time for expecting that he would recover an amount in excess of the amount prescribed by that subrule.

(4) Subject to subrule (5), where, by or under the rules or any order of the Court, the plaintiff is entitled to his or her costs of any proceedings to which this rule applies, the amount of costs payable to him or her shall:

- (a) in respect of proceedings commenced on or before 28 September 1973:
  - (i) where he or she recovers a sum more than \$300 but not more than \$1,000, be only one third of the amount (the “whole amount”) which would be payable to him or her apart from this subrule;
  - (ii) where he or she recovers a sum more than \$1,000 but not more than \$2,000, be only two thirds of the whole amount;
- (b) in respect of proceedings commenced after 28 September 1973 and on or before 31 October 1980:
  - (i) where he or she recovers a sum more than \$1,000 but not more than \$3,000, be only a quarter of the whole amount;
  - (ii) where he or she recovers a sum more than \$3,000 but not more than \$5,000, be only a half of the whole amount;
  - (iii) where he or she recovers a sum, in respect of damages for personal injuries, more than \$5,000 but not more than \$7,500, be only three quarters of the whole amount;
- (c) in respect of proceedings commenced after 31 October 1980, but on or before 31 March 1983:

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- (i) where he or she 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 31 March 1983, but on or before 30 June 1993, where he or she 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 30 June 1993, where he or she recovers a sum more than \$75,000 but not more than \$150,000, be only a half of the whole amount.

cf. Costs Rules, r. 6.

- (5) In a case to which subrule (4) applies, if it appears to the Court that the plaintiff had sufficient reason for commencing or continuing proceedings in the Court, the Court may order that the amount of costs payable to the plaintiff be some greater part or the whole of the amount which would be payable to him or her apart from that subrule.

cf. Costs Rules, r. 6.

- (6) Without limiting the generality of subrule (5), it shall be taken to be a sufficient reason if the plaintiff had reasonable grounds at the relevant time for expecting to recover an amount in excess of the amount prescribed by that subrule.

(7) Where:

- (a) in proceedings commenced on or before 28 September 1973, the plaintiff recovers a sum not more than \$2,000;
- (b) in proceedings commenced after 28th September 1973, but on or before 31 March 1983, the plaintiff recovers a sum not more than \$7,500;
- (c) in proceedings commenced after 31 March 1983, but on or before 30 June 1993, the plaintiff recovers a sum not more than \$50,000; or
- (d) in proceedings commenced after 30 June 1993, the plaintiff recovers a sum not more than \$150,000,

and, by or under the rules or any order of the Court, the plaintiff is entitled to his or her costs of the proceedings, the costs of briefing more than one counsel for the plaintiff shall not be allowed unless the Court or the assessor otherwise orders.

cf. Costs Rules, r. 31.

(8) Where:

- (a) before 1 May 1973 or, unless the claim is for unliquidated damages, on or before 28 September 1973, the plaintiff claimed a sum not more than \$2,000;
- (b) unless the claim is for unliquidated damages, after 28th September 1973, but on or before 31 March 1983, the plaintiff claims a sum not more than \$7,500;
- (c) after 31 March 1983, but on or before 30 June 1993, the plaintiff claims a sum not more than \$50,000; or
- (d) after 30 June 1993, the plaintiff claim a sum not more than \$150,000,

and the Court makes an order for the payment of the defendant's costs of the proceedings, the costs of briefing more than one counsel for the defendant shall not be allowed unless the Court or the assessor otherwise orders.

(9) For the purposes of this rule, a plaintiff shall be treated as recovering the full amount recoverable in respect of his or her claim without regard to any deduction made in respect of contributory negligence on his or her part or in respect of any cross-claim by a defendant or otherwise in respect of matters not falling to be taken into account in determining whether the action should have been commenced in the Supreme Court.

cf. 7 & 8 Eliz. 2, c. 22. s. 47 (1).

#### **De Facto Relationships Act 1984**

34. Where the plaintiff commences proceedings in the Court for an order or relief under the De Facto Relationships Act 1984 and the Court:

- (a) in relation to property, declares a right or adjusts an interest; or
- (b) makes an order for maintenance, of a value or amount which does not exceed the amount prescribed at the time of commencement of the proceedings by section 12 of the Local Courts (Civil Claims) Act 1970;
- (c) the plaintiff shall not be entitled to payment of his or her costs of the proceedings unless the Court otherwise orders; and

(d) where the Court makes an order for the payment of the plaintiff's costs of the proceedings and the costs are assessed on a party and party basis or an indemnity basis under rule 22 (4), the costs of briefing more than one counsel for the plaintiff shall not be allowed unless the Court or the assessor otherwise orders.

**Orders for non-application of rules 33 and 34**

35. (1) The Court may, on the application of any person, order that rule 33 (2), (4), (7) and (8) or rule 34 shall not apply in respect of proceedings to be commenced or commenced in the court.

(2) Where an order is made under subrule (1) in respect of proceedings to be commenced, the originating process by which the proceedings are later commenced shall bear a note of the order made.

**Counsel before registrar etc.**

36. (1) Where costs are payable by or under the rules or any order of the Court on a party and party basis, those costs shall not include costs in respect of counsel attending before a registrar or other officer unless the registrar or other officer certifies the attendance to be proper or the Court otherwise orders.

cf. Prothonotary (Chamber Work) Rules, r. 4; R.S.C. (Rev.) 1965, O. 62, App. 2, Pt. X, 2 (3).

(2) Subrule (1) does not apply to costs in respect of counsel attending before a master.

(3) In respect of proceedings before a registrar or other officer in the Probate Division, the Family Law Division, the Administrative Law Division or the Commercial Division, subrule (1) shall apply in respect of Her Majesty's Counsel but it shall not apply, in respect of other counsel unless the registrar or officer before whom the proceedings were held otherwise directs or the Court otherwise orders.

cf. Costs Rules, r. 23 (f).

**Indemnity basis**

37. On an assessment on the indemnity basis, all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred and any doubts which the assessor may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party.

cf. R.S.C. (Rev.) 1965, O. 62, r. 12 (2).

**Division 4—General****Costs in account**

38. Where the Court orders that an account be taken and the account consists in part of costs, the Court may, by the same or a later order, direct the registrar to refer those costs for assessment.

cf. R.S.C. (Rev.) 1965, O. 62, r. 19 (1); Costs Rules, r. 57.

**Drug Trafficking (Civil Proceedings) Act 1990**

39. An application for an order under section 17 of the Drug Trafficking (Civil Proceedings) Act 1990 may be made by motion in the proceedings for the restraining order.

**Proper officer**

40. The Registrar is the proper officer of the Court for the purposes of Division 6 of Part 11 of the Legal Profession Act 1987.

**Costs of solicitor appointed as tutor**

41. Where the Court appoints a solicitor to be tutor of a disable person who is a party to any proceedings, the Court may:

- (a) order that the costs to be incurred in performance of the duties of tutor be paid:
  - (i) by the parties to the proceedings or any of them; or
  - (ii) out of any fund in Court in which the disable person is interested; and
- (b) make orders for the repayment or allowance of the costs as the nature of the case may require.

cf. Costs Rules, r. 47.

**Trustee or mortgagee**

42. (1) Where a person is or has been a party to any proceedings in the capacity of trustee or mortgagee, he shall, unless the Court otherwise orders, be entitled to the costs of the proceedings out of the fund held by the trustee or out of the mortgaged property, as the case may be, in so far as the costs are not paid by any other person.

cf. R.S.C. (Rev.) 1965, O. 62, r. 6 (2).

(2) The Court may otherwise order pursuant to subrule (1) only where:

- (a) the trustee or mortgagee has acted unreasonably; or
- (b) in the case of a trustee, he has in substance acted for his own benefit rather than for the benefit of the fund.

cf. R.S.C. (Rev.) 1965, O. 62, r. 6 (2).

**Liability of solicitor**

43. (1) Where costs are incurred improperly or without reasonable cause, or are wasted by undue delay or by any other misconduct or default, and it appears to the Court that a solicitor is responsible (whether personally or through a servant or agent), the Court may, after giving the solicitor a reasonable opportunity to be heard:

- (a) disallow the costs as between the solicitor and the solicitor's client;
- (b) direct the solicitor to repay to the client costs which the client has been ordered to pay to any other party; and
- (c) direct the solicitor to indemnify any party other than the client against costs payable by the party indemnified.

(2) Without limiting the generality of subrule (1), a solicitor is responsible for default for the purposes of that subrule where any proceedings cannot conveniently proceed, or fail or are adjourned without useful progress being made, because of the failure of the solicitor:

- (a) to attend in person or by a proper representative;
- (b) to file any document which ought to have been filed;
- (c) to deliver any document which ought to have been delivered for the use of the Court;
- (d) to be prepared with any proper evidence or account; or
- (e) otherwise to proceed.

(3) The Court may, before making an order under subrule (1), refer the matter to a registrar for enquiry and report.

(4) The Court may order that notice of any proceedings or order against a solicitor under this rule shall be given to the solicitor's client in such manner as may be specified in the order under this subrule.

(5) This rule is in addition to and is intended to operate independently of the provisions of section 76C of the Act and does not apply in circumstances where section 76C of the Act applies.

**Opportunity for solicitor to be heard**

44. The Court shall, before making an order under section 76C of the Act in respect of a solicitor, give the solicitor a reasonable opportunity to be heard.

**Probate**

45. (1) A bill for moderation shall be served on each executor, administrator or trustee before it is filed.

(2) A request for moderation shall be endorsed on the bill in the prescribed form and signed by each executor, administrator and trustee.

**Certificate under s. 208J (3) of the Legal Profession Act 1987**

46. (1) A person shall not be entitled to his or her costs of:

- (a) filing in the Court a certificate under section 208J (3) of the Legal Profession Act 1987; or
- (b) proceedings in the Court to recover payment of costs included in the certificate,

unless:

- (c) at the time of filing the certificate the amount of unpaid costs included in the certificate exceeds \$150,000; or
- (d) it appearing to the Court that the person had sufficient reason for filing the certificate and recovering the costs in the Court, the Court otherwise orders.

(2) A party may apply for an order under subrule (1) without serving notice of the motion.

(3) Where the applicant for an order under subrule (1) adds to the motion a request that the application be granted under this subrule, the Court may make the order in the absence of the public and without any attendance by or on behalf of the applicant.

**Certificate and copy of judgment of this court**

47. The costs of obtaining under section 13 (1) of the Foreign Judgments Act 1973 a certified copy of a judgment and a certificate shall be assessed by the Court.

**Costs order to confirm earlier costs orders**

48. An order as to costs made in proceedings after 30 June 1994 shall, unless the Court otherwise orders, be taken to expressly confirm all earlier orders as to costs made in the proceedings.

**Order confirming rule as to payment of costs**

49. (1) Where a party to proceedings in the Court has become liable under a rule or section to which this rule applies to pay any of the costs of the proceedings of any other party, the Court may order the party so liable to pay those costs.

(2) This rule applies to rules 12 (l), 14 (l), 17, 19 (l), 20 (l), 21, 22 (l), 23, 29 and 42 (1) and to Part 52 rules 11A (l), 11C (l), 13, 14 (l), 15 (l), 16, 17 (l), 18 (1), 21D, 65 (l) and to section 366 (2) of the Companies Code and section 466 (2) of the Corporations Law.

#### Execution

50. The amount to be allowed for the costs of a writ of execution (as defined in Part 44 rule 1) shall be the mount equal to the amount fixed by a costs determination in force on 30 June 1994, notwithstanding the repeal of the costs determination.

(y) Part 62 rule 8

- (i) From subrule (1) omit “order that fees be taxed” and insert instead “determine the amount of fees payable to the Sheriff”.
- (ii) From subrule (2) omit “he may not apply for an order for taxation of the fees” and insert instead “a person may not apply for an order under this rule”.
- (iii) Omit subrule (3) and insert instead:  
(3) The notice of motion shall be served on the Sheriff and every other person interested.

(z) Part 62

- (i) Rule 9 (1)  
Omit “for taxation”.
- (ii) Rule 9 (2)  
Omit the subrule and insert instead:

(2) Where the fees are determined pursuant to an application by a person interested under rule 8, the amount determined shall, subject to any alteration on appeal, be binding as between the Sheriff and all persons interested.

(aa) Part 65 rule 7 (3A) and (3B)

Omit the subrules and insert instead:

(3A) A person may not, except with the leave of the Court, inspect any order filed with the Prothonotary:

(a) made by:

- (i) the Professional Standards Board under section 149; or
- (ii) the Disciplinary Tribunal under section 154 (l), of the Legal Profession Act 1987 as in force from time to time prior to 1 July 1994; or

(b) made by the Legal Services Tribunal under section 171C of the Legal Profession Act 1987,  
unless the order involves a finding of professional misconduct.

(3B) Any person may inspect any order filed with the Prothonotary:

- (a) made by the Disciplinary Tribunal under section 163 of the Legal Profession Act 1987 as in force from time to time prior to 1 July 1994; or
- (b) made by the Legal Services Tribunal under section 171C of the Legal Profession Act 1987,  
if the order involves a finding of professional misconduct.

(ab) Part 65A rule 1

- (i) Omit “Disciplinary” wherever appearing and insert instead “Legal Services”.
- (ii) Omit “164” and insert instead “171F”.

(ac) Part 65A rule 2 (1) (b)  
Omit “120 (7) and 121 (3)” and insert instead “48A (4), 48J (4) and 48K (3)”.

(ad) Part 65A rule 3 (1)  
Omit “barrister or solicitor” and insert instead “legal practitioner”.

(ae) Part 65A rule 3 (1) (a)  
Omit “Barristers or Roll of Solicitors” and insert instead “Legal Practitioners”.

(af) Part 65A rule 3 (1) (b)  
Omit “barrister or solicitor” and insert instead “lawyer (whether known as a barrister, a solicitor, a barrister and solicitor, an attorney, a legal practitioner or otherwise)”.

(ag) Part 65A rule 4  
Omit the rule and insert instead:

**Application for re-admission**

4. (1) An application to the Court by a person, whose name has been removed from the Roll of Legal Practitioners or the former Roll of Barristers or the former Roll of Solicitors, for admission as a legal practitioner shall be made by summons joining as defendants the New South Wales Bar Association and the Law Society of New South Wales.

(2) The summons and affidavits to be used shall be served on the defendants not less than 28 days before the date appointed for hearing.

(3) Any affidavit of the fitness of the applicant shall show:

- (a) that the deponent is conversant with the evidence and the facts upon which the order was made removing the name of the legal practitioner from the Roll; or
- (b) that the deponent has read the affidavits and evidence upon which that order was made.

cf. Solicitors' Practices Rules, rr. 16, 17.

(ah) Part 65A rule 5 (1)

Omit "37" and insert instead "38B".

(ai) Part 65C

Omit the part and insert instead:

## **PART 65C**

### **ADMISSION AS LEGAL PRACTITIONER**

#### **Application by person approved by a Board**

1. A person who has been approved by:

- (a) the former Barristers Admission Board or the former Solicitors Admission Board as a suitable candidate for admission as a barrister or as a solicitor; or
- (b) the Legal Practitioners Admission Board for admission as a suitable candidate for admission as a legal practitioner, may, unless the Court otherwise orders, apply for admission without having filed any originating process in the Court.

#### **Admission, other than of interstate applicant**

2. (1) This rule applies to an application for admission as a legal practitioner other than an application to which rule 3 applies.

(2) Every person applying for admission as a legal practitioner shall personally attend in Court and shall on such admission:

- (a) take the oath of office as a legal practitioner; and
- (b) sign the Roll of Legal Practitioners in the Court,

and shall be entitled to receive a certificate bearing the seal of the court.

**Interstate applicant, other than under the Mutual Recognition Act**

3. (1) This rule applies to an application for admission as a legal practitioner by a person whose name is on the Roll of Barristers, the Roll of Solicitors, the Roll of Barristers and Solicitors or the Roll of Legal Practitioners of the Supreme Court of any other State or Territory of Australia.

(2) An application to which this rule applies may, at the request of the applicant, 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.

(3) A request under subrule (2) may be included in the applicant's form of application for admission under the Legal Practitioners Admission Rules 1994.

(4) Where the applicant makes a request under subrule (2) and the applicant is admitted, he or she shall, at the request of this Court, attend at the office of the Supreme Court of his or her State or Territory and:

(a) take the oath of office as a Legal Practitioner in Form 70AA; and

(b) sign a Roll of Legal Practitioners (being a Roll kept in the office of that court for the purpose of this rule).

(5) When this Court has received from the other court:

(a) the form of oath of office duly completed; and

(b) notification of the signing of a Roll under subrule (4) (b), then:

(c) the Prothonotary shall enter or cause to be entered the name of the person admitted in the Roll of Legal Practitioners in this State; and

(d) the person admitted shall be entitled to receive a certificate bearing the seal of this Court.

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

**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 Legal Practitioners;
- (ii) is given by the proper officer of
  - (A) the Supreme Court; or
  - (B) a body, having functions similar to the Legal Practitioners 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 on the Legal Practitioners Admission Board, the New South Wales Bar Association, 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,

filings the notice, attend at a registry of the Court or at the office of the Supreme Court of his or her State or Territory and take the oath of office as a legal practitioner 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 Legal Practitioners Admission Board.

(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 legal practitioner and:

- (a) the Prothonotary shall enter or cause to be entered the name of the person admitted in the Roll of Legal Practitioners; and
- (b) the person admitted shall be entitled to receive a certificate bearing the seal of the Court.

(aj) Part 66A rule 1

Omit “Disciplinary” wherever appearing and insert instead “Legal Services”.

(ak) Part 72A

(i) Omit rule 5 (4).

(ii) After rule 5, insert:

5A. Part 51A rule 2A shall not apply to an application for leave under section 38 (4) (b) of the subject Act.

(al) Part 72B rule 6

Omit “52 rule 21E” and insert instead “52A rule 30”.

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(am) Part 76 rules 13 (d) and 14 (c)

- (i) Omit “the costs”, wherever appearing, and insert instead “the assessed costs”.
- (ii) From rule 13 (d) omit “be taxed on the common fund basis and that the amount allowed on taxation”.
- (iii) From rule 14 (c) omit “be taxed on the common fund basis and that the amounts allowed on taxation”.

(an) Part 82

- (i) From rule 5 (1) (a), omit “barrister or as a solicitor” and insert instead “barrister, as a solicitor or as a legal practitioner”.
- (ii) From section 5 (1) (b) and (b1), omit “solicitor or as a barrister”, wherever appearing, and insert instead “barrister, as a solicitor or as a legal practitioner”.

(ao) SCHEDULE D Part 1

In the matter relating to Act No. 109, 1987:

- (i) Omit “80 (8) (c)” and insert instead “80 (7) (d)”.
- (ii) Omit “86 (2) (b)” and insert instead “87 (4) (b)”.
- (iii) Omit “90 (3)” and insert instead “90 (2)”.
- (iv) After the matter relating to Section 102, insert:

In Column 1—	In Column 2—	In Column 3—
“Section 208L	Appeal against decision of costs assessor	.....
Section 208M	Leave to appeal, appeal: determination of costs assessor	.....
Section 208N	Suspension of costs determination and ending suspension	..... “.....”

(ap) SCHEDULE E Part 1

- (i) After the matter relating to Part 52, insert:

In Column 1—	In Column 2—	In Column 3—
“Part 52A—		
Rule 46	Costs order	.....
Rule 47	Assessment of costs of obtaining copy of judgment	.....
Rule 49 (1)	Costs order in accordance with rule	.....
Any other rule	Costs	Consent order only”

(ii) In the matter relating to Part 62, after the matter relating to rule 5 insert:

In Column 1—	In Column 2—	In Column 3—
“Rule 8 (l)	Determination of amount of fees payable to Sheriff	” .... “

(aq) SCHEDULE E Part 2 paragraph 8

Omit the paragraph and insert instead:

8. (*Costs*) Hearing of proceedings where:

- (a) the only matter in question is the matter of costs;
- (b) the proceedings are not brought under:
  - (i) section 208L or section 208M of the Legal Profession Act 1987 (which relate to appeals, and applications for leave to appeal, against a decision or determination of a costs assessor);
  - (ii) section 208N of the Legal Profession Act 1987 (which relates to a suspension and an end of a suspension of a decision or determination of a costs assessor); or
  - (iii) Part 52 rule 62 (which relates to review of a taxing officer’s decision); and
- (c) it is unlikely in the opinion of the registrar that the costs will exceed \$10,000.

(ar) SCHEDULE F

(i) From Form 51A, omit “*Part 52 rule 70*” and insert instead “*Part 52A rule 47*”.

(ii) Forms 75 and 83

From paragraph 4 in each form, omit “the costs” and insert instead “the assessed costs”; and omit “be taxed on the common fund basis and that the amount allowed on taxation”.

(iii) Form 86

Omit paragraphs 4 and 5 and insert instead:

4. The assessed costs of all parties be paid to the persons entitled thereto out of the estate of the said (*name of protected person*).

## (as) SCHEDULE F Form 57

- (i) In paragraph (b), after “writ” insert “\*”.
- (ii) In paragraph (c), after “fees” insert “\*”.
- (iii) Omit “levied other than your fees” and insert instead “levied, less your fees”.
- (iv) At the end of the Form insert “ \* omit if irrecoverable by reason of Part 52A rule 46”.

## (at) SCHEDULE F Form 70AA

Omit “barrister (or solicitor)” wherever appearing and insert instead “legal practitioner”.

6. The amendment contained in paragraph 5 (i) shall not apply to writs issued before 1 August 1994.

7. The amendment contained in paragraph 5 (q) shall not apply to orders made before 1 July 1994.

8. The amendment contained in paragraph 5 (am) do not apply to orders made before 1 July 1994.

9. Notwithstanding the amendments contained in paragraph 5 (ao), a master may exercise the powers of the Court under sections 80 (8) (c), 86 (2) (b) and 90 (3) of the Legal Profession Act 1987, as in force immediately before 1 July 1994, in proceedings commenced before that date.

10. Service before 14 July 1994 of a notice in accordance with Part 65C rule 4 (3), as in force prior to 1 July 1994, is sufficient compliance with that rule as hereby amended.

11. Subject to paragraphs 6 to 10, the amendments contained in paragraph 5 shall commence on 1 July 1994.

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**EXPLANATORY NOTE**

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

1. The object of amendment contained in paragraph 2 is to provide that appeals from masters in respect of certain matters will go to the Court of Appeal rather than to a single Judge.

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

- (a) allow the Court to direct service of a notice of appeal involving a matter arising under the Corporations Law to be served on the Australian Securities Commission;
- (b) allow the registrar when settling the appeal book index to extend time to file or serve, or grant leave to amend, the notice of appeal, cross-appeal or contention where this is not opposed by the parties present;

**1994—No. 266**

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- (c) allow consent adjournments of certain proceedings;
- (d) prescribe the procedure for applications for proceedings in the Court of Appeal to be heard during the fixed vacation; and
- (e) correct an error in Part 60 rule 10; and
- (f) make other provisions of a minor, consequential or ancillary nature.

3. The object of the amendments contained in paragraph 5 is to make changes which have become necessary or desirable as a result of the Legal Profession Reform Act 1993, and to make other provisions of a minor, consequential or ancillary nature.

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

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