

1994—No. 615

**SUPREME COURT RULES (AMENDMENT No. 289) 1994—
RULE**

NEW SOUTH WALES



[Published in Gazette No. 156 of 25 November 1994]

1. These rules are made by the Rule Committee on 21 November 1994.
2. The Supreme Court Rules 1970 are amended as follows:
 - (a) Part 6 rule 11 (2)
Omit the subrule and insert instead:
 - (2) In subrule (1), a reference to debt or damages includes a reference to interest claimed:
 - (a) under section 94 of the Act, on the debt; or
 - (b) under section 94 of the Act or section 73 of the Motor Accidents Act 1988, on the damages.
 - (b) Part 7 rule 1 (5)
Omit “(which section relates” and insert instead “or section 73 of the Motor Accidents Act 1988 (which sections relate”.
 - (c) Part 7 rule 1 (6)
Omit “1A” and insert instead “1A (2)”.
 - (d) Part 16 rule 1A (1)
Omit “(which section relates” and insert instead “or section 73 of the Motor Accidents Act 1988 (which sections relate”.
 - (e) Part 22 rule 7 (3) (d)
After “the Act” insert “or section 73 (4) of the Motor Accidents Act 1988”.
 - (f) Part 40 rule 7 (1)
After “the Act” insert “or section 73 of the Motor Accidents Act 1988”.

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

(a) Part 5 rule 12

Omit the rule and insert instead:

Want of prosecution

12. (1) Where a plaintiff makes default in complying with any order or direction as to the conduct of the proceedings, or does not prosecute the proceedings with due despatch, the Court may, on application by any party or of its own motion, stay or dismiss the proceedings.

(2) The Court may not make an order under subrule (1) without giving the plaintiff a reasonable opportunity to be heard.

(3) The Court may, on application by any party, set aside an order that is made on the Court's own motion under subrule (1).

(b) Part 33 rule 6

Omit subrules (2) and (3) and insert instead:

(2) Where a plaintiff makes default in complying with any order or direction as to the conduct of the proceedings, or does not prosecute the proceedings with due despatch, the Court may, on application by any party or of its own motion, stay or dismiss the proceedings.

(3) The Court may not make an order under subrule (2) without giving the plaintiff a reasonable opportunity to be heard.

(4) The Court may, on application by any party, set aside an order that is made on the Court's own motion under subrule (2).

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

Part 52A rule 2

Omit “218 (5)” and insert instead “208J”.

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

(a) Part 78 Rule 24 (5) (b)

After “paragraphs” insert “ 1 0 and”.

(b) Part 78 Rule 25 (5)

Omit “(3)” and insert instead “(4)”.

- (c) Part 78 rule 25A
 - (i) Omit subrule (6)
 - (ii) Renumber subrule (7) as (6)
 - (d) SCHEDULE F Form 97
 - From paragraph 6 omit “deceased did” and insert instead “deceased”.
 - (e) SCHEDULE F Form 106
 - From paragraph 2 omit “intestate” where secondly appearing.
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EXPLANATORY NOTE

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

- 1. The object of the amendments contained in paragraph 2 are to include references to s. 73 of the Motor Accidents Act 1988, where appropriate.
- 2. The objects of the amendments contained in paragraph 3 are to:
 - (a) allow the Court to stay or dismiss proceedings where the plaintiff
 - (i) makes default in complying with any order or direction; or
 - (ii) does not prosecute the proceedings with due despatch,of its own motion, in addition to (as is presently the case) on motion by any other party and to provide for the plaintiff to have a reasonable opportunity to be heard and for the order to be set aside on application by any party; and
 - (b) remove provisions that the rules being amended apply in relation to a cross-claimant as they apply to a plaintiff [the provisions being unnecessary in view of a general provision to this effect in Part 6 r.6 (2)].
- 3. The object of the amendment contained in paragraph 4 is to remedy an incorrect reference to a section.
- 4. The object of the amendments contained in paragraph 5 is to correct errors contained in the probate rules and forms.

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