

1994—No. 681

**SUPREME COURT RULES (AMENDMENT No. 290) 1994—
RULE**

NEW SOUTH WALES



[Published in Gazette No. 174 of 23 December 1994]

1. These rules are made by the Rule Committee on 19 December 1994.

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

(a) Part 27 rule 2 (1) (a) (iii)

Omit the subparagraph and insert instead:

(iii) unless the Court otherwise orders, if the letter of request is to be issued to the judicial authorities of a country in which English is not an official language appropriate to the place where the evidence is to be taken—translation of each of the documents mentioned in subparagraphs (i) and (ii) in an official language of that country appropriate to the place where the evidence is to be taken; and

(b) Part 27 rule 2 (2)

Omit “his full name and address and his qualifications for making the translation” and insert instead “the person’s full name and address and the office or qualification by reason of which the person so certifies”.

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

(a) Part 1 rule 3

From the matter relating to Part 51, omit:

DIVISION 3—*Appeal Papers*—rr. 19–25

and insert instead:

DIVISION 3—*Appeal Papers in Appeals other than those within Division 3A*—rr. 18B–25

(b) Part 1 rule 3

After the matter relating to Division 3, insert:

DIVISION 3A—*Appeal Papers in Appeals with hearing dates*—rr. 25A–25H.

(c) Part 51 rule 3

- (i) From subrule (3) omit “or within such extended time as the court below or the Court of Appeal may fix”.
- (ii) From subrule (3A) omit “, or within such further time as the Court of Appeal may fix”.
- (iii) Omit subrule (10) and insert instead:
 - (10) A party applying for an extension of time under subrule (5) may include that application in the summons for leave to appeal or cross-appeal.

(d) Part 51 rule 4 (2)

Omit the subrule and insert instead:

- (2) An appeal by leave must be instituted within 14 days after leave is given or within such extended or abridged time as the Court of Appeal may fix.

(e) Part 51 rule 4 (5)

Omit “his summons or” and insert instead “the”.

(f) Part 51 rule 5 (1) (b)

Omit the paragraph and insert instead:

(b) otherwise:

- (i) a notice of appeal without appointment in Form 60A;
- (ii) where the appeal is not subject to Division 3A—a notice of appeal with appointment in Form 60; or
- (iii) where the appeal is subject to Division 3A—a notice of appeal with hearing date in Form 60B.

(g) Part 51 rule 5 (2)

Omit “file a notice of appeal with appointment in Form 60.” and insert instead:

file:

- (c) where the appeal is not subject to Division 3A—a notice of appeal with appointment in Form 60; or
- (d) where the appeal is subject to Division 3A—a notice of appeal with hearing date in Form 60B.

(h) Part 51 rule 5 (3)

Omit the subrule and insert instead:

- (3) The appellant shall, on filing a notice of appeal with appointment or hearing date:

- (a) obtain from the proper officer in the registry, as the case may require:

- (i) an appointment to settle the appeal papers; or
- (ii) a hearing date which will be a Monday of a particular week; and
- (b) subscribe it to the notice.
- (i) Part 51 rule 5
 - After subrule (4) insert:
 - (5) The appellant may discontinue the appeal by filing a notice of discontinuance in Form 60C and serving it on each respondent who has been served with the notice of appeal.
 - (6) The discontinuance of an appeal shall not affect any cross-appeal.
- (j) Part 51 rule 5A
 - Omit “the filing or”.
- (k) Part 51 rule 6 (5)
 - (i) After “no”, insert “further”.
 - (ii) After “costs,”, insert “incurred after that date.”.
- (l) Part 51 rule 8 (1)
 - (i) Renumber paragraphs (a), (b) and (c) as (b), (c) and (d) respectively.
 - (ii) Before paragraph (b) as renumbered, insert:
 - (a) whether it is filed pursuant to leave, and the date leave was given;
- (m) Part 51 rule 12 (2)
 - Omit “and must file or lodge a copy of the supplementary notice in accordance with rule 9 as if it were a notice of appeal”.
- (n) Part 51 rule 13 (2)
 - Omit the subrule and insert instead:
 - (2) A notice of cross-appeal must be filed within:
 - (a) 28 days after service of a notice of appeal with or without appointment or with a hearing date;
 - (b) 14 days after leave to cross-appeal is given; or
 - (c) such extended or abridged time as the Court of Appeal may fix.
- (o) Part 511 rule 13
 - After subrule (4) insert:
 - (5) Where a notice of cross-appeal is filed in proceedings in which a notice of appeal with hearing date has been filed, the

notice of cross-appeal shall contain the following note near its foot, namely, “A notice of appeal with hearing date has been filed in these proceedings”.

- (p) Part 51 rule 13B
Omit “add to that party’s notice of appearance” and insert instead “file a notice of appearance with”.
- (q) Part 51 rule 14 (1)
Omit the subrule and insert instead:
 - (1) Where a respondent to an appeal wishes to contend that the decision of the court below should be affirmed on grounds other than those relied upon by the court below, but does not seek a discharge or variation of any part of the decision of the court below, he need not file a notice of cross-appeal but he must, within 28 days after service of the notice of appeal with or without appointment or with a hearing date, file notice of that contention stating briefly but specifically, the grounds relied upon in support of the contention.
- (r) Part 51 rule 16 (1)
 - (i) Omit paragraph (a) and insert instead:
 - (a) on the ground of misdirection, non-direction or other error of law;
 - (ii) From paragraph (b), omit “; or” and insert instead “;”.
 - (iii) From paragraph (c), omit “,” and insert instead “; or”.
 - (iv) After paragraph (c), insert:
 - (d) or on any other ground,
- (s) Part 51 rule 17
Omit the rule and insert instead:
Time: want of prosecution

17. (1) Where an appellant has not done any act required to be done by or under these rules, or otherwise has not prosecuted his appeal with due diligence, the Court of Appeal may on application by any party or of its own motion:

 - (a) order that the appeal shall be dismissed for want of prosecution;
 - (b) fix a time peremptorily for the doing of the act and:
 - (i) in the event of non-compliance, subsequently order that it be so dismissed; or
 - (ii) in special circumstances order that in the event of non-compliance the appeal be dismissed; or
 - (c) make such further or other order as in the circumstances may seem just.

- (t) Part 51 rule 18
After “reinstatement”, insert “or restitution”.
- (u) Part 51
To the heading of Division 3 add “in Appeals other than those within Division 3A”.
- (v) Part 51
After the heading to Division 3, insert:
Application
18B. Subject to Division 3A, this Division does not apply to appeals to which Division 3A applies.
- (w) Part 51 rule 21
 - (i) Renumber the rule as “20”.
 - (ii) Omit subrules (6) and (7).
- (x) Part 51 rules 22–25
Omit the rules and insert instead:
Draft index
 - 21. (1) The appellant shall, not later than 7 days before the appointment, file and serve on every party other than a submitting respondent a draft index of the proposed contents of the appeal book in Form 61A.
 - (2) If the appellant is not represented by a solicitor the registrar, without being obliged to do so, may prepare the draft index.
 - (3) The draft index shall consist of a list of the documents contained in the record of the Court below and the relevant documents in the Court of Appeal.
 - (4) Subject to subrule (7) the draft index shall list the documents referred to in rule 24 (8) in the order there specified.
 - (5) In the case of affidavits or statements the draft index shall indicate which parts were rejected, not read, or admitted for a limited purpose. Each annexure shall be listed separately.
 - (6) The draft index shall give the date of each document and indicate whether or not the appellant intends that its text be reproduced in the appeal book and the appellant shall endeavour to exclude from the appeal book material that is unnecessary or irrelevant.
 - (7) In the draft index the exhibits shall be arranged in the order in which they have been lettered or numbered with references to the pages of the transcript where they were admitted or marked.

(8) A respondent who objects to the inclusion of material in the appeal book on the ground that it is unnecessary or irrelevant or who wishes the draft index to include further material relevant only to its cross-appeal or notice of contention shall, at least one day before the appointment, file and serve on the appellant, and any respondent who has not submitted, a written notice containing the respondent's objections or a draft supplementary index, as the case may be.

(9) The appellant or respondent, as the case may be, shall ensure, prior to the appointment, that all relevant documents are held by the registrar or by one of the parties, and that their descriptions in the draft or supplementary index are accurate.

Settlement of index

22. (1) The registrar in settling the index:

- (a) shall have regard to the issues of fact and law in the grounds of appeal cross-appeal or contention;
- (b) shall endeavour to exclude from the appeal book documents that are merely formal irrelevant or unnecessary; and
- (c) shall exclude from the appeal book documents relevant only to issues such as damages or liability where they are not in dispute on the appeal or, where the appeal is limited to questions of law, relate only to questions of fact not in dispute on the appeal.

(2) If an appellant fails to file and serve a draft index, appear at an appointment, comply with any directions by the registrar, or otherwise proceed with the preparation and settlement of the draft index with due diligence, the registrar may give a notice to the appellant requiring the necessary steps to be taken within 28 days.

(3) Where an appellant fails to comply with a notice under subrule (2), orders may be made under rule 17.

(4) With the consent of all parties other than a submitting respondent, an index may be settled by the registrar in the absence of the parties, and shall be settled notwithstanding the absence of any party, unless the registrar otherwise directs.

(5) An appellant, who has filed and served a draft index and appeared at the appointment when the index was settled, shall file a clean copy of the index as settled and serve a copy on every party other than a submitting respondent.

(6) Where the index has been settled in the absence of the appellant, the registrar shall serve a copy of the index on every party other than a submitting respondent.

Directions at appointment

23. (1) At the appointment the registrar may:

- (a) enquire whether there is likely to be any amendment to the grounds of appeal, cross-appeal or contention;
- (b) ascertain whether any cross-appeal or notice of contention has been or is likely to be filed;
- (c) clarify any grounds of appeal, cross-appeal or contention which appear to be unclear or irrelevant;
- (d) ascertain whether any other appeal or cross-appeal has been or is likely to be brought against:
 - (i) the decision in question; or
 - (ii) the decision in any other proceedings heard with the proceedings in which the decision in question was made,

and, where consented to or not opposed by the parties present, order that the appeal and any other such appeal or cross-appeal be consolidated;

- (e) ensure that all necessary parties have been joined as appellants or respondents and served with the notice of appeal with appointment or cross-appeal as the case may be;
- (f) 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, in which case the settled index shall note the extension or amendment;
- (g) determine the number of copies of the appeal books; and
- (h) where the appeal books are to be prepared in the registry, obtain from the appellant an order for that number of copies.

(2) The registrar may give directions and fix times in relation to any of the matters in subrule (1).

(3) The registrar shall note any correction to the transcript or notes or report of evidence, unless objected to by any party.

(4) If any party objects to a proposed correction of the transcript, the registrar shall refer the question to the associate or other proper officer of the court below for the directions of the judge, justice or other person presiding in the court below.

(5) Where one party objects to the inclusion of material on the ground that it is unnecessary or irrelevant and another party insists

upon it being included, it shall be included but the index shall identify such material and the parties objecting to and insisting on its inclusion.

(6) The registrar shall endeavour to satisfy himself that the appeal and any cross-appeal are competent and may refer the question to the Court or decline to proceed unless and until an application for leave to appeal or an application to strike out the notice of appeal or cross-appeal has been determined.

(7) The appeal papers shall include any additional evidence or exhibits relevant only to any cross-appeal or notice of contention and not otherwise required to be included. In that event the respondent shall make such provisional contribution to the cost of printing the appeal books as the registrar may direct.

Preparation of appeal books

24. (1) The appeal book shall, unless a Judge of Appeal or the registrar otherwise directs, be prepared by the appellant in accordance with this rule.

(2) It shall be printed or reproduced by a photocopying, roneograph, or some other multi-graphic process which gives uniform copies of pages in a clear and legible type.

(3) The pages shall be numbered consecutively and, where the book exceeds 300 pages, it shall be bound in separate volumes of not more than 250 pages.

(4) The contents shall be printed, or otherwise reproduced, with a 50 millimetres margin on the left hand side of each page and evenly marked in the margin with the letters "A" to "Z". The book may be bound by means of either a flexibinding or spiral binding process.

(5) It shall have a title page setting out the full and correct title of the proceedings, including the title of the court below, names of the solicitors for each party, the address for service for each party, and the telephone, telex, facsimile and reference number of each Party.

(6) The index shall follow as settled under rule 22 showing the page number where each document is reproduced, and in the case of exhibits the page of the appeal book containing the transcript where the exhibit was admitted or marked.

(7) Where it is bound in 2 or more volumes, each shall contain, at the beginning, an index of the entire book, unless otherwise directed by the registrar.

(8) The documents shall be arranged in the following order:

- (a) the process and pleadings of every party as last amended at the trial and any intermediate versions which are relevant to the grounds of appeal, cross-appeal or contention;
- (b) other documents before the court below;
- (c) where the text of affidavits or statements is reproduced, pages or annexures not admitted in evidence shall be excluded, unless such material is relevant to a ground of appeal, cross-appeal or contention;
- (d) any oral evidence, including where the trial is with a jury, the transcript of the return of the jury's verdict;
- (e) any written questions submitted to the jury for their determination;
- (f) exhibits:
 - (i) exhibits shall be arranged, not in the order in which they have been lettered or numbered as exhibits, but in chronological order according to the dates borne by the documents, or in the case of manifestly or admittedly misdated documents, their known dates;
 - (ii) if a document is undated it shall be placed in the sequence contended for by the appellant, but the appellant shall inform the respondent of the position or order proposed for the document and the respondent may require that a "date and order disputed" be inserted in the index against the document;
 - (iii) if the exhibits include correspondence between, or among, two or more persons which should be read consecutively and not interspersed among other documents, the documents forming the correspondence may be arranged in chronological order and given a position together, at a convenient place, in relation to the other exhibits;
 - (iv) if the exhibits include medical reports by a group of doctors or by one doctor tendered on behalf of a party which should be read consecutively and not interspersed among other documents, those medical reports may be arranged in chronological order and given a position together, at a convenient place, in relation to the other exhibits;

- (v) any photographic exhibits unless irrelevant to the proposed grounds of appeal, cross-appeal or contention;
- (vi) any plans, unless irrelevant to the proposed grounds of appeal cross-appeal or contention and if possible such plans shall be reduced in size so as to be included in the appeal book;
- (vii) interrogatories, answers and affidavits of documents shall not be copied, except so far as they were put in evidence;
- (g) the reasons for judgment or summing up of the primary judge or court;
- (h) the formal judgment of the primary judge or court;
- (i) the notice of appeal, notice of cross-appeal or notice of contention;
- (j) order of the Court granting leave to appeal or to cross-appeal if applicable;
- (k) any submitting appearance.

(9) The appeal book shall be prepared and produced in a manner satisfactory to the registrar.

Filing lodgment and service

25. The applicant shall:

- (a) within 42 days of the settlement of the index or within such extended or abridged time as the registrar directs:
 - (i) file a copy of the appeal book; and
 - (ii) serve 3 copies on every party other than a submitting respondent; and
- (b) within 7 days of receipt of a notice of callover or notice of listing, file a further 3 copies of the appeal book.

DIVISION 3A—*Appeal Papers in Appeals with hearing dates*

Application

25A. (1) This Division applies to an appeal solely on the issue of the amount of damages claimed or awarded in respect of the death of or bodily injury to a person that is commenced on or after 1 January, 1995.

(2) Rules 19 and 20 shall apply to proceedings to which this Division applies.

Documents to be filed with notice of appeal

25B. An appellant must file with the notice of appeal with hearing date:

- (a) a draft index in accordance with rule 21;
- (b) a schedule, signed by counsel (if any), or solicitor (if any), or by the appellant; in Form 61B:
 - (i) setting out the manner in which the damages were assessed, or in the case of trial by jury, may be supposed to have been assessed;
 - (ii) indicating the items which are challenged in the appeal;
 - (iii) containing a brief but specific statement of the basis of the challenge;
 - (iv) where applicable—showing the alternative assessment contended for; and
 - (v) containing an estimate of the likely length of hearing; and
- (c) where applicable—a letter notifying the registrar that the transcript of the hearing and judgment is not yet available to the appellant.

Incorrect commencement of appeal

25C. (1) Where:

- (a) a notice of appeal with hearing date is filed without the documents referred to in rule 25B; or
- (b) a notice of appeal with appointment is filed,

the appeal shall be validly commenced but the registrar shall:

- (c) vacate the hearing date or appointment, as the case may be;
- (d) inform the parties; and
- (e) shall give notice to the appellant requiring a notice of appeal with an appropriate hearing date and, if necessary, the documents required by rule 25B, to be filed and served within 28 days after service of the notice.

(2) In the event of non-compliance with the registrar's notice, orders may be made under rule 17.

Documents to be filed in reply

25D. The respondent must, within 28 days of the date of service of a notice of appeal with hearing date and the other documents required by rule 25B, where applicable file and serve:

- (a) a document signed by counsel (if any), or solicitor (if any), or by the respondent, and headed "Notice of Intention to Challenge or Support Judgment", indicating the extent, if any, to which the judgment will be challenged or supported by cross-appeal or contention, any alternative assessment sought, with a brief but specific statement of the basis for it, and the respondent's estimate of the likely length of hearing; and
- (b) a written notice containing the objections to the appellant's draft index.

Vacation of hearing date

25E. If the respondent files a cross-appeal which raises questions of liability, the registrar shall vacate the hearing date and fix an appointment to settle the appeal papers and the appeal and cross-appeal shall proceed under Division 3 accordingly.

Index

25F. (1) The appellant's draft index will stand as the index to the appeal book unless a respondent files a notice of objection under rule 25D.

(2) If a notice of objection is filed, rule 22 (1) shall apply and the registrar shall promptly settle the index without the attendance of the parties.

(3) Where the index has been settled pursuant to subrule (2), the registrar shall serve a copy of the index on each party within 2 days of the settlement of the index.

Filing appeal books

25G. The appellant shall file and serve appeal books in accordance with rule 25:

- (a) where the draft index is not objected to—within 14 days of the expiration of the period for objection; or
- (b) where the draft index is objected to—within 14 days of receipt of the copy index settled by the registrar.

Fixing of Hearing Date

25H. Unless the Court of Appeal otherwise orders, the registrar shall, after consultation with the parties, fix the hearing for a day within the week commencing on the Monday nominated in the Notice of Appeal.

(y) Part 51 rules 26 and 27

Omit the rules and insert instead:

Written submissions and chronology

26. Each party, other than a submitting respondent, shall, unless otherwise directed, file and serve written submissions, and the appellant shall file and serve a chronology. The respondent may file and serve an amended or supplementary chronology.

Appellant's chronology

27. The appellant's chronology shall comprise a list of the principal events leading up to the litigation and, where appropriate, events during the litigation, numbered consecutively with the date, a short description of each event, and appropriate references to the appeal book including exhibit marks where applicable.

(z) Part 51 rule 28

(i) Rerun the rule as "28 (1)".

(ii) After subrule (1), as renumbered, insert:

(2) In appeals raising substantial challenges to findings of fact, the submissions of the party making those challenges shall include a statement in narrative form setting out the findings challenged, those contended for, the reasons why the Court of Appeal should substitute those findings and supporting references to the transcript and other evidence.

(aa) Part 51 rules 29 and 30

Omit the rule and insert instead:

Filing and lodgment

29. Written submissions and chronologies shall be filed as follows:

(a) by the appellant—not later than 4 days before the date fixed for hearing, and

(b) by the respondent—not later than 2 days before the date fixed for the hearing,

by placing 4 copies in the box marked "Appeal Submissions" located on the 12th Level of the Law Courts Building.

Service

30. A party who files his written submissions and chronology shall, on the day of filing, serve 3 copies on every party to the appeal other than a submitting respondent.

(ab) Part 51

After rule 33 insert:

Consent orders

33A. Any order which may be made by a Judge of Appeal by consent of the parties may be made by the registrar.

(ac) Part 52A rule 14 (1)

After “rule 5 (4)”, insert “or is discontinued under Part 51 rule 5 (5)”.

(ad) SCHEDULE F Form 60

(i) After “5 (1)”, insert “(a), (b) (ii)”.

(ii) At the foot of the Form insert:

(This Form must not be used in respect of an Appeal which is subject to Division 3A)

(ae) SCHEDULE F

After Form 60A, insert:

Form 60B

(Notice of appeal with hearing date)

P. 51, r. 5 (I) (b) (iii).

(To be set out in accordance with Form 1.)

JAMES STYLES

appellant

JOHN LEE

respondent

in the Court below:

JOHN LEE

plaintiff

JAMES STYLES

defendant

NOTICE OF APPEAL

The proceedings appealed from were heard on 7 and 8 May 19 and decided on May 19 .

(Where leave to appeal has been granted, add:

Leave to appeal was granted on 12 May 19 .)

The appellant appeals from the decision of
 (or as the case may be) (or the following part of the decision of
 (or as the case my be):

(state the part)).

GROUNDs: (state briefly but specifically the grounds relied upon in support of
 the appeal).

ORDER SOUGHT: (state what judgment, order, verdict or determination the
 appellant seeks in place of the decision in the court below).

The appeal will be heard by the Court at (address)
 on Monday the day of 19
 or on a later day during that week to be fixed.

(Where Part 51 rule 8 (2) applies, add:

To the respondent, (address):

Before you take any step in these proceedings you must enter an appearance in
 the Registry.

Appellant: (name, address)

Appellant's Address for Service: (Part 9 rule 6).

(This form must be used only in respect of an appeal which is subject to
 Division 3A.)

Form 60C

P 51, r. 5 (5)

NOTICE OF DISCONTINUANCE OF APPEAL

The appellant hereby discontinues the appeal the subject to these proceedings.

(af) SCHEDULE F Form 61A

Omit the Form and insert instead:

Form 61A

P. 51, r. 21.

INDEX

(Follow the order of arrangement prescribed by Part 51 rule 24 (8), for
 example)

No	Document	Text Included	Date	Page
1	Statement of Claim (<i>if relevant to the appeal</i>)	Y	17-2-77	(Leave this column blank in the draft index)
2	Defence	Y		
3	Amended Statement of Claim	Y	10-6-77	
4	Affidavit of (<i>name</i>) except paragraph 3	Y	27-7-77	
5	Annexure "A"	Y	27-7-77	
6	Statement under Part 33 r. 8A	Y	27-7-77	
7	Transcript of evidence taken before Mr. Justice (<i>name</i>)	Y Y Y	1-3-78 2-3-78 6-3-78	
	LEE, John Examined Cross-Examined JONES, Dr. Henry Examined Cross-Examined Re-Examined			
8	Further cross-examined Exhibits-mark, description and page of appeal book where tender recorded (<i>In the draft index, lists all exhibits, whether relevant to the appeal or not</i>)	Y	28-1-75 16-4-75	
	“A” Reports Dr. H. Jones “B” Discharge summary from Royal North Short+ Hospital (inclusion objected to by respondent as irrelevant and insisted upon by appellant “C” Copies of wage records “1” Reports of Dr. J. Smith “2” Reports of Dr. J. Styles	Y Y	27-7-73 21-9-76 29-10-75	
9	“MFI 1” Plan by A. Brown	Y	1-3-78	
10	Reasons for judgment of Mr. Justice (<i>name</i>)	Y	10-3-78	
11	Minute of Judgment	Y	31-3-78	
12	Notice of Appeal	Y	31-3-78	
13	Notice of Cross-Appeal	Y	4-4-78	

* Sic.

Solicitor for the respondent
 (plaintiff)
 (name)
 DX 222 Sydney
 telephone 222 2222
 22 Pitt Street, Sydney

Solicitor for the appellant
 (defendant)
 (name)
 DX 333 Sydney
 telephone 333 3333
 33 Pitt Street, Sydney.

To the Registrar of the Court of Appeal:

[Where the appeal books are to be prepared by the Registry add:

I, (name of solicitor) request you to prepare (number; to be left blank in the index) copies of the appeal papers and acknowledge my liability to pay the Court fees payable in respect of their preparation.]

No part of any affidavit listed above was struck out or rejected or not read or expressly admitted for a limited purpose only, except as shown above.

Filed (date)

Appellant's solicitor

Form 61B

P. 51, r. 25B.

SCHEDULE OF DAMAGES

	JUDGMENT QUANTUM \$	APPELLANT'S QUANTUM \$
1. PASTECONOMICLOSS		
2. INTERESTON PAST ECONOMIC LOSS (amount x time x %)		
3. GENERAIDAMAGES		
3.1 Past		
3.2 Future		
4. INTERESTON PASTGENERAL DAMAGES (amount x time x %)		
5. GRIFFITHS v KERKEMEYER		
6. FOX v WOOD		
7. OUT OF POCKET EXPENSES		
7.1 Past		
7.2 Future		
8. FUTUREECONOMICLOSS		
9. CONTRIBUTORY NEGLIGENCE		
GROSSTOTAL		
LESS		
NET TOTAL		

BASIS OF THE CHALLENGE TO THE JUDGMENT*(Set out brief but specific statement of the basis of the challenge)***LIKELY LENGTH OF HEARING**

Counsel for appellant (*if any*)
or
Solicitor for appellant (*if any*)
or
Appellant

Filed: *(date)*

(adapt as necessary)
(attach calculation sheets as necessary)

(ag) Part 51

From the notes to the rules, omit references to the Court of Appeal Rules (also referred to as “C.A.R.”) and to the High Court Rules (also referred to as “H.C.R.”).

(ah) SCHEDULE F Index of Forms

(i) In the matter relating to Form 60, after “5 (1)” insert “(a), (b) (ii)”.

(ii) After the matter relating to Form 60 insert:

60A. Notice of Appeal without appointment (P. 51, r. 5 (1) (a), (b) (ii)).

60B. Notice of Appeal with hearing date (P. 51, r. 5 (1) (b) (iii)).

60C. Notice of the commencement of appeal (P. 51 r. 5 (5)).

(iii) After the matter relating to Form 61, insert:

61AA. Notice of non objection (P. 51, r. 18A (1) (b)).

(iv) From the matter relating to form 61A, omit “(5)”.

(v) After the matter relating to Form 61A, insert:

61B. Schedule of damages (P. 51, r. 25B).

4. The amendments contained in paragraph 3 shall apply to appeals commenced after 1 January 1995.

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

Part 52A rule 37

Omit the rule and insert instead:

Indemnity costs

37. Where, in any proceedings, costs are payable to a person by or under the rules or any order of the Court on an indemnity basis:

- (a) if that person is a party to the proceedings in the capacity of trustee, legal representative of a deceased estate or other fiduciary and the costs are payable out of property held or controlled by that person in that capacity—all costs incurred by that person shall be allowed except to the extent that it is shown that they were incurred in breach of that person's duty in that capacity; and
- (b) otherwise all costs incurred by that person shall be allowed except to the extent that it is shown that they are of an unreasonable amount or have been unreasonably incurred.

6. The amendment contained in paragraph 5 shall have effect in respect of orders made after 29 January 1995.

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

(a) Part 17 rule 4

Omit the rule and insert instead:

Liquidated demand

4. Where the plaintiff's claim for relief against a defendant in default is for a liquidated demand and the only other claim or claims made against the defendant is or are for an order or orders under section 94 or section 95 of the Act or for costs, the plaintiff may enter judgment against that defendant for:

- (a) a sum not exceeding the sum claimed in the statement of claim on that demand;
- (b) any interest which has been ordered by the Court under section 94; and
- (c) costs.

(b) SCHEDULE E Part 1

Omit from column 3 the matter relating to Part 17 rule 9 and insert instead:

Restricted to the following:

- (a) judgment on a claim for a liquidated demand where the only other claim or claims, if any, made against the defendant is or are for a liquidated demand, for an order referred to in paragraphs (c) (e);
- (b) inclusion, in a judgment given under Part 17 rule 9, of interest pursuant to an order referred to in paragraph (c);
- (c) an order under section 94 (1) or (1A) of the Act in respect of a liquidated demand where judgment on the demand is, or is to be, given or entered under Part 17;
- (d) an order under section 95 of the Act in respect of a judgment on a liquidated demand given or entered under Part 17;
- (e) an order for costs when exercising the powers of the Court under paragraphs (a) (d) above.

(c) SCHEDULE E Part 2

Omit paragraph 8A and insert instead:

9. Order under section 95 of the Act in respect of a judgment given or entered under Part 17.

EXPLANATORY NOTE

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

1. The object of the amendment contained in paragraph 2 is to amend the rule prescribing the form of a letter of request to a foreign court to take evidence on behalf of the Supreme Court of New South Wales so as to take account of the requirement of the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters.
2. The object of the amendment contained in paragraph 3 (c) is to dispense with a requirement for a separate notice of motion to be filed seeking extension of time for leave to appeal or cross-appeal.
3. The object of the amendment contained in paragraph 3 (f) and 3 (g) is to enable a notice of appeal with hearing date to be filed in appeals solely on the issue of the amount of damages claimed or rewarded in respect of the death or bodily injury of a person.
4. The object of the amendment contained in paragraph 3 (i) is to obviate the need for a consent order to be filed in abandoning an appeal and to simplify the procedure.
5. The object of the amendment contained in paragraph 3 (i) is to enable a party in certain circumstances to move the Court of Appeal without service on the defendant.

6. The object of the amendment contained in paragraph 3 (l) is to require a notice of appeal with appointment to state whether it is filed pursuant to leave and the date leave was given.
7. The object of the amendment contained in paragraph 3 (n) is to omit the requirement that amended notices of appeal be filed or lodged with the Court below.
8. The object of the amendment contained in paragraph 3 (4) is to omit the requirement for a party filing a notice of contention to file various documents in relation to the contention which in practice are not used.
9. The object of the amendment contained in paragraph 3 (r) is to widen the present rule which deals with orders for new trials to make it clear that the Court need not in any case order a new trial unless a substantial wrong or miscarriage has been occasioned by the error in the first trial.
10. The object of the amendment contained in paragraph 3 (s) is to allow the Court to make orders in relation to the dismissal of an appeal through want of prosecution on its own motion, as well as on the motion of a party.
11. The object of the amendment contained in paragraph 3 (t) is to enable the Court of Appeal to make orders for restitution in circumstances where it can make orders for reinstatement.
12. The object of the amendment contained in paragraph 3 (x) is to make:
 - (a) provision for a fast track for hearing appeals solely on the issue of the amount of damages claimed or awarded in respect of death or bodily injury to a person;
 - (b) provisions of a minor, consequential or ancillary nature; and
 - (c) drafting improvements.
13. The object of the amendment contained in paragraph 3 (y) is to set out details of what is required for written submissions and chronologies.
14. The object of the amendment contained in paragraph 3 (z) is to require a party to an appeal, which raises substantial challenges to findings of fact, to include in its submissions certain information concerning the grounds of appeal.
15. The object of the amendment contained in paragraph 3 (aa) is to require chronologies to be filed and served in the same way as written submissions.
16. The object of the amendment contained in paragraph 3 (ab) is to enable any order which may be made by a Judge of Appeal by consent to be made by the registrar.
17. The object of the amendment contained in paragraphs 3 (ad), 3 (ae) and 3 (af) is to amend forms and add new forms as required by the rule amendments.
18. The object of the amendment contained in paragraph 3 (ag) is to remove notes to the rules which are no longer relevant.
19. The object of the amendment contained in paragraphs 3 (d), 3 (e), 3 (p) 3 (w) is to effect drafting improvements.
20. The object of the amendment contained in paragraphs (a), (b), (h), (k), (m), (o), (u), (v), (ac) and (ah) is to make changes of a minor, consequential or ancillary nature.

21. The object of the amendment contained in paragraph 5 is to allow a fuller recovery of costs where an indemnity costs order is made in favour of a trustee, legal representative of a deceased estate or other fiduciary and the costs are payable out of property held or controlled by that person in that capacity.
22. The object of the amendments contained in paragraph 7 (a) is to make it clear that the provisions enabling default judgments to be entered in the registry extend to proceedings which include claims in respect of interest under sections 94 and 95 of the Act.
23. The object of the amendments contained in paragraph 7 (b) is to:
 - (a) make it clear that registrars may exercise the powers of the Court in varying the interest payable under section 95 of the Act on a judgment on a liquidated demand given or entered under Part 17 (which relates to default judgments); and
 - (b) enable registrars to exercise the powers of the Court under section 94 (1) and (1A) of the Act in respect of interest on a liquidated demand where judgment on the demand is, or is to be, given or entered under Part 17.

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