

SUPREME COURT RULES (AMENDMENT No. 282) 1994

NEW SOUTH WALES



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1. These rules are made by the Rule Committee on 21 February 1994.
2. The Supreme Court Rules 1970 are amended as follows:
 - (a) Part 1 rule 3

In the matter relating to Part 80A, insert after the matter relating to Division 8:

DIVISION 9—Winding up of bodies other than companies r.38
 - (b) Part 41 rule 13 (3)

Omit “rule 7 and Part 80 rule 6” and insert instead “rule 7, Part 80 rule 6 and Part 80A rule 6”.
 - (c) Part 52
 - (i) Rule 9 (1) (g)

After “Code” insert “or section 466 (2) of the Corporations Law”.
 - (ii) Rule 71 (1)

Omit “1961 or the Companies (New South Wales) Code” and insert instead “1961, the Companies Code or the Corporations Law” .
 - (iii) Rule 71 (2)

After “Schedule G” insert “or the equivalent item in any costs determination, as the case requires”.
 - (iv) Rule 71 (2)

After “that Table” insert “or the equivalent part of any costs determination”.
 - (d) Part 61
 - (i) Rule 3 (6) (a)

Omit “18 (1)” and insert instead “21(1)”.

(ii) Rule 5 (1) (b)

Omit the paragraph and insert instead:

- (b) under Part 80 rule 6 or Part 80A rule 6 (which relate to minutes of judgment etc. under the Companies Code or the Corporations Law respectively);

(e) Part 77 rule 81

- (i) In the headnote, after “57”, insert “and Part 80A rule 38”.
 (ii) From subrule (2) omit “(which relates” and insert instead “and Part 80A rule 3 (3) (which relate”.

(f) Part 77 Division 24

- (i) From the Division heading omit ‘1924’ and insert instead ‘1923’.
 (ii) Omit rule 83 and insert instead:

Winding up and dissolution

83. (1) The provisions of Part 80 relating to the winding up or dissolution of a company formed and registered under the Companies Code or the Corporations Law shall, so far as applicable and making such changes as it is necessary to make, apply to the winding up or dissolution of a society to which section 92 (6) (a) of the Co-operation Act 1923 applies and which is commenced before 1 April 1994; and

(2) The provisions of Part 80A relating to the winding up or dissolution of a company formed and registered under the Companies Code or the Corporations Law shall, so far as applicable and making such changes as it is necessary to make, apply to the winding up or dissolution of a society to which section 92 (6) (a) of the Co-operation Act 1923 applies and which is commenced after 31 March 1994.

(g) Part 77 rule 83B

Omit the rule and insert instead:

Applicability of Parts 80A and 80

83B. (1) The provisions of Part 80A relating to applications under the Corporations Law shall, so far as applicable and making such changes as it is necessary to make, apply to:

- (a) proceedings under the subject Act commenced in the Court after 31 March 1994; and
 (b) applications made under the subject Act after 31 March 1994 in proceedings in the Court, whenever commenced.

(2) The provisions of Part 80 relating to applications under the Companies Code and under the Corporations Law shall, so far as applicable and making such changes as it is necessary to make, apply to all other proceedings commenced and applications made under the subject Act.

(h) Part 80A

(i) Rule 9

Omit from the headnote “attention” and insert instead “intention”.

(ii) Rule 21 (3) (b)

Omit “18(3)” and insert instead “21”.

(iii) Rule 33 (3)

After “must” insert “, not”.

(iv) After rule 37 insert:

DIVISION 9—*Winding up of bodies other than companies*

Finding up of bodies other than companies (s. 583)

38. The rules apply, with such adaptations as are necessary, to a body to which Part 5.7 of the Corporations Law applies as they apply to a company.

(i) SCHEDULE E Part 1

From the matter relating to Part 80A, omit “24” and insert instead “36”.

(j) SCHEDULE E Part 2 Paragraph 28

After subparagraph (aa) insert:

(ab) section 449E(1) (which relates to the remuneration of an administrator);

(k) SCHEDULE F, Explanatory notes

(i) Omit “and Part 80” and insert instead “, Part 80”.

(ii) After “Code)” insert “and Part 80A rule 3 (3) (Corporations Law and ASC Law)”.

(l) SCHEDULE F, Form 154B

Omit “of abrogation” and insert instead “or abrogation”.

(m) SCHEDULE F, Form 154F

Omit “20” and insert instead “20 (1)”.

(n) SCHEDULE F, Form 154M

Omit “at” and insert instead “the”.

(o) SCHEDULE F, Index of Forms

After the matter relating to Form 154A, insert:

- 154BA. Summons under section 1092 (3) of the Corporations Law (P. 80A, r. 4).
- 154B. Notice of application under ss. 167 (7), 168 (4), 172 (10), 190 (3), 194 (1), 195 (5), 197 (6), 198 (6), 411 (4) (b) and (6), 413 (1), 459A, or 461 of the Corporations Law (P. 80A, r. 10 (5)).
- 154C. Notice of application for reduction of capital and of list of creditors (P. 80A, r. 13 (5) (a)).
- 154D. Notice to creditors (P. 80A, r. 13 (5) (b)).
- 154E. Affidavit verifying list of creditors (P. 80A, r. 13 (7)).
- 154F. Notice to liquidator (or provisional liquidator) of appointment (P. 80A, r. 20 (1) (a) (i)).
- 154G. Notice of winding up order and appointment of liquidator (P. 80A, r. 20 (1) (b)).
- 154H. Notice of appointment of provisional liquidator (P. 80A, r. 20 (1) (b)).
- 154I. Notice of intention of liquidator (or provisional liquidator) to apply for determination of remuneration (P. 80A, rr. 22 (2), 23 (2) (b)).
- 154J. Report by liquidator (or as the case may be) (P. 80A, rr. 25, 31).
- 154K. Affidavit by special manager verifying his accounts (P. 80A, r. 27).
- 154L. Notice of intention of liquidator to seek release (P. 80A, r. 33 (3) (a) (i)).
- 154M. Notice of intention of liquidator to seek release (P. 80A, r. 33 (3) (b)).
- 154N. Summons to attend for examination under section 596A (or 596B) of the Corporations Law (P. 80A, r. 36 (6)).

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

(a) Part 51 rule 3

(i) To the headnote to the rule add **“or cross-appeal”**.

(ii) After subrule (1) insert:

(1A) 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.

(iii) After subrule (3) insert:

(3A) A summons for leave to cross-appeal shall be filed within 14 days after service of the notice of appeal, or the summons for leave to appeal, or within such further time as the Court of Appeal may fix.

(b) Part 51 rule 3 (1)

Omit “to appeal” and insert instead “to appeal, and subject to subrule (1A), to cross-appeal”.

(c) Part 51 rule 3 (3)

Omit “The applicant shall file the summons” and insert instead “The summons for leave to appeal shall be filed”.

(d) Part 51 rule 3 (5)

After “(3)” insert “or (3A)”.

(e) Part 51 rule 3 (6)

Omit the subrule.

(f) Part 51 rule 3 (8)

After “applicant” and after “application” insert “for leave to appeal”.

(g) Part 51 rule 3 (9)

After “appeal” insert “or to cross-appeal”.

(h) Part 51 rule 3 (10)

After “(3)” insert “or (3A)”.

(i) Part 51 rule 7 (3)

(i) After “to appeal” insert “or to cross-appeal” wherever occurring.

(ii) After “for appealing” insert “or for cross-appealing”.

(iii) After “of appeal” insert “or of cross-appeal”.

(j) Part 51 rule 13 (1)

(i) Omit “to appeal” and insert instead “to Cross-appeal”.

(ii) After “decision” where secondly appearing insert “and is entitled to do so as of right”.

(k) Part 51 rule 13 (2)

After “him” insert “or within 14 days after leave to cross-appeal is given or within such extended or abridged time as the Court of Appeal may fix”.

(l) Part 51 rule 24 (11) (i)

After “appeal” insert “or to cross-appeal”.

- (m) Part 51 rule 31 (1)
 - (i) After “rules” insert “and in particular rule 3”.
 - (ii) Omit “(except for leave to appeal)”.
 - (n) Part 51 rule 31 (2)

After “to appeal” insert “or to cross-appeal”.
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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 is to:
 - (a) correct typographical errors in Amendment 281;
 - (b) correct incorrect references to rules relating to the Corporations Law and to the ASC Law;
 - (c) insert, in the Explanatory notes to the forms, a reference to the rule which prescribes certain matters to be included in the heading of a summons for relief under the Corporations Law or the ASC Law;
 - (d) add, to the Index of Forms, entries in respect of forms added by Amendment No. 281;
 - (e) alter the rules relating to the Associations Incorporations Act 1984, the Co-operations Act 1923 and the Co-operatives Act 1992 and to take account of the new Part 80A of the rules inserted by Amendment 281;
 - (f) correct a typographical error in Part 77 Division 24;
 - (g) add references to Part 80A where relevant;
 - (h) allow a chief clerk to exercise the same powers in proceedings under the Corporations Law as chief clerks presently exercise in proceedings under the Companies Code; and
 - (i) allow a registrar to exercise powers of the Court in approving the remuneration of an administrator.
2. The object of the amendments contained in paragraph 3 is to:
 - (a) prescribe how an application for leave to cross-appeal is to be made; and
 - (b) make provisions of an ancillary and consequential nature.

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