

1995—No. 161

**SUPREME COURT RULES (AMENDMENT No. 292) 1995—
RULE**

NEW SOUTH WALES



[Published in Gazette No. 50 of 28 April 1995]

1. These rules are made by the Rule Committee on 24 April 1995.
2. The Criminal Appeal Rules are amended as follows:
 - (a) Rules 31A to 31E

omit:

(i) the rules; and

(ii) the heading “PRISONS ACT 1952” above rule 31D,
and insert instead:

**Application to Court—section 23 (1) or section 41 (1) of
Sentencing Act 1989**

3 1A. A prisoner may apply to the Court under section 23 (1) or section 41 (1) of the Sentencing Act 1989 by sending to the Registrar a form of application in Form VA duly completed.

**Application to Court under clause 24 (1) of Schedule 2 to
Sentencing Act 1989**

3 1B. A licensee may apply to the Court under clause 24 (1) of Schedule 2 of the Sentencing Act 1989 by sending to the Registrar a form of application in Form VA duly completed.

**Secretary of Offenders Review to forward copies of
reports, etc., to Registrar**

31C. Where the Registrar has received a form of application in Form VA duly completed, the secretary of the Board shall, unless the Court otherwise orders, at the request of the Registrar, forward to the Registrar copies of all reports, documents and other information placed before the Board and a copy of that part of the minutes in which the reason for the decision was recorded.

Omit the forms and insert instead:

Criminal Appeal Act 1912

Offenders Review Board and (name of applicant)

Application to the Court

To the Registrar:

The _____ day of _____ 19____

I apply to the Court for a direction to be given by the Court to the Offenders Review Board that the information upon which the Board on *(date)* made a decision

pursuant to section 22 of the Sentencing Act 1989 that I should not be released on parole was (false misleading irrelevant.*) *or*

pursuant to section 34 (1) of the Sentencing Act 1989 that the parole order relating to me be revoked was (false misleading irrelevant.*) *or*

to revoke my licence was (false misleading irrelevant.*)

The information which I contend was (false misleading irrelevant*) is set forth on page 2 hereof.

(signed) #

Applicant

* *Strike out any word or words which is or are not applicable.*

This application must be signed by the applicant and, if he or she cannot write, his or her mark must be attested by a witness whose name and address must be given.

The applicant must answer the following question:

Do you desire to appear in person at the hearing or determination of your application?

If the answer is "yes", the applicant must state the grounds on which the applicant contends he or she should be allowed to do so.

(Page 2 of application)

The following information was false: (*set out the information*) or

The following information was misleading: (*set out the information*) or

The following information was irrelevant: (*set out the information*).

3. The amendment contained in paragraph 2 shall commence on 1 June 1995.

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

(a) Part 1 rule 3

From the matter relating to Part 77, omit “*State Drug Crime Commission Act 1985*” and insert instead “*New South Wales Crime Commission Act 1985*”.

(b) Part 77 Division 25

(i) From the heading to the Division omit “*State Drug*” and insert instead “*New South Wales*”.

(ii) From rule 84, wherever occurring, omit “*State Drug*” and insert instead “*New South Wales*”.

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

Part 33 rule 3

After “Subject to the Act”, insert “and to section 7A of the Defamation Act 1974”.

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

(a) Part 1 rule 8

In alphabetical order insert:

“Foreign Evidence Act” means the Foreign Evidence Act 1994 of the Commonwealth.

(b) Part 1 rule 8, Part 27, Part 36 rule 6, Part 75 rule 3C, Schedule D Part 2 and Schedule E Part 1

Omit “Evidence Act 1905” and “Evidence Act 1905 of the Commonwealth”, wherever occurring, and insert instead “Foreign Evidence Act”.

(c) Part 27

Omit “7V (1)”, wherever occurring, and insert instead “7 (1)”.

(d) Part 27

Omit “7V (3)”, wherever occurring, and insert instead “8 (1)”.

(e) Part 1 rule 8, Part 27, Schedule D Part 2 and Schedule E Part 1

Omit “7W”, wherever occurring, and insert instead “10”.

(f) Part 36 rule 6 (4)

Omit “7V (6)” and insert instead “9 (2)”.

(g) Part 36

After rule 6 insert:

Foreign material

6B. (1) A party to proceedings who adduces foreign material under section 24 (1) or section 32 (1) of the Foreign Evidence Act as evidence must:

(a) give not less than 14 days' written notice to each other party who has an address for service in the proceedings of:

(i) the intention to adduce evidence under the subsection; and

(ii) the nature of the foreign material; and

(b) adduce all relevant evidence available to that party:

(i) as to whether the person who gave the testimony that is the subject of the foreign material is in Australia and is able to attend the hearing;

(ii) if the foreign material is adduced under section 24 (1) of the Foreign Evidence Act—of the matters to which section 25 (2) (a) or (c) of the Foreign Evidence Act refer; and

(iii) if the foreign material is adduced under section 32 (1) of the Foreign Evidence Act—of the matters to which section 32 (2) (a) or (c) of the Foreign Evidence Act refer,

unless the Court otherwise orders.

(2) In this rule “foreign material” has the same meaning as it has in the Foreign Evidence Act.

(h) Part 75 rule 2 (1) (g)

Omit “rule” and insert instead “rules 6B (foreign material) and”.

(i) Part 75 rule 3C

Omit “IIIB” and insert instead “2”.

(j) Schedule D Part 2

From the matter relating to Part 27, omit “7V” and insert instead “7”.

(k) Schedule E Part 1

From the matter relating to Part 27:

Omit “7V” and insert instead “7”.

7. The amendment contained in paragraph 6 (g) and (h) shall commence on 19 June 1995.

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

(a) Part 12 rule 4

(i) From paragraph (s) omit “.” and insert instead “;”.

(ii) After paragraph (s) insert:

(t) section 22A of the Lotteries and Art Unions Act 1901.

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

Part 71A rule 2

Omit the rule and insert instead:

Commencement of Proceedings

2. (1) Proceedings in the Court:

(a) on an appeal under section 101 of the Service and Execution of Process Act against the decision of magistrate; or

(b) under section 105 of the Service and Execution of Process Act,

shall be commenced in the Common Law Division.

(2) Proceedings in the Court under section 105 (4) of the Service and Execution of Process Act shall be commenced by summons.

(3) Proceedings in the Court on an application under section 57 (1), section 67 (1), section 76 (1), section 79 (1) or section 93 (1) of the Service and Execution of Process Act shall be commenced by summons in the Common Law Division.

(4) Proceedings in the Court on an application under section 72 (1) or section 86 of the Service and Execution of Process Act shall be commenced:

(a) where the application is in or for the purposes of or in relation to proceedings in the Court—by motion on notice in those proceedings; or

(b) otherwise—by summons in the Common Law Division.

10. The amendment contained in paragraph 9 shall commence on 1 June 1995.

EXPLANATORY NOTE

(This note does not form part of the rules)

1. The object of the amendment contained in paragraph 2 is to:
 - (a) take account of amendments made by the Prisons (Amendment) Act 1993 and the Sentencing (Amendment) Act 1993; and
 - (b) consolidate affected rules and forms.
2. The object of the amendment contained in paragraph 3 is to replace a reference to the superseded name of an Act with a reference to the current name of that Act.
3. The object of the amendment contained in paragraph 5 is to amend a rule so as to add a reference to the possible restriction on the operation of the rule by s. 7A of the Defamation Act 1974.
4. The objects of the amendments contained in paragraph 6 are:
 - (a) to replace references to the provisions of the Evidence Act 1905 (Commonwealth) with references to the appropriate provisions of the Foreign Evidence Act 1994 (Commonwealth); and
 - (b) to require a party who adduces foreign material under section 24 (1) or section 32 (1) of the Foreign Evidence Act 1994 (Commonwealth) to give 14 days written notice of the intention and nature of the material and to adduce certain relevant evidence in respect of the use of that foreign material unless the Court otherwise orders.
5. The object of the amendment contained in paragraph 8 is to assign to the Common Law Division applications under section 22A of the Lotteries and Art Unions Act 1901.
6. The object of the amendment contained in paragraph 9 is to provide that proceedings under section 72 (1) or section 86 of the Service and Execution of Process Act 1992 (Commonwealth), where the application is in or for the purposes of or in relation to proceedings in the Court, shall be commenced by notice of motion in those proceedings instead of by summons.

M. A. Blay, Secretary of the Rule Committee
