

1995—No. 309

SUPREME COURT RULES (AMENDMENT No. 293) 1995

NEW SOUTH WALES



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These rules are made by the Rule Committee on 17 July 1995.

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

Part 9 rule 7A

After subrule (1) insert:

(1A) Where service of a document is effected on the clerk of the court under subrule (1), the document shall also be served on the Chief Executive Officer to the Chief Magistrate of the Local Courts personally or by post.

2. The amendment contained in paragraph 1 shall not apply to proceedings commenced before 1 September 1995.

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

(a) Part 1 rule 8

After subrule (1) insert:

(2) Where:

(a) reference is made in the rules to the holder of an office in the Public Service or in the Australian Public Service; and

(b) the name of the office is changed or the relevant function is assumed by the holder of another office,

the reference shall continue to apply to the holder of that office.

(b) Part 10 rules 11 (2) and 12 and the Part 57 rule 5 (4)

Omit “Secretary” wherever occurring and insert instead “Director-General”.

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

Part 28 rule 1 (1)

After paragraph (aii) insert:

(aiii) make an order extending the operation of a caveat under the Real Property Act 1900;

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

SCHEDULE H Part 1

Insert, in alphabetical order, in the appropriate columns:

Offshore Minerals Act 1994 (Commonwealth)	351 Order relating to caveats. 354 Order directing correction of register. 355 Appeal.
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6. The Supreme Court Rules 1970 are further amended as follows:

Part 52A rule 46

(a) Omit subrule (1) and the headnote to the rule and insert instead:

Certificate of determination

(1) A person shall not be entitled to his or her costs of proceedings in the Court (including costs of execution) to recover payment of costs included in a certificate of determination unless:

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

(b) After subrule (3) insert:

(4) A person shall not be entitled to his or her costs of filing a certificate of determination in the Court.

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

(a) Part 1 rule 8, Part 27 rule 1, Part 36 rule 6 (4), Part 58 rule 1, Schedule E Part 2 paragraph 27

Omit “Evidence Act 1898” where occurring and insert instead “Evidence on Commission Act 1995”.

(b) Part 1 rule 8

From the definition of “examiner”:

- (i) Omit “65 (2)” and insert instead “6 (1)”.
- (ii) Omit “66 (1)” and insert instead “9”.
- (iii) Omit “73 (1)” and insert instead “23”.
- (iv) Omit “75” and insert instead “21”.

- (c) Part 27 rule 1
 - (i) Omit “65 (2)” and insert instead “6 (1)”.
 - (ii) Omit “65 (4)” and insert instead “7 (1)”.
 - (iii) Omit “66 (1)” and insert instead “9”.
 - (iv) Omit “72 (2)” and insert instead “20 (1)”.
 - (v) Omit “72 (4)” and insert instead “21 (1)”.
 - (vi) Omit “73 (1)” and insert instead “23”.
- (d) Part 36 rule 6 (4)
 - (i) Omit “65 (7)” and insert instead “8 (2)”.
 - (ii) Omit “72” and insert instead “22 (2)”.
- (e) Part 58 rules 1 (1) and 6 (2)

Omit “79” where occurring and insert instead “33”.
- (f) Part 75 rule 3C (b)

Omit the paragraph and insert instead:

 - (b) the Evidence on Commission Act 1995,
- (g) SCHEDULE E Part 2 paragraph 27

Omit “65 (2)—(5) and 72 (2)—(5)” and insert instead “6, 7, 20 and 21”.

8. The amendments contained in paragraph 7 shall take effect on the date when the Evidence on Commission Act 1995 takes effect.

9. The rules amended or omitted by paragraph 7 shall continue to apply to proceedings to the extent necessitated by the continued application of a provision of the Evidence Act 1898.

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

- (a) Part 7 rule 8 (1) (b)

Omit the paragraph and insert instead:

 - (b) serve the originating process on the occupier together with a notice that the occupier may apply to the Court for an order that the occupier be added as a defendant and that, if the occupier does not so apply within 10 days after service, the occupier may be evicted pursuant to a judgment entered in the occupier’s absence.
- (b) SCHEDULE D Part 3 paragraph 8

Omit “Part 5 rule 9.”.
- (c) SCHEDULE E Part 2 paragraph 26

Omit the paragraph.

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11. The amendments continued in paragraph 10 shall not apply to proceedings commenced prior to 31 March 1994.

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

Part 15 rule 11

Omit the rule and insert instead:

Conditions precedent

11. Where it is a condition precedent necessary for the case of a party in any pleading that:

- (a) a thing has been done;
- (b) an event has happened;
- (c) a state of affairs exists, or existed at some time or times;
- (d) the party is and has been at all material times ready and willing to perform an obligation; or
- (e) the party was at all material times ready and willing to perform an obligation,

a statement that:

- (f) a thing has been done;
- (g) an event has happened;
- (h) a state of affairs exists, or existed at that time or those times;
- (i) the party is and has been at all material times ready and willing to perform the obligation; or
- (j) the party was at all material times ready and willing to perform the obligation,

shall be implied in the pleading.

13. The amendment contained in paragraph 12 shall not apply to pleadings filed before 1 January 1996.

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

SCHEDULE H Part 1

In alphabetical order insert in the appropriate columns:

Native Title (New South Wales) Act 1994

82 Appeal against decision or determination of a warden on a question of law.

EXPLANATORY NOTE

(This note does not form part of the rules)

1. The object of the amendment contained in paragraph 1 is to require applicants:
 - (a) for any relief or remedy which would formerly have been granted by writ of prohibition; or
 - (b) for an order under s. 112 (5) of the Justices Act 1902 (which relates to proceedings for prohibition),

to serve documents, that are required to be served on the justice, upon the Chief Executive Officer to the Chief Magistrate of the Local Courts, in addition to the existing requirement to serve the clerk of the court at which the decision or determination in question was made.

2. The object of the amendment contained in paragraph 3 (a) is to make it clear that where reference is made in the rules to the holder of an office in the Public Service or in the Australian Public Service, and the name of the office is changed or the relevant functions are assumed by the holder of another office, the reference shall continue to apply to the holder of that office.

3. The object of the amendment contained in paragraph 3 (b) is to replace a superseded reference to the Secretary of the Attorney General's Department with a reference to the Director-General of the Attorney General's Department.

4. The object of the amendment contained in paragraph 4 is to allow urgent applications for extension of a caveat under the Real Property Act 1900 to be made prior to an originating process being filed in the Court.

5. The object of the amendment contained in paragraph 5 is to assign to the Administrative Law Division applications under ss. 351 and 354 and appeals under s. 355 of the Offshore Minerals Act 1994 (Commonwealth).

6. The objects of the amendment contained in paragraph 6 are to make it clear that:
 - (a) a person is not entitled to costs of filing a certificate under s. 208J (3) of the Legal Profession Act 1987 in the Court; and
 - (b) reference to costs of proceedings in the Court in Part 52A r. 46 (1) includes costs of execution.

7. The object of the amendment contained in paragraph 7 is to substitute references to the Evidence on Commission Act 1955 for references to the repealed Evidence Act 1898.

8. The object of the amendments contained in paragraph 10 is to eliminate references to proceedings for possession of land commenced by summons, as such proceedings may no longer be instituted.

9. The object of the amendment contained in paragraph 12 is to imply in a pleading, where it is a condition precedent necessary for the case of a party in that pleading that a statement of affairs exists, or existed at some time or times, a statement that the state of affairs exists, or existed at that time or those times.

10. The object of the amendment contained in paragraph 14 is to assign to the Administrative Law Division appeals from a warden under s. 82 of the Native Title (New South Wales) Act 1994.