

1995—No. 429

SUPREME COURT RULES (AMENDMENT No. 294) 1995

NEW SOUTH WALES



[Published in Gazette No. 102 of 25 August 1995]

1. These rules are made by the Rule Committee on 21 August 1995.
2. The Supreme Court Rules 1970 are amended as follows:
 - Part 12 Rule 5 (a)
 - (i) From subparagraph (xxxii) omit “.” and insert instead “;”.
 - (ii) After subparagraph (xxxii) insert:
(xxxiii) section 10 (3) of the State Owned Corporations Act 1989.
3. The Supreme Court Rules 1970 are further amended as follows:

SCHEDULE E Part 2 paragraph 29

Omit “sections 471 (2)” and insert instead “the former section 471 (2) or sections 471B”
4. The Supreme Court Rules 1970 are further amended as follows:

Part 61 rule 3 (1)

After “any party” insert “to the proceedings or application as the case may be”.
5. The Supreme Court Rules 1970 are further amended as follows:
 - (a) Part 6 rule 2 (1)

After “addition”, insert:

separate from and below the existing title of the proceedings, headed “CROSS-CLAIM” or “SECOND CROSS-CLAIM”, or as the case may be,

(b) Part 65 rule 1

After subrule (2) insert:

(2A) The description of any party as “plaintiff”, “defendant”, “cross-claimant” or “cross-defendant”, as the case may be, shall not be preceded by any number other than (if so desired) a number corresponding to the actual position of that party in the group of parties in which that party is included.

(c) Part 65 rule 1 (4)

After originating process”, insert “, a cross-claim”.

(d) SCHEDULE F Form 1

Omit the form and insert instead:

Form 1

(First page of a document. See Part 65 rule 1.)

(Leave clear a space of about 50 millimetres from the top of the page.)

IN THE SUPREME
COURT OF NEW
SOUTH WALES
SYDNEY *(or as the
case may be)*
REGISTRY COMMON
LAW *(or as the case
may be)* DIVISION

S10 of 19 *(or as the
case may require: see
Part I rule 10 (1)
and Part 65 rule 1
(1))*

*(Do not describe the document here.
The substance of the document
shall be written within this space.
A margin of not less than 25
millimetres shall be kept clear on
the left hand side of the page.
The dividing line to the left hand
side shall be about 75 millimetres
from the left hand edge of the
page. The substance of a
statement of accounts may
commence on the following page.
Where there is insufficient space
on the left hand side of the page
to include particulars of all the
parties, this space may also be
used to include particulars of
parties and the substance of the
document may be commenced on
the following page.*

(Describe the document)
 NOTICE OF MOTION
(or, in the case of an affidavit)
 AFFIDAVIT
(and show the name of the deponent and date of swearing)
 J. Smith
 7 May 19

Above “COMMON LAW DIVISION” in the margin name the registry at the place for trial or hearing. In respect of proceedings under Division 1 of Part 5 of the Justices Act 1902 (which Division relates to stated cases) omit “plaintiff” from the title and insert instead “appellant” and omit “defendant” from the title and insert instead “respondent”.

Highlight the name of the document and the filing party by including a solid line above and below that information.)

Filed for *(Full name of filing party)*
 HENRY JONES
 JOHN LEE
 plaintiff
 JAMES STYLES
 defendant
 CROSS-CLAIM
 JAMES STYLES
 Cross-claimant
 JOHN LEE and
 HENRY JONES
 Cross-defendants
 SECOND CROSS-CLAIM
 HENRY JONES
 Cross-claimant
 WILLIAM SMITH
 Cross-defendant

*(and in every
document continue)*

Principal & Co.
22 Main Street,
Yass 2582.
telephone: 202

Agent & Co.
22 Pitt Street
Sydney 2000
telephone: 222 2222
DX 222, Sydney

6. The amendments contained in paragraph 5 will commence on 1 January 1996.
7. The Supreme Court Rules 1970 are further amended as follows:
 - Part 37 rule 9
 - (a) Omit “in complying with the subpoena” and insert instead “in consequence of service of the subpoena”.
 - (b) Omit “sufficient to make good” and insert instead “in respect of”.
8. The Supreme Court Rules 1970 are further amended as follows:
 - (a) Part 9 rule 4 (3) (i)
Omit the paragraph.
 - (b) Part 25 rule 8
After subrule (4) insert:
 - (5) The Court shall not make an order under this rule unless it is satisfied that sufficient relief is not available under section 169 of the Evidence Act 1995.
 - (c) Part 25 rule 9
Omit the rule.
 - (d) Part 36 rule 2 (3)
 - (i) From paragraph (c) omit “and”.
 - (ii) From paragraph (d) omit “,” and insert instead “; and”.
 - (iii) After paragraph (d) insert:
 - (e) section 29 (4) and section 31 of the Evidence Act 1995.
 - (e) Part 36 rules 13A (5) (b) and 13B (5)
Omit “14B or section 14CE of the Evidence Act 1898” where occurring and insert instead “63 or section 64 or section 69 of the Evidence Act 1995”.

(f) Part 36

After rule 13C insert:

Notice under s. 67 or s. 99 of the Evidence Act 1995

13D. (1) Notice for the purposes of section 67 or section 99 of the Evidence Act 1995 shall, unless the Court otherwise orders:

(a) be given:

- (i) in any case where the Court by notice to the parties fixes a date for determining the date for trial—not later than 21 days before the date fixed by that notice;
- (ii) in any other case where the place of trial is a place other than Sydney—not later than 21 days before the first call-over held in respect of the sittings at that place; and
- (iii) in any other case—not later than 21 days before the date on which the Court determines the date for trial;

(b) include:

- (i) if the notice relates to a previous representation—the name of:
 - (A) the person who made the previous representation; and
 - (B) any witness who is to give evidence of the previous representation; and
- (ii) a statement of the evidence.

(2) Rule 4A (2), (2A) and (4) shall apply to a statement referred to in subrule (1) (b) (ii) as if the statement were a statement referred to in rule 4A (1).

(3) Where a notice referred to in subrule (1) is given in respect of a document:

- (a) a copy of the document shall be annexed to the notice; and
- (b) the notice shall not include the statement referred to in subrule (1) (b) (ii).

(4) Rule 4A (2A) and (4) shall apply to a document referred to in subrule (3) as if the document were a statement referred to in rule 4A (1).

(g) Part 37 rule 5

- (i) From subrule (1) omit “can be” and insert instead “could have been”.

- (ii) In subrule (1) after “1898” insert “prior to its repeal”.
 - (iii) Omit “has” and insert instead “had”.
 - (h) Part 75 rule 2
 - After subrule (5) insert:
 - (6) Part 36 rule 13D applies to proceedings which are specified in the Third Schedule (except clause (d) of the Schedule) and to proceedings to which Division 2 applies as if the time fixed for giving notice for the purposes of sections 67 and 99 respectively were not later than 21 days before the date fixed for hearing, instead of the time fixed by rule 13D (1) (a).
 - (i) Part 75 rule 11 (4) (b) (vii)
 - Omit “14CE of the Evidence Act 1898” and insert instead “69 of the Evidence Act 1995”.
 - (j) SCHEDULE D Part 1
 - Omit the reference to Act No. 11, 1898 and the matter relating to it.
 - (k) SCHEDULE F Forms 46A and 74AB
 - Omit “applies” where occurring and insert instead “would have applied prior to its repeal”.
9. The rules amended or omitted by paragraph 8 shall continue to apply to proceedings to the extent necessitated by the continued application of a provision of the Evidence Act 1898.
10. The amendments contained in paragraph 8 shall take effect when the Evidence Act 1995, other than Part 1.1 and the Dictionary at the end of the Act, take effect.
11. The Supreme Court Rules 1970 are further amended as follows:
- (a) SCHEDULE F Form 97
 - After paragraph 15 insert:
 - 16. I am not aware of any circumstances which raise doubt as to my entitlement to a grant of probate of the will of the deceased [*where applicable* except for (*specify matter*)].
 - (b) SCHEDULE F Forms 98 and 104
 - After paragraph 15 in each form insert:
 - 16. I am not aware of any circumstances which raise doubt as to my entitlement to a grant of administration of the estate of the deceased [*where applicable* except for (*specify matter*)].
 - (c) SCHEDULE F Form 105A
 - After paragraph 9 insert:

10. I am not aware of any circumstances which raise doubt as to my entitlement to a grant of administration of the estate of the deceased [*where applicable except for (specify matter)*].

(d) SCHEDULE F Form 106

After paragraph 17 insert:

18.1 I am not aware of any circumstances which raise doubt as to my entitlement to have the grant sealed by this Court [*where applicable except for (specify matter)*].

12. The amendment contained in paragraph 11 shall apply to affidavits sworn on or after 1 November 1995.

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

(a) SCHEDULE F

(i) Form 101

Omit “and the Affidavit of Assets and Liabilities”.

(ii) Form 105A

In paragraph 7 and 8, after “59”, insert “(1)”.

(iii) Form 106D

(A) Omit paragraph 2 (c).

(B) After paragraph 2 (b), insert “and”.

(C) Renumber paragraph 2 (d) as “2 (c)”.

(D) From paragraph 3, omit:

to “C” (*or* “D” *if*

and insert instead:

and “B” (*or* to “C” *if*

(iv) Forms 106E and 106F

From paragraph 1 in each form, omit:

), Affidavit of Executor, (*or* Affidavit of Applicant for Administration) and Affidavit of Assets and Liabilities are annexed and marked “A” to “C”

and insert instead:

) and Affidavit of Executor (*or* Affidavit of Applicant for Administration) are annexed and marked “A” and “B”

(v) Form 106E

From paragraph 2 omit “D” and insert instead “C”.

(b) Part 52 rule 21D and Part 52A rule 29

Omit from each rule “Probate Act” and insert instead “Wills, Probate and Administration Act 1898”.

14. The amendment contained in paragraph 13 (a) (ii) shall apply in respect of affidavits sworn on or after 1 November 1995.

EXPLANATORY NOTE

(This note does not form part of the rules)

1. The object of the amendment contained in paragraph 2 is to assign proceedings under s. 10 (2) of the State Owned Corporations Act 1989 to the Equity Division.
2. The object of the amendment contained in paragraph 3 is to replace a reference to s. 471 (2) of the Corporations Law by reference to s. 471B (which supersedes it) and a reference to s. 471 (2) with added wording indicating that the section is no longer in force.
3. The object of the amendment contained in paragraph 4 is to make it clear that a review of a registrar’s act may be sought by a party to an application in respect of which the act occurs, and not only by a party to the proceedings.
4. The objects of the amendments contained in paragraph 5 are to facilitate the identification of parties shown in documents and the name of documents.
5. The objects of the amendments contained in paragraph 7 are to make it clear that the Court might order payment of expenses of a non-party served with a subpoena:
 - (a) who incurs the expense otherwise than in complying with the subpoena, such as where the person disputes the obligation to produce the documents in question; or
 - (b) in an amount less than the full amount of the expense incurred.
6. The object of the amendment contained in paragraph 8 is to take account of the Evidence Act 1995.
7. The object of the amendment contained in paragraph 11 is to require applicants for grant of probate or letters of administration or for a reseal of a grant elsewhere to disclose any circumstances which raise doubt as to the applicant’s entitlement to a grant or reseal.
8. The object of the amendments contained in paragraph 13 are:
 - (a) to omit superseded references to an affidavit of assets and liabilities and to make consequential amendments;
 - (b) to replace an abbreviated reference to an Act with a full reference; and
 - (c) to correct an incomplete reference to a rule in Form 105A.

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