

SUPREME COURT RULES (AMENDMENT No. 295) 1995

NEW SOUTH WALES



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1. These rules are made by the Rule Committee on 18 September 1995.
2. The Supreme Court Rules 1970 are amended as follows:

Part 65C

After rule 4 insert:

Administering oaths for other courts

5. (1) A registrar may administer the oath of office of a Supreme Court of another State or Territory of Australia to a new South Wales legal practitioner who is required to take the oath for the purpose of being admitted as a lawyer by that court.

(2) In subrule (1) “oath of office” and “oath” include any affirmation or declaration that may be taken in lieu of the oath of office.

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

- (a) SCHEDULE F Form 36

Omit the form.

- (b) SCHEDULE F Index of Forms

Omit the reference to Form 36 and the matter relating to it.

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

- (a) Part 1 rule 3:

Insert in the matter relating to Part 77 in alphabetical order in the appropriate columns:

International War Crimes Tribunals 26BA 87KA, 87KB
Act 1995 (Commonwealth)

(b) Part 77

After Division 26A insert:

Division 26BA—International War Crimes Tribunals Act 1995**Assignment of business**

87KA. Proceedings in the Court under the International War Crimes Tribunals Act 1995 of the Commonwealth (the “subject Act”) are assigned to the Common Law Division.

Registration (s. 45)

87KB. (1) A register of orders to which section 45 of the subject Act applies shall be kept in the registry.

(2) A copy mentioned in section 45 (2) of the subject Act is registered when it is included in the register.

(3) Proceedings for registration of an order to which section 45 (1) of the subject Act applies shall be commenced by summons joining as defendant the person against whom the order was made.

(4) The plaintiff may, unless the Court otherwise orders, proceed without service of the summons on the defendant.

(5) Where the plaintiff adds to the summons a request that the application be granted under this subrule, the Court may make the order in the absence of the public and without any attendance by or on behalf of the plaintiff.

(6) The plaintiff shall file with the summons an affidavit setting out such particulars as are necessary to enable the Court to comply with section 45 (1) of the subject Act.

(7) Where an order is made under section 45 (1) for registration of an order, the plaintiff shall serve a minute of the order for registration and the registered order on the defendant.

(c) SCHEDULE D Part 1

At the end of the Part, insert in the appropriate Columns:

Act No. 18, 1995 (Commonwealth)

International War Crimes Act 1995:

Section 45 (1)	Order for registration of a forfeiture order
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5. The Supreme Court Rules 1970 are further amended as follows:

(a) Part 1 rule 3

From the matter relating to Part 75 Division 1, omit “3G” and insert instead “3H”.

(b) Part 75 Division 1

After rule 3G insert:

Election under s. 32 of Criminal Procedure Act 1986

3H. (1) An election under section 32 (1) or section 32 (5) of the Criminal Procedure Act 1986 shall:

- (a) be in the prescribed form;
- (b) in the case of an election under section 32 (1)—be endorsed with the consent of the Director for Public Prosecutions given under section 32 (3); and
- (c) be filed before the date fixed for the trial.

(2) Consent of the Director of Public Prosecutions may be endorsed under subrule (1) (b) by that Director or an officer authorised in writing by that Director to give such consents.

(d) SCHEDULE F

After Form 74AI insert:

Form 74AJ

P. 75, r. 3H (1)

**ELECTION UNDER S. 32 (1) OF THE CRIMINAL
PROCEDURE ACT 1986**

I, _____, of _____ being charged with
(*short details of the charge, or all of the charges, in the
proceedings*), elect to be tried by a Judge alone in respect of the
alleged offence(s).

I have before making this election sought and received advice in
relation to the election from _____ barrister (*or* solicitor).

The date fixed for my trial is _____ 19 ____.

Dated: _____

Accused

Witness to signature of accused

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Full name and address of witness:

The Director of Public Prosecutions consents to this election.

Dated:

(Signature and description)

Form 74AK

P. 75, r. 3H (1)

**ELECTION UNDER S. 32 (5) OF THE CRIMINAL
PROCEDURE ACT 1986**

I, _____, having previously elected to be tried by a Judge alone in respect of these proceedings, now elect to be tried by a jury.

The date fixed for my trial is _____ 19 ____.

Dated:

Accused

Witness to signature of accused

Full name and address of witness:

(d) SCHEDULE F Index of Forms

After the matter relating to Form 74AI insert:

74AJ. Election under s. 32 (1) of the Criminal Procedure Act 1986 (P. 75, r. 3H (1)).

74AK. Election under s. 32 (5) of the Criminal Procedure Act 1986 (P. 75, r. 3H (1)).

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

(a) Part 11 rule 4 (1) (b)

Omit the paragraph and insert instead:

(b) where the person entering the appearance appears by a solicitor:

(i) the name, address and telephone number of the solicitor; and

- (ii) if the proceedings are in the Court of Appeal—the solicitor’s facsimile transmission number and the name of the person in the solicitor’s office handling the matter;
- (b) Part 51 rule 3 (2)
Omit the rule.
- (c) Part 51 rule 8 (2)
Omit “Where there is an appeal from a specified tribunal within the meaning of section 48 of the Act and where there is a respondent, the” and insert instead “The”.
- (d) Part 51 rule 18
Omit the headnote to the rule and insert instead **“Reinstatement and restitution”**.
- (e) SCHEDULE F Form 60
 - (i) Omit “(*Where part 51 rule 8 (2) applies, add—*” and the closing bracket immediately following “Address of Registry: ”.
 - (ii) Omit “Solicitor: (*name, address and telephone number*)” and insert instead “Solicitor: (*name, address, telephone and fax numbers and the name of the person in the solicitor’s office handling the matter*)”.
- (f) SCHEDULE F Forms 60A and 60B
 - (i) Omit “(*Where Part 51 rule 8 (2) applies, add—*”.
 - (ii) After “Appellant: (*name, address*)” insert:
Solicitor: (*name, address, telephone and fax numbers and the name of the person in the solicitor’s office handling the matter*).
- (g) SCHEDULE F Form 60B
After “Appellant’s Address for Service: (Part 9 rule 6)” insert:
Address of Registry:
- (h) SCHEDULE F Form 61A
 - (i) Under “telephone 222 222” insert:
Fax number 222 257
Name of person handling the matter (*name*)
 - (ii) Under “telephone 333 333” insert:
Fax number 333 321
Name of person handling the matter (*name*)

(i) SCHEDULE F Form 62

After “Claimant: (*name, address*)” insert:

Solicitor: (*name, address, telephone and fax numbers and the name of the person in the solicitor’s office handling the matter*).

(j) SCHEDULE F Form 62A

After “(Claimant: (*name, address*) (a minor))” insert:

Solicitor: (*name, address, telephone and fax numbers and the name of the person in the solicitor’s office handling the matter*).

7. The amendments contained in paragraph 6 shall commence on 1 January 1996.

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

(a) Part 36 rule 13D (1)

Omit the subrule and insert instead:

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

- (a) 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;
- (b) 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
- (c) in any other case—not later than 21 days before the date on which the Court determines the date for trial;

(b) Part 36 rule 13D (2)

Omit “subrule (1) (b) (ii)” and insert instead “regulation 5 (2) (a) or (b) of the Evidence Regulation 1995”.

(c) Part 36 rule 13D (3)

Omit the subrule.

(d) Part 36 rule 13D (4)

(i) Renumber the subrule as “(3)”.

(ii) Omit “subrule (3)” and insert instead “regulation 5 (5) (a) of the Evidence Regulation 1995”.

(e) Part 75 rule 2 (6)

Omit “(a)”.

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

(a) Part 1 rule 3

From the matter relating to Part 77 omit:

Imperial Acts Application Act 1969	11	45
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(b) Part 77 Division 11

Omit the Division.

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

Part 58 rule 6 (1)

(i) Omit “80” where firstly appearing and insert instead “34”.

(ii) Omit “80” where secondly appearing and insert instead “section 34”.

EXPLANATORY NOTE

(This note does not form part of the rules)

1. The object of the amendment contained in paragraph 2 is to confirm the arrangement whereby officers of the Court administer the oath of office taken by legal practitioners of this State who seek admission by Supreme Courts of other States or territories.

2. The object of the amendment contained in paragraph 3 is to omit a superfluous form.

3. The object of the amendment contained in paragraph 4 is to provide for the registration of forfeiture orders under s. 45 of the International War Crimes Tribunal Act 1995 of the Commonwealth.

4. The object of the amendment contained in paragraph 5 is to require an election under s. 32(1) or s. 32(5) of the Criminal Procedure Act 1986 (which relates to an accused electing to be tried by a Judge without a jury) to be:

- (a) in the prescribed form;
- (b) in the case of an election to be tried by a Judge or a jury—endorsed with the consent of the Director for Public Prosecutions; and
- (c) filed before the date fixed for the trial.

5. The object of the amendments contained in paragraph 6 is:

- (a) to require solicitors’ facsimile transmission numbers and the name of the person in the solicitors’ office handling matters to be furnished to the Court of Appeal; and
- (b) to provide for the address of the registry to be included in a form.

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6. The object of the amendment contained in paragraph 8 is to omit matter which is dealt with by the Evidence Regulation 1995.

7. The object of the amendment contained in paragraph 9 is to omit a reference in the rules to S. 17 of the Imperial Acts Application Act 1969, which was repealed by the Charitable Trusts Act 1993.

8. The object of the amendment contained in paragraph 10 is to substitute appropriate references to the Evidence on Commission Act 1995 for superseded references to sections of the Evidence Act 1898.

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