

1995—No. 75

**SUPREME COURT RULES (AMENDMENT No. 291)
1995—RULE**

NEW SOUTH WALES



[Published in Gazette No. 18 of 24 February 1995]

1. These rules are made by the Rule Committee on 20 February 1995.
2. The Supreme Court Rules 1970 are amended as follows:
 - (a) Part 19 rule 1
 - (i) Renumber the rule as “1.(1)”.
 - (ii) After subrule (1), as renumbered, insert:
 - (2) In this Part, the person making the application is referred to as the applicant and any other party to the application is referred to as a respondent.
 - (b) Part 19 rule 2
Omit the rule and insert instead:

Notice

 2. (1) Subject to subrules (2) and (3), a person shall not move the Court for any order unless before moving he or she has filed notice of the motion and has served the notice on each respondent.
 - (2) A person may move the Court without previously filing or serving notice of the motion:
 - (a) where the preparation of the notice, or the filing or service (as the case may be) of the notice would cause undue delay or other mischief to the applicant;
 - (b) where each respondent consents to the order;
 - (c) where under these rules or the practice of the Court for the time being the motion may properly be made without the prior filing or service (as the case may be) of notice of the motion; or
 - (d) where the Court dispenses with the requirements of subrule (1).
 - (3) A respondent who is a party to the proceedings and is in default of appearance need not be served unless an order is sought requiring that respondent to do, or to refrain from doing, some act.

(4) Notice of a motion shall:

- (a) state the date and time when, and the place where, the motion is to be made;
- (b) where the Court makes an order under rule 3, bear a note of the order made;
- (c) state concisely the nature of the order which is sought;
- (d) name (or if a party to the proceedings, identify) the applicant and each respondent; and
- (e) where the applicant does not already have an address for service in the proceedings, state an address for service.

(5) Costs need not be specifically claimed.

(c) Part 19 rule 4

- (i) After “motion is”, insert “required”.
- (ii) Omit “and is not in default of appearance”.

(d) Part 19 rule 5

Omit the rule and insert instead:

Absence of party

5. The Court may hear and dispose of a motion in the absence of any party to the motion where notice of the motion has been duly served on the absent party.

(e) Part 19 rule 7

After “any party”, insert “to the motion”.

(f) Part 19 rule 8 (2) (b)

Omit “party” and insert instead “person”.

(g) SCHEDELE F Form 23

Omit the Form and insert instead:

Form 23

P. 19, r. 2.

NOTICE OF MOTION

Applicant: (*name and address and, if a party to the proceedings, description eg the plaintiff or the defendant JAMES STYLES*)
[where applicable a minor or as the case requires]

[Where applicable Tutor: (name and address)]

The applicant will at 9.30 am on (*date*) at (*address of Court*) apply to the Court for orders:

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1. } (*State concisely the nature of each order which is sought but*
 2. } *not the grounds for the application.*)

[*Where the time for service under Part 19 rule 3 has been abridged, add:*

The time before which this notice of motion is to be served has been abridged by the Court to {5 p.m. on 6 May 1995 or as the case requires}.]

To: The Respondent(s)

(set out name of each respondent and the address of any respondent who does not have an address for service in the proceedings).

If there is no attendance before the Court by you or by your counsel or solicitor at the time and place specified above, the application may be heard and an order may be made against you in your absence.

A respondent who has not already done so must enter an appearance in the proceedings before any attendance before the court.

[*Where the applicant does not have an address for service in the proceedings or any respondent is not a party to the proceedings, add:*

Applicant's address for service: (Part 9 rule 6)]

(Follow the prescribed form of conclusion of documents for use by a party, Form 4.)

*(As to a notice of motion in the Court of Appeal,
 see Form 62AA)*

3. The amendment contained in paragraph 2 shall apply to motions moved on or after 1 May 1995, notice of which has not been filed prior to that date.

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

(a) Part 51 rule 16 (1) (d)

Omit "or".

(b) Part 51 rule 25

Omit "applicant" and insert instead "appellant".

(c) Part 51 rule 33A

After "Any" insert "judgment or".

(d) SCHEDULE F Form 60C

Omit "to" and insert instead "of".

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

(a) Part 51A rule 1

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

(ii) After paragraph (c) insert:

(d) any appeal to which the provisions of Part 80A rule 32 (1) (which relate to appeals from certain officers of the Court) apply.

(b) Part 80A rule 32

Omit the rule and insert instead:

Appeal from liquidator, etc (s. 1321)

32. (1) An appeal to the Court under section 1321 in respect of an act, omission or decision of a receiver, receiver and manager, liquidator or provisional liquidator, appointed by the Court, shall be instituted by motion in the proceedings in which the appointment was made, within 28 days after the date on which the person who whishes to appeal receives notice of the act, omission or decision.

(2) Subject to subrule (1), an appeal to the Court under section 1321 shall be initiated in accordance with Part 51A.

(3) A person mentioned in section 1321 (a), (b), (c), (ca), or (d) may, on application in writing made to that person before the expiration of the time limited by subrule (1) or by Part 51A rule 3 (1) as the case may be (other than the time extended by the Court) for instituting an appeal from that person's act, omission or decision, grant, by notice in writing, an extension of that time and, where that person does so, he or she shall deliver the notice to the applicant who shall file the notice with the summons or notice of motion (as the case may be) instituting the appeal.

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

Schedule J

Omit “after 31 August 1993 10.5”

and insert instead:

in Column 1	In Column 2
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“the beginning of 1 September 1993 to the end of 28 February 1995.....	10.5
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after 28 February 1995.....	12 ”
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7. 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:

Community Protection Act 1994 39 105–107

(b) Part 77

At the end of the Part insert:

DIVISION 39—Community Protection Act 1994

Assignment of business

105. Proceedings in the Court under the Community Protection Act 1994 (“the subject Act”) are assigned to the Common Law Division.

Application for order under ss 6 (1), 7 (1) or 12

106. An application for an order under section 6 (1), section 7 (1) or section 12 of the subject Act may be included in the summons by which application is made for the relevant preventative detention order.

Application to be by motion

107. Subject to rule 106, an application for an order under the subject Act, other than an application for a preventative detention order, shall be made by motion on notice in the proceedings for the relevant preventative detention order.

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

Part 40 rule 11

- (i) From paragraph (f) omit “.” and insert instead “;.”
- (ii) After paragraph (f) insert:

(g) that the institution of proceedings is not in contravention of section 8 (1) of the Farm Debt Mediation Act 1994 (which relates to enforcement action by a creditor against a farmer in respect of a farm mortgage).

9. The amendment contained in paragraph 8 shall apply to judgments given or entered after 7 April 1995.

EXPLANATORY NOTE

(This note does not form part of the rules)

1. The object of the amendments contained in paragraph 2 is to ensure that the rules make adequate provision in respect of notices of motion filed by, or served on, persons who are not parties to the proceedings in which the motion is to be moved.
2. The object of the amendment contained in paragraph 4 is to correct minor errors which occurred in Amendment No. 290.
3. The object of the amendment contained in paragraph 5 is to provide that an appeal to the Court under s. 1321 of the Corporations Law in respect of an act, omission or decision of a receiver, receiver and manager, liquidator or provisional liquidator appointed by the Court shall be instituted by motion in the proceedings in which the appointment was made and to make other provisions of a minor, incidental or consequential nature.
4. The object of the amendment contained in paragraph 6 is to prescribe the interest on judgment debts and certain other cases at 12% per annum as of 1 March 1995.
5. The object of the amendment contained in paragraph 7 is to assign proceedings in the Court under the Community Protection Act 1994 to the Common Law Division and to provide for the manner in which the proceedings are to be commenced.
6. The object of the amendment contained in paragraph 8 is to require, on entering default judgment for possession of land, an affidavit that the institution of the proceedings is not in contravention of s. 8 (1) of the Farm Debt Mediation Act 1994 (which relates to enforcement action by a creditor against a farmer in respect of a farm mortgage).

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