

1996—No. 153

**SUPREME COURT RULES (AMENDMENT No. 301) 1996**

NEW SOUTH WALES



*[Published in Gazette No. 51 of 26 April 1996]*

1. These rules are made by the Rule Committee on 22 April 1996.
2. The Supreme Court Rules 1970 are amended as follows:
  - (a) Part 1 rule 10 (1) (b)  
Omit “registry” and insert instead “registry and except where paragraph (b1) applies-”.
  - (b) Part 1 rule 10 (1)  
After paragraph (b) insert:  
(b1) in respect of proceedings in the Probate Division to which Part 78 Division 3 applies—a number not preceded by a letter.
  - (c) Part 78 rules 3 and 4  
Omit the rules and insert instead:

**Title**

3. In proceedings in the Probate Division:
  - (a) there shall be added to a document, after the solid line appearing under the name of the filing party, the words “The estate of” with a reference to the name, place of residence and occupation of the deceased at the time of the deceased’s death; and
  - (b) if Part 78 Division 3 applies:
    - (i) Part 65 rule 1 (2), (3) and (4) (which relates to heading and title) shall not apply; and
    - (ii) there shall be added to a summons, after the matter referred to in paragraph (a) the words:
      - (A) “Date of death:”, with a reference to the date of the death of the deceased;
      - (B) “Gross value:”, with a reference to the gross value of the estate;
      - (C) “Net value:”, with a reference to the net value of the estate; and

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(D) “Pages in will:”, with a reference to the number of pages in the will.

(d) Part 78 rule 5 (1) (g1) (ii)  
Omit “\$20,000” and insert instead “\$30,000”.

(e) Part 78 rule 5 (l) (o)  
Omit “\$4,000” and insert instead “\$60,000”.

(f) Part 78 rule 5 (1)

- (i) From paragraph (p) omit “.” and insert instead “;”.
- (ii) After paragraph (p) insert:
  - (q) declaring whether it is satisfied under section 13 (2) (c), section 15A (2) (a) or section 29A (1) of the Probate Act where:
    - (i) rule 34C (1) has been complied with and no appearance has been entered by any person cited; or
    - (ii) the value of the interest in the estate that would be effected by a declaration made under that section does not exceed \$30,000;
  - (r) making orders under section 150 (1) of the Probate Act;
  - (s) making a declaration under section 13 (l) or section 15 (1) of the Children (Equality of Status) Act 1976 where:
    - (i) the person whom it is sought to have declared as the father or mother (“the alleged parent”) of the child in question is deceased; and
    - (ii) the registrar makes the declaration at the same time as the registrar makes a finding as to whether the alleged parent is the father or mother of the child in proceedings to which Division 3 applies for a grant or resealing in respect of the alleged parent’s estate.

(g) Part 78 rule 6 (a)  
Omit “section 18A” and insert instead “section 13 (2) (c), section 15A (2) (a), section 18A or section 29A (l)”.

(h) Part 78 rule 34A  
From the heading to the rule omit “(s. 13 (2))”.

## (i) Part 78 rule 34A

After subrule (1) insert:

(1A) A consent to an order referred to in rule 34C (1) shall be in the form prescribed with an affidavit verifying the consent added to the form of consent.

## (j) Part 78 rule 34C (1)

Omit the subrule and insert instead:

(1) A person whose interests would be adversely affected by an order under section 13 (2) (c), section 15A (2) (a) or section 29A (1) of the Probate Act shall, within 14 days of commencement of proceedings for the order, be cited to see the proceedings unless the person has consented as prescribed by rule 34A.

## (k) SCHEDELE F

After Form 106B insert:

**Form 106CA***P. 78, r. 34A (IA)***CONSENT TO ORDER**

I (*name*) of (*place*) (*occupation*) would receive the following benefit under the will dated (*date*) of (*name of deceased*) if the order set out below is not made (*specify benefit*).

If the order is made my benefit would be (*specify benefit*).

I am over 18 years of age. I am not an undischarged bankrupt. I have not assigned or encumbered any interest that I may have in the estate of the deceased.

I consent to an order being made that (*specify order*).

Dated:                   (*date*).

Signed in the }  
presence of      }

**AFFIDAVIT OF WITNESS TO CONSENT**

On (*date*) I (*name, address and occupation*) say on oath:

1. The above document was signed in my presence on (*date*) by (*name*).

2. The signatures (set these out) are respectively my signature and that of (*name of person consenting*).

Sworn at                   }  
before me                }

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**(1) SCHEDULE F Forms 114, 115 and 115A**

In each form after “labourer” insert where secondly occurring “who died on (date of death)”.

**(m) SCHEDULE F Index of Forms**

After the matter relating to Form 106B, insert:

106CA. Consent to order (P. 78, r. 34A (IA)).

3. The amendments contained in paragraph 2 (h), (i), (j), (k) and (m) shall have effect in respect of proceedings commenced on or after 1 July 1996.

4. The amendment contained in paragraph (1) shall have effect in respect of caveats lodged OR or after 1 July 1996.

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

**(a) Part 12 rule 4 (t)**

Omit “.” and insert instead “;”.

**(b) Part 12 rule 4**

After paragraph (t) insert:

(u) sections 205F (l), 206 (6), 207 (2), 221 and 245 (1) of the Customs Act 1901 of the Commonwealth;

**(c) Part 15 rule 24**

After subrule (1) insert:

(1a) Where a tender is made to which section 224 of the Customs Act 1901 of the Commonwealth applies:

(a) subrule (1) shall not apply to a defence which pleads the tender; and

(b) the amount tendered may be paid into Court when entering the defence.

**(d) Part 52A rule 18**

Omit “24” and insert instead “24 (1)”.

**(e) SCHEDULE B Part 3**

After paragraph 21 insert:

22. Trial (except with a jury) of proceedings under section 205F (1) or section 206 (6) or section 207 (2) or section 243T (3) of the Customs Act 1901 of the Commonwealth.

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

Part 12 rule 4

After paragraph (u) insert:

(v) section 107A (3) and (4) of the Telecommunications (Interception) Act 1979 of the Commonwealth;

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

(a) Part 12 rule 4

After paragraph (v) insert:

(w) sections 69E (1); 69L and 69R (3) of the Wildlife Protection (Regulation of Exports and Imports) Act 1982 of the Commonwealth.

(b) SCHEDE D Part 3

After paragraph 22 insert:

23. Trial (except with a jury) of proceedings under section 69E (1) or section 69L or section 69R (3) or section 69W (4) of the Wildlife Protection (Regulation of Exports and Imports) Act 1982 of the Commonwealth.

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

(a) Part 14 rule 3 (d)

Omit “,” and insert instead “:”.

(b) Part 14 rule 3

Omit paragraph (e).

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

(a) Part 1 rule 8

From the definition of “medical practitioner” omit “Medical Practitioners Act 1938” and insert instead “Medical Practice Act 1992”.

(b) SCHEDE H

Omit the reference to the Medical Practitioners Act 1938 and the matter relating to it.

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

(a) Part 75 rule 3E

Omit the rule and insert instead:

**Bail application**

3E. An application to the Court:

(a) for bail pursuant to section 22 of the Bail Act 1978, where the accused person is not then appearing before the Court; or

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(b) pursuant to Part 6 of the Bail Act 1978, if made by or on behalf of an accused person,  
 shall be in the prescribed form.

(b) **SCHEDULE F**  
 Omit Form 74AF and Form 74AG and insert instead:

**Form 74AF***P. 75. r. 3E.**(No heading or title)***BAIL ACT 1978****APPLICATION TO THE SUPREME COURT OR THE COURT OF CRIMINAL APPEAL FOR BAIL OR REVIEW OF BAIL OR VARIATION OF EXISTING BAIL CONDITIONS.**

1. I, ..... (full name)  
 of .....  
 ..... (address) ..... Phone No) ..... MIN if known)  
 make application for:

bail  
 review of bail determination  
 variation of existing bail conditions only

**NOTE**

(a) *You must nominate only ONE of the above choices.*

(b) *If you:*

(i) *remain in custody because any bail condition has not been complied with; and*

(ii) *want only bail conditions varied,*

*you should choose “variation of existing bail conditions only” above. If the bail condition you want varied was imposed by a court other than the Supreme Court and you remain in custody because that bail condition has not been complied with, you must make your application to that other court, not to the Supreme Court*

2. What is your date of birth? .....

3. Do you need an interpreter?  Yes  No  
 If Yes, what language? .....

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4. If you are an Aborigine or Torres Strait Islander:

(a) Do you want the Aboriginal Legal Service to represent you in your application?  Yes  No

(b) If Yes, do not answer Question 5.

5. Do you want the Legal Aid Commission to represent you in your application?  Yes  No

If No, who will represent you at the hearing of your application? .....

..... (name of solicitor and firm and, if known, fax no)

6. To what charges does your application apply? .....

.....

.....

.....

7. (a) What is the date of your next appearance in court on these charges?

.....

(b) In which court are you appearing next?

Court of Criminal Appeal  Supreme Court  
 District Court  Local Court

at .....

8. Have you had a committal hearing at the Local Court? i

Yes  No

(a) If Yes:

(i) What was the date? .....

(ii) Which Local Court? .....

(b) If No, has a date been set for the committal hearing at the Local Court?  Yes  No

If Yes:

(i) What was the date? .....

(ii) Which Local Court? .....

(c) Have you been committed for trial or sentence?

Yes  No

If Yes:

(i) was it for  trial  sentence

(ii) which court  Supreme Court  District Court

at .....

(d) Are you presently on appeal after trial or sentence?

Yes  No

If Yes, which court?  Court of Criminal Appeal

District Court

9. Are there any co-accused (or co-defendants) in this matter?

Yes  No

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If Yes, who? .....

.....

10. Are you presently in custody?  Yes  No

If Yes, please answer the following:

(a) What date were you taken into custody of these charges? .....

(b) Are you presently serving a sentence?  Yes  No

If Yes, when are you due for release? .....

(c) Which gaol are you presently in? .....

(d) If released on bail, where do you intend to live? .....

..... (address) (.....) Phone No)

11. Who is the police officer in charge of your case? .....

ANSWER QUESTIONS 12 TO 15 ONLY IF YOU REPLIED  
*"VARRIATION OF EXISTING BAIL CONDITIONS ONLY"* TO THE  
 CHOICE IN PARAGRAPH 1.

12. If you are you in custody, is it only because you have not complied with a condition of the bail which you are seeking to have varied?

Yes  No

13. What court granted the bail, a condition of which you seek to have varied?

Court of Criminal Appeal  Supreme  
 District Court  Local Court

*NB If the bail condition you want varied was imposed by a court other than the Supreme Court and you remain in custody because that bail condition has not been complied with, you must make your application to that other court, not to the Supreme Court.*

14. What variation are you asking for? .....

.....  
 .....  
 .....

15. On the previous grant of bail, was there any surety involved?

Yes  No

If Yes, please state the name and address of each surety .....

.....  
 .....  
 .....

**NOTE**

*If a surety was involved, unless the surety appears in person at the hearing of this application and consents to it, you will be required to produce at court at the hearing of this application:*

- (a) evidence of notification of the surety of the date of listing of this application and of the nature of the variation sought; AND*
- (b) the written consent of the surety to that variation.*

16. If this application is to the Supreme Court:

- (a) Is this your  1st  2nd  3rd  4th  More application of any kind to the Supreme Court in relation to bail?
- (b) If the answer to (a) is not "1st", please state the special facts or special circumstances which justify the making of this further application.

*IF THIS APPLICATION IS TO THE SUPREME COURT, YOUR APPLICATION WILL NOT BE ENTERTAINED UNTIL A SATISFACTORY ANSWER IS GIVEN TO THIS QUESTION.*

*REPRESENTATIVES OF THE LEGAL AID COMMISSION (OR, WHERE APPLICABLE, THE ABORIGINAL LEGAL SERVICE) WILL ASSIST APPLICANTS WITH THIS QUESTION IF REQUIRED*

.....  
.....  
.....  
.....  
.....  
.....  
.....

17. If this form is completed by a solicitor on behalf of the applicant, what approximate time is it anticipated that the hearing of the application will take?

.....

18. Any other comments you wish to make .....

.....  
.....  
.....  
.....  
.....  
.....  
.....

*NOTE*

(a) *This note applies only if:*

- (i) *this application is to the Supreme Court and will be heard in Sydney;*
- (ii) *you are a male; and*
- (iii) *at the time this application is filed in the Court, you are in custody but are NOT in:*
  - (A) *a detention centre within the meaning of the Children (Detention Centres) Act 1987; or*
  - (B) *the Parramatta Correctional Centre, the John Morony Correctional Centre, the Parklea Correctional Centre or the Silverwater Correctional Complex.*

(b) *Subject to paragraph (c), the hearing of this application will be conducted by means of video link facilities without your personal attendance at court. Video link facilities allow two-way audio and visual communication of television standard between the Court and the Long Bay Correctional Complex, including private communication between you and your legal representative. If you are in a country correctional centre, you will be sent to the Long Bay Correctional Complex for the hearing.*

(c) *The Court may, if it is in the interests of justice to do so, order that the hearing of this application is not to be conducted by video link. An application for such an order:*

- (i) *must be in the prescribed form, which is available on request;*
- (ii) *must be filed with this application, together with any supporting documents;*
- (iii) *will be dealt with before this application is placed in the list for hearing; and*
- (iv) *may be dealt with by the Court in the absence of the public and without any attendance by or on behalf of yourself*

Signed ..... Date ..... 199 ....

**EXPLANATORY NOTE**

*(this note does not form part of the rules)*

1. The object of the amendments contained in paragraphs 2 (a), (b) and (c) are to clarify the requirements concerning the heading of documents in the Probate Division.
2. The object of the amendment contained in paragraph 2 (d) is to increase from \$20,000 to \$30,000 the upper limit of the value of the interest in an estate that would be affected by a declaration made by a registrar under s. 18A of the Wills, Probate and Administration Act 1898.

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3. The object of the amendment contained in paragraph 2 (e) is to increase from \$4,000 to \$60,000 the gross value of real estate, the sale, lease or mortgage of which may be authorised by a registrar where no objection is raised.

4. The object of the amendments contained in paragraphs 2 (f) and (g) is to allow registrars to exercise the powers of the Court under ss. 13 (2) (c), 15A (2) (a), 29A (1) and 150 (1) of the Wills, Probate and Administration Act 1898 and to provide for a review by the Court of a registrar's decision under the first 3 mentioned sections.

5. The object of the amendments contained in paragraphs 2 (h), (i), (j) (k) and (m) is to require interested persons who do not consent to applications under ss. 13 (2) (c), 15A (2) (a), 29A (1) of the Wills Probate and Administration Act 1898 to be cited unless they have consented to the orders sought.

6. The object of the amendment contained in paragraph 2 (1) is to require the date of death of the deceased to be shown in a caveat.

7. The object of the amendment contained in paragraphs 5 (a) and 1 (b) is to assign to the Common Law Division proceedings under various sections of the Customs Act 1901 of the Commonwealth.

8. The object of the amendments contained in paragraphs 5 (c) and (d) is to take account of section 224 of the Customs Act 1901 of the Commonwealth.

9. The object of the amendment contained in paragraph 5 (e) is to allow masters to exercise the powers of the Court on a trial (except with a jury) of proceedings under section 205F (1) or section 206 (6) or section 207 (2) or section 243T (3) of the Customs Act 1901 of the Commonwealth.

10. The object of the amendment contained in paragraph 6 is to assign to the Common Law Division applications under section 107A (3) and (4) of the Telecommunications (Interception) Act 1979 of the Commonwealth.

11. The object of the amendment contained in paragraph 7 (a) is to assign to the Common Law Division proceedings brought under sections 69E (1), 69L and 69R (3) of the Wildlife Protection (Regulation of Exports and Imports) Act 1982 of the Commonwealth.

12. The object of the amendments contained in paragraph 7 (b) is to allow masters to exercise the powers of Court under sections 69E (1), 69L, 69R (3) and 69W (4) of the Wildlife Protection (Regulation of Exports and Imports) Act 1982 of the Commonwealth.

13. The object of the amendment contained in paragraph 8 is to omit a superfluous provision.

14. The object of the amendment contained in paragraph 9 is to replace a reference to the Medical Practitioners Act 1938 with a reference to the Medical Practice Act 1992, which replaces it, and to omit a superseded reference to the 1938 Act.

15. The object of the amendment contained in paragraph 10 is to prescribe a form to be used for all bail applications to the Court of Criminal Appeal or to the Supreme Court in place of the existing 2 forms and to make the form easier to use.

M. A. Blay, Secretary of the Rule Committee

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