

**SUPREME COURT RULES (AMENDMENT No. 303) 1996**

NEW SOUTH WALES



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1. These rules are made by the Rule Committee on 15 July 1996.
2. The Supreme Court Rules 1970 are amended as follows:

(a) Part 36

After rule 13D insert:

**Published research concerning maintenance of children**

13E. Where the proper needs of a minor are relevant, the Court may have regard, to the extent to which it considers it appropriate, to any relevant findings of published research in relation to the maintenance of minors.

cf. Family Law Act 1975 (Com)

3. The amendment contained in paragraph 2 shall have effect on 1 October 1996.

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

Part 52A rule 36

Omit the rule.

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

Part 77

After rule 112 insert—

**Division 42—Forfeiture Act 1995**

**Commencement of proceedings**

113. Proceedings in the Court under the Forfeiture Act 1995 shall be commenced by summons in the Equity Division.

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

Part 77

After rule 113 insert:

**Division 43—Electricity Supply Act 1995****Assignment of business**

114. Proceedings in the Court under section 95 of the Electricity Supply Act 1995 (“the subject Act”) are assigned to the Administrative Law Division.

**Service of certificate**

115. The Minister shall serve any certificate made pursuant to section 95 (3) of the subject Act upon the appellant.

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

(a) Part 65 rule 7 (2)

Omit “Principal”.

(b) Part 77 Division 5

Omit the Division.

(c) Part 78 rules 25 (3) and 25A (3)

(i) Omit “Principal” wherever occurring.

(ii) Omit “48A of the Registration of Births, Deaths and Marriages Act 1973” wherever occurring and insert instead “50 of the Births, Deaths and Marriages Registration Act 1995”.

8. The amendment contained in paragraph 7 shall not apply to an application pending under section 13 of the registration of Births, Deaths and Marriages Act 1973 immediately before the repeal of that Act.

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

(a) Part 1 rule 8

Omit the definition of “document” and insert instead:

“document” means any record of information, and includes:

(a) anything on which there is writing;

(b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;

(c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or

(d) a map, plan, drawing or photograph.

## (b) Part 23

Omit the Part and insert instead:

**PART 23—DISCOVERY AND INSPECTION OF DOCUMENTS****Definitions**

1. In this Part:

- (a) “document” includes any part of a document;
- (b) “excluded documents” means in relation to proceedings, subject to any order of the Court to the contrary:
  - (i) any document filed in the proceedings and any copy thereof;
  - (ii) any document served on the party A (as described in rule 3 (1)) after the commencement of the proceedings and any copy thereof;
  - (iii) any document which wholly came into existence after the commencement of the proceedings;
  - (iv) any additional copy of a document included in a list of documents under rule 3 (5), which contains no mark, deletion or other matter, relevant to a fact in issue, not present in the document so included; and
  - (v) any document comprising an original written communication sent by party B prior to the date of commencement of the proceedings of which a copy is included in a list of documents under rule 3 (5).
- (c) “privileged document” means in relation to proceedings:
  - (i) a document of which evidence could not be adduced in the proceedings over the objection of any person, by virtue of the operation of Part 3.10 of the Evidence Act 1995;
  - (ii) a document that relates to matters of state within the meaning of section 130 of the Evidence Act 1995, unless and until the Court directs that it cease to be a privileged document;
  - (iii) where a claim is made against a party for the recovery of a statutory penalty or for the enforcement of a forfeiture, a document which is or has been in the possession, custody or power of that party which is:

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- (A) relevant to a fact in issue on that claim; and
- (B) not relevant to a fact in issue on my claim made in the proceedings other than for the recovery of a statutory penalty or for the enforcement of a forfeiture;
- (d) a document or matter is to be taken to be relevant to a fact in issue if it could, or contains material which could, rationally affect the assessment of the probability of the existence of that fact (otherwise than by relating solely to the credibility of a witness), regardless of whether the document or matter would be admissible in evidence.

**Notice to produce for inspection**

2.(1) A party (party A) may by notice served on another party (party B) require party B to produce for the inspection of party A:

- (a) any document (other than a privileged document) referred to in any originating process, pleading, affidavit or witness statement filed or served by party B;
- (b) my other specific document (other than a privileged document) clearly identified in the notice, relevant to a fact in issue.

(2) The maximum number of documents which party A may require party B to produce in reliance on subrule (1) (b), whether by one or more notices, is 50.

(3) Party B, upon being served with a notice under subrule (1), shall within a reasonable time:

- (a) produce for the inspection of party A such of the documents as are in the possession, custody or power of party B;
- (b) in respect of any document which is not produced, serve on party A a notice stating in whose possession the document is, to the best of the knowledge, information and belief of party B, or that party B has no knowledge, information or belief as to that matter.

(4) A notice under subrule (1) may specify a time for production of all or any of the documents required to be produced. If the time specified is 14 days or longer after service of the notice it is to be taken to be a reasonable time for the purpose of subrule (3) unless the contrary is shown. If the time specified is less than 14 days after service of the notice it is to be taken to be less than a reasonable time unless the contrary is shown.

**Order for discovery**

3. (1) The Court may, on the application of a party or of its own motion, order that any party (party B) give discovery to any other party (party A) or parties (each of which is included in the expression “party A”) of:

- (a) documents within a class or classes specified in the order;
- (b) one or more samples (selected in such manner as the Court may specify) of documents within such a class.

(2) A class of documents shall not be specified in more general terms than the Court considers to be justified in the circumstances.

(3) Subject to subrule (2), a class of documents may be specified:

- (a) by relevance to one or more facts in issue;
- (b) by description of the nature of the documents and the period within which they were brought into existence;
- (c) in such other manner as the Court considers appropriate in the circumstances.

(4) The effect of an order for discovery under subrule (1) is that the parties involved are required to comply with the succeeding provisions of this rule.

(5) Party B must, within 28 days of the order being made (or of notice of the order being received by party B, if party B was not present or represented when the order was made) or such other period as the Court may specify, serve on party A:

- (a) a list, complying with subrule (6), of all the documents or samples specified in the order (other than excluded documents) which:
  - (i) are in the possession, custody or power of party B; or
  - (ii) are not, but were later than 6 months prior to the commencement of the proceedings, in the possession, custody or power of party B;
- (b) an affidavit made in accordance with subrule (7) stating:
  - (i) that the deponent has made reasonable enquiries and:
    - (A) believes that there are no documents (other than excluded documents) falling within any of the classes specified in the order which are, or were later than 6 months prior

to the commencement of the proceedings, in the possession, custody or power of party B other than those referred to in the list of documents;

- (B) believes that the documents in part 1 of the list are within the possession, custody or power of party B;
- (C) believes that the documents in part 2 of the list are within the possession or power of the persons (if any) respectively specified in that part;
- (D) as to any document in part 2 in respect of which no such person is specified, that the deponent has no belief as to whose possession or power the document is in; and

- (ii) in respect of any document which are claimed to be privileged documents, the facts relied on as establishing the existence of the privilege; and

- (c) where party B is represented by a solicitor, a certificate by that solicitor stating:
  - (i) that the solicitor has advised party B as to the obligations arising under an order for discovery (and where party B is a corporation, which officers of party B have been so advised); and
  - (ii) that the solicitor is not aware of any documents within any of the classes specified in the order (other than excluded documents) which are, or were later than 6 months prior to the commencement of the proceedings, in the possession, custody or power of party B, other than those referred to in the list of documents.

- (6) The list of documents shall:
  - (a) be divided into two parts, of which part 1 relates to documents in the possession, custody or power of party B, and part 2 relates to documents which are not, but were later than 6 months prior to the commencement of the proceedings, in the possession, custody or power of party B;
  - (b) include a brief description by reference to nature and date (or period) of each document or group of documents, and in the case of a group, the number of documents in that group;

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(c) specify against the description of each document or group in part 2 of the list the person (if any) in whose possession the document or group of documents is believed to be;

(d) identify any document or group of documents which is claimed to be privileged, and specify:

(i) any provision of Part 3.10 of the Evidence Act 1995 under which the privilege is claimed to arise; or

(ii) the circumstances which it is claimed bring the document or group of documents within rule 1 (c) (ii) or (iii).

(7) The affidavit shall be made:

(a) where party B is a natural person and not a disable person—by party B;

(b) where party B is a disable person—by party B's tutor;

(c) where party B is a corporation—by an officer of the corporation having knowledge of the facts so far as they are known to the corporation, or by its liquidator or provisional liquidator;

(d) where party B is the Crown—by an officer of the Crown having knowledge of the facts so far as they are known to the Crown.

(8) If any time after the affidavit is made, and before the end of the trial or hearing, party B becomes aware:

(a) that any document within the class or classes specified in the order (not being an excluded document) but not included in part 1 of the list of documents is within, or has come into, party B's possession, custody or power; or

(b) that any document included in part 1 of the list of documents which was claimed to be a privileged document, was not, or has ceased to be, a privileged document,

party B shall thereupon give written notice to party A of that fact and comply with subrule (10) in respect of the document, as if that document had been included in part 1 of the list of documents and the list had been served on the date of the giving of such notice.

(9) Party B shall ensure that the documents described in part 1 of the list (other than privileged documents) are:

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- (a) at the time the list of documents is served on party A and for a reasonable time thereafter, physically kept and arranged in a way that makes the documents readily accessible, and capable of convenient inspection by party A; and
- (b) at the time the list of documents is served on party A and until completion of the trial of the proceedings, identified in a way that enables particular documents to be readily retrieved.

(10) Within 21 days after service of the list of documents, or within such other period or at such other times as the Court may specify, party B shall, on request by party A:

- (a) produce for inspection by party A the documents described in part 1 of the list (other than privileged documents);
- (b) make available a person who is able to, and does on request by party A, explain the way the documents are arranged and assist in locating and identifying particular documents or classes of documents;
- (c) provide facilities of the inspection and copying of such of the documents (other than privileged documents) as are not capable of being copied by photocopying;
- (d) subject to an undertaking being given by the solicitor for party A to pay the reasonable costs thereof (or if party A has no solicitor, subject to party A providing to party B an amount not less than a reasonable estimate of the reasonable costs of the use thereof), provide photocopies of, or photocopying facilities for the copying of, such of the documents as are capable of being copied by photocopying.

(11) No copy document, or information from a document, obtained by party A as a result of discovery by party B shall be disclosed or used otherwise than for the purposes of the conduct of the proceedings, without the leave of the Court, unless the document has been received into evidence in open Court.

(12) Nothing in subrule (11) shall affect the power of the Court to make an order restricting the disclosure or use of any document whether or not received into evidence, or the operation of any such order.

### **Powers of Court**

4. The Court may, on the application of a party, or of its own motion:

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- (a) by order discharge, vary or extend any of the obligations arising under rules 2 and 3;
- (b) determine any question of privilege or other question arising from the operation of this Part;
- (c) where a party does not comply with an obligation arising under rules 2 and 3:
  - (i) by order, dismiss or limit any claim made by that party;
  - (ii) by order, strike out or amend any pleading filed by that party;
  - (iii) strike out, disallow or reject any evidence which that party has adduced or seeks to adduce;
  - (iv) require that party to pay the whole or part of the costs of another party of the proceedings; or
  - (v) make such other order as the Court considers appropriate in the circumstances.

### **Personal injury claims**

5. Rule 2(1)(b) and rule 3 shall not apply to proceedings on a common law claim for damages arising out of the death of, or bodily injury to, any person or for contribution in respect of damages so arising, unless the Court, for special reasons, otherwise orders.

### **Contempt**

6. Neither the provisions of rule 4 (c) nor any order made thereunder shall affect the liability of a party or any other person for contempt of court in respect of any breach of an order for discovery under rule 3 (1).

(c) SCHEDULE E Part 1

Omit:

Part 23 Discovery and inspection of documents

(d) SCHEDULE F Forms 31 and 32

Omit the forms.

10. The amendment contained in paragraph 9 shall apply to proceedings commenced on or after 1 October 1996.

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

Part 77

After rule 115 insert:

Division 44—Gas Supply Act 1996

**Assignment of business**

116. Proceedings in the Court under section '17 of the Gas Supply Act 1996 ("the subject Act") are assigned to the Administrative Law Division.

**Service of certificate**

117. The Minister shall serve any certificate made pursuant to section 17 (3) of the subject Act upon the appellant.

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

Schedule H Part 1

Insert in alphabetical order in the appropriate column:

Police Integrity Commission Act 1996 All provisions

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

Part 51

After rule 35 insert:

**Powers of the registrar**

36. (1) The registrar may exercise the powers of Judge of Appeal under section 46 (1) and (2) of the Act.

(2) The registrar shall, on the direction of the President or the Judge for the time being responsible for the Court of Appeal's list, refer any motion to the Court of Appeal or a Judge of Appeal.

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

(a) Part 50 rule 5

(i) Omit from paragraph (a) "or of the Territory of Papua and New Guinea".

(ii) In paragraph (a) after "State" insert "or Territory".

(iii) Omit from paragraph (c), "1919" and insert instead "1993".

(iv) Omit paragraph (f) and insert instead:

(f) on interest bearing deposit in:

(i) a bank authorised to carry on the business of banking under any law of the Commonwealth or of a State or Territory of the Commonwealth;

(ii) a building society; or

(iii) a credit union.

**(b) SCHEDULE H Part 1**

Omit the reference to the Local Government Act 1919 and the matter relating to it.

15. The amendments contained in paragraph 14 (a) (i) and (iii) commence on 1 September 1996 or the day on which the Financial Institutions (Miscellaneous Amendments) Act 1996 commences, whichever is the later.

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

**SCHEDULE F Form 89C**

In paragraph 5 omit “(*times*) (or at any time)” and insert instead “(*times of day*) (or at any time of day)”.

**EXPLANATORY NOTE**

*(This note does not form part of the rules).*

1. The object of the amendment contained in paragraph 2 is to allow the court to have regard to relevant findings of public research in relation to the maintenance of minors.

2. The object of the amendment contained in paragraph 4 is to omit a rule restricting recovery of costs of counsel appearing before a registrar, which has become inappropriate following changes to the way in which costs are assessed.

3. The object of the amendment contained in paragraph 5 is to require that proceedings in the Court under the Forfeiture Act 1995 be commenced by summons in the Equity Division.

4. The object of the amendments contained in paragraph 6 is to assign proceeding in the Court under section 95 of the Electricity Supply Act 1995 to the Administrative Law Division and to require the Minister to serve any certificate made under that section upon the appellant.

5. The object of the amendment contained in paragraph 7 is to make changes required by reason of the replacement of the Registration of Births, Deaths and Marriages Act 1973 by the Births, Deaths and Marriages Registration Act 1995.

6. The object of the amendment contained in paragraph 9 is to substitute, for the existing provisions relating to discovery and inspection of documents, new provisions which:

(a) limit the right to require; and

(b) set up new procedures for,

discovery and inspection of documents, and certain ancillary matters.

7. The object of the amendments contained in paragraph 11 is to assign proceeding in the Court under section 17 of the Gas Supply Act 1996 to the Administrative Law Division and to require the Minister to serve any certificate made under that section upon the appellant.

8. The purpose of the amendment contained in paragraph 12 is to assign business under the Police Integrity Commission Act 1996 to the Administrative Law Division.

9. The objects of the amendment contained in paragraph 13 is to:

- (a) allow the registrar to exercise the powers of a Judge of Appeal under s.46(1) and (2) of the Supreme Court Act 1970; and
- (b) provide that the registrar shall, on the direction of the President or the Court of Appeal List Judge, refer any motion to the Court of Appeal or a Judge of Appeal.

10. The object of the amendment contained in paragraph 14 is to update provisions relating to investments of funds in Court to take account of changes that have occurred since the rule was last amended.

11. The object of the amendment contained in paragraph 16 is to clarify paragraph 5 of Form 89C.

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

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