



New South Wales

SUPREME COURT RULES (AMENDMENT No. 305) 1996

1. These rules are made by the Rule Committee on 21 October 1996.
2. The Supreme Court Rules 1970 are amended as follows:
 - (a) Part 17 rule 4
 - (i) renumber the rule as subrule 4(1).
 - (ii) omit "plaintiff" and insert instead "plaintiff, subject to satisfying the requirements of subrule (2),".
 - (iii) After subrule (1) insert:
 - (2) A plaintiff applying to enter judgment under this rule shall file an affidavit which:
 - (a) is in accordance with the prescribed form;
 - (b) subject to subrule (3), is made by the plaintiff or, where there is more than one plaintiff, by one of them;
 - (c) sets out the facts entitling the deponent under paragraph (b) to make the affidavit;
 - (d) states the source of the deponent's knowledge of the matters stated in the affidavit concerning the debt or debts;
 - (e) states that the deponent believes these matters to be true; and
 - (f) is sworn not earlier than 14 days before the day on which it is filed.
 - (3) In subrule (2), in the case of a plaintiff which is:
 - (a) a disable person—an affidavit by the person's tutor;
 - (b) a corporation—an affidavit by a member or officer of the corporation having knowledge of the facts so far as they are known to the corporation;
 - (c) a body of persons lawfully suing or being sued in the name of the body or in the name of any officer or other person—an affidavit by a member or officer of the body having knowledge of the facts so far as they are known to the body;

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- (d) the Crown—an affidavit by an officer of the Crown having knowledge of the facts so far as they are known to the Crown;
 - (e) a company to which a liquidator or provisional liquidator has been appointed—an affidavit by the liquidator or provisional liquidator;
 - (f) not referred to in any of the preceding paragraphs—an affidavit by an employee of the plaintiff having knowledge of the facts so far as they are known, to the plaintiff,

is taken to be an affidavit by the plaintiff.

(4) In subrule (3), "Crown" includes not only the Crown in right of New South Wales but also the Crown in any other capacity.

(b) **SCHEDULE F**

After Form 20B insert:

Form 20C

P. 17, r. 4 (2)

AFFIDAVIT OF DEBT

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

- 1. *(Set out the matters referred to in Part 17 rule 4(2) (c))*
- 2. *(Set out the matters referred to in Part 17 rule 4 (2) (d))*
- 3. I believe that the defendant is indebted to (me or the plaintiff) in respect to the cause of action the subject of these proceedings in the sum of \$ *(amount)*, made up as follows:

\$

Amount owing at the time of commencement of proceedings:

[Explain any discrepancy between this amount and the amount claimed in the statement of claim]

[If applicable] Interest accrued from the date of commencement of proceedings to the date hereof:

Give particulars of the rate of interest, the amount on which it is charged and the period during which it is charged]

[Give the date and amount of any payment made or credit accrued, since the commencement of proceedings, that reduces the amount for which judgment is sought and deduct it from the total]

TOTAL

(total)

4. *[If applicable] Interest will continue to accrue at the rate of \$ (amount) per day until judgment (subject to any future payment on account of the debt).]*

[If an order for interest under section 94 of the Supreme Court Act 1970 is claimed, give sufficient particulars to enable the amount of that interest to be calculated and the daily rate in dollars and cents from the date of the affidavit until judgment]

5. No payment has been made, and no credit has accrued, since the commencement of proceedings that reduces the amount for which judgment is sought *[if applicable other than as set out above]*.

6. *[I am or The plaintiff is] entitled to judgment for costs of \$ (amount) made up as follows:*

(Give particulars of how costs are made up)

Sworn at

before me

(c) SCHEDULE F Index of Forms

After the matter relating to Form 20B, insert:

20C. Affidavit of debt (P. 17, r. 4 (2))

3. The amendments contained in paragraph 2 shall commence on 1 January 1997.

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

(a) Part 6 rule 5A

Omit the heading to the rule and renumber the rule as subrule (4) of rule 5.

(b) Part 6 rule 5(1)

Omit "on that date" and insert instead "as soon as practicable".

(c) Part 6 rule 8

Omit the rule.

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- (d) Part 6 rules 9—16
Renumber the rules as 8—15 respectively.
 - (e) Part 6 rule 11
Omit the rule.
 - (f) Part 5 rule 12 (1)
Add the following footnote to the rule:
See Part 40 rule 8.
 - (g) Part 15 rule 3 (3)
Omit “10” and insert instead “9”.
 - (h) Part 20 rule 1 (3A)
Omit “shall” and insert instead “shall, subject to rule 4.”.
 - (i) Part 20 rule 1 (4)
After “order” insert “or of a certificate”.
 - (j) Part 20 rule 4(1)
Omit “(2),”.
 - (k) Part 20 rule 7 (2)
Omit the rule and insert instead:
A filed document amended under this rule shall be marked with a statement specifying the date of the amendment and:
 - (a) if the amendment is made pursuant to an order—the date of the order, or
 - (b) otherwise—a reference to the rule authorising the amendment.
 - (l) Part 20 rule 10 (1)
Omit the subrule and insert instead:
 - (1) Where there is a clerical mistake, or an error arising from an accidental slip or omission, in a minute of a judgment or order, or in a certificate, the Court, on the application of any party or of its own motion, may, at any time, correct the mistake or error.
 - (m) Part 21 rule 4
Omit the rule.
 - (n) Part 21 rule 5 (3)
Omit the rule and insert instead:
 - (3) A notice under subrule (1) effecting a discontinuance under rule 2 (a) may contain a statement that no order will be sought as to the costs occasioned by the discontinued claim and incurred before service of the notice.

- (o) Part 21 rule 6
Omit “on the day of filing” and insert instead “as soon as practicable”.
- (p) Part 21 rule 7
After “terms of” insert “any consent to the discontinuance or of”.
- (q) Part 22 rule 8 (1) (b)
After “defendant,” insert “an order”.
- (r) Part 22
After rule 11 insert:

Division 3—Offer to contribute

Offer to contribute

12. Where in any proceedings:

- (a) a party (“the first party”) stands to be held liable to another party (“the second party”) to contribute towards any debt or damages which may be recovered against the second party in the proceedings;
- (b) the first party, at any time after entering an appearance, makes an offer to the second party to contribute to a specified extent to the debt or damages; and
- (c) the offer is made without prejudice to the first party’s defence, the offer shall not be brought to the attention of the Court or, as the case may require, to the arbitrator, until all questions of liability or amount of debt or damages have been decided.

cf. RSC. (Rev) 1965, Q 16r.10.

(2) In subrule (1), a reference to debt or damages includes a reference to interest claimed:

- (a) under section 94 of the Act, on the debt; or
 - (b) under section 94 of the Act or section 73 of the Motor Accidents Act 1988 or section 15IM of the Workers Compensation Act 1987, on the damages.
- (s) Part 52A rule 22 (7)
Omit “5” and insert “6”.
 - (t) Part 52A rule 22 (8)
After “the interest” insert “or damages in the nature of interest”.

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(u) Part 52A rule 22 (10)

Omit the subrule and insert instead:

(10) If, a reasonable time before the Court makes an order under subrule (4) or subrule (6), the party to whom the offer is made requests the party making the offer to satisfy the Court that the party making the offer was at all material times willing and able to carry out the offer:

- (a) if the Court is so satisfied—the party making the request shall pay the costs of the party to whom the request is made occasioned by the request, or
- (b) otherwise:
 - (i) subrules (4) and (6) shall not apply; and
 - (ii) the party to whom the request is made shall pay the costs of the party making the request occasioned by the request,

unless the Court otherwise orders.

(11) Unless the Court otherwise orders, any application for an order for costs under subrule (4) or subrule (6) must be made immediately after the order or judgment giving rise to the entitlement to the order for costs is made or given.

(v) SCHEDULE F Form 10

Omit “13” wherever occurring and insert instead “12”.

5. The amendments contained in paragraph 4 shall commence on 1 January 1997.

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

Part 1 rule 9A

After “filing” insert “, including a document sought to be filed under rule 9B”.

7. The amendment contained in paragraph 6 shall commence on 1 November 1996.

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

(a) Part 38 rule 4

Omit the rule and insert instead:

Annexures, exhibits and length of affidavits

4. (1) Subject to subrule (2) a document to be used in conjunction with an affidavit may be made:

- (a) an annexure; or

(b) an exhibit,

to the affidavit.

(2) Except by leave of the Court, an affidavit, together with annexures, must not exceed 50 pages.

(3) An annexure to an affidavit must be identified as such by a certificate endorsed on the annexure (and not on a page separate from the annexure) signed by the person before whom the affidavit is made.

(4) An exhibit to an affidavit must be identified as such by a certificate attached to the exhibit entitled in the same manner as the affidavit and signed by the person before whom the affidavit is made.

(5) An exhibit to an affidavit must not be filed.

(6) A party who serves an affidavit to which a document is an exhibit shall, at the option of any other party:

- (a) produce the document for inspection by that other party;
- (b) provide a photocopy of the document to that other party; or
- (c) produce the document at some convenient place to enable it to be photocopied by that other party.

(7) Where it would be convenient for the Judge or other judicial officer expected to hear a matter to peruse the exhibit prior to its tender, the exhibit (or a copy thereof) should be delivered to the chambers of the Judge or other judicial officer within 2 days prior to the expected hearing.

(b) **SCHEDULE E Part 1**

In the matter relating to Part 38 insert, in the appropriate columns, before the matter relating to rule 5:

Rule 4 (2) Leave for affidavit, together with annexures, to exceed 50 pages

9. The amendment contained in paragraph 8 shall commence on 1 January 1997.

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

(a) Part 4 rule 2 (2) (a) and (b)

Omit "rule I" and insert instead "rule 1(1)" wherever occurring.

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- (b) Part 6 rule 15 (3)
Omit “under Part 5 rule 7, Part 5 rule 11, Part 14 rule 3, Part 14 rule 5 or Part 14 rule 9”.
 - (c) Part 12 rule 5 (a) (x)
Omit “6” and insert instead “5”.
 - (d) Part 14 rule 3
After paragraph (a) insert:
 - (ai) Part 4 rule 2 (1)(e) (commencement of proceedings where a claim is made for possession of land);
 - (e) Part 14 rule 6
Omit “5” and insert instead “4”.
 - (f) SCHEDULE F Form 13
Omit “Part 7 rule 8 (1) (b) (i) applies” and insert instead “*the document served with this notice is a summons”.
 - (g) Part 27 rule 1B (3)
After “1 2 ”insert “(1)”.
 - (h) Part 36 rule 6B (1) (b) (iii)
Omit “32” where secondly appearing and insert instead “33”.
 - (i) Part 51 rule 17 (l)
Omit “(l)”.
 - (j) Part 66 rule 9 (2)
Omit “1” and insert instead “(1)”.
 - (k) Part 72A rule 1A (2) (a)
Omit “or section 57”.
 - (l) Part 72A rule 9 and SCHEDULE E Part 2 clause 24
Omit “33 (1)” wherever occurring and insert instead “33”.
 - (m) SCHEDULE F Form 73
Omit “(1)”.
 - (n) SCHEDULE F Forms 74AA, 74AB, 74AC and 74AD.
Omit “2 (r)” and insert instead “2 (l)(r)” wherever occurring.

(o) Form 103A

Omit "(e)" and insert instead "(d)".

11. The Criminal Appeal Rules are amended as follows:

Rule 25

Omit the rule and insert instead:

Documents to be furnished to Registrar

25. Where:

- (a) the Registrar receives in relation to a conviction or sentence any notice of appeal or of application for leave to appeal or of application for extension of time; or
- (b) the Minister administering section 474C (1) of the Crimes Act 1900:
 - (i) refers to the Court any case; or
 - (ii) requests the Court to give an opinion on any point arising in a case,at the request of the Registrar.
- (c) the Director of Public Prosecutions shall forward to the Registrar particulars of the trial and conviction (Form No II); and
- (d) the proper officer of the Court of Trial shall forward to the Registrar:
 - (i) all exhibits in the possession of the officer; and
 - (ii) the indictment; and
 - (iii) any plea or demurrer filed in the Court of Trial.

EXPLANATORY NOTE

(This note does not form part of the rules)

1. The object of the amendment contained in paragraph 2 is to formalise the existing requirement that an affidavit of debt be filed when signing default judgment.
2. The object of the amendments contained in paragraph 4 is to achieve uniformity with the corresponding rules of the District Court.
3. The object of the amendment contained in paragraph 6 is to provide that the rule relating to acceptance of documents presented for filing in person shall apply to documents presented for filing by post or through the Australian Document Exchange Pty Ltd.
4. The object of the amendment contained in paragraph 8 is to restrict the length of affidavits, together with annexures, to 50 pages and require documents which would otherwise have been annexed to an affidavit to be made exhibits to it and to provide for incidental matters.

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5. The object of the amendment contained in paragraph 10 (a) is to correct a reference to a paragraph of a rule.
 6. The object of the amendment contained in paragraph 10 (b) is to omit superseded or unnecessary references to rules.
 7. The object of the amendment contained in paragraph 10 (c) is to correct a reference to the year of a statute.
 8. The object of the amendment contained in paragraph 10 (d) is to except proceedings in the Commercial Division from the prohibition against commencing proceedings for possession of land by summons.
 9. The object of the amendment contained in paragraph 10 (e) is to correct a reference to the year of a statute.
 10. The object of the amendment contained in paragraph 10 (f) is to omit a reference to a superseded rule.
 11. The object of the amendment contained in paragraph 10 (g) is to correct a reference to a paragraph.
 12. The object of the amendment contained in paragraph 10 (h) is to correct a reference to a section.
 13. The object of the amendment contained in paragraph 10 (i) is to omit a superfluous reference to a subrule.
 14. The object of the amendment contained in paragraph 10 (j) is to correct a typographical error.
 15. The object of the amendment contained in paragraph 10 (k) is to remove a reference to a repealed section.
 16. The object of the amendment contained in paragraph 10(l) is to remove outdated references to a subsection.
 17. The object of the amendment contained in paragraph 10 (m) is to omit a superseded reference to a subrule.
 18. The object of the amendment contained in paragraph 10(n) is to correct references to a paragraph.
 19. The object of the amendment contained in paragraph 10(0) is to correct a reference to a paragraph of a rule.
 20. The object of the amendment contained in paragraph 11 is to require the director of Public Prosecutions (rather than as is presently required by s.25 of the rules, the proper officer of the Court of Trial) to forward to the Registrar of the Court of Criminal Appeal certain documents relating to an appeal. The amendment validates the existing practice.

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