



New South Wales

SUPREME COURT RULES (AMENDMENT No. 306) 1996

1. These rules are made by the Rule Committee on 18 November 1996.
2. The Supreme Court Rules 1970 are amended as follows:

Part 14 rule 3 (ai)

From the paragraph omit “(e) (commencement of proceedings where a claim is made for possession of land)” and insert instead “(commencement of certain proceedings by statement of claim)”.

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

SCHEDULE F Form 73B

Omit “*to putative father*”.

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

Part 73 rules 14–17

Omit the rules and insert instead:

Proper officer

14. A proper officer of the Court for the purpose of section 14(3) of the Adoption Information Act 1990 (the subject Act) is a registrar.

Requirements

15. An applicant under section 14 (2) of the subject Act must fulfil such reasonable requirements as may be made by a registrar as to:

- (a) verification of the facts on which the application is based;
- (b) identification of the proceedings in the Court to which the application relates;
- (c) compliance with the requirements of the subject Act and the Regulations thereunder;
- (d) any other matter.

Application

16. An application under section 14 (2) of the subject Act shall be addressed to the Registrar of the Equity Division.

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

(a) Part 78 rule 75

Omit the rule and insert instead:

Commencement of proceedings for passing accounts or for commission

75. Proceedings by an executor, administrator or trustee for:

(a) an order passing accounts; or

(b) an order passing accounts and for commission,
shall be commenced by summons.

(b) Part 78 rule 76 (1)

Omit the subrule and insert instead:

(1) At least 14 days before filing the summons under rule 75, the plaintiff shall cause to be published a notice in the form prescribed of:

(a) the filing of the accounts; and

(b) the order or orders claimed in the proceedings.

(c) Part 78 rule 77 (1)

Omit “the appointment to vouch his accounts” and insert instead “filing the summons under rule 75”.

(d) Part 78

After rule 77 insert:

Objection prior to proceedings

77A. (1) Any person (“the objector”) may, prior to the filing of a summons under rule 75, by filing a notice in the form prescribed give notice of his or her intention to object to the passing of accounts or the allowance of commission.

(2) The address for service shown in the notice shall be the objector’s address for service in any proceedings to which the notice relates.

(3) The registrar shall serve the notice on any person who is or becomes an applicant for or has obtained a grant or resealing in respect of the deceased to whom the notice relates.

(4) As soon as practicable after commencing proceedings under rule 75, the plaintiff shall serve the summons on the objector.

(e) Part 78 rule 78 (1)

Omit the subrule and insert instead:

- (1) Where proceedings have been commenced for:
 - (a) an order passing accounts; or
 - (b) an order passing accounts and for commission, and the hearing of the proceedings has not been completed:
 - (c) any person may, unless the registrar otherwise directs, inspect the accounts without the leave of the Court; and
 - (d) any person who seeks to object to the passing of the accounts or the allowance of commission shall, at any time before completion of the hearing, enter an appearance in the proceedings.

(f) Part 78 rule 79

Omit the rule and insert instead:

Vouching

79. Unless the Court otherwise directs, the accounts shall be vouched:

- (a) in the absence of the public;
- (b) without the appearance before the Court of any person; and
- (c) without an appointment being obtained for the vouching.

(g) Part 78 rule 80

Omit the rule and insert instead:

Court may require further evidence, documents and notices

80. On an application under rule 75, the Court may require further evidence to be furnished, further documents to be filed, and notices to be given.

(h) Part 78 rule 83

Omit the rule and insert instead:

Order passing accounts

83. (1) This rule applies where:

- (a) there is no defendant in the proceedings;
- (b) the plaintiff does not seek commission; and
- (c) the registrar has signed a certificate under rule 81.

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(2) The plaintiff shall file a draft minute of order passing the accounts.

(3) The Court may make the order passing the accounts without the appearance before it of any person.

(i) SCHEDULE F Forms 97, 98, 104 and 106

From each Form omit “(signed in the margin by me and by the person before whom this affidavit is sworn)”.

(j) SCHEDULE F Form 116

Omit the Form and insert instead:

Form 116

P 78, r 76.

(Notice of filing of accounts.)

In the Supreme Court of New South Wales Probate Division

After 14 days from publication of this notice the {executor of the will or administrator of the estate or as the case may be} of (name in capitals) late of (place, occupation) will make application for an order passing {his or her or as the case may be} accounts [if applicable and an order for commission]. Any person wishing to object to the application may obtain a copy of it by filing a Notice of Intended Objection and must file an Appearance in the proceedings before they are concluded.

Address for Service: (Part 9 rule 6)

(Form 4 does not apply.)

Form 116A

P 78. r 77A.

Notice of Intended Objection to {Accounts or Commission or Accounts and Commission}

(name) of (address, occupation) intends to object to the {passing of accounts or allowance of commission or passing of accounts and allowance of commission} in the estate of (name) late of (place, occupation) who died on (date).

Address for Service: (Part 9 rule 4)

(k) SCHEDULE F Index of Forms

After the matter relating to Form 116, in the appropriate columns insert:

116A. Notice of Intended Objection to Accounts or Commission or Accounts and Commission (P. 78, r. 77A).

6. The amendments contained in paragraph 5 shall apply to proceedings which commence on or after 1 February 1997.

EXPLANATORY NOTE

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

1. The object of the amendment contained in paragraph 2 is to extend the operation of Part 14r. 3 (ai) to all matters in the Commercial Division. The rule, which exempts proceedings to which it applies from the requirement to commence by statement of claim, presently applies only to proceedings which include a claim for possession of land.

2. The object of the amendment contained in paragraph 3 is to omit inapplicable words which were erroneously included in a form.

3. The object of the amendment contained in paragraph 4 is to take account of changes made by the Adoption Information Amendment Act 1995 to the Adoption Information Act 1990 (which eliminate the need for orders where information is supplied by the Court).

4. The object of the amendments contained in paragraphs 5 (a)–(h) and (i) and (k) is to:

- (a) dispense with the requirement for an applicant for the passing of accounts to attend the registry to have the accounts vouched, unless so ordered in a particular case;
- (b) to allow a person, who wishes to object to the passing of accounts or allowance of commission, to file a notice of objection, which will result in a copy of the summons commencing the relevant proceedings being served upon him; and
- (c) to allow a person who wishes to object to the passing of accounts to file an appearance in the proceedings and thereby become a defendant (this procedure is presently available only in the case of someone objecting to the passing of accounts where commission is applied for).

5. The object of the amendment contained in paragraph 5 (i) is to omit superfluous wording from certain forms.

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