



New South Wales

SUPREME COURT RULES (AMENDMENT No. 311) 1997

1. These rules are made by the Rule Committee on 16 June 1997.
2. The Supreme Court Rules 1970 are amended as follows:
 - Part 28 rule 1
After subrule (2) insert:
 - (3) A person making an application under subrule (1) shall give an undertaking to the Court to file, within 14 days of determination of the application, an originating process commencing proceedings in respect of the subject matter of the application.
3. The Supreme Court Rules 1970 are further amended as follows:
 - Part 52A rule 37
Omit "it is shown" and insert instead "it appears", wherever appearing.

EXPLANATORY NOTE

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

1. The object of the amendment contained in paragraph 2 is to require a person, making an urgent application without filing an originating process, to undertake to the Court that an originating process will be filed within 14 days after the determination of the application. Presently parties who make such applications, particularly those that are unsuccessful, often do not file an originating process, thus avoiding payment of prescribed fees and leaving the Court's record incomplete.

2. The object of the amendment contained in paragraph 3 is to make it clear that costs payable on an indemnity basis:

- (a) that were incurred by a trustee in breach of the trustee's duty in that capacity, may be disallowed without it being necessary for a party to show that they were so incurred; or
- (b) that are of an unreasonable amount or that have been unreasonably incurred may be disallowed, without it being necessary for a party to show that they are of an unreasonable amount or have been unreasonably incurred,

thus avoiding problems that arise when costs are assessed without the attendance of the party liable to pay for them.

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