



New South Wales

## **SUPREME COURT RULES (AMENDMENT NO. 317) 1997**

1. These rules are made by the Rule Committee on 15 December 1997.
2. The Supreme Court Rules 1970 are amended as follows
  - (a) Part 7 rule 8
    - (i) In subrule (1), omit “on the date on” and insert instead “at the time at”.
    - (ii) After subrule (1) insert—

(1A) If an originating process is amended by the addition of a claim for possession of land, the time at which proceedings for possession of that land are commenced shall, for the purposes of subrule (1), be taken to be the time at which the amendment is made.
  - (b) Part 40 rule 11

From paragraph (a) omit “were, on the date of filing the originating process, in occupation of the whole in part of the land” and insert instead “were in occupation of the whole or any part of the land:

    - (i) if the originating process was amended to include the claim for possession—at the time of making the amendment; or
    - (ii) otherwise—at the time of filing the originating process”.
  - (c) Part 42 rule 4
    - (i) Omit subrule (2B).
    - (ii) From subrule (4) omit “on the date” and insert instead “at the time”.
    - (iii) After subrule (4)—

(4A) If an originating process is amended by the addition of a claim for possession of land, the time at which proceedings for possession of that land are commenced shall, for the purposes of subrules (3) and (4), be taken to be the time at which the amendment is made.
3. The amendments contained in paragraph 2, other than in subparagraph (c)(i), shall apply only to proceedings commenced on or after 1 March 1998.

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4. The Supreme Court Rules 1970 are further amended as follows—
  - (a) Part 42 rule 2  
After subrule (3) insert—
    - (4) This rule is subject to Part 2 of the Fines Act 1996.
  - (b) Part 42 rule 3  
After subrule (5) insert—
    - (6) This rule is subject to Part 2 of the Fines Act 1996.
  - (c) Part 42 rule 6(3)  
After “money)” insert “and Part 2 of the Fines Act 1996”.
  - (d) Part 75 rule 2(1)(k)  
Omit the paragraph.
  - (e) SCHEDULE F Form 74D  
Omit the form.
  - (f) SCHEDULE F Index of Forms  
Omit the reference to Form 74D and the matter relating to it.
5. The amendments contained in paragraph 4 commence when the Fines Act 1996 commences.
6. The Supreme Court Rules 1970 are further amended as follows—
  - (a) Part 51 rule 47
    - (i) Renumber the rule as 47(1).
    - (ii) After subrule (1), insert—
      - (2) Where the period in subrule (1)(a) would include a day or part of a day on which the registry is closed, that day shall be excluded from the calculation of the 9 day period.
7. The Supreme Court Rules 1970 are further amended as follows—
  - (a) Part 82  
Omit the Part and insert instead—

## PART 82 PUBLIC NOTARIES ACT 1997

### Interpretation

1. In this Part, unless the context or subject-matter otherwise indicates or requires:

- (a) “**Board**” means the Legal Practitioners Admission Board;
- (b) “**notary**” means a person appointed under the Public Notaries Act 1997;

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(c) **“roll”** means the roll of notaries mentioned in section 7 of the subject Act;

(d) **“subject Act”** means the Public Notaries Act 1997.

**Application by person approved by Board**

2. A person who has been approved by the Board as a suitable candidate for appointment as a notary may, unless the Court otherwise orders, apply for appointment without having filed any originating process in the Court.

**Appointment in the absence of the public etc.**

3. On an application under rule 2, the Court may make an order in the absence of the public and without any attendance by or on behalf of any person, unless the plaintiff has filed a request that the application not be dealt with under this rule.

**Taking oath etc.**

4. An applicant for appointment under section 6 of the subject Act shall attend the Court on appointment and:

- (a) take the oath of office prescribed in Form 157; and
- (b) sign a certificate that the oath was duly tendered and taken.

**Particulars to be entered in the roll**

5. The registrar of the Board shall enter in the roll:

- (a) the date of the notary's appointment;
- (b) particulars of any penalty imposed on the notary as the result of disciplinary action; and
- (c) where the name of the notary is removed from the roll, the date of removal and the provision under which the removal was authorised.

**Assignment**

6. (1) Proceedings under section 6 or section 10 of the subject Act or under the Mutual Recognition Act are assigned to the Common Law Division.

(2) An order relating to a notary that is required by section 171H of the Legal Profession Act 1987 to be filed in the Court shall be filed in the Common Law Division.

**Application under the Mutual Recognition Act**

7. (1) This rule applies to proceedings commenced by notice under Section 19 (1) of the Mutual Recognition Act.

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- (2) The notice must, unless the Court otherwise orders:
- (a) be lodged by filing it in the registry at Sydney;
  - (b) show the name, residential address and business address of the applicant;
  - (c) where the applicant is represented by a solicitor, show:
    - (i) the name, address and telephone number of the solicitor; and
    - (ii) if that solicitor has another solicitor as agent in the proceedings—the name, address and telephone number of the agent;
  - (d) show an address for service;
  - (e) be dated not more than 14 days before the date on which it is filed; and
  - (f) be accompanied by a certificate which:
    - (i) evidences the existing registration which gives rise to the entitlement of the applicant under the Mutual Recognition Act to entry in the roll;
    - (ii) is given by the proper officer of the Supreme Court of the State or Territory where such existing registration occurred unless the document mentioned in Section 19 (3) of the Mutual Recognition Act, accompanying the notice, fulfils the requirements of this paragraph.

(3) The applicant shall, on or before the day of filing, serve the notice and accompanying documents on the Society of Notaries of New South Wales Incorporated and the Board and shall file an affidavit of service within 14 days of filing the notice.

- (4) The applicant shall:
- (a) prior to; or
  - (b) within 14 days after,
- filing the notice, attend at a registry of the Court or at the office of the Supreme Court of his or her State or Territory and take the oath of office as a notary in Form 159A, and cause the certificate included in that form to be completed and shall:
- (c) at the time of; or
  - (d) within 14 days after,
- filing the notice, file the form of oath and the certificate.

(5) Notwithstanding Part 36 rule 3:

- (a) the statements and other information in the notice which are verified by statutory declaration;
- (b) the document mentioned in section 19 (3) of the Mutual Recognition Act, certified under section 19 (4) of that Act, accompanying the notice; and
- (c) the certificate referred to in subrule (2) (f)

are admissible in evidence and, unless the Court otherwise orders, shall not be the subject of oral evidence by the applicant.

(6) Part 4 rules 1 to 3 and Part 7 rule 6 shall not apply to proceedings to which this rule applies unless the Court otherwise orders.

(7) The Court may, of its own motion, obtain information under section 37 of the Mutual Recognition Act and such information is admissible in evidence without further proof.

(8) The application for enrolment made by the notice may be determined or dealt with by the Court in the absence of the public and without any attendance by or on behalf of the applicant.

(9) If the Court is satisfied that the applicant is entitled to enrolment, it shall order that the applicant be appointed as a notary.

(b) SCHEDULE F

Omit Forms 157, 158, 159 and 160 and insert instead—

### **Form 157**

P.82, rr.9, 7 (4).

#### **OATH OF OFFICE**

I, *(name)* of *(address and occupation)* do swear that *(if the oath is taken in relation to proceedings commenced or proposed to be commenced under the Mutual Recognition Act, add if I am appointed as a public notary by the Supreme Court of New South Wales)* I will truly and honestly conduct myself in the practice of a public notary in New South Wales according to the best of my knowledge, skill and ability.

*(Signature of person taking oath)*

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I, *(name)* of *(address)*, certify that I duly administered the above oath  
on *(date)* at *(place)*.  
*(date)*

.....  
(Office of person administering oath)

Omit the references to Forms 157–160 and the matter relating to them and insert instead in the appropriate columns—

(i) *this application is to the Supreme Court and will be heard in Sydney; and*

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(ii) *at the time this application is filed in the Court, you are in custody but are NOT in a detention centre within the meaning of the Children (Detention Centres) Act 1987.*

(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 Metropolitan Remand and Reception Centre and Long Bay Correctional Complex, including private communication between you and your legal representative. If you are in another correctional centre, you will be sent to the Metropolitan Remand and Reception Centre for the hearing.*

(b) SCHEDULE F Form 74AI

Omit the text commencing with the words “The hearing in Sydney” and ending with “for the hearing” and insert instead—

*The hearing in Sydney of an application to the Supreme Court for bail or variation of bail by a person who, at the time this application is filed in the Court, is in custody but is not in a detention centre within the meaning of the Children (Detention Centres) Act 1987, will be conducted by means of video link facilities without the applicant’s personal attendance at Court, unless the Court **in the interests of justice** otherwise orders.*

*Video link facilities allow two-way audio and visual communication of television standard between the Court and the Metropolitan Remand and Reception Centre and the Long Bay Correctional Complex, including private communication between the applicant and the applicant’s legal representative. If you are in another correctional centre, you will be sent to the Metropolitan Remand and Reception Centre for the hearing.*

## EXPLANATORY NOTE

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

The object of the amendment contained in paragraph 2 is to—

- (a) make it clear that the identity of occupiers of land, on whom service of process for possession of the land is required by the rules, is ascertained at the time (rather than on the date) when the proceedings are commenced;

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- (b) to provide that where originating process is amended by the addition of a claim for possession of land, the time at which the proceedings are taken to be commenced for the purposes of rules requiring service of notice on an occupier is the time at which the amendment is made; and
  - (c) remove a superfluous rule (Part 42 r.4(2B)).

The object of the amendments contained in paragraph 4 is to qualify or omit rules and forms which would be inconsistent with the Fines Act 1996.

The object of the amendment contained in paragraph 6 is to provide that the period of 9 days within which a party is required to take certain action is calculated exclusively of days on which the registry is closed. Normally periods mentioned in the rules exceeding 5 days in lengths are intended to be inclusive of days on which the registry is closed, but in the present case the time allowed for the other party to take the next step could be substantially reduced by intervening week-ends and public holidays.

The object of the amendments contained in paragraph 7 is to—

- (a) amend the rules relating to public notaries so as to take into account the changes in this area brought about by the replacement of the Public Notaries Act 1985 by the Public Notaries Act 1997; and
- (b) make provision for the appointment of notaries under the Mutual Recognition Act 1992 (Com.) based on the existing rules relating to the appointment of legal practitioners under that Act.

The object of the amendments contained in paragraph 9 is correct minor drafting errors.

The object of the amendment contained in paragraph 10 is to substitute the Manager, Support Services, for the Executive Officer, Costs Assessment, as the proper officer of the Court for the purposes of Division 6 of Part 11 of the Legal Profession Act 1987 (which relates to Costs Assessment).

The object of the amendment contained in paragraph 11 is to amend bail application forms to take into account the extension of the video-link facility for hearing of bail applications.

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