



New South Wales

SUPREME COURT RULES (AMENDMENT No 319) 1998

1. These rules are made by the Rule Committee on 20 April 1998.

2. The Supreme Court Rules 1970 are amended as follows:

Part 40 rule 11

Omit the rule and insert instead:

11. Unless the Court otherwise orders, judgment for possession of land shall not be given or entered against a defendant in his or her absence, unless the plaintiff files an affidavit:

- (a) showing whether any and, if so, what persons, other than parties to the proceedings, were, on the date of filing the originating process, in occupation of the whole or any part of the land;
- (b) proving, as to each of those persons (other than any person whose occupation the plaintiff does not seek to disturb), either that the originating process and a notice pursuant to Part 7 rule 8 (1) (b) has been served on him or her within the time prescribed by the rules or that he or she has ceased to be in occupation of any part of the land;
- (c) where the plaintiff claims possession by reason of default in the payment of money, setting out particulars of the default.

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

(a) Part 77

After Division 45 insert:

Division 46—Australian Mutual Provident Society (Demutualisation and Reconstruction) Act 1997

Assignment of business

120. Proceedings in the Court under the Australian Mutual Provident Society (Demutualisation and Reconstruction) Act 1997 (“the subject Act”) are assigned to the Equity Division.

Application of rules

121. The provisions of Part 80A shall, so far as applicable and making such changes as it is necessary to make, apply to proceedings under the subject Act.

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

(a) Part 1 rule 8 (1)

From the definition of “curator”, omit paragraphs (a) and (b) and insert instead:

(a) in respect of a person:

- (i) the management of whose estate is, by the Protected Estates Act 1983 or by any order of the Court or the Guardianship Tribunal under that Act or under the Guardianship Act 1987, committed to the Protective Commissioner;
- (ii) of whose estate the Protective Commissioner has, in accordance with section 63 of the Protected Estates Act 1983 Act, undertaken the management, or
- (iii) in relation to whose property the Protective Commissioner is authorised as mentioned in section 66 (1) (a) of that Act,

the Protective Commissioner;

(b) in respect of a person of whose estate a manager has been appointed by order of the Court or the Guardianship Tribunal under section 22 of the Protected Estates Act 1983 or section 25M of the Guardianship Act 1987—the manager appointed.

(b) Part 76 rule 1

Omit paragraphs (a)-(d) and insert instead:

- (a) **“Commissioner”** means the Protective Commissioner;
- (b) **“Court Visitor”** means any person who is the subject of a direction under section 79 of the subject Act;
- (c) **“Guardianship Act”** means the Guardianship Act 1987.
- (d) **“subject Act”** means the Protected Estates Act 1983;
- (e) **“subject person”** means a person in respect of whom an application is made for the purposes of section 13 of the subject Act.

(c) Part 76 rule 2 (c) (vi)

Omit “Disability Services and” and “1987”.

(d) Part 76 rule 17

- (i) Omit the headnote to the rule and insert instead **“Directions”**.
- (ii) Omit subrule (1) and insert instead:

(1) The party having the carriage of proceedings on the application under section 13 of the subject Act or under section 25E of the Guardianship Act shall, not later than 14 days after the making of:

- (a) any declaration and order under section 13 of the subject Act, or
- (b) any order under section 25E of the Guardianship Act, move the Court for a hearing for directions.

(e) Part 76 rule 19
Omit “Act” and insert instead “subject Act”.

(f) Part 76 rule 30
Omit “or section 17A of the subject” and insert instead “of the subject Act or section 25E of the Guardianship”.

(g) Part 76 rule 34

- (i) From the headnote to the rule omit “**or section 35A**”.
- (ii) From subrule (1) omit “or section 17A of the subject” and insert instead “of the subject Act or section 25E of the Guardianship”.

(h) Part 76 Division 8
From the heading to the Division omit “**Appeal, from Stipendiary Magistrate**” and insert instead “**Appeal, review and referral**”.

(i) Part 76 rule 51
After “21” insert “of the subject Act”.

(j) Part 76
After rule 51 insert:

Review under section 6L of the Guardianship Act

52. (1) An application for review under section 6L of the Guardianship Act shall be made by summons joining as a defendant the enduring guardian.

(2) The applicant shall file and serve with the summons an affidavit showing the applicant’s relationship to the appointor and the applicant’s interest in the matter.

Referral under section 25L of the Guardianship Act

53. (1) Following a referral under section 25L of the Guardianship Act, the proceedings shall be listed before a Judge for directions.

(2) Concurrence shall be given or refused on the first directions hearing, unless the Court otherwise orders.

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

(a) Part 82 rule 4

(i) Omit “shall attend the Court” and insert instead “shall, before applying to the Court for appointment, attend at a registry of the Court”.

(ii) Renumber the rule as subrule (1).

(iii) After subrule (1) insert:

(2) A registrar may administer the oath of office.

(b) SCHEDULE E Form 157

(i) Omit “*(if the oath is taken in relation to proceedings or proposed to be commenced under the Mutual Recognition Act, add*”.

(ii) Omit “Wales)” and insert instead “Wales”.

(c) Part 82 rule 5

Omit “registrar of the Board” and insert instead “officer designated under section 7 of the Act as the registrar of public notaries”.

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

(a) Part 12 rule 5 (a) (xii)

Omit the subparagraph.

(b) Part 77

After rule 119 insert:

Division 46—Friendly Societies (New South Wales) Code

Assignment of business

120. Proceedings under the Friendly Societies (New South Wales) Code (the “Code”) are assigned to the Equity Division.

Applicability of Part 80A

121. The provisions of Part 80A (which relate to proceedings under the Corporations Law) shall, so far as applicable and making such changes as it is necessary to make, apply to proceedings under the Code.

Disputing amount under s. 408 (5)

122. (1) A person who is notified of an amount under section 405 (3) of the Code may dispute the amount under section 408 (5) by serving a notice disputing the amount (“the disputing notice”) on the liquidator:

- (a) if the person is notified under section 408 (3) by a written notice that includes the note set out in subrule (4)—within 28 days after person was so notified;
- (b) otherwise—within 6 months after the person was notified; or
- (c) in any case—within such longer time as the Court may fix.

(2) The Court may extend time under subrule (2) (c) at any time.

(3) Service of the disputing notice on the liquidator may be effected by leaving it at, or sending it by pre-paid post addressed to the liquidator at, the address given for that purpose in the notice referred to in subrule (1) (a).

(4) The note referred to in subrule (1) (a) is to the following effect, namely, “**NB** You will be bound by my determination set out in this notice of the amount for which the (*name of friendly society*) has a liability to you in respect of your interest in a benefit fund unless you serve on me, within 28 days of the date of receipt by you of this notice, a notice stating that you dispute the amount. You may serve the notice disputing the amount by leaving it at, or sending it by pre-paid post address to me at, (*address*).”

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

Part 74 rule 1 (3)

Omit the rule and insert instead:

This rule shall not apply to a stated case.

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

- (a) Part 1 rule 8 (1)

In alphabetical order insert:

“Trans-Tasman Mutual Recognition Act” means the Trans-Tasman Mutual Recognition Act 1997 of the Commonwealth.

- (b) Part 61 rules 1 (7) and 3 (6) (b)

After “Act” insert “or under the Trans-Tasman Mutual Recognition Act”.

(c) Part 65A rule 3 (2)

Omit the subrule and insert instead:

(2) This rule does not apply to a cancellation or suspension:

- (a) in Australia under the Mutual Recognition Act, or
- (b) in New Zealand under the Trans-Tasman Mutual Recognition Act.

(d) Part 65C rule 4

In the headnote to the rule, after “Act” insert “or the Trans-Tasman Mutual Recognition Act”.

(e) Part 65C rule 4 (1)

Omit the subrule and insert instead:

(1) This rule applies to proceedings commenced by notice under section 19 (1) of the Mutual Recognition Act or under section 18 (1) of the Trans-Tasman Mutual Recognition Act.

(f) Part 65C rule 4 (2) (f)

Omit the rule and insert instead:

(f) be accompanied by a certificate which:

(i) evidences the existing registration which gives rise to the entitlement of the applicant to entry in the Roll of Legal Practitioners;

(ii) is given by the proper officer:

(A) of the Supreme Court of the State or Territory where such registration occurred or, where applicable, of the High Court of New Zealand; or

(B) of a body, having functions similar to the Legal Practitioners Admission Board, of the State or Territory where such existing registration occurred or, where applicable, of New Zealand; and

(iii) is dated not more than 28 days before the date on which it is filed,

unless the document mentioned in section 19 (3) of the Mutual Recognition Act or section 18 (3) of the Trans-Tasman Mutual Recognition Act, accompanying the notice, fulfils the requirements of this paragraph.

(g) Part 65C rule 4 (4)

Omit the subrule and insert instead:

(4) The applicant shall:

- (a) prior to; or
- (b) within 14 days after,
filing the notice attend:
- (c) at a registry of the Court;
- (d) at the office of the Supreme Court of his or her State or Territory; or
- (e) where application is made under the Trans-Tasman Mutual Recognition Act—a person in New Zealand authorised under New Zealand law to take oaths,

and take the oath of office as a legal practitioner in Form 70AA, and cause the certificate included in that Form to be completed and shall:

- (f) at the time of; or
- (g) within 14 days after

filing the notice, file the form of oath and the certificate.

(h) Part 65C rule 4 (5) (b)

Omit the paragraph and insert instead:

(b) the document mentioned in:

- (i) section 19 (3) of the Mutual Recognition Act, certified under section 19 (4) of that Act; or
- (ii) section 18 (3) of the Trans-Tasman Mutual Recognition Act, certified under section 18 (4) of that Act,
accompanying the notice; and

(i) SCHEDULE F Form 70AA

After “Act” insert “1992 of the Commonwealth or under the Trans-Tasman Mutual Recognition Act 1997 of the Commonwealth”.

EXPLANATORY NOTE

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

1. The object of the amendment contained in paragraph 2 is to omit the requirement, on signing default judgment for possession of land, to prove non-contravention of various Acts. The rule was originally directed to preventing institution of proceedings for recovery of possession of prescribed premises under the Landlord and Tenant (Amendment) Act 1948 and against bringing proceedings in the Court which should have been brought in a Local Court by reason of section 2A of the Landlord and Tenant Act 1899.

Over the years references to additional Acts have been added and, if the rule is to be comprehensive, it should also require evidence of non-contravention of Acts prohibiting proceedings not involving possession of land. This would involve a total of 24 sections or subsections in 11 Acts, thus involving plaintiff's solicitors in substantial additional work, with consequent costs increases, and increasing by a substantial amount the time taken by Court staff to process default judgments.

There is no requirement to rule out by affidavit the enormous number of other possible legal or factual defences that might arise in proceedings.

The amendment to the rule does not affect the protection given to defendants by the various Acts but merely omits the requirement for reference to be made to them in an affidavit as a precondition to signing default judgment for possession of land.

2. The objects of the amendment contained in paragraph 3 are to:

- (a) assign proceedings under the Australian Mutual Provident Society (Demutualisation and Reconstruction) Act 1997 (the subject Act) to the Equity Division; and
- (b) apply the provisions of Part 80A of the rules (which applies to proceedings under the Corporations Law or the ASC Law), so far as applicable and making such changes as it is necessary to make, to proceedings under the subject Act.

The subject Act applies the Corporations Law to a substantial extent to acts, matters etc under the subject Act.

3. The object of the amendments contained in paragraph 4 is to make amendments to the rules to take account of the Guardianship Amendment Act 1997.

4. The object of the amendment contained in paragraphs 5 (a) and 5 (b) is to enable a registrar to administer the oath of office for an applicant for appointment as a public notary.

5. The object of the amendment contained in paragraph 5 (c) is to correct a reference to the registrar of public notaries.

6. The object of the amendment contained in paragraph 6 is to:

- (a) omit a reference to the superseded Friendly Societies Act 1989;
- (b) assign proceedings under the Friendly Societies (New South Wales) Code to the Equity Division;
- (c) apply the provisions of Part 80A (which relates to proceedings under the Corporations Law), so far as applicable, to proceedings under the Code; and

(d) prescribe how a person notified of an amount determined by a liquidator under s.408 of the Friendly Societies (New South Wales) Code may dispute the amount.

The object of the amendment contained in paragraph 7 is to omit superfluous wording from a subrule.

The object of the amendment contained in paragraph 8 is to extend the rules applicable to the Mutual Recognition Act 1992 (Com) to applications under the Trans-Tasman Recognition Act 1997 (Com).

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