



New South Wales

SUPREME COURT RULES (AMENDMENT No. 320) 1998

1. These rules are made by the Rule Committee on 18 May 1998.
2. The Supreme Court Rules 1970 are amended as follows—
 - (a) Part 77

At the end of the Part insert—

Division 48—Contractors Debts Act 1997

Application under s 7 (1) or s 14 to be by motion

125. An application for an order under section 7 (1) or section 14 of the Contractors Debts Act 1997 (“the subject Act”) shall be made by motion in the proceedings in which judgment is given (“the principal proceedings,’).

Application under s. 7 (1)

126. (1) This rule applies where an application for a certificate under section 7 (1) of the subject Act is made otherwise than at the hearing of the principal proceedings.

(2) The evidence in support of the application shall include evidence showing:

- (a) how much of the judgment debt is for work done or for materials supplied (“the subject debt”);
- (b) whether the subject debt consists of daily, weekly or monthly wages;
- (c) if the subject debt so consists—whether the subject debt exceeds 120 days’ wages;
- (d) if the subject debt so consists and exceeds 120 days’ wages—an amount to be included in the certificate that does not exceed 120 days’ wages; and
- (e) whether work resulting in the subject debt was done on something moveable and, if so, whether it would be practicable for the applicant to exercise a lien by retaining the thing in the applicant’s possession.

(3) The applicant may, unless the Court otherwise orders, proceed without service of notice of the motion or other documents upon any person.

(4) The application may be determined or dealt with by the Court in the absence of the public and without any attendance by or on behalf of any person.

Application under s. 14 (1)

127. On an application under section 14 (1) of the subject Act the applicant may, unless the Court otherwise orders, proceed without service of notice of the motion or other documents upon any person.

(b) **SCHEDULE D Part 1**

- (i) Omit the reference to Contractors' Debts Act of 1897 and the matter relating to it;
- (ii) At the end of the Part, insert in the appropriate columns—
Act No. 1 10, 1997; Contractors Debts Act 1997—
Section 14...Attachment order.....

(c) **SCHEDULE E Part 2**

At to the end of the Part, insert—

39. Orders under section 7 (1) of the Contractors Debts Act 1997.

3. The amendment contained in paragraph 2 (b) (i) shall commence on 1 September 1998.

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

Part 77

- (i) Move the Division relating to the Friendly Societies (New South Wales) Code, inserted by Amendment No. 319, to immediately follow Division 46;
- (ii) Renumber the Division as 47.
- (iii) Renumber the rules of the Division as 122 to 124;
- (iv) In rule 124 (1) (a) of the Division as renumbered, before "person" where secondly occurring, insert "the"
- (v) In rule 124 (2) of the Division as renumbered, omit "(2) (c)" and insert instead "(1) (c)".

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

(a) Part 63

At the end of the Part insert—

Delegation by Protective Commissioner

16. (1) Where, in proceedings in the Court, a person ("the delegate") signs a document in exercise of a function delegated to the delegate under section 5A of the Protected Estates Act 1983, the delegate shall include in the document a statement:

- (a) of the delegate's name and position;
- (b) that the document is signed in exercise of a function delegated under that section; and
- (c) if the delegate has not himself or herself previously signed such a document in the proceedings—a statement as to whether he or she has an interest in the proceedings adverse to that of the disable person.

(2) The delegate shall, upon request by the Court, the registrar or a party to the proceedings, furnish to the person making the request a photocopy of the delegation certified by the delegate as being a true copy.

- (b) Part 63 rule 5 (1A)
Omit the rule.
- (c) Part 78 rule 58 (12A)
Omit the rule.

EXPLANATORY NOTE

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

- 1 The object of the amendment contained in paragraph 2 is to—
 - (a) make changes to the rules consequential upon the replacement of the Contractors' Debts Act 1897 by the Contractors Debts Act 1997 ("the subject Act");
 - (b) provide the procedure on an application under s. 7 (1) or s. 14 of the subject Act and particulars of evidence required on an application under s. 7 (1);
 - (c) allow masters to exercise the powers of the Court under s. 14 of the subject Act; and
 - (d) allow registrars to exercise the powers of the Court to make orders issuing a debt certificate under s. 7 (1) of the subject Act.
- 2 The object of the amendment contained in paragraph 4 is rectify an incorrect Division number and correct typographical errors.
3. The object of the amendment contained in paragraph 5 is to require a person to whom the Protective Commissioner has delegated his or her functions as tutor under s. 5A of the Protected Estates Act 1983—
 - (a) to include certain relevant information about the delegate in documents signed under the delegation; and
 - (b) upon request by the Court, the registrar or a party to the proceedings—to furnish to the person making the request a photocopy of the delegation certified by the delegate as being a true copy;and to omit superfluous rules.

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