



New South Wales

SUPREME COURT RULES (AMENDMENT NO. 321) 1998

1. These rules are made by the Rule Committee on 20 July 1998.
2. The Supreme Court Rules 1970 are amended as follows—
 - (a) Part 4 rule 5(4)
Omit the subrule.
 - (b) Part 63 rule 4(2)
Omit “(including a married woman)”.
3. The Supreme Court Rules 1970 are further amended as follows—
SCHEDULE H
Insert in alphabetical order in the appropriate columns—

National Electricity Law	46	Appeal
	48	Referral of question of law

4. The Supreme Court Rules 1970 are further amended as follows—
 - (a) Part 75 rule 2 (1)
 - (i) From paragraph (r) omit “.” and insert instead “,”
 - (ii) After paragraph (r) insert—
 - (s) Part 77 rule 129 (application for declaration of satisfaction that the Sheriff is interested in a trial).
 - (b) Part 75 rule 2(3)
Omit the subrule.
 - (c) Part 77
At the end of the Part insert—

Division 49—Jury Act 1977**Application**

128. This Division applies to an application to the Court under the Jury Act 1977 (the “subject Act”).

Application (s. 24)

129. (1) An application for a declaration of satisfaction that the Sheriff is interested in a trial shall be made a reasonable time before the trial by motion in the proceedings to which the application relates.

(2) Notice of the motion shall be served on the Sheriff.

(3) The Sheriff shall be entitled to be heard on the application without becoming a party to the proceedings.

Application under s. 26(3)

130. An application to the Court for an order under section 26(3) of the subject Act shall be made by summons in the Common Law Division without joining any person as a defendant.

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

(a) Part 77 rule 73

Omit the rule.

(b) SCHEDULE F Form 89C

Omit the form.

(c) SCHEDULE F Index of Forms

Omit the reference to Form 89C and the matter relating to it.

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

Part 40 rule 11(a)

Omit the paragraph and insert instead—

(a) showing whether any and, if so, what persons, other than parties to the proceedings, 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;

7. The amendment contained in paragraph 6 shall commence on 1 October 1998.

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

(a) Part 51

After rule 58 insert—

Short reasons for decision

59. The Court of Appeal may, when dismissing an appeal, exercise its power under section 45(4) of the Act to give reasons for its decision in short form by stating them in the prescribed form.

(b) Part 51AA

After rule 36 insert—

Short reasons for decision

37. The Court of Appeal may, when dismissing an appeal, exercise its power under section 45(4) of the Act to give reasons for its decision in short form by stating them in the prescribed form.

(c) SCHEDULE F

After Form 62AA insert—

Form 62AA1*P. 51, r. 59, P. 51AA, r. 37.**(Title of proceedings)***SHORT REASONS FOR DECISION**

The appeal is dismissed and the Court is of the unanimous opinion that the appeal does not raise any question of general principle. Pursuant to section 45(4) of the Supreme Court Act 1970, the Court's reasons in short form are (*set out short reasons*).

*(Date)**(Signatures of Judges)*

(d) SCHEDULE F Index of Forms

After the matter relating to Form 62AA insert—

62AA1. Short reasons for decision (P. 51, r. 59, P. 51AA, r. 37).

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

(a) SCHEDULE H Part 1

(i) Insert. in the appropriate columns in alphabetical order—

Administrative Decisions Tribunal Act 1997	118	Reference
	119	Appeal

(ii) Omit the reference to the Anti-Discrimination Act 1977 and the matter relating to it.

(iii) Omit the reference to the Community Services (Complaints, Appeals and Monitoring) Act 1993 and the matter relating to it.

(iv) Omit the reference to the Public Health Act 1991 and the matter relating to it.

1998 No 414

Supreme Court Rules (Amendment No 321) 1998

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- (v) Omit the reference to the Technical and Further Education Act 1974 and the matter relating to it.
 - (b) Part 65A
 - (i) Omit rule 1.
 - (ii) Omit subrule 2(1) and insert instead—
 - (i) There are assigned to the Court of Appeal proceedings in the Court in the exercise of the disciplinary powers of the Court with respect to legal practitioners and interstate legal practitioners.
 - (c) Part 66A rule 1
 - Omit the rule.
10. The amendments contained in paragraphs 9(a) (ii), (iii) and (iv), 9(b) (i) and 9(c) shall commence on 1 January 1999.

EXPLANATORY NOTE

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

1. The object of the amendments contained in paragraph 2 is to remove superfluous references to married women.
2. The object of the amendment contained in paragraph 3 is to assign to the Administrative Law Division appeals under section 46 of the National Electricity Law and referrals of questions of law under section 48 of that Law.
3. The object of the amendment contained in—
 - (a) paragraphs 4(a) and (c)—is to provide the manner in which applications under s 24 or s 26(3) of the Jury Act 1977 are to be made; and
 - (b) paragraph 4(b)—is to omit an outdated subrule.
4. The object of the amendment contained in paragraph 5 is to omit a rule prescribing a form of warrant under s. 16 of the Listening Devices Act 1983. The form has been superseded by a form prescribed by the Listening Devices Amendment Act 1996.
5. The object of the amendment contained in paragraph 6 is to require that an affidavit be filed in support of an application for judgment for possession of land show in the absence of the defendant show—
 - whether any and, if so, what persons, other than parties to the proceedings, 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.

The present requirement, which is inconsistent with other rules and is replaced, is for the affidavit to show 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.

6. The object of the amendment contained in paragraph 8 is to enable the Court of Appeal to take advantage of s.45(4) of the Supreme Court Act 1970, which enables the Court to give short reasons for its decision where, in dismissing an appeal, it is of the unanimous opinion that the appeal does not raise any question of general principle.

7. The object of the amendments contained in paragraph 9 is to take account of changes made by the Administrative Decisions Legislative Amendment Act 1997 and the Administrative Decisions Tribunal Act 1997.

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