



New South Wales

**SUPREME COURT RULES (AMENDMENT No. 323) 1998**

1. These rules are made by the Rule Committee on 17 August 1998.
2. The Supreme Court Rules 1970 are amended as follows:
  - (a) Part 1 rule 8  
Omit the reference to, and definition of, "certificate of determination".
  - (b) Part 40 rule 12
    - (i) In the heading to the rule, after "s. 208JA". insert "or s. 208KF or s. 208KH".
    - (ii) In subrule (1) after "section 208JA (4)" insert "or section 208KF (2) (b) or section 208KH (6)".
    - (iii) From subrule (2) (a). omit "a certificate under section 208J or section 208JA of the Legal Profession Act 1987" and insert instead "the certificate".
  - (c) Part 44 rule 6 (d)  
Omit "unless a certificate of determination issues in respect of the costs and the certificate is not filed in the Court".
  - (d) Part 44 rule 7 (1) (c)  
Omit subparagraphs (viii) and (ix) and insert instead:
    - (viii) that the judgment was not entered as a result of the filing of a certificate under section 208J (3) or section 208JA (4) or section 208KF (2) (b) or section 208KH (6) of the Legal Profession Act 1987; or
    - (ix) that the judgment was entered as a result of the filing of a certificate under section 208J (3) or section 208JA (4) or section 208KF (2) (b) or section 208KH (6) of the Legal Profession Act 1987 and that the determination which the certificate sets out is not subject to any suspension under:
      - (A) section 208N (1) of that Act which has not been ended under section 208N (2): or
      - (B) section 208KE (1) of that Act which has not been ended under section 208KE (2).

(e) Part 44 rule 10 (2)

Omit the rule and insert instead:

(2) The costs referred to in subrule (1) (a) shall not, without the leave of the Court, be included in the amount for which a writ of execution may be issued if a certificate under section 208J (1) or section 208KF (2) of the Legal Profession Act 1987 issues in respect of the costs of the prior writ and that certificate is not filed in the Court.

(f) Part 52A rule 2

Omit the reference to, and definition of, "certificate of determination".

(g) Part 52A rule 46 (1)

Omit "of determination" and insert instead "under section 208J (3) or section 208JA (4) or section 208KF (2) (b) or section 208KH (6) of the Legal Profession Act 1987".

(h) Part 52A rule 46 (4)

Omit "a certificate of determination" and insert instead "the certificate".

(i) Part 77

At the end of the Part insert:

**Division 50—Legal Profession Act 1987**

**Sealed copy of application under s. 208KA**

131. The officer of the Court accepting an application under section 208KA of the Legal Profession Act 1987 shall, on request by the applicant, seal with the seal of the Court a copy of the application provided by the applicant.

**Affidavit showing compliance with s. 208KA**

132. A person applying for a review of a determination under section 208KA of the Legal Profession Act 1987 shall file with the application an affidavit showing compliance with subsection (5) of that section.

3. The amendments contained in paragraph 2 commence when the Legal Profession Amendment (Costs Assessment) Act 1998 commences.

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

(a) Part 7 rule 7 (1)

Omit "two years from the date on which it is filed" and insert instead " 1 year from the date on which it is filed, unless the Court otherwise orders".

(b) Part 16A

Omit the Part.

(c) After Part 32 insert:

**PART 32A—DISMISSAL OF INACTIVE  
COMMON LAW PROCEEDINGS**

**Application**

1. This Part applies to proceedings in the Common Law Division that have not been disposed of by judgment, final order, discontinuance or dismissal.

**Dismissal**

2. (1) If no party to proceedings has, for over 1 year, taken any step in the proceedings that appears from records maintained by the Court, the Court may of its own motion dismiss the proceedings, or part of the proceedings, unless a party satisfies the Court that special circumstances exist that render it desirable that such an order should not be made.

(2) The Court may not make an order under subrule (1) without giving the parties a reasonable opportunity to be heard.

**Effect of dismissal**

3. (1) An order for dismissal under rule 2 shall not prevent a party from:

(a) bringing fresh proceedings: or

(b) claiming in fresh proceedings relief that has been claimed in the dismissed proceedings.

(2) Where:

(a) proceedings are dismissed under rule 2:

(b) a party is, by reason of the dismissal, liable to pay the costs of another party occasioned by the proceedings: and

**1998 No 481**

Supreme Court Rules (Amendment No 323) 1998

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(c) before payment of the costs, the party so liable brings against that other party further proceedings on the same or substantially the same cause of action as that on which the dismissed proceedings were brought.

the Court may stay the further proceedings until those costs are paid.

cf. Part 40, rule 8

(d) Part 52A rule 23

(i) Renumber the rule as subrule (2).  
(ii) Insert before subrule (2):

(1) Where proceedings are dismissed under Part 32A rule 2 (1), unless the Court otherwise orders:

(a) the plaintiff shall pay the costs of the defendant in the proceedings; and  
(b) if there is a cross-claim in the proceedings—the cross-claimant shall pay the costs of the cross-defendant in respect of the cross-claim.

(e) SCHEDEULE E Part 1

(i) After the matter relating to Part 5 in the appropriate columns insert:

Part 7:

Rule 7 (1).... Order extending validity of originating process .....

(ii) After the matter relating to Part 31 in the appropriate columns insert:

Part 32A:

Rule 2 (1) ..... Order dismissing ... Unopposed order only .....

5. The amendments contained in paragraph 4 (a) shall apply to proceeding commenced on or after 1 September 1998.

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

(a) Part 80A

Before rule 1 insert:

**Amendment to Corporations Law**

1A. Subject to any order of the Court, this Part applies, making such changes as it is necessary to make, to proceedings under the Corporations Law, as amended by the Company Law Review Act 1998 of the Commonwealth, as it applies to proceedings under the Corporations Law prior to being so amended.

(b) SCHEDULE D Part 1

From the matter relating to the Corporations Law omit "Section 195" and insert instead "Sections 256B, 256C and 256E".

(e) SCHEDULE E Part 2

From paragraph 28 (j) omit "574 (3)" and insert instead "601AH (2)".

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

**SCHEDULE J**

Omit "after 31 August 1997" 10"

and insert instead in the appropriate columns:

the beginning of 1 September 1997 to the end of

31 August 1998 10

after 31 August 1998 9.5

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

(a) Part 52A rule 30

Omit "18 (3) (b)" wherever occurring and insert instead "18B".

(b) Part 52A rule 30 (6)

Omit "18 (5)" and insert instead "18B (1) and (2)".

(c) Part 72B rule 5 (1)

Omit "18 (2)" and insert instead "18".

(d) Part 72B rule 7

(i) Omit "18 (5) (c)" from the heading and insert instead "18D (2) (C)".

(ii) Omit "18 (5) (c)" from the body of the rule and insert instead "18D (2) (c) of the subject Act".

## 1998 No 481

Supreme Court Rules (Amendment No 323) 1998

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(e) Part 72B

After rule 7 insert:

**Application for order under section 18D (3)**

8. An application under section 18D (3) of the subject Act may be made by motion on notice in the discontinued proceedings.

(f) SCHEDULE E Part 2 paragraph 3B

Omit "section 18" and insert instead "section 18A or section 18D (2) (c) or (3)".

(g) SCHEDULE F Form 71E

Omit "for the" and insert instead "for a *[if applicable full or limited]*".

9. The amendments contained in paragraph 8 apply to proceedings to which the amendments made to the Arbitration (Civil Actions) Act 1983 by the Courts Legislation Amendment Act 1998 apply.

### EXPLANATORY NOTE

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

1. The object of the amendments contained in paragraph 2 is to take account of the Legal Profession Amendment (Costs Assessment) Act 1998 and to make general drafting improvements.

2. The object of the amendment contained in paragraph 4 is to:

- (a) reduce from 2 years to 1 year the time during which originating process remain valid for the purpose of service; and
- (b) allow the Court, of its own motion, to dismiss Common Law proceedings in which no party has taken a step for over a year;

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

- (a) ensure that Part 80A of the rules applies with such changes as are necessary to proceedings under the Corporations Law, as amended by the Company Law Review Act 1998 (Com), 3s it applies to proceedings under the Corporations Law prior to being so amended;
- (b) amend references in Schedules D and E to sections substituted by the Company Law Review Act 1998 (Com).

4. The object of the amendment contained in paragraph 7 is to change the interest rate payable on judgments from 10% to 9.5%.

5. The object of the amendments contained in paragraph 8 is to take account of amendments made to the Arbitration (Civil Actions) Act 1983 by the Courts Legislation Amendment Act 1998.

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