



New South Wales

SUPREME COURT RULES (AMENDMENT No. 327) 1999

1. These rules are made by the Rule Committee on 15 March 1999.
2. The Criminal Appeal Rules are amended as follows—

Form VA

Omit the words and figures commencing “I apply to” and ending “on page 2 hereof.” and insert instead—

I apply to the Court for a direction to be given by the Court to the Parole Board that the information upon which the Board on (date) made a decision:

- * pursuant to section (22 or 22J or 22K*) of the Sentencing Act 1989 that I should not be released on parole was (false misleading irrelevant.*)
- * pursuant to section 34 (1) of the Sentencing Act 1989 that the parole order relating to me be revoked was (false misleading irrelevant.*)
- * to revoke my licence was (false misleading irrelevant.*)
- * pursuant to section (25 or 25A*) of the Periodic Detention of Prisoners Act 1981 that an order for periodic detention in force in respect of me be cancelled was (false misleading irrelevant.*)

The information which I contend was (false misleading irrelevant*) is set forth on page 2 hereof.

3. The Supreme Court Rules 1970 are amended as follows—

Part 7 rule 7

- (i) From subrule (1) omit “For” and insert instead “Subject to subrule (1A), for”.
- (ii) After subrule (1) insert—

(1A) Where an originating process contains an application for an order under section 7 of the Family Provision Act 1982, for the purposes of service the originating process shall be valid for 3 months from the date on which it is filed, unless the Court otherwise orders.

4. The amendment in paragraph 3 shall apply to proceedings commenced after 30 April 1999.

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

(a) Part 37 rule 4(3)

After “evidence” insert “and is subject to Part 77 rule 134”.

(b) Part 37 rule 7(7)

Omit the subrule and insert instead—

7(7) Where a subpoena requires attendance or production or both on a specified date, the subpoena may not be served on the person named later than:

(a) if attendance or production is required within the State—5 days; and

(b) otherwise—14 days,

before the date so specified unless the Court otherwise orders.

(c) Part 77

At the end of the Part (after the uncommenced rule 132 inserted by amendment 323) insert—

Division 51—Evidence (Audio and Audio Visual Links) Act 1998

Evidence taken by audio link or audio visual link

133 (1) An application for a direction under section 7 of the Evidence (Audio and Audio Visual Links) Act 1998 (“the subject Act”) may be made orally or by motion on notice.

(2) The application must be supported by an affidavit stating:

(a) the reasons why such a procedure is desirable;

(b) the nature of the evidence to be taken;

(c) the number of witnesses to be examined;

(d) the expected duration of the evidence;

(e) whether issues of character are likely to be raised;

(f) in the case of submissions—the expected duration of the submissions;

(g) the facilities available for such a procedure or that can reasonably be made available;

(h) that the requirements of section 8 or section 9 of the subject Act are able to be met.

(3) In deciding whether to grant the application, the Court may take account of the matters set out in the applicant's affidavit in addition to any other matters considered to be material, including cost and convenience to the witness and all parties.

(4) Where the Court makes a direction under section 7(1) of the subject Act, it may direct the registrar to arrange and co-ordinate the appropriate facilities in New South Wales and the other State and may give detailed directions, including a direction that an officer of the Supreme Court of the other State, or another person approved by the Court, be requested to be present to assist in the transmission of the evidence or submissions and, in particular, to:

- (a) introduce witnesses to be called and legal representatives;
- (b) assist with the administration of oaths, if necessary; and
- (c) assist with the implementation of any directions or requests given or made by the judge or officer hearing the evidence or submissions.

Subpoenas

134 (1) This rule applies where a party requests the issue of a subpoena in Form 46 or Form 46A or Form 46B or Form 48, to produce at the place where evidence is to be given, or submissions are to be made, pursuant to the direction under section 7(1) of the subject Act.

(2) If the subpoena is in Form 46 or Form 46A or Form 46B, in paragraph (c)(i) of the form, the words "post, in either case so that he receives them—

- (A) where this subpoena is served within New South Wales—NOT LATER THAN 48 HOURS; and
- (B) where this subpoena is served out of New South Wales—not later than 24 hours,"

shall be replaced by "post, PROVIDED THAT in either case—

- (A) where this subpoena is served within New South Wales—he or she receives:
 - (I) them; and

(II) if an officer of the Court considers it appropriate—an amount that the officer considers is sufficient to meet the cost of transmitting them, by a means that the officer considers reasonable, to the place where production is required,

NOT LATER THAN 7 days; and

(B) where this subpoena is served out of New South Wales—he or she receives them not later than 24 hours.”.

(3) If the subpoena is in Form 48, paragraph (c)(iii) of the form shall be replaced by:

(iii) you may produce this subpoena and the documents and things described in the schedule to a clerk of the Court at the above place by hand or by post, PROVIDED THAT in either case he or she receives—

(A) them; and

(B) if an officer of the Court considers it appropriate—an amount that the officer considers is sufficient to meet the cost of transmitting them, by a means that the officer considers reasonable, to the place where production is required,

NOT LATER THAN 7 days before the date on which you are required so to attend.

(4) The words “INTERSTATE PRODUCTION” shall be added immediately under the description of the subpoena on the first page of the subpoena.

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

(a) Part 77 Division 25A and Part 52A rule 39

Omit “Drug Trafficking (Civil Proceedings) Act 1990” wherever appearing and insert instead “Criminal Assets Recovery Act 1990”.

(b) Part 77

Insert, with appropriate Division and rule numbers, at the end of the Part 77—

Division -Victims Compensation Act 1996

Assignment of business

Proceedings in the Court under the Victims Compensation Act 1996 (the ““subject Act””) are assigned to the Common Law Division.

Statement in summons or notice of motion

The applicant for an order under the subject Act shall file with his summons or notice of motion a statement in summary form of the general nature of the facts and circumstances relied on.

Examination order: prescribed officer (s. 58H(2)(a))

An officer prescribed for the purposes of section 58H(2)(a) of the subject Act is a master or registrar.

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

(a) Part 70

After rule 15 insert—

Division 5—Distribution after Notice

Notice of intended distribution

16.(1) A notice under section 60(1) of the Trustee Act 1925 relating to a trust which arose in respect of a deceased estate shall be published in a newspaper circulating in the district where the deceased resided if:

(a) probate or letters of administration in respect of the estate has or have been granted by the Court or sealed under s. 107 of the Wills, Probate and Administration Act 1898; and

(b) the deceased was resident at the date of death in the State.

(2) A notice under section 60(1) of the Trustee Act 1925 to which subrule (1) does not apply shall be published in a Sydney daily newspaper.

(3) The notice may be in or to the effect of:

(a) where subrule (1) applies—Form 121; or

(b) otherwise—Form 121A.

(4) This rule is subject to section 60(8) of the Trustee Act 1925.

(b) Part 77 rule 69

Omit the rule and insert instead—

Notice of intended distribution

69.(1) A notice under section 35 of the subject Act shall be published:

(a) if the deceased person was resident at the date of the deceased person's death in the State—in a newspaper circulating in the district where the deceased person resided; or

(b) otherwise—in a Sydney daily newspaper, and shall be served on all persons of whose intention to bring an application under the subject Act the administrator has notice.

(2) The notice may be in or to the effect of Form 121.

(c) SCHEDULE F Form 121
Omit the form and insert instead—

Form 121

P. 78, r 91, P. 77, rr. 31, 69 and P.70 r 16(3)(a).

(Notice of intended distribution of an estate under—

(a) section 92 of the Wills, Probate and Administration Act 1898;
(b) section 11 of the Testator's Family Maintenance and Guardianship of Infants Act 1916;
(c) section 60 of the Trustee Act 1925 where Part 70 r 16(l) applies; or
(d) section 35 of the Family Provision Act 1982.)

(No heading or title is necessary.)

NOTICE OF INTENDED DISTRIBUTION OF ESTATE

Any person having any claim upon the estate of (name in capitals) late of (*place, occupation*) who died on (*date*) [*where the notice is given in respect of trust property add or in respect of (describe the property to be conveyed or distributed and identify the trust)*] must send particulars of the claim to the executor* (*name*) at {*address of executor* or care of name of solicitor, solicitor, address, [where applicable add or their agents, name address]}*} within {*one calendar month or longer period*} from publication of this notice. After that time the {*assets of the estate [where appropriate add and the property]*} or property} may be conveyed and distributed having regard only to the claims of which at the time of conveyance or distribution the executor* has notice. {*Probate was or Letters of administration were*} granted in N.S.W. on (*date*).

(Form 4 does not apply. It is not necessary to add the name of the person authorising publication.)

**or as the case may be*

FORM 121A

P. 70, r. 16(3)(b).

(No heading or title is necessary.)

NOTICE OF INTENDED DISTRIBUTION OF TRUST PROPERTY

Any person having any claim in respect of (*describe the property to be conveyed or distributed and identify the trust*) must send particulars of the claim to the trustee (*name*) at (*address of trustee or care of name of solicitor; solicitor, address, [where applicable add or their agents, name, address]*) within (*one calendar month or longer period*) from publication of this notice. After that time the trustee may convey and distribute the abovementioned property having regard only to the claims of which at the time of conveyance or distribution the trustee had notice.

(Form 4 does not apply. It is not necessary to add the name of the person authorising publication.)

- (d) From the Index of Forms, omit from the matter relating to Form 121 “r.91 and P.77, r.31” and insert instead “r.91, P.70, r. 16(3)(a), and P.77, rr.31, 69 ”.
- (e) In the Index of Forms, after the matter relating to Form 121, insert—
121A. Notice of intended conveyance or distribution of trust property (P. 70, r.16(3)(b)).

8. The amendments contained in paragraph 7 shall commence on 1 June 1999.

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

- (a) Part 51B rule 1
After “1998”, insert “(“the subject Act””).
- (b) Part 51B rule 3
 - (i) Replace the period with a semi-colon.
 - (ii) Move the definition of “tribunal below” to the end of the rule and replace the semi-colon at the end of the definition with a period.
- (c) Part 51B rule 4
Omit the rule.

(d) Part 51B rule 5

Omit subrule (3) and insert instead—

(3) Subject to subrules (3A), (S) and (5A), the summons for leave to appeal shall be filed within 28 days after the material date.

(3A) If an application is made to a Local Court under Part 4A of the subject Act, the time for filing a summons for leave to appeal does not start to run until the application under Part 4A is finally disposed of.

(e) Part 51B rule 5

Omit subrule (5) and insert instead—

(5) The Court may, at any time, extend the time fixed by subrule (3) or (4).

(5A) Where the decision appealed from is that of a magistrate, the tribunal below may, within the time fixed by subrule (3) for filing a summons for leave to appeal (as extended by subrule (3A)) or on application filed within that time, extend the time fixed by subrule (3).

(e) Part 51B rule 5(10)

After “applying” insert “to the Court”.

(g) Part 51B rule 7

Omit the rule and insert instead—

Time for appeal

7 (1) Subject to subrules (1A) and (2) and any provisions made by or under any Act, an appeal must be instituted within 28 days after the material date.

(1A) If an application is made to a Local Court under Part 4A of the subject Act, the time for instituting an appeal does not start to run until the application under Part 4A is finally disposed of.

(2) Time fixed by subrule (1) may be extended:

(a) by the Court at any time; or

(b) where the decision appealed from is that of a magistrate—by the tribunal below, but only within the time fixed by subrule (1) for instituting an appeal (as extended by subrule (1A)) or on application filed within that time.

(3) A party applying to the Court for an extension of time under subrule (2)(a) shall:

- (a) include that application in the summons instituting the appeal; or
- (b) lodge with his or her notice of motion or summons a draft, completed as far as possible, of the summons under rule 7 and the statement under rule 8, to be filed if an extended time is fixed.

EXPLANATORY NOTE

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

1. The object of the amendment contained in paragraph 2 is to amend a form to—

- (a) take account of amendments made to the Periodic Detention Of Prisoners Act 1981 by the Periodic Detention Of Prisoners Further Amendment Act 1998; and
- (b) correct a formatting error.

2. The object of the amendments contained in paragraph 3 is to reduce from 1 year to 3 months the time during which an originating process containing an application for an order under section 7 of the Family Provision Act 1982 remains valid for service, without an order of the Court extending the time. The reduction has been made because of problems arising with administration of an estate where originating process remains unserved for a substantial period without good reason.

3. The object of the amendments contained in paragraph 5 is—

- (a) to prescribe the procedure for making an application for a direction under s.7(1) of the Evidence (Audio and Audio Visual Links) Act 1998 (“the subject Act”) that evidence be taken, or submissions made, by audio link or audio visual link, from a participating State;
- (b) where the Service and Execution of Process Act 1992 (Commonwealth) does not apply and subpoenaed documents are to be produced to the Court registry instead of at a hearing at which the subject Act applies—to extend from 48 hours to 7 days the time that must be allowed after service of a subpoena and allow the registry to require in appropriate cases to require reasonable cost of transmitting the items produced interstate;
- (c) to require service of subpoenas for production or attendance outside the State 14 days before the date for production or attendance (instead of the present period of 5 days), being the period required by the Service and Execution of Process Act 1992 (Commonwealth) for service of subpoenas out of the State; and
- (d) to require “INTERSTATE PRODUCTION” to be added to the description of a subpoena to produce at the place in another State where evidence is to be given pursuant to a direction under the subject Act.

4. The object of the amendment contained in paragraph 6(a) is to update the reference to an Act the title of which has been changed.

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5. The object of the amendment contained in paragraph 6(b) is to—
 - (a) assign proceedings under the Victims Compensation Act 1996 to the Common Law Division;
 - (b) require a statement in summary form of the general nature of facts and circumstances relied on where an application is made for an order under that Act; and
 - (c) prescribe a master or registrar as an officer for the purpose of s.58H(2)(a) of that Act.
6. The object of the amendment contained in paragraph 7(a) is to prescribe the requirements of publication of a notice under s.60(1) of the Trustee Act 1925 (which bars claims against a trustee after a certain period following the publication) and to bring these requirements as closely as practicable to those of a notice under s.92 of the Wills Probate and Administration Act 1898 (which bars claims against an executor).
7. The object of the amendment contained in paragraph 7(b) is to amend the requirements for publication of a notice under s.35 of the Family Provision Act 1982.
8. The object of the amendment contained in paragraph 7(c) is to amend the form of notice prescribed for publication under s.92 of the Wills Probate and Administration Act 1898, s.11 of the Testator's Family Maintenance and Guardianship of Infants Act 1916, s.60 of the Trustee Act 1925 (where the trust arises under a deceased estate) and s.35 of the Family Provision Act 1982.
9. The object of the amendments contained in paragraphs 7(d) and (e) is to make amendments of an ancillary and consequential nature.
10. The object of the amendments contained in paragraph 9 is to limit the time during which application may be made to a Local Court to extend the time for appealing, or making an application for leave to appeal, to 28 days from the material date in relation to the decision appealed from or, where application has been made to the Local Court under Part 4A of the Justices Act 1902, from the time when the application under that Part is finally disposed of.

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