



New South Wales

SUPREME COURT RULES (AMENDMENT NO. 328) 1999

1. These rules are made by the Rule Committee on 17 May 1999.
2. The Supreme Court Rules 1970 are amended as follows—
 - (a) Part 12 rule 4
 - (i) At the end of subparagraph (w) omit “.” and insert instead “;”.
 - (ii) After paragraph (W) insert—
 - (x) section 61 or section 62 of the Residential Tribunal Act 1998 on an appeal relating to:
 - (i) the Residential Tenancies Act 1987;
 - (ii) the Retirement Villages Act 1989;
 - (iii) the Residential Parks Act 1998;
 - (b) Part 12 rule 5(a)
 - (i) At the end of subparagraph (xxxvi) omit “.” and insert instead “;”.
 - (ii) After subparagraph (xxxvi) insert—
 - ~~(xxv)~~ section 61 or section 62 of the Residential Tribunal Act 1998 on an appeal relating to:
 - (A) the Community Land Management Act 1989;
 - (B) the Strata Schemes Management Act 1996;
 - ~~(xxvi)~~ section 200 of the Strata Schemes Management Act 1996;
 - (c) Part 74 rule 1

Omit the rule and insert instead—

Proceedings after transfer etc. to the Court

1. (1) In this rule:

“**court**” includes a tribunal;

“**transfer**” includes remit and remove.

(2) Where proceedings are transferred to or into the Court from any other court:

- (a) subject to the Act or Commonwealth Act under which the transfer was made or any order of the Court:
 - (i) the registrar or clerk of the court from which the proceedings are transferred shall send the record of the proceedings to the Court; and
 - (ii) the Court shall proceed as if the proceedings had been originally commenced in the Court and as if the same steps had been taken in the Court as have been taken in any other court or courts in which the proceedings were for the time being pending and as if any order made by any other court or courts in which the proceedings were for the time being pending had been made by the Court;
- (b) the proceedings shall be assigned to the Division to which they would have been assigned if they had been commenced in the Court;
- (c) the plaintiff shall, within 28 days of the transfer, move the Court for directions under Part 26.

(3) Subrule (2) (c) shall not apply to proceedings to which rule 3 or Division 3 (which relates to cross-vesting laws) applies.

(4) This rule shall not apply to a stated case.

(5) Where proceedings are transferred by agreement under section 23(1) of the Residential Tribunal Act 1998, the parties shall reduce the agreement to writing and it shall be included with the record of the proceedings.

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

- (a) Part 1 rule 8(1)

Insert in alphabetical order—

“officer of the Court” does not include a solicitor, barrister or liquidator.
- (b) Part 41 rule 11(3)(b)(iii)

Omit “other than a solicitor”.

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- (c) Part 36 rule 16

Insert, after subrule (3)—

(4) Subrules (1)—(2) are subject to Part 77 rule 134A (which relates to production where a direction has been made under section 7(1) of the Evidence (Audio and Audio Visual Links) Act 1998).

- (d) Part 77

After rule 134 insert—

Notice to produce

134A A notice to produce at the place where evidence is to be given, or submissions are to be made, pursuant to a direction under section 7(1) of the subject Act shall:

- (a) be served not later than 14 days before the date on which production is required, unless the Court otherwise orders;
- (b) contain the following note:

“You may produce the documents and things described above by hand to a clerk of the Court at the Exhibits Office, Level 4 Queen’s Square, Sydney, or by posting them to—

Exhibits Clerk,
Prothonotary’s Office, Level 4,
Supreme Court of N.S.W.,
G.P.O. Box 3,
Sydney 2001,

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.

You need not comply with this notice if it is served on you after *(date calculated in accordance with paragraph (a)).*”;

- (c) contain the words “INTERSTATE PRODUCTION” immediately under the heading “NOTICE TO PRODUCE”.

(e) SCHEDULE F Form 45

At the end of the Form, on a new line, insert—

[if Part 77 rule 134A applies, add the wording required by the rule]

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

(a) Part 60 rule 17

After paragraph (a) insert—

(a1) in proceedings referred pursuant to Schedule D Part 3 paragraph 5;

(b) SCHEDULE D Part 2

Insert, in column 3, opposite the reference to Part 54—

Where paragraph 5 of Part 3 of this Schedule applies.

(c) SCHEDULE D Part 3

After paragraph 4 insert—

5. Proceedings referred to a master by a Judge where such proceedings arise under or out of any of the following:

Administrative Decisions Tribunal Act 1997;

Commercial Tribunal Act 1984;

Community Land Management Act 1989;

Consumer Claims Tribunals Act 1987;

Consumer Credit Administration Act 1995;

Dividing Fences Act 1991;

Fair Trading Tribunal Act 1998;

Home Building Act 1989;

Motor Vehicle Repairs Act 1980;

Residential Tenancies Act 1987;

Residential Tribunal Act 1998;

Retirement Villages Act 1989;

Strata Schemes Management Act 1996;

Transport Appeals Board Act 1980;

Travel Agents Act 1986.

EXPLANATORY NOTE

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

1. The objects of the amendment contained in paragraph 2 are to—
 - (a) assign matters referred under s.61 of the Residential Tribunal Act 1998 and appeals under s.62 of the Residential Tribunal Act; and
 - (b) to make further provision for the procedure for transferring proceedings to the court.
2. The object of the amendment contained in paragraph 3 is to—
 - (a) clarify the meaning of “officer of the Court” in the rules;
 - (b) allow notices to produce to be given where evidence is taken, or submissions are made, in a participating State pursuant to an order under section 7 of the Evidence (Audio and Audio Visual Links) Act 1998;
 - (c) require service of a notice to produce so given not less than 14 days before the date on which production is required; and
 - (d) allow production, pursuant to a notice to produce so given, to the registry 7 days prior to the date upon which production is required.
3. The object of the amendments contained in paragraph 4(b) and (c) is to—

Allow a Judge to refer to a master proceedings arising under certain Acts, including interlocutory matters.
4. The object of the amendment contained in paragraph 4(a) is to prevent an appeal from a master to the Court, where a master is exercising the power of the Court pursuant to a referral of the type referred to above, except to the Court of Appeal by leave.

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