



New South Wales

## SUPREME COURT RULES (AMENDMENT NO. 329) 1999

1. These rules are made by the Rule Committee on 21 June 1999.
2. The Supreme Court Rules 1970 are amended as follows—
  - (a) Part 77 Division 38  
Omit the Division.
  - (b) SCHEDULE H
    - (i) Omit the references to the *Commercial Tribunal Act 1984*, the *Trade Measurement Administration Act 1989* and the *Travel Agents Act 1986* and the material relating to any of those Acts.
    - (ii) In alphabetical order insert, in the appropriate columns—
 

Local Government Act 1993	330	Appeal from Administrative Decisions Tribunal
	485	Appeal from Pecuniary Interest Tribunal
    - (iii) From the matter relating to the Motor Dealers Act 1974, omit—  
“20F(6)      Appeal from Commercial Tribunal.”
3. The Supreme Court Rules 1970 are further amended as follows—
  - (a) From amendment 326 made by the Rule Committee on 15 February 1999, omit paragraph 4 (ac) (which amends SCHEDULE H).
  - (b) After Part 14C insert—

### PART 14D—ADMINISTRATIVE LAW LIST

#### Interpretation

1. In this Part:
  - (a) “Administrative Law proceedings” means:
    - (i) proceedings which were, at the conclusion of 30 June 1999, in the Administrative Law Division of the Court;

- (ii) proceedings assigned by any of the following rules:
  - (A) Part 12 rule 4(2); or
  - (B) Part 77 rules 84(3), 92(b), 96, 99, 100, 114, 116 or 118; and
- (iii) proceedings:
  - (A) for commanding or otherwise requiring a public body or a public officer to perform a public duty;
  - (B) for prohibiting or otherwise restraining a public body or a public officer from performing or purporting to perform any act;
  - (C) for determining by declaration or otherwise any matter concerning the powers of a public body or a public officer; or
  - (D) in appeals or applications to the Court in respect of decisions of a public body or a public officer under any enactment specified in the rules for the purposes of this subsection.
- (b) “the List” means the Administrative Law List kept in the registry.
- (c) “prescribed tribunal” means:
  - (i) a specified tribunal within the meaning of section 48 of the Act;
  - (ii) a court of petty sessions, whether constituted by a stipendiary magistrate or by justices of the peace;
  - (iii) a stipendiary magistrate, justice of the peace, coroner or deputy coroner; or
  - (iv) any other tribunal, person or body of persons prescribed, or belonging to a class prescribed for the purposes of this definition.
- (d) “public body” means a body of persons, whether corporate or unincorporate, constituted by or under an Act and required to perform or performing public duties, but does not include a prescribed tribunal.

- (e) “public officer” means a person holding or acting in a public office under the Government of the State or an office created by or under an Act and required to perform or performing public duties, but does not include a prescribed tribunal.

**Entry in List**

**2. (1)** A party to Administrative Law proceedings in the Common Law Division must add the words “Administrative Law List” under the heading and title of all documents filed by that party.

**(2)** Where a document endorsed pursuant to subrule (1) is filed, the proceedings shall be entered in the List, if not already so entered.

**(3)** The Court may, on application by a party or of its own motion, order entry in the List of proceedings in which subrule (1) has not been complied with.

**(4)** The Court may, at the same time as transferring Administrative Law proceedings to the Common Law Division, order that they be entered in the List.

**(5)** Proceedings referred to in rule 1(a)(i) shall be entered in the List.

**Removal from List**

**3(1)** The Court may, on application by a party or of its own motion, order that the proceedings be removed from the List and may give such further directions as to the continuance of the proceedings as it thinks fit.

**(2)** This Part does not apply to proceedings that have been removed from the List.

(c) **SCHEDULE H**

Omit from the heading to the Schedule “BUSINESS OF ADMINISTRATIVE LAW DIVISION” and insert instead “ADMINISTRATIVE LAW LIST”.

4. The amendments contained in paragraph 3(b) and (c) shall commence on 1 July 1999.

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5. The Supreme Court Rules 1970 are further amended as follows—
- (a) Part 70 rule 16
- Omit subrules (1), (2) and (3) and insert instead—
- (1) This subrule applies to a notice under section 60(1) of the Trustee Act 1925 relating to a trust that arose in respect of a deceased estate in which probate or letters of administration has or have been:
- (a) granted by the Court; or
- (b) sealed under s.107 of the Wills, Probate and Administration Act 1898.
- (2) A notice to which subrule (1) applies:
- (a) shall be published:
- (i) if the deceased was resident at the date of death in the State—in a newspaper circulating in the district where the deceased resided; or
- (ii) otherwise—in a Sydney daily newspaper; and
- (b) may be in or to the effect of Form 121.
- (3) A notice under section 60(1) of the Trustee Act 1925 to which subrule (1) does not apply:
- (a) shall be published in a Sydney daily newspaper; and
- (b) may be in or to the effect of Form 121A.
- (b) SCHEDULE F Form 121
- Omit “16(3)(a)” and insert instead “16(2)(b)”.
6. The amendments contained in paragraph 5 shall apply to notices published on or after 1 August 1999.
7. The Supreme Court Rules 1970 are further amended as follows—
- SCHEDULE E Part 1
- Omit the matter relating to Part 36 rule 16(3) and insert instead in the appropriate columns—
- |         |                   |
|---------|-------------------|
| Rule 16 | Notice to produce |
|---------|-------------------|

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

(a) Part 14A rules 2A, 3 and 4

Omit the rules and insert instead—

**Application of rules**

**2A.** Part 36 rule 3 (2) (evidence by affidavit) and rule 8 (plans, etc.) and Schedule F Forms 6 and 7 (summons) shall not apply to:

- (a) proceedings entered in the subject list; or
- (b) a summons filed in the Equity Division that contains a requirement under rule 4.

**Commencement of proceedings**

**3.** Notwithstanding Part 4 rule 2, where a plaintiff requires any proceedings to be entered in the subject list under rule 2, he or she shall commence proceedings by summons in the Equity Division.

**Entry in list on commencement of proceedings**

**4.(1)** Where a plaintiff, on his or her summons, or a defendant, on his or her notice of appearance or, in proceedings commenced by statement of claim, on his or her defence requires proceedings to be entered in the subject list:

- (a) in the case of proceedings in the Equity Division—the proceedings shall be entered in the subject list without any order for entry;
- (b) in any other case—the defendant requiring entry shall be entitled to an order that the proceeding be transferred to the Equity Division and entered in the subject list.

**(2)** A requirement under subrule (1) shall be made by a party by adding “Construction List” next under the heading and title on his or her summons, notice of appearance or defence, as the case may be.

**(3)** A requirement under subrule (1) shall not be made:

- (a) on a cross-claim;
- (b) by a defendant to a cross-claim who is a party in the proceedings before the filing of that cross-claim.

(b) Part 14A

After rule 5 insert—

**Bulk transfer orders**

**6.(1)** The Court may of its own motion, by a single order, order that proceedings of a specified type be transferred from the Common Law Division to the Equity Division.

**(2)** Part 41 rule 11 (1) shall not apply to an order to which subrule (1) applies.

(c) Part 14A rule 14

Omit the rule and insert instead—

**Court expert**

**14. (1)** The Court shall not obtain the assistance of a person (an “adviser”) under Part 39 rule 7:

(a) where all parties object; or

(b) where one party or some parties consents or consent, without giving all parties an opportunity to be heard.

**(2)** So far as practicable, the Court shall, in proceedings entered in the subject list, endeavour to arrange for the adviser to be present, either throughout the hearing or during the evidence and addresses relevant to his or her assistance to the Court and upon inspection, relevant to his or her assistance to the Court, of any place, process or thing under section 53 of the Evidence Act (which relates to a view).

(d) Part 34 rule 3(1)

Omit paragraphs (a) and (a1) and insert instead—

(a) if the proceedings are commenced by statement of claim—not later than 14 days after the date on which the notice to set down for trial is filed;

(e) Part 34 rule 7(1)

Omit “except in proceedings entered in the Construction List”.

(f) Part 49 rule 1(1) and Part 63 rule 6

Omit “Commercial List” wherever appearing and insert instead “Commercial List, the Construction List”.

(g) Part 72A rule 1A(1)

Omit the subrule and insert instead—

(1) Proceedings on an application or appeal under the subject Act or for a declaration of right that an award is not binding on a party are assigned to the Equity Division for entry:

(a) where the arbitration proceedings are proceedings to which Part 14A rule 2 (which relates to the Construction List) applies—in the Construction List;

(b) in any other case—in the Commercial List.

(h) SCHEDULE E Part 1

Insert in appropriate order in the appropriate columns—

Part 14A—

Rule 6	Order for transfer of proceedings to Equity Division and entry in Construction List.	.....
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9. The amendments contained in paragraph 8 shall commence on 1 August 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 provisions relating to appeals, the right to which has been removed or altered by the Administrative Decisions Tribunal Legislation Amendment Act 1998.
2. The object of the amendments contained in paragraph 3 is to provide for matters that are presently in the Administrative Law Division to be included in an Administrative Law List within the Common Law Division, following abolition of the Administrative Law Division.
3. The object of the amendment contained in paragraph 5 is to make Form 121 (which relates to the form of notice to be used under s.60(1) of the Trustee Act 1925) applicable where probate or letters of administration has or have been granted by the Court or sealed under s.107 of the Wills, Probate and Administration Act 1898.
4. The object of the amendment contained in paragraph 7 is to enable registrars to exercise all of the powers of the Court under Part 36 rule 16, which relates to notices to produce. This will bring registrars powers in relation to notices to produce into line with their powers in respect of subpoenas.

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5. The object of the amendments contained in paragraph 8 is to transfer the Construction List from the Common Law Division to the Equity Division. The List has for some time been dealt with by Equity Judges and the amendment brings the rules into line with the existing practice.

M.A. Blay

The Secretary of the Rule Committee

BY AUTHORITY