



New South Wales

Supreme Court Rules (Amendment No. 336) 1999

1. These rules are made by the Rule Committee on 20 December 1999.
2. The Supreme Court Rules 1970 are amended as follows—
 - (a) Part 1 rule 8(1)
In alphabetical order insert—
“Possession List” means the list to which Part 14B applies.
 - (b) After Part 14A insert—

PART 14B—POSSESSION LIST

Definitions

1. In this Part:

“**possession claim**” means a claim for possession of land, whether made by statement of claim or by cross-claim.

“**the List**” means the Possession List kept in the registry.

Application of Part

2. This Part, other than rule 4, does not apply to:

- (a) proceedings in the Equity Division;
- (b) proceedings entered in the Professional Negligence List;
- (c) appeals, or applications for stays, in respect of orders made by the Residential Tribunal,

and is subject to Parts 14A and 14C.

Entry in List

- 3.(1) Upon a possession claim being made in proceedings commenced after the commencement of this Part, the proceedings (ie the whole of the proceedings as instituted by statement of claim and all cross-claims in the same

proceedings) shall be entered in the List, if not already so entered.

(2) The Court may, on application by a party or of its own motion, order entry in the List of proceedings in which a possession claim is made, that:

- (a) were commenced before commencement of this Part;
or
- (b) are transferred to the Court.

Removal from the List

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

(2) Proceedings in the List that are entered in the Professional Negligence List or transferred to the Equity Division shall be removed from the List.

(3) This Part, other than rule 5(1), does not apply to proceedings that have been removed from the List.

Notice of entry in or removal from the List

5.(1) The Court shall give notice of entry of proceedings in, and removal of proceedings from, the List:

- (a) in the case of entry otherwise than pursuant to an order—to the party filing the document that results in the entry; and
- (b) in any other case—to each party who has an address for service in the proceedings and who was not present or represented when the order to enter or remove was made.

(2) Notice under subrule (1)(a) may, in addition to any other valid means, be given to a party by handing it to the person who filed the document.

(3) A party who is given notice under subrule (1)(a) shall serve the notice with the document and, if the document is not a statement of claim, will forthwith serve the document and the notice on each other party who has an address for service in the proceedings.

Endorsement of documents

6.(1) A party must add the words “Possession List” under the heading and title of a document filed by that party in proceedings that:

- (a) are entered in the List; or
- (b) will be entered in the List as a result of the filing of the document.

Dismissal

7.(1) If a defence to a possession claim has not been filed in proceedings entered in the List within 5 months of the possession claim being instituted, the Court may of its own motion dismiss:

- (a) the proceedings; or
- (b) if there is more than one claim made in the proceedings—the claim for possession,

unless a party satisfies the Court 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.

(3) Subrule (1) does not apply to proceedings, or to a claim, that have or has been disposed of by judgment, final order, discontinuance or dismissal.

Effect of dismissal

8.(1) An order for dismissal under rule 7 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 7;
- (b) a party is, by reason of the dismissal, liable to pay the costs of another party occasioned by the proceedings; and

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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.
- (c) SCHEDULE E Part 1
- (i) After the matter relating to Part 21, in the appropriate columns insert—
- | | | |
|---------|-----------|--|
| Part 23 | Discovery | Restricted to proceedings in the Possession List |
|---------|-----------|--|
- (ii) In the matter relating to Part 40, after the matter relating to rule 4, in the appropriate columns insert—
- | | | |
|--------------|--------------------------------|--|
| Rule 9(2)(a) | Setting aside default judgment | Restricted to proceedings in the Possession List |
|--------------|--------------------------------|--|
3. The amendments contained in paragraph 2 shall commence on 1 February 2000.
4. The Supreme Court Rules 1970 are further amended as follows—
- (a) Part 51 rule 2(3) and Part 51AA rule 1(2A)
- Omit the subrules.
5. The Supreme Court Rules 1970 are further amended as follows—
- (a) Part 41 rule 13(3) and (4)
- Omit the subrules and insert instead—
- (3)** Subject to Part 40 rule 12 (2), Part 74 rule 1A, Part 76 rule 7, Part 77 rule 141 (3), Part 80 rule 6, Part 80A rule 6 and subrule (4), the registrar shall not file or seal the minute in proceedings in a Division unless the Court so directs or a party so requests.
- (4)** The registrar may, in proceedings under the Corporations Law, file or seal a minute of a judgment or order without a direction of the Court or request of a party.
- (b) Part 51A rule 1(d)

Omit the paragraph and insert instead—

- (d) any appeal to which the provisions of Part 80A rule 32 (1) or rule 14.1 of the Corporations Law Rules apply.
- (c) Part 60 rule 1A(1)(b)
After “rules” insert “or of the Corporations Law Rules”.
- (d) Part 61 rule 3(6)(a)
After “21(1)” insert “or rule 16.1 of the Corporations Law Rules”.
- (e) Part 61 rule 5(1)(b)
Omit the paragraph and insert—
 - (b) under Part 74 rule 1A (which relates to minutes of judgment etc. transferring proceedings between courts), Part 80 rule 6 (which relates to minutes of judgment etc. under the Companies Code) or Part 40 rule 13(4) or Part 80A rule 6 (which relate to minutes of judgment etc. under the Corporations Law);
- (f) Part 77 rule 81

Omit the rule and insert instead—

Winding up (cf. Part 80 rule 57, Part 80A rule 38 and Corporations Law Rules rule 10.3)

81. (1) The rules relating to the winding up of bodies other than companies (including, where applicable, the Corporations Law Rules) apply, so far as applicable, to, and in relation to, the winding up by the Court of an incorporated association.

(2) Part 80 rule 3 and Part 80A rule 3 (3) (which relate to additions to the title) and the instructions concerning the title of the corporation contained in Form 1 of the Corporations Law Rules shall not apply to proceedings under the subject Act.

(3) Documents in proceedings for relief under section 50, section 51, section 53 or section 58 of the subject Act shall bear above the title, a reference to the name of the incorporated association to which the proceedings relate

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together with “the Corporations Law and the Associations Incorporation Act 1984”.

- (g) Part 77 rule 83(2)

After “1994” insert “and before the Corporations Law Rules commence”.

- (h) Part 77 rule 83

At the end of the rule insert—

(3) The provisions of the Corporations Law Rules relating to the winding up or dissolution of a company registered under the Corporations Law shall, so far as applicable and making such changes as it is necessary to make, apply to the winding up or dissolution of a society to which section 92 (6) (a) of the Co-operation Act 1923 applies and which is commenced after the Corporations Law Rules commence.

- (h) Part 77 rule 83B

Omit the rule and insert instead—

Applicability of Parts 80A and 80 and the Corporations Law Rules

83B. (1) The provisions of the Corporations Law Rules relating to applications under the Corporations Law shall, so far as applicable and making such changes as it is necessary to make, apply to:

- (a) proceedings under the subject Act commenced in the Court after those rules commence; and
- (b) applications made under the subject Act in those proceedings.

(2) The provisions of Part 80A relating to applications under the Corporations Law shall, so far as applicable and making such changes as it is necessary to make, apply to:

- (a) proceedings under the subject Act commenced in the Court after 31 March 1994 and before the Corporations Law Rules commence; and
- (b) applications made under the subject Act after 31 March 1994 in proceedings in the Court commenced before the Corporations Law Rules commence.

(3) The provisions of Part 80 relating to applications under the Companies Code and under the Corporations Law shall, so far as applicable and making such changes as it is necessary to make, apply to all other proceedings commenced and applications made under the subject Act.

- (i) Part 77 rule 121

Omit the rule and insert instead—

Application of rules

121. (1) The provisions of Part 80A shall, so far as applicable and making such changes as it is necessary to make, apply to proceedings under the subject Act commenced before the Corporations Law Rules commence.

(2) The provisions of Corporations Law Rules shall, so far as applicable and making such changes as it is necessary to make, apply to all other proceedings under the subject Act.

- (j) Part 77 rule 123

Omit the rule and insert instead—

Applicability of Part 80A and the Corporations Law Rules

123. (1) The provisions of Part 80A (which relate to proceedings under the Corporations Law) shall, so far as applicable and making such changes as it is necessary to make, apply to proceedings under the Code commenced before the Corporations Law Rules commence.

(2) The provisions of Corporations Law Rules shall, so far as applicable and making such changes as it is necessary to make, apply to all other proceedings under the Code.

- (k) Part 80 rule 1A

After “rule 2” insert “and the Corporations Law Rules”.

- (l) Part 80A rule 2

Omit the rule and insert instead—

Application

2. Subject to any order of the Court, this Part applies to:

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- (a) proceedings under the Corporations Law or the ASC Law commenced in the Court after 30 January 1994 and before the Corporations Law Rules commence; and
 - (b) applications made under the Corporations Law or the ASC Law after 30 January 1994 in proceedings in the Court commenced before the Corporations Law Rules commence.
- (m) SCHEDULE Part 2
 - In numerical order insert—
 - 31A** Order under rule 11.3(7), direction under rule 11.4 and leave under rule 11.8(1) of the Corporations Law Rules.
- 6. The amendments contained in paragraph 5 shall commence on 1 March 2000.
- 7. The Supreme Court Rules are further amended as follows—
 - Part 65A rule 3(1)
 - Omit the subrule and insert instead—
 - (1)** Any legal practitioner:
 - (a) whose name is removed from a roll kept outside the State that corresponds to the Roll of Legal Practitioners in the Court;
 - (b) who is prohibited (whether conditionally or unconditionally) from reinstatement to such a roll; or
 - (c) who is:
 - (i) suspended from practising; or
 - (ii) prohibited (whether conditionally or unconditionally) from resuming practice,as a lawyer (whether known as a barrister, a solicitor, a barrister and solicitor, an attorney, a legal practitioner or otherwise) outside the State,by reason of misconduct, is suspended from practice:
 - (d) in the case of removal—unless the Court otherwise orders;
 - (e) in the case of suspension or prohibition—during the period of suspension or prohibition, unless the Court otherwise orders.

8. The amendment contained in paragraph 7 shall commence on 1 March 2000.

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

(a) Part 13

After rule 5 insert—

Non appearance by plaintiff

5A (1) If there is no attendance by or on behalf of a plaintiff at a hearing (including the hearing of an interlocutory or other application and a directions hearing), or at a trial, of which he or she has had due notice, the Court may, on application by a party or of its own motion, adjourn the hearing or trial to another date and direct that not less than 5 days before that date a notice of the adjournment be served on the plaintiff advising that the proceedings may be dismissed if there is no attendance by or on behalf of the plaintiff at the adjourned hearing or trial.

(2) If the plaintiff has been given notice in accordance with subrule (1) and there is no attendance by or on behalf of the plaintiff at the adjourned hearing or trial, the Court may, on application by a party or of its own motion, dismiss the proceedings.

(3) This rule does not restrict any other power of the Court to dismiss proceedings.

(b) SCHEDULE E Part 1

After the matter relating to Part 6, in the appropriate columns insert—

Part 13—

| | |
|---------|--|
| Rule 5A | Dismiss proceedings where non-attendance by plaintiff |
|---------|--|

10. The Criminal Appeal Rules are amended as follows—

(a) Rules 31A and 31B

Omit the rules and the heading “SENTENCING ACT 1989” and insert instead—

CRIMES (ADMINISTRATION OF SENTENCES) ACT
1999

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- pursuant to section 167 of the *Crimes (Administration of Sentences) Act 1999* that an order for home 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.

(signed) †

Applicant

* *Strike out any word or words which is or are not applicable.*

† *This application must be signed by the applicant and, if he or she cannot write, his or her mark must be attested by a witness whose name and address must be given.*

The applicant must answer the following question:

Do you desire to appear in person at the hearing or determination of your application?

If the answer is "yes", the applicant must state the grounds on which the applicant contends he or she should be allowed to do so.

(Page 2 of application)

The following information was false: *(set out the information)* or

The following information was misleading *(set out the information)* or

The following was irrelevant *(set out the information)*.

VBA

Criminal Appeal Act 1912

Parole Board and *(name of inmate)*

Application to the Court

To the Registrar:

The day of 20 .

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The Attorney General (*or* The Director of Public Prosecutions) applies 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 (*number of appropriate section*) of the *Crimes (Administration of Sentences) Act 1999* that

(*name of inmate*) should be released on parole* was (false misleading irrelevant.*)

the parole order relating to (*name of inmate*) be not revoked* was (false misleading irrelevant.*)

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

(*signed*)

Applicant

* *Strike out any inapplicable word or words.*

(*Page 2 of application*)

The following information was false: (*set out the information*) or

The following information was misleading (*set out the information*) or

The following was irrelevant (*set out the information*).

10. The amendments contained in paragraph 9 shall commence on the date that the *Crimes (Administration of Sentences) Act 1999* commences.

EXPLANATORY NOTE

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

1. The object of the amendments contained in paragraph 2 is to establish a special list for proceedings in the Common Law Division that include a claim for possession of land, other than proceedings entered in the Professional Negligence List.

Relevant proceedings are automatically entered in the list upon commencement or, where the proceedings did not originally contain a possession claim, upon such a claim being made. The Court may order

proceedings to be entered in the List that were commenced before the List commenced or are transferred to the Court and there is provision for removal of proceedings from the List in appropriate circumstances.

There is provision for notification of parties when a matter is entered in or removed from the List and for endorsement of documents identifying proceedings that are entered or are to be entered in the List.

There is provision for dismissal of proceedings where appropriate action is not taken to ensure that proceedings do not remain inactive for an unreasonable period following institution.

Procedures will be adopted in respect of the List designed to reduce delay and expense and to ensure proceedings are fully prepared for hearing.

2. The object of the amendment contained in paragraph 4 is to omit subrules rendered superfluous by the Courts Legislation Further Amendment Act 1995.
3. The object of the amendments contained in paragraph 5 is to take account of the Corporations Law Rule that will commence on 1 March.
4. The object of the amendments contained in paragraph 7 is to extend the automatic suspension from practice in NSW of a legal practitioner:
 - (a) whose name is removed from a roll kept outside the State that corresponds to the Roll of Legal Practitioners in the Court for misconduct; or
 - (b) who is suspended from practising as a lawyer (whether known as a barrister, a solicitor, a barrister and solicitor, an attorney, a legal practitioner or otherwise) outside the State for misconduct,to a legal practitioner who, due to misconduct, is prohibited from reinstatement to such a roll or from resuming practice outside NSW.
5. The object of the amendments contained in paragraph 9 is allow proceedings to be dismissed if:
 - (a) a plaintiff fails to attend a hearing (including the hearing of an interlocutory or other application and a directions hearing) or a trial of which he or she has had due notice; and
 - (b) the hearing or trial is adjourned and 5 days' notice is given to the plaintiff of the adjournment and that the proceedings may be dismissed.

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6. The object of the amendments contained in paragraph 10 is to take account of the Crimes (Administration of Sentences) Act 1999. The amendment to Form VAB also corrects an error by removing “not”.

M A Blay

The Secretary of the Rule Committee

BY AUTHORITY
