



New South Wales

## Supreme Court Rules (Amendment No. 340) 2000

1. These rules are made by the Rule Committee on 19 June 2000.
2. The Supreme Court Rules 1970 are amended as follows—
  - (a) Part 12 rule 5 (b)
    - (i) From paragraph (v) omit “.” and insert instead “;”.
    - (ii) After paragraph (v) insert—
      - (vi) in relation to any provision in any Act or Commonwealth Act by which a tax, fee, duty or other impost is levied, collected or administered by or on behalf of the State or the Commonwealth.
  - (b) Part 77
    - (i) Omit Division 31.
    - (ii) From rule 118, omit “Common Law” and insert instead “Equity”.
  - (c) SCHEDULE H Part 1
 

Omit the following—

Land Tax Management Act 1956 .	38 B	Appeal.
	38 BE	Stated case.
Pay-roll Tax Act 1971 . . . . .	32 (8)	Appeal.
	32 F	Stated case.
Stamp Duties Act 1920 . . . . .	68	Evidence of value of property.
	124	Case stated by Commissioner.
	129B (1B)	Injunction.
3. The amendments contained in paragraph 2 apply to proceedings commenced on or after 1 August 2000.
4. The Supreme Court Rules 1970 are amended as follows—
  - (a) Part 12 rule 4 (1) (x)
 

After “on” insert “a referral or”.

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- (b) Part 14D rule 1 (a)
  - (i) From the end of subparagraph (ii) omit “and”.
  - (ii) From paragraph (iii) (D) omit “.” and insert instead “; and”.
  - (iii) After paragraph (iii) insert—
    - (iv) proceedings under section 61 or section 62 of the Fair Trading Tribunal Act 1998, other than proceedings on an appeal or referral relating to the Retirement Villages Act 1999.
- (c) Part 12 rule 5 (a)
  - (i) In paragraph (xxxvii), after “on” insert “a referral or”.
  - (ii) After subparagraph (xxxvii) (B) insert—
    - (C) the Retirement Villages Act 1999;
  - (iii) Renumber subparagraphs (xc) and (xci) as (xl) and (xli) respectively.
  - (iv) After subparagraph (xli), as renumbered, insert—
    - (xlii) section 61 or section 62 of the Fair Trading Tribunal Act 1998 on an appeal or a referral relating to the Retirement Villages Act 1999;
- (d) Part 77  
At the end of the Part insert—

### **Division 55—the Retirement Villages Act 1999**

#### **Assignment**

**145.** Proceedings under the Retirement Villages Act 1999 (“**the subject Act**”), other than proceedings under section 183 (1) (which relates to proceedings for an offence), are assigned to the Equity Division.

#### **Consent of administrator**

**146.** In an application for an order under section 84 of the subject Act, the plaintiff must—

- (a) file the consent mentioned in section 85 of the subject Act with the application; and
- (b) serve the consent with the application.

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**Application under s 88 of the subject Act**

**147.** An application for an order under section 88 of the subject Act revoking or varying an order appointing an administrator may be made by motion in the proceedings in which the order appointing the administrator was made.

- (e) Schedule D Part 3 Paragraph 5

After “*Retirement Villages Act 1989*”, insert “*Retirement Villages Act 1999*”.

- (f) Schedule H Part 1

Omit the reference to the Fair Trading Tribunal Act 1998 and the matter relating to it.

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

- (a) Part 51 rule 18 (5)

Omit “47” and insert instead “47 (1)”.

- (b) Part 51 Division 4

To the heading to the division add “**and chronologies**”.

- (c) Part 51 rule 44

- (i) From the heading to the rule omit “**Written**” and insert instead “**Filing written**”.

- (ii) Omit subrules (1) and (2) and insert instead—

**(1)** Each non-submitting party shall, unless otherwise directed, file written submissions, and the appellant shall file a chronology. The respondent may file an alternative or supplementary chronology.

**(2)** A party who files written submissions may file one set of amended submissions—

- (a) if the amendment is of a minor or formal nature or consists of the insertion of appeal book references or of an omission—without leave; or

- (b) otherwise—by leave of a Judge of Appeal or the registrar or with the consent of all other interested parties.

- (d) Part 51 rule 44A

- (i) From the heading to the rule omit “**Written**” and insert instead “**Filing written**”.

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- (ii) Omit subrule (1) and insert instead—

**(1)** Each non-submitting party shall, unless otherwise directed, file written submissions, and the appellant shall file a chronology. The respondent may file an amended or supplementary chronology.

- (e) Part 51 rule 47

Omit subrules (1), (2) and (3) and insert instead—

**(1)** Written submissions shall be filed as follows:

- (a) by the appellant—within 6 weeks of the notice of appeal with appointment being filed; and
- (b) by the respondent—within 10 weeks of the notice of appeal with appointment being filed.

**(2)** Chronologies and amended written submissions shall be filed as follows—

- (a) by the appellant—not less than 10 weeks before the hearing date of the appeal; and
- (b) by the respondent—not less than 8 weeks before the hearing date of the appeal.

**(3)** Compliance with subrules (1) or (2) does not excuse compliance with rule 35A (b) or (c).

cf. r 37A as to the overriding obligation to ensure that the Orange Book is filed on time

- (f) Part 51 rules 48 and 48A

Omit the rules and insert instead—

### **Service**

**48.** A party who files a chronology or original or amended written submissions shall, on the day of filing, serve 3 copies on every other interested party.

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

- (a) Part 77 rule 133

- (i) In subrule (1) after “under” insert “section 5B or”.
- (ii) In subrule (2) (g), after “available”, insert “, including the minimum transmission rate that will be available”.
- (iii) In subrule (2) (h) omit “section 8 or section 9” and insert instead “section 20A or section 20B”.
- (iv) From subrule (2) (h) omit “.” and insert instead “;”.

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- (v) After subrule 2 (h) insert—
    - (i) an undertaking to pay all appropriate fees/charges for this facility.
  - (vi) Omit subrule (4) and insert instead—
 

**(4)** Where the Court makes a direction under section 5B (1) or 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 place and may give detailed directions, including a direction that—

    - (a) where applicable—an officer of the Supreme Court of the other State; or
    - (b) 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:
      - (c) introduce witnesses to be called and legal representatives;
      - (d) assist with the administration of oaths, if necessary; and
      - (e) assist with the implementation of any directions or requests given or made by the judge or officer hearing the evidence or submissions.
  - (b) Part 77 rule 134
 

Substitute the following for subrules (1), (2) and (4) respectively—

**(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 5B (1) or 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,

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BEFORE THE DATE on which you are required so to attend;”

shall be replaced by:

- (a) if service is effected under the Service and Execution of Process Act 1992 of the Commonwealth—“post, PROVIDED THAT in either case he or she receives them not later than 24 hours BEFORE THE DATE on which you are required so to attend;”; or
- (b) otherwise— “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 “PRODUCTION UNDER THE EVIDENCE (AUDIO AND AUDIO VISUAL LINKS) ACT 1998” shall be added immediately under the description of the subpoena on the first page of the subpoena.

- (c) Part 77 rule 134A (c)

Omit “INTERSTATE PRODUCTION” and insert instead “PRODUCTION UNDER THE EVIDENCE (AUDIO AND AUDIO VISUAL LINKS) ACT 1998”

### EXPLANATORY NOTES

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

1. The object of the amendments contained in paragraph 2 is to assign to the Equity Division proceedings relating to a revenue provision.
2. The object of the amendments contained in paragraph 4 are to—
  - (a) assign to the Equity Division—
    - (i) proceedings on a referral or appeal relating to the *Retirement Villages Act 1999* under section 61 or section 62 of—

- (A) the *Fair Trading Tribunal Act 1998*; or
      - (B) the *Retirement Villages Act 1999*; and
    - (ii) proceedings under the *Retirement Villages Act 1999*, other than proceedings under section 183 (1) (which relates to proceedings for an offence);
  - (b) assign to the Common Law Division, and provide for entry in the Administrative Law List, proceedings under section 61 or section 62 of the *Fair Trading Tribunal Act 1998*, other than proceedings on an appeal or referral relating to the *Retirement Villages Act 1999*;
  - (c) require, on an application for appointment of an administrator under s 84 of the *Retirement Villages Act 1999*, a consent of a person proposed to be appointed to be filed and served with the application;
  - (d) to allow an application for an order under section 88 of the *Retirement Villages Act 1999* revoking or varying an order appointing an administrator to be made by motion in the proceedings in which the order appointing the administrator was made.
3. The object of the amendments contained in paragraph 5 is to—
- (a) alter the time for filing chronologies from early in the proceedings to closer to the hearing in order to avoid the need to update them; and
  - (b) remove superfluous references to service.
4. The object of the amendments contained in paragraph 6 is to:
- (a) take account of amendments to the *Evidence (Audio and Audio Visual Links) Act 1998* made by the *Evidence (Audio and Audio Visual Links) Amendment Act 2000*;
  - (b) require the transmission rate of a proposed video link to be specified; and
  - (c) provide for payment of costs of a video link.

M A Blay

The Secretary of the Rule Committee

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**CORPORATIONS LAW RULES**

This rule amendment is made by the Supreme Rule Committee on 19 June 2000.

The Corporations Law Rules are amended as follows—

Rule 5.5 (1A)

Omit the subrule.

**EXPLANATORY NOTE**

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

The object of the above amendment is to omit a superseded rule.

M A Blay

The Secretary of the Rule Committee

BY AUTHORITY