



New South Wales

## Supreme Court Rules (Amendment No. 341) 2000

1. These rules are made by the Rule Committee on 17 July 2000.
2. The Supreme Court Rules 1970 are amended as follows—

### Part 67

- (a) Omit the Divisional headings.
- (b) Rule 9

Omit the rule and insert instead—

### Application

**9.** This Part applies to proceedings for defamation.

- (c) Rule 11 (4)

Omit the subrule.

- (d) Rule 11A

Omit the rule and insert instead—

### Motion for directions

**11A. (1)** The plaintiff shall, on commencing the proceedings, move on notice for a hearing for directions under Part 26 and rule 11B of this Part.

**(2)** The notice and the statement of claim shall be served not less than 21 days before the date of hearing fixed by the notice.

- (e) Rule 11B

Omit paragraph (c) and insert instead—

- (c) make orders pursuant to Part 31 rule 2;
- (d) set the proceedings down for trial.

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(f) Rule 12

Omit the rule and insert instead—

**Particulars: publication and innuendo**

**12. (1)** The particulars required by Part 16 rule 1 in relation to a statement of claim shall include:

- (a) particulars of any publication on which the plaintiff relies to establish the cause of action, sufficient to enable the publication to be identified;
- (b) particulars of any publication, circulation or distribution of the matter complained of or copy of the matter complained of on which the plaintiff relies on the question of damages, sufficient to enable the publication, circulation or distribution to be identified;
- (c) where the plaintiff alleges that the matter complained of had a defamatory meaning other than its ordinary meaning—particulars of the facts and matters on which the plaintiff relies to establish that defamatory meaning, including:
  - (i) full and complete particulars of the facts and matters relied upon to establish a true innuendo; and
  - (ii) by reference to name or class, the identity of those to whom those facts and matters were known;
- (d) where the plaintiff is not named in the matter complained of—particulars of identification of the plaintiff together with, by reference to names and addresses or class of persons, the identity of those to whom any such particulars were known; and
- (e) particulars of the part or parts of the matter complained of relied upon by the plaintiff in support of each pleaded imputation.

**(2)** There shall be filed and served with the statement of claim and any amended statement of claim and referred to in it, where applicable:

- (a) a legible photocopy of the original publication or, in the case of an internet, e-mail or other computer displayed publication, a printed copy;
- (b) a typescript, with numbered lines, of:
  - (i) if the original publication is in English—the text of the original publication; or
  - (ii) otherwise—a translation of the text of the original publication; and
- (c) a description of any other written material other than words.

(3) Subrule (2) (b) shall be complied with in respect of radio and television publications.

#### **Disputes**

12A (1) A defendant, not less than 7 days before the return date of the notice of motion filed under rule 11A, must file and serve on each other party who has an address for service in the proceedings a notice of the subject of any objection or other dispute in relation to any matter pleaded or particularised in the Statement of Claim, identifying with particularity the nature of the objection or other dispute and providing an outline of submissions in relation to it.

(2) A plaintiff who is served with a notice under subrule (1) must, not less than 2 days before the return date of the notice of motion, file and serve on each other party who has an address for service in the proceedings a notice stating its position in relation to the objection or matter in dispute and providing an outline of submissions in relation to it.

- (g) Rule 13  
Omit the note to the rule.
- (h) Rule 15 (d)  
Omit “he” and insert instead “the defendant”.
- (i) Rule 17 (c) (iii)  
Omit “his” and insert instead “the defendant”.

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- (j) Rule 17 (3) (b)  
Omit “facts and matters” and insert instead “facts, matters and circumstances”.
- (k) Rule 17 (3)  
Omit the note to the subrule.
- (l) Rule 17 (4)  
Omit the subrule.
- (m) Rule 17 (6)  
Omit “(3), (4)” and insert instead “(3)”.
- (n) Rules 18 and 19  
Omit the rules and insert instead—

### **Particulars of defence**

**18. (1)** The particulars of defence required by Part 16 rule 1 shall, unless the Court otherwise orders, include particulars of the facts, matters and circumstances on which the defendant relies to establish:

- (a) that any imputation, notice, report, comment or other material was or related to a matter of public interest;
- (b) that any imputation or matter was published under qualified privilege;
- (c) that any imputation or contextual imputation was true or was a matter of substantial truth;
- (d) that any material being proper material for comment was a matter of substantial truth.

**(2)** Where a defendant intends to make a case in mitigation of damages by reference to:

- (a) the circumstances in which the publication complained of was made;
- (b) the reputation of the plaintiff;
- (c) any apology for, or explanation or correction or retraction of, any imputation complained of;

(d) any recovery, proceedings, receipt or agreement to which section 48 of the Defamation Act 1974 applies, the defendant shall give particulars of the facts, matters and circumstances on which the defendant relies to make that case.

(3) Where a defendant intends to show, in mitigation of damages, that any imputation complained of was true or was a matter of substantial truth, the defendant shall give particulars identifying the imputation, stating that intention, and of the facts, matters and circumstances the defendant relies upon to establish that the imputation was true or was a matter of substantial truth.

(4) The particulars required by subrules (2) and (3) shall be set out in the defence, or, if that is inconvenient, shall be set out in a separate document, referred to in the defence and that document shall be filed and served with the defence.

#### **Malice etc.: reply and particulars**

**19. (1)** Where a plaintiff intends to meet any defence:

- (a) by alleging that the defendant was actuated by express malice in the publication of the matter complained of;
- (b) by relying on any matter which, under the Defamation Act 1974, defeats the defence,

then:

- (c) the plaintiff shall plead that allegation or matter of defeasance by way of reply; and
- (d) the particulars required by Part 16 rule 1 in relation to the reply shall include particulars of the facts, matters and circumstances on which the plaintiff relies to establish that allegation or matter of defeasance.

(2) The plaintiff must give:

- (a) particulars of facts, matters and circumstances upon which the plaintiff will rely in support of a claim for aggravated damages; and
- (b) particulars of any claim the plaintiff makes by way of:
  - (i) special damages; or
  - (ii) any claim for general loss of business or custom, or cognate claim.

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**(3)** The particulars required by subrule (2) shall be set out in the reply, or, if that is inconvenient, shall be set out in a separate document, referred to in the reply, and that document shall be filed and served with the reply.

- (o) Rules 21 and 22  
Omit the notes to each of the rules.
- 3. The amendments contained in paragraph 2 shall apply to proceedings commenced on or after 1 September 2000.
- 4. The Supreme Court Rules 1970 are further amended as follows—
  - (a) Part 12 rule 5 (a)  
After paragraph (xlii) insert—  
(xliii) section 13 of the Married Persons (Equality of Status) Act 1996;
  - (b) Part 60 rule 17
    - (i) From paragraph (f) omit “or”.
    - (ii) From paragraph (g) omit “.” and insert instead “; or”.
    - (iii) After paragraph (g) insert—  
(h) in proceedings under section 13 of the Married Persons (Equality of Status) Act 1996.
  - (c) SCHEDULE D Part 1  
At the end of the Schedule insert in the appropriate columns—  
Act No. 96, 1996; Married Persons  
(Equality of Status) Act 1996  
Section 13..... Fraudulent investment.... ....
- 5. The Supreme Court Rules 1970 are further amended as follows—
  - (a) Part 12 rule 5 (a) (xiii)  
Omit the subparagraph and insert instead—  
(xiii) the Status of Children Act 1996;

(b) Part 77 Division 10

Omit the Division and insert instead—

**Division 10—Status of Children Act 1996**

**Form of declaration**

38. A declaration under section 21 (2) of the Status of Children Act 1996 (“the subject Act”) (which subsection relates to a declaration of parentage) shall be in the prescribed form.

**Parentage testing procedure: service of notice of motion on non-party**

39. Where a party moves under section 26 of the subject Act for an order requiring a parentage testing procedure to be carried out on a person who is not a party to the proceedings, notice of the motion shall, unless the Court otherwise orders, be served personally on that person.

**Service of notice of motion on disable person**

40. Where the notice of motion for an order requiring a parentage testing procedure to be carried out on a person is to be served personally on a disable person and the person served under Part 63 rule 15 does not appear to have the care and control of the disable person, then, unless the Court otherwise orders, the notice shall also be served personally on the person who appears to have that care and control and on such other person as the Court may direct.

**Service of order on non-party**

41. Where the Court makes an order under section 26 (1) of the subject Act, the registrar shall serve the minute of order on any person on whom a parentage testing procedure is required to be carried out and who is not a party to the proceedings.

**Disable person**

42. Where the Court makes an order under section 26 (1) of the subject Act, requiring a parentage testing procedure to be carried out on a disable person, the order shall name the person having the care and control of the disable person.

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### **Service of order on disable person**

43. Where any minute of order under section 26 (1) of the subject Act is to be served on a disable person and the person served under Part 63 rule 15 is not the person having the care and control of the disable person, then, unless the Court otherwise orders, the minute shall also be served personally on the person having that care and control and on such other person as the Court may direct.

### **Service of report**

44. On receipt of a report under regulation 8 of the Status of Children Regulation 1996, the registrar shall serve the report on the parties to the proceedings and on any person from whom the taking of bodily samples was directed and who is not a party to the proceedings.

- (c) Part 78 rule 5 (1) (s)
  - (i) Omit “13 (1) or section 15 (1) of the Children (Equality of Status) Act 1976” and insert instead “21 (2) of the Status of Children Act 1996”;
  - (ii) Omit “the father or mother” and insert instead “a parent” wherever appearing.
- (d) SCHEDULE F Form 89A  
Omit the Form and insert instead—

### **Form 89A**

*P. 77, r. 38*

*(Minute of order under section 21 (2) of the Status of Children Act 1996)*

### **ORDER**

THE COURT DECLARES that the relationship of parent and child exists between the person named below and the child named below—

**CHILD**

Surname:

Other names:

Sex:

Date of birth:

Place of birth: (*full name and address of hospital or house*)

PARENT

Surname:

Other names:

Occupation:

Sex:

Date of birth:

Where born: (*town or locality*)

(*State or country*)

(*Complete as in general form of minute of order under Part 41 rule 11, Form 51*)

(e) **SCHEDULE F, Index of Forms**

Omit the matter relating to Form 89A and insert instead  
“Minute of order under section 21 (2) of the Status of Children Act 1996 (P. 77, r. 38).”

6. The amendments contained in paragraph 5 shall commence on 1 August 2000.
7. The Supreme Court Rules 1970 are amended as follows—  
Part 78 rule 28 (2)  
Omit the subrule and insert instead—  
(2) Subrules (5), (6), (7) and (8) of rule 24A apply as if the application were an application for administration.

**EXPLANATORY NOTE**

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

1. The object of the amendments contained in:
  - (a) paragraphs 2 (a) and (b) is to omit superfluous wording;
  - (b) paragraphs (2) (c) and (e)–(o) is to:

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- (i) ensure that relevant information in respect of each party's case and matters in dispute is provided at an early stage in defamation proceedings;
- (ii) remove old notes; and
- (iii) replace gender specific expressions;

- (c) paragraph 2 (d) is to ensure that statements of claim and the initial notice of motion for directions in defamation proceedings is served 21 days before the date of the directions hearing.

2. The object of the amendments contained in paragraph 4 is to—
  - (a) assign to the Equity Division proceedings under section 13 of the Married Persons (Equality of Status) Act 1996;
  - (b) provide that an appeal from a decision of a master in such proceedings shall lie to the Court of Appeal; and
  - (c) assign such proceedings to a master.
3. The object of the amendments contained in paragraph 5 is to take account of the replacement of the Children (Equality of Status) Act 1976 by the Status Of Children Act 1996.
4. The object of the amendments contained in paragraph 7 is to update references to an amended rule.

M A Blay

The Secretary of the Rule Committee

BY AUTHORITY