

**ERRATUM**

THE Supreme Court Rules (Amendment No 355) 2001 that appeared in the *Government Gazette* on 19 October 2001, No 158, page 8651 was published in an incorrect format. It is now republished in its correct format.



New South Wales

## **Supreme Court Rules (Amendment No 355) 2001**

under the

**Supreme Court Act 1970**

The Supreme Court Rule Committee made the following rules of court under the *Supreme Court Act 1970* on 15 October 2001.

Stephen Jupp

Secretary to the Rule Committee

### **Explanatory note**

The object of these Rules is to amend Part 14A of the *Supreme Court Rules 1970* to expand the types of proceedings that may be included on the Construction List of proceedings in the Equity Division of the Supreme Court to include proceedings relating to the design, acquisition, disposal or operation of technology in commercial transactions or in transactions involving Government and to rename that expanded list the “Technology and Construction List”.

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Rule 1 Supreme Court Rules (Amendment No 355) 2001

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**Supreme Court Rules (Amendment No 355) 2001**

**1 Name of Rules**

These Rules are the *Supreme Court Rules (Amendment No 355) 2001*.

**2 Commencement**

These Rules commence on 1 January 2002.

**3 Amendment of Supreme Court Rules 1970**

The *Supreme Court Rules 1970* are amended as set out in Schedule 1.

**4 Notes**

The explanatory note does not form part of these Rules.

## Schedule 1 Amendments

(Rule 3)

**[1] Part 1, rule 8**

Omit the definition of *Construction List* from rule 8 (1).

**[2] Part 1, rule 8 (1)**

Insert in alphabetical order:

*Technology and Construction List* means the list to which Part 14A applies.

**[3] Part 14A**

Omit the Part. Insert instead:

## Part 14A Technology and Construction List

### 1 Interpretation

In this Part:

*building or engineering expert* includes builder, engineer, architect, designer and quantity surveyor.

*building or engineering work* includes:

- (a) any intended building or engineering work, and
- (b) any building or engineering work in the course of construction or completion or which has been substantially or fully completed, and
- (c) any associated work.

### 2 Proceedings for entry in list

The following proceedings (unless they are proceedings on a claim for damages in respect of the death of, or personal injuries to, any person) may, subject to this Part, be entered in the Technology and Construction List (*the List*) kept in the registry:

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- (a) proceedings relating to or arising out of:
  - (i) the design, carrying out, supervision or inspection of any building or engineering work,
  - (ii) the performance by any building or engineering expert of any other services with respect to any building or engineering work,
  - (iii) any certificate, advice or information given or withheld with respect to any building or engineering work,
- (b) proceedings relating to or arising out of, or the determination of which involves, the design, acquisition, disposal or operation of technology in commercial transactions or in transactions involving Government,
- (c) proceedings on a claim for rectification, setting aside or cancellation of any agreement with respect to matters mentioned in paragraph (a) or (b).

### 3 Application of rules

Part 36, rule 3 (2) (evidence by affidavit) and rule 8 (plans, photographs and models) and Schedule F, Forms 6 and 7 (summons) do not apply to:

- (a) proceedings entered in the List, or
- (b) a summons filed in the Equity Division that contains a requirement under rule 5.

### 4 Commencement of proceedings

Despite Part 4, rule 2, where a plaintiff requires any proceedings to be entered in the List under rule 2, he or she must commence proceedings by summons in the Equity Division.

### 5 Entry in list on commencement of proceedings

- (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 List:
  - (a) in the case of proceedings in the Equity Division, the proceedings must be entered in the List without any order for entry, or

- (b) in any other case, the defendant requiring entry is entitled to an order that the proceeding be transferred to the Equity Division and entered in the List.
- (2) A requirement under subrule (1) must be made by a party by adding “Technology and 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) must not be made:
  - (a) on a cross-claim, or
  - (b) by a defendant to a cross-claim who is a party in the proceedings before the filing of that cross-claim.

**6 Removal from list**

- (1) Where any proceedings are entered in the List, the Court, on the application of a party or of its own motion, may, if it is satisfied that it is proper to do so, order, on terms, 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) A party who wants an order under subrule (1) must move on notice for that order on or before the first hearing for directions conducted in accordance with the practice of the Court.

**7 Bulk transfer orders**

- (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) does not apply to an order to which subrule (1) applies.

**8 Appeal by leave**

An appeal does not lie to the Court of Appeal, except by leave of the Court of Appeal, from an order that any proceedings be entered in the List.

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- [4] Part 14C, rules 2 and 4 (2), Part 33, rule 5 (4), Part 49, rule 1 (1), Part 52A, rule 9 (1), Part 63, rule 6 (2), Part 72A, rule 1A (1) (a) and Schedule D, Part 2 and Schedule E, Part 1**

Insert “Technology and” before “Construction List” wherever occurring.

BY AUTHORITY