



Supreme Court Rules (Amendment No 394) 2004

under the

Supreme Court Act 1970

The Supreme Court Rule Committee made the following rules of court under the *Supreme Court Act 1970* on 16 August 2004.

Steven Jupp
Secretary of the Rule Committee

Explanatory note

The object of these Rules is to amend the *Supreme Court Rules 1970*:

- (a) to make further provision with respect to the orders and decisions of Masters that may be appealed to the Court of Appeal, and
- (b) to revise and restate the powers of the Court under certain Acts and Regulations that Masters may exercise.

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Clause 1 Supreme Court Rules (Amendment No 394) 2004

Supreme Court Rules (Amendment No 394) 2004

under the

Supreme Court Act 1970

1 Name of Rules

These Rules are the *Supreme Court Rules (Amendment No 394) 2004*.

2 Amendment of Supreme Court Rules 1970

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

Schedule 1 Amendments

(Rule 2)

[1] Part 60, rule 17

Omit “or” from rule 17 (g) where thirdly occurring.

[2] Part 60, rule 17 (h)

Omit “or”.

[3] Part 60, rule 17 (j)

Omit “brought.” Insert instead “brought, or”.

[4] Part 60, rule 17 (k)

Insert after rule 17 (j):

- (k) where the decision of the master is a final decision other than:
 - (i) a decision on an application for a summary judgment, or
 - (ii) a decision on an application for a summary dismissal of proceedings.

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Schedule 1 Amendments

[5] Schedule D Powers of Masters

Omit Part 1. Insert instead:

Part 1 Powers under NSW and Commonwealth Acts and regulations

Column 1	Column 2	Column 3
Act or regulation and provision	Description	Restriction
<i>Administration of Justice Act 1924:</i>		
• section 5	Enforcement of judgment of British dominion	
<i>Arbitration (Civil Actions) Act 1983:</i>		
• section 12 (1)	Order to witness to attend	
<i>Bills of Sale Act 1898:</i>		
• section 4B	Extension of time for registering, filing etc	
<i>Business Names Act 1962:</i>		
• section 14	Persons in default; orders for compliance or stay of proceedings	
<i>Business Names Act 2002:</i>		
• section 23 (2)	Contraventions of Act; orders for compliance or adjournment of proceedings	
<i>Charitable Fundraising Act 1991:</i>		
• section 32	Disposition of assets	
<i>Commercial Arbitration Act 1984:</i>		
• section 18 (1)	Examination before the Court	

Column 1	Column 2	Column 3
Act or regulation and provision	Description	Restriction
• section 30	Correcting award	
• section 35 (1) (a)	Delivery of award	
• section 36	Costs of abortive arbitration	
• section 46 (2) (a)	Terminating proceedings for delay	
• section 48	Extension of time	For making award only
• section 53	Stay of proceedings	
• section 54	Interpleader	
• section 60 (d)	Service of notices	
<i>Companies Act 1961:</i>		
• section 363	Security for costs	
<i>Companies Code:</i>		
• section 123	Reduction of capital	
• section 212	Rectification of Register of Company Charges	
• Part 12, Division 2	Winding up by the Court	Except sections 377 (5) and 388
• section 396 (4)	Members' voluntary winding up: meeting	
• section 401	Creditors' voluntary winding up	
• section 402	Creditors' voluntary winding up: recognized company	
• section 406	Voluntary winding up: remuneration of liquidator	

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Schedule 1 Amendments

Column 1	Column 2	Column 3
Act or regulation and provision	Description	Restriction
<ul style="list-style-type: none">Part 12, Division 4	Winding up: companies	In a winding up by the Court and except sections 417 (2), 420, 423 (1), 427 (2), 454 and 462 (6) of the Code
<ul style="list-style-type: none">Part 12, Division 6	Winding up: bodies other than companies	Except in respect of sections 417 (2), 420, 423 (1), 427 (2), 454 and 462 (6) of the Code
<ul style="list-style-type: none">section 533	Security for costs, etc	
<ul style="list-style-type: none">section 536	Directions: meetings ordered by the Court	
<ul style="list-style-type: none">section 539	Irregularities, extension of time, etc	Restricted orders or declarations in or for the purposes of proceedings for other relief under the Code which the master may grant
<ul style="list-style-type: none">section 541	Examination of persons concerned with corporations	
<i>Companies (New South Wales) Regulations—</i>		
<ul style="list-style-type: none">regulation 78	Liquidator's account	
<ul style="list-style-type: none">regulation 81	Deposit with liquidator	
<ul style="list-style-type: none">regulation 87	Costs of meeting	
<ul style="list-style-type: none">regulation 90	Adjournment of meeting	
<ul style="list-style-type: none">regulation 96	Votes of secured creditors	
<ul style="list-style-type: none">regulation 118	Bills of exchange	
<ul style="list-style-type: none">regulation 123	Costs of proof	

Column 1	Column 2	Column 3
Act or regulation and provision	Description	Restriction
• regulation 125	Dealing with proof	
• regulation 126	Time for appeal	
• regulation 134	Time for appeal	
• regulation 143	Distribution of surplus	
<i>Confiscation of Proceeds of Crime Act 1989:</i>		
• section 77	Registration of interstate forfeiture order etc	
• section 82 (1)	Order for cancellation of registration of interstate forfeiture order etc	
<i>Contractors Debts Act 1997:</i>		
• section 14	Attachment order	
<i>Conveyancers Licensing Act 1995:</i>		
• section 77	Directions relating to a receiver	
• section 85	Bill of costs	
<i>Conveyancing Act 1919:</i>		
• section 36A	Division of chattels	
• section 66G	Trustees for sale	
• section 89	Modification of easements, etc	
• section 98 (1)	Amount due by absent, etc mortgagee	
<i>Corporations Act 2001 of the Commonwealth:</i>		
• section 274	Rectification of register of company charges	

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Schedule 1 Amendments

Column 1	Column 2	Column 3
Act or regulation and provision	Description	Restriction
<ul style="list-style-type: none">• Part 5.3A	Administration of company's affairs with view to executing deed of company arrangement	
<ul style="list-style-type: none">• Part 5.4	Winding up	
<ul style="list-style-type: none">• section 461	Winding up	Where the application is not opposed
<ul style="list-style-type: none">• Part 5.4B	Winding up	Except ss 472 (2), (3) and (6), 486A, 486B and 487
<ul style="list-style-type: none">• section 495 (4)	Members' voluntary winding up: meeting	
<ul style="list-style-type: none">• section 500	Creditor's voluntary winding up	
<ul style="list-style-type: none">• section 504	Voluntary winding up: remuneration of liquidator	
<ul style="list-style-type: none">• Part 5.6	Winding up: companies	In a winding up by the court and except ss 532 (2), 536, 540 (1), 544 (2) and 568
<ul style="list-style-type: none">• Part 5.7	Winding up: bodies other than companies	Except in respect of ss 532 (2), 536, 540 (1), 544 (2) and 568
<ul style="list-style-type: none">• section 597	Examination of persons concerned with corporations	
<ul style="list-style-type: none">• section 1274	Directions to make good default in lodgement of documents	
<ul style="list-style-type: none">• section 1319	Directions, meetings ordered by the Court	
<ul style="list-style-type: none">• section 1321	Appeals from decisions of receivers, liquidators etc	Restricted to appeals in respect of decisions under section 430 (3) or 475 (8) of the <i>Corporations Act 2001</i>

Column 1	Column 2	Column 3
Act or regulation and provision	Description	Restriction
<ul style="list-style-type: none"> section 1322 	Irregularities, extension of time etc	Restricted to orders or declarations in or for the purposes of proceedings for other relief under the <i>Corporations Act 2001</i> which the Master may grant
<ul style="list-style-type: none"> section 1324 	Injunctions	Restricted to orders where it is alleged that there has been an inappropriate reduction of capital or share buy back
<ul style="list-style-type: none"> section 1335 	Security for costs etc	
<i>Corporations Regulations 2001</i> of the Commonwealth:		
<ul style="list-style-type: none"> Part 5.6 	Winding up	
<i>Damages (Infants and Persons of Unsound Mind) Act 1929:</i>		
<ul style="list-style-type: none"> section 4 	Sanctioning settlements, etc	
<ul style="list-style-type: none"> section 5 	Directions, etc, as to money paid to Public Trustee	
<ul style="list-style-type: none"> section 7 	Assessments, directions, certificates and references as to costs	
<i>District Court Act 1973:</i>		
<ul style="list-style-type: none"> section 143 	Transfers to District Court	
<ul style="list-style-type: none"> section 145 	Removal of proceedings	
<i>Exotic Diseases of Animals Act 1991:</i>		
<ul style="list-style-type: none"> section 62 	Disputed claims for compensation	
<i>Family Provision Act 1982</i>		
	Family provision	

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Column 1	Column 2	Column 3
Act or regulation and provision	Description	Restriction
<i>Foreign Judgments Act 1973:</i>		
<ul style="list-style-type: none">sections 6, 8, 9	Enforcement of judgment of a country	
<i>Foreign Judgments Act 1991 of the Commonwealth:</i>		
<ul style="list-style-type: none">sections 6, 7, 8, 9	Enforcement of judgment of a country	
<i>Insurance Act 1902:</i>		
<ul style="list-style-type: none">section 17A (1)	Joinder of insurer etc	
<i>International War Crimes Tribunals Act 1995 of the Commonwealth:</i>		
<ul style="list-style-type: none">section 45 (1)	Registration of a forfeiture order	
<i>Judgment Creditors' Remedies Act 1901:</i>		
<ul style="list-style-type: none">Part 5	Charging orders	
<i>Jury Act 1977:</i>		
<ul style="list-style-type: none">section 38 (1) (b)	Excusing juror	
<i>Land and Environment Court Act 1979:</i>		
<ul style="list-style-type: none">section 72	Transfer to Land and Environment Court	
<i>Landlord and Tenant Act 1899:</i>		
<ul style="list-style-type: none">section 2A (3)	Time for writ of possession	
<ul style="list-style-type: none">section 9 (1)	Payment into Court	
<ul style="list-style-type: none">section 9 (2)	Direction for entry of judgment	
<ul style="list-style-type: none">section 10	Stay	

Column 1	Column 2	Column 3
Act or regulation and provision	Description	Restriction
• section 27 (2)	Relief relating to bond	
• section 27 (3)	Cancellation of bond	
<i>Legal Profession Act 1987:</i>		
• section 80 (7) (d)	Claim against Fidelity Fund; time	
• section 87 (4) (b)	Final date for claim against Fund	
• section 90C	Enforcement against Fund	
• section 102	Directions relating to a receiver	
• section 208L	Appeal against decision of costs assessor	
• section 208M	Leave to appeal, appeal: determination of costs assessor	
• section 208N	Suspension of costs determination and ending suspension	
• section 209C	Order for barrister or solicitor to give to a client a bill of costs or certain documents	
<i>Limitation Act 1969:</i>		
• section 58 (2)	Extension of limitation period—personal injury action not surviving	
• section 59 (2)	Extension of limitation period—personal injury action which survives	
• section 60 (2)	Extension of limitation period—compensation to relatives claim	
• sections 60C–60H	Personal injury cases	

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Act or regulation and provision	Description	Restriction
<ul style="list-style-type: none">• section 73 (1)	Extension of limitation period—arbitration	
<ul style="list-style-type: none">• Schedule 5 clause 5 (5)	Transitional provisions	
<i>Married Persons (Equality of Status) Act 1996:</i>		
<ul style="list-style-type: none">• section 13	Fraudulent investment of spouse's money	
<i>Minors (Property and Contracts) Act 1970:</i>		
<ul style="list-style-type: none">• section 41 (3)	Removal of proceedings	
<i>Motor Accidents Act 1988:</i>		
<ul style="list-style-type: none">• section 42 (4)	Explanation for non compliance	
<ul style="list-style-type: none">• section 42 (5)	Allow proceedings to continue	
<ul style="list-style-type: none">• section 43A (7), 44B	Dismiss proceedings	
<ul style="list-style-type: none">• section 47A	Joinder of insurer	
<ul style="list-style-type: none">• section 48	Co-operation with person against whom claim made and the person's insurer	
<ul style="list-style-type: none">• section 52 (4)	Commencing proceedings	
<ul style="list-style-type: none">• section 66A (1)	Joinder of insurer	
<i>Motor Accidents Compensation Act 1999:</i>		
<ul style="list-style-type: none">• section 36 (5)	Extension of time for giving notice	
<ul style="list-style-type: none">• section 36 (7), (8)	Joinder of Nominal Defendant	
<ul style="list-style-type: none">• section 70 (2)	Explanation for non-compliance	

Column 1	Column 2	Column 3
Act or regulation and provision	Description	Restriction
• section 70 (3)	Allow proceedings to continue	
• section 73 (4), 76	Dismiss proceedings	
• section 79	Joinder of insurer	
• section 85	Co-operation with person against whom claim made and the person's insurer	
• section 109 (1)	Commencing proceedings	
• section 119 (1)	Joinder of insurer	
<i>Motor Vehicles (Third Party Insurance) Act 1942:</i>		
• section 14E (1) and (2)	Joint hearing and transfer	
<i>Mutual Assistance in Criminal Matters Act 1987 of the Commonwealth:</i>		
• section 34A	Registration of a foreign forfeiture order, a foreign pecuniary penalty order or a foreign restraining order	
• section 34A (5)	Registration of amendment to a foreign forfeiture order, a foreign pecuniary penalty order or a foreign restraining order	
• section 34G	Order cancelling registration	
<i>Offshore Minerals Act 1994 of the Commonwealth:</i>		
• section 351 (1) (a)	Removal of caveat	
• section 351 (1) (c)	Extending caveat	
• section 351 (2)	Non-registration of further caveat	

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Act or regulation and provision	Description	Restriction
<i>Offshore Minerals Act 1999:</i>		
• section 351 (1) (a)	Removal of caveat	
• section 351 (1) (c)	Extending caveat	
• section 351 (2)	Non registration of further caveat	
<i>Proceeds of Crime Act 1987 of the Commonwealth:</i>		
• section 23A (2)	Direction to DPP to give or publish notice of registration	
<i>Proceeds of Crime Act 2002 of the Commonwealth:</i>		
• Division 1 of Part 2-2	Forfeiture order	
<i>Property (Relationships) Act 1984</i>		
	De facto relationships	
	Domestic relationships	
<i>Property, Stock and Business Agents Act 1941:</i>		
• section 83J	Directions relating to a receiver	
• section 83V	Directions relating to a receiver	
<i>Property, Stock and Business Agents Act 2002:</i>		
• section 160	Directions relating to a receiver	
• section 161	Directions relating to a receiver	
<i>Real Property Act 1900:</i>		
• section 74D (2)	Extending caveat	
• section 74K (2)	Extending caveat	
• section 74MA (2)	Withdrawal of caveat	

Column 1	Column 2	Column 3
Act or regulation and provision	Description	Restriction
<ul style="list-style-type: none"> • section 74O 	Further caveat	
<i>Service and Execution of Process Act 1992 of the Commonwealth:</i>		
<ul style="list-style-type: none"> • section 17 (1) 	Shortening of time for appearance	
<ul style="list-style-type: none"> • section 57 (1) 	Leave to serve a subpoena outside the State etc	
<ul style="list-style-type: none"> • section 67 (1) 	Order to produce	
<ul style="list-style-type: none"> • section 76 (1) 	Leave to serve a subpoena outside the State etc	
<ul style="list-style-type: none"> • section 79 (1) 	Order to produce	
<i>Testator's Family Maintenance and Guardianship of Infants Act 1916</i>		
	Maintenance	Except sections 13 to 21 inclusive (guardianship)
<i>Trustee Act 1925:</i>		
<ul style="list-style-type: none"> • section 63 	Judicial advice	
<ul style="list-style-type: none"> • section 70 	New trustees	
<ul style="list-style-type: none"> • section 71 	Vesting orders	
<ul style="list-style-type: none"> • section 75 (1) 	Deceased mortgagee	
<ul style="list-style-type: none"> • section 81 	Advantageous dealings	
<ul style="list-style-type: none"> • Part 4 	Payment into Court	Except section 97 (2)
<i>Trustee Companies Act 1964:</i>		
<ul style="list-style-type: none"> • section 15B (4) 	Directions	
<ul style="list-style-type: none"> • section 21 (2) 	Ordering account	
<ul style="list-style-type: none"> • section 22 	Ordering audit	
<ul style="list-style-type: none"> • section 27 (1) 	Payment out	

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Schedule 1 Amendments

Column 1	Column 2	Column 3
Act or regulation and provision	Description	Restriction
<i>Wills, Probate and Administration Act 1898:</i>		
• section 13	Gift to interested witness	
• section 15A	Effect of termination of marriage	
• section 84	Application for legacy, etc	
• section 146	Caveat: application for grant to proceed	
<i>Workers Compensation Act 1987:</i>		
• section 151A (5) (as continued in effect by Part 18C of Schedule 6)	Leave to revoke election	
• section 151C	Commencing proceedings	
• section 151D	Commencing proceedings	

BY AUTHORITY