



New South Wales

Supreme Court Rules (Amendment No 405) 2005

under the

Supreme Court Act 1970

The Supreme Court Rule Committee made the following rules of court under the *Supreme Court Act 1970* on 4 August 2005.

Steven Jupp
Secretary of the Rule Committee

Explanatory note

The object of these Rules is to amend the *Supreme Court Rules 1970* as a consequence of the commencement of the *Civil Procedure Act 2005* and the *Uniform Civil Procedure Rules 2005*.

2005 No 407

Rule 1 Supreme Court Rules (Amendment No 405) 2005

Supreme Court Rules (Amendment No 405) 2005

under the

Supreme Court Act 1970

1 Name of Rules

These Rules are the *Supreme Court Rules (Amendment No 405) 2005*.

2 Commencement

These Rules commence on the commencement of section 9 of the *Civil Procedure Act 2005*.

3 Amendment of Supreme Court Rules 1970

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

Schedule 1 Amendments

(Rule 3)

[1] All Parts and Schedules

Omit “a master” and “a master’s”, wherever occurring.

Insert instead “an associate Judge” and “an associate Judge’s”, respectively.

[2] All Parts and Schedules

Omit “master”, “master’s”, “masters” and “masters” wherever occurring (otherwise than as referred to in item [1]).

Insert instead “associate Judge”, “associate Judge’s”, “associate Judges” and “associate Judges”, respectively.

[3] All Parts and Schedules

Omit “a Master” and “a Master’s”, wherever occurring.

Insert instead “an associate Judge” and “an associate Judge’s”, respectively.

[4] All Parts and Schedules

Omit “Master”, “Master’s”, “Masters” and “Masters” wherever occurring (otherwise than as referred to in item [3]).

Insert instead “associate Judge”, “associate Judge’s”, “associate Judges” and “associate Judges”, respectively.

[5] Part 1, rules 3–7, 9A, 9B, 10 and 10A

Omit the rules.

[6] Part 1, rule 8

Insert in alphabetical order in rule 8 (1):

associate Judge includes an acting associate Judge, and also includes the Protective Commissioner.

[7] Part 1, rule 8

Omit the definitions of *Central West, Commercial List, examiner, incommunicate person, master, Northern Rivers district, pleading, Possession List, Professional Negligence List, Technology and Construction List* and *writing* from rule 8 (1).

[8] Part 1, rule 8

Omit rule 8 (4).

2005 No 407

Supreme Court Rules (Amendment No 405) 2005

Schedule 1 Amendments

[9] Part 1, rule 11

Insert at the end of rule 11:

- (2) A reference in any such form to a provision of these rules includes a reference to the corresponding provision (if any) of the *Uniform Civil Procedure Rules 2005*.
- (3) If a form is approved under section 17 of the *Civil Procedure Act 2005* in relation to the same matter as that for which a form is prescribed in Schedule F, the form to be used is the approved form and not the prescribed form.

[10] Part 1, rules 11A, 12 and 14

Omit the rules.

[11] Parts 1B and 2–11

Omit the Parts.

[12] Part 12, rules 1 and 1A

Insert before rule 2:

1 Assignment of business to Divisions and Lists

- (1) Proceedings in the Court under an Act or instrument referred to in Column 1 of Part 1 or 2 of Schedule I (or, if applicable, under a provision of the Act or instrument referred to in Column 2 of that Part) are assigned:
 - (a) to the Division of the Court referred to in Column 3 of that Part in respect of that Act or instrument, and
 - (b) if applicable, to the List referred to in Column 4 of that Part in respect of that Act or instrument.
- (2) If satisfied that it is proper to do so, the Court may order that any proceedings be entered in, or removed from, any List, and may give such further directions as to the continuance of the proceedings as it thinks fit.
- (3) The following proceedings in the Court are assigned to the Common Law Division:
 - (a) proceedings for a debt arising under any Act (including any Commonwealth Act) by which any tax, fee, duty or other impost is collected or administered by or on behalf of the State or the Commonwealth,

- (b) proceedings on an appeal or application to the Court:
 - (i) in respect of a decision of a public body (other than a court or tribunal) or public officer (other than an officer of a court or tribunal), or
 - (ii) for the removal into the Court of any matter before a public body (other than a court or tribunal) or public officer (other than an officer of a court or tribunal),
- (c) proceedings on an appeal or application to the Court in respect of:
 - (i) a decision of a public body constituted or established by or under a Commonwealth Act (other than a court exercising federal jurisdiction within the meaning of section 26 of the *Acts Interpretation Act 1901* of the Commonwealth), or
 - (ii) a decision of a person holding or acting in a public office under a Commonwealth Act (other than an officer of a court referred to in subparagraph (i)).

1A Procedure under particular Acts

The provisions of Schedule J with respect to proceedings under an Act or instrument referred to in that Schedule apply to proceedings in the Court under that Act or instrument.

[13] Part 12, rules 4, 5 and 7

Omit the rules.

[14] Part 13

Omit the Part.

[15] Part 14, rule 1

Omit rule 1 (2) (c). Insert instead:

- (c) proceedings that are assigned to any Division or List pursuant to Part 12 rule 1 and Schedule I.

[16] Part 14, rules 2 and 3

Omit the rules. Insert instead:

2 Exclusion of rules

Rule 31.10 of the *Uniform Civil Procedure Rules 2005* does not apply to any proceedings entered, or intended to be entered, in the List.

2005 No 407

Supreme Court Rules (Amendment No 405) 2005

Schedule 1 Amendments

3 Appeals

Rules 46.4, 46.9, 46.10 and 46.11 of the *Uniform Civil Procedure Rules 2005* do not apply to proceedings entered, or intended to be entered, in the List.

[17] Part 14, rule 5

Omit “Notwithstanding Part 4 rule 2, where”. Insert instead “If”.

[18] Part 14, rule 6

Omit “next under the heading and title”.

[19] Part 14, rule 10

Omit “Part 41 rule 11 (1) shall not” from rule 10 (3).

Insert instead “Rule 36.11 (1) of the *Uniform Civil Procedure Rules 2005* does not”.

[20] Part 14A, rule 3

Omit the rule. Insert instead:

3 Exclusion of rules

Rule 31.10 of the *Uniform Civil Procedure Rules 2005* does not apply to any proceedings entered, or intended to be entered, in the List.

[21] Part 14A, rule 4

Omit “Notwithstanding Part 4, rule 2, where”. Insert instead “If”.

[22] Part 14A, rule 5

Omit rule 5 (2).

[23] Part 14A, rule 7

Omit “Part 41, rule 11 (1)” from rule 7 (2).

Insert instead “Rule 36.11 (1) of the *Uniform Civil Procedure Rules 2005*”.

[24] Part 14B, rule 6

Omit “under the heading and title of”. Insert instead “to”.

[25] Part 14B, rules 7 and 8

Omit the rules.

[26] Part 14C, rule 3

Omit “under the heading and title of” from rule 3 (1). Insert instead “in”.

[27] Part 14C, rules 6 and 7

Omit the rules.

[28] Part 14D, rule 1

Omit rule 1 (a) (ii). Insert instead:

- (ii) proceedings assigned to the Administrative Law List pursuant to Part 12 rule 1 and Schedule I,

[29] Part 14D, rule 2

Omit “under the heading and title of” from rule 2 (1). Insert instead “to”.

[30] Parts 15, 15A, 16, 17–32, 32A, 33–36, 36A and 37–47

Omit the Parts.

[31] Part 50

Omit the Part.

[32] Part 51, rule 2

Omit rule 2 (4) (a). Insert instead:

- (a) proceedings to which Part 28 of the *Uniform Civil Procedure Rules 2005* applies, except an appeal to the Court of Appeal from the decision of the Court in a Division in proceedings to which that Part applies, or

[33] Part 51, rule 3

Omit rule 3 (3).

[34] Part 51, rule 7

Omit “where an application made under subrule (2) of Part 19 rule 2 for any of the forms of relief specified in Part 28 rule 1, rule 2 and rule 3 has been refused”.

Insert instead “where an application made under rule 18.2 (2) of the *Uniform Civil Procedure Rules 2005* for an order under rule 25.2, 25.3 or 25.4 of those rules has been refused”.

2005 No 407

Supreme Court Rules (Amendment No 405) 2005

Schedule 1 Amendments

[35] Part 51, rule 16

Omit “Part 53 Division 1” from rule 16 (3).

Insert instead “Division 6 of Part 42 of the *Uniform Civil Procedure Rules 2005*”.

[36] Part 51, rule 38

Omit the rule.

[37] Part 51, rule 50

Omit “under Part 5 rule 3” from rule 50 (1).

[38] Part 51, rule 57

Omit “notwithstanding subrules (2) and (3) of Part 65 rule 1 (which relates to the title),” from rule 57 (a).

[39] Part 51, rule 58

Omit “Part 40 rule 8” from rule 58 (1A) (a).

Insert instead “rule 12.8 of the *Uniform Civil Procedure Rules 2005*”.

[40] Part 51, rule 58

Omit “Part 44 rule 5” from rule 58 (1A) (b).

Insert instead “section 135 of the *Civil Procedure Act 2005*”.

[41] Parts 51AA, 51A, 52, 52A and 53

Omit the Parts.

[42] Part 54, rule 2

Omit rule 2 (2).

[43] Part 56

Omit the Part.

[44] Part 57, rule 3

Omit “pursuant to Part 9 rule 10” from rule 3 (2).

Insert instead “pursuant to rule 10.14 of the *Uniform Civil Procedure Rules 2005*”.

[45] Part 58, rule 2

Omit the rule. Insert instead:

2 Application of Uniform Civil Procedure Rules 2005

Subject to rules 3, 4, 5 and 6, rules 24.7–24.16 of the *Uniform Civil Procedure Rules 2005* apply to an examination pursuant to an order under this Part:

- (a) as if the matter pending before the requesting court were proceedings in the Court, and
- (b) as if the order were made under rule 24.3 of those rules in those proceedings, and
- (c) where a Judge, associate Judge or registrar is appointed under section 33 of the subject Act, as if an order were made under rule 24.3 of those rules for the examination of a person on oath before a Judge, associate Judge or registrar.

[46] Part 58, rule 4

Omit “Subrules (5) and (6) of rule 9 of Part 27” from rule 4 (1).

Insert instead “The provisions of rule 24.14 (4) and (5) of the *Uniform Civil Procedure Rules 2005*”.

[47] Part 58, rule 4

Omit “Part 27 rule 8A” from rule 4 (2).

Insert instead “rule 24.13 of the *Uniform Civil Procedure Rules 2005*”.

[48] Part 58, rule 5

Omit “Part 27 rule 8A” from rule 5 (a).

Insert instead “rule 24.13 of the *Uniform Civil Procedure Rules 2005*”.

[49] Part 59

Omit the Part.

[50] Part 59A, rule 4

Omit “Part 53 rule 2 (1)”.

Insert instead “rule 42.21 of the *Uniform Civil Procedure Rules 2005*”.

2005 No 407

Supreme Court Rules (Amendment No 405) 2005

Schedule 1 Amendments

[51] Part 59A, rule 9

Omit rule 9 (3). Insert instead:

- (3) During the period before the expiry of the time fixed under section 6 (4) of the subject Act or under rule 8 (1) within which the judgment debtor may file notice of a motion for an order setting aside the registration, the judgment creditor may not, except by leave of the Court, take any step for enforcement of the judgment.

[52] Part 60, rule 1A

Omit rule 1A (4A).

[53] Part 60, Divisions 2 and 3

Omit the Divisions.

[54] Part 61, rules 1, 2, 2A, 2B and 3

Omit the rules.

[55] Part 61, Division 2

Omit the Division.

[56] Parts 62–65

Omit the Parts.

[57] Part 65A, rule 5

Omit “Notwithstanding Part 65 rule 1 in” from rule 5 (2). Insert instead “In”.

[58] Part 65C, rule 4

Omit “Notwithstanding Part 36 rule 3” from rule 4 (5).

Insert instead “Despite rule 31.2 of the *Uniform Civil Procedure Rules 2005*”.

[59] Part 65C, rule 4

Omit rule 4 (6).

[60] Part 65C, rule 7

Insert “and the *Uniform Civil Procedure Rules 2005*” after “These rules”.

[61] Part 65C, rule 9

Omit rule 9 (3). Insert instead:

- (3) Subrule (2) does not affect the powers of the Court under Part 7 of the *Uniform Civil Procedure Rules 2005*.

[62] Part 65C, rule 10

Omit “Part 36 rule 3”.

Insert instead “Rule 31.2 of the *Uniform Civil Procedure Rules 2005*”.

[63] Part 66

Omit the Part.

[64] Part 67, rule 11B

Omit the rule.

[65] Part 67, rule 12

Omit “by Part 16 rule 1” from rule 12 (1).

Insert instead “by rule 15.1 of the *Uniform Civil Procedure Rules 2005*”.

[66] Part 67, rule 17

Omit “by Part 16 rule 1” wherever occurring in rule 17 (3) and (5).

Insert instead “by rule 15.1 of the *Uniform Civil Procedure Rules 2005*”.

[67] Part 67, rule 18

Omit “by Part 16 rule 1” from rule 18 (1).

Insert instead “by rule 15.1 of the *Uniform Civil Procedure Rules 2005*”.

[68] Part 67, rule 19

Omit “by Part 16 rule 1” from rule 19 (1) (d).

Insert instead “by rule 15.1 of the *Uniform Civil Procedure Rules 2005*”.

[69] Part 68, rule 5

Omit rule 5 (4). Insert instead:

- (4) This rule has effect despite rule 6.20 of the *Uniform Civil Procedure Rules 2005*.

2005 No 407

Supreme Court Rules (Amendment No 405) 2005

Schedule 1 Amendments

[70] Part 68, rule 7

Omit rule 7 (2). Insert instead:

- (2) Subrule (1) does not affect the power of the Court under rule 6.6 of the *Uniform Civil Procedure Rules 2005*.

[71] Part 70, rule 3

Omit “Notwithstanding Part 7 rule 1 (2)” from rule 3 (2).

Insert instead “Despite rule 6.12 (2) of the *Uniform Civil Procedure Rules 2005*”.

[72] Part 70, rule 12

Omit “serial number under Part 1 rule 10” from rule 12 (2).

Insert instead “case number or other unique identifier under rule 4.11 of the *Uniform Civil Procedure Rules 2005*”.

[73] Part 71A, rule 2

Omit rule 2 (1).

[74] Part 71A, rule 2

Omit “in the Common Law Division” wherever occurring in rule 2 (3) and (4) (b).

[75] Part 72

Omit the Part.

[76] Part 72A, rule 1A

Omit the rule.

[77] Part 72A, rule 7

Omit “Part 37 (except Part 37 rules 2 (2), 3A, 4, 7 (4), 7A)” from rule 7 (1).

Insert instead “Part 33 of the *Uniform Civil Procedure Rules 2005*”.

[78] Part 72A, rule 8

Omit the rule. Insert instead:

8 Order for examination of witness

- (1) Rule 24.3 of the *Uniform Civil Procedure Rules 2005* applies for the purpose of an arbitration to which the subject Act applies as it applies for the purpose of proceedings in the Court.

-
- (2) Where any order is made pursuant to subrule (1), Part 24 of the *Uniform Civil Procedure Rules 2005* applies as if:
 - (a) a reference in that Part to proceedings included a reference to the arbitration proceedings, and
 - (b) the provisions of rule 24.14 (4), (5) and (6) were omitted.
 - (3) Unless the Court otherwise orders, the examiner must send the deposition, a copy of the deposition, any document which constitutes an audio-visual recording and the exhibits to the registrar.
 - (4) On receiving the copy of the deposition, the registrar must file it in the proceedings on the examination.
 - (5) The Court may make orders for the transmission to the arbitrator of the deposition, document, any exhibit or copy of any exhibit and any such deposition, document, exhibit or copy is deemed to have been taken or received (as the case requires) in the course of the arbitration proceedings.

[79] Parts 72B and 72C

Omit the Parts.

[80] Part 73, rule 2

Omit the rule.

[81] Part 73, rule 4

Omit “under Part 5” from rule 4 (1) (a).

[82] Part 73, rule 4

Omit “Despite Part 5, a summons” from rule 4 (6).

Insert instead “A summons”.

[83] Part 74

Omit Divisions 1 and 2.

[84] Part 74, rule 6

Omit “above the title of”. Insert instead “to”.

2005 No 407

Supreme Court Rules (Amendment No 405) 2005

Schedule 1 Amendments

[85] Part 75, rules 2 and 3

Omit rules 2 and 3. Insert instead:

2 Rules applicable

The following provisions of these rules apply, so far as applicable, to proceedings specified in the Third Schedule to the Act (except clause (d) of that Schedule) and to proceedings to which Division 2 applies:

- (a) Part 1 (preliminary matters),
- (b) Part 1A (sittings and vacations),
- (c) Part 2 (time),
- (d) Part 55 (procedure for punishment for contempt),
- (e) Part 61 rules 1 (4), (5) and (6), 2 and 3 (registrars),
- (f) Schedule F, forms 74AA, 74AB, 74AC and 74AD (subpoenas),
- (g) clause 1 of the matter relating to the *Jury Act 1977* in Schedule J.

3 Rules applicable

- (1) The following provisions of the *Uniform Civil Procedure Rules 2005* apply, so far as applicable, to proceedings specified in the Third Schedule to the Act (except clause (d) of that Schedule) and to proceedings to which Division 2 applies:

- (a) Part 1 (preliminary matters),
- (b) rules 2.1 and 2.2,
- (c) Part 4 (preparation and filing of documents), other than rules 4.2, 4.9 and 4.12,
- (d) Part 10 (service of documents generally), other than rules 10.7 and 10.16,
- (e) rule 29.13 (record of trial to be kept),
- (f) rules 31.7, 31.11, 31.12, 31.21 and 31.22,
- (g) Part 33 (subpoenas), other than:
 - (i) rules 33.3 (8), 33.6 (1) and 33.7, and
 - (ii) if the issuing party is the Crown, rules 33.2 (3), 33.5 and 33.11,
- (h) Part 35 (affidavits).

-
- (2) Part 10 of the *Uniform Civil Procedure Rules 2005* (other than rules 10.7 and 10.16) applies, so far as applicable, to service of a notice of listing under clause 10 (2) of the *Criminal Procedure Regulation 1987*.
 - (3) For the purposes of subrule (2), the address contained in a notice filed in the registry under clause 6 (1) of the *Criminal Procedure Regulation 1987* of an accused person's solicitor is taken to be the accused person's address for service.
 - (4) Subject to subrule (5), Rule 31.3 of the *Uniform Civil Procedure Rules 2005* applies to proceedings specified in the Third Schedule to the Act (except clause (d) of that Schedule) and to proceedings to which Division 2 applies.
 - (5) Orders may not be made under Rule 31.3 of the *Uniform Civil Procedure Rules 2005*:
 - (a) in respect of the evidence given by a person against whom the proceedings are brought (*an accused*), or
 - (b) that prevent an accused from attending any part of the proceedings,
 without the consent of that accused.
 - (6) Rule 31.5 of the *Uniform Civil Procedure Rules 2005* applies to proceedings specified in the Third Schedule to the Act (except clause (d) of that Schedule) and to proceedings to which Division 2 applies as if the time fixed for giving notice were not later than 21 days before the date fixed for hearing.

[86] Part 75, rule 3A

Omit rule 3A (1) and (2).

[87] Part 75, rule 3A

Omit "the subject Act" from rule 3A (3).

Insert instead "the *Children (Criminal Proceedings) Act 1987*".

[88] Part 75, rule 3B

Omit the rule. Insert instead:

3B Registrar may exercise certain powers and functions

- (1) Any power or function in relation to civil proceedings:
 - (a) that is conferred on a registrar by a provision of these rules referred to in rule 2, or

2005 No 407

Supreme Court Rules (Amendment No 405) 2005

Schedule 1 Amendments

(b) that is conferred on a registrar by a provision of the *Uniform Civil Procedure Rules 2005* referred to in rule 3, or

(c) that is required to be exercised by a registrar by an instrument under section 13 of the *Civil Procedure Act 2005*,

may be exercised by the registrar in relation to proceedings specified in the Third Schedule to the Act (except clause (d) of that Schedule) and proceedings to which Division 2 applies.

(2) This rule does not apply to a power or function that is required to be exercised by a registrar by an instrument under section 13 of the *Civil Procedure Act 2005* if the instrument states, or necessarily implies, that the registrar may exercise the power or function in relation to civil proceedings only.

(3) In this rule, *civil proceedings* has the same meaning as it has in the *Civil Procedure Act 2005*.

[89] Part 75, rule 3C

Omit “Part 27”.

Insert instead “Part 24 of the *Uniform Civil Procedure Rules 2005*”.

[90] Part 75, rule 3HA

Insert after rule 3H:

3HA Criminal proceedings (cf former Part 27, rule 1B)

(1) If a person has been committed for trial or is to be dealt with before the Court, a proceeding between the prosecuting authority and the person is taken to be before the Court for the purposes of any application to the Court under section 6 or 20 of the *Evidence on Commission Act 1995* or under section 7 of the *Foreign Evidence Act 1994* of the Commonwealth.

(2) Any such application is to be made:

- (a) in a proceeding which is before the Court under subrule (1)—by summons, or
- (b) in proceedings which are specified in the Third Schedule to the Act—by motion in the proceedings as if the proceedings had been commenced by summons, or
- (c) in proceedings in the Court in its summary jurisdiction—by motion in the proceedings.

-
- (3) If a person has been committed for trial or to be dealt with before the District Court, a proceeding between the prosecuting authority and the person is taken to be before the District Court for the purposes of any application to the Court under section 9 or 23 of the *Evidence on Commission Act 1995* or under section 10 of the *Foreign Evidence Act 1994* of the Commonwealth.

[91] Part 75, rule 3I

Omit “Part 27 rule 1B (2)”. Insert instead “rule 3HA”.

[92] Part 75, rule 5A

Omit the rule.

[93] Part 75, rule 6

Omit the rule. Insert instead:

6 Rules applicable

In addition to the rules mentioned in rules 2 and 3, the following provisions of the *Uniform Civil Procedure Rules 2005* apply, so far as applicable, to proceedings to which this Division applies:

- (a) rule 4.10,
- (b) rules 6.15 and 6.16,
- (c) Part 19,
- (d) rule 34.1,
- (e) Part 36.

[94] Part 75, rule 14

Insert after rule 13:

14 Arrest warrants (cf former Part 42, rule 7)

- (1) Subject to rules of court:
 - (a) if, by subpoena or otherwise, the Court makes an order, whether under an Act or under rules of court:
 - (i) for a person to attend the Court for any purpose, or
 - (ii) for a person to produce any document or thing to the Court, and
 - (b) the person fails to comply with the order, the Court may issue, or make an order for the issue of, a warrant for the person’s arrest.

2005 No 407

Supreme Court Rules (Amendment No 405) 2005

Schedule 1 Amendments

- (2) Subject to rules of court, an arrest warrant may be issued without notice to the person.
- (3) The Court may revoke an arrest warrant.
- (4) An arrest warrant is sufficient authority for any person to whom it is addressed, with the assistance of such police officers as may be necessary, to arrest the person named in the warrant, to convey the person to the place specified in the warrant and to deliver the person into the custody of the Court sitting at that place.

[95] Part 76, rule 2

Omit the rule.

[96] Part 76, rule 3

Omit the rule. Insert instead:

3 Entry in Protective List

A party to proceedings that are entered, or to be entered in the Protective List must add the words “Protective List” and “In the matter of [*name of person to whom proceedings relate*]” in appropriate places in each document filed in the proceedings.

[97] Part 76, rule 6

Omit “Part 37 rules 4, 5, 6 (4), (5), (7) and 7–10” from rule 6 (1).

Insert instead “Rules 33.4, 33.5, 33.6 (4) and (5) and 33.7–33.10 of the *Uniform Civil Procedure Rules 2005*”.

[98] Part 76, rule 6

Omit “Part 37 rule 9” from rule 6 (3).

Insert instead “rule 33.11 of the *Uniform Civil Procedure Rules 2005*”.

[99] Part 76, rule 7

Omit the rule.

[100] Part 76, rule 51

Omit “, notwithstanding Part 51A rule 6 (3),”.

[101] Part 77

Omit the Part.

[102] Part 78, rule 3

Omit rule 3 (2) (a). Insert instead:

- (a) there must be added to each document filed in the proceedings the words “Probate List” and “In the matter of [name of person to whom proceedings relate]”,

[103] Part 78, rule 3

Omit rule 3 (2) (b) (i).

[104] Part 78, rule 4C

Omit “Despite Part 5, a summons” from rule 4C (1).

Insert instead “A summons”.

[105] Part 78, rule 4D

Insert after rule 4C:

4D Bills for moderation

- (1) A bill for moderation must be served on each executor, administrator or trustee before it is filed.
- (2) A request for moderation must be endorsed on the bill in the prescribed form and signed by each executor, administrator and trustee.

[106] Part 78, rule 5

Omit rule 5 (3).

[107] Part 78, rule 6 Review of registrar’s decision

Omit “Part 61 rule 3 (which relates to review of a registrar’s direction etc) does not” from rule 6 (1).

Insert instead “Divisions 4 and 5 of Part 45 of the *Uniform Civil Procedure Rules 2005* do not”.

[108] Part 78, rule 8

Omit rule 8 (2).

[109] Part 78, rule 9

Omit rule 9 (3). Insert instead:

- (3) Rules 6.14, 6.15 and 6.16 of the *Uniform Civil Procedure Rules 2005* do not apply.

2005 No 407

Supreme Court Rules (Amendment No 405) 2005

Schedule 1 Amendments

- [110] Part 78, rule 34B**
Omit rule 34B (3).
- [111] Part 78, rule 34B**
Omit “Part 8 rule 14” from rule 34B (4).
Insert instead “Rule 7.6 of the *Uniform Civil Procedure Rules 2005*”.
- [112] Part 78, rule 34G**
Omit rule 34G (3). Insert instead:
(3) Part 11 of the *Uniform Civil Procedure Rules 2005* does not apply to service of a notice under rule 34E.
- [113] Part 78, rule 34H**
Omit “Subject to subrule (3), Part 11” from rule 34H (2).
Insert instead “Division 3 of Part 6 of the *Uniform Civil Procedure Rules 2005*”.
- [114] Part 78, rule 34H**
Omit rule 34H (3). Insert instead:
(3) Rule 12.11 of the *Uniform Civil Procedure Rules 2005* does not apply to proceedings to which this Division applies.
- [115] Part 78, rule 37**
Omit “Part 18 rule 3”.
Insert instead “Rule 17.7 of the *Uniform Civil Procedure Rules 2005*”.
- [116] Part 78, rule 55**
Omit rule 55 (3). Insert instead:
(3) Part 11 of the *Uniform Civil Procedure Rules 2005* does not apply to service of a citation.
- [117] Part 78, rule 56**
Omit “Subject to subrule (2), Part 11” from rule 56 (1).
Insert instead “Division 3 of Part 6 of the *Uniform Civil Procedure Rules 2005*”.

[118] Part 78, rule 56

Omit rule 56 (2). Insert instead:

- (2) Rule 12.11 of the *Uniform Civil Procedure Rules 2005* does not apply to proceedings to which this Division applies.

[119] Part 78, rule 58

Omit “Part 63 (which relates to disability)” from rule 58 (4).

Insert instead “Division 4 of Part 7 of the *Uniform Civil Procedure Rules 2005*”.

[120] Part 78, rule 59

Omit “Part 63 (which relates to disability)”.

Insert instead “Division 4 of Part 7 of the *Uniform Civil Procedure Rules 2005*”.

[121] Part 78, rule 69

Omit “Part 13” from rule 69 (5).

Insert instead “Part 13 of the *Uniform Civil Procedure Rules 2005*”.

[122] Part 79, rule 3

Omit the rule.

[123] Part 79, rule 23

Omit “Part 36”.

Insert instead “Division 1 of Part 31 of the *Uniform Civil Procedure Rules 2005*”.

[124] Part 79, rule 26

Omit the rule.

[125] Part 80, rule 2

Omit “under Part 5 rule 3” from rule 2 (1).

[126] Part 80, rule 5

Omit rule 5 (4).

[127] Part 80, rule 6

Omit the rule.

2005 No 407

Supreme Court Rules (Amendment No 405) 2005

Schedule 1 Amendments

- [128] **Part 80, rule 8A**
Omit “limited by Part 51A rule 3 (1)”.
- [129] **Part 80, rule 13**
Omit the rule.
- [130] **Part 80, rule 21**
Omit rule 21 (2).
- [131] **Part 80, rule 22**
Omit “Part 21 rule 2 (b)”.
Insert instead “Rule 12.2 of the *Uniform Civil Procedure Rules 2005*”.
- [132] **Part 80, rule 23A**
Omit the rule.
- [133] **Part 80, rule 39**
Omit “under Part 29 rule 5 (2)” from rule 39 (2).
Insert instead “under Rule 26.6 (3) of the *Uniform Civil Procedure Rules 2005*”.
- [134] **Part 80, rule 55**
Omit the rule.
- [135] **Part 80, rule 61**
Omit “limited by Part 51A rule 3 (1)”.
- [136] **Part 80, rule 62**
Omit “Notwithstanding Part 65 rule 7, a written record” from rule 62 (8).
Insert instead “A written record”.
- [137] **Part 80A, rule 3**
Omit “Part 19 rule 1” wherever occurring.
Insert instead “rule 18.1 of the *Uniform Civil Procedure Rules 2005*”.
- [138] **Part 80A, rule 6**
Omit the rule.

- [139] Part 80A, rule 9**
Omit rule 9 (2).
- [140] Part 80A, rule 19**
Omit “Notwithstanding Part 21 rule 2, proceedings”.
Insert instead “Proceedings”.
- [141] Part 80A, rule 21**
Insert “constituted by a Judge” after “the Court” in rule 21 (1).
- [142] Part 80A, rule 21**
Omit rule 21 (2). Insert instead:
(2) Subject to such changes as it is necessary to make, Divisions 4 and 5 of Part 45 of the *Uniform Civil Procedure Rules 2005* apply to an appeal under subrule (1) in the same way as they apply to an appeal under Division 1 of that Part.
- [143] Part 80A, rule 21**
Omit rule 21 (3).
- [144] Part 80A, rule 28**
Omit “Part 29 rule 5 (2)” from rule 28 (2).
Insert instead “rule 26.6 (3) of the *Uniform Civil Procedure Rules 2005*”.
- [145] Part 80A, rule 32**
Omit rule 32 (2).
- [146] Part 80A, rule 32**
Omit “or by Part 51A rule 3 (1) as the case may be” from rule 32 (3).
- [147] Part 80A, rule 36**
Omit “Notwithstanding Part 65 rule 7, an affidavit” from rule 36 (5).
Insert instead “An affidavit”.
- [148] Part 81, rule 4**
Omit the rule.

2005 No 407

Supreme Court Rules (Amendment No 405) 2005

Schedule 1 Amendments

[149] Part 81, rule 5

Omit “Part 4 rule 1 shall not”.

Insert instead “The requirements of the *Uniform Civil Procedure Rules 2005* for a statement of claim or summons do not”.

[150] Part 81, rule 6

Omit the rule.

[151] Part 81, rule 7

Omit “under Part 5 rule 7” from rule 7 (1).

Insert instead “under Part 2 of the *Uniform Civil Procedure Rules 2005*”.

[152] Part 81, rule 7

Omit “under Part 26” from rule 7 (2).

[153] Part 81, rule 8

Omit the rule.

[154] Part 81, rule 9

Omit “under Part 5 rule 3” from rule 9 (2) (b).

[155] Part 82, rule 6

Omit the rule.

[156] Part 82, rule 7

Omit “Part 36 rule 3” from rule 7 (5).

Insert instead “rule 31.2 of the *Uniform Civil Procedure Rules 2005*”.

[157] Part 82, rule 7

Omit rule 7 (6).

[158] Part 83, rules 1–4

Omit the rules.

[159] Schedules A, B and C

Omit the Schedules.

[160] Schedule D

Omit from Columns 1, 2 and 3 of Part 2 of Schedule D the matter relating to Parts 1B, 27, 28, 30, 32, 33, 34, 41, 42, 61 and 72.

[161] Schedule D

Omit “and 51AA” from Column 1 of Part 2 of Schedule D.

[162] Schedules E and H

Omit the Schedules.

[163] Schedules I, J and K

Omit the Schedules. Insert instead:

Schedule I Assignment of business

(Part 12, rule 1)

Part 1 Legislation of New South Wales

Column 1	Column 2	Column 3	Column 4
Act or instrument	Provisions	Division	List
<i>Administrative Decisions Tribunal Act 1997</i>	Section 118 or 119	Common Law	Administrative Law
<i>Adoption Act 2000</i>		Equity	
<i>Agricultural Tenancies Act 1990</i>		Common Law	
<i>Apiaries Act 1985</i>	Section 45	Equity	
<i>Associations Incorporation Act 1984</i>	Section 40, 54, 55B or 58	Equity	
<i>Australian Mutual Provident Society (Demutualisation and Reconstruction) Act 1997</i>		Equity	
<i>Bishopsgate Insurance Australia Limited Act 1983</i>	Section 7	Equity	
<i>Building and Construction Industry Long Service Payments Act 1986</i>		Common Law	Administrative Law
<i>Business Names Act 2002</i>		Common Law	Administrative Law
<i>Casino Control Act 1992</i>	Section 33, 34 or 155	Common Law	Administrative Law

2005 No 407

Supreme Court Rules (Amendment No 405) 2005

Schedule 1 Amendments

Column 1	Column 2	Column 3	Column 4
Act or instrument	Provisions	Division	List
<i>Charitable Fundraising Act 1991</i>		Equity	
<i>Children and Young Persons (Care and Protection) Act 1998</i>		Equity	
<i>Children (Care and Protection) Act 1987</i>		Equity	
<i>Children (Criminal Proceedings) Act 1987</i>		Common Law	
<i>Commercial Arbitration Act 1984</i> , except in relation to arbitration proceedings that are appropriate for assignment to the Technology and Construction List		Equity	Commercial
<i>Commercial Arbitration Act 1984</i> , in relation to arbitration proceedings that are appropriate for assignment to the Technology and Construction List		Equity	Technology and Construction
<i>Community Land Development Act 1989</i>		Equity	
<i>Community Land Management Act 1989</i>		Equity	
<i>Community Services (Complaints, Reviews and Monitoring) Act 1987</i>		Equity	
<i>Community Welfare Act 1987</i>		Common Law	
<i>Companies Act 1961</i>	Section 9 or 166B	Common Law	Administrative Law
<i>Companies (Acquisition of Shares) (New South Wales) Code</i>		Equity	
<i>Companies (Application of Laws) Act 1981</i>		Equity	

Column 1	Column 2	Column 3	Column 4
Act or instrument	Provisions	Division	List
<i>Companies (New South Wales) Code</i>		Equity	
<i>Competition Policy Reform (New South Wales) Act 1995</i>		Common Law or Equity (as appropriate in the circumstances)	
<i>Confiscation of Proceeds of Crime Act 1989</i>		Common Law	
<i>Consumer, Trader and Tenancy Tribunal Act 2001</i>	Section 65–67	Common Law	
<i>Conveyancers Licensing Act 1995</i>	All provisions except in relation to proceedings assigned to the Court of Appeal	Common Law	
<i>Co-operative Housing and Starr-Bowkett Societies Act 1998</i>		Equity	
<i>Co-operatives Act 1992</i>		Equity	
<i>Corporations (New South Wales) Act 1990</i>	any “national scheme law” as defined in section 60	Equity	
<i>Crimes Act 1900</i>	Section 172 or 474E	Common Law	
<i>Crimes (Forensic Procedures) Act 2000</i>	Section 74	Common Law	
<i>Criminal Assets Recovery Act 1990</i>		Common Law	
<i>Criminal Procedure Act 1986</i>	Section 30, Part 5 of Chapter 4 or Part 2 of Chapter 7	Common Law	
<i>Dairy Industry Authority Act 1970</i>	Section 34A (5)	Common Law	Administrative Law
<i>Dividing Fences Act 1991</i>	Section 19 (2) or (3)	Common Law	Administrative Law

2005 No 407

Supreme Court Rules (Amendment No 405) 2005

Schedule 1 Amendments

Column 1	Column 2	Column 3	Column 4
Act or instrument	Provisions	Division	List
<i>Driving Instructors Act 1992</i>	Section 39 (1)	Common Law	Administrative Law
<i>Drug Misuse and Trafficking Act 1985</i>	Section 39R	Common Law	
<i>Electricity Supply Act 1995</i>		Common Law	
<i>Exotic Diseases of Animals Act 1991</i>		Common Law	
<i>Fair Trading Act 1987</i>	All provisions except in relation to proceedings specified in the Third Schedule to the <i>Supreme Court Act 1970</i> or assigned by Part 75	Common Law or Equity (as appropriate in the circumstances)	
<i>Family Provision Act 1982</i>		Equity	
<i>Felons (Civil Proceedings) Act 1981</i>		Common Law or Equity (whichever the other proceedings to which the proceedings relate have been assigned)	
<i>Fines Act 1996</i>	Section 75 (9)	Common Law	Administrative Law
<i>Forfeiture Act 1995</i>		Equity	
<i>Freedom of Information Act 1989</i>	Section 58A (1)	Common Law	Administrative Law
<i>Funeral Funds Act 1979</i>	Part 6	Common Law	Administrative Law
	Section 74	Equity	
<i>Futures Industry (New South Wales) Code</i>		Equity	
<i>Gas Industry Restructuring Act 1986</i>		Equity	

Column 1	Column 2	Column 3	Column 4
Act or instrument	Provisions	Division	List
<i>Gas Pipelines Access (New South Wales) Law</i>	Section 35 or 37	Equity	
<i>Gas Supply Act 1996</i>	Section 17	Common Law	
<i>Guardianship Act 1987</i>		Equity	
<i>Independent Commission Against Corruption Act 1988</i>		Common Law	Administrative Law
<i>Landlord and Tenant Act 1899</i>		Common Law	
<i>Legal Profession Act 1987</i>	Section 171H	Common Law	
<i>Liquor Act 1982</i>		Common Law	
<i>Listening Devices Act 1984</i>		Common Law	
<i>Loan Fund Companies Act 1976</i>	Section 64	Common Law	Administrative Law
<i>Local Government Act 1993</i>	Section 330 or 485	Common Law	Administrative Law
<i>Maintenance Act 1964</i>	Section 113	Equity	
<i>Married Persons (Equality of Status) Act 1996</i>	Section 13	Equity	
<i>Married Persons (Property and Torts) Act 1901</i>		Equity	
<i>Mental Health Act 1990</i>	Section 174, 281 or 285	Equity	
<i>Mental Health (Criminal Procedure) Act 1990</i>		Common Law	
<i>Mining Act 1992</i>	Section 319	Common Law	
<i>Minors (Property and Contracts) Act 1970</i>		Equity	
<i>Motor Accidents Act 1988</i>		Common Law	
<i>Motor Accidents Compensation Act 1999</i>		Common Law	

2005 No 407

Supreme Court Rules (Amendment No 405) 2005

Schedule 1 Amendments

Column 1	Column 2	Column 3	Column 4
Act or instrument	Provisions	Division	List
<i>Motor Dealers Act 1974</i>	Section 38 (2), 38 (3B) (a) or Part 5A	Common Law	Administrative Law
	Other than proceedings under section 38 (2), 38 (3B) (a) or Part 5A	Common Law	
<i>Murray-Darling Basin Act 1992</i>	Section 11	Common Law	Administrative Law
<i>Mutual Recognition (New South Wales) 1992</i>		Common Law	
<i>National Companies and Securities Commission (State Provisions) Act 1981</i>		Equity	
<i>National Crime Authority (State Provisions) Act 1984</i>	Section 12, 13, 19 (1) or (2) or 20	Common Law	
	Section 21	Common Law	Administrative Law
<i>National Crime Authority (State Provisions) Regulation 1986</i>	Regulation 5	Common Law	
<i>National Electricity (NSW) Law</i>	Section 46 or 48	Common Law	Administrative Law
<i>National Trust of Australia (New South Wales) Act 1990</i>		Equity	
<i>Native Title (New South Wales) Act 1994</i>		Common Law	Administrative Law
<i>New South Wales Crime Commission Act 1985</i>		Common Law	
<i>Nurses and Midwives Act 1991</i>	Section 67	Common Law	
<i>Offshore Minerals Act 1999</i>	Section 49 (2), 136 (2), 196 (2), 351, 354 (1) or 355 (1)	Equity	

Column 1	Column 2	Column 3	Column 4
Act or instrument	Provisions	Division	List
<i>Ombudsman Act 1974</i>	Section 21A, 35A or 35B	Common Law	Administrative Law
<i>Parliamentary Electorates and Elections Act 1912</i>		Common Law	
<i>Permanent Building Societies Act 1967</i>		Equity	
<i>Petroleum (Submerged Lands) Act 1982</i>	Section 8 or 73	Common Law	Administrative Law
<i>Pipelines Act 1967</i>	Section 33 or 52	Common Law	Administrative Law
<i>Police Integrity Commission Act 1996</i>		Common Law	Administrative Law
<i>Powers of Attorney Act 2003</i>		Equity	
<i>Price Exploitation Code (New South Wales) Act 1999</i>		Common Law or Equity (as appropriate in the circumstances)	
<i>Prisoners (Interstate Transfer) Act 1982</i>	Section 16	Common Law	
<i>Professional Standards Act 1994</i>	Section 15	Common Law	
<i>Property (Relationships) Act 1984</i>		Equity	
<i>Protected Estates Act 1983</i>		Equity	
<i>Protection of the Environment Operations Act 1997</i>		Common Law	
<i>Public Notaries Act 1997</i>	Section 6 or 10	Common Law	
<i>Real Property Act 1900</i>		Equity	
<i>Registered Clubs Act 1976</i>	Section 42 (1)	Common Law	
<i>Residential Tenancies Act 1987</i>		Common Law	

2005 No 407

Supreme Court Rules (Amendment No 405) 2005

Schedule 1 Amendments

Column 1	Column 2	Column 3	Column 4
Act or instrument	Provisions	Division	List
<i>Restraints of Trade Act 1976</i>		Equity	
<i>Restricted Premises Act 1943</i>		Common Law	
<i>Retail Leases Act 1994</i>	Section 76A or 77 (2) or (4)	Equity	
<i>Retirement Villages Act 1999</i>	All sections other than section 183 (1)	Equity	
<i>Royal Commissions Act 1923</i>	Section 18B	Common Law	Administrative Law
<i>Royal Commission (Police Service) Act 1994</i>	Section 11B	Common Law	Administrative Law
<i>Rural Assistance Act 1989</i>	Section 54	Common Law	Administrative Law
<i>Securities Industry Act 1975</i>		Equity	
<i>Securities Industry (Application of Laws) Act 1981</i>		Equity	
<i>Securities Industry (New South Wales) Code</i>		Equity	
<i>State Owned Corporations Act 1989</i>	Section 10	Equity	
<i>State Records Act 1998</i>	Section 42, 45 or 72	Equity	
<i>Status of Children Act 1996</i>		Equity	
<i>Strata Schemes (Freehold Development) Act 1973</i>		Equity	
<i>Strata Schemes (Leasehold Development) Act 1986</i>		Equity	
<i>Strata Schemes Management Act 1996</i>	Section 200	Equity	
<i>Summary Offences Act 1988</i>	Section 25 or 26	Common Law	Administrative Law

Column 1	Column 2	Column 3	Column 4
Act or instrument	Provisions	Division	List
<i>Supreme Court Act 1970</i>	Section 70	Common Law	
<i>Surveying Act 2002</i>		Common Law	Administrative Law
<i>Taxation Administration Act 1996</i>	Part 10	Equity	
<i>Testator's Family Maintenance and Guardianship of Infants Act 1916</i>		Equity	
<i>Totalizator Act 1997</i>	Section 39 or 46	Common Law	Administrative Law
<i>Totalizator Agency Board Privatisation Act 1997</i>	Section 44	Common Law	Administrative Law
<i>Travel Agents Act 1986</i>	Section 39	Common Law	
<i>Trustee Companies Act 1964</i>		Equity	
<i>Uncollected Goods Act 1995</i>	Section 18	Equity	
<i>Victims Support and Rehabilitation Act 1996</i>		Common Law	
<i>Warnervale Airport (Restrictions) Act 1996</i>	Section 13	Equity	
<i>Witness Protection Act 1995</i>	Section 17, 19 or 34 (2)	Common Law	
<i>Workers Compensation Act 1987</i>		Common Law	
<i>Workplace Injury Management and Workers Compensation Act 1998</i>	Section 188	Equity	

2005 No 407

Supreme Court Rules (Amendment No 405) 2005

Schedule 1 Amendments

Part 2 Legislation of the Commonwealth

Column 1	Column 2	Column 3	Column 4
Act or instrument	Provisions	Division	List
<i>Admiralty Act 1988</i>		Equity	Admiralty
<i>Commonwealth Electoral Act 1918</i>	Section 383	Common Law	
<i>Copyright Act 1968</i>		Equity	
<i>Corporations Act 1989</i>	Section 51AA (1) (b) or (2) (d)	Common Law	
<i>Crimes (Aviation) Act 1991</i>	Section 40 (1)	Common Law	
<i>Crimes (Superannuation Benefits) Act 1989</i>		Common Law	
<i>Customs Act 1901</i>	Section 205F (1), 206 (6), 207 (2), 221 or 245 (1)	Common Law	
<i>Designs Act 1906</i>		Equity	
<i>Futures Industry Act 1986</i>		Equity	
<i>International War Crimes Tribunals Act 1995</i>		Common Law	
<i>Judiciary Act 1903</i>	Section 39B (1B) (b) or 39B (1C) (d)	Common Law	Administrative Law
<i>Marriage Act 1961</i>		Equity	
<i>Mutual Assistance in Criminal Matters Act 1987</i>		Common Law	
<i>National Companies and Securities Commission Act 1979</i>		Equity	
<i>National Crime Authority Act 1984</i>	Section 32 or 32A	Common Law	Administrative Law
<i>National Crime Authority Regulations</i>	Regulation 7	Common Law	
<i>Navigation Act 1912</i>		Equity	Admiralty

Column 1	Column 2	Column 3	Column 4
Act or instrument	Provisions	Division	List
<i>Offshore Minerals Act 1994</i>	Section 49 (2), 136 (2), 196 (2), 351, 354 (1) or 355 (1)	Equity	
<i>Patents Act 1990</i>		Equity	
<i>Proceeds of Crime Act 1987</i>		Common Law	
<i>Racial Discrimination Act 1975</i>		Common Law	Administrative Law
<i>Retirement Savings Accounts Act 1997</i>	Section 43, 74, 76 (2), 119, 158 (4), 160, 161 (1), (2), (8) or (10), 162, 163, 166 or 176	Equity	
<i>Service and Execution of Process Act 1992</i>	Section 57 (1), 67 (1), 76 (1), 79 (1), 93 (1), 101 or 105 Section 72 (1) or 86 (except in relation to proceedings before the Court)	Common Law	
<i>Shipping Registration Act 1981</i>		Equity	Admiralty
<i>Sydney 2000 Games (Indicia And Images) Protection Act 1996</i>	Section 43 (1) or (7), 44, 45, 46 or 48	Equity	
<i>Telecommunications (Interception) Act 1979</i>	Section 107A (3) or (4)	Common Law	
<i>Trade Marks Act 1995</i>		Equity	
<i>Wildlife Protection (Regulation of Exports and Imports) Act 1982</i>	Section 69E (1), 69L or 69R (3)	Common Law	

Schedule J Procedure under various Acts

(Part 12, rule 1A)

Part 1 Acts of New South Wales

Associations Incorporation Act 1984

- 1 **Winding up** (cf Part 80 rule 57, Part 80A rule 38 and Supreme Court (Corporations) Rules 1999 rule 10.3)
 - (1) The rules relating to the winding up of bodies other than companies (including, where applicable, the *Supreme Court (Corporations) Rules 1999*) 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 *Supreme Court (Corporations) Rules 1999* do not apply to proceedings under the Act.
 - (3) Documents in proceedings for relief under section 50, 51, 53 or 58 must bear above the title, a reference to the name of the incorporated association to which the proceedings relate together with “the *Corporations Act 2001* and the *Associations Incorporation Act 1984*”.

2 Appeal from liquidator etc (section 58)

A person mentioned in section 58, may, on application in writing made to the person before the expiration of the time limited for instituting an appeal from his or her act, omission or decision (other than the time extended by the Court), grant, by notice in writing, an extension of that time and if he or she does so, he or she must deliver the notice to the applicant, who must file the notice with the summons instituting the appeal.

Australian Mutual Provident Society (Demutualisation and Reconstruction) Act 1997

Application of rules

- (1) The provisions of Part 80A, so far as applicable and making such changes as it is necessary to make, apply to proceedings under the Act commenced before the *Supreme Court (Corporations) Rules 1999* commenced.

- (2) The provisions of the *Supreme Court (Corporations) Rules 1999*, so far as applicable and making such changes as it is necessary to make, apply to all other proceedings under the Act.

Confiscation of Proceeds of Crime Act 1989

1 Statement in summons or notice of motion

- (1) The applicant for an order under the Act must file with his or her summons or notice of motion a statement in summary form of the general nature of the facts and circumstances relied on.
- (2) This clause does not apply to an application under section 77 or 82.

2 Notice of discharge of order (section 26)

Notice of discharge of an order mentioned in section 26 (2) must be given by the appropriate officer on whose application the order was registered by filing, in the court in which the order was registered, a notice stating that the order was discharged and annexing a sealed copy of the order quashing or discharging on appeal.

3 Form of acceptance etc of allegation (section 31)

An allegation may be accepted or a matter may be indicated for the purposes of section 31 (5) (b) in Form 89D or 89E, whichever is appropriate.

4 Form (section 44 (2))

The form prescribed for the purposes of section 44 (2) is Form 89F.

5 Examination order: prescribed officer (section 45)

An officer prescribed for the purposes of section 45 (1) (c) is an associate Judge or a registrar.

6 Notice (section 56 (2))

Notice of an application for the purpose of section 56 (2) must be given by serving the notice of motion by which the application was made personally on each other person who is entitled, by virtue of section 45 (3) (a)–(c), to make an application under section 45 in relation to the restraining order.

2005 No 407

Supreme Court Rules (Amendment No 405) 2005

Schedule 1 Amendments

7 Information for production order or search warrant (sections 58 (1) and 66 (1))

An information setting out the grounds mentioned in section 58 (1) or 66 (1) may be laid before the Court by filing an affidavit setting out those grounds.

8 Registration of interstate orders (section 77)

- (1) A register of orders to which section 77 applies (*interstate orders*) must be kept in the registry.
- (2) A copy mentioned in section 77 (2) is registered when it is included in the register.
- (3) Proceedings for registration of an interstate order must be commenced by summons joining as defendant the person against whom the order was made.
- (4) The plaintiff may, unless the Court otherwise orders, proceed without service of the summons on the defendant.
- (5) If the plaintiff adds to the summons a request that the application be granted under this subclause, the Court may make the order in the absence of the public and without any attendance by or on behalf of the plaintiff.
- (6) If an order is made for registration of an interstate order, the plaintiff must forthwith serve a minute of the order and the interstate order on the defendant.
- (7) The registration of an order mentioned in section 82 (1) is cancelled when the registrar notes its cancellation on the copy order included in the register.

9 Certifying facsimile copy (section 85 (1))

A facsimile copy of a sealed copy is certified for the purposes of section 85 (1) if it includes a facsimile copy certificate in Form 89G.

Contractors Debts Act 1997

1 Application under section 7 (1) or 14 to be by motion

An application for an order under section 7 (1) or section 14 must be made by motion in the proceedings in the Court in which judgment is given (*the principal proceedings*).

2 Application under section 7 (1)

- (1) This clause applies if an application for a certificate under section 7 (1) is made otherwise than at the hearing of the principal proceedings.
- (2) The evidence in support of the application must include evidence showing:
 - (a) how much of the judgment debt is for work done or for materials supplied (*the subject debt*), and
 - (b) whether the subject debt consists of daily, weekly or monthly wages, and
 - (c) if the subject debt so consists—whether the subject debt exceeds 120 days’ wages, and
 - (d) if the subject debt so consists and exceeds 120 days’ wages—an amount to be included in the certificate that does not exceed 120 days’ wages, and
 - (e) whether work resulting in the subject debt was done on something moveable and, if so, whether it would be practicable for the applicant to exercise a lien by retaining the thing in the applicant’s possession.
- (3) The applicant may, unless the Court otherwise orders, proceed without service of notice of the motion or other documents on any person.
- (4) The application may be determined or dealt with by the Court in the absence of the public and without any attendance by or on behalf of any person.

3 Application under section 14 (1)

On an application under section 14 (1), the applicant may, unless the Court otherwise orders, proceed without service of notice of the motion or other documents on any person.

Conveyancing Act 1919**1 “Prescribed officer”: section 66G (5) (b)**

The officer of the Court prescribed pursuant to section 66G (5) (b) (which paragraph relates to service of notice where a co-owner is under mental disability) is the Registrar in Equity.

2005 No 407

Supreme Court Rules (Amendment No 405) 2005

Schedule 1 Amendments

2 “Prescribed officer”: section 98 (1F)

The officer of the Court prescribed pursuant to section 98 (1F) (which subsection relates to certificates relating to repayments under mortgages) is the Registrar in Equity.

Co-operative Housing and Starr-Bowkett Societies Act 1998

Applicability of the Supreme Court (Corporations) Rules 1999

The provisions of the *Supreme Court (Corporations) Rules 1999* relating to applications under the *Corporations Act 2001* of the Commonwealth, so far as applicable and making such changes as it is necessary to make, apply to applications under the Act.

Co-operatives Act 1992

Applicability of Parts 80A and 80 and the Supreme Court (Corporations) Rules 1999

- (1) The provisions of the *Supreme Court (Corporations) Rules 1999* relating to applications under the *Corporations Law*, so far as applicable and making such changes as it is necessary to make, apply to:
 - (a) proceedings under the Act commenced in the Court after those rules commence, and
 - (b) applications made under the Act in those proceedings.
- (2) The provisions of Part 80A relating to applications under the *Corporations Law*, so far as applicable and making such changes as it is necessary to make, apply to:
 - (a) proceedings under the Act commenced in the Court after 31 March 1994 and before the *Supreme Court (Corporations) Rules 1999* commence, and
 - (b) applications made under the Act after 31 March 1994 in proceedings in the Court commenced before the *Supreme Court (Corporations) Rules 1999* commence.
- (3) The provisions of Part 80 relating to applications under the Companies Code and under the *Corporations Law*, 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 Act.

Coroners Act 1980

Service of notice and order

- (1) For the purposes of section 47 (2A), the notice of application must be served by serving the summons by which proceedings on the application are commenced.
- (2) The plaintiff must serve the minute of order required to be served under section 47 (2C).

Criminal Assets Recovery Act 1990

1 Statement in summons or notice of motion

The applicant for an order under the Act must file with his or her summons or notice of motion a statement in summary form of the general nature of the facts and circumstances relied on.

2 Examination order: “prescribed officer” (section 12)

An officer prescribed for the purposes of section 12 (1) (b) and (b1) is an associate Judge or registrar.

3 Information for production order

An information setting out the grounds mentioned in section 33 (1), 44 or 48 (1) may be laid before the Court by filing an affidavit setting out those grounds.

Electricity Supply Act 1995

Service of certificate

The Minister must serve any certificate made pursuant to section 95 (3) on the appellant.

Evidence (Audio and Audio Visual Links) Act 1998

1 Evidence taken by audio link or audio visual link

- (1) An application for a direction under section 5B or 7 may be made orally or by notice of motion.
- (2) The application must be supported by an affidavit stating the following:
 - (a) the reasons why such a procedure is desirable,
 - (b) the nature of the evidence to be taken,
 - (c) the number of witnesses to be examined,

2005 No 407

Supreme Court Rules (Amendment No 405) 2005

Schedule 1 Amendments

- (d) the expected duration of the evidence,
 - (e) whether issues of character are likely to be raised,
 - (f) in the case of submissions—the expected duration of the submissions,
 - (g) the facilities available for such a procedure or that can reasonably be made available, including the minimum transmission rate that will be available,
 - (h) that the requirements of section 20A or 20B are able to be met,
 - (i) an undertaking to pay all appropriate fees/charges for this facility.
- (3) In deciding whether to grant the application, the Court may take account of the matters set out in the applicant's affidavit in addition to any other matters considered to be material, including cost and convenience to the witness and all parties.
- (4) If the Court makes a direction under section 5B (1) or 7 (1), 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) if 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, and
 - (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.

2 Application that bail proceedings or other preliminary criminal proceedings not be conducted by video link

An application for a direction under section 5BA that proceedings relating to bail or other preliminary criminal proceedings before the Court are not to be conducted by video link:

- (a) must be in Form 89KA, and
- (b) if the application is in relation to bail proceedings and is made by the detained applicant—must be filed with the

application, made pursuant to section 22 or 44 of the *Bail Act 1978*, to which it relates, and

- (c) may be determined or dealt with by the Court in the absence of the public and without any attendance by or on behalf of the applicant.

3 Subpoenas

- (1) This clause applies if a party requests the issue of a subpoena in Form 46 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 7 (1) .
- (2) In paragraph (c) (i) of Form 46, the words “post, in either case so that he or she 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,
BEFORE THE DATE on which you are required so to attend;”
are to 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;”
- (3) The words “PRODUCTION UNDER THE *EVIDENCE (AUDIO AND AUDIO VISUAL LINKS) ACT 1998*” are to be added immediately under the description of the subpoena on the first page of the subpoena.

2005 No 407

Supreme Court Rules (Amendment No 405) 2005

Schedule 1 Amendments

4 Notice to produce

A notice to produce at the place where evidence is to be given, or submissions are to be made, pursuant to a direction under section 7 (1) must:

- (a) be served not later than 14 days before the date on which production is required, unless the Court otherwise orders, and
- (b) contain the following note:

“You may produce the documents and things described above by hand to a clerk of the Court at the Exhibits Office, Level 4 Queen’s Square, Sydney, or by posting them to:

Exhibits Clerk,
Prothonotary’s Office, Level 4,
Supreme Court of NSW,
GPO Box 3,
Sydney NSW 2001,

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.

You need not comply with this notice if it is served on you after *(date calculated in accordance with paragraph (a))*”, and

- (c) contain the words “**PRODUCTION UNDER THE EVIDENCE (AUDIO AND AUDIO VISUAL LINKS) ACT 1998**” immediately under the heading “**NOTICE TO PRODUCE**”.

Family Provision Act 1982**1 Commencement of proceedings**

Proceedings in the Court on an application for relief under the Act must be commenced by summons.

2 Additions to title

A summons in proceedings for relief under the Act must bear, above the title, the words "Estate of", the full name of the deceased person and the words "deceased and the *Family Provision Act 1982*".

3 Search in index

Any person may, on payment of the fee (if any) fixed under the Act, search in the index kept in the registry against the name of the deceased person in relation to whom any application for an order under the Act has been made.

4 Extension of time for application for provision

A claim for an order under section 16 (2) or (5) may be included in a claim for an order under section 7.

5 Affidavit of administrator

- (1) In proceedings for an order under section 7, the administrator must make an affidavit setting out the following:
 - (a) the nature and value of the assets and liabilities at the date of death,
 - (b) what is or is likely to be the nature and value of:
 - (i) any distributed estate, and
 - (ii) the net distributable estate,
 - (c) what is the nature and value of any property which, in his or her opinion, is or may be the subject of any prescribed transaction,
 - (d) the names and addresses of every person who, in his or her opinion, is or may be:
 - (i) an eligible person (designating as a person under legal incapacity any eligible person who, in his or her opinion, is or may be a person under legal incapacity), or
 - (ii) a person beneficially entitled to the distributable estate, or

2005 No 407

Supreme Court Rules (Amendment No 405) 2005

Schedule 1 Amendments

- (iii) a disponee, within the meaning of section 21, or
- (iv) a person holding property as a result of a distribution from the estate,

(e) the persons to whom notice was given under clause 9 (2).

- (2) The affidavit mentioned in subclause (1) must be served within a reasonable time after service of the originating process.

6 Parties

- (1) In proceedings on an application by summons for an order under section 7 or 16 (2) or (5), the summons must, subject to subclause (2), join as a defendant every administrator.
- (2) The summons must not join as a defendant:
 - (a) any person, if any plaintiff is the sole administrator, or
 - (b) any person, if there is sufficient reason for not doing so.

7 Directions as to parties and service

- (1) Despite clause 6, the Court may, at any stage of the proceedings, direct that any person be added as a party or substituted for another party or a former party or that notice of the proceedings be served on any person in addition to or instead of the defendant.
- (2) Subclause (1) does not affect the powers of the Court under Part 7 of the *Uniform Civil Procedure Rules 2005* in relation to the joinder of parties.

8 Representative orders

Rule 7.6 of the *Uniform Civil Procedure Rules 2005* applies to proceedings under the Act as it applies to proceedings mentioned in subrule (1) of that rule.

9 Notice to eligible persons

- (1) The plaintiff claiming an order under section 7 must, unless he or she is the administrator, when serving the summons, also serve a notice on the administrator showing who, in his or her opinion, is or may be an eligible person (designating as a person under legal incapacity any eligible person who, in his or her opinion, is or may be a person under legal incapacity).
- (2) The administrator must serve a notice in Form 89B on the following:
 - (a) the surviving spouse (if any) of the deceased person,
 - (b) every child of the deceased person,

- (c) every person not mentioned in paragraph (a) or (b) who is entitled to share in the distributable estate of the deceased person,
- (d) any person mentioned by the plaintiff in his or her notice served under subclause (1) and not mentioned in paragraph (a), (b) or (c),
- (e) any other person who, in his or her opinion, is or may be an eligible person.

10 Additional provision

An application for an order under section 8 (which section relates to the making of additional provision) must be made by motion in the proceedings for the order under section 7.

11 Certified copies of orders

- (1) If an order is made under section 7 (not being an interim order), 8, 19 (2) or (3) or 30, an administrator must, unless the Court otherwise orders, within the time prescribed by subclause (2), lodge in the registry:
 - (a) the probate, letters of administration or copy of election, as the case may require, bearing a copy of the minute of order, and
 - (b) a copy of the minute of order.
- (2) The time prescribed for the purpose of subclause (1) is:
 - (a) if an administrator is a defendant—14 days after the date of service of an office copy of the minute of order on him or her, and
 - (b) in any other case—28 days after the order is entered.
- (3) The registrar must, unless the Court otherwise orders:
 - (a) certify on each copy that it is a true copy of the minute of order, and
 - (b) send the copy mentioned in subclause (1) (b) to the Registrar in Probate.

12 Revocation etc of order for provision

An application for an order under section 19 (2) must be made by motion in the proceedings for the order under section 7.

2005 No 407

Supreme Court Rules (Amendment No 405) 2005

Schedule 1 Amendments

13 Discharge of property from liability

An application for an order under section 30 (1) or (2) must be made by motion in the proceedings in which the order for provision has been, or is proposed to be, made.

14 Revocation of release

An application for an order under section 31 (8) or (9) must be made by motion in the proceedings for the order under section 31 (6).

15 Notice of intended distribution

- (1) A notice under section 35 must be published:
 - (a) if the deceased person was resident at the date of the deceased person's death in the State—in a newspaper circulating in the district where the deceased person resided, or
 - (b) otherwise—in a Sydney daily newspaper,
and must be served on all persons of whose intention to bring an application under the Act the administrator has notice.
- (2) The notice may be in or to the effect of Form 121.

Federal Courts (State Jurisdiction) Act 1999

1 Interpretation

In these clauses:

ineffective judgment and *relevant order* have, unless the contrary intention appears, in relation to proceedings under the Act, the same meaning as in the Act.

2 Application for order under section 7

A person seeking the aid of the Court in respect of a right or liability to which section 7 refers, other than in respect of an appeal, must commence proceedings:

- (a) by summons joining as defendants all persons whose interests may be affected by the application, and
- (b) in the Division to which the proceedings, in which the ineffective judgment was given or recorded, would have been assigned if it had been commenced in the Court.

3 Application for order under section 10

An applicant for an order under section 10 must commence proceedings for the order:

- (a) by summons joining as defendants all other parties to the proceedings in which the ineffective judgment was given or recorded, and
- (b) in the Division to which the proceedings, in which the ineffective judgment was given or recorded, would have been assigned if it had been commenced in the Court.

4 Application for order under section 11 (2)

- (1) An applicant for an order under section 11 (2) (*the order*) must commence proceedings for the order by summons, joining as defendants all other parties to the proceeding in which the relevant order was made (*the relevant proceedings*), in:

- (a) where the relevant proceedings, if commenced in the Court, would have been commenced in the Court of Appeal—the Court of Appeal, or
- (b) otherwise—the Division to which the relevant proceedings would have been assigned if they had been commenced in the Court.

- (2) If the order is made:

- (a) subject to any order of the Court:
 - (i) the registrar or clerk of the court in which the relevant proceedings were brought must send the record of the proceeding to the Court, and
 - (ii) the Court must proceed as if:
 - (A) the relevant proceedings had been originally commenced in the Court, and
 - (B) the same steps had been taken in the Court as have been taken in any other court or courts in which the relevant proceedings were for the time being pending, and
 - (C) any order made by any other court or courts in which the relevant proceedings were for the time being pending had been made by the Court,
- (b) the plaintiff must, within 28 days of the order being made, move the Court for directions.

2005 No 407

Supreme Court Rules (Amendment No 405) 2005

Schedule 1 Amendments

- (3) The registrar may, without a direction of the Court or a request of a party, file and seal a minute of the order.
- (4) The registrar must serve a minute of the order on the registrar of the court by which the relevant order was made.

Forfeiture Act 1995

Commencement of proceedings

Proceedings in the Court must be commenced by summons.

Gas Supply Act 1996

Service of certificate

The Minister must serve any certificate made pursuant to section 17 (3) on the appellant.

Insurance Act 1902

Joinder of insurer etc (section 17A)

- (1) Notice of motion in any proceedings in the Court for an order under section 17A (1) must be filed:
 - (a) if the Court by notice to the parties fixes a date for determining the date for trial—before the date fixed by the notice, and
 - (b) if the venue for trial is elsewhere than Sydney—not later than 6 weeks before the beginning of the sitting at that venue, and
 - (c) in any other case—before the date on which the Court determines the date for trial.
- (2) The applicant must serve the notice on each other party to the proceedings and on such other person as the Court may direct.

Jury Act 1977

1 Application (section 24)

- (1) An application for a declaration of satisfaction that the Sheriff is interested in a trial must be made a reasonable time before the trial by motion in the proceedings to which the application relates.
- (2) Notice of the motion must be served on the Sheriff.

- (3) The Sheriff is entitled to be heard on the application without becoming a party to the proceedings.

2 Application under section 26 (3)

An application to the Court for an order under section 26 (3) must be made by summons without joining any person as a defendant.

Legal Profession Act 1987

1 Sealed copy of application under section 208KA

The officer of the Court accepting an application under section 208KA must, on request by the applicant, seal with the seal of the Court a copy of the application provided by the applicant.

2 Affidavit showing compliance with section 208KA

A person applying for a review of a determination under section 208KA must file with the application an affidavit showing compliance with subsection (5) of that section.

Mining Act 1992

Entry of order of Warden's Court (section 319)

- (1) Proceedings for entry in the Court under section 319 of an order for the payment of money must be commenced by summons, joining as defendant the person against whom the order was made.
- (2) The plaintiff may, unless the Court otherwise orders, proceed without service of the summons on the defendant.
- (3) If the plaintiff adds to the summons a request that the application be granted under this subclause, the Court may make the order for entry in the absence of the public and without any attendance by or on behalf of the plaintiff.
- (4) If an order for entry is made in proceedings to which this clause applies, the plaintiff must forthwith serve on the defendant a minute of:
- (a) the order for entry, and
 - (b) the order which is the subject of the proceedings.
- (5) An order mentioned in section 319 is entered when a copy of the order (being a copy sealed by the court that made the order) is filed in accordance with an order of the Court.

2005 No 407

Supreme Court Rules (Amendment No 405) 2005

Schedule 1 Amendments

Motor Accidents Act 1988

Joinder of insurer etc (section 66A)

- (1) Notice of motion in any proceedings for an order under section 66A (1) must be filed:
 - (a) if the Court by notice to the parties fixes a date for determining the date for trial—before the date fixed by the notice, and
 - (b) if the venue of trial is elsewhere than Sydney—not later than 6 weeks before the beginning of the sittings at that venue, and
 - (c) in any other case—before the date on which the Court determines the date for trial.
- (2) The applicant must serve the notice on each other party to the proceedings and on such other person as the Court may direct.

Motor Accidents Compensation Act 1999

Joinder of insurer etc (section 119)

- (1) Notice of motion in any proceedings in the Court for an order under section 119 (1) must be filed:
 - (a) if the Court by notice to the parties fixes a date for determining the date for trial—before the date fixed by the notice, and
 - (b) if the venue for trial is elsewhere than Sydney—not later than 6 weeks before the beginning of the sittings at that venue, and
 - (c) in any other case—before the date on which the Court determines the date for trial.
- (2) The applicant must serve the notice on each other party to the proceedings and on such other person as the Court may direct.

New South Wales Crime Commission Act 1985

Review of decision

- (1) The appropriate officer for the purposes of section 19 (15) is the Prothonotary.
- (2) The appropriate Registry for the purposes of section 19 (15) is the Registry of the Common Law Division.

Offshore Minerals Act 1999**Commencement of proceedings under section 354**

Proceedings for an order under section 354 (1) must be commenced by summons joining as a defendant the Minister and each person who is directly affected by the relief sought in the proceedings.

Professional Standards Act 1994**Commencement of proceedings**

- (1) Proceedings in the Court for an order under section 15 in respect of a scheme are to be commenced by summons joining as a defendant the occupational association on whose application the scheme was approved by the Professional Standards Council.
- (2) The plaintiff must, within one day of commencing proceedings, lodge a copy of the summons at the office of the Professional Standards Council.

Property (Relationships) Act 1984**1 Death of party to application (section 24)**

- (1) The Court may, on application by the legal personal representative mentioned in section 24 (1) or of its own motion, order the substitution of that representative as a party to the application under section 20.
- (2) Rule 6.32 of the *Uniform Civil Procedure Rules 2005* applies to proceedings in which the Court makes an order under subrule (1) in the same way as it applies to proceedings in which the Court makes an order under Division 5 or 6 of Part 6 of those rules.

2 Additions to title

Documents in proceedings under the Act must bear above the title the words "*Property (Relationships) Act 1984*".

3 Pleading and particulars

- (1) Proceedings in the Court under the Act must be commenced by statement of claim.
- (2) The material facts required in the statement of claim must include the facts alleged to constitute any contribution within the meaning of section 20 (1) on which the plaintiff relies.

2005 No 407

Supreme Court Rules (Amendment No 405) 2005

Schedule 1 Amendments

- (3) The particulars required in relation to a statement of claim must include particulars of:
- (a) any payment relied on in respect of any contribution, and
 - (b) any voucher relied on in respect of any payment.

Protection of the Environment Operations Act 1997

1 Statement in summons or notice of motion

The applicant under section 232 (1), 235 (3), 238 (2) or 239 (1) must file with his or her summons or notice of motion a statement in summary form of the general nature of the facts and circumstances relied on.

2 Examination order: prescribed officer (section 235 (2) (a))

An officer prescribed for the purposes of section 235 (2) (a) is an associate Judge or registrar.

Restricted Premises Act 1943

1 Commencement of proceedings

Proceedings in the Court under the Act must be commenced by summons.

2 Application for declaration: section 3 (1)

The Court may make a declaration under section 3 (1) even if the summons has not been served on the owner or occupier of the premises.

3 Forms

- (1) A minute of order under section 3 (1) may be in Form 89H.
- (2) A minute of order under section 4 (1) or 14 (3) may be in Form 89I.
- (3) A notice under section 5 (1) may be in Form 89J or 89K, as appropriate.

Retirement Villages Act 1999**1 Consent of administrator**

In an application for an order under section 84, the plaintiff must:

- (a) file the consent mentioned in section 85 with the application, and
- (b) serve the consent with the application.

2 Application under section 88

An application for an order under section 88 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.

Status of Children Act 1996**1 Form of declaration**

A declaration under section 21 (2) (which relates to a declaration of parentage) must be in the prescribed form.

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

If a party moves under section 26 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 must, unless the Court otherwise orders, be served personally on that person.

3 Service of notice of motion on person under legal incapacity

If 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 person under legal incapacity and the person served under rule 10.12 of the *Uniform Civil Procedure Rules 2005* does not appear to have the care and control of the person under legal incapacity, then, unless the Court otherwise orders, the notice must 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.

4 Service of order on non-party

If the Court makes an order under section 26 (1), the registrar must 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.

2005 No 407

Supreme Court Rules (Amendment No 405) 2005

Schedule 1 Amendments

5 Person under legal incapacity

If the Court makes an order under section 26 (1), requiring a parentage testing procedure to be carried out on a person under legal incapacity, the order must name the person having the care and control of the person under legal incapacity.

6 Service of order on person under legal incapacity

If any minute of order under section 26 (1) is to be served on a person under legal incapacity and the person served is not the person having the care and control of the person under legal incapacity, then, unless the Court otherwise orders, the minute must also be served personally on the person having that care and control and on such other person as the Court may direct.

7 Service of report

On receipt of a report under clause 18 of the *Status of Children Regulation 2003*, the registrar must 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.

Strata Schemes (Freehold Development) Act 1973

Readjustment etc and authorising acts

- (1) Proceedings under section 32 (1), 50 (1) or 51 (1) must be commenced by summons, joining as defendants the persons referred to in section 32 (2), 50 (2) or 51 (2), respectively.
- (2) Notice under section 32 (2), 50 (2) or 51 (2) must be served by serving the summons.
- (3) An application under section 50 (10) or 51 (2) for variation of an order must be made by motion in the proceedings for the order.

Strata Schemes (Leasehold Development) Act 1986

Readjustment etc and authorising acts

- (1) Proceedings in the Court under section 37 (4), 61 (1), 79 (1) or 80 (1) must be commenced by summons joining as defendants the persons referred to in section 37 (5), 61 (2), 79 (2) or 80 (3), respectively.
- (2) Notice under section 37 (5) or (8), 61 (2), 79 (2) or 80 (3) must be served by serving the summons by which the application is made.

-
- (3) An application under section 37 (13), 79 (10) or 80 (13) for variation of an order must be made by motion in the proceedings for the order.

Taxation Administration Act 1996

Evidence of jurisdiction

A plaintiff must file and serve, with a summons by which application for review is made under section 97, an affidavit:

- (a) showing:
- (i) that the application is made under section 97 (1) (a), or
 - (ii) that:
 - (A) the application is made under section 97 (1) (b), and
 - (B) the application is not in breach of the time prescribed by section 97 (1) (b), and
 - (C) section 100 (1) has been complied with, and
- (b) showing that the application is not in breach of section 97 (2) or (3).

Testator's Family Maintenance and Guardianship of Infants Act 1916

1 Commencement of proceedings

- (1) The summons commencing proceedings under the Act may state an appointment for hearing.
- (2) The summons must bear, above the title, the words "Estate of", the full name of the deceased person and the words "deceased and the Testator's Family Maintenance, etc Act 1916".

2 Parties

- (1) This clause applies to proceedings for an order under section 3 or 5 (2A).
- (2) In proceedings to which this clause applies, subject to subclause (3), the summons must join as a defendant every executor or administrator.
- (3) The summons must not join as a defendant:
 - (a) any person, if any plaintiff is the sole executor or administrator, or

2005 No 407

Supreme Court Rules (Amendment No 405) 2005

Schedule 1 Amendments

- (b) an executor or administrator who is a plaintiff, or
- (c) any person, if there is sufficient reason for not doing so.

3 Extension of time for application

A claim for an order under section 5 (2A) may be included in the summons claiming an order under section 3.

4 Affidavit of executor

- (1) In proceedings for an order under section 3, the executor or administrator, as the case may be, must make an affidavit setting out:
 - (a) the nature and value of the assets and liabilities at the date of death, and
 - (b) what is or is likely to be the nature and net amount of the distributable estate, and
 - (c) such information as is available to the deponent as to the family of the deceased, and
 - (d) the person beneficially entitled.
- (2) The affidavit mentioned in subclause (1) must be served within a reasonable time after service of the summons commencing the proceedings.

5 Additional provision

An application for an order under section 6A (which section relates to the making of additional provision) may be made by motion in the proceedings for an order under section 3.

6 Directions as to parties and service

- (1) The Court may, at any stage of the proceedings to which these clauses apply, direct that any person be added as a party or substituted for another party or a former party or that notice of the proceedings be served on any person in addition to or instead of the defendant.
- (2) Subclause (1) does not affect the powers of the Court under Part 7 of the *Uniform Civil Procedure Rules 2005* in relation to the joinder of parties.

7 Representative orders

Rule 7.6 of the *Uniform Civil Procedure Rules 2005* applies to proceedings under the Act as it applies to proceedings mentioned in subrule (1) of that rule.

8 Certified copies of order

- (1) The Court may, but need not, make any direction or requirement under section 6 (3).
- (2) Unless the Court otherwise orders, in every case in which provision is made under the Act, a certified copy of the minute of the order making the provision must be made on the probate, the letters of administration, or a copy of an election under section 18A of the *Public Trustee Act 1913*, whichever is appropriate.
- (3) Unless the Court otherwise orders, an executor or administrator must, within the time prescribed by subclause (4), lodge in the registry:
 - (a) the probate, the letters of administration or the copy of the election, as the case may require, bearing a copy of the minute of order, and
 - (b) a copy of the minute of order.
- (4) The time prescribed for the purpose of subclause (3) is:
 - (a) if an executor or administrator is a defendant—14 days after the date of service of an office copy of the minute of order on the defendant, and
 - (b) in any other case—28 days after the order is entered.
- (5) The registrar must:
 - (a) certify on each copy that it is a true copy of the minute of order, and
 - (b) send the copy mentioned in subclause (3) (b) to the Registrar in Probate.

9 Notice of intended distribution

A notice under section 11 may be in or to the effect of Form 121.

Victims Support and Rehabilitation Act 1996**1 Statement in summons or notice of motion**

The applicant for an order under the Act must file with his or her summons or notice of motion a statement in summary form of the general nature of the facts and circumstances relied on.

2 Examination order: prescribed officer (section 58H (2) (a))

An officer prescribed for the purposes of section 58H (2) (a) is an associate Judge or registrar.

2005 No 407

Supreme Court Rules (Amendment No 405) 2005

Schedule 1 Amendments

3 Certificate of amount payable

A certificate issued by the registrar under section 75 or 77F may be in the prescribed form.

Witness Protection Act 1995

1 Section 17 applications

Proceedings for an order under section 17 must be commenced by summons without joining any person as a defendant.

2 Section 19 (2) applications

Proceedings for an order under section 19 (2) in respect of an entry must be commenced by summons joining as a defendant the person to whom the entry relates.

3 Section 34 (2) applications

Proceedings for an order under section 34 (2) must be commenced by summons joining as a defendant the person against whom the order is sought.

Workers Compensation Act 1987

Proof of payments

A defendant pleading a defence under section 151Z (1) (e), or under section 150 (1) (e) as in force immediately prior to its omission by the *Workers Compensation (Benefits) Amendment Act 1989* need not, in his or her pleading, state the amount of any payments made under the Act, but may, by affidavit filed and served not later than 3 days before the date for which the proceedings are set down for trial, adduce evidence of any such payments.

Part 2 Acts of the Commonwealth

Crimes (Superannuation Benefits) Act 1989

Statement in summons or notice of motion

The applicant for an order under the Act must file with his or her summons or notice of motion a statement in summary form of the facts and circumstances relied on.

International War Crimes Tribunals Act 1995**Registration (section 45)**

- (1) A register of orders to which section 45 applies must be kept in the registry.
- (2) A copy mentioned in section 45 (2) is registered when it is included in the register.
- (3) Proceedings for registration of an order to which section 45 (1) applies must be commenced by summons joining as defendant the person against whom the order was made.
- (4) The plaintiff may, unless the Court otherwise orders, proceed without service of the summons on the defendant.
- (5) If the plaintiff adds to the summons a request that the application be granted under this subclause, the Court may make the order in the absence of the public and without any attendance by or on behalf of the plaintiff.
- (6) The plaintiff must file with the summons an affidavit setting out such particulars as are necessary to enable the Court to comply with section 45 (1).
- (7) If an order is made under section 45 (1) for registration of an order, the plaintiff must serve a minute of the order for registration and the registered order on the defendant.

Offshore Minerals Act 1994**Commencement of proceedings under section 354**

Proceedings for an order under section 354 (1) must be commenced by summons joining as a defendant the Designated Authority and each person who is directly affected by the relief sought in the proceedings.

Proceeds of Crime Act 1987**1 Statement in summons or notice of motion**

The applicant for an order under the Act must file with his or her summons or notice of motion a statement in summary form of the facts and circumstances relied on.

2 Information for production order or search warrant (sections 66 (1) and 71 (1))

An information setting out the grounds mentioned in section 66 (1) or 71 (1) may be laid before the Court by filing an affidavit setting out those grounds.

Retirement Savings Accounts Act 1997**1 Application by Regulator under section 119 (3)**

An application by the Regulator for an inquiry or order under section 119 (3) must be made by summons, filed with the certificate under section 119 (2), and joining as a defendant the person who is the subject of the certificate.

2 Notice of certain applications to be given to Regulator

Unless the Court otherwise orders, an applicant for an order under section 158 (1) or (4) or 160 (5) must serve on the Regulator, a reasonable time before the hearing of the application, a copy of the originating process, or interlocutory process, and supporting affidavit in respect of the application.

3 Intervention by Regulator

- (1) The Regulator may intervene under section 168 by filing a notice of appearance that includes a statement that the Regulator intervenes under the section.
- (2) On complying with subclause (1), the Regulator must be added as a defendant.