



New South Wales

Supreme Court (Amendment No 430) Rule 2016

under the

Supreme Court Act 1970

The Supreme Court Rule Committee has made the following rule of court under the *Supreme Court Act 1970*.

Rebel Kenna
Secretary of the Rule Committee

Explanatory note

The object of this Rule is to amend the *Supreme Court Rules 1970* to make provision, consequent on the abolition of the Industrial Court, for the practice and procedure to be followed in the Supreme Court in relation to applications concerning contraventions of dispute orders and the recovery of civil penalties under the *Industrial Relations Act 1996*.

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1 Name of Rule

This Rule is the *Supreme Court (Amendment No 430) Rule 2016*.

2 Commencement

This Rule commences on 8 December 2016 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Supreme Court Rules 1970

Schedule J Procedure under various Acts

Insert after the matter relating to the *Family Provision Act 1982* in Part 1:

Industrial Relations Act 1996

1 Applications concerning contraventions of dispute orders

- (1) Proceedings in the Court on an application under section 139 of the Act must be commenced by summons (the *commencement summons*).
- (2) The commencement summons must state the following:
 - (a) the name and address of the person by whom the proceedings are brought (*the prosecutor*),
 - (b) the capacity in which the prosecutor is taking the proceedings,
 - (c) the name and address of the person against whom the proceedings are brought (*the defendant*),
 - (d) the details and nature of the contravention that is alleged to have occurred.
- (3) The commencement summons must be accompanied by a draft summons requiring the defendant to appear before the Court at the time specified to show cause why the Court should not take action for the alleged contravention (a *show cause summons*).
- (4) The details and nature of the alleged contravention must be verified by a supporting affidavit made by the prosecutor.
- (5) If a show cause summons is issued by the Court, the summons and supporting affidavit must be served on the defendant in accordance with the directions given by the Court as to service.
- (6) An affidavit of service of the show cause summons, or notice that service has not been effected, must be filed by the prosecutor before the return date specified in the summons.
- (7) If the show cause summons has not been served by the return date, the Registrar must, on an application made by the prosecutor in accordance with this rule, amend the summons to specify a new return date.

2 Proceedings to recover civil penalties

- (1) Proceedings in the Court to recover a civil penalty under section 357 of the Act must be commenced by a verified statement of claim.
- (2) The statement of claim must state the following:
 - (a) the name and address of the person by whom the proceedings are brought (*the plaintiff*),
 - (b) the capacity in which the plaintiff is taking the proceedings,
 - (c) the name and address of the person against whom the proceedings are brought (*the defendant*),
 - (d) the provision of the industrial instrument that the defendant is alleged to have contravened,
 - (e) the nature of the contravention that is alleged,

- (f) particulars of any payment that it is alleged the defendant has failed to make,
- (g) whether an application is to be made under section 358 of the Act, or under any other Act, for the recovery of any such payment.