

# Supreme Court Rules 1970

[1970-1]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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### Authorisation

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# Supreme Court Rules 1970



New South Wales

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# Supreme Court Rules 1970



New South Wales

## Part 1 Preliminary

### 1 Name of Rules

These rules may be cited as the *Supreme Court Rules 1970*.

### 2 Commencement

These rules shall commence on the commencement of the Act.

#### Editorial note—

Date of commencement: 1.7.1972. See Gazette No 59 of 2.6.1972, p 2018.

### 3-7 (Repealed)

### 8 Interpretation cf RSC (Rev) 1965, O 13, r 1 (2).

(1) In these rules, unless the context or subject matter otherwise indicates or requires:

**ASIC** means the entity known as the Australian Securities Commission prior to 1 July 1998, and subsequently known as the Australian Securities and Investments Commission.

**assess**, when used in relation to costs assessed otherwise than by the Court, means assess in accordance with Part 11 of the *Legal Profession Act 1987*.

**associate Judge** includes an acting associate Judge.

**barrister** has the same meaning as it has in the *Legal Profession Act 1987*.

**Companies Code** means the *Companies (New South Wales) Code*.

**convention** means a convention made between Her Majesty or any of her predecessors and the king or other head of state of a foreign country regarding legal proceedings in civil and commercial matters.

**convention country** means a foreign country to which a convention applies.

**corporation** includes any artificial person.

**costs determination** means a determination made under section 180 of the *Legal Profession Act 1987* as in force from time to time prior to 1 July 1994.

**cross-claim** means a claim for relief under section 78 of the Act.

**curator** means:

(a) in respect of a person:

- (i) the management of whose estate is, by the *Protected Estates Act 1983* or by any order of the Court or the Guardianship Tribunal under that Act or under the *Guardianship Act 1987*, committed to the Protective Commissioner,
- (ii) of whose estate the Protective Commissioner has, in accordance with section 63 of the *Protected Estates Act 1983*, undertaken the management, or
- (iii) in relation to whose property the Protective Commissioner is authorised as mentioned in section 66 (1) (a) of that Act,

the Protective Commissioner,

(b) in respect of a person of whose estate a manager has been appointed by order of the Court or the Guardianship Tribunal under section 22 of the *Protected Estates Act 1983* or section 25M of the *Guardianship Act 1987*—the manager appointed.

**disable person** means a minor or an incompetent person.

**document** means any record of information, and includes:

- (a) anything on which there is writing,
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them,
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else, or
- (d) a map, plan, drawing or photograph.

cf Act No 15 of 1987, s 21 (1).

**expert** means a person who has specialised knowledge based on the person's training, study or experience.

**fax** means send a copy by facsimile transmission.

**folio** means 100 words, five figures being counted as one word.

cf Cost Rules, r 2. Rules of the Supreme Court (Revised) 1965 (Eng), O 1, r 4 (1).

**Foreign Evidence Act** means the *Foreign Evidence Act 1994* of the Commonwealth.

**funds** includes money, debentures, stock, shares and other securities and investments.

**incompetent person** means:

- (a) a person who is not a minor and who is:
  - (i) incapable of managing his or her affairs, or
  - (ii) incommunicate, or
- (b) a minor who has a curator.

**Law Courts Building** means the building in which the Sydney registry of the Court is located.

**Mutual Recognition Act** means the *Mutual Recognition Act 1992* of the Commonwealth.

**notice** means notice in writing.

cf RSC (Rev) 1965, O 66, r 2 (5).

**officer**, in relation to a corporation, includes a director and any person having (whether alone or with others) powers of management, direction or control of the corporation.

**officer of the Court** does not include a solicitor, barrister or liquidator.

**originating process** means a statement of claim, a summons or, where a cross-claim is made against a person not previously a party to the proceedings in which the cross-claim is made, the cross-claim.

**pay**, in relation to funds, includes transfer, deposit and deliver.

**person bound**, in relation to a judgment or order, means a person required by the judgment or order:

- (a) to pay money,
- (b) to give possession of land,
- (c) to deliver goods (with or without the alternative of paying the assessed value of the goods),
- (d) to do any other act, or
- (e) to abstain from doing any act.

**personal injuries** includes any disease and any impairment of a person's physical or mental condition.

cf RSC (Rev) 1965, O 5, r 2.

**registry** means a registry at Lismore, Newcastle, Orange, Sydney, Wagga Wagga or Wollongong.

**Riverina** means the district of the State comprising Albury, Cootamundra, Deniliquin, Griffith, Gundagai, Leeton, Narrandera, Temora, Tumut and Wagga Wagga.

**solicitor** has the same meaning as it has in the [Legal Profession Act 1987](#).

**the Act** means the [Supreme Court Act 1970](#).

**the Evidence Act** means the [Evidence Act 1995](#).

**the Service and Execution of Process Act** means the [Service and Execution of Process Act 1992](#) of the Commonwealth.

**Trans-Tasman Mutual Recognition Act** means the [Trans-Tasman Mutual Recognition Act 1997](#) of the Commonwealth.

**tutor** means a next friend or guardian ad litem of a disable person.

(2) Where:

- (a) reference is made in the rules to the holder of an office in the Public Service or in the Australian Public Service, and
- (b) the name of the office is changed or the relevant function is assumed by the holder of another office,

the reference shall continue to apply to the holder of that office.

(3), (4) (Repealed)

## 9 Seals

- (1) There shall be the seals mentioned in the first column in the table below, which shall be impressed seals and respectively shall have the wording mentioned in the second column of the table and shall be in the custody of the officer mentioned in the third column of the table.

Seal	Wording	Custody
General seal of the Court.	Supreme Court of New South Wales.	Prothonotary.

Seal of the Court of Appeal.	Supreme Court of New South Wales: Court of Appeal.	Registrar of the Court of Appeal.
Seal of each Division.	Supreme Court of New South Wales: (name of the Division).	Registrar of the Division.

cf *Protective Jurisdiction Rules 1968*, r 11 (1).

- (2) Each of the seals mentioned in subrule (1) shall have effect as the seal of the Court.
- (3) Except where the rules otherwise provide, but subject to subrule (4), the seal of the Court of Appeal or the general seal of the Court shall be used for the purpose of proceedings in the Court of Appeal and the seal of each Division or the general seal of the Court shall be used for the purpose of proceedings in that Division.
- (4) A rubber stamp facsimile of any seal may be used instead of the seal for any purpose.

cf PJR r 11 (3).

- (5) (Repealed)

#### **9A, 9B (Repealed)**

#### **9C Filing prescribed bail forms by fax**

A document, which concerns an application relating to bail and the form of which is prescribed by the rules, shall be sufficiently filed if a copy of the document, produced in the Sydney registry by a facsimile transmission machine, is filed.

#### **10, 10A (Repealed)**

#### **11 Forms** cf Act No 15 of 1987, s 80.

- (1) Forms are prescribed in Schedule F.
- (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.

#### **11A, 12 (Repealed)**

#### **13 Procedure wanting or in doubt**

- (1) Where a person desires to commence proceedings or take any step in any proceedings, and the manner or form of procedure is not prescribed by the Act or the

rules or by or under any other Act or that person is in doubt as to the manner or form of procedure, the Court may, on application by that person, give directions.

cf *High Court Rules*, O 72, r 1 (1).

(2) Proceedings commenced in accordance with the directions of the Court shall be well commenced.

cf HCR, O 72, r 1 (2).

(3) A step taken in accordance with the directions of the Court shall be regular and sufficient.

cf HCR, O 72, r 1 (2).

(4) In respect of proceedings to be commenced for directions under subrule (1), application may be made by summons in any Division.

#### **14 (Repealed)**

### **Part 1A Sittings and vacations**

#### **1 Sittings**

(1) Sittings shall be held in each year at such times and places as are appointed for that year or from time to time by the Chief Justice.

cf HCR O 59, rr 1 and 2.

(2) Particulars of times and places appointed shall be published in the Gazette.

(3) The Court may sit at any time and place notwithstanding that the time and place of the sitting has not been appointed or has not been published as provided in this rule.

#### **2 Vacations**

(1) There shall be a fixed vacation and a variable vacation in each year.

(2) The fixed vacation shall be a period of six weeks from the beginning of the Monday before the 24th of December.

(3) The variable vacation shall be a period not exceeding four weeks regulated by the Chief Justice.

(4) A hearing or trial shall not be held in the fixed vacation, unless the Court otherwise orders.

#### **3 (Repealed)**

### **Parts 1B-11**

#### **(Repealed)**



## Part 12 Distribution of business

### 1 (Repealed)

#### 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.

### 2-7 (Repealed)

## Parts 13-51A

(Repealed)

## Part 51B Appeals to the Court under Part 5 of the [Crimes \(Appeal and Review\) Act 2001](#)

### 1 Application

This Part applies to an appeal to the Court under Part 5 of the [Crimes \(Appeal and Review\) Act 2001](#).

### 2 Assignment of business

Proceedings to which this Division applies shall be commenced in the Common Law Division.

### 3 Definitions

In this Part, unless the context or subject matter otherwise indicates or requires:

**decision** includes a conviction, order or sentence, judgment, opinion, direction or determination.

**informant** includes a complainant, the Director of Public Prosecutions and any other person responsible for the conduct of a prosecution.

**material date** in relation to an appeal means:

- (a) where the appeal is from the decision of a court, the date on which the decision is pronounced or given, and
- (b) where the appeal is from any other person, the date on which notice of the decision was given to the person who wishes to appeal by or on behalf of the person who made the decision.

**tribunal below** means, in relation to an appeal to the Court, the court or the person whose decision is under appeal.

#### **4 (Repealed)**

#### **5 Leave to appeal or cross-appeal**

- (1) An application for leave to appeal and, subject to subrule (2), to cross-appeal must be made by summons under Part 5 rule 3.
- (2) A party served with a summons for leave to appeal who wishes to apply for leave to cross-appeal may do so by motion on the hearing of the summons, supported by an affidavit stating the matters set out in subrule (7), without filing or serving a summons or notice of the motion.
- (3) Subject to subrules (3A), (5) and (5A), the summons for leave to appeal shall be filed within 28 days after the material date.
- (3A) If an application is made to a Local Court under Part 2 of the subject Act, the time for filing a summons for leave to appeal does not start to run until the application under Part 2 is finally disposed of.
- (4) A summons for leave to cross-appeal shall be filed within 28 days after service of the summons instituting the appeal, or the summons for leave to appeal, or within such further time as the Court may fix.
- (5) The Court may, at any time, extend the time fixed by subrule (3) or (4).
- (5A) Where the decision appealed from is that of a magistrate, the tribunal below may, within the time fixed by subrule (3) for filing a summons for leave to appeal (as extended by subrule (3A)) or on application filed within that time, extend the time fixed by subrule (3).
- (6) The summons for leave to appeal or to cross-appeal shall include a claim for the decision which the party instituting the appeal seeks in place of the decision of the tribunal below.
- (7) The applicant shall file and serve with or subscribe to the summons a brief but specific statement of:
  - (a) the grounds relied upon in support of the appeal and, in particular, the grounds upon which it is contended that there is any error of law,
  - (b) as to whether the appeal is from the whole or part only and what part of the decision in the tribunal below,
  - (c) the nature of the case,
  - (d) the questions involved, and
  - (e) the reasons why leave should be given.

- (8) The applicant for leave to appeal shall, unless the Court otherwise directs, not later than 3 days before the date fixed for the hearing of the application for leave to appeal, file an affidavit exhibiting:
  - (a) a copy of the transcript of the proceedings in the tribunal below, unless a transcript cannot be obtained in respect of proceedings of that type, and
  - (b) a copy of the reasons for decision in the tribunal below, unless the tribunal below has not given, and does not intend to give, written reasons.
- (9) Where an application for leave to appeal or to cross-appeal has been granted:
  - (a) the summons for leave to appeal shall be deemed a summons instituting an appeal in respect of the grounds upon which the Court has granted such leave, and
  - (b) the summons, or the affidavit under subrule (2), for leave shall be deemed a notice of cross-appeal instituting a cross-appeal in respect of the grounds upon which the Court has granted such leave.
- (10) A party applying to the Court for an extension of time under subrule (3) or (4) shall:
  - (a) include that application in the summons for leave to appeal or cross-appeal, or
  - (b) lodge with his or her notice of motion or summons a draft, completed as far as possible, of the summons under subrule (1) and the statement under subrule (7), to be filed if an extended time is fixed.

## **6 Time for appeal**

- (1) Subject to subrules (1A) and (2) and any provisions made by or under any Act, an appeal must be instituted within 28 days after the material date.
- (1A) If an application is made to a Local Court under Part 2 of the subject Act, the time for instituting an appeal does not start to run until the application under Part 2 is finally disposed of.
- (2) Time fixed by subrule (1) may be extended:
  - (a) by the Court at any time, or
  - (b) where the decision appealed from is that of a magistrate—by the tribunal below, but only within the time fixed by subrule (1) for instituting an appeal (as extended by subrule (1A)) or on application filed within that time.
- (3) A party applying to the Court for an extension of time under subrule (2) (a) shall:
  - (a) include that application in the summons instituting the appeal, or
  - (b) lodge with his or her notice of motion or summons a draft, completed as far as

possible, of the summons under rule 7 and the statement under rule 8, to be filed if an extended time is fixed.

## **7 Institution of appeal**

Subject to rule 5, an appeal to the Court is to be instituted by filing a summons under Part 5 rule 3 that claims the decision that the party instituting the appeal seeks in place of the decision of the tribunal below.

## **8 Statement of ground**

The plaintiff shall file and serve with or subscribe to the summons instituting the appeal a brief but specific statement:

- (a) of the grounds relied upon in support of the appeal and, in particular, the grounds upon which it is contended that there is any error of law, and
- (b) as to whether the appeal is from the whole or part only and what part of the decision in the tribunal below.

## **9 Transcript and reasons for decision**

The plaintiff shall, unless the Court otherwise directs, not later than 3 days before the date fixed for the hearing of the summons, file an affidavit exhibiting:

- (a) a copy of the transcript of the proceedings in the tribunal below, unless a transcript cannot be obtained in respect of proceedings of that type, and
- (b) a copy of the reasons for decision in the tribunal below, unless the tribunal below has not given, and does not intend to give, written reasons.

## **10 Parties**

- (1) Any informant and each person who is directly affected by the relief sought in the appeal or is interested in maintaining the decision under appeal shall be joined as a defendant to the appeal.
- (2) Subject to subrule (3), the tribunal below shall be joined as a defendant.
- (3) Subrule (2) shall not apply where the tribunal below is a court.
- (4) The Court may order the addition or removal of any person as a party to an appeal.
- (5) A person shall not be made a plaintiff without his consent.

## **11 Service**

- (1) Subject to subrule (2), the plaintiff shall, on the day of filing a summons instituting an appeal or for leave to appeal, or as soon as practicable thereafter, subject to Part 9 rule 8, serve the summons on the defendant personally.

- (2) When the summons contains an application for extension of time, service shall be effected on the day when the application is granted, or as soon as practicable thereafter.

## **12 Directions for service**

Where the Court makes an order granting:

- (a) leave to appeal or to cross-appeal, or
- (b) an extension of time for:
  - (i) appealing or cross-appealing, or
  - (ii) applying for leave to appeal or to cross-appeal,

the Court may, at the same time or afterwards, give directions for service other than personal service of any summons or notice of cross-appeal by which, pursuant to the order, proceedings are commenced for an appeal or for leave to appeal or to cross-appeal, and of any other document in the proceedings so commenced.

## **13 Filing with tribunal below**

- (1) Where the tribunal below is a court, the plaintiff shall, on the date of instituting the appeal, file a copy of the summons instituting the appeal in the registry or office of that court.
- (2) For the purposes of subrule (1), the date of instituting the appeal shall:
  - (a) if the summons instituting the appeal contains an application for extension of time—the day the application is granted, or
  - (b) if a summons for leave is deemed by rule 5 (9) to be the summons instituting the appeal—the day when the summons is so deemed.
- (3) If compliance with subrule (1) is not in accordance with the practice or organisation of that court, the plaintiff shall lodge a copy of the summons with an officer of that court concerned with its records or process.

## **14 Security for costs**

- (1) The Court may, in special circumstances, order that such security as the Court thinks fit be given of the costs of an appeal to the Court.
- (2) Subject to subrule (1), no security for the costs of an appeal to the Court shall be required.
- (3) Subrules (1) and (2) do not affect the powers of the Court under Part 53, Division 1 (which relates to security for costs).

### **15 Date of hearing of appeal**

Unless the Court otherwise orders, the appeal shall not be heard before 21 days after service of the summons by which the appeal is instituted.

### **16 Amendment**

- (1) The summons by which the appeal is instituted and any statement under rule 8 may be amended by the plaintiff without leave by filing a supplementary notice not less than 7 days before the day appointed for hearing.
- (2) The plaintiff must, on the day of filing the supplementary notice, serve it on the other parties and must file or lodge a copy of it in accordance with rule 13 as if it were a summons.
- (3) Subrule (1) does not affect the powers of the Court under Part 20 (which relates to amendment).

### **17 Cross-appeal**

- (1) Where a defendant wishes to appeal from the whole or part of a decision, the defendant shall file a notice of cross-appeal.
- (2) The defendant must file the notice of cross-appeal within the later of:
  - (a) 28 days after service of the summons instituting the appeal on the defendant, and
  - (b) 14 days after leave to appeal or to cross-appeal is given.
- (3) Subject to subrules (1), (2) and (4), the provisions of this Part relating to an appeal and a summons apply to the cross-appeal and a notice of cross-appeal.
- (4) Part 6 and rule 6 (which relates to time for appeal) do not apply to a cross-appeal or notice of cross-appeal.

### **18 Notice of contention**

Where a defendant wishes to contend that the decision of the tribunal below should be affirmed on grounds other than those relied upon by the tribunal below but does not seek a discharge or variation of any part of the decision of the tribunal below, the defendant need not file a notice of cross-appeal but, within the time limited by rule 17 (2), the defendant must:

- (a) file notice of that contention stating, briefly but specifically, the grounds relied upon in support of the contention, and
- (b) serve the notice of contention on each other party to the appeal.

## **Parts 52-54**

**(Repealed)**

## **Part 55 Contempt**

### **Division 1 Preliminary**

#### **1 Interpretation**

In this Part **contemnor** means a person guilty or alleged to be guilty of contempt of the Court or of any other court.

### **Division 2 Contempt in the face or hearing of the Court**

#### **2 Arrest** *cf High Court Rules, O 56, r 1 (1).*

Where it is alleged, or appears to the Court on its own view, that a person is guilty of contempt of court, committed in the face of the Court or in the hearing of the Court, the Court may:

- (a) by oral order direct that the contemnor be brought before the Court, or
- (b) issue a warrant for the arrest of the contemnor.

#### **3 Charge, defence and determination** *cf HCR, O 56, r 1 (2).*

Where the contemnor is brought before the Court, the Court shall:

- (a) cause him to be informed orally of the contempt with which he is charged,
- (b) require him to make his defence to the charge,
- (c) after hearing him, determine the matter of the charge, and
- (d) make an order for the punishment or discharge of the contemnor.

#### **4 Interim custody**

(1) The Court may, pending disposal of the charge:

- (a) direct that the contemnor be kept in such custody as the Court may determine, or
- (b) direct that the contemnor be released.

*cf HCR, O 56, r 1 (3).*

(2) The Court may make a direction under subrule 1 (b) on terms, which may include a requirement that the contemnor give security, in such sum as the Court directs, for his appearance in person to answer the charge.

cf HCR, O 56, r 1 (3).

### **Division 3 Motion or proceedings for punishment**

#### **5 Application** cf HCR, O 56, r 2.

This Division does not apply to a case in which the Court proceeds under Division 2.

#### **6 Procedure generally**

- (1) Where contempt is committed in connection with proceedings in the Court, an application for punishment for the contempt must be made by motion on notice in the proceedings, but, if separate proceedings for punishment of the contempt are commenced, the proceedings so commenced may be continued unless the Court otherwise orders.
- (2) Where contempt is committed, but not in connection with proceedings in the Court, proceedings for punishment of the contempt must be commenced by summons, but, if an application for punishment of the contempt is made by motion on notice in any proceedings, the application may be heard and disposed of in the latter proceedings, unless the Court otherwise orders.

#### **7 Statement of charge** cf HCR, O 56, r 3 (a).

A statement of charge, that is, a statement specifying the contempt of which the contemnor is alleged to be guilty, shall be subscribed to, or filed with, the notice of motion or summons.

#### **8 Evidence**

- (1) Subject to subrule (2), the evidence in support of the charge shall be by affidavit.
- (2) The Court may, on terms, permit evidence in support of the charge to be given otherwise than by affidavit.

#### **9 Service** cf HCR, O 56, rr 4, 5.

The notice of motion or summons, the statement of charge, and the affidavits shall be served personally on the contemnor.

#### **10 Arrest** cf HCR, O 56, r 6.

Where:

- (a) notice of a motion for punishment of a contempt has been filed or proceedings have been commenced for punishment of a contempt, and
- (b) it appears to the Court that the contemnor is likely to abscond or otherwise withdraw himself from the jurisdiction of the Court,



the Court may issue a warrant for the arrest of the contemnor and his detention in custody until he is brought before the Court to answer the charge, unless he, in the meantime, gives security in such manner and in such sum as the Court directs, for his appearance in person to answer the charge and to submit to the judgment or order of the Court.

#### **11 Motion or proceedings by the registrar**

- (1) Where it is alleged, or appears to the Court on its own view, that a person is guilty of contempt of the Court or of any other court, the Court may, by order, direct the registrar to apply by motion for, or to commence proceedings for, punishment of the contempt.
- (2) Subrule (1) does not affect such right as any person other than the registrar may have to apply by motion for, or to commence proceedings for, punishment of contempt.
- (3) Where:
  - (a) it appears to the District Court on its own view that a person is guilty of contempt of court, whether committed in the face or hearing of the District Court or not, and the District Court refers the matter to the Court for determination under section 203 (1) of the *District Court Act 1973*,
  - (b) (Repealed)
  - (c) it appears to a Local Court on its own view that a person is guilty of contempt of the Local Court, whether during a proceeding before the Local Court or otherwise, and the court refers the matter to the Court for determination under section 27B of the *Local Courts Act 1982*,

the registrar must commence proceedings for punishment of the contempt, and no direction from the Court shall be necessary to enable the registrar to do so.

- (4) Subrule (3) does not affect such right as any person other than the registrar may have to commence proceedings for punishment of the contempt prior to the commencement of proceedings by the registrar.
- (5) Subrule (3) does not apply in the event that a person other than the registrar commences proceedings for punishment of the contempt prior to the commencement of proceedings by the registrar.
- (6) Subject to the rules and to any Act, where, pursuant to a power conferred by or under an Act, a court or other body or person refers or reports a matter to the Court with a view to the Court dealing with a possible contempt of the court, body or person, the registrar shall:
  - (a) take advice from the Crown Solicitor as to whether the registrar should take proceedings for contempt in respect of the matter,

- (b) unless the Court otherwise orders, act in accordance with the advice, and
- (c) inform the Attorney-General of the matter.

## **Division 4 General**

### **12 Warrant** cf HCR, O 56, r 7.

A warrant for the arrest or detention under this Part of a contemnor shall be addressed to the Sheriff and may be issued under the hand of the Judge or officer presiding in the Court directing the arrest or detention.

### **13 Punishment**

- (1) Where the contemnor is not a corporation, the Court may punish contempt by committal to a correctional centre or fine or both.

cf HCR, O 56, r 9.

- (2) Where the contemnor is a corporation, the Court may punish contempt by sequestration or fine or both.
- (3) The Court may make an order for punishment on terms, including a suspension of punishment or a suspension of punishment in case the contemnor gives security in such manner and in such sum as the Court may approve for good behaviour and performs the terms of the security.

### **14 Discharge** cf HCR, O 56, r 11.

Where a contemnor is committed to a correctional centre for a term, the Court may order his discharge before the expiry of the term.

### **15 (Repealed)**

## **Parts 56-59A**

**(Repealed)**

## **Part 60 Associate Judges**

### **Division 1 General**

#### **1 Interpretation**

In this Part **decision** includes a judgment, order, opinion, direction, determination or certificate.

#### **1A Powers**

- (1) An associate Judge may exercise the powers of the Court:

- (a) under the provisions of the Acts and regulations and Acts and regulations of the Commonwealth mentioned in column 1 of Part 1 of Schedule D,
  - (b) subject to subrule (4), under provisions of any of the following rules of court (the **relevant rules**):
    - (i) these rules,
    - (ii) the *Supreme Court (Corporations) Rules 1999*,
    - (iii) the *Uniform Civil Procedure Rules 2005*,
  - (c) in respect of the matters mentioned in Part 3 of Schedule D and in Part 2 of Schedule E.
- (2) The matter in column 2 of Parts 1 and 2 of Schedule D is inserted for convenience of reference only and does not affect the operation of the relevant rules.
- (3) In relation to any provision mentioned in column 1 of Part 1 of Schedule D, subrule (1) (a) has effect subject to the restriction (if any) appearing beside that provision in column 3.
- (4) An associate Judge may not exercise the powers of the Court under any of the provisions of the relevant rules mentioned in column 1 of Part 2 of Schedule D except to the extent (if any) specified opposite that provision in column 3.
- (4A) (Repealed)
- (5) In proceedings commenced before 1 July 1972, an associate Judge may exercise any power formerly exercisable by the Prothonotary.
- (6) An associate Judge may exercise the powers of the Court for the purposes of, and in respect of all matters incidental to, the exercise of his powers under subrule (1) or under any Act or regulation or under any other provision of the relevant rules.
- (7) The generality of the powers granted by subrule (6) shall not be restricted by reason of the grant under subrule (1) of specific powers.

## **2 Distribution of business**

Where there are two or more associate Judges in a Division, the distribution of business amongst the associate Judges shall, subject to any direction of the Court, be by direction of the senior associate Judge present.

## **3 Judgment or order**

An associate Judge shall, on the disposal of any matter before him, give such judgment or make such order as the nature of the case requires, except where, by the rules or by any judgment or order, he is required to state his determination in a certificate or in some

other manner.

#### **4 Certificate**

- (1) An associate Judge may give a certificate as to any matter arising or decision made in the course of proceedings before him.
- (2) Where proceedings are before an associate Judge pursuant to a judgment or order, the certificate of the associate Judge shall refer to so much only of the judgment or order as is necessary to show upon what the determination of the associate Judge is founded.

cf RSC (Rev) 1965, O 44, r 21 (2).

- (3) The certificate of an associate Judge shall not refer to documents or evidence except so far as is necessary to show upon what the determination of the associate Judge is founded.

cf RSC (Rev) 1965, O 44, r 21 (2).

- (4) The certificate of an associate Judge shall not, except where necessary, set out the reasons for the determination of the associate Judge.

cf RSC (Rev) 1965, O 44, r 21 (2).

- (5) The certificate of an associate Judge as to an account taken under a judgment or order shall:
  - (a) specify, by reference to the numbers of the items in the account, the items (if any) disallowed or varied, and
  - (b) specify the additions (if any) by way of surcharge or otherwise.

cf RSC (Rev) 1965, O 44, r 21 (3).

- (6) This rule does not apply where any proceedings, question or issue are or is referred to an associate Judge under Part 72 rule 2 (which relates to reference to an arbitrator etc).

## **Divisions 2, 3**

### **5-16 (Repealed)**

## **Division 4 Appeal to the Court of Appeal**

### **17 Cases for appeal**

An appeal shall lie to the Court of Appeal in accordance with section 101 and 103 of the Act, subject however to the leave of the Court of Appeal in any case to which subsections (2) and (4) of section 101 apply, from any decision of the Court in a Division constituted

by an associate Judge:

- (a) upon a trial pursuant to Schedule D Part 3 paragraphs 1, 2, 3, 3A, 4 (a), 8, 9, 17, 17A, 24, 25, 26, 27 and 28,
  - (a1) in proceedings referred pursuant to Schedule D Part 3 paragraphs 5, 5A and 5B,
  - (b) in proceedings under the provisions (except sections 13 to 21 inclusive, which relate to guardianship) of the *Testator's Family Maintenance and Guardianship of Infants Act 1916*,
  - (c) in proceedings under section 14 or section 22 of the *Married Persons (Property and Torts) Act 1901*,
  - (d) in proceedings under the *Family Provision Act 1982*,
  - (e) in proceedings under the *Property (Relationships) Act 1984*,
  - (f) in proceedings on an application for review of taxation of costs,
  - (g) in proceedings under section 208L or section 208M or section 208N of the *Legal Profession Act 1987*,
  - (h) in proceedings under section 13 of the *Married Persons (Equality of Status) Act 1996*,
  - (i) in proceedings determining a question of costs with respect to a matter that has been otherwise finalised,
  - (j) on an application to extend a period of limitation, fixed by or under an enactment, within which original proceedings must be brought, or
  - (k) where the decision of the associate Judge 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.

## **Part 61 Registrars and chief clerk**

### **Division 1 Registrars**

#### **1-4 (Repealed)**

#### **4A Practice in registries outside Sydney**

The practice of the Sydney registry shall, so far as practicable, be followed in any other registry.

### **Division 2**

#### **5 (Repealed)**

## **Parts 62-65**

**(Repealed)**

### **Part 65A Legal profession**

**1 (Repealed)**

#### **2 Assignment of business**

- (1) There are assigned to the Court of Appeal proceedings in the Court in the exercise of the disciplinary powers of the Court with respect to legal practitioners and interstate legal practitioners.
- (2) Proceedings in the Court under the *Legal Profession Act 1987* (other than proceedings assigned to the Court of Appeal) are assigned to the Common Law Division.

#### **3 Removal or suspension elsewhere**

- (1) Any legal practitioner:
  - (a) whose name is removed from a roll kept outside the State that corresponds to the Roll of Legal Practitioners in the Court,
  - (b) who is prohibited (whether conditionally or unconditionally) from reinstatement to such a roll, or
  - (c) who is:
    - (i) suspended from practising, or
    - (ii) prohibited (whether conditionally or unconditionally) from resuming practice, as a lawyer (whether known as a barrister, a solicitor, a barrister and solicitor, an attorney, a legal practitioner or otherwise) outside the State,by reason of misconduct, is suspended from practice:
  - (d) in the case of removal—unless the Court otherwise orders,
  - (e) in the case of suspension or prohibition—during the period of suspension or prohibition, unless the Court otherwise orders.
- (2) This rule does not apply to a cancellation or suspension:
  - (a) in Australia under the Mutual Recognition Act, or
  - (b) in New Zealand under the Trans-Tasman Mutual Recognition Act.

**4 (Repealed)**

## **5 Appeal: practising certificate**

- (1) The Court may, on the application of a person who intends to appeal to the Court under section 38B of the *Legal Profession Act 1987*, make such orders as the nature of the case requires as if the person had instituted the appeal and the application were made in the proceedings on the appeal.
- (2) In the title of a document in proceedings on the application or the appeal, the plaintiff may, subject to any order of the Court, be shown as “A solicitor”, without the plaintiff’s name.

## **6 Furnishing information**

The registrar shall furnish information that is required by section 48Y of the *Legal Profession Act 1987* to be furnished by the Court.

## **7 Removal from Roll pursuant to s 48Z (5) of the *Legal Profession Act 1987***

Unless the Court otherwise orders, the Prothonotary shall, pursuant to an order under section 48Z (5) of the *Legal Profession Act 1987*, remove from the Roll of Legal Practitioners in the Court the name of a legal practitioner upon the expiration of 10 days after a copy of the order is filed, being a copy that:

- (a) if the regulatory authority making the order is a tribunal—is signed by a member of the tribunal,
- (b) if the regulatory authority is a court—is signed by a Judge or Registrar of the Court, or
- (c) in any case—is sealed with the seal of the regulatory authority.

## **Part 65B**

### **1 (Repealed)**

## **Part 65C Admission as legal practitioner**

### **Division 1 Application for admission**

#### **1 Application by person approved by a Board**

A person who has been approved by:

- (a) the former Barristers Admission Board or the former Solicitors Admission Board as a suitable candidate for admission as a barrister or as a solicitor, or
- (b) the Legal Practitioners Admission Board as a suitable candidate for admission as a legal practitioner,

may, unless the Court otherwise orders, apply for admission without having filed any originating process in the Court.

## **2 Admission, other than of interstate applicant**

- (1) This rule applies to an application for admission as a legal practitioner other than an application to which rule 3 or rule 4 applies.
- (2) Every person applying for admission as a legal practitioner shall personally attend in Court and shall on such admission:
  - (a) take the oath of office as a legal practitioner, and
  - (b) sign the Roll of Legal Practitioners in the Court,and shall be entitled to receive a certificate bearing the seal of the Court.

## **3 Interstate applicant, other than under the Mutual Recognition Act**

- (1) This rule applies to an application for admission as a legal practitioner by a person whose name is on the Roll of Barristers, the Roll of Solicitors, the Roll of Barristers and Solicitors or the Roll of Legal Practitioners of the Supreme Court of any other State or Territory of Australia.
- (2) An application to which this rule applies may, at the request of the applicant, 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) A request under subrule (2) may be included in the applicant's form of application for admission under the [Legal Practitioners Admission Rules 1994](#).
- (4) Where the applicant makes a request under subrule (2) and the applicant is admitted, he or she shall, at the request of this Court, attend at the office of the Supreme Court of his or her State or Territory and:
  - (a) take the oath of office as a Legal Practitioner in Form 70AA, and
  - (b) sign a Roll of Legal Practitioners (being a Roll kept in the office of that court for the purpose of this rule).
- (5) When this Court has received from the other court:
  - (a) the form of oath of office duly completed, and
  - (b) notification of the signing of a Roll under subrule (4) (b),then:
  - (c) the Prothonotary shall enter or cause to be entered the name of the person admitted in the Roll of Legal Practitioners in this State, and
  - (d) the person admitted shall be entitled to receive a certificate bearing the seal of this Court.



- (6) This rule does not apply to proceedings commenced by notice under Section 19 (1) of the Mutual Recognition Act.

**4 Application under the Mutual Recognition Act or the Trans-Tasman Mutual Recognition Act**

- (1) This rule applies to proceedings commenced by notice under section 19 (1) of the Mutual Recognition Act or under section 18 (1) of the Trans-Tasman Mutual Recognition Act.
- (2) The notice must, unless the Court otherwise orders:
- (a) be lodged by filing it in the registry at Sydney,
  - (b) show the name, residential address and business address of the applicant,
  - (c) where the applicant is represented by a solicitor show:
    - (i) the name, address and telephone number of the solicitor, and
    - (ii) if that solicitor has another solicitor as agent in the proceedings—the name, address and telephone number of the agent,
  - (d) show an address for service,
  - (e) be dated not more than 14 days before the date on which it is filed, and
  - (f) be accompanied by a certificate which:
    - (i) evidences the existing registration which gives rise to the entitlement of the applicant to entry in the Roll of Legal Practitioners,
    - (ii) is given by the proper officer:
      - (A) of the Supreme Court of the State or Territory where such registration occurred or, where applicable, of the High Court of New Zealand, or
      - (B) of a body, having functions similar to the Legal Practitioners Admission Board, of the State or Territory where such existing registration occurred or, where applicable, of New Zealand, and
    - (iii) is dated not more than 28 days before the date on which it is filed,unless the document mentioned in section 19 (3) of the Mutual Recognition Act or section 18 (3) of the Trans-Tasman Mutual Recognition Act, accompanying the notice, fulfils the requirements of this paragraph.
- (3) The applicant shall, on or before the day of filing, serve the notice and accompanying documents on the Legal Practitioners Admission Board, the New South Wales Bar Association, and the Law Society of New South Wales and shall file an affidavit of

service within 14 days of filing the notice.

(4) The applicant shall:

(a) prior to, or

(b) within 14 days after,

filing the notice attend:

(c) at a registry of the Court,

(d) at the office of the Supreme Court of his or her State or Territory, or

(e) where application is made under the Trans-Tasman Mutual Recognition Act—a person in New Zealand authorised under New Zealand law to take oaths,

and take the oath of office as a legal practitioner in Form 70AA, and cause the certificate included in that Form to be completed and shall:

(f) at the time of, or

(g) within 14 days after,

filing the notice, file the form of oath and the certificate.

(5) Despite rule 31.2 of the *Uniform Civil Procedure Rules 2005*:

(a) the statements and other information in the notice which are verified by statutory declaration,

(b) the document mentioned in:

(i) section 19 (3) of the Mutual Recognition Act, certified under section 19 (4) of that Act, or

(ii) section 18 (3) of the Trans-Tasman Mutual Recognition Act, certified under section 18 (4) of that Act,

accompanying the notice, and

(c) the certificate referred to in subrule (2) (f),

are admissible in evidence and, unless the Court otherwise orders, shall not be the subject of oral evidence by the applicant.

(6) (Repealed)

(7) The application for enrolment made by the notice 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.

- (8) If the Court is satisfied that the applicant is entitled to enrolment, it shall order that the applicant be admitted as a legal practitioner and:
- (a) the Prothonotary shall enter or cause to be entered the name of the person admitted in the Roll of Legal Practitioners, and
  - (b) the person admitted shall be entitled to receive a certificate bearing the seal of the Court.

#### **5 Administering oaths for other courts**

- (1) A registrar may administer the oath of office of a Supreme Court of another State or Territory of Australia to a New South Wales legal practitioner who is required to take the oath for the purpose of being admitted as a lawyer by that court.
- (2) In subrule (1) “oath of office” and “oath” include any affirmation or declaration that may be taken in lieu of the oath of office.

### **Division 2 Referral under s 13A of the [Legal Profession Act 1987](#)**

#### **6 Commencement of proceedings**

- (1) An application is referred to the Court under section 13A of the [Legal Profession Act 1987](#) by filing it.
- (2) Proceedings on a referral (***the proceedings***) shall be entitled “The Application of” followed by the full name of applicant.

#### **7 Application of rules**

These rules and the [Uniform Civil Procedure Rules 2005](#) shall apply to the proceedings as if the applicant were the plaintiff in the proceedings.

#### **8 Rights of professional bodies**

- (1) The Legal Practitioners Admission Board shall notify the applicant, the New South Wales Bar Association and the Law Society of New South Wales of a referral within 5 days of filing it.
- (2) The New South Wales Bar Association and the Law Society of New South Wales shall be entitled with the leave of the Court to be joined as a party in the proceedings.

#### **9 Directions**

- (1) Following commencement, the proceedings shall be listed before the Court for directions.
- (2) 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.

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

## **10 Evidence**

Rule 31.2 of the *Uniform Civil Procedure Rules 2005* shall apply to evidence in the proceedings, including evidence as to character.

## **Parts 66-68**

**(Repealed)**

## **Part 69 Infants' Custody and Settlements Act rules**

### **1 Custody etc** cf CER, r 319.

- (1) This rule applies to an application for an order under section 5 of the *Infants' Custody and Settlements Act of 1899* in respect of any minor.

cf *Consolidated Equity Rules of 1902*, r 319.

- (2) Where proceedings under that section in respect of the minor are pending in the Court:

- (a) the application shall be made by motion in the proceedings, and
- (b) notice of the motion shall, unless the Court otherwise orders, be served on his parents or on the guardian of his person.

- (3) Where no proceedings under that section in respect of the minor are pending in the Court:

- (a) proceedings for the order shall be commenced by summons, and
- (b) his parents or the guardian of his person shall, unless the Court otherwise orders, be made defendants.

### **2 Assignment of business**

Proceedings for orders under Part 1 of the *Infants' Custody and Settlements Act 1899* shall be commenced in the Equity Division.

## **Parts 70, 71**

**(Repealed)**

## **Part 71A Service and Execution of Process Act 1992 (Commonwealth)**

## 1 Interpretation

- (1) In this Part, unless the context or subject matter otherwise indicates or requires, each of the expressions:

***court of rendition,***

***enforcement,***

***judgment,*** and

***place of rendition,***

has the meaning which it has in the Service and Execution of Process Act.

- (2) For the purposes of the application of the rules, unless the context or subject matter otherwise indicates or requires, ***defendant*** includes the respondent under section 86 or section 90 of the Service and Execution of Process Act.

## 2 Commencement of proceedings

- (1) (Repealed)
- (2) Proceedings in the Court under section 105 (4) of the Service and Execution of Process Act shall be commenced by summons.
- (3) Proceedings in the Court on an application under section 57 (1), section 67 (1), section 76 (1), section 79 (1) or section 93 (1) of the Service and Execution of Process Act shall be commenced by summons.
- (4) Proceedings in the Court on an application under section 72 (1) or section 86 of the Service and Execution of Process Act shall be commenced:
- (a) where the application is in or for the purposes of or in relation to proceedings in the Court—by motion on notice in those proceedings, or
- (b) otherwise—by summons.

## 3 Title and parties

- (1) A document in any proceedings in the Court under Part 6 of the Service and Execution of Process Act shall be entitled between:
- (a) as plaintiff, the person in whose favour judgment was given or order made, and
- (b) as defendant:
- (i) the person against whom execution is issued or other proceedings taken upon the judgment registered under that Act, or
- (ii) the applicant for a stay under section 106 of that Act.

- (2) In proceedings under section 57 (1), section 67 (1), section 76 (1), section 79 (1) or section 93 (1) of the Service and Execution of Process Act, no person shall be joined as a defendant.

#### **4 Where service not required**

Process by which application is made under section 57 (1), section 67 (1), section 76 (1), section 79 (1), section 93 (1) or section 105 (4) of the Service and Execution of Process Act need not, unless the Court otherwise orders, be served on any person.

#### **5 Where attendance not required**

Where, in proceedings for an order under section 57 (1), section 76 (1) or section 79 (1) of the Service and Execution of Process Act, the plaintiff adds to the summons a request that the application be granted under this rule, the Court may hear the proceedings in the absence of the public and without any attendance by or on behalf of the plaintiff.

#### **6 Enforcement proceedings**

- (1) A person proceeding for enforcement of a judgment registered under the Service and Execution of Process Act shall file an affidavit, sworn not more than 14 days before proceedings are taken, stating:
- (a) that the judgment is capable of being enforced, and
  - (b) the extent to which the judgment is capable of being enforced,
- in or by:
- (c) the court of rendition, or
  - (d) a court in the place of rendition.
- (2) The Court may notify the Sheriff of any change in the rate of interest payable on the judgment in the court of rendition.

#### **7 Costs and expenses of registration etc**

- (1) The costs and expenses referred to in section 107 (1) of the Service and Execution of Process Act shall be assessed by the Court.
- (2) An application for assessment of costs and expenses under subrule (1) shall be made by filing an affidavit:
- (a) which contains particulars of the costs and expenses claimed, and
  - (b) states the basis upon which the costs and expenses are claimed.
- (3) The plaintiff may proceed without service of the affidavit on any party.

- (4) The Court may make an assessment in the absence of the public and without any attendance by or on behalf of the plaintiff.

#### **8 Facsimile number and e-mail address**

An application made to the Court under a provision of the Service and Execution of Process Act:

- (a) if made by facsimile transmission—must be transmitted to transmission number (02) 9230 8628, or
- (b) if made by electronic mail—must be transmitted to the following address:

supremecourt@agd.nsw.gov.au

### **Parts 72-73**

**(Repealed)**

### **Part 74 Transfers of proceedings; cross-vesting laws**

#### **Divisions 1, 2**

**1-3 (Repealed)**

#### **Division 3 Cross-vesting laws**

##### **4 Definitions**

- (1) In this Division, unless the context or subject matter otherwise indicates or requires, **subject Act** means the *Jurisdiction of Courts (Cross-vesting) Act 1987* or the *Jurisdiction of Courts (Cross-vesting) Act 1987* of the Commonwealth.
- (2) Expressions used in this Division shall have, unless the contrary intention appears, in relation to proceedings under a subject Act, the same meaning as in that subject Act.
- (3) In this Division a reference to an application to the Court under a subject Act includes a reference to a request under section 6 (6) of that subject Act.

##### **5 Mode of application**

Any application for an order under any provision (except section 8) of a subject Act shall be made by motion in the proceedings pending in the Court.

##### **6 Addition above title**

Where a party to any proceeding in the Court intends to contend that:

- (a) the Court should exercise jurisdiction pursuant to any provision of a subject Act or any law of the Commonwealth or a State relating to cross-vesting of jurisdiction, or

- (b) that the Court should transfer the proceeding to another Court pursuant to any such provision or law,

the party shall add "*Jurisdiction of Courts (Cross-vesting) Acts 1987*" to the first document filed by that party.

## **7 Attorney-General**

If an application for the transfer of proceedings pending in the Court is made by the Attorney-General of the Commonwealth or a State or Territory under a subject Act, the Attorney-General shall not, by reason of the application, become a party to those proceedings.

## **8 Application relating to transfer**

Where a party to any proceeding in the Court intends to contend that:

- (a) the Court should exercise jurisdiction pursuant to any provision of a subject Act or any law of the Commonwealth or a State relating to cross-vesting of jurisdiction, or
- (b) that the Court should transfer the proceeding to another Court pursuant to any such provision or law,

the party shall, on or as soon as practicable after commencement of the proceedings, apply to the Court for a determination of the question whether or not the proceeding should be transferred to another Court.

## **9 Application of other laws or rules**

- (1) Where a party wishes to contend that the Court should, under section 11 (1) (b) or (c) of a subject Act, apply the written law of another State or Territory or the rules of evidence or procedure other than those applied in the State, the party shall, as soon as practicable:
  - (a) file notice of the contention, specifying the law or rules and stating the grounds relied upon in support of the contention,
  - (b) forthwith after filing the notice, serve it on each other party.
- (2) The Court may, on the application of a party to a proceeding or of its own motion, give directions in relation to the application of a law or rule under section 11 (1) (b) or (c) of a subject Act.

## **Part 75 Criminal proceedings**



## **Division 1 General**

### **1 Application**

Subject to section 17 of the Act and except as provided in this Part, the rules do not apply to any of the proceedings in the Court which are specified in the Third Schedule to the Act.

### **1A Criminal Appeal Rules**

The Criminal Appeal Rules remain in force.

### **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), other than Part 1 rule 11 (3),
- (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,
  - (f1) Division 3 of Part 32 and rule 32.13,

- (g) Part 33 (subpoenas), other than:
  - (i) rules 33.3 (1), 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.

### **3AA Forms approved by Uniform Rules Committee not to be used**

Despite anything to the contrary in this Part, a form approved under section 17 of the *Civil Procedure Act 2005* is not to be used for the purposes of proceedings in the Court that are specified in the Third Schedule to the Act or in proceedings to which Division 2 applies.

### **3A Children (Criminal Proceedings) Act 1987**

- (1), (2) (Repealed)
- (3) An application to the Court under section 45 (1) of the *Children (Criminal Proceedings) Act 1987* shall be made by motion in the proceedings in respect of the offence.

### **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
- (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*.

### **3C Evidence taken outside the State**

Rule 1 shall not apply to proceedings under:

- (a) Part 2 of the Foreign Evidence Act, or
- (b) the *Evidence on Commission Act 1995*,

(to which proceedings Part 24 of the *Uniform Civil Procedure Rules 2005* relates).

### **3D Form of indictment**

- (1) An indictment may be in Form 74AE.

cf Act No 40, 1900, s 567.

- (2) No indictment shall be held bad or insufficient for failure to comply with the form prescribed by subrule (1) or with subrule (2A).

cf Act No 40, 1900, s 360.

- (2A) An indictment must specify the Law Part Code (if any) for each offence alleged to have been committed in the indictment.

- (3) The rules, other than this rule and Form 74AE, shall not apply to an indictment in any other Court.

- (4) In this rule:

**Law Part Code** for an offence means the Law Part Code allocated to the offence in

the Lawcodes Database maintained by the Judicial Commission of New South Wales.

**3E-3G (Repealed)**

**3H Election under s132 of [Criminal Procedure Act 1986](#)**

- (1) An election under section 132 (1) or (5) of the [Criminal Procedure Act 1986](#) shall:
  - (a) be in the prescribed form,
  - (b) in the case of an election under section 16 (1)—be endorsed with the consent of the Director for Public Prosecutions given under section 16 (3), and
  - (c) be filed before the date fixed for the trial.
- (2) Consent of the Director of Public Prosecutions may be endorsed under subrule (1) (b) by that Director or an officer authorised in writing by that Director to give such consents.

**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.

**3I Return of exhibits**

Where proceedings specified in the Third Schedule to the Act or assigned by rule 3HA or by Part 75 have been concluded and:

- (a) 28 days have expired since the conclusion, and

- (b) there is no undisposed of appeal, or application for leave to appeal, in respect of the proceedings,

the registrar may, unless the Court otherwise orders, return any exhibits in the proceedings still in the custody of the registrar by forwarding them to the Director of Public Prosecutions.

### 3J Expert witnesses

- (1) This rule and rule 3K apply to all criminal proceedings in the Court (including those specified in the Third Schedule to the Act).

- (2) For the purposes of this rule and rule 3K:

**expert witness** means an expert engaged for the purpose of:

- (a) providing a report as to his or her opinion for use as evidence in proceedings or proposed proceedings, or
- (b) giving opinion evidence in proceedings or proposed proceedings.

**the code** means the expert witness code of conduct in Schedule 7 to the *Uniform Civil Procedure Rules 2005*.

- (3) Unless the Court otherwise orders:

- (a) at or as soon as practicable after the engagement of an expert as a witness, whether to give oral evidence or to provide a report for use as evidence, the person engaging the expert must provide the expert with a copy of the code, and
- (b) unless an expert witness's report contains an acknowledgment by the expert witness that he or she has read the code and agrees to be bound by it:
- (i) service of the report by the party who engaged the expert witness is not valid service for the purposes of the rules or of any order or practice note, and
- (ii) the report is not to be admitted into evidence, and

- (c) oral evidence is not to be received from an expert witness unless:

- (i) he or she has acknowledged in writing, whether in a report relating to the proposed evidence or otherwise in relation to the proceedings, that he or she has read the code and agrees to be bound by it, and
- (ii) a copy of the acknowledgment has been served on all parties affected by the evidence.

- (4) If an expert witness furnishes to the engaging party a supplementary report, including any report indicating that the expert witness has changed his or her opinion on a material matter expressed in an earlier report by the expert witness:

- (a) the engaging party must forthwith serve the supplementary report on all parties on whom the engaging party has served the earlier report, and
  - (b) the earlier report must not be used in the proceedings by the engaging party, or by any party in the same interest as the engaging party on the question to which the earlier report relates, unless paragraph (a) is complied with.
- (5) This rule does not apply to an expert engaged before this rule commences.

### **3K Conference between experts**

- (1) The Court may do any or all of the following, with the consent of the parties:
- (a) direct expert witnesses to confer (whether before or during a trial or other proceedings),
  - (b) specify the matters on which they are to confer,
  - (c) direct that they provide the Court with a joint report specifying matters agreed and matters not agreed and the reasons for any non agreement,
  - (d) direct that such conference be held with or without the attendance of the legal representatives of the parties affected, or with or without the attendance of legal representatives at the option of the parties respectively,
  - (e) give any additional directions as may be considered necessary.
- (2) An expert who is the subject of an order made under subrule (1) may apply to the Court for further directions.
- (3) The content of the conference between the expert witnesses is not to be referred to at the hearing or trial unless the parties affected agree.
- (4) The parties may agree, at any time, to be bound by agreement on any specified matter. In that event, the joint report may be tendered at the trial as evidence of the matter agreed. Otherwise, the joint report may be used or tendered at the trial only in accordance with the rules of evidence and the practices of the Court.
- (5) Where, pursuant to this rule, expert witnesses have conferred and have provided a joint report agreeing on any matter, a party affected may not, without leave of the Court, adduce expert evidence inconsistent with the matter agreed.

### **3L Recording of evidence**

- (1) This rule applies to all criminal proceedings in the Court (including those specified in the Third Schedule to the Act).
- (2) Evidence given by a witness may be recorded by video or by any other audio-visual method as directed by the Court.

## **Division 2 Summary jurisdiction**

### **4 Application**

This Division applies to proceedings in the Court under the Part 5 of Chapter 4 of the *Criminal Procedure Act 1986* (in this Division called the **subject Act**).

### **5 Interpretation**

For the purposes of applying rules other than this Part to proceedings to which this Division applies, unless the context or subject matter otherwise indicates or requires, **plaintiff** means “prosecutor”.

### **5A (Repealed)**

### **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.

### **7 Commencement of proceedings**

Proceedings for an offence under any Act which may be taken before the Court in its summary jurisdiction shall be commenced in the Court by summons claiming an order under section 246 of the subject Act in respect of the offence and claiming that the defendant be dealt with according to law for commission of the offence.

### **8 Copies of order**

When the prosecutor files the summons, he shall lodge with the registrar two or more copies of a minute of the order which he claims.

### **9 Service**

- (1) The summons and any affidavit in support of an application under section 246 of the subject Act shall not, unless the Court so directs, be served before the making of the order but shall be served on the defendant when the minute of order is served on him.
- (2) Subject to any Act, a minute of any order made under section 246 (1) or section 250

(b) of the subject Act and any affidavits used to obtain either of those orders shall be served personally upon the defendant.

## **10 Evidence of service**

Evidence of service of any document in any proceedings to which this Division applies may be given by affidavit.

### **10A Privilege**

- (1) Where the Court, by subpoena or otherwise, orders any person to produce any document or thing, and any person makes and substantiates sufficient lawful objection to production on grounds of privilege, the Court shall not compel production of that document or thing except production to the Court for the purpose of ruling on the objection.
- (2) Where a question is put to a person in the course of examination, and any person makes and substantiates sufficient lawful objection on grounds of privilege to the question being answered, the Court shall not compel an answer to the question.
- (3) Subrule (1) applies where an order is made for production to, and subrule (2) applies where a question is put to a person in the course of examination before, the Court or a Judge or any officer of the Court, or any examiner, referee, arbitrator or other person authorised to receive evidence, whether on a trial or hearing or on any other occasion.
- (3A) Where a party to any proceedings claims privilege from production of any document, the Court may, if it thinks fit:
  - (a) permit evidence in relation to the claim to be given by any other party by affidavit or otherwise, and
  - (b) permit cross-examination on any affidavit used in support of the claim.
- (4) This rule does not affect any rule of law which authorises or requires the withholding of any document or thing or the refusal to answer any question on the ground that the disclosure of the document or thing or the answering of the question would be injurious to the public interest.
- (5) Subrules (1), (2) and (3) do not apply to an objection to produce any document or thing or to answer any question on the ground mentioned in subrule (4).

## **11 Pre-trial procedures**

- (1) The procedures prescribed by this rule shall be complete before the trial of a case commences.
- (2) This rule does not apply where the person charged with an offence pleads guilty to the offence or where the Judge dismisses the charge under section 249 (1) or 251 of



the subject Act.

- (3) In this rule, **trial** includes the hearing and determination of the case and the adjudication on the case under section 250 (a) of the subject Act.
- (4) The Judge may, of his own motion or on the application of a party:
- (a) make orders and give directions for the just and efficient disposal of the proceedings,
  - (b) without limiting the generality of paragraph (a), make such orders and give such directions as may be appropriate relating to:
    - (i) the giving by the plaintiff to the defendant of particulars or further and better particulars,
    - (ii) the giving by the plaintiff to the defendant of a list of persons who it is expected will be called to give evidence at the trial or, if the Judge thinks fit, who have made statements in writing but who it is expected will not be so called,
    - (iii) the giving by the plaintiff to the defendant of a copy of any statement made in writing by any person whose evidence it is expected will be given at the trial or, if that person has not made a statement in writing or if the Judge thinks fit, of a summary of the evidence which it is expected he will give at the trial,
    - (iv) the giving by the plaintiff to the defendant of a list of documents or things which it is expected will be tendered in evidence at the trial,
    - (v) the giving by the plaintiff to the defendant of copies of documents,
    - (vi) inspection by the defendant of documents or of property,
    - (vii) evidence, including evidence under section 69 of the Evidence Act,
    - (viii) any admission or consent of the defendant under section 184 of the [Evidence Act 1995](#), and
    - (ix) any alibi.
- (5) The procedures prescribed by this rule are completed when the Judge certifies that in his opinion the pre-trial procedures prescribed by this rule have been completed.

**11A Procedure where defendant does not appear** cf Act No 27 of 1902, s 75A.

If a defendant charged with two or more offences, whether of a like or different nature, does not appear at the time and place appointed for the hearing of the charges by the orders relating thereto, the Judge, upon proof in the manner prescribed of the due service of the orders upon him a reasonable time before the time appointed for his appearance,

may proceed to hear and determine all or any of the charges together and adjudicate thereon in the absence of the defendant.

**11B Defendant to plead** cf Act No 27 of 1902, s 78.

- (1) Where the defendant appears at the hearing and has been provided with a written copy of the charges against him, the substance of the order under section 246 (1) of the subject Act shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted or why an order should not be made against him.
- (2) If he thereupon admits the truth of the charges and shows no sufficient cause why he should not be convicted or why an order should not be made against him, the Judge shall convict him or make an order against him accordingly.
- (3) If he does not admit the truth of the charges, the Judge shall proceed to hear the prosecutor and the witnesses whom he examines and such other evidence as he adduces in support of the charges and to hear the defendant and the witnesses whom he examines and such other evidence as he adduces in his defence.

**12 (Repealed)**

**13 Termination of proceedings in a court of petty sessions**

- (1) A Local Court is notified under section 255 of the subject Act of the commencement of proceedings under the subject Act for an offence when a minute of the order made under section 246 of the subject Act is delivered to a Magistrate or an authorised officer within the meaning of the [Criminal Procedure Act 1986](#) at the Local Court before which the proceedings for that offence are pending.
- (2) A notice stating that the proceedings in the Local Court for the offence charged in the order have been terminated shall be served on the defendant with the minute of order under section 246 of the subject Act.

**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.

- (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.

## **Parts 76, 77**

**(Repealed)**

## **Part 78 Probate and administration**

### **Division 1 Preliminary**

#### **1 Definitions** (cf former Part 78, rule 1)

In this Part:

**administration** means administration of a deceased person's estate, and includes:

- (a) administration with the will annexed, and
- (b) administration where a prior grant of probate or administration has become inoperative, and
- (c) limited and special administration.

**affidavit in support**, in relation to an application:

- (a) for the grant of probate or administration, or
- (b) for the resealing of a foreign grant,

means an affidavit referred to in rule 12.

**caveat against grant of probate or administration** means a caveat referred to in rule 66.

**caveat concerning an informal testamentary instrument** means a caveat referred to in rule 67.

**caveat requiring proof in solemn form** means a caveat referred to in rule 68.

**contentious proceedings** means proceedings in which:

- (a) a notice of proceedings has been served on any person, or

(b) there is a defendant,

but, in relation to proceedings concerning an informal testamentary document in which the only defendant is a person who has become a defendant pursuant to rule 44 (2), includes only such parts of the proceedings as are referred to in rule 44 (4).

**foreign grant** means probate, or letters of administration, granted elsewhere than in New South Wales by a court of competent jurisdiction referred to in section 107 (1) of the [Probate and Administration Act 1898](#).

**informal testamentary document** means a document that (together with any amendments to it) purports to embody a deceased person's testamentary intentions, being a document that has not been duly executed.

**named executor**, in relation to an application for grant of probate or administration, means an executor named in the will to which the application relates.

**non-contentious proceedings** means proceedings that are not contentious proceedings.

**notice of proceedings** means a notice referred to in rule 57 (1).

**notice to apply for administration** means a notice referred to in rule 53 (2).

**notice to apply for probate** means a notice referred to in rule 55 (2).

**registrar** means a registrar within the meaning of the [Probate and Administration Act 1898](#) or the [Succession Act 2006](#), and includes a deputy or assistant to any such registrar who has been appointed as such under section 120 of the [Supreme Court Act 1970](#).

**resealing** means the sealing, under section 107 of the [Probate and Administration Act 1898](#), of a foreign grant.

**will** includes a codicil and any other testamentary document.

## 2 Forms

Documents under this Part for which a form is approved under section 17 of the [Civil Procedure Act 2005](#) are to be completed in accordance with, and are to include such information as is required by, the form so approved.

## Division 2 Commencement of proceedings

### 3 Publication of notice of intended application for probate or administration: section 42 of P&A Act (cf former Part 78, rule 10)

(1) The notice of an intended application for the grant of probate or administration that is required under section 42 of the [Probate and Administration Act 1898](#) must be published on the New South Wales Online Registry website.

(2) The notice must include:

- (a) the date of any will (and of any codicil to any such will) that is sought to be proved or, if the will bears no date, a statement of that fact and of the will's approximate date, if known, and
- (b) a statement requiring creditors of the deceased to send in their claims.

(3) Subrule (2) does not apply to the grant of administration under section 91 of the *Succession Act 2006*.

(4) The Court may require further advertisement of the intended application.

**4 Publication of notice of intended application for reseal of foreign grant: section 109 of P&A Act** (cf former Part 78, rule 10)

(1) The notice of an intended application for the resealing of a foreign grant that is required under section 109 of the *Probate and Administration Act 1898* must be published on the New South Wales Online Registry website.

(2) The Court may require further advertisement of the intended application.

**5 Commencement of proceedings by creditor** (cf former Part 78, rule 33)

(1) This rule applies to proceedings for the grant of administration that are commenced by a creditor of the deceased under section 63, 74 or 75 of the *Probate and Administration Act 1898*.

(2) If a creditor knows that the deceased has left a will naming an executor, and that the executor has not renounced probate, the creditor may commence proceedings for the grant of administration if and only if:

- (a) the creditor has filed, and served on the executor, a notice requiring the executor to apply for probate, and
- (b) the executor has failed to comply with the notice.

(3) If a creditor knows that the deceased has left a will, and that either the will does not name an executor or that each named executor has renounced probate, the creditor may commence proceedings for the grant of administration if and only if:

- (a) the creditor has filed, and served on:
  - (i) each beneficiary under the will, and
  - (ii) in the case of a partial intestacy, each person who, pursuant to section 63 (a), (b) or (c) of the *Probate and Administration Act 1898*, is eligible to be granted administration of the deceased's estate on intestacy,

a notice requiring a beneficiary or person so eligible, as the case may be, to apply

for the grant of administration, and

- (b) each person on whom such a notice has been served has failed to comply with the notice.
- (4) A notice under subrule (3) need not be served on a named executor under the will if the executor has renounced probate, unless the Court so orders.
- (5) If a creditor knows that the deceased has not left a will or is unsure as to whether or not the deceased has left a will, the creditor may commence proceedings for the grant of administration if and only if:
  - (a) the creditor has filed, and served on each person who, pursuant to section 63 (a), (b) or (c) of the *Probate and Administration Act 1898*, is eligible to be granted administration of the deceased's estate on intestacy, a notice requiring a person so eligible to apply for the grant of administration, and
  - (b) each person on whom such a notice has been served has failed to comply with the notice.
- (6) The affidavit in support of a creditor's application for the grant of administration must include:
  - (a) proof of the deceased's debt to the creditor, and
  - (b) evidence as to the creditor's knowledge of the matters referred to in subrule (2), (3) or (5), as the case requires, and
  - (c) a statement indicating the steps taken by the creditor for the purpose of complying with the requirements of this rule.

## **6 Cross-claims**

- (1) A defendant in the proceedings may, by cross-claim, apply for a grant of probate or administration, or the resealing of a foreign grant.
- (2) Such an application may be made whether or not notice of the intended application has been published.
- (3) A defendant who makes such an application is to publish notice of the application within 28 days after filing the cross-claim in accordance with rule 3 or 4, as the case requires.

## **Division 3 Non-contentious proceedings**

### **Subdivision 1 General provisions in relation to non-contentious proceedings**

## **7 Application of Division**

This Division applies to all non-contentious proceedings.

## **8 Commencement of non-contentious proceedings** (cf former Part 78, rule 8)

Subject to rule 72, non-contentious proceedings are to be commenced by summons.

## **9 Disposal of non-contentious proceedings** (cf former Part 78, rule 9)

- (1) Non-contentious proceedings may be dealt with by the registrar in the absence of the public and without any attendance by or on behalf of any person.
- (2) Rules 6.14, 6.15 and 6.16 of the *Uniform Civil Procedure Rules 2005* do not apply to the proceedings.

## **10 Documents to accompany application for grant of probate or administration**

- (1) An application for the grant of probate or administration must be accompanied by:
  - (a) 2 separate sets of the following documents, each stapled together on the left hand side, in the following order:
    - (i) the proposed form of the grant of probate or administration,
    - (ii) if applicable, a copy of the will and any codicils,
    - (iii) an inventory of the assets of the estate, and
  - (b) if applicable, a certified copy of the relevant death certificate, and
  - (c) a stamped self-addressed A4 envelope.

### **Note—**

If preferred, the address on the envelope may be a DX address.

- (2) Without limiting rule 4.3 (1) of the *Uniform Civil Procedure Rules 2005*, archival paper may be used for the proposed form of the grant of probate.
- (3) Unless the court otherwise orders, the certified copy of the death certificate referred to in subrule (1) (b) is to be returned to the applicant when the grant of probate or administration is made.

## **11 Documents to accompany application for resealing of foreign grant**

An application for the resealing of a foreign grant must be accompanied by:

- (a) the document to be resealed, being:
  - (i) an original document (either a grant or similar document), or
  - (ii) a copy or exemplification of the original document that is certified by the court

that issued the original document to be a true copy of the original, and

- (b) 2 separate sets of the following documents, each stapled together on the left hand side, in the following order:
  - (i) a notice of reseal,
  - (ii) a copy of the document to be resealed,
  - (iii) an inventory of the assets of the estate, and
- (c) a stamped self-addressed A4 envelope.

**Note—**

If preferred, the address on the envelope may be a DX address.

## **12 Supporting affidavits**

In addition to the documents referred to in rule 10 (1) or 11, as the case requires, an application:

- (a) for the grant of probate or administration, or
- (b) for the resealing of a foreign grant,

must be accompanied by:

- (c) an affidavit in support containing such information as may be required by the relevant form, and Subdivisions 2 and 3, and
- (d) such additional affidavits as may be required by Subdivisions 2 and 3 if the evidence cannot be given by the deponent of the affidavit in support.

**Note—**

The prescribed forms of affidavit in support of an application for probate, administration or resealing of a foreign grant are as follows:

- (a) probate—UCRP Form 118,
- (b) administration—UCPR Form 119,
- (c) administration with the will annexed—UCPR Form 120,
- (d) administration pursuant to section 91 of the *Succession Act 2006*—UCPR Form 122,
- (e) resealing of a foreign grant—UCPR Form 121.

## **13 Domicile outside New South Wales**

If an application for the grant of probate or administration, or for the resealing of a foreign grant, is made in respect of a person who has died while domiciled outside New South Wales, the affidavit in support must include evidence as to:



- (a) the domicile of the deceased, and
- (b) the requirements of the law of the domicile:
  - (i) as to the validity of any will made by the deceased, and
  - (ii) as to the persons who may be entitled in distribution of the estate.

## **Subdivision 2 Evidence in support in non-contentious applications**

### **14 Informal testamentary documents** (cf former Part 78, rule 24)

If an application for the grant of probate or administration is made in respect of the estate of a person who has died leaving an informal testamentary document, the affidavit in support must include:

- (a) the name and address of each person whose interests may be affected by the Court's decision as to the deceased's intentions in relation to the document (designating which of them, in the plaintiff's opinion, is or may be a person under legal incapacity), or
- (b) if the name and address of any such person cannot be ascertained, the best information the plaintiff can give to assist in ascertaining the person's identity and whereabouts.

### **15 Will made prior to divorce**

If an application for the grant of probate or administration relies on:

- (a) section 13 of the *Succession Act 2006*, or
- (b) section 15A of the *Probate and Administration Act 1898*, as in force before the repeal of that section,

the affidavit in support must include a statement of the facts on which the plaintiff relies.

#### **Note—**

The provisions referred to in paragraph (b) were repealed, and replaced by the provisions referred to in paragraph (a), on 1 March 2008.

### **16 Delay**

- (1) If an application for the grant of probate or administration:
  - (a) is filed later than 6 months after the death of the deceased, and
  - (b) is the first application for such a grant,the affidavit in support must include a statement explaining the delay.
- (2) Subrule (1) does not apply to the grant of administration under section 91 of the

*Succession Act 2006.*

**17 Application for grant of probate where named executor has renounced probate or reserved leave to apply**

- (1) In proceedings on an application for the grant of probate in which one or more, but not all, named executors have renounced probate:
  - (a) evidence of each such renunciation must be furnished, and
  - (b) if any such renunciation has been signed by a named executor, the renunciation must be filed.
- (2) If a named executor is not joining in the application, but leave is sought to be reserved to the executor to come in and apply for probate at some future date, evidence must be furnished:
  - (a) that the executor was served with notice of the intended proceedings at least 14 days before the proceedings were commenced, or
  - (b) that the executor is a person under legal incapacity.

**18 Application for grant of administration with will annexed where named executor has renounced probate** (cf former Part 78, rule 26 (3))

- (1) In proceedings on an application for the grant of administration with the will annexed in which all named executors have renounced probate:
  - (a) evidence of each such renunciation must be furnished, and
  - (b) if any such renunciation has been signed by a named executor, the renunciation must be filed.
- (2) Where the executor or executors in a will have renounced probate in favour of the NSW Trustee and Guardian, administration with the will annexed may be granted to the NSW Trustee and Guardian without the consent of, or giving notice to, any person.

**19 Application for grant of administration by some only of those entitled to administration**

- (1) If a grant of administration is applied for by some only of the persons within Australia who are entitled to administration, the application must, in relation to each such person not applying, be supported by:
  - (a) the written consent of that person to the grant of administration to the applicant, with an affidavit verifying the consent endorsed on the document containing the consent, or
  - (b) an affidavit as to service on that person of the applicant's notice of intention to make such an application.

- (2) Service of the notice referred to in subrule (1) (b) must have occurred at least 14 days before the proceedings commence.
- (3) The affidavits and notice referred to in subrule (1) (b) may be served personally or by post.

**20 Affidavit in support of application for administration generally** (cf former Part 78, rule 24A)

- (1) This rule applies to an application for the grant of administration made in respect of the estate of a person who died before 1 March 2010, other than:
  - (a) an application for the grant of administration with the will annexed, or
  - (b) an application for the grant of administration made by or on behalf of a de facto partner, or
  - (c) an application for the grant of administration under section 91 of the *Succession Act 2006*.

**Note—**

1 March 2010 was the date on which the provisions of the *Probate and Administration Act 1898* referred to in subrule (3) (a) were repealed by the *Succession Amendment (Intestacy) Act 2009*.

- (2) The affidavit in support of an application for the grant of administration made by or on behalf of any person (other than a de facto partner of the deceased) must show that the deceased did not leave a de facto partner for whom the estate, or any part of it, is required to be held under a statutory trust for de facto partners.
- (3) In this rule, **statutory trust for de facto partners** means a trust for the benefit of a de facto partner:
  - (a) that arises under section 61B (3A) (a) or (3B) (a) or (b) (ii) of the *Probate and Administration Act 1898* (as in force before 1 March 2010), or
  - (b) that, by operation of section 32G (2) of that Act, arises under any other provision of that Act (as so in force).

**21 Evidence in support of application for administration by de facto partner** (cf former Part 78, rule 25A)

- (1) This rule applies to an application for the grant of administration made by or on behalf of a de facto partner of the deceased in respect of the estate of a person who died before 1 March 2010, other than:
  - (a) an application for the grant of administration with the will annexed, or
  - (b) an application for the grant of administration under section 91 of the *Succession Act 2006*.

**Note—**

1 March 2010 was the date on which the provisions of the *Probate and Administration Act 1898* referred to in subrule (3) (a) were repealed by the *Succession Amendment (Intestacy) Act 2009*.

- (2) The affidavit in support of an application for the grant of administration made by or on behalf of a de facto partner must show that the estate, or some part of it, is required to be held under a statutory trust for de facto partners.
- (3) The application must be supported by the written consent of each person who would be entitled to distribution of the estate if the deceased had not left a de facto spouse, or an affidavit of service on such a person of the applicant's intention to make such an application.
- (4) The provision of consents and service of notices is to be in accordance with rule 19.
- (5) In this rule, **statutory trust for de facto partners** means a trust for the benefit of a de facto partner:
  - (a) that arises under section 61B (3A) (a) or (3B) (a) or (b) (ii) of the *Probate and Administration Act 1898* (as in force before 1 March 2010), or
  - (b) that, by operation of section 32G (2) of that Act, arises under any other provision of that Act (as so in force).

**22 Affidavit in support of application for administration—domestic partnerships**

- (1) This rule applies to an application for a grant of administration made in respect of a person who died after 1 March 2010, other than:
  - (a) an application for a grant of administration with the will annexed, or
  - (b) an application for a grant of administration under section 91 of the *Succession Act 2006*.
- (2) If the application is not made by a person claiming to have been a party to a domestic partnership with the deceased the affidavit in support of the application must show that the deceased did not leave a domestic partner who would be entitled to the estate or any part of it.
- (3) If the application is made by a person claiming to have been in a domestic partnership with the deceased:
  - (a) the affidavit in support of the application must show that the applicant is entitled to the estate or some part of it, and
  - (b) the application must be supported by the written consent of each person who would be entitled to distribution of the estate if the deceased person had not left a partner to a domestic partnership, or an affidavit of service on such persons of

notice of the applicant's intention to make such an application.

- (4) The provision of consents and service of notices is to be in accordance with rule 19.
- (5) In this rule, **domestic partnership** has the same meaning as it has in section 105 of the *Succession Act 2006*.

### **23 Administration bonds**

- (1) Before granting administration, the Court may require an administration bond to be filed.
- (2) Unless the Court otherwise orders, an administration bond must have 2 sureties conditioned for duly collecting and getting in the deceased's assets and administering the deceased's estate.

### **24 Evidence in support of application for administration for the purposes only of Chapter 3 of the *Succession Act 2006* (cf former Part 78, rule 26A)**

If the plaintiff under an application referred to in section 91 of the *Succession Act 2006* is aware of a proposal by any other person to make such an application, the affidavit in support must include a statement to the effect that notice of the plaintiff's intended application was served on the other person at least 14 days before the application was made.

## **Subdivision 3 Proof of wills in non-contentious proceedings**

### **25 Application of Division**

This Subdivision applies to proceedings in which the plaintiff seeks to prove a will.

### **26 Will not sufficiently attested (cf former Part 78, rule 15)**

- (1) If the will contains either no attestation clause or an insufficient attestation clause, the plaintiff must file an affidavit by one or more of the attesting witnesses to the due execution of the will.
- (2) A plaintiff who is unable to comply with subrule (1) must file:
  - (a) an affidavit as to the reason for the inability, and
  - (b) a further affidavit by some other person who was present when the will was executed.
- (3) A plaintiff who is unable to comply with subrule (1) or (2) must file an affidavit as to:
  - (a) the reason for the inability, and
  - (b) either:

- (i) the signatures of the testator and the attesting witnesses, or
- (ii) other facts from which it may be inferred that the will was duly executed.

**27 Blind or illiterate testator's will or will at another's direction** (cf former Part 78, rule 16)

If the will was or appears to have been signed by:

- (a) a blind or illiterate testator, or
- (b) some other person at the testator's direction,

the affidavit in support must include all available evidence as to the manner in which the will was executed and as to whether the testator knew and approved its contents.

**28 Date of execution** (cf former Part 78, rule 18)

If the will is undated, the affidavit in support must include evidence establishing the date of its execution.

**29 Interlineations, obliterations and alterations** (cf former Part 78, rule 19)

If:

- (a) there is any interlineation, obliteration or alteration in the will, and
- (b) the interlineation, obliteration or alteration is not duly authenticated or otherwise validated,

the affidavit in support must include evidence establishing that the interlineation, obliteration or alteration was made before the will was executed.

**30 Documents referred to or attached** (cf former Part 78, rule 20)

If:

- (a) the will contains a reference to a document that suggests that the document forms part of the will, or
- (b) there are marks on the will from which it appears that a document has been attached to it,

the affidavit in support must include all available evidence in regard to those circumstances.

**31 Part of will paper torn off or cut off** (cf former Part 78, rule 21)

If it appears that any part of the material on which the will was written has been torn or cut off, the affidavit in support must include all available evidence (including the torn or cut-off part) in regard to those circumstances.

**32 Burning, tearing or other sign of revocation** (cf former Part 78, rule 22)

If:

- (a) it appears that there may have been an attempt to destroy the will by burning, tearing or otherwise, or
- (b) there are other circumstances that suggest that the testator may have revoked the will,

the affidavit in support must include all available evidence in regard to those circumstances.

**33 Inoperative will** (cf former Part 78, rule 23)

If it appears that the will is or may be wholly or partly inoperative, whether by reason of the executors and beneficiaries all predeceasing the testator or otherwise, the affidavit in support must include evidence as to what persons would be entitled to distribution of the estate on intestacy.

## **Division 4 Contentious proceedings**

**34 Application of Division** (cf former Part 78, rule 35)

This Division applies to contentious proceedings.

**35 Commencement of contentious proceedings** (cf former Part 78, rule 36)

Subject to rule 72, contentious proceedings must be commenced:

- (a) by statement of claim, if there is a defendant, or
- (b) by summons, if there is no defendant.

**36 Admissions** (cf former Part 78, rule 37)

Rule 17.7 of the *Uniform Civil Procedure Rules 2005* does not apply to contentious proceedings.

**37 Disputes as to standing** (cf former Part 78, rule 37A)

- (1) If a defendant opposes the grant of probate or administration and the plaintiff intends to dispute the defendant's standing to do so, the plaintiff's pleadings must allege the absence of standing.
- (2) If one party (the **first party**) has applied for the grant of administration and another party (the **second party**) alleges that the first party is not entitled to do so, the second party's pleadings must allege facts that, if proved, would show that the second party is entitled to apply for such a grant.

## Division 5 Proceedings affecting other persons' interests

### 38 Plaintiff sole executor (cf former Part 78, rule 34B)

- (1) This rule applies to an application for an order under:
  - (a) section 10 (3) (c) of the *Succession Act 2006*, or
  - (b) section 13 (2) (c) of the *Probate and Administration Act 1898*, as in force before the repeal of that paragraph.

**Note—**

The provisions referred to in paragraph (b) were repealed, and replaced by the provisions referred to in paragraph (a), on 1 March 2008.

- (2) The originating process for such an application need not join any person as a defendant:
  - (a) if the plaintiff is the sole executor or administrator, or
  - (b) if there is otherwise sufficient reason for not doing so.
- (3) Despite subrule (2), the Court may, at any stage of the proceedings, direct that:
  - (a) any person be added as a party or substituted for another party or a former party, or
  - (b) notice of the proceedings be served on any person in addition to, or instead of, the defendant.
- (4) Rule 7.6 of the *Uniform Civil Procedure Rules 2005* applies to proceedings for an order referred to in subrule (1) in the same way as it applies to proceedings referred to in rule 7.6 (1) of those Rules.

### 39 Notice of proceedings to be served on certain persons (cf former Part 78, rule 34C)

- (1) This rule applies to any proceedings on an application for the grant of probate or administration in which an application is made for an order under:
  - (a) section 10 (3) (c) or 27 (1) of the *Succession Act 2006*, or
  - (b) section 13 (2) (c), 15A (2) (a) or 29A (1) of the *Probate and Administration Act 1898*, as in force before the repeal of those provisions.

**Note—**

The provisions referred to in paragraph (b) were repealed, and replaced by the provisions referred to in paragraph (a), on 1 March 2008.

- (2) The applicant for the grant of probate or administration:



- (a) must file an affidavit showing the persons whose interests would be adversely affected if the order were made, and
- (b) must serve a notice of proceedings on each such person within 28 days after the application for the order is made.

**Note—**

Division 9 (particularly Subdivisions 3, 4 and 5) apply to a notice of proceedings referred to in paragraph (b).

- (3) Subrule (2) (b) does not require a notice of proceedings to be served on a person who has consented to the making of the order.
- (4) Any document that the applicant intends to rely on as evidence of such consent must be filed.

**40 Affidavit verifying consent** (cf former Part 78, rule 34A)

Any document that the applicant intends to rely on as evidence of consent referred to in:

- (a) section 10 (3) (b) of the *Succession Act 2006*, or
- (b) section 13 (2) (b) of the *Probate and Administration Act 1898*, as in force before the repeal of that paragraph,

must be filed.

**Note—**

The provisions referred to in paragraph (b) were repealed, and replaced by the provisions referred to in paragraph (a), on 1 March 2008.

## **Division 6 Proceedings concerning informal testamentary documents**

### **41 Application of Division**

This Division applies to proceedings on an application for the grant of probate or administration in relation to a will that comprises or includes an informal testamentary document.

### **42 Consent of or notice to person affected** (cf former Part 78, rules 34E and 34G)

- (1) The plaintiff must serve notice of the application (**a prescribed notice**) on each person whose interests may be affected by the Court's decision as to the deceased's intentions in relation to the informal testamentary document.
- (2) Subrule (1) does not require a prescribed notice to be served:
  - (a) on the caveator under any caveat in force in respect of the informal testamentary document, or
  - (b) on any person who has consented to the grant of probate or administration to the

plaintiff.

- (3) Any consent referred to in subrule (2) (b) must be filed by the plaintiff.
- (4) If the person whose interests are affected is a person under legal incapacity:
  - (a) subrule (2) (b) does not apply, and
  - (b) if the person has no tutor, service of a prescribed notice does not take effect until a tutor is appointed.
- (5) The Court may dispense with compliance with subrule (1) on any of the following grounds:
  - (a) that the person affected cannot readily be ascertained,
  - (b) that the person affected, though ascertained, cannot readily be found,
  - (c) that it would be expedient to do so (having regard to all the circumstances, including the amount at stake and the degree of difficulty of the point to be determined) so as to save expense.

**Note—**

Pursuant to rule 72, unless the Court otherwise directs, a caveator under any caveat in force in respect of an informal testamentary document is to be a party to proceedings for the grant of probate or administration that comprises or includes the informal testamentary document.

**43 Appearance by person affected by informal testamentary document** (cf former Part 78, rule 34H)

- (1) A person on whom a prescribed notice has been served in relation to any proceedings may enter an appearance in the proceedings.
- (2) Division 3 of Part 6 of the *Uniform Civil Procedure Rules 2005* applies to appearance by the person as if the person were a defendant in the proceedings.
- (3) Rule 12.11 of the *Uniform Civil Procedure Rules 2005* does not apply to the proceedings.
- (4) The time limited for the person to enter an appearance is:
  - (a) in the case of service within New South Wales, 14 days,
  - (b) in the case of service outside New South Wales, 28 days.
- (5) An appearance may not be entered after the expiration of the time so limited except by the leave of the Court.

**44 Person affected by informal testamentary document becomes party on entering**

**appearance** (cf former Part 78, rule 34I)

- (1) This rule applies to a person on whom a prescribed notice has been served in relation to any proceedings if the person enters an appearance within the time limited for entering an appearance.
- (2) On entering an appearance, the person becomes a defendant in the proceedings.
- (3) The proceedings are to continue as if:
  - (a) the person had been joined as a defendant by the application for the grant of probate or administration, and
  - (b) the person had been served with that application on the day on which he or she was served with the prescribed notice.
- (4) The person may only take part in:
  - (a) such parts of the proceedings as relate to the decision under:
    - (i) section 8 of the *Succession Act 2006*, or
    - (ii) section 18A of the *Probate and Administration Act 1898*, as in force before the repeal of that section,in relation to the informal testamentary document, and
  - (b) such other parts of the proceedings as the Court directs.
- (5) The person ceases to be a defendant on the conclusion of those parts of the proceedings referred to in subrule (4).

**Note—**

The provisions referred to in subparagraph (ii) were repealed, and replaced by the provisions referred to in subparagraph (i), on 1 March 2008.

**45 Persons who are bound by Court's decision on informal testamentary document** (cf former Part 78, rule 34F)

- (1) This rule applies if a decision is made under:
  - (a) section 8 of the *Succession Act 2006*, or
  - (b) section 18A of the *Probate and Administration Act 1898*, as in force before the repeal of that section,in relation to an informal testamentary document.

**Note—**

The provisions referred to in paragraph (b) were repealed, and replaced by the provisions referred to in paragraph (a), on 1 March 2008.

- (2) Subject to any order made by the Court, each of the following persons is bound by the decision made in relation to the informal testamentary document to the same extent as if he or she had been a party to the proceedings concerned when the decision was made:
- (a) any person whose consent to the grant of probate or administration has been filed in relation to the document,
  - (b) any person whose interests may be affected by the Court's decision as to the deceased's intentions in relation to the document, but only if:
    - (i) a prescribed notice has been served on the person, or
    - (ii) the Court has, pursuant to rule 42 (5), dispensed with the requirement for service.

**Note—**

Pursuant to rule 60, subject to any contrary order, a person on whom a notice of proceedings has been served under rule 57 is also bound by the decision, as he or she is bound by all other orders and decisions made in the proceedings to which the decision relates, including orders and decisions made by consent or otherwise without a contested hearing.

## **Division 7 Proceedings for revocation of grant of probate or administration**

### **46 Application**

This Division applies to proceedings for the revocation of a grant of probate or administration.

### **47 Commencement of proceedings with no defendant** (cf former Part 78, rules 40 and 41)

If there is no defendant, the proceedings must be commenced by summons, and may be dealt with by the registrar in the absence of the public and without any attendance by or on behalf of any person.

### **48 Commencement of proceedings with defendant** (cf former Part 78, rule 43)

- (1) If there is a defendant, proceedings for the revocation of a grant of probate or administration must be commenced by statement of claim.
- (2) The statement of claim must allege facts that, if proved, would show that the plaintiff has standing to commence the proceedings.

### **49 Deposit of grant of probate or administration** (cf former Part 78, rules 38 and 39)

The Court may order an executor or administrator to deposit a grant of probate or administration in the registry:

- (a) on the application of a person who intends to commence proceedings for the revocation of the grant, or
- (b) if proceedings for the revocation of the grant have already commenced, on the application of the plaintiff or of its own motion.

## **Division 8 Proceedings for administration during minority**

### **50 Administration during minority** (cf former Part 78, rule 29)

- (1) The Court may grant administration during minority, for the use and benefit of a minor, to any of the following:
  - (a) the minor's legal or testamentary guardian,
  - (b) a guardian assigned in accordance with rule 51,
  - (c) a guardian elected in accordance with rule 52.
- (2) A grant of administration during minority is subject to such limitations and conditions as the Court thinks fit.

### **51 Assigned guardian** (cf former Part 78, rule 31)

- (1) Any person may apply for an order assigning the person as a minor's guardian for the purpose of applying for the grant of administration.
- (2) The application may be made:
  - (a) except as provided by paragraph (b), by summons, or
  - (b) if proceedings on an application for the grant of administration have already been commenced, by notice of motion in the proceedings,and may be dealt with by the registrar in the absence of the public and without any attendance by or on behalf of any person.
- (3) There is to be no defendant in proceedings on a summons referred to in subrule (2) (a).
- (4) The application must be supported by evidence of:
  - (a) the proposed guardian's relationship, if any, to the minor, and
  - (b) the proposed guardian's fitness and appropriateness to act as the minor's guardian.

### **52 Elected guardians** (cf former Part 78, rule 30)

- (1) A minor who is aged 16 years or more may elect a guardian for the purpose of

applying for the grant of administration.

- (2) The elected guardian may also act for any other minor in the same family who is aged less than 16 years.
- (3) Despite the election of a guardian, the Court may grant administration to any person referred to in rule 50 (1) (a) or (b) whom it considers more appropriate or better fitted to act as the minor's guardian.
- (4) An application for the grant of administration by a minor's elected guardian must be supported by evidence of:
  - (a) the minor's election, and
  - (b) the elected guardian's fitness and appropriateness to act as the minor's guardian.

## **Division 9 Notices**

### **Subdivision 1 Notice to apply for administration**

#### **53 Notice to apply for administration** (cf former Part 78, rule 51)

- (1) For the purposes of section 63 of the *Probate and Administration Act 1898*, any person may require a person referred to in paragraph (a), (b) or (c) of that section to apply for administration of an intestate person's estate, as referred to in that section.
- (2) Such a requirement must be made by filing and serving on the person concerned a notice to apply for administration.

**Note—**

This notice, a "notice to apply for administration", was formerly referred to as a "citation to pray for administration".

#### **54 Time for answer to notice** (cf former Part 78, rule 54)

The time limited for answer to a notice to apply for administration is:

- (a) in the case of service within New South Wales, 14 days,
- (b) in the case of service outside New South Wales, 28 days.

### **Subdivision 2 Notice to apply for probate**

#### **55 Notice to apply for probate** (cf former Part 78, rule 52)

- (1) For the purposes of section 69 of the *Probate and Administration Act 1898*, any person may require a named executor to take probate, as referred to in that section.
- (2) Such a requirement must be made by filing and serving on the person concerned a notice to apply for probate.

**Note—**

This notice, a “notice to apply for probate”, was formerly referred to as a “citation to take probate”.

**56 Time for answer to notice** (cf former Part 78, rule 54)

The time limited for answer to a notice to apply for probate is:

- (a) in the case of service within New South Wales, 14 days,
- (b) in the case of service outside New South Wales, 28 days.

### **Subdivision 3 Notice of proceedings**

**57 Notice of proceedings** (cf former Part 78, rules 53 and 56)

- (1) Subject to subrule (2), any party to proceedings for the grant of probate or administration may file and serve on any person having an interest adverse to the party a notice of proceedings.

**Note—**

This notice, a “notice of proceedings”, was formerly referred to as a “citation to see proceedings”.

- (2) Such a notice must be filed and served on each person on whom such a notice is required to be served pursuant to any other provision of this Part or any direction of the Court.
- (3) The notice must state that, if the person to whom it is addressed does not enter an appearance in the proceedings, the proceedings may be heard and determined in the person’s absence.
- (4) Division 3 of Part 6 of the *Uniform Civil Procedure Rules 2005* (rule 6.10 excepted) applies to appearance by a person on whom a notice of proceedings has been served in the same way as if the person were a defendant in the proceedings.
- (5) If the person on whom the notice is served enters an appearance in the proceedings, he or she is entitled to the same notice of the hearing or trial of the proceedings as a defendant.

**58 Election to be a defendant** (cf former Part 78, rule 57)

- (1) A person on whom a notice of proceedings has been served may include in his or her notice of appearance a statement that he or she elects to be a defendant in the proceedings.
- (2) If the person makes such an election:
  - (a) he or she becomes a defendant in the proceedings, and
  - (b) the proceedings are to continue as if the person:

- (i) had been joined as a defendant by the application for the grant of probate or administration, and
- (ii) had been served with the application for the grant of probate or administration on the day on which he or she was served with the notice of proceedings.

**59 Proof of service of notice of proceedings** (cf former Part 78, rule 60)

A party who has issued a notice of proceedings (the **issuing party**) is not entitled to be heard, except by leave of the Court, unless:

- (a) the person to whom the notice is addressed (the **addressee**) has entered an appearance in the proceedings, or
- (b) the issuing party has filed:
  - (i) an affidavit of service of the notice on the addressee, or
  - (ii) an affidavit stating that the notice has not been served on the addressee and explaining why it has not been served.

**60 Persons served bound by certain orders and decisions**

Subject to any order of the Court, any person on whom a notice of proceedings has been served is bound by all orders and decisions made in the proceedings concerned, including orders and decisions made by consent or otherwise without a contested hearing, and is so bound whether or not the person has elected to be a defendant in the proceedings or has entered an appearance in the proceedings.

**Note—**

This is a substantive change to the former law. See note to rule 45.

**Subdivision 4 Notices served on persons under legal incapacity**

**61 Service on persons under legal incapacity** (cf former Part 78, rule 58)

- (1) Service on a person under legal incapacity of a notice under this Division is to be effected in accordance with this rule.
- (2) The notice may be served:
  - (a) if the person has a tutor, on the tutor, or
  - (b) if the person has no tutor, on someone with whom the person resides or in whose care the person is.
- (3) If the person to be served is a minor, the notice may also be served:
  - (a) on the minor, but only if he or she is aged 16 years or more and is under legal incapacity by reason only of minority, or



(b) on a parent of the minor, or

(c) on a guardian of the minor's person or estate.

(4) The notice may also be served on any person (including the person under legal incapacity) whom the Court may, before or after the service, approve.

(5) Service of the notice on a person under legal incapacity who has no tutor does not take effect until a tutor is appointed.

**62 Notice to be answered by tutor** (cf former Part 78, rule 58)

(1) A person under legal incapacity may not answer a notice under this Division otherwise than by his or her tutor.

(2) If a person under legal incapacity has a tutor who has or may be given authority, under the *NSW Trustee and Guardian Act 2009*, to answer the notice on that person's behalf, then, unless the Court otherwise orders, no person other than the tutor may answer the notice.

(3) If a notice of proceedings is served on a person under legal incapacity and that person's tutor is appointed to answer the notice, the appointment extends to the tutor electing on that person's behalf to become a defendant in the proceedings.

(4) If a person under legal incapacity elects by tutor to become a defendant in the proceedings, Division 4 of Part 7 of the *Uniform Civil Procedure Rules 2005* applies as if the tutor had been appointed as provided by that Division.

**63 Appointment of tutor** (cf former Part 78, rule 59)

(1) Any person may apply for an order appointing the person as tutor for a person under legal incapacity.

(2) The application may be made:

(a) except as provided by paragraph (b), by summons, or

(b) if proceedings on an application for the grant of probate or administration have already been commenced, by notice of motion in the proceedings,

and may be dealt with by the registrar in the absence of the public and without any attendance by or on behalf of any person.

(3) There is to be no defendant in proceedings on a summons referred to in subrule (2) (a).

(4) A tutor must not be appointed unless:

(a) he or she is the person applying for appointment, or

(b) evidence of his or her consent to act as tutor has been filed.

(5) Subject to rule 62 (4), Division 4 of Part 7 of the *Uniform Civil Procedure Rules 2005* does not apply to the appointment of a tutor under this rule.

## **Subdivision 5 General**

### **64 Service generally** (cf former Part 78, rule 55)

(1) A notice under this Division must be served personally.

(2) Part 11 of the *Uniform Civil Procedure Rules 2005* does not apply to service of such a notice.

#### **Note—**

See also rule 61 in relation to service on persons under legal incapacity.

### **65 Assignment of case number**

(1) A case number or unique identifier is to be assigned to a notice under this Division when it is accepted for filing.

(2) In the case of a notice for an estate in respect of which:

(a) proceedings for the grant of probate or administration have been commenced, or

(b) some other notice has been filed under this Division, or

(c) a caveat has been filed under Division 10,

the case number or other unique identifier is to be the same as that previously assigned to the proceedings, notice or caveat.

## **Division 10 Caveats**

### **Subdivision 1 Caveat against grant of probate or administration**

#### **66 Caveat against grant of probate or administration** (cf former Part 78, rule 61)

(1) A person who claims an interest in an estate may file a caveat in respect of any grant of probate or administration, or resealing of a foreign grant, being made in respect of the estate.

(2) The caveat must state fully the nature of the interest claimed by the caveator and an address for service.

(3) If the caveator is aware that any other person is making, or is intending to make, an application for the grant of probate or administration, or the resealing of a foreign grant, in respect of the same estate, the caveator must, within 7 days after filing the

caveat, serve a copy of the caveat on that other person.

## **Subdivision 2 Caveat concerning an informal testamentary instrument**

### **67 Caveat concerning an informal testamentary instrument** (cf former Part 78, rule 62A)

- (1) A person who claims to be a person whose interests may be affected by the Court's decision as to the deceased's intentions in relation to an informal testamentary document may file a caveat requiring an opportunity to be heard before the Court makes such a decision.
- (2) Subrule (1) does not apply to a person who is a defendant in proceedings for the grant of probate or administration in relation to the deceased's estate.
- (3) The caveat may be lodged:
  - (a) at any time before service on that person of a copy of an application for the grant of probate or administration in relation to that estate, or
  - (b) by leave of the Court, at any time before the grant of probate or administration is made.
- (4) The caveat must state fully the nature of the interest claimed by the caveator and an address for service.
- (5) If the caveator is aware that any other person is making, or is intending to make, an application for the grant of probate or administration in respect of the same estate, the caveator must, within 7 days after filing the caveat, serve a copy of the caveat on that other person.

## **Subdivision 3 Caveat requiring proof in solemn form**

### **68 Caveat requiring proof in solemn form** (cf former Part 78, rule 62)

- (1) A person:
  - (a) who claims an interest in a deceased person's estate as a beneficiary under a will, or
  - (b) who has an interest in a deceased person's estate and who wishes to challenge an alleged will on the ground that the will has not been duly executed,may file a caveat requiring proof in solemn form of any such will.
- (2) The caveat must state fully the nature of the interest of the caveator and an address for service.
- (3) If the caveator is aware that any other person is making, or intending to make, an application for the grant of probate or administration, or the resealing of a foreign

grant, in respect of the same estate, the caveator must, within 7 days after filing the caveat, serve a copy of the caveat on that other person.

## **Subdivision 4 General**

### **69 Duration of caveat** (cf former Part 78, rule 63)

- (1) A caveat under this Division takes effect when it is filed and, unless the Court otherwise orders, lapses after 6 months.
- (2) The Court may extend the duration of a caveat.
- (3) Despite subrules (1) and (2), in any proceedings on an application for the grant of probate or administration in relation to a will that comprises or includes an informal testamentary document, a caveat concerning the informal testamentary instrument lapses when the caveator becomes a party to the proceedings.

#### **Note—**

Rule 72 (2) provides that, unless the Court otherwise directs, the caveator is to be a party to the proceedings.

### **70 Withdrawal of caveat** (cf former Part 78, rule 64)

- (1) The caveator in respect of any caveat under this Division may withdraw the caveat by filing a notice of withdrawal of caveat.
- (2) The withdrawal of the caveat takes effect when the notice is filed.

### **71 Order that caveat cease to be in force** (cf former Part 78, rule 69)

- (1) If:
  - (a) a person has applied or intends to apply for the grant of probate or administration or the resealing of a foreign grant, and
  - (b) a caveat under this Division is in force in respect of any grant of probate or administration, or resealing of a foreign grant, being made in respect of the estate concerned,the person may apply for an order that the caveat cease to be in force in relation to the application or intended application.
- (2) An application under this rule must be made:
  - (a) except as provided by paragraph (b), by summons, or
  - (b) if the person has commenced proceedings for the grant of probate or administration, or the resealing of a foreign grant, by notice of motion in the proceedings.

- (3) The caveator must be joined as a defendant in the proceedings on an application under this rule.
- (4) If the Court considers that the evidence fails to show:
  - (a) that the caveator has an interest in the estate concerned, or a reasonable prospect of establishing such an interest, and
  - (b) that there is a doubt as to whether the grant of probate or administration should be made or whether the foreign grant should be resealed,the Court may order that the caveat cease to be in force in respect of the application.
- (5) Part 13 of the *Uniform Civil Procedure Rules 2005* does not apply to the proceedings.
- (6) If it does not order that the caveat cease to be in force in respect of the application, the Court may give such directions as appear best adapted for the just, quick and cheap determination of proceedings on the application, or intended application.
- (7) Directions that the Court may give pursuant to subrule (6) include a direction to the caveator to commence proceedings.
- (8) If the Court directs the caveator to commence proceedings, it may order that if the caveator does not commence proceedings within such time as the Court fixes, the caveat is to lapse, either generally or in respect of the application or intended application.
- (9) An order under subrule (8) may be made at the time the caveator is directed to commence proceedings or at any subsequent time.

**72 Certain proceedings to be commenced by statement of claim** (cf former Part 78, rule 70)

- (1) If a caveat under this Division is in force in respect of a deceased person's estate, proceedings for the grant of probate or administration, or the resealing of a foreign grant, in respect of the estate, must be commenced by statement of claim.
- (2) Unless the Court otherwise directs, the caveator is to be a party to the proceedings.

**73 Service of documents on caveator**

In the application of rule 10.5 of the *Uniform Civil Procedure Rules 2005* to the service on a caveator of either of the following documents, namely:

- (a) an application for an order referred to in rule 71,
- (b) a statement of claim referred to in rule 72,

the caveator's address for service is taken to be the address for service stated in the relevant caveat under rule 66, 67 or 68.

#### **74 Assignment of case number**

- (1) A case number or unique identifier is to be assigned to a caveat under this Division when it is accepted for filing.
- (2) In the case of a caveat for an estate in respect of which:
  - (a) proceedings for the grant of probate or administration have been commenced, or
  - (b) some other caveat has been filed under this Division, or
  - (c) a notice has been filed under Division 9,the case number or other unique identifier assigned to the caveat is to be the same as that previously assigned to the proceedings, caveat or notice.

### **Division 11 Accounts and commission**

#### **75 Definitions**

In this Division:

**commission** means commission referred to in section 86 of the *Probate and Administration Act 1898*.

**parent proceedings**, in respect of an estate the subject of proceedings for the passing of accounts, means the proceedings in which:

- (a) probate or administration has been granted, or
- (b) a foreign grant has been resealed,

in respect of the estate.

**proceedings for the passing of accounts** means proceedings for an order passing accounts under section 85 of the *Probate and Administration Act 1898*.

#### **76 Commencement of proceedings** (cf former Part 78, rule 75)

- (1) Proceedings for the passing of accounts for an estate must be commenced by notice of motion in the parent proceedings.
- (2) The notice may, but need not, request the Court to allow the applicant to be paid commission from the assets of the estate.

#### **77 Further requirements where applicant seeks commission** (cf former Part 78, rule 85)

If the applicant seeks commission he or she must file with the notice of motion commencing the proceedings:

- (a) an affidavit in support of the application, and

- (b) where the accounts were not filed within the time fixed by the rules or any order of the Court, an affidavit explaining the delay.

**78 Objection prior to proceedings** (cf former Part 78, rule 77A)

- (1) At any time prior to the commencement of proceedings for the passing of accounts for an estate in respect of which:
  - (a) probate or administration has been granted, or
  - (b) a foreign grant has been resealed,any person (***the objector***) may, by filing a notice of his or her intention to do so, object to the passing of accounts or the allowance of commission, as the case may be.
- (2) The address for service shown in the notice is taken to be the objector's address for service in any such proceedings.
- (3) On the commencement of any such proceedings, the registrar must serve a copy of the notice on the applicant.
- (4) As soon as practicable after being served with such a copy, the applicant in any such proceedings must serve a copy of the originating process on the objector.

**79 Notice of proceedings** (cf former Part 78, rules 76 and 87)

- (1) At least 14 days before the commencement of proceedings for the passing of accounts, the applicant must cause to be published a notice of:
  - (a) the filing of the accounts, and
  - (b) the order or orders claimed in the proceedings.
- (2) The notice must be published on the New South Wales Online Registry website.
- (3) The applicant must file an affidavit of compliance with this rule.
- (4) The Court may order the applicant to give notice of the proceedings to any person.

**80 Sureties** (cf former Part 78, rule 77)

- (1) At least 14 days before the commencement of proceedings for the passing of accounts for an estate in respect of which an administration bond has been executed under section 64 of the *Probate and Administration Act 1898*, the plaintiff must serve on each surety to the bond a copy of the notice referred to in rule 79 (1).
- (2) The plaintiff must file an affidavit of compliance with subrule (1).
- (3) Instead of or in addition to complying with subrules (1) and (2) in respect of any surety, the plaintiff may file the consent of the surety to an order passing the

accounts, with an affidavit verifying the consent endorsed on the document containing the consent.

**81 Inspection and appearance** (cf former Part 78, rule 78)

- (1) This rule applies if proceedings for the passing of accounts have been commenced but the hearing of the proceedings has not been completed.
- (2) Any person may inspect the accounts at any time after the commencement of the proceedings, without leave, unless the registrar otherwise directs.
- (3) Any person intending to object to the passing of the accounts may, at any time before completion of the hearing, enter an appearance in the proceedings.
- (4) Any person entering an appearance in the proceedings is to be joined as a defendant in the proceedings.

**82 Vouching** (cf former Part 78, rule 79)

Unless the Court otherwise directs, accounts are to be vouched:

- (a) in the absence of the public, and
- (b) without the appearance before the Court of any person, and
- (c) without an appointment being obtained for the vouching.

**83 Court may require further evidence, documents and notices** (cf former Part 78, rule 80)

In any proceedings for the passing of accounts, the Court:

- (a) may require further evidence to be furnished, further documents to be filed and further notices to be given, and
- (b) if satisfied that the accounts are correct, may make an order passing the accounts, and
- (c) if satisfied that any commission that is sought is appropriate, may make an order allowing commission.

**84 Certificate as to passing of accounts** (cf former Part 78, rule 81)

- (1) If the Court makes an order passing accounts, the registrar is to issue the applicant with a certificate as to the balance of the accounts.
- (2) If the Court makes an order allowing commission, the certificate must also certify as to:
  - (a) the amount of capital realised, and
  - (b) the amount of income collected, and



(c) the value of any assets transferred to beneficiaries, and

(d) where a business was carried on, the gross receipts and net profit earned or loss incurred,

during the period to which the accounts relate.

**85 Time for filing etc accounts under section 85 of P&A Act** (cf former Part 78, rules 71 and 73)

(1) For the purposes of section 85 (1) and (1AA) of the *Probate and Administration Act 1898*, the time within which accounts for an estate in respect of which:

(a) probate or administration has been granted, or

(b) a foreign grant has been resealed,

must be filed, verified and filed or verified, filed and passed, as the case requires, is 12 months after the relevant grant or resealing.

(2) An executor or administrator may, in the proceedings for the grant of probate or administration or the resealing of a foreign grant, move for an order extending the period for compliance with section 85 (1) or (1AA) of the *Probate and Administration Act 1898*, including an order extending the period until the further order of the Court, without the prior filing or service of notice of the motion.

**Note—**

These rules do not fix a time limit under section 85 (1A), (1B) or (5) of the *Probate and Administration Act 1898*. Subject to any order made by the Court, no time limit will therefore apply under those subsections.

**86 Renunciation of commission under section 86 (3) of P&A Act** (cf former Part 78, rule 86)

If, in any proceedings for the passing of accounts, the applicant wishes to renounce his or her right to commission:

(a) the applicant may do so, at any time before the hearing of the proceedings, by filing a renunciation of commission, and

(b) if the applicant does so, the accounts must be allowed in accordance with the indemnity referred to in section 86 (3) of the *Probate and Administration Act 1898*.

**Note—**

Under section 86 (3) of the *Probate and Administration Act 1898*, an executor, administrator or trustee who renounces their right to commission for work carried out in relation to a deceased's estate, and engages a legal practitioner to do that work (being non-professional work) on their behalf, is entitled to be indemnified by the estate, up to the amount of commission to which they would otherwise be entitled, for the legal practitioner's charges and disbursements in connection with that work.

**87 Reduction of excessive commission under section 86A of P&A Act** (cf former Part 78, rule

75A)

Proceedings for an order under section 86A of the *Probate and Administration Act 1898* are to be commenced by notice of motion in the parent proceedings.

**88 Notices and orders under section 87 of P&A Act** (cf former Part 78, rule 72)

- (1) A notice or order under section 87 of the *Probate and Administration Act 1898* may be served by sending it to the executor, administrator or trustee concerned at his or her address for service in relation to the parent proceedings.
- (2) If an order has been made under section 87 of the *Probate and Administration Act 1898* requiring an executor, administrator or trustee to show cause, any application for an order extending the period referred to in section 87 (1) of that Act must be made on the day appointed for showing cause.

**89 Order to file etc accounts** (cf former Part 78, rule 74)

Proceedings for an order that an executor, administrator or trustee of a deceased person's estate do any of the following:

- (a) file an inventory,
- (b) verify and file an inventory,
- (c) file accounts,
- (d) verify and file accounts,
- (e) file and pass accounts,
- (f) verify, file and pass accounts,
- (g) pass accounts filed,

must be commenced by notice of motion in the parent proceedings.

## Division 12 Forms

**90 Form of appointment: section 75A of P&A Act** (cf former Part 78, rule 90)

The following documents under section 75A of the *Probate and Administration Act 1898* must be in the approved form:

- (a) a notice of appointment of the NSW Trustee and Guardian or a trustee company by an executor or administrator,
- (b) a deed of appointment of the NSW Trustee and Guardian or a trustee company by an executor or administrator,

- (c) a notice of objection to the appointment of the NSW Trustee and Guardian or a trustee company by an executor or administrator.

**91 Affidavit of additional assets: section 81A of P&A Act** (cf former Part 78, rule 28A)

Disclosure of assets and liabilities under section 81A (1) and (2) of the *Probate and Administration Act 1898* must be effected by filing an affidavit of assets or an affidavit of additional assets, as the case requires.

**92 Form of acknowledgment: section 83 of P&A Act** (cf former Part 78, rule 89)

An acknowledgment for the purposes set out in section 83 of the *Probate and Administration Act 1898* must be in the approved form.

**93 Form of notice of intended distribution** (cf former Part 78, rule 91)

A notice under section 92 of the *Probate and Administration Act 1898*, section 93 of the *Succession Act 2006* or section 60 of the *Trustee Act 1925* must be published:

- (a) if the notice relates to the intended distribution of the estate of a deceased person in relation to which a grant of representation has been made or resealed by the Court, on the New South Wales Online Registry website, or
- (b) in any other case, in a Sydney daily newspaper.

**Note—**

The form currently approved under section 17 of the *Civil Procedure Act 2005* for a notice of intended distribution is Form 114 of the forms approved under that section.

## **Division 13 Functions of registrar**

**94**

- (1) The registrar may exercise the functions of the Court, in respect of all proceedings under the *Probate and Administration Act 1898*, Chapter 2 of the *Succession Act 2006* or this Part, in relation to the estates of deceased persons, otherwise than:
- (a) on the hearing of proceedings for contempt, or
- (b) on the hearing of an application for an order authorising a will to be made or altered, or for a will or part of a will to be revoked, by a minor, or
- (c) on the hearing of an application for an order authorising a will to be made or altered, or for a will or part of a will to be revoked, on behalf of a person who lacks testamentary capacity, or
- (d) on the hearing of an application for leave to make an application referred to in paragraph (c), or

- (e) on the hearing of an application for an order under section 67 or 89 of the *Probate and Administration Act 1898*, or
- (f) on the hearing of contested proceedings for:
  - (i) the grant of probate or administration, or
  - (ii) the resealing of a foreign grant, or
  - (iii) the rectification of a will, or
  - (iv) the determination of whether an interested witness can benefit under a will, or
  - (v) the determination of whether an informal testamentary document forms the deceased's will, an alteration of the deceased's will or a full or partial revocation of the deceased's will, or
  - (vi) an order under section 68, 84 or 84A (1) of the *Probate and Administration Act 1898*, or
  - (vii) an order under rule 51 or 71.
- (2) If the Court refers any matter to the registrar, the registrar may exercise the functions of the Court in respect of that matter.
- (3) The registrar may exercise the functions of the Court in respect of:
  - (a) proceedings for the revocation of a grant of probate in common form where the grant was made in error, and
  - (b) proceedings for the revocation of a grant of probate where the application for revocation is not contested, and
  - (c) proceedings for the passing of accounts, or the allowance of commission, under Division 11, and
  - (d) proceedings under section 21 of the *Status of Children Act 1996* for a declaration of parentage in connection with uncontested proceedings for the grant of probate or administration, or for the resealing of a foreign grant.

## **Part 79 Court of Disputed Returns**

### **Division 1 General**

#### **1 Application of Part**

This Part applies to proceedings in the Court in the exercise of its jurisdiction as the Court of Disputed Returns.

## 2 Interpretation

In this Part, unless the subject matter otherwise indicates or requires:

**Electoral District** means the Electoral District for which the election was held, and

**subject Act** means the *Parliamentary Electorates and Elections Act 1912*.

## 3 (Repealed)

## 4 Application of rules cf *High Court Rules*, O 68, r 2.

The rules, other than this Part, so far as applicable and not inconsistent with the subject Act and this Part, apply to proceedings to which this Part applies.

## 5 Appointment of solicitor cf Pt 66, r 5.

Where, after consent or leave is given to a party pursuant to section 171 of the subject Act to be represented by a solicitor and the party appoints a solicitor to act for him in the proceedings, the party shall file notice of the appointment and serve the notice on all other parties.

## Division 2 Disputed elections and returns

## 6 Application of Division

This Division applies to proceedings under Division 1 of Part 6 of the subject Act.

## 7 Interpretation

For the purposes of rule 4, unless the context or subject matter otherwise indicates or requires:

**plaintiff** means petitioner, and

**defendant** means respondent.

## 8 Commencement of proceedings

Proceedings in the Court shall be commenced by petition in the prescribed form, joining as respondent every person the validity of whose election or return is disputed.

## 9 Publication cf HCR, O 68, r 3.

The petitioner shall, forthwith after filing the petition:

(a) publish it in the Gazette, and

(b) publish a notice in the prescribed form in a newspaper circulating in the Electoral District.

## **10 Service of petition**

(1) The petitioner shall:

- (a) at the request of the Electoral Commissioner, serve the petition on the Electoral Commissioner personally,
- (b) within seven days after filing the petition, serve the petition on each respondent, other than the Electoral Commissioner, personally.

cf HCR, O 68, r 4.

(2) The request of the Electoral Commissioner under subrule (1) may be added to his notice of appearance.

## **11 Death of party**

(1) Where a sole petitioner dies before the trial, his solicitor or, if he had no solicitor, the respondent on learning of his death, shall file notice of the death.

cf HCR, O 68, r 12.

(2) Where a respondent (other than the Electoral Commissioner) dies before the trial, his solicitor or, if he had no solicitor, the petitioner on learning of his death, shall file notice of the death.

cf *Representation of the People Act, 1949* (Eng), s 134 (1) and *Election Petition Rules, 1960* (Eng), r 16.

(3) The Prothonotary shall publish notice of the death in a newspaper circulating in the Electoral District.

(4) The notice shall add a statement to the effect that any person who might have been a petitioner may, not later than 28 days after the publication of the notice, apply by motion to the Court at such time and place as the Court may appoint, to be substituted as a petitioner or as a respondent as the case may require.

## **12 Respondent not opposing petition**

(1) Where, before the trial of a petition, a respondent (other than the Electoral Commissioner) files a notice that he does not intend to oppose a petition, he shall serve the notice on the petitioner and publish the notice in a newspaper circulating in the Electoral District.

cf *Representation of the People Act, 1949* (Eng), s 134 (1), and *Election Petition Rules, 1960* (Eng), rr 15, 16.

(2) A notice under subrule (1) shall add a statement to the effect that any person who might have been a petitioner may, not later than 28 days after the publication of the

notice, apply by motion to the Court at such time and place as the Court may appoint to be substituted as a respondent.

- (3) A respondent who has filed a notice under subrule (1) shall not be allowed to appear or act as a party against the petition.
- (4) Where a respondent files a notice under subrule (1), the Prothonotary shall report that fact to the Clerk of the Legislative Assembly.

### **13 Substitution of petitioner or respondent**

(1) The Court may, on application by a person who might have been a petitioner, order that that person be substituted as a petitioner or as a respondent, as the case may require, and may make further orders for the conduct of the proceedings which may include orders relating to:

- (a) service of the order and other documents in the proceedings,
- (b) amendment, and
- (c) the sum required under section 158 of the subject Act as security for costs.

cf HCR, O 68, r 11 and *Representation of the People Act, 1949* (Eng), ss 127 (1), 134 (1).

(2) Where the Court orders that a party be substituted for another party or a former party, all things done in the proceedings before the making of the order shall, unless the Court otherwise orders, have effect in relation to the new party as those things had effect in relation to the old, but entry of appearance by the old party shall not dispense with entry of appearance by the new.

cf Part 8, r 11 (2).

### **14 Electoral Commissioner**

The Electoral Commissioner may apply to the Court under section 160 of the subject Act (which section relates to leave to enter an appearance) by motion in the proceedings.

### **15 Time limited for entry of appearance** cf Pt 7, r 5.

The time limited for entry of an appearance is:

- (a) in the case of the Electoral Commissioner, subject to any order of the Court—14 days after leave is granted to him to enter an appearance,
- (b) in the case of a respondent (other than the Electoral Commissioner)—14 days after service of the petition upon him,
- (c) in the case of any other person who might have been a petitioner—14 days after the publication of the petition in the Gazette.

**16 No step without appearance** cf Pt 11, r 22.

A person, other than a petitioner or the Electoral Commissioner, shall not, except by leave of the Court, take any step in any proceedings unless, before taking the step, he has filed a petition under the subject Act or has entered an appearance in the proceedings.

**17 Particulars** cf HCR, O 68, r 9.

The Court may order any party to file and serve on any other party particulars or further and better particulars of any matter alleged by him.

**18 Motions** cf Pt 19, r 1.

An interlocutory or other application, in or for the purposes of or in relation to the proceedings, shall be made by motion under the rules.

**19 Discontinuance** cf *Representation of the People Act, 1949* (Eng), s 128.

(1) Proceedings may not be discontinued without the leave of the Court.

cf HCR, O 68, r 11.

(2) Where there are two or more petitioners, an application for leave under subrule (1) may not be made, except with the consent of all the petitioners.

cf Pt 21, rr 1, 4.

(3) The Court may give leave under subrule (1) on terms.

(4) An application under subrule (1) should be made by motion at such time and place as the Court appoints.

(5) The notice of motion for leave under subrule (1) shall state the grounds on which the application is made and add a statement to the effect that, on the hearing of the motion, any person who might have been a petitioner in respect of the election may apply to the Court to be substituted as a petitioner.

(6) Not less than 14 days before the day appointed under subrule (4), the petitioner shall publish the notice of motion in a newspaper circulating in the Electoral District.

(7) Evidence on an application for leave under subrule (1) shall include evidence denying, subject to any specified exceptions:

(a) that any agreement or terms of any kind whatsoever has or have been made, and

(b) that any undertaking has been entered into,

in relation to the discontinuance in respect of which leave is sought.



## **20 Lists of objections to votes**

- (1) This rule applies where the petition (not being a petition merely claiming a fresh count of the votes counted at the election) claims the seat for a person not returned, alleging that that person had a majority of valid votes.

cf HCR, O 68, r 7.

- (2) Each party shall, not later than 14 days before the day appointed for the trial, serve on the opposite party a list of the votes or class of votes which he contends were improperly admitted or improperly rejected, stating, in respect of each, the grounds of the contention.

cf *Election Petition Rules, 1960* (Eng), r 10 (1).

- (3) A contention under subrule (2) by a party shall not be entertained upon a ground not specified in his list, except with the leave of the Court.
- (4) The Court may give leave under subrule (3) on terms.

## **21 Respondent's contention of undue election** cf HCR, O 68, r 8.

Where a petition claims a seat for a person not returned and a respondent wishes to contend, upon a ground not mentioned in rule 20 (2), that that person was not duly elected, he shall, not later than 14 days before the day appointed for the trial, serve on the petitioner a statement of the facts upon which he intends to rely and the grounds of the contention.

## **22 Trial**

- (1) The trial shall be held at a time and place to be appointed by the Court at the request of a party.

cf HCR, O 68, r 10 (2).

- (2) Not less than 14 days' notice of the time and place appointed shall:
  - (a) be given by the party obtaining the order to the other parties, and
  - (b) be published by the party obtaining the order in a newspaper circulating in the Electoral District.
- (3) The time and place of trial may be varied from time to time by the Court.
- (4) This rule does not affect the powers of the Court as to adjournment.

## **23 Evidence generally**

Division 1 of Part 31 of the *Uniform Civil Procedure Rules 2005* (which relates to evidence generally) applies on the trial of a petition as it applies on a trial in proceedings

commenced by statement of claim.

### **Division 3 Qualifications and vacancies**

#### **24 Application**

This Division applies to proceedings on a reference under Division 2 of Part 6 of the subject Act.

#### **25 Interpretation**

In this Division, unless the context or subject matter otherwise indicates or requires, **subject statement** means a statement mentioned in section 175C of the subject Act.

#### **26 (Repealed)**

#### **27 Transmitting of documents**

- (1) The subject statement is transmitted to the Court under section 175C of the subject Act by filing it in the registry.
- (2) Proceedings, papers, reports or documents are transmitted under section 175C of the subject Act by lodging them in the registry.

#### **28 Referring of question**

A question is referred under Division 2 of Part 6 of the subject Act when the Speaker files with the subject statement a summons claiming the determination of the question stated for determination in the subject statement.

#### **29 Parties**

The summons shall join the Speaker as plaintiff and, where the matter of the subject statement concerns an election or return or the qualification of a member of the Legislative Assembly, the person whose election or return is disputed or the member, as the case may be, as defendant.

#### **30 Service**

The Prothonotary shall serve the subject statement with the summons.

#### **31 Publication** *cf Court of Disputed Returns Rules, r (7).*

The Prothonotary shall, forthwith after the summons and subject statement are filed:

- (a) publish them in the Gazette, and
- (b) where the matter of the subject statement concerns an election or return, publish a notice in the prescribed form in a newspaper circulating in the Electoral District.

## Part 80 Companies (New South Wales) Code and Corporations Law

### Division 1 Preliminary

#### 1 Interpretation *cf Companies Rules, 1968, r 4.*

In this Part, unless the contrary intention appears:

**corporation** has the same meaning as it has in section 5 (1) of the Code.

**Companies Regulations** means the *Companies (New South Wales) Regulations*.

**liquidator** includes a provisional liquidator.

**officer** in relation to a corporation, has the same meaning as it has in section 5 (1) of the Code.

**prescribed newspaper** means:

- (i) where the proceedings relate to a corporation the prescribed office of which is, or, where the corporation does not have a prescribed office, the principal place of business of which is, or the last known principal place of business of which was, situated within 50 kilometres of the General Post Office, Sydney—a daily newspaper circulating generally in Sydney,
- (ii) where the proceedings relate to any other corporation—a newspaper circulating generally in the district in which the prescribed office of the corporation is situated or, where the corporation does not have a prescribed office, in which the principal place of business of which is, or the last known principal place of business of which was, situated.

**prescribed office** means:

- (a) where the corporation is a company—its registered office for the purposes of section 528 (1) of the Code,
- (b) where the corporation is a recognised company or a recognised foreign company—its principal office for the purposes of section 529 (1) of the Code,
- (c) where the corporation is a registered foreign company—its registered office for the purposes of section 530 (1) of the Code.

**the Code** means the *Companies (New South Wales) Code*.

**the Company** means the company in respect of which any proceedings are taken in the Court under the Code.

**1A Corporations Law**

Subject to any order of the Court and subject to Part 80A rule 2 and the *Supreme Court (Corporations) Rules 1999*, this Part applies, making such changes as it is necessary to make, to proceedings under the *Corporations Law* as it applies to proceedings under the *Companies (New South Wales) Code*.

**1B Corporations Law: affidavit (s 459E (3))**

An affidavit referred to in Section 459E (3) of the *Corporations Law* must:

- (a) be made:
  - (i) by the person serving the demand,
  - (ii) where the demand is served by more than one person—by one of those persons,
  - (iii) where the, or a, person serving the demand is a corporation—by a member or officer of the corporation having knowledge of the facts so far as they are known to the corporation, or
  - (iv) where the person serving the demand is the Crown—by an officer of the Crown having knowledge of the facts so far as they are known to the Crown,
- (b) set out the facts entitling the deponent under paragraph (a) to make the affidavit,
- (c) state the source of the deponent's knowledge of the matters stated in the affidavit concerning the debt or debts,
- (d) state that the deponent believes those matters to be true, and
- (e) state that the deponent believes that there is no genuine dispute about the existence or amount of the debt or debts to which the demand relates.

**1C Corporations Law: affidavit (s 459Q (c))**

An affidavit referred to in Section 459Q (c) of the *Corporations Law* must:

- (a) be made:
  - (i) by the plaintiff,
  - (ii) where there is more than one plaintiff—by one of them,
  - (iii) where the, or a, plaintiff is a corporation by a member or officer of the corporation having knowledge of the facts so far as they are known to the corporation, or
  - (iv) where the plaintiff is the Crown—by an officer for the Crown having knowledge of the facts so far as they are known to the Crown,
- (b) set out the facts entitling the deponent under paragraph (a) to make the affidavit,

- (c) state the source of the deponent's knowledge of the matters stated in the affidavit concerning the debt or debts,
- (d) state that the deponent believes those matters to be true, and
- (e) state that the deponent believes that there is no genuine dispute about the existence or amount of the debt or debts to which the demand relates.

**1D Corporations Law: affidavit (s 596C)**

- (1) An affidavit referred to in section 596C of the *Corporations Law* must set out:
  - (a) the facts relied on to establish that the applicant is an eligible applicant for the purposes of section 596B,
  - (b) the facts relied on to establish the matters referred to in section 596B (1) (b), and
  - (c) if production of books is to be required—the deponent's belief that the books, the production of which is sought, are reasonably required for the purposes of the examination, and the grounds for that belief.
- (2) A summons under section 596A or 596B of the *Corporations Law* shall be in Form 154A.

**Division 2 Proceedings under the Code generally**

**2 Commencement of proceedings**

- (1) Proceedings in the Court on an application for relief under the Code shall be commenced by summons.

cf CR 1968, r 23.

- (2) Nothing in subrule (1) prevents an application for relief under the Code being made by motion in existing proceedings.

**3 Additions above title** cf CR 1968, r 7.

A summons in proceedings for relief under the Code shall bear, above the title, a reference to the name of the corporation to which the proceedings relate together with "and the Companies Code".

**4 Directing notice of any application etc** cf CR 1968, r 22 (a).

- (1) The Court may, at any stage of proceedings under the Code, direct that notice of anything be given to any person or that any document be served on any person and give such further directions with respect to those matters or documents as it thinks fit.
- (2) This rule does not limit any other powers of the Court.

**5 Leave to creditor etc to be heard etc**

- (1) In any proceedings under the Code, the Court may, on terms, grant to any person who is, or claims to be, a creditor, contributory or officer of the company or an officer of a creditor or contributory of the company, leave to be heard in the proceedings without becoming a party, and may at any time revoke leave so granted.
- (2) In any proceedings under the Code, the Court may, on terms, order that any person who is or claims to be a creditor, contributory or officer of the company be added as a defendant, and make orders for the further conduct of the proceedings.
- (3) Leave may be granted to a person under subrule (1) and an order may be made adding a person under subrule (2) on application by the person or by any party or of the Court's own motion.
- (4) (Repealed)

**6 (Repealed)**

**7 Inquiry as to creditors** cf CR 1968, r 14, 22 (c).

- (1) The Court may direct an inquiry as to any debts, claims or liabilities or class thereof of or affecting any corporation to which any proceedings under the Code relate.
- (2) Where the Court directs an inquiry under subrule (1), rule 10 applies, with the necessary modifications, as it applies where the Court directs that a list of creditors be settled.

**8 Registrar furnishing copy of summons etc** cf CR 1968, r 17 (5).

The registrar shall, upon payment of the fee (if any) fixed under the Act, furnish to any person claiming to be a contributory, creditor or officer of the Company, an office copy of the summons and affidavits which are in the custody of the registrar and are filed by by the plaintiff in support of an application for the winding up of the Company.

**Division 2A Part II of the Code**

**8A Appeal from Board (s 30R)** cf CR 1968, r 39.

The Companies Auditors and Liquidators Disciplinary Board may, on application in writing made to it before the expiration of the time (other than the time extended by the Court) for instituting an appeal from its decision under section 30R of the Code, grant, by notice in writing, an extension of that time and where it does so, it shall deliver the notice to the applicant who shall file the notice with the summons instituting the appeal.

## Division 3 Parts III-XI of the Code

### 9 Applications under ss 73, 118, 122, 123, 125, 133 and 175 cf CR 1968, r 29.

(1) This rule applies to an application for an order under any of the provisions of the Code referred to in column 1 of the Table below:

**Table**

<b>Column 1</b>	<b>Column 2</b>
<b>Provision</b>	<b>Description</b>
73	Cancellation or alteration of the objects or powers of a company.
118	Confirmation of issue of shares at a discount.
122 (1)	Validation of issue or allotment of shares.
123 (5)	Confirmation of reduction of capital.
125 (4)	Cancellation, etc of variation or abrogation of rights of holders of special classes of shares.
133	Approving payment of interest out of capital
175 (5)	Confirmation of resolution to wind up scheme.

(2) The matter in column 2 of the above Table is inserted for convenience or reference only and does not affect the operation of the rules.

(3) Unless the Court otherwise orders, notice of an application to which this rule applies shall, not later than seven days before the date appointed for hearing, be published once in the Government Gazette and once in a prescribed newspaper.

(4) The notice mentioned in subrule (3) shall:

(a) in the case of an application for orders under section 123 (5) of the Code and for fixing a date under section 123 (3) (a) of the Code—be in Form 125, and

(b) in any other case—be in Form 126.

(5) Evidence in support of an application to which this rule applies shall include:

(a) a statement of the statute under which the Company was incorporated,

(b) a statement of the date of incorporation,

(c) unless the Company is the plaintiff or has entered an appearance, proof of:

(i) the address of its registered office at the date of search made under this subrule, being the latest address disclosed in a notice or annual return lodged with the Commission under section 84 (2) (b) (ia), section 85 (4) (fa), section

- 217 (1) or (3) or section 263 (1) of the Code,
- (ii) the date of lodgment of the notice or return disclosing that address, as ascertained by search made not earlier than three days before:
  - (iii) if the summons was served on the Company by post—the date of posting, or
  - (iv) if the summons was served otherwise—the date of service,
- (d) unless the Company is the plaintiff, the capacity in which the plaintiff makes the application.
- (6) Rule 20 applies to an application to which this rule applies as it applies to an application for a winding up order under the Code.

**10 Reduction of capital (s 123)** cf CR 1968, r 31.

- (1) This rule applies where, on an application for an order under section 123 (5) of the Code, the Court fixes a date under section 123 (3) (a) of the Code.
- (2) Within seven days after the date fixed under section 123 (3) (a) of the Code, the Company shall:
  - (a) make out a list of creditors, and
  - (b) file an affidavit in Form 127 verifying the list.
- (3) Copies of the list shall be kept at the registered office of the Company and be available for inspection there at all times when the office is required to be open and accessible to the public.
- (4) Within seven days after the date of filing the affidavit under subrule (2) (b), the Company shall:
  - (a) publish once in the Government Gazette and once in a prescribed newspaper a notice in Form 126, and
  - (b) serve on each creditor whose name is entered on the list mentioned in subrule (2)
    - (a) a notice in Form 128.
- (5) Within seven days after the expiry of the time fixed by the Court for creditors to send particulars of their claims to the solicitor for the Company, the Company shall file an affidavit in Form 129.
- (6) Where the Company contends that a person is not entitled to be entered on the list or disputes the amount of a debt or claim claimed by a person, the Company shall, unless the Company is willing to appropriate, as the Court directs, the full amount of the debt or claim, serve on the person a notice in Form 130.



- (7) The Court may, on the adjudication of claims:
- (a) allow any claim and fix the amount allowed,
  - (b) direct that any claim be investigated in such manner as the Court thinks fit,
  - (c) require any claimant to furnish particulars or evidence of his claim or produce any security relating to his claim, or
  - (d) disallow any claim.
- (8) Where a claimant does not comply with a notice served on him under subrule (6), the Court may disallow his claim.
- (9) In subrules (7) and (8), **claim** includes part of a claim.

**11 Reduction of capital: appointment for hearing (s 123)** cf CR 1968, r 32.

Where the Court settles the list under section 123 (3) (b) of the Code, the Court shall appoint a date for hearing of the proceedings on the application for the order under section 123 (5) of the Code.

**12 Registration of transfer of shares etc (s 184)**

- (1) An application to the Court for an order for the issue of a summons under section 184 (3) of the Code may be made without serving the summons by which the application is made on any person.
- (2) A summons under section 184 (3) of the Code may be in Form 131.

**13 (Repealed)**

**14 Compromise with creditors etc (ss 315, 317)** cf CR 1968, r 23 (i).

- (1) An application for relief under a subsection of section 315 of the Code, (which section relates to a compromise with creditors etc) other than under subsection (1) of that section, shall be made by motion in the proceedings on the application for the order under subsection (1) of that section.
- (2) Rule 9 applies to an application for an order under section 315 (4) or section 317 (1) of the Code as it applies to an application for an order under the provisions of the Code mentioned in rule 9 (1).
- (3) The Court may, on the application of any person whose rights are affected by a compromise or arrangement approved under section 315 (4) of the Code, fix or review the remuneration of the person appointed to administer the compromise or arrangement.

**15 Oppression or injustice (s 320 (2))**

Rules 18, 19, 20, 21 and 22 apply to an application for an order under section 320 (2) of the Code as they apply to an application for an order under section 364 (1) of the Code and as if for the reference in rule 18 (3) (e) to a paragraph of section 364 (1) of the Code there were a reference to a subparagraph of section 320 (1) (a) of the Code.

**16 Release of official manager (s 355) cf CR 1968, r 216.**

A person applying for an order under section 355 (19) or section 355 (20) of the Code shall give notice of his application:

- (a) to every creditor who has proved his debt, and
- (b) to any creditor mentioned in the report referred to in section 335 (4) of the Code who has not proved his debt.

**Division 4 Part XII of the Code (winding up)**

**17 Company Index: search (s 363) cf CR 1968, r 44 (1).**

Any person may, upon payment of the fee (if any) fixed under the Act, search in the Company Index kept in the registry against the name of the Company which is the subject of a winding up application or which is in the course of being wound up.

**18 Application for a winding up order under s 364 (1)**

- (1) This rule applies to an application for an order under section 364 (1) of the Code.
- (2) The summons claiming the order may be in Form 132.
- (3) The evidence in support of the application shall include:
  - (a) a statement of the statute under which the Company was incorporated,
  - (b) a statement of the date of incorporation,
  - (c) unless the Company is the plaintiff or has entered an appearance, proof of:
    - (i) the address of its registered office at the date of search made under this subrule, being the latest address disclosed in a notice or annual return lodged with the Commission under section 84 (2) (b) (ia), section 85 (4) (fa), section 217 (1) or (3) or section 263 (1) of the Code,
    - (ii) the date of lodgment of the notice or return disclosing that address, as ascertained by search made not earlier than three days before:
    - (iii) if the summons was served on the Company by post—the date of posting, or
    - (iv) if the summons was served otherwise—the date of service,

- (d) unless the Company is the plaintiff, the capacity in which the plaintiff makes the application,
- (e) the grounds of the application and a reference to the paragraph of section 364 (1) of the Code under which the plaintiff is proceeding.

(4) Unless the Court otherwise orders, notice in Form 126 of the application shall, not earlier than three days after the date of service on the Company of the summons claiming the order and not later than seven days before the date of hearing, be published once in the Government Gazette and once in a prescribed newspaper.

**19 Serial number: winding up** cf CR 1968, r 43.

The serial number assigned to the summons claiming an order for the winding up of the Company shall be borne by every document filed in proceedings in the winding up of the Company after the winding up order is made.

**20 Notice of intention to appear** cf CR 1968, r 27, 28.

- (1) This rule applies in proceedings on an application for a winding up order under the Code.
- (2) Where a person on whom the summons has not been served intends to appear on the hearing of the application, he shall add to his notice of appearance a note in Form 133.
- (3) The notice shall be served on the plaintiff before 1 in the afternoon of a day (being a day on which the registry is open for business) before the date appointed for hearing.
- (4) Where the plaintiff has received any notice mentioned in subrule (2) he shall, at or before the hearing, file a notice in Form 134.

**21 Substituted plaintiff in winding up application** cf CR 1968, r 52.

- (1) Where a plaintiff, in proceedings on an application for a winding up order:
    - (a) fails to take all the steps prescribed by these rules preliminary to the hearing,
    - (b) seeks the leave of the Court to discontinue the proceedings,
    - (c) consents to the proceedings being dismissed,
    - (d) does not appear when the proceedings are called on for hearing,
    - (e) does not claim the order at the hearing, or
    - (f) does not obtain the order at the hearing,
- the Court may, at any time, on terms, subject to the Code, on application of any person, make orders for the further conduct of the proceedings, including an order in

Form 135 substituting that person for the former plaintiff.

(2) (Repealed)

## **22 Discontinuance**

Rule 12.2 of the *Uniform Civil Procedure Rules 2005* does not apply to proceedings on an application for a winding up order.

### **22A Notice to liquidator of appointment**

(1) Where an order for the winding up of a Company is made, the plaintiff shall:

- (a) complete two forms of notice in Form 135A,
- (b) leave a copy with, and obtain a sealed copy from, the proper officer of the Court,
- (c) serve the sealed copy on the liquidator appointed:
  - (i) where the order is made before noon—before 5 in the afternoon,
  - (ii) where the order is made in the afternoon—before noon of the following day.

(2) A sealed copy is sufficiently served on a liquidator within the time prescribed in subrule (1) (c) if the information contained in the copy is transmitted to the liquidator's facsimile transmission number by a means that reproduces, in the hands of the liquidator, that information as it appears in the copy.

### **23 Form of winding up order** cf CR 1968, r 58.

A minute of a winding up order may be in Form 136.

### **23A (Repealed)**

### **24 Stay of proceedings against company (s 367)**

Where an action or other civil proceeding against a company is pending in the Court in a Division, an application to the Court for an order under section 367 (6) of the Code may be made by motion in the action or proceeding in that Division.

### **24A Validation of dispositions of property etc (s 368)**

An application for an order under section 368 (2) of the Code (which subsection relates to the validation of dispositions of property etc) shall be made by motion in the proceedings for the winding up order.

### **25 Proceedings against a Company after a winding up order (s 371)**

An application for leave under section 371 (2) of the Code may, where the proceedings in respect of which leave is sought have been commenced in a Division, be made by motion in those proceedings in that Division.

**26 Appointment of provisional liquidator (s 372)** cf CR 1968, r 50 (3).

- (1) An application for the appointment of a provisional liquidator under section 372 (2) of the Code shall be made by motion in the proceedings for the winding up order.
- (2) Any party obtaining an order under section 372 (2) of the Code shall:
  - (a) complete two forms of notice in Form 136A,
  - (b) leave a copy with, and obtain a sealed copy from the proper officer of the Court,
  - (c) serve the sealed copy on the provisional liquidator appointed:
    - (i) where the order is made before noon—before 5 in the afternoon,
    - (ii) where the order is made in the afternoon—before noon of the following day,
  - (d) publish once in the Government Gazette and once in a prescribed newspaper a notice in Form 137, and
  - (e) serve an office copy of the minute of order on the provisional liquidator.
- (3) A sealed copy is sufficiently served on a provisional liquidator within the time prescribed in subrule (2) (c) and an office is sufficiently served under subrule (2) (e) if the information contained in the copy is transmitted to the provisional liquidator's facsimile transmission number by a means that reproduces, in the hands of the provisional liquidator, that information as it appears in the copy.

**27 Notice to liquidator of appointment** cf CR 1968, r 55.

The registrar shall, forthwith after a person has been appointed liquidator or provisional liquidator, give notice to that person of his appointment.

**28 Notice of appointment of liquidator** cf CR 1968, r 57.

Where the Court makes an order for the winding up of the Company and appoints a liquidator, the liquidator shall, not later than seven days after the order is made, publish a notice in Form 138 once in the Government Gazette and once in a prescribed newspaper.

**29 Provisional liquidator (s 372)** cf CR 1968, r 50 (5).

- (1) Subject to the Code and the rules and subject to any directions of the Court, a liquidator appointed provisionally under section 372 (2) of the Code shall have power to carry on the business of the Company and the powers specified in section 377 (2) (a)-(k) of the Code.
- (2) For the purpose of enabling the provisional liquidator to take out letters of administration or recover money as mentioned in section 377 (2) (h) of the Code, the money due shall be deemed to be due to the provisional liquidator himself.

- (3) The exercise by the provisional liquidator of the powers conferred by this rule is subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

**30 Filling vacancy in office of liquidator (s 373)** cf CR 1968, r 89 (5).

A person applying to the Court for an order under section 373 (7) of the Code shall, not later than seven days before the date appointed for hearing, publish, in a prescribed newspaper, a notice of his intention to apply to the Court for the order.

**31 Copy of report under s 375 (7) (a)** cf CR 1968, r 66.

The copy of the report required to be filed with the Court under section 375 (7) (a) of the Code shall be a copy certified in writing by the liquidator of the Company to be a true copy of the original report.

**32 List of contributories (s 378 (1) (a))** cf CR 1968, r 140.

Where, in a winding up by the Court, a liquidator has settled a list or supplementary list of contributories, he shall, within 14 days after certifying it, file a copy of it and the certificate.

**33 Liquidator to file resolutions** cf CR 1968, r 100.

- (1) The liquidator appointed by the Court shall, after the passing of any resolution of a meeting of creditors, of contributories, of both or of the committee of inspection, file a copy certified by him of the resolution.
- (2) The certificate may be in Form 139.

**34 (Repealed)**

**35 Release of liquidator (s 381)**

- (1) A summons by which an application is made under section 381 (c) or section 381 (d) of the Code for an order that the liquidator be released shall bear a note "Section 382 (3) of the *Companies (New South Wales) Code* provides" and state the provisions of the subsection.
- (2) The liquidator shall file with a summons claiming an order mentioned in section 381 (c) or section 381 (d) of the Code a summary of receipts and payments in the winding up and a statement showing the position of the Company at the date of filing the summons.
- (3) The liquidator shall give notice of the application and copies of the summary and the statement:
  - (a) to every creditor who has proved his debt, and

(b) to every contributory.

cf CR 1968, r 206.

(4) The evidence in support of the application shall include statements in an affidavit by the liquidator to the following effect:

(a) "To the best of my belief there has been no act done or default made by me in the administration of the affairs of the company or otherwise in relation to my conduct as liquidator which is likely to give rise to any liability to the company or any creditor or contributory (*where applicable add* except as disclosed in this affidavit)",

(b) "I am not aware of any claim made by any person that there has been any such act or default (*where applicable add* except as disclosed in this affidavit)".

**36 Report by the liquidator to the Court: stay of winding up (s 383)** cf CR 1968, r 73 (1); (As to s 384 of the Code (delivery of property to liquidator and calls), see rules 40–45.)

A report by the liquidator to the Court under section 383 (2) of the Code may be furnished to the Court by filing it in Form 140.

**37 Special manager (s 385)** cf CR 1968, r 61.

- (1) This rule applies to proceedings in the Court under section 385 of the Code (which section relates to a special manager).
- (2) The liquidator may file an unverified statement in support of the application, instead of an affidavit.
- (3) Security is sufficiently given if it is given for any winding up in which the person giving security is appointed a special manager.
- (4) The Court may at any time and from time to time give directions for the giving of security in a different amount to the amount for which security was previously given.
- (5) Where security is given to the satisfaction of an associate Judge he shall give a certificate to that effect.

**38 Accounting by special manager** cf CR 1968, r 62.

- (1) Subject to any order of the Court under section 385 (2) (a) of the Code, the special manager shall furnish his accounts to the liquidator.
- (2) The accounts shall be verified by affidavit.
- (3) The affidavit may be in Form 141 and subscribed to the accounts.
- (4) When the accounts are approved by the liquidator, the totals of the receipts and

payments shall be included by the liquidator in his accounts.

**39 Default of special manager** cf CR 1968, r 64.

- (1) Where any special manager is required by the rules or any direction of the Court to do anything and does not carry out the requirement, the liquidator shall apply to the Court for directions in respect of the default and the Court may make such orders and give such directions as the Court thinks fit.
- (2) Without limiting subrule (1), where a special manager is required by the rules or by any order or direction of the Court to pay into Court any sum shown by his account as due from him, and he does not comply with the requirement, the Court may charge him with interest at the rate prescribed for payment of interest by a receiver under Rule 26.6 (3) of the *Uniform Civil Procedure Rules 2005* on that sum while in his possession as special manager.
- (3) This rule does not limit the powers of the Court as to the enforcement of orders or as to the punishment of contempt.

**40 Requirement by liquidator to pay money etc (ss 384 (1) and 389)** cf CR 1968, r 136.

A requirement by a liquidator under section 384 (1) of the Code may be in Form 142.

**41 Calls: sanction of committee of inspection (ss 384 (3), 389)** cf CR 1968, r 145 (1).

- (1) In a winding up by the Court the liquidator shall, for the purpose of obtaining the sanction of the committee of inspection under section 389 (2) (a) of the Code:
  - (a) convene a meeting of the committee by serving notice in Form 143 on every member of the committee so as to reach him not later than seven days before the date appointed for the meetings,
  - (b) serve on every member of the committee, with the notice mentioned in paragraph (a), a statement in Form 144, and
  - (c) publish notice of the meeting in Form 145 once in the Government Gazette and once in a prescribed newspaper or as the Court may direct.
- (2) The committee shall, before sanctioning the proposed call, consider representations (if any) made by any contributory to the liquidator or any member of the committee in writing before or at, or orally at, the meeting.
- (3) A resolution of the committee of inspection sanctioning a call may be in Form 146.

**42 Application for leave to make a call (ss 384 (3), 389)** cf CR 1968, r 146.

- (1) This rule applies to proceedings on an application for an order under section 389 (2) (a) of the Code (which section relates to leave to make a call).



- (2) The summons may be in Form 147.
- (3) The affidavit in support of the application may be in Form 148.
- (4) Subject to subrule (5), the summons shall be served on each contributory on whom it is proposed the call should be made.
- (5) The summons need not be served on the contributories where the Court directs that notice of the proposed call may be given by advertisement.
- (6) The advertisement may be in Form 149.
- (7) The copy of the summons served on a contributory may show only the amount claimed to be owing by him.
- (8) The order granting leave may be in Form 150.

**43 Filing notice of amount of call per share (ss 384 (3), 389)** cf CR 1968, r 146.

Where in a winding up by the Court the liquidator is authorised under section 389 (2) (a) of the Code to make a call, he shall file a notice in Form 151 showing the amount of the call per share.

**44 Call on contributories (ss 384 (3), 389)** cf CR 1968, r 147.

- (1) In a winding up by the Court, the liquidator shall make a call on a contributory by serving a notice in Form 152 or Form 153 as the case may require, on the contributory.
- (2) The Court may direct that notice of the order granting leave to make the call or of the resolution sanctioning the making of the call be advertised.

**45 Application for order for payment of call (s 384 (3) (b))** cf CR 1968, r 148; (As to s 385 of the Code (special manager), see rules 37–39.)

Evidence in support of an application for an order under section 384 (3) (b) of the Code (which relates to an order for payment of a call) shall include an estimate of the amount owing by each contributory (if more than one) in respect of the costs of the application and of carrying it into effect and a statement that the estimate is based on an apportionment of the costs of the application equally among the contributories who have not paid the call.

**46 Powers of liquidator (s 389)**

Subject to the Code, the rules and the Companies Regulations, the powers and duties conferred or imposed on the Court by Part XII of the Code in respect of:

- (a) the holding and conducting of meetings to ascertain the wishes of creditors and contributors,

- (b) the paying, delivering, conveyance, surrender or transfer of money, property or books to the liquidator,
  - (c) the making of calls and the adjusting of the rights of contributories among themselves and the distribution of any surplus among the persons entitled to it, and
  - (d) the fixing of a time within which debts and claims must be proved,
- may be exercised and shall be performed by the liquidator as an officer of the Court and subject to the control of the Court.

**47 Proceedings against company after voluntary winding up (ss 401, 402)**

An application for leave under section 401 (2) or section 402 (2) of the Code may, where the proceedings in respect of which leave is sought have been commenced in a Division, be made by motion in the proceedings.

**48 Complaints concerning liquidator (s 420 (1))**

A complaint to the Court under section 420 (1) of the Code shall be filed with the summons claiming an inquiry under the subsection in respect of the matter complained of.

**49 Report concerning liquidator (s 420 (2))** cf CR 1968, r 211.

- (1) A report to the Court by the Commission under section 420 (2) of the Code shall be filed with the summons claiming orders under the subsection in respect of the matter reported.
- (2) A report made under section 420 (2) of the Code shall not be inspected or used except by leave of the Court.

**50 Resignation of liquidator (s 421)** cf CR 1968, r 89 (1).

Where, in a winding up by the Court, the liquidator resigns, he shall, within the time prescribed by section 421 (2) of the Code, file a copy of the notice of the resignation in the form prescribed by the Companies Regulations.

**51 (Repealed)**

**52 Report by the chairman to the Court: meeting of creditors etc (s 431)** cf CR 1968, r 73 (1).

A report by the chairman to the Court under section 431 (1) of the Code may be made by filing a report in Form 140.

**53 Committee of inspection (s 432)** cf CR 1968, r 74 (2).

- (1) The Court may, in proceedings for an order under section 432 (2) of the Code (which subsection relates to the appointment of a committee of inspection) make an appointment for hearing of the proceedings and give directions for service and

publication of notice of the appointment.

(2) On the hearing the Court may hear the liquidator, any creditor and any contributory.

**54 Filing proof of debt (s 438)** cf CR 1968, r 164.

In a winding up by the Court the liquidator shall, within three days after service upon him of a summons instituting an appeal from his decision rejecting a creditor's proof of debt, file the proof and a copy of the notice given by him under regulation 125 (1) of the Companies Regulations.

**55 (Repealed)**

**56 Disclaimer (s 454)** cf CR 1968, r 130.

The applicant for leave under section 454 (6) of the Code shall file an affidavit showing who the persons interested are and their interests.

**57 Winding up of bodies other than companies (s 470)**

The rules apply, with such adaptations as are necessary, to a body to which Part XII Division 6 of the Code applies as they apply to a Company.

**58 Stay of proceedings against body other than a Company (s 472)**

An application for leave under section 472 (2) of the Code may, where the proceedings in respect of which leave is sought have been commenced in a Division, be made by motion in those proceedings in that Division.

**Division 5 Part XIV of the Code (miscellaneous)**

**59 Security for costs: plaintiff corporation (s 533)** cf CR 1968, r 3 (3).

Where a proceeding referred to in section 533 of the Code (which section relates to a plaintiff corporation giving security for costs) has been commenced in a Division, an application under that section may be made by motion in those proceedings in that Division.

**60 (Repealed)**

**61 Appeal from liquidator etc (s 538)** cf CR 1968, r 39.

A person mentioned in section 538 (a), (b), (c) or (d) may, on application in writing made to him before the expiration of the time (other than the time extended by the Court) for instituting an appeal from his act, omission or decision, grant, by notice in writing, an extension of that time and where he does so, he shall deliver the notice to the applicant who shall file the notice with the summons instituting the appeal.

**61A Irregularities (s 539)**

Subject to any direction of the Court, an application for an order under section 539 of the Code in or for the purposes of or in relation to any proceedings in the Court may be made by motion in those proceedings.

**62 Examination of person concerned with corporation (s 541)** cf CR 1968, r 119–126.

- (1) This rule applies to proceedings on an application to the Court for an order under section 541 (3) of the Code.
- (2) The summons by which the application is made shall be served:
  - (a) where a liquidator has been appointed, unless he is the applicant—on the liquidator, and
  - (b) unless the Commission is the applicant—on the Commission,and need not be served on any other person unless the Court so directs.
- (3) The applicant shall, when making the application, lodge in the registry a draft minute in Form 154 of the order sought.
- (4) A minute of the order made shall be served personally on the person who is to be examined and shall be served, where the liquidator is the applicant, on the Commission and, where the Commission is the applicant, on the liquidator.
- (5) The applicant shall publish once in the Government Gazette and once in a prescribed newspaper, notice of the time and place appointed for the holding of an examination but not, unless the Court so orders, for the holding of an adjourned examination.
- (6) Where the Court makes an order under section 541 (13) of the Code, the written record, signed if so required by the Court under that subsection, shall be filed in the registry.
- (6A) Where:
  - (a) the examination of a person under section 541 of the Code is held wholly or partly in public, and
  - (b) a written record or transcript of the questions put to the person and the answers given by the person at the examination is filed in the registry,the registrar shall, upon application by the person made within 3 years of the date of the conclusion of the examination and payment of the prescribed fee, furnish to the person a copy of the written record or transcript of such part of his examination as is held in public.
- (7) A transcript is authenticated under section 541 (14) of the Code by a certificate by the

person who made the transcript certifying it to be a correct record of the examination.

- (8) A written record or transcript of an examination under section 541 of the Code shall not, except with the leave of the Court, be open to inspection by any person.
- (9) Subrule (8) does not apply to the liquidator or any person authorised by the Commission.
- (10) Where the examination is held before a court other than the Court, the powers of the Court under this rule may be exercised by that other court.

**63 Default in relation to an examination** cf CR 1968, r 127 (2).

- (1) Where a registrar constitutes the Court for the purpose of an examination under section 541 of the Code and a person (the **person in default**) refuses or fails to do anything mentioned in section 541 (7), (8) or (9) of the Code, he shall, at the request of any person who took part in the examination, give to that person a certificate, signed by him, of the refusal or failure.
- (2) The Court may, upon the certificate being filed and on motion by any party, order the person in default:
  - (a) to do the thing, and
  - (b) to pay any costs occasioned by his refusal or failure.

## Division 6 Meetings ordered by the Court

**64 Application of regulations** cf CR 1968, r 92.

Subject to the Code and subject to any directions of the Court, the provisions of regulations 84–99 of the Companies Regulations apply to and in respect of meetings ordered by the Court.

## Part 80A Corporations Law and ASC Law

### Division 1 Preliminary

**1A (Repealed)**

**1 Interpretation**

In this Part, unless the contrary intention appears:

- (a) **subject Act** means the *Corporations (New South Wales) Act 1990*.

**advertised** means published in the Commonwealth of Australia Gazette and in a prescribed newspaper.

**Corporations Law** has the meaning given by section 13 of the subject Act.

**prescribed newspaper** means:

- (i) where the registered office of the subject corporation is within 100 kilometres of the General Post Office, Sydney—a daily newspaper circulating generally in Sydney,
- (ii) where the subject corporation does not have a registered office, and its principal place of business or last known principal place of business is or was within 100 kilometres of the General Post Office, Sydney—a daily newspaper circulating generally in Sydney, or
- (iii) in any other case—a newspaper circulating generally in the district in which the registered office of the subject corporation is situated or, if it does not have a registered office, in which its principal place of business or last known principal place of business is or was situated.

**subject corporation** means corporation to which the application relates,

- (b) subject to this rule, a word or expression defined in the *Corporations Law* (other than for the purposes of limited parts thereof) has the meaning as so defined,
- (c) a reference to a section is a reference to a section of the *Corporations Law*.

## 2 Application

Subject to any order of the Court, this Part applies to:

- (a) proceedings under the *Corporations Law* or the *ASC Law* commenced in the Court after 30 January 1994 and before the *Supreme Court (Corporations) Rules 1999* commence, and
- (b) applications made under the *Corporations Law* or the *ASC Law* after 30 January 1994 in proceedings in the Court commenced before the *Supreme Court (Corporations) Rules 1999* commence.

## 3 Commencement of proceedings

- (1) Subject to rule 18.1 of the *Uniform Civil Procedure Rules 2005* (which relates to applications by motion) and to subrules (2), (4) and (5), proceedings in the Court for relief under the *Corporations Law* or the *ASC Law* must be commenced by summons under Part 5 rule 4B (as in force at the relevant time before the commencement of the *Supreme Court (Corporations) Rules 1999*).
- (2) Proceedings in the Court on an application:
  - (a) for an order for the winding up of a corporation shall be commenced by summons under Part 5 rule 4A (as in force at the relevant time before the commencement of the *Supreme Court (Corporations) Rules 1999*),

(b) for other relief under the *Corporations Law* where:

(i) it is necessary to obtain an early appointment for hearing, and

(ii) the plaintiff intends to be ready to proceed at the time appointed,

whether for final or interlocutory relief or directions, may be commenced by summons under Part 5 rule 4A (as in force at the relevant time before the commencement of the *Supreme Court (Corporations) Rules 1999*).

(3) The summons must state above the title:

(a) the name of the subject corporation followed, where appropriate, by the words “(in liquidation)”, “(provisional liquidator appointed)”, “(receiver appointed)”, “(receiver and manager appointed)”, “(under official management)” or “(administrator appointed)”,

(b) (if applicable) the registered number of the subject corporation preceded by the words “Australian Company Number” (which may be abbreviated to “ACN”) or “Australian Registered Body Number” (which may be abbreviated to “ARBN”) as the case may be, and

(c) the words “and the *Corporations Law*” or “and the *ASC Law*”, as the case may be.

(4) Without limiting the generality of rule 18.1 of the *Uniform Civil Procedure Rules 2005*, application of the following kinds must be made by motion in the relevant winding up proceedings, namely:

(a) an application for an order under section 467 (7) (which relates to staying existing proceedings),

(b) an application for an order under section 468 (which relates to avoidance of dispositions of property),

(c) an application for an order under section 472 (which relates to provisional liquidators), and

(d) any application in the winding up of the subject corporation.

(5) An application for an order under section 471B or section 500 (2) in respect of existing proceedings in the Court in a Division may be made by motion in those proceedings.

(6) Notwithstanding subrule (4) and rule 18.1 of the *Uniform Civil Procedure Rules 2005*, an application for the issue of an Examination Summons under section 596A or section 596B must be made by summons.

#### **4 Registration of transfer of shares etc (s 1092 (3))**

(1) An application to the Court for an order for the issue of a summons, under section

1092 (3) may be made, without serving the summons by which the application is made on any person.

(2) A summons under section 1092 (3) may be in Form 154BA.

## **Division 2 Proceedings generally**

### **5 Additional powers of the Court**

Without limiting its other powers, the Court may at any time in proceedings, on application by a party or of its own motion:

- (a) direct that notice of any matter be given by advertisement or otherwise to any person or class of persons,
- (b) direct that a document be served on any person,
- (c) grant to any person who is or claims to be a creditor, contributory or officer of a subject corporation, or an officer of such a creditor or contributory, leave to be heard without becoming a party,
- (d) revoke, or vary the terms and conditions of, any such leave,
- (e) order that any person who is or claims to be a creditor, contributory or officer of a subject corporation be added as a defendant,
- (f) appoint any creditor or contributory of a subject corporation to represent, at the expense of that corporation, all or any class of creditors or contributories of that corporation for the purpose of the proceedings or any part of them, and
- (g) revoke, or vary the terms and conditions of, any such appointment.

### **6 (Repealed)**

### **7 Inquiry as to creditors etc**

- (1) The Court may direct an inquiry as to any debts, claims or liabilities or any class of debts, claims or liabilities of a subject corporation.
- (2) Where the Court directs an inquiry under subrule (1), subject to any further direction of the Court, rule 13 applies with such modifications as may be necessary as though settlement of a list of creditors was required.

### **8 Registrar furnishing copy of summons etc**

The registrar shall, upon payment of the fee (if any) fixed under the Act, furnish to any person claiming to be a contributory, creditor or officer of the subject corporation, an office copy of the summons and affidavits which are in the custody of the registrar and are filed by the plaintiff in support of an application for the winding up of the subject



corporation.

## 9 Notice of intention to appear

- (1) Any person who intends to appear on the hearing of an application, notice of which has been advertised under this Part, who is not already a party, must, not later than 2 days before the date appointed for the hearing:
  - (a) file a notice of appearance which must include:
    - (i) a statement of the relationship of the person to the subject corporation, and
    - (ii) a statement that the person intends to support or oppose the application, as the case may be, and
  - (b) serve the notice of appearance on the plaintiff and on each other party of whose address for service the person has notice.
- (2) (Repealed)

## Division 3 Advertisement

### 10 Advertisement and inspection of certain applications

- (1) This rule applies to an application for an order under any of the provisions of the [Corporations Law](#) referred to in column 1 of Table 1 below.

**Table 1**

<b>Column 1</b>	<b>Column 2</b>
<b>Provision</b>	<b>Description</b>
s 246D (5)	Rights of holders of classes of shares and of members
s 254E (1)	Validation of shares improperly issued
s 411 (4) (b) and (6)	Compromises and arrangements
s 413 (1)	Reconstruction and amalgamation of Part 5.1 bodies
s 459A	Winding up (insolvency)
s 461	Winding up (general grounds)
s 601FP	Appointment of temporary responsible entity
s 601ND (1)	Winding up of schemes

- (2) The descriptions in column 2 of Table 1 are inserted for convenience of reference only, and do not affect the operation of this rule.
- (3) Subject to subrule (4), notice of an application to which this rule applies must be

advertised not later than 7 days before the date appointed for the hearing.

- (4) Notice of an application for an order under section 459A or section 461 must not be advertised earlier than 3 days after the date of service of the summons on the subject corporation.
- (5) The notice shall be in Form 154B.
- (6) Where an application to which this rule relates is made otherwise than by the subject corporation, the applicant shall, as soon as practicable after filing the document by which proceedings in the application is commenced, and in any event not later than 14 days after that document is filed, serve that document and the affidavit in support of the application on the subject corporation.
- (7) Any creditor, contributory or officer of a subject corporation shall at any time before the date appointed for the hearing be entitled to inspect at the address specified in the notice copies of the summons and supporting affidavits in respect of any application, notice of which has been advertised under this rule.

## Division 4 Notice to ASIC

### 11 Service of certain applications

- (1) This rule applies to an application for an order under any of the provisions of the *Corporations Law* referred to in column 1 of Table 2 below.

**Table 2**

<b>Column 1</b>	<b>Column 2</b>
<b>Provision</b>	<b>Description</b>
s 342 (8)	Restoration of name to the register
s 350 (9)	Restoration of name to the register (foreign company)
s 411 (1) or (1A)	Administration of compromises
s 480	Release of liquidator
s 536 (1)	Supervision of liquidators
s 601AH (2)	Reinstate deregistered company
s 737	Prohibited acquisition
s 739	Protection of rights under a takeover scheme
s 740	Unfair agreements
s 741	Defaulting substantial shareholder

s 742

Undisclosed beneficial shareholder

- (2) The descriptions in column 2 of Table 2 are inserted for convenience of reference only, and do not affect the operation of this rule.
- (3) Subject to section 411 (2), copies of the summons and supporting affidavits in respect of an application to which this rule applies must be served on ASIC a reasonable time before the date appointed for the hearing of the application.

## **Divisions 5, 6**

### **12, 13 (Repealed)**

## **Division 6A Remuneration of receiver, administrator and special manager**

### **13A Remuneration of receiver (s 425 (1))**

- (1) The summons or notice of the motion, by which application is made by a receiver for an order fixing his or her remuneration under section 425 (1), must not be filed until the expiration of 21 days after the applicant has served notice in Form 154I of his or her intention to apply for the order, together with a copy of the affidavit on which the applicant intends to rely, on:
  - (a) the person who appointed the receiver,
  - (b) any other creditor holding security over all or any of the same property,
  - (c) any liquidator or provisional liquidator of the subject corporation,
  - (d) any administrator of the subject corporation,
  - (e) any administrator of a deed of company arrangement executed by the subject corporation, and
  - (f) if there is no person of the kinds referred to in (c), (d) and (e):
    - (i) each of the 5 largest unsecured creditors of the subject corporation, and
    - (ii) each member of the subject corporation whose shareholding represents at least 10 per cent of the issued capital.
- (2) Any creditor or contributory or any of the persons referred to in paragraphs (c), (d) and (e) of subrule (1) may within 21 days after service of the last of the notices required by subrule (1) deliver to the applicant a notice of objection to the remuneration claimed, stating the grounds of objection.
- (3) Where the applicant files with the summons or notice of motion an affidavit made

after the expiration of the lastmentioned period of 21 days:

- (a) proving service of the notices required by subrule (1) (b), and
- (b) stating that he or she has received no notice of objection to the remuneration claimed,

and the summons or notice of motion is endorsed with a request that the application 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, the application may be so dealt with by the Court.

- (4) The summons or notice of motion must be served on any creditor or contributory or other person who has given notice of objection under subrule (2).
- (5) The evidence in support of the application must include an affidavit stating:
  - (a) the nature of the work carried out by the applicant together with a summary of receipts and payments for the relevant period, and
  - (b) if at the time of the application the applicant remains the receiver, any matters delaying the completion of the receivership.

### **13B Remuneration of administrator (s 449E (1))**

- (1) The summons or notice of the motion, by which application is made for an order fixing an administrator's remuneration under section 449E (1), must not be filed until the expiration of:
  - (a) 28 days after the date when a meeting of creditors referred to in section 449E (1) was last held, and
  - (b) 21 days after the applicant has served notice in Form 154I of his or her intention to apply for the order, together with a copy of the affidavit on which the applicant intends to rely, on:
    - (i) each creditor who was present in person or by proxy at the meeting of creditors,
    - (ii) each member of any committee of inspection, and
    - (iii) each member of the subject corporation whose shareholding represents at least 10 per cent of the issued capital.
- (2) Any creditor or contributory may within 21 days after service of the last of the notices required by subrule (1) deliver to the applicant a notice of objection to the remuneration claimed, stating the grounds of objection.
- (3) Where the applicant files with the summons or notice of motion an affidavit made

after the expiration of the lastmentioned period of 21 days:

- (a) proving service of the notices required by subrule (1) (b), and
- (b) stating that he or she has received no notice of objection to the remuneration claimed,

and the summons or notice of motion is endorsed with a request that the application 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, the application may be so dealt with by the Court.

- (4) The summons or notice of motion must be served on any creditor or contributory who has given notice of objection under subrule (2).
- (5) The evidence in support of the application must include an affidavit stating:
  - (a) the nature of the work carried out by the applicant together with a summary of receipts and payments for the relevant period, and
  - (b) if at the time of the application the applicant remains the administrator, any matters delaying the completion of the administration.

### **13C Remuneration of special manager (s 484 (2))**

- (1) The summons or notice of the motion, by which application is made by a special manager for an order fixing his or her remuneration under section 484 (2), must not be filed until the expiration of 21 days after the applicant has served notice in Form 154I of his or her intention to apply for the order, together with a copy of the affidavit on which the applicant intends to rely, on:
  - (a) the liquidator,
  - (b) each member of any committee of inspection, or if there is no committee of inspection, each of the 5 largest creditors of the subject corporation, and
  - (c) each member of the subject corporation whose shareholding represents at least 10 per cent of the issued capital.
- (2) The liquidator or any creditor or contributory may within 21 days after service of the last of the notices required by subrule (1) deliver to the applicant a notice of objection to the remuneration claimed, stating the grounds of objection.
- (3) Where the applicant files with the summons or notice of motion an affidavit made after the expiration of the lastmentioned period of 21 days:
  - (a) proving service of the notices required by subrule (1) (b), and
  - (b) stating that he or she has received no notice of objection to the remuneration

claimed,

and the summons or notice of motion is endorsed with a request that the application 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, the application may be so dealt with by the Court.

- (4) The summons or notice of motion must be served on the liquidator or any creditor or contributory who has given notice of objection under subrule (2).
- (5) The evidence in support of the application must include an affidavit stating:
  - (a) the nature of the work carried out by the applicant together with a summary of receipts and payments for the relevant period, and
  - (b) if at the time of the application the applicant remains the special manager, any matters delaying the completion of the special management.

## **Division 7 Winding up**

### **14 Index: search**

Any person may, upon payment of the fee (if any) fixed under the Act, search in the index kept in the registry against the name of a subject corporation.

### **15 Form of affidavit in support of statutory demand (s 459E (3))**

- (1) An affidavit referred to in section 459E (3) must:
  - (a) subject to subrule (2), be made by the creditor or, where there is more than one creditor, by one of them,
  - (b) set out the facts entitling the deponent under paragraph (a) to make the affidavit,
  - (c) state the source of the deponent's knowledge of the matters stated in the affidavit concerning the debt or debts,
  - (d) state that the deponent believes those matters to be true, and
  - (e) state that the deponent believes that there is no genuine dispute about the existence or amount of the debt or debts to which the demand relates.
- (2) In the case of a creditor which is:
  - (a) a corporation—an affidavit by a member or officer of the corporation having knowledge of the facts so far as they are known to the corporation is taken to be an affidavit by the creditor,
  - (b) the Crown—an affidavit by an officer of the Crown having knowledge of the facts so far as they are known to the Crown is taken to be an affidavit by the creditor,

and

(c) a company to which a liquidator or provisional liquidator has been appointed—an affidavit by the liquidator or provisional liquidator is taken to be an affidavit by the creditor.

(3) An affidavit under this rule must:

- (a) be in accordance with the prescribed form,
- (b) contain the statement headed “Important Note” set out in the form, and
- (c) not state a proceeding number.

(4) An affidavit under this rule must not be filed with the Court.

(5) For the purposes of section 459E (3), an affidavit in support of a statutory demand that complies with the rules of:

- (a) the Federal Court of Australia, or
- (b) the Supreme Court of another State or Territory in which the registered office of the company to be served is situated,

is taken to be an affidavit that complies with this rule.

(6) In subrule (2), **Crown** includes not only the Crown in right of New South Wales but also the Crown in any other capacity.

**16 Form of affidavit in support of an application to wind up relying on failure to comply with statutory demand (s 459Q (c))**

(1) An affidavit referred to in section 459Q (c) must:

- (a) be in accordance with the prescribed form,
- (b) subject to subrule (2), be made by the plaintiff or, where there is more than one plaintiff, by one of them,
- (c) set out the facts entitling the deponent under paragraph (b) to make the affidavit,
- (d) state the source of the deponent’s knowledge of the matters stated in the affidavit concerning the debt or debts,
- (e) state that the deponent believes those matters to be true, and
- (f) state that the deponent believes that there is no genuine dispute about the existence or amount of the debt or debts to which the demand relates.

(2) In the case of a plaintiff which is:

- (a) a corporation—an affidavit by a member or officer of the corporation having knowledge of the facts so far as they are known to the corporation is taken to be an affidavit by the plaintiff,
  - (b) the Crown—an affidavit by an officer of the Crown having knowledge of the facts so far as they are known to the Crown is taken to be an affidavit by the plaintiff, and
  - (c) a company to which a liquidator or provisional liquidator has been appointed—an affidavit by the liquidator or provisional liquidator is taken to be an affidavit by the plaintiff.
- (3) In subrule (2), **Crown** includes not only the Crown in right of New South Wales but also the Crown in any other capacity.

### **17 Time prescribed (s 465C)**

The period prescribed for the purposes of section 465C is a period terminating 2 days before the date appointed for the hearing.

### **18 Evidence in support of winding up application**

The evidence in support of an application for the winding up of a corporation shall include:

- (a) an affidavit stating:
  - (i) unless the plaintiff is the subject corporation, the capacity in which the plaintiff makes the application under section 459P or section 462 (2),
  - (ii) the grounds of the application and a reference to the provision or provisions of the [Corporations Law](#) on which the plaintiff relies,
  - (iii) the statute under which the subject corporation was incorporated,
  - (iv) the date of its incorporation,
  - (v) whether or not an administrator has been appointed to the subject corporation and, if so, details of that appointment, as ascertained by a search of the records maintained by ASIC made not earlier than seven days before the summons was filed,
  - (vi) whether or not a winding up application was pending or a winding up order had been made against the subject corporation and, if so, details of that application or order, as ascertained by a search of the records maintained by ASIC made not earlier than seven days before the summons was filed, and
- (b) unless the subject corporation is the plaintiff or has entered an appearance, proof of the address of its registered office as ascertained by a search of the records maintained by ASIC made not earlier than 7 days before the summons was filed,



supported by a copy of the last or only notice of the address, or change in the situation, of its registered office lodged with ASIC or with any predecessor of ASIC.

**19 Discontinuance (ss 459 and 461)**

Proceedings shall not be discontinued without the leave of the Court, so far as they concern a claim for a winding up order under section 459A or section 461.

**20 Service of notice of appointment of liquidator or provisional liquidator**

(1) Where the Court appoints a liquidator or a provisional liquidator:

(a) the plaintiff must:

- (i) obtain from the Court and serve on the liquidator or provisional liquidator by delivery or by facsimile transmission to his or her office, a sealed copy of a notice in Form 154F not later than 1 day after the appointment is made, and
- (ii) if the subject Corporation is not the plaintiff—serve a copy of the notice on the subject Corporation by delivery or by facsimile transmission or by pre-paid post to its registered office not later than 1 day after the appointment is made, and

(b) the liquidator or provisional liquidator must, not later than 7 days after the appointment is made, cause to be advertised a notice in Form 154G or Form 154H, as the case requires.

(2) For the purposes of subrule (1), a sealed or unsealed copy is sufficiently served at an office if the information contained in the copy is transmitted to a facsimile transmission number by a means that reproduces, in that office, the information as it appears in the copy.

**21 Appeal from registrar: winding up order**

(1) An appeal shall lie to the Court constituted by a Judge from a winding up order made by a registrar.

(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.

(3) (Repealed)

**22 Remuneration of provisional liquidator (s 473 (2))**

(1) An application by a provisional liquidator for determination of his or her remuneration by the Court under section 473 (2) must be made by motion in the winding up proceedings.

- (2) Notice of the motion must not be filed until the expiration of 21 days after the applicant has served written notice of intention to apply for such determination in Form 154I together with a copy of the affidavit upon which the applicant intends to rely, on:
  - (a) any liquidator of the subject corporation (other than the applicant),
  - (b) each member of any committee of inspection, or if there is no committee of inspection, each of the 5 largest creditors of the subject corporation, and
  - (c) each member of the subject corporation whose shareholding represents at least 10 per cent of the issued capital.
- (3) The liquidator or any creditor or contributory may within 21 days after service of the last of the notices required by subrule (2) deliver to the applicant a notice of objection to the remuneration claimed, stating the grounds of objection.
- (4) Where the applicant files with the notice of motion an affidavit made after the expiration of the lastmentioned period of 21 days:
  - (a) proving service of the notices required by subrule (2), and
  - (b) stating that he has received no notice of objection to the remuneration claimed, and the notice of motion is endorsed with a request that the application 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, the application may be so dealt with by the Court.
- (5) The notice of motion must be served on any liquidator, creditor or contributory of the subject corporation who has given notice of objection under subrule (3).
- (6) The evidence in support of the application must include an affidavit stating:
  - (a) the nature of the work carried out by the applicant together with a summary of receipts and payments for the relevant period, and
  - (b) if at the time of the application the applicant remains the provisional liquidator:
    - (i) any reasons known to the applicant why the winding up proceedings have not been determined, and
    - (ii) any reasons why the applicant's remuneration should be determined prior to the determination of the winding up proceedings.

### **23 Remuneration of liquidator (s 473 (3))**

- (1) An application by a liquidator for determination of his or her remuneration by the Court under section 473 (3) must be made by motion in the winding up proceedings.

- (2) Notice of the motion must not be filed until the expiration of:
- (a) 28 days after the holding of the meeting of creditors referred to in section 473 (4), and
  - (b) 21 days after the applicant has served notice in form 154I of his or her intention to apply for such determination, together with a copy of the affidavit on which the applicant intends to rely, on:
    - (i) each creditor who was present in person or by proxy at the meeting of creditors,
    - (ii) each member of any committee of inspection, and
    - (iii) any member of the subject corporation whose shareholding represents at least 10 per cent of the issued capital.
- (3) Any creditor or contributory may within 21 days after service of the last of the notices required by subrule (2) deliver to the applicant a notice of objection to the remuneration claimed, stating the grounds of objection.
- (4) Where the applicant files with the notice of motion an affidavit made after the expiration of the lastmentioned period of 21 days:
- (a) proving service of the notices required by subrule (2) (b), and
  - (b) stating that he has received no notice of objection to the remuneration claimed, and the notice of motion is endorsed with a request that the application 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, the application may be so dealt with by the Court.
- (5) The notice of motion must be served on any creditor or contributory of the subject corporation who has given notice of objection under subrule (3).
- (6) The evidence in support of the application must include an affidavit stating:
- (a) the nature of the work carried out by the applicant together with a summary of receipts and payments for the relevant period, and
  - (b) if at the time of the application the applicant remains the liquidator, any matters delaying the completion of the winding up.

#### **24 Copy of a report under s 475 (7) (a)**

The copy of the report required to be filed with the Court under section 475 (7) (a) shall be a copy certified in writing by the liquidator of the subject corporation to be a true copy of the original report.

**25 Report by the liquidator to the Court: stay of winding up (s 482 (2))**

A report by the liquidator to the Court under section 482 (2) may be furnished to the Court by filing it in Form 154J.

**26 Special manager (s 484)**

- (1) This rule applies to proceedings in the Court under section 484 (which section relates to a special manager).
- (2) The liquidator may file an unverified statement in support of the application, instead of an affidavit.
- (3) Security is sufficiently given if it is given for any winding up in which the person giving security is appointed a special manager.
- (4) The Court may at any time and from time to time give directions for the giving of security in a different amount to the amount for which security was previously given.
- (5) Where security is given to the satisfaction of an associate Judge, he shall give a certificate to that effect.

**27 Accounting by special manager (s 484 (2) (a))**

- (1) Subject to any order of the Court under section 484 (2) (a) the special manager shall furnish his accounts to the liquidator.
- (2) The accounts shall be verified by affidavit.
- (3) The affidavit may be in Form 154K and subscribed to the accounts.
- (4) When the accounts are approved by the liquidator, the totals of the receipts and payments shall be included by the liquidator in his accounts.

**28 Default of special manager**

- (1) Where any special manager is required by the rules or any direction of the Court to do anything and does not carry out the requirement, the liquidator shall apply to the Court for directions in respect of the default and the Court may make such orders and give such directions as the Court thinks fit.
- (2) Without limiting subrule (1), where a special manager is required by the rules or by any order or direction of the Court to pay into Court any sum shown by his account as due from him, and he does not comply with the requirement, the Court may charge him with interest at the rate prescribed for payment of interest by a receiver under rule 26.6 (3) of the *Uniform Civil Procedure Rules 2005* on that sum while in his possession as special manager.
- (3) This rule does not limit the powers of the Court as to the enforcement of orders or as

to the punishment of contempt.

**29 Complaints concerning liquidator or provisional liquidator (s 536 (1))**

- (1) The complaint to the Court under section 536 (1) shall be filed with the summons claiming an inquiry under the subsection in respect of the matter complained of.
- (2) A complaint under section 536 (1) shall not be inspected or used except by leave of the Court.

**30 Report concerning liquidator or provisional liquidator (s 536 (2))**

- (1) A report to the Court by ASIC under section 536 (2) shall be filed with the summons claiming orders under the subsection in respect of the matter reported.
- (2) A report made under section 536 (2) shall not be inspected or used except by leave of the Court.

**31 Report by the chairman to the Court: meeting of creditors etc (s 547)**

A report by the chairman to the Court under section 547 may be made by filing a report in Form 154J.

**32 Appeal from liquidator etc (s 1321)**

- (1) An appeal to the Court under section 1321 in respect of an act, omission or decision of a receiver, receiver and manager, liquidator or provisional liquidator, appointed by the Court, shall be instituted by motion in the proceedings in which the appointment was made, within 28 days after the date on which the person who wishes to appeal receives notice of the act, omission or decision.
- (2) (Repealed)
- (3) A person mentioned in section 1321 (a), (b), (c), (ca), or (d) may, on application in writing made to that person before the expiration of the time limited by subrule (1) (other than the time extended by the Court) for instituting an appeal from that person's act, omission or decision, grant, by notice in writing, an extension of that time and, where that person does so, he or she shall deliver the notice to the applicant who shall file the notice with the summons or notice of motion (as the case may be) instituting the appeal.

**33 Release of liquidator (s 480)**

- (1) An application by a liquidator for:
  - (a) an order under section 480 (c) that he or she be released, or
  - (b) an order under section 480 (d) that he or she be released and that the subject corporation be dissolved,

must be made by motion in the winding up proceedings.

- (2) An application by a liquidator for an order under section 480 (c) that he or she be released must state the grounds on which it is contended that the subject corporation should not be dissolved.
- (3) Unless the Court otherwise orders, the liquidator must, not less than 21 days prior to filing notice of the motion:
  - (a) send:
    - (i) a notice in form 154L,
    - (ii) a copy of the application for release,
    - (iii) a copy of the summary of receipts and payments, and
    - (iv) a copy of the statement showing the subject corporation's position,by prepaid post to each creditor who has proved his or her debt and to each contributory, and
  - (b) cause notice of the application in form 154M to be published in the Commonwealth of Australia Gazette.
- (4) Where a liquidator applies for an order under section 480 (c) or section 480 (d), he or she shall file with notice of the motion:
  - (a) a summary of receipts and payments in the winding up,
  - (b) a statement showing the position of the subject corporation at the date the application was filed, and
  - (c) an affidavit:
    - (i) stating whether the whole of the property of the subject corporation has been realised, or whether so much of the property of the subject corporation has been realised as can be realised without needlessly prolonging the liquidation,
    - (ii) stating details of any calls made upon contributories in the course of the winding up,
    - (iii) stating details of any dividends paid in the course of the winding up,
    - (iv) stating whether the committee of inspection, if any, has passed a resolution approving of the liquidator's release,
    - (v) stating whether ASIC has appointed an auditor to report on an account or a statement of the position in the winding up under section 539 (2),

- (vi) stating whether the Court has ordered a report on the accounts of the liquidator to be prepared,
  - (vii) stating whether any objection has been received by the liquidator to his or her release as liquidator of the subject corporation from any auditor appointed by ASIC or by the Court or from any creditor, contributory or other person interested,
  - (viii) stating whether any report has been submitted by the liquidator to ASIC under section 533,
  - (ix) stating whether the unsecured creditors of the subject corporation have been paid more than 50 cents in the dollar and whether it is otherwise necessary to report on the affairs of the subject corporation or its officers,
  - (x) stating details of any onerous property disclaimed in the course of the winding up,
  - (xi) stating details of any costs and expenses payable by the liquidator if the Court grants his or her release,
  - (xii) annexing a copy of:
    - (A) the notice sent to each creditor and contributory in compliance with paragraph (a) of subrule (3), and
    - (B) the notice published in the Commonwealth of Australia Gazette in compliance with paragraph (b) of subrule (3), and
  - (xiii) including statements by the liquidator to the following effect:
    - (A) "To the best of my belief there has been no act done or default made by me in the administration of the affairs of the subject corporation or otherwise in relation to my conduct as liquidator which is likely to give rise to any liability to the subject corporation or any creditor or contributory" and, where applicable, add "except as disclosed in this affidavit",
    - (B) "I am not aware of any claim made by any person that there has been any such act or default" and, where applicable, add "except as disclosed in this affidavit".
- (5) A creditor or contributory who wishes to object to the grant of release to a liquidator must deliver to the liquidator a notice of objection stating the grounds of objection within 21 days of publication of the notice referred to in subrule (3) (b).
- (6) Where the applicant files with the notice of motion an affidavit made after the expiration of the 21 days:

(a) proving compliance with subrule (3), and

(b) stating that he has received no notice of objection to the release,

and the notice of motion is endorsed with a request that the application be determined or dealt with in the absence of the public and without an attendance by or on behalf of the applicant, the application may be so determined or dealt with by the Court.

#### **34 Exercise of Court's power by liquidator (s 488 (1))**

Subject to the *Corporations Law*, the *Corporations Regulations*, this Part, and any order of the Court, the powers and duties conferred on the Court by Part 5.4B of the *Corporations Law* in respect of the matters referred to in section 488 (1) may be exercised by the liquidator as an officer of the Court and subject to the control of the Court.

#### **35 Destruction of books (s 542 (3) (a))**

(1) An application for an order under section 542 (3) (a) must be made by motion in the winding up proceedings.

(2) Where notice of the motion is endorsed with a request that the application be dealt with by the Court in the absence of the public and without an attendance by or on behalf of the applicant, the application may be so dealt with by the Court.

### **Division 8 Examinations**

#### **36 Examination of persons concerned with corporations (Part 5.9 Division 1)**

(1) This rule applies to proceedings on an application to the Court for a summons under section 596A or section 596B (in these rules referred to as an Examination Summons).

(2) The summons by which the application is made shall be served:

(a) where a liquidator has been appointed, unless he is the applicant—on the liquidator, and

(b) unless ASIC is the applicant—on ASIC,

and need not be served on any other person unless the Court so directs.

(3) The applicant shall, when making the application, lodge in the registry a draft of the Examination Summons applied for.

(4) An affidavit referred to in section 596C must set out:

(a) the facts relied on to establish that the applicant is an eligible applicant for the purposes of section 596B,

(b) the facts relied on to establish the matters referred to in section 596B (1) (b), and



- (c) if production of books is to be required—the deponent’s belief that the books, the production of which is sought, are reasonably required for the purposes of the examination and the grounds for that belief.
- (5) An affidavit or other material filed in support of an application for an Examination Summons shall not, except with the leave of the Court, be open to inspection by any person other than the liquidator or any person authorised by ASIC.
- (6) An Examination Summons shall be in form 154N.
- (7) The applicant shall cause notice of the time and place appointed for the holding of an examination (but not, unless the Court so orders, for the holding of an adjourned examination) to be advertised.
- (8) An Examination Summons shall be served personally on the person who is to be examined.
- (9) Where the Court makes an order under section 597 (13), the written record, signed if so required by the Court under that subsection, shall be filed in the registry.
- (10) Where:
- (a) the examination of a person under section 597 is held wholly or partly in public, and
  - (b) a written record or transcript of the questions put to the person and the answers given by the person at the examination is filed in the registry,
- the registrar shall, upon application by the person made within 3 years of the date of the conclusion of the examination and payment of the prescribed fee, furnish to the person a copy of the written record or transcript of such part of the examination as is held in public.
- (11) A transcript is authenticated under section 597 (14) if the person who prepared the transcript, or under whose supervision the transcript was prepared, certifies in writing signed by that person that the transcript is a true record of the examination.
- (12) In this rule, **liquidator** includes a provisional liquidator.

### **37 Default in relation to an examination**

- (1) When a person is summoned under an Examination Summons and the examination is, or is to be, held before the Court constituted by a registrar, and that person (in this rule referred to as the person in default):
- (a) fails to attend as required by the Examination Summons,
  - (b) fails to attend from day to day until the conclusion of the examination,

- (c) refuses or fails to take an oath or make an affirmation,
- (d) refuses or fails to answer a question that the Court directs him or her to answer,
- (e) refuses or fails to produce books that the Examination Summons requires him or her to produce, or
- (f) fails to comply with a requirement by the court to sign a written record of the examination,

and if, in the case of a failure or refusal referred to in paragraphs (a), (b), (c), (d) or (e), it does not appear to the registrar that there was any reasonable excuse, the registrar must, on the request of any person entitled to take part in the examination, give to that person a signed certificate of the failure or refusal.

- (2) On application by a person to whom such a certificate has been given, the Court, if satisfied that there has been a contravention of section 597 (6), (7) or (13), may order the person in default to do the relevant act and to pay any costs occasioned by the failure or refusal.
- (3) On an application under subrule (2), a signed certificate given under subrule (1) constitutes evidence of the matters certified.

## **Division 9 Winding up of bodies other than companies**

### **38 Winding up of bodies other than companies (s 583)**

The rules apply, with such adaptations as are necessary, to a body to which Part 5.7 of the [Corporations Law](#) applies as they apply to a company.

## **Part 81**

### **1-40 (Repealed)**

## **Part 82 Public Notaries Act 1997**

### **1 Interpretation**

In this Part, unless the context or subject-matter otherwise indicates or requires:

- (a) **Board** means the Legal Practitioners Admission Board,
- (b) **notary** means a person appointed under the [Public Notaries Act 1997](#),
- (c) **roll** means the roll of notaries mentioned in section 7 of the subject Act,
- (d) **subject Act** means the [Public Notaries Act 1997](#).

## **2 Application by person approved by Board**

A person who has been approved by the Board as a suitable candidate for appointment as a notary may, unless the Court otherwise orders, apply for appointment without having filed any originating process in the Court.

## **3 Appointment in the absence of the public etc**

On an application under rule 2, the Court may make an order in the absence of the public and without any attendance by or on behalf of any person, unless the plaintiff has filed a request that the application not be dealt with under this rule.

## **4 Taking oath etc**

- (1) An applicant for appointment under section 6 of the subject Act shall, before applying to the Court for appointment, attend at a registry of the Court on appointment and:
  - (a) take the oath of office prescribed in Form 157, and
  - (b) sign a certificate that the oath was duly tendered and taken.
- (2) A registrar may administer the oath of office.

## **5 Particulars to be entered in the roll**

The officer designated under section 7 of the Act as the registrar of public notaries shall enter in the roll:

- (a) the date of the notary's appointment,
- (b) particulars of any penalty imposed on the notary as the result of disciplinary action, and
- (c) where the name of the notary is removed from the roll, the date of removal and the provision under which the removal was authorised.

## **6 (Repealed)**

## **7 Application under the Mutual Recognition Act**

- (1) This rule applies to proceedings commenced by notice under Section 19 (1) of the Mutual Recognition Act.
- (2) The notice must, unless the Court otherwise orders:
  - (a) be lodged by filing it in the registry at Sydney,
  - (b) show the name, residential address and business address of the applicant,
  - (c) where the applicant is represented by a solicitor, show:

- (i) the name, address and telephone number of the solicitor, and
  - (ii) if that solicitor has another solicitor as agent in the proceedings—the name, address and telephone number of the agent,
- (d) show an address for service,
- (e) be dated not more than 14 days before the date on which it is filed, and
- (f) be accompanied by a certificate which:
  - (i) evidences the existing registration which gives rise to the entitlement of the applicant under the Mutual Recognition Act to entry in the roll,
  - (ii) is given by the proper officer of the Supreme Court of the State or Territory where such existing registration occurred unless the document mentioned in Section 19 (3) of the Mutual Recognition Act, accompanying the notice, fulfils the requirements of this paragraph.
- (3) The applicant shall, on or before the day of filing, serve the notice and accompanying documents on the Society of Notaries of New South Wales Incorporated and the Board and shall file an affidavit of service within 14 days of filing the notice.
- (4) The applicant shall:
  - (a) prior to, or
  - (b) within 14 days after,filing the notice, attend at a registry of the Court or at the office of the Supreme Court of his or her State or Territory and take the oath of office as a notary in Form 159A, and cause the certificate included in that form to be completed and shall:
  - (c) at the time of, or
  - (d) within 14 days after,filing the notice, file the form of oath and the certificate.
- (5) Notwithstanding rule 31.2 of the *Uniform Civil Procedure Rules 2005*:
  - (a) the statements and other information in the notice which are verified by statutory declaration,
  - (b) the document mentioned in section 19 (3) of the Mutual Recognition Act, certified under section 19 (4) of that Act, accompanying the notice, and
  - (c) the certificate referred to in subrule (2) (f),are admissible in evidence and, unless the Court otherwise orders, shall not be the

subject of oral evidence by the applicant.

(6) (Repealed)

(7) The Court may, of its own motion, obtain information under section 37 of the Mutual Recognition Act and such information is admissible in evidence without further proof.

(8) The application for enrolment made by the notice 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.

(9) If the Court is satisfied that the applicant is entitled to enrolment, it shall order that the applicant be appointed as a notary.

## **8 Certificate of appointment**

A person appointed as a notary shall be entitled to receive a certificate bearing the seal of the Court.

## **Part 83**

**1-5 (Repealed)**

## **Part 84 Crimes (Administration of Sentences) Act 1999**

### **1 Application by offender for direction relating to decision of Parole Authority**

An application to the Court by an offender under section 155 or 176 of the *Crimes (Administration of Sentences) Act 1999* in relation to a decision of the Parole Authority is to be made by sending the application in Form 161 to the Registrar.

### **2 Application by State for direction relating to decision of Parole Authority**

An application to the Court by the Attorney General or the Director of Public Prosecutions under section 156 or 177 of the *Crimes (Administration of Sentences) Act 1999* in relation to a decision of the Parole Authority is to be made by sending the application in Form 162 to the Registrar.

### **3 Secretary of Parole Authority to forward documents to Registrar**

(1) On the request of the Registrar, the Secretary of the Parole Authority must, unless the Court otherwise orders, forward the following material to the Registrar concerning the decision to which a relevant application relates:

(a) copies of any reports, documents, submissions and other information placed before the Authority when it made the decision,

(b) a copy of that part of the minutes of the Authority in which the reason for the decision was recorded.

(2) In this rule:

**relevant application** means an application made under section 155, 156, 177 or 178 of the *Crimes (Administration of Sentences) Act 1999*.

## Schedules A-C (Repealed)

### Schedule D Powers of associate Judges

Pt 60, r 1A.

#### 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>		
<ul style="list-style-type: none"> <li>section 5</li> </ul>	Enforcement of judgment of British dominion	
<i>Arbitration (Civil Actions) Act 1983:</i>		
<ul style="list-style-type: none"> <li>section 12 (1)</li> </ul>	Order to witness to attend	
<i>Bills of Sale Act 1898:</i>		
<ul style="list-style-type: none"> <li>section 4B</li> </ul>	Extension of time for registering, filing etc	
<i>Business Names Act 1962:</i>		
<ul style="list-style-type: none"> <li>section 14</li> </ul>	Persons in default; orders for compliance or stay of proceedings	
<i>Business Names Act 2002:</i>		
<ul style="list-style-type: none"> <li>section 23 (2)</li> </ul>	Contraventions of Act; orders for compliance or adjournment of proceedings	
<i>Charitable Fundraising Act 1991:</i>		
<ul style="list-style-type: none"> <li>section 32</li> </ul>	Disposition of assets	
<i>Commercial Arbitration Act 1984:</i>		
<ul style="list-style-type: none"> <li>section 18 (1)</li> </ul>	Examination before the Court	

- 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

*Companies Act 1961:*

- section 363                                     Security for costs

*Companies Code:*

- 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
- 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
- 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
- section 533                                     Security for costs, etc

- section 536 Directions: meetings ordered by the Court
- 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 associate Judge may grant
- section 541 Examination of persons concerned with corporations

*Companies (New South Wales) Regulations—*

- regulation 78 Liquidator's account
- regulation 81 Deposit with liquidator
- regulation 87 Costs of meeting
- regulation 90 Adjournment of meeting
- regulation 96 Votes of secured creditors
- regulation 118 Bills of exchange
- regulation 123 Costs of proof
- regulation 125 Dealing with proof
- regulation 126 Time for appeal
- regulation 134 Time for appeal
- regulation 143 Distribution of surplus

*Confiscation of Proceeds of Crime Act 1989:*

- section 77 Registration of interstate forfeiture order etc
- section 82 (1) Order for cancellation of registration of interstate forfeiture order etc

*Contractors Debts Act 1997:*

- section 14 Attachment order



*Conveyancers Licensing Act 1995:*

- section 77 Directions relating to a receiver
- section 85 Bill of costs

*Conveyancing Act 1919:*

- 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

*Corporations Act 2001* of the Commonwealth:

- section 274 Rectification of register of company charges
- Part 5.3A Administration of company's affairs with view to executing deed of company arrangement
- Part 5.4 Winding up
- section 461 Winding up Where the application is not opposed
- Part 5.4B Winding up Except ss 472 (2), (3) and (6), 486A, 486B and 487
- section 495 (4) Members' voluntary winding up: meeting
- section 500 Creditor's voluntary winding up
- section 504 Voluntary winding up: remuneration of liquidator
- 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
- Part 5.7 Winding up: bodies other than companies Except in respect of ss 532 (2), 536, 540 (1), 544 (2) and 568
- section 597 Examination of persons concerned with corporations

- section 1274 Directions to make good default in lodgement of documents
- section 1319 Directions, meetings ordered by the Court
- 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 *Corporations Act 2001*
- section 1322 Irregularities, extension of time etc  
Restricted to orders or declarations in or for the purposes of proceedings for other relief under the *Corporations Act 2001* which the associate Judge may grant
- section 1324 Injunctions  
Restricted to orders where it is alleged that there has been an inappropriate reduction of capital or share buy back
- section 1335 Security for costs etc

*Corporations Regulations 2001* of the Commonwealth:

- Part 5.6 Winding up

*Damages (Infants and Persons of Unsound Mind) Act 1929*:

- section 4 Sanctioning settlements, etc
- section 5 Directions, etc, as to money paid to Public Trustee
- section 7 Assessments, directions, certificates and references as to costs

*District Court Act 1973*:

- section 143 Transfers to District Court
- section 145 Removal of proceedings

*Exotic Diseases of Animals Act 1991*:

- section 62 Disputed claims for compensation

*Family Provision Act 1982* Family provision

*Foreign Judgments Act 1973*:

- sections 6, 8, 9 Enforcement of judgment of a country

*Foreign Judgments Act 1991* of the Commonwealth:

- sections 6, 7, 8, 9 Enforcement of judgment of a country

*Insurance Act 1902*:

- section 17A (1) Joinder of insurer etc

*International War Crimes Tribunals Act 1995* of the Commonwealth:

- section 45 (1) Registration of a forfeiture order

*Judgment Creditors' Remedies Act 1901*:

- Part 5 Charging orders

*Jury Act 1977*:

- section 38 (1) (b) Excusing juror

*Land and Environment Court Act 1979*:

- section 72 Transfer to Land and Environment Court

*Landlord and Tenant Act 1899*:

- section 2A (3) Time for writ of possession
- section 9 (1) Payment into Court
- section 9 (2) Direction for entry of judgment
- section 10 Stay
- section 27 (2) Relief relating to bond
- section 27 (3) Cancellation of bond

*Legal Profession Act 1987*:

- 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

*Limitation Act 1969:*

- 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
- section 73 (1) Extension of limitation period—arbitration
- Schedule 5 clause 5 (5) Transitional provisions

*Married Persons (Equality of Status) Act 1996:*

- section 13 Fraudulent investment of spouse's money

*Minors (Property and Contracts) Act 1970:*

- section 41 (3) Removal of proceedings

*Motor Accidents Act 1988:*

- section 42 (4) Explanation for non compliance
- section 42 (5) Allow proceedings to continue
- section 43A (7), 44B Dismiss proceedings
- section 47A Joinder of insurer
- section 48 Co-operation with person against whom claim made and the person's insurer
- section 52 (4) Commencing proceedings
- section 66A (1) Joinder of insurer

*Motor Accidents Compensation Act 1999:*

- section 36 (5) Extension of time for giving notice
- section 36 (7), (8) Joinder of Nominal Defendant
- section 70 (2) Explanation for non- compliance
- 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

*Motor Vehicles (Third Party Insurance) Act 1942:*

- section 14E (1) and (2) Joint hearing and transfer

*Mutual Assistance in Criminal Matters Act 1987* of the Commonwealth:

- 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

*Offshore Minerals Act 1994* of the Commonwealth:

- section 351 (1) (a) Removal of caveat
- section 351 (1) (c) Extending caveat
- section 351 (2) Non-registration of further caveat

*Offshore Minerals Act 1999*:

- section 351 (1) (a) Removal of caveat
- section 351 (1) (c) Extending caveat
- section 351 (2) Non registration of further caveat

*Probate and Administration Act 1898* (including former provisions of the *Wills, Probate and Administration Act 1898* with continuing application):

- former section 13 Gifts to interested witnesses
- former section 15A Effect of termination of marriage
- section 84 Application for legacy, etc
- section 146 Caveat: application for grant to proceed

*Proceeds of Crime Act 1987* of the Commonwealth:

- section 23A (2) Direction to DPP to give or publish notice of registration

*Proceeds of Crime Act 2002* of the Commonwealth:

- Division 1 of Part 2-2 Forfeiture order

*Property (Relationships) Act 1984* De facto relationships  
Domestic relationships

*Property, Stock and Business  
Agents Act 1941:*

- section 83J Directions relating to a receiver
- section 83V Directions relating to a receiver

*Property, Stock and Business  
Agents Act 2002:*

- section 160 Directions relating to a receiver
- section 161 Directions relating to a receiver

*Real Property Act 1900:*

- section 74D (2) Extending caveat
- section 74K (2) Extending caveat
- section 74MA (2) Withdrawal of caveat
- section 74O Further caveat

*Service and Execution of Process  
Act 1992 of the Commonwealth:*

- section 17 (1) Shortening of time for appearance
- section 57 (1) Leave to serve a subpoena outside the State etc
- section 67 (1) Order to produce
- section 76 (1) Leave to serve a subpoena outside the State etc
- section 79 (1) Order to produce

*Succession Act 2006:*

- Chapter 3 Family provision

*Testator's Family Maintenance  
and Guardianship of Infants Act  
1916*

Maintenance

Except sections 13 to 21 inclusive  
(guardianship)

*Trustee Act 1925:*

- section 63                                      Judicial advice
- section 70                                      New trustees
- section 71                                      Vesting orders
- section 75 (1)                                  Deceased mortgagee
- section 81                                      Advantageous dealings
- Part 4    Payment into Court                              Except section 97 (2)

*Trustee Companies Act 1964:*

- section 15B (4)                                  Directions
- section 21 (2)                                  Ordering account
- section 22                                      Ordering audit
- section 27 (1)                                  Payment out

*Workers Compensation Act 1987:*

- 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

## Part 2 Limitations of powers under provisions of the rules

Column 1	Column 2	Column 3
Rules of court and provision	Description	Extent of power

*Supreme Court Rules 1970:*

Part 14A	Technology and Construction List	
Part 49—		
Rule 3 (4) (b)	Discharging or varying judgment or order.	



Part 54	Prerogative and other orders	Where paragraph 5 of Part 3 of this Schedule applies.
Part 55—		
Rules 2, 4, 6, 8, 13, 14.	Contempt in the face or hearing of the Court.	Where paragraph 6 of Part 3 of this Schedule applies.
Rule 10	Arrest	
Part 60	associate Judges	
Part 68—		
Rule 8 (2)	General administration of an estate.	
Rule 9	Conduct of sale of property	
Part 69	Infants' Custody and Settlements Act Rules.	
Part 70—		
Rule 9 (1)	Affidavit of fitness of new trustee.	
Rule 11 (3)	Joining a defendant	
Rule 14	Notice of payment into Court	
Rule 15	Inquiries relating to application of funds.	
Part 73	Adoption of Children	
Part 75	Criminal proceedings	
Part 76	Protective business	Except as provided in Part 76.
Part 78	Probate	Under Part 78 rules 38, 59, 69, 71 and 72.
<i>Uniform Civil Procedure Rules 2005:</i>		
Part 51	Court of Appeal	

## Part 3 General

- 1 Trial (except with a jury) of proceedings, where the only matters in question are the amount of damages and costs.
- 2 Trial (except with a jury) of proceedings where the only matters in question are the value of goods

and costs or the amount of damages, the value of goods and costs.

- 3** Trial of proceedings pursuant to a direction under rule 9 of Part 56 (which relates to interpleader).
- 3A** (*Interest up to judgment*) Trial of proceedings where the only matters in question are interest under section 94 of the Act and costs.
- 4** Any:
- (a) trial or hearing of proceedings (except with a jury), or
  - (b) matter (other than a matter of proceedings tried or to be tried with a jury),
- where referred to an associate Judge by an order of a Judge or of the Court of Appeal.
- (c), (d) (Repealed)
- 5** An appeal from, or an application for prerogative or declaratory relief relating to, the Consumer, Trader and Tenancy Tribunal.
- 5A** Proceedings referred to an associate Judge by a Judge where those proceedings are an appeal from, or an application for prerogative or declaratory relief relating to, the Administrative Decisions Tribunal.
- 5B** An appeal from a Local Court in any civil matter.
- 6** Punishment for contempt in the face of the Court or in the hearing of the Court, where the Court is constituted by the associate Judge concerned, and punishment for breach of an undertaking given to the Court constituted by an associate Judge.
- 7** Under section 16 of the Act, the application of the Act to, and the effect of the repeals and amendments made by the Act on, proceedings commenced in the Court before the commencement of the Act.
- 8** (*Possession of land*) Trial or hearing of proceedings (except with a jury) where:
- (a) the only matter in question is a claim for the possession of land, or
  - (b) the only matters in question are a claim for the possession of land and one or more of the following:
    - (i) a claim or cross-claim for damages,
    - (ii) a claim or cross-claim for other money,
    - (iii) a claim or cross-claim for costs.
- 9** (*Costs*) Hearing of proceedings where the only matter in question is the matter of costs.
- 10** Payment, transfer or delivery out of Court, and investment, of funds in Court in the Equity

Division.

- 11** Proceedings for perpetuation of testimony.
- 12** Orders under section 100 of the Act (which section relates to an appointment to execute an instrument).
- 13** (*Extension of time for action*) Under any provision mentioned in Schedule 1 of the [Notice of Action and Other Privileges Abolition Act 1977](#) to which section 3 to that Act (which section relates to a cause of action accrued before the commencement of that Act) applies.
- 14** (*Lost bond or debenture*) Orders under any provision by or under any Act that a debenture or bond issued by a corporation constituted by that Act, or a coupon annexed to that debenture or bond, has been lost or destroyed or defaced and directions by or under that Act for advertisement relating to that debenture, bond or coupon.
- 15** Orders under any provision made by or under any Act for the appointment of a receiver of the income of a corporation which is constituted by that Act and which makes default in payment to the holder of any debenture, or coupon, issued or stock inscribed by that corporation.
- 16** Order under section 95 of the Act (which section relates to interest on money payable under a judgment).
- 17** (*Running down cases*) Trial (except with a jury) of proceedings to which section 87 of the Act applies (which section relates to running down cases).
- 17A** Trial (except with a jury) of proceedings in the Common Law Division on a claim in which:
- (a) damages are claimed in respect of the death of or personal injuries to any person,
  - (b) damages are claimed in respect of damage to property and:
    - (i) the proceedings include a claim in respect of the death of or personal injuries to any person, and
    - (ii) if separate proceedings were brought in respect of:
      - (A) the claim referred to in subparagraph (i), and
      - (B) the claim in respect of damage to property,some common question of fact would arise in both claims, or
  - (c) contribution is claimed under Part III of the [Law Reform \(Miscellaneous Provisions\) Act 1946](#) in respect of damages of the nature referred to in paragraph (a) or (b).
- 18** (*Companies Code*) An appeal under section 538 of the [Companies \(New South Wales\) Code](#) in respect of a decision under section 329 (3) or section 375 (8) of that Code (which subsections relate to the costs, etc, of a person making a report to a receiver or liquidator).
- 19** (*Associations Incorporation Act*) Appeal under section 58 of the [Associations Incorporation Act 1984](#) in respect of a decision under section 375 (8) of the Companies Code in relation to an incorporated association (which subsection relates to the costs, etc of a person making a report to

a liquidator).

**20, 21 (Repealed)**

- 22** Trial (except with a jury) of proceedings under section 205F (1) or section 206 (6) or section 207 (2) or section 243T (3) of the *Customs Act 1901* of the Commonwealth.
- 23** Trial (except with a jury) of proceedings under section 69E (1) or section 69L or section 69R (3) or section 69W (4) of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* of the Commonwealth.
- 24** Trial (except with a jury) of any proceedings arising out of or under the *Partnership Act 1892* or any question arising in proceedings where the plaintiff alleges the plaintiff and any defendant were partners and that the partnership has terminated.
- 25** Trial (except with a jury) of proceedings for any of the following matters:
- (a) the foreclosure or redemption of a mortgage or the enforcing of any charge or lien,
  - (b) the specific performance, rectification, delivery up or cancellation of any agreement for the sale or purchase of any property or the lease of any property,
  - (c) relief against fraud or mistake,
  - (d) the execution of a trust or a declaration that a trust subsists,
  - (e) the administration of the estate of a deceased person,
  - (f) any equitable claim or demand for recovery of money or damages, whether liquidated or unliquidated (not being a claim or demand of a kind to which paragraph (a), (b), (c), (d) or (e) applies).
- 26** Trial (except with a jury) of any proceedings in the Equity Division in which all the parties are related to each other by blood or marriage (other than adoption proceedings or matters arising in the Court's *parens patriae* jurisdiction).
- 27** Trial (except with a jury) of any proceedings arising out of or under the *Frustrated Contracts Act 1978*, the *Contracts Review Act 1980* or the *Fair Trading Act 1987*.
- 28** In proceedings in which an associate Judge has jurisdiction to determine a matter under these rules, any inherent jurisdiction of the Court to decide any associated or appendant matter in issue in the proceedings.
- 29** Any jurisdiction of the Court that is exercisable by a registrar of the Court.

**Schedule E (Repealed)**

**Schedule F Forms**

Pt 1, r 11.

**Form 1**

*(First page of a document. See Part 65 rule 1.)*

*(Leave clear a space of about 50 millimetres from the top of the page.)*

IN THE SUPREME COURT OF NEW SOUTH  
WALES  
SYDNEY (or as the case may be) REGISTRY  
COMMON LAW (or as the case may be)  
DIVISION  
S10 of 19 (or as the case may require: see Part  
1 rule 10 (1) and Part 65 rule 1 (1))

*(Do not describe the document here. The substance of the document shall be written within this space. A margin of not less than 25 millimetres shall be kept clear on the left hand side of the page. The dividing line to the left hand side shall be about 75 millimetres from the left hand edge of the page. The substance of a statement of accounts may commence on the following page. Where there is insufficient space on the left hand side of the page to include particulars of all the parties, this space may also be used to include particulars of parties and the substance of the document may be commenced on the following page.*

---

*(Describe the document)*  
NOTICE OF MOTION  
*(or, in the case of an affidavit)*  
AFFIDAVIT  
*(and show the name of the deponent and date  
of swearing)*  
J. Smith  
7 May 19

*Above "COMMON LAW DIVISION" in the margin name the registry at the place for trial or hearing. In respect of proceedings under Part 5 of the [Crimes \(Appeal and Review\) Act 2001](#) omit "plaintiff" from the title and insert instead "appellant" and omit "defendant" from the title and insert instead "respondent".*

Filed for *(Full name of filing party)*  
HENRY JONES

---

*Highlight the name of the document and the filing party by including a solid line above and below that information.)*

JOHN LEE  
plaintiff

JAMES STYLES  
defendant

CROSS-CLAIM  
JAMES STYLES  
Cross-claimant

JOHN LEE and HENRY JONES  
Cross-defendants

SECOND CROSS-CLAIM  
HENRY JONES  
Cross-claimant

WILLIAM SMITH  
Cross-defendant

*(and in every document continue)*

Principal & Co.  
22 Main Street,  
Yass 2582.  
telephone: 202

Agent & Co.  
22 Pitt Street  
Sydney 2000  
telephone: 222 2222  
DX 222, Sydney

*(Forms lodged in relation to civil proceedings to which the Uniform Civil Procedure Rules 2005 apply should use UCPR Form 1 instead of this form. Forms lodged in relation to criminal proceedings should use UCPR Form 1 with appropriate amendments.)*

**Form 2**

*(To be set out in accordance with Form 1)*

JOHN LEE and others  
plaintiffs  
JAMES STYLES  
defendant  
and cross-claims

*(See Part 65 rule 1 (4).)*

**Form 3**

*(To be set out in accordance with Form 1)*

The application of HENRY JONES

*(See Part 65 rule 1 (3).)*

**Form 4**

*(Conclusion of documents for signature by a party unless otherwise indicated or required.)*

(Signature)  
Plaintiff's solicitor

Filed (dated if not filed): 7 May 19 .

(On an originating process or notice of appearance add the full name of the solicitor after "solicitor". The appropriate alteration must be made where Part 66 rule 9 (3) (relating to signature for a solicitor) applies. See also Part 65 generally.)

## Forms 5-45

(Repealed)

### Form 45A

(Subpoena to a natural person)

P 36A, r 3 (5).

#### SUBPOENA FOR PRODUCTION—FOR SERVICE IN NEW ZEALAND

To <sup>(1)</sup>

<sup>(2)</sup>.

THE COURT ORDERS that you shall ATTEND AND PRODUCE this subpoena and the documents and things described in the schedule—

(a) before the Court <sup>(3)</sup>;

(b) at <sup>(4)</sup>;

(c) on <sup>(5)</sup> <sup>(6)</sup> at 10 am <sup>(3)</sup> and until you are excused by the Court from further attending; BUT—

(i) INSTEAD OF so ATTENDING, YOU MAY PRODUCE this subpoena and the documents and things described in the schedule to—

(A) a clerk of the Court at the above place by hand or by post, in either case so that the clerk receives them not later than 24 hours BEFORE THE DATE on which you are required so to attend; or

(B) any registry of the High Court of New Zealand not later than <sup>(8)</sup> PROVIDED THAT you—

(I) tender to the registry such portion of the amount provided to you on account of expenses as is necessary to meet the costs of transportation for the document or thing produced to the Supreme Court of New South Wales;

(II) obtain from the New Zealand registry a receipt with a description of the document or thing produced in accordance with the subpoena; and

(III) forthwith send a copy of the receipt and the subpoena by fax to the Sydney registry of the Supreme Court of New South Wales;

(ii) you need not comply with this subpoena—

(A) if—

(I) allowances and travelling expenses; or

(II) vouchers,

sufficient to meet your reasonable expenses are not paid, or tendered to you, at the time of service or at some other reasonable time before you are required to comply with it;

(B) if it is served on you after <sup>(9)</sup>;

(C) if the party who requested the issue of this subpoena has excused you from compliance; or

- (D) if it is not accompanied by—
- (I) a copy of the order giving leave to serve it in New Zealand; and
  - (II) a notice in the prescribed form setting out your rights and obligations in relation to the subpoena and information on how to apply to set aside the subpoena;
- (iii) the party who requested the issue of this subpoena may, by written or oral notice to you, alter the time for attendance and production to a later time.

SCHEDULE  
(<sup>10</sup>)

Dated 19 .

By the Court,  
(<sup>11</sup>)

Issued at the request of (<sup>12</sup>) whose address for service is (<sup>13</sup>).

**See the reverse of this page.**

*On the reverse of the page, keeping clear a margin of 25 millimetres on the right hand side, add—*

Note that—

- (1) if you do not comply with this subpoena you may be arrested;
- (2) if, by paragraph (c) (i) (A), you are permitted to produce this subpoena and other documents and things to a clerk of the Court at Queen's Square, Sydney, you may produce them to the clerk by hand at the Exhibits Office, Level 5 at that place or by posting them to—
  - Exhibits Clerk,
  - Exhibits Office, Level 5,
  - Supreme Court of N.S.W.
  - G.P.O. Box 3,
  - Sydney 2001.
  - AUSTRALIA
- in accordance with paragraph (c) (i) (A);
- (3) in subparagraph (c) (i) (A) Saturdays, Sundays and other holidays are not counted in calculating time;
- (4) documents and things produced by you in accordance with this subpoena may be returned by post to you at your address shown on this subpoena but you may in writing on or attached to this subpoena request that they be posted to you at another address given by you;
- (5) any questions relating to the requirements of this subpoena should be directed not to the Court but to the person who requested the issue of this subpoena;
- (6) being excused from compliance with this subpoena does not excuse you from compliance with any other subpoena; and
- (7) if there is a dispute over the amount of your reasonable expenses, you may apply to the Court for a decision on what is reasonable.

*Directions for completing the above form.*

(<sup>1</sup>) *name.*

(<sup>2</sup>) *address.*

(<sup>3</sup>) *or as the case may require.*



(<sup>4</sup>) address of Court or other place.

(<sup>5</sup>) date, for example, 7 May 19 .

(<sup>6</sup>) or on a date during the sittings beginning on (<sup>5</sup>) and ending on (<sup>7</sup>), notice of which date will be given to you.

(<sup>7</sup>) date, for example, 21 May 19 .

(<sup>8</sup>) specify a date, for example 26 April 19 , having regard to Part 2 rule 2, Part 37 rule 4 (1) (b) and section 12 of the *Evidence and Procedure (New Zealand) Act 1994* (Commonwealth), which is not later than 10 days before the date mentioned in note (<sup>5</sup>) above.

(<sup>9</sup>) specify a date, for example 19 April 19 , having regard to Part 2 rule 2, Part 36A rule 3 (2) (d), Part 37 rules 4 (1) (b) and 7 (7) and section 12 of the *Evidence and Procedure (New Zealand) Act 1994* (Commonwealth), which is not later than 15 days before the date mentioned in note (<sup>5</sup>) above.

(<sup>10</sup>) description of documents and things.

(<sup>11</sup>) signature and description of officer of the Court.

(<sup>12</sup>) state person at whose request the subpoena was issued.

(<sup>13</sup>) address for service.

(This form applies only to subpoenas to which Part 2 of the *Evidence and Procedure (New Zealand) Act 1994* (Commonwealth) applies.)

### Form 45B

(Subpoena to a corporation for production and for its proper officer to answer questions concerning possession, etc. of documents.)

P 36A, r 3 (5).

#### SUBPOENA FOR PRODUCTION AND TO ANSWER QUESTIONS FOR SERVICE IN NEW ZEALAND

To (<sup>1</sup>)

(<sup>2</sup>)

THE COURT ORDERS that—

1. (<sup>1</sup>), “the corporation”, shall produce this subpoena and the documents and things described in the schedule by causing its proper officer to ATTEND AND PRODUCE them—

(a) before the Court (<sup>3</sup>);

(b) at (<sup>4</sup>);

(c) on (<sup>5</sup>) (<sup>6</sup>) at 10 am (<sup>3</sup>) and until the officer is excused by the Court from further attending; BUT—

(i) INSTEAD OF causing its proper officer to so ATTEND, THE CORPORATION MAY PRODUCE this subpoena and the documents and things described in the schedule to—

(A) a clerk of the Court at the above place by hand or by post, in either case so that the clerk receives them not later than 24 hours BEFORE THE DATE on which the officer is required so to attend; or

(B) any registry of the High Court of New Zealand not later than (<sup>8</sup>) PROVIDED THAT you—

(i) tender to the registry such portion of the amount provided to you on account of expenses as is necessary to meet the costs of transportation for the document or thing produced to the Supreme Court of New South Wales;

(II) obtain from the New Zealand registry a receipt with a description of the document or thing produced in accordance with the subpoena; and

(III) forthwith send a copy of the receipt and the subpoena by fax to the Sydney registry of the Supreme Court of New South Wales;

(ii) the corporation need not comply with this subpoena—

(A) if—

(I) allowances and travelling expenses; or

(II) vouchers,

sufficient to meet the corporation's reasonable expenses are not paid, or tendered to it, at the time of service or at some other reasonable time before it is required to comply with this subpoena;

(B) if it is served on the corporation after <sup>(9)</sup>;

(C) if the party who requested the issue of this subpoena has excused the corporation from compliance; or

(D) if it is not accompanied by—

(I) a copy of the order giving leave to serve it in New Zealand; and

(II) a notice in the prescribed form setting out the corporation's rights and obligations in relation to the subpoena and information on how to apply to set aside the subpoena;

(iii) if the corporation is a bank and is required by this subpoena to produce a banker's book and the corporation is not a party to these proceedings and Part IV of the *Evidence Act 1898* would have applied prior to its repeal, the corporation need not cause its officer to produce it if the corporation causes him to produce proof of the relevant entries in it in accordance with that Part;

(iv) the party who requested the issue of this subpoena may, by written or oral notice to the corporation, alter the time for attendance or production to a later time.

2. the officer who is to attend shall make enquiries for the purpose of answering, and, on attending, shall answer, such questions as the Court requires him to answer concerning the possession or custody of those documents and things.

#### SCHEDULE

(<sup>10</sup>)

Dated 19 .

By the Court  
(<sup>11</sup>)

Issued at the request of (<sup>12</sup>) whose address for service is (<sup>13</sup>).

Note that—

(1) where the corporation fails to comply with this subpoena, this subpoena may be enforced by sequestration of the property of the corporation or by arrest of an officer of the corporation or by both means;

(2) if, by paragraph (c) (i) (A), the corporation is permitted to produce this subpoena and other documents and things to a clerk of the Court at Queen's Square, Sydney, it may produce them to the clerk by hand at the Exhibits Office, Level 5 at that place or by posting them to—

Exhibits Clerk,  
Exhibits Office,  
Level 5,  
Supreme Court of N.S.W.,

G.P.O. Box 3,  
Sydney 2001.  
AUSTRALIA

in accordance with paragraph (c) (i) (A);

- (3) in subparagraph (c) (i) (A) Saturdays, Sundays and other holidays are not counted in calculating time;
- (4) documents and things produced by the corporation in accordance with this subpoena may be returned by post to it at its address shown on this subpoena but it may, in writing on or attached to this subpoena, request that they be posted to it at another address given by it;
- (5) any questions relating to the requirements of this subpoena should be directed not to the Court but to the person who requested the issue of this subpoena;
- (6) being excused from compliance with this subpoena does not excuse you from compliance with any other subpoena;
- (7) if there is a dispute over the amount of your reasonable expenses, you may apply to the Court for a decision on what is reasonable.

*Directions for completing this form.*

- (<sup>1</sup>) *name of corporation.*
- (<sup>2</sup>) *address.*
- (<sup>3</sup>) *or as the case may require.*
- (<sup>4</sup>) *address of Court or other place.*
- (<sup>5</sup>) *date, for example, 7 May 19 .*
- (<sup>6</sup>) *or on a date during the sittings beginning on (<sup>5</sup>) and ending on (<sup>7</sup>), notice of which date will be given to you.*
- (<sup>7</sup>) *date, for example, 21 May 19 .*
- (<sup>8</sup>) *specify a date, for example 26 April 19 , having regard to Part 2 rule 2, Part 37 rule 4 (1) (b) and section 12 of the [Evidence and Procedure \(New Zealand\) Act 1994](#) (Commonwealth), which is not later than 10 days before the date mentioned in note (<sup>5</sup>) above.*
- (<sup>9</sup>) *specify a date, for example 19 April 19 , having regard to Part 2 rule 2, Part 36A rule 3 (2) (d), Part 37 rules 4 (1) (b) and 7 (7) and section 12 of the [Evidence and Procedure \(New Zealand\) Act 1994](#) (Commonwealth), which is not later than 15 days before the date mentioned in note (<sup>5</sup>) above.*
- (<sup>10</sup>) *description of documents and things.*
- (<sup>11</sup>) *signature and description of officer of the Court.*
- (<sup>12</sup>) *state person at whose request the subpoena was issued.*
- (<sup>13</sup>) *address for service.*

*If the reverse side of a page is used, add to the foot of the front of the page "See the reverse of this page." and keep clear a margin of 25 millimetres on the right hand side.*

*(This form applies only to subpoenas to which Part 2 of the [Evidence and Procedure \(New Zealand\) Act 1994](#) (Commonwealth) applies.)*

**Form 45C**

*(Subpoena for production of original or photocopies of medical records.)*

P 36A, r 3 (5).

SUBPOENA FOR PRODUCTION—FOR SERVICE IN NEW ZEALAND

To (1)

(2)

THE COURT ORDERS that you shall ATTEND AND PRODUCE this subpoena and the medical records, or clear sharp photocopies of them, described in the schedule (in this subpoena called the “scheduled documents”)—

(a) before the Court (3);

(b) at (4);

(c) on (5) (6) at 10 am (3) and until you are excused by the Court from further attending; BUT—

(i) INSTEAD OF so ATTENDING, YOU MAY PRODUCE this subpoena and the scheduled documents to—

(A) a clerk of the Court at the above place by hand or by post, in either case so that the clerk receives them not later than 24 hours, BEFORE THE DATE on which you are required so to attend; or

(B) any registry of the High Court of New Zealand not later than (8) PROVIDED THAT you—

(I) tender to the registry such portion of the amount provided to you on account of expenses as is necessary to meet the costs of transportation for the document or thing produced to the Supreme Court of New South Wales;

(II) obtain from the New Zealand registry a receipt with a description of the document or thing produced in accordance with the subpoena; and

(III) forthwith send a copy of the receipt and the subpoena by fax to the Sydney registry of the Supreme Court of New South Wales;

(ii) you need not comply with this subpoena—

(A) if \$ (the amount prescribed by Part 37 rule 7A (4)) have not been paid or tendered to you;

(B) if, in addition to the amount referred to in the preceding paragraph,—

(I) allowances and travelling expenses; or

(II) vouchers,

sufficient to meet your reasonable expenses are not paid, or tendered to you, at the time of service or at some other reasonable time before you are required to comply with it;

(C) if it is served on you after (9);

(D) if the party who requested the issue of this subpoena has excused you from compliance; or

(E) if it is not accompanied by—

(I) a copy of the order giving leave to serve it in New Zealand; and

(II) a notice in the prescribed form setting out your rights and obligations in relation to the subpoena and information on how to apply to set aside the subpoena;

(iii) the party who requested the issue of this subpoena may, by written or oral notice to you, alter the time for attendance and production to a later time.

SCHEDULE  
(<sup>10</sup>)

Dated 19 .

By the Court,  
(<sup>11</sup>)

Issued at the request of (<sup>12</sup>) whose address for service is (<sup>13</sup>).

**See the reverse of this page.**

*On the reverse of the page, keeping clear a margin of 25 millimetres on the right hand side, add—*

Note that—

- (1) if you do not comply with this subpoena you may be arrested;
- (2) if, by paragraph (c) (i) (A), you are permitted to produce the subpoena and the scheduled documents to a clerk of the Court at Queen's Square, Sydney, you may produce them to the clerk by hand at the Exhibits Office, Level 5 at that place or by posting them to—  
Exhibits Clerk,  
Exhibits Office, Level 5,  
Supreme Court of N.S.W.,  
G.P.O. Box 3,  
Sydney 2001.  
AUSTRALIA  
  
in accordance with paragraph (c) (i) (A);
- (3) in subparagraph (c) (i) (A) Saturdays, Sundays and other holidays are not counted in calculating time;
- (4) documents produced by you in accordance with this subpoena may be returned by post to you at your address shown on this subpoena but you may in writing on or attached to this subpoena request that they be posted to you at another address given by you;
- (5) any questions relating to the requirements of this subpoena should be directed not to the Court but to the person who requested the issue of this subpoena;
- (6) Being excused from compliance with this subpoena does not excuse you from compliance with any other subpoena.

*Directions for completing the above form*

- (<sup>1</sup>) *name.*
- (<sup>2</sup>) *address.*
- (<sup>3</sup>) *or as the case may require.*
- (<sup>4</sup>) *address of Court or other place.*
- (<sup>5</sup>) *date, for example, 7 May 19 .*
- (<sup>6</sup>) *or on a date during the sittings beginning on (<sup>5</sup>) and ending on (<sup>7</sup>), notice of which date will be given to you.*
- (<sup>7</sup>) *date, for example, 21 May 19 .*
- (<sup>8</sup>) *specify a date, for example 26 April 19 , having regard to Part 2 rule 2, Part 37 rule 4 (1) (b) and section 12 of the [Evidence and Procedure \(New Zealand\) Act 1994](#) (Commonwealth), which is not later than 10 days before the date mentioned in note (<sup>5</sup>) above.*

(<sup>9</sup>) specify a date, for example 19 April 19 , having regard to Part 2 rule 2, Part 36A rule 3 (2) (d), Part 37 rules 4 (1) (b) and 7 (7) and section 12 of the *Evidence and Procedure (New Zealand) Act 1994* (Commonwealth), which is not later than 15 days before the date mentioned in note (<sup>5</sup>) above.

(<sup>10</sup>) description of the medical records.

(<sup>11</sup>) signature and description of officer of the Court.

(<sup>12</sup>) state person at whose request the subpoena was issued.

(<sup>13</sup>) address for service.

(This form applies only to subpoenas to which Part 2 of the *Evidence and Procedure (New Zealand) Act 1994* (Commonwealth) applies.)

### Form 45D

P 36A, r 3 (5).

#### SUBPOENA TO GIVE EVIDENCE—FOR SERVICE IN NEW ZEALAND

To (<sup>1</sup>)

(<sup>2</sup>)

THE COURT ORDERS that you shall attend for the purpose of giving evidence—

(a) before the Court (<sup>3</sup>);

(b) at (<sup>4</sup>);

(c) on (<sup>5</sup>) (<sup>6</sup>) at 10 a.m. (<sup>3</sup>) and until you are excused by the Court from further attending; but—

(i) you need not comply with this subpoena—

(A) if—

(I) allowances and travelling expenses; or

(II) vouchers,

sufficient to meet your reasonable expenses are not paid, or tendered to you, at the time of service or at some other reasonable time before you are required to comply with it;

(B) if it is served on you after (<sup>8</sup>);

(C) if, as a medical expert, you are required by this subpoena to attend at a place in Sydney for the purposes of giving evidence on medical matters and it is served on you after (<sup>9</sup>);

(D) if the party who requested the issue of this subpoena has excused you from compliance; or

(E) if it is not accompanied by—

(I) a copy of the order giving leave to serve it in New Zealand; and

(II) a notice in the prescribed form setting out your rights and obligations in relation to the subpoena and information on how to apply to set aside the subpoena;

(ii) the party who requested the issue of this subpoena may, by written or oral notice to you, alter the time for attendance to a later time.

Dated 19 .

By the Court,  
(<sup>10</sup>)

Issued at the request of <sup>(11)</sup> whose address for service is <sup>(12)</sup>.

Note that—

- (1) if you do not comply with this subpoena you may be arrested;
- (2) if, as a medical expert, you are to give evidence of medical matters at a trial at Sydney and you are not called as a witness, you shall, unless the Court otherwise orders, be entitled to be paid \$ <sup>(13)</sup> in addition to any sum paid or tendered to you as reasonable expenses of complying with this subpoena;
- (3) being excused from compliance with this subpoena does not excuse you from compliance with any other subpoena;
- (4) if there is a dispute over the amount of your reasonable expenses, you may apply to the Court for a decision on what is reasonable.

*Directions for completing the above form.*

<sup>(1)</sup> name.

<sup>(2)</sup> address.

<sup>(3)</sup> or as the case may require.

<sup>(4)</sup> address of Court or other place.

<sup>(5)</sup> date, for example, 7 May 19 .

<sup>(6)</sup> or on a date during the sittings beginning on <sup>(5)</sup> and ending on <sup>(7)</sup>, notice of which date will be given to you.

<sup>(7)</sup> date, for example, 21 May 19 .

<sup>(8)</sup> specify a date, for example, 29 April 19 , having regard to Part 2 rule 2, Part 36A rule 3 (2) (d) and Part 37 rule 7 (7), which is not later than 5 days before the date mentioned in note <sup>(5)</sup> above.

<sup>(9)</sup> specify a date, for example, 15 April 19 , having regard to Part 2 rule 2, Part 36A rule 3 (2) (d) and Part 37 rule 7A (1), which is not later than 21 days before the date mentioned in note <sup>(5)</sup> above.

<sup>(10)</sup> signature and description of officer of the Court.

<sup>(11)</sup> state person at whose request the subpoena was issued.

<sup>(12)</sup> address for service.

<sup>(13)</sup> the amount prescribed by Part 37 rule 3A.

*(This form applies only to subpoenas to which Part 2 of the [Evidence and Procedure \(New Zealand\) Act 1994](#) (Commonwealth) applies.)*

### **Form 45E**

P 36A, r 3 (5).

SUBPOENA FOR PRODUCTION AND TO GIVE EVIDENCE—FOR SERVICE IN NEW ZEALAND

To <sup>(1)</sup>

<sup>(2)</sup>

THE COURT ORDERS that you shall attend and produce this subpoena and the documents and things described in the schedule and attend for the purposes of giving evidence—

- (a) before the Court <sup>(3)</sup>;
- (b) at <sup>(4)</sup>;
- (c) on <sup>(5)</sup> <sup>(6)</sup> at 10 a.m. <sup>(3)</sup> and until you are excused by the Court from further attending; but—
  - (i) you need not comply with this subpoena—
    - (A) if—
      - (I) allowances and travelling expenses; or
      - (II) vouchers,sufficient to meet your reasonable expenses are not paid, or tendered to you, at the time of service or at some other reasonable time before you are required to comply with it;
    - (B) if it is served on you after <sup>(8)</sup>;
    - (C) if, as a medical expert, you are required by this subpoena to attend at a place in Sydney for the purposes of giving evidence on medical matters and it is served on you after <sup>(9)</sup>;
    - (D) if the party who requested the issue of this subpoena has excused you from compliance; or
    - (E) if it is not accompanied by—
      - (I) a copy of the order giving leave to serve it in New Zealand; and
      - (II) a notice in the prescribed form setting out your rights and obligations in relation to the subpoena and information on how to apply to set aside the subpoena;
  - (ii) the party who requested the issue of this subpoena may, by written or oral notice to you, alter the time for attendance or production to a later time;
  - (iii) you may produce this subpoena and the documents and things described in the schedule to—
    - (A) a clerk of the Court at the above place by hand or by post, in either case so that the clerk receives them not later than 24 hours BEFORE THE DATE on which you are required so to attend; or
    - (B) any registry of the High Court of New Zealand not later than <sup>(10)</sup> PROVIDED THAT you—
      - (I) tender to the registry such portion of the amount provided to you on account of expenses as is necessary to meet the costs of transportation for the document or thing produced to the Supreme Court of New South Wales;
      - (II) obtain from the New Zealand registry a receipt with a description of the document or thing produced in accordance with the subpoena; and
      - (III) forthwith send a copy of the receipt and the subpoena by fax to the Sydney registry of the Supreme Court of New South Wales;

SCHEDULE  
<sup>(11)</sup>

Dated 19 .

By the Court  
<sup>(12)</sup>

Issued at the request of <sup>(13)</sup> whose address for service is <sup>(14)</sup>

**See the notes on the reverse of this page.**

*On the reverse of the page, keeping clear a margin of 25 millimetres on the right hand side, add—*

Note that—

- (1) if you do not comply with this subpoena you may be arrested;



- (2) if, as a medical expert, you are to give evidence of medical matters at a trial at Sydney and you are not called as a witness, you shall, unless the Court otherwise orders, be entitled to be paid \$ (15) in addition to any sum paid or tendered to you as reasonable expenses of complying with this subpoena;
- (3) if, by paragraph (c) (iii) (A), you are permitted to produce this subpoena and other documents and things to a clerk of the Court at Queen's Square, Sydney, you may produce them to him by hand at the Exhibits Office, Level 5 at that place or by posting them to—
- Exhibits Clerk,  
Exhibits Office, Level 5,  
Supreme Court of N.S.W.  
G.P.O. Box 3,  
Sydney 2001.  
AUSTRALIA
- in accordance with paragraph (c) (iii) (A);
- (4) in subparagraph (c) (iii) (A) Saturdays, Sundays and other holidays are not counted in calculating time;
- (5) documents and things produced by you in accordance with this subpoena may be returned by post to you at your address shown on this subpoena but you may in writing on or attached to this subpoena request that they be posted to you at another address given by you;
- (6) any questions relating to the requirements of this subpoena should be directed not to the Court but to the person who requested the issue of this subpoena;
- (7) being excused from compliance with this subpoena does not excuse you from compliance with any other subpoena;
- (8) if there is a dispute over the amount of your reasonable expenses, you may apply to the Court for a decision on what is reasonable.

*Directions for completing the above form.*

- (1) *name.*
- (2) *address.*
- (3) *or as the case may require.*
- (4) *address of Court or other place.*
- (5) *date, for example, 7 May 19 .*
- (6) *or on a date during the sittings beginning on (5) and ending on (7), notice of which date will be given to you.*
- (7) *date, for example, 21 May 19 .*
- (8) *specify a date, for example 19 April 19 , having regard to Part 2 rule 2, Part 36A rule 3 (2) (d), Part 37 rules 4 (1) (b) and 7 (7) and section 12 of the [Evidence and Procedure \(New Zealand\) Act 1994](#) (Commonwealth), which is not later than 15 days before the date mentioned in note (5) above.*
- (9) *specify a date, for example, 15 April 19 , having regard to Part 2 rule 2 and Part 36A rule 3 (2) (d) and Part 37 rule 7A (1), which is not later than 21 days before the date mentioned in note (5) above.*
- (10) *specify a date, for example 26 April 19 , having regard to Part 2 rule 2, Part 37 rule 4 (1) (b) and section 12 of the [Evidence and Procedure \(New Zealand\) Act 1994](#) (Commonwealth), which is not later than 10 days before the date mentioned in note (5) above.*

- (<sup>11</sup>) *description of documents and things.*
- (<sup>12</sup>) *signature and description of officer of the Court.*
- (<sup>12</sup>) *state person at whose request the subpoena was issued.*
- (<sup>14</sup>) *address for service.*
- (<sup>15</sup>) *the amount prescribed by Part 37 rule 3A.*

(This form applies only to subpoenas to which Part 2 of the *Evidence and Procedure (New Zealand) Act 1994* (Commonwealth) applies.)

### Form 45F

P 36A, r 5 (1).

#### CERTIFICATE OF NON-COMPLIANCE WITH SUBPOENA

I certify that:—

- (a) On (*date*) leave under section 9 of the *Evidence and Procedure (New Zealand) Act 1994* of the Commonwealth was given to serve in New Zealand a subpoena issued by this Court;
- (b) A copy of the subpoena and a copy of the order giving leave are annexed to this certificate;
- (c) (*name of person named*), the person named in the subpoena, failed to comply with it; and
- (d) {No application to set aside the subpoena either wholly or in part has been made.

OR

An application to set aside the subpoena was dismissed by order made on (*date*). A copy of this order is annexed to this certificate.}

Date:

By the Court

Registrar

(*Seal of Court to be affixed*)

### Form 45G

P 36A, r 6 (7).

#### OBJECTION TO DETERMINATION WITHOUT HEARING

The (*identify objector*) objects to the application to set aside the subpoena (*identify subpoena*) being determined without a hearing.

### Form 45H

P 36A, r 6 (8).

#### REQUEST FOR HEARING BY VIDEO LINK OR TELEPHONE

The (*applicant*) requests that the hearing of the application to set aside the subpoena (*identify subpoena*) be heard by video link or telephone.

### Forms 46-51

(Repealed)

**FORM 51A**

(Certificate under section 13 of the *Foreign Judgments Act 1973* or section 15 of the *Foreign Judgments Act 1991* of the Commonwealth)

P 41, r 15B (2).

**CERTIFICATE**

I certify that—

- (a) a statement of claim (or summons), a copy of which is annexed hereto marked “A”, was filed in the registry of the Division of this Court on (date) by (name), the abovenamed plaintiff, claiming against (name), the abovenamed defendant, payment of the sum of (amount) (or state shortly the nature of the relief claimed) in respect of (state shortly the causes of action);
  - (b) the said statement of claim (or summons) was on (date) served on the said defendant (state the mode of service) (or the said defendant entered an appearance on (date) );
  - (c) the said plaintiff obtained judgment against the said defendant in this Court for payment of the sum of (amount) (or state shortly the terms of the judgment) in respect of (state shortly the causes of action) together with \$ for costs;
  - (d) the said judgment was obtained (state the grounds on which the judgment was based);
  - (e) the following (or no) objections have been made to the jurisdiction of this Court (state the objections, if any);
  - (f) (state the position relating to the time for appealing or discharging or setting aside the judgment or for apply for a new trial or for a stay of execution);
  - (g) (where the judgment was entered by default), the defendant may apply, but has not applied, to set aside the judgment;
  - (h) notice of appeal has (or has not) been filed;
- (If interest is payable on the judgment)
- (i) (where the rate of interest is specified in the judgment interest is payable from (date of judgment) at the rate of (rate) % yearly on so much of the sum of (amount) as is from time to time unpaid;) (otherwise interest is payable—
    - (i) from (date of judgment) up to and including the date hereof at the following rate (or rates)—  
(rate prescribed by Part 40 rule 7 (2) or, where more than one rate applies, the prescribed rates and the period during which each rate applies); and
    - (ii) from the date hereof at the rate of (prescribed rate applicable at the date of the certificate), or at such other rate or rates as may be prescribed from time to time,  
on so much of the sum of (amount) as is from time to time unpaid;))
  - (j) (give information, similar to that contained in (j), in respect of costs of the proceedings.)
  - (k) (any other necessary particulars);
  - (l) the costs of obtaining this certificate and copy of a minute of the judgment are \$ (see Part 52A rule 47).

Dated

(signature)  
(title of person certifying)

**Forms 52-54**

(Repealed)

**Form 55**

P 42, r 8 (3).

(No heading or title: for subscribing to the minute of order.)

To (name of corporation) and (name of officer):

If (name of corporation) neglects to obey this order within the time specified in the order (disobeys this order, as the case may be) (name of officer) and (name of corporation) will be liable to sequestration of property and (name of officer) to imprisonment.

**Forms 56-70**

(Repealed)

**Form 70AA**

P 65C, rr 3 (4), 4 (4).

OATH OF OFFICE

I, (name) of (address) do swear that (if the oath is taken in relation to proceedings commenced or proposed to be commenced under the [Mutual Recognition Act 1992](#) of the Commonwealth or under the [Trans-Tasman Mutual Recognition Act 1997](#) of the Commonwealth, add if I am enrolled as a legal practitioner by the Supreme Court of New South Wales) I will truly and honestly conduct myself in the practice of a legal practitioner of the Supreme Court of New South Wales and I shall faithfully serve as such in the administration of the laws and the usages of that State according to the best of my knowledge, skill and ability.

(Signature of person taking oath)

.....

CERTIFICATE

I, (name) of (address), certify that I duly administered the above oath on (date)  
(date)

(Signature of a person administering oath)

.....

(Office of person administering oath)

**Forms 70A-74**

(Repealed)

**Form 74AA**

(Subpoena to a natural person: criminal proceedings)

P 75, r 2 (1) (r).

SUBPOENA FOR PRODUCTION

To (1)

(2)

THE COURT ORDERS that you shall attend and produce this subpoena and the documents and things described in the schedule—

(a) before the Court <sup>(3)</sup>;

(b) at <sup>(4)</sup>;

(c) on <sup>(5)</sup> <sup>(6)</sup> at 10 a.m. <sup>(7)</sup> and until you are excused by the Court from further attending; but—

(i) you need not comply with this subpoena if the party who requested its issue has excused you from compliance;

(ii) the party who requested the issue of this subpoena may, by written or oral notice to you, alter the time for attendance and production to a later time.

SCHEDULE

<sup>(8)</sup>

Dated 19

By the Court,  
<sup>(9)</sup>

Issued at the request of <sup>(10)</sup> whose address for service is <sup>(10A)</sup>.

Note that—

(1) if you do not comply with this subpoena you may be arrested.

*(If the subpoena is issued at the request of the Solicitor for Public Prosecutions other than on behalf of the accused) add—*

(2) If you wish to be paid the expenses allowable in respect of your attendance, you must produce the certificate endorsed duly completed).

*or*

*(If the subpoena is issued at the request of the accused or at the request of the Solicitor (for Public Prosecutions on behalf of the accused) add—*

(2) You are not entitled to payment by the Crown of your expenses in respect of your attendance unless legal aid has been granted to the accused.

(3) documents and things produced by you in accordance with this subpoena may be returned by post to you at your address shown on this subpoena but you may in writing on or attached to this subpoena request that they be posted to you at another address given by you.

(4) any questions relating to the requirements of this subpoena should be directed not to the Court but to the person who requested the issue of this subpoena.

(5) Being excused from compliance with this subpoena does not excuse you from compliance with any other subpoena.

*Directions for completing the above form.*

<sup>(1)</sup> name.

<sup>(2)</sup> address.

<sup>(3)</sup> *or as the case may require.*

<sup>(4)</sup> address of Court or other place.

(<sup>5</sup>) *date, for example, [7 May 19 .]*

(<sup>6</sup>) *or on a date during the sittings beginning on (<sup>5</sup>) and ending on (<sup>7</sup>), notice of which date will be given to you.*

(<sup>7</sup>) *date, for example, 21 May 19 .*

(<sup>8</sup>) *description of documents and things.*

(<sup>9</sup>) *signature and description of officer of the Court.*

(<sup>10</sup>) *state person at whose request the subpoena was issued.*

(<sup>10A</sup>) *address for service.*

(<sup>11</sup>) *notwithstanding Part 65 rule 3 (3), the reverse of the page may be used, keeping clear a margin of 25 millimetres on the right hand side.*

### Form 74AB

*(Subpoena to a corporation for production and for its proper officer to answer questions concerning (possession, etc., of documents: criminal proceedings.)*

P 75, r 2 (1) (r).

#### SUBPOENA FOR PRODUCTION AND TO ANSWER QUESTIONS

To (<sup>1</sup>)

(<sup>2</sup>)

THE COURT ORDERS that—

1. (1) “the corporation” shall produce this subpoena and the documents and things described in the schedule by causing its proper officer to attend and produce them—

(a) before the Court (<sup>3</sup>);

(b) at (<sup>4</sup>);

(c) on (<sup>5</sup>) (<sup>6</sup>) at 10 a.m. (<sup>7</sup>) and until the officer is excused by the Court from further attending; but—

(i) the corporation need not comply with this subpoena if the party who requested its issue has excused the corporation from compliance;

(ii) if the corporation is a bank and is required by this subpoena to produce a banker’s book and the corporation is not a party to these proceedings and Part IV of the *Evidence Act 1898* would have applied prior to its repeal, the corporation need not cause its officer to produce it if the corporation causes him to produce proof of the relevant entries in it in accordance with that Part;

(iii) the party who requested the issue of this subpoena may, by written or oral notice to the corporation, alter the time for attendance or production to a later time.

2. the officer who is to attend shall make inquiries for the purpose of answering, and, on attending, shall answer, such questions as the Court requires him to answer concerning the possession or custody of those documents and things.

#### SCHEDULE

(<sup>8</sup>)

Dated 19 .

By the Court,  
(<sup>9</sup>)

Issued at the request of <sup>(10)</sup> whose address for service is <sup>(10A)</sup>.

Note that—

(1) where the corporation fails to comply with this subpoena, this subpoena may be enforced by sequestration of the property of the corporation or by arrest of an officer of the corporation or by both means.

*(If the subpoena is issued at the request of the Solicitor for Public Prosecutions other than on behalf of the accused, add—*

(2) if you wish to be paid the expenses allowable in respect of your attendance, you must produce the certificate endorsed duly completed);

*or*

*(If the subpoena is issued at the request of the accused or at the request of the Solicitor for Public Prosecutions on behalf of the accused) add—*

(2) you are not entitled to payment by the Crown of your expenses in respect of your attendance unless legal aid has been granted to the accused;

(3) documents and things produced by the corporation in accordance with this subpoena may be returned by post to it at its address shown on this subpoena but it may in writing on or attached to this subpoena request that they be posted to it at another address given by it;

(4) any questions relating to the requirements of this subpoena should be directed not to the Court but to the person who requested the issue of this subpoena;

(5) Being excused from compliance with this subpoena does not excuse you from compliance with any other subpoena.

*Directions for completing this form.*

<sup>(1)</sup> *name of corporation.*

<sup>(2)</sup> *address.*

<sup>(3)</sup> *or as the case may require.*

<sup>(4)</sup> *address of Court or other place.*

<sup>(5)</sup> *date, for example, 7 May 19 .*

<sup>(6)</sup> *or on a date during the sittings beginning on <sup>(5)</sup> and ending on <sup>(7)</sup>, notice of which date will be given to you.*

<sup>(7)</sup> *date, for example, 21 May 19 .*

<sup>(8)</sup> *description of documents and things.*

<sup>(9)</sup> *signature and description of officer of the Court.*

<sup>(10)</sup> *state person at whose request the subpoena was issued.*

<sup>(10A)</sup> *address for service.*

<sup>(11)</sup> *notwithstanding Part 65 rule 3 (3), the reverse of the page may be used, keeping clear a margin of 25 millimetres on the right hand side.*

### **Form 74AC**

*(Subpoena to give evidence: criminal proceedings)*

SUBPOENA TO GIVE EVIDENCE

To (1)

(2)

THE COURT ORDERS that you shall attend for the purpose of giving evidence—

(a) before the Court (3);

(b) at (4);

(c) on (5) (6) at 10 a.m. (7) and until you are excused by the Court from further attending; but—

(i) you need not comply with this subpoena if the party who requested its issue has excused you from compliance;

(ii) the party who requested the issue of this subpoena may, by written or oral notice to you, alter the time for attendance to a later time.

Dated 19 .

By the Court, (8)

Issued at the request of (9) whose address for service is (9A)

Note that—

(1) If you do not comply with this subpoena you may be arrested; and

*(If the subpoena is issued at the request of the Solicitor for Public Prosecutions other than on behalf of the accused, add—*

(2) If you wish to be paid the expenses allowable in respect of your attendance, you must produce the certificate endorsed duly completed);

*or*

*(If the subpoena is issued at the request of the accused or at the request of the Solicitor for Public Prosecutions on behalf of the accused) add—*

(2) You are not entitled to payment by the Crown of your expenses in respect of your attendance unless legal aid has been granted to the accused;

(3) Being excused from compliance with this subpoena does not excuse you from compliance with any other subpoena.

*Directions for completing the above form.*

(1) *name.*

(2) *address.*

(3) *or as the case may require.*

(4) *address of Court or other place.*

(5) *date, for example, 7 May 19 .*

(6) *or on a date during the sittings beginning on (5) and ending on (7), notice of which date will be given to you.*

(7) *date, for example, 21 May 19 .*

(8) *signature and description of officer of the Court.*



(<sup>9</sup>) *state person at whose request the subpoena was issued.*

(<sup>9A</sup>) *address for service.*

(<sup>10</sup>) *notwithstanding Part 65 rule 3 (3), the reverse of the page may be used, keeping clear a margin of 25 millimetres on the right hand side.*

### Form 74AD

*(Subpoena for production and to give evidence: criminal proceedings).*

P 75, r 2 (1) (r).

#### SUBPOENA FOR PRODUCTION AND TO GIVE EVIDENCE

To (<sup>1</sup>)

(<sup>2</sup>)

THE COURT ORDERS that you shall attend and produce this subpoena and the documents and things described in the schedule and attend for the purposes of giving evidence—

(a) before the Court (<sup>3</sup>);

(b) at (<sup>4</sup>);

(c) on (<sup>5</sup>) (<sup>6</sup>) at 10 a.m. (<sup>7</sup>) and until you are excused by the Court from further attending; but—

(i) you need not comply with this subpoena if the party who requested its issue has excused you from compliance;

(ii) the party who requested the issue of this subpoena may, by written or oral notice to you, alter the time for production or attendance to a later time.

#### SCHEDULE

(<sup>8</sup>)

Dated 19 .

By the Court,  
(<sup>9</sup>)

Issued at the request of (<sup>10</sup>) whose address for service is (<sup>10A</sup>).

Note that—

(1) if you do not comply with this subpoena you may be arrested.

*(If the subpoena is issued at the request of the Solicitor for Public Prosecutions other than on behalf of the accused, add—*

(2) If you wish to be paid the expenses allowable in respect of your attendance, you must produce the certificate endorsed duly completed).

*or*

*(If the subpoena is issued at the request of the accused or at the request of the Solicitor for Public Prosecutions on behalf of the accused add—*

(2) You are not entitled to payment by the Crown of your expenses in respect of your attendance unless legal aid has been granted to the accused.

(3) documents and things produced by you in accordance with this subpoena may be returned by post to you at your address shown on this subpoena but you may in writing on or attached to this subpoena request that they be posted to you at another address given by you.

- (4) any questions relating to the requirements of this subpoena should be directed not to the Court but to the person who requested the issue of this subpoena.
- (5) Being excused from compliance with this subpoena does not excuse you from compliance with any other subpoena.

*Directions for completing the above form.*

- (<sup>1</sup>) *name.*
- (<sup>2</sup>) *address.*
- (<sup>3</sup>) *or as the case may require.*
- (<sup>4</sup>) *address of Court or other place.*
- (<sup>5</sup>) *date, for example, 7 May 19 .*
- (<sup>6</sup>) *or on a date during the sittings beginning on (<sup>5</sup>) and ending on (<sup>7</sup>), notice of which date will be given to you.*
- (<sup>7</sup>) *date, for example, 21 May 19 .*
- (<sup>8</sup>) *description of documents and things.*
- (<sup>9</sup>) *signature and description of officer of the Court.*
- (<sup>10</sup>) *state person at whose request the subpoena was issued.*
- (<sup>10A</sup>) *address for service.*
- (<sup>11</sup>) *notwithstanding Part 65 rule 3 (3), the reverse of the page may be used, keeping clear a margin of 25 millimetres on the right hand side.*

### **Form 74AE**

*(Form of indictment)*

P 75, r 3D (1).

*(Under the description INDICTMENT on the form insert a statement of the nature of the offence, for example for murder and, if a statutory offence, insert under that statement under s. .... of the [Crimes Act 1900](#) or as the case may require.*

New South Wales

On 7 May 20 the Attorney General (or Director of Public Prosecutions) on behalf of Her Majesty (or as the case may require: see ss. 8 and 9 of the [Criminal Procedure Act 1986](#)) charges that (state the offence and its Law Part Code, if any).

*(signature, full name and capacity of signatory: see s 126 of the [Criminal Procedure Act 1986](#).)*

### **Forms 74AF-74AH**

(Repealed)

### **Form 74AHA**

P 75, r 3FA.

#### **OBJECTION TO CONFIRMATION OF FORFEITURE ORDER BY THE SUPREME COURT OR THE COURT OF CRIMINAL APPEAL**

I, *(full name)* of  
*(address)* object to confirmation of the forfeiture order made by the Supreme Court\*/Court of Criminal

Appeal\* on \_\_\_\_\_ (date) in these proceedings.

*\*delete as required*

The order affects me in the following manner—  
(state how you are affected)

I rely on the following grounds—  
(state grounds of objection)

Signed:

Date:

Time for hearing:

Place:

### Form 74AHB

P 75, r 3FB.

#### APPLICATION TO SET ASIDE FORFEITURE ORDER BY THE SUPREME COURT OR THE COURT OF CRIMINAL APPEAL

I, \_\_\_\_\_ (full name) of  
\_\_\_\_\_ (address) apply to set aside the forfeiture order made by the Supreme Court\*/Court of Criminal  
Appeal\* on \_\_\_\_\_ (date) in these proceedings.

*\*delete as required*

The order affects me in the following manner—  
(state how you are affected)

I rely on the following grounds—  
(state grounds of application)

Signed:

Date:

Time for hearing:

Place for hearing:

### Form 74AI

(Repealed)

### Form 74AJ

P 75, r 3H (1)

#### ELECTION UNDER S. 132 (1) OF THE CRIMINAL PROCEDURE ACT 1986

I, \_\_\_\_\_, of \_\_\_\_\_, being charged with (short details of the charge, or all of the charges, in the proceedings),  
elect to be tried by a Judge alone in respect of the alleged offence(s).

I have before making this election sought and received advice in relation to the election from \_\_\_\_\_ barrister (or solicitor).

The date fixed for my trial is \_\_\_\_\_ 19 .

Dated:

\_\_\_\_\_  
Accused

\_\_\_\_\_  
Witness to signature of accused

Full name and address of witness:

The Director of Public Prosecutions consents to this election.

Dated:

(Signature and description)

### Form 74AK

P 75, r 3H (1)

#### ELECTION UNDER S. 132 (5) OF THE CRIMINAL PROCEDURE ACT 1986

I, \_\_\_\_\_, having previously elected to be tried by a Judge alone in respect of these proceedings, now elect to be tried by a jury.

The date fixed for my trial is \_\_\_\_\_ 19 .

Dated:

\_\_\_\_\_  
Accused

\_\_\_\_\_  
Witness to signature of accused

Full name and address of witness:

### Form 74A

(Summons under the Part 5 of Chapter 4 of the [Criminal Procedure Act 1986](#).)

(To be set out in accordance with Form 1.)

(name)  
prosecutor  
(name)  
defendant

#### SUMMONS

The plaintiff claims—

1. An order that the defendant (name) appear before a Judge of the Court to answer to the offence that (state the offence).

or

1. An order that the defendant (name) be apprehended for the purpose of being brought before a Judge of the Court to answer to the offence that (state the offence).

2. That the defendant be dealt with according to law for commission of the above offence.

Time and place for hearing the application for the above orders—

Time: \_\_\_\_\_ 19 \_\_\_\_\_ at 10 a.m.

Place: (address of Court)

Prosecutor: (name and address)

Prosecutor's address for service: (*Part 9 rule 6*).

Address of Registry:

(*signature*)  
Plaintiff's solicitor

Filed: 19 .

### Form 74B

P 75, r 8.

(*Minute of order under section 246 (1) (a) of the [Criminal Procedure Act 1986](#).*)

(*Heading and title as in Form 74A.*)

ORDER

To the defendant (*name, address and occupation*):

THE COURT ORDERS you to appear before a Judge of the Court at (*address of Court*) on 19 , at 10 a.m., to answer to the offence alleged by the prosecutor that (*state the offence alleged*).

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

### Form 74C

P 75, r 8.

(*Minute of order under section 246 (1) (b) of the [Criminal Procedure Act 1986](#).*)

(*Heading and title as in Form 74A.*)

ORDER

To all members of the police force (*add, where section 246 (4) of the [Criminal Procedure Act 1986](#) applies, and to*):

THE COURT ORDERS you to arrest (*name*) and bring him before a Judge of the Court to answer to the offence alleged by the prosecutor that (*state offence alleged*).

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

### Forms 74D-89A

(Repealed)

### Form 89B

(*Notice of claim for provision under the [Family Provision Act 1982](#)*)

P 77, r 63.

NOTICE OF CLAIM

The plaintiff has applied to the Court under the [Family Provision Act 1982](#), for an order for provision for him out of the estate of (*name*) deceased who died on 19 .

If you are entitled to, and wish to apply for, an order for provision for you out of that estate you must apply within a period prescribed by the Act or allowed by the Court. If you do not, before the Court deals with the plaintiff's application, apply for an order for provision for you out of that estate, the Court may deal with the plaintiff's application without regard to any possible application by you.

Dated:

(*signature*)

Solicitor for the administrator  
(*address for service*)  
(*or as the case may be*)

**Forms 89C-121A**

(Repealed)

**Form 122**

P 79, r 8.

(Petition under the *Parliamentary Electorates and Elections Act 1912*.)

(To be set out in accordance with Form 1.)

In the Matter of the Election of a  
Member of the Legislative  
Assembly for the Electoral  
District of (*place*).

(*name*)  
petitioner  
(*name*)  
respondent

PETITION

To the Court of Disputed Returns—

*(The statement of facts shall be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject matter. The facts shall include a description of the petitioner in terms of section 157 (c) of the subject Act, the date and result of the election, the date on which the writ was returned and the facts relied on to invalidate the election or return.)*

The petitioner prays that—

(a)

(b)

To the respondent (*address*)—

You are liable to suffer judgment or an order against you unless the prescribed form of notice of your appearance is received in the Registry (*or where a place in the Riverina or the Central West or the Northern Rivers district is the nominated place of trial, "or Sub-Registry"*) within 14 days after service of this petition upon you.

Petitioner: (*name, address*).

Petitioner's Address for Service: (*Part 9 rule 6 (1)*).

Address of Registry:

*(where a place in the Riverina is the nominated place of trial, add*

*"Sub-Registries: the offices of clerks of the Court at Albury, Cootamundra, Deniliquin, Griffith, Gundagai, Leeton, Narrandera, Temora and Tumut".)*

*(where a place in the Central West is the nominated place of trial, add*

*"Sub-Registries: the offices of the clerks of the Court at Bathurst, Cowra, Dubbo, Forbes, Lithgow, Mudgee, Parkes and Wellington".)*

*(where a place in the Northern Rivers district is the nominated place of trial, add*

*"Sub-Registries: the offices of the clerks of the Court at Ballina, Bellingen, Byron Bay, Casino, Coffs Harbour, Dorrigo, Glen Innes, Grafton, Kempsey, Kyogle, Macksville, Maclean, Mullumbimby, Murwillumbah, Port Macquarie, Tenterfield, Tweed Heads and Wauchope".)*

(signature)  
Petitioner

Signed by the Petitioner in our presence at (*place*) on (*date*).

(signature)  
(full name, address and occupation)

(signature)  
(full name, address and occupation)

(The rules which apply where a deponent making an affidavit if illiterate or blind shall apply in respect of each witness, making such changes as it is necessary to make, where a petitioner is illiterate or blind.)

(Form 4 does not apply.)

### Form 123

P 79, r 9.

(Notice of filing petition under the [Parliamentary Electorates and Elections Act 1912](#).)

NOTICE OF DISPUTED ELECTION (OR RETURN) OF A MEMBER OF THE LEGISLATIVE ASSEMBLY

A petition was, on (*date*), filed with the Prothonotary of the Supreme Court disputing the election (*or return*) of (*name*) as a member of the Legislative Assembly for the Electoral District of (*place*).

The facts relied on to invalidate the election (*or return*) are as follows—

(a)

(state the facts as concisely as may be)

(b) The petition prays that—

(set out the claims for relief prayed for in the petition)

Petitioner: (*name, address and occupation*).

(Form 4 does not apply.)

### Form 124

P 79, r 31.

(Notice of a reference under the [Parliamentary Electorates and Elections Act 1912](#).)

NOTICE OF A REFERENCE OF A QUESTION TO THE COURT OF DISPUTED RETURNS

The following question respecting the qualification of a member of the Legislative Assembly (*or* respecting a vacancy in the Legislative Assembly) was, on \_\_\_\_\_,

19\_\_\_\_, referred to the Court of Disputed Returns for its determination, namely—

(state the question)

(*name*), Speaker of the Legislative Assembly.

(Form 4 does not apply)

### Form 125

(Notice of application for reduction of capital and of list of creditors.)

P 80, r 9.

(No heading or title.)

NOTICE OF APPLICATION RELATING TO

*(name of company in capitals.)*

An application has been made to the Supreme Court to confirm a resolution of the above Company for reducing its capital from \$ (or as the case may be). A list of the persons admitted to have been creditors of the Company on (date), may be inspected at the office of the Company at (address) or at the office of the undersigned at any time during usual business hours, on payment of the charge of (\$ Schedule G item 22).

Any person who claims to have been, on the last mentioned day and still to be, a creditor of the company, unless he belongs to the following class or classes (set out class or classes) and is not entered on the said list and claims to be so entered, must on or before (date), send his name and address, and the particulars of his debt or claim (and the name and address of his solicitor, if any) to the undersigned or in default thereof he will be precluded from objecting to the proposed reduction of capital.

Every admitted creditor who does not consent thereto shall be entitled to object.

Any creditor who has not received notice that his name is entered on the list of creditors must send to the undersigned particulars of his name and address.

*(name of plaintiff's solicitor)*

*(No date is required.)*

*(address for service)*

*(Form 4 is not applicable.)*

**Form 126**

*(Notice of application under ss. 123 (5), 320 and 363 (1) of the Code.)*

*(No heading or title.)*

NOTICE OF APPLICATION RELATING TO

*(Name of Company in capitals.)*

P 80, rr 9 (4) (b), 10 and 18.

In respect of proceedings commenced on (date), application will be made by (name of plaintiff) (or if applicable, name of substituted plaintiff, who has, with the leave of the Court, in respect of a summons filed on (date) been substituted as plaintiff) to the Supreme Court of New South Wales at a.m. on (date) at (address of Court)

where application is made for an order under section 123 (5) of the Code without fixing a date for (settling a list of creditors to confirm a resolution of the Company to reduce its share capital from \$ to \$ , such reduction to be effected by (state how the reduction is to be effected).

or

where application is made for an order under section 320 of the Code for an order under section 320 of the [Companies \(New South Wales\) Code](#), in respect of the above Company and, where an order for winding up is sought including an order that the Company be wound up.

or

where application is made for an order under section 364 (1) of the [Companies \(New South Wales\) Code](#), for an order that the Company be wound up.

or

*(state the orders sought)*

Copies of documents filed may be obtained under the rules.

Any person intending to appear at the hearing must serve a notice in the prescribed form so as to reach the address below not later than 1 p.m. on (specify the date, for example 7 May 19 by reference to Part 80 rule 20 (3)).



(name of plaintiff's solicitor)

(No date is required.)

(address for service)

(Form 4 is not applicable.)

**Form 127**

(Affidavit verifying list of creditors.)

P 80, r 10.

AFFIDAVIT

On 7 May 19     I (name, address and occupation) say on oath—

1. I am the secretary, (or as the case may be) of the plaintiff.
2. The document produced to me, and marked "A", contains a list of the creditors of and persons having claims upon the said Company (or a list of the creditors of and persons having claims upon the said Company except those of the following class (or classes—set out class or classes) on (date) (the date fixed by the Court) together with their addresses, and the nature and amount of their debts or claims, and such list is, to the best of my knowledge and belief, a true and accurate list of persons having claims on that day, and of the nature and amount or estimated value of their debts or claims.
3. To the best of my knowledge and belief there was not, at that date, any debt or claim which, if that date were the commencement of the winding up of the said Company, would be admissible in proof against the said Company other than and except the debts and claims set forth in the said list.
4. I am able to make this statement from facts within my knowledge as the     of the said Company, and from information derived upon investigation of the books of the said Company.

Sworn at

before me

} "A"

<b>Name, address and description of creditor or claimant</b>	<b>Nature of debt or claim</b>	<b>Amount of estimated value of debt or claim</b>

This list of creditors and claimants marked "A" was produced and shown to AB at the time of swearing his affidavit before me on (date).

XY

[Where applicable, include the note required by Part 38 rule 6 (4) (a)]

**Form 128**

(Notice to creditors.)

To (name and address of creditor).

An application has been made to the Supreme Court to confirm a special resolution of the above Company for reducing its capital from \$     to \$     . In the list of persons admitted by the Company to have been its creditors on (date) (here insert any qualification which may have been directed) your name is entered as a creditor for (nature and amount or estimated value of debt or claim).

If you claim to have been on the last-mentioned day a creditor in a larger amount than is stated above, you must on or before (date), send the particulars of your claim, your name and address (and the name and address of your solicitor, if any) to the undersigned otherwise the above entry in the list of creditors will, in all the proceedings under the above application to reduce the capital of the Company, be treated as correct.

Dated                      19     .

(Name of plaintiff's solicitors.)

### Form 129

(Affidavit as to claims.)

#### AFFIDAVIT

On 7 May 19     I, CD, of &c (for example, the secretary of the said Company) and on 11 May 19     , I, EF, of &c (for example, the solicitor for the said Company) and on 12 May 19     I, AB, of &c (for example, the managing director of the said Company) say on oath—

I, the said CD for myself say—

1. I did, on            19     , in the manner hereinafter mentioned, serve a true copy of the notice now produced to me and marked "B" upon each of the respective persons whose names, addresses, and descriptions appear in the first column of the list of creditors, marked "A", referred to in the affidavit of                      filed on            19     .
2. I served the copies of the said notice by (for example putting such copies duly addressed to such persons according to their respective names and addresses appearing in the said list (being the last known addresses or places of abode of such persons) and with the proper postage stamps affixed thereto as prepaid letters, into the post office in (street) between     a.m. and     a.m. on 19     ).

And I, the said EF, for myself say—

3. A true copy of the notice now produced to me, and marked "C", has appeared in the     of 19     , 19     , &c.
4. I have, in the document now produced and shown to me and marked "D", set forth a list of all claims, the particulars of which have been sent in to me pursuant to the said notice "B", now produced and shown to me by persons claiming to be creditors of the Company for larger amounts than are stated in the list of creditors, marked "A", referred to in the affidavit of sworn on 19     , (or no person has sent to me pursuant to the said notice "B" a claim to be entered on the said list for a larger sum than in respect of which he is entered in the said list marked "A".)
5. I have, in the document now produced and shown to me, marked "E", set forth a list of all claims, the particulars of which have been sent to me pursuant to the notice referred to in the third paragraph of this affidavit by persons claiming to be creditors of the Company on 19     , not appearing on the said list of creditors marked "A", and who claimed to be entered thereon (or no claims have been sent to me pursuant to the notice referred to in paragraph 3 hereof by persons not entered on the said list "A" and claimed to be so entered).

And we, *CD* and *AB*, for ourselves say—

6. We have in the first part of the said document marked “D”, (now produced and shown to us), and also in the first part of the said document marked “E”, (also produced and shown to us), respectively set forth such of the said debts and claims as are admitted by the Company to be due wholly or in part, and how much is admitted to be due in respect of such of the same debts and claims respectively as are not wholly admitted by the Company to be due wholly or in part, and how much is admitted to be due in respect of such of the same debts and claims respectively as are not wholly admitted, and such of the same debts and claims as the Company contends are wholly or as to any and what part thereof not included in the enquiry in this matter.

7. We have, in the second part of such of the said documents marked “D” and “E”, set forth such of the said debts and claims as are wholly disputed by the Company and such of the same debts and claims as the Company contends would even if admitted be wholly (*or as to what part thereof*) not included in the enquiry in this matter.

And I, the said *CD* further say—

8. All rents, rates, taxes, salaries, wages and other incidental expenses current on and since become due have been paid and discharged by the Company. 19

Sworn by (*name*) at

}  
}

before me (*and so on*)

EXHIBIT D

D  
(*heading and title.*)

LIST OF DEBTS AND CLAIMS of which the particulars have been sent to by persons claiming to be creditors of the Company for larger amounts than are stated in the list of creditors made out by the Company.

This document marked “D”, was produced and shown to *CD*, *EF*, and *AB*, respectively, and is the same as is referred to in their affidavit sworn before me on

19 .

*XY*

First Part

Debts and claims wholly or partly admitted by the Company

<b>Names and addresses and description of creditors</b>	<b>Particulars of debt or claim</b>	<b>Amount claimed</b>	<b>Amount admitted by the Company to be owing to creditor</b>	<b>Amounts admitted by the Company to be owing but which it is contended are not within the enquiry</b>

Second Part

Debts and claims wholly disputed by the Company

<b>Names, addresses and descriptions of claimants</b>	<b>Particulars of claim</b>	<b>Amount claimed</b>	<b>Amounts which, even if admitted, it is contended would not be within the enquiry</b>

EXHIBIT E

E  
(heading and title.)

LIST OF DEBTS AND CLAIMS of which the particulars have been sent to by persons claiming to be creditors of the Company and to be entered on the list of the creditors made out by the Company.

This document marked "E" was produced and shown to CD, EF and AB, respectively, and is the same as is referred to in their affidavit sworn before me on 19 .

XY

First Part  
(Same as in Exhibit D.)

Second Part  
(Same as in Exhibit D.)

(Note: names are to be inserted alphabetically.)

[Where applicable, include the note required by Part 38 rule 6 (4) (a)]

**Form 130**

P 80, r 10.

(Notice to creditors to prove debts.)

To (Name and address).

You are hereby required to prove the debt claimed by you against the above company by filing your affidavit in the registry of the Court, Sydney, and serving a copy on the undersigned on or before 19 , and you are to attend before in at the Supreme Court, Sydney, on 19 , at a.m. being the time appointed for hearing and adjudicating on the claim, and produce any securities or documents relating to your claim.

In default of your complying with the above directions, you will be precluded from objecting to the proposed reduction of the capital of the company (or, in all proceedings relative to the proposed reduction of the capital of the company be treated as a creditor for such amount only as is set against your name in the list of creditors).

Dated 19 .

(Signed)  
Solicitor for the Company  
(address)

**Form 131**

(Summons under section 184 (3) of the Code.)

P 80, r 12.

SUMMONS UNDER SECTION 184 (3) OF THE COMPANIES (NEW SOUTH WALES) CODE

THE COURT ORDERS that—

(name) of (address) shall appear before the Court at (place) on (date) at a.m. and show cause why the document mentioned in the schedule below should not be delivered up and produced by bringing the said document into the office of (name of Company) at (office of Company) within (state the period as ordered) to have the said document cancelled (or as the notice required) and the transfer of the said document registered (or as ordered).

SCHEDULE

(description of document.)

(Complete as in general form of minute or order, Form 51.)

**Form 132**

(Summons claiming winding up order under section 364 (1) of the Code.)

P 80, r 18.

SUMMONS

The plaintiff claims—

1. An order that the defendant be wound up under the *Companies (New South Wales) Code*.
2. An order that a liquidator of the defendant be appointed (or where a person is proposed that (name) be appointed liquidator of the defendant).

**Form 133**

(Note of intention to appear on hearing.)

P 80, r 20.

He intends to appear on the hearing (add, where he intends to support the plaintiff's application and support the plaintiff's application or where he intends to oppose the plaintiff's application and oppose the plaintiff's application). He is a creditor for \$ \_\_\_\_\_ of the Company (or a contributory holding number and class of shares held shares in the Company).

(No date is required.)

(Form 4 is not applicable.)

**Form 134**

P 80, r 20.

NOTICE RELATING TO PERSONS INTENDING TO APPEAR ON THE HEARING

Particulars relating to persons who have given notice of their intention to appear on the hearing are set out below.

Name	Address	Solicitor	Creditor's debt \$	Contributory's shares: number and class	"Supporting", "Opposing" or leave blank

**Form 135**

(Minute of order substituting a plaintiff in a winding up application)

(Title before this order)

P 80, r 21.

ORDER

THE COURT ORDERS that—

1. (name) be substituted as plaintiff;
2. the substituted plaintiff amends the summons accordingly;

3. the substituted plaintiff serve on the defendant personally a minute of this order and the amended summons;
4. the substituted plaintiff publish a notice in accordance with Form 126 and otherwise comply with the requirements of the rules as if he were the former plaintiff making the application made in the summons;
5. the date appointed for hearing be adjourned to (*date*);
6. the costs of the substituted plaintiff of this application be the substituted plaintiff's costs of proceedings on the application (*or as ordered*).

(Complete as in general form of minute of order, Form 51.)

**Form 135A**

(Notice to liquidator of appointment)

P 80, r 22A.

To: (*name and address of liquidator*).

(*name and registered office of Company*) was wound up by order of the Court on (*date*) and you were appointed to be the liquidator. The application for the winding up was filed on (*date on which the summons was filed*).

**Form 136**

(Minute of winding up order.)

P 80, r 23.

ORDER

THE COURT ORDERS that—

1. the defendant be wound up by the Court under the provisions of the *Companies (New South Wales) Code*;
2. (*name and address*) be the liquidator of the defendant;
3. (*any directions under section 370 (2) (b) of the Code*);
4. that the plaintiff be at liberty to apply as he may be advised (*or as ordered*).

(Complete as in general form of minute of order, Form 51.)

**Form 136A**

(Notice to provisional liquidator of appointment)

P 80, r 26.

To: (*name and address of provisional liquidator*):

On: (*date*) the Court appointed you to be the liquidator of (*name and registered office of the Company*) provisionally.

**Form 137**

(Notice of appointment of provisional liquidator.)

(No heading or title.)

P 80, r 26.

NOTICE OF APPOINTMENT OF PROVISIONAL LIQUIDATOR

On (*date*), the Supreme Court appointed (*name in capitals, address*) to be the liquidator of (*name of company in capitals*) provisionally.

(name of plaintiff's solicitor)  
(address for service)

(No date required.)  
(Form 4 is not applicable.)

**Form 138**

(No heading or title.)  
NOTICE OF WINDING-UP ORDER

(Name of Company in capitals.)

P 80, r 28.

On (date) the Supreme Court made an order that the Company be wound up by the Court and appointed me to be liquidator.

(name of liquidator)  
(address)

(No date required.)  
(Form 4 does not apply.)

**Form 139**

(Certificate of liquidator of resolution of meeting of Committee of Inspection (or creditors and/or contributories))

P 80, r 33.

(Title)

I certify that the document attached hereto and marked "A" is a true copy of the resolution of a meeting of the Committee of Inspection (creditors and contributories or creditors or contributories) of the Company held at on (date).

Dated .

(Signature)

Liquidator

**Form 140**

(Report.)

P 80, r 36, 52.

REPORT BY LIQUIDATOR (or as the case may be)

1. I, (name and address) am the liquidator (or as the case may be) of (name of Company).  
(Continue in paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct part of the subject matter. For example, where the liquidator makes a report under section 431 (2) of the Code—
2. I was chairman of a meeting of the creditors (or contributories) of the Company held on (date) at (place).
3. The meeting was convened by a notice given on (date) and by notice published in the (name of newspaper) on (date) and in the Government Gazette on (date).
4. The meeting was attended, either personally or by proxy, by (number) creditors whose proofs of debt against the Company were admitted for voting purposes and amounted in all to the value of \$ .

or

4. The meeting was attended, either personally or by proxy, by *(number)* contributories who held in all *(number)* shares in the Company and were entitled respectively by the regulations of the Company to *(number)* votes.)
5. The proposals submitted to the meeting were *(state the proposals)*.
6. *Certify the resolution of the meeting, showing that the voting was unanimous or if not, the (total number and value of creditors, or the total number and voting power of contributories, voting for and against each proposal.)*

Dated: \_\_\_\_\_ (signature)  
Chairman

**Form 141**

*(Affidavit by special manager verifying his accounts.)*

P 80, r 38.

AFFIDAVIT

On \_\_\_\_\_ 19 \_\_\_\_ I *(name, address and occupation)* say on oath—

1. I am the special manager of the property and business *(or as the case may be)* of the Company.
2. The account of receipts and payments set out above contains a full and true account of my receipts and payments as special manager from *(date)* to *(date)*.
3. I have not, nor has any other person by my order or for my use, during the period, received or paid any moneys on account of the Company other than the items mentioned in that account.

Sworn at

}  
}

before me

*[Where applicable, include the note required by Part 38 rule 6 (4) (a)]*

**Form 142**

*(Requirement by liquidator under section 384 (1) of the Code.)*

P 80, r 40.

REQUIREMENT TO PAY MONEY, etc. TO LIQUIDATOR

To *(name and address)*:

1. I am the liquidator of *(name of Company)*.
2. Pursuant to section 384 (1) of the *Companies (New South Wales) Code*, I require you to pay *(or deliver, convey, surrender or transfer)* to me, forthwith *(or not later than (number) days from the date of this requirement) (or such time as the liquidator directs)* \$ \_\_\_\_\_ *(or describe the property or books)*  
*[or any money, property or books to which the Company is prima facie entitled.*

In this requirement—

- (a) “accounting records” includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up;



- (b) "books" includes any register or other record of information and any accounts or accounting records, however compiled, recorded or stored, and also includes any document;
- (c) a reference to writing shall be construed as including a reference to any mode of representing or reproducing words, figures or symbols in a visible form;
- (d) "printed" includes type-written, lithographed or reproduced by any mechanical means; and
- (e) "document" includes—
  - (i) any paper or other material on which there is writing or printing, or on which there are marks, symbols, or perforations having a meaning for persons qualified to interpret them; and
  - (ii) a disc, tape or other article from which sounds, images or messages are capable of being reproduced and, without limiting the generality of the foregoing, includes any summons, order and other legal process and any notice;
- (f) "property" means any legal or equitable interest (whether present or future and whether vested or contingent) in real or personal property of any description and includes things in action].

Dated:

(signature)  
(name)  
(address)

(Form 4 does not apply.)

### Form 143

(Notice of meeting of committee of inspection to sanction a call.)

P 80, r 41.

A meeting of the committee of inspection will be held at \_\_\_\_\_ on (date) at \_\_\_\_\_ a.m. for the purpose of considering, and if thought fit passing, a resolution that the making by the liquidator of a call of \$ \_\_\_\_\_ per share on all of the contributories (or as the case may be) be sanctioned.

Dated:

(signature)  
Liquidator  
(address)

### Form 144

(Statement with notice of meeting of committee of inspection to sanction a call.)

P 80, r 41.

STATEMENT IN SUPPORT OF PROPOSAL FOR CALL

(state the matters required to be stated by Form 148.)

Dated:

(signature)  
Liquidator  
(address)

**Form 145**

*(Notice of meeting of committee of inspection to sanction a call.)*

P 80, r 41.

*(No heading or title.)*

I have convened a meeting of the committee of inspection of *(name of Company)* to be held at \_\_\_\_\_ on \_\_\_\_\_ *(date)* at \_\_\_\_\_ a.m. to sanction the making of a call of \$ \_\_\_\_\_ per share on all of the contributories of the Company *(or as the case may be)*. Any contributory may make representations to me or the members of the committee in writing before, at, or orally at, the meeting. A statement showing the necessity for the making of the call may be obtained from me.

*(name and address of liquidator)*

*(No date is required.)  
(Form 4 is not applicable.)*

**Form 146**

*(Resolution of committee of inspection sanctioning a call.)*

P 80, r 41.

Resolved on *(date)* that the making by the liquidator of a call of \$ \_\_\_\_\_ per share on all of the contributories of the Company *(or as the case may be)* be sanctioned.

*(signatures)*

Members of the Committee of Inspection.

**Form 147**

*(Summons for leave to make a call.)*

P 80, r 42.

SUMMONS

The plaintiff claims an order—

1. under section 389 (2) (a) of the *Companies (New South Wales) Code* that he be granted leave (to make a call of \$ \_\_\_\_\_ per share on all of the contributories of the Company named in column 2 of the schedule below.
2. under section 384 (4) of the Code that each contributory pay into *(name of bank)* to the account of the liquidator the amount of the call made on him.

SCHEDULE

Column 1	Column 2	Column 3	Column 4
<b>Serial number.</b>	<b>Name and address.</b>	<b>In what character included.</b>	<b>Amount due \$</b>

**Form 148**

*(Affidavit in support of application for leave to make a call.)*

AFFIDAVIT

On 19 I (name, address and occupation) say on oath—

1. I am the liquidator of the Company.
2. The statement annexed hereto marked "A" shows—
  - (a) the amount due in respect of the debts proved and admitted against the Company and the estimated amount of the costs, charges and expenses of and incidental to the winding up (which amounts form in the aggregate about \$ );
  - (b) the property of the Company which amounts to about \$ .
3. There is no other property of the Company (*where applicable*) except amounts due from some of the contributories and I believe that these will realise about \$ .
4. (*number*) persons have been settled by me on the list of contributories of the Company in respect of the total number of shares.
5. To satisfy the debts and liabilities of the Company and the costs, charges, and expenses of and incidental to its winding-up, I believe \$ will be required in addition to the proceeds of the realization of the profit of the said Company and the amounts referred to in paragraph 3.
6. To provide \$ (*as in 5*), it is necessary to make a call upon the persons settled on the list of contributories, and, having regard to the probability that some of such contributories will partly or wholly fail to pay the amount of such call, I believe that a call of \$ per share should be made.

Sworn at

}

before me

[Where applicable, include the note required by Part 38 rule 6 (4) (a)]

**Form 149**

(*Notice of application for leave to make a call.*)

(*No heading or title.*)

An application will be made to the Supreme Court on (*date*) at a.m. (*or p.m.*) at (*address of Court*) for leave to make a call of \$ per share on all of the contributories of the company (*or as the case may be*). All persons interested are entitled to attend the hearing. A copy of an affidavit showing the necessity for the call may be obtained from me.

(*name and address of liquidator*)

(*No date is required.*)

(*Form 4 is not applicable.*)

**Form 150**

(*Minute of order giving leave to make a call.*)

ORDER

THE COURT ORDERS that—

1. leave be given to the liquidator to make a call of \$            per share on all of the contributories (*or as the case may be*);
2. each contributory pay into (*name of Bank*) to the account of the liquidator the amount of the call made on him (*or as the case may be*).

(*Complete as in general form of minute of order, Form 51.*)

**Form 151**

(*Notice of amount of call per share.*)

Pursuant to the order of the court made (*or the resolution of the committee of inspection passed*) on (*date*) I will make a call of \$            per share on all of the contributories of the Company (*or as the case may be*).

Dated:

(*signature*)  
Liquidator

**Form 152**

(*Notice of call sanctioned by committee of inspection.*)

On (*date of resolution*) the committee of inspection sanctioned the making by me of a call of \$            per share on all of the contributories of the Company (*or as the case may be*).

I call on you accordingly to pay \$            to me on or before (*date*).

If you do not pay that sum to me on or before that date, I will claim interest on that sum from that date until payment of that sum.

(*signature*)

Liquidator

Dated:

(*name and address*)

**Form 153**

(*Notice of call permitted by leave of the Court.*)

On (*date of making of order*) the Court granted leave to me to make a call of \$            per share on all of the contributories of the Company (*or as the case may be*) and to pay the amount of the call into (*bank named in the order*) to my account. I call on you accordingly to pay \$            into (*bank*) to my account on or before (*date*).

If you do not so pay the sum on or before that date, I will claim interest on that sum from that date until payment of that sum.

Dated:

(*signature*)

Liquidator

(*name and address*)

**Form 154**

(*Minute of order under section 541 (3) of the Code for examination.*)

P 80, r 63.

ORDER

THE COURT ORDERS that—

1. (*name*) (*address*) attend before the Court at a time and place appointed by the registrar and from day to day until the conclusion of his examination, to be examined in public on oath or affirmation on any matters relating to the promotion, formation, management, administration or winding up of the Company and produce any books in his possession or under his control relevant to those matters;
2. (*any directions under section 541 (5) of the Code*).
3. the questions put to him and the answers given by him be recorded in writing;
4. subject to any further order of the Court, the plaintiff be paid or retain out of the property of the Company his costs of this application and the examination.

(*or as ordered*).

(*Complete as in general form of minute of order, Form 51.*)

(*There may be added to a minute of the above order—*

APPOINTMENT FOR HEARING

I appoint (*date*) at 10 a.m. at (*address of Court*) for the examination (*or as appointed*).

(*Signature*)

Registrar

**Form 154A**

(*Summons under section 596A or 596B of the [Corporations Law](#)*)

SUMMONS TO ATTEND FOR EXAMINATION UNDER SECTION 596A (OR 596B) OF THE *CORPORATIONS LAW*

P 80, r 1D (2).

To: (*Name*)  
(*Address*)

1. You are required to attend before the Court at the time and place appointed by the Registrar and specified below, to be examined on oath or affirmation about the examinable affairs (as defined in the [Corporations Law](#)) of (*name of corporation*) ("the Corporation").

Section 597 (6) of the [Corporations Law](#) provides that a person who is summoned under section 596A or section 596B to attend before the Court shall not, without reasonable excuse—

2. (a) fail to attend as required by the summons; or  
(b) fail to attend from day to day until the conclusion of the examination.

*(If applicable)* You are also required to produce at the examination the books (as defined in the *Corporations Law*) specified in the Schedule below that—

3. (a) are in your possession or custody or under your control; and  
(b) relate to the Corporation or to any of its examinable affairs.

*(If applicable)* Section 597 (7) of the *Corporations Law* provides that a person who attends before the Court for examination must not—

4. (a) without reasonable excuse, refuse or fail to take an oath or make an affirmation; or  
(b) without reasonable excuse, refuse or fail to answer a question that the Court directs him or her to answer; or  
(c) make a statement that is false or misleading in a material particular; or  
(d) without reasonable excuse, refuse or fail to produce books that the summons requires him or her to produce.

SCHEDULE

*(if applicable)*  
*(description of books)*

Dated: 19

By the Court  
Registrar  
*(or as the case may be)*

APPOINTMENT

I appoint *(date)* at *(time)* at *(address of Court)* for the examination.

*(Signature)*  
Registrar

**Form 154BA**

P 80A, r 4.

SUMMONS UNDER SECTION 1092 (3) OF THE *CORPORATIONS LAW*

THE COURT ORDERS that:

*(name)* of *(address)* shall appear before the Court at *(place)* on *(date)* at a.m. and show cause why the document mentioned in the Schedule below should not be delivered up and produced by bringing the said document into the office of *(name of company)* at *(office of the company)* within *(state the period as ordered)* to have the said document cancelled *(or as the notice required)* and the transfer of the said document registered *(or as ordered)*.

SCHEDULE

*(Description of document)*  
*(Complete as in general form of minute or order, Form 51.)*

**Form 154B**

*(Notice of Application under ss. 246D (5), 254E (1), 411 (4) (b) and (6), 413 (1), 459A, 461, 601FP or 601ND (1))*

*(No heading or title.)*

NOTICE OF APPLICATION RELATING TO

*(Name of Company in capitals)*

A.C.N. *(specify Australian Company Number of Company)*

*(Name of applicant)* will apply to the Supreme Court of New South Wales at *(time)* on *(date)* at *(address of Court)* for an order *(describe order using appropriate description hereunder)* validating an issue of shares *(or confirming the terms of an issue of shares)* in the capital of *(name of Company)* under section 254E;

*or*

setting aside a modification of the constitution of *(name of Company)* under section 246D;

*or*

setting aside a variation or cancellation of rights of members of *(name of Company)* under section 246D;

*or*

approving a compromise or arrangement by *(name of Company)* with its creditors or members, or a class of creditors or members, under section 411 (4) and (6);

*or*

that *(name of Company)* be wound up in insolvency under section 459A;

*or*

that *(name of Company)* be wound up on the ground of *(specify ground)* under section 461;

*or*

that *(name of proposed temporary responsible entity)* be appointed as the temporary responsible entity of *(specify scheme)* under section 601FP;

*or*

that *(name of responsible entity)* wind up *(specify registered scheme)* under section 601ND (1);

*or*

*(state other order sought).*

Any person intending to appear at the hearing must file a notice of appearance in the prescribed form and serve that notice on the applicant at its address for service shown below not later than *(specify the date by reference to Part 80A rule 9 (1)).*

*(name of applicant's solicitor)*  
*(address for service)*

*(no date is required)*  
*(Form 4 does not apply)*

### **Forms 154C-154E**

(Repealed)

### **Form 154FA**

*(No heading or title)*

*(name of creditor)*  
Creditor  
*(name of company)*  
Debtor

AFFIDAVIT UNDER SECTION 459E OF THE *CORPORATIONS LAW*

On (date), I, (name, address and occupation) say on oath:

1 (Set out the matters referred to in paragraph (b) of Part 80A, rule 15 (1)).

2 I believe that the amount of \$ , being the debt (or the total of the amounts of the debts) specified in the accompanying demand, is due and payable by the debtor to the creditor.

3 (Set out the matters referred to in paragraph (c) of Part 80A, rule 15 (1)).

4 I believe that there is no genuine dispute about the existence or amount of the debt (or debts) referred to in paragraph 2.

Sworn at

before me

}

[IMPORTANT NOTE:

(1) This affidavit accompanies a statutory demand under section 459E of the *Corporations Law*.

(2) No proceedings (or, if applicable, no winding up proceedings) have been commenced in respect of any debt to which this affidavit relates.

(3) Any questions relating to this affidavit or any debt to which it relates should be directed either to the person named as creditor or the creditor's solicitors.]

**Form 154FB**

P 80A, r 16.

AFFIDAVIT VERIFYING DEBT UNDER SECTION 459Q OF THE *CORPORATIONS LAW*

On (date), I, (name, address and occupation) say on oath:

1 (Set out the matters referred to in paragraph (c) of Part 80A, rule 16 (1))

2 I believe that the amount of \$ , being the debt (or the total of the amounts of the debts) specified in the statutory demand served on the defendant, is due and payable by the defendant to the plaintiff.

3 (Set out the matters referred to in paragraph (d) of Part 80A, rule 16 (1))

4 I believe that there is no genuine dispute about the existence or amount of the debt (or debts) referred to in paragraph 2.

5 The defendant has failed to pay the said amount to the plaintiff or to secure or compound for that amount to the reasonable satisfaction of the plaintiff.

Sworn at

before me

}

**Form 154F**

P 80A, r 20 (1) (a) (i).

NOTICE TO LIQUIDATOR (or PROVISIONAL LIQUIDATOR) OF APPOINTMENT

To: (name and address of liquidator or provisional liquidator)



*(if liquidator was appointed, add:*

*(Name and registered office of Company) was wound up by order of the Supreme Court of New South Wales on (date) and you were appointed to be the liquidator. The application for the winding up was filed on (date on which the summons was filed).)*

*(if provisional liquidator was appointed, add:*

*By order of the Court on (date) you were appointed to be provisional liquidator of (name and registered office of Company).)*

### **Form 154G**

P 80A, r 20 (1) (b).

*(No heading or title)*

NOTICE OF WINDING UP ORDER AND APPOINTMENT OF LIQUIDATOR

*(Name of Company in capitals)*

A.C.N. *(specify Australian Company Number of Company)*

On *(date)* the Supreme Court of New South Wales made an order that the Company be wound up by the Court and appointed me to be liquidator.

*(name of liquidator)*

*(address)*

*(No date required)*

*(Form 4 does not apply)*

### **Form 154H**

P 80A, r 20 (1) (b).

*(No heading or title)*

NOTICE OF APPOINTMENT OF PROVISIONAL LIQUIDATOR

*(Name of Company in capitals)*

A.C.N. *(specify Australian Company Number of Company)*

On *(date)* the Supreme Court of New South Wales appointed me to be provisional liquidator of the Company.

*(name of provisional liquidator)*

*(address)*

*(No date required)*

*(Form 4 does not apply)*

### **Form 154I**

P 80A, rr 13A (1), 13B (1) (b), 13C (1), 22 (2), 23 (2) (b).

*(No heading or title)*

NOTICE OF INTENTION OF LIQUIDATOR *(or PROVISIONAL LIQUIDATOR or RECEIVER or ADMINISTRATOR or SPECIAL MANAGER)* TO APPLY FOR DETERMINATION OF REMUNERATION

*(Name of Company in capitals)*

A.C.N. *(specify Australian Company Number of Company)*

To: *(name and address of person to whom notice is given)*

I, *(name and address)*, the liquidator *(or provisional liquidator or receiver or administrator or special manager)* of the abovenamed Company, will, not earlier than 21 days after service on you of this notice and the accompanying affidavit, seek a determination by the Court of my remuneration.

If you object to my application, you should, within 21 days after service of this notice, serve on me a notice of objection stating the grounds of objection to the remuneration claimed. You will then be entitled to receive notice of the time and place of hearing of the application.

Dated (*date*)

(*signature*)  
liquidator (*or* provisional liquidator *or*  
receiver *or* administrator *or* special manager)

(*Form 4 does not apply*)

### **Form 154J**

(*Report*)

P 80A, rr 25, 31.

#### REPORT BY LIQUIDATOR (*or as the case may be*)

1. I, (*name and address*) am the liquidator (*or as the case may be*) of (*name of Company*).  
(*Continue in paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct part of the subject matter. For example, where the liquidator makes a report under section 547 (1) of the [Corporations Law](#):*)
2. I was chairman of a meeting of the creditors (*or* contributories) of the Company held on (*date*) at (*place*).
3. The meeting was convened by a notice given on (*date*) and by notice published in the (*name of newspaper*) on (*date*) and in the Commonwealth of Australia Gazette on (*date*).
4. The meeting was attended, either personally or by proxy, by (*number*) creditors whose proofs of debt against the Company were admitted for voting purposes and amounted in all to the value of \$  
*or*
4. The meeting was attended, either personally or by proxy, by (*number*) contributories who held in all (*number*) shares in the Company and were entitled respectively by the regulations of the Company to (*number*) votes.
5. The proposals submitted to the meeting were (*state the proposals*).
6. (*Certify the resolution of the meeting, showing that if the voting was unanimous of, if not, the total number and value of creditors, or the total number in voting power of contributories, voting for and against each proposal.*)

Dated:

(*signature*)  
Chairman

### **Form 154K**

(*Affidavit by special manager verifying his accounts.*)

P 80A, r 27.

#### AFFIDAVIT

On 19 I (*name, address and occupation*) say on oath:

1. I am the special manager of the property and business (*or as the case may be*) of the Company.
2. The account of receipts and payments set out above contains a full and true account of my receipts and payments as special manager from (*date*) to (*date*).

3. I have not, nor has any other person by my order or for my use, during the period, received or paid any moneys on account of the Company other than the items mentioned in that account.

SWORN at

}

before me

[Where applicable, include the note required by Part 38 rule 6 (4) (a)]

**Form 154L**

P 80A, r 33 (3) (a) (i).

NOTICE OF INTENTION OF LIQUIDATOR TO SEEK RELEASE

To: *(name and address of creditor or contributory)*

I, *(name and address of liquidator)*, the liquidator of the above Company, intend to apply to the Supreme Court of New South Wales for a release as liquidator of the Company *(if applicable, add and that the company be dissolved)*.

If you object to the grant of my release, you must, within 21 days of publication in the Commonwealth of Australia Gazette of my notice of intention to apply for a grant of release, deliver to me a notice of objection stating the grounds of objection.

**(NOTE—**

Section 481 (3) of the [Corporations Law](#) provides that an order of the Court releasing the liquidator discharges him or her from all liability in respect of any act done or default made by him or her in the administration of the affairs of the Company or otherwise in relation to his or her conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.)

Dated: *(date)*

*(Form 4 does not apply)*

**Form 154M**

P 80A, r 33 (3) (b).

*(No heading or title)*

NOTICE OF INTENTION OF LIQUIDATOR TO SEEK RELEASE

*(Name of Company in capitals)*

A.C.N. *(specify Australian Company Number of Company)*

I, *(name and address of liquidator)*, the liquidator of the above company, intend to apply to the Supreme Court of New South Wales for a release as liquidator of the Company *(if applicable, add and that the company be dissolved)*.

Any creditor or contributory who wishes to object to the grant of my release may, within 21 days of publication of this notice, deliver to me a notice of objection stating the grounds of objection.

**(NOTE—**

Section 481 (3) of the [Corporations Law](#) provides that an order of the Court releasing the liquidator discharges him or her from all liability in respect of any act done or default made by him or her in the administration of the affairs of the Company or otherwise in relation to his or her conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.)

*(No date is required)*

*(Form 4 does not apply)*

**Form 154N**

P 80A, r 36 (6).

SUMMONS TO ATTEND FOR EXAMINATION

UNDER SECTION 596A (or 596B) OF THE *CORPORATIONS LAW*

To: (Name)  
(Address)

1. You are required to attend before the Court at the time and place appointed by the Registrar and specified below, to be examined on oath or affirmation about the examinable affairs (as defined in the *Corporations Law*) of (name of corporation) ("the Corporation").
2. Section 597 (6) of the *Corporations Law* provides that a person who is summoned under section 596A or section 596B to attend before the Court shall not, without reasonable excuse:
  - (a) fail to attend as required by the summons; or
  - (b) fail to attend from day to day until the conclusion of the examination.
3. (If applicable) You are also required to produce at the examination the books (as defined in the *Corporations Law*) specified in the Schedule below that:
  - (a) are in your possession or custody or under your control; and
  - (b) relate to the Corporation or to any of its examinable affairs.
4. (If applicable) Section 597 (7) of the *Corporations Law* provides that a person who attends before the Court for examination must not:
  - (a) without reasonable excuse, refuse or fail to take an oath or make an affirmation; or
  - (b) without reasonable excuse, refuse or fail to answer a question that the Court directs him or her to answer; or
  - (c) make a statement that is false or misleading in a material particular; or
  - (d) without reasonable excuse, refuse or fail to produce books that the summons requires him or her to produce.

SCHEDULE

(if applicable)  
(description of books)

Dated: 19

By the Court  
Registrar  
(or as the case may be)

**Forms 155, 156**

(Repealed)

**Form 157**

P 82, rr 9, 7 (4).

OATH OF OFFICE

I, (name) of (address and occupation) do swear that if I am appointed as a public notary by the Supreme Court of New South Wales I will truly and honestly conduct myself in the practice of a public notary in New South Wales according to the best of my knowledge, skill and ability.

*(Signature of person taking oath)*

CERTIFICATE

I, *(name)* of *(address)*, certify that I duly administered the above oath on *(date)* at *(place)*.  
*(date)*

.....*(Signature of a person administering oath)*

.....*(Office of person administering oath)*

**Form 158**

P 1, r 9A (1A)

CERTIFICATION UNDER SECTION 198L OF THE *LEGAL PROFESSION ACT 1987*

I, *(full name)*, certify that there are reasonable grounds for believing on the basis of facts provable on the material available to me to date and a reasonably arguable view of the law that this claim for damages (or, as the case may be, this defence/this cross-claim/this defence to cross-claim) has reasonable prospects of success.

*(Signature)* Date *(Date certification signed)*

Solicitor/barrister for the plaintiff/defendant/cross-claimant/cross-defendant (as the case may be)

**Forms 159, 160**

*(Repealed)*

**Form 161**

P 84, r 1

APPLICATION FOR DIRECTION TO PAROLE AUTHORITY

To the Registrar:

Date:

I, *(full name)*, apply to the Court for a direction to be given to the Parole Authority that the information on which the Authority on *(date)* based its decision:

\*(a) under section 141/149/150\* of the *Crimes (Administration of Sentences) Act 1999* that I should not be released on parole was false/misleading/irrelevant\*.

\*(b) under section 130/163/167/170 (1)\* of the *Crimes (Administration of Sentences) Act 1999* to revoke the parole order/periodic detention order/home detention order\* relating to me was false/misleading/irrelevant\*.

The information that I believe was false/misleading/irrelevant\* is set out on page 2 of this application.

\* *Strike out any words that are not applicable.*

*(signed)†*  
Applicant

†*This application must be signed by the applicant and, if the applicant cannot write, the applicant's mark must be attested by a witness whose name and address must be given.*

The applicant must answer the following question:

Do you desire to appear in person at the hearing or determination of your application?

If the answer is "yes", the applicant must state the grounds on which the applicant believes he or she should be allowed to do so.

*(Page 2 of application)*

The following information was false:\*

The following information was misleading:\*

The following information was irrelevant:\*

\* *Strike out any words that are not applicable.*

## Form 162

P 84, r 2

### APPLICATION BY STATE FOR DIRECTION TO PAROLE AUTHORITY

To the Registrar:

Date:

The Attorney General/The Director of Public Prosecutions\* applies to the Court for a direction to be given to the Parole Authority that the information on which the Authority on *(date)* based its decision under section *(number of appropriate section)* of the *Crimes (Administration of Sentences) Act 1999*:

\*(a) that *(name of offender)* should be released on parole was false/misleading/irrelevant\*.

\*(b) not to revoke the parole order relating to *(name of offender)* was false/misleading/irrelevant\*.

The information that I believe was false/misleading/irrelevant\* is set out on page 2 of this application.

\* *Strike out any words that are not applicable.*

(signed)Applicant

(Page 2 of application)


The following information was false:\*

The following information was misleading:\*

The following information was irrelevant:\*

\* *Strike out any words that are not applicable.*

### Index of Forms

1. First page of a document (See P 65, r 1).
2.  Heading and title (See P 65, r 1).
- 3.
4. Conclusion of documents for use by a party.
5. Statement of Claim (P 4, r 1).
6. Summons (P 5, r 4A).
7. (Repealed)
8. Appointment for hearing (P 5, r 5).
9. Defence and cross-claim (P 6, r 13).
10. Cross-claim (pleaded) (P 6, r 13).
11. (Repealed)

- 11A. Cross-claim against plaintiff in summons (P 6, r 16 (1)).
- 11B. (Repealed)
- 12. Notice of payment (P 7, r 4).
- 13. Notice of claim for possession (P 7, r 8).
- 13A. Notice to defendant served outside Australia (P 10, r 2A).
- 14. Request for special service (P 10, r 8 (a) (v)).
- 15. Request for service (P 10, r 10).
- 16. Notice of Appearance (P 11, r 4).
- 17. Defence (P 15, r 3).
- 18. Reply (P 15, r 4).
- 19. Reply and defence to cross-claim (P 15, r 4 (2)).
- 20. Notice to plead facts (P 15, r 12 (3)).
- 20A. Affidavit verifying statements of claim (P 15, r 23).
- 20B. Affidavit verifying defence (P 15, r 23).
- 20C. Affidavit of debt (P 17, r 4 (2))
- 21. Notice to admit facts and authenticity of documents (P 18, rr 2, 5).
- 22. Notice disputing facts and authenticity of documents (P 18, rr 2, 5).
- 23. Notice of Motion (P 19, r 2).
- 24. Notice of amendments (P 20, r 7).
- 25–30A. (Repealed)
- 31. Notice for discovery (P 23, r 1).
- 32. List of documents (P 23, r 6).
- 33. Notice to answer interrogatories (P 24, r 6).
- 34. Statement in answer to interrogatories (P 24, r 6).
- 35. Verified statement in answer to interrogatories (P 24, r 6).
- 36. (Repealed)
- 37. Notice of motion for directions (P 26, r 2).
- 38. Minutes of Order for examination (P 27, r 1D).
- 39. Minutes of Order appointing examiner (P 27, r 1D).
- 40. Minutes of Order to send letter of request (P 27, r 1).
- 41. Receiver's deed of security (P 29, r 2).

- 41A, 41B. (Repealed)
42. Notice to set down for trial (P 33, r 5).
43. Requisition for trial with a jury (P 34, r 3).
- 43A. Order for Production (P 36, r 12).
44. Minutes of order (inmate a witness) (P 36, r 14).
45. Notice to produce (P 36, r 16).
- 45A. Subpoena for production for service in New Zealand (P 36A r 3 (5))
- 45B. Subpoena to a corporation for production and for its proper officer to answer questions concerning possession, etc of documents for service in New Zealand (P 36A r 3 (5)).
- 45C. Subpoena for production of original or photocopies of medical records for service in New Zealand (P 36A r 3 (5)).
- 45D. Subpoena to give evidence for service in New Zealand (P 36A r 3 (5)).
- 45E. Subpoena for production and to give evidence for service in New Zealand (P 36A r 3 (5)).
- 45F. Certificate of non-compliance with subpoena (P 36A, r 5 (1)).
- 45G. Objection to determination without hearing (P 36A r 6 (7)).
- 45H. Request for hearing by video link or telephone (P 36A r 6 (8)).
46. Subpoena (P 37, r 3).
- 46A-48. (Repealed)
49. Affidavit (P 38, r 2).
50. Minute of judgment (P 41, r 10) and particular judgments.
51. Minute of order (P 41, r 11).
- 51A. Certificate under section 13 of the *Foreign Judgments (Reciprocal Enforcement) Act 1973* (P 41, r 15A (2)).
52. Writ of possession (and for levy of property) (P 42, r 4).
53. Writ of specific delivery (P 42, r 5).
54. Writ of delivery (P 42, r 5).
55. Notice to corporation and officer before sequestration or committal (P 4, r 8 (3)).
56. Minute of order (examination as to debts) (P 43, r 1).
57. Writ for levy of property (P 45, r 2).
- 57A. Notice to judgment debtor of intention to sell land (P 45, r 9 (2)).
- 57B. Memorandum to be endorsed on notice of sale for service on judgment debtor. (P45, r 12).
58. Garnishment notice (P 46, r, 3).



59-62AA1. (Repealed)

62AAA. Items, etc in a bill of costs (P 52, r 49 (1)).

62AB. Undertaking to pay disbursement (P 52, r 49 (3A)).

62AC. Notice to file objections to bill of costs (P 52, r 50A (3)).

62AD. Notice of objection to a bill (P 52, r 50A (5)).

62AE. Certificate of taxation (P 52, r 50A (7)).

62B. Request for appointment for hearing before taxing officer (P 52, r 50 (4) (ii)).

63. Certificate of taxation (P 52, r 59).

64. Statement of objection (to item of costs disallowed) (P 52, r 60).

64A. Request for taxation or moderation (P 52, r 68 (8)).

64B. Security for costs (P 53, r 3).

65. Warrant for arrest (P 55, r 10).

66. Warrant for committal (P 55, r 13).

67. Notice of claim to Sheriff (interpleader) (P 56, r 5).

68. Minute of order (registration of judgment) (P 59, r 4).

69. Notice of registration of judgment (P 59, r 6).

69A, 69B. (Repealed)


70. Notice of Appeal from associate Judge (P 60, r 11 (1)).

*(The form prescribed under Pt 65 r 1 is Form 1).*

70AA. Oath of office (P 65C, rr 3 (4), 4 (4)).

70A. Notice of intention to cease acting as solicitor (P 66, r 7 (2)).

71. Writ of Habeas Corpus (s 69 (2)).

71A, 71B.  (Repealed)

71C. Arbitrator's award and Registrar's notice to parties (P 72B, r 3 (1)).

71D. Arbitrator's reasons for award (P 72B, r 3 (2)).

71E. Application for rehearing (P 72B, r 5 (1)).

72-74. (Repealed)

74AA. Subpoena to a natural person: criminal proceedings (P 75, r 2 (q)).

74AB. Subpoena to a corporation for production and for its proper officer to answer questions concerning possession etc of documents: criminal proceedings (P 75, r 2 (q)).

- 74AC. Subpoena to give evidence: criminal proceedings (P 75, r 2 (q)).
- 74AD. Subpoena for production and to give evidence: criminal proceedings (P 75, r 2 (q)).
- 74AE. Form of indictment (P 75, r 3D (1)).
- 74AF. Application to the Supreme Court or the Court of Criminal Appeal for variation of bail (P 75, r 3E (c)).
- 74AG. Application to the Supreme Court or the Court of Criminal Appeal for bail (P 75, r 3E (d)).
- 74AH. Acceptable person—Information form (P 75, r 3F).
- 74AHA. Objection to confirmation of forfeiture order by the Supreme Court or the Court of Criminal Appeal (p 75, r 3FA).
- 74AHB. Application to set aside forfeiture order by the Supreme Court or the Court of Criminal Appeal (P 75, r 3FB).
- 74AI. Application to the Supreme Court for an order that the hearing of an application in relation to bail be not conducted by video link (P 75, r 3G).
- 74AJ. Election under s 132 (1) of the *Criminal Procedure Act 1986* (P 75, r 3H (1)).
- 74AK. Election under s 132 (5) of the *Criminal Procedure Act 1986* (P 75, r 3H (1)).
- 74A. Summons: *Part 5 of Chapter 4 of the Criminal Procedure Act 1986* (P 75, r 7).
- 74B. Minute of order: s 246 (1) (a), *Criminal Procedure Act 1986* (P 75, r 8).
- 74C. Minute of order: s 246 (1) (b), *Criminal Procedure Act 1986* (P 75, r 8).
- 74D–89. (Repealed)
- 89A. Minute of order under section 21 (2) of the *Status of Children Act 1996* (P 77, r 38).
- 89B. Notice of claim for provision under the *Family Provision Act 1982* (P 77, r 63).
- 89C. (Repealed)
- 89D. Defendant's notice under s 31 (5) of the *Confiscation of Proceeds of Crime Act 1989* (P 77, r 87A).
- 89E. Prosecution's notice under s 31 (5) of the *Confiscation of Proceeds of Crime Act 1989* (P 77, r 87A).
- 89F. Notice under 44 (2) of the *Confiscation of Proceeds of Crime Act 1989* (P 77, r 87B).
- 89G. Certificate under section 85 (1) of the *Confiscation of Proceeds of Crime Act 1989* (P 77, r 87G).
- 89E. Notice under s 24 of the *Crimes (Confiscation of Profits) Act 1985* (P 77, r 86).
- 89H. Order under s 3 (1) of the *Restricted Premises Act 1943* (P 77, r 91).
- 89I. Order under s 4 (1) or 14 (3) of the *Restricted Premises Act 1943* (P 77, r 91).
- 89J. Notice of declaration under s 5 (1) of the *Restricted Premises Act 1943* (P 77, r 91).
- 89K. Notice of rescission under s 5 (1) of the *Restricted Premises Act 1943* (P 77, r 91).

- 89L. Certificate under s 77F of the *Victims Compensation Act 1996* (P 77, r 137A).
- 90. Summons for probate, administration or resealing (P 77, r 8).
- 91. Notice of intended application for probate (P 78, r 10).
- 92. Notice of intended application for administration (P 78, r 10).
- 92A. Notice of intended application for administration under s 41A of the Probate Act (P 78, r 10).
- 93. Notice of intended application for resealing (P 77, r 10).
- 94. Renunciation of probate (P 78, r 14).
- 95. Affidavit of attesting witness (P 78, r 15).
- 96. Inventory of Property (Forms 97, 98, 104, 106).
- 97. Affidavit of executor (P 78, r 24).
- 98. Affidavit of applicant for administration (P 78, rr 24A (1) (a), 25 (1) (a), 25A (2) (a)).
- 98A. Affidavit showing deceased had no de facto spouse (P 78, r 24A (2) (c)).
- 99. Affidavit showing deceased had no de facto spouse (P 78, r 25 (2) (f)).
- 99A–  
100B. (Repealed)
- 101. Consent to administration (P 78, rr 24A, 25, 25A).
- 102. Administration bond (P 78, rr 24A, 25, 26).
- 103. Affidavit of surety (P 78, rr 24A, 25, 25A, 26, 34).
- 103A. Affidavit relating to de facto relationship (P 78, r 25A (2) (e)).
- 103AA. Affidavit relating to de facto relationships (P 78, r 25A (2) (d)).
- 103B. Notice where the deceased leaves a de facto wife or de facto husband (P 78, r 25A (3) (b) (iv)).
- 104. Affidavit of applicant for administration with the will annexed (P 78, r 26).
- 105. Renunciation in favour of Public Trustee (P 78, r 26).
- 105A. Affidavit of applicant for administration for the purposes of the *Family Provision Act 1982* (P 78, r 26A).
- 106. Affidavit of applicant for resealing (P 78, r 28).
- 106A. Affidavit of additional assets (P 78, r 28A).
- 106B. Consent to distribution of gift (P 78, r 34A).
- 106CA. Consent to order (P 78, r 34A (1A)).
- 106C. Notice of intention to distribute estate (P 78, r 34D).
- 106D. Consent by affected person (P 78, r 34E (1)).
- 106E. Notice to affected person (P 78, r 34E (1)).

- 106F. Notice to affected person (P 78, r 34E (3)).
- 107. (Repealed)
- 108. Request for issue of citation (P 78, rr 46, 54).
- 109. Citation to pray for administration (P 78, r 51).
- 110. Answer to citation to pray for administration (P 78, r 51).
- 111. Citation to take probate (P 78, r 52).
- 112. Answer to citation to take probate (P 78, r 52).
- 113. Citation to see proceedings (P 78, r 53).
- 114. Caveat in respect of grant of probate or proof of will (P 78, rr 61, 62, 62A).
- Form 115 Notice of withdrawal of caveat (P 78, r 64).
- 115A. (Repealed)
- 116. Notice of filing of accounts (P 78, r 76).
- 116A. Notice of Intended Objection to Accounts *or* Commission *or* Accounts and Commission (P 78, r 77A).
- 117. Acknowledgment under s 83 of the Probate Act (P 78, r 80).
- 118. Notice of appointment of executor or administrator (P 78, r 90).
- 119. Deed of appointment of executor or administrator (P 78, r 90).
- 120. Notice of objection to appointment of executor or administrator (P 78, r 90).
- 121. Notice of intended distribution of an estate under s 92 of the Probate Act, s 11 of the Testator's Family Maintenance etc Act, and s 35 of the Family Provision Act (P 78, r 91, and P 77, rr 31, 69).
- 121A. (Repealed)
- 122. Petition: *Parliamentary Electorates etc Act 1912* (P 79, r 8).
- 123. Notice of filing petition: *Parliamentary Electorates etc Act 1912* (P 79, r 9).
- 124. Notice of reference: *Parliamentary Electorates etc Act 1912* (P 79, r 31).
- 125. Notice of application for reduction of capital and of list of creditors (P 80, r 9).
- 126. Notice of application under ss 123 (5), 320 and 363 (1) of the Code (P 80, rr 9, 10, 18).
- 127. Affidavit verifying list of creditors (P 80, r 10).
- 128. Notice to creditors (P 80, r 10).
- 129. Affidavit as to claims (P 80, r 10).
- 130. Notice to creditors to prove debts (P 80, r 10).
- 131. Summons under s 184 (3) of the Code (P 80, r 12).
- 132. Summons claiming winding up order under the Code (P 80, r 18).

- 133. Note of intention to appear on hearing (P 80, r 20).
- 134. Notice relating to persons intending to appear on hearing (P 80, r 20).
- 135. Minute of order substituting plaintiff in a winding up application (P 80, r 21).
- 135A. Notice to liquidator of appointment (P 80, r 22A).
- 136. Minute of winding up order (P 80, r 23).
- 136A. Notice to provisional liquidator of appointment (P 80, r 26).
- 137. Notice of appointment of provisional liquidator (P 80, r 26).
- 138. Notice of winding up order (P 80, r 28).
- 139. Certificate of liquidator of resolution of meeting (P 80, r 33).
- 140. Report (P 80, rr 36, 52).
- 141. Affidavit by special manager (P 80, r 38).
- 142. Requirement by liquidator under s 384 (1) of the Code (P 80, r 40).
- 143. Notice of meeting of committee of inspection: calls (P 80, r 41).
- 144. Statement with notice of meeting of committee of inspection: calls (P 80, r 41).
- 145. Notice of meeting of committee of inspection: calls (P 80, r 41).
- 146. Resolution of committee of inspection: calls (P 80, r 41).
- 147. Summons for leave to make a call (P 80, r 42).
- 148. Affidavit: leave to make a call (P 80, r 42).
- 149. Notice of application for leave to make a call (P 80, r 42).
- 150. Minute of order: leave to make a call (P 80, r 42).
- 151. Notice of amount of call per share (P 80, r 43).
- 152. Notice of call sanctioned by committee of inspection (P 80, r 44).
- 153. Notice of call permitted by leave of the Court (P 80, r 44).
- 154. Minute of order under s 541 (3) of the Code for examination (P 80, r 63).
- 154A. Summons under section 596A or 596B of the *Corporations Law* (P 80, r 1D (2)).
- 154BA. Summons under section 1092 (3) of the *Corporations Law* (P 80A, r 4).
- 154B. Notice of application under ss 167 (7), 168 (4), 172 (10), 190 (3), 194 (1), 195 (5), 197 (6), 198 (6), 411 (4) (b) and (6), 413 (1), 459A, or 461 of the *Corporations Law* (P 80A, r 10 (5)).
- 154C. Notice of application for reduction of capital and of list of creditors (P 80A, r 13 (5) (a)).
- 154D. Notice to creditors (P 80A, r 13 (5) (b)).
- 154E. Affidavit verifying list of creditors (P 80A, r 13 (7)).

- 154FA. Affidavit under s 459E of the *Corporations Law* (P 80A, r 15).
- 154FB. Affidavit under s 459Q of the *Corporations Law* (P 80A, r 16).
- 154F. Notice to liquidator (or provisional liquidator) of appointment (P 80A, r 20 (1) (a) (i)).
- 154G. Notice of winding up order and appointment of liquidator (P 80A, r 20 (1) (b)).
- 154H. Notice of appointment of provisional liquidator (P 80A, r 20 (1) (b)).
- 154I. Notice of intention of liquidator (or provisional liquidator or receiver or administrator or special manager) to apply for determination of remuneration (P 80A, rr 13A (1), 13B (1) (b), 13C (1), 22 (2), 23 (2) (b)).
- 154J. Report by liquidator (or as the case may be) (P 80A, rr 25, 31).
- 154K. Affidavit by special manager verifying his accounts (P 80A, r 27).
- 154L. Notice of intention of liquidator to seek release (P 80A, r 33 (3) (a) (i)).
- 154M. Notice of intention of liquidator to seek release (P 80A, r 33 (3) (b)).
- 154N. Summons to attend for examination under section 596A (or 596B) of the *Corporations Law* (P 80A, r 36 (6)).
- 155, 156. (Repealed)
157. Oath of office (P 82, rr 9, 7 (4)).
158. Certification under section 198L of the *Legal Profession Act 1987*.
- 159-160. (Repealed)

## Schedule G Costs

P 52, rr 67, 68.

### Table 1 General Appendix A

Statement of claim etc—

	\$
1. Drawing statement of claim	9.50
or per folio	1.60
2. Drawing summons	9.50
or per folio	1.60
3. Drawing and attending to obtain—	
(a) a subpoena to give evidence, including copy for service	6.50

	and for each additional witness	1.00
	(b) a subpoena for production or for production and to give evidence, including copy for service	6.50
	and per folio, for each folio excluding printed matter beyond three	1.60
4.	Writs of execution or other writs, including drawing and engrossing and all endorsements and copies for service and attending to issue	9.25
	Service	
5.	Service or attempted service by a solicitor or his employee or filing in lieu of service, where service by post is not authorised	3.75
6.	If at a distance beyond 3 kilometres from the nearest place of business of the solicitor serving a document, at the Scale under section 9 of the <i>Sheriff Act 1900</i> , except in special circumstances.	
7.	Where a service by post or by leaving a copy of a document in an exchange box or at a document exchange under Part 9 rule 4 (1) (d) or by transmitting information in a document to a facsimile transmission number under Part 9 rule 4 (1) (e) is authorised	2.25
8.	Service by persons other than those specified in items 5, 6 and 7, discretionary, but not exceeding the amount payable under those items.	
	Appearances	
9.	Preparing and filing notice of appearance (including copy for service)	5.75
10.	If entered at the one time for more than one person, for every defendant beyond the first	0.50
	Preparing for hearing	
11.	(Repealed)	
	Drawing	
12.	Any document where no other provision is made, per folio or part	1.60
	Copies	
13.	Of any document, where no other provision is made—	
	(a) typed or written, per folio	0.50
	(b) printed or carbon, per folio	0.25
	(c) photographed, per page, discretionary.	

## Perusal

14.	Of any document where no other provision is made, per folio	0.50
	or per hour	15.00

## Attendance

15.	To file any document where not elsewhere included, to lodge any document for, or to pick up after signature, or any other attendance involving analogous work or any formal attendance	1.75
16.	To file or lodge any document which requires an appointment to be signed by a clerk in the registry or to get any consent order signed	2.25
17.	To settle any minute of order or judgment or obtain signature of a judge, associate Judge or officer of the Court to an order which is not consented to	3.75
	or per hour	15.00
18.	To search the list or for appearance or other document	1.75
19.	To pay money into Court (including filing any necessary document), or to bespeak payment out (including receiving cheque)	3.75
20.	To obtain consent of tutor	3.75
21.	To obtain or give any consent or undertaking	3.75
	or if by telephone	1.75
22.	To produce documents for inspection	3.75
	or if personal supervision necessary, per hour	15.00
	or if unqualified clerk attends, discretionary.	
23.	To inspect documents	7.50
	or per hour	15.00
	or if unqualified clerk attends, discretionary.	
	Any necessary clerical assistance, per hour	3.75
24.	To examine and sign admissions	5.50
	or per folio	1.25
25.	For collating necessary material for appeal papers; attendances on the printer, examining and general oversight of their proper preparation	11.00
	or per hour	15.00
26.	On deponent to swear an affidavit or for a solicitor or his clerk to swear an affidavit or such additional amount as the taxing officer thinks fit	3.75
27.	To mark annexure	0.25



28.	On counsel to deliver brief	1.75
29.	On counsel to appoint conference or consultation	1.75
30.	On conference or consultation with counsel, per hour or if unqualified clerk attends, discretionary.	15.00
31.	In Court instructing counsel on any hearing, per hour or if unqualified clerk attends, discretionary.	15.00
32.	For any short attendance in Court without counsel	7.50
33.	For any other attendance in Court on any hearing without counsel or for any attendance by a solicitor which involves a high degree of skill and responsibility, per hour or such additional amount as the taxing officer thinks fit.	22.00
34.	Clerk's attendance, if in the opinion of the taxing officer, his attendance was reasonably necessary in view of the number of witnesses expected to be called on any day, per day	15.00
35.	To hear reserved judgment or per hour or if unqualified clerk attends, discretionary.	7.50 15.00
36.	To tax a bill of costs or per hour or if unqualified clerk attends, discretionary.	5.50 15.00
37.	To bespeak and obtain a transcript copy of evidence, judgment, copy of the jury panel or any other necessary document	3.75
38.	Any telephone attendance or such additional amount as the taxing officer thinks fit.	1.75
39.	Attendance where no other provision is made or per hour or if unqualified clerk attends, discretionary.	3.75 15.00
Travelling and Waiting		
40.	For each day of not less than six hours employed in travelling or in waiting (plus reasonable travelling expenses and sustenance) Where less time than six hours is so employed, per hour or for an unqualified clerk, discretionary.	90.00 15.00

Letters

40A.	Where no other provision is made—	
	(a) ordinary	2.75
	(b) short formal	1.75
	(c) circular after the first	0.75
	(d) others discretionary.	
41.	Skill, care and responsibility, discretionary.	

*Companies Act 1961* and *Companies (New South Wales) Code*—

Winding up proceedings

41A.	For work done for the applicant in proceedings in a winding up by the Court under the <i>Companies Act 1961</i> or <i>Companies (New South Wales) Code</i> —	
	(a) in respect of an application for an order appointing a provisional liquidator, up to and including lodgment and delivery of a copy of the order under Rule 50 (3) of the <i>Companies Rules 1968</i> or delivery of an office copy of the order under Part 80 rule 26,	
	(i) where counsel does not appear on the hearing	130.00
	(ii) where counsel appears on the hearing	115.00
	(b) in respect of an application for an order appointing a liquidator, but not in respect of an application for an order appointing a provisional liquidator, up to and including lodgment, service and delivery of a copy of the order under Rule 54 of the <i>Companies Rules 1968</i> or lodgment, service and delivery of an office copy of the order under section 370 (2) of the <i>Companies (New South Wales) Code</i> ,	
	(i) where counsel does not appear on the hearing	240.00
	(ii) where counsel appears on the hearing	215.00

**Appendix B**  
**Business Done After 8 February 1974**

In respect of business done after 8 February 1974, and on or before 1 August 1975, the costs in Appendix A shall be increased by 36 per cent.

**Appendix C**  
**Business Done After 1 August 1975**

In respect of business done after 1 August 1975 and on or before 23 September 1977 the costs in Appendix A shall be increased by 80 per cent.

**Appendix D**  
**Business Done After 23 September 1977**

In respect of business done after 23 September 1977 and on or before 31 October 1980 the costs in Appendix A shall be increased by 110 per cent.

**Appendix E**  
**Business done after 31 October 1980**

In respect of business done after 31 October 1980 and on or before 16 April 1982 the costs in Appendix A shall be increased by 160 per cent.

**Appendix F**  
**Business done after 16 April 1982**

In respect of business done after 16 April 1982 and on or before 31 December 1983 the costs in Appendix A shall be increased by 225 per cent.

**Appendix G**  
**Business done after 31 December 1983**

In respect of business done after 31 December 1983 the costs in Appendix A shall be increased by 294 per cent.

**Table 2**  
**Fixed costs**

	<b>Higher scale \$</b>	<b>Lower scale \$</b>
42. Under Part 7 rule 4 (money claim)	182	91
43. Under Part 52 rule 10 where judgment is entered under Part 17 (except where item 44 applies) in default of appearance or of defence or of verification of defence	253	127
44. Under Part 52 rule 10 where judgment for possession of land is entered under Part 17 in default of appearance or of defence	326	-
45. Amount to be allowed where a solicitor is the plaintiff and acts for himself or where a member of his firm acts for him, instead of the amounts fixed by item 42	127	64
and instead of the amounts fixed by item 43	199	100
and instead of the amounts fixed by item 44	271	-
46. Amount to be added where an order under Part 10 rule 2, for leave to proceed has been obtained	40	21
47. Amount to be allowed on a writ of execution	91	46

47A. Amount to be allowed on a writ of possession after the first 122 -

**NOTE—**

**1** In this Table—

(a) “Higher scale” means the amount payable apart from Part 52 rule 24 (3),

(b) “Lower scale” means the amount payable where Part 52 rule 24 (3) (d) applies,

(c) the amounts allowed in items 42–45 include out of pocket expenses, other than those properly paid for filing the originating process, which fee must be added to those amounts,

(d) the amounts allowed in items 47 and 47A include out of pocket expenses, other than the fees properly paid for service or execution of the writ, but not in excess of the scale under section 9 of the *Sheriff Act 1900*, which fees must be added to those amounts.

**2** The costs mentioned in items 42–46 apply in respect of proceedings commenced after 31 December 1983.

**3** The costs mentioned in items 47 and 47A apply in respect of a writ issued after 31 December 1983.

**Table 3**  
**Allowances to Witnesses**

		\$
48.	Barristers, solicitors, medical practitioners, surveyors, architects, accountants, pharmacists and other professional persons	76
	or per hour	56
49.	Whenever the persons mentioned in Item 48 are called to give expert evidence and not evidence of fact—	
	(a) to give expert evidence, including travelling to Court, where period from departure from home, hospital, place of practice, office, place of employment or other place to return thereto from attendance at Court does not exceed one and a half hours	116
	(b) for every full hour after the first half hour, or a proportion thereof if not for a full hour	56
	(c) the amounts payable under (a) and (b) above shall not exceed a total of \$462 per day.	
	Travelling and other allowances—	
50.	(a) payment to be made at the rate of 70 cents per kilometre one way after the first kilometre up to and including 80 kilometres,	
	(b) exceeding 80 kilometres—the reasonable cost thereof plus the cost of reasonable accommodation and meals.	
51.	Other witnesses:	

Such allowance as is commensurate with the witness's remuneration or circumstances but not exceeding the allowances provided by the preceding three items.

52. Such additional sum as is reasonable for travelling expenses and sustenance and in cases where accommodation is required such further sum as having regard to all the circumstances is reasonable and has been paid in respect thereof.

53. The taxing officer may also allow such amount as he thinks has been reasonably and properly incurred and paid to witnesses for qualifying to give skilled evidence.

**Table 4**  
**Medical examinations and reports**

		\$
54.	(a) report made by an attending general practitioner—	
	(i) where a re-examination of a patient is not required	32
	(ii) where a re-examination of a patient is required	58
	(b) report made by an attending specialist—	
	(i) where a re-examination of a patient is not required	48
	(ii) where a re-examination of a patient is required	80
	(c) report made by a specialist who has not previously treated the patient—	
	(i) where an examination is not required	58
	(ii) where an examination is required	97
	(d) attending a joint examination (including travelling time where the distance does not exceed 8 kilometres)—	
	(i) as examining practitioner (including provision of report)	116
	(ii) as non-examining practitioner when the examination is conducted by another practitioner	48
	(iii) provision of report by non-examining practitioner (see (ii) above)	48
	or, in respect of this Table, such higher amount as the taxing officer thinks fit.	

**Table 5**  
**Probate**

55. In respect of proceedings commenced after 23 December 1977, in respect of the estates of persons who died before 31 December 1981, costs of and incident to the obtaining for the first time of probate or administration or of resealing of probate or letters of administration (including satisfying any requisition made by the Commissioner of Stamp Duties after the date of grant, the perusal and checking of the assessment of duty and the payment of duty under the *Stamp Duties Act 1920* and all work and attendances incidental to these matters including the uplifting of the grant) shall be allowed in accordance with the scale below.

	Costs allowed \$
Gross value of the estate as accepted by the Commissioner of Stamp Duties	
not exceeding \$1,000	80
exceeding \$1,000 but not exceeding \$2,000	100
exceeding \$2,000 but not exceeding \$4,000	120
exceeding \$4,000 but not exceeding \$6,000	155
exceeding \$6,000 but not exceeding \$8,000	170
exceeding \$8,000 but not exceeding \$10,000	190
exceeding \$10,000 but not exceeding \$12,000	215
exceeding \$12,000 but not exceeding \$14,000	250
exceeding \$14,000 but not exceeding \$16,000	290
exceeding \$16,000 but not exceeding \$18,000	330
exceeding \$18,000 but not exceeding \$20,000	390
and thereafter at the rate of \$15.60 for each \$2,000 in excess of \$20,000 and a maximum of \$4,134 costs.	

55A. In respect of the estates of persons who die on or after 31 December 1981, costs of and incident to the obtaining for the first time of probate or administration or of resealing of probate or letters of administration and costs of and incident to the disclosure of assets and liabilities under section 81A (1) and (2) of the *Wills, Probate and Administration Act 1898* and the uplifting of documents issued under section 91 (2) of that Act shall be allowed in accordance with the scale below—

Disclosed value of assets \$	Costs allowed \$
not exceeding 7,500	250
exceeding 7,500 but not exceeding 15,000	375
exceeding 15,000 but not exceeding 25,000	435
exceeding 25,000 but not exceeding 40,000	500
exceeding 40,000 but not exceeding 55,000	565

exceeding 55,000 but not exceeding 70,000	630
exceeding 70,000 but not exceeding 85,000	695
exceeding 85,000 but not exceeding 100,000	760
exceeding 100,000 but not exceeding 125,000	855
exceeding 125,000 but not exceeding 150,000	950
exceeding 150,000 but not exceeding 175,000	1,045
exceeding 175,000 but not exceeding 200,000	1,140
exceeding 200,000 but not exceeding 250,000	1,300
exceeding 250,000 but not exceeding 300,000	1,460
exceeding 300,000 but not exceeding 400,000	1,680
exceeding 400,000 but not exceeding 500,000	1,900
exceeding 500,000	2,100

56. In respect of proceedings commenced after 23 December 1977, costs of and incident to the obtaining of any grant or resealing after the first up to and including the uplifting of the probate or letters of administration so granted or resealed shall be allowed in accordance with the scale below.

Value of the assets remaining to be administered at the time of application for the grant	Costs allowed \$
not exceeding \$1,000	80
exceeding \$1,000 but not exceeding \$2,000	100
exceeding \$2,000 but not exceeding \$4,000	120
exceeding \$4,000 but not exceeding \$6,000	155
exceeding \$6,000 but not exceeding \$8,000	170
exceeding \$8,000 but not exceeding \$10,000	190
exceeding \$10,000 but not exceeding \$12,000	215
exceeding \$12,000 but not exceeding \$14,000	235
exceeding \$14,000 but not exceeding \$16,000	250
exceeding \$16,000 but not exceeding \$18,000	270
exceeding \$18,000 but not exceeding \$20,000	295

and thereafter at the rate of \$4 for each \$2,000 in excess of \$20,000 and a maximum of \$1,255 costs.

**Table 6**  
**Miscellaneous**

57-58A. (Repealed)

58. The prescribed amount under Part 52 rule 69 (1) (adoption application) shall be \$460 plus disbursements (including counsel's fees and registration fees, if any).

59. The prescribed amount under Part 52 rule 70 (obtaining certificate of judgment) shall be \$264.

60, 61. (Repealed)

## Schedule G1

(P 37, rr 3A (1) (b), 7A (4)

P 46, r 6 (2) (a)

P 77, r 102)

\$

2	Amount prescribed under Part 36 rule 13BC (2) (medical expert producing photocopies)	36.00
3	Amount prescribed under Part 46 rule 6 (2) (a) (costs of garnishee)	25.00
5	Fees prescribed under Part 77 rule 102 (fees chargeable by a person authorised under section 27 (2) of the <i>Oaths Act 1900</i> ):	
	(a) for each oath	4.00
	(b) or, if not at the office of the person so authorised	4.90
	(c) or, if more than 5 kilometres from the office of the person so authorised, in addition to travelling expenses	18.90
	(d) for marking any annexure or exhibit	1.60
	(e) for attesting any document	4.00
6	Amount prescribed under Part 36 rule 13BA (1)	214.00

The above items include a GST component and section 6 of the *Intergovernmental Agreement Implementation (GST) Act 2000* does not apply to them.

## Schedules H, I (Repealed)



## Schedule J Procedure under various Acts

(Part 12, rule 1A)

### Part 1 Acts of New South Wales

#### 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
- (iii) a donee, 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.

#### **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.

### **Succession Act 2006**

#### **1 Commencement of proceedings**

An application for a family provision order under Chapter 3 of the Act:

- (a) must join as a defendant any administrator, unless the plaintiff is the sole administrator, and
- (b) must not join any person unless there is sufficient reason for doing so.

#### **2 Directions as to parties and service**

- (1) Despite clause 1, 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.

#### **3 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.

#### **4 Notice to eligible persons**

- (1) The plaintiff applying for a family provision order under Chapter 3 must, unless he or she is the administrator, when serving the application, 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 accordance with subclause (3) 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.
- (3) The notice must set out the following:

**NOTICE OF CLAIM**

The plaintiff has applied to the Court under the [Succession Act 2006](#) for a family provision order in respect of the estate of (*name*) deceased who died on (*date*).

If you are entitled to, and wish to apply for, an order for provision for you out of that estate, you must apply within a period prescribed by the [Succession Act 2006](#) or allowed by the Court. If you do not, before the Court deals with the plaintiff's application, apply for an order for provision for you out of that estate, the Court may deal with the plaintiff's application without regard to any possible application by you.

Dated:

(*signature*)

Solicitor for the administrator

(*Address for service*)

(*or as the case may be*)

**5 Affidavit of administrator**

- (1) In proceedings for a family provision order under Chapter 3, 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 the administrator's opinion, is or may be the subject of any prescribed transaction or any relevant property transaction,
- (d) the names and addresses of every person who, in the administrator's opinion, is holding property as trustee or otherwise which is or may be the subject of any prescribed transaction or relevant property transaction,
- (e) the names and addresses of every person who, in the administrator's 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
  - (iii) a person holding property as trustee or otherwise,
- (f) the names and addresses of every person to whom the administrator has given notice of the plaintiff's application.
- (2) The affidavit mentioned in subclause (1) must be served within a reasonable time after service of the application.

## **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
- (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.

## **Part 2**

**(Repealed)**

## **Schedule K (Repealed)**