

**SUPREME COURT RULES (AMENDMENT No. 256) 1991**

NEW SOUTH WALES



*[Published in Gazette No. 116 of 16 August 1991]*

1. These rules are made by the Rule Committee on 12 August 1991.
2. The Criminal Appeal Rules are amended as follows:
  - (a) Rules 5B and 33:  
Omit “10” where appearing and insert instead “14”.
  - (b) Rule 19:  
Omit “TEN” from the headnote and insert instead “28”.
  - (c) Rules 19 (1) and (2):  
Omit “ten” where appearing and insert instead “28”.
  - (d) Forms IV and V:  
Omit “10” where appearing and insert instead “28”.
  - (e) Forms VC and VD:  
Omit “10” where appearing and insert instead “14”.
3. The amendment to rule 5B, contained in paragraph 2 (a), and the amendment to Forms VC and VD, contained in paragraph 2 (e), shall not apply in respect of interlocutory orders or judgments made or given on or before 16 August 1991.
4. The amendment to rule 33, contained in paragraph 2 (a), shall not apply in respect of applications refused on or before 16 August 1991.
5. The amendments to rule 19, contained in paragraphs 2 (b) and 2 (c), shall not apply in respect of convictions occurring before 16 August 1991.
6. The Supreme Court Rules 1970 are amended as follows:
  - (a) Part 9 rule 8 (1):  
Omit paragraphs (c) and (d) and insert instead:
    - (c) that address for service is the office of the solicitor or his agent and:

- (i) that address for service is within 3 kilometres of the General Post Office in Sydney; or
  - (ii) the solicitor has a box in a document exchange maintained in the State by Australian Document Exchange Pty Limited and does not have another solicitor acting as agent;
- (d) proceedings are commenced in the Court:
- (i) instituting an appeal from the decision in the proceedings below;
  - (ii) for an extension of time for instituting an appeal from that decision;
  - (iii) on the stated case;
  - (iv) for leave to appeal from the decision in the proceedings below; or
  - (v) for relief under section 48 (2) (b), (c), (d), (e) or (g) of the Act;
- (b) Part 51 rule 6:
- (i) Omit the heading and insert instead:  
Parties (cf. Pt. 52, r. 11A & 11B: costs).
  - (ii) After subrule (3) insert:
    - (4) An appellant who considers that respondents need not be separately represented on the appeal may notify such respondents that objection will be taken to more than one set of costs being allowed between them.
    - (5) An appellant who considers that a respondent should enter a submitting appearance and take no active part in the proceedings may notify that respondent that objection will be taken to any order for costs, other than for costs as a submitting party, being made in favour of that respondent.
    - (6) The failure by:
      - (a) an appellant to give notice under subrules (4) or (5); or
      - (b) a claimant to give a corresponding notice pursuant to subrule (7),

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does not limit the powers of the Court with respect to the costs of the proceedings.

(7) Subrules (4) and (5) apply, making such changes as are necessary, to a claimant who applies for leave to appeal and to the opponents in the proceedings.

(c) Part 51 rule 8:

After subrule (2) insert:

(3) Where a ground of appeal involves a matter arising under the Constitution of the Commonwealth or involves its interpretation:

- (a) the statement of the ground shall indicate that it involves a matter within section 78B of the Judiciary Act 1903 of the Commonwealth; and
- (b) the appellant shall, forthwith after filing the notice of appeal, give the notices required by that section and promptly file an affidavit of service of the notices.

(d) Part 51:

After rule 13A insert:

**Submitting appearance** (cf. Pt. 52, r. 11A: costs)

13B. A respondent to an appeal or an opponent to proceedings commenced by summons who wishes to submit to the orders of the Court of Appeal, save as to costs, may add to that party's notice of appearance a statement that the party submits to the orders of the Court, save as to costs.

(e) Part 51 rule 14:

Omit "Where" and insert instead "(1) Where" and after subrule (1) insert:

(2) Where a ground relied on in support of the contention involves a matter arising under the Constitution of the Commonwealth or involves its interpretation:

- (a) the statement of the ground shall indicate that it involves a matter within section 78B of the Judiciary Act 1903 of the Commonwealth; and

(b) the respondent shall, forthwith after filing the notice of contention, give the notices required by that section and promptly file an affidavit of service of the notices.

(f) Part 51:

After rule 32 insert:

**Proceedings other than appeals**

32A. (1) A claimant in proceedings commenced by summons in the Court of Appeal shall file with the summons an affidavit in support of the claim for relief.

(2) Where a ground on which relief is claimed involves a matter arising under the Constitution of the Commonwealth or involves its interpretation:

(a) the statement of the ground shall indicate that it involves a matter within section 78B of the Judiciary Act 1903 of the Commonwealth; and

(b) the claimant shall, forthwith after filing the summons and affidavit in support, give the notices required by that section and promptly file an affidavit of service of the notices.

(3) Where the proceedings are for relief of the nature referred to in section 48 (2) (b), (c), (d), (e) or (g) of the Act, the affidavit in support of the summons shall conclude with a brief but specific statement of the grounds on which relief is claimed.

(4) Rule 6 applies, making such changes as are necessary, to proceedings of the kind referred to in subrule (3).

(g) Part 52:

After rule 11 insert:

**Submitting appearance (Court of Appeal)**

11A. (1) A respondent or opponent who adds to that party's notice of appearance a statement pursuant to Part 51 rule 13B (which relates to a submitting appearance) and takes no active part in the proceedings shall, unless the Court otherwise orders, be entitled to an order that the appellant or claimant pay the respondent's or opponent's costs as a submitting party.

(2) Any costs that an appellant or claimant has been ordered to pay pursuant to subrule (1) to a submitting party properly joined in proceedings shall, unless the Court otherwise orders, be included in any costs payable by any other respondent or opponent to the appellant or claimant in respect of those proceedings.

### **Common representations**

11B. Where in proceedings in the Court of Appeal:

- (a) respondent to an appeal;
- (b) opponents to an application for leave to appeal; or
- (c) opponents to proceedings commenced by summons claiming relief under section 48 (2) (b), (c), (d), (e) or (g) of the Act,

have arranged common representation and they are entitled to recover their costs from another party, those costs shall include the costs of arranging the common representation.

(h) Schedule F Form 16:

After “appears” insert “(where Part 51 rule 13A applies add and submits to the orders of the Court, save as to costs)”.

7. Subparagraphs (a), (c), (e) and (f) of the amendments contained in paragraph 6 take effect on 16 September 1991.

8. The Supreme Court Rules 1970 are further amended as follows:  
Part 9 rule 6 (2):

Omit the words commencing “an exchange box” and ending “his agent” and insert instead:

a box in a document exchange maintained in the State by Australian Document Exchange Pty Ltd, or is represented by a solicitor who has such a box and has another solicitor acting as agent

9. The Supreme Court Rules 1970 are further amended as follows:

(a) Part 32:

After rule 22 insert:

### **Interpretation**

22A. (1) The rules, other than this Division, so far as applicable, apply to proceedings to which this Division applies.

(2) For the purposes of subrule (1), unless the context or subject matter otherwise indicates or requires:

“**plaintiff**” means appellant; and

“**defendant**” means respondent.

(b) Schedule H Part 1:

Omit “Mining Act 1906” and the matter beside that Act.

10. The Supreme Court Rules 1970 are further amended as follows:

(a) Part 52 rule 66:

Delete the rule.

(b) Part 52:

Insert after rule 65:

**Liability of solicitor**

66. (1) Where costs are incurred improperly or without reasonable cause, or are wasted by undue delay or by any other misconduct or default, and it appears to the Court that a solicitor is responsible (whether personally or through a servant or agent), the Court may, after giving the solicitor a reasonable opportunity to be heard:

(a) disallow the costs as between the solicitor and the solicitor’s client;

(b) direct the solicitor to repay to the client costs which the client has been ordered to pay to any other party; and

(c) direct the solicitor to indemnify any party other than the client against costs payable by the party indemnified.

(2) Without limiting the generality of subrule (1), a solicitor is responsible for default for the purposes of that subrule where any proceedings cannot conveniently proceed, or fail or are adjourned without useful progress being made, because of the failure of the solicitor:

(a) to attend in person or by a proper representative;

(b) to file any document which ought to have been filed;

(c) to deliver any document which ought to have been delivered for the use of the Court;

(d) to be prepared with any proper evidence or account; or

(e) otherwise to proceed.

(3) The Court may, before making an order under subrule (1), refer the matter to a taxing officer for enquiry and report.

(4) The Court may order that notice of any proceedings or order against a solicitor under this rule shall be given to his client in such manner as may be specified in the order under this subrule.

(5) This rule is in addition to and is intended to operate independently of the provisions of section 76C of the Act and does not apply in circumstances where section 76C of the Act applies.

#### **Opportunity for solicitor to be heard**

66A. The Court shall, before making an order under section 76C of the Act in respect of a solicitor, give the solicitor a reasonable opportunity to be heard.

11. The amendment contained in paragraph 10 is to take effect immediately after the commencement of paragraph (2) of Schedule 1 to the Courts Legislation (Civil Procedure) Amendment Act 1991.
12. The Supreme Court Rules 1970 are further amended as follows:  
Part 55 rule 11:  
After subrule (2) insert:

(3) Where 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, 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.

13. The Supreme Court Rules 1970 are further amended as follows:

Part 36 rule 10A:

(a) Omit:

The “usual  
and insert instead:

(1) The “solicitor’s usual

(b) Omit “on”.

(c) After subrule (1) insert:

(2) The “party’s usual undertaking as to stamp duty”, if given to the Court by a party in relation to an instrument referred to in section 29 (4) of the Stamp Duties Act 1920, is an undertaking that the party will within 28 days inform the Chief Commissioner of Stamp Duties of the name of the person primarily liable to duty in respect of the instrument and lodge the instrument or a copy of the instrument with the Chief Commissioner.

14. The Supreme Court Rules 1970 are further amended as follows:

Part 75 rule 3:

Omit paragraph (d) and insert instead:

(d) under the following provisions of the National Crime Authority (State Provisions) Act 1984 and of the National Crime Authority (State Provisions) Regulation 1986;

(i) Sections 12 and 13 (which relate to search warrants);

(ii) Section 19 (1), Section 19 (2) and Regulation 5 (which relate to summoning witnesses); and

(iii) Section 20 (which relates to warrants for arrest of witnesses);

(e) under the following provisions of the National Crime Authority Act 1984 (Commonwealth) and of the National Crime Authority Regulations (Commonwealth):

(i) Section 22 and section 23 (which relate to search warrants);



- (ii) Section 30 and Regulation 7 (which relate to summoning witnesses); and
- (iii) Section 31 (which relates to warrants for arrest of witnesses).
15. The Supreme Court Rules 1970 are further amended as follows:
- Schedule J
- |                                    |                         |
|------------------------------------|-------------------------|
| Omit “after 28 February 1991 ..... | 17” and insert instead: |
| in Column 1                        | in Column 2             |
| “the beginning of 1 March 1991     |                         |
| to the end 31 August 1991          | 17                      |
| after 31 August 1991 .....         | 15”                     |
16. The Supreme Court Rules 1970 are further amended as follows:
- (a) Part 22 rule 3 (8):
- (i) Omit “or” from paragraph (a).
- (ii) Omit “(b)” and insert instead “(c)”.
- (iii) After paragraph (a) insert:
- (b) where the proceedings have been referred under section 76B (1) of the Act for determination pursuant to the Arbitration (Civil Actions) Act 1983—after the conclusion of the arbitration hearing; or
- (b) Part 22 rule 7 (2):
- After “trial” insert “or, as the case may require, to the arbitrator”

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#### EXPLANATORY NOTE

(This note does not form part of the rules).

1. The object of the amendments contained in paragraph 2 is to make changes to the Criminal Appeal Rules consequential and ancillary to the recent amendment to section 10 of the Criminal Appeal Act 1912, which extended the time for appeals from 10 days to 28 days.
2. The object of the amendments contained in paragraph 6 is to amend the rules in the following manner:
  - (a) paragraph (a) expands the circumstances in which a party’s address for service in proceedings below is also that party’s address for service in proceedings in the Court;

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- (b) paragraph (b) allows notice to be given to respondents to appeals and opponents to applications for leave to appeal that objection will be taken to the recipient of the notice recovering the costs of separate representation or of taking an active part in the proceedings;
  - (c) paragraph (c) provides that, where a ground of appeal involves a matter arising under the Constitution, the statement of the ground in the notice of appeal shall indicate that a matter under section 78B of the Judiciary Act is involved and provides for the prompt service and proof of service of the notices required by that section;
  - (d) paragraph (d) allows a submitting appearance to be filed in proceedings in the Court of Appeal;
  - (e) paragraph (e) makes the same provision in respect of notices of contention as paragraph (c) provides in respect of notices of appeal;
  - (f) paragraph (f):
    - (i) requires the filing, with the summons, of an affidavit in support of proceedings commenced by summons in the Court of Appeal;
    - (ii) makes the same provision in respect of proceedings commenced by summons in the Court of Appeal as paragraph (c) provides in respect of appeals; and
    - (iii) provides that the affidavit filed in support of proceedings in the Court of Appeal for relief of the nature referred to in section 48 (2) (b), (c), (d), (e) or (g) of the Supreme Court Act 1970 shall conclude with a statement of the grounds on which relief is claimed and provides that the amendments contained in paragraph (b) shall apply to these proceedings;
  - (g) paragraph (g) provides for the payment of costs of a party entering a submitting appearance in proceedings in the Court of Appeal and for the recovery of those costs by the person paying them from other parties; and
  - paragraph (h) amends the form of notice of appearance to allow for a submitting appearance.
3. The object of the amendment contained in paragraph 8 is to increase the clarity of Part 9 rule 6 (2).
  4. The object of the amendment contained in paragraph 9 (a) is to clarify the applicability of the rules generally to proceedings to which Part 32 Division 4 applies and to prevent confusion in references to parties to those proceedings.
  5. The object of the amendment contained in paragraph 9 (b) is to delete the reference to the repealed Mining Act 1906 in the schedule of proceedings assigned to the Administrative Law Division.
  6. The object of the amendment contained in paragraph 10 is to:
    - (a) ensure that Part 52 rule 66 is not impliedly repealed by section 76C of the Act, inserted by the Courts Legislation (Civil Procedure) Amendment Act 1991; and

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- (b) to provide that a solicitor is given a reasonable opportunity to be heard before an order is made under section 76C of the Supreme Court Act 1970.
7. The object of the amendment contained in paragraph 12 is to provide that, where a Judge of the District Court forms the view that a person is guilty of contempt and refers the matter to the Supreme Court, the registrar of the Supreme Court must commence proceedings for punishment of the contempt without any direction from the Supreme Court being necessary.
  8. The object of the amendment contained in paragraph 13 (a) is to amend Part 36 rule 10A by changing the description of “usual undertaking as to stamp duty” to “solicitor’s usual undertaking as to stamp duty” and also renumbers the existing rule 10A as 10A (1).
  9. The object of the amendment contained in paragraph 13 (b) is to remove a superfluous word.
  10. The object of the amendment contained in paragraph 13 (c) is to insert a new subrule 10A (2) prescribing the form of undertaking to be given to the Court pursuant to section 29 (4) (a) of the Stamp Duties Act, 1920.
  11. The object of the amendments contained in paragraph 14 is to assign to the Criminal Division proceedings in the Court under:
    - (a) sections 12, 13, 19 (1), 19 (2) and 20 of the National Crime Authority (State Provisions) Act 1984;
    - (b) regulation 5 of the National Crime Authority (State Provisions) Regulation 1986;
    - (c) sections 22, 23, 30 and 31 of the National Crime Authority Act 1984 (Commonwealth); and
    - (d) regulation 7 of the National Crime Authority Regulations (Commonwealth).
  12. The object of the amendment contained in paragraph 15 is to prescribe the interest rate on judgment debts and in certain other cases at 15% as of 1 September 1991.
  13. The object of the amendment contained in paragraph 16 is to prevent offers of compromise being accepted after the conclusion of an arbitration under the Arbitration (Civil Actions) Act 1983.
  14. Words or figures underlined in the above rules are intended to be represented in italics if printed.

M.A. Blay, Secretary of the Rule Committee

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