

**SUPREME COURT RULES (AMENDMENT No. 251) 1991**

NEW SOUTH WALES



*[Published in Gazette No. 31 of 15 February 1991]*

(L.S.) P. R. SINCLAIR, Governor.

1. These rules are made by the Rule Committee on 11 February 1991.
2. The Supreme Court Rules 1970 are amended as follows—  
Part 3 rule 2 (1)  
Omit the subrule and insert instead—
  - (1) An application for an order under rule 1 shall be made by summons under Part 5 rule 4A joining the person against whom the order is sought as a defendant.
3. The Supreme Court Rules 1970 are further amended as follows—
  - (a) Part 20 rule 2 (2)  
Omit “subrule (3)” and insert instead “subrules (5) and (6)”.
  - (b) Part 20 rules 2 (A) and (3)  
Omit the subrules and insert instead—
    - (3) A plaintiff filing a summons or a cross-claim to which Part 6 Division 3 applies may, subject to subrules (5) and (6), by consent of the parties, amend the summons or cross-claim at any stage of the proceedings.
    - (4) Subject to subrules (5) and (6), this rule applies to an amendment which would have the effect that a person is added as, or ceases to be, a party, as it applies to other amendments.
    - (5) This rule does not apply to an amendment which would have the effect of adding a person as a plaintiff unless—
      - (a) the plaintiff immediately before the amendment is made acts by a solicitor;

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(b) that solicitor at the time the amendment is made certifies on the amended document—

(i) that he acts for the person added as a plaintiff; and

(ii) that the person consents to being added as a plaintiff.

(6) This rule does not apply to an amendment which would have the effect that a person ceases to be a party unless that person consents to ceasing to be a party.

4. The Supreme Court Rules 1970 are further amended as follows—

(a) Part 52 rule 21E (1)

(i) After “applicant” insert “for the order for rehearing (the “applicant”)”.

(ii) Omit “party” where appearing and insert instead “applicant”.

(b) Part 52 rule 21E (4)

(i) From paragraph (a) omit “that party’s” and insert instead “the applicant’s”.

(ii) From paragraph (b) omit “that party” and insert instead “the applicant”.

5. The Supreme Court Rules 1970 are further amended as follows—

SCHEDULE H Part 1

Under the matter relating to the Funeral Funds Act 1979 insert—

in the column “Act”—	in the column “Section—(unless otherwise stated)”	in column 2
“Independent Commission Against Corruption Act 1988 .....	All provisions	”

6. The Supreme Court Rules 1970 are further amended as follows—

SCHEDULE H Part 1

Under the matter relating to the River Murray Waters Act 1915 insert—

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in the column “Act”—	in the column “Section—(unless otherwise stated)”	in column 2
“Royal Commissions Act 1923 .....	18B	Punishment of contempt.”

7. The Supreme Court Rules 1970 are further amended as follows—

- (a) Part 1 rule 8 (1)  
Insert immediately before the definition of “master”—  
“Law Courts Building” means the building in which the  
Sydney registry of the Court is located.
- (b) Part 1 rule 10A (3)  
After “(1D)” insert “and Part 51 Rule 29”.
- (c) Part 51 rule 28 (c)  
Omit the full stop and insert instead “; and”
- (d) Part 51 rule 28  
After paragraph (c) insert—
  - (d) shall be signed by the barrister or solicitor who  
prepares them or, where they are not prepared by a  
barrister or solicitor, by or on behalf of the party on  
which behalf they are signed, and
    - (i) the name of the signatory;
    - (ii) a telephone number at which the signatory  
can be contacted; and
    - (iii) if available, the signatory’s facsimile number,  
shall be typed or printed in a neat and legible  
manner under his signature.
- (e) Part 51 rule 29  
Omit “and, unless the registrar otherwise directs, lodge  
three copies with the registrar.” and insert instead—  
by placing them in the box marked “Appeal  
Submissions” located on the 12th level of the Law  
Courts Building and, unless the registrar otherwise  
directs, lodge four copies in the box.

8. The Supreme Court Rules 1970 are further amended as follows—  
Part 75 rule 3

- (a) Omit “property).” from paragraph (c) and insert instead  
“property);”

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(b) After paragraph (c) insert—

(d) under section 20 of the National Crime Authority (State Provisions) Act 1984 (which section relates to warrants for arrest of witness).

9. The Supreme Court Rules 1970 are amended as follows—  
Schedule J

Omit “after 31 August 1990 .....	19”
and insert instead—	
in Column 1	in Column 2
“the beginning of 1 September 1990 to the end 28 February 1991	19
after 28 February 1991 .....	17”

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

(a) SCHEDULE D Part 1

Under the matter relating to Act No. 202 of 1989 insert—

in column 1—	in column 2	in column 3
“Corporations Law		
Section 195	Reduction of capital	
section 274	Rectification of register of company charges	
Part 5.4	Winding up by the Court	
Section 495 (4)	Members’ voluntary winding up: meeting	
Section 500	Creditor’s voluntary winding up:	
Section 504	Voluntary winding up: remuneration of liquidator	

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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, 548 (1), 544 (2) and 568.
Section 597	Examination of persons concerned with corporations	
Section 1319	Directions, meetings ordered by the Court	
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 Law which the Master may grant.
Section 1328	Transitional difficulties	Restricted to orders in or for the purposes of proceedings for other relief under Corporations Law which the Master may grant

Section 1335      Security for  
costs etc.

Corporations  
Regulations

Part 5.6              Winding up

(b) SCHEDULE D Part 3

After paragraph 19 insert—

20. An appeal under section 1321 of the Corporations Law in respect of a decision under section 430 (3) or section 475 (8) of the Corporations Law (which subsections relate to the costs etc. of a person making a report to a receiver or liquidator).
21. Jurisdiction exercisable by the court under Part 9 Division 1 of the Corporations Act 1989 (Commonwealth) or Part 9 Division 1 of the Corporations (New South Wales) Act 1990 with respect to matters arising under the Corporations Law or the Corporations Regulations of any other State or Territory corresponding to matters in respect of which a master could exercise the powers of the Court if they arose under the Corporations Law or Corporations Regulations of New South Wales.

(c) SCHEDULE E Part 2

After paragraph 27 insert—

28. Orders under the following provisions of the Corporations Law—
  - (a) section 425 (which relates to the remuneration of a receiver, etc.);
  - (b) section 452 (3) (which relates to the inspection of books of a company under official management);
  - (c) section 468 (which relates to winding up a company on the ground of insolvency);
  - (d) section 473 (2) (which relates to the remuneration of a provisional liquidator);
  - (e) section 473 (3) (which relates to the remuneration of a liquidator);
  - (f) sections 480 and 481 (I) (which relate to release and dissolution);

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- (g) section 484 (2) (b) (which relates to the remuneration of a special manager);
  - (h) section 486 (which relates to the inspection of books of a company in a winding up by the court);
  - (i) section 511 (which relates to a voluntary winding up) on an application to exercise the power of the court under s. 486;
  - (j) section 574 (3), where the summons by which the application is made has been served on the Australian Securities Commission;
  - (k) section 597 (which relates to the examination of persons concerned with corporations) except subsection (15); and
  - (l) section 1328, where the order is made in or for the purposes of proceedings for other relief under the Corporations Law which a registrar may grant.
29. Orders under sections 471 (2) or 500 (2) of the Corporations Law where the proceedings is for damages in respect of the debt of or bodily injury to a person and is based upon an act, neglect or default of the company for which, if proved, the company would, as the employer of that person and not otherwise, incur liability to the plaintiff in the proceedings.
30. Any matter which arises in a winding up by the court under the Corporations Law and is referred to a registrar by a Judge or the Court of Appeal.
31. Holding an examination under s. 597 of the Corporations Law.
32. Jurisdiction exercisable by the Court under Part 9 Division 1 of the Corporations Act 1989 (Commonwealth) or Part 9 Division 1 of the Corporations (New South Wales) Act 1990 with respect to matters arising under the Corporations Law of any other State or Territory corresponding to matters in respect of which a registrar could exercise the powers of the Court if they arose under the Corporations Law of New South Wales.
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**EXPLANATORY NOTE**

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

1. The purpose of the amendment contained in paragraph 2 is to require an application for preliminary discovery to be made on notice to the person against whom the order is sought. If for good reason the application is to be made ex parte, the requirement of service may be dispensed with pursuant to Part 1 rule 12.
2. The purpose of the amendments contained in paragraph 3 is to enable amendments to pleadings, summonses and certain cross-claim to be made, subject to certain specified safeguards, which have the effect that a person is added as or ceases to be a party without requiring a court order and to simplify the numbering of the subrules of Part 20 rule 2.
3. The purpose of the amendments contained in paragraph 4 is to clarify the meaning of subrules 21E (1) and 21E (4).
4. The purpose of the amendment contained in paragraph 5 is to assign business under the Independent Commission Against Corruption Act 1988 to the Administrative Law Division.
5. The purpose of the amendment contained in paragraph 6 is to assign all business under Section 18B of the Royal Commissions Act 1923 to the Administrative Law Division.
6. The purposes of the amendment contained in paragraph 7 is—
  - (a) provide for the signing of written submissions and the inclusion therein of certain information relating to the signatories;
  - (b) provide for the filing of lodging of written submissions in a box on the 12th level of the Law Courts Building rather than being filed in the usual way; and
  - (c) to make provisions of a minor, consequential or ancillary nature.
7. The purpose of the amendment contained in paragraph 8 is to assign business under Section 20 of the National Crime Authority (State Provisions) Act 1984 to the Criminal Law Division.
8. The purpose of the amendment contained in paragraph 9 is to prescribe the interest on judgment debts and certain other cases at 17% as of 1 March 1991.
9. The purpose of the amendments contained in paragraph 10 is to confer certain powers of the Court under the Corporations Law on a master and on a registrar.

M. A. Blay,  
Secretary of the Rule Committee.

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