



New South Wales

## SUPREME COURT RULES (AMENDMENT No. 318) 1998

1. These rules are made by the Rule Committee on 16 February 1998.
2. The Criminal Appeal Rules are amended as follows:

### Rule 8A

Omit the rule and insert instead:

### **Copy of Summing-up**

8A. (1) Subject to subrules (3) and (4), access to a copy of the summing up shall not be allowed to the Registrar, any Judge of the Court, or any party, until it has been submitted to the Judge of the Court of Trial and copied in accordance with his or her revision.

(2) Upon the Registrar notifying the Reporting Services Branch of the Attorney General's Department that notice of appeal or notice of application for leave to appeal has been sent to the Registrar in relation to any proceedings, the Reporting Services Branch shall furnish to the Registrar, when available, a copy of the summing up that has been submitted to and corrected by the Judge of the Court of Trial.

(3) If a corrected copy of the summing up has not been received by the Reporting Services Branch within 3 weeks, or such other period as the Registrar may direct, from the date when a copy of the unrevised transcript of the summing up was made available to the Judge of the Court of Trial, the Reporting Services Branch shall, upon the expiration of the period, furnish to the Registrar a copy of the unrevised transcript.

(4) The Court or a Judge of the Court may, for special cause, order that access be allowed to an uncorrected copy of the summing up.

3. The Supreme Court Rules 1970 are amended as follows:

### Part 38 rule 2 (4A)

Omit the note to the subrule.

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

### (a) Part 52A rule 33 (4) (e)

After "\$150,000" insert ", be only a half of the whole amount".

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- (b) Part 52A rule 33 (4) (f)  
Omit subparagraph (ii) and insert instead:
- (ii) in any other case—~~an~~ more than \$225,000 but not more than \$450,000,  
be only a half of the whole amount.
- 5 The Supreme Court Rules 1970 are further amended as follows:  
Part 51 rule 15
- (i) Renumber the rule as subrule (1).  
(ii) After subrule (1) insert:
- (2) An applicant for a stay of execution or of proceedings under the decision of the court below shall serve the application and the order determining the application on each necessary party and:
- (a) file copies thereof in the registry or office of the court below; or  
(b) if compliance with paragraph (a) is not in accordance with the practice or organisation of the court below—  
lodge copies thereof with an officer of the court below concerned with its records or process.
6. The amendment contained in paragraph 5 shall commence on 1 April 1998.
7. The Supreme Court Rules 1970 are further amended as follows:
- (a) SCHEDULE F Form 5
- (i) Renumber paragraphs 2 and 3 as 3 and 4 respectively.  
(ii) After paragraph 1 insert:
2. (*Where the defendant is a corporation, add: A Corporation may not enter an appearance in, or defend, any proceedings otherwise than by a solicitor or by a director authorised in accordance with Part 11 rule 1A of the Supreme Court Rules 1970.*)
- (b) SCHEDULE F Form 6
- Omit “Time: 7 May, 19           , at 10 a.m.” and insert instead:  
(*Where the defendant is a corporation, add: A Corporation may not enter an appearance in, or defend, any proceedings otherwise than by a solicitor or by a director authorised in accordance with Part 11 rule 1A of the Supreme Court Rules 1970.*)  
Time: 7 May 19           , at 10 a.m.

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- (c) SCHEDULE F Form 7  
Omit “Plaintiff: (*name, address*) (a minor)” and insert instead:  
(*Where the defendant is a corporation, add: A Corporation may not enter an appearance in, or defend, any proceedings otherwise than by a solicitor or by a director authorised in accordance with Part 11 rule 1A of the Supreme Court Rules 1970.*)  
Plaintiff. (*name, address*) (a minor)
- (d) SCHEDULE F Form 9  
Omit “*r. 13*” and insert instead “*r. 11*”.
- (e) SCHEDULE F Form 10  
(i) Omit “*r. 12*” and insert instead “*r. 11*”.  
(ii) Omit “*rule 12 (4)*” and insert instead “*rule 11 (4)*”.  
(iii) Renumber paragraph 2 as paragraph 3 and insert after paragraph 1:  
  
2. (*Where the defendant is a corporation, add: A Corporation may not enter an appearance in, or defend, any proceedings otherwise than by a solicitor or by a director authorised in accordance with Part 11 rule 1A of the Supreme Court Rules 1970.*)
- (f) SCHEDULE F Form 11A  
Omit “*r. 16(1)*” and insert instead “*r. 13(1)*”.
- (g) SCHEDULE F Form 11B  
(i) Omit “*r. 16 (2)*” and insert instead “*r. 13 (4)*”.  
(ii) Omit “Cross-claimant: (*name, address*) (a minor)” and insert instead:  
(*Where the defendant is a corporation, add: A Corporation may not enter an appearance in, or defend, any proceedings otherwise than by a solicitor or by a director authorised in accordance with Part 11 rule 1A of the Supreme Court Rules 1970.*)  
  
Cross-claimant: (*name, address*) (a minor)
8. The amendments contained in paragraph 7 shall commence on 1 May 1998.

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

Part 55 rule 11

After subrule (5), insert:

(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 to be dealt with as if it were a contempt of the Court, 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.

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

Part 52A rule 33 (1A)

Omit the subrule and insert instead:

(1A) Where the application of any provision of this rule to proceedings depends upon whether the proceedings include a motor accident claim, “motor accident claim” shall have the same meaning in the provision that it had in the District Court Act 1973:

- (a) in the case of subrule (8)—at the date of the making of the order therein referred to; or
- (b) in any other case—at the date of commencement of the proceedings.

#### EXPLANATORY NOTE

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

1. The object of the amendment contained in paragraph 2 is to:

- (a) set out the current practice whereby the Reporting Services Branch provides the Registrar of the Court of Criminal Appeal with a corrected copy of the summing-up, when available, after being notified by the Registrar that notice of appeal or notice of application for leave to appeal has been sent to the Registrar in relation to any proceedings; and
- (b) provide that, if a corrected copy of the summing-up is not available within 3 weeks or such other period as the Registrar may direct, a copy of the unrevised transcript will be furnished, in order to avoid delay in the hearing of appeals.

2. The object of the amendment contained in paragraph 3 is to omit a note which will no longer be appropriate following commencement of section 27 (5) of the Oaths Act 1900, contained in the Statute Law (Miscellaneous Provisions) Act (No. 2) 1997.

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3. The object of the amendment contained in paragraph 4 is to add words omitted in a recent amendment which reduce costs entitlements by one half in certain circumstances.

4. The object of the amendment contained in paragraph 5 is to require service of an application for a stay of execution or proceedings, and the order determining the application, upon relevant parties and upon the court or tribunal below, which will thus be in a position to take the application and any order thereon into account if any further action is taken in the proceedings.

5. The object of the amendment contained in paragraph 7 is to:

- (a) add to statements of claim and certain cross-claims and summonses a warning to corporations that they must be represented by a solicitor or a duly authorised director; and
- (b) correct certain references in forms to rule numbers.

6. The object of the amendment contained in paragraph 9 is to provide a procedure for processing referrals and reports of matters (other than contempt of the Court) that the Court has power to deal with as contempt of the Court, where no procedure is prescribed.

7. The object of the amendment contained in paragraph 10 is to take account of the new definition of *motor accident claim* inserted into s. 4 of the District Court Act 1973 by the Courts Legislation Further Amendment Act 1997.

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