

EXPLANATORY STATEMENT

Subordinate Law No. 4 of 1992

Issued by the Authority of the Judges
of the Supreme Court

AMENDMENT OF THE SUPREME COURT RULES

These amendments deal primarily with amendment of documents generally, pleadings and judgments and orders. Other amendments relate to an appearance by a respondent in an appeal, Registry office hours and irregularities in proceedings.

Order 32 - Amendment

Order 32 ("Amendment") is repealed and a new Order 32 is substituted. The new Order is substantially along the lines of the Federal Court Rules relating to amendments. The policy about amendment in general is set out in section 59 of the Supreme Court Act 1933. The provisions in the superseded Order which in effect repeated section 59, although in slightly different language (O32 rr. 1 & 12), have been omitted.

New Order 32 also remedies certain problems that existed with the superseded Order in relation to the mode of amendment and time for effecting amendment (Roche Products Pty Limited V John De Jong SC No. 656 of 1990 per Gallop J.).

Order 60 Rule 6 - Appearance

This rule requires a respondent to an appeal to enter an appearance. This procedure is consistent with the practice in the Federal Court and will ensure that there is an address for service for a respondent to an appeal.

Order 63 Rules 1 & 2 - Office hours

The amendment to O.63 r.1 changing the opening time of the Court offices from 9.30 a.m. to 9.15 a.m. reflects actual practice. The amendment to O.63 r.2(a) is consequential upon the amendment to O.63 r.1.

Order 69 Rule 3 - Objection of irregularity

This amendment requires the ground for the amendment also to be stated. The balance of the amendment is one of drafting style.

Order 69 Rules 4 & 5 - Costs & Forms

O.69 rr. 4 & 5 are repealed. O.69 r.4 relates to costs where a summons to set aside any process or irregularity is dismissed

without any special direction as to costs. O.69 r.4 does not give any guidance as to what order should be made. It is preferable that the ordinary rule should apply to applications about irregularities, namely, that the general judicial discretion as provided for in S.23(2) of the Supreme Court Act 1933, applies.

O.69 r.5 provides that strict compliance with any Form in a Schedule is not necessary and that substantial compliance, or such compliance as the circumstances require, shall be sufficient. O.65 r.5 is considered redundant in light of S.13 of the Interpretation Act when read with S.9 of the Subordinate Law Act.