

1990 - No. 479

DISTRICT COURT ACT 1973 - RULE

NEW SOUTH WALES



[Published in Gazette No. 85 of 6 July 1990]

1. This rule is made by the Rule Committee on 27 June 1990, and has effect on and from 6 July 1990.

2. The District Court Rules 1973 are amended as follows:

(a) Part 1 rule 3

(i) After the matter relating to Part 24 insert the following matter:

PART 24A - BUILDING AND ENGINEERING LIST

PART 24B - COMMERCIAL LIST

(ii) After the matter relating to Part 28 insert the following matter:

PART 28A - COURT EXPERT

PART 28B - REFERENCE BY THE COURT TO REFEREE

(b) Part 2A rule 6 (3)

Omit "6 (1) or 7 of the Public Assemblies Act, 1979," insert instead "25 (1) or 26 of the Summary Offences Act 1988".

(c) Part 28 rule 7A

Omit the rule.

(d) Parts 28A, 28B

After Part 28 insert the following Parts:

PART 28A

COURT EXPERT

Application

1. This Part does not apply to a question or matter to be tried before a jury.

Appointment

2. (1) Where a question for an expert witness arises in any proceeding the Court may, at any stage of the proceedings, on application by a party or of its own motion, on terms:

- (a) appoint an expert as court expert to inquire into and report upon the question;
- (b) authorise the court expert to inquire into and report upon any facts relevant to his inquiry and report on the question;
- (c) direct the court expert to make a further or supplemental report or inquiry and report; and
- (d) give such instructions as the Court thinks fit relating to any inquiry or report of the court expert.

(2) In subrule (1), “expert”, in relation to any question, means a person who has such knowledge or experience of, or in connection with, that question, or questions of the character of that question, that his opinion on that question would be admissible in evidence, and who consents to appointment under the subrule.

(3) Instructions pursuant to subrule (1) (d) may include provision concerning any experiment or test for the purposes of any inquiry or report of a court expert.

Report

3. (1) The court expert shall send his report to the registrar, together with so many copies of the report as the Court may direct.

(2) The registrar shall send a copy of the report to each party interested in the question.

(3) The report shall, unless the Court otherwise orders, be admissible in evidence on the question on which it is made, but shall not be binding on any party except to the extent to which that party agrees to be bound by it.

Cross-examination

4. Upon application made by any party within 14 days after receiving a copy of a court expert’s report, the Court shall make an order for the cross-examination of the court expert by all the parties, before the Court, at the trial or at some other time.

Remuneration

5. (1) The remuneration of the court expert shall be fixed by the Court and shall include:

- (a) a fee for his report; and
- (b) a proper sum for each day during which he is required to attend before the Court.

(2) The parties shall be jointly and severally liable to the court expert to pay the amount fixed by the Court for his remuneration.

(3) The Court may, on application by any party or by the court expert, make orders in the proceedings for payment in or towards discharge of the liability of any party under subrule (2).

(4) Subrules (2) and (3) do not affect the powers of the Court as to costs.

Further expert evidence

6. Where, pursuant to this Part, a court expert has made a report on any question:

- (a) any party may adduce evidence on the same one other expert but only if he has, at a reasonable time before the commencement of the trial, given to the other interested parties notice of his intention to do so; but
- (b) subject to paragraph (a), a party shall not adduce evidence on the same question of any other expert, except with the leave of the Court.

PART 28B

REFERENCE BY THE COURT TO REFEREE

Interpretation

1. In this Part, unless the context or subject-matter otherwise indicates or requires, “question” includes any question or issue arising in any proceedings, whether of fact or law or both and whether raised by pleadings, agreement of parties or otherwise.

Other referring

2. (1) The Court may, subject to this rule, at any stage of any proceedings, on application by a party or of its own motion, make orders for reference to a referee appointed by the Court for inquiry and report by the referee on the whole of the

proceedings or any question or questions arising in the proceedings.

(2) The Court shall not make an order under subrule (1) in respect of a question to be tried with a jury.

(3) In respect of a question which may, under section 78 of the Act, be tried with a jury, the Court shall not, before the expiry of the time prescribed by Part 12 rule 5, make an order under subrule (1) unless the Court also makes an order under section 79A of the Act.

Appointees;

3. The Court may appoint as a referee any person who consents to be so appointed.

Inquiry and report

4. (1) Where the Court makes orders under rule 2 the Court may, at any time and from time to time:

- (a) authorise the referee to inquire into and report upon any facts relevant to the inquiry and report on the matter referred;
- (b) direct the referee to make a further or supplemental report or inquiry and report;
- (c) give such instructions as the Court thinks fit relating to the inquiry or report.

(2) Instructions pursuant to subrule (1) (c) may include provision concerning any experiment or test for the purposes of any inquiry or report of a referee.

Remuneration of referee

5. (1) The Court may:

- (a) determine the amount of the fees to be paid to a referee;
- (b) direct how, when and by whom the whole or any part of any such fees are to be payable;
- (c) determine the consequences of failure to comply with a direction under paragraph (b).

(2) Subrule (1) does not affect the powers of the Court as to costs.

Court rooms, etc.

6. The Court may give directions for the provision:

- (a) of services of officers of the Court; and
- (b) of court rooms and other facilities,

for the purpose of any reference under rule 2.

Conduct of proceedings under the reference

7. (1) Where the Court makes an order under rule 2, the Court may give directions with respect to the conduct of proceedings under the reference.

(2) Subject to any direction under subrule (1):

- (a) the referee may conduct the proceedings under the reference in such manner as the referee thinks fit;
- (b) the referee, in conducting proceedings under the reference, is not bound by rules of evidence but may inform himself in relation to any matter in such manner as the referee thinks fit.

(3) Evidence before the referee;

- (a) may be given orally or in writing; and
- (b) shall, if the referee so requires, be given on oath or affirmation or by affidavit.

(4) A referee may take the examination of any person.

(5) Each party shall, within a time fixed by the referee but in any event before the conclusion of evidence on the inquiry, give to the referee and each other party a brief statement of the findings of fact and law for which the party contends.

(6) The parties shall at all times do all things which the referee requires to enable a just opinion to be reached and no party shall wilfully do or cause to be done any act to delay or prevent an opinion being reached.

Interlocutory directions

8. The Court may, at any time and from time to time, on motion of the referee or of a party, give directions with respect to any matter arising in proceedings under the reference.

Setting aside or variation of reference

9. (1) The Court may, of its own motion or on application by a referee or a party, set aside or vary any order made under rule 2.

(2) Nothing in this rule affects any other power of the Court to set aside or vary an order made under rule 2.

Report

10. (1) The referee shall, unless the Court otherwise orders, make a report to the Court, in writing, on the matter referred to the referee annexing the statements given under rule 7 (5) and stating:

- (a) the referee's opinion on the matter; and
- (b) the reasons for the opinion.

Service of report

11. On receipt of the report, the Court shall serve it on the parties.

Proceedings on the report

12. (1) Where a report is made, the Court may, of its own motion, after notice to the parties, or on application by any party, on a matter of fact or law or both

- (a) adopt, vary or reject the report in whole or in part;
- (b) require an explanation by way of report from the referee;
- (c) on any ground, remit for further consideration by the referee the whole or any part of the matter referred for a further report;
- (d) decide any matter on the evidence taken before the referee, with or without additional evidence,

and shall give such judgment or make such order as the Court thinks fit.

(2) Evidence additional to the evidence taken before the referee may not be adduced before the Court except with the leave of the Court.

(e) Part 29 rule 6 (8)

Omit the subrule, insert instead the following subrule:

(8) The function of the Court under subrule (7) may, unless the Court otherwise orders, be exercised by the registrar.

(f) Part 51A rule 12

After subrule (5) insert the following subrule:

(6) Where, by operation of section 18 (5) of the Arbitration (Civil Actions) Act 1983, an order for rehearing of an action ceases to have effect, subrules (4) and (5) apply to the action as if:

- (a) the rehearing had taken place; and
- (b) the decision of the Court on the rehearing had been in accordance with the award of the arbitrator.

EXPLANATORY NOTE

The purposes of the amendments are:

to import into the District Court Rules most of the provisions in the Supreme Court Rules as to Court experts and referees, thus complementing the repeal of section 69A of the District Court Act 1973;

to empower all registrars to exercise the Court's discretion to grant access to documents produced on subpoena;

to clarify the entitlement to costs when a party aborts a rehearing demanded by him after an arbitration;

to make other amendments of a minor or consequential nature.

E.J. O'Grady
Secretary to the Rule Committee