

DISTRICT COURT ACT 1973—RULE

NEW SOUTH WALES



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1. This rule is made by the Rule Committee on 12 October 1993, and has effect on and from 1 December 1993.

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

(a) Part 1 rule 3

After the matter relating to Division 6 of Part 6 insert the following matter:

Division 7—Appeals under the Victims Compensation Act 1987

(b) Part 5 rule 9

Omit the rule, insert instead the following rule:

Application of this Division

9. (1) Subject to subrule (2), this Division applies to an appeal to the Court brought under any existing or future Act, and so applies subject to any provision of or under the Act under which the appeal is brought.

(2) This Division does not apply to an appeal to which Division 5 or 7 of Part 6 applies.

(c) Part 6 rule 8

Omit the rule, insert instead the following rule:

Application of this Division

8. (1) Subject to subrule (2), this Division applies to an appeal to the Court brought under any existing or future Act, and so applies subject to any provision of or under the Act under which the appeal is brought.

(2) This Division does not apply to an appeal to which Division 5 or 7 applies.

(d) Part 6 Division 7

After Part 6 rule 47 insert the following Division

DIVISION 7—Appeals under the Victims Compensation Act 1987

Interpretation

48. (1) This Division applies to appeals instituted on or after 1 December 1993.

(2) In this Division:

“**appeal**” means appeal under section 29 of the Compensation Act;

“**Compensation Act**” means the Victims Compensation Act 1987;

“**Tribunal**” means the Victims Compensation Tribunal constituted by the Compensation Act.

Application to extend time for appeal

49. An application for further time to institute an appeal must be made in accordance with Division 3 of Part 5.

Respondent to appeal

50. The respondent to an appeal is the Victims Compensation Fund Corporation constituted under section 65FA of the Compensation Act.

Venue of appeal

51. (1) Unless the Court otherwise orders, an appeal may be heard and determined by the Court sitting only at Sydney, or, if the appellant so chooses, at:

- (a) if the determination appealed from was made after a hearing under Part 4 of the Compensation Act—the nearest of the proclaimed places mentioned in subrule (2) to the place where the determination was made; or
- (b) if the determination appealed from was made without such a hearing—the nearest of those proclaimed places to the appellant’s place of abode.

(2) For the purposes of subrule (1), the proclaimed places are Bathurst, Broken Hill, Coffs Harbour, Dubbo, Gosford, Lismore, Liverpool, Newcastle, Parramatta, Tamworth, Taree, Wagga Wagga and Wollongong.

(3) An appellant may make a choice as referred to in subrule (1) by instituting the appeal at the proclaimed place at which the appeal is to be heard.

Making of appeal

52. An appeal shall be instituted by filing notice of the appeal at the proclaimed place at which the appeal is to be heard.

Notice of appeal

53. (1) A notice of appeal shall contain the full name and address of the appellant, and the identifying number of, or other information sufficient to identify, the proceedings in the Tribunal leading to the determination appealed from.

(2) A notice of appeal shall contain the grounds of the appeal in full (including any question of law intended to be raised, and any ground on which it is to be claimed that the determination appealed from was in an insufficient amount), or a reference to an affidavit or affidavits, filed with the notice, in which those grounds are contained in full.

(3) On the filing of a notice of appeal the registrar shall endorse on the notice and on 2 or more copies of the notice a date for the call-over of the appeal under rule 55 and shall return the copies so endorsed to the appellant.

(4) The appellant shall, as soon as practicable after filing the notice of appeal, deliver to the Registrar of the Tribunal 2 of the copies returned to the appellant by the registrar, and that delivery shall constitute service of the notice of appeal on the respondent and the Registrar of the Tribunal.

(5) The date for the call-over of an appeal shall, subject to rule 55, be the earliest date which is convenient to the Court and which will reasonably allow for compliance with rule 54.

Tribunal record

54. The Registrar of the Tribunal shall, as soon as practicable after being served with a copy of a notice of appeal as provided in rule 53 (4), forward to the registrar of the District Court at the proclaimed place at which the notice was filed the record of the proceedings in the Tribunal leading to the determination appealed from.

Listing of appeal

55. (1) Subject to any order of the Court, a call-over of appeals shall be held:

- (a) in Sydney—only on the first Monday in each of the months of March, July and November in each year; and
- (b) in a proclaimed place other than Sydney—on such day or days as the registrar directs.

(2) At the call-over of an appeal the registrar:

- (a) shall, if satisfied that the appeal is ready for hearing, set it down to be heard; and
- (b) may, if not satisfied that the appeal is ready for hearing, on terms adjourn the appeal to another date for call-over, or strike the appeal out of the list of appeals awaiting hearing.

(3) Unless the Court otherwise orders, where the registrar in Sydney sets an appeal down to be heard he shall set it down to be heard in a group of appeals in accordance with directions given from time to time by the Chief Judge.

(4) Unless the Court otherwise orders, where the registrar at a proclaimed place other than Sydney sets an appeal down to be heard he shall set it down to be heard at the next convenient sittings of the Court at that proclaimed place.

(5) Where an appeal is struck out under subrule (2) (b), the Court may, on terms, restore the appeal to the list of appeals awaiting hearing and make such orders as to costs and the continuance of the appeal as to the Court seem proper.

(6) Subject to this rule, the functions of the registrar with respect to, and the procedure at and in respect of, the call-over of an appeal shall be the functions and procedure provided in the case of the call-over of an action.

Evidence

56. (1) This rule applies subject to any order of the Court.

(2) Material which was considered by the Tribunal in reaching the determination appealed from is admissible as evidence on the appeal, unless notice of objection to that admissibility (on which objection the Court shall rule) is given by a party to the other party, and to the registrar, within 28 days after the institution of the appeal.

(3) Evidence which is available through the operation of subrule (2) shall not be adduced otherwise than through that operation.

(4) Subject to this rule, evidence on an appeal shall be given by affidavit.

(5) Medical evidence on an appeal shall be given by report of a medical practitioner.

(6) A party may require the attendance for cross-examination of the deponent to an affidavit, the maker of a report, or a person who gave evidence in the proceedings before the Tribunal, but only if the party:

- (a) in the case of an affidavit or report tendered, or of a person who gave evidence, in the proceedings before the Tribunal—within 28 days after the institution of the appeal; or
- (b) in any other case—as soon as practicable, but in any event not later than 14 days before the hearing of the appeal,

gives to the other party and to the registrar written notice of the requirement for attendance.

(7) Where a person required to attend for cross-examination is cross-examined by a party, the other party may re-examine the person.

Service of affidavits and reports

57. A party to an appeal who intends to rely on an affidavit or report which was not relied on before the Tribunal shall file the affidavit or report and serve it on the other party before the call-over of the appeal, or within such other period as may be consented to by the other party or ordered by the Court.

Withdrawal of appeal

58. The appellant may, at any time before the hearing of the appeal commences, withdraw the appeal by filing and serving notice of withdrawal.

Attendance at hearing

59. (1) Where the appellant fails to attend on the hearing of an appeal, the Court may, in its discretion:

- (a) dismiss the appeal;
- (b) strike out the appeal; or
- (c) on terms adjourn the appeal,

and in any such case may make such order as to the costs of the appeal as the Court thinks fit.

(2) Where an appeal is struck out under subrule (1) (b) the Court may, on terms, restore the appeal to the list of appeals awaiting hearing and make such orders as to costs and the continuance of the appeal as to the Court seem proper.

Costs

60. (1) In exercising its discretion as to the costs of an appeal the Court may take into account the conduct by the parties of the proceedings before the Tribunal, and, where fresh evidence is adduced on the appeal, whether the evidence could reasonably have been adduced in those proceedings.

(2) Where the Court orders the respondent to pay the appellant's costs of an appeal, those costs shall be \$2,600.00 (including any amount claimed for fees paid to counsel) in addition to any necessary disbursements other than counsel's fees, unless the Court in the special circumstances of the case otherwise orders.

(3) Unless the Court otherwise orders, necessary disbursements for the purposes of subrule (2) shall, in default of agreement between the parties to the appeal, be taxed under Part 39.

(4) Where the Court orders under subrule (2) that the appellant's costs of an appeal shall not be the amount prescribed by that subrule, the orders that the Court may make include orders that the costs shall be another amount (greater or less than the amount so prescribed) and orders that the costs shall be taxed, or otherwise ascertained, in accordance with any direction of the Court.

(5) Where the Court grants an application for further time to institute an appeal it shall not order the respondent to pay the appellant's costs of the application unless it is of opinion that the respondent has unreasonably failed to consent to the extension sought.

(6) Where the appellant withdraws an appeal the Court may, on the application of the respondent and unless the Court is satisfied that the decision to institute the appeal was reasonable, order the appellant to pay the respondent's costs of the appeal incurred before the withdrawal.

EXPLANATORY NOTE

The purpose of the amendments is to establish a new system regulating appeals to the District Court under section 29 of the Victims Compensation Act 1987. The major features of the system are:

- (a) Unless the Court otherwise orders, appeals are to be heard only at Sydney and other major centres.
- (b) A notice of appeal is to contain all of the grounds on which the appeal is brought; it is to be served by delivering it to the Registrar of the Victims Compensation Tribunal.
- (c) The record of the proceedings before the Tribunal is made admissible on the hearing of the appeal, and the only evidence to be adduced otherwise is evidence not contained in that record.
- (d) Appeals in Sydney are to be listed for hearing en bloc.

- (e) Where the Court awards costs of an appeal to the appellant, except in special circumstances the costs are to be in an amount specified in the rules.

E. J. O'GRADY,
Secretary to the Rule Committee.
