

DISTRICT COURT ACT 1973—RULE
NEW SOUTH WALES



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1. This Rule is made by the Rule Committee on 17 February 1993. and has effect on and from 26 February 1993.

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

(a) Part 9 rule 17A

After Part 9 rule 17 insert the following rule:

Actions transferred from Supreme Court

17A. (1) This rule applies to proceedings which were commenced in the Supreme Court by summons and transferred to the Court by order of the Supreme Court made under section 143 of the Act without a statement of claim having been filed.

(2) In proceedings to which this rule applies the Court may, at any time and if it thinks fit:

- (a) direct, where appropriate, the filing of a statement of agreed issues;
- (b) order that any affidavits or other documents filed in the proceedings stand as pleadings; or
- (c) make orders for the filing of a statement of claim or other pleadings.

(3) Subject to any order of the Court, where the Court makes an order under subrule (2) (c) for the filing of a statement of claim:

- (a) the plaintiff shall, on the day of filing, serve the statement of claim on the defendant; and
- (b) the defendant shall file and serve notice of the grounds of his defence within 28 days after service of the statement of claim on him.

(b) Part 24C rule 6 (1)

Omit “An action”, insert instead “Subject to subrule (7), an action”.

(c) Part 24C rule 6 (7)

After Part 24C rule 6 (6) insert the following subrule:

(7) Where an action in the Motor Accidents List:

- (a) is ready for hearing; and
- (b) would, but for the operation of this rule, be listed for hearing on a day, or at a sittings, earlier than the earliest day on, or sittings at, which it can be listed for hearing after compliance with subrules (1) and (2),

the court or registrar may make orders dispensing with compliance with any requirement of this rule, including orders:

- (c) dispensing with the holding of a status conference; and
- (d) altering any time fixed by subrule (1), (2) or (3) in respect of any status conference.

(d) Part 29 rule 10

After Part 29 rule 9 insert the following rule:

Alteration to obligations

10. (1) A party who has requested the issue of a subpoena to give evidence may, by written or oral notice to the person named, alter the day specified in the subpoena for attendance to a day which is:

- (a) later than the day specified in the subpoena and the day, if any, as last altered pursuant to this subrule; and
- (b) the day of the hearing of the action.

(2) Where the person named in any subpoena has not been called to give evidence, or produce documents, before the Court in compliance with the subpoena, the party who requested the issue of the subpoena may, by written or oral notice to the person named, excuse that person from compliance with the subpoena.

(e) Part 30 rule 7

Omit the rule, insert instead the following rule:

Service

7. (1) A party intending to use an affidavit shall serve it on each other interested party not later than a reasonable time before the occasion for using it arises.

(2) A party who fails to serve an affidavit in accordance with the requirements of these rules or of any direction of the Court may not use the affidavit without the leave of the Court.

EXPLANATORY NOTE

The purpose of the amendments is:

- (a) to enable the Court to make orders ensuring that sufficient pleadings are completed in actions commenced under a different pleading system in the Supreme Court and transferred to the District Court;
- (b) and (c): to provide sufficient flexibility in the listing of actions, in the Motor Accidents List for status conference or hearing, particularly in country centres; these amendments are supplemented by the issue of Practice Note No. 19;
- (d) consequent on amendments to the Supreme Court Rules, to give validity to a notice by the party issuing a subpoena postponing or cancelling the witness' obligations;
- (e) to ensure, as in the Supreme Court, that affidavits for use in the District Court are served in reasonable time on all interested parties.

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