

DISTRICT COURT ACT 1973—RULE

NEW SOUTH WALES



[Published in Gazette No. 53 of 31 March 1994]

1. This rule is made by the Rule Committee on 23 March 1994 and has effect on and from 31 March 1994.

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

(a) Part 12 rule 2 (2)

Omit the subrule, insert instead the following subrule:

(2) A party shall not, except with the consent of every other party or the leave of the Court, file a praecipe in an action before one or more of the following has occurred:

(a) the filing of a notice of grounds of defence in the action;

(b) in the case of an action which was commenced by the lodging of an ordinary statement of claim:

(i) the filing by a defendant of a document other than a notice of grounds of defence;

(ii) the filing of an affidavit of service of the statement of claim which sets the date of service more than 28 days before the date on which the praecipe is sought to be filed.

(b) Part 12 rule 2 (3A)

Omit the subrule.

(c) Part 19A rule 9 (11)

Omit the subrule.

(d) Part 24C rule 2 (2) (c)

Omit “offered to the Court for non-compliance”, insert instead “, or has been, provided under section 43A (1) of that Act”.

(e) Part 24C rule 8

(i) In paragraph (a) after “42;” insert “or”;

(ii) Omit paragraph (b).

(f) Part 39 rule 7 (1)

Omit “On”, insert instead “Subject to subrule (4), on”.

(g) Part 39 rule 7(4)

After Part 39 rule 7 (3) insert the following subrule:

(4) Notwithstanding anything in this Part, on a taxation or assessment on an indemnity basis all costs shall be allowed except insofar as they are of an unreasonable amount or have been unreasonably incurred, and any doubts which a taxing officer may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party.

EXPLANATORY NOTE

The purpose of amendments (a) and (b) is to ensure that a plaintiff may file a praecipe for trial in an action without an affidavit of service of the statement of claim if the defendant has filed any document in the action.

The purpose of amendments (c), (f) and (g) is to clarify the application of the limitations in the costs scales to costs ordered to be paid on an indemnity basis.

The purpose of amendments (d) and (e) is to take account of the provision recently made in section 43A of the Motor Accidents Act 1988 for the taking of objection to a plaintiff's claim for failure to notify it as required by section 43 of that Act.

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