

1995—No. 133

DISTRICT COURT ACT 1973—RULE

NEW SOUTH WALES



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1. This rule is made by the Rule Committee on 8 March 1995, and has effect on and from 17 March 1995.

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

(a) Part 3 rule 2 (4)

After Part 3 rule 2 (3) insert the following subrule:

(4) Where a party applies for an extension of time, unless the Court otherwise orders, the party shall, after the conclusion of the proceedings, pay the costs of and occasioned by the application, or any order made on or in consequence of the application.

(b) Part 5 rule 13 (1) (c)

Omit “according to the scale of costs in the Supreme Court”, insert instead “as though the proceedings had remained in the Supreme Court”.

(c) Part 5 rule 15 (1) (c)

Omit “according to the scale of costs in the Court”, insert instead “as though the proceedings were, before the making of the order, an action in the Court”.

(d) Part 6 rule 6

Omit “, and when the Court orders any such costs to be paid by any party it shall direct the scale on which the costs are to be paid”.

(e) Part 6 rule 13

Omit “, and when the Court orders any such costs to be paid by any party it shall direct the scale on which the costs are to be paid”.

(f) Part 6 rule 60 (3)

Omit “taxed under Part 39”, insert instead “assessed”.

- (g) Part 6 rule 60 (4)
Omit “taxed”, insert instead “assessed”.
- (h) Part 14 rule 4 (b)
Omit “by the taxing officer on taxation of a bill of costs”, insert instead “on an assessment”.
- (i) Part 15 rule 7 (1)
Omit “taxed”, insert instead “assessed”.
- (i) Part 15 rule 7 (1B)
Omit the subrule.
- (k) Part 15 rule 7 (2)
Omit the subrule.
- (l) Part 16 rule 6(3),(4)
Omit the subrules.
- (m) Part 18 rule 6 (3)
Omit the subrule.
- (n) Part 19A rule 9 (1)
Omit “, and the plaintiff shall be entitled to tax those costs without any order of the Court”.
- (o) Part 19A rule 9 (2)
Omit the subrule.
- (p) Part 19A rule 9 (5), (6), (7)
Omit “taxed or” where occurring.
- (q) Part 21 rule 8 (1)
 - (i) In paragraph (b) omit “party;”, insert instead “party; and”;
 - (ii) In paragraph (c) omit “require; and”, insert instead “require.”;
 - (iii) Omit paragraph (d).
- (r) Part 21 rule 8 (2)
 - (i) In paragraph (a) omit “parties;”, insert instead “parties; and”;
 - (ii) Omit paragraph (b).
- (s) Part 29 rule 2A (1)
Omit “an amount equal to two-thirds of the amount prescribed by item 73 (a) of Schedule Scale of Costs and Allowances to Witnesses” insert instead “\$167.00”.

(t) Part 34 3(b)

Omit “taxed”, insert instead “assessed”.

(u) Part 39 rule 1AA

Before Division 1 of Part 39 insert the following rule:

Application after commencement of Legal Profession Reform Act 1993

1AA. (1) This Part has no operation after 30 June 1994 except:

(a) as provided by the Legal Profession Act 1987 or the regulations made under that Act; or

(b) as provided by subrule(2).

(2) This rule shall not affect any right, privilege, obligation, liability or disentitlement acquired, accrued or incurred on or before 30 June 1994.

(v) Part 39A

After Part 39 insert the following Part:

PART 39A—COSTS AFTER 30 JUNE 1994

Application

1. (1) The provisions of this Part apply, subject to their terms, to and in respect of costs payable or to be assessed under any order of the Court or under the rules.

(2) The application of this Part is subject to the Legal Profession Act 1987 and the regulations made under that Act.

Time for dealing with costs

2. The Court may, in any proceedings, exercise its powers and discretions as to costs at any stage of the proceedings or after the conclusion of the proceedings.

Assessed costs and other provisions

3. (1) Subject to this Part, where, by or under the rules or any order of the Court, costs are to be paid to any person, that person shall be entitled to assessed costs.

(2) Where the Court orders that costs be paid to any person, the Court may, at any time prior to the costs being referred for assessment, further order that, as to the whole or any part (specified in the order) of the costs, instead of assessed costs, that person shall be entitled to:

(a) a proportion specified in the order of the assessed costs;

- (b) the assessed costs from or up to a stage of the proceedings specified in the order; or
- (c) a gross sum specified in the order instead of the assessed costs.

Disobedience to rule, judgment or order

4. Where any person fails to comply with any provision of the Act or the rules or any judgment or order of the Court, the Court may order the person to pay the costs of any other person occasioned by the failure.

Discovery before action

5. The Court may in any action require any person to pay the costs of a party to the action of proceedings under Part 4 in respect of that action including payments of conduct money and payments on account of expenses and loss under that Part.

Agreement as to costs

6. (1) An agreement as to the amount of costs payable by a party shall be evidenced to the registrar for the purposes of section 148C (c) of the Act by the filing of an order for that amount of costs on which is endorsed the consent of the party signed by the party or his barrister or solicitor.

(2) Where a consent mentioned in subrule (1) is signed by a person other than a barrister or solicitor, the signature of the person shall be witnessed by any registrar, a barrister, a solicitor, or a justice of the peace.

(3) An order mentioned in subrule (1) shall be for signature by the registrar.

Limitation on costs of expert evidence

7. (1) This rule applies only to an action in which damages are claimed in respect of the death of a person or in respect of personal injuries.

(2) In an action to which this rule applies, unless the Court otherwise orders, the Court shall be taken to have directed that there shall not be allowed, in respect of more than one expert witness in any medical specialty, any costs incurred in qualifying the expert witness to give evidence, preparing or obtaining a report from the expert witness, or calling the expert witness to give evidence.

(3) A medical practitioner who treated a person for injuries which led to the bringing of the action is not for the purposes of subrule (2) an expert witness.

Order for costs—when payable

8. (1) Where, before the conclusion of any proceedings, the Court makes an order for the payment of costs or a motion is refused with costs, the costs shall not, unless the Court otherwise orders, be payable until after the conclusion of the proceedings.

(2) Where, in any proceedings, it appears to the registrar, on application, that there is no likelihood of any further order being made in the proceedings, the registrar may order that any costs ordered to be paid shall be payable forthwith.

Following the event

9. If the Court makes an order as to costs, the Court shall, subject to this Part, order that the costs follow the event, except where it appears to the Court that some other order should be made as to the whole or any part of the costs.

Party and party basis

10. Costs payable by or under the rules or any order of the Court shall be payable on a party and party basis unless the rules or an order provide that they are payable on an indemnity basis.

Fixed amounts of costs

11. (1) The costs recoverable in respect of any of the following matters:

- (a) issuing a statement of claim;
- (b) obtaining an order for judgment;
- (c) obtaining judgment in an undefended action;
- (d) an examination summons;
- (e) issuing a warrant for apprehension;
- (f) issuing a writ of execution;
- (g) issuing a writ against the person;
- (h) serving process; and
- (i) substituted service of process,

on or after 1 July 1994 are the costs that would have been recoverable under a rule, a scale of costs, or a costs determination in force on 30 June 1994 in respect of the matter, notwithstanding that the rule, scale or determination has ceased to have effect.

(2) Subrule (1) applies subject to any regulation made under section 196 of the Legal Profession Act 1987.

Limitations on costs

12. (1) If in any action which could have been brought in a Local Court but which is brought in the Court:

- (a) the plaintiff recovers a total amount which does not exceed the prescribed amount by payment by or on behalf of the defendant without judgment; or
- (b) judgment is given or entered up infavour of the plaintiff for an amount which does not exceed the prescribed amount,

the plaintiff shall not be entitled to recover any costs in the action unless the Court certifies that it appears to it that there was a sufficient reason for bringing or trying the action in the Court.

(2) Subrule (1) does not apply in respect of an action in which judgment is given or entered up for an amount which does not exceed the prescribed amount but which would have exceeded the prescribed amount but for:

- (a) any verdict against the plaintiff on any cross-claim pleaded by the defendant; or
- (b) any reduction of the damages due to the plaintiff under Part 3 of the Law Reform (Miscellaneous Provisions) Act 1965,

or but for both such a verdict and such a reduction.

(3) In this rule, “prescribed amount” means:

- (a) in relation to an action commenced before 4 April 1977—\$100;
- (b) in relation to an action commenced on or after 4 April 1977 but before 1 April 1983—\$750;
- (c) in relation to an action commenced on or after 1 April 1983 but before 1 February 1988—\$2,000;
- (d) in relation to an action commenced on or after 1 February 1988 but before 1 November 1991:
 - (i) if the action is of the kind mentioned in Part 5 rule 6 (2) (b) or (c)—\$15,000;
 - (ii) if the action is not of the kind mentioned in Part 5 rule 6 (2) (b) or (c) but is, or could under the rules have been, commenced by the lodging of a statement of liquidated claim—\$10,000; or
 - (iii) in any other case—\$5,000; or
- (e) in relation to an action commenced on or after 1 November 1991:

1995—No. 133

- (i) if the action is, or could under the rules have been, commenced by the lodging of a statement of liquidated claim—\$20,000; or
- (ii) in any other case—\$10,000.

Indemnity basis

13. On an assessment on the indemnity basis, all costs shall be allowed except is* so far as they are of an unreasonable amount or have been unreasonably incurred, and any doubts which the assessor may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party.

Liability of solicitor

14. (1) Where costs are incurred improperly or without reasonable cause, or are wasted by undue delay or by any other misconduct or default, and it appears to the Court that a solicitor is responsible (whether personally or through a servant or agent), the Court may, after giving the solicitor a reasonable opportunity to be heard:

- (a) direct the solicitor to repay to his client costs which the client has been ordered to pay to any other party; and
- (b) direct the solicitor to indemnify any party other than his client against costs payable by the party indemnified.

(2) Without limiting the generality of subrule (1), a solicitor is responsible for default for the purposes of that subrule where any proceedings cannot conveniently proceed, or fail or are adjourned without useful progress being made, because of the failure of the solicitor:

- (a) to attend in person or by a proper representative;
- (b) to file any document which ought to have been filed;
- (c) to deliver any document which ought to have been delivered for the use of the Court;
- (d) to be prepared with any proper evidence or account; or
- (e) otherwise to proceed.

(3) The Court may, before making an order under subrule (1), refer the matter to the registrar for enquiry and report.

(4) The Court may order that notice of any proceedings or order against a solicitor under this rule shall be given to the solicitor's client in such manner as may be specified in the order under this subrule.

*Sic.

1995—No. 133

(5) This rule is in addition to, and is intended to operate independently of, the provisions of section 148E of the Act and does not apply in circumstances where section 148E of the Act applies.

Opportunity for solicitor to be heard

15. The Court shall, before making an order under section 148E of the Act in respect of a solicitor, give the solicitor a reasonable opportunity to be heard.

Costs order to confirm earlier costs orders

16. An order as to costs made in proceedings after 30 June 1994 shall, unless the Court otherwise orders, be taken to expressly confirm all earlier orders as to costs made in the proceedings.

Order confirming rule as to payment of costs

17. Where a party to proceedings in the Court has become liable under a rule to pay any of the costs of the proceedings of any other party, the Court may order the party so liable to pay those costs.

(w) Part 42 rule 6

Omit “scale”, insert instead “basis”.

EXPLANATORY NOTE

The purpose of the amendments is to rationalise the District Court Rules affecting costs with the altered regime created by the Legal Profession Reform Act 1993, and to do this by establishing a closer accord with the Supreme Court Rules affecting costs.

E. J. O’Grady,

Secretary to the Rule Committee.