

1995—No. 610

DISTRICT COURT ACT 1973—RULE

NEW SOUTH WALES



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1. This rule is made by the Rule Committee on 26 September 1995, and has effect on and from 6 October 1995.

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

(a) Part 1 rule 3

After the matter relating to Division 7 of Part 6 insert:

DIVISION 8—*Applications and appeals under section 208M of the Legal Profession Act 1987—rr. 61–63.*

(b) Part 9 rule 7

Omit the rule, insert instead:

Conditions precedent

7. Where it is a condition precedent necessary for the case of a party in any pleading that:

- (a) a thing has been done;
- (b) an event has happened;
- (c) a state of affairs exists, or existed at some time or times;
- (d) the party is and has been at all material times ready and willing to perform an obligation; or
- (e) the party was at all material times ready and willing to perform an obligation,

a statement that:

- (f) the thing has been done;
- (g) the event has happened;
- (h) the state of affairs exists, or existed at that time or those times;

1995—No. 610

- (i) the party is and has been at all material times ready and willing to perform the obligation; or
- (i) the party was at all material times ready and willing to perform the obligation,
shall be implied in the pleading.
- (c) Part 19A rule 3 (4) (b)
Omit “commencement”, insert instead “conclusion”.
- (d) Part 23 rule 7
After subrule (4) insert:
(5) The Court shall not make an order under this rule unless it is satisfied that sufficient relief is not available under section 169 of the Evidence Act 1995.
- (e) Part 23 rule 8
Omit the rule.
- (f) Part 24C rule 3
After subrule (1) insert:
(2) Service of a statement of claim in an action under the Act may be effected as though the statement of claim were a notice or other document referred to in section 133 of the Motor Accidents Act 1988.
- (g) Part 28 rule 2 (2)
 - (i) In paragraph (c) omit “and”;
 - (ii) In paragraph (d) omit “parties.”, insert instead “parties; and”;
 - (iii) After paragraph (d) insert:
(e) sections 29 (4) and 31 of the Evidence Act 1995.
- (h) Part 28 rules 5, 5A
Omit the rules.
- (i) Part 28 rules 8 (5) and 9 (6) (b)
Omit “14B or section 14CE of the Evidence Act 1898” where occurring, insert instead “63, 64 or 69 of the Evidence Act 1995”.
- (j) Part 28 rule 9A
After Part 28 rule 9 insert:

Notice under section 67 or 99 of the Evidence Act 1995

9A. (1) Notice for the purposes of section 67 or 99 of the Evidence Act 1995 shall, unless the Court otherwise orders, be given 28 days before the hearing.

(2) If an intended witness to whose evidence a notice mentioned in this rule relates does not give evidence, no party may put the notice in evidence at the hearing without the leave of the Court.

(3) Where the party serving the notice calls the witness at the hearing:

- (a) the party may not, except with the leave of the Court, adduce, in respect of matters the subject of the notice, evidence from the witness which is not included in the notice served, except in relation to new matters which have arisen in the course of the hearing;
- (b) the Court may direct that the notice served, or part of it, shall stand as the evidence, or part of the evidence, in chief of the witness; and
- (c) whether or not the notice or any part of it is referred to during the evidence in chief of the witness, any party may put the notice or any part of it in cross-examination of the witness.

(k) Part 29 rule 4

Omit the rule.

(l) Part 51A rule 11 (2)

After “under subrule (1)” insert “, fix a date for the rehearing of the action and advise the parties of that date, or”.

(m) Part 52 rule 15

Omit the rule.

(n) Part 53 rule 3 (10) (a)

Omit the paragraph.

(o) Part 53 rule 10B (1) (b)

Omit “prosecutor”, insert instead “Director of Public Prosecutions”.

(p) Part 53 rule 10B (2)

Omit the subrule, insert instead:

(2) Consent of the Director of Public Prosecutions may be endorsed under subrule (1) (b) by the Director or a person authorised by the Director to give such consents on the Director’s behalf.

1995—No. 610

(q) Part 53 rule 10C

After Part 53 rule 10B insert:

Notice under section 67 or 99 of the Evidence Act 1995

10C. Part 28 rule 9A applies in respect of proceedings in the criminal jurisdiction of the Court.

EXPLANATORY NOTE

The purpose of the amendments is:

- (a): to update the “contents”, provision;
- (b): to align the Rules with those of the Supreme Court as to the pleading of conditions precedent;
- (c): to align the Rules with those of the Supreme Court as to the time limits on acceptance of an offer of compromise in an action referred to arbitration;
- (d), (f)–(k), (m), (n) and (q): to rationalise the provisions relating to evidence with those of the Evidence Act 1995 and ancillary legislation;
- (e): to enable the statement of claim in an action in the Motor Accidents List to be served as provided in the Motor Accidents Act 1988, including service by post;
- (1): to enable a date to be set for a rehearing after arbitration without listing the action for call-over;
- (o) and (p): to take account of an amendment to the Criminal Procedure Act 1986 regarding consent to an election for summary trial.

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