

COMPENSATION COURT ACT 1984—RULE

NEW SOUTH WALES



[Published in Gazette No. 156 of 22 December 1995]

1. This rule was made by the Rule Committee on 8th December 1995.
2. The Compensation Court Rules 1990 are amended by omitting Part 23 rule 8 and inserting instead:

Expert's Reports and Hospital Reports

8. (1) In this rule:

- (a) “expert’s report” means a statement by an expert in writing which sets out the expert’s opinion and the facts on which the opinion is formed and which contains the substance of the expert’s evidence which the party serving the statement intends to adduce in evidence in chief at the hearing, and includes:
 - (i) a statement in writing made by a medical expert, as defined in Part 20 rule 1 (2); and
 - (ii) a statement in writing made by a medical practitioner as defined in section 59 of the Compensation Act;
 - (b) “hospital report” means a statement in writing concerning a patient made by or on behalf of a hospital which the party serving the statement intends to adduce in evidence in chief at the hearing;
 - (c) “party” includes any person who has filed an appearance or answer.
- (2) This rule applies in respect of any proceedings subject to:
- (a) any order made by the Court at any time;
 - (b) any order made by the registrar at any call-over or mention of the proceedings under Part 12; and
 - (c) any agreement between the parties.

(3) Each party in any proceedings may, at least 28 days before such party seeks to tender them, serve experts' reports and hospital reports on each other party to the proceedings.

(4) Where an expert's report is served in accordance with subrule (3), or an order is made under subrule (2), the report is admissible as evidence of the expert's opinion and, where the expert's direct oral evidence of a fact upon which the opinion was formed would be admissible, as evidence of that fact, without further evidence, oral or otherwise.

(5) Except where otherwise provided in the Compensation Act, and unless the Court otherwise orders, a party may require the attendance for cross examination of the expert.

(6) A party who requires the attendance of a person under subrule (5) shall procure that attendance, and, whether the party procures the attendance by the issue and service of a subpoena or otherwise, the person shall not thereby become the party's witness except for the purpose of determining any liability for conduct money or witness' expenses.

(7) A party who requires the attendance of a person as mentioned in subrule (6) shall as soon as practicable inform all other parties to the proceeding that he has done so.

(8) Where a person who has made a report is cross examined, the party tendering the report may re-examine him.

(9) Where a hospital report is served in accordance with subrule (3) or an order is made under subrule (2), the report is admissible.

(10) In reckoning the period of 28 days referred to in subrule (3):

- (a) any day on which the matter is listed for hearing shall not be counted; and
- (b) where the hearing is not on consecutive days, any period of less than 28 days between hearing days shall not be counted.

(11) Where a party has been served with an expert's report or a hospital report by another party and the first party seeks to rely on such report, it shall not be necessary to serve a copy of that report on the party who served it but the first party shall give notice of intention to rely on the report to the party who served it and to each other party in the proceedings, within the time prescribed by subrule (3).

- (12) This rule does not apply to an expert's report if:
- (a) the expert resides outside the Commonwealth of Australia;
or
 - (b) the expert is resident in or near a place in which the hearing began or was continued but from which place the hearing has been adjourned to some other place,
- unless the Court orders otherwise.

T. J. Doubleday,
Secretary,
Rule Committee
Compensation Court of New South Wales
