



New South Wales

DISTRICT COURT ACT 1973—RULE

1. This rule is made by the Rule Committee on 8 October 1996, and has effect on and from 18 October 1996.

2. The amendments made by this rule do not apply in respect of notices of cross-claim or third party notices filed before 1 January 1997.

3. Subject to paragraph 2, the District Court Rules 1973 are amended as follows:

(a) Part 1 rule 4 (1)

Insert in alphabetical order:

“cross-claim” means a claim for relief made:

- (a) by a defendant to an action against the plaintiff in that action; or
- (b) by a defendant to an action or cross-claim against another person in respect of relief relating to or connected with the subject of the action;

(b) Part 9 rule 1 (2)

(i) Omit “, third or subsequent party notice,”;

(ii) Omit “notice of cross-claim”, insert instead “cross-claim”.

(c) Part 11A rule I

Omit the definition of “claim for relief”.

(d) Part 15 rule 2 (1)

Omit “notice of cross-claim, a third party notice”, insert instead “cross-claim”.

(e) Part 15 rule 4 (1)

Omit “notice of cross-claim, a third party notice”, insert instead “cross-claim”.

(f) Part 19A rule 11

Omit the rule, insert instead:

Offer of contribution

11. (1) where in an action:

- (a) a party (“the first party”) stands to be held liable to another party (“the second party”) to contribute towards any debt or damages which may be recovered against the second party in the action;

- (b) the first party, at any time after filing a defence, makes an offer to the second party to contribute to a specified extent to the debt or damages; and
- (c) the offer is made without prejudice to the first party's defence,

the offer shall not be brought to the attention of the Court or, as the case may require, of the arbitrator, until all questions of liability or amount of debt or damages have been decided.

(2) In subrule (1), a reference to debt or damages includes a reference to interest claimed:

- (a) under section 83A of the Act, on the debt; or
- (b) under section 83A of the Act or section 73 of the Motor Accidents Act 1988 or section 151M of the Workers Compensation Act 1987, on the damages.

(g) Parts 20, 21

Omit the parts, insert instead:

PART 20
CROSS-CLAIMS

Amount

1. (1) In any action or cross-claim a defendant who wishes to plead a cross-claim on any cause of action on which the defendant might have brought an action in the Court may plead the cross-claim for an amount not exceeding the amount for which an action may be brought under the Act, whether on balance or after admitted set-off or otherwise, or, if the defendant to the proposed cross-claim consents in writing thereto, for an amount exceeding the amount for which an action may be brought under the Act.

(2) A cross-claimant who has a cause of action for an amount in excess of the amount for which an action may be brought under the Act may abandon the excess by stating the abandonment in the cross-claim, and where the abandonment is so stated:

- (a) the cross-claimant's claim shall be reduced by the amount of the excess, and if the claim is proved a verdict shall be found for the cross-claimant for an amount not exceeding the amount for which an action may be brought under the Act;

- (b) judgment, so far as it relates to the cross-claim, shall be in full discharge of all demands in respect of that cause of action; and
- (c) entry of the judgment in the records of the Court shall be made accordingly.

Title

2. (1) A cross-claim shall be entitled in the action with an addition separate from and below the existing title of the action, headed “CROSS-CLAIM” or “SECOND CROSS-CLAIM”, or as the case may be, showing the names of the parties to the cross-claim.

(2) Where there are 2 or more cross-claims, the second cross-claim to be filed shall be called the second cross-claim, the third to be filed shall be called the third cross-claim, and so on.

(3) Part 5 rule 6A applies to a cross-claim as though the cross-claim were a statement of claim.

Title of subsequent documents

3. On a cross-claim being filed, a document afterwards filed or used in the action shall, subject to Part 47 rule 1 (5), be entitled in the manner in which the cross-claim is entitled.

Directions

- 4. The Court may, at any state of an action, on terms:
 - (a) order that any cross-claim or any question or issue in or arising on any cross-claim shall be separately tried;
 - (b) give to a defendant to the cross-claim leave to defend the claim on the statement of claim or any other cross-claim in the action, either alone or in addition to any other Party;
 - (c) give to a defendant to the cross-claim leave to appear at the trial or hearing of the claim on the statement of claim or on any other cross-claim in the action and to take such part in the trial or hearing as the Court thinks fit;
 - (d) determine the extent to which the cross-claimant and a defendant to the cross-claim shall be bound as between themselves by a judgment (including a judgment by consent of a default judgment) or decision (including a decision by consent) on the claim on the statement of claim or any other cross-claim in the action.

Service

5. A cross-claimant who files a cross-claim in an action under subrule (2) shall as soon as practicable serve the cross-claim on the defendant to the cross-claim, and where that defendant was not a party to the action before the filing of the cross-claim, shall also serve on that defendant as soon as practicable the originating process in the action and all the following documents (if any) which have been filed by the cross-claimant or served on the cross-claimant by any other party:

- (a) other pleadings;
- (b) notices of motions not finally disposed of;
- (c) affidavits, other than affidavits which are not relevant to the issues arising on the cross-claim;
- (d) amendments made to any of the documents required by this subrule to be served.

Conduct of proceedings generally

6. (1) Subject to this part, the proceedings on a cross-claim shall follow as nearly as may be the course of proceedings in an action.

(2) Subject to this Part, and without limiting the generality of subrule (1), these rules apply to a cross-claim and the proceedings arising from it as they apply to an action.

(3) Subrules (1) and (2) apply as if:

- (a) the cross-claim were a statement of claim;
- (b) the cross-claimant were a plaintiff; and
- (c) the defendant to the cross-claim were a defendant.

(4) Subject to this Part, the trial or hearing and all other steps in the proceedings on a cross-claim in an action shall as far as practicable be carried on together with the trial or hearing and similar steps in the action.

Default of defendant to cross-claim

7. Where a defendant to a cross-claim does not file a defence, if and as required by these rules, or does not file a defence in accordance with an order to do so, a judgment (including a judgment by consent or a default judgment) or decision (including a decision by consent) on any claim, question or

issue in the proceedings on the statement of claim or on any other cross-claim in the action shall, unless the Court otherwise orders, be binding as between the cross-claimant and the defendant to the cross-claim so far as the judgement or decision is relevant to any claim, question or issue in the proceedings on the cross-claim.

Separate prosecution

8. A cross-claim may proceed notwithstanding that judgment is given or entered up in the action or on any other cross-claim in the action, or that the proceedings in the action or on any other cross-claim in the action are stayed, dismissed or discontinued.

Contribution or indemnity

9. (1) Where a defendant makes a cross-claim for contribution or indemnity in respect of a claim against him in the action:

- (a) judgment for the claimant on the cross-claim shall not be given or entered up except by direction of the Court; and
- (b) judgment for the claimant on the cross-claim shall not, unless the Court otherwise orders, be enforced until satisfaction of any judgment in the action against the cross-claimant.

(2) Where, in respect of a claim against him in an action, a defendant makes a claim for contribution under section 5 of the Law Reform (Miscellaneous Provisions) Act 1946 against a party in the action, a defence to the cross-claim or subsequent pleading on the cross-claim shall not be filed unless the Court so directs.

Commencement

10. (1) A defendant to an action or cross-claim may plead a cross-claim by filing the cross-claim.

(2) A cross-claimant may file a cross-claim within the time fixed for filing his defence.

Form

11. (1) Where a cross-claimant cross-claims solely against a party who claims in the action against the cross-claimant, the cross-claimant may add the cross-claim to his defence.

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(2) Subject to Part 9 rule 17, a cross-claimant may, in his cross-claim, plead all or any of the facts on which he relies by reference to the prior pleadings in the action.

(3) A cross-claimant shall, in addition to pleading any other facts on which he relies, plead the facts showing that the claim is a cross-claim as defined in Part 1 rule 4 (1).

(h) Part 47 rule 1 (5)

After “process” insert “, a cross-claim.”.

EXPLANATORY NOTE

The purpose of the amendments is to adopt, as from 1 January 1997, the Supreme Court procedural system regarding cross-claims, including what are presently known in the District Court as third party notices.

E. J. O’Grady
Secretary to the Rule Committee