



New South Wales

DISTRICT COURT ACT 1973—RULE

1. This rule is made by the Rule Committee on 3 December 1996, and has effect on and from 6 December 1996.

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

(a) Part 1 rule 4 (1)

Omit the definition of “curator”, insert instead:

“*curator*” means:

(a) in respect of a person:

- (i) the management of whose estate is, by the Protected Estates Act 1983, or by any order of the Supreme Court or the Guardianship Board under that Act, committed to the Protective Commissioner;
- (ii) of whose estate the Protective Commissioner has, in accordance with section 63 of that Act, undertaken the management, or
- (iii) in relation to whose property the Protective Commissioner is authorised as mentioned in section 66 (1) (a) of that Act,

the Protective Commissioner;

(b) in respect of a person of whose estate a manager has been appointed by order of the Supreme Court or the Guardianship Board under section 22 or section 22A of the Protected Estates Act 1983—the manager appointed;

(b) Part 3 rule 2 (4)

Omit the subrule.

(c) Part 7 rule 8 (2)

Omit “suing without a next friend, or as the next friend of a plaintiff,”.

(d) Part 12 rule 4C

After Part 12 rule 4B insert:

Dismissal of dormant actions commenced before 1.1.96

4C (1) This rule applies to actions which were commenced before 1 January 1996:

1996 No 597

District Court Act 1973—Rule

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- (a) by the lodging of an ordinary statement of claim; or
 - (b) by the lodging of a statement of liquidated claim and in which notice of grounds of defence has been filed,

which have not been disposed of by judgment or final order.

(2) If in an action to which this rule applies no praecipe for trial has been filed before 1 January 1998, the action is on that date deemed to be dismissed.

(3) If

- (a) an action to which this rule applies has been adjourned;
- (b) the adjournment is not to a specified date or a specified sittings for hearing, directions or other purpose, or to any “Not Ready List” maintained in accordance with Practice Note No 33; and
- (c) the action remains so adjourned on 1 January 1998,

the action is on that date deemed to be dismissed.

(4) The Court may if it thinks fit by order rescind a dismissal which is deemed to have occurred through the operation of this rule if application for the order is made before 1 July 1998, and where such an order is made the Court shall give directions as to the future conduct of the action.

- (e) Part 22A rule 1 (l)
 - (i) Omit “subrules (3) and (4)”, insert instead “this rule and to any direction given in a particular case”;
 - (ii) Omit “file and”.
- (f) Part 22A rule 1 (4)
Omit “harm”, insert instead “injury”.
- (g) Part 22A rule 2 (2), (3)
Omit “filing and” where occurring.
- (h) Part 22A rule 5 (1)
Omit “file and”.
- (i) Part 22A rule 7 (1) (b)
Omit “next friend or guardian ad litem”, insert instead “tutor”.
- (j) Part 22A rule 7 (4)
After Part 22A rule 7 (3) insert:

(4) In subrule (1) (e), “Crown” includes not only the Crown in right of New South Wales but also the Crown in any other capacity.

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- (k) Part 22A rule 9
- (i) Omit “file or”;
 - (ii) Omit “make such order”, insert instead “give or make such judgment or such order”.
- (l) Part 23 rule 1 (1)
- Omit “any action”, insert instead “proceedings”.
- (m) Part 23 rule 4 (1)
- Omit “proceedings as to any claim in the action”, insert instead “the proceedings as to any claim for relief”.
- (n) Part 23 rule 4 (2)
- (i) Omit “action is”, insert instead “proceedings are”;
 - (ii) Omit “proceedings in the action”, insert instead “the proceedings”.
- (o) Part 23 rules 7–10
- Renumber Part 23 rules 6B, 6C, 7 and 9 respectively as Part 23 rules 7, 8, 9 and 10.
- (p) Part 23 rule 8 (1)
- Omit “, on terms,”.
- (q) Part 23 rule 9 (1)
- Omit “action”, insert instead “proceedings”.
- (r) Part 23 rule 10 (1)
- (i) Omit paragraph (a);
 - (ii) Renumber paragraphs (b) and (c) respectively as paragraphs (a) and (b).
- (s) Part 23 rule 10 (2)
- Omit “proceedings in the action be stayed or the action be dismissed as to any claim”, insert instead “the proceedings be stayed or dismissed as to any relief claimed”.
- (t) Part 25
- Omit the heading, insert instead:
- PART 25—EVIDENCE OTHERWISE THAN AT THE TRIAL
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- (u) Part 25 rule 1

Omit the rule, insert instead:

Order for examination of witness

1. The Court may, for the purpose of proceedings in the Court, make orders for the examination of any person before a Judge or other officer of the Court or before such other person as the Court may appoint as examiner at any place:

- (a) in the State or out of the State in Australia; or
- (b) out of Australia.

- (v) Part 25 rule 2

Omit “action”, insert instead “proceedings”.

- (w) Part 25 rule 3

Omit “action”, insert instead “proceedings”.

- (x) Part 25 rule 3A

After Part 25 rule 3 insert:

Evidence otherwise than on oath

3A. Unless the Court otherwise orders:

- (a) a person may be examined in another country pursuant to an order under rule 1 (b), or
- (b) evidence of a person may be taken in another country pursuant to an order under sections 7 (1) (c) and 10 of the Foreign Evidence Act 1994 (Commonwealth),

otherwise than on oath or affirmation if the person is examined in accordance with the procedure of the country.

- (y) Part 25 rule 4

(i) Omit “action” where occurring, insert instead “proceedings”.

(ii) After rule 4 (2) insert:

(3) This rule does not apply where a Judge is the examiner.

- (z) Part 25 rule 5 (3)

Omit the subrule, insert instead:

(3) The examiner shall give notice of an appointment under this rule to the party obtaining the order and that party shall, not later than the earlier of:

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- (a) 3 days, or
 - (b) a reasonable time,
- before the time appointed, give notice of the appointment to each other party.
- (aa) Part 25 rule 6 (1A)
After Part 25 rule 6 (1) insert:
(1A) Subject to this Part, the proceedings before the examiner shall be in accordance with the procedure of the Court.
 - (ab) Part 25 rule 7
Omit the rule, insert instead:
Examination of additional persons
7. (1) Where the examiner is a Judge, the examiner may, on application of a party to the proceedings, take the examination of any person not named or provided for in the order for examination.
(2) Where the examiner is not a Judge, the examiner may, with the consent in writing of each party to the proceedings, take the examination of any person not named or provided for in the order for examination and, if he does so, he shall annex to the written record or transcript of the deposition of that person the consent of each of the parties.
 - (ac) Part 25 rule 8
Omit the rule, insert instead:
Objection
8. (1) Where objection is taken to a question put to a person being examined before an examiner, or a person being so examined takes objection to answering a question put to him or to producing any document or thing:
 - (a) the examiner shall state to the parties his opinion on, but shall not decide, the validity of the ground for the objection;
 - (b) the question, the ground for the objection, the opinion of the examiner, and the answer (if any) must be set out in the written record or transcript of the deposition of that person or in a statement attached to the written record or transcript;
 - (c) the Court may, on motion by any party, decide the validity of the ground for the objection; and
 - (d) if the Court decides against the objector, the Court may order him to pay the costs occasioned by the objection.
- (2) This rule does not apply where the examiner is a Judge.

(ad) Part 26 rule 1A

Before Part 26 rule 1 insert:

Interpretation

1A. For the purposes of this Part:

- (a) where the burden of proof on any issue lies on the plaintiff, he shall be the beginning party and the defendant shall be the opposite party; and
- (b) where the burden of proof on all the issues lies on the defendant, he shall be the beginning party and the plaintiff shall be the opposite party.

(ae) Part 26 rule 1

Omit the rule, insert instead:

Information for Sheriff

1. Where any action for trial with a jury is set down for trial, and is reasonably expected by the registrar to proceed to trial, at or during a sittings, the registrar shall, 14 days at least before the sittings commences, so inform the Sheriff in writing.

Part 26 rule 5A (2) (a)

Omit “on terms”.

(af) Part 26 rule 5A (3), (4)

(ag) After Part 26 rule 5A (2) insert:

(3) Subrule (2) does not enable the Court to vary the verdict, finding or assessment of a jury at a trial except with the consent of each interested party present at the trial.

(4) A motion to set aside a judgment under subrule (2) must be made on notice and the notice must be filed and served not more than 7 days after the giving of the judgment.

(ah) Part 26 rule 6 (1)

Omit the subrule.

(ai) Part 26 rule 6 (2)

Omit “hearing of any proceedings”, insert instead “trial”.

(aj) Part 26 rule 6 (3) (a)

Omit “to any proceedings”.

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- (ak) Part 26 rule 6A

After Part 26 rule 6 insert:

Dismissal on plaintiff's application

6A. The Court, on the application of any party making a claim for relief in any proceedings, may, at any time but, in the case of trial with a jury, before verdict, make an order, on terms, for the dismissal of the proceedings so far as concerns any cause of action or the whole or any part of any claim for relief made by him.

- (al) Part 26 rule 7 (2)

Omit the subrule.

- (am) Part 26 rule 7 (3)

(i) Omit "plaintiff's action", insert instead "proceedings";

(ii) Omit "the action", insert instead "the proceedings".

- (an) Part 26 rule 7 (5)

(i) Omit "plaintiff's action", insert instead "proceedings";

(ii) Omit "the action", insert instead "the proceedings".

- (ao) Part 26 rule 8A

After Part 26 rule 8 insert:

Record

8A. The Associate, or other proper officer present at the trial, shall be clerk at the trial and shall maintain and complete a record of the trial.

- (ap) Part 27 r 2 (2)

Omit "after an order for judgment has been made", insert instead "under this Part".

- (aq) Part 28 rule 2

Omit the rule, insert instead:

Witnesses at a trial

2. (1) Subject to subrules (2), (3) and (4), the evidence of any witness on any issue at a trial shall be given orally before the Court.

(2) The Court may, on terms, order that evidence of particular facts be given by affidavit.

(3) Subrule (1) applies subject to:

(a) the Act;

(b) the rules;

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- (c) any direction of the Court;
 - (d) any agreement between the parties; and
 - (e) sections 29 (4) and 31 of the Evidence Act 1995.

(4) Where the only matters in question are:

- (a) on a claim for a liquidated demand and for an order for interest under section 83A of the Act, interest; and
- (b) costs,

evidence of facts at the trial arising on the matter of interest may, unless the Court otherwise orders, be given by affidavit.

(5) On an assessment of the amount to be recovered by a plaintiff after an order for judgment has been made, evidence of the identity of any motor vehicle, the damage sustained by a motor vehicle in a particular collision, and the reasonable cost of repairing that damage may be given by affidavit.

(ar) Part 28 rule 4

Omit the rule.

(as) Part 28 rule 8

Omit the rule, insert instead:

Expert's report admissible

9. (1) Where an expert's report is served in accordance with rule 8 or an order is made under rule 8 (3), 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.

(2) A party may, unless the Court otherwise orders, at least 21 days before the trial, require the attendance for cross-examination of the expert.

(3) The parties may not by consent abridge the time fixed by or under subrule (2).

(4) A requirement under subrule (2) shall be made to the party who served the report.

(5) Where the attendance of an expert is required under subrule (2), his report shall not be tendered under section 63 or section 64 or section 69 of the Evidence Act 1995 or otherwise used unless the person attends or is dead or the Court grants leave to use it.

(6) Where an expert attends pursuant to a requirement under subrule (2), the party using the report may re-examine him.

(at) Part 28 rule 9

Renumber the rule as Part 28 rule 8

(au) Part 28 rule 9A (1A)

After Part 28 rule 9A (1) insert:

(1A) A notice mentioned in this rule shall be signed by the intended witness to whose evidence the notice relates, unless the signature of the intended witness cannot be procured or the Court otherwise orders.

(av) Part 28 rule 13A

After Part 28 rule 13 insert:

Unstamped documents: undertaking

13A. (1) The solicitor’s “usual undertaking as to stamp duty”, if given to the Court by a solicitor in relation to an instrument referred to in section 29 of the Stamp Duties Act 1920, or an unexecuted copy referred to in that section, is an undertaking that the solicitor will cause the instrument or copy to be presented to the Chief Commissioner of Stamp Duties for assessment in accordance with that Act and cause any duty and fine to which the instrument or copy is liable to be paid.

(2) The “party’s usual undertaking as to stamp duty”, if given to the Court by a party in relation to an instrument referred to in section 29 (4) of the Stamp Duties Act 1920, is an undertaking that the party will within 28 days inform the Chief Commissioner of Stamp Duties of the name of the person primarily liable to duty in respect of the instrument and lodge the instrument or a copy of the instrument with the Chief Commissioner.

(aw) Part 28 rule 14

Omit the rule, insert instead:

Attendance and production

14. (1) The Court may make orders for:

- (a) the attendance of any person for the purpose of being examined;
- (b) the attendance of any person and production by him of any document or thing described in the order; or
- (c) production by any corporation of any document or thing specified or described in the order.

1996 No 597

District Court Act 1973—Rule

(2) An order under subrule (1) may be made for the attendance of any person before, and production by him to, or for the production by any corporation to, the Judge or any officer of the Court, examiner, referee, arbitrator, or other person authorised to take evidence, on any trial hearing or other occasion.

(3) Subrules (1) and (2) apply whether or not the person required by the order to attend or produce any document or thing has been required to do so by subpoena.

(ax) Part 28 rule 16 (3A)

After Part 28 rule 16 (3) insert:

(3A) Where a party to any proceedings claims privilege from production of any document, the Court may, if it thinks fit:

- (a) permit evidence in relation to the claim to be given by any other party by affidavit or otherwise; and
- (b) permit cross-examination on any affidavit used in support of the claim.

(ay) Part 28 rule 16 (5)

Omit “This rule”, insert instead “Subrules (1), (2) and (3)”.

(az) Part 31 rules 1–7

Omit the rules.

(ba) Part 31 rule 9

- (i) Omit “immediately thereafter”, insert instead “then”;
- (ii) Omit “to the parties or their legal representatives in Court, or”.

(bb) Part 31 rule 12 (1)

Omit the subrule.

(bc) Part 31 rule 12 (2)

Omit “, other than to pay any money,”.

(bd) Part 31 rule 12 (3)

Omit “, other than to pay any money,”, insert instead “forthwith or forthwith upon a specified event or to do an act”.

(be) Part 31 rule 14 (1)

Omit “of the Court”, insert instead “of, or undertaking given to, the Court in the proceedings”.

(bf) Part 31 rule 14 (2)

Omit the subrule, insert instead:

(2) In any proceedings, the Court may be informed of an order of, or an undertaking given to, the Court in the proceedings by (amongst other things) reference to a note made:

- (a) by the Judge making the order or accepting the undertaking or by his Associate or by any other proper officer; or
- (b) by the registrar making the order or accepting the undertaking.

(bg) Part 39A rule 32

After Part 39A rule 31 insert:

Extension of time

32. 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.

(bh) Part 43 rule 10B (2B)

After Part 43 rule 10B (2A) insert:

(2B) Except where a Judge otherwise orders or the rules otherwise provide, the registrar for Sydney may exercise the powers of the Court to make orders:

- (a) changing the venue of proceedings;
- (b) under section 44 (3) of the Act, altering the amount specified in a statement of claim after the monetary limit of the jurisdiction of the Court is increased;
- (c) under section 84A of the Act, granting leave to apply for the issue of process of enforcement of a judgment, and under section 107 (2) of the Act, giving leave to issue a writ of execution;
- (d) under section 102 of the Act, giving or refusing to give judgment against a garnishee;

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- (e) under section 18 (5) (c) of the Arbitration (Civil Actions) Act 1983, that an award be reinstated;
 - (f) extending the time within which a party may file an application for a rehearing under section 18 (2) of the Arbitration (Civil Actions) Act 1983 after another party has filed and discontinued such an application; and
 - (g) granting leave to discontinue proceedings under Part 18 rule 1 (b).

EXPLANATORY NOTE

The purpose of amendment (d) is to enable the Court, during 1997, to complete the process of ensuring that all actions remaining current have been brought under some form of management by the Court.

The purpose of amendment (ae) is to bring the procedure for requiring the attendance of a civil jury into line with changes made by the Jury Amendment Act 1996.

The purpose of amendment (bh) is to enable the registrar for Sydney to deal with certain contested applications to the Court, subject to reference to a Judge where appropriate.

The purpose of the remaining amendments is to continue the process of establishing as much uniformity with the Supreme Court Rules as can be achieved without substantially altering procedures.

E. J. O'Grady

Secretary to the Rule Committee
