

1996—No. 74

DISTRICT COURT ACT 1973—RULE

NEWSOUTHWALES



[Published in Gazette No. 26 of 1 March 1996]

1. This rule is made by the Rule Committee on 27 February 1996, and has effect on and from 1 March 1996.

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

(a) Part 1 rule 3

Omit the rule

(b) Part 17 rule 1

After subrule (3) insert:

(3A) An order may be made, or leave may be granted, under subrule (1) notwithstanding that the effect of the amendment is, or would be, to add or substitute a cause of action arising after the commencement of the proceedings, but in such a case the date of commencement of the proceedings, so far as concerns that cause of action, shall be the date on which the amendment is made.

(c) Part 24A—BUILDING AND ENGINEERING LIST

Omit the title, insert instead “Part 24A—CONSTRUCTION LIST”.

(d) Part 24A rule 2

Omit the rule, insert instead:

Construction List

2. The registrar for Sydney shall keep a Construction List, and shall enter proceedings in that List in accordance with this Part.

(e) Part 24A rules 3–9

Omit “Building and Engineering List” where occurring, insert instead “Construction List”.

(f) Part 24A rule 5

Omit “Proceedings”, insert instead “Unless the Court otherwise orders, proceedings”.

(g) Part 24A rule 8

- (i) In subrule (2) omit “after a notice of grounds of defence and a praecipe for trial have been filed”;
- (ii) In subrule (3) omit “and the fixing of a hearing date and mention dates”, insert instead “, the conduct of the trial, and the adducing of evidence at or before the trial”.

(h) Part 35 rule 8 (1)

- (i) Omit “with the approval of the Sheriff’s Officer”;
- (ii) After “may” insert “, with the approval of the Sheriff,”.

(i) Part 35 rule 8 (2)

Omit the subrule, insert instead:

2. The Sheriff shall not approve a sale of goods under subrule (1) at a price substantially below a fair value determined by the Sheriff.

(j) Part 35 rule 8 (3)

Omit “Sheriff’s Officer” where first occurring, insert instead “Sheriff”.

(k) Part 36 rule 11A (1)

- (i) Omit “with the approval of the Sheriff’s Officer”;
- (ii) After “may” insert “, with the approval of the Sheriff,”.

(l) Part 36 rule 11A (2)

Omit the subrule, insert instead:

(2) The Sheriff shall not approve a sale of land under subrule (1) at a price substantially below a fair value determined by the Sheriff.

(m) Part 36 rule 11A (3)

Omit “Sheriff’s Officer” where first occurring, insert instead “Sheriff”.

(n) Part 51A rule 2 (4)

Omit paragraphs (a) and (b).

(o) Part 51A rule 5 (2) (b)

After “action” where secondly occurring insert “, and the registrar.”.

(p) Part 51A rule 5B

After rule 5A insert:

Continuation after referral

5B. (1) Notwithstanding anything in this Part, an order for referral of an action to an arbitrator shall be conditional on the fee on referral required by the District Court (Fees) Regulation being paid to the registrar not later than two (2) weeks prior to the date fixed for the hearing before the arbitrator.

(2) Where the fee mentioned in subrule (1) has not been paid to the registrar two (2) weeks or more before the date fixed for the hearing before the arbitrator, the registrar shall report the non-payment to the Court, which shall make such order as it thinks fit.

(3) The orders that may be made under subrule (2) include an order striking out the action and an order striking out any defence or other pleading.

(q) Part 53 rule 5

- (i) In subrules (1) and (4), omit “solicitor” where occurring, insert instead “legal practitioner”;
- (ii) In subrules (5) and (6), after “solicitor” where occurring insert “or, where a barrister acts uninstructed by any solicitor, a barrister”.

EXPLANATORY NOTE

The purpose of the amendments is:

- (a): to remove a provision which unnecessarily details the Parts and Divisions of the Rules;
- (b): to provide, as in the Supreme Court, for the amendment of a pleading even where the effect is to add or substitute a cause of action which arose after the commencement of the proceedings;
- (c)–(g): to retitle the “Building and Engineering List” as the “Construction List”, and to bring the provisions affecting it into line with those affecting the Commercial List;
- (h)–(m): to require the personal approval of the Sheriff before any sale by private treaty can proceed under a writ of execution;
- (n): to remove a monetary limitation on the classes of proceedings that may be referred to arbitration;
- (o): to require an arbitrator under the “General” system to advise the Court of the date fixed by the arbitrator for the hearing of referred proceedings;

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- (p): to provide for the procedure to be followed by the registrar, and the orders that may be made by the Court, where the fee on referral to arbitration is not paid two (2) weeks before the hearing;
- (q): to impose on barristers the same obligations as solicitors are under with regard to withdrawal from criminal proceedings.

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