



New South Wales

DISTRICT COURT ACT 1973—RULE

1. This rule is made by the Rule Committee on 26 August 1997, and has effect on and from 1 January 1998.

2. The amendments made by this rule apply only to and in respect of offers of compromise made on or after the day on which this rule takes effect.

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

(a) Part 19A rule 7 (3) (a)

After “25 (4)” insert “, (4A)”.

(b) Part 39A rule 25

(i) Before subrule (1) insert:

(1A) The objects of this rule are:

- (a) to introduce an added element of risk in order to promote early settlement of actions without hearing or arbitration;
- (b) to compel the parties to an action, under threat of possible penalties in costs, to arrive at an early assessment of the amount of damages, if any, recoverable by the plaintiff;
- (c) to encourage the making and acceptance of reasonable offers of compromise by:
 - (i) providing for penalties in costs to be imposed on a party who rejects an offer of compromise and does not at the hearing or arbitration of the action achieve a position better than he would have held if he had accepted the offer of compromise; and
 - (ii) providing corresponding costs relief to the party making the offer;
- (d) to impart as much certainty to the imposition of costs penalties referred to in object (c) as may be imparted without substantial injustice; and

-
- (e) to provide a discretion in the Court to relieve a party from the imposition of a costs penalty, to be exercised only in an exceptional case and for the avoidance of substantial injustice.

(1B) A decision of the Court to make or refuse to make an order for costs under this rule must be made in pursuance of the objects of this rule.

- (ii) Omit subrule (4), insert instead:

(4) Where an offer is made by a plaintiff 28 days or more before the hearing of the action commences, and the offer is not accepted by the defendant, and the plaintiff obtains an order or judgment on the claim to which the offer relates no less favourable to the plaintiff than the terms of the offer, then, unless the Court in an exceptional case and for the avoidance of substantial injustice otherwise orders, the plaintiff shall be entitled to an order against the defendant for the plaintiff's costs in respect of the claim assessed on a solicitor and client basis.

(4A) Where an offer is made by a plaintiff less than 28 days before the hearing of the action commences, and the offer is not accepted by the defendant, and the plaintiff obtains an order or judgment on the claim to which the offer relates no less favourable to the plaintiff than the terms of the offer, then, unless the Court in an exceptional case and for the avoidance of substantial injustice otherwise orders, the plaintiff shall be entitled to an order against the defendant for the plaintiff's costs in respect of the claim from the day on which the offer was made, assessed on a solicitor and client basis, in addition to the plaintiff's costs incurred before that time, assessed on a party and party basis.

- (iii) In subrule (5):

- (A) Omit "subrule (4)", insert instead "subrules (4) and (4A)";
- (B) Omit "an indemnity", insert instead "a solicitor and client".

(iv) After subrule (5) insert:

(5A) An entitlement to costs on a solicitor and client basis under subrule (4), (4A) or (5) does not include an entitlement to the amount of any surcharge on costs provided by a costs agreement, conditional or otherwise.

(v) In subrule (6):

(A) After “Court” insert “in an exceptional case and for the avoidance of substantial injustice”;

(B) Omit “, subject to rule 12.”.

(vi) In subrule (8), after “(4)” insert “, (4A)”.

(vii) In subrule (10):

(A) After “subrule (4)” insert “,subrule (4A)”;

(B) After “subrules (4)” insert “, (4A)”.

(viii) In subrule (11), after “(4)” insert “, subrule (4A)”.

EXPLANATORY NOTE

(This note does not form part of the rules).

The purpose of these amendments is to make more effective the existing rules by encouraging the making and acceptance of reasonable offers of compromise in proceedings.

J.G. COWEN
Secretary to the Rule Committee