



New South Wales

## **District Court Rule (Case Management Law Revision) 1998**

under the

District Court Act 1973

The District Court Rule Committee made the following rule of court under the *District Court Act 1973* on 7 April 1998.

J G Cowen

Secretary to the Rule Committee

### **Explanatory note**

The object of this Rule is to make miscellaneous amendments to the *District Court Rules 1973* relating to case management and, in particular, to remove inconsistencies between the *District Court Rules 1973* and Practice Note 33 issued by the Chief Judge of the District Court on 6 December 1995. Practice Note 33 deals with the case management of civil actions by the District Court and is already expressed to operate despite its several inconsistencies with the Rules.

**1998 No 221**

Clause 1          District Court Rule (Case Management Law Revision) 1998

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**District Court Rule (Case Management Law Revision) 1998**

**1 Name of Rule**

This Rule is the *District Court Rule (Case Management Law Revision) 1998*.

**2 Commencement**

This Rule commences on 24 April 1998.

**3 Amendment of District Court Rules 1973**

The *District Court Rules 1973* are amended as set out in Schedule 1.

**4 Application of amendments**

The amendments made to the *District Court Rules 1973* apply to proceedings commenced in the District Court on or after the date of the commencement of this Rule.

**5 Notes**

The explanatory note does not form part of this Rule.

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## Schedule 1      Amendments

(Clause 3)

**[1]      Part 2A, rule 8 (1A)**

Omit “the trial of” where secondly occurring.

**[2]      Part 2A, rule 8 (1A)**

Omit “stood over generally”.

Insert instead “struck out or dismissed”.

**[3]      Part 3, rule 2 (1)**

Omit “, on terms,”.

**[4]      Part 3, rule 2 (4)**

Insert after Part 3, rule 2 (3):

- (4)      Subrule (3) does not apply to any period fixed by or under Practice Note 33 (or any Practice Note modifying Practice Note 33).

**[5]      Part 5, rule 6B**

Insert after Part 5, rule 6A:

**6B Personal injury actions**

In any proceedings in which a claim is made for damages in respect of personal injuries, the plaintiff shall file with the statement of claim the statement, and a schedule of documents, required under Part 9, rule 27 (2) or (4), as the case may be, to be served on the defendant’s insurer or solicitor.

**[6]      Part 9, rule 19A (4)**

Omit “tribunal under Part 24 of these rules”. Insert instead “Court”.

**[7] Part 9, rule 27**

Insert after Part 9, rule 26:

**27 Personal injury actions**

- (1) This rule applies to proceedings in which a claim is made for damages in respect of personal injuries.
- (2) In proceedings to which this rule applies (other than proceedings which are maintainable by virtue of the *Compensation to Relatives Act 1897*) the plaintiff shall, on serving the statement of claim or as soon as practicable after serving the statement of claim, serve on the defendant's insurer or solicitor a statement:
  - (a) setting out the matters specified in subrule (3), and
  - (b) that is accompanied by copies or originals of all documents available to the plaintiff in support of a claim for special damage and economic loss, whether past, present or continuing, including:
    - (i) hospital, medical and similar accounts, and
    - (ii) letters from a workers' compensation insurer indicating moneys paid to or on behalf of the plaintiff, and
    - (iii) letters from employers, wage records, income records and group certificates, and
    - (iv) reports, award rates and correspondence relied on to support any claim for domestic assistance or attendant care, and
  - (c) that is accompanied by copies or originals of all hospital and medical reports available at the time of serving the statement upon which the plaintiff intends to rely at the hearing.
- (3) The following matters are to be set out in a statement referred to in subrule (2) (a):
  - (a) particulars of injuries received,
  - (b) particulars of continuing disabilities,

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- (c) details of out-of-pocket expenses,
  - (d) if any claim is made in respect of loss of income:
    - (i) the name and address of each employer during the 12 months immediately before the accident together with details of the periods of employment, capacity in which employed and net earnings during each period of employment, and
    - (ii) the name and address of each employer since the accident together with details of the periods of employment, capacity in which employed and net earnings during each period of employment, and
    - (iii) the amount claimed in respect of loss of income to the date of the statement by comparison between what the plaintiff has earned since the accident and what the plaintiff would have earned but for the accident, setting out, in respect of what the plaintiff would have earned but for the accident, particulars thereof, including, where appropriate, particulars of the earnings of comparable employees and the identity of those employees, or, where appropriate, particulars of payment which the plaintiff would have received under a relevant award or industrial agreement and the description of that award or industrial agreement, and
    - (iv) particulars of any alleged loss of earning capacity and future economic loss, and
    - (v) if self-employed immediately before the accident—such additional particulars as will achieve full disclosure of the basis of the claim for loss of income, and
    - (vi) particulars of any claim for domestic assistance or attendant care.

**1998 No 221**

District Court Rule (Case Management Law Revision) 1998

Schedule 1 Amendments

---

- (4) Without limiting the generality of subrule (2), the documents required under that subrule to be served shall, where a claim is made in respect of loss of income, include:
  - (a) a letter from the employer or employers (if any) of the plaintiff immediately before the accident the subject of the action, providing particulars of
    - (i) the dates on which the plaintiff was absent from work due to the accident, and
    - (ii) the total net remuneration lost by the plaintiff in respect of that absence, including overtime, and
    - (iii) if the plaintiff returned to work for that employer, the plaintiff's classification and duties, and any alteration in the remuneration paid to the plaintiff, after that return, and
    - (iv) if that employment has been terminated, the date of and reason for the termination, and
  - (b) if the plaintiff was self-employed immediately before the accident—copies of any accountants' reports or other documents on which the plaintiff intends to rely to establish his or her pre-accident income, and
  - (c) copies of the plaintiff's income tax returns relating to income received during the period of 2 financial years ending immediately before the financial year which included the date of the accident and of any income tax return lodged by the plaintiff since the date of the accident.
- (5) If any, or any part of any, of the statements, documents and reports required to be served by subrule (4) (a), (b) or (c) cannot be served, a statement of the reasons why it cannot be served shall be included in the documents to be served.

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- (6) In proceedings in which this rule applies and which are maintainable by virtue of the *Compensation to Relatives Act 1897*, the plaintiff shall, on serving the statement of claim or as soon as practicable after serving the statement of claim, serve on the defendant's insurer or solicitor in respect of each person on whose behalf the action is brought:
- (a) a statement as to:
    - (i) the person's name, address, relationship to the deceased person the subject of the action, marital status and any anticipated alteration to that status, and
    - (ii) whether the dependency of the person on the deceased person is claimed to have been whole or partial, the circumstances in which the person received support from the deceased person, and the quantum of that support during the 12 month period immediately before the death of the deceased person, and
  - (b) a copy or extract of the person's birth certificate, and, if the person has been married, a copy of the person's marriage certificate, and
  - (c) a letter from the employer (if any) of the deceased person immediately before the accident the subject of the action, providing particulars of the deceased person's remuneration and prospects of promotion at the date of his or her death, and
  - (d) copies of the deceased person's income tax returns relating to income received during the period of 2 financial years ending immediately before the financial year which included the date of his or her death, and
  - (e) copies of bank statements, financial records, and any other documents on which the plaintiff intends to rely to establish the extent of the support and other benefits provided to the person by the

deceased person, covering a period of not less than 12 months immediately before the date of the death of the deceased person, and

- (f) copies of all documents, including accounts and receipts, in support of any claim for the cost of a headstone, funeral, monumental mason or other expenses relating to the death of the deceased person, and
  - (g) copies of documents evidencing the net value of the estate of the deceased person.
- (7) If any, or any part of any, of the statements, documents and reports required to be served by subrule (6) (a)–(g) cannot be served, a statement of the reasons why it cannot be served shall be included in the documents to be served.
  - (8) The statement, documents and reports required under subrule (2) or (6) to be served shall be as final and complete as to the plaintiff's case as they can, with the exercise of reasonable diligence, be made, and shall contain such information as the plaintiff can then provide as to any medical examination of the plaintiff to be conducted after the date of service.
  - (9) If, after service of any statement, document or report mentioned in subrule (2) or (6) and before the hearing of the proceedings, the plaintiff becomes aware that any information contained in the statement, document or report is no longer accurate and complete information as regards the plaintiff's claim, the plaintiff shall as soon as practicable give to all other parties who have separately pleaded such advice as is necessary to make that information accurate and complete.
  - (10) The plaintiff shall, at least one month before the day first scheduled for a status conference in the proceedings, file a schedule of all the documents served as required under subrule (2) or (6) and advice given as required under subrule (9), including the dates of service of the documents or giving of advice.



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- (11) If the court or registrar, in conducting a review or status conference or otherwise, is of the opinion that the plaintiff has not sufficiently complied with this rule:
- (a) the Court may dismiss or strike out, and the registrar may strike out, the proceedings, or
  - (b) the Court or registrar may make such other order as the Court or registrar thinks fit.

**[8] Part 11, rule 1 (1A)**

Omit the subrule.

**[9] Part 12, rules 1–4B**

Omit the rules.

**[10] Part 12, rule 5**

Omit the rule. Insert instead:

**5 Notice of demand for jury**

In any action in which a party is entitled to require a jury to be summoned, a party so requiring shall file and serve on each other party a requisition for jury, and shall pay the fee required by the regulations made under the Act, at least 2 months before the date first scheduled for a status conference in the action.

**[11] Part 12, rule 6**

Omit “or where a requisition for jury is filed after the time when a praecipe for trial is filed,”.

**[12] Part 12, rule 7**

Omit “, on terms,”.

**1998 No 221**

District Court Rule (Case Management Law Revision) 1998

Schedule 1 Amendments

---

**[13] Part 15, rule 7**

Insert after Part 15, rule 6:

**7 Time for serving notices under this Part**

A party may serve a notice referred to in rule 2 or 5:

- (a) within 4 months after the day on which the proceedings are commenced, or
- (b) if the period referred to in paragraph (a) has expired—only with the leave of the Court.

**[14] Part 20, rule 2 (3)**

Omit “rule 6A applies”. Insert instead “rules 6A and 6B apply”.

**[15] Part 20, rule 10 (2)**

Omit the subrule. Insert instead:

- (2) A cross-claimant may file a cross-claim:
  - (a) within 3 months after the day on which the cross-claimant is served with the statement of claim commencing the action, or
  - (b) if the period referred to in paragraph (a) has expired—only with the leave of the Court.

**[16] Part 22, rule 2 (1A)**

Insert after Part 22, rule 2 (1):

- (1A) A party may serve a notice referred to in subrule (1):
  - (a) within 4 months after the day on which the proceedings are commenced, or
  - (b) if the period referred to in paragraph (a) has expired—only with the leave of the Court.

**[17] Part 228, rule 1 (1AA)**

Insert after Part 22A. rule 1 (1):

(1AA) A party may serve a notice referred to in subrule (1):

- (a) within 4 months after the day on which the proceedings are commenced, or
- (b) if the period referred to in paragraph (a) has expired—only with the leave of the Court.

**[18] Part 23, rule 4 (2)**

Omit the subrule.

**[19] Part 24**

Omit the Part.

**[20] Part 24A, rule 4 (1)**

Omit “, on the filing of a praecipe for trial (if the filing of a praecipe for trial is otherwise required by the rules),”.

**[21] Part 24A, rules 5 and 6 (1)**

Omit “and a praecipe for trial (if the filing of a praecipe for trial is otherwise required by the rules) have” wherever occurring.  
Insert instead “has”.

**[22] Part 24A, rule 7**

Omit “in which a praecipe for trial (if the filing of a praecipe for trial is otherwise required by the rules) has been filed and”.

**[23] Part 24B, rule 3 (1)**

Omit “, on the filing of a praecipe for trial (if the filing of a praecipe for trial is otherwise required by the rules),”.

**[24] Part 24B, rules 4 and 5 (1)**

Omit “and a praecipe for trial (if the filing of a praecipe for trial is otherwise required by the rules) have” wherever occurring.  
Insert instead “has”.

## 1998 No 221

District Court Rule (Case Management Law Revision) 1998

Schedule 1 Amendments

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**[25] Part 24B, rule 6**

Omit “in which a praecipe for trial (if the filing of a praecipe for trial is otherwise required by the rules) has been filed and”.

**[26] Part 24C, rule 4**

Omit the rule.

**[27] Part 24C, rules 5–7**

Omit the rules.

**[28] Part 26, rule 3**

Omit “call-over”. Insert instead “directions”.

**[29] Part 26, rule 3**

Omit “the lodging of any fresh praecipe for trial or”.

**[30] Part 26, rule 4**

Omit “under Part 12 or Part 24” wherever occurring.

**[31] Part 28, rule 8 (4)**

Omit the subrule.

**[32] Part 38, rules 3 and 4**

Omit “call-over” wherever occurring.  
Insert instead “directions”.

**[33] Part 51A, rule 2 (2)**

Omit the subrule.

**[34] Part 51A, rule 2 (3)**

Omit “for call-over ahead of other actions in which praecipes for trial have been earlier filed”.  
insert instead “ahead of other actions”.

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**[35] Part 51A, rule 11 (2)**

Omit the subrule. Insert instead:

- (2) The registrar shall, as soon as practicable after filing a notice under subrule (1), fix a date for the rehearing of the action, or for the action to be before the Court for directions as to the rehearing, and advise the parties of that date.