



New South Wales

District Court Amendment (Dismissal and Strike Out) Rule 2000

under the

District Court Act 1973

The District Court Rule Committee made the following rule of court under the *District Court Act 1973* on 15 June 2000.

J G Cowen

Secretary to the Rule Committee

Explanatory note

The object of this Rule is to amend the *District Court Rules 1973*:

- (a) to remove the power of the District Court to strike out certain proceedings and replace it with a power to dismiss proceedings, and
- (b) to provide for the effect of certain orders made by the Court dismissing proceedings.

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Clause 1 District Court Amendment (Dismissal and Strike Out) Rule 2000

District Court Amendment (Dismissal and Strike Out) Rule 2000

1 Name of Rule

This Rule is the *District Court Amendment (Dismissal and Strike Out) Rule 2000*.

2 Commencement

This Rule commences on 1 September 2000.

3 Amendment of District Court Rules 1973

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

4 Notes

The explanatory note does not form part of this Rule.

Schedule 1 Amendments

(Clause 3)

[1] Part 1, rule 7A

Insert after rule 7:

7A Effect of certain orders dismissing proceedings

- (1) In this rule:
preliminary dismissal order means an order made by the Court dismissing proceedings other than an order dismissing proceedings after there has been a trial or hearing on the merits of the case or an application to dismiss the proceedings.
- (2) The Court is not to make a preliminary dismissal order in respect of any proceedings unless it is satisfied that the parties to the proceedings have been appropriately notified that the order may be made.
- (3) A preliminary dismissal order does not have effect:
 - (a) if an application is not made under subrule (5)—until a period of 28 days has elapsed after the making of the order, or
 - (b) if an application is made under subrule (5)—unless the Court confirms the order under subrule (6) or (7).
- (4) The Court may, at the time it makes a preliminary dismissal order or subsequently, make such other orders as it thinks fit to ensure that any party to the proceedings in respect of which the dismissal order is made is appropriately notified of the making or consequences of the order.
- (5) Any party to proceedings in respect of which a preliminary dismissal order is made may, within the period of 28 days after the making of the order, apply to the Court to set aside the order.
- (6) On any such application, the Court may set aside the preliminary dismissal order or confirm the order as it thinks fit.

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(7) The Court may, if it thinks fit, confirm a preliminary dismissal order if:

- (a) the party who has made an application to have the order set aside does not appear at the hearing of the application, or
- (b) an application to set aside the order is withdrawn or otherwise not proceeded with.

[2] Part 2A, rule 1 (5) (c)

Omit the paragraph. Insert instead:

- (c) dismiss the proceedings.

[3] Part 2A, rule 8

Omit “struck out or” from rule 8 (1A).

[4] Part 5, rule 5

Omit “2 years” from rule 5 (1) (c). Insert instead “2 months”.

[5] Part 5, rule 5 (3)

Omit the subrule.

[6] Part 6, rule 11A

Omit “, or strike the appeal out of the list of appeals awaiting hearing” from rule 11A (2) (b).

Insert instead “, or refer the appeal to the Court for dismissal”.

[7] Part 6, rule 11A (4)

Omit the subrule. Insert instead:

- (4) If an appeal is referred to the Court by a registrar under subrule (2) (b), the Court may dismiss the appeal if it considers it appropriate to do so.

[8] Part 6, rule 46

Omit rule 46 (1) (b).

[9] Part 6, rule 46 (2)

Omit the subrule.

[10] Part 6, rule 55

Omit “, or strike the appeal out of the list of appeals awaiting hearing” from rule 55 (2) (b).

Insert instead “, or refer the appeal to the Court for dismissal”.

[11] Part 6, rule 55 (5)

Omit the subrule. Insert instead:

- (5) If an appeal is referred to the Court by a registrar under subrule (2) (b), the Court may dismiss the appeal if it considers it appropriate to do so.

[12] Part 6, rule 59

Omit rule 59 (1) (b).

[13] Part 6, rule 59 (2)

Omit the subrule.

[14] Part 8, rule 5

Omit “or strike out” from rule 5 (1).

Insert instead “ or dismiss”.

[15] Part 9, rule 26

Omit rule 26 (3). Insert instead:

- (3) Where the Court makes an order under this rule, it may, if it thinks fit, by the same or subsequent order direct that, if the order made under this rule is not complied with within the period stated by the Court:
 - (a) any pleading filed by the party in default is struck out, or
 - (b) any proceedings brought by the party in default are stayed until the order made under this rule is complied with, or

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- (c) any proceedings brought by the party in default are dismissed.

[16] Part 9, rule 27 (11)

Omit rule 27 (11) (a). Insert instead:

- (a) the Court may dismiss the proceedings, or

[17] Part 13, rule 1

Omit “12 months” from rule 1 (1). Insert instead “6 months”.

[18] Part 18, rule 3

Omit rule 3 (2)–(4).

[19] Part 18, rule 9

Omit the rule. Insert instead:

9 Statement of liquidated claim—dismissal

An action commenced by the filing of a statement of liquidated claim and in which no notice of grounds of defence is filed is, if not otherwise completed, deemed to be dismissed 12 months after the date of commencement.

[20] Part 24C, rule 8

Omit “strike out or”.

[21] Part 26, rule 9

Omit “or striking proceedings out” from rule 9 (a).

[22] Part 40, rule 1

Omit rule 1 (5). Insert instead:

- (5) Where a plaintiff fails to comply with an order under this rule, the Court may, on terms, order that any claim made by the plaintiff for relief in the proceedings be struck out or that the proceedings be dismissed.

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Amendments

Schedule 1

[23] Part 51A, rule 5B

Omit “an order striking out the action and” from rule 5B (3).

[24] Part 52, rule 13

Insert after rule 13 (2):

- (3) A reference in this rule to proceedings that are ancillary to an action is a reference to proceedings that are ancillary to an action that is pending in the Court at the time the ancillary proceedings are brought.