



New South Wales

District Court Amendment (Access to Subpoenaed Material) 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 7 December 2000.

J G Cowen

Secretary to the Rule Committee

Explanatory note

The object of this Rule is to amend Part 29 of the *District Court Rules 1973* to facilitate access in civil proceedings to documents or things produced to the Court pursuant to a subpoena requiring production issued by the Court.

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Clause 1 District Court Amendment (Access to Subpoenaed Material) Rule 2000

District Court Amendment (Access to Subpoenaed Material) Rule 2000

1 Name of Rule

This Rule is the *District Court Amendment (Access to Subpoenaed Material) Rule 2000*.

2 Commencement

This Rule commences on 1 January 2001.

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 4

Insert after rule 4 (3):

- (4) Notes in the text of these rules do not form part of these rules.

[2] Part 29, rule 1

Insert in appropriate alphabetical order:

access order, in relation to a subpoena requiring production, means an order of the Court granting access to specified documents or things produced pursuant to the subpoena (whether with or without conditions).

requesting party for a subpoena means a person who is requesting, or who has requested, the issue of the subpoena.

return date for a subpoena means the date on which the subpoena is returnable.

[3] Part 29, rule 6

Omit rule 6 (7) and (8).

[4] Part 29, rules 6A–6D

Insert after Part 29, rule 6:

6A Notice to be given to other parties concerning subpoenas requiring production

- (1) The requesting party for any subpoena requiring production must serve each other party with a copy of the subpoena:
- (a) if the return date of the subpoena is on a day that is 14 days or more after the subpoena is issued—within the period of 7 days after the subpoena is issued, or
 - (b) if the return date of the subpoena is on a day that is less than 14 days after the subpoena is issued—within 24 hours after the subpoena is issued.

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- (2) The requesting party for a subpoena requiring production who fails to comply with subrule (1) must notify the Court of that failure at the next date on which the subpoena is returnable.
- (3) The requesting party for a subpoena requiring production must notify each other party to the proceedings of any new return date for the subpoena fixed after the subpoena is first issued:
 - (a) if the return date of the subpoena is on a day that is 14 days or more after the new date is fixed—within the period of 7 days after the new date is fixed, or
 - (b) if the return date of the subpoena is on a day that is less than 14 days after the new date is fixed—within 24 hours after the new date is fixed.
- (4) The Court or the registrar may make an order for costs against a requesting party for a subpoena requiring production if that party fails to comply with subrule (2) or (3), but only in respect of costs incurred by reason of that failure.
- (5) A requesting party for a subpoena requiring production need not comply with a requirement under subrule (1), (2) or (3) if the person named is excused from compliance with the subpoena by the requesting party under rule 10 (2) before the time when the requesting party had to comply with that requirement.
- (6) Nothing in this rule affects the operation of rule 7A.
- (7) Subrules (1)–(5) do not apply to a subpoena requiring production that authorises compliance with it as provided by section 64 (1A) of the Act

Note. Rule 6 (2C) relates to service on other parties of a proposed subpoena that authorises compliance with the subpoena as provided in section 64 (1A) of the Act before such a subpoena can be issued. Section 64 (1A) of the Act provides that a subpoena for production may authorise compliance with the subpoena by the production of the document or thing to a specified person at a specified place. This rule does not apply to such a subpoena.

6B Access to subpoenaed material

- (1) The Court may make an access order in relation to a subpoena requiring production at the time the subpoena is issued or at any time after it is issued.

- (2) If an access order has effect in relation to a subpoena for production, a party or the party's barrister or solicitor may (subject to the terms of the order):
 - (a) inspect documents or things produced in compliance with the subpoena, and
 - (b) take copies of any documents so inspected.

6C Proposed access orders

- (1) Unless the Court orders otherwise, the requesting party for a subpoena requiring production must endorse a proposed access order on the subpoena.
- (2) Without limiting rule 6B, the Court may:
 - (a) endorse a proposed access order on a subpoena requiring production if the requesting party has not endorsed such a proposed order, or
 - (b) endorse a proposed access order on a subpoena requiring production in different terms to a proposed order endorsed by the requesting party.
- (3) Unless the Court orders otherwise, any such proposed access order has effect as an access order immediately after the next return date for the subpoena if:
 - (a) documents or things are produced in compliance with the subpoena on or before that date, and
 - (b) no person appears before the registrar or Court on the return date in opposition to the proposed order.
- (4) Without limiting subrule (3), the Court may take into account a failure to comply with subrule (5) or (6) or rule 6A (1), (2) or (3) in determining whether a proposed access order should have effect according to its tenor or whether an order is to be made to modify or revoke the proposed access order.
- (5) A party or a person named in a subpoena requiring production who proposes to object to the proposed access order on the return date for the subpoena must notify the requesting party of the objection:

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- (a) if the party or person is served with a copy of the subpoena on a day that is 14 days or more before the return date—within the period of 3 days after the party or person is served, or
 - (b) if the party or person is served with a copy of the subpoena on a day that is less than 14 days before the return date—within the period of 24 hours after the party or person is served.
- (6) A requesting party who has received notice of an objection to a proposed access order must notify all of the other parties of the objection within 24 hours after receiving that notice.
- (7) Subrules (1)–(6) do not apply to a subpoena requiring production that authorises compliance with it as provided by section 64 (1A) of the Act.

6D Application of rules 6A–6C

- (1) Rules 6A–6C apply only to subpoenas requiring production that are issued on or after 1 March 2001.
- (2) This Part as in force immediately before the commencement of the *District Court Amendment (Access to Subpoenaed Material) Rule 2000* continues to apply to subpoenas requiring production issued before 1 March 2001.
- (3) The functions of the Court under rules 6B and 6C may, unless the Court otherwise orders, be exercised by the registrar.

[5] Part 29, rule 7

Insert “on the person named” after “served” in rule 7 (1).

BY AUTHORITY