



New South Wales

District Court Amendment (Subpoenas) Rule 2007

under the

District Court Act 1973

The District Court Rule Committee made the following rule of court under the *District Court Act 1973* on 26 April 2007.

Anthony Grew
Secretary of the Rule Committee

Explanatory note

The object of this Rule is to amend the provisions of the *District Court Rules 1973* with respect to subpoenas so that they accord with Part 3 of Chapter 4 of the *Criminal Procedure Act 1986*. The new provisions (Division 2 of Part 53) are generally the same as the provisions of the *Local Courts (Criminal and Applications Procedure) Rule 2003* with respect to subpoenas.

2007 No 196

Clause 1 District Court Amendment (Subpoenas) Rule 2007

District Court Amendment (Subpoenas) Rule 2007

under the

District Court Act 1973

1 Name of Rule

This Rule is the *District Court Amendment (Subpoenas) Rule 2007*.

2 Amendment of District Court Rules 1973

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

Schedule 1 Amendments

(Clause 2)

[1] Part 53, Division 1 heading

Insert before Part 53, rule 1:

Division 1 General

[2] Part 53, rule 8

Omit the rule.

[3] Part 53, rule 15

Omit “other than the function exercisable under rule 8 (16)” from rule 15 (1).

[4] Part 53, Division 2

Insert after Part 53, rule 17:

Division 2 Subpoenas

18 Issue of subpoenas

- (1) A registrar or prosecutor who issues a subpoena in proceedings is to issue it by signing and dating it.
- (2) A registrar may refuse to issue a subpoena if satisfied that:
 - (a) the issue of the subpoena would be an abuse of process, or
 - (b) the issue of the subpoena would be oppressive on the person named, or
 - (c) if the subpoena is a subpoena to give evidence, the subpoena is returnable on a date on which the Court has not directed the hearing of oral evidence in the proceedings.
- (3) The registrar is not required to retain a copy of a subpoena issued by the registrar.

19 Filing of subpoenas by issuing parties

A party that issues a subpoena must, if required to do so by the Court, make a copy available for filing on the return date for the subpoena.

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Schedule 1 Amendments

20 Service of subpoenas

- (1) A subpoena must be served on the person named in accordance with this rule.
- (2) Service of a subpoena may be effected:
 - (a) by handing it to the person, or
 - (b) if the person is an inmate of a correctional centre, by handing it to the officer in charge of the correctional centre or by sending it by post or facsimile or other electronic transmission to the officer in charge at the correctional centre, or
 - (c) if the person is a police officer or a public officer, by sending it by post or facsimile to the person's business address, or
 - (d) if the person is a police officer or a public officer, by sending it by electronic communication to the person's business email address, or
 - (e) if the person is not a police officer or a public officer, by sending it by post or facsimile to the person's residential address, or
 - (f) if the person is not a police officer or a public officer, by sending it by electronic communication to the person's email address, or
 - (g) with the consent of the relevant legal practitioner, by leaving it at the relevant legal practitioner's address for service or by sending it to that address by post or facsimile or by sending it to the legal practitioner's email address for service by electronic communication.
- (3) If, on tender of a subpoena, the person refuses to accept it, it may be served by putting it down in the person's presence after the person has been told of the nature of the notice.

21 Conduct money

The amounts prescribed for the expenses of complying with a subpoena in relation to a day are:

- (a) an amount equivalent to the amount that would be payable for that day, in accordance with the Scale of Allowances Paid to Witnesses published in Government Gazette No 104 of 27 June 2003, at pages 6408 and 6409, in respect of the person named if the party issuing the subpoena were entitled to claim witnesses expenses in respect of that person as costs in the proceedings, and

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- (b) in relation to the production of a document, the reasonable expenses of the person named of complying with the requirement to produce the document.

22 Production by non-party

- (1) This rule applies to a subpoena issued to a person who is not a party to the proceedings.
- (2) A document or thing that may be produced to the Court under section 226 (1) of the *Criminal Procedure Act 1986* may be produced to the registrar of the Court.
- (3) If a subpoena for production requires the production of a document, but does not require the production of the original document, the person named may produce a copy of the original document.
- (4) The person who produces a document pursuant to a subpoena must advise the registrar as to whether the document is an original document or a copy and must elect whether the document is to be disposed of by the registrar or returned to the person.
- (5) If a document or thing is produced to a registrar, the registrar must:
 - (a) give a receipt to the person who produced the document or thing, and
 - (b) produce the document or thing as the nature of the case requires, or as directed by the Court.
- (6) If a subpoena requires production of a document or thing on a date other than the date for hearing the proceedings, the registrar may, at any time after the hearing date, order that the subpoena has ceased to have effect and:
 - (a) in the case of an original document, or a thing, return it to the person who produced it, or
 - (b) in the case of a document that is a copy, return the document, or dispose of it, in accordance with the election of the person who produced the document.

23 Subpoena may be set aside

- (1) A notice of application to set aside a subpoena (either wholly or in part) is to be in the approved form.
- (2) A copy of the notice of application must be served by the applicant on the party on whose request the subpoena issued,

either personally or by forwarding a copy by post to the address of the party as shown on the subpoena.

- (3) A copy of the notice of application must also be filed by the applicant with the Court before which the subpoena is returnable.
- (4) Unless leave is granted by the Court, the time for filing and serving the notice of application by the applicant in accordance with this rule is not less than 3 days before the date that the subpoena is returnable.
- (5) An applicant seeking to set aside a subpoena must appear before the Court on the date that the subpoena is returnable to allow the Court to deal with the application.

24 Inspection of subpoenaed documents or things

For the purposes of section 228 (3) of the *Criminal Procedure Act 1986*, notification of an objection to the inspection of subpoenaed documents or things may be raised orally before the Court on the return date of the subpoena.

25 Return of documents and things produced under subpoena

If a subpoena requires production of a document or thing on the date for hearing the proceedings and the proceedings are adjourned, other than to a further date for hearing the proceedings, before the document or thing is produced to the Court, the registrar may, at any time after the hearing date, order that the subpoena has ceased to have effect and:

- (a) in the case of an original document, or a thing, return it to the person who produced it, or
- (b) in the case of a document that is a copy, return the document, or dispose of it, in accordance with the election of the person who produced the document.