



New South Wales

Uniform Civil Procedure Rules (Amendment No 22) 2008

under the

Civil Procedure Act 2005

The Uniform Rules Committee made the following rules of court under the *Civil Procedure Act 2005* on 4 August 2008.

Jennifer Atkinson
Secretary of the Rule Committee

Explanatory note

The object of these Rules is to amend the *Uniform Civil Procedure Rules 2005* so as:

- (a) to replicate parts of Schedule J to the *Supreme Court Rules 1970* (see new Schedule 10), and
- (b) to replicate Parts 6, 24C, 24D, 24E, 24F and 39B of the *District Court Rules 1973* (see new Divisions 6 and 7 of Part 50 and new Schedule 11), and
- (c) to make other minor, consequential and ancillary amendments.

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Rule 1 Uniform Civil Procedure Rules (Amendment No 22) 2008

Uniform Civil Procedure Rules (Amendment No 22) 2008

under the

Civil Procedure Act 2005

1 Name of Rules

These Rules are the *Uniform Civil Procedure Rules (Amendment No 22) 2008*.

2 Amendment of Uniform Civil Procedure Rules 2005

The *Uniform Civil Procedure Rules 2005* are amended as set out in Schedule 1.

Schedule 1 Amendments

(Rule 2)

[1] Part 1, Division 6

Insert after Division 5 of Part 1:

Division 6 Procedure in particular circumstances

1.26 Procedure under particular Acts

- (1) The provisions of Schedule 10 apply to proceedings under the Acts referred to in that Schedule.
- (2) A reference in any such provision to “the Act” is a reference to the Act referred to in the heading beneath which that provision appears.

1.27 Procedure in particular District Court lists

The provisions of Schedule 11 apply to proceedings in the District Court that are assigned to the Coal Miners’ Workers Compensation List or the Special Statutory Compensation List.

[2] Rule 3.7 Electronic issuing of a document

Insert after rule 3.7 (2):

- (3) When issued by means of the ECM system, a document that is required to be signed by a person is taken to have been duly authenticated for the purposes of section 14E of the *Electronic Transactions Act 2000* if the person’s name is printed where his or her signature would otherwise appear.

[3] Rule 4.2 Documents to be filed to contain certain information

Insert after rule 4.2 (3A):

- (3B) Subrule (3A) does not apply to documents that are filed in the Land and Environment Court in relation to proceedings in Class 1, 2 or 3 of that Court’s jurisdiction.

[4] Rule 6.33 Definitions

Insert at the end of the rule:

- (2) A reference in this Division to the Supreme Court includes a reference to the Court of Appeal where the proceedings concerned are assigned to or in the Court of Appeal.

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[5] Rule 6.34

Omit the rule. Insert instead:

6.34 Application of Division

This Division applies to proceedings in the Supreme Court for an order with respect to a referred matter under a legislative provision, including (but not limited to) the following provisions:
Administrative Decisions Tribunal Act 1997, section 118 or 118D,

Constitution Further Amendment (Referendum) Act 1930, section 28,

Consumer, Trader and Tenancy Tribunal Act 2001, section 66,

Powers of Attorney Act 2003, section 39,

Real Property Act 1900, section 123 or 124,

Note. This Division also applies by force of rules 12.1A and 15.1 of the *Supreme Court (Corporations) Rules 1999* to questions referred to the Supreme Court under the following Commonwealth legislation:

Australian Securities and Investments Commission Act 2001, section 61,

Corporations Act 2001, section 659A.

[6] Rule 6.35 Originating process

Omit rule 6.35 (1).

[7] Rule 6.35 (4) and (6)

Insert “(or as respondents where the proceedings are in the Court of Appeal)” after “defendants” wherever occurring.

[8] Rule 6.39 Insufficient case

Omit “alteration, or” from rule 6.39 (2) (b). Insert instead “alteration.”.

[9] Rule 6.39 (2) (c)

Omit the paragraph.

[10] Rule 18.3 Contents of notice of motion

Insert after rule 18.3 (1):

- (1A) In the case of proceedings in Class 1, 2, 3 or 4 of the Land and Environment Court’s jurisdiction, a notice of motion must identify a person who is not yet a party to the proceedings by name alone, and not as the applicant or respondent as required by subrule (1) (a) (ii) or (b) (ii).

[11] Rule 37.4A

Insert after rule 37.4:

37.4A Payment of instalments under instalment order

- (1) Unless the court for special reasons orders otherwise, the judgment debtor must pay the amounts under an instalment order to the judgment creditor.
- (2) This rule does not apply to money recovered on behalf of a person under legal incapacity.

Note. The payment of money recovered on behalf of a person under legal incapacity is regulated by section 77 of the *Civil Procedure Act 2005*.

[12] Rules 37.1 and 37.1A

Renumber rule 37.1 as rule 37.1A, and insert before rule 37.1A (as renumbered):

37.1 Instalments under Fines Act 1996

This Part does not apply to a fine in relation to which enforcement action is being taken under Division 4 of Part 4 of the *Fines Act 1996*.

Note. The *Fines Act 1996* has its own regime for the payment of fines by instalments.

[13] Rule 37.7 Effect of instalment order on judgment debt

Omit “rule 37.1”. Insert instead “rule 37.1A”.

[14] Rule 39.21 Judgment creditor’s notice to judgment debtor

Insert at the end of rule 39.21 (1):

Note. Section 72 of the *Fines Act 1996* provides that a property seizure order under that section operates as a writ for the levy of property issued by a Local Court and, for that purpose, that the State Debt Recovery Office is taken to be the judgment creditor.

[15] Rule 39.21 (1A)

Insert after rule 39.21 (1):

- (1A) A copy of the advice referred to in subrule (1) (b) must be annexed to the affidavit.

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[16] Rule 42.19 Proceedings discontinued

Insert after rule 42.19 (2):

- (3) Despite subrule (2), the defendant's costs in an appeal to the District Court under section 91 of the *Children and Young Persons (Care and Protection) Act 1998* are not payable by the plaintiff unless the court finds there are special circumstances to justify an order for their payment by the plaintiff.

[17] Rule 50.12 Leave to appeal

Insert after rule 50.12 (4):

- (5) This rule does not apply to an appeal under section 39 of the *Victims Support and Rehabilitation Act 1996*.

Note. See instead rule 50.23.

[18] Rule 50.12, note

Omit the note at the end of the rule.

[19] Part 50, Divisions 6 and 7

Insert after Division 5 of Part 50:

Division 6 Appeals to District Court under section 91 of Children and Young Persons (Care and Protection) Act 1998

50.17 Definitions (cf DCR Part 6, rule 35)

In this Division:

appeal means appeal to the District Court under section 91 of the *Children and Young Persons (Care and Protection) Act 1998*.

child, Children's Court, Department and **Director-General** have the same meanings as they have in the *Children and Young Persons (Care and Protection) Act 1998*.

Children's Registrar has the same meaning as it has in the *Children's Court Act 1987*.

50.18 Defendants in appeal (cf DCR Part 6, rule 37)

- (1) The defendants in an appeal against a decision in respect of the care of a child are as follows:
 - (a) if the Director-General is not the plaintiff, the Director-General,
 - (b) if the child is of or above the age of 10 years and is not the plaintiff, the child,

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- (c) any person (not being the plaintiff or an officer of the Department) who is responsible for the child and can reasonably be located,
 - (d) any person (not being the plaintiff or an officer of the Department) to whom leave was granted under section 98 (3) of the *Children and Young Persons (Care and Protection) Act 1998* in respect of the proceedings leading to the decision,
 - (e) any person whom the District Court orders be joined as a defendant in the appeal.
- (2) An order may be made as referred to in subrule (1) (e) only if the District Court considers that the person's joinder as a defendant is necessary to the determination of the appeal.

50.19 Children's Court record (cf DCR Part 6, rule 41)

As soon as practicable after the filing in the Children's Court of a copy of the summons commencing an appeal against a decision of that Court under rule 50.6, a Children's Registrar must forward the record of the proceedings leading to the decision to the registrar of the District Court at the proclaimed place (within the meaning of the *District Court Act 1973*) where the listing of the appeal for directions is to occur.

50.20 Notice of fresh evidence (cf DCR Part 6, rule 43)

If a party to an appeal against a decision intends to adduce on the appeal fresh evidence, or evidence in addition to or in substitution for the evidence on which the decision was made, the party must, as soon as practicable after becoming aware of the fresh, additional, or substituted evidence, serve on every other party notice of the nature and extent of that evidence.

Division 7 Appeals to District Court under section 39 of Victims Support and Rehabilitation Act 1996

50.21 Definitions (cf DCR Part 6, rule 60A)

In this Division:

appeal means appeal under section 39 of the *Victims Support and Rehabilitation Act 1996*.

application for leave means application for the leave of the District Court under section 39 (1) of the *Victims Support and Rehabilitation Act 1996* to institute an appeal.

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Tribunal means the Victims Compensation Tribunal constituted under section 59 of the *Victims Support and Rehabilitation Act 1996*.

50.22 Venue (cf DCR Part 6, rule 60B)

Subject to any order of the Court for a change of venue, an application for leave and an appeal may each be heard and determined at any proclaimed place (within the meaning of the *District Court Act 1973*).

50.23 Application for leave (cf DCR Part 6, rule 60C)

- (1) An application for leave must be made by summons.
- (2) An application for leave must be filed within:
 - (a) the period specified in section 39 (2) (a) of the *Victims Support and Rehabilitation Act 1996*, or
 - (b) such further time as the Court may allow under section 39 (2) (b) of that Act.
- (3) An application to allow further time to appeal under section 39 (2) (b) of the *Victims Support and Rehabilitation Act 1996* must be made by summons.
- (4) An application for leave must include or be accompanied by a statement identifying the determination sought to be appealed against, a statement of the question of law on which it is sought to appeal and the grounds of the proposed appeal.
- (5) The defendant in an application for leave or an application to allow further time to appeal is the Victims Compensation Fund Corporation constituted under section 66 of the *Victims Support and Rehabilitation Act 1996*.

50.24 Tribunal record (cf DCR Part 6, rule 60D)

The Registrar of the Tribunal must, as soon as practicable after delivery of a copy of a summons commencing an appeal under rule 50.6, forward to the registrar of the District Court at the proclaimed place (within the meaning of the *District Court Act 1973*) at which the appeal is to be heard the record of the proceedings in the Tribunal leading to the determination sought to be appealed against.

50.25 Appeal (cf DCR Part 6, rule 60E)

If the Court grants leave to institute an appeal, it may give directions as to the extent to which matters before it, and decisions made by it, on the application for leave are admissible or binding on the hearing of the appeal, and may:

- (a) proceed immediately to hear and determine the appeal, or
- (b) give such directions as to filing and service of documents, conferences, fixing of a hearing date, and any other matter as appear requisite for the hearing and determination of the appeal.

[20] Rule 51.56 Discontinuance of proceedings in Court

Omit rule 51.56 (1). Insert instead:

- (1) The initiating party in any appeal proceedings may discontinue the proceedings by filing a notice of discontinuance and serving it on each respondent who has been served with the relevant notice of appeal or summons seeking leave to appeal.

[21] Rule 51.56 (7) and (8)

Insert after rule 51.56 (6):

- (7) The discontinuance of appeal proceedings does not require the consent of any respondent or the leave of the Court.
- (8) Rule 42.19 applies to the discontinuance of appeal proceedings under this rule in the same way as it applies to the discontinuance of proceedings under rule 12.1.

[22] Schedule 2 Local rules that prevail over these rules

Omit the matter relating to the *District Court Rules 1973*.

[23] Schedule 8 Assignment of business in the Supreme Court

Omit the following matter from Part 1 of the Schedule:

Mental Health Act 1990 Section 174, 281 or 285 Equity

Insert instead the following matter:

Mental Health Act 2007 Section 163 or 166 Equity

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[24] Schedules 10 and 11

Insert after Schedule 9:

Schedule 10 Provisions regarding procedure under particular legislation

(Rule 1.26)

Part 1 New South Wales legislation

Associations Incorporation Act 1984

1 Winding up

The rules relating to the winding up of bodies other than companies (including, if applicable, the *Supreme Court (Corporations) Rules 1999*) apply, so far as applicable, to, and in relation to, the winding up by the Supreme Court of an incorporated association.

2 Appeal from liquidator etc: section 58

- (1) A liquidator or provisional liquidator referred to in section 58 of the Act may, on application in writing, grant, by notice in writing, an extension of the time limited for instituting an appeal from his or her act, omission or decision except where the Supreme Court has limited the time for instituting an appeal.
- (2) If the liquidator or provisional liquidator extends the time for instituting an appeal, he or she must deliver the notice referred to in subclause (1) to the applicant, who must file the notice with the originating process instituting the appeal.
- (3) An application referred to in subclause (1) must be made to the person before the expiration of the time allowed for instituting an appeal.

Australian Mutual Provident Society (Demutualisation and Reconstruction) Act 1997

Application of other rules of court

- (1) The provisions of Part 80A of the *Supreme Court Rules 1970*, so far as applicable and making such changes as it is necessary to make, apply to proceedings under the Act commenced before the *Supreme Court (Corporations) Rules 1999* commenced.

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- (2) The provisions of the *Supreme Court (Corporations) Rules 1999*, so far as applicable and making such changes as it is necessary to make, apply to all other proceedings under the Act.

Confiscation of Proceeds of Crime Act 1989

1 Statement in summons

- (1) The applicant for an order under the Act must file with his or her summons a statement in summary form of the general nature of the facts and circumstances relied on.
- (2) This clause does not apply to an application under section 77 or 82 of the Act.

2 Notice of discharge of order: section 26

Notice of discharge of a pecuniary penalty order, as referred to in section 26 (2) of the Act, must be given by the appropriate officer on whose application the order was registered by filing, in the court in which the order was registered, a notice:

- (a) that states that the order has been discharged, and
- (b) that annexes a sealed copy of the order by which the relevant conviction was quashed (as referred to in section 26 (1) (a) of the Act) or the pecuniary penalty order was discharged (as referred to in section 26 (1) (b) of the Act).

3 Form of acceptance etc of allegation: section 31

An allegation may be accepted or a matter may be indicated for the purposes of section 31 (5) (b) of the Act in writing signed by the relevant party's legal representative or, if the person is unrepresented, by the relevant party.

4 Form of notice: section 44 (2)

The form of notice prescribed for the purposes of section 44 (2) of the Act is a form in writing signed by the appropriate officer or the appropriate officer's legal representative.

5 Examination order: prescribed officer: section 45

For the purposes of section 45 (1) (c) of the Act, a registrar is a prescribed officer of the Supreme Court.

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6 Information for production order or search warrant: sections 58 (1) and 66 (1)

An information setting out the grounds referred to in section 58 (1) or 66 (1) of the Act may be laid before the Supreme Court by filing an affidavit setting out those grounds.

7 Registration of interstate orders: section 77

- (1) A summons seeking registration of an interstate order must join as defendant the person against whom the order was made.
- (2) Unless the Supreme Court otherwise orders, the plaintiff may proceed without service on the defendant of the summons.
- (3) If the plaintiff includes in the summons a request that the application be granted under this subclause, the Supreme Court may deal with the application in the absence of the public and without any attendance by or on behalf of the plaintiff.
- (4) If an order is made for registration of an interstate order, the plaintiff must forthwith serve on the defendant both the interstate order and a sealed copy of the order for registration of the interstate order.
- (5) A copy referred to in section 77 (2) of the Act is registered when the order for its registration is entered.
- (6) The registration of an order referred to in section 82 (1) of the Act is cancelled when the order cancelling its registration is entered.

Contractors Debts Act 1997

1 Application: section 7 (1)

- (1) This clause applies if an application for a debt certificate under section 7 (1) or (1A) of the Act is made, otherwise than at the hearing of proceedings, in relation to a judgment for the recovery of money owed (the *subject debt*).
- (2) The application must be made by notice of motion in the proceedings in which the judgment was given or entered or in which an adjudication certificate was filed.
- (3) The evidence in support of the application must include evidence showing:
 - (a) how much of the subject debt is for work done or for materials supplied, and
 - (b) whether the subject debt consists of daily, weekly or monthly wages, and

- (c) if the subject debt consists of daily, weekly or monthly wages, whether the subject debt exceeds 120 days' wages, and
 - (d) if the subject debt consists of daily, weekly or monthly wages and exceeds 120 days' wages, that the amount to be certified in the certificate does not exceed 120 days' wages, and
 - (e) whether work resulting in the subject debt was done on something moveable, and
 - (f) if the work resulting in the subject debt was done on something moveable, whether it would be practicable for the applicant to exercise a lien by retaining possession of the thing.
- (4) Unless the court otherwise orders, the applicant may proceed without service of the notice of motion on any person.
 - (5) The notice of motion may be dealt with by the court in the absence of the public and without any attendance by or on behalf of any person.

2 Application: section 14 (1)

On an application under section 14 (1) of the Act, the applicant may, unless the court otherwise orders, proceed without service of the relevant notice of motion on any person.

Conveyancing Act 1919

1 Prescribed officer: section 66G (5) (b)

For the purposes of section 66G (5) (b) of the Act, the Registrar in Equity is a prescribed officer of the Supreme Court.

2 Prescribed officer: section 98 (1F)

For the purposes of section 98 (1F) of the Act, the Registrar in Equity is a prescribed officer of the Supreme Court.

Co-operative Housing and Starr-Bowkett Societies Act 1998

Application of Supreme Court (Corporations) Rules 1999

The provisions of the *Supreme Court (Corporations) Rules 1999* relating to applications under the *Corporations Act 2001* of the Commonwealth, so far as applicable and making such changes as it is necessary to make, apply to applications under the Act.

Co-operatives Act 1992

Application of other rules of court

- (1) The provisions of the *Supreme Court (Corporations) Rules 1999* relating to applications under the *Corporations Act 2001* of the Commonwealth, so far as applicable and making such changes as it is necessary to make, apply to:
 - (a) proceedings under the Act commenced in the Supreme Court after those rules commence, and
 - (b) applications made under the Act in those proceedings.
- (2) The provisions of Part 80A of the *Supreme Court Rules 1970* relating to applications under the *Corporations Law*, so far as applicable and making such changes as it is necessary to make, apply to:
 - (a) proceedings under the Act commenced in the Supreme Court after 31 March 1994 and before the *Supreme Court (Corporations) Rules 1999* commence, and
 - (b) applications made under the Act after 31 March 1994 in proceedings in the Supreme Court commenced before the *Supreme Court (Corporations) Rules 1999* commence.
- (3) The provisions of Part 80 of the *Supreme Court Rules 1970* relating to applications under the Companies Code and under the *Corporations Law*, so far as applicable and making such changes as it is necessary to make, apply to all other proceedings commenced and applications made under the Act.

Criminal Assets Recovery Act 1990

1 Statement in application for order

The applicant for an order under the Act must file with the summons a statement in summary form of the general nature of the facts and circumstances relied on.

2 Prescribed officer: section 12

For the purposes of section 12 (1) (b) and (b1) of the Act, a registrar is a prescribed officer of the Supreme Court.

3 Information for production order

An information setting out the grounds referred to in section 33 (1), 44 or 48 (1) of the Act may be laid before the Supreme Court by filing an affidavit setting out those grounds.

Electricity Supply Act 1995

Service of certificate

The Minister must, as soon as practicable, file and serve on all active parties any certificate made pursuant to section 95 (3) of the Act.

Federal Courts (State Jurisdiction) Act 1999

1 Definitions

In these clauses, *ineffective judgment* and *relevant order* have the same meanings as they have in the Act.

2 Application for order under section 7

A person seeking the aid of the Supreme Court in respect of a right or liability to which section 7 of the Act applies, otherwise than in respect of an appeal:

- (a) must commence proceedings in the Division of the Supreme Court to which the proceedings in which the ineffective judgment was given would have been assigned if they had been commenced in the Court, and
- (b) must join as defendants all persons whose interests may be affected by the application.

3 Application for order under section 10

An applicant for an order under section 10 of the Act:

- (a) must commence proceedings for the order in the Division of the Supreme Court to which the proceedings in which the ineffective judgment was given would have been assigned if they had been commenced in the Supreme Court, and
- (b) must join as defendants all other parties to the proceedings in which the ineffective judgment was given.

4 Application for order under section 11 (2)

- (1) In this clause:

relevant proceedings means the proceedings in which a relevant order has been made.

section 11 order means an order under section 11 (2) of the Act.

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- (2) An applicant for a section 11 order:
 - (a) must commence proceedings for the order:
 - (i) in the Division of the Supreme Court to which the proceedings in which the relevant order was made would have been assigned if they had been commenced in the Supreme Court, or
 - (ii) in the Court of Appeal if the proceedings in which the relevant order was made would have been assigned to the Court of Appeal had the proceedings been commenced in the Supreme Court, and
 - (b) must join as defendants all other parties to the relevant proceedings.
- (3) If a section 11 order is made subject to any order of the Supreme Court:
 - (a) the registrar or clerk of the court in which the relevant proceedings were brought must send the record of the proceedings to the Supreme Court, and
 - (b) the Supreme Court must proceed as if:
 - (i) the relevant proceedings had been originally commenced in the Supreme Court, and
 - (ii) the same steps had been taken in the Supreme Court as have been taken in any other court in which the relevant proceedings have at any time been pending, and
 - (iii) any order made by any other court in which the relevant proceedings have at any time been pending had been made by the Supreme Court.
- (4) Within 28 days of the order being made, the plaintiff must move the Supreme Court for directions.

Gas Supply Act 1996

Service of certificate

The Minister must file and serve on all active parties any certificate made pursuant to section 17 (3) of the Act.

Motor Accidents Act 1988

1 Statement of claim (cf DCR Part 24C, rule 2)

- (1) The statement of claim must specify the date on which the accident to which the proceedings relate occurred.

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- (2) A document must be filed with the statement of claim, being a document that includes:
- (a) a statement that the accident was reported in compliance with section 42 of the Act, or an indication of what explanation will be offered to the court for non-compliance, and
 - (b) a statement to the effect that a claim was made in respect of the accident in compliance with section 43 of the Act, or an indication of what explanation will be, or has been, provided under section 43A of the Act, and
 - (c) if the proceedings are commenced before the time prescribed by section 52 (1A) of the Act, a statement of the grounds on which the plaintiff relies as referred to in section 52 (2) of the Act, and
 - (d) if the proceedings are commenced after the time prescribed by section 52 (4) of the Act, a statement that the court has granted leave as referred to in that subsection.

2 Service of statement of claim (cf DCR Part 24C, rule 3)

- (1) The statement of claim must be served on both the defendant and the defendant's insurer.
- (2) Service of the statement of claim may be effected as though it were a notice or other document referred to in section 133 of the Act.
- (3) The requirement in subclause (1) for service on the defendant's insurer is satisfied by service:
 - (a) if the defendant is the Nominal Defendant under the Act, on the Nominal Defendant, or
 - (b) if the defendant is an insured person for the purposes of the Act, on the defendant's third party insurer, or
 - (c) if the defendant is insured, in respect of the liability alleged in the proceedings, under a policy issued elsewhere than in New South Wales, on the insurer who issued the policy.

3 Non-compliance with Act (cf DCR Part 24C, rule 8)

A notice of motion by the defendant to dismiss the proceedings on the ground that:

- (a) the accident the subject of the proceedings was not reported in compliance with section 42 of the Act, or

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(b) the proceedings were commenced outside the time limited by section 52 of the Act, must be filed no later than 2 months after service of the statement of claim on the defendant's insurer.

4 Examination: section 66A (cf SCR Schedule J)

- (1) Unless the court otherwise orders, the following applications to the court must be made by notice of motion:
 - (a) an application under section 66A (1) of the *Motor Accidents Act 1988*,
 - (b) an application for leave under section 66A (3) or (4) of that Act.
- (2) Unless the court otherwise orders, the notice of motion must be filed no later than 6 weeks before the date fixed for the trial of the proceedings.
- (3) Unless the court otherwise orders, the notice of motion must be served on all parties to the proceedings (other than the applicant) and on such other persons as the court directs.
- (4) If the court is satisfied that an insurer has not made out its allegation that a claim has not been made in good faith, the court may if it thinks fit order the insurer to pay the costs of the whole or any specified part of the proceedings incurred by any owner or driver or any witness whom the insurer has sought leave to examine or cross-examine.

Motor Accidents Compensation Act 1999

1 Statement of claim (cf DCR Part 24C, rule 11)

- (1) The statement of claim must specify the date on which the accident to which the proceedings relate occurred.
- (2) A document must be filed with the statement of claim, being a document that includes:
 - (a) a statement that the accident was reported in compliance with section 70 of the Act, or an indication of what explanation will be offered to the court for non-compliance, and
 - (b) a statement to the effect that a claim was made in respect of the accident in compliance with section 72 of the Act, or an indication of what explanation will be, or has been, provided under section 73 of the Act, and

- (c) a statement that a certificate in respect of the claim has been issued under section 92 or 94 of the Act and as to the provision under which that certificate was issued, and
- (d) if the proceedings are commenced after the time prescribed by section 109 of the Act, a statement that the court has granted leave as referred to in that section.

2 Service of statement of claim (cf DCR Part 24C, rule 12)

- (1) The statement of claim must be served on the defendant and, if the defendant's insurer is a third-party insurer within the meaning of the Act, on the defendant's insurer.
- (2) Service of the statement of claim may be effected as though it were a notice or other document referred to in section 222 of the Act.
- (3) The requirement in subclause (1) for service on the defendant's insurer is satisfied by service:
 - (a) if the defendant is the Nominal Defendant under the Act, on the Nominal Defendant, or
 - (b) if the defendant is insured, in respect of the liability alleged in the proceedings, under a policy issued elsewhere than in New South Wales, on the insurer who issued the policy.

3 Non-compliance with Act (cf DCR Part 24C, rule 8)

A notice of motion by the defendant to dismiss the proceedings on the ground that:

- (a) the accident the subject of the proceedings was not reported in compliance with section 70 of the Act, or
- (b) the proceedings were commenced outside the time limited by section 109 of the Act,

must be filed no later than 2 months after service of the statement of claim on the defendant's insurer.

4 Examination: section 119 (cf SCR Schedule J)

- (1) The following applications to the court must be made by notice of motion:
 - (a) an application under section 119 (1) of the Act,
 - (b) an application for leave under section 119 (3) or (4) of the Act.

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- (2) Unless the court otherwise orders, the notice of motion must be filed no later than 6 weeks before the date fixed for the trial of the proceedings.
- (3) Unless the court otherwise orders, the notice of motion must be served on all parties to the proceedings (other than the applicant) and on such other persons as the court directs.
- (4) If the court is satisfied that an insurer has not made out its allegation that a claim has not been made in good faith, the court may if it thinks fit order the insurer to pay the costs of the whole or any specified part of the proceedings incurred by any owner or driver or any witness whom the insurer has sought leave to examine or cross-examine.

New South Wales Crime Commission Act 1985

Review of decision

- (1) For the purposes of section 19 of the Act, the appropriate officer is the Prothonotary.
- (2) For the purposes of section 19 of the Act, the appropriate Registry is the Registry of the Common Law Division of the Supreme Court.

Offshore Minerals Act 1999

Commencement of proceedings under section 354

Proceedings for an order under section 354 (1) of the Act must join as defendants both the Minister and each person who is directly affected by the relief sought in the proceedings.

Professional Standards Act 1994

Commencement of proceedings

- (1) An application for an order under section 15 of the Act in respect of a scheme must join as a defendant the occupational association on whose application the scheme was approved by the Professional Standards Council.
- (2) Within one day of commencing proceedings, the plaintiff must lodge a copy of the summons at the office of the Professional Standards Council.

Public Health Act 1991

1 Definitions

In these clauses:

Director-General means the Director-General, Department of Health.

medical practitioner means the medical practitioner on whom it is sought, by the order applied for in a section 18 application, to serve a notice under section 19 of the Act.

person concerned means the person whose name and address would be required to be supplied if the District Court made the order sought in the section 18 application.

section 18 application means an application under section 18 of the Act.

2 Section 18 applications

- (1) The summons must join the medical practitioner as a defendant.
- (2) A document must be filed with the summons, being a document that includes:
 - (a) particulars of the grounds on which the Director-General applies for the order sought, or a reference to the affidavit in which those particulars are contained, and
 - (b) a notice to the medical practitioner explaining the requirement imposed on him or her by clause 3, and
 - (c) a notice to the person concerned explaining the person's right to be heard in reply to the summons, in a closed court, without the person's name or address being publicly disclosed.

3 Medical practitioner to advise registrar

- (1) A medical practitioner on whom the summons is served must as soon as practicable (and in any case not later than 7 days after service) advise the registrar, by letter, facsimile, email or telephone, of the name and address of the person concerned, so far as that name and address are known to the medical practitioner.
- (2) After a medical practitioner has complied with the requirements of subclause (1), the medical practitioner need take no further part in the proceedings on the section 18 application other than to comply with any notice authorised by the District Court to be served on him or her.

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- (3) If a medical practitioner fails to comply with the requirements of subclause (1) and the Director-General files an affidavit of service of the summons on the medical practitioner, the District Court may proceed to hear and determine the section 18 application even though clause 4 has not been complied with if it thinks fit to do so.

4 Registrar to advise person concerned

- (1) The registrar must as soon as practicable after receiving advice under clause 3 (1) send a sealed copy of the summons, together with a copy of the document referred to in clause 2 (2), by post addressed to the name and address advised to the registrar under that subclause.
- (2) The registrar must, when sending a copy under subclause (1), enclose the copy in an envelope endorsed with the return address of the registrar and marked "Confidential".

Restricted Premises Act 1943

Application for declaration: section 3 (1)

The Supreme Court or the District Court may make a declaration under section 3 (1) of the Act even if the summons has not been served on the owner or occupier of the premises.

Retirement Villages Act 1999

Consent of administrator

In proceedings for an order under section 84 of the Act, the plaintiff:

- (a) must file the consent referred to in section 85 of the Act with the summons, and
- (b) must serve the consent with the summons.

Status of Children Act 1996

1 Parentage testing procedure: service of notice of motion on non-party

Unless the Supreme Court otherwise orders, a notice of motion seeking an order under section 26 of the Act that requires a parentage testing procedure to be carried out on a person who is not a party to the proceedings must be served personally on that person.

2 Service of notice of motion on person under legal incapacity

If:

- (a) a notice of motion for an order requiring a parentage testing procedure to be carried out on a person is to be served personally on a person under legal incapacity, and
- (b) the person served under rule 10.12 does not appear to have the care and control of the person under legal incapacity,

then, unless the Supreme Court otherwise orders, the notice of motion must also be served personally both on the person who appears to have that care and control and on such other person as the Court may direct.

3 Service of order on person under legal incapacity

If:

- (a) an order under section 26 (1) of the Act is to be served on a person under legal incapacity, and
- (b) the person served is not the person having the care and control of the person under legal incapacity,

then, unless the Supreme Court otherwise orders, the order must also be served personally both on the person having that care and control and on such other person as the Court may direct.

4 Service of report

On receipt of a report prepared in accordance with the regulations under the Act in relation to the results of a parentage testing procedure, the registrar must send a copy of the report:

- (a) to the parties to the proceedings, and
- (b) to any person (not being a party to the proceedings) from whom the taking of bodily samples was directed.

Strata Schemes (Freehold Development) Act 1973

1 Commencement of proceedings

In any proceedings under section 32 (1), 50 (1) or 51 (1) of the Act, the persons referred to in section 32 (2), 50 (2) or 51 (2) of the Act, respectively, must be joined as defendants.

2 Service of notice

Notice under section 32 (2), 50 (2) or 51 (2) of the Act is served by serving the summons.

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Strata Schemes (Leasehold Development) Act 1986

1 Commencement of proceedings

In any proceedings under section 37 (4), 61 (1), 79 (1) or 80 (1) of the Act, the persons referred to in section 37 (5), 61 (2), 79 (2) or 80 (3) of the Act, respectively, must be joined as defendants.

2 Service of notice

Notice under section 37 (5) or (8), 61 (2), 79 (2) or 80 (3) of the Act is served by serving the summons.

Taxation Administration Act 1996

Evidence of jurisdiction

- (1) The plaintiff in proceedings seeking a review under section 97 of the Act must file an affidavit specifying:
 - (a) that the application is made under section 97 (1) (a) of the Act, or
 - (b) that:
 - (i) the application is made under section 97 (1) (b) of the Act, and
 - (ii) the application is not in breach of the time prescribed by section 97 (1) (b) of the Act, and
 - (iii) section 100 (1) of the Act has been complied with.
- (2) The affidavit must also show that the application is not in breach of section 97 (2) of the Act.

Victims Support and Rehabilitation Act 1996

1 Statement in application

The plaintiff in proceedings for an order under the Act must file with the summons a statement in summary form of the general nature of the facts and circumstances relied on.

2 Prescribed officer: section 58H (2) (a)

For the purposes of section 58H (2) (a) of the Act, a registrar of the Supreme Court is a prescribed officer.

Witness Protection Act 1995

Section 19 (2) and 34 (2) applications

The plaintiff in proceedings for an order under section 19 (2) or 34 (2) of the Act must join as a defendant the person against whom the order is sought.

Part 2 Commonwealth legislation

Crimes (Superannuation Benefits) Act 1989

Statement in application

The plaintiff in proceedings for an order under the Act must file with the summons a statement in summary form of the facts and circumstances relied on.

International War Crimes Tribunals Act 1995

Registration: section 45

- (1) The plaintiff in proceedings for registration of an order to which section 45 (1) of the Act applies must join as a defendant the person against whom the order was made.
- (2) Unless the Supreme Court otherwise orders, the plaintiff may proceed without service of the summons on the defendant.
- (3) If the plaintiff adds to the application a request that the application be granted under this subclause, the Supreme Court may make the order in the absence of the public and without any attendance by or on behalf of the plaintiff.
- (4) The plaintiff must file with the summons an affidavit setting out such particulars as are necessary to enable the Supreme Court to comply with section 45 (1) of the Act.
- (5) If an order is made under section 45 (1) of the Act for registration of an order, the plaintiff must serve on the defendant both the registered order and the order for registration.

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Offshore Minerals Act 1994

Commencement of proceedings under section 354

The plaintiff in proceedings for an order under section 354 (1) of the Act must join as defendants both the Designated Authority and each person who is directly affected by the relief sought in the proceedings.

Proceeds of Crime Act 1987

1 Statement in application

The plaintiff in proceedings for an order under the Act must file with the summons a statement in summary form of the facts and circumstances relied on.

2 Information for production order or search warrant: sections 66 (1) and 71 (1)

An information setting out the grounds referred to in section 66 (1) or 71 (1) of the Act may be laid before the Supreme Court by filing an affidavit setting out those grounds.

Retirement Savings Accounts Act 1997

1 Application by Regulator: section 119 (3)

- (1) A certificate under section 119 (2) of the Act must be filed with the summons commencing proceedings for an inquiry or order under section 119 (3) of the Act.
- (2) The summons commencing proceedings for an inquiry or order under section 119 (3) of the Act must join as a defendant the person who is the subject of the certificate.

2 Notice of certain applications to be given to Regulator

Unless the Supreme Court otherwise orders, a person seeking an order under section 158 (1) or (4) or 160 (5) of the Act must, as soon as practicable after filing the summons or notice of motion, serve a copy of it and its supporting affidavit on the Regulator.

3 Intervention by Regulator

- (1) The Regulator may intervene under section 168 of the Act by filing a notice of appearance that includes a statement that the Regulator intervenes under that section.

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- (2) On complying with subclause (1), the Regulator must be added as a defendant.

Schedule 11 Provisions regarding procedure in certain lists in the District Court

(Rule 1.27)

Part 1 Preliminary

1 Definitions

In this Schedule:

coal miner means a worker employed in or about a mine to which the *Coal Mine Health and Safety Act 2002* applies.

coal miner's claim means a claim for compensation pursuant to the Workers Compensation Acts in respect of any injury received by a coal miner.

compensation includes any monetary benefit under the Workers Compensation Acts or a Special Statutory Compensation Act.

conciliator means a District Court conciliator being an officer or employee of the Court nominated by the registrar to carry out conciliation in connection with a coal miner's claim.

registrar means registrar of the District Court.

Special Statutory Compensation Act means the *Police Act 1990*, the *Police Regulation (Superannuation) Act 1906*, the *Sporting Injuries Insurance Act 1978*, the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* and the *Workers' Compensation (Dust Diseases) Act 1942*.

special statutory compensation claim means a claim for compensation pursuant to a Special Statutory Compensation Act.

the 1926 Act means the *Workers' Compensation Act 1926*.

the 1987 Act means the *Workers Compensation Act 1987*.

the 1998 Act means the *Workplace Injury Management and Workers Compensation Act 1998*.

WorkCover Authority means the WorkCover Authority constituted under the 1998 Act.

Workers Compensation Acts means the 1926 Act, the 1987 Act and the 1998 Act.

Part 2 Coal Miners' Workers Compensation List

Division 1 Proceedings generally

- 2 Proceedings under the Workers Compensation Acts** (cf DCR Part 24D, rule 1)
- (1) In this Part:
List means the Coal Miners' Workers Compensation List.
proceedings under the Acts means proceedings commenced under the Workers Compensation Acts.
 - (2) This Division applies to proceedings under the Acts whether commenced in the District Court or transferred from the Compensation Court.
 - (3) Where there is an inconsistency in the operation of these rules and the provisions of this Division, the provisions of this Division shall apply.
- 3 Commencement of proceedings** (cf DCR Part 24D, rule 1A)
- Subject to these rules, proceedings under the Acts must be commenced by statement of claim.
- 4 Coal Miners' Workers Compensation List** (cf DCR Part 24D, rule 2)
- (1) The registrar for Sydney and the registrar for Newcastle shall each maintain a Coal Miners' Workers Compensation List and shall enter in that List any proceedings under the Acts as soon as the proceedings are commenced or transferred under section 7 (1) (a) of the *Compensation Court Repeal Act 2002*.
 - (2) The statement of claim in proceedings under the Acts shall bear in the heading the words "Coal Miners' Workers Compensation List", and shall be in the approved form.
 - (3) A summons in proceedings under the Acts shall bear in the heading the words "Coal Miners' Workers Compensation List", and shall be in the approved form.
 - (4) If a statement of claim or a summons in proceedings under the Acts is lodged with a registrar for a proclaimed place other than Sydney or Newcastle, the registrar at that other place shall forward the statement of claim or summons to the registrar for Sydney or Newcastle, whichever appears the most expedient, for filing and entry in the List maintained by that registrar.
 - (5) Proceedings under the Acts, and any ancillary proceedings, may be set down for hearing at any proper place.

5 Functions of the registrar (cf DCR Part 24D, rule 3)

A conciliator has and may exercise all the functions of the registrar for Sydney in respect of proceedings in the Coal Miners' Workers Compensation List.

6 Compliance with statutory restrictions on commencement of proceedings under the 1998 Act (cf DCR Part 24D, rule 4)

- (1) This clause is made pursuant to section 104 of the 1998 Act.
- (2) This clause applies to claims for compensation referred to in sections 101, 102 and 103 of the 1998 Act, as modified by clauses 235, 236 and 237 respectively of the *Workers Compensation Regulation 2003*.
- (3) A party seeking to commence any proceedings in respect of any such claim shall file with the initiating process a certificate of compliance in the form stipulated by subclause (5) certifying that the commencement of such proceedings is not contrary to the provisions of section 101, 102 or 103 of the 1998 Act, as modified by clauses 235, 236 and 237 respectively of the *Workers Compensation Regulation 2003*, as the case may be.
- (4) Any initiating process not accompanied by such appropriate certificate shall not be accepted for filing.
- (5) Such certificate of compliance shall be in or to the effect of the approved form or such portion or portions thereof as may be relevant to the particular matter.
- (6) Where, leave of the District Court having been previously obtained, a party seeks to file an amended statement of claim adding an additional party or parties to the current proceedings then the provisions of this clause apply with all necessary modifications in respect of the proposed application against such added party or parties.

7 Particular proceedings commenced by summons (cf DCR Part 24D, rule 5)

- (1) The following proceedings shall be commenced by summons where no proceedings have been commenced in relation to the subject matter in dispute:
 - (a) for an order for costs pursuant to section 112 of the 1998 Act,
 - (b) for an order for refund of weekly payments pursuant to section 58 of the 1987 Act,

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- (c) for apportionment between dependants pursuant to section 29 of the 1987 Act or for variation of any previous apportionment pursuant to section 30 of the 1987 Act,
 - (d) where liability has been admitted, for an order for payment in respect of dependent children pursuant to section 31 of the 1987 Act,
 - (e) for variation in the manner in which the Public Trustee invests, applies, pays out or otherwise deals with money paid to the Public Trustee pursuant to section 85 of the 1987 Act. The Public Trustee shall be made a respondent to any such application,
 - (f) for any order, direction or authorization in respect of the payment of compensation pursuant to sections 83, 85 and 85A of the 1987 Act,
 - (g) for suspension of a weekly payment, or for a declaration that a worker's right to take or prosecute any proceedings under the 1998 Act has been suspended, until, pursuant to section 120 of that Act, the worker submits to medical examination,
 - (h) for an order under section 53 of the 1987 Act,
 - (i) for an order in respect of an objection to a reference to a medical referee or medical panel pursuant to Part 3,
 - (j) for a determination under section 224 (1) or 225 (3) of the 1998 Act, as saved by clause 3 (1) of Part 18 of Schedule 6 to the 1987 Act, in respect of the Uninsured Liability and Indemnity Scheme.
- (2) Where proceedings are pending in relation to the subject matter of any application referred to in subclause (1), such application shall be made by notice of motion in the proceedings.

8 Affidavits in support of summons under section 53 of the 1987 Act

(cf DCR Part 24D, rule 6)

- (1) A summons for an order pursuant to clause 7 (1) (h) shall be supported by affidavits by the worker and a medical practitioner who has examined the worker.
- (2) The affidavits referred to in subclause (1) shall verify:
 - (a) the circumstances in which the application is made,
 - (b) the age and a description of the applicant sufficient to identify him or her,

- (c) particulars as to the injury, the nature and extent of the incapacity resulting from the injury, and the history and treatment of the worker since the injury,
- (d) the amount and duration of the weekly payment,
- (e) the worker's present and proposed places of residence, and
- (f) the detail of any award or previous proceedings in respect of the injury.

9 Applications for contribution, indemnity or apportionment (cf DCR Part 24D, rule 7)

- (1) The following applications shall be made by notice of motion where proceedings are pending in relation to the subject matter of the application:
 - (a) for contribution subject to section 15, 16 or 17 of the 1987 Act,
 - (b) for indemnification pursuant to section 20 of the 1987 Act,
 - (c) for apportionment pursuant to section 22 or 22A of the 1987 Act,
 - (d) for a determination pursuant to section 22B of the 1987 Act.
- (2) Where there are no proceedings in relation to the subject matter of an application under subclause (1), proceedings shall be commenced by statement of claim.

10 Application for further medical expenses etc (cf DCR Part 24D, rule 8)

Where a worker who has commenced proceedings for compensation seeks to apply for a direction under section 62 (6A) of the 1987 Act he or she may so apply by notice of motion in the proceedings.

11 Application for suspension of weekly payment (cf DCR Part 24D, rule 9)

An application for an order for suspension of a weekly payment, or for a declaration that a worker's right to take or prosecute any proceedings under the 1998 Act, has been suspended, until, pursuant to section 120 of that Act, the worker submits to medical examination may be made, where proceedings have been commenced in respect of the subject matter to which the weekly payment relates, by notice of motion.

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12 Uninsured Liability and Indemnity Scheme (cf DCR Part 24D, rule 10)

- (1) The WorkCover Authority shall be a necessary party to any application under section 224 (1) or 225 (3) of the 1998 Act, as saved by clause 3 (1) of Part 18 of Schedule 6 to the 1987 Act.
- (2) Where a matter or question for determination by the District Court under the Uninsured Liability and Indemnity Scheme is already the subject of proceedings, proceedings to determine the matter or question may be made by notice of motion in the proceedings.

13 Applications in the case of death of worker (cf DCR Part 24D, rule 11)

- (1) In proceedings for the benefit of dependants in the case of the death of a worker pursuant to the 1987 Act and the 1998 Act, the following persons shall be joined as defendants:
 - (a) the personal representative (if any) of the worker, if that personal representative is not already an applicant,
 - (b) if the proceedings are brought by or on behalf of some only of the dependants, the other dependants,
 - (c) any other person claiming to be a dependant.
- (2) Where an injured worker dies leaving no dependants, proceedings to recover reasonable burial or cremation expenses pursuant to section 27 of the 1987 Act may be continued:
 - (a) by the personal representative of the worker, or
 - (b) by any person to whom any such expenses are due or who has paid any such expenses.
- (3) In proceedings brought under subclause (2) (b):
 - (a) the personal representative (if any) of the worker, and any person referred to in subclause (2) (b) who has not been joined as an applicant, shall be joined as a defendant,
 - (b) if the amount awarded is insufficient to meet the expenses sought to be recovered, the District Court may give directions for the apportionment of that amount.

14 Service on insurer (cf DCR Part 24D, rule 12)

Where any insurer of a defendant is named in an originating process, a copy of that originating process shall be served on any such insurer as well as on the defendant.

15 Service on WorkCover Authority (cf DCR Part 24D, rule 13)

Service on the WorkCover Authority may be effected by delivering a copy to an officer of the Authority at Legal Group, WorkCover, Level 1, 60–70 Elizabeth Street, Sydney, or by sending a copy by post addressed to the Authority, at GPO Box 2677 Sydney NSW 2001, or by leaving a copy, addressed to the Authority, in the Authority's exchange box in a document exchange of Australian Document Exchange Pty Limited, or at another exchange box for transmission to that exchange box.

16 Submission to award (cf DCR Part 24D, rule 14)

- (1) An employer who is a party to proceedings for an award of compensation or for determination of any question as to the employer's liability to pay compensation may, at any stage of the proceedings, and whether or not the employer admits any liability to pay compensation, file and serve a notice stating that the employer is willing to submit to an award of compensation in the terms set out in the notice.
- (2) If the worker who is a party, or the dependants who are parties, to the proceedings file and serve notice of his, her or their willingness to accept the award as set out in the notice given under subclause (1), the registrar shall cause the proceedings to be listed before the District Court, and the District Court may make such award or give such directions as to it may appear proper.
- (3) If notice under subclause (2) is not filed and served within 28 days after the service of notice under subclause (1) the proceedings shall be continued as though the notice under subclause (1) had not been filed.
- (4) If proceedings are continued under subclause (3), before the record of the proceedings is brought before the District Court for any hearing of the proceedings, the registrar shall seal within the record the notice filed under subclause (1) and any information contained in the record in respect of that notice, but the District Court need not disqualify itself from hearing the proceedings only because it becomes aware in any manner of the notice or of any such information.

17 Offer of compromise (cf DCR Part 24D, rule 15)

The provisions of Division 4 of Part 20 do not have application to proceedings entered in the Coal Miners' Workers Compensation List.

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18 Schedule of earnings (cf DCR Part 24D, rule 16)

In any statement of claim where the quantum of weekly compensation is or may be an issue and there is or may be a dispute in respect of the actual or probable earnings of a worker during any relevant period the following provisions shall, unless the District Court otherwise orders, have effect:

- (a) the plaintiff shall file and serve on each other party not later than 10 days before conciliation of a coal miner's claim or, where there is no conciliation, 21 days before the hearing date, a schedule containing full particulars of such earnings during such period,
- (b) if any party disputes the accuracy of any matter in the schedule that party shall, not later than 7 days after service of the schedule or 28 days after expiry of the time prescribed for filing a statement of defence pursuant to rule 14.3, whichever is the later, file and serve a schedule containing its allegations of such earnings,
- (c) a matter not so disputed shall be deemed to be admitted.

19 Proceedings deemed dismissed (cf DCR Part 24D, rule 17)

- (1) Where in respect of any proceedings on a claim for compensation:
 - (a) a defendant has not filed a notice of appearance or notice of defence, and
 - (b) the plaintiff has not filed an affidavit of service of the originating process on that defendant,within 3 months after the date of commencement of the proceedings, the proceedings as against that defendant are deemed to have been dismissed, and no further step may be taken in those proceedings other than an application referred to in subclause (3) until the proceedings have been restored to the list.
- (2) Where proceedings which have not been heard, part heard or discontinued, and in which a preliminary advice of hearing or notice of call-over has been issued, have not been before the District Court during any period of 6 months, the proceedings are, unless the District Court otherwise orders, deemed to have been dismissed.
- (3) The Court may, on application by a party and on terms, restore to the list any proceedings deemed to have been dismissed under subclauses (1) and (2).

20 Dismissal of proceedings (cf DCR Part 24D, rule 18)

- (1) The Court may if it thinks fit dismiss any proceedings at any time on terms and without affecting the generality of the foregoing provisions of this clause, the District Court may dismiss any proceedings if:
 - (a) no party appears, or
 - (b) a defendant does, but the plaintiff does not, appear.
- (2) Where proceedings are dismissed under subclause (1) the District Court may, on the application of any party, order that the proceedings be reinstated on terms, and without affecting the generality of the foregoing provisions of this subclause, the proceedings may be reinstated upon such terms and conditions as to costs and the priority of the hearing of the proceedings as the District Court thinks fit.
- (3) Subclause (2) applies except where otherwise provided in section 112 of the 1998 Act.

21 Medical examination (cf DCR Part 24D, rule 19)

- (1) Except by leave of the District Court, which may be given on terms, or consent of the worker, a notice shall not be given under rule 23.2 requesting that a worker submit to examination:
 - (a) by a medical expert specialising in a particular field of practice if the worker has already been examined, at the request of the party giving the notice, by another medical expert specializing in that field, or
 - (b) by the one medical expert:
 - (i) more than twice in respect of the one proceedings, or
 - (ii) at intervals of less than 2 months.
- (2) An examination to which the worker submits himself or herself for the purposes of section 119 of the 1998 Act is not an examination by a medical expert for the purposes of subclause (1).

22 Expert evidence and hospital reports (cf DCR Part 24D, rule 20)

- (1) In this clause *expert's report* and *hospital report* have the same meaning as in rule 31.18 and *party* includes any person who has filed a notice of appearance or notice of grounds of defence.

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- (2) This clause applies in respect of any proceedings subject to the *Evidence Act 1995*, the Workers Compensation Acts and any regulations made thereunder and to any orders of the District Court or agreement between the parties not inconsistent with such Acts or regulations.
- (3) Primary expert's reports must be served by each party in any proceedings prior to conciliation and any reports in reply or refresher reports must be served not later than 28 days before the hearing.
- (4) Where an expert's report is served in accordance with subclause (3), or an order is made under subclause (2), the report is admissible, without further evidence, oral or otherwise, as evidence of the expert's opinion and, where the expert's direct oral evidence of a fact upon which the opinion was formed would be admissible, as evidence of that fact.
- (5) Except where otherwise provided in the Workers Compensation Acts, and unless the District Court otherwise orders, a party may require the attendance for cross examination of the expert.
- (6) A party who requires the attendance of a person under subclause (5) shall procure that attendance, and, whether the party procures the attendance by the issue and service of a subpoena or otherwise, the person shall not thereby become the party's witness except for the purpose of determining any liability for conduct money or witness' expenses.
- (7) A party who requires the attendance of a person as referred to in subclause (6) shall as soon as practicable inform all other parties to the proceedings that he or she has done so.
- (8) Where a person who has made a report is cross-examined, the party tendering the report may re-examine that person.
- (9) Where a hospital report is served in accordance with subclause (3) or an order is made under subclause (2), the report is admissible.
- (10) In reckoning the period of 28 days referred to in subclause (3):
 - (a) any day on which the matter is listed for hearing shall not be counted, and
 - (b) where the hearing is not on consecutive days, any period of less than 28 days between hearing days shall not be counted.

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- (11) Where a party has been served with an expert's report or a hospital report by another party and the first party seeks to rely on such report, it shall not be necessary to serve a copy of that report on the party who served it but the first party shall give notice of intention to rely on the report to the party who served it and to each other party in the proceedings, within the time prescribed by subclause (3).

23 Discontinuance (cf DCR Part 24D, rule 22)

- (1) A party may discontinue proceedings so far as concerns the whole or any part of any claim made by him or her:
- (a) if no preliminary advice of hearing has been issued in the proceedings—without leave of the District Court or consent of any other party, or
 - (b) after a preliminary advice of hearing has been issued in the proceedings—with the consent of all other parties or by leave of the District Court.
- (2) Application for the leave of the District Court as referred to in subclause (1) (b) may be made:
- (a) if made on not less than 3 days' notice to all other parties at a time when the proceedings are before the District Court for another purpose—orally, or
 - (b) if made otherwise—by motion.

24 Settling of awards (cf DCR Part 24D, rule 23)

- (1) Where the District Court gives a decision or makes a final order disposing of any proceedings in the Coal Miners' Workers Compensation List, the registrar shall as soon as convenient prepare and settle a form of award engrossing the decision or order.
- (2) The registrar shall sign and seal any form of award settled by the registrar, and as soon as practicable cause a copy to be forwarded to each party, and any insurer of a respondent, to the proceedings.

Division 2 Conciliation of coal miners' claims

25 Referral (cf DCR Part 24D, rule 24)

The registrar shall, not later than 3 months after the filing of a statement of claim in respect of a coal miner's claim, or at such earlier time as the parties may request, refer the matter to a conciliator for conciliation.

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26 General powers of a conciliator (cf DCR Part 24D, rule 25)

- (1) Without limiting the powers of a conciliator pursuant to Divisions 3 and 4 of Part 2 of Chapter 4 of the 1998 Act, a conciliator may:
 - (a) make a recommendation to parties prior to conciliation, and
 - (b) determine whether to hold a conference or return the matter to the registrar, and
 - (c) direct the production of any document by any party to proceedings, and
 - (d) generally control any proceedings before the conciliator, and
 - (e) do such other things as the rules specifically provide or the District Court otherwise directs.
- (2) The conciliator may, if the conciliator thinks fit, on terms dispense with compliance with any of the requirements of this Part, either before or after the occasion for the compliance arises.

27 Directions (cf DCR Part 24D, rule 26)

Without limiting the powers of a conciliator to give directions, a conciliator may give directions relating to preparation for and the conduct of the conciliation conference including:

- (a) a direction to a party to provide any other party or the conciliator with further particulars of any allegation or claim made in the proceedings, and
- (b) a direction to a party to lodge further documents with the conciliator, and
- (c) a direction to a party to make available to any other party a copy of a specified document (not being a document that is privileged from production), and
- (d) a direction revoking or varying any direction made at a conciliation conference.

28 Conciliation conference procedure (cf DCR Part 24D, rule 27)

- (1) Unless the conciliator otherwise directs, a conciliation conference shall be attended by:
 - (a) subject to paragraph (b), each party or, where a party is a company, an officer of the company having authority to settle the proceedings, or

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- (b) if the conduct of the proceedings by a party is controlled by an insurer, an officer of the insurer having authority to settle the proceedings.
 - (2) A party may be accompanied at the conciliation conference by a barrister or solicitor retained by or on behalf of the party.
 - (3) A conciliator may from time to time adjourn the conciliation of a dispute which the conciliator has commenced to conduct.
 - (4) A conciliator must not adjourn a matter beyond 35 days from the date of first notification of the conciliation conference, except with the consent of the parties.
 - (5) A matter shall not be adjourned beyond 90 days from the date of first notification of the conciliation conference except by leave of the District Court.

29 Conduct of a conciliation conference (cf DCR Part 24D, rule 28)

A conciliation conference shall be conducted:

- (a) following reasonable notice to the parties, and
- (b) as a structured process in which the conciliator endeavours to assist the parties to:
 - (i) communicate effectively with each other about the issues in dispute, and
 - (ii) narrow the issues in dispute and obtain appropriate concessions, and
 - (iii) reach a settlement of the matter, and
 - (iv) record details of any settlement.

30 Confidentiality (cf DCR Part 24D, rule 29)

Evidence of anything said or of any admission made in a conciliation conference is not admissible in any proceedings before the District Court except:

- (a) with the consent of the parties, and
- (b) where the evidence is referred to in a conciliation certificate but only to the extent so referred, and
- (c) where the evidence is relevant to an issue as to costs.

31 Dismissal of proceedings (cf DCR Part 24D, rule 30)

- (1) The conciliator may, if the conciliator thinks fit, dismiss any proceedings if:
 - (a) no party appears, or

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(b) a defendant does, but the plaintiff does not, appear.

- (2) The conciliator or the District Court may, on application by a party and on terms, restore any proceedings dismissed under subclause (1).

32 Conciliation notifications (cf DCR Part 24D, rule 31)

- (1) The conciliator is taken to have notified the parties that a dispute has been referred to conciliation when the conciliator issues a notice of listing of the conciliation conference.
- (2) The conciliator shall, within 7 days of the conclusion of the conciliation conference, advise the registrar of the fact that the conciliation conference has been concluded but not of the details thereof.
- (3) A conciliator must, within a reasonable time after the conciliation conference, issue a conciliation certificate under section 84 of the 1998 Act.

33 Guidelines (cf DCR Part 24D, rule 32)

Except to the extent of any inconsistency with these rules, or unless the District Court otherwise orders, the parties shall comply with the requirements of any Conciliation Guidelines issued by the Chief Judge.

Part 3 Medical panel procedures

34 Transferred applications (cf DCR Part 24E, rule 1A)

Applications under section 122 of the 1998 Act that have been transferred under section 7 (1) (a) of the *Compensation Court Repeal Act 2002* are to be dealt with under this Part.

35 Application for reference (cf DCR Part 24E, rule 2)

- (1) An application for reference to a medical referee or medical panel pursuant to section 122 of the 1998 Act shall be lodged with the registrar together with sufficient copies for every respondent to the application.
- (2) The registrar shall endorse on or attach to the application and on sufficient copies of the application a notice containing the following matter:

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- (a) that any respondent to the application who objects to the reference applied for may, within 21 days from the date of the notice, request that the application be listed before the registrar for argument and determination,
 - (b) that any such request shall be made in accordance with clause 7 (1) (i),
 - (c) that, in certain circumstances, a certificate or determination of a medical referee or medical panel may be conclusive evidence of the worker's condition, and shall send a copy of the application so endorsed to every respondent to the application.
- (3) In the application of section 122 of the 1998 Act for the purposes of section 122 (12) of that Act, section 122 (2) of that Act shall be construed as requiring any application to be made jointly by the worker and the employer.

36 Order for report (cf DCR Part 24E, rule 3)

Where an order is made by the District Court or a conciliator referring a matter to a medical referee or medical panel for report pursuant to section 124 of the 1998 Act, the registrar shall, as soon as practicable, refer all relevant court papers and supporting material to the medical referee or medical panel for a report to be furnished in accordance with the terms of reference.

37 Reports for medical panels (cf DCR Part 24E, rule 4)

Additional medical reports in respect of applications under section 122 of the 1998 Act shall be filed not later than 7 days prior to the date set for the medical examination.

38 Certificate (cf DCR Part 24E, rule 5)

- (1) A certificate given under section 122 (5) of the 1998 Act shall be in or to the effect of the approved form.
- (2) The registrar shall as soon as practicable after receiving a certificate furnish a copy to each party to the application.

Part 4 Special Statutory Compensation List

39 Proceedings under the Special Statutory Compensation Acts

(cf DCR Part 24F, rule 1)

- (1) In this Part:

List means the Special Statutory Compensation List.

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proceedings includes proceedings on an appeal and proceedings on an application.

proceedings under the Acts means proceedings under any of the following provisions:

- (a) *Police Regulation (Superannuation) Act 1906*, section 21,
- (b) *Police Act 1990*, section 216A,
- (c) *Sporting Injuries Insurance Act 1978*, section 29,
- (d) *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*, section 16 or 30,
- (e) *Workers' Compensation (Dust Diseases) Act 1942*, section 8I.

- (2) This Part applies to proceedings under the Acts whether commenced in the District Court or transferred from the Compensation Court.
- (3) Where there is an inconsistency in the operation of these rules and the provisions of this Part, the provisions of this Part shall apply.

40 Commencement of proceedings (cf DCR Part 24F, rule 1A)

Subject to these rules, proceedings under the Acts must be commenced by statement of claim.

41 Special Statutory Compensation List (cf DCR Part 24F, rule 2)

- (1) The registrar for Sydney shall maintain a Special Statutory Compensation List and shall enter into that List any proceedings under the Acts as soon as the proceedings are commenced or transferred under section 7 (1) (a) of the *Compensation Court Repeal Act 2002*.
- (2) The statement of claim in proceedings under the Acts shall bear in the heading the words "Special Statutory Compensation List", and shall be in the approved form.
- (3) If a statement of claim in proceedings under the Acts is lodged with a registrar for a proclaimed place other than Sydney, the registrar at that other place shall forward the statement of claim to the registrar for Sydney for filing and entry in the List.
- (4) Proceedings under the Acts, and any ancillary proceedings, may be set down for hearing at any proper place.

42 Directions (cf DCR Part 24F, rule 3)

- (1) Where any proceedings are entered in the List, the registrar shall, as soon as convenient and not later than 3 months after the filing of a statement of claim, list the proceedings before a Judge (appointed by the Chief Judge for the control of proceedings in the List) for directions under this clause, and shall advise the parties of the listing.
- (2) Where any proceedings are before a Judge for directions under this clause, the Judge may give such directions as may be thought fit concerning the preparation of the proceedings for hearing, the conduct of the hearing and the adducing of evidence at or before the hearing.
- (3) Without limiting the generality of subclauses (1) and (2), directions which may be given under this clause include directions as to the times within which, and the modes in which, particulars are to be given, documents are to be prepared and exchanged, documents are to be inspected, a further directions hearing and an order fixing a hearing date.
- (4) A direction given under this clause, and an order made in respect of non-compliance with such a direction, shall apply notwithstanding any time, mode, or penalty for non-compliance otherwise fixed by the rules or the practice of the District Court.
- (5) In this clause:
document includes an affidavit or statement of evidence and experts' reports (including any made by a medical practitioner).

43 Expert evidence and hospital reports (cf DCR Part 24F, rule 4)

The provisions of Division 2 of Part 31 apply to proceedings in the List subject to the following modifications:

- (a) each party to proceedings must, as soon as possible after their receipt and at least 28 days before any hearing date is allocated to the proceedings, serve experts' reports and hospital reports on each party who has an address for service in the proceedings,
- (b) a party who requires the attendance of a person for cross-examination under rule 31.19 must inform the District Court and all other parties to the proceedings that the party has done so or wishes to do so at a directions hearing before any hearing date is allocated to the proceedings.

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44 Oral expert evidence (cf DCR Part 24F, rule 5)

- (1) Unless the District Court otherwise orders, where a party has served reports by more than one expert in the same field, that party shall not call more than one of those experts to give oral evidence.
- (2) This clause does not affect:
 - (a) the right of a party to tender reports by more than one expert in the same field, or
 - (b) the right of a party to require an expert to attend for cross-examination.

45 Settling of orders (cf DCR Part 24F, rule 6)

- (1) Where the District Court gives a decision or makes a final order disposing of any proceedings in the List, the registrar shall as soon as convenient prepare and settle a form engrossing the decision or order.
- (2) The registrar shall sign and seal any form of decision or order settled by him or her, and as soon as practicable cause a copy to be forwarded to each party to the proceedings.

Part 5 Costs in Coal Miners' Workers Compensation List and Special Statutory Compensation List matters

46 Application (cf DCR Part 39B, rule 1)

- (1) The provisions of this Part apply subject to their terms, to proceedings entered in the Coal Miners' Workers Compensation List and the Special Statutory Compensation List in respect of costs payable or to be assessed under any order of the Court or under these rules.
- (2) Where there is an inconsistency in the operation of these rules and the provisions of this Part the provisions of this Part shall apply.
- (3) The application of these rules and of this Part is subject to:
 - (a) the *District Court Act 1973*, and
 - (b) the Workers Compensation Acts and the regulations made under those Acts, and
 - (c) a Special Statutory Compensation Act and the regulations made under that Act, and

(d) the *Legal Profession Act 2004* and the regulations made under that Act.

47 Interpretation (cf DCR Part 39B, rule 2)

In this Part, and unless the context or subject matter otherwise indicates or requires, a reference to costs is a reference to costs payable between party and party in respect of proceedings, including disbursements.

48 Time for dealing with costs (cf DCR Part 39B, rule 3)

The Court may in any proceedings exercise its powers and discretions as to costs at any stage of the proceedings or after the conclusion of the proceedings.

49 Claimant's costs (cf DCR Part 39B, rule 4)

Where in any proceedings the Court makes a final order, or gives a final decision, in favour of the claimant, the claimant shall, unless the Court otherwise orders, be entitled to recover the claimant's costs of the proceedings against the employer against whom the final order or decision was made or given.

50 Redemption cases (cf DCR Part 39B, rule 5)

Where an employer commences proceedings for redemption under section 15 of the *Workers' Compensation Act 1926*, as preserved by Part 18 of Schedule 6 to the *Workers Compensation Act 1987*, with the consent of the claimant, the employer shall, unless the Court otherwise orders, pay the costs of the claimant of the proceedings whatever be the result of the proceedings.

51 Costs where other proceedings (cf DCR Part 39B, rule 6)

Where in any proceedings a claimant is entitled to recover costs against an employer or insurer, those costs shall not be reduced or apportioned because any part of them was incurred also in respect of proceedings under the Uninsured Liability and Indemnity Scheme, or in respect of proceedings against another person against whom no award has been made, except to the extent that any such part has been received by the claimant.

52 Assessed costs and other provisions (cf DCR Part 39B, rule 7)

- (1) Subject to this Part, where, by or under these rules or any order of the Court, costs are to be paid to any person, that person shall be entitled to assessed costs.

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- (2) Where the Court orders that costs be paid to any person, the Court may, at any time prior to the costs being referred for assessment, further order that, as to the whole or any part (specified in the order) of the costs, instead of assessed costs, that person shall be entitled to:
- (a) a proportion specified in the order of the assessed costs, or
 - (b) the assessed costs from or up to a stage of the proceedings specified in the order, or
 - (c) a gross sum specified in the order instead of the assessed costs.

53 Preliminary discovery (cf DCR Part 39B, rule 8)

The Court may in any proceedings require any person to pay the costs of any party of proceedings under Part 5 of these rules (Preliminary discovery and inspection) in respect of those proceedings including payments of conduct money and payments on account of expenses and loss under that Part.

54 Agreement as to costs (cf DCR Part 39B, rule 9)

- (1) Where costs are payable by one party to another, those parties may agree as to the amount of the costs.
- (2) An amount of costs agreed to under subclause (1) shall not be included in any process of enforcement unless the agreement is embodied in a form of order bearing the consent of the party required to pay the costs and lodged for the signature of the registrar.

55 Agreement as to part of costs (cf DCR Part 39B, rule 10)

- (1) Notwithstanding anything in this Part, where costs are payable by one party to another, the parties may agree as to the amount of those costs payable in respect of any item or items of work done.
- (2) An amount of costs agreed to under subclause (1) shall not be included in any process of enforcement unless the agreement is embodied in a form of order bearing the consent of the party required to pay the costs and lodged for the signature of the registrar.

56 When costs payable (cf DCR Part 39B, rule 11)

- (1) Where, before the conclusion of any proceedings, the Court makes an order for the payment of costs or a motion is refused with costs, the costs shall not, unless the Court otherwise orders, be payable until after the conclusion of the proceedings.

- (2) Where, in any proceedings, it appears to the registrar, on application, that there is no likelihood of any further order being made in the proceedings, the registrar may order that any costs ordered to be paid shall be payable forthwith.

57 Party and party basis (cf DCR Part 39B, rule 12)

Costs payable by or under these rules or any order of the Court shall be payable on a party and party basis unless these rules or an order provide that they are payable on an indemnity basis.

58 Indemnity basis (cf DCR Part 39B, rule 13)

On an assessment on the indemnity basis, all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred, and any doubts which the assessor may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party.

59 Costs order to confirm earlier costs orders (cf DCR Part 39B, rule 14)

An order as to costs made in proceedings after 30 June 1994 shall unless the Court otherwise orders, be taken to expressly confirm all earlier orders as to costs made in the proceedings.

[25] Dictionary

Insert in alphabetical order:

Uninsured Liability and Indemnity Scheme means the scheme constituted under Division 6 of Part 4 of the *Workers Compensation Act 1987*.