

# District Court Rules 1973

[1973-1]



New South Wales

## Status Information

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### Authorisation

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New South Wales

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# District Court Rules 1973



New South Wales

## Part 1 Preliminary

### 1 Name of rules

These rules may be cited as the *District Court Rules 1973*.

### 2 Commencement

These rules shall commence on the commencement of the Act.

### 3 (Repealed)

### 4 Interpretation

(1) In these rules, unless the context or subject matter otherwise indicates or requires:

**coal miner** means a worker employed in or about a mine to which the *Coal Mines Regulation Act 1982* 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.

**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 Act** means the *District Court Act 1973*.

**WorkCover Authority** means the WorkCover Authority constituted under the *Workplace Injury Management and Workers Compensation Act 1998*.

**Workers Compensation Acts** means the *Workers' Compensation Act 1926*, the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*.

(2) In these rules, words and expressions that are defined in the *Civil Procedure Act 2005* or the *Uniform Civil Procedure Rules 2005* have the same meanings as they have in that Act and those rules.

(2A), (3) (Repealed)

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

## **5, 5A (Repealed)**

## **6 Seal of the Court**

(1) The registrar is to seal or stamp the following documents (or cause the documents to be sealed or stamped) with the seal of the Court:

- (a) any order, notice, warrant, certificate, judgment or process made, given or issued by the registrar (or any copy of such a document),
- (b) any other document issued by the registrar that is required by the rules to be sealed.

(2) Without limiting subrule (1), a document may be stamped with the seal of the Court by any of the following means:

- (a) affixing the seal on the document by means of a rubber stamp,
- (b) affixing an adhesive label on the document with a representation of the seal printed on it,
- (c) printing a representation of the seal on the document by electronic or mechanical means.

## **7, 7A (Repealed)**

## **Part 2 Administration**

### **1 Sittings of the Court** DCR r 2.

The registrar for a proclaimed place shall, one month before the day appointed for the commencement of a sitting of the Court at that proclaimed place, or such lesser time before that day as the circumstances permit, affix in some conspicuous place in his office a notice of the day and hour so appointed, and whenever any such day or hour is altered

shall immediately affix notice of the alteration in the same place.

**2 Vacation** cf SCR Pt 2, r 5 (2).

- (1) The Chief Judge shall appoint in each year periods to be called vacation, and one of those periods shall be called summer vacation.
- (2) During vacation the Court shall sit on such days only, and for the hearing of proceedings of such types only, as the Chief Judge shall direct.

**3 (Repealed)**

**4 Registries** DCR r 4.

- (1) The registry for each proclaimed place shall be under the control and direction of the registrar for the place, subject to any direction by the Chief Judge or a Judge.
- (2), (3) (Repealed)
- (4) Except on Saturdays, Sundays and other holidays, and whether in vacation or not:
  - (a) the registry for Sydney shall be open to the public for business between 9.30 in the morning and 4.00 in the afternoon, and
  - (b) the registry for any other proclaimed place shall be open to the public for business between 9.30 in the morning and 1.00 in the afternoon, and between 2.00 and 4.00 in the afternoon.

cf DCR r 3.

- (5) A registry shall, notwithstanding subrule (4), be kept open to the public for business, or closed for business, at such times on such days as the Chief Judge or a Judge shall direct.

**Parts 2A-5**

**(Repealed)**

**Part 6 Proceedings commenced by application and statutory appeals**

**Divisions 1, 2**

**1-14 (Repealed)**

**Division 3 Proceedings under section 18 of the [Public Health Act 1991](#)**

**15 Interpretation**

In this Division:

**application** means an application under section 18 of the [Public Health Act 1991](#).

**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 an application, to serve a notice under section 19 of the [Public Health Act 1991](#).

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

## **16 Application**

- (1) An application must be commenced:
  - (a) at the proclaimed place nearest to the address at which the medical practitioner practises, or
  - (b) at some other proclaimed place that in the special circumstances of the case appears to the registrar for that other proclaimed place to be more convenient.
- (2) (Repealed)
- (3) The registrar is to fix the earliest convenient date for the hearing of the application.
- (4) The summons by which an application is commenced must contain the following information:
  - (a) the date on which the application is to be heard,
  - (b) the name of the medical practitioner and the address at which he or she practises,
  - (c) particulars of the order for which that application is being made,
  - (d) 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,
  - (e) a notice to the medical practitioner explaining the requirement imposed on him or her by rule 18,
  - (f) a notice to the person concerned explaining the person's right to be heard in reply to the application without being required to disclose the person's name or address.

## **17 (Repealed)**

## **18 Medical practitioner to advise registrar**

- (1) A medical practitioner on whom a copy of a summons is served must as soon as practicable (and in any case not later than 7 days after service) advise the registrar, either by letter, facsimile or email or by 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 subrule (1), the medical practitioner need take no further part in the proceedings on the application other than to comply with any notice authorised by the Court to be served on him or her.
- (3) If a medical practitioner fails to comply with the requirements of subrule (1) and the Director-General files an affidavit of service of the summons on the medical practitioner, the Court may proceed to hear and determine the application even though rule 19 has not been complied with if it thinks fit to do so.

### **19 Registrar to advise person concerned**

- (1) The registrar must as soon as practicable after receiving advice under rule 18 (1) send a sealed copy of the summons by post addressed to the name and address advised to the registrar under that subrule.
- (2) The registrar must, when sending a copy under subrule (1), enclose the copy in an envelope endorsed with the return address of the registrar and marked "Confidential".

## **Division 4 Proceedings under the [Transport Accidents Compensation Act 1987](#)**

### **20-34 (Repealed)**

## **Division 5 Appeals under the [Children and Young Persons \(Care and Protection\) Act 1998](#)**

### **35 Interpretation**

- (1) This Division applies to appeals to the Court under section 91 of the Care Act, and so applies subject to Part 46 of the [Uniform Civil Procedure Rules 2005](#).

- (2) In this Division:

**appeal** means appeal to the Court under section 91 of the Care Act.

**Care Act** means the [Children and Young Persons \(Care and Protection\) Act 1998](#).

**registrar of the Children's Court**, with relation to an appeal, means the registrar of the Children's Court at the place where the decision appealed against was made.

- (3) In this Division, each of **child**, **Children's Court**, **Director-General** and **officer** has the same meaning as it has when used in the Care Act.

### **36 (Repealed)**

### **37 Defendants in appeal**

The defendants in an appeal against a decision in respect of the care of a child shall be:



- (a) where the Director-General is not the appellant, the Director-General,
- (b) where the child is of or above the age of 10 years and is not the appellant, the child,
- (c) any person, other than an officer of the appellant, who is responsible for the child and can reasonably be located, and
- (d) any person to whom leave was granted under section 98 (3) of the Care Act in respect of the proceedings leading to the decision and who is not the appellant.

### **38 Venue of appeal**

- (1) Subject to the rules, an appeal shall be heard and disposed of by the Court sitting at the proper place in relation to the appeal.
- (2) The Chief Judge may, from time to time, by order published in the Gazette, direct that any appeal commenced by the filing of a summons at a specified proclaimed place shall be heard at another specified proclaimed place, and where any such direction is given any document to be filed in any such appeal, other than the summons, shall be filed at that other proclaimed place.

### **39 Making of appeal**

An appeal against a decision of the Children's Court shall be made by filing the summons commencing the appeal at the proclaimed place nearest to the place where the decision was given.

### **40 Summons**

- (1) A summons commencing an appeal against a decision of the Children's Court shall contain the full name and address of the appellant, the full name and address of the child the subject of the decision, and the identifying number of, or other information sufficient to identify, the proceedings in the Children's Court leading to the decision.
- (2) A summons commencing an appeal shall contain the grounds of the appeal, or a reference to an affidavit, to be served with the summons, in which those grounds are contained.
- (3) On the filing of a summons commencing an appeal the registrar shall endorse on the summons and on 2 or more copies of the summons a date, which shall be as early as practicable, for the listing of the appeal before a Judge for directions, and the place where that listing is to occur, and shall return the copies so endorsed to the appellant.
- (4), (5) (Repealed)

### **41 Children's Court record**

The Registrar of the Children's Court shall, as soon as practicable after the filing in that Court of a copy of the summons commencing an appeal against a decision of that Court,

forward to the registrar of the District Court at the proclaimed place where the listing of the appeal for directions is to occur the record of the proceedings in the Children's Court leading to the decision.

**42 (Repealed)**

**43 Notice of fresh evidence**

Where 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 shall, as soon as practicable after becoming aware of the fresh, additional, or substituted evidence, file, and serve on every other party, notice of the nature and extent of that evidence.

**44 Withdrawal of appeal**

- (1) An appellant may, at any time before the hearing of his appeal commences, withdraw the appeal by filing and serving notice of withdrawal.
- (2) Where an appellant withdraws an appeal the Court may, if it thinks fit on the application of any party, order a party to pay to any other party the costs of the appeal incurred by that other party before service of the notice of withdrawal.
- (3) An application mentioned in subrule (2) may be made on notice of motion under Part 18 of the *Uniform Civil Procedure Rules 2005*.
- (4) (Repealed)

**45 (Repealed)**

**46 Attendance at hearing**

- (1) Where an appellant fails to attend on the hearing of his appeal, the Court may, in its discretion:
  - (a) dismiss the appeal,
  - (b) (Repealed)
  - (c) on terms adjourn the appeal,and in any such case may make such order as to the costs of the appeal as the Court thinks fit.
- (2) (Repealed)

**Division 6 Proceedings under section 83 of the [Building Services Corporation Act 1989](#)**

## 47 Application

- (1) An application for a suspension order under section 83 of the *Home Building Act 1989* must be made by filing a summons, supported by an affidavit verifying the grounds of the application, at Sydney.
- (2) As soon as practicable after the filing of a summons referred to in subrule (1) the registrar shall submit the summons and any document filed with the summons to a Judge for directions, and the Judge may give directions as to any or all of the following:
  - (a) at what proclaimed place and on what day the application is to be heard and determined,
  - (b) whether the application is to be heard in open Court or in chambers,
  - (c) what notice, if any, of the application is to be given to the holder concerned, and how any such notice is to be given,
  - (e) any other matter relevant to the hearing of the application.
- (3) Nothing in subrule (2) prevents a Judge from making or refusing a suspension order immediately the application for the order is submitted to him under that subrule.

## Division 7

### 48-60 (Repealed)

## Division 7A Appeals under section 39 of the *Victims Support and Rehabilitation Act 1996*

### 60A Interpretation

- (1) In this Division:

**appeal** means appeal under section 39 of the Victims Act.

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

**Tribunal** means the Victims Compensation Tribunal constituted under section 59 of the Victims Act.

**Victims Act** means the *Victims Support and Rehabilitation Act 1996*.

- (2) This Division has effect subject to Part 46 of the *Uniform Civil Procedure Rules 2005*.

### 60B Venue

Subject to any order of the Court for a change of venue, an application for leave and an appeal may be heard and determined at any proclaimed place.

### **60C Application for leave**

- (1) An application for leave must be made by summons.
- (2) An application for leave must be filed and served within:
  - (a) the period specified in section 39 (2) (a) of the Victims Act, or
  - (b) such further time as the Court may allow under section 39 (2) (b) of the Victims Act.
- (3) An application to allow further time to appeal under section 39 (2) (b) of the Victims Act 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 Act.
- (6) (Repealed)

### **60D Tribunal record**

The Registrar of the Tribunal must, as soon as practicable after delivery of a copy of a summons commencing an appeal, forward to the registrar of the District Court at the proclaimed place 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.

### **60E Appeal**

If the Court grants leave to institute an appeal, it may give directions as to the extent, if any, to which matter which was 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.

## **Division 8 Applications and appeals under section 208M of the [Legal Profession Act 1987](#)**

### **61 Interpretation**

In this Division:

**appeal** means appeal to the Court under section 208M of the subject Act.

**application for leave** means application under section 208M (2) of the subject Act seeking leave of the Court to appeal to the Court against a determination of a costs assessor.

**subject Act** means the [Legal Profession Act 1987](#).

## 62 Application for leave

(1)-(3) (Repealed)

- (4) The applicant for leave must file with, or include in, the summons or a supporting affidavit:
- (a) a statement of the points on which the applicant objects to the decision of the assessor,
  - (b) a statement of the reasons why leave should be given,
  - (c) all of the documents which were submitted by the parties for the consideration of the assessor, or copies of those documents, and
  - (d) where the assessor has given reasons for the decision sought to be appealed against, a copy of those reasons.
- (5) On the day fixed for the hearing or adjourned hearing of the application, the Court may proceed to hear and determine the application or may adjourn it to another day.
- (6) The Court may, whether or not it adjourns the application, require any party to produce any relevant document in the party's possession or control, or to provide further particulars as to the party's case in the application.
- (7) Nothing in this rule prevents the Court from dealing with the application in chambers.

## 63 Appeal

- (1) Where the Court grants leave to appeal under section 208M (3) of the subject Act, it may give directions as to the extent, if any, to which matter which was 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.
- (2) Unless the Court otherwise orders, an appeal shall be heard and determined in

chambers, and not in the presence of the parties or their representatives.

## **Division 9 Applications under [Contractors Debts Act 1997](#)**

### **64 Application for order issuing debt certificate**

- (1) The evidence in support of an application for a certificate under section 7 (1) of the [Contractors Debts Act 1997](#) must include evidence showing the following:
  - (a) how much of the judgment debt is for work carried out or for materials supplied (the **subject debt**),
  - (b) whether the subject debt consists of daily, weekly or monthly wages,
  - (c) if the subject debt so consists—whether the subject debt exceeds 120 days' wages,
  - (d) if the subject debt so consists and exceeds 120 days' wages—an amount to be included in the certificate that does not exceed 120 days' wages,
  - (e) whether work resulting in the subject debt was done on something moveable and, if so, whether it would be practicable for the applicant to exercise a lien by retaining the thing in the applicant's possession.
- (2) The applicant may, unless the Court orders otherwise, proceed without service of the summons commencing the application or other documents on any person.
- (3) The application may be determined or dealt with by the Court in the absence of the public and without any attendance by or on behalf of any person.

### **65 Application for attachment order**

On an application under section 14 (1) of the [Contractors Debts Act 1997](#), the plaintiff may, unless the Court orders otherwise, proceed without service of the summons commencing the application or other documents on any person.

## **Parts 7-24**

**(Repealed)**

## **Part 24A Construction List**

### **1 Interpretation**

In this Part:

**building or engineering expert** includes builder, engineer, architect, designer and quantity surveyor.

**building or engineering work** includes:

- (a) any intended building or engineering work,
- (b) any building or engineering work in the course of construction or completion or which has been substantially or fully completed, and
- (c) any associated work.

## **2 Construction List**

The registrar for Sydney shall keep a Construction List, and shall enter proceedings in that List in accordance with this Part.

## **3 Proceedings for entry in list**

There may, subject to this Part, be entered in the Construction List any proceedings which:

- (a) are not proceedings for trial by a jury or proceedings on a claim for damages in respect of the death of, or personal injuries to, any person, and
- (b) are:
  - (i) an appeal under Part 5 of the *Builders Licensing Act 1971*,
  - (ii) proceedings relating to or arising out of:
    - (a) the design, carrying out, supervision or inspection of any building or engineering work,
    - (b) the performance by any building or engineering expert of any other services with respect to any building or engineering work, or
    - (c) any certificate, advice or information given or withheld with respect to any building or engineering work, or
  - (iii) proceedings on a claim for rectification, setting aside or cancellation of any agreement with respect to any matter mentioned in subparagraph (ii).

## **4 Entry in list on commencement of proceedings**

- (1) Where, in proceedings which may under rule 3 be entered in the Construction List, a plaintiff on his statement of claim, or a defendant on the notice of the grounds of his defence, requires the proceedings to be so entered, the proceedings shall be so entered without any order of the Court.
- (2) A requirement under subrule (1) shall be made by a party adding "Construction List" next under the heading and title on his statement of claim or the notice of the grounds of his defence, as the case may require.

## **5 Entry in list by consent**

Unless the Court otherwise orders, proceedings which may under rule 3 be entered in the Construction List shall be so entered on the filing, after a notice of grounds of defence has been filed, of a consent order for that entry.

## **6 Motion for entry in List**

- (1) A plaintiff, or a defendant who has filed notice of the grounds of his defence in any proceedings, may move for entry of the proceedings in the Construction List at any time after a notice of grounds of defence has been filed.
- (2) A motion mentioned in subrule (1) shall be returnable before a Judge appointed by the Chief Judge for the control of proceedings in the Construction List.
- (3) A party moving on notice for an order for entry of any proceedings in the Construction List shall, as far as practicable, move at the same time for such other directions and orders relating to the conduct of the proceedings as he may require.

## **7 Order for entry in list**

The Court may of its own motion direct that any proceedings which may under rule 3 be entered in the Construction List be so entered.

## **8 Directions**

- (1) Where a Judge makes an order, on motion, for the entry of any proceedings in the Construction List, the proceedings shall thereupon be before him for directions under this rule.
- (2) Where any proceedings are entered in the Construction List under rule 4 or 5, the registrar shall, as soon as convenient, list the proceedings before a Judge (appointed by the Chief Judge for the control of proceedings in the Construction List) for directions under this rule, and shall advise the parties of the listing.
- (3) Where any proceedings are before a Judge for directions under this rule, the Judge may give such directions as he thinks fit concerning the preparation of the proceedings for trial, the conduct of the trial, and the adducing of evidence at or before the trial.
- (4) Without limiting the generality of subrule (1), directions which may be given under that subrule include directions as to the times within which, and the modes in which, particulars are to be given, lists of documents are to be prepared and exchanged, documents are to be inspected, and Scott Schedules are to be served and completed.
- (5) A direction given under this rule, 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 Court.



## **9 Removal from list**

- (1) Where any proceedings are entered in the Construction List, the Court, on the application of a party or of its own motion, may, if it is satisfied that it is proper to do so, order, on terms, that the proceedings be removed from that list, and may give such further directions as to the continuance of the proceedings as it thinks fit.
- (2) Notice of motion for an order under subrule (1) shall be filed and served before the proceedings are before a Judge for directions under rule 8.

## **Part 24B Commercial List**

### **1 Commercial List**

The registrar for Sydney shall keep a Commercial List, and shall enter proceedings in that List in accordance with this Part.

### **2 Proceedings for entry in List**

There may, subject to this Part, be entered in the Commercial List any proceedings which:

- (a) are not proceedings for trial by a jury or proceedings on a claim for damages in respect of the death of, or personal injuries to, any person,
- (b) are not proceedings which may be entered in the Building and Engineering List, and
- (c) are proceedings:
  - (i) arising out of commercial transactions, or
  - (ii) in which there is an issue that has importance in trade or commerce.
- (d) (Repealed)

### **3 Entry in List on commencement of proceedings**

- (1) Where, in proceedings which may under rule 2 be entered in the Commercial List, a plaintiff on his statement of claim, or a defendant on the notice of the grounds of his defence, requires the proceedings to be so entered, the proceedings shall be so entered without any order of the Court.
- (2) A requirement under subrule (1) shall be made by a party adding "Commercial List" next under the heading and title on his statement of claim or the notice of the grounds of his defence, as the case may require.

### **4 Entry in List by consent**

Unless the Court otherwise orders, proceedings which may under rule 2 be entered in the Commercial List shall be so entered on the filing, after a notice of grounds of defence has been filed, of a consent order for that entry.

## **5 Motion for entry in List**

- (1) A plaintiff, or a defendant who has filed notice of the grounds of his defence in any proceedings, may move for entry of the proceedings in the Commercial List at any time after a notice of grounds of defence has been filed.
- (2) A motion mentioned in subrule (1) shall be returnable before a Judge appointed by the Chief Judge for the control of proceedings in the Commercial List.
- (3) A party moving on notice for an order for entry of any proceedings in the Commercial List shall, as far as practicable, move at the same time for such other directions and orders relating to the conduct of the proceedings as he may require.

## **6 Order for entry in List**

The Court may of its own motion direct that any proceedings which may under rule 2 be entered in the Commercial List be so entered.

## **7 Directions**

- (1) Where a Judge makes an order under rule 5 for the entry of any proceedings in the Commercial List, the proceedings shall thereupon be before him for directions under this rule.
- (2) Where any proceedings are entered in the Commercial List under rule 3, 4 or 6, the registrar shall, as soon as convenient, list the proceedings before a Judge (appointed by the Chief Judge for the control of proceedings in the Commercial List) for directions under this rule, and shall advise the parties of the listing.
- (3) Where any proceedings are before a Judge for directions under this rule, the Judge may give such directions as he thinks fit concerning the preparation of the proceedings for trial, the conduct of the trial, and the adducing of evidence at or before the trial.
- (4) Without limiting the generality of subrule (1), directions which may be given under that subrule include directions as to the times within which, and the modes in which, particulars are to be given, lists of documents are to be prepared and exchanged, documents are to be inspected, and interrogatories are to be administered and answered.
- (5) A direction given under this rule, 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 Court.

## **8 Removal from List**

- (1) Where any proceedings are entered in the Commercial List, the Court on the application of a party or of its own motion, may, if it is satisfied that it is proper to do

so, order, on terms, that the proceedings be removed from that List, and may give such further directions as to the continuance of the proceedings as it thinks fit.

- (2) Notice of motion for an order under subrule (1) shall be filed and served before the proceedings are before a Judge for directions under rule 7.
- (3) Without limiting the generality of subrule (1), the Court shall under that subrule order that proceedings be removed from the Commercial List if it is of the opinion that the proceedings are not proceedings which may under rule 2 be entered in that List.

## **Part 24C Motor accident claims**

### **Division 1 Actions under the [Motor Accidents Act 1988](#)**

#### **1 Interpretation**

- (1) In this Division, ***action under the Act*** means proceedings commenced on or after 1 July 1992 in respect of a claim within the meaning of Part 5 of the [Motor Accidents Act 1988](#).
- (2) This Division applies to an action under the Act notwithstanding anything in these Rules other than this Division.

#### **2 Motor accident claims**

- (1) (Repealed)
- (2) The statement of claim in an action under the Act shall have attached to it as a separate document:
  - (a) a statement of the date on which the accident the subject of the action occurred,
  - (b) a statement that the accident was reported in compliance with section 42 of the [Motor Accidents Act 1988](#), or an indication of what explanation will be offered to the Court for non-compliance,
  - (c) a statement that a claim was made in respect of the accident in compliance with section 43 of that Act, or an indication of what explanation will be, or has been, provided under section 43A of that Act, and
  - (d) where the action is commenced before the time prescribed by section 52 (1A) of that Act, an indication of the grounds on which the plaintiff relies as referred to in section 52 (2) of that Act, and
  - (e) where the action is commenced after the time prescribed by section 52 (4) of that Act, a statement that leave of the Court has been granted as referred to in that subsection.

(3) (Repealed)

### 3 Service of statement of claim (by post or otherwise)

- (1) The statement of claim in an action under the Act shall be served on the defendant and the defendant's insurer.
- (2) Service of a statement of claim in an action under the Act may be effected as though the statement of claim were a notice or other document referred to in section 133 of the *Motor Accidents Act 1988*.
- (3) The requirement in subrule (1) for service on the defendant's insurer is satisfied by service:
  - (a) where the defendant is the Nominal Defendant under the *Motor Accidents Compensation Act 1999*—on the Nominal Defendant,
  - (b) where the defendant is an insured person for the purposes of that Act—on the defendant's third party insurer, or
  - (c) where the defendant is insured, in respect of the liability alleged in the action, under a policy issued other than in New South Wales—on the insurer who issued the policy.

### 4-7 (Repealed)

### 8 Non-compliance with Act

A defendant may not move the Court to dismiss an action under the Act on the ground that:

- (a) the accident the subject of the action was not reported in compliance with section 42, or
- (b) (Repealed)
- (c) the action was commenced outside a relevant time period as prescribed by operation of section 52,

of the *Motor Accidents Act 1988* unless the defendant so moves within 2 months after service on the defendant's insurer of the statement of claim in the action.

## Division 2 Actions under the *Motor Accidents Compensation Act 1999*

### 9 Interpretation

- (1) In this Division, **action under the Act** means proceedings in respect of a claim to which Chapter 4 of the *Motor Accidents Compensation Act 1999* applies.
- (2) This Division applies to an action under the Act despite anything in these Rules other

than this Division.

#### **10 (Repealed)**

#### **11 Statement of claim**

The statement of claim in an action under the Act must have attached to it as a separate document:

- (a) a statement of the date on which the accident the subject of the action occurred, and
- (b) a statement that the accident was reported in compliance with section 70 of the *Motor Accidents Compensation Act 1999*, and
- (c) a statement that the claim is made in respect of the accident in compliance with section 72 of that Act or an indication of what explanation will be, or has been, provided under section 73 of that Act, and
- (d) a statement that a certificate in respect of the claim has been issued under section 92 or 94 of that Act and as to the provision under which that certificate was issued, and
- (e) where the action is commenced after the time prescribed by section 109 of that Act—a statement that leave of the Court has been granted as referred to in that section.

#### **12 Service of statement of claim**

- (1) The statement of claim in an action under the Act must be served on the defendant and, where the defendant's insurer is a third-party insurer within the meaning of the *Motor Accidents Compensation Act 1999*, on the defendant's insurer.
- (2) Service of a statement of claim in an action under the Act may be effected as though the statement of claim were a notice or other document referred to in section 222 of the *Motor Accidents Compensation Act 1999*.
- (3) The requirement in subrule (1) for service on the defendant's insurer is satisfied by service:
  - (a) where the defendant is the Nominal Defendant under the *Motor Accidents Compensation Act 1999*—on the Nominal Defendant, or
  - (b) where the defendant is insured in respect of the liability alleged in the action under a policy issued other than in New South Wales—on the insurer who issued the policy.

#### **13 Non-compliance with Act**

A defendant may not move the Court to dismiss an action under the Act on the ground that the accident the subject of the action was not reported as referred to in section 70 of

the [Motor Accidents Compensation Act 1999](#) unless the defendant so moves within 2 months after service of the statement of claim in the action on:

- (a) where the defendant is a third-party insurer—the insurer, or
- (b) where the defendant’s insurer is not a third-party insurer—the defendant.

## **Part 24D Coal Miners’ Workers Compensation List**

### **Division 1 Proceedings generally**

#### **1 Actions under the Workers Compensation Acts**

(1) In this Part:

**action under the Acts** means proceedings commenced under the 1926 Act, the 1987 Act and the 1998 Act.

**List** means the Coal Miners’ Workers Compensation List.

**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](#).

- (2) This Division applies to an action under the Acts whether commenced in this 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.

#### **1A Commencement of proceedings**

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

#### **2 Coal Miners’ Workers Compensation List**

- (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 action under the Acts as soon as the action is commenced or transferred under section 7 (1) (a) of the [Compensation Court Repeal Act 2002](#).
- (2) The statement of claim in an action 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 an action 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 an action 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) An action under the Acts, and any proceedings ancillary to such action, may be set down for hearing at any proper place.

### **3 Functions of the registrar**

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.

### **4 Compliance with statutory restrictions on commencement of proceedings under the 1998 Act**

- (1) This rule is made pursuant to section 104 of the 1998 Act.
- (2) This rule 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 subrule (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 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 rule apply with all necessary modifications in respect of the proposed application against such added party or parties.

### **5 Particular proceedings commenced by summons**

- (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,
  - (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 24E,
  - (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 subrule (1), such application shall be made by notice of motion in the proceedings.

**6 Affidavits in support of summons under section 53 of the 1987 Act**

- (1) A summons for an order pursuant to rule 5 (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 subrule (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,
  - (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.

## **7 Applications for contribution, indemnity or apportionment**

- (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 subrule (1), proceedings shall be commenced by statement of claim.

## **8 Application for further medical expenses etc**

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

## **9 Application for suspension of weekly payment**

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.

## **10 Uninsured Liability and Indemnity Scheme**

- (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 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.

## **11 Applications in the case of death of worker**

- (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 subrule (2) (b):
- (a) the personal representative (if any) of the worker, and any person referred to in subrule (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 Court may give directions for the apportionment of that amount.

## **12 Service on insurer**

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.

## **13 Service on WorkCover Authority**

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.

## **14 Submission to award**

- (1) (Repealed)
- (2) 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.

- (3) 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 subrule (2), the registrar shall cause the proceedings to be listed before the Court, and the Court may make such award or give such directions as to it may appear proper.
- (4) If notice under subrule (3) is not filed and served within 28 days after the service of notice under subrule (2) the proceedings shall be continued as though the notice under subrule (2) had not been filed.
- (5) If proceedings are continued under subrule (4), before the record of the proceedings is brought before the Court for any hearing of the proceedings, the registrar shall seal within the record the notice filed under subrule (2) and any information contained in the record in respect of that notice, but the 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.

## **15 Offer of compromise**

The provisions of Division 4 of Part 20 of the *Uniform Civil Procedure Rules 2005* do not have application to proceedings entered in the Coal Miners' Workers Compensation List.

## **16 Schedule of earnings**

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 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 of the *Uniform Civil Procedure Rules 2005*, 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.

## **17 Proceedings deemed dismissed**

- (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 mentioned in subrule (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 Court during any period of 6 months, the proceedings are, unless the 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 subrules (1) and (2).

#### **18 Dismissal of proceedings**

- (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 rule, the 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 subrule (1) the 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 subrule, the proceedings may be reinstated upon such terms and conditions as to costs and the priority of the hearing of the proceedings as the Court thinks fit.
- (3) Subrule (2) applies except where otherwise provided in section 112 of the 1998 Act.

#### **19 Medical examination**

- (1) Except by leave of the Court, which may be given on terms, or consent of the worker, a notice shall not be given under rule 23.2 of the *Uniform Civil Procedure Rules 2005* requesting that a worker submit to examination:
  - (a) by a medical expert specializing 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 for the purposes of section 119 of the 1998 Act is not an examination by a medical expert for the purposes of subrule (1).

## **20 Expert evidence and hospital reports**

- (1) In this rule **expert's report** and **hospital report** have the same meaning as in rule 31.18 of the *Uniform Civil Procedure Rules 2005* and **party** includes any person who has filed a notice of appearance or notice of grounds of defence.
- (2) This rule 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 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 subrule (3), or an order is made under subrule (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 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 subrule (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 mentioned in subrule (6) shall as soon as practicable inform all other parties to the proceedings that he 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 subrule (3) or an order is made under subrule (2), the report is admissible.
- (10) In reckoning the period of 28 days referred to in subrule (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.

(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 subrule (3).

## **21 (Repealed)**

## **22 Discontinuance**

(1) A party may discontinue proceedings so far as concerns the whole or any part of any claim made by him:

(a) if no preliminary advice of hearing has been issued in the proceedings—without leave of the 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 Court.

(2) Application for the leave of the Court as mentioned in subrule (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 Court for another purpose—orally, or

(b) if made otherwise—by motion.

## **23 Settling of awards**

(1) Where the 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**

### **24 Referral**

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.

## **25 General powers of a conciliator**

- (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,
  - (b) determine whether to hold a conference or return the matter to the registrar,
  - (c) direct the production of any document by any party to proceedings,
  - (d) generally control any proceedings before the conciliator, and
  - (e) do such other things as the rules specifically provide or the Court otherwise directs.
- (2) The conciliator may, if the conciliator thinks fit, on terms dispense with compliance with any of the requirements of the rules under this Part, either before or after the occasion for the compliance arises.

## **26 Directions**

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,
- (b) a direction to a party to lodge further documents with the conciliator,
- (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.

## **27 Conciliation conference procedure**

- (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
  - (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 Court.

## **28 Conduct of a conciliation conference**

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,
  - (ii) narrow the issues in dispute and obtain appropriate concessions,
  - (iii) reach a settlement of the matter, and
  - (iv) record details of any settlement.

## **29 Confidentiality**

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

- (a) with the consent of the parties,
- (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.

## **30 Dismissal of proceedings**

- (1) The conciliator may, if the conciliator thinks fit, dismiss any proceedings if:
  - (a) no party appears, or
  - (b) a defendant does, but the plaintiff does not, appear.
- (2) The conciliator or the Court may, on application by a party and on terms, restore any proceedings dismissed under subrule (1).

## **31 Conciliation notifications**

- (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.

## **32 Guidelines**

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

## **Part 24E Medical panel procedures**

### **1 Definitions**

In this Part:

**the 1987 Act** means the [Workers Compensation Act 1987](#).

**the 1998 Act** means the [Workplace Injury Management and Workers Compensation Act 1998](#).

### **1A Transferred applications**

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.

### **2 Application for reference**

- (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:
  - (a) where any respondent to the application objects to the reference applied for that respondent may, within 21 days from the date of the notice, request that the application be listed before the registrar for argument and determination,
  - (b) any such request shall be made in accordance with Part 24D rule 5 (1) (i), and
  - (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.

### **3 Order for report**

Where an order is made by the 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.

### **4 Reports for medical panels**

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.

### **5 Certificate**

- (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 24F Special Statutory Compensation List**

### **1 Actions under the Special Statutory Compensation Act**

- (1) In this Part:

**action** includes appeal and application.

**action under the Acts** means proceedings under the:

- (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*, sections 16 and 30, or
- (e) *Workers' Compensation (Dust Diseases) Act 1942*, section 8I.

**List** means the Special Statutory Compensation List.

- (2) This Part applies to an action under the Acts whether commenced in this 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.

### **1A Commencement of proceedings**

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

### **2 Special Statutory Compensation List**

- (1) The registrar for Sydney shall maintain a Special Statutory Compensation List and shall enter into that List any action under the Acts as soon as the action is commenced or transferred under section 7 (1) (a) of the *Compensation Court Repeal Act 2002*.
- (2) The statement of claim in an action 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 an action 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) An action under the Acts, and any proceedings ancillary to such action, may be set down for hearing at any proper place.

### **3 Directions**

- (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 rule, and shall advise the parties of the listing.
- (2) Where any proceedings are before a Judge for directions under this rule, 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 subrules (1) and (2), directions which may be given under this rule 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 rule, 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 Court.

(5) In this rule:

**document** includes an affidavit or statement of evidence and experts' reports (including any made by a medical practitioner).

#### **4 Expert evidence and hospital reports**

The provisions of Division 2 of Part 31 of the *Uniform Civil Procedure Rules 2005* 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 of the *Uniform Civil Procedure Rules 2005* must inform the 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.

#### **5 Oral expert evidence**

- (1) Unless the 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 rule 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.

#### **6 Settling of orders**

- (1) Where the 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, and as soon as practicable cause a copy to be forwarded to each party to the proceedings.

### **Part 25**

#### **1-21 (Repealed)**

### **Part 26 Trial**

#### **1A (Repealed)**

**1 Examination under section 66A of the *Motor Accidents Act 1988* or section 119 of the *Motor Accidents Compensation Act 1999***

- (1) The following applications to the Court must be made on notice of motion before the day on which the proceedings commence to be heard unless the Court in special circumstances otherwise orders:
  - (a) an application under section 66A (1) of the *Motor Accidents Act 1988* or an application for leave under section 66A (3) or (4) of that Act,
  - (b) an application under section 119 (1) of the *Motor Accidents Compensation Act 1999* or an application for leave under section 119 (3) or (4) of that Act.
- (2) A notice of motion referred to in subrule (1) must be served on all parties to the proceedings (other than the applicant) and, if the witness sought to be examined or cross-examined is not a party, on the witness.
- (3) The Court may order that, on the hearing of an application referred to in subrule (1) or on the hearing of proceedings after such an application is granted, any owner or driver who is a party to the proceedings, and any witness who is the subject of leave sought or given under section 66A of the *Motor Accidents Act 1988* or section 119 of the *Motor Accidents Compensation Act 1999*, may be separately represented.
- (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.

**2-10 (Repealed)**

**Parts 27-28B**

**(Repealed)**

**Part 28C Court appointed referral for legal assistance**

**1 Objectives**

- (1) In the interpretation of this Part, preference must be given to a construction that will promote, and be consistent with, the purpose in subrule (2) and the statements in subrules (3) and (4).
- (2) The purpose of this Part is to facilitate, where it is in the interests of the administration of justice, the provision of legal assistance to litigants who are otherwise unable to obtain assistance.
- (3) The provision of legal assistance under this Part is not intended to be a substitute for

legal aid.

- (4) A referral under this Part is not an indication that the Court has formed an opinion on the merits of a litigant's case.
- (5) Nothing in this Part requires the Court to make a referral, or to consider a litigant's case for referral, under this Part.

## 2 Interpretation

In this Part:

**litigant**, in proceedings, means a person who is a party to the proceedings or who has been served with a subpoena in the proceedings or who has applied to be joined in the proceedings.

**Pro Bono Panel** means a list of barristers and solicitors referred to in rule 3.

**registrar**, in relation to any proceedings, means the registrar for the proper place in relation to the proceedings.

**scheme** means the scheme for the provision of legal assistance to litigants under this Part.

## 3 Pro Bono Panel

The registrar for a proclaimed place may maintain a list of persons:

- (a) who are barristers or solicitors, and
- (b) who have agreed to participate in the scheme.

## 4 Referral to a barrister or solicitor

- (1) The Court may, if it is in the interests of the administration of justice, refer a litigant to a registrar for referral to a barrister or solicitor on a Pro Bono Panel for legal assistance.
- (2) For the purposes of subrule (1), the Court may take into account:
  - (a) the means of the litigant, and
  - (b) the capacity of the litigant to obtain legal assistance outside the scheme, and
  - (c) the nature and complexity of the proceedings, and
  - (d) any other matter that the Court considers appropriate.
- (3) The power to refer may be exercised in the absence of the public and without any attendance by or on behalf of any person.

- (4) A referral to a registrar is effected by the issue of a Referral Certificate in the approved form in relation to the litigant.
- (5) If a Referral Certificate has been issued, a registrar must attempt to arrange for the legal assistance mentioned in the certificate to be provided to the litigant by a barrister or solicitor on a Pro Bono Panel.
- (6) A registrar may refer a litigant to a particular barrister or solicitor only if the barrister or solicitor has agreed to accept the referral.
- (7) A referral to a barrister does not prevent a referral also being made to a solicitor and a referral to a solicitor does not prevent a referral also being made to a barrister.

## **5 Kind of assistance**

A referral may be made for the following kinds of assistance:

- (a) advice in relation to the proceedings,
- (b) representation on directions hearing, interlocutory or final hearing, arbitration or mediation,
- (c) drafting or settling of documents to be filed or used in the proceedings,
- (d) representation generally in the conduct of the proceedings or of part of the proceedings.

## **6 Provision of assistance by barrister or solicitor**

Subject to rule 7, if a barrister or solicitor agrees to accept a referral, he or she must provide legal assistance to the litigant in accordance with the referral.

## **7 Cessation of assistance**

- (1) A barrister or solicitor who has agreed to accept a referral may cease to provide legal assistance to the litigant only:
  - (a) in the circumstances set out in any practice rules governing professional conduct that apply to the barrister or solicitor, or
  - (b) with the written agreement of the litigant, or
  - (c) with the leave of a registrar.
- (2) If a barrister or solicitor ceases to provide legal assistance to a litigant, the barrister or solicitor must inform a registrar in writing within 7 days of so ceasing.

## **8 Application for leave**

- (1) An application by a barrister or solicitor to a registrar for leave to cease to provide

legal assistance must be in writing and must briefly state the reasons for the application.

- (2) A copy of the application for leave must be served on the litigant.
- (3) An application for leave may be heard by a registrar in the absence of the public and without any attendance by or on behalf of any person.
- (4) In deciding whether to grant leave under this rule, a registrar must consider:
  - (a) whether the barrister or solicitor would be likely to be able to cease to provide legal assistance to the litigant under any practice rules governing professional conduct that apply to the barrister or solicitor, and
  - (b) any conflict of interest that the barrister or solicitor may have, and
  - (c) whether there is a substantial disagreement between the barrister or solicitor and the litigant in relation to the conduct of the litigation, and
  - (d) any view of the barrister or solicitor:
    - (i) that the litigant's case is not well founded in fact or law, or
    - (ii) that the litigant's prosecution of the litigation is an abuse of process, and
  - (e) whether the barrister or solicitor lacks the time to provide adequate legal assistance to the litigant because of other professional commitments, and
  - (f) whether the litigant has refused or failed to pay any disbursements requested under rule 10, and
  - (g) whether it is unfair to the barrister or solicitor to require him or her to continue to provide legal assistance under the scheme, and
  - (h) any other matter that the registrar considers relevant.
- (5) An application for leave under this rule and any related correspondence:
  - (a) is confidential, and
  - (b) is not part of the proceedings in relation to which the referral was made, and
  - (c) does not form part of the Court file in relation to those proceedings.

## **9 Costs**

- (1) Subject to subrules (2) and (3) and rule 10, a barrister or solicitor who provides legal assistance to a litigant under the scheme must not seek or recover any costs for the legal assistance.



- (2) If an order for costs is made in favour of a litigant who is assisted under the scheme, the barrister or solicitor who has provided the legal assistance is entitled to recover the amount of costs that another person is required to pay under the order.
- (3) A barrister or solicitor must account to the litigant for any money received by the barrister or solicitor in respect of disbursements that were paid by the litigant.

## **10 Disbursements**

A barrister or solicitor who provides legal assistance to a litigant under the scheme may request the litigant to pay any disbursements reasonably incurred, or reasonably to be incurred, by the barrister or solicitor on behalf of the litigant in connection with the legal assistance.

## **Parts 29–39A**

**(Repealed)**

## **Part 39B Costs in Coal Miners' Workers Compensation List and Special Statutory Compensation List matters**

### **1 Application**

- (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 the 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 Act,
  - (b) the Workers Compensation Acts and the regulations made under those Acts,
  - (c) a Special Statutory Compensation Act and the regulations made under that Act, or
  - (d) the *Legal Profession Act 1987* and the regulations made under that Act.

### **2 Interpretation**

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.

### **3 Time for dealing with costs**

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.

### **4 Worker's costs**

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

### **5 Redemption cases**

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 worker, the employer shall, unless the Court otherwise orders, pay the costs of the worker of the proceedings whatever be the result of the proceedings.

### **6 Costs where other proceedings**

Where in any proceedings a worker 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 worker.

### **7 Assessed costs and other provisions**

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

### **8 Preliminary discovery**

The Court may in any action require any person to pay the costs of a party to the action of proceedings under Part 5 of the *Uniform Civil Procedure Rules 2005* in respect of that

action including payments of conduct money and payments on account of expenses and loss under that Part.

#### **9 Agreement as to costs**

- (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 subrule (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.

#### **10 Agreement as to part of costs**

- (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 subrule (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.

#### **11 When costs payable**

- (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.

#### **12 Party and party basis**

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

#### **13 Indemnity basis**

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.

#### **14 Costs order to confirm earlier costs orders**

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.

## **Parts 40-43**

**(Repealed)**

## **Part 43A Judicial Registrar**

### **Division 1 General**

#### **1 Powers of the Judicial Registrar**

- (1) For the purposes of section 18FB (1) of the Act, all of the powers of the Court are conferred on the Judicial Registrar other than:
  - (a) any of the powers of the Court in its criminal jurisdiction, or
  - (b) the power of the Court to deal with contempt of Court.
- (2) Subrule (1) (b) does not prevent the Judicial Registrar from reporting to the Court constituted by a Judge any allegation of contempt of the Court.

**2-4 (Repealed)**

### **Division 2**

**5-12 (Repealed)**

## **Parts 44-46**

**(Repealed)**

## **Part 47 Documents**

**1 (Repealed)**

#### **2 Forms**

- (1) (Repealed)
- (2) The Chief Judge may from time to time cause to be published forms approved for use in the Court, and all documents filed in any proceedings shall be in forms similar to the forms so approved where those forms are applicable, and where no approved form is applicable to any document the document shall be framed to the satisfaction of the registrar.

cf DCR r 442.

- (3) Subrule (2) authorises the publication of a form only if no form for the same purpose has been approved by the Uniform Rules Committee under section 17 of the *Civil*

*Procedure Act 2005.*

**3-10 (Repealed)**

**Part 48**

**1-5 (Repealed)**

**Part 49 Defamation**

**Division 1**

**1-7 (Repealed)**

**Division 2 Publication after [Defamation Act 1974](#)**

**8 Application** SCR Pt 67, r 9.

This Division applies to proceedings for defamation in respect of matter published after the commencement of the [Defamation Act 1974](#).

**9 Interpretation** SCR Pt 67, r 10.

- (1) In this Division, unless the context or subject-matter otherwise indicates or requires, **defence** includes any matter of privilege, protection, justification or excuse.
- (2) In this Division, **imputation in question**, in relation to any defence, means the imputation as to which the defence is pleaded.

**10 Statement of claim** SCR Pt 67, r 11.

- (1) A statement of claim shall not include any allegation that the matter complained of or its publication was false, malicious or unlawful.
- (2) A statement of claim:
  - (a) shall, subject to subrule (3), specify each imputation on which the plaintiff relies, and
  - (b) shall allege that the imputation was defamatory of the plaintiff.
- (3) A plaintiff shall not rely on two or more imputations alleged to be made by the defendant by means of the same publication of the same report, article, letter, note, picture, speech or thing, unless the imputations differ in substance.
- (4) Subject to rule 11 (c), a statement of claim need not show how the matter complained of bore the sense of any imputation on which the plaintiff relies.

**11 Particulars: publication and innuendo** SCR Pt 67, r 12.

The particulars required by rule 15.1 of the *Uniform Civil Procedure Rules 2005* in relation to a statement of claim shall include:

- (a) particulars of any publication on which the plaintiff relies to establish his cause of action, sufficient to enable the publication to be identified,
- (b) particulars of any publication, circulation or distribution of the matter complained of or copy of the matter complained of on which the plaintiff relies on the question of damages, sufficient to enable the publication, circulation or distribution to be identified,
- (c) where the plaintiff alleges that the matter complained of had a defamatory meaning other than its ordinary meaning, particulars of the facts and matters on which he relies to establish that defamatory meaning, and
- (d) where the plaintiff intends to allege that damages are affected by reason of conduct of the defendant or any other thing which occurs after the publication complained of, he shall give particulars of the facts and matters on which he relies to establish that allegation and stating that intention.

**12 Defence generally** SCR Pt 67, r 13.

- (1) Subject to rules 13 to 16, a defendant shall plead any defence specifically.
- (2) Where a plaintiff relies on two or more alleged defamatory imputations, a defence shall specify to what alleged imputation or imputations it is pleaded.

**13 Truth generally** SCR Pt 67, r 14.

Subject to rule 12 (2), a defence under section 15 (2) of the *Defamation Act 1974* is sufficiently pleaded if it alleges:

- (a) that the imputation in question was a matter of substantial truth, and
- (b) either:
  - (i) that the imputation in question related to a matter of public interest, or
  - (ii) that the imputation in question was published under qualified privilege.

**14 Truth: contextual imputations** SCR Pt 67, r 15.

Subject to rule 12 (2), a defence under section 16 of the *Defamation Act 1974* is sufficiently pleaded if it:

- (a) alleges either:
  - (i) that the imputation in question related to a matter of public interest, or

- (ii) that the imputation in question was published under qualified privilege,
- (b) specifies one or more imputations on which the defendant relies as being contextual to the implication in question,
- (c) as to each imputation on which he so relies:
  - (i) alleges either that it related to a matter of public interest or that it was published under qualified privilege, and
  - (ii) alleges that it was a matter of substantial truth, and
- (d) alleges that, by reason that the imputations on which he so relies are matters of substantial truth, the imputation in question did not further injure the reputation of the plaintiff.

**15 Qualified privilege** SCR Pt 67, r 16.

- (1) This rule applies:
  - (a) to a defence under Division 4 of Part 3 of the *Defamation Act 1974*, and
  - (b) subject to subrule (2), to any other defence of qualified privilege.
- (2) This rule does not apply to a defence under Division 5, 6 or 7 of Part 3 of the *Defamation Act 1974*.
- (3) Subject to rule 12 (2), a defence is sufficiently pleaded if it alleges that the imputation in question was published under qualified privilege.

**16 Comment** SCR Pt 67, r 17.

- (1) This rule applies to a defence under Division 7 of Part 3 of the *Defamation Act 1974*.
- (2) Subject to rule 12 (2), a defence is sufficiently pleaded if it:
  - (a) either:
    - (i) alleges that the imputation in question was comment based on proper material for comment and upon no other material, or
    - (ii) alleges that the imputation in question was comment based to some extent on proper material for comment and represented an opinion which might reasonably be based on that material to the extent to which it was proper material for comment,
  - (b) alleges that the imputation in question related to a matter of public interest, and
  - (c) either:
    - (i) alleges that the imputation in question was the comment of the defendant,

- (ii) alleges that the imputation in question was the comment of a servant or agent of the defendant, or
  - (iii) alleges that the imputation in question was not, and in its context and in the circumstances of the matter complained of did not purport to be, the comment of the defendant or of any servant or agent of his.
- (3) The particulars required by rule 15.1 of the *Uniform Civil Procedure Rules 2005* shall include:
- (a) particulars identifying the material upon which it is alleged that the imputation in question was comment and identifying to what extent that material is alleged to be proper material for comment, and
  - (b) as to material alleged to be proper material for comment, particulars of the facts and matters on which the defendant relies to establish that allegation.
- (4) Subrule (3) (b) does not extend to particulars of the facts and matters on which the defendant relies to establish that any material was true or was a matter of substantial truth.
- (5) Where a defendant relies on a defence under section 33 of the *Defamation Act 1974*, the particulars required by rule 15.1 of the *Uniform Civil Procedure Rules 2005* shall include particulars identifying the servant or agent of the defendant whose comment the imputation in question is alleged to be.
- (6) Subrules (3), (4) and (5) do not limit the operation of rule 17.

**17 Particulars of defence** SCR Pt 67, r 18.

- (1) The particulars of defence required by rule 15.1 of the *Uniform Civil Procedure Rules 2005* shall include particulars of the facts and matters on which the defendant relies to establish that:
- (a) any imputation or material was or related to a matter of public interest, or
  - (b) any imputation was published under qualified privilege.
- (2) Where a defendant intends to make a case in mitigation of damages by reference to:
- (a) the circumstances in which the publication complained of was made,
  - (b) the character of the plaintiff,
  - (c) any apology for, or explanation or correction or retraction of, any imputation complained of, or
  - (d) any recovery, proceedings, receipt or agreement to which section 48 of the *Defamation Act 1974* applies,



he shall give particulars of the facts and matters on which he relies to make that case.

- (3) Where a defendant intends to show, in mitigation of damages, that any imputation complained of was true or was a matter of substantial truth, he shall give particulars identifying the imputation and stating that intention.
- (4) The particulars required by subrules (2) and (3) shall be set out in the defence or, if that is inconvenient, shall be set out in a separate document referred to in the defence and that document shall be filed and served with the defence.
- (5), (6) (Repealed)

**18 Malice etc: particulars** cf SCR Pt 67, r 19.

Where a plaintiff intends to meet any defence:

- (a) by alleging that the defendant was actuated by express malice in the publication of the matter complained of, or
  - (b) by relying on any matter which, under the *Defamation Act 1974*, defeats the defence,
- the plaintiff shall, within such reasonable time as the circumstances of the case allow, file and serve a notice of the allegation or matter of defeasance, and include in the notice particulars of the facts and matters on which he relies to establish any such allegation or matter of defeasance.

**19 Statement in open Court** SCR Pt 67, r 21.

Where:

- (a) (Repealed)
- (b) proceedings for defamation are settled,

a party may, with the leave of the Court, make in open Court a statement approved by the Court in private.

**20 Offer of amends; determination of questions** SCR Pt 67, r 22.

The Court may hear an application and determine any question pursuant to section 39 of the *Defamation Act 1974* in the absence of the public.

**Parts 50-51A**

**(Repealed)**

**Part 51B Commercial Arbitration Act 1984**

## 1 Interpretation

In this Part:

**arbitrator** includes an umpire.

**subject Act** means the *Commercial Arbitration Act 1984*.

## 2 Commencement of applications under the subject Act

- (1) Proceedings on an application, other than an application for the issue of a subpoena, under the subject Act shall be commenced by summons.
- (2) Application for the issue of a subpoena under section 17 of the subject Act shall be made by producing the subpoena to the registrar in duplicate.

## 3 Interlocutory orders

In proceedings on an application for an order under section 47 of the subject Act, the Court may refuse to make the order where the Court considers that the arbitrator has power to make the order.

## 4 Time for application

- (1) In this rule **material date** means:
  - (a) in respect of an award which, by agreement by the parties to the arbitration agreement, may be made with reasons later—the date on which notice of the reasons is given by the arbitrator to the person who wishes to apply to the Court, or
  - (b) in respect of any other award—the date on which notice of the award is given by the arbitrator to the person who wishes to apply to the Court.
- (2) Proceedings on an application to the Court for an order under section 42 or 43 of the subject Act shall be commenced within 28 days after the material date or within such extended time as the Court may fix.

## 5 Subpoenas

- (1) The *Uniform Civil Procedure Rules 2005* (except rules 31.20, 31.21, 31.22, 33.2 and 33.7) apply in relation to the issue of a subpoena under section 17 (1) of the subject Act as they apply in relation to the issue of a subpoena in proceedings in the Court.
- (2) A subpoena for production before an arbitrator may, with the leave of the Court or the arbitrator, require production on any day.
- (3) A subpoena requiring production of any document before an arbitrator shall, unless the Court otherwise orders, permit the person named to produce the document to a person, and at a place, nominated in writing by the arbitrator and stated in the

subpoena, by hand or by post, in either case so that the person nominated receives it not later than 2 days before the first date on which production before the arbitrator is required, instead of attending and producing it before the arbitrator.

- (4) Where a document is produced to the person nominated pursuant to subrule (3) the person nominated shall:
  - (a) if required to do so, give a receipt to the person producing the document, and
  - (b) produce the document as the nature of the case requires or as the arbitrator may direct.
- (5) Subrule (3) does not apply to so much of a subpoena as requires a person to attend to give evidence.

## **6 Leave to enforce award**

A party against whom an award is made under the subject Act shall be a defendant in any application to the Court under section 33 (1) of that Act for leave to enforce the award.

## **Part 51C**

### **1-4 (Repealed)**

## **Part 51D Property (Relationships) Act 1984, Family Provision Act 1982 and Testator's Family Maintenance and Guardianship of Infants Act 1916**

### **1 Property (Relationships) Act 1984**

The following rules of the *Supreme Court Rules 1970* apply to proceedings before the District Court under the *Property (Relationships) Act 1984* in the same way as they apply to proceedings before the Supreme Court:

- (a) Part 52, rule 24A (*De Facto Relationships Act 1984*),
- (b) Part 52, rule 24B (Orders for non-application of rules 24 and 24A),
- (c) Part 52A, rule 34 (*Property (Relationships) Act 1984*),
- (d) Part 52A, rule 35 (Orders for non-application of rules 33 and 34),
- (e) Part 77, Division 19 (*Property (Relationships) Act 1984*), rules 74–76A.

### **2 Family Provision Act 1982**

The following rules of the *Supreme Court Rules 1970* apply to proceedings before the District Court under the *Family Provision Act 1982* in the same way as they apply to proceedings before the Supreme Court:

- (a) Part 77, Division 16, rules 54–69 (*Family Provision Act 1982*),
- (b) Part 78, rule 5 (1) (n) (Powers of the registrar),
- (c) Part 78, rule 10 (Publication of notice of intended application),
- (d) Part 78, rule 11 (Delay),
- (e) Part 78, rule 25 (Evidence in support of application for administration),
- (f) Part 78, rule 25A (Evidence in support of application for administration by de facto wife or de facto husband),
- (g) Part 78, rule 26 (Evidence in support of application for administration with will annexed),
- (h) Part 78, rule 26A (Evidence in support of application for administration for the purposes only of the *Family Provision Act 1982*).

### **3 Testator's Family Maintenance and Guardianship of Infants Act 1916**

Part 77, Division 6, rules 22–31 (*Testator's Family Maintenance and Guardianship of Infants Act 1916*) of the *Supreme Court Rules 1970* apply to proceedings before the District Court under the *Testator's Family Maintenance and Guardianship of Infants Act 1916* in the same way as they apply to proceedings before the Supreme Court.

### **4 Documents**

If a rule of court of the Supreme Court referred to in rules 1, 2 or 3 requires a document to be in a form specified in Schedule F to the *Supreme Court Rules 1970* the document is to be in that form in proceedings in the District Court.

### **5 Modifications**

The forms contained in Schedule F to the *Supreme Court Rules 1970* apply with necessary modifications and to the extent that they are not inconsistent with the *District Court Act 1973*.

## **Part 52 Miscellaneous**

### **1, 2 (Repealed)**

### **3 Searches**

- (1) A party to any proceedings may search the file kept by the registrar in respect of the proceedings.

cf DCR r 17 (1).

- (2) A person other than a party to any proceedings, or the solicitor for the party, shall not

search the file kept by the registrar in respect of the proceedings except by leave of the Court or registrar.

cf DCR r 451.

(3) (Repealed)

(4) No person shall search any book of record kept by the registrar except by leave of the Court or registrar.

(5) Subrules (2) and (4) do not apply in respect of proceedings under section 134 (1) (c) of the Act.

### **3A “TFM” proceedings**

(1) When proceedings are commenced by a party under section 134 (1) (c) of the Act at a proclaimed place other than Sydney, such party shall as soon as practicable after filing the originating process lodge a copy with the registrar for Sydney.

(2) The registrar for Sydney shall keep a register of originating process filed in proceedings under section 134 (1) (c) of the Act in respect of all registries. Such register and any file recorded in such register may be searched by any person.

### **4 Waiver of appeal** cf DCR r 119.

An agreement shall come into effect for the purposes of section 129 of the Act:

(a) if a form of agreement is drawn up by either party, signed by both parties, and filed by either party, or

(b) if a party endorses on a pleading filed by him, or separately files and serves on the opposite party, a statement that he is willing to accept as final the ruling, order, direction or decision of the Court, and the opposite party endorses on a pleading filed by him in reply to the firstmentioned pleading, or separately files and serves on the firstmentioned party, a statement that he agrees to accept the ruling, order, direction or decision as final.

### **5 (Repealed)**

### **6 Removal of proceedings** DCR r 385.

(1) Where an application for an order of removal or prohibition relating to an action is granted or refused by the Supreme Court, the plaintiff shall as soon as practicable serve the registrar with a copy of the order granting or refusing the application.

(2) Where an order of removal or prohibition relating to any proceedings is made by the Supreme Court, the registrar shall, as soon as practicable after being served with a copy of the order, send by post or otherwise to the prothonotary the file kept by the registrar in respect of the proceedings.

**7 Affidavit of service of certain process** DCR r 422.

- (1) In this rule, **process** means any summons or order (but not a subpoena), whereby a person is called upon to attend before the Court or a registrar on a day named in the process, and **return-day** means the day so named.
- (2) Except where otherwise provided in the rules, where at noon on the day on which the registry is open for business most nearly preceding the return-day of any process:
  - (a) a person served with the process has filed no document in reply to the process, and
  - (b) no affidavit of service of the process on the person has been filed,the party at whose instance the process was served shall be deemed to have discontinued, as against that person, the proceedings initiated by the process.
- (3) The Court may if it thinks fit order on terms that any proceedings deemed to have been discontinued under subrule (2) may be continued.

**8 (Repealed)**

**9 Publication**

- (1) Except where otherwise provided, where notice of any matter is required by the Act or rules, or by any order of the Court, to be published, the notice shall be published in such newspaper or periodical as the Court or registrar shall direct.

cf DCR r 427.

- (2) The Court or registrar may also direct that the notice be published by email or facsimile, on the internet or by any other electronic means.

**10, 11 (Repealed)**

**12 Temporary injunctions**

The proclaimed places prescribed for the purposes of section 140 (5) and (6) of the Act are Campbelltown, Gosford, Liverpool, Penrith.

**13-17 (Repealed)**

**Part 53 Criminal procedure rules**

**1 Interpretation**

- (1) This Part applies only to proceedings in the criminal jurisdiction of the Court.
- (2) In this Part, **registrar** means registrar of the Court in its criminal jurisdiction, and, in relation to any proceedings, means the registrar for the proclaimed place at which the

proceedings are heard or to be heard.

## **2 Record of committal or appeal**

- (1) Where an accused person is committed for trial to the District Court sitting at a proclaimed place, the registrar of the Local Court at which the accused person was committed for trial shall as soon as practicable forward to the registrar for the proclaimed place a record containing the following information relating to the committal:
  - (a) the full name of the accused person and any other names recorded in the proceedings in the Local Court as names by which that person is also known,
  - (b) the date of birth and last known address of the accused person,
  - (c) whether the accused person is in custody or on bail,
  - (d) where known to the registrar, the full name, address and telephone number of any solicitor who acted for the accused person in the proceedings resulting in the committal,
  - (e) the full name and rank of the member of the police force responsible for the proceedings resulting in the committal, and his location,
  - (f) the short title of the offence for which the accused person was committed, and
  - (g) the location of the transcription centre to which the tapes of the proceedings resulting in the committal were sent for transcription.
  
- (2) Where an appellant lodges under section 14 (1) or (3) of the *Crimes (Local Courts Appeal and Review) Act 2001* a notice of appeal, or an application for leave to appeal, which is to be heard in the District Court sitting at a proclaimed place, the registrar of the Local Court at which was made the conviction or order, or was imposed the sentence, appealed against shall as soon as practicable forward to the registrar for the proclaimed place a record containing the following information relating to the appeal:
  - (a) the full name of the appellant and any other names recorded in the proceedings in the Local Court as names by which the appellant is also known,
  - (b) the date of birth and last known address of the appellant,
  - (c) whether the appellant is in custody or on bail,
  - (d) where known to the registrar, the full name, address and telephone number of any solicitor who acted for the appellant in the proceedings resulting in the conviction or, order or sentence,
  - (e) where the informant in the proceedings resulting in the conviction or order was:

- (i) a member of the police force—the full name and rank of the member of the police force responsible for those proceedings and his location, or
  - (ii) not a member of the police force—the full name and address of the informant, and, where he laid the information as the holder of an office, the title of that office,
- (f) the short title of the offence of which the appellant was convicted, and
- (g) the location of the transcription centre to which the tapes of the proceedings resulting in the conviction or, order or sentence were sent for transcription.

**2A Appeals under section 23 (1) of the [Crimes \(Local Courts Appeal and Review\) Act 2001](#)**

- (1) In this rule:

**appeal** means an appeal under section 23 (1) of the [Crimes \(Local Courts Appeal and Review\) Act 2001](#).

**respondent** in respect of an appeal means the person on whom the sentence appealed against was imposed.

- (2) An appeal shall be lodged by giving notice of the appeal in the approved form to the Registrar of the Local Court at the Downing Centre, Sydney.
- (3), (4) (Repealed)
- (5) The registrar of the Local Court at which was imposed the sentence appealed against shall, as soon as practicable after receiving notice of the appeal, forward to the registrar for the proclaimed place nearest to that Local Court a record containing the following information relating to the appeal:
- (a) the full name of the respondent and any other names recorded in the proceedings in the Local Court as names by which the respondent is also known,
  - (b) the date of birth and last known address of the respondent,
  - (c) whether the respondent is in custody or on bail,
  - (d) where known to the registrar, the full name, address and telephone number of any solicitor who acted for the respondent in the proceedings resulting in the sentence,
  - (e) where the informant in the proceedings resulting in the sentence was:
    - (i) a member of the police force—the full name and rank of the member of the police force responsible for those proceedings and his location, or
    - (ii) not a member of the police force—the full name and address of the informant,



and, where he laid the information as the holder of an office, the title of that office,

- (f) the short title of the offence in respect of which the respondent was sentenced, and
- (g) the location of the transcription centre to which the tapes of the proceedings resulting in the sentence were sent for transcription.

## **2B Notification of lodging of appeal**

- (1) The registrar of the Local Court who receives notice of an appeal, or an application for leave to appeal, lodged under section 14 (1) or (3) of the *Crimes (Local Courts Appeal and Review) Act 2001* shall immediately thereafter send notification of the lodging of the appeal or application to the Director of Public Prosecutions and the registrar for the proclaimed place at which the appeal or application is to be heard.
- (2) The registrar of the Local Court at the Downing Centre, Sydney shall, immediately after notice of an appeal under section 23 (1) of the *Crimes (Local Courts Appeal and Review) Act 2001* is given to him, send notification of the lodging of the appeal to the registrar for the proclaimed place at which the appeal is to be heard.

## **2C Registrar of Local Court to order transcript**

Where, consequent on any proceedings in a Local Court:

- (a) a person is committed for trial to the District Court,
  - (b) an appellant lodges under section 14 (1) or (3) of the *Crimes (Local Courts Appeal and Review) Act 2001* a notice of appeal or an application for leave to appeal, or
  - (c) the Director of Public Prosecutions lodges an appeal under section 23 (1) of that Act,
- the registrar of the Local Court shall as soon as practicable request preparation of a transcript of the proceedings.

## **3 Service of documents**

- (1) In this rule:

**copy** means a true copy of a document (including a notice of listing) to be served.

**party** means the person to be served with a document.

**service** means service of a document required or permitted by or under any Act or these rules or by any order of the Court to be served in the conduct of any proceedings.

- (2) Except where otherwise provided by or under any Act or these rules, service may be

effected:

- (a) on an accused person, appellant, or respondent to an appeal under section 23 (1) of the *Crimes (Local Courts Appeal and Review) Act 2001*—by a member of the police force or a Sheriff's Officer, or
  - (b) on any other person, by any person over the age of 16 years.
- (3) Service may be personal, but need not be personal unless required by the rules or any order.
  - (4) Personal service may be effected by delivering a copy to the party personally.
  - (5) A copy may be delivered to a person by handing it to him or by leaving it in his presence and informing him of its nature.
  - (6) Except where personal service is required, service may be effected by delivering a copy at the residence or place of business of the party, to a person apparently not less than 16 years old and apparently residing at that residence or employed at that place of business.
  - (7) It shall not be necessary to the regular service of any document that the original thereof be produced to any person.
  - (8) Where a solicitor acts for a party, service on the party may be effected by:
    - (a) delivering a copy to the solicitor,
    - (b) leaving a copy, addressed to the solicitor, at his office,
    - (c) sending a copy by post addressed to the solicitor at his office, or
    - (d) where the solicitor has an exchange box in a document exchange, in the State, of Australian Document Exchange Pty Limited—leaving a copy, addressed to the solicitor, in that exchange box or at another exchange box for transmission to that exchange box.
  - (9) Service on a party who is in custody at an institution may be effected by delivery of a copy at the institution to the officer in charge thereof.
  - (10) Service:
    - (a) (Repealed)
    - (b) by leaving a copy at an exchange box shall be deemed to be effected on a day 2 days after the copy is so left.

#### **4 Party in custody**

Where for the purposes of any proceedings:

- (a) a document is handed, or information or a request is conveyed, to the officer in charge of an institution for delivery to a party who is in custody at that institution, or
  - (b) a party who is in custody at an institution hands a document, or conveys information or a request, to the officer in charge of that institution for delivery to the registrar,
- the officer shall ensure that the document, information or request is so delivered as soon as practicable.

## **5 Representation**

- (1) A legal practitioner whose authority to act for a party in any proceedings has not been terminated by the party shall not, without the leave of the Court, cease to act for the party unless he has given reasonable notice of his intention to so cease to act to all parties to the proceedings, the registrar and the Criminal Listing Director.
- (2) An application for the leave of the Court as mentioned in subrule (1) shall be made on notice to all parties to the proceedings, the registrar and the Criminal Listing Director of the day and the place where, and the grounds on which, the leave is to be sought.
- (3) Non-payment of professional costs or counsel's fees shall not of itself constitute adequate grounds on which the Court may grant leave as mentioned in subrule (1).
- (4) A statement by a legal practitioner that he desires for ethical reasons to cease to act shall, without any explanation being required by the Court, constitute adequate grounds for the granting of leave as mentioned in subrule (1), and the fact that such a statement has been made by the legal practitioner shall be recorded on the Court file.
- (5) A solicitor or, where a barrister acts uninstructed by any solicitor, a barrister who acts for a party in any proceedings and has reason at any time to believe that he has lost contact with the party shall as soon as practicable, in writing, so inform every other party, the registrar and the Criminal Listing Director.
- (6) Without limiting the generality of subrule (5), a solicitor or, where a barrister acts uninstructed by any solicitor, a barrister who acts for a party in any proceedings shall, not less than 1 month nor more than 2 months before the date fixed for the hearing of the proceedings, ascertain whether he remains in contact with the party.
- (7) (Repealed)

## **6 Listing**

- (1) At the listing of any proceedings the Court may hear the proceedings or may give directions for the proper, speedy and convenient hearing of the proceedings as it may determine, and may adjourn the listing of the proceedings to another date.
- (2) In adjourning the listing of any proceedings to another date the Court shall so far as practicable liaise with the Criminal Listing Director.

## 7 Venue

- (1) This rule applies subject to any order made by the Supreme Court under Section 577 of the *Crimes Act 1900*, or by the Attorney General, in respect of the venue of any proceedings.
- (2) Subject to this rule, the venue for the hearing of any proceedings shall be:
  - (a) in the case of a person committed for trial or sentence to the Court sitting at a proclaimed place—that proclaimed place, or
  - (b) in the case of an appeal under section 11, or an application for leave to appeal under section 12 or 13, of the *Crimes (Local Courts Appeal and Review) Act 2001*, the proclaimed place nearest to the Local Court at which was made the conviction or order or was imposed the sentence, appealed, or sought to be appealed, against, or
  - (c) in the case of an appeal under section 23 (1) of the *Crimes (Local Courts Appeal and Review) Act 2001*—the nearest proclaimed place to the Local Court at which was imposed the sentence appealed against.
- (3) Whether or not the hearing of any proceedings has commenced, the Court may, on the application of a party or of its own motion, on terms order that the venue of the proceedings be changed to another proclaimed place.
- (4) Notwithstanding anything in subrule (2), and without limiting subrule (3), the Court may, on the application of a party or of its own motion, direct that any proceedings for hearing at a specified proclaimed place comprised within a District are to be heard at another proclaimed place that is comprised within the same District.
- (5) The powers of the Court under subrule (4) may, in respect of a District, be exercised by the Court, or by the registrar in the criminal jurisdiction for that District.

## 8 Subpoenas

- (1) In this rule, **person named** means, in relation to a subpoena, the person to whom the subpoena is addressed.
- (2) On request by any party, any registrar shall issue a subpoena to give evidence or a subpoena for production or a subpoena both to give evidence and for production.
- (3) Subrule (2) does not prevent the issue of a subpoena to give evidence and a subpoena for production to the same person in the same proceedings.
- (4) A party may require a subpoena for production of documents or things to be returnable on:
  - (a) any day on which the proceedings are listed before the Court, or any day not more

than 21 days before any such day, or

(b) with the leave of the Court or registrar, any other day.

- (5) Unless the Court otherwise orders, a subpoena issued at the request of a party who is not the prosecuting authority in the proceedings shall not require the person named to attend or produce any document or thing on any day on which his attendance is required unless an amount sufficient to meet the reasonable expenses of the person named of complying with the subpoena in relation to that day is paid or tendered to him at the time of service of the subpoena or not later than a reasonable time before that day.
- (6) Where the person named in a subpoena for production of any document or thing, being a subpoena requiring attendance before the Court at a proclaimed place, is not a party in the proceedings, the subpoena shall, unless the Court otherwise orders, permit the person to produce the document or thing to the registrar at the proclaimed place not later than the day before the first day on which his attendance is required, instead of attending and producing the document or thing as required by the subpoena.
- (7) Where a document or thing is produced to the registrar pursuant to subrule (6), the registrar shall:
- (a) give a receipt to the person producing the document or thing, and
  - (b) produce the document or thing as the nature of the case requires or as the Court may direct.
- (8) Where a document or thing is produced to the registrar pursuant to subrule (6) and before the document or thing is tendered to the Court the hearing of the proceedings is adjourned, other than to a date then fixed, the subpoena shall no longer be of any force or effect, and the registrar shall be at liberty to return the document or thing to the person who produced it to him.
- (9) Where a document or thing is produced to the registrar pursuant to subrule (6) in compliance with a subpoena which is returnable under subrule (4) on a day other than a day on which the proceedings are heard, the registrar may, if he thinks fit, at a reasonable time order that the subpoena shall no longer be of any force or effect and return the document or thing to the person who produced it to him.
- (10) Subrules (8) and (9) do not operate to prevent the issue of a further subpoena requiring the production of a document or thing returned by the registrar under either of those subrules.
- (11) Subrules (6) and (10) do not apply to so much of a subpoena as requires the person named to attend to testify in any proceedings.

- (12) A subpoena shall be served within a reasonable time.
- (13) The Court may, on application by the person named in a subpoena, set aside the subpoena wholly or in part.
- (14) Notice of an application under subrule (13) shall be filed and served on the party on whose request the subpoena was issued.
- (15) A party or his solicitor or barrister may:
  - (a) inspect documents or things produced in compliance with a subpoena, and
  - (b) take copies of any documents so inspected,if the Court so orders, and any such order may be made on terms.
- (16) Where the registrar is not notified by a party, the person to whom the subpoena was addressed, or a person claiming privilege in respect of the document, that any such party or person objects to the making of an order under subrule (15), the function of the Court to make that order may, unless the Court otherwise orders, be exercised by the registrar.

#### **8A Tendering bundles of documents**

If a party to proceedings seeks to tender more than one document to the Court at the same time (a **bundle of documents**), the party must:

- (a) number each document in the bundle of documents with a consecutive whole number commencing with "1", and
- (b) prepare a schedule for the bundle of documents that provides a brief description of each document in the bundle next to the number for the document allocated as provided by paragraph (a), and
- (c) provide a copy of the schedule and the bundle of documents both to the Court and to each other party to the proceedings.

#### **9 Return of exhibits**

- (1) Exhibits in any proceedings, whether produced on subpoena or otherwise, may be returned to the person who produced them to the Court or registrar:
  - (a) where the Court makes an order for the return of the exhibits, forthwith, and
  - (b) where, within a period of 90 days after sentence is passed or deferred or a final order is made, the Court makes no order for the return or retention of the exhibits, and no notice is given to the registrar of any appeal in the proceedings, forthwith after the expiration of that period.

- (2) A person to whom exhibits may be returned under subrule (1) shall obtain the return of, and give to the registrar a receipt for, the exhibits as soon as practicable, and the registrar shall be responsible for the safe custody of any exhibits in his keeping for a period only of 14 days after the first day on which the exhibits may be so returned.

## **10 Pre-trial applications**

- (1) Any application to the Court in relation to any proceedings which may practicably be made before the day appointed for the hearing of the proceedings shall be made before that day.
- (2) An application may be made, and the Court may make orders with regard to the application, before the day appointed for the hearing, where the application is:
- (a) for adjournment,
  - (ai) to seek or to give any admission or consent,
  - (b) to quash or stay an indictment,
  - (c) to demur to an indictment,
  - (d) for separate trials,
  - (e) for severance of counts,
  - (f) for change of venue,
  - (g) to set aside a subpoena,
  - (gi) for leave to withdraw an appeal under section 67 of the *Crimes (Local Courts Appeal and Review) Act 2001*,
  - (h) for directions generally,
  - (i) for an order under the *Bail Act 1978*, or
  - (j) for an order under rule 11 (1).
- (3) Subject to subrule (4), an application referred to in subrule (1) shall be made by filing notice of motion supported, unless the Court otherwise orders, by an affidavit or affidavits as to the facts and grounds upon which the application is made.
- (4) A party may make an application referred to in subrule (1) without previously filing or serving notice of the motion:
- (a) where the preparation of the notice, or the filing or service of the notice (as the case may be), would cause undue delay or other mischief to the applicant,
  - (b) where no date has been fixed for the hearing of the proceedings, or of any

proceedings ancillary to the proceedings, and all parties to the proceedings consent to the order applied for, or

(c) where the Court gives leave to the party so to do.

(5) Notice of a motion shall:

(a) state the date and time when, and the place where, the motion is to be made, that date, time and place having been obtained by the applicant from the registrar,

(b) where the Court has made an order under subrule (6), bear a note of the order made,

(c) state concisely the nature of the order sought, and

(d) state concisely the grounds on which the order is sought, or refer to the affidavit in which those grounds are contained.

(6) Unless the Court otherwise orders, a party filing a notice of motion shall serve the notice, and every affidavit in support of the motion, on each other party to the proceedings not less than 3 days before the date fixed for the motion.

(7) An application referred to in subrule (1) in relation to any proceedings which are expected to be heard at a place where the Court does not usually sit on every Court day may be made in Sydney.

#### **10A Application to reopen proceedings**

(1) An application of a party as referred to in section 43 (2) of the *Crimes (Sentencing Procedure) Act 1999* shall, unless the Court otherwise orders, be made on notice of motion.

(2) Rule 10 (5), (6) and (7) shall apply to a notice of motion referred to in subrule (1) as if the notice were filed under rule 10.

#### **10B Elections under Criminal Procedure Act**

(1) An election referred to in section 132 (1) or (5) of the *Criminal Procedure Act 1986* in respect of any proceedings:

(a) shall be in writing in or to the effect of the approved Form,

(b) in the case of an election referred to in section 132 (1) shall be endorsed with the consent of the Director of Public Prosecutions given for the purposes of section 132 (3) of that Act, and

(c) shall be lodged with the registrar before the day appointed for the hearing of the proceedings.



- (2) Consent of the Director of Public Prosecutions may be endorsed under subrule (1) (b) by the Director or a person authorised by the Director to give such consents on the Director's behalf.

#### **10C Notice under section 67 or 99 of the Evidence Act 1995**

Rule 31.5 of the *Uniform Civil Procedure Rules 2005* applies in respect of proceedings in the criminal jurisdiction of the Court.

#### **10D Manner of presenting indictments**

- (1) An indictment may be presented by filing a copy of the indictment with the registrar.
- (2) If an indictment is filed with the registrar, a copy of the indictment must be served on each accused person or the accused person's legal representative within 14 days after the filing of the indictment.
- (3) Without limiting the generality of rule 3, an indictment may be filed or served by letter or facsimile.
- (4) In this rule, **accused person's legal representative** means:
  - (a) a solicitor who acts for the accused, or
  - (b) if a barrister acts for the accused person uninstructed by a solicitor, the barrister.

#### **10E Time for presenting indictments**

- (1) For the purposes of section 129 (3) (a) of the *Criminal Procedure Act 1986*, the time within which an indictment is to be presented at a relevant proclaimed place is extended to 8 weeks after the committal of the accused person for trial.
- (2) In this rule, **relevant proclaimed place** means a proclaimed place other than Sydney, Sydney West, Newcastle, Wollongong, Gosford, Lismore, Wagga Wagga, Dubbo or Bathurst.

#### **10F Applications for orders under section 129 (3) (b) of Criminal Procedure Act 1986**

An application for an order under section 129 (3) (b) of the *Criminal Procedure Act 1986* to extend the time for filing an indictment:

- (a) must be made before the time for filing the indictment has expired, and
- (b) may be made in Court or by written application to the Court.

#### **11 Evidence**

- (1) The Court may order that an enquiry by way of a voir dire into the admissibility of any evidence or as to the capacity of a witness to give evidence be had, before the trial Judge, at any stage of any proceedings whether before or after the jury is empanelled.

- (2) Before commencing any enquiry ordered under subrule (1) the Court shall require the accused person, if he has not already pleaded to the charge against him, to so plead.
- (3) Unless the Court otherwise orders, a party shall make any statement he intends to make, and give any evidence he intends to give, before he adduces any other evidence.
- (4) The Court may in any proceedings order, on terms, that evidence or submissions may be received by telephone, video link or other form of communication.

#### **11A View of real property**

The Court has the same powers as the Supreme Court has to make an order for a view of real property for the purposes of any proceedings.

#### **12 Recording of orders etc**

Any judgment, order, sentence, direction or recommendation given or made by a Judge in any proceedings shall be entered on the indictment in the proceedings, and that entry shall, when signed by the Judge, be the record of the judgement, order, sentence, direction or recommendation.

#### **12A Notice of result of appeal**

As soon as practicable after the Court gives judgment in respect of, or makes an order or gives any leave which has the effect of disposing of, an appeal under section 11 or section 23 (1) of the *Crimes (Local Courts Appeal and Review) Act 2001*, the registrar shall send notice of the judgment, order or leave to the Magistrate who recorded the conviction, made the order, or imposed the sentence, appealed against.

#### **13 Recognizances**

- (1) The registrar shall:
  - (a) maintain a record of every recognizance entered into by order of the Court, and
  - (b) where money is paid to the registrar as required by a condition of a recognizance, maintain a record of the payment and disburse the money to the person entitled to it.
- (2) Where a recognizance entered into by order of the Court is conditioned to require a party to do or refrain from doing any thing or to suffer the doing of any thing by any person, and it is alleged that the party is in breach of that condition, the person so alleging shall without delay so advise the registrar.
- (3) Unless the Court otherwise orders, the registrar shall, in respect of a recognizance:
  - (a) on receiving any advice given under subrule (2), or

(b) on becoming aware of a breach of a condition requiring payment of money to the registrar,

without delay submit a report on the advice or breach to the Judge who required the recognizance to be entered into, or, if that Judge be not available, to the Chief Judge or another Judge.

- (4) After considering any report submitted to him under subrule (3), a Judge may if he thinks fit direct that the party the subject of the report be brought before him or another Judge or that no action be taken in respect of the report, or may make such other directions as to him seem appropriate.
- (5) Where a Judge directs under subrule (4) that a party be brought before a Judge, the registrar shall without delay give notice to the party to that effect, and shall include in that notice the place and time at which the party is so required to appear.
- (6) At a place and time notified under subrule (5), or at any other place and time to which the matter is adjourned, a Judge may deal according to law with a party who is in breach of a condition of a recognizance whether or not the Judge is the Judge who directed that the party be brought before a Judge.
- (7) The certificate of the registrar as to the amount of any money paid to him as required by a condition of a recognizance, the date of any such payment, and any amount remaining due to be paid under the condition, shall be evidence of the facts stated in the certificate.

#### **14 Interpreters**

- (1) This rule applies to an interpreter whose services are provided by arrangement with the registrar for the assistance of the Court in the translation of evidence given in any proceedings.
- (2) This rule does not apply to an interpreter who is engaged to assist a party.
- (3) An interpreter to whom this rule applies shall, when attending at the Court for the purpose of the proceedings, report to the Sheriff's Officer in charge at the Court or to the Associate to the presiding Judge.
- (4) An interpreter to whom this rule applies shall not, without the direction or permission of the presiding Judge, make his services available to, or communicate with, a party to the proceedings or the representative of such a party.

#### **15 Functions of assistant registrars**

- (1) An assistant registrar at a place that is a proclaimed place shall have the functions of the registrar for that proclaimed place other than the function exercisable under rule 8 (16).

- (2) An assistant registrar at a place that is not a proclaimed place shall have the function only of issuing subpoenas.

**16 Relevant factors for appearance by audio visual link: section 5BBA of Evidence (Audio and Audio Visual Links) Act 1998**

- (1) The following are specified as factors that the Court is to take into account in determining whether it is in the interests of the administration of justice to make a direction under section 5BBA (1) of the *Evidence (Audio and Audio Visual Links) Act 1998* that an accused child detainee is to appear before the Court by audio visual link:
- (a) the nature of the proceedings concerned,
  - (b) the right of the accused child detainee to be given the fullest opportunity to be heard and to participate in the proceedings,
  - (c) whether the accused child detainee would be significantly advantaged or disadvantaged if directed to appear by audio visual link,
  - (d) the availability of Judges of the Court to hear the proceedings by audio visual link,
  - (e) the need for the accused child detainee's lawyer to obtain initial or detailed instructions from the accused child detainee,
  - (f) the need for the accused child detainee's lawyer to discuss a brief of evidence with the accused child detainee,
  - (g) the distance the accused child detainee would need to travel and the expense and inconvenience involved in appearing physically before the Court,
  - (h) the maturity of the accused child detainee,
  - (i) the accused child detainee's need for the support of a parent, carer or other support person during the proceedings,
  - (j) the wishes of the accused child detainee,
  - (k) the involvement of the accused child detainee in any educative or rehabilitative program at the detention centre at which the accused child detainee is in custody,
  - (l) any special needs of the accused child detainee, including the impact of any intellectual or physical disability or mental illness that the accused child detainee may have,
  - (m) whether the accused child detainee requires the assistance of an interpreter and the availability of an appropriate interpreter,
  - (n) the risk that the personal security of a particular person or persons (including the accused child detainee) may be endangered if the accused child detainee appears

in the courtroom or place where the Court is sitting,

- (o) the risk of the accused child detainee escaping, or attempting to escape, from custody when attending the courtroom or place where the Court is sitting,
- (p) the behaviour of the accused child detainee when appearing before a court in the past,
- (q) the conduct of the accused child detainee while in custody, including the accused child detainee's conduct during any period in the past during which the accused child detainee was being held in custody in a detention centre.

(2) Expressions used in this rule that are defined in section 3 of the *Evidence (Audio and Audio Visual Links) Act 1998* have the meanings set out in that section.

#### **17 Elections under section 11A of Mental Health (Criminal Procedure) Act 1990**

An election made by a person under section 11A of the *Mental Health (Criminal Procedure) Act 1990* must be made in writing in or to the effect of the approved form.

#### **Schedules 1, 2 (Repealed)**