

**DISTRICT COURT ACT 1973—RULE**  
NEW SOUTH WALES



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1. This rule is made by the Rule Committee on 11 June 1991 and has effect on and from 21 June 1991.
2. The District Court Rules 1973 are amended as follows—
  - (a) Part 5 rule 9  
Omit “the Transport Accidents Compensation Act 1987 or”;
  - (b) Part 6 rule 8  
Omit “the Transport Accidents Compensation Act 1987 or”;
  - (c) Part 39 rule 7  
Omit “7.”, insert instead “7. (1)”;
  - (d) Part 39 rule 7 (2), (3)  
After Part 39 rule 7 (1) insert the following subrules—
    - (2) Notwithstanding subrule (1), the costs of and incidental to the briefing of counsel for a party on the hearing of an action shall not be disallowed on the ground that the brief was delivered too early if counsel has conferred with the party, or otherwise given substantial assistance, in respect of negotiations which have led to settlement of the action.
    - (3) Notwithstanding subrule (1), the costs of and incidental to the briefing of counsel to advise on evidence, or on quantum, in respect of an action shall not be disallowed on the ground that—
      - (a) damages for personal injuries are claimed in the action; or
      - (b) the personal injuries were sustained in a motor vehicle accident.

- (e) Part 39 rule 19 (1)  
Omit “Where”, insert instead “Subject to rule 7 (2), where”;
- (f) Part 51B  
After Part 51A insert the following Part—

PART 51B

COMMERCIAL ARBITRATION ACT 1984

**Interpretation**

1. In this Part,

“arbitrator” includes an umpire;

“subjectAct” means the Commercial Arbitration Act 1984.

**Commencement of applications under the subject Act**

2. (1) Proceedings on an application, other than an application for the issue of a subpoena, under the subject Act shall be commenced by notice of application under Part 5 Division 3.

(2) Subject to Part 29 rule 6 (4), 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.

**Interlocutory orders**

3. 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.

**Time for application**

4. (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 the 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.

### **Subpoenas**

**5.** (1) Part 29 (except Part 29 rules 2A, 3, 6 (6), (7), (8) and 7A) applies in relation to the issue of a subpoena under section 17 (1) of the subject Act as it applies 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.

### **Leave to enforce award**

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

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**EXPLANATORY NOTE**

The purpose of the amendments is—

- (a) to encourage earlier settlements by ensuring that—
  - (i) where an action is settled after counsel is briefed and gives substantial assistance in the negotiations, counsel's fees are recoverable as between party and party no matter how early the brief was delivered; and
  - (ii) counsel's fees for advising on evidence are recoverable in personal injuries actions;
- (b) to provide machinery for access for the Court where the District Court is the nominated Court in an agreement under the Commercial Arbitration Act 1984; and
- (c) to make other minor or consequential provisions.

E. J. O'GRADY

Secretary to the Rule Committee

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