



DISTRICT COURT
OF WESTERN
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NOTICE TO PRACTITIONERS AMENDMENTS TO THE DISTRICT COURT RULES

The Court has been asked by practitioners to provide some guidance on the transitional arrangements for the recent amendments to the District Court Rules.

The amendments to the rules came into operation on 31 July 2007 and not 3 August 2007 as was foreshadowed in the Notice to Practitioners dated 25 July 2007 (the relevant Government Gazette was published earlier than expected).

The only transitional rule is rule 74 which provides that if an action had been listed for trial before the date of commencement, the former rules would apply. Thus, the parties do not have to comply with the trial related rules in 2005 DCR Part 4A for actions listed for trial before 31 July 2007.

The remaining rules came into operation on 31 July 2007. Unless and until there is a specific judicial decision to the contrary, for practical and administrative purposes, the Court will adopt the following position:

- (a) if the time for compliance with a rule had passed before 31 July 2007, then the rule has no operation as it has no retrospective effect.
- (b) if the time for compliance with a rule had not passed by 31 July 2007, then the rule has operation.

For example, the amended rules require particulars of damages to be filed within 60 days after the first defence is filed (2005 DCR rule 45C). If 31 July 2007 was 55 days after the date of filing of the first defence, then rule 45C would be operative to require particulars to be filed. If 31 July 2007 was 65 days after the date of filing of the first defence, then as the time for compliance with rule 45C has passed, there is no obligation to file particulars pursuant to rule 45C.

If the default operation of the 2005 DCR does not provide a party with the level of pre trial disclosure they require, it is always open for the party to seek orders under the applicable *Rules of the Supreme Court* or seek specific case management orders under the 2005 DCR. For example, if in an action as at 31 July 2007 more than 60 days had passed since the first

defence was filed, there would be no obligation under 2005 DCR rule 45C to file and serve particulars. The former obligation to file and serve particulars with the entry for trial papers also would not apply, as that rule has been repealed. It is open to the defendant to request further and better particulars and seek orders for compliance with such a request.

The Court's expectation is that most transitional issues will be able to be resolved through conferral (as to which see 2005 DCR rule 22). If there is a specific transitional issue, a party may by letter or facsimile to the Associate to the Principal Registrar (copied to the other parties) request a telephone directions hearing to efficiently resolve the issue. Alternatively, the party may seek orders on a chambers summons in the ordinary course.

Yours faithfully

Michael Gething
Principal Registrar

6 September 2007