

1990 - No. 243

LOCAL COURTS (CIVIL CLAIMS) ACT 1970 - RULE

(Relating to the execution of writs against land, arbitration proceedings, procedural matters and costs)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Local Courts (Civil Claims) Act 1970, has been pleased to make the Rule set forth hereunder.

JOHN DOWD
Attorney General.

Commencement

1. This Rule takes effect on 27 April 1990.

Amendments

2. The Local Courts (Civil Claims) Rules 1988 are amended:

- (a) by omitting from Part 3 rule 4 (4) the words "receipt by the plaintiff or the plaintiff's solicitor from the registrar" and by inserting instead the words "service on the plaintiff";
- (b) by omitting Part 12 rule 5 and by inserting instead the following rule:

Costs

5. Subject to any provision to the contrary in any agreement filed in the action under rule 3, there shall be added to the judgment debt:

- (a) where judgment in favour of the plaintiff is entered up under rule 2 or 3 within 28 days after service of the statement of claim in the action - the costs of issuing and serving the statement of claim; or
- (b) where judgment in favour of the plaintiff is entered up under rule 2 or 3 otherwise than within that period - the costs of issuing and serving the statement of claim, or such other amount as the court on motion may allow for the costs reasonably incurred by the plaintiff before judgment, as the plaintiff may elect.
- (c) by inserting after Part 21 rule 3 (2) the following subrule:
 - (3) In this rule:
"proceedings" includes any part of any proceedings.
- (d) by inserting before Part 21 rule 1 the following rule:
Definition

1A. For the purposes of this Part:

- (a) where the burden of proof on any issue lies on the plaintiff, the plaintiff is the beginning party and the defendant is the opposite party and
- (b) where the burden of proof on all the issues lies on the defendant, the defendant is the beginning party and the plaintiff is the opposite party.

(e) by omitting Part 21 rule 4 (1);

(f) by inserting after Part 21 rule 4 the following rules:

Dismissal

5. (1) The court, on the application of the plaintiff in any action, may, at any time before judgment is given, make an order, on terms, for the dismissal of the action so far as concerns any cause of action on which the action is brought.

(2) Where the plaintiff is the beginning party and no judgment has been given, a defendant may, at any time after the conclusion of the evidence in the plaintiff's case in chief, move for an order for the dismissal of the plaintiff's action, or of the action so far as concerns any cause of action on which the plaintiff claims against that defendant, on the ground that, on the evidence given, a judgment for the plaintiff could not be supported.

(3) The plaintiff may decline to argue the question raised by a defendant's motion.

(4) Unless the plaintiff declines to argue the question so raised, the court shall, if the ground of the defendant's motion is established, make an order for the dismissal of the plaintiff's action, or of the action so far as concerns the cause of action in question, as the nature of the case requires.

(5) If the plaintiff declines to argue the question, or if the defendant's motion is refused, the defendant may adduce evidence or further evidence or may make an application for judgment under rule 6.

(6) If the court makes an order for the dismissal of the plaintiff's action, or of the action so far as concerns a cause of action, the plaintiff shall pay the defendant's costs of the action, or of the action so far as concerns the cause of action in question, as the case may be.

(7) If fewer than all defendants move the court under this rule, the court shall not entertain the motion before the conclusion of the evidence given for all parties.

Judgment by direction

6. (1) This rule applies to the hearing of an action.

(2) An opposite party may:

(a) after the conclusion of the evidence in the beginning party's case in chief; or
(b) after the conclusion of the evidence given for all parties, move the court for judgment for that opposite party in the action generally or on any claim for relief in the action, on the ground that, on the evidence given, a judgment for the beginning party could not be supported.

(3) If the ground of an opposite party's motion is established, the court shall give judgment for the opposite party accordingly.

(4) If an opposite party moves the court under this rule, that party may not adduce evidence or further evidence in the action generally (where the motion is for judgment in the action generally) or on the claim for relief in question (where the motion is for judgment in the action on a particular claim).

(5) If fewer than all opposite parties move the court under this rule, the court shall not entertain the motion before the conclusion of the evidence given for all parties.

Stay to secure costs

7. Where:

- (a) the court makes an order for the dismissal of an action or striking proceedings out;
- (b) a party is, by reason of the order, liable to pay the costs of another party occasioned by the action or proceedings; and
- (c) before payment of the costs, the party brings against that other party further proceedings on the same, or substantially the same, cause of action as that on which the action was, or the proceedings were, brought,
the court may, on the application of that other party, stay the further proceedings until those costs are paid.
- (g) by omitting from Part 24 rule 3 (4) the matter "6 (6)" and by inserting instead the matter "5 (5)";
- (h) by omitting Part 27 rule 1 (3);
- (i) by omitting from Part 27 rule 1 (5) the words "Notwithstanding subrule (3), any" and by inserting instead the word "Any";
- (j) by omitting from Part 27 rule 2 (11) the matter "subrule (10) (b)" and by inserting instead the words "subrule (10) makes, refuses to make,";
- (k) by omitting Part 28 rule 9;
- (l) by omitting Part 30 rule 1 and by inserting instead the following rule:

Duration of writ

1. (1) A writ of execution is to be endorsed by the registrar with the date of its issue.

(2) The period for which a writ of execution is in force is, for the purposes of section 58 (2) of the Act, the period commencing on the date of issue of the writ and ending:

- (a) if, within 6 months after its date of issue, application is made to the registrar for an office copy of the writ - on the date occurring 12 months after its date of issue;

- (b) if, within 6 months after its date of issue, the sale of land under the writ is postponed under Part 30A rule 11 - on the date to which the sale is postponed; or
- (c) in any other case - on the date occurring 6 months after its date of issue.

(m) by inserting after Part 30 rule 13 the following rule:

Auctioneer

13A (1) If the nature and apparent value of property to be sold under a writ of execution are such that it appears reasonable to the Sheriffs officer or bailiff to do so, the Sheriffs officer or bailiff may appoint an auctioneer to sell the property.

(2) An auctioneer appointed to sell goods may, with the approval of the Sheriffs officer or bailiff, give such notice (by advertisement in a newspaper or otherwise) as appears to the auctioneer necessary to give due publicity to the sale.

(3) An auctioneer appointed to sell property shall, as soon as practicable after the registrar, Sheriffs officer or bailiff advises that the auctioneer's services will not be required in respect of the writ or otherwise requests an account of the auctioneer's charges, advise the registrar, Sheriff's officer or bailiff of the amount of those charges to date.

(4) An auctioneer appointed to sell property shall, as soon as practicable after receipt of any money under the writ, pay the money to the Sheriffs officer or bailiff required to execute the writ, less the amount of any charges payable to the auctioneer in respect of the writ.

- (n) by inserting in Part 30 rule 16 (1) after the word "postpone" where firstly occurring the words ", or require any auctioneer appointed to sell the goods to postpone,";
- (o) by inserting in Part 30 rule 17 (4) after the word "bailiff" the words ", or an auctioneer,";
- (p) by inserting in Part 30 rule 18 (1) after the words "Sheriffs officer" where thirdly occurring the words "or, where an auctioneer is appointed under rule 13A (1) to sell the goods, the auctioneer";
- (q) by omitting from Part 30 rule 19 (1) the words "or bailiff" and by inserting instead the words ", bailiff or auctioneer";

(r) by inserting after Part 30 the following Part:

PART 30A - EXECUTION AGAINST LAND

Application

1. (1) This Part applies to a writ of execution to the extent to which it is enforced against land.
- (2) Subject to subclause (3), this Part does not limit the application of Part 30 in its application to a writ to which this Part applies.
- (3) Such of the provisions of Part 30 as are referable solely to goods do not apply to a writ of execution to the extent to which it is enforced against land.

Renewal

2. (1) On the filing of an application by the judgment creditor, the registrar may renew a writ of execution, for the purposes of section 105(5) of the Real Property Act 1900, by endorsing on the writ a memorandum of the renewal, by signing and dating the memorandum and by affixing to the memorandum the seal of the court.

- (2) A renewal does not have the effect of continuing the validity of a writ of execution beyond the period mentioned in Part 30 rule 1.

Notice to debtor

3. (1) A judgment creditor may file an affidavit verifying:
 - (a) the registration or recording of particulars of a writ of execution at the Land Titles Office; and
 - (b) the receipt by the judgment creditor of advice from the Sheriff's officer or bailiff to the effect that the Sheriff's officer or bailiff cannot obtain satisfaction of the writ by proceeding further against the goods of the judgment debtor.
- (2) On filing such an affidavit, the judgment creditor may lodge with the registrar in duplicate, and the registrar shall seal, a notice advising the judgment debtor of:
 - (a) the registration or recording of particulars of the writ of execution,
 - (b) the judgment creditor's intention to proceed to the sale of the judgment debtor's land after the lapse of 4 weeks;

- (c) the Judgment debtor's right to effect his or her own disposition of the land and the conditions, pertaining to that right; and
- (d) the judgment debtor's right to make an application under Part 27 rule 2 (1).

(3) The judgment creditor shall cause any notice so sealed to be served on the judgment debtor, either personally or in accordance with an order for substituted service under Part 7 rule 16.

Disposition by judgment debtor

4. (1) For the purposes of section 62B (2) (d) of the Act, an issuing registrar shall:

- (a) inquire from the Sheriff's officer or bailiff required to execute a writ of execution as to whether land has been sold under the writ; and
- (b) as soon as practicable after the inquiry, advise the Sheriff's officer or bailiff of any certificate endorsed by the registrar under that paragraph.

(2) The prescribed period for the purposes of section 62B (2) of the Act is the period commencing on the filing of the notice of consent under section 62B (2) (c) of the Act and ending:

- (a) if notice under rule 3 (2) has been served on the Judgment debtor before the endorsing of the notice of consent by the registrar - 2 weeks; or
- (b) if notice under rule 3 (2) has not been so served - 6 weeks,

before the expiration of 3 months after the registration or recording of particulars of the writ at the Land Titles Office.

(3) If money is paid to the issuing registrar under section 62B (3) (c) of the Act in respect of a writ of execution, the registrar shall:

- (a) retain from the money
 - (i) the amount due under the judgment, including interest;
 - (ii) the costs of execution of the writ then known to the registrar, including any fees payable to an auctioneer in respect of the execution; and

- (iii) an amount determined by the registrar as security for the judgment creditor's costs of the execution, other than those retained under subparagraph (ii),
and pay any balance of the money to the judgment debtor; and
- (b) as soon as practicable, advise the Sheriffs officer or bailiff, and any auctioneer appointed for the purposes of the writ, of the payment and require the Sheriffs officer or bailiff to return the writ.

Creditor's application for sale

- 5. (1) Where a judgment creditor:
 - (a) files at the relevant court an affidavit of service of the notice mentioned in rule 3 (2);
 - (b) files at the relevant court a notice of sale and lodges with the registrar of that court 6 copies of the notice; and
 - (c) furnishes to the Sheriffs officer or bailiff at the relevant court such information as the judgment creditor possesses, or can reasonably obtain, and as is relevant to the ascertainment of the value of the interest to be sold (including particulars of the value most recently assigned by the Valuer-General to the land the subject of the interest and particulars of the title to that land as revealed by a recent search at the Land Titles Office),

the Sheriff's officer or bailiff may proceed to sell the interest or, if the nature and apparent value of the interest are such that it appears reasonable to the Sheriffs officer or bailiff to do so, may appoint an auctioneer under Part 30 rule 13A to sell the interest.

(2) The Sheriffs officer or bailiff required, or the auctioneer appointed, to sell land under a writ of execution shall:

- (a) fix a date for the sale, which date shall be not less than 4 weeks after service on the judgment debtor of the notice mentioned in rule 3 (2); and
- (b) insert the date so fixed in each copy of the notice of sale lodged with the registrar under subrule (1) (b) and forward 2 sealed copies of the notice so completed to the judgment creditor.

(3) In this rule:

"relevant court", in relation to a writ of execution, means the court the Sheriff's officer at which, or the bailiff for which, is required to execute the writ.

Approximate market value

6. (1) A Sheriffs officer or bailiff required to sell land under a writ of execution shall, before proceeding to the sale, fix, so far as he or she can do so by the exercise of reasonable diligence, the approximate market value of the interest to be sold, but need not communicate the value so fixed to any person before selling the land.

(2) For the purpose of fixing a value, a Sheriffs officer or bailiff may require the judgment creditor to furnish, in addition to any information furnished under rule 5 (1) (c), any further information known to, or reasonably capable of ascertainment by, the judgment creditor in respect of the land.

(3) If the judgment creditor fails to furnish within a reasonable time any further information so required, the Sheriffs officer or bailiff shall report the failure to the registrar and may refuse to proceed further towards the sale of the land.

(4) A Sheriffs officer, bailiff or auctioneer shall not sell land by public auction for a price substantially below the approximate market value of the land fixed by the Sheriffs officer or bailiff.

Further notice to debtor

7. The judgment creditor:

- (a) shall endorse on a sealed copy of the notice of sale forwarded under rule 5 (2) (b) a memorandum reminding the judgment debtor of the judgment debtor's right to make an application under Part 27 rule 2 (1); and
- (b) shall cause the copy so endorsed to be served on the judgment debtor at least one week before the date fixed for the sale.

Satisfaction by debtor

8. If, before or at the time fixed for the sale of the judgment debtor's land, a judgment debtor indicates to the Sheriff's officer, bailiff or auctioneer that the judgment debtor intends to

satisfy the writ, the judgment debtor shall pay to the Sheriffs officer, bailiff or auctioneer:

- (a) the amount due under the judgment, including interest;
- (b) the costs of execution of the writ then known to the Sheriffs officer, bailiff or auctioneer, including any fees payable to an auctioneer in respect of the execution; and
- (c) an amount determined by the Sheriffs officer or bailiff as security for the judgment creditor's costs of the execution, other than those mentioned in paragraph (b),

and the Sheriff's officer, bailiff or auctioneer shall, on receipt of the money, cancel the sale and the Sheriffs officer or bailiff shall return the writ to the registrar.

Advertisement

9. (1) A Sheriffs officer or bailiff required, or an auctioneer appointed, to sell land under a writ of execution shall cause notice of any such sale, including a full description of the land to be sold, to be advertised:

- (a) in the Gazette; and
- (b) in a newspaper circulating in the district in which the land is situated,

at least one week before the date fixed for the sale.

(2) The sale of any land may, in addition to being advertised under this rule, be further advertised by the Sheriffs officer, bailiff or auctioneer, but only if the further advertisement is approved by the Sheriff.

Proof of service and publication

18. (1) Before the sale of any land takes place, the judgment creditor shall lodge with the Sheriffs officer or bailiff required to execute the writ an affidavit:

- (a) as to the service on the judgment debtor of the duly endorsed notice required under rule 7 to be served; and
- (b) as to the date and particulars of publication of every advertisement of the sale.

(2) When making the return to a writ of execution, a Sheriffs officer or bailiff shall attach to the return a copy of any such affidavit lodged in respect of the writ.

Postponement

11.(1) The Sheriffs officer or bailiff required to execute a writ of execution may from time to time postpone, or require any auctioneer appointed to sell the land to postpone, the sale of land if the Sheriff's officer or bailiff thinks it proper to postpone the sale so as:

- (a) to avoid a sacrifice of the reasonable value of the land; or
- (b) to comply with a request by the judgment creditor for the postponement.

(2) Any postponement under this rule has the effect of continuing the validity of the writ until the sale.

Sale

12. Subject to these rules, land sold by public auction under a writ of execution shall be sold to the highest bidder.

Sale by private treaty

13. (1) If, at a public auction in respect of land to be sold under a writ of execution being executed by a Sheriffs officer, the highest bid is substantially below the approximate market value of the land fixed by the Sheriff's officer under rule 6 (1), the Sheriff's officer may sell the land, or permit the auctioneer to sell the land, by private treaty.

(2) The Sheriffs officer shall not sell land, or permit the sale of land, at a price substantially below a fair value determined by the Sheriff's officer.

(3) In determining a fair value in respect of any land, the Sheriffs officer:

- (a) shall take into account all relevant circumstances, including but not limited to:
 - (i) the approximate market value of the land fixed by the Sheriff's officer under rule 6 (1);
 - (ii) the amount of the highest bid for the land at the public auction; and
 - (iii) the likelihood or otherwise of there being a higher bid if the land is again put up for sale by public auction; and

- (b) shall not determine a fair value that is substantially below the amount of the highest bid for the land at the public auction.

Conditions of sale

14. (1) The purchaser of land sold under a writ of execution, whether by public auction or private treaty, shall pay to the Sheriffs officer, bailiff or auctioneer:

- (a) at least 10 per cent of the purchase price immediately upon the sale; and

- (b) the remainder of the purchase price within 2 working days after the sale.

(2) Nothing in subrule (1) prevents the purchaser from paying the full amount of the purchase price immediately upon the sale.

(3) Payment of the purchase price or any part thereof shall be made in cash, by bank draft or, if the Sheriff so approves, by credit card.

(4) If payment is made by credit card, any charge incurred by the vendor in respect of the payment shall form part of the costs of execution of the writ.

(5) If a purchaser pays an amount under subrule (1) (a) but does not comply with subrule (1) (b), the amount paid shall be appropriated firstly towards meeting the costs of execution of the writ and thereafter towards satisfying the judgment debt the subject of the writ.

(6) Upon the completion of a sale of land under a writ of execution, the Sheriffs officer or bailiff required to execute the writ, and the purchaser, shall sign a contract of sale in the approved form.

(7) An assurance, by a registrar, of land sold under a writ of execution shall be prepared by the purchaser.

(8) The purchaser of land sold under a writ of execution shall take, at the purchaser's expense, the registrar's assurance of the interest sold.

Report of sale

15. (1) A Sheriffs officer or bailiff required, or an auctioneer appointed, to sell land under a writ of execution shall, as soon

as practicable after the sale has been completed, make a report to the registrar of the relevant court as to:

- (a) the approximate market value of the land fixed by the Sheriffs officer or bailiff under rule 6 (1);
- (b) the amount of the highest bid at the sale;
- (c) whether or not the judgment debtor was identified to the Sheriffs officer, bailiff or auctioneer as being present at the sale;
- (d) the amount of the auctioneer's charges; and
- (e) any other matter which the Sheriffs officer, bailiff or auctioneer considers should be reported to the registrar.

(2) An auctioneer shall, as soon as practicable after the registrar, Sheriffs officer or bailiff advises that the auctioneer's services will not be required in respect of the writ or otherwise requests an account of the auctioneer's charges, advise the registrar, Sheriffs officer or bailiff of the amount of those charges to date.

(3) An auctioneer shall, as soon as practicable after receipt of any money under the writ, pay the money to the Sheriffs officer or bailiff required to execute the writ, less the amount of any charges payable to the auctioneer in respect of the writ.

(4) In this rule:

"relevant court", in relation a writ of execution, means the court the Sheriffs officer at which, or the bailiff for which, is required to execute the writ.

Payment to judgment debtor

16. (1) A judgment creditor at whose request a writ of execution has issued may file:

- (a) evidence of an agreement with the judgment debtor as to the amount of the judgment creditor's costs of the execution; or
- (b) a notice of motion for the assessment of those costs.

(2) Any evidence or notice of motion referred to in subrule (1) must be filed within 2 months after the receipt by the issuing registrar of:

- (a) the proceeds of sale of any land;
- (b) any money under section 62B (3) (c) of the Act; or
- (c) any money under rule 8,

or within such further time as may be consented to in writing by the judgment debtor.

(3) If the judgment creditor files any evidence or notice in accordance with subrule (1), the registrar shall as soon as practicable pay to the judgment debtor any money mentioned in subrule (1) and held by the registrar over and above the amount necessary to satisfy the writ of execution.

(4) If the judgment creditor:

- (a) does not file any evidence or notice in accordance with subrule (1); and
- (b) does not within the time allowed in that regard advise the registrar of any consent by the judgment debtor to extend that time,

the registrar may pay to the judgment debtor any money mentioned in subrule (1) and held by the registrar over and above the total of the amount necessary to satisfy the judgment (including interest) and the costs of the execution (other than solicitor's profit costs) then known to the registrar.

(5) The registrar shall pay to the judgment creditor any money referred to in this rule which the registrar is not by this rule required to pay to the judgment debtor.

(6) Nothing in this rule affects the right of the judgment creditor to recover against the judgment debtor the costs of execution of the writ.

(s) by inserting after Part 31 rule 10 (2) the following subrules:

(2A) Notwithstanding subrule (1) or (2), if a defendant in an action pays to the plaintiff or to the court the whole of the amount of the debt or damages claimed in the statement of claim, the defendant shall at the same time pay to the plaintiff or to the court the plaintiff's costs of issue and service of the statement of claim.

(2B) If such a payment is made after the expiration of 28 days after service of the statement of claim on the defendant, the plaintiff shall be entitled to recover against the defendant such additional amount as the court, on motion, may allow for the

costs reasonably incurred by the plaintiff before the payment was made.

- (t) by omitting Part 31 rule 10(3) (a) and by inserting instead the following paragraphs:
 - (a) attending to examine a judgment debtor - \$53;
 - (al) examining a judgment debtor - \$53;
- (u) by omitting from Part 33 rule 1 (1) the matter "84 (1A)" and by inserting instead the matter "54 (1A) (a)-(k);"
- (v) by inserting after Part 33 rule 1 (2) the following subrule:

(3) Except where the court otherwise orders or these rules otherwise provide, the registrar of the court held at 302 Castlereagh Street, Sydney, is authorised to exercise the functions of the court as to the making of an order for costs in respect of any order made or refused by that registrar under these rules.
- (w) by inserting before Part 35 rule 1 the following heading:

Division 1 - Preliminary

- (x) by omitting Part 35 rules 3-12;
- (y) by inserting at the end of Part 38 the following Divisions:

**Division 2 - Arbitration under the
"Philadelphia" system**

"Philadelphia" system

3. (1) This rule applies to an action referred to an arbitrator under section 21H (1) of the Act by an order referred to in subrule (2).

(2) In the court held at 302 Castlereagh Street, Sydney, and in such of the courts mentioned in rule 1 as may be appointed by the Chief Magistrate for the purposes of this subrule, an order under section 21H (1) of the Act may be for referral to an arbitrator sitting with the approval of the court, on the date specified in the order, without further specifying the arbitrator.

(3) An arbitrator to whom an action is so referred shall, if he or she is not prepared to hear and determine the action, so inform the court as soon as practicable, specifying the reasons why he or she is not prepared to hear and determine the action.

(4) If an arbitrator:

(a) informs the court that he or she is not prepared to hear and determine an action so referred; or

(b) declines or fails to hear and determine the action, the court shall revoke the order referring the action to the arbitrator and may, if it thinks fit, make an order referring the action to another arbitrator.

(5) An arbitrator may from time to time adjourn arbitration of an action which he or she has commenced to hear.

(6) Without limiting the operation of subrule (5), an arbitrator shall:

(a) on the date specified in the order referring the action; or

(b) on the date to which arbitration has been adjourned under subrule (5),

hear or continue to hear the action, whether or not the parties to the action appear.

Division 3 - Arbitration otherwise than under the "Philadelphia" system

Referral procedure

4. (1) This rule applies to an action referred to an arbitrator under section 21H (1) of the Act otherwise than by an order referred to in rule 3 (2).

(2) A court or registrar shall, when making an order under section 21H (1) of the Act or as soon as practicable thereafter, nominate the arbitrator to whom the action is to be referred for arbitration.

(3) When an arbitrator is so nominated, the registrar shall:

(a) send to the nominated arbitrator the record of the action, together with notice of the order in the approved form;

(b) send to the parties or their representatives notice of the referral in the approved form; and

(c) make and maintain a record of the order.

(4) In nominating an arbitrator under this rule, the court or registrar shall have regard to the desirability of:

- (a) utilising any appropriate special skills or experience of the arbitrator with regard to an action involving technical issues; and
- (b) complying with any choice of arbitrator made by all the parties in the action.

Procedure by arbitrator

5. (1) This rule applies to an action referred to an arbitrator under section 21H (1) of the Act otherwise than by an order referred to in rule 3 (2).

(2) An arbitrator to whom an action is so referred shall:

- (a) if he or she is not prepared to hear and determine the action - return the record of the action to the court as soon as practicable, specifying the reasons why he or she is not prepared to hear and determine the action; or
- (b) as soon as practicable - fix a date, time and place for the hearing of the action and inform the parties to the action of the date, time and place so fixed.

(3) If an arbitrator:

- (a) returns the record of an action to the court under subrule (2) (a); or
- (b) fails to comply with this rule,

the court shall revoke the order referring the action to the arbitrator and may, if it thinks fit, make an order referring the action to another arbitrator.

(4) Except to the extent that the court otherwise orders, the date fixed by the arbitrator under subrule (2) (b) for the hearing of an action shall be a date that is not later than 2 months after receipt by the arbitrator of the record of the action.

(5) In fixing a date, time and place under subrule (2) (b) for the hearing of an action, an arbitrator shall have regard to, but is not bound to meet, the convenience of the parties to the action.

(6) An arbitrator may, for cause shown by a party to an action, from time to time adjourn the hearing of the action.

(7) Without limiting the operation of subrule (6), an arbitrator shall:

- (a) on the date, and at the time and place, fixed by the arbitrator under subrule (2) (b); or

(b) on the date, and at the time and place, to which a hearing has been adjourned,
hear or continue to hear the action, whether or not the parties to the action appear.

(8) If within 3 months after receipt of the record of an action the arbitrator fails to determine the action, the arbitrator shall:

- (a) forthwith after the expiration of that period; and
- (b) if the arbitrator fails to determine the action during any succeeding month - forthwith after the end of each such month,

inform the court of the reasons for the failure.

(9) Nothing in this rule operates to limit (as to date, time, place or otherwise) any step an arbitrator thinks fit to take in order to advance the possibility of settlement of an action.

(10) An arbitrator shall:

- (a) take custody of any exhibit produced to the arbitrator in relation to an action; and
- (b) before, or immediately after, determining the action, return the exhibit to the person by whom it was produced.

Division 4 - General

Application

6. This Division applies to an action referred to an arbitrator under section 21H (1) of the Act, whether by an order referred to in rule 3 (2) or otherwise.

Medical reports

7. (1) A party seeking to adduce at any hearing before an arbitrator any evidence of a medical practitioner as to the past, present or probable future physical or mental condition of a person:

- (a) shall obtain from the medical practitioner a written report containing the substance of the matters sought to be adduced as evidence; and
- (b) shall serve a copy of the report on each other party not less than 14 days after the date on which notice of referral to arbitration was forwarded by the registrar.

(2) A party is not entitled to adduce oral evidence by a medical practitioner as to any matter mentioned in subrule (1) unless the arbitrator otherwise directs or the parties consent.

Proof of documents

8. Unless the arbitrator otherwise directs, documents purporting to be hospital clinical notes or records, medical practitioners' records, workers compensation records or wages records are, to the extent that they are admissible in evidence, admissible without further proof as to their identity.

Confession or agreement

9. (1) If the court has made an order under section 21H (1) of the Act with respect to an action:

- (a) the court may continue to exercise its powers to enter a judgment to which all the parties consent; and
- (b) the provisions of Part 12 continue to apply to the action.

(2) If the court enters a judgment to which all the parties consent, or if the registrar enters up judgment under Part 12, the court shall be taken to have revoked the order under section 21H (1) of the Act with respect to the action.

Award of arbitrator

10. (1) In this rule, a reference to the award of an arbitrator is a reference to an award made by an arbitrator to determine an action referred to the arbitrator under section 21H (1) of the Act.

(2) The award of an arbitrator must be in or to the effect of the approved form.

(3) An arbitrator shall, forthwith after making an award, transmit the award to the court together with, in the case of an action to which rule 4 applies:

- (a) as many copies of the award, and of any attachments to the award, as there were parties separately represented in the action; and
- (b) the record of the action.

(4) An arbitrator shall specify in the award the reasons for the award, being reasons that are, in the arbitrator's opinion, sufficiently stated to make the parties aware of the arbitrator's view of the case made by each of them.

(5) If a party has not attended an arbitration, the arbitrator shall include in the award a statement that the party did not attend and any other information known to the arbitrator concerning the party's failure to attend.

(6) A registrar shall, forthwith after receiving the award of an arbitrator, send to each of the parties to the action to which the award relates, or to the representative of such a party, a copy of the award on which the registrar has endorsed the date of sending and the registrar's notice in the approved form.

Period after which award becomes judgment

11. For the purposes of section 21H (5) of the Act, the time prescribed is:

- (a) in relation to an award expressed to be made with the consent of all parties - the period ending on the date endorsed by the registrar on copies of the award as the date of sending the award; or
- (b) in any other case - the period of 28 days immediately following the date so endorsed.

Rehearing

12. (1) An application for the rehearing, under section 18 (2) of the Arbitration (Civil Actions) Act 1983, of an action determined by an arbitrator shall be made by the aggrieved party filing a notice, in or to the effect of the approved form, together with as many copies of the notice as there were parties separately represented in the action.

(2) The registrar shall, as soon as practicable after the filing of a notice under subrule (1):

- (a) set a date (being as early a date as the business of the court permits):
 - (i) for call-over of the action and for the fixing of a date for the rehearing; or
 - (ii) in the case of an action in which the arbitrator's award contains a statement referred to in rule 10 (5) - for the action to be before the court for directions as to any rehearing and for the fixing of a date for any such rehearing;
- (b) endorse the date set by the registrar on the notice and on each copy of the notice filed; and

(c) send a copy of the notice, so endorsed, to each party who was separately represented in the action.

(3) Before the record of an action is brought before the court for rehearing, the registrar shall seal within the record all information as to the nature and quantum of the award made in respect of the action, but the court is not disqualified from rehearing the action merely because it becomes aware of any such information.

Costs on rehearing

13. (1) If:

- (a) an action is heard and determined by way of rehearing; and
- (b) the decision of the court is such that the party who made the application for the order for rehearing substantially improves the party's position as compared with the party's position under the arbitrator's award,

the court may order that the fee paid by the party for filing the application be refunded to the party, either wholly or to such extent as may be specified by the court.

(2) If a party is required to pay the costs of another party in respect of a rehearing, those costs shall not include the fee paid for filing the application for the order for rehearing unless the court so directs.

(3) The court shall not give a direction under subrule (2) unless it is of the opinion that the party ordered to pay the costs has been guilty of unreasonable conduct that has caused the making of the application for the rehearing.

(4) If an action is determined by way of rehearing, and the decision of the court is such that the party who made the application for the order for rehearing does not substantially improve the party's position as compared with the party's position under the arbitrator's award, the court:

- (a) shall not make any order for the payment by any other party of that party's costs incurred by reason of the rehearing; but
- (b) shall order that party to pay the costs of every other party incurred by reason of the rehearing.

(5) Notwithstanding subrule (4), the court may certify that the special circumstances of the case require the court:

- (a) to make an order referred to in subrule (4) (a) in respect of a rehearing - in which case the court may make such an order; or
- (b) to refrain from making an order referred to in subrule (4) (b) in respect of a rehearing - in which case the court may refrain from making such an order.

(6) Where, by operation of section 18 (5) of the Arbitration (Civil Actions) Act 1983, an order for rehearing of an action ceases to have effect, subrules (4) and (5) apply to the action as if:

- (a) the rehearing had taken place; and
- (b) the decision of the court on the rehearing had been in accordance with the award of the arbitrator.

(z) by inserting after Part 39 rule 4 the following rule:

Corporation acting in person

5. For the purposes of the Act and these rules, a corporation may authorise an officer of the corporation to sign any document, or to do any thing which a party to any proceedings acting in person may do, in respect of any proceedings to which the corporation is or may become a party, and any document signed or thing done by an officer so authorised shall be taken to be signed or done by the corporation.

EXPLANATORY NOTE

The purpose of the amendments is to amend the Local Courts (Civil Claims) Rules 1988 so as:

- (a) to relate the time for a plaintiff's rejoinder to a defendant's objection to venue to the date of service of the objection rather than the date of receipt of it;
- (b) to enable a plaintiff, where a confession is filed later than 28 days after service of the statement of claim in the action, to apply on motion for any additional costs incurred because of the delay;
- (c) to enable the court to strike out any part, as well as the whole, of any proceedings;
- (d) to import the District Court provisions allowing the court to dismiss a claim which is not proved, to give judgment by direction at the end of a plaintiff's case and to stay subsequent proceedings until costs are paid;

- (e) to remove the requirement that a judgment debt be paid to the registrar;
- (f) to extend the discretion of the court to award costs in respect of applications to pay by instalments;
- (g) to clarify the entitlement of a judgment creditor to costs of an examination summons;
- (h) to provide for the engagement of an auctioneer in appropriate cases to sell property under a writ of execution;
- (i) to import the whole of the District Court provisions regarding execution against interests in land;
- (j) to enable specified registrars to make orders for costs in respect of any other orders they may make or refuse;
- (k) to recast the arbitration rules so as to introduce the "Philadelphia" system and to take account of recent amendments to the Act and the Arbitration (Civil Actions) Act 1983; and
- (l) to make minor and consequential amendments.
