

1990 - No. 578

LOCAL COURTS (CIVIL CLAIMS) ACT 1970 - RULE

(Relating to certificates of readiness, inspection of
property and powers of registrars)

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. (1)** This Rule commences on the date on which it is published in the Gazette, except as provided by subclause (2).
- (2)** Clauses 3 and 4 commence on 1 October 1990.

Amendments

- 2.** The Local Courts (Civil Claims) Rules 1988 are amended:
 - (a)** by omitting the heading to Part 20 and by inserting instead the following headings:

**PART 20 - MEDICAL EXAMINATION, INSPECTION
OF PROPERTY ETC.**

Division 1 - Medical examination

- (b)** by omitting Part 20 rule 6;

(c) by inserting at the end of Part 20 the following Divisions:

Division 2 - Inspection of property etc.

Inspection

8. (1) The court may, for the purpose of enabling the proper determination of any matter in question in any action, make orders, on terms, for:

- (a) the inspection of any property; or
- (b) the taking of samples of any property; or
- (c) the making of any observation of any property; or
- (d) the trying of any experiment on or with any property or
- (e) the observation of any process.

(2) An order under this rule may authorise any person to enter any land or to do any other thing for the purpose of gaining access to the property.

(3) A party applying for an order under this rule must, so far as practicable, serve notice of the motion on each person who would be affected by the order if made.

(4) In this rule:

"property" includes any land and any document or other chattel, whether in the ownership, possession, custody or power of a party or not.

View

9. The court may inspect any place, process or thing with respect to which any question arises in the action.

Division 3 - Default

Default

10. (1) Where a party fails to comply with an order under this Part, or with the requirements of rule 5 (2), the court may make such order as it thinks fit, including:

- (a) an order that the party in default pay the costs of any other party occasioned by the default; and
- (b) if the party in default is a plaintiff, an order that proceedings in the action be stayed or the action be dismissed as to the whole or any part thereof; and

- (c) if the party in default is a defendant, an order that the party's defence be struck out and that an order for judgment be made or default judgment be entered, as the case requires.
- (2) Where a person concerned, not being a party, fails to comply with an order under this Part, or with the requirements of rule 5 (2), the court may order that proceedings in the action be stayed or the action be dismissed as to any claim for the benefit of that person.
- (3) This rule does not limit the powers of a court to punish for contempt.
- (d) by omitting from Part 30A rule 16 (3) the matter "subrule (1)" where secondly occurring and by inserting instead the matter "subrule (2)"
- (e) by omitting from Part 30A rule 16 (4) the matter "subrule (1)" where secondly occurring and by inserting instead the matter "subrule (2)";
- (f) by inserting in Part 33 rule 1 (1) after the matter "5 (6)" the words "and the function of the court to make an order for costs where an order is made by the registrar setting aside, or refusing to set aside, a default judgment".

Further amendments

- 3.** The Local Courts (Civil Claims) Rules 1988 are further amended:
 - (a) by inserting in Part 9 rule 1 (3) after the words "with it" the words ", together with a notice calling attention to the provisions of rule 2A (1);"
 - (b) by inserting after Part 9 rule 2 the following rule:

Certificate of readiness

2A (1) Unless the court otherwise orders, an action is not to be set down for hearing or call-over under rule 3 unless the plaintiff has filed a certificate of readiness.

(2) A plaintiff is not to file a certificate of readiness before notice of grounds of defence has been filed:

 - (a) by the defendant; or
 - (b) if there is more than one defendant, by at least one of the defendants.

(3) A plaintiff must, prior to filing a certificate of readiness, serve a copy of the certificate:

- (a) on the defendant or on the defendant's solicitor; or
- (b) if there is more than one defendant, on each of the defendants by whom notice of grounds of defence has been filed or on that defendant's solicitor

and must endorse and sign, on the certificate to be filed, a statement to the effect that the provisions of this subrule have been complied with.

- (c) by inserting in Part 9 rule 3 (1) and (2) after the matter "or (2)" wherever occurring the words "and a certificate of readiness is filed under rule 24".

Transitional

4. The Local Courts (Civil Claims) Rules 1988, as amended by clause 3, do not apply to any action in respect of which notice of grounds of defence has been filed before the commencement of that clause, but do apply to any action in respect of which such a notice has not been filed before that commencement,

EXPLANATORY NOTE

The object of this Rule is to amend the Local Courts (Civil Claims) Rules 1988 so as:

- (a) to enable a Local Court to order inspection of property the subject of a civil action; and
- (b) to restore to certain registrars the power to make orders as to costs when setting aside, or refusing to set aside, a default judgment; and
- (c) to ensure that a civil action in a Local Court is not set down for hearing or call-over unless the plaintiff has filed a certificate of readiness, which may only be filed after notice of grounds of defence has been filed in the action.

The amendments are to commence on the date on which this Rule is published in the Gazette, except for those referred to in paragraph (c) which are to commence on 1 October 1990.

This Rule contains a transitional provision that has the effect of applying the amendments referred to in paragraph (c) to civil actions in respect of which notice of grounds of defence has not been filed when the amendments commence. Actions in respect of which such a notice has been filed will not be affected by the amendments.
