

LOCAL COURTS (CIVIL CLAIMS) ACT 1970—RULE

NEW SOUTH WALES



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1. This rule is made by the Rule Committee on 7 December 1992, and has effect on and from 18 December 1992.

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

(a) Part 5 rule 1 (2)

(i) In paragraph (b) omit “Transport Accidents Compensation Act 1987, where the repairs (or the loss of the vehicle)”, insert instead “Motor Accidents Act 1988 or a trailer within the meaning of that Act, where the repairs (or the loss of the vehicle or trailer)”;

(ii) In paragraph (c):

(a) After “vehicle” where first appearing insert “or trailer”;

(b) Omit “Transport Accidents Compensation Act 1987”, insert instead “Motor Accidents Act 1988 or in controlling a trailer within the meaning of that Act”.

(b) Part 9 rule 8 (2A)

After Part 9 rule 8 (2) insert the following subrule:

(2A) Nothing in this rule prevents the court from proceeding immediately after a pre-trial review to the hearing of the action if the court is satisfied that the action is ready for hearing and that all parties consent to an immediate hearing.

(c) Part 10A

After Part 10 insert the following Part:

PART 10A

SUMMARY DISPOSAL

Application and interpretation

1. (1) This Part applies to actions, but not to proceedings other than actions, in a court's General Division, and not to actions or other proceedings in a court's Small Claims Division.

(2) In this Part:

“claim for relief” means any claim which the court has jurisdiction to determine in an action;

“defendant” includes any person against whom a claim for relief is made;

“plaintiff” includes any person making a claim for relief.

Summary judgment

2. (1) Where, on application by the plaintiff in relation to any claim for relief or any part of any claim for relief of the plaintiff

(a) there is evidence of the facts on which the claim or part is based; and

(b) there is evidence given by the plaintiff or by some responsible person that, in the belief of the person giving the evidence, the defendant has no defence to the claim or part, or no defence except as to the amount of any damages claimed,

the court may, at any time, give such judgment for the plaintiff on that claim or part as the nature of the case requires.

(2) Without limiting subrule (1), the court may, under that subrule, give judgment for the plaintiff for damages to be assessed, and where the court gives such a judgment the action shall go to trial only as to the assessment of damages.

(3) A judgment under this rule may, on sufficient cause being shown, be set aside, on terms, by order of the court.

(4) In this rule, “damages” includes the value of goods.

(5) Evidence in support of an application under subrule (1) shall be by affidavit unless the court otherwise orders, and the provisions of Part 15 rules 2 (1), (3), 3, 4, 5 and 6 apply to any such application.

Summary stay or dismissal

3. (1) Where in any action it appears to the court that in relation to the action generally or in relation to any claim for relief in the action:

- (a) no reasonable cause of action is disclosed;
- (b) the action is frivolous or vexatious; or
- (c) the action is an abuse of the process of the court,

the court may order that the action be stayed or dismissed generally or in relation to any claim for relief in the action.

(2) Evidence in support of an application for an order under subrule (1) shall be by affidavit unless the court otherwise orders, and the provisions of Part 15 rules 2 (1), (3), 3, 4, 5 and 6 apply to any such application.

Residue of proceedings

4. Where, in any action:

- (a) a party applies under this Part for:
 - (i) judgment pursuant to rule 2; or
 - (ii) an order for stay or dismissal pursuant to rule 3; and
- (b) the action is not wholly disposed of by judgment or dismissal or the action is not wholly stayed,

the action may be continued as regards any claim or part of a claim not disposed of by judgment or dismissal and not stayed.

(d) Part 23 rules 1B, 1C

After Part 23 rule 1 insert the following rules:

Hearsay and copies

1B. (1) This rule does not apply to evidence on an issue of fact to be determined on the hearing of an action.

(2) Subject to subrule (1), subrules (3) and (4) apply where undue delay or hardship would otherwise be caused.

(3) Where a statement on information and belief is made by a deponent in an affidavit, or by a witness being examined orally, and the deponent or witness gives the source and ground of the information, the statement shall not be inadmissible on the ground that it is hearsay.

(4) Where a deponent swears in an affidavit, or a witness being examined orally states, that a document is a copy of an original, the document shall not be inadmissible as evidence of the contents of the original on the ground that the original is not produced.

Hearsay evidence under Motor Accidents Act 1988

1C. A party seeking admission of evidence of a statement under section 58 (2) of the Motor Accidents Act 1988 shall give reasonable notice to all other parties to the action that he will seek that admission.

(e) Part 31 rule 9 (1A)

After Part 31 rule 9 (1) insert the following subrule:

(1A) Where the court or arbitrator is satisfied that it was necessary to the attaining of a just decision on an action or cross-claim that a party attend the hearing of the action or cross-claim, the court or arbitrator may order that any costs payable to the party include an amount in respect of the party's loss of earnings in attending the hearing, not exceeding the amount that would have been payable to the party as witnesses' expenses had the party been a witness in the action or cross-claim.

(f) Part 31 rule 11A

After Part 31 rule 11 insert the following rule:

Security for costs

11A. (1) In this rule:

- (a) references to a plaintiff extend to any person who makes a claim for relief in an action; and
- (b) references to a defendant extend to any person against whom a claim for relief is made in an action.

(2) Where, in any action in a court's General Division, it appears to the court on the application of a defendant:

- (a) that a plaintiff is ordinarily resident outside the Commonwealth of Australia;
- (b) that a plaintiff is suing, not for his own benefit, but for the benefit of some other person and there is reason to believe that the plaintiff will be unable to pay the costs of the defendant if ordered to do so;
- (c) subject to subrule (3), that the address of a plaintiff is not stated or is mis-stated in his originating process;
- (d) that a plaintiff has changed his address after the commencement of the action with a view to avoiding the consequences of the action; or
- (e) that there is reason to believe that a plaintiff is unlikely to succeed in the action and will be unable to pay the costs of the defendant if ordered to do so,

the court may if it thinks fit order that plaintiff to give such security as the court thinks fit for the costs of the defendant of and incidental to the action and that the action be stayed until the security is given.

(3) The court shall not order a plaintiff to give security by reason only of subrule (2) (c) if it appears to the court that the failure to state the address of the plaintiff or the mis-statement of the address was made without intention to deceive.

(4) Where the court orders a plaintiff to give security for costs, the security shall be given in such manner, at such time, and in such terms (if any) as the court may order direct, and in the absence of any such direction shall be given to the satisfaction of the registrar.

(5) Where a plaintiff fails to comply with an order under this rule, the court may, on terms, order that the action or any part of the action be struck out.

(g) Part 33 rules 1, 2

Omit the rules, insert instead the following rule:

Functions of registrars

1. (1) The registrar of any court may exercise the functions of the court:

- (a) to make in any action any order which the court may make, being an order consented to by:
 - (i) the parties to the application for the order; and
 - (ii) any other person who will be required to comply with the order or to suffer anything to be done under the order;
- (b) to enter a judgment to which all the parties consent; and
- (c) to stay proceedings in any action, subject to the stay subsisting only pending a hearing by the court set down for the first available day.

(2) The registrar of a court specified in subrule (3) may exercise the functions of the court to make, or refuse to make, orders:

- (a) under Part 24 rule 5 (6) (which relates to inspection of subpoenaed documents);
- (b) for substituted service of process;
- (c) in respect of the amendment of documents;
- (d) for expedition or adjournment of the hearing of an action;
- (e) that proceedings be heard together;
- (f) for extension or abridgment of time;

- (g) to give further particulars;
- (h) setting aside a default judgment subject to the filing of a notice of grounds of defence;
- (i) for costs where an order is made or refused under paragraph (h);
- (i) under section 21H (1) of the Act; and
- (k) revoking any order made under section 21H (1) of the Act by a registrar.

(3) The courts specified for the purposes of subrule (2) are the courts held at the Downing Centre, Albury, Balmain, Bankstown, Bathurst, Blacktown, Broken Hill, Burwood, Camden, Campbelltown, Coffs Harbour, Dubbo, Fairfield, Gosford, Goulburn, Hornsby, Kogarah, Lismore, Liverpool, Manly, Newcastle, Newtown, North Sydney, Orange, Parramatta, Penrith, Queanbeyan, Redfern, Ryde, Sutherland, Tamworth, Taree, Wagga Wagga, Waverley and Wollongong.

(4) The registrar of the court held at the Downing Centre may 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 or in respect of any call-over or conference presided over, or scheduled to be presided over, by that registrar.

(5) This rule:

- (a) applies except where the court otherwise orders; and
- (b) confers functions additional to, and not in derogation from or substitution for, functions conferred otherwise in these rules.

(h) Part 38 rule 1

- (i) Omit “Campsie,”;
 - (ii) After “Katoomba,” insert “Kempsey,”;
 - (iii) Omit “Lidcombe,”;
 - (iv) After “Port Kembla,” insert “Port Macquarie,”;
 - (v) After “Raymond Terrace,” insert “Richmond,”;
 - (vi) After “Waverley,” insert “Windsor,”.
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EXPLANATORY NOTE

The purposes of the amendments are:

- (a) to update a statutory reference in the definition of “motor vehicle”;
- (b) to ensure that an action in the Small Claims Division may be heard and determined immediately after the pre-trial review of the action if this is just and convenient;
- (c) to provide machinery for the summary disposal of an action in which a party does not pursue his rights;
- (d) to make the same provision as in the District Court for the admission of hearsay evidence in limited circumstances;
- (e) to make clear that an award of costs in a party’s favour may include the party’s loss of earnings in attending the hearing;
- (f) to provide that a court may require a plaintiff to give security for costs in the circumstances in which the District Court may so require;
- (g) to restate the functions of registrars, which were stated by reference to a subsection of the Local Courts (Civil Claims) Act 1970 which has been repealed, to add to those functions, and to extend the places at which they may be exercised;
- (h) to add to the list of courts from which actions may be referred to arbitration under the Arbitration (Civil Actions) Act 1983.

E. J. O’Grady,
Secretary to the Rule Committee.
