

1993—No. 82

LOCAL COURTS (CIVIL CLAIMS) ACT 1970—RULE

NEW SOUTH WALES



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1. This rule is made by the Rule Committee on 22 February 1993, and has effect on and from 5 March 1993.
2. The Local Courts (Civil Claims) Rules 1988 are amended as follows:
 - (a) Part 9 rule 4 (2) (c) and (d)
Omit the paragraphs, insert instead the following paragraphs:
 - (c) make an order adjourning the call-over of the action, which order may be made on terms, including terms as to costs; or
 - (d) strike out the action or any defence, cross-claim, or third or subsequent party notice filed in the action,
 - (b) Part 9 rule 4 (3) (b) and (c)
Omit the paragraphs, insert instead the following paragraphs:
 - (b) make an order adjourning the call-over of the action, which order may be made on terms, including terms as to costs; or
 - (c) strike out the action or any defence, cross-claim, or third or subsequent party notice filed in the action,
 - (c) Part 9 rule 4 (5) and (6)
After Part 9 rule 4 (4) insert the following subrules:
 - (5) Where the court strikes out a defence, cross-claim, or third or subsequent party notice under subrule (2) (d) or (3) (c) and default judgment is entered in the action, subrule (4) does not operate to enable the court to fix another date for the call-over of the action.
 - (6) Where an action is called over before a registrar the registrar may exercise the functions of the court mentioned in this rule.

(d) Part 9 rule 8 (3)

Omit “court from adjourning an action”, insert instead “person before whom the pre-trial review of an action is held from adjourning the action”.

(e) Part 10 rule 1 (1) (a)

After “6 (1)” insert “, or has filed such a notice which the court has ordered to be struck out”.

(f) Part 10 rule 1 (1A)

After Part 10 rule 1 (1) insert the following subrule:

(1A) Where:

(a) a defendant seeks an order for judgment under subrule (1) in respect of a cross-claim; and

(b) a notation has been made, by an officer in the registry, on the filed notice of the cross-claim:

(i) to the effect that a copy of the notice has been given or sent by post to the plaintiff or the plaintiff’s solicitor; and

(ii) stating the date of that giving or sending,

that giving or sending shall be deemed to be service of the notice on the plaintiff and that notation shall be taken to satisfy the requirement in subrule (1) for the filing of an affidavit of service.

(g) Part 11 rule 1 (1) (a)

After “6 (1)” insert “, or has filed such a notice which the court has ordered to be struck out”.

(h) Part 11 rule 1 (1A)

After Part 11 rule 1 (1) insert the following subrule:

(1A) Where:

(a) a defendant seeks the entry of default judgment under subrule (1) in respect of a cross-claim; and

(b) a notation has been made, by an officer in the registry, on the filed notice of the cross-claim:

(i) to the effect that a copy of the notice has been given or sent by post to the plaintiff or the plaintiff’s solicitor; and

(ii) stating the date of that giving or sending,

that giving or sending shall be deemed to be service of the notice on the plaintiff and that notation shall be taken to satisfy the requirement in subrule (1) for the filing of an affidavit of service.

(i) Part 13 rule 2 (5)

After Part 13 rule 2 (4) insert the following subrule:

(5) This rule does not apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise.

(j) Part 31 rule 12 (4A)

After Part 31 rule 12 (4) insert the following subrule:

(4A) Where the function of a court specified in Part 33 rule 1 (3) to adjourn, strike out, or reinstate an action as referred to in subrule (4) is exercised by the registrar, the function of the court to award costs under that subrule may also be exercised by the registrar.

(k) Part 33 rule 1 (2) (d)

After “action” insert “, which orders may be made on terms, including terms as to costs”.

(l) Part 33 rule 1 (4)

Omit the subrule, insert instead the following subrule:

(4) The registrar of the court held at the Downing Centre may exercise the functions of the court to make, or refuse to make, orders:

- (a) giving judgment under Part 21 rule 2 (1) (c);
- (b) setting aside under Part 21 rule 2 (2) any judgment given by the registrar under Part 21 rule 2 (1) (c);
- (c) striking out proceedings under Part 21 rule 3 (1) (a), (b) or (c);
- (d) reinstating under Part 21 rule 3 (2) any proceedings struck out by the registrar;
- (e) granting leave to discontinue proceedings under Part 17 rule 1 (2) (c);
- (f) removing a stay of proceedings under Part 19 rule 2 (2);
- (g) setting aside a default judgment:
 - (i) on the application of the plaintiff; or
 - (ii) in any case, subject to the filing of a notice of grounds of defence; and
- (h) for costs in respect of any order made or refused by the registrar under these rules or in respect of any call-over, conference or pre-trial review presided over, or scheduled to be presided over, by the registrar.

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(m) Part 33 rule 1 (6)

After Part 33 rule 1 (5) insert the following subrule:

(6) Without limiting subrules (1) to (5), a registrar may exercise any function, if he is authorised to exercise the function, during or with respect to the conduct by the registrar of a call-over mentioned in Part 9 rule 4, whether or not any notice of motion is filed with regard to the exercise of the function.

EXPLANATORY NOTE

The purpose of the amendments is:

(a) to ensure the power of the registrar at a prescribed court to:

- (i) make a costs order when adjourning a hearing, a call-over or a pre-trial review, or striking out or reinstating an action at a pre-trial review;
- (ii) strike out not only the whole, but a part of an action, cross-claim, etc.;
- (iii) enter default judgment or make an order for judgment after a defence is struck out;
- (iv) exercise at a call-over functions which he can exercise otherwise, whether or not a notice of motion is filed;

(The courts affected are prescribed by Part 33 rule 1 (3).)

(b) to ensure the power of the registrar at the Downing Centre to:

- (i) enter judgment on the failure of a defendant to attend the hearing, and set aside any such judgment
- (ii) give leave to discontinue proceedings;
- (iii) remove the stay of proceedings where a third party notice is not served,
- (iv) set aside a default judgment on the plaintiff's application, whether or not a defence is to be filed;

(c) to make it clear that the provisions concerning interest ordered by the court do not apply to interest claimed as of right.

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