

LOCAL COURTS (CIVIL CLAIMS) ACT 1970—RULE

NEW SOUTH WALES



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1. This rule is made by the Rule Committee on 11 April 1994, and has effect on and from the date on which section 28A of the Local Courts (Civic claims) Act 1970, as substituted by the Courts Legislation (Amendment) Act 1993, commences.

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

(a) Part 26 rule 2A

After Part 26 rule 2 insert the following rule:

Judgment in an action relating to the detention of goods

2A. (1) Where a plaintiff, under section 28A (2) of the Act, chooses between the forms of relief prescribed in section 28A (1) (b) and (c) of the Act, the plaintiff shall notify the choice to the court before judgment in the action is given.

(2) Where a court gives judgment under section 28A (1) (a) or (b) of the Act, it shall in its judgment specify a time within which any delivery of the goods the subject of the judgment must take place.

(3) Where a judgment debtor delivers or tenders goods in satisfaction or part satisfaction of a judgment given under section 28A (1) (a) or (b) of the Act, and the judgment creditor refuses to accept the goods on the ground that they are not the goods the subject of the judgment or that they are substantially damaged, the judgment creditor may apply to the court:

- (a) in the case of a judgment given under section 28A (1) (a) or an order under section 28A (3), subject to Part 30 rule 10A for committal of the judgment debtor, or, where the judgment debtor is a corporation, an officer of the judgment debtor; or
- (b) in the case of a judgment given under section 28A (1) (b), for an order that the judgment may be enforced as though it had been given under section 28A (1) (c).

(b) Part 30 rules 10A, 10B

After Part 30 rule 10 insert the following rules:

Judgment for return of goods

10A. (1) A judgment given under section 28A (1) (a), and an order made under section 28A (3), of the Act may, after the expiration of any time specified under Part 26 rule 2A (2), be enforced by one or more of the following means:

(a) writ of specific delivery;

(b) subject to this rule, committal by order of the court on the application of the judgment creditor.

(2) A judgment given under section 28A (1) (b) of the Act may, after the expiration of any time specified under Part 26 rule 2A (2), be enforced by writ of delivery.

(3) A writ of specific delivery and a writ of delivery may include provision for enforcing the payment of money required to be paid by the judgment to be enforced by the writ.

(4) The court shall not order committal of a judgment debtor under this rule unless a minute of the judgment is served personally on the judgment debtor before the expiration of any time specified under Part 26 rule 2A (2) in respect of the judgment.

(5) Where the judgment debtor is a corporation, the court shall not order committal of an officer of the corporation unless, in addition to service under subrule (4) on the judgment debtor, a minute of the judgment is served personally on the officer before the expiration of any time specified under Part 26 rule 2A (2) in respect of the judgment.

(6) A minute of a judgment served under this rule must bear a notice (naming the person concerned) that the person is liable to imprisonment if the goods the subject of the judgment are not returned within the time specified in the judgment.

(7) Where an order is made under Part 4 rule 2 (1) extending or abridging any time specified under Part 26 rule 2A (2) in respect of a judgment, and a minute of the judgment is served on a person pursuant to this rule, a minute of the order must be served on that person before the expiration of that time ~~as so~~ extended or abridged.

(8) Where a person liable to committal by way of enforcement of a judgment has notice of the judgment:

- (a) by being present when the judgment is given; or
- (b) by being notified of the terms of the judgment whether by telephone, telegram or otherwise,

the court may order committal of that person notwithstanding that service has not been effected in accordance with this rule.

(9) The court may dispense with service under this rule.

Issue of writ of delivery or specific delivery

10B. (1) An application by a judgment creditor for the issue of a writ of delivery or a writ of specific delivery shall contain a statement as to:

- (a) the matters mentioned in paragraphs (a) to (d) of rule 2 relating to the judgment to enforce which the writ is sought to be issued;
- (b) whether any, and if so which, of the goods the subject of the judgment have been returned to the judgment creditor; and
- (c) the address at which it is alleged that the goods the subject of the judgment are situated.

(2) Rule 2 (2) applies to an application mentioned in subrule (1) as though it were an application for the issue of a writ of execution.

EXPLANATORY NOTE

The purpose of the amendments is to apply to the Local Courts the provisions of the District Court Rules 1973 relating to judgments for the return of goods detained and the enforcement of those judgments. The jurisdiction to give such judgments and the power to make rules relating to them are conferred on the Local Courts by Schedule 1 (1) and (3) to the Courts Legislation (Amendment) Act 1993.

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Secretary to the Rule Committee
