

LOCAL COURTS (CIVIL CLAIMS) ACT 1970—RULE

NEW SOUTH WALES



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1. This rule is made by the Rule Committee on 18 July 1994, and has effect on and from 22 July 1994.

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

(a) Part 15 rule 6 (1)

Omit “determined in accordance with Part 31 rule 8”.

(b) Part 31 rule 1A

After Part 31 rule 1 insert the following rule:

Application after commencement of Legal Profession Reform Act

1A. (1) This Part has no operation after 30 June 1994 except:

(a) as provided by or under the Legal Profession Act 1987;

(b) as provided by subrule (2); or

(c) for the purposes of Part 38A rule 4 (2) (which deals with the costs of registration of a judgment under the Service and Execution of Process Act 1992 (Cth.)).

(2) This rule shall not affect any right, privilege, obligation, liability or disentitlement acquired, accrue or incurred on or before 30 June 1994.

Part 31A

(c) After Part 31 insert the following Part:

PART 31A

COSTS AFTER 30 JUNE 1994

Application

1. (1) The provisions of this Part apply, subject to their terms, to and in respect of costs payable or to be assessed under any order of a court or under the rules.

(2) The application of this Part is subject to the Legal Profession Act 1987 and the regulations made under that Act.

Time for dealing with costs

2. A court may, in any proceedings, exercise its powers and discretions as to costs at any stage of the proceedings or after the conclusion of the proceedings.

Assessed costs and other provisions

3.(1) Subject to this Part, where, by or under these rules, or any order of a court, costs are to be paid to any person, that person shall be entitled to assessed costs.

(2) Where a court orders that costs be paid to any person, the court may, at any time prior to the costs being referred for assessment, further order that, as to the whole or any part (specified in the order) of the costs, instead of assessed costs, that person shall be entitled to:

- (a) a proportion specified in the order of the assessed costs;
- (b) the assessed costs from or up to a stage of the proceedings specified in the order; or
- (c) a gross sum specified in the order.

Order for costs—when payable

4. (1) Where, before the conclusion of any proceedings, a court or registrar makes an order for the payment of costs or a motion is refused with costs, the costs shall not, unless the court or registrar otherwise orders, be payable until after the conclusion of the proceedings.

(2) Where, in any proceedings, it appears to the court or registrar, on application, that there is no likelihood of any further order being made in the proceedings, the court or registrar may order that any costs ordered to be paid shall be payable forthwith.

Following the event

5. If a court makes any order as to costs, the court shall, subject to this Part, order that the costs follow the event, except where it appears to the court that some other order should be made as to the whole or any part of the costs.

Party and party basis

6. Costs payable by or under the rules or any order of a court or registrar shall be payable on a party and party basis unless the rules or an order provide that they are payable on an indemnity basis.

Fixed amounts of costs

7. The costs recoverable in respect of any of the following matters:

- (a) issuing a statement of claim;
- (b) obtaining an order for judgment;
- (c) obtaining judgment in an undefended action;
- (d) an examination summons;
- (e) issuing a warrant for apprehension;
- (f) issuing a writ of execution;
- (g) serving process; and
- (h) substituted service of process,

on or after 1 July 1994 are the costs that would have been recoverable under a rule, a scale of costs, or a costs determination in force on 30 June 1994 in respect of the matter, notwithstanding that the rule, scale or determination has ceased to have effect.

Costs order to confirm earlier costs orders

8. An order as to costs made in proceedings after 30 June 1994 shall be taken to expressly confirm all earlier orders as to costs made in the proceedings.

Order confirming rule as to payment of costs

9. Where a party to proceedings has become liable under a rule to pay any of the costs of the proceedings of any other party, the court may order the party so liable to pay those costs.

Proceedings removed into the District Court

10. Costs payable under an order of the District Court in respect of any step in an action removed into the District Court under section 21B (1) of the Act, taken before that removal, shall not exceed the costs that would have been payable under these rules in respect of that step if the action had not been so removed.

Security for costs

11. (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 the 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 by 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.

Small Claims Division

12. (1) Costs may not be awarded, and are not recoverable, in a court's Small Claims Division except as provided by this rule.

(2) The costs (including professional costs) of:

- (a) issuing a statement of claim; and
- (b) entering a default judgment; and
- (c) obtaining an order for judgment; and
- (d) enforcing a judgment,

in relation to an action in a court's Small Claims Division are recoverable as if the action were in the court's General Division.

(3) If a court gives judgment in its Small Claims Division, it may award costs to a party against another party.

(4) If a court sitting in its Small Claims Division makes an order setting aside a judgment, it may award costs to a party against another party.

(5) If a court:

(a) adjourns or strikes out an action in its Small Claims Division or reinstates an action that has been struck out; and

(b) is satisfied that the failure of the action to proceed was caused by the fault or neglect of a party to the action, the court may award costs against the party to another party.

(6) 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 (5) is exercised by the registrar, the function of the court to award costs under that subrule may also be exercised by the registrar.

(7) If a party discontinues an action in a court's Small Claims Division, the court may award costs against the party to another Party.

(8) The costs that may be awarded to a party under subrule (3), (4), (5) or (7) may include the party's disbursements properly incurred and may also include:

(a) an amount in respect of the party's loss of earnings in attending the court for a hearing or pre-trial review, or both, not exceeding the amount that would have been payable to the party as witness' expenses had the party been a witness in the action; and

(b) if the party appeared by a solicitor or barrister — such professional costs as would have been recoverable by the plaintiff had default judgment been entered in the action, but may not include any other costs.

(9) In exercising its discretion under section 34 of the Act in respect of an action in its General Division, a court must consider whether or not the action should have been heard and determined in the court's Small Claims Division.

EXPLANATORY NOTE

The purpose of the amendments is to bring the costs rules into line with the new costs regime created by the Legal Profession Reform Act 1993.

E J O'Grady
Secretary to the Rule Committee.
