

1994—No. 671

LOCAL COURTS (CIVIL CLAIMS) ACT 1970—REGULATION

(Relating to fees in pro bono cases)

NEW SOUTH WALES



[Published in Gazette No. 174 of 23 December 1994]

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 Regulation set forth hereunder.

JOHN HANNAFORD,
Minister for Justice.

Commencement

1. This Regulation commences on 1 January 1995.

Amendments

2. Part 2 of the Local Courts (Civil Claims) Rules 1988 is amended:

- (a) by omitting from rule 2 (4) the matter “subrule (3)” and by inserting instead the matter “subrule (3) or rule 3 or not required because of subrule (5A)”;
- (b) by inserting after rule 2 the following rule:

Pro bono cases

3. (1) The taking of the fee for the filing of any statement of claim (or notice of cross-claim) on behalf of a pro bono party to proceedings is to be postponed until judgment has been given in the proceedings.

(2) The fee is not to be taken at all, or if taken must be remitted, if in relation to the claim (or cross-claim):

- (a) judgment is against that party; or
- (b) judgment is in favour of that party, but damages are not awarded (or only nominal damages are awarded) in his or her favour and costs are not awarded in his or her favour.

(3) A registrar must not refuse to file or issue any document relevant to proceedings merely because, in accordance with this rule, a fee has not been taken for the filing of any statement of claim (or notice of cross-claim) on behalf of a pro bono party to those proceedings.

(4) Under this rule, a party is to be treated as a **pro bono party to proceedings** if he or she is being represented under the pro bono scheme of the Law Society of New South Wales or the pro bono scheme of the New South Wales Bar Association and a solicitor (in the case of the Law Society's scheme), or a barrister (in the case of the Bar Association's scheme), acting for the party:

- (a) certifies in writing to the registrar with whom the statement of claim (or notice of cross-claim) is lodged on behalf of the party that the party is being so represented; and
- (b) undertakes in writing to the registrar to pay the filing fee for that document if, at the conclusion of the proceedings, subrule (2) does not apply.

EXPLANATORY NOTE

The object of this Regulation is to supplement the general power that a registrar of a Local Court has to postpone or remit fees with an express provision for the postponement or waiver of filing fees for documents that initiate pro bono cases in a Local Court.

The general power is set out in rule 2 (3) of Part 2 of the the Local Courts (Civil Claims) Rules 1988. (Those rules, in so far as they prescribe fees, are taken by virtue of section 10F (2) 'of the Local Courts (Civil Claims) Act 1970 to be regulations made by the Governor.) This Regulation inserts a rule 3 in Part 2 that provides that in general the filing fee for a document by which a party initiates pro bono proceedings (including proceedings involving a cross-claim) need only be paid when the proceedings conclude in favour of that party.

However, that fee need not be paid even if judgment is in favour of the party as long as he or she recovers only nominal damages (or no damages) and costs are not awarded in his or her favour.

The fee, if already paid, is to be refunded in circumstances where, because of the outcome, it need not have been paid.

This Regulation also makes a consequential amendment to ensure that any document is marked with the fee payable in respect of it in cases where the fee is waived, postponed or remitted or is the subject of an exemption.

This Regulation is made under section 85 (Regulations—court fees) of the Local Courts (Civil Claims) Act 1970.
