



New South Wales

**LOCAL COURTS (CIVIL CLAIMS) ACT 1970—RULE**

1. This rule is made by the Rule Committee on 18 November 1996, and has effect on and from 22 November 1996.
2. The Local Courts (Civil Claims) Rules 1988 are amended as follows:
  - (a) Part 1 rule 3 (1)
    - (i) Omit the definition of “*document*”, insert instead:  
“*document*” means any record of information, and includes:
      - (a) anything on which there is writing;
      - (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
      - (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or
      - (d) a map, plan, drawing or photograph;
    - (ii) Insert in alphabetical order:  
“*curator*” means:
      - (a) in respect of a person:
        - (i) the management of whose estate is, by the Protected Estates Act 1983 or by any order of the Supreme Court or the Guardianship Board under that Act, committed to the Protective Commissioner;
        - (ii) of whose estate the Protective Commissioner has, in accordance with section 63 of that Act, undertaken the management; or
        - (iii) in relation to whose property the Protective Commissioner is authorised as mentioned in section 66 (1) (a) of that Act, the Protective Commissioner;
      - (b) in respect of a person of whose estate a manager has been appointed by order of the Supreme Court or the Guardianship Board under section 22 or section 22A of the Protected Estates Act 1983—the manager appointed;

***“disable person”*** means a minor or an incompetent person;

***“incommunicate person”*** means a person suffering from such a handicap of body or mind, by way of coma, paralysis or otherwise, whether or not induced by any drug or by medical or other treatment, that he or she is unable to receive communications respecting his or her property or affairs, or to express his or her will respecting his or her property or affairs;

***“incompetent person”*** means:

(a) a person who is not a minor and who is:

- (i) incapable of managing his or her affairs; or
- (ii) incommunicate; or

(b) a minor who has a curator;

***“minor”*** means person under the age of 18 years;

***“tutor”*** means a next friend or guardian ad litem of a disable person;

(b) Part 1 rule 3 (6)

Omit “on terms”.

(c) Part 6 rule 8 (2)

Omit “suing without a tutor, or as the tutor of a plaintiff.”.

(d) Part 9 rule 2B (2) (d)

(i) In subparagraph (iv) omit “loss; and”, insert instead “loss;”;

(ii) In subparagraph (v) omit “income,”, insert instead “income; and”;

(iii) After subparagraph (v) insert:

- (vi) particulars of any claim for domestic assistance or attendant care,

(e) Part 9 rule 2B (2) (e)

After subparagraph (iii) insert:

(iv) reports, award rates and correspondence relied on to support any claims for domestic assistance or attendant care; and

(f) Part 10A

Before Part 10A rule 1 insert:

**DIVISION I—*Summary Judgment***

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(g) Part 10A rule 1 (IA)

After Part 10A rule 1 (1) insert:

(IA) This Part does not apply to an action in which there is an issue of fact on a charge of fraud against a party.

(h) Part 10A rule 2 (5)

Omit “rules 2 (1), (3), 3, 4, 5 and 6”.

(i) Part 10A rule 3

(i) Before Part 10A rule 3 insert:

*DIVISION 2—Summary stay or dismissal*

(ii) Omit the headnote, insert instead “**Frivolity, etc**”

(iii) In subrule (3) omit “rules 2 (1), (3), 3, 4, 5 and 6”.

(j) Part 10A rule 4

(i) Before Part 10A rule 4 insert:

*DIVISION 3—General*

(ii) Omit “rule 2”, insert instead “Division 1”.

(iii) Omit “rule 3”, insert instead “Division 2”.

(k) Part 12 rule 5

Omit the rule.

(l) Part 14 rule 6

Omit “made under, or by virtue of the operation of”, insert instead “under”.

(m) Part 14 rule 7

Omit the rule.

(n) Part 15 rule 1

Omit subrule (1), insert instead:

(1) An interlocutory application, in or for the purposes of or in relation to an action, shall be made by motion.

(1A) In this Part, the person making the application is referred to as the applicant and any other party to the application is referred to as a respondent.

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- (o) Part 15 rule 2 (1)  
Omit “interested party”, insert instead “respondent”.
- (p) Part 15 rule 2 (2) (b)  
Omit “party interested, other than the applicant,”, insert instead “respondent”.
- (q) Part 15 rule 2 (3)
  - (i) In paragraph (d) omit “and”;
  - (ii) Omit paragraph (e), insert instead:
    - (e) name (or, if a party to the action, identify) the applicant and each respondent; and
    - (f) where the applicant does not already have an address for service in the action, state an address for service.
- (r) Part 15 rule 2 (3A)  
After Part 15 rule 2 (3) insert:
  - (3A) Costs need not be specifically claimed.
- (s) Part 15 rule 4  
Omit the rule.
- (t) Part 15 rule 5 (2A)  
After Part 15 rule 5 (2) insert:
  - (2A) The court may hear and dispose of a motion in the absence of any party to the motion where notice of the motion has been duly served on the absent party.
- (u) Part 15 rule 5 (4)  
Omit the subrule.
- (v) Part 15 rule 6  
Omit the rule.
- (w) Part 16 rule 1 (1)
  - (i) Omit “on the application of any party or without any such application, order, on terms,”, insert instead “on application by any party or of its own motion, order”;
  - (ii) Omit “filed by the party”.

(x) Part 16 rule 1 (3A)

After Part 16 rule 1 (3) insert:

(3A) An order may be made, or leave may be granted, under subrule (1) notwithstanding that the effect of the amendment is, or would be, to add or substitute a cause of action arising after the commencement of the action, but in such a case the date of commencement of the action, so far as concerns that cause of action, shall, subject to rule 4, be the date on which the amendment is made.

(y) Part 16 rule 2 (2)

Omit “subrule (3)”, insert instead “subrules (3A) and (3B)”.

(z) Part 16 rule 2 (3)

Omit the subrule, insert instead:

(3) Subject to subrules (3A) and (3B), this rule applies to an amendment which would have the effect that a person is added as, or ceases to be, a party, as it applies to other amendments.

(3A) This rule does not apply to an amendment which would have the effect of adding a person as a plaintiff unless:

(a) the plaintiff immediately before the amendment is made acts by a solicitor; and

(b) that solicitor at the time the amendment is made certifies on the amended document:

(i) that he acts for the person added as a plaintiff; and

(ii) that the person consents to being added as a plaintiff.

(3B) This rule does not apply to an amendment which would have the effect that a person ceases to be a party unless that person consents to ceasing to be a party.

(aa) Part 16 rule 3 (1)

(i) After “2 (1)” insert “or (4)”.

(ii) Omit “on terms, but”.

(ab) Part 16 rule 4 (1)

Omit “(2),”.

(ac) Part 16 rule 4 (2)

Omit the subrule.

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(ad) Part 16 rule 4 (5A)

After Part 16 rule 4 (5) insert:

(5A) An amendment made pursuant to an order made under this rule shall, unless the court otherwise orders, relate back to the date of filing of the statement of claim.

(ae) Part 16 rule 5

(i) Omit the headnote, insert instead “**Duration of leave or consent**”;

(ii) Omit “under this Part”;

(iii) After Part 16 rule 5 (1) insert:

(2) Subject to Part 4 rule 2, where, at the request of a party, each other party gives consent to amend a document, then, if the requesting party does not amend the document in accordance with the consent or consents before the expiration of 14 days after the date on which the consent or the first of the consents is given the consent or consents shall cease to have effect.

(af) Part 16 rule 6 (l)

(i) Omit “it” where first occurring, insert instead “the court”;

(ii) Omit “, and may make any such order or leave conditional on compliance with any such directions”.

(ag) Part 16 rule 7 (1)

Omit “authorised under this Part”.

(ah) Part 16 rule 7 (2)

(i) In paragraph (a) omit “where”, insert instead “if”;

(ii) In paragraph (b) omit “where the amendment is made by a party without leave”, insert instead “otherwise”.

(ai) Part 16 rule 8

Omit “authorised under this Part”.

(aj) Part 16 rule 9

Omit “who filed the document”, insert instead “making the amendment”.

(ak) Part 16 rule 10 (1)

Omit “without any such application”, insert instead “of its own motion”.

(al) Part 16 rule 11

Omit the rule.

(am) Part 17 rule 1 (2)

Omit the subrule, insert instead:

(2) A party making a claim for relief may, before the beginning of the trial or hearing of the proceedings on the claim (but not otherwise), discontinue the proceedings so far as concerns the whole or any part of any claim for relief made by him:

(a) where the party or the party's solicitor certifies that the party does not represent any other person and all other parties having an address for service in the proceedings consent; or

(b) with the leave of the court.

(an) Part 17 rule 3

Omit the rule.

(ao) Part 17 rule 4 (1)

Omit the subrule, insert instead:

(1) Where a plaintiff makes default in complying with any order or direction as to the conduct of the proceedings, or does not prosecute the proceedings with due despatch, the court may, on application by any party or of its own motion, dismiss the proceedings or make such other order as the court thinks fit.

(ap) Part 17 rule 4 (2)

Omit "7,".

(aq) Part 17 rule 5 (2)

Omit "consent shall be endorsed by each consenting party on the notice before filing", insert instead "notice under subrule (1) must bear the consent of each consenting party".

(ar) Part 17 rule 5 (3)

After Part 17 rule 5 (2) insert:

(3) A notice under subrule (1) effecting a discontinuance under rule 1 (2) (a) may contain a statement that no order will be sought as to the costs occasioned by the discontinued claim and incurred before service of the notice.

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(as) Part 17 rule 6

Omit “on the day of filing or as soon as practicable thereafter”, insert instead “as soon as practicable”.

(at) Part 17 rule 7

Omit the rule.

(au) Part 17 rule 8

Omit “be a defence to proceedings for the same, or substantially the same, cause of action”, insert instead “prevent the plaintiff from bringing fresh proceedings or claiming the same relief in fresh proceedings”.

(av) Part 17 rule 9

(i) In paragraph (a) omit “thereof”, insert instead “of any claim for relief”;

(ii) Omit paragraph (b), insert instead:

(b) the party is, by reason of the discontinuance, liable to pay costs of another party occasioned by the proceedings; and

(iii) In paragraph (c) omit “that amount”, insert instead “the costs”;

(iv) Omit “the amount is”, insert instead “those costs are”.

(aw) Part 17A rule 5 (1)

Omit “judgment”, insert instead “the time prescribed by subrule (8)”.

(ax) Part 17A rule 5 (4)

Omit paragraphs (b) and (c), insert instead:

(b) the time prescribed by subrule (8) in respect of the claim to which the offer relates,

(ay) Part 17A rule 5 (8)

After Part 17A rule 5 (7) insert:

(8) The time prescribed for the purposes of subrules (1) and (4) and Part 31A rule 20 is:

(a) where the action has been referred under section 21H of the Act for determination pursuant to the Arbitration (Civil Actions) Act 1983—after the conclusion of the arbitration hearing; or

(b) in any other case—after the Magistrate gives his or her decision or begins to give reasons for his or her decision on a judgment (except an interlocutory judgment),

whichever is the sooner.

(az) Part 17A rule 9 (2), (3)

Omit the subrules, insert instead:

(2) Where an offer has not been accepted, then, subject to subrule (3), no communication with respect to the offer shall be made to the court at the hearing, or, as the case may require, to the arbitrator.

(3) An offer made in accordance with this Part may be disclosed to the court or, as the case may require, to the arbitrator:

- (a) for the purposes of Part 31A rule 20 (4) or (6)—after all questions of liability and the relief to be granted have been determined;
- (b) as provided by Part 31A rule 20 (9);
- (c) where a notice of offer provides that the offer is not made without prejudice; or
- (d) in so far as disclosure is necessary to enable the offer to be taken into account for the purposes of section 73 (4) of the Motor Accidents Act 1988 or section 151M of the Workers Compensation Act 1987.

(ba) Part 17A rule 11

Omit the rule.

(bb) Part 17A rule 12

Omit “rule 11”, insert instead “Part 31A rule 20”.

(bc) Part 17A rule 13

Omit the rule, insert instead:

### **Offer of contribution**

13. (1) Where in an action:

- (a) a party (“the first party”) stands to be held liable to another party (“the second party”) to contribute towards any debt or damages which may be recovered against the second party in the action;
- (b) the first party, at any time after filing a defence, makes an offer to the second party to contribute to a specified extent to the debt or damages; and
- (c) the offer is made without prejudice to the first party’s defence,

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the offer shall not be brought to the attention of the court or, as the case may require, of the arbitrator, until all questions of liability or amount of debt or damages have been decided.

(2) In subrule (1), a reference to debt or damages includes a reference to interest claimed:

- (a) under section 39A of the Act, on the debt; or
  - (b) under section 39A of the Act or section 73 of the Motor Accidents Act 1988 or section 151M of the Workers Compensation Act 1987, on the damages.
- (bd) Part 23 rule 1B  
Omit the rule.
- (be) Part 24 rule 7  
Omit the rule, insert instead:

#### **Setting aside**

7. The court may, of its own motion or on the motion of any person having a sufficient interest, set aside a subpoena wholly or in part.

- (bf) Part 25 rule 7  
Omit the rule, insert instead:

#### **Service**

7. (1) A party intending to use an affidavit shall serve it on each other interested party not later than a reasonable time before the occasion for using it arises.

(2) A party who fails to serve an affidavit in accordance with the requirements of these rules or of any direction of the court may not use the affidavit without the leave of the court.

- (bg) Part 25 rule 11

After Part 25 rule 11 (1) insert:

(2) A document (other than a statement of claim) which is filed in the proceedings and has been served may be identified in an affidavit of service by:

- (a) exhibiting to the affidavit of service a copy of the document served; or
- (b) including in the affidavit of service a sufficient description of the document served.

(3) A copy of a document (other than a statement of claim) which is filed in the proceedings and has been served shall not be annexed to an affidavit of service.

(bh) Part 27 rule 2 (16)

After “Wollongong” insert “, Wyong”.

(bi) Part 30 rule 10

Omit the rule.

(bj) Part 31A rules 14-23

After Part 31A rule 13 insert:

**Extension of time**

14. Where a party applies for an extension of time, unless the court otherwise orders, the party shall, after the conclusion of the proceedings, pay the costs of and occasioned by the application, or any order made on or in consequence of the application.

**Judgment by confession or agreement**

15. Where judgment in favour of the plaintiff is entered up under Part 12 rule 2 or 3, subject to any provision to the contrary in any agreement filed in the action under Part 12 rule 3 there shall be added to the judgment debt:

- (a) if the judgment is entered up within 28 days after service of the statement of claim in the action—the costs of issuing and serving the statement of claim; or
- (b) otherwise—the costs of issuing and serving the statement of claim, or such other amount as the court on motion may allow for the costs reasonably incurred by the plaintiff before judgment, as the plaintiff may elect.

**Non-admission of fact or document**

16. (1) Where a party to any proceedings (in this rule called the “disputing party”) serves a notice under Part 14 rule 2 (3) or 3 (3) disputing a fact or the authenticity of a document and afterwards the fact or the authenticity of the document is:

- (a) proved in the proceedings; or
- (b) admitted for the purpose of the proceedings by the disputing Party,

unless the court otherwise orders, the disputing party shall, after the conclusion of the proceedings, pay the costs of the party upon whom the notice is served, assessed on an indemnity basis, occasioned by:

- (c) proof of the fact or the authenticity of the document; or
- (d) preparation for the purpose of proving the fact or the authenticity of the document,

as the case may be.

(2) An entitlement to costs under this rule shall not be affected by any order as to costs unless that order refers to the notice by the disputing party giving rise to the entitlement.

(3) This rule has effect notwithstanding rules 19 and 20.

#### **Interlocutory application**

17. (1) Where the court disposes of an application under Part 15 in or for the purposes of or in relation to an action, the court may if it thinks fit order that an amount in respect of any additional costs incurred by reason of the application be paid by a party to the action to another party.

(2) Where the court makes an order under subrule (1) that an amount be paid by a party to another party, it may if it thinks fit direct that the amount be paid within a time specified in the order.

(3) Where the court makes an order under subrule (1) that an amount be paid by a party to another party, but does not direct under subrule (2) that the amount be paid within a time specified in the order, the amount shall become payable when judgment is given or entered up in the action to which the application relates, or when the action is otherwise finally disposed of.

#### **Amendment**

18. Where a party amends a document under Part 16, with or without leave, the court may, on the application of any other party, and if it thinks fit, at any time order the party to pay to the other party such amount as the court determines in respect of any additional costs incurred by reason of the amendment.

#### **Discontinuance**

19. Where, pursuant to Part 17 rule 1 (2), a party to any proceedings discontinues the proceedings without leave as to the whole or any part of the relief claimed by him against any other party, the discontinuing party shall, unless:

- (a) the court otherwise orders or
- (b) the notice of discontinuance contains a statement under Part 17 rule 5 (3),

pay the costs of the party against whom the discontinued claim is made, occasioned by the discontinued claim and incurred before service of notice of the discontinuance.

#### **Offer of compromise**

20. (1) Subject to subrule (2), upon the acceptance of an offer of compromise in accordance with Part 17A rule 5 (4), the defendant shall, unless the court otherwise orders, pay the costs in respect of the claim by the plaintiff against the defendant up to and including the day the offer was accepted.

(2) If a notice of offer contains a term which purports to negative or limit the operation of subrule (1), that offer shall be of no effect for any purpose under Part 17A or this rule.

(3) Subrules (4)–(6) apply to an offer which has not been accepted at the time prescribed by Part 17A rule 3 (8).

(4) Where an offer is made by a plaintiff and not accepted by the defendant, and the plaintiff obtains an order or judgment on the claim to which the offer relates no less favourable to the plaintiff than the terms of the offer, then, unless the court otherwise orders, the plaintiff shall be entitled to an order against the defendant for the plaintiff's costs in respect of the claim from the day on which the offer was made, assessed on an indemnity basis, in addition to the plaintiff's costs incurred before that time, assessed on a party and party basis.

(5) For the purpose of subrule (4), where the offer was made on the first or a later day of the trial of the proceedings, then, unless the court otherwise orders, the plaintiff shall be entitled to the plaintiff's costs in respect of the claim from 11 am on the day following the day on which the offer was made, assessed on an indemnity basis, in addition to the plaintiff's costs incurred before that time, assessed on a party and party basis.

(6) Where an offer is made by a defendant and not accepted by the plaintiff, and the plaintiff obtains an order or judgment on the claim to which the offer relates not more favourable to him than the terms of the offer, then, unless the court otherwise orders, the plaintiff shall be entitled to an order against the defendant for the plaintiff's costs in

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respect of the claim up to and including the day the offer was made, assessed on a party and party basis, and the defendant shall be entitled to an order against the plaintiff for the defendant's costs in respect of the claim thereafter, assessed on a party and party basis.

(7) For the purpose of subrule (6), where the offer was made on the first or a later day of the trial of the proceedings, then, unless the court otherwise orders, the plaintiff shall be entitled to his costs in respect of the claim up to 11 am on the day following the day on which the offer was made, assessed on a party and party basis, and the defendant shall be entitled to his costs in respect of the claim thereafter, assessed on a party and party basis.

(8) Where a plaintiff obtains an order or judgment for the payment of a debt or damages and:

- (a) the amount payable under the order or for which judgment is given includes interest or damages in the nature of interest; or
- (b) by or under any Act the court awards the plaintiff interest or damages in the nature of interest in respect of the amount,

then, for the purpose of determining the consequences as to costs referred to in subrules (4) and (6), the court shall disregard so much of the interest or damages in the nature of interest as relates to the period after the day the offer was made.

(9) For the purpose only of subrule (8), the court may be informed of the fact that the offer was made, and of the date on which it was made, but shall not be informed of its terms.

(10) If, a reasonable time before the court makes an order under subrule (4) or subrule (6), the party to whom the offer is made requests the party making the offer to satisfy the court that the party making the offer was at all material times willing and able to carry out the offer:

- (a) if the court is so satisfied—the party making the request shall pay the costs of the party to whom the request is made occasioned by the request; or
- (b) otherwise:
  - (i) subrules (4) and (6) shall not apply; and
  - (ii) the party to whom the request is made shall pay the costs of the party making the request occasioned by the request,

unless the court otherwise orders.

(11) Unless the court otherwise orders, any application for an order for costs under subrule (4) or subrule (6) must be made immediately after the order or judgment giving rise to the entitlement to the order for costs is made or given.

**Offer to contribute**

21. The court may take an offer to contribute into account in determining whether it should order that the offeree should pay the whole or part of

- (a) the costs of the offeror; or
- (b) any costs which the offeror is liable to pay to the plaintiff.

**Writ of execution**

22. (1) The costs of a writ of execution, whether executed or not, and whether productive or not, shall be the amount allowed by the registrar of the home court.

(2) Unless the court or registrar otherwise orders, the costs of a writ of execution, whether executed or not, and whether productive or not, shall be added to and form part of the judgment debt.

**Arbitration (Civil Actions) Act 1983**

23. (1) Where proceedings are heard and determined under section 18 (3) (b) of the Arbitration (Civil Actions) Act 1983 (the “Arbitration Act”) and the determination of the court is substantially more favourable to the applicant for the order for rehearing (the “applicant,,) than is the determination of the arbitrator, the court may order that the fee paid by the applicant for filing the application be refunded to the applicant wholly or to the extent specified by the court.

(2) Where a party is required to pay the costs of another party in respect of a rehearing under section 18 (3) (b) of the Arbitration Act, those costs shall not include the fee paid for filing the application for the order for the rehearing unless the court so directs.

(3) The court shall not give a direction under subrule (2) unless it is of opinion that the party ordered to pay the costs unreasonably caused the making of the application for the order for the rehearing.

(4) Subject to subrule (5), where proceedings are heard and determined under section 18 (3) (b) of the Arbitration Act, and the

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determination of the court is not substantially more favourable to the applicant than is the determination of the arbitrator, the court:

- (a) shall not make any order for the payment by any other party of the applicant's costs incurred by reason of the rehearing; and
- (b) shall order the applicant to pay the costs of every other party incurred by reason of the rehearing.

(5) The court may in respect of a rehearing certify that the special circumstances of the case require the court:

- (a) to make an order referred to in subrule (4) (a), in which case the court may make that order; or
- (b) to refrain from making an order referred to in subrule (4) (b), in which case the court may refrain from making that order.

(6) Where, by operation of section 18 (5) of the Arbitration Act, an order for rehearing of proceedings ceases to have effect, the applicant shall pay the costs of every other party incurred by reason of the order for rehearing, unless the court otherwise orders.

(7) Unless the court otherwise orders, any application for an order or direction under this rule in respect of costs consequent on the rehearing of an action must be made immediately after judgment is given on the rehearing.

(bk) Part 34 rule 1

Omit the rule.

(bl) Part 38 rule 13

Omit the rule.

### EXPLANATORY NOTE

The purpose of the amendments is to add Wyong to the list of places at which the registrar may hear contested applications for leave to pay a judgment debt by instalments, and to establish, without substantially altering procedures, as much uniformity with the District Court Rules 1973 in certain areas as can be achieved.

E.J. O'Grady

Secretary to the Rule Committee