



New South Wales

Local Courts (Civil Claims) Amendment (Case Management) Rule 2001

under the

Local Courts (Civil Claims) Act 1970

The Local Court (Civil Claims) Rule Committee made the following rule of court under the *Local Courts (Civil Claims) Act 1970* on 25 October 2001.

Stephen Olischlager
Secretary to the Rule Committee

Explanatory note

The object of this Rule is to amend the *Local Courts (Civil Claims) Rules 1988* to facilitate the introduction of new case management procedures in Local Courts.

2001 No 885

Clause 1 Local Courts (Civil Claims) Amendment (Case Management) Rule 2001

Local Courts (Civil Claims) Amendment (Case Management) Rule 2001

1 Name of Rule

This Rule is the *Local Courts (Civil Claims) Amendment (Case Management) Rule 2001*.

2 Commencement

This Rule commences on 1 January 2002.

3 Amendment of Local Courts (Civil Claims) Rules 1988

The *Local Courts (Civil Claims) Rules 1988* are amended as set out in Schedule 1.

4 Notes

The explanatory note does not form part of this Rule.

Schedule 1 Amendments

(Clause 3)

[1] Part 3 rule 4

Omit rule 4 (3). Insert instead:

- (3) The defendant must, within 3 days after the filing of an affidavit under subrule (2), give or send a copy of the affidavit to the plaintiff.

[2] Part 3 rule 4 (10) and (11)

Insert after rule 4 (9):

- (10) Nothing in this rule prevents or delays the listing of the action for either pretrial review or call-over at the court in which the action is commenced.
- (11) If a change of venue is ordered under this rule, the attendance of any party to the action at any future pretrial review or call-over at court at which the action is commenced is no longer required.

[3] Part 5 rule 5 (1) and (1A)

Omit rule 5 (1). Insert instead:

- (1) For the purposes of service:
 - (a) a statement of claim filed before 1 January 2002 is valid for 2 years from the date on which it is filed or such further period as the court may direct, and
 - (b) a statement of claim filed on or after 1 January 2002 is valid from the date on which it is filed until such time as it is struck out under subrule (1A).
- (1A) A statement of claim filed on or after 1 January 2002 is struck out by operation of this subrule on the expiry of the period of 12 months commencing on the date of filing if no defence is filed, order for judgment made or judgment entered, or if the action is not otherwise disposed of, within that period.

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Schedule 1 Amendments

[4] Part 9 rule 1

Omit rule 1 (3). Insert instead:

- (3) A defendant who files notice of grounds of defence under this rule must, within 14 days after filing the notice, serve on the plaintiff a copy of the notice and of any affidavit filed with it.

[5] Part 9 rule 2A

Omit rule 2A.

[6] Part 9, rule 2B

Omit “before filing a certificate of readiness” from rule 2B (2).
Insert instead “before the first call-over of the action”.

[7] Part 9 rule 2B (3)

Omit “or when filing a certificate of readiness in the action”.
Insert instead “or at the time of the first call-over of the action”.

[8] Part 9 rule 3

Omit the rule. Insert instead:

3 Setting down for hearing or call-over

- (1) If notice of grounds of defence is filed under rule 1 (1) or (2), the registrar must:
 - (a) give the action a call-over date and a review date, and
 - (b) specify a range of dates for the hearing date.
- (2) The registrar must give or send a copy of the notice of listing for call-over and review and hearing dates to each party or their legal representatives.

[9] Part 9 rule 4

Omit the rule. Insert instead:

4 Call-over, review and directions hearing

- (1) If the registrar sets an action down under rule 3 (1) for call-over on a day, the action is to be called over before a Magistrate or the registrar on that day.
- (2) At the call-over of an action the court must:
 - (a) make an order under section 21H (1) of the Act where appropriate, or
 - (b) take the following steps:
 - (i) explore the possibility of settlement,
 - (ii) fix a timetable for the taking of steps to prepare the matter for hearing,
 - (iii) make orders regarding the exchange of written statements of intended evidence of witnesses,
 - (iv) make directions as to how statements may be used,
 - (v) make orders for the preparation and filing of an agreed list of exhibits that are page numbered and indexed,
 - (vi) make orders for the preparation of written submissions on a question of law raised and the filing of copies of authorities relied on,
 - (vii) make such other orders as appropriate to achieve the just, efficient, effective and timely management of the proceedings before the court,
 - (viii) confirm the review date.
- (3) At the review date of an action, a Magistrate or the registrar is to ascertain from the parties the following:
 - (a) whether all directions have been complied with in accordance with the timetable fixed,
 - (b) whether all the prospects of settlement have been fully explored,
 - (c) whether all interlocutory matters have been completed.

If satisfied of such compliance, the Magistrate or registrar must then confirm the hearing date of the action.

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Schedule 1 Amendments

- (4) If any party does not comply with a standard or specific case management direction, the proceedings may be listed on motion for directions before a Magistrate at the instance of any party or on the court's own motion.
- (5) If proceedings are listed for directions under subrule (4) before a Magistrate or if a Magistrate at a review hearing is satisfied that any party does not comply with a standard or specific case management direction, the Magistrate may at the review hearing or directions hearing (as the case may be) make such orders as the Magistrate thinks fit, including any one or more the following:
 - (a) further specific case management directions,
 - (b) an order to strike out the action or any defence, cross claim, or third or subsequent party notice filed in the action,
 - (c) orders for costs.
- (6) If a party does not appear at a call-over or review, the Magistrate or registrar may make such orders as it thinks fit, including any one or more of the following:
 - (a) an order for the further adjournment of the proceedings,
 - (b) an order referred to in subrule (5).

[10] Part 9 rule 6

Omit rule 6 (2). Insert instead:

- (2) A defendant who files a notice of grounds of defence under this rule must, within 14 days after filing the notice, serve on the plaintiff a copy of the notice.

[11] Part 10 rule 1

Insert after rule 1 (1B):

- (1C) The plaintiff is not entitled to an order for judgment under subrule (1) if the statement of claim has been struck out under Part 5 rule 5 (1A).

[12] Part 11 rule 1 (4)

Insert after rule 1 (3):

- (4) The plaintiff is not be entitled to default judgment under subrule (1) if the statement of claim has been struck out under Part 5 rule 5 (1A).

[13] Part 19 rule 2

Omit the rule.

[14] Part 21 rule 1

Omit “or Part 9 rule 4 (2) (b) or (3) (a)” from rule 1 (1).

[15] Part 33 rule 1 (4) (f)

Omit the paragraph.