



Local Courts (Civil Claims) Amendment (Case Management) Rule 2003

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 30 May 2003.

Stephen Olischlager
Secretary of the Rule Committee

Explanatory note

The object of this Rule is to amend the *Local Courts (Civil Claims) Rules 1988*:

- (a) to require the registrar of a Local Court (rather than a defendant in an action) to give or send to a plaintiff in the action a copy of an affidavit as to venue filed by the defendant under Part 3 rule 4, and
- (b) to provide that an action is not to be listed for call-over or pre-trial review if a defendant in an action is seeking a change of venue under Part 3 rule 4, and
- (c) to require a registrar of a Local Court (rather than a defendant in an action) to give or send a copy of any notice of grounds of defence or notice of listing for call-over or pre-trial review of an action to the plaintiff in the action or the plaintiff's legal representative, and
- (d) to make it clear that a Local Court is required to exercise the case management powers listed in Part 9 rule 4 (2) only where it is appropriate to do so and to enable a Local Court to make orders under that subrule for the preparation of chronologies, and
- (e) to provide that a person who moves a Local Court for any order has the exclusive responsibility of ensuring that each respondent is served with a copy of the notice of motion once it is filed, and
- (f) to require a written report by an expert witness tendered by a party in an action to be served on each other party at least 14 days before the pre-trial review date for the action or the date for the arbitration of the action or within such other period as may be ordered, and

2003 No 431

Local Courts (Civil Claims) Amendment (Case Management) Rule 2003

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- (g) to enable a Magistrate or registrar at a review date for an action in the General Division to ascertain from the parties what witnesses are intended to be called or cross-examined at the hearing of the action, and
- (h) to enable the parties to an action in the General Division not to attend a review of the action if the plaintiff's legal representative has (with the consent of all the parties) certified certain matters to the court concerning compliance with the case management requirements for the action, and
- (i) to enable the registrars of the Local Courts at Balmain and Windsor to exercise certain functions of a Local Court in relation to instalment orders.

2003 No 431

Clause 1 Local Courts (Civil Claims) Amendment (Case Management) Rule 2003

Local Courts (Civil Claims) Amendment (Case Management) Rule 2003

under the

Local Courts (Civil Claims) Act 1970

1 Name of Rule

This Rule is the *Local Courts (Civil Claims) Amendment (Case Management) Rule 2003*.

2 Amendment of Local Courts (Civil Claims) Rules 1988

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

2003 No 431

Local Courts (Civil Claims) Amendment (Case Management) Rule 2003

Schedule 1 Amendments

Schedule 1 Amendments

(Clause 2)

[1] Part 3 rule 4

Omit “defendant” from rule 4 (3). Insert instead “registrar”.

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

Omit rule 4 (10) and (11). Insert instead:

- (10) If an affidavit is filed under subrule (2), the registrar for the court at which the action is commenced must not list the action for call-over or pre-trial review unless and until a direction is made under subrule (6) (a) that the proper court in relation to the action remains unchanged.
- (11) If a change of venue is ordered under this rule:
 - (a) the attendance of any party to the action at any future call-over or pre-trial review at the court at which the action is commenced is no longer required, and
 - (b) the registrar of the court that is the new venue must list the action for call-over and pre-trial review as soon as is practicable after the order for change of venue.

[3] Part 9 rule 1

Omit rule 1 (3).

[4] 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
 - (b) specify a range of dates for the review of the action, and
 - (c) specify a range of dates for the hearing date.

- (2) The registrar must:
- (a) give or send a copy of the notice of listing for call-over and review and hearing dates to the plaintiff and each defendant who has filed a notice of grounds of defence (or to their legal representatives), and
 - (b) give or send a copy to the plaintiff or the plaintiff's legal representative of:
 - (i) any notice of grounds of defence filed by the defendant under rule 1 (1) or (2), and
 - (ii) any affidavit filed with it.

[5] Part 9 rule 4

Insert “(where appropriate)” after “At the call-over of an action the court must” in rule 4 (2).

[6] Part 9 rule 4 (2) (a)

Omit “where appropriate”.

[7] Part 9 rule 4 (2) (b) (via)

Insert after rule 4 (2) (b) (vi):

- (via) make orders for the preparation of chronologies,

[8] Part 9 rule 4 (3) (d)

Insert after rule 4 (3) (c):

- (d) what witnesses are intended to be called or cross-examined.

[9] Part 9 rule 4 (7)

Insert after rule 4 (6):

- (7) Despite subrule 4 (6), the parties to an action are not required to attend at a review if:
 - (a) the legal representative for the plaintiff in the action certifies in the approved form that:
 - (i) all directions have been complied with by the parties in accordance with the timetable fixed for the action, and
 - (ii) all the prospects of settlement of the action have been fully explored, and

2003 No 431

Local Courts (Civil Claims) Amendment (Case Management) Rule 2003

Schedule 1 Amendments

(iii) all interlocutory matters in the action have been completed, and

(iv) all parties to the action have consented to the filing of the certificate instead of attending the review, and

(b) the certificate contains a statement about which witnesses (if any) the parties intend to call to give evidence or to be cross-examined at the hearing of the action, and

(c) a copy of the certificate is sent to the court by facsimile transmission before the review date.

[10] Part 9 rule 6

Omit rule 6 (2).

[11] Part 9 rule 7

Omit rule 7 (3). Insert instead:

(3) If an action is set down for pre-trial review or for hearing under this rule, the registrar must:

(a) give or send a copy of the notice of listing for call-over and review and hearing dates to the plaintiff and each defendant who has filed a notice of grounds of defence (or to their legal representatives), and

(b) give or send a copy of any notice of grounds of defence filed under rule 6 (1) by a defendant to the plaintiff or the plaintiff's legal representative.

[12] Part 15 rule 2

Omit "or the registrar" from rule 2 (1).

[13] Part 23 rule 2

Omit rule 2 (2). Insert instead:

(2) Subject to rule 1D (2) (b) (ii), a written report made by an expert witness is to be admissible in evidence in an action as to:

(a) any matter of the expert opinion of the maker of the report contained in it, and

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- (b) any fact stated in it which is known to the maker as a result either of the maker's own observations or of the maker's general professional knowledge or experience, if the party tendering the report served the report on each other party who is a plaintiff or who has filed notice of grounds of defence:
 - (c) where the report is sought to be tendered at an arbitration—at least 14 days before the arbitration, or
 - (d) where the report is sought to be tendered at a hearing of the action by the court—at least 14 days before the review date for the action, or
 - (e) within such other period as the arbitrator or court (as the case may be) orders.

[14] Part 27 rule 2

Insert "Balmain," after "Albury," in rule 2 (16).

[15] Part 27 rule 2 (16)

Insert "Windsor," after "Wagga Wagga,".