



New South Wales

Local Courts (Civil Procedure) Rules 2005

under the

Local Courts Act 1982

The Local Court (Civil Claims) Rule Committee made the following rules of court under section 79 of the *Local Courts Act 1982* on 15 July 2005.

Craig Cooke
Secretary of the Rule Committee

Explanatory note

The object of these Rules is to make provision with respect to the practice and procedure of a Local Court when sitting in its Small Claims Division. These Rules supplement the *Uniform Civil Procedure Rules 2005* that come into operation on the commencement of section 9 of the *Civil Procedure Act 2005*. These Rules deal with the following matters:

- (a) transfers of proceedings between a Local Court's Small Claims Division and its General Division,
- (b) the conduct of trials and pre-trial reviews, including the use of telephones and audio-visual links,
- (c) orders as to costs,
- (d) the use of a Local Court's seal,
- (e) other minor, consequential and ancillary matters.

Contents

	Page
Part 1 Preliminary	
1 Name of Rules	3
2 Commencement	3
3 Definitions	3
4 Repeal	3
Part 2 Proceedings in the Small Claims Division	
Division 1 Preliminary	
5 Application of Part	4
Division 2 Transfer of proceedings	
6 Transfer of proceedings from Small Claims Division to General Division: jurisdictional limit exceeded	4
7 Transfer of proceedings from Small Claims Division to General Division: complexity, difficulty or importance of matters in dispute	4
Division 3 Pre-trial review	
8 Setting down for pre-trial review	4
9 Conduct of pre-trial reviews	5
Division 4 Trial	
10 Procedure generally	6
11 Procedure regarding assessment of damages	6
Division 5 General	
12 Applications	6
13 Use of telephones etc	6
14 Costs	7
Part 3 General	
15 Application of Part	8
16 Seal of the Court	8

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Part 1 Preliminary

1 Name of Rules

These Rules are the *Local Courts (Civil Procedure) Rules 2005*.

2 Commencement

These Rules commence on the commencement of section 9 of the *Civil Procedure Act 2005*.

3 Definitions

(1) In these Rules:

the Act means the *Local Courts Act 1982*.

(2) Notes included in these Rules do not form part of these Rules.

4 Repeal

The *Local Courts (Civil Claims) Rules 1988* are repealed.

2005 No 387

Rule 5 Local Courts (Civil Procedure) Rules 2005

Part 2 Proceedings in the Small Claims Division

Part 2 Proceedings in the Small Claims Division

Division 1 Preliminary

5 Application of Part

This Part applies to proceedings in a Court sitting in its Small Claims Division.

Division 2 Transfer of proceedings

6 Transfer of proceedings from Small Claims Division to General Division: jurisdictional limit exceeded

Proceedings are to be transferred to the Court's General Division if a cross-claim is made in the proceedings for an amount exceeding the jurisdictional limit of the Court's Small Claims Division.

Note. As at the commencement of these Rules, the jurisdictional limit of a Court sitting in its Small Claims Division was \$10,000.

7 Transfer of proceedings from Small Claims Division to General Division: complexity, difficulty or importance of matters in dispute

- (1) Proceedings are to be transferred to the Court's General Division if, at any time before judgment is given, the Court is of the opinion that the matters in dispute are so complex or difficult, or are of such importance, that the proceedings ought more properly to be heard in the Court's General Division.
- (2) Proceedings that have been transferred to a Court's General Division under subrule (1) may be transferred back to its Small Claims Division if the Court considers it appropriate to do so.
- (3) An application for proceedings to be transferred under subrule (1) or (2) may not be made by a party to the proceedings later than 28 days before the day fixed for the trial of the proceedings.

Division 3 Pre-trial review

8 Setting down for pre-trial review

- (1) Unless the Court otherwise orders, proceedings in which a defence is filed are to be listed for pre-trial review.
- (2) The registrar must cause notice of the date, time and place of the pre-trial review to be sent to the plaintiff and to each defendant who has filed a defence.

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- (3) Despite subrule (1), if a defendant has applied for the proceedings to be transferred to some other Court pursuant to rule 44.1 of the *Uniform Civil Procedure Rules 2005*, the proceedings are not to be listed for pre-trial review until after the application has been determined.

9 Conduct of pre-trial reviews

- (1) Subject to rule 13, in any pre-trial review of proceedings, each of the parties to the proceedings must be in attendance at the review, either in person or by a legal representative having general authority to negotiate a settlement of the proceedings.
- (2) In the pre-trial review, the Court:
- (a) must attempt to identify the matters in dispute between the parties and to bring the parties to a settlement that is acceptable to them, and
 - (b) for that purpose, may propose that the parties seek mediation under the *Community Justice Centres Act 1983*.
- (3) If the parties agree to seek mediation, the Court may make such orders as it thinks fit, including orders as to adjournment, so as to facilitate the mediation.
- (4) The Court may refuse to list proceedings for trial if it is satisfied that the parties have not made reasonable attempts to settle the matters in dispute between them.
- (5) If a party fails to attend the pre-trial review after having been given notice in accordance with rule 8 (2), the Court may adjourn the review to another date and direct that, not less than 5 days before that date, a further notice be given to the party in default advising:
- (a) if the party in default is the plaintiff, that the party's claim may be dismissed, either in whole or in part, or
 - (b) if the party in default is the defendant, that the party's defence may be struck out, either in whole or in part,
- if the party fails to attend the adjourned review.
- (6) If a party fails to attend the adjourned review after having been given notice in accordance with subrule (5), the Court may order:
- (a) if the party in default is the plaintiff, that the party's claim be dismissed, either in whole or in part, or
 - (b) if the party in default is the defendant, that the party's defence be struck out, either in whole or in part,
- and may make such other orders as it thinks fit.

2005 No 387

Rule 10 Local Courts (Civil Procedure) Rules 2005

Part 2 Proceedings in the Small Claims Division

Division 4 Trial

10 Procedure generally

- (1) The procedure to be followed at a trial of any proceedings is to be determined by the Court.
- (2) Unless the Court orders otherwise, proceedings are to be heard and determined on the basis of written statements that have been filed in the Court and served on the plaintiff and on each of the defendants who has filed a defence.
- (3) Proceedings may be heard and determined by the Court even if one or more of the parties is absent.

11 Procedure regarding assessment of damages

In the case of proceedings in which default judgment has been entered in favour of the plaintiff but damages are yet to be assessed, the Court may, when listing the proceedings for trial, give directions as to the manner in which evidence as to damages is to be given.

Division 5 General

12 Applications

- (1) Unless the Court orders otherwise, applications are to be made orally before the Court.
- (2) Despite subrule (1):
 - (a) any application for the transfer of proceedings to the Court's General Division, or
 - (b) any application for the inspection of property, or
 - (c) any application in relation to proceedings made after the Court has given judgment in the proceedings (such as an application for a writ of execution), or
 - (d) any application to set aside a judgment or order of the Court,is to be made by motion in accordance with Part 18 of the *Uniform Civil Procedure Rules 2005*.

13 Use of telephones etc

In any proceedings, the Court may allow a person to appear or give evidence by telephone, audio-visual link or any other means of electronic communication.

14 Costs

- (1) Subject to this rule, the Court may make orders for the payment of costs in any proceedings, including proceedings that are adjourned, discontinued or dismissed.
- (2) The only matters for which the Court may award costs are those for which fixed costs are prescribed under Part 11 of the *Legal Profession Act 1987*.
- (3) The amounts that the Court may award for such costs include not only the fixed costs so prescribed but also any disbursements properly incurred in relation to the matters for which those costs are prescribed.
- (4) Despite subrules (2) and (3), the maximum costs that may be awarded to a party:
 - (a) if proceedings are discontinued or dismissed, or a defence is struck out, at a pre-trial review or at a hearing, or
 - (b) if proceedings are adjourned as a consequence of a party's default or neglect, including a party's failure to comply with a direction of the Court, or
 - (c) if proceedings on a motion are heard by the Court, or
 - (d) if judgment is given after a trial of proceedings, are the costs allowable on entry of default judgment.

2005 No 387

Rule 15 Local Courts (Civil Procedure) Rules 2005

Part 3 General

Part 3 General

15 Application of Part

This Part applies to proceedings in a Court sitting in either its General Division or its Small Claims Division.

16 Seal of the Court

- (1) The registrar is to cause the following documents to be sealed or stamped with the seal of the Court:
 - (a) any order, notice, warrant, certificate, judgment or process made, given or issued by the registrar (or any copy of such a document issued by the registrar),
 - (b) any other document issued by the registrar that rules of court require to be sealed.
- (2) Without limiting subrule (1), a document may be stamped with the seal of the Court by any of the following means:
 - (a) affixing the seal on the document by means of a rubber stamp,
 - (b) affixing an adhesive label on the document with a representation of the seal printed on it,
 - (c) printing a representation of the seal on the document by electronic or mechanical means.

BY AUTHORITY
