

# Law Reform (Miscellaneous Provisions) Civil Claims Third Party Procedure Rule 1977

[1977-1]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

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New South Wales

## Contents

1 Name of Rule .....	3
2 Commencement .....	3
3 Definition .....	3
4 Application and construction of certain references .....	3
5 Third party notice .....	4
6 Stay of proceedings .....	5
7 Service of third party notice .....	5
8 Notice of defence .....	5
9 Joinder of third parties .....	6
10 Procedure upon joinder of third parties .....	6
11 Court may order separate trials.....	6
12 Failure by third party to file notice of grounds of defence .....	6
13 Joinder of fourth and subsequent parties .....	7
14 Application of sub-rules 5 to 13 to fourth and subsequent parties .....	7
15 Certain effects of third party notice.....	7
16 Additional powers as to costs .....	7
<b>First Schedule</b> .....	<b>7</b>

# Law Reform (Miscellaneous Provisions) Civil Claims Third Party Procedure Rule 1977



New South Wales

## 1 Name of Rule

This Rule may be cited as the *Law Reform (Miscellaneous Provisions) Civil Claims Third Party Procedure Rule 1977*.

## 2 Commencement

This Rule shall take effect on and from the day on which the several items of Schedule 1, except item (35), of the *Courts of Petty Sessions (Civil Claims) Amendment Act 1975*, commence.

### Editorial note—

Date of commencement, 4.4.1977—see Gazette of 11.3.1977, p 942.

## 3 Definition

A reference in this Rule to a third party includes a reference to a person joined as a fourth or subsequent party.

## 4 Application and construction of certain references

The provisions of the *Courts of Petty Sessions (Civil Claims) Act 1970* (sections 22, 23, 23A and 24 excepted) and the provisions of the *Courts of Petty Sessions (Civil Claims) Rules* apply to and in respect of the joinder of a third party in an action commenced in a court of petty sessions, and for the purposes of the application of those provisions, a reference therein to:

- (a) a plaintiff shall, where appropriate, be construed as a reference to a defendant who has filed a third party notice,
- (b) a defendant shall, where appropriate be construed as a reference to a third party, and
- (c) a plaint or a plaint and summons commencing an action, shall be construed as a reference to a third party notice.

## 5 Third party notice

- (1) Where a defendant in any action claims as against any person (in this Rule called the third party) that the defendant is entitled to contribution towards or indemnity for the amount of any judgment recovered against him by the plaintiff in the action the defendant may file with the registrar a notice in or to the effect of the form headed "Third Party Notice", Form No 1 in the First Schedule:
  - (a) in the case of an action commenced by the filing of a default summons—not later than the filing of the notice of defence in the action, or, where no notice of defence is filed, within 14 days after service of the summons on him,
  - (b) in the case of an action commenced by the filing of a special summons—not later than the filing of the notice of defence in the action, or, where no notice of defence is filed, within 28 days after service of the summons on him, or
  - (c) in the case of an action commenced by the filing of an ordinary summons where:
    - (i) the action is not set down for hearing in accordance with Rule 20 (4) of the *Courts of Petty Sessions (Civil Claims) Rules*—any time not later than three days before the day set down for hearing of the action,
    - (ii) the action is set down for hearing in accordance with Rule 20 (4) (a) of the *Courts of Petty Sessions (Civil Claims) Rules*—any time before the hearing of the action commences, or
    - (iii) the action is set down for hearing in accordance with Rule 20 (4) (b) of the *Courts of Petty Sessions (Civil Claims) Rules*—any time before the application referred to in Rule 20 (4) (b) of the *Courts of Petty Sessions (Civil Claims) Rules* is made.
- (2) A third party notice shall contain such particulars of the defendant's claim against the third party as would be required to be provided if the claim was separately sued by the issue of a plaint and summons.
- (3) Where a third party notice is filed in accordance with clause (1), the registrar shall:
  - (a) sign the copies,
  - (b) except in the case of an action which has been set down for hearing in accordance with Rule 20 (4) (a) or (b) of the *Courts of Petty Sessions (Civil Claims) Rules*—serve one of the copies on the plaintiff or, where there is more than one plaintiff, on each plaintiff, and
  - (c) return the other copies to the defendant unless the defendant has requested that the bailiff effect service of the notice on the third party.
- (4) Where an action in which a third party notice is filed has been set down for hearing in

accordance with Rule 20 (4) (a) or (b) of the *Courts of Petty Sessions (Civil Claims) Rules*, the registrar shall return sufficient copies of the third party notice to the defendant to enable a copy of the notice to be served on the plaintiff or, where there is more than one plaintiff, on each plaintiff.

## **6 Stay of proceedings**

- (1) Where a defendant who has filed a notice of defence to the plaintiff's action also files a third party notice, proceedings in the action shall be stayed until the third party files a notice of his defence to the defendant's claim against him, or until the expiration of 28 days after service on the third party of the third party notice, whichever first occurs.
- (2) A defendant who files a third party notice may cause a copy of the third party notice to be served by:
  - (a) a bailiff,
  - (b) a commercial agent or subagent,
  - (c) an attorney,
  - (d) a person employed within the office of an attorney, or
  - (e) a person in the permanent and exclusive employ of the defendant.
- (3) Where proceedings in an action are stayed under clause (1) and the third party notice is not served on the third party, or an affidavit of that service is not filed within a reasonable time, the court may, on the application of the plaintiff, remove the stay of proceedings.

## **7 Service of third party notice**

- (1) Service of a third party notice upon a third party shall be effected in the same manner as a summons may be served upon a defendant but service of the third party notice shall only be effective if at the time of service a copy of the summons commencing the action and a copy of each other document filed in the action before the third party notice is filed is also served on the third party.
- (2) A person who effects service of a third party notice shall, as soon as practicable thereafter, file an affidavit of that service and, by notice in writing inform each party to the action, other than the defendant (unless service of the third party notice has been effected by the bailiff) and the third party, of the date of that service.

## **8 Notice of defence**

- (1) A notice of defence filed by a third party shall specify whether the third party disputes the plaintiff's claim against the defendant or the defendant's claim against the third

party or both of those claims.

- (2) Where any notice of defence referred to in clause (1) is filed with the registrar the registrar shall, as soon as practicable thereafter, serve on the plaintiff and the defendant a copy of the notice of defence so filed and, where the action is not listed for hearing, list the action for hearing.
- (3) For the purposes of listing an action for hearing in accordance with clause (2), Rule 20 (2) of the *Courts of Petty Sessions (Civil Claims) Rules* applies in the same way as it applies when a document referred to in Rule 20 (2) of those Rules is filed with a registrar.

## **9 Joinder of third parties**

Where a defendant makes against any other defendant in the same action a claim referred to in sub-rule 5 (1), he may file and serve on that other defendant a notice making that claim, and the same procedure shall apply as would be applicable under this rule if that other defendant were a third party, but nothing in this sub-rule shall prejudice the rights of the plaintiff against any other defendant.

## **10 Procedure upon joinder of third parties**

- (1) The court may direct what part the third party shall take in the trial and generally the extent to which the usual procedures at a trial shall be modified because of the joinder of the third party.
- (2) As between the defendant by whom the third party notice has been served and the third party, the court may give any judgment or make any order which might properly have been given or made if the claim against the third party had been made in a separate action.
- (3) A defendant shall not, except in accordance with an order of the court, enforce any judgment given in his favour against a third party until any judgment given in favour of the plaintiff against the defendant in the same action has been satisfied.
- (4) An order referred to in clause (3) may be made subject to conditions.

## **11 Court may order separate trials**

The court may, if the trial in one action of the issues between the plaintiff and defendant and the issues between the defendant and the third party would in its opinion embarrass or delay the trial of the action or be otherwise inconvenient, order separate trials or make such other order as it thinks fit.

## **12 Failure by third party to file notice of grounds of defence**

Where a third party does not file notice of the grounds of his defence within 28 days after service on him of a third party notice, he shall be deemed to have admitted the whole of

the defendant's claim against him, unless the court otherwise orders, and the court may, on the application in writing of the defendant and without further notice to the third party, enter judgment against the third party.

### **13 Joinder of fourth and subsequent parties**

Where a third party makes against any person a claim referred to in sub-rule 5 (1) the third party may join the person as a fourth party in the action, and subsequent parties may be joined in succession in the same manner, each by the party previous to him in order of joinder.

### **14 Application of sub-rules 5 to 13 to fourth and subsequent parties**

Sub-rules 5 to 13 apply to parties joined subsequently to a third party as if in each group of three parties successively joined the first of those parties were a plaintiff, the second a defendant, and the third a third party.

### **15 Certain effects of third party notice**

For the purposes of sections 34 and 35 of the *Courts of Petty Sessions (Civil Claims) Act 1970*, a defendant who files a third party notice shall be deemed to have filed a plaint and summons commencing an action.

### **16 Additional powers as to costs**

Where a third party has been joined in an action, the court may exercise its powers as to costs under the *Courts of Petty Sessions (Civil Claims) Act 1970* as if the third party were a plaintiff or defendant in the action, and accordingly may:

- (a) order any party to pay the costs incurred by any other party,
- (b) order any party to pay any costs which would otherwise be payable by any other party, and
- (c) make such other order as to costs as the justice of the case may require.

## **First Schedule**

### **Form No 1**

LAW REFORM (MISCELLANEOUS PROVISIONS) ACT 1946

LAW REFORM (MISCELLANEOUS PROVISIONS) CIVIL CLAIMS THIRD PARTY PROCEDURE RULE 1977

Sub-rule No 5

#### THIRD PARTY NOTICE

IN the Court of Petty Sessions at in the State of  
New South Wales.

}

Plaint No. 19 ,

BETWEEN

Plaintiff,

and

Defendant.

Third Party.

The plaintiff has commenced an action against the defendant by which he claims an amount from the defendant.  
A copy of the plaint and summons in the action and a copy of each other document filed in the action is attached.  
The defendant claims against the third party contribution towards or indemnity for any judgment recovered against him by the plaintiff in the action for the following reasons:

\*

†The action has been set down for hearing at the Court of Petty Sessions at  
on the  
day of 19 , at the hour of .

†A stay of proceedings in the action is in force in accordance with sub-rule  
6 (1) of the abovementioned Rule.

You have the same rights, and are subject to the same liabilities, in  
respect of the action as you would have had and been subject to if you had  
been sued in a separate action by the defendant.

††The acting on behalf of the third party is

Dated this day of 19 .

Registrar.

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\* Insert reasons for the claim here.

† Delete whichever does not apply.

†† Delete if not applicable.