

LOCAL COURTS (CIVIL CLAIMS) ACT 1970—RULE

(Relating to the establishment of Small Claims Divisions in Local Courts)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Local Courts (Civil Claims) Act 1970, has been pleased to make the Rule set forth hereunder.

TERRY GRIFFITHS
Minister for Justice.

Commencement

1. This Rule commences on 1 September 1991.

Amendments

2. The Local Courts (Civil Claims) Rules 1988 are amended:
 - (a) by omitting Part 1 rule 3 (7) and by inserting instead the following subrule:
 - (7) A function conferred on a court by these rules may be exercised:
 - (a) in the case of matters relating to a court's General Division—by a Magistrate or, if these rules so provide in respect of a particular matter, by the registrar; or
 - (b) in the case of matters relating to a court's Small Claims Division—by a Magistrate or an Assessor or, if these rules so provide in respect of a particular matter, by the registrar.
 - (b) by inserting after Part 1 rule 7 the following rule:

Application of rules in General and Small Claims Divisions

8. These rules apply to actions in both the General Division and the Small Claims Division of a court except where the contrary intention appears.

- (c) by inserting in Part 3 rule 6 after the word “Magistrate” wherever occurring the words “or Assessor”;
- (d) by inserting in Part 3 rule 7 after the word “Magistrate” wherever occurring the word “ , Assessor”;
- (e) by inserting in Part 3 rule 8 after the word “Magistrate” wherever occurring the words “or Assessor”;
- (f) by inserting after Part 3 rule 8 the following rules:

Small Claims Division

9. (1) If the amount claimed in an action and the amount claimed in any related cross-claim are each not more than \$3,000, the action and any such cross-claim are each to be heard and determined in a court’s Small Claims Division unless the court orders otherwise.

(2) Such an order may not be made unless the court is of the opinion that the issues likely to arise in the action or cross-claim are so complex or difficult as to law or fact, or that the action or cross-claim is of such unusual importance, that it should not be heard or determined in the court’s Small Claims Division.

(3) Such an order may be made:

- (a) on the court’s own motion or on the application of any of the parties; and
- (b) at any time before judgment in the action concerned.

(4) An application for the making of an order under this rule:

- (a) may be made by the plaintiff when the statement of claim in the action is lodged with the registrar; or
- (b) may be made to the court by any of the parties, in accordance with Part 15, at any time before the date fixed for the hearing of the action; or
- (c) may be made to the Magistrate or Assessor hearing the action by any of the parties, on reasonable notice to the other parties, at any time before judgment in the action concerned.

(5) The jurisdiction of the court in relation to the making of an order under this rule may be exercised by the registrar if the application for the making of the order has been made as referred to in subrule (4) (a).

(6) If the registrar makes an order under this rule as referred to in subrule (5), the registrar is to endorse the relevant statement of with the words “REMOVED INTO THE GENERAL DIVISION BY ORDER OF THE REGISTRAR”.

(7) A court, sitting in its General Division, may make orders in respect of the continuance of an action that has been removed into that Division by virtue of an order under this rule (including orders for the amendment or substitution of any document filed in the action).

Transfer of actions to the Small Claims Division

10. (1) If the amount claimed in an action in a court's General Division and the amount claimed in any related cross-claim are each not more than \$3,000, the court may order that the action and any such cross-claim be heard and determined in the court's Small Claims Division.

(2) Such an order may be made:

- (a) on the court's own motion or on the application of any of the parties; and
- (b) at any time before judgment in the action concerned.

(3) An application for the making of an order under this rule may be made by any of the parties, in accordance with Part 15, at any time before the date fixed for the hearing of the action.

Applications concerning judgments in the Small Claims Division

11. Any application to a court concerning an action in respect of which judgment has been given in the court's Small Claims Division must be heard and determined:

- (a) in the case of an application to have the judgment set aside—in the court's Small Claims Division; and
 - (b) in any other case—in the court's General Division.
- (g) by omitting from Part 5 rule 2 (2) (i) the word "and";
- (h) by inserting at the end of Part 5 rule 2 (2) the following word and paragraph:
- ; and
 - (k) if the amount claimed in the action is not more than \$3,000, either the words "SMALL CLAIMS DIVISION" or the words "THE PLAINTIFF APPLIES FOR THE REMOVAL OF THIS ACTION INTO THE GENERAL DIVISION".
- (i) by inserting before Part 9 rule 1 the following heading and rule:

Division 1—General Division**Application of Division**

1A. This Division applies to actions in a court's General Division but not to actions in a court's Small Claims Division.

(j) by inserting after Part 9 rule 4 the following Division:

Division 2—Small Claims Division**Application of Division**

5. This Division applies to actions in a court's Small Claims Division but not to actions in a court's General Division.

Notice of grounds of defence

6. (1) A defendant in an action in a court's Small Claims Division may, at any time before judgment, file (in duplicate) notice of grounds of defence, signed by the defendant or the defendant's solicitor.

(2) The registrar must, as soon as practicable after the filing of any notice of grounds of defence under this rule, give or send a copy of the notice to the plaintiff or the plaintiff's solicitor.

(3) At the hearing of an action, a defendant may not set up any ground of defence that has not been included in a notice of defence filed under this rule, except by consent of the plaintiff or by leave of the court, given on terms.

Setting down for pre-trial review or for hearing

7. (1) If notice of grounds of defence has been filed under rule 6, and no affidavit has been filed under Part 3 rule 4, the registrar must, unless a direction is given under subrule (2), set the action down for pre-trial review on the earliest day which is convenient to the court and of which reasonable notice can be given to the parties.

(2) The court may, if it considers appropriate in the circumstances, direct the registrar that an action be set down for hearing instead of for pre-trial review.

(3) If an action is set down for pre-trial review or for hearing under this rule, the registrar must, as soon as practicable, give or send notice to:

(a) the plaintiff or the plaintiff's Solicitor; and

(b) each defendant who has filed notice of grounds of defence or that defendant's solicitor,

of the day set down for the review or hearing.

Pre-trial review

8. (1) A pre-trial review of an action must be held, on the day set down under rule 7, before:

- (a) the Magistrate or Assessor who is expected to hear the action; or
- (b) some other Magistrate or Assessor; or
- (c) the registrar.

(2) The person before whom the pre-trial review of an action is held:

- (a) must use his or her best endeavours:
 - (i) to identify to the court and to the parties the issues in dispute between the parties; and
 - (ii) to bring the parties to a settlement that is acceptable to them; and
- (b) must consider whether the issues in dispute between the parties should be referred to a community justice centre and, if so, must make any necessary orders as a consequence of such a referral; and
- (c) if the action is to proceed to a hearing:
 - (i) must consider the preparations that the parties have made for the trial of the action and must give to the parties such advice concerning those preparations as seems reasonably necessary to ensure that a fair and quick trial of the action can be completed; and
 - (ii) must give such directions as to evidence, admissions, amendments and otherwise as seems reasonably necessary to ensure that a fair and quick trial of the action can be completed; and
 - (iii) must fix a date for the hearing and must cause notice of the date so fixed to be given to each of the parties.

(3) Nothing in this rule prevents the court from adjourning an action for a further pre-trial review if an adjournment seems necessary and can be granted without causing injustice to any of the parties.

(4) If a party fails, without reasonable explanation:

- (a) to attend a pre-trial review of an action; or
- (b) to comply with any direction given by the court on or in respect of a pre-trial review of an action,

the person before whom the review is held may make such orders (including orders fixing or vacating a date for hearing, orders adjourning the action for a further pre-trial review and orders striking out any claim or defence) as he or she considers appropriate in relation to the action.

(5) If an action is struck out under this rule, the action may subsequently be reinstated by the court if the court is satisfied that the action is ready for pre-trial review or for hearing.

(k) by inserting in Part 10 rule 1 (1) (a) and rule 2 (1) (b) after the matter “Part 9 rule 1 (1)” wherever occurring the matter “or 6 (1)”;

(l) by inserting in Part 11 rule 1 (1) (a) after the matter “Part 9 rule 1 (2)” the matter “or 6 (1)”;

(m) by omitting Part 14 rule 2 (1) and by inserting instead the following subrule:

(1) This rule does not apply to an action in a court’s Small Claims Division.

(n) by omitting Part 14 rule 3 (1) and by inserting instead the following subrule:

(1) This rule does not apply to an action in a court’s Small Claims Division.

(o) by inserting at the end of Part 15 rule 1 the following subrules:

(2) The provisions of this Part do not apply to an action in a court’s Small Claims Division except in relation to:

(a) an application under Part 3 rule 9 (4) (b), Part 20 rule 8, Part 26 rule 3 or Part 32 rule 2 (1); or

(b) a motion under Part 35 rule 6.

(3) Subrule (2) does not prevent a court from making any order or giving any direction.

(p) by inserting before Part 16 rule 1 the following rule:

Application of Part

1A. (1) The provisions of this Part (rule 1 excepted) do not apply to an action in a court’s Small Claims Division except in relation to an amendment under Part 35 rule 4.

(2) Subrule (1) does not prevent a court from making any order or giving any direction.

(q) by inserting after Part 18 rule 1 (3) the following subrule:

(4) If a cross-claim for an amount of more than \$3,000 is brought in an action that would otherwise have been heard and determined in a court’s Small Claims Division, the registrar must,

as soon as practicable, remove the action to the General Division and give or send to the parties notice of the fact that the action has been removed into that Division.

- (r) by inserting before Part 21 rule 1A the following heading and rule:

Division 1—General Division

Application of Division

1AA. (1) This Division applies to actions in a court's General Division but not to actions in a court's Small Claims Division.

(2) Subrule (1) does not prevent a court from making any order or giving any direction.

- (s) by inserting after Part 21 rule 7 the following Division:

Division 2—Small Claims Division

Application of Division

8. This Division applies to actions in a court's Small Claims Division but not to actions in a court's General Division.

Procedure

9. Except to the extent to which the Act and these rules otherwise provide, the procedure at and in respect of the hearing of an action are to be as determined by the court.

Dismissal and striking out

10. (1) Without limiting the generality of rule 9, a court may, if it considers appropriate, make an order, on terms, for the dismissal of an action or for the striking out of an action.

(2) If an action is struck out under this rule, the court may, at the request of any of the parties, make an order, on terms, for the reinstatement of the action.

(3) If:

(a) a court makes an order for the dismissal of an action or for the striking out of an action and orders any of the parties to pay the whole or my part of the costs of another party; and

(b) before making such a payment, the party so ordered brings a further action against the other party on the same, or on substantially the same, cause of action,

the court may, at the request of the other party, stay proceedings on the further action until that payment has been made.

- (t) by inserting before Part 23 rule 1 the following rule:

Application of Part

1A. (1) This Part applies to actions in a court's General Division but not to actions in a court's Small Claims Division.

(2) Subrule (1) does not prevent a court from making any order or giving any direction.

- (u) by inserting after Part 31 rule 11 the following rule:

Small Claims Division

12. (1) Costs may not be awarded, and are not recoverable, in a court's Small Claims Division except as provided by this rule.

(2) The costs (including professional costs) of

- (a) issuing a statement of claim; and
- (b) entering a default judgment; and
- (c) obtaining an order for judgment; and
- (d) enforcing a judgment,

in relation to an action in a court's Small Claims Division are recoverable as if the action were in the court's General Division.

(3) If a court gives judgment in an action in its Small Claims Division, it may award costs to a party against another party.

(4) If a court:

- (a) adjourns or strikes out an action in its Small Claims Division or reinstates an action that has been struck out; and
- (b) is satisfied that the failure of the action to proceed was caused by the fault or neglect of a party to the action,

the court may award costs against the party to another party.

(5) The costs that may be awarded to a party under subrule (3) or (4) may include the party's disbursements properly incurred and may also include:

- (a) an amount in respect of the party's loss of earnings in attending the court for a hearing or pre-trial review, or both, not exceeding the amount that would have been payable to the party as witnesses' expenses had the party been a witness in the action; and
- (b) if the party appeared by a solicitor or barrister—such professional costs as would have been recoverable by the plaintiff had default judgment been entered in the action,

but may not include any other costs.

(6) In exercising its discretion under section 34 of the Act in respect of the costs of an action in its General Division, a court must consider whether or not the action should have been heard and determined in the court's Small Claims Division.

- (v) by inserting after Part 33 rule 4 (2) the following subrules:
 - (3) This rule does not apply to an action in a court's Small Claims Division.
 - (4) Subrule (3) does not prevent a court from making any order or giving any direction.
- (w) by inserting after Part 36 rule 2 (1) the following subrule:
 - (1A) The heading of any document in an action to be heard and determined in a court's Small Claims Division must contain the words "SMALL CLAIMS DIVISION".
- (x) by omitting Part 38 rule 2 and by inserting instead the following rule:

Prescribed actions

2. For the purposes of section 21H (3) (d) of the Act, an action that has been commenced in a court is within a class of actions that may not be referred for determination pursuant to the Arbitration (Civil Actions) Act 1983:

- (a) if the action is within the court's Small Claims Division; or
- (b) if the plaintiff is a disable person within the meaning of Part 34; or
- (c) if the court, at the call-over of the action under Part 9 rule 4, is not of the opinion that the possibilities of settlement have been sufficiently explored, that the action is unlikely to be settled or that the action is ready for arbitration.

EXPLANATORY NOTE

The object of this Rule is to make provision for the practice and procedure of Local Courts in respect of their Small Claims Divisions. These Divisions are to be created as a consequence of the enactment of the Local Courts (Civil Claims) Amendment Act 1990. The Rule deals with:

- (a) the allocation of actions between a Local Court's General Division and Small Claims Division and the transfer of actions between those Divisions; and
- (b) the setting down of actions in a Local Court's Small Claims Division for pre-trial review; and

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- (c) the procedure to be followed at and in respect of the hearing of an action in a Local Court's Small Claims Division; and
 - (d) the costs that may be recovered in respect of an action that is heard in a Local Court's Small Claims Division; and
 - (e) other matters of a consequential nature.
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