

LOCAL COURTS (CIVIL CLAIMS) ACT 1970—RULE

NEW SOUTH WALES



[Published in Gazette No, 54 of 5 May 1995]

1. This rule is made by the Rule Committee on 24 April 1995, and has effect on and from 5 May 1995.

2. The Local Courts (Civil Claims) Rules 1988 are amended as follows:

(a) Part 34 rule 3A

After Part 34 rule 3 insert the following rule:

Notice to minor to appoint tutor

3A. In any proceedings in which the plaintiff or applicant believes on reasonable grounds that the defendant or respondent is a minor for whom no tutor has been appointed, the plaintiff or applicant may serve on the defendant or respondent a notice requiring the defendant or respondent to cause a tutor to appear on the record of the proceedings within 28 days of service of the notice. Any such notice must contain advice that if the defendant or respondent does not comply with the notice the plaintiff or applicant will, unless the court otherwise orders, be at liberty to proceed as though the defendant or respondent were not a minor.

(b) Part 34 rule 5

(i) In subrule (2), omit “subrule”, insert instead “subrules (2A) and”;

(ii) After subrule (2) insert the following subrule:

(2A) The registrar may not be a tutor.

(c) Part 34 rule 7

(i) Omit “Where”, insert instead “(1) Subject to subrule (2), where”;

(ii) After subrule (1) insert the following subrule:

(2) Unless the court otherwise orders, where a minor is a defendant or respondent in any proceedings and does not comply with a notice served on him under rule 3A, the plaintiff or applicant, and the court, may take any step in the proceedings as though the minor were not a minor.

(d) Part 34 rule 8 (3)

(i) In paragraph (a) omit “person;”, insert instead “person; and”;

(ii) Omit paragraphs (b) and (c), insert instead the following paragraph:

(b) That the proposed tutor:

(i) consents to act;

(ii) is a proper person for appointment; and

(iii) has no interest in the proceedings adverse to the interest of the disable person.

(e) Part 38 rule 3

After subrule (3) insert the following subrule:

(3A) An arbitrator who has not determined an action may, under subrule (3), inform the court at any time that the arbitrator is not prepared to hear and determine the action, whether or not the arbitrator has commenced to hear the action.

(f) Part 38 rule 5

After subrule (2) insert the following subrule:

(2A) An arbitrator who has not determined an action may return the record of the action to the court under subrule (2) (a) at any time, whether or not the arbitrator has complied with subrule (2) (b) and whether or not the arbitrator has commenced to hear the action.

(g) Part 38A rule 4

(i) In subrule (2) omit “Part 31 rule 6”, insert instead “subrule (3)”;

(ii) After subrule (2) insert the following subrule:

(3) The amount recoverable under subrule (2) in respect of a judgment is to be calculated as though:

- (a) the amount for which the judgment is to be enforced were the amount in issue in an action; and
- (b) the amount specified in subrule (2) (b) were a fixed fee,

for the purposes of the Determination of the Legal Fees and Costs Board published in Government Gazette No. 91, of 20 August 1993, at page 4741.

EXPLANATORY NOTE

The purpose of the amendments is:

- (a)–(d) to provide that the registrar may not be appointed as a tutor for a disable party in proceedings in a court, and that where a defendant minor, after being served with a warning notice, does nothing to have a tutor appointed the plaintiff may, unless the court otherwise orders, proceed as though the defendant were of full capacity;
- (e), (f) to ensure that an arbitrator may at any time discontinue arbitration of an action and return it to the court;
- (g) to ensure that the professional costs recoverable on registration of an interstate judgment in a court are, like the costs of other judgments, scaled according to the amount of the judgment.

E. J. O'GRADY,
Secretary to the Rule Committee.
