

LOCAL COURTS (CIVIL CLAIMS) ACT 1970—RULE

NEW SOUTH WALES



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1. This rule is made by the Rule Committee on 7 February 1994, and has effect on and from 3 January 1995.

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

(a) Part 7 rule 20

After Part 7 rule 19 insert the following rule:

Service by post—statement of claim

20. (1) Service of a statement of claim may be effected by ordinary post addressed to the defendant at the address of the defendant shown in the statement of claim if

- (a) the address is at the time of posting the address of the defendant's residence or place of business; and
- (b) the posting is done by or at the direction of an officer in the registry, in an envelope marked with a return address which is the address of the court but is not so described.

(2) Where the envelope containing a statement of claim posted as required by subrule (1) is returned unopened to the court by the postal authority as not having been delivered to the addressee:

- (a) service of the statement of claim shall be deemed not to have been effected; and
- (b) any judgment given or entered up on the basis of that service shall be deemed to have been set aside,

and the registrar shall so advise the plaintiff.

(b) Part 10 rule 1 (1B)

After Part 10 rule 1 (1A) insert the following subrule:

(1B) Where a notation has been made, by an officer in the registry, on the court record of an action:

- (a) to the effect that the statement of claim in the action has been served by posting under Part 7 rule 20 (1); and
 - (b) stating the date of that posting,that notation shall be taken to satisfy the requirement in subrule (1) for the filing of an affidavit of service of the statement of claim.
- (c) Part 11 rule 1 (1B)
After Part 11 rule 1 (1A) insert the following subrule:
 - (1B) Where a notation has been made, by an officer in the registry, on the court record of an action:
 - (a) to the effect that the statement of claim in the action has been served by posting under Part 7 rule 20 (1); and
 - (b) stating the date of that posting,that notation shall be taken to satisfy the requirement in subrule (1) for the filing of an affidavit of service of the statement of claim.
- (d) Part 11 rule 1 (3)
After Part 11 rule 1 (2) insert the following subrule:
 - (3) Without limiting subrule (2), a default judgment under this rule may be set aside, on terms, by order of the court if:
 - (a) service of the statement of claim in the action was effected by posting under Part 7 rule 20 (1); and
 - (b) the defendant satisfies the court that:
 - (i) he did not receive the statement of claim in due time;
 - (ii) he has a defence on the merits to the plaintiff's claim, or there is other reason why it would be unjust or unconscionable for the judgment to stand.
- (e) Part 31A rule 7
 - (i) Omit "7. The", insert instead "7. Subject to subrule (2), the";
 - (ii) After subrule (1) insert the following subrule:
 - (2) Where a party is entitled to recover disbursements, those disbursements shall include any amount paid to the registrar for service of the statement of claim in the action by post under Part 7 rule 20 (1).

EXPLANATORY NOTE

The purpose of the amendments is to provide for service by post of statements of claim on defendants who are real persons.

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