

## **District Court Rules 2005**

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## District Court Rules 2005

### Part 1 — Preliminary

**1. Citation**

These rules are the *District Court Rules 2005*.

**2. Commencement**

These rules come into operation on 30 May 2005.

**3. Interpretation**

In these rules, unless the contrary intention appears —

“**address for service**” has a meaning affected by rule 17;

“**audio link**” has the meaning given to that term by the  
*Evidence Act 1906* section 120;

“**case**” means any proceeding in the Court involving or in  
connection with the Court’s civil or appellate jurisdiction,  
irrespective of how it was commenced;

“**file**” a document, means to file it at the relevant registry  
together with any fee required to be paid under the *District  
Court (Fees) Regulations 2002*;

“**file and serve**” has the meaning given by rule 4;

“**Form**”, if followed by a number, means the form of that  
number in Schedule 1;

**“Judge”** means a District Court Judge;

**“lawyer”** means a certificated practitioner within the meaning of the *Legal Practice Act 2003*;

**“lay Registrar”** means a Registrar who is not a legally qualified Registrar;

**“legally qualified Registrar”** means a Registrar who is or has been a legal practitioner within the meaning of the *Legal Practice Act 2003*;

**“personal injuries action”** means an action in which a claim is made in respect of —

- (a) a person’s personal injuries (including any illness suffered by him or her and any impairment of his or her physical or mental condition); or
- (b) a person’s death;

**“record”** means any thing or process —

- (a) on or by which information is recorded or stored; or
- (b) by means of which a meaning can be conveyed by any means in a visible or recoverable form,

whether or not the use or assistance of some electronic, electrical, mechanical, chemical or other device or process is required to recover or convey the information or meaning;

**“registry”** means a registry of the Court;

**“relevant registry”** to a case, means the registry of the Court where the documents relating to the case are being held;

**“RSC”** means the *Rules of the Supreme Court 1971*;

**“rules of court”** means these rules and, where applicable, the RSC;

**“serve”** means to serve in accordance with rule 21;

**“settle”** a case, includes to compromise the case;

**“video link”** has the meaning given to that term by the *Evidence Act 1906* section 120;



**“working day”** means a day other than a Saturday, a Sunday, or a public holiday throughout the State.

**4. “File and serve”, meaning of**

If these rules require a person to file and serve a document, then unless these rules expressly provide otherwise, the person must —

- (a) file the document within any time limit for doing so; and
- (b) after filing the document, serve it on the other party or parties within 5 working days after the date on which it is filed.

**5. Application of these rules**

These rules apply to and in respect of any case that is commenced after these rules commence.

**6. Application of *Rules of the Supreme Court 1971***

- (1) The RSC apply to and in respect of any case in the Court.
- (2) For the purposes of subrule (1) —
  - (a) a reference in the RSC to “the Court” is to be taken as being a reference to the District Court, unless the context requires otherwise; and
  - (b) a reference in the RSC to the RSC (whether “these Rules” or other words are used) is to be taken as including a reference to these rules, unless the context requires otherwise.
- (3) If there is a conflict or inconsistency between these rules and the RSC, these rules prevail.

## **Part 2 — Administrative matters**

### **Division 1 — Registry matters**

#### **7. Court's seal applied electronically, effect of**

If the Court issues a document in an electronic form that bears a facsimile of the Court's seal, the sealed document as it appears electronically, or as it appears when printed on paper, is to be taken to have the same effect as if the Court's seal had been lawfully applied to it by hand by an officer of the Court.

### **Division 2 — Registrars' jurisdiction**

#### **8. Registrars' general jurisdiction**

- (1) A legally qualified Registrar may deal with any proceedings that a Judge may deal with in chambers other than —
  - (a) proceedings involving a review of the taxation of costs;
  - (b) proceedings in relation to an originating summons that raises for determination —
    - (i) a question of law;
    - (ii) a question as to the construction of a statute or document;
    - (iii) a question arising out of an interest in land; or
    - (iv) a question arising out of or connected with a contract between a vendor and purchaser of land;
  - (c) proceedings claiming an injunction or other order under the *Supreme Court Act 1935* section 25(9);
  - (d) proceedings that under rules of court are to be dealt with by a Judge; and
  - (e) proceedings that the Chief Judge directs are to be dealt with by a Judge.

- (2) A lay Registrar may do any of the following —
- (a) sign and seal any judgment or order that has been settled by a legally qualified Registrar;
  - (b) conduct a pre-trial conference under Part 4 and make any order that may be made at such a conference other than —
    - (i) an order under rule 40(7) as to any costs reserved or the costs of interrogatories; or
    - (ii) an order under rule 42(1)(d), (e) or (f);
  - (c) conduct a listing conference under Part 4 and make any order that may be made at such a conference other than an order under rule 43(5) as to any costs reserved or the costs of interrogatories.

**9. Registrar may be ordered to take account etc.**

- (1) If in any proceedings the Court orders that an account be taken or that an inquiry be made, it may order that it be done by a Registrar.
- (2) When or after making an order under subrule (1) the Court may give orders or directions to assist the Registrar.
- (3) While a Registrar is taking an account or making an inquiry, a party may apply at any time, without a summons, to have the proceedings dealt with by a Judge in which case the Registrar must adjourn the proceedings accordingly.

**10. Registrar may be required to calculate interest etc.**

- (1) A Judge may direct that the calculation of any interest, or the apportionment of any fund, for the purposes of a judgment be done and certified by a Registrar on the judgment.
- (2) The certificate of a Registrar has effect according to its tenor without any further order of the Court.

**11. Registrars' matters, when may be listed before Judge**

Proceedings that may be dealt with by a Registrar are not to be listed before a Judge except —

- (a) as provided for in rule 9(3);
- (b) on the reference of a Registrar under rule 12;
- (c) on an appeal to a Judge under rule 15;
- (d) in the case of a case management hearing, pre-trial conference, or a listing conference, under Part 4, on the order of a Judge;
- (e) in the case of an application in an action or matter that is made after the action or matter is listed for trial; or
- (f) with leave from a Judge.

**12. Registrar may refer matter to Judge**

- (1) A Registrar may refer any proceedings before him or her to a Judge who may deal with them or refer them back with or without directions.
- (2) Pending the determination of the proceedings the Registrar may make an interim order.

**13. Registrars' powers to obtain evidence etc.**

For the purpose of any proceedings that are to be dealt with by a Registrar, a Registrar may —

- (a) summons a person to appear before him or her to give evidence orally;
- (b) summons a person to appear before him or her to produce a document or other thing;
- (c) examine a person, either orally or by written interrogatories; and
- (d) issue advertisements.

**14. Registrars' office taken to be Judges' chambers**

- (1) Any place where a Registrar sits is to be taken to be a Judge's chambers for the purpose of any proceedings which under rules of court may be dealt with by a Registrar.
- (2) For the purpose of proceedings before a Registrar, a reference in rules of court to the Court includes a reference to a Registrar.

**Division 3 — Appeals from Registrars**

**15. Appeal lies from Registrar to a Judge**

- (1) If a party is dissatisfied with a decision of a Registrar the party may appeal to a Judge.
- (2) The appeal must be commenced within 10 days after the date of the decision or such longer period as a Judge or Registrar may allow.
- (3) The appeal must be commenced by filing and serving a notice that —
  - (a) sets out the particulars of the Registrar's decision or that part of it to which the appeal relates; and
  - (b) sets out the final orders that it is proposed the Court should make on the appeal.
- (4) There must be at least 7 clear days between service of the notice and the date for the hearing of the appeal, unless otherwise ordered.
- (5) The appeal does not operate as a stay of proceedings unless a Judge or Registrar orders otherwise.
- (6) The appeal is to be by way of a new hearing of the matter that was before the Registrar.

**16. Directions hearing for appeals from Registrars**

- (1) Not less than 14 days after an appeal is commenced, a Registrar must summons the parties to the appeal to a directions hearing before a Registrar.
- (2) At the directions hearing the Registrar may make any order or direction that in his or her opinion will or may facilitate the appeal being conducted efficiently, economically and expeditiously, including —
  - (a) directions as to how the material necessary to determine the appeal is to be presented; and
  - (b) directions setting the date, time and length of time for the hearing of the appeal.
- (3) At the directions hearing the Registrar, with the consent of the parties, may make an order that concludes the appeal.

## **Part 3 — General matters**

### **Division 1 — Addresses for service**

**17. Address for service within 66 kms**

For the purposes of a case in the District Court, a requirement in the RSC to provide an address for service that is not more than 66 kms from the Supreme Court at Perth is to be read as a requirement to provide an address for service that is not more than 66 kms from the relevant registry of the District Court.

**18. Electronic addresses for service**

(1) If a party who is self-represented —

- (a) resides in Australia;
- (b) is registered by the Court’s website as a person authorised to file documents electronically; and
- (c) is required by rules of court to provide an address for service,

the party, in addition to providing an address for service in accordance with rules of court, may provide one email address being the email address of the party recorded on the Court’s website.

(2) Subrule (1) does not affect a person’s duty under the RSC to provide the person’s residential address.

(3) If a lawyer acting for a party, or the business in which the lawyer works —

- (a) has a business address in Australia;
- (b) is registered by the Court’s website as a person authorised to file documents electronically; and
- (c) is required by rules of court to provide an address for service,

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the lawyer or business, in addition to providing an address for service in accordance with rules of court, may provide one email address being the email address of the lawyer or business recorded on the Court's website.

- (4) Subrule (3) does not affect a lawyer's duty under the RSC to provide the lawyer's business address.
- (5) For the purposes of enabling the service by email of documents that rules of court require to be served, a person who is not registered by the Court's website as a person authorised to file documents electronically may, in addition to providing an address for service in accordance with rules of court, provide an email address operating at that address.
- (6) For the purposes of enabling the service by fax of documents that rules of court require to be served, a person may, in addition to providing an address for service in accordance with rules of court, provide a fax number operating at that address.
- (7) If a lawyer practises in a business with one or more other lawyers or people —
  - (a) any email address provided under subrule (5) must be the email address of the business and not that of the lawyer personally; and
  - (b) any fax number provided under subrule (6) must be the fax number of the business and not that of the lawyer personally.
- (8) A person who under this rule provides an email address or a fax number is to be taken to have consented to being served with documents by means of email at that email address or by fax at that fax number.
- (9) The RSC Order 6 rule 11, with any necessary changes, applies to and in relation to a fax number or email address provided under this rule.



**Division 2 — Filing documents electronically**

**19. Some documents may be filed by fax**

- (1) Subject to this rule, a document may be filed by fax.
- (2) A person wanting to file a document at a registry by fax must use the published fax number for that registry.
- (3) A document that, with any attachments and a cover page, is more than 20 pages long, must not be filed by fax and any such document received by a registry is to be taken not to have been filed.
- (4) A document that is sent by fax to a registry must have a cover page stating —
  - (a) the sender's name, postal address, document exchange number (if any), telephone number and fax number; and
  - (b) the number of pages (including the cover page) being sent by fax.
- (5) A person that files a document by fax must —
  - (a) endorse the first page of the original document with —
    - (i) a statement that the document is the original of a document sent by fax; and
    - (ii) the date and time the document was sent by fax;
  - (b) keep the endorsed original document and the fax machine's report evidencing the successful transmission of the document; and
  - (c) if directed to do so by the Court, produce the items in paragraph (b) to the Court.
- (6) A document filed by fax at a registry is to be taken to have been filed —
  - (a) if the whole document is received before 4.00 p.m. on a day when the registry is open for business, on that day;

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- (b) otherwise, on the next day when the registry is open for business.
- (7) A person who files a document by fax must have the original paper version of the document with him or her at any conference or hearing in the course of the case concerned.
- (8) The Court may at any time, on the application of a party or on its own initiative, order a person who has filed a document by fax to file the paper version of the document.

**20. Some documents may be filed using Court's website**

- (1) Subject to the requirements of the Court's website and this rule, a person may file a document electronically by filing an electronic version of it by means of the Court's website.
- (2) If the rules of court require a document to be signed by a person who is not, or who is not acting on behalf of, the person filing it, the document cannot be filed electronically unless it is an affidavit.
- (3) If the rules of court require a document, before it is filed, to be signed by or on behalf of the person filing it and the document is being filed electronically —
  - (a) the document need not be signed by that person; and
  - (b) the person filing the document electronically must ensure that the electronic version of the document, instead of showing a signature at any place where a signature is required, states the name of the person whose signature is required at the place.
- (4) A person who files an affidavit electronically must either file an electronic version of it that includes the signatures on it or —
  - (a) file an electronic version of it that does not include the signatures on it;
  - (b) ensure that the electronic version, instead of showing a signature at any place where a signature appears in the

- paper version, states the name of the person whose signature it is; and
- (c) also file an undertaking that the person —
    - (i) has possession of the paper version signed according to law; and
    - (ii) will retain the paper version subject to any order of the Court.
- (5) A document filed electronically at a registry is to be taken to have been filed —
- (a) if the whole document is received before 4.00 p.m. on a day when the registry is open for business, on that day;
  - (b) otherwise, on the next day when the registry is open for business.
- (6) A document that is sent electronically to a registry but not in accordance with the requirements of the Court’s website and this rule is to be taken not to have been filed at the registry.
- (7) A person who files a document electronically must have the original paper version of the document with him or her at any conference or hearing in the course of the case concerned.
- (8) The Court may at any time, on the application of a party or on its own initiative, order a person who has filed a document electronically to file the paper version of the document.

### **Division 3 — Serving documents**

#### **21. Service of documents**

- (1) If rules of court require a person to serve a document, then, unless the contrary intention appears, the person must serve the document on each other party to the proceedings by one of these methods —
  - (a) in accordance with the RSC Order 72;

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- (b) if the party has provided an email address under rule 18, by sending the document as an attachment to an email sent to that address; or
  - (c) if the party has provided a fax number under rule 18(6), by sending the document by fax to that number.
- (2) A document cannot be served by email under subrule (1) if under rule 20(2) it cannot be filed electronically.
  - (3) Rule 20(3) and (4), with any necessary changes, apply to a document being served by email in the same way as they apply to a document being filed electronically.
  - (4) A document that is served by email or fax on a person is to be taken to have been served —
    - (a) if the whole document is sent before 4.00 p.m. on a working day, on that day;
    - (b) otherwise, on the next working day.
  - (5) Subrules (1) and (4), with any necessary changes, apply to the service by the Court of a notice on a party.
  - (6) This rule does not prevent a person from consenting to being served in a manner other than in accordance with the rules of court.

**Division 4 — Miscellaneous**

**22. Summons for matters in chambers**

A person filing a summons to be dealt with in chambers must include either —

- (a) a certificate that the parties to the summons have conferred about the issues giving rise to the summons and have not resolved them; or
- (b) a certificate that the parties to the summons have not conferred about the issues giving rise to the summons and the reasons why they have not conferred.

## **Part 4 — Case management**

### **Division 1 — Preliminary**

#### **23. Interpretation**

In this Part, unless the contrary intention appears —

**“case management direction”** is defined by rule 24;

**“enforcement order”** is defined by rule 25;

**“mediator”** means a Registrar, or another person, who is approved as a mediator by the Chief Judge.

#### **24. Case management direction, meaning of**

- (1) A case management direction is any procedural direction that in the Court’s opinion it is just to make in a case to facilitate the case being conducted and concluded efficiently, economically and expeditiously.
- (2) Without limiting subrule (1), a case management direction may —
  - (a) dispense with all or any or any further pleadings;
  - (b) direct that specified pleadings be filed;
  - (c) dispense with any interlocutory proceedings;
  - (d) as to the hearing of any interlocutory application —
    - (i) direct the parties to confer in order to identify the issues between them and resolve as many as possible before the hearing and to identify the issues to be heard;
    - (ii) direct the parties to file and exchange memoranda before the hearing in order to identify the issues to be heard;
    - (iii) give directions as to the use of videotapes, films, computers and other technology at the hearing;
    - (iv) give directions for the speedier and more effective recording of evidence at the hearing;

- (e) direct some or all of the parties to confer on a “without prejudice” basis in order to settle the case or, failing settlement, to resolve as many of the issues between them as possible and to identify the issues to be tried and, as to the conference —
  - (i) direct that it be conducted by a mediator; but not, unless the parties consent, a mediator who is not a Registrar and whom a party would become liable to remunerate;
  - (ii) give directions for the purpose of rule 35(7);
  - (iii) if good cause is shown, direct that it operates as a stay of proceedings;
  - (iv) give any other directions that are necessary;
- (f) direct that experts, whose reports have been exchanged, confer on a “without prejudice” basis in order to identify the differences between them and to resolve as many as possible;
- (g) as to —
  - (i) the hearing of any interlocutory application; or
  - (ii) any conference directed under paragraph (d)(i), (e) or (f),direct that it be conducted, and any evidence in relation to it be provided, by fax or email or by an audio link or a video link;
- (h) direct the mode by which particular facts may be proved at trial;
- (i) direct that evidence of any particular fact, to be specified in the direction, shall be given at the trial by statement on oath of information and belief, or by production of documents or entries in books or by copies of documents or entries or otherwise as the Court may direct;
- (j) direct a party to serve on the other parties, at such times as shall be directed, a signed written statement of the

- proposed evidence in chief of each witness to be called by that party;
- (k) direct that a signed written statement referred to in paragraph (j) or any part of it stand as the evidence in chief of the witness;
  - (l) direct a party (“**A**”) intending to produce a plan, photograph, model or other object (the “**object**”) at trial to serve on the other party (“**B**”), at a time specified, a written notice —
    - (i) describing the object;
    - (ii) stating where and when it may be inspected; and
    - (iii) requiring B to serve A, within 7 days after the service of the notice, with a written notice agreeing or refusing to agree to the admission in evidence of the object without further proof of it;
  - (m) direct that if under paragraph (l) B gives A notice that B refuses to agree to the admission of the object without further proof, and the object is admitted into evidence at the trial as part of A’s case, B shall pay any costs of proving the object unless the trial Judge otherwise orders;
  - (n) direct a lawyer for a party to give the party written notice of any or all of the legal costs and disbursements referred to in rule 36(1);
  - (o) direct a party or the lawyer for a party to attend certain proceedings specified in the direction;
  - (p) in exceptional circumstances direct that an application by a party made under this Division operate as a stay of proceedings;
  - (q) in exceptional circumstances or if not to do so would frustrate the appeal, direct that an appeal against a decision made under this Part operate as a stay of proceedings;

- (r) direct that an application for an adjournment of any proceeding be supported by affidavits of specified people;
  - (s) give directions to assist the convenience of the parties or witnesses;
  - (t) give directions as to the manner in which the parties shall defray the costs of giving effect to any case management direction;
  - (u) direct that a specified case management direction be complied with by a set date.
- (3) A case management direction shall not order the attachment or committal of a person.
- (4) A case management direction is not enforceable by a writ of attachment or an order of committal.

**25. Enforcement order, meaning of**

An enforcement order is —

- (a) an order as to the payment of costs;
- (b) an order as to the payment of costs of the parties on an indemnity basis, to be fixed in a manner specified in the order, and payable within 14 days after the order;
- (c) a self-executing order for judgment, striking out pleadings, or otherwise;
- (d) an order under the RSC Order 66 Rule 5.

**Division 2 — Case management generally**

**26. Court may make case management directions etc.**

At any time in a case the Court, on its own initiative after notifying the parties, or when hearing a summons for directions or any other application in a case, may review the progress of the case and may make any order that may be made under rule 32(2).



**27. Case management hearing, Registrar may hold**

- (1) At any time before a case is listed for trial or hearing, a Registrar may summons the parties to a case management hearing.
- (2) Rules 32 to 35 apply to and in respect of the case management hearing.

**Division 3 — Case management of cases commenced by writ**

**28. Application of this Division**

This Division applies only to a case that is an action commenced by writ.

**29. Various RSC rules do not apply**

The RSC Orders 29, 29A, 31A, 33 (other than Rules 9 and 10) and Order 59 rule 9 do not apply to a case.

**30. Standard timetable for cases commenced by writ**

- (1) For the purposes of making orders and directions under this Division in relation to a case, each stage of the case listed in the Standard timetable to this subrule should be completed within the period stated as calculated from the date on which a defence (or if there is more than one defendant, the first defence) is filed.

**Standard timetable**

<b>Stage of case</b>	<b>Period after defence</b>
Entry for trial	120 days
Commencement of pre-trial conference	160 days
Commencement of listing conference	200 days
Commencement of trial	290 days
Judgment	360 days

- (2) If the trial of a case takes more than one day, the period after defence for judgment is extended by the period of the trial.

- (3) The Judge who tries a case may at any time extend the period after defence for judgment.

**31. Case management hearing, holding of**

- (1) In this rule —  
**“appearance”** means a memorandum of appearance.
- (2) This rule does not limit rule 27.
- (3) When the first appearance is filed in a case, a Registrar may summons the parties to the case to attend a case management hearing before a Registrar.
- (4) The date for the case management hearing must be at least 14 days after the date the summons is issued.
- (5) If after the first appearance is filed and before the date for the case management hearing another party files an appearance, the Registrar must summons the party to attend the case management hearing for which a summons has been issued under subrule (2), despite subrule (3).
- (6) The case management hearing may be held even if, at the time of the hearing, not all parties to the case have been served with the writ or have filed appearances.

**32. Case management hearing, conduct of**

- (1) At a case management hearing a Registrar must review the documents on the Court file and inquire into these matters —
- (a) the complexity of the case;
  - (b) the need for interlocutory proceedings;
  - (c) whether the standard timetable in rule 30 is appropriate to the case;
  - (d) whether rule 38(1) should not apply to the case;
  - (e) the readiness of the parties for trial.

- (2) At a case management hearing, either on the oral application of a party or, after notifying the parties, on the Registrar's own initiative, a Registrar may —
- (a) order that the standard timetable in rule 30 or some variation of it applies;
  - (b) order that any of the other rules in this Division do not apply to the case;
  - (c) make, amend or cancel any interlocutory order;
  - (d) make, amend or cancel any case management direction;
  - (e) make, amend or cancel any enforcement order;
  - (f) order that the case be managed by a Judge.
- (3) A Registrar may adjourn the case management hearing from time to time.

**33. Case management directions etc. may be made in other proceedings**

- (1) Without limiting rule 32, a direction or order referred to in rule 32(2) may be made, amended or cancelled —
- (a) at any time while a case management hearing is adjourned, or after a case management hearing, on the application of a party made by summons with a supporting affidavit; or
  - (b) at the hearing of a summons for —
    - (i) an interlocutory order; or
    - (ii) third party directions issued under the RSC Order 19 Rule 4.
- (2) An application made under subrule (1)(a) must specify any direction or order referred to in rule 32(2) that the party wants.

**34. Duties of parties at case management hearing etc.**

- (1) At a case management hearing or at the hearing of an application made under rule 33(1)(a), the parties and their

lawyers must give any information and produce any documents that the Court reasonably requires other than information or documents that are privileged.

- (2) As far as is practicable a party must give another party at least 2 clear days' notice of any direction or order referred to in rule 32(2) that the party wants made, whether at a case management hearing or otherwise, and that is not stated in a written application.

**35. Mediations**

- (1) This rule applies if the Court makes a case management direction that directs any parties to confer with a mediator.
- (2) The direction does not operate as a stay of proceedings unless the Court orders otherwise.
- (3) Unless the Court has specified a time and place for the conference, the parties must take any steps necessary and obey any relevant case management directions to ensure that it takes place without delay.
- (4) A party must attend the conference in person or, if the party is a body corporate, by an agent who is authorised by the body to conduct settlement negotiations and to settle the case.
- (5) Each party's costs of and incidental to the conference shall be the party's costs in the cause, unless the Court orders, or the parties agree, otherwise.
- (6) The remuneration and expenses of a mediator who is not a Registrar are to be paid by the parties in equal shares, unless the Court orders, or the parties agree, otherwise.
- (7) Within 2 weeks after the conclusion of the conference, the party ordered by the Court to do so must file a report signed by or on behalf of the parties concerned —
  - (a) confirming that the conference took place as directed; and

- (b) recording the substance of any resolution or narrowing of the differences between the parties achieved as a result of the conference.
- (8) The mediator —
  - (a) must not, unless the parties agree, report to the Court about the conference;
  - (b) whether or not the parties agree, may report to the Court any failure by a party to cooperate in the conference.
- (9) A report made under subrule (8)(b) must not be disclosed to the trial judge except for the purposes of determining any question as to costs or as to the remuneration and expenses of a mediator.

**36. Legal costs, lawyer to notify client of**

- (1) Unless otherwise ordered, a lawyer for a party to a case must not enter the case for trial unless the lawyer has given the party written notice of —
  - (a) the approximate legal costs and disbursements of the party up to and including giving the notice;
  - (b) the estimated future legal costs and disbursements of the party up to but not including the trial;
  - (c) the estimated length of the trial and the legal costs and disbursements associated with it;
  - (d) the estimated legal costs and disbursements that the party would have to pay to another party if the party were to lose the case.
- (2) Within 14 days after the date on which a party is served with a Form 1 (Entry for trial), the lawyer for the party must give the party written notice of the legal costs and disbursements referred to in subrule (1).

**37. Entering a case for trial**

- (1) The plaintiff must enter the case for trial on or before the date for entry for trial in the timetable applicable to the case.

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(2) Subrule (1) does not affect the operation of the RSC Order 36A.

(3) To enter a case for trial the plaintiff must file and serve —

(a) a Form 1 (Entry for trial) which must state the dates, within 40 days after the date of the form, when the parties are not available to attend a pre-trial conference;

(b) if the case is a personal injuries action, a document setting out in detail the amount of money claimed for any of the following, the justification for claiming it, and how it is calculated —

(i) past loss of earning capacity;

(ii) future loss of earning capacity;

(iii) loss of superannuation due to past or future loss of earning capacity;

(iv) special damages;

(v) future medical expenses;

(vi) future care;

(vii) past gratuitous services;

(viii) future services;

(ix) special services or appliances;

(x) any other discrete item of damages;

(c) if the case is not a personal injuries action, a document setting out in detail any amount of money claimed, the justification for claiming it, and how it is calculated; and

(d) the papers for the Judge, comprising —

(i) the pleadings, and any affidavits ordered to stand as pleadings, with any amendments to them incorporated;

(ii) any request or order for particulars that has been made together with the particulars given; and

(iii) any order for directions made under the RSC Order 19 Rule 4.

- (4) For the purposes of completing Form 1 —
  - (a) the plaintiff, at least 14 days before the date on which the plaintiff intends to enter the case for trial, must ask each other party to tell the plaintiff on which dates, within 40 days after that date, the party will not be available to attend a pre-trial conference; and
  - (b) a party that does not advise the plaintiff within 7 days after the plaintiff's request of the dates on which that party will not be available to attend a pre-trial conference is to be taken to be available on any date.

**38. Plaintiff failing to enter case for trial, consequences**

- (1) If the plaintiff does not enter the case for trial on or before the date for entry for trial in the timetable applicable to the case, the relevant registry must send each party a Form 2 (Notice of default (entry for trial)).
- (2) At any time after receiving a Form 2, a party, other than the plaintiff, may enter the case for trial.
- (3) Rule 37(3), with any necessary changes, applies if a party other than the plaintiff enters the case for trial.
- (4) If a party other than the plaintiff enters the case for trial, then, for the purposes of completing Form 1, all other parties (including the plaintiff) are to be taken to be available to attend a pre-trial conference on any date unless notice to the contrary is filed prior to when the date of the pre-trial conference is set.
- (5) If under subrule (2) a case is entered for trial at a time when, by virtue of the Form 2 sent to the parties and rule 44(2) the case is inactive, the case ceases to be inactive.
- (6) Subrules (2) and (5) do not prevent the plaintiff from complying with rule 44(1) or applying to the Court under rule 45.

**39. Pre-trial conference, preliminary matters**

- (1) When a case is entered for trial the relevant registry must give each party notice of the date, time and place of the pre-trial conference.
- (2) A pre-trial conference must be held before a Registrar unless a Judge has ordered otherwise.

**40. Pre-trial conference**

- (1) Unless otherwise ordered, a party must attend a pre-trial conference in person or, if the party is a body corporate, by an agent who is authorised by the body to conduct settlement negotiations and to settle the case.
- (2) If at a pre-trial conference the presiding officer is satisfied that a party is not ready for trial, the officer may adjourn the conference and make, amend or cancel any direction or order referred to in rule 32(2).
- (3) At a pre-trial conference the parties must, in good faith, attempt to settle the case or, failing settlement, to resolve as many of the issues between them as possible and to identify the issues to be tried.
- (4) At a pre-trial conference the presiding officer may either —
  - (a) mediate between the parties; or
  - (b) order the parties to attend before a mediator, arbitrator or other person who provides alternative dispute resolution services (but not, unless the parties consent, a person whom a party would become liable to remunerate),in order to settle the case or, failing settlement, to resolve as many of the issues between them as possible and to identify the issues to be tried.
- (5) If the mediation referred to in subrule (4) does not result in the settlement of the case, the presiding officer must either —



- (a) order the parties to attend a listing conference and make any orders under rule 42 that are needed; or
  - (b) list the case for trial if satisfied about the matters in subrule (6).
- (6) The presiding officer must not list a case for trial under subrule (5) unless satisfied —
- (a) that the lawyers who will appear at trial for the parties have all been fully briefed and that all parties have been advised by their lawyers about their prospects at trial;
  - (b) that all parties have made reasonable efforts to agree on —
    - (i) facts that are not the subject of real controversy;
    - (ii) the tender of any expert's report without the need for the expert to be called;
  - (c) that a reliable estimate has been made as to the probable length of the trial; and
  - (d) that no useful purpose would be served by ordering the parties to attend a listing conference and making any order under rule 42.
- (7) At a pre-trial conference the presiding officer may make orders as to costs including, if a case is settled, orders as to costs reserved and the costs of interrogatories.
- (8) The presiding officer may adjourn a pre-trial conference from time to time.

**41. Pre-trial conference, ancillary matters**

- (1) Evidence of anything said or any admission made in the course of a pre-trial conference is not admissible at the trial of the case.
- (2) Subrule (1) does not apply —
  - (a) to the hearing of an application for costs arising out of a pre-trial conference; or

- (b) to anything said or any admission made that all parties at the conference, in an agreement recorded in writing by the presiding officer, agree is admissible at the trial.
- (3) If the parties at a pre-trial conference agree to settle the case, then unless otherwise ordered —
  - (a) each party and the party's lawyer must sign and file and serve a written consent to the making of an order giving effect to the settlement; and
  - (b) judgment is to be entered, or final orders are to be made, at the pre-trial conference unless a Judge's approval of the judgment or orders is required and a Registrar is presiding.

**42. Listing conference, orders for the purpose of**

- (1) If under rule 40(5)(a) the presiding officer orders the parties to attend a listing conference, then, either at the request of the parties or, after notifying the parties, on the officer's own initiative, the officer may —
  - (a) order the plaintiff, within 14 days after the date of the order, to file and serve —
    - (i) a chronology of relevant events;
    - (ii) a concise statement of the issues of fact and law that the plaintiff contends will need to be determined at trial (which, in cases involving building or engineering disputes, must be in the form of a *Scott Schedule*); and
    - (iii) an index of the reports of any expert witness that the plaintiff intends to adduce at trial;
  - (b) order the defendant, within 14 days after the date of service of those documents, to file and serve —
    - (i) the defendant's chronology of relevant events;
    - (ii) a concise statement of the issues of fact and law that the defendant contends will need to be determined at trial; and

- (iii) an index of the reports of any expert witness that the defendant intends to adduce at trial;
  - (c) order the parties to exchange, within such period as the officer orders, any medical or expert evidence that has not already been exchanged under the RSC Order 36A;
  - (d) make, amend or cancel any case management direction;
  - (e) make, amend or cancel any enforcement order;
  - (f) order that the case be managed by a Judge.
- (2) A chronology or statement of issues filed and served by a party under an order made under subrule (1) must be consistent with the party's pleadings.
- (3) A party subject to an order made under subrule (1) is not required to disclose an event or issue that is primarily relevant to the credibility of the opposing party or its principal witnesses.

**43. Listing conference**

- (1) A listing conference must be held before a Registrar unless a Registrar or a Judge has ordered otherwise.
- (2) A listing conference must be attended by the lawyers who will appear at trial for the parties unless subrule (3) applies.
- (3) The lawyer who will appear at trial for a party need not attend a listing conference if his or her instructing lawyer attends and tenders the other's certificate as to —
  - (a) the estimated length of the trial;
  - (b) the number of witnesses that the party intends to call;
  - (c) whether there are any special circumstances affecting the date or time when any particular witness can be called;
  - (d) whether any particular witness will be attending from a long distance or from outside the State;
  - (e) whether an interpreter will be needed;
  - (f) whether an audio link or a video link will be needed;

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- (g) whether the use of any technology would allow the trial to be conducted more efficiently, economically or expeditiously;
  - (h) whether there is any matter known to the lawyer that is likely to interfere with the trial being conducted efficiently, economically and expeditiously; and
  - (i) the fact that the parties have made reasonable efforts to reach agreement on —
    - (i) facts that are not the subject of real controversy; and
    - (ii) the tender of experts' reports (if any) without the need for the experts to be called.
- (4) At a listing conference the presiding officer must list the case for trial only if any order or direction previously made has been complied with or, if not, if appropriate orders in default have been made.
- (5) At a listing conference the presiding officer may make orders as to costs including, if a case is settled, orders as to costs reserved and the costs of interrogatories.
- (6) The presiding officer may adjourn a listing conference from time to time.

**44. Notice of default, effect of disobedience to**

- (1) If a Form 2 is sent in relation to a case, the plaintiff must, on or before the date specified in the form (which must be at least 14 days after the date of the form), enter the case for trial.
- (2) If a plaintiff does not obey a Form 2, the case becomes inactive.

**45. Inactive cases, consequences**

- (1) This rule applies if a case is inactive under rule 44(2).

- (2) The plaintiff must not file a Form 1 to list the case for trial or any other document (other than an application under subrule (3)) without the leave of the Court.
- (3) Within 21 days after the date specified in a Form 2, the plaintiff must apply for leave to list the case for trial or to be excused from doing so.
- (4) If —
  - (a) no application is made under subrule (3): or
  - (b) on an application made under subrule (3), leave is refused or the plaintiff is not excused,a party that is not in default may apply for judgment in that party's favour to be entered without a trial.
- (5) If the Court grants leave on an application made under subrule (3) and is satisfied that there is no reason for the case to be inactive, it must order that the case is no longer inactive.

## **Part 5 — Obtaining evidence**

### **Division 1 — Discovery**

#### **46. RSC Order 26 modified in actions commenced by writ**

- (1) The RSC Order 26 applies to an action commenced by writ, subject to this rule.
- (2) Subject to any order made by the Court, each party to the action must give each other party discovery of all documents that are or have been in the party's possession, custody or power relating to any matter in question in the action.
- (3) With the consent of each other party to the action, discovery may be by way of an informal list, but otherwise shall be by way of affidavit served on the other parties.
- (4) Discovery must be given by all parties within 60 days after a defence (or if there is more than one defendant, the first defence) is filed.
- (5) The RSC Order 26 Rule 8(1) applies as if the reference to 7 days were amended to 14 days.

### **Division 2 — Interrogatories**

#### **47. RSC Order 27 modified**

- (1) The RSC Order 27 applies, subject to this rule.
- (2) Leave of the Court to serve notice on a party is not required under the RSC Order 27 Rule 1(1) if the party consents to being served without the leave of the Court.
- (3) Leave of the Court to serve notice on a party is not required under the RSC Order 27 Rule 1(1) if the action is a personal injuries action and —
  - (a) the notice is served within 75 days after the party files a defence; and

- (b) the interrogatories specified in the notice relate to —
  - (i) the occurrence of the incident pleaded as the cause of the personal injuries;
  - (ii) the defendant's system for preventing incidents of the type alleged to have occurred;
  - (iii) the plaintiff's medical history in the 5 years prior to the incident;
  - (iv) the symptoms and treatment of the personal injuries pleaded; or
  - (v) the plaintiff's employment history in the 5 years prior to the accident.
- (4) A party applying for leave under the RSC Order 27 Rule 1 to serve interrogatories must —
  - (a) file and serve with the application a minute of the proposed interrogatories; and
  - (b) make the application at least 7 days before it is heard.

**48. No interrogatories after pre-trial conference**

Unless justice requires otherwise, the Court will not, after a pre-trial conference, grant leave to serve interrogatories if to do so would necessitate adjourning the trial.

## **Part 6 — Appeals to the Court**

### **49. Interpretation**

In this Part, unless the contrary intention appears —

**“appealable decision”** means an award, a determination, a finding, a judgment or any other decision, that by virtue of a written law may be the subject of an appeal to the Court but not a decision of a Registrar;

**“primary court”** in relation to an appealable decision, means the court, tribunal, person or body that made the decision.

### **50. Appeal, nature of**

- (1) An appeal to the Court must be by way of a reconsideration of the evidence that was before the primary court unless the parties agree otherwise.
- (2) At the hearing of an appeal a party must not adduce evidence that was not adduced in the primary court except with the leave of the Court.
- (3) The Court is not to grant such leave unless satisfied there are special grounds for doing so.
- (4) This rule is subject to the written law that provides for the appeal to made to the Court.

### **51. Appeal, commencement of**

- (1) An appeal to the Court against an appealable decision must be commenced by filing a notice of appeal at the registry nearest to where the appealable decision was given.
- (2) A notice of appeal must —
  - (a) identify the primary court and the action or matter or proceedings in which the appealable decision was given;



- (b) except in the case of an appeal made under the *Magistrates Court (Civil Proceedings) Act 2004*, identify the written law under which the appeal is made;
  - (c) set out the particulars of the appealable decision or that part of it to which the appeal relates;
  - (d) state the grounds of appeal;
  - (e) set out the final orders that it is proposed the Court should make on the appeal; and
  - (f) include an address for service of the appellant in Australia.
- (3) The grounds of appeal in a notice of appeal must not merely allege that an appealable decision is against the weight of the evidence or that it is wrong in law, they must specify the particulars relied on to demonstrate that the decision is against the weight of the evidence and the specific reasons why it is wrong in law.
- (4) A notice of appeal must be filed and served within 21 days after the date of the appealable decision.
- (5) When filing a notice of appeal the appellant must pay the Court \$100 as security for the costs of being unsuccessful.

**52. Primary court to supply records when given notice**

- (1) In this rule —
- “primary court case”** means the action, case, matter or proceedings in the primary court in which the appealable decision was made.
- (2) As soon as practicable after a notice of appeal is filed in respect of an appealable decision, a Registrar must give the primary court concerned a copy of it.
- (3) As soon as practicable after being given the copy of the notice of appeal, the primary court must give the Court a copy of the following documents —

- (a) any record that has been filed or filed with the primary court as required by law and that forms part of the court's record of the primary court case;
  - (b) any record admitted as evidence in the primary court case together with a list of them and the exhibit numbers given to them by the primary court;
  - (c) any record tendered in the primary court case but not admitted as evidence in the case together with a list of them and any numbers given to them by the primary court;
  - (d) the transcript of the proceedings in the primary court case or the notes made by the judicial officer who presided at the proceedings;
  - (e) the primary court's decision in the primary court case and any written reasons given for it;
  - (f) any other record held by the primary court that is or may be relevant to the appeal.
- (4) Any copy of a document given by the primary court to the Court need not be certified by the primary court.
- (5) If any of the documents given to the Court contains information to which access by any person is or should be restricted, the primary court must advise the Court.
- (6) A Registrar may —
- (a) request a primary court to comply with subrule (3) by a date set by the Registrar;
  - (b) decide any question that arises about what must be sent to the Court under subrule (3).
- (7) The documents given to the Court form part of the District Court's record.

**53. Appeal, responding to**

- (1) Within 10 days after being served with a notice of appeal a party that intends to appear as a respondent must file and serve a notice of intention to appear.
- (2) A notice of intention to appear must include an address for service of the respondent in Australia.
- (3) If a respondent intends to seek to uphold the appealable decision on grounds other than those relied on by the primary court that made it, or to vary the decision, or to cross-appeal, the respondent must, within 14 days after filing a notice of intention to appear, file and serve an answer.
- (4) The answer must —
  - (a) if the respondent seeks to uphold the appealable decision on grounds other than those relied on by the primary court that made it, state the grounds for doing so;
  - (b) if the respondent seeks to vary the appealable decision, state the grounds doing so;
  - (c) if the respondent is cross-appealing —
    - (i) set out the particulars of the appealable decision or that part of it to which the cross-appeal relates; and
    - (ii) state the grounds of the cross-appeal.
- (5) Rule 51(3) applies to the grounds of a cross-appeal as it does to the grounds of an appeal.
- (6) When filing an answer the respondent must pay the Court \$100 as security for the costs of being unsuccessful.

**54. Appeal, entry for hearing**

- (1) The appellant must enter an appeal for hearing —
  - (a) if no notice of intention to appear has been filed by a respondent — not less than 10 and not more than

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- 30 days after the date when the respondent, or the last of the respondents, was served with the notice of appeal;
- (b) if a notice of intention to appear, but no answer, has been filed by a respondent — not less than 14 and not more than 30 days after the appellant was served with the notice of intention to appear;
  - (c) if an answer has been filed by a respondent — within 30 days after the appellant was served with the answer.
- (2) If an appellant does not enter an appeal for hearing in accordance with subrule (1), a respondent that has filed a notice of intention to appear may enter the appeal for hearing.
- (3) If an appeal is not entered for hearing within 90 days after the notice of appeal was filed, a respondent that has filed a notice of intention to appear may apply for the appeal to be dismissed for want of prosecution.

**55. Directions hearing**

- (1) When an appeal is entered for hearing, a Registrar must summons the appellant and each respondent that has filed a notice of intention to appear to attend a directions hearing before a Registrar.
- (2) The date for the directions hearing must be at least 7 days after the date of the summons.
- (3) At the directions hearing the Registrar may make any order or direction that in his or her opinion will or may facilitate the appeal being conducted efficiently, economically and expeditiously, including —
  - (a) an order giving leave under rule 56;
  - (b) directions as to how the material necessary to determine the appeal is to be presented;
  - (c) directions as to the preparation of appeal books, including directions as to the inclusion of some or all of a certified copy of the transcript of the proceedings in

the primary court, or of a certified copy of the notes of such proceedings taken by the presiding official;

- (d) directions fixing a timetable for interlocutory applications;
- (e) directions setting the date, time and length of time for the hearing of the appeal; and
- (f) any order under rule 57, other than under paragraphs (h) or (j) of that rule.

**56. New grounds of appeal etc. only with leave**

Except with the leave of the Court, a party to an appeal is not entitled to seek any relief or rely on any ground that is not set out in the notice of appeal or the answer, as the case may be.

**57. Court's powers as to appeals**

- (1) This rule is subject to the written law that provides for the appeal to made to the Court.
- (2) Before or during the hearing of an appeal, the Court, on application or, after notifying the parties, on its own initiative, and on any terms needed, may —
  - (a) order a stay of execution of any appealable decision against which an appeal has been, or the Court is satisfied will be, commenced;
  - (b) order the notice of appeal or an answer, or any part of it, to be struck out;
  - (c) order the appeal to be conducted at a different registry;
  - (d) order the appeal be heard at a different place;
  - (e) order 2 or more appeals to be consolidated;
  - (f) order the notice of appeal or an answer to be served on a person who is not a party to the appeal;
  - (g) order substituted service of any document;
  - (h) give leave under rule 50(2);

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- (i) give leave under rule 56;
- (j) make orders as to the admission or otherwise of evidence in an affidavit;
- (k) give leave or make an order under rule 58;
- (l) dismiss an appeal for want of prosecution;
- (m) adjourn the hearing of the appeal;
- (n) adjourn the appeal to a further direction hearing before a Registrar under rule 55.

**58. Discontinuance**

- (1) Unless subrule (3) applies, if no respondent has filed an answer that seeks to vary the appealable decision or cross-appeals, the appellant, without the Court's leave, may discontinue an appeal at any time before it is heard.
- (2) Unless subrule (3) applies, if a respondent has filed an answer that seeks to vary the appealable decision or cross-appeals, then at any time before it is heard —
  - (a) the appellant may discontinue the appeal with the consent of the respondent; and
  - (b) the respondent may discontinue the application to vary, or the cross-appeal, with the consent of the appellant.
- (3) An appeal commenced by, or an answer filed by, a person under a disability may only be discontinued with the leave of the Court which may make any consequential order needed, including an order as to costs and the disposal of money paid to the Court as security for costs.
- (4) A party wishing to discontinue must file and serve a notice of discontinuance together with any consent of another party required by subrule (2).
- (5) In the case of a discontinuance under subrule (1), the appellant must pay the respondent's costs to the date of discontinuance unless the parties agree otherwise.

- (6) In the case of a discontinuance under subrule (2), unless the parties agree, or the Court orders, otherwise —
  - (a) if the appellant discontinues, the appellant must pay the respondent's costs to the date of discontinuance;
  - (b) if the respondent discontinues, the respondent must pay the appellant's costs to the date of discontinuance.
- (7) Unless subrule (3) applies, money paid to the Court as security for costs is to be disposed of in accordance with a filed written agreement of the parties or, in the absence of an agreement, an order of the Court.
- (8) If the parties cannot agree the amount of costs, they are to be taxed.

**59. Costs**

- (1) The awarding of the costs of and incidental to an appeal is in the discretion of the Court.
- (2) On determining an appeal the Court may fix the amount of costs but otherwise they are to be taxed in accordance with determinations made by the Legal Costs Committee under the *Legal Practice Act 2003* and section 215 of that Act.

**60. Final orders on appeal**

- (1) A Registrar must settle any order made on determining an appeal.
- (2) A Registrar must send a copy of any order made on determining an appeal to the primary court registrar together with a copy of the judgment given on appeal and the reasons for it.

## **Part 7 — Hearings and trials**

### **61. Outline of submissions etc. for certain hearings**

- (1) In this rule —  
    **“legal authority”** means —
  - (a) a written law;
  - (b) a judgment of a court, whether reported or not; or
  - (c) an authoritative legal text.
- (2) This rule applies to the following hearings —
  - (a) a trial, or the hearing of application, that a Judge or a Registrar has ordered to be subject to this rule because it involves complex or difficult issues;
  - (b) unless in a particular case the Court orders otherwise —
    - (i) a special appointment in Judge’s or Registrar’s chambers;
    - (ii) the hearing of an appeal from a Registrar of the Court;
    - (iii) the hearing of an appeal to the Court.
- (3) A Judge or a Registrar may make an order under subrule (2)(a) on his or her own initiative, or on an application by a party.
- (4) At least 7 clear working days before the date of the hearing, each party must file and immediately serve a list of all documents, including any affidavits, on which the party intends to rely or to which the party intends to refer at the hearing.
- (5) At least 2 clear working days before the date of the hearing, each party must file and immediately serve —
  - (a) a document titled “Outline of submissions” of not more than 5 pages setting out in numbered paragraphs —
    - (i) a summary of each contention of law or fact the party intends to make at the hearing; and



- (ii) any legal authority on which the party relies in support of the contention;
  - (b) a list of the legal authorities from which passages will be read to the Court at the hearing;
  - (c) a separate list of the legal authorities to which the Court will merely be referred at the hearing;
  - (d) if a listed judgment of a court is not reported, a copy of it; and
  - (e) if the party chooses, a chronology of material events.
- (6) In the documents a reference to a legal authority that is —
- (a) a written law — must include a reference to the section or provision that will be read or referred to;
  - (b) a judgment of a court — must use its citation in an authorised report if any;
  - (c) an authoritative legal text — must include a reference to the edition being referred to.

**Part 8 — *Civil Judgments Enforcement Act 2004* rules**

**62. Interpretation**

In this Part, unless the contrary intention appears —

“**Act**” means the *Civil Judgments Enforcement Act 2004*;

“**section**” means a section of the Act.

**63. Applications etc. that may be dealt with by a Registrar**

- (1) Each of the following applications and requests, if made to the Court, may be dealt with by a Registrar —
- (a) an application made under a section listed in the Table to this subrule;
  - (b) an application for an order under section 10, 15(5)(a) or 20(3);
  - (c) an application for leave under section 13(1)(a).

**Table**

s. 15(1)	s. 41(2)	s. 59(1)
s. 27	s. 42(1)	s. 95(1)
s. 28	s. 49(1)	s. 101(1)
s. 32	s. 55(2)	s. 102(2)
s. 33	s. 56(1)	s. 103(2)
s. 35(1)	s. 58(1)	

- (2) A Registrar who is dealing with an application or request may exercise any power conferred by the Act on the Court in respect of the application.
- (3) A Registrar may conduct a means inquiry under section 30 and for that purpose exercise any power in section 30 or 31.

**64. Registrar’s decision, review of**

For the purposes of section 9, Part 2 Division 3 of these rules, with any necessary changes, applies for the purpose of any review of a Registrar’s decision under the Act.

## **Part 9 — *Misuse of Drugs Act 1981* rules**

### **65. Interpretation**

In this Part, unless the contrary intention appears —

“**Act**” means the *Misuse of Drugs Act 1981*;

“**application**” means an application under section 28(3)(b);

“**claimant**” has the same meaning as in section 28(2);

“**DPP**” means the Director of Public Prosecutions for the State;

“**respondent**” means —

- (a) in the case of an application made by a claimant, the DPP;
- (b) in the case of an application made by any other person, any claimant;

“**section**” means a section of the Act.

### **66. Applications, how they are to be made**

- (1) An application to the Court under section 28(3)(b) must be made by filing and serving a notice of motion.
- (2) The notice of motion must set out clearly and concisely the grounds on which the application is made and must include the applicant’s address for service.
- (3) When, or within 7 days after, the notice of motion is filed, the applicant must file and serve an affidavit setting out the facts relied on to support the application.
- (4) The notice of motion must be made returnable before a Judge in open court on a date, set by the Court, that is at least 21 days after the date on which the notice is filed unless —
  - (a) the respondent consents in writing to an earlier hearing and the consent is filed with the notice; or
  - (b) the Court orders the notice to be heard earlier.

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- (5) A respondent who is a police officer may be served by serving the DPP.

**67. Respondent's rights and obligations**

- (1) A respondent is entitled to be heard on the application.
- (2) A respondent who intends to be heard on an application must file and serve a notice of intention to appear that includes the respondent's address for service.
- (3) A respondent who has complied with subrule (2) may file an affidavit in reply to any affidavit filed in support of the application, and must serve any such affidavit in reply.

**68. Court may order parties to be added**

If at any time during proceedings on an application it appears to the Court that a person who is not a party to the proceedings has an interest in the property concerned, the Court on the application of a party (which may be made *ex parte*) or on its own initiative may order the person to be made a party.

**69. Deponents to attend for cross examination**

- (1) If the Court so orders or another party so requests, a party that has filed an affidavit in connection with an application must ensure that the person who made the affidavit attends the hearing of the application in order to be cross examined.
- (2) If the person who made the affidavit does not attend, his or her affidavit is inadmissible except with the leave of the Court.

**70. Evidentiary matters**

- (1) If a party to an application has been convicted after pleading guilty —
  - (a) any statement of a witness that complies with *Criminal Procedure Act 2004* Schedule 3 clause 4 and that has been disclosed under section 42 or 95 of that Act; and

- (b) any recording of a witness's evidence that has been made in accordance with Schedule 3 clause 6 of that Act and that has been disclosed under section 42 or 95 of that Act,

in the prosecution of the party is admissible at the hearing of the application.

- (2) If a party to an application has been convicted after trial, the transcript of the oral evidence, and any other evidence, admitted at the trial is admissible at the hearing of the application.
- (3) With the leave of the Court, the evidence referred to in subrule (2) may be supplemented by oral evidence at the hearing or by an affidavit admitted in evidence at the hearing.

## **Part 10 — Miscellaneous**

### **71. Access to records and things**

- (1) In this rule —  
“**court record**” in respect of a case, means —
  - (a) any record or thing held by the Court in respect of the case; and
  - (b) the transcript of proceedings in the case before the Court.
- (2) An application under this rule must be made by summons with a supporting affidavit.
- (3) A person may apply to the Court for an order that prohibits or restricts access to, or the publication or possession of, all or any part of the court record in respect of a case by a person or class of persons.
- (4) A party to a case is entitled to inspect and obtain a copy of any part of the court record in respect of the case unless it is a part to which access by the party is prohibited or restricted because of a written law, an order made under a written law, or an order of a court.
- (5) A party to a case whose access to any part of the court record in respect of the case is restricted may apply to the Court for permission to inspect or obtain a copy of it.
- (6) A person who is not a party to a case may apply to the Court for permission to inspect or obtain a copy of all or a part of the court record in respect of the case.
- (7) The Court may grant an application made under subrule (5) or (6) if satisfied —
  - (a) the applicant has sufficient cause to inspect or obtain the record in question; and
  - (b) that access to or possession of the record by the applicant would be lawful.

- (8) An order made on an application made under subrule (5) or (6) may include —
  - (a) an order that the applicant pay or make arrangements to pay the cost of supplying any copy of a court record;
  - (b) conditions on which the applicant may inspect or obtain a copy of court record.
- (9) The Court may determine the cost of making and supplying a copy of a court record.

**72. *District Court Rules 1996 repealed***

The *District Court Rules 1996* are repealed.

**73. *Transitional provisions***

- (1) In this rule —
  - “**1996 Rules**” means the *District Court Rules 1996*;
  - “**commencement**” means when these rules come into operation.
- (2) In respect of an action commenced before commencement —
  - (a) if no appearance is entered before commencement, these rules apply to and in respect of the action;
  - (b) if an appearance is entered before commencement, the 1996 rules continue to apply to and in respect of the action despite rule 72;
  - (c) if an appearance is entered before commencement but after commencement the action is not conducted in accordance with the timetable that applies to it under Order 1 of the 1996 Rules, the Court may issue and hear and determine a summons for directions under Order 1 Rule 4 of the 1996 Rules.
- (3) The powers in subrule (2)(c) may be exercised as often as is necessary.

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**Schedule 1 — Forms**

[r. 3]

**1.          Entry for trial (r. 37)**

District Court of Western Australia	At:		
<b>Entry for trial</b>	Number:		
Matter	<i>[Names of all parties]</i>		
Certificate * delete if inapplicable	<p>The <i>[party]</i> certifies that —</p> <ul style="list-style-type: none"> <li>• the <i>[party]</i> has been given discovery and inspection by all of the other parties;</li> <li>• *the <i>[party]</i> served interrogatories and has received answers;</li> <li>• the <i>[party]</i> has complied with all directions and orders made by the Court at the case management hearing;</li> <li>• the <i>[party]</i> has complied with all orders made by the Court since the case management hearing;</li> <li>• no other interlocutory orders are needed;</li> <li>• the <i>[party]</i> has complied with the <i>Rules of the Supreme Court 1971</i> Order 36A;</li> <li>• the <i>[party]</i> has complied with the <i>District Court Rules 2005</i> rule 36(1); and</li> <li>• this matter is in all respects ready for trial.</li> </ul>		
Entry for trial	<p>The <i>[party]</i> enters this matter for trial.</p> <p>In accordance with the <i>District Court Rules 2005</i> rule 37(3) the following are filed with this form —</p> <ul style="list-style-type: none"> <li>• a document setting out in detail the amount of money claimed and the other matters required by that rule; and</li> <li>• the papers for the judge required by that rule.</li> </ul>		
Unavailable dates	The parties are not available for a pre-trial conference on these dates:		
Signature of party or lawyer	<table style="width: 100%; border: none;"> <tr> <td style="width: 70%; border: none;"> <p>.....</p> <p><i>[Party]/[Party's]</i> lawyer</p> </td> <td style="width: 30%; border: none; vertical-align: top;"> <p>Date:</p> </td> </tr> </table>	<p>.....</p> <p><i>[Party]/[Party's]</i> lawyer</p>	<p>Date:</p>
<p>.....</p> <p><i>[Party]/[Party's]</i> lawyer</p>	<p>Date:</p>		



2. Notice of default (entry for trial) (r. 38)

District Court of Western Australia	At:	
<b>Notice of default (entry for trial)</b>	Number:	
Matter	[Names of all parties]	
Notice to all parties	<b>The plaintiff has not entered this action for trial as required. Unless the plaintiff enters this action for trial on or before [date], this action will become inactive. Despite the above, any party other than the plaintiff may now enter this action for trial, and may do so even if the action has become inactive.</b>	
Seal of Court		Date:

**Notes**

<sup>1</sup> This is a compilation of the *District Court Rules 2005*. The following table contains information about those rules.

**Compilation table**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>District Court Rules 2005</i>	27 May 2005 p. 2335-92	30 May 2005 (see r. 2)