

JU303*

Magistrates Court Act 2004
Magistrates Court (Civil Proceedings) Act 2004

Magistrates Court (Civil Proceedings) Amendment Rules 2011

Made by the Magistrates Court.

1. Citation

These rules are the *Magistrates Court (Civil Proceedings) Amendment Rules 2011*.

2. Commencement

These rules come into operation as follows —

- (a) rules 1 and 2 — on the day on which these rules are published in the *Gazette*;
- (b) the rest of the rules — on the day after that day.

3. Rules amended

These rules amend the *Magistrates Court (Civil Proceedings) Rules 2005*.

4. Rule 96 amended

After rule 96(4) insert:

- (5) An application under the *Prohibited Behaviour Orders Act 2010* may be lodged at any registry of the Court.

5. Rule 111 amended

- (1) In rule 111(2)(a)(ii) delete “rule 10(1); or” and insert:

rule 41B; or

- (2) In rule 111(2)(b)(i) and (ii) delete “if”.

6. Rule 123 amended

In rule 123 in the definition of *conferring Act* delete “an Act” and insert:

legislation

Note: The heading to amended rule 123 is to read:

Terms used**7. Rule 124 amended**

- (1) In rule 124(1) in the Table insert in alphabetical order:

Animal Welfare Act 2002 s. 44, 56

Prohibited Behaviour Orders Act 2010 s. 5, 21

Weapons Act 1999 s. 17(1)

- (2) After rule 124(3) insert:

- (4) This Division applies to an application made to the Court under the *National Credit Code*, as defined in the *National Consumer Credit Protection Act 2009* (Commonwealth) section 5(1), sections 100 and 101.

8. Rule 126 amended

In rule 126(1) delete “129B or 129C,” and insert:

129B, 129C or 131B,

9. Rule 127 amended

Delete rule 127(1a) and insert:

- (1A) This rule does not apply to an application made to the Court under a provision listed in the Table.

Table

Written law	Provision(s)
<i>Animal Welfare Act 2002</i>	s. 44, 56
<i>Criminal and Found Property Disposal Act 2006</i>	Any provision
<i>Criminal Investigation Act 2006</i>	s. 49(1), 147(5)
<i>Prohibited Behaviour Orders Act 2010</i>	s. 5, 21
<i>Restraining Orders Act 1997</i>	Any provision
<i>Weapons Act 1999</i>	s. 17(1)

10. Rule 129AB inserted

After regulation 129A insert:

129AB. *Animal Welfare Act 2002*

An application under the *Animal Welfare Act 2002* section 44 or 56 must be lodged together with a supporting affidavit.

11. Rule 131A replaced

Delete rule 131A and insert:

131A. *National Consumer Credit Protection Act 2009* (Commonwealth)

Under the *National Consumer Credit Protection Act 2009* (Commonwealth) section 199(1)(b), a person who wants the small claims procedure to apply to the proceedings must so indicate in the person's application made under that Act.

131B. *Prohibited Behaviour Orders Act 2010*

- (1) In this rule, unless the contrary intention appears —
Act means the *Prohibited Behaviour Orders Act 2010*;
section means a section of the Act.
- (2) If a term used in this rule is defined in the Act, it has the same meaning in this rule as it has in the Act, unless the contrary intention appears.

- (3) To make an application under section 5 for a PBO against a person (the *respondent*), the prosecutor must —
- (a) complete the approved form for the application and state in it —
 - (i) the constraints the prosecutor wants the Court to specify in the PBO under section 10; and
 - (ii) the period of the PBO the prosecutor wants the Court to specify in the PBO under section 12;
 - and
 - (b) give the application to the judicial officer presiding at the hearing at which the respondent is to be sentenced; and
 - (c) if the respondent is present at that hearing, give a copy of the application to the respondent personally.
- (4) If the respondent is not present when an application for a PBO is made, a registrar must attach a copy of the application to the hearing notice that the registrar gives the respondent under section 7(2).
- (5) Within 28 days after the date on which an application for a PBO is made, the applicant must —
- (a) lodge an affidavit in support of the application; and
 - (b) give a copy to the respondent in accordance with section 33.
- (6) Unless the Court permits otherwise, the supporting affidavit must state the following —
- (a) details of the respondent's convictions of relevant offences on which the applicant relies to allege the respondent is a person described in section 8(2)(a);
 - (b) if any such conviction is of a relevant offence that is not a prescribed offence, the material facts of the offence;
 - (c) details of the matters listed in section 9(3)(a), (c), (e) and (f);
 - (d) any other facts on which the applicant intends to rely in support of the application.
- (7) Unless the Court permits otherwise, the supporting affidavit must refer to and have attached to it each of these documents —
- (a) the respondent's criminal record;

- (b) any order referred to in section 9(3)(d) that is in force against the respondent;
 - (c) any order listed in section 10(7) that is in force against the respondent.
- (8) To make an application under section 21 to vary or cancel a PBO, a person must lodge —
 - (a) the application; and
 - (b) 2 copies of an affidavit in support of the application.
- (9) The respondent to an application made under section 5 or 21 may file an affidavit in response to the affidavit filed in support of the application.
- (10) An affidavit referred to in subrule (9) must be —
 - (a) lodged within 21 days after the date on which the respondent is served with the affidavit lodged in support of the application; and
 - (b) served on the applicant at least 5 clear days before the hearing of the application.
- (11) If a PBO is corrected under section 25, a registrar must cause a copy of the corrected PBO to be given —
 - (a) to each party to the PBO proceedings; and
 - (b) if the Commissioner of Police is not a party to the PBO proceedings — to the Commissioner of Police.

131C. *Weapons Act 1999*

An application made under the *Weapons Act 1999* section 17(1) must be lodged together with a supporting affidavit.

12. Rule 138 inserted

At the end of Part 22 insert:

138. *Residential Tenancies Act 1987 s. 18*

For the purposes of the *Residential Tenancies Act 1987* section 18(2)(b) —

- (a) if the address of the other party is known to the Court, the notice to be given by the Court under section 18(2)(b)(ii) of that Act must be given by giving the other party a copy of the application; and
- (b) if the address of the other party is not known to the Court, the notice to be given by the Court under section 18(2)(b)(ii) of that Act must be

given by giving the other party a summary of
the relief sought by the applicant.

Dated: 16 May 2011.

Magistrates' signatures:

STEVEN HEATH, Chief Magistrate.

ELIZABETH WOODS, Deputy Chief Magistrate.

GREGORY SMITH, Magistrate.

DONNA WEBB, Magistrate.