

JU303*

Magistrates Court Act 2004

**Magistrates Court (Civil Proceedings)
Amendment Rules 2007**

Made by the Magistrates Court.

1. Citation

These rules are the *Magistrates Court (Civil Proceedings) Amendment Rules 2007*.

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* (“**Gazettal day**”);
- (b) the rest of the rules — on the day after Gazettal day.

3. The rules amended

The amendments in these rules are to the *Magistrates Court (Civil Proceedings) Rules 2005*.

4. Rule 4 amended

- (1) Rule 4 is amended in the definition of “counterclaim” by deleting “, relating to the claim against the defendant,”.
- (2) Rule 4 is amended by inserting in the appropriate alphabetical position —

“

“**enforcement officer**” has the meaning given to that term in the *Civil Judgments Enforcement Act 2004* section 3;

”.

5. Rule 85 amended

Rule 85(a) is amended by deleting “bailiff” and inserting instead —

“ enforcement officer ”.

6. Rule 96 replaced

- (1) Rule 96 is repealed and the following rule is inserted instead —

“

96. Registry at which documents must be lodged

- (1) Except as provided in this rule, an originating claim or an application referred to in rule 124 may be lodged at any registry of the Court where there is at least one registrar who is not a Deputy Registrar appointed under the *Magistrates Court Act 2004* section 26(5).
- (2) An originating claim to recover possession of real property must be lodged at the registry of the Court referred to in subrule (1) that is nearest to the property.
- (3) An application under the *Restraining Orders Act 1997* may be lodged at any registry of the Court.
- (4) An application under the *Criminal Investigation Act 2006* section 49 or 147 must be lodged at the registry of the Court referred to in subrule (1) that is nearest to the relevant protected forensic area or the place where the relevant seized thing is secured, as the case requires.

”.

7. Rule 103 amended

- (1) Rule 103(1) is amended as follows:
- (a) by deleting “a bailiff” and inserting instead —
“ an enforcement officer ”;
- (b) by deleting “the bailiff” and inserting instead —
“ the enforcement officer ”.
- (2) Rule 103(3) is amended by deleting “bailiff.” and inserting instead —
“ enforcement officer. ”.

8. Rule 104 amended

Rule 104(1) is amended by deleting “a bailiff,” and inserting instead —

“ an enforcement officer, ”.

9. Rule 124 amended

- (1) Rule 124 is amended as follows:
- (a) after each of paragraphs (a) to (e) by inserting —
“ or ”;

- (b) by deleting the full stop at the end of paragraph (g) and inserting instead —

“

; or

- (h) the *Warehousemen's Liens Act 1952*.

”

- (2) After rule 124(a) the following paragraphs are inserted —

“

- (aa) the *Criminal and Found Property Disposal Act 2006*; or

- (ab) the *Criminal Investigation Act 2006* section 49(1) or 147(5); or

”

10. Rule 126 replaced

Rule 126 is repealed and the following rule is inserted instead —

“

126. Application must be served

Except as provided in the conferring Act or in rule 128B or 128C, a party making an application must serve a copy of the application and any supporting affidavit on every other party —

- (a) as soon as practicable, and in any event within one year, after it has been lodged; and
- (b) at least 5 clear days before the hearing of the application.

”

11. Rule 127 amended

Before rule 127(1) the following subrule is inserted —

“

- (1a) This rule does not apply in relation to an application under the *Criminal and Found Property Disposal Act 2006*, the *Criminal Investigation Act 2006* section 49(1) or 147(5) or the *Restraining Orders Act 1997*.

”

12. Rules 128A, 128B and 128C inserted

After rule 128 the following rules are inserted —

“

128A. Dealing with an application

Except as provided in the conferring Act and this Part, an application must be dealt with in the presence of the parties to the application.

128B. *Criminal and Found Property Disposal Act 2006*

- (1) An application under the Criminal and Found Property Disposal Act 2006 must be lodged together with a supporting affidavit.
- (2) When the application and supporting affidavit are lodged, 2 copies must be also be lodged.
- (3) When the application and supporting affidavit are lodged, a Registrar must —
 - (a) list the application for hearing on the earliest convenient date; and
 - (b) insert the hearing details on the application; and
 - (c) return a copy of the application and supporting affidavit to the applicant and give a copy to every other party to the application at least 5 clear days before the date listed for the hearing of the application.

128C. *Criminal Investigation Act 2006*

- (1) An application under the Criminal Investigation Act 2006 section 49(1) must be lodged together with a supporting affidavit and a map of the protected forensic area to which the application relates.
- (2) An application under the Criminal Investigation Act 2006 section 147(5) must be lodged together with a supporting affidavit and a map of the place where the seized thing to which the application relates has been secured.
- (3) When the application, supporting affidavit and map are lodged, 2 copies must be also be lodged.
- (4) When the application, supporting affidavit are lodged, a Registrar must —
 - (a) list the application for hearing on the earliest convenient date; and
 - (b) insert the hearing details on the application; and
 - (c) return a copy of the application, supporting affidavit and map to the applicant and give a copy to every other party to the application at least 5 clear days before the date listed for the hearing of the application.

13. Rule 130 amended

Rule 130(1) is repealed and the following subrule is inserted instead —

“

- (1) An application under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 69(1) must be lodged together with a supporting affidavit.

”.

14. Rule 135 amended

Rule 135(2) is amended as follows:

- (a) by deleting “When” and inserting instead —
“ Except as provided in the Act section 44, when ”;
- (b) by deleting “attend a conference or hearing,”;
- (c) in paragraph (b) by deleting “an officer of the corporation” and inserting instead —
“ a person ”.

Dated: 23 July 2007.

STEVEN HEATH

Chief Magistrate

E. WOODS

Deputy Chief Magistrate

D. JONES

Magistrate

M. E. PONTIFEX

Magistrate
