

JU301*

Magistrates Court Act 2004

Magistrates Court (Civil Proceedings) Amendment Rules (No. 2) 2008

Made by the Magistrates Court.

1. Citation

These rules are the *Magistrates Court (Civil Proceedings) Amendment Rules (No. 2) 2008*.

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 1 September 2008.

3. The rules amended

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

4. Rule 4 amended

Rule 4 is amended by inserting in the appropriate alphabetical position —

“

“**the Act**” means the *Magistrates Court (Civil Proceedings) Act 2004*;

”.

5. Rules 6, 7 and 8 replaced

Rules 6, 7 and 8 are repealed and the following rules are inserted instead —

“

6. Application of this Part

This Part applies to a claim except a claim to recover possession of real property.

7. Making an originating claim

- (1) If a party wants to make an originating claim the party must lodge the approved form.
- (2) The claim must be lodged and served together with an approved form that may be used for making a response under rule 9.
- (3) The claim may, but need not, be lodged and served together with a statement of claim in accordance with rule 41A.
- (4) The claim must be served as soon as practicable, and in any event within one year, after the day on which it is lodged.
- (5) Unless these rules or an Act provides otherwise, the claim must be served personally.

8. Making a counterclaim or third party claim

- (1) If a party wants to make a counterclaim or third party claim the party must lodge the approved form.
- (2) The claim must be lodged and served together with —
 - (a) the relevant statement of defence referred to in rule 41B; and
 - (b) an approved form that may be used for making a response under rule 9.
- (3) The claim may, but need not, be lodged and served together with a statement of claim in accordance with rule 41A.
- (4) Unless these rules or an Act provides otherwise, a third party claim must be served personally.

”.

6. Rule 9 amended

After rule 9(1) the following subrule is inserted —

“

- (1A) A response may, but need not, be lodged together with a statement of defence in accordance with rule 41B.

”.

7. Rules 10, 11 and 12 repealed

Rules 10, 11 and 12 are repealed.

8. Part 4 repealed

Part 4 is repealed.

9. Rule 20 amended

Rule 20(b) is amended as follows:

- (a) by inserting after “lodged” —
“ and served ”;
- (b) by deleting “rule 10(1).” and inserting instead —
“ rule 41B. ”.

10. Rule 21 amended

Rule 21 is amended as follows:

- (a) by inserting after “claim” in each place where it occurs —
“ , or the relevant part of the claim, ”;
- (b) by deleting “\$500” in both places where it occurs and inserting instead —
“ \$1 000 ”.

11. Rule 22 amended

Rule 22(3) is amended by inserting after “lodged” —

“ and served ”.

12. Rule 23 amended

Rule 23 is amended by deleting “unless the claim is a consumer/trader claim”.

13. Rules 24 and 25 replaced

Rules 24 and 25 are repealed and the following rules are inserted instead —

“

24. Registrar not to give judgment in certain cases

- (1) A Registrar must not give default judgment under this Part against a party for a failure to lodge and serve a statement of defence if —
 - (a) the party has lodged an application under the Act section 17 to strike out the relevant statement of claim; and
 - (b) the application —
 - (i) has not been dealt with; or
 - (ii) has been granted; or

- (iii) has been dismissed, and the party has lodged a statement of defence within 14 days after the dismissal.
- (2) A Registrar must not give default judgment under this Part if one year or more has passed since the originating claim was served.

25. Registrar to list application

- (1) If the Registrar does not grant the application for default judgment, the Registrar must refer the matter to the Court.
- (2) The Court may determine the application in the absence of the parties or may list the application for a hearing.
- (3) If the Court lists the matter for hearing, the Court must notify the parties in writing at least 28 days before the hearing.

”.

14. Rule 27 replaced

Rule 27 is repealed and the following rule is inserted instead —

“

27. Party may admit fact

If a party wants to admit a particular fact alleged in a claim made against the party, the case statement or in an invitation to admit under rule 28, the party must lodge and serve a notice of admission in the approved form.

”.

15. Rules 29A to 29C inserted

After rule 28 the following rules are inserted —

“

29A. Party may admit claim

- (1) If in a response a party admits liability for the whole of the claim and agrees to pay the amount claimed, a Registrar may give judgment against the party in accordance with that admission.
- (2) When the Registrar gives judgment under this rule the Registrar may also make an order for costs.

29B. Party may admit part of claim

- (1) If in a response a party admits liability for part of a claim made against the party and indicates an intention to defend the balance of the claim, the party may offer

an amount as full satisfaction for the claim in the response.

- (2) A party may accept an offer under subrule (1) by lodging and serving a notice of acceptance in an approved form within 14 days after receiving the response.
- (3) If a party makes an offer under subrule (1) and the offer is accepted under subrule (2), the Registrar may give judgment against the party in accordance with the party's admission and offer.
- (4) When the Registrar gives judgment under this rule the Registrar may also make an order for costs.

29C. Party may admit liability but dispute amount claimed

- (1) If in a response a party admits liability for the whole of the claim for an unliquidated amount but does not agree to the relevant amount sought, the party may, in the response, apply to the Court to determine the amount that should be awarded for the claim.
- (2) If a party applies to the Court to determine the amount that should be awarded for the claim under subrule (1), the Registrar must list the case for a pre-trial conference and notify the parties in writing.

”.

16. Rule 30 amended

- (1) Rule 30(1) is amended as follows:
 - (a) by inserting before “the Court” in the first place where it occurs —
“ a Registrar or ”;
 - (b) by inserting before “the Court” in the second place where it occurs —
“ the Registrar or ”.
- (2) Rule 30(2) is amended by deleting “a Court order,” and inserting instead —
“ an order of a Registrar or the Court, ”.

17. Rule 31 amended

Rule 31(1) is amended by deleting “a Court order” and inserting instead —

“ an order of a Registrar or the Court ”.

18. Rules 35 and 36 replaced

Rules 35 and 36 are repealed and the following rules are inserted instead —

“

35. Application for an order for answers to interrogatories

- (1) An application for an order under the Act section 16(1)(n) that a party must provide additional information by answering interrogatories must contain or be accompanied by a list of interrogatories that comply with subrule (2).
- (2) An interrogatory must not seek information that —
 - (a) is irrelevant to the case; or
 - (b) is inadmissible in evidence under these rules or any other law; or
 - (c) cannot practicably be disclosed; or
 - (d) is sought so as to harass or annoy, or to cause delay; or
 - (e) is frivolous, vexatious, scandalous or improper; or
 - (f) is otherwise not genuinely required for the purposes of the case.

36. Party must answer interrogatories when ordered

When a Registrar or the Court orders a party to answer interrogatories, the party must lodge and serve an affidavit containing the answers within the period ordered by the Registrar or the Court.

”.

19. Rule 38 repealed

Rule 38 is repealed.

20. Rule 39 replaced

Rule 39 is repealed and the following rule is inserted instead —

“

39. Listing a pre-trial conference

- (1) A claimant must request a Registrar to list the case for a pre-trial conference within 14 days after the claimant receives from the Court a copy of a response that indicates an intention to defend the claim.
- (2) When a Registrar receives the request the Registrar must list the case for a pre-trial conference and notify the parties in writing.

”.

21. Rule 40 amended

Rule 40(2) is repealed and the following subrule is inserted instead —

“

- (2) The Registrar at a pre-trial conference may do any or all of the following —
- (a) determine what facts, if any, are agreed by the parties;
 - (b) order the parties to lodge and serve statements of claim and defence;
 - (c) exercise the jurisdiction of the Court under the Act section 16(1)(a) to extend the time for making counterclaims or third party claims (even if the time for making those claims has passed);
 - (d) exercise the jurisdiction of the Court under the Act section 16(1)(m) to allow a party to amend its case statement;
 - (e) exercise the jurisdiction of the Court under the Act section 16(1)(n) to order the parties —
 - (i) to provide additional information by disclosing documents relevant to the case in accordance with Part 7; and
 - (ii) to answer interrogatories in accordance with Part 8;
 - (f) make any other orders necessary to facilitate settlement or ensure the case is ready for trial.

”.

22. Rules 41A to 41D inserted

After rule 40 the following rules are inserted —

“

41A. Statement of claim

- (1) If the Registrar at the pre-trial conference orders a party to lodge and serve a statement of claim, the party must do so in accordance with this rule.
- (2) Unless the party has lodged and served its statement of claim with its claim it must lodge and serve the statement of claim —
 - (a) if the claim is an originating claim, within 14 days after the pre-trial conference; and
 - (b) if the claim is a counterclaim or third party claim, within 14 days after the party has received a response that indicates an intention to defend the claim.

- (3) A statement of claim must be in the approved form.
- (4) The statement of claim must contain —
 - (a) a summary of the facts relevant to the claim; and
 - (b) the legal basis of the claim; and
 - (c) the basic contentions of the party; and
 - (d) the remedy or relief claimed; and
 - (e) if the amount of the claim has been reduced in order to bring the claim within the jurisdictional limit, a statement to that effect.
- (5) The party must, together with the statement of claim, lodge and serve a statutory declaration in accordance with subrule (6) or (7).
- (6) If the party is not represented by a lawyer, the statutory declaration must be made by the party and must state that —
 - (a) any allegations of fact in the statement of claim are true to the best of the party's belief; and
 - (b) the statement of claim is not frivolous, vexatious, scandalous or improper.
- (7) If the party is represented by a lawyer, the statutory declaration must be made by the party's lawyer and must state that —
 - (a) the party has instructed the lawyer that all of the allegations of fact in the statement of claim are true and correct; and
 - (b) all the arguments raised in the statement of claim are, in the opinion of the lawyer, reasonable; and
 - (c) in the opinion of the lawyer the statement of claim is not frivolous, vexatious, scandalous or improper.

41B. Statement of defence

- (1) If the Registrar at the pre-trial conference orders a party to lodge and serve a statement of defence, the party must do so in accordance with this rule.
- (2) Unless the party has lodged and served its statement of defence with its response the party must lodge and serve its statement of defence within 14 days after the party has been served with the relevant statement of claim.
- (3) A statement of defence must be in the approved form.

- (4) The statement of defence must contain —
 - (a) a summary of the facts relevant to the defence; and
 - (b) the legal basis of the defence; and
 - (c) the basic contentions of the party; and
 - (d) the details of anyone who the party alleges is liable for the claim and the grounds upon which the party so alleges.
- (5) The party must, together with the statement of defence, lodge a statutory declaration in accordance with subrule (6) or (7).
- (6) If the party is not represented by a lawyer, the statutory declaration must be made by the party and must state that —
 - (a) any allegations of fact in the statement of defence are true to the best of the party's belief; and
 - (b) the statement of defence is not frivolous, vexatious, scandalous or improper.
- (7) If the party is represented by a lawyer, the statutory declaration must be made by the party's lawyer and must state that —
 - (a) the party has instructed the lawyer that all of the allegations of fact in the statement of defence are true and correct; and
 - (b) all the arguments raised in the statement of defence are, in the opinion of the lawyer, reasonable; and
 - (c) in the opinion of the lawyer the statement of defence is not frivolous, vexatious, scandalous or improper.

41C. Objection to counterclaim (s. 9(4))

A claimant wanting to object under the Act section 9(4) to a counterclaim must lodge and serve the approved form.

41D. Amending a case statement

- (1) If a Registrar or the Court allows a party to amend its case statement, the party must, together with the amended case statement, lodge and serve a statutory declaration in accordance with subrule (2) or (3).

- (2) If the party is not represented by a lawyer, the statutory declaration must be made by the party and must state that —
 - (a) any new or amended allegations of fact in the case statement are true to the best of the party's belief; and
 - (b) the case statement is not frivolous, vexatious, scandalous or improper.
- (3) If the party is represented by a lawyer, the statutory declaration must be made by the party's lawyer and must state that —
 - (a) the party has instructed the lawyer that all of the allegations of fact in the amended case statement are true and correct; and
 - (b) all the arguments raised in the amended case statement are, in the opinion of the lawyer, reasonable; and
 - (c) in the opinion of the lawyer the amended case statement is not frivolous, vexatious, scandalous or improper.

”.

23. Rule 41 amended

- (1) Rule 41 is amended by deleting “Except as provided in subrule (2),” and inserting instead —

“ Unless a Registrar or the Court orders otherwise, ”.
- (2) Rule 41(2) and (3) are repealed.

24. Rule 42 amended

Rule 42(b) is amended by inserting before “list the case” —
“ in accordance with rule 43A(4), ”.

25. Rule 43A inserted

After rule 42 the following rule is inserted —

“

43A. Listing conference memoranda

- (1) This rule applies except in the case of —
 - (a) a claim to recover possession of real property; or
 - (b) an application under Part 21.
- (2) If the Registrar at a pre-trial conference is of the opinion that it is unlikely that the case will be settled, the Registrar must order each party to lodge a listing conference memorandum in accordance with subrule (3) by the day specified in the order.

- (3) The listing conference memorandum must be in the approved form and must —
- (a) include a concise statement of the issues of fact and law that the party contends will need to be determined at the trial; and
 - (b) state how each allegation of fact will be proved; and
 - (c) state the name, address, occupation and qualification of each witness the party will call to give oral evidence at the trial; and
 - (d) unless the Registrar or the Court orders otherwise, annex a statement in the approved form of the intended evidence of each witness who is not an expert witness.
- (4) When all the parties have complied with the order the Registrar must —
- (a) give a copy of each party's listing conference memorandum to the other parties; and
 - (b) list the case for a listing conference.
- (5) If a party does not comply with the order, the Registrar may, after giving 10 days notice to the party, give default judgment against the party, and in that case Part 5, except rule 24, with any necessary modifications, applies in relation to the default judgment.
- ”.

26. Rule 44 repealed

Rule 44 is repealed.

27. Rule 56 amended

Rule 56 is amended by deleting “disability may be dealt with in the absence of the respondent to the application.” and inserting instead —

“

disability —

- (a) is not required to be served on any other party; and
- (b) may be dealt with in the absence of the parties.

”.

28. Rule 72 amended

- (1) Rule 72(1) is amended by deleting “directions” and inserting instead —

“ orders ”.

- (2) Rule 72(2) is amended by deleting “directs” and inserting instead —
“ orders ”.
- 29. Rule 73 amended**
Rule 73 is amended by deleting “or directions”.
- 30. Rule 79 amended**
Rule 79 is amended as follows:
(a) by deleting “judgment” and inserting instead —
“ an order ”;
(b) by inserting after “or 19(3)” —
“ to set aside a judgment ”.
- 31. Rule 82 amended**
After rule 82(3) the following subrule is inserted —
“
(4) However nothing in subrule (3) requires the Registrar to allow costs claimed in relation to the item if the Registrar considers it is inappropriate to do so.
”.
- 32. Rule 96 amended**
Rule 96(3) is amended by inserting after “*Restraining Orders Act 1997*” —
“ for a restraining order as defined in section 3 of that Act ”.
- 33. Rule 102 amended**
(1) Rule 102(1) is amended by deleting “, business or postal” and inserting instead —
“ or business ”.
(2) After rule 102(1) the following subrule is inserted —
“
(1A) The address for service specified on the document is to be taken to be the party’s address for service under this Division until —
(a) if the document specified the address of a lawyer under subrule (5), the lawyer lodges a notice in the approved form —
(i) stating that the lawyer no longer acts for the party; and
(ii) specifying the party’s address for service under subrule (2), (3) or (4), as the case requires, or any new address for

service under subrule (5) that is known to the lawyer;

or

- (b) a notice of change of address is lodged under subrule (6).

”.

- (3) Rule 102(2) is amended by deleting “, principal place of business or postal” and inserting instead —

“ or principal place of business ”.

- (4) Rule 102(3) is amended by deleting “or postal address”.

- (5) Rule 102(4) is amended by deleting “, principal place of business or postal address” and inserting instead —

“ or principal place of business ”.

- (6) Rule 102(5) is amended by deleting “, the lawyer’s postal address”.

34. Rule 107 replaced

Rule 107 is repealed and the following rule is inserted instead —

“

107. Service on a corporation personally

- (1) In order to serve a document on a corporation personally a person must hand the document to —
- (a) a person who, on reasonable grounds, is believed to be a director of the corporation who resides in Australia; or
- (b) a lawyer who is acting for the corporation.
- (2) This rule applies in addition to the *Corporations Act 2001* of the Commonwealth.

”.

35. Part 17 Division 3 inserted

After rule 108 the following Division is inserted in Part 17 —

“

Division 3 — Miscellaneous

109A. Substituted service

- (1) If a party cannot serve a document on another party in accordance with Divisions 1 and 2, the party may apply to the court to make an order under the Act section 16(1)(t) that —
- (a) the party may be served by a substituted form of service; or

- (b) if it is appropriate in the circumstances, the requirement for service be dispensed with altogether.
 - (2) The application —
 - (a) is not required to be served on any other party; and
 - (b) may be dealt with in the absence of the parties.
- ”.

36. Rule 111 amended

Rule 111(2) is repealed and the following subrule is inserted instead —

“

- (2) Subrule (1) does not apply —
 - (a) in relation to an application for default judgment —
 - (i) for a failure to lodge a response in accordance with rule 9(1); or
 - (ii) for a failure to lodge a statement of defence in accordance with rule 10(1); or
 - (iii) if these rules state that the default judgment may be given in the absence of the parties;
 - (b) in relation to any other application, if —
 - (i) if these rules provide otherwise; or
 - (ii) if the Court dealing with the application orders otherwise.
- ”.

37. Rule 113 amended

- (1) Rule 113(1) is amended by deleting the subrule designation “(1)”.
- (2) Rules 113(2) and (3) are repealed.

38. Rule 115 amended

Rule 115(2) is repealed and the following subrule is inserted instead —

“

- (2) An affidavit may contain statements based on information received by the person making the affidavit, and believed by that person to be true, if the affidavit also contains the sources or grounds of that information or belief.
- ”.

39. Rule 124 amended

- (1) Rule 124(aa) and (ab) are renumbered as paragraphs (ba) and (bb) respectively.
- (2) After rule 124(e) the following is inserted —

“

(fa) the *Residential Tenancies Act 1987*; or

”.

40. Rules 128A to 128C renumbered

Rules 128A, 128B and 128C are renumbered as rules 129A, 129B and 129C respectively.

41. Rule 131A inserted

After rule 130 the following rule is inserted —

“

131A. *Residential Tenancies Act 1987*

The Court must give notice of the nature of an application under the *Residential Tenancies Act 1987* by giving a copy of the application to every other party after it has been lodged.

”.

42. Rule 132 amended

Rule 132(1)(a) is amended by deleting “or 20(3)” and inserting instead —

“ 20(3) or 22(1) ”.

43. Rules 133A and 133B inserted

Before rule 133 the following rules are inserted into Part 22 —

“

133A. Changing venue

- (1) When an application is made under the Act section 22 —
 - (a) the applicant is not required to serve the application on any other party; and
 - (b) the Registrar must instead provide a copy of the application to every other party.
- (2) Unless the Court orders otherwise, the application may be dealt with in the absence of the parties.

133B. Corrections to typographical and other errors

- (1) If a party makes an application to correct a typographical error or other defect, a Registrar may order that the party may make the correction.

- (2) An application for an order under subrule (1) —
 - (a) is not required to be served on any other party;
and
 - (b) may be dealt with in the absence of the parties.

”.

44. Rule 134 amended

- (1) Rule 134 is amended by inserting before “A” the subrule designation “(1)”.
- (2) At the end of rule 134 the following subrule is inserted —

“

- (2) A person may make a claim, and conduct a case,
against a partnership in the partnership’s name, if any.

”.

Dated: 28 May 2008.

STEVEN HEATH, Chief Magistrate.

E. WOODS, Deputy Chief Magistrate.

R. BAYLY, Magistrate.

M. BOON, Magistrate.
