

JU302\*

Magistrates Court Act 2004

## **Magistrates Court (Minor Cases Procedure) Amendment Rules 2008**

Made by Magistrates Court.

### **1. Citation**

These rules are the *Magistrates Court (Minor Cases Procedure) Amendment Rules 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 (Minor Cases Procedure) 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. Rule 5A renumbered**

Rule 5A is renumbered as rule 6A.

**6. Rules 7 and 8 replaced**

Rules 7 and 8 are repealed and the following rules are inserted instead —

“

**7. How to make a claim that starts a case**

- (1) If you want to make a claim that starts a case you must lodge the approved form.
- (2) Your claim may, but need not, be lodged and served together with a statement of claim in accordance with rule 25A.
- (3) You must serve your claim as soon as practicable, and in any event within one year, after the day on which you lodge it.
- (4) Unless these rules or an Act says otherwise, your claim must be served personally on the party you are claiming against.

**8. How to make a counterclaim or third party claim**

- (1) If you want to make a counterclaim or third party claim you must lodge the approved form.
- (2) You must lodge your claim together with your statement of defence referred to in rule 25B.
- (3) Your claim may, but need not, be lodged and served together with a statement of claim in accordance with rule 25A.

- (4) Unless these rules or an Act says otherwise, if your claim is a third party claim it must be served personally on the party you are claiming against.

”.

**7. Rule 9 amended**

- (1) Rule 9(2) is amended as follows:
- (a) by inserting after “lodged” —  
“ and served ”;
  - (b) by deleting “rule 10.” and inserting instead —  
“ rule 25B. ”.
- (2) Rule 9(4) is repealed.

**8. Rules 10A, 10B and 10C inserted**

After rule 9 the following rules are inserted —

“

**10A. If you admit a claim**

If in a response you admit liability for the whole of the claim and agree to pay the amount claimed, a Registrar may give judgment against you in accordance with that admission.

**10B. If you admit part of a claim**

- (1) If in a response you admit liability for part of a claim made against you but indicate that you want to defend the rest of the claim, you may offer an amount as full satisfaction for the claim in your response.
- (2) The other party may accept your offer by lodging and serving a notice of acceptance in an approved form within 14 days after receiving your response.
- (3) If your offer is accepted, the Registrar may give judgment against you in accordance with your admission and offer.

**10C. You may admit liability but dispute the amount claimed**

- (1) If in a response —
  - (a) you admit liability for the whole of an unliquidated claim; but
  - (b) you do not agree to the amount sought by the other party,

you may, in your response, apply to the Court to determine the amount that should be awarded for the claim.

- (2) The Registrar must then list the case for a pre-trial conference and notify you and the other parties in writing.

”.

**9. Rule 10 replaced**

Rule 10 is repealed and the following rule is inserted instead —

“

**10. How to accept an offer of settlement**

- (1) If you have made a claim against a party and that party has, in its response, offered to settle the whole or part of your claim, you may accept that offer, or any part of the offer, by lodging and serving a notice of acceptance on the party at any time before the case is listed for pre-trial conference.
- (2) The notice of acceptance must be in the approved form.

”.

**10. Rule 13A inserted**

After rule 12 the following rule is inserted —

“

**13A. If someone has made a consumer/trader claim against you**

If someone has made a consumer/trader claim against you and you want to make —

- (a) a counterclaim against that person; or  
(b) a third party claim against another person,

you must lodge it in the approved form within 14 days after you have received a copy of the claim made against you.

”.

**11. Rule 13 replaced**

Rule 13 is repealed and the following rule is inserted instead —

“

**13. Registrar to list case for listing conference**

- (1) A Registrar must, as soon as possible after a consumer/trader claim is made and the time for making any related counterclaim or third party claim has passed, list the case for a listing conference.
- (2) The Registrar must notify you and the other parties in writing of the listing conference.

”.

**12. Rule 16 amended**

Rule 16(b) is amended as follows:

- (a) by inserting after “lodge” —  
“ and serve ”;
- (b) by deleting “rule 10(1).” and inserting instead —  
“ rule 25B. ”.

**13. Rule 17 amended**

Rule 17 is amended as follows:

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

**14. Rule 18 amended**

- (1) Rule 18(1) is amended by inserting after “claim” —  
“ , or the relevant part of the claim, ”.
- (2) Rule 18(3) is amended by inserting after “lodged” —  
“ and served ”.

**15. Rules 21 and 22 replaced**

Rules 21 and 22 are repealed and the following rules are inserted instead —

“

**21. Registrar not to give judgment in certain cases**

- (1) A Registrar must not give default judgment against you under this Part for a failure to lodge and serve a statement of defence if —
  - (a) you have lodged an application under the Act section 17 to strike out the relevant statement of claim; and
  - (b) your application —
    - (i) has not been dealt with; or
    - (ii) has been granted; or
    - (iii) has been dismissed, but you have lodged a statement of defence within 14 days after the dismissal.
- (2) A Registrar must not give default judgment against you under this Part if one year or more has passed since the claim that started the case was served.

**22. 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 in which case the Court must notify you and the other parties in writing of that hearing at least 28 days before the hearing.

”.

**16. Rule 22A renumbered**

Rule 22A is renumbered as rule 23A.

**17. Rule 23 replaced**

Rule 23 is repealed and the following rule is inserted instead —

“

**23. Listing a pre-trial conference**

- (1) A Registrar must list a case for a pre-trial conference within 14 days after the defendant in your case lodges a response that indicates an intention to defend the claim.
- (2) The Registrar must notify you and the other parties in writing of the pre-trial conference.

”.

**18. Rule 24 amended**

Rule 24(3) is repealed and the following subrule is inserted instead —

“

- (3) Specifically, the Registrar may do any or all of the following —
  - (a) determine what facts, if any, are agreed by the parties;
  - (b) order the parties to —
    - (i) lodge and serve statements of claim and defence; and
    - (ii) lodge and serve lists of documents the parties might tender in evidence at the trial in support of their claims or defences; and
    - (iii) exchange any other documents or information;
  - (c) extend the time for making counterclaims or third party claims (even if the time for making those claims has passed);

- (d) recommend to the Court that it order you and the other parties to attend before a mediator;
- (e) list the case for a further pre-trial conference;
- (f) make any other orders necessary to facilitate settlement or ensure the case is ready for trial.

”.

**19. Rules 25A, 25B and 25C inserted**

After rule 24 the following rules are inserted —

“

**25A. Lodging a statement of your claim**

- (1) If the Registrar at the pre-trial conference orders you to lodge and serve a statement of claim, you must do so in accordance with this rule.
- (2) Unless you lodged and served your statement of claim with your claim you must lodge and serve your statement of claim —
  - (a) if your claim is not a counterclaim or third party claim, within 14 days after the pre-trial conference; and
  - (b) if your claim is a counterclaim or third party claim, within 14 days after you have received a response that indicates an intention to defend the claim.
- (3) Your statement of claim must be in an approved form.
- (4) Your statement of claim must contain —
  - (a) a summary of the facts relevant to your claim; and
  - (b) what remedy or relief you want.

**25B. Lodging a statement of your defence**

- (1) If the Registrar at the pre-trial conference orders you to lodge and serve a statement of defence, you must do so in accordance with this rule.
- (2) Unless you lodged and served your statement of defence with your response you must lodge and serve your statement of defence within 14 days after you are served with the relevant statement of claim.
- (3) Your statement of defence must be in the approved form.
- (4) Your statement of defence must contain —
  - (a) a summary of the facts relevant to your defence; and

- (b) the details of anyone who you allege is liable for the claim and the grounds upon which you base that allegation.

**25C. List of documents you might tender at trial**

- (1) If the Registrar at the pre-trial conference orders you to lodge and serve a list of any documents that you might tender in evidence at the trial in support of your claim or defence, you must do so in the approved form.
- (2) You may, at any stage of your case, lodge and serve an amended list of those documents to correct any errors.
- (3) You must lodge and serve an amended list of those documents as soon as practicable after you come into possession, or become aware that you are in possession, of any further documents that you might tender in evidence at the trial in support of your claim or defence.
- (4) You must have all the documents specified on your list available at the trial.
- (5) At the trial you cannot, without the leave of the Court, tender into evidence a document that was not on your list before the trial commenced.

”.

**20. Rule 36 amended**

Rule 36(1) is amended by deleting “that application may be dealt with in the absence of the respondent to the application.” and inserting instead —

“

that application —

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

”.

**21. Rule 37 amended**

Rule 37 is amended by deleting “directions” and inserting instead —

“ orders ”.

**22. Rule 54 amended**

- (1) Rule 54 is amended as follows:

- (a) by inserting before “If” the subrule designation “(1)”; and
- (b) by deleting “, business or postal” and inserting instead —  
“ or business ”.



- (2) At the end of rule 54 the following subrule is inserted —

“

- (2) The address for service specified on the document is to be taken to be your address for service under this Division until —
- (a) if your document specifies the address of an agent under rule 56 — your agent lodges a notice in the approved form stating that he or she no longer acts for you; or
  - (b) you lodge a notice of change of address under rule 57.

”.

**23. Rule 55 amended**

- (1) Rule 55(1) is amended by deleting “, principal place of business or postal address.” and inserting instead —

“ or principal place of business. ”.

- (2) Rule 55(2) is amended by deleting “or postal address”.

- (3) Rule 55(3) is amended by deleting “, principal place of business or postal address.” and inserting instead —

“ or principal place of business. ”.

**24. Rule 56 amended**

- (1) Rule 56(1) is amended by deleting “, your lawyer’s postal address,”.

- (2) Rule 56(2) is amended by deleting “, principal place of business or postal address.” and inserting instead —

“ or principal place of business. ”.

**25. Rule 60 replaced**

Rule 60 is repealed and the following rule is inserted instead —

“

**60. Service on a corporation personally**

- (1) In order to serve a document on a corporation personally you 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.

”.

**26. Part 11 Division 4 inserted**

After rule 61 the following Division is inserted in Part 11 —

“

**Division 4 — Miscellaneous****62A. Applications for substituted service**

- (1) If you cannot serve a document on another party in accordance with Divisions 1 to 3, you may apply to the Court to make an order under the Act section 16(1)(t) that —
  - (a) you may serve the party by a substituted form of service; or
  - (b) if it is appropriate in the circumstances, you do not have to serve the party.
- (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.

”.

**27. Rule 64 amended**

Rule 64(2) is repealed and the following subrule is inserted instead —

“

- (2) Subrule (1) does not apply to your application if —
  - (a) your application is for default judgment against another part —
    - (i) for a failure by the other party to lodge a response in accordance with rule 9(1); or
    - (ii) for a failure by the other party to lodge a statement of defence in accordance with rule 10(1); or
    - (iii) for a failure by the other party to do something else, and these rules state that the default judgment may be given in the absence of the parties;
  - (b) your application is for something else and —
    - (i) these rules provide that your application does not need to be served; or
    - (ii) the Court dealing with your application does not need to be served.

”.

**28. Rule 66 amended**

- (1) Rule 66(1) is amended by deleting the subrule designation “(1)”.
- (2) Rule 66(2) and (3) are repealed.

**29. Rule 68 amended**

Rule 68(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.

”.

**30. Rules 76A, 76B and 76C inserted**

Before rule 76 the following rules are inserted into Part 15 —

“

**76A. If you are making an application under the  
*Residential Tenancies Act 1987***

- (1) If you are making an application under the *Residential Tenancies Act 1987* you do not have to serve it.
- (2) Instead, the Court must give a copy of your application to every other party after you have lodged it.

**76B. If you want to change venues**

- (1) If you make an application for the proceedings in your case to be conducted at another place in the State —
  - (a) you are not required to serve the application on any other party; and
  - (b) the Registrar must instead provide a copy of your application to every other party.
- (2) Unless the Court orders otherwise, your application may be dealt with in the absence of the parties.

**76C. If you want to correct typographical and other errors**

- (1) If you make an application to correct a typographical error or other defect, a Registrar may make an order allowing you may make that correction.
- (2) Your application —
  - (a) does not have to be served on any other party; and
  - (b) may be dealt with in the absence of the parties.

”.

**31. Rule 78 amended**

- (1) Rule 78 is amended by inserting before “If” the subrule designation “(1)”.
- (2) At the end of rule 78 the following subrule is inserted —  
“
  - (2) You 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.