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MAGISTRATES COURT (CIVIL PROCEEDINGS) ACT 2004

MAGISTRATES COURT (MINOR CASES PROCEDURE) RULES 2005

Western Australia

Magistrates Court (Minor Cases Procedure) Rules 2005

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Magistrates Court (Civil Proceedings) Act 2004

Magistrates Court (Minor Cases Procedure) Rules 2005

Made by the Magistrates Court.

Part 1 — Preliminary

1. Citation

These rules are the *Magistrates Court (Minor Cases Procedure) Rules 2005*.

2. Commencement

These rules come into operation on the day on which the *Magistrates Court (Civil Proceedings) Act 2004* comes into operation.

3. These rules to be read with the *Magistrates Courts (General) Rules 2005*

These rules are to be read with the *Magistrates Courts (General) Rules 2005*.

4. Terms used in these rules

In these rules, unless the contrary intention appears —

"agent" means a lawyer or any other person who is representing you with the leave of the Court;

"application" means an application made under Part 12;

"approved form" means the form approved by the Chief Magistrate;

"counterclaim" means a claim made by a defendant against a claimant including a claim for set-off;

"default judgment" means a judgment without trial given against a party for a failure by the party to comply with the Act, these rules or an order made by the Court, and includes a dismissal of a claim for want of service without consideration of its merits;

"defendant" means a party against which a claim is made by a claimant;

"lodge" has the meaning affected by rule 47;

"partnership" means —

(a) a partnership as defined in the *Partnership Act 1895* section 7;

(b) an unincorporated company or association formed for the purposes of gain; or

(c) 3 or more persons who otherwise have a joint or several interest or liability in a case;

"personal service" has a meaning corresponding with the meaning of "serve personally";

"Public Trustee" means the Public Trustee under the *Public Trustee Act 1941*;

"Registrar" does not include a Deputy Registrar;

"response" means a response made under rule 9 to a claim;

"serve" has a meaning affected by rule 50;

"serve personally" in relation to a document, means to serve the document in accordance with Part 11 Division 3;

"third party" means a party against which a third party claim is made;

"third party claim" means a claim made by a defendant against a party other than the claimant relating to the claim against the defendant;

"working day" means a day other than a Saturday, a Sunday, or a public holiday.

5. When these rules apply

Unless the Court in a particular case orders otherwise, these rules apply in every minor case.

Part 2 — How to make and defend a claim generally

6. When this Part applies

This Part applies if —

(a) you want to make any claim other than a consumer/trader claim; or

(b) if a claim other than a consumer/trader claim is made against you.

7. How to make a claim

(1) If you want to make a claim you must lodge the approved form.

(2) Your claim may, but need not, be lodged together with a statement of claim in accordance with rule 8.

(3) If your claim starts a case you must serve it as soon as practicable, and in any event within one year, after the day on which you lodge it.

(4) If your claim is a counterclaim or third party claim you must lodge it together with your statement of defence referred to in rule 9.

(5) Unless these rules or an Act says otherwise, your claim must be served personally on the party you are claiming against.

8. Lodging a statement of your claim

(1) If you are served with a claim against you, you must lodge and serve a statement of claim 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 within 14 days after you are served with 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;

(b) a list of any documents that you might tender in evidence at the trial in support of your claim;

(c) what remedy or relief you want.

9. How to respond to a claim

(1) If a claim has been made against you, you must complete the response served with the claim and lodge it with the Court within 14 days after the claim was served.

(2) Your response may, but need not, be lodged together with a statement of defence in accordance with rule 10.

(3) After you lodge your response, the Court will give a copy of it to the party which made the claim against you and to every other party to your case.

(4) If you admit the whole of the claim, a Registrar may give judgment against you.

10. Lodging a statement of your defence

(1) If you are served with a claim against you, you must lodge and serve a statement of defence 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 a 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;

(b) a list of any documents that you might tender in evidence at the trial in support of your defence; and

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

Part 3 — How to make a consumer/trader claim

11. How to make a consumer/trader claim

If you want to make a consumer/trader claim you must lodge the approved form.

12. Service of the claim

After you lodge a consumer/trader claim, the Court will give a copy of it to the party against which you are claiming and to every other party to your case.

13. Registrar to list case for listing conference

A Registrar must, as soon as possible after you have lodged your consumer/trader claim, list your case for a listing conference and write the date of that conference on the copy of the claim that is to be served by you.

14. Listing conference

(1) A listing conference must be conducted before a magistrate, in private and at any time or place the Court thinks fit.

(2) Unless the Court at a listing conference orders the parties to attend before a mediator, or to attend a pre-trial conference or listing conference, the Court will list the case for trial.

(3) The Registrar must notify you and the other parties in writing of the listing.

15. Attendance of parties at listing conferences

You must attend a listing conference in person.

Part 4 — If you or another party does not defend a claim

16. When this Part applies

This Part applies if an application for default judgment is made against you or another party for a failure to —

(a) lodge a response in accordance with rule 9(1); or

(b) lodge a statement of defence in accordance with rule 10(1).

17. If the claim is for a specified amount

Unless rule 21 applies, a Registrar may give default judgment for a specified amount if the claim is for —

(a) a liquidated amount;

(b) an unliquidated amount of $500 or less; or

(c) an unliquidated amount of more than $500, if the Registrar is able to assess the amount from any supporting affidavit lodged with the application.

18. If the claim is for an unspecified amount

(1) Unless rule 21 applies, a Registrar may give default judgment for an unspecified amount if the claim is for any unliquidated amount not referred to in rule 17.

(2) When the Registrar gives default judgment for an unspecified amount, the Registrar must —

(a) list the application for a hearing at which the Court will assess the amount; and

(b) notify you and the other parties in writing at least 28 days before the hearing.

(3) An application for default judgment under this Part does not need to be supported by an affidavit unless a hearing is listed under subrule (2) or rule 22. In that case a supporting affidavit must be lodged at least 14 days before the hearing.

19. If the claim against you is for claim to recover possession of personal property

Unless rule 21 applies, or the claim is a consumer/trader claim, a Registrar may give default judgment for a claim to recover possession of personal property.

20. Registrar may give default judgment in absence of parties

A Registrar may give default judgment under this Part in the absence of the parties.

21. Leave needed in cases lasting one year or more

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 lodged.

22. Registrar to list application

If the Registrar does not grant the application for default judgment, the Registrar must list the application for a hearing before the Court and notify you and the other parties in writing at least 28 days before the hearing.

Part 5 — Pre-trial conferences

23. Listing a pre-trial conference

(1) A Registrar must list a case for a pre-trial conference —

(a) within 14 days after the defendant in your case lodges and serves a statement of defence; or

(b) if the defendant has made a counterclaim, within 14 days after the claimant lodges and serves a statement of defence to the counterclaim.

(2) The Registrar must notify you and the other parties in writing of the listing.

24. What happens at a pre-trial conference

(1) The purpose of a pre-trial conference is to give you and the other parties an opportunity to settle the case.

(2) The primary role of the Registrar at a pre-trial conference is to attempt to bring you and the other parties to a settlement that is acceptable to all of you.

(3) Specifically, the Registrar may —

(a) determine what facts, if any, are agreed by the parties;

(b) direct the parties to exchange further documents or other information;

(c) recommend to the Court that it order you and the other parties to attend before a mediator;

(d) make any other directions necessary to facilitate settlement; and

(e) list the case for a further pre-trial conference.

(4) The Registrar must notify you and the other parties in writing of any further pre-trial conference.

(5) The Court may consider a recommendation from the Registrar under subrule (3)(c) in the absence of the parties.

25. If there is a counterclaim that is not a minor case

(1) If there is a counterclaim that is not a minor case, the Registrar must determine whether or not you and the other parties consent to it being dealt with under these rules.

(2) If the parties do not consent to the counterclaim being dealt with under these rules, the Registrar must —

(a) list the case for a hearing before the Court for it to determine what part of the case, if any, is to be dealt with under these rules; and

(b) notify you and the other parties in writing of the hearing date.

(3) If the Court determines that part of the case is to be dealt with under these rules, it will list the case for a further pre-trial conference.

(4) The Registrar must notify you and the other parties in writing of the listing.

26. Your attendance at a pre-trial conference or hearing

(1) You must attend a pre-trial conference, or any hearing referred to in rule 25(2), in person.

(2) If you do not attend a pre-trial conference, the Registrar at the pre-trial conference may give default judgment against you. In that case Part 4, except rule 21, with any necessary modifications, applies in relation to the default judgment.

27. Listing the case for trial

Unless the Registrar at a pre-trial conference lists the case for a further pre-trial conference, the Registrar must list the case for trial and notify you and the other parties in writing.

28. Status of things said or done at a pre-trial conference

(1) A pre-trial conference must be conducted before a Registrar.

(2) Anything said or done by you or another party for the purpose of attempting to settle a case at a pre-trial conference is to be taken to be said or done without prejudice to any evidence or submission that you or the other party —

(a) has adduced or made; or

(b) may subsequently adduce or make,

in or in respect of the proceedings, and the saying or doing of that thing does not disqualify the Registrar who conducted the pre-trial conference from later dealing with the case.

Part 6 — Mediation

29. Mediation conference

(1) If the Court orders you and the other parties to attend before a mediator, you must ensure that a mediation conference before the mediator is arranged.

(2) A mediation conference must be conducted in private.

30. Attendance of parties at mediation conferences

Unless the mediator otherwise approves, you must attend a mediation conference in person.

31. Outcome of mediation

If you are the claimant you must, within 14 days after the mediation conference, lodge a notice of the outcome of the mediation in the approved form.

32. Further pre-trial conference if case not settled

If the case is not settled at the mediation conference a Registrar must list the case for a further pre-trial conference and notify you and the other parties in writing.

Part 7 — Consent orders and settlement

33. Memorandum of consent

If you want to settle a case or consent to any other order you may lodge a memorandum to that effect in the approved form, signed by you and every other party.

34. Registrar may make consent orders or give judgment

(1) When a memorandum of consent is lodged, a Registrar may, unless subrule (2) applies, make the orders or give the judgment consented to.

(2) The Registrar must not make an order —

(a) adjourning the trial of a case; or

(b) extending the time for complying with any rule of court or practice direction, or any order made by the Court.

35. When the rules require your consent

Where the Act or these rules require your consent before something can be done, you may give that consent by lodging a notice of consent to that effect in the approved form and signed by you.

36. Settling claims involving a person under a legal disability

(1) If you make an application for the approval of the settlement of a case in which there is a claim by or against a person under a legal disability, that application may be dealt with in the absence of the respondent to the application.

(2) Unless the Court orders otherwise, in addition to the supporting affidavit required under rule 65, your application must be supported by an affidavit of an independent lawyer verifying that the settlement is in the best interests of the person under a legal disability.

(3) The settlement of a case in which there is a claim by or against a person under a legal disability has effect on and from the day the Court gives its approval to it.

Part 8 — Trial

37. How the trial of your case is to be conducted

The trial of your case must be conducted in accordance with directions given by the Court.

38. Your attendance at trial

You must attend the trial of your case in person.

39. How to call witnesses

(1) If you want to require someone to give evidence or to produce something at the trial of your case, you must lodge a request for the Court to issue a witness summons.

(2) Your request must be in the approved form and must be accompanied by —

(a) a draft witness summons, in the approved form, that requires the witness to attend the Court to give oral evidence in the case; or

(b) a draft witness summons, in the approved form, that requires the witness to attend the Court and produce to the Court evidentiary material that is relevant to the case.

(3) If the Court issues the requested witness summons, you must lodge and serve the witness summons on the witness at least 14 days before the trial date.

(4) The witness summons must be served personally.

(5) You must ensure that at the time the witness summons is served on a witness, or at a reasonable time before the attendance date —

(a) an amount that is likely to be sufficient to meet the reasonable expenses of attending the court is tendered to the witness;

(b) arrangements to enable the witness to attend the court are made with the witness; or

(c) the means to enable the witness to attend the court are provided to the witness.

(6) The person who serves a witness with the witness summons for you must record how subsection (3) was complied with on a copy of the witness summons.

(7) If a copy of a witness summons contains information recorded in accordance with subsection (4) it is to be presumed that the information is true, unless the contrary is proved.

40. Return of things after trial

(1) If, during your trial, you tender to the Court something that you are entitled to possess you will not be entitled to have that thing returned to you —

(a) if no appeal against the judgment is lodged, until 21 days after the day on which the judgment was given; or

(b) if an appeal against the judgment is lodged, until the appeal has been dealt with.

(2) The Registrar must give you written notice of your entitlement to the return of something under subrule (1) as soon as practicable after the entitlement arises.

(3) If you do not take possession of the thing within 28 days after you receive the notice, the Registrar may dispose of the thing as the Registrar thinks fit.

Part 9 — Orders and judgments

41. Money paid to you if you are a person under a legal disability

(1) If you are a person under a legal disability and under a judgment money is to be paid to you, the money is to be paid to the Public Trustee to hold on trust for you.

(2) The Public Trustee must invest the money for you and may, if the Court so orders, invest it outside the Common Fund referred to in the *Public Trustee Act 1941* section 40.

42. Setting aside default judgment

If the Court gives default judgment against you and you want to apply for the judgment to be set aside you must apply within 21 days after the judgment was given.

43. Decisions of Registrars

If a Registrar exercises any jurisdiction of the Court, the decision of the Registrar is to be taken to be a decision of the Court unless it is set aside on an appeal.

44. Requests for certificate of judgment

If you want a certificate of a judgment, you must lodge a request for the judgment in an approved form.

Part 10 — How to lodge documents

45. How to lodge a document

In order to lodge a document with the Court you must lodge it in accordance with this Part at a Court registry together with any fee required under the *Magistrates Courts (Fees) Regulations 2005*.

46. Where you may lodge a claim that starts a case

You may lodge a claim that starts a case at any registry of the Court.

47. If a Registrar refuses to accept your document for lodgment

You may make an application under the *Magistrates Court Act 2004* section 17(3) for the Court to give you leave to lodge a document that has been refused by a Registrar. If you make the application in relation to a claim that would have started a case, you are to be taken to be a party to an existing case for the purposes of making the application.

48. You may lodge documents by hand delivery or pre-paid post

(1) You may lodge a document by delivering the document to the registry by hand delivery or by pre-paid post.

(2) When you are lodging a document you must also lodge —

(a) a copy for yourself; and

(b) a copy for any other party which must be served under these rules.

49. Lodging documents electronically or by fax

You may lodge a document electronically or by fax if the *Magistrates Court (General) Rules 2005* enable you to do so.

Part 11 — How to serve documents

Division 1 — General

50. Meaning of "serve"

If these rules require you to serve a document —

(a) you must serve a copy of the document returned after lodgment bearing the seal of the Court; and

(b) unless the rules provide otherwise, you must serve it on each other party.

51. How to serve a document

(1) Unless personal service is required under these rules, if you want to serve a document on a person you must —

(a) deliver the document to the person;

(b) send the document by pre-paid post to the person; or

(c) if the *Magistrates Court (General) Rules 2005* enable it, send the document to the person by email or fax.

(2) If you want to serve a document by delivery or pre-paid post and an address for service has been provided under Division 2, you must serve it at that address.

(3) If you want to serve a document by delivery or pre-paid post and the party you want to serve has not provided an address for service under Division 2, you must serve it at the party's usual or last known place of residence or principal or last known place of business.

(4) In order to serve a document on someone personally, you must serve it in accordance with Division 3.

(5) Nothing in this rule prevents you from serving a person in a manner other than in accordance with this rule if the person consents to being served in that manner.

52. A bailiff may serve documents for you

(1) You may ask a bailiff to serve a document for you. If a bailiff serves a document for you, he or she must, as soon as practicable after the service, give you a certificate of the service.

(2) The certificate must be in an approved form.

(3) The certificate is admissible as evidence and, in the absence of proof to the contrary, is proof that the document was served by the bailiff.

53. You must lodge an affidavit after serving a document

(1) If you serve a document personally, or someone other than a bailiff serves the document for you, you must lodge an affidavit of service completed by whoever served the document.

(2) The affidavit of service must state when, where, how and by whom service was effected.

Division 2 — Service at a residential, business or postal address

54. Your address must be on each document

If you lodge a document in relation to a case, the document must contain your residential, business or postal address for service.

55. If you are not represented

(1) If you are an individual who is not represented by an agent, the address for service is to be your usual place of residence, principal place of business or postal address.

(2) If you are a partnership that is not represented by an agent, your address for service is to be your principal place of business or postal address.

(3) If you are a corporation that is not represented by an agent, your address for service is to be your registered office, principal place of business or postal address.

56. If you are represented

(1) If you are represented by a lawyer, your address for service is to be your lawyer's principal place of business, your lawyer's postal address, or your lawyer's number (if any) at a document exchange approved by the Chief Magistrate.

(2) If you are represented by an agent who is not a lawyer, your address for service is to be your agent's usual place of residence, principal place of business or postal address.

57. If your address changes

(1) If your address for service under this rule changes after documents have been lodged in relation to your case, you must lodge and serve a notice of change of address as soon as practicable after the address has changed.

(2) Your notice of change of address must be in the approved form.

Division 3 — Personal service

58. Service on an individual personally

In order to serve a document on an individual personally you must —

(a) hand the document to the individual or, if he or she is a person under a legal disability, with his or her parent, guardian or litigation guardian;

(b) if the individual's parent, guardian or litigation guardian, as the case may be, does not accept the document, put the document down in his or her presence and advise him or her of the nature of the document;

(c) hand the document to someone who is authorised in writing to receive documents on behalf of the individual;

(d) hand the document to someone at the person's usual or last known place of residence or business who is believed, on reasonable grounds, to have reached 18 years of age; or

(e) hand the document to an agent who is acting for the person.

59. Service on a partnership personally

In order to serve a document on a partnership personally you must —

(a) hand the document to one of the partners;

(b) if the partner does not accept the document, put the document down in the partner's presence and advise the partner of the nature of the document;

(c) hand the document to someone at the partnership's principal or last known place of business who, on reasonable grounds, is believed to be in charge of the business at the time of service; or

(d) hand the document to a lawyer who is acting for the partnership.

60. Service on a corporation personally

In order to serve a document on a corporation personally you must —

(a) hand the document to a person who, on reasonable grounds, is believed to be a director, manager or secretary of the corporation; or

(b) hand the document to a lawyer who is acting for the corporation.

61. Service on a public authority personally

In order to serve a document on a public authority personally you must —

(a) hand the document to a person who, on reasonable grounds, is believed to be the chief executive officer of the public authority or a person authorised by the chief executive officer to receive documents for the purposes of this paragraph; or

(b) hand the document to a lawyer who is acting for the public authority.

Part 12 — How to make an application

62. How to make a written application

(1) If you want to make an application for a Court order other than —

(a) a judgment after trial; or

(b) an order made in or as a consequence of a judgment not being an order to set aside a judgment given under the Act section 17(3), 18(6), or 19(3),

you must lodge the approved form unless the Court gives you leave to make an oral application under subrule (2).

(2) You may, with the leave of the Court, make an oral application at any hearing before the Court.

63. Your supporting affidavit

Unless rule 18(3) applies, if you are making a written application it must be lodged together with a supporting affidavit.

64. Application must be served

(1) Unless subrule (2) applies, if you have made a written application you must serve a copy of the application and any supporting affidavit on every other party after it has been lodged and at least 10 days before the hearing of the application.

(2) Subrule (1) does not apply —

(a) if your application is for default judgment for a failure to —

(i) lodge a response in accordance with rule 9(1); or

(ii) lodge a statement of defence in accordance with rule 10(1);

or

(b) if these rules say that your application may be dealt with in the absence of the respondent to the application.

65. Response to an application

(1) If you have been served with an application you must, at least 3 working days before the hearing of the application, lodge and serve —

(a) a response to the application stating whether you consent or object to each order sought in the application;

(b) unless you consent to every order sought in the application, an affidavit supporting your response; and

(c) any related application you might want to make.

(2) You response must be in the approved form.

66. How the Court will deal with your application

(1) Your application will be dealt with in your presence and in the presence of every other party to the application unless —

(a) these rules provide otherwise; or

(b) the Court dealing with your application orders otherwise.

(2) Unless the Court orders otherwise, a party is not required to attend the determination of an application for proceedings in a case to be conducted at another place in the State.

(3) If you make an application to correct a typographical error or other defect, a Registrar may, in the absence of the parties, order that you may make the correction.

Part 13 — Affidavits

67. Form of an affidavit

An affidavit lodged by you must be in the approved form.

68. Content of an affidavit

(1) Unless subrule (2) applies, an affidavit must be confined to facts to which the person making the affidavit is able to say from his or her own knowledge.

(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 —

(a) the sources of the information; and

(b) the grounds for believing that the information is true.

(3) Any addition, alteration or erasure in an affidavit must be initialled by the person making the affidavit and the person before whom the affidavit was sworn or affirmed.

Part 14 — If you need a litigation guardian

69. Terms used in this Part

In this Part —

"child" means a person who is under 18 years of age and who is not a represented person;

"represented person" has the meaning given to that term in the *Guardianship and Administration Act 1990* section 3(1).

70. When this Part applies

This Part applies if you are a person under a legal disability and you are, or intend to be, a party to a case.

71. If you are a represented person

(1) If you are a represented person you must have a litigation guardian to conduct the case on your behalf unless the Court orders otherwise.

(2) Except as provided in subrule (3), your guardian or administrator is to be your litigation guardian if the guardianship or administration order that applies to you —

(a) is plenary; or

(b) otherwise confers on your guardian or administrator the function of conducting or settling legal proceedings on your behalf.

(3) If the Public Trustee is a joint administrator of your estate, the Public Trustee is to be your sole litigation guardian.

(4) If you are a represented person who is not referred to in subrule (2) you may have as your litigation guardian anyone who —

(a) is not under a legal disability; and

(b) does not have an interest in the case that is adverse to your interests.

(5) A person may act as your litigation guardian without being appointed by the Court to act in that capacity.

72. Affidavit your litigation guardian must lodge and serve if you are a represented person

(1) If you are a represented person your litigation guardian must, in accordance with this rule, lodge and serve an affidavit that is sworn by the litigation guardian —

(a) when first lodging and serving a claim or response; or

(b) if he or she becomes the litigation guardian after proceedings on your behalf have begun, as soon as practicable after he or she becomes the litigation guardian.

(2) If you are a represented person referred to in rule 73(2), your litigation guardian's affidavit must verify that —

(a) you are a represented person;

(b) your litigation guardian has been appointed the guardian or administrator of the person under the *Guardianship and Administration Act 1990*; and

(c) the guardianship or administration order that applies to you —

(i) is plenary; or

(ii) otherwise confers on your guardian or administrator the function of conducting or settling legal proceedings on your behalf.

(3) If you are a represented person not referred to in rule 73(2), your litigation guardian's affidavit must —

(a) verify that you are a represented person;

(b) state the nature of your litigation guardian's relationship with you;

(c) verify that your litigation guardian consents to acting in that capacity for you;

(d) verify that the litigation guardian is not under a legal disability and does not have an interest in the case that is adverse to your interests; and

(e) set out the grounds for any knowledge or belief expressed in the affidavit.

73. If you are a child

(1) If you are a child you may have as your litigation guardian anyone who —

(a) is not under a legal disability; and

(b) does not have an interest in the case that is adverse to your interests.

(2) A person may act as your litigation guardian without being appointed by the Court to act in that capacity.

74. Affidavits your litigation guardian must lodge and serve if you are a child

(1) If you are a child your litigation guardian must, in accordance with subrule (2), lodge and serve an affidavit sworn by the litigation guardian —

(a) when first lodging and serving a claim or response; or

(b) if proceedings on your behalf have already begun, as soon as practicable after the litigation guardian assumes that capacity.

(2) Your litigation guardian's affidavit must —

(a) verify that you are a child;

(b) state the nature of your litigation guardian's relationship with you;

(c) verify that your litigation guardian consents to acting in that capacity for you;

(d) verify that your litigation guardian is not under a legal disability and does not have an interest in the case that is adverse to your interests; and

(e) set out the grounds for any knowledge or belief expressed in the affidavit.

(3) If you have reached 14 years of age, your litigation guardian's affidavit must be accompanied by an affidavit sworn by you, verifying that you want the litigation guardian to act in that capacity.

(4) If —

(a) you have not reached 14 years of age; and

(b) your litigation guardian is not your parent or guardian,

your litigation guardian's affidavit must be accompanied by an affidavit sworn by one of your parents or guardians, verifying that your parent or guardian consents to the litigation guardian acting in that capacity.

75. Person may apply to be appointed your litigation guardian

(1) A person may make an application to be appointed as your litigation guardian, or to replace your litigation guardian.

(2) Except as provided in subrules (3) and (4), the application must be made in accordance with Part 12.

(3) If you are a represented person, the application must be supported by an affidavit in accordance with rule 74(3).

(4) If you are a child, the application must be supported by affidavits in accordance with rule 74.

Part 15 — Miscellaneous

76. You may discontinue claim

If you want to discontinue the whole or part of a claim that you have made, you must lodge and serve a notice of discontinuance in the approved form.

77. Availability of forms

The Court will make forms approved by the Chief Magistrate available —

(a) at each Court registry;

(b) on request, by post; and

(c) on the website maintained by the Principal Registrar under the *Magistrates Court (General) Rules 2005*.

78. Partnership name may be used

If you are a partnership you may conduct your case in your partnership name, if any.

79. When you are required to do things personally and you are not an individual

(1) When under these rules you are required or enabled to sign a document, attend a conference or hearing, or do something else personally and —

(a) you are a partnership — then a person who was a partner at the time the cause of action arose and who is authorised by each of the other partners to do the thing may do it;

(b) you are a corporation — then an officer of the corporation who is authorised by the corporation to do the thing may do it;

(c) you are a public authority — then an officer of the public authority who is authorised by the public authority to do the thing may do it;

(d) an insurer is subrogated to your rights — then a person who is authorised to do the thing on behalf of the insurer may do it.

(2) If you are a person under a legal disability and a litigation guardian is conducting a case on your behalf, subrule (1) applies to your litigation guardian with any necessary changes.

80. Payments into Court

(1) If you make a payment of money into Court, the Court will give you a written receipt for the money.

(2) When judgment is given in the case and the Court does not order that the money be paid out, the money must be returned to you or paid out in accordance with any authorisation prepared by you in the approved form.

81. Registrar's powers under the *Civil Judgments Enforcement Act 2004*

(1) A Registrar may deal with a means enquiry under the *Civil Judgments Enforcement Act 2004* section 30 and may for that purpose exercise any of the Court's powers under sections 28, 29 and 31 of that Act.

(2) For the purposes of the *Civil Judgments Enforcement Act 2004* section 9(3), an application or request that, when made to the Court under that Act, may be dealt with by a Registrar, is —

(a) an application for an order under section 10, 15(5)(a) or 20(3) of that Act;

(b) an application for leave under section 13(1)(a) of that Act; or

(c) an application or request under a section of that Act listed in the Table to this paragraph.

Table

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

(3) You may apply for the review of a decision of a Registrar in relation to the application or request by making an application under Part 12 of these rules.

Dated: 19/4/2005

STEVEN HEATH
Chief Magistrate

E. WOODS
Deputy Chief Magistrate

PAUL M. HEANEY
Magistrate

ROBERT H. BURTON
Magistrate