



Western Australia

## **Industrial Magistrates Courts (General Jurisdiction) Regulations 2005**

Compare between:

[01 May 2005, 00-a0-06] and [01 Aug 2012, 00-b0-07]



## Industrial Magistrates Courts (General Jurisdiction) Regulations 2005

### Part 1 — Preliminary

#### 1. Citation

These regulations are the *Industrial Magistrates Courts (General Jurisdiction) Regulations 2005*.

#### 2. Commencement

These regulations come into operation on the day on which the *Courts Legislation Amendment and Repeal Act 2004* comes into operation.

#### 3. Application of these regulations

(1) Unless ~~—~~

~~(a) a Court in a particular case orders otherwise;~~ ~~or~~

~~(b) these regulations provide otherwise,~~

~~\_\_\_\_\_~~ the practice and procedure provided for in these regulations applies in every case.

(2) For the purposes of the Act section 81CA(2), the *Magistrates Court (Civil Proceedings) Act 2004* does not apply to, or in relation to, a Court.

~~\_\_\_\_\_~~ [\[Regulation 3 amended: Gazette 31 Jul 2012 p. 3684.\]](#)

**4. Terms used in these regulations**

In these regulations, unless the contrary intention appears —

**application** means an application made under Part 10;

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

**Board** means the [Construction Industry Long Service Leave Payments Board established under the Construction Industry Portable Paid Long Service Leave Act 1985 section 5\(1\)](#);

**case** means any proceedings in a Court involving or in connection with the Court's general jurisdiction as defined in the Act section 81CA(1);

**Chief Magistrate** means the Chief Magistrate appointed under the *Magistrates Court Act 2004* Schedule 1 clause 6(1) or a person who under Schedule 1 clause 8(2) of that Act is performing the functions of the Chief Magistrate;

**CIPPLSL case** means [any proceedings in a Court involving or in connection with the Court's jurisdiction under section 83E in respect of a provision of the Construction Industry Portable Paid Long Service Leave Act 1985 that is specified to be a civil penalty provision](#);

**claim** means a claim made to a Court by a party (whether a claimant, a defendant or another party);

**claimant** means a person who commences a case;

**corporation** has the meaning given by section 57A of the *Corporations Act 2001* of the Commonwealth;

**counterclaim** means a claim made by a respondent against a claimant including a claim for set-off;

**Court** means an industrial magistrate's court;

**deal with** includes to hear and determine;

**default judgment** means a judgment without trial given against a party for a failure by the party to comply with ~~the Act~~, these regulations or an order made by the Court, and includes a

dismissal of a claim for want of service without consideration of its merits;

**document** means any record that is or is capable of being put on paper;

**judgment** includes an order under the Act section 83E imposing a penalty;

**lodge** has the meaning affected by regulation 43;

**officer**, of a corporation, has the meaning given by section 9 of the *Corporations Act 2001* of the Commonwealth;

**order** includes a direction;

**originating claim** means a claim that commences a case;

**party** means a party to a case;

**person under a legal disability** means —

- (a) a person under 18 years of age; or
- (b) a represented person as defined by the *Guardianship and Administration Act 1990* section 3(1);

**pre-trial conference** means a conference held under Part 4;

**public authority** means an employing authority as defined in the *Public Sector Management Act 1994* section 5;

**record** means any thing or process —

- (a) on or by which information is recorded or stored; or
- (b) by means of which a meaning can be conveyed by any means in a visible or recoverable form,

whether or not the use or assistance of some electronic, electrical, mechanical, chemical or other device or process is required to recover or convey the information or meaning;

**representative**, in relation to a party, means the legal practitioner or agent representing the party;

**respondent** means a party against which a claim is made by the claimant;

**response** means a response made under regulation 14 to a claim;

**serve** has a meaning affected by regulation 50;

**settle**, in relation to a case, includes to accept an offer to consent to judgment, and to compromise;

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

**third party claim** means a claim made by a respondent against a party other than the claimant relating to the claim against the respondent;

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

[\[Regulation 4 amended: Gazette 31 Jul 2012 p. 3684.\]](#)

## **Part 2 — Court's functions generally**

### **5. Court's duties in dealing with cases**

- (1) A Court is to ensure that cases are dealt with justly.
- (2) Ensuring that cases are dealt with justly includes ensuring —
  - (a) that cases are dealt with efficiently, economically and expeditiously;
  - (b) so far as is practicable, that the parties are on an equal footing; and
  - (c) that a Court's judicial and administrative resources are used as efficiently as possible.

### **6. Court may act on its own initiative**

- (1) A Court may exercise its powers on the application of a party or on its own initiative unless these regulations or another written law provides otherwise.
- (2) A Court may make an order on its own initiative with or without —
  - (a) allowing the parties to make submissions; or
  - (b) hearing the parties.
- (3) If the Court decides to allow the parties to make submissions before making an order on its own initiative, it must notify each party likely to be affected by the order of how and when the submissions are to be made.
- (4) If the Court decides to hear the parties before making an order on its own initiative, it must notify each party likely to be affected by the order of the time and place of the hearing.

### **7. Court's powers to control and manage cases**

- (1) A Court may do all or any of the following for the purposes of controlling and managing cases and trials —

- (a) extend the time for complying with any of these regulations, any practice direction, or any order made by the Court (even if the time for complying has expired), or shorten it;
- (b) adjourn or bring forward a hearing to a specified date;
- (c) stay any case, either generally or until a specified date;
- (d) consolidate cases;
- (e) try 2 or more cases on the same occasion;
- (f) order any aspect of a case or a counterclaim in a case to be dealt with as a separate case;
- (g) order that particular issues be tried in a particular order;
- (h) order that an issue not be tried;
- (i) order that an issue be tried separately;
- (j) give judgment against a claim after a decision is made on a separate trial of a preliminary issue;
- (k) hold a hearing by audio link or video link (as those terms are defined in the *Evidence Act 1906* section 120);
- (l) allow a party to amend any document lodged by the party;
- (m) order a party to provide additional information to that in or attached to its claim, whether by disclosing or providing documents or by answering interrogatories;
- (n) order parties —
  - (i) to exchange the written statements of the evidence that is anticipated will be given by witnesses;
  - (ii) to confer, to attend before a clerk or other person or to take other measures, before trial, to try to settle the case or identify the issues that need to be tried;
  - (iii) [except in a CIPPLSL case,](#) to attend before the Court before trial to deal with case management, interlocutory and pre-trial issues;



- (iv) to do anything that in the Court's opinion will or may facilitate the case being conducted and concluded efficiently, economically and expeditiously;
  - (o) by order, limit —
    - (i) the time a party has at trial to examine, cross-examine or re-examine a witness, or to make oral submissions, or to present its case;
    - (ii) the number of witnesses (including expert witnesses) that may be called in relation to an issue;
    - (iii) the length of a trial;
  - (p) refuse to admit into evidence a document that a party has deliberately not disclosed or provided in accordance with these regulations;
  - (q) as to expert witnesses —
    - (i) order a party to disclose the nature and substance of the expert evidence to be given by any expert witness the party intends to call;
    - (ii) order an expert witness to disclose the advice given to, and the work done in relation to the case of, the party that intends to call him or her;
    - (iii) refuse to allow an expert witness to be called without the leave of a Court;
    - (iv) refuse to admit the evidence of an expert witness that has not been disclosed in accordance with these regulations or a Court order;
  - (r) take any other action or make any other order for the purpose of complying with regulation 5.
- (2) A power in this regulation to make an order includes a power to vary or cancel the order.

[\[Regulation 7 amended: Gazette 31 Jul 2012 p. 3684.\]](#)

**8. Default by party, Court's powers to deal with**

- (1) This regulation does not apply to a failure to comply with the judgment of a Court in a case or any order made in or as a consequence of the judgment.
- (2) If a party does not comply with ~~the Act~~, these regulations, or an order made by a Court, a Court may give default judgment against the party.

(3A) Without limiting regulation 6, the Court may exercise its powers under subregulation (2) on the application of a party or on its own initiative.

- (3) The Court may set aside a default judgment and may do so on any conditions it thinks fit.

[Regulation 8 amended: Gazette 31 Jul 2012 p. 3685.]

**9. Procedural orders may be made conditional**

- (1) When making an order under regulation 7 or 8 a Court may order that the order is to take effect unless the party complies with a particular regulation or order, within a particular time, as specified by the Court.
- (2) The Court may vary or cancel an order made under subregulation (1).

**10. Experts, use of**

- (1) The Court, with or without the consent of the parties, may refer a question arising in a case to a person who is an expert in the relevant field for investigation and a report.
- (2) The expert has and may exercise any powers of the Court that are delegated to experts by these regulations for the purposes of this regulation.
- (3) The Court may adopt all or some of the expert's report.

- (4) The *Magistrates Court Act 2004* section 37 applies to an expert in respect of his or her performance or purported performance of the functions of an expert under this regulation.

**11. Costs, Court's power to order**

In a case other than a case under the Act section 77, 83, 83A, 83B or 83E, a Court may order that costs be paid by a party if and only if, in the opinion of the Court, the case has been frivolously or vexatiously instituted or defended, as the case requires, by that party.

**12. Pre-judgment interest, Court's power to order**

- (1) Except as provided in this regulation, if a Court orders a party to pay a sum of money, the Court may order the party to pay interest on the sum —
- (a) at the yearly rate for judgment debts set out in the notice published under the *Supreme Court Act 1935* section 142 and applicable to the period from the date when the cause of case arose to the date when the judgment is made; and
  - (b) on the whole or any part of the money for the whole or any part of the period from the date when the cause of case arose to the date when the judgment is made.
- (2) When a Court orders a party to pay the total of the amounts that another party was entitled to be paid on different dates, the Court may order interest to be paid on the total and if it does so it is to calculate the interest as the Court thinks fit.
- (3) This regulation does not authorise the ordering of interest to be paid on costs or any penalty other than a deemed penalty under the Act section 83A.
- (4) Unless good cause is shown to the contrary, if a Court orders a party to pay a sum of money under the Act section 83A, the Court must order the party to pay interest on the sum, at such

rate as it thinks fit, from the date when the cause of case arose to the date when the judgment is made.

- (5) An order to pay interest under subregulation (4) may be expressed as an order to pay a lump sum.

### Part 3 — Making and responding to claims

#### 13. Making a claim (including a counterclaim or third party claim)

- (1) If a party wants to make a claim the party must lodge the approved form.
- (2) An originating claim must be served within 30 days, or, if in a particular case the clerk so approves, 60 days, after the claim has been lodged.

(3A) The originating claim in respect of a CIPPLSL case must not be served unless the clerk has recorded on the claim the date set for the initial hearing of the trial under regulation 35A.

- (3) A claim must be lodged and served together with an approved form that may be used for making a response under regulation 14.
- (4) A counterclaim or third party claim may be lodged and served at any time, unless the clerk at a pre-trial conference has specified a time within which a counterclaim or third party claim may be made, in which case the counterclaim or third party claim must be made within that time.

(5) Without limiting subregulation (4), if, at the initial hearing of a CIPPLSL case, the Court specifies a time within which a counterclaim or third party claim in the case may be made, the counterclaim or third party claim must be made within that time.

[Regulation 13 amended: Gazette 31 Jul 2012 p. 3685.]

#### 14. Response to a claim

- (1) ~~A~~Except in a CIPPLSL case, a party against which a claim is made must complete the response included with the claim served on the party, and lodge it —
  - (a) if the party's address for service is less than 1 000 km from the Perth Court, within 21 days after the service of the claim; and

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(b) if the party's address for service is more than 1 000 km from the Perth Court, within 28 days after the service of the claim.

(2) ~~The~~Except in a CIPPLSL case, the party must serve the response within 14 days after it has been lodged.

(3A) A party against which a claim in a CIPPLSL case is made must —

(a) complete the response included with the claim served on the party, and lodge it; and

(b) after lodging the response, serve it,

within 28 days after the service of the claim.

(3) If a party wants to admit the whole or part of a claim made against the party, the party must do so in the response.

(4) If the party admits the whole or part of the claim, a Court may give judgment against the party for the whole of the claim or that part, as the case may be, without the need for an appearance by the parties before the Court.

*[Regulation 14 amended: Gazette 31 Jul 2012 p. 3685.]*

**15. Party may discontinue claim**

If a party wants to discontinue the whole or part of a claim made by the party it must lodge and serve a notice of discontinuance in the approved form.

## Part 4 — Pre-trial conferences

### **16A. Application of Part**

This Part does not apply to CIPPLSL cases.

[Regulation 16A inserted: Gazette 31 Jul 2012 p. 3686.]

### **16. Listing a pre-trial conference**

Unless the whole of an originating claim is admitted, a clerk must list the case for a pre-trial conference as soon as practicable after a response has been lodged and notify the parties in writing.

### **17. Pre-trial conference, purpose of**

The purpose of a pre-trial conference is —

- (a) to give the parties an opportunity to settle the case;
- (b) to enable the clerk to make certain orders, including orders in complex or exceptional cases under regulation 19; and
- (c) if the case cannot be settled, to list the case for trial.

### **18. General duties and powers of the clerk at a pre-trial conference**

- (1) The clerk at a pre-trial conference must —
  - (a) explain to an unrepresented party the practice and procedure of the Court and direct the party to any information that may assist the party made available by the Commission or the department principally assisting the Minister in the administration of the Act;
  - (b) assist the parties in any attempt to settle the case; and
  - (c) specify a time (being the soonest practicable time) within which any counterclaim or third party claim may be made.

- (2) The clerk at a pre-trial conference may order the parties to lodge and serve on each other —
  - (a) outlines of the parties' respective cases in the approved form and, if the clerk thinks it necessary, further and better particulars of those outlines;
  - (b) copies of the statements of any witnesses who the parties intend to call at trial; or
  - (c) copies of any records that the parties intend to use in evidence at trial.

**19. Orders for proceedings in complex or exceptional cases**

- (1) The clerk at a pre-trial conference may —
  - (a) order that a party must provide additional information by disclosing documents relevant to the case;
  - (b) order that a party must permit the inspection of real or personal property;
  - (c) order that a party must provide additional information by answering interrogatories; or
  - (d) order a party to reply to a notice to admit facts.
- (2) The clerk may give an order under subregulation (1) if the clerk is satisfied that, given the complexity or the exceptional nature of the case, the order is necessary for the just hearing and determination of the case.

**20. Attendance at a pre-trial conference**

A party must attend a pre-trial conference in person.

**21. Failure to comply with an order**

- (1) If a party fails to comply with an order of the clerk under this Part the clerk may, of the clerk's own motion or on an application by a party, list the case before the Court.
- (2) When the clerk lists a case before the Court under subregulation (1) the clerk must notify the parties in writing.



- (3) For the purposes of the Court exercising its powers under regulation 8, the order of the clerk is to be taken to be an order of the Court.
- (4) This regulation does not apply to an order to reply to a notice to admit facts under regulation 19(1)(d).

**22. Listing the case for further pre-trial conference or trial**

After a pre-trial conference the clerk must either —

- (a) list the case for a further pre-trial conference; or
- (b) list the case for trial,

and notify the parties in writing.

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

- (1) A pre-trial conference must be conducted before the clerk, in private.
- (2) Anything said or done by a 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 the 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 clerk who conducted the pre-trial conference from later dealing with the case.

## **Part 5 — Proceedings in exceptional or complex cases**

### **Division 1 — Disclosure of documents**

#### **24. Disclosing documents**

- (1) Subject to any objection under regulation 25, when the clerk gives an order under regulation 19(1)(a), the party must lodge and serve a list of the documents within the period ordered by the clerk.
- (2) Subject to any objection under regulation 25, if the party subsequently —
  - (a) comes into possession; or
  - (b) becomes aware that it is in possession,of further documents required to be disclosed under the clerk's order, the party must, as soon as practicable after that, lodge and serve a list of those documents.
- (3) An order under regulation 19(1)(a) may require a party to provide the list of documents in an affidavit.
- (4) Unless the Court orders otherwise, a document in the possession, custody or power of the party must not be used by the party as evidence in the trial of the case if it is not disclosed —
  - (a) when the clerk gives an order under regulation 19(1)(a), in the list of documents referred to in this regulation; or
  - (b) otherwise before the listing of the case for trial.

#### **25. Objection to disclosure of documents**

A party may object to the disclosure of a document if it —

- (a) is privileged from production; or
- (b) is inadmissible in evidence,

under these regulations or any other law.

**26. Inspection of documents**

- (1) If a party wants to inspect documents disclosed by another party it must serve the other party with a written request to inspect.
- (2) A party receiving a request for inspection must make the documents available for inspection within 14 days after the service of the request.
- (3) If asked to do so by the party which requested inspection, a party making documents available for inspection must also —
  - (a) provide copies of the documents, at a reasonable cost, to the party which requested inspection; or
  - (b) if the clerk so orders or the parties agree, permit the documents to be copied at another place by the party which requested inspection.

**27. Production of documents at trial**

If a party discloses a document, the party must have the document available at the trial.

**Division 2 — Inspection of property**

**28. Inspection of property**

An order under regulation 19(1)(b) may require a party to make the property available for —

- (a) inspection, whether during a particular process or not;
- (b) the taking of measurements or samples;
- (c) the conducting of experiments; and
- (d) the filming, videotaping or taking of photographs.

**Division 3 — Answers to interrogatories**

**29. Request for answers to interrogatories**

- (1) When the clerk gives an order under regulation 19(1)(c) a party wanting to request answers to interrogatories may lodge and serve the request within the period ordered by the clerk.
- (2) The request for answers to interrogatories must be in the approved form.

**30. Party must answer interrogatories when ordered**

- (1) Subject to any objection under regulation 31, when the clerk gives an order under regulation 19(1)(c) and a request is lodged and served under regulation 29, the party receiving the request must lodge and serve the answers within the period ordered by the clerk.
- (2) The answers must be in the approved form.
- (3) An order under regulation 19(1)(c) may require a party to provide the answers in an affidavit.

**31. Objection to answering interrogatories**

A party may object to answering an interrogatory if the answer —

- (a) is irrelevant to the case;
- (b) is inadmissible in evidence under these regulations or any other law;
- (c) cannot practicably be disclosed;
- (d) is sought so as to harass or annoy, or to cause delay;
- (e) is frivolous, vexatious, scandalous or improper; or
- (f) is otherwise not genuinely required for the purposes of the case.

**Division 4 — Invitation to admit an alleged fact**

**32. Invitation to admit**

- (1) When the clerk gives an order under regulation 19(1)(d) a party wanting to invite another party to admit a particular alleged fact may lodge and serve the invitation within the period ordered by the clerk.
- (2) The invitation to admit must be in the approved form.

**33. Response to an invitation to admit**

- (1) When the clerk gives an order under regulation 19(1)(d) and an invitation to admit is lodged and served under regulation 32, the party receiving the invitation must lodge and serve a response to the invitation within the period ordered by the clerk.
- (2) The response must be in the approved form.
- (3) If a party fails to comply with subregulation (1), the fact is taken to be admitted unless the Court orders otherwise.

## **Part 6 — Trial**

### **Division 1 — General**

#### **34. Court where case is to be tried**

- (1) Except as provided in this regulation, a case must be tried at a Court chosen by the clerk when the case is listed for trial under regulation 22 [or 35A](#).
- (2) The clerk must choose a Court by determining in which Court the case can most conveniently and fairly be tried.
- (3) A Court may order that the trial of a case be transferred to another Court if —
  - (a) a party makes an application to transfer the case to the other Court and the Court is satisfied that the case could more conveniently or fairly be tried in the other Court; or
  - (b) the parties consent to the trial of the case being so transferred by lodging a memorandum of consent to that effect.
- (4) If the trial of a case is transferred to another Court the clerk of the Court from which the trial is being transferred must make arrangements for all the original documents relating to the case to be sent to the other Court as soon as practicable after the transfer.

*[Regulation 34 amended: Gazette 31 Jul 2012 p. 3686.]*

#### **35A. Initial hearing for CIPPLSL cases**

- (1) At the initial hearing of a trial of a CIPPLSL case the Court may do any or all of the following —
  - (a) give directions as to how the material necessary to determine the trial is to be presented;
  - (b) give directions setting the date, time and length of time for the hearing of the trial;

(c) set a final hearing date.

(2) At the initial hearing the Court may make any order that concludes the trial.

[Regulation 35A inserted: Gazette 31 Jul 2012 p. 3686.]

**35. Conduct of trial**

- (1) A trial must be conducted in public unless the Court is of the opinion that the interests of justice will be better served by conducting the trial in private.
- (2) A Court may hear a trial at any time or place the Court thinks fit.
- (3) A Court hearing a trial may adjourn the trial to a fixed date as the Court thinks fit.
- (4) Except as provided in these regulations, a Court hearing a trial is not bound by the rules of evidence and may inform itself on any matter and in any manner as it thinks fit.

**36. Attendance of parties at trial**

Unless the Court orders otherwise, a party must attend the trial in person.

**Division 2 — Witnesses**

**37. Issuing a witness summons**

- (1) If a party wants to require a person to give evidence or to produce evidentiary material at a trial the party must lodge and serve on the person a witness summons in the approved form at least 14 days before the first day of the trial.
- (2) The witness summons must be served personally.
- (3) At the time a witness is served with a witness summons, 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 must be tendered to the witness;
  - (b) arrangements to enable the witness to attend the court must be made with the witness; or
  - (c) the means to enable the witness to attend the court must be provided to the witness.
- (4) A party which issues a witness summons must ensure that subsection (3) is complied with.
- (5) The person who serves a witness with a witness summons must record how subsection (3) was complied with on a copy of the witness summons.
- (6) If a copy of a witness summons contains information recorded in accordance with subsection (5) it is to be presumed that the information is true, unless the contrary is proved.

**38. Witness summons may be set aside**

- (1) A person summoned to give evidence or to produce evidentiary material at a trial may make an application to set aside the summons, and in that case Part 10 applies as if the person were a party to the case in question.
- (2) The Court may set aside the witness summons if it is satisfied that —
- (a) the person does not have either evidence to give or evidentiary material to produce that is relevant to the case;
  - (b) the person cannot be lawfully compelled to give any evidence or produce any evidentiary material to the Court; or
  - (c) there are other good reasons for doing so.



**39.        Producing evidentiary material before trial**

Where a witness summons requires a person to produce evidentiary material but does not require the person to give evidence, the person may, instead of producing the material at the trial, deliver the material, and a written list describing the material, to the Court at least 2 clear working days before the first day of the trial.

## **Part 7 — Orders and judgments**

### **40. Consent to orders or judgment**

- (1) The parties may settle a case or consent to any other order by lodging a memorandum to that effect in the approved form, signed by each party.
- (2) The Court may give judgment or make an order in accordance with the memorandum of consent without the need for an appearance by the parties before the Court.
- (3) Where the Act or these regulations require the consent of one party before something can be done, that consent may be given by the party lodging a notice of consent to that effect in the approved form and signed by the party.

### **41. Setting aside default judgment**

- (1) When a Court gives a default judgment, the party may, within 14 days after the judgment was given, make an application for the judgment to be set aside.
- (2) When a Court sets aside the order [in relation to a case other than a CIPPLSL case](#) it must list the case for a pre-trial conference and notify the parties in writing.

(3) [When a Court sets aside the order in relation to a CIPPLSL case it must list the case for hearing and notify the parties in writing.](#)

*[Regulation 41 amended: Gazette 31 Jul 2012 p. 3686.]*

### **42. Judgments suspended**

A judgment is suspended —

- (a) until 21 days after the making of the judgment; or
- (b) if an appeal is lodged with the Full Bench and the Full Bench has not ordered otherwise, until that appeal is heard and determined.

## **Part 8 — Lodging documents**

### **43. “Lodge”, meaning of**

In order to lodge a document a person must lodge it in accordance with this Part at the Court registry referred to in regulation 44 together with any fee specified in Schedule 1 Division 1.

### **44. Court at which documents must be lodged**

- (1) Before a case is listed for trial, a document must be lodged at the registry of the Perth Court.
- (2) After a case is listed for trial, a document must be lodged at the registry of the Court at which the case is to be tried under regulation 34.

### **45. Documents may be lodged by hand delivery or pre-paid post**

- (1) A party may lodge a document by delivering the document to the relevant Court’s registry by hand delivery or by pre-paid post.
- (2) A party lodging a document under this regulation must, at the same time also lodge —
  - (a) a copy to be returned to the party; and
  - (b) if these regulations require the document to be served, a copy for each other party to be served.

### **46. Certain documents may be lodged electronically**

- (1) This regulation does not apply to lodging a document by fax.
- (2) The Registrar must publish a website for the Court.
- (3) Subject to the requirements of the Court’s website and this regulation, a party may lodge a document electronically by lodging an electronic version of it by means of the Court’s website.

- (4) If these regulations require a document to be signed by a person who is not, or who is not acting on behalf of, the party lodging it, the document cannot be lodged electronically unless it is an affidavit.
- (5) If these regulations require a document, before it is lodged, to be signed by or on behalf of the party lodging it and the document is being lodged electronically —
  - (a) the document need not be signed; and
  - (b) the party lodging the document electronically must ensure that the electronic version of the document, instead of showing a signature at any place where a signature is required, states the name of the person whose signature is required at the place.
- (6) A party which lodges an affidavit electronically must —
  - (a) ensure that the electronic version of it, instead of showing a signature at any place where a signature appears in the paper version, states the name of the person whose signature it is; and
  - (b) also lodge an undertaking that the party —
    - (i) has possession of the paper version signed according to law; and
    - (ii) will retain the paper version subject to any order of the Court.
- (7) A document lodged electronically with a Court is to be taken to have been lodged —
  - (a) if the whole document is received before 4.00 p.m. on a day when the Court's registry is open for business, on that day;
  - (b) otherwise, on the next day when the Court's registry is open for business.
- (8) A document that is sent electronically to a Court but not in accordance with the requirements of the Court's website and

this regulation is to be taken not to have been lodged with the Court.

**47. Certain documents may be lodged by fax**

- (1) Subject to this regulation, a document may be lodged by fax if it is a document that may be lodged without the payment of a fee specified in Schedule 1.
- (2) A Court must publish a fax number for its registry.
- (3) A party wanting to lodge a document by fax must use the published fax number for the relevant Court's registry.
- (4) A document that, with any attachments and a cover sheet, is more than 20 pages long, must not be lodged by fax and any such document received by a Court is to be taken not to have been lodged.
- (5) A document that is sent by fax to a Court must have a cover sheet stating —
  - (a) the sender's name, postal address, document exchange number (if any), telephone number and fax number;
  - (b) the number of pages (including the cover sheet) being sent by fax; and
  - (c) what the Court is to do with the document.
- (6) A party which lodges a document by fax must —
  - (a) endorse the first page of the original document with —
    - (i) a statement that the document is the original of a document sent by fax; and
    - (ii) the date and time the document was sent by fax;
  - (b) keep the endorsed original document and the fax machine's report evidencing the successful transmission of the document; and
  - (c) if directed to do so by the Court, produce the items in paragraph (b) to the Court.

- (7) A document lodged by fax with the Court is to be taken to have been lodged —
- (a) if the whole document is received before 4.00 p.m. on a day when the Court's registry is open for business, on that day;
  - (b) otherwise, on the next day when the Court's registry is open for business.
- (8) A document that is sent by fax to the Court is to be taken not to have been lodged with the Court if —
- (a) it is not sent in accordance with the requirements of this regulation; or
  - (b) if the document is completely or partly illegible or if any of the details on the cover sheet required under subregulation (5) are illegible.

**48. Court's seal applied electronically, effect of**

If the Court issues a document in an electronic form that bears a facsimile of the Court's seal, the sealed document as it appears electronically, or as it appears when printed on paper, is to be taken to have the same effect as if the Court's seal had been lawfully applied to it by hand by an officer of the Court, unless there is evidence that the document was not issued by the Court.

**49. Clerk's refusal to accept documents**

- (1) If a clerk refuses to accept a document delivered or sent to the Court then the document is to be taken not to have been lodged.
- (2) If a clerk refuses to accept a document that was sent to the Court electronically or by fax, the Court must give to the party notice of the refusal.
- (3) In an application under the *Magistrates Court Act 2004* section 17(3) for leave to lodge an originating claim, the party wanting to lodge the claim is to be taken to be a party to a case for the purposes of making the application.

## **Part 9 — Serving documents**

### **Division 1 — General**

**50. “Serve”, meaning of**

If these regulations require a party to serve a document —

- (a) the party must serve a copy of the document returned after lodgment bearing the seal of the Court; and
- (b) unless the regulations provide otherwise, the party must serve it on each other party.

**51. Personal service**

Where these regulations require a person or body to be served personally, the person or body must be served —

- (a) in the case of a natural person, in accordance with regulation 53(2);
- (b) in the case of a public authority that is not a corporation, by delivering the document in accordance with regulation 54(2);
- (c) in the case of a corporation, in accordance with regulation 55(2).

**52. Address for service and representative’s details**

- (1) A document lodged in relation to a case is to contain an address for service.
- (2) A document lodged in relation to a case by a representative of a party is to contain the name, address and telephone number of the representative.
- (3) If the address for service or any of the representative’s details change after the lodgment of documents in relation to the case, the party must lodge and serve a notice of change of address or details as soon as practicable after the change.

- (4) The notice of change of address or details must be in the approved form.

**53. Service of a document on a natural person**

- (1) Except as provided in regulation 54, if a party wants to serve a document on a natural person the party must do so in accordance with this regulation.

- (2) A document may be served by delivering it to the person personally.

- (3) Any document except a witness summons may be served —

(a) if an address for service has been provided under regulation 52(1), by delivering it, or sending it by pre-paid post, to that address; or

(b) if no address for service has been provided under regulation 52(1) —

(i) by leaving it at the person's usual or last known place of residence with a person who, on reasonable grounds, is believed to be over the age of 16 years; or

(ii) if the person is the principal of a business, by leaving it at the person's usual or last known place of business with a person who, on reasonable grounds, is believed to be in charge of the business;

or

(c) in a CIPPLSL case, by delivering it, or sending it by pre-paid post, to the person's address last known to the Board.

- (4) A document may be served on the person by email or fax under Division 2.

*[Regulation 53 amended: Gazette 31 Jul 2012 p. 3687.]*



**54. Service of a document on a public authority that is not a corporation**

- (1) If a party wants to serve a document on a public authority that is not a corporation the party must do so in accordance with this regulation.
- (2) A document may be served —
  - (a) if an address for service has been provided under regulation 52(1), by delivering it, or sending it by pre-paid post, to that address; or
  - (b) if no address for service has been provided under regulation 52(1), by delivering it, or sending it by pre-paid post to the office of the public authority; or
  - (c) in a CIPPLSL case, if no address for service has been provided under regulation 52(1), by delivering it, or sending it by pre-paid post, to the public authority's address last known to the Board.
- (3) A document may be served by email or fax under Division 2.  
[Regulation 54 amended: Gazette 31 Jul 2012 p. 3687.]

**55. Service of a document on a corporation**

- (1) Except as provided in the Act section 60, if a party wants to serve a document on a corporation the party must do so in accordance with this regulation.
- (2) A document may be served by delivering it to a person who, on reasonable grounds, is believed to be a director, manager or secretary of the corporation.
- (3) A document may be served —
  - (a) if an address for service has been provided under regulation 52(1), by delivering it, or sending it by pre-paid post, to that address; or
  - (b) if an address has not been provided under regulation 52(1), to the party's usual or last known place

of residence or principal or last known place of business, as the case may be; —

- (i) no address for service has been provided under regulation 52(1); and
- (ii) on a reasonable inquiry, a director, manager or secretary cannot be found,

by leaving it at the body's principal place of business or registered office in the State with a person who, on reasonable grounds, is believed to be over the age of 16 years and employed by the corporation; ~~or~~

(c) in accordance with the *Corporations Act 2001* (Commonwealth) section 109X if the corporation is a company within the meaning of that Act.

- (4) A document may be served by email or fax under Division 2.

[Regulation 55 amended: Gazette 31 Jul 2012 p. 3687.]

**56. Affidavit of service**

- (1) If a document is served by a party, or on behalf of a party by a person, the party must lodge an affidavit of service completed by the person who served the document.
- (2) The affidavit of service must state when, where, how and by whom service was effected.

**Division 2 — Service by email or fax**

**57. Email and fax address for service**

- (1) For the purposes of enabling the service of documents by email, a party may, in addition to providing an address for service in accordance with regulation 52, provide an email address operating at that address.
- (2) For the purposes of enabling the service of documents by fax, a party may, in addition to providing an address for service in

accordance with regulation 52, provide a fax number operating at that address.

- (3) If a representative of a party practises in a business with one or more other representatives or people —
  - (a) any email address provided by the representative under subregulation (1) must be the email address of the business and not that of the representative personally; and
  - (b) any fax number provided by the representative of the party under subregulation (2) must be the fax number of the business and not that of the representative personally.
- (4) A party which under this regulation provides an email address or a fax number is to be taken to have consented to being served with documents by email at that email address or by fax at that fax number.
- (5) If a party's email or fax address for service changes after the email or fax lodgment of documents in relation to a case, the party must by email or fax respectively lodge and serve a notice of change of address as soon as practicable after the address changes.
- (6) The notice of change of email or fax address must be in the approved form.

**58. Service of documents by email**

- (1) Except as provided in subregulation (2) if a party has provided an email address under regulation 57(1), the party may be served by sending the document by email to that address.
- (2) If these regulations require a document to be signed by a person who is not, or who is not acting on behalf of, the party lodging it, the document cannot be served by email unless it is an affidavit.

- (3) Regulation 46(5) and (6), with any necessary changes, apply to a document being served by email in the same way as they apply to a document being lodged electronically.

**59. Service of documents by fax**

- (1) If a party has provided a fax number under regulation 57(2), the party may be served by sending the document by fax to that number.
- (2) Regulation 47(5)(a) and (b) and (6), with any necessary changes, apply to a document being served by fax in the same way as they apply to a document being lodged by fax.

**60. Time of service by email or fax**

A document that is served by email or fax on a party is to be taken to have been served —

- (a) if the whole document is sent before 5.00 p.m. on a working day, on that day;
- (b) otherwise, on the next working day.

## **Part 10 — Applications**

### **61. Making an application**

- (1) If a party wants 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 default judgment,the party must lodge the approved form unless the Court gives leave under subregulation (3).
- (2) The application must be lodged together with a supporting affidavit.
- (3) A party may, with the leave of the Court, make an application orally at any hearing.

### **62. Application must be served**

- (1) Except as provided in subregulation (2), a party making a written application must serve a copy of the application and any supporting affidavit on every other party after it has been lodged and at least 2 clear working days before the hearing of the application.
- (2) Subregulation (1) does not apply if these regulations state that the application may be dealt with in the absence of the respondent to the application.

## **Part 11 — Persons under a legal disability**

### **63. Person under a legal disability, claims by or against**

Except as provided in this Part, a person under a legal disability may conduct a case in the person's own right.

### **64. Represented persons under the *Guardianship and Administration Act 1990***

- (1) If the person under a legal disability is a represented person as defined by the *Guardianship and Administration Act 1990* section 3(1) and the relevant guardianship or administration order —

- (a) is plenary; or
- (b) otherwise confers on the guardian or administrator the function of conducting or settling legal proceedings on behalf of the person,

then the guardian or administrator must conduct the case on behalf of the person.

- (2) If a party to a case is not a represented person under the *Guardianship and Administration Act 1990* but a Court suspects on reasonable grounds that the party may be in need of a guardian or administrator under that Act, the Court may —

- (a) request the Public Advocate to investigate whether the party is in such need; and
- (b) adjourn the case until the Court is advised by the Public Advocate of the result of the investigation.

### **65. Court may appoint litigation guardian**

- (1) Except as provided in regulation 64 and subregulation (2), if a Court is of the opinion that a person under a legal disability is not competent to conduct a case in the person's own right, the Court must appoint a litigation guardian to conduct the case on the party's behalf.

- (2) The Court must not make the appointment unless the proposed litigation guardian —
  - (a) has been informed of his or her liability under subregulation (1); and
  - (b) has agreed to act in that capacity.
- (3) The litigation guardian is liable to pay any costs ordered by the Court to be paid by the person under a legal disability.

**66. Clerk's powers**

A clerk may exercise the powers of a Court under regulations 64(2) and 65.

**67. Settlements of claims by or against persons under a legal disability**

- (1) The settlement of a case in which there is a claim by or against a person under a legal disability is not valid unless a Court approves it.
- (2) The Court may approve such a settlement and may do so on any reasonable and necessary terms.

## **Part 12 — Miscellaneous**

**68. Form of an affidavit**

An affidavit must be in the approved form.

**69. Availability of forms**

The Court must make approved forms available —

- (a) at each Court's registry;
- (b) on request, by post; and
- (c) electronically, on the website referred to in regulation 46(2).

**70. Fees for obtaining documents**

A person who wants to obtain a document from the Court must pay the fee set out opposite the document in Schedule 1 Division 2.

**71. Requirements on parties may be carried out by certain persons**

- (1) In this regulation —  
*party* includes a litigation guardian conducting a case on behalf of a party who is a person under a legal disability.
- (2) When under these regulations a party is required or enabled to sign a document, attend a conference or hearing, or do something else personally and —
  - (a) the party is a corporation — then an officer of the corporation who is authorised by the corporation to do the thing may do it;
  - (b) the party is a public authority that is not a corporation — then an officer of the public authority who is authorised by the public authority to do the thing may do it.



**72. Practice directions**

The Chief Magistrate from time to time may issue, amend or cancel directions (to be called practice directions) about the practice or procedure to be followed in the Court and its registries.

**73. Review of a decision of the clerk**

- (1) If a party objects to a decision of the clerk under these regulations, the party may, within 5 working days after the decision, make an application for a review of the decision.
- (2) The Court may hear an application under subregulation (1) in the absence of another party.
- (3) A Court hearing an application under subregulation (1) may affirm, vary or set aside the decision as the Court considers necessary for the just and expeditious hearing and determination of the case.

**74. Repeal and savings**

- (1) The *Industrial Magistrates' Courts (General Jurisdiction) Regulations 2000* are repealed.
- (2) Subject to subregulation (3), an action under the repealed regulations subsisting immediately before the commencement day may be continued as if the repealed regulations had not been repealed.
- (3) A final order under the repealed regulations is enforceable as if it were a judgment under these regulations, whether the order was made before or after the commencement day.
- (4) In this regulation —  
*commencement day* means the day on which these regulations come into operation;  
*repealed regulations* means the regulations repealed by subregulation (1).

**Schedule 1 — Fees**

[r. 43 and 70]

**Division 1 — Lodgment fees**

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<b>Document</b>	<b>Fee</b>
Claim	\$40.00
Application	\$10.00
Witness summons	\$6.00
Any other document	\$5.00

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**Division 2 — Fees for obtaining documents**

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<b>Document</b>	<b>Fee</b>
Photocopy of a document	\$1.00 per page
Transcript of a hearing	\$4.00 for the first page and \$1.00 per subsequent page, subject to a minimum of \$13.00 per transcript

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### Notes

- <sup>1</sup> This is a compilation of the *Industrial Magistrates Courts (General Jurisdiction) Regulations 2005*. ~~The~~ and includes the amendments made by the other written laws referred to in the following table ~~contains information about that regulation.~~

### Compilation table

Citation	Gazettal	Commencement
<i>Industrial Magistrates Courts (General Jurisdiction) Regulations 2005</i>	15 Apr 2005 p. 1231-74	1 May 2005 (see r. 2 and Gazette 31 Dec 2004 p. 7128)
<a href="#"><u><i>Industrial Magistrates Courts (General Jurisdiction) Amendment Regulations 2012</i></u></a>	<a href="#"><u>31 Jul 2012</u></a> <a href="#"><u>p. 3683-7</u></a>	<a href="#"><u>r. 1 and 2: 31 Jul 2012</u></a> <a href="#"><u>(see r. 2(a));</u></a> <a href="#"><u>Regulations other than r. 1 and 2:</u></a> <a href="#"><u>1 Aug 2012 (see r. 2(b))</u></a>