



Western Australia

# **Magistrates Court (Civil Proceedings) Rules 2005**

Compare between:

[08 Jan 2015, 02-g0-00] and [24 Jan 2015, 02-h0-01]



## **Magistrates Court (Civil Proceedings) Rules 2005**

### **Part 1 — Preliminary**

**1. Citation**

These rules are the *Magistrates Court (Civil Proceedings) Rules 2005*<sup>1</sup>.

**2. Commencement**

These rules come into operation on the day on which the *Magistrates Court (Civil Proceedings) Act 2004* comes into operation<sup>1</sup>.

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

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

**4. Terms used**

In these rules, unless the contrary intention appears —  
*Act* means the *Magistrates Court (Civil Proceedings) Act 2004*;  
*application* means an application made under Part 18;  
*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 given under the Act section 19(2)(b), 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;

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

**listing conference** means a conference held under Part 10;

**lodge** has the meaning affected by rule 95;

**order** includes a direction;

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

**partnership** means —

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

**pre-trial conference** means a conference held under Part 9;

**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 100;

**serve personally**, in relation to a document, means to serve the document in accordance with Part 17 Division 2;

**successful party**, in relation to a costs order, means the party in whose favour the order is made;

**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;

**trial date** means the first day of the trial;

**unsuccessful party**, in relation to a costs order, means a party against which the order is made;

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

*[Rule 4 amended in Gazette 24 Aug 2007 p. 4328; 3 Jun 2008 p. 2123.]*

## **5. Application of these rules**

- (1) Unless the Court in a particular case orders otherwise, these rules apply in every case except a minor case.
- (2) Unless the contrary intention appears, these rules do not apply to or in relation to an application made to the Court under the *Residential Tenancies Act 1987*.

*[Rule 5 amended in Gazette 2 Jul 2010 p. 3191.]*

## **Part 2 — Claims generally**

### **6. Application of this Part**

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

*[Rule 6 inserted in Gazette 3 Jun 2008 p. 2124.]*

### **7. Originating claim, making and serving**

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

*[Rule 7 inserted in Gazette 3 Jun 2008 p. 2124.]*

### **8. Counterclaim or third party claim, making and serving**

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

- (4) Unless these rules or an Act provides otherwise, a third party claim must be served personally.
- (5) Unless the contrary intention appears, the provisions in these rules that apply to claims apply also to counterclaims and third party claims.

*[Rule 8 inserted in Gazette 3 Jun 2008 p. 2124; amended in Gazette 2 Jul 2010 p. 3192.]*

**9. Response to claim**

- (1) A party against which a claim is made must complete the response served with the claim and lodge it with the Court within 14 days after the claim is served.
- (1A) A response may, but need not, be lodged together with a statement of defence in accordance with rule 41B.
- (2) The Court must give a copy of the response to every other party.

*[Rule 9 amended in Gazette 3 Jun 2008 p. 2124.]*

*[10-12. Deleted in Gazette 3 Jun 2008 p. 2125.]*

## **Part 3 — Claims to recover possession of real property**

### **13. Claim to recover possession of real property, making**

- (1) If a party wants to make a claim to recover possession of real property the party must lodge the approved form.
- (2) If the party making the claim does not know the name of the person or persons in possession of the real property, the claim may be made against “the person or persons in possession of [description of the property]”.

### **14. Notice demanding possession, lodging**

The claim must be lodged together with any written notice demanding possession of the property.

### **15. Serving the claim**

- (1) The claim must be served as soon as practicable, and in any event within one year, after the day on which it is lodged.
- (2) The claim must be served personally or in accordance with subrule (3).
- (3) If the party making the claim does not know who is in possession of the real property, the party may serve the claim —
  - (a) by leaving the claim in a conspicuous position on the real property; or
  - (b) by serving the claim personally on a person allegedly in possession.

### **16. Registrar to list case for listing conference**

As soon as practicable after the claim is lodged, a registrar must list the case for a listing conference and endorse the date of that conference on the claim that is to be served.

*[Part 4 (r. 17-19) deleted in Gazette 3 Jun 2008 p. 2125.]*



## **Part 5 — Failure to defend a claim**

### **20. Application of this Part**

This Part applies if an application for default judgment is made against a defendant because the defendant has not —

- (a) lodged a response in accordance with rule 9(1); or
- (b) lodged and served a statement of defence in accordance with rule 41B.

*[Rule 20 amended in Gazette 3 Jun 2008 p. 2125.]*

### **21. Default judgment for specified amount, when allowed**

Except as provided in rule 24, a registrar may, in the absence of the parties, give default judgment against the defendant for a specified amount if —

- (a) the claim, or the relevant part of the claim, is for a liquidated amount; or
- (b) the claim, or the relevant part of the claim, is for an unliquidated amount of \$5 000 or less; or
- (c) the claim, or the relevant part of the claim, is for an unliquidated amount of more than \$5 000 but not more than the minor cases jurisdictional limit, if the registrar is able to assess the amount from any supporting material lodged in relation to the claim.

*[Rule 21 amended in Gazette 3 Jun 2008 p. 2125; 24 May 2013 p. 2060.]*

### **22. Default judgment for unspecified amount, when allowed**

- (1) Except as provided in rule 24, a registrar may, in the absence of the parties, give default judgment against the defendant for an unspecified amount if the claim is for an unliquidated amount to which rule 21 does not apply.

- (2) When the registrar gives default judgment for an unspecified amount, the registrar must —
  - (a) list the application for a hearing at which the amount is to be assessed by the Court; and
  - (b) notify the parties in writing at least 28 days before the hearing.
- (3) An application for default judgment under this rule does not require a supporting affidavit unless a hearing is listed under subrule (2) or rule 25, and in that case a supporting affidavit must be lodged and served at least 14 days before the hearing.

*[Rule 22 amended in Gazette 3 Jun 2008 p. 2125.]*

**23. Claim to recover possession of personal property, default judgment for**

Except as provided in rule 24, a registrar may, in the absence of the parties, give default judgment for a claim to recover possession of personal property.

*[Rule 23 amended in Gazette 3 Jun 2008 p. 2125.]*

**24. Default judgment not to be given in certain cases**

- (1) A registrar must not give default judgment under this Part against a party for a failure to lodge and serve a statement of defence if —
  - (a) the party has lodged an application under the Act section 17 to strike out the relevant statement of claim; and
  - (b) the application —
    - (i) has not been dealt with; or
    - (ii) has been granted; or
    - (iii) has been dismissed, and the party has lodged a statement of defence within 14 days after the dismissal.

- (2) A registrar must not, without the approval of a Magistrate, give default judgment under this Part if one year or more has passed since the originating claim was served.

*[Rule 24 inserted in Gazette 3 Jun 2008 p. 2125-6; amended in Gazette 24 May 2013 p. 2061.]*

**25A. Default judgment one year or more after originating claim, referral to Magistrate**

- (1) If one year or more has passed since the originating claim was served, a registrar may, if an application for default judgment has been made, refer the matter to a Magistrate.
- (2) A matter referred to a Magistrate must be accompanied by an affidavit from the applicant for default judgment setting out the reasons for the delay in the claim being finalised.
- (3) On referral of a matter under this rule a Magistrate may give approval for the registrar to give default judgment under this Part.

*[Rule 25A inserted in Gazette 24 May 2013 p. 2061.]*

**25. Application for default judgment not granted, registrar to list etc.**

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

*[Rule 25 inserted in Gazette 3 Jun 2008 p. 2126.]*

**26. Costs when registrar gives default judgment**

When the registrar gives default judgment under this Part the registrar may also make an order for costs.

## **Part 6 — Admission and discontinuance**

### **27. Admitting alleged facts, manner of**

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

*[Rule 27 inserted in Gazette 3 Jun 2008 p. 2126.]*

### **28. Invitation to admit alleged fact**

- (1) If a party wants to invite another party to admit a particular alleged fact the party must lodge and serve an invitation to admit in the approved form at least 5 working days before the trial date.
- (2) If —
  - (a) a party does not admit a fact when invited to do so; and
  - (b) the Court subsequently finds the fact to be proven; and
  - (c) the Court awards the costs of proving that fact against the party,

the costs of proving the fact are to be assessed on a party and party basis.

### **29A. Party admitting whole claim, judgment in case of**

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

*[Rule 29A inserted in Gazette 3 Jun 2008 p. 2126.]*

**29B. Party admitting part of claim may offer to settle claim etc.**

- (1) If in a response a party admits liability for part of a claim made against the party and indicates an intention to defend the balance of the claim, the party may offer an amount as full satisfaction for the claim in the response.
- (2) A party may accept an offer under subrule (1) by lodging and serving a notice of acceptance in an approved form within 14 days after receiving the response.
- (3) If a party makes an offer under subrule (1) and the offer is accepted under subrule (2), the registrar may give judgment against the party in accordance with the party's admission and offer.
- (4) When the registrar gives judgment under this rule the registrar may also make an order for costs.

*[Rule 29B inserted in Gazette 3 Jun 2008 p. 2126-7.]*

**29C. Party admitting whole claim may dispute amount claimed**

- (1) If in a response a party admits liability for the whole of the claim for an unliquidated amount but does not agree to the relevant amount sought, the party may, in the response, apply to the Court to determine the amount that should be awarded for the claim.
- (2) If a party applies to the Court to determine the amount that should be awarded for the claim under subrule (1), the registrar must list the case for a pre-trial conference and notify the parties in writing.
- (3) At the pre-trial conference a registrar may —
  - (a) make any orders necessary to facilitate settlement or ensure the case is ready to be listed for a determination of the amount that should be awarded for the claim; or

- (b) list the matter for a determination of the amount that should be awarded for the claim.

*[Rule 29C inserted in Gazette 3 Jun 2008 p. 2127; amended in Gazette 24 May 2013 p. 2061.]*

**29. 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 7 — Disclosure of documents**

### **30A. Informal disclosure**

- (1) Subject to any order made by a registrar or the Court, each party to the action may disclose documents relating to any matter in question in the action to the other parties.
- (2) Disclosure may —
  - (a) with the consent of each other party to the action, be by way of an informal list of the documents; or
  - (b) be by way of affidavit containing a list of the documents served on the other parties.

*[Rule 30A inserted in Gazette 24 May 2013 p. 2061-2.]*

### **30. Party must disclose documents when ordered**

- (1) Subject to any objection under rule 32, when a registrar or the Court makes an order under the Act section 16(1)(n) that a party must provide additional information by disclosing documents relevant to the case, the party must lodge and serve an affidavit containing a list of the documents within the period ordered by the registrar or the Court.
- (2) Subject to any objection under rule 32, 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 an order of a registrar or the Court, the party must, as soon as practicable after that, lodge and serve a affidavit containing a list of those documents.

*[Rule 30 amended in Gazette 3 Jun 2008 p. 2127.]*

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**31. Affidavit of disclosure**

- (1) An affidavit lodged under rule 30 must state that, to the best of the deponent's knowledge and belief, every document required to be disclosed under an order of a registrar or the Court, has either been disclosed or is the subject of an objection under rule 32.
- (2) If a party objects to the disclosure of a document, the party must raise the objection, and state the grounds for the objection, in the affidavit.
- (3) The affidavit may be made by the party or the party's lawyer.
- (4) If the affidavit is made by the party's lawyer, then it must also state that the lawyer has fully explained the obligations of disclosure under these rules to the party.

*[Rule 31 amended in Gazette 3 Jun 2008 p. 2127.]*

**32. Objecting 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 rules or any other law.

**33. Inspecting disclosed 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) permit the documents to be copied at another place by the party which requested inspection.

**34. Disclosed documents to be available at trial**

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

## **Part 8 — Answers to interrogatories**

### **35.      Order to answer interrogatories, application for (Act s. 16(1)(n))**

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

*[Rule 35 inserted in Gazette 3 Jun 2008 p. 2128.]*

### **36.      Party must answer interrogatories when ordered**

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

*[Rule 36 inserted in Gazette 3 Jun 2008 p. 2128.]*

### **37.      Affidavit of answers**

- (1) An affidavit lodged under rule 36 must state that the answers are provided to the best of the deponent's knowledge and belief.
- (2) If a party objects to answering an interrogatory, the party must raise the objection, and state the grounds for the objection, in the affidavit.

- (3) The affidavit must be made by the party personally.

[38. Deleted in Gazette 3 Jun 2008 p. 2128.]

## **Part 9 — Pre-trial conferences**

### **39. Pre-trial conference, listing of**

- (1) A claimant must request a registrar to list the case for a pre-trial conference within 14 days after the claimant receives from the Court a copy of a response that indicates an intention to defend the claim.
- (2) When a registrar receives the request the registrar must list the case for a pre-trial conference and notify the parties in writing.  
*[Rule 39 inserted in Gazette 3 Jun 2008 p. 2128.]*

### **40. Pre-trial conference, purpose of and registrar's powers at**

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

- (f) make any other orders necessary to facilitate settlement or ensure the case is ready for trial.

*[Rule 40 amended in Gazette 3 Jun 2008 p. 2129.]*

**41A. Statement of claim, effect of order to lodge**

- (1) If the registrar at the pre-trial conference orders a party to lodge and serve a statement of claim, the party must do so in accordance with this rule.
- (2) Unless the party has lodged and served its statement of claim with its claim it must lodge and serve the statement of claim —
  - (a) if the claim is an originating claim, within 14 days after the pre-trial conference; and
  - (b) if the claim is a counterclaim or third party claim, within 14 days after the party has received a response that indicates an intention to defend the claim.
- (3) A statement of claim must be in the approved form.
- (4) The statement of claim must contain —
  - (a) a summary of the facts relevant to the claim; and
  - (b) the legal basis of the claim; and
  - (c) the basic contentions of the party; and
  - (d) the remedy or relief claimed; and
  - (e) if the amount of the claim has been reduced in order to bring the claim within the jurisdictional limit, a statement to that effect.

*[(5)-(7) deleted]*

*[Rule 41A inserted in Gazette 3 Jun 2008 p. 2129-30; amended in Gazette 24 May 2013 p. 2062.]*

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**41B. Statement of defence, effect of order to lodge**

- (1) If the registrar at the pre-trial conference orders a party to lodge and serve a statement of defence, the party must do so in accordance with this rule.
- (2) Unless the party has lodged and served its statement of defence with its response the party must lodge and serve its statement of defence within 14 days after the party has been served with the relevant statement of claim.
- (3) A statement of defence must be in the approved form.
- (4) The statement of defence must contain —
  - (a) a summary of the facts relevant to the defence; and
  - (b) the legal basis of the defence; and
  - (c) the basic contentions of the party; and
  - (d) the details of anyone who the party alleges is liable for the claim and the grounds upon which the party so alleges.

*[(5)-(7) deleted]*

*[Rule 41B inserted in Gazette 3 Jun 2008 p. 2130-1; amended in Gazette 2 Jul 2010 p. 3192; 24 May 2013 p. 2062.]*

**41C. Counterclaim, objecting to (Act s. 9(4))**

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

*[Rule 41C inserted in Gazette 3 Jun 2008 p. 2131.]*

**41D. Case statement, amending**

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

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

*[Rule 41D inserted in Gazette 3 Jun 2008 p. 2131-2.]*

**41. Attendance at pre-trial conferences**

- (1) Unless a registrar or the Court orders otherwise, a party must attend a pre-trial conference.

*[(2)-(3) deleted]*

- (4) If a party fails to attend a pre-trial conference, the registrar at the pre-trial conference may give default judgment against the party, and in that case Part 5, except rule 24, with any necessary modifications, applies in relation to the default judgment.

*[Rule 41 amended in Gazette 3 Jun 2008 p. 2132.]*

**42. Further pre-trial conference or listing conference may be listed**

After a pre-trial conference the registrar must either —

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

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- (b) in accordance with rule 43A(4), list the case for a listing conference,

and notify the parties in writing.

*[Rule 42 amended in Gazette 3 Jun 2008 p. 2132.]*

**43A. Listing conference memoranda, orders to lodge etc.**

- (1) This rule does not apply in the case of a claim to recover possession of real property.
- (2) If the registrar at a pre-trial conference is of the opinion that it is unlikely that the case will be settled, the registrar must order each party to lodge a listing conference memorandum in accordance with subrule (3) by the day specified in the order.
- (3) The listing conference memorandum must be in the approved form and must —
  - (a) include a concise statement of the issues of fact and law that the party contends will need to be determined at the trial; and
  - (b) state how each allegation of fact will be proved; and
  - (c) state the name, address, occupation and qualification of each witness the party will call to give oral evidence at the trial; and
  - (d) unless the registrar or the Court orders otherwise, annex a statement in the approved form of the intended evidence of each witness who is not an expert witness.
- (4) When all the parties have complied with the order the registrar must —
  - (a) give a copy of each party's listing conference memorandum to the other parties; and
  - (b) list the case for a listing conference.
- (5) If a party does not comply with the order, the registrar may, after giving 10 days notice to the party, give default judgment against the party, and in that case Part 5, except rule 24, with



any necessary modifications, applies in relation to the default judgment.

*[Rule 43A inserted in Gazette 3 Jun 2008 p. 2132-3; amended in Gazette 2 Jul 2010 p. 3192.]*

**43. Things said or done at a pre-trial conference, status of**

- (1) A pre-trial conference must be conducted before a registrar, 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 registrar who conducted the pre-trial conference from later dealing with the case.

## **Part 10 — Listing conferences**

*[44. Deleted in Gazette 3 Jun 2008 p. 2133.]*

### **45. Listing conference, purpose of**

The purpose of a listing conference is to list the case for trial.

### **46. Attendance at listing conferences**

- (1) Except as provided in subrule (2), a party must attend a listing conference.
- (2) Unless the Court orders otherwise, a party is not required to attend a listing conference in person if the party's lawyer attends the listing conference.
- (3) If the Court orders a person to attend a listing conference, a registrar must notify the party in writing.
- (4) If a party or, if the party is not required under subrule (2) to attend in person, a party's lawyer fails to attend a listing conference, the magistrate at the listing conference may give default judgment against the party.

*[Rule 46 amended in Gazette 24 May 2013 p. 2062.]*

### **47. Listing a case for trial**

- (1) Unless the magistrate at a listing conference orders the parties to attend before a mediator, or to attend a pre-trial conference or listing conference, the magistrate must list the case for trial and a registrar notify the parties in writing.
- (2) If under subrule (1) the magistrate orders the parties to an application to which Part 21 Division 1 applies to attend before a mediator, then, despite rule 128, Part 11 applies.
- (3) If under subrule (1) the magistrate orders the parties to an application to which Part 21 Division 1 applies to attend a pre-trial conference, then, despite rule 128, Part 9, other than rule 40(2)(c), applies.

*[Rule 47 amended in Gazette 2 Jul 2010 p. 3192.]*

**48. Listing conferences to be conducted in private**

A listing conference must be conducted before a magistrate, in private.

## **Part 11 — Mediation**

**49.        Mediation conference, parties to arrange if Court orders mediation**

- (1) If the Court orders the parties to attend before a mediator, each party must ensure that a mediation conference before the mediator is arranged.
- (2) A mediation conference must be conducted in private.

**50.        Attendance at mediation conferences**

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

**51.        Outcome of mediation, claimant to lodge notice of**

- (1) The claimant must, within 14 days after the mediation conference, lodge a notice of the outcome of the mediation.
- (2) The notice must be in the approved form.

**52.        Further listing conference if case not settled at mediation**

If the case is not settled at the mediation conference a registrar must list the case for a further listing conference and notify the parties in writing.

## **Part 12 — Consent orders and settlement**

### **Division 1 — Consent**

#### **53. Consenting to judgment etc., manner of**

The parties may consent to the Court giving a judgment, or making an order (whether applied for or not), in a case by signing a memorandum to that effect in the approved form and lodging it.

*[Rule 53 inserted in Gazette 2 Jul 2010 p. 3192-3.]*

#### **54. Memorandum of consent, registrar's powers on**

- (1) When a memorandum of consent is lodged, a registrar may, except as provided in subrule (2), 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.

#### **55. Consent by one party, manner of giving**

Where the Act or these rules 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.

#### **56. Person under legal disability, settling claims involving**

- (1) 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 —
  - (a) is not required to be served on any other party; and
  - (b) may be dealt with in the absence of the parties.

- (2) Unless the Court orders otherwise, in addition to the supporting affidavit required under rule 110, the 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.

*[Rule 56 amended in Gazette 3 Jun 2008 p. 2133.]*

### **Division 2 — Offers of settlement**

#### **57. Offer of settlement, making**

- (1) If a party wants to make an offer of settlement to another party it must serve the offer on the other party.
- (2) The offer of settlement must be in the approved form.
- (3) The offer of settlement must specify —
  - (a) whether it includes costs and interest up to the date of the offer; and
  - (b) if it includes the costs and interest, the amount offered in relation to those costs and that interest.
- (4) If an offer of settlement does not comply with subrule (3) the offer is to be taken to exclude costs and interest up to the date of the offer.

#### **58. Offers to be confidential and made without prejudice**

- (1) An offer of settlement must not be lodged, nor otherwise disclosed to the Court, except in accordance with this Division.
- (2) Unless it specifies otherwise, an offer of settlement is to be taken to have been made without prejudice.

**59. Receipt of offer to be acknowledged**

- (1) A party receiving an offer of settlement must, within 3 working days after the offer is served, serve an acknowledgment of the receipt of the offer on the party making the offer.
- (2) The acknowledgment must be in the approved form.

**60. Period within which offer may be accepted**

- (1) An offer of settlement may specify a period that is not less than 28 days as the period within which the offer may be accepted.
- (2) If an offer of settlement specifies a period within which it may be accepted, a party may accept the offer —
  - (a) before the expiration of the period; or
  - (b) if the offer is made within 28 days before the trial date, before judgment.
- (3) If an offer of settlement does not specify a period within which it may be accepted, a party may accept the offer —
  - (a) before the expiration of a period of 28 days after the day on which the offer is made; or
  - (b) if the offer is made within 28 days before the trial date, before judgment.

**61. Accepting offer**

- (1) A party receiving an offer of settlement may accept the offer, or any part of the offer, by lodging and serving a notice of acceptance on the party making the offer.
- (2) The notice of acceptance must be in the approved form.

**62. Period within which offered sums must be paid**

If an offer of settlement provides for the payment of a sum of money to a party, the party making the offer must pay that sum to the party before the expiration of —

- (a) any period for payment specified in the offer; or

- (b) if no such period is specified, a period of 28 days after the day on which the offer is accepted.

**63. Withdrawing acceptance of offer**

- (1) If a party accepts an offer, or part of an offer, of settlement, the party may withdraw an acceptance of an offer of settlement —
  - (a) if, on an application by the party, the Court has given the party leave to withdraw the acceptance; or
  - (b) otherwise, if —
    - (i) the offer provides for the payment of a sum of money to a party; and
    - (ii) that sum was not paid in accordance with rule 62; and
    - (iii) the notice of withdrawal of acceptance is served on the party making the offer within 7 working days after the expiration of the period referred to in rule 62.
- (2) If a party wants to withdraw an acceptance of an offer, or part of an offer, of settlement, the party must serve a notice of withdrawal of acceptance on the party making the offer.

**64. Requesting and giving judgment after offer accepted**

- (1) If a party accepts an offer of settlement, either party to the offer may lodge a request for judgment in terms of the offer.
- (2) The request for judgment must be in the approved form and must have annexed to it copies of the offer of settlement and the acceptance.
- (3) When the request for judgment is lodged, a registrar may, except as provided in subrule (4), give the judgment in the absence of the parties.
- (4) The registrar must not give judgment in relation to a party if —
  - (a) the party has withdrawn acceptance of the offer; or



- (b) the party has made an application for leave to withdraw acceptance of an offer and that application has not been dealt with by the Court.

**65. Post-offer costs, orders for**

- (1) In this rule —

*claimant* means a party which makes a claim;

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

*post-offer costs* means costs from and after the day when an offer is made.

- (2) If —

- (a) a claimant makes an offer of settlement that specifies an amount to be paid by the defendant; and
- (b) the defendant does not accept the offer; and
- (c) judgment is given for the claimant for an amount that is not less than the amount specified in the offer; and
- (d) under the Act section 25(1) the Court makes an order under which the claimant is entitled to, among any other costs, its post-offer costs,

the post-offer costs are to be assessed on a party and party basis.

- (3) If —

- (a) a defendant makes an offer of settlement that specifies an amount to be paid by the defendant; and
- (b) the claimant does not accept the offer; and
- (c) judgment is given for the claimant for an amount that is not more than the amount specified in the offer; and
- (d) under the Act section 25(2) the Court, after considering that there is good reason not to make an order for the claimant for post-offer costs, makes an order for the defendant for post-offer costs,

the post-offer costs are to be assessed on a party and party basis.

## **Part 13 — Trial**

### **Division 1 — General**

#### **66. Terms used**

In this Part —

*first party* means the party which first presents its case at a trial;

*subsequent party* means any party except the first party.

#### **67. Who is first party to present case**

- (1) When the burden of proof on any question is on the claimant, the claimant is to be the first party.
- (2) When the burden of proof on every question is on the defendant, the defendant is to be the first party.

#### **68. Opening addresses and adducing evidence, order of**

- (1) The first party may make an opening address and adduce the party's evidence.
- (2) A subsequent party may then make an opening address and adduce the party's evidence.

#### **69. Closing addresses, order of**

- (1) If a subsequent party —
  - (a) tenders exhibits into evidence while the first party is adducing evidence; or
  - (b) adduces evidence,each subsequent party may, after all the evidence has been adduced, make a closing address after which the first party may make a closing address.
- (2) If a subsequent party —
  - (a) does not tender any exhibits into evidence while the first party is adducing evidence; and

(b) does not adduce evidence,

the first party may make a closing address after which each subsequent party may make a closing address.

**70. Attendance at trial**

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

**Division 2 — Witnesses**

**71. Witness summons, request for and issue and service of**

- (1) If a party wants to require a person to give evidence or to produce evidentiary material at a trial the party must lodge a request for the Court to issue a witness summons.
- (2) The 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, the party must serve the witness summons on the witness at least 14 days before the trial date.
- (4) The witness summons must be served personally.
- (5) 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; or

- (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.
- (6) The party which serves a witness summons must ensure that subrule (5) is complied with.
- (7) The person who serves a witness with a witness summons must record how subrule (5) was complied with on a copy of the witness summons.
- (8) If a copy of a witness summons contains information recorded in accordance with subrule (7) it is to be presumed that the information is true, unless the contrary is proved.

*[Rule 71 amended in Gazette 2 Jul 2010 p. 3193.]*

**72. Expert evidence, orders required for**

- (1) A party must not adduce expert evidence at a trial except in accordance with orders given by the Court.
- (2) If the Court orders a party to lodge and serve a statement of an expert witness, the statement must set out, or be accompanied by a document setting out —
  - (a) the full name of the expert; and
  - (b) details of the expert's qualifications to give the evidence; and
  - (c) to the extent practicable, details of any material on which the expert has relied in reaching his or her opinion.

*[Rule 72 amended in Gazette 3 Jun 2008 p. 2133-4.]*

**73. Children and special witnesses, application for orders as to evidence of**

Any application for an order under the *Evidence Act 1906* section 106S must be made at least 14 days before the trial date.

*[Rule 73 amended in Gazette 3 Jun 2008 p. 2134.]*

**74. Affidavit evidence, when may be adduced**

- (1) A party may, if the other parties do not object, adduce the evidence of a witness at a trial by tendering an affidavit of the witness.
- (2) A party wishing to adduce affidavit evidence under subrule (1) must lodge and serve the affidavit at least 14 days before the trial date.
- (3) If a party wants to object to the affidavit evidence the party must lodge and serve a notice of objection in the approved form as soon as practicable after the affidavit is served on the party.

**Division 3 — Exhibits**

**75. Records requiring device to read, admission of**

If a record cannot be read without using another device, then the Court must not receive the record into evidence unless each party has had the opportunity to inspect the record using that device.

**76. Return of exhibits after trial**

- (1) If an exhibit tendered at a trial is retained by the Court without being received into evidence, a person who was lawfully entitled to the possession of the exhibit before it was tendered is not entitled to the return of that exhibit until the end of the trial.
- (2) If an exhibit is received into evidence at a trial, a person who was lawfully entitled to the possession of the exhibit before it was received is not entitled to the return of that exhibit —
  - (a) if no appeal against the judgment is lodged, until 21 days after the day on which the judgment is given; or
  - (b) if an appeal against the judgment is lodged, until the appeal has been dealt with.
- (3) The Court must give written notice to a person of the person's entitlement to the return of an exhibit under subrule (1) or (2).

- (4) The notice must be given as soon as practicable after the entitlement arises.
- (5) If the person does not take possession of the exhibit within 28 days after the person receives the notice, the registrar may dispose of the exhibit as the registrar thinks fit.

## **Part 14 — Orders and judgments**

### **77. Person under legal disability, payments to**

- (1) If, under a judgment, money is to be paid to a person under a legal disability, the money is to be paid to the Public Trustee to hold on trust for the person.
- (2) The Public Trustee must invest the money for the person and may, if the Court so orders, invest it other than in accordance with the *Public Trustee Act 1941* section 39C.

*[Rule 77 amended in Gazette 24 May 2013 p. 2062.]*

### **78. Certificate of judgment, requesting**

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

### **79. Summary judgment or default judgment, applying to set aside (Act s. 17(3), 18(6) and 19(3))**

An application for an order under the Act section 17(3), 18(6), or 19(3) to set aside a judgment must be made within 21 days after the date of the judgment.

*[Rule 79 amended in Gazette 3 Jun 2008 p. 2134.]*

### **80. Registrars' decisions taken to be decision of Court**

- (1) 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.
- (2) Nothing in this rule limits the application of the *Magistrates Court (Civil Proceedings) Act 2004* section 19(3) to the judgment of a registrar made under section 19(2) of that Act.

*[Rule 80 amended in Gazette 24 May 2013 p. 2062.]*

## **Part 15 — Costs**

### **Division 1 — Assessments**

#### **81. Bill of costs, lodging and serving**

- (1) When the Court makes an order for costs to be assessed the successful party may lodge a bill of those costs.
- (2) Unless the bill of costs relates to a judgment given under Part 5, the successful party must serve the bill on each unsuccessful party as soon as practicable after it has been lodged.

#### **82. Bill of costs, objecting to**

- (1) An unsuccessful party may, within 21 days after being served with a bill of costs, object to any item in the bill by lodging and serving on the successful party a notice of objection.
- (2) The notice of objection must be in the approved form and must specify reasons for each objection.
- (3) If the party does not object to a particular item in a bill the party is to be taken to have admitted the item.
- (4) However nothing in subrule (3) requires the registrar to allow costs claimed in relation to the item if the registrar considers it is inappropriate to do so.

*[Rule 82 amended in Gazette 3 Jun 2008 p. 2134.]*

#### **83. Assessment when objection made**

If an objection is made in relation to a bill of costs, a registrar must list the case for an assessment and notify the parties in writing.

#### **84. Assessment when no objection made**

If —

- (a) a bill of costs is lodged in relation to a judgment given under Part 5; or



- (b) in any other case, 21 days have passed from the service of a bill of costs and no objection to it has been made,

the registrar may assess the costs in the absence of the parties and give a certificate of the assessment to the successful party, otherwise the registrar must list the case for an assessment and notify the parties in writing.

**85. Bill of costs, form of etc.**

A bill of costs must be in the approved form and must be supported by —

- (a) receipts for each expense except court and enforcement officer fees; and  
(b) any other documents required by the registrar at the assessment.

*[Rule 85 amended in Gazette 24 Aug 2007 p. 4328.]*

**86. Assessments, conduct of**

- (1) An assessment must be conducted before the registrar, in private.  
(2) The registrar must assess the costs and give a certificate of the assessment to the parties appearing before the registrar.  
(3) The registrar may assess the costs in the absence of any party.  
(4) The registrar must allow the costs of the assessment in favour of the successful party unless subrule (5) applies.  
(5) If any disallowed costs represent 25% or more of the costs claimed in respect of the bill, the unsuccessful party's costs of attending the assessment are to be subtracted from the successful party's costs.

**Division 2 — Determining value of claim**

**87. Value of claim to be determined under this Division**

For the purposes of assessing a party's costs under the applicable costs determination, the value of a claim is the amount determined under this Division (the *determined value*).

**88. Originating claim successful and no successful counterclaim, value of originating claim**

- (1) Except as provided in subrule (2), if an originating claim is successful and —

- (a) there is no counterclaim; or
- (b) if there is a counterclaim, each counterclaim is unsuccessful,

then the determined value of the originating claim is the amount of the judgment.

- (2) If an unsuccessful counterclaim was for an amount greater than the judgment sum, then the determined value of the originating claim made is the amount of the greatest counterclaim.

**89. Originating claim and counterclaim successful, value of each**

If an originating claim is successful and there is a successful counterclaim, then —

- (a) the determined value of the originating claim is the amount of the judgment given in relation to the originating claim; and
- (b) the determined value of the counterclaim is the amount of the judgment given in relation to the counterclaim.

**90. Originating claim unsuccessful and counterclaim successful, value of counterclaim**

If an originating claim is unsuccessful and there is a successful counterclaim, then the determined value of the counterclaim is —

- (a) the amount of the originating claim; or
- (b) the amount of the judgment given in relation to the counterclaim,

whichever is the greater.

**91. Originating claim and counterclaim unsuccessful, value of each**

If the originating claim is unsuccessful and there is an unsuccessful counterclaim, then —

- (a) the determined value of the originating claim is the amount of the originating claim;
- (b) the determined value of the counterclaim is the amount of the counterclaim.

**92. Claims by or against third parties, value of**

Rules 88 to 91, with the necessary modifications, apply to claims against or by third parties.

**93. Claims to recover possession of real property, value of**

*[(1) deleted]*

- (2) The determined value of a claim to recover possession of real property is the sum of —

- (a) the determined value of any claim for damages or rent determined in accordance with rules 88 to 91; and
- (b) the gross annual rental value of the property determined in accordance with the Act section 6(3).

*[Rule 93 amended in Gazette 2 Jul 2010 p. 3193.]*

**94. Claims to recover possession of personal property, value of**

The determined value of a claim to recover possession of personal property is the sum of —

- (a) the determined value of any claim for damages determined in accordance with rules 88 to 91; and
- (b) the value of the personal property.

## Part 16A — Inactive Cases List

*[Heading inserted in Gazette 31 Dec 2013 p. 6543.]*

### 95A. Term used: Inactive Cases List

In this Part —

**Inactive Cases List** means the list kept by the Principal Registrar under rule 95B(4).

*[Rule 95A inserted in Gazette 31 Dec 2013 p. 6543.]*

### 95B. Case taken to be inactive

- (1) If no procedural step is taken in a case for 12 months by a party to a case, the case is taken to be inactive unless the Court orders otherwise.
- (2) A magistrate or registrar making an order or direction in exercise of a case management power may direct that, unless the order or direction in exercise of the case management power is complied with by a specified date, the case is to be taken to be inactive.
- (3) Unless countermanded by a magistrate or registrar before it has effect, a direction made under subrule (2) has effect according to its terms.
- (4) The Principal Registrar is to keep a list of cases taken to be inactive.

*[Rule 95B inserted in Gazette 31 Dec 2013 p. 6543.]*

### 95C. Parties to be notified of case being on Inactive Cases List

- (1) When a case is taken to be inactive under rule 95B, the Principal Registrar is to —
  - (a) put the case on the Inactive Cases List; and
  - (b) give all parties to the case written notice of —
    - (i) the fact that the case is on the Inactive Cases List and why; and

**r. 95D**

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(ii) the effect of rule 95D.

- (2) If a lawyer representing a party receives a notice under subrule (1), the lawyer is to notify the party as soon as practicable of —
- (a) the fact that the case is on the Inactive Cases List and why; and
  - (b) the effect of rule 95D.

*[Rule 95C inserted in Gazette 31 Dec 2013 p. 6543.]*

**95D. Consequences of case being on Inactive Cases List**

The only documents that may be lodged in the Court in relation to a case on the Inactive Cases List are —

- (a) an application for an order under rule 95E; or
- (b) a notice of discontinuance under rule 29; or
- (c) a memorandum of consent under rule 53 to an order or judgment that would finally dispose of the case.

*[Rule 95D inserted in Gazette 31 Dec 2013 p. 6544.]*

**95E. Removing cases from Inactive Cases List**

- (1) A party to a case on the Inactive Cases List may apply to the Court for an order that the case be taken off the Inactive Cases List.
- (2) The Court may order that a case be taken off the Inactive Cases List —
  - (a) if it is satisfied that the case will be conducted in a timely way; or
  - (b) for any other good reason.
- (3) When the Court orders that a case be taken off the Inactive Cases List, it may make further orders for the conduct of the case in a timely way.

*[Rule 95E inserted in Gazette 31 Dec 2013 p. 6544.]*

**95F. Certain inactive cases taken to be dismissed**

- (1) A case that is on the Inactive Cases List for 6 continuous months is taken to be dismissed.
- (2) If no procedural step is taken in the 6 months after the date on which a case is ordered to be taken off the Inactive Cases List, the case is taken to be dismissed.
- (3) If the case is taken to be dismissed under subrule (1) or (2), the Principal Registrar is to take it off the Inactive Cases List.
- (4) If a case is taken to have been dismissed under subrule (1) or (2) —
  - (a) a party to the case may apply for an order for costs; and
  - (b) the Court may make an order for costs.

*[Rule 95F inserted in Gazette 31 Dec 2013 p. 6544; amended in Gazette 12 Dec 2014 p. 4717.]*

## **Part 16 — Lodging documents**

**95. Term used: lodge**

In order to lodge a document with the Court a person must lodge it in accordance with this Part at the Court registry referred to in rule 96 together with any fee required under the *Magistrates Court (Fees) Regulations 2005*.

**96. Registry at which documents must be lodged**

- (1) Except as provided in this rule, an originating claim or an application referred to in rule 124 may be lodged at any registry of the Court where there is at least one registrar who is not a deputy registrar appointed under the *Magistrates Court Act 2004* section 26(5).
- (2) An originating claim to recover possession of real property must be lodged at the registry of the Court referred to in subrule (1) that is nearest to the property.
- (3) An application under the *Restraining Orders Act 1997* for a restraining order as defined in section 3 of that Act may be lodged at any registry of the Court.
- (4) An application under the *Criminal Investigation Act 2006* section 49 or 147 must be lodged at the registry of the Court referred to in subrule (1) that is nearest to the relevant protected forensic area or the place where the relevant seized thing is secured, as the case requires.
- (5) An application under the *Prohibited Behaviour Orders Act 2010* may be lodged at any registry of the Court.

*[Rule 96 inserted in Gazette 24 Aug 2007 p. 4329; amended in Gazette 3 Jun 2008 p. 2134; 20 May 2011 p. 1842.]*

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

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



- (2) A party lodging a document under this rule must, at the same time also lodge —
- (a) a copy to be returned to the party; and
  - (b) if these rules require the document to be served, a copy for each other party to be served.

**98. Certain documents may be lodged electronically or by fax**

Subject to the *Magistrates Court (General) Rules 2005*, a party may lodge a document electronically or by fax.

**99. Registrar's refusal to accept documents**

In an application under the *Magistrates Court Act 2004* section 17(3) for leave to lodge an originating claim, the person wishing to lodge the claim is to be taken to be a party to a case for the purposes of making the application.

## **Part 17 — Serving documents**

### **Division 1 — General**

**100.      Term used: serve**

If these rules 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 rules provide otherwise, the party must serve it on each other party.

**101.      How documents to be served**

- (1) Unless personal service is required under these rules, if a person wants to serve a document on someone, the person must do so —
  - (a) by delivering it, or sending it by pre-paid post —
    - (i) if an address has been provided under rule 102, to that address; or
    - (ii) if an address has not been provided under rule 102, to the party's usual or last known place of residence or principal or last known place of business, as the case may be, or the party's usual postal address;
  - or
  - (b) subject to the *Magistrates Court (General) Rules 2005*, by email or fax.
- (2) In order to serve a document on someone personally, a person must do so in accordance with Division 2.
- (3) Nothing in this rule prevents a person from consenting to being served in a manner other than in accordance with this rule.

*[Rule 101 amended in Gazette 24 May 2013 p. 2063.]*

**102. Address for service in lodged documents**

- (1) A document lodged in relation to a case must contain a residential or business address for service.
- (1A) The address for service specified on the document is to be taken to be the party's address for service under this Division until —
  - (a) if the document specified the address of a lawyer under subrule (5), the lawyer lodges a notice in the approved form —
    - (i) stating that the lawyer no longer acts for the party; and
    - (ii) specifying the party's address for service under subrule (2), (3) or (4), as the case requires, or any new address for service under subrule (5) that is known to the lawyer;
  - or
  - (b) a notice of change of address is lodged under subrule (6).
- (2) If the party lodging the document is an individual who is not represented by a lawyer, the address for service must be the usual place of residence or principal place of business address or the postal address of the individual.
- (3A) A party who is an individual not represented by a lawyer and who provides a postal address as an address for service must also provide the Court and each of the other parties details of the usual place of residence or principal place of business address of the individual.
- (3) If the party lodging the document is a partnership that is not represented by a lawyer, the address for service must be the principal place of business of the partnership.
- (4) If the party lodging the document is a corporation that is not represented by a lawyer, the address for service must be the

registered office or principal place of business of the corporation.

- (5) If the party lodging the document is represented by a lawyer, the address for service must be the principal place of business of the lawyer or the lawyer's number (if any) at a document exchange approved by the Chief Magistrate.
- (6) If a party's address for service under this rule changes after the lodgment of documents in relation to a case, the party must lodge and serve a notice of change of address as soon as practicable after the address has changed.
- (7) The notice of change of address must be in the approved form.

*[Rule 102 amended in Gazette 3 Jun 2008 p. 2134-5;  
24 May 2013 p. 2063.]*

**103. Service by enforcement officer, certificate of**

- (1) If a document is served by an enforcement officer on behalf of a party, the enforcement officer must, as soon as practicable after the service, give a certificate of the service to the party.
- (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 enforcement officer.

*[Rule 103 amended in Gazette 24 Aug 2007 p. 4329.]*

**104. Service by other persons, affidavit of**

- (1) If a document is served by a party, or on behalf of a party by a person other than an enforcement officer, 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.

*[Rule 104 amended in Gazette 24 Aug 2007 p. 4329.]*

**Division 2 — Personal service**

**105. Personal service on individual, how effected**

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

- (a) hand the document to the individual or, if the individual is a person under a legal disability, to the individual's parent, guardian or litigation guardian; or
- (b) if the individual or 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; or
- (c) hand the document to a person who is authorised in writing to receive documents on behalf of the individual; or
- (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 a lawyer who is acting for the individual.

**106. Personal service on partnership, how effected**

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

- (a) hand the document to one of the partners; or
- (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; or
- (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.

**107. Personal service on corporation, how effected**

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

*[Rule 107 inserted in Gazette 3 Jun 2008 p. 2135.]*

**108. Personal service on public authority, how effected**

In order to serve a document on a public authority personally a person 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.

**Division 3 — Miscellaneous**

*[Heading inserted in Gazette 3 Jun 2008 p. 2135.]*

**109A. Substituted service, applying for (Act s. 16(1)(t))**

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

- (b) if it is appropriate in the circumstances, the requirement for service be dispensed with altogether.

(2) The application —

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

*[Rule 109A inserted in Gazette 3 Jun 2008 p. 2135-6.]*

## **Part 18 — Applications**

### **109. Court order except judgment, applying for**

- (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 judgment given under the Act section 17(3), 18(6), or 19(3),the party must lodge the approved form unless the Court gives leave under subrule (2).
- (2) A party may, with the leave of the Court, make an application orally at any hearing.

### **110. Supporting affidavit, when required**

Except as provided in rule 22(3), a written application must be lodged together with a supporting affidavit.

### **111. Application must be served**

- (1) Except as provided in subrule (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 10 days before the hearing of the application.
- (2) Subrule (1) does not apply —
  - (a) in relation to an application for default judgment —
    - (i) for a failure to lodge a response in accordance with rule 9(1); or
    - (ii) for a failure to lodge a statement of defence in accordance with rule 41B; or
    - (iii) if these rules state that the default judgment may be given in the absence of the parties;



- (b) in relation to any other application, if —
  - (i) these rules provide otherwise; or
  - (ii) the Court dealing with the application orders otherwise.

*[Rule 111 amended in Gazette 3 Jun 2008 p. 2136;  
20 May 2011 p. 1842.]*

**112. Response to application**

- (1) A party which has been served with an application must, at least 3 working days before the hearing of the application, lodge and serve —
  - (a) a response to the application stating whether the party consents or objects in relation to each order sought in the application; and
  - (b) unless the party consents to every order sought in the application, an affidavit supporting the response; and
  - (c) any related application by the party.
- (2) The response must be in the approved form.

**113. Dealing with an application**

An application must be dealt with in the presence of the parties to the application unless —

- (a) these rules provide otherwise; or
- (b) the Court dealing with the application orders otherwise.

*[Rule 113 amended in Gazette 3 Jun 2008 p. 2136.]*

## **Part 19 — Affidavits**

### **114.     Form of affidavits**

An affidavit must be in the approved form.

### **115.     Content of affidavits**

- (1) Except as provided in subrule (2), an affidavit must be confined to facts to which the person making the affidavit is able to depose 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 the sources or grounds of that information or belief.
- (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.

*[Rule 115 amended in Gazette 3 Jun 2008 p. 2136.]*

## Part 20 — Litigation guardians

### 116. Terms used

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).

### 117. Application of this Part

This Part applies in relation to a person under a legal disability if the person is, or intends to be, a party to a case.

### 118. Represented persons to have litigation guardians

- (1) A represented person must have a litigation guardian to conduct the case on his or her behalf unless the Court orders otherwise.
- (2) Except as provided in subrule (3), a guardian or administrator of a represented person is to be the litigation guardian of the person if 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.
- (3) If the Public Trustee is a joint administrator of the estate of a represented person, the Public Trustee is to be the person's sole litigation guardian.
- (4) A represented person not referred to in subrule (2) may have as his or her 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 the interests of the represented person.

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

**119. Litigation guardian of represented person must lodge affidavit**

- (1) A litigation guardian of a represented person 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 behalf of the represented person have commenced, as soon as practicable after he or she becomes the litigation guardian.
- (2) In the case of a litigation guardian of a represented person referred to in rule 118(2), the affidavit must verify that —
  - (a) the person for whom the litigation guardian is acting is a represented person; and
  - (b) the litigation guardian has been appointed the guardian or administrator of the person under the *Guardianship and Administration Act 1990*; and
  - (c) the relevant guardianship or administration order —
    - (i) is plenary; or
    - (ii) otherwise confers on the guardian or administrator the function of conducting or settling legal proceedings on behalf of the person.
- (3) In the case of a litigation guardian of a represented person not referred to in rule 118(2), the affidavit must —
  - (a) verify that the person for whom the litigation guardian is acting is a represented person; and
  - (b) state the nature of the litigation guardian's relationship with the represented person; and

- (c) verify that the litigation guardian consents to acting in that capacity for the represented person; and
- (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 the interests of the represented person; and
- (e) set out the grounds for any knowledge or belief expressed in the affidavit.

**120. Children, litigation guardians for**

- (1) A child may have as his or her 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 the interests of the child.
- (2) A person may act as litigation guardian of a child without being appointed by the Court to act in that capacity.

**121. Litigation guardian of child must lodge affidavit**

- (1) A litigation guardian of a child 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 behalf of the child have already begun, as soon as practicable after the litigation guardian assumes that capacity.
- (2) The litigation guardian's affidavit must —
  - (a) verify that the person for whom the litigation guardian is acting is a child; and
  - (b) state the nature of the litigation guardian's relationship with the child; and
  - (c) verify that the litigation guardian consents to acting in that capacity for the child; and

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- (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 the interests of the child; and
  - (e) set out the grounds for any knowledge or belief expressed in the affidavit.
- (3) If the child has reached 14 years of age, the litigation guardian must, together with the litigation guardian's affidavit, lodge and serve an affidavit sworn by the child, verifying that he or she wants the litigation guardian to act in that capacity.
- (4) If —
  - (a) the child has not reached 14 years of age; and
  - (b) the litigation guardian is not the parent or guardian of the child,

the litigation guardian must, together with the litigation guardian's affidavit, lodge and serve an affidavit sworn by the parent or guardian of the child, verifying that the parent or guardian consents to the litigation guardian acting in that capacity.

**122. Litigation guardian, application by to be appointed**

- (1) A person may make an application to be appointed as the litigation guardian, or to replace the litigation guardian, of a person under a legal disability.
- (2) Except as provided in subrules (3) and (4), the application must be made in accordance with Part 18.
- (3) If the application relates to a represented person, the application must be supported by an affidavit in accordance with rule 119(3).
- (4) If the application relates to a child, the application must be supported by affidavits in accordance with rule 121.

## Part 21 — Jurisdiction conferred by other Acts

### Division 1 — General

#### 123. Terms used

In this Division —

**application** means an application to which this Division applies;

**conferring Act** means legislation referred to in rule 124.

*[Rule 123 amended in Gazette 2 Jul 2010 p. 3193; 20 May 2011 p. 1842.]*

#### 124. Applications to which this Division applies

- (1) This Division applies to an application made to the Court under a provision listed in the Table.

**Table**

<b>Written law</b>	<b>Provision(s)</b>
<i>Animal Welfare Act 2002</i>	s. 44, 56.
<i>Auction Sales Act 1973</i>	s. 8, 9, 11, 13, 14, 15, 17, 18, 19, 22, 33.
<i>Building Act 2011</i>	s. 86(1).
<i>Conservation and Land Management Act 1984</i>	s. 108A.
<i>Criminal and Found Property Disposal Act 2006</i>	s. 11, 12, 26, 30.
<i>Criminal Investigation Act 2006</i>	s. 49, 147.
<i>Disposal of Uncollected Goods Act 1970</i>	s. 17(3), 19(1), 20.
<i>Dividing Fences Act 1961</i>	s. 9, 11, 13, 15.
<i>Dog Act 1976</i>	s. 39, 40(4).

**Magistrates Court (Civil Proceedings) Rules 2005****Part 21** Jurisdiction conferred by other Acts**Division 1** General**r. 124**

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<b>Written law</b>	<b>Provision(s)</b>
<i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i>	s. 69(1), 91B(2), 94.
<i>Forest Management Regulations 1993</i>	r. 152.
<i>Local Government Act 1995</i>	s. 3.26(4).
<i>Pawnbrokers and Second-hand Dealers Act 1994</i>	s. 85, 86.
<i>Petroleum and Geothermal Energy Resources Act 1967</i>	s. 17(4)
<i>Prohibited Behaviour Orders Act 2010</i>	s. 5, 21.
<i>Restraining Orders Act 1997</i>	Any provision.
<i>Restraint of Debtors Act 1984</i>	Any provision.
<i>Road Traffic (Vehicle Standards) Regulations 2002</i>	r. 60.
<i>Weapons Act 1999</i>	s. 17(1).

- (2) This Division applies to an application made to the Court under the *Corporations Act 2001* (Commonwealth).
- (3) This Division does not apply to a claim for the recovery of an amount that is permitted to be made in a court of competent jurisdiction by a provision referred to in subrule (1) or by the *Corporations Act 2001* (Commonwealth).
- (4) This Division applies to an application made to the Court under the *National Credit Code*, as defined in the *National Consumer Credit Protection Act 2009* (Commonwealth) section 5(1), sections 100 and 101.

*[Rule 124 inserted in Gazette 2 Jul 2010 p. 3193-4; amended in Gazette 20 May 2011 p. 1842; 23 Mar 2012 p. 1367; 24 May 2013 p. 2063.]*



**125. Application, form of**

Unless the conferring Act provides otherwise, an application must be in the approved form.

**126. Application must be served**

- (1) Except as provided in the conferring Act or in rule 129B, 129C, 131AA or 131B, a party making an application must serve a copy of the application and any supporting affidavit on every other party —
- (a) as soon as practicable, and in any event within one year, after it has been lodged; and
  - (b) at least 5 clear days before the hearing of the application.

- (2) Unless an Act provides otherwise, the application must be served personally.

*[Rule 126 inserted in Gazette 24 Aug 2007 p. 4330; amended in Gazette 2 Jul 2010 p. 3194; 20 May 2011 p. 1842; 3 Jun 2014 p. 1743.]*

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

- (1A) This rule does not apply to an application made to the Court under a provision listed in the Table.

**Table**

<b>Written law</b>	<b>Provision(s)</b>
<i>Animal Welfare Act 2002</i>	s. 44, 56.
<i>Criminal and Found Property Disposal Act 2006</i>	Any provision.
<i>Criminal Investigation Act 2006</i>	s. 49(1), 147(5).
<i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i>	s. 94.

<b>Written law</b>	<b>Provision(s)</b>
<i>Prohibited Behaviour Orders Act 2010</i>	s. 5, 21.
<i>Restraining Orders Act 1997</i>	Any provision.
<i>Weapons Act 1999</i>	s. 17(1).

- (1) As soon as practicable after an application is lodged, a registrar must list the case for a listing conference.
- (2) If the conferring Act requires the application to be served, the registrar must endorse the date of the listing conference on the application that is to be served.
- (3) If the conferring Act does not require the application to be served, the registrar must notify the parties in writing of the listing conference.

*[Rule 127 amended in Gazette 24 Aug 2007 p. 4330; 2 Jul 2010 p. 3194; 20 May 2011 p. 1843; 3 Jun 2014 p. 1743.]*

**128. Application of rules generally**

Unless the conferring Act provides otherwise, rules 40 to 41B, rule 43, Part 10, Part 12 Division 1, and Parts 13 to 20 and 22 apply, with any necessary modifications, to an application.

*[Rule 128 amended in Gazette 2 Jul 2010 p. 3195; 24 May 2013 p. 2063.]*

**129A. Dealing with application**

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

*[Rule 129A inserted as rule 128A in Gazette 24 Aug 2007 p. 4330; renumbered as rule 129A in Gazette 3 Jun 2008 p. 2137.]*

**129AB. *Animal Welfare Act 2002* s. 44 and 56, application under**

An application under the *Animal Welfare Act 2002* section 44 or 56 must be lodged together with a supporting affidavit.

*[Rule 129AB inserted in Gazette 20 May 2011 p. 1843.]*

**129B. *Criminal and Found Property Disposal Act 2006*, application under**

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

*[Rule 129B inserted as rule 128B in Gazette 24 Aug 2007 p. 4331; renumbered as rule 129B in Gazette 3 Jun 2008 p. ~~2137~~2137; amended in Gazette 23 Jan 2015 p. 411.]*

**129C. *Criminal Investigation Act 2006* s. 49(1) and 147(5), application under**

- (1) An application under the *Criminal Investigation Act 2006* section 49(1) must be lodged together with a supporting affidavit and a map of the protected forensic area to which the application relates.

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

*[Rule 129C inserted as rule 128C in Gazette 24 Aug 2007 p. 4331; renumbered as rule 129C in Gazette 3 Jun 2008 p. ~~2137~~2137; amended in Gazette 23 Jan 2015 p. 411.]*

**129. Disposal of Uncollected Goods Act 1970, application under**

An application under the *Disposal of Uncollected Goods Act 1970* must be lodged together with a supporting affidavit.

**130. Fines, Penalties and Infringement Notices Enforcement Act 1994 s. 69(1), application under**

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

*[(2) deleted]*

- (3) The application may be dealt with by a registrar.
- (4) The application may be dealt with in the absence of —

- (a) the debtor mentioned in the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 69(1)(a); or
- (b) the person mentioned in the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 69(1)(b),

as is relevant in the case.

[(5) *deleted*]

*[Rule 130 amended in Gazette 24 Aug 2007 p. 4332; 2 Jul 2010 p. 3195; 20 Aug 2013 p. 3817; 3 Jun 2014 p. 1743.]*

**131AA. *Fines, Penalties and Infringement Notices Enforcement Act 1994* s. 94(2), application under**

- (1) An application under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 94(2) must be lodged by the Sheriff together with copy of the written notice of claim.
- (2) As soon as practicable after an application made by the Sheriff under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 94(2) is lodged, a registrar must —
  - (a) list the application for hearing on the earliest convenient date; and
  - (b) endorse the hearing date on the application; and
  - (c) return one copy of the application to the Sheriff and serve one copy of the application on the claimant by service by ordinary post.
- (3) If the claimant files notice of withdrawal and gives notice in writing of the withdrawal to the court before the time of the hearing, the property seized by the Sheriff or the proceeds of the sale of the property must be dealt with and disposed of as if the claim had not been made.

*[Rule 131AA inserted in Gazette 3 Jun 2014 p. 1744.]*

**131AB. *Fines, Penalties and Infringement Notices Enforcement Act 1994 s. 94, location of interpleader proceedings***

- (1) The proceedings under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 94 are to be held at the place where the court has a registry that is nearest to the place where the property the subject of the proceedings is located.
- (2) If the court is satisfied that it would be more convenient or fair to the parties if the whole or a part of the interpleader proceedings were conducted at another place in the State (whether or not a registry of the court is there), the court may order accordingly.
- (3) An order may be made under subrule (2) only on the application of a party of which any other party has had notice.
- (4) If the court makes an order under subrule (2) it may make any necessary ancillary or consequential order.

*[Rule 131AB inserted in Gazette 3 Jun 2014 p. 1744.]*

**131AC. *Fines, Penalties and Infringement Notices Enforcement Act 1994 s. 94, interpleader proceedings***

- (1) The claimant must, at least 10 clear days before the time of the hearing, file with the court 2 copies of the particulars of any property alleged to be the property of the claimant and of the claimant's grounds for the claim.
- (2) The following details and information must be fully set out in, or accompany, those particulars —
  - (a) the name, address and description of the claimant;
  - (b) information as to possession of the property;
  - (c) information as to the claimant's interest in the property;
  - (d) details of, and a copy of, any document that supports the claimant's claim to possession of or interest in the property.

- (3) The court must immediately give the Sheriff a copy of the particulars by service by ordinary post.
- (4) A hearing in relation to a claim is to proceed as if the claimant were the plaintiff, and the Sheriff the defendant.

*[Rule 131AC inserted in Gazette 3 Jun 2014 p. 1745.]*

**131AD. *Fines, Penalties and Infringement Notices Enforcement Act 1994 s. 94, power to delay sale***

- (1) The Sheriff may, in his or her discretion, delay selling any property in respect of which a claim has been made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 93 until a court has adjudicated on the claim.
- (2) The Sheriff is to be allowed such costs out of pocket only as the court may order for the keeping of continued possession of the property under subrule (1).

*[Rule 131AD inserted in Gazette 3 Jun 2014 p. 1745.]*

**131A. *National Consumer Credit Protection Act 2009 (Cwlth) s. 199(1)(b), application under***

Under the *National Consumer Credit Protection Act 2009* (Commonwealth) section 199(1)(b), a person who wants the small claims procedure to apply to the proceedings must so indicate in the person's application made under that Act.

*[Rule 131A inserted in Gazette 20 May 2011 p. 1843.]*

**131B. *Prohibited Behaviour Orders Act 2010, application under***

- (1) In this rule, unless the contrary intention appears —  
*Act* means the *Prohibited Behaviour Orders Act 2010*;  
*section* means a section of the Act.
- (2) If a term used in this rule is defined in the Act, it has the same meaning in this rule as it has in the Act, unless the contrary intention appears.

- (3) To make an application under section 5 for a PBO against a person (the *respondent*), the prosecutor must —
  - (a) complete the approved form for the application and state in it —
    - (i) the constraints the prosecutor wants the Court to specify in the PBO under section 10; and
    - (ii) the period of the PBO the prosecutor wants the Court to specify in the PBO under section 12;
  - and
  - (b) give the application to the judicial officer presiding at the hearing at which the respondent is to be sentenced; and
  - (c) if the respondent is present at that hearing, give a copy of the application to the respondent personally.
- (4) If the respondent is not present when an application for a PBO is made, a registrar must attach a copy of the application to the hearing notice that the registrar gives the respondent under section 7(2).
- (5) Within 28 days after the date on which an application for a PBO is made, the applicant must —
  - (a) lodge an affidavit in support of the application; and
  - (b) give a copy to the respondent in accordance with section 33.
- (6) Unless the Court permits otherwise, the supporting affidavit must state the following —
  - (a) details of the respondent's convictions of relevant offences on which the applicant relies to allege the respondent is a person described in section 8(2)(a);
  - (b) if any such conviction is of a relevant offence that is not a prescribed offence, the material facts of the offence;
  - (c) details of the matters listed in section 9(3)(a), (c), (e) and (f);



- (d) any other facts on which the applicant intends to rely in support of the application.
- (7) Unless the Court permits otherwise, the supporting affidavit must refer to and have attached to it each of these documents —
  - (a) the respondent's criminal record;
  - (b) any order referred to in section 9(3)(d) that is in force against the respondent;
  - (c) any order listed in section 10(7) that is in force against the respondent.
- (8) To make an application under section 21 to vary or cancel a PBO, a person must lodge —
  - (a) the application; and
  - (b) 2 copies of an affidavit in support of the application.
- (9) The respondent to an application made under section 5 or 21 may file an affidavit in response to the affidavit filed in support of the application.
- (10) An affidavit referred to in subrule (9) must be —
  - (a) lodged within 21 days after the date on which the respondent is served with the affidavit lodged in support of the application; and
  - (b) served on the applicant at least 5 clear days before the hearing of the application.
- (11) If a PBO is corrected under section 25, a registrar must cause a copy of the corrected PBO to be given —
  - (a) to each party to the PBO proceedings; and
  - (b) if the Commissioner of Police is not a party to the PBO proceedings — to the Commissioner of Police.
- (12) A hearing notice must be in the approved form.

*[Rule 131B inserted in Gazette 20 May 2011 p. 1843-5;  
amended in Gazette 27 Oct 2011 p. 4557.]*

**131C. Weapons Act 1999 s. 17(1), application under**

An application made under the *Weapons Act 1999* section 17(1) must be lodged together with a supporting affidavit.

*[Rule 131C inserted in Gazette 20 May 2011 p. 1845.]*

**Division 2 — Civil Judgments Enforcement Act 2004**

**131. Means inquiries, registrars' powers for**

A registrar may deal with a means inquiry 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 and the *Civil Judgments Enforcement Regulations 2005* Part 4 Division 2 and regulations 86 and 96.

*[Rule 131 amended in Gazette 1 Jun 2012 p. 2282.]*

**132. Other applications and requests dealt with by registrars**

- (1) For the purposes of the *Civil Judgments Enforcement Act 2004* section 9(3), an application or request that, when made to the Court under the Act, may be dealt with by a registrar, is —
- (a) an application for an order under section 10, 15(5)(a), 20(3) or 22(1) 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)



(b) may be dealt with at the directions hearing (in the manner provided by subrule (6)) in the absence of the parties.

(6) At the directions hearing, the Court may —

(a) make orders as to the procedure to be followed by each party and the Court in order to ensure the application is dealt with justly; and

(b) make an interim order under section 7(7A) pending the final determination of the application.

[Rule 133AAB inserted in Gazette 23 Jan 2015 p. 411-12.]

**133AAC. Payments into court under s. 10(2A)**

(1) This rule applies when a warehouseman pays a surplus into the Court under section 10(2A).

(2) The surplus must be accompanied by the following —

(a) the approved form;

(b) the duplicate copies of the statement of account referred to in section 10(4), verified in the manner prescribed for the purposes of that subsection;

(c) a supporting affidavit containing any other particulars that are prescribed for the purposes of that subsection.

(3) The Court must give to the warehouseman a receipt for the surplus.

(4) After the surplus is paid into the Court, a registrar must serve on each person who, to the registrar's knowledge, may have a claim to the surplus a copy of the following —

(a) the approved form referred to in subrule (2)(a);

(b) the verified statement of account referred to in subrule (2)(b);

(c) the supporting affidavit referred to in subrule 2(c);

(d) the receipt referred to in subrule (3).

[Rule 133AAC inserted in Gazette 23 Jan 2015 p. 412.]

**133AAD. Application for order under s. 10(2B)**

- (1) A person (the **applicant**) who wishes to make a claim to a surplus paid into the Court under section 10(2A) may apply to the Court for an order under section 10(2B).
- (2) The application must be lodged within 60 days after the day on which the surplus is paid into the Court under section 10(2A).
- (3) The application must be in the approved form.
- (4) The application must be lodged together with a supporting affidavit.
- (5) The supporting affidavit must include (but is not limited to including) the following —
  - (a) a statement as to why the applicant is entitled to the surplus;
  - (b) unless paragraph (c) applies — details of any person (an **other party**) who, to the applicant's knowledge, disputes the applicant's claim to the surplus;
  - (c) if, to the applicant's knowledge, there is no other party, a statement to that effect.
- (6) When the application and supporting affidavit are lodged, 2 copies must also be lodged.
- (7) As soon as practicable after the application and the supporting affidavit are lodged, a registrar must list the application before a magistrate for a directions hearing.
- (8) The registrar must endorse the date of the directions hearing on the copy of the application that is to be served under subrule (9).
- (9) The applicant must serve personally on any other party a copy of the application and the supporting affidavit at least 5 clear days before the date of the directions hearing.

- (10) At the directions hearing, the Court may make orders as to the procedure to be followed by the applicant, any other party and the Court to ensure the application is dealt with justly.

[Rule 133AAD inserted in Gazette 23 Jan 2015 p. 412-13.]

**133AAE. Court may act on its own initiative under s. 10(2B)**

- (1) This rule applies if —

- (a) the period allowed by rule 133AAD(2) for lodging an application under rule 133AAD has expired; and  
(b) no application has been lodged.

- (2) A registrar must list the case before a magistrate in chambers for the making of an order by the Court under section 10(2B).

[Rule 133AAE inserted in Gazette 23 Jan 2015 p. 413.]

**Division 3 — Applications under other written laws**

*[Heading inserted in Gazette 23 Mar 2012 p. 1367.]*

**133AA. Applications under other written laws, making etc.**

- (1) This rule applies to an application made under a written law, other than a written law referred to in another rule in this Part, for relief other than relief within the Court's jurisdiction conferred by section 6 of the Act.
- (2) The application must —
- (a) be made in accordance with rule 125; and
- (b) be served in accordance with rule 126.
- (3) As soon as practicable after the application is made, a registrar must list it before a magistrate for a directions hearing, and advise each party in writing.

- (4) At the directions hearing, the magistrate may make orders as to the procedure to be followed by each party and the Court in order to ensure the application is dealt with justly.

*[Rule 133AA inserted in Gazette 23 Mar 2012 p. 1367-8.]*

## **Part 22 — Miscellaneous**

### **133A. Change of venue, application for (Act s. 22)**

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

*[Rule 133A inserted in Gazette 3 Jun 2008 p. 2137.]*

### **133B. Typographical and other errors, correcting**

- (1) If a party makes an application to correct a typographical error or other defect, a registrar may order that the party may make the correction.
- (2) An application for an order under subrule (1) —
  - (a) is not required to be served on any other party; and
  - (b) may be dealt with in the absence of the parties.

*[Rule 133B inserted in Gazette 3 Jun 2008 p. 2137-8.]*

### **133. Forms to be available**

The Court must make approved forms available —

- (a) at each Court registry; and
- (b) on request, by post; and
- (c) electronically, on the website maintained by the Principal Registrar under the *Magistrates Court (General) Rules 2005*.



**134. Partnerships, conduct of cases by**

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

*[Rule 134 amended in Gazette 3 Jun 2008 p. 2138.]*

**135. Partnerships, corporations etc., who may sign for etc.**

- (1) In this rule —  
*party* includes a litigation guardian conducting a case on behalf of a party who is a person under a legal disability.
- (2) Except as provided in the Act section 44, when under these rules a party is required or enabled to sign a document, or do something else personally and —
  - (a) the party is 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) the party is a corporation — then a person who is authorised by the corporation to do the thing may do it;
  - (c) the party is 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 the rights of the party — then a person who is authorised to do the thing on behalf of the insurer may do it.

*[Rule 135 amended in Gazette 24 Aug 2007 p. 4332.]*

**136. Cases remitted from superior court**

Where a case is remitted from the Supreme Court or District Court, a registrar must list the case for a listing conference and notify the parties in writing.

**137. Payments into Court**

When a party makes a payment of money into Court, the Court must give to the party a written receipt for the money.

**138. *Residential Tenancies Act 1987* s. 18(2)(b), notices under**

For the purposes of the *Residential Tenancies Act 1987* section 18(2)(b) —

- (a) if the address of the other party is known to the Court, the notice to be given by the Court under section 18(2)(b)(ii) of that Act must be given by giving the other party a copy of the application; and
- (b) if the address of the other party is not known to the Court, the notice to be given by the Court under section 18(2)(b)(ii) of that Act must be given by giving the other party a summary of the relief sought by the applicant.

*[Rule 138 inserted in Gazette 20 May 2011 p. 1845-6.]*

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## Notes

- <sup>1</sup> This is a compilation of the *Magistrates Court (Civil Proceedings) Rules 2005* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

### Compilation table

Citation	Gazettal	Commencement
<i>Magistrates Court (Civil Proceedings) Rules 2005</i>	28 Apr 2005 p. 1651-709	1 May 2005 (see r. 2 and <i>Gazette</i> 31 Dec 2004 p. 7127)
<i>Magistrates Court (Civil Proceedings) Amendment Rules 2007</i>	24 Aug 2007 p. 4328-32	r. 1 and 2: 24 Aug 2007 (see r. 2(a)); Rules other than r. 1 and 2: 25 Aug 2007 (see r. 2(b))
<i>Magistrates Court (Civil Proceedings) Amendment Rules (No. 2) 2008</i>	3 Jun 2008 p. 2123-38	r. 1 and 2: 3 Jun 2008 (see r. 2(a)); Rules other than r. 1 and 2: 1 Sep 2008 (see r. 2(b))
<b>Reprint 1: The <i>Magistrates Court (Civil Proceedings) Rules 2005</i> as at 17 Jul 2009</b> (includes amendments listed above)		
<i>Magistrates Court (Civil Proceedings) Amendment Rules 2010</i>	2 Jul 2010 p. 3191-5	r. 1 and 2: 2 Jul 2010 (see r. 2(a)); Rules other than r. 1 and 2: 3 Jul 2010 (see r. 2(b))
<i>Magistrates Court (Civil Proceedings) Amendment Rules 2011</i>	20 May 2011 p. 1841-6	r. 1 and 2: 20 May 2011 (see r. 2(a)); Rules other than r. 1 and 2: 21 May 2011 (see r. 2(b))
<i>Magistrates Court (Civil Proceedings) Amendment Rules (No. 2) 2011</i>	27 Oct 2011 p. 4556-7	r. 1 and 2: 27 Oct 2011 (see r. 2(a)); Rules other than r. 1 and 2: 28 Oct 2011 (see r. 2(b))
<i>Magistrates Court (Civil Proceedings) Amendment Rules 2012</i>	23 Mar 2012 p. 1366-8	r. 1 and 2: 23 Mar 2012 (see r. 2(a)); Rules other than r. 1, 2, 4(1) and (2): 24 Mar 2012 (see r. 2(c)); r. 4(1) and (2): 2 Apr 2012 (see r. 2(b) and <i>Gazette</i> 13 Mar 2012 p. 1033)

Citation	Gazettal	Commencement
<i>Magistrates Court (Civil Proceedings) Amendment Rules (No. 2) 2012</i>	1 Jun 2012 p. 2281-2	r. 1 and 2: 1 Jun 2012 (see r. 2(a)); Rules other than r. 1 and 2: 2 Jun 2012 (see r. 2(b))
<b>Reprint 2: The Magistrates Court (Civil Proceedings) Rules 2005 as at 8 Jun 2012</b> (includes amendments listed above)		
<i>Magistrates Court (Civil Proceedings) Amendment Rules (No. 2) 2013</i>	24 May 2013 p. 2060-3	r. 1 and 2: 24 May 2013 (see r. 2(a)); Rules other than r. 1 and 2: 25 May 2013 (see r. 2(b))
<i>Magistrates Court (Civil Proceedings) Amendment Rules (No. 3) 2013</i>	20 Aug 2013 p. 3816-17	r. 1 and 2: 20 Aug 2013 (see r. 2(a)); Rules other than r. 1 and 2: 21 Aug 2013 (see r. 2(b) and <i>Gazette</i> 20 Aug 2013 p. 3815)
<i>Magistrates Court (Civil Proceedings) Amendment Rules 2013</i>	31 Dec 2013 p. 6542-4	r. 1 and 2: 31 Dec 2013 (see r. 2(a)); Rules other than r. 1 and 2: 1 Jan 2014 (see r. 2(b))
<i>Magistrates Court (Civil Proceedings) Amendment Rules (No. 4) 2014</i>	3 Jun 2014 p. 1743-5	r. 1 and 2: 3 Jun 2014 (see r. 2(a)); Rules other than r. 1 and 2: 4 Jun 2014 (see r. 2(b))
<i>Magistrates Court (Civil Proceedings) Amendment Rules (No. 5) 2014</i>	12 Dec 2014 p. 4716-17	r. 1 and 2: 12 Dec 2014 (see r. 2(a)); Rules other than r. 1 and 2: 13 Dec 2014 (see r. 2(b))
<a href="#"><i>Magistrates Court (Civil Proceedings) Amendment Rules 2014</i></a>	<a href="#">23 Jan 2015</a> <a href="#">p. 410-14</a>	<a href="#">r. 1 and 2: 23 Jan 2015</a> <a href="#">(see r. 2(a));</a> <a href="#">Rules other than r. 1 and 2:</a> <a href="#">24 Jan 2015 (see r. 2(b))</a>

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

**Provisions that have not come into operation**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Magistrates Court (Civil Proceedings) Amendment Rules (No. 3) 2014</i> r. 3 and 4 <sup>3</sup>	8 Jan 2015 p. 159-60	Operative on the day fixed under the <i>Road Traffic (Administration) Act 2008</i> s. 2(b) (see r. 2(b))

<sup>2</sup> The *Public Trustee Act 1941* s. 40, as inserted by the *Public Trustee and Trustee Companies Legislation Amendment Act 2008* s. 25(1), does not refer to the “Common Fund” but to a “Fund”.

<sup>3</sup> On the date as at which this compilation was prepared, the *Magistrates Court (Civil Proceedings) Amendment Rules (No. 3) 2014* r. 3 and 4 had not come into operation. They read as follows:

**3. Rules amended**

These rules amend the *Magistrates Court (Civil Proceedings) Rules 2005*.

**4. Rule 124 amended**

In rule 124(1) in the Table delete the item relating to the *Road Traffic (Vehicle Standards) Regulations 2002*.