

Western Australia

Magistrates Court (Civil Proceedings) Act 2004

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

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

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

### **Part 1 — Preliminary**

**1. Citation**

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

**2. Commencement**

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

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

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

**4. Terms used in these rules**

In these rules, unless the contrary intention appears —

***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;

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**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;
- (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;

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

**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**

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

## **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. Making an originating claim**

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

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

### **8. Making a counterclaim or third party claim**

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

- (4) Unless these rules or an Act provides otherwise, a third party claim must be served personally.

*[Rule 8 inserted in Gazette 3 Jun 2008 p. 2124.]*

**9. Response to a 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. Making a claim to recover possession of real property**

- (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**

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

### **15. Service of 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 (s. 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 a specified amount**

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;
- (b) the claim, or the relevant part of the claim, is for an unliquidated amount of \$1 000 or less; or
- (c) the claim, or the relevant part of the claim, is for an unliquidated amount of more than \$1 000 but not more than the minor cases jurisdictional limit, if the Registrar is able to assess the amount from any supporting affidavit lodged with the application.

*[Rule 21 amended in Gazette 3 Jun 2008 p. 2125.]*

### **22. Default judgment for an unspecified amount**

- (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 —

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- (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. Default judgment for claim to recover possession of personal property**

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. Registrar not to give judgment in certain cases**

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

*[Rule 24 inserted in Gazette 3 Jun 2008 p. 2125-6.]*

**25. Registrar to list application**

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

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

**26. Registrar may order costs after giving 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. Party may admit fact**

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

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

### **28. Invitation to admit an 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;
  - (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 may admit claim**

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

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

**29B. Party may admit part of claim**

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

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

**29C. Party may admit liability but dispute amount claimed**

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

*[Rule 29C inserted in Gazette 3 Jun 2008 p. 2127.]*

**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**

### **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.]*

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

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

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

under these rules or any other law.

**33. Inspection of documents**

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

**34. Production of documents at trial**

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

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

### **35. Application for an order for answers to interrogatories**

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

*[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. Listing a pre-trial conference**

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

*[Rule 39 inserted in Gazette 3 Jun 2008 p. 2128.]*

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

- (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**

- (1) If the Registrar at the pre-trial conference orders a party to lodge and serve a statement of claim, the party must do so in accordance with this rule.
- (2) Unless the party has lodged and served its statement of claim with its claim it must lodge and serve the statement of claim —
  - (a) if the claim is an originating claim, within 14 days after the pre-trial conference; and
  - (b) if the claim is a counterclaim or third party claim, within 14 days after the party has received a response that indicates an intention to defend the claim.
- (3) A statement of claim must be in the approved form.
- (4) The statement of claim must contain —
  - (a) a summary of the facts relevant to the claim; and
  - (b) the legal basis of the claim; and
  - (c) the basic contentions of the party; and
  - (d) the remedy or relief claimed; and
  - (e) if the amount of the claim has been reduced in order to bring the claim within the jurisdictional limit, a statement to that effect.
- (5) The party must, together with the statement of claim, lodge and serve a statutory declaration in accordance with subrule (6) or (7).
- (6) If the party is not represented by a lawyer, the statutory declaration must be made by the party and must state that —

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

*[Rule 41A inserted in Gazette 3 Jun 2008 p. 2129-30.]*

**41B. Statement of defence**

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

- (5) The party must, together with the statement of defence, lodge a statutory declaration in accordance with subrule (6) or (7).
- (6) If the party is not represented by a lawyer, the statutory declaration must be made by the party and must state that —
  - (a) any allegations of fact in the statement of defence are true to the best of the party's belief; and
  - (b) the statement of defence is not frivolous, vexatious, scandalous or improper.
- (7) If the party is represented by a lawyer, the statutory declaration must be made by the party's lawyer and must state that —
  - (a) the party has instructed the lawyer that all of the allegations of fact in the statement of defence are true and correct; and
  - (b) all the arguments raised in the statement of defence are, in the opinion of the lawyer, reasonable; and
  - (c) in the opinion of the lawyer the statement of defence is not frivolous, vexatious, scandalous or improper.

*[Rule 41B inserted in Gazette 3 Jun 2008 p. 2130-1.]*

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

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

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

**41D. Amending a case statement**

- (1) If a Registrar or the Court allows a party to amend its case statement, the party must, together with the amended case statement, lodge and serve a statutory declaration in accordance with subrule (2) or (3).
- (2) If the party is not represented by a lawyer, the statutory declaration must be made by the party and must state that —

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- (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 of parties 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. Listing the case for further pre-trial conference or trial**

After a pre-trial conference the Registrar must either —

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

- (1) This rule applies except in the case of —
  - (a) a claim to recover possession of real property; or
  - (b) an application under Part 21.
- (2) If the Registrar at a pre-trial conference is of the opinion that it is unlikely that the case will be settled, the Registrar must order each party to lodge a listing conference memorandum in accordance with subrule (3) by the day specified in the order.
- (3) The listing conference memorandum must be in the approved form and must —
  - (a) include a concise statement of the issues of fact and law that the party contends will need to be determined at the trial; and
  - (b) state how each allegation of fact will be proved; and
  - (c) state the name, address, occupation and qualification of each witness the party will call to give oral evidence at the trial; and
  - (d) unless the Registrar or the Court orders otherwise, annex a statement in the approved form of the intended evidence of each witness who is not an expert witness.
- (4) When all the parties have complied with the order the Registrar must —
  - (a) give a copy of each party's listing conference memorandum to the other parties; and
  - (b) list the case for a listing conference.
- (5) If a party does not comply with the order, the Registrar may, after giving 10 days notice to the party, give default judgment against the party, and in that case Part 5, except rule 24, with any necessary modifications, applies in relation to the default judgment.

*[Rule 43A inserted in Gazette 3 Jun 2008 p. 2132-3.]*

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

- (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 of parties 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.

**47. Listing a case for trial**

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.

**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**

- (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 of parties at mediation conferences**

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

### **51. Outcome of mediation**

- (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**

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. Memorandum of consent**

The parties may settle a case or consent to any other order by lodging a memorandum to that effect in the approved form, signed by each party.

#### **54. Registrar may make consent orders or give judgment**

- (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. Notice of consent by one party**

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. Settling claims involving a person under a legal disability**

- (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. Making an offer of settlement**

- (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 are 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. Acknowledging the receipt of an offer of settlement**

- (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 an 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 an offer of settlement**

- (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 an acceptance of offer of settlement**

- (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;
    - (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. Registrar may give judgment**

- (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. Orders for post-offer costs**

(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;
- (b) the defendant does not accept the offer;
- (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;
- (b) the claimant does not accept the offer;
- (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. “First party” and “subsequent party”, meaning of**

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 to be the first party**

- (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. Order of opening addresses and evidence**

- (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. Order of closing addresses**

- (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 of parties at trial**

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

**Division 2 — Witnesses**

**71. Issuing a witness summons**

- (1) If a party wants to require a person to give evidence or to produce evidentiary material at a trial the party must lodge 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 lodge and serve the witness summons on the witness at least 14 days before the trial date.
- (4) The witness summons must be served personally.
- (5) At the time a witness is served with a witness summons, or at a reasonable time before the attendance date —
  - (a) an amount that is likely to be sufficient to meet the reasonable expenses of attending the court must be tendered to the witness;

- (b) arrangements to enable the witness to attend the court must be made with the witness; or
  - (c) the means to enable the witness to attend the court must be provided to the witness.
- (6) A party which issues a witness summons must ensure that subsection (5) is complied with.
- (7) The person who serves a witness with a witness summons must record how subsection (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 subsection (7) it is to be presumed that the information is true, unless the contrary is proved.

**72. Directions for expert witnesses**

- (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;
  - (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. Directions for evidence of children and special witnesses**

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. Party may adduce affidavit evidence at trial if there is no objection**

- (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. Receiving records into evidence**

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. Money paid to person under a legal disability**

- (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 outside the Common Fund referred to in the *Public Trustee Act 1941* section 40.

**78. Requests for certificate of judgment**

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

**79. Setting aside summary judgment or default judgment**

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. Decisions of Registrars**

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

## **Part 15 — Costs**

### **Division 1 — Assessments**

#### **81. Bill of costs**

- (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. Objection to bill of costs**

- (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. Form of bill**

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. Conduct of assessments**

- (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. Determination 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. Claim successful and no successful counterclaim**

- (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. Claim and counterclaim successful**

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. Claim unsuccessful and counterclaim successful**

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. Claim and counterclaim unsuccessful**

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**

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

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

- (1) This rule does not apply to a claim arising from a residential tenancy agreement as defined in the *Residential Tenancies Act 1987* section 3.
- (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).

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

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 16 — Lodging documents**

**95. “Lodge”, meaning of**

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 Courts (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.

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

**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. “Serve”, meaning of**

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 may 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
  - (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.

#### **102. Residential, business or postal address for service**

- (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 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.]*

**103. Documents served by bailiff**

- (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. Documents served by other persons**

- (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. Service of a document on an individual**

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;
- (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;

- (c) hand the document to a person who is authorised in writing to receive documents on behalf of the individual;
- (d) hand the document to someone at the person's usual or last known place of residence or business who is believed, on reasonable grounds, to have reached 18 years of age; or
- (e) hand the document to a lawyer who is acting for the individual.

**106. Service of a document on a partnership**

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

- (a) hand the document to one of the partners;
- (b) if the partner does not accept the document, put the document down in the partner's presence and advise the partner of the nature of the document;
- (c) hand the document to someone at the partnership's principal or last known place of business who, on reasonable grounds, is believed to be in charge of the business at the time of service; or
- (d) hand the document to a lawyer who is acting for the partnership.

**107. Service on a corporation personally**

- (1) In order to serve a document on a corporation personally a person must hand the document to —
  - (a) a person who, on reasonable grounds, is believed to be a director of the corporation who resides in Australia; or
  - (b) a lawyer who is acting for the corporation.

- (2) This rule applies in addition to the *Corporations Act 2001* of the Commonwealth.

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

**108. Service of a document on a public authority**

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**

- (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. Making an application for a Court order except judgment**

- (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 to be lodged with application**

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 10(1); or
    - (iii) if these rules state that the default judgment may be given in the absence of the parties;
  - (b) in relation to any other application, if —

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- (i) if these rules provide otherwise; or
- (ii) if the Court dealing with the application orders otherwise.

*[Rule 111 amended in Gazette 3 Jun 2008 p. 2136.]*

**112. Response to an 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;
  - (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.

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

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

## **Part 19 — Affidavits**

### **114. Form of an affidavit**

An affidavit must be in the approved form.

### **115. Content of an affidavit**

- (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**

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.      Litigation guardians of represented persons**

- (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.

- (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 an 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;
  - (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;
  - (b) state the nature of the litigation guardian's relationship with the represented person;

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- (c) verify that the litigation guardian consents to acting in that capacity for the represented person;
- (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. Litigation guardian of a child**

- (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 a child**

- (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;
  - (b) state the nature of the litigation guardian's relationship with the child;
  - (c) verify that the litigation guardian consents to acting in that capacity for the child;

- (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. Application for appointment as litigation guardian**

- (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**

In this Division —

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

#### **124. Application of this Division**

This Division applies to an application to the Court under —

- (a) the *Auction Sales Act 1973*; or
- (ba) the *Criminal and Found Property Disposal Act 2006*; or
- (bb) the *Criminal Investigation Act 2006* section 49(1) or 147(5); or
- (b) the *Disposal of Uncollected Goods Act 1970*; or
- (c) the *Dividing Fences Act 1961*; or
- (d) the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 69(1); or
- (e) the *Pawnbrokers and Second-hand Dealers Act 1994* sections 85 and 86; or
- (fa) the *Residential Tenancies Act 1987*; or
- (f) the *Restraining Orders Act 1997*; or
- (g) the *Restraint of Debtors Act 1984* section 22; or
- (h) the *Warehousemen's Liens Act 1952*.

*[Rule 124 amended in Gazette 24 Aug 2007 p. 4329-30;  
3 Jun 2008 p. 2137.]*

#### **125. Form of application**

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



**126. Application must be served**

Except as provided in the conferring Act or in rule 128B or 128C, 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.

*[Rule 126 inserted in Gazette 24 Aug 2007 p. 4330.]*

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

- (1a) This rule does not apply in relation to an application under the *Criminal and Found Property Disposal Act 2006*, the *Criminal Investigation Act 2006* section 49(1) or 147(5) or the *Restraining Orders Act 1997*.
- (1) A Registrar must list the case for a listing conference as soon as practicable after the application.
- (2) If the conferring Act requires the application to be served, the Registrar must endorse the date of the listing conference on the claim 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.]*

**128. Application of rules generally**

Unless the conferring Act provides otherwise, Parts 10, 13 to 20 and 22 apply, with any necessary modifications, to an application.

**129A. Dealing with an 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 129A in Gazette 3 Jun 2008 p. 2137.]*

**129B. Criminal and Found Property Disposal Act 2006**

- (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 129B in Gazette 3 Jun 2008 p. 2137.]*

**129C. Criminal Investigation Act 2006**

- (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 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 129C in Gazette 3 Jun 2008 p. 2137.]*

**129. *Disposal of Uncollected Goods Act 1970***

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***

- (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) The application must be served personally.
- (3) The application may be dealt with by a Registrar.
- (4) The application may be dealt with in the absence of the offender referred to in that section.

*[Rule 130 amended in Gazette 24 Aug 2007 p. 4332.]*

**131A. Residential Tenancies Act 1987**

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

*[Rule 131A inserted in Gazette 3 Jun 2008 p. 2137.]*

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

**131. Means inquiries**

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.

**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)
s. 49(1)	s. 103(2)
s. 55(2)	

- (2) A person may apply for the review of a decision of a Registrar in relation to the application or request by making an application under Part 18 of these rules.

*[Rule 132 amended in Gazette 3 Jun 2008 p. 2137.]*

## **Part 22 — Miscellaneous**

### **133A. Changing venue**

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

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

### **133B. Corrections to typographical and other errors**

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

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

### **133. Availability of forms**

The Court must make approved forms available —

- (a) at each Court registry;
- (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**

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

- (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.]*

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**136. Cases remitted from a 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.



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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.

**Compilation table**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<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))