

# **MAGISTRATES COURT (CIVIL) RULES 2013**

## **(Amendment 28)**

Magistrates Court (Civil) Rules 2013 (Gov Gaz 26 April 2013, p 1201)  
 Magistrates Court (Civil) Rules 2013 (Amendment 1) (Gov Gaz 9 January 2014, p 67)  
 Magistrates Court (Civil) Rules 2013 (Amendment 2) (Gov Gaz 23 January 2014, p 319)  
 Magistrates Court (Civil) Rules 2013 (Amendment 3) (Gov Gaz 10 April 2014, p 1489)  
 Magistrates Court (Civil) Rules 2013 (Amendment 4) (Gov Gaz 17 April 2014, p 1511)  
 Magistrates Court (Civil) Rules 2013 (Amendment 5) (Gov Gaz 19 June 2014, p 2872)  
 Magistrates Court (Civil) Rules 2013 (Amendment 6) (Gov Gaz 31 July 2014, p 3708)  
 Magistrates Court (Civil) Rules 2013 (Amendment 7) (Gov Gaz 4 December 2014, p 6599)  
 Magistrates Court (Civil) Rules 2013 (Amendment 8) (Gov Gaz 30 April 2015, p 1638)  
 Magistrates Court (Civil) Rules 2013 (Amendment 9) (Gov Gaz 3 September 2015, p 4159)  
 Magistrates Court (Civil) Rules 2013 (Amendment 10) (Gov Gaz 28 January 2016, p 254)  
 Magistrates Court (Civil) Rules 2013 (Amendment 11) (Gov Gaz 10 March 2016, p 861)  
 Magistrates Court (Civil) Rules 2013 (Amendment 12) (Gov Gaz 31 March 2016, p 1107)  
 Magistrates Court (Civil) Rules 2013 (Amendment 13) (Gov Gaz 28 July 2016, p 3038)  
 Magistrates Court (Civil) Rules 2013 (Amendment 14) (Gov Gaz 4 August 2016, p 3103)  
 Magistrates Court (Civil) Rules 2013 (Amendment 15) (Gov Gaz 27 October 2016, p 4226)  
 Magistrates Court (Civil) Rules 2013 (Amendment 16) (Gov Gaz 19 April 2017, p 1090)  
 Magistrates Court (Civil) Rules 2013 (Amendment 17) (Gov Gaz 30 May 2017, p 1980)  
 Magistrates Court (Civil) Rules 2013 (Amendment 18) (Gov Gaz 7 June 2017, p 2038)  
 Magistrates Court (Civil) Rules 2013 (Amendment 19) (Gov Gaz 1 August 2017, p 3030)  
 Magistrates Court (Civil) Rules 2013 (Amendment 20) (Gov Gaz 6 February 2018, p 659)  
 Magistrates Court (Civil) Rules 2013 (Amendment 21) (Gov Gaz 28 June 2018, p 2663)[1]  
 Magistrates Court (Civil) Rules 2013 (Amendment 22) (Gov Gaz 5 October 2018 p 3740)  
 Magistrates Court (Civil) Rules 2013 (Amendment 23) (Gov Gaz 20 December 2018 p 4373)  
 Magistrates Court (Civil) Rules 2013 (Amendment 24) (Gov Gaz 27 June 2019 p 2578)  
 Magistrates Court (Civil) Rules 2013 (Amendment 25) (Gov Gaz 19 September p 3333)  
 Magistrates Court (Civil) Rules 2013 (Amendment 26) (Gov Gaz 26 September p 3372)[2]  
 Magistrates Court (Civil) Rules 2013 (Amendment 27) (Gov Gaz 21 November 2019 p 3934)  
 Magistrates Court (Civil) Rules 2013 (Amendment 28) (Gov Gaz 28 November 2019 p 3996)

[1] Came into effect on 5 July 2018.

[2] Came into effect on 1 October 2019.

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## PRELIMINARY

1. (1) These Rules may be cited as the "*Magistrates Court (Civil) Rules 2013*".
- (2) These Rules commence when the relevant provisions of the *Statutes Amendment (Courts Efficiency Reforms) Act 2012* commences.

## DEFINITIONS

2. (1) In these Rules, unless the contrary intention appears –

"*the Act*" means the *Magistrates Court Act 1991*.

"*action*" or "*claim*" means an action or claim or request (at law or in equity), defence, counterclaim, set-off, interpleader, third and subsequent party action or claim, any other originating application or appellate action or claim and mediation, conciliation, arbitration and expert opinion arranged by the Court in relation to an intended claim, respectively within the jurisdiction of the Civil Division of the Court.

"*ADR*" is an umbrella term for dispute resolution processes (other than judicial determination) in which an impartial person assists the parties to resolve the issues between them and to conduct their litigation in a cost efficient manner.

"*application*" means an application to the Court other than an interlocutory application.

"*arbitration*" is a process in which parties present arguments and evidence to an arbitrator who makes a binding determination.

"*authorised user*" means a person authorised by the Courts Administration Authority to file documents by electronic filing. An authorised user will be given a user identifier and must nominate a password. A corporate authorised user will be required to nominate a natural person(s) as its agent with the authority to act on behalf of the body corporate, and each of those natural persons will be given a user identifier. The Principal Registrar can withdraw an authorisation by notice to the authorised user and without giving any reason.

"*conciliation*" is a process in which the participants, with the assistance of a conciliator, identify the issues in dispute, develop options, consider alternatives and endeavour to reach an agreement. A conciliator will advise on the matters in dispute/or options for resolution, but will not make a determination. The conciliator is responsible for managing the conciliation process.

"costs" means party and party costs including disbursements, witness fees, experts' charges and other expenses of and incidental to the conduct of an action.

"date of filing" means the date when a document was apparently sealed with the seal of the Court.

"defendant" includes a defendant to a counterclaim or third or subsequent party claim.

"document" includes any evidentiary material that contains or is information including but not limited to:

- (a) an audio-tape;
- (b) a computer program or software, and any data or information recorded in or processed by a computer;
- (c) a film or digital image
- (d) a microfiche record; and
- (e) any material thing or substance which is relevant evidence

or any reproduction of such a document.

"DX" means the Australian Document Exchange at the following locations - Adelaide, Berri, Christies Beach, Elizabeth, Mount Gambier, Murray Bridge, Port Adelaide, Port Augusta, Port Lincoln, Port Pirie and Whyalla (or any other location fixed by Practice Direction).

"DX number" means the identifying number, at a DX, of a box at which a person is entitled to collect documents.

"electronic filing" means filing by electronic means by a method approved by the Chief Magistrate.

"e-mail" means a transfer of documents from one computer to another correctly addressed to the name, user identification or string which the computer of the addressee recognizes.

"Enforceable Payment Agreement" or "EPA" means an agreement under Rule 21B.

"fax" means a facsimile of a document transmitted through a Telecom system.

"fax number" means the identifying Telecom number of a subscriber for the receipt of a fax.

"film" includes a photograph, videotape, digital images or cinematographic film.

“*interlocutory application*” means

- (a) an application to the Court that is preliminary or ancillary to an action or intended action in the Court;
- (b) a proceeding for an order or direction about the course or conduct of an action; or
- (c) a proceeding related to the enforcement of a judgment.

“*judgment*” means a judgment, declaration, decree, decision or order of the Court disposing of an action, and includes an interlocutory judgment or order.

"*judgment debt*" includes costs and interest.

“*Judicial Registrar*” means a Judicial Registrar appointed pursuant to section 7AB of the *Magistrates Court Act 1991*.

"*final judgment*" means any judgment –

- (a) made with the consent of the parties;
- (b) given at the conclusion of a contested hearing;
- (c) made in the terms of the acceptance of either an offer to consent to judgment or a payment of a sum of money to the Registrar; or
- (d) a summary judgment.

“*judicial intimation*” means an intimation made under Rule 77 where a Magistrate reviews the provable facts against the pleadings, assists the parties narrow the issues in dispute and predicts the outcome of the case at trial with such reasons as s/he sees fit to give.

“*mediation*” is a process where parties with the assistance of a mediator identify disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or determinative role in relation to the content of the dispute or its resolution but may advise on or determine the process of the mediation.

"*order*" includes the giving of a direction.

"*personal service*" includes service in accordance with Rule 47 Sub-rule (k)(i) and Sub-rule (1).

"*person under disability*" includes an infant and any person (whether under statutory protection or not) who by reason of physical or intellectual impairment is unable to give sufficient instructions to conduct or compromise an action.

"*plaintiff*" includes a plaintiff by counterclaim or third or subsequent party claim.

"pleadings" includes a statement in writing of the action or claim of a party and any particulars of such statement.

"pre-judgment interest" means interest pursuant to section 34(1) of the *Magistrates Court Act 1991*.

"proceeding" means a step or process in the course of an action or the enforcement of a judgment.

"property" means real or personal property.

"qualified mediator, conciliator or arbitrator" means a person accredited in accordance with the National Mediation Accreditation Standards by a Recognised Mediation Accreditation Body and the Court shall have the discretion to appoint a mediator who is not accredited where cultural, regional or other considerations make it necessary.

"the Registrar" means any Registrar of the Court other than the Principal Registrar or a Judicial Registrar.

"Sheriff" includes a Deputy Sheriff, a Sheriff's Officer and any person appointed by the Court to serve or execute any action, proceeding or process, or carry out the duties of the Sheriff in relation to any matter.

"solicitor" includes counsel.

"Trial Court" means –

- (a) the Adelaide Civil Registry; or
- (b) such other Registry as the Court may nominate.

"Trial Plans" are intended to assist parties to an action by identifying issues in dispute and their proof.

- (2) A reference to a Commonwealth Act includes a reference to that Act as amended from time to time and to an Act passed in substitution for that Act.
- (3) For the purposes of the Act, the *Enforcement of Judgments Act 1991* and these Rules, the Court must be constituted under the First Schedule.
- (4) For the purposes of these Rules, a reference to "a Magistrate" is also taken to be a reference to a Judicial Registrar except for in sub-rules 40(6), 40(7) and 112(3)(ab).

## DUTY OF COURT

3. (1) (a) In interpreting, applying and enforcing observance of these Rules, the Court and Registrar must in all things promote the expeditious, economical and just conduct and resolution of an action or proceeding by negotiated agreement or judicial determination.  
(b) These Rules are not intended to defeat the proper action brought in good faith of any party and are to be interpreted accordingly.
- (2) A person may not commence more than one action in respect of the same or a substantially similar cause of action and the Court must attempt to resolve multiple actions involving a party and determine all matters in dispute in an action so as to avoid multiplicity of actions.

## ORDERS

4. (1) Unless the contrary intention appears, where under these Rules the Court has the power to make an order, grant leave or do any other act or thing it may do so –
  - (a) subject to specified conditions, including conditions as to the payment of costs;
  - (b) at any time.
- (2) An order which requires an act to be done will be taken to require it to be done within 7 days of the date of the order, unless these Rules require, or the Court orders, otherwise.
- (3) The Court may make an incidental or ancillary order.
- (4) The Court may require a party to file draft Minutes of an order sought.
- (5) The terms of any order or leave made or granted on application or interlocutory application need not be drawn up unless the Court orders otherwise, and any order or leave endorsed on the application or interlocutory application has effect as a formal order or leave.

## FORMS

5. (1) The Forms set out in the Second Schedule must be used for the purposes specified in the Schedule or these Rules.
- (2) Where a party is required to use a Form prescribed by these Rules, the particulars required by the Form must be provided and included in the Form before it is filed and served on any other person or party.



- (3) It is sufficient compliance with these Rules, as to the form of any document, if the document is substantially in accordance with the Form.
- (4) The provision of a user identifier and current password in relation to the electronic filing of a document is deemed to have the same effect as if the document was signed by the agent with authority on behalf of a corporate authorised user, or by an authorised user who is a natural person.

## **PRACTICE DIRECTIONS**

6. (1) The Chief Magistrate may issue, vary or revoke a Practice Direction and the practice and procedure of the Court, subject to these Rules, must be in conformity with any Practice Direction.
  - (2) The Principal Registrar must maintain a register of all Practice Directions.

## **GENERAL POWERS OF COURT**

7. (1) In addition to exercising powers referred to in these Rules, the Court may –
    - (a) make an order for a party to produce a document for inspection notwithstanding that a solicitor claims a lien over the document;
    - (b) make an order authorising the observation or recording of, or the taking of a sample of or from, any property;
    - (c) make an order that any person, or in the case of a body corporate a specified officer of that body corporate, make discovery (on oath, affirmation or otherwise) of all documents and property which are or have been in the possession, custody or power of that person relating to the matters in issue in an action and the order may be general, or limited to such classes of documents or property as the Court thinks fit;
    - (d) make an order that any person, or in the case of a body corporate a specified officer of that body corporate, answer on oath or affirmation interrogatories relating to the matters in issue in an action.
  - (2) An order under this Rule may be made against a person who is not a party to an action.
8. (1) Where a party wishes to obtain –
    - (a) summary judgment in, or the disposal of the whole or part of, an action; or
    - (b) immediate relief,

he or she may do so on interlocutory application accompanied by an affidavit specifying –

- (c) that there is no reasonable basis for the action or defence.
  - (2) The Court may –
    - (a) enter judgment accordingly;
    - (b) grant the whole or part of the relief sought, and order that the action continue in relation to the part not disposed of;
    - (c) make an order for an early trial; or
    - (d) make any other order.
  - (3) The Court may enter a summary judgment based on an Enforceable Payment Agreement verified by an affidavit.
- 9.** The Court must order re-service of an action or proceeding where the Court is satisfied that it has not come to the attention of a person to whom it is directed and that the person has not attempted to avoid or prevent service.
- 10.** In an action or proceeding the Court may –
- (a) amend any defect or error;
  - (b) remedy or rectify any omission;
  - (c) enlarge or abridge the time fixed by these Rules, or by any order, for taking a proceeding or doing any act or thing;
  - (d) dispense with compliance with any of these Rules, before or after the occasion for compliance arises; or
  - (e) take or regard an act or thing to be done at or from a date fixed by the Court.
- 11.** (1) Where in an action or proceeding a person or party has been prejudiced or suffered damage or loss as a result of a wrongful act or the default, neglect, delay or non-compliance with the Act or these Rules by any other person or party, the Court may order that other person or party to pay compensation for the prejudice, damage or loss.
- (2) The order for compensation may be made in respect of any injury, embarrassment, inconvenience or expense suffered or incurred.
- 12.** (1) Where the manner or form of commencing an action, taking a proceeding or doing any other act or thing is not prescribed by or under any Act or these Rules, the Court may give directions as to the steps to be taken and may adopt (with necessary modification) the appropriate practice and procedure of the Supreme Court.
- (2) Where at any time the Court considers it necessary or expedient for the speedy administration of justice or the saving of costs, it may –

- (a) on its own initiative, or on interlocutory application of a party; or
- (b) with the consent of the parties,

by order, modify or dispense with the practice and procedure of the Court prescribed by these Rules, or give directions as to the practice and procedure to be adopted, in respect of any action or proceeding.

- (3) The Court may make an order or do any other act or thing (even if such order, act or thing is not specifically referred to in these Rules) if the Court thinks that it is necessary or expedient to give proper effect to the Act, any other Act, or these Rules and the justice of the case so requires.

## **LEGAL REPRESENTATION**

- 13**
- (1) A solicitor is taken to be acting for a party in an action when he or she files and serves notice in writing of that fact on all other parties and must continue to act until the solicitor or his or her client has filed a notice in writing that the solicitor is no longer acting and confirming that the party is aware of the procedural obligations in the action and a current address for service on the party.
  - (2) A firm or company of solicitors must nominate a person within the firm or company as the contact person and that person is a person acting for the party for the purpose of these Rules unless the firm or company advises the Court in writing that a different person is the contact person, or the firm or company ceases to act in accordance with these Rules.
  - (3) Subject to any Act a party may do any act or thing under these Rules by his/her solicitor.
  - (4) In deciding whether a party would be unfairly disadvantaged in a minor civil action, if not represented by a legal practitioner, the Court must have regard to whether –
    - (a) the party has a judgment in his/her favour in the action,
    - (b) the party will suffer undue expense or inconvenience in attending,
    - (c) the party is unable to attend due to ill health,
    - (d) any other proper cause exists.
  - (5) A company may be represented by a director with authority to bind the company.

## **PERSONS UNDER DISABILITY**

- 14.**
- (1) A person under disability must have a litigation guardian to conduct an action on his or her behalf.

- (2) Where a person under disability is a party to an action anything which he or she, if not under disability, would be required or authorised to do, is required or authorised to be done by the litigation guardian.
  - (3) Failure to appoint a litigation guardian does not invalidate an action.
- 15.** An action filed by a litigation guardian must state –
- (a) the identity and address of the litigation guardian; and
  - (b) the identity of the person under disability and the nature of the disability (and, where it is infancy, the date of birth of the infant).
- 16.** Subject to any Act, the Court, on its own initiative or on interlocutory application by a person under disability, may appoint a litigation guardian.
- 17.** A litigation guardian of a defendant, unless the Court orders otherwise, is not liable for the costs of any other party.
- 18.** (1) No compromise or settlement of an action binds a person under disability unless it is approved by order of the Court.
- (a) The approval of the Court may be sought at any time.
  - (b) Before making an order of approval, the Court must consider an opinion of counsel filed by the parties on the adequacy or desirability of the proposed compromise or settlement.
  - (c) If the Court makes an order of approval, it may make an order as to the investment of any settlement money and payments of the capital and income to its full extent for the maintenance, education, benefit or advancement for and on behalf of the person under disability and as to the payment of the costs of the litigation guardian or any party.
  - (d) Unless the Court orders otherwise, a compromise or settlement must be made on the basis that the solicitor acting for the person under disability limits his or her costs to the party/party costs.
- (2) Before making an order of approval under Section 80 of the *Correctional Services Act 1982* the Court may order an opinion of counsel be obtained and filed by the Crown as to the adequacy or desirability of the settlement.

## **EVIDENCE IN PRETRIAL PROCEEDINGS**

- 19.** (1) In pretrial proceedings, subject to any order of the Court, documents may be received in accordance with the *Evidence Act 1929*, or may be verified by affidavit. Evidence from a natural person may be received by the tender of an affidavit or by the tender of a continuous unedited video commencing with an oath or affirmation administered in accordance with the *Evidence Act 1929*.

- (2) An affidavit must be in accordance with Form 35 and the information arranged in numbered paragraphs.
- (3) Save in an interlocutory application for final relief the evidence may contain statements based on information received and believed by the person making the affidavit to be true with the sources and the grounds for the belief.
- (4) Where it appears to the witness before whom an affidavit is sworn that the person is illiterate or blind, that witness must certify in or below the witnessing clause that at the time the affidavit was sworn –
  - (a) the affidavit was read to the person making the affidavit; and
  - (b) the person making the affidavit seemed to understand the affidavit:  
  
and if the person is not capable of signing the affidavit
  - (c) the witness may certify that and verify that the person making the affidavit accepted the accuracy of the facts in the affidavit.
- (5) Where an affidavit is made by a person who does not have an adequate command of the English language –
  - (a) the affidavit and the oath or affirmation to be taken must be translated to the person making the affidavit by an interpreter into a language which the person making the affidavit understands; and
  - (b) the interpreter in writing state his/her full name and must certify in or below the witnessing clause that paragraph (a) has been complied with.
- (6) Subject to Sub-rule 19(4), each page of and any alterations to an affidavit must be signed by the person making the affidavit and the witness before whom it is sworn.
- (7) An annexure or exhibit to an affidavit must bear an endorsement, signed by the witness before whom the affidavit is sworn, that identifies the annexure as the particular annexure referred to in the affidavit.
- (8) An affidavit, unless the Court otherwise orders, may be received in evidence notwithstanding any irregularity in form.

## **PRE CLAIM PROCEDURES**

20. (1) A person intending to bring an action may, by notice in writing to another person, request the other person to make discovery, and disclose the present whereabouts, of any document or property that is relevant to the proposed action.

- (2) If such a request is not complied with within 7 days of the service of the notice, the Court may order the other person to make discovery and disclosure by letter or affidavit.
- 21.**
- (1) On an interlocutory application by a person intending to bring an action, the Court may issue a subpoena in Form 1 to compel the attendance of another person to give evidence or produce evidentiary material relevant to the bringing of the proposed action.
  - (2) The subpoena must be served at least 4 clear days before the date fixed for the attendance.
  - (3) The Court may order the person applying for the subpoena to pay, at the time of service of the subpoena, to the person subpoenaed, the reasonable expenses of attendance (including transport and accommodation) fixed by the Registrar.
  - (4) If a person served with a subpoena fails to attend or produce the evidentiary material at the date, time and place fixed in the subpoena, the Court may issue a warrant for the arrest of the person and make an order under Section 37(4) of the Act.
  - (5) A subpoena issued under this Rule must bear the Court seal.
- 21A.**
- (1) Subject to this Rule and to any order of the Court the plaintiff is not entitled to the costs for filing of a claim other than a counterclaim, a third party claim, a claim for non compliance with an EPA, or a claim under the *Worker's Liens Act 1893*, unless notice in writing of the intended claim was given to the intended defendant not less than 21 days before the filing of the claim, or where Sub-rule(2) applies in accordance with that Sub-rule, by any means authorised in these Rules for service of a claim.
  - (2) In an action for damages for personal injuries notice of the claim must be given at least 90 days before the filing of the claim and must be given to the defendant's insurer if the identity of the insurer is known to the intended plaintiff. Such notice must include notice of any intended claim for past and future economic loss and be supported by documents including medical reports setting out the nature and extent of the plaintiff's injuries and residual disabilities as known to the plaintiff at the time of the giving of the notice.
  - (3) Notice of an intended claim may be given in accordance with Form 1A which must be filed with the Court and must bear the Court's seal. A plaintiff who is successful in a claim is entitled to recover from the defendant any filing fee for this notice.
  - (4) A debtor may give notice in accordance with Form 1C to a creditor of willingness to consent to judgment for a sum of money and the creditor may file a claim with the notice attached and sign judgment for that sum plus the filing fee, without service of the claim. Notwithstanding these

Rules but subject to any order of the Court the creditor will not be entitled to legal fees for filing a claim for that sum or less.

- (5) Notice of an intended claim or willingness to consent to judgment may be served on a current place of business of the corporation and notice of an intended claim by the Commissioner or Deputy Commissioner of Taxation may be served in accordance with any Act or Regulation which provides for service of notices by the Commissioner or Deputy Commissioner on the taxpayer.
- (6) The Registrar must give an action number to any action in which the Court arranges a mediation or expert opinion before a claim is filed by a party.

- 21B.**
- (1) An agreement of the extent of a monetary obligation and terms of repayment may be made in terms of Form 1B (an Enforceable Payment Agreement).
  - (2) Where an EPA is in place and is being complied with the creditor must not make any adverse report about the non payment of the monetary obligation to any credit referencing agency.
  - (3) Where a party to an EPA does not do what was agreed the other party may seek a judgment in accordance with the EPA, provided that where the EPA is for payment by instalments two instalment payments must be in arrears before a creditor can obtain a judgment for a monetary sum.
  - (4) The Court may accept an EPA verified by an affidavit of one party to it as proof of the matters contained in it.
  - (5) If payments have been made a creditor seeking to enforce an EPA must disclose them when seeking judgment and any judgment must allow credit for them.
  - (6) An EPA may be made before or after a claim has been filed.

## **INTERIM INJUNCTIONS AND RESTRAINING ORDERS**

- 22.**
- (1) An interlocutory application for an injunction or order under Sections 25 or 26 of the Act must not be made in the absence of a party unless the Court is satisfied by evidence that proper cause exists and the applicant gives an undertaking as to damages.
  - (2) If an order is made in the absence of a party it must be listed for further directions within three working days.
  - (3) The Court must give directions as to the conduct and service of the interlocutory application, and may –

- (a) order the inspection, photographing, detention, custody or preservation of property that is the subject-matter of an action;
- (b) require such bond, security or undertaking as may be appropriate;
- (c) order the filing and service of any document; or
- (d) make any other order.

## PARTIES

23. (1) The misjoinder or non-joinder of parties will not defeat an action, but the Court must ensure that all necessary parties are joined to enable the Court to determine all questions involved in the action.
- (2) The Court may direct that a person who has an interest in proceedings be joined as a party if it is satisfied that it will avoid multiplicity of proceedings and will not cause the existing parties unreasonable expense or delay.
- (3) (a) Where 2 or more persons carry on business as partners in the State they may sue and be sued in the name of their firm in respect of any cause of action accruing at the time the persons were partners, but if the partners are named they are the parties to the action;
- (b) The Court may order a partner to provide a statement on oath or affirmation of the particulars of persons who were partners of a firm at any relevant time.
- (c) A judgment against a firm may be enforced against all partners of the firm at the relevant time
- (4) (a) A trustee, executor or administrator may sue and be sued on behalf or as a representative of the relevant trust property or estate.
- (b) The Court may order joinder of any person beneficially interested in the property or estate.
- (5) (a) This Sub-rule applies where 3 or more persons have a cause of action or defence (whether identical or not) arising out of, or in respect of, the same, or substantially the same, set of facts or circumstances.
- (b) (i) The Court may, by consent, make an order (a "*representation order*") that in the one action, 1 or more of the persons be appointed to sue or defend on behalf, or for the benefit, of all persons who so consent;
- (ii) Unless the Court orders otherwise, a representation order is to be taken to confer on any appointed person or persons complete authority and power in respect of the conduct, compromise, settlement or other disposition of the whole, or any part, of the action;



- (c) A representation order may be made even if the remedies or relief sought by the persons (whether at law or in equity) are not identical;
- (d) (i) Within 7 days of a representation order being made, the Registrar must give to the parties at least 21 days notice in writing of, and fix a date, time and place for, a directions hearing.
  - (ii) At a directions hearing, the Court may –
    - (A) direct that the existence of the action be published, in such manner and form as it thinks fit, to ascertain if any other person wants to consent to being represented in the action;
    - (B) direct the manner of legal representation of the parties at trial;
    - (C) give any other directions.
- (e) A person who is represented may be entitled to, or liable for, costs in such sum or proportion as the Court may fix.
- (f) A person may withdraw his or her consent with leave of the Court not less than 21 days before the date fixed for trial, but thereafter such consent is irrevocable.
- (g) A consent must be in writing, signed and filed.

## PLEADINGS

- 24.** (1) (a) In a minor civil action, subject to any order of the Court, a short form of pleading disclosing the date(s), place(s), circumstances and the cause of action upon which the action is based is sufficient and a minor civil action under section 588FF of the Corporations Act 2001 must not attach an affidavit nor liquidators report.
- (b) In a general jurisdiction claim pleadings must comply with the Supreme Court Civil Rules 2006 except that a claim under section 588FF of the Corporations Act 2001 must not attach an affidavit nor liquidators report.
- (c) Pleadings in a general claim may be amended on the initiative of a party without leave on one occasion to be filed and served not later than 28 days before the first directions hearing but not to plead an action that is statute barred, nor to join a new party. Any other party to the action then has 21 days to file and serve any consequential amendments.

- (2) (a) Where a natural person denies personal liability on the ground that the liability was incurred or assumed by, or on behalf of, another person or body corporate instead, the natural person must plead all material facts or circumstances –
  - (i) from which the liability of the other person or body corporate can be implied or inferred; or
  - (ii) identifying when, where and how the other person or body corporate incurred or assumed the liability.
- (b) Where a party alleges that the parties are bound by a quotation, the party must plead all material facts or circumstances –
  - (i) from which the quotation can be implied or inferred; and
  - (ii) identifying by whom, when, where and how the quotation was given or made.
- (3) A claim under the *Worker's Liens Act 1893* must include the particulars required to enforce a lien or charge under that Act.
- (4) A Council constituted under the *Local Government Act 1999* making a claim for an instalment of rates may plead the instalments, interest, fines and costs owing at that time. The Council may obtain judgment for that sum and later may apply to amend any judgment that is not a final judgment to reflect further accrued liability for rate instalments, interest and fines for that same property and owner, supported by a statement of the amount due at that time, which amendment must be served.
- (5) The Commissioner of State Taxation making a claim on behalf of RevenueSA for State land tax may plead the amounts and costs owing at that time. The Commissioner may obtain judgment for that sum and later may apply to amend any judgment that is not a final judgment to reflect further accrued liability for State land tax for that same property and owner, supported by filing a statement of the amount due at that time, which amendment must be served.
- (6) No pleading beyond a reply is allowed except with leave of the Court.

## CLAIM

- 25. (1) (a) Except where otherwise provided, an action in the general jurisdiction must be commenced in Form 2 and in the minor civil jurisdiction must be commenced in Form 3.
- (b) An action pursuant to section 588FF of the Corporations Act 2001 must be commenced in Form 2 or 3.

26. (1) An action founded on a neighbourhood dispute or a minor statutory proceeding pursuant to the legislation listed below must be commenced in the respective forms set out below -

***Building Work Contractors Act 1995*** Form 3F

***Fair Trading Act 1987*** Form 3G

***Fences Act 1975*** Form 3A

***Fines Enforcement and Debt Recovery Act 2017***

Sections 50 and 53 Form 7

(**Note:** An application in relation to a debt that exceeds \$12,000 is not a minor statutory proceeding and must be commenced in accordance with rule 37.)

**Neighbourhood Dispute** Form 3B

***Retail and Commercial Leases Act 1995***

Sections 12, 15 or 49(2)(b), 68, 76(8) or 77(2) Form 3C

Section 20(6) Form 3D

(**Note:** An application under this Act which involves a monetary claim for more than \$12 000 is not a minor statutory proceeding and must be commenced on Form 2.)

***Second-hand Vehicle Dealers Act 1995***  
**(other than Schedule 3)** Form 3E

(**Note:** An appeal under Schedule 3 of this Act is not a minor statutory proceeding and must be commenced on Form 10.)

- (2) On the filing of an action under this Rule the Registrar must fix a date, time and place for a directions hearing and give at least 7 days notice in writing in Form 23C to the parties and serve a copy of the form commencing the action, together with any documents attached to it, on the other parties.
- (3) On the filing of an application under section 53 of the *Fines Enforcement and Debt Recovery Act 2017*, the Registrar must fix a date, time and place for a directions hearing and give at least 7 days notice in writing to the parties and serve a copy of the form commencing the action, together with any documents attached to it, on the other parties.
- (4) Any application under section 50 or 53 of the *Fines Enforcement and Debt Recovery Act 2017* must be accompanied by an affidavit in support of it.

- (5) A party served with an application may file and serve a response.
  - (6) A party electing to exclude the dispute from the minor civil jurisdiction may do so at the directions hearing or by interlocutory application.
- 27.**
- (1) A legal practitioner acting for a party must give its client a copy of Rules 55-58 inclusive, Rule 106 and the cost scale applicable to the action.
  - (2) A party must take genuine steps to resolve an action before it is commenced including considering the use of ADR.
- 28.**
- (1) An action must be served within 1 year of the date of filing.
  - (2) The time for service of an action may be extended, on interlocutory application to the Court, filed within 1 year of the date of filing of the action.
  - (3)
    - (a) If at the expiry of 21 days after the time for service of an action or any extension thereof –
      - (i) judgment has not been signed; or
      - (ii) a defence has not been filed, the action will stand dismissed for want of prosecution.
    - (b) If it appears that an action is not being conducted with due expedition, the Court –
      - (i) on its own initiative, and upon due notice to the parties; or
      - (ii) on interlocutory application of a party or the Registrar, may make an order –
        - (iii) that is necessary or expedient to ensure that the action proceeds to trial as soon as possible (including the fixing of both time limits in respect of any subsequent proceedings and the trial date); or
        - (iv) dismissing the action for want of prosecution.
    - (c) Where an action is dismissed under this Sub-rule that dismissal has effect as a judgment but not as a final judgment.
    - (d) In determining whether an action is not being conducted with due expedition under paragraph (b) of this Sub-rule, the Court may have regard to the principles of case flow management expressed in, or time limits fixed by –
      - (i) the *Supreme Court Civil Rules 2006* in respect of the taking of any proceeding or the conduct of the action, as if such

principles or time limits applied to a proceeding or action in the Court; or

(ii) Practice Direction.

- 29.** (1) Subject to these rules a party may file a pleading in any Registry of the Court but where possible in respect of a contested matter should file interlocutory applications and documents in the Registry of the Trial Court and in respect of an Investigation or Examination hearing, the Registry where the hearing is to be conducted. (see Rule 125(2))
- (2) Subject to these Rules or to an order of the Court, the parties must conduct the whole of an action up to and including judgment in the Trial Court.
- (3) On interlocutory application by any person (which may be filed at any Registry of the Court) the Trial Court may nominate another Registry of the Court to be the Trial Court.
- (4) An interlocutory application to set aside or vary –
- (a) a judgment, may be filed in any Registry of the Court but must be listed in the Trial Court;
  - (b) an enforcement process, may be filed in any Registry of the Court but must listed in the Registry of the Court in which the process was filed.

## **DEFENCE**

- 30.** (1) To defend an action (other than an action under Rules 26, 37 and 38) a person must file a defence in Form 4 at any Registry of the Court.
- (2) A party intending to object to the jurisdiction of the Court may only do so on an interlocutory application filed at the same time as the defence.

## **COUNTERCLAIM AND SET-OFF**

- 31.** A counterclaim or set-off must be filed at the same time as the defence and in Form 5.
- 32.** (1) A party intending to file a counterclaim or raise a set-off which is not within the jurisdiction of the Court must forthwith apply to the Court to have the matter remitted to the District Court.
- (2) The Court may remit the claim to the District Court or order that the counterclaim or set-off be heard separately from the claim.
- (3) If the party fails forthwith to apply to the Court, the claim will be heard separately from the counterclaim or set-off.

33. (1) Where there is more than one defendant to a claim, each defendant will be taken to claim contribution from any other defendant.
- (2) A defendant may require any other defendant to provide particulars of a claim to contribution.
- (3) This Rule does not apply to an action to which the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* or Section 72 of the *Development Act 1993* applies.

## DEFENCE TO COUNTERCLAIM AND SET-OFF

34. (1) A plaintiff will be taken to have filed a defence forthwith to a counterclaim or set-off, and pleaded to the general issue.
- (2) A defendant may require a plaintiff to provide particulars of a defence to a counterclaim or set-off.

## THIRD PARTY CLAIM

35. (1) A defendant claiming indemnity, contribution or relief related to the claim against him or her must file a Third Party Claim within 21 days of the filing of the defence, in Form 6, and serve it together with a copy of the claim.
- (2) The defendant must serve the Third Party Claim on all other parties.
- (3) Form 6 may be adapted for use in any subsequent party claim.
- (4) A third or subsequent party may plead to the plaintiff's claim.
- (5) A defendant, third party and subsequent party may with leave, join actions between themselves which are related to the plaintiff's claim.
- (6) A party may apply for directions in respect of a Third (or subsequent) Party Claim.

## INTERPLEADER BY STAKEHOLDER

36. (1) Where a person (the "*applicant*") is or is about to be sued, or could be sued, in respect of personal property in his or her possession or under his or her control or in respect of the proceeds from a disposition of the property and –
- (a) is uncertain as to whom the property or proceeds belongs; or

- (b) receives a claim in respect of the property or proceeds by 2 or more persons making adverse claims,

the applicant may apply to the Court for directions as to the parties to be served and as to the procedure to be followed.

- (2) This Rule applies only where the applicant expressly disclaims any personal interest in, or claim to, any part of the property or proceeds in dispute.

## **STATUTORY ACTIONS**

- 37.** (1) Actions (other than criminal proceedings) under the following legislation must be commenced in the respective forms set out below:

Any Act not otherwise specified	Form 7
<i>Australian Consumer Law (SA)</i>	Form 9
<i>Community Titles Act 1996</i>	Form 15
<i>Criminal Assets Confiscation Act 2005</i>	Form 9A
<i>Fair Trading Act 1987</i>	
Section 86B	Form 11
<i>Family Relationships Act 1975</i>	
Sections 9 and 11B	Form 16
<i>Fire and Emergency Services Act 2005</i>	
Section 38	Form 15B
<i>Fines Enforcement and Debt Recovery Act 2017</i>	
Sections 50, 53 and 66	Form 7
<i>Housing Improvement Act 2016</i>	
Section 35(3)	Form 53
<i>Marriage Act 1961 (Cth)</i>	Form 7
<i>National Credit Code (Cth)</i>	Form 51
<i>Second-hand Dealers and Pawnbrokers Act 1996</i>	Form 8

***Strata Titles Act 1988***

Form 15

***Unclaimed Goods Act 1987***

Form 8

***Warehouse Liens Act 1990***

Sections 12 and 14

Form 8

- (2) Any application made under the *Criminal Assets Confiscation Act 2005* must be accompanied by an affidavit in support of it.
- (3) An application pursuant to section 56B of the *Criminal Assets Confiscation Act 2005* must also annex all certificates of record required to show that a person is a prescribed drug offender.
- (4) An application pursuant to section 219 of the *Criminal Assets Confiscation Act 2005* must also annex draft minutes of order.
- (5) A warrant under Section 172 of the *Criminal Assets Confiscation Act 2005* must be in Form 36 and a duplicate warrant must be in Form 37.
- (6) A freezing order under Section 17 of the *Criminal Assets Confiscation Act 2005* must be in Form 37A.
- (7) An application pursuant to Sections 9 or 11B of the *Family Relationships Act 1975* must be accompanied by an affidavit that discloses, to the best of applicant's knowledge, information or belief the full names and addresses of all persons whose interests may be affected by the declaration.
- (8) An application pursuant to Sections 9 or 11B of the *Family Relationships Act 1975* must be served on all persons whose interests may be affected by the declaration.
- (9) An application pursuant to s 35(3) of the *Housing Improvement Act 2016* must be accompanied by a copy of the applicable residential tenancy agreement and, if the applicant is the landlord, a copy of all applicable rent records kept pursuant to s 57 of the *Residential Tenancies Act 1995*.
- (10) The Registrar must serve a copy of an application filed pursuant to s 35(3) of the *Housing Improvement Act 2016*, and any other supporting documents, on all respondents and other parties, and must notify the Minister of the application.
- (11) An application pursuant to sections 12 or 16 of the *Marriage Act 1961* (Cth) must comply with the requirements of part 2 of the *Marriage Regulations 2017* (Cth).
- (12) An application pursuant to sections 50, 53 or 66 of the *Fines Enforcement and Debt Recovery Act 2017* must be accompanied by an affidavit in support of it.



38. (1) Subject to any Act and these Rules, on the filing of an application under Rule 37, the Registrar must fix a date, time and place for a directions hearing and give at least 21 days notice in writing of the hearing in Form 23B to, and serve a copy of the application on, the person(s) nominated by the applicant to be the person(s) to be served.
- (2) On the filing of an application to commence an action under the *Criminal Assets Confiscation Act 2005* or Section 38 of the *Fire and Emergency Services Act 2005*, the Registrar must list it for a directions hearing at the earliest possible time.
- (3) On the filing of an application under sections 53 or 66 of the *Fines Enforcement and Debt Recovery Act 2017*, the Registrar must fix a date, time and place for a directions hearing, and give at least 21 days' notice in writing of the directions hearing to the parties, and serve the respondent with a copy of the application.
- (4) The Court may give directions –
- (a) that persons who are not nominated, but who may be affected by the relief sought, are to be joined to the application;
- (b) as to service; and
- (c) as to any other matter.
- 39 (1) Actions (other than criminal proceedings) under the following legislation must be commenced in the respective forms set out below:

***Births, Deaths and Marriages Registration Act 1996***

Section 19 Form 7A

***Motor Vehicles Act 1959***

Section 81BB Form 12

***Problem Gambling Family Protection Orders Act 2004***

Section 16 Form 49

***Relationships Register Act 2016***

Section 28 Form 7D

***Second-hand Vehicle Dealers Act 1995***

Schedule 3 Clause 2 Form 10

- (2) An order made by the Court on review of a decision of the Liquor and Gambling Commissioner under Section 16 of the *Problem Gambling Family Protection Orders Act 2004* must comply with Form 50.
- (3) Subject to any Act, and any order of the Court, on the filing of an action under this Rule the Registrar must fix a date, time and place for the hearing and give at least 21 days notice in writing of the hearing in Form 23I or Form 23J to, and serve a copy of the application on, the person(s) nominated by the applicant to be the person(s) to be served or from whose decision or determination the appeal or review is brought.
- (4) An application for review under s 28 of the *Relationships Register Act 2016* must be accompanied by a copy of the application to the Registrar that was rejected, and a copy of the Registrar's letter/notification of the rejection.

**39A.** On the Court making an order that may affect the information recorded in a register maintained by the Registrar of Births, Deaths and Marriages, the Registrar must notify the Registrar of Births, Death and Marriages of that order.

**40.** (1) Under the *Serious and Organised Crime (Control) Act 2008*, the following forms must be used:

A Notice of Objection under Section 26	Form 40
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An Authorisation Order under Section 25	Form 41
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(2) For applications under Sections 66D and 66E of the *Summary Offences Act 1953*, Form 7 must be used.

(3) When filing an application for an Authorisation Order, the applicant must also file with the Court an affidavit verifying the grounds for the application and if leave to have application heard without notice to any person is sought, reasons for that.

(4) Under the *Serious and Organised Crime (Unexplained Wealth) Act 2009*, the following forms must be used:

Application under Sections 14, 15, 16, 20 and 25	Form 43
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A warrant issued under Section 16	Form 44
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A Notice of Objection under Section 24	Form 45
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(note this must be filed in the action in which the restraining order was made)

A Monitoring Order under Section 14	Form 46
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An Examination and/or Production Order under Section 15	Form 47
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- (5) On the filing of an application to commence an action under the *Serious and Organised Crime (Control) Act 2008*, the Registrar must list it for a directions hearing at the earliest possible time.
  - (6) To request an application by telephone the applicant must:
    - (a) (if the Registry is open) contact the Registry to arrange an urgent hearing by telephone with a Magistrate;
    - (b) (if the Registry is closed) telephone the Court's rostered on-call Magistrate on the after-hours telephone number of the Court.
  - (7) Where an order is made by telephone a copy of the order, and any affidavit in support of the application must be filed in the Registry of the Adelaide Magistrates Court or such other registry as the Magistrate may designate on the next working day.
  - (8) The Court may give directions as to service and as to any other matter.
- 41.** Subject to any Act, the Court may conduct the hearing of an appeal or application under Rules 37, 39 and 40 in such manner as it thinks fit.

## **FILING AND SERVICE OF CLAIMS AND PROCESS**

- 42.** (1) (a) Subject to this Sub-rule the documents described in Sub-rule (2) must be prepared with sufficient copies and filed at a Registry of the Court.
- (b) It is sufficient for an authorised user to file Form 2, 3 and any other form permitted by a Practice Direction, by electronic filing.
  - (c) A form filed by electronic filing will be deemed to be filed on the day when it is accepted for filing by the Courts Administration Authority website.
- (2) Subject to any Act, these Rules and any order of the Court, the following documents must be served on any other party to an action –
- (a) an originating process of an action (other than an action described in Rules 26, 37, 39 or 40);
  - (b) a defence and reply;
  - (c) an injunction;
  - (d) a restraining order;
  - (e) an interlocutory application and any affidavit or other document in support of it;

- (f) an originating process of an action not otherwise described in this Sub-rule.
- (3) Copies of documents to be filed and served must bear the Court seal.
- (4) The Court seal may be placed on a document by electronic means.
- 43. (1) Service on Good Friday or Christmas Day is not effective service.
- (2) A subpoena must be served personally on the person to whom it is directed.
- 44. A person serving a natural person (who is not a solicitor) with -
  - (a) a document in Form 1, 2, 3, 3A, 3B, 3C, 3D, 3E, 3F, 6, 8, 9, 15, 15A, 15B, 20(a), 25, 25A and 26; or
  - (b) an injunction or restraining order,must at the same time serve a document in Form 17 (which need not be filed).

## **MANNER OF SERVICE**

- 46. (1) Subject to any other Act, these Rules and any order of the Court, the Registrar may serve a document on a person by any means provided by these Rules.
- (2) (a) Where service is, or appears to be, ineffectual the Registrar must note that fact on the Court file and –
  - (i) if it was service of a claim, set aside any judgment signed in default of the filing of a defence and in any other case seek directions of the Court;
  - (ii) ensure that the party seeking service is aware that service was or appears to have been ineffectual; and
  - (iii) not again attempt service at that address unless the party seeking service has made further reasonable enquiries and has ensured that the address for service is the address of the party to be served.
- (b) The Registrar may require a party to verify on oath or affirmation the nature and extent of such further enquires.
- (3) The Registrar must cause a stamp showing the date of any postal or other service by the Registrar to be affixed to the Court copy of the document.
- 47. (1) Subject to any other Act, these Rules and any order of the Court, a document may be served on a person:

- (a) by sending it by pre-paid post addressed to the address of the person (but note the cost risk in Rule 106(6));
  - (b) by personal service on the person;
  - (c) by service by any of the means set out in this Rule on the solicitor acting for the person;
  - (d) by leaving it for the person at the address of the place of dwelling or business of the person with someone apparently above the age of 14 years;
  - (e) by depositing it for the person at the DX addressed to the DX number of the person;
  - (f) in the case of a body corporate (other than a Strata Corporation or a Community Corporation), by leaving it at or sending it by pre-paid post addressed to the registered office of the body corporate;
  - (g) in the case of a strata corporation, by sending it by pre-paid post addressed to the corporation at its site or its post office box;
  - (h) by fax directed to the fax number of the person;
  - (i) in the case of a firm, by service under these Rules on one partner, or at the principal place of business of the firm, but if the person serving the document knows that the partnership has been dissolved before the action is filed, by service on every person sought to be made liable;
  - (j) In the case of a person in custody in a government institution, by pre-paid post addressed to the prisoner, care of the Chief Executive of the Department for Correctional Services.
  - (k) (i) who appears to keep his or her place of dwelling or business closed in order to avoid or prevent service; or  
(ii) in respect of an action for the recovery of real property, (in a case of vacant possession),  
by affixing it on a door of the place or otherwise conspicuously on the property;
  - (l) in the case of threats or violence by or on behalf of that person, by leaving it near the person;
  - (m) in the case of a person who has given an e-mail address for service by e-mail;
  - (n) in the case of a Community Corporation by pre-paid post addressed to the Community Corporation or to the Presiding Officer, Treasurer or Secretary at the postal address of the Community Corporation or by placing it in the Community Corporation's letterbox.
- (2) A person must not rely on apparently ineffective service. If any action has been requested in reliance of service that subsequently appears to have been ineffective he or she immediately must advise the Registrar in writing of that fact and must not again attempt service at that address unless the

party seeking service has made further reasonable enquiries and has ensured that the address for service is the address of the party to be served.

- 48.** In the case of service outside the State but within the Commonwealth of Australia service must be effected in accordance with the provisions of the *Service of Execution of Process Act 1992* (Cth).
- 49.** (1) A claim may be served outside of the Commonwealth of Australia and its Territories where it is founded on a cause of action –
- (a) arising from a tort committed wholly or partly in South Australia;
  - (b) arising from a contract or quasi contract which was made or breached in South Australia or the terms of which are governed by the law of South Australia;
  - (c) to obtain or recover title to, or possession of, real or personal property situated in South Australia;
  - (d) which the Court determines has sufficient nexus to South Australia.
- (2) (a) Service of a claim outside the Commonwealth of Australia and its Territories is only valid if prior leave for service is granted and service is in accordance with any conditions imposed by the Court, or the person served consents to the jurisdiction by filing a defence.
- (b) Leave must only be granted if the Court is satisfied that the party applying has a prima facie case for the relief that he or she seeks.
- 50.** In the case of service to a person in New Zealand service is to be effected in accordance with the *Trans-Tasman Proceedings Act 2010* (Cth) when it comes into operation.
- 51.** Where it is intended that a person is to be served in accordance with the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, service must be effected in accordance with the rules in the *Supreme Court Civil Rules 2006* that deal with service under that convention.
- 52.** (1) Subject to any Act, a person will be taken to be served -
- (a) at the time he or she is personally served;
  - (b) where service is by fax during normal business hours on a business day, when the fax is transmitted;
  - (c) where service is by e-mail on the next business day after an acknowledgement of receipt of a transfer by e-mail is received from the computer to which it was addressed; and
  - (d) in any other case, 4 business days after the document is served in accordance with these Rules.

- (2) A statement on a fax of the date, time and place of transmission or receipt of the fax may be accepted as proof thereof.
  - (3) A statement from a computer that a computer of an addressee has acknowledged receipt of a transfer by e-mail may be accepted as proof thereof.
- 53.** Where a person, on interlocutory application to the Court, establishes proper cause, the Court may order service by advertisement, substituted service or such other means as the Court considers appropriate, and such service will be effective in the manner ordered.
- 54.** (1) The records of the Registrar may be accepted as proof of service of a document by the Registrar.
- (2) In any other case, service must be proved by affidavit of the person serving the document.

## **OFFERS TO CONSENT AND PAYMENTS TO REGISTRAR**

- 55.** (1) A party may file and serve on any other party an offer to consent to judgment, provided such offer is filed and served at least 21 days prior to the trial.
- (2) The offer must specify whether it is inclusive of costs and interest.
- (3) If the offer does not specify that it is inclusive of costs or interest the offer is taken to include in addition to the sum of money, an entitlement to costs in accordance with the applicable scale and interest in accordance with the rules up to the expiration of 14 days from the date of service of the offer. The offer may relate to liability, quantum, matters in issue in the action or any order, remedy or relief sought.
- (4) A party may file and serve a notice of withdrawal or variation of an offer which has not been accepted.
- (5) A party may file and serve an acceptance of the offer, provided such acceptance is filed and served at least seven days prior to the trial.
- (6) If a party to an accepted offer fails to comply with the terms of the offer (and failure to pay any sum due is a failure to comply) the court may on application of another party to the accepted offer:
- (a) enter judgment to give effect to the terms of the accepted offer, such judgment having the effect of a final judgment;

- (b) stay or dismiss the claim the subject of the accepted offer if the plaintiff is in default or strike out the defendant's defence to the claim the subject of the accepted offer if the defendant is in default;
  - (c) set aside the acceptance of the offer and make directions for the claim the subject of the accepted offer to proceed to trial; or
  - (d) make any other order as the court thinks fit.
- 56.** (1) A defendant may pay (with or without an admission of liability) to the Registrar at least 21 days before the trial such sum of money as it thinks sufficient to satisfy the claim by a party against the defendant, specifying how much is attributable to each of the claim, costs and interest.
- (2) At the time of making any such payment, the party so paying must give notice in writing to the other party of the payment.
- (3) The defendant by notice filed with the Registrar and served on all other parties may request the withdrawal of the sum paid to the Registrar and unless notice accepting the sum has by then been filed and served the Registrar will repay it.
- (4) The other party may file and serve a notice in writing at least seven days prior to the trial accepting the sum of money, and such notice will operate as full satisfaction of that other party's claim.
- (5) If the sum is not withdrawn and no notice of acceptance is filed the sum of money must abide the event.
- (6) The Registrar must pay the sum of money to the party entitled to it in accordance either with the notice of acceptance or the outcome of the event.
- 57.** The amount of an offer to consent to judgment or payment of a sum of money to the Registrar must not be communicated to the judicial officer hearing the trial of the action.
- 58.** (1) In making an order as to costs at the trial of an action, the Court must take into account any offer to consent to judgment, or any payment of a sum of money to the Registrar, and any refusal or failure to accept such offer or payment.
- (2) Unless the Court for special reasons orders otherwise –
- (a) A plaintiff who obtains final judgment for a sum of money that is more than the amount of its offer plus the costs and interest due at the time of the offer is entitled to costs on a solicitor and client basis after the expiration of 14 days from the date the notice of the offer was served.



- (b) A plaintiff who obtains final judgment for a sum of money that is equal to or less than the amount of any such offer or payment by the defendant (plus costs and interest due at the time of payment, is not entitled to costs after the expiration of 14 days from the date the notice of offer or the notice of payment was served and thereafter the defendant is entitled to solicitor client costs.

**59.** There is no Rule 59.

## **ACTIONS NOT DEFENDED**

- 60.** (1) Subject to Sub-rule (4), where a party has been served with an action (other than an action under Rules 26, 37, 39 and 40) and does not file a defence within 21 days of service, or any other period fixed by the Court, the other party, on proof to the Registrar of such service, may sign judgment against the party in default, by filing a Form 18.
- (2) A party cannot sign judgment –
- (a) on a counterclaim or an interpleader action; or
  - (b) on a Third (or subsequent) Party Claim, unless a judgment has been obtained against that party.
- (3) (a) The 21 days referred to in Sub-rule (1) will be taken not to include the day on which the party was served.
- (b) Where the 21 days referred to in Sub-rule (1) expires on a Saturday, Sunday or public holiday, the period within which a defence may be filed will be extended to expire on the next working day.
- (4) Where a party has been served with an action under either Section 15 or Section 16 of the *Building and Construction Industry Security of Payment Act 2009*, and does not file a defence within 21 days of service, or any other period fixed by the Court, the other party, on proof to the Registrar of such service, may only sign judgment against the party in default by filing with the Form 18 an affidavit certifying as to the circumstances required by either Section 15(1) or Section 16(1).
- 61.** (1) Where a party signs judgment for a claim:
- (a) for a debt or liquidated sum; or
  - (b) for the cost of repairs to, or the loss of, property and any other consequential loss;

the party will have judgment for the claim, plus costs on the scale applicable to the claim, but the party has no entitlement to pre-judgment interest except if it is awarded by the Court on an interlocutory application.

- (2) A party may sign judgment for a claim under paragraph (b) of Sub-rule (1) only if the party proves that, at the same time as the action was served, a copy of any relevant evidentiary material (including a repair or loss account, quotation, invoice or receipt) upon which he or she is intending to rely, was served on the other party.
  - (3) For the purposes of paragraph (b) of Sub-rule (1) the claim may also include a liquidated sum in respect of incidental expenses (including towing and storage fees in respect of the property and the reasonable cost of hire or rental of alternative property during the period the first-mentioned property underwent repairs).
  - (4) Where an action for the recovery of premises or ejectment –
    - (a) includes a claim for mesne profits; and
    - (b) specifies that the rate of claim of the profits does not exceed the rate of rent payable at the time of termination of the tenancy, such claim will be taken to be a claim for a liquidated sum under paragraph (a) of Sub-rule (1).
- 62.** (1) Subject to Sub-rule (4), in any other case not provided for in Rule 61, where a party signs judgment the Registrar must fix a date, time and place for the hearing, by the Court, in respect of the assessment of damages or such other order, remedy or relief as the action may require, and give at least 21 days notice in writing of the hearing to the parties.
- (2) The party who has signed judgment must serve on all other parties at least 21 days before the hearing date –
    - (a) a notice in Form 19; and
    - (b) a copy of any affidavit evidence to be relied upon and a written schedule of costs sought.
  - (3) In a minor civil action, the Court may receive as evidence of the fact or quantum of injury, damage or loss an affidavit, deposed to by the party, the solicitor acting for the party, or an assessor or other expert, which annexes relevant evidentiary material.
  - (4) In an action for damages for personal injury, where a party signs judgment the Registrar must fix a date, time and place for a directions hearing, and give at least 21 days notice in writing of the directions hearing to the parties. The parties who have signed judgment must serve on all other parties at least 21 days before the date of the directions hearing a notice in Form 19A.

## INTERLOCUTORY APPLICATIONS

- 63.** (1) Subject to these Rules, the Court may, on the interlocutory application of a party, make an order, grant leave or do any other act or thing under the Act or these Rules.
- (2) Where proper cause exists, the applicant may make an interlocutory application *ex parte*, orally or in such other manner and on such notice to any other party as the Court thinks fit.
- (3) (a) The Registrar may, at the direction of the Court or on his or her own initiative, apply to the Court for an order under these Rules.
- (b) The Registrar must give at least 4 days notice in writing of the interlocutory application, and the date, time and place fixed for the hearing, to all parties of the relevant action.
- (c) The Registrar is only a nominal party in such a proceeding and need not appear and cannot be ordered to pay, and is not liable for, any costs arising in the proceeding.
- (4) (a) Where a person seeks to file an interlocutory application in respect of a matter that has been determined on a previous interlocutory application, the Registrar must not receive it unless the person has leave of the Court to file it.
- (b) Leave under paragraph (a) may only be granted if -
- (i) the determination on the previous interlocutory application was made in the absence of the person and the person has a reasonable excuse for such absence;
- (ii) in any other case, if the person establishes that there were material facts or circumstances not known to, or which could not reasonably be expected to be known by, that person at the time of making the original interlocutory application.
- (5) A summons or warrant under Section 14(1) of the *Enforcement of Judgments Act 1991* may be issued in Form 20(a) or 20(b), respectively, on interlocutory application by the plaintiff.
- (6) The hearing of an interlocutory application –
- (a) may be adjourned on no more than 2 occasions;
- (b) must be adjourned only to a fixed date.
- 64.** (1) Except where otherwise provided, an interlocutory application to the Court must be in Form 21 and accompanied by an affidavit in support of it.

- (2) On an interlocutory application being filed, the Registrar will fix a date, time and place for the hearing of it and such hearing must be conducted in Chambers unless the Court orders otherwise.
  - (3) An interlocutory application that is required to be served must be served not less than 4 clear days before the date fixed for the hearing of it.
  - (4) The Registrar may, where proper cause is established at the time of the filing of an interlocutory application, make the interlocutory application returnable at such date, time and place as he or she thinks fit and the time for service of the interlocutory application is abridged accordingly.
- 65.** No interlocutory application (other than to object to jurisdiction or set aside or enforce a judgment or warrant) may be filed in respect of a minor civil action, except with leave of the Court.
- 66.** The Court may hear and determine an interlocutory application without requiring service of it in such class of interlocutory application as these Rules or a Practice Direction may prescribe.
- 67.** (1) The Court may permit or require a party to attend any hearing by being available at a designated telephone, a video link at a nominated facility, or by E-mail.
- (2) A request by a party to attend by telephone, video link or email must be made to the Trial Court in sufficient time prior to the hearing to allow the Court to decide whether to allow the request, and if it is granted, to put appropriate arrangements in place.
- (3) If the Court is unable to contact the party at any time within 15 minutes after the time appointed for the hearing, at the phone number given by the party, or by video link at the nominated facility or at the computer to which the E-mail attendance is applicable, Rule 101 applies.
- (4) The Court may of its own motion contact a party or any other person by telephone, video link or E-mail.

## **EXPERTS, PARTICULARS AND DISCOVERY**

- 68.** (1) A party who has obtained a report from an expert (including a medical expert) in relation to an action must obtain a written report from that expert and serve on the other parties, a copy of that written report together with the name, address and qualifications of the expert, within 7 days of receipt of such written report and in any event in a general jurisdiction action not less than 7 days before the pretrial directions hearing and in a minor civil jurisdiction action not less than 21 days before the date fixed for the trial of the action.
- (2) A party who intends to call an expert witness at trial must –

- (a) make the *curriculum vitae* of the expert available to any other party upon request;
  - (b) make any documents or notes and other materials relied upon by the expert to any other party upon request;
  - (c) Require the expert to give an undertaking to this effect:
 

“I undertake to limit my expressions of opinion to matters within my expertise, to disclose the factual material upon which my opinions are based, and to be fair, unbiased and accurate in my expression of opinion.”
- (3) Where a written report is not served on the other parties, the Court may refuse to hear the expert.
  - (4) A Form 22 and a report from an expert may be received by the Court as an exhibit whether or not the author is called as a witness.
  - (5) In an action for damages for personal injuries (including a minor civil action) the plaintiff, at the time of service of the claim must file and serve a Form 22 and make discovery to the defendant.
- 69.**
- (1) The Court may appoint such experts as it sees fit to advise it in the conduct of its work and pay them in accordance with rates determined by the Principal Registrar from time to time.
  - (2) Where the Court refers a question arising in an action to an expert for investigation and report under Section 29 of the Act it must:
    - (a) Make the *curriculum vitae* of the expert available to a party upon written request,
    - (b) Require the expert to give an undertaking to this effect:
 

“I undertake to limit my expressions of opinion to matters within my expertise, to disclose the factual material upon which my opinions are based, and to be fair, unbiased and accurate in my expression of opinion.”
- and where the Court intends to adopt any part of the report which a party contests the Court may require the expert to attend for the parties to question the expert about the basis for any opinion, but not as a witness.
- 70.**
- (1) A party may, by notice in writing to any other party, request better particulars of that other party's pleading.
  - (2) If such a request is not complied with within 7 days of service of the notice, the Court may order that other party to provide all or any of the requested particulars.

- 71.** (1) All parties must file and serve a list of all documents that are directly relevant to any issue raised in the pleadings not less than 7 days before the first directions hearing.
- (2) The Court may on interlocutory application or its own initiative order any party to discover additional documents.
- (3) In any action, an investigatory film or audio-tape, taken or made of a party, is discoverable by the party by whom, or on whose behalf, such film or tape was taken or made but only need to be produced by order of the Court.
- (4) Where a party has made discovery under these Rules, but other documents or property come into her or his attention which are also discoverable, the party must make further discovery as soon as practicable.
- (5) The Court may order a party to produce for inspection any document or property at such date, time and place as the Court fixes.
- (6) If the Court directs, copies of all discovered documents in which privilege is not claimed are to be filed 7 days before any mediation, conciliation, arbitration or judicial intimation and if there is no settlement conference before the pre-trial directions hearing.
- (7) A party may apply to be excused from filing documents if it would be unduly onerous or for other cause.

## **MEDIATION, CONCILIATION AND ARBITRATION**

- 72.** The Principal Registrar must employ qualified mediators and also keep a panel of private qualified mediators, conciliators, and arbitrators and a list of those that are willing to provide pro bono services arranged in accordance with a notice before a claim.
- (1) Where the resources of the Court permit, the Court may refer in accordance with the Act an action to mediation by a Court mediator giving priority to cases where one or more of the parties are impecunious.
- (2) The Court may refer in accordance with the Act an action or any defined aspect of it for mediation, conciliation or arbitration by a private qualified mediator, conciliator or arbitrator chosen by the parties from the Court panel or if one is not chosen nominated by the Registrar. The Court will where appropriate provide rooms and assistance for the process.
- (a) Subject to any order of the Court the costs of the mediator, conciliator or arbitrator will be calculated in accordance with Scale 1 or 2 (as applicable) and will be borne in the first instance equally by the parties.

- (b) The Court must require the parties to pay their proportion of the cost of mediation, conciliation or arbitration into Court before the resolution hearing commences.
  - (c) The Court may subsequently order that a party be reimbursed wholly or in part by another party for their portion of the scale cost incurred.
- (3) When a mediation, conciliation or arbitration is ordered the action must be adjourned to a pretrial directions hearing at a later date.
  - (4) Where an action or any aspect of it is settled at a mediation, conciliation or arbitration the mediator or conciliator or arbitrator must assist the parties to record the agreement and any agreed consequences upon default of its terms and report that outcome to the Court before the pretrial directions hearing.
  - (5) Where no aspect of an action is settled at a mediation or conciliation the mediator or conciliator must confirm that the mediation or conciliation took place and may with the consent of the parties report any factual matters that were agreed and any other report the mediator or conciliator considers appropriate. Where a mediation takes place, the mediator must certify whether the parties to the mediation made an attempt to settle.
  - (6) Where an action or any aspect of it is referred for arbitration the arbitrator must provide the arbitration decision and reasons to the Court before the pretrial directions hearing.
  - (7) If a mediator, conciliator or arbitrator needs more time to complete their process they must advise the Court of the reason for the delay before the pretrial directions hearing and predict the time when the process will be complete. The Court will advise the parties and the mediator, conciliator or arbitrator of any adjourned date for the pretrial directions hearing.

## **CASE MANAGEMENT AND SETTLEMENT CONFERENCES**

- 73.** When a defence is filed in a minor civil action the file must be referred to a Magistrate who will give directions:
- (1) to list the matter for a directions hearing before the Registrar who will advise the parties by notice given in Form 23A; or
  - (2) to list the matter for directions before a Magistrate for identified procedural, jurisdiction, pretrial directions or other issues at a time which the Registrar will appoint by notice given in Form 23A; or
  - (3) to list the matter for mediation, conciliation or arbitration at a time which the Registrar will appoint by notice given in Form 23D; or
  - (4) to list the matter for expert appraisal at a time which the Registrar will appoint by notice given in Form 23E;

- (5) to order if it is appropriate that the complexity of the action justifies legal advice in the pretrial processes in accordance with Cost Scale 2 item 3; or
  - (6) to list the matter for trial at a time which the Registrar will appoint by notice given in Form 23H; or
  - (7) in relation to any other matter.
- 74.** Once a defence is filed in a general jurisdiction claim the Registrar must give notice of a directions hearing in Form 23B to be conducted by a Magistrate.
- (1) At the directions hearing the Magistrate may:
    - (a) Permit informal settlement discussions;
    - (b) Identify procedural and evidentiary issues and make orders to clarify those issues;
    - (c) List the action for mediation, conciliation, arbitration, expert appraisal, judicial intimation or to a pretrial directions hearing.
  - (2) Where the proper identity of a party is in issue, the Court may make such order as it thinks fit to ascertain the identity of the party.
  - (3) The Court may consolidate or deconsolidate actions, or list separate actions for hearing at the same time or consecutively.
- 75.** (1) (a) The Registrar must give notice served on the parties required to attend a mediation, conciliation or arbitration at a date, time and place fixed in Form 23D.
- (c) Subject to this Rule where the notice requires a party to attend in person a natural person must do so and a body corporate must attend by a natural person who is authorised to represent it.
  - (d) An insurer which is subrogated to the rights of a party may attend on behalf of that party.
- 76.** (1) A Magistrate may list a matter for conciliation before the Magistrate and may conduct a conciliation of an action at any time that the Registrar will appoint by notice given in Form 23F which subject to any order of the Court must be in private. The Magistrate may –
- (a) exclude solicitors of the parties from any interview in Chambers.
  - (b) require the disclosure and consideration of any offer of settlement;
  - (c) give directions as to the subsequent course of the action or trial.
- (2) A Magistrate is not disqualified from hearing the trial as a consequence of conducting a conciliation.



- 77.** (1) A Magistrate may refer a matter for a judicial intimation by another Magistrate about the likely outcome of an action that the Registrar will appoint by notice given in Form 23F.
- (2) The Magistrate conducting the intimation must do so in private and can give directions as to preparation for it and the manner in which it will be conducted.
- (3) The judicial intimation must be reduced to writing and made available to the parties.
- (4) A judicial intimation must not be disclosed to the trial Magistrate until after the Magistrate has delivered final judgment in the action.
- (5) After giving a judicial intimation, unless the action settles, the Magistrate must list the action for a pretrial directions hearing.
- 78.** (1) The Court may order that not less than 7 days prior to a pre-trial directions hearing that each party must file and serve a Form 52 Trial Plan.
- (2) At the pretrial directions hearing, unless the matter settles the Court must set the matter for trial and give directions about the conduct of the trial to:
- (a) bring only necessary evidence before the Court in the most cost effective way;
- (b) limit the number of witnesses; and
- (c) any other matter to facilitate the expeditious and economical disposition of the action or trial.
- 79.** (1) A party must consider ways of presenting the evidence in an economical and expeditious manner including using the procedures set out in this Rule.
- (2) (a) A party may interrogate any other party with leave of the Court.
- (b) Such leave may permit any interrogatory which in the opinion of the Court will narrow the issues in dispute and shorten the trial.
- (c) A party must answer an interrogatory by affidavit.
- (3) (a) A party may by notice in writing to any other party, request that party to admit facts or the authenticity or admissibility of a relevant document specified in the notice. A copy of this Sub-rule must be served with the notice.
- (b) If and to the extent that the other party fails by notice in writing to object (including detailed reasons for the objection) to the facts or documents specified in the notice within 21 days of the service of the notice, the contents of the notice will be taken to be admitted upon proof of service of the request to admit.

- (c) At the trial of an action the Court if proper cause exists may admit evidence contrary to any such admission.
- (4) (a) If a party believes that the attendance of a witness at a trial will not be necessary because his or her evidence, or the evidentiary material to be produced by him or her, will be of a formal nature only or should not be the subject of real dispute, the party may give notice in writing, served on all other parties at least 14 clear days before trial –
  - (i) conveying the belief;
  - (ii) identifying the witness; and
  - (iii) specifying the facts or opinions that the evidence, or evidentiary material would tend to prove or establish.
- (b) If no other party has, within 7 clear days, given notice in writing of objection (including detailed reasons for objection) –
  - (i) the witness need not attend at trial; and
  - (ii) the contents of the notice referred to in Sub-rule (4)(a) will be taken to be admitted.
- (5) The attendance at trial of a witness will not be required if an affidavit of that witness has been served on all other parties at least 14 days prior to the trial and no other party has objected, by notice in writing (including detailed reasons for the objection), to the use of the affidavit at the trial within at least 7 clear days of service of the affidavit.
- (6) (a) Where the outcome of an action depends only upon –
  - (i) the determination of a question of law; or
  - (ii) the proper construction of any written contract, instrument or other document (whose existence or validity is not disputed), a party may make interlocutory application to the Court for summary determination.
- (b) The party must file, in book form –
  - (i) a statement of agreed facts and the question of law or construction involved; and
  - (ii) a copy of the relevant contract, instrument or other document.
- (c) The Court, in open Court, may proceed to hear relevant submissions and give final judgment accordingly.
- (7) Where –
  - (a) the Court certifies that a party failed to use one of the procedures in this Rule when it should have; or

- (b) the Court certifies that a party unreasonably objected to another party using one of the procedures in this Rule,

the Court may order that that party is not to recover costs and is to pay the costs of the other parties and of the Court caused by that failure or objection.

- (8) Where the attendance at trial of a witness was not necessary, the Court, on interlocutory application of the witness, may order a party or the solicitor acting for the party, to pay a witness fee in respect of that attendance.
- 80.** (1) The Court may allow a party to amend his or her pleadings and remedy or relief sought at any time before final judgment.
- (2) The Court may allow a party to amend the description of any party but, if such amendment amounts to a change of party, the Court may require the new party to be served and may set aside any order made against the former party.
- 81.** (1) The Court may order a party to pay a sum of money, or give other security, to the Registrar in respect of the whole or part of the costs of an action, or the claim itself, and such sum or security will be held by the Registrar to abide the event.
- (2) The Court may order a party to give a bond or undertaking.
  - (3) The Court may require a party to obtain a guarantee or other surety in respect of the whole or part of the costs of an action of that party.
- 82.** Where several actions arise out of the same or similar circumstances, the parties may agree that one action be heard and determined by the Court, and the final judgment of the Court in relation to that action binds the parties to all actions in terms of the agreement.
- 83.** The Court may give judgment against a party who fails or refuses to comply with an order of the Court, on proof that the terms of the order have been given in writing to the party and the order has not been complied with.
- 84.** (1) The Court may give judgment (including a final judgment) or make an order with the consent of the parties in the terms of the consent.
- (2) Where a party files a consent in writing to the giving of judgment (including a final judgment) or the making of an order, the judgment or order may be given or made in the terms of the consent, in the absence of the parties.
  - (3) Sub-rule (2) does not apply to an order –
    - (a) to adjourn the trial of an action;

- (b) to enlarge the time fixed by these Rules, or by an order, for taking a proceeding or doing any act or thing;
  - (c) to dispense with compliance with any of these Rules; or
  - (d) that would in any other way affect or modify the application of the principles of case flow management, or time limits, to the action or proceeding.
- 85.** There is no Rule 85.
- 86.** A party may apply to the Court for judgment in, or an order staying until further order, an action or proceeding that is scandalous, frivolous, oppressive, vexatious or otherwise an abuse of the process of the Court, or an order striking out a pleading of that nature.
- 87.** (1) The Court may set aside or vary a judgment (not being a final judgment).
- (2) The Court must not set aside such a judgment unless the party seeking to set it aside establishes that he or she –
- (a) has an arguable case on the merits; and
  - (b) has a reasonable excuse for not having complied with these Rules, or an order of the Court, or any time limit fixed by these Rules or order of the Court, in respect of the action or proceeding.
- (3) When setting aside a judgment the Court may order –
- (a) payment to the other party of costs thrown away;
  - (b) payment or security under Rule 81.
- 88.** (1) A party may discontinue or reduce the amount claimed in respect of any aspect of an action, or discontinue an action entirely at any time by notice in writing filed and served on the other parties.
- (2) Subject to any order of the Court the cost consequences of such discontinuance or reduction shall be dealt with in accordance with Rule 106.
- (3) Where it comes to the attention of the Registrar that a judgment debt has been paid in full the Registrar must upon confirmation of that information with the judgment creditor make an order that the action is discontinued.
- (4) Where an action is discontinued any judgment in the action is set aside.
- (5) A discontinuance of any part of an action has effect as a judgment in relation to that part.

- 89.** At a directions hearing, conciliation conference or pretrial directions hearing the Court may make any order or do any act or thing that it is empowered to make or do under these Rules.

## **TRIAL**

- 90.** (1) The Court at any hearing or conference, may fix the date, time and place for trial and the Registrar must give notice of trial to any party who is not present at that hearing.
- (2) The Registrar must give a notice of trial in the appropriate form when directed by the Court to do so.
- (3) (a) The date fixed for the trial of an action will not be adjourned in the absence of special reasons.
- (b) A trial must be adjourned only to a fixed date.
- (c) If the Court fails to fix a date, the Registrar must do so.
- 91.** (1) If a party or witness of the party needs the assistance of an interpreter, the party, on receiving a notice of a date fixed for a hearing, must forthwith notify the Registrar in writing of that need and of the language, and dialect, to be interpreted.
- (2) If the party so fails to notify the Registrar, costs occasioned by the non-attendance of the appropriate interpreter must be borne by that party.
- 92.** Unless the Court orders otherwise, a claim, counterclaim, set-off, third and subsequent party claim and an interpleader claim must be heard together.
- 93.** A waiver of any monetary limit on the civil jurisdiction of the Court may be effected by the parties on an interlocutory application, by a notice in writing jointly signed and filed or by oral application at trial.
- 94.** (1) The Court may direct the trial proceed with a preliminary hearing on identified issues and require any party to call evidence about those issues.
- (2) The Court may direct the order, manner and form in which evidence and submissions on evidence (including the time allotted for evidence and submissions) are to be given.
- (3) The Court may disallow a question that is irrelevant, prolix or repetitious.
- (4) Exhibits put in by a party are to be consecutively numbered and a record is to be kept of them.
- (5) At trial, on its own initiative, or on oral application of a party, the Court may make any order or do any act or thing that it is empowered to make or do under these Rules.

- (6) At trial the Court may sit with an expert(s) and under Section 29 of the Act may at and during the trial refer any question of a technical nature for immediate or reserved investigation and report by the expert(s).
- 95.** (1) The Court may receive as evidence a document or property which has not been discovered.
- (2) The Court may receive as evidence (without further proof) evidentiary material served under Rule 61(2), request to admit facts, a list of discovered documents, interrogatories and their answers, an affidavit or any document that has been filed and served pursuant to these Rules.
- (3) Where the Court accepts as evidence for any purpose a document that records the delivery of goods, the Court may accept the document as prima facie evidence of that delivery.
- 96.** If, at the pretrial directions hearing or at the trial of an action –
- (a) objection is taken to the admissibility of relevant evidence; and
- (b) the admissibility of the evidence or evidentiary material is subsequently proved or established,
- the party objecting must pay costs occasioned by the objection, unless the Court orders otherwise.
- 97.** (1) A Magistrate, on oral or written interlocutory application of a party, may issue a subpoena in Form 1 requiring the attendance of a witness to give evidence or produce evidentiary material at a trial.
- (2) The subpoena must be served at least 4 clear days before the date fixed for the attendance.
- (3) The Magistrate may require the person applying for the subpoena to pay, at the time of service of the subpoena, to the witness, the reasonable expenses of attendance (including transport and accommodation) fixed by the Magistrate.
- (4) The Court may order any party to compensate a witness for the loss and expense caused to the witness by attending at the Court.
- (5) Where a party or witness is in custody, the Magistrate may direct the Registrar to issue a Form 13.
- 98.** Where there are grounds for believing that, if a subpoena were issued, a person would not comply with it, the Court may issue a warrant to have the person arrested and brought before the Court.
- 99.** There is no Rule 99.

- 100.** (1) The Court may, for proper reason –
- (a) fix a date, time and place for the examination of a witness on oath or affirmation and require the attendance of that witness for that purpose; or
  - (b) order a Commission to issue under the seal of the Court for the examination of a witness on oath or affirmation.
- (2) The Court may give such directions regarding the examination or Commission as it thinks fit.

**101.** Where a party fails to attend within 15 minutes of the time fixed for an interlocutory application, a directions hearing, settlement conference, pretrial directions hearing, any other hearing appointed by the court, or trial, the Court may give judgment or make an order against, and in the absence of, that party, without hearing any evidence.

**102.** There is no Rule 102.

## JUDGMENT

- 103.** (1) The Court must give reasons for a final judgment after the conclusion of a contested hearing.
- (2) Where the Court delivers an *ex tempore* final judgment and reasons for it, the Court is taken to reserve to itself the power –
- (a) to edit formally those reasons; and
  - (b) to make further findings of fact or determinations of law consistent with the judgment and reasons,
- in the event that their publication in final written form is required.
- (3) Where the Court has reserved its decision, it must give final judgment within 2 months of the date it was reserved.
- (4) Where for any reason the Court is unable to deliver a reserved final judgment, the Registrar may read the judgment to the parties in open Court.
- 104.** (1) The Court may vary or set aside a judgment –
- (a) before it is entered; or
  - (b) after it is entered –
    - (i) if the judgment was obtained by fraud;
    - (ii) if the judgment does not reflect the intention of the Court;

- (iii) if the parties consent; or
  - (iv) if it was obtained consequent upon any irregularity.
- (2) A clerical mistake in a judgment, or an error arising in it from a slip or omission, may at any time be corrected by the Court, or the Registrar at the direction of the Court.

**105.** A judgment takes effect on the date on which it is given unless the Court orders otherwise.

## **COSTS**

**106. (1)** Subject to these Rules or to an order of the Court, the successful party in an action (other than a minor civil action) is entitled on judgment to costs against an unsuccessful party, or any other party that the Court may order, in accordance with the following principles. Where a judgment is for a sum of money the costs including disbursements in Cost Scale 1 in the Third Schedule applicable to the sum of money claimed at each stage of the litigation are totalled (the total costs).

- (a) Where more than half of the judgment is for a liquidated sum or sums if judgment is for the defendant it will be awarded the total costs and where judgment is for the plaintiff it will have costs calculated by multiplying the total costs by this fraction:

$$\frac{\text{the judgment sum}}{\text{the amount claimed}}$$

- (b) Where half or less of the judgment is for a liquidated sum if judgment is for the plaintiff it will be awarded the costs including disbursements in Cost Scale 1 in the Third Schedule applicable to the judgment sum and where judgment is for the defendant it will be awarded the total costs.
- (c) Where judgment is in respect of an action that is not an action for a sum of money the Court may determine which party is the successful party and the amount claimed or the judgment sum for the purpose of Cost Scale 1 in the Third Schedule.
- (d) Where the plaintiff discontinues or reduces any aspect of its claim by filing and serving a notice under Rule 88 the amount claimed is reduced accordingly the day after the amendment or admission is filed and served.
- (e) Where a defendant files and serves an admission of part of the plaintiff's claim the amount claimed is reduced accordingly from the day after the admission is filed and served. If the plaintiff pursues the balance of its claim for the purposes of the formula in Rule 106(1)(a)



any judgment sum will exclude the part admitted by the defendant from the day after it is admitted. If the amount admitted is not paid within 7 days plus the costs applicable on the scale for that sum and any interest due the plaintiff is entitled to sign judgment for the amount admitted, plus costs applicable on the scale plus any interest without that prejudicing its rights in relation to the balance of the amounts claimed in its action.

- (2) Where there is a counterclaim the costs on the claim and counterclaim must be separately calculated and applied.
- (3) Where proper cause exists, the Court may fix a cost budget specifying the total sum of costs that will be awarded to a successful party for an action or any part of an action.
- (4) Where proper cause exists the Court may order that a successful party is entitled to costs on a solicitor client basis.
- (5) In a minor civil action a successful plaintiff is entitled to the costs in Cost Scale 2 in the Third Schedule applicable to the judgment sum and a successful defendant is entitled to the costs in Cost Scale 2 in the Third Schedule applicable to the amount claimed.
- (6) A plaintiff who serves a claim by post (except by the agency of the Registrar) is not entitled to the costs thrown away up to the time a judgment relying upon that service is set aside unless the Court is satisfied that the claim form came to the attention of the defendant.
- (7) A Magistrate who is not the trial Magistrate may conduct a settlement conference at which s/he formally intimates her or his view of the likely result of a case and put that intimation in writing. The intimation must not be available to the trial Magistrate until after judgment when the trial Magistrate may take it into account in relation to any application for costs.

Note that a plaintiff may not be entitled to the costs for the filing of a claim unless notice of the claim is given, or if the defendant has given notice of willingness to consent to judgment, in accordance with Rule 20A.

- 107.** (1) Unless the Court orders otherwise, where costs of proceedings are reserved, such costs must be dealt with in accordance with these Rules.
- (2) The Court may order that a party must make payment of costs within a time fixed by the Court and if they are not paid the Court may then order the action be dismissed or the defence struck out, and judgment entered for non compliance with the cost order.
- 108.** (1) The Court may tax costs and allow costs in respect of the taxation.

- (2) The successful party must make a genuine attempt to agree his or her costs but if they cannot be agreed may file and serve on the unsuccessful party a Bill of Costs in taxable form.
  - (3) If the unsuccessful party does not file and serve a written notice of objection to an item of the Bill of Costs (including detailed reasons for the objection) within 21 days of the service of the Bill of Costs, he or she will be taken to admit the item.
  - (4) When a Bill of Costs in taxable form is filed, the Registrar must fix, and give notice in writing to the parties, of the date, time and place for the taxation, which may proceed in the absence of any party.
  - (5) Where costs taxed off represent 10%, or more, of the costs allowed and certified on taxation, the successful party is not entitled to any costs in respect of the taxation.
- 109.** (1) The Court may award costs in respect of the exercise of its jurisdiction under the *Enforcement of Judgments Act 1991* and where applicable in accordance with Cost Scale 3.
- (2) Where the Court appoints a person to execute a process or to carry out the duties of the Sheriff in relation to any matter pursuant to Section 7(1) of the *Sheriff's Act 1978*, the Court must not allow any additional costs or fees to the judgment creditor against the judgment debtor unless it is satisfied by affidavit evidence that the judgment debtor has been avoiding service or there is other proper cause.
- 110.** The Court, notwithstanding that it has no jurisdiction to hear an action or proceeding, may award costs as if it had jurisdiction.

## APPEALS

- 111.** (1) An appeal to the Supreme Court must be instituted under Chapter 13 *Supreme Court Civil Rules 2006*.
- (2) A review by the District Court of proceedings in a minor civil action must be instituted under Rule 279A *District Court Civil Rules 2006*.

## ADMINISTRATION

- 112.** (1) A Magistrate may exercise any power or do anything that a Registrar is empowered to exercise or do under these Rules.
- (2) (a) A person dissatisfied with a decision or act of a Registrar acting in pursuance of these Rules may apply to a Magistrate for a review of the decision or act and, on such review, the Magistrate may confirm,

vary or reverse the decision or make any appropriate order in respect of the act.

- (b) The Magistrate will conduct the review by way of rehearing and in such manner as he or she thinks fit.
  - (3) (a) The Registrar or a Special Justice may refer any matter to a Magistrate.
  - (ab) A Judicial Registrar may refer any matter to a Magistrate.
  - (b) The Registrar may apply for directions of the Court in respect of the discharge of the Registrar's functions under the Act or these Rules.
- 113.** (1) The Registrar has the custody of all books, records, actions, proceedings and the Court seal.
- (2) Subject to an order of the Court, the Registrar has custody of all exhibits until the expiration of any relevant appeal or review period. Following the expiration of any such period, the Registrar must return the exhibit to the person who produced the exhibit, or the solicitor for the party tendering the exhibit. The person to whose custody any exhibit is returned must be liable for any costs incurred by the Registrar in returning the exhibit.
  - (3) In the event that the Registrar is unable to return an exhibit in accordance with Sub-rule (2), the Court may make any order as it thinks fit for the custody or disposal of the exhibit.
  - (4) The Registrar must keep a record of all actions, proceedings and judgments of the Court and may keep such record in electronic form.
  - (5) The Registrar must –
    - (a) forthwith after the issue of any summons, or the receipt of any request for process to issue under the *Enforcement of Judgments Act 1991*, deliver the summons or process to the Sheriff;
    - (b) fix the seal by physical or electronic means to any document required to be sealed under the Act or these Rules;
    - (c) keep books of account to comply with the *Public Finance and Audit Act 1987*;
    - (d) monitor compliance with the filing of documents and forms required by these rules and where a default has occurred forthwith refer the file to a Magistrate.
    - (e) perform such other acts and discharge such other functions as may be necessary or expedient to give proper effect to the Act, any other Act or these Rules.
- 114.** (1) The Registrar may, in writing, delegate to an officer of the Court any of his or her powers or functions under the Act, any other Act or these Rules.

- (2) A delegation by the Registrar may be absolute or conditional, does not derogate from the powers exercisable personally by the Registrar and is revocable at will.
- 115.** (1) The Registrar may provide a certified copy of any record kept by the Registrar.
- (2) The contents of any record in the custody of the Registrar may be proved by a certified copy of it.
- 116.** (1) The Registrar must establish an interest-bearing bank account to be known as the *Magistrates Court (Civil Jurisdiction) Litigants' Fund* with an authorised deposit-taking institution, as defined by the *Banking Act 1959* (Cth), which is also an Australian-owned bank, as defined by Prudential Standard APS 330.
- (2) The signatory to the account must be the Registrar.
- (3) Money paid to the Registrar under Rules 56 and 81 must, unless the Court orders otherwise, be paid into the Fund.
- (4) The Registrar must pay money from the account in accordance with an order of the Court, or the terms of consent of the parties.
- (5) As soon as practicable after the last day of each calendar month, the Registrar must certify the rate of interest applicable to the Fund for the immediately preceding calendar month (“*the certified rate*”), and the Registrar must maintain a register of his or her certifications.
- (6) The certified rate must be not more than, and within 1% of, the average rate of interest paid on money in the account of the Fund by the authorised deposit-taking institution, as defined by the *Banking Act 1959* (Cth), which is also an Australian-owned bank, as defined by Prudential Standard APS 330, during the relevant period.
- (7) Money paid into the Fund will accrue interest at the certified rate and such interest will (unless the Court orders otherwise) be taken to be part of the principal paid into the Fund.
- (8) No interest will accrue in respect of any period until the Registrar certifies the rate.
- (9) The Court may order the proper disposition of interest accrued under this Rule.
- (10) The Court may order the proper disposition for use in the Civil (General Claims) Division of the Court of any balance in the fund that will not accrue to litigants.

- (11) The Registrar must once each year identify all files in respect of which funds are held in the fund and ensure it is still appropriate to retain the funds.
- 117.** (1) A party to an action, or a legal practitioner acting for a party to an action, may access the record of that action.
- (2) Access by a legal practitioner to a document may be by electronic means but such access will be deemed to be the provision of a copy of the document and a fee may be charged for it.
- 118.** (1) A Registry of the Court will be open between such hours and on such days as the Chief Magistrate directs.
- (2) The Registrar may accept an action or proceeding outside the hours specified.
- (3) The Registrar may accept an action or proceeding by electronic means authorised by the Principal Registrar and it will be filed when payment is accepted.
- 119.** (1) The first document in an action will have an action number assigned to it and each other document in the action must bear that action number, together with any prefix given to it by the Court to designate that it was an action filed by electronic means, or at the Court, and the calendar year when the action was commenced.
- (2) A new series of numbers will be commenced for claims filed by electronic means and each Registry, each calendar year.

## **FEES**

- 120.** (1) The fees payable in relation to an action or proceeding in the Court are the fees prescribed in the *Magistrates Court (Fees) Regulations 2004*, *Sheriff's Regulations 2005* and any other relevant Act or Regulations under which an action is commenced
- (2) An interlocutory application for the remission or reduction of a fee must be made to the Registrar on oath or by affirmation in Form 24 and the Registrar must maintain a copy of the application separately from the file of the action or proceeding.
- (3) Where proper cause exists, the Registrar may, by notice in writing served on a person or party, impose conditions in respect of the mode or time of payment of a fee by that person or party.
- (4) Payment of a fee may be ordered by the Court, and the Registrar may enforce the order pursuant to these Rules.

## ENFORCEMENT OF JUDGMENTS – GENERAL

- 121.** (1) The Registrar must not issue an enforcement process in respect of a judgment that is more than 6 years old, except with leave of the Court, which must only be given if the judgment creditor establishes proper reasons to explain the delay in enforcement.
- (2) A person may, on interlocutory application, apply to the Court for a review under Section 18(2) of the *Enforcement of Judgments Act 1991* of a Registrar’s decision.
- (3) Where cross-judgments are obtained by both parties (whether in separate actions or the same action):
- (a) if the judgment debts are unequal, only the balance is enforceable;
  - (b) if the judgment debts are equal, neither is enforceable.
- 122.** (1) Subject to an order of the Court and to these Rules an enforcement process must be served:
- (a) on the person to whom it is directed; and
  - (b) on a natural person personally or in any other case in a manner prescribed by these Rules.
- (2) Subject to any order of the Court an Investigation Summons, Examination Summons and a Warrant must be served by the Sheriff.
- (3) An interlocutory application to appoint a person under Section 7 of the *Sheriff’s Act 1978* must be served on the Sheriff who has a right to be heard on the appropriateness of the proposed appointment.
- 123.** (1) Subject to an order of the Court the first enforcement process in respect of a judgment debt against a natural person for a sum of less than \$10,000 that does not arise from the carrying on of a business must be an Investigation Hearing.
- (2) The first enforcement process for the purpose of this Rule ends when an order, other than an adjournment, is made at an investigation hearing in the matter.

## INTEREST ON JUDGMENTS

- 124.** (1) Subject to an order of the Court, interest for the purpose of Section 35 must be calculated at the rate of 10% per annum on the judgment debt excluding any part of it that is interest.
- (2) A payment made by a judgment debtor will be credited first against the judgment debt excluding interest and, after that has been discharged, to any sum that has accrued on account of interest.

## INVESTIGATION AND EXAMINATION HEARINGS

- 125.** (1) At the request of a judgment creditor filed in Form 18 the Registrar may fix a date and time at the Registry of the Court nearest to the place of residence or registered office of a judgment debtor to investigate the judgment debtor's means of satisfying a monetary judgment (an "*Investigation Hearing*") or to examine a judgment debtor who has failed to comply with an order under section 5(1) of the *Enforcement of Judgments Act 1991* (an "*Examination Hearing*").
- (2) The Registrar may issue a summons requiring the judgment debtor to attend an Investigation Hearing, in Form 25, or an Examination Hearing, in Form 26, or any other person who may be able to assist the investigation to attend or produce documents at the Investigation Hearing, in Form 25A.
- (3) A summons under this Rule must be served personally at least 4 clear days before the date fixed for the Investigation or Examination Hearing.
- (4) The judgment creditor may appear at an Investigation and Examination Hearing which will be conducted in private.
- (5) If a person summonsed to appear at an Investigation or Examination Hearing has not attended within 15 minutes of the time fixed for the hearing, or an adjourned hearing arranged with the knowledge of the judgment debtor, the Court, on proof of service of the summons, may order the issue a warrant for the arrest of the person.
- (6) At an Investigation or Examination Hearing the Court must have the judgment debtor give evidence about his or her financial circumstances on oath or by way of affirmation.
- (7) The Registrar must keep a record of the evidence of a judgment debtor's financial circumstances taken at an Investigation or Examination Hearing and may make that available to other creditors.
- (8) Where a Registrar considers that a debtor should be committed to prison and a Magistrate is available the Registrar should adjourn the matter to the Magistrate.
- (9) The Court at an Investigation or Examination hearing on its own motion may make any appropriate order for payment, an order for the judgment debtor to execute or endorse a direct debit arrangement or any other document or authorising an officer of the Court to do so on behalf of the judgment debtor, the issue of a warrant of sale and that it not be first executed against personal property, a charging order, an order appointing a receiver, a garnishee order or for imprisonment at an Examination hearing, and any other order for or to assist the enforcement of a judgment.

(Note Section 60(1) of the *Social Security Administration Act 1991* (Cth) provides that a social security payment is absolutely inalienable.)

- (10) Where an order of commitment is made the judgment debtor must be advised of the right to seek a stay under Section 17 of the *Enforcement of Judgments Act 1991*.
- (11) A request to rescind, suspend or vary an order will be by interlocutory application in Form 21. If such an interlocutory application is to be served on a judgment debtor it is an enforcement process and must be served personally on a natural person (Rule 122).

**126.** There is no Rule 126.

**127.** Nothing in these Rules prevents an action in bankruptcy against a judgment debtor.

## **GARNISHEE ORDERS**

**128.** (1) Subject to these Rules on interlocutory application by a judgment creditor the Court may make an order for attachment (garnishee).

(2) The Court may receive affidavit evidence to prove –

- (a) the extent to which the judgment debt remains unpaid;
- (b) the matters under Section 6(1)(a) or (b) of the *Enforcement of Judgments Act 1991*; and
- (c) any other relevant matter.

(3) A consent in respect of the attachment of salary or wages must be –

- (a) given by the judgment debtor personally;
- (b) given by a solicitor on his or her behalf; or
- (c) in writing signed by the judgment debtor.

**129.** Where the Court makes an order for attachment in the absence of either a garnishee or a judgment debtor –

- (a) the judgment creditor must forthwith serve a garnishee, who was not present, with the order of attachment;
- (b) the Court must adjourn the hearing to a date, time and place fixed by the Court; and
- (c) the judgment creditor must serve notice of the adjourned hearing and the interlocutory application on a garnishee or a judgment debtor who was not present when the order was made at least 4 clear days before the adjourned date.



- 130.** (1) On proof of service of any document required to be served under Rule 129, the Court may proceed in the absence of a garnishee or a judgment debtor.
- (2) An order for attachment, which is confirmed or varied at an adjourned hearing in the absence of a garnishee, must be served forthwith by the judgment creditor on the garnishee.
- 131.** (1) A judgment creditor may, on interlocutory application, request the Court to register a judgment against a garnishee.
- (2) The interlocutory application must be served by the judgment creditor on the garnishee by any means authorised by Rule 47.
- (3) The Court may receive affidavit evidence to prove –
- (a) the extent to which the judgment debt remains unpaid;
  - (b) the matters under Section 6(6) of the *Enforcement of Judgments Act 1991*; and
  - (c) any other relevant matter.
- 132.** (1) A judgment creditor, a judgment debtor or a garnishee may make interlocutory application to the Court to vary or revoke an attachment order.
- (2) The interlocutory application must be served on the other parties at least 4 clear days before the date fixed for the hearing of the interlocutory application.
- (3) The Court must not vary or revoke an order for attachment, unless there are material facts or circumstances that have changed since the attachment order was made.

## **WARRANTS TO SELL OR RECOVER PROPERTY**

- 133.** (1) Subject to these Rules, the Registrar on request of a judgment creditor in Form 18, may issue a warrant for the sale of a judgment debtor's real or personal property (and it will be presumed to be for both unless there is an order of the Court to the contrary) in Form 28 (amended as required by order of the Court).
- (2) The Sheriff, the judgment creditor or the judgment debtor, on interlocutory application, may seek the Court's directions as to the manner of the sale, or a direction that real property be sold before personal property.
- (3) The Sheriff when executing a warrant issued under this Rule must (subject to these Rules and any order of the Court) comply with the relevant *Supreme Court Civil Rules 2006* relating to the sale of property under warrant.

- (4) Subject to an order of the Court, the Registrar must not issue a warrant under this Rule where the judgment debtor is subject to an order for payments under Section 5(1) of the *Enforcement of Judgments Act 1991* unless s/he is satisfied by affidavit evidence that the judgment debtor has failed to comply with the order or, if the order is for payment by instalments, that at least 2 instalments are in arrears.
- (5) A judgment creditor in a claim that is not a minor civil action may request a summons for an investigation hearing and a warrant of sale at the same time.

**134.** The Registrar on request, in Form 18, of a person in whose favour a judgment for recovery or delivery up of possession of property has been given, must issue to the Sheriff a warrant of possession in Form 29.

## **SHERIFF'S INTERPLEADER**

**135.** Disputes in respect of property taken or intended to be taken by the sheriff in execution of any process must be dealt with in accordance with Rule 321 of the *Supreme Court Civil Rules 2006*.

## **OTHER ORDERS OF ENFORCEMENT**

- 136.** (1) Subject to these Rules on interlocutory application by a judgment creditor the Court may make an order –
- (a) charging property of a judgment debtor in Form 34;
  - (b) appointing a receiver for the purpose of enforcing a judgment; or
  - (c) ordering a party to execute or endorse a document or authorising an officer of the Court to do so on behalf of the party.
- (2) The Court may receive affidavit evidence to prove –
- (a) the extent to which the judgment debt remains unpaid; and
  - (b) any other relevant matter including identifying any party with a legal or equitable interest in the property.
- (3) The interlocutory application must be served by the judgment creditor on the judgment debtor at least 4 clear days before the date fixed for the hearing of the interlocutory application.
- (4) The Court may, where proper cause exists, dispense with service under this Rule.

## WARRANTS AGAINST THE PERSON

- 137.** (1) An order for a warrant lapses if the warrant is not issued within 28 days.
- (2) A request to the Registrar for the issue of a warrant must be in Form 18 and must be accompanied by a statement of any payments of arrears made on the judgment debt and if the arrears on which the warrant was based have been paid the Registrar must not issue the warrant.
- (3) A warrant for the arrest of a person must be in Form 30.
- (4) A warrant for commitment under Section 5(7) of the *Enforcement of Judgments Act 1991* must be in Form 31.
- (5) A warrant for commitment on remand must be in Form 32.
- (6) Any other warrant for commitment must be in Form 33.
- (7) A warrant lapses 1 year after the date of its issue, unless that period is extended by the Court.
- (8) The Registrar must withdraw a Warrant of Commitment for non-compliance with a payment order on payment made to the Registrar of the judgment debt or all arrears of instalments up to the date of the Order of Commitment (as the case requires).
- 138.** (1) Prior to a warrant (other than a warrant under Rule 137(6)) being executed, the person to whom it is directed may make an interlocutory application to have the Court stay the warrant.
- (2) Such an interlocutory application does not itself operate to stay the warrant.
- (3) An interlocutory application to stay a warrant must be served on the judgment creditor at least 2 clear days before the date fixed for the hearing of the application.
- (4) The Court may stay a warrant subject to conditions to ensure that the person to whom it is directed attends at the hearing, or complies with any other order.
- (5) The Court may conduct an Investigation or Examination Hearing on the hearing of an interlocutory application for the stay of a warrant.
- 139.** (1) Where a person is arrested under a warrant for arrest, s/he must be brought before the Court as soon as reasonably possible.
- (2) If it is anticipated that it may be necessary to arrest a person outside normal Court hours the Court may order the person to be held in police custody

until s/he can be brought before the Court and the warrant will be endorsed accordingly.

- (3) An order for arrest made outside normal Court hours cannot be made unless the Court is satisfied that there is no other reasonable means of ensuring the debtor's attendance at Court.
- (4) Where a person is brought before the Court under a warrant, the Court may remand the person in custody, to be brought before the Court at any hearing at which the attendance of the person is required, but the hearing must be re-listed not more than 7 days after the date when the person was remanded in custody.
- (5) The Court may release an arrested person on such conditions as may be appropriate to ensure his or her attendance, including surrender of any passport they hold or lodging a monetary bond to appear at the date, time and place fixed for any hearing at which the person's attendance is required.
- (6) Where a debtor fails to appear on a date fixed in the presence of the debtor the Court may issue a warrant of arrest of the debtor of its own motion and without fee.

## **RECORDING EVENTS IN COURT**

- 140.** (1) Subject to this rule and to any contrary direction of the Court, the making of a record of persons, things, or events in court is not permitted.
- (2) Subrule (1) does not apply to Courts Administration Authority staff acting in the course of their office or employment.
  - (3) Despite subrule (1):
    - (a) a party to a proceeding which is being heard by the Court, a legal practitioner, law clerk, student or a bona fide member of the media may make a handwritten or electronic note of persons, things or events in court; and
    - (b) a bona fide member of the media may make an audio recording of proceedings for the sole purpose of verifying notes and for no other purpose.
  - (3a) A party to proceedings must seek leave of the Court prior to using an electronic device.
  - (4) Any record made in court permitted by this Rule must:
    - (a) be made in a manner which does not interfere with court decorum, not be inconsistent with court functions, not impede

- the administration of justice, and not interfere with the proceedings;
  - (b) not interfere with the Court’s sound system or other technology; and
  - (c) not generate sound or require speaking into a device.
- (5) Any audio recording made by a member of the media under subrule (3) (b):
  - (a) must not record any private conversation occurring in court;
  - (b) must not be made available to any other person or used for any other purpose; and
  - (c) must be erased entirely within 48 hours of the recording.
- (6) For the purpose of this Rule, ‘record’ means a record by any means whatsoever, including by handwriting, other physical means, audio and/or visual recording or electronic record.
- (7) For the purpose of this Rule, ‘electronic note’ means a text based note.

## **ELECTRONIC COMMUNICATIONS IN COURT**

- 141.** (1) Subject to this rule and to any contrary direction of the Court, communication by means of an electronic device to and from a court room during the conduct of proceedings is not permitted.
- (2) Subrule (1) does not apply to Courts Administration Authority staff acting in the course of their office or employment.
- (3) Despite subrule (1) and subject to subrules (4) and (5), a party to a proceeding which is being heard by the Court, a legal practitioner or a bona fide member of the media may communicate by means of an electronic device to and from a court room during the conduct of proceedings.
- (4) Any electronic communication permitted by this Rule must:
- (a) be made in a manner which does not interfere with court decorum, not be inconsistent with court functions, not impede the administration of justice, and not interfere with the proceedings;
  - (b) not interfere with the Court’s sound system or other technology; and
  - (c) not generate sound or require speaking into a device.
- (5) A communication of evidence adduced or a submission made in proceedings, whether in full or in part, must not be made until at least 15 minutes have elapsed since the evidence or submission in question, or until the Court has ruled on any application for suppression or objection made in

relation to the evidence or submission within that period of 15 minutes, whichever occurs last.

- (6) For the purpose of this rule, 'electronic device' means any device capable of transmitting and/or receiving information, audio, video or other matter (including, cellular phones, computers, personal digital assistants, digital or analogue audio and/or visual cameras or similar devices).

## **TERRORISM (POLICE POWERS) ACT 2005: SECTION 27C**

- 141A.** (1) An application pursuant to section 27C(2) for a transcript of evidence and a record of outcome must be made in writing to the Court.
- (2) The application must include the relevant court file number, the parties' names, and the date and time of the proceedings.
  - (3) An application for a transcript of evidence and a record of outcome must be determined, where practicable, by the same Magistrate who made the initial order under section 27C(1).

## **APPLICATION OF FAST TRACK RULES**

- 142.** (1) The Court may order that a proceeding formerly in the Fast Track Stream in the District Court which has been transferred to the Court is to be governed by Chapters 1, 2 and 4 to 9 of the Fast Track Rules 2014 insofar as they make provisions which differ from the provisions of these Rules and otherwise is to be governed by these Rules.
- (2) The Court may order that a proceeding instituted in the Court is to be governed by Chapters 1, 2 and 4 to 9 of the Fast Track Rules 2014 insofar as they make provisions which differ from the provisions of these Rules and otherwise is to be governed by these Rules.
  - (3) In this Rule, the Fast Track Rules 2014 means the Fast Track Rules 2014 adopted by the District Court and the Supreme Court.

## **FIRST SCHEDULE**

### **CONSTITUTION OF THE COURT**

1. Subject to the Act and this Schedule the Court must be constituted by a Magistrate and in deciding whether a Magistrate is available for the purposes for

section 7A(2) of the Act preference must be given to a Magistrate hearing the matter by phone or video link, or adjourning the matter to an occasion when a Magistrate is available before any alternative.

2. For the purposes of the *Enforcement of Judgments Act 1991* and these Rules the Court may be constituted by a Registrar or a Deputy Registrar to deal with matters under the following provisions:
  - (i) *The Enforcement of Judgments Act 1991*–  
Sections 4, 5, 6, 7, 8, 9, 11, 12, 13, 14 and 17;
  - (ii) *The Rules* –  
Rules 120, 125, 126, 128, 129, 130, 131, 132, 133(2), 133(4), 136, 137(7), 138, 139(5) and 139(6).

**THE SECOND SCHEDULE (FORMS) IS PUBLISHED SEPARATELY**

## THIRD SCHEDULE: COST SCALES

### COST SCALE 1: General jurisdiction costs

No.	ITEM	\$12,001-\$100,000
1	(a) Pre-action notice in an action other than for personal injury	1%
	(b) Pre-action notice in an action for personal injury	2%
2	Filing an action or defence including where necessary attending the first Directions Hearing.	
	(a) For an action where more than half of the judgment is for a liquidated sum	3%
	(b) For an action where half or less of the judgment is for a liquidated sum	5%
3	Any and all activity after the first directions hearing until the trial date is set or the last pre-trial conference or hearing whichever is the latter.	
	(a) For an action where more than half of the judgment is for a liquidated sum	12%
	(b) For an action where half or less of the judgment is for a liquidated sum	14%
4	All aspects not otherwise specified of and incidental to preparing for trial including proofing witnesses, advice on evidence and law (solicitor and counsel) delivering brief to counsel and fee on brief.	8%
5	Preparing and filing a trial plan	2.5%
6	To advise on compromise or settlement for a person under disability or under the <i>Correctional Services Act 1982</i> –	\$1,000 or 2% whichever is the greater
	(a) Where quantum only is in dispute; (b) Where quantum and liability are in dispute.	\$1,500 or 3% whichever is the greater
7	Attendance as counsel at trial (includes fee on brief and refreshers) first day	3%
	subsequent day(s)	2.5%
8	Arranging attendance of a witness at trial (including issuing and a summons to witness if this is necessary).	\$100
9	Attendance on an application to set aside a warrant	\$150
10	Any other attendance where the costs are not within any other item.	\$150



### Other Costs and Disbursements

No.	ITEM	
11	Court ordered mediation	\$500 or 2% whichever is the greater
12	Filing a Form 18 not otherwise provided for:	\$150
13	Request for an Investigation or Examination Summons including attending at the hearing:	\$110
14	Service of any document: (a) personal where required (b) other	\$100 \$50
15	Preparing a bill for taxation (includes attendance).	\$350
16	Professional or other expert witness per day (included waiting)	\$1,000 or such other amount ordered by the Court
17	Other adult witness per day (includes waiting)	\$250
18	Juvenile witness (includes waiting)	\$100
19	Travel expenses for witnesses	Where the witness is normally resident more than 50 km from the trial Court at the rate of 85 cents per km or the least expensive return air fare whichever is the lesser or the cheapest combination of both.
20	Accommodation for witnesses	Where the witness is required to be absent from his or her normal place of residence overnight for accommodation and sustenance per night \$250.
21	Expert reports	\$1,000 or such other amount ordered by the Court.
22	Other	All Court fees, search fees, and other fees and payments to the extent to which they have been properly and reasonably

		<p>incurred and paid; but excluding the usual and incidental expenses and overheads of a legal practice and in particular excluding postage, photocopying, telephone charges and courier expenses.</p>
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**NOTES:**

1. Where this scale refers to a percentage it is calculated on the amount claimed or the judgment sum as appropriate.
2. The Court may allow any larger or lesser amount in respect of any matter at the time of making any order.
3. All the above items are all inclusive of all costs for all incidental and necessary activity and advice for each item to the intent that no costs will be allowed in addition to the costs set for each item nor for anything not itemised. Counsel fees include juniors and all other assistants.
4. For the purposes of items expressed as a percentage the costs calculated must be rounded to the nearest \$10.
5. For the purpose of determining the sum to which the scale is applicable, any cents must be rounded up to the next dollar and unless the Court orders to the contrary any interest component in the judgment sum will be excluded.
6. For the purpose of this scale the cost of repairs to, or the loss of, property and any other consequential loss are regarded as a liquidated sum.
7. Only the witness expenses for the successful party are to be included.
8. The cost of mediation is for the cost of the mediator if that amount or more is actually incurred.
9. The costs in the scale do not include GST and if that is applicable the amount of GST may be added

## COST SCALE 2: Minor Civil Actions

ITEM		\$1- \$12,000
1	Filing an action (if prepared and filed by a solicitor)	\$20 plus 5% up to a maximum of \$500
2	Having a lawyer prepare and file personal injury particulars	2%
3	Where a matter is defended and a Magistrate orders that the complexity of the action justifies legal advice in the pretrial processes	5%
4	Any attendance at Court by party or solicitor (where solicitor is entitled to attend)	0.5%
5	Cost of a private mediator, conciliator or arbitrator where it is ordered by the Court	\$500
6	Witness fees generally	\$80 per day
7	Professional witness	\$500 per day
8	Filing and serving a summons to witness	\$50
9	Preparation of a trial plan where the Court permits it due to special circumstances <i>Magistrates Court Act 1991</i> Section 38(5)	3%
10	Request for Investigation or Examination summons including attendance at the hearing	\$50
11	Any other request (Form18) for enforcement of judgment	\$50
12	All other Court fees	As allowed by the Court
13	Other disbursements	As allowed by the Court
14	To advise on compromise or settlement for a person under disability or under the <i>Correctional Services Act 1982</i> - (a) Where quantum only is in dispute (b) Where quantum and liability are in dispute	\$1,000 \$1,500

**NOTES:**

1. Where this scale refers to a percentage it is calculated on the amount claimed or the judgment sum as appropriate.
2. For the purpose of item 1 the costs calculated must be rounded up to the nearest dollar.
3. Debt collecting fees in addition to the above amounts are not allowed.
4. Where a party intends to serve a claim by means other than post, e-mail or fax a disbursement equal to the amount a Sheriff is entitled to receive for serving a claim form is allowed, but if the process is returned to the Court unserved, or is served by post, e-mail or fax, the disbursement must be disallowed unless a Registrar is satisfied that the party made reasonable efforts to serve the claim by means other than post, e-mail or fax.
5. The costs in the scale do not include GST and if that is applicable the amount of GST may be added.

### SCALE 3: Workers Liens, Charging Orders and Warrants of Sale

ITEM	\$1 - \$10,000	Above \$10,000
1 (a) Notice of Demand and registration of Lien and registration and Notice of Demand under the <i>Workers Liens Act 1893</i> .	\$250	\$450
(b) Notice of withdrawal/ satisfaction of Lien and registration.	\$95	\$140
2 (a) Preparing and registering a warrant of sale against real property.	\$140	\$175
(b) Discharging a warrant of sale.	\$95	\$140
3 (a) Applying for and obtaining a charging order over real property and registering it.	\$220	\$450
(b) Discharging a charging order at the Lands Titles Office.	\$95	\$140

#### NOTES :

- A** All the above items are all inclusive of all costs for all incidental and necessary activity and advice for each item to the intent that no costs will be allowed in addition to the costs set forth for each item nor for anything not itemised, save for disbursements for registration fees incurred at the Lands Titles Office which are allowed in addition to these items.
- B** Subject to any order of the Court costs for only one of these items is allowed in any action and no costs for a Charging Order are allowed if the Judgment Creditor has a mortgage over the subject property.
- C** The Court may allow any larger or lesser amount for any item and any amount in respect of any other matter that the Court allowed at the time of making any order.
- D** For the purpose of determining the applicable scale, any cents must be rounded up to the next dollar and unless the Court orders to the contrary any interest component in the judgment sum will be excluded.
- E** The costs in the scale do not include GST and if that is applicable the amount of GST may be added.

## APPENDIX

### Legislative History

Magistrates Court (Civil) Rules 2013 (Gov Gaz 26 April 2013, p 1201)

Rule 2(1) new definition 'pre-judgment interest' inserted by Gov Gaz 31 Jul 2014, p3708

Rule 24(1)(a) and (b) deleted and replaced by Gov Gaz 23 January 2014, p 319

Rule 25 deleted and replaced by Gov Gaz 23 January 2014, p 319

Rule 26(1) amended by Gov Gaz 9 January 2014, p 67

Rule 37(1) deleted and replaced by Gov Gaz 4 December 2014, p 6599

Rule 39(6) inserted by Gov Gaz 9 January 2014, p 67

Rule 47(1)(j) deleted and replaced by Gov Gaz 9 January 2014, p 67

Rule 67(3) amended by Gov Gaz 9 January 2014, p 67

Rule 68(5) inserted by Gov Gaz 17 April 2014, p 1511

Rule 71(6) deleted and replaced by Gov Gaz 4 December 2014, p 6599

Rule 78(1) deleted and replaced by Gov Gaz 3 September 2015, p 4159

Rule 97(5) inserted by Gov Gaz 4 December 2014, p 6599

Rule 106 Note replaced by Gov Gaz 31 Jul 2014, p3708

Rule 119 deleted and replaced by Gov Gaz 3 September 2015, p 4159

Rule 124(1) deleted and replaced by Gov Gaz 3 September 2015, p 4159

Rule 126 deleted and replaced by Gov Gaz 9 January 2014, p 67

Rule 127 deleted and replaced by Gov Gaz 9 January 2014, p 67

Rule 136(3) deleted and replaced by Gov Gaz 9 January 2014, p 67

Rule 140 inserted by Gov Gaz 9 January 2014, p 67

Rule 140 (3a) inserted by Gov Gaz 31 Jul 2014, p3708

Rule 140 (7) inserted by Gov Gaz 31 Jul 2014, p3708

Rule 141 inserted by Gov Gaz 9 January 2014, p 67

Rule 142 inserted by Gov Gaz 31 Jul 2014, p3708

Rule 143 inserted by Gov Gaz 4 December 2014, p 6599

Rule 144 inserted by Gov Gaz 30 April 2015, p 1638

Cost Scale 2 deleted and replaced by Gov Gaz 19 June 2014, p 2872

### Forms

Form 1A deleted and replaced by Gov Gaz 9 January 2014, p 67

Form 1C deleted and replaced by Gov Gaz 9 January 2014, p 67

Form 3G inserted by Gov Gaz 9 January 2014, p 67

Form 7 deleted and replaced by Gov Gaz 9 January 2014, p 67

Form 13 inserted by Gov Gaz 4 December 2014, p 6599

Form 17 inserted by Gov Gaz 9 January 2014, p 67

Form 17 is deleted and replaced by Gov Gaz 27 June 2019, p 2578

Form 23A is deleted and replaced by Gov Gaz 4 December 2014, p 6599

Form 23C is deleted and replaced by Gov Gaz 4 December 2014, p6599

Form 28 deleted and replaced by Gov Gaz 9 January 2014, p 67

Form 36 deleted and replaced by Gov Gaz 9 January 2014, p 67

Form 37 deleted and replaced by Gov Gaz 9 January 2014, p 67

Form 43 deleted and replaced by Gov Gaz 9 January 2014, p 67, deleted and replaced by Gov Gaz 4 December 2014, p 6599

Form 53 inserted by Gov Gaz 9 January 2014, p 67

Form 54 inserted by Gov Gaz 9 January 2014, p 67

Form 55 inserted by Gov Gaz 4 December 2014, p 6599

Form 56 inserted by Gov Gaz 4 December 2014, p 6599

Form 57 inserted by Gov Gaz 30 April 2015, p 1645

Form 58 inserted by Gov Gaz 30 April 2015, p 1646