

Magistrates Court (Civil Proceedings) Act 2004

Magistrates Court (Civil Proceedings) Amendment Rules 2014

Made by the Magistrates Court under the *Magistrates Court (Civil Proceedings) Act 2004* section 47 and the *Magistrates Court Act 2004* section 39.

1. Citation

These rules are the *Magistrates Court (Civil Proceedings) Amendment Rules 2014*.

2. Commencement

These rules come into operation as follows —

- (a) rules 1 and 2 — on the day on which these rules are published in the *Gazette*;
- (b) the rest of the rules — on the day after that day.

3. Rules amended

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

4. Rule 129B amended

In rule 129B(2) delete “be” (first occurrence).

5. Rule 129C amended

- (1) In rule 129C(3) delete “be” (first occurrence).
- (2) In rule 129C(4) after “supporting affidavit” (first occurrence) insert:

and map

6. Part 21 Division 3A inserted

After Part 21 Division 2 insert:

Division 3A — *Warehousemen’s Liens Act 1952*

133AAA. Terms used

In this Division —

Act means the *Warehousemen's Liens Act 1952*;
section means a section of the Act;
warehouseman has the meaning given in section 3.

133AAB. Application for order under s. 7(7A)

- (1) An application for an order under section 7(7A) must be in the approved form.
- (2) The application must be lodged together with a supporting affidavit.
- (3) When the application and supporting affidavit are lodged, 2 copies must also be lodged.
- (4) As soon as practicable after the application and supporting affidavit are lodged, a registrar must list the application before a magistrate for a directions hearing on the earliest practicable date.
- (5) The application —
 - (a) is not required to be served on any other party; and
 - (b) may be dealt with at the directions hearing (in the manner provided by subrule (6)) in the absence of the parties.
- (6) At the directions hearing, the Court may —
 - (a) make orders as to the procedure to be followed by each party and the Court in order to ensure the application is dealt with justly; and
 - (b) make an interim order under section 7(7A) pending the final determination of the application.

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

- (1) This rule applies when a warehouseman pays a surplus into the Court under section 10(2A).
- (2) The surplus must be accompanied by the following —
 - (a) the approved form;
 - (b) the duplicate copies of the statement of account referred to in section 10(4), verified in the manner prescribed for the purposes of that subsection;
 - (c) a supporting affidavit containing any other particulars that are prescribed for the purposes of that subsection.
- (3) The Court must give to the warehouseman a receipt for the surplus.

- (4) After the surplus is paid into the Court, a registrar must serve on each person who, to the registrar's knowledge, may have a claim to the surplus a copy of the following —
 - (a) the approved form referred to in subrule (2)(a);
 - (b) the verified statement of account referred to in subrule (2)(b);
 - (c) the supporting affidavit referred to in subrule 2(c);
 - (d) the receipt referred to in subrule (3).

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

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

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

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

- (1) This rule applies if —
- (a) the period allowed by rule 133AAD(2) for lodging an application under rule 133AAD has expired; and
 - (b) no application has been lodged.
- (2) A registrar must list the case before a magistrate in chambers for the making of an order by the Court under section 10(2B).

Dated: 4th December 2014.

Magistrates' signatures:

STEVEN HEATH, Chief Magistrate.

ELIZABETH WOODS, Deputy Chief Magistrate.

RICHARD BAYLY, Magistrate.

KEVIN TAVENER, Magistrate.