

Magistrates Court (Civil Proceedings) Amendment Rules 2010

Made by the Magistrates Court.

1. Citation

These rules are the *Magistrates Court (Civil Proceedings) Amendment Rules 2010*.

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 5 amended

- (1) In rule 5 delete “Unless” and insert:

- (1) Unless

- (2) At the end of rule 5 insert:

- (2) Unless the contrary intention appears, these rules do not apply to or in relation to an application made to the Court under the *Residential Tenancies Act 1987*.

5. Rule 8 amended

After rule 8(4) insert:

- (5) Unless the contrary intention appears, the provisions in these rules that apply to claims apply also to counterclaims and third party claims.

6. Rule 41B amended

In rule 41B(5) after “lodge” insert:

and serve

7. Rule 43A amended

Delete rule 43A(1) and insert:

- (1) This rule does not apply in the case of a claim to recover possession of real property.

8. Rule 47 amended

- (1) In rule 47 delete “Unless” and insert:

- (1) Unless

- (2) At the end of rule 47 insert:

- (2) If under subrule (1) the magistrate orders the parties to an application to which Part 21 Division 1 applies to attend before a mediator, then, despite rule 128, Part 11 applies.
 - (3) If under subrule (1) the magistrate orders the parties to an application to which Part 21 Division 1 applies to attend a pre-trial conference, then, despite rule 128, Part 9, other than rule 40(2)(c), applies.

9. Rule 53 replaced

Delete rule 53 and insert:

53. Memorandum of consent

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

10. Rule 71 amended

- (1) In rule 71(3) delete “lodge and”.
- (2) In rule 71(6) delete “A party which issues” and insert:

The party which serves

11. Rule 93 amended

Delete rule 93(1).

12. Rule 123 amended

In rule 123 insert in alphabetical order:

application means an application to which this Division applies;

13. Rule 124 replaced

Delete rule 124 and insert:

124. Applications to which this Division applies

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

Table

Written law	Provision(s)
<i>Auction Sales Act 1973</i>	s. 8, 9, 11, 13, 14, 15, 17, 18, 19, 22, 33.
<i>Conservation and Land Management Act 1984</i>	s. 108A.
<i>Criminal and Found Property Disposal Act 2006</i>	s. 11, 12, 26, 30.
<i>Criminal Investigation Act 2006</i>	s. 49, 147.
<i>Disposal of Uncollected Goods Act 1970</i>	s. 17(3), 19(1), 20.
<i>Dividing Fences Act 1961</i>	s. 9, 11, 13, 15.
<i>Dog Act 1976</i>	s. 39, 40(4).
<i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i>	s. 69(1), 91B(2), 94.
<i>Forest Management Regulations 1993</i>	r. 152.
<i>Local Government Act 1995</i>	s. 3.26(4).
<i>Local Government (Miscellaneous Provisions) Act 1960</i>	s. 399(3)(a), 400(3), 401(7), 404, 406, 408(4), 409(4), 410(1), 411(4), 418, 667(1).
<i>Pawnbrokers and Second-hand Dealers Act 1994</i>	s. 85, 86.
<i>Restraining Orders Act 1997</i>	Any provision.

Written law	Provision(s)
<i>Restraint of Debtors Act 1984</i>	Any provision.

- (2) This Division applies to an application made to the Court under the *Corporations Act 2001* (Commonwealth).
- (3) This Division does not apply to a claim for the recovery of an amount that is permitted to be made in a court of competent jurisdiction by a provision referred to in subrule (1) or by the *Corporations Act 2001* (Commonwealth).

14. Rule 126 amended

- (1) In rule 126:
 - (a) delete “Except” and insert:
 - (1) Except
 - (b) delete “rule 128B or 128C,” and insert:
 - rule 129B or 129C,
- (2) At the end of rule 126 insert:
 - (2) Unless an Act provides otherwise, the application must be served personally.

15. Rule 127 amended

Delete rule 127(1) and (2) and insert:

- (1) As soon as practicable after an application is lodged, a registrar must list the case for a listing conference.
- (2) If the conferring Act requires the application to be served, the registrar must endorse the date of the listing conference on the application that is to be served.

16. Rule 128 amended

In rule 128 delete “Parts 10,” insert:

Part 10, Part 12 Division 1, and Parts

17. Rule 130 amended

- (1) Delete rule 130(2).
- (2) After rule 130(4) insert:
 - (5) An application made by the Sheriff under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 94(2) in respect of a claim must be made and determined under the *Civil Judgments Enforcement Regulations 2005* Part 4 Division 6 which, with any necessary changes, applies as if —
 - (a) the claim were a claim made under the *Civil Judgments Enforcement Act 2004* section 83; and
 - (b) the application were an application made under section 84 of that Act.

18. Rule 131A replaced

Delete rule 131A and insert:

131A. Residential Tenancies Act 1987 s. 18

For the purposes of the *Residential Tenancies Act 1987* section 18(2)(b), the notice to be given by the Court to any other party of the nature of an application made to the Court under that Act must be given by giving a copy of the application to the party.

Dated: 25 June 2010.

STEVEN ALEX HEATH
Chief Magistrate

ELIZABETH ADELE WOODS
Deputy Chief Magistrate

JEREMY RAYMOND PACKINGTON
Magistrate

PAUL MICHAEL HEANEY
Magistrate