

Magistrates Court (Civil Proceedings) Amendment Rules 2016

Made by the Magistrates Court in accordance with the *Magistrates Court Act 2004* section 39.

1. Citation

These rules are the *Magistrates Court (Civil Proceedings) Amendment Rules 2016*.

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 7 amended

In rule 7(3) delete “claim in accordance with rule 41A.” and insert:

claim.

5. Rule 7A inserted

After rule 7 insert:

7A. Statement of claim

- (1) Unless the party has lodged and served its statement of claim with its claim under rule 7 the party must lodge and serve the statement of claim —
 - (a) if the claim is an originating claim, within 14 days after the party has received a response that indicates an intention to defend the claim, or such other time as is ordered by the registrar; and

- (b) if the claim is a counterclaim or third party claim, within 14 days after the party has received a response that indicates an intention to defend the claim, or such other time as is ordered by the registrar.
- (2) A statement of claim must be in the approved form.
- (3) Unless otherwise ordered by the registrar under rule 41A, the statement of claim must contain all of the following —
 - (a) a summary of the facts relevant to the claim;
 - (b) the legal basis of the claim;
 - (c) the basic contentions of the party;
 - (d) the remedy or relief claimed;
 - (e) if the amount of the claim has been reduced in order to bring the claim within the jurisdictional limit, a statement to that effect.

6. Rule 8 amended

- (1) In rule 8(2)(a) delete “rule 41B; and” and insert:

rule 10; and
- (2) In rule 8(3) delete “claim in accordance with rule 41A.” and insert:

claim.

7. Rule 9 amended

Delete rule 9(1A) and insert:

- (1A) If a statement of claim has been lodged together with a claim under rule 7(3) or 8(3), a response may, but need not, be lodged together with a statement of defence.

8. Rule 10 inserted

At the end of Part 2 insert:

10. Statement of defence

- (1) Unless the party has lodged and served its statement of defence with its response under rule 9, the party must lodge and serve its statement of defence within

14 days, or such other time as is ordered by the registrar, after the party has been served with the relevant statement of claim.

- (2) A statement of defence must be in the approved form.
- (3) Unless otherwise ordered by the registrar under rule 41B, the statement of defence must contain all of the following —
 - (a) a summary of the facts relevant to the defence;
 - (b) the legal basis of the defence;
 - (c) the basic contentions of the party;
 - (d) the details of anyone who the party alleges is liable for the claim and the grounds upon which the party so alleges.

9. Rule 39 amended

In rule 39(1) delete “receives from the Court a copy of a response that indicates an intention to defend the claim.” and insert:

is served with a statement of defence.

10. Rule 40 amended

After rule 40(2)(b) insert:

- (ba) order what statements of claim or defence must contain;

11. Rules 41A and 41B replaced

Delete rules 41A and 41B and insert:

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

If the registrar at the pre-trial conference orders a party to lodge and serve a statement of claim, the party must do so in accordance with rule 7A(2) and (3).

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

If the registrar at the pre-trial conference orders a party to lodge and serve a statement of defence, the party must do so in accordance with rule 10(2) and (3).

12. Part 15 Division 3 inserted

At the end of Part 15 insert:

Division 3 — Security for costs

94A. Term used: claimant

In this Division —

claimant includes a defendant counterclaiming in respect of a claim not arising out of the claim made against the defendant.

94B. Factors that are not grounds for ordering security for costs

The Court may order security for costs to be given by a claimant, but an order must not be made merely on account of the poverty of the claimant or the likely inability of the claimant to pay any costs which may be awarded against the claimant.

94C. Grounds for ordering security for costs

Without limiting rule 94B, the Court may order security for costs to be given by the claimant in the following circumstances —

- (a) the claimant is ordinarily resident out of the jurisdiction, notwithstanding that the claimant may be temporarily within the jurisdiction;
- (b) the claimant is about to depart from the jurisdiction;
- (c) the claimant enjoys within the jurisdiction some privilege which renders the claimant immune, wholly or partially, from the normal processes of execution;
- (d) the claimant is an undischarged bankrupt or a person who has suspended, or given notice of suspension of, debts;
- (e) the claimant is a company in liquidation or under official management, or a company in respect of which a receiver of its property has been appointed;
- (f) the claimant is a relator suing for the enforcement or declaration of some public right or to have some public trust carried out or some charitable scheme settled;
- (g) the claimant is in default in respect of any costs ordered to be paid by the claimant in any proceedings previously brought by the claimant against the same defendant or another

defendant for substantially the same cause of action or in relation to substantially the same subject matter;

- (h) the claimant is a person who has in the past vexatiously brought litigation against the same defendant or against any other defendant;
- (i) the claimant is suing the Sheriff in respect of anything done or omitted to be done by the Sheriff or the Sheriff's officers in the execution of any judgment of the Court.

94D. Court has discretion

- (1) The granting of security may be in the discretion of the Court.
- (2) In determining whether an order should be made, the Court may take the following into consideration —
 - (a) the prima facie merits of the claim;
 - (b) what property within the jurisdiction may be available to satisfy any order for costs against the claimant;
 - (c) whether the normal processes of the Court would be available within the jurisdiction for enforcement of any order for costs made against the claimant.

94E. Manner of giving security

In fixing security the Court may direct the form and manner in which the security is to be given and may from time to time vary the amount and form of the security.

94F. Action may be stayed

Where security is ordered the action or other proceedings may be stayed until the security is furnished, unless the Court otherwise orders.

94G. Payment out

- (1) Where money has been paid into Court as security for costs and the action has been finally disposed of, the amount of the security is to be paid out to the party for whose security it was furnished to the extent that costs are due from the securer to such party.
- (2) Unless the Court orders otherwise, the Principal Registrar is to pay out the security accordingly, and the balance (if any) may be refunded to the securer without the necessity for any special order.

13. Rule 128 amended

In rule 128(2) after “otherwise,” insert:

rule 29,

Made by the Magistrates Court,

STEVEN HEATH, Chief Magistrate.
