



Australian Capital Territory

# Protection Orders Regulations 2002

## Subordinate Law 2002 No 6

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The Australian Capital Territory Executive makes the following regulations under the *Protection Orders Act 2001*.

Dated 26 March 2002.

JON STANHOPE  
Minister

BILL WOOD  
Minister

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*Protection Orders Act 2001*

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## Part 1 Preliminary

### 1 Name of regulations

These regulations are the *Protection Orders Regulations 2002*.

### 2 Commencement

These regulations commence on the commencement of the *Protection Orders Act 2001*, section 3 (Dictionary).

### 3 Dictionary

The dictionary at the end of these regulations is part of these regulations.

*Note 1* The dictionary at the end of these regulations defines certain words used in these regulations, and includes references (*signpost definitions*) to other words defined elsewhere in these regulations.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire regulations unless the definition, or another provision of the regulations, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

### 4 Notes

- (1) A note included in these regulations is explanatory and is not part of these regulations.

*Note* See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.

- (2) In this regulation:

***note*** includes material enclosed in brackets in regulation headings.

*Note* For comparison, a number of regulations contain bracketed notes in their headings drawing attention to equivalent or comparable (though not necessarily identical) provisions of other Acts. Abbreviations in the notes include the following:

**Part 1** Preliminary

Regulation 4

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- DVA: *Domestic Violence Act 1986* as in force immediately before the commencement of the *Protection Orders Act 2001*, s 3
- MCCJA: *Magistrates Court (Civil Jurisdiction) Act 1982*

(3) Subregulation (2), this subregulation, and the material enclosed in brackets in regulation headings, expire 2 years after this regulation commences.

## Part 2                      Applicant's obligation

### 5        Court to be told about relevant contact orders (DVA s 8A)

- (1) The applicant must tell the Magistrates Court about any relevant family contact order, or a pending application for such an order, of which the applicant is aware.
- (2) The failure of the applicant to comply with subregulation (1) does not affect the validity of the protection order.

*Note about relationship with Family Law Act*

The *Family Law Act 1975* (Cwlth), pt 7, divs 10 and 11 deal with the relationship between family violence orders and contact orders within the meaning of that part. In particular, s 68J imposes an obligation on certain people to inform the court of any family violence orders (including domestic violence orders) and under s 68S certain people may apply for a declaration of the extent to which a contact order is inconsistent with a family violence order.

## **Part 3 Preliminary conferences**

### **6 Objects of preliminary conferences**

- (1) The objects of a preliminary conference for a proceeding are to—
  - (a) find out whether the proceeding may be settled by consent before it is heard by the Magistrates Court; and
  - (b) work out and limit the issues to be decided in the proceeding; and
  - (c) ensure that the parties are taking the measures necessary to allow the proceeding to be heard quickly.
- (2) Without limiting how the issues to be decided in the proceeding may be worked out and limited, the preliminary conference must try to—
  - (a) identify facts agreed on; and
  - (b) identify issues not agreed on; and
  - (c) identify any unusual or urgent factors that require special attention.

*Note* Before making a consent order, the Magistrates Court must explain certain things about the order (see the Act, s 24 and s 25).

### **7 Exceptions to requirement for preliminary conference**

The registrar need not hold a preliminary conference in relation to an application if—

- (a) the application is for an emergency order; or
- (b) the registrar is satisfied that the conference would not achieve its objects (completely or partly).

*Note* An interim order is made on an application for a final order, but does not need its own application. Because preliminary conferences are held in relation to applications, a preliminary conference need not be

held in relation to an interim order, as long as the preliminary conference is held in relation to the application for the final order.

## **8 Notice of, and nonattendance at, conferences**

- (1) The registrar must, in writing, tell each party to a proceeding for which a preliminary conference is to be held—
  - (a) when and where the conference is to be held; and
  - (b) that, if the party does not attend the conference, the nonattendance may be reported to the Magistrates Court.
- (2) The registrar must tell the Magistrates Court if a party does not attend the preliminary conference if satisfied that the party was given notice of the conference.

*Note* If the application is returned before the Magistrates Court at the same time as the preliminary conference is to be held and a party to the application does not attend, the application may be dealt with under reg 15 or 16.

## **9 Admissibility of preliminary conference evidence**

Evidence must not be given before, or statements made in, the Magistrates Court about words spoken or anything done at a preliminary conference that is related to a question to be decided by the Magistrates Court in the proceeding unless—

- (a) the parties otherwise agree; or
- (b) the court is satisfied that there are substantial reasons why, in the interests of justice, the evidence should be given, or statements made.

## **Part 4                      Hearings before Magistrates Court**

### **10      Hearings usually in public (MCCJA s 181 (1))**

- (1) The hearing of a proceeding before the Magistrates Court must be in public.
- (2) This regulation does not apply to a hearing, or part of a hearing, if—
  - (a) regulation 11 applies to the hearing, or part; or
  - (b) the magistrate presiding at the hearing makes an order under regulation 12 (Closed hearings in special circumstances).

### **11      Public hearing not required**

The hearing of an application, or part of the hearing, need not be in public if—

- (a) the order sought is a consent order; or
- (b) the part of the hearing is an application for an interim order and the respondent has not been served with a copy of the application under the Act, section 16 (Service of application); or
- (c) the respondent has been served with the application and the notice about the proceeding and does not appear in the Magistrates Court when the application is returned before the court.

### **12      Closed hearings in special circumstances (MCCJA s 181 (2))**

- (1) If the magistrate presiding at a hearing is satisfied that it is desirable in the public interest or in the interests of justice to do so, the magistrate may, by order—

- (a) direct that the hearing, or part of the hearing, take place in private and give directions about the people who may be present; and
  - (b) give directions prohibiting or restricting the publication of evidence given at the hearing, whether in public or private, or of matters contained in documents lodged with the Magistrates Court or received in evidence by the court for the proceeding; and
  - (c) give directions prohibiting or restricting the disclosure to some or all of the parties to the proceeding of evidence given at the hearing, or of a matter contained in a document lodged with the court or received in evidence by the court for the proceeding.
- (2) A person must not, without reasonable excuse, contravene an order under subregulation (1).

Maximum penalty: 10 penalty units.

### **13 Order of presentation of cases (MCCJA s 183)**

- (1) In a proceeding, the party (the *beginning party*) on whom the burden of proof on an issue lies must begin.

**Example**

If the applicant is applying for a final order on the grounds that someone has engaged in domestic violence towards the applicant, the burden of proof is on the applicant to prove that someone has engaged in domestic violence and, because of that, the applicant must begin.

- (2) The beginning party may make an address opening the party's case and may then present his or her evidence.
- (3) If, at the end of the beginning party's evidence, no document or thing has been admitted in evidence after being tendered by the opposite party, the opposite party may elect to present evidence or not to present evidence.

- (4) If the opposite party elects not to present evidence, the beginning party may make an address closing the party's case and then the opposite party may make an address stating his or her case.
- (5) If the opposite party elects to present evidence, the opposite party may—
  - (a) first make an opening address; and
  - (b) then present the party's evidence; and
  - (c) finally make an address closing the party's case.
- (6) If the opposite party elects to present evidence, the beginning party may make an address closing the beginning party's case after the opposite party has made a closing address.

#### **14 If applicant not present at return of application**

If the applicant is not present at the time an application is returned before the Magistrates Court, the court must—

- (a) dismiss the application; or
- (b) adjourn the hearing.

#### **15 If certain respondent not present**

- (1) This regulation applies to an application if the respondent—
  - (a) is the person claimed to have committed the violence that is the subject of the application; and
  - (b) has been served with a copy of the application and notice about the proceeding under the Act, section 16 (Service of application); and
  - (c) does not appear in person at the Magistrates Court when the application is returned before the court.
- (2) The Magistrates Court must—
  - (a) decide the application in the respondent's absence; or



- (b) if the court considers it appropriate—
  - (i) issue a warrant for the respondent to be apprehended and brought before the court; and
  - (ii) adjourn the proceeding until the respondent is brought before the court.
- (3) This regulation does not prevent the Magistrates Court from making an interim order in the proceeding.

## **16 Procedure if neither party appears**

- (1) If neither party to a proceeding appears, either personally or by a representative, at the time and place set for the hearing of the proceeding, the Magistrates Court may order that the proceeding be dismissed.
- (2) If the Magistrates Court orders that the proceeding be dismissed, the court must not make an order about costs.

## **17 Court may join child as party**

- (1) This regulation applies to a child if a protection order sought in a proceeding includes a condition mentioned in the Act, section 42 (2) (h) or 42 (3) in relation to the child.

*Note* The Act, sections 42 (2) (h) and 42 (3) prohibit someone from doing certain things in relation to a child of the aggrieved person.

- (2) The Magistrates Court may join the child as a party in the proceeding.

## **18 Applications heard together**

Two or more applications may be heard together if—

- (a) a common question of fact arises in each application; or
- (b) the applications relate to, or arise from, the same event or series of events; or

- (c) the court gives leave for the applications to be heard together.

**Example**

A group of people are threatened by someone. If 2 or more of the people in the group apply for an order under the Act, the applications may be heard together.

**19 Obligation on respondent**

A respondent to an application must—

- (a) in the first affidavit filed by him or her, state an address for service; or
- (b) if the applicant does not file an affidavit—
  - (i) file a notice of intention to appear; and
  - (ii) serve a copy of the notice on the applicant.

*Note* If a form is approved under the Act, s 96 (Approved forms) for a notice, the form must be used.

## **Part 5 Evidence**

*Note about operation of Evidence Act 1995 (Cwlth)*

The *Evidence Act 1995* (Cwlth) (the *EA*) applies to the Magistrates Court. The application of the EA means that it is not necessary to include provisions dealing with, for example, the following areas dealt with in that Act:

- examination on oath (see EA, s 21)
- court control over conduct of hearing (see EA, div 2.1.3)
- privileges (see EA, pt 3.10)
- proof of court documents (see EA, s 157)
- cross-examination of deponents (see EA, div 4.6.1).

### **Division 5.1 Giving and taking evidence**

#### **20 How may evidence be given? (MCCJA s 195, s 196)**

- (1) Evidence in a proceeding under the Act must be given orally.
- (2) However, evidence may be given by affidavit—
  - (a) if the parties agree to allow affidavit evidence; or
  - (b) with the leave of the Magistrates Court.

##### **Example of when Magistrates Court might give leave**

If the court is satisfied that it would be unreasonable to require the applicant to give oral evidence.

*Note* Affidavits are dealt with in div 5.2.

#### **21 Court may inform self**

The Magistrates Court may inform itself in any way it considers appropriate in a particular proceeding.

## Division 5.2 Affidavits

### 22 Time for swearing affidavits (MCCJA s 203)

- (1) An affidavit for use in a proceeding may be sworn before or after the proceeding is begun.
- (2) An affidavit must not be used as evidence of the service of a document in the ACT if it is sworn more than 2 weeks after the date of service, unless the Magistrates Court otherwise orders.

### 23 Form of affidavit (MCCJA s 204)

An affidavit for use in a proceeding must—

- (a) be in the first person; and
- (b) be divided into consecutively numbered paragraphs; and
- (c) contain, as far as practicable, only 1 subject matter in each paragraph; and
- (d) have each page signed by the deponent and the person before whom it is sworn.

*Note* If a form is approved under the Act, s 96 (Approved forms) for an affidavit, the form must be used.

### 24 Irregularity in affidavit (MCCJA s 205)

- (1) An affidavit for use in a proceeding under the Act may be filed even if there is an irregularity in the affidavit's form unless the Magistrates Court or registrar otherwise orders.
- (2) If there is an irregularity in an affidavit's form, the affidavit may be used in a proceeding under the Act only with the Magistrates Court's leave.
- (3) If an affidavit to which the *Oaths and Affirmations Act 1984*, section 19 (Affidavit by person unable to understand English) or section 20 (Affidavit by illiterate or blind person) applies does not contain the certificate mentioned in the section, the affidavit may be used in a

proceeding under the Act only if the Magistrates Court is satisfied that—

- (a) the affidavit was read out or translated to the person who made the affidavit; and
- (b) the person appeared to understand the affidavit; and
- (c) the person agreed to the affidavit.

## **25 Attachments and exhibits to affidavits (MCCJA s 212)**

- (1) A document to be used in relation to an affidavit filed in a proceeding must—
  - (a) be attached to the affidavit if convenient; or
  - (b) be made an exhibit to the affidavit if attachment is not convenient.
- (2) An exhibit to an affidavit in a proceeding must be identified by a certificate headed in the same way as the affidavit and made by the person before whom the affidavit is sworn.

## **26 Alterations in affidavits (MCCJA s 213)**

- (1) This regulation applies if there is an interlineation, erasure or other alteration in the jurat or body of an affidavit.

*Note* A jurat is the section at the end of an affidavit that sets out who swore the affidavit, who it was sworn before and when it was sworn (see The Macquarie Dictionary, 3rd ed, Butterworths Australian Legal Dictionary).

- (2) The affidavit may be filed unless the Magistrates Court otherwise orders.
- (3) The affidavit may be used in a proceeding without the leave of the Magistrates Court only if the person before whom the affidavit is sworn has initialled the interlineation, erasure or alteration.
- (4) This regulation applies to a document verified by affidavit as if the document were part of the affidavit.

**27 Relying on affidavits (MCCJA s 22 (6))**

- (1) A party to an application who intends to rely on an affidavit at the hearing of the application must—
  - (a) file the affidavit; and
  - (b) serve a copy of the affidavit on each other party to the proceeding unless the Magistrates Court otherwise orders.
- (2) The copy of the affidavit must be served—
  - (a) in sufficient time before the hearing to allow the other party to make and file, and serve a copy of, an affidavit in reply; or
  - (b) within the time the Magistrates Court orders.

**Division 5.3                      Summonses and notices to  
produce**

**28 Issue of summons (MCCJA s 187 (1), (2))**

- (1) This regulation applies to—
  - (a) a summons (a *summons to give evidence*) to the person named in the summons to attend before the Magistrates Court or an examiner, to give evidence; or
  - (b) a summons (a *summons for production*) to the person named in the summons to attend before the court or an examiner to produce a document or thing; or
  - (c) a summons that is both a summons to give evidence and a summons for production.

*Note*        If a form is approved under the Act, s 96 (Approved forms) for a summons, the form must be used.

- (2) In a proceeding—
  - (a) the Magistrates Court may issue the summons on its own initiative; and

- (b) the registrar must, subject to any order or direction of the Magistrates Court, issue the summons if asked by a party to the proceeding.

**29 Copies of summons (MCCJA s 187 (4) and (5))**

- (1) A party to a proceeding that asks for the issue of a summons under regulation 28 must give the summons to the registrar in triplicate and must file 1 of the copies.
- (2) However, a party to a proceeding that asks for the issue of several summonses under regulation 28 addressed to different people need produce only 1 original summons and file only 1 copy of the summons if—
  - (a) the summonses are to give evidence in similar terms; and
  - (b) the original and copy each contain the name of each person to whom any of the summonses is addressed.

**30 Timing of service of summons (MCCJA s 187 (6))**

A summons mentioned in regulation 28 (Issue of summons) must be served within a reasonable time before the date for compliance mentioned in the summons.

**31 Requirement to comply with summons (MCCJA s 187 (7), (9))**

- (1) This regulation applies if—
  - (a) a summons mentioned in regulation 28 (Issue of summons) has been served on the person named in the summons in accordance with regulation 30; and
  - (b) a reasonable amount for expenses that the person would incur in complying with the summons on any day when the person's attendance is required has been paid or tendered to the person at the time of service of the summons or within a reasonable

time before the date for compliance mentioned in the summons.

*Note* **Reasonable amount**, for expenses, is defined in subregulation (5).

- (2) The person must not, without reasonable excuse, fail to comply with a requirement of the summons.

Maximum penalty: 10 penalty units.

- (3) However, a person is not required to produce a document or thing because of a summons for production if—
- (a) the document or thing is not mentioned or otherwise adequately described in the summons; or
  - (b) had the summons been issued by the Supreme Court, the person could have successfully objected to the requirement to produce the document or thing.

**Examples of grounds for objecting to the requirement to produce**

- 1 privilege
- 2 public interest immunity
- 3 insufficient possession, custody or control of the thing required to be produced
- 4 lateness of service of summons
- 5 statutory prohibition on production.

*Note* These examples are not exhaustive, and may extend, but do not limit, the meaning of this section (see *Legislation Act 2001*, s 132).

- (4) If someone contravenes subregulation (2), the Magistrates Court may—
- (a) issue a warrant for the apprehension of the person and for the person to be brought before the court to give evidence or to produce the required document or thing or both; and
  - (b) order the person to pay any costs in the proceeding that result from the contravention.



- (5) For this regulation:

***reasonable amount***, for expenses for a person, means the amount that would be payable in relation to the person if the party on whose request the summons was issued were entitled to claim witnesses' expenses in relation to the person as costs in the proceeding.

### **32 Evidence from outside ACT (MCCJA s 187 (7A))**

If the Magistrates Court has given a direction under the *Evidence (Miscellaneous Provisions) Act 1991*, section 18 (1) (Territory courts may take evidence and submissions from outside the Territory) or section 30 (1) (Use of link in proceedings) in relation to someone who is required to give evidence under a summons, the person satisfies the requirement by appearing and giving evidence in accordance with the direction.

### **33 Production by non-party (MCCJA s 188)**

- (1) If someone named in a summons for production of a document or thing is not a party to the proceeding, instead of attending and producing the document or thing as required by the summons, the person may produce the document or thing to the registrar not later than the day before the first date the person's attendance is required by the summons, unless the Magistrates Court otherwise orders.
- (2) If a document or thing is produced to the registrar under subregulation (1), the registrar must—
  - (a) give a receipt to the person producing the document or thing; and
  - (b) produce the document or thing as required during the proceeding or as the Magistrates Court directs.
- (3) This regulation does not apply to a part of a summons that requires the person named to attend to give evidence in a proceeding.

**34 Setting aside summons (MCCJA s 189)**

- (1) The Magistrates Court may, on the application of the person named in a summons, completely or partly set aside the summons.
- (2) An application under subregulation (1) must be filed and a copy served on the party to the proceeding who asked for the summons to be issued.

**35 Production on notice (MCCJA s 190)**

- (1) This regulation applies if—
  - (a) a party to a proceeding serves on another party a notice requiring the other party to produce a document or thing at the hearing of the proceeding or before the registrar or an examiner; and
  - (b) the document or thing is in the other party's possession.

*Note* If a form is approved under s 96 (Approved forms) for a notice, the form must be used.

- (2) The other party must produce the document or thing in accordance with the notice even though the other party has not been served with a summons for production in relation to the document or thing unless the Magistrates Court otherwise orders.

**Division 5.4 Examination**

**36 Order for examination of witnesses (MCCJA s 202 (1)-(6))**

- (1) This regulation applies if, on application, the Magistrates Court makes an order for the examination of a person, whether within or outside the ACT, before a magistrate or someone else appointed by the court (the *examiner*) for a proceeding under the Act.
- (2) If the documents filed in the proceeding are not sufficient to inform the examiner of the questions to which the examination is to relate, the Magistrates Court must, in the order or by a subsequent order, state the questions.

- (3) The examiner must—
  - (a) give reasonable notice of the appointment to the party (the ***applicant***) to the proceeding on whose application the order was made; and
  - (b) unless the Magistrates Court otherwise orders, set a place and time for the examination that is as soon as practicable after the order appointing the examiner was made, having regard to the convenience of the person to be examined and any other relevant circumstance.
- (4) The applicant must promptly—
  - (a) serve a copy of the order on each other party to the proceeding; and
  - (b) give the examiner a copy of any document in the proceeding that is necessary to inform the examiner of the questions to which the examination is to relate.

**37 Examination procedure and objections**  
(MCCJA s 202 (7), (10), (12))

- (1) At an examination—
  - (a) the practice and procedure of the Magistrates Court in relation to the hearing of a proceeding apply so far as they are applicable (subject to regulation 36 and this regulation); and
  - (b) the examiner may adjourn the examination; and
  - (c) each party, and his or her lawyer, may attend; and
  - (d) unless the court otherwise orders, each party has the same rights in relation to the examination, cross-examination and re-examination of the person being examined as the party would have had if the person had given evidence at the hearing of the proceeding before the court; and

- (e) the examiner may ask the person being examined any question about the meaning of an answer given by the person or any other matter arising in the course of the examination; and
  - (f) the deposition of the person examined must be taken down by the examiner or by a shorthand writer or someone else in the presence of the examiner; and
  - (g) the deposition must contain, so far as practicable, the statement of the person examined; and
  - (h) the examiner may direct that the words of any question and the answer to the question be set out in the deposition, but subject to paragraph (g) and subregulation (2) (b), the deposition need not set out every question and answer; and
  - (i) if a party to the proceeding asks, the deposition of the person examined, or the shorthand notes of his or her examination, must be read to the person and the examiner must ask the person to sign his or her deposition or the notes; and
  - (j) the examiner must authenticate the deposition of the person examined by the examiner's signature and must make on, or attach to, the deposition a note, signed by the examiner, of the time spent in the examination and the fees received by the examiner in relation to the examination.
- (2) If, at the examination, a party to the proceeding, or the person being examined, objects to a question asked of the person or to the production of a document or thing by the person, or the person objects to answering a question asked of him or her—
- (a) the examiner must state to the parties present at the examination his or her opinion about the validity of the ground for the objection, but must not decide on the validity; and
  - (b) the question, the ground for objection, the answer (if any) and the opinion of the examiner must be set out in the deposition of the person being examined or in a statement attached to the deposition; and

- (c) the Magistrates Court must, on application by a party or at the hearing of the proceeding, decide on the validity of the ground for the objection; and
  - (d) if the court decides that there were no valid grounds for the objection, the court may order the objector to pay any costs of any party in the proceeding caused by the objection.
- (3) The examiner may, with the written consent of each party to the proceeding, examine another person as well as the person for whose examination he or she was appointed, and, if the examiner does so—
- (a) the examiner must attach to the deposition of the other person the consent of each party; and
  - (b) the person must be examined in accordance with these regulations.

**38 After examination (MCCJA s 202 (8)-(9), (11)-(12))**

- (1) The examiner must, as soon as practicable after the examination is finished, give the registrar any deposition taken at the examination and, unless the Magistrates Court otherwise orders, any exhibits that were before the examiner.
- (2) The registrar must enter into the record of the Magistrates Court any deposition received from the examiner.
- (3) The registrar must deal with any exhibit received from the examiner in the way the Magistrates Court directs.
- (4) Evidence given by someone in the examination is admissible at the hearing of the proceeding unless the Magistrates Court is satisfied that the person who gave the evidence is within a convenient distance of the court and can attend before the court to give evidence.

**39 Entitlement to expenses (MCCJA s 202 (13))**

A person attending before an examiner to be examined is entitled to be paid the same amount to meet his or her reasonable expenses in

attending as he or she would have been entitled to be paid if the attendance had been before the Magistrates Court to give evidence in the proceeding.

**40 Examiner's reports (MCCJA s 202 (14)-(15))**

- (1) An examiner may make a report to the Magistrates Court about the examination and, in particular, the conduct or absence of a person.
- (2) On receiving the report, the Magistrates Court may make any order it considers appropriate.

**Division 5.5 Defences**

**41 Notice of grounds of defence (MCCJA s 37-39)**

- (1) A respondent in a proceeding may, at any time before the end of the proceeding, file a notice of grounds of defence.

*Note* If a form is approved under s 96 (Approved forms) for a notice, the form must be used.

- (2) The notice of grounds of defence must be signed by the respondent, the respondent's lawyer or an agent authorised in writing by the respondent to sign the grounds of defence.
- (3) The registrar must serve the notice of grounds of defence on the applicant.
- (4) The respondent does not waive any objection the respondent may have on the grounds of lack of jurisdiction in the Magistrates Court to decide the proceeding only because the respondent files a notice of grounds of defence.

**42 Reliance on undisclosed defence (MCCJA s 40)**

- (1) A respondent in a proceeding may, at the hearing of the proceeding, rely on a ground of defence not mentioned in a notice of grounds of defence filed by the respondent only with the applicant's consent or with the Magistrates Court's leave.

- (2) The Magistrates Court may grant the leave on the terms (if any) the court considers just.

#### **43 Reply to notice of grounds of defence (MCCJA s 52-54)**

- (1) If the respondent in a proceeding files a notice of grounds of defence, the applicant may file a reply within 21 days after the day when a copy of the notice is served on the applicant.

*Note* If a form is approved under s 96 (Approved forms) for a reply, the form must be used.

- (2) A reply must be signed by the applicant, the applicant's lawyer or an agent authorised by the applicant in writing to sign the reply.
- (3) The registrar must serve the reply on the defendant.

## Part 6                      Discontinuance and adjournments

### 44      Discontinuance

- (1) The applicant in a proceeding may discontinue the proceeding at any time before a final decision is made in the proceeding by filing a notice of discontinuance.

*Note*      If a form is approved under s 96 (Approved forms) for a notice, the form must be used.

- (2) If a proceeding is discontinued, the discontinuance—
- (a) does not prevent a further application being made in relation to the same, or substantially the same, matter; and
  - (b) is not a defence in a proceeding on any further application.

### 45      Adjournment by court (MCCJA s 191)

The Magistrates Court may, at any time, adjourn the hearing or the further hearing of the proceeding in the way, and on the terms, the court considers appropriate.

### 46      Return date notice on adjournment

If the hearing is adjourned—

- (a) the return date notice under the Act, section 15 (Registrar sets return date) must be amended to state the new time and the place for the hearing; and
- (b) the amended return date notice must be served on any party to the proceeding who is not present and not otherwise aware of the new time and place for the hearing.



**47     Adjournment of hearing by registrar (MCCJA s 193)**

- (1) This regulation applies if, at the time and place fixed for the hearing or further hearing of a proceeding, a magistrate is not available to hear the proceeding.
- (2) The registrar may adjourn the hearing or further hearing to a time and place fixed by the registrar.
- (3) The registrar must, if asked by a party to the proceeding not earlier than 1 hour after the time fixed for the hearing without a magistrate becoming available, adjourn the hearing or further hearing to a time and place fixed by the registrar.

## Part 7 People with legal disability

### 48 Respondents with legal disability

*Note* The Act, s 12 deals with applications by people with a legal disability.

- (1) This regulation applies to a person with a legal disability who is the respondent in a proceeding on an application.
- (2) The person may defend the proceeding only by a litigation guardian.
- (3) If an order is made against the person to whom this regulation applies when the person has no litigation guardian, the validity of the order is not affected.

### 49 Appointments of next friend and litigation guardian

- (1) An individual who is not a person with a legal disability may be appointed as the next friend or litigation guardian of a person with a legal disability (the *other person*) in a proceeding under the Act.
- (2) An individual is appointed under subregulation (1) by filing with the Magistrates Court a statement—
  - (a) about whether, to the best of the individual's knowledge, the other person has a disability guardian, or manager, other than the individual; and
  - (b) to the effect that—
    - (i) the individual has no interest in the proceeding that is adverse to the interests of the other person; and
    - (ii) the individual agrees to be appointed; and
    - (iii) if the individual wishes to be the next friend of the other person—the individual agrees to be responsible for the costs in the proceeding that the other person would otherwise be required to pay.

*Note* See reg 51 (2) for next friend's responsibility for costs.

- (3) However, if the other person has a disability guardian, or manager, other than the individual, the individual may be appointed as the other person's litigation guardian only with the Magistrates Court's leave.

- (4) For this regulation:

*manager*—see the *Guardianship and Management of Property Act 1991*, dictionary.

## **50 What may be done by next friend and litigation guardian?**

- (1) This regulation applies to a person for whom a next friend or litigation guardian has been appointed.
- (2) Anything that the person is allowed to do under the Act may be done by the person's next friend or litigation guardian.
- (3) Anything that the person is required to do under the Act must be done by the person's next friend or litigation guardian.

*Note* The next friend or litigation guardian may not give the person's evidence for the person (see *Evidence Act 1995* (Cwlth), pt 3.2).

## **51 What are responsibilities of next friend and litigation guardian?**

- (1) The next friend or litigation guardian of a person with a legal disability must do everything that is necessary in the proceeding to protect the person's interests.
- (2) The next friend of a person with a legal disability is responsible for the costs in the proceeding that the person would otherwise be required to pay.

## **52 Removal of next friend and litigation guardian**

- (1) The Magistrates Court may, on application or its own initiative—
- (a) remove the next friend or litigation guardian of a person with a legal disability in the proceeding; and

- (b) order that the proceeding be stayed until someone else has been appointed as next friend or litigation guardian in place of the person removed.
- (2) An applicant for an order under subregulation (1) must, unless the Magistrates Court otherwise directs, serve notice of the application on the person whose removal is sought and on the person under a legal disability.
- (3) An application under subregulation (1) may be made by a party to the proceeding or anyone else.

## Part 8 Representation

### 53 Right of appearance (MCCJA s 482)

- (1) A party to a proceeding may appear before the Magistrates Court or the registrar—
  - (a) by a lawyer; or
  - (b) in the case of an individual—personally; or
  - (c) in the case of a corporation—by an officer of the corporation authorised by the corporation; or
  - (d) with the leave of the court or the registrar—by another person.
- (2) A person appearing in accordance with subsection (1) may address the Magistrates Court or the registrar and may examine and cross-examine witnesses.
- (3) A person who is not a lawyer is not entitled to receive or recover money or other remuneration or consideration for appearing on behalf of another person.
- (4) Subsection (3) does not prevent an employee who, in the ordinary course of employment, appears on behalf of his or her employer from receiving wages or salary for appearing.
- (5) If the Magistrates Court has given a direction under the *Evidence (Miscellaneous Provisions) Act 1991*, section 18 (1) or 30 (1), a person who, under this regulation, is entitled to appear before the court or the registrar on his or her own or someone else's behalf, may appear, address the court or the registrar and examine and cross-examine witnesses in accordance with the direction.

### 54 Representation of parties with legal disability

- (1) This regulation applies if a person under a legal disability—
  - (a) does not have a representative; or

- (b) does not have an appropriate or suitable representative.
- (2) The Magistrates Court may, on its own initiative or on application by someone else—
  - (a) adjourn the proceeding so the person can get representation; and
  - (b) give the person the information necessary to allow the party to get representation; and
  - (c) tell the community advocate that the proceeding has been adjourned so the person can get representation.

## **55 Representation by Legal Aid Office**

- (1) This regulation applies if—
  - (a) a party to the proceeding is a child; and
  - (b) the child is either the applicant or a party joined under regulation 17 (Court may join child as party); and
  - (c) the Magistrates Court adjourns the proceeding under regulation 53 to allow the child to obtain representation.
- (2) The Magistrates Court may ask that legal representation be arranged by the Legal Aid Office (A.C.T.).
- (3) For this regulation:  
*Legal Aid Office (A.C.T.)*—see the *Legal Aid Act 1977*, section 94 (Commission to operate as ‘Legal Aid Office (A.C.T.)’).

## **Part 9 Interlocutory matters**

### **Division 9.1 Motions**

#### **56 Interlocutory applications (MCCJA s 123 (1)-(3))**

- (1) An application to the Magistrates Court in a proceeding—
  - (a) may be made only by motion; and
  - (b) may be supported by affidavit.
- (2) An applicant may move the Magistrates Court for the order sought only if—
  - (a) the applicant has—
    - (i) filed a notice of motion; and
    - (ii) served a copy of the notice on each interested party; or
  - (b) regulation 57 applies.
- (3) If a copy of a notice is required to be served under this regulation, the copy must be served not later than 3 days before the day fixed for the hearing of the motion unless the Magistrates Court otherwise orders.

#### **57 Motion without notice (MCCJA s 123 (4))**

An applicant may move the Magistrates Court without having filed, or served a copy of, a notice of motion only if—

- (a) the preparation or filing of the notice, or the service, would cause undue delay or other mischief to the applicant; or
- (b) each interested party consents to the order sought by the applicant; or
- (c) the court dispenses with the requirement to file and serve the notice of motion by order.

## **58 Notice of motion**

- (1) A notice of motion must—
  - (a) state the place, date and time fixed for the hearing of the motion; and
  - (b) if the Magistrates Court has made an order under regulation 57 (c)—contain a note of the order; and
  - (c) state briefly the nature of the order sought by the applicant; and
  - (d) state briefly the grounds on which the order is sought, or refer to the affidavit in which the grounds are set out; and
  - (e) name each party who would be affected by the order sought.
- (2) Anyone who intends to rely on an affidavit at the hearing of a motion must file the affidavit, and serve a copy of the affidavit on each interested party (except a party on whom service of a copy of the notice of motion was not required under regulation 57)—
  - (a) in sufficient time to allow the other party to make and file, and serve a copy of, an affidavit in reply; or
  - (b) within the time the Magistrates Court orders.

## **59 Hearing of motion (MCCJA s 123 (7), s 124)**

- (1) On the hearing of a motion, the Magistrates Court may—
  - (a) make, or refuse to make, the order sought by the applicant; and
  - (b) make any other order, and give direction, it considers just.
- (2) As far as is practicable, a motion must include as many applications as can conveniently be dealt with at the same time, having regard to the nature of the proceeding.
- (3) On the hearing of a motion, any respondent may make any application in relation to the proceeding.
- (4) If, on the hearing of a motion, a respondent makes an application under subregulation (3), the Magistrates Court may—



- (a) make, or refuse to make, the order sought by the respondent on the terms it considers just, and make any other order, and give the directions, it considers just; or
  - (b) adjourn the hearing of the application and direct the notice of the application to be given to any interested party that the court considers just.
- (5) A motion may be heard in the absence of a party.

## **Division 9.2                      Amendments**

### **60      General power of amendment (MCCJA s 126)**

- (1) At any stage of a proceeding, the Magistrates Court may order that a document filed in the proceeding be amended, or give leave to a party to amend a document filed by the party in the proceeding, in the way the court considers just.
- (2) The Magistrates Court may make the order on application by a party or on its own initiative.
- (3) All amendments necessary to do the following must be made:
  - (a) to work out the real questions raised by, or otherwise depending on, the proceeding;
  - (b) to correct a defect or error in the proceeding;
  - (c) to avoid multiple proceedings.
- (4) If, in a document filed in a proceeding, there has been a mistake in the name of a party to the proceeding, subregulation (1) applies in relation to the person intended to be made a party as if the person were a party.
- (5) This regulation does not apply to the amendment of an order or certificate.

**61 Simple amendment (MCCJA s 132)**

- (1) Amendments authorised under the Act to be made to a document in a proceeding may be made by writing the alterations in the document only if the amendments are not so numerous, lengthy or otherwise of a kind that make the document difficult or inconvenient to read.
- (2) A document filed in a proceeding amended in accordance with subregulation (1) must be endorsed with a statement stating the date of the amendment and—
  - (a) if the amendment was made in accordance with an order of the Magistrates Court—the date of the order; or
  - (b) if not—a reference to regulation 60.
- (3) An endorsement mentioned in subregulation (2) must—
  - (a) if the amendment was made in accordance with an order of the Magistrates Court—be made by the registrar and sealed with the seal of the court; or
  - (b) if not—be made and initialled by the party making the amendment.

**62 Method of amendment of fresh document (MCCJA s 133)**

Unless regulation 61 applies to amendments authorised under the Act of a document filed in a proceeding, the amendments must be made by filing a fresh document and containing a statement mentioning the matters mentioned in regulation 61 (2).

**63 Service after amendment (MCCJA s 134)**

If a document filed in a proceeding has been served and is later amended, the party making the amendment must, as soon as practicable, serve on the parties on whom the document was served a copy of—

- (a) if the amendment is made under regulation 61 (Simple amendment)—a notice stating the amendment and the matters mentioned in regulation 61 (2); or
- (b) if the amendment is made under regulation 62—the fresh document filed.

#### **64 Statutes of limitation (MCCJA s 135)**

- (1) If any relevant limitation period ends after a proceeding was begun and, after the end of the period, the applicant applies for leave to amend his or her application by making an amendment mentioned in this regulation, the Magistrates Court may, in accordance with the relevant subregulation, make an order giving leave to amend even though the period has expired, unless otherwise prevented by this part.
- (2) If notice of a motion for leave to make an amendment is filed within 14 days after the date of filing the claim, leave may be given whatever the nature of the amendment.
- (3) If, in an application, there is a mistake in the name of a party and the court is satisfied that the mistake is not misleading or a mistake that would cause doubt about the identity of the person mentioned, leave may be given to correct the mistake, whether or not the effect of the amendment would be to substitute a new party.
- (4) This regulation does not limit the powers of the Magistrates Court under regulation 60 (General power of amendment).

#### **65 Amendment of order or certificate to correct error (MCCJA s 136)**

- (1) The Magistrates Court may, by order, amend an order of, or certificate issued out of, the court to correct a clerical mistake or error arising from an accidental slip or omission in the order or certificate.

- (2) An order under subregulation (1) may be made at any time on application by a party to the proceeding or on the Magistrates Court's own initiative.
- (3) Regulation 61 (Simple amendment) and regulation 62 (Method of amendment of fresh document) do not apply in relation to an amendment made under subregulation (1).

## **Division 9.3 Stays and dismissals**

### **66 Summary stay or dismissal (MCCJA s 139)**

- (1) This regulation applies if, in a proceeding, it appears to the Magistrates Court, in relation to the proceeding generally or in relation to a particular application or part of the proceeding, that—
  - (a) no reasonable cause of action is disclosed; or
  - (b) the proceeding is—
    - (i) frivolous or vexatious; or
    - (ii) an abuse of the process of the court.
- (2) The Magistrates Court may, on the application of the respondent or on its own initiative, order that the proceeding be stayed or dismissed either generally or in relation to the claim for relief.
- (3) The Magistrates Court may receive evidence on the hearing of an application for an order under subregulation (2).

### **67 Dismissal for lack of prosecution (MCCJA s 141)**

- (1) This regulation applies if—
  - (a) the applicant in a proceeding does not, within a reasonable time, take a step necessary to have the proceeding heard; or
  - (b) the applicant in a proceeding unreasonably takes a step to avoid the proceeding being heard.

- (2) The Magistrates Court may, on the application of the respondent and on the terms the court considers just, order that the proceeding be dismissed for lack of prosecution or may make any other order it considers just.
- (3) The proceeding is to be treated as if it had been discontinued.

*Note* Reg 44 deals with discontinuance.

## **Division 9.4 Admissions**

### **68 Voluntary admissions (MCCJA s 156)**

- (1) A party to a proceeding may, by notice served on another party, admit, in favour of the other party, the facts mentioned in the notice.

*Note* If a form is approved under the Act, s 96 (Approved forms) for a notice, the form must be used.

- (2) The admission has effect only for the proceeding.
- (3) The party that made the admission may, with the Magistrates Court's leave, withdraw the admission.

### **69 Notice to admit facts (MCCJA s 157)**

- (1) A party to a proceeding (the *serving party*) may, by notice served on another party, require the other party to admit, for the proceeding only, the facts or documents mentioned in the notice.

*Note* If a form is approved under the Act, s 96 (Approved forms) for a notice, the form must be used.

- (2) If a party on whom a notice (the *1st notice*) mentioned in subregulation (1) has been served (the *served party*) by another party (the *serving party*) does not, within 21 days after the day when the 1st notice was served on the served party, serve a notice on the serving party disputing the fact or document mentioned in the 1st notice, the fact or document is, for the proceeding, taken to have been admitted by the served party in favour of the serving party.

- (3) A party may, with the leave of the Magistrates Court, withdraw an admission taken to have been made by him or her under subregulation (2).

**70 Order on admissions (MCCJA s 159)**

- (1) If admissions are made by a party to a proceeding, the Magistrates Court may, on the application of another party, make an order to which the applicant is, in the court's opinion, entitled on the admissions.
- (2) The Magistrates Court may exercise its powers under subregulation (1) even though other questions in the proceeding have not been decided.

**71 Restricted effect of admissions (MCCJA s 160)**

An admission mentioned in this division made for a proceeding must not be used—

- (a) against the party who made the admissions in other proceedings; or
- (b) in favour of anyone other than the party in whose favour the admission was made.

**Division 9.5 Discovery**

**72 Admission of documents discovered (MCCJA s 158)**

- (1) If an affidavit of discovery is served on a party (the *served party*) under the Act and inspection of a document mentioned in the affidavit is allowed to the served party under the Act, then, the prescribed admissions by the served party in favour of the party serving the affidavit have effect unless the Magistrates Court otherwise orders.

- (2) For subregulation (1), the *prescribed admissions* are—
- (a) if the document is described in the affidavit as an original document—that the document is an original and was printed, written, signed or executed as it purports to have been; or
  - (b) if the document is described in the affidavit as a copy—that the document is a true copy.
- (3) However, subregulation (1) does not operate as an admission by the served party in relation to the document if the served party—
- (a) has, by affidavit, denied the authenticity of the document; or
  - (b) within 14 days after the time set under the Act for inspection of a document, serves on the party giving inspection a notice that he or she disputes the authenticity of the document.

*Note* Time is set under regs 74, 77 or 80.

- (4) If a party to a proceeding (the *1st party*) serves an affidavit of discovery on another party (the *2nd party*), then, at the hearing of the proceeding, the 1st party has to produce each document mentioned in the affidavit that is in the possession of the 1st party, as if the 2nd party had, on the day of service of the affidavit, served on the 1st party a notice to produce each document mentioned at the hearing of the proceeding.

### **73 Notice for discovery (MCCJA s 163)**

- (1) If there has been an implied joinder of issue between the parties to a proceeding, any of the parties may, unless the Magistrates Court otherwise orders, by notice for discovery filed and served on another of the parties, require the party served to give discovery of documents.

*Note* If a form is approved under the Act, s 96 (Approved forms) for a notice, the form must be used.

- (2) However, a party to a proceeding may require discovery under subregulation (1) after a certificate of readiness for hearing has been filed only if the certificate has been withdrawn or struck out.

**74 Discovery on notice (MCCJA s 164)**

- (1) A party to a proceeding who is required to give discovery of documents under regulation 73 must do so within the time stated in the notice.
- (2) The time stated in the notice to give discovery of the documents under regulation 73 must not end earlier than 21 days after the day the notice for discovery is served on the party required to give discovery.
- (3) A party must give discovery by filing and serving on the party who filed the notice for discovery an affidavit of discovery relating to any matter in question between him or her and the party who filed the notice for discovery.

*Note* If a form is approved under the Act, s 96 (Approved forms) for an affidavit, the form must be used.

- (4) This regulation is subject to regulation 75.

**75 Limitation of discovery on notice (MCCJA s 165)**

- (1) The Magistrates Court may order that discovery under regulation 74 by a party is not required or is limited to the documents, or to the matters in question in the proceeding, stated in the order.

*Note* The court may state in the order that discovery is limited to a class of documents, rather than individually named documents (see *Legislation Act 2001*, s 48).

- (2) The Magistrates Court may make the order before or after the party has been required under regulation 73 (Notice for discovery) to give discovery.
- (3) The Magistrates Court must, on application by a party to the proceeding, make any order under subregulation (1) that is necessary to prevent unnecessary discovery.



**76 Order for general discovery (MCCJA s 167)**

The Magistrates Court may, at any stage of a proceeding, order a party to file and serve an affidavit of discovery on another party.

**77 Contents of affidavit of discovery (MCCJA s 168)**

- (1) An affidavit of discovery must name each document that is or has been in the possession of the party making the affidavit in a convenient sequence and as concisely as possible.
- (2) Each document or, if there is a group of documents of the same kind, each group must be adequately described in the affidavit of discovery to allow the document or group to be identified.
- (3) The affidavit of discovery must adequately state the grounds of any privilege from production claimed for a document in the possession of the party making the affidavit.
- (4) An affidavit of discovery must distinguish the documents that are in the possession of the party making the affidavit from the documents that have been but are no longer in the party's possession.
- (5) An affidavit of discovery must, for any document that has been but is not then in the possession of the party making the affidavit, state when the party parted with possession of the document and what has become of it.
- (6) An affidavit of discovery must state a time, within 7 days after the day the affidavit is served, when, and a place where, the documents in the affidavit may be inspected.

**78 Absence of privilege (MCCJA s 169)**

- (1) A party to a proceeding may claim privilege from production of a document on the ground that it relates only to, and does not tend to prejudice, his or her own case and does not relate to or tend to support the case of an opposite party only with the Magistrates Court's leave.
- (2) Leave under this regulation may be granted only for special cause.

- (3) An application to the Magistrates Court for leave under this regulation may be made without serving notice of the motion.
- (4) The Magistrates Court may, at any stage of a proceeding, order a party to produce a document to another party even though leave under this regulation has been granted and privilege claimed in relation to the document.

#### **79 Order for particular discovery (MCCJA s 170)**

- (1) This regulation applies if, at any stage of a proceeding, it appears to the Magistrates Court from the evidence, from the nature or circumstances of the case or from a document filed in the proceeding, that there are grounds for believing that a document relating to a matter in question in the proceeding may be or may have been in the possession of a party.
- (2) The Magistrates Court may order the party to file, and serve on another party, an affidavit stating whether the document is or has been in his or her possession and, if it has been but is not then in his or her possession, when he or she parted with possession of the document and what has become of it.

*Note* Document includes a class of document (see *Legislation Act 2001*, s 48).

#### **80 Document mentioned in affidavit (MCCJA s 171)**

- (1) If an affidavit filed by a party (the *filing party*) to a proceeding mentions a document, another party (the *notice party*) may, by notice to produce served on the filing party, require the filing party to produce the document for inspection.

*Note* If a form is approved under the Act, s 96 (Approved forms) for a notice, the form must be used.

- (2) If a notice to produce a document is served on the filing party, the filing party must, within 4 days after the day of service, serve on the notice party a notice—

- (a) stating a time, within 7 days after the day of service of the notice under this subregulation, when, and a place where, the document may be inspected; or
- (b) claiming that the document is privileged from production and adequately stating the grounds of the privilege; or
- (c) stating that the document is not in his or her possession and stating, to the best of his or her knowledge, information and belief, where the document is and in whose possession it is.

*Note* If a form is approved under the Act, s 96 (Approved forms) for a notice, the form must be used.

## **81 Order for production (MCCJA s 172)**

- (1) This regulation applies if—
  - (a) it appears from an affidavit of discovery filed by a party to a proceeding that a document is in his or her possession; or
  - (b) an affidavit filed by a party to a proceeding mentions a document; or
  - (c) it appears to the Magistrates Court from the evidence, the nature or circumstances of the case or a document filed in the proceeding, that there are grounds for believing that a document relating to a matter in question in the proceeding is in the possession of a party.
- (2) The Magistrates Court may, subject to any question of privilege that may arise, order the party to—
  - (a) produce the document for inspection by another party at the time and place stated in the order; or
  - (b) file and serve on another party a copy of all or part of the document, with or without an affidavit verifying the copy made by a person who has examined the document and the copy.
- (3) An affidavit made in accordance with an order under subregulation (2) (b) must, unless the Magistrates Court otherwise orders, state

whether there are in the document copied any erasures, interlineations or alterations and, if so, describe each erasure, interlineation and alteration.

**82 Power to take copies (MCCJA s 173)**

A party to a proceeding to whom a document is produced for inspection under the Act may make copies of the document.

**83 Production to the court (MCCJA s 174)**

- (1) The Magistrates Court may, at any stage of a proceeding, order a party to produce to the court a document in his or her possession relating to a matter in question in the proceeding.
- (2) On production of the document to the Magistrates Court, the court may deal with the document in the way the court considers just.

**84 Inspection to decide objection (MCCJA s 175)**

- (1) This regulation applies if—
  - (a) an application is made for—
    - (i) an order under regulation 81 (Order for production) for the production of a document for inspection by another party to a proceeding; or
    - (ii) an order under regulation 83 for the production of a document to the Magistrates Court; and
  - (b) either—
    - (i) a claim is made that the document is privileged from production; or
    - (ii) an objection to production is made on another ground.
- (2) The Magistrates Court may inspect the document to decide the validity of the claim or objection.

## **Division 9.6 Interrogatories**

### **85 Interrogatories without leave (MCCJA s 162 (1)-(4))**

- (1) A party to a proceeding (the *filing party*) may, once without the leave of the Magistrates Court, file and serve on another party (the *other party*) interrogatories relating to any matter in question in the proceeding between the parties.

*Note* If a form is approved under the Act, s 96 (Approved forms) for interrogatories, the form must be used.

- (2) The Magistrates Court may, by order, give the filing party leave to file and serve further interrogatories on the other party.
- (3) However, the filing party may file and serve interrogatories on the other party after a certificate of readiness for hearing has been filed only if the certificate has been withdrawn or struck out.

### **86 Further interrogatories (MCCJA s 162 (5)-(8))**

- (1) A party on whom interrogatories are served under regulation 85 must, within 21 days after the day of service—
  - (a) file an affidavit containing the party's answers to the interrogatories; and
  - (b) serve a copy of the affidavit on the party who served the interrogatories.

*Note* If a form is approved under the Act, s 96 (Approved forms) for an affidavit, the form must be used.

- (2) A party on whom interrogatories are served may, in his or her affidavit, object to answering any of the interrogatories on the ground that they are irrelevant, unnecessary, unreasonable, scandalous, vexatious, oppressive or not made honestly, or on any other ground.
- (3) The party who served interrogatories may apply to the Magistrates Court for an order that answers, or further and better answers, be given if—

- (a) a party to a proceeding fails to comply with subregulation (1);  
or
  - (b) answers contained in an affidavit filed and served by the party under subregulation (1) are insufficient.
- (4) On hearing an application for an order under subregulation (3), the Magistrates Court may order that answers, or further and better answers, be given in the way, whether by oral examination or otherwise, and within the time, stated in the order.

## **87 Failure to attend or give answers etc (MCCJA s 162 (9))**

- (1) This regulation applies if—
- (a) the Magistrates Court has made an order under regulation 86 (4) in relation to interrogatories; and
  - (b) the person against whom the order was made fails—
    - (i) to attend for oral examination at the time and place stated in the order; or
    - (ii) to give answers or further and better answers at the examination; or
    - (iii) to give answers, or further and better answers, in the way and within the time stated in the order.
- (2) The Magistrates Court may, on the application of the party who served the interrogatories, make the orders it considers just.

### **Example of order the court may make**

If the party that failed is the applicant, an order that the proceeding be stayed or dismissed completely or partly in relation to any relief claimed by the applicant in the proceeding

## **88 Use of parts of interrogatories (MCCJA s 162 (11)-(12))**

- (1) A party to a proceeding who has served interrogatories may use in evidence in the proceeding any of the answers, or any part of an answer, without using any other answers or the whole of the answer.

- (2) However, the Magistrates Court may examine all the answers given and if, in the opinion of the court, any answer or part of the answer (the *1st response*) is so connected with another answer or part of an answer, the court may refuse to admit the 1st response in evidence unless the party who served the interrogatories also tenders in evidence the other answer or part of an answer.

## Part 10 Costs

### 89 Costs

- (1) Each party to a proceeding on an application must bear the party's own costs.
- (2) However, the Magistrates Court may order the payment of costs in a proceeding and, if it does, the court must fix the amount of the costs.
- (3) Also, the Magistrates Court must not order the payment of costs on an application if regulation 16 (2) (Procedure if neither party appears) applies to the proceeding on the application.
- (4) Costs under subregulation (2) are recoverable as if they were costs awarded under the *Magistrates Court (Civil Jurisdiction) Act 1982*.



## Part 11                      Miscellaneous

### **90     Setting aside orders entered irregularly** (MCCJA s 222)

- (1) The Magistrates Court may, on sufficient cause being shown, order that an order be set aside if the court is satisfied that the order was made irregularly, illegally or against good faith.
- (2) The Magistrates Court may, by order, on the terms it considers just, set aside an order made in a proceeding if the parties to the proceeding consent.

### **91     Irregularity in proceeding (MCCJA s 492)**

- (1) This regulation applies if, in beginning a proceeding or at any stage during the proceeding there is a failure to comply with a requirement of the Act, or a direction given by the Magistrates Court, because of an act or omission in or in connection with the proceeding, whether in relation to time, place, manner, form, content or in any other respect.
- (2) The failure is an irregularity (the *irregularity*) and does not nullify the proceeding, a step taken or document filed in the proceeding or an order made in the proceeding.
- (3) The Magistrates Court may, on the terms it considers just, set aside, completely or partly, the proceeding, a step taken or document filed in the proceeding or an order made in the proceeding, and exercise its powers under these regulations to allow amendments and to make orders relating to the conduct of the proceeding generally.
- (4) However, the Magistrates Court must not set aside a proceeding, step taken or document filed in a proceeding or an order made in the proceeding on the ground of the irregularity on the application of a party unless the application is made within a reasonable time and before the applicant has taken any fresh step in the proceeding after becoming aware of the irregularity.

**92 Time of effect of order (MCCJA s 223)**

An order takes effect on the day it is made.

**93 Reservation of decision (MCCJA s 224)**

If the hearing of a proceeding is completed, the magistrate constituting the Magistrates Court may reserve his or her decision on a question of fact or law, and may give his or her decision in court on a date to be fixed.

**94 Minute of order (MCCJA s 225)**

If the Magistrates Court makes an order (whether final or interlocutory) in a proceeding, a minute of the order must be made and signed by the magistrate constituting the court.

**95 Formal order (MCCJA s 226)**

- (1) This regulation applies if an order has been made by the Magistrates Court in a proceeding.
- (2) If the registrar is directed by the Magistrates Court, or receives an application for a certificate, or certified copy, of the order, the registrar must arrange for the order of the court to be formally drawn up and filed in the court.

## Dictionary

(see reg 3)

*possession* includes custody and power.

*summons for production*, for division 5.3 (Summonses and notices to produce)—see regulation 28 (Issue of summons).

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## Endnote

### Notification

- 1 Notified under the *Legislation Act 2001* on 26 March 2002.  
(see [www.legislation.act.gov.au](http://www.legislation.act.gov.au))

### Penalty units

- 2 The *Legislation Act 2001*, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

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