



Australian Capital Territory

Court Procedures Amendment Rules 2006 (No 2)

Subordinate Law SL2006-58

We, members of the rule-making committee, make the following rules under the *Court Procedures Act 2004*, section 7.

Dated 15 December 2006.

T J HIGGINS

Chief Justice

K J CRISPIN

President of the Court of Appeal

T CONNOLLY

Judge

R CAHILL

Chief Magistrate

M SOMES

Magistrate

J2006-479

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Court Procedures Amendment Rules 2006 (No 2)

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made under the

Court Procedures Rules 2006

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1 Name of rules

These rules are the *Court Procedures Amendment Rules 2006 (No 2)*.

2 Commencement

These rules commence on 1 January 2007.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Legislation amended

These rules amend the *Court Procedures Rules 2006*.

4 New parts 3.12 and 3.13

insert

Part 3.12 Small Claims Court**Division 3.12.1 Small Claims Court—preliminary****3730 Definitions—pt 3.12**

(MC(CJ)R s 394)

In this part:

conference means a conference under division 3.12.7.

court means the Small Claims Court.

Magistrates Court Act means the *Magistrates Court Act 1930*.

order includes—

- (a) a debt declaration; and
- (b) a common boundaries determination; and
- (c) a judgment of the court.

restoration order means an order made under rule 3780 (Small Claims Court—restoration of proceeding).

3731 Meaning of *applicant* and *respondent*—pt 3.12

For a proceeding on a counterclaim or third-party notice (the *process*) under this part—

- (a) a reference in this part to the *applicant* includes a reference to the party who files the process; and
- (b) a reference in these rules to the *respondent* includes a reference to the person on whom the process is served.

3732 Terms used in Magistrates Court Act

A term used in the Magistrates Court Act, part 4.6 (Small Claims Court) has the same meaning in this part.

Note 1 For example, the following terms are defined in the Magistrates Court Act, s 278:

- common boundaries determination
- debt declaration
- inquiry
- nuisance application
- trespass application.

Note 2 An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

3733 Application—pt 3.12

This part applies to a proceeding in the Small Claims Court.

3734 Small Claims Court—application of ch 2 generally

(MC(CJ)R s 395)

- (1) Except as provided by this rule, chapter 2 does not apply to a proceeding in the court.

(2) The applied civil rules apply, with any necessary changes, to a proceeding in the court.

(3) In this rule:

applied civil rules means the following:

- division 2.4.9 (People with a legal disability)
- division 2.4.10 (Partnerships)
- division 2.4.11 (Business names)
- part 2.18 (Enforcement)
- part 2.19 (Interpleader proceedings)
- part 2.21 (Representation by solicitors)
- part 2.22 (Miscellaneous).

Division 3.12.2 Small Claims Court—starting proceeding

3735 Small Claims Court—assistance to members of public

(MC(CJ)R s 403)

The registrar or a member of the staff of the Magistrates Court must, if asked, explain the procedures of the Small Claims Court to a person to assist the person to participate in a proceeding in the court.

3736 Small Claims Court—who may start and carry on a proceeding

(MC(CJ)R s 484 and s 488)

- (1) A person may start and carry on a proceeding in the court—
- (a) in person; or
 - (b) by a solicitor acting for the person; or
 - (c) if the person is a corporation—by an officer or employee of the corporation authorised by the corporation to represent it.

Note Rule 275 (1) (Person with legal disability—litigation guardian to start proceeding etc) provides that a person with a legal disability may start

or defend and carry on a proceeding only by the person's litigation guardian.

- (2) An officer or employee mentioned in subrule (1) (c) must file with the first document that is filed in the court for the corporation in the proceeding—
- (a) an affidavit stating—
 - (i) the position the person holds in the corporation; and
 - (ii) that the person has been authorised by the corporation to represent the corporation in the proceeding; and
 - (iii) that the authority has not been revoked; and
 - (iv) that the person is aware that the person may be liable to pay some or all of the costs of the proceeding; and
 - (b) a copy of an instrument authorising, or evidencing the authorisation of, the person to represent the corporation in the proceeding.

Note An *instrument* is defined in the Legislation Act, s 14 as any writing or other document. *Writing* and *document* are defined in the Legislation Act, dict, pt 1.

3737 Small Claims Court—originating application etc

(MC(CJ)R s 404)

- (1) A proceeding in the court may be started by—
- (a) an originating application; or
 - (b) if the proceeding is for a common boundaries determination— an application in accordance with the *Common Boundaries Act 1981*, and not by originating application.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) A proceeding starts on the day the application under subrule (1) is filed in the court.

Note Rule 6145 (5) (Filed documents initially rejected) provides that, if a document is rejected by the registrar, it is taken to have been filed on the day it was first filed.

- (3) The application must state—

- (a) the nature of the claim and the relief sought; and
- (b) any claim for interest up to the day of judgment; and
- (c) the applicant's address for service.

Note *Address for service* is defined in the dictionary.

3738 Small Claims Court—single application for each matter

(MC(CJ)R s 405)

A person may file only 1 originating application in relation to a claim for relief arising out of a single cause of action.

3739 Small Claims Court—debt declaration

(MC(CJ)R s 406)

A person may file an application for a debt declaration only if the person named as respondent has made a written demand on the person for payment of the debt.

3740 Small Claims Court—claim for interest

(MC(CJ)R s 407 and s 454 (1))

- (1) This rule does not apply to an application under the *Common Boundaries Act 1981*.

- (2) This rule applies if interest up to the day of judgment is claimed in a proceeding—
 - (a) under a contractual agreement between the parties to the proceeding; or
 - (b) for a debt or liquidated amount.
- (3) The claim for interest—
 - (a) must state the period or periods for which interest is claimed; and
 - (b) must state the amount or amounts for which interest is claimed; and
 - (c) may state the rate or rates at which interest is claimed.
- (4) If a rate is not claimed under subrule (3) (c), the rate is taken to be the rate applying, from time to time, under schedule 2, part 2.1 (Interest up to judgment).

3741 Small Claims Court—service of originating application etc

(MC(CJ)R s 408)

- (1) This rule does not apply to an application under the *Common Boundaries Act 1981*.

Note The *Common Boundaries Act 1981*, s 18 deals with the service of an application under that Act.
- (2) If an originating application is filed in the court, the registrar must—
 - (a) give the applicant a written notice summarising the possible courses of action open to the applicant in the proceeding and when a conference or inquiry may be directed; and

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- (b) serve on the respondent—
- (i) a sealed copy of the application; and
 - (ii) a written notice summarising the possible courses of action open to the respondent in the proceeding and when a conference or inquiry may be directed.
- (3) A person authorised by the registrar to serve an originating application must—
- (a) if the application is served by post under rule 6412 (Service of originating process by post—Magistrates Court)—complete and file in the court a certificate of postal service for the application; or
- Note* If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.
- (b) if the application is served otherwise than by post under rule 6412—file in the court an affidavit of service; or
 - (c) if service is attempted but the application is not served—endorse on the originating application the reason for non-service, sign the endorsement and return the application to the registrar not later than 14 days after the day service is attempted.

3742 Small Claims Court—response to originating application

(MC(CJ)R s 410, s 411 (1) and (4))

- (1) This rule does not apply to an application under the *Common Boundaries Act 1981*.
- (2) The respondent may file a response to an originating application not later than—
 - (a) 21 days after the day the application is served on the respondent; or

- (b) any shorter period directed by the registrar under rule 3744 (Small Claims Court—response to nuisance application or trespass application).

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (3) If a respondent files a response, the registrar must serve a sealed copy of the response on the applicant.

3743 Small Claims Court—counterclaim and set-off

(MC(CJ)R s 453)

- (1) This rule does not apply to an application under the *Common Boundaries Act 1981*.
- (2) The respondent may make a counterclaim in a response instead of filing a separate originating application.
- (3) The respondent may rely on set-off (whether or not of a known amount) as a response to all or part of the applicant's claim for relief, whether or not it is also included as a counterclaim.
- (4) A counterclaim or set-off must not exceed \$10 000.
- (5) If the respondent's total entitlement to any set-offs and in relation to any counterclaim exceeds \$10 000, the respondent may—
 - (a) abandon the excess by limiting the total amount to \$10 000; or
 - (b) apply to transfer the proceeding to the Magistrates Court under rule 3776 (Small Claims Court—transfer of proceeding to Magistrates Court).

3744 Small Claims Court—response to nuisance application or trespass application

(MC(CJ)R s 411 (2) and (3))

- (1) This rule applies to a nuisance application or trespass application.
- (2) The registrar may, on written application by the applicant, order that any response to the application be filed less than 21 days after the day the application is served.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

- (3) The registrar may make an order under subrule (2) only if satisfied that the order is necessary or desirable to avoid unreasonable hardship to the applicant.
- (4) If the registrar makes an order under subrule (2), the registrar must serve a sealed copy of the order on the respondent.

3745 Small Claims Court—amendment

(MC(CJ)R s 409)

The court may, at any stage of a proceeding, on application by a party or on its own initiative, amend a document in the proceeding in any way the court considers appropriate.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

Division 3.12.3 Small Claims Court—third-party proceeding**3746 Application of div 3.12.3—common boundary applications**

This division does not apply to an application under the *Common Boundaries Act 1981*.

3747 Small Claims Court—third-party notice

- (1) A respondent may file a third-party notice if the respondent wants to—
 - (a) claim a contribution or indemnity against a person who is not already a party to the proceeding; or
 - (b) claim relief against a person who is not already a party to the proceeding that—
 - (i) relates to or is connected with the original subject matter of the proceeding; and
 - (ii) is substantially the same as some relief claimed by the applicant; or
 - (c) require an issue relating to or connected with the original subject matter of the proceeding to be decided not only as between the applicant and respondent but also between either of them and a person not already a party to the proceeding.
- (2) A third-party notice—
 - (a) must not be filed by a respondent until the respondent has filed a response; and
 - (b) must be filed not later than 21 days after the end of whichever of the following periods ends last:
 - (i) the time limited for filing the response of the respondent who is filing the third-party notice (the *prescribed period*);
 - (ii) if the applicant agrees to an extension of the prescribed period—the agreed period.

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- (3) A third-party proceeding starts on the day the third-party notice for the proceeding is filed in the court.

Note Rule 6145 (5) (Filed documents initially rejected) provides that, if a document is rejected by the registrar, it is taken to have been filed on the day it was first filed.

- (4) The third-party notice must state—
- (a) the nature of the claim and the relief sought; and
 - (b) any claim for interest up to the day of judgment; and
 - (c) the respondent's address for service.

Note 1 If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

Note 2 *Address for service* is defined in the dictionary.

3748 Small Claims Court—service of third-party notice

- (1) Rule 6412 (Service of originating process by post—Magistrates Court) applies, with necessary changes, to a third-party notice as if a reference to an originating process were a reference to a third-party notice.
- (2) If a third-party notice is filed in the court, the registrar must—
- (a) serve on the third party—
 - (i) a sealed copy of the notice; and
 - (ii) a copy of a sealed copy of the originating application; and
 - (iii) a copy of a sealed copy of the respondent's response to the originating application; and
 - (iv) a written notice summarising the possible courses of action open to the third party in the proceeding and when a conference or inquiry may be directed; and
 - (b) serve on the applicant a sealed copy of the notice.

(3) A person authorised by the registrar to serve a third-party notice on a third party must—

(a) if the notice is served by post under rule 6412—complete and file in the court a certificate of postal service for the notice; or

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

(b) if the notice is served otherwise than by post under rule 6412—file in the court an affidavit of service; or

(c) if service is attempted but the notice is not served—endorse on the notice the reason for non-service, sign the endorsement and return the application to the registrar not later than 14 days after the day service is attempted.

3749 Small Claims Court—response to third-party notice

(1) A third party may file a response to a third-party notice not later than 21 days after the day the notice is served on the third-party.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

(2) If a third party files a response, the registrar must serve a sealed copy of the response on the other parties to the proceeding.

3750 Small Claims Court—counterclaim and set-off by third party

(1) A third party who has a claim against the respondent who included the third party may counterclaim against the respondent.

(2) A third party may rely on set-off (whether or not of a known amount) as a response to all or part of a respondent's claim for relief against the third party, whether or not it is included as a counterclaim.

(3) A counterclaim or set-off must not exceed \$10 000.

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- (4) If the third party's total entitlement to any set-offs and in relation to any counterclaim exceeds \$10 000, the third party may—
- (a) abandon the excess by limiting the total amount to \$10 000; or
 - (b) apply to transfer the proceeding to the Magistrates Court under rule 3776 (Small Claims Court—transfer of proceeding to Magistrates Court).

3751 Small Claims Court—default by third party

- (1) This rule applies if—
- (a) a default judgment is entered for the applicant against the respondent who included the third party; and
 - (b) the third party is in default in relation to the third-party notice.
- (2) The third party is bound by the default judgment between the applicant and respondent as far as it is relevant to a claim or issue stated in the third-party notice.
- (3) The respondent at any time after satisfaction of the default judgment, or, with the court's leave, before satisfaction, may file in the court an application for default judgment.

Note 1 If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

Note 2 Pt 6.2 (Applications in proceedings) applies to an application for leave under this rule.

- (4) If the respondent applies for default judgment under subrule (3), the court must—
- (a) if the amount of damages claimed is stated in the third-party notice—enter default judgment for the respondent against the third party; or

(b) if the amount of damages claimed is not stated in the third-party notice, or another order is sought—enter default judgment for the respondent against the third party for damages to be assessed or the orders sought to be decided.

(5) If subrule (4) (a) applies, the registrar must—

(a) serve a sealed copy of the judgment on the respondent and third party; and

(b) tell the respondent and third party about the right to apply for a restoration order.

Note For restoration orders, see r 3780 (Small Claims Court—restoration of proceeding).

(6) If subrule (4) (b) applies, the registrar must—

(a) serve a sealed copy of the judgment on the respondent and third party; and

(b) tell the respondent and third party about the right to apply for a restoration order; and

(c) set a date for an inquiry to be held to assess damages or decide any other orders sought; and

(d) tell the respondent and third party the date set for the inquiry not later than 10 days before the date set.

Note For restoration orders, see r 3780 (Small Claims Court—restoration of proceeding).

(7) If the third party does not have an address for service, the registrar may serve the copy of the judgment on the third party by post by sending the copy by prepaid post to the third party's last known address.

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- (8) Part 6.2 (Applications in proceedings) does not apply to an application under subrule (3), other than an application for leave.
 - (9) The court may enter default judgment under this rule in favour of the respondent without a hearing.

3752 Small Claims Court—judgment between respondent and third party

- (1) In a proceeding, the court may enter judgment in favour of—
 - (a) a respondent who included a third party against the third party;
or
 - (b) the third party against the respondent.
- (2) If—
 - (a) judgment is entered in favour of the applicant against a respondent; and
 - (b) judgment is entered in favour of the respondent against a third party;

the respondent must not enforce the judgment against the third party unless the judgment against the respondent is satisfied, or the court otherwise orders.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

Division 3.12.4 Small Claims Court—admission of liability

3753 Application of div 3.12.4—common boundary applications

(MC(CJ)R s 410)

This division does not apply to an application under the *Common Boundaries Act 1981*.

3754 Small Claims Court—admission of liability

(MC(CJ)R s 412 and s 415)

- (1) A respondent to a proceeding may, in a response filed in the court—
 - (a) admit liability for all or part of the applicant’s claim for relief; and
 - (b) state any conditions on which liability is admitted, for example, time for payment or payment by instalments.

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) If the respondent admits liability under subrule (1), the applicant may accept the admission of liability by filing in the court a notice accepting liability not later than 21 days after the day the response is served on the applicant.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (3) The court must enter judgment for the applicant by consent if—
 - (a) the respondent admits the whole of the applicant’s claim for relief without any condition; or
 - (b) the applicant accepts the respondent’s admission of liability, subject to the conditions (if any) on which the respondent admitted liability.

3755 Small Claims Court—payment into court

(MC(CJ)R s 413)

- (1) If a respondent in a proceeding admits liability to pay an amount to the applicant, the respondent may pay the amount into court.
- (2) If the amount paid into court is the amount claimed by the applicant, and the applicant’s claim for relief does not ask for any other order, the court must enter judgment for the applicant for the amount.

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- (3) If the court enters judgment under subrule (2), the registrar must—
 - (a) serve a sealed copy of the judgment on the parties; and
 - (b) pay the amount paid into court to the applicant.
 - (4) If the amount paid into court is not the amount claimed by the applicant, or the applicant's claim for relief asks for another order, the amount must stay in court until the court otherwise orders.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

3756 Small Claims Court—payment into court by bond

(MC(CJ)R s 414)

- (1) When paying an amount into court under rule 3755, a respondent may lodge a bond for the amount with the registrar instead of actually paying the amount into court.
- (2) Rule 1002 (Payment into court—bond) applies, with any necessary changes, to a bond lodged under this rule.

Division 3.12.5 Small Claims Court—no response to claim

3757 Small Claims Court—default judgment

(MC(CJ)R s 417)

- (1) This rule does not apply to an application under the *Common Boundaries Act 1981*.
- (2) This rule applies if the respondent in a proceeding—
 - (a) does not file a response to the originating application in accordance with rule 3742 (2) (Small Claims Court—response to originating application); or
 - (b) files a response to the application but later withdraws the response by written notice filed in the court.

- (3) The applicant may file in the court an application for default judgment not later than 1 year and 21 days after the day the originating application was served on the respondent.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (4) If the applicant applies for default judgment under subrule (3), the court must—
- (a) if the amount of damages claimed is stated in the originating application, or the application is for a debt declaration—enter default judgment for the applicant against the respondent; or
 - (b) if the amount of damages claimed is not stated in the originating application, or another order is sought—enter default judgment for the applicant against the respondent for damages to be assessed or the orders sought to be decided.

- (5) If subrule (4) (a) applies, the registrar must—

- (a) serve a sealed copy of the judgment on the parties; and
- (b) tell the parties about the right to apply for a restoration order.

Note For restoration orders, see r 3780 (Small Claims Court—restoration of proceeding).

- (6) If subrule (4) (b) applies, the registrar must—

- (a) serve a sealed copy of the judgment on the parties; and
- (b) tell the parties about the right to apply for a restoration order; and
- (c) set a date for an inquiry to be held to assess damages or decide any other orders sought; and
- (d) tell the parties the date set for the inquiry not later than 10 days before the date set.

Note For restoration orders, see r 3780 (Small Claims Court—restoration of proceeding).

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- (7) If the respondent does not have an address for service, the registrar may serve the copy of the judgment on the respondent by post by sending the copy by prepaid post to the respondent's last known address.
 - (8) Part 6.2 (Applications in proceedings) does not apply to an application under subrule (3).
 - (9) The court may enter default judgment under this rule in favour of the applicant without a hearing.

3758 Small Claims Court—striking out application

(MC(CJ)R s 418)

- (1) This rule does not apply to an application under the *Common Boundaries Act 1981*.
- (2) An originating application is taken to be struck out at the end of 1 year and 22 days after the day the application is filed in the court if—
 - (a) a response has not been filed; and
 - (b) judgment has not been entered or the application has not otherwise been disposed of.
- (3) An applicant whose application is struck out under this rule may file a new originating application not later than 1 year after the day it is struck out.
- (4) For any time limit (including a limitation period), an originating application that is started under subrule (3) is taken to have started on the day the originating application that was struck out under subrule (2) was filed.

Division 3.12.6 Small Claims Court—disputed claim

3759 Small Claims Court—disputed claim

(MC(CJ)R s 410 and s 416)

- (1) This rule does not apply to an application under the *Common Boundaries Act 1981*.
- (2) This rule applies if a respondent in a proceeding—
 - (a) files a response in the court in accordance with rule 3742 (2) (Small Claims Court—response to originating application) denying liability for the applicant’s claim for relief; or
 - (b) files a response in the court in accordance with rule 3742 (2) admitting liability for the applicant’s claim for relief, but—
 - (i) any amount paid into court under rule 3755 (Small Claims Court—payment into court) is less than the amount claimed by the applicant; and
 - (ii) the applicant does not accept the respondent’s admission of liability in accordance with rule 3754 (2) (Small Claims Court—admission of liability).
- (3) The registrar must—
 - (a) set a date for a conference between the parties; and
 - (b) tell the parties the date set for the conference not later than 10 days before the date set.
- (4) However, if the registrar is satisfied that a conference will not help the resolution of the issues in dispute between the parties, the registrar must—
 - (a) set a date for an inquiry; and
 - (b) tell the parties the date set for the inquiry not later than 10 days before the date set.

Division 3.12.7 Small Claims Court—conferences**3760 Application—div 3.12.7**

(MC(CJ)R s 419)

This division applies if—

- (a) a proceeding is set down for a conference under rule 3759 (3) or another territory law; or

Note A *territory law* includes these rules (see Legislation Act, s 98).

- (b) the court orders a conference to be held in accordance with a restoration order, or at any stage of the proceeding; or
- (c) an application under the *Common Boundaries Act 1981* is set down for a conference; or
- (d) a territory law provides that a conference be held.

3761 Small Claims Court conference—setting conference date

If the court orders a conference to be held as mentioned in rule 3760 (b), the registrar must—

- (a) set a date for the conference; and
- (b) tell the parties the date set for the conference not later than 10 days before the date set.

3762 Small Claims Court conference—changing time or place of

(MC(CJ)R s 421 and s 424)

- (1) The court may change the time or place of a conference if it considers the change appropriate.
- (2) The court may adjourn a conference if satisfied a party to the proceeding, or the party's representative, has a reasonable reason for not being able to attend the conference.

- (3) If the court changes the time or place of, or adjourns, a conference, the registrar must tell the parties about the change or adjournment.

3763 Small Claims Court conference—representation

(MC(CJ)R s 422)

A party to a proceeding may be represented at a conference by someone else.

3764 Small Claims Court conference—who may attend

(MC(CJ)R s 423)

Only the following people may attend a conference:

- (a) a party to the proceeding;
- (b) a representative of a party to the proceeding;
- (c) the registrar or any officer or member of the staff of the Magistrates Court;
- (d) anyone authorised in writing by the Chief Magistrate to attend the conference, or to attend conferences generally;
- (e) anyone authorised in writing by the Attorney-General to attend the conference, or to attend conferences generally.

3765 Small Claims Court conference—failure to attend

(MC(CJ)R s 428)

- (1) This rule applies to a party to a proceeding if—
- (a) the registrar tells the party the date set for a conference; and
 - (b) the party fails to attend the conference, either personally or by a representative; and
 - (c) the court is not satisfied the party has a reasonable excuse for failing to attend the conference.
- (2) If this rule applies to the applicant, or all parties to the proceeding, the court must dismiss the application.

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- (3) If this rule applies to a respondent, but does not apply to the applicant—
- (a) the court must—
- (i) if the amount of damages claimed is stated in the originating application, or the application is for a debt declaration—enter default judgment for the applicant against the respondent; or
- (ii) if the amount of damages claimed is not stated in the originating application, or another order is sought—enter default judgment for the applicant against the respondent for damages to be assessed or the orders sought to be decided; and
- (b) if the respondent has filed a third-party notice in the proceeding—the court must dismiss the notice.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (4) If this rule applies to a third party, but does not apply to the applicant or the respondent who filed the third-party notice, and the court enters consent judgment in favour of the applicant, the court must—
- (a) if the amount of damages claimed is stated in the third-party notice—enter default judgment for the respondent against the third party for the lesser of—
- (i) the amount of damages claimed in the third-party notice; and
- (ii) the amount of the consent judgment; or
- (b) if the amount of damages claimed is not stated in the third-party notice, or another order is sought—enter default judgment for the respondent against the third party for damages to be assessed or the orders sought to be decided.

- (5) If subrule (2), (3) (a) (i) or (4) (a) applies, the registrar must—
- (a) serve a sealed copy of the order dismissing the application or the judgment on the parties; and
 - (b) tell the parties about the right to apply for a restoration order.

Note For restoration orders, see r 3780 (Small Claims Court—restoration of proceeding).

- (5) If subrule (3) (b) or (4) (b) applies, the registrar must—
- (a) serve a sealed copy of the judgment on the parties; and
 - (b) tell the parties about the right to apply for a restoration order; and
 - (c) set a date for an inquiry to be held to assess damages or decide any other orders sought; and
 - (d) tell the parties the date set for the inquiry not later than 10 days before the date set.

Note For restoration orders, see r 3780 (Small Claims Court—restoration of proceeding).

3766 Small Claims Court conference—procedure

(MC(CJ)R s 420, s 425 and s 426)

- (1) At a conference in a proceeding, the court may—
- (a) decide what are the real issues in dispute between the parties; and
 - (b) by conciliation, help the parties reach an agreement on conditions the court considers just; and
 - (c) if an adjournment of the conference is likely to help the parties reach an agreement—adjourn the conference on the conditions the court considers appropriate; and

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- (d) if the issues in dispute cannot be resolved—ensure the parties do everything reasonable and necessary for an inquiry to take place as soon as practicable; and
 - (e) order that an inquiry be held.
- (2) If the issues in dispute are resolved between the parties at the conference, the parties may file a consent judgment in accordance with rule 3782 (Small Claims Court order—consent judgment).
 - (3) If the issues in dispute are not resolved at the conference, and the court is satisfied there is no reasonable possibility of the parties reaching an agreement about the issues in dispute, the court must—
 - (a) order that an inquiry be held; and
 - (b) estimate the time required for the inquiry; and
 - (c) adjourn the conference.
 - (4) If subrule (3) applies, the registrar must—
 - (a) set a date for the inquiry; and
 - (b) tell the parties the date set for the inquiry not later than 10 days before the date set.

Division 3.12.8 Small Claims Court—inquiries

3767 Application—div 3.12.8

(MC(CJ)R s 429)

- (1) This division applies if—
 - (a) a proceeding has been set down for an inquiry under this part or another territory law; or

Note A *territory law* includes these rules (see Legislation Act, s 98).

(b) an application under the *Common Boundaries Act 1981* has been set down for an inquiry; or

(c) a territory law provides that an inquiry be held.

3768 Small Claims Court inquiry—constitution

(MC(CJ)R s 430)

(1) A magistrate or referee sitting alone must preside at an inquiry.

(2) In this rule:

referee means a referee appointed under the *Magistrates Court Act 1930*, section 280 (Referees—appointment).

3769 Small Claims Court inquiry—changing time or place of

(MC(CJ)R s 437)

(1) The court may change the time or place of an inquiry if it considers the change appropriate.

(2) The court may adjourn an inquiry if satisfied that an adjournment is necessary in the interests of justice.

(3) If the court changes the time or place of, or adjourns, an inquiry, the registrar must tell the parties about the change or adjournment.

3770 Small Claims Court inquiry—representation

(MC(CJ)R s 434)

A party to a proceeding may be represented at an inquiry by someone else.

3771 Small Claims Court inquiry—failure to attend

(MC(CJ)R s 441)

- (1) This rule applies to a party to a proceeding if—
 - (a) the registrar tells the party the date set for an inquiry; and
 - (b) the party fails to attend the inquiry, either personally or by a representative; and
 - (c) the court is not satisfied the party has a reasonable excuse for failing to attend the inquiry.
- (2) If this rule applies to the applicant, or all parties to the proceeding, the court may dismiss the application.
- (3) If this rule applies to a respondent, but does not apply to the applicant, the court may enter default judgment for the applicant against the respondent.
- (4) If this rule applies to a respondent, but does not apply to the applicant, in an application in a proceeding, the court may make the orders sought in the application.
- (5) If the court makes an order under this rule, the registrar must—
 - (a) serve a sealed copy of the order on the parties; and
 - (b) tell the parties about the right to apply for a restoration order.

Note For restoration orders, see r 3780 (Small Claims Court—restoration of proceeding).

3772 Small Claims Court inquiry—procedure

(MC(CJ)R s 431 and 433)

- (1) At an inquiry, the court is not bound by the rules of evidence and may inform itself in any way it considers appropriate.
- (2) Evidence in an inquiry must not be given on oath.

Note **Oath** includes affirmation (see Legislation Act, dict.)

- (3) However, the court may require a witness to give evidence on oath if the court considers it necessary or desirable for properly deciding the application.
- (4) The court must otherwise adopt procedures that it considers appropriate for an inquiry to be finalised promptly and with as little formality as possible.

3773 Small Claims Court inquiry—investigators

(MC(CJ)R s 432)

- (1) For an inquiry, the court may appoint an investigator to investigate any question of fact arising in a proceeding.
- (2) An appointment under subrule (1) must state—
 - (a) particulars of the question to be investigated; and
 - (b) any conditions on which the appointment is made.
- (3) An investigator appointed under subrule (1) must—
 - (a) investigate any question of fact mentioned in the appointment; and
 - (b) file a written report on the question in the court.
- (4) The court may accept, amend or reject all or part of the investigator's report, as the court considers appropriate.
- (5) The court may decide the remuneration of an investigator.
- (6) The Territory must pay the investigator's remuneration.
- (7) However, the court may order a party to pay a proportion of the remuneration.
- (8) The Legislation Act, part 19.3 (Appointments) does not apply to an appointment under this rule.

Division 3.12.9 Small Claims Court—transfer of proceedings between courts**3774 Application of div 3.12.9—common boundary applications**

(MC(CJ)R s 410)

This division does not apply to an application under the *Common Boundaries Act 1981*.

3775 Small Claims Court—transfer of proceedings from Magistrates Court

(MC(CJ)R s 439)

- (1) The Magistrates Court may, at any stage in a proceeding, on application or its own initiative, order that a proceeding started in the Magistrates Court be transferred to the Small Claims Court.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

- (2) The Magistrates Court may make an order under subrule (1) only if satisfied that—
- (a) the proceeding could have been started in the Small Claims Court; and
 - (b) transferring the proceeding to the Small Claims Court would not be unfair to any party to the proceeding.
- (3) If the Magistrates Court makes an order under subrule (1) in relation to a proceeding—
- (a) this part applies as if, for any step taken in the proceeding under chapter 2 (Civil proceedings generally), the corresponding step under this part had been taken in the proceeding; and
 - (b) any evidence given in the proceeding in the Magistrates Court is taken to have been given in the Small Claims Court.

- (4) Rule 3777 (Small Claims Court—applications in proceedings) does not apply to an application under this rule.

3776 Small Claims Court—transfer of proceeding to Magistrates Court

(MC(CJ)R s 438)

- (1) The Small Claims Court may, at any stage in a proceeding, on application or its own initiative, order that a proceeding started in the Small Claims Court be transferred to the Magistrates Court.

Note Pt 6.2 (Applications in proceedings) and r 3777 (Small Claims Court—applications in proceedings) apply to an application for an order under this rule.

- (2) The Small Claims Court may make an order under subrule (1) only if satisfied that transferring the proceeding to the Magistrates Court would not be unfair to any party to the proceeding.
- (3) If the Small Claims Court makes an order under subrule (1) in relation to a proceeding—
- (a) chapter 2 (Civil proceedings generally) applies as if, for any step taken in the proceeding under this part, the corresponding step under that chapter had been taken in the proceeding; and
 - (b) any evidence given in the proceeding in the Small Claims Court is taken to have been given in the Magistrates Court.

Division 3.12.10 Small Claims Court—general provisions

3777 Small Claims Court—applications in proceedings

(MC(CJ)R s 436)

- (1) This rule applies to an application in a proceeding under this part, other than an application in a proceeding under the *Common Boundaries Act 1981*.

Note 1 An **application** in a proceeding is defined in r 6006 (Application—pt 6.2)

Note 2 Part 6.2 (Applications in proceedings) applies to an application under this rule. See also r (3).

- (2) If an application to which this rule applies is filed in the court, the registrar must—
 - (a) set a date for an inquiry in relation to the application; and
 - (b) serve a stamped copy of the application on each other party to the proceeding not later than 3 days before the date set for the inquiry; and
 - (c) tell the parties the date set for the inquiry.
- (3) Part 6.2 (Applications in proceedings) does not apply in relation to service of the application or of the supporting material (if any) for the application.

3778 Small Claims Court—discontinuance of proceeding

(MC(CJ)R s 440)

- (1) The applicant may, at any stage of a proceeding, discontinue the proceeding by filing a notice of discontinuance in the court.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) If the applicant discontinues the proceeding, the registrar must—
- (a) serve a stamped copy of a notice of discontinuance on the other parties to the proceeding; and
 - (b) tell the parties about the right to apply for a restoration order.

Note For restoration orders, see r 3780 (Small Claims Court—restoration of proceeding).

3779 Small Claims Court—dismissal for abuse of process

(MC(CJ)R s 442)

- (1) The court may, at any stage of a proceeding, dismiss all or part of the proceeding, if it considers the proceeding to be—
- (a) frivolous, scandalous, unnecessary or vexatious; or
 - (b) otherwise an abuse of the process of the court.
- (2) The court may make an order under subrule (1) on the application of a party or on its own initiative.

Note Pt 6.2 (Applications in proceedings) and r 3777 (Small Claims Court—applications in proceedings) apply to an application for an order under this rule.

- (3) The court may receive evidence in an inquiry for an order under subrule (1).
- (4) If the court makes an order under this rule, the registrar must serve a sealed copy of the order on the parties to the proceeding.

3780 Small Claims Court—restoration of proceeding

(MC(CJ)R s 443)

- (1) On application by a party to a proceeding, the court may order that the proceeding be restored (a *restoration order*) if—
- (a) the proceeding has been dismissed under—
 - (i) rule 3765 (2) (Small Claims Court conference—failure to attend); or

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- (ii) rule 3771 (2) (Small Claims Court inquiry—failure to attend); or
 - (b) the proceeding has been discontinued under rule 3778 (Small Claims Court—discontinuance of proceeding); or
 - (c) default judgment has been entered in the proceeding under—
 - (i) rule 3751 (Small Claims Court—default by third party); or
 - (ii) rule 3757 (4) (Small Claims Court—default judgment); or
 - (iii) rule 3765 (3) (Small Claims Court conference—failure to attend); or
 - (iv) rule 3771 (3) (Small Claims Court inquiry—failure to attend); or
 - (d) consent judgment has been entered in the proceeding under—
 - (i) rule 3754 (3) (Small Claims Court—admission of liability); or
 - (ii) rule 3782 (Small Claims Court order—consent judgment).

Note Pt 6.2 (Applications in proceedings) and r 3777 (Small Claims Court—applications in proceedings) apply to an application for an order under this rule.

- (2) If the court makes a restoration order in a proceeding, the court may also make any of the following orders:
 - (a) an order setting aside a judgment, including a judgment entered by default or by consent;
 - (b) an order for the payment of costs;

- (c) an order staying a proceeding until costs are paid;
 - (d) an order setting aside any proceeding taken to enforce a judgment set aside under this rule;
 - (e) any order the court considers appropriate for the future conduct of the proceeding, including an order that a conference be held between the parties, or an order about the priority of an inquiry in a proceeding;
 - (f) any other order the court considers just.
- (3) The court may set aside a consent judgment only if any of the following apply in relation to the application for judgment or the entry of judgment:
- (a) fraud;
 - (b) duress;
 - (c) suppression of relevant information or evidence;
 - (d) false evidence or information given and relied on;
 - (e) change of circumstances;
 - (f) impracticability of enforcement;
 - (g) any other ground the court considers just.
- (4) If the court does not make a restoration order on an application under subrule (1), the court may make any order for costs it considers appropriate.
- (5) If the court makes an order under this rule, the registrar must serve a sealed copy of the order on the parties to the proceeding.

3781 Small Claims Court—costs

(MC(CJ)R s 456)

- (1) The court must not make an order in relation to costs in a proceeding, except in accordance with this part.

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- (2) A judgment in favour of a party must include an order that the party liable for the judgment pay to the party entitled to the judgment—
 - (a) the amount of any fee paid by the party entitled to the judgment; and
 - (b) any expenses incurred by the party entitled to the judgment in relation to the proceeding, other than the costs of representation by a lawyer.
 - (3) The court may make an order for costs (other than the costs of representation by a lawyer) in favour of a party to a proceeding (the *first party*) against another party to the proceeding (the *second party*) for expenses unnecessarily incurred by the first party because of any act or omission of the second party.
 - (4) If the court makes an order under this rule, the registrar must serve a sealed copy of the order on the parties to the proceeding.

Division 3.12.11 Small Claims Court—orders

3782 Small Claims Court order—consent judgment

(MC(CJ)R s 425 and s 451)

- (1) A party to a proceeding may file a draft consent judgment at any time before judgment is entered by the court if—
 - (a) the parties to the proceeding agree on the judgment; and
 - (b) the judgment is signed by, or on behalf of, each party to the proceeding; and
 - (c) the judgment is witnessed by the registrar, a lawyer or a justice of the peace.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) If a consent judgment is filed under this rule the court must enter judgment in accordance with the draft consent judgment.
- (3) If subrule (2) applies, the registrar must—
 - (a) serve a sealed copy of the judgment on the parties; and
 - (b) tell the parties about the right to apply for a restoration order.

Note For restoration orders, see r 3780 (Small Claims Court—restoration of proceeding).

3783 Small Claims Court order—counterclaim or set-off

(MC(CJ)R s 453 (2))

- (1) This rule does not apply to an application under the *Common Boundaries Act 1981*.
- (2) This rule applies if—
 - (a) the respondent relies on set-off or makes a counterclaim; and
 - (b) the set-off or counterclaim is successful; and
 - (c) the total amount of any successful set-off and counterclaim exceeds the amount for which the applicant is otherwise entitled to judgment.
- (3) The court must enter judgment for the respondent for the amount of the excess.

3784 Small Claims Court order—to perform work etc

(MC(CJ)R s 457)

- (1) This rule does not apply to an application under the *Common Boundaries Act 1981*.
- (2) This rule applies if the court enters judgment in a proceeding.

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- (3) The court may order a respondent in the proceeding either to—
- (a) perform work, or do something else, to rectify a defect in goods or services related to the applicant’s claim for relief in accordance with any conditions the court considers appropriate; or
 - (b) pay an amount to the applicant.
- (4) Alternatively, the court may order a respondent in the proceeding—
- (a) to pay an amount to the applicant; and
 - (b) either to—
 - (i) perform work, or do something else, to rectify a defect in goods or services related to the applicant’s claim for relief in accordance with any conditions the court considers appropriate; or
 - (ii) pay a further amount to the applicant.

3785 Small Claims Court order—payment on condition work performed etc

(MC(CJ)R s 458)

- (1) This rule does not apply to an application under the *Common Boundaries Act 1981*.
- (2) This rule applies if the court enters judgment in a proceeding requiring—
 - (a) a party (the *first party*) to pay an amount into court; and
 - (b) another party (the *second party*) to perform work, or do something else, to rectify a defect in goods or services.
- (3) The court may include in the judgment a condition that the registrar is not to pay the amount out of court until the second party has performed the work or otherwise complied with the judgment.

3786 Small Claims Court order—detention of goods

(MC(CJ)R s 217 and s 459)

- (1) This rule applies to a proceeding in relation to the detention of goods.
- (2) The court may give judgment for the applicant against the respondent, in accordance with the applicant's claim for relief, for either—
 - (a) the return of the goods to the applicant, or the retention of the goods by the respondent and payment to the applicant of the value of the goods; or
 - (b) payment to the applicant of the value of the goods.
- (3) If the court gives judgment for the return of goods, it may state a date before which the return must take place.
- (4) If the court gives judgment for the return of goods, but the goods are subsequently damaged, destroyed or otherwise made unavailable for return, the court may, on the applicant's application, order the respondent to pay the value of the goods to the applicant.

Note Pt 6.2 (Applications in proceedings) and r 3777 (Small Claims Court—applications in proceedings) apply to an application for an order under this rule.

- (5) If the court gives judgment under subrule (2) (a), and the applicant subsequently applies for an order under this subrule, the court may make an order for the return of the goods to the applicant without the option of the respondent retaining the goods and paying their value.
- (6) In this rule:
value, of the goods, means the value assessed by, or in accordance with the directions of, the court.

3787 Small Claims Court order—nuisance application

(MC(CJ)R s 463 (d))

- (1) The court may grant the same relief on a nuisance application as the Supreme Court may grant in a proceeding for nuisance.
- (2) Subrule (1) is subject to this part.

3788 Small Claims Court order—trespass application

(MC(CJ)R s 460)

- (1) The court may grant the same relief on a trespass application as the Supreme Court may grant in a proceeding for trespass to land.
- (2) Subrule (1) is subject to this part.

3789 Small Claims Court order—debt declaration

(MC(CJ)R s 461)

The court may make a debt declaration in a proceeding for a debt declaration.

3790 Small Claims Court order—joint liability

(MC(CJ)R s 464)

- (1) This rule does not apply to an application under the *Common Boundaries Act 1981*.

Note The *Common Boundaries Act 1981*, s 19 deals with apportionment of liability for orders made in relation to an application under that Act.

- (2) This rule applies if—
 - (a) 2 or more people are jointly liable in relation to a cause of action in a proceeding; and
 - (b) 1 or more, but not all, of the people jointly liable are served with the originating application.

- (3) The court may enter judgment in relation to the cause of action against any 1 or more of the people served with the originating application, and the judgment may be enforced against anyone against whom judgment is entered.
- (4) If judgment is entered in relation to the cause of action against 1 or more, but not all, of the people jointly liable in relation to the cause of action—
 - (a) the liability of the people jointly liable against whom judgment is not entered (the *other people*) is not discharged by the judgment or any enforcement of the judgment; and
 - (b) the people against whom judgment is entered (the *judgment parties*) and the other people are, as between the judgment parties on the one hand and the other people on the other hand, liable severally but not jointly; and
 - (c) if there are 2 or more other people—the other people are jointly liable as between themselves; and
 - (d) if the judgment is satisfied or partly satisfied—the liability of the other people is discharged to the extent to which the judgment is satisfied.
- (5) Subrule (4) does not affect a person's right to contribution or indemnity in relation to the person's satisfaction of all or part of a liability that the person has (whether jointly, severally or jointly and severally) with anyone else.
- (6) This rule does not apply to a proceeding to which the *Civil Law (Wrongs) Act 2002*, section 107F (Proportionate liability for apportionable claims) applies.

3791 Small Claims Court order—notice

(MC(CJ)R s 465)

- (1) This rule applies if the court makes an order affecting a person in the person's absence.
- (2) The registrar must serve a sealed copy of the order on the person.

3792 Small Claims Court order—payment of amount

(MC(CJ)R s 467)

- (1) If an amount is payable under an order, the person liable to pay must pay the amount into court.
- (2) The registrar must pay an amount paid into court to the person entitled to the payment.
- (3) Subrule (2) is subject to any condition included in a judgment under rule 3785 (3) (Small Claims Court order—payment on condition work performed etc).

3793 Small Claims Court order—other orders

(MC(CJ)R s 462)

The court may, in a proceeding—

- (a) make any order it considers necessary in exercising its jurisdiction under another territory law; or
- (b) any other order it considers appropriate.

Part 3.13 Workers compensation

Division 3.13.1 Workers compensation proceedings—general

3900 Definitions—pt 3.13

(WCR dict)

In this part:

arbitration means arbitration under the Workers Compensation Act.

case management meeting means a case management meeting held under rule 3942 (1).

claim includes a matter or question arising under the Workers Compensation Act to be decided by arbitration.

conciliation means conciliation under the Workers Compensation Act.

contractor—see the Workers Compensation Act, section 13 (Subcontracting).

injury notice—see the Workers Compensation Act, section 123 (The notice for an injury).

prescribed scale of costs means the scale of costs in schedule 4 (Scale of costs).

principal—see the Workers Compensation Act, section 13 (Subcontracting).

representative, for a party to an arbitration, means a lawyer or other person who represents the party.

third-party respondent—see rule 3920 (Arbitration—including other parties).

Workers Compensation Act means the *Workers Compensation Act 1951*.

3901 Terms used in Workers Compensation Act

A term used in the Workers Compensation Act has the same meaning in this part.

Note For example, the following terms are defined in the Workers Compensation Act, dictionary:

- compulsory insurance policy
- dependant
- employer
- injured worker (see s 86)
- insurer
- medical referee
- registered agreement
- self-insurer.

3902 Application—pt 3.13

(WCR r 5)

This part applies only in relation to—

- (a) the Magistrates Court; and
- (b) an injury to which the Workers Compensation Act, as in force after the commencement of the *Workers Compensation Amendment Act 2001*, applies.

Note With some exceptions (see Workers Compensation Act, s 234 (now expired)), the Workers Compensation Act, as in force after the commencement of the *Workers Compensation Amendment Act 2001*, does not apply to injuries that happened before the commencement of the amending Act ie 1 July 2002.

3903 Workers compensation proceedings—application of ch 2 generally

(WCR r 64)

- (1) Except as provided by this rule, chapter 2 does not apply to a proceeding under this part.
- (2) The applied civil rules apply, with any necessary changes, to a proceeding under this part.
- (3) Part 2.18 (Enforcement) applies, with any necessary changes, to a proceeding for enforcement of, or the recovery of money payable under, an award of the court or a registered agreement as if it were a judgment of the court.
- (4) In this rule:

applied civil rules means the following:

- division 2.4.9 (People with a legal disability)
- division 2.4.10 (Partnerships)
- division 2.4.11 (Business names)
- division 2.12.1 (Expert evidence generally)
- part 2.17 (Costs), other than the following:
 - rule 1722 (Costs—solicitors’ costs generally)
 - rule 1723 (Costs—*relevant amount* for Magistrates Court proceedings)
 - rule 1726 (Costs—amendment of documents)
 - rule 1729 (Costs—extending or shortening time)
- part 2.21 (Representation by solicitors)
- part 2.22 (Miscellaneous).

Division 3.13.2 Workers compensation—applications for arbitration

Note to div 3.13.2

The *Workers Compensation Regulation 2002*, div 6.2 deals with conciliation. A conciliation of a matter in issue arising from a worker's claim for compensation (other than rejection of the claim by an insurer) must be held before arbitration of the matter (see s 38). The *Workers Compensation Regulation 2002*, pt 7 provides for a committee rather than the court to arbitrate matters in certain cases (see esp s 51).

3904 Application for arbitration—Commercial Arbitration Act not apply

(WC Reg s 49)

The *Commercial Arbitration Act 1986* does not apply to an arbitration.

3905 Application for arbitration—by worker

(WCR r 9)

- (1) An injured worker may ask that a claim be decided by arbitration by filing an application in the court.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) The application must state briefly, but specifically, the claim to be arbitrated.

3906 Application for arbitration—by dependant or estate of deceased worker

(WCR r 10)

- (1) A dependant, or the personal representative, of a deceased worker may ask that a claim be decided by arbitration by filing an application in the court.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) The application must—
 - (a) contain details of each dependant on whose behalf the application is made; and
 - (b) state briefly, but specifically, the claim to be arbitrated; and
 - (c) be accompanied by a certified copy of—
 - (i) the worker’s death certificate; and
 - (ii) the birth certificate of each dependant.

- (3) In this rule:

dependant includes a person claiming to be a dependant.

3907 Application for arbitration—by employer or insurer

(WCR r 11)

- (1) An employer or insurer may ask that a claim be decided by arbitration by filing an application.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) The application must state briefly, but specifically, the claim to be arbitrated.

3908 Application for arbitration—when application may be filed

(WC Reg s 48)

An injured worker or the worker’s employer may file an application for the arbitration of—

- (a) a matter in issue arising from the worker’s claim for compensation only if—
 - (i) the worker or employer has asked a conciliator to help the parties reach agreement on the matter; and

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- (ii) the parties have attended the conciliation; and
 - (iii) either the matter was not resolved at the conciliation or the conciliator decided that the matter was not suitable for conciliation; or
- (b) the insurer's rejection of the worker's claim for compensation.

3909 Application for arbitration—injury notice and medical evidence

(WCR r 12)

- (1) An application for arbitration filed in the court must be accompanied by—
- (a) if available to the applicant—a copy of the injury notice in relation to the claim; and
 - (b) a copy of all available medical evidence the applicant intends to rely on.
- (2) If no injury notice was given in relation to the claim, the application must contain details of why no notice was given.

3910 Application for arbitration—copies

(WCR r 13)

When filing an application for arbitration, and the documents accompanying the application mentioned in rule 3909, in the court, the applicant must also file—

- (a) 1 copy for each respondent; and
- (b) for each respondent who is an employer other than a self-insurer—1 copy for the respondent's insurer.

3911 Application for arbitration—service on respondent

(WCR r 14)

- (1) An applicant for arbitration must serve a sealed copy of the application on each respondent not later than 14 days after the day the application is filed in the court.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time.

- (2) The applicant must file in the court an affidavit of service of the application on a respondent unless the respondent has filed an answer.
- (3) If the court makes an order under rule 6351 (Time—extending and shortening by court order), the applicant must serve a sealed copy of the order with the application.

3912 Application for arbitration—service on insurer

(WCR r 15)

- (1) An employer (other than a self-insurer) who is a respondent to an application for arbitration must serve a copy of the application on the employer's insurer not later than 7 days after the day the employer is served with the application.
- (2) A party included as a third-party respondent must serve a copy of the notice including the party on the party's insurer not later than 7 days after the day the party is served with the notice.

Note Rule 3920 deals with including other parties.

3913 Application for arbitration—answer by respondent or third-party respondent

(WCR r 16)

- (1) A respondent to an application for arbitration may file an answer.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

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- (2) The answer must be filed not later than 28 days after the day the respondent is served with the application.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time.

- (3) A third-party respondent may file an answer to the third-party notice that includes the third-party respondent not later than 28 days after the day the respondent is served with the notice.

Note Rule 3920 deals with including other parties.

- (4) When filing an answer in the court, the respondent must also file—
- (a) 1 copy for the applicant; and
 - (b) 1 copy for each other respondent; and
 - (c) for each other respondent who is an employer other than a self-insurer—1 copy for the respondent’s insurer.

3914 Application for arbitration—liability and particulars subject to answer

(WCR r 39)

- (1) An answer to an application for arbitration must admit or deny each claim and admit or deny each particular set out in the application.
- (2) If no admission or denial of a claim or particular is made, the claim or particular is taken to be admitted.
- (3) If a respondent worker does not file an answer, subrule (2) does not apply to a particular denying, completely or partly, liability to pay compensation.
- (4) If a respondent employer wishes to deny a claim or particular, but has not done so in an answer, the court may—
 - (a) allow the respondent to raise a matter the respondent should have included, or given notice of, in an answer; or

- (b) adjourn the arbitration to a stated time or for a stated period to allow the respondent to file an answer.

Note Rule 6901 (Orders may be made on conditions) provides that the court may make an order under these rules on any conditions it considers appropriate.

3915 Application for arbitration—service of answer

(WCR r 17)

- (1) A respondent must serve a sealed copy of the answer on the applicant and each other respondent.

Note The answer must be served as soon as possible (see Legislation Act, s 151B (Doing things for which no time is fixed)).

- (2) If the court makes an order under rule 6351 (Time—extending and shortening by court order), the respondent must serve a sealed copy of the order with the answer.

3916 Application for arbitration—amendment

(WCCR (NSW) r 17)

- (1) At any stage of a proceeding, the court may give leave for a party to amend, or direct a party to amend, any document filed in the court in the proceeding in the way the court considers appropriate.
- (2) However, this rule does not apply to a document accompanying an application for arbitration mentioned in rule 3909 (Application for arbitration—injury notice and medical evidence).
- (3) The court may give leave, or give a direction, on application by the party or on its own initiative.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for leave or a direction under this rule.

Note 2 Rule 6902 (Leave may be given on conditions) provides that, if the court gives leave under these rules, it may give the leave on the conditions it considers appropriate.

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- (4) If there is a mistake in the name or identity of a party, the court may give leave for, or direct the making of, amendments necessary to correct the mistake, even if the effect of the amendments is to substitute another person as a party.
 - (5) An amendment of a document made under this rule must be distinguished so that the changes are identifiable.
 - (6) A party amending a document must file and serve on each other active party—
 - (a) a copy of the document that contains the amendments written on it; or
 - (b) a revised document incorporating and distinguishing the amendments.
 - (7) This rule does not apply in relation to an amendment of an order.

Note See r 6906 (Mistakes in orders or court certificates) for amendment of orders.

3917 Application for arbitration—minor amendment or amendment by consent

(WCCR (NSW) r 17 (5))

- (1) This rule applies to an amendment to a document in a proceeding that is—
 - (a) minor and will not have any substantive effect on the case to be put by any party to the proceeding; or
 - (b) consented to by all parties to the proceeding.
- (2) Rule 3916 does not apply to an amendment mentioned in subrule (1).

- (3) A party may amend the document by filing, and serving on each other active party in the proceeding—
 - (a) a copy of the document that contains the amendments written on it; or
 - (b) a revised document incorporating and distinguishing the amendments.

3918 Application for arbitration—discontinuance

(WCCR (NSW) r 74)

- (1) An applicant may discontinue a proceeding, or withdraw part of it, at any time.
- (2) The applicant and another party to the proceeding may agree, in writing, that the applicant may discontinue the proceeding, or withdraw part of it, against the other party at any time.
- (3) A discontinuance or withdrawal under this rule is made by filing in the court a notice of discontinuance or withdrawal and serving a stamped copy of the notice on the other active parties in the proceeding.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (4) If a proceeding is discontinued or withdrawn, a party who has not agreed to the discontinuance or withdrawal may apply to the court for an order that the applicant pay the party's costs of the proceeding up to when notice of the discontinuance or withdrawal is served on the party.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

- (5) Subrule (4) is subject to rule 3968 (Workers compensation costs—generally).

Division 3.13.3 Workers compensation—parties for arbitration

3919 Arbitration—necessary parties

(WCR r 28)

- (1) A person whose participation is necessary for the court to completely and finally decide all matters in issue in an arbitration must be included as a party in the arbitration.

Example

If both a principal and a contractor, or more than 1 employer, may be liable in relation to the compensable injury, each of them must be included as a respondent.

Note An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The court may require a person to be included as a party.

Example

If, for an application on behalf of dependants of a deceased worker, a dependant fails to join in the application, the dependant may be included as a respondent.

- (3) Each party other than the applicant is a respondent.
- (4) The court may decide a claim even if a person is incorrectly included or not included as a party.

3920 Arbitration—including other parties

(WCR r 29)

- (1) An applicant may include someone else as a party to an arbitration by naming the person in the application.

- (2) A respondent may include someone else as a party to an arbitration (a *third-party respondent*) by filing a third-party notice.

Example

If a worker contracts a disease or suffers an aggravation, acceleration or recurrence of a disease, a respondent employer claiming to be entitled to contribution from another employer may include the other employer as a third-party respondent.

Note 1 If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

Note 2 An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act*, s 126 and s 132).

- (3) A party including a person as a third-party respondent must, not later than 14 days after the day the party files the notice—
- (a) serve a sealed copy of the notice, the application for arbitration and any answer filed in the arbitration, on the person; and
 - (b) serve a sealed copy of the notice on each other party to the arbitration.
- (4) The court may, at any time, order a party who has included a person as a party in an arbitration to—
- (a) serve on the person any document in the arbitration; or
 - (b) file and serve on the person and each other party an affidavit setting out the basis on which the person has been included.

3921 Arbitration—person may apply to be included as party

(WCR r 30)

A person may apply to the court to be included as a party to an arbitration.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

3922 Arbitration—party may apply to be removed as party

(WCR r 31)

A party to an arbitration may apply to the court to be removed as a party.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

3923 Arbitration—employer not respondent in certain applications by dependant or personal representative

(WCR r 32)

- (1) This rule applies if—
 - (a) a dependant, or the personal representative, of a deceased worker asks that a claim be decided by arbitration; and
 - (b) the amount of compensation payable to the dependants of the deceased worker is not an issue in the arbitration.
- (2) The employer is not a respondent in the arbitration if the employer has paid the amount of compensation—
 - (a) to the applicant; or
 - (b) into court to be dealt with as the court directs.

Division 3.13.4 Workers compensation—representation in arbitrations**3924 Arbitration—party may be represented**

(WCR r 34)

- (1) A party to an arbitration may be represented by—
 - (a) a lawyer; or
 - (b) with leave of the court—
 - (i) if the party is an injured worker—a member of the party's family; or

- (ii) an employee of the party; or
- (iii) if the party is a corporation—a director or officer of the corporation; or
- (iv) if the party is a member of an organisation—an officer or member of the organisation; or
- (v) in special circumstances, anyone else.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

- (2) A person who represents a party with the court's leave must file in the court an authority to act signed by the party.
- (3) The court may allow a person other than a lawyer to claim travelling expenses for representing a party in an arbitration.

Note A lawyer representing a party may claim costs and reasonable disbursements, see r 3968 (Workers compensation costs—generally).

- (4) Also, the court may allow a worker, or a member of the worker's family who represents the worker, an allowance for time spent at the arbitration.

3925 Arbitration—separate representation of employer for insurer's period on risk

- (1) An employer who is a party to an arbitration in relation to a claim may be separately represented in the arbitration for each insurer on risk in relation to the claim.
- (2) This part applies to the employer as if, for each separate representation, the employer were a separate party.
- (3) An answer filed under rule 3913 (Application for arbitration—answer by respondent or third-party respondent) in relation to the separate representation must state the period of the representation.

- (4) In this rule:

on risk—an insurer is *on risk* in relation to a claim if the insurer issued a compulsory insurance policy to the employer for any part of the period in which the injured worker says the injury happened.

Division 13.3.5 Workers compensation—listing procedure for arbitrations

3926 Arbitration listing procedure—certificate of readiness

(MCPD 1/2000 par 5 and 6)

- (1) If a party to an arbitration is ready for arbitration, the party must—
- (a) complete and sign a certificate of readiness for the party; and
 - (b) serve a copy of the completed and signed certificate on each other party to the arbitration to be completed and signed by each other party.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) Each party who is served with a certificate of readiness must—
- (a) if the party is ready for arbitration—complete and sign the certificate for the party and return it to the party who served it; or
 - (b) if the party is not ready for arbitration—return the unsigned certificate to the party who served it.
- (3) If a certificate of readiness is filed in the court for an application for arbitration, the court must include the application in a callover list.
- (4) The registrar must tell the parties the date set for the callover.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (5) At the callover the court may set a hearing date for the arbitration.

3927 Arbitration listing procedure—certificate of readiness not signed

(MCPD 1/2000 par 8)

- (1) This rule applies if—
 - (a) a party to an arbitration has served a certificate of readiness under rule 3926 (1); and
 - (b) another party to the arbitration has failed to complete and sign the certificate, and return the completed and signed certificate to the first party, within 21 days after the day the certificate was served on the other party.
- (2) The first party may apply to the court for an order that the application be placed in the callover list, even though the certificate of readiness has not been filed in the court.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

- (3) On an application under subrule (2), the court—
 - (a) must decide whether the application is ready for arbitration; and
 - (b) may—
 - (i) give the directions it considers appropriate to have the application made ready for arbitration; or
 - (ii) order that the application be placed in the callover list, even though a certificate of readiness has not been filed; or
 - (iii) adjourn the application.
- (4) If the court orders that an application be placed in the callover list even though a certificate of readiness has not been filed, the court must include the application in a callover list.

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- (5) The registrar must tell the parties the date set for the callover.
 - (6) At the callover the court may set a hearing date for the application.

Division 13.3.6 Workers compensation—medical reports for arbitrations

3928 Arbitration—service of medical reports

(MCPD 1/2000, par 18, 19 and 20)

- (1) Each party to an arbitration must, not later than 28 days before the hearing date for the arbitration, serve on each other party to the arbitration a copy of all medical reports then available to the party—
 - (a) on which the party intends to rely at the arbitration; or
 - (b) obtained from a doctor whom the party intends to call at the arbitration.

Note Rule 6351 (Time—extending and shortening by court order) provides for the extending of time by the court.
- (2) If a party serves a medical report from a doctor, the party must serve every medical report from that doctor obtained by the party.
- (3) If, after serving a medical report under subrule (1), a party obtains a further report from the same doctor, the party—
 - (a) must serve the further report not later than 3 days after the day the party obtains the report; or
 - (b) must not serve the report and tell the other parties that the party does not intend to rely on the reports of that doctor already served.
- (4) A doctor's report must not be tendered, and is not admissible, in the arbitration unless it has been served in accordance with this rule, except with—
 - (a) the court's leave; or

(b) the agreement of all parties to the arbitration.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave or an order under this rule.

(5) This rule applies subject to any order of the court.

3929 Arbitration—supplementary medical reports

(CPR r 1242)

- (1) If a doctor changes in a material way an opinion in a medical report that has been served, the doctor must provide a supplementary medical report (a *supplementary report*) to the party who engaged the doctor (the *engaging party*) stating the change and the reason for it.
- (2) The doctor may provide the engaging party with other supplementary reports (also a *supplementary report*).
- (3) If a doctor provides a supplementary report under this rule, the engaging party, and any other party having the same interest as the engaging party, must not use an earlier medical report (including an earlier supplementary report) on an issue to which the earlier medical report relates unless the engaging party has served a copy of the supplementary report on all active parties in the proceeding on whom the engaging party served the earlier medical report.

3930 Arbitration—doctor’s evidence to be covered by medical report

(MCPD 1/2000 par 23)

Except with the court’s leave or as otherwise agreed by all the parties to an arbitration, the oral evidence in chief of a doctor is not admissible unless the doctor’s medical report served in accordance with rule 3928 (Arbitration—service of medical reports) contains the substance of the matters sought to be adduced in evidence.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

3931 Arbitration—medical reports admissible as evidence of opinion etc

(MCPD 1/2000 par 21)

A medical report served under rule 3928 is admissible as evidence of—

- (a) the author's opinion; and
- (b) if the author's direct oral evidence of a fact on which the opinion was formed would be admissible as evidence of that fact without further evidence (whether oral or otherwise)—that fact.

3932 Arbitration—requiring attendance of doctor for cross-examination etc

(MCPD 1/2000 par 22)

- (1) This rule applies if a medical report is served under rule 3928 by a party to an arbitration.
- (2) Another party to the arbitration may, by notice served on the party who served the medical report, require the doctor who prepared the report to be available during the arbitration to be cross-examined on the report.
- (3) The notice must be served not later than 14 days after the day the report is served on the other party.

3933 Arbitration—tender of medical report

- (1) A party to an arbitration who is served with a medical report under rule 3928 may tender the report.
- (2) If the doctor who prepared the report is required under rule 3932 to be available during the arbitration, the report must not be tendered or otherwise used in the proceeding by any party unless—
 - (a) the doctor is available as required to be cross-examined on the report; or

- (b) the doctor has died; or
- (c) the court gives leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

- (3) If the doctor is cross-examined on the report, the party using the report may re-examine the doctor.

Division 13.3.7 Workers compensation—medical referees for arbitrations

3934 Arbitration—party may apply for medical referee etc (WCR r 44; WC Reg s 54)

- (1) The court may, on application by a party to an arbitration or on its own initiative, ask a medical referee to—
 - (a) help the court to assess a medical matter during an arbitration; or
 - (b) report on a medical matter during, or arising from, the arbitration.

Note Pt 6.2 (Applications in proceedings) applies to an application under this subrule.

- (2) An application must set out the reasons for the application.

Note Rule 6008 (Application in proceeding—filing and service) deals with service of the application.

3935 Arbitration—number of medical referees (WC Reg s 55)

- (1) The same medical referee must help the court throughout an arbitration.
- (2) However, another medical referee may help the court if the medical referee is unavailable for any reason.

3936 Arbitration—notice of request to medical referee

(WCR r 45)

If the court, on the application of a party to an arbitration or its own initiative, decides to ask a medical referee to help the court assess, or to report on, a medical matter in an arbitration, the registrar must tell each party, in writing, about the decision.

3937 Arbitration—assessment of worker by medical referee

(WCR r 46)

- (1) If a medical referee is to do a medical assessment of an injured worker for an arbitration, the court may order the worker to undergo the assessment.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application under this rule.

Note 2 The *Workers Compensation Regulation 2002*, div 3.1 deals with how a medical assessment must be done.

- (2) If an order is made under this rule, the registrar must tell each other party to the arbitration, in writing, about the order.

3938 Arbitration—medical referee to review medical evidence etc

(WC Reg s 14)

- (1) This rule applies if a medical referee is asked under rule 3934 (Arbitration—party may apply for medical referee etc) to help the court assess, or report on, a medical matter in an arbitration.
- (2) The medical referee must—
 - (a) review the medical evidence about the injured worker; and
 - (b) review any relevant approved medical guidelines or clinically relevant research about the worker's injury; and

- (c) apply the referee's clinical expertise to the review under paragraphs (a) and (b); and
- (d) do a medical assessment of the worker, unless the referee considers it unnecessary.

(3) In this rule:

approved medical guidelines—see the *Workers Compensation Regulation 2002*, dictionary.

clinically relevant research—see the *Workers Compensation Regulation 2002*, section 6.

medical evidence—see the *Workers Compensation Regulation 2002*, dictionary.

3939 Arbitration—medical referee's report

(WC Reg s 15)

- (1) A medical referee's report for an arbitration must state—
 - (a) the results of the referee's assessment of the cause or diagnosis of, or the prognosis or recommended medical treatment for, the worker's injury; and
 - (b) if the referee's assessment differs from the medical evidence about the worker's injury—
 - (i) how the assessment differs and why; and
 - (ii) why the referee's assessment is preferable; and

- (c) if the referee considered it unnecessary to assess the worker—
why the referee did not consider it necessary.

Example of why assessment may differ

The medical evidence does not take into account relevant approved medical guidelines or clinically relevant research.

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) If there is no difference between the medical referee's assessment and the medical evidence, the report must say there is no difference.

3940 Arbitration—medical referee's report to be given to parties

(WCR r 47)

If a medical referee prepares a report for an arbitration, the registrar must give a copy of the report to each party to the arbitration.

3941 Arbitration—court may decide claim without medical referee report

(WCR r 48)

This division does not prevent the court from deciding a claim without the help of, or a report from, a medical referee.

Division 13.3.8 Workers compensation—case management meeting for arbitrations

3942 Arbitration—case management generally

(WCR r 20)

- (1) The court may hold a case management meeting with the parties to each application for arbitration.

- (2) The purpose of the case management meeting is—
 - (a) to assess the likelihood of the parties settling the claim before the arbitration is heard; and
 - (b) to give directions for the arbitration.

3943 Arbitration—time of case management meeting

(WCR r 21)

- (1) If the court decides to hold a case management meeting for an arbitration, the registrar must—
 - (a) set a time and place for the case management meeting; and
 - (b) tell the parties to the arbitration the time and place set.
- (2) If practicable, the registrar must set a time for the case management meeting after—
 - (a) each respondent’s answer is filed; and
 - (b) each party to the arbitration has served its medical reports under rule 3928.
- (3) The registrar may require the parties to sign and file a certificate of readiness under rule 3926 (Arbitration listing procedure—certificate of readiness) before setting a time for the case management meeting.

3944 Arbitration—attendance at case management meeting

(WCR r 22)

- (1) Unless the court otherwise orders, the injured worker or, for a claim by a dependant, the dependant or personal representative, must attend the case management meeting.

Note Pt 6.2 (Applications in proceedings) applies to an application under this rule.

- (2) If the injured worker or dependant is represented, the representative must also attend the case management meeting.

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- (3) Each other party must be represented at the case management meeting.
 - (4) A party's representative at the case management meeting must—
 - (a) have authority to negotiate a settlement on behalf of the party;
or
 - (b) be able to obtain instructions to negotiate a settlement on behalf of the party during the meeting.
 - (5) This rule does not prevent the court from directing a party to attend the case management meeting.

3945 Arbitration—parties must make genuine effort to settle at case management meeting

(WCR r 23)

- (1) The parties must make a genuine effort to settle the claim at the case management meeting.
- (2) If the court is satisfied that a party did not make a genuine effort, the court may take this into account when making an order for costs.

3946 Arbitration—settling of claim at case management meeting

(WCR r 24)

If, at a case management meeting, the court considers there are reasonable prospects for the parties to settle the claim, the court—

- (a) must promote the settlement of the claim (at the meeting or by referral to other dispute resolution mechanisms); and
- (b) may adjourn the arbitration to a stated time or for a stated period to allow the parties to negotiate a settlement.

3947 Arbitration—settling of claim unlikely at case management meeting

(WCR r 25)

- (1) If, at a case management meeting, the court considers it unlikely that the parties will settle the claim, the court must give directions about how the arbitration will be conducted.
- (2) In deciding what directions to give, the court must try to facilitate—
 - (a) hearing the claim as quickly as practicable; and
 - (b) keeping costs as low as practicable.

3948 Arbitration—record of terms of settlement at case management meeting

(WCR r 27)

If agreement is reached at a case management meeting, the parties must record the agreement in writing in the way required by the registrar.

Division 3.13.9 Workers compensation—conduct of arbitration

3949 Conduct of arbitration—date

(WCR r 38)

The registrar must—

- (a) set a date for an arbitration in accordance with the directions (if any) of the court; and
- (b) tell the parties the date set.

3950 Conduct of arbitration—burden of proof on party asserting fact

(WCR r 40)

The burden of proof of a fact that is not admitted in an arbitration is the same whether the applicant is an employer or insurer, an injured worker, or a dependant, or personal representative, of a deceased worker.

3951 Conduct of arbitration—directions about third-party respondents

(WCR r 41)

- (1) A party may apply for directions about the procedure to decide a question between a respondent and a third-party respondent.

Note Pt 6.2 (Applications in proceedings) applies to an application for directions.

- (2) The court may give the directions it considers appropriate.
- (3) Without limiting subrule (2), the court may—
- (a) give the third-party respondent leave to answer the applicant's claim against the respondent; or
 - (b) give directions about the extent to which the third-party respondent is to be liable to or be bound by an award in the arbitration.
- (4) This rule does not affect an applicant's claim against a respondent.

3952 Conduct of arbitration—directions and orders if remedy against employer and stranger

(WCR r 42)

- (1) This rule applies to an arbitration if—
- (a) the injury to the applicant worker happened in circumstances mentioned in the Workers Compensation Act, section 183 (Remedies against employer and stranger); and

(b) a respondent to the application claims that, if compensation is paid under the Workers Compensation Act to the applicant, the respondent is entitled to be indemnified by a person under that section.

(2) The respondent may file a notice of claim naming the person.

(3) The respondent must serve a sealed copy of the notice on the person.

Note The copy of the notice must be served as soon as possible (see Legislation Act, s 151B (Doing things for which no time is fixed)).

(4) If this rule applies, the court may make the orders it considers appropriate.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

(5) Without limiting subrule (4), the court may give the person leave to answer the applicant's claim against the respondent.

(6) If the person wishes to dispute the notice, the person may appear at the arbitration.

(7) Without limiting subrule (4), the court may, under the subrule, order that the person is not entitled in any future proceeding between the respondent and the person to dispute the validity of the award of the court on the arbitration.

(8) If the person does not appear at the arbitration, the person is taken to admit the validity of the award of the court on the arbitration.

(9) With the consent of the respondent and the person, the court may, under subrule (4)—

(a) if the person's liability to indemnify the respondent is admitted—make an order for the respondent against the person, to be enforced only after payment is made by the respondent under the award; or

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- (b) order that the question of the person's liability to indemnify the respondent be settled by arbitration between the respondent and the person (the *later arbitration*) after the arbitration between the applicant and the respondent.
- (10) If the court makes an order mentioned in subrule (9) (b), the court may make the orders it considers appropriate in relation to the later arbitration.
- (11) Without limiting subrules (4) and (10), the court may make any order it considers appropriate about costs between the respondent and the person in the arbitration or the later arbitration.

3953 Conduct of arbitration—directions generally

- (1) The court may, at any stage of a proceeding, give any direction about the conduct of the proceeding it considers appropriate, even though the direction may be inconsistent with another provision of these rules.
- (2) The court may give a direction about the conduct of the proceeding on application by a party or on its own initiative.
- Note* Pt 6.2 (Applications in proceedings) applies to an application for directions.
- (3) In deciding whether to give a direction under this rule, the interests of justice are paramount.
- (4) If a direction under this rule is inconsistent with another provision of these rules, the direction prevails to the extent of the inconsistency.
- (5) The court may at any time amend or revoke a direction made under this rule.

- (6) The court may amend or revoke a direction made under this rule on application by a party or on its own initiative.

Note Pt 6.2 (Applications in proceedings) applies to an application to amend or revoke a direction.

- (7) The powers of the court under this rule are additional to any other powers of the court under a territory law.

Note A *territory law* includes these rules (see Legislation Act, s 98).

Division 3.13.10 Workers compensation—submission to award and payments into court

3954 Arbitration—payment into court generally

(WCR r 49)

If a party to an arbitration pays an amount of compensation into court, the registrar must tell each other party to the arbitration, in writing, about the payment.

3955 Arbitration—admission of liability to claim by worker

(WCR r 50)

- (1) This rule applies to the arbitration of a claim if the application is by a worker.
- (2) An employer may, before the day set for the arbitration, act under subrule (3) or (4).
- (3) The employer may file in the court a notice stating that the employer admits liability and submits to an award of the court for the payment of the amount of weekly compensation stated in the notice.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

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- (4) The employer may—
 - (a) file in the court a notice stating that the employer admits liability and submits to an award of the court for the payment of a lump sum amount of compensation stated in the notice that is sufficient to cover the employer's liability on the claim; and
 - (b) pay the amount into court.
 - (5) An employer filing a notice under this rule must serve a copy of the notice on each other party to the arbitration.

3956 Arbitration—admission of liability to claim for deceased worker

(WCR r 51)

- (1) This rule applies to the arbitration of a claim if the application is by a dependant, or the personal representative, of a deceased worker.
- (2) An employer may, before the day set for the arbitration—
 - (a) file in the court a notice stating that the employer admits liability; and
 - (b) pay into court an amount sufficient to cover the employer's liability on the claim.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (3) An employer filing a notice under this rule must serve a copy of the notice on each other party to the arbitration.

3957 Arbitration—denial and submission to award or payment by employer

(WCR r 52)

- (1) An employer who is a party to an arbitration may, before the day set for the arbitration—
 - (a) file in the court a notice stating that—
 - (i) the employer does not admit liability on the claim; or
 - (ii) the employer submits to an award of the court for the payment of the amount of weekly compensation stated in the notice but does not admit liability on the claim; and
 - (b) pay into court—
 - (i) an amount sufficient to cover the liability the employer would have on the claim if the employer did not deny liability; or
 - (ii) the amount stated in the notice.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) An employer filing a notice under this rule must serve a copy of the notice on each other party to the arbitration.

3958 Arbitration—acceptance of payment by worker

(WCR r 53)

- (1) This rule applies if a notice is filed under rule 3955 (Arbitration—admission of liability to claim by worker) in relation to a claim by a worker.
- (2) The worker may accept the amount of compensation in satisfaction of the worker's claim by giving written notice of the acceptance to the employer and registrar.

-
- (3) Notice under subrule (2) must be given within a reasonable time before the day set for the arbitration, taking into consideration the time the employer filed the notice under rule 3955.

3959 Arbitration—acceptance of payment for deceased worker

(WCR r 54)

- (1) This rule applies if an employer files a notice under rule 3956 (Arbitration—admission of liability to claim for deceased worker) in relation to a claim made by a dependant, or the personal representative, of a deceased worker.
- (2) The applicant dependant or personal representative may accept the amount of compensation in satisfaction of the claim by giving written notice of the acceptance to the employer, registrar and any other party.
- (3) If a respondent other than the employer is willing to accept the amount of compensation in satisfaction of the claim, the respondent may accept the amount of compensation in the same way as the applicant dependant or personal representative.
- (4) Notice under subrule (2) must be given within a reasonable time before the day set for the arbitration, taking into consideration the time the employer filed the notice under rule 3956.

3960 Arbitration—payment on worker’s acceptance

(WCR r 55)

- (1) This rule applies if a worker accepts payment of an amount under rule 3958 (Arbitration—acceptance of payment by worker).
- (2) The court may order payment of the amount to the worker or the application of the amount for the worker’s benefit.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

- (3) The court may order the employer to pay any costs of the worker properly incurred before the worker receives the notice about the employer's submission or payment, and in relation to the notice of the submission or payment and to its acceptance.

3961 Arbitration—payment on dependant's etc acceptance

(WCR r 56)

- (1) This rule applies if an applicant dependant or personal representative and each respondent other than the employer (the *other parties*) accept payment of an amount under rule 3959 (Arbitration—acceptance of payment for deceased worker).
- (2) Further proceedings against the employer are stayed and—
 - (a) if the other parties agree about the apportionment and application of the amount—the court may make an award for the apportionment and application of the amount; or
 - (b) in any other case—the arbitration may proceed as between the other parties.
- (3) The court may order the employer to pay any costs of another party properly incurred before the party receives notice about the employer's submission or payment, and in relation to the notice of the submission or payment and to its acceptance).

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

3962 Arbitration—no prompt acceptance of submission or payment

(WCR r 57)

- (1) This rule applies if a party given a notice under rule 3955, rule 3956 or rule 3957 does not accept the amount of compensation mentioned in the notice within a reasonable time after receiving the notice.
- (2) The party may accept the amount at any time before the arbitration starts.

-
- (3) However, if the party accepts the amount, the party is liable to pay the costs the court is satisfied were reasonably incurred by the employer after the day the employer filed the notice or made the payment into court.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

- (4) The court may order that the costs payable by a party under subrule (3) be set off against any costs payable to the party, or be deducted from any amount awarded to the party.

3963 Arbitration—award not greater than submission or payment

(WCR r 58)

- (1) This rule applies if—
- (a) an employer to an arbitration has submitted to an award, or paid an amount into court, and given notice under rule 3955, rule 3956 or rule 3957; and
 - (b) the award on arbitration is not more than the amount submitted to or paid.
- (2) The employer is not liable to pay the costs of a party in whose favour the submission or payment is made that were incurred by the party after the party received notice about the submission or payment.
- (3) The court may—
- (a) order that any costs incurred by the employer after giving notice under rule 3955, rule 3956 or rule 3957 be paid by any party who has not accepted the amount submitted to or paid; and
 - (b) order that the costs be set off against any costs payable to the party or be deducted from any amount awarded to the party.

- (4) The court may also—
- (a) order that any costs incurred by a party who accepted the amount submitted to or paid after receiving the notice be paid by any other party who has not accepted the amount; and
 - (b) order that the costs be set off against any costs payable to the party or be deducted from any amount awarded to the party.

Division 3.13.11 Workers compensation—awards

3964 Arbitration—award

(WCR r 59)

- (1) If the court makes findings in support of an award in favour of a party on an arbitration, the party must prepare draft terms of the award for making by the court.

Note If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

- (2) The party preparing draft terms of the award must, not later than 7 days after the day the court makes the findings, give a copy of the draft terms to each other party to the arbitration.
- (3) Each other party to the arbitration must, not later than 7 days after the day the party receives a copy of the draft terms—
- (a) endorse the party's agreement on the draft terms; or
 - (b) object to the draft terms.
- (4) If the draft terms of the award are agreed, the draft terms must be given to the registrar for making by the court.
- (5) A party objecting to the terms must ask the registrar to list the matter before the court.

Note The party must, as soon as possible, ask the registrar to list the matter (see *Legislation Act*, s 151B (Doing things for which no time is fixed)).

-
- (6) After the award is made by the court, the registrar must serve a sealed copy of the award on each party to the arbitration.
 - (7) The court may at any time correct a clerical error in an award made on an arbitration.

3965 Arbitration—setting aside or amending award

(WCR r 60)

- (1) The court may, by order, set aside or amend an award made on arbitration if satisfied that—
 - (a) the award was obtained by fraud or other improper means; or
 - (b) a person included in the award as a dependant is not a dependant; or
 - (c) a person who is a dependant is not included in the award.
- Note* Pt 6.2 (Applications in proceedings) applies to an application for an order, directions or leave under this rule.
- (2) The court may give directions it considers appropriate about the conduct of a proceeding to set aside or amend an award.
 - (3) The court may give the directions under subrule (2) on application by a party or on its own initiative.
 - (4) In setting aside or amending an award, the court may make any order it considers just.
 - (5) An application to set aside or amend an award must not be made more than 6 months after the date of the award without the court's leave.
 - (6) The court may give leave only if the failure to make the application not later than 6 months after the date of the award was because of mistake, absence of the party from the ACT, or other reasonable grounds.

Division 3.13.12 Workers compensation—registered agreements

3966 Registered agreement—application for registration

(WCR r 61 and r 62)

- (1) This rule applies to an agreement under the Workers Compensation Act, part 4.7 (Registration of agreements for compensation).
- (2) A person who is a party to the agreement may apply to the court for registration of the agreement by filing a copy of the agreement in the court.

Note 1 If a form is approved under the *Court Procedures Act 2004*, s 8 for this provision, the form must be used.

Note 2 The Legislation Act provides for things to be done as soon as possible if no time is fixed (see s 151B).

- (3) If the person is also a party to an arbitration about the matter in the agreement, the party may apply to the court for registration of the agreement by filing a copy of the agreement or handing it to the court at the arbitration.
- (4) The copy of the agreement filed or handed to the court must be signed by the injured worker, the injured worker's representative and each other party or the party's representative.
- (5) Part 6.2 (Applications in proceedings) does not apply to the application to register the agreement.
- (6) Unless the court otherwise orders on its own initiative, the application to register must be dealt with without a hearing and in the absence of the parties.
- (7) However, at any time before registering an agreement, the court may require a party to provide additional information.

-
- (8) If the court registers the agreement, the registrar must give a sealed copy of the registered agreement, endorsed with the date of registration, to—
- (a) each party to the agreement; and
 - (b) if applicable, any party to the arbitration who is not a party to the agreement.

3967 Registered agreement—application for amendment or cancellation

(WCR r 63)

- (1) A party to a registered agreement may apply to the court to amend or cancel the agreement under the Workers Compensation Act, section 81 (Cancellation or amendment of registered agreements) by filing an application in the court.

Note Pt 6.2 (Applications is proceedings) applies to an application under this rule.

- (2) The court may give the directions it considers appropriate about the conduct of the proceeding.
- (3) The court may give directions under subrule (2) on application by a party or on its own initiative.

Division 3.13.13 Workers compensation—costs

3968 Workers compensation costs—generally

(WC Reg s 57 and WCR r 68)

- (1) The successful party to an arbitration or related proceeding is entitled to be paid party and party costs (including reasonable disbursements) by the unsuccessful party, unless the court otherwise orders.
- (2) The court may make any order about costs between a third-party respondent and another party to an arbitration the court considers appropriate.

- (3) However, the court must not award the costs of, or incidental to, an arbitration or related proceeding (including reasonable disbursements) against someone claiming compensation honestly in the arbitration or proceeding.
- (4) The costs of, and incidental to, an arbitration or related proceeding are payable at $\frac{2}{3}$ of the prescribed scale of costs, unless the court otherwise orders.
- (5) Disbursements are payable in full.
- (6) This rule is subject to rule 3962 (Arbitration—no prompt acceptance of submission or payment) and rule 3963 (Arbitration—award not greater than submission or payment).

3969 Workers compensation costs—claim against arbitration award

(WC Reg s 58)

- (1) This rule applies if a worker is paid an amount of compensation on arbitration.
- (2) The worker's lawyer or the lawyer's agent may claim costs in relation to the arbitration, or claim a lien in relation to the costs, from the compensation only if, on application by the worker, lawyer or agent, the court awards the lawyer or agent the costs.
- (3) Costs to be awarded to the lawyer or the lawyer's agent are payable at $\frac{2}{3}$ of the prescribed scale of costs, unless the court otherwise orders.
- (4) Part 2.17 (Costs) applies in relation to costs awarded to a worker's lawyer or the lawyer's agent under this rule as if the lawyer or lawyer's agent were a party to the proceeding entitled to costs.

Division 3.13.14 Workers compensation—appeals

3970 Appeal—order of Supreme Court

(WCR r 65)

- (1) This rule applies if an order is made by the Supreme Court on an appeal from a decision or award of the Magistrates Court in an arbitration.
- (2) A party may file a sealed copy of the order in the Magistrates Court.
Note The Legislation Act provides for things to be done as soon as possible if no time is fixed (see s 151B).
- (3) If the order has effect as a decision or award in favour of a party, the decision or award must be recorded by the registrar of the Magistrates Court as if it were a decision or award of that court.
- (4) If the order requires an award be made in favour of a party, the Magistrates Court must make the award.
- (5) If the judgment directs a re-hearing or further hearing of the arbitration, the registrar of the Magistrates Court must—
 - (a) set a date for directions; and
 - (b) tell the parties the date for directions.
- (6) The Magistrates Court must make any other direction, decision or award that is necessary to give effect to the order.

Schedule 1 Other amendments

(see s 3)

[1.1] New rule 55

insert

55 Originating claim—abandonment of excess in Magistrates Court

(MC(CJ)R s 21)

- (1) This rule applies if a person has a cause of action against another person for more than \$50 000.
- (2) The person may start a proceeding for the cause of action in the Magistrates Court if the person—
 - (a) abandons the excess and limits the claim to \$50 000; and
 - (b) states in the claim that the excess is abandoned.
- (3) Judgment in a proceeding under this rule—
 - (a) is in full discharge of all demands in relation to the cause of action; and
 - (b) must record the abandonment.

[1.2] Rule 771 (5)

substitute

- (5) If a notice is served on the receiver under subrule (3), the receiver must file a copy of the accounts, verified by affidavit, within the time required by the notice.

Note See approved form 2.29 (Receiver's affidavit and account).

[1.3] Rule 1006 (2)

substitute

- (2) If an amount is paid into court under this part by a respondent, the applicant may accept the amount in satisfaction of—
- (a) the claim for relief; or
 - (b) if there are 2 or more causes of action included in a single action—the claim or each claim for which the payment is made.

[1.4] Rule 1119 (3), note, 1st dot point

substitute

- r 1120 (Default judgment—debt or liquidated demand)

[1.5] New rule 2016

insert

2016 Enforcement—enforcement of payment directed by Essential Services Consumer Council

(MC(CJ)R s 380A)

- (1) If a copy of a payment direction, certified by the registrar of the council, is filed in the Magistrates Court, the direction is enforceable under this part as if it were a judgment of the Magistrates Court.
- (2) In this rule:

council means the Essential Services Consumer Council.

payment direction means a direction by the council under the *Utilities Act 2000*, section 209 (Payment for loss or damage) that a utility pay a stated amount to a complainant.

[1.6] New rule 2110 (6)

insert

- (6) For the *Magistrates Court Act 1930*, section 73A, that Act, division 3.4.4 (Committal and recognisance) applies in relation to a person for whom an enforcement hearing warrant has been issued by the Magistrates Court.

[1.7] Rule 2231 (4)

omit

If the enforcement debtor files

substitute

If the enforcement creditor files

[1.8] Rule 2363 (1)

omit

enforcement creditor order

substitute

enforcement creditor

[1.9] New rule 2444 (6)

insert

- (6) For the *Magistrates Court Act 1930*, section 73A, that Act, division 3.4.4 (Committal and recognisance) applies in relation to a person for whom a warrant has been issued by the Magistrates Court under this rule.

[1.10] New rule 2445 (5)

insert

- (5) For the *Magistrates Court Act 1930*, section 73A, that Act, division 3.4.4 (Committal and recognisance) applies in relation to a person for whom a warrant has been issued by the Magistrates Court under this rule.

[1.11] Rule 2749 (3) (b)

omit

claims

substitute

wants

[1.12] Rule 2750 (2)

after

accounts

insert

or allowance of commission

[1.13] Rule 3006 (4)

after

person's

omit

the

[1.14] Rules 3007 (3) (a) and 3008 (3) (a)

omit

written consent

substitute

consent, by affidavit,

[1.15] Rule 3010 (1) (j) and (o)

omit

[1.16] Rule 3010 (1) (k) to (n)

renumber as paragraphs (j) to (m)

[1.17] Rule 3010 (2) (k)

substitute

- (k) if, under the *Wills Act 1968*, section 20A (Effect of termination of marriage), the deceased person's marriage is taken to have been terminated—the date of the termination;

Note The *Wills Act 1968*, s 20A (4) provides that the termination of a marriage is taken to occur—

- (a) when a decree of dissolution of marriage under the Family Law Act becomes absolute; or
- (b) on the making of a decree of nullity under the Family Law Act in respect of a purported marriage that is void; or
- (c) on the annulment of the marriage in accordance with the law of a place outside Australia if the annulment is recognised in Australia under the Family Law Act.

[1.18] New rule 3010 (3) (d) and (e)

insert

- (d) the names of everyone with a beneficial interest in the estate;
- (e) the interest of everyone with a beneficial interest in the estate.

[1.19] Rule 3014*substitute***3014 Grant of representation—no grant to executor etc who has renounced**

(NSW Prob r 14)

- (1) A person may renounce probate of the will or administration of the estate of a deceased person by affidavit.

Note See approved form 3.15 (Renunciation of probate).

- (2) If a person renounces probate of the will or administration of the estate of a deceased person, the person must not be granted representation of the estate in another capacity.

[1.20] Rules 3056 (2) and 3057 (2)*after*

renunciation

insert

by affidavit

[1.21] Rule 3159*substitute***3159 Adoption order—service of application on chief executive**

(SCR o 76 r 4)

If the applicant for an adoption order is not the chief executive or the principal officer of a private adoption agency, the applicant must serve a sealed copy of the application and stamped copies of the following documents on the chief executive not later than 28 days before the return date for the application:

- (a) the affidavit under rule 3157 supporting the application;
- (b) each document accompanying the application under rule 3158.

[1.22] Rule 3201

omit

serve stamped copies of the application on

substitute

serve, not later than 28 days before the return date for the application, sealed copies of the application on

[1.23] Rule 3210

omit

stamped

substitute

sealed

[1.24] Rule 3478 (2) (a)

substitute

- (a) the reasonable costs of, and incidental to, registration of the judgment including—
 - (i) the cost of obtaining a certified copy of the judgment from the original court; and
 - (ii) the costs of obtaining from foreign exchange dealers evidence of the rates at which Australian dollars may be bought in the currency in which the judgment is expressed;

[1.25] Rule 3483 (6)

omit

[1.26] Rule 4330*substitute***4330 Magistrates Court witness—informant may request attendance**

(MCR s 12)

- (1) The informant may, by letter sent by a form of post that requires a signature on receipt, request a person to attend to give evidence as a witness at the hearing of an information.

Note See approved form 4.12 (Request to attend hearing as witness).

- (2) The letter must—

- (a) set out the time and place for the hearing; and
- (b) be accompanied by an undertaking to attend the hearing to be signed by the person and returned to the informant by the date stated in the undertaking; and

Note See approved form 4.13 (Undertaking to attend as a witness).

- (c) be accompanied by a form to be completed by the person to claim the person's reasonable expenses incurred in attending the hearing.

Note See approved form 4.14 (Claim for expenses by witness).

4331 Magistrates Court witness—expenses

(MCR s 21)

A person who attends the hearing of a criminal proceeding as a witness is entitled to be paid witness expenses assessed in accordance with schedule 4.

[1.27] New divisions 4.2.4 and 4.2.5

insert

Division 4.2.4 Magistrates Court criminal proceedings—enforcement of fines

4340 Definitions—div 4.2.4

In this division:

enforcement hearing subpoena—see rule 4341 (2).

enforcement hearing warrant—see rule 4345 (2).

fine—see the *Magistrates Court Act 1930*, section 146.

fine defaulter—see the *Magistrates Court Act 1930*, section 146.

outstanding fine—see the *Magistrates Court Act 1930*, section 146.

4341 Enforcement of fine—enforcement hearing

- (1) This rule applies to a person who is liable to pay a fine to the court.
- (2) The registrar may—
 - (a) set a date for an enforcement hearing; and
 - (b) by subpoena (an *enforcement hearing subpoena*), require the person to attend the court, at the time and place stated in the subpoena—
 - (i) to answer questions and give information; and
 - (ii) to produce the documents or other things (if any) stated in the subpoena.
- (3) The registrar may adjourn an enforcement hearing from time to time and may, by order, require the person to attend an adjourned enforcement hearing.

4342 Enforcement of fine—service of enforcement hearing subpoena

- (1) An enforcement hearing subpoena must be served on a person who is liable to pay a fine at least 14 days before the date set for the enforcement hearing.
- (2) A copy of the form of the statement to be completed in accordance with rule 4343 must be served with the enforcement hearing subpoena.

Note The person who is liable to pay a fine is not required to comply with the subpoena unless conduct money is given to the person a reasonable time before attendance is required (see r 6606 (1)).

4343 Enforcement of fine—statement of person’s financial position

- (1) At least 8 days before the date set for the enforcement hearing, the person who is liable to pay a fine must file in the court a sworn statement of the person’s financial position.
- (2) If the person receives regular payments (for example, wages or social security benefits), the statement of financial position must include—
 - (a) the dates the last 4 payments were received; and
 - (b) if the payments were paid to the person by payment into an account with a financial institution—a statement to that effect, and the account number and any other details necessary to identify the account.

Note An example is part of these rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) If the person, without reasonable excuse, contravenes the subpoena by failing to complete, swear or file a statement of the person’s financial position in accordance with this rule, the person may be dealt with for contempt of court.

- (4) Subrule (3) does not limit any other power of the court in relation to the contravention.

Note Failure to answer a question or give information in a legal proceeding may be an offence (see Criminal Code, s 722).

4344 Enforcement of fine—determining capacity to pay fine

(MCR s 18 (1) and (2))

- (1) A person who is liable to pay a fine may—
- (a) be examined orally on oath about—
- (i) the person's assets, liabilities, expenses and income; and
 - (ii) any other means the person has of paying the fine; and
 - (ii) the person's financial circumstances generally; and
- Note* **Oath** includes affirmation (see Legislation Act, dict, pt 1).
- (b) be required to produce any document substantiating anything relevant to—
- (i) the person's assets, liabilities, expenses and income; and
 - (ii) any other means the person has of paying the fine; and
 - (iii) the person's financial circumstances generally.
- (2) The examination—
- (a) must be conducted by the registrar; and
 - (b) may be conducted in open court or in the absence of the public, as the registrar directs.

4345 Enforcement of fine—enforcement hearing warrant issue

(MCR s 9 and 18 (3))

- (1) This rule applies if—
 - (a) a person who is liable to pay a fine is required under this division to attend an enforcement hearing or an adjourned enforcement hearing; and
 - (b) the person fails to attend the hearing as required.
- (2) The registrar may issue a warrant (an *enforcement hearing warrant*) ordering an enforcement officer to apprehend the person and bring the person before the registrar to be examined at an enforcement hearing under rule 4344 if the registrar—
 - (a) is satisfied that the person was served with the subpoena or was otherwise aware that the person was required by the enforcement hearing subpoena to attend the hearing as required by the subpoena; and
 - (b) considers that the person does not have a reasonable excuse for not attending the hearing.
- (3) Rule 2111 (Enforcement hearing—enforcement hearing warrant contents etc) applies to an enforcement hearing warrant issued under this rule as if a reference to rule 2109 were a reference to rule 4344.
- (4) A person apprehended under an enforcement hearing warrant must be brought before the registrar to be examined at an enforcement hearing under rule 4344.
- (5) For the *Magistrates Court Act 1930*, section 73A, that Act, division 3.4.4 (Committal and recognisance) applies in relation to a person for whom an enforcement hearing warrant has been issued by the court.

4346 Enforcement of fine—orders

(MCR s 19)

- (1) The registrar may, if satisfied that a fine defaulter has the capacity to pay an outstanding fine—
 - (a) make a seizure and sale order under division 2.18.5 (Enforcement of money orders—seizure and sale orders) as applied by rule 4347 against personal property of the fine defaulter to enforce the outstanding fine; or
 - (b) make a debt redirection order under division 2.18.6 (Enforcement of money orders—debt redirection orders generally) as applied by rule 4347 in relation to the outstanding fine; or
 - (c) make a regular redirection order under division 2.18.7 (Enforcement of money orders—regular redirections from financial institutions) as applied by rule 4347 in relation to the outstanding fine; or
 - (d) make an earnings redirection order under division 2.18.8 (Enforcement of money orders—earnings redirection orders) as applied by rule 4347 in relation to the outstanding fine.
- (2) If the registrar makes a seizure and sale order in relation to 2 or more outstanding fines payable by a fine defaulter, the order operates in relation to the amount of each outstanding fine separately.

4347 Application of pt 2.18

(MCR s 20)

- (1) The purpose of this rule is to ensure, as far as practicable, that—
 - (a) a seizure and sale order under rule 4346 has the same effect as a seizure and sale order in relation to an enforcement debtor; and

- (b) a debt redirection order under rule 4346 has the same effect as a debt redirection order in relation to an enforcement debtor; and
 - (c) a regular redirection order under rule 4346 has the same effect as a regular redirection order in relation to an enforcement debtor; and
 - (d) an earnings redirection order under rule 4346 has the same effect as an earnings redirection order in relation to an enforcement debtor.
- (2) For subrule (1) (a), division 2.18.5 (Enforcement of money orders—seizure and sale orders) applies, with any necessary changes, and in particular, as if the following rules were omitted:
- rule 2200 (2) (Seizure and sale order—making);
 - rule 2201 (Seizure and sale order—application);
 - rule 2208 (Seizure and sale order—application for instalment order stays sale of seized property);
 - rule 2210 (Seizure and sale order—seizure of real property);
 - rule 2211 (Seizure and sale order—enforcement debtor not to deal with real property);
 - rule 2214 (Seizure and sale order—suspension etc of enforcement);
 - rule 2215 (Seizure and sale order—agreements to withdraw and re-enter);
 - rule 2217 (1) (b) and (2) (Seizure and sale order—setting reasonable amount);
 - rule 2218 (Seizure and sale order—additional provisions relating to land);
 - rule 2219 (Seizure and sale order—power of entry for auction of land);
 - rule 2223 (3) (Seizure and sale order—amounts received);

- rule 2230 (Seizure and sale order—documents giving effect to sale);
 - rule 2235 (2) and (4) (Seizure and sale order—order for disposal and return of property to enforcement debtor).
- (3) For subrule (1) (b), division 2.18.6 (Enforcement of money orders—debt redirection orders generally) applies, with any necessary changes, and in particular, as if the following rules were omitted:
- rule 2301 (Debt redirection order—making);
 - rule 2302 (Debt redirection order—application).
- (4) For subrule (1) (c), division 2.18.7 (Enforcement of money orders—regular redirections from financial institutions) applies, with any necessary changes, and in particular, as if rule 2332 (Regular redirection order—making) were omitted.
- (5) For subrule (1) (d), division 2.18.8 (Enforcement of money orders—earnings redirection orders) applies, with any necessary changes, and in particular, as if the following rules were omitted:
- rule 2350 (Earnings redirection order—making);
 - rule 2351 (Earnings redirection order—application).
- (6) The provisions applied by subrules (2), (3), (4) and (5) have effect as if, in addition to any other necessary changes—
- (a) a reference to a seizure and sale order were a reference to a seizure and sale order under rule 4346; and
 - (b) a reference to a debt redirection order were a reference to a debt redirection order under rule 4346; and
 - (c) a reference to a regular redirection order were a reference to a regular redirection order under rule 4346; and
 - (d) a reference to an earnings redirection order were a reference to an earnings redirection order under rule 4346; and
 - (e) a reference to an enforceable money order of the court were a reference to an outstanding fine; and

- (f) a reference to an enforcement debtor were a reference to a fine defaulter; and
 - (g) a reference to an enforcement creditor were a reference to the Territory.
- (7) If, under a provision applied by this rule, the registrar's power to do anything depends on the enforcement creditor doing something, the registrar may exercise the power on his or her own initiative.
- (8) The registrar must not make an instalment order for the payment of a fine or administrative fee under a provision applied by this rule.

4348 Enforcement of fine—security for payment

(MCR s 71 and 72)

- (1) This rule applies if, under the *Magistrates Court Act 1930*, section 148 (Court may allow time to pay), the court has ordered a person to give security with or without sureties for the payment of an amount.
- (2) If the person does not enter into the security at the court house when the order is made, the person before whom the security is entered must send the security to the court.

[1.28] Rule 4733 (b), note

substitute

Note 1 See the *Supreme Court Act 1933*, s 68B (Trial by judge alone in criminal proceedings).

Note 2 See approved form 4.11 (Supreme Court criminal proceeding—election for trial by judge alone).

[1.29] Part 5.2, note to pt 5.2

omit

non-interlocutory judgments

substitute

non-interlocutory orders

[1.30] Rule 5010, definition of *decision*, paragraph (a)

omit

interlocutory judgment

substitute

interlocutory order

[1.31] Table 5011, item 1, column 2

omit

interlocutory judgments

substitute

interlocutory orders

[1.32] Rule 5300 (2)

omit

interlocutory judgments

substitute

interlocutory orders

[1.33] Division 5.4.2 heading

substitute

Division 5.4.2 Appeals to Court of Appeal—leave to appeal from interlocutory orders**[1.34] Rule 5310 (1)**

omit

interlocutory judgment

substitute

interlocutory order

[1.35] Rule 5310 (1), note

omit

interlocutory judgments

substitute

interlocutory orders

[1.36] Rule 5312

omit

interlocutory judgment

substitute

interlocutory order

[1.37] Rule 5314 (2) (b)

omit

interlocutory judgment

substitute

interlocutory order

[1.38] Rule 5403 (4)

omit

interlocutory judgment

substitute

interlocutory order

[1.39] Rule 5430 (1)

substitute

- (1) Before the date set for settling the appeal papers, the appellant must—
 - (a) get and file the reasons for the order or the summing up of the judicial officer of the court who gave the order appealed from, certified by the judicial officer's associate; and
 - (b) get and file a copy of the transcript of the proceeding in which the order was made, corrected in accordance with subrules (2) and (3) and, if corrected, certified by the registrar; and
 - (c) prepare and file a 1-paragraph (about 250 words) summary (the *case summary*) of—
 - (i) the proceeding in which the order appealed from was made; and

- (ii) the order appealed from; and
- (iii) the grounds relied on in support of the appeal.

[1.40] Rule 5472 (1), notes 1 and 2

substitute

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

[1.41] Rule 5850 definition of *appellant*, paragraph (b) (ii)

omit

interlocutory judgments

substitute

interlocutory orders

[1.42] Rule 6200 (3) (a)

omit

interlocutory judgment

substitute

interlocutory order

[1.43] Rule 6200 (3), note

omit

non-interlocutory judgments

substitute

non-interlocutory orders

[1.44] Rule 6256 (1)

substitute

- (1) This rule applies to the following orders:
 - (a) an order made by the registrar of the Supreme Court in the exercise of jurisdiction given under rule 6250 (Jurisdiction exercisable by registrar of Supreme Court);
 - (b) an order made by the registrar of the Magistrates Court in a civil proceeding;
 - (c) an order made by the registrar under rule 6253 (Registrar's powers—subpoenas).

Note **Order** is defined in the dictionary (see also def *made*).

[1.45] Schedule 4, rule 4.12

substitute

4.12 Costs—transitional

(SCR o 65 r 7)

- (1) A solicitor is entitled to charge and be allowed the costs set out in this schedule for work done or services performed on or after 1 January 2007.
- (2) Rule 4.12 as in effect immediately before the commencement of this rule continues to apply for work done or services performed by a solicitor before 31 December 2006.

[1.46] Schedule 4, Part 4.2*substitute***Part 4.2 Scale of costs—items**

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
Division 4.2.1 Instructions		
1	to sue or defend, to appeal or oppose an appeal	135.00
2	for statement of claim, petition, special case or counterclaim	135.00
3	for defence	115.50

Schedule 1 Other amendments

Amendment [1.46]

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
4	for— (a) a reply; or (b) amending a pleading; or (c) a notice claiming contribution or indemnity; or (d) a document to be brought into the registrar’s office (for example, an account or deed); or (e) adding parties by order; or (f) a bond or other deed; or (g) retaining counsel, including preparing retainer	48.20
5	for— (a) a pleading not otherwise provided for; or (b) interrogatories for the examination of a party or witness; or (c) an affidavit in answer to interrogatories or other special affidavit; or (d) disclosure or a list of documents; or (e) an application for an order that a matter be heard before the Full Court; or (f) a brief on application in chambers	96.30

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
6	for— (a) an application whether in court, before the registrar or in chambers; or (b) opposition to an application; or (c) the assessment of a bill of costs	96.30
7	for brief to advise on evidence	86.70
8	for— (a) a statement of facts in an action; or (b) a request for particulars; or (c) particulars	96.30
9	for brief in preparation for trial	the amount the registrar considers appropriate
Division 4.2.2 Drawing		
10	for an originating process or counterclaim	100.70 or, if longer than 700 words, 14.20 per 100 words
11	for any other pleading, a notice claiming contribution or indemnity, or an amendment of a pleading	67.40 or, if longer than 400 words, 14.20 per 100 words

Schedule 1 Other amendments

Amendment [1.46]

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
12	for— (a) a notice of an application in a proceeding; or (b) a notice to produce documents; or (c) a notice to admit facts; or (d) a special case; or (e) interrogatories; or (f) a special affidavit; or (g) a brief (including observations)	61.70 or, if the document is longer than 400 words, 14.20 per 100 words
13	a formal affidavit, including an affidavit of service	33.90
14	any other document	26.70 or, if longer than 100 words, 15.80 per 100 words
Division 4.2.3 Engrossing		
15	of a document	4.10 per 100 words

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
Division 4.2.4 Copies		
16	of any document, or of multiple documents copied at the same time— (a) for each of the first 10 copies; or (b) for each additional copy up to 100 copies; or (c) for each additional copy over 100 copies	2.60 per page 1.10 per page 0.30 per page
Division 4.2.5 Perusal		
17	of— (a) an originating process; or (b) a pleading; or (c) an application in a proceeding; or (d) interrogatories; or (e) a special case; or (f) a notice to admit	47.50 or, if the document is longer than 800 words, 5.40 per 100 words
18	of any other document, if it is necessary to peruse	5.40 per 100 words

Schedule 1 Other amendments

Amendment [1.46]

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
19	of a document by scanning it, if it is not necessary to peruse	5.30 or, if the document has more than 10 pages, the additional amount the registrar considers appropriate
Division 4.2.6 Attendances		
20	for personal service, if necessary, of 1 or more documents at the same time	72.00
21	for service of 1 or more documents at the same time— (a) at the office of a solicitor on the record or the address for service of a party; or (b) by post; or (c) made through a document exchange	29.10

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
22	<p>by a solicitor, necessarily or properly engaged, if the solicitor holds an unrestricted practising certificate or has been the holder of a practising certificate for at least 2 years—</p> <p>(a) to instruct counsel; or</p> <p>(b) on assessment of a bill of costs or other matter; or</p> <p>(c) at conference with counsel; or</p> <p>(d) on a view; or</p> <p>(e) on witness or other person; or</p> <p>(f) to produce a document; or</p> <p>(g) to inspect a document, if the registrar is satisfied there were appropriate and sufficient reasons for the inspection; or</p> <p>(h) to prepare appeal papers</p>	192.60 per hour

Schedule 1 Other amendments

Amendment [1.46]

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
23	by a solicitor, necessarily or properly engaged, other than a solicitor mentioned in item 22— (a) to instruct counsel; or (b) on assessment of a bill of costs or other matter; or (c) at conference with counsel; or (d) on a view; or (e) on witness or other person; or (f) to produce a document; or (g) to inspect a document, if the registrar is satisfied there were appropriate and sufficient reasons for the inspection; or (h) to prepare appeal papers	135.00 per hour

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
24	by a clerk, necessarily or properly engaged— (a) to instruct counsel; or (b) on assessment of a bill of costs or other matter; or (c) at conference with counsel; or (d) on a view; or (e) on witness or other person; or (f) to produce a document; or (g) to inspect a document, if the registrar is satisfied there were appropriate and sufficient reasons for the inspection; or (h) to prepare appeal papers	67.30 per hour

Schedule 1 Other amendments

Amendment [1.46]

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
25	<p>other than an attendance already mentioned, in court or any hearing without counsel—</p> <p>(a) by a solicitor holding an unrestricted practising certificate, or a solicitor who has been the holder of a practising certificate for at least 2 years; or</p> <p>(b) by any other solicitor</p>	<p>288.80 per hour</p> <p>202.20 per hour</p>
26	by a solicitor involving a high degree of skill and responsibility	288.80 per hour
27	<p>in court or chambers or before the registrar—</p> <p>(a) to take a reserved judgment; or</p> <p>(b) to mention a matter; or</p> <p>(c) for an adjournment; or</p> <p>(d) for settling the terms of and entering orders; or</p> <p>(e) for another reason</p>	77.00 or 192.60 per hour

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
28	at the registry or other office or place for— (a) filing, delivering, or collecting a document; or (b) a purpose not involving the exercise of legal skill or knowledge	23.90
29	formal telephone attendance	23.90
30	telephone attendance leaving message only	11.90
31	any other attendance by a solicitor (including travelling and waiting time and including a telephone attendance)	38.60 or 48.20 per quarter hour
32	any other attendance by a clerk (including travelling and waiting time and including a telephone attendance)	23.90 or 16.70 per quarter hour

Schedule 1 Other amendments

Amendment [1.46]

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
33	<p>if the registrar is satisfied, in relation to travel, that the purpose of the journey could not have been satisfactorily accomplished by an agent and that—</p> <p>(a) a solicitor has been necessarily absent from the place where the solicitor carries on practice; or</p> <p>(b) a clerk has attended in place of the solicitor</p>	<p>an allowance (in addition to reasonable travelling expenses), for each day (other than Saturdays and Sundays) that the solicitor is absent, of not more than 1 124.60</p> <p>an allowance (in addition to reasonable travelling expenses), for each day (other than Saturdays and Sundays) that the clerk is absent, of not more than 288.80</p>
Division 4.2.7 Letters		
34	ordinary letter	33.40 or 16.30 per 100 words
35	special letter	55.50 or 16.30 per 100 words
36	formal letter—short letter, without legal content	16.20
37	circular letters after the first	7.30
38	fax copy or telex, including attendance to send	37.90

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
39	receiving and filing any incoming letter, other than a letter received by email (postage and transmission fees properly incurred may be claimed as a disbursement)	10.10
40	receiving, printing and filing incoming letter received by email	10.80
41	printing any attachment to an email, or multiple attachments to an email printed at the same time— (a) for each of the first 10 pages; or (b) for each additional page up to 100 copies; or (c) for each additional page over 100 copies	2.60 per page 1.10 per page 0.30 per page

Schedule 1 Other amendments

Amendment [1.46]

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
Division 4.2.8 Witness expenses		
42	a witness called because of the witness's professional, scientific or other special skill or knowledge	944.90 per day
43	a witness called other than because of the witness's professional, scientific or other special skill or knowledge	99.70 per day
44	a witness paid in the witness's occupation by wages, salary or fees	the amount lost by attendance at court
45	a witness qualifying to give skilled evidence	the additional amount the registrar considers reasonable and properly incurred and paid
46	if the witness lives more than 50km from the court	the additional amount the registrar considers reasonable for the actual cost of travel, and for accommodation and meals
47	attendance at court by a witness acting as an expert in assisting counsel or a solicitor for a period during the trial or hearing	the amount the registrar considers appropriate (but not affecting the existing practice of allowing qualifying fees for witnesses)

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
Division 4.2.9 Disbursements		
48	all court fees, counsel's fees and other fees and payments	allowed to the extent that they have been properly and reasonably incurred and paid

[1.47] Schedule 5, part 5.1, item 94, column 3*omit*

interlocutory judgments

substitute

interlocutory orders

[1.48] Dictionary, new definitions*insert****arbitration***, for part 3.13 (Workers compensation)—see rule 3900.***case management meeting***, for part 3.13 (Workers compensation)—see rule 3900.***claim***, for part 3.13 (Workers compensation)—see rule 3900.***conciliation***, for part 3.13 (Workers compensation)—see rule 3900.***conference***, for part 3.12 (Small Claims Court)—see rule 3730.***contractor***, for part 3.13 (Workers compensation)—see the Workers Compensation Act, section 13 (Subcontracting).

[1.49] Dictionary, definitions of *court*, *criminal proceeding*, *defendant*, *enforcement hearing subpoena* and *enforcement hearing warrant*

substitute

court—

- (a) for these rules generally—see rule 5 (1) and (2) (References to *court*, *judicial officer* etc); and
- (b) for part 3.12 (Small Claims Court)—see rule 3730; and
- (c) for part 5.4 (Appeals to Court of Appeal)—see rule 5300.

criminal proceeding means a proceeding against a person for an offence (whether summary or indictable); and

- (a) includes—
 - (i) a committal proceeding; and
 - (ii) a proceeding in relation to bail; and
 - (iii) a proceeding in relation to sentence; but
- (b) does not include—
 - (i) an appellate proceeding; or
 - (ii) for division 4.3.2 (Supreme Court criminal proceedings—representation)—an application in relation to bail.

defendant—

- (a) for these rules generally—see rule 20; and
- (b) for division 2.18.17 (Enforcement—arrest warrant for absconding defendants)—see rule 2551; and
- (c) for part 3.9 (Habeas corpus)—see rule 3500; and

- (d) for part 4.2 (Magistrates Court criminal proceedings)—see rule 4300; and
- (e) for schedule 6 (Rules for proceedings under Corporations Act or ASIC Act)—see schedule 6, rule 1.5.

enforcement hearing subpoena—

- (a) for part 2.18 (Enforcement)—see rule 2000; and
- (b) for division 4.2.4 (Magistrates Court criminal proceedings—enforcement of fines)—see rule 4340.

enforcement hearing warrant—

- (a) for part 2.18 (Enforcement)—see rule 2000; and
- (b) for division 4.2.4 (Magistrates Court criminal proceedings—enforcement of fines)—see rule 4340.

[1.50] Dictionary, new definitions of *fine*, *fine defaulter*, *injury notice* and *Magistrates Court Act*

insert

fine, for division 4.2.4 (Magistrates Court criminal proceedings—enforcement of fines)—see rule 4340.

fine defaulter, for division 4.2.4 (Magistrates Court criminal proceedings—enforcement of fines)—see rule 4340.

injury notice, for part 3.13 (Workers compensation)—see the Workers Compensation Act, section 123 (The notice for an injury).

Magistrates Court Act, for part 3.12 (Small Claims Court)—see rule 3730.

[1.51] Dictionary, definitions of *order* and *originating process*

substitute

order—

- (a) for these rules generally—includes a judgment, decree, direction or decision, whether or not final; and
- (b) for part 3.12 (Small Claims Court)—see rule 3730; and
- (c) for part 4.2 (Magistrates Court criminal proceedings)—see rule 4300; and
- (d) of a court or tribunal, for part 5.3 (Appeals to Supreme Court)—see rule 5050; and
- (e) for division 5.4.4 (Appeals to Court of Appeal—procedure generally), division 5.4.5 (Appeals to Court of Appeal—appeal papers and hearing) and division 5.4.6 (Appeals to Court of Appeal—ending all or part of appeal)—see rule 5400.

originating process—

- (a) for these rules generally—means an originating claim, originating application or application for arbitration; and
- (b) for schedule 6 (Corporations Rules)—see schedule 6, rule 1.5.

[1.52] Dictionary, new definition of *outstanding fine*

insert

outstanding fine, for division 4.2.4 (Magistrates Court criminal proceedings—enforcement of fines)—see rule 4340.

[1.53] Dictionary, definitions of *plaintiff*, *pleading* and *prescribed scale of costs*

substitute

plaintiff—

- (a) for these rules generally—see rule 20; and
- (b) for division 2.18.17 (Enforcement—arrest warrants for absconding defendants)—see rule 2551; and
- (c) for schedule 6 (Corporations Rules)—see schedule 6, rule 1.5.

pleading—

- (a) includes—
 - (i) a statement of claim; and
 - (ii) a defence; and
 - (iii) a reply; and
 - (iv) a counterclaim made in a proceeding started by originating claim or third-party notice; and
 - (v) an answer to a counterclaim; and
 - (vi) a response to an answer to a counterclaim; and
 - (vii) an affidavit ordered to be treated as pleadings; and
 - (viii) an application for arbitration; and
 - (ix) an answer to an application for arbitration; and
 - (x) a third-party notice for an arbitration; but
- (b) does not include—
 - (i) an originating claim; or
 - (ii) an originating application; or

(iii) a third-party notice other than a third-party notice for an arbitration; or

(iv) an application in a proceeding.

Note A pleading must comply with pt 2.6 (Pleadings).

prescribed scale of costs—

(a) for part 2.17 (Costs)—see rule 1700; and

(b) for part 3.13 (Workers compensation)—see rule 3900.

[1.54] Dictionary, new definition of *principal*

insert

principal, for part 3.13 (Workers compensation)—see the Workers Compensation Act, section 13 (Subcontracting).

[1.55] Dictionary, definition of *registrar*

substitute

registrar—

(a) for these rules generally—see rule 5 (4) (References to *court*, *judicial officer* etc); and

(b) of a court or tribunal, for part 5.3 (Appeals to Supreme Court)—see rule 5050.

[1.56] Dictionary, new definitions of *representative*, *restoration order*, *third-party respondent* and *Workers Compensation Act*

representative, for part 3.13 (Workers compensation)—see rule 3900.

restoration order, for part 3.12 (Small Claims Court)—see rule 3730.

third-party respondent, for part 3.13 (Workers compensation)—see rule 3920 (Arbitration—including other parties).

Workers Compensation Act, for part 3.13 (Workers compensation)—see rule 3900.

Endnotes

1 Notification

Notified under the Legislation Act on 18 December 2006.

2 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.
