NEW MAGISTRATES COURT RULES

The changes to the Magistrates Court procedures occasioned by the Magistrates Court (Increased Civil Jurisdiction) Act 2004 and represented in the Magistrates Court Civil Procedure (Amendment No. 11) Rules 2004 are the most significant to happen to the jurisdiction since the 1989 Act. More than just an increased monetary jurisdiction of $100,000.00, there is now a much greater emphasis on case management and the refinement of procedure to reflect the Supreme and County Courts.

JURISDICTION OF THE COURT

The Magistrates Court (Increased Civil Jurisdiction) Act 2004 raises the jurisdiction from $40,000.00 to $100,000.00 by amending the jurisdictional limit as defined in s.3(1) of the Magistrates Court Act 1989 ("the Act"). In addition, s.102(1) of the Act is amended by the substitution of $10,000.00 for $5000.00 as the level below which complaints must be referred to arbitration.

It should be noted that the transitional provisions of the 2004 Act make clear that the increased jurisdiction only applies to proceedings commenced on or after the commencement of the 2004 Act, being 1 January 2005. This means that it is not possible for a civil claim to be increased beyond $40,000.00 if issued prior to 1 January 2005. This would have been an attractive proposition in some cases, particularly if a monetary claim had been previously abandoned above that limit.

As yet, there has been no decision made as to any amendment of the County Court's jurisdiction, as foreshadowed in the 2004 Justice Statement, so for the time being the Magistrates Court and the County Court have concurrent jurisdiction from $40,000.00 to $100,000.00.

CIVIL PROCEDURE

A. CASE MANAGEMENT

One of the first changes is the insertion of case management principles. These now form Rules 1.19 to 1.21 of the principal Rules. The case management rules contain a number of general principles, all tied to what is called the Overriding Objective of the Rules, being to "enable the Court to deal with cases justly."

To enable the Court to achieve the Overriding Objective, the Court must deal with matters economically, avoiding unnecessary expense, etc., all of which correlates with the purposes of the Act set out in s.1. However, there is now also a specific duty on the parties to help the Court achieve the overriding Objective [Rule 1.20]. In Rules 1.21.and 1.22, there is clear authority for the Court to manage cases much as would be done in the higher courts. For example, when exercising any power under the Rules, "the Court may give any direction or impose any term or condition it thinks fit."[1.21(2)].

The Court also has set up a system of active case management, which will include such matters as encouraging alternative dispute resolution, fixing timetables and controlling the progress of a case, dealing with matters without the parties having to attend court, etc. There is also an interesting provision which suggests the implementation of preliminary hearings if required: "deciding promptly which issues need full investigation and a hearing and accordingly disposing summarily of the others" [1.22(2)(c)].

All of these things are laudable in principle, but what do they mean in practice? Depending upon the particular Magistrate, it has not been uncommon for the Court to encourage the progression of a case by setting timetables for interlocutory steps when one or both parties have been dilatory, or not allowing adjournments without conditions in order to speed resolution. It may be that directions hearings will be encouraged, or it may be that this just gives formal authority to what is already happening. Either way, it is a definite step away from the previous philosophy whereby matters simply progressed to hearing with interlocutory steps limited by times fixed in the Rules, such fixed times altered only when one party made application due to its own or the other party's non-compliance.

B. PROCESS IN THE COURT

One of the substantive rule changes is in Order 4. Rule 4.02 is renumbered, but otherwise unchanged.

However, a new 4.02.1 replaces 4.02(d) of the former Rules. Rather than contain only a "concise statement of the nature of the claim", now a complaint must contain a statement of claim [4.02.1(2)] which contains a summary of the material facts and other matters as per the SCR and CCR, including "the necessary particulars of every fact or matter"[4.02.1(2)(b)]. This is a movement away from the "narrative paragraphs", which are common particularly for unrepresented Plaintiffs, towards the more formalised pleadings familiar to lawyers, and is reinforced by the requirement of numbered paragraphs containing separate allegations [4.02.1.(4)].

The motor vehicle complaint rules are unchanged in their requirements to attach itemised quotations or assessments of damage [now 4.02.2], but the requirement of a sketch of the collision location has been deleted. This amendment is reflected in the new form 4A complaint, which no longer requires a sketch and also no longer has a separate section A and B for motor vehicle or non-motor vehicle cases.

Former Rule 4.02.01, which relates to the filing of a complaint by electronic message, have been renumbered as 4.02.4 - 4.02.6.

C. COUNTERCLAIM

Rule 7.02 (1) and (2) are amended to require the new counterclaim in forms 7A and 7AB. Unlike in the Supreme or County Courts, the counterclaim remains a separate document.

D. DEFENCE

The significant changes in Order 9 are primarily contained in Rule 9.02. A Notice of Defence must state a defence in accordance with 9.02 [9.01(4)(b)]

Rule 9.02 replaces the former 9.01(5), which placed few requirements on a defendant. The new provision requires that the defendant must state which matters are admitted, denied or not admitted [9.02(1)]. Any fact which is not admitted, denied or not admitted [9.02(2)]. Where any fact alleged in the statement of claim is denied, a defendant must state the reason for the denial and must state with necessary particulars any fact which the defendant intends to prove different from the facts alleged in the statement of claim.

In the case of a matter not admitted, a defendant cannot adduce evidence against such allegation of fact except in cross-examination [9.02.4].

In addition, there is a requirement that a defendant identify any legislative provision upon which the defendant relies [9.02(6)], and must separate and number the paragraphs of the defence [9.02(7)] as the plaintiff must the statement of claim.

All of these changes will standardise the Notices of Defence to a format similar to the Supreme and County Courts, and should end the argument as to whether the complaint or defence are pleadings. If there was any doubt as to its applicability, the requirements are also set out on the new form 9A.

E. REPLY

The new rules now make provision for a reply by a plaintiff [9.02.1]

F. SUMMARY JUDGEMENT

Order 9A is a new provision, giving the court the power to dismiss a claim where there is not disclosed a cause of action.

Where the claim is scandalous, frivolous or vexatious, or is an abuse of process [9A.01], a defendant may apply for a stay of the proceeding or make an order for the defendant [9A01(1)]. Similarly, when a defence does not disclose an answer or is scandalous, frivolous or vexatious, a plaintiff may apply for an order [9A.01(2)]. Further, pleadings may be struck out if inadequate, an abuse of process, or may “prejudice, embarrass or delay the fair hearing of the proceeding”[9A.02(1)], a Rule which appears designed to reflect the case management principles described above.

This is a radical change, as it will no longer be the case that the court, as a court of summary jurisdiction, considers that it will hear matters in full without a power to dismiss unmeritorious cases prior to final hearing. Unlike Rule 10.07, which has not been repealed or substituted, Order 9A insofar as it applies to a plaintiff does not only apply to a debt or liquidated demand, and will punish parties who either do not have a claim or defence or who do not plead such claim or defence properly.

G. ARBITRATION

A number of changes are made to the rules applicable to arbitrations. Apart from the jurisdictional changes noted above, there is a specific rule stating the requirements of a complaint [21.02] and defence [21.03] in an arbitration. On its face it is less stringent than the requirement of Order 4, but interestingly Order 4 is not limited to non-arbitration matters. It remains to be seen whether the Court will interpret this rule to mean that an arbitration complaint or defence does not have these pleading requirements.

Importantly, a party may not serve a request for further and better particulars, a reply, a notice to admit, a notice for discovery, interrogatories, an expert witness statement, or apply for summary judgement under Order10.07 [21.04].

While interrogatories and discovery have always been restricted by the former Rule 21.02, the new provision will radically change the way arbitrations are conducted. In particular, where a plaintiff's claim is expressed to be "work and labour done, particulars of which have been previously provided" (which is common in many debt collecting matters) the only recourse of a defendant is to issue summary judgement proceedings under Order 9A. Similarly, if matters cannot be admitted by way of a notice to admit, it will mean that a party may be required to prove everything denied or not admitted by the other party, thereby increasing costs which will not be recoverable due to the costs cap.

Finally, there is a new Rule [21.05] which requires a list of documents to be served by each party 14 days before a pre-hearing conference, but only in proceedings claiming $5000.00 to $10,000.00. It is not discovery and, interestingly, not only is the list of documents unsworn but also only describes documents "in the possession of the party", not possession custody or power [cf.11.01]. One may wonder whether these limitations will encourage some unscrupulous parties not to possess many documents prior to trial.

H. MEDIATION

Order 22A is inserted to create a mediation process for the Court in addition to the current pre-hearing procedure in Order 22.

The Court has always had the power under s.108 of the Act to refer proceedings to mediation with the consent of the parties, but now formal procedures have been established in the Rules, in particular a consequence for non-compliance [22A.04]. Time limits for compliance with other Rules are altered to be calculated from the date of filing of the mediation report [22A.09], which suggests that mediation may occur before interlocutory procedures need to be completed, rather than afterwards as occurs in the Supreme and County courts.

If contemplating mediation, reference should also be made to the protocol released by the Court in 2004. Mediation is still optional for parties in the Magistrates Court, and it can be a frustrated by a party who does not want to consent.

A party contemplating mediation will also be aware that a mediation must conducted by a legally qualified mediator, often over a period of some hours, while a pre-hearing conference is conducted by Registrars who are usually not legally trained and who must conduct the conference within a limited time.

I. ASSESSMENT OF COSTS

Order 26A creates a new procedure for assessment of costs, which will apply when costs are not fixed on the day the proceeding is heard [26.0(2)].

It does not apply to arbitrations [26A.01(3)], due to the fixed 'costs cap' under the Magistrates Court (Arbitration) Regulations 2000. In general, Order 26A follows the SCR 63 and CCR 63A, particularly in language used, eg. the bases of taxation [26A.03-07] mirror SCR 63.28-31 and CCR 63A.28-31.

Assessments are carried out by Registrars [26A.08], subject to reference to a Magistrate by a Registrar for directions [26A.25] and review by a Magistrate 26A.30] if a party is unhappy with the assessment. In the short term, expected to be the first few months of 2005, the assessments will be conducted by the Registrars of the County Court.

No time limit is set for the application, which is made in accordance with Order 20 [26A.10], but it must be served no later than 21 days prior to the date set for the assessment [26A.10(2)] accompanied by a bill of costs [26A.11(1)] in a format set out in Rule 26A.14 This format is identical to the bill in taxable form in SCR 63.42 and CCR 63.42.

A party may object to an item in the bill to be assessed by filing a list of objections 7 days prior to the hearing of the assessment [26A.19(3)].

An interesting feature of the assessment process will be the 'taxation' of discretionary costs [26A.20]. While this is a normal procedure in other courts [cf. SCR 63.48 and CCR 63A.48], it is a new matter for the Magistrates Court,

which has had a clear fixed scale of costs. The discretionary costs are those set out in the new court scale in Appendix A of the rules, eg. circuit fees – item 79.

J. FORMS

New forms have been substituted for the complaint [Form 4A], counterclaim [Forms 7A and 7AB], defence [Form 9A]. A new form 22AA is inserted for the mediation report.

K. COSTS

In addition to the mode of assessment of costs pursuant to Order 22A, Appendix A has also been amended.
Apart from the obvious change of renumbering all of the items and some small changes of content (eg. general preparation), the following items are introduced:

4.	Consent of litigation guardian;
10, 11	View
18	Brief to advise
36 – 41	mediation
43	Workcover attendance without counsel
50	Counsel conferring, preparing, viewing or consulting per hour
51	Counsel advising or giving opinion
55, 56	Counsel attending mediation
83	Circuit fees

A new table of circuit fees is included at Table 2 of the Appendix, such circuit fees only applying in proceedings over $40,000.00.

An issue may arise when fixing costs at hearing, which is likely to continue in most proceedings. If counsel claims an hourly fee for conferring or preparing, how is this to be valued? For example, if counsel says that conferring with two witnesses took three hours, will counsel be entitled to 3 hours or will some be considered solicitor-client? Will it depend upon the experience of counsel? If the other party does not accept the reasonableness of the claim, will it be assessed by the Magistrate at the hearing or would it have to be taxed?

L. TRANSITIONAL PROVISIONS

The amendment to Orders 4 (Complaints), 7 (Counterclaims) and 9 (Defences) take effect on 1 March 2004, as do the changes to Forms 4A, 7A, 7AB and 9A.

All other amendments to the Rules take effect on 1 January 2005.

P.J.Pickering
24 January 2004