



Local Court Rule 2000

under the

Justices Act 1902

The Local Court Rule Committee made the following rule of court under the *Justices Act 1902* on 4 December 2000, which was approved by the Attorney General in accordance with section 154A (2) of that Act.

Stephen Olischlager

Acting Secretary to the Rule Committee

Explanatory note

The objects of this Rule are:

- (a) to make provision with respect to the practice and procedure to be followed in Local Courts exercising jurisdiction under the *Justices Act 1902* or any other law (other than the *Local Courts (Civil Claims) Act 1970*) in relation to court dress, subpoenas and applications under the *Road Transport (General) Act 1999* to quash a declaration that a person is a habitual traffic offender, and
- (b) to repeal the *Justices (General) Rule 1993*, the *Traffic (Habitual Traffic Offender) Rule 1999* and the *Justices (Attendance of Witnesses and Production of Evidence) Rule 1999* and consolidate their provisions in this Rule, and
- (c) to make the following provision with respect to proceedings for access orders under the *Access to Neighbouring Land Act 2000*:
 - (i) to provide for the form of application for orders, applications to vary or revoke orders and applications for compensation,
 - (ii) to require evidence of consent for the making of applications by persons applying on behalf of owners of land for access orders,
 - (iii) to provide for evidence in proceedings,

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- (iv) to apply procedures applicable to complaints under the *Justices Act 1902* to proceedings for access orders.

This Rule is made under the *Justices Act 1902*, including section 154A (the general rule-making power).

Section 154A provides that the Local Court Rule Committee established under the *Local Courts Act 1982* may make rules, not inconsistent with the *Justices Act 1902* or any other Act, for or with respect to:

- (a) any matter that is required or permitted to be prescribed by rules, or that is necessary or convenient to be prescribed by rules, in relation to the practice or procedure to be followed to give effect to the *Justices Act 1902* or any other Act or law conferring jurisdiction or functions on a Local Court, and
- (b) any matter incidental to, or relating to, any such practice or procedure.

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Part 1 Preliminary

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Part 1 Preliminary

1 Name of Rule

This Rule is the *Local Court Rule 2000*.

2 Commencement

This Rule commences on the date on which this Rule is published in the Gazette.

3 Definitions

(1) In this Rule:

approved form, in relation to a document, means the form approved for that document by the Chief Magistrate under clause 5 from time to time.

Clerk of a Local Court means the Clerk of that Court appointed under the *Local Courts Act 1982*.

Court means a Local Court established under the *Local Courts Act 1982*.

person named, in relation to a subpoena, means the person to whom the subpoena is addressed.

subpoena has the same meaning as it has in section 100AH of the Act.

the Act means the *Justices Act 1902*.

(2) The explanatory note, table of contents and notes in the text of this Rule do not form part of this Rule.

4 Repeal of Rules made under the Act

The following Rules are repealed:

- (a) the *Justices (Attendance of Witnesses and Production of Evidence) Rule 1999*,
- (b) the *Justices (General) Rule 1993*,

(c) the *Traffic (Habitual Traffic Offender) Rule 1999*.

Note. The *Justices (General) Rule 1993* was made by the Governor under section 15 of the Act, which was repealed by the *Courts Legislation Amendment Act 1998*. Section 154A (3) of the Act provides that the general rules in force under section 15 of the Act immediately before the commencement of section 154A are taken to be rules made by the Local Court Rule Committee.

5 Forms

The Chief Magistrate may from time to time cause to be published in the Gazette approved forms for the purposes of this Rule.

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Part 2 Court dress

Part 2 Court dress

6 Court dress

In proceedings under the Act in a Court, no legal practitioner may robe.

Note. Section 19A of the *Local Courts Act 1982* provides that no Magistrate may robe at any sitting of a Local Court.

Part 3 Subpoenas

7 Conduct money

For the purposes of section 100AJ (4) of the Act, the amount prescribed for the expenses of complying with a subpoena in relation to a day is an amount equivalent to the amount that would be payable for that day in respect of the person named if the party issuing the subpoena were entitled to claim witness' expenses in respect of that person as costs in the proceedings.

Note. The costs that are recoverable for witness' expenses are prescribed by Schedule 3 to the *Legal Profession Regulation 1994* and, in relation to certain Crown witnesses, the Scale of Allowances Paid to Witness approved by the Attorney General from time to time.

8 Subpoena may be set aside

- (1) For the purposes of section 100AL of the Act, a notice of application to set aside a subpoena (either wholly or in part) is to be in or to the effect of the approved form.
- (2) A copy of the notice of application must be served by the applicant on the party on whose request the subpoena issued either personally or by forwarding a copy by post to the address of the party as shown on the subpoena.
- (3) A copy of the notice of application must also be filed by the applicant with the Court before which the subpoena is returnable.
- (4) Unless leave is granted by the Court, the time for filing and serving the notice of application by the applicant in accordance with this clause is not less than 3 days before the date that the subpoena is returnable.
- (5) An applicant seeking to set aside a subpoena must appear before the Court on the date that the subpoena is returnable to allow the Court to deal with the application.

9 Inspection of subpoenaed documents or things

For the purposes of section 100AM (3) of the Act, notification of an objection to the inspection of subpoenaed documents or things may be raised orally before the Court on the return date of the subpoena.

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Part 3 Subpoenas

10 Service of subpoena

- (1) Service of a subpoena may be effected by handing it to the person named.
- (2) If, on tender of a subpoena to the person named, the person refuses to accept it, the subpoena may be served by putting it down in the person's presence after the person has been told of the nature of the subpoena.
- (3) If the person named in a subpoena is a party and has a solicitor or barrister (or both) in the proceedings, the subpoena may, with the consent of the relevant legal practitioner, be served on the person named by leaving it at the relevant legal practitioner's address for service.
- (4) If the person named in a subpoena is a practising medical practitioner:
 - (a) service of a subpoena may be effected at a place where the practice is carried on, by handing it to some person apparently engaged (whether as an employee or otherwise) in the practice and apparently of or above the age of 16 years, and
 - (b) if, on the tender of the subpoena to the person referred to in paragraph (a), that person refuses to accept it, the subpoena may be served by putting it down in the person's presence after the person has been told of the nature of the subpoena.
- (5) Service of a subpoena on a corporation may be effected by serving the subpoena in accordance with subclause (1) or (2), as the case may require, on a principal officer of the corporation or, if provision is made by or under any Act for service of a document on the corporation, by serving the subpoena in accordance with that provision.
- (6) In this clause:

relevant legal practitioner, in relation to a person named in a subpoena, means:

 - (a) if the person named is represented only by a solicitor—the solicitor, or
 - (b) if the person is represented only by a barrister under a direct access arrangement—the barrister, or
 - (c) if the person named is represented by both a solicitor and a barrister—the solicitor.

principal officer of a corporation means the chairperson, president, chief executive officer, general manager, clerk, secretary, treasurer or other similar officer of the corporation.

11 Substituted service of subpoenas

- (1) On the application of a party, a Court or the Clerk of the Court may, by order in or to the effect of the approved form, direct that service of a subpoena be effected otherwise than in any manner specified in clause 10.
- (2) An application for an order for substituted service may be made:
 - (a) orally, or
 - (b) in or to the effect of the approved form.
- (3) An application for an order for substituted service may be dealt with by the Court or Clerk of the Court in chambers, unless the Court or Clerk otherwise directs.
- (4) If substituted service is ordered, a copy of the order is to be served with the subpoena.

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Part 4 Proceedings under various Acts

Division 1 Proceedings under section 31 of Road Transport (General) Act 1999

Part 4 Proceedings under various Acts

Division 1 Proceedings under section 31 of Road Transport (General) Act 1999

12 Habitual traffic offenders—mandatory disqualification after 3 convictions within 5 years

- (1) A person who seeks to have a Court quash a declaration that the person is a habitual traffic offender under section 31 of the *Road Transport (General) Act 1999* may apply for the declaration to be quashed either orally or by lodging an application in or to the effect of the approved form.
- (2) However, a person who makes any such application after the time at which the Court convicted the person of a relevant offence must lodge an application in or to the effect of the approved form.
- (3) In this clause:
relevant offence has the same meaning as it has in section 27 of the *Road Transport (General) Act 1999*.

Division 2 Access orders under Access to Neighbouring Land Act 2000

13 Definitions

In this Division:

access order has the same meaning as it has in the *Access to Neighbouring Land Act 2000*.

the Access Act means the *Access to Neighbouring Land Act 2000*.

14 Form of applications

The following are to be in or to the effect of the approved form:

- (a) an application for an access order,
- (b) an application to a Court to vary or revoke an access order,
- (c) an application to a Court for an order for compensation under section 26 of the Access Act.

15 Authority to act

- (1) An application for an access order made by a person referred to in section 7 (2) of the Access Act is to be accompanied by a written consent of the person on whose behalf the proposed work is to be carried out.
- (2) Subclause (1) does not apply if a written application for waiver of consent, as referred to in section 7 (3) of the Access Act, is lodged with the application for the access order.

16 Evidence

Part 23 of the *Local Courts (Civil Claims) Rules 1988* applies to proceedings relating to an application for an access order in the same way that it applies to actions referred to in that Part.

17 Application of procedures under Justices Act 1902

The provisions of Part 4 of the Act with respect to complaints for orders apply in connection with the practice and procedure of a Court with respect to access orders, with such modifications as may be necessary or appropriate.