

1992—No. 448

**MINING ACT 1992—RULES**

(Wardens' Courts Rules 1992)

NEW SOUTH WALES



*[Published in Gazette No. 101 of 20 August 1992]*

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Mining Act 1992, has been pleased to make the Rules set forth hereunder.

G. B. Peacocke,  
Acting Minister for Natural Resources.

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**Citation**

1. These rules may be cited as the Wardens' Courts Rules 1992.

**Commencement**

2. These rules commence on 21st August, 1992.

**Definitions**

3. (1) In these rules:

“**practice direction**” means a practice direction in force under section 333 of the Act;

“**the Act**” means the Mining Act 1992.

- (2) In these rules, a reference to a form is a reference to a form set out in Schedule 1.

**Practice and procedure generally**

4. (1) The practice in a warden's court is to be the practice prescribed by the Act, by these rules and by the practice directions.

(2) A warden's court may on terms dispense with compliance with any of the requirements of these rules, or of the practice directions, either before or after the occasion for the compliance arises.

(3) The practice prescribed by these rules and by the practice directions applies to all proceedings commenced or maintained in a warden's court, except in so far as that practice is inconsistent with any provision of or under any Act.

#### **Orders as to procedure where provision does not otherwise exist**

5. (1) A warden's court may, on application or of its own motion, make orders as to the manner or form of procedure in any case in which:

- (a) the manner or form of procedure for commencing proceedings, or for taking any step in proceedings, is not prescribed by the Act, by these rules, by the practice directions or by or under any other Act; or
- (b) there is any doubt as to the manner or form of procedure for commencing proceedings or for taking any step in proceedings.

(2) Proceedings commenced in accordance with the orders of a warden's court are duly commenced and steps taken in accordance with the orders of a warden's court are duly taken.

#### **Orders as to procedure for preliminary matters**

6. (1) A warden's court may make such orders as to the following matters as appear to the court appropriate to facilitate the hearing of a proceeding or the identification and reduction of issues in a proceeding:

- (a) points and particulars of a claim;
- (b) points and particulars of a defence or cross-claim;
- (c) admissions;
- (d) discovery;
- (e) interrogatories;
- (f) any other matter of procedure.

(2) A warden's court may also impose time limits and sanctions in respect of any such orders.

#### **Forms**

7. (1) It is sufficient compliance with my requirement as to the form of any document if the document is substantially in accordance with the requirement or has only such variations as the nature of the case requires.

(2) Any document for use in proceedings before a warden's court must be in the relevant form set out in Schedule 1 or, if there is no such form, in such form as the chief warden may from time to time approve.

(3) In particular:

- (a) the heading and conclusion to orders and other documents used in proceedings before a warden's court are to be in the form set out in Form 1; and
- (b) the heading and conclusion to affidavits used in proceedings before a warden's court are to be in the form set out in Form 2; and
- (c) a summons on a complaint is to be in the form set out in Form 3; and
- (d) a warrant of commitment for contempt is to be in the form set out in Form 4; and
- (e) a subpoena to give evidence is to be in the form set out in Form 5; and
- (f) a subpoena for production is to be in the form set out in Form 6.

### **Fees**

8. (1) The fee to be paid to the registrar of a warden's court for the issue of a summons is \$130.

(2) The fee to be lodged with the registrar of a warden's court with an application to a warden to state a case is \$110.

### **Complaints**

9. (1) A summons on a complaint must contain particulars of:

- (a) the basis of the complaint; and
- (b) the relief or remedy sought (including the amount of any money sought to be recovered); and
- (c) any ancillary matter.

(2) The particulars must be sufficient to enable the defendant to identify precisely the case the defendant is required to meet.

(3) A summons on a complaint must be served on the defendant at least 14 days before the day stated in the summons for the appearance of the defendant or by such other day as a warden's court may direct.

### **Injunctions**

10. (1) An application for an injunction:

- (a) must be in writing; and

- (b) must contain particulars of the injunction sought and the grounds on which it is sought; and
  - (c) must be supported by the affidavit of at least one person who has knowledge of the circumstances giving rise to the application.
- (2) An application for an injunction, and every affidavit supporting the application:
- (a) must be served on each person who will, if it is granted, be, restrained by the injunction; and
  - (b) must be so served at least 14 days before the day stated in the application for the appearance of the person or by such other day as a warden's court may direct.

**Other applications etc.**

- 11.** Any application other than an application for an injunction, and every affidavit supporting the application:
- (a) must be served on each person who may be affected by the decision on the application; and
  - (b) must be so served at least 14 days before the day stated in the application for the appearance of the person or by such other day as a warden's court may direct.

**Summons or subpoena to attend as witness etc.**

**12. (1)** A summons or subpoena requiring a person to attend as a witness must be served on the person at least 5 days before the day stated in the summons or subpoena for the appearance of the person at the proceedings or inquiry concerned.

**(2)** The costs of attendance to be tendered to a person in connection with a summons or subpoena requiring the person to attend as a witness must be sufficient to cover the person's reasonable costs of travel, accommodation and meals (as appropriate) for each day the person is required to attend.

**Manner of service of documents**

- 13. (1)** Subject to the Act, any document concerning a proceeding or matter may be served on a person:
- (a) personally; or
  - (b) by sending it to the person by post addressed to:
    - the person's place of residence or place of business; or
    - the place of business of the person's solicitor or agent in the proceeding or matter; or

- (c) by leaving the document with any person apparently of or above the age of 16 years at:
- the person's place of residence or place of business; or
  - the place of business of the person's solicitor or agent in the proceeding or matter; or
- (d) by delivering the document to the facilities of a document exchange of which the person, or the person's solicitor or agent in the proceeding or matter, is a member.

(2) In the case of service by delivery to the facilities of a document exchange, the document is, unless the contrary is proved, taken to have been served on the second business day following the day of delivery of the document to those facilities.

#### **Orders for delivery or deposit of minerals etc.**

14. A warden's court that makes an order in any proceedings for the delivery or deposit of any mineral or other property may make further orders as to:

- (a) the safe-keeping of the mineral or other property; and
- (b) the payment by any party to the proceedings of the cost of any such delivery, deposit or safe-keeping.

#### **Costs**

15. Costs recoverable in proceedings before a warden's court are, unless the court otherwise orders, to be determined by reference to the scales of costs applicable in the District Court.

#### **Wardens' courts registers**

16. The register to be kept by the registrar of a warden's court is to be kept in writing or by means of computer equipment and is to contain the following particulars in respect of each proceeding or matter commenced in the court:

- (a) the name and address of each party to the proceeding or matter;
  - (b) the name and description of any legal practitioner or agent acting for any party to the proceeding or matter;
  - (c) a short description of the nature of the proceeding or matter;
  - (d) the amount of money or order sought in the proceeding or matter;
  - (e) a brief note of the decision or order, if any, made on the proceeding or matter.
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**SCHEDULE 1—FORMS**

(Cl. 7)

**Form 1**

**HEADING AND CONCLUSION TO ORDERS AND OTHER DOCUMENTS**

In the WARDEN'S COURT

at .....

No. of 19 .....

Between A.B., Complainant

and

C.D., Defendant

[BODY OF ORDER OR DOCUMENT]

Dated this ..... day of ..... 19 .....

Registrar.

**Form 2**

**HEADING AND CONCLUSION TO AFFIDAVITS**

In the WARDEN'S COURT

at .....

No. of 19 .....

Between A.B., Complainant

and

C.D., Defendant

[BODY OF AFFIDAVIT]

Sworn/declared ..... in the State of New South Wales this ..... day  
of.. ..... 19 ..... before me.

**Form 3**  
**COMPLAINT AND SUMMONS**

In the WARDEN'S COURT

at .....

No. of 19 .....

Between AB., Complainant  
and  
C.D., Defendant

To: The Defendant.

The complainant claims: .....  
.....  
.....

*(set out the relief or remedy claimed)*

The grounds of the complainant's claim are: .....  
.....  
.....

*(set out grounds of claim)*

You are summoned to appear at the warden's court at .....  
at ..... am/prn on the ..... day of ..... 19 .....  
to answer the complaint.

If you do not comply with this summons, the court may make any or all of the orders  
sought in the complaint, and any order so made will be binding against you.

Dated this .....day of ..... 19.....

Registrar.

**Form 4**  
**WARRANT OF COMMITMENT FOR CONTEMPT**  
(Mining Act 1992, section 330)

TO: All police constables and all governors of prisons in the State of New South Wales,

WHEREAS: .....  
.....  
.....

*(set out the contempt)*

AND WHEREAS A.B. was for the contempt adjudged by me (to pay a fine of \$ ..... and in default of immediate payment) to be imprisoned for ..... days (unless the fine is sooner paid).

THIS WARRANT ORDERS that A.B. be arrested and delivered to the governor of the prison most convenient to the place of arrest, AND FURTHER ORDERS that AB. be kept at that prison for the period of ..... days from the arrest (unless the fine is sooner paid).

Given under my hand this ..... day of ..... 19 .....

Warden.



**Form 5**  
**SUBPOENA TO GIVE EVIDENCE**

In the WARDEN'S COURT

at .....

No. of 19 .....

Between A,B., Complainant  
and  
C.D., Defendant

TO: .....  
(Name)

OF: .....  
(Address)

You are required to attend for the purpose of giving evidence before the warden's court at ..... on the ..... day of ..... 19 ..... at .... am/pm and until you are excused from further attending. Failure to comply with the requirements of this subpoena may constitute an offence.

However, you need not comply with this subpoena if it is served on you less than 5 days before the date referred to above and you need not attend on any day unless reasonable expenses have been paid or tendered to you.

Dated this ..... day of ..... 19 .....

Registrar.

Issued at the request of the complainant/complainment's solicitor:

.....  
.....  
(name, address anal telephone)

**Form 6**  
**SUBPOENA FOR PRODUCTION**

In the WARDEN'S COURT

at .....

No. of 19 .....

Between A.B., Complainant

and

C.D., Defendant

TO: .....  
(Name)

OF: .....  
(Address)

You are required to attend for the purpose of producing such of the documents or things described in the Schedule as are in your possession or control before the warden's court at ..... on the ..... day of ..... 19 ..... at .... am/pm and until you are excused from further attending Failure to comply with the requirements of this subpoena may constitute an offence.

However, you need not comply with this subpoena if it is served on you less than 5 days before the date referred to above and you need not attend on any day unless reasonable expenses have been paid or tendered to you.

If you are not a party to the proceedings you may, instead of attending, produce this subpoena, and such of the documents or things described in the Schedule as are in your possession or control to the registrar of the warden's court at the above place not later than the day before the day referred to above.

If, as an officer of a bank you are required by this subpoena to produce a banker's book and Part 4 of the Evidence Act 1898 applies, you need not produce it if you produce proof of the relevant entries in it in accordance with that Part.

**SCHEDULE**

.....  
.....  
.....  
.....

*(description of documents or things to be produced)*

Dated this ..... day of ..... 19 .....

Registrar.

Issued at the request of the complainant/complainant's solicitor:

.....  
.....

*(name, address and telephone)*

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SCHEDULE 1—FORMS

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**EXPLANATORY NOTE**

The object of these rules is to make provision for the practice and procedure to be followed in wardens' courts in their exercise of jurisdiction under the Mining Act 1992. These rules are supplementary to the provisions of the Act with respect to these matters. Other provisions with respect to these matters may be included in practice directions given by the chief warden under section 333 of the Act.

These rules include provisions with respect to:

- (a) practice and procedure generally; and
- (b) the forms to be used for the purposes of proceedings before a warden's court; and
- (c) the fees that may be imposed with respect to proceedings before a warden's court; and
- (d) the costs that may be awarded with respect to proceedings before a warden's court.

These rules also empower individual wardens to give procedural orders with respect to certain preliminary matters and in circumstances where no other provision exists as to the practice or procedure to be followed.

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