

Queensland



Subordinate Legislation 1994 No. 26

*Supreme Court Act 1921*

**SUPREME COURT RULES AMENDMENT  
ORDER (No. 1) 1994**

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**Short title**

1. This order in council may be cited as the *Supreme Court Rules Amendment Order (No. 1) 1994*.

**Commencement**

2. This order in council commences on 1 May 1994.

**Amended rules**

3. The *Rules of the Supreme Court* are amended as set out in this order.

**Replacement of Order 35 (Discovery and Inspection)**

4. Order 35—  
*omit, insert—*

**‘ORDER 35****‘1. DISCLOSURE AND INSPECTION****‘Interpretation**

‘1.(1) In this Order—

“**document**” has the meaning given by section 5(1) of the *Evidence Act 1977*;

“**trial**” includes the hearing of an action and a proceeding other than an action, but does not include an interlocutory proceeding.

‘(2) A reference in an Act, rule or practice direction to discovery of a document includes a reference to disclosure under this Order.

**‘Application**

‘2.(1) This Order applies to all parties, including—  
(a) infant parties; and

(b) next friends and guardians *ad litem* of infants.

‘(2) This Order does not affect—

- (a) the right of a party to inspect a document if the party has a common interest in the document with the party who has possession or control of the document; or
- (b) any other right of access to the document apart from under this Order.

### ‘Nature of disclosure

‘3. Disclosure is the delivery or production of documents in accordance with this Order.

### ‘Duty to disclose documents

‘4.(1) A party to an action has a duty to disclose to each other party each document that—

- (a) is in the possession or under the control of the first party; and
- (b) is directly relevant to an allegation in issue in the cause.

‘(2) The duty of disclosure continues until the cause is determined.

‘(3) An allegation remains in issue until it is—

- (a) admitted or taken to be admitted; or
- (b) withdrawn, struck out or otherwise disposed of.

### ‘Documents to which disclosure does not apply

‘5.(1) The duty of disclosure does not apply to—

- (a) a document in relation to which there is a valid claim to privilege from disclosure; or
- (b) a document that relates only to the credit of an individual who may testify at the trial; or
- (c) a document consisting of—
  - (i) a brief or instructions to counsel; or

- (ii) advice from counsel; or
- (d) an additional copy of a document already disclosed if it is reasonable to suppose the additional copy contains no modification, obliteration or other marking or feature likely to affect the outcome of the action.

‘(2) A document consisting of a statement or report of an expert is not privileged from disclosure.

### **‘Privilege claim**

‘6.(1) A claim to privilege from disclosure is to be made by affidavit.

‘(2) The affidavit is to be made by an individual knowing the facts giving rise to the claim.

‘(3) The affidavit is to be filed and served not later than the relevant time mentioned in rule 7(2).

### **‘Disclosure by delivery of copies of documents**

‘7.(1) Subject to rules 9 and 14, a party to an action performs the duty of disclosure by delivering to the other parties in accordance with this Order copies of the documents to which the duty relates.

‘(2) The times for the delivery are as follows—

- (a) if an order for disclosure is made before a defence is delivered—the time specified in the order;
- (b) when a defence is delivered;
- (c) when any further pleading or amended pleading is delivered;
- (d) if the first occasion on which a document comes into the possession or under the control of the party, or is located by the party, happens after a time mentioned in paragraph (a) to (c)—within 7 days after the occasion;
- (e) if the party is requested in writing by another party to deliver a copy of a document—within 28 days after the request.

**‘Requirement to produce documents**

‘8. Despite rule 7, a party may require another party to produce for inspection of the first party specified original documents of which copies are, or are to be, disclosed.

**‘Disclosure by inspection of documents**

‘9.(1) This rule applies if—

- (a) it is not convenient for a party to deliver documents under rule 7 because of the number, size, quantity or volume of the documents or some of the documents; or
- (b) a requirement for production of documents is made of a party under rule 8.

‘(2) If this rule applies, the party must effect disclosure by—

- (a) producing the documents for inspection at the time specified in rule 7(2); and
- (b) notifying the other party in writing of a convenient place and time at which the documents may be inspected.

**‘Procedure for disclosure**

‘10.(1) If disclosure is effected by the production of documents, the documents must be—

- (a) contained together, and arranged, in a way that makes the documents readily accessible to, and capable of convenient inspection by, the party to whom the documents are produced; and
- (b) identified in a way that enables particular documents to be retrieved readily on later occasions.

‘(2) If disclosure is effected by the production of documents, the party producing the documents for inspection must—

- (a) provide facilities (including mechanical and computerised facilities) for the inspection and copying of the documents; and
- (b) make available a person who is able to—

- (i) explain the way the documents are arranged; and
- (ii) assist in locating and identifying particular documents or classes of documents.

**‘(3)** If disclosure is effected by the production of documents, the mode of arrangement of the documents when in use—

- (a) must not be disturbed more than is necessary to achieve substantial compliance with subrule (1)(a); and
- (b) if the party to whom the documents are produced for inspection so requires—must not be disturbed at all.

**‘(4)** If disclosure is effected by the delivery of copies of documents, the party delivering the copies must provide a list with the copies—

- (a) describing the nature of each document; and
- (b) identifying the person by whom the document is made.

**‘(5)** The person made available under subrule (2) by a party producing documents for inspection must, if required by the person inspecting the documents—

- (a) explain to the person the way the documents are arranged; and
- (b) assist the person to locate and identify particular documents or classes of documents.

**‘(6)** For the purposes of subrule (1)—

- (a) the containment of the documents may be effected by files, folders or another way; and
- (b) the arrangement of the documents may be effected—
  - (i) according to topic, class, category or allegation in issue; or
  - (ii) by an order or sequence; or
  - (iii) in another way; and
- (c) the identification of the documents may be effected by a number, description or another way.

**‘Costs**

**‘11.** Subject to rule 12, a party who does not make use of the opportunity to inspect documents in accordance with a notice under rule 9 is not entitled, without an order of the Court or a Judge, to inspect the documents except on tendering an amount for the reasonable costs of providing another opportunity for inspection.

**‘Deferral of disclosure**

**‘12.(1)** A party may give a written notice to another party stating that documents relating to a specified question or class are not to be disclosed to the first party until requested by the party at a time that is reasonable having regard to the stage of the proceeding.

**‘(2)** The party to whom the notice is given may disclose to the other party a document to which the notice relates only if the other party requests its disclosure.

**‘(3)** A party may disclose to another party a document relating only to damages only if the other party requests its disclosure.

**‘Inspection of documents mentioned in pleadings or affidavits**

**‘13.** A party may, by written notice, require another party in whose pleadings, particulars or affidavits mention is made of a document—

- (a) to produce the document for the inspection of the party making the requirement or the solicitor for the party; and
- (b) to permit copies of the document to be made.

**‘Court orders relating to disclosure**

**‘14.(1)** The Court or a Judge may order a party to any proceeding to disclose to another party a document or class of documents by—

- (a) delivering to the other party in accordance with this Order a copy of the document, or of each document in the class; or
- (b) producing for the inspection of the other party in accordance with this Order the document, or each document in the class.

‘(2) The Court or a Judge may order a party to any proceeding to file and serve on another party an affidavit—

- (a) deposing that a specified document or class of documents does not exist or has never existed; or
- (b) deposing to the circumstances in which a specified document or class of documents—
  - (i) ceased to exist; or
  - (ii) passed out of the possession or control of the first party.

‘(3) The Court or a Judge may order that delivery, production or inspection of a document or class of documents for the purposes of disclosure—

- (a) be provided; or
- (b) not be provided; or
- (c) be deferred.

‘(4) An order mentioned in subrule (1) or (2) may be made only if—

- (a) there are special circumstances and the interests of justice require it; or
- (b) it appears there is an objective likelihood that—
  - (i) the duty to disclose has not been complied with; or
  - (ii) a specified document or class of documents exists or existed and has passed out of the possession or control of a party.

‘(5) An order mentioned in subrule (3) may be made subject to conditions that the Court or Judge considers just.

‘(6) If, on an application for an order under this rule, objection is made to the disclosure of a document (whether on the ground of privilege or another ground), the Court or a Judge may inspect the document to decide the validity of the objection.

#### **‘Relief from duty to disclose**

‘15.(1) The Court or a Judge may order that a party be relieved, wholly or to a specified extent, of the duty of disclosure.

**‘(2)** In determining whether to make the order, the matters to which the Court or Judge may have regard include the following—

- (a) the likely time, cost and inconvenience involved in disclosing the documents or classes of documents compared with the amount involved in the action;
- (b) the relative importance of the question to which the documents or classes of documents relate;
- (c) the probable effect on the outcome of the action of disclosing or not disclosing the documents or classes of documents.

### **‘Consequences of non-disclosure**

**‘16.** If a party does not disclose a document in accordance with this Order or a notice or order under this Order, the party—

- (a) may not tender the document, or adduce evidence of its contents, without leave of the Court or a Judge at the trial; and
- (b) is liable to process of contempt or sequestration for the failure; and
- (c) may be ordered to pay the costs or a part of the costs of the cause.

### **‘Certificate by solicitor**

**‘17.(1)** The solicitor having conduct of a cause on behalf of a party must give to the Court or a Judge at the trial, a certificate—

- (a) stating that the duty of disclosure has been explained fully to the party; and
- (b) if the party is a corporation—identifying the individual or individuals to whom the duty was explained.

**‘(2)** The certificate must be—

- (a) given at or immediately before the trial; and
- (b) signed by the solicitor; and
- (c) addressed to the Court.

**‘Production of documents at trial**

**‘18.(1)** Documents disclosed under this Order must be produced at the trial if—

- (a) notice to produce them has been given with reasonable particularity; and
- (b) their production is asked for at the trial.

**‘(2)** If a document disclosed under this Order is tendered at the trial, it is admissible in evidence against the disclosing party as relevant and as being what it purports to be.

**‘2. INTERROGATORIES****‘Entitlement to deliver interrogatories**

**‘19.** Interrogatories may be delivered only in accordance with this Order.

**‘Delivery of interrogatories**

**‘20.(1)** By leave of the Court or a Judge, interrogatories may, at any time, and on such terms as may be ordered as to costs, be delivered to—

- (a) a party to a cause; or
- (b) a person whom it is necessary to identify for the purpose of a cause it is proposed to start.

**‘(2)** The number of interrogatories may be more than 30 only if the Court or a Judge directs that a greater number may be delivered.

**‘(3)** The number of interrogatories is to be determined by treating each distinct question as 1 interrogatory.

**‘Granting of leave to deliver interrogatories**

**‘21.(1)** Subject to an order of the Court or a Judge, leave to deliver interrogatories may be granted—

- (a) on application without notice to any other person; and

- (b) only if the Court or Judge is satisfied there is not likely to be available to the applicant at the trial any other reasonably simple and inexpensive way of proving the matter sought to be elicited by interrogatory.

‘(2) The application must be accompanied by a draft of the interrogatories intended to be delivered, unless the Court or Judge otherwise directs.

### **‘Answering interrogatories**

‘22.(1) Subject to this Order, a person to whom interrogatories are delivered is required to answer them.

‘(2) The person must answer the interrogatories—

- (a) within the time ordered by the Court or Judge; and
- (b) by delivering to the interrogating party—
  - (i) a statement in answer to the interrogatories; and
  - (ii) an affidavit verifying the statement.

‘(3) If a party—

- (a) claims relief against 2 or more other parties; and
- (b) delivers interrogatories to 1 or more of them;

the statement and affidavit also must be delivered to each party who enters an appearance.

### **‘Statement in answer to interrogatories**

‘23.(1) The statement in answer to interrogatories must comply with this rule, unless the Court or a Judge otherwise orders.

‘(2) The statement must deal with each interrogatory specifically—

- (a) by answering the substance of the interrogatory; or
- (b) by objecting to answer the interrogatory.

‘(3) An answer must be given directly and without evasion or resort to technicality.

**‘(4)** An objection must be made by—

- (a) specifying the grounds of the objection; and
- (b) briefly stating the facts on which the objection is made.

**‘(5)** The statement is not required to deal with an interrogatory to which an order under rule 25(a) applies.

**‘(6)** The statement is required to deal with an interrogatory to which an order under rule 25(b) applies only to the extent required by the order.

### **‘Grounds for objection to answering interrogatories**

**‘24.(1)** The following are the only grounds on which a person may object to answering an interrogatory—

- (a) the interrogatory does not relate to a matter in question, or likely to be in question, between the person and the interrogating party;
- (b) the interrogatory is vexatious or oppressive;
- (c) privilege.

**‘(2)** The Court or a Judge may—

- (a) require the grounds of objection specified in a statement in answer to interrogatories to be specified with greater particularity; and
- (b) determine the sufficiency of the objection.

**‘(3)** If the objection is determined to be sufficient, the interrogatory is not required to be answered.

### **‘Unnecessary interrogatories**

**‘25.** On an application made to the Court or a Judge, the Court or Judge may—

- (a) order that a person is not required to answer an interrogatory; or
- (b) by order, limit the extent to which the person is required to answer an interrogatory.

**‘Identity of individual by whom verifying affidavit to be made**

**‘26.(1)** Subject to subrule (2), the affidavit verifying the statement of a person in answer to interrogatories must be made—

- (a) by the person; or
- (b) if the person is under disability—by the guardian or committee of the person; or
- (c) if the person is a corporation or organisation—
  - (i) by a member or officer of the corporation or organisation; or
  - (ii) by another individual involved in the management of its affairs; or
- (d) if the person is a body of persons lawfully suing or being sued in the name of the body or in the name of an officer or other person—by a member or officer of the body; or
- (e) if the person is a State, a Territory or the Commonwealth or an officer of a State, a Territory or the Commonwealth suing or being sued in an official capacity—by an officer of the State, Territory or Commonwealth.

**‘(2)** If the person is a person to whom subrule (1)(c), (d) or (e) applies—

- (a) the Court or a Judge may, in relation to all or any of the interrogatories—
  - (i) specify (by name or otherwise) the individual to make the affidavit; or
  - (ii) specify (by description or otherwise) the individuals from whom the interrogating party may choose the individual to make the affidavit; and
- (b) the affidavit must be made in relation to the interrogatories, or the relevant interrogatories, by—
  - (i) the individual specified; or
  - (ii) the individual chosen by the interrogating party.

**‘(3)** Subject to subrule (2), if the person is a person to whom subrule (1)(c), (d) or (e) applies—

- (a) the interrogating party must specify in the interrogatories, in

relation to each interrogatory, the individual to make the affidavit;  
and

- (b) the affidavit must be made, in relation to an interrogatory, by the individual specified.

‘(4) The individual specified under subrule (3) must be a person who reasonably may be supposed—

- (a) to be qualified to make the affidavit under the relevant paragraph of subrule (1); and
- (b) to have knowledge of the relevant facts.

#### **‘Failure to answer interrogatory**

‘27.(1) This rule applies if a person does not give an answer, or gives an insufficient answer, to an interrogatory.

‘(2) If this rule applies, the Court or a Judge may—

- (a) order that an answer or further answer be given under rule 22; or
- (b) order the person to attend to be orally examined; or
- (c) if the person is not qualified to make the affidavit verifying the statement in answer to the interrogatories—order an individual who is qualified to make the affidavit to attend to be orally examined.

‘(3) This rule does not limit the powers of the Court under rule 28.

#### **‘Failure to comply with Court order**

‘28.(1) If a person does not comply with an order under rule 27(2)(a), the interrogating party or another party may apply on notice to the Court or a Judge for—

- (a) an order that the cause be stayed or dismissed as to the whole or a part of the relief being claimed; or
- (b) judgment or an order against the person; or
- (c) an order that the relevant statement in answer to interrogatories or affidavit verifying the statement be filed or served within the time

specified in the order.

‘(2) The Court or a Judge may make an order under subrule (1), or another order, specifying consequences for failing to comply with the order that the Court or Judge considers appropriate.

‘(3) This rule does not limit the powers of the Court or a Judge to punish for contempt of court.

### ‘Tendering answers

‘29.(1) A party may tender as evidence—

- (a) an answer of another party to an interrogatory without tendering other answers; or
- (b) part of an answer of another party to an interrogatory without tendering all of the answer.

‘(2) If the whole or a part of an answer to an interrogatory is tendered as evidence, the Court or a Judge may—

- (a) consider all of the answers; and
- (b) subject to subrule (3), reject the tender, unless another answer or part of an answer is tendered also.

‘(3) The Court or Judge may reject the tender on the condition mentioned in subrule (2)(b) only if it appears to the Court or Judge that the other answer or part of an answer is so connected with the matter tendered that the matter should not be used without the other answer or part.

## ‘3. GENERAL

### ‘Public interest considerations

‘30. This Order does not affect any rule of law that authorises or requires the withholding of any matter on the ground that its disclosure would be injurious to the public interest.

**‘Service on solicitors of disclosure orders**

**‘31.(1)** If an order relating to interrogatories or the delivery, production or inspection of documents is served on the solicitor for the party against whom the order is made, the service is sufficient service for making an application for contempt of court for disobedience to the order.

**‘(2)** If—

- (a) an application of a kind mentioned in subrule (1) is made; and
- (b) the order to which the application relates was served in the way mentioned in the subrule;

the party against whom the order is made may show in answer to the application that the party has no notice or knowledge of the order.

**‘Attachment of solicitor**

**‘32.** If—

- (a) an order mentioned in rule 31 is served on the solicitor for the party against whom the order is made; and
- (b) the solicitor fails, without reasonable excuse, to give notice of the order to the party;

the solicitor is liable to a proceeding for contempt of court.

**‘Costs**

**‘33.** If, in any case, the cost of complying with this Order would be oppressive to a party, the Court or a Judge may order that another party—

- (a) pay or contribute to the cost of compliance; or
- (b) provide security for the cost.

**‘Right to disclosure**

**‘34.** The right of a party to a cause to discovery is limited to obtaining disclosure, inspection and interrogatories under this Order.

## **‘4. TRANSITIONAL**

### **‘Proceedings already commenced**

‘**35.** Order 35, as in force immediately before the commencement of this rule, continues to apply to a cause in which an affidavit of documents was filed before the commencement.’.

### **Amendment of Schedule 1**

#### **5.** Schedule 1, Part 5—

*omit* ‘SECTION 1—DISCOVERY’,

*insert* ‘SECTION 1—DISCLOSURE’.

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#### ENDNOTES

1. Made by the Governor in Council on 3 February 1994.
2. Notified in the Gazette on 4 February 1994.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Justice and Attorney-General.