

# Queensland



## Subordinate Legislation 1995 No. 133

### *Supreme Court of Queensland Act 1991*

# SUPREME COURT AMENDMENT RULE (No. 1) 1995

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**Short title**

1. This rule may be cited as the *Supreme Court Amendment Rule (No. 1) 1995*.

**Commencement**

2. This rule commences on the day the *Courts Legislation Amendment Act 1995*, part 2 commences.

**Rules amended**

3. This rule amends the *Rules of the Supreme Court*.

**Insertion of new o 99**

4. After order 98—

*insert—*

**‘ORDER 99****‘ALTERNATIVE DISPUTE RESOLUTION  
PROCESSES*****‘Division 1—Definitions*****‘Definitions for order**

‘1. In this order—

“ADR costs” include—

- (a) for a mediation—the extra costs mentioned in rule 15;<sup>1</sup> and
- (b) for a case appraisal—the extra costs mentioned in rule 24.<sup>2</sup>

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<sup>1</sup> Rule 15 (Mediator may seek independent advice)

<sup>2</sup> Rule 24 (Case appraiser may seek information)

**“referred dispute”** means a dispute referred to a case appraiser under rule 21.

**“Supreme Court”** includes a Judge.

### *‘Division 2—Establishment of ADR processes*

#### **‘Approval as mediator**

**‘2.(1)** A person seeking approval as a mediator must—

- (a) make application in form 514; and
- (b) pay the fee prescribed under schedule 3, part 2; and
- (c) satisfy the Senior Judge Administrator the person is a suitable person to be approved as a mediator.

**‘(2)** The Senior Judge Administrator must inform the registrar of an approval of a person as a mediator.

**‘(3)** If the Senior Judge Administrator decides not to approve a person as mediator, the Senior Judge Administrator must give the person a statement of reasons for the decision.

#### **‘Approval as case appraiser**

**‘3.(1)** A person seeking approval as a case appraiser must—

- (a) be a barrister or solicitor of 5 years standing; and
- (b) make application in form 515; and
- (c) pay the fee prescribed under schedule 3, part 2; and
- (d) satisfy the Senior Judge Administrator the person is a suitable person to be approved as a case appraiser.

**‘(2)** The Senior Judge Administrator must inform the registrar of an approval of a person as a case appraiser.

**‘(3)** If the Senior Judge Administrator decides not to approve a person as case appraiser, the Senior Judge Administrator must give the person a statement of reasons for the decision.

**‘ADR register**

‘4. The ADR register must contain the fees notified to the registrar under rule 5.

**‘Information to be given to registrar by ADR convenors and venue providers**

‘5.(1) A person intending to provide a venue for ADR processes must give notice to the registrar in form 516 of the person’s name and address and the address of the venue.

‘(2) A person intending to act as a mediator, case appraiser or venue provider for ADR processes must give notice to the registrar of the fee the person intends to charge for providing the services or venue.

‘(3) If a person intends to change the fee notified to the registrar, the person must give notice of the change to the registrar in form 517 at least 4 weeks before the change is effective.

‘(4) Notice of the fee may be given by notifying the way the fee may be worked out, including, for example, an hourly or daily rate of charge or another way approved by the registrar.

**‘Form of consent order for ADR process**

‘6. For the *Supreme Court of Queensland Act 1991*, section 100H,<sup>3</sup> the consent order must be made, as far as practicable, in form 518.

**‘Registrar to give notice of proposed reference to ADR process**

‘7.(1) The Supreme Court may direct the registrar to give written notice to the parties (the “**referral notice**”) that the parties’ dispute is to be referred, by order, to an ADR process to be conducted by a specified mediator or case appraiser.

‘(2) A party may object to the reference by filing an objection notice in the registry.

‘(3) The objection notice must—

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<sup>3</sup> Section 100H (Parties may agree to ADR process)

- (a) state the reasons why the party objects to the referral; and
- (b) be filed within 7 days after the objecting party receives the referral notice.

‘(4) If an objection notice is filed, the Supreme Court may require the parties or their representatives to attend before it (the “**hearing**”).

‘(5) The court may make an order at the hearing it considers appropriate in the circumstances.

**‘Proceedings referred to ADR process are stayed**

‘8. If a dispute is referred to an ADR process, the dispute and all claims made in the dispute are stayed until—

- (a) the report of the ADR convenor certifying the finish of the ADR process is filed with the registrar; or
- (b) the Supreme Court otherwise orders.

**‘When does a party impede an ADR process?**

‘9. A party impedes an ADR process if the party—

- (a) fails to attend at the process; or
- (b) fails to participate in the process; or
- (c) fails to pay an amount the party is required to pay under a referring order within the time stated in the order.

***‘Division 3—Mediation***

**‘Referral of dispute to appointed mediator**

‘10.(1) A referring order for a mediation must—

- (a) appoint as mediator—
  - (i) a specified mediator; or
  - (ii) a mediator to be selected by the parties; or
  - (iii) if all parties agree, a person who is not a mediator; and

- (b) include enough information about pleadings, statements of issues or other documents to inform the mediator of the dispute and the present stage of the proceeding between the parties; and
- (c) fix a period beyond which the mediation may extend only with the authorisation of the parties or estimate how long the mediation should take to finish.

‘(2) The order must also—

- (a) fix the ADR costs or estimate the costs to the extent possible; and
- (b) state the percentage of ADR costs each party must pay; and
- (c) state a time (not more than 7 days) within which the ADR costs, including any fee negotiated under subrule (3), must be paid to the registrar.

‘(3) Instead of fixing or estimating the appointed mediator’s fee, the order may direct the parties to negotiate a fee with the appointed mediator.

‘(4) A person appointed as mediator under subrule (1)(a)(iii) is taken to be a mediator for the mediation and issues incidental to the mediation.

‘(5) An order must, as far as practicable, be made in form 519.

### **‘When mediation must start and finish**

‘11. A mediator must start a mediation as soon as possible after the mediator’s appointment and try to finish the mediation within 28 days after the appointment.

### **‘Parties must assist mediator**

‘12. The parties must act reasonably and genuinely in the mediation and help the mediator to start and finish the mediation within the time estimated or fixed in the referring order.

### **‘Mediator’s role**

‘13.(1) The mediator may gather information about the nature and facts of the dispute in any way the mediator decides.

‘(2) The mediator may decide whether a party may be represented at the



mediation and, if so, by whom.

‘(3) During the mediation, the mediator may see the parties, with or without their representatives, together or separately.

**‘Liberty to apply**

‘14. The mediator, a party or the registrar may apply to the Supreme Court at any time for directions on any issue about the mediation.

**‘Mediator may seek independent advice**

‘15.(1) The mediator may seek legal or other advice about the dispute from independent third parties.

‘(2) However, if the advice involves extra cost, the mediator must first obtain—

- (a) the parties’ agreement to pay the extra cost; or
- (b) the Supreme Court’s leave.

‘(3) If the court gives leave under subrule (2)(b), the court must also—

- (a) order the parties to pay the extra cost; and
- (b) state the time within which the payment must be made to the registrar.

‘(4) The mediator must disclose the substance of the advice to the parties.

**‘Record of mediation resolution**

‘16.(1) Unless the parties otherwise agree, the mediator must ensure that an agreement mentioned in the *Supreme Court of Queensland Act 1991*, section 100N<sup>4</sup> is—

- (a) placed in a sealed container, for example, an envelope; and
- (b) marked with the court file number; and
- (c) endorsed ‘Not to be opened without an order of the Supreme

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<sup>4</sup> Section 100N (Mediated resolution agreement)

Court or a Judge'; and

(d) filed in the court.

'(2) The container may be opened only if the Supreme Court orders it to be opened.

'(3) No fee is payable for filing the container.

### **'Abandonment of mediation**

'17.(1) The mediator may abandon the mediation if the mediator considers further efforts at mediation will not lead to the resolution of the dispute or an issue in the dispute.

'(2) Before abandoning the mediation, the mediator must—

(a) inform the parties of the mediator's intention; and

(b) give them an opportunity to reconsider their positions.

### **'Mediator to file certificate**

'18.(1) For the *Supreme Court of Queensland Act 1991*, section 100O,<sup>5</sup> the mediator must file a certificate in form 520.

'(2) The certificate must not contain comment about the extent to which a party participated or refused to participate in the mediation.

'(3) However, the certificate may indicate that a party did not attend the mediation.

'(4) No fee is payable for filing the container.

### **'Unsuccessful mediations**

'19. If a mediation is unsuccessful, the dispute may go to trial in the ordinary way without any inference being drawn against any party because of the failure to settle at the mediation.

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<sup>5</sup> Section 100O (Mediator to file certificate)

**‘Replacement of mediator**

‘20.(1) The Supreme Court may, by further order, revoke the appointment of a mediator and appoint someone else as mediator if the court is satisfied it is desirable to do so.

‘(2) When appointing a substitute mediator, the court may decide the amount (if any) to be paid to the retiring mediator for work done.

***‘Division 4—Case appraisal*****‘Referral of dispute to appointed case appraiser**

‘21.(1) A referring order for a case appraisal must—

- (a) appoint as case appraiser—
  - (i) a specified case appraiser; or
  - (ii) a case appraiser to be selected by the parties; and
- (b) include enough information about pleadings, statements of issues or other documents to inform the case appraiser of the dispute and the present stage of the proceeding between the parties; and
- (c) fix a period beyond which the case appraisal may extend only with the authorisation of the parties or estimate how long the case appraisal should take to finish.

‘(2) The order must also—

- (a) fix the ADR costs or estimate the costs to the extent possible; and
- (b) state the percentage of ADR costs each party must pay; and
- (c) state a time (not more than 7 days) within which the ADR costs, including any fee negotiated under subrule (3), must be paid to the registrar.

‘(3) Instead of fixing or estimating the appointed case appraiser’s fee, the order may direct the parties to negotiate a fee with the appointed case appraiser.

‘(4) An order must, as far as practicable, be made in form 519.

**‘Jurisdiction of case appraiser**

**‘22.(1)** The case appraiser for a referred dispute has the power of the Supreme Court to decide the issues in dispute in the referred dispute.

**‘(2)** However, the case appraiser—

- (a) may only give a decision that could have been given in the dispute if it had been decided by the court; and
- (b) cannot punish for contempt.

**‘(3)** Subrule (1) is subject to rule 30.<sup>6</sup>

**‘Appearances**

**‘23.** A party appearing before a case appraiser has the same rights to appear by lawyer or otherwise the party would have if the appearance were before the Supreme Court.

**‘Case appraiser may seek information**

**‘24.** A case appraiser may ask anyone for information and may obtain, and act on, information obtained from anyone on any aspect of the dispute.

**‘Case appraisal proceeding may be recorded**

**‘25.(1)** A case appraiser may have the case appraisal proceeding recorded if the case appraiser considers it appropriate, in the special circumstances of the case.

**‘(2)** If the proceeding is to be recorded, the case appraiser must decide the extent to which, and the way in which, the recording may be done.

**‘Case appraiser’s decision**

**‘26.(1)** A case appraiser’s decision must be in writing, but the case appraiser need not give reasons for the decision.

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<sup>6</sup> Rule 30 provides that a party dissatisfied with a case appraiser’s decision may elect to go to trial.

‘(2) However, a case appraiser may, at any stage of a case appraisal proceeding, decline to proceed further with the proceeding.

*Example of subsection (2)—*

The dispute proves to be unsuitable for case appraisal.

‘(3) A copy of the decision must be given to each party.

### **‘Case appraiser’s decision on costs in the dispute**

‘27.(1) In a referred dispute, a case appraiser has the same power to award costs in the dispute the Supreme Court would have had if it had heard and decided the dispute.

‘(2) A case appraiser’s decision under rule 26(1) must include a decision on costs in the dispute.

### **‘Case appraiser’s decision final unless election made**

‘28. A case appraiser’s decision is final, unless an election to go to trial is made under rule 30.

### **‘Case appraiser to file certificate and decision**

‘29.(1) For the *Supreme Court of Queensland Act 1991*, section 100P,<sup>7</sup> the case appraiser must file a certificate in form 521.

‘(2) If the case appraiser makes a decision about the dispute or any issue in the dispute, the case appraiser must—

- (a) place the written decision in a sealed container, for example, an envelope; and
- (b) mark the container with the court file number; and
- (c) endorse the container ‘Not to be opened without an order of the Supreme Court or a Judge’; and
- (d) file the container in the court.

‘(3) The container may be opened only if the Supreme Court orders it to

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<sup>7</sup> Section 100P (Case appraiser to file certificate and decision)

be opened.

‘(4) No fee is payable for filing the certificate and decision.

**‘Dissatisfied party may elect to go to trial**

‘30.(1) A party who is dissatisfied with a case appraiser’s decision may elect to have the dispute go to trial in the ordinary way by filing an election in form 522 with the registrar.

‘(2) The election must be filed within 28 days after the case appraiser’s certificate is filed in registry.

‘(3) If an election is filed—

- (a) the case appraiser’s decision ceases to have effect other than as provided by rule 31; and
- (b) the dispute must be decided in the Supreme Court as if it had never been referred to the case appraiser.

**‘Court to have regard to case appraiser’s decision when awarding costs**

‘31.(1) In this rule—

“**challenger**” means a party who filed an election under rule 30.

‘(2) If the Supreme Court’s decision in the dispute is not more favourable overall to a challenger than the case appraiser’s decision in the dispute was to the challenger, the costs of the action and the case appraisal must be awarded against the challenger.

‘(3) However, the court may make another order about costs if the court considers there are special circumstances.

‘(4) If all parties are challengers, the case appraiser’s decision has no effect on the awarding of costs.

**‘Replacement of case appraiser**

‘32.(1) The Supreme Court may, by further order, revoke the appointment of a case appraiser and appoint someone else as case appraiser if the court is satisfied it is desirable to do so.

‘(2) When appointing a substitute case appraiser, the court may decide the amount (if any) to be paid to the retiring case appraiser for work done.

### ***Division 5—ADR costs***

#### **‘Payment of ADR costs**

‘33. Each party to an ADR process is severally liable for the party’s percentage of the ADR costs in the first instance.

#### **‘Party may pay another party’s ADR costs**

‘34.(1) If a party to an ADR process does not pay the party’s percentage of ADR costs, another party may pay the amount.

‘(2) If another party pays the amount, the amount is the other party’s costs in any event.

#### **‘Registrar to facilitate payment of ADR costs**

‘35. After the registrar has been paid all payments under the referring order and the ADR process has finished, the registrar must pay the ADR convenor and the venue provider their fees from the funds held for the purpose.

#### **‘When ADR convenor or venue provider may recover further costs**

‘36.(1) An ADR convenor or venue provider may recover an amount more than the amount paid to the convenor or provider by the registrar—

- (a) if the referring order estimates the ADR costs by fixing a fee rate and period for which the rate is to be paid—only if the parties authorise the ADR process to continue beyond the period fixed in the referring order; or
- (b) in any other case—only if the parties agree in writing to the payment of a greater amount than the amount paid by the registrar.

‘(2) The parties are severally liable for an amount recoverable under

subrule (1).

‘(3) The amount may be recovered as a debt payable to the convenor or provider.

**‘Court may extend period within which costs are to be paid or grant relief**

‘37.(1) A party may apply to the Supreme Court for an order—

- (a) extending the time for payment to the registrar of ADR costs; or
- (b) relieving the party from the effects of noncompliance with any requirement about costs.

‘(2) The court may make any order it considers appropriate.

**‘Costs of failed ADR process are costs in the dispute**

‘38. Unless otherwise ordered by the Supreme Court, each party’s costs of and incidental to an ADR process that did not result in the full settlement of the dispute between the parties are the party’s costs in the dispute.’.

**Amendment of sch 1**

5. Schedule 1, after part 25—

*insert—*

**‘PART 26—FORMS FOR ADR PROCESSES**

**‘Form 514**

**(o.99 r.2)**

**‘APPLICATION FOR APPROVAL AS MEDIATOR**

I, (*insert full name and address and contact phone number*), apply to be approved as a mediator for disputes arising in the Supreme Court of Queensland.

I believe I am a suitable person to be approved as a mediator. My



qualifications and experience are—

*(State qualifications and experience that make you  
suitable to be approved as a mediator.)*

My fee for mediating disputes is *(insert fee and show whether hourly or  
daily and any minimum fee)*

*(Date and sign the application)*

**‘Form 515****(o.99 r.3)****‘APPLICATION FOR APPROVAL AS CASE  
APPRAISER**

I, *(insert full name and address and contact phone number)*, apply to be approved as a case appraiser for disputes arising in the Supreme Court of Queensland.

I believe I am a suitable person to be approved as a case appraiser. I am a *(barrister/solicitor)* of *(insert number)* years standing. My qualifications and experience are—

*(State qualifications and experience that make you  
suitable to be approved as a case appraiser.)*

My fee for appraising disputes is *(insert fee and show whether hourly or daily and any minimum fee)*

*(Date and sign the application)*

**‘Form 516****(o.99 r.5(1))****‘VENUE PROVIDER’S NOTICE**

I, (*insert full name and address and contact phone number*), give notice to the registrar that I am the (*owner/lessee*) of a venue at (*insert address*) that is suitable for use for mediations and case appraisals.

The venue (*insert description of venue and available facilities eg telephones, fax machines, parking*)

My fee for making the venue available is (*insert fee and show whether hourly or daily and any minimum fee*)

(*Date and sign the notice*)

**‘Form 517****(o.99 r.5(3))****‘NOTICE OF FEE CHANGE**

I, *(insert full name and address and contact phone number)*, am an approved mediator/an approved case appraiser/a venue provider for disputes arising in the Supreme Court of Queensland.

I give notice that on and from *(insert date which must be at least 4 weeks after this form is filed with the registrar)* my fee for *(acting as a mediator/case appraiser/making the venue at (insert address) available)* will be *(insert fee and show whether hourly or daily and any minimum fee)*

*(Date and sign the notice)*

**‘Form 518****(o.99 r.6)****‘CONSENT ORDER**

1. *(Insert names of parties)* agree to participate in, and act reasonably and genuinely in, a *(mediation/case appraisal)* to be conducted at *(insert time of commencement and address of venue)*.

2. The *(mediator/case appraiser)* is *(insert name or state that the mediator/case appraiser is to be selected by the parties)*.

3. Copies of the following documents are attached to this order to help the *(mediator/case appraiser)* to understand the dispute, the issues and the present stage of the proceeding—

*(attach enough information about pleadings, statements of issue or other documents to inform the mediator/case appraiser of the dispute and the present stage of the proceeding)*

4. The period of *(mediation/case appraisal)* is agreed at a maximum of *(insert number of hours or days)* and may extend beyond the period only with the authorisation of the parties.

—OR—

4. The estimated maximum period of the *(mediation/case appraisal)* is *(insert period)*.

5. The costs of the *(mediation/case appraisal)* are agreed at *(insert lump sum)*.

—OR—

5. The costs of the *(mediation/case appraisal)* are agreed at \$ (per hour or day) up to a maximum of *(insert number of hours or days)*.

—OR—

5. The parties agree to negotiate a fee with *(insert name of mediator/case appraiser)*.

6. The parties agree to pay the following percentages of the costs—

*(name of party)*

*(insert %)*

(name of party)

(insert %)

7. The parties must pay (*their respective percentages of the costs/the fee negotiated by the parties with the mediator/case appraiser*) to the registrar by (*insert date not later than 7 days after the date of the order*)

8. The parties agree that no hearing date may be given to this matter until the (*mediator or appraiser's*) certificate is filed in the registry or until further order.

**‘Form 519 (o.99 rr.10(5) and 21(4))****‘REFERRING ORDER**

1. *(Insert names of parties)* are directed to participate in, and act reasonably and genuinely in, a *(mediation/case appraisal)* to be conducted at *(insert time of commencement and address of venue)*.

2. The *(mediator/case appraiser)* is *(insert name or state that the mediator/case appraiser is to be selected by the parties)*.

3. Copies of the following documents are attached to this order to help the *(mediator/case appraiser)*—

*(attach enough information about pleadings, statements of issue or other documents to inform the mediator/case appraiser of the dispute and the present stage of the proceeding)*

4. The period of *(mediation/case appraisal)* is fixed at a maximum of *(insert number of hours or days)* and may extend beyond the period only with the authorisation of the parties.

—OR—

4. The estimated maximum period of the *(mediation/case appraisal)* is *(insert period)*.

5. The costs of the *(mediation/case appraisal)* are fixed at *(insert lump sum)*.

—OR—

5. The costs of the *(mediation/case appraisal)* are fixed at \$ *(per hour or day)* up to a maximum of *(insert number of hours or days)*.

—OR—

5. The parties are to negotiate a fee with *(insert name of mediator/case appraiser)*.

6. The parties are to pay the following percentages of the costs—

*(name of party)*

*(insert %)*

(name of party)

(insert %)

7. The parties must pay (*their respective percentages of the costs/the fee negotiated by the parties with the mediator/case appraiser*) to the registrar by (*insert date not later than 7 days after the date of the order*)

8. No hearing date may be given to this matter until the (*mediator or appraiser's*) certificate is filed in the registry or until further order.



**‘Form 520****(o.99 r.18)****‘MEDIATOR’S CERTIFICATE**

I, (*insert name of mediator*), certify that—

1. (*Insert name of parties*) have participated in a mediation before me and the procedure has finished. The parties *have/have not* resolved (*their dispute/part of their dispute*).

—OR—

1. (*Insert name of parties*) have participated in a mediation before me and I cannot usefully take the resolution of their dispute any further.<sup>8</sup>

—OR—

1. (*Insert name of party or parties*) did not attend the mediation as ordered.

2. (*Insert if appropriate*) The terms of their agreement are enclosed in the attached sealed (*insert type of container*) marked ‘Mediation agreement. Not to be opened without an order of the Supreme Court or a Judge. Court File No. . . .’.

—OR—

2. (*include any other relevant matter for report*).

(*Date and sign the certificate*)

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<sup>8</sup> No comment should be made about the extent to which a party participated or refused to participate in the mediation.

**‘Form 521****(o.99 r.29)****‘CASE APPRAISER’S CERTIFICATE**

I, (*insert name of case appraiser*), certify that—

1. (*Insert name of parties*) have participated in the reference to me of their dispute and the procedure has finished.

—OR—

1. (*Insert name of party or parties*) did not participate in the procedure.

—OR—

1. The procedure could not be finished because (*state reasons*).

2. (*Insert if appropriate*) I have provisionally decided the proceeding and my decision is enclosed in the attached sealed (*insert type of container*) marked ‘Appraiser’s Decision. Not to be opened without an order of the Supreme Court or a Judge. Court File No. . . .’.

—OR—

2. (*include any other relevant matter for report*).

(*Date and sign the certificate*)

**‘Form 522****(o.99 r.30)****‘NOTICE OF ELECTION TO GO TO TRIAL**

I, (*insert full name*), am a party to a dispute and attended at a case appraisal on (*insert date*) conducted by (*insert name of case appraiser*).

I am dissatisfied with the case appraiser’s decision and elect to go to trial.

(*Date and sign the notice*)’.

**Amendment of sch 3, pt 2**

6. Schedule 3, part 2, after item 22, before heading ‘Miscellaneous’—  
*insert—*

**‘Mediators and case appraisers**

‘22A	Application fee for approval as mediator or case appraiser	300.00’.
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**ENDNOTES**

1. Made by the Governor in Council on 18 May 1995.
2. Notified in the Gazette on 19 May 1995.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Justice and Attorney-General.