

# Queensland



## Subordinate Legislation 1996 No. 137

### *Supreme Court of Queensland Act 1991*

# SUPREME COURT AMENDMENT RULE (No. 3) 1996

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**Short title**

1. This rule may be cited as the *Supreme Court Amendment Rule (No. 3) 1996*.

**Rules amended**

2. This rule amends the Rules of the Supreme Court.

**Amendment of o 12 (Appearance)**

3. Order 12, rules 2 and 3—

*omit, insert—*

**‘Filing memorandum of appearance**

‘2.(1) A party enters an appearance by filing a memorandum of appearance in duplicate.

‘(2) The memorandum must be dated—

- (a) if it is lodged for filing personally—on the day it is lodged for filing; or
- (b) if it is lodged for filing by post—on the day it is posted.

‘(3) The memorandum must state the name of the party’s solicitor or that the party appears in person.

‘(4) The proper officer must seal the duplicate memorandum with the office seal and return it to the filing party.

‘(5) The sealed duplicate memorandum is evidence the person entered an appearance on the day indicated by the seal.

**‘Notice of appearance**

‘3.(1) A defendant who lodges a memorandum of appearance for filing by post must, on the day it is posted, give a copy to the plaintiff.

‘(2) The copy may be served personally, sent by prepaid post or sent by facsimile.

‘(3) On the day a defendant receives the sealed duplicate memorandum

of appearance from the proper officer, the defendant must give it to the plaintiff.

‘(4) The memorandum may be served personally or sent by prepaid post.

‘(5) Subrule (3) applies whether the memorandum was lodged for filing personally or by post.

‘(6) In this rule—

“**plaintiff**” means the plaintiff’s solicitor or, if the plaintiff sues in person, the plaintiff.’.

### **Amendment of o 15 (Default of appearance)**

**4.** Order 15, after rule 2—

*insert—*

#### **‘Entry of judgment by post**

‘**2A.(1)** This rule applies if the plaintiff seeks to enter judgment under this order by post.

‘(2) The documents filed to enter judgment must include—

- (a) a notice stating the rule under which the plaintiff is seeking to enter judgment; and
- (b) an affidavit by the plaintiff, attested on the day it is posted, deposing that the plaintiff has not received a copy of a memorandum of appearance lodged for filing by post or a sealed duplicate memorandum of appearance.

‘(3) The affidavit under subrule (2)(b) may be relied on, for this rule, until the end of 5 days after the day it is attested.

‘(4) If, before receiving the duplicate judgment, the plaintiff receives a copy of a memorandum of appearance lodged for filing by post or a sealed duplicate memorandum of appearance, the plaintiff must immediately give written notice to the registrar.

‘(5) The registrar may enter judgment in default of appearance if—

- (a) the documents mentioned in subrule (2) have been filed; and

- (b) the plaintiff has otherwise complied with this order in seeking to enter judgment; and
- (c) the registrar is satisfied a memorandum of appearance has not been filed under these rules.

‘(6) If, after entering judgment in default of appearance, the registrar becomes satisfied a memorandum of appearance was filed under these rules before judgment was entered, the registrar must withdraw the judgment and notify the parties.

‘(7) In this rule—

“**plaintiff**” means the plaintiff’s solicitor or, if the plaintiff sues in person, the plaintiff.’.

### **Amendment of o 31 (Default of pleading)**

**5.** Order 31, after rule 1—

*insert—*

#### **‘Entry of judgment by post**

‘**1A.(1)** This rule applies if the plaintiff seeks to enter judgment under this order by post.

‘(2) The documents filed to enter judgment must include—

- (a) a notice stating the rule under which the plaintiff is seeking to enter judgment; and
- (b) an affidavit by the plaintiff, attested on the day it is posted, deposing that a defence has not been delivered to the plaintiff.

‘(3) The affidavit under subrule (2)(b) may be relied on, for this rule, until the end of 5 days after the day it is attested.

‘(4) If, before receiving the duplicate judgment, a defence is delivered to the plaintiff, the plaintiff must immediately give written notice to the registrar.

‘(5) The registrar may enter judgment in default of delivery of defence if—

- (a) the documents mentioned in subrule (2) have been filed; and

- (b) the plaintiff has otherwise complied with this order in seeking to enter judgment; and
- (c) the registrar is satisfied a defence has not been delivered under these rules.

‘(6) If, after entering judgment in default of delivery of defence, the registrar becomes satisfied that a defence was delivered under these rules before judgment was entered, the registrar must withdraw the judgment and notify the parties.

‘(7) In this rule—

“**plaintiff**” means the plaintiff’s solicitor or, if the plaintiff sues in person, the plaintiff.’.

### **Replacement of o 87A (Filing)**

#### **6. Order 87A—**

*omit, insert—*

### **‘ORDER 87A—FILING**

#### **‘Filing**

‘**1.(1)** A document may be lodged for filing by—

- (a) delivering it to the registry personally; or
- (b) sending it to the registry, by pre-paid post, in an envelope marked with a note that it contains court documents.

‘(2) If a document is lodged for filing in contravention of these rules, the registrar may refuse to accept the document for filing.

‘(3) A document lodged for filing under these rules is not taken to be filed until it is stamped as filed.

#### **‘Filing by post**

‘**2.(1)** This rule applies if a document is lodged for filing by post.

‘(2) The document must be accompanied by the number of copies required by these rules and a stamped envelope addressed to the filing party

or the filing party's solicitor.

‘(3) The registrar must return to the filing party or solicitor in the envelope—

- (a) any copies of the document that, under these rules, have been lodged with the document and endorsed or sealed by the registrar; or
- (b) if the document is not accepted for filing—the document.

‘(4) If, on filing the document, a hearing is required before a chamber judge or registrar, the registrar must not fix a return day earlier than 14 days after the filing day.

‘(5) If the document contains an affidavit about a debt—

- (a) it must be attested on the day it is posted; and
- (b) it may be relied on, for these rules, until the end of 5 days after the day it is attested.

### ‘Risk

‘3. A document lodged for filing by post is at the risk of the filing party.

### ‘Postal dealing fee

‘4.(1) A party must pay the prescribed fee (the “**postal dealing fee**”) for lodging a document for filing by post.

‘(2) The postal dealing fee is in addition to any other fee payable for lodging the document and is not refundable if the document is not accepted for filing.’.

### Amendment of sch 3 (Scale of fees)

7. Schedule 3, part 2, item 27—

*omit, insert—*

‘27. (1) Postal dealing fee (for each document lodged for filing by post) . . . . .	16.00
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(2) However, only 1 postal dealing fee is payable for lodging more than 1 document in the same proceeding at the same time.’.

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#### ENDNOTES

1. Made by the Governor in Council on 20 June 1996.
2. Notified in the gazette on 21 June 1996.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Justice.