

# Queensland



## Subordinate Legislation 2001 No. 107

### *Supreme Court of Queensland Act 1991*

# UNIFORM CIVIL PROCEDURE AMENDMENT RULE (No. 1) 2001

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## **1 Short title**

This rule may be cited as the *Uniform Civil Procedure Amendment Rule (No. 1) 2001*.

## **2 Rules amended**

This rule amends the *Uniform Civil Procedure Rules 1999*.

## **3 Omission of r 125 (How service outside Australia to be performed)**

Rule 125—

*omit.*

## **4 Amendment of r 127 (Service of other process by leave)**

Rule 127(a), before ‘a proceeding’—

*insert—*

‘an originating process for’.

## **5 Relocation and renumbering of r 128 (Service of counterclaim or third party notice)**

Rule 128—

*relocate and renumber* as rule 125.

## **6 Renumbering of r 129 (Order for service outside Australia)**

Rule 129—

*renumber* as rule 128.

## **7 Insertion of new r 129**

After rule 128, as renumbered—

*insert—*

### **‘129 How service outside Australia to be performed**

‘(1) If service outside Australia of an originating process, a counterclaim or a third party notice is authorised under this part, then parts 1 to 5 apply to the service.

‘(2) However, nothing in these rules, or in any order of the court made under these rules, authorises or requires the doing of anything in a country in which service is to be effected that is contrary to the law of the country.’.

### **8 Amendment of r 206 (Claim against another party)**

Rule 206(1), ‘rule 192(b)’—

*omit, insert—*

‘rule 192’.

### **9 Replacement of ch 9, pt 2, divs 2–3**

Chapter 9, part 2, divisions 2 and 3—

*omit, insert—*

*‘Division 2—Applying for summary judgment*

### **‘292 Summary judgment for plaintiff**

‘(1) A plaintiff may, at any time after a defendant files a notice of intention to defend, apply to the court under this part for judgment against the defendant.

‘(2) If the court is satisfied that—

- (a) the defendant has no real prospect of successfully defending all or a part of the plaintiff’s claim; and
- (b) there is no need for a trial of the claim or the part of the claim;

the court may give judgment for the plaintiff against the defendant for all or the part of the plaintiff’s claim and may make any other order the court considers appropriate.

### **‘293 Summary judgment for defendant**

‘(1) A defendant may, at any time after filing a notice of intention to defend, apply to the court under this part for judgment against a plaintiff.

‘(2) If the court is satisfied—

- (a) the plaintiff has no real prospect of succeeding on all or a part of the plaintiff’s claim; and
- (b) there is no need for a trial of the claim or the part of the claim;

the court may give judgment for the defendant against the plaintiff for all or the part of the plaintiff’s claim and may make any other order the court considers appropriate.

### **‘294 Claims not disposed of**

‘(1) The making of orders under this part that does not dispose of all claims in issue in a proceeding does not prevent the continuation of any part of the proceeding not disposed of by the orders.

‘(2) A second or later application under this part may be made with the court’s leave.

## ***‘Division 3—Evidence***

### **‘295 Evidence**

‘(1) In a proceeding under this part, evidence must be given by affidavit unless the court gives leave.

‘(2) An affidavit may contain statements of information and belief if the person making the affidavit states the sources of the information and the reasons for the belief.

‘(3) A party to an application under this part who intends to rely on a document must—

- (a) exhibit the document to an affidavit; or
- (b) identify in an affidavit the provisions relied on to the extent the party is able to identify them.

‘(4) A person who makes an affidavit to be read in an application under this part may not be cross-examined without the leave of the court.

### **‘296 Service**

‘(1) A party applying for judgment under this part must file and serve the respondent to the application with the following documents at least 8 business days before the date for hearing shown on the application—

- (a) the application;
- (b) a copy of each affidavit on which the applicant intends to rely.

‘(2) At least 4 business days before the date for hearing, the respondent must file and serve on the applicant a copy of any affidavit on which the respondent intends to rely.

‘(3) At least 2 business days before the date for hearing, the applicant must file and serve on the respondent a copy of any affidavit in reply to the respondent’s affidavit on which the applicant intends to rely.’.

### **10 Amendment of r 313 (Definitions for pt 4)**

Rule 313, definition “**registrar**”, paragraph (a) and definition “**senior judicial officer**”, paragraph (c), ‘Chief Stipendiary Magistrate’—

*omit, insert—*

‘Chief Magistrate’.

### **11 Amendment of r 314 (Approval as mediator)**

Rule 314(6), ‘Chief Stipendiary Magistrate’—

*omit, insert—*

‘Chief Magistrate’.

### **12 Amendment of r 315 (Approval as case appraiser)**

Rule 315(6), ‘Chief Stipendiary Magistrate’—

*omit, insert—*

‘Chief Magistrate’.

**13 Amendment of r 466 (Setting and vacating trial dates)**

Rule 466, heading, ‘**and vacating**’—  
*omit.*

**14 Amendment of r 679 (Definitions)**

Rule 679, definition “**registrar**”, paragraph (c), ‘Chief Stipendiary Magistrate’—

*omit, insert—*  
‘Chief Magistrate’.

**15 Amendment of r 782 (Application of pt 3)**

Rule 782, ‘appeals’—  
*omit, insert—*  
‘an appeal or case stated’.

**16 Amendment of r 785 (Application of pt 1 to appeals under this part)**

(1) Rule 785, heading—  
*omit, insert—*  
‘**Application of rules to appeals and cases stated under this part**’.

(2) Rule 785—  
*insert—*  
‘(2) Rule 781 applies to cases stated under this part, with necessary changes.’.

**17 Amendment of r 833 (Sale at best price obtainable)**

Rule 833(4), ‘The’—  
*omit, insert—*  
‘Unless the court orders otherwise, the’.

### **18 Amendment of r 846 (Discharge of the third person)**

Rule 846(1), ‘enforcement creditor’s liability’—

*omit, insert—*

‘third person’s liability’.

### **19 Amendment of ch 19, pt 8**

Chapter 19, part 8, heading, ‘**AND STOP ORDERS**’—

*omit.*

### **20 Amendment of ch 19, pt 9**

Chapter 19, part 9, heading—

*omit, insert—*

**‘PART 9—MONEY IN COURT AND STOP ORDERS’.**

### **21 Amendment of sch 4 (Dictionary)**

Schedule 4, definition “**administration charge**”, paragraph (a)(iii), ‘Chief Stipendiary Magistrate’—

*omit, insert—*

‘Chief Magistrate’.

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#### ENDNOTES

1. Made by the Governor in Council on 12 July 2001.
2. Notified in the gazette on 13 July 2001.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Justice and Attorney-General.