



Queensland

Uniform Civil Procedure Amendment Rule (No. 1) 2010

Subordinate Legislation 2010 No. 129

made under the

Supreme Court of Queensland Act 1991

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1 Short title

This rule may be cited as the *Uniform Civil Procedure Amendment Rule (No. 1) 2010*.

2 Rules amended

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

3 Amendment of r 17 (Contact details and address for service)

- (1) Rule 17(1)(a)(ii), from ‘is more’ to ‘service’—

omit, insert—

‘is not in Queensland, an address in Queensland where documents may be served on the plaintiff or applicant’.

- (2) Rule 17(2), ‘may’—

omit, insert—

‘must’.

- (3) Rule 17(3)—

omit, insert—

- ‘(3) If the solicitor, or the solicitor’s firm, has an email address, the solicitor—

(a) must include the firm’s email address; and

(b) may include the email address of the solicitor having conduct of the matter.’.

4 Amendment of r 29 (Notice of address for service)

- (1) Rule 29(5)—

renumber as rule 29(6).

- (2) Rule 29—

insert—

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- ‘(5) Despite rule 17, an address for service stated under the *Service and Execution of Process Act 1992* (Cwlth) is the address for service of the respondent.’

5 Amendment of r 140 (Contact details and address for service)

Rule 140—

insert—

- ‘(2) Despite rule 17, an address for service stated under the *Service and Execution of Process Act 1992* (Cwlth) is the address for service of the defendant.’

6 Insertion of new r 308A

After rule 308—

insert—

‘308A Discontinuance by parties when proceeding settled

- ‘(1) This rule applies if a proceeding is settled, whether or not a request for trial date has been filed.
- ‘(2) Each party must immediately give the registrar written notice that the proceeding has been settled.’

7 Amendment of r 358 (Acceptance of offer)

Rule 358(5)—

omit, insert—

- ‘(5) If an offer is accepted that expressly or impliedly includes an offer to pay assessed costs, then on the filing of a notice of acceptance in the approved form—
- (a) an order of the court is taken to have been made for the payment of costs in accordance with the offer; and
- (b) the costs may, if required, be assessed under these rules.’

8 Replacement of r 466 (Setting trial dates)

Rule 466—

*omit, insert—***‘466 Setting trial dates**

‘A date for the trial of a proceeding may be set—

- (a) at a call-over; or
- (b) by a judge or magistrate; or
- (c) by a registrar.’.

9 Replacement of r 467 (Request for trial date)

Rule 467—

*omit, insert—***‘467 Request for trial date**

- ‘(1) A party who is ready for trial may prepare and sign a request for trial date in the approved form.
- ‘(2) The party who prepared the request for trial date must serve copies of the request on each other party and, if the party served is ready for trial, that party must sign the request and return it to the party who prepared it.
- ‘(3) The party who prepared the request for trial date must file as soon as practicable a copy of the request signed by all parties, other than a party whose signature has been dispensed with by the court.
- ‘(4) For this rule, a party is *ready for trial* if—
 - (a) any order or requirement by notice under chapter 7, part 1 for the making of disclosure by or to the party or for the inspection of documents by or to the party has been complied with; and
 - (b) any order requiring particulars to be given by or to the party has been complied with; and
 - (c) any interrogatories delivered by or to the party have been answered under chapter 7, part 1, division 2; and

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- (d) as far as the party is concerned, all necessary steps in the proceeding (including steps to obtain disclosure or inspection of documents, admissions, particulars and answers to interrogatories) are complete; and
- (e) all the party's necessary witnesses will be available for the trial; and
- (f) as far as the party is concerned, the proceeding is in all respects ready for trial; and
- (g) if in the proceeding there is a claim for damages for personal injury or death—chapter 14, part 2 has been complied with.’.

10 Replacement of r 469 (Request for trial date)

Rule 469—

omit, insert—

‘469 Dispensing with signature on request for trial date

‘On the application of a party who has signed a request for trial date, the court may dispense with the signature of another party who has been served with the request under rule 467(2) and has not signed and returned it within 21 days after service.’.

11 Amendment of r 553 (Conference if personal injury damages claim)

Rule 553(4), ‘469(5)’—

omit, insert—

‘467(4)’.

12 Amendment of r 601 (When registrar may make grant)

(1) Rule 601(1)(c)—

renumber as rule 601(1)(d).

(2) Rule 601(1)—

insert—

‘(c) the original will is not available; or’.

13 Amendment of r 661 (Filing an order)

(1) Rule 661(2), from ‘, settled’—

omit, insert—

‘by a party and signed by the registrar.’.

(2) Rule 661(3)(a) and (b)—

omit.

(3) Rule 661(3)(c) and (d)—

renumber as rule 661(a) and (b).

14 Replacement of rr 807–816

Rules 807 to 816—

omit, insert—

‘807 Statement of financial position

- ‘(1) At any time after a money order is made, an enforcement creditor may, by written notice, require an enforcement debtor to complete and return to the enforcement creditor a statement of financial position of an enforcement debtor in the approved form.
- ‘(2) The written notice must be given or sent by post to the enforcement debtor together with a blank statement of financial position.
- ‘(3) The enforcement debtor must complete and return the statement of financial position to the enforcement creditor within 14 days after receiving the statement.
- ‘(4) If the enforcement debtor is a corporation, an officer of the corporation must complete the statement of financial position.
- ‘(5) If the enforcement debtor is a partnership, a partner or a person who has or had control or management of the

partnership business in Queensland must complete the statement of financial position.

- ‘(6) If the enforcement debtor receives regular payments including, for example, wages or social security benefits, the person completing the statement of financial position must include in the statement—
- (a) the date of receipt of the last 4 payments; and
 - (b) if the payments were paid to the enforcement debtor by payment into an account with a financial institution, the account number and any other details necessary to identify the account.

‘808 Enforcement hearing after money order is made

- ‘(1) An enforcement creditor may, without notice to another party, apply to the court, including the court as constituted by a registrar, for an enforcement hearing.
- ‘(2) The application may be made only after—
- (a) a money order is made; and
 - (b) the enforcement creditor has, under rule 807, required a statement of financial position to be completed and returned by the enforcement debtor in relation to whom the enforcement hearing is sought; and
 - (c) either—
 - (i) a completed statement of financial position has been returned to the enforcement creditor; or
 - (ii) the time for returning a completed statement of financial position has expired.
- ‘(3) The application must be supported by an affidavit that states the following—
- (a) the unpaid amount of the money order;
 - (b) whether the enforcement creditor has received a completed statement of financial position from the enforcement debtor;

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- (c) if the enforcement creditor has received a completed statement of financial position from the enforcement debtor, why the enforcement creditor is not satisfied with the information given in the statement.
- ‘(4) The application must be made to the court in the district in which the enforcement hearing is sought.
- ‘(5) No fee is payable for filing the application.
- ‘(6) The registrar must set the date for the enforcement hearing and issue an enforcement hearing summons in the approved form requiring the person to whom the summons is directed to attend an enforcement hearing at the time and place stated in the summons—
- (a) to give information and answer questions; and
 - (b) to produce the documents or things stated in the summons.
- ‘(7) The enforcement hearing summons may require the enforcement debtor to complete and return a statement of financial position in the approved form at least 4 business days before the date of the enforcement hearing.

‘809 Person to whom enforcement hearing summons may be directed and service

- ‘(1) An enforcement hearing summons may be directed to—
- (a) an enforcement debtor; or
 - (b) if an enforcement debtor is a corporation—an officer of the corporation; or
 - (c) if an enforcement debtor is a partnership—a partner or a person who has or had the control or management of the partnership business in Queensland.
- ‘(2) An enforcement hearing summons may be served on the person to whom it is directed personally or by prepaid ordinary post.

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- ‘(3) An enforcement hearing summons for an end of trial enforcement hearing must be served within the period directed by the court.
- ‘(4) Any other enforcement hearing summons must be served at least 14 days before the day set for the enforcement hearing.

‘810 Location for enforcement hearing

- ‘(1) If practicable, an enforcement hearing, other than an end of trial enforcement hearing, must be held in a district in which the person to whom the enforcement hearing summons is directed resides or carries on business.
- ‘(2) If subrule (1) does not apply, an enforcement hearing must be held at the place where the money order was made, unless the court directs otherwise.
- ‘(3) If an application for an enforcement hearing is made at a place other than where the money order was made—
 - (a) a copy of the money order must be filed with the application; and
 - (b) at the conclusion of the enforcement hearing, the registrar of the court at the place where the summons is issued must send to the registrar of the court where the money order was made a copy of—
 - (i) the summons; and
 - (ii) any documents filed in relation to the summons; and
 - (iii) the record of any enforcement hearing held and a copy of any order made.

‘811 Conduct money

- ‘(1) This rule applies to a person required by summons to attend an enforcement hearing in a district other than a district in which the person resides or carries on business.
- ‘(2) Conduct money must be offered to the person when the person is served with the summons.

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- ‘(3) The amount of conduct money is the amount required to be paid to a witness attending before the court under a subpoena under rule 419.
 - ‘(4) An affidavit accompanying the application for the enforcement hearing summons must contain an undertaking by the applicant to offer to pay conduct money to a person summoned.

‘812 Subpoena

- ‘(1) On application by an enforcement creditor or enforcement debtor, the court may issue a subpoena in the approved form to a person having relevant knowledge about the circumstances of an enforcement debtor.
- ‘(2) A person required to attend an enforcement hearing by subpoena must be served with the subpoena by ordinary service at least 14 days before the day set for the enforcement hearing.
- ‘(3) Rule 419 applies to a person required to attend an enforcement hearing by subpoena.

Note—

See chapter 11 (Evidence), part 4 (Subpoenas) for other provisions, including a requirement for conduct money, that apply to a subpoena under this rule.

‘813 Enforcement hearing

- ‘(1) A person to whom an enforcement hearing summons is directed must attend before the court issuing the summons, including the court as constituted by a registrar, at the time and place stated in the summons—
 - (a) to give information and answer questions; and
 - (b) to produce the documents or things stated in the summons.
- ‘(2) If an enforcement creditor is satisfied with the information provided by a person in a statement of financial position of an enforcement debtor, the enforcement creditor may give

written notice to the person and the court that the person is no longer required to attend the enforcement hearing.

- ‘(3) At an enforcement hearing, a person summoned to attend may be examined about an enforcement debtor’s property and other means of satisfying the order debt.

‘814 Orders at enforcement hearing

- ‘(1) At an enforcement hearing, the court may—
- (a) order that an enforcement warrant be issued; or
 - (b) make another order about the enforcement of the order; or
 - (c) stay the enforcement of the order; or
 - (d) award costs.
- ‘(2) However, unless the court orders otherwise, the costs of the enforcement hearing are costs of enforcement of the order.

‘815 Failure or refusal in relation to statement of financial position or enforcement hearing

- ‘(1) This rule applies if—
- (a) an enforcement hearing summons requires an enforcement debtor to complete and return a statement of financial position in the approved form; and
 - (b) the enforcement debtor or the person to whom the summons is directed fails, without lawful excuse, to return the completed statement of financial position.
- ‘(2) This rule also applies if a person summoned or subpoenaed to attend an enforcement hearing—
- (a) attends before the court and without lawful excuse—
 - (i) refuses to be sworn or to affirm; or
 - (ii) refuses to answer a question put to the person that the court directs be answered; or
 - (iii) fails to give an answer to the court’s satisfaction; or

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- (iv) fails or refuses to produce the documents or things stated in the summons; or
 - (b) fails or refuses to attend at the time and place stated in the summons or subpoena.
- ‘(3) The court may treat the person’s refusal or failure as a contempt of court.
- ‘(4) In this rule—
lawful excuse includes a lawful claim of privilege.

‘816 Enforcement hearing warrant

- ‘(1) A court may issue a warrant in the approved form ordering an enforcement officer to arrest a person and bring the person before the court or, for a Magistrates Court, the Magistrates Court or another Magistrates Court to be examined if the issuing court—
- (a) is satisfied that the person was personally served with, or otherwise received, a summons to attend an enforcement hearing; and
 - (b) considers the person failed to attend the enforcement hearing without sufficient cause.
- ‘(2) The power under this rule may only be exercised by a judge, a magistrate or the registrar conducting the enforcement hearing.
- ‘(3) An enforcement officer may ask a police officer to help in the exercise of the enforcement officer’s powers under the warrant.
- ‘(4) The police officer must give the enforcement officer the reasonable help the enforcement officer requires, if it is practicable to give the help.
- ‘(5) The enforcement officer or a police officer may deliver the person to the person in charge of any prison or watchhouse and the person in charge must receive and keep the person delivered in custody until the court or the enforcement officer directs otherwise.

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- ‘(6) If a warrant is issued by a Magistrates Court directing that a person be brought before another Magistrates Court—
- (a) the registrar of the issuing court must send the warrant to the registrar of the other court to give to an enforcement officer; and
 - (b) the registrar of the court to which the warrant is sent must—
 - (i) report to the registrar of the issuing court as to the execution of the warrant; and
 - (ii) send to the registrar of the issuing court the record of any enforcement hearing held and a copy of any order made.’.

15 Amendment of r 968 (Filing documents personally)

Rule 968(3), note—

omit.

16 Amendment of r 975G (If both electronic and paper documents filed)

Rule 975G(2), ‘must’—

omit, insert—

‘may’.

17 Replacement of r 978 (Registrar to keep and use seal)

Rule 978—

omit, insert—

‘978 Issue of documents

- ‘(1) Each document issued by the court must be signed by the appropriate officer for the court and stamped with the court seal.

- ‘(2) If a document to be stamped with the court seal has 2 or more pages, only 1 page of the document is required to be stamped.’.

18 Amendment of sch 4 (Dictionary)

- (1) Schedule 4, definition *issued*—
omit.
- (2) Schedule 4, definition *assessed costs*, ‘, for chapter 17A,’—
omit.
- (3) Schedule 4, definition *minor claim*, paragraph (a), ‘\$7500’—
omit, insert—
‘\$25000’.

ENDNOTES

- 1 Made by the Governor in Council on 17 June 2010.
- 2 Notified in the gazette on 18 June 2010.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Department of Justice and Attorney-General.