



Queensland

# Uniform Civil Procedure Amendment Rule (No. 1) 2011

## Subordinate Legislation 2011 No. 296

made under the

*Supreme Court of Queensland Act 1991*

## Contents

---

		Page
1	Short title . . . . .	5
2	Rules amended . . . . .	5
3	Amendment of ch 4, pt 7 hdg (Service outside Australia) . . . . .	5
4	Amendment of ch 4, pt 7, div 3, sdiv 1 hdg (Preliminary). . . . .	5
5	Amendment of r 130A (Definitions for div 3). . . . .	5
6	Amendment of r 130D (Application for request for service abroad)	6
7	Insertion of new ch 4, pt 7, div 3, sdiv 4. . . . .	6
	Subdivision 4 Local service of foreign judicial documents	
	130M Application of sdiv 4 . . . . .	6
	130N Certain documents to be referred back to the Attorney-General's Department of the Commonwealth	7
	130O Service . . . . .	8
	130P Affidavit as to service . . . . .	9
8	Amendment, relocation and renumbering of ch 4, pt 8 (Service of foreign legal process in Queensland) . . . . .	10
9	Insertion of new r 130Q . . . . .	10
	130Q Application of div 4 . . . . .	10
10	Amendment of r 214 (Disclosure by delivery of list of documents and copies). . . . .	10
11	Amendment of r 216 (Disclosure by inspection of documents) . .	11
12	Amendment of r 352 (Definition for pt 5) . . . . .	11

Contents

---

13	Amendment of r 405 (Default of witness) . . . . .	12
14	Amendment of r 406 (Witness's expenses) . . . . .	12
15	Amendment of r 420 (Production by non-party) . . . . .	12
16	Amendment of r 449 (Definitions for ch 12) . . . . .	12
17	Omission of ch 14, pt 3, div 1 hdg and r 559 . . . . .	13
18	Omission of ch 14, pt 3, div 2 (Defamation) . . . . .	13
19	Amendment of ch 15 hdg (Probate and administration) . . . . .	13
20	Amendment of r 632 (Affidavit of scripts) . . . . .	13
21	Replacement of ch 15, pt 10 (Executors', administrators' and trustees' accounts) . . . . .	13
	Part 10 Assessment of estate accounts	
	Division 1 Preliminary	
644	Definitions for pts 10 and 11. . . . .	13
	Division 2 Applying for orders for filing, assessing and passing estate accounts etc.	
645	Application by beneficiary for filing, assessing and passing estate account. . . . .	15
646	Requirements for making application for filing, assessing and passing estate account. . . . .	16
647	Application by trustee for assessing and passing estate account . . . . .	17
648	Requirements of estate account. . . . .	18
649	Filing estate account and notice of objection . . . . .	19
650	Referral of issue to costs assessor. . . . .	20
	Division 3 Assessment of estate accounts	
651	Procedure on assessment . . . . .	20
652	Powers of account assessor. . . . .	21
653	No participation by party . . . . .	22
654	Issue or question arising . . . . .	22
655	Notice of adjournment . . . . .	23
656	Conflict of interest. . . . .	23
657	Certificate of account assessment . . . . .	23
657A	Written reasons for decision. . . . .	24
	Division 4 Passing estate accounts	
657B	Passing estate account . . . . .	25
	Division 5 Commission	
657C	Application for commission. . . . .	26

	657D	Court may require filing of estate account . . . . .	26
	657E	Decision on application for commission . . . . .	27
	657F	Other orders and agreements . . . . .	28
	Part 11	Account assessors	
	657G	Eligibility . . . . .	28
	657H	Application . . . . .	28
	657I	Appointment . . . . .	29
	657J	Ongoing disclosure of adverse matters and updated details . . . . .	29
	657K	List of account assessors . . . . .	30
	657L	Charges for account assessments . . . . .	30
	657M	Ending an appointment by request . . . . .	31
	657N	Ending an appointment for sufficient reason . . . . .	31
	657O	Effect of ending of appointment or notice about possible ending of appointment . . . . .	32
22		Amendment of r 679 (Definitions) . . . . .	32
23		Amendment of r 743L (Appointment) . . . . .	32
24		Amendment of r 743M (Ongoing disclosure of adverse matters and updated details) . . . . .	33
25		Amendment of r 743N (List of costs assessors) . . . . .	33
26		Amendment of r 743P (Ending an appointment by request) . . . .	33
27		Amendment of r 743Q (Ending an appointment for sufficient reason) . . . . .	33
28		Amendment of r 743R (Effect of ending of appointment or notice about possible ending of appointment) . . . . .	33
29		Amendment of r 881 (Money in court) . . . . .	34
30		Amendment of r 890 (Definitions for ch 20) . . . . .	34
31		Omission of r 975A (Application of div 4) . . . . .	34
32		Amendment of r 975B (Definitions for div 4) . . . . .	34
33		Amendment of r 975H (Request for electronic judgment under r 283) . . . . .	35
34		Insertion of new rr 975J–975M . . . . .	35
	975J	Application for enforcement hearing under r 808 . . . .	35
	975K	Electronic enforcement hearing summons . . . . .	36
	975L	Application for enforcement warrant under r 817 . . . .	36
	975M	Electronic enforcement warrant . . . . .	38
35		Amendment of r 999 (Transitional provision) . . . . .	38
36		Insertion of new ch 24, pt 6 . . . . .	38

Contents

---

	Part 6	Provision for Uniform Civil Procedure Amendment Rule (No. 1) 2011	
	1001	Transitional provision . . . . .	38
37		Amendment of sch 1B (Powers of the court that may be exercised by a registrar) . . . . .	39
38		Amendment of sch 4 (Dictionary) . . . . .	39

## 1 Short title

This rule may be cited as the *Uniform Civil Procedure Amendment Rule (No. 1) 2011*.

## 2 Rules amended

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

## 3 Amendment of ch 4, pt 7 hdg (Service outside Australia)

Chapter 4, part 7, heading, after ‘outside’—

*insert—*

‘, or emanating from outside,’.

## 4 Amendment of ch 4, pt 7, div 3, sdiv 1 hdg (Preliminary)

Chapter 4, part 7, division 3, subdivision 1, heading, note 2, at the end—

*insert—*

‘Subdivision 4, on the other hand, deals with service by the Supreme Court or arranged by the court in its role as an other or additional authority, of judicial documents emanating from overseas convention countries.’.

## 5 Amendment of r 130A (Definitions for div 3)

(1) Rule 130A—

*insert—*

*‘foreign judicial document* means a judicial document that originates in a Hague Convention country and relates to civil proceedings in a court of that country.

*forwarding authority* means—

- (a) for a request for service of a foreign judicial document in Queensland—the authority or judicial officer of the Hague Convention country in which the document originates that forwards the request (being an authority or judicial officer that is competent under the law of that

[s 6]

---

country to forward a request for service under Article 3 of the Hague Convention); or

- (b) for a request for service of a local judicial document in a Hague Convention country—the registrar.

***request for service in Queensland*** means a request for service in Queensland of a foreign judicial document mentioned in rule 130M(1).’.

- (2) Rule 130A, definition *applicant*, after ‘service abroad’—  
*insert—*  
‘or for a request for service in Queensland’.

## **6 Amendment of r 130D (Application for request for service abroad)**

Rule 130D(6)—

*omit.*

## **7 Insertion of new ch 4, pt 7, div 3, sdiv 4**

Chapter 4, part 7, division 3—

*insert—*

### **‘Subdivision 4 Local service of foreign judicial documents**

#### **‘130M Application of sdiv 4**

- ‘(1) This subdivision applies to service in Queensland of a foreign judicial document in relation to which a due form of request for service has been forwarded to the court—
  - (a) by the Attorney-General’s Department of the Commonwealth, whether in the first instance or following referral under rule 130N; or
  - (b) by a forwarding authority.

- ‘(2) Subject to subrule (3), a request for service in Queensland is in due form if it is in the approved form and is accompanied by the following documents—
- (a) the document to be served;
  - (b) a summary of the document to be served, which must be in the approved form;
  - (c) a copy of the request and of each of the documents mentioned in paragraphs (a) and (b);
  - (d) if either of the documents mentioned in paragraphs (a) and (b) is not in the English language, an English translation of the document.
- ‘(3) Any translation required under subrule (2)(d) must bear a certificate (in English) signed by the translator stating—
- (a) that the translation is an accurate translation of the document; and
  - (b) the translator’s full name and address and his or her qualifications for making the translation.

**‘130N Certain documents to be referred back to the Attorney-General’s Department of the Commonwealth**

‘If, after receiving a request for service in Queensland, the registrar is of the opinion—

- (a) that the request does not comply with rule 130M; or
- (b) that the document to which the request relates is not a foreign judicial document; or
- (c) that compliance with the request may infringe Australia’s sovereignty or security; or
- (d) that the request seeks service of a document in some other State or Territory of the Commonwealth;

the registrar must refer the request to the Attorney-General’s Department of the Commonwealth together with a statement of his or her opinion.

*Note—*

The Attorney-General's Department of the Commonwealth will deal with misdirected and non-compliant requests, make arrangements for the service of extrajudicial documents and assess and decide questions concerning Australia's sovereignty and security.

### **'1300 Service**

- '(1) Subject to rule 130N, on receipt of a request for service in Queensland, the court must arrange for the service of the relevant documents in accordance with the request.
- '(2) The relevant documents mentioned in subrule (1) are the following—
  - (a) the document to be served;
  - (b) a summary of the document to be served;
  - (c) a copy of the request for service in Queensland;
  - (d) if either of the documents mentioned in paragraphs (a) and (b) is not in the English language, an English translation of the document.
- '(3) Service of the relevant documents may be effected by any of the following methods of service—
  - (a) by a method of service prescribed by the law in force in Queensland—
    - (i) for the service of a document of a kind corresponding to the document to be served; or
    - (ii) if there is no such corresponding kind of document, for the service of initiating process in proceedings in the Supreme Court;
  - (b) if the applicant has requested a particular method of service and that method is compatible with the law in force in Queensland, by that method;
  - (c) if the applicant has not requested a particular method of service and the person requested to be served accepts the document voluntarily, by delivery of the document to the person requested to be served.



### **‘130P Affidavit as to service**

- ‘(1) If service of a document has been effected pursuant to a request for service in Queensland, the person by whom service has been effected must lodge with the court an affidavit specifying—
  - (a) the time, day of the week and date on which the document was served; and
  - (b) the place where the document was served; and
  - (c) the method of service; and
  - (d) the person on whom the document was served; and
  - (e) the way in which that person was identified.
- ‘(2) If attempts to serve a document pursuant to a request for service in Queensland have failed, the person by whom service has been attempted must lodge with the court an affidavit specifying—
  - (a) details of the attempts made to serve the document; and
  - (b) the reasons that have prevented service.
- ‘(3) When an affidavit as to service of a document has been lodged in accordance with this rule, the registrar—
  - (a) must complete a certificate of service, sealed with the seal of the court, on the reverse side of, or attached to, the request for service in Queensland; and
  - (b) must forward the certificate of service, together with a statement as to the costs incurred in relation to the service or attempted service of the document, directly to the forwarding authority from which the request was received.
- ‘(4) A certificate of service must be—
  - (a) in the approved form; or
  - (b) if a form of certificate of service that substantially corresponds to the approved form mentioned in paragraph (a) accompanies the request for service, in that accompanying form.’.

**8 Amendment, relocation and renumbering of ch 4, pt 8  
(Service of foreign legal process in Queensland)**

- (1) Chapter 4, part 8, heading, after ‘Queensland’—  
*insert—*  
‘**other than under the Hague Convention**’.
- (2) Chapter 4, part 8, heading—  
*relocate* and *renumber* in chapter 4, part 7 as division 4,  
heading.
- (3) Rule 131(1)(b), after ‘Attorney-General’—  
*insert—*  
‘, or a person authorised by the Attorney-General,’.
- (4) Rule 131(2)(f), ‘Attorney-General’—  
*omit, insert—*  
‘person mentioned in subrule (1)(b) who sent the request to  
the Supreme Court’.
- (5) Rule 131—  
*relocate* in chapter 4, part 7, division 4 as rule 131.

**9 Insertion of new r 130Q**

Chapter 4, part 7, division 4, as amended, relocated and  
renumbered—

*insert—*

**‘130Q Application of div 4**

‘This division applies to a request for the service in  
Queensland of process of a court or tribunal of a foreign  
country that is not a Hague Convention country.’.

**10 Amendment of r 214 (Disclosure by delivery of list of  
documents and copies)**

Rule 214(2)—

*omit, insert—*

- ‘(2) The times for the delivery of lists under subrule (1)(a) are as follows—
- (a) if an order for disclosure is made before the close of pleadings—the times stated in the order;
  - (b) if an application for a summary decision is made within 28 days after the close of pleadings and the proceeding is not entirely disposed of when the application is decided—within 28 days after the decision;
  - (c) if, as a result of a further pleading or amended pleading, additional documents are subject to disclosure—within 28 days after the 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 happens;
  - (e) otherwise—within 28 days after the close of pleadings.
- ‘(3) A copy of a document requested under subrule (1)(b) must be delivered within 14 days after the request.’.

## **11 Amendment of r 216 (Disclosure by inspection of documents)**

Rule 216(2)(a), after ‘rule 214(2)’—

*insert—*

‘or (3)’.

## **12 Amendment of r 352 (Definition for pt 5)**

Rule 352, heading, ‘Definition’—

*omit, insert—*

‘**Definitions**’.

**13 Amendment of r 405 (Default of witness)**

Rule 405, heading, ‘witness’—

*omit, insert—*

**‘person required to attend’.**

**14 Amendment of r 406 (Witness’s expenses)**

Rule 406, heading—

*omit, insert—*

**‘406 Expenses etc. of person required to attend’.**

**15 Amendment of r 420 (Production by non-party)**

Rule 420(2) to (4)—

*omit, insert—*

- ‘(2) Unless the court orders otherwise, the subpoena to produce a document or thing must permit the person to produce the document or thing at the registry from which the subpoena was issued by the day before the first day on which attendance is required.
- ‘(3) If a document or thing is produced at the registry, the appropriate officer of the court must—
  - (a) issue a receipt to the person producing the document or thing; and
  - (b) produce the document or thing as the court directs.
- ‘(4) A subpoena to produce a document or thing may be satisfied by an agent of the person named in the subpoena producing the document or thing to the court.’.

**16 Amendment of r 449 (Definitions for ch 12)**

Rule 449, heading, ‘Definitions’—

*omit, insert—*

**‘Definition’.**

**17 Omission of ch 14, pt 3, div 1 hdg and r 559**

Chapter 14, part 3, division 1, heading and rule 559—  
*omit.*

**18 Omission of ch 14, pt 3, div 2 (Defamation)**

Chapter 14, part 3, division 2—  
*omit.*

**19 Amendment of ch 15 hdg (Probate and administration)**

Chapter 15, heading, after ‘administration’—  
*insert—*  
**‘, and trust estates’.**

**20 Amendment of r 632 (Affidavit of scripts)**

Rule 632(1)(b)(ii)—  
*omit, insert—*  
**‘(ii)stating that the party does not know who has possession or control of the script.’.**

**21 Replacement of ch 15, pt 10 (Executors’, administrators’ and trustees’ accounts)**

Chapter 15, part 10—  
*omit, insert—*

**‘Part 10 Assessment of estate accounts**

**‘Division 1 Preliminary**

**‘644 Definitions for pts 10 and 11**

**‘In this part and part 11—**

**account assessment** means the examination and consideration of an estate account under this part to ensure that it is correct and appropriate.

**account assessor** means an account assessor appointed under rule 657I.

**beneficiary**, in an estate, includes a person with—

- (a) a beneficial interest in the estate; and
- (b) a right to obtain an account of the administration of the estate from the trustee of the estate.

**certificate of account assessment** see rule 657.

**commission** means—

- (a) remuneration or commission payable to a personal representative under the *Succession Act 1981*, section 68; or
- (b) remuneration a trustee may charge under the *Trusts Act 1973*, section 101(1).

**costs assessor** means a cost assessor appointed under rule 743L.

**estate** includes a trust estate.

**estate account** see rule 648.

**inventory**, of an estate, means a numbered list of assets and liabilities of, and payments to and from, the estate, in reasonable detail.

**party** includes—

- (a) a person to whom the court has directed that notice of an application for an order that an estate account be assessed and passed be given; and
- (b) a person on whom the court has ordered that a copy of an estate account be served.

**trustee** includes a personal representative of a deceased individual.

---

**‘Division 2                      Applying for orders for filing,  
   assessing and passing estate  
   accounts etc.**

**‘645      Application by beneficiary for filing, assessing and  
                 passing estate account**

- ‘(1) A beneficiary in an estate may apply to the court for an order that a trustee of the estate file an estate account and that the estate account be assessed and passed.
- ‘(2) The applicant must file an affidavit stating the reasons for the application and showing—
  - (a) compliance with rule 646; or
  - (b) why compliance with rule 646 should be dispensed with.
- ‘(3) If the applicant seeks assessment of the estate account, the applicant must, if practicable—
  - (a) nominate a particular account assessor for the account assessment; and
  - (b) state the applicable hourly rate of the nominated account assessor; and
  - (c) provide the nominated account assessor’s consent to appointment to carry out the account assessment and confirmation that, if appointed, there would be no conflict of interest.
- ‘(4) The trustee is the respondent to the application but the court may direct that notice of the application be given to other beneficiaries or other persons.
- ‘(5) The court may make the orders it considers appropriate.
- ‘(6) If the court orders that the estate account be assessed, the court—
  - (a) must appoint an account assessor to carry out the assessment; and
  - (b) may give directions to the account assessor about carrying out the account assessment.

**‘646 Requirements for making application for filing, assessing and passing estate account**

- ‘(1) Before a beneficiary makes an application under rule 645, the beneficiary must serve on the trustee a written notice requesting an estate account be prepared and served on the beneficiary within 30 days after service of the notice.
- ‘(2) If the trustee serves an estate account on the beneficiary as requested under subrule (1) and the beneficiary is not satisfied with the estate account, the beneficiary must serve on the trustee a notice of objection to the estate account.
- ‘(3) The notice of objection must—
  - (a) be in the approved form; and
  - (b) number each objection; and
  - (c) identify each—
    - (i) item in the estate account to which the beneficiary objects; or
    - (ii) omission from the estate account alleged by the beneficiary; and
  - (d) for each objection—concisely state the reasons for the objection identifying any issue of law or fact the beneficiary contends the trustee should have taken into account.
- ‘(4) The reasons for objection may be in abbreviated note form but must be understandable without further explanation.
- ‘(5) If the same objection applies to consecutive or nearly consecutive items in the estate account, the notice need not separately state the reasons for objecting to each of the items.
- ‘(6) Also, if there are a number of associated items, the objection may be in the form of an objection to a common issue related to the associated items.
- ‘(7) The beneficiary may make an application to the court under rule 645 for filing, assessing and passing an estate account only if—



- (a) 30 days have passed after service of the notice under subrule (1) and an estate account has not been served on the beneficiary; or
  - (b) 21 days have passed after service of a notice of objection under subrule (2) and no response to the objection has been served on the beneficiary; or
  - (c) a response to the notice of objection has been served on the beneficiary.
- ‘(8) The court may dispense with compliance with this rule if urgent circumstances exist or another good reason is shown.

**‘647 Application by trustee for assessing and passing estate account**

- ‘(1) A trustee of an estate may apply to the court for an order that an estate account for the estate be assessed and passed.
- ‘(2) The applicant must file the estate account and an affidavit stating the reasons for seeking the order.
- ‘(3) The application may be made ex parte, but the court may give directions for service the court considers appropriate.
- ‘(4) If the applicant seeks assessment of the estate account, the applicant must, if practicable—
  - (a) nominate a particular account assessor for the account assessment; and
  - (b) state the applicable hourly rate of the nominated account assessor; and
  - (c) provide the nominated account assessor’s consent to carry out the account assessment and confirmation that, if appointed, there would be no conflict of interest.
- ‘(5) The court may make the orders it considers appropriate.
- ‘(6) If the court orders that the estate account be assessed, the court—
  - (a) must appoint an account assessor to carry out the assessment; and

- (b) may give directions to the account assessor about carrying out the account assessment.

*Example for paragraph (b)—*

The court may direct that the account assessment be carried out without detailed consideration of the estate account unless the account assessor identifies a deficiency in the estate account.

## **‘648 Requirements of estate account**

- ‘(1) An *estate account* must give an account of the property of the estate to which it applies and include the following—

- (a) clear and succinct particulars of all transactions that have occurred in respect of any bank or trust account relating to the estate;

*Example of how paragraph (a) may be complied with—*

The particulars may be set out in spreadsheet format in chronological order, with—

- (a) each receipt and disbursement divided into capital and income components; and
  - (b) running column totals at the bottom of each page and top of each successive page; and
  - (c) progressive calculations of total funds on hand.
- (b) an inventory of the estate;
  - (c) all distributions under the will (including the will as varied by a court order), trust instrument or on intestacy for the estate;
  - (d) the value of all distributions and assets remaining on hand, reconciled to the net balance of the estate;
  - (e) the changes in any investments made in the course of administration;
  - (f) details of any other dealings with the property of the estate.

- ‘(2) Subject to subrule (3), if a person is the personal representative of a deceased individual and the trustee of an estate of the deceased individual, the person may include in the same estate account a statement of the administration of

the estate both as personal representative of the deceased individual and as trustee of the estate of the deceased individual.

- ‘(3) The estate account must identify property received and disbursed by the person in each capacity.

#### **‘649 Filing estate account and notice of objection**

- ‘(1) If the court orders an estate account be filed, assessed and passed under rule 645, the trustee of the estate to which the account relates must, within the time specified in the order—
  - (a) file an estate account complying with rule 648 and verified by affidavit of the trustee; and
  - (b) serve a copy of the estate account on the applicant, and any other person as directed by the court.
- ‘(2) If a beneficiary or other person served with a copy of the estate account is not satisfied with the estate account, the beneficiary or other person may, within 21 days after being served, file and serve on the trustee a notice of objection.
- ‘(3) The notice of objection must comply with rule 646(3) to (6).
- ‘(4) The court may direct that an assessment of the estate account be limited to the matters raised by a beneficiary or other person in a notice of objection to the estate account filed and served under this rule.
- ‘(5) When the time for service of notices of objection to the estate account has ended, the trustee must serve on the account assessor appointed to carry out the account assessment copies of the following—
  - (a) the order that the estate account be filed, assessed and passed;
  - (b) the estate account;
  - (c) any notice of objection to the estate account filed and served under this rule.

**‘650 Referral of issue to costs assessor**

- ‘(1) The court may order that any issue relating to a lawyer’s fees charged to an estate be referred to a costs assessor for a costs assessment.
- ‘(2) On making an order under subrule (1), the court may—
  - (a) appoint a costs assessor to undertake the costs assessment; and
  - (b) direct the trustee to cause a costs statement in assessable form to be prepared: and
  - (c) determine who is to pay the costs of the cost assessment and the lawyer’s costs of preparing the costs statement.
- ‘(3) The costs assessment is to be made under chapter 17A, part 4.
- ‘(4) For the purposes of applying subrule (3)—
  - (a) despite rule 743I(3), a reference to a notice of objection in chapter 17A, part 4 is taken to be a reference to a notice of objection under rule 649, so far as the notice of objection relates to a lawyer’s fees; and
  - (b) despite rule 743I, rule 720(3) does not apply to a costs assessment referred to a costs assessor under this rule; and
  - (c) the court may give directions for notice to be given to the persons referred to in the *Legal Profession Act 2007*, section 339(1).
- ‘(5) The certificate of the costs assessor must distinguish between professional and non-professional work by the lawyer.

**‘Division 3 Assessment of estate accounts**

**‘651 Procedure on assessment**

- ‘(1) An account assessor appointed to carry out an account assessment is to decide the procedure to be followed on the assessment.
- ‘(2) However, the procedure must be—

- (a) appropriate to the scope and nature of any dispute and any amount in dispute; and
  - (b) consistent with the rules of natural justice; and
  - (c) fair and efficient.
- ‘(3) Without limiting subrule (1) or (2), the account assessor may decide to do all or any of the following—
  - (a) hear the account assessment in private;
  - (b) carry out the account assessment on the papers without an oral hearing;
  - (c) not be bound by laws of evidence or procedure applying to a proceeding in the court;
  - (d) extend or shorten the time for taking any step in the account assessment;
  - (e) be informed of the facts in any way the account assessor considers appropriate;
  - (f) require proof of expenditure in the form of receipts or other evidence satisfactory to the account assessor;
  - (g) require an estate account to be amended or require a further estate account or amended estate account to be provided by the trustee of the estate;
  - (h) not make a record of the evidence given.
- ‘(4) Unless the court orders otherwise, the costs of an account assessment are to be borne by the estate.
- ‘(5) However, the account assessor may make a recommendation in a certificate of account assessment as to how the costs of the account assessment are to be borne.

## **‘652 Powers of account assessor**

‘The court may, by order, give an account assessor the power to do any of the following in relation to an account assessment—

- (a) administer an oath or receive an affirmation;
- (b) examine witnesses;

[s 21]

---

- (c) if the account assessor considers there is any conflict of interest relating to the legal representation of a party—direct that there be separate legal representation for the party;
- (d) direct or require a party to produce documents or provide information;
- (e) give directions about the conduct of the assessment process;
- (f) anything else the court directs.

**‘653 No participation by party**

‘(1) This rule applies if—

- (a) an account assessor is appointed to carry out an account assessment; and
- (b) a party does not participate in the account assessment in accordance with the procedure decided by the account assessor.

‘(2) The account assessor may—

- (a) proceed with the account assessment without the party’s participation; or
- (b) refer the matter to the court for directions.

**‘654 Issue or question arising**

‘(1) An account assessor appointed to carry out an account assessment may decline to decide any issue or question arising in relation to the account assessment that the account assessor considers should not be decided by the account assessor.

‘(2) The account assessor may refer to the court any issue or question arising in relation to the account assessment the account assessor considers should be decided by the court.

‘(3) The court may do either or both of the following—

- (a) decide the issue or question referred under subrule (2);

- (b) refer the issue or question to the account assessor with or without directions.

#### **‘655 Notice of adjournment**

- ‘(1) This rule applies if an account assessment is adjourned for any reason.
- ‘(2) Unless the court or account assessor directs otherwise, the trustee must give notice of the adjournment to any party not present when the hearing or assessment was adjourned.

#### **‘656 Conflict of interest**

‘If an account assessor has a direct or indirect interest in an account assessment that could conflict with the proper performance of the account assessor’s duties, the account assessor must, after the relevant facts come to the account assessor’s knowledge—

- (a) disclose the nature of the interest to the registrar of the court; and
- (b) not continue with the account assessment; and
- (c) refer the account assessment to the court for directions.

#### **‘657 Certificate of account assessment**

- ‘(1) At the end of an account assessment, an account assessor must prepare and sign a certificate (a ***certificate of account assessment***) setting out the following—
  - (a) the account assessor’s opinion as to the correctness and appropriateness or otherwise of the estate account;
  - (b) the account assessor’s determination of any issue or question referred to the account assessor under rule 654(3)(b);
  - (c) the account assessor’s decision on any issue raised in any notice of objection under rule 649;
  - (d) any other matter the court directs.

‘(2) If an estate account is prepared as allowed under rule 648(2) by a person both as personal representative of a deceased individual and as trustee of the estate of the deceased individual, the certificate of account assessment must set out separately the results of the account assessor’s examination of the estate account so far as it relates to each capacity.

‘(3) The certificate of account assessment may also include—

- (a) remarks or findings about the administration of the estate to which the assessment relates; and
- (b) a recommendation as to costs made under rule 651(5).

*Example of a finding for subrule (3)(a)—*

a finding about the value of capital assets gathered in, sold or distributed in the administration of the estate or the income of the estate

‘(4) The account assessor must—

- (a) file the certificate of account assessment in the court within 14 days after the end of the account assessment to which the certificate of account assessment relates; and
- (b) on filing, give a copy of the certificate of account assessment to each party.

### **‘657A Written reasons for decision**

‘(1) Within 14 days after receiving a copy of an account assessor’s certificate of account assessment, a party may make a written request to the account assessor for reasons for any decision included in the certificate of account assessment.

‘(2) If an account assessor receives a request under subrule (1), the account assessor must—

- (a) within 21 days, give written reasons for the decision to each of the parties who participated in the account assessment; and
- (b) give a copy of the written reasons to the registry of the court in which the certificate of account assessment was filed.



- ‘(3) A party requesting reasons must pay the account assessor’s reasonable costs of preparing the reasons and those costs form part of the party’s costs in the proceeding.
- ‘(4) The court may publish written reasons in the way it considers appropriate.

*Example—*

The reasons may be published on the Queensland Courts website.

## **‘Division 4                      Passing estate accounts**

### **‘657B Passing estate account**

- ‘(1) After a certificate of account assessment is filed in the court, a party may relist the application made under rule 645 or 647 for the account to be passed by the court.
- ‘(2) The party must give notice of the request under subrule (1) and the date and time of the hearing of the application to all other parties.
- ‘(3) A party dissatisfied with a decision in an account assessor’s certificate of account assessment may ask the court to review the decision before the estate account is passed.
- ‘(4) The party must file and serve an affidavit on all other parties—
  - (a) stating specific and concise grounds for objecting to the decision in the certificate of account assessment; and
  - (b) exhibiting a copy of the written reasons for the decision given by the account assessor; and
  - (c) detailing any evidence relied on in support of the objection.
- ‘(5) On the review, the court may do all or any of the following—
  - (a) exercise all the powers of the account assessor in relation to the account assessment;
  - (b) set aside or vary the decision of the account assessor;

- (c) refer any issue to the account assessor for reconsideration, with or without directions;
  - (d) make any other order or give any other direction the court considers appropriate.
- ‘(6) After the conclusion of the review, the court may—
  - (a) pass the estate account; and
  - (b) make any other order, including as to costs, as may be appropriate in the circumstances.

## **‘Division 5                      Commission**

### **‘657C Application for commission**

- ‘(1) A trustee of an estate may apply to the court for commission.
- ‘(2) The application must be supported by an affidavit of the trustee setting out—
  - (a) the basis of the application; and
  - (b) the commission sought; and
  - (c) the trustee’s justification for the commission; and
  - (d) an inventory of the estate; and
  - (e) material to identify the appropriate respondents to the application.
- ‘(3) Unless the court otherwise orders, the application must be served on any beneficiary of the estate affected by the order sought.
- ‘(4) The court may direct that the application be served on any other person.

### **‘657D Court may require filing of estate account**

- ‘(1) An estate account need not be filed, assessed or passed before an application for commission is determined, but the court may order that an estate account be filed, assessed and passed,

and adjourn the application for commission until the estate account has been filed, assessed and passed.

‘(2) If an order is made under subrule (1)—

- (a) the court must appoint an account assessor to carry out the account assessment; and
- (b) this part applies as if the order were an order made under rule 645 for an estate account to be filed, assessed and passed.

‘(3) The court may—

- (a) order that any other matter be determined for the purpose of the application for commission; and
- (b) give directions to enable that matter to be determined.

### **‘657E Decision on application for commission**

‘(1) In deciding an application for commission by a trustee of an estate, the court may take into account—

- (a) the value and composition of the estate; and
- (b) the provisions of the will or trust instrument for the estate; and
- (c) the conduct of all persons (including the parties) connected with the administration of the estate; and
- (d) the nature, extent and value of work done by persons other than the trustee, including non-professional work delegated to a lawyer; and
- (e) the result of any assessment of the estate account, including the scope and merit of any objections raised in a notice of objection before the estate account is passed; and
- (f) the efficiency of the administration of the estate; and
- (g) any other matter the court considers relevant.

‘(2) The court may make any order for commission the court considers appropriate.

### **‘657F Other orders and agreements**

‘Nothing in this part prevents—

- (a) the court making an order in relation to an estate account or commission; or
- (b) all trustees and beneficiaries of an estate making an agreement in relation to an estate account or commission.

## **‘Part 11 Account assessors**

### **‘657G Eligibility**

‘(1) A person is eligible for appointment as an account assessor only if the person is—

- (a) an Australian legal practitioner who is currently accredited by the Queensland Law Society in the area of succession law; and
- (b) a fit and proper person to assess estate accounts.

‘(2) In this rule—

*Australian legal practitioner* see the *Legal Profession Act 2007*, section 6(1).

### **‘657H Application**

‘(1) A person applying for appointment as an account assessor must—

- (a) apply in the approved form; and
- (b) provide an affidavit demonstrating the person’s eligibility for appointment and stating the following—
  - (i) any adverse matter known by the person that may affect whether the person is a fit and proper person for appointment;
  - (ii) the hourly rate or rates the person would charge if appointed;

- (iii) any other matter required by a practice direction to be stated in the affidavit; and
- (c) pay the prescribed fee, if any.
- ‘(2) The Chief Justice may make a practice direction under this rule requiring other matters relevant to appointment as an account assessor to be stated in the affidavit.

### **‘657I Appointment**

- ‘(1) If a person who is eligible for appointment as an account assessor applies for appointment under rule 657H, the principal registrar may appoint or refuse to appoint the person as an account assessor.
- ‘(2) If the principal registrar refuses to appoint the person, the principal registrar must give the person a statement of reasons for the decision.
- ‘(3) A person whose application for appointment is refused under subrule (1) may appeal to a single judge of the Supreme Court.

### **‘657J Ongoing disclosure of adverse matters and updated details**

- ‘(1) Subrule (2) applies to—
  - (a) a person who has applied for appointment as an account assessor but whose application has not yet been decided; or
  - (b) a person who is an account assessor.
- ‘(2) The person must give written notice to the principal registrar of any matter coming to the person’s knowledge that would, if the person were applying afresh for appointment as an account assessor—
  - (a) be required in the person’s affidavit under rule 657H(1)(b)(i); or
  - (b) otherwise affect the person’s eligibility to be appointed.

*Example of a matter otherwise affecting a person’s eligibility—*

The person ceases to be accredited by the Queensland Law Society in the area of succession law.

- ‘(3) An account assessor must also give written notice to the principal registrar of any change in name, contact details or hourly rate or rates for the account assessor.
- ‘(4) A person must give any notice required under this rule as soon as practicable.

#### **‘657K List of account assessors**

- ‘(1) The principal registrar must keep and publish a current list of account assessors.
- ‘(2) The list must contain—
  - (a) the name, contact details and hourly rate or rates of each account assessor; and
  - (b) any change notified under rule 657J(3).

#### **‘657L Charges for account assessments**

- ‘(1) The Chief Justice may make a practice direction under this rule setting the maximum hourly rate chargeable by an account assessor.
- ‘(2) At any time the hourly rate for an account assessor may not be more than the maximum hourly rate at that time set by the practice direction.
- ‘(3) For an account assessment—
  - (a) the account assessor is entitled to charge only for the number of hours reasonably spent on the assessment (which number may be, or include, a fraction) including time spent reading the material served under rule 649(5) and any other relevant document; and
  - (b) the account assessor’s total charge is the amount calculated by multiplying the number of hours (including part hours) reasonably spent on the assessment, by the account assessor’s current hourly rate.

‘(4) However, for a particular account assessment, an account assessor may agree with the parties to charge an hourly rate that is less than the account assessor’s current hourly rate.

‘(5) In this rule—

***current hourly rate***, of an account assessor for an account assessment, means the hourly rate of the account assessor applicable for the account assessment that is set out in the list of account assessors at the time the account assessor was appointed to carry out the account assessment.

### **‘657M Ending an appointment by request**

‘The principal registrar may end the appointment of a person as an account assessor at the person’s request.

### **‘657N Ending an appointment for sufficient reason**

‘(1) The principal registrar may end the appointment of a person as an account assessor for a sufficient reason.

*Examples of a sufficient reason—*

- the account assessor becoming a judicial officer
- the account assessor ceasing to be a fit and proper person to assess estate accounts

‘(2) Before ending a person’s appointment, the principal registrar must give the person—

- (a) reasonable notice of the matters the principal registrar intends to consider in deciding whether there is a sufficient reason to end the appointment; and
- (b) a reasonable opportunity to make a submission in relation to the matters.

‘(3) If the principal registrar ends a person’s appointment, the principal registrar must give the person a statement of reasons for the decision.

‘(4) A person whose appointment is ended may appeal to a single judge of the Supreme Court.

**‘657O Effect of ending of appointment or notice about possible ending of appointment**

- ‘(1) If an account assessor has been given notice under rule 657N(2), the account assessor may not be appointed to carry out an account assessment unless the principal registrar decides not to end the person’s appointment as an account assessor.
- ‘(2) Unless the court orders otherwise, an account assessor who has been given notice under rule 657N(2) or whose appointment ends may complete an account assessment started before the notice was given or the appointment ended.
- ‘(3) For subrule (2), an account assessment is taken to have started when the account assessor is appointed to carry out the account assessment.
- ‘(4) Unless the court orders otherwise, the ending of a person’s appointment as an account assessor does not affect the validity of—
  - (a) an account assessment carried out by the account assessor before the appointment ended; or
  - (b) an account assessment completed under subrule (2).’.

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

Rule 679, definition *Brisbane registrar*—  
*omit.*

**23 Amendment of r 743L (Appointment)**

- (1) Rule 743L(1), ‘Brisbane registrar,’—  
*omit, insert—*  
‘principal registrar’.
- (2) Rule 743L(2), ‘Brisbane registrar’—  
*omit, insert—*  
‘principal registrar’.



**24 Amendment of r 743M (Ongoing disclosure of adverse matters and updated details)**

Rule 743M(2) and (3), ‘Brisbane registrar’—

*omit, insert—*

‘principal registrar’.

**25 Amendment of r 743N (List of costs assessors)**

Rule 743N(1), ‘Brisbane registrar’—

*omit, insert—*

‘principal registrar’.

**26 Amendment of r 743P (Ending an appointment by request)**

Rule 743P, ‘Brisbane registrar’—

*omit, insert—*

‘principal registrar’.

**27 Amendment of r 743Q (Ending an appointment for sufficient reason)**

Rule 743Q, ‘Brisbane registrar’—

*omit, insert—*

‘principal registrar’.

**28 Amendment of r 743R (Effect of ending of appointment or notice about possible ending of appointment)**

Rule 743R(1), ‘Brisbane registrar’—

*omit, insert—*

‘principal registrar’.

**29 Amendment of r 881 (Money in court)**

- (1) Rule 881(2), ‘a’—  
*omit, insert—*  
‘an’.
- (2) Rule 881(3), ‘subrule (1)’—  
*omit, insert—*  
‘subrule (2)’.

**30 Amendment of r 890 (Definitions for ch 20)**

Rule 890, heading, ‘Definitions’—  
*omit, insert—*  
‘**Definition**’.

**31 Omission of r 975A (Application of div 4)**

Rule 975A—  
*omit.*

**32 Amendment of r 975B (Definitions for div 4)**

- (1) Rule 975B—  
*insert—*  
*‘electronic enforcement hearing summons* means an enforcement hearing summons issued under rule 808(6) as a result of an application for an enforcement hearing made under rule 808(1) that is filed electronically.  
*electronic enforcement warrant* means a warrant to enforce a money order issued as a result of an application for the warrant under rule 817 that is electronically filed.’.
- (2) Rule 975B, definition *approved entity*, paragraph (a)—  
*omit, insert—*  
‘(a) is any of the following—

- (i) a solicitor or firm of solicitors;
- (ii) for a document filed in a Magistrates Court—approved by the principal clerk of courts appointed under the *Justices Act 1886*, section 22D to file documents electronically in a Magistrates Court;
- (iii) for a document filed in the Supreme Court or District Court—approved by the principal registrar to file documents electronically in the Supreme Court or District Court; and’.

**33 Amendment of r 975H (Request for electronic judgment under r 283)**

- (1) Rule 975H(1)(b)—  
*omit.*
- (2) Rule 975H(1)(c)—  
*renumber* as rule 975H(1)(b).

**34 Insertion of new rr 975J–975M**

Chapter 22, part 1, division 4—  
*insert—*

**‘975J Application for enforcement hearing under r 808**

- ‘(1) This rule applies if—
  - (a) a claim has been electronically filed; and
  - (b) the plaintiff intends to electronically file an application for an enforcement hearing under rule 808 in relation to the claim.
- ‘(2) At the time the application is electronically filed, the approved entity for the plaintiff must have the affidavit mentioned in rule 808(3).
- ‘(3) The electronic application for the enforcement hearing must—

[s 34]

---

- (a) be prepared in a way that would result in the application complying with the approved form if a paper copy were made of the application; and
- (b) include the following details obtained from the affidavit—
  - (i) the full name of the person who made the affidavit;
  - (ii) the unpaid amount of the money order;
  - (iii) whether the enforcement creditor has received a completed statement of financial position from the enforcement debtor;
  - (iv) 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;
  - (v) the full name of the person before whom the affidavit was sworn;
  - (vi) the date and place the affidavit was sworn.

### **‘975K Electronic enforcement hearing summons**

- ‘(1) Despite rule 978(1), the court may issue an electronic enforcement hearing summons by setting out the summons in an electronic document and sending it by electronic or computer-based means to the service provider who electronically filed the application for the enforcement hearing.
- ‘(2) Without limiting the grounds on which a court may set aside or amend an electronic summons, or any enforcement of it, the court must set aside an electronic summons if rule 975J(2) is not complied with.

### **‘975L Application for enforcement warrant under r 817**

- ‘(1) This rule applies if—
  - (a) a claim has been electronically filed; and

- 
- (b) the plaintiff intends to electronically file an application for an enforcement warrant under rule 817 in relation to the claim.
  - ‘(2) At the time the application is electronically filed, the approved entity for the plaintiff must have the statement mentioned in rule 817(1)(b).
  - ‘(3) The electronic application for the enforcement warrant must—
    - (a) be prepared in a way that would result in the request complying with the approved form if a paper copy were made of the application, except that rule 817(1) and (3) does not apply; and
    - (b) include the following details obtained from the statement—
      - (i) the full name of the person who made the statement;
      - (ii) the date the money order was made;
      - (iii) the amount for which the order was made;
      - (iv) the date and amount of any payment made under the order;
      - (v) the costs incurred in previous enforcement proceedings in relation to the order debt;
      - (vi) any interest due at the date the statement is sworn;
      - (vii) any other details necessary to calculate the amount payable under the order at the date the statement is sworn and how the amount is calculated;
      - (viii) the daily amount of any interest that, subject to any future payment under the order, will accrue after the date the statement is sworn;
      - (ix) any other information necessary for the warrant being sought;
      - (x) the full name of the person before whom the statement was sworn;
      - (xi) the date and place the statement was sworn.

- ‘(1) Despite rule 978(1), the court may issue an electronic enforcement warrant by setting out the warrant in an electronic document and sending it by electronic or computer-based means to the service provider who electronically filed the application for the enforcement warrant.
- ‘(2) Without limiting the grounds on which a court may set aside or amend an electronic enforcement warrant, or any enforcement of it, the court must set aside an electronic enforcement warrant if rule 975L(2) is not complied with.’.

### 35 Amendment of r 999 (Transitional provision)

Rule 999, ‘section’—

*omit, insert—*

‘rule’.

**36      Insertion of new ch 24, pt 6**

Chapter 24—

*insert*—

**‘Part 6                      Provision for Uniform Civil  
Procedure Amendment Rule  
(No. 1) 2011**

## '1001 Transitional provision

- ‘(1) Chapter 15, part 10, as in force immediately before the commencement, continues to apply to a proceeding under that part started but not completed before the commencement.
- ‘(2) In this rule—
- commencement*** means the commencement of this rule.’.

**37 Amendment of sch 1B (Powers of the court that may be exercised by a registrar)**

Schedule 1B, entry for section 459B, column 2, ‘an’—  
*omit.*

**38 Amendment of sch 4 (Dictionary)**

(1) Schedule 4, definitions *Brisbane registrar*, *costs assessment*, *costs assessor*, *costs statement*, *estate*, *party* and *trustee*—  
*omit.*

(2) Schedule 4—

*insert—*

*‘account assessment* see rule 644.

*account assessor* see rule 644.

*additional authority*, for chapter 4, part 7, division 3, see rule 130A.

*beneficiary*, for chapter 15, parts 10 and 11, see rule 644.

*central authority*, for chapter 4, part 7, division 3, see rule 130A.

*certificate of account assessment*, for chapter 15, parts 10 and 11, see rule 644.

*certificate of service*, for chapter 4, part 7, division 3, see rule 130A.

*certifying authority*, for chapter 4, part 7, division 3, see rule 130A.

*civil proceeding*, for chapter 4, part 7, division 3, see rule 130A.

*commission*, for chapter 15, parts 10 and 11, see rule 644.

*costs assessment* see rule 679.

*costs assessor—*

(a) for chapter 15, parts 10 and 11, see rule 644; or

(b) for chapter 17A, see rule 679.

***costs statement*** see rule 679.

***electronic enforcement hearings summons***, for chapter 22, part 1, division 4, see rule 975B.

***electronic enforcement warrant***, for chapter 22, part 1, division 4, see rule 975B.

***estate***—

(a) for chapter 15 generally, see rule 596; and

(b) for chapter 15, parts 10 and 11, see rule 644.

***estate account***, for chapter 15, parts 10 and 11, see rule 644.

***foreign judicial document***, for chapter 4, part 7, division 3, see rule 130A.

***forwarding authority***, for chapter 4, part 7, division 3, see rule 130A.

***Hague Convention***, for chapter 4, part 7, division 3, see rule 130A.

***Hague Convention country*** see rule 130A.

***initiating process***, for chapter 4, part 7, division 3, see rule 130A.

***inventory***, for chapter 15, parts 10 and 11, see rule 644.

***local judicial document***, for chapter 4, part 7, division 3, see rule 130A.

***party***—

(a) for chapter 15, parts 10 and 11, see rule 644; and

(b) for chapter 17A, see rule 679.

***principal registrar*** means the principal registrar of the Supreme Court.

***request for service abroad***, for chapter 4, part 7, division 3, see rule 130A.

***request for service in Queensland***, for chapter 4, part 7, division 3, see rule 130A.



*trustee*—

(a) for chapter 15, parts 10 and 11, see rule 644; or

(b) for chapter 17A, see rule 679.’.

- (3) Schedule 4, definition *enforcement creditor*, paragraph (a), ‘chapter 19’—

*omit, insert*—

‘chapters 19 and 22’.

- (4) Schedule 4, definition *enforcement debtor*, ‘chapter 19’—

*omit, insert*—

‘chapters 19 and 22’.

- (5) Schedule 4, definition *order debt*, ‘chapter 19’—

*omit, insert*—

‘chapters 19 and 22’.

- (6) Schedule 4, definition *regular deposit*, ‘rule 847’—

*omit, insert*—

‘rule 847(1)(b)’.

---

ENDNOTES

- 1 Made by the Governor in Council on 8 December 2011.
- 2 Notified in the gazette on 9 December 2011.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Department of Justice and Attorney-General.