



Queensland

Uniform Civil Procedure and Another Rule Amendment Rule (No. 1) 2012

Subordinate Legislation 2012 No. 150

made under the

Supreme Court of Queensland Act 1991

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[s 1]

Part 1 Preliminary

1 Short title

This rule may be cited as the *Uniform Civil Procedure and Another Rule Amendment Rule (No. 1) 2012*.

2 Commencement

This rule commences on 1 September 2012.

Part 2 Amendment of Uniform Civil Procedure Rules 1999

3 Rules amended

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

4 Amendment of r 2 (Commencement)

Rule 2, note, after ‘section 118B’—
insert—
‘(repealed)’.

5 Amendment of r 4 (Dictionary)

- Rule 4—
insert—
- ‘(2) Words and expressions used in the *Civil Proceedings Act 2011* have the same meaning in these rules as they have in that Act.
 - ‘(3) Subrule (2) does not apply to the extent that the context or subject matter otherwise indicates or requires.’.

6 Replacement of ch 2, pt 6, div 3 hdg (Magistrates Courts)

Chapter 2, part 6, division 3, heading—

omit, insert—

‘Division 3 Area of Magistrates Courts districts’.

7 Replacement of rr 38–42 and ch 2, pt 6, divs 4 and 5

Rules 38 to 42 and chapter 2, part 6, divisions 4 and 5—

omit, insert—

‘Division 4 Objection to, and change of, venue

‘38 Objection to venue

- ‘(1) This rule applies if a proceeding in a court is started other than in a central registry of the court.
- ‘(2) The defendant or respondent to the proceeding may object to the starting of the proceeding in a district of the court other than in accordance with rule 35—
 - (a) by application to the court for an order dismissing the proceeding or transferring the proceeding to another place at which the court is held; and
 - (b) if the proceeding is started by claim—by including the objection in the defendant’s notice of intention to defend.
- ‘(3) If the defendant or respondent does not object in the way required under subrule (2), the court can not, on its own initiative, decide that the proceeding should have been started at another place at which the court is held.
- ‘(4) If the proceeding is started by application, the application under subrule (2)(a) must be made returnable on or before the return date of the originating process.
- ‘(5) The court may make any of the following orders on an application under this rule—

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- (a) an order dismissing—
 - (i) the application; or
 - (ii) the proceeding;
 - (b) an order transferring the proceeding to another place at which the court is held.
- ‘(6) If the court makes an order under subrule (5)(a)(i), the proceeding is taken to have been started in a district of the court in accordance with rule 35.

‘39 Change of venue by court order

- ‘(1) This rule applies if at any time a court is satisfied a proceeding can be more conveniently or fairly heard or dealt with at a place at which the court is held other than the place in which the proceeding is pending.
- ‘(2) The court may, on its own initiative or on the application of a party to the proceeding, order that the proceeding be transferred to the other place.

‘40 Change of venue by agreement

‘The parties to a proceeding may apply for a consent order under rule 666 that the proceeding be transferred to another place at which the court is held.

‘41 Consequences of transfer

‘If the court or registrar (the *transferring court*) orders under rule 38(5)(b), 39(2) or 40 that a proceeding be transferred to another place at which the court is held—

- (a) the proceeding is pending in the registry at the other place; and
- (b) unless the transferring court otherwise orders, the trial or hearing of the proceeding is to be heard and decided by the court at the other place.’

8 Renumbering of ch 2, pt 6, div 6 (Applications heard at a different location)

Chapter 2, part 6, division 6—

renumber as chapter 2, part 6, division 5.

9 Amendment of r 71 (Defendant or respondent dead at start of proceeding)

Rule 71(3), note, from ‘*Supreme*’ to ‘93N’—

omit, insert—

‘*Civil Proceedings Act 2011*, sections 104 and 105’.

10 Amendment of r 77 (Enforcement of order against representative party)

Rule 77(1), note, from ‘*Supreme*’ to ‘82’—

omit, insert—

‘*Civil Proceedings Act 2011*, section 18’.

11 Amendment of r 144 (Conditional notice of intention to defend)

(1) Rule 144(1) to (6)—

renumber as rule 144(2) to (7).

(2) Rule 144—

insert—

‘(1) This rule does not apply to a defendant objecting to the starting of a proceeding in a district of a court other than in accordance with rule 35.

Note—

See rule 38 for objections to the starting of a proceeding other than in the correct district.’

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12 Amendment of r 150 (Matters to be specifically pleaded)

Rule 150—

insert—

- ‘(5) If the plaintiff’s claim starts a wrongful death proceeding, the plaintiff must state in the statement of claim the person or persons for whose benefit the claim is brought.’.

13 Amendment of r 159 (Interest)

Rule 159(1), ‘*Supreme Court Act 1995*, section 47’—

omit, insert—

‘*Civil Proceedings Act 2011*, part 8’.

14 Amendment of r 249 (Costs of production)

Rule 249(3)—

omit, insert—

- ‘(3) Unless the court otherwise orders, the applicant may apply to the registrar within 1 month after receiving written notice under subrule (2) for assessment of the costs and expenses.’.

15 Amendment of r 255 (Jurisdiction of court not affected)

Rule 255, ‘This order’—

omit, insert—

‘This part’.

16 Amendment of r 281 (Application of div 2)

Rule 281(2), ‘rule 144(5)’—

omit, insert—

‘rule 144(6)’.

17 Amendment of r 283 (Judgment by default—debt or liquidated demand)

Rule 283, ‘*Supreme Court Act 1995*, section 47’—

omit, insert—

‘*Civil Proceedings Act 2011*, section 58’.

18 Amendment of r 313 (Definitions for pt 4)

(1) Rule 313, definition *senior judicial officer*—

omit.

(2) Rule 313, definition *registrar*—

omit, insert—

‘**registrar** means the registrar of the court that referred the proceeding to mediation or case appraisal.’.

19 Omission of r 318 (Form of consent order for ADR process)

Rule 318—

omit.

20 Amendment of r 323 (Referral of dispute to appointed mediator)

(1) Rule 323(1)(a)(ii), ‘or’—

omit, insert—

‘and’.

(2) Rule 323(1)(a)(iii)—

omit.

(3) Rule 323(4)—

omit.

[s 21]

- (4) Rule 323(5) and (6)—
renumber as rule 323(4) and (5).

21 Amendment of r 329 (Record of mediation resolution)

- (1) Rule 329(1), from ‘*Supreme*’ to ‘section 34 is’—
omit, insert—
‘*Civil Proceedings Act 2011*, section 48 is’.

- (2) Rule 329(1), note—
omit, insert—
‘*Note*—

The *Civil Proceedings Act 2011*, section 48 provides for a written mediated resolution agreement signed by each party and the mediator.’.

22 Amendment of r 331 (Mediator to file certificate after mediation)

- (1) Rule 331, heading—
omit, insert—

‘331 Requirements for certificate about mediation’.

- (2) Rule 331(1)—
omit, insert—

‘(1) This rule applies to a certificate mentioned in the *Civil Proceedings Act 2011*, section 49(1).

Note—

The *Civil Proceedings Act 2011*, section 49(1) requires a mediator to file a certificate about the mediation.’.

23 Amendment of r 342 (Case appraiser to file certificate and decision)

- (1) Rule 342, heading—
omit, insert—

‘342 Requirements for case appraiser’s certificate and decision’.

(2) Rule 342(1)—

omit, insert—

‘(1) This rule applies to—

(a) a certificate mentioned in the *Civil Proceedings Act 2011*, section 49(2)(a); and

(b) a case appraiser’s decision mentioned in section 42(2)(b) of that Act.

Note—

The *Civil Proceedings Act 2011*, section 49(2) requires a case appraiser to file a certificate about the case appraisal and the case appraiser’s decision.’.

24 Amendment of r 362A (Multiple beneficiaries)

Rule 362A(4)—

omit.

25 Amendment of r 366 (Application for directions)

Rule 366(2), note—

omit, insert—

‘*Note—*

See also the *Supreme Court of Queensland Act 1991*, section 17, the *District Court of Queensland Act 1967*, section 125 and the *Magistrates Act 1991*, section 12(2)(b) which provide for practice directions to be made.’.

26 Omission of r 394 (Dispensing with rules of evidence)

Rule 394—

omit.

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27 Amendment of ch 11, pt 4, hdg (Subpoenas)

Chapter 11, part 4, heading—

insert—

‘Note—

See the *Civil Proceedings Act 2011*, part 7 which provides for matters relating to compliance with subpoenas.’.

28 Omission of r 422 (Noncompliance is contempt of court)

Rule 422—

omit.

29 Amendment of ch 12, hdg (Jurisdiction of judicial registrar and registrar)

Chapter 12, heading, ‘judicial registrar and’—

omit.

30 Amendment of r 449 (Definition for ch 12)

Rule 449, definition *relevant application*—

omit, insert—

‘relevant application means an application the registrar may hear and decide under rule 452.’.

31 Omission of r 451 (Judicial registrar’s powers to hear and decide applications)

Rule 451—

omit.

32 Amendment of r 452 (Registrar’s powers to hear and decide applications)

Rule 452(1), from ‘of the following’—

omit, insert—

‘for an order under the *Public Trustee Act 1978*, part 3.’.

33 Amendment of r 453 (Court may decide that matter can not be heard by judicial registrar or registrar)

(1) Rule 453, ‘judicial registrar or’—

omit.

(2) Rule 453, example, ‘judicial’—

omit.

34 Amendment of r 454 (Relevant application must not be made to the court)

Rule 454, ‘judicial registrar or’—

omit.

35 Amendment of r 455 (Referring relevant application)

Rule 455, ‘judicial registrar or’—

omit.

36 Amendment of r 456 (Removing relevant applications)

Rule 456, ‘judicial registrar or’—

omit.

37 Amendment of r 457 (Involvement of court as constituted by a judge)

Rule 457(2)(b) and (c), ‘judicial registrar or’—

omit.

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38 Amendment of r 458 (General powers)

Rule 458, ‘judicial registrar or’—
omit.

39 Amendment of r 459 (Decision)

Rule 459, ‘judicial registrar or’—
omit.

40 Amendment of r 460 (Power to correct mistakes)

Rule 460, ‘judicial registrar or’—
omit.

41 Omission of r 474 (Trial without jury)

Rule 474—
omit.

42 Amendment of r 488 (Application of pt 6)

Rule 488(2), note, from ‘section’—
omit, insert—
‘section 17 and the *District Court of Queensland Act 1967*,
section 125.’.

43 Amendment of r 524 (Holding directions conference)

- (1) Rule 524(5), note, from ‘*Supreme*’—
omit, insert—
‘*Civil Proceedings Act 2011*, section 35.’.
- (2) Rule 524(6), note, from ‘*Supreme*’ to ‘78’—
omit, insert—
‘*Civil Proceedings Act 2011*, section 36’.

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- 44 Amendment of r 553 (Conference if personal injury damages claim)**
Rule 553(1), note, from ‘*Supreme*’ to ‘(Confidentiality)’—
omit, insert—
‘*Civil Proceedings Act 2011*, section 36’.
- 45 Amendment of r 679 (Definitions)**
Rule 679, heading, at the end—
insert—
‘**for ch 17A**’.
- 46 Amendment of r 763 (Appeals from refusal of applications made in the absence of parties)**
Rule 763(2), ‘central, northern or far northern district’—
omit, insert—
‘Central Region, Northern Region or Far Northern Region’.
- 47 Amendment of r 771 (Assessment of costs of appeals)**
Rule 771, from ‘by a registrar’ to ‘Brisbane’—
omit, insert—
‘under chapter 17A’.
- 48 Amendment of r 820 (Issue and enforcement of enforcement warrant)**
Rule 820(1)(b), note, from ‘*Supreme*’ to ‘92’—
omit, insert—
‘*Civil Proceedings Act 2011*, section 91’.

[s 49]

49 Omission of r 897 (Order for delivery of or payment for goods)

Rule 897—

omit.

50 Omission of rr 901–903

Rules 901 to 903—

omit.

51 Amendment of r 908 (Issue and enforcement of enforcement warrant)

Rule 908(1)(b), note, from ‘*Supreme*’ to ‘92’—

omit, insert—

‘*Civil Proceedings Act 2011*, section 91’.

52 Replacement of r 916 (Enforcement warrant for delivery)

Rule 916—

omit, insert—

‘916 Enforcement warrant for seizure and delivery of goods

‘(1) An enforcement warrant authorising an enforcement officer to seize and deliver goods specified in a judgment must be in the approved form.

‘(2) The enforcement warrant may include provision for enforcing the payment of an amount, if the amount is—

(a) required by the judgment to be paid; and

(b) enforceable as a money order.’.

53 Amendment of r 948 (Definitions for ch 21)

Rule 948, definition *interpleader order*, from ‘*Supreme*’—

omit, insert—

‘Civil Proceedings Act 2011, section 19.’.

54 Amendment of sch 1A (Rules for proceedings under Corporations Act or ASIC Act)

Schedule 1A, rule 2.9(3), ‘subparagraph’—

omit, insert—

‘subrule’.

55 Amendment of sch 4 (Dictionary)

(1) Schedule 4, definitions *condition, district registry, enforcement officer, exempt property, money order, non-money order, person under a legal incapacity, person with impaired capacity, senior judicial officer and young person—*

omit.

(2) Schedule 4—

insert—

*‘**wrongful death proceeding** means a proceeding under the Civil Proceedings Act 2011, part 10.’.*

(3) Schedule 4, definition *district*, paragraph (a), ‘*Supreme Court Act 1995*, part 19’—

omit, insert—

‘Supreme Court of Queensland Act 1991, section 57’.

61 Amendment of sch 6 (Dictionary)

- (1) Schedule 6, definition *appeal period*, paragraph (b), after ‘*Court*’—
insert—
‘of Queensland’.
- (2) Schedule 6, definition *proper officer*, second mention, paragraph (a), ‘or the far northern, northern or central sheriff’—
omit.

ENDNOTES

- 1 Made by the Governor in Council on 30 August 2012.
2 Notified in the gazette on 31 August 2012.
3 Laid before the Legislative Assembly on . . .
4 The administering agency is the Department of Justice and Attorney-General.