



Queensland

Land Court Amendment Rule (No. 1) 2013

Subordinate Legislation 2013 No. 280

made under the

Land Court Act 2000

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[r 1]

1 Short title

This rule may be cited as the *Land Court Amendment Rule (No. 1) 2013*.

2 Rule amended

This rule amends the *Land Court Rules 2000*.

3 Amendment of r 4 (Application of Uniform Civil Procedure Rules)

Rule 4(2), ‘application’—

omit, insert—

process

4 Amendment of r 5 (Definitions)

Rule 5, ‘schedule 2’—

omit, insert—

schedule 1

5 Replacement of rr 7–11

Rules 7 to 11—

omit, insert—

7 Starting proceeding

- (1) A proceeding is started by filing an originating process in the registry.
- (2) An originating process may be filed by facsimile.

8 Content of originating process

An originating process for a proceeding must—

- (a) comply with any requirements of the Act giving jurisdiction for the proceeding to the court; and

- (b) identify the respondent; and
- (c) briefly state the facts, circumstances or other relevant matters on which the proceeding is based; and
- (d) identify the land, building, watercourse, tenure or licence to which the proceeding relates; and
- (e) state—
 - (i) the orders or other relief sought in the proceeding; and
 - (ii) the grounds on which the orders or other relief are sought.

9 Contact details and address for service

- (1) An applicant or appellant (the *person*) acting personally must ensure all of the following details are stated on the originating process before it is filed—
 - (a) the person's residential or business address;
 - (b) the person's telephone number, if any, or a way of contacting the person by telephone;
 - (c) the person's facsimile number, if any;
 - (d) the person's email address, if any.
- (2) A lawyer or agent acting for the person must ensure all of the following details are stated on the originating process before it is filed—
 - (a) the person's residential or business address;
 - (b) the name of the lawyer or agent;
 - (c) if the lawyer practises in a firm or the agent conducts or is employed in a business, the name of the firm or business;
 - (d) the address of the lawyer's or agent's place of business;

- (e) the lawyer's or agent's telephone number;
 - (f) the lawyer's or agent's facsimile number;
 - (g) the lawyer's or agent's email address.
- (3) The ***address for service*** of the person is—
 - (a) for a person acting personally—the address given under subrule (1)(a); or
 - (b) for a person for whom a lawyer or agent acts—the address given under subrule (2)(d).
- (4) Notice of any change in a party's address for service must be filed and served on all other parties.

10 Signing originating process

The applicant or appellant, or the lawyer or agent acting for the applicant or appellant, must sign the originating process.

11 Giving originating process to other parties

Unless the court otherwise orders, the applicant or appellant must serve a copy of the originating process on each other party.

6 Amendment of r 13 (Disclosure)

Rule 13, 'the disclosure of documents'—
omit, insert—
disclosure

7 Amendment of r 14 (Failure to prosecute proceedings)

Rule 14(1) and (4), after 'applicant'—

insert—

or appellant

8 Amendment of r 15 (Discontinuance or withdrawal)

Rule 15, after ‘applicant’—

insert—

or appellant

9 Amendment of r 18 (Costs)

Rule 18, after ‘applicant’—

insert—

or appellant

10 Amendment of r 19 (Directions hearing)

Rule 19(1), ‘application’—

omit, insert—

process

11 Replacement of pt 5 (Evidence)

Part 5—

omit, insert—

Part 5 Evidence

Division 1 Preliminary

22 Definitions for pt 5

In this part—

expert means a person who would, if called as a witness in a proceeding, be qualified to give

opinion evidence as an expert witness in relation to an issue in dispute in the proceeding.

joint report, for a proceeding, means a report—

- (a) stating the joint opinion of experts in relation to an issue in dispute in the proceeding; and
- (b) identifying the matters about which the experts agree or disagree and the reasons for any disagreement.

meeting of experts—

1 A *meeting of experts* is a meeting at which experts in each area of expertise relevant to a proceeding meet, in the absence of the parties—

- (a) to discuss and attempt to reach agreement about the experts' evidence in relation to an issue in dispute in the proceeding as it relates to the experts' area of expertise; and
- (b) to prepare a joint report.

2 The term includes —

- (a) a resumed meeting of experts or further meeting of experts; and
- (b) a meeting attended by the experts in either, or a combination, of the following ways—
 - (i) personally;
 - (ii) a way that allows contemporaneous communication between the experts, including by telephone, video link or email.

party, for a proceeding, means a party to the proceeding or the party's lawyer or agent.

statement of evidence, of an expert, see rule 24E.

Division 2 Meetings of experts

23 Application of div 2

Unless the court otherwise orders, this division applies in relation to a meeting of experts ordered or directed by the court at any time in a proceeding.

24 Party must ensure expert ready to take part in meeting of experts

Before a meeting of experts, a party to a proceeding must do all things reasonably necessary or expedient to ensure an expert chosen by the party is ready to take part fully, properly and promptly in the meeting, including by giving the expert—

- (a) reasonable prior notice that the court has ordered or directed a meeting of experts; and
- (b) notice of the contents of any order or direction about the meeting, including the time by which the meeting must be held; and
- (c) reasonable notice of the issue in dispute in the proceeding to the extent it is relevant to the expert's expertise; and
- (d) enough information and opportunity for the expert to adequately investigate the facts in relation to the issue in dispute in the proceeding; and
- (e) written notice that the expert has a duty to assist the court and the duty overrides any obligation the expert may have to the party or any person who is liable for the expert's fee or expenses.

24A Experts attending meeting must prepare joint report

- (1) The experts attending a meeting of experts must, without further reference to or instruction from the parties, prepare a joint report in relation to the meeting.
- (2) However, the experts attending the meeting may, at any time before the joint report is completed, ask all parties to respond to an inquiry the experts make jointly of all parties.
- (3) Despite subrule (1), any of the experts may participate in a mediation involving the parties.
- (4) The joint report must—
 - (a) confirm that each expert understands the expert's duty to the court and has complied with the duty; and
 - (b) be given to the parties.
- (5) The applicant or appellant must deliver to the registry, personally or by facsimile or email, a copy of the joint report received under subrule (4) at least 21 days before the date set for the hearing.

24B Admissions made at meeting of experts

- (1) Subrule (2) does not apply to a joint report prepared in relation to a meeting of experts.
- (2) Evidence of anything done or said, or an admission made, at a meeting of experts is admissible at the hearing of the proceeding or at the hearing of another proceeding in the court or in another civil proceeding only if all parties to the proceeding agree.
- (3) In this rule—

civil proceeding does not include a civil proceeding founded on fraud alleged to be

connected with, or to have happened during, the meeting.

Division 3 Evidence given by experts

24C Duty of expert

- (1) A witness giving evidence in a proceeding as an expert has a duty to assist the court.
- (2) The duty overrides any obligation the witness may have to any party to the proceeding or to any person who is liable for the expert's fee or expenses.

24D Giving or accepting instructions to adopt or reject a particular opinion prohibited

A person must not give, and an expert must not accept, instructions to adopt or reject a particular opinion in relation to an issue in dispute in a proceeding.

24E Expert must prepare statement of evidence

- (1) An expert must prepare a written statement of the expert's evidence (a *statement of evidence*) for the hearing of a proceeding.
- (2) If the expert has taken part in a meeting of experts—
 - (a) a joint report prepared in relation to the meeting is taken to be the expert's statement of evidence in the proceeding; and
 - (b) a further statement of evidence in relation to any issue of disagreement recorded in the joint report is to be prepared by the expert.
- (3) However, the further statement of evidence must not, without the court's leave—

- (a) contradict, depart from or qualify an opinion in relation to an issue the subject of agreement in the joint report; or
- (b) raise a new matter not already mentioned in the joint report.

24F Requirements for statement of evidence other than joint report

- (1) An expert's statement of evidence, other than a joint report, must be addressed to the court and signed by the expert.
- (2) The statement of evidence must include the following information, to the extent the information is not already contained in a joint report prepared for the proceeding—
 - (a) the expert's qualifications;
 - (b) all material facts, whether written or oral, on which the statement is based;
 - (c) references to any literature or other material relied on by the expert to prepare the statement;
 - (d) for any inspection, examination or experiment conducted, initiated or relied on by the expert to prepare the statement—
 - (i) a description of what was done; and
 - (ii) whether the inspection, examination or experiment was done by the expert or under the expert's supervision; and
 - (iii) the name and qualifications of any other person involved; and
 - (iv) the result;
 - (e) if there is a range of opinion on matters dealt with in the statement, a summary of the

-
- range of opinion and the reasons why the expert adopted a particular opinion;
- (f) a summary of the conclusions reached by the expert;
 - (g) a statement about whether access to any readily ascertainable additional facts would assist the expert in reaching a more reliable conclusion.
- (3) The expert must confirm, at the end of the statement of evidence—
- (a) the factual matters included in the statement are, as far as the expert knows, true; and
 - (b) the expert has made all enquiries considered appropriate; and
 - (c) the opinions included in the statement are genuinely held by the expert; and
 - (d) the statement contains reference to all matters the expert considers significant; and
 - (e) the expert understands the expert's duty to the court and has complied with the duty; and
 - (f) the expert has read and understood the rules contained in this part, as far as they apply to the expert; and
 - (g) the expert has not received or accepted instructions to adopt or reject a particular opinion in relation to an issue in dispute in the proceeding.

24G Serving statement of evidence other than joint report

- (1) This rule applies to a statement of evidence other than a joint report.

- (2) A party to a proceeding intending to call evidence by an expert in the proceeding must deliver to the registry, personally or by facsimile or email, and serve on each other party to the proceeding, a copy of the expert's statement of evidence.
- (3) A party must comply with subrule (2) at least 21 days before the date set for the hearing or, if the court directs a different time, within the time directed by the court.

24H Matters contained in statement of evidence not to be repeated

During examination in chief, an expert must not, without the court's leave, repeat or expand on matters contained in the expert's statement of evidence or introduce new material.

24I Evidence from only 1 expert may be called

Other than with the court's leave, a party to a proceeding, at any hearing of the proceeding, may call evidence from only 1 expert for each area of expertise dealt with in the hearing.

Division 4 Non-expert statements of evidence

24J Statement of evidence of witness other than expert

- (1) This rule applies to a party who intends to do either or both of the following—
 - (a) give evidence in a proceeding;
 - (b) call another person, other than an expert, to give evidence in a proceeding.

- (2) Before giving the evidence or calling the other person, the party must deliver to the registry, personally or by facsimile or email, and serve on each other party, a written statement containing—
 - (a) the name, address and occupation of the party or other person; and
 - (b) the evidence of the party or other person for the hearing.
- (3) The party must comply with subrule (2) at least 21 days before the date set for the hearing or, if the court directs a different time, within the time directed by the court.
- (4) During examination in chief, the party or other person must not, without the court's leave, repeat or expand on matters contained in the party's or person's statement delivered under subrule (2) or introduce new material.

Division 5 General

24K Way evidence given

- (1) Unless the court orders that a witness's evidence in a proceeding be given by affidavit or in another way, the evidence may only be given orally.
- (2) Giving evidence orally may include merely swearing to the accuracy of a statement of evidence submitted to the court.
- (3) If the court orders that evidence be given by affidavit, the court may impose conditions on the order.

24L Calling witnesses

A party to a proceeding must not, without the court's leave, call an expert or another person to give evidence in the proceeding unless the party has complied with the rules contained in this part.

12 Amendment of r 26 (Judicial registrar's power to hear and decide matters)

(1) Rule 26(e)—

omit.

(2) Rule 26(f)—

renumber as rule 26(e).

13 Amendment of r 27 (Judicial registrar's power to make orders)

Rule 27(m), 'application'—

omit, insert—

originating process

14 Amendment of r 34 (Request for trial date)

Rule 34(4)(c)—

omit.

15 Amendment of r 35 (Request for decision without oral hearing)

(1) Rule 35(1)—

omit, insert—

(1) A party may, with the written consent of each other party to a proceeding, ask the court to decide the proceeding or an application in the proceeding without an oral hearing.

(2) Rule 35(2), from 'If' to 'must'—

omit, insert—

A request under subrule (1) must

16 Amendment of r 36 (Court may decide application without oral hearing)

- (1) Rule 36, heading, ‘application’—

omit, insert—

request

- (2) Rule 36, ‘an application’—

omit, insert—

a request

17 Insertion of new r 36A

After rule 36—

insert—

36A Court may dispense with oral hearing

The court may, in the court’s discretion, dispense with the oral hearing of a proceeding or an application in a proceeding if—

- (a) the court is satisfied that it is appropriate to decide the proceeding or application without an oral hearing; and
- (b) the parties are given notice of the court’s proposal to make the decision without an oral hearing; and
- (c) there is no objection raised by any party to the proceeding.

18 Amendment of r 37 (Court may decide that decision without oral hearing is inappropriate)

- (1) Rule 37, ‘an application’—

omit, insert—

that a proceeding or an application in a proceeding

- (2) Rule 37(b), before ‘application’—

insert—

proceeding or

19 Amendment of r 38 (Further information)

- (1) Rule 38(1), ‘an application’—

omit, insert—

a proceeding or an application in a proceeding

- (2) Rule 38(1), before ‘by telephone’—

insert—

or application

20 Amendment of r 39 (Order if decision without oral hearing)

Rule 39, ‘an application’—

omit, insert—

a proceeding or an application in a proceeding

21 Replacement of r 50 (Opening hours of registry)

Rule 50—

omit, insert—

50 Opening hours of registry

- (1) Subject to subrule (2), the registry must be open between 9am and 4pm on business days, other than a court holiday.
- (2) The president or registrar may direct that the registry is to be opened or closed at any time.

22 Omission of r 51 (Approved forms)

Rule 51—

*omit.***23 Omission of sch 1 (Matters under various Acts that may be heard and decided by a judicial registrar)**

Schedule 1—

*omit.***24 Amendment and renumbering of sch 2 (Dictionary)**

- (1) Schedule 2, definitions *application*, *approved form* and *originating application*—

omit.

- (2) Schedule 2—

insert—

application in a proceeding means an application about a proceeding made after the proceeding is started and before it is decided.

expert, for part 5, see rule 22.

joint report, for part 5, see rule 22.

meeting of experts, for part 5, see rule 22.

notice of appeal means a notice in the approved form that starts an appeal to the court.

originating application means an application in the approved form that starts a proceeding in the court, other than an appeal.

originating process means any of the following that, under an Act conferring jurisdiction on the court, may start a proceeding in the court—

- (a) an originating application;
- (b) a notice of appeal;

[r 24]

(c) another document.

party, for part 5, see rule 22.

statement of evidence, of an expert, for part 5,
see rule 24E.

(3) Schedule 2, definition *address for service*, ‘rule 9(5)’

omit, insert—

rule 9(3)

(4) Schedule 2, as amended—

renumber as schedule 1.

ENDNOTES

- 1 Made by the Governor in Council on 12 December 2013.
- 2 Notified on the Queensland legislation website on 13 December 2013.
- 3 The administering agency is the Department of Justice and Attorney-General.

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