Queensland

Supreme Court of Queensland Act 1991

UNIFORM CIVIL PROCEDURE RULES 1999

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Information about this reprint

These rules are reprinted as at 5 May 2000. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

Queensland

UNIFORM CIVIL PROCEDURE RULES 1999

TABLE OF CONTENTS

TABLE OF PROVISIONS

PART 4—APPLICATIONS

PART 5—APPLICATIONS IN A PROCEEDING

PART 6—WHERE TO START A PROCEEDING

Division 1—Central Registry of Supreme Court

Division 2—Magistrates Courts, District Court and District Registry of Supreme Court

Division 3—Magistrates Courts

Division 4—District Court

Division 5—Supreme Court

CHAPTER 10—COURT SUPERVISION

PART 1—DIRECTIONS

PART 2—FAILURE TO COMPLY WITH RULES OR ORDER

PART 3—AMENDMENT

Division 1—Amendment generally

Division 2—Procedural matters

Division 3—Consequences of amendment

Division 4—Amending orders or certificates

PART 4—DELAY

CHAPTER 11—EVIDENCE

PART 1—GENERAL

PART 2—EVIDENCE GIVEN OUT OF COURT

PART 3—EVIDENCE FOR FUTURE RIGHT OR CLAIM

PART 4—SUBPOENAS

PART 8—CONTESTED PROCEEDINGS

PART 9—MISCELLANEOUS

PART 10—EXECUTORS', ADMINISTRATORS' AND TRUSTEES' ACCOUNTS

CHAPTER 16—ORDERS

CHAPTER 17—COSTS

PART 1—SECURITY FOR COSTS

PART 2—COSTS

Division 1—Preliminary

UNIFORM CIVIL PROCEDURE RULES 1999

[as amended by all amendments that commenced on or before 5 May 2000]

CHAPTER 1—PRELIMINARY

Short title

1. These rules may be cited as the *Uniform Civil Procedure Rules 1999.*

Commencement

2. These rules commence on 1 July 1999.[1]

Application

3.(1) Unless these rules otherwise expressly provide, these rules apply to civil proceedings in the following courts—

- the Supreme Court
- the District Court
- Magistrates Courts.

(2) In a provision of these rules, a reference to **"the court"** is a reference to the court mentioned in subrule (1) that is appropriate in the context of the provision.

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1 The Rules of the Supreme Court, the *Supreme Court (Admiralty) Rules 1988*, Rules under and in pursuance of the Reciprocal Enforcement of Judgments Act 1959, the *District Court Rules 1968*, and the *Magistrates Courts Rules 1960* expire at the end of 30 June 1999—*Supreme Court of Queensland Act 1991*, section 118B and *Acts Interpretation Act 1954*, section 18. The *Uniform Civil Procedure Rules 1999* will commence at the beginning of 1 July 1999—section 2 and *Acts Interpretation Act 1954*, section 15B.

Dictionary

4. The dictionary in schedule 4 defines terms used in these rules.

Philosophy—overriding obligations of parties and court

5.(1) The purpose of these rules is to facilitate the just and expeditious resolution of the real issues in civil proceedings at a minimum of expense.

(2) Accordingly, these rules are to be applied by the courts with the objective of avoiding undue delay, expense and technicality and facilitating the purpose of these rules.

(3) In a proceeding in a court, a party impliedly undertakes to the court and to the other parties to proceed in an expeditious way.

(4) The court may impose appropriate sanctions if a party does not comply with these rules or an order of the court.

Example—

The court may dismiss a proceeding or impose a sanction as to costs, if, in breach of the implied undertaking, a plaintiff fails to proceed as required by these rules or an order of the court.

Names of all parties to be used

6.(1) The following documents filed in a proceeding must include the names of all of the parties to the proceeding—

(a) an originating process;

(b) a document to be served on a person not a party to the proceeding;

(c) a final order.

(2) Other documents in a proceeding may include an abbreviation of the title of the proceeding sufficient to identify the proceeding.

(3) If the parties to a proceeding change, the names of the parties on each document filed after the change must reflect the state of the parties after the change.

Extending and shortening time

7.(1) The court may, at any time, extend a time set under these rules or by order.

(2) If a time set under these rules or by order, including a time for service, has not ended, the court may shorten the time.[2]

CHAPTER 2—STARTING PROCEEDINGS

PART 1—STARTING PROCEEDINGS

Starting proceedings

8.(1) A proceeding starts when the originating process is issued by the court.

(2) These rules provide for the following types of originating process—

- claim
- application
- notice of appeal
- notice of appeal subject to leave.

(3) An application in, about or pending the trial, hearing or outcome of a proceeding[3] is not an originating process.

Claim compulsory

9. A proceeding must be started by claim unless these rules require or permit the proceeding to be started by application.

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2 A time allowed or provided for under these rules is calculated according to the *Acts Interpretation Act 1954*, section 38 (Reckoning of time).

3 This is commonly called an "interlocutory application".

Application compulsory

10. A proceeding must be started by application if an Act or these rules require or permit a person to apply to a court for an order or another kind of relief and—

(a) the Act or rules do not state the type of originating process to be used; or

(b) a type of originating process (other than a claim or application) is required or permitted under a law.

Application permitted

11. A proceeding may be started by application if—

(a) the only or main issue in the proceeding is an issue of law and a substantial dispute of fact is unlikely; or

(b) there is no opposing party to the proceeding or it is not intended to serve any person with the originating process; or

(c) there is insufficient time to prepare a claim because of the urgent nature of the relief sought.

Oral application permitted

12. A court may allow a proceeding to be started by oral application by a counsel or solicitor for an applicant if—

(a) urgent relief is sought; and

(b) the counsel or solicitor undertakes to file an application within the time directed by the court; and

(c) the court considers it appropriate having regard to all relevant circumstances.

Proceeding incorrectly started by claim

13.(1) This rule applies if the court considers a proceeding started by claim should have been started by application or may more conveniently continue as if started by application.

(2) The court may—

(a) order that the proceeding continue as if started by application; and

(b) give the directions the court considers appropriate for the conduct of the proceeding;[4] and

(c) make any other order the court considers appropriate.

Proceeding incorrectly started by application

14.(1) This rule applies if the court considers a proceeding started by application should have been started by claim or may more conveniently continue as if started by claim.

(2) The court may—

(a) order that the proceeding continue as if started by claim; and

(b) give the directions the court considers appropriate for the conduct of the proceeding; and

(c) if the court considers it appropriate—order that any affidavits filed in the proceeding be treated as pleadings, alone or supplemented by particulars; and

(d) make any other order the court considers appropriate.

Registrar may refer issue of originating process to court

15.(1) If the registrar considers an originating process appears to be an abuse of the process of the court or frivolous or vexatious, the registrar may refer the originating process to the court before issuing it.

(2) The court may direct the registrar—

(a) to issue the originating process; or

(b) to refuse to issue the originating process without leave of the court.

4 See rule 367 (Directions).

Setting aside originating process

16. The court may[5]—

(a) declare that a proceeding for which an originating process has been issued has not, for want of jurisdiction, been properly started; or

(b) declare that an originating process has not been properly served; or

(c) set aside an order for service of an originating process; or

(d) set aside an order extending the period for service of an originating process; or

(e) set aside an originating process; or

(f) set aside service of an originating process; or

(g) stay a proceeding; or

(h) set aside or amend an order made under rule 127;[6] or

(i) make another order the court considers appropriate.

PART 2—RULES ABOUT ORIGINATING PROCESS

Contact details and address for service

17.(1) A plaintiff or applicant must ensure—

(a) if the plaintiff or applicant intends to act personally, the following details are on the originating process before it is issued—

(i) the residential or business address of the plaintiff or applicant;

(ii) for a proceeding in the Supreme Court or the District Court—if the address specified under subparagraph (i) is

5 See also rule 373 (Incorrect originating process).

6 Rule 127 (Service of other process by leave)

more than 30 km from the issuing registry, an address not more than 30 km from the registry or another address approved by the court as the address for service;

(iii) the telephone number (if any) of the plaintiff or applicant;

(iv) if the plaintiff or applicant does not have a telephone number—a way of contacting the person by telephone;

(v) the fax number (if any) of the plaintiff or applicant;[7] or

(b) if a solicitor is appointed to act for the plaintiff or applicant, the following details are on the originating process before it is issued—

(i) the residential or business address of the plaintiff or applicant;

(ii) the name of the solicitor and, if the solicitor practises in a firm of solicitors, the name of the firm;

(iii) the address of the solicitor's place of business;

(iv) if the address specified under subparagraph (iii) is not the plaintiff's or applicant's address for service or is not a Queensland address—an address for service in Queensland including, for example, an address approved by the court as the address for service;

(v) the solicitor's telephone number;

(vi) the solicitor's fax number.

(2) If the plaintiff or applicant intends to act personally and has an email address, the plaintiff or applicant may include the email address with the details required under subrule (1)(a).

(3) If the solicitor, or the solicitor's firm, has an email address, the solicitor may include the email address with the details required under subrule (1)(b).

(4) If the solicitor, or the solicitor's firm, is a member of an approved document exchange, the solicitor may include the document exchange

7 This may be relevant for ordinary service—see ch 4 (Service), pt 4 (Ordinary service).

address with the details required under subrule (1)(b).

(5) Notice of any change in a party's address for service must be filed and served on all other parties.

(6) The **"address for service"** of a plaintiff or applicant is—

(a) for a party acting personally—

(i) if the party is required to specify an address under subrule (1)(a)(ii)—that address; or

(ii) otherwise—the address specified under subrule (1)(a)(i); and

(b) for a party for whom a solicitor acts—

(i) if an address is specified under subrule (1)(b)(iv)—that address; or

(ii) otherwise—the address specified under subrule (1)(b)(iii).

Representative details required

18. If a person is suing or being sued in a representative capacity, the plaintiff or applicant must state the representative capacity on the originating process.

Originating process must be signed

19.(1) The plaintiff or applicant, or the person's solicitor,[8] must sign the originating process.

(2) For a minor debt claim, the claim may be signed by an agent whose authority is filed with the claim.

Copy of originating process for court

20. The plaintiff or applicant must file with the court a copy of the originating process to be filed and kept by the court.

8 See rule 985 (Solicitor's act).

PART 3—CLAIMS

Application of pt 3

21. This part applies to claims.

Claim

22.(1) A claim must be in the approved form.

(2) A plaintiff must—

(a) state briefly in the claim the nature of the claim made or relief sought in the proceeding; and

(b) attach a statement of claim to the claim.

(3) The claim and attachment must be filed and then served on each defendant.

(4) Subrule (3) does not require service on a defendant personally if the claim and attachment are served in accordance with the *Motor Accident Insurance Act 1994* or the *WorkCover Queensland Act 1996*.

Claim must include statement about filing notice of intention to defend claim

23. The plaintiff must ensure a claim has a statement on it telling the defendant—

(a) the relevant time limited for filing a notice of intention to defend;[9] and

(b) that if the defendant does not file a notice of intention to defend within the time, a default judgment may be obtained against the defendant without further notice.

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9 See rule 137 (Time for notice of intention to defend).

Duration and renewal of claim

24.(1) A claim remains in force for 1 year starting on the day it is filed.

(2) If the claim has not been served on a defendant and the registrar is satisfied that reasonable efforts have been made to serve the defendant or that there is another good reason to renew the claim, the registrar may renew the claim for further periods, of not more than 1 year at a time, starting on the day after the claim would otherwise end.

(3) The claim may be renewed whether or not it is in force.

(4) However, the court's leave must be obtained before a claim may be renewed for a period any part of which falls on or after the 5th anniversary of the day on which the claim was originally filed.

(5) Before a claim renewed under this rule is served, it must be stamped with the court's seal by the appropriate officer of the court and show the period for which the claim is renewed.

(6) Despite subrule (1), for any time limit (including a limitation period), a claim that is renewed is taken to have started on the day the claim was originally filed.

PART 4—APPLICATIONS

Application of pt 4

25. This part applies to an application that is an originating process.

Content of application

26.(1) An application must be in the approved form.

(2) An application must name as respondents all persons directly affected by the relief sought in the application.[10]

[10] The court may direct that others be included as respondents—see rule 69 (Including, substituting or removing party).

(3) Subrule (2) does not apply if these rules or another law authorise the hearing of the application without notice being given to another person.

(4) The application must list the affidavits to be relied on by the applicant at the hearing.

(5) The applicant must specify in the application the orders or other relief sought in the proceeding.

(6) If an application is made under an Act, the application must state the name and section number of the Act under which the application is made.

(7) The application, and any copies of the application for service, must specify the day set for hearing the application.

Service of application

27.(1) An application must be filed and then served on each respondent at least 3 business days before the day set for hearing the application.[11]

(2) However, the time limit in subrule (1) does not apply if—

(a) these rules, an Act or another law permit the application to be heard and decided without being served; or

(b) the applicant proposes in the application that it be decided without a hearing; or

(c) another time is provided for under these rules or an Act.

(3) If an application is not served as required by subrule (1), the court must not hear and decide the application unless the court considers it just to hear and decide the application on the day set for hearing and 1 of the following applies—

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11 The *Acts Interpretation Act 1954*, section 38 provides—

'**Reckoning of time**

'**38.(1)** If a period beginning on a given day, act or event is provided or allowed for a purpose by an Act, the period is to be calculated by excluding the day, or the day of the act or event, and—

(a) if the period is expressed to be a specified number of clear days or at least a specified number of days—by excluding the day on which the purpose is to be fulfilled … '.

(a) the court is satisfied delay caused by giving notice of the application would cause irreparable or serious mischief to the applicant or another person;

(b) the court is satisfied the respondents to the application will suffer no significant prejudice if it hears and decides the application on the day set for hearing;

(c) the respondents to the application consent to the court hearing and deciding the application on the day set for hearing.

Example of subrule (3)—

The court may decide subrule (3) has been satisfied if the application is a cross application by a respondent to another application and it is convenient for the applications to be heard together.

(4) For an application not served as required by subrule (1)—

(a) the court may make an order on an undertaking given by the applicant and acceptable to the court; and

(b) a person affected by the order may apply to the court for it to be set aside.

Service of affidavit in support of application

28.(1) An affidavit to be relied on by the applicant at the hearing of an application must be filed and then served on each respondent at least 3 business days before the day set for hearing the application.

(2) However, the court may give leave for an affidavit not served as required by subrule (1) to be relied on at the hearing.

Notice of address for service

29.(1) A respondent may not file and serve a notice of intention to defend an application.

(2) However, the respondent may file and serve a notice of address for service in the approved form.

(3) The court may require a respondent to file and serve a notice of address for service in the approved form.

(4) Rule 17[12] applies in relation to a notice of address for service as if the notice were an originating process and the respondent were an applicant.

(5) Failure to file or serve notice of an address for service does not affect the respondent's right to be heard on the hearing of the application.

Consent adjournment

30. If all the parties to an application consent to an adjournment of a hearing of the application, they may adjourn the application by noting the adjournment on the court file or filing a consent in the approved form.

Oral applications

31.(1) Nothing in this part prevents—

(a) a party to a proceeding making an oral application to the court in the proceeding for an order the court may make on a written application; or

(b) the court making an order sought on an oral application.

(2) If a party makes an oral application, the court may impose conditions required in the interests of justice to prevent prejudice to the other parties.

PART 5—APPLICATIONS IN A PROCEEDING

Applications in a proceeding

32.(1) A person making an application within a proceeding, or the person's solicitor, must sign the application and file it.

(2) The application must be in the approved form.

(3) The application must name as respondent any party whose interests may be affected by the granting of the relief sought.

(4) If an application is made by a person who is not a party to the

12 Rule 17 (Contact details and address for service)

proceedings, the application must have on it the information required under rule 17[13] to be on an originating process unless the information has already been provided on a document filed in the proceeding.

(5) An application must be filed and then served on each respondent at least 2 business days before the day set for hearing the application.[14]

PART 6—WHERE TO START A PROCEEDING

Division 1—Central Registry of Supreme Court

Central registry of Supreme Court

33. A proceeding in the Supreme Court may be started in any central registry of the court.

Division 2—Magistrates Courts, District Court and District Registry of Supreme Court

Application of div 2

34. This division applies to the following courts—

(a) Magistrates Courts;

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13 Rule 17 (Contact details and address for service)

14 The *Acts Interpretation Act 1954*, section 38 provides—

'**Reckoning of time**

'**38.(1)** If a period beginning on a given day, act or event is provided or allowed for a purpose by an Act, the period is to be calculated by excluding the day, or the day of the act or event, and—

(a) if the period is expressed to be a specified number of clear days or at least a specified number of days—by excluding the day on which the purpose is to be fulfilled … '.

(b) the District Court;

(c) if a person decides to start a proceeding in a district registry, and not a central registry, of the Supreme Court—the Supreme Court.

General rule

35.(1) A person must start a proceeding before a court in 1 of the following districts—

(a) the district in which the defendant or respondent lives or carries on business;

(b) if there is more than 1 defendant or respondent—the district in which 1 or more of the defendants or respondents live or carry on business;

(c) if the parties to a proceeding to be started in a Magistrates Court or the District Court consent in writing and file the consent with the registrar—

(i) for a Magistrates Court—any Magistrates Courts district; or

(ii) for the District Court—any district of the District Court;

(d) if a defendant has agreed or undertaken in writing to pay a debt or another amount at a particular place—the district in which the place is located;

(e) the district in which all or part of the claim or cause of action arose.

(2) However, if the proceeding is to be started in the District Court and subrule (1) does not apply—

(a) a person may, without notice to a proposed party, apply to the District Court for directions about the district in which the proceeding should be started; and

(b) the person may start the proceeding in accordance with the court's directions.

Division 3—Magistrates Courts

Application of div 3

36. This division applies only to Magistrates Courts.

Extended area of Magistrates Courts districts

37.(1) The area of a division of a Magistrates Court in the Brisbane Magistrates Courts district includes—

(a) if the division has a common boundary with an adjoining division in the district—the part of the adjoining division that is within 1 km of the common boundary; and

(b) if the division has a common boundary with another district—the area outside the Brisbane Magistrates Courts district that is within 35 km of the common boundary.

(2) The area of a district, other than the Brisbane Magistrates Courts district, includes the area outside the district that is within 35 km of the district's boundary.

Power to decide questions related to where to start proceeding

38. If a question arises in a proceeding about any of the following, the court in which the question arises must decide—

(a) the district in which a defendant or respondent lives or carries on business;

(b) the court in which a defendant or respondent must file a notice of intention to defend;

(c) the court in which a proceeding is to be heard.

Objection to court

39.(1) A defendant or respondent may object to the starting of the proceeding other than in the correct district under division 2—

(a) for a proceeding started by claim—only if the objection is

included in the defendant's notice of intention to defend; or

(b) for another proceeding—by application for dismissal of the proceeding.

(2) If the defendant or respondent does not object, the court can not, on its own initiative, decide that the proceeding should have been started in another district.

(3) The objection is taken to be an application.

(4) The court may make any of the following orders on an application or objection under this rule—

(a) an order dismissing—

(i) the application or objection; or

(ii) the proceeding;

(b) an order transferring the proceeding to another court.

Change of venue by court order

40.(1) This rule applies if at any time a court (the **"first court"**) is satisfied a proceeding pending in the first court can be more conveniently or fairly heard or dealt with in another court.

(2) The first court may order that the proceeding be sent for trial to or to be dealt with by the other court.

Change of venue by agreement

41.(1) This rule applies if, before the trial of a proceeding started in a court (the **"transferring court"**), all parties agree, by signed memorandum in the approved form filed with the registrar, that the proceeding be heard in another court (the **"transferee court"**).

(2) The transferring court, including the transferring court constituted by a registrar, may order that the proceeding be sent to the transferee court for trial, on the conditions agreed in writing and filed with the registrar.

(3) No fee is payable for filing an agreement under subrule (2).

Registrar to send documents to transferee court

42.(1) If the court or registrar orders the transfer of a proceeding to a transferee court, the registrar of the transferring court must immediately send to the registrar of the transferee court the following documents—

(a) a copy issued by the court of the filed application or claim;

(b) any other documents filed in the proceeding, including a copy issued by the court of any filed agreement to the transfer of the proceeding;

(c) a copy issued by the court of the order of the court or the registrar.

(2) The registrar of the transferee court must—

(a) make a record of the proceeding in the registrar's record of proceedings; and

(b) set a new day for the trial of the proceeding; and

(c) give the parties to the proceeding notice of the new trial date, by post or in another way decided by the registrar; and

(d) do anything else the registrar must do for a proceeding started in the transferee court.

Division 4—District Court

Application of div 4

43.(1) This division applies only to the District Court.

(2) In this division, if the context requires, a reference to a court is a reference to a court sitting in a particular district.

Objection to court

44.(1) A defendant or respondent may object to the starting of a proceeding other than in the correct district under division 2—

(a) for a proceeding started by claim—only if the objection is included in the defendant's notice of intention to defend; or

(b) for another proceeding—by application for dismissal of the

proceeding.

(2) If the defendant or respondent does not object, the court can not, on its own initiative, decide that the proceeding should have been started in another district or that the court has no jurisdiction.

(3) The objection is taken to be an application.

(4) The court may make any of the following orders on an application or objection under this rule—

(a) an order dismissing—

(i) the application or objection; or

(ii) the proceeding;

(b) an order transferring the proceeding to another court.

Change of venue by court order

45.(1) This rule applies if at any time a court (the **"first court"**) is satisfied a proceeding pending in the first court can be more conveniently or fairly heard or dealt with in another court.

(2) The first court may order that the proceeding be sent for trial to or to be dealt with by the other court.

Division 5—Supreme Court

Application of div 5

46. This division applies only to the Supreme Court.

Proceedings in registries

47.(1) Subject to these rules or an order of the court, in a proceeding started in a registry, including a central registry of the Supreme Court—

(a) each application or other step required or permitted to be made in a registry must be made in the registry; and

(b) the proceeding must be tried or heard in the district served by the registry.

(2) In subrule (1)—

"step" includes—

(a) the giving, making or filing of a judgment or an interpleader order; and

(b) assessment of costs.

Objection to court

48.(1) A defendant can object to the starting of a proceeding other than in the correct district under division 2—

(a) for a proceeding started by claim—only if the objection is included in the defendant's notice of intention to defend; or

(b) for another proceeding—by application for dismissal of the proceeding.

(2) If the defendant does not object, the court can not, of its own initiative, decide that the proceeding should have been started in another registry.

(3) The objection is taken to be an application.

(4) The court may make any of the following orders on an application or objection under this rule—

(a) an order dismissing—

(i) the application or objection; or

(ii) the proceeding;

(b) an order transferring the proceeding to another court.

Transfer of proceeding

49. The court as constituted by a judge or registrar may order the transfer of a proceeding to another registry.

Division 6—Applications heard at a different location

Applications heard at a different location

50.(1) If—

(a) an application in a proceeding would ordinarily be made to the court at a particular registry; and

(b) there is no judge of the court at the registry available to hear and decide the application;

nothing in this part prevents a person making the application in the proceeding to the court at another registry.

(2) If—

(a) an application in a proceeding would ordinarily be made to a particular Magistrates Court; and

(b) there is no magistrate at the court available to hear and decide the application;

nothing in this part prevents a person making the application in the proceeding to another Magistrates Court.

PART 7—CROSS-VESTING

Definitions for pt 7

51. In this part—

"cross-vesting laws" means the *Jurisdiction of Courts (Cross-vesting) Act 1987* and the *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cwlth).

"special federal matter" see *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cwlth).

Application of pt 7

52.(1) This part applies to a proceeding to which the cross-vesting laws

apply.

(2) This part applies only to the Supreme Court.

Starting proceedings

53.(1) A proceeding in which a party relies on the cross-vesting laws must be started under this part.

(2) However, if there is doubt or difficulty about how a proceeding should be started, the court, on application to it, may give directions.

(3) An application for directions may be made without notice to another person.

(4) A party who relies on the cross-vesting laws must include in the process by which the laws are invoked a statement identifying each claim or ground of defence about which the cross-vesting laws are invoked.

(5) A failure to comply with subrule (4) does not invalidate the process.

(6) If a party who has not complied with subrule (4) wishes to invoke the cross-vesting laws, the court, on application by the party, may give directions.

Special federal matters

54.(1) If a matter for decision is a special federal matter, the plaintiff or the defendant must give particulars of the special matter in the statement required under rule 53(4).

(2) The court must not decide a proceeding that raises for decision a special federal matter unless it is satisfied the notice required by section 6(4)(a) of the cross-vesting laws sufficiently specifies the nature of the special federal matter.

Service

55.(1) Despite chapter 4,[15] an originating process in which the cross-vesting laws are relied on may be served outside the jurisdiction.

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15 Chapter 4 (Service)

(2) If a defendant served outside the jurisdiction under subrule (1) does not file a notice of intention to defend, the plaintiff must not take a further step in the proceeding unless the court gives leave to proceed.

(3) The court must not give leave to proceed unless it is satisfied—

(a) jurisdiction under the cross-vesting laws is being invoked; and

(b) the court is a convenient court in which to decide the matter.

(4) An application for leave to proceed must be made by application or it may be included in the application for directions under rule 56.

(5) An order giving leave to proceed does not prevent the court from subsequently transferring the proceeding to another court.

Directions

56.(1) The first party to invoke the cross-vesting laws must make an application for directions and serve it on all other parties.

(2) If a plaintiff is required to make the application for directions, the plaintiff must make and serve the application within 7 days after being served with the first notice of intention to defend.

(3) If a defendant is required to make the application for directions, the defendant must make and serve the application within 7 days after service of the process invoking the cross-vesting laws.

(4) If a proceeding is transferred to the court from another court, the party who started the proceeding must, within 14 days after the date of the order transferring the proceeding, make and serve an application for directions.

(5) If the party does not comply with subrule (4), another party may make and serve the application or the court may call the parties before it on its own initiative.

(6) On the hearing of the application for directions, the court must give a direction or make a decision about the conduct of the proceeding that the court considers appropriate.

(7) The court may, at the trial or hearing of the proceeding, vary an order or decision made on the application for directions.

Transfer of proceedings

57.(1) If the court makes an order transferring a proceeding to another court, the registrar must send to the court to which the proceeding is transferred all documents filed and orders made in the proceeding, unless the court orders otherwise.

(2) If a proceeding is transferred to the court from another court, the registrar must give it a number.

(3) An order transferring a proceeding to another court under section 5 of the cross-vesting laws may be made only by the court constituted by a judge.

Transfer on Attorney-General's application

58. An application by an Attorney-General of a State or of the Commonwealth under section 5 or 6 of the cross-vesting laws for the transfer of a proceeding may be made by application without the Attorney-General becoming a party to the proceeding.

Transfer to court if no proceeding pending

59.(1) This rule applies if a proceeding is removed to a court under section 8 of the cross-vesting laws.

(2) The court may immediately on the removal give a direction, make a decision or direct the parties to take a step in the proceeding the court considers appropriate.

(3) The court's powers under subrule (2)—

(a) are in addition to the court's powers under rule 56; and

(b) include power to give directions that could have been given by the court or tribunal from which the proceeding was removed.

CHAPTER 3—PARTIES AND PROCEEDINGS

PART 1—SEVERAL CAUSES OF ACTION AND PARTIES IN A PROCEEDING

Division 1—Several causes of action

Inclusion of several causes of action in a proceeding

60.(1) A plaintiff or applicant may, whether seeking relief in the same or different capacities, include in the same proceeding as many causes of action as the plaintiff has against a defendant or the applicant has against a respondent.

(2) However, causes of action may be included in the same proceeding only if at least 1 of the following conditions is satisfied—

(a) if a separate proceeding were brought for each cause of action—a common question of law or fact may arise in all the proceedings;

(b) all rights to relief sought in the proceeding (whether joint, several or alternative) are in relation to, or arise out of, the same transaction or event or series of transactions or events;

(c) the court gives leave, either before or after the start of the proceeding.

Division 2—Several parties

Application of div 2

61. This division applies to a proceeding subject to any order of the court made before or after the proceeding is started—

(a) requiring a person—

(i) to be a party to the proceeding; or

(ii) to attend a proceeding or part of a proceeding; or

(b) dispensing with the requirement for a person to be a party to the proceeding.

Necessary parties

62.(1) Each person whose presence is necessary to enable the court to adjudicate effectually and completely on all matters in dispute in a proceeding must be included as a party to the proceeding.

(2) The court may order a person to be included as a party whose presence as a party is necessary to enable the court to adjudicate effectually and completely on all issues raised in the proceeding.

(3) A person who is required under this rule to be included as a plaintiff or applicant and does not consent to be included in this way may be included as a defendant or respondent.

(4) The court may dispense with a requirement under this rule for a person to be included as a party.

Joint entitlement

63.(1) If a plaintiff or applicant seeks relief to which another person is entitled jointly with the plaintiff or applicant, all persons entitled to the relief must be parties to the proceeding.

(2) A person entitled to seek relief who does not agree to be a plaintiff or applicant must be made a defendant or respondent.

Joint or several liability

64.(1) If a plaintiff or applicant seeks relief against a defendant or respondent who is liable jointly with another person and also liable severally, the other person need not be made a defendant or respondent to the proceeding.

(2) If persons are liable jointly, but not severally, under a contract, and a plaintiff or applicant seeks relief in relation to the contract against some but not all of the persons, the court may stay the proceeding until the other persons liable under the contract are included as defendants or respondents.

Inclusion of multiple parties in a proceeding

65.(1) In a proceeding, 2 or more persons may be plaintiffs or defendants or applicants or respondents if—

(a) separate proceedings were brought by or against each of them and a common question of law or fact may arise in all the proceedings; or

(b) all rights to relief sought in the proceeding (whether joint, several, or alternative) arise out of the same transaction or event or series of transactions or events.

(2) Also, in a proceeding, 2 or more persons may be defendants or respondents if—

(a) there is doubt as to—

(i) the person from whom the plaintiff or applicant is entitled to relief; or

(ii) the respective amounts for which each may be liable; or

(b) damage or loss has been caused to the plaintiff or applicant by more than 1 person, whether or not there is a factual connection between the claims apart from the involvement of the plaintiff or applicant.

Identical interest in relief unnecessary

66. It is not necessary for every defendant or respondent to be interested in all the relief sought or in every cause of action included in a proceeding.

Parties incorrectly included or not included

67. Despite rules 62 and 63, the court may decide a proceeding even if a person is incorrectly included or not included as a party and may deal with the proceeding as it affects the rights of the parties before it.

Division 3—Reconstitution of proceeding

Inconvenient inclusion of cause of action or party

68.(1) This rule applies to a proceeding, despite division 2, if including a cause of action or party may delay the trial of the proceeding, prejudice another party or is otherwise inconvenient.

(2) The court may, at any time—

(a) order separate trials; or

(b) award costs to a party for attending, or relieve a party from attending, a part of a trial in which the party has no interest; or

(c) stay the proceeding against a defendant or respondent until the trial between the other parties is decided, on condition that the defendant or respondent against whom the proceeding is stayed is bound by the findings of fact in the trial against the other defendant; or

(d) make another order appropriate in the circumstances.

(3) In this rule—

"trial" includes hearing.

Including, substituting or removing party

69.(1) The court may at any stage of a proceeding order that—

(a) a person who has been improperly or unnecessarily included as a party, or who has ceased to be an appropriate or necessary party, be removed from the proceeding; or

(b) any of the following persons be included as a party—

(i) a person whose presence before the court is necessary to enable the court to adjudicate effectually and completely on all matters in dispute in the proceeding;

(ii) a person whose presence before the court would be desirable, just and convenient to enable the court to adjudicate effectually and completely on all matters in dispute connected with the proceeding.

(2) However, the court must not include or substitute a party after the end of a limitation period unless 1 of the following applies—

(a) the new party is a necessary party to the proceeding because—

(i) property is vested in the party at law or in equity and the plaintiff's or applicant's claimed entitlement to an equitable interest in the property may be defeated if the new party is not included; or

(ii) the proceeding is for the possession of land and the new party is in possession personally or by a tenant of all or part of the land; or

(iii) the proceeding was started in or against the name of the wrong person as a party, and, if a person is to be included or substituted as defendant or respondent, the person is given notice of the court's intention to make the order; or

(iv) the court considers it doubtful the proceeding was started in or against the name of the right person as a party, and, if a person is to be included or substituted as defendant or respondent, the person is given notice of the court's intention to make the order;

(b) the relevant cause of action is vested in the new party and the plaintiff or applicant jointly but not severally;

(c) the new party is the Attorney-General and the proceeding should have been brought as a relator proceeding in the Attorney-General's name;

(d) the new party is a company in which the plaintiff or applicant is a shareholder and on whose behalf the plaintiff or applicant is suing to enforce a right vested in the company;

(e) the new party is sued jointly with the defendant or respondent and is not also liable severally with the defendant or respondent and failure to include the new party may make the claim unenforceable;

(f) there has been a change in law or practice that requires, in the interests of justice, the inclusion or substitution of a party;

(g) for another reason the court considers it just to include or

substitute the party after the end of the limitation period.

(3) If the court makes an order including or substituting a party, the court may give directions about the future conduct of the proceeding.

Procedure for inclusion of party

70.(1) Unless the court orders otherwise, an application by a person seeking to be included as a party must be supported by an affidavit showing the person's interest in—

(a) the matter in dispute in the proceeding; or

(b) a matter in dispute to be decided between the person and a party to the proceeding.

(2) Unless the court orders otherwise, an application to include a person as a defendant or respondent must be served on all existing parties and on the person.

Defendant or respondent dead at start of proceeding

71.(1) This rule applies if—

(a) when an originating process is issued—

(i) a person who would otherwise be defendant or respondent is dead; and

(ii) a grant of representation has not been made; and

(b) the cause of action survives the person's death.

(2) If the party filing the originating process knows the person who would otherwise be defendant or respondent is dead, the originating process must name as defendant or respondent the 'Estate of [person's name] deceased'.

(3) If, after the start of a proceeding against a person, the proceeding is taken, under an Act, to be against the person's personal representative, all

subsequent documents filed in the proceeding must name the personal representative as defendant or respondent.[16]

Party becomes bankrupt, person with impaired capacity or dies during proceeding

72.(1) If a party to a proceeding becomes bankrupt, becomes a person with impaired capacity or dies during the proceeding, a person may take any further step in the proceeding for or against the party only if—

(a) the court gives the person leave to proceed; and

(b) the person follows the court's directions on how to proceed.

(2) If a party to a proceeding becomes bankrupt or dies, the court may, at any stage of the proceeding, order the trustee or personal representative of the party or, if a deceased party does not have a personal representative, someone else, to be included or substituted as a party for the original party.

(3) Subrules (1) and (2) apply subject to the *Bankruptcy Act 1966* (Cwlth).

(4) An application for an order under this rule must be served on all persons who could be affected by the order.

(5) The court may, before it makes an order under this rule because a party has died, require notice to be given to—

(a) an insurer of the deceased who has an interest in the proceeding; and

(b) any other person who has an interest in the estate.

(6) An insurer or other person given notice is entitled to be heard on the hearing of the application.

(7) If the court orders that a person be included as a defendant, the person must file a notice of intention to defend within the time set by the court in the order.

(8) If—

(a) a deceased party does not have a personal representative and the

16 See *Supreme Court of Queensland Act 1991*, sections 93I and 93J for procedures, relevant to this rule, about estates and grants of representation.

court orders that a person be included or substituted as a party for the deceased; and

(b) a grant of representation is subsequently made;

the person must, as soon as practicable, deliver to the deceased's personal representative a copy of all process and documents in the person's possession relating to the proceeding.

No substitution order after death of plaintiff or applicant

73.(1) This rule applies if—

(a) a plaintiff or applicant dies and the cause of action survives the death; and

(b) no order is made substituting another person for the deceased.

(2) The court, on application by a party or by a person to whom the benefit of the cause of action passes on the death, may order that, unless an order for substitution is made within a specified time, the proceeding be dismissed on a specified basis, including, for example, with costs against a party, person or estate connected with the proceeding.

(3) A copy of the application must be served on the deceased's personal representative (if any) unless the court orders otherwise.

Amendment of proceedings after change of party

74.(1) If an order is made changing or affecting the identity or designation of a party, the plaintiff or applicant must—

(a) file an amended copy of the originating process within the time specified in the order, or if no time is specified, within 10 days after the order is made; and

(b) serve the amended originating process on any new party within the time specified in the order.

(2) The plaintiff or applicant must also note on the amended copy of the originating process a reference to the order, the date of the order and the date the amended copy is filed.

(3) Within 10 days after an order is made including or substituting a

person as a defendant or respondent, the applicant for the order must serve a copy of the order on every other continuing party and on every person who becomes a party because of the order, unless the court orders otherwise.

(4) If an order is made including or substituting a person as a defendant or respondent, the proceeding against the new defendant or respondent starts on the filing of the amended copy of the originating process.

(5) However, for a limitation period, the proceeding against the new defendant or respondent is taken to have started when the proceeding started against the original defendant or respondent unless the court otherwise orders.

(6) Unless the court otherwise orders—

(a) for a new defendant or respondent who is a substituted defendant or respondent—everything done in the proceeding before it was started against the new defendant or respondent has the same effect in relation to the new defendant or respondent as for the original defendant or respondent; and

(b) for another new defendant or respondent—the proceeding must be continued as if the new defendant or respondent were an original defendant or respondent.

(7) Subrule (6)(a) does not apply to the following—

(a) the filing of a notice of intention to defend by an original defendant;

(b) an admission made by an original defendant or respondent;

(c) an order for costs either in favour of, or against, the original defendant or respondent.

Division 4—Representative party

Representative party

75. A proceeding may be started and continued by or against 1 or more persons who have the same interest in the subject matter of the proceeding as representing all of the persons who have the same interest and could have been parties in the proceeding.

Order for representation

76.(1) At any stage of a proceeding brought by or against a number of persons who have the same interest under rule 75, the court may appoint 1 or more parties named in the proceeding, or another person, to represent, for the proceeding, the persons having the same interest.

(2) However, when making an order appointing a person who is not a party, the court must also make an order under rule 62[17] including the person as a party.

Enforcement of order against representative party

77.(1) An order made in a proceeding against a representative party under this division may be enforced against a person not named as a party only with the court's leave.[18]

(2) An application for leave to enforce an order must be served on the person against whom enforcement of the order is sought as if the application were an originating process.

PART 2—MULTIPLE PROCEEDINGS

Consolidation of proceedings

78. The court may order that 2 or more proceedings be consolidated if—

(a) the same or substantially the same question is involved in all the proceedings; or

(b) the decision in 1 proceeding will decide or affect the other proceeding or proceedings.

17 Rule 62 (Necessary parties)

18 See also the *Supreme Court of Queensland Act 1991*, section 82 (Order binds persons who are represented).

Sequence of hearings

79. The court may order that 2 or more proceedings be heard together or in a particular sequence.

Directions

80. If the court orders that proceedings be consolidated or heard together or in a specified sequence, the court may give a direction it considers appropriate for the conduct of the proceeding or proceedings.

Variation of order

81. Before or during the hearing of a consolidated proceeding or of proceedings ordered to be heard together or in a particular sequence, the court may order the proceedings be separated or heard in another sequence.

PART 3—PARTNERSHIPS AND BUSINESS NAMES

Division 1—Partnerships

Meaning of "partnership proceeding"

82. A **"partnership proceeding"** is a proceeding started by or against a partnership in the partnership name and includes a proceeding between a partnership and 1 or more of its partners.

Proceeding in partnership name

83.(1) Two or more partners may start a proceeding in the partnership name.

(2) A proceeding against persons alleged to be partners may be brought against the alleged partnership in the partnership name.

(3) The partnership name used in a partnership proceeding must be the name of the partnership when the cause of action arose.

(4) For a partnership registered under the *Partnership (Limited Liability) Act 1988*, the name of the partnership when the cause of action arose is the name in which the partnership was registered when the cause of action arose.

(5) Unless the court orders otherwise, a partnership proceeding must continue in the partnership name and not in the name of the individual partners.

Disclosure of partners' names

84.(1) At any stage of a partnership proceeding, a party may by written notice require the partnership to give the names and places of residence of the persons who were partners in the partnership when the cause of action arose.

(2) The notice must state a time of not less than 2 business days after service of the notice for compliance with the notice.

(3) If the partnership does not give the information as required by this rule, the court may make an order it considers appropriate, including the following—

(a) an order staying the proceeding until the information is supplied;

(b) an order striking out a pleading or affidavit.

Notice of intention to defend

85.(1) Despite an originating process being against a partnership, a notice of intention to defend must not be filed in a partnership name.

(2) A partner who is served[19] with an originating process against a partnership may file a notice of intention to defend only in the partner's own name.

(3) However, the proceeding continues in the name of the partnership.

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19 See rule 114 (Service in relation to a partnership).

Person improperly served as partner

86.(1) In a proceeding against a partnership started by claim, a person who is served as a partner may file a conditional notice of intention to defend stating—

(a) the person files the notice because the person was served as a partner; and

(b) the person denies being a partner at a material time or being liable as a partner.

(2) On application, the court may—

(a) set aside the service of an originating process on the person on the ground that the person is not a partner or is not liable as a partner; or

(b) set aside a conditional notice of intention to defend on the ground that the person is a partner or is liable as a partner.

(3) The court may give directions about how to decide the liability of the person or the liability of the partners.

Defence

87. Except for a person who files a conditional notice of intention to defend under rule 86, a person may file a defence for the partnership in the partnership name only.

Enforcement against individual partner

88.(1) On application by a person seeking to enforce an order against partners in the partnership name, the court may give leave for the order to be enforced against a person who is liable to satisfy the judgment.

(2) The application must be served on the person against whom the order is sought to be enforced.

(3) Despite chapter 4,[20] the person may be served outside Australia without leave.

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20 Chapter 4 (Service)

(4) If, on the hearing of the application, the person denies liability, the court may decide liability summarily or give directions about how liability is to be decided.

Division 2—Business names

Proceeding if registered business name

89. A proceeding may be started against a name registered under the *Business Names Act 1962*.

Proceeding in business name if unregistered

90. If a proceeding is brought against a person in relation to a business carried on by the person under a name or style other than the person's own name and the name is not registered under the *Business Names Act 1962*—

(a) the proceeding may be started against the person in the name or style under which the person carries on business; and

(b) the name or style under which the business is carried on is sufficient designation of the person in a document filed in the proceeding; and

(c) an order in the proceeding may be enforced against the person.

Notice of intention to defend

91.(1) This rule applies if a proceeding is brought against a person in relation to a business carried on by the person under a name or style other than the person's own name and regardless of whether the name or style is registered under the *Business Names Act 1962*.

(2) A notice of intention to defend must be in name of a person and not in the business name.

(3) A person who files a notice of intention to defend must file and serve with the notice a statement of the names and places of residence of all persons who were carrying on business under the name or style as at the day the proceeding was started.

(4) The court may set aside the notice of intention to defend of a person who does not comply with subrule (3).

Amendment as to parties

92.(1) This rule applies if—

(a) a proceeding is brought against a person in relation to a business carried on by the person under a name or style other than the person's own name; and

(b) the name is not registered under the *Business Names Act 1962*

(2) The plaintiff or applicant must, as soon as practicable, take all reasonable steps to find out the name of the persons carrying on the business under the name or style in question.

(3) The plaintiff or applicant must also, as far as practicable, make amendments so the proceeding is continued against a named defendant or respondent and not in the name or style under which the business was carried on.

(4) Other than for service of the originating process and for complying with this rule, until the amendments are made, the plaintiff or applicant may only take a step in the proceeding with the court's leave.

(5) An amendment for this rule must be effected under rules 383 and 384.[21]

(6) This rule applies in addition to chapter 10, part 3.[22]

PART 4—PERSONS UNDER A LEGAL INCAPACITY

Litigation guardian of person under a legal incapacity

93.(1) A person under a legal incapacity may start or defend a proceeding only by the person's litigation guardian.

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21 Rules 383 (Who is required to make amendment) and 384 (Serving amendments)

22 Chapter 10 (Court Supervision), part 3 (Amendment)

(2) Except if these rules provide otherwise, anything in a proceeding (including a related enforcement proceeding) required or permitted by these rules to be done by a party must or may, if the party is a person under a legal incapacity, be done by the party's litigation guardian.

(3) A litigation guardian of a person under a legal incapacity may act only by a solicitor.

Who may be a litigation guardian

94.(1) A person may be a litigation guardian of a person under a legal incapacity if the person—

(a) is not a person under a legal incapacity; and

(b) has no interest in the proceeding adverse to the interest in the proceeding of the person under a legal incapacity.

(2) If a person is authorised by or under an Act to conduct legal proceedings in the name of or for a person with impaired capacity, the authorised person is, unless the court orders otherwise, entitled to be litigation guardian of the person with impaired capacity in any proceeding to which the authorised person's authority extends.

(3) A corporation, other than the public trustee or a trustee company under the *Trustee Companies Act 1968*, may not be a litigation guardian.

Appointment of litigation guardian

95.(1) A person becomes a litigation guardian of a person under a legal incapacity for a proceeding by filing in the registry the person's written consent to be litigation guardian of the party in the proceeding.

(2) If the interests of a party who is a person under a legal incapacity require it, the court may, on application by any party, appoint or remove a litigation guardian or substitute another person as litigation guardian.

(3) The court may appoint a person as a litigation guardian only if the person consents to the appointment.

No notice of intention to defend by person under a legal incapacity

96. If a defendant who is a person under a legal incapacity does not file a notice of intention to defend within the time limited, the plaintiff may not continue the proceeding unless a person is made litigation guardian of the defendant.

Disclosure

97.(1) Chapter 7, parts 1 and 2[23] apply to a party who is a person under a legal incapacity as if the person were not a person under a legal incapacity.

(2) An act required to comply with an order under chapter 7, part 1 or 2 may be performed by—

(a) if the party is capable of performing it—the party; or

(b) otherwise—the litigation guardian of the party.

Settlements and compromises

98.(1) A settlement or compromise of a proceeding in which a party is a person under a legal incapacity is ineffective unless it is approved by the court or the public trustee acting under the *Public Trustee Act 1978*, section 59.[24]

(2) To enable the court to consider whether a settlement or compromise should be approved, the litigation guardian for the party must produce to the court—

(a) an affidavit made by the party's solicitor stating why the settlement or compromise is in the party's best interests; and

(b) a statement by the litigation guardian that instructions have been given for the settlement or compromise of the proceeding; and

(c) any other material the court may require.

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23 Chapter 7 (Disclosure), part 1 (Disclosure by parties) and part 2 (Non-party disclosure)

24 *Public Trustee Act 1978*, section 59 (Compromise of actions by or on behalf of persons under a legal disability claiming moneys or damages valid only with sanction of court or public trustee)

(3) The documents mentioned in subrule (2) are not to be served on another party unless the court orders otherwise.

Proceedings by and against prisoners

99.(1) This rule applies if a prisoner is incapable of bringing or defending a proceeding without the public trustee's consent.[25]

(2) The public trustee's consent must be written on the front, or attached on a separate sheet at the back, of the originating process or notice of intention to defend.

CHAPTER 4—SERVICE

PART 1—PRELIMINARY

Definitions for ch 4

100. In this chapter—

"Australia" includes the external territories.

Service not allowed on certain days

101. A person can not serve a document on Good Friday or Christmas Day unless the court otherwise orders.

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25 See *Public Trustee Act 1978*, section 95—

'**Restrictions on property dealings or proceedings**

'**95.** During the time when the public trustee is manager of the prisoner's estate under this part (pt 7), a prisoner shall be incapable, except with the consent in writing of the public trustee—

'(b) of bringing or defending any action of a property nature or for the recovery of any debt or damage.'.

Approved document exchanges

102.(1) In a proceeding, a solicitor or party must not give a document exchange address unless the document exchange is approved by the Chief Justice.

(2) The Chief Justice may approve, by practice direction, a document exchange for part 4.[26]

Service after 4.00 p.m.

103. If a document is served on a person after 4.00 p.m., the document is taken to have been served on the next day.

PART 2—PERSONAL SERVICE GENERALLY

Application of pt 2

104.(1) This part does not apply to corporations.

(2) Also, this part applies subject to these rules or an order made under these rules.[27]

Personal service for originating process

105.(1) A person serving an originating process must serve it personally on the person intended to be served.

(2) If a defendant files an unconditional notice of intention to defend, the claim is taken to have been served on the defendant on the day the notice is filed or, if a party proves the claim was served on an earlier day, the earlier day.

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26 Part 4 (Ordinary Service)

27 The *Acts Interpretation Act 1954*, section 39 also contains provisions about service that apply subject to a contrary intention.

For service on the State see the *Crown Proceedings Act 1980*, section 19 and for service on the Commonwealth see the *Judiciary Act 1903* (Cwlth), section 63.

How personal service is performed

106.(1) To serve a document personally, the person serving it must give the document, or a copy of the document, to the person intended to be served.

(2) However, if the person does not accept the document, or copy, the party serving it may serve it by putting it down in the person's presence and telling him or her what it is.

(3) It is not necessary to show to the person served the original of the document.

PART 3—PERSONAL SERVICE IN PARTICULAR CASES

Personal service—corporations

107. A document required to be served personally on a corporation[28] must be served in the way provided for the service of documents under the Corporations Law or another applicable law.

Personal service—young people

108.(1) A document required to be served personally on a young person must be served instead on the person who is the young person's litigation guardian for the proceeding to which the document relates.

(2) If the young person does not have a litigation guardian for the proceeding the document must be served instead on—

(a) the young person's parent or guardian; or

(b) if there is no parent or guardian—an adult who has the care of the young person or with whom the young person lives.

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28 A **"corporation"** includes a body politic or corporate—*Acts Interpretation Act 1954*, section 36.

Personal service—persons with impaired capacity

109. A document required to be served personally on a person with impaired capacity (the **"impaired person"**) must be served instead on—

(a) the person who is the impaired person's litigation guardian for the proceeding to which the document relates; or

(b) if there is no-one under paragraph (a)—a person who is entitled under rule 94(2) to be the impaired person's litigation guardian for the proceeding to which the document relates; or

(c) if there is no-one under paragraph (a) or (b)—an adult who has the care of the impaired person.

Personal service—prisoners

110. A document required to be served personally on a prisoner must be served on—

(a) if the public trustee is manager of the prisoner's estate under the *Public Trustee Act 1978*, part 7[29] and the proceeding is of a property nature or for the recovery of a debt or damage—the public trustee; or

(b) if paragraph (a) does not apply and the prisoner has a litigation guardian—the prisoner's litigation guardian; or

(c) otherwise—the person in charge of the prison in which the prisoner is imprisoned.

Personal service in Magistrates Courts proceedings

111.(1) All documents in a Magistrates Court proceeding, including a document required by these rules to be served on a person personally, may, unless the court otherwise orders, be served under part 4.[30]

(2) However, a document required by these rules to be served on a person personally must not be served under rule 112(1)(b), (c), (d), (e) or (g).

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29 *Public Trustee Act 1978*, part 7 (Administration of property of prisoners)

30 Part 4 (Ordinary service)

(3) However, if the person intended to be served resides or carries on business more than 50 km from the nearest court, the claim may be served by posting a copy of it to the person's residential or business address.

PART 4—ORDINARY SERVICE

How ordinary service is performed

112.(1) If these rules do not require personal service of a document, the following are ways by which the document may be served on the person to be served—

(a) leaving it with someone who is apparently an adult living at the relevant address;

(b) if there is no-one at the relevant address—leaving it at the relevant address in a position where it is reasonably likely to come to the person's attention;

(c) if the relevant address is within a building or area to which the person serving the document has been denied access—leaving it at the building or area in a position where it is reasonably likely to come to the person's attention;

(d) posting it to the relevant address;

(e) if the person has given—

(i) a fax number under these rules—faxing the document to the person; or

(ii) an email address under these rules—emailing the document to the person;

(f) if the solicitor for the person has—

(i) an exchange box at a document exchange—leaving the document in the exchange box or another exchange box available for documents to be transferred to the solicitor's exchange box; or

(ii) a fax—faxing the document to the solicitor; or

(iii) an email address—emailing the document to the solicitor;

(g) an electronic means prescribed by practice direction.

(2) A document served under subrule (1)(f)(i) is taken to have been served on the business day after it is left in the document exchange box.

(3) In this rule—

"relevant address", of a person to be served, means—

(a) the person's address for service; or

(b) for an individual who does not have an address for service—

(i) the individual's last known place of business or residence; or

(ii) if the individual is suing or being sued in the name of a partnership—the principal or last known place of business of the partnership; or

(c) for a corporation that does not have an address for service—its head office or its principal or registered office.

Service in relation to a business

113.(1) This rule applies if—

(a) a proceeding is brought against a person in relation to a business carried on by the person under a name or style other than the person's name; and

(b) the name is not registered under the *Business Names Act 1962*; and

(c) the proceeding is started in the name or style under which the person carries on the business.

(2) The originating process may be served by leaving a copy at the person's place of business with a person who appears to have control or management of the business at the place.

Service in relation to a partnership

114.(1) An originating process against a partnership must be served—

(a) on 1 or more of the partners; or

(b) on a person at the principal place of business of the partnership in Queensland who appears to have control or management of the business there; or

(c) for a partnership registered under the *Partnership (Limited Liability) Act 1988*—at the registered office of the partnership.

(2) If the originating process is served under subrule (1), each of the partners who were partners in the partnership when the originating process was issued, including a partner who was outside Queensland at the time, is taken to have been served.

(3) The originating process must also be served on any person the plaintiff seeks to make liable as a partner but who was not a partner when the originating process was issued.

PART 5—OTHER SERVICE

Acceptance of service

115.(1) Despite parts 2, 3 and 4, a solicitor may accept service of a document for a party.

(2) The solicitor must make a note on a copy of the document to the effect that the solicitor accepts service for the party.

(3) The document is taken to have been served on the party, unless the party proves the solicitor did not have authority to accept service for the party.

(4) This rule applies whether or not personal service of the document is required under these rules.

Substituted service

116.(1) If, for any reason, it is impracticable to serve a document in a way required under this chapter, the court may make an order substituting another way of serving the document.

(2) The court may, in the order, specify the steps to be taken, instead of

service, for bringing the document to the attention of the person to be served.

(3) The court may, in the order, specify that the document is to be taken to have been served on the happening of a specified event or at the end of a specified time.

(4) The court may make an order under this rule even though the person to be served is not in Queensland or was not in Queensland when the proceeding started.

Informal service

117. If—

(a) for any reason, a document is not served as required by this chapter but the document or a copy of it came into the possession of the person to be served; and

(b) the court is satisfied on evidence before it that the document came into the person's possession on or before a particular day;

the court may, by order, decide that the possession of the document is service for these rules on the day it came into the person's possession or another day stated in the order.

Service on agent

118.(1) If a person living or carrying on business outside Queensland (the **"principal"**) enters into a contract in Queensland through an agent living or carrying on business in Queensland, the court may, without deciding the agent's authority or business relationship with the principal, give leave for an originating process relating to a proceeding arising out of the contract to be served on the agent.

(2) The court must, in an order giving leave under subrule (1), state the time within which the principal must file a notice of intention to defend.

(3) The party serving the originating process on the agent must immediately send to the principal a copy of each of the order and originating process.

(4) The documents required to be sent under subrule (3) must be sent to the principal's address outside Queensland by pre-paid post.

Service under contract

119.(1) This rule applies if—

(a) before a proceeding starts, the parties to the proceeding agree that a document relating to the proceeding may be served on a party, or someone else for the party, in a way or at a place, in Queensland or elsewhere, specified in the agreement; or

(b) after a proceeding starts, the parties to the proceeding agree that a document relating to the proceeding may be served on a party, or someone else for the party, in a way or at a place, in Queensland or elsewhere, specified in the agreement.

(2) The document may be served in accordance with the agreement.

Affidavit of service

120.(1) If an affidavit of service of a document is required under these rules or an Act or law, the affidavit—

(a) for an affidavit of personal service—must be made by the person who served the document and include the following—

(i) the person's full name;

(ii) the time, day and date the document was served;

(iii) the place of service;

(iv) the name of the person served and how the person was identified; or

(b) otherwise—

(i) must state the relevant dates and the facts showing service; and

(ii) may be made on information given to, or the belief of, the person causing the service; and

(iii) if made on information given to the person—must state the source of the information.

(2) An affidavit of service must—

(a) have the document filed with it as an exhibit or be written on the document; or

(b) if the document has been filed—mention the document in a way sufficient to enable the document to be identified.

Identity of person served

121. For proving service, a statement by a person of his or her identity or that he or she holds a particular office or position is evidence of the identity or that the person holds the office or position.

Special requirements for service by fax

122.(1) A document served by fax must include a cover page stating the following—

(a) the sender's name and address;

(b) the name of the person to be served;

(c) the date and time of transmission;

(d) the total number of pages, including the cover page, transmitted;

(e) the telephone number from which the document is transmitted;

(f) the name and telephone number of a person to contact if there is a problem with the transmission;

(g) that the transmission is for service under a stated rule.

(2) An affidavit of service of a document by fax must include, as an exhibit, the transmission advice, generated by the sender's fax machine, indicating the transmission was successful.

PART 6—SERVICE OUTSIDE QUEENSLAND

Service outside Queensland

123.(1) This rule applies only to service of an originating process outside Queensland but within Australia.

(2) The originating process must be served in accordance with the *Service and Execution of Process Act 1992* (Cwlth).

PART 7—SERVICE OUTSIDE AUSTRALIA

Service outside Australia

124.(1) An originating process for any of the following may be served on a person outside Australia without the court's leave—

(a) a proceeding based on a cause of action arising in Queensland;

(b) a proceeding about—

(i) property situated in Queensland; or

(ii) obtaining evidence for a future claim relating to property in Queensland;

(c) a proceeding in which an Act, deed, will, contract, obligation or liability affecting property in Queensland is sought to be interpreted, rectified, set aside or enforced;

(d) a proceeding for relief against a person domiciled or ordinarily resident in Queensland;

(e) a proceeding for—

(i) the administration of the estate of a person who died domiciled in Queensland; or

(ii) relief that might be obtained in a proceeding for the administration of the estate of a person who died domiciled in Queensland;

(f) a proceeding for the execution of a trust if—

(i) the trust is created or declared by an instrument; and

(ii) the person is a trustee; and

(iii) the execution relates to trust property in Queensland; and

(iv) the trust ought to be executed under the law of Queensland;

(g) a proceeding relating to a contract—

(i) made in Queensland; or

(ii) made by 1 or more parties carrying on business or residing in Queensland; or

(iii) made by or through an agent carrying on business or residing in Queensland on behalf of a principal carrying on business or residing outside Queensland; or

(iv) governed by the law of Queensland;

(h) a proceeding based on a breach of contract committed in Queensland, regardless of where the contract was made and whether or not the breach was preceded or accompanied by a breach (wherever occurring), rendering impossible the performance of a part of the contract that ought to be performed in Queensland;

(i) a proceeding based on a contract containing a condition by which the parties agree to submit to the jurisdiction of the court;

(j) a proceeding for the recovery of an amount payable under an Act to an entity[31] in Queensland;

(k) a proceeding based on a tort committed in Queensland;

(l) a proceeding for damage—

(i) all or part of which was suffered in Queensland; and

(ii) caused by a tortious act or omission (wherever happening);

(m) a proceeding affecting a person in relation to the person's membership of—

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31 **"Entity"** includes a person and an unincorporated body—*Acts Interpretation Act 1954*, section 36.

(i) a corporation incorporated in Queensland; or

(ii) a partnership, association or other entity formed, or carrying on any part of its affairs, in Queensland;

(n) a proceeding for a contribution or indemnity for a liability enforceable in the court;

(o) a proceeding for an injunction ordering a defendant or respondent to do, or refrain from doing, anything in Queensland (whether or not damages are also claimed);

(p) a proceeding properly brought in Queensland against a person in which another person outside Queensland is a necessary or proper party to the proceeding;

(q) a proceeding brought under the *Civil Aviation (Carrier's Liability) Act 1959* (Cwlth)—

(i) by a resident of Queensland; or

(ii) in relation to damage that happened in Queensland;

(r) a proceeding in which a person has submitted to the jurisdiction of the court;

(s) a proceeding in which the subject matter of the proceeding, so far as it concerns the person, is property in Queensland;

(t) a proceeding concerning the interpretation, effect or enforcement of—

(i) an Act; or

(ii) an Imperial or Commonwealth Act affecting property in Queensland;

(u) a proceeding concerning the effect or enforcement of an executive, Ministerial or administrative act done, or purported to have been done, under an Act;

(v) a proceeding relating to an arbitration held in Queensland;

(w) a proceeding about a person under a legal incapacity who is domiciled or present in, or a resident of, Queensland;

(x) a proceeding, so far as it concerns the person, falling partly within 1 or more of paragraphs (a) to (w).

(2) Each paragraph of subrule (1) is a separate ground for deciding whether an originating process may be served outside Australia under this rule.

(3) Also, this rule does not limit or extend the jurisdiction a court has apart from this rule.

How service outside Australia to be performed

125.(1) Subject to subrule (2), rule 116[32] applies to the service of an originating process even if the originating process is to be served outside Australia.

(2) Nothing in this rule, or in any order or direction of the court made under it, authorises or requires the doing of anything in a country in which service is to be effected contrary to the law of the country.

Setting aside service

126. The court must, on application by a defendant or respondent, set aside service of an originating process under this part if service of it is not authorised under rule 124.[33]

Service of other process by leave

127. The court may, by leave, allow service outside Australia of the following—

(a) a proceeding under an Act if service is not authorised under rule 124;

(b) an application, order, notice or document in a pending proceeding.

Service of counterclaim or third party notice

128.(1) This rule applies—

(a) to a counterclaim against a plaintiff and another person if the

32 Rule 116 (Substituted service)

33 Rule 124 (Service outside Australia)

person against whom the counterclaim is made is not already a party to the proceeding; and

(b) to a third party notice.

(2) A counterclaim or third party notice may be served outside Australia without the court's leave if the claim made by the defendant in the counterclaim or third party notice is of a kind that, if the claim were made by claim or other originating process, the originating process could be served outside Australia under rule 124.

(3) If subrule (2) does not apply, the court may, by leave, allow service outside Australia of a counterclaim or third party notice.

Order for service outside Australia

129.(1) On making an order for service outside Australia, the court may give directions as to the time for filing a notice of intention to defend or for attendance before the court or otherwise.

(2) If a document is served outside Australia under an order of the court, a copy of each of the following must be served with the document—

(a) the order;

(b) each affidavit made in support of the application for the order;

(c) unless the court otherwise orders, an exhibit mentioned in the affidavit.

PART 8—SERVICE OF FOREIGN LEGAL PROCESS IN QUEENSLAND

Application of pt 8

130. This part applies only to the Supreme Court.

Letter of request from foreign tribunal—procedure

131.(1) This rule applies if, in a civil or commercial matter before a court or tribunal of a foreign country (the **"foreign court"**)—

(a) the foreign court, by letter of request, requests service on a person in Queensland of any process or citation (the **"process"**) in the matter; and

(b) the Attorney-General sends the request to the Supreme Court indicating that effect should be given to the process.

(2) The following procedures apply—

(a) the letter of request must be accompanied by the following—

(i) if the letter is not in English—a translation of the letter in English;

(ii) 2 copies of the process to be served;

(iii) either—

(A) 2 copies of the process in English; or

(B) 2 copies of the process each having a notation on it in English stating as precisely as possible the name and address of the person on whom the document is to be served, the nature of the document, and the names of the parties;

(b) if paragraph (a)(iii)(B) is complied with, it is not necessary to give the person served a translated copy of the process;

(c) the sheriff, or an agent of the sheriff, must serve the process personally under these rules;

(d) after serving the process, the person serving it must return to the registrar of the Supreme Court 1 copy of the process, affidavit evidence by the person serving the process of service of the process, and particulars of charges for the cost of serving it;

(e) the registrar must certify the correctness of the charges, or another amount properly payable for the cost of serving the process;

(f) the registrar must send the following to the Attorney-General—

(i) the letter of request for service received from the foreign

court;

(ii) evidence of service of the process, with a certificate on it in the approved form stamped with the seal of the Supreme Court;

(iii) a certificate establishing the fact and the date of service or indicating why it has not been possible to serve the process;

(iv) a certificate stating the amount of the charges properly payable for the cost of serving it.

Orders for substituted service

132. On the application of the Crown Solicitor, with the consent of the Attorney-General, the court may, in relation to the service of process of a court or tribunal of a foreign country, make an order for substituted service or otherwise as may be necessary to give effect to these rules.

Noncompliance with rules

133. The court may direct that effect is to be given to a letter of request for the service of process of a court or tribunal of a foreign country, even though rules 131 and 132 have not been complied with.

CHAPTER 5—NOTICE OF INTENTION TO DEFEND

Application of ch 5

134. This chapter applies only to a proceeding started by claim.

No step without notice of intention to defend

135.(1) Except with the court's leave, a defendant may take a step in a proceeding only if the defendant has first filed a notice of intention to defend.

(2) In this rule—

"notice of intention to defend" includes a conditional notice of intention to defend.

Defendant may act by solicitor or in person

136.(1) A defendant may defend a proceeding by a solicitor, in person or, in a minor debt claim, by an agent whose authority, in the approved form, is filed with the notice of intention to defend.

(2) However, if a defendant is a person under a legal incapacity, the defendant may defend the proceeding only by the person's litigation guardian who may act only by a solicitor.[34]

(3) In this rule—

"defend" includes file a notice of intention to defend.

Time for notice of intention to defend

137.(1) In a proceeding started by a claim, a notice of intention to defend must be filed within 28 days after the day the claim is served.

(2) However, if the *Service and Execution of Process Act 1992* (Cwlth) applies, a notice of intention to defend must be filed within the time limited by that Act.

Late filing of notice of intention to defend

138.(1) A defendant may file and serve a notice of intention to defend at any time before judgment, even if the defendant is in default of rule 137.[35]

(2) If a defendant files a notice of intention to defend after the time limited for doing so, the defendant is not, unless the court otherwise orders, entitled to further time for doing anything else.

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34 See rule 93 (Litigation guardian of person under a legal incapacity).

35 However, see chapter 9 (Ending proceedings early), part 1 (Default), division 2 (Proceedings started by claim) for the possible consequences of not filing within the time limited for filing.

Requirements for notice of intention to defend

139.(1) A notice of intention to defend must—

(a) be in the approved form; and

(b) have the defendant's defence attached to it.

(2) A notice of intention to defend must be signed and dated.

Contact details and address for service

140. Rule 17[36] applies in relation to a notice of intention to defend as if the notice were a claim and the defendant were a plaintiff.

Filing notice of intention to defend

141. A notice of intention to defend must be filed in the registry from which the claim was issued.

Service of notice of intention to defend

142. A sealed copy of the notice of intention to defend must be served at the plaintiff's address for service—

(a) on the day on which it is filed; or

(b) as soon as practicable after it is filed.

Possession of land

143.(1) A person who is not named in a claim as a defendant in a proceeding for the possession of land may file a notice of intention to defend if the person files an affidavit showing the person is in possession of the land either directly or by a tenant.

(2) Subject to rule 69,[37] a person who files a notice of intention to defend under subrule (1) becomes a defendant by virtue of the notice and must—

36 Rule 17 (Contact details and address for service)

37 Rule 69 (Including, substituting or removing party)

(a) when filing the notice, file an application to the court for directions; and

(b) serve a copy of the notice, the affidavit mentioned in subrule (1) and the application mentioned in paragraph (a) on every other party to the proceeding.

(3) A notice of intention to defend under this rule may be confined to a specified part of the land.

Conditional notice of intention to defend

144.(1) A defendant who proposes to challenge the jurisdiction of the court or to assert an irregularity must file a conditional notice of intention to defend.

(2) Rule 139(1)(b) does not apply to a conditional notice of intention to defend.

(3) If a defendant files a conditional notice of intention to defend, the defendant must apply for an order under rule 16[38] within 14 days after filing the notice.

(4) A defendant who files an unconditional notice of intention to defend is taken to have submitted to the jurisdiction of the court and waived any irregularity in the proceeding.

CHAPTER 6—PLEADINGS

PART 1—INTRODUCTION

Application of pt 1

145. This part applies only to the following proceedings—

(a) a proceeding started by claim;

38 Rule 16 (Setting aside originating process)

(b) a proceeding started by application if the court orders that pleadings must be served.

Formal requirements

146.(1) A pleading must—

(a) state the number of the proceeding; and

(b) state the description of the pleading; and

(c) state the date on which it is filed; and

(d) be signed by the solicitor for the party filing it or, if the party appears or defends in person, the party; and

(e) be consecutively numbered on each page; and

(f) be divided into consecutively numbered paragraphs and, if necessary, subparagraphs, each containing, as far as practicable, a separate allegation; and

(g) if it is settled by counsel—state the counsel's name.

(2) In addition, a pleading (other than a reply) must have on it a notice to the party on whom the pleading is served under rule 164[39] informing the party about the time for serving pleadings in response under rule 164.

Filing pleadings

147.(1) A pleading or amendment of a pleading must be served on the other parties to the proceeding by delivery to the address for service of each party.

(2) A pleading or an amendment to a pleading must be filed on the day of service on the first party to be served or as soon as practicable after that day.

Judgment pleaded

148.(1) Subrule (2) applies if a party pleads a judgment.

(2) The party pleading the judgment must, within 10 days after the

39 Rule 164 (Time for serving answer to counterclaim and reply)

request, deliver to the other party a copy of the judgment.

(3) If the party does not comply with subrule (2), the court may order the pleading to be struck out or amended.

PART 2—RULES OF PLEADING

Statements in pleadings

149.(1) Each pleading must—

(a) be as brief as the nature of the case permits; and

(b) contain a statement of all the material facts on which the party relies but not the evidence by which the facts are to be proved; and

(c) state specifically any matter that if not stated specifically may take another party by surprise; and

(d) subject to rule 156,[40] state specifically any relief the party claims; and

(e) if a claim or defence under an Act is relied on—identify the specific provision under the Act.

(2) In a pleading, a party may plead a conclusion of law or raise a point of law if the party also pleads the material facts in support of the conclusion or point.

Matters to be specifically pleaded

150.(1) Without limiting rule 149, the following matters must be specifically pleaded—

(a) breach of contract or trust;

40 Rule 156 (General relief)

(b) every type of damage claimed including, but not limited to, special and exemplary damages;[41]

(c) defence under the *Limitation of Actions Act 1974*;

(d) duress;

(e) estoppel;

(f) fraud;

(g) illegality;

(h) interest (including the rate of interest and method of calculation) claimed;

(i) malice or ill will;

(j) misrepresentation;

(k) motive, intention or other condition of mind, including knowledge or notice;

(l) negligence or contributory negligence;

(m) payment;

(n) performance;

(o) part performance;

(p) release;

(q) undue influence;

(r) voluntary assumption of risk;

(s) waiver;

(t) want of capacity, including disorder or disability of mind;

(u) that a testator did not know and approve of the contents of a will;

(v) that a will was not properly made;

(w) wilful default;

(x) anything else required by an approved form or practice direction to be specifically pleaded.

41 See also rule 155 (Damages).

(2) Also, any fact from which any of the matters mentioned in subrule (1) is claimed to be an inference must be specifically pleaded.

(3) If the plaintiff's claim is for a debt or liquidated demand only (with or without a claim for interest), the plaintiff must state the following details in the statement of claim—

(a) particulars of the debt or liquidated demand;

(b) if interest is claimed—particulars as required by rule 159;[42]

(c) the amount claimed for the costs of issuing the claim and attached statement of claim;

(d) a statement that the proceeding ends if the defendant pays the debt or liquidated demand and interest and costs claimed before the time for filing notice of intention to defend ends;

(e) a statement of the additional costs of obtaining judgment in default of notice of intention to defend.

(4) In a defence or a pleading after a defence, a party must specifically plead a matter that—

(a) the party alleges makes a claim or defence of the opposite party not maintainable; or

(b) shows a transaction is void or voidable; or

(c) if not specifically pleaded might take the opposite parties by surprise; or

(d) raises a question of fact not arising out of a previous pleading.

Presumed facts

151.(1) A party is not required to plead a fact if—

(a) the law presumes the fact in the party's favour; or

(b) the burden of proving the fact does not lie with the party.

(2) Subrule (1) does not apply if it is necessary to plead the fact—

42 Rule 159 (Interest)

(a) to comply with rule 149;[43] or

(b) to meet a denial pleaded by another party.

Spoken words and documents

152. Unless precise words are material, a pleading may state the effect of spoken words or a document as briefly as possible without setting out all of the spoken words or document.

Condition precedent

153.(1) An allegation of the performance or occurrence of a condition precedent necessary for the case of a party is implied in the party's pleading.

(2) A party who denies the performance or occurrence of a condition precedent must specifically plead the denial.

Inconsistent allegations or claims in pleadings

154.(1) A party may make inconsistent allegations or claims in a pleading only if they are pleaded as alternatives.

(2) However, a party must not make an allegation or new claim that is inconsistent with an allegation or claim made in another pleading of the party without amending the pleading.

Damages

155.(1) If damages are claimed in a pleading, the pleading must state the nature and amount of the damages claimed.

(2) Without limiting rule 150(1)(b),[44] a party claiming general damages must include the following particulars in the party's pleading—

(a) the nature of the loss or damage suffered;

(b) the exact circumstances in which the loss or damage was

43 Rule 149 (Statements in pleadings)

44 Rule 150 (Matters to be specifically pleaded)

suffered;

(c) the basis on which the amount claimed has been worked out or estimated.

(3) If practicable, the party must also plead each type of general damages and state the nature of the damages claimed for each type.

(4) In addition, a party claiming damages must specifically plead any matter relating to the assessment of damages that, if not pleaded, may take an opposing party by surprise.

General relief

156. The court may grant general relief or relief other than that specified in the pleadings irrespective of whether general or other relief is expressly claimed in the pleadings.

PART 3—PARTICULARS

Particulars in pleading

157. A party must include in a pleading particulars necessary to—

(a) define the issues for, and prevent surprise at, the trial; and

(b) enable the opposite party to plead; and

(c) support a matter specifically pleaded under rule 150.[45]

Particulars of damages

158.(1) If a party claims damages including money the party has paid or is liable to pay, the pleading must contain particulars of the payment or liability.

(2) If a party claims exemplary or aggravated damages, the party's

45 Rule 150 (Matters to be specifically pleaded)

pleading must contain particulars of all matters relied on in support of the claim.

Interest

159.(1) This rule applies if a party intends to apply to the court for an award of interest, whether under the *Supreme Court Act 1995*, section 47[46] or otherwise.

(2) This rule does not apply to a proceeding for damages for personal injury or death.

(3) The party must allege in the party's pleading particulars of—

(a) the amount or amounts on which the interest is claimed; and

(b) the interest rate or rates claimed; and

(c) the day or days from which interest is claimed; and

(d) the method of calculation.

(4) However, the rate or rates of interest need not be separately specified if the party is claiming at the rate or rates specified in a practice direction.

Way to give particulars

160.(1) If rules 157 to 159 require particulars to be given, the particulars must be stated in the pleading or, if that is inconvenient, in a separate document mentioned in, and filed and served with, the pleading.

(2) Further particulars may be given by correspondence.

(3) A party giving further particulars must file a copy of the particulars.

Application for order for particulars

161.(1) A party may apply to the court for an order for further and better

46 Section 47 (Interest up to judgment)

particulars of the opposite party's pleading.[47]

(2) The court may, on an application under subrule (1), make the consequential orders and give the directions for the conduct of the proceeding the court considers appropriate.

(3) The making of an application under this rule does not extend the time for pleading.

(4) Particulars required under an order under this rule must repeat the relevant part of the order so the particulars are self-explanatory.

Striking out particulars

162.(1) This rule applies if a particular—

(a) has a tendency to prejudice or delay the fair trial of the proceeding; or

(b) is unnecessary or scandalous; or

(c) is frivolous or vexatious; or

(d) is otherwise an abuse of the process of the court.

(2) The court, at any stage of the proceeding, may strike out the particular and order the costs of the application to be paid on the indemnity basis.

(3) On the hearing of an application under subrule (2), the court is not limited to receiving evidence about the particular.

Failure to give particulars

163. If a party does not comply with an order made under rule 161, the court may make the order, including a judgment, it considers appropriate.

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47 Chapter 11 (Evidence), part 8 (Exchange of correspondence instead of affidavit evidence) applies to an application under this part. Note, particularly, rule 447 (Application to court).

PART 4—PROGRESS OF PLEADING

Time for serving answer to counterclaim and reply

164.(1) Unless the court orders otherwise, any answer to counterclaim must be filed and served within—

(a) 14 days after the day the counterclaim is served; or

(b) if the defendant to the counterclaim is not a party to the original proceeding, 28 days after the day the counterclaim is served.

(2) Unless the court orders otherwise, any reply must be filed and served within 14 days after the day of the service of the defence or answer to counterclaim.[48]

Answering pleadings

165.(1) A party may, in response to a pleading, plead a denial, a non-admission, an admission or another matter.

(2) A party who pleads a non-admission may not give or call evidence in relation to a fact not admitted, unless the evidence relates to another part of the party's pleading.

Denials and non-admissions

166.(1) An allegation of fact made by a party in a pleading is taken to be admitted by an opposite party required to plead to the pleading unless—

(a) the allegation is denied or stated to be not admitted by the opposite party in a pleading; or

(b) rule 168[49] applies.

(2) However, there is no admission under subrule (1) because of a failure to plead by a party who is, or was at the time of the failure to plead, a person under a legal incapacity.

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48 See chapter 9 (Ending proceedings early), part 1 (Default) for the consequence of default.

49 Rule 168 (Implied denial)

(3) A party may plead a non-admission only if—

(a) the party has made inquiries to find out whether the allegation is true or untrue; and

(b) the inquiries for an allegation are reasonable having regard to the time limited for filing and serving the defence or other pleading in which the denial or non-admission of the allegation is contained; and

(c) the party remains uncertain as to the truth or falsity of the allegation.

(4) A party's denial or non-admission of an allegation of fact must be accompanied by a direct explanation for the party's belief that the allegation is untrue or can not be admitted.

(5) If a party's denial or non-admission of an allegation does not comply with subrule (4), the party is taken to have admitted the allegation.

(6) A party making a non-admission remains obliged to make any further inquiries that may become reasonable and, if the results of the inquiries make possible the admission or denial of an allegation, to amend the pleading appropriately.

(7) A denial contained in the same paragraph as other denials is sufficient if it is a specific denial of the allegation in response to which it is pleaded.

Unreasonable denials and non-admissions

167. If the court considers an allegation of fact denied or not admitted should have been admitted, the court may order the party who denied or did not admit the allegation to pay additional costs caused by the denial or non-admission.

Implied denial

168.(1) Every allegation of fact made in the last pleading filed and served before the time for filing and serving pleadings closes is taken to be the subject of a non-admission and rule 165(2) then applies.

(2) However, nothing in these rules prevents a party at any time admitting an allegation contained in a pleading.

Close of pleadings

169. The pleadings in a proceeding close—

(a) if a pleading is served after the defence or answer to a counterclaim—on service of the pleading; or

(b) otherwise—14 days after service of the defence.

Confession of defence

170.(1) If the defendant alleges a defence that arose after the proceeding was started, the plaintiff may file and serve a confession of defence.

(2) The plaintiff may, on filing a confession of defence, obtain a judgment for costs to be assessed up to the day the defence was served, unless the court otherwise orders.

(3) In this rule—

"defendant" includes a defendant to a counterclaim.

Striking out pleadings

171.(1) This rule applies if a pleading or part of a pleading—

(a) discloses no reasonable cause of action or defence; or

(b) has a tendency to prejudice or delay the fair trial of the proceeding; or

(c) is unnecessary or scandalous; or

(d) is frivolous or vexatious; or

(e) is otherwise an abuse of the process of the court.

(2) The court, at any stage of the proceeding, may strike out all or part of the pleading and order the costs of the application to be paid by a party calculated on the indemnity basis.

(3) On the hearing of an application under subrule (2), the court is not limited to receiving evidence about the pleading.

PART 5—PARTICULAR PLEADINGS

Division 1—Various

Defence of tender

172. If a defendant pleads the defence of tender before the proceeding was started, the court may order the defendant to pay the amount tendered into court.

Set off

173.(1) A defendant may rely on set off (whether or not of an ascertained amount) as a defence to all or part of a claim made by the plaintiff whether or not it is also included as a counterclaim.

(2) If the amount of a set off is more than the amount of the claim against which it is set off, then, regardless of whether the set off is pleaded as a counterclaim—

(a) the set off may be treated as a counterclaim; and

(b) the court may give judgment for the amount of the difference or grant the defendant other relief to which the court considers the defendant is entitled.

Examples of other relief under subrule (2)(b)—

Injunction, or stay, if within the court's jurisdiction.

(3) Despite subrules (1) and (2)—

(a) if the court considers a set off cannot be conveniently dealt with in a proceeding, the court may set aside a defence or counterclaim in the proceeding by way of set off and may order that the set off be dealt with in a separate proceeding; or

(b) if the court considers a set off should not be allowed, the court may set aside a defence or counterclaim by way of set off.

Defamation pleadings

174. If in a proceeding for defamation the plaintiff intends to allege that the defendant was actuated by ill will to the plaintiff or by another improper motive, the plaintiff must allege in a reply the facts from which the ill will or improper motive is to be inferred.

Division 2—Counterclaims

Application of div 2

175. This division applies to a counterclaim and an answer to a counterclaim with necessary changes and, in particular, as if the plaintiff in the original proceeding were a defendant and the defendant a plaintiff.

Counterclaim after issue of claim

176. A counterclaim may be made in relation to a cause of action arising after the issue of the claim.

Counterclaim against plaintiff

177. In a proceeding, the defendant may make a counterclaim against a plaintiff, instead of bringing a separate proceeding.

Counterclaim against additional party

178.(1) A defendant may make a counterclaim against a person other than the plaintiff (whether or not already a party to the proceeding) if—

(a) the plaintiff is also made a party to the counterclaim; and

(b) either—

(i) the defendant alleges that the other person is liable with the plaintiff for the subject matter of the counterclaim; or

(ii) the defendant claims against the other person relief relating to or connected with the original subject matter of the proceeding.

(2) If a defendant counterclaims against a person who is not a party to the original proceeding, the defendant must—

(a) make the counterclaim; and

(b) serve the defence and counterclaim and the plaintiff's statement of claim on the person within the time allowed for service on a plaintiff.

(3) A person not a party to the original proceeding who is included as a defendant to a counterclaim becomes a party to the proceeding on being served with the defence and counterclaim.

(4) If a defendant makes a counterclaim against a person not a party to the original proceeding, chapters 2, 4 and 5 and chapter 9, part 1[50] apply as if—

(a) the counterclaim were a proceeding started by a claim; and

(b) the party making the counterclaim were a plaintiff; and

(c) the party against whom the counterclaim is made were a defendant.

Pleading and serving counterclaim

179. A counterclaim must be in the approved form and must be included in the same document and served within the same time as the defence.

Answer to counterclaim

180. A defendant to a counterclaim may plead to the counterclaim by serving an answer to the counterclaim under these rules.

Conduct of counterclaim

181.(1) These rules apply to the conduct of a counterclaim with necessary changes as if—

(a) the plaintiff on the counterclaim were the plaintiff in an original

50 Chapters 2 (Starting proceedings), 4 (Service), 5 (Notice of intention to defend) and 9 (Ending proceedings early), part 1 (Default)

proceeding; and

(b) the defendant to the counterclaim were the defendant to an original proceeding.

(2) Chapter 4[51] does not apply to a defendant to a counterclaim who is a party to the original proceeding.

(3) Subject to rule 182, a counterclaim must be tried at the trial of the plaintiff's claim.

Exclusion of counterclaim

182. The court may, at any time, exclude a counterclaim from the proceeding in which the counterclaim is made and give the directions the court considers appropriate about the conduct of the counterclaim.

Counterclaim after judgment, stay etc. of original proceeding

183. A counterclaim may proceed after judgment is given in the original proceeding or after the original proceeding is stayed, dismissed or discontinued.

Judgment for balance

184. If a defendant establishes a counterclaim against the plaintiff and there is a balance in favour of 1 of the parties, the court may give judgment for the balance.

Stay of claim

185. If the defendant does not plead a defence but makes a counterclaim, the court may stay the enforcement of a judgment given against the defendant until the counterclaim is decided.

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51 Chapter 4 (Service)

Division 3—Admissions

Application of div 3

186. This division applies only to proceedings started by claim.

Voluntary admission

187. A party to a proceeding may, in addition to an admission in a pleading, by notice served on another party, admit, in favour of the other party, for the proceeding only, the facts specified in the pleading or notice.

Withdrawal of admission

188. A party may withdraw an admission made in a pleading or under rule 187 only with the court's leave.

Notice to admit facts or documents

189.(1) A party to a proceeding (the **"first party"**) may, by notice served on another party ask the other party to admit, for the proceeding only, the facts or documents specified in the notice.

(2) If the other party does not, within 14 days, serve a notice on the first party disputing the fact or the authenticity of the document, the other party is taken to admit, for the proceeding only, the fact or the authenticity of the document specified in the notice.

(3) The other party may, with the court's leave, withdraw an admission taken to have been made by the party under subrule (2).

(4) If the other party serves a notice under subrule (2) disputing a fact or the authenticity of a document and afterwards the fact or the authenticity of the document is proved in the proceeding, the party must pay the costs of proof, unless the court otherwise orders.

Admissions

190.(1) If an admission is made by a party, whether in a pleading or otherwise after the start of the proceeding, the court may, on the application

of another party, make an order to which the party applying is entitled on the admission.

(2) The court may give judgment or make another order even though other questions in the proceeding have not been decided.

(3) The court may, instead of assessing the amount claimed, make a judgment conditional on the assessment of damages under chapter 13, part 8.[52]

(4) If the court gives judgment under subrule (3), the court must specify in the order the court to perform the assessment under rule 507.[53]

PART 6—THIRD PARTY AND SIMILAR PROCEEDINGS

Explanation of pt 6

191.(1) This part provides for a third party procedure in a proceeding started by claim.

(2) A third party proceeding starts when the third party notice is issued.

(3) In addition to the provisions of this part, rules 16 to 18, 20 and 23[54] apply in relation to a third party notice as if the notice were a claim and the defendant making the claim were a plaintiff and the third party were a defendant.

Reason for third party procedure

192. A defendant may file a third party notice if the defendant wants to—

52 Chapter 13 (Trials and other hearings), part 8 (Assessment of damages)

53 Rule 507 (Conditional order)

54 Rules 16 (Setting aside originating process), 17 (Contact details and address for service), 18 (Representative details required), 20 (Copy of originating process for court) and 23 (Claim must include statement about filing notice of intention to defend claim)

(a) claim against a person who is not already a party to the proceeding a contribution or indemnity; or

(b) claim against a person who is not already a party to the proceeding relief—

(i) relating to or connected with the original subject matter of the proceeding; and

(ii) substantially the same as some relief claimed by the plaintiff; or

(c) require a question or issue relating to or connected with the original subject matter of the proceeding to be decided not only as between the plaintiff and the defendant but also as between either of them and a person not already a party to the proceeding.

Content of third party notice

193.(1) A third party notice must be in the approved form.

(2) In a third party notice, a defendant must—

(a) state briefly the nature of the claim made or relief sought against the third party; and

(b) attach a statement of claim to the notice, unless the court otherwise orders.

Filing third party notice

194.(1) Unless the court gives leave—

(a) a third party notice may not be filed by a defendant until the defendant has filed a defence; and

(b) a third party notice must be filed within 28 days after the end of whichever of the following periods ends last—

(i) the time limited for the filing of the defence of the defendant who makes the third party claim (the **"prescribed period"**);

(ii) if the plaintiff agrees to an extension of the prescribed period—the period agreed to.

(2) An application for leave to file a third party notice must be served on

the plaintiff.

(3) However, the court may order the application to be served on another party who has filed a notice of intention to defend.

(4) If the court gives leave to the defendant to file a third party notice, it may give directions about filing and serving the notice.

Serving third party notice

195.(1) A defendant who files a third party notice must serve it on the third party—

(a) as soon as practicable after it is issued; and

(b) in the same way as an originating process is served on a defendant.

(2) A copy of the following documents must be served with the third party notice—

(a) any order giving leave to file or serve the notice;

(b) the claim;

(c) all pleadings filed in the proceeding.

(3) As soon as practicable after serving the third party notice on the third party, the defendant must also serve a copy of the notice on the plaintiff and all parties who have filed a notice of intention to defend.

Effect of service on third party

196. On being served with a third party notice, the third party becomes a party to the proceeding with the same rights in relation to the third party's defence to a claim made against the third party in the notice as the third party would have if sued in the ordinary way by the defendant.

Notice of intention to defend by third party

197. Chapter 5[55] applies, with necessary changes, to a proceeding started

[55] Chapter 5 (Notice of intention to defend)

by a third party notice as if the notice were a third party claim, the defendant making the claim were a plaintiff and the third party were a defendant.

Third party defence

198.(1) The third party may file and serve a defence within 28 days after the day the third party is served with the statement of claim on the third party.

(2) The third party may, in the defence to the third party notice, deny a plaintiff's allegations against a defendant and allege a matter showing a plaintiff's claim against a defendant is not maintainable.

Pleadings

199. A party who files a pleading after the filing of a third party notice must serve the pleading on all other parties who have an address for service.

Counterclaim by third party

200.(1) A third party who has a claim against the defendant who makes the third party claim may counterclaim against the defendant.

(2) The third party may include the plaintiff or another person as a defendant to the counterclaim if the person could be included as a defendant if the third party brought a separate proceeding.

(3) The counterclaim starts when it is issued.

(4) Rule 178[56] applies to a counterclaim by a third party with necessary changes.

Default

201.(1) This rule applies if—

(a) a default judgment is given for the plaintiff against the defendant by whom a third party was included; and

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56 Rule 178 (Counterclaim against additional party)

(b) the third party has not filed a notice of intention to defend or a defence.

(2) When the time for filing a notice of intention to defend or a defence ends—

(a) the third party—

(i) is taken to admit a claim stated in the third party notice or statement of claim; and

(ii) is bound by the default judgment between the plaintiff and the defendant so far as it is relevant to a claim, question or issue stated in the notice or statement of claim; and

(b) the defendant—

(i) at any time after satisfaction of the default judgment, or, with the court's leave, before satisfaction, may obtain a judgment against the third party for a contribution or indemnity claimed in the notice or statement of claim; and

(ii) with the court's leave, may obtain a judgment against the third party for other relief or remedy claimed in the notice or statement of claim.

(3) The court may set aside or vary the judgment against the third party.

(4) Chapter 9, part 1, division 2,[57] applies for a third party procedure as if the third party notice were a claim, the defendant making the claim were a plaintiff and the third party were a defendant.

Disclosure

202.(1) A duty of disclosure arises between a third party and the defendant who included the third party only if the third party files a defence.

(2) A duty of disclosure arises between a third party and a plaintiff only if the third party denies the plaintiff's allegations against the defendant or alleges another matter showing the plaintiff's claim against the defendant is

57 Chapter 9 (Ending proceedings early), part 1 (Default), division 2 (Proceedings started by claim)

not maintainable.[58]

(3) However, a duty of disclosure may arise between a third party and another party if the court so orders.

Trial

203.(1) A third party may appear at, and take part in, the trial of the proceeding as the court directs.

(2) At the trial, the issues between the defendant who included the third party and the third party must be tried concurrently with the issues between the plaintiff and the defendant, unless the court otherwise orders.

Extent third party bound by judgment between plaintiff and defendant

204. In a proceeding, the court may make an order or give a direction about the extent to which a third party is bound by a judgment between a plaintiff and a defendant.

Judgment between defendant and third party

205.(1) In a proceeding, the court may give judgment in favour of—

(a) a defendant by whom a third party was included against the third party; or

(b) the third party against the defendant.

(2) If—

(a) judgment is given in favour of the plaintiff against a defendant; and

(b) judgment is given in favour of the defendant against a third party;

the judgment against the third party may be enforced only if—

(c) the judgment against the defendant has been satisfied; or

(d) the court orders otherwise.

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58 See rule 211 (Duty of disclosure).

Claim against another party

206.(1) A party may claim against another party to the proceeding relief of the kind mentioned in rule 192(b)[59] by filing and serving a third party notice under this rule.

(2) Subrule (1) does not apply if the claim could be made by counterclaim in the proceeding.

(3) If a party files and serves a third party notice under this rule—

(a) the party on whom it is served is not required to file a notice of intention to defend if the party has filed a notice of intention to defend in the proceeding or is a plaintiff; and

(b) this part otherwise applies with necessary changes as if—

(i) the party filing and serving the notice were a defendant filing and serving a third party notice; and

(ii) the party on whom the notice is served were a third party.

Subsequent parties

207.(1) If a third party has filed a notice of intention to defend, this part applies, with necessary changes, as if the third party were a defendant.

(2) If a person joined as a party (a **"fourth party"**) by a third party has filed a notice of intention to defend, this part as applied by this rule must have effect as regards the fourth party and any other further person or persons included and so on successively.

Contribution under Law Reform Act 1995

208. If the only relief claimed by a defendant is a contribution under the *Law Reform Act 1995*, section 6[60] against another defendant, the defendant may file and serve a notice claiming contribution without further pleading.

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59 Rule 192 (Reason for third party procedure)

60 *Law Reform Act 1995*, section 6 (Proceedings against, and contribution between, joint and several tortfeasors)

CHAPTER 7—DISCLOSURE

PART 1—DISCLOSURE BY PARTIES

Division 1—Disclosure and inspection of documents

Application of pt 1

209.(1) This part applies to the following types of proceeding—

(a) a proceeding started by claim;

(b) a proceeding in which the court has made an order under rule 14[61] ordering the proceeding to continue as if started by claim;

(c) if the court directs—a proceeding started by application.

(2) This part applies to all parties, including a party who is a young person and a litigation guardian of a young person.

(3) This part does not affect—

(a) the right of a party to inspect a document if the party has a common interest in the document with the party who has possession or control of the document; or

(b) another right of access to the document other than under this part.

Nature of disclosure

210. In a proceeding, disclosure is the delivery or production of documents in accordance with this part.

Duty of disclosure

211.(1) A party to a proceeding has a duty to disclose to each other party

61 Rule 14 (Proceeding incorrectly started by application)

each document[62]—

(a) in the possession or under the control of the first party; and

(b) directly relevant to an allegation in issue in the pleadings; and

(c) if there are no pleadings—directly relevant to a matter in issue in the proceeding.

(2) The duty of disclosure continues until the proceeding is decided.

(3) An allegation remains in issue until it is admitted, withdrawn, struck out or otherwise disposed of.

Documents to which disclosure does not apply

212.(1) The duty of disclosure does not apply to the following documents—

(a) a document in relation to which there is a valid claim to privilege from disclosure;

(b) a document relevant only to credit;

(c) an additional copy of a document already disclosed, if it is reasonable to suppose the additional copy contains no change, obliteration or other mark or feature likely to affect the outcome of the proceeding.

(2) A document consisting of a statement or report of an expert is not privileged from disclosure.

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62 *Acts Interpretation Act 1954*, section 36 (Meaning of commonly used words and expressions)—

' **"document"** includes—

(a) any paper or other material on which there is writing; and

(b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them; and

(c) any disc, tape or other article or any material from which sounds, images, writings or messages are capable of being produced or reproduced (with or without the aid of another article or device).'.

Privilege claim

213.(1) This rule applies if—

(a) a party claims privilege from disclosure of a document; and

(b) another party challenges the claim.

(2) The party making the claim must, within 7 days after the challenge, file and serve on the other party an affidavit stating the claim.

(3) The affidavit must be made by an individual who knows the facts giving rise to the claim.

Disclosure by delivery of list of documents and copies

214.(1) Subject to rules 216 and 223,[63] a party to a proceeding performs the duty of disclosure by—

(a) delivering to the other parties in accordance with this part a list of the documents to which the duty relates and the documents in relation to which privilege from disclosure is claimed (the **"list of documents"**); and

(b) at a party's request, delivering to the party copies of the documents mentioned in the list of documents, other than the documents in relation to which privilege from disclosure is claimed.

(2) The times for the deliveries 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) otherwise—within 28 days after the close of pleadings.

(d) when any further pleading or amended pleading is delivered;

63 Rule 216 (Disclosure by inspection of documents) and 223 (Court orders relating to disclosure)

(e) 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;

(f) if the party is asked in writing by another party to deliver a copy of a document—within 28 days after the request.

Requirement to produce original documents

215. Despite rule 214, a party (the **"first party"**) may require another party to produce for inspection of the first party specified original documents of which copies are, or are to be, disclosed.

Disclosure by inspection of documents

216.(1) This rule applies if—

(a) it is not convenient for a party to deliver documents under rule 214 because of the number, size, quantity or volume of the documents or some of the documents; or

(b) a requirement for production of documents is made of a party under rule 215.

(2) If this rule applies, the party must effect disclosure by—

(a) producing the documents for inspection at the time specified in rule 214(2); and

(b) notifying the other party in writing of a convenient place and time at which the documents may be inspected.

Procedure for disclosure by producing documents

217.(1) This rule applies if a party discloses documents by producing them.

(2) The documents must be—

(a) contained together and arranged in a way making the documents easily accessible to, and capable of convenient inspection by, the party to whom the documents are produced; and

(b) identified in a way enabling particular documents to be retrieved easily on later occasions.

(3) The party producing the documents must—

(a) provide facilities (including mechanical and computerised facilities) for the inspection and copying of the documents; and

(b) make available a person who is able to explain the way the documents are arranged and help locate and identify particular documents or classes of documents; and

(c) provide a list of the documents for which the party claims privilege.

(4) The arrangement of the documents when in use—

(a) must not be disturbed more than is necessary to achieve substantial compliance with subrule (1); and

(b) if the party to whom the documents are produced for inspection so requires—must not be disturbed at all.

(5) For subrule (2), the documents may—

(a) be contained by files, folders or in another way; and

(b) be arranged—

(i) according to topic, class, category or allegation in issue; or

(ii) by an order or sequence; or

(iii) in another way; and

(c) be identified by a number, description or another way.

(6) The person made available under subrule (3)(b) must, if required by the person inspecting the documents—

(a) explain to the person the way the documents are arranged; and

(b) help the person locate and identify particular documents or classes of documents.

Procedure for disclosure by delivering copies

218.(1) This rule applies if a party discloses documents by the delivery of copies of documents.

(2) The party delivering the copies must provide—

(a) a list with the copies describing the nature of each document and identifying the person by whom the document is made; and

(b) a list of the documents for which the party claims privilege.

Costs

219. Subject to rule 220, a party who does not make use of the opportunity to inspect documents under a notice under rule 216[64] may not inspect the documents unless the party tenders an amount for the reasonable costs of providing another opportunity for inspection or the court otherwise orders.

Deferral of disclosure

220.(1) A party (the **"first party"**) may give to another party a written notice stating documents relating to a specified question or of a specified class are not to be disclosed to the first party until asked by the first party at a time that is reasonable having regard to the stage of the proceeding.

(2) The other party may disclose to the first party a document to which the notice relates only if the first party asks for its disclosure.

Disclosure of document relating only to damages

221. A party may disclose to another party a document relating only to damages only if the other party asks for its disclosure.

Inspection of documents referred to in pleadings or affidavits

222. A party may, by written notice, require another party in whose pleadings, particulars or affidavits mention is made of a document—

(a) to produce the document for the inspection of the party making the requirement or the solicitor for the party; and

(b) to permit copies of the document to be made.

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64 Rule 216 (Disclosure by inspection of documents)

Court orders relating to disclosure

223.(1) The court may order a party to a proceeding to disclose to another party a document or class of documents by—

(a) delivering to the other party in accordance with this part a copy of the document, or of each document in the class; or

(b) producing for the inspection of the other party in accordance with this part the document, or each document in the class.

(2) The court may order a party to a proceeding (the **"first party"**) to file and serve on another party an affidavit stating—

(a) that a specified document or class of documents does not exist or has never existed; or

(b) the circumstances in which a specified document or class of documents ceased to exist or passed out of the possession or control of the first party.

(3) The court may order that delivery, production or inspection of a document or class of documents for disclosure—

(a) be provided; or

(b) not be provided; or

(c) be deferred.

(4) An order mentioned in subrule (1) or (2) may be made only if—

(a) there are special circumstances and the interests of justice require it; or

(b) it appears there is an objective likelihood—

(i) the duty to disclose has not been complied with; or

(ii) a specified document or class of documents exists or existed and has passed out of the possession or control of a party.

(5) If, on an application for an order under this rule, objection is made to the disclosure of a document (whether on the ground of privilege or another ground), the court may inspect the document to decide the objection.

Relief from duty to disclose

224.(1) The court may order a party be relieved, or relieved to a specified extent, of the duty of disclosure.

(2) Without limiting subrule (1), the court may, in deciding whether to make the order, have regard to the following—

(a) the likely time, cost and inconvenience involved in disclosing the documents or classes of documents compared with the amount involved in the proceeding;

(b) the relative importance of the question to which the documents or classes of documents relate;

(c) the probable effect on the outcome of the proceeding of disclosing or not disclosing the documents or classes of documents;

(d) other relevant considerations.

Consequences of nondisclosure

225.(1) If a party does not disclose a document under this part, the party—

(a) must not tender the document, or adduce evidence of its contents, at the trial without the court's leave; and

(b) is liable to contempt for not disclosing the document; and

(c) may be ordered to pay the costs or a part of the costs of the proceeding.

(2) If a document is not disclosed to a party under this part, the party may apply on notice to the court for—

(a) an order staying or dismissing all or part of the proceeding; or

(b) a judgment or other order against the party required to disclose the document; or

(c) an order that the document be disclosed in the way and within the time stated in the order.

(3) The court may, in an order under subrule (2)(c), specify consequences for failing to comply with the order.

Certificate by solicitor

226.(1) The solicitor having conduct of a proceeding for a party must give to the court at the trial, a certificate addressed to the court and signed by the solicitor—

(a) stating the duty of disclosure has been explained fully to the party; and

(b) if the party is a corporation—identifying the individual to whom the duty was explained.

(2) The certificate must be prepared and signed at or immediately before the trial.

Production of documents at trial

227.(1) Documents disclosed under this division must be produced at the trial if—

(a) notice to produce them has been given with reasonable particularity; and

(b) their production is asked for at the trial.

(2) A document disclosed under this division that is tendered at the trial is admissible in evidence against the disclosing party as relevant and as being what it purports to be.

Division 2—Interrogatories

Entitlement to deliver interrogatories

228. A party may deliver an interrogatory only under this part.

Delivery of interrogatories

229.(1) With the court's leave, a person may, at any time, deliver interrogatories—

(a) to a party to a proceeding, including a third party under chapter 6,

part 6;[65] or

(b) to help decide whether a person is an appropriate party to the proceeding or would be an appropriate party to a proposed proceeding—to a person who is not a party.

(2) The number of interrogatories may be more than 30 only if the court directs a greater number may be delivered.

(3) For this rule, each distinct question is 1 interrogatory.

Granting of leave to deliver interrogatories

230.(1) Subject to an order of the court, the court may give leave to deliver interrogatories—

(a) on application without notice to another person; and

(b) only if the court is satisfied there is not likely to be available to the applicant at the trial another reasonably simple and inexpensive way of proving the matter sought to be elicited by interrogatory.

(2) The application must be accompanied by a draft of the interrogatories intended to be delivered, unless the court otherwise directs.

(3) However, a Magistrates Court may not give leave for this division unless the amount sued for is more than $7 500.

Answering interrogatories

231.(1) Subject to this part, a person to whom interrogatories are delivered is required to answer them.

(2) The person must answer the interrogatories—

(a) within the time ordered by the court; and

(b) by delivering to the interrogating party a statement in answer to the interrogatories and an affidavit verifying the statement.

(3) If a party—

(a) claims relief against 2 or more other parties; and

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65 Chapter 6 (Pleadings), part 6 (Third party and similar proceedings)

(b) delivers interrogatories to 1 or more of them;

the statement and affidavit must also be delivered to each party who has filed a notice of intention to defend.

Statement in answer to interrogatories

232.(1) A statement in answer to interrogatories must comply with this rule, unless the court otherwise orders.

(2) The statement must specifically—

(a) answer the substance of each interrogatory; or

(b) object to answering each interrogatory.

(3) An answer must be given directly and without evasion or resort to technicality.

(4) An objection must—

(a) specify the grounds of the objection; and

(b) briefly state the facts on which the objection is made.

(5) This rule does not apply to an interrogatory to which an order under rule 234(a)[66] applies.

(6) However, if rule 234(b) applies to an interrogatory, the statement must deal with the interrogatory to the extent the person is required to answer it.

Grounds for objection to answering interrogatories

233.(1) The following are the only grounds on which a person may object to answering an interrogatory—

(a) the interrogatory does not relate to a matter in question, or likely to be in question, between the person and the interrogating party;

(b) the interrogatory is not reasonably necessary to enable the court to decide the matters in question between the parties;

(c) there is likely to be available to the interrogating party at the trial

66 Rule 234 (Unnecessary interrogatories)

another reasonably simple and inexpensive way of proving the matter sought to be elicited by interrogatory;

(d) the interrogatory is vexatious or oppressive;

(e) privilege.

(2) The court may—

(a) require the grounds of objection specified in a statement in answer to interrogatories to be specified in more detail; and

(b) decide the objection.

(3) If the court decides the objection is sufficient, the interrogatory is not required to be answered.

Unnecessary interrogatories

234. The court may, on application—

(a) order that a person is not required to answer an interrogatory; or

(b) by order, limit the extent to which the person is required to answer an interrogatory.

Identity of individual by whom verifying affidavit to be made

235.(1) An affidavit verifying the statement of a person in answer to interrogatories must be made by—

(a) the person; or

(b) if the person is a person under a legal incapacity—the person's litigation guardian; or

(c) if the person is a corporation or organisation—

(i) a member or officer of the corporation or organisation; or

(ii) another individual involved in the management of its affairs; or

(d) if the person is a body of persons lawfully suing or being sued in the name of the body or the name of an officer of the body or another person—a member or officer of the body; or

(e) if the person is a State or the Commonwealth or an officer of a State or the Commonwealth suing or being sued in an official capacity—an officer of the State or the Commonwealth.

(2) If subrule (1)(c), (d) or (e) applies—

(a) the court may, in relation to all or any of the interrogatories—

(i) specify, by name or otherwise, the individual to make the affidavit; or

(ii) specify, by description or otherwise, the individuals from whom the interrogating party may choose the individual to make the affidavit; and

(b) the affidavit must be made in relation to the interrogatories, or the relevant interrogatories, by the individual specified or the individual chosen by the interrogating party.

Failure to answer interrogatory

236.(1) This rule applies if a person does not give an answer, or gives an insufficient answer, to an interrogatory.

(2) The court may—

(a) order an answer or further answer be given under rule 231;[67] or

(b) order the person to attend to be orally examined; or

(c) if the person is not qualified to make the affidavit verifying the statement in answer to the interrogatories—order a qualified individual to attend to be orally examined.

(3) This rule does not limit the powers of the court under rule 237.

Failure to comply with court order

237.(1) If a person does not comply with an order under rule 236(2)(a), the interrogating party or another party may apply on notice to the court for—

(a) an order that all or part of the proceedings be stayed or dismissed;

67 Rule 231 (Answering interrogatories)

or

(b) a judgment or other order against the person; or

(c) an order requiring the relevant statement in answer to interrogatories or the affidavit verifying the statement to be filed or served within a stated time.

(2) The court may make an order under subrule (1), or another order, specifying consequences for failing to comply with the order, the court or judge considers appropriate.

(3) This rule does not limit the powers of the court to punish for contempt of court.

Tendering answers

238.(1) A party may tender as evidence—

(a) an answer of another party to an interrogatory without tendering other answers; or

(b) part of an answer of another party to an interrogatory without tendering all of the answer.

(2) If all or part of an answer to an interrogatory is tendered as evidence, the court may consider all of the answers and reject the tender unless another answer or part of an answer is also tendered.

(3) However, the court may reject the tender under subrule (2) only if the court considers the other answer or part of an answer is so connected with the answer tendered that the answer should not be used without the other answer or part.

Division 3—General

Public interest considerations

239. This part does not affect a rule of law authorising or requiring the withholding of a matter on the ground its disclosure would be injurious to the public interest.

Service on solicitors of disclosure orders

240.(1) If an order relating to interrogatories or the delivery, production or inspection of documents is served on the solicitor for the party against whom the order is made, the service is sufficient for making an application for contempt of court for disobedience to the order.

(2) If—

(a) an application of a kind mentioned in subrule (1) is made; and

(b) the order to which the application relates was served in the way mentioned in the subrule;

the party against whom the order is made may show, in answer to the application, the party has no notice or knowledge of the order.

(3) A solicitor is liable to a proceeding for contempt of court if—

(a) an order relating to interrogatories or the delivery, production or inspection of documents is served on the solicitor for the party against whom the order is made; and

(b) the solicitor fails, without reasonable excuse, to give notice of the order to the party.

Costs

241. If, in any case, the cost of complying with this part would be oppressive to a party, the court may order another party to pay or contribute to the cost of compliance or provide security for the cost.

PART 2—NON-PARTY DISCLOSURE

Notice requiring non-party disclosure

242.(1) A party (the **"applicant"**) to a proceeding may by notice of non-party disclosure require a person who is not party to the proceeding (the **"respondent"**) to produce to the applicant, within 14 days after service of the notice on the respondent, a document—

(a) directly relevant to an allegation in issue in the pleadings; and

(b) in the possession or under the control of the respondent; and

(c) that is a document the respondent could be required to produce at the trial of the matter.

(2) The applicant may not require production of a document if there is available to the applicant another reasonably simple and inexpensive way of proving the matter sought to be proved by the document.

(3) The respondent must comply with the notice but not before the end of 7 days after service of the notice on the respondent.

(4) Disclosure under this part is not an ongoing duty.

Form and service of notice

243.(1) A notice of non-party disclosure must—

(a) be issued in the same way as a claim; and

(b) state the allegation in issue in the pleadings about which the document sought is directly relevant; and

(c) include a certificate signed by the applicant's solicitor, or if the applicant acts personally, by the applicant, stating that there is not available to the applicant another reasonably simple and inexpensive way of proving the matter sought to be proved by the document; and

(d) be in the approved form; and

(e) be served in the same way as a claim and within 3 months after its issue.

(2) However, the applicant may serve the respondent only after the applicant has served all other persons who are required to be served under rule 244.

Others affected by notice

244.(1) The applicant must, within 3 months after the issue of a notice of non-party disclosure, serve a copy of the notice on—

(a) a person, other than a party, about whom information is sought

by the notice; and

(b) if the applicant knows the respondent does not own a document required to be produced—the owner of the document.

(2) Subrule (1) does not apply if the applicant's solicitor—

(a) believes, on reasonable grounds, that a person who would otherwise be required to be served under subrule (1) is likely to fabricate evidence or perpetrate fraud if the person becomes aware of the notice; and

(b) has completed a certificate in the approved form stating that the solicitor has that belief and that the interests of justice are likely to be jeopardised if the person were served with the notice.

(3) A certificate by the applicant's solicitor under subrule (2) must be tendered to the court after the close of the applicant's case.

(4) Further, subrule (1)(b) does not apply if, after reasonable inquiries, the applicant can not identify the owner of the document.

(5) The applicant must write the name and address of anyone who must be served under this rule on the notice and on all copies of the notice.

Objection to disclosure

245.(1) The respondent, or a person who has been served with a notice of non-party disclosure under rule 244, may object to the production of some or all of the documents mentioned in the notice within 7 days after its service or, with the court's leave, a later time.

(2) Also, another person who would be affected by the notice and who has not been served may object to the production of some or all of the documents mentioned in the notice at any time with the court's leave.

(3) The objection must—

(a) be written; and

(b) be served on the applicant; and

(c) if the person objecting (the **"objector"**) is not the respondent—be served on the respondent; and

(d) clearly state the reasons for the objection.

(4) The reasons may include, but are not limited to, the following—

(a) if the objector is the respondent—the expense and inconvenience likely to be incurred by the respondent in complying with the notice;

(b) the lack of relevance to the proceeding of the documents mentioned in the notice;

(c) the lack of particularity with which the documents are described;

(d) a claim of privilege;

(e) the confidential nature of the documents or their contents;

(f) the effect disclosure would have on any person;

(g) if the objector was not served with the notice—the fact that the objector should have been served.

Objection stays notice

246. Service of an objection under rule 245 operates as a stay of a notice of non-party disclosure.

Court's decision about objection

247.(1) Within 7 days after service of an objection under rule 245, the applicant may apply to the court for a decision about the objection.

(2) The court may make any order it considers appropriate including, but not limited to an order—

(a) lifting the stay; or

(b) varying the notice of non-party disclosure; or

(c) setting aside the notice.

(3) Unless the court otherwise orders, each party to an application to decide an objection must bear the party's own costs of the application.

(4) The court may make an order for subrule (3) if, having regard to the following, the court considers that the circumstances justify it—

(a) the merit of the objector's objections;

(b) the public interest in the efficient and informed conduct of litigation;

(c) the public interest in not discouraging objections in good faith by those not a party to the litigation.

Production and copying of documents

248.(1) Unless the operation of a notice of non-party disclosure is stayed, and subject to any order under rule 247(2), the respondent must produce the document specified in the notice for inspection by the applicant at the place of business of the respondent, or the respondent's solicitor, within ordinary business hours or at another place or time agreed by the applicant and respondent.

(2) If the respondent does not comply with subrule (1), the applicant may apply to the court who may order compliance and make another order the court considers appropriate.

(3) The applicant may copy a document produced under this part.

Costs of production

249.(1) Subject to rule 247(3),[68] the applicant must pay the respondent's reasonable costs and expenses of producing a document.

(2) Within 1 month after producing a document, the respondent must give to the applicant written notice of the respondent's reasonable costs and expenses of producing it.

(3) Within 1 month after receiving written notice under subrule (2), the applicant may apply to the registrar for assessment of the costs and expenses under chapter 17, part 2.[69]

68 Rule 247 (Court's decision about objection)

69 Chapter 17 (Costs), part 2 (Costs)

CHAPTER 8—PRESERVATION OF RIGHTS AND PROPERTY

PART 1—INSPECTION, DETENTION AND PRESERVATION OF PROPERTY

Inspection, detention, custody and preservation of property

250.(1) The court may make an order for the inspection, detention, custody or preservation of property[70] if—

(a) the property is the subject of a proceeding or is property about which a question may arise in a proceeding; or

(b) inspection of the property is necessary for deciding an issue in a proceeding.

(2) Subrule (1) applies whether or not the property is in the possession, custody or power of a party.

(3) The order may authorise a person to do any of the following—

(a) enter a place or do another thing to obtain access to the property;

(b) take samples of the property;

(c) make observations and take photographs of the property;

(d) conduct an experiment on or with the property;

(e) observe a process;

(f) observe or read images or information contained in the property including, for example, by playing or screening a tape, film or disk;

(g) photograph or otherwise copy the property or information

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70 *Acts Interpretation Act 1954*, section 36 (Meaning of commonly used words and expressions)—

‘ **“Property”** means any legal or equitable estate or interest (whether present or future, vested or contingent, or tangible or intangible) in real or personal property of any description (including money), and includes things in action.’.

contained in the property.

(4) In the order, the court may impose the conditions it considers appropriate, including, for example, a condition about—

(a) payment of the costs of a person who is not a party and who must comply with the order; or

(b) giving security for the costs of a person or party who must comply with the order.

(5) The court may set aside or vary the order.

Perishable property

251.(1) The court may order the sale or other disposal of all or part of perishable property the subject of a proceeding.

(2) The order may include conditions about the proceeds of the sale or disposal.

(3) In this rule—

"perishable property" means property, other than land, that is perishable or likely to deteriorate or decrease in value.

Order affecting non-party

252. The court may make an order under rule 250 or 251 binding on, or otherwise affecting, someone who is not a party to the proceeding.

Service of application

253.(1) The applicant for an order for the inspection, detention, custody or preservation of property must make all reasonable inquiries to find out who has, or claims to have, an interest in the property.

(2) Unless the court otherwise orders, an order may not be made under rule 250 or 251 unless each person who has an interest in the property is served with the application and all supporting affidavits.

Order before proceeding starts

254.(1) In urgent circumstances, the court may, before a proceeding starts, make an order under rule 250 or 251 as if the proceeding had started.

(2) The order may include conditions about starting the proceeding.

Jurisdiction of court not affected

255. This order does not affect the jurisdiction of the court to make orders for the inspection, detention, custody or preservation of property that is exercisable apart from these rules.

PART 2—INJUNCTIONS AND SIMILAR ORDERS

Application of pt 2

256. This part does not apply to a Magistrates Court.

Relationship with other law

257. This part is not intended to impede the development of the law relating to injunctions and similar orders including orders of the type mentioned in rules 260 and 261.[71]

Procedure

258.(1) An application for a part 2 order should comply with chapter 2, part 4[72] unless this part otherwise provides.

(2) Subrule (1) applies irrespective of whether the application is made—

(a) before a proceeding starts; or

(b) in a pending proceeding.

71 Rule 260 (Mareva orders) and rule 261 (Anton Piller orders)

72 Chapter 2 (Starting proceedings), part 4 (Applications)

(3) In this rule—

"part 2 order" means an injunction or an order of the type mentioned in rule 260 or 261.

Part 2 order without notice

259.(1) An application for a part 2 order should be served, but if the court is satisfied there is adequate reason for doing so, the court may grant the order without notice to the other party.

(2) Without limiting the discretion of the court in the exercise of its equitable jurisdiction, on an application for a part 2 order, the court may, with or without conditions—

(a) grant the order for a limited period specified in the order; or

(b) grant the order until the trial of the proceeding; or

(c) grant an order for a limited time restraining a person from leaving Australia; or

(d) make another order.

Example of an injunction under subrule (2)(c)—

This injunction may be used if the departure of the person would render a proceeding useless, for example, because the person's departure would make it impossible to have an enforcement hearing in relation to a judgment against the person and so ascertain the location of the person's assets. Conditions imposed may, for example, relate to payment of moneys, or surrendering a passport, to the registry.

Mareva orders

260.(1) The court may grant an order of a type that restrains someone from removing assets from Australia or dealing with assets either in or out of Australia (a **"mareva order"**).

(2) A mareva order may be granted whether or not the respondent is a party to an existing proceeding.

(3) On application, the court may grant a mareva order if—

(a) the order is to be ancillary to a judgment or other order already given or made in favour of the applicant; or

(b) the court is satisfied the applicant has an existing or prospective cause of action that is justiciable within Australia.

(4) The supporting affidavits should include the following information—

(a) the nature and value of the respondent's assets, so far as is known to the applicant, in and out of Australia;

(b) why the applicant believes—

(i) the respondent's assets may be removed from Australia; or

(ii) the dealing with the assets should be restrained by order;

(c) why the applicant believes the judgment to which the order is ancillary may go unsatisfied if the removal or dealing mentioned in paragraph (b) happens;

(d) the identity of anyone, other than the respondent, who the applicant knows may be affected by the order, and how they may be affected;

(e) if the application is made under subrule (3)(b)—the following information about the cause of action—

(i) the basis of the claim for principal relief;

(ii) the amount of the claim;

(iii) if the application is made without notice to the respondent—a possible defence or other response to the claim.

(5) The court may set aside or vary a mareva order.

Anton Piller orders

261.(1) On application, the court may make an order, without notice to the respondent, of a type requiring the respondent to permit the applicant or another person to enter the respondent's premises and inspect or seize documents or other items (an **"Anton Piller order"**).

(2) An Anton Piller order may also require the respondent to disclose stated information relevant to the proceeding to which the order relates.

(3) An Anton Piller order may also include an injunction restraining, for a stated period of up to 7 days, anyone on whom the order is served from informing anyone else the order has been made.

(4) The court may make the order on the conditions as to the persons by whom the order is to be carried out, retention of seized items and otherwise as the court considers appropriate.

(5) The supporting affidavits for an application should include the following information—

(a) a description of the documents or other items, or the categories of documents or other items, in relation to which the order is sought;

(b) the address of the premises in relation to which the order is sought;

(c) why the applicant believes the respondent may remove, destroy or alter the relevant documents or items unless the order is made;

(d) the damage likely to be suffered by the applicant if the order is not made.

(6) The court may set aside or vary the order.

Part 2 order without trial

262.(1) A plaintiff claiming relief by way of a part 2 order, with or without a declaration or other relief, may apply to the court for a judgment.

(2) The plaintiff may make the application at any time after—

(a) the plaintiff is served with a notice of intention to defend; or

(b) the end of the time set by rule 137[73] for filing a notice of intention to defend.

(3) On the hearing of an application under subrule (1) the court may do one or more of the following—

(a) give judgment in relation to the part 2 order and declaration and, if other relief is claimed, give the directions it considers appropriate about how to dispose of the rest of the proceeding;

(b) grant a part 2 order until the trial or hearing or until a stated day;

73 See rule 137 (Time for notice of intention to defend).

(c) order the parties to file and serve pleadings;

(d) direct a trial of the proceeding.

Expedited trial

263. On an application for a part 2 order, the court may order an expedited trial under rule 468.[74]

Damages and undertaking as to damages

264.(1) Unless there is a good reason, the court must not grant a part 2 order until the trial or hearing or until a stated day without the usual undertaking as to damages having been given.

(2) The usual undertaking as to damages for a part 2 order applies during an extension of the period of the order.

(3) If the usual undertaking as to damages is contravened, the person in whose favour the undertaking is given may apply to the court for an order conditional on the assessment of damages.[75]

(4) If the court finds damages are sustained because of a part 2 order, the court may assess damages or give the directions it considers necessary for the assessment of damages.

(5) In this rule or an order—

"usual undertaking as to damages", for a part 2 order, means an undertaking to pay to a person (whether or not a party to the proceeding) who is affected by the order an amount the court decides should be paid for damages the person may sustain because of the order.

Other undertakings and security to perform undertaking

265.(1) The court may require an undertaking from a person approved by the court other than the applicant.

74 Rule 468 (Trial expedited)

75 See rule 507 (Conditional order).

(2) The court may require a person who gives an undertaking as to damages under rule 264 to make a payment into court or to give other security, including to the satisfaction of the registrar, for the performance of the undertaking.

(3) In deciding whether to make a requirement under this rule, the court may consider the matters it could consider in deciding whether to order security for costs and whether it is otherwise reasonable in all the circumstances of the matter to impose the requirement.

PART 3—RECEIVERS

Division 1—Application

Application of pt 3

266. This part does not apply to—

(a) Magistrates Courts; or

(b) situations controlled or regulated by the Corporations Law.

Division 2—Receivership generally

Consent to act as receiver

267.(1) A person must not be appointed as a receiver unless the person's written consent to act as receiver is filed in the court.

(2) The court may set aside the appointment of a receiver at any time for an appropriate reason and make the orders it considers appropriate about the receivership and the receiver's remuneration.

Security

268.(1) Unless the court otherwise orders, the appointment of a receiver by the court does not start until the receiver files security acceptable to the

court for the performance of the receiver's duties.

(2) The court may vary or vacate an order for a security filed under subrule (1) at any time.

Remuneration

269.(1) A receiver is allowed the remuneration, if any, the court sets.

(2) The court may order that the receiver be remunerated under a scale the court specifies in the order.

Accounts

270.(1) Unless the court otherwise orders, a receiver must submit accounts under this rule.

(2) A receiver must submit accounts to the parties and at the intervals or on the dates the court directs.

(3) A party to whom a receiver is required to submit accounts may, on giving reasonable written notice to the receiver, inspect, either personally or by an agent, the documents and things on which the accounts are based.

(4) A party who objects to the accounts may serve written notice on the receiver—

(a) specifying the items to which objection is taken; and

(b) requiring the receiver to file the receiver's accounts with the court within a stated period of not less than 14 days after the notice is served.

(5) The party must file a copy of the notice served with the court.

(6) The court may examine the items to which objection is taken.

(7) The court must by order declare the result of an examination under subrule (6) and may make an order for the costs and expenses of a party or the receiver.

Default

271.(1) If a receiver contravenes rule 270, the court may—

(a) set aside the receiver's appointment; or

(b) appoint another receiver; or

(c) order the receiver to pay the costs of an application under this rule; or

(d) deprive the receiver of remuneration and order the repayment of remuneration already paid to the receiver; or

(e) if the receiver did not pay money into court as required by the court—charge the receiver with interest at the rate currently payable on order debts in the court for a period the court considers appropriate.

(2) This rule does not limit the powers of the court about the enforcement of orders or the power of the court to punish for contempt.

(3) In this rule—

"order debt" see rule 793.[76]

Powers

272.(1) The court may appoint a receiver and manager on conditions specified in the order.

(2) The court may authorise a receiver to do (either in the receiver's name or in the name of a party and either generally or in a particular case) anything the party might do if without legal incapacity.

(3) The court may, on application by an interested person, give the directions it considers appropriate.

(4) Subrule (2) has effect even if the relevant party is under a legal incapacity.

(5) Subrule (2) does not limit the power of the court apart from this subrule.

76 Rule 793 (Definitions for ch 19)

Death of receiver

273. If a receiver dies, the court may, but only on the application of a party, make orders for—

(a) the filing and passing of accounts by the deceased receiver's representative; and

(b) the payment into court of an amount shown to be owing.

Division 3—Enforcement of judgment by appointment of receiver

Enforcement of judgment

274. The court may appoint a receiver to receive an amount payable under a judgment or other order if it is impracticable to enforce payment in another way.[77]

PART 4—SALES BY COURT ORDER

Definition for pt 4

275. In this part—

"land" includes an interest in land.

Application of pt 4

276. This part applies only for a proceeding in the Supreme Court or the District Court.

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77 See chapter 19 (Enforcement of money orders), part 10 (Enforcement warrants for appointment of a receiver).

Order for sale

277. In a proceeding relating to land, the court may, if it is necessary or expedient, order the land be sold before the proceeding is decided.

Conduct of sale

278.(1) The court may appoint a party or another person to have the conduct of the sale if the court—

(a) makes an order for sale under rule 277; or

(b) by a judgment, orders the sale of land or personal property.

(2) The court may direct a party to join in the sale or transfer or in another matter relating to the sale.

(3) The court may permit the party or person having the conduct of the sale to sell the land in a way the party or person considers appropriate or give directions about conducting the sale.

(4) Directions given under subrule (3) may include the following—

(a) specifying the type of sale, whether by contract conditional on approval of the court, private treaty, tender or otherwise;

(b) setting a minimum or reserve price;

(c) requiring payment of the purchase price into court or to a trustee or other person;

(d) for settling the particulars and conditions of sale;

(e) for obtaining evidence of value;

(f) specifying the remuneration to be allowed to an auctioneer, estate agent or another person.

Certificate of result of sale

279.(1) If the court directs, or if the court has directed the payment of the purchase money into court, the result of a sale by order of the court must be certified—

(a) for a public auction—by the auctioneer who conducted the sale; or

(b) otherwise—by the party or person who conducted the sale or by

the solicitor who acted for the party.

(2) Within 7 days after the day of settlement of the sale, the person required to give the certificate under subrule (1) must file the certificate in the court.

CHAPTER 9—ENDING PROCEEDINGS EARLY

PART 1—DEFAULT

Division 1—Default by plaintiff or applicant

Default by plaintiff or applicant

280.(1) If—

(a) the plaintiff or applicant is required to take a step required by these rules or comply with an order of the court within a stated time; and

(b) the plaintiff or applicant does not do what is required within the time stated for doing the act;

a defendant or respondent in the proceeding may apply to the court for an order dismissing the proceeding for want of prosecution.

(2) The court may dismiss the proceeding or make another order it considers appropriate.

(3) An order dismissing the proceeding for want of prosecution may be set aside only on appeal or if the parties agree to it being set aside.

(4) Despite subrule (3), the court may vary or set aside an order dismissing the proceeding for want of prosecution made in the absence of the plaintiff or applicant, on terms the court considers appropriate, and without the need for an appeal.

Division 2—Proceedings started by claim

Application of div 2

281. This division applies if the defendant in a proceeding started by claim has not filed a notice of intention to defend within the time required by these rules.

Service must be proved

282. A plaintiff must prove service of a claim on a defendant in default before judgment may be given under this division against the defendant.

Judgment by default—debt or liquidated demand

283.(1) This rule applies if the plaintiff's claim against the defendant in default is for a debt or liquidated demand, with or without interest.

(2) The plaintiff may file a request for judgment for an amount not more than the amount claimed, together with—

(a) if interest is claimed—interest calculated, to the date of judgment, at the rate specified in the claim or in a practice direction for the *Supreme Court Act 1995*, section 47;[78] and

(b) the prescribed amount for costs.

(3) If the plaintiff files a request for judgment under subrule (2), the court, as constituted by a registrar, may give judgment.

(4) For this rule, a debt or liquidated demand includes interest if the rate of interest is—

(a) limited to the rate specified in, and calculated in accordance with, an agreement; or

(b) not higher than the rate specified in a practice direction for the *Supreme Court Act 1995*, section 47.

(5) Subrules (6) to (8) apply if interest is claimed under the *Supreme Court Act 1995*, section 47.

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78 *Supreme Court Act 1995*, section 47 (Interest up to judgment)

(6) If the plaintiff elects to abandon the claim for the interest, the claim is taken to be a claim for the debt or liquidated demand without interest.

(7) If the plaintiff elects to accept interest at a rate not higher than that specified in a practice direction for any period mentioned in the direction, the registrar may award interest under the direction, whether or not the defendant has paid the debt or liquidated demand after the proceeding is started.

(8) If the plaintiff seeks to recover a higher rate of interest than that specified in a practice direction for any period mentioned in the direction, the court may—

(a) decide the interest, if any, that is recoverable; and

(b) direct that judgment be given for the interest, whether or not the defendant has paid the debt or liquidated demand after the proceeding is started; and

(c) direct that judgment be given against the defendant under this rule.

(9) If the period for which interest is to be awarded is not specified in the statement of claim, interest is recoverable only from the date of the issue of the claim.

Judgment by default—unliquidated damages

284.(1) This rule applies if the plaintiff's claim against the defendant in default is for unliquidated damages, with or without another claim.

(2) The plaintiff may file a request for a judgment conditional on the assessment of damages by the court under chapter 13, part 8,[79] and for costs.

(3) If the plaintiff files a request for judgment under subrule (2), the court, as constituted by a registrar, may give judgment.

(4) The court, as constituted by a registrar, must nominate under chapter 13, part 8 the court that is to do the assessment.

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79 Chapter 13 (Trials and other hearings), part 8 (Assessment of damages)

Judgment by default—detention of goods

285.(1) This rule applies if the plaintiff's claim for relief against a defendant in default is for the detention of goods only.

(2) The plaintiff may file a request for judgment against the defendant, within the limits of the plaintiff's claim for relief, either—

(a) for the return of the goods or the value of the goods conditional on assessment under chapter 13, part 8 and for costs; or

(b) for the value of the goods conditional on assessment under chapter 13, part 8 and for costs.

(3) If the plaintiff files a request for judgment under subrule (2), the court, as constituted by a registrar, may give judgment in accordance with the request.

(4) The court, as constituted by a registrar, must nominate under chapter 13, part 8 the court that is to do the assessment.

(5) If the plaintiff seeks an order for the return of specified goods, the plaintiff must apply to the court for the order.

Judgment by default—recovery of possession of land

286.(1) This rule applies if the plaintiff's claim for relief against a defendant in default is for the recovery of possession of land only.

(2) The plaintiff may file a request for a judgment for recovery of possession of the land as against the defendant and for the costs prescribed.

(3) If the plaintiff files a request for judgment under subrule (2), the court, as constituted by a registrar, may give judgment.

(4) However, the plaintiff is not entitled to the judgment if the plaintiff's claim is for delivery of possession under a mortgage.

Judgment by default—mixed claims

287.(1) This rule applies if the plaintiff's claims for relief against a defendant in default include 2 or more of the claims for relief mentioned in rules 283 to 286, and no other claim.

(2) The plaintiff is entitled to a judgment against the defendant on all or

any of the claims for relief the plaintiff could request under those rules if that were the plaintiff's only claim for relief against the defendant.

Judgment by default—other claims

288.(1) This rule applies if a defendant is in default in respect of a claim not mentioned in rules 283 to 286.

(2) The plaintiff may apply to the court for a judgment.

(3) On the application, the court may give the judgment it considers is justified on the pleadings even if the judgment was not claimed.

Judgment by default—costs only

289.(1) This rule applies if, under this division, the plaintiff is entitled to judgment against a defendant in default and the defendant satisfies the plaintiff's claim for relief.

(2) The plaintiff may file a request for a judgment against the defendant for costs alone.

(3) If the plaintiff files a request for judgment under subrule (2), the court, as constituted by a registrar, may give judgment.

Setting aside judgment by default and enforcement

290. The court may set aside or amend a judgment by default under this division, and any enforcement of it, on terms, including terms about costs and the giving of security, the court considers appropriate.

PART 2—SUMMARY JUDGMENT

Division 1—Application

Application of pt 2

291. This part applies to any proceeding.

Division 2—Applying for summary judgment

Summary judgment for plaintiff

292.(1) The plaintiff may, at any time after the defendant serves a notice of intention to defend, apply to the court under this part for judgment.

(2) The court may give judgment for the plaintiff for all or part of the relief claimed in the application if the court is satisfied—

(a) the plaintiff has complied with this part and is entitled to all or part of the relief sought in the statement of claim; and

(b) the defendant has no defence other than in relation to the amount of the claim; and

(c) there is no need for a trial of the proceeding.

(3) The court may also give judgment for—

(a) the assessment of the amount of the claim or the value of goods; or

(b) the return of goods without the option of retaining the goods and paying their assessed value.

(4) However, if the amount of the claim can not be calculated, because, for example, there is insufficient evidence available to satisfy the court of the amount of the claim, the court may instead order the amount of the claim to be decided in the way the court directs and give leave for judgment to be given for the amount decided and costs.

(5) A second or later application under this part may be made with the court's leave.

Summary judgment for defendant

293.(1) The defendant may at any time apply to the court under this part for judgment.

(2) Also, the court may give any judgment or make any other order the court considers appropriate if satisfied—

(a) no reasonable cause of action is disclosed; or

(b) the proceeding is frivolous, vexatious or an abuse of the process of the court; or

(c) the defendant has a defence to the proceeding.

Claims not disposed of by judgment

294. The giving of a judgment under this part that does not dispose of all claims in issue in a proceeding or counter-claim does not prevent the continuation of any part of the proceeding or counter-claim not disposed of by the judgment.

Division 3—Evidence

Evidence

295.(1) In a proceeding under this part, evidence must be given by affidavit made by the party giving the evidence.

(2) Despite subrule (1), on the hearing of an application, the court may, on terms the court considers appropriate, permit further evidence to be given by affidavit or otherwise by or for a party.

(3) The affidavit may contain statements of information and belief if the person making it states the sources of the information and the reasons for the belief.

(4) A plaintiff applying for judgment under this part must swear in support of the application that in the plaintiff's belief the defendant has no defence to the relief sought in the application.

(5) If a party to an application under this part intends to rely on a document, the document must be identified in the affidavit.

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

(7) An affidavit giving evidence in defence of a plaintiff's claim must identify the parts of the claim for which the evidence is claimed to be a defence.

Service

296. Subject to rule 295(2), a plaintiff applying for judgment under this part against a defendant must serve the defendant with the application and a copy of each affidavit and any exhibits mentioned in the affidavits at least 4 business days before the date for hearing shown on the application.

Examination of defendant and witnesses

297. The court may order any of the following to attend the court to be examined on oath or to produce to the court all relevant documents and records—

(a) the applicant;

(b) a party defending the application;

(c) a person who made an affidavit for either party;

(d) a witness for either party;

(e) for an incorporated party—an officer of the corporation.

Division 4—Other procedural matters

Directions

298. If—

(a) the court dismisses an application under this part for judgment; or

(b) a judgment under this part does not dispose of all claims in a proceeding;

the court may give directions or impose conditions about the future conduct of the proceeding.

Costs

299.(1) If it appears to the court that a party who applied under this part for judgment was or ought reasonably to have been aware that an opposite party relied on a point that would entitle that party to have the application dismissed, the court may dismiss the application and order costs to be paid within a time specified by the court.

(2) Subrule (1) does not limit the court's powers in relation to costs.

Stay of enforcement

300. The court may order a stay of the enforcement of a judgment given under this part for the time and on the terms the court considers appropriate.

Relief from forfeiture

301. A tenant has the same right to relief against forfeiture for nonpayment of rent after judgment for possession of land is given under this part as if the judgment had been given after a trial.

Setting aside judgment

302. The court may set aside or vary a judgment given on an application under this part against a party who did not appear on the hearing of the application.

PART 3—DISCONTINUANCE AND WITHDRAWAL

Discontinuance by party representing another person

303.(1) A party who represents another person in a proceeding may discontinue or withdraw only with the court's leave.

(2) A party who discontinues or withdraws, or the party's solicitor, must certify in a notice of discontinuance or withdrawal that the party does not represent another person in the proceeding.

Discontinuance by plaintiff or applicant

304.(1) A plaintiff or applicant may discontinue a proceeding or withdraw part of it before being served with—

(a) for a proceeding started by claim—the first defence of any defendant; or

(b) for a proceeding started by application—the first affidavit in reply from a respondent.

(2) However, after being served with the first defence or first affidavit in reply, a plaintiff or applicant may discontinue a proceeding or withdraw part of it only with the court's leave or the consent of the other parties.

(3) Also, if there is more than 1 plaintiff or applicant, or a counterclaim against a plaintiff, a plaintiff or applicant may only discontinue with the court's leave or the consent of the other parties.

(4) A plaintiff may discontinue against one or more defendants without discontinuing against other defendants.

(5) An applicant may discontinue against one or more respondents without discontinuing against other respondents.

Discontinuance by defendant or respondent

305. A defendant may discontinue a counterclaim or withdraw part of it—

(a) before being served with the plaintiff's answer to counterclaim; and

(b) only with the court's leave or the consent of the other parties, after being served with the plaintiff's answer to counterclaim.

Withdrawal of notice of intention to defend

306. A party may withdraw the party's notice of intention to defend at any time with the court's leave or the consent of the other parties.

Costs

307.(1) A party who discontinues or withdraws is liable to pay—

(a) the costs of the party to whom the discontinuance or withdrawal relates up to the discontinuance or withdrawal; and

(b) the costs of another party or parties caused by the discontinuance or withdrawal.

(2) If a party discontinues or withdraws with the court's leave, the court may make the order for costs it considers appropriate.

Withdrawal of defence or subsequent pleading

308.(1) A party may withdraw all or part of the answer to counterclaim.

(2) A defendant or respondent may withdraw all or part of the defence.

(3) A respondent may withdraw all or part of an affidavit.

(4) However, subrules (1), (2) and (3) do not enable a party to withdraw, without the other party's consent or the court's leave, an admission or another matter operating for the benefit of the other party.

Notice of discontinuance or withdrawal

309.(1) A discontinuance or withdrawal for which the court's leave is not required may be effected by filing a notice in the approved form and serving it as soon as practicable on the other parties who have an address for service.

(2) A discontinuance or withdrawal for which the court's leave is required is effected by the order giving leave and a notice of discontinuance or withdrawal is not required.

Subsequent proceeding

310.(1) Subject to the conditions of a leave to discontinue or withdraw, a discontinuance or withdrawal under this part is not a defence to another proceeding on the same or substantially the same ground.

(2) A party who is served with another party's notice of withdrawal may

continue with the proceeding as if the other party's notice of intention to defend had not been filed.

Consolidated proceedings and counterclaims

311. The plaintiff's discontinuance of a proceeding does not prejudice a proceeding consolidated with it or a counterclaim made by the defendant.

Stay pending payment of costs

312.(1) This rule applies if, because of a discontinuance or withdrawal under this part, a party is liable to pay the costs of another party, and the party, before paying the costs, starts another proceeding on the same or substantially the same grounds.

(2) The court may order a stay of the subsequent proceeding until the costs are paid.

PART 4—ALTERNATIVE DISPUTE RESOLUTION PROCESSES

Division 1—Preliminary

Definitions for pt 4

313. In this part—

"ADR costs" include—

(a) for a mediation—the extra cost mentioned in rule 328;[80] and

(b) for a case appraisal—the extra cost mentioned in rule 337.[81]

"referred dispute" means a dispute referred to a case appraiser under

80 Rule 328 (Mediator may seek independent advice)

81 Rule 337 (Case appraiser may seek information)

rule 334.[82]

"registrar" means—

(a) for a Magistrates Court—the registrar nominated by the Chief Stipendiary Magistrate under the *Magistrates Courts Act 1921*, section 27(1);[83] or

(b) for rules 319, 321, 323, 327, 328, 334, 343, 348, 349 and 350[84]—the registrar of the court that referred the proceeding to mediation or case appraisal.

"senior judicial officer" means—

(a) for the Supreme Court—the Senior Judge Administrator; or

(b) for the District Court—the Chief Judge of the District Court; or

(c) for a Magistrates Court—the Chief Stipendiary Magistrate.

Division 2—Establishment of ADR processes

Approval as mediator

314.(1) A person seeking approval as a mediator must—

(a) apply in the approved form; and

(b) pay the prescribed fee; and

(c) satisfy the appropriate senior judicial officer of the court of which the person is seeking to become a mediator that the person is a suitable person to be approved as a mediator.

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82 Rule 334 (Referral of dispute to appointed case appraiser)

83 *Magistrates Courts Act 1921*, section 27 (ADR register)

84 Rules 319 (Registrar to give notice of proposed reference to ADR process), 321 (Proceedings referred to ADR process are stayed), 323 (Referral of dispute to appointed mediator), 327 (Liberty to apply), 328 (Mediator may seek independent advice), 334 (Referral of dispute to appointed case appraiser), 343 (Dissatisfied party may elect to continue), 348 (If ADR costs paid to registrar), 349 (When ADR convenor or venue provider may recover further costs) and 350 (Court may extend period within which costs are to be paid or grant relief)

(2) However, the fee is not payable if—

(a) the person has already been approved as a mediator of the Supreme Court; or

(b) for an application for approval as a mediator of the Magistrates Courts—the person has already been approved as a mediator of the District Court.

(3) If the appropriate senior judicial officer decides not to approve a person as mediator, the senior judicial officer must give the person a statement of reasons for the decision.

(4) If a person is approved as a mediator of the Supreme Court, the Senior Judge Administrator must inform the registrar of the approval.

(5) If a person is approved as a mediator of the District Court, the Chief Judge of the District Court must inform the registrar of the Supreme Court of the approval.

(6) If a person is approved as a mediator of the Magistrates Courts, the Chief Stipendiary Magistrate must inform the registrar of the approval.

Approval as case appraiser

315.(1) A person seeking approval as a case appraiser must—

(a) be a barrister or solicitor of 5 years standing; and

(b) make application in the approved form; and

(c) pay the fee prescribed by regulation; and

(d) satisfy the appropriate senior judicial officer of the court of which the person is seeking to become a case appraiser that the person is a suitable person to be approved as a case appraiser.

(2) However, the fee is not payable if—

(a) the person has already been approved as a case appraiser of the Supreme Court; or

(b) for an application for approval as a case appraiser of the Magistrates Courts—the person has already been approved as a case appraiser of the District Court.

(3) If the appropriate senior judicial officer decides not to approve a

person as case appraiser, the senior judicial officer must give the person a statement of reasons for the decision.

(4) If a person is approved as a case appraiser of the Supreme Court, the Senior Judge Administrator must inform the registrar of the approval.

(5) If a person is approved as a case appraiser of the District Court, the Chief Judge of the District Court must inform the registrar of the Supreme Court of the approval.

(6) If a person is approved as a case appraiser of the Magistrates Courts, the Chief Stipendiary Magistrate must inform the registrar of the approval.

ADR register

316. The ADR register must contain the fees notified to the registrar under rule 317.

Information to be given to registrar by ADR convenors and venue providers

317.(1) A person intending to provide a venue for ADR processes for a court must give notice to the registrar in the approved form of the person's name and address and the address of the venue.

(2) A person intending to act as a mediator, case appraiser or venue provider for ADR processes must give notice to the registrar of the fee the person intends to charge for providing the services or venue.

(3) If a person intends to change the fee notified to the registrar, the person must give notice of the change to the registrar in the approved form at least 4 weeks before the change is effective.

(4) Notice of the fee may be given by notifying the way the fee may be worked out, including, for example, an hourly or daily rate of charge or another way approved by the registrar.

(5) In this rule—

"registrar", for a mediator or case appraiser of the Supreme Court or District Court, means the registrar of the Supreme Court.

Form of consent order for ADR process

318. For the *Supreme Court of Queensland Act 1991*, section 101, the *District Court Act 1967*, section 96 and the *Magistrates Courts Act 1921*, section 28,[85] the consent order must be filed in the approved form.

Registrar to give notice of proposed reference to ADR process

319.(1) The court may direct the registrar to give written notice to the parties (the **"referral notice"**) that the parties' dispute is to be referred, by order, to an ADR process to be conducted by a specified mediator or case appraiser.

(2) A party may object to the reference by filing an objection notice in the registry.

(3) The objection notice must—

(a) state the reasons why the party objects to the referral; and

(b) be filed within 7 days after the objecting party receives the referral notice.

(4) If an objection notice is filed, the court may require the parties or their representatives to attend before it (the **"hearing"**).

(5) The court may make an order at the hearing it considers appropriate in the circumstances.

When referral may be made

320. The court may also refer a dispute in a proceeding for mediation or case appraisal—

(a) on application by a party; or

(b) if the proceeding is otherwise before the court.

85 These provisions provide for a consent order to be filed referring a dispute to an ADR process.

Proceedings referred to ADR process are stayed

321. Subject to an order of the court, if a dispute in a proceeding is referred to an ADR process, the dispute and all claims made in the dispute are stayed until 6 business days after the report of the ADR convenor certifying the finish of the ADR process is filed with the registrar.

When does a party impede an ADR process

322. A party impedes an ADR process if the party fails to—

(a) attend at the process; or

(b) participate in the process; or

(c) pay an amount the party is required to pay under a referring order within the time stated in the order.

Division 3—Mediation

Referral of dispute to appointed mediator

323.(1) A referring order for a mediation must—

(a) appoint as mediator—

(i) a specified mediator; or

(ii) a mediator to be selected by the parties; or

(iii) if all parties agree, a person who is not a mediator; and

(b) include enough information about pleadings, statements of issues or other documents to inform the mediator of the dispute and the present stage of the proceeding between the parties; and

(c) set a period beyond which the mediation may extend only with the authorisation of the parties or estimate how long the mediation should take to finish; and

(d) state how the mediator is to be informed of the appointment; and

(e) require the parties, if the mediation is not completed within 3 months of the date of the referring order, to provide a report setting out the circumstances of the matter to the registrar who

may refer the matter to the court for resolution.

(2) The order must also—

(a) set the ADR costs or estimate the costs to the extent possible; and

(b) state the percentage of ADR costs each party must pay; and

(c) provide to whom and by when the ADR costs must be paid.

(3) Instead of setting or estimating the appointed mediator's fee, the order may direct the parties to negotiate a fee with the appointed mediator.

(4) A person appointed as mediator under subrule (1)(a)(iii) is taken to be a mediator for the mediation and issues incidental to the mediation.

(5) The order must be made in the approved form.

(6) A mediator must have regard to an amended pleading, including amendments made after the referring order.

When mediation must start and finish

324. A mediator must start a mediation as soon as possible after the mediator's appointment and try to finish the mediation within 28 days after the appointment.

Parties must assist mediator

325. The parties must act reasonably and genuinely in the mediation and help the mediator to start and finish the mediation within the time estimated or set in the referring order.

Mediator's role

326.(1) The mediator may gather information about the nature and facts of the dispute in any way the mediator decides.

(2) The mediator may decide whether a party may be represented at the mediation and, if so, by whom.

(3) During the mediation, the mediator may see the parties, with or without their representatives, together or separately.

Liberty to apply

327. The mediator or a party may apply to the court at any time for directions on any issue about the mediation.

Mediator may seek independent advice

328.(1) The mediator may seek legal or other advice about the dispute from independent third parties.

(2) However, if the advice involves extra cost, the mediator must first obtain—

(a) the parties' agreement to pay the extra cost; or

(b) the court's leave.

(3) If the court gives leave, the court must also—

(a) order the parties to pay the extra cost; and

(b) state to whom and by when the payment must be made.

(4) The mediator must disclose the substance of the advice to the parties.

Record of mediation resolution

329.(1) Unless the parties otherwise agree, the mediator must ensure that an agreement mentioned in the *Supreme Court of Queensland Act 1991*, section 107, the *District Court Act 1967*, section 102 or the *Magistrates Courts Act 1921*, section 34[86] is—

(a) placed in a sealed container, for example, an envelope; and

(b) marked with the court file number; and

(c) marked 'Not to be opened without an order of the court'; and

(d) filed in the court.

(2) The container may be opened only if the court orders it to be opened.

(3) No fee is payable for filing the agreement.

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86 These provisions provide for a written mediated resolution agreement signed by each party and the mediator.

Abandonment of mediation

330.(1) The mediator may abandon the mediation if the mediator considers further efforts at mediation will not lead to the resolution of the dispute or an issue in the dispute.

(2) Before abandoning the mediation, the mediator must—

(a) inform the parties of the mediator's intention; and

(b) give them an opportunity to reconsider their positions.

Mediator to file certificate after mediation

331.(1) For the *Supreme Court of Queensland Act 1991*, section 108, the *District Court Act 1967*, section 103 and the *Magistrates Courts Act 1921*, section 35,[87] the mediator must file a certificate in the approved form.

(2) The certificate must not contain comment about the extent to which a party participated or refused to participate in the mediation.

(3) However, the certificate may indicate that a party did not attend the mediation.

(4) No fee is payable for filing the certificate.

Unsuccessful mediations

332. If a mediation is unsuccessful, the dispute may go to trial or be heard in the ordinary way without any inference being drawn against any party because of the failure to settle at the mediation.

Replacement of mediator

333.(1) The court may, by further order, revoke the appointment of a mediator and appoint someone else as mediator if the court is satisfied it is desirable to do so.

(2) When appointing a substitute mediator, the court may decide the amount (if any) to be paid to the retiring mediator for work done.

87 These provisions require a mediator to file a certificate about the mediation as soon as practicable after a mediation has finished.

Division 4—Case appraisal

Referral of dispute to appointed case appraiser

334.(1) A referring order for a case appraisal must—

(a) appoint as case appraiser—

(i) a specified case appraiser; or

(ii) a case appraiser to be selected by the parties; and

(b) state what dispute is referred; and

(c) include enough information about pleadings, statements of issues or other documents to inform the case appraiser of the dispute and the present stage of the proceeding between the parties; and

(d) set a period beyond which the case appraisal may extend only with the authorisation of the parties or estimate how long the case appraisal should take to finish; and

(e) state how the case appraiser is to be informed of the appointment; and

(f) require the parties, if the case appraisal is not completed within 3 months of the date of the referring order, to provide a report setting out the circumstances of the matter to the registrar who may refer the matter to the court for resolution.

(2) The order must also—

(a) set the ADR costs or estimate the costs to the extent possible; and

(b) state the percentage of ADR costs each party must pay; and

(c) state to whom and by when the ADR costs must be paid.

(3) The order may be made even if the dispute has been referred previously for a mediation.

(4) Instead of setting or estimating the appointed case appraiser's fee, the order may direct the parties to negotiate a fee with the appointed case appraiser.

(5) The order must, as far as practicable, be made in the approved form.

(6) A case appraiser must have regard to an amended pleading, including amendments made after the referring order.

Jurisdiction of case appraiser

335.(1) The case appraiser for a referred dispute has the power of the court referring the dispute to decide the issues in dispute in the referred dispute.

(2) However, the case appraiser—

(a) may only give a decision that could have been given in the dispute if it had been decided by the court; and

(b) cannot punish for contempt.

(3) Subrule (1) is subject to rules 341 and 343.[88]

Appearances

336.(1) A party appearing before a case appraiser has the same rights to appear by lawyer or otherwise the party would have if the appearance were before the court referring the dispute.

(2) For a proceeding in a Magistrates Court, this rule is subject to rules 514(1)(e) and 519.[89]

Case appraiser may seek information

337.(1) A case appraiser may ask anyone for information and may obtain, and act on, information obtained from anyone on any aspect of the dispute.

(2) However, if obtaining the information involves extra cost, the case appraiser must first obtain—

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88 Rule 341 provides that, in the absence of an election under rule 343, the parties are taken to have consented to the case appraiser's decision which then becomes final and binding. Rule 343 provides that a party dissatisfied with a case appraiser's decision may elect to go to trial.

89 Rules 514 (Simplified procedures for minor debt claims) and 519 (Simplified procedures may apply in other cases)

(a) the parties' agreement to pay the extra cost; or

(b) the court's leave.

(3) If the court gives leave, the court must also—

(a) order the parties to pay the extra cost; and

(b) state to whom and by when the payment must be made.

(4) The case appraiser must disclose the substance of the information to the parties.

Case appraisal proceeding may be recorded

338.(1) A case appraiser may have the case appraisal proceeding recorded if the case appraiser considers it appropriate, in the special circumstances of the proceeding.

(2) If the proceeding is to be recorded, the case appraiser must decide the extent to which, and the way in which, the recording may be done.

Case appraiser's decision

339.(1) A case appraiser's decision must be in writing, but the case appraiser need not give reasons for the decision.

(2) However, a case appraiser may, at any stage of a case appraisal proceeding, decline to proceed further with the proceeding.

Example of subrule (2)—

The dispute proves to be unsuitable for case appraisal.

(3) A copy of the decision must be given to each party.

Case appraiser's decision on costs in the dispute

340.(1) In a referred dispute, a case appraiser has the same power to award costs in the dispute the court that referred the dispute would have had if it had heard and decided the dispute.

(2) A case appraiser's decision under rule 339(1) must include a decision on costs in the dispute.

Effect of case appraiser's decision

341.(1) A case appraiser's decision has effect only to the extent specified in this division.

(2) If an election under rule 343 is not made, the parties are taken to have consented to the case appraiser's decision being binding on them and the decision then becomes final and binding.

Case appraiser to file certificate and decision

342.(1) For the *Supreme Court of Queensland Act 1991*, section 109, the *District Court Act 1967*, section 104 and the *Magistrates Courts Act 1921*, section 36,[90] the case appraiser must file a certificate in the approved form.

(2) If the case appraiser makes a decision about the dispute or any issue in the dispute, the case appraiser must—

(a) place the written decision in a sealed container, for example, an envelope; and

(b) mark the container with the court file number; and

(c) mark the container 'Not to be opened without an order of the court'; and

(d) file the container in the court.

(3) The container may be opened only if the court orders it to be opened.

(4) No fee is payable for filing the certificate and decision.

Dissatisfied party may elect to continue

343.(1) A party who is dissatisfied with a case appraiser's decision may elect to have the dispute go to trial or be heard in the ordinary way by filing an election in the approved form with the registrar.

(2) The election must be filed within 28 days after the case appraiser's certificate is filed in the registry.

(3) If an election is filed—

90 These provisions require the case appraiser to file a certificate about the case appraisal and the case appraiser's decision.

(a) the case appraiser's decision has no effect other than as provided by rule 344; and

(b) the dispute must be decided in a court as if it had never been referred to the case appraiser.

Court to have regard to case appraiser's decision when awarding costs

344.(1) If the court's decision in the dispute is not more favourable overall to a challenger than the case appraiser's decision in the dispute was to the challenger, the costs of the proceeding and the case appraisal must be awarded against the challenger.

(2) However, the court may make another order about costs if the court considers there are special circumstances.

(3) If all parties are challengers, the case appraiser's decision has no effect on the awarding of costs.

(4) In this rule—

"challenger" means a party who filed an election under rule 343.

Replacement of case appraiser

345.(1) The court may, by further order, revoke the appointment of a case appraiser and appoint someone else as case appraiser if the court is satisfied it is desirable to do so.

(2) When appointing a substitute case appraiser, the court may decide the amount (if any) to be paid to the retiring case appraiser for work done.

Division 5—ADR costs

Payment of ADR costs

346. Each party to an ADR process is severally liable for the party's percentage of the ADR costs in the first instance.

Party may pay another party's ADR costs

347.(1) If a party to an ADR process does not pay the party's percentage of ADR costs, another party may pay the amount.

(2) If another party pays the amount, the amount is the other party's costs in any event.

If ADR costs paid to registrar

348. If an amount is paid to the registrar for a convenor's fee or a venue provider's fee, the registrar must, if appropriate, pay the amount to the convenor or venue provider.

When ADR convenor or venue provider may recover further costs

349.(1) If a referring order deals with ADR costs by setting a fee rate and period for which the rate is to be paid, an ADR convenor or venue provider may recover an amount for any additional period only if the parties authorise the ADR process to continue beyond the period set in the order.

(2) If a referring order deals with ADR costs in another way, an ADR convenor or venue provider may recover an amount that is more than the amount stated or estimated in the order or negotiated only if the parties agree in writing to the payment of a greater amount.

(3) The parties are severally liable for an amount recoverable under subrule (1) or (2).

(4) The amount may be recovered as a debt payable to the convenor or provider.

Court may extend period within which costs are to be paid or grant relief

350.(1) A party may apply to the court for an order—

(a) extending the time for payment of ADR costs; or

(b) relieving the party from the effects of noncompliance with any requirement about costs.

(2) The court may make any order it considers appropriate.

Costs of failed ADR process are costs in the dispute

351. Unless otherwise ordered by the court, each party's costs of and incidental to an ADR process not resulting in the full settlement of the dispute between the parties are the party's costs in the dispute.

PART 5—OFFER TO SETTLE

Definition for pt 5

352. In this part—

"offer" means an offer made under this part.

"offer to settle" means an offer to settle made under this part.

If offer to settle available

353.(1) A party to a proceeding may serve on another party to the proceeding an offer to settle 1 or more of the claims in the proceeding on the conditions specified in the offer to settle.

(2) A party may serve more than one offer to settle.

(3) An offer to settle must be in writing and must contain a statement that it is made under this part.

Time for making offer

354.(1) An offer to settle may be served—

(a) for a jury trial of a proceeding started by claim—at any time before a verdict is returned; and

(b) otherwise—at any time before final relief is granted.

(2) However, if an account is claimed in the first instance or if a claim involves taking an account, an offer to settle may be served at any time

before the certificate under rule 540[91] becomes final and binding.

(3) Further, if there is a judgment conditional on the assessment of damages, an offer to settle may be served at any time before the damages are assessed.

Withdrawal or end of offer

355.(1) A party must specify in an offer to settle a period, ending not less than 14 days after the day of service of the offer, during which the offer is open for acceptance, and the offer may not be withdrawn during that period without the court's leave.

(2) An offer to settle expressed to be open for acceptance for a specified period lapses at the end of the period.

(3) The court may, at any time within which an offer to settle is open for acceptance, give leave to a party to withdraw the offer to settle, but the offer may be accepted at any time before the application for leave to withdraw it is decided.

(4) An application for leave to withdraw an offer may be made without notice to another party.

(5) Subrule (3) has effect even though, at the end of the period for accepting the offer to settle, an application for leave to withdraw it has not been decided by the court.

(6) The court may not, despite another provision of these rules, extend the time for accepting an offer to settle.

Effect of offer

356. An offer to settle made under this part is taken to be an offer made without prejudice.

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91 Rule 540 (Certificate as to account)

Disclosure of offer

357.(1) Subject to rule 365,[92] no statement of the fact that an offer to settle has been made may be contained in a pleading or affidavit.

(2) An offer to settle must not be filed.

(3) If an offer to settle is not accepted, no communication about the offer may be made to the court at the trial or hearing of the proceeding until all questions of liability and the relief to be given, other than costs, have been decided.

(4) Subrule (1) does not apply to an affidavit in support of an application for leave to withdraw an offer to settle.

(5) After an application for leave to withdraw an offer to settle is decided, the court must—

(a) place the application and any affidavits that contain a statement of the fact that an offer to settle has been made in a sealed container, for example, an envelope; and

(b) mark the container with the court file number; and

(c) mark the container 'Not to be opened without an order of the court'; and

(d) file the container in the court.

(6) The container may be opened only if the court orders it to be opened.

(7) No fee is payable for filing the container.

Acceptance of offer

358.(1) An offer to settle may be accepted only by serving a written notice of acceptance on the party making the offer.

(2) An offer to settle does not lapse on the making of a counter offer to settle.

(3) If an offeree rejects an offer or makes a counter offer to settle that is not accepted under this part, the offeree may subsequently accept the original offer to settle during the period it is open for acceptance.

92 Rule 365 (Failure to comply with offer)

(4) If an offer to settle is accepted, the court may incorporate any of its conditions into a judgment.

(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, the registrar must assess costs as particularised in the notice without further order of the court.

Person under a legal incapacity

359.(1) A party who is a person under a legal incapacity may make or accept an offer to settle under this part.

(2) However, the making or the acceptance of an offer to settle is not binding on the party unless it is approved by the court under rule 98[93] or the public trustee acting under the *Public Trustee Act 1978*, section 59.[94]

Costs if offer to settle by plaintiff

360.(1) If—

(a) the plaintiff makes an offer to settle that is not accepted by the defendant and the plaintiff obtains a judgment no less favourable than the offer to settle; and

(b) the court is satisfied that the plaintiff was at all material times willing and able to carry out what was proposed in the offer;

the court must order the defendant to pay the plaintiff's costs calculated on the indemnity basis unless the defendant shows another order for costs is appropriate in the circumstances.

(2) If a plaintiff makes more than 1 offer, the offer most favourable to the plaintiff is taken to be the only offer for this rule.

93 Rule 98 (Settlements and compromises)

94 *Public Trustee Act 1978*, section 59 (Compromise of actions by or on behalf of persons under a legal disability claiming moneys or damages valid only with sanction of court or public trustee)

Costs if offer to settle by defendant

361.(1) This rule applies if—

(a) the defendant makes an offer to settle that is not accepted by the plaintiff and the plaintiff obtains a judgment that is not more favourable to the plaintiff than the offer to settle; and

(b) the court is satisfied that the defendant was at all material times willing and able to carry out what was proposed in the offer.

(2) Unless a party shows another order for costs is appropriate in the circumstances, the court must—

(a) order the defendant to pay the plaintiff's costs, calculated on the standard basis, up to and including the day of service of the offer to settle; and

(b) order the plaintiff to pay the defendant's costs, calculated on the standard basis, after the day of service of the offer to settle.

(3) However, if the defendant's offer to settle is served on the first day or a later day of the trial or hearing of the proceeding then, unless the court otherwise orders—

(a) the plaintiff is entitled to costs on the standard basis to the opening of the court on the next day of the trial; and

(b) the defendant is entitled to the defendant's costs incurred after the opening of the court on that day on the indemnity basis.

(4) If the defendant makes more than 1 offer satisfying subrule (1), the first of the offers made is taken to be the only offer for this rule.

Interest after service of offer to settle

362.(1) This rule applies if the court gives judgment for the plaintiff for the recovery of a debt or damages and—

(a) the judgment includes interest or damages in the nature of interest; or

(b) under an Act the court awards the plaintiff interest or damages in the nature of interest.

(2) For giving judgment for costs under rule 360 or 361, the court must

disregard the interest or damages in the nature of interest relating to the period after the day of service of the offer to settle.

Multiple defendants

363.(1) If there are 2 or more defendants, the plaintiff may make an offer to settle with any defendant, and any defendant may offer to settle with the plaintiff.

(2) However, if defendants are alleged to be jointly or jointly and severally liable to the plaintiff and rights of contribution or indemnity may exist between the defendants, this rule applies to the offer to settle only if—

(a) for an offer made by the plaintiff—the offer is made to all of the defendants and is an offer to settle the claim against all the defendants; or

(b) for an offer made to the plaintiff—

(i) the offer is an offer to settle the plaintiff's claim against all the defendants; and

(ii) if the offer is made by 2 or more defendants, by the conditions of the offer the defendants who make the offer are jointly or jointly and severally liable to the plaintiff for the whole of the amount of the offer.

Offer to contribute

364.(1) This rule applies if a defendant makes a claim (a **"contribution claim"**) to recover contribution or indemnity against a person, whether a defendant to the proceeding or not, in relation to a claim for a debt or damages made by the plaintiff in the proceeding.

(2) A party to the contribution claim may serve on another party to the contribution claim an offer to contribute towards the settlement of the claim made by the plaintiff on the conditions specified in the offer.

(3) The court may take account of an offer to contribute in deciding whether it should order that the party on whom the offer to contribute was served should pay all or part of—

(a) the costs of the party who made the offer; and

(b) any costs the party is liable to pay to the plaintiff.

(4) Rules 356 and 357[95] apply, with any changes necessary, to an offer to contribute as if it were an offer to settle.

Failure to comply with offer

365. If a party does not comply with an accepted offer to settle, the other party may elect to—

(a) apply to the court for a judgment on the conditions of the offer and the court may give the judgment; or

(b) continue with the proceeding as if an offer to settle had not been accepted.

CHAPTER 10—COURT SUPERVISION

PART 1—DIRECTIONS

Application for directions

366.(1) This part also applies to the Court of Appeal.

(2) The court may give directions about the conduct of a proceeding at any time.[96]

(3) A party may apply to the court for directions at any time.[97]

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95 Rules 356 (Effect of offer) and 357 (Disclosure of offer)

96 See also *Supreme Court of Queensland Act 1991*, section 118D(1)(a) which provides for practice directions to be made about case management.

97 Chapter 11 (Evidence), part 8 (Exchange of correspondence instead of affidavit evidence) applies to an application under this part. Note, particularly, rule 447 (Application to court).
For other provisions about directions in Magistrates Courts, see chapter 13 (Trials and other hearings), part 9 (Magistrates Courts).

(4) A party may apply for directions either on an application made for the purpose or on application for other relief.

Directions

367.(1) The court may make any order or direction about the conduct of a proceeding it considers appropriate, even though the order or direction may be inconsistent with another provision of these rules.

(2) In deciding whether to make an order or direction, the interests of justice are paramount.

(3) Without limiting subrule (1), the court may at any time do any of the following in relation to a trial or hearing of a proceeding—

(a) require copies of pleadings for use by the court before the trial or hearing;

(b) limit the time to be taken by the trial or hearing;

(c) limit the time to be taken by a party in presenting its case;

(d) require evidence to be given by affidavit, orally or in some other form;

(e) limit the number of witnesses (including expert witnesses) a party may call on a particular issue;

(f) limit the time to be taken in examining, cross-examining or re-examining a witness;

(g) require submissions to be made in the way the court directs, for example, in writing, orally, or by a combination of written and oral submission;

(h) limit the time to be taken in making an oral submission;

(i) limit the length of a written submission or affidavit;

(j) require the parties, before the trial or hearing, to provide statements of witnesses the parties intend to call.

(4) In addition to the principle mentioned in subrule (2), in deciding whether to make an order or direction of a type mentioned in subrule (3), the court may have regard to the following matters—

(a) that each party is entitled to a fair trial or hearing;

(b) that the time allowed for taking a step in the proceeding or for the trial or hearing must be reasonable;

(c) the complexity or simplicity of the case;

(d) the importance of the issues and the case as a whole;

(e) the volume and character of the evidence to be led;

(f) the time expected to be taken by the trial or hearing;

(g) the number of witnesses to be called by the parties;

(h) that each party must be given a reasonable opportunity to lead evidence and cross-examine witnesses;

(i) the state of the court lists;

(j) another relevant matter.

(5) If the court's order or direction is inconsistent with another provision of these rules, the court's order or direction prevails to the extent of the inconsistency.

(6) The court may at any time vary or revoke an order or direction made under this rule.

Proceeding already being managed by the court

368.(1) A proceeding may be managed by the court as constituted by a particular judge or magistrate, in accordance with an order, direction, practice direction about case management, administrative procedure of the court or otherwise.

(2) If a proceeding is managed under subrule (1), the court may direct that all applications in relation to the proceeding, or the trial or hearing of the proceeding, be heard and decided by the court as constituted by the particular judge or magistrate.

Decision in proceeding

369. If the parties agree, the court may hear and decide a proceeding on an application for directions.

Failure to attend

370.(1) This rule applies if a party—

(a) after receiving notice of a hearing for directions, does not attend a hearing for directions; or

(b) fails to comply with a direction, including a practice direction.

(2) The court may do any of the following—

(a) give the further directions the court considers appropriate;

(b) dismiss the application or proceeding;

(c) make another order dealing with the proceeding the court considers appropriate.

(3) In deciding whether to dismiss the application or proceeding, the court must have regard to the principle that the interests of justice are paramount.

PART 2—FAILURE TO COMPLY WITH RULES OR ORDER

Effect of failure to comply with rules

371.(1) A failure to comply with these rules is an irregularity and does not render a proceeding, a document, step taken or order made in a proceeding, a nullity.

(2) Subject to rules 372 and 373, if there has been a failure to comply with these rules, the court may—

(a) set aside all or part of the proceeding; or

(b) set aside a step taken in the proceeding or order made in the proceeding; or

(c) declare a document or step taken to be ineffectual; or

(d) declare a document or step taken to be effectual; or

(e) make another order that could be made under these rules

(including an order dealing with the proceeding generally as the court considers appropriate); or

(f) make such other order dealing with the proceeding generally as the court considers appropriate.

Application because of failure to comply with rules

372. An application[98] for an order under rule 371 must set out details of the failure to comply with these rules.

Incorrect originating process

373. The court may not set aside a proceeding or an originating process on the ground the proceeding was started by the incorrect originating process.

Failure to comply with order

374.(1) This rule applies if a party does not comply with an order to take a step in a proceeding.

(2) This rule does not limit the powers of the court to punish for contempt of court.

(3) A party who is entitled to the benefit of the order may, by application, require the party who has not complied to show cause why an order should not be made against it.

(4) The application—

(a) must allege the grounds on which it is based; and

(b) is evidence of the allegations specified in the application; and

(c) must, together with all affidavits to be relied on in support of the application, be filed and served at least 2 business days before the

98 Chapter 11 (Evidence), part 8 (Exchange of correspondence instead of affidavit evidence) applies to an application under this part. Note, particularly, rule 447 (Application to court).

day set for hearing the application.[99]

(5) On the hearing of the application, the court may—

(a) give judgment against the party served with the application; or

(b) extend time for compliance with the order; or

(c) give directions; or

(d) make another order.

(6) The party who makes the application may reply to any material filed by the party who was served with the application.

(7) The application may be withdrawn with the consent of all parties concerned in the application or with the court's leave.

(8) A judgment given under subrule (5)(a) may be set aside—

(a) if the application is made without notice—on an application to set the judgment aside; or

(b) otherwise—only on appeal.

(9) Despite subrule (8), if the court is satisfied an order dismissing the proceeding was made because of an accidental slip or omission, the court may rectify the order.

PART 3—AMENDMENT

Division 1—Amendment generally

Power to amend

375.(1) At any stage of a proceeding, the court may allow or direct a party to amend a claim, anything written on a claim, a pleading, an application or a document in a proceeding in the way and on the conditions the court considers appropriate.

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99 See also rule 447 (Application to court).

(2) Subject to rule 376, the court may give leave to make an amendment even if the effect of the amendment would be to include a cause of action arising after the proceeding was started.

Amendment after limitation period

376.(1) This rule applies if, in a proceeding, an application for leave to make an amendment is made after the end of a relevant period of limitation current at the date the proceeding was started.

(2) The court may give leave to make an amendment correcting the name of a party, even if it is alleged that the effect of the amendment will be to substitute a new party, if—

(a) the court considers it appropriate; and

(b) the court is satisfied that the mistake sought to be corrected—

(i) was a genuine mistake; and

(ii) was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or intended to be sued.

(3) The court may give leave to make an amendment changing the capacity in which a party sues (whether as plaintiff or as defendant by counterclaim) if—

(a) the court considers it appropriate; and

(b) the capacity in which, if the amendment is made, the party will sue is one in which, at the date the proceeding was started by the party, the party might have sued.

(4) The court may give leave to make an amendment, even if the effect of the amendment is to include a new cause of action, if—

(a) the court considers it appropriate; and

(b) the new cause of action arises out of the same facts or substantially the same facts as a cause of action for which relief has already been claimed in the proceeding by the party applying for leave to make the amendment.

(5) This rule does not limit the court's powers under rule 375.

Amendment of originating process

377.(1) An originating process may not be amended except—

(a) if the amendment is a technical matter—with the leave of the registrar or the court; or

(b) otherwise—with the leave of the court.

(2) Subrule (1) does not apply to a pleading or particular included in an originating process.

Amendment before request for trial date

378. Before the filing of the request for trial date, a party may, as often as necessary, make an amendment for which leave from the court is not required under these rules.

Disallowance of amendment

379.(1) If a party makes an amendment without leave before the filing of the request for trial date, another party may, within 8 days after service on the party of the amendment, apply to the court to disallow all or part of the amendment.

(2) On the application, the court may make an order it considers appropriate.

Amendment after request for trial date

380. An amendment after the filing of the request for trial date may only be made with the leave of the court.

Failure to amend after order

381. An order giving a party leave to amend a document ceases to have effect if the party has not amended the document in accordance with the order at the end of the time specified by the order for making the amendment, or, if no time was specified, at the end of 14 days after the day on which the order was made.

Division 2—Procedural matters

Procedure for amending

382.(1) All amendments must be distinguished so as to be identifiable from the remainder of the document.

(2) If an amendment is made, the document amended must have a notation on it showing the date of the amendment and, if it was made by leave of the court, the date of the order giving leave.

(3) An amendment may be made in writing on the document being amended.

(4) However, if writing an amendment on the document is inconvenient or makes the document difficult to read, the party making the amendment must file and serve a revised document incorporating and distinguishing the amendment.

(5) Subject to rule 74,[100] if an originating process is amended and the amendment is made on the originating process, the appropriate officer of the court must stamp near the amendment with the seal of the court.

(6) If a revised originating process is filed under subrule (4), the appropriate officer of the court must stamp the revised originating process with the seal of the court.

(7) The court may direct how an amendment is to be made.

Who is required to make amendment

383. If the court orders an amendment be made to a document, the court may order a party, a registrar, judge's associate or other appropriate person to make the amendment.

Serving amendments

384.(1) All amendments under this part must be served on all parties as soon as practicable after being made.

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100 Rule 74 (Amendment of proceedings after change of party)

(2) However, the court may dispense with the service of an amendment or it may give directions about service.

Division 3—Consequences of amendment

Pleading to amendment

385.(1) If a party amends a pleading, another party may plead to the amended pleading or amend the opposite party's own pleading.

(2) The pleading or amendment must be served within the time the opposite party then has to plead, or within 8 days after the day of being served with the amendment, whichever is the later.

(3) If an opposite party has pleaded before being served with an amendment to a pleading and does not plead again within the time specified in subrule (2), the opposite party is taken to rely on the original pleading as an answer to the amended pleading.

Costs

386. The costs of and resulting from an amendment made under rule 378[101] are to be paid by the party making the amendment unless the court orders otherwise.

When amendment takes effect

387.(1) An amendment, made under this part, of a document takes effect on and from the date of the document that is amended.

(2) However, an amendment including or substituting a cause of action arising after the proceeding started takes effect on and from the date of the order giving leave.

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101 Rule 378 (Amendment before request for trial date)

Division 4—Amending orders or certificates

Mistakes in orders or certificates

388.(1) This rule applies if—

(a) there is a clerical mistake in an order or certificate of the court or an error in a record of an order or a certificate of the court; and

(b) the mistake or error resulted from an accidental slip or omission.

(2) The court, on application by a party or on its own initiative, may at any time correct the mistake or error.

(3) The other rules in this part do not apply to a correction made under this rule.

PART 4—DELAY

Continuation of proceeding after delay

389.(1) If no step has been taken in a proceeding for 1 year from the time the last step was taken, a party who wants to proceed must, before taking any step in the proceeding, give a month's notice to every other party of the party's intention to proceed.

(2) If no step has been taken in a proceeding for 2 years from the time the last step was taken, a new step may not be taken without the order of the court, which may be made either with or without notice.

(3) For this rule, an application in which no order has been made is not taken to be a step.

(4) Until the end of 30 June 2000, subrule (2) applies as if the reference to 2 years were a reference to 3 years.

(5) Subrules (4) and (5) expire on 1 July 2000.

CHAPTER 11—EVIDENCE

PART 1—GENERAL

Way evidence given

390. Subject to these rules or a direction by the court—

(a) evidence at the trial of a proceeding started by claim may only be given orally; and

(b) evidence in a proceeding started by application may only be given by affidavit.[102]

Court may call evidence

391.(1) The court may, by order and on its own initiative, call a person before it as a witness in a proceeding.

(2) The court may give the directions about examination, cross-examination and re-examination of the person the court considers appropriate.

(3) The court may make the order it considers appropriate about 1 or more parties paying the witness' attendance expenses.

Evidence by telephone, video link or another form of communication

392.(1) The court may receive evidence or submissions by telephone, video link or another form of communication in a proceeding.

(2) The court may impose conditions for subrule (1).

Plans, photographs, video or audio recordings and models

393.(1) This rule applies if a party intends to tender a plan, photograph, video or audio recording or model at a trial or hearing.

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[102] See part 8 for exchange of correspondence instead in affidavit evidence for certain applications.

(2) Unless the court orders otherwise, at least 7 days before the trial or hearing starts, the party must give all other parties an opportunity to—

(a) inspect anything mentioned in subrule (1) the party intends to tender; and

(b) agree to its admission without proof.

(3) An application for an order under subrule (2) may be made without notice to another party and the court may direct that the application and any supporting evidence be placed in a sealed container, for example, an envelope.

(4) The container may be opened only if the court orders it to be opened.

(5) Noncompliance with subrule (2) does not affect the admissibility of a plan, photograph, video or audio recording or model.

(6) Compliance or noncompliance with subrule (2) may be taken into account on the question of costs.

(7) In this section—

"model" includes a model or image generated by a computer.

Dispensing with rules of evidence

394.(1) If a fact in issue is not seriously in dispute or strict proof of a fact in issue might cause unnecessary or unreasonable expense, delay or inconvenience in a proceeding, the court may order that evidence of the fact may be given at the trial or at any other stage of the proceeding in any way the court directs.

(2) Without limiting subrule (1)—

(a) the subrule applies to the proof of handwriting, proof of documents, proof of the identity of parties and proof of authority; and

(b) the court may order that evidence of a fact be given—

(i) by a statement on oath of information and belief; or

(ii) by the production of documents or entries in records; or

(iii) by the production of copies of documents or copies of entries in records.

(3) The court may at any time vary or revoke an order under this rule.

Evidence in other proceedings

395. A party may, with leave of the court, rely on evidence given or an affidavit filed in another proceeding or in an earlier stage of the same proceeding.

PART 2—EVIDENCE GIVEN OUT OF COURT

Order for examination

396.(1) The court may, for obtaining evidence for use in a proceeding, order the examination on oath of a person before a judge, magistrate or another person appointed by the court as an examiner at a place inside or outside Queensland (an **"examination order"**).

(2) However, the court may not order the examination of a person before a judge of a higher court.

Documents for examiner

397. The party who obtains an examination order must supply the examiner with copies of the documents in the proceeding necessary to inform the examiner of the relevant questions for the examination.

Appointment for examination

398.(1) The examiner appoints a time and place for the examination.

(2) The time appointed must be as soon as practicable after the making of the examination order.

(3) The examiner must notify the party who obtained the examination order of the time and place fixed for the examination at least 7 days before

the time appointed.

(4) The party who obtained the examination order must give notice of the time and place of the examination to the person to be examined and each other party at least 3 business days before the examination.

(5) Also, if the person to be examined is not a party to the proceeding, the party who obtained the examination order must serve the person with a subpoena under part 4[103] at least 3 business days before the examination unless the court directs otherwise.[104]

Conduct of examination

399.(1) Each party and each party's counsel and solicitor may attend the examination.

(2) Unless the court orders otherwise, the person examined is examined, cross-examined and re-examined in accordance with the procedure of the court for taking evidence orally.

(3) The examiner may put any question to the person examined about the meaning of an answer given by the person or about any matter arising in the course of the examination.

(4) The examiner may adjourn the examination from time to time and from place to place.

Examination of additional persons

400.(1) If the examiner is a judge or a magistrate, the examiner may, on the application of a party, examine a person who is not named or provided for in the examination order.

(2) If the examiner is not a judge or a magistrate, the examiner may, with the written consent of every other party to the proceeding, examine a person not named or provided for in the examination order.

(3) The examiner must attach the consent to the deposition under rule 402 of a person examined under subrule (2).

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103 Part 4 (Subpoenas)

104 See rule 419 (Conduct money) for the requirement as to conduct money.

Objections

401.(1) If a person being examined before an examiner objects to answering a question or producing a document or other thing, the question, the ground of the objection and, except if the objection is based on privilege, the answer, must be set out in the deposition or under rule 402 in a statement attached to the deposition.

(2) The court may, on the application of a party, decide the validity of the objection.

(3) If the court disallows the objection, it may—

(a) remit the examination back to the examiner with any necessary direction about the conduct of the examination; and

(b) make an order for the costs caused by the objection, including an order for costs against the person being examined.

Recording evidence

402.(1) An examiner must ensure, if practicable, evidence given at an examination in Queensland is recorded under the *Recording of Evidence Act 1962*[105] or recorded in another way and authenticated by the examiner.

(2) The examiner must authenticate and sign any deposition or other recording.

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[105] Note the *Recording of Evidence Act 1962*, section 5—

'**Power to direct recording under this Act**

'**5.(1)** In any legal proceeding in or before any court or judicial person, the court or judicial person may in its or the judicial person's discretion, with or without any application for the purpose, direct that any evidence to be given and any ruling, direction, address, summing up, and other matter in the legal proceeding (or of any part of the legal proceeding in question) be recorded—

(a) if a shorthand reporter is available—in shorthand; or

(b) if a mechanical device and a recorder are available—by the mechanical device; or

(c) if a shorthand reporter, mechanical device, and a recorder are available—in shorthand or by the mechanical device or partly in shorthand and partly by the mechanical device.'.

(3) If evidence given at an examination is recorded in a deposition, it must—

(a) contain, in question and answer form, the evidence of the person examined; and

(b) be transcribed and read over by or to the witness in the examiner's presence and in the presence of such of the parties as wish to attend; and

(c) be signed by the witness, or, if the witness refuses to sign the deposition, by the examiner for the witness.

Authentication and filing

403.(1) This rule applies if a deposition under rule 402 is produced and the examiner is a person other than a judge or magistrate.

(2) The examiner must write on the deposition a statement signed by the examiner of the time occupied in taking the examination and the fees (if any) received for the examination.

(3) The examiner must send the deposition to the registrar, who must file it in the proceeding.

(4) The examiner must, unless the court orders otherwise, send exhibits at the examination to the registrar, who must deal with them as the court directs.

Report of examiner

404. The examiner may report to the court on the examination or on the absence of a person from the examination.

Default of witness

405.(1) This rule applies if—

(a) a person has been required by subpoena to attend before an examiner other than a judge or magistrate; and

(b) the person does not attend or refuses to take an oath for the examination, answer a lawful question or produce a document or

thing.

(2) The examiner must, if asked by a party, give the party a certificate signed by the examiner of the facts mentioned in subrule (1).

(3) On the filing of the certificate, the court may—

(a) order the person to attend before the examiner, be sworn, answer the question or produce the document or thing; and

(b) order the person to pay the costs caused by the person's refusal.

Witnesses's expenses

406. A person required to attend before an examiner is entitled to payment for expenses and for loss of time to the same extent as a witness at trial.

Admissibility of deposition

407.(1) A deposition under rule 402[106] is admissible in evidence at the trial of a proceeding only if—

(a) the deposition is made under an examination order; or

(b) an Act provides for the deposition to be admissible.

(2) A deposition purporting to be signed by the person before whom it was taken is receivable in evidence without proof of the signature of the person.

Letter of request

408.(1) This rule applies if the Supreme Court makes an order under the

106 Rule 402 (Recording evidence)

Evidence Act 1977, section 22[107] or otherwise for the sending of a letter of request for an examination.

(2) The party obtaining the order must, when the letter of request has been signed—

(a) file the following documents with the registrar—

(i) the letter of request;

(ii) any interrogatories to accompany the letter of request;

(iii) if English is not an official language of the country to whose judicial authorities the letter of request is to be sent—a translation of each of the documents mentioned in subparagraphs (i) and (ii) in an official language of the country appropriate to the place where the evidence is to be taken;

(iv) a copy of each of the documents mentioned in

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107 *Evidence Act 1977*, section 22—

'**Commission, request or order to examine witnesses**

'**22.(1)** The Supreme Court or a judge thereof, on application made under the Rules of the Supreme Court, shall have the same powers to issue a commission, request or order to examine witnesses for the purpose of civil proceedings in any court other than the Supreme Court as it or the judge has for the purpose of civil proceedings in the Supreme Court.

'**(2)** The rules of the Supreme Court, with such adaptations as the circumstances may require, shall apply and extend to a commission, request or order to examine witnesses issued by authority of subsection (1) and to all proceedings taken thereunder as if the commission, request or order were issued by authority of those rules.

'**(3)** Subject to all just exceptions, the depositions taken upon the examination of a witness before an examiner by virtue of this section certified under the hand of the examiner are admissible in evidence, without proof of the signature to such certificate, unless it is proved that the witness is at the time of the hearing at which the depositions are offered in evidence within a convenient distance of the place of the hearing and able to attend.

'**(4)** The costs of proceedings taken by virtue of this section shall be costs in the cause, unless otherwise directed either by the judge issuing the commission, request or order or by the court for the purpose of whose proceedings the examination is conducted.'.

subparagraphs (i) to (iii);

(v) an undertaking under rule 409; and

(b) unless the court orders otherwise, serve a copy of each of the documents mentioned in paragraph (a)(i) to (iii) on each other party.

(3) A letter of request must be in the approved form.

(4) A translation filed under subrule (2) must be certified by the person making it to be a correct translation and the certificate must state the person's full name and address and qualifications for making the translation.

Undertaking

409.(1) An undertaking filed under rule 408 is an undertaking by the party obtaining the order or the party's solicitor—

(a) to be responsible for all expenses incurred by the court or by any person at the request of the court in relation to the letter of request; and

(b) on being given notice of the amount of the expenses incurred—to pay the amount to the registrar.

(2) The registrar may require a security in support of the undertaking.

PART 3—EVIDENCE FOR FUTURE RIGHT OR CLAIM

Application

410. This part does not apply to Magistrates Courts.

Proceeding to obtain evidence for future right or claim

411.(1) This rule applies if a person would, under the circumstances the person alleges to exist, become entitled to property or office on the

happening of a future event, the right or claim to which cannot be brought to trial before the happening of the event.

(2) The person may start a proceeding by application to obtain evidence that may be material for establishing the right or claim.

(3) The proceeding to obtain evidence for a future claim may only be started by application.

(4) The person against whom the right or claim is made is the respondent to the application.

Order to obtain evidence for future claim

412.(1) In a proceeding to obtain evidence for a future right or claim, the court may make an order specifying the evidence that may be obtained and the way it may be obtained, including, for example, that there be a hearing.

(2) The court may only make an order under subrule (1) if it is satisfied that the applicant may, under the circumstances the applicant alleges to exist, become entitled to property or office on the happening of a future event, the right or claim to which cannot be brought to trial before the happening of the event.

Taking, use and admissibility of evidence obtained for future right or claim

413. The court may take the evidence in a proceeding to obtain evidence for a future right or claim or it may appoint an examiner under part 2.[108]

PART 4—SUBPOENAS

Power to issue subpoena

414.(1) This rule applies to the following subpoenas—

[108] Part 2 (Evidence given out of court)

(a) subpoenas for production;

(b) subpoenas to give evidence;

(c) subpoenas for production and to give evidence.

(2) The court may, on its own initiative or at the request of a party, issue a subpoena requiring the attendance of the person specified in the subpoena before the court or before an officer, examiner, referee or other person having authority to take evidence.

(3) A request for a subpoena—

(a) must specify the name or designation by office or position of the person to whom the subpoena is directed unless the registrar otherwise directs or the court otherwise orders; and

(b) must be filed.

(4) If a party files a request for a subpoena, the registrar may issue the subpoena.

(5) A subpoena must not be filed.

(6) A subpoena to give evidence may be addressed to 1 or more persons.

(7) The name or designation by office or position of the person to whom the subpoena is directed must appear on it before it is issued.

Example of designation by office or position—

The proper officer of XYZ Pty Ltd

(8) A subpoena requiring a person to produce a document or thing must include an adequate description of the document or thing.

(9) A person to whom a subpoena is directed must comply with it.

Formal requirements

415.(1) A particular type of subpoena must be in the approved form for that type of subpoena.

(2) Also, a subpoena for production must bear a notice, to be set out in the approved form advising the person required to comply with it that the person has the right to apply to the court to have the subpoena set aside on any sufficient grounds, including—

(a) want of relevance; or

(b) privilege; or

(c) oppressiveness, including oppressiveness because substantial expenses may not be reimbursed; or

(d) noncompliance with these rules.

Setting aside subpoena

416. The court may make an order setting aside all or part of a subpoena.

Order for cost of complying with subpoena

417. On application to the court, the court may make an order for the payment of any loss or expense incurred in complying with a subpoena.

Cost of complying with subpoena if not a party

418.(1) This rule applies if—

(a) a subpoena for production is addressed to a person who is not a party to the proceeding; and

(b) the court is satisfied that substantial loss or expense has been or would be incurred in complying with the subpoena.

(2) The court may order the party on whose behalf the subpoena was issued to pay all or part of the losses and expenses, including legal costs, incurred by the person to whom the subpoena is addressed in responding properly to the subpoena.

(3) The court may fix the amount payable under subrule (2) or it may order the amount to be fixed by assessment.

(4) An amount payable under this rule is in addition to an amount payable under rule 419.

(5) An order under this rule may be made at the trial or hearing or at another time but in all cases before the order is made finally deciding the proceeding at first instance.

(6) If a party who is ordered to pay losses and expenses under

subrule (2) obtains an order for the costs of the proceeding, the court may—

(a) allow the losses and expenses to be included in the costs recoverable by the party; or

(b) make another order it considers appropriate.

Conduct money

419.(1) A person is excused from complying with a subpoena unless conduct money sufficient to meet the reasonable expenses of complying with the subpoena is tendered—

(a) when the subpoena is served; or

(b) within a reasonable time before attendance under the subpoena is required.

(2) Payment of conduct money is in addition to payment of amounts payable as normal witness expenses.[109]

Production by non-party

420.(1) This rule applies if the person named in the subpoena for production is not a party to the proceeding.

(2) Unless the court orders otherwise, the subpoena must permit the person to produce by the day before the first day on which attendance is required the document or thing at the registry from which the subpoena was issued.

(3) If documents or a thing are produced at the registry, the appropriate officer of the court must—

(a) issue a receipt to the person producing the documents or thing; and

(b) produce the documents or thing as the court directs.

(4) A subpoena for production may be satisfied by an agent of the person named in the subpoena producing the documents or things to the court.

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[109] Rule 406 (Witnesses's expenses)

(5) This rule does not apply to so much of a subpoena as requires a person named to attend to give evidence orally.

Service

421.(1) A subpoena may be served under chapter 4, parts 2, 3, 4 and 5.[110]

(2) Compliance with a subpoena may be enforced, and a proceeding may be taken for noncompliance with a subpoena, only if it is proved that the subpoena has been received by the person to whom it is addressed or the person has actual knowledge of it.

Noncompliance is contempt of court

422. Failure to comply with a subpoena without lawful excuse is contempt of court and the person who failed to comply may be dealt with for contempt of court.[111]

PART 5—EXPERT EVIDENCE

Disclosure of expert evidence

423.(1) A party who intends to call a person to give evidence as an expert witness[112] must serve on every other party a statement—

(a) giving the name and address of the witness; and

(b) describing the witness' qualifications to give evidence as an expert; and

110 Chapter 4 (Service), parts 2 (Personal service generally), 3 (Personal service in particular cases), 4 (Ordinary service) and 5 (Other service).

111 See also rules 901 to 903.

112 Note rule 367 (Directions) which provides, in part, that the court may make an order or direction limiting the number of expert witnesses a party may call on a particular issue.

(c) containing the substance of the evidence it is proposed to adduce from the witness as an expert.

(2) A party must comply with subrule (1) within 21 days after the day on which the trial date is set.

(3) A party may not, except with the leave of the court or with the consent of every other party, adduce evidence from a witness as an expert unless the party has complied with subrules (1) and (2).

(4) The court may order expert witnesses confer and prepare and file a document setting out areas of agreement and disagreement and the reasons for the disagreement.

(5) The court may make the order it considers appropriate about the cost of preparing the document.

(6) This rule does not apply to require the disclosure of material disclosed under chapter 14, part 2.

PART 6—COURT EXPERTS

Application

424. This part does not apply to a proceeding for a minor claim in a Magistrates Court.

Appointment of court expert

425.(1) If a question for an expert witness arises in a proceeding, the court may, at any stage of the proceeding, do any of the following—

(a) appoint an expert as court expert, whether from a list of experts kept by the court or otherwise;

(b) authorise the court expert to inquire into the question and report on it within a specified time;

(c) direct the court expert to make a further or supplementary inquiry or report;

(d) give instructions the court considers appropriate about the inquiry or report, including instructions about an experiment or test for the purposes of the inquiry or report;

(e) give necessary directions.

(2) The court may appoint a person as court expert only if the person consents to the appointment.

(3) For subrule (1), the court may require the parties to provide a list—

(a) of persons who are experts in relation to the question; and

(b) of the fee each expert would agree to accept for the preparation of a report and attending court or before an examiner; and

(c) attaching each expert's consent to be appointed as court expert.

(4) In this rule—

"expert", for a question arising in a proceeding, means a person who has the knowledge or experience of, or in connection with, the question or questions of the character of the question that would make the person's opinion admissible in evidence.

Report of court expert

426.(1) The court expert must send a report about the question for which the court expert was appointed to the registrar within the specified time, together with the number of copies the court directs.

(2) The registrar must then send a copy of the report to each party interested in the question.

(3) The report is admissible in evidence on the question unless the court otherwise orders.

(4) However, the report is not binding on a party except to the extent the party agrees to be bound by it.

Cross-examination of court expert

427.(1) On application by a party within 14 days after receiving a copy of a court expert's report, the court must make an order allowing the cross-examination of the court expert by the parties.

(2) The court may order that the cross-examination be—

(a) before the court, at the trial or at some other time; or

(b) before an examiner under part 2.[113]

Remuneration of court expert

428.(1) The remuneration of a court expert must—

(a) be set by the court and agreed to by the expert; and

(b) include a fee for the report and an adequate amount for each day of attendance at the court or before an examiner.

(2) The court must, in its order appointing a court expert, state who is liable to pay the expert's remuneration in the first instance.

(3) The court may, on application by a party or by the court expert, make orders in the proceeding for payment in or towards discharge of the liability of a party to pay the remuneration set.

(4) Subrules (2) and (3) do not limit the powers of the court about costs.

(5) A court expert is not required to do the thing for which the court appointed the court expert until the remuneration set has been paid or secured.

Further expert evidence

429. If a court expert has made a report on a question at the court's request, a party may not adduce evidence of another expert on the question without the court's leave.

[113] Part 2 (Evidence given out of court)

PART 7—AFFIDAVITS

Contents of affidavit

430.(1) Except if these rules provide otherwise, an affidavit must be confined to the evidence the person making it could give if giving evidence orally.

(2) However, an affidavit for use in an application because of default[114] or otherwise for relief, other than final relief, may contain statements based on information and belief if the person making it states the sources of the information and the grounds for the belief.

(3) On assessment, all or part of the costs of an affidavit not complying with these rules or unnecessarily including copies of or extracts from documents may be disallowed.

Form of affidavit

431.(1) An affidavit must be in the approved form.

(2) A note must be written on an affidavit stating the name of the person making it and the name of the party on whose behalf it is filed.

(3) An affidavit must be made in the first person.

(4) An affidavit must describe the person making it and state the person's residential or business address or place of employment.

(5) The body of an affidavit must be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct portion of the subject.

(6) Each page of an affidavit must be numbered.

Swearing or affirming affidavit

432.(1) The person making an affidavit and the person taking the affidavit must sign each page of the affidavit.

(2) Subrule (3) applies if—

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[114] See chapter 9 (Ending proceedings early), part 1 (Default)

(a) the affidavit is made by 1 person; or

(b) although the affidavit is made by 2 or more persons, both or all of the persons are not swearing or affirming the affidavit at the same time before the same person.

(3) A statement (the **"jurat"**) must be placed at the end of the body of the affidavit and must—

(a) state the full name of the person making the affidavit before the person taking it; and

(b) state whether the affidavit was sworn or affirmed; and

(c) state the day and the place the person made the affidavit; and

(d) be signed by the person making it in the presence of the person authorised to take the affidavit; and

(e) then be signed by the person before whom the affidavit was taken, above a statement of the capacity of the person to take the affidavit;[115] and

(f) otherwise be as in the approved form.

Example of the capacity mentioned in paragraph (e)—

solicitor.

(4) If the affidavit is made by 2 or more persons, 2 or more of whom are swearing or affirming the affidavit at the same time before the same person, then, in addition to any statement under subrule (3), a statement (the **"jurat"**) must be placed at the end of the body of the affidavit and must—

(a) state the full name of the persons making the affidavit before the

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115 See the *Oaths Act 1867*, section 41 which provides—

'**Who may take affidavits**

'**41.(1)** A person's affidavit may be taken by any of the following persons without a commission being issued for the purpose—

(a) a justice, commissioner for declarations or notary public under the law of the State, the Commonwealth or another State;

(b) a lawyer;

(c) a conveyancer, or another person authorised to administer an oath, under the law of the State, the Commonwealth or another State.'.

person taking it; and

(b) state, for each of the persons making the affidavit, whether the affidavit was sworn or affirmed; and

(c) state the day and the place both or all the persons made the affidavit; and

(d) be signed by the persons making it in the presence of the person authorised to take the affidavit; and

(e) then be signed by the person before whom the affidavit was taken, above a statement of the capacity of the person to take the affidavit; and

(f) otherwise be as in the approved form.

Certificate of reading or signature for person making affidavit

433.(1) If the person taking an affidavit considers that the person making it is incapable of reading the affidavit, the person taking the affidavit must certify in or below the jurat[116] that—

(a) the affidavit was read or otherwise communicated in the person's presence to the person making it; and

(b) the person seemed to understand the affidavit; and

(c) the person signified that the person made the affidavit.

(2) If the person taking an affidavit considers that the person making it is physically incapable of signing it, the person taking the affidavit must certify in or below the jurat that—

(a) the affidavit was read or otherwise communicated in the person's presence to the person making it; and

(b) the person seemed to understand the affidavit; and

(c) the person signified that the person made the affidavit.

(3) If an affidavit is made by a person who is incapable of reading the affidavit or physically incapable of signing the affidavit and a certificate under subrule (1) or (2) does not appear on the affidavit, the affidavit may

116 See rule 432 (Swearing or affirming affidavit).

be used in a proceeding only if the court is satisfied that—

(a) the affidavit was read or otherwise communicated to the person making it; and

(b) the person seemed to understand it; and

(c) the person signified that the person made the affidavit.

Alterations

434.(1) This rule applies if there is an interlineation, erasure or other alteration in any part of an affidavit.

(2) The affidavit may be filed but, unless the court orders otherwise, may only be used if the person who makes the affidavit and the person who takes the affidavit initials the alteration or erasure.

Exhibits

435.(1) An original document used with and mentioned in an affidavit is an exhibit.

(2) An original thing used with and mentioned in an affidavit may be an exhibit, if practicable.

(3) A group of different documents may form 1 exhibit.

(4) If it is impracticable to exhibit the original of a document used with and mentioned in an affidavit, a copy of the document may be an exhibit to the affidavit.

(5) An exhibit to an affidavit must—

(a) have a letter, number or other identifying mark on it; and

(b) be bound with the affidavit, if practicable.

(6) An exhibit must have a certificate in the approved form on it or attached to it.

(7) The certificate must be signed by the person who made the affidavit and the person who took the affidavit.

(8) However, if an affidavit is taken under rule 433,[117] only the person who took the affidavit must sign the certificate.

Irregularity

436.(1) An affidavit may, unless the court orders otherwise, be filed despite an irregularity in form, including a failure to use the approved form.

(2) An affidavit may, with the leave of the court, be used despite an irregularity in form and the affidavit must have on it a memorandum by the court or the appropriate associate or clerk that it was used by leave.

(3) An affidavit used under subrule (2) is afterwards taken as a regular affidavit.

Filing

437. Unless the court gives leave, an affidavit may be used in a proceeding only if it has been filed.

Service

438. The court may, at any time, give leave to a party to use an affidavit that has not been served or that was served later than the time specified in these rules.

Examination of person making affidavit

439.(1) If an affidavit is to be relied on at a hearing, the court may order the person making it to be examined and cross-examined before the court and may order the person to attend the court for the purpose.

(2) If an affidavit to be relied on at a hearing is served on a party more than 1 business day before the hearing and the party wishes the person who made the affidavit to attend the court for cross-examination, the party must serve a notice to that effect on the party on whose behalf the affidavit is filed at least 1 business day before the date the person is required for examination.

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[117] Rule 433 (Certificate of reading or signature for person making affidavit)

(3) If an affidavit to be relied on at a hearing is served on a party less than 2 business days before the hearing, the person who made the affidavit must attend the court to be available for cross-examination unless the party otherwise agrees.

(4) If the person who made the affidavit does not attend the court in compliance with the notice or subrule (3), the court may refuse to receive the affidavit into evidence.

(5) However, the court may—

(a) dispense with the attendance for cross-examination of a person making an affidavit; and

(b) direct that an affidavit be used without the person making the affidavit being cross-examined in relation to the affidavit.

(6) Unless the court orders otherwise, a party who serves a notice under subrule (2) for the person who made an affidavit to attend the court is not liable to pay the expenses of the attendance.

Scandal and oppression

440. If there is scandalous or oppressive matter in an affidavit, the court may order that—

(a) the affidavit be removed from the file; or

(b) the affidavit be removed from the file and destroyed; or

(c) the scandalous or oppressive matter in the affidavit be struck out.

Affidavit taken before party

441. The court may not receive, and a party may not file, an affidavit taken by a party personally.

PART 8—EXCHANGE OF CORRESPONDENCE INSTEAD OF AFFIDAVIT EVIDENCE

Definitions for pt 8

442. In this part—

"applicant" means a party seeking an order in relation to an application under this part.

"respondent" means a party who must be served with notice of an application under this part.

Application of pt 8

443. This part applies to the following applications—

(a) an application for further and better particulars of the opposite party's pleading under rule 161;[118]

(b) an application under chapter 10, part 1;[119]

(c) an application under chapter 10, part 2;[120]

(d) any other application relating to a failure to comply with an order or direction of the court.

Applicant's letter to respondent

444.(1) Before making an application mentioned in rule 443, the applicant must write to the respondent specifying the following matters—

(a) the applicant's complaint;

(b) a brief statement of the relevant facts;

(c) the relief sought by the applicant;

(d) why the applicant should have the relief;

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118 Rule 161 (Application for orders for particulars)

119 Chapter 10 (Court supervision), part 1 (Directions)

120 Chapter 10 (Court supervision), part 2 (Failure to comply with rules or order)

(e) a time (at least 3 business days after the date of the letter) within which the respondent must reply to the letter (the **"nominated time"**);

(f) that the letter is written under this part.

(2) The applicant—

(a) need not serve the letter on the respondent under chapter 4;[121] and

(b) may send the letter to the respondent by fax.

(3) The applicant must send a copy of the letter to every person the applicant would be required to serve or notify if the applicant was making an application to the court for the relief sought.

(4) The letter must list the persons to whom a copy of the letter is sent.

(5) The applicant need not comply with subrule (3) if complying would—

(a) cause the applicant undue delay, expense or inconvenience; or

(b) unduly prejudice the applicant if a person mentioned in subrule (3) saw the contents of the letter.

Respondent's reply

445.(1) If the respondent receives a letter from the applicant written under this part, the respondent must write to the applicant, specifying the following matters—

(a) that the letter is a reply to the applicant's letter under this rule;

(b) what, if anything, the respondent proposes to do in response to the applicant's complaint;

(c) if applicable, why the applicant should not have the relief to be sought.

(2) The respondent's letter of reply must be sent to the applicant within the nominated time.

(3) The respondent must send a copy of the letter of reply to every person

[121] Chapter 4 (Service)

the respondent would be required to serve or notify if the applicant was making an application to the court for the relief sought.

(4) The letter must list the persons to whom a copy of the letter of reply is sent.

(5) The respondent need not comply with subrule (3) if complying would—

(a) cause the respondent undue delay, expense or inconvenience; or

(b) unduly prejudice the respondent if a person mentioned in subrule (3) saw the contents of the letter of reply.

Additional correspondence

446. Rules 444 and 445[122] do not prevent the applicant and respondent from writing to each other in addition to the correspondence required under this part.

Application to court

447.(1) The applicant may apply to the court only after—

(a) the applicant receives a reply from the respondent under rule 445;[123] or

(b) the nominated time for replying has passed.

(2) The following documents must be filed with the application—

(a) the applicant's letter to the respondent;

(b) the respondent's reply (if any);

(c) other relevant correspondence between the applicant and the respondent exchanged after—

(i) the applicant receives the respondent's reply; or

(ii) the nominated time for replying has passed;

(d) relevant responses from any other person notified under this part;

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122 Rule 444 (Applicant's letter to respondent) and 445 (Respondent's reply)

123 Rule 445 (Respondent's reply)

(e) a list of the affidavits (if any) on which the applicant wishes to rely.

Hearing of application

448.(1) The court may hear an application that does not comply with this part if the court directs.

(2) The court may decide an application to which this part applies on the basis of, or partly on the basis of, the contents of the letters between the applicant and the respondent.

(3) The court may receive affidavit evidence in relation to the application only if the court directs.

(4) Subrule (3) applies despite rule 390.[124]

CHAPTER 12—JURISDICTION OF JUDICIAL REGISTRAR AND REGISTRAR

Definitions for ch 12

449. In this chapter—

"relevant application" means—

(a) for a judicial registrar—an application the judicial registrar may hear and decide under rule 451; and

(b) for a registrar—an application the registrar may hear and decide under rule 452.

Application of ch 12

450. This chapter applies only to the Trial Division of the Supreme Court and the District Court.

[124] Rule 390 (Way evidence given)

Judicial registrar's powers to hear and decide applications

451.(1) A judicial registrar may constitute the court to hear and decide an application of a type prescribed by practice direction, other than the following—

(a) a contested application that may result in judgment or other final relief;

(b) an order or relief the court may grant in its equitable jurisdiction;

(c) an application relating to, or for, a writ of habeas corpus or about contempt;

(d) an application about cross-vesting under chapter 2, part 7.[125]

(2) The jurisdiction conferred on a judicial registrar by this chapter is in addition to any other jurisdiction conferred on a judicial registrar by these rules or another law, and includes any inherent or implied jurisdiction of the court.

(3) This rule is subject to rule 3[126] and any practice direction of the court excluding a matter from the judicial registrar's jurisdiction.

Registrar's powers to hear and decide applications

452.(1) A registrar of a central registry of the Supreme Court may constitute the court to hear and decide an unopposed application of the following type—

(a) an application for an order for passing accounts and allowing commission in probate and administration matters;

(b) an application for an order under the *Public Trustee Act 1978*, part 3.[127]

(2) A registrar of the Supreme Court or District Court may constitute the court to hear and decide—

(a) an application for an order to file any document or take any

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125 Chapter 2 (Starting proceedings), part 7 (Cross-vesting)

126 Rule 3 (Application)

127 *Public Trustee Act 1978*, part 3 (Appointment as trustee or personal representative)

document off the file or admit informal affidavits to be filed; or

(b) an application of a type prescribed by practice direction.

Court may decide that matter cannot be heard by judicial registrar or registrar

453. The court, as constituted by a judge, may order or direct that a relevant application in a particular proceeding cannot be heard by the court as constituted by a judicial registrar or registrar.

Example—

The court may order or direct that a relevant application in a proceeding cannot be heard by the court as constituted by a judicial registrar because the court, as constituted by a particular judge, is managing the entire proceeding.

Relevant application must not be made to the court

454. If a judicial registrar or registrar is available, a person may make a relevant application to the court as constituted by a judge only if the court gives leave.

Referring relevant application

455.(1) If a judicial registrar or registrar considers it would be proper for a relevant application to be decided by the court as constituted by a judge, the judicial registrar or registrar must refer the application to the court as constituted by a judge.

(2) The court, as constituted by a judicial registrar or registrar, must also refer the application to the court as constituted by a judge if, before the hearing starts—

(a) a party asks the court to do so; and

(b) the judicial registrar or registrar considers it is in the interests of justice to do so.

(3) On a reference, the court, as constituted by a judge, may give a direction about the conduct of the application.

Removing relevant applications

456. The court as constituted by a judge may, before the end of a hearing of a relevant application before the court as constituted by a judicial registrar or registrar, order that the application or a part of it be removed to the court as constituted by a judge.

Involvement of court as constituted by a judge

457.(1) This rule applies if there is—

(a) a reference of a relevant application under rule 455(1) or (2); or

(b) a removal of a relevant application under rule 456.

(2) The court as constituted by a judge may—

(a) hear and decide the application; or

(b) decide a matter arising under the application or remit a matter to the court as constituted by a judicial registrar or registrar with directions that the court considers appropriate; or

(c) remit the application to the court as constituted by a judicial registrar or registrar with directions that the court considers appropriate.

General powers

458.(1) A person who contravenes a subpoena issued by a judicial registrar or registrar is guilty of contempt of the court, unless the person has a reasonable excuse.

(2) The court as constituted by a judicial registrar or registrar must refer a matter involving a person's liability for contempt under this rule, including punishment for the contempt, to the court as constituted by a judge for decision.

(3) To prevent doubt, the court as constituted by a judicial registrar or registrar may make an order about costs in relation to a relevant application that the judicial registrar or registrar considers appropriate.

Decision

459. The court as constituted by a judicial registrar or registrar must, if practicable, decide a relevant application within 14 days after starting to consider it.

Power to correct mistakes

460. Rule 388[128] applies to the judicial registrar or registrar constituting the court under this chapter.

CHAPTER 13—TRIALS AND OTHER HEARINGS

PART 1—LISTING APPLICATIONS FOR HEARING

Application of pt 1

461. This part applies to originating and other applications.

List of applications

462. On the filing of an application, the registrar must record a return date for the matter to come before the court.

Estimate of hearing time

463.(1) A party bringing an application must write on the application an estimate of the duration of the hearing of the application.

(2) However, if the matter to which the application relates is settled, the party bringing the application must, as soon as practicable after the matter settles, notify the registrar that the matter is settled.

(3) Also, any party who becomes aware of a change in the estimated

128 Rule 388 (Mistakes in orders or certificates)

duration of the hearing must, as soon as practicable after becoming aware of the change, notify the registrar of the changed estimate.

Adjournments

464.(1) If an application is adjourned to a particular date, the registrar on a request for relisting must record it in the appropriate list for the adjourned date.

(2) If an application is adjourned to a date to be decided, a party may ask that it be relisted for a particular day, but the registrar is not bound by the request.

(3) If a party asks that an adjourned application be relisted and the estimate of the duration of the hearing of the application has changed and the revised estimate was not given to the judge or magistrate on the adjournment being granted, the party must give the registrar a revised estimate.

(4) The party who asked the registrar to relist an adjourned application must give all other parties reasonable written notice of the new date of hearing assigned by the registrar.

(5) If all parties consent to an adjournment, the file may be marked with a note to that effect.

(6) If all parties agree a date for an adjourned application, the registrar may relist the application for the agreed date or the first available date after the agreed date.

PART 2—SETTING TRIAL DATES

Application of pt 2

465. This part applies to proceedings for which a trial date has not been set.

Setting and vacating trial dates

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

(a) at a callover; or

(b) by a judge; or

(c) by a registrar at a judge's direction; or

(d) for a magistrates court—by the registrar, unless a magistrate otherwise directs.

Request for trial date

467.(1) A proceeding started by claim can not be set down for trial unless all the parties sign a request for trial date in the approved form.

(2) Subrule (1) applies unless the court otherwise orders.

Trial expedited

468.(1) The court may expedite the trial of a proceeding.

(2) To expedite the trial of a proceeding, the court may do all or any of the following—

(a) order the proceeding to be given priority in the allocation of a trial date, including by certifying for speedy trial;

(b) make an order about any of the following—

(i) setting a trial date;

(ii) subject to these rules, specifying the mode of trial;

(c) give a direction the court could give under chapter 10, part 1.[129]

Request for trial date

469.(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

[129] Chapter 10 (Court supervision), part 1 (Directions)

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 or copies of the request signed by all parties.

(4) For this rule, a party is **"ready for trial"** if—

(a) any order or requirement by notice under chapter 7, part 1[130] for the making of disclosure by or to the party or for the inspection of documents has been complied with; and

(b) any order requiring particulars to be given by or to the party has been complied with; and

(c) an affidavit in answer to any interrogatories delivered by or to the party has been filed; and

(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; 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[131] has been complied with.

Leave required for steps after request for trial date

470. After a party has signed a request for trial date, the party may do the following only with the court's leave—

(a) amend a pleading;

(b) request particulars;

(c) make an application in the proceeding.

130 Chapter 7 (Disclosure), part 1 (Disclosure by parties)

131 Chapter 14 (Particular proceedings), part 2 (Personal injury and fatal accidents)

PART 3—TRIAL

Division 1—Mode of trial

Application of pt 3

471. This part only applies to proceedings started by claim.

Jury

472. Unless trial by jury is excluded by an Act, a plaintiff in the statement of claim or a defendant in the defence may elect a trial by jury.

Third party proceeding

473.(1) A third party proceeding may be tried in the same way as the proceeding between the plaintiff and the defendant.

(2) However, if the court directs a third party proceeding be decided separately, the court may, on an application by the defendant or third party, order the third party proceeding to be tried by a jury.

Trial without jury

474. The court may order a trial without a jury if—

(a) the trial requires a prolonged examination of records; or

(b) involves any technical, scientific or other issue that can not be conveniently considered and resolved by a jury.

Changing mode of trial

475.(1) The court may order a trial by jury on an application made before the trial date is set by a party who was entitled to elect for a trial by jury but who did not so elect.

(2) If it appears to the court that an issue of fact could more appropriately be tried by a jury, the court may order a trial by jury.

Division 2—Proceedings at trial

Default of attendance

476.(1) If a defendant does not appear when the trial starts, the plaintiff may call evidence to establish an entitlement to judgment against the defendant, in the way the court directs.

(2) If the plaintiff does not appear when the trial starts, the defendant is entitled to dismissal of the plaintiff's claim and the defendant may call evidence necessary to establish an entitlement to judgment under a counterclaim against the plaintiff, in the way the court directs.

(3) Despite subrule (2), the defendant may submit to judgment if the plaintiff does not appear when the trial starts.

(4) The court may set aside or vary any judgment or order obtained because of subrule (1) on terms the court considers appropriate.

Adjournment

477. The court may at or before a trial adjourn the trial.

Division 3—View

View by court

478. The court may inspect a place, process or thing, and witness any demonstration about which a question arises in the proceeding.[132]

[132] See also the *Jury Act 1995*, section 52 (Inspections and views) for views by juries.

PART 4—DECISION WITHOUT PLEADINGS

Application of pt 4

479. This part applies to—

(a) a proceeding started by claim; and

(b) another proceeding in which a pleading, or a document permitted to be used as a pleading, has been filed.

No pleadings

480.(1) If the court considers a proceeding can be decided without pleadings, or without pleadings after the statement of claim, the court may, on the application of a party, order the proceeding to be decided in this way.

(2) If the court makes an order under subrule (1), the court may direct the parties to prepare a statement of facts and issues or, if the parties do not agree on a statement of facts and issues, the court may settle the statement itself.

Directions

481. If the court makes an order under rule 480, it may give a direction it is authorised to give under chapter 10, part 1.[133]

PART 5—SEPARATE DECISION ON QUESTIONS

Definition for pt 5

482. In this part—

"question" includes a question or issue in a proceeding, whether of fact or law or partly of fact and partly of law, and whether raised by pleadings,

[133] Chapter 10 (Court supervision), part 1 (Directions)

agreement of parties or otherwise.

Order for decision and statement of case for opinion

483.(1) The court may make an order for the decision by the court of a question separately from another question, whether before, at, or after the trial or continuation of the trial of the proceeding.

(2) The Supreme Court, other than the Court of Appeal, may also state a case for the opinion of the Court of Appeal.[134]

Orders, directions on decision

484. If a question is decided under this part, the court may, subject to rule 475, make the order, grant the relief and give the directions that the nature of the case requires.

Disposal of proceedings

485. The court may, in relation to a decision of a question under this part, as the nature of the case requires—

(a) dismiss the proceeding or the whole or part of a claim for relief in the proceeding; or

(b) give judgment, including a declaratory judgment; or

(c) make another order.

Form and content of separate question

486. A separate question or questions must—

(a) set out the question or questions to be decided; and

(b) be divided into paragraphs numbered consecutively.

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134 See chapter 18 (Appellate proceedings), part 2 (Applications and cases stated to Court of Appeal), division 2 (Cases stated).

For Magistrates Courts, see *Magistrates Courts Act 1921*, section 46 (Special case stated) and *District Court Act 1967*, section 112 (No appeal lies from Magistrates Court to Supreme Court).

PART 6—DECISION ON PAPERS WITHOUT ORAL HEARING

Definition for pt 6

487. In this part—

"decision without an oral hearing" means a decision made under this part by the court on written material and submissions without the parties attending.

Application of pt 6

488.(1) This part applies only to the District Court and the Trial Division of the Supreme Court.

(2) However, this part does not apply to a type of application exempted from this part by a practice direction.[135]

(3) Also, this part applies to an application made without notice to the other party, with any necessary changes.

Proposal for decision without oral hearing

489.(1) A party making an application, including an application in a proceeding, may propose in the application that it be decided without an oral hearing.

(2) If the applicant proposes the application be decided without an oral hearing, the court must decide the application without an oral hearing unless—

(a) under rule 491,[136] the court considers it inappropriate to do so; or

(b) under rule 494,[137] the respondent requires an oral hearing; or

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135 The *Supreme Court of Queensland Act 1991*, section 118D(2)(b).

136 Rule 491 (Court may decide that decision without an oral hearing is inappropriate)

137 Rule 494 (Respondent's right to require oral hearing)

(c) under rule 495,[138] the applicant abandons the request for a decision without an oral hearing; or

(d) the Chief Justice or Chief Judge suspends the operation of this rule by direction.

Procedure for making application

490.(1) If the applicant proposes an application be decided without an oral hearing, the application must—

(a) include a notice in the approved form; and

(b) be accompanied by a draft order and written submission in support.

(2) The registrar must set a date for deciding the application which is at least 10 days after the application is expected to be served on the respondent.

Court may decide that decision without an oral hearing is inappropriate

491.(1) The court may decide at any time that an application is inappropriate for decision without an oral hearing.

(2) If the court decides this before the date set for deciding the application, the court—

(a) must immediately notify the parties of the decision by telephone or in some other way; and

(b) may set a date for hearing.

Respondent's response

492. If the respondent wishes to present a written submission or evidence, other than oral evidence, the respondent must file and serve on the applicant a response with all relevant accompanying material at least 3 business days before the date set for deciding the application.

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138 Rule 495 (Applicant's right to abandon request for decision without an oral hearing)

Applicant's reply

493. The applicant may file and serve a reply to the response at least 1 business day before the date for deciding the application.

Respondent's right to require oral hearing

494.(1) This rule applies if the respondent requires an oral hearing.

(2) The respondent must, within 3 business days after being served with the application—

(a) file a notice in the approved form; and

(b) serve a copy of the notice on the applicant.

(3) After filing and serving the notice, the respondent must file and serve material in response to the application at least 3 business days before the date for deciding the application.

(4) The applicant may—

(a) attend the hearing and advance oral argument; or

(b) rely on the supporting material and not attend.

(5) The application is to be heard on a date set by the registrar.

Applicant's right to abandon request for decision without an oral hearing

495.(1) On receiving material from the respondent, the applicant may require an oral hearing.

(2) If the applicant requires an oral hearing, the applicant must, within 2 business days after receiving the respondent's material—

(a) file a notice in the approved form; and

(b) serve a copy of the notice on the respondent.

Concise written submissions

496. A written submission for a decision without an oral hearing must be concise.

Further information

497.(1) The court may obtain further information, including evidence, about the application by telephone (including conference telephone), fax, email or in another way.

(2) If the court decides to obtain further information, the court—

(a) must inform all parties of the substance of the inquiry; and

(b) give all parties an opportunity to be heard.

Order

498. If the court makes an order without an oral hearing, the registrar must send each party a copy of the order by post, fax or email together with a copy of the court's reasons.

PART 7—ASSESSORS AND SPECIAL REFEREES

Application of pt 7

499. This part does not apply to Magistrates Courts.

Assessors

500.(1) The court may sit with 1 or more assessors if the trial is not a trial by jury.

(2) A trial with assessors may be conducted as the court directs.

(3) Assessors may be chosen as the court directs.

Special referee

501.(1) The court may in a proceeding, except a trial by jury, refer a question of fact to a special referee—

(a) to decide the question; or

(b) to give a written opinion on the question to the court.

(2) If an order is made under subrule (1), the court may direct the special referee to make a report in writing to the court on the question referred to the special referee stating with reasons the referee's decision or opinion.

Procedure before special referee

502.(1) The court may order a special referee to hold a trial or to make an inquiry to enable the special referee to decide the question or to give the opinion.

(2) The court may, either in the reference or from time to time, give directions as to the conduct of the trial or inquiry.

(3) Unless the court otherwise orders, a trial before a special referee must be conducted as nearly as possible in the same way as a trial before a judge sitting alone.

(4) A special referee has the same authority as a judge, but may not deal with a person for contempt.

Submission of question to court

503.(1) A special referee may submit for the decision of the court a question that arises in the course of a trial or inquiry before the special referee.

(2) The special referee must comply with the decision of the court given on the question.

Report of special referee

504. On receipt of a special referee's report, the court—

(a) must supply a copy of the report to the parties; or

(b) may order the special referee to provide a further report or provide an explanation; or

(c) may remit the whole or part of the question originally referred for further consideration in accordance with the court's directions.

Use of opinion, decision or findings

505.(1) The court may—

(a) accept or reject all or part of a special referee's opinion, decision or findings in a report; and

(b) make an order or give judgment in the proceeding on the basis of the opinion, decision or findings in the report as it considers appropriate.

(2) An application by a party for an order or judgment under subrule (1) must be made on 7 days notice to the other parties.

Remuneration of special referee and assessor

506.(1) The court may decide, either in the first instance or finally—

(a) the remuneration of a special referee or assessor; and

(b) by which party or parties, and in what proportion, the remuneration is to be paid.

(2) The court may—

(a) order a party to give security for the remuneration of a special referee or assessor; and

(b) order a stay of the proceeding until the security is given.

PART 8—ASSESSMENT OF DAMAGES

Conditional order

507.(1) This rule applies if judgment is obtained for damages to be assessed.

(2) The order must state which court is to conduct the assessment.

(3) The court may decide that the assessment is to be conducted by that court or by—

(a) for a proceeding in the Supreme Court—the District Court; or

(b) for a proceeding in the Supreme Court or the District Court—a Magistrates Court; or

(c) the court constituted by a registrar or judicial registrar.

(4) A nomination under chapter 9, part 1[139] for a court that could be selected under subrule (3) is sufficient compliance with subrule (2).

(5) The court conducting the assessment may assess an amount of damages that would otherwise exceed the limits of the court's jurisdiction.

(6) This rule is subject to rule 508.

Defendant's default or summary decision

508.(1) This rule applies if—

(a) a judgment (including a default judgment) is given for damages (including the value of goods) to be assessed—

(i) because of a defendant's default mentioned in chapter 9, part 1[140] (other than under rule 283[141]); or

(ii) under chapter 9, part 2;[142] and

(b) the proceeding is carried on in relation to a claim for relief not decided by the judgment.

(2) The court must assess the damages at the trial of the other claim for relief, unless the court orders otherwise.

Assessment

509.(1) Unless the court directs otherwise, an assessment of damages must be conducted as nearly as possible in the same way as a trial.

(2) The hearing date for assessment must be fixed under part 2.[143]

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139 Chapter 9 (Ending proceedings early), part 1 (Default)

140 Chapter 9 (Ending proceedings early), part 1 (Default)

141 Rule 283 (Judgment by default—debt or liquidated demand)

142 Chapter 9 (Ending proceedings early), part 2 (Summary judgment)

143 Part 2 (Setting trial dates)

(3) When the hearing date is fixed, the plaintiff must serve notice of the hearing date on the defendant.

(4) However, if judgment is obtained in a Magistrates Court under chapter 9, part 1, subrule (3) does not apply and the registrar may proceed immediately to assess damages or refer the assessment of damages to a court constituted by a magistrate, without notice to the party against whom the judgment was obtained.

Directions

510. The court that will conduct an assessment may give directions about the conduct of the assessment and the procedures to be followed before the assessment takes place, including disclosure and the use of pleadings or another direction that could be given under chapter 10, part 1.[144]

Certificate of damages

511.(1) The registrar of the court conducting an assessment must certify the amount at which damages were assessed.

(2) The certificate must be filed in the court that gave the judgment for assessment of damages and a copy must be made available to the parties.

(3) On the filing of the certificate, the registrar of the court that gave the judgment must give a judgment or make an order, for the amount assessed.

Damages to time of assessment

512.(1) This rule applies if damages, including interest, may be assessed and—

(a) continuing damages are likely to happen; or

(b) there are—

(i) repeated breaches of recurring obligations; or

(ii) intermittent breaches of a continuing obligation.

144 Chapter 10 (Court supervision), part 1 (Directions)

(2) The damages are assessed for the period to the time of assessment, including damages for breaches occurring after the proceeding began.

PART 9—MAGISTRATES COURTS

Division 1—Application

Application of pt 9

513. This part applies only to Magistrates Courts.

Division 2—Simplified procedures for minor claims

Simplified procedures for minor debt claims

514.(1) The following procedures (**"simplified procedures"**) apply to minor debt claims—

(a) the plaintiff must file and serve a claim which includes a statement of—

(i) the amount or amounts claimed (including interest and, if the plaintiff wants to claim it, the filing fee for the claim); and

(ii) how the amount is worked out and came to be owing;

(b) the defendant must include in the notice of intention to defend or defence a response answering the plaintiff's assertions in the claim and stating any amount the defendant claims to owe the plaintiff, how any amount owing is worked out, and why the defendant claims to owe that amount;

(c) a party may not require another party to disclose documents in the possession or under the control of the other party and directly relevant to an allegation in issue in a proceeding, unless the court otherwise orders;

(d) all parties must have all relevant documents available at the

hearing;

(e) unless the parties otherwise agree or the court gives leave, a party must not appear by[145]—

(i) a lawyer; or

(ii) a person who has a legal qualification under the laws of this or another State; or

(iii) a person who is of the nature of a professional advocate;

(f) the court—

(i) may hear the claim in private; and

(ii) is not bound by laws of evidence or procedure applying to a proceeding in the court; and

(iii) may inform itself of the facts in any way it considers appropriate; and

(iv) must observe the rules of natural justice; and

(v) is not required to make a record of the evidence given but must record the reasons for its decision.

(2) Before giving or refusing leave for a representative mentioned in subrule (1)(e), the court must consider the following matters—

(a) the difficulty of any question of law or fact raised or likely to be raised in the proceeding;

(b) any prejudice likely to be caused to a party by the presence or absence of the representative;

(c) whether, under a contract of insurance, a party's rights in relation to the claim have been subrogated to an insurer.

(3) If at any stage—

(a) the court considers there is a reasonable possibility of settling something in dispute by mediation; and

(b) the parties agree to refer their dispute to mediation;

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145 See also the *Magistrates Court Act 1921*, section 18 (Appearance to be in person or by barrister, or solicitor, or other person allowed by the court).

the court may make any order or give directions to enable a consent order to be filed under the *Magistrates Courts Act 1921*, section 28.[146]

(4) Subrule (3) does not prevent the court—

(a) attempting to settle the dispute; or

(b) continuing to hear and decide a proceeding that can not be settled by mediation; or

(c) making orders to give effect to an agreement reached by mediation or otherwise.

Court's decision about minor debt claim

515. In deciding a minor debt claim, the court must make the orders it considers fair and equitable to the parties to the proceeding but may, if the court considers it appropriate, dismiss the claim.[147]

Costs in minor debt claims

516. The only costs a party may be awarded in relation to a minor debt claim are filing fees and a service fee and travelling allowance at the prescribed rate for bailiff's fees.

Particular rules do not apply to minor debt claims

517. The following provisions do not apply to a minor debt claim—

(a) chapter 6;

(b) chapter 9, part 2;

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146 *Magistrates Courts Act 1921*, section 28 (Parties may agree to ADR process). See also section 29 (Court may consider and order reference to ADR process).

147 The *Magistrates Courts Act 1921*, section 45A provides that no appeal lies from judgments in minor debt claims or, if the parties agree, in claims dealt with under simplified procedures.

(c) chapter 13, parts 2 to 6.[148]

Address for service

518. In a proceeding for a minor debt claim, the business address of a party for the purposes of rule 17 includes the address of an agent of the party under rule 19(2) or 136.

Simplified procedures may apply in other cases

519.(1) This rule applies to claims other than minor debt claims.

(2) If, in relation to a minor claim, the court considers the simplified procedures will help decide the claim, the court may apply all or any of the simplified procedures (other than the procedures mentioned in rule 514(1)(a) and (b)) for deciding the claim and rule 515.

(3) The parties to a claim may agree in writing to the application of all or any of the simplified procedures (other than the procedures mentioned in rule 514(1)(a) and (b)) for deciding the claim.

(4) The parties must file a copy of the agreement.

(5) Rule 514(c), (d) and (f) apply to all minor claims other than to the extent necessary for compliance with chapter 14, part 2.[149]

(6) The court must hear and decide the claim in accordance with the provisions applied under subrule (2) or (3), unless the court considers deciding the claim under the applied provisions would be an abuse of process.

No counterclaim to minor debt claims

520.(1) In a proceeding for a minor debt claim, the defendant may not make a counterclaim in response to the claim.

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148 Chapter 6 (Pleadings)
Chapter 9 (Ending proceedings early), part 2 (Summary judgment)
Chapter 13 (Trials and other hearings), parts 2 (Setting trial dates), 3 (Trial), 4 (Decision without pleadings), 5 (Separate decision on questions) and 6 (Decision on papers without oral hearing)

149 Chapter 14 (Particular proceedings), part 2 (Personal injury and fatal accidents)

(2) However, the court may—

(a) order that circumstances giving rise to a counterclaim be dealt with as a separate minor debt claim; and

(b) if a defendant has brought a proceeding for a minor claim against a plaintiff for a matter that, apart from subrule (1) may have been the subject of a counterclaim—order the enforcement of any judgment in the first proceeding be suspended for the time and on the conditions it considers appropriate; and

(c) give any directions the court considers appropriate.

Notices in minor debt claims

521. If, at any time before a judgment is given on a minor debt claim, a party gives to the registrar a notice of intention to defend the claim, the registrar must immediately give notice by post to each party to the claim of the time, at least 7 days after the notice is given, and the place, for hearing and deciding the claim.

Failure to appear in a minor debt claim

522.(1) If neither party appears at the hearing of a minor debt claim, the court may dismiss the proceeding.

(2) If the plaintiff does not appear at the hearing but the defendant does, the court may—

(a) if the defendant admits part of the claim—give judgment for the plaintiff for the part of the claim the defendant admits; or

(b) if the defendant does not admit any part of the claim—dismiss the proceeding.

(3) If the plaintiff appears at the hearing but the defendant does not, the court may give the judgment or make the order the court considers just without requiring the plaintiff to give any evidence of the plaintiff's claim, unless it considers the giving of evidence desirable.

(4) For this rule, a party is taken to have appeared at the hearing if the party—

(a) files in the court before the date of the hearing an affidavit[150] of the facts in issue with a copy of the documents the party considers relevant to the facts in issue as exhibits to the affidavit; and

(b) sends to the other party a copy of the affidavit.

(5) If the court is satisfied, on application made to it within a reasonable time after a judgment given in the absence of a party came to the notice of the absent party, there was enough reason for the party's absence, the court may set aside the judgment and its enforcement.

(6) The court must rehear a proceeding set aside under subrule (5) then or at a later time set by the court.

(7) At any time during the hearing the court may give the directions for the conduct of the proceeding it considers appropriate and necessary to enable justice to be done between the parties.

Division 3—Directions conferences

Court may require directions conferences

523.(1) At any time after a notice of intention to defend and defence is filed in a proceeding started by claim, the court may direct that a conference (**"directions conference"**) be held.

(2) A directions conference may consider the following matters—

(a) the possibility of settling the proceeding at the directions conference without a hearing or by referring it to mediation;

(b) the simplification of the issues;

(c) the use of the simplified procedures;

(d) the possibility of obtaining admissions that may facilitate the hearing or reduce costs;

(e) for proceedings other than minor debt claims—the necessity or desirability of further pleadings or amendments to the existing pleadings;

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150 See chapter 11 (Evidence), part 7 (Affidavits).

(f) the amount of damages;

(g) the possible length of any trial;

(h) the burden of costs a party may have to bear;

(i) anything else that may help dispose of the proceeding.

(3) The court may direct that—

(a) the directions conference be held at the date, time and place stated in the direction; and

(b) all parties attend personally with their counsel or solicitor or, for a corporation, a person with authority to compromise the claim for the corporation.

(4) However, if, in the court's opinion, personal attendance with counsel or solicitor would cause unreasonable hardship, inconvenience or excessive cost to a party, the court must not direct the personal appearance of a party with counsel or solicitor.

(5) If the court acts on its own initiative, the court must give the parties at least 2 business days notice of the date, time and place of the directions conference.

(6) At a directions conference, each party must—

(a) be sufficiently aware of the party's case so as to be able to answer any question that may be asked about the claim or defence; and

(b) be in a position to make and respond properly to an offer of settlement.

(7) Also, each party's counsel or solicitor must—

(a) be sufficiently aware of his or her client's case so as to be able to answer any question that may be asked about the claim or defence; and

(b) be in a position to make and respond properly to an offer of settlement.

(8) The court may adjourn a proceeding listed for hearing so a directions conference may be held.

Holding directions conference

524.(1) The court must hold a directions conference in private and for the purpose may be constituted by a magistrate or registrar.

(2) The court may—

(a) adjourn the directions conference; or

(b) direct that a further directions conference be held before the court as constituted or before the court constituted by someone else mentioned in subrule (1); or

(c) make the suggestions the court considers appropriate to help in promptly disposing of the proceeding; or

(d) make any orders necessary to give effect to a memorandum signed by parties under this rule; or

(e) give a party the directions the court considers appropriate.

(3) The court must record on the file any formal orders made by the court at a directions conference, but must not keep a record of anything discussed at the conference.

(4) At a directions conference, any 2 or more parties or their counsel or solicitor may sign a memorandum of the results of the conference including any admissions made by the parties.

(5) The memorandum must be attached to the file in the way the court directs at the directions conference.[151]

(6) Unless the court otherwise orders, the costs of a directions conference are costs in the proceeding and may be assessed by the court constituted for the conference, the court hearing the proceeding, or assessed under these rules.[152]

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151 See also the *Supreme Court of Queensland Act 1991*, section 77 (Resolution agreement).

152 The *Supreme Court of Queensland Act 1991*, section 78 protects the confidentiality of things said and done, and documents tendered at a directions conference unless all the parties agree or the evidence is a resolution agreement.

Failure to attend directions conference

525.(1) This rule applies if a person directed to attend a directions conference fails to attend the conference.

(2) If the court is satisfied by affidavit that the person who failed to attend was given notice of the date, time and place of the directions conference, the court may—

(a) if the party failing to attend is the plaintiff or the plaintiff's counsel or solicitor—stay or dismiss the proceeding; or

(b) if—

(i) the party failing to attend is a defendant or the defendant's counsel or solicitor; and

(ii) the claim discloses a sufficient cause of action;

make the orders or give the judgment the court considers just; or

(c) make the order for costs the court considers appropriate, whether or not the court makes an order under paragraph (a) or (b) or gives judgment under paragraph (b).

(3) Also, the court may give the directions for listing the proceeding for hearing or for holding another directions conference the court considers appropriate in the circumstances.

(4) If the court makes an order or gives judgment under subrule (2), the court may, on application made within the time the court considers reasonable, set aside the order and order a new trial.

General directions about directions conferences

526. Nothing in this division prevents a magistrate giving to a registrar the general or special directions the magistrate considers appropriate for arranging and conducting directions conferences.

CHAPTER 14—PARTICULAR PROCEEDINGS

PART 1—ACCOUNT

Order for account

527.(1) If an account is claimed in the first instance or if a claim involves taking an account, the court may at any stage order an account to be taken.

(2) A judgment or an order directing an account to be taken must specify—

(a) the transaction or series of transactions of which the account is to be taken; and

(b) the basis of the account; and

(c) the period of the account.

Directions

528.(1) If the court directs an account to be taken, it may, by the judgment or the order directing an account or a later order, give directions about taking or verifying the account, including but not limited to directions about the following matters—

(a) the advertisements to be published, the evidence to be adduced, the procedure to be followed, and the time and place for taking the account;

(b) whether in taking the account the books and records of account are evidence of the matters contained in them;

(c) the persons (whether or not parties to the proceeding) to be served with the judgment or order and who are entitled to be heard on the taking of the account;

(d) the persons to be called as witnesses at the taking of the account;

(e) whether a judgment should be given for a balance found to be owing.

(2) If the court directs that the books and records of account are evidence of the matters contained in them, the parties have leave to take objections.

Service of judgment

529.(1) A judgment or other order for an account to be served on a person who was not a party to the proceeding must be served personally.

(2) The account may not be taken until all necessary persons have been served with the judgment or order for an account unless the court otherwise orders.

(3) If the court dispenses with service, the court may also order that the persons as to whom service is dispensed with are bound by the judgment or order for an account, except if it was obtained by fraud or nondisclosure of material facts.

Form and verification

530.(1) Unless the court orders otherwise, all items in an account must be numbered consecutively.

(2) The party seeking the account (the **"accounting party"**) must, unless the court orders otherwise, verify the account by an affidavit and the account must be made an exhibit to the affidavit.

(3) An alteration in an account verified by affidavit may not be made by erasure and the alteration must be marked by the initials of the person who took the affidavit.

(4) On the taking of an account, all payments over $250 must be verified by receipts, unless the court orders otherwise.

(5) The court may order that the documents relating to an account be produced for inspection by another party at the office of the accounting party's solicitor and that only the contested items be brought before the court or person taking the account.

Filing and service

531. Unless the court orders otherwise, the accounting party must—

(a) file the account and affidavit; and

(b) serve copies as soon as practicable after they are filed on all other persons entitled to be heard at the taking of the account.

Challenging account

532. A person who challenges the accuracy of an account must specify the errors or omissions alleged and serve a statement containing brief details of the errors or omissions on the accounting party.

Witness

533. A witness on the taking of an account or the deponent of an affidavit read at the taking of an account may be examined or cross-examined on oath.

Allowances

534. In taking an account directed by a judgment or order, all just allowances for the expenses and claims of the accounting party may be made without a direction for the purpose.

Delay

535.(1) If there is delay in prosecuting an account, the court may make orders for staying or expediting the proceeding, or for the conduct of the proceeding.

Before whom account taken

536. An account must be taken before the registrar unless the court directs it to be taken before a special referee or the court itself takes the account.

Powers exercisable on taking account

537.(1) On the taking of an account, advertisements may be published, witnesses subpoenaed, oaths administered, the production of documents and records ordered and oral examinations conducted.

(2) An order under subrule (1) may be made by the court or person taking the account.

Class interests

538.(1) If it appears to the court that the interests of the persons who are entitled to attend the taking of the account can be classified, the court may order each class to be represented by one solicitor and counsel.

(2) Despite an order under subrule (1), a person who objects to being represented as a member of a class—

(a) may be separately represented; and

(b) if separately represented, is not entitled to an order for costs and may be ordered to pay additional costs incurred by another person because of the separate representation.

(3) The court may order separate representation for members of a class who are represented by one solicitor and counsel.

Reference to court

539.(1) If an account is taken by the registrar or a special referee, the registrar or special referee must, if asked by a person interested in the account, or on his or her own initiative may, refer to the court a question arising and the account must be taken in accordance with a direction the court gives on the reference.

(2) A direction given by the court under subrule (1) may be varied at any time until a certificate is filed embodying the results of the account.

Certificate as to account

540.(1) The result of the taking of an account must be stated in a certificate that must be filed immediately after it is settled.

(2) A person who is interested in the account may apply to the court for it to be set aside or varied within 7 days after the day the certificate was filed.

(3) If a person applies for a certificate to be set aside or varied—

(a) the items objected to must be specified and the grounds of the

objection must be concisely stated; and

(b) the application must be decided on the same evidence as was presented at the taking of the account, unless the court gives leave for further evidence to be presented.

(4) A certificate becomes final and is binding on the parties at the end of 7 days after the day it is filed unless a person applies under subrule (2) for the certificate to be set aside or varied.

(5) In special circumstances the court may set aside or vary a certificate after it has become final and binding.

(6) The certificate may not set out the judgment or order, the documents, evidence or reasons, but it must refer to the judgment or order or the documents or evidence so the basis of the result of the account is stated in the certificate.

(7) The certificate must specify the items allowed and disallowed.

(8) The party who is responsible for the prosecution of the judgment or order must prepare a draft certificate for settling by the court or the person who took the account on at least 7 days notice to all persons who appeared at the taking of the account.

Further consideration

541. If a proceeding is adjourned for an account to be taken, it may be set down for further hearing within 7 days after the certificate becomes final and binding.

Procedure for inquiries

542. Rules 527 to 541 apply, with necessary changes, to the making of an inquiry.

Directions

543. The court may, if it orders the making of an inquiry, by the same or later order, give a direction or make an order about the making of the inquiry it considers appropriate.

PART 2—PERSONAL INJURY AND FATAL ACCIDENTS

Definition for pt 2

544. In this rule—

"defendant" includes a defendant by election.

Application of pt 2

545.(1) This part applies to a proceeding for damages for personal injury or death.

(2) This part is subject to chapter 13, part 2.[153]

Waiving compliance

546. A party may, by written notice, waive further compliance with this part.

Plaintiff's statement of loss and damage

547.(1) The plaintiff must serve on the defendant a written statement of loss and damage within 28 days after the close of pleadings.

(2) The statement must be served before a request for trial date is filed.

(3) The statement must have the following information—

(a) details of any amount claimed for out of pocket expenses and documents in the possession or under the control of the plaintiff about the expenses;

(b) if there is a claim for economic loss—

(i) the name and address of each of the plaintiff's employers in the 3 years immediately before the injury and since the injury, the period of employment by each employer, the capacity in which the plaintiff was employed by each

[153] Chapter 13 (Trials and other hearings), part 2 (Setting trial dates)

employer and the plaintiff's net earnings for each period of employment; and

(ii) if the plaintiff is self-employed—details of the plaintiff's net income in the 3 years immediately before the injury and since the injury; and

(iii) details of the amount the plaintiff claims (if any) for loss of income to the date of the statement; and

(iv) details of any disability resulting in loss of earning capacity and of the amount the plaintiff claims for future economic loss; and

(v) if the plaintiff is self-employed—additional details substantiating the plaintiff's claim for economic loss;

(c) details of the pain and suffering experienced by the plaintiff and the loss of amenities caused by the injuries (including the physical, social and recreational consequences of the injuries sustained);

(d) details of any other amount sought as damages;

(e) the names and addresses of all hospitals, doctors and experts who have examined the plaintiff or who have given reports on the plaintiff's injury, loss (including economic loss) or treatment;

(f) the documents in the possession or under the control of the plaintiff about the plaintiff's injury, loss (including economic loss) or treatment.

Plaintiff's statement must identify particular documents

548.(1) Without limiting rule 547(3)(f), a plaintiff's statement of loss and damage must identify the following documents—

(a) hospital and medical reports;

(b) hospital, medical and similar accounts;

(c) documents about the refund of workers' compensation payments, social security benefits or similar payments;

(d) if there is a claim for economic loss—

(i) documents about the amount of wages paid to the plaintiff—

(A) in the 3 years immediately before the injury; and

(B) since the injury; and

(ii) if the plaintiff is self-employed—documents about the plaintiff's net income—

(A) in the 3 years immediately before the injury; and

(B) since the injury;

(iii) documents about the tax paid by the plaintiff and the taxable income of the plaintiff—

(A) in the 3 years immediately before the injury; and

(B) since the injury;

(e) any other documents about the plaintiff's claim for damages.

(2) If the defendant asks for a copy of a document identified in the plaintiff's statement of loss and damage, the plaintiff—

(a) must give the defendant a copy; and

(b) may charge a reasonable amount for giving the copy.

(3) If the plaintiff intends to rely at the trial on evidence of the plaintiff's injury, loss (including economic loss) or treatment (including future treatment) not in a report that, if it were in a report, would be required to be identified under subrule (1), the plaintiff must, before the request for trial date is filed, serve on the defendant the evidence in the form of a report, or a proof of the evidence.

(4) At the trial, the plaintiff may call or tender evidence not identified in the plaintiff's statement of loss and damage or not given to the defendant under this part only if—

(a) the evidence is called or tendered by consent; or

(b) the evidence is called or tendered in cross-examination; or

(c) the court for special reason gives leave.

Plaintiff's statement must be accurate

549.(1) The statement of loss and damage must be accurate when served.

(2) If there is a significant change in information given in the statement of loss and damage after it has been served and before a trial date is set, the plaintiff must serve on the defendant a supplement to the statement.

(3) After a trial date is set, the plaintiff must give any further documents mentioned in rule 548(1) to the defendant as soon as practicable, or, if the documents are voluminous, must identify the documents to the defendant and make them available for inspection by the defendant.

Defendant's statement of expert and economic evidence

550.(1) A defendant must serve on the plaintiff a written statement of expert and economic evidence that includes the names and addresses of all hospitals, doctors, and experts who have given the defendant reports on the plaintiff's injury, loss (including economic loss) or treatment.

(2) The statement must be served within 28 days after the defendant is served with the plaintiff's statement of loss and damage, but before a request for trial date is filed.

Defendant's statement must identify particular documents

551.(1) Without limiting rule 550, a defendant's statement must identify the following documents—

(a) hospital and medical reports;

(b) hospital, medical and similar accounts;

(c) documents about the refund of workers' compensation payments, social security benefits or similar payments;

(d) if there is a claim for economic loss and the defendant was an employer of the plaintiff—

(i) documents about the amount of wages paid to the plaintiff by the defendant in the 3 years immediately before the plaintiff's injury; and

(ii) documents about the tax paid by the plaintiff and the taxable

income of the plaintiff in the 3 years immediately before the plaintiff's injury.

(2) If the plaintiff asks for a copy of a document identified in the defendant's statement of expert and economic evidence, the defendant—

(a) must give the plaintiff a copy; and

(b) may charge a reasonable amount for giving the copy.

(3) If the defendant intends to rely at the trial on evidence of the plaintiff's injury, loss (including economic loss) or treatment (including future treatment) not in a report that, if it were in a report, would be required to be identified under subrule (1), the defendant must, before the request for trial date is filed, serve on the plaintiff the evidence in the form of a report, or a proof of the evidence.

(4) At the trial, the defendant may call or tender evidence not identified in the defendant's statement of expert and economic evidence or not given to the plaintiff under this part only if—

(a) the evidence is called or tendered by consent; or

(b) the evidence is called or tendered in cross-examination; or

(c) the court for special reason gives leave.

Defendant's statement must be accurate

552.(1) The statement of expert and economic evidence must be accurate when served.

(2) If there is a significant change in information given in the statement of expert and economic evidence after it has been served and before a trial date is set, the defendant must serve on the plaintiff a supplement to the statement.

(3) After a trial date is set, the defendant must give any further documents mentioned in rule 551(1) to the plaintiff as soon as practicable, or, if the documents are voluminous, must identify the documents to the plaintiff and make them available for inspection by the plaintiff.

Conference if personal injury damages claim

553.(1) A party may, after service of a statement of loss and damage, or service of the statement is waived, give to the other parties a written notice specifying a day, time and place for the holding of a conference to discuss, and, if possible, reach agreement on, all matters in dispute in the proceeding.[154]

(2) However, in a proceeding in the Magistrates Court, the conference is in the nature of a directions conference under rule 523.[155]

(3) If a party who is given the notice unreasonably neglects or refuses to attend a conference, the court may, on the application of a party who, except for the holding of the conference, is ready for trial, do all or any of the following—

(a) make an order about any of the following—

(i) setting a trial date;

(ii) subject to a restriction on the right to a trial by jury, specifying the mode of trial;

(b) give a direction the court could give under chapter 10, part 1;[156]

(c) without prejudice to another power or discretion of the judge or registrar, require the party neglecting or refusing to attend a conference to pay the costs of the application immediately;

(d) make another appropriate order, including, for example, an order sending the case to mediation.

(4) In this rule—

"ready for trial" see rule 469(4).[157]

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154 See *Supreme Court of Queensland Act 1991*, section 78 (Confidentiality) for the limitations on the admissibility of anything done or said, an admission made, or a document tendered, at a conference.

155 Rule 523 (Court may require directions conference)

156 Chapter 10 (Court supervision), part 1 (Directions)

157 Rule 469 (Request for trial date)

Insurers

554.(1) An insurer who is defending a proceeding in the name of a defendant is bound by this part.

(2) The insurer must, in relation to documents in the possession or under the control of the insurer, comply with this part as if the insurer were a defendant.

(3) The obligations of the insurer under subrule (1) are additional to, and not in substitution for, the obligations of the defendant under this part.

(4) However, the defendant and the insurer may make a joint statement of expert and economic evidence about documents in their possession or under their control.

(5) The joint statement must state it is made jointly by the defendant and the insurer.

(6) If a joint statement is not made, the defendant and insurer must serve separate statements.

Legal advice

555. This part does not require a party to disclose the existence, or nature, of legal advice given to the party.

Pleadings

556. Compliance with this part does not relieve a party of the obligation to amend a pleading if it is necessary to do so to properly plead the party's case.

Costs

557. The court may, in making an order for costs, take into account a party's failure to comply, or the way a party has complied, with this part.

Assessment of damages

558.(1) This rule does not apply to the Magistrates Court.

(2) If—

(a) an order is made or judgment given for the assessment of damages before the plaintiff complies with this part; and

(b) the defendant has an address for service;

the plaintiff must, at least 21 days before the date set for the assessment, serve on the defendant a statement of loss and damage complying in all respects with the requirements of this part.

(3) If the defendant asks for a copy of a document identified in the plaintiff's statement, the plaintiff—

(a) must give the defendant a copy; and

(b) may charge a reasonable amount for giving the copy.

(4) If the defendant intends to appear on the assessment, the defendant must serve on the plaintiff 7 days before the date set for the assessment a statement of expert and economic evidence complying in all respects with the requirements of this part.

(5) This part, with any changes necessary, applies to an assessment of damages.

PART 3—MONEYS IN COURT

Division 1—General

Application of division 1

559. This division does not apply for payments under the *Defamation Act 1889*, section 22.

Payment or deposit of money in court

560.(1) This rule applies if a person is required or permitted by an Act, these rules, an order of the court or another law or practice to pay into or deposit money in court.

(2) The person must file an affidavit complying with the *Court Funds Regulation 1999.*

(3) The affidavit must be served on all other parties and any other interested person as soon as practicable after it is filed.

Disposal of money in court

561.(1) An application for payment out of court of money paid into or deposited in court in a proceeding must be served on all other parties.

(2) A person who applies for payment out of court of money paid into or deposited in court in a proceeding must state whether the person is aware of a right or a claim made by another person to all or part of the money.

(3) Unless these rules provide otherwise, money paid into or deposited in court must be dealt with under the *Court Funds Act 1973*.

Division 2—Defamation

Defendant's payment into court

562.(1) This rule applies if a party makes a payment into court under the *Defamation Act 1889*, section 22.[158]

(2) The defendant may increase the amount paid into court.

(3) The defendant must file a notice in the approved form and serve it on the plaintiff and every other defendant—

(a) on making a payment into court; or

(b) on increasing an amount already paid into court.

(4) The defendant may not withdraw money paid into court or amend the notice of payment into court without the court's leave.

158 *Defamation Act 1889*, section 22 (In an action against a newspaper for libel the defendant may plead that it was inserted without malice and without neglect and may pay money into court as amends)

(5) If 2 or more causes of action for defamation are joined in a proceeding and money is paid into court, then unless the court orders otherwise, the notice of payment must specify—

(a) the cause or causes of action for which the payment is made; and

(b) the amount paid for each cause of action.

(6) Within 14 days after the day of service of the notice of payment into court or, if more than 1 payment has been made or the notice has been amended, within 14 days after the day of service of the last notice or the amended notice, but, in any case, before the trial or hearing of the proceeding starts, the plaintiff may—

(a) if the money was paid for the cause of action or all of the causes of action for which damages are claimed—accept the money in satisfaction of the cause of action or causes of action; or

(b) if the money was paid for some only of the causes of action—accept in satisfaction of a cause or causes of action the amount specified for the cause or causes of action in the notice of payment;

by filing a notice in the approved form and serving it on every defendant in the proceeding.

(7) If in a proceeding against several defendants sued jointly the plaintiff accepts money paid into court by any of the defendants in satisfaction of the cause of action against that defendant, then the proceeding is stayed as against that defendant only, but the amount paid into court is set off against any damages awarded to the plaintiff against another defendant against whom the proceeding is continued.

(8) If a party takes money out of court in satisfaction of a cause of action, the plaintiff or the defendant may apply to the court for leave to make in open court a statement in terms approved by the court.

(9) If money paid into court is not accepted under subrule (6), the money remaining in court may not be paid out except under an order of the court that may be made at any time before, at or after the trial or hearing of the proceeding, and if the order is made before the trial or hearing the money may not be paid out except in satisfaction of the cause or causes of action for which it was paid in.

(10) If money paid into court is liable to be paid out, the money—

(a) must be paid to—

(i) the party entitled to the money; or

(ii) on the written authority of the party entitled to the money—the party's solicitor; or

(b) with the court's leave—may be paid to the party's solicitor without the party's written authority.

(11) In exercising discretion as to costs, the court must, to the extent it considers appropriate, take into account a payment of money into court and the amount of the payment.

Costs in particular case

563.(1) This rule applies if the plaintiff in a proceeding for defamation against several defendants sued jointly accepts—

(a) money paid into court by 1 of the defendants in satisfaction of the cause of action, or all of the causes of action; or

(b) an amount or amounts paid for 1 or more specified causes of action and gives notice of abandonment of the other causes of action.

(2) The plaintiff may, after 4 business days from payment out and unless the court orders otherwise, have assessed the costs incurred to the time of receipt of the notice of payment into court (including the expenses of taking the money out).

(3) Two business days after the assessment, the plaintiff is entitled to judgment for the plaintiff's assessed costs and to require the judgment to be filed.

PART 4—JUDICIAL REVIEW

Definitions for pt 4

564. In this part—

"review application" means an application started or continued under rule 566 to 569.

"the Act" means the *Judicial Review Act 1991*.

Application of pt 4

565. This part applies only to the Supreme Court.

Form of application for statutory order of review

566.(1) An application for a statutory order of review must be made in the approved form.

(2) If the grounds of the application include an allegation of fraud or bad faith, the applicant must include in the application particulars of the fraud or bad faith on which the applicant relies.

Form of application for review

567.(1) An application for review under section 43 of the Act[159] must be made in the approved form.

(2) If the grounds of the application include an allegation of fraud or bad faith, the applicant must include in the application particulars of the fraud or bad faith on which the applicant relies.

Application for statutory order of review and for review

568. If—

(a) an application for a statutory order of review under the Act; and

(b) an application for any relief mentioned in section 43 of the Act;

relate to the same matter—

(c) the applications may be made in the one application; and

(d) that application must, with necessary changes, be made in the approved form.

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159 *Judicial Review Act 1991*, section 43 (Application for review)

Relief based on application for review if application made for statutory order of review

569. If—

(a) an application is made under rule 566 or 568 for a statutory order of review in relation to—

(i) a decision; or

(ii) conduct engaged in, or proposed to be engaged in, for the purpose of making a decision; or

(iii) a failure to make a decision; and

(b) the court considers—

(i) the decision to which the application relates does not fall within the definition **"decision to which this Act applies"** in section 4 of the Act; and

(ii) any relief or remedy mentioned in section 43 of the Act may have been granted in relation to the decision, conduct or failure if it had been sought in an application for review at the time of starting the application for a statutory order of review;

the court may, instead of refusing the application, order the proceeding to continue as if it had been started as an application for review at that time.

Filing documents

570. On the filing of a review application, or as soon afterwards as is practicable, the applicant must file copies of any of the following documents in the applicant's possession, unless a copy of the document has been filed previously in the proceeding—

(a) a statement of the conditions of the decision to which the application relates;

(b) either—

(i) a statement relating to the decision given to the applicant

under section 33 of the Act;[160] or

(ii) any other statement given by or on behalf of the person who made the decision purporting to include—

(A) findings of fact; and

(B) a reference to the evidence or other material on which the findings were based; and

(C) the reasons for making the decision.

Setting directions hearing

571. On the filing of a review application, the registrar must set a time, date and place for a directions hearing before the court.

Service on other parties

572. The applicant must serve—

(a) a copy of the review application; and

(b) notice of the time, date and place of the directions hearing; and

(c) a copy of all statements filed under rule 570;

on the other parties to the proceeding at least 14 days before the directions hearing, unless the time for service is shortened by the court.

Orders and directions at directions hearing

573.(1) At the directions hearing, the court may make any orders and give any directions relating to the conduct of the proceeding it considers appropriate.

(2) Without limiting subrule (1), the court may make orders relating to—

(a) disclosure and interrogatories; and

(b) inspections of property; and

160 *Judicial Review Act 1991*, section 33 (Decision maker must comply with request except in certain circumstances)

(c) admissions of fact or of documents; and

(d) the defining of the issues by pleadings or otherwise; and

(e) the standing of affidavits as pleadings; and

(f) inclusion of parties; and

(g) the method and sufficiency of service; and

(h) amendments; and

(i) the filing of affidavits; and

(j) the giving of particulars; and

(k) a matter specified in rule 367.[161]

(3) Without limiting subrule (1), the court may—

(a) order that evidence of a particular fact be given at the hearing—

(i) by production of documents or entries in books; or

(ii) by copies of documents or entries; or

(iii) by an agreed statement of facts; or

(iv) otherwise as the court directs; and

(b) order that an agreed bundle of documents be prepared by the parties; and

(c) order that the reports of experts be exchanged; and

(d) order that a party serve a copy of the application on the Attorney-General; and

(e) order that a party give notice of the application to the persons or classes of persons, and in the way, the court directs; and

(f) set a date for a further directions hearing; and

(g) set a date for hearing; and

(h) set a date after which the parties are directed to arrange with the registrar a date for hearing.

161 Rule 367 (Directions)

(4) The court may revoke or vary an order made under subrule (1), (2) or (3).

Hearing and determination of application at directions hearing if parties agree

574. The court may hear and decide the review application on a directions hearing if the parties agree.

Nonappearance of parties at directions hearing

575.(1) If no applicant appears before the court on a directions hearing, the court may—

(a) dismiss the review application; or

(b) make any other order it considers appropriate.

(2) If no respondent appears before the court on a directions hearing, the court may give the directions the court considers appropriate.

Application for dismissal or stay at directions hearing

576.(1) A party may apply to the court for an order under part 1, division 3 or section 48 of the Act[162] at a directions hearing if an application is served on the other parties to the proceeding at least 3 business days before the directions hearing.

(2) The court may shorten the time for service, or dispense with service, under subrule (1).

Application for dismissal to be made promptly

577. A party who seeks to have a review application dismissed—

(a) on a ground set out in part 1, division 3 or section 48 of the Act; or

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162 *Judicial Review Act 1991*, part 1 (Preliminary), division 3 (Relationship with other review rights) and section 48 (Power of the Court to stay or dismiss applications in certain circumstances)

(b) in the exercise of the court's discretion;

must apply promptly for the dismissal.

Application for costs order at directions hearing

578. An applicant may apply to the court for an order under section 49 of the Act[163] at a directions hearing if an application is served on the other parties to the proceeding at least 3 business days before the directions hearing.

Orders or directions about or for proceeding to be sought at directions hearing

579. On a directions hearing, each party must, so far as practicable, apply for any order or direction about or for the proceeding that the party requires.

Additional requirements for order of certiorari

580. An order of certiorari may be granted only if—

(a) a copy of the order, warrant, conviction, inquisition or record relevant to the proceeding, verified by an affidavit, has been filed; or

(b) the failure of the applicant to file the copy is accounted for to the satisfaction of the court.

No proceeding in relation to things done under mandamus order

581. No proceeding may be begun or prosecuted against a person in relation to anything done in obedience to an order of the court for relief in the nature of mandamus.

Consolidation of proceedings for prerogative injunctions

582. If there is more than 1 application for an injunction under

163 *Judicial Review Act 1991*, section 49 (Costs—review application)

section 42[164] of the Act pending against several persons in relation to the same office and on the same grounds, the court may order the applications to be consolidated.

Proceedings in relation to statements of reasons

583.(1) An application to the court for a declaration or order under part 4 of the Act[165] must be made in the approved form.

(2) On the filing of an application under subrule (1), the applicant must file an affidavit containing—

(a) the applicant's name and description; and

(b) details of the relief sought and the grounds on which it is sought; and

(c) the facts relied on.

(3) On the filing of an application under subrule (1), the registrar must set a time, date and place for a directions hearing before the court, at least 14, and not more than 21, days after the filing of the application, unless the time is shortened by the court.

(4) The applicant must serve the application and the affidavit mentioned in subrule (2) on the respondent at least 7 days before the directions hearing, unless the time for service is shortened by the court.

(5) At a directions hearing, the court may make the orders and give the directions for the conduct of the proceeding as it considers appropriate, including any of the orders and directions in rule 573 appropriate to the proceeding.

(6) Rules 574 and 579 apply, with necessary changes, to an application made to the court under subrule (1).

Application by unincorporated body

584.(1) If the applicant in an application made to the court under the Act is an unincorporated body, the application may be brought in the name of

164 *Judicial Review Act 1991*, section 42 (Abolition of quo warranto)

165 *Judicial Review Act 1991*, part 4 (Reasons for decision)

the body.

(2) Subrule (1) does not apply unless, at the time of filing the application, there is also filed an affidavit sworn by an officer of the body stating the names and addresses of all members of the body.

(3) The affidavit must be served on each party to the proceeding.

Proceeding for declaration or injunction

585. A proceeding for a declaration or injunction relating to the same matter as a review application may be included with the review application.

PART 5—HABEAS CORPUS

Definitions for pt 5

586. In this part—

"respondent" means the person named as the respondent in—

(a) a writ of habeas corpus; or

(b) an application for a writ of habeas corpus.

"writ of habeas corpus" means a writ of habeas corpus *ad subjiciendum.*

Application of pt 5

587. This part applies only to the Supreme Court.

Originating process

588. A proceeding mentioned in this part may only be started by application.

Application to court

589.(1) The jurisdiction of the court to issue a writ of habeas corpus or to

order the release of a person from restraint is exercisable by the court constituted by a single judge.

(2) However, the court may refer a relevant proceeding to the Court of Appeal.

(3) If an application is referred to the Court of Appeal, references in this part to the 'court' are interpreted as references to the Court of Appeal.

Parties

590. An application under this part may be made by the person who is under restraint or by another person.

Form and procedure

591.(1) An application for a writ of habeas corpus may be made without notice being given to another party.

(2) The application must be supported by an affidavit.

(3) The affidavit may—

(a) be made by another person on behalf of the person who is under restraint; and

(b) contain statements based on information and belief so long as it states the sources of information and grounds of belief.

Procedure on application

592.(1) On the hearing of an application for a writ of habeas corpus, the court may—

(a) order the respondent to release the person who is under restraint; or

(b) order the issue of a writ of habeas corpus directed to the respondent and to anyone else and give directions as to the course to be taken under the writ; or

(c) dismiss the application.

(2) If a writ of habeas corpus is issued—

(a) the person to whom the writ is directed must bring the person who is under restraint before the court as directed in the writ; and

(b) unless the court directs otherwise, the writ, the application for the writ and all affidavits must, as soon as practicable, be served on the respondent and anyone else to whom the writ is directed.

(3) If a writ of habeas corpus is directed to a person in charge of a prison or other institution, service under subrule (2) may be effected by serving the person who is for the time being in charge of the prison or other institution.

(4) The court may, pending the return of the writ of habeas corpus, make an order as to the custody of the person under restraint.

Return of writ of habeas corpus

593. On the return of a writ of habeas corpus, the court may do any of the following—

(a) receive further evidence in support of the application for release from restraint;

(b) permit a respondent to show cause why the person should not be released from restraint;

(c) if it considers the restraint of the person is unlawful—order the person's release or other disposition;

(d) set aside the writ;

(e) if the evidence placed before the court suggests some other person has custody of the person under restraint—order a further writ issue directed to the other person;

(f) make an order or give directions about the disposal of the proceedings, or about the person under restraint, as it considers appropriate.

Enforcement

594.(1) A writ issued under an order of the court may be enforced as an order of the court.

(2) Subrule (1) does not limit the power of the court to punish for contempt.

Form of writ

595. A writ of habeas corpus must be in the approved form unless the court orders otherwise.

CHAPTER 15—PROBATE AND ADMINISTRATION

PART 1—INTRODUCTION

Definitions for ch 15

596. In this chapter—

"de facto spouse" see the *Succession Act 1981*, section 5.[166]

"estate" means estate of a deceased person.

"grant" see the *Succession Act 1981*, section 5.

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166 *Succession Act 1981*, section 5 (Definitions)—

' **"de facto spouse"**, of a deceased person, means a person who—

(a) has lived in a connubial relationship with the deceased person for a continuous period of at least 5 years ending on the death of the deceased person; or

(b) within the period of 6 years ending on the death of the deceased person, has lived in a connubial relationship with the deceased person for periods totalling at least 5 years that include a period ending on the death of the deceased person.

' **"grant"** means grant of probate of the will or letters of administration of the estate of a deceased person and includes the grant of an order to administer and the filing of an election to administer such an estate.'.

"public trustee" means the Public Trustee of Queensland.

"will" includes codicil.

PART 2—GRANTS

Application for grant

597.(1) A proceeding for a grant must be started by application.

(2) The proceeding may only be started in a central registry of the Supreme Court.

(3) The application need not be served.

General notice of intention to apply for grant

598.(1) A person, other than the public trustee, proposing to apply for a grant must, at least 14 days before filing the application, give notice in the approved form of intention to apply for a grant.

(2) At least 7 days before filing the application, the person must also give to the public trustee a copy of the notice.

(3) The copy may be given by post or fax.

(4) If the court considers urgent circumstances exist that justify making a grant without giving notice under subrule (1), the court may dispense with compliance with the subrule.

Requirements for notice of intention to apply for grant

599.(1) The notice of intention to apply for a grant—

(a) must include the following—

(i) the name, including any known alias, of the deceased in relation to whom the grant is sought;

(ii) if the deceased left a will—the deceased's address as shown in the will and, if different, the deceased's last known

address and the date of the will and any other testamentary documents for which the grant is sought;

(iii) if the deceased did not leave a will—the deceased's last known address;

(iv) the name and address of the solicitor for the applicant, if any;

(v) the full name and residential address of each applicant for the grant; and

(b) may include a statement calling on anyone who has a claim against the estate, as creditor, beneficiary or otherwise, to give particulars of the claim to the personal representative at the address stated in the notice.

(2) If the notice includes a statement mentioned in subrule (1)(b), the notice must comply with the *Trusts Act 1973,* section 67.[167]

(3) The notice must be published—

(a) if the deceased's last known address is more than 150 km from Brisbane—in a local newspaper circulated and sold at least once each week in the area of the deceased's last known address; or

(c) otherwise—in a newspaper circulating throughout the State or a newspaper approved for the area of the deceased's last known address by the Chief Justice under a practice direction.

(4) The notice must also be published in a publication approved by the Chief Justice under a practice direction.

(5) The court or the registrar may require the applicant to give another notice the court or the registrar considers appropriate.

Registrar may make inquiries

600.(1) The registrar may make or arrange to be made any inquiry about the identity of the deceased, the applicant, or anything else the registrar considers requires proof or explanation.

(2) The registrar may require an answer to an inquiry to be given by affidavit.

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167 *Trusts Act 1973*, section 67 (Protection of trustees by means of advertisements)

When registrar may make grant

601.(1) The registrar may make a grant under this chapter unless—

(a) a caveat relating to an estate is filed under part 7; or

(b) 2 or more persons claim priority under rule 610; or

(c) the court otherwise directs by practice direction.

(2) Also, the registrar may—

(a) refer any question arising in a grant to the court; or

(b) refer any application to the court.

(3) The registrar must seal each grant and file a copy.

PART 3—PROBATE AND LETTERS OF ADMINISTRATION WITH THE WILL

Contents of supporting affidavit

602.(1) An affidavit in support of an application for probate or letters of administration with the will must—

(a) state the following—

(i) that the will identified in the affidavit is the last will of the deceased;

(ii) the date of death or, if the date of death is not known, the circumstances of death and the place of death of the deceased;

(iii) for an application for letters of administration with the will—the grounds on which the applicant is entitled to the grant in priority to anyone else or, if the applicant does not claim priority, the facts on which the applicant relies for the making of the grant; and

(b) for an application for probate—identify the applicant as being the executor named or identified in the will; and

(c) if a certificate of the deceased's death is issued under the *Registration of Births, Deaths and Marriages Act 1962* or a corresponding law of another jurisdiction—have, as an exhibit, a certified copy of the certificate.

(2) In addition, whichever of the following documents is relevant must be an exhibit—

(a) the original will;

(b) any codicil;

(c) any other document that may be a will or codicil.

(3) Anything mentioned in the affidavit as an exhibit must be filed with the affidavit.

Priority for letters of administration with the will

603.(1) The descending order of priority of persons to whom the court may grant letters of administration with the will is as follows—

(a) a trustee of the residuary estate;

(b) a life tenant of any part of the residuary estate;

(c) a remainderman of any part of the residuary estate;

(d) another residuary beneficiary;

(e) a person otherwise entitled to all or part of the residuary estate, by full or partial intestacy;

(f) a specific or pecuniary legatee;

(g) a creditor or person who has acquired the entire beneficial interest under the will;

(h) any one else the court may appoint.

(2) The court may grant letters of administration with the will to any person, in priority to any person mentioned in subrule (1).

(3) If 2 or more persons have the same priority, the order of priority must be decided according to which of them has the greater interest in the estate.

(4) Each applicant must establish the person's priority by providing

evidence that each person higher in the order of priority is not entitled to priority because of death, incapacity or renunciation.

(5) A document providing evidence for subrule (4) must be an exhibit to the affidavit in support of the application.

(6) The applicant need not establish priority for a person equal to or lower than the applicant in the order of priority.

Evidence of proper attestation of will

604.(1) If it appears to the court that a will has been attested in the way required by law, the court may accept the attestation as evidence of the proper making of the will.

(2) If there is no attestation clause or the attestation clause does not show how the will was made, the applicant must file an affidavit made by a witness who signed the will stating how the will was made.

(3) However, if it is not practicable to comply with subrule (2) because, for example, the witnesses who signed the will are dead, the applicant must file an affidavit made by someone else present when the will was made and stating how the will was made.

(4) If it is not practicable for the applicant to comply with subrule (3) because, for example, no-one else was present when the will was made, the applicant must file an affidavit stating why it is not practicable and, if possible, giving evidence of the handwriting of the witnesses.

(5) The applicant must also state in the affidavit anything else relevant about the making of the will.

Interlineations, alterations and erasures

605.(1) The court must not include an interlineation in or alteration to a will in the probate or letters of administration unless the interlineation or alteration—

(a) was in the will when the will was made; or

(b) if made afterwards—was made and attested in a way required by law; or

(c) was made valid by the remaking of the will or a later codicil.

(2) If it is not shown when the alteration was made, and the words altered can, on inspection, be easily worked out, the altered words may be included in the probate or letters of administration.

(3) If the erased words may have been of importance, the erasure must be explained by evidence.

(4) In this rule—

"alteration" includes erasure and obliteration.

Documents mentioned in or attached to will

606.(1) If a will mentions another document and raises a question whether the document does or does not form part of the will, the applicant must produce the other document or, if possible, explain its absence.

(2) The court must not include in a grant a document mentioned in a will unless it appears to the court to have been in existence when the will was made.

(3) If there is any evidence supporting the inference that any paper may have been attached to the will, the applicant must produce the paper or, if possible, explain its absence.

Wills made by blind or illiterate persons

607. Unless the court otherwise requires, it is not necessary to obtain evidence of the attestation of a blind or apparently illiterate person's will if—

(a) the will specifically states the person is blind or apparently illiterate; and

(b) the attestation of the witnesses who signed the will acknowledges the testator knew and approved of the contents of the will.

Marginal note

608. If there is no attestation clause to the will or the will is undated, a memorandum stating the name of the witness by whom its execution or date was proved must be written in the margin of the grant.

PART 4—LETTERS OF ADMINISTRATION ON INTESTACY

Contents of supporting affidavit on intestacy

609. An affidavit in support of an application for letters of administration on intestacy must—

(a) state the following—

(i) the date of death or, if the date of death is not known, the circumstances of death and the place of death of the deceased;

(ii) the relationship, if any, of the applicant to the deceased;

(iii) the grounds on which the applicant is entitled to a grant in priority to anyone else or, if the applicant does not claim priority, the facts on which the applicant relies for the making of the grant;

(iv) so far as it is known to the applicant—the name of anyone having, under the *Succession Act 1981*, sections 35 to 37, a beneficial interest in the estate in the particular circumstances; and

(b) if a certificate of the deceased's death is issued under the *Registration of Births, Deaths and Marriages Act 1962* or a corresponding law of another jurisdiction—have, as an exhibit, a certified copy of the certificate.

Priority for letters of administration

610.(1) The descending order of priority of persons to whom the court may grant letters of administration on intestacy is as follows—

(a) the deceased's surviving spouse or de facto spouse;

(b) the deceased's children;

(c) the deceased's grandchildren or great-grandchildren;

(d) the deceased's parent or parents;

(e) the deceased's brothers and sisters;

(f) the children of deceased brothers and sisters of the deceased;

(g) the deceased's grandparent or grandparents;

(h) the deceased's uncles and aunts;

(i) the deceased's first cousins;

(j) anyone else the court may appoint.

(2) A person who represents a person mentioned in a paragraph of subrule (1) has the same priority as the person represented.

(3) The court may grant letters of administration to any person, in priority to any person mentioned in subrule (1).

(4) Also, if there is a surviving spouse and a surviving de facto spouse, the court may make a grant to either of them or, instead of to either of them, to a person lower in the order of priority.

(5) Each applicant must establish priority by providing evidence that each person higher in the order of priority is not entitled to priority because of death, incapacity or renunciation.

(6) A document providing evidence for subrule (5) must be an exhibit to the application.

(7) The applicant need not establish priority for a person equal to or lower than the applicant in the order of priority but the existence or nonexistence and beneficial interest of any de facto spouse or a person claiming to be a de facto spouse must be sworn.

Grant to attorney of absent person or person without prior right

611.(1) This rule applies if, apart from subrule (2), a person residing outside Queensland is entitled to a grant.

(2) The court may, instead of making the grant to the person, make the grant to a person residing in Queensland who the court is satisfied may act under a power of attorney for the other person.

(3) However, if the donor of the power later applies for a grant, the grant to the attorney ends.

(4) The court may also make a grant to the donee of a power of attorney given by a person residing in Queensland who is entitled to a grant.

Court not to make grant on intestacy within 30 days after death

612. The court must not make a grant on an intestacy within 30 days after the death of the deceased, unless the court considers urgent circumstances exist that justify making the grant before the end of the 30 days.

Limited administration

613.(1) Limited administration must not be granted to the person entitled to a general grant, other than by the court.

(2) Also, limited administration must not be granted, unless each person entitled to a general grant has consented, or renounced, or has been cited and failed to appear.

Limited and special administration

614. In a limited or special administration, the grant must set out the circumstances under which the special or limited grant is made.

PART 5—RESEALING GRANTS UNDER BRITISH PROBATES ACT 1898

Application of part

615. This part applies to an application for the resealing of a grant of probate or letters of administration under the *British Probates Act 1898* (**"foreign grant"**).

Who may apply for reseal of foreign grant

616. An application for the resealing of a foreign grant may be made by the executor or administrator, or a person lawfully authorised for the purpose by the executor or administrator.

Notice of intention to apply for reseal

617.(1) A notice of intention to apply for the resealing of the foreign grant need not be published or served unless—

(a) there are debts owing at the date of the application in Queensland; or

(b) the court or registrar requires it for another reason.

(2) Rules 597 and 601 apply to an application for the resealing of the foreign grant with any necessary changes.

Production of grant and testamentary papers

618.(1) The foreign grant or copy of the grant of probate, or administration with the will, to be resealed, and the copy to be filed in the registry, must include copies of all testamentary papers admitted to probate.

(2) If the foreign grant does not include a copy of the will, the applicant must file a copy of the will with the application.

(3) An exemplification, office copy, or other reproduction of the foreign grant which bears the rubber, embossed or other seal of the court that made the grant, on each constituent sheet of the grant, may be resealed.

Special, limited and temporary grants

619. The registrar must not reseal a special, limited or temporary foreign grant, unless the court otherwise orders.

Notice to original court

620. The registrar must send to the court from which the foreign grant was issued notice that the grant has been resealed in Queensland.

PART 6—CERTAIN PROCEEDINGS UNDER THE PUBLIC TRUSTEE ACT 1978

Order to administer

621.(1) This rule applies if, under the *Public Trustee Act 1978*, section 29 or 31,[168] the public trustee applies for an order to administer an estate.

(2) The application must be in the approved form and accompanied by an affidavit made by the public trustee.

(3) The application need not be served.

Revocation of order to administer

622.(1) This rule applies for an order to administer granted under the *Public Trustee Act 1978*, section 29 or 31.

(2) With the consent of the public trustee, the registrar may exercise the jurisdiction of the court under this rule.

(3) The court may revoke the order—

(a) on an application by the public trustee or a person acting with the public trustee's consent; or

(b) if it appears that the order was made because of a mistake of law or fact.

(4) If the court revokes the order, the public trustee must give the copy of the order to the registrar.

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168 Section 29 (Circumstances in which public trustee may apply for order to administer) or 31 (Appointment of public trustee in place of existing personal representative)

PART 7—CAVEATS

Definitions for pt 7

623. In this part—

"applicant" means a person who applies for a grant.

"caveator" means a person who files a caveat under this part.

"grant" includes a resealing of a foreign grant.

"notice to support a caveat" means the notice the caveator must give stating the nature of the interest the caveator claims to have.

Caveats by person objecting

624.(1) A person claiming to have an interest in an estate may file in the registry a caveat in the approved form.

(2) The caveat may be—

(a) a caveat against a grant for the estate; or

(b) a caveat requiring any application for a grant to be referred to the court as constituted by a judge; or

(c) a caveat requiring proof in solemn form of any will of the deceased.

(3) The caveat must give an address for service of the caveator as if the caveator were a plaintiff.

(4) The caveat takes effect on the date of filing and remains in force for 6 months, but may be renewed for periods of 6 months by the filing of a new caveat.

(5) The registrar must enter the caveat in a register kept for the purpose.

Caveat procedure

625.(1) Unless the court otherwise orders, nothing may be done on an application to which a caveat relates, whether filed before or after the filing of the caveat, until at least 8 days after service by the registrar of notice under subrule (2) on the caveator.

(2) If a caveat is filed, whether before or after an application is filed, the registrar must give to the caveator and the applicant, notice in the approved form of the filing of the caveat.

(3) The notice—

(a) must state a date, not later than the end of the 8 days under subrule (1), by which the caveator must file a notice to support the caveat; and

(b) must be given as soon as practicable after an application is filed.

(4) Within the time stated in the notice under subrule (2), the caveator must file a notice to support the caveat and serve a copy of it on the applicant at the address for the applicant stated in the application.

(5) If the caveat is filed after the application to which it relates, the caveator may file a notice to support the caveat when filing the caveat.

(6) If the notice to support the caveat is not filed within 8 days after service of the notice under subrule (2), the registrar may consider the application as if no caveat had been filed.

(7) If a notice to support the caveat is filed, a further step on the application may not be taken unless the caveat is set aside or withdrawn.

(8) However, the applicant may start a proceeding against the caveator seeking the making of a grant as sought in the application.

(9) If the applicant starts a proceeding under subrule (8), the claim may be served at the address for service given in the caveat.

Setting aside caveat

626.(1) If—

(a) a person intends to apply for a grant; and

(b) a caveat is in force in relation to the estate;

the person may apply to the court, naming the caveator as a respondent, for an order setting aside the caveat.

(2) The court may set aside the caveat if the court considers that the evidence does not—

(a) show that the caveator has an interest in the estate or a reasonable

prospect of establishing an interest; or

(b) raise doubt as to whether the grant ought to be made.

(3) If the court does not set aside the caveat under subrule (2), the court may give the directions it considers appropriate for the application to be decided speedily, including a direction to the caveator to start a proceeding within a stated time.

(4) If the caveator does not start the proceeding within the time stated in a direction given under subrule (3), the caveat stops having effect.

Withdrawal of caveat

627. The caveator may withdraw a caveat at any time.

Effect of caveat filed on day of grant

628. A caveat does not affect a grant made on the day the caveat is filed, unless it is filed before the grant is sealed.

PART 8—CONTESTED PROCEEDINGS

Definitions for pt 8

629. In this part—

"contested proceeding" means—

(a) a claim in which the court is asked to pronounce for or against the validity of a will; or

(b) a claim brought in opposition to an application for a grant.

"script" means any of the following—

(a) a will;

(b) a draft of a will;

(c) documentary instructions for a will made by or at the request of a testator;

(d) a solicitor's attendance notes containing a client's instructions written down from the client's oral instructions;

(e) for a will alleged to have been lost or destroyed—another document that is or may be evidence of the contents, or a copy, of the will.

Application of pt 8

630. This part applies to a contested proceeding.

Statement of nature of interest

631. The plaintiff must describe in the statement of claim the nature of the plaintiff's interest in the estate to which the proceeding relates and the interest in the estate of each defendant named in the claim.

Affidavit of scripts

632.(1) The plaintiff, and any party who files a notice of intention to defend, must each file an affidavit—

(a) either—

(i) describing any script of the deceased of which the person knows; or

(ii) if the party does not know of any script of the deceased—stating the party does not know of any script; and

(b) if the party making the affidavit does not have possession or control of any known script—

(i) stating the name and address of the person who has or is believed to have possession or control of the script and the grounds for the belief; or

(ii) if the party does not know who has possession or control of the script—stating that fact.

(2) The party must ensure any script in the party's possession or control is filed as an exhibit to the affidavit.

(3) If the original script is not in the possession or control of the party, a

copy of the original script in the party's possession must be filed as an exhibit to the affidavit.

(4) The affidavit of a party who files a notice of intention to defend and any script to be filed with it as an exhibit must be filed within 8 days after the person files notice of intention to defend.

(5) However, if no notice of intention to defend is filed, and the court does not direct otherwise, the plaintiff's affidavit must be filed before a request for a trial date is filed.

Notice to persons with beneficial interest

633. The plaintiff must give notice of the proceeding to any person who has a beneficial interest in the estate to which the proceeding relates.

Notice of intention to intervene

634. Any person not named in the claim may give notice of intention to intervene in the proceeding by filing an affidavit showing that the person has an interest in the estate to which the proceeding relates and serving a copy of the affidavit on each other party.

Claim to name defendants

635. If the relief sought in a claim includes the revocation of a grant, the claim must name as defendant each person to whom the grant has been made.

Grant to be filed

636.(1) This rule applies if a claim includes a claim for the revocation of a grant.

(2) If the person to whom the grant was made asks for it to be revoked, the grant must be filed in the court by the person within 7 days after filing the claim.

(3) However, if the grant is in the possession or under the control of a defendant, the grant must be filed in the court by the defendant within 14 days after the defendant is served with the claim.

PART 9—MISCELLANEOUS

Subpoenas

637.(1) A person may apply to the registrar for a subpoena requiring another person—

(a) to bring into the registry or otherwise as the court may direct a will or other testamentary paper; or

(b) to attend the court for examination in relation to any matter relevant to a proceeding under this chapter.

(2) The applicant must serve the subpoena on the person to whom it is directed.

(3) An application for the issue of a subpoena requiring a person to bring into the registry, or as directed in the subpoena, a will or other testamentary paper must be supported by an affidavit showing that the will or testamentary paper is believed to be in the person's possession or control and the grounds for the belief.

(4) If the person against whom the subpoena is issued denies that the will is in the person's possession or control, the person must file in the registry an affidavit to that effect.[169]

Administration pending proceedings

638.(1) A person may apply to the court for the appointment of an administrator pending the outcome of proceedings under this chapter.

(2) When making any special, interim or limited grant of administration, the court may impose the conditions it considers appropriate, including conditions requiring the filing of an administration account.

(3) If an administration account is required to be filed, the account must be verified by affidavit.

(4) Chapter 14, part 1[170] applies to the administrator and to an account

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169 For general provisions about subpoenas, see chapter 11, part 4.

170 Chapter 14 (Particular proceedings), part 1 (Account)

under subrule (2) with necessary changes.

(5) Unless the court fixes the remuneration of the administrator in the appointment, the registrar may on passing the account assess and provide for the remuneration of the administrator.

(6) This rule does not limit the power of the court to make any other limited grant.

Grants to young persons

639.(1) This rule applies if a young person—

(a) is the sole executor of a will; or

(b) would be entitled to a grant of administration on intestacy.

(2) The court may grant administration with the will or administration on intestacy to a young person's guardian or someone else the court considers appropriate until the young person becomes an adult.

(3) When the young person is an adult, the court may, on the person's application, grant administration with the will or administration on intestacy to the person.

Proof in solemn form

640.(1) If the court has made a grant in common form of probate or of administration with the will, any person who claims to have a sufficient interest in the administration of the estate may apply to the court for an order for the personal representative to bring the grant into the registry.

(2) However, the court must not make the order unless it is satisfied the applicant has an interest in the administration of the estate, or a reasonable prospect of establishing an interest in the administration of the estate.

(3) If the court orders the personal representative to bring the grant into the registry, the court may also give the directions the court considers appropriate, including directions about the persons to be made parties to the proceeding and about service.

(4) As soon as practicable after the court makes an order under this rule, the personal representative must start a proceeding for a grant in solemn form.

Notice of revocation or alteration of resealed Queensland grant

641. If the registrar believes that a Queensland grant that has been revoked or altered has been resealed by a court outside Queensland, the registrar must send to the other court notice of the revocation of, or alteration in, the grant.

Revocation of grants and limited grants

642.(1) The court may, on application, revoke a grant or make a limited grant if—

(a) it appears to the court that—

(i) the personal representative is no longer capable of acting in the administration; or

(ii) the personal representative can not be found; or

(iii) the grant was made because of a mistake of fact or law; or

(b) the personal representative wants to retire from the administration.

(2) With the consent of the parties, the registrar may exercise the jurisdiction of the court under this rule.

(3) If the court revokes a grant or replaces it with a limited grant, the personal representative must bring the original grant into the registry as soon as practicable after the order is made.

(4) On the hearing of an application under this rule, the court may direct that the proceeding continue as if started by claim and give any directions it considers appropriate.

Relief against neglect or refusal by executor, administrator or trustee

643.(1) This rule applies if an executor, administrator or trustee neglects or refuses to comply with a beneficiary's written request—

(a) to apply for and take all necessary steps to register the transmission of any real or leasehold estate; or

(b) if the executor, administrator or trustee has or is entitled to the legal estate in the land—to convey or transfer the land to the person entitled to it; or

(c) to pay or hand over any legacy or residuary bequest to the person entitled to it.

(2) The beneficiary may apply by application for an order calling on the executor, administrator or trustee to show cause why the person should not comply with the request.

(3) The court may direct that the proceedings the court considers appropriate be taken against the executor, administrator or trustee.

PART 10—EXECUTORS', ADMINISTRATORS' AND TRUSTEES' ACCOUNTS

Filing and passing account on application of beneficiary

644.(1) A beneficiary may apply to the court for an order requiring the examination and passing of the executor's or administrator's accounts of the estate.

(2) The applicant must file an affidavit stating the reasons for the application.

(3) The court may make the orders it considers appropriate.

(4) In this rule—

"beneficiary", in an estate, includes—

(a) a person with a beneficial interest in the estate; and

(b) a person with a right to compel the executor or administrator of the estate to complete the administration.

Order requiring account

645.(1) Within 2 months after the date of service on the executor or administrator of a copy of an order made under rule 644, the executor or administrator must—

(a) file the accounts of the estate; and

(b) make an appointment with the registrar to have the account

examined and passed; and

(c) attend the appointment.

(2) The accounts must be full and correct, in the approved form and verified by affidavit.

(3) If the executor or administrator fails to comply with the order, the court, on the beneficiary's application, may direct that the proceedings the court considers appropriate be taken against the executor or administrator.

Applications for commission

646.(1) If an executor or administrator of an estate applies for the allowance of commission out of the estate, the executor or administrator must file a full and correct account of the administration of the estate.

(2) If a trustee applies for an order for the allowance of commission out of the income or proceeds of trust property, the trustee must file a full and correct account of the trustee's administration of the trust property.

(3) An account mentioned in subrule (1) or (2) must be in the approved form and verified by affidavit.

Notice

647.(1) This rule applies if an account is to be examined under rule 645 or 645.

(2) The executor, administrator or trustee must give notice of—

(a) the filing of the account; and

(b) if the executor, administrator or trustee intends to apply for an allowance of commission—the intention to apply for the commission; and

(c) the day fixed for examining the account.

(3) The notice must—

(a) be given by advertisement published in the same way as an application for probate or letters of administration; and

(b) state that anyone having a claim on the estate or trust property or otherwise interested in the estate or trust property—

(i) may inspect the account at the registry; and

(ii) may, before a stated day at least 30 days after the day the advertisement is last published, file in the registry a memorandum stating that he or she claims to be heard on the examination and passing of the account or allowance of commission.

Appearance of person interested

648.(1) A person having a claim on, or otherwise interested in, the estate or trust property may, before the day stated in the notice, file a memorandum stating that the person wants to be heard on the examination and passing of the account.

(2) The memorandum must—

(a) state an address for service that would comply with rule 17(1)[171] if the memorandum were an originating process; and

(b) be accompanied by an affidavit stating the nature and ground of objection or exceptions, if any, to the account or allowance of commission.

(3) On the filing of the memorandum, the person is entitled to receive from the executor, administrator or trustee, free of charge, a copy of the account.

(4) The registrar may make any order for service of the memorandum on any of the parties interested as the registrar considers appropriate.

Examination of account

649.(1) On the day appointed for the examination of an account, the registrar must examine the account and hear the executor, administrator or trustee and anyone who has filed a memorandum under rule 648 who is present and wants to be heard.

(2) The registrar must inquire into any objection or exception taken to the account or allowance of commission at the hearing.

171 Rule 17 (Contact details and address for service)

Hearing on examination of account

650.(1) Any person interested may attend before the registrar on the examination of an account under this part, but may not object to the passing of the account unless the person has filed a memorandum under rule 648.

(2) However, if no-one files a memorandum under rule 648, the registrar may pass the account on the oath of the executor, administrator or trustee alone with appropriate verification.

(3) On the taking of the account, the payments of all amounts of more than $50 must be verified by proper receipts signed by the persons to whom the payments are alleged to have been made, or in the way the registrar considers satisfactory.

(4) However, if—

(a) the account consists entirely of items of receipts and expenditure paid into and drawn out of the trust account of a practising solicitor for an executor, administrator or trustee; and

(b) the trust account has been properly audited by an appropriately qualified accountant in a way that discloses in detail the receipts and disbursements and the true position of the estate accounts;

the account may be passed on the production of a certificate by the accountant of the correctness of the accounts.

(5) The registrar may, if the registrar considers it appropriate, require the account to be filed in the way otherwise prescribed by these rules and to be further verified.

(6) The result of the registrar's examination of the account must be set out in a certificate.

(7) On the filing of the certificate, the executor, administrator or trustee must apply to the court for an order that the account be passed and may if the executor, administrator or trustee desires, apply for an allowance of commission.

(8) Notice of the application must be given to every person who filed a memorandum under rule 648 and is not stated in the certificate to have withdrawn his or her objection or exception.

Power of court

651.(1) The court, on the hearing of an application under rule 650(7), may refer the certificate to the registrar for review or order that the account be passed with or without amendment.

(2) Also, the court may—

(a) allow the costs of examining and passing the account to the executor, administrator or trustee out of the estate; and

(b) make the order for commission the court considers reasonable; and

(c) allow the trustee to retain out of the estate the costs of the examination and application.

(3) In addition, the court may grant an extension of time for filing and passing further accounts.

Amended or further account

652. The court may at any time require an account to be amended, or a further account or amended account to be brought in by the executor or administrator or trustee and the proceedings to be taken on the account or amended account as the court considers appropriate.

Renewal of objection in subsequent proceeding

653. If an account has been passed under this part and the same account is afterwards directed to be taken in a proceeding, a person who, on the taking of the account under this part, made an objection or exception before the registrar that has been disallowed or overruled, must not renew the objection or exception against the executor, administrator or trustee without the leave of the court.

Evidence in subsequent proceeding

654.(1) If an account has been passed under this part and the same account is afterwards directed to be taken in a proceeding, the evidence taken before the registrar on passing the account may, with all just exceptions, be read on behalf of the executor, administrator or trustee on the taking of the

account in the proceeding.

(2) The order passing the account may also be read on behalf of the executor, administrator or trustee on the taking of the account in the proceeding, and is evidence on the person's behalf of the facts stated in the account.

General practice to apply

655. Unless this part otherwise provides, the provisions of chapter 14, part 1 relating to proceedings before the registrar in taking accounts under judgments and orders apply to a proceeding before the registrar under this part.

Combined executors' and trustees' account

656.(1) If the same person is executor and trustee or administrator and trustee, the person may include in the same account a statement of the administration of the property in both capacities, but distinguishing between amounts received and disposed of by the person in each capacity.

(2) Any notice required to be given under this part must be titled in the matter of the will, goods, or land and goods, of the deceased person, and in the matter of the trust.

(3) The registrar's certificate must set out separately the result of the registrar's examination of the account so far as it relates to each matter.

Allowance of commission in proceeding

657.(1) A trustee whose account has been taken in a proceeding may apply to the court for commission at any time after the account has been taken.

(2) For subrule 1, rules 644 to 656 do not apply.

CHAPTER 16—ORDERS

General

658.(1) The court may, at any stage of a proceeding, on the application of a party, make any order, including a judgment, that the nature of the case requires.

(2) The court may make the order even if there is no claim for relief extending to the order in the originating process, statement of claim, counterclaim or similar document.

Judgment

659. Final relief granted in a proceeding started by claim is granted by giving a judgment setting out the entitlement of a party to payment of money or another form of final relief.

Order

660.(1) An order is made by—

(a) the order being pronounced in court by the person making the order; or

(b) for a proceeding under chapter 13, part 6[172]—the order being set out in a document, with or without reasons, and signed by the person making the order.

(2) An order takes effect as of the date on which it is made.

(3) However, the court may order that an order takes effect as of an earlier or later date.

Filing an order

661.(1) If a judge or judge's associate, magistrate, judicial registrar or registrar writes the date and terms of an order on a file or on a document on

[172] Chapter 13 (Trials and other hearings), part 6 (Decision on papers without oral hearing)

the file, then, unless or until the order is filed, the writing is sufficient proof of the making of the order, its date and terms.

(2) An order of a court is filed in the court if a document embodying the order and the date the order was made is drawn up, settled and signed by the registrar and filed in the court.

(3) An order must be filed if—

(a) the order is a judgment or another final order; or

(b) the order is returnable before the Court of Appeal; or

(c) the court directs it to be filed; or

(d) a party asks for it to be filed.

(4) Unless an order is filed—

(a) the order may not be enforced under chapter 19[173] or by other process; and

(b) no appeal may be brought against the order without the leave of the court to which the appeal would be made.

(5) However—

(a) an order appropriate on default of an earlier order may be made without the earlier order being filed; and

(b) costs payable under an order may be assessed without the order being filed.

Certified duplicate of filed order

662.(1) If an order is filed in a court, the registrar must give the party having carriage of the order a free certified duplicate of the order within 1 business day after the day the order is filed.

(2) If a rule, order or practice of a court requires the production or service of an order, it is sufficient to produce or serve the certified duplicate of the order.

[173] Chapter 19 (Enforcement of money orders)

Reasons for order

663.(1) The reasons of a court for making any order may, if in written form, be published—

(a) by the reasons being delivered in court to a judge's associate or an officer of the court to give a copy to each party; or

(b) by a copy of the reasons signed by the person making the order being given to an appropriate officer of the court to deliver in court and give a copy to each of the parties; or

(c) for a proceeding under chapter 13, part 6[174]—by a copy of the reasons signed by the person making the order being sent to each of the parties.

(2) The reasons of a court for a proposed order may be published before the order is made.

Delivery of reserved decision by a different judicial officer

664.(1) If a judge reserves a decision in a proceeding, the judge may arrange for written reasons for decision to be prepared setting out the proposed order, sign them and send them to another judge or registrar for delivery.

(2) The other judge or registrar must, at a convenient time, publish in court the reasons for decision.

(3) The publication by the other judge or registrar has the same effect as if, at the time of publication, the judge who reserved the decision had been present in court and made the order proposed in the written reasons, and published the reasons, in person.

(4) This rule applies, with necessary changes, if a magistrate, judicial registrar or registrar reserves a decision.

Time for compliance

665.(1) An order requiring a person to perform an act must specify the

174 Chapter 13 (Trials and other hearings), part 6 (Decision on papers without oral hearing)

time within which the person is required to perform the act.

(2) If an order requires a person to perform an act immediately or immediately on the happening of a specified event or to perform an act but does not stipulate a time for the performance, the court may, by order, stipulate a time within which the person liable must perform the act.

(3) An order requiring a person to perform an act must have written on it or attached to it the following statement or a statement to the same effect—

> 'If you, [state name of person required to perform act] do not obey this order within the time specified, you will be liable to court proceedings to compel you to obey it and punishment for contempt.'.

(4) The court may vary a time specified in an order for the performance of an act.

Consent orders

666.(1) The registrar may give judgment or make another order if—

(a) the parties consent in writing; and

(b) the registrar considers it appropriate.

(2) The consents must be filed in the registry.

(3) The judgment or order must—

(a) state that it is given or made by consent; and

(b) be filed in the registry.

(4) The judgment or order applies as if it had been given or made by the court.

Setting aside

667.(1) The court may vary or set aside an order before the earlier of the following—

(a) the filing of the order; or

(b) the end of 7 days after the making of the order.

(2) The court may set aside an order at any time if—

(a) the order was made in the absence of a party; or

(b) the order was obtained by fraud; or

(c) the order is for an injunction or the appointment of a receiver; or

(d) the order does not reflect the court's intention at the time the order was made; or

(e) the party who has the benefit of the order consents; or

(f) for a judgment for specific performance, the court considers it appropriate for reasons that have arisen since the order was made.

(3) This rule does not apply to a default judgment.[175]

Matters arising after order

668.(1) This rule applies if—

(a) facts arise after an order is made entitling the person against whom the order is made to be relieved from it; or

(b) facts are discovered after an order is made that, if discovered in time, would have entitled the person against whom the order is made to an order or decision in the person's favour or to a different order.

(2) On application by the person mentioned in subrule (1), the court may stay enforcement of the order against the person or give other appropriate relief.

(3) Without limiting subrule (2), the court may do one or more of the following—

(a) direct the proceedings to be taken, and the questions or issue of fact to be tried or decided, and the inquiries to be made, as the court considers just;

(b) set aside or vary the order;

(c) make an order directing entry of satisfaction of the judgment to be made.

[175] For a default judgment, see rule 290 (Setting aside judgment by default and enforcement) and rule 521 (Notices in minor debt claims).

Appointment to settle

669.(1) The registrar may settle a draft order without an appointment for the attendance of the parties.

(2) However, if the registrar considers it is necessary or a party requests an appointment to settle a draft order, the registrar must appoint a time and place for the attendance of the parties when the registrar will settle the draft.

(3) The registrar may settle a draft order in the absence of a party who fails to attend the registrar after being notified by the registrar of the time and place of the appointment.

CHAPTER 17—COSTS

PART 1—SECURITY FOR COSTS

Security for costs

670.(1) On application by a defendant, the court may order the plaintiff to give the security the court considers appropriate for the defendant's costs of and incidental to the proceeding.

(2) This rule applies subject to the provisions of these rules, particularly, rules 671 and 672.

Prerequisite for security for costs

671. The court may order a plaintiff to give security for costs only if the court is satisfied—

(a) the plaintiff is a corporation and there is reason to believe the plaintiff will not be able to pay the defendant's costs if ordered to pay them; or

(b) the plaintiff is suing for the benefit of another person, rather than for the plaintiff's own benefit, and there is reason to believe the plaintiff will not be able to pay the defendant's costs if ordered to

pay them; or

(c) the address of the plaintiff is not stated or is misstated in the originating process, unless there is reason to believe this was done without intention to deceive; or

(d) the plaintiff has changed address since the start of the proceeding and there is reason to believe this was done to avoid the consequences of the proceeding; or

(e) the plaintiff is ordinarily resident outside Australia; or

(f) the plaintiff is, or is about to depart Australia to become, ordinarily resident outside Australia and there is reason to believe the plaintiff has insufficient property of a fixed and permanent nature available for enforcement to pay the defendant's costs if ordered to pay them; or

(g) an Act authorises the making of the order; or

(h) the justice of the case requires the making of the order.

Discretionary factors for security for costs

672. In deciding whether to make an order, the court may have regard to any of the following matters—

(a) the means of those standing behind the proceeding;

(b) the prospects of success or merits of the proceeding;

(c) the genuineness of the proceeding;

(d) for rule 671(a)—the impecuniosity of a corporation;

(e) whether the plaintiff's impecuniosity is attributable to the defendant's conduct;

(f) whether the plaintiff is effectively in the position of a defendant;

(g) whether an order for security for costs would be oppressive;

(h) whether an order for security for costs would stifle the proceeding;

(i) whether the proceeding involves a matter of public importance;

(j) whether there has been an admission or payment into court;

(k) whether delay by the plaintiff in starting the proceeding has prejudiced the defendant;

(l) whether an order for costs made against the plaintiff would be enforceable within the jurisdiction;

(m) the costs of the proceeding.

Way security given

673.(1) If the court orders the plaintiff to give security for costs, the security must be given in the form, at the time, and on any conditions the court directs.

(2) If the court does not specify the form of security to be given—

(a) it must be given in a form satisfactory to the registrar; and

(b) the registrar's approval of the form of security must be written on the order before it is issued.

(3) The plaintiff must as soon as practicable after giving security serve on the defendant written notice of the time when, and the way, the security was given.

Stay or dismissal

674. If the court orders the plaintiff to give security for costs—

(a) the time set by these rules or by an order of the court for another party to take a step in the proceeding does not run until the security is given; and

(b) if security is not given under the order—the proceeding is stayed so far as it concerns steps to be taken by the plaintiff; and

(c) the court may, on the defendant's application, dismiss all or part of the proceeding.

Setting aside or varying order

675. The court may set aside or vary an order made under this part in special circumstances.

Finalising security

676.(1) This rule applies if, in a proceeding, security for costs has been given by a party under an order made under this part.

(2) If judgment is given requiring the party to pay all or part of the costs of the proceeding, the security may be applied in satisfaction of those costs.

(3) However, the security must be discharged—

(a) if a judgment is given which is not within subrule (2); or

(b) if the court orders the discharge of the security; or

(c) if the party entitled to the benefit of the security consents to its discharge; or

(d) in relation to the balance after costs have been satisfied under subrule (2).

Counterclaims and third party proceedings

677. This part applies, with necessary changes, for a counterclaim and a third party proceeding.

PART 2—COSTS

Division 1—Preliminary

Application

678.(1) This part applies to costs payable or to be assessed under an Act, these rules or an order of the court.

(2) However, this part does not apply to costs to which the *Queensland Law Society Act 1952*, part 2, division 6A[176] applies.

176 *Queensland Law Society Act 1952*, part 2 (The Queensland Law Society Incorporated and the council), division 6A (Application for assessment of account under client agreement)

Definitions

679. In this part—

"assessed costs" means costs and disbursements assessed under this part.

"costs of the proceeding" mean costs of all the issues in the proceeding and includes—

(a) costs ordered to be costs of the proceeding; and

(b) costs of complying with the necessary steps before starting the proceeding; and

(c) costs incurred before or after the start of the proceeding for successful or unsuccessful negotiations for settlement of the dispute.

"costs statement" means a bill of costs, account or statement of charges.

"party" includes a person not a party to a proceeding by or to whom assessed costs of the proceeding are payable.

"registrar" means the registrar approved to assess costs by—

(a) for the Supreme Court—the Chief Justice; or

(b) for the District Court—the Chief Judge of the District Court; or

(c) for a Magistrates Court—the Chief Stipendiary Magistrate.

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

General provision about costs

680.(1) The costs a court may award—

(a) may be awarded at any stage of a proceeding or after the proceeding ends; and

(b) must be decided in accordance with this part.

(2) If the court awards the costs of an application in a proceeding, the court may order that the costs not be assessed until the proceeding ends.

Costs in proceeding before Magistrates Court

681.(1) This rule applies to a proceeding before a Magistrates Court.

(2) The magistrate must make an order setting the amount of the costs of the proceeding.

(3) However, the magistrate may, having regard to the nature and complexity of the proceeding, order that the costs of the proceeding be assessed by the registrar.

Costs of question or part of proceeding

682.(1) The court may make an order for costs in relation to a particular question in, or a particular part of, a proceeding.

(2) For subrule (1), the court may declare what percentage of the costs of the proceeding is attributable to the question or part of the proceeding to which the order relates.

Costs if further proceedings become unnecessary

683.(1) If, for any reason, it becomes unnecessary to continue a proceeding other than for deciding who is to pay the costs of the proceeding, any party to the proceeding may apply to the court for an order for the costs.

(2) The court may make the order the court considers to be just.

Registrar to assess costs

684.(1) Unless the court orders otherwise, the registrar must assess costs under this part.

(2) The registrar must, on application, assess costs without an order for assessment if—

(a) the court orders a party to pay another party's costs; or

(b) under these rules, a party must pay another party's costs; or

(c) under a filed written agreement, a party agrees to pay to another party costs under these rules.

Assessed costs to be paid unless court orders otherwise

685.(1) If, under these rules or an order of the court, a party is entitled to costs, the costs are to be assessed costs.

(2) However, instead of assessed costs, the court may order a party to pay to another party—

(a) a specified part or percentage of assessed costs; or

(b) assessed costs to or from a specified stage of the proceeding; or

(c) an amount for costs decided by the court; or

(d) an amount for costs to be decided in the way the court directs.

Costs when proceeding removed to another court

686.(1) This rule applies if a proceeding is removed to the court from another court or tribunal (the **"first court"**).

(2) In relation to the proceeding—

(a) if the first court has not made an order for costs—the court may make an order for the costs of the proceeding, including the costs before the removal; and

(b) any order for costs made by the first court may be assessed and enforced as if it were an order of the court.

(3) Unless the first court otherwise orders, the costs up to the time of the removal must be assessed on the scale applying in the court.

Costs in an account

687. If the court orders that an account be taken and the account is partly for costs, the court may set costs or order that the registrar assess costs under this part.

Enforcement of payment of costs

688. If costs are assessed other than under an order for costs, any order of the registrar for payment of an amount found to be payable may be enforced in the same way as an order for the payment of money.

Division 2—Entitlement to costs

General rule about costs

689.(1) Costs of a proceeding are in the discretion of the court but follow the event, unless the court considers another order is more appropriate.

(2) Subrule (1) applies unless these rules otherwise provide.

Solicitors' costs

690.(1) For assessing costs on the standard basis under this part, a solicitor is entitled to charge and be allowed the costs under the scales of costs for work done for or in a proceeding in the court.

(2) The scales of costs are in—

(a) for the Supreme Court—schedule 1; or

(b) for the District Court—schedule 2; or

(c) for Magistrates Courts—schedule 3.

(3) For an assessment for Magistrates Courts on the standard basis, the scale in schedule 3 appropriate for the amount the plaintiff recovers applies.

(4) For an assessment for Magistrates Courts on the indemnity basis, the scale in schedule 3 appropriate for the amount the plaintiff claims applies.

(5) If the nature and importance, or the difficulty or urgency, of a proceeding and the justice of the case justify it, the court may allow an increase of not more than 30% of the solicitor's costs allowed on the assessment of the costs of the proceeding.

(6) The registrar has the same authority as the court under subrule (5).

Entitlement to recover costs

691. A party to a proceeding can not recover any costs of the proceeding from another party other than under these rules or an order of the court.

Amendment

692.(1) This rule does not apply to a party who amends a document because of another party's amendment or default.

(2) A party who amends a document must pay the costs of and caused by the amendment, unless the court orders otherwise.

Application in a proceeding

693.(1) Each party must pay the party's own costs of an application in a proceeding, unless the court orders otherwise.

(2) Subrule (1) applies even if the application is adjourned until the trial of the proceeding in which it is made.

Costs of assessment

694.(1) This rule applies if a party's costs statement is assessed or the assessment process has commenced.

(2) Subject to these rules and any order of the court, the registrar may make orders for the costs of assessment, including costs of appointments for directions.

Default judgment

695. If a default judgment is given with costs under chapter 9, part 1[177], the registrar must set the costs in accordance with the prescribed scale.

Extending or shortening time

696. A party applying for the extension or shortening of a time set under these rules must pay the costs of the application, unless the court orders otherwise.

[177] Chapter 9 (Ending proceedings early), part 1 (Default)

Cost of inquiry to find person

697. The costs of an inquiry to find out who is entitled to a legacy, money, share or other property must be paid out of the property, unless the court orders otherwise.

Costs of proceeding in wrong court

698.(1) Subrule (2) and (3) apply unless the court otherwise orders.

(2) If the relief obtained by a plaintiff in a proceeding in the Supreme Court or District Court is a judgment that, when the proceeding began, could have been given in a Magistrates Court, the costs the plaintiff may recover must be assessed as if the proceeding had been started in the Magistrates Court.

(3) If the only relief obtained by a plaintiff in a proceeding in the Supreme Court is relief that, when the proceeding began, could have been given by the District Court, but not a Magistrates Court, the costs the plaintiff may recover must be assessed as if the proceeding had been started in the District Court.

Reserved costs

699. If the court reserves costs of an application in a proceeding, the costs reserved follow the event, unless the court orders otherwise.

Receiver's costs

700. The costs of a receiver appointed in a proceeding may be assessed by the registrar on the application of the receiver or another party to the proceeding.

Trustee

701.(1) This rule applies to a party who sues or is sued as trustee.

(2) Unless the court orders otherwise, the party is entitled to have costs of the proceeding that are not paid by someone else paid out of the fund held by the trustee.

Division 3—Costs of a party in a proceeding

Application of div 3

702. This division applies to costs in a proceeding that, under an Act, these rules or an order of the court, are to be paid to a party to the proceeding by another party or out of a fund.

Standard basis of assessment

703.(1) Unless these rules or an order of the court otherwise provide, the registrar must assess costs on the standard basis.[178]

(2) When assessing costs on the standard basis, the registrar must allow all costs necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being assessed.

Indemnity basis of assessment

704.(1) The court may order costs to be assessed on the indemnity basis.[179]

(2) Without limiting subrule (1), the court may order that costs be assessed on the indemnity basis if the court orders the payment of costs—

(a) out of a fund; or

(b) to a party who sues or is sued as a trustee; or

(c) of an application in a proceeding brought for noncompliance with an order of the court.

(3) When assessing costs on the indemnity basis, the registrar must allow all costs reasonably incurred and of a reasonable amount, having regard to—

(a) the scale of fees prescribed for the court; and

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178 Previously party and party costs—see rule 743 (Transitional provision—old basis for taxing costs equates to new basis for assessing costs)

179 Previously solicitor and client costs—see rule 743 (Transitional provision—old basis for taxing costs equates to new basis for assessing costs)

(b) any costs agreement between the party to whom the costs are payable and the party's solicitor; and

(c) charges ordinarily payable by a client to a solicitor for the work.

Trustee

705. If a party who sues or is sued as a trustee is entitled to be paid costs out of a fund held by the trustee, the registrar must assess the costs on an indemnity basis, unless the court orders otherwise.

Division 4—Registrar

Powers of the registrar

706.(1) For assessing costs, the registrar may do any of the following things—

(a) administer an oath or receive an affirmation;

(b) examine witnesses;

(c) direct a party to subpoena someone to attend a hearing before a registrar;

(d) if satisfied there is or may be a conflict of interest between the solicitor and the party—require the party to be represented by another solicitor;

(e) unless the court orders otherwise—extend or shorten the time for taking any step in assessment;

(f) direct or require a party to produce documents;

(g) give directions about the conduct of the assessment process;

(h) anything else the court directs.

(2) A person who contravenes a subpoena issued under subrule (1)(c) is guilty of contempt of the court, unless the person has a reasonable excuse.

(3) The registrar may also refer to the court any question of law arising in relation to the assessment.

Discretion of the registrar

707. In assessing costs, the registrar must consider the following—

(a) any other fees and allowances payable to the solicitor or counsel for other items in the same proceeding;

(b) the nature and importance of the proceeding;

(c) the amount involved;

(d) the principle involved;

(e) the interest of the parties;

(f) the fund, estate, or person who is to pay the costs;

(g) the general conduct and cost of the proceeding;

(h) any other relevant circumstances.

Solicitor's delay or neglect

708. The court or registrar may order a solicitor to repay to the solicitor's client all or part of any costs ordered to be paid by the client to another party if the party incurred the costs because of delay, misconduct or negligence of the solicitor.

Division 5—Procedure to assess costs

Appointment to assess

709. An application to the registrar for costs to be assessed must be made in the approved form and be accompanied by a costs statement in the approved form.

Filing a costs statement

710.(1) A costs statement must have attached to it when it is filed originals or copies of receipts for disbursements, or, if a disbursement has not been paid, originals or copies of all relevant accounts.

(2) When filing the costs statement, the registrar must write on the service copy of the costs statement the time and date set for a directions hearing before the registrar in relation to costs.

Service of costs statement

711.(1) Subject to subrule (2), the registrar must not assess a costs statement unless the party entitled to costs has served a copy of the costs statement on the party liable for the costs.

(2) A party who has not filed a notice of intention to defend need not be served with a costs statement.

(3) Unless the registrar directs otherwise, the costs statement must be served at least 14 days before the day for the directions hearing written on the statement.

Failure to file and serve costs statement

712.(1) If a party entitled to costs delays filing and serving a costs statement, the party liable to pay the costs may, by notice, require the other party to file and serve a costs statement.

(2) If the party entitled to the costs does not file and serve a costs statement within 30 days after service of a notice under subrule (1), the registrar may direct the party entitled to costs to file and serve a costs statement within a stated time.

(3) If the party does not comply with the registrar's direction, the registrar may—

(a) either—

(i) disallow the costs; or

(ii) allow costs at a nominal or other amount; and

(b) order the party to pay to another party costs incurred because of the failure to comply with the direction.

Disbursement or fee not paid

713.(1) If a party's costs statement includes an account in it which has

not been paid, the party may claim the amount as a disbursement.

(2) The registrar may allow the amount as a disbursement only if it is paid before the registrar signs the order for the amount of the costs under rule 736.

Agent's fees

714.(1) A solicitor who includes in a costs statement a charge for work done by another solicitor practising in Queensland as agent for the solicitor must claim the charge as a professional charge, not as a disbursement.

(2) The registrar may assess and allow a charge mentioned in subrule (1) even though it is not paid before the assessment.

(3) However, if a solicitor includes in a costs statement a charge for work done by a solicitor or barrister practising outside Queensland, the solicitor must claim the charge as a disbursement.

(4) If the registrar allows a charge mentioned in subrule (3) when assessing costs, the amount the registrar allows must, so far as practicable, be an amount appropriate in the place where the solicitor or barrister practises.

Solicitor trustee

715.(1) On the assessment of a bill of costs between a solicitor who is an executor or trustee and his or her beneficiary, costs other than out-of-pocket costs for professional services rendered by the solicitor, either in the administration of the trust estate out of court, or for a proceeding about the trust estate to which the solicitor is a party must not be allowed.

(2) Subrule (1) does not apply if the solicitor is expressly authorised by the instrument creating the trust to charge the costs.

(3) However, the solicitor may employ as his or her solicitor for trust purposes a member of a firm of which the solicitor is himself or herself a partner.

(4) A partner employed under subrule (2) may be allowed the usual professional charges if—

(a) the solicitor trustee does not participate in the profits; and

(b) a certificate to that effect, signed by the solicitor trustee, is produced on the assessment.

Amendment and withdrawal of costs statement

716.(1) The court or the registrar may at any time, by order, allow a party to amend or withdraw a costs statement or order that a party file another costs statement.

(2) Unless the court or registrar orders otherwise, the amendment or withdrawal and replacement of a costs statement must be disregarded for deciding if—

(a) the costs statement has been reduced by more than 15% on assessment; or

(b) the amount of the assessed costs in the costs statement is more than, equal to or less than an offer mentioned in rule 721.[180]

Objection to costs statement

717.(1) A party on whom a costs statement is served may, by notice, object to any item in the statement.

(2) The notice of objection must—

(a) number each objection; and

(b) give the number of each item in the costs statement to which the party objects; and

(c) for each objection—concisely state the reasons for the objection identifying any issue of law or fact the objector considers the registrar must consider to make a decision in favour of the objector.

(3) The reasons for objection may be in abbreviated note form but must be understandable without further explanation.

(4) If the same objection applies to consecutive or near consecutive items in a costs statement, the notice need not separately state the reasons for

[180] Rule 721 (Offer to settle costs)

objecting to each of the items.

(5) 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.

(6) The party objecting must file the notice and serve it on the party entitled to the costs at least 2 business days before the day for the directions hearing written on the costs statement.

(7) The assessment must proceed in accordance with directions given at a directions hearing.

Assessment may be limited

718. If a notice of objection relates only to a particular issue or a particular item, the registrar may limit the assessment to the resolution of the matters raised in the objection and otherwise assess the costs under rule 719.

What happens if no objection to costs statement

719.(1) If a party does not file a notice of objection to a costs statement and the party liable for costs does not attend the directions hearing, the registrar may, on proof that the costs statement was served on the party liable for the costs, assess the costs without considering each item by allowing all or part of the costs claimed and make an order for the amount of the assessed costs.

(2) If the party entitled to the costs is not satisfied with the assessed costs under subrule (1), the party may require the registrar to assess the costs by considering each item.

Setting aside default assessment

720.(1) The party liable for costs may apply to the court to have costs assessed in the absence of a party under rule 719 set aside or varied.

(2) The application must be supported by an affidavit explaining the default, any delay and the grounds for the application.

Offer to settle costs

721.(1) A party liable to pay costs may serve on the party entitled to the costs a written offer to settle the costs.

(2) An offer to settle costs—

(a) must state it is made under this rule; and

(b) must be for all of the person's liability for costs to the party to whom it is made; and

(c) may be served at any time after whichever of the following applies, but at least 2 business days before the date set for assessing the costs—

(i) if costs are payable under an order—the day the order is made;

(ii) if costs are not payable under an order—the day liability for costs accrues.

(3) An offer to settle costs—

(a) can not be withdrawn without the leave of the court; and

(b) does not lapse because the party to whom it is made rejects or fails to accept it; and

(c) ends when the assessment of the costs statement to which it relates starts.

(4) Other than for rule 722, a party must not disclose to the registrar the amount of an offer to settle until the registrar has assessed all items in the costs statement, and decided all questions, other than the cost of the assessment.

Acceptance of offer to settle costs

722.(1) An acceptance of an offer to settle must be in writing.

(2) If a party gives to the registrar a copy of the offer and the acceptance of the offer, the costs must be set at the amount of the offer.

(3) If—

(a) a party does not accept an offer to settle; and

(b) the amount of the costs statement allowed by the registrar, before deciding the costs of the assessment, is equal to, or more than, the amount of the offer;

the party liable for the costs must pay the costs of the assessment, unless the registrar orders otherwise.

(4) However, if the amount of the costs statement allowed by the registrar, before deciding the costs of the assessment, is less than the amount of the offer, the party entitled to the costs may not recover the costs of the assessment but must pay the costs of the assessment of the party liable to pay the costs, unless the registrar orders otherwise.

(5) For this rule, the costs of the assessment are the costs that have been, or will be, incurred by the party entitled to the costs, on and from the date of service of the offer to settle and includes any fee payable to the court for the assessment.

Agreement as to costs

723. If a party entitled to costs and a party liable for costs agree that the costs may be set at a certain amount, the registrar must, upon receipt of a written consent signed by the parties or their solicitors, set the costs at the agreed amount.

Division 6—Procedure on assessment

Attendance of parties

724.(1) The registrar may give directions about—

(a) who must be served with a costs statement; and

(b) who should attend or be represented when the registrar is assessing costs.

(2) If the registrar considers a person's attendance at an assessment is unnecessary, the registrar may disallow the costs of the person's attendance.

(3) This rule does not prevent a person affected by an assessment

attending the assessment.

(4) If the registrar gives a direction under subrule (1) and costs are payable by a fund, the party entitled to costs must also serve a notice—

(a) identifying the fund; and

(b) stating that the costs in the costs statement are payable by the fund; and

(c) stating when the costs are to be assessed; and

(d) containing any other information the registrar requires to be included in the notice.

Notice of adjournment

725.(1) If a directions hearing or an assessment is adjourned for any reason, the party with the carriage of the assessment must give notice of the adjournment to any solicitor or party served with the original costs statement but not present when the assessment was adjourned.

(2) The notice must be served under rule 112.[181]

(3) Subrule (1) applies unless the registrar otherwise directs.

Delay before the registrar

726. If, in a proceeding before the registrar, a party or the party's solicitor, puts another party to any unnecessary or improper expense or inconvenience because of neglect or delay, the registrar may—

(a) order the party to pay costs of the proceeding before the registrar to any party; or

(b) refuse to allow fees to which the solicitor would otherwise be entitled.

Parties with same solicitor

727. If the same solicitor represents 2 or more parties and the solicitor

181 Rule 112 (How ordinary service is performed)

does work for 1 or some of them separately that could have been done for some or all of them together, the registrar may disallow costs for the unnecessary work.

Counsel's advice and settling documents

728.(1) Costs of a proceeding may include costs incurred for—

(a) the advice of counsel on pleadings, evidence or other matters in a proceeding; and

(b) counsel drawing or settling any pleading or other document in a proceeding that is appropriate for counsel to draw or settle.

(2) If the registrar allows costs for counsel to draw and settle a document, the registrar must not allow the costs of a conference with counsel in relation to the document, unless there were special reasons making the conference necessary.

Evidence

729.(1) Costs of a proceeding may include costs incurred in procuring evidence and the attendance of witnesses.

(2) For subrule (1), the attendance of a witness includes an attendance at any necessary conference with counsel before the trial or hearing and, if the witness is an expert, qualifying to give evidence as an expert.

Solicitor advocate

730.(1) This rule applies if a solicitor appears on a trial or hearing alone or instructed by a partner or employee.

(2) The registrar must not allow the solicitor or partner a fee for preparing a brief.

(3) The registrar may allow one fee for preparing for the trial or hearing.

Premature brief

731. The registrar must not allow costs for the preparation and delivery

of a brief to counsel on a trial or hearing that did not take place if the costs were incurred prematurely.

Retainer of counsel

732. When assessing costs on the standard basis, the registrar must not allow a fee paid to counsel as a retainer.

Refresher fees

733.(1) If a trial or hearing occupies more than 1 day, when assessing costs on the standard basis, the registrar may allow fees for counsel at a reasonable amount for each day or part of a day of the trial or hearing after the first day.

(2) If the start or resumption of a trial or hearing is delayed and, because of the delay, counsel or a solicitor were not able to undertake other work, the registrar may include waiting time as part of any period under subrule (1).

Cross-costs may be set off

734.(1) If a party entitled to be paid costs is also liable to pay costs, the registrar may—

(a) assess the costs the party is liable to pay and set off the amount assessed against the amount the party is entitled to be paid and by an order set the amount of the balance and by whom the balance is payable; or

(b) decline to make an order for costs the party is entitled to be paid until the party has paid the amount the party is liable to pay.

(2) Costs may be set off under subrule (1) even though a solicitor for a party has a lien for costs of the proceeding.

Costs statement reduced by 15%

735.(1) This rule applies if on the assessment of costs payable out of a fund the amount of professional charges and disbursements is reduced by more than 15%.

(2) The registrar must not allow the solicitor filing the costs statement for assessment any costs for preparing the statement or attending the assessment, unless the registrar orders otherwise.

Registrar's assessment

736.(1) The registrar must state in the form of an order the amount at which a costs statement has been assessed.

(2) Except if costs are assessed under rule 719(1) or an offer to settle is accepted under rule 722, the registrar must not, without the consent of the parties to the assessment, sign the order within 14 days after the date of the assessment.

(3) If a notice of objection is given under rule 739, the registrar must not sign the order until after the reconsideration procedure ends.

(4) However, if no notice of objection is given under rule 739, the registrar must sign and file the order.

(5) The order, once signed and filed, is final.

Division 7—Review of assessment

Application

737. This division does not apply to an assessment under rule 719(1).

Objection to decision of registrar

738.(1) A party who has objected under rule 717 or attends an assessment and objects to any decision of the registrar may apply to the registrar for reconsideration of the decision.

(2) For subrule (1), the registrar does not make a decision on an item in a costs statement if no-one objected to the item and the registrar allows the item.

Procedure for objection

739.(1) A party may apply for reconsideration under rule 741 of a registrar's assessment by notice given to the registrar.

(2) The notice must be in the approved form and be filed within 14 days after the date of the assessment.

(3) The applicant must file with, or write on, the notice a statement of objection.

(4) The statement of objection must list—

(a) the number of each item in the costs statement to which the decision objected to relates; and

(b) the reasons for each objection identifying any issues of law or fact the objector considers the registrar must consider to make a decision in favour of the objector.

(5) The applicant must, on the day of filing the notice and statement of objections, serve a copy of the notice and statement on any other party who attended the assessment.

(6) If the applicant is the party liable for costs, the applicant must not include in the statement of objections any objection not previously taken.

Reply to objection

740.(1) If a party to an assessment is served with a notice and statement under rule 739, the party may file and serve on the party applying for reconsideration, a reply to the statement of objections.

(2) The reply must—

(a) be in the approved form and be filed and served within 7 days after the statement of objections is served or another time set by the registrar; and

(b) state specifically the issues of law or fact the replying party considers the registrar must consider to make a decision in favour of the replying party.

Reconsideration

741.(1) If a party files a notice and statement under rule 739, the registrar must—

(a) reconsider a decision objected to having regard to the statement of objections and any reply; and

(b) state the reason for the decision on reconsideration; and

(c) sign and file an order in accordance with the decision on reconsideration.

(2) Subject to rule 742, an order signed and filed under subrule (1)(c) is final.

Review by court

742.(1) A party dissatisfied with the decision of the registrar on reconsideration under rule 741 may apply to the court to review the decision.

(2) The application must list—

(a) the number of each item in the costs statement for which the party objects to the decision of the registrar; and

(b) specific and concise grounds and reasons for objecting to the decision; and

(c) the decision sought from the court in relation to each objection.

(3) The party must file the application and serve it on all other parties to the assessment within 14 days after the decision of the registrar on reconsideration under rule 741.

(4) On a review, unless the court otherwise directs—

(a) the court may not receive further evidence; and

(b) a party may not raise any ground of objection not stated in a statement of objection or raised before the registrar.

(5) Subject to subrule (4), on the review the court may—

(a) exercise all the powers of the registrar in relation to the items of the costs statement under objection; and

(b) set aside or vary the decision of the registrar; and

(c) return any item in the costs statement to the registrar for reconsideration, whether with or without directions to the registrar; and

(d) make any other order it considers appropriate.

(6) Unless the court orders otherwise, the review does not operate as a stay of the registrar's decision.

Division 8—Transitional provision about costs

Transitional provision—old basis for taxing costs equates to new basis for assessing costs

743. For the Act, section 133(b)[182]—

(a) party and party basis equates to standard basis; and

(b) solicitor and client basis equates to indemnity basis.

CHAPTER 18—APPELLATE PROCEEDINGS

PART 1—APPEALS TO THE COURT OF APPEAL

Division 1—Preliminary

Definition for pt 1

744. In this part—

"decision" means an order, judgment, verdict or an assessment of damages.

182 The *Supreme Court of Queensland Act 1991*, section 133 (References to taxation of costs)

Application of pt 1

745.(1) This part applies to an appeal to the Court of Appeal from a decision of—

(a) the Supreme Court constituted by a single judge; or

(b) the District Court, the Industrial Court, the Land Appeal Court and the Planning and Environment Court; or

(c) another body from which an appeal lies to the Court of Appeal.

(2) However, rule 765[183] applies only to an appeal from the Supreme Court constituted by a single judge.

(3) This part does not apply to a decision of a registrar of a court or other body mentioned in subrule (1).

Division 2—Procedural

Starting appeal or making application for new trial

746.(1) An appeal is started, or an application for a new trial is made, by filing a notice of appeal with the registrar of the Supreme Court at Brisbane.

(2) If the proceeding in which the decision appealed from was made was not started in the Supreme Court registry in Brisbane, as soon as practicable the appellant must also—

(a) file a copy of the notice of appeal in the registry of the court in which the proceeding was started; or

(b) if the decision appealed from was made by an entity other than a court—serve a copy of the notice of appeal on the registrar, secretary or another officer of the entity or, if there is no appropriate person, on the person or 1 of the persons constituting the entity.

183 Rule 765 (Nature of appeal and application for new trial)

Content of notice of appeal

747.(1) A notice of appeal must be in the approved form and state—

(a) whether the whole or part of the decision is appealed from; and

(b) briefly and specifically the grounds of appeal; and

(c) the decision the appellant seeks.

(2) If leave is given to start an appeal, the notice of appeal must set out—

(a) the order giving leave; and

(b) a concise statement of the reasons why leave was given; and

(c) the specific questions for which leave was given.

Time for appealing

748. A notice of appeal must, unless the Court of Appeal orders otherwise—

(a) be filed within 28 days after the date of the decision appealed from; and

(b) be served as soon as practicable on all other parties to the appeal.

Parties to appeal

749.(1) Each party to a proceeding who is directly affected by the relief sought in the notice of appeal or who is interested in maintaining the decision under appeal must be made a respondent to the appeal.

(2) The notice of appeal need not be served on a party who is not made a respondent to the appeal.

Inclusion, removal or substitution of party

750.(1) The Court of Appeal may order the inclusion or removal of a person (whether or not a party to the original proceeding) as a party to an appeal and may order that a person directly affected by the appeal be substituted as a party or included as a party.

(2) However, a person who has not consented in writing may not be

made an appellant.

(3) If the Court of Appeal orders the inclusion of a person as a party to an appeal, it may adjourn the hearing of the appeal and make an order or give a direction it considers appropriate about the conduct of the appeal.

Amendment of notice of appeal

751. A notice of appeal may be amended—

(a) without leave within the time limited for starting an appeal; or

(b) at another time with the Court of Appeal's leave.

Service

752.(1) A notice of appeal must be served on all respondents to the appeal and on any other person the Court of Appeal directs.

(2) A notice of appeal, a notice of cross appeal or a notice of contention may be served on a party at the party's address for service in the proceeding in which the decision was given.

Directions conference with registrar

753.(1) If a notice of appeal is filed, the registrar may set a date for a directions conference with the parties named in the notice.

(2) The purpose of the conference is to settle the contents of the appeal book and to set a date for hearing.

(3) The registrar may adjourn a conference and give directions about matters of preparation to be completed before the adjourned conference is held.

Cross appeals

754. If a respondent intends to contend the decision appealed from should be varied, the respondent must file a notice of cross appeal stating the contention and serve it on any other party who may be affected.

Notice of cross appeal

755.(1) A notice of cross appeal must be in the approved form and state the following—

(a) the part of the decision to which the cross appeal relates;

(b) briefly and specifically, the grounds of the cross appeal;

(c) the decision the respondent seeks.

(2) The respondent must—

(a) file the notice of cross appeal within 14 days after the day of service of the notice of appeal on the respondent; and

(b) as soon as practicable serve a copy of the notice of cross appeal on all other parties to the appeal.

Effect of notice of cross appeal

756.(1) A failure to give a notice of cross appeal does not affect the powers exercisable by the Court of Appeal on hearing the appeal but the Court of Appeal may adjourn the hearing of the appeal.

(2) If a notice of cross appeal is filed, the Court of Appeal may do any of the following—

(a) direct the respondent to serve a notice of cross appeal in compliance with this rule on a party to the proceeding or another person;

(b) adjourn the hearing of the appeal;

(c) make an order, or give a direction, it considers appropriate as to the conduct of the appeal.

(3) A notice of cross appeal may be amended with the Court of Appeal's leave.

Affirmation on other ground

757.(1) If a respondent intends to contend a decision should be affirmed on a ground other than a ground relied on by the court that made the decision, the respondent must file a notice of contention stating briefly and specifically the grounds of the contention.

(2) The notice of contention must be in the approved form.

(3) The respondent must—

(a) file the notice of contention within 14 days after the day of service of the notice of appeal on the respondent; and

(b) as soon as practicable serve a copy of the notice of contention on all other parties to the appeal.

Appeal book

758.(1) The appellant or a cross appellant must arrange preparation of an appeal book.

(2) The appeal book must—

(a) include the documents, or the parts of documents, set out in a practice direction or decided by the registrar; and

(b) be prepared in a way satisfactory to the registrar.

(3) A practice direction may provide the minimum number of copies of the appeal book to be produced.

(4) An appellant or a cross appellant must file and serve the appeal book on all other parties to the appeal or cross appeal.

Undertaking about appeal book

759.(1) An appellant or cross appellant must undertake in writing to pay for the preparation of the appeal book.

(2) Also, an appellant or cross appellant must undertake in writing to—

(a) ask the appeals registry to arrange preparation of any transcript the registrar decides must be included in the appeal book; and

(b) pay the appeals registry for the preparation of the transcript.

(3) Within 7 days after filing a notice of appeal, the appellant or cross-appellant must file and serve the undertaking on all other parties to the appeal or cross appeal.

(4) The undertaking must be in the approved form.

Setting a date for appeal

760.(1) The registrar, if satisfied all parties to the appeal have complied with these rules or any practice direction, must set a date for hearing by the Court of Appeal.

(2) The registrar may, instead of setting a date for hearing, add the appeal to a list of appeals for hearing at a particular sitting of the Court of Appeal.

Division 3—Powers

Stay of decision under appeal

761.(1) The starting of an appeal does not stay the enforcement of the decision under appeal.

(2) However, the Court of Appeal, a judge of appeal or the court that made the order appealed from may order a stay of the enforcement of all or part of a decision subject to an appeal.

Dismissal by consent

762.(1) The parties may agree an appeal should be dismissed by consent.

(2) If the parties agree to dismissal of the appeal, a memorandum in the approved form must be filed.

(3) The memorandum may provide that—

(a) an amount secured for the costs of the appeal be paid to a party specified in the memorandum; or

(b) the appellant pay the respondent's costs of the appeal to be assessed; or

(c) the appellant pay the respondent's costs of the appeal set by consent as a specified amount; or

(d) the appellant pay the respondent's costs of the appeal, to be satisfied from an amount secured for the costs of the appeal with any balance to be paid to a specified party or to the party's solicitor; or

(e) there be no order for the costs of the appeal.

(4) Unless the court otherwise orders in relation to an amount secured for the costs of an appeal—

(a) on the dismissal of the appeal, the registrar of the court in which the amount was lodged may pay the amount to the successful respondent; and

(b) on the allowance of the appeal with costs, the registrar may pay the amount to the appellant; and

(c) in either case—the payment may be made to the solicitors on the record for the party entitled to the amount.

(5) When the registrar stamps the memorandum with the seal of the court, it takes effect as an order dismissing the appeal and providing for costs in the way stated in it.

Appeals from refusal of applications made in the absence of parties

763.(1) If a judge refuses an application made in the absence of a party, the party who made the application may renew the application in the absence of the other party by way of appeal to the Court of Appeal.

(2) The application may be made at any sitting of the Court of Appeal held within 4 business days after the day of the refusal or, for an application refused by a judge sitting in the central, northern or far northern district, 14 days after the day of the refusal, or any further time the Court of Appeal may allow.

Consent orders on appeal

764.(1) If the parties to an appeal agree as to the orders the Court of Appeal will be asked to make by consent, the appeal may be listed for hearing by the Court of Appeal even though a directions conference has not been held.

(2) If the parties agree as to the substantive orders the Court of Appeal will be asked to make by consent but are in dispute as to the order for costs, the appeal may be listed for hearing even though no record has been prepared and no directions conference has been held, unless the Court of Appeal orders otherwise.

Nature of appeal and application for new trial

765.(1) An appeal to the Court of Appeal under this chapter is an appeal by way of rehearing.

(2) However, an appeal from a decision, other than a final decision in a proceeding, or about the amount of damages or compensation awarded by a court is brought by way of an appeal.

(3) An application for a new trial is brought by way of an appeal.

(4) Despite subrules (2) and (3) but subject to the Act authorising the appeal, the Court of Appeal may hear an appeal from a decision mentioned in subrule (2) or an application for a new trial by way of rehearing if the Court of Appeal is satisfied it is in the interests of justice to proceed by way of rehearing.

General powers

766.(1) The Court of Appeal—

(a) has all the powers and duties of the court that made the decision appealed from; and

(b) may draw inferences of fact, not inconsistent with the findings of the jury (if any), and may make any order the nature of the case requires; and

(c) may, on special grounds, receive further evidence as to questions of fact, either orally in court, by affidavit or in another way; and

(d) may make the order as to the whole or part of the costs of an appeal it considers appropriate.

(2) For subrule (1)(c), further evidence may be given without special leave, unless the appeal is from a final judgment, and in any case as to matters that have happened after the date of the decision appealed against.

(3) Subject to any Act, the jurisdiction and powers of the Court of Appeal may be exercised by 2 or more Judges of Appeal in proceedings of the following kind—

(a) applications in criminal proceedings for an extension of time within which to appeal or to apply for leave to appeal;

(b) applications in criminal proceedings for leave to appeal;

(c) applications for leave to appeal in any other matter;

(d) civil proceedings other than appeals from judgments or orders given or made by a Supreme Court judge.

(4) On an appeal, the powers of the Court of Appeal are not limited because of an order made on an application in a proceeding from which there has been no appeal.

(5) Also, on hearing an application for a new trial or to set aside the verdict or finding of a jury, the Court of Appeal may, if satisfied it has before it all the materials necessary for finally determining any or all of the questions in dispute or for awarding any relief sought, give final judgment in the matter, and may for that purpose draw any inference of fact not inconsistent with any findings of the jury.

(6) The Court of Appeal may exercise its powers under this rule even though—

(a) a notice of appeal has not been given for a particular part of the decision or by a particular party to the proceeding; or

(b) a ground for allowing the appeal or for affirming or varying the decision is not stated in the notice of appeal.

Exercise of certain powers by judge of appeal

767. Subject to any Act, 1 or more judges of appeal may exercise the powers of the Court fo Appeal in any of the following proceedings—

(a) a proceeding about a question of practice and procedure in the Court of Appeal; or

(b) an application in a civil proceeding for leave to appeal or for an extension of time to apply for leave to appeal; or

(c) an application for a stay of execution or for an injunction pending an appeal; or

(d) an appeal listed for hearing under rule 764.

Matter happening in other court

768.(1) If a question arises as to a matter happening in the court that

made the decision, the Court of Appeal may have regard to the material it considers appropriate.

(2) Without limiting subrule (1), the Court of Appeal may—

(a) call for a report from the court that made the decision; and

(b) if the contents of the report have been made available to the parties to the appeal—act on the report.

Insufficient material

769. If the Court of Appeal considers it has insufficient material before it to enable it to make a decision, it may direct the appeal be adjourned for further consideration and it may direct the issues or questions to be decided, and accounts to be taken or inquiries made, that it considers appropriate.

New trial

770.(1) If, on the hearing of an appeal, it appears to the Court of Appeal there ought to be a new trial, the Court of Appeal may set aside the decision and order a new trial.

(2) Unless the Court of Appeal considers some substantial wrong or miscarriage happened, a new trial may not be granted merely because—

(a) evidence was improperly rejected or admitted; or

(b) if the proceeding was tried with a jury—

(i) the jury was misdirected; or

(ii) the verdict of the jury was not taken on a question that the judge at the trial was not asked to leave to the jury.

(3) A new trial may be ordered for a part of a decision without interfering with another part of the decision.

(4) The Court of Appeal may, in the order granting a new trial, give all necessary directions for the further conduct of the proceeding.

Assessment of costs of appeals

771. The costs of appeals and all other matters brought before the Court

of Appeal under this part are assessed by a registrar of the Supreme Court in Brisbane.

Security for costs of appeal

772.(1) The Court of Appeal, or the court that made the decision appealed from, may order an appellant to give security, in the form the court considers appropriate, for the prosecution of the appeal without delay and for payment of any costs the Court of Appeal may award to a respondent.

(2) A court may make the order at any time on the application of a respondent to the appeal.

(3) The order must set the amount of security that must be given and the time within which it must be given.

(4) The Court of Appeal may at any time set aside or vary an order made under this rule.

Way security for costs of appeal to be given

773.(1) Security may be given by payment into court or in another way approved by the court or the registrar.

(2) The appellant must, as soon as practicable after giving security, serve on the respondent written notice of the time when, and the way in which, the security was given.

Effect of failure to give security for costs of appeal

774. If the appellant has been ordered to give security for costs of an appeal and the security has not been given as required by the order—

(a) the appeal is stayed so far as it concerns steps to be taken by the appellant, unless the Court of Appeal otherwise orders; and

(b) the Court of Appeal or the court may, on the respondent's application, dismiss the appeal.

Effect of failure to prosecute appeal

775.(1) If the appellant fails to comply with any step required under these rules or a practice direction, including a practice direction about filing or serving an outline of argument, the Court of Appeal may, at or before the hearing of the appeal and of its own initiative or on an application by a respondent, dismiss the appeal for want of prosecution.

(2) Subrule (1) applies unless an Act otherwise provides.

Division 4—Miscellaneous

Appeals from outside Brisbane

776.(1) If a copy of a notice of appeal is filed in a registry of a court, other than the Brisbane registry of the Supreme Court—

(a) the court or registrar of the registry in which the copy is filed must send to the registrar of the Supreme Court at Brisbane any documents necessary for the hearing of the appeal; and

(b) unless the Court of Appeal, or the court that made the decision appealed from, orders otherwise, on the disposal of the appeal, the registrar of the Supreme Court at Brisbane must return them to the other court or registrar.

(2) If an appeal from a decision given in a proceeding pending in a registry of a court, other than the Brisbane registry of the Supreme Court, has been disposed of—

(a) the order is settled by the registrar of the Supreme Court at Brisbane and filed in the Brisbane registry; and

(b) the registrar of the Supreme Court at Brisbane must send a copy of the order to the court or registrar of the registry in which the proceeding was pending; and

(c) all subsequent steps in the proceeding are taken in the other court or registry.

Registrar may publish certain decision

777. A judge of appeal may authorise the registrar to publish a decision of the Court of Appeal—

(a) if no judge of appeal is available to publish the decision; or

(b) that grants or refuses a certificate under the *Appeal Costs Fund Act 1973*.

PART 2—APPLICATIONS AND CASES STATED TO COURT OF APPEAL

Division 1—Applications to Court of Appeal

Application in appeal or case stated

778. This division applies only to an application in an appeal or case stated to the Court of Appeal.

Procedure

779.(1) Chapter 2, part 4[184] applies, with any changes necessary, to an application under this division.

(2) An application under this division must be in the approved form.

Documents for application

780.(1) The applicant must, when filing an application under this division, supply 3 further copies of the application and of all affidavits in support and exhibits for the use of the Court of Appeal.

(2) The respondent must, when filing an affidavit in the application,

[184] Chapter 2 (Starting proceedings), part 4 (Applications)

supply 3 further copies of the affidavit and exhibits for the use of the Court of Appeal.

Division 2—Cases stated

Form and contents of case stated

781. A case stated must—

(a) be divided into paragraphs numbered consecutively; and

(b) state the questions to be decided; and

(c) state concisely the facts necessary to enable the Court of Appeal to decide the questions arising or to otherwise hear and decide the questions on the case stated.

Setting a date for argument

782. On receipt of a case stated, the registrar, if satisfied all parties interested in the case have been served with a copy, must set a date for hearing by the Court of Appeal.

Hearing case stated

783. At the hearing of a case stated—

(a) the Court of Appeal and the parties may refer to the whole of a document referred to in the case stated; and

(b) the Court of Appeal may draw any inference from the facts stated in the case.

PART 3—OTHER APPEALS

Application of pt 3

784. Subject to any Act, this part applies to appeals to a court other than the Court of Appeal.

Procedure

785.(1) The procedures in part 1, other than rules 753, 758, 766(3), 767, 776 and 777, apply to appeals under this part.

(2) An appeal to the District Court may be filed in any registry in which an appeal may be filed under the *District Court Act 1967*.

(3) The procedures apply with necessary changes and subject to any practice direction of the court to which the appeal is made, including a practice direction about the originating process to be used.

(4) If the appeal is not from a court, then, for applying rule 746(2)—

(a) the person to be served must be the registrar, secretary or another officer of the entity in respect of whose decision the appeal is started or, if there is no appropriate person, the person or 1 of the persons constituting the entity; and

(b) on being served with a copy of the notice of appeal, the person served must arrange to send immediately to the registrar of the court in which the appeal is started copies of all documents used by the entity in the proceeding from which the appeal is brought, including, but not limited to—

(i) initiating documents; and

(ii) anything in the nature of pleadings; and

(iii) affidavits or written statements of evidence; and

(iv) transcripts or notes of oral evidence; and

(v) exhibits; and

(vi) any documents embodying the formal decision including the

reasons for the decision; and

(vii) any other document relevant to the hearing of the appeal.

Notice of appeal

786.(1) A notice of appeal must be in the approved form and, in addition to the requirements of rule 747(1)—

(a) state the name and last known address of each respondent; and

(b) state whether the appellant will seek to put further evidence before the court and

(c) if further evidence is to be put before the court, briefly state the nature of any evidence the applicant will seek to put before the court and what is sought to be proved; and

(d) have on it the information required to be on an originating process under rule 17.

(2) Within 14 days after service on the respondent of the notice of appeal, the respondent, if the respondent wishes to participate in the appeal, must file a notice of address for service in the approved form and then serve a copy on the appellant.

(3) The notice of address for service must have on it the information required to be on an originating process under rule 17.

(4) Subrules (2) and (3) do not apply if the respondent files a notice of cross appeal under rule 754 or a notice of contention under rule 757.

(5) If the leave of the court is required, the proceeding must be commenced by filing a notice of appeal subject to leave in the approved form.

(6) Subrule (1) applies to a notice of appeal subject to leave with any changes necessary.

(7) If the court gives leave to appeal—

(a) the appellant must serve notice of the giving of leave on each respondent; and

(b) subrules (2) and (3) apply as if the reference to service of the notice of appeal were a reference to service of the notice of the

giving of leave.

(8) Nothing in subrules (5) to (7) prevents the parties agreeing that an appeal subject to leave may be heard by the court with or immediately after the application for leave.

Procedure for hearing appeal under r 786

787. Unless a judge otherwise orders, for hearing an appeal—

(a) a record of proceedings is not necessary; and

(b) the court must rely on the transcript and exhibits at first instance.

Consent order

788. If the parties agree in writing to resolve the appeal, a consent order may be made under rule 666.[185]

Registrar may give directions

789.(1) The registrar of the court to which an appeal is made may—

(a) give directions about the documents and number of copies to be filed and served on another party to the appeal; and

(b) require the parties to attend at a conference for the purpose of identifying and assembling for convenient access by the court all documents on which the parties wish to rely in the appeal.

(2) Directions given by the registrar under subrule (1) must be consistent with the court's practice directions.

Preparation for hearing

790.(1) On compliance with these rules and any relevant practice direction, the appellant and all respondents who have filed an address for service must confer with a view to identifying—

(a) the matters in issue in the appeal; and

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185 Rule 666 (Consent orders)

(b) whether any and what further evidence is or is sought to be put before the court for the purposes of the appeal; and

(c) how long the hearing of the appeal may take.

(2) If the parties reach agreement as required under subrule (1), the parties must immediately file a certificate of readiness in the approved form.

(3) If the parties can not agree as required under subrule (1), each party must immediately file a certificate of readiness in the approved form.

(4) On the filing of a certificate of readiness, the registrar may list the matter for hearing.

Rehearing after decision of judicial registrar or registrar

791.(1) A party to an application who is dissatisfied with a decision of a judicial registrar or registrar on the application may, with the leave of the court, have the application reheard by the court.

(2) If the court grants leave, it may do so on condition, including, for example, a condition about—

(a) the evidence to be adduced; or

(b) the submissions to be presented; or

(c) the nature of the rehearing.

(3) This rule does not apply to a review under rule 742.

Leave to appeal

792.(1) A party may appeal to a court under rule 791 only with the leave of the court as constituted by a judge or magistrate.

(2) This rule and rule 791 do not prevent a party appealing against a decision on an appeal under this part.

CHAPTER 19—ENFORCEMENT OF MONEY ORDERS

PART 1—PRELIMINARY

Definitions for ch 19

793. In this chapter—

"account", for a financial institution, includes a withdrawable share account.

"earnings", of an enforcement debtor, means any of the following that are owing or accruing to the enforcement debtor—

(a) wages, salary, fees, bonuses, commission, overtime pay or other compensation for services or profit arising from office or employment;

(b) pension, benefit or similar payment;

(c) annuity;

(d) an amount payable instead of leave;

(e) retirement benefit.

"employer", of an enforcement debtor, means a person (including the State) who, as principal, rather than as a servant or agent, pays, or is likely to pay, earnings to the enforcement debtor.

"end of trial enforcement hearing", for part 2, see rule 805.[186]

"enforceable money order", of a court, means—

(a) a money order of the court; or

(b) a money order of another court or tribunal filed or registered under an Act in the court for enforcement.

"enforcement creditor" means—

(a) a person entitled to enforce an order for the payment of money; or

[186] Rule 805 (Application for end of trial enforcement hearing)

(b) a person to whom the benefit of part of the order has passed by way or assignment or in another way.

"enforcement debtor" means a person required to pay money under an order.

"enforcement warrant" means a warrant issued under this chapter to enforce a money order.

"enforcement warrant for regular redirection", for part 5, division 2, see rule 848.

"fourth person", for part 5, division 2, see rule 847.

"order debt" means the amount of money payable under a money order.

"partner" includes a former partner.

"regular deposit", for part 5, division 2, see rule 847.

"regular debt" for part 5, division 2, see rule 848.

"third person" means—

(a) a person (including the State) from whom a debt—

(i) is payable to the enforcement debtor; or

(ii) is likely to become payable to the enforcement debtor; and

(b) for part 5, division 2, see rule 847.

Enforcement of money orders

794. A money order may be enforced under this chapter.

Enforcement by or against a non-party

795.(1) If a money order is made in favour of a person who is not a party to the proceeding in which the order is made, the person may enforce the order as if the person were a party.

(2) If a money order is made against a person who is not a party when the order is made, the order may be enforced against the person as if the person were a party.

(3) If a money order is made against a corporation who is not a party

when the order is made, an officer of the corporation is liable to the same process of enforcement as if the corporation were a party.

Conditional order

796.(1) A money order subject to a condition may be enforced only if—

(a) the condition has been satisfied; and

(b) a court has given leave to enforce the order.

(2) Unless a court orders otherwise, if a person fails to satisfy a condition a court has included in a money order, the person entitled to the benefit of the order loses the benefit.

(3) The court may order otherwise for subrule (2) even on an application made after the date for satisfaction of the condition.

Amount recoverable from enforcement

797.(1) The costs of enforcement of a money order are recoverable as part of the order.

(2) Interest on an order debt is recoverable as part of the money order.

Separate enforcement for costs

798. A person entitled to enforce an order with costs may enforce the order and, when the costs become payable, enforce payment of the costs separately.

Enforcement period

799.(1) An enforcement creditor may start enforcement proceedings without leave at any time within 6 years after the day the money order was made.

(2) In addition to another law requiring a court's leave before an order may be enforced, an enforcement creditor requires a court's leave to start enforcement proceedings if—

(a) it is more than 6 years since the money order was made; or

(b) there has been a change in an enforcement creditor or enforcement debtor, whether by assignment, death or otherwise.

(3) An application for leave to start enforcement proceedings may be made without notice to any person unless the court orders otherwise.

(4) On an application for leave to start enforcement proceedings, the applicant must satisfy the court—

(a) as to the amount, including interest, owing at the date of the application; and

(b) if it is more than 6 years since the money order was made—as to the reasons for the delay; and

(c) if there has been a change in an enforcement creditor or enforcement debtor—as to the change that has happened; and

(d) that the applicant is entitled to enforce the order; and

(e) that the enforcement debtor against whom enforcement is sought is liable to satisfy the order.

Stay of enforcement

800.(1) A court may, on application by an enforcement debtor—

(a) stay the enforcement of all or part of a money order, including because of facts arising or discovered after the order was made; and

(b) make the orders it considers appropriate, including an order for payment by instalments.

(2) The application must be supported by an affidavit stating the facts relied on by the enforcement debtor.

(3) The application and affidavit must be served personally on the enforcement creditor at least 3 business days before the hearing of the application.

Where to enforce money order

801.(1) If the amount payable under an enforceable money order of the Supreme Court is—

(a) within the jurisdiction of a Magistrates Court—the order may be enforced in a Magistrates Court; or

(b) within the jurisdiction of the District Court but not within the jurisdiction of a Magistrates Court—the order may be enforced in the District Court.

(2) If the amount payable under an enforceable money order of the District Court is within the jurisdiction of a Magistrates Court, the order may be enforced in a Magistrates Court.

(3) An enforceable money order of the District Court or a Magistrates Court may be enforced in the Supreme Court if the Supreme Court so orders.

(4) Unless the court in which a money order was made orders otherwise, the costs of the order's enforcement are recoverable only on—

(a) if the amount payable under the order is within the jurisdiction of a Magistrates Court—the scale of costs prescribed for Magistrates Courts; or

(b) if the amount payable under the order is within the jurisdiction of the District Court—the scale of costs prescribed for the District Court.

Enforcing money order in different court

802.(1) To enforce an enforceable money order of the Supreme Court, the District Court or a Magistrates Court in another court, the order must be filed in the other court.

(2) If an enforceable money order is to be filed under this rule in the District Court or Magistrates Court, then, unless the court in which it is to be filed orders otherwise, the enforceable money order must be filed in the District Court, or Magistrates Court, for the district—

(a) where the enforcement debtor resides or carries on business; or

(b) closest to the court that made the enforceable money order.

(3) Rule 826[187] applies to an enforceable money order filed under this rule.

PART 2—ENFORCEMENT HEARINGS

Purpose of enforcement hearing

803. The purpose of an enforcement hearing is to obtain information to facilitate the enforcement of a money order.

When an enforcement hearing may take place

804. An enforcement hearing may take place—

(a) at the end of the trial of a proceeding that has resulted in a money order; or

(b) at any time after a money order is made.

Application for end of trial enforcement hearing

805.(1) At any time after filing a request for trial date and before trial, a party may apply to the court for an enforcement hearing (an **"end of trial enforcement hearing"**) to take place immediately after judgment is given at the end of a trial.

(2) The application must be served on each other party.

(3) A party may also apply during a trial for an end of trial enforcement hearing.

Outcome of application for end of trial enforcement hearing

806.(1) If the court considers an end of trial enforcement hearing is appropriate, the court may grant the application.

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187 Rule 826 (Enforcement beyond the district)

(2) If the court grants the application, it—

(a) must issue an enforcement hearing summons; and

(b) may give directions about the conduct of the end of trial enforcement hearing and direct that—

(i) the court as constituted by a judicial registrar or registrar may hear the enforcement hearing; or

(ii) the enforcement hearing be adjourned.

(3) If an enforcement debtor is served with an enforcement hearing summons for an end of trial enforcement hearing and the court reserves its decision, the court may give directions—

(a) about the date of the enforcement hearing; and

(b) as provided for under subrule (2)(b).

Enforcement hearing after order is made

807.(1) At any time after a money order is made, an enforcement creditor or an enforcement debtor 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 must be supported by an affidavit.

(3) The registrar must set the date for the enforcement hearing and issue an enforcement hearing summons summoning an enforcement debtor to attend the enforcement hearing.

(4) If the enforcement debtor is a corporation, the summons may be directed to an officer of the corporation.

(5) If an enforcement debtor is a partnership, the summons may be directed to a partner or a person who has or had the control or management of the partnership business in Queensland.

(6) In this rule—

"registrar" includes a judicial registrar.

Enforcement hearing summons

808.(1) A court may, by an enforcement hearing summons in the approved form, require a person mentioned in rule 807(3), (4) or (5) to attend before the court at a stated time and place to give information and answer questions, and produce stated documents or things.

(2) A person required to attend an enforcement hearing under an enforcement hearing summons must be served with the summons personally or by pre-paid ordinary post at least 14 days before the day set for the enforcement hearing.

(3) However, if an enforcement hearing summons is issued for an end of trial enforcement hearing, the summons must be served as soon as practicable after it is issued.

Financial position statement

809.(1) By an enforcement hearing summons, a court may also require completion of a statement on oath of an enforcement debtor's financial position in the approved form by—

(a) the enforcement debtor; or

(b) if the enforcement debtor is a corporation—an officer of the corporation; or

(c) if the enforcement debtor is a partnership—a partner or person who has or had the control or management of the partnership business in Queensland.

(2) If the enforcement debtor receives regular payments, for example, wages or social security benefits, the person required to complete the statement must state—

(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.

(3) A person required to complete a statement of an enforcement debtor's financial position must forward it to the enforcement creditor within 14 days after service of the summons or before the day of the enforcement hearing, whichever happens first.

(4) An enforcement creditor may, if satisfied with the information provided by a person in a statement of an enforcement debtor's financial position, give written notice to the person and the court that the person is no longer required to attend the enforcement hearing.

Subpoena

810.(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 may be served with the subpoena by ordinary service at least 14 days before the day set for the enforcement hearing.[188]

Conduct money

811.(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.

(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.[189]

(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 who is not an enforcement debtor or an officer of an enforcement debtor.

Examination at enforcement hearing

812. At an enforcement hearing, a person summoned to attend may be

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

189 Rule 419 (Conduct money)

examined about an enforcement debtor's property and other means of satisfying the order debt.

Order for enforcement hearing outside district

813.(1) This rule applies only to the District Court or a Magistrates Court.

(2) An enforcement hearing in the District Court may take place in the court sitting at a place outside the district in which the relevant money order was made.

(3) For the Magistrates Courts—

(a) an enforcement hearing may take place in a court other than in a district where the enforcement debtor resides or carries on business; and

(b) a summons for an enforcement hearing may be issued by a court in any district if a copy of the money order is filed in the registry in the district; and

(c) a person who requires an enforcement officer of a district, other than the district in which the summons is issued, to serve the summons may send the summons to a court in the district where the summons is to be served; and

(d) the court in the district where the summons is to be served may record the summons, after which the summons is taken to have been issued by that court.

Enforcement hearing warrant

814.(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 to be examined if the 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 or magistrate.

(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.

Failure to cooperate at enforcement hearing

815.(1) This rule applies if a person summoned or subpoenaed to attend an enforcement hearing attends before the court and without lawful excuse—

(a) refuses to be sworn or to affirm; or

(b) refuses to answer a question put to the person; or

(c) fails to give an answer to the court's satisfaction.

(2) The court may treat the person's refusal or failure as a contempt of court.

(3) In this rule—

"lawful excuse" includes a lawful claim of privilege.

Orders at enforcement hearing

816.(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.

PART 3—ENFORCEMENT WARRANTS GENERALLY

Procedure

817.(1) A person applying for an enforcement warrant must file—

(a) an application attaching the enforcement warrant the person wants the court to issue; and

(b) a statement in the approved form sworn by the enforcement creditor, or the enforcement creditor's agent or solicitor, not earlier than 2 business days before the date of the application disclosing the following—

(i) the date the money order was made;

(ii) the amount for which the order was made;

(iii) the date and amount of any payment made under the order;

(iv) the costs incurred in previous enforcement proceedings in relation to the order debt;

(v) any interest due at the date the statement is sworn;

(vi) 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;

(vii) the daily amount of any interest that, subject to any future payment under the order, will accrue after the date the statement is sworn;

(viii) any other information necessary for the warrant being sought.

(2) An enforcement creditor may apply for an enforcement warrant without notice to another party.

(3) A copy of the enforcement warrant must be served on the enforcement debtor and may be served personally or by post.

(4) Subject to this chapter, it is not necessary to request an enforcement hearing before applying for an enforcement warrant.

(5) Unless the court or a registrar directs otherwise, an application for an enforcement warrant or an application for renewal of an enforcement warrant must be dealt with by the registrar without a formal hearing.

Deceased enforcement debtor

818. If a money order is to be enforced against the estate of a deceased enforcement debtor, only the assets of the estate are subject to the enforcement.

Application to set aside enforcement

819.(1) A person served with an enforcement warrant may apply to the court to set it aside or to stay enforcement at any time before the warrant is enforced.

(2) The filing of the application does not stay the operation of an enforcement warrant.

Issue and enforcement of enforcement warrant

820.(1) An enforcement warrant must state—

(a) the name of the enforcement debtor; and

(b) the date, within 1 year after the warrant's issue[190], the warrant ends; and

(c) the amount recoverable under the warrant; and

(d) any other details required by these rules.

(2) The amount recoverable under the warrant must include—

(a) unless the court orders otherwise, the unpaid costs of any previous enforcement proceeding of the same money order; and

(b) the costs relating to the enforcement warrant; and

(c) the amount of interest on the order debt.

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190 The *Supreme Court of Queensland Act 1991*, section 92 provides that an enforcement warrant ends 1 year after it issues unless it states that it ends at an earlier time.

(3) The registrar must give the enforcement warrant to an enforcement officer to be enforced.

Renewal of enforcement warrant

821.(1) On an application made to the court before an enforcement warrant ends, the court may renew the warrant from time to time, for a period of not more than 1 year at any one time, from the date the warrant ends.

(2) If the court renews an enforcement warrant, the registrar must give a copy of the court's order to the enforcement officer.

(3) A renewed enforcement warrant must be stamped with the seal of the court to show the period for which the warrant has been renewed.

(4) The priority of a renewed enforcement warrant is decided according to the date the warrant was originally issued.

(5) The production of an enforcement warrant purporting to be stamped with the seal of the court and showing the period for which the warrant has been renewed is sufficient evidence for all purposes of the warrant having been renewed for the period.

Return of enforcement warrant

822. A person who obtains an enforcement warrant may require the enforcement officer to write on the warrant a statement of the steps the enforcement officer has taken under the warrant and to send the person a copy of the statement.

Priority of enforcement warrants

823.(1) The precise time an application for an enforcement warrant is made must be written on the application by the registrar.

(2) If more than 1 application for an enforcement warrant against the same enforcement debtor is made to a court, the court must issue the warrants in order of the times written on the applications.

(3) The precise time an enforcement warrant is issued must be written on the warrant by the registrar.

(4) If more than 1 enforcement warrant against the same enforcement debtor is given to an enforcement officer, the enforcement officer must enforce the warrants in order of the times written on the warrants.

(5) In this rule—

"precise time" means the hour, day, month and year.

Enforcement throughout Queensland

824. Subject to rules 825 and 826,[191] an enforcement warrant issued out of any registry of any court is, without more, enforceable throughout the State.

Concurrent enforcement warrants—Magistrates Court

825.(1) Enforcement warrants issuable out of a Magistrates Court may be issued concurrently in 1 or more Magistrates Courts districts.

(2) However, the costs of more than 1 warrant are allowed against the enforcement debtor only by order of the court.

Enforcement beyond the district

826.(1) This rule applies if an enforcement warrant has been issued out of a Magistrates Court registry in 1 Magistrates Court district (the **"original district"**) and the enforcement debtor or any of the enforcement debtor's property is believed to be in another Magistrates Court district (the **"receiving district"**).

(2) The registrar of the court in the original district (the **"original registrar"**) may issue the enforcement warrant and send it to the registrar of the court in the receiving district (the **"receiving registrar"**).

(3) The receiving registrar must—

(a) record the enforcement warrant; and

(b) stamp the enforcement warrant with the court seal; and

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191 Rules 825 (Concurrent enforcement warrants—Magistrates Court) and 826 (Enforcement beyond the district)

(c) issue the enforcement warrant to an enforcement officer in the receiving district and record having issued it.

(4) An enforcement officer in the receiving district—

(a) is authorised and required to act as if the enforcement warrant had been directed to the enforcement officer; and

(b) must, within a reasonable time, report in writing to the receiving registrar about what the enforcement officer has done to enforce the warrant; and

(c) must, within a reasonable time, give the receiving registrar any money received in the enforcement of the warrant together with a claim for any fee for enforcement.

(5) If the receiving registrar is given money under subrule (4)(c), the receiving registrar must, within a reasonable time and after payment of any fee claimed under the subrule, send it to the original registrar.

Cross orders

827.(1) This rule applies if there are cross orders between the same parties in the same court.

(2) An enforcement warrant may be issued only—

(a) on the application of the party in whose favour a money order for the larger order debt was made; and

(b) for the amount of the larger order debt less the amount of the smaller order debt.

(3) If the enforcement warrant is issued, the money order for the smaller amount is satisfied.

(4) If the amount of both order debts is equal, both money orders are satisfied.

PART 4—ENFORCEMENT WARRANTS FOR SEIZURE AND SALE OF PROPERTY

Property that may be seized under enforcement warrant

828. A court may issue an enforcement warrant authorising an enforcement officer to seize and sell in satisfaction of a money order all real and personal property (other than exempt property) in which the enforcement debtor has a legal or beneficial interest.[192]

Order of selling property

829.(1) An enforcement officer must seize and sell property—

(a) in the order appearing to the enforcement officer to be best for the prompt enforcement of the warrant without undue expense; and

(b) subject to paragraph (a), in the order appearing to the enforcement officer to be best for minimising hardship to the enforcement debtor and other persons.

(2) However, land which is the enforcement debtor's principal place of residence may be put up for sale under an enforcement warrant only if—

(a) all other property liable to be sold under the warrant has been sold or is unlikely to be sufficient to satisfy the amount recoverable under the warrant; or

(b) the enforcement debtor requests the land be sold before other property.

(3) Also, on the application of an enforcement officer made without notice to an enforcement debtor, the court may order an enforcement officer to seize or sell property in a different order.

(4) An enforcement officer may seize and sell an item of property even though the enforcement officer considers that its value exceeds the amount

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192 For registration of an enforcement warrant over land, see the *Land Title Act 1994* part 7 (Other dealings), division 1 (Writs of execution) and the *Land Act 1994* chapter 6 (Registration), part 4 (Dealings affecting land), division 11 (Writs of execution).

recoverable, but the enforcement officer must not in that case seize and sell additional items.

Payment by enforcement debtor before sale

830. An enforcement officer must not sell property seized under an enforcement warrant if, at or before the sale, the enforcement debtor pays to the enforcement officer—

(a) the amount owing under the order, including interest; and

(b) the costs of enforcement then known to the enforcement officer; and

(c) an amount set by the enforcement officer as security for the enforcement creditor's other costs of enforcement.

Storage before sale

831.(1) Until sale, an enforcement officer must put seized goods in an appropriate place, or give them to an appropriate person, approved by the enforcement officer for the purpose.

(2) The enforcement creditor is liable to pay any storage expenses but may recover them as costs of enforcement.

Nature of sale

832.(1) Unless the court orders otherwise, an enforcement officer must put up for sale by public auction all property liable to be sold under an enforcement warrant—

(a) as early as possible, having regard to the interests of the parties;[193] and

(b) at a place appearing to the enforcement officer to be suitable for a beneficial sale of the property.

(2) Property sold by public auction must be sold under the following conditions of sale—

[193] See also rule 831 (Storage before sale).

(a) for goods, if the enforcement officer considers the particular lot in which the goods are to be auctioned is worth less than $500, or for other property if the enforcement debtor agrees—at the best price obtainable;

(b) otherwise, if the reserve is reached—to the highest bidder;

(c) if the enforcement officer considers there is a dispute as to who is the highest bidder, the property is to be reauctioned and knocked down to the highest bidder.

(3) However, before a sale by public auction, a party or an enforcement officer may apply to the court for an order that the property be sold privately.

(4) The application must be supported by affidavit.

(5) If the applicant is a party, the applicant must also serve the enforcement officer with the application.

(6) If, on application by the enforcement creditor, the court makes an order that the property be sold privately before a public auction, the court may order that the enforcement creditor pay any costs already incurred by the enforcement officer for the auction.

(7) If property put up for sale at public auction is not sold by auction, the enforcement officer may sell the property privately—

(a) for an amount not less than the highest bid made at the auction that the enforcement officer considers is a reasonable amount for the property; or

(b) in accordance with a court order.[194]

(8) In this rule—

"reserve", for property to be sold at auction, means the reserve amount set by the enforcement officer, being an amount the enforcement officer considers is not less than a reasonable amount for the property.

[194] See rule 833 (Sale at best price obtainable), particularly subrule (4).

Sale at best price obtainable

833.(1) This rule applies if the enforcement officer has failed to sell the enforcement debtor's property under rule 832.

(2) An enforcement officer may apply to the court for an order to sell property at the best price obtainable.

(3) The application must be supported by an affidavit giving details of the required steps for sale that have been taken.

(4) The enforcement debtor must be served with the application.

Advertising

834.(1) Before selling seized property, an enforcement officer must arrange advertisement of a notice giving the time and place of sale together with details of the property to be sold.

(2) However, an enforcement officer may sell seized goods without arranging the advertisement if—

(a) the goods are of a perishable nature; or

(b) the enforcement debtor requests it in writing.

(3) In this rule—

"advertisement", of a notice, means—

(a) in any case—posting the notice at the registry of the court in the district where the property is located, not less than 2 weeks, and no more than 4 weeks, before the date of sale; and

(b) if there are 2 or more newspapers circulating in the district where the property is located—publication of the notice once in each of 2 of the newspapers not less than 2 weeks, and no more than 4 weeks, before the date of sale; and

(c) if there is only 1 newspaper circulating in the district where the property is located—publication of the notice twice in the newspaper on different days, if practicable, not less than 2 weeks, and no more than 4 weeks, before the date of sale; and

(d) if there is no newspaper circulating in the district where the property is located and the property to be sold is an interest in

land—posting the notice on the land not less than 2 weeks, and no more than 4 weeks, before the date of sale; and

(e) if there is no newspaper circulating in the district where the property is located and the property to be sold is not an interest in land—posting the notice at the place where the sale is to take place not less than 2 weeks, and no more than 4 weeks, before the date of sale.

Postponement of sale

835.(1) The court may, on application by the enforcement creditor or an enforcement officer, order that a sale of seized property be postponed to a specified date.

(2) If the enforcement warrant authorising the seizure would otherwise end before the specified date, the postponement extends the warrant's validity until the end of the specified date.

Accountability for, and distribution of, money received

836.(1) An enforcement officer must pay to the registrar all proceeds of sale and other money received by the enforcement officer under an enforcement warrant.

(2) From the money received from the enforcement officer, the registrar must—

(a) pay the enforcement officer's fees and costs of enforcement to the enforcement officer; and

(b) pay any balance, up to the amount recoverable under the warrant, to the enforcement creditor; and

(c) pay any balance, after payment to the enforcement creditor, to the enforcement debtor.

Reserve price provisions

837.(1) To set an amount as a reasonable value of the property to be sold, the enforcement officer may require the enforcement creditor to provide any information about the property that is known to, or can reasonably be

obtained by, the enforcement creditor.

(2) If the enforcement creditor fails to comply with the enforcement officer's request, the enforcement officer may refuse to proceed with the sale.

(3) The enforcement officer may communicate the amount set as a reasonable value of property to any person before the sale only if the communication is necessary to conduct the sale or there is another sufficient excuse.

Enforcement debtor dealing with charged property

838.(1) After being served with an enforcement warrant to seize and sell property, the enforcement debtor must not sell, transfer or otherwise deal with the enforcement debtor's principal place of residence without the court's leave.

(2) The court may set aside or restrain any sale, transfer or other dealing that is in contravention of subrule (1), unless to do so would prejudice the rights or interests of a genuine purchaser without notice.

PART 5—ENFORCEMENT WARRANTS FOR REDIRECTION OF DEBTS

Division 1—General

Application of pt 5

839. This part does not apply to—

(a) redirection of earnings;[195] or

(b) an order for the payment of money into court.

[195] See part 6 (Enforcement warrants for redirection of earnings).

Debts that may be redirected under enforcement warrant

840.(1) A court may issue an enforcement warrant authorising redirection to an enforcement creditor of specified debts certainly payable, belonging to an enforcement debtor, from a third person.

(2) In deciding whether to issue an enforcement warrant authorising redirection, including regular redirection under division 2,[196] to an enforcement creditor of a debt, belonging to an enforcement debtor, from a financial institution, the court must have regard to the following—

(a) whether the enforcement debtor has adequate means of satisfying the order after deducting—

(i) the necessary living expenses of the enforcement debtor and the enforcement debtor's dependants; and

(ii) any other known liabilities of the enforcement debtor;

(b) whether the amount of regular debt to be redirected would impose unreasonable hardship on the enforcement debtor;

(c) if the applicant is the enforcement debtor—whether, having regard to the availability of other enforcement means, the issue of the warrant would be consistent with the public interest in enforcing orders efficiently and expeditiously;

(d) whether, having regard to the nature of the debt (belonging to the enforcement debtor from the financial institution) and the type of redirection, a regular redirection or otherwise, is appropriate.

(3) A debt may be redirected only if the debt, or the part of the debt belonging to the enforcement debtor, is payable to the enforcement debtor from the third person on the date the enforcement warrant is served on the third person.

(4) Subrule (3) does not apply to a regular redirection under division 2.

196 Division 2 (Regular redirections from financial institutions)

Attendance of, or information about, the enforcement debtor

841. The court may order an enforcement hearing under part 2[197] to decide whether to order that an enforcement warrant authorising redirection of an enforcement debtor's debt be issued.

When debt redirected under enforcement warrant

842.(1) An enforcement warrant authorising redirection of a debt belonging to an enforcement debtor from a third person must be served on the third person to have effect.

(2) When the third person is served with the warrant, the debt is redirected in the hands of the third person to the enforcement creditor to the extent of the amount specified in the warrant.

(3) This rule does not apply to a regular redirection under division 2[198] of a regular debt belonging to an enforcement debtor from a financial institution.

Payment to enforcement debtor despite redirection

843.(1) This rule applies if, after redirection of a debt in the hands of a third person—

(a) the third person acts with reasonable diligence to give effect to the redirection; and

(b) despite the third person acting with reasonable diligence, the third person deals with the redirected debt in a way that satisfies, as between the third person and the enforcement debtor, all or part of the redirected debt, including, for example, by payment to the enforcement debtor.

(2) A court may order that, for this part, the redirected debt be reduced to the extent of its satisfaction.

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197 Part 2 (Enforcement hearings), particularly rules 808 (Enforcement hearing summons), 809 (Financial position statement) and 810 (Subpoena).

198 Division 2 (Regular redirections from financial institutions)

Third person disputes liability

844.(1) This rule applies if, on the hearing of a notice of objection to an enforcement warrant ordering the redirection of a debt, the third person disputes liability to pay.

(2) The court may decide summarily the question of liability or give directions for the question to be decided.

Claim by other person

845.(1) This rule applies if a court considers that another interested person, including, for example, a person other than an enforcement debtor who may be entitled to all or a part of a redirected debt or to a charge or lien on it, should be given the opportunity to be heard.

(2) The court may—

(a) order that notice of the hearing of the notice of objection be given to the other person; and

(b) at the hearing, decide the other person's entitlement or give directions as to how the entitlement is to be decided.

Discharge of the third person

846.(1) A payment to an enforcement creditor made by a third person in compliance with an enforcement warrant is a valid discharge of the enforcement creditor's liability to the enforcement debtor to the extent of the amount paid.

(2) Subrule (1) applies even if after payment the enforcement warrant is set aside or the order from which it arose is reversed or varied.

Division 2—Regular redirections from financial institutions

Application of div 2

847.(1) This division applies if—

(a) an enforcement debtor has an account with a financial institution (the **"third person"**); and

(b) a fourth person (the **"fourth person"**) regularly deposits earnings into the account (a **"regular deposit"**).

(2) Except where otherwise stated, division 1 applies to an enforcement warrant issued under this division.

Procedure for issue of enforcement warrant for regular redirection

848.(1) On application by an enforcement creditor or enforcement debtor, the court may issue an enforcement warrant authorising the regular redirection to an enforcement creditor of all or part of a regular debt (an **"enforcement warrant for regular redirection"**).

(2) An enforcement warrant for regular redirection continues in force until the total amount specified in the warrant is paid or the warrant is set aside, varied or expires according to its conditions.

(3) In this rule—

"regular debt" means a debt, belonging to the enforcement debtor, from the third person because of a regular deposit by the fourth person.

Content of enforcement warrant for regular redirection

849. In an enforcement warrant for regular redirection, the court must, in addition to the details required by rule 820,[199] specify the following—

(a) the name of the financial institution that must deduct amounts from a regular debt;

(b) details of the enforcement debtor's account from which the deduction is to be made;

(c) the amount the financial institution must deduct each time a regular deposit is made to the account;

(d) the name and address of the enforcement creditor to whom the financial institution must give the deducted amount.

[199] Rule 820 (Issue and enforcement of enforcement warrant)

Service of enforcement warrant for regular redirection

850.(1) An enforcement warrant for regular redirection must be served personally or by post on the enforcement debtor and the financial institution.

(2) The enforcement warrant does not come into force until the end of 7 days after the day on which the order is served on the financial institution.

Financial institution to make payments

851.(1) For each regular deposit into the enforcement debtor's account while the enforcement warrant for regular redirection is in force, the financial institution—

(a) within 2 business days after the deposit, must deduct from the account the amount specified in the warrant and pay it to the person specified in the warrant; and

(b) may deduct from the account an administration charge[200] and keep it as a contribution towards the administrative cost of making payments under the warrant; and

(c) must give to the enforcement debtor a notice detailing the deductions.

(2) However, in applying subrule (1)(a) to the last deduction, the financial institution must deduct the amount, being no more than the amount specified in the warrant for deduction for each regular deposit, that results in the total amount deducted by the financial institution being the total amount for deduction specified in the warrant.

(3) A deduction paid or kept by a financial institution under subrule (1) is a valid discharge of the financial institution's liability to the enforcement debtor to the extent of the deduction.

Enforcement debtor not to defeat enforcement warrant

852.(1) The enforcement debtor must ensure that adequate funds remain in the enforcement debtor's account after each regular deposit for the deduction from the account of the amount specified in the warrant.

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200 **"Administration charge"** is defined in schedule 4 (Dictionary).

(2) The enforcement debtor must notify the enforcement creditor if—

(a) the fourth person discontinues regular payments of earnings to the enforcement debtor; or

(b) the enforcement debtor closes the account or arranges for the fourth person to pay the enforcement debtor in another way.

No other enforcement while regular redirection

853. Unless the court orders otherwise, while an enforcement warrant for regular redirection is in force in relation to a money order, no other enforcement warrant may be issued in relation to the money order.

Setting aside, suspending or varying enforcement warrant for regular redirection

854.(1) The court may, on the application of an enforcement creditor or enforcement debtor, set aside, suspend or vary an enforcement warrant for regular redirection.

(2) An order setting aside, suspending or varying an enforcement warrant for regular redirection must be served on the following—

(a) unless the enforcement creditor is the applicant—the enforcement creditor;

(b) unless the enforcement debtor is the applicant—the enforcement debtor;

(c) the financial institution.

(3) The order does not come into force until the end of 7 days after the day on which it is served on the financial institution.

PART 6—ENFORCEMENT WARRANTS FOR REDIRECTION OF EARNINGS

General

855.(1) A court may issue an enforcement warrant authorising redirection to an enforcement creditor of particular earnings[201] of an enforcement debtor from a third person.

(2) An enforcement warrant redirecting earnings continues in force until—

(a) the total amount specified in the warrant is paid; or

(b) the warrant is set aside or expires according to its conditions.

Procedure for issue of enforcement warrant redirecting earnings

856.(1) An enforcement creditor or enforcement debtor may apply to the court for an enforcement warrant authorising the redirection to the enforcement creditor of part of the enforcement debtor's earnings.

(2) Without limiting subrule (1), the application may be made at an enforcement hearing.

(3) In deciding whether to issue an enforcement warrant authorising the redirection to the enforcement creditor of the enforcement debtor's earnings, the court must have regard to the following—

(a) whether the enforcement debtor is employed and the enforcement debtor's employer has been identified;

(b) whether the enforcement debtor has sufficient means of satisfying the order after deducting—

(i) the necessary living expenses of the enforcement debtor and the enforcement debtor's dependants; and

(ii) any other known liabilities of the enforcement debtor;

(c) whether the amount of earnings to be redirected would impose

201 The provisions of legislation such as the *Social Security Act 1991* (Cwlth) contain exemptions for social security payments.

unreasonable hardship on the enforcement debtor;

(d) if the applicant is the enforcement debtor—whether, having regard to the availability of other enforcement means, the issue of the warrant would be consistent with the public interest in enforcing orders efficiently and expeditiously.

Attendance of, or information about, the enforcement debtor

857. For deciding whether to issue an enforcement warrant authorising redirection of an enforcement debtor's earnings, the court may do 1 of the following—

(a) order an enforcement hearing under part 2;[202]

(b) order a person whom the court considers may owe earnings to the enforcement debtor to give to the court a signed statement of details of the earnings owing to the enforcement debtor (an **"earnings statement"**).

Content of enforcement warrant redirecting earnings

858.(1) In an enforcement warrant authorising the redirection of earnings, the court must, in addition to the details required by rule 820,[203] specify the following—

(a) the name of the enforcement debtor;

(b) the name of the enforcement debtor's employer who must deduct amounts from the enforcement debtor's earnings;

(c) the total amount the enforcement debtor's employer must deduct from the earnings of the enforcement debtor;

(d) the amount the enforcement debtor's employer must deduct each pay day from the earnings of the enforcement debtor;

(e) the name and address of the enforcement creditor to whom the enforcement debtor's employer must give the deducted amount.

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202 Part 2 (Enforcement hearings), particularly, rules 808 (Enforcement hearing summons), 809 (Financial position statement) and 810 (Subpoena)

203 Rule 820 (Issue and enforcement of enforcement warrant)

(2) An enforcement warrant authorising the redirection of earnings must be in the approved form.

Service of enforcement warrant redirecting earnings

859.(1) The applicant for an enforcement warrant authorising the redirection of an enforcement debtor's earnings must serve the enforcement warrant on the enforcement debtor and the enforcement debtor's employer.

(2) The applicant must also serve on the enforcement debtor's employer—

(a) a notice in the approved form informing the employer of the effect of the order and the employer's obligations under this part; and

(b) a copy of a notice in the approved form that the employer may use if the enforcement debtor is not employed by the employer.

(3) The enforcement warrant does not come into force until the end of 7 days after the day on which the order was served on the employer.

Employer to make payments

860.(1) For each pay day while an enforcement warrant authorising the redirection of an enforcement debtor's earnings is in force, the employer—

(a) must deduct from the enforcement debtor's earnings the amount specified in the warrant and pay it to the person specified in the warrant; and

(b) may deduct from the enforcement debtor's earnings an administration charge[204] and keep it as a contribution towards the administrative cost of making payments under the warrant; and

(c) must give to the enforcement debtor a notice detailing the deductions.

(2) However, in applying subrule (1)(a) to the last deduction, the employer must deduct the amount, being no more than the amount specified

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204 **"Administration charge"** is defined in schedule 4 (Dictionary). The amount of the charge is fixed under these rules.

in the warrant for deduction each pay day, that results in the total amount deducted by the employer being the total amount for deduction specified in the warrant.

(3) A deduction paid or kept by an employer under subrule (1) is a valid discharge as between the employer and the enforcement debtor, to the extent of the deduction, of the employer's liability to pay earnings.

No enforcement while redirection of earnings

861. Unless the court orders otherwise, while an enforcement warrant authorising the redirection of earnings is in force in relation to a money order, no other enforcement warrant may be issued in relation to the money order.

Setting aside, suspending or varying enforcement warrant redirecting earnings

862.(1) The court may, on the application of the enforcement creditor or the enforcement debtor, set aside, suspend or vary an enforcement warrant authorising redirection of earnings.

(2) An order setting aside, suspending or varying the enforcement warrant must be served on the following—

(a) unless the enforcement creditor was the applicant—the enforcement creditor;

(b) unless the enforcement debtor was the applicant—the enforcement debtor;

(c) the enforcement debtor's employer.

(3) The order does not come into force until the end of 7 days after the day on which it is served on the employer.

Cessation of enforcement warrant redirecting earnings

863.(1) An enforcement warrant authorising redirection of earnings in relation to a money order ceases to have effect—

(a) on being set aside; or

(b) unless the court orders otherwise, on the making of another order for the enforcement of the money order; or

(c) on expiry according to its conditions.

(2) If an enforcement warrant authorising the redirection of earnings ceases to have effect, the enforcement debtor's employer does not incur any liability by treating the warrant as still in force at any time within 7 days after the day on which a copy of a following order was served on the employer—

(a) an order discharging the enforcement warrant; or

(b) another order for the enforcement of the judgment.

(3) If the enforcement creditor receives from the enforcement debtor's employer more than the amount deductible under the warrant, the enforcement creditor must return the excess to the enforcement debtor's employer who must pay it to the enforcement debtor.

(4) If the enforcement creditor does not return the excess, the enforcement debtor may recover it as a debt to the enforcement debtor.

Two or more warrants redirecting earnings in force

864.(1) This rule applies if 2 or more enforcement warrants are in force authorising redirection by an enforcement debtor's employer of the enforcement debtor's earnings.

(2) The employer must comply with the warrants according to the respective dates on which they were served on the employer and disregard a warrant served later in time until a warrant served earlier in time ceases to have effect.

(3) If an enforcement warrant is varied, it continues to have priority according to the date the original enforcement warrant was served.

Person served is not enforcement debtor's employer

865.(1) This rule applies to a person, other than an enforcement debtor, who—

(a) is served with an enforcement warrant authorising redirection of an enforcement debtor's earnings; and

(b) is not an employer of the enforcement debtor at the time of service.

(2) The person must, immediately after service, give notice in the approved form mentioned in rule 859(2)(b)[205] to the registrar and the enforcement creditor.

(3) To prevent doubt, it is declared the person is not bound by the warrant.

Person ceases to be enforcement debtor's employer

866.(1) This rule applies if an enforcement debtor's employer served with an enforcement warrant authorising redirection of the enforcement debtor's earnings ceases to be the enforcement debtor's employer.

(2) The person must, immediately after ceasing to be the enforcement debtor's employer, give notice in the approved form mentioned in rule 859(2)(b) to the registrar and the enforcement creditor.

Directions

867.(1) An employer to whom an enforcement warrant authorising the redirection of earnings is directed may apply to the court for directions and the court may make an order or give the directions it considers appropriate.

(2) Without limiting subrule (1), the court may, on the application of an employer, decide whether payments to the enforcement debtor of a particular class or description specified in the application are earnings.

(3) While the application or any appeal from a decision made on the application is pending, the employer does not incur any liability for failing to comply with the warrant in relation to payments of the class or description specified in the application that are made to the enforcement debtor.

[205] Rule 859 (Service of enforcement warrant redirecting earnings)

PART 7—ENFORCEMENT WARRANTS FOR PAYMENT OF ORDER DEBT BY INSTALMENTS

Enforcement warrant may authorise payment by instalments

868.(1) A court may issue an enforcement warrant authorising satisfaction of an order debt by instalment payments.

(2) A court may, on the application of a party, issue the warrant—

(a) when making a money order; or

(b) at any time after the order issues.

(3) An enforcement warrant authorising payment by instalments continues in force until—

(a) the amount specified in the warrant is paid; or

(b) the warrant is set aside, varied or expires according to its conditions.

Prerequisites for enforcement warrant authorising instalments

869.(1) In deciding whether to issue an enforcement warrant authorising payment by instalments, the court must have regard to the following—

(a) whether the enforcement debtor is employed;

(b) the enforcement debtor's means of satisfying the order;

(c) whether the order debt, including any interest, will be satisfied within a reasonable time;

(d) the necessary living expenses of the enforcement debtor and the enforcement debtor's dependants;

(e) other liabilities of the enforcement debtor;

(f) if the applicant is the enforcement debtor—whether, having regard to the availability of other enforcement means, the issue of the warrant would be consistent with the public interest in enforcing orders efficiently and expeditiously.

(2) In deciding the amount and timing of the instalments, the court must be satisfied that the warrant will not impose unreasonable hardship on the

enforcement debtor.

(3) However, an enforcement hearing is not necessary if the court issues the enforcement warrant when giving the money order.

No other enforcement if enforcement warrant authorises instalments

870. Unless the court orders otherwise, while an enforcement warrant authorising payment by instalments is in force, no other enforcement warrant may be issued in relation to the money order.

Discharge or variation of enforcement warrant authorising instalments

871.(1) The court may, on the application of the enforcement creditor or the enforcement debtor, set aside, suspend or vary an enforcement warrant authorising payment by instalments.

(2) An order suspending or varying the warrant must be served on—

(a) if the enforcement creditor was the applicant—the enforcement debtor; or

(b) if the enforcement debtor was the applicant—the enforcement creditor.

(3) An order suspending or varying the warrant does not come into force until the end of 7 days after the last day on which the order was served.

Default

872. If an enforcement debtor fails to make 2 consecutive payments under an enforcement warrant authorising payment by instalments—

(a) the authorisation of instalment payments under the warrant ends; and

(b) other authorisations under the warrant, or other enforcement action, may be used to enforce the balance of the order debt owing to the enforcement creditor.

Cessation of enforcement warrant authorising payment by instalments

873.(1) An enforcement warrant authorising payment by instalments ceases to have effect—

(a) when set aside; or

(b) when the order debt has been satisfied; or

(c) unless the court orders otherwise, when any other order for the enforcement of the order debt is made.

(2) If an enforcement warrant authorising payment by instalments ends or otherwise ceases to have effect, the enforcement creditor must give notice of that fact to the enforcement debtor.

(3) A notice under subrule (2) must be in the approved form.

PART 8—ENFORCEMENT WARRANTS FOR CHARGING ORDERS AND STOP ORDERS

Application of pt 8

874. This part applies only to the Supreme Court.

Issue of warrant

875. The court may issue an enforcement warrant imposing a charging order charging all or part of the enforcement debtor's legal or equitable interest in 1 or more of the following—

(a) annuities;

(b) debentures;

(c) stocks;

(d) bonds;

(e) shares;

(f) marketable securities;

(g) prescribed interests;

(h) units of—

(i) shares; or

(ii) marketable securities; or

(iii) prescribed interests.

Effect of warrant

876.(1) To have effect on a person, an enforcement warrant imposing a charging order must be personally served on the person.

(2) An enforcement warrant imposing a charging order entitles the enforcement creditor to the same remedies as the enforcement creditor would have had if the charge had been made in the enforcement creditor's favour by the enforcement debtor.

(3) However, an enforcement creditor may not take proceedings to obtain a remedy in relation to particular charged property until—

(a) the enforcement warrant imposing the charging order is served on the enforcement debtor and the person who issued or administers the property; and

(b) 3 months has passed since the later service.

Enforcement debtor dealing with charged property

877.(1) After being served with an enforcement warrant imposing a charging order, the enforcement debtor must not sell, transfer or otherwise deal with the charged property.

(2) The court may set aside or restrain any sale, transfer or other dealing in contravention of subrule (1), unless to do so would prejudice the rights or interests of a genuine purchaser or chargee without notice.

Issuer dealing with charged property

878.(1) After being served with an enforcement warrant imposing a charging order, the person who issued or administers the charged property must not sell, transfer or otherwise deal with the property.

(2) If, despite subrule (1), the person who issued or administers the charged property sells, transfers or otherwise deals with the property, the person is liable to the enforcement creditor for the value or amount of the charged property dealt with or the order debt, whichever is smaller.

Application to enforce charge

879. An application to enforce an enforcement warrant imposing a charging order must be made in the proceeding in which the warrant is issued.

Partnership property

880.(1) This rule applies if the property charged under an enforcement warrant is partnership property.

(2) An application made by an enforcement creditor under the *Partnership Act 1891*, section 26[206] must be served on the enforcement debtor and the partners of the partnership.

(3) For this rule, service on each partner who resides in the State is sufficient service on any partner who resides outside the State.

PART 9—MONEY IN COURT

Money in court

881.(1) This rule applies if the enforcement debtor is entitled in the enforcement debtor's own right to money in court standing to the enforcement debtor's credit in another proceeding in the court.

(2) The court may, on the application of a enforcement creditor, order that the money be applied towards satisfying the money order.

(3) Money in court standing to the credit of an enforcement debtor may

206 *Partnership Act 1891*, section 26 (Procedure against partnership property for a partner's separate judgment debt)

not be paid out if it appears to the court that an application under subrule (1) has been made.

(4) An application under this rule must be made in the proceeding in which the order being enforced was made.

Stop orders on money and securities in court

882.(1) A person who claims an interest in or a charge on money or a security in court, whether under this part or otherwise, may apply to the court for a stop order preventing payment or delivery or transfer of the money or security without notice to the person.

(2) A copy of an application under subrule (1) must be served on any other person who appears to have an interest in the money or security.

(3) An application under this rule must be brought in the proceeding for which the money or security stands in the court.

PART 10—ENFORCEMENT WARRANTS FOR APPOINTMENT OF A RECEIVER

Application of pt 10

883. This part does not apply to a Magistrates Court.

General provisions relating to receivers apply

884. Chapter 8, part 3[207] applies to receivers appointed to enforce a money order.

Enforcement of a money order

885. A receiver may be appointed in an enforcement warrant even though

[207] Chapter 8 (Preservation of rights and property), part 3 (Receivers)

no other proceeding has been taken for enforcement of the money order to which the warrant relates.

Relevant considerations for appointment

886. In deciding whether to issue an enforcement warrant appointing a receiver, the court must have regard to—

(a) the amount of the order debt; and

(b) the amount likely to be obtained by the receiver; and

(c) the probable costs of appointing and remunerating a receiver.

Inquiry

887. In deciding whether to issue an enforcement warrant appointing a receiver, the court may direct the holding of an enforcement hearing or other inquiry about a matter in rule 886 or another matter the court considers relevant.

Receiver's powers

888. A receiver's powers operate to the exclusion of an enforcement debtor's powers for the duration of the receiver's appointment.

PART 11—ENFORCEMENT OFFICER

Return of enforcement warrant

889.(1) The enforcement officer, or another person who is charged with the enforcement of an enforcement warrant, must make a return of the warrant into court if required by the person who obtained the issue of the warrant.

(2) The return of an enforcement warrant must be made by filing the original warrant in the registry with a certificate written on or attached to it signed by the enforcement officer, or other person charged with enforcing it,

stating what was done to enforce the warrant.

(3) This rule is subject to this chapter.

CHAPTER 20—ENFORCEMENT OF NON-MONEY ORDERS

PART 1—PRELIMINARY

Definitions for ch 20

890. In this chapter—

"enforcement warrant" means a warrant issued under this chapter to enforce a non-money order.

Enforcement of non-money orders

891.(1) A non-money order may be enforced under this chapter.

(2) An enforcement warrant issued under this chapter to enforce a non-money order may also provide for the enforcement of a related money order.

Enforcement by or against a non-party

892.(1) If a non-money order is given in favour of a person who is not a party to the proceeding in which the order is made, the person may enforce the order as if the person were a party.

(2) If a person who is not a party when a non-money order is made is liable to comply with the order, the order may be enforced against the person as if the person were a party.

(3) If a corporation that is not a party when a non-money order is made is liable to comply with the order, an officer of the corporation is liable to the same process of enforcement as if the corporation were a party.

Amount recoverable from enforcement

893. The costs of enforcement of a non-money order are recoverable as part of the order.

Enforcement period

894.(1) A person entitled to enforce a non-money order may start enforcement proceedings without leave at any time within 6 years after the day the order was made.

(2) An application for leave to start enforcement proceedings may be made without notice to any person unless the court orders otherwise.

(3) On an application for leave to start enforcement proceedings, the applicant must satisfy the court—

(a) that there has not been compliance with the order at the date of the application; and

(b) as to the reasons for the delay; and

(c) that the applicant is entitled to enforce the order; and

(d) that the person against whom enforcement is sought is liable to comply with the order.

Stay of enforcement

895.(1) A court may, on application by a person liable to comply with a non-money order—

(a) stay the enforcement of all or part of the order, including because of facts that arise or are discovered after the order was made; and

(b) make the orders it considers appropriate.

(2) The application must be supported by an affidavit stating the facts relied on by the applicant.

(3) The application and affidavit must be served personally on the person entitled to enforce the order at least 3 business days before the hearing of the application.

PART 2—ENFORCEMENT OF PARTICULAR NON-MONEY ORDERS

Order for possession of land

896. An order for the possession of land may be enforced by either or both of the following—

(a) an enforcement warrant under rule 915;[208]

(b) for an order to which rule 898 applies, and subject to rule 904—

(i) punishment for contempt of the person liable under the order; or

(ii) seizing property of the person liable under the order under rule 917.

Order for delivery of or payment for goods

897.(1) An order for the delivery of goods or an order for the delivery of goods or the payment of their assessed value may be enforced by 1 or more of the following—

(a) an enforcement warrant under rule 916;[209]

(b) for an order to which rule 898 applies, and subject to rule 904—

(i) punishment for contempt of the person liable under the order; or

(ii) seizing property of the person liable under the order under rule 917.

(2) An order for the payment of the assessed value of goods may be enforced as if it were a money order.

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208 Rule 915 (Enforcement warrant for possession)

209 Rule 916 (Enforcement warrant for delivery)

Order to perform or abstain from an act

898.(1) This rule applies to an order if—

(a) the order is a non-money order and requires a person to perform an act and the act is to be performed within a time specified in the order and the person does not comply with the order within the time; or

(b) the order requires a person to abstain from performing an act and the person does not comply with the order.

(2) An order to which this rule applies may, subject to rule 904, be enforced in 1 or more of the following ways—

(a) punishment for contempt of the person liable under the order;

(b) seizing property of the person liable under the order under rule 917;

(c) if the person liable under the order is a corporation, without limiting paragraphs (a) and (b), either or both of the following—

(i) punishment for contempt of any officer of the corporation;

(ii) seizing property of any officer of the corporation under rule 917.

Substituted performance

899.(1) If a non-money order requires a person to perform an act and the person does not perform the act, the court may—

(a) appoint another person to perform the act; and

(b) order the person liable under the order to pay the costs and expenses caused by the failure to perform the act.

(2) Subrule (1) does not affect the court's power to—

(a) appoint a person to execute a document by order of the court; or

(b) punish for contempt.

Undertakings

900.(1) An undertaking, other than for the payment of money, may be enforced in 1 or more of the following ways—

(a) punishment for contempt of the person liable under the undertaking;

(b) seizing property of the person liable under the undertaking under rule 917;

(c) if the person liable under the undertaking is a corporation, without limiting paragraphs (a) and (b), either or both of the following—

(i) punishment for contempt of any officer of the corporation;

(ii) seizing property of any officer of the corporation under rule 917.

(2) An undertaking for the payment of money may be enforced as if it were a money order.

(3) If a party is in breach of an undertaking, another party may apply for compensation to the court in the proceeding in which the undertaking was given.

(4) If the court decides that a party is in breach of an undertaking and that another party has sustained a loss because of the breach for which the party in breach should pay the other party compensation, the court may give judgment against the party who is in breach for the amount the court decides should be paid.

Attendance of individuals

901.(1) This rule applies if an individual fails to comply with a subpoena or order requiring attendance to give evidence or produce a document or thing before the court or before an officer, examiner, referee or other person having authority to take evidence for the court.

(2) The court may make an order for the issue of a warrant to an enforcement officer for—

(a) the arrest of the individual; and

(b) the production of the individual as required by the subpoena or order for the purpose of the proceeding; and

(c) the detention in custody of the individual until released by the court.

(3) The court may order an individual who did not attend as required by the subpoena or order to pay the costs and expenses resulting because the individual did not comply with the subpoena or order.

Attendance of corporation

902.(1) This rule applies if a corporation fails to comply with a subpoena or order requiring attendance to give evidence or produce a document or thing before the court or before an officer, examiner, referee or other person having authority to take evidence for the court.

(2) The court may make an order for the issue of a warrant to an enforcement officer for—

(a) the arrest of a named officer of the corporation; and

(b) the production of the officer as required by the subpoena or order for the purpose of the proceeding; and

(c) the detention in custody of the officer until released by the court.

(3) The court may order a corporation that did not attend as required by the subpoena or order to pay the costs and expenses resulting because the corporation did not comply with the subpoena or order.

Effect on power to punish for contempt

903. Nothing in rule 901 or 902 affects the court's power to punish for contempt.

Prerequisite to enforcement by contempt or seizing property

904.(1) Unless the court otherwise orders, a non-money order may be enforced by contempt proceedings or seizing a person's property only if—

(a) the person against whom the order is to be enforced is served

personally with a copy of the order;[210] and

(b) for an order requiring a person to perform an act within a time specified in the order, the order is served a reasonable time before the end of the time specified in the order.

(2) Subrule (1) does not apply to a non-money order requiring a person to perform an act within a time specified in the order or requiring a person to abstain from performing an act, if the person has notice of the order because—

(a) the person was present when the order was made; or

(b) the person was notified of the terms of the order by telephone or in another way a reasonable time before the end of the time for performance of the act or before the time when the prohibited act was to be performed as the case requires.

Conditional order

905.(1) A non-money order that is subject to a condition may be enforced only if—

(a) the condition has been satisfied; and

(b) a court has given leave to enforce the order.

(2) Unless a court orders otherwise, if a person fails to satisfy a condition the court has included in an order—

(a) the person loses the benefit of the order; and

(b) any other person interested under the order may take any steps that—

(i) are warranted by the order; or

(ii) might have been taken if the order had not been made.

[210] See rules 106 (How personal service is performed) and 107 (Personal service—corporations).

PART 3—ENFORCEMENT WARRANTS GENERALLY

Procedure

906.(1) A person applying for an enforcement warrant must file an application attaching the warrant the person wants the court to issue.

(2) A person entitled to enforce a non-money order may apply for an enforcement warrant without notice to another party.

(3) A copy of the enforcement warrant must be served on the person required to comply with the order and may be served personally or by post.

(4) Unless the court or a registrar directs otherwise, an application for an enforcement warrant or an application for renewal of an enforcement warrant must be dealt with by the registrar without a formal hearing.

Application to set aside enforcement

907.(1) A person served with an enforcement warrant may apply to the court to set it aside or to stay enforcement at any time before the warrant is enforced.

(2) The filing of the application does not stay the operation of an enforcement warrant.

Issue and enforcement of enforcement warrant

908.(1) An enforcement warrant for a non-money order must state—

(a) the name of the person who must comply with the order; and

(b) the date, within 1 year after the warrant's issue,[211] the warrant ends; and

(c) what is authorised under the warrant; and

(d) the amount recoverable under the warrant; and

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211 See the *Supreme Court of Queensland Act 1991*, section 92 which provides that an enforcement warrant ends 1 year after it issues unless it states that it ends at an earlier time.

(e) any other details required by these rules.

(2) The amount recoverable under the warrant must include—

(a) unless the court orders otherwise, the unpaid costs of any previous enforcement proceeding of the same non-money order; and

(b) the costs relating to the enforcement warrant; and

(c) the amount of interest on the costs mentioned in paragraph (a).

(3) The registrar must give the enforcement warrant to an enforcement officer to be enforced.

Renewal of enforcement warrant

909.(1) On an application made to the court before an enforcement warrant ends, the court may renew the warrant from time to time, for a period of not more than 1 year at any one time, from the date the warrant ends.

(2) If the court renews an enforcement warrant, the registrar must give a copy of the court's order to the enforcement officer.

(3) A renewed enforcement warrant must be stamped with the seal of the court to show the period for which the warrant has been renewed.

(4) The priority of a renewed enforcement warrant is decided according to the date the warrant was originally issued.

(5) The production of an enforcement warrant purporting to be stamped with the seal of the court and showing the period for which the warrant has been renewed is sufficient evidence for all purposes of the warrant having been renewed for the period.

Return of enforcement warrant

910. A person who obtains an enforcement warrant may require the enforcement officer, within the time specified, to write on the warrant a statement of the steps the enforcement officer has taken under the warrant and to send the person a copy of the statement.

Priority of enforcement warrants

911.(1) The precise time an application for an enforcement warrant is made must be written on the application by the registrar.

(2) If more than 1 application for an enforcement warrant against the same person is made to a court, the court must issue the warrants in order of the times written on the applications.

(3) The precise time an enforcement warrant is issued must be written on the warrant by the registrar.

(4) If more than 1 enforcement warrant against the same person is given to an enforcement officer, the enforcement officer must enforce the warrants in order of the times written on the warrants.

(5) In this rule—

"precise time" means the hour, day, month and year.

Enforcement throughout Queensland

912. An enforcement warrant issued out of any registry of any court is, without more, enforceable throughout the State.

PART 4—ENFORCEMENT WARRANTS FOR POSSESSION

Prerequisites to enforcement warrant for possession

913.(1) Unless the court otherwise orders, an order for the possession of land may be enforced by an enforcement warrant under rule 915 only if the person against whom the order is to be enforced is served with a copy of the order at least 7 days before the warrant is issued.

(2) If a person other than the person against whom the order is made is in occupation of land, an enforcement warrant under rule 915 may be issued only if the court gives leave.

Procedure

914.(1) A person applying for an enforcement warrant under rule 915 must file—

(a) an affidavit by the person stating whether to the best of the person's knowledge a person other than the person liable under the order is in occupation of the land; and

(b) an affidavit about compliance with rule 913.

(2) An affidavit must not contain evidence which the person making it could not give if giving evidence orally.[212]

Enforcement warrant for possession

915. A court may issue an enforcement warrant in the approved form authorising an enforcement officer to enter on the land described in the warrant and deliver possession of the land and appurtenances to the person entitled to possession.

PART 5—ENFORCEMENT WARRANTS FOR DELIVERY OF GOODS

Enforcement warrant for delivery

916.(1) If a judgment for the delivery of specified goods does not give the person against whom the judgment is given the option of retaining the goods and paying the assessed value of the goods, a court may issue an enforcement warrant in the approved form authorising an enforcement officer to seize the goods and deliver them to the person who is entitled to them under the judgment.

(2) If a judgment for the delivery of specified goods gives the person against whom the judgment is given the option of retaining the goods and paying the assessed value of the goods and the person does not exercise the

[212] See also rule 906 (Procedure).

option, a court may issue an enforcement warrant in the approved form authorising an enforcement officer to seize the goods and deliver them to the person who is entitled to them under the judgment.

(3) If a judgment for the delivery of specified goods gives the person against whom the judgment is given the option of retaining the goods and paying the assessed value of the goods and the person exercises the option, the judgment may be enforced in the same way as any money order.

(4) An enforcement warrant under this section may include provision for enforcing the payment of an amount required by the judgment to be paid.

PART 6—ENFORCEMENT WARRANTS FOR SEIZURE AND DETENTION OF PROPERTY

Property that may be seized under enforcement warrant

917. A court may issue an enforcement warrant authorising an enforcement officer to seize and detain all real and personal property (other than exempt property) in which the person who must comply with the judgment has a legal or beneficial interest.

Prerequisite for enforcement warrant authorising seizure and detention of property

918. The court may issue a warrant under rule 917 only if the judgment specifies a time for compliance and the time has passed.

Enforcement against officer of corporation

919.(1) This rule applies if, to enforce a judgment with which a corporation must comply, a person applies for a warrant under rule 917 to seize and detain property of an officer of the corporation.

(2) A copy of the application and each affidavit in support must be served on the officer, unless the court otherwise orders.

Return of seized property

920. If the person against whom a warrant under rule 917 was issued complies with the judgment or is released from compliance, the court may order that the property, after deduction of the costs of enforcement, be returned to the person.

PART 7—CONTEMPT

Division 1—Preliminary

Definition for pt 7

921. In this part—

"respondent" means—

(a) the respondent to a proceeding to punish for contempt of court; or

(b) a person who is alleged to be guilty of contempt of court.

Division 2—Contempt in face or hearing of court

Arrest

922. If it is alleged or it appears to a court that a person is guilty of contempt of court committed in the face of the court or in the hearing of the court, the court may—

(a) by oral order direct the respondent to be brought before the court; or

(b) issue a warrant in the approved form for the respondent's arrest.

Custody

923.(1) Pending disposal of a charge of contempt, the court may direct that the respondent be kept in the custody the court directs or be released.

(2) Without limiting subrule (1), the court may release the respondent on conditions, including, for example, a condition that security be given to secure the respondent's attendance in person to answer the charge and that the security be forfeited if the respondent fails to attend.

Hearing

924. If a respondent is brought before the court, the court must—

(a) cause the respondent to be orally informed of the contempt charged; and

(b) ask the respondent to show cause why punishment should not be imposed for contempt of court; and

(c) after hearing the respondent, decide the matter of the charge in any way it considers appropriate; and

(d) make an order for the respondent's punishment or discharge.

Division 3—Application for punishment for contempt

Application of div 3

925.(1) This division applies to the following contempts—

(a) contempt constituted by failure to comply with an order of the court or an undertaking given to the court;

(b) contempt committed in the face of the court;

(c) any other contempt of the court;

(d) contempt of another court.

(2) For a contempt committed in the face of the court, the procedure under this division is an alternative to the procedure under division 2.

Procedure under div 3

926.(1) A person applying for punishment of a contempt must file an application specifying the alleged contempt.

(2) The application may be filed in the proceeding in which the contempt

was committed or to start a new proceeding.

(3) The application and any affidavit in support of it must be served on the respondent personally.

(4) An affidavit in support of or opposing the application must not contain evidence which the person making it could not give if giving evidence orally.

Arrest

927.(1) This rule applies if—

(a) an application for punishment for contempt has been filed; and

(b) the court considers that the respondent is likely to abscond or otherwise withdraw from the court's jurisdiction.

(2) The court may issue a warrant for the respondent's arrest and detention in custody until the court hears the charge unless the respondent gives security satisfactory to the court for the respondent's appearance in person to answer the charge and to submit to the court's decision.

Application by registrar

928.(1) The court may by order direct the registrar to apply to the court for a respondent to be punished for contempt.

(2) On an application by the registrar made at the court's direction, the court may order costs to be paid by the registrar to the respondent or by the respondent to the registrar as the court considers appropriate.

Division 4—General

Warrant

929.(1) A warrant for the arrest or detention of a person under this part must be—

(a) in the approved form; and

(b) addressed to an enforcement officer; and

(c) signed by the judge or magistrate presiding in the court which orders the arrest or detention.

(2) Pending the court's decision, a person who is arrested under a warrant must be held in prison or in any other custody that is satisfactory to the enforcement officer.

(3) The 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 respondent to the person in charge of any prison and the person must receive and keep the respondent in custody until the court or the enforcement officer directs otherwise.

Punishment

930.(1) This rule applies if the court decides that the respondent has committed a contempt.

(2) If the respondent is an individual, the court may punish the respondent by—

(a) imprisonment or a fine or both; or

(b) making an order that may be made under the *Penalties and Sentences Act 1992*.

(3) If the respondent is a corporation, the court may punish the respondent by seizing corporation property or a fine or both.

(4) The court may make an order for punishment on conditions, including, for example, a suspension of punishment during good behaviour, with or without the respondent giving security satisfactory to the court for good behaviour.

Imprisonment

931.(1) An order for imprisonment of the respondent may specify the prison in which the respondent is to be imprisoned.

(2) If a respondent is imprisoned for a term, the court may order the respondent's discharge from prison before the end of the term.

Costs

932. The costs of a proceeding for punishment for contempt are within the court's discretion whether a specific punishment is imposed or not.

PART 8—WARRANT FOR DEFENDANT'S ARREST

Constitution of court

933. Jurisdiction under this part may be exercised only by the Supreme Court constituted by a judge.

Application

934. An application for a warrant for the arrest of a defendant may be made without notice to the defendant, unless the court directs that the defendant be served.

Issue of warrant for defendant's arrest

935.(1) The court may issue a warrant in the approved form for the arrest of a defendant only if it is satisfied that—

(a) the defendant has absconded or is about to abscond; and

(b) the absence of the defendant would materially prejudice the plaintiff in prosecuting the proceeding or enforcing any judgment that may be given.

(2) The court may issue the warrant at any time, for example, before the defendant has been served with the claim or before judgment.

(3) The warrant must state—

(a) the name of the defendant; and

(b) the date, within 2 months after the warrant's issue, the warrant ends.

(4) The court may fix an amount to be stated in the warrant entitling the defendant to be released.

(5) In fixing the amount, the court may have regard to any matter it considers relevant, including the following matters—

(a) the amount (if any) of the plaintiff's claim;

(b) the costs of issuing the warrant;

(c) an estimate of the costs of executing the warrant.

Enforcement of warrant for defendant's arrest

936.(1) The registrar must give a warrant for the arrest of a defendant to an enforcement officer to be enforced.

(2) The warrant may be enforced by the enforcement officer or a person authorised by the enforcement officer.

(3) Receipt of a facsimile of a warrant is sufficient authority for the enforcement officer or a person authorised by the enforcement officer to enforce the warrant.

Costs of enforcement

937.(1) Unless the court orders otherwise—

(a) the plaintiff is liable to pay to the enforcement officer the costs the enforcement officer considers appropriate for enforcing a warrant for the arrest of a defendant; and

(b) the enforcement officer may, as a condition of enforcing the warrant, require the plaintiff to give security, for the amount and in the form the enforcement officer considers appropriate, for the costs to be incurred by the enforcement officer in enforcing the warrant.

(2) The enforcement officer may refuse to execute a warrant if the plaintiff fails to comply with a reasonable requirement by the enforcement officer under subrule (1)(b).

Service of warrant and claim

938.(1) A person who enforces a warrant for the arrest of a defendant must, as soon as practicable after enforcing it, serve the defendant with—

(a) a copy or a facsimile copy of the warrant; and

(b) if the defendant has not been served with the claim for which the warrant was issued, a sealed copy or facsimile copy of the claim.

(2) If a facsimile copy of the claim is served under subrule (1)(b), the plaintiff must serve the defendant with a sealed copy of the originating process as soon as practicable after the defendant's arrest.

Record of enforcement

939. A person who enforces a warrant for the arrest of a defendant must write on the warrant the time and place of enforcement.

Procedure after arrest

940.(1) A person who enforces a warrant for the arrest of a defendant must, as soon as practicable after enforcing it, take the defendant to the nearest suitable prison.

(2) The person in charge of the prison must hold the defendant in custody and within 24 hours, or as soon as practicable afterwards, bring the defendant before the court.

(3) A warrant on which the time and place of enforcement is written is sufficient authority for the officer in charge of the prison to hold the defendant in custody.

Release of defendant

941.(1) The person in charge of the prison where the defendant is in custody must release the defendant if—

(a) the court orders that the defendant be released; or

(b) the plaintiff gives the enforcement officer a written consent to the defendant's release; or

(c) the warrant states an amount fixed by the court the payment of

which entitles the defendant to be released and the defendant pays the amount into court or secures payment of the amount in a way that the plaintiff or enforcement officer considers satisfactory.

(2) An amount paid into court or security given under subrule (1)(c) may be paid out or released only in accordance with an order of the court.

Court powers

942.(1) The court must order that the defendant be released from custody unless it is satisfied that failure to detain the defendant would materially prejudice the plaintiff in prosecuting the proceeding or enforcing any judgment that may be given.

(2) If the court is satisfied that failure to detain the defendant would materially prejudice the plaintiff in prosecuting the proceeding or enforcing any judgment that may be given, the court may—

(a) order that the defendant be released unconditionally from custody; or

(b) order that the defendant be released from custody subject to 1 or more of the following conditions—

(i) that the defendant undertake, in a form approved by the court, not to leave Australia until an amount specified by the court is paid to the plaintiff, or into court, as the court directs;

(ii) that the defendant give security, either with or without surety, for the payment of an amount specified by the court;

(iii) that the defendant pay a specified amount to the plaintiff;

(iv) that the defendant pay a specified amount into court to await further consideration by the court; or

(c) order that the defendant be detained in custody for the period the court considers appropriate or until the defendant complies with any condition specified by the court.

(3) If the court makes an order under subrule (2), it may expedite the trial

of the proceeding under rule 468[213] and give any direction it considers appropriate for the conduct of the proceeding.

Failure to comply with conditions

943.(1) The enforcement officer or a surety may, without a warrant, arrest a defendant who has been conditionally released from custody by the court under rule 942 if the enforcement officer or surety reasonably suspects that the defendant has failed or will fail to comply with a condition of the defendant's release.

(2) If the defendant is arrested under subrule (1) by the enforcement officer, the enforcement officer must, as soon as practicable after the arrest, take the defendant to the nearest prison.

(3) If the defendant is arrested under subrule (1) by a surety, the surety must, as soon as practicable after the arrest, take the defendant to the enforcement officer who must take the defendant to the nearest prison as soon as practicable.

(4) The person in charge of the prison must hold the defendant in custody and within 24 hours, or as soon as practicable afterwards, bring the defendant before the court.

(5) If the court is satisfied that the defendant has failed to comply or is about to fail to comply with a condition of the defendant's release, the court may—

(a) revoke the order under which the defendant was released; and

(b) make any order that it could make under rule 942.

Review

944.(1) A defendant may, at any time and from time to time, apply to the court for an order that—

(a) the warrant be set aside; or

(b) the defendant be released from custody; or

213 Rule 468 (Trial expedited)

(c) an order made under rule 942(2) be varied.

(2) On an application under subrule (1), the court may make any order that it could make under rule 942.

Restriction on further applications

945.(1) This rule applies if—

(a) the court makes an order (the **"warrant order"**) refusing to issue, or setting aside, a warrant for the arrest of a defendant; or

(b) the court makes an order (the **"release order"**) that the defendant be released from custody under this part.

(2) Within 6 months of the warrant order or the defendant's release under the release order, the plaintiff may apply for another warrant for the defendant's arrest in relation to the same cause of action only if the plaintiff produces further evidence that was not and could not reasonably have been given when the order was made.

Costs

946. On any application under this part or at the trial or hearing of the proceeding, the court may make the order the court considers appropriate about costs payable by the plaintiff under rule 937.[214]

PART 9—ENFORCEMENT OFFICER

Return of enforcement warrant

947.(1) The enforcement officer, or another person who is charged with the enforcement of an enforcement warrant, must make a return of the warrant into court if required by the person who obtained the issue of the warrant.

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214 Rule 937 (Costs of enforcement)

(2) The return of an enforcement warrant must be made by filing the original warrant in the registry with a certificate written on or attached to it signed by the enforcement officer, or other person charged with enforcing it, stating what was done to enforce the warrant.

(3) This rule is subject to this chapter.

CHAPTER 21—INTERPLEADER ORDERS

PART 1—INTERPRETATION

Definitions for ch 21

948. In this chapter—

"applicant" means the person who is applying for an interpleader order.

"claimant" means a person who claims property or an interest in property.

"enforcement creditor" means a person in whose favour an enforcement warrant is issued.

"enforcement warrant" means a warrant issued under chapter 19 to enforce a money order.

"interpleader order" means an order under the *Supreme Court of Queensland Act 1991*, section 83.[215]

"property" means a debt or personal property subject to a claim under this chapter.

"stakeholder" means an applicant under rule 949.

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215 *Supreme Court of Queensland Act 1991*, section 83 (Interpleader orders)

PART 2—STAKEHOLDER'S INTERPLEADER

Stakeholder's interpleader

949.(1) A person may apply for an interpleader order if the person is under a liability for property that is, or the person expects may become, the subject of adverse claims by 2 or more other persons.

(2) If a stakeholder is sued, an application under subrule (1) may be made in the proceeding.

(3) If neither the stakeholder nor the claimants are parties to a proceeding, interpleader relief may be sought by application.

(4) An application under this rule must be served on each of the competing claimants.

PART 3—ENFORCEMENT OFFICER'S INTERPLEADER

Enforcement officer's interpleader

950.(1) If the enforcement officer takes or intends to take property under an enforcement warrant, a claimant to the property or the proceeds of sale must give written notice of the claim to the enforcement officer.

(2) A notice of claim under subrule (1) must—

(a) state the claimant's name and give an address for service; and

(b) identify each item of property to which the claim relates; and

(c) state the grounds of the claim.

Failure to give notice of claim

951.(1) This rule applies if a person who was entitled to give a notice under rule 950 did not, within a reasonable time after having knowledge of the fact, give the notice.

(2) The court may, on the enforcement officer's application, restrain the person from starting or continuing a proceeding in a court against the enforcement officer for anything done by the enforcement officer in enforcing the warrant after the time.

(3) The application may be brought only in the proceeding in which the warrant was issued.

Notice to enforcement creditor

952.(1) Within 4 business days after being served with a notice under rule 950, the enforcement officer must serve a copy of the notice on the enforcement creditor.

(2) The enforcement creditor may serve a notice on the enforcement officer that the claim is admitted.

(3) If the enforcement creditor admits the claim of a claimant, the enforcement creditor is liable for the enforcement officer's costs and expenses of enforcement, including any costs of complying with rule 953.

Admission of claim

953.(1) If the enforcement creditor admits a claim by serving notice on the enforcement officer—

(a) the enforcement creditor is not liable to the enforcement officer for fees or expenses incurred by the enforcement officer under the warrant after the notice is given to the enforcement officer; and

(b) the enforcement officer must—

(i) withdraw from possession of the property; or

(ii) if the property has already been sold—pay the proceeds of sale into court and notify the enforcement debtor and the claimant that the proceeds of sale have been paid into court; and

(c) the court may, on the enforcement officer's application, restrain the person whose claim is admitted from starting or continuing a proceeding in a court against the enforcement officer for anything done by the enforcement officer in enforcing the warrant.

(2) If a proceeding to which subrule (1)(c) applies is brought in a court against the enforcement officer, an application by the enforcement officer for an order under that subrule may be brought in the proceeding.

(3) An application made under this rule may be brought only in—

(a) the proceeding in which the warrant was issued; or

(b) if a proceeding is pending in which the property's ownership is an issue—the pending proceeding.

Enforcement officer's interpleader application

954.(1) This rule applies if—

(a) the enforcement officer has served a notice of claim on the enforcement creditor under this division; and

(b) the enforcement creditor does not, within 4 business days after service of the notice of claim, serve on the enforcement officer a notice that the enforcement creditor admits the claim; and

(c) the claimant does not afterwards withdraw the claim.

(2) The court may, on application by the enforcement officer, grant interpleader relief to the enforcement officer by giving a direction or making 1 or more interpleader orders.

(3) The application may be brought only in the proceeding in which the warrant was issued.

(4) The application must be served on the enforcement creditor and on all claimants.

(5) A claimant who has an address for service may be served at the address.[216]

Action against enforcement officer or enforcement creditor

955. Nothing in this chapter affects a right of the enforcement debtor to bring a claim against the enforcement officer or the enforcement creditor.

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216 See rule 17 (Contact details and address for service).

PART 4—INTERPLEADER ORDERS

Default by claimant

956. If—

(a) a claimant has been given appropriate notice of the hearing of an application for relief by way of interpleader; and

(b) the claimant does not appear at the hearing or does not comply with an order made on an application for relief by way of interpleader;

the court may dismiss the claimant's claim and decide all questions arising between the other claimants on the basis that the claim by the defaulting claimant is barred.

Neutrality of applicant

957.(1) If a stakeholder applies for relief by way of interpleader, the court may dismiss the application or give judgment against the applicant if the court is satisfied the applicant—

(a) has an interest in the property in dispute other than for charges or costs; or

(b) is in collusion with a claimant.

(2) If the enforcement officer applies for relief by way of interpleader, the court may dismiss the application if the court is satisfied the enforcement officer—

(a) has an interest in the property in dispute other than for charges or costs; or

(b) is in collusion with a claimant.

(3) Nothing in this rule affects the power of the court in other cases to dismiss the application or to give judgment against the applicant.

Trial

958. If, in a proceeding for relief by way of interpleader, the court directs

the trial of an issue, chapter 13[217] applies to the trial with necessary changes and subject to directions the court may give.

Disposal of money in court

959. If the enforcement officer has paid money into court under rule 953(1)(b),[218] the court may order it be paid out to the person who is entitled to it or make an interpleader order.

CHAPTER 22—DOCUMENTS, REGISTRY AND SOLICITORS

PART 1—DOCUMENTS

Division 1—General provisions about documents to be filed

Application of div 1

960.(1) This division applies to a document to be filed in a registry.

(2) However, this division does not apply to a document used with and mentioned in an affidavit.

Layout

961.(1) A document must—

(a) be on international sheet size A4 paper that—

(i) is white or cream in colour; and

(ii) is of good and durable quality; and

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217 Chapter 13 (Trials and other hearings)

218 Rule 953 (Admission of claim)

(iii) is free from discolouration or blemishes; and

(b) have all its pages and all attachments securely bound together in a way satisfactory to the registrar; and

(c) have clear margins no smaller than 10 mm on the top, bottom and right sides; and

(d) have a margin on the left side of the document wide enough for the seal of the court to be stamped on it; and

(e) be printed—

(i) with type no smaller than 1.8 mm (10 point); and

(ii) in a way that is permanent and can be photocopied to produce a copy satisfactory to the registrar.

(2) Subrule (1)(e) does not prevent a person from completing an approved form, or another document, in a minor debt proceeding in clear, hand-printed capital letters in ink.

Figures may be used

962. A date, amount or number stated in a document may be stated in figures.

Alterations

963.(1) An alteration on a document must be made by—

(a) striking through the printing or writing intended to be altered so that the original printing or writing is still legible; and

(b) having each party to the document and each witness initial the alteration to the document.

(2) The alteration may be handwritten and must be made in black ink, unless the court or registrar otherwise directs.

(3) A document can not be filed if it contains an erasure or alteration that the registrar considers causes a material disfigurement.

Serial number

964.(1) This rule applies to proceedings started by claim, application or notice of appeal.

(2) The registrar must keep a separate file for each proceeding and give the proceeding a distinguishing number.

(3) Each document filed in the proceeding must—

(a) be placed on the relevant file; and

(b) show the court serial number for the proceeding at the top right-hand corner of the first page.

(4) Unless the document starts a proceeding or is filed with a document starting a proceeding, the party filing the document must insert the serial number on the document.

Copies

965. The court may give leave for a fax or other copy of a document to be used.

Giving copies to other parties

966.(1) A party who prepares a document for use in the court must, if another party entitled to a copy of the document asks for the copy and pays the fee prescribed under a regulation, give the party a copy of the document.

(2) Subrule (1) also applies if a person against whom an order is made without notice is entitled to a copy of a document used in support of the application for the order.

Division 2—Filing documents

How documents may be filed

967.(1) A document may be filed by—

(a) delivering it to the registry personally; or

(b) sending it to the registry by post; or

(c) if lodgement by electronic or computer based means is authorised under a practice direction—complying with the practice direction.

(2) A practice direction may require a particular class of document to be delivered to the registry personally.

Filing documents personally

968.(1) This rule applies to a document filed by personal delivery to the registry.

(2) However, this rule does not apply to an exhibit or another document that does not require the court's seal on it.

(3) The registrar may record the document and stamp the seal of the court on it or, if the document does not comply with these rules or may not otherwise be filed,[219] refuse to file the document.

(4) The document is filed when the registrar records the document and stamps the seal of the court on it.

Filing documents by post

969.(1) This rule applies to a document filed by post.

(2) The person filing the document must ensure it is sent by pre-paid post in an envelope marked with a note it contains court documents.

(3) The person filing the document must also ensure it is accompanied by the following—

(a) the number of copies of the document required by these rules or by practice direction;

(b) a stamped envelope addressed to the party filing it or the party's solicitor;

(c) any prescribed fee in a form satisfactory to the registrar.

(4) The registrar may record the document and stamp the seal of the court on it or, if the document does not comply with these rules or may not otherwise be filed, refuse to file the document.

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[219] See rule 436 (Irregularity).

(5) The document is filed when the registrar records the document and stamps the seal of the court on it.

(6) After filing the document, the registrar must stamp the seal of the court on the copies of the document filed with the registrar and return them in the envelope provided by the party filing the document.

(7) If a default judgment is given after filing by post of a request for the judgment, the registrar must return the default judgment in the envelope provided by the party filing the request.

(8) If the registrar refuses to file the document, the registrar must return the document, in the envelope provided, to the party who filed it.

(9) A party files a document by post at the party's risk.

Affidavit of debt by post

970. An affidavit about a debt filed by post may be relied on only until the end of the 5th business day after the day it is sworn.

Filing fees

971.(1) A document may be filed only if any prescribed fee for filing it is paid when the document is given to the registrar.

(2) Also, if a document is sent by post and the registrar refuses to file it, a fee payable for dealing with the document is not refundable.

Court fees if state-related party

972.(1) In a proceeding to which a state-related person is a party—

(a) despite rule 971, the state-related person may file a document without payment of a fee; and

(b) the state-related person is not required to prepay any other fees of court.

(2) However, if judgment is given against another party in the proceeding, the state-related person may recover fees of court with costs from the other party.

(3) In this rule—

"state-related person" means the Sovereign, the State, a person acting for the State, an entity whose expenditure is payable, in whole or part, out of amounts from the consolidated fund or a person acting for the entity.

Scandalous material

973. The registrar may refuse to file a document the registrar considers contains scandalous material, unless the material is in a claim, application or notice of appeal.[220]

Division 3—Other provisions about documents

Form of notices

974. A notice required or permitted under these rules must be in documentary form, unless the court gives leave for notice to be given orally.

Use of approved forms

975. The approved forms must be used for the purposes for which they are applicable with the necessary changes circumstances may require.[221]

PART 2—REGISTRY

Office hours

976.(1) The registry must be open between 9.00 a.m. and 4.00 p.m. on each day other than a Saturday, Sunday or court holiday.

(2) However, the registrar may, by order, open or close the registry at

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220 See also rule 15 (Registrar may refer issue of originating process to court).

221 Substantial compliance with an approved form is sufficient—see the *Acts Interpretation Act 1954*, section 49(1).

other times.

(3) The court or the registrar may direct that the registry is to be closed between 1.00 p.m. and 2.00 p.m.

Registrar to keep records

977. The registrar must keep a record in documentary or electronic form of all claims, applications, orders and other things required to be kept under these rules, including under a practice direction.

Registrar to keep and use seal

978.(1) The registrar must keep a seal showing the name of the court and the location of the court or registry.

(2) The seal must be stamped on each document issued by the court.

(3) In particular, if a party files with a document copies of the document for service on another person, the registrar must ensure each copy of the document is stamped with the seal.

(4) If a document is required to be served on more than 1 person, service of a copy of the document stamped under subrule (3) is sufficient.

Issue of commissions

979. If an Act or these rules require the court to issue a commission, the registrar must issue the commission.

Copies of documents

980.(1) A person may ask the registrar for a copy or a certified copy of a document filed under these rules.

(2) The person asking for the copy must pay any prescribed fee for the copy or certified copy.

(3) The registrar must give to the person a copy or certified copy of the document as the case may be.

(4) The copy must have the seal and the word ‘copy’ stamped on it.

Searches

981.(1) A person may ask the registrar to search for and permit the person to inspect a document in a court file.

(2) If the person is not a party or a representative of a party, the person asking for the search or inspection must pay any prescribed fee for the search or inspection.

(3) Subject to any court order restricting access to the file or document or the file or document being required for the court's use, the registrar must comply with the request.

Referral to judge

982.(1) If a question arises in a matter before a registrar that the registrar considers appropriate for the decision of a judge, the registrar may refer the matter to a judge.

(2) If a party asks a registrar to refer a matter before the registrar to a judge, the registrar must refer the matter to a judge.

(3) The judge may then dispose of the matter or refer it back to the registrar with the directions the judge considers appropriate.

Admiralty

983.(1) The registrar of the Supreme Court may perform the functions and exercise the powers of the registrar under the *Admiralty Rules* (Cwlth).

(2) The marshal, deputy marshal or assistant marshal of the Supreme Court may perform the functions and exercise the powers of the marshal under the *Admiralty Rules* (Cwlth).

(3) If the marshal cannot conveniently execute a warrant or instrument in person because of distance or for another sufficient reason, the marshal may employ an appropriate person as the marshal's officer to execute it and the person is authorised to execute it as marshal.

Clerks

984. If authorised by the registrar, a clerk in a registry may do any of the following—

(a) sign a claim, application, warrant or commission for the registrar;

(b) receive and file documents;

(c) sign a judgment for the registrar that is not actually settled by the registrar.

PART 3—SOLICITORS

Solicitor's act

985.(1) Every act required or permitted to be done by a party in the conduct of a proceeding in a court may be done by the party's solicitor.

(2) However, subrule (1) does not apply to a document that must be signed by a party.

Examples for subrule (2)—

1. Answers to interrogatories.

2. An affidavit.

Change between acting personally and acting by solicitor

986.(1) If a party acts in person in a proceeding and later appoints a solicitor, the solicitor must—

(a) as soon as practicable, file and serve on all other parties notice of the solicitor's appointment in the approved form; and

(b) state in the notice the same details that would be required under rule 17[222] for an originating process or a notice of intention to defend.

(2) If a party appoints a solicitor and later decides to act in person, the party must—

(a) as soon as practicable, file and serve on all other parties and the party's former solicitor a notice in the approved form the party is

[222] Rule 17 (Contact details and address for service)

acting in person; and

(b) state in the notice the same details that would be required under rule 17 for an originating process or a notice of intention to defend.

(3) The party's former solicitor remains the solicitor on the record until the party serves the notice on the former solicitor.

(4) When a notice in relation to a party is served under this rule, the party's address for service becomes the address for service that would have applied if the notice were an originating process or notice of intention to defend.

Change of solicitor

987.(1) A party may, at any stage of a proceeding and without an order, appoint another solicitor in place of the solicitor then acting for the party.

(2) If a party appoints another solicitor, the newly appointed solicitor must—

(a) as soon as practicable after being appointed, file and serve on all parties and the party's former solicitor a notice of change of solicitor in the approved form; and

(b) state in the notice the same details that would be required under rules 17[223] for an originating process or a notice of intention to defend.

(3) The party's former solicitor remains the solicitor on the record until the newly appointed solicitor serves the notice of change of solicitor on the former solicitor.

(4) When a notice in respect of a party is served under this rule, the party's address for service becomes the address for service that would have applied if the notice were an originating process or notice of intention to defend.

[223] Rule 17 (Contact details and address for service)

Removal of solicitor by court

988.(1) This rule applies if a solicitor on the record loses the capacity to act as a solicitor or can not be found and a notice of change of solicitor is not given.

(2) A party may apply to the court for the removal of the solicitor's name from the record.

(3) The application must be served on all parties to the proceeding.

(4) A document in the proceeding to be served before another solicitor is appointed or before there is another address for service may be served by ordinary service.

Solicitor struck off or suspended

989.(1) This rule applies if a solicitor is struck off, removed from the roll of solicitors or suspended from practice.

(2) If a receiver of the solicitor's practice is appointed by the Queensland Law Society Incorporated, a copy of all processes and documents to be served in a proceeding in which the solicitor is a solicitor on the record must be served on the receiver.

(3) If a receiver is not appointed, rule 992[224] applies with necessary changes.

Application for leave to withdraw as solicitor

990.(1) Unless the court orders otherwise, a solicitor may apply for leave to withdraw from the record in a proceeding only if, at least 7 days before applying for leave, the solicitor gives written notice (**"notice of intention to apply for leave to withdraw"**) to the client—

(a) stating the solicitor's intention to withdraw; and

(b) asking the client, within 7 days after the date of the notice, to—

(i) appoint another solicitor; or

[224] Rule 992 (Effect of leave to withdraw as solicitor)

(ii) file and serve a notice under rule 986(2)[225] that the client acts in person; and

(c) stating that, if the client does not comply with the requirements of the notice—

(i) the solicitor may apply to the court for leave to withdraw; and

(ii) the client may be ordered to pay the solicitor's costs of the application.

(2) The application for leave to withdraw must be served on the client.

(3) A solicitor may give notice of intention to apply for leave to withdraw, or serve an application for leave to withdraw, by posting it to the client at the residential or business address of the client last known to the solicitor.

Leave to withdraw as solicitor

991.(1) A solicitor may withdraw from the record only with the court's leave.

(2) If a solicitor's client does not comply with the requirements of a notice of intention to apply for leave to withdraw, the court may give the solicitor leave to withdraw from the record and may make an order for costs.

(3) A solicitor who withdraws from the record must file a notice of withdrawal of solicitor.

(4) A solicitor's withdrawal does not take effect until the notice of withdrawal of solicitor is filed.

(5) A notice of withdrawal of solicitor must be in the approved form.

(6) On withdrawing from the record, the solicitor must serve the notice of withdrawal of solicitor on all other parties other than a party in default of notice of intention to defend.

[225] Rule 986 (Change between acting personally and acting by solicitor)

Effect of leave to withdraw as solicitor

992.(1) If a solicitor withdraws from the record, the client's residential or business address becomes the address for service until—

(a) another solicitor is appointed; or

(b) the client notifies another address for service in compliance with these rules.

(2) The withdrawal of a solicitor under this rule does not affect a right or obligation arising out of the solicitor's retainer by the client.

Withdrawal of town agent

993.(1) A town agent of a principal solicitor may withdraw from the record.

(2) A town agent may not withdraw from the record unless the town agent—

(a) gives 7 days notice of intention to withdraw to the principal solicitor; or

(b) obtains leave from the court to withdraw without giving notice.

(3) The application for leave to withdraw need not be served.

(4) On withdrawing from the record, a town agent must serve a notice of withdrawal of town agent on all other parties other than a party in default of notice of intention to defend.

(5) A notice of withdrawal of town agent must be in the approved form.

(6) If a town agent withdraws from the record, the address of the principal solicitor's place of business becomes the address for service until another town agent is appointed.

Crown Solicitor etc.

994. If the solicitor on the record is the Crown Solicitor or another State official appearing under the person's official title and someone else is appointed to the position, it is not necessary to file and serve a notice of change of solicitor.

CHAPTER 23—PROCEEDINGS UNDER CORPORATIONS LAW AND ASC LAW[226]

226 The *Corporations (Queensland) Rules 1993* (1993 SL No. 201) continue to apply under the *Supreme Court of Queensland Act 1991*, section 137.

SCHEDULE 1

SCALE OF COSTS—SUPREME COURT

rule 690(2)(a)

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General care and conduct		
1.	In addition to an amount that is to be allowed under another item in this schedule, the amount that is to be allowed for a solicitor's care and conduct of a proceeding is the amount that the registrar considers reasonable having regard to the circumstances of the case including, for example— (a) the complexity of the matter; and (b) the difficulty and novelty of any question raised in the matter; and (c) the importance of the matter to the party; and (d) the amount involved; and (e) the skill, labour, specialised knowledge and responsibility involved in the matter on the part of the solicitor; and (f) the number and importance of the documents prepared or perused (without regard to length); and (g) the time spent by the solicitor; and (h) research and consideration of questions of law and fact.	
Drawing		
2.	Drawing any necessary document—each folio	5.20
Engrossing or typing		
3.	Engrossing any necessary document—each folio	1.50
4.	Preparing an exhibit certificate—each exhibit	1.50

SCHEDULE 1 (continued)

Copies

5. Copying each page of the total number of pages copied in a proceeding that the registrar considers necessary—

(a) for pages 1 to 20 . . . . . 1.50
(b) for pages 21 to 50 . . . . . 1.20
(c) for pages 51 to 100 . . . . . 1.00
(d) after page 100 . . . . . 0.80

Perusals

6. Perusal of a document when necessary—each folio 1.50

7. If it is not necessary to peruse a document—examination or comparison of a document—

(a) if by a solicitor—for each quarter hour 33.00
(b) if by a clerk—for each quarter hour 9.80

Service

8. **(1)** Personal service, by a solicitor or an employee, of a document of which personal service is required 28.50

(2) If the registrar considers another amount is reasonable (having regard, for example, to the distance travelled, the time involved, and the number of attendances necessary to effect service)—the amount the registrar considers reasonable.

(3) If more than 1 document is served, only 1 fee for service is allowable.

9. **(1)** Ordinary service of a document at a relevant address 18.60

(2) Service of a document by post 11.40

(3) Service of a document by fax—

for the first page 5.70
for each additional page 1.50

(4) Service of a document by email 5.70

(5) If more than 1 document is served, only 1 fee for service is allowable.

Attendances

10. Attendance—

(a) to file or deliver a document, obtain an appointment,

SCHEDULE 1 (continued)

	insert an advertisement, or settle an order or judgment; or	
	(b) to search; or	
	(c) to do something of a similar nature;	
	if capable of being performed by a clerk	18.60
11.	Attendance by telephone that does not involve the exercise of skill or legal knowledge	11.90
12.	Attendance in court, at a compulsory conference or before the registrar by a solicitor who appears without counsel—each quarter hour	33.00
13.	Attendance in court, at a compulsory conference or before the registrar by—	
	(a) a solicitor who appears with counsel—each quarter hour	33.00
	(b) a clerk who appears with counsel—each quarter hour	9.80
14.	**(1)** If a hearing or trial is not—	
	(a) in Brisbane, Rockhampton, Townsville or Cairns; or	
	(b) in the town where the solicitor resides or carries on business;	
	a solicitor is to be allowed, for each day (other than a Saturday or Sunday or a day of the hearing or trial) that the solicitor is necessarily absent from the solicitor's place of business, for time used in travelling (to and from the hearing or trial) and in waiting	671.00
	(2) If the period of absence is less than a full day, the amount is to be determined on a pro rata basis, but is not to be less than half the amount specified in subitem (1).	
	(3) A solicitor to whom subitem (1) applies is also to be allowed reasonable expenses (beside actual reasonable fares or payments for transport) for each day of necessary absence including Saturdays and Sundays.	
	(4) If the solicitor has to attend more than 1 hearing or trial at the same time and place, the allowances are to be rateably divided.	
	(5) If a clerk attends instead of a solicitor, the amount allowed is to be the amount that the registrar considers reasonable.	

SCHEDULE 1 (continued)

15. Attendance on call-over of matters to be heard at the sittings of the court 33.00

16. Other attendances—

(a) if by a solicitor, involving skill or legal knowledge—for each quarter hour 33.00

(b) if by a clerk—for each quarter hour 9.80

Correspondence

17. **(1)** A short letter of a formal nature, written or received, forwarding documents without comment or to the like effect 9.30

(2) An ordinary letter, written or received, including a letter between principal and agent 18.60

(3) A special letter 26.00

(4) If the registrar considers that a higher amount than that mentioned in subitem (3) is reasonable—the amount that the registrar considers reasonable.

(5) In addition to the charges mentioned in this item, allowance is to be made for the necessary expense of postage, carriage and transmission of documents.

(6) For facsimile transmissions, the allowance is—

for the first page 5.70

for each additional page 1.50

(7) For email transmission, the allowance is 5.70

(8) The allowance for correspondence between offices of the same firm of solicitors is the allowance that would have been allowable if an agent had been engaged and the engagement was normal and reasonable in the circumstances.

Disbursements

18. Court fees and other fees and payments, to the extent that they have been reasonably incurred and paid, are to be allowed.

General

19. **(1)** In a case—

SCHEDULE 1 (continued)

(a) not otherwise provided for in this schedule; or
(b) if the registrar considers that the relevant fee is inappropriate in the circumstances;

the registrar may allow the fees for attendances and instructions, drawing and copying documents (including cases for the opinion of counsel) and perusals that the registrar considers reasonable.

(2) If, in an item, a charge is determined on a per quarter hour basis, the registrar is to allow the charge for the first quarter hour and after that is to apportion the charge on a pro rata basis.

Prescribed costs

20.	Costs on issuing a claim	433.00
21.	Costs of obtaining judgment in default of appearance . . .	198.00
22.	Costs of enforcement warrant	185.00
23.	Costs of order for leave to proceed	373.00

SCHEDULE 2

SCALE OF COSTS—DISTRICT COURT

rule 690(2)(b)

PART 1—GENERAL

Incidental work

1. The costs for an item in part 2 also cover any work that is incidental to the item.

Costs not mentioned in part 2

2. A solicitor is not entitled to charge and be allowed costs that are not mentioned in part 2 or by a rule of court in relation to a proceeding to which part 2 applies.

Allowance between solicitor and client of certain costs

3.(1) As between solicitor and client, costs that are not mentioned in part 2 may be allowed if the registrar or the court on a review considers—

(a) the client has agreed in writing at any time before assessment to pay them; and

(b) the costs are reasonable.

(2) As between solicitor and client, the solicitor is to be allowed necessary expenses of travelling between the town that is the place of hearing and the nearer of the town in which the solicitor ordinarily practises and the town in which the solicitor ordinarily resides.

Change to costs allowed for counsel or solicitor

4. The court or a judge may direct that the costs to be allowed for counsel

SCHEDULE 2 (continued)

or solicitor are to be—

(a) less than the costs under part 2; or

(b) assessed under schedule 3; or

(c) more than the costs under part 2, either generally or in relation to a particular item, if the costs are not sufficient because of the work involved or the importance, difficulty or complexity of the proceeding.

Costs of unnecessary step

5. The court may disallow the costs of a step taken by a party in a proceeding if the court considers the step was unnecessary for the proper conduct of the proceeding.

PART 2—COSTS

		$
Claim, counterclaim, subpoena, application		
1.	Preparation of claim and statement of claim, including copy for service, attendance on registrar to issue, on counsel to settle, and affidavit of service	198.00
2.	Preparation of set-off or counterclaim, copy to file, 1 copy for service, and attendance to file	96.00
3.	**(1)** Request and attendances to issue subpoena	41.00
	(2) For each additional copy subpoena	3.70
4.	Application, including attendance to issue and copy for service	46.00
Notices, consents and other memoranda		
5.	Notice before proceeding, if required by an Act, including copy and service	67.00
6.	Notice to admit or produce, including copy and service .	50.00

SCHEDULE 2 (continued)

7.	If a notice to admit or produce is special or necessarily long, the allowance that the judge or registrar considers proper (in addition to allowance under item 20 or 22), but not more than—for each folio	5.20
8.	For each further notice to produce or admit considered necessary by the judge or registrar on assessment, including copy and service	32.00
9.	Necessary or proper consent or admission, including attendance to obtain or give, and copy for opposite party (unless otherwise provided for)	24.00
10.	Notice of intention to defend and defence including attendance to file	119.00
11.	Reply, including attendance to file	80.00
12.	If a specific ground of defence is raised—reply, including copy for service and attendance to file	140.00
13.	Preparing admissions for judgment upon admission, and attending and obtaining enforcement of judgment	50.00
14.	A necessary or proper notice, undertaking or memorandum not otherwise mentioned, including copies to file and serve, attendance to file and service	79.00
15.	If a document mentioned in item 14 is special or necessarily more than 3 folios—for each additional folio	5.20

Service

If 2 or more documents have or could have been served together, 1 fee only for service of all such documents is to be allowed.

16.	Service of claim or an originating process on a party . . .	28.50
17.	Service of a necessary document on a party or the party's solicitor or on the registrar, if not authorised to be served by ordinary service	17.60
18.	Service of a necessary document as mentioned in item 17, if authorised to be served by ordinary service	11.90
19.	Service of subpoena on witness	28.50
20.	For a document served more than 3 km from the registrar's office—a reasonable amount to be fixed by the registrar.	

SCHEDULE 2 (continued)

21. **(1)** If substituted service is ordered—costs of attendance, making appointments to serve, drawing, engrossing, attending to swear affidavits and to obtain order, but not more than 140.00

(2) These costs are additional to the costs mentioned in items 16 to 20, any court fees and oath fees.

22. **(1)** If substituted service by way of advertisement is ordered—for drawing and engrossing the advertisement, and attending to insert same (together with advertising fees paid) 70.00

(2) This cost is additional to the costs mentioned in items 16 to 20.

Instructions

23. Instructions to sue or defend (including counterclaim) or for an originating process 287.00

24. **(1)** If—

(a) a proceeding is settled or not proceeded with; and

(b) no amount is allowed under item 27;

the judge or registrar may allow an amount under this item.

(2) The amount allowed under this item is to include—

(a) allowances for instructions to settle and all attendances on, and correspondence with, the party and the party's witnesses; and

(b) all necessary work and perusals in relation to the settlement, advising about the settlement, and briefs to counsel concerning settlement;

but, subject to subitems (3) and (5), must not be more than 1 037.00

(3) The judge or registrar may allow, in addition, any necessary out-of-pocket expenses.

(4) If because of special circumstances, a party considers that the maximum allowance under subitem (2) is not enough for the work actually done, the party may apply to a judge to certify to the registrar that the registrar may allow a higher amount that the registrar considers proper

SCHEDULE 2 (continued)

in the circumstances.

(5) The registrar may allow a higher amount under the assessment order.

25. Instructions for special affidavits, including affidavits verifying answers to interrogatories 25.50

26. Instructions for interrogatories and for special applications to the court or a judge under an Act other than the *District Court Act 1967* 64.00

27. **(1)** Instructions for brief for counsel, or brief notes for solicitor if no counsel employed on trial, including—

(a) all attendances on, and correspondence with, the party and the party's witnesses; and

(b) all necessary perusals and work in relation to preparation for hearing;

not more than 3 063.00

(2) The registrar may allow, in addition, necessary out-of-pocket expenses.

(3) If because of special circumstances, a party considers that the maximum allowance under subitem (1) is not enough for the work actually done, the party may apply to the trial judge at or after the trial to certify to the registrar that the registrar may allow a higher amount that the registrar considers proper in the circumstances.

(4) The registrar may allow a higher amount under the assessment order.

28. Instruction for counsel to advise on evidence (including attendance on counsel) when allowed on assessment . . . 100.00

Drawing

29. **(1)** A document must be necessary and relevant, and expressed without prolixity and the costs of all unnecessary, irrelevant or prolix matter must be disallowed.

(2) No allowance is to be made to a solicitor for drawing a document actually drawn by counsel.

(3) The allowance for drawing a brief is not to exceed . . 1 052.00

30. Drawing a brief on trial or on hearing before an arbitrator

SCHEDULE 2 (continued)

	or referee if counsel employed—each folio	5.20
31.	Engrossing each folio of a brief or another necessary document	1.50
32.	Preparing each folio of brief notes for practitioner if no counsel employed, including copy	5.20
33.	Drawing and engrossing brief for counsel on examination of witnesses, or to support or oppose any application, if not otherwise provided for—not more than	161.00
34.	**(1)** Drawing each folio of an affidavit, account or other necessary document (including a request for further particulars) if not otherwise provided for	5.20
	(2) Preparing exhibit certificate—each exhibit	1.50
35.	**(1)** Drawing affidavit of service of a document, other than a claim or application, if considered necessary (including copy and attendance to swear and file)	24.50
	(2) This fee is additional to any court fees and oath fees.	

Copies

36.	Each page of the total number of pages copied in a proceeding, including carbon or photographic copy, that the registrar considers necessary—	
	(a) for pages 1 to 20	1.50
	(b) for pages 21 to 50	1.20
	(c) for pages 51 to 100	1.00
	(d) after page 100	0.80

Perusals

37.	Perusing deeds, correspondence, accounts and documents, if long and necessary, and if the registrar considers that allowance should be made in addition to item 27—50c for each folio, but not more than	345.00
38.	Perusing and advising on notice to produce or admit, admission of facts, special defence, counterclaim, further particulars, answers to interrogatories—for the first 10 folios	24.00
39.	If a document mentioned in item 38 is longer than 10 folios—for each additional folio	1.50

SCHEDULE 2 (continued)

Attendances

More than 1 attendance at the office of the registrar in a proceeding must not be allowed unless the registrar is satisfied that each separate attendance was necessary.

40.	Attending to file final judgment	24.00
41.	Attending at the office of the registrar, bailiff or on opposite party—if not otherwise provided for	20.00
42.	If the attendance referred to in item 41 requires the personal attendance of the solicitor or managing clerk, and involves the exercise of skill or legal knowledge	58.00
43.	Attending to inspect documents, under a notice to admit, or an order or notice under a rule	58.00
44.	For each hour of attendance mentioned in item 43 after the first if the registrar considers that the attendance was necessary	119.00
45.	Attending to produce documents for inspection—for each necessary attendance	41.50
46.	Attending on person making affidavit verifying answers to interrogatories or other special affidavit	17.60
47.	Attending to inspect property—not more than—each hour	119.00
48.	**(1)** Attendance of solicitor or managing clerk to inspect works or a place or for any other similar purpose if considered necessary by registrar—not more than—each hour	119.00
	(2) Attendance of a clerk to inspect works or a place or for any other similar purpose if considered necessary by registrar—not more than—each hour	37.00
49.	If an attendance is necessary to advise or receive instructions from a client during an proceeding, and the purpose for the attendance could not have been effected at any previous or subsequent attendance, and if the attendance has not been otherwise provided for in this schedule	58.00
50.	Attending on counsel with brief or with notice of appeal	

SCHEDULE 2 (continued)

	or other document to settle	21.50
51.	If conference allowed by judge or registrar—appointing and attending conference—each hour	119.00
52.	Attending court or judge without counsel to support or oppose an application—if not otherwise provided for in this schedule	119.00
53.	Attending court or judge with counsel to support or oppose an application—if not otherwise provided for in this schedule	87.00
54.	Attending necessary unopposed application—if not otherwise provided for in this schedule	58.00
55.	Attending court on a call-over	34.50
56.	Attending court when proceeding listed but not dealt with because no judge available—for each day up to a maximum of 3 days	34.50
57.	**(1)** Solicitor attending court on trial, or before arbitrator or referee, with counsel—each day	591.00
	(2) Clerk attending court on trial, or before arbitrator or referee, with counsel—each day	187.00
	(3) If the solicitor does not reside or carry on business within 5 km of the town in which the trial or hearing takes place— (a) the amount reasonably paid for travelling and living expenses to attend the trial or hearing; and (b) any reasonable amount ordered to be paid by a judge or allowed by the registrar because the solicitor was necessarily absent from his or her office.	
58.	**(1)** Solicitor attending court, arbitrator or referee and conducting trial or hearing if no counsel employed—each day	807.00
	(2) Item 57(3) applies to an attendance by a solicitor under subitem (1).	
59.	Attending before judge, with or without counsel, to hear deferred judgment	25.50
60.	Obtaining appointment to assess costs, and making and serving copy on opposite party	16.50

SCHEDULE 2 (continued)

61.	**(1)** Solicitor attending assessment of costs—each hour . .	119.00
	(2) Clerk attending assessment of costs—each hour	37.00
62.	**(1)** Attendance to make search for bankruptcy, incorporation of corporation (and obtaining certificate of bankruptcy or incorporation), birth, marriage, death, registration of business name, or against land, at the Supreme Court registry, or any similar search if a judge or the registrar considers that the search was necessary and the attendance is not otherwise provided for in this schedule	14.40
	(2) The cost provided for in subitem (1) is in addition to any fee for the search or obtaining a certificate.	
	(3) Any necessary or proper attendance by telephone . . .	11.90
63.	Attending a witness to arrange his or her attendance at court without subpoena	18.60

Appeals

64.	Instructions to appeal	53.00
65.	Application for copy of judge's notes	18.10
66.	Copy of judge's notes—amount actually paid.	
67.	Preparing notice of appeal, including copies—not more than	87.00
68.	Paying money into court as security for costs, including notice and service	39.00
69.	Notice of nature and particulars of proposed security, including copies and service	28.50
70.	Fair copy of record—each folio	1.50
71.	Perusing record—each folio	1.50
72.	In addition to items 64 to 71, costs of preparation of necessary affidavits, swearing and filing, attendances on opposite party or registrar, and necessary letters may be allowed in accordance with appropriate items in the general scale.	

Fees allowable to counsel on assessment in certain cases

These fees are allowable if—

(a) in the case of plaintiff's costs assessed on the

SCHEDULE 2 (continued)

standard basis—the amount recovered is not more than $50 000; or

(b) in the case of defendant's costs, or plaintiff's costs assessed on the indemnity basis—the amount claimed is not more than $50 000.

No fee to counsel is to be allowed unless vouched by counsel's signature.

If counsel's fees are allowed on assessment, the registrar may allow such higher or lower amount as the registrar considers reasonable.

73.	To settle claim, counterclaim, set-off, defence, or further particulars of claim, counterclaim, set-off or defence, or to settle special case	169.00
74.	To settle reply	95.00
75.	To settle notice of appeal or application	169.00
76.	To settle interrogatories or answers to interrogatories . . .	178.00
77.	To settle an affidavit or other document	107.00
78.	On conference, inspection or similar attendance when allowed by a judge or the registrar—each hour	169.00
79.	To advise on evidence	187.00
80.	**(1)** To advise on liability	169.00
	(2) To advise on quantum	169.00
	(3) To advise on liability and quantum	254.00
	(4) Any other brief for opinion	254.00
81.	**(1)** On trial or hearing	1 138.00
	(2) In proceedings heard outside the town in which counsel ordinarily practises, a further fee by way of out of chambers fee of $71.00 may be allowed for each day on which it is not reasonably practicable for counsel to be in attendance at chambers for a total of at least 1 hour, between 8.30 a.m. and 5.30 p.m.	
	(3) If counsel is briefed to appear in court, to attend a conference or to attend on an inspection outside the town in which counsel ordinarily practises or resides, counsel is to be allowed reasonable travelling, meal and sundry expenses.	
82.	Refresher fee	759.00

SCHEDULE 2 (continued)

83. If more than 1 counsel is employed for a party and the judge certifies that such employment was reasonably necessary having regard to the difficulty or importance of the case, the fee of the senior of the counsel is to be a fee not more than the appropriate fee for the relevant item in this schedule increased by one-half, and the fee of the other counsel is not to exceed two-thirds of the fee allowed to the senior counsel.

84. **(1)** To support or oppose a formal application 134.00
(2) To support or oppose a standard application 336.00
(3) To support or oppose a complex application 603.00

85. To hear deferred judgment, when certified by a judge, or allowed by the registrar, as being reasonably necessary . 96.00

86. On examination of enforcement debtor 161.00

87. For an appearance of counsel not otherwise provided for if the appearance is certified by a judge, or allowed by the registrar, as being reasonably necessary 192.00

Fees to counsel in any other proceeding within the jurisdiction of the court are to be as the registrar considers proper in all the circumstances.

Judgment

88. **(1)** Costs of judgment by default 518.00
(2) In addition to the amount in subitem (1)—
(a) if applicable—the allowance under item 62(1); and
(b) if the registrar considers it appropriate—the allowances under items 50 and 73; and
(c) all necessary out-of-pocket expenses.

89. **(1)** Plaintiff's costs of judgment, including application and affidavit in support 339.00
(2) The costs mentioned in subitem (1) are in addition to disbursements.

90. If application for judgment is necessarily served more than 3 km from the registrar's office, an allowance under item 89 may also be made by the registrar.

91. Defendant's costs of judgment as mentioned in items 89 and 90 . . . . . 339.00

SCHEDULE 2 (continued)

92. If counsel engaged—brief to counsel and copy of documents to accompany, and attending counsel with documents 162.00

Costs of the day

93. Costs of the day if allowed by the judge at the trial—the amount decided by the judge.

Enforcement

94. Preparing enforcement, attending to issue and for return . 106.00

Letters and miscellaneous

95. **(1)** Ordinary letter before proceeding 22.00

(2) Special letter before proceeding—the amount allowed by the registrar, but not more than 25.00

(3) Any necessary letter sent or received, including agency correspondence 17.60

(4) Short letter of a formal nature sent or received forwarding documents without comment or a letter to the like effect 9.30

(5) In addition to the above fees, an allowance is to be made for the necessary expense of postage, carriage and transmission of documents (if facsimile transmission—$1.20 per page and if email transmission—$5.70 per transmission).

96. Subject to item 97, plans, charts, photographs or models, if necessary for use at hearing, and certified by the judge, or allowed by registrar—not more than 541.00

97. A judge or the registrar may allow the amount actually paid in relation to a thing mentioned in item 96.

98. Solicitor's clerk's fees 75.00

99. In cases where it is considered reasonable to bring articles as exhibits or for inspection by a judge or jury, a reasonable sum may be allowed for the cost of doing so by the judge or the registrar.

SCHEDULE 2 (continued)

Costs of appeal from Magistrates Court

100. For the first day—the amount the court fixes (including counsel's fees).

101. For each extra day if certified for by the court—the amount that the court fixes (including counsel's fee).

102. Copies (other than copies prepared by photographic or similar means) of necessary documents at the rate of 30c for each folio of 72 words to be allowed in addition.

All other appeals

103. (1) As far as practicable, this schedule applies in the same way as it applies to an appeal from a Magistrates Court.

(2) If the appeal is, in the judge's opinion, of such a special and important nature that the fees would not be fair and reasonable for the trouble, care, skill and expense necessarily involved in the proper preparation and conduct of the appeal case, the judge may allow the amount that, in the judge's opinion, would be fair and reasonable.

(3) To the extent that the schedule does not apply, the costs are to be in the discretion of the judge.

SCHEDULE 3

SCALE OF COSTS—MAGISTRATES COURTS

rule 690(2)(c)

PART 1—GENERAL

Costs allowed for counsel and solicitor or clerk

1.(1) The costs of or incidental to the attendance of both counsel and a solicitor during a trial are not to be allowed unless a court certifies that the attendance of both counsel and solicitor was necessary.

(2) The costs of or incidental to the attendance of a clerk with counsel or a solicitor acting as advocate during a trial are to be allowed unless a court certifies the attendance of the clerk was not reasonably required.

(3) A court may direct that costs to be allowed for counsel or a solicitor acting as advocate are to be less than the costs set out in part 2.

Costs of unnecessary step

2. A court may disallow the costs of a step taken by a party in a proceeding if the court considers the step was unnecessary for the proper conduct of the proceeding.

PART 2—COSTS

	A	B	C	D	E	F	G
	Under $751	$751 to $1 500	$1 501 to $2 500	$2 501 to $5 000	$5 001 to $10 000	$10 001 to $20 000	Over $20 000
	$	$	$	$	$	$	$
1. Instructions to sue—							

SCHEDULE 3 (continued)

	claim and statement of claim and service	119.00	168.00	209.00	403.00	502.00	704.00	704.00
2.	Instructions to defend—notice of intention to defend and defence and filing . . .	119.00	168.00	209.00	403.00	502.00	704.00	704.00
3.	Appearance in court in undefended proceedings (or in defended proceedings in which a claim or defence is not proceeded with—additional to costs for instructions to sue but including costs under item 4) to obtain judgment	39.00	39.00	56.00	92.00	114.00	160.00	160.00
4.	Obtaining judgment by default	39.00	40.00	56.00	92.00	114.00	160.00	160.00
5.	Preparing for trial, including directions conference—							
	(a) including brief if counsel engaged . . .	332.00	436.00	526.00	1 208.00	1 515.00	2 120.00	2 332.00
	(b) if no counsel engaged	209.00	365.00	419.00	1 007.00	1 259.00	1 764.00	1 942.00
	An amount agreed between the parties or allowed by the court or the registrar is to be allowed proportionate to the extent of the work done if—							
	(a) a matter is settled before the directions conference or not proceeded with; or							
	(b) costs are awarded in favour of a party for part only of the total proceedings.							
6.	Counsel's fees—							
	(a) to settle claim and statement of claim, counterclaim, notice							

SCHEDULE 3 (continued)

of intention to defend or notice of appeal .	–	–	–	–	109.00	155.00	169.00
(b) to settle special affidavit, reply or particulars that the magistrate or registrar is satisfied is reasonably necessary or proper	–	–	–	–	66.00	94.00	102.00
(c) to settle interrogatories or answers to interrogatories that the magistrate or registrar is satisfied is reasonably necessary or proper	–	–	–	–	107.00	151.00	166.00
(d) on conference, inspection of works or locus in quo, or a similar attendance that the magistrate or registrar is satisfied is reasonably necessary or proper—each hour	–	–	–	–	109.00	155.00	169.00
(e) to advise on evidence or for any other opinion	–	–	–	–	119.00	161.00	176.00
(f) on trial or hearing (other than an application in a proceeding—first day	308.00	380.00	463.00	517.00	682.00	958.00	1 052.00
(g) on each subsequent day of hearing (if the matter occupies 2 or more hours of the day and the appearance is certified for by the court)	205.00	255.00	308.00	344.00	455.00	637.00	701.00
(h) on each subsequent day of hearing not included in item 6(g)	102.00	126.00	155.00	173.00	228.00	319.00	351.00
(i) if a proceeding is heard outside the town where counsel ordinarily practises, a further fee by way of out of chambers fee							

SCHEDULE 3 (continued)

	(not less than $38.00 a day) may be allowed for each day it is not reasonably practicable for counsel to be in attendance at chambers for a total of at least 1 hour, between 8.30 am and 5.30 pm							
	(j) on an application in a proceeding	_	_	_	_	110.00	156.00	172.00
	(k) to hear deferred judgment	_	_	_	_	56.00	80.00	89.00
7.	Solicitor on hearing—							
	(a) appearance without counsel on hearing—first day .	320.00	365.00	419.00	443.00	554.00	778.00	856.00
	(b) appearance without counsel on second and each subsequent day of hearing (if the matter occupies 2 or more hours of the day and the appearance is certified for by the court)	209.00	267.00	302.00	302.00	380.00	534.00	587.00
	(c) attendance of clerk with solicitor acting as advocate—each day	33.50	40.00	50.00	153.00	174.00	174.00	174.00
	Costs under item 7(c) are not allowed if the court certifies the attendance of the clerk was not reasonably required.							
8.	On hearing with counsel—							
	(a) attendance of solicitor with counsel (if the attendance is certified for by the court)—each day . .	139.00	168.00	195.00	219.00	274.00	383.00	422.00
	(b) attendance of clerk with counsel—each day	33.50	40.50	50.00	153.00	174.00	174.00	174.00

SCHEDULE 3 (continued)

Costs under item 8(b) are not allowed if the court certifies the attendance of the clerk was not reasonably required.							
9. Proof of damages (if the opposite party fails to appear, or fails to file a notice of intention to defend and defence—additional to costs for instructions to sue but including costs under item 3 or item 4)—							
(a) counsel's fees (if no fee is payable under item (6)(f))	119.00	139.00	153.00	165.00	207.00	295.00	319.00
(b) solicitor for appearance without counsel	119.00	139.00	153.00	153.00	188.00	262.00	290.00
10. Application to the court (or to the registrar, if allowed) for enforcement warrant for redirection of debts or earnings	84.00	119.00	139.00	251.00	314.00	314.00	314.00
11. Other applications to the court (other than an application for an adjournment)	84.00	84.00	99.00	181.00	228.00	314.00	345.00
12. Instructions—							
(a) for disclosure preparing list of documents and making inspection and copies of documents—							
(i) allowance to party requesting disclosure	39.00	67.00	84.00	134.00	174.00	201.00	223.00
(ii) allowance to party making disclosure	39.00	67.00	84.00	308.00	336.00	375.00	412.00
(b) for interrogatories and answers to interrogatories							

SCHEDULE 3 (continued)

(including preparation, filing and perusing)—							
(i) allowance to party delivering interrogatories .	39.00	67.00	84.00	228.00	240.00	254.00	280.00
(ii) allowance to party answering interrogatories .	39.00	67.00	84.00	213.00	224.00	234.00	256.00
13. Enforcement hearing—							
(a) counsel's fees	204.00	204.00	204.00	235.00	295.00	412.00	454.00
(b) if no counsel engaged	138.00	138.00	156.00	201.00	254.00	358.00	394.00
14. Enforcement warrant—							
(a) costs of preparing warrant and attending issuing and for return—to be marked on warrant (exclusive of court or other fees)	39.00	39.00	45.50	91.00	116.00	160.00	175.00
(b) costs of registration of warrant against land	39.00	39.00	45.50	91.00	116.00	160.00	175.00
15. Warrant (other than enforcement warrant) —preparing warrant and attending issuing	39.00	39.00	45.50	91.00	116.00	160.00	175.00
16. Applying for summary judgment or showing cause against a summary judgment application .	39.00	39.00	45.50	91.00	116.00	160.00	175.00

SCHEDULE 4

DICTIONARY

rule 4

"account", for a financial institution, for chapter 19,[227] see rule 793.

"accounting party", for chapter 14, part 1,[228] see rule 530(2).

"address for service" means—

(a) for a plaintiff, applicant or appellant—see rule 17(6); and

(b) for a respondent—the address given under rule 29; and

(c) for a defendant—see rule 17(6) as applied by rule 140.

"administration charge" means—

(a) the amount set from time to time by a practice direction issued by—

(i) for an enforcement warrant issued by the Supreme Court—the Chief Justice; or

(ii) for an enforcement warrant issued by the District Court—the Chief Judge; or

(iii) for an enforcement warrant issued by a Magistrates Court—the Chief Stipendiary Magistrate; or

(b) if a practice direction is not in force—$3.00.

"ADR costs", for chapter 9, part 4,[229] see rule 313.

"applicant"—

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227 Chapter 19 (Enforcement of money orders)

228 Chapter 14 (Particular proceedings), part 1 (Account)

229 Chapter 9 (Ending proceedings early), part 4 (Alternative dispute resolution processes)

SCHEDULE 4 (continued)

(a) for chapter 15, part 7,[230] see rule 623; or

(b) for chapter 21,[231] see rule 948.

"application"—

1. Each of the following is an "application"—

(a) an application starting a proceeding;

(b) another application.

2. If the court orders a proceeding started by claim to continue as an application, the claim is also an "application" for these rules.

"application because of default" means an application under chapter 9, part 1.[232]

"approved document exchange" means a document exchange approved under rule 102.

"assessed costs", for chapter 17, part 2,[233] see rule 679.

"attached" to a document includes incorporated into the document.

"Australia", for chapter 4,[234] see rule 100.

"business day" see *Acts Interpretation Act 1954*, section 36.[235]

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230 Chapter 15 (Probate and administration), part 7 (Caveats)

231 Chapter 21 (Interpleader orders)

232 Chapter 9 (Ending proceedings early), part 1 (Default)

233 Chapter 17 (Costs), part 2 (Costs)

234 Chapter 4 (Service)

235 *Acts Interpretation Act 1954*, section 36 (Meaning of commonly used words and expressions)—

' **"business day"** means a day that is not—

(a) a Saturday or Sunday; or

(b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done.'.

SCHEDULE 4 (continued)

"caveator", for chapter 15, part 7,[236] see rule 623.

"central registry", of the Supreme Court, means the registry at Brisbane, Rockhampton, Townsville or Cairns.

"claim"—

1. A "claim" is a document under chapter 2, part 3 starting a proceeding.

2. If the court orders a proceeding started by application to continue as a claim, the application is also a "claim" for these rules.

"claimant", for chapter 21,[237] see rule 948.

"condition" see *Supreme Court of Queensland Act 1991*, schedule 2.[238]

"contested proceeding", for chapter 15, part 8,[239] see rule 629.

"costs of the proceeding", for chapter 17, part 2,[240] see rule 679.

"costs statement", for chapter 17, part 2, see rule 679.

"decision without an oral hearing", for chapter 13, part 6,[241] see rule 487.

"de facto spouse", for chapter 15,[242] see rule 596.

"defence" includes an answer to counterclaim.

"defendant" includes—

(a) a person who is served with a counterclaim; or

(b) a person who is served with a notice claiming a contribution or

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236 Chapter 15 (Probate and administration), part 7 (Caveats)

237 Chapter 21 (Interpleader orders)

238 *Supreme Court of Queensland Act 1991*, schedule 2 (Dictionary)—

' **"condition"** includes term.'.

239 Chapter 15 (Probate and administration), part 8 (Contested proceedings)

240 Chapter 17 (Costs), part 2 (Costs)

241 Chapter 13 (Trials and other hearings), part 6 (Decision on papers without oral hearing)

242 Chapter 15 (Probate and administration)

SCHEDULE 4 (continued)

indemnity; or

(c) a third, fourth or subsequent party; or

(d) for chapter 14, part 2,[243] see rule 544.

"district"—

(a) for the Supreme Court—see the *Supreme Court Act 1995*, part 19; or

(b) for the District Court—see the *District Court Act 1967*; or

(c) for a Magistrates Court—see the *Magistrates Courts Act 1921.*

"district registry", for the Supreme Court, means a registry constituted for a district under the *Supreme Court Act 1995*, part 19.[244]

"earnings", for chapter 19,[245] see rule 793.

"employer", for chapter 19, see rule 793.

"end of trial enforcement hearing", for chapter 19, part 2, see rule 805.[246]

"enforceable money order", for chapter 19, see rule 793.

"enforcement creditor"—

(a) for chapter 19, see rule 793; or

(b) for chapter 21,[247] see rule 948.

"enforcement debtor", for chapter 19, see rule 793.

"enforcement officer" see *Supreme Court of Queensland Act 1991*,

243 Chapter 14 (Particular proceedings), part 2 (Personal injury and fatal accidents)

244 *Supreme Court Act 1995*, part 19 (Provisions from the Supreme Court Act 1921)

245 Chapter 19 (Enforcement of money orders)

246 Rule 805 (Application for end of trial enforcement hearing)

247 Chapter 21 (Interpleader orders)

SCHEDULE 4 (continued)

schedule 2.[248]

"enforcement warrant"—

(a) for chapter 19,[249] see rule 793; or

(b) for chapter 20, see rule 890; or

(c) for chapter 21, see rule 948.

"enforcement warrant for regular redirection", for chapter 19, part 5, division 2, see rule 848.

"estate", for chapter 15,[250] see rule 596.

"exempt property" see *Supreme Court of Queensland Act 1991*, schedule 2.[251]

"foreign grant", for chapter 15, part 5,[252] see rule 615.

"fourth person", for chapter 19, part 5, division 2, see rule 847.

"grant"—

(a) for chapter 15 generally,[253] see rule 596; and

(b) for chapter 15, part 7,[254] see rule 623.

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248 *Supreme Court of Queensland Act 1991*, schedule 2 (Dictionary)—

' **"enforcement officer"**, for a court, means a sheriff, deputy sheriff or bailiff of the court.'.

249 Chapters 19 (Enforcement of money orders), 20 (Enforcement of non-money orders) and 21 (Interpleader orders)

250 Chapter 15 (Probate and administration)

251 *Supreme Court of Queensland Act 1991*, schedule 2 (Dictionary)—

'**"exempt property"** means property that is not divisible among the creditors of a bankrupt under the relevant bankruptcy law as in force from time to time.'.

252 Chapter 15 (Probate and administration), part 5 (Resealing grants under British Probates Act 1898)

253 Chapter 15 (Probate and administration)

254 Chapter 15 (Probate and administration), part 7 (Caveats)

SCHEDULE 4 (continued)

"interpleader order", for chapter 21,[255] see rule 948.

"issued", for a document filed in the court, means the appropriate officer of the court has stamped the seal of the court on it.

"judgment" see rule 659.

"land", for chapter 8, part 4,[256] see rule 275.

"limitation period" means a limitation period under the *Limitation of Actions Act 1974*.

"minor claim" see *Supreme Court of Queensland Act 1991*, schedule 2.[257]

"minor debt claim" see *Supreme Court of Queensland Act 1991*, schedule 2.

"money order" see *Supreme Court of Queensland Act 1991*, schedule 2.

"non-money order" see *Supreme Court of Queensland Act 1991*, schedule 2.

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255 Chapter 21 (Interpleader orders)

256 Chapter 8 (Preservation of rights and property), part 4 (Sales by court order)

257 *Supreme Court of Queensland Act 1991*, schedule 2 (Dictionary)—

' **"minor claim"** means a claim for an amount, including interest, of not more than $7 500, whether as a balance or after an admitted set off, reduction by any amount paid by or credited to the defendant, abandonment of any excess, or otherwise.

"minor debt claim" means a minor claim in which the plaintiff—

(a) claims to recover against a defendant a debt or liquidated demand in money, with or without interest; and

(b) elects in the claim to have it heard and decided in a Magistrates Court under the simplified procedures in the *Uniform Civil Procedure Rules 1999*.

"money order" means an order of the court, or part of an order of the court, for the payment of an amount, including an amount for damages, whether or not the amount is or includes an amount for interest or costs.

"non-money order" means an order of the court, or part of an order of the court, for a form of relief other than the payment of an amount.'.

SCHEDULE 4 (continued)

"notice to support a caveat", for chapter 15, part 7,[258] see rule 623.

"oath" see *Acts Interpretation Act 1954*, section 36.[259]

"offer", for chapter 9, part 5,[260] see rule 352.

"offer to settle", for chapter 9, part 5, see rule 352.

"officer", of a corporation, includes a former officer of the corporation.

"order" includes a judgment, direction, decision or determination of a court whether final or otherwise.

"order debt", for chapter 19,[261] see rule 793.

"part 2 order", for chapter 8, part 2, means an injunction or order of the type mentioned in rule 260 or 261.[262]

"partner", for chapter 19, see rule 793.

"partnership" see the *Partnership Act 1891*.

"party", for chapter 17, part 2,[263] see rule 679.

"person under a legal incapacity" see *Supreme Court of Queensland Act*

258 Chapter 15 (Probate and administration), part 7 (Caveats)

259 *Acts Interpretation Act 1954*, section 36 (Meaning of commonly used words and expressions)—

' **"oath"** in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration and promise.'.

260 Chapter 9 (Ending proceedings early), part 5 (Offer to settle)

261 Chapter 19 (Enforcement of money orders)

262 Chapter 8 (Preservation of rights and property), part 2 (Injunctions and similar orders), rule 260 (Mareva orders) or 261 (Anton Piller orders)

263 Chapter 17 (Costs), part 2 (Costs)

SCHEDULE 4 (continued)

1991, schedule 2.[264]

"person with impaired capacity" see *Supreme Court of Queensland Act 1991*, schedule 2.

"plaintiff" includes a party who files—

(a) a counterclaim; or

(b) a third party notice or a notice joining a fourth or subsequent party; or

(c) a notice claiming a contribution or indemnity.

"pleading" means—

(a) for a plaintiff—a concise statement in a claim of the material facts on which the plaintiff relies; or

(b) for a defendant—the defence stated in a notice of intention to defend or a defence;

and includes a joinder of issue and an affidavit ordered to stand as a pleading.

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264 *Supreme Court of Queensland Act 1991*, schedule 2 (Dictionary)—

' **"person under a legal incapacity"** means—

(a) a person with impaired capacity; or

(b) a young person.

"person with impaired capacity" means a person who is not capable of making the decisions required of a litigant for conducting proceedings or who is deemed by an Act to be incapable of conducting proceedings.'.

SCHEDULE 4 (continued)

"prescribed interest" see the Corporations Law, section 9.[265]

"property", for chapter 21,[266] see rule 948.

"public trustee", for chapter 15,[267] see rule 596.

"question", for chapter 13, part 5,[268] see rule 482.

"referred dispute", for chapter 9, part 4,[269] see rule 313.

"registrar"—

(a) for chapter 9, part 4,[270] see rule 313; and

(b) for chapter 17, part 2,[271] see rule 679.

(b) otherwise, for a court, includes a deputy registrar of the court or person other than the registrar who discharges the duties and performs the functions conferred on the registrar under these

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265 The Corporations Law, section 9 defines **"prescribed interest"** as meaning—

'(a) a participation interest; or

(b) a right, whether enforceable or not, whether actual, prospective or contingent and whether or not evidenced by a formal document, to participate in a time-sharing scheme;

but does not include:

(c) a right or interest, or a right or interest included in a class or kind of rights or interests, declared by the regulations to be an exempt right or interest, or a class or kind of exempt rights or interests, for the purposes of Chapter 7; or

(d) an exempt prescribed interest in relation to this jurisdiction (as defined by section 68A).'.

266 Chapter 21 (Interpleader orders)

267 Chapter 15 (Probate and administration)

268 Chapter 13 (Trials and other hearings), part 5 (Separate decision on questions)

269 Chapter 9 (Ending proceedings early), part 4 (Alternative dispute resolution processes)

270 Chapter 9 (Ending proceedings early), part 4 (Alternative dispute resolution processes)

271 Chapter 17 (Costs), part 2 (Costs)

SCHEDULE 4 (continued)

rules.

"regular debt" for chapter 19, part 5, division 2, see rule 848.

"regular deposit", for chapter 19, part 5, division 2, see rule 847.

"relevant application", for chapter 12,[272] see rule 449.

"respondent"—

(a) for chapter 14, part 5,[273] see rule 586; or

(b) for chapter 20, part 7,[274] see rule 921.

"review application", for chapter 14, part 4,[275] see rule 564.

"script", for chapter 15, part 8,[276] see rule 629.

"sealed copy" means a copy stamped with the seal of the court.

"senior judicial officer", for chapter 9, part 4,[277] see rule 313.

"set aside" means—

(a) for a document—the document can not be relied on in a proceeding; or

(b) for anything else—the thing stops having effect.

"simplified procedures" for Magistrates Courts, see rule 514.

"stakeholder", for chapter 21,[278] see rule 948.

"subpoena for production" means a subpoena for the person specified to produce a document or thing.

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272 Chapter 12 (Jurisdiction of judicial registrar and registrar)

273 Chapter 14 (Particular proceedings), part 5 (Habeas corpus)

274 Chapter 20 (Enforcement of non-money orders), part 7 (Contempt)

275 Chapter 14 (Particular proceedings), part 4 (Judicial review)

276 Chapter 15 (Probate and administration), part 8 (Contested proceedings)

277 Chapter 9 (Ending proceedings early), part 4 (Alternative dispute resolution processes)

278 Chapter 21 (Interpleader orders)

SCHEDULE 4 (continued)

"subpoena for production and to give evidence" means a subpoena for the person specified to produce a document or thing and give evidence.

"subpoena to give evidence" means a subpoena for the person specified to give evidence.

"swear" see *Acts Interpretation Act 1954*, section 36.[279]

"the Act", for chapter 14, part 4,[280] see rule 564.

"the court" see rule 3(2).

"third person"—

(a) for chapter 19 generally,[281] see rule 793;

(b) for chapter 19, part 5, division 2, see rule 847.

"trustee", for chapter 17, part 2,[282] see rule 679.

"will", for chapter 15,[283] see rule 596.

"writ of habeas corpus", for chapter 14, part 5,[284] see rule 586.

"young person" see *Supreme Court of Queensland Act 1991*, schedule 2.[285]

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279 *Acts Interpretation Act 1954*, section 36 (Meaning of commonly used words and expressions)—

' **"swear"** in relation to a person allowed by law to affirm, declare or promise, includes affirm, declare and promise.'.

280 Chapter 14 (Particular proceedings), part 4 (Judicial review)

281 Chapter 19 (Enforcement of money orders)

282 Chapter 17 (Costs), part 2 (Costs)

283 Chapter 15 (Probate and administration)

284 Chapter 14 (Particular proceedings), part 5 (Habeas corpus)

285 *Supreme Court of Queensland Act 1991*, schedule 2 (Dictionary)—

' **"young person"** means an individual under 18 years.'.

ENDNOTES

1 Index to endnotes

2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 5 May 2000. Future amendments of the Uniform Civil Procedure Rules 1999 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	**Acts Interpretation Act 1954**	**(prev)**	=	**previously**
amd	=	**amended**	**proc**	=	**proclamation**
amdt	=	**amendment**	**prov**	=	**provision**
ch	=	**chapter**	**pt**	=	**part**
def	=	**definition**	**pubd**	=	**published**
div	=	**division**	**R[X]**	=	**Reprint No.[X]**
exp	=	**expires/expired**	**RA**	=	**Reprints Act 1992**
gaz	=	**gazette**	**reloc**	=	**relocated**
hdg	=	**heading**	**renum**	=	**renumbered**
ins	=	**inserted**	**rep**	=	**repealed**
lap	=	**lapsed**	**s**	=	**section**
notfd	=	**notified**	**sch**	=	**schedule**
o in c	=	**order in council**	**sdiv**	=	**subdivision**
om	=	**omitted**	**SIA**	=	**Statutory Instruments Act 1992**
orig	=	**original**	**SIR**	=	**Statutory Instruments Regulation 1992**
p	=	**page**			
para	=	**paragraph**	**SL**	=	**subordinate legislation**
prec	=	**preceding**	**sub**	=	**substituted**
pres	=	**present**	**unnum**	=	**unnumbered**
prev	=	**previous**			

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	none	1 July 1999

5 List of legislation

Uniform Civil Procedure Rules 1999 SL No. 111
made by the Governor in Council on 10 June 1999
notfd gaz 11 June 1999 pp 675–8
rr 1–2 commenced on date of notification
remaining provisions commenced 1 July 1999 (see r 2)
SIA pts 5, 7 do not apply (see 1991 No. 68 s 118B(1))

as amended by—

Justice Legislation (Variation of Fees and Costs) Regulation 2000 SL No. 66 pts 1, 11
notfd gaz 20 April 2000 pp 1533–6
ss 1–2 commenced on date of notification
remaining provisions commenced 1 May 2000 (see s 2)

6 List of annotations

Continuation of proceeding after delay
r 389 (4)–(5) exp 1 July 2000 (see r 389(5))

SCHEDULE 1—SCALE OF COSTS—SUPREME COURT
sub 2000 SL No. 66 s 24

SCHEDULE 2—SCALE OF COSTS—DISTRICT COURT
PART 2—COSTS
pt 2 sub 2000 SL No. 66 s 25

SCHEDULE 3—SCALE OF COSTS—MAGISTRATES COURT
PART 2—COSTS
pt 2 sub 2000 SL No. 66 s 26