



Queensland

*Supreme Court of Queensland Act 1991*

# Uniform Civil Procedure Rules 1999

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# Uniform Civil Procedure Rules 1999

[as amended by all amendments that commenced on or before 10 December 2007]

## Chapter 1 Preliminary

### 1 Short title

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

### 2 Commencement

These rules commence on 1 July 1999.<sup>1</sup>

### 3 Application

- (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* expired 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* commenced at the beginning of 1 July 1999—section 2 and *Acts Interpretation Act 1954*, section 15B.

#### **4 Dictionary**

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

#### **5 Philosophy—overriding obligations of parties and court**

- (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.

#### **6 Names of all parties to be used**

- (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.

**7 Extending and shortening time**

- (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.<sup>2</sup>

**Chapter 2 Starting proceedings****Part 1 Starting proceedings****8 Starting proceedings**

- (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<sup>3</sup> is not an originating process.

**9 Claim compulsory**

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*.

**10 Application compulsory**

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.

**11 Application permitted**

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.

**12 Oral application permitted**

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.

**13 Proceeding incorrectly started by claim**

- (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;<sup>4</sup> and
  - (c) make any other order the court considers appropriate.

#### **14 Proceeding incorrectly started by application**

- (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.

#### **15 Registrar may refer issue of originating process to court**

- (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.

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4 See rule 367 (Directions).

**16 Setting aside originating process**

The court may<sup>5</sup>—

- (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;<sup>6</sup> or
- (i) make another order the court considers appropriate.

**Part 2 Rules about originating process****17 Contact details and address for service**

- (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;

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<sup>5</sup> See also rule 373 (Incorrect originating process).

<sup>6</sup> Rule 127 (Service of other process by leave)

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- (ii) for a proceeding in the Supreme Court or the District Court—if the address specified under subparagraph (i) is more than 30km from the issuing registry, an address not more than 30km 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;<sup>7</sup> 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).

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<sup>7</sup> This may be relevant for ordinary service—see chapter 4 (Service), part 4 (Ordinary service).

- (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 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).

## **18 Representative details required**

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.

## **19 Originating process must be signed**

- (1) The plaintiff or applicant, or the person's solicitor,<sup>8</sup> must sign the originating process.
- (2) For a minor debt claim—
  - (a) the claim may be signed by an agent; and

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<sup>8</sup> See rule 985 (Solicitor's act).

- (b) if the registrar requires, the agent's authority must be filed.

## **20 Copy of originating process for court**

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

# **Part 3 Claims**

## **21 Application of pt 3**

This part applies to claims.

## **22 Claim**

- (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; and
  - (c) for a claim filed in the District Court or a Magistrates Court, show the court has jurisdiction to decide 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*, the repealed *WorkCover Queensland Act 1996* or the *Workers' Compensation and Rehabilitation Act 2003*.

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

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;<sup>9</sup> 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.

**24 Duration and renewal of claim**

- (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 fifth 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.

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<sup>9</sup> See rule 137 (Time for notice of intention to defend).



**27 Service of application**

- (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.<sup>11</sup>
- (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—
  - (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)—

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11 *Acts Interpretation Act 1954*, section 38—

**38 Reckoning of time**

- (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 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.

## **28 Service of affidavit in support of application**

- (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.

## **29 Notice of address for service**

- (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<sup>12</sup> 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.

## **30 Consent adjournment**

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.

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12 Rule 17 (Contact details and address for service)

## **Part 5 Applications in a proceeding**

### **31 Applications in a proceeding**

- (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 proceedings, the application must have on it the information required under rule 17 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.<sup>13</sup>
- (6) 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.

### **32 Oral applications**

- (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.

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<sup>13</sup> *Acts Interpretation Act 1954*, section 38—

#### **38 Reckoning of time**

- (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 ...

- (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 6                      Where to start a proceeding**

### **Division 1                      Central registry of Supreme Court**

#### **33                      Central registry of Supreme Court**

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**

#### **34                      Application of div 2**

This division applies to the following courts—

- (a) Magistrates Courts;
- (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.

#### **35                      General rule**

- (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;
  - (f) if the proceeding is a claim for the recovery of possession of land—the district in which the land is located.
- (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.
- (3) For these rules, a division of the Brisbane Magistrates Court is taken to be a district.

## **Division 3                      Magistrates Courts**

### **36            Application of div 3**

This division applies only to Magistrates Courts.

**37 Extended area of Magistrates Courts districts**

- (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 1km 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 35km 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 35km of the district's boundary.

**38 Power to decide questions related to where to start proceeding**

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.

**39 Objection to court**

- (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.

#### **40 Change of venue by court order**

- (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.

#### **41 Change of venue by agreement**

- (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).

#### **42 Registrar to send documents to transferee court**

- (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**

### **43            Application of div 4**

- (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.

### **44            Objection to court**

- (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.

#### **45 Change of venue by court order**

- (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**

#### **46 Application of div 5**

This division applies only to the Supreme Court.

#### **47 Proceedings in registries**

- (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.

#### **48 Objection to court**

- (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.

#### **49 Transfer of proceeding**

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

### 50      Applications heard at a different location

(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

### 51      Definitions for pt 7

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)*.

**52 Application of pt 7**

- (1) This part applies to a proceeding to which the cross-vesting laws apply.
- (2) This part applies only to the Supreme Court.

**53 Starting proceedings**

- (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.

**54 Special federal matters**

- (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.

**55 Service**

- (1) Despite chapter 4,<sup>14</sup> an originating process in which the cross-vesting laws are relied on may be served outside the jurisdiction.
- (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.

**56 Directions**

- (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.

## **57 Transfer of proceedings**

- (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.

## **58 Transfer on Attorney-General's application**

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.

## **59 Transfer to court if no proceeding pending**

- (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**

##### **60      Inclusion of several causes of action in a proceeding**

- (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**

### **61            Application of div 2**

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.

### **62            Necessary parties**

- (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.

### **63            Joint entitlement**

- (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.

**64 Joint or several liability**

- (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.

**65 Inclusion of multiple parties in a proceeding**

- (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.

**66 Identical interest in relief unnecessary**

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.

**67 Parties incorrectly included or not included**

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****68 Inconvenient inclusion of cause of action or party**

- (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.

**69 Including, substituting or removing party**

- (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—

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- (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) for any other reason—
    - (i) a claim made, or ground of defence raised, in the proceeding before the end of the limitation period can not be maintained; or
    - (ii) relief sought in the proceeding before the end of the limitation period can not be granted;unless the new party is included or substituted as a party.
- (3) If the court makes an order including or substituting a party, the court may give directions about the future conduct of the proceeding.

## **70 Procedure for inclusion of party**

- (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.

## **71 Defendant or respondent dead at start of proceeding**

- (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.<sup>15</sup>

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

- (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—

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<sup>15</sup> See the *Supreme Court of Queensland Act 1991*, sections 93M and 93N for procedures, relevant to this rule, about estates and grants of representation.

- (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 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.

### **73 No substitution order after death of plaintiff or applicant**

- (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.

**74 Amendment of proceedings after change of party**

- (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, a proceeding by or against a new party is taken to have started when the original proceeding started, unless the court orders otherwise.
- (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**

### **75            Representative party**

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.

### **76            Order for representation**

- (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<sup>16</sup> including the person as a party.

### **77            Enforcement of order against representative party**

- (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.<sup>17</sup>
- (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.

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<sup>16</sup> Rule 62 (Necessary parties)

<sup>17</sup> See also the *Supreme Court of Queensland Act 1991*, section 82 (Order binds persons who are represented).

## **Part 2 Multiple proceedings**

### **78 Consolidation of proceedings**

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.

### **79 Sequence of hearings**

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

### **80 Directions**

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.

### **81 Variation of order**

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**

#### **82            Meaning of *partnership proceeding***

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.

#### **83            Proceeding in partnership name**

- (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 Act 1891*, 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.

#### **84            Disclosure of partners' names**

- (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.

### **85 Notice of intention to defend**

- (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<sup>18</sup> 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.

### **86 Person improperly served as partner**

- (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.

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

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

## **87 Defence**

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.

## **88 Enforcement against individual partner**

- (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,<sup>19</sup> the person may be served outside Australia without leave.
- (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**

### **89 Proceeding if registered business name**

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

### **90 Proceeding in business name if unregistered**

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*—

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19 Chapter 4 (Service)

- (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.

## **91 Notice of intention to defend**

- (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).

## **92 Amendment as to parties**

- (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 382 and 384.<sup>20</sup>
- (6) This rule applies in addition to chapter 10, part 3.<sup>21</sup>

## **Part 4**                      **Persons under a legal incapacity**

### **93**      **Litigation guardian of person under a legal incapacity**

- (1) A person under a legal incapacity may start or defend a proceeding only by the person's litigation guardian.
- (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 may, if the party is a person under a legal incapacity, be done only by the party's litigation guardian.
- (3) A party's litigation guardian who is not a solicitor may act only by a solicitor.

### **94**      **Who may be a litigation guardian**

- (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

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20 Rules 382 (Procedure for amending) and 384 (Serving amendments)

21 Chapter 10 (Court supervision), part 3 (Amendment)

- (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.

## **95 Appointment of litigation guardian**

- (1) Unless a person is appointed as a litigation guardian by the court, 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 appoint or remove a litigation guardian or substitute another person as litigation guardian.

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

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.

## **97 Disclosure**

- (1) Chapter 7, parts 1 and 2<sup>22</sup> apply to a party who is a person under a legal incapacity as if the person were not a person under a legal incapacity.

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22 Chapter 7 (Disclosure), parts 1 (Disclosure by parties) and 2 (Non-party disclosure)

- (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.

## **98 Settlements and compromises**

- (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.<sup>23</sup>
- (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.
- (3) The documents mentioned in subrule (2) are not to be served on another party unless the court orders otherwise.

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<sup>23</sup> *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)

**99 Proceedings by and against prisoners**

- (1) This rule applies if a prisoner is incapable of bringing or defending a proceeding without the public trustee's consent.<sup>24</sup>
- (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****100 Definitions for ch 4**

In this chapter—

*Australia* includes the external territories.

*convention* means an agreement, arrangement, treaty or convention, relating to legal proceedings in civil matters, made between Australia and another country.

*convention country* means a country other than Australia to which a convention applies.

**101 Service not allowed on certain days**

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

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<sup>24</sup> See the *Public Trustee Act 1978*, section 95—

**95 Restrictions on property dealings or proceedings**

- (1) During the time when the public trustee is manager of the prisoner's estate under this part, 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.

**102 Approved document exchanges**

- (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.

**103 Service after 4.00p.m.**

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

**Part 2 Personal service generally****104 Application of pt 2**

This part applies subject to these rules or an order made under these rules.<sup>25</sup>

**105 Personal service for originating process**

- (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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<sup>25</sup> 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.

**106 How personal service is performed**

- (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 Service in particular cases****107 Personal service—corporations**

A document required to be served personally on a corporation<sup>26</sup> must be served in the way provided for the service of documents under the Corporations Act or another applicable law.

**108 Personal service—young people**

- (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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<sup>26</sup> A *corporation* includes a body politic or corporate—*Acts Interpretation Act 1954*, section 36.

**109 Personal service—persons with impaired capacity**

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.

**110 Personal service—prisoners**

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<sup>27</sup> 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.

**111 Personal service in Magistrates Courts proceedings**

- (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.

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

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

## **Part 4                      Ordinary service**

### **112    How ordinary service is performed**

- (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

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- 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.

**113 Service in relation to a business**

- (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.

#### **114 Service in relation to a partnership**

- (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 Act 1891*—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**

#### **115 Acceptance of service**

- (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.

**116 Substituted service**

- (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.

**117 Informal service**

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.

**118 Service on agent**

- (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 prepaid post.

### **119 Service under contract**

- (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.

### **120 Affidavit of service**

- (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;

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- (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.

**121 Identity of person served**

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.

**122 Special requirements for service by fax**

- (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**

### **123      Service outside Queensland**

- (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**

### **Division 1                  Ordinary service outside Australia**

#### **124      When service outside Australia permitted**

- (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

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- 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;

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- (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<sup>28</sup> 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—
  - (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;

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<sup>28</sup> *Entity* includes a person and an unincorporated body—*Acts Interpretation Act 1954*, section 36.

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- (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.

**125 Service of counterclaim or third party notice**

- (1) This rule applies—
- (a) to a counterclaim against a plaintiff and another person if the 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.

## **126 Setting aside service**

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.

## **127 Service of other process by leave**

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

- (a) an originating process for a proceeding under an Act if service is not authorised under rule 124;
- (b) an application, order, notice or document in a pending proceeding.

## **128 Order for service outside Australia**

- (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.

**129 How service outside Australia to be performed**

- (1) If service outside Australia of an originating process, a counterclaim or a third party notice is authorised under this part, then parts 1 to 5 apply to the service.
- (2) However, nothing in these rules, or in any order of the court made under these rules, authorises or requires the doing of anything in a country in which service is to be effected that is contrary to the law of the country.

**Division 2 Service in convention countries****130 Service in convention countries**

- (1) This rule applies if a person—
  - (a) is required by a convention to serve a document in a convention country in accordance with the convention; or
  - (b) otherwise wants to serve a document in a convention country in accordance with a convention.
- (2) A person serving a document in a convention country must lodge with the registrar—
  - (a) the document to be served; and
  - (b) if a particular way of service is required, a request for service in that way; and
  - (c) if English is not an official language of the convention country, a translation in an official language of the country, certified by the person making it to be a correct translation, of the documents mentioned in paragraphs (a) and (b); and
  - (d) the further copies of each of the documents mentioned in paragraphs (a) to (c) the registrar directs; and
  - (e) a request and undertaking under subrule (4).
- (3) A certificate given in a translation of a document filed under subrule (2) must state the person's full name and address and qualifications for making the translation.

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- (4) A request and undertaking lodged under subrule (2) must—
- (a) request the registrar to send a sealed copy of the document to be served to the convention country for service on a specified person; and
  - (b) refer to the relevant convention; and
  - (c) include an undertaking by the person or the person's solicitor to pay to the registrar the expenses incurred by the registrar in complying with the request.
- (5) The registrar must give to the Attorney-General for transmission for service—
- (a) the documents, stamped with the seal of the court; and
  - (b) if the judicial authority of the country requires a letter of request—the request.
- (6) If, after the registrar sends documents to the Attorney-General under subrule (5), a certificate of service, attempted service or non-service is filed purporting to be a certificate from—
- (a) a judicial authority or other responsible person in the convention country; or
  - (b) an Australian consular authority in the convention country;
- the certificate is evidence of the matters stated in the certificate.
- (7) If a person gives an undertaking under subrule (2) and does not, within 7 days after being given an account of the registrar's expenses in complying with the request for service, pay to the registrar the expenses, the court may, on application by the registrar—
- (a) order the person to pay the expenses to the registrar; and
  - (b) stay the proceeding until the unpaid amount is paid.
- (8) Despite subrule (2)(e), the registrar may—
- (a) require the person to provide security in a form satisfactory to the registrar for the anticipated expenses of complying with the request; and
  - (b) decline to proceed under subrule (5) until security is provided.



- 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.

### **132 Orders for substituted service**

On the application of the Crown solicitor, with the consent of the Attorney-General, the Supreme 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.

### **133 Noncompliance with rules**

The Supreme 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

### 134      Application of ch 5

This chapter applies only to a proceeding started by claim.

### 135      No step without notice of intention to defend

- (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.

### 136      Defendant may act by solicitor or in person

- (1) A defendant may defend a proceeding by a solicitor or in person.
- (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.<sup>29</sup>
- (3) A defendant may also defend a minor debt claim by an agent.
- (4) If a defendant defends by an agent, the defendant must file the agent's authority if the registrar requires it.
- (5) In this rule—  
*defend* includes file a notice of intention to defend.

### 137      Time for notice of intention to defend

- (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.

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<sup>29</sup> See rule 93 (Litigation guardian of person under a legal incapacity).

- (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.

### **138 Late filing of notice of intention to defend**

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.<sup>30</sup>

### **139 Requirements for notice of intention to defend**

- (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.

### **140 Contact details and address for service**

Rule 17<sup>31</sup> applies in relation to a notice of intention to defend as if the notice were a claim and the defendant were a plaintiff.

### **141 Filing notice of intention to defend**

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

### **142 Service of notice of intention to defend**

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.

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30 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.

31 Rule 17 (Contact details and address for service)

**143 Possession of land**

- (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,<sup>32</sup> a person who files a notice of intention to defend under subrule (1) becomes a defendant by virtue of the notice and must—
  - (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.

**144 Conditional notice of intention to defend**

- (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<sup>33</sup> within 14 days after filing the notice.
- (4) If the defendant does not apply for an order under rule 16 within the 14 days, the conditional notice of intention to defend becomes an unconditional notice of intention to defend.
- (5) Within 7 days after a conditional notice of defence becomes an unconditional notice of intention to defend, the defendant must file a defence.

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32 Rule 69 (Including, substituting or removing party)

33 Rule 16 (Setting aside originating process)

- (6) 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**

#### **145 Application of pt 1**

This part applies only to the following proceedings—

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

#### **146 Formal requirements**

- (1) A pleading must—
- (a) state the number of the proceeding; and
  - (b) state the description of the pleading; and
  - (c) be filed and 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<sup>34</sup> informing the party about the time for serving pleadings in response under rule 164.

### **148 Judgment pleaded**

- (1) Subrule (2) applies if a party pleads a judgment.
- (2) The party pleading the judgment must, within 10 days after another party requests a copy of the judgment, 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**

### **149 Statements in pleadings**

- (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, 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.

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

**150 Matters to be specifically pleaded**

- (1) Without limiting rule 149, the following matters must be specifically pleaded—
- (a) breach of contract or trust;
  - (b) every type of damage claimed including, but not limited to, special and exemplary damages;<sup>35</sup>
  - (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;

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35 See also rule 155 (Damages).

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- (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.
- (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;
  - (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.

**151 Presumed facts**

- (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—
  - (a) to comply with rule 149; or
  - (b) to meet a denial pleaded by another party.

### **152 Spoken words and documents**

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.

### **153 Condition precedent**

- (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.

### **154 Inconsistent allegations or claims in pleadings**

- (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.

### **155 Damages**

- (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), 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 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.

### **156 General relief**

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**

### **157 Particulars in pleading**

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.

### **158 Particulars of damages**

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

**159 Interest**

- (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<sup>36</sup> 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.

**160 Way to give particulars**

- (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.

**161 Application for order for particulars**

- (1) A party may apply to the court for an order for further and better particulars of the opposite party's pleading.<sup>37</sup>

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<sup>36</sup> *Supreme Court Act 1995*, section 47 (Interest up to judgment)

<sup>37</sup> 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).

- (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.

### **162 Striking out particulars**

- (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.

### **163 Failure to give particulars**

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.

## **Part 4 Progress of pleading**

### **164 Time for serving answer to counterclaim and reply**

- (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.<sup>38</sup>

### **165 Answering pleadings**

- (1) A party may, in response to a pleading, plead a denial, a nonadmission, an admission or another matter.
- (2) A party who pleads a nonadmission 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.

### **166 Denials and nonadmissions**

- (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 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.
- (3) A party may plead a nonadmission 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 nonadmission of the allegation is contained; and

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<sup>38</sup> See chapter 9 (Ending proceedings early), part 1 (Default) for the consequence of default.

- (c) the party remains uncertain as to the truth or falsity of the allegation.
- (4) A party's denial or nonadmission 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 nonadmission of an allegation does not comply with subrule (4), the party is taken to have admitted the allegation.
- (6) A party making a nonadmission 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.

### **167 Unreasonable denials and nonadmissions**

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 nonadmission.

### **168 Implied nonadmission**

- (1) Every allegation of fact made in the last pleading filed and served before the pleadings close is taken to be the subject of a nonadmission 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.

### **169 Close of pleadings**

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.

**170 Confession of defence**

- (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.

**171 Striking out pleadings**

- (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**

#### **172**    **Defence of tender**

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.

#### **173**    **Set-off**

- (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 can not 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.

**174 Defamation pleadings**

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****175 Application of div 2**

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.

**176 Counterclaim after issue of claim**

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

**177 Counterclaim against plaintiff**

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

**178 Counterclaim against additional party**

- (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<sup>39</sup> 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.

## **179 Pleading and serving counterclaim**

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.

## **180 Answer to counterclaim**

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

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<sup>39</sup> Chapters 2 (Starting proceedings), 4 (Service) and 5 (Notice of intention to defend) and chapter 9 (Ending proceedings early), part 1 (Default)

**181 Conduct of counterclaim**

- (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 proceeding; and
  - (b) the defendant to the counterclaim were the defendant to an original proceeding.
- (2) Chapter 4<sup>40</sup> 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.

**182 Exclusion of counterclaim**

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.

**183 Counterclaim after judgment, stay etc. of original proceeding**

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

**184 Judgment for balance**

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.

**185 Stay of claim**

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.

## **Division 3                      Admissions**

### **186      Application of div 3**

This division applies only to proceedings started by claim.

### **187      Voluntary admission**

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.

### **188      Withdrawal of admission**

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

### **189      Notice to admit facts or documents**

- (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.

## **190 Admissions**

- (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.<sup>41</sup>
- (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.<sup>42</sup>

## **Part 6 Third party and similar proceedings**

### **191 Explanation of pt 6**

- (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.

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

42 Rule 507 (Conditional order)

- (3) In addition to the provisions of this part, rules 16 to 18, 20 and 23<sup>43</sup> 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.

## **192 Reason for third party procedure**

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

- (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.

## **193 Content of third party notice**

- (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.

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43 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)

**194 Filing third party notice**

- (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.

**195 Serving third party notice**

- (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.

**196 Effect of service on third party**

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.

**197 Notice of intention to defend by third party**

Chapter 5<sup>44</sup> applies, with necessary changes, to a proceeding started 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.

**198 Third party defence**

- (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.

**199 Pleadings**

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.

**200 Counterclaim by third party**

- (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

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44 Chapter 5 (Notice of intention to defend)

included as a defendant if the third party brought a separate proceeding.

- (3) The counterclaim starts when it is issued.
- (4) Rule 178<sup>45</sup> applies to a counterclaim by a third party with necessary changes.

## **201 Default**

- (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
  - (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.

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45 Rule 178 (Counterclaim against additional party)

- (4) Chapter 9, part 1, division 2,<sup>46</sup> 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.

## **202 Disclosure**

- (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 not maintainable.<sup>47</sup>
- (3) However, a duty of disclosure may arise between a third party and another party if the court so orders.

## **203 Trial**

- (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.

## **204 Extent third party bound by judgment between plaintiff and defendant**

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.

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46 Chapter 9 (Ending proceedings early), part 1 (Default), division 2 (Proceedings started by claim)

47 See rule 211 (Duty of disclosure).

**205 Judgment between defendant and third party**

- (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.

**206 Claim against another party**

- (1) A party may claim against another party to the proceeding relief of the kind mentioned in rule 192<sup>48</sup> 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.

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48 Rule 192 (Reason for third party procedure)

**207 Subsequent parties**

- (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.

**208 Contribution under Law Reform Act 1995**

If the only relief claimed by a defendant is a contribution under the *Law Reform Act 1995*, section 6<sup>49</sup> against another defendant, the defendant may file and serve a notice claiming contribution without further pleading.

**Chapter 7 Disclosure****Part 1 Disclosure by parties****Division 1 Disclosure and inspection of documents****209 Application of pt 1**

- (1) This part applies to the following types of proceeding—
  - (a) a proceeding started by claim;

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<sup>49</sup> *Law Reform Act 1995*, section 6 (Proceedings against, and contribution between, joint and several tortfeasors)

- (b) a proceeding in which the court has made an order under rule 14<sup>50</sup> 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.

## **210 Nature of disclosure**

In a proceeding, disclosure is the delivery or production of documents in accordance with this part.

## **211 Duty of disclosure**

- (1) A party to a proceeding has a duty to disclose to each other party each document<sup>51</sup>—
  - (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.

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50 Rule 14 (Proceeding incorrectly started by application)

51 *Acts Interpretation Act 1954*, section 36—

*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).

- (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.

## **212 Documents to which disclosure does not apply**

- (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.

## **213 Privilege claim**

- (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.

## **214 Disclosure by delivery of list of documents and copies**

- (1) Subject to rules 216 and 223, 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;
  - (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.

## **215 Requirement to produce original documents**

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.

## **216 Disclosure by inspection of documents**

- (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.

### **217 Procedure for disclosure by producing documents**

- (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 (2); 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.

## **219 Costs**

Subject to rule 220, a party who does not make use of the opportunity to inspect documents under a notice under rule 216 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.

## **220 Deferral of disclosure**

- (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.

## **221 Disclosure of document relating only to damages**

A party may disclose to another party a document relating only to damages only if the other party asks for its disclosure.

**222 Inspection of documents referred to in pleadings or affidavits**

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.

**223 Court orders relating to disclosure**

- (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.

## **224 Relief from duty to disclose**

- (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.

## **225 Consequences of nondisclosure**

- (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.

## **226 Certificate by solicitor**

- (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.

## **227 Production of documents at trial**

- (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**

### **228    Entitlement to deliver interrogatories**

A party may deliver an interrogatory only under this part.

### **229    Delivery of interrogatories**

- (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;<sup>52</sup> 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.

### **230    Granting of leave to deliver interrogatories**

- (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 \$7500.

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52 Chapter 6 (Pleadings), part 6 (Third party and similar proceedings)

**231 Answering interrogatories**

- (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
  - (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.

**232 Statement in answer to interrogatories**

- (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) 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.

**233 Grounds for objection to answering interrogatories**

- (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 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.

**234 Unnecessary interrogatories**

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.

**235 Identity of individual by whom verifying affidavit to be made**

- (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.

### **236 Failure to answer interrogatory**

- (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;<sup>53</sup> 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.

### **237 Failure to comply with court order**

- (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; 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 considers appropriate.
- (3) This rule does not limit the powers of the court to punish for contempt of court.

### **238 Tendering answers**

- (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.

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53 Rule 231 (Answering interrogatories)

- (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**

### **239    Public interest considerations**

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.

### **240    Service on solicitors of disclosure orders**

- (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.

## **241 Costs**

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**

### **242 Notice requiring non-party disclosure**

- (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.

### **243 Form and service of notice**

- (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.

#### **244 Others affected by notice**

- (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.

## **245 Objection to disclosure**

- (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.

## **246 Objection stays notice**

Service of an objection under rule 245 operates as a stay of a notice of non-party disclosure.

## **247 Court's decision about objection**

- (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.

## **248 Production and copying of documents**

- (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.

## **249 Costs of production**

- (1) Subject to rule 247(3), 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 17A.

# **Chapter 8 Preservation of rights and property**

## **Part 1 Inspection, detention and preservation of property**

### **250 Inspection, detention, custody and preservation of property**

- (1) The court may make an order for the inspection, detention,

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- custody or preservation of property<sup>54</sup> 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 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.

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54 *Acts Interpretation Act 1954*, section 36—

**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.

**251 Perishable property**

- (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.

**252 Order affecting non-party**

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.

**253 Service of application**

- (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.

**254 Order before proceeding starts**

- (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.

**255 Jurisdiction of court not affected**

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**

### **Division 1                Preliminary**

#### **255A    Definition for pt 2**

In this part—

*part 2 order* means an injunction or order of the type mentioned in rule 260A or 261A.

#### **256    Application of pt 2**

This part does not apply to a Magistrates Court.

#### **257    Relationship with other law**

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 260A and 261A.

#### **258    Procedure**

- (1) An application for a part 2 order should comply with chapter 2, part 4<sup>55</sup> 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.

#### **259    Part 2 order without notice**

- (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.

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55 Chapter 2 (Starting proceedings), part 4 (Applications)

- (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.

## Division 2                      Freezing orders

### 260      Definitions for div 2

In this division—

*ancillary order* has the meaning given by rule 260B.

*another court* means a court outside Australia or a court in Australia other than the court.

*applicant* means a person who applies for a freezing order or an ancillary order.

*freezing order* has the meaning given by rule 260A.

*judgment* includes an order.

*respondent* means a person against whom a freezing order or an ancillary order is sought or made.

### 260A    Freezing order

- (1) The court may make an order (a *freezing order*) for the purpose of preventing the frustration or inhibition of the

court's process by seeking to meet a danger that a judgment or prospective judgment of the court will be wholly or partly unsatisfied.

- (2) A freezing order may be an order restraining a respondent from removing any assets located in or outside Australia or from disposing of, dealing with, or diminishing the value of, those assets.

### **260B Ancillary order**

- (1) The court may make any order (an *ancillary order*) ancillary to a freezing order or prospective freezing order it considers appropriate.
- (2) Without limiting subrule (1), an ancillary order may be made for either or both of the following purposes—
  - (a) obtaining information about assets relevant to the freezing order or prospective freezing order;
  - (b) deciding whether the freezing order should be made.

### **260C Respondent need not be party to proceeding**

A freezing order or an ancillary order may be granted whether or not the respondent is a party to an existing proceeding.

### **260D Order against judgment debtor or prospective judgment debtor or third party**

- (1) This rule applies if judgment has been given in favour of an applicant by the court or another court and there is sufficient prospect that the judgment of the other court will be registered in or enforced by the court.
- (2) This rule also applies if an applicant has a good arguable case on an accrued or prospective cause of action that is justiciable in—
  - (a) the court; or
  - (b) another court and—
    - (i) there is a sufficient prospect that the other court will give judgment in favour of the applicant; and

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- (ii) there is a sufficient prospect that the judgment of the other court will be registered in or enforced by the court.
- (3) The court may make a freezing order or an ancillary order or both against a judgment debtor or prospective judgment debtor if the court is satisfied, having regard to all the circumstances, that there is a danger that a judgment or prospective judgment will be wholly or partly unsatisfied because—
  - (a) the judgment debtor, prospective judgment debtor or another person might abscond; or
  - (b) the assets of the judgment debtor, prospective judgment debtor or another person might be—
    - (i) removed from Australia or from a place inside or outside Australia; or
    - (ii) disposed of, dealt with or diminished in value.
- (4) The court may make a freezing order or an ancillary order or both against a person other than a judgment debtor or prospective judgment debtor (a *third party*) if the court is satisfied, having regard to all the circumstances, that—
  - (a) there is a danger that a judgment or prospective judgment will be wholly or partly unsatisfied because—
    - (i) the third party holds or is using, or has exercised or is exercising, a power of disposition over assets (including claims and expectancies) of the judgment debtor or prospective judgment debtor; or
    - (ii) the third party is in possession of, or in a position of control or influence concerning, assets (including claims and expectancies) of the judgment debtor or prospective judgment debtor; or
  - (b) a process in the court is or may ultimately be available to the applicant as a result of a judgment or prospective judgment, under which process the third party may be obliged to disgorge assets or contribute toward satisfying the judgment or prospective judgment.

- (5) This rule does not affect the power of the court to make a freezing order or ancillary order if the court considers it is in the interests of justice to do so.

## **260E Jurisdiction**

This division does not diminish the inherent, implied or statutory jurisdiction of the court to make a freezing order or ancillary order.

## **260F Service outside Australia of application for freezing order or ancillary order**

An application for a freezing order or an ancillary order may be served on a person outside Australia without the court's leave if any of the assets to which the order relates are within the jurisdiction of the court.

## **260G Costs**

- (1) The court may make any order as to costs it considers appropriate in relation to an order made under this division.
- (2) Without limiting subrule (1), an order as to costs includes an order as to the costs of any person affected by a freezing order or ancillary order.

## **Division 3 Search orders**

### **261 Definitions for div 3**

In this division—

*applicant* means a person who applies for a search order.

*described* includes described generally whether by reference to a class or otherwise.

*premises* includes a vehicle or vessel of any kind.

*respondent* means a person against whom a search order is sought or made.

*search order* has the meaning given by rule 261A.

**261A Search order**

The court may make an order (a *search order*), in any proceeding or in anticipation of any proceeding in the court, for the purpose of securing or preserving evidence and requiring a respondent to permit persons to enter premises for the purpose of securing the preservation of evidence which is, or may be, relevant to an issue in the proceeding or anticipated proceeding.

**261B Requirements for grant of search order**

The court may make a search order if the court is satisfied that—

- (a) the applicant has a strong prima facie case on an accrued cause of action; and
- (b) the potential or actual loss or damage to the applicant will be serious if the search order is not made; and
- (c) there is sufficient evidence in relation to a respondent that—
  - (i) the respondent possesses important evidentiary material; and
  - (ii) there is a real possibility that the respondent might destroy the material or cause it to be unavailable for use in evidence in a proceeding or anticipated proceeding before the court.

**261C Jurisdiction**

This division does not diminish the inherent, implied or statutory jurisdiction of the court to make a search order.

**261D Terms of search order**

- (1) A search order may direct each person who is named or described in the order—
  - (a) to permit, or arrange to permit, the other persons named or described in the order—
    - (i) to enter premises specified in the order; and

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- (ii) to take any steps that are in accordance with the terms of the order; and
  - (b) to provide, or arrange to provide, the other persons named or described in the order with any information, thing or service described in the order; and
  - (c) to allow the other persons named or described in the order to take and retain in their custody any thing described in the order; and
  - (d) not to disclose any information about the order, for up to 3 days after the date on which the order was served, except for the purposes of obtaining legal advice or legal representation; and
  - (e) to do or refrain from doing any act as the court considers appropriate.
- (2) Without limiting subrule (1)(a)(ii), the steps that may be taken in relation to a thing specified in a search order include—
- (a) searching for, inspecting or removing the thing; and
  - (b) making or obtaining a record of the thing or any information it may contain.
- (3) A search order may contain any other provisions the court considers appropriate.
- (4) In this rule—
- record* includes a copy, photograph, film or sample.

**261E Independent solicitors**

- (1) If the court makes a search order, the court must appoint 1 or more solicitors, each of whom is independent of the applicant's solicitors (the *independent solicitors*), to supervise the enforcement of the order, and to do the other things in relation to the order the court considers appropriate.
- (2) The court may appoint an independent solicitor to supervise enforcement of the order at any 1 or more premises, and a different independent solicitor or solicitors to supervise enforcement of the order at other premises, with each independent solicitor having power to do the other things in relation to the order the court considers appropriate.

**261F Costs**

- (1) The court may make any order as to costs it considers appropriate in relation to an order made under this division.
- (2) Without limiting subrule (1), an order as to costs includes an order as to the costs of any person affected by a search order.

**Division 4                      Miscellaneous****262      Part 2 order without trial**

- (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<sup>56</sup> 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;
  - (c) order the parties to file and serve pleadings;
  - (d) direct a trial of the proceeding.

**263      Expedited trial**

On an application for a part 2 order, the court may order an expedited trial under rule 468.<sup>57</sup>

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<sup>56</sup> Rule 137 (Time for notice of intention to defend)

<sup>57</sup> Rule 468 (Trial expedited)

**264 Damages and undertaking as to damages**

- (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.<sup>58</sup>
- (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.

**265 Other undertakings and security to perform undertaking**

- (1) The court may require an undertaking from a person approved by the court other than the applicant.
- (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.

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58 See rule 507 (Conditional order).

## **Part 3                      Receivers**

### **Division 1                Application**

#### **266    Application of pt 3**

This part does not apply to—

- (a) Magistrates Courts; or
- (b) situations controlled or regulated by the Corporations Act.

### **Division 2                Receivership generally**

#### **267    Consent to act as receiver**

- (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.

#### **268    Security**

- (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.

#### **269    Remuneration**

- (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.

**270 Accounts**

- (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.

**271 Default**

- (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.<sup>59</sup>

## **272 Powers**

- (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.

## **273 Death of receiver**

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.

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<sup>59</sup> Rule 793 (Definitions for ch 19)



- (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.

## **279 Certificate of result of sale**

- (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**

##### **280    Default by plaintiff or applicant**

- (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**

### **281      Application of div 2**

- (1) This division applies if a defendant in a proceeding started by claim has not filed a notice of intention to defend and the time allowed under rule 137<sup>61</sup> to file the notice has ended.
- (2) This division also applies if a defendant in a proceeding started by claim files a conditional notice of intention to defend that becomes an unconditional notice of intention to defend and the defendant does not file a defence within the time required under rule 144(5).<sup>62</sup>

### **282      Service must be proved**

A plaintiff must prove service of a claim on a defendant in default before judgment may be given under this division against the defendant.

### **283      Judgment by default—debt or liquidated demand**

- (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;<sup>63</sup> and
  - (b) the following costs—
    - (i) costs for issuing the claim;
    - (ii) costs for obtaining judgment;

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61 Rule 137 (Time for notice of intention to defend)

62 Rule 144 (Conditional notice of intention to defend)

63 *Supreme Court Act 1995*, section 47 (Interest up to judgment)

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- (iii) any other fees and payments, to the extent they have been reasonably incurred and paid.
- (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.
- (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.

**284 Judgment by default—unliquidated damages**

- (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,<sup>64</sup> 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 rule 507<sup>65</sup> the court that is to do the assessment.

**285 Judgment by default—detention of goods**

- (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 rule 507 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.

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

65 Rule 507 (Conditional order)

**286 Judgment by default—recovery of possession of land**

- (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—
  - (a) recovery of possession of the land as against the defendant; and
  - (b) the following costs—
    - (i) costs for issuing the claim;
    - (ii) costs for obtaining judgment;
    - (iii) any other fees and payments, to the extent they have been reasonably incurred and paid.
- (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.

**287 Judgment by default—mixed claims**

- (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.

**288 Judgment by default—other claims**

- (1) This rule applies if a defendant is in default and the plaintiff is not entitled to apply for judgment under rule 283, 284, 285 or 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.

**289 Judgment by default—costs only**

- (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.

**290 Setting aside judgment by default and enforcement**

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****291 Application of pt 2**

This part applies to any proceeding.

## **Division 2                      Applying for summary judgment**

### **292      Summary judgment for plaintiff**

- (1) A plaintiff may, at any time after a defendant files a notice of intention to defend, apply to the court under this part for judgment against the defendant.
- (2) If the court is satisfied that—
  - (a) the defendant has no real prospect of successfully defending all or a part of the plaintiff's claim; and
  - (b) there is no need for a trial of the claim or the part of the claim;

the court may give judgment for the plaintiff against the defendant for all or the part of the plaintiff's claim and may make any other order the court considers appropriate.

### **293      Summary judgment for defendant**

- (1) A defendant may, at any time after filing a notice of intention to defend, apply to the court under this part for judgment against a plaintiff.
- (2) If the court is satisfied—
  - (a) the plaintiff has no real prospect of succeeding on all or a part of the plaintiff's claim; and
  - (b) there is no need for a trial of the claim or the part of the claim;

the court may give judgment for the defendant against the plaintiff for all or the part of the plaintiff's claim and may make any other order the court considers appropriate.

### **294      Claims not disposed of**

- (1) The making of orders under this part that does not dispose of all claims in issue in a proceeding does not prevent the continuation of any part of the proceeding not disposed of by the orders.

- (2) A second or later application under this part may be made with the court's leave.

## **Division 3                      Evidence**

### **295      Evidence**

- (1) In a proceeding under this part, evidence must be given by affidavit unless the court gives leave.
- (2) An affidavit may contain statements of information and belief if the person making the affidavit states the sources of the information and the reasons for the belief.
- (3) A party to an application under this part who intends to rely on a document must—
  - (a) exhibit the document to an affidavit; or
  - (b) identify in an affidavit the provisions relied on to the extent the party is able to identify them.
- (4) 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.

### **296      Service**

- (1) A party applying for judgment under this part must file and serve the respondent to the application with the following documents at least 8 business days before the date for hearing shown on the application—
  - (a) the application;
  - (b) a copy of each affidavit on which the applicant intends to rely.
- (2) At least 4 business days before the date for hearing, the respondent must file and serve on the applicant a copy of any affidavit on which the respondent intends to rely.
- (3) At least 2 business days before the date for hearing, the applicant must file and serve on the respondent a copy of any affidavit in reply to the respondent's affidavit on which the applicant intends to rely.

## **Division 4                    Other procedural matters**

### **298    Directions**

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.

### **299    Costs**

- (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.

### **300    Stay of enforcement**

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.

### **301    Relief from forfeiture**

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.

**302 Setting aside judgment**

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****303 Discontinuance by party representing another person**

- (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.

**304 Discontinuance by plaintiff or applicant**

- (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.

### **305 Discontinuance by defendant or respondent**

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.

### **306 Withdrawal of notice of intention to defend**

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.

### **307 Costs**

- (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.

### **308 Withdrawal of defence or subsequent pleading**

- (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.

### **309 Notice of discontinuance or withdrawal**

- (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.

### **310 Subsequent proceeding**

- (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.

### **311 Consolidated proceedings and counterclaims**

The plaintiff's discontinuance of a proceeding does not prejudice a proceeding consolidated with it or a counterclaim made by the defendant.

### **312 Stay pending payment of costs**

- (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

#### 313    Definitions for pt 4

In this part—

*ADR costs* include—

- (a) for a mediation—the extra cost mentioned in rule 328;<sup>66</sup> and
- (b) for a case appraisal—the extra cost mentioned in rule 337.<sup>67</sup>

*referred dispute* means a dispute referred to a case appraiser under rule 334.<sup>68</sup>

*registrar* means—

- (a) for a Magistrates Court—the registrar nominated by the Chief Magistrate under the *Magistrates Courts Act 1921*, section 27(1);<sup>69</sup> or
- (b) for rules 319, 321, 323, 327, 328, 334, 343, 348, 349 and 350<sup>70</sup>—the registrar of the court that referred the proceeding to mediation or case appraisal.

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66 Rule 328 (Mediator may seek independent advice)

67 Rule 337 (Case appraiser may seek information)

68 Rule 334 (Referral of dispute to appointed case appraiser)

69 *Magistrates Courts Act 1921*, section 27 (ADR register)

70 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)

*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 Magistrate.

## **Division 2                    Establishment of ADR processes**

### **314    Approval as mediator**

- (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.
- (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 Magistrate must inform the registrar of the approval.

### **315 Approval as case appraiser**

- (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 Magistrate must inform the registrar of the approval.

### **316 ADR register**

The ADR register must contain the fees notified to the registrar under rule 317.

**317 Information to be given to registrar by ADR convenors and venue providers**

- (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.

**318 Form of consent order for ADR process**

For the *Supreme Court of Queensland Act 1991*, section 101, the *District Court of Queensland Act 1967*, section 96 and the *Magistrates Courts Act 1921*, section 28,<sup>71</sup> the consent order must be filed in the approved form.

**319 Registrar to give notice of proposed reference to ADR process**

- (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.

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<sup>71</sup> These provisions provide for a consent order to be filed referring a dispute to an ADR process.

- (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.

### **320 When referral may be made**

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.

### **321 Proceedings referred to ADR process are stayed**

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.

### **322 When does a party impede an ADR process**

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**

### **323      Referral of dispute to appointed mediator**

- (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.

**324 When mediation must start and finish**

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.

**325 Parties must assist mediator**

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.

**326 Mediator's role**

- (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.

**327 Liberty to apply**

The mediator or a party may apply to the court at any time for directions on any issue about the mediation.

**328 Mediator may seek independent advice**

- (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.

### **329 Record of mediation resolution**

- (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 of Queensland Act 1967*, section 102 or the *Magistrates Courts Act 1921*, section 34<sup>72</sup> 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.

### **330 Abandonment of mediation**

- (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.

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<sup>72</sup> These provisions provide for a written mediated resolution agreement signed by each party and the mediator.

- (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.

### **331 Mediator to file certificate after mediation**

- (1) For the *Supreme Court of Queensland Act 1991*, section 108, the *District Court of Queensland Act 1967*, section 103 and the *Magistrates Courts Act 1921*, section 35,<sup>73</sup> 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.

### **332 Unsuccessful mediations**

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.

### **333 Replacement of mediator**

- (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.

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<sup>73</sup> 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**

### **334    Referral of dispute to appointed case appraiser**

- (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.

### **335 Jurisdiction of case appraiser**

- (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) can not punish for contempt.
- (3) Subrule (1) is subject to rules 341 and 343.<sup>74</sup>

### **336 Appearances**

- (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.<sup>75</sup>

### **337 Case appraiser may seek information**

- (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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74 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.

75 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.

**338 Case appraisal proceeding may be recorded**

- (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.

**339 Case appraiser's decision**

- (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.

**340 Case appraiser's decision on costs in the dispute**

- (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.

**341 Effect of case appraiser's decision**

- (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.

**342 Case appraiser to file certificate and decision**

- (1) For the *Supreme Court of Queensland Act 1991*, section 109, the *District Court of Queensland Act 1967*, section 104 and the *Magistrates Courts Act 1921*, section 36,<sup>76</sup> 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.

**343 Dissatisfied party may elect to continue**

- (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.

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<sup>76</sup> These provisions require the case appraiser to file a certificate about the case appraisal and the case appraiser's decision.

- (3) If an election is filed—
  - (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.

**344 Court to have regard to case appraiser's decision when awarding costs**

- (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.

**345 Replacement of case appraiser**

- (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**

**346 Payment of ADR costs**

Each party to an ADR process is severally liable for the party's percentage of the ADR costs in the first instance.

**347 Party may pay another party's ADR costs**

- (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.

**348 If ADR costs paid to registrar**

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.

**349 When ADR convenor or venue provider may recover further costs**

- (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.

**350 Court may extend period within which costs are to be paid or grant relief**

- (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.

**351 Costs of failed ADR process are costs in the dispute**

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****352 Definition for pt 5**

In this part—

*offer* means an offer made under this part.

*offer to settle* means an offer to settle made under this part.

**353 If offer to settle available**

- (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.

**354 Time for making offer**

- (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<sup>77</sup> becomes final and binding.

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<sup>77</sup> Rule 540 (Certificate as to account)

- (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.

### **355 Withdrawal or end of offer**

- (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 (2) 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.

### **356 Effect of offer**

An offer to settle made under this part is taken to be an offer made without prejudice.

### **357 Disclosure of offer**

- (1) Subject to rule 365,<sup>78</sup> 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.

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<sup>78</sup> Rule 365 (Failure to comply with offer)

- (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.

### **358 Acceptance of offer**

- (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.
- (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.

**359 Person under a legal incapacity**

- (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<sup>79</sup> or the public trustee acting under the *Public Trustee Act 1978*, section 59.<sup>80</sup>

**360 Costs if offer to settle by plaintiff**

- (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 the plaintiff makes more than 1 offer satisfying subrule (1), the first of those offers is taken to be the only offer for this rule.

**361 Costs if offer to settle by defendant**

- (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

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<sup>79</sup> Rule 98 (Settlements and compromises)

<sup>80</sup> *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)

- (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 those offers is taken to be the only offer for this rule.

### **362 Interest after service of offer to settle**

- (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.

**362A Multiple beneficiaries**

- (1) If a wrongful death proceeding is brought for the benefit of 2 or more persons (the *beneficiaries*), a party to the proceeding may make an offer to settle 1 or more claims in the proceeding by payment of 1 amount to all the beneficiaries without stating how the amount is to be apportioned among the beneficiaries.
- (2) If the offer to settle is accepted, none of the amount is to be paid or payable to the plaintiff until the way in which the amount is to be apportioned among the beneficiaries is decided by—
  - (a) order of the court; or
  - (b) an agreement that is binding on each of the beneficiaries.
- (3) An agreement about apportionment is not binding on a beneficiary who is a person under a legal incapacity unless it is approved by the court under rule 98<sup>81</sup> or the public trustee acting under the *Public Trustee Act 1978*, section 59.<sup>82</sup>
- (4) In this rule—

*wrongful death proceeding* means a proceeding under the *Supreme Court Act 1995*, part 4, division 5.<sup>83</sup>

**363 Multiple defendants**

- (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—

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81 Rule 98 (Settlements and compromises)

82 *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)

83 *Supreme Court Act 1995*, part 4 (Provisions from Common Law Practice Act 1867), division 5 (Actions against and by executors)

- (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.

### **364 Offer to contribute**

- (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<sup>84</sup> apply, with any changes necessary, to an offer to contribute as if it were an offer to settle.

### **365 Failure to comply with offer**

If a party does not comply with an accepted offer to settle, the other party may elect to—

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84 Rules 356 (Effect of offer) and 357 (Disclosure of offer)

- (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

#### 366 Application for directions

- (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.<sup>85</sup>
- (3) A party may apply to the court for directions at any time.<sup>86</sup>
- (4) A party may apply for directions either on an application made for the purpose or on application for other relief.

#### 367 Directions

- (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.

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85 See also the *Supreme Court of Queensland Act 1991*, section 118D(2)(a) which provides for practice directions to be made about case management.

86 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).

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- (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.

**368 Proceeding already being managed by the court**

- (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.

**369 Decision in proceeding**

If the parties agree, the court may hear and decide a proceeding on an application for directions.

**370 Failure to attend**

- (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**

### **371**      **Effect of failure to comply with rules**

- (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.

### **372**      **Application because of failure to comply with rules**

An application<sup>87</sup> for an order under rule 371 must set out details of the failure to comply with these rules.

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<sup>87</sup> 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).

**373 Incorrect originating process**

The court may not set aside a proceeding or an originating process on the ground the proceeding was started by the incorrect originating process.

**374 Failure to comply with order**

- (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 day set for hearing the application.<sup>88</sup>
- (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.

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<sup>88</sup> See also rule 447 (Application to court).

- (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**

#### **375      Power to amend**

- (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 any other document in a proceeding in the way and on the conditions the court considers appropriate.
- (2) 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.
- (3) If there is misnomer of a party, the court must allow or direct the amendments necessary to correct the misnomer.
- (4) This rule is subject to rule 376.

#### **376      Amendment after limitation period**

- (1) This rule applies in relation to an application, in a proceeding, for leave to make an amendment mentioned in this rule if a relevant period of limitation, current at the date the proceeding was started, has ended.

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- (2) The court may give leave to make an amendment correcting the name of a party, even if the effect of the amendment is to substitute a new party, only 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 likely 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 counterclaiming defendant, only if—
  - (a) the court considers it appropriate; and
  - (b) the changed capacity in which the party would then 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 to include a new cause of action only 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.

**377 Amendment of originating process**

- (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) if the originating process has not been served and all sealed copies of the originating process, and other documents filed with the originating process, are returned to the court that issued the originating process—with the leave of the registrar or the court; or
  - (c) otherwise—with the leave of the court.

- (2) Subrule (1) does not apply to a pleading or particular included in an originating process.

**378 Amendment before request for trial date**

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.

**379 Disallowance of amendment**

- (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.

**380 Amendment after request for trial date**

An amendment after the filing of the request for trial date may only be made with the leave of the court.

**381 Failure to amend after order**

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**

**382 Procedure for amending**

- (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—
  - (a) the date of the amendment; and
  - (b) either—
    - (i) if the amendment was made by leave of the court, the date of the order giving leave; or
    - (ii) if the amendment was made other than by leave of the court, the number of the rule under which it was made.
- (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 a revised document incorporating and distinguishing the amendment.
- (5) Subject to rule 74,<sup>89</sup> 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.

### **383 Who is required to make amendment**

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.

### **384 Serving amendments**

- (1) All amendments under this part must be served on all parties as soon as practicable after being made.

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<sup>89</sup> 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**

### **385      Pleading to amendment**

- (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.

### **386      Costs**

The costs of and resulting from an amendment made under rule 378 are to be paid by the party making the amendment unless the court orders otherwise.

### **387      When amendment takes effect**

- (1) If a document is being amended under this part, the amendment takes effect on and from the date of the document being 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.
- (3) Despite subrule (2), if an amendment mentioned in subrule (2) is made, then, for a limitation period, the proceeding as amended is taken to have started when the original proceeding started, unless the court orders otherwise.

## **Division 4                    Amending orders or certificates**

### **388     Mistakes in orders or certificates**

- (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**

### **389     Continuation of proceeding after delay**

- (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.



- (9) This rule does not limit any inherent or other power of a court or judge.
- (10) In this rule—
- application in relation to the existing proceeding*** includes an appeal in relation to the existing proceeding.
- similar proceeding***, in relation to an existing proceeding, means a proceeding in which—
- (a) the relief claimed is the same or substantially the same as the relief claimed in the existing proceeding; or
- (b) the relief claimed arises out of, or concerns, the same or substantially the same matters as those alleged in the existing proceeding.

## Chapter 11 Evidence

### Part 1 General

#### 390 Way evidence given

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.<sup>90</sup>

#### 391 Court may call evidence

- (1) The court may, by order and on its own initiative, call a person before it as a witness in a proceeding.

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<sup>90</sup> See part 8 for exchange of correspondence instead in affidavit evidence for certain applications.

- (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's attendance expenses.

**392 Evidence by telephone, video link or another form of communication**

- (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).

**393 Plans, photographs, video or audio recordings and models**

- (1) This rule applies if a party intends to tender a plan, photograph, video or audio recording or model at a trial or hearing.
- (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.

### **394 Dispensing with rules of evidence**

- (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.

### **395 Evidence in other proceedings**

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.

**395A Application to obtain evidence for civil proceedings in another jurisdiction**

An application under the *Evidence Act 1977*, section 36<sup>91</sup> may be made without notice to any person.

**Part 2 Evidence given out of court****396 Order for examination**

- (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.

**397 Documents for examiner**

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.

**398 Appointment for examination**

- (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.

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91 *Evidence Act 1977*, section 36 (Application to Supreme Court to obtain evidence for civil proceedings in another jurisdiction)

- (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<sup>92</sup> at least 3 business days before the examination unless the court directs otherwise.<sup>93</sup>

### **399 Conduct of examination**

- (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.

### **400 Examination of additional persons**

- (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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92 Part 4 (Subpoenas)

93 See rule 419 (Conduct money) for the requirement as to conduct money.

**401 Objections**

- (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.

**402 Recording evidence**

- (1) An examiner must ensure, if practicable, evidence given at an examination in Queensland is recorded under the *Recording of Evidence Act 1962*<sup>94</sup> or recorded in another way and authenticated by the examiner.

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94 Note the *Recording of Evidence Act 1962*, section 5—

**5 Power to direct recording under this Act**

- (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.

- (2) The examiner must authenticate and sign any deposition or other recording.
- (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.

#### **403 Authentication and filing**

- (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.

#### **404 Report of examiner**

The examiner may report to the court on the examination or on the absence of a person from the examination.

#### **405 Default of witness**

- (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.

#### **406 Witness's expenses**

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.

#### **407 Admissibility of deposition**

- (1) A deposition under rule 402 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.

**408 Letter of request**

- (1) This rule applies if the Supreme Court makes an order under the *Evidence Act 1977*, section 22<sup>95</sup> 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 subparagraphs (i) to (iii);
    - (v) an undertaking under rule 409; and

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95 *Evidence Act 1977*, section 22—

**22 Commission, request or order to examine witnesses**

- (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.

- (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.

### **409 Undertaking**

- (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**

### **410 Application**

This part does not apply to Magistrates Courts.

### **411 Proceeding to obtain evidence for future right or claim**

- (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 can not 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.

#### **412 Order to obtain evidence for future claim**

- (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 can not be brought to trial before the happening of the event.

#### **413 Taking, use and admissibility of evidence obtained for future right or claim**

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.<sup>96</sup>

## **Part 4 Subpoenas**

#### **414 Power to issue subpoena**

- (1) This rule applies to the following subpoenas—
  - (a) subpoenas for production;

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<sup>96</sup> Part 2 (Evidence given out of court)

- (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.

#### **415 Formal requirements**

- (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.

#### **416 Setting aside subpoena**

The court may make an order setting aside all or part of a subpoena.

#### **417 Order for cost of complying with subpoena**

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.

#### **418 Cost of complying with subpoena if not a party**

- (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.

#### **419 Conduct money**

- (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.<sup>97</sup>

#### **420 Production by non-party**

- (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.

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97 Rule 406 (Witness's expenses)

- (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.
- (5) This rule does not apply to so much of a subpoena as requires a person named to attend to give evidence orally.

## **421 Service**

- (1) A subpoena may be served under chapter 4, parts 2, 3, 4 and 5.<sup>98</sup>
- (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.

## **422 Noncompliance is contempt of court**

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.<sup>99</sup>

# **Part 5 Expert evidence**

## **Division 1 Preliminary**

### **423 Purposes of pt 5**

The main purposes of this part are to—

- (a) declare the duty of an expert witness in relation to the court and the parties; and

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<sup>98</sup> Chapter 4 (Service), parts 2 (Personal service generally), 3 (Service in particular cases), 4 (Ordinary service) and 5 (Other service)

<sup>99</sup> See also rules 901 to 903.

- (b) ensure that, if practicable and without compromising the interests of justice, expert evidence is given on an issue in a proceeding by a single expert agreed to by the parties or appointed by the court; and
- (c) avoid unnecessary costs associated with the parties retaining different experts; and
- (d) allow, if necessary to ensure a fair trial of a proceeding, for more than 1 expert to give evidence on an issue in the proceeding.

#### **424 Application of pt 5**

- (1) This part does not apply in relation to a witness giving evidence, whether orally or in writing, in a proceeding who is—
  - (a) a party to the proceeding; or
  - (b) a person whose conduct is in issue in the proceeding; or
  - (c) a doctor or another person who has given or is giving treatment or advice in relation to an injured person if the evidence is limited to 1 or more of the following matters in relation to the injured person—
    - (i) the results of any examination made;
    - (ii) a description of the treatment or advice;
    - (iii) the reason the treatment or advice was, or is being, given;
    - (iv) the results of giving the treatment or advice.
- (2) This part also does not apply in relation to a proceeding for a minor claim in a Magistrates Court.

#### **425 Definitions for pt 5**

In this part—

***appointed expert*** means an expert appointed under division 3 or 4,<sup>100</sup> including a court appointed expert.

***court appointed expert*** means an expert appointed by the court under division 3 or 4.

***expert*** means a person who would, if called as a witness at the trial of a proceeding, be qualified to give opinion evidence as an expert witness in relation to an issue arising in the proceeding.

***report***, for a proceeding, means a document giving an expert's opinion on an issue arising in the proceeding.

## **Division 2                    Evidence given by an expert**

### **426    Duty of expert**

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

### **427    Expert evidence**

- (1) An expert may give evidence in a proceeding by a report.
- (2) The report may be tendered as evidence only if—
  - (a) the report has been disclosed as required under rule 429;  
or
  - (b) the court gives leave.
- (3) The report is to be tendered as evidence-in-chief of the expert.
- (4) Oral evidence-in-chief may be given by the expert only—
  - (a) in response to the report of another expert; or

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<sup>100</sup> Division 3 (Experts appointed after proceeding started) or 4 (Experts appointed before proceeding started)

- (b) if directed to issues that first emerged in the course of the trial; or
  - (c) if the court gives leave.
- (5) Any party to the proceeding may tender as evidence at the trial any report disclosed by any party, subject to producing the expert for cross-examination if required.

#### **428 Requirements for report**

- (1) An expert's report must be addressed to the court and signed by the expert.
- (2) The report must include the following information—
  - (a) the expert's qualifications;
  - (b) all material facts, whether written or oral, on which the report is based;
  - (c) references to any literature or other material relied on by the expert to prepare the report;
  - (d) for any inspection, examination or experiment conducted, initiated, or relied on by the expert to prepare the report—
    - (i) a description of what was done; and
    - (ii) whether the inspection, examination or experiment was done by the expert or under the expert's supervision; and
    - (iii) the name and qualifications of any other person involved; and
    - (iv) the result;
  - (e) if there is a range of opinion on matters dealt with in the report, a summary of the range of opinion, and the reasons why the expert adopted a particular opinion;
  - (f) a summary of the conclusions reached by the expert;
  - (g) a statement about whether access to any readily ascertainable additional facts would assist the expert in reaching a more reliable conclusion.
- (3) The expert must confirm, at the end of the report—

- (a) the factual matters stated in the report are, as far as the expert knows, true; and
- (b) the expert has made all enquiries considered appropriate; and
- (c) the opinions stated in the report are genuinely held by the expert; and
- (d) the report contains reference to all matters the expert considers significant; and
- (e) the expert understands the expert's duty to the court and has complied with the duty.

**429 Disclosure of report**

A party intending to rely on a report must, unless the court otherwise orders, disclose the report—

- (a) if the party is a plaintiff—within 90 days after the close of pleading; or
- (b) if the party is a defendant—within 120 days after the close of pleading; or
- (c) if the party is not a plaintiff or defendant—within 90 days after the close of pleading for the party.

**429A Supplementary report**

- (1) If an expert changes in a material way an opinion in a report that has been disclosed, the expert must, as soon as practicable, provide a supplementary report stating the change and the reason for it.
- (2) The supplementary report must comply with rule 428 and be disclosed as soon as practicable.

**429B Court may direct experts to meet**

- (1) The court may, at any stage of a proceeding, direct experts to meet and—
  - (a) identify the matters on which they agree; and

- (b) identify the matters on which they disagree and the reasons why; and
  - (c) attempt to resolve any disagreement.
- (2) The court may, for the meeting—
- (a) set the agenda; and
  - (b) specify the matters the experts must discuss; and
  - (c) direct whether or not legal representatives may be present; and
  - (d) give directions about the form of any report to be made to the court about the meeting; and
  - (e) give any other directions the court considers appropriate.
- (3) Evidence of anything done or said, or an admission made, at the meeting is admissible at a trial of the proceeding only if all parties to the proceeding agree.
- (4) However, subrule (3) does not apply to a report made to the court about the meeting identifying the matters mentioned in subrule (1)(a) or (1)(b).

### **429C Immunity**

An expert has the same protection and immunity for the contents of a report disclosed as required under these rules as the expert could claim if the contents of the report were given orally at a trial of the proceeding in which the report is disclosed.

### **429D Costs**

When deciding the order to make about the costs of a proceeding, the court may consider, in allowing, disallowing or limiting the costs for an expert's report prepared for a party on an issue, the extent to which the proceedings may have been facilitated by the appointment of a person as the only expert in relation to the issue.

## **Division 3                      Experts appointed after proceeding started**

### **429E Application of div 3**

This division applies only in relation to proceedings in the Supreme Court.

### **429F Definition for div 3**

In this division—

*court* means the Supreme Court.

### **429G Appointment of experts**

- (1) If, after a proceeding has started, 2 or more parties agree that expert evidence may help in resolving a substantial issue in the proceeding, subject to rule 429H, those parties may in writing jointly appoint an expert to prepare a report on the issue.
- (2) If parties to a proceeding are not able to agree on the appointment of an expert, subject to rules 429I and 429K, any party who considers that expert evidence may help in resolving a substantial issue in the proceeding may apply to the court for the appointment of an expert to prepare a report on the issue.
- (3) Subject to rules 429J and 429K, the court may, on its own initiative and at any stage of a proceeding, if it considers that expert evidence may help in resolving a substantial issue in the proceeding, appoint an expert to prepare a report on the issue.

### **429H Expert appointed by parties**

- (1) An expert may be appointed under rule 429G(1) only if—
  - (a) the parties appointing the expert agree in writing on the following matters—
    - (i) the issue in the proceeding the expert evidence may help resolve;

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- (ii) the identity of the expert;
    - (iii) when the report must be prepared by the expert and given to the parties to the agreement;
    - (iv) liability for fees and expenses payable to the expert; and
  - (b) the expert has been made aware of the content of this part and consents to the appointment.
- (2) A copy of the agreement must be—
- (a) signed by each party to the agreement; and
  - (b) filed in the court; and
  - (c) after being filed in the court, immediately served on any other party to the proceeding who is not a party to the agreement.
- (3) The parties to the agreement must give the expert a statement of facts, agreed to by the parties to the agreement, on which to base the report.
- (4) However, if the parties to the agreement do not agree on a statement of facts, then—
- (a) unless the court directs otherwise, each of the parties to the agreement must give the expert a statement of facts on which to base the report; and
  - (b) the court may give directions about the form and content of the statement of facts to be given to the expert.
- (5) The report is taken to be disclosed for this part if—
- (a) a copy of the report is given to each party to the agreement; and
  - (b) within 14 days after the day by which all parties to the agreement have received a copy of the report, each party to the proceeding who is not a party to the agreement is given a copy of the report.
- (6) Unless the court otherwise orders, the expert is the only expert who, in relation to the parties to the agreement, may give evidence in the proceeding on the issue.
- (7) Unless the court otherwise orders, each party to the proceeding has the right to cross-examine the expert.

**429I Expert appointed by court on application**

- (1) A party applying to the court for appointment of an expert under rule 429G(2) must serve a copy of the application and the supporting material on each other party to the proceeding.
- (2) The supporting material must—
  - (a) state the issue in the proceeding that expert evidence may help resolve; and
  - (b) name at least 3 experts who—
    - (i) are qualified to give expert evidence on the issue; and
    - (ii) have been made aware of the content of this part and consent to being appointed; and
  - (c) state any connection known to the applicant between an expert named and a party to the proceeding.
- (3) When hearing the application, the court may receive other material and make other enquiries to help decide which expert to appoint.
- (4) The court may appoint an expert other than an expert named in the supporting material.
- (5) The court may appoint an expert only if the expert has been made aware of the content of this part and consents to the appointment.

**429J Expert appointed by court on court initiative**

- (1) In deciding whether to appoint an expert under rule 429G(3) in relation to an issue in a proceeding, the court may—
  - (a) ask each party to name at least 3 experts who—
    - (i) are qualified to give expert evidence on the issue; and
    - (ii) have been made aware of the content of this part and consent to being appointed; and
  - (b) require each party to state any connection between an expert named and a party to the proceeding; and

- (c) receive other material and make other enquiries to help decide which expert to appoint.
- (2) The court may appoint an expert other than an expert named by a party to the proceeding.
- (3) The court may appoint an expert only if the expert has been made aware of the content of this part and consents to the appointment.

### **429K Considerations for court when appointing an expert**

- (1) In deciding whether to appoint an expert under rule 429G(2) or (3) in relation to an issue in a proceeding, the court may consider—
  - (a) the complexity of the issue; and
  - (b) the impact of the appointment on the costs of the proceeding; and
  - (c) the likelihood of the appointment expediting or delaying the trial of the proceeding; and
  - (d) the interests of justice; and
  - (e) any other relevant consideration.
- (2) If the court considers an expert is the most appropriate expert to help resolve an issue in the proceeding, the court may appoint the expert even if the expert has already given a report to a party in the proceeding on the issue or on another issue in the proceeding.

### **429L Report by court appointed expert given to registrar etc.**

- (1) Unless the court otherwise orders—
  - (a) a court appointed expert appointed in relation to an issue in a proceeding must—
    - (i) prepare a report on the issue; and
    - (ii) give the report to the registrar together with sufficient copies of the report for all parties to the proceeding; and
  - (b) the registrar must—

- (i) file the report in a sealed envelope; and
  - (ii) within 7 days after receiving the report, forward a copy of it to each party to the proceeding.
- (2) The report is taken to be disclosed for this part if the registrar forwards copies of the report to all parties as required.

#### **429M Orders and directions for court appointed experts**

- (1) The court may make the orders and give the directions it considers appropriate in relation to a court appointed expert, including, for example, 1 or more of the following orders or directions—
  - (a) an order or direction to facilitate the expert's preparation of a report;
  - (b) a direction about any of the following matters—
    - (i) a party giving the expert written information relevant to the preparation of the report and forwarding a copy of the written information to each other party;
    - (ii) the extent a party may communicate with the expert;
    - (iii) an inspection, examination or experiment by the expert;
    - (iv) the expert obtaining a report from another expert in a discipline relevant to the issue in relation to which the expert was appointed;
  - (c) a direction about any of the following matters—
    - (i) when the expert must give the registrar the report;
    - (ii) liability for fees and expenses payable to the expert;
    - (iii) payment of any expenses incurred by the registrar;

- (d) an order permitting cross-examination of the expert before an examiner under part 2<sup>101</sup> or before the trial starts.
- (2) If the court directs that a report from another expert may be obtained by a court appointed expert, the other expert's report must be attached to the court appointed expert's report when it is given to the registrar.
- (3) The court may receive in evidence the report of a court appointed expert on terms the court considers appropriate.

#### **429N Consequences of court appointment**

- (1) This rule applies if the court appoints an expert in relation to an issue in a proceeding.
- (2) Unless the court otherwise orders, the expert is to be the only expert to give evidence in the proceeding on the issue.
- (3) However, the court may, on its own initiative or on application by a party, appoint another expert (the *other expert*) to prepare a report in relation to the issue if—
  - (a) after receiving a report from the expert originally appointed (the *first expert*), the court is satisfied—
    - (i) there is expert opinion, different from the first expert's opinion, that is or may be material to deciding the issue; or
    - (ii) the other expert knows of matters, not known by the first expert, that are or may be material to deciding the issue; or
  - (b) there are other special circumstances.

#### **429O Court may direct access to information**

- (1) The court may direct a party to a proceeding who has access to information reasonably necessary for the preparation of a report by an appointed expert—

- (a) to give the court or the expert a document stating the information; or
  - (b) to otherwise make the information reasonably available to the expert.
- (2) Subrule (1) does not limit the directions a court may give under rule 429M.

#### **429P Expert may apply for directions**

- (1) An appointed expert may apply to the court for directions to facilitate the preparation of a report.
- (2) The application must be served on the parties to the proceeding and on any other person directed by the court.
- (3) The court may give the directions the court considers appropriate, including directions about an inspection, examination or experiment for the expert's report.

### **Division 4                      Experts appointed before proceeding started**

#### **429Q Definition for div 4**

In this division—

*court* means the Supreme Court.

#### **429R Expert appointed by disputants**

- (1) This rule applies if, before any proceeding is started, 2 or more persons (the *disputants*) agree in writing on the following matters—
  - (a) there is a dispute between them that will probably result in a proceeding and obtaining expert evidence immediately may help in resolving a substantial issue in the dispute;
  - (b) the identity of an expert from whom a report should be obtained;

- (c) when the report must be prepared by the expert and given to the disputants;
  - (d) liability for fees and expenses payable to the expert.
- (2) The disputants may in writing jointly appoint the agreed expert to prepare a report giving an opinion on the issue.
  - (3) The appointment must be expressed to be made under this rule.
  - (4) The disputants may appoint the expert only if the expert has been made aware of the content of this part and consents to the appointment.
  - (5) Rule 428(2) and (3) apply in relation to the report.
  - (6) Unless the court otherwise orders, in any proceeding started in the court between the disputants in which the issue is relevant, the expert is to be the only expert who, in relation to the disputants, may give evidence on the issue.

#### **429S Expert appointed by court on application**

- (1) This rule applies if, before any proceeding is started, a person (the *first person*) believes on reasonable grounds that—
  - (a) there is a dispute between the first person and 1 or more other persons that will probably result in a proceeding; and
  - (b) obtaining expert evidence immediately may help in resolving a substantial issue in the dispute.
- (2) The first person may apply to the court for the appointment of an expert to prepare a report giving an opinion on the issue.
- (3) The application and the supporting material must be served on the other person or persons.
- (4) The supporting material must—
  - (a) describe the nature of the dispute; and
  - (b) state the issue in dispute that expert evidence may help resolve; and
  - (c) indicate why the report should be obtained immediately; and

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- (d) name at least 3 experts who—
  - (i) are qualified to give expert evidence on the issue; and
  - (ii) have been made aware of the content of this part and consent to being appointed; and
- (e) state any previous connection between an expert named and the first person.
- (5) The court, on being satisfied in relation to the matters mentioned in subrule (1)(a) and (b), may appoint an expert to give a report on the issue.
- (6) The court may appoint an expert other than an expert named in the supporting material.
- (7) In deciding whether to appoint an expert, the court may consider—
  - (a) the complexity of the issue; and
  - (b) the impact of the appointment on the costs of the contemplated proceeding; and
  - (c) the likelihood of the appointment expediting or delaying the contemplated proceeding; and
  - (d) the interests of justice; and
  - (e) any other relevant consideration.
- (8) The court may give directions as to—
  - (a) the time in which the report is to be prepared and given to the first person; and
  - (b) any filing of the report.
- (9) The court may make orders and give directions to facilitate the expert's preparation of a report.
- (10) Rule 428(2) and (3) apply in relation to the report.
- (11) Unless the court otherwise orders, in any proceeding started in the court between the first person and 1 or more of the other persons in which the issue is relevant, the expert appointed under this rule is to be the only expert who, in relation to those persons, may give evidence on the issue.

- (12) The fees and expenses of an expert appointed under this rule, and the costs of the application, are to be borne by the first person, unless and until the court otherwise orders either on the application or in any proceeding started between the first person and 1 or more of the other persons in which the issue is relevant.
- (13) The court may give directions as to the right to cross-examine an expert appointed under this rule.

## **Part 7                      Affidavits**

### **430      Contents of affidavit**

- (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<sup>102</sup> 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.

### **431      Form of affidavit**

- (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.

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102 See chapter 9 (Ending proceedings early), part 1 (Default).

- (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.

#### **432 Swearing or affirming affidavit**

- (1) The person making an affidavit and the person taking the affidavit must sign each page of the affidavit.
- (2) Subrule (3) applies if—
  - (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

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- (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;<sup>103</sup> 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 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.

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103 See the *Oaths Act 1867*, section 41—

**41 Who may take affidavits**

- (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.

**433 Certificate of reading or signature for person making affidavit**

- (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<sup>104</sup> 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 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.

**434 Alterations**

- (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.

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104 See rule 432 (Swearing or affirming affidavit).

**435 Exhibits**

- (1) A document to be used with and mentioned in an affidavit is an exhibit.
- (2) Another thing to be 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 document to be 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 have—
  - (a) a letter, number or other identifying mark on it; and
  - (b) a certificate in the approved form on it or bound with it.
- (6) The certificate must be signed by the person who made the affidavit and the person who took the affidavit.
- (7) However, if an affidavit is taken under rule 433, only the person who took the affidavit must sign the certificate.
- (8) An exhibit to an affidavit must be filed at the same time as the affidavit.
- (9) Subrules (10) and (11) apply if—
  - (a) an exhibit to an affidavit is comprised of a group of documents; or
  - (b) there is more than one documentary exhibit to an affidavit.
- (10) The documents are to be presented in a way that will facilitate the court's efficient and expeditious reference to them.
- (11) As far as practicable—
  - (a) the documents are to be bound in 1 or more paginated books; and
  - (b) a certificate is to be bound—
    - (i) if there is 1 book—at the front of the book; or
    - (ii) if there is more than 1 book—at the front of each book dealing with the exhibits in the book; and

- (c) an index to each book is to be bound immediately after the certificate.
- (12) If a document or other thing has been filed in a proceeding, whether or not as an exhibit to an affidavit, in a subsequent affidavit filed in the proceeding—
- (a) the document or thing must not be made an exhibit to the affidavit; and
  - (b) the document or thing may be referred to in the affidavit in a way sufficient to enable the document or thing to be identified.

#### **436 Irregularity**

- (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.

#### **437 Filing**

Unless the court gives leave, an affidavit may be used in a proceeding only if it has been filed.

#### **438 Service**

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.

#### **439 Examination of person making affidavit**

- (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.
- (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.

#### **440 Scandal and oppression**

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.

**441 Affidavit taken before party**

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****442 Definitions for pt 8**

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.

**443 Application of pt 8**

This part applies to the following applications—

- (a) an application for further and better particulars of the opposite party's pleading under rule 161;<sup>105</sup>
- (b) an application under chapter 10, part 1;<sup>106</sup>
- (c) an application under chapter 10, part 2;<sup>107</sup>
- (d) any other application relating to a failure to comply with an order or direction of the court.

**444 Applicant's letter to respondent**

- (1) Before making an application mentioned in rule 443, the applicant must write to the respondent specifying the following matters—

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105 Rule 161 (Application for orders for particulars)

106 Chapter 10 (Court supervision), part 1 (Directions)

107 Chapter 10 (Court supervision), part 2 (Failure to comply with rules or order)

- (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;
  - (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;<sup>108</sup> 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.

#### **445 Respondent's reply**

- (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 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.

#### **446 Additional correspondence**

Rules 444 and 445 do not prevent the applicant and respondent from writing to each other in addition to the correspondence required under this part.

#### **447 Application to court**

- (1) The applicant may apply to the court only after—
  - (a) the applicant receives a reply from the respondent under rule 445; 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;
- (e) a list of the affidavits (if any) on which the applicant wishes to rely.

#### **448 Hearing of application**

- (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.

## **Chapter 12 Jurisdiction of judicial registrar and registrar**

#### **449 Definitions for ch 12**

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.

#### **450 Application of ch 12**

This chapter applies only to the Trial Division of the Supreme Court and the District Court.

**451 Judicial registrar's powers to hear and decide applications**

- (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.<sup>109</sup>
- (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<sup>110</sup> and any practice direction of the court excluding a matter from the judicial registrar's jurisdiction.

**452 Registrar's powers to hear and decide applications**

- (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.<sup>111</sup>
- (2) A registrar of the Supreme Court or District Court may constitute the court to hear and decide—

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109 Chapter 2 (Starting proceedings), part 7 (Cross-vesting)

110 Rule 3 (Application)

111 *Public Trustee Act 1978*, part 3 (Appointment as trustee or personal representative)

- (a) an application for an order to file any document or take any document off the file or admit informal affidavits to be filed; or
- (b) an application of a type prescribed by practice direction.

#### **453 Court may decide that matter can not be heard by judicial registrar or registrar**

The court, as constituted by a judge, may order or direct that a relevant application in a particular proceeding can not 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 can not 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.

#### **454 Relevant application must not be made to the court**

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.

#### **455 Referring relevant application**

- (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.

**456 Removing relevant applications**

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.

**457 Involvement of court as constituted by a judge**

- (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.

**458 General powers**

- (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.

**459 Decision**

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.

**460 Power to correct mistakes**

Rule 388<sup>112</sup> 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**

**461 Application of pt 1**

This part applies to originating and other applications.

**462 List of applications**

On the filing of an application, the registrar must record a return date for the matter to come before the court.

**463 Estimate of hearing time**

- (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 duration of the hearing must, as soon as practicable

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112 Rule 388 (Mistakes in orders or certificates)

after becoming aware of the change, notify the registrar of the changed estimate.

#### **464 Adjourments**

- (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**

### **465 Application of pt 2**

This part applies to proceedings for which a trial date has not been set.

### **466 Setting trial dates**

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

- (a) at a call-over; or

- (b) by a judge; or
- (c) by a registrar at a judge's direction; or
- (d) for a magistrates court—by the registrar, unless a magistrate otherwise directs.

**467 Request for trial date**

- (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.

**468 Trial expedited**

- (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.<sup>113</sup>

**469 Request for trial date**

- (1) A party who is ready for trial may prepare and sign a request for trial date in the approved form.
- (2) The party who prepared the request for trial date must serve copies of the request on each other party and, if the party served is ready for trial, that party must sign the request and return it to the party who prepared it.

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113 Chapter 10 (Court supervision), part 1 (Directions)

- (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, other than a party whose signature has been dispensed with by the court.
- (4) On the application of a party who signed the request for trial date, the court may dispense with the signature of another party who has been served with the request under subrule (2) and has not signed and returned it within 21 days after service.
- (5) For this rule, a party is *ready for trial* if—
  - (a) any order or requirement by notice under chapter 7, part 1<sup>114</sup> 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) answers have been delivered to any interrogatories delivered by or to the party; 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<sup>115</sup> has been complied with.

#### **470 Leave required for steps after request for trial date**

After the filing of the request for trial date, a party may do the following only with the court's leave—

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114 Chapter 7 (Disclosure), part 1 (Disclosure by parties)

115 Chapter 14 (Particular proceedings), part 2 (Personal injury and fatal accidents)

- (a) amend a pleading;
- (b) request particulars;
- (c) make an application in the proceeding.

## **Part 3                      Trial**

### **Division 1                      Mode of trial**

#### **471      Application of pt 3**

This part only applies to proceedings started by claim.

#### **472      Jury**

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.

#### **473      Third party proceeding**

- (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.

#### **474      Trial without jury**

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.

**475 Changing mode of trial**

- (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****476 Default of attendance**

- (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.

**477 Adjournment**

The court may at or before a trial adjourn the trial.

## **Division 3                      View**

### **478      View by court**

The court may inspect a place, process or thing, and witness any demonstration about which a question arises in the proceeding.<sup>116</sup>

## **Part 4                              Decision without pleadings**

### **479      Application of pt 4**

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.

### **480      No pleadings**

- (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.

### **481      Directions**

If the court makes an order under rule 480, it may give a direction it is authorised to give under chapter 10, part 1.<sup>117</sup>

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116 See also the *Jury Act 1995*, section 52 (Inspections and views) for views by juries.

117 Chapter 10 (Court supervision), part 1 (Directions)

## **Part 5                      Separate decision on questions**

### **482      Definition for pt 5**

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, agreement of parties or otherwise.

### **483      Order for decision and statement of case for opinion**

- (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.<sup>118</sup>

### **484      Orders, directions on decision**

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.

### **485      Disposal of proceedings**

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.

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118 See chapter 18 (Appellate proceedings), part 2 (Applications and cases stated to Court of Appeal), division 2 (Cases stated).

For Magistrates Courts, see the *Magistrates Courts Act 1921*, section 46 (Special case stated) and the *District Court of Queensland Act 1967*, section 112 (No appeal lies from Magistrates Court to Supreme Court).

**486 Form and content of separate question**

A separate question or questions must—

- (a) set out the question or questions to be decided; and
- (b) be divided into paragraphs numbered consecutively.

**Part 6 Decision on papers without oral hearing****487 Definition for pt 6**

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.

**488 Application of pt 6**

- (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.<sup>119</sup>

**489 Proposal for decision without oral hearing**

- (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, the court considers it inappropriate to do so; or

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119 See the *Supreme Court of Queensland Act 1991*, section 118D(2)(b).

- (b) under rule 494, the respondent requires an oral hearing; or
- (c) under rule 495, 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.

**490 Procedure for making application**

- (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.
- (3) If the application is made without notice to a party—
  - (a) subrule (2) and rules 492 to 495 do not apply; and
  - (b) the registrar must set as the date for deciding the application the first date convenient to the court.
- (4) If the parties resolve all or part of the application before the date for deciding the application, each party must give the court written notice of the extent to which the application is resolved and the orders the parties have agreed to seek.

**491 Court may decide that decision without an oral hearing is inappropriate**

- (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 to the application of the decision by telephone or in some other way; and
  - (b) may set a date for hearing.

**492 Respondent's response**

- (1) 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.
- (2) If the respondent has not already filed a document that includes the information required by rule 17,<sup>120</sup> the response must include that information.
- (3) Also, if the respondent does not serve a response or a notice under rule 494 and there is not otherwise material before the court to acknowledge or establish service, the applicant must, before the date fixed for deciding the application, file an affidavit of service of the application.

**493 Applicant's reply**

Unless the applicant files a notice under rule 495(2), the applicant must file and serve a reply to the response at least 1 business day before the date for deciding the application.

**494 Respondent's right to require oral hearing**

- (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

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120 Rule 17 (Contact details and address for service)

- (b) rely on the supporting material and not attend.
- (5) The application is to be heard on a date set by the registrar.

**495 Applicant's right to abandon request for decision without an oral hearing**

- (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.

**496 Concise written submissions**

A written submission for a decision without an oral hearing must be concise.

**497 Further information**

- (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 to the application of the substance of the inquiry; and
  - (b) give all parties to the application an opportunity to be heard.

**498 Order**

If the court makes an order without an oral hearing, the registrar must send each party to the application a copy of the order by post, fax or email together with a copy of the court's reasons.



**503 Submission of question to court**

- (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.

**504 Report of special referee**

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.

**505 Use of opinion, decision or findings**

- (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.

**506 Remuneration of special referee and assessor**

- (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—



- (i) because of a defendant's default mentioned in chapter 9, part 1 (other than under rule 283<sup>122</sup>); or
    - (ii) under chapter 9, part 2;<sup>123</sup> 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.

### **509 Assessment**

- (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.<sup>124</sup>
- (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.

### **510 Directions**

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.<sup>125</sup>

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122 Rule 283 (Judgment by default—debt or liquidated demand)

123 Chapter 9 (Ending proceedings early), part 2 (Summary judgment)

124 Part 2 (Setting trial dates)

125 Chapter 10 (Court supervision), part 1 (Directions)

**511 Certificate of damages**

- (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.

**512 Damages to time of assessment**

- (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.
- (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****513 Application of pt 9**

This part applies only to Magistrates Courts.

## Division 2                      Simplified procedures for minor claims

### 514      Simplified procedures for minor debt claims

- (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<sup>126</sup>—
    - (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;

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<sup>126</sup> See also the *Magistrates Court Act 1921*, section 18 (Appearance to be in person or by lawyer, or other person allowed by the court).

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- (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;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.<sup>127</sup>
- (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

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<sup>127</sup> *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).

- (c) making orders to give effect to an agreement reached by mediation or otherwise.

### **515 Court's decision about minor debt claim**

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.<sup>128</sup>

### **516 Costs in minor debt claims**

The only costs a party may be awarded in relation to a minor debt claim up to judgment are 1 or more of the following costs—

- (a) a filing fee;
- (b) a fee charged by a service provider for electronically filing a document;
- (c) a service fee and travelling allowance at the prescribed rate for bailiff's fees;
- (d) a business name or company search fee.

### **517 Particular rules do not apply to minor debt claims**

The following provisions do not apply to a minor debt claim—

- (a) chapter 6;
- (b) chapter 9, part 2;
- (c) chapter 13, parts 2 to 6.<sup>129</sup>

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128 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.

129 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)

**518 Address for service**

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(3).

**519 Simplified procedures may apply in other cases**

- (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(1)(c), (d) and (f) apply to all minor claims other than to the extent necessary for compliance with chapter 14, part 2.<sup>130</sup>
- (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.

**520 No counterclaim to minor debt claims**

- (1) In a proceeding for a minor debt claim, the defendant may not make a counterclaim in response to the claim.
- (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

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130 Chapter 14 (Particular proceedings), part 2 (Personal injury and fatal accidents)

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.

## **521 Notices in minor debt claims**

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.

## **522 Failure to appear in a minor debt claim**

- (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<sup>131</sup> of the facts in issue with a copy of the

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131 See chapter 11 (Evidence), part 7 (Affidavits).

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**

### **523      Court may require directions conferences**

- (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;
  - (f) the amount of damages;
  - (g) the possible length of any trial;

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- (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.

**524 Holding directions conference**

- (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.<sup>132</sup>
- (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.<sup>133</sup>

## **525 Failure to attend directions conference**

- (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—

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<sup>132</sup> See also the *Supreme Court of Queensland Act 1991*, section 77 (Resolution agreement).

<sup>133</sup> 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.

- (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.

## **526 General directions about directions conferences**

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**

#### **527 Order for account**

- (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.

#### **528 Directions**

- (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.

### **529 Service of judgment**

- (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.

### **530 Form and verification**

- (1) Unless the court orders otherwise, all items in an account must be numbered consecutively.
- (2) The party required to 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.

### **531 Filing and service**

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.

**532 Challenging account**

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.

**533 Witness**

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.

**534 Allowances**

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.

**535 Delay**

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.

**536 Before whom account taken**

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.

**537 Powers exercisable on taking account**

- (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.

### **538 Class interests**

- (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.

### **539 Reference to court**

- (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.

### **540 Certificate as to account**

- (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.

#### **541 Further consideration**

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.

#### **542 Procedure for inquiries**

Rules 527 to 541 apply, with necessary changes, to the making of an inquiry.

**543 Directions**

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****544 Definition for pt 2**

In this rule—

*defendant* includes a defendant by election.

**545 Application of pt 2**

- (1) This part applies to a proceeding for damages for personal injury or death.
- (2) This part is subject to chapter 13, part 2.<sup>134</sup>

**546 Waiving compliance**

A party may, by written notice, waive further compliance with this part.

**547 Plaintiff's statement of loss and damage**

- (1) The plaintiff must serve on the defendant a written statement of loss and damage, signed by the plaintiff, 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—

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<sup>134</sup> Chapter 13 (Trials and other hearings), part 2 (Setting trial dates)

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- (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, the period of employment by each employer, the capacity in which the plaintiff was employed by each employer and the plaintiff's net earnings for each period of employment—
    - (A) in the 3 years immediately before the injury; and
    - (B) since the injury; and
  - (ii) if the plaintiff is self-employed, details of the plaintiff's net income—
    - (A) in the 3 years immediately before the injury; and
    - (B) 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; and
  - (vi) details of the educational level reached by the plaintiff, including any trade or professional qualifications held;
- (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;
  - (g) details of any accident, injury or illness suffered by the plaintiff—
    - (i) in the 3 years immediately before the injury; and
    - (ii) since the injury.

#### **548 Plaintiff's statement must identify particular documents**

- (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; and
    - (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; and

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- (iv) documents about the superannuation entitlements of the plaintiff and prospective loss of superannuation entitlements by the plaintiff;
  - (e) documents about the cost of meeting needs of the plaintiff alleged to have arisen or increased because of the plaintiff's injury;
  - (f) documents about any additional expenses to which it is alleged the plaintiff has been or will be put because of the injury;
  - (g) documents that are or contain a contemporaneous record, account or description of—
    - (i) the plaintiff's injury, disability, pain and suffering, loss of amenities or treatment; or
    - (ii) the consequences of them; or
    - (iii) the cost resulting from them.
- (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.

**549 Plaintiff's statement must be accurate**

- (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.

**550 Defendant's statement of expert and economic evidence**

- (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.

**551 Defendant's statement must identify particular documents**

- (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

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- (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; and
    - (iii) documents about the superannuation entitlements of the plaintiff and prospective loss of superannuation entitlements by the plaintiff;
  - (e) documents about the cost of meeting needs of the plaintiff alleged to have arisen or increased because of the plaintiff's injury;
  - (f) documents about any additional expenses to which it is alleged the plaintiff has been or will be put because of the injury;
  - (g) if the defendant was an employer of the plaintiff after the plaintiff's injury—
    - (i) documents about the amount of wages paid to the plaintiff by the defendant since the injury; and
    - (ii) documents about the tax paid by the plaintiff and the taxable income of the plaintiff since the injury; and
    - (iii) documents about the superannuation entitlements of the plaintiff and prospective loss of superannuation entitlements by the plaintiff;
  - (h) if the employment of the plaintiff by the defendant terminated at the time of or after the plaintiff's injury, documents relating to the termination of the employment.
- (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.

### **552 Defendant's statement must be accurate**

- (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.

### **553 Conference if personal injury damages claim**

- (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.<sup>135</sup>

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135 See the *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.

- (2) However, in a proceeding in the Magistrates Court, the conference is in the nature of a directions conference under rule 523.<sup>136</sup>
- (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;<sup>137</sup>
  - (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(5).<sup>138</sup>

## **554 Insurers**

- (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.

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136 Rule 523 (Court may require directions conferences)

137 Chapter 10 (Court supervision), part 1 (Directions)

138 Rule 469 (Request for trial date)

- (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.

### **555 Privilege**

Subject to the express requirements of rules 548 and 551,<sup>139</sup> this part does not require a party to disclose, to any extent greater than required by chapter 7, part 1,<sup>140</sup> a document in relation to which there is a valid claim to privilege from disclosure.

### **556 Pleadings**

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.

### **557 Costs**

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.

### **558 Assessment of damages**

- (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

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139 Rules 548 (Plaintiff's statement must identify particular documents) and 551 (Defendant's statement must identify particular documents)

140 Chapter 7 (Disclosure), part 1 (Disclosure by parties)

- (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**

#### **559      Application of division 1**

This division does not apply for payments under the *Defamation Act 1889*, section 22.

#### **560      Payment or deposit of money in court**

- (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.

### **561 Disposal of money in court**

- (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**

### **562 Defendant's payment into court**

- (1) This rule applies if a party makes a payment into court under the *Defamation Act 1889*, section 22.<sup>141</sup>
- (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.

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141 *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)

This Act has been repealed, see 2005 Act No. 55 s 47.

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- (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.

### **563 Costs in particular case**

- (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.



- (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.

### **569 Relief based on application for review if application made for statutory order of review**

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.

### **570 Filing documents**

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 terms of the decision to which the application relates;
- (b) either—
  - (i) a statement relating to the decision given to the applicant under section 33<sup>143</sup> of the Act; 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.

### **571 Setting directions hearing**

On the filing of a review application, the registrar must set a time, date and place for a directions hearing before the court.

### **572 Service on other parties**

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.

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143 *Judicial Review Act 1991*, section 33 (Decision maker must comply with request except in certain circumstances)

**573 Orders and directions at directions hearing**

- (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
  - (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.<sup>144</sup>
- (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.
- (4) The court may revoke or vary an order made under subrule (1), (2) or (3).

**574 Hearing and determination of application at directions hearing if parties agree**

The court may hear and decide the review application on a directions hearing if the parties agree.

**575 Nonappearance of parties at directions hearing**

- (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.

**576 Application for dismissal or stay at directions hearing**

- (1) A party may apply to the court for an order under part 1, division 3 or section 48<sup>145</sup> of the Act 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).

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145 *Judicial Review Act 1991*, part 1 (Preliminary), division 3 (Relationship with other review rights) or section 48 (Power of the court to stay or dismiss applications in certain circumstances)

**577 Application for dismissal to be made promptly**

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
  - (b) in the exercise of the court's discretion;
- must apply promptly for the dismissal.

**578 Application for costs order at directions hearing**

An applicant may apply to the court for an order under section 49<sup>146</sup> of the Act 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.

**579 Orders or directions about or for proceeding to be sought at directions hearing**

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.

**580 Additional requirements for order of certiorari**

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.

**581 No proceeding in relation to things done under mandamus order**

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.

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146 *Judicial Review Act 1991*, section 49 (Costs—review application)

**582 Consolidation of proceedings for prerogative injunctions**

If there is more than 1 application for an injunction under section 42<sup>147</sup> 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.

**583 Proceedings in relation to statements of reasons**

- (1) An application to the court for a declaration or order under part 4<sup>148</sup> of the Act 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).

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147 *Judicial Review Act 1991*, section 42 (Abolition of quo warranto)

148 *Judicial Review Act 1991*, part 4 (Reasons for decision)

**584 Application by unincorporated body**

- (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 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.

**585 Proceeding for declaration or injunction**

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

**586 Definitions for pt 5**

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*.

**587 Application of pt 5**

This part applies only to the Supreme Court.

**588 Originating process**

A proceeding mentioned in this part may only be started by application.

**589 Application to court**

- (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.

**590 Parties**

An application under this part may be made by the person who is under restraint or by another person.

**591 Form and procedure**

- (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.

**592 Procedure on application**

- (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.

### **593 Return of writ of habeas corpus**

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.

**594 Enforcement**

- (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.

**595 Form of writ**

A writ of habeas corpus must be in the approved form unless the court orders otherwise.

## Chapter 15 Probate and administration

### Part 1 Introduction

**596 Definitions for ch 15**

In this chapter—

*estate* means estate of a deceased person.

*grant* see the *Succession Act 1981*, section 5.

*public trustee* means the Public Trustee of Queensland.

*spouse*, in relation to a deceased person and despite the *Acts Interpretation Act 1954*, section 32DA(6),<sup>149</sup> means a person who, at the time of the deceased's death—

- (a) was the deceased's husband or wife; or
- (b) had been the deceased's de facto partner for a continuous period of at least 2 years ending on the deceased's death.

*will* includes codicil.

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149 *Acts Interpretation Act 1954*, section 32DA (Meaning of *de facto partner*)

## **Part 2 Grants**

### **597 Application for grant**

- (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.

### **598 General notice of intention to apply for grant**

- (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.

### **599 Requirements for notice of intention to apply for grant**

- (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) the deceased's last known residential address;
    - (iii) if the deceased left a will—the date of the will and of any other testamentary documents for which the grant is sought;
    - (iv) the name and address of the solicitor for the applicant, if any;
    - (v) the full name 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.<sup>150</sup>
- (3) The notice must be published—
  - (a) if the deceased's last known address is more than 150km 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
  - (b) 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.

## **600 Registrar may make inquiries**

- (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.

## **601 When registrar may make grant**

- (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.

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<sup>150</sup> *Trusts Act 1973*, section 67 (Protection of trustees by means of advertisements)

- (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**

### **602 Contents of supporting affidavit**

- (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 *Births, Deaths and Marriages Registration Act 2003* 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.

### **603 Priority for letters of administration with the will**

- (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.

**604 Evidence of proper attestation of will**

- (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.

**605 Interlineations, alterations and erasures**

- (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.

**606 Documents mentioned in or attached to will**

- (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.

**607 Wills made by blind or illiterate persons**

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.

**608 Marginal note**

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.



- (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 more than 1 surviving spouse, the court may make a grant to 1 or more of them, or 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 spouse or a person claiming to be a spouse must be sworn.

**611 Grant to attorney of absent person or person without prior right**

- (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.

**612 Court not to make grant on intestacy within 30 days after death**

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.

**613 Limited administration**

- (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.

**614 Limited and special administration**

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**

**615 Application of part**

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*).

**616 Who may apply for reseal of foreign grant**

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.

**617 Notice of intention to apply for reseal**

- (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.

**618 Production of grant and testamentary papers**

- (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.

**619 Special, limited and temporary grants**

The registrar must not reseal a special, limited or temporary foreign grant, unless the court otherwise orders.

**620 Notice to original court**

The registrar must send to the court from which the foreign grant was issued notice that the grant has been resealed in Queensland.



***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.

## **624 Caveats by person objecting**

- (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.

## **625 Caveat procedure**

- (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—

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- (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.

**626 Setting aside caveat**

- (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.

**627 Withdrawal of caveat**

The caveator may withdraw a caveat at any time.

**628 Effect of caveat filed on day of grant**

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****629 Definitions for pt 8**

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.

**630 Application of pt 8**

This part applies to a contested proceeding.

**631 Statement of nature of interest**

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.

**632 Affidavit of scripts**

- (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.

**633 Notice to persons with beneficial interest**

The plaintiff must give notice of the proceeding to any person who has a beneficial interest in the estate to which the proceeding relates.

**634 Notice of intention to intervene**

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.

**635 Claim to name defendants**

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.

**636 Grant to be filed**

- (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**

### **637      Subpoenas**

- (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.<sup>152</sup>

### **638      Administration pending proceedings**

- (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

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<sup>152</sup> For general provisions about subpoenas, see chapter 11, part 4.

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<sup>153</sup> applies to the administrator and to an 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.

### **639 Grants to young persons**

- (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.

### **640 Proof in solemn form**

- (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.

#### **641 Notice of revocation or alteration of resealed Queensland grant**

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.

#### **642 Revocation of grants and limited grants**

- (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.

**643 Relief against neglect or refusal by executor, administrator or trustee**

- (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**

**644 Filing and passing account on application of beneficiary**

- (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.

#### **645 Order requiring account**

- (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.

#### **646 Applications for commission**

- (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 verified by affidavit.

**647 Notice**

- (1) This rule applies if an account is to be examined under rule 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.

**648 Appearance of person interested**

- (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)<sup>154</sup> if the memorandum were an originating process; and

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154 Rule 17 (Contact details and address for service)

- (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.

#### **649 Examination of account**

- (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.

#### **650 Hearing on examination of account**

- (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

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- (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.

**651 Power of court**

- (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.

**652 Amended or further account**

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.

**653 Renewal of objection in subsequent proceeding**

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.

**654 Evidence in subsequent proceeding**

- (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.

**655 General practice to apply**

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.

**656 Combined executors' and trustees' account**

- (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 estate 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.

### **657 Allowance of commission in proceeding**

- (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**

### **658 General**

- (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.

### **659 Judgment**

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.

**660 Order**

- (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<sup>155</sup>—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.

**661 Filing an order**

- (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 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<sup>156</sup> or by other process; and

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155 Chapter 13 (Trials and other hearings), part 6 (Decision on papers without oral hearing)

156 Chapter 19 (Enforcement of money orders)

- (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.

### **662 Certified duplicate of filed order**

- (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.

### **663 Reasons for order**

- (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<sup>157</sup>—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.

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157 Chapter 13 (Trials and other hearings), part 6 (Decision on papers without oral hearing)

**664 Delivery of reserved decision by a different judicial officer**

- (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.

**665 Time for compliance**

- (1) An order requiring a person to perform an act must specify the 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.

**666 Consent orders**

- (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.

**667 Setting aside**

- (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.<sup>158</sup>

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158 For a default judgment, see rules 290 (Setting aside judgment by default and enforcement) and 521 (Notices in minor debt claims).

**668 Matters arising after order**

- (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.

**669 Appointment to settle**

- (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 Security for costs

### 670 Security for costs

- (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.

### 671 Prerequisite for security for costs

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.

**672 Discretionary factors for security for costs**

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.

**673 Way security given**

- (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.

#### **674 Stay or dismissal**

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.

#### **675 Setting aside or varying order**

The court may set aside or vary an order made under this chapter in special circumstances.

#### **676 Finalising security**

- (1) This rule applies if, in a proceeding, security for costs has been given by a party under an order made under this chapter.
- (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).

**677 Counterclaims and third party proceedings**

This chapter applies, with necessary changes, for a counterclaim and a third party proceeding.

## Chapter 17A Costs

### Part 1 Preliminary

**678 Application of ch 17A**

- (1) This chapter applies to costs payable or to be assessed under an Act, these rules or an order of the court.
- (2) However—
  - (a) part 2 applies to costs payable or to be assessed under the *Legal Profession Act 2007* only if section 319(1)(b) of that Act applies to the costs; and
  - (b) part 3 does not apply to costs payable or to be assessed under the *Legal Profession Act 2007*; and
  - (c) part 4 applies only to costs payable or to be assessed under the *Legal Profession Act 2007*.

*Note—*

The *Legal Profession Act 2007*, section 319(1)(b) applies to costs that are recoverable under the applicable scale of costs, rather than under a costs agreement.

**679 Definitions**

In this chapter—

***assessed costs*** means costs and disbursements assessed under this chapter.

***assessing registrar*** means a 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 Magistrate.

**Australian lawyer** see the *Legal Profession Act 2007*, section 5(1).

**Brisbane registrar** means the registrar of the Supreme Court at Brisbane.

**certificate of assessment** means a certificate under rule 737.

**client** see the *Legal Profession Act 2007*, section 334.

**costs assessment** means assessment of a costs statement or itemised bill under this chapter.

**costs assessor** means—

(a) a costs assessor appointed under rule 743L; or

(b) except in parts 4 and 5, an assessing registrar.

**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 costs statement mentioned in rule 705.

**itemised bill** see the *Legal Profession Act 2007*, section 300.

**party** includes a person not a party to a proceeding by or to whom assessed costs of the proceeding are payable.

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

## **Part 2**                      **Costs of a proceeding<sup>159</sup>**

### **Division 1**                **Costs of a proceeding generally**

#### **680**    **Entitlement to recover costs**

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.

#### **681**    **General rule about costs**

- (1) Costs of a proceeding, including an application in a proceeding, are in the discretion of the court but follow the event, unless the court orders otherwise.
- (2) Subrule (1) applies unless these rules provide otherwise.

#### **682**    **General provision about costs**

- (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 chapter.
- (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.

#### **683**    **Costs in proceeding before Magistrates Court**

- (1) This rule applies to a proceeding before a Magistrates Court.
- (2) The magistrate may fix the amount of the costs of the proceeding and order payment of the amount.
- (3) However, the magistrate may order that the costs of the proceeding be assessed by a costs assessor if the magistrate

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<sup>159</sup> This part applies to costs payable or to be assessed under the *Legal Profession Act 2007* only if section 319(1)(b) of that Act applies to the costs—see rule 678(2)(a).

considers it appropriate because of the nature and complexity of the proceeding.

**684 Costs of question or part of proceeding**

- (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.

**685 Costs if further proceedings become unnecessary**

- (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 just.

**686 Assessment of costs without order**

Costs may be assessed without an order for assessment having been made 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.

**687 Assessed costs to be paid unless court orders otherwise**

- (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 fixed by the court; or
- (d) an amount for costs to be decided in the way the court directs.

**688 Costs when proceeding removed to another court**

- (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 court orders otherwise, the costs up to the time of the removal must be assessed on the scale applying in the first court.

**689 Costs in an account**

If the court orders that an account be taken and the account is partly for costs, the court may fix costs or order that a costs assessor assess costs under part 3.

**690 Lawyer's delay or neglect**

The court may order a lawyer to repay to the lawyer'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 the lawyer's delay, misconduct or negligence.

**691 Australian lawyer's costs**

- (1) For assessing costs on the standard basis, an Australian lawyer 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 Australian lawyer's costs allowable on an assessment under the relevant scale of costs.
  - (6) A costs assessor has the same authority as the court under subrule (5).
  - (7) The costs under the scales of costs for work done are inclusive of any GST payable in relation to the work.

**692 Amendment**

- (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.

**693 Application in a proceeding**

- (1) The costs of a proceeding do not include the costs of an application in the 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.

**694 Default judgment**

If a default judgment is given with costs under chapter 9, part 1,<sup>160</sup> the registrar must fix the costs in accordance with the prescribed scale.

**695 Extending or shortening time**

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.

**696 Costs of inquiry to find person**

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.

**697 Costs of proceeding in wrong court**

- (1) Subrule (2) applies 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.
- (2) The costs the plaintiff may recover must be assessed as if the proceeding had been started in the Magistrates Court, unless the court orders otherwise.
- (3) Subrule (4) applies 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.
- (4) The costs the plaintiff may recover must be assessed as if the proceeding had been started in the District Court, unless the court orders otherwise.

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160 Chapter 9 (Ending proceedings early), part 1 (Default)

**698 Reserved costs**

If the court reserves costs of an application in a proceeding, the costs reserved follow the event, unless the court orders otherwise.

**699 Receiver's costs**

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.

**700 Trustee**

- (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 2 Basis of assessment of costs of a party in a proceeding****701 Application of div 2**

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.

**702 Standard basis of assessment**

- (1) Unless these rules or an order of the court provides otherwise, a costs assessor must assess costs on the standard basis.

*Note—*

Costs on the standard basis were previously party and party costs—see rule 743S (Old basis for taxing costs equates to new basis for assessing costs).

- (2) When assessing costs on the standard basis, a costs assessor 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.

**703 Indemnity basis of assessment**

- (1) The court may order costs to be assessed on the indemnity basis.

*Note—*

Costs on the indemnity basis were previously solicitor and client costs—see rule 743S (Old basis for taxing costs equates to new basis for assessing costs).

- (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, a costs assessor must allow all costs reasonably incurred and of a reasonable amount, having regard to—
- (a) the scale of fees prescribed for the court; and
  - (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.

**704 Trustee**

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, a costs assessor must assess the costs on the indemnity basis, unless the court orders otherwise.

## **Part 3                      Assessment of costs other than under the Legal Profession Act 2007<sup>161</sup>**

### **Division 1                Before application**

#### **705      Costs statement**

A party entitled to be paid costs must serve a costs statement in the approved form on the party liable to pay the costs.

#### **706      Objection to costs statement**

- (1) A party on whom a costs statement is served may, within 21 days after being served, object to any item in the statement by serving a notice of objection on the party serving 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 contends a costs assessor should consider in order 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 nearly consecutive items in a costs statement, the notice need not separately state the reasons for 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.

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<sup>161</sup> This part does not apply to costs payable or to be assessed under the *Legal Profession Act 2007*—see rule 678(2)(b).

**707 Consent order**

If, before the appointment of a costs assessor, the party entitled to costs and the party liable to pay the costs agree on the amount of costs, the parties may apply for a consent order under rule 666.

**708 Default assessment if no objection to costs statement**

- (1) This rule applies if—
  - (a) a party served with a costs statement does not serve a notice of objection under rule 706; and
  - (b) the party who served the costs statement files an application for a costs assessment under rule 710.
- (2) On the filing of the application, the registrar must appoint a costs assessor to assess costs under this rule.
- (3) The costs assessor must, on proof that the costs statement was served on the party liable for the costs—
  - (a) assess the costs without considering each item and by allowing the costs claimed in the costs statement; and
  - (b) issue a certificate of assessment.
- (4) However—
  - (a) despite subrule (3)(a), the costs of attending the assessment of costs are not allowable; and
  - (b) subrule (3)(a) does not prevent the costs assessor correcting an obvious error in the costs statement.
- (5) Rules 712 and 721 do not apply to an assessment of costs under this rule.

**709 Setting aside default assessment**

- (1) If a costs assessor is appointed under rule 708 to assess costs, the court may, on the application of the party liable for the costs, by order, set aside or vary a decision of the costs assessor or any order made under rule 740.
- (2) The application must be supported by—
  - (a) an affidavit explaining—

- (i) the party's failure to file a notice of objection to the costs statement; and
    - (ii) any delay; and
  - (b) a notice of objection in accordance with rule 706(2) to (5), as an exhibit to the affidavit.
- (3) Rule 722 applies to any reassessment of costs on an application made under this rule.

## **Division 2                      Application**

### **710      Application for costs assessment**

- (1) A person who has served a costs statement under rule 705 may, not less than 21 days after service of the costs statement, apply for a costs assessment.
- (2) The application must—
  - (a) be in the approved form; and
  - (b) be accompanied by—
    - (i) the costs statement; and
    - (ii) either—
      - (A) if a notice of objection has been served on the applicant—the notice of objection; or
      - (B) otherwise—an affidavit of service of the costs statement; and
  - (c) if practicable—
    - (i) nominate a particular costs assessor for the assessment; and
    - (ii) for a costs assessor other than an assessing registrar, state the applicable hourly rate of the nominated costs assessor; and
  - (d) if applicable, be accompanied by the nominated costs assessor's consent to appointment to carry out the costs

assessment and confirmation that, if appointed, there would be no conflict of interest.

- (3) The application is returnable before the registrar.

### **711 Service of application**

Within 7 days after filing an application for a costs assessment, the applicant must serve a copy of the application and all accompanying documents (other than the costs statement and any notice of objection) on the party liable to pay the costs.

### **712 Agreed costs assessor**

- (1) This rule applies if the parties agree that a costs assessment be carried out by a particular costs assessor.
- (2) The parties may apply for a consent order under rule 666 that the particular costs assessor be appointed to carry out the costs assessment.
- (3) The particular costs assessor's consent to appointment to carry out the costs assessment and confirmation that, if appointed, there would be no conflict of interest must be filed with the consent under rule 666.

### **713 Costs assessor if no agreement**

- (1) This rule applies if the parties do not agree that a costs assessment be carried out by a particular costs assessor.
- (2) A party may either—
  - (a) apply to the registrar for appointment of a costs assessor for the costs assessment; or
  - (b) apply to the court for directions.
- (3) If an application is made under subrule (2)(a), the registrar may order the appointment of a particular costs assessor to carry out the costs assessment.

## **Division 3                      Assessment**

### **714      Powers of an assessing registrar**

For assessing costs, an assessing registrar may do any of the following—

- (a) administer an oath or receive an affirmation;
- (b) examine witnesses;
- (c) 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;
- (d) unless the court orders otherwise—extend or shorten the time for taking any step in the assessment;
- (e) direct or require a party to produce documents;
- (f) give directions about the conduct of the assessment process;
- (g) anything else the court directs.

### **715      Powers of a costs assessor**

The court may, by order, give a costs assessor who is not an assessing registrar a power mentioned in rule 714 in relation to a costs assessment.

### **716      No participation by a party**

- (1) This rule applies if—
  - (a) a costs assessor is appointed to carry out a costs assessment; and
  - (b) a party to the application for the costs assessment does not participate in the costs assessment in accordance with the procedure decided by the costs assessor.
- (2) The costs assessor may—
  - (a) proceed with the assessment without the party's participation; or
  - (b) refer the application to the court for directions.

**717 Issue or question arising**

- (1) A costs assessor appointed to carry out a costs assessment may decline to decide any issue or question arising in relation to the assessment that the costs assessor considers should not be decided by the costs assessor.
- (2) The costs assessor may refer to the court any issue or question arising in relation to the assessment the costs assessor considers should be decided by the court.
- (3) The court may do either or both of the following—
  - (a) decide the issue or question referred under subrule (2);
  - (b) refer the issue or question to the costs assessor with or without directions.

**718 Notice of adjournment**

- (1) This rule applies if a directions hearing or a costs assessment is adjourned for any reason.
- (2) Unless the court or costs assessor directs otherwise, the applicant must give notice of the adjournment to any party served with the application for the costs assessment but not present when the hearing or assessment was adjourned.

**719 Conflict of interest**

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

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

**720 Procedure on assessment**

- (1) A costs assessor appointed to carry out a costs assessment is to decide the procedure to be followed on the assessment.

- (2) However, the procedure must be—
  - (a) appropriate to the scope and nature of the dispute and the amount in dispute; and
  - (b) consistent with the rules of natural justice; and
  - (c) fair and efficient.
- (3) Also, if the costs are payable out of a fund—
  - (a) the applicant must serve on the person having charge of the fund a notice—
    - (i) identifying the fund; and
    - (ii) stating that the costs in the costs statement to be assessed are payable out of the fund; and
    - (iii) stating when the costs are to be assessed; and
    - (iv) containing or attaching any other information the costs assessor requires to be included in or with the notice; and
  - (b) the person having charge of the fund may make submissions to the costs assessor in relation to the assessment.
- (4) Without limiting subrule (1) or (2), the costs assessor may decide to do all or any of the following—
  - (a) hear the costs assessment in private;
  - (b) carry out the costs assessment on the papers without an oral hearing;
  - (c) not be bound by laws of evidence or procedure applying to a proceeding in the court;
  - (d) be informed of the facts in any way the costs assessor considers appropriate;
  - (e) not make a record of the evidence given.

## **721 Discretion of a costs assessor**

In assessing costs, a costs assessor 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 interests of the parties;
- (f) the person who is to pay the costs, or the fund or estate out of which the costs are to be paid;
- (g) the general conduct and cost of the proceeding;
- (h) any other relevant circumstances.

## **722 Assessment must be limited**

If a notice of objection relates only to a particular issue or a particular item, a costs assessor must limit the assessment to the resolution of the matters raised in the notice of objection in relation to the issue or item and otherwise assess the costs under rule 708.

## **723 Disbursement or fee not paid**

- (1) If a party's costs statement includes an account that has not been paid, the party may claim the amount as a disbursement.
- (2) A costs assessor may allow the amount as a disbursement only if it is paid before the costs assessor signs the certificate of assessment.
- (3) Subrule (2) does not apply to an amount for lawyers' or experts' fees.

## **724 Professional charges and disbursements**

- (1) If a costs statement includes a charge for work done by a lawyer practising in Queensland and acting as agent for a party's lawyer, the charge must be shown as a professional charge, not as a disbursement.
- (2) A costs assessor may assess and allow a charge mentioned in subrule (1) even if it is not paid before the assessment.

- (3) If a costs statement includes a charge for work done by a lawyer practising outside Queensland, the charge may be shown as a disbursement or as a professional charge.
- (4) If a costs assessor allows a charge mentioned in subrule (3) when assessing costs, the amount the costs assessor allows must, so far as practicable, be an amount appropriate in the place where the lawyer practises.

### **725 Parties with same lawyer**

If the same lawyer represents 2 or more parties and the lawyer does work for 1 or some of them separately that could have been done for some or all of them together, the costs assessor may disallow costs for the unnecessary work.

### **726 Counsel's advice and settling documents**

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.

### **727 Evidence**

- (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.

### **728 Solicitor advocate**

- (1) This rule applies if a solicitor appears on a trial or hearing alone or instructed by a partner or employee.
- (2) A costs assessor must not allow the solicitor or partner a fee for preparing a brief.

- (3) A costs assessor may allow 1 fee for preparing for the trial or hearing.

**729 Premature brief**

A costs assessor 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.

**730 Retainer of counsel**

When assessing costs on the standard basis, a costs assessor must not allow a fee paid to counsel as a retainer.

**731 Refresher fees**

- (1) If a trial or hearing occupies more than 1 day, when assessing costs on the standard basis, a costs assessor 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, a costs assessor may include waiting time as part of any period under subrule (1).

**Division 4                      Costs of assessment and offers to settle****732 Costs of assessment**

A costs assessor must decide the costs of a costs assessment.

**733 Offer to settle costs**

- (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

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- (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 the day liability for the 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 734, a party must not disclose to a costs assessor the amount of an offer to settle until the costs assessor has assessed all items in the costs statement, and decided all questions, other than the cost of the assessment.

**734 Acceptance of offer to settle costs**

- (1) An acceptance of an offer to settle must be in writing.
- (2) If a party gives to a costs assessor a copy of the offer and the acceptance of the offer, the costs must be certified by the costs assessor under rule 737 in 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 assessed by the costs assessor, 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 costs assessor decides otherwise.
- (4) However, if the amount of the costs assessed by the costs assessor, 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 costs assessor decides 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.

### **735 Reduction of more than 15%**

- (1) This rule applies if, on an assessment of costs payable out of a fund, the amount of professional charges and disbursements is reduced by more than 15%.
- (2) Unless the costs assessor decides otherwise—
  - (a) the party with the benefit of the costs order must pay the costs of the assessment; and
  - (b) the costs payable under the costs order do not include the costs of preparing the costs statement or attending the costs assessment.
- (3) Subrule (2) applies subject to rules 733, 734 and 736.

## **Division 5 Certificate of costs assessor**

### **736 Agreement as to costs**

If a party entitled to costs and a party liable for costs agree on the amount of costs, a costs assessor must, on receipt of a written consent signed by the parties or their lawyers, certify the costs under rule 737 in the agreed amount.

### **737 Certificate of assessment**

- (1) At the end of a costs assessment, a costs assessor must certify the amount or amounts payable by whom and to whom in relation to the application, having regard to—
  - (a) the amount at which costs were assessed; and
  - (b) the costs of the assessment.
- (2) The certificate must be filed by the costs assessor in the court within 14 days after the end of the assessment and a copy must be given to each of the parties.

**738 Written reasons for decision**

- (1) Within 14 days after receiving a copy of a cost assessor's certificate of assessment, a party may make a written request to the costs assessor for reasons for any decision included in the certificate.
- (2) If a costs assessor receives a request under subrule (1), the costs assessor must—
  - (a) within 21 days give written reasons for the decision to each of the parties who participated in the costs assessment; and
  - (b) give a copy of the written reasons to the registry of the court in which the certificate was filed.
- (3) A party requesting reasons must pay the costs assessor's reasonable costs of preparing the reasons and those costs form part of the party's costs in any subsequent review.
- (4) The court may publish written reasons in the way it considers appropriate.

*Example—*

The reasons may be published on the Queensland Courts website.

**Division 6 After assessment****739 Application of div 6**

This division applies if a certificate of assessment is filed in a court.

**740 Judgment for amount certified**

- (1) After a certificate of assessment is filed, the registrar of the court must make the appropriate order having regard to the certificate.
- (2) The order takes effect as a judgment of the court.
- (3) However, the order is not enforceable until at least 14 days after it is made and the court may stay enforcement pending review of the assessment on terms the court considers just.

- (4) Unless the registrar orders otherwise, the costs assessor's fees—
  - (a) are payable to the cost assessor in the first instance by the party who applied for the assessment; and
  - (b) are to be included in that party's costs of the assessment.
- (5) Amounts paid or payable under the order are charged with payment of the costs assessor's fees.

**741 Costs may be set off**

- (1) If a party entitled to be paid costs is also liable to pay costs and the costs have been assessed, the registrar may—
  - (a) set off 1 amount against the other and, by order, direct by whom any 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.

**742 Review by court**

- (1) A party dissatisfied with a decision included in a costs assessor's certificate of assessment may apply to the court to review the decision.
- (2) An application for review must be filed within—
  - (a) if reasons are requested under rule 738(1)—14 days after the party receives those reasons; or
  - (b) otherwise—14 days after the party receives the certificate.
- (3) The application must—
  - (a) state specific and concise grounds for objecting to the certificate; and
  - (b) have attached to it a copy of any written reasons for the decision given by the costs assessor; and

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- (c) state any other matter required by a practice direction made in relation to this rule.
- (4) The applicant must serve a copy of the application on all other parties to the assessment within 14 days after the application is filed.
- (5) On a review, unless the court directs otherwise—
  - (a) the court may not receive further evidence; and
  - (b) a party may not raise any ground of objection not stated in the application for assessment or a notice of objection or raised before the costs assessor.
- (6) Subject to subrule (5), on the review, the court may do any of the following—
  - (a) exercise all the powers of the costs assessor in relation to the assessment;
  - (b) set aside or vary the decision of the costs assessor;
  - (c) set aside or vary an order made under rule 740(1);
  - (d) refer any item to the costs assessor for reconsideration, with or without directions;
  - (e) make any other order or give any other direction the court considers appropriate.
- (7) Unless the court orders otherwise, the application for review does not operate as a stay of the registrar's order.

## Part 4 **Assessment of costs under the Legal Profession Act 2007**<sup>162</sup>

### 743 Definition for pt 4

In this part—

*relevant court*, for an assessment of costs under the *Legal Profession Act 2007*, means the court having the lowest monetary limit to its jurisdiction in a personal action that is not less than the costs claimed.

### 743A Application for costs assessment

- (1) A person applying for a costs assessment must apply to the relevant court.
- (2) The application must—
  - (a) be in the approved form; and
  - (b) state the names of any persons to whom notice must be given under the *Legal Profession Act 2007*, section 339(1); and
  - (c) if practicable—
    - (i) nominate a particular costs assessor for the assessment; and
    - (ii) state the applicable hourly rate of the nominated costs assessor; and
  - (d) be accompanied by the following—
    - (i) an affidavit;
    - (ii) if applicable, the nominated costs assessor's consent to appointment to carry out the costs assessment and confirmation that, if appointed, there would be no conflict of interest;

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<sup>162</sup> This part applies only to costs payable or to be assessed under the *Legal Profession Act 2007*—see rule 678(2)(c). Also, a reference in this part to a costs assessor does not include a reference to an assessing registrar—see rule 679, definition *costs assessor*.

- (iii) the prescribed fee.
- (3) If the applicant has an itemised bill for all of the costs to be assessed under the application, a copy of the itemised bill must be an exhibit to the affidavit.
  - (4) If the applicant does not have an itemised bill for all of the costs to be assessed under the application, the best information the applicant has as to the costs to be assessed must be included in the affidavit.
  - (5) The affidavit must also—
    - (a) state whether the applicant disputes or requires assessment of all or what part of the costs; and
    - (b) if the applicant disputes all or part of the costs, state the grounds on which the applicant disputes the amount of the costs or liability to pay them.

### **743B If recovery proceedings started**

- (1) If a law practice has started a proceeding in a court to recover costs from any person, any application for assessment of all or part of those costs must be made by application in the proceeding.
- (2) At the directions hearing mentioned in rule 743G, the court may also give directions as to the conduct of the proceeding.
- (3) If no application for assessment is made in the proceeding, the court may, at an appropriate stage of the proceeding—
  - (a) order that any costs be assessed by a costs assessor; and
  - (b) give appropriate directions.

### **743C Court may direct preparation of itemised bill**

If there is no itemised bill for all of the costs to be assessed under an application, the relevant court may give the directions it considers appropriate for an itemised bill to be prepared, filed and served.

**743D Notice of application**

- (1) Within 7 days after filing an application for a costs assessment, the applicant must serve a copy of the application on any person to whom notice must be given under the *Legal Profession Act 2007*, section 339(1).
- (2) If a person served under subrule (1) knows a third party payer should have been, but was not, served, the person must, within 14 days after being served, give the applicant written notice of that fact and the name and contact details for the third party payer.
- (3) As soon as practicable, but no more than 14 days after receiving a notice under subrule (2), the applicant must serve a copy of the application on the third party payer.
- (4) In this rule—  
*third party payer* see the *Legal Profession Act 2007*, section 301(1).

**743E Agreed costs assessor**

- (1) This rule applies if the parties agree that the costs assessment be carried out by a particular costs assessor.
- (2) The parties may apply for a consent order under rule 666 that the particular costs assessor be appointed to carry out the costs assessment.
- (3) The particular costs assessor's consent to appointment to carry out the costs assessment and confirmation that, if appointed, there would be no conflict of interest must be filed with the consent under rule 666.
- (4) If the consent order mentioned in subrule (2) is made, the registrar of the relevant court may vacate any directions hearing date previously allocated for the application.

**743F Costs assessor if no agreement**

- (1) This rule applies if the parties do not agree that the costs assessment be carried out by a particular costs assessor.
- (2) A party may either—

- (a) apply to the registrar for appointment by the registrar of a costs assessor for the costs assessment; or
  - (b) apply to the court for directions.
- (3) If an application is made under subrule (2)(a), the registrar may order the appointment of a particular costs assessor to carry out the costs assessment.

### **743G Directions hearing**

- (1) The relevant court may hold a directions hearing in relation to an application for a costs assessment.
- (2) At a directions hearing, the relevant court may consider the following matters—
  - (a) whether the application has been properly filed and served;
  - (b) whether notice has been given as required under the *Legal Profession Act 2007*, section 339(1);
  - (c) whether it is appropriate to refer the application to mediation;
  - (d) whether it is appropriate for any question to be tried before the costs are assessed, including, for example—
    - (i) whether a person claimed to be liable to pay costs is liable to pay those costs; and
    - (ii) whether any costs agreement relied on by the lawyer concerned is void; and
    - (iii) whether the lawyer concerned was negligent; and
    - (iv) whether the lawyer concerned was in breach of the contract of retainer; and
    - (v) whether the lawyer concerned acted without the instructions of, or contrary to the instructions of, the client;
  - (e) whether anything else should be done before the costs are assessed.
- (3) Also, the relevant court may—

- (a) if the grounds of dispute relate only to the amount of costs—order that a particular costs assessor be appointed to carry out the costs assessment; or
- (b) otherwise—order that the application be heard by the relevant court.

**743H Application to court for directions after certificate of assessment filed**

- (1) This rule applies if a certificate of assessment is filed in the relevant court.
- (2) The court or any party may, on notice to all parties who participated in the assessment, have the application relisted before the court.
- (3) In relation to any issue in dispute between the parties, the court may give directions or decide the issue.
- (4) If there are no issues in dispute, the court may give the judgment it considers appropriate having regard to the certificate.
- (5) The court may delay giving a judgment, or stay the enforcement of a judgment given, pending a review by the court of a decision of the costs assessor.

**743I Application of other rules**

- (1) The following rules also apply to costs assessed under the *Legal Profession Act 2007*—
  - rule 715;
  - rule 716;
  - rule 717;
  - rule 718;
  - rule 719;
  - rule 720;
  - rule 732;
  - rule 737;

- rule 738;
  - rule 742.
- (2) For the purposes of applying a rule mentioned in subrule (1) that refers to a court or the court, the reference is taken to be a reference to the relevant court.
  - (3) For the purpose of applying rule 742(5)(b), a reference to a ground of objection not stated in the application for assessment or a notice of objection is taken to be a reference to a ground of dispute not stated in the affidavit mentioned in rule 743A.
  - (4) For the purpose of applying rule 742(6)(c), a reference to an order made under rule 740(1) is taken to be a reference to a judgment given under rule 743H(4).

## **Part 5                      Costs assessors<sup>163</sup>**

### **743J Eligibility**

A person is eligible for appointment as a costs assessor only if the person is—

- (a) an Australian lawyer who has at least 5 years' experience in either or both of the following—
  - (i) the practice of law;
  - (ii) the assessment of costs; and
- (b) a fit and proper person to assess costs.

### **743K Application**

- (1) A person applying for appointment as a costs assessor must—
  - (a) apply in the approved form; and

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<sup>163</sup> A reference in this part to a costs assessor does not include a reference to an assessing registrar—see rule 679, definition *costs assessor*.

- (b) provide an affidavit demonstrating the person's eligibility for appointment and stating the following—
    - (i) any adverse matter known by the person that may affect whether the person is a fit and proper person for appointment;
    - (ii) the hourly rate or rates the person would charge if appointed;
    - (iii) any other matter required by a practice direction to be stated in the affidavit; and
  - (c) pay the prescribed fee.
- (2) The Chief Justice may make a practice direction under this rule requiring other matters relevant to appointment as a costs assessor to be stated in the affidavit.

### **743L Appointment**

- (1) If a person who is eligible for appointment as a costs assessor applies for appointment under rule 743K, the Brisbane registrar, may appoint, or refuse to appoint, the person as a costs assessor.
- (2) If the Brisbane registrar refuses to appoint the person, the Brisbane registrar must give the person a statement of reasons for the decision.
- (3) A person whose application for appointment is refused may appeal to a single judge of the Supreme Court.

### **743M Ongoing disclosure of adverse matters and updated details**

- (1) Subrule (2) applies to—
  - (a) a person who has applied for appointment as a costs assessor but whose application has not yet been decided; or
  - (b) a person who is a costs assessor.
- (2) The person must give written notice to the Brisbane registrar of any matter coming to the person's knowledge that would, if the person were applying afresh for appointment as a costs

assessor, be required in the person's affidavit under rule 743K(1)(b)(i).

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

### **743N List of costs assessors**

- (1) The Brisbane registrar must keep and publish a current list of costs assessors.
- (2) The list must contain—
  - (a) the name, contact details and hourly rate or rates of each costs assessor; and
  - (b) any change notified under rule 743M(3).

### **743O Charges for costs assessments**

- (1) The Chief Justice may make a practice direction under this rule setting the maximum hourly rate chargeable by a costs assessor.
- (2) At any time the hourly rate for a costs assessor may not be more than the maximum hourly rate at that time set by the practice direction.
- (3) For a costs assessment—
  - (a) the costs assessor is entitled to charge only for the number of hours reasonably spent by the costs assessor on the assessment (which number may be, or include, a fraction); and
  - (b) time spent by the costs assessor reading the application for the costs assessment and any documents filed in the application is taken to be time spent by the costs assessor on the assessment; and
  - (c) the costs assessor's total charge is the number of hours reasonably spent by the costs assessor on the assessment multiplied by the costs assessor's current hourly rate.

- (4) However, for a particular costs assessment, a costs assessor may agree to charge an hourly rate that is less than the costs assessor's current hourly rate.
- (5) In this rule—  
***current hourly rate***, of a costs assessor for a costs assessment, means the hourly rate of the costs assessor applicable for the costs assessment that is set out in the list of costs assessors at the time the costs assessor was appointed to carry out the costs assessment.

### **743P Ending an appointment by request**

The Brisbane registrar may end the appointment of a person as a costs assessor at the person's request.

### **743Q Ending an appointment for sufficient reason**

- (1) The Brisbane registrar may end the appointment of a person as a costs assessor for a sufficient reason.

*Examples of a sufficient reason—*

- 1 the costs assessor becoming a judicial officer
  - 2 the costs assessor ceasing to be a fit and proper person to assess costs
- (2) Before ending a person's appointment, the Brisbane registrar must give the person—
- (a) reasonable notice of the matters the Brisbane registrar intends to consider in deciding whether there is a sufficient reason to end the appointment; and
  - (b) a reasonable opportunity to make a submission in relation to the matters.
- (3) If the Brisbane registrar ends a person's appointment, the Brisbane registrar must give the person a statement of reasons for the decision.
- (4) A person whose appointment is ended may appeal to a single judge of the Supreme Court.

**743R Effect of ending of appointment or notice about possible ending of appointment**

- (1) If a costs assessor has been given notice under rule 743Q(2), the costs assessor may not be appointed to carry out a costs assessment unless the Brisbane registrar decides not to end the person's appointment as a costs assessor.
- (2) Unless the court orders otherwise, a costs assessor who has been given notice under rule 743Q(2) or whose appointment ends may complete a costs assessment started before the notice was given or the appointment ended.
- (3) For subrule (2), a costs assessment is taken to have started when the costs assessor is appointed to carry out the costs assessment.
- (4) Unless the court orders otherwise, the ending of a person's appointment as a costs assessor does not affect the validity of—
  - (a) a costs assessment carried out by the costs assessor before the appointment ended; or
  - (b) a costs assessment completed under subrule (2).

**Part 6 Transitional rules about costs****743S Old basis for taxing costs equates to new basis for assessing costs**

For the Act, section 133(b)<sup>164</sup>—

- (a) party and party basis equates to standard basis; and
- (b) solicitor and client basis equates to indemnity basis.

**743T Purpose of rules 743U and 743V**

Rules 743U and 743V are intended—

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<sup>164</sup> The Act, section 133 (References to taxation of costs)

- (a) to apply a new system of costs assessment, to the extent practicable, in relation to—
  - (i) transitional costs within the meaning of rule 743U; and
  - (ii) transitional LPA costs within the meaning of rule 743V; and
- (b) for that application, to give any necessary retrospective operation, for example, by applying rule 742 to provide a right to apply to a court for a review of a decision even if the decision was made before the commencement of this rule.

#### **743U Costs other than under Legal Profession Act 2007**

- (1) Rules 736 to 742 apply in relation to transitional costs and, for the purpose of applying the rules—
  - (a) the person appointed is a costs assessor; and
  - (b) a certificate filed before the commencement of this rule by the person appointed is a certificate of assessment; and
  - (c) if a certificate was not filed before the commencement of this rule by the person appointed, instead of a certificate having to be filed under rule 737(2) within 14 days after the end of the assessment, a certificate must be filed within 14 days after the later of—
    - (i) the end of the assessment; or
    - (ii) the commencement of this rule; and
  - (d) instead of a party being able to make a written request under rule 738(1) within 14 days after receiving a copy of a certificate of assessment, a party may make the written request within 14 days after the later of—
    - (i) the party receiving the copy; or
    - (ii) the commencement of this rule; and
  - (e) instead of an application for review having to be filed within a period mentioned in rule 742(2), the application must be filed within the later of—

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- (i) the relevant period mentioned in rule 742(2); or
  - (ii) the period of 14 days after the commencement of this rule; and
- (f) on a review under rule 742, instead of the powers mentioned in rule 742(6), the court may, subject to rule 742(5), do any of the following—
- (i) exercise all the powers of an assessing registrar in relation to the assessment;
  - (ii) set aside or vary the decision of the costs assessor;
  - (iii) set aside or vary an order made under rule 740(1);
  - (iv) refer any matter to a costs assessor for reconsideration, with or without directions;
  - (v) make any other order or give any other direction the court considers appropriate.

- (2) In this rule—

***previous rule 685(2)*** means rule 685(2) as in force at any time before the commencement of this rule.

***transitional costs*** means costs in relation to which, before the commencement of this rule, a court made an order under previous rule 685(2) that an amount for costs be decided by a person appointed by the court to carry out an assessment of costs.

*Note—*

The following practice directions deal with various matters concerning orders made under previous rule 685(2)—

- (a) for the Supreme Court, see Practice Direction No. 7 of 2007 (Costs Assessment: Interim Arrangements), part A;
- (b) for the District Court, see Practice Direction No. 5 of 2007 (Costs Assessment: Interim Arrangements);
- (c) for the Magistrates Courts, see Practice Direction No. 6 of 2007 (Costs Assessment: Interim Arrangements), part A.

### **743V Costs under Legal Profession Act 2007**

- (1) Rules 738 and 742 apply in relation to transitional LPA costs and, for the purpose of applying the rules—
- (a) the person appointed is a costs assessor; and

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- (b) the certificate is a certificate of assessment; and
  - (c) instead of a party being able to make a written request under rule 738(1) within 14 days after receiving a copy of a certificate of assessment, a party may make the written request within 14 days after the later of—
    - (i) the party receiving the copy; or
    - (ii) the commencement of this rule; and
  - (d) instead of an application for review having to be filed within a period mentioned in rule 742(2), the application must be filed within the later of—
    - (i) the relevant period mentioned in rule 742(2); or
    - (ii) the period of 14 days after the commencement of this rule; and
  - (e) on a review under rule 742, instead of the powers mentioned in rule 742(6), the court may, subject to rule 742(5), do any of the following—
    - (i) exercise all the powers of an assessing registrar in relation to the assessment;
    - (ii) set aside or vary the decision of the costs assessor;
    - (iii) set aside or vary an order made under rule 740(1);
    - (iv) refer any matter to a costs assessor for reconsideration, with or without directions;
    - (v) make any other order or give any other direction the court considers appropriate.
- (2) In this rule—

***previous rule 743A*** means rule 743A as in force at any time before the commencement of this rule.

***transitional LPA costs*** means costs in relation to which—

- (a) before the commencement of this rule, a court made an order under previous rule 743A that—
  - (i) an amount for costs be decided by a person appointed by the court to carry out an assessment of costs; and

- (ii) after deciding the amount for costs on the assessment, the person file a certificate as to the amount for costs; and
- (iii) judgment be given for the amount certified; and
- (b) whether before or after the commencement of this rule, the person, in accordance with the order, filed or files a certificate as to the amount for costs and judgment was or is given for the amount certified.

*Note—*

The following practice directions deal with various matters concerning orders made under previous rule 743A—

- (a) for the Supreme Court, see Practice Direction No. 7 of 2007 (Costs Assessment: Interim Arrangements), part B;
- (b) for the Magistrates Courts, see Practice Direction No. 6 of 2007 (Costs Assessment: Interim Arrangements), part B.

### **743W Expiry of particular rules**

Rules 743T to 743V and this rule expire 1 year after the commencement of this rule.

## **Chapter 18 Appellate proceedings**

### **Part 1 Appeals to the Court of Appeal**

#### **Division 1 Preliminary**

#### **744 Definition for pt 1**

In this part—

*decision* means an order, judgment, verdict or an assessment of damages.

**745 Application of pt 1**

- (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<sup>165</sup> 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****746 Starting appeal or making application for new trial**

- (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.

**747 Content of notice of appeal**

- (1) A notice of appeal must be in the approved form and state—

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<sup>165</sup> Rule 765 (Nature of appeal and application for new trial)

- (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.

**748 Time for appealing**

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.

**749 Parties to appeal**

- (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.

**750 Inclusion, removal or substitution of party**

- (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.

### **751 Amendment of notice of appeal**

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.

### **752 Service**

- (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.

### **753 Directions conference with registrar**

- (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.

### **754 Cross appeals**

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.

**755 Notice of cross appeal**

- (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.

**756 Effect of notice of cross appeal**

- (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.

**757 Affirmation on other ground**

- (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.

### **758 Appeal book**

- (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.

### **759 Registry preparation of appeal book**

- (1) An individual who is an appellant or cross-appellant may apply to the registrar for an order that the registry prepare the appeal book for the appeal or cross-appeal at no cost to the individual because of the individual's financial position.
- (2) The registrar may decide the application summarily and without extensive investigation.
- (3) The registrar may order that the registry prepare the appeal book at no cost to the individual if, having regard to the individual's financial position, including, for example, the following matters, it is clearly in the interests of justice to make the order—

- (a) if the individual receives an income-tested pension under the *Social Security Act 1991* (Cwlth), the type and amount of the pension;
  - (b) how much the individual is paying as rent for accommodation;
  - (c) whether a spouse or close relative may be willing to give the individual financial help;
  - (d) any other matter the registrar considers relevant.
- (4) The individual, if dissatisfied with the registrar's decision on an application under subrule (1) may apply to a judge of appeal for a review of the decision.
- (5) On an application for a review of the registrar's decision, the judge conducting the review—
- (a) may consider the application with or without a hearing; and
  - (b) may consider—
    - (i) anything the registrar considered under subrule (3); and
    - (ii) the preliminary merits of the appeal to which the application relates; and
  - (c) may make the order the judge considers appropriate.
- (6) When making an application under this rule, the individual must give the court a written undertaking that, if the individual is successful on the appeal or cross appeal and costs are awarded in the individual's favour, the individual will pay the registrar the appeal books fee in relation to the appeal or cross appeal.
- (7) In this rule—

*appeal books fee* means the fee payable under the *Uniform Civil Procedure (Fees) Regulation 1999*, schedule 1, item 15.

## **760 Setting a date for appeal**

- (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**

#### **761      Stay of decision under appeal**

- (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.

#### **762      Dismissal by consent**

- (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.

**763 Appeals from refusal of applications made in the absence of parties**

- (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.

**764 Consent orders on appeal**

- (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.

**765 Nature of appeal and application for new trial**

- (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.

**766 General powers**

- (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.

## **767 Exercise of certain powers by judge of appeal**

Subject to any Act, 1 or more judges of appeal may exercise the powers of the Court of 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.

**768 Matter happening in other court**

- (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.

**769 Insufficient material**

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.

**770 New trial**

- (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.

**771 Assessment of costs of appeals**

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 unless the Court of Appeal orders otherwise.

**772 Security for costs of appeal**

- (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.

**773 Way security for costs of appeal to be given**

- (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.

**774 Effect of failure to give security for costs of appeal**

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.

**775 Effect of failure to prosecute appeal**

- (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****776 Appeals from outside Brisbane**

- (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.

**777 Registrar may publish certain decision**

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****778 Application in appeal or case stated**

This division applies only to an application in an appeal or case stated to the Court of Appeal.

**779 Procedure**

- (1) Chapter 2, part 4<sup>166</sup> applies, with any changes necessary, to an application under this division.
- (2) An application under this division must be in the approved form.

**780 Documents for application**

- (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.

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166 Chapter 2 (Starting proceedings), part 4 (Applications)

- (2) The respondent must, when filing an affidavit in the application, supply 3 further copies of the affidavit and exhibits for the use of the Court of Appeal.

## **Division 2                    Cases stated**

### **781    Form and contents of case stated**

- (1) 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.
- (2) 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.
- (3) 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**

### **782    Application of pt 3**

Subject to any Act, this part applies to an appeal or case stated to a court other than the Court of Appeal.

**783 Procedure for appeals to District Court from Magistrates Court**

- (1) An appeal to the District Court from a Magistrates Court is started by filing a notice of appeal with the registrar of the District Court.
- (2) The notice of appeal may be filed in any registry of the District Court at which the appeal may be heard and decided under the *District Court of Queensland Act 1967*.
- (3) The appellant must also, as soon as practicable, file a copy of the notice of appeal in the registry of the Magistrates Court from which the appeal is brought.
- (4) On the filing of the copy of the notice of appeal, the registrar of the Magistrates Court must arrange to send immediately to the registrar of the District Court copies of all documents used in or relevant to the proceeding from which the appeal is brought, including, but not limited to, the following documents—
  - (a) initiating documents;
  - (b) anything in the nature of pleadings;
  - (c) affidavits or written statements of evidence;
  - (d) transcripts or notes of oral evidence;
  - (e) exhibits;
  - (f) any documents embodying the formal decision, including the reasons for the decision.

**784 Procedure for appeals to a court from other entities**

- (1) An appeal to a court from an entity other than a court is started by filing a notice of appeal with the registrar of the court.
- (2) The appellant must also, as soon as practicable, serve a copy of the notice of appeal on the registrar, secretary or another officer of the entity or, if there is no registrar or officer, on the person or 1 of the persons constituting the entity.
- (3) On the service of the copy of the notice of appeal, the person served with the copy must arrange to send immediately to the registrar of the court in which the appeal is started copies of all documents used in or relevant to the proceeding from

which the appeal is brought, including, but not limited to, the following documents—

- (a) initiating documents;
- (b) anything in the nature of pleadings;
- (c) affidavits or written statements of evidence;
- (d) transcripts or notes of oral evidence;
- (e) exhibits;
- (f) any documents embodying the formal decision, including the reasons for the decision.

**785 Application of rules to appeals and cases stated under this part**

- (1) Part 1, other than rules 746, 753, 758, 766(3), 767, 776 and 777, applies to appeals under this part, with necessary changes, and subject to any practice direction of the court in which the appeal is brought.
- (2) Rule 781 applies to cases stated under this part, with necessary changes.

**786 Notice of appeal**

- (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.

### **787 Procedure for hearing appeal under r 786**

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.

### **788 Consent order**

If the parties agree in writing to resolve the appeal, a consent order may be made under rule 666.<sup>167</sup>

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167 Rule 666 (Consent orders)

**789 Registrar may give directions**

- (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.

**790 Preparation for hearing**

- (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
  - (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.

**791 Rehearing after decision of judicial registrar or registrar**

- (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.

## **792 Leave to appeal**

- (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**

### **793 Definitions for ch 19**

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.<sup>168</sup>

**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
- (b) a person to whom the benefit of part of the order has passed by way of 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.

**instalment order** see rule 868(1).

**order debt** means the amount of money payable under a money order.

**partner** includes a former partner.

**regular debt** for part 5, division 2, see rule 848.

**regular deposit**, for part 5, division 2, see rule 847.

**third person** means—

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<sup>168</sup> Rule 805 (Application for end of trial enforcement hearing)

- (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.

#### **794 Enforcement of money orders**

A money order may be enforced under this chapter.

#### **795 Enforcement by or against a non-party**

- (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.

#### **796 Conditional order**

- (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.

**797 Amount recoverable from enforcement**

- (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.

**798 Separate enforcement for costs**

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.

**799 Enforcement period**

- (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.

### **800 Stay of enforcement**

- (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.

### **801 Where to enforce money order**

- (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.

## **802 Enforcing money order in different court**

- (1) To enforce an enforceable money order of the Supreme Court, the District Court or a Magistrates Court in another court under rule 801, 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 a 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 a 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<sup>169</sup> applies to an enforceable money order filed under this rule.

## **Part 2 Enforcement hearings**

### **803 Purpose of enforcement hearing**

The purpose of an enforcement hearing is to obtain information to facilitate the enforcement of a money order.

### **804 When an enforcement hearing may take place**

An enforcement hearing may take place—

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<sup>169</sup> Rule 826 (Enforcement beyond the district)

- (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.

### **805 Application for end of trial enforcement hearing**

- (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.

### **806 Outcome of application for end of trial enforcement hearing**

- (1) If the court considers an end of trial enforcement hearing is appropriate, the court may grant the application.
- (2) If the court grants the application, it—
  - (a) must issue an enforcement hearing summons in the approved form; 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 a person to whom an enforcement hearing summons for an end of trial enforcement hearing is directed is served with the summons 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).

**807 Enforcement hearing after order is made**

- (1) At any time after a money order is made, an enforcement creditor may, without notice to another party, apply to the court, including the court as constituted by a registrar, for an enforcement hearing.
- (2) The application must be supported by an affidavit.
- (3) The registrar must set the date for the enforcement hearing and issue an enforcement hearing summons in the approved form.

**808 Person to whom enforcement hearing summons may be directed and service**

- (1) An enforcement hearing summons may be directed to—
  - (a) an enforcement debtor; or
  - (b) if an enforcement debtor is a corporation—an officer of the corporation; or
  - (c) if an enforcement debtor is a partnership—a partner or a person who has or had the control or management of the partnership business in Queensland.
- (2) An enforcement hearing summons for an end of trial enforcement hearing must be served on the person to whom it is directed as soon as practicable after it is issued.
- (3) Any other enforcement hearing summons must be served on the person to whom it is directed personally or by prepaid ordinary post at least 14 days before the day set for the enforcement hearing.

**809 Requirements under enforcement hearing summons**

- (1) The person to whom an enforcement hearing summons is directed must—
  - (a) attend before the court issuing the summons, including the court as constituted by a registrar, at the time and place stated in the summons—
    - (i) to give information and answer questions; and

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- (ii) to produce the documents or things stated in the summons; and
  - (b) complete a statement on oath of the enforcement debtor's financial position in the approved form; and
  - (c) forward the sworn statement to the enforcement creditor within 14 days after service of the summons or before the day of the enforcement hearing, whichever happens first.
- (2) If the enforcement debtor receives regular payments, for example, wages or social security benefits, the person to whom the enforcement hearing summons is directed must, in the statement of financial position include—
  - (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) 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.

**810 Subpoena**

- (1) On application by an enforcement creditor or enforcement debtor, the court may issue a subpoena in the approved form to a person having relevant knowledge about the circumstances of an enforcement debtor.
- (2) A person required to attend an enforcement hearing by subpoena may be served with the subpoena by ordinary service at least 14 days before the day set for the enforcement hearing.<sup>170</sup>

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<sup>170</sup> See chapter 11 (Evidence), part 4 (Subpoenas) for other provisions, including a requirement for conduct money, that apply to a subpoena under this rule.

- (3) Rule 419<sup>171</sup> applies to a person required to attend an enforcement hearing by subpoena.

### **811 Conduct money**

- (1) This rule applies to a person required by summons to attend an enforcement hearing in a district other than a district in which the person resides or carries on business.
- (2) Conduct money must be offered to the person when the person is served with the summons.
- (3) The amount of conduct money is the amount required to be paid to a witness attending before the court under a subpoena under rule 419.
- (4) An affidavit accompanying the application for the enforcement hearing summons must contain an undertaking by the applicant to offer to pay conduct money to a person summoned.

### **812 Examination at enforcement hearing**

At an enforcement hearing, a person summoned to attend may be examined about an enforcement debtor's property and other means of satisfying the order debt.

### **813 Order for enforcement hearing outside district**

- (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

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171 Rule 419 (Conduct money)

- (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) the registrar of the court that issues a summons under paragraph (b) must forward to the registrar of the court where the money order was made a copy of—
  - (i) the summons; and
  - (ii) any documents filed in relation to the summons; and
  - (iii) the record of any enforcement hearing held and a copy of any order made.

#### **814 Enforcement hearing warrant**

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

delivered in custody until the court or the enforcement officer directs otherwise.

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

### **815 Failure concerning financial position statement or enforcement hearing**

- (1) This rule applies if a person to whom an enforcement hearing summons is directed fails, without lawful excuse, to complete and forward a statement of the enforcement debtor's financial position as required by rule 809.
- (2) This rule also 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.
- (3) The court may treat the person's refusal or failure as a contempt of court.
- (4) In this rule—

*lawful excuse* includes a lawful claim of privilege.

### **816 Orders at enforcement hearing**

- (1) At an enforcement hearing, the court may—



- (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 filed.
  - (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.

### **818 Deceased enforcement debtor**

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.

### **819 Application to set aside enforcement**

- (1) An enforcement debtor or another person affected by an enforcement warrant may apply to the court to set it aside or to stay enforcement at any time.
- (2) The filing of the application does not stay the operation of an enforcement warrant.

### **820 Issue and enforcement of enforcement warrant**

- (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,<sup>172</sup> 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.
- (3) The registrar must give the enforcement warrant to the enforcement creditor to be enforced, unless the warrant is an enforcement warrant for the seizure and sale of property.<sup>173</sup>

## **821 Renewal of enforcement warrant**

- (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 creditor or, if the original warrant was an enforcement warrant for the seizure and sale of property, 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

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<sup>172</sup> 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.

<sup>173</sup> See rule 828 (Seizure of property under enforcement warrant).

all purposes of the warrant having been renewed for the period.

## **822 Return of particular enforcement warrant**

The registrar or a person who obtains an enforcement warrant for the seizure and sale of property may require the enforcement officer—

- (a) to write on the warrant a statement of the steps the enforcement officer has taken under the warrant; and
- (b) to send a copy of the statement to the person who obtained the warrant; and
- (c) to file a copy of the statement in the registry.

## **823 Priority of enforcement warrants**

- (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.

## **824 Enforcement throughout Queensland**

Subject to rules 825 and 826, an enforcement warrant issued out of any registry of any court is, without more, enforceable throughout the State.

**825 Concurrent enforcement warrants—Magistrates Court**

- (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.

**826 Enforcement beyond the district**

- (1) This rule applies if an enforcement warrant for the seizure and sale of property 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
  - (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.

## **827 Cross orders**

- (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**

### **828 Seizure of property under enforcement warrant**

- (1) 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.<sup>174</sup>
- (2) The registrar must give the enforcement warrant to an enforcement officer to be enforced.

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<sup>174</sup> 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 and dealings), part 4 (Dealings affecting land), division 11 (Writs of execution).

- (3) An enforcement officer must—
  - (a) have the warrant in the enforcement officer's possession when enforcing the warrant; and
  - (b) show the warrant to any person claiming an interest in the property to be seized.
- (4) Actual seizure is not necessary to authorise the sale of real property under an enforcement warrant.
- (5) If there is an advertisement of a notice about real property under rule 834, an enforcement officer is taken to have seized the real property for the purposes of these rules.
- (6) An enforcement officer must send a copy of the notice by prepaid post to the enforcement debtor at the enforcement debtor's last known address.

## **829 Order of selling property**

- (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, on the application of an enforcement officer or enforcement creditor, made without notice to an enforcement debtor, the court may order an enforcement officer to seize or sell property in a different order.
- (3) An enforcement officer may seize and sell an item of property even though the enforcement officer considers that its value exceeds the amount recoverable, but the enforcement officer must not in that case seize and sell additional items.

## **830 Payment by enforcement debtor before sale**

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.

**831 Storage before sale**

- (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.

**832 Nature of sale**

- (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;<sup>175</sup> and
  - (b) at a place and in a way appearing to the enforcement officer to be suitable for a beneficial sale of the property.
- (2) The public auction may be conducted by the enforcement officer or a person authorised by the enforcement officer.
- (3) Property sold by public auction must be sold under the following conditions of sale—
  - (a) for goods, if the person conducting the auction 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;

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<sup>175</sup> See also rule 831 (Storage before sale).

- (c) if the person conducting the auction 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.
- (4) 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.
- (5) The application must be supported by affidavit.
- (6) If the applicant is a party, the applicant must also serve the enforcement officer with the application.
- (7) 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.
- (8) 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) if no bid was made at the auction—for an amount the enforcement officer considers is a reasonable amount for the property; or
- (c) in accordance with a court order.<sup>176</sup>
- (9) 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.

### **833 Sale at best price obtainable**

- (1) This rule applies if the enforcement debtor's property has not been sold under rule 832.

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<sup>176</sup> See rule 833 (Sale at best price obtainable), particularly subrule (4).

- (2) An enforcement officer or an enforcement creditor 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) Unless the court orders otherwise, the enforcement debtor must be served with the application.

### **834 Advertising**

- (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.<sup>177</sup>
- (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) Also, if seized property is put up for sale at a public auction to be conducted by a person other than an enforcement officer—
  - (a) it is sufficient for a notice under subrule (1) to contain only the details reasonable and usual for a public auction of property of the same nature as the seized property; and
  - (b) subrule (4) does not apply and advertisement of the notice may be done in the way reasonable and usual for a public auction of property of the same nature as the seized property; and
  - (c) the enforcement officer may require any other advertising the enforcement officer considers reasonable.
- (4) In this rule—

*advertisement*, of a notice, means—

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<sup>177</sup> For real property, see also rule 828(6) (Seizure of property under enforcement warrant).

- (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.

**835 Postponement of sale**

- (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.

**836 Accountability for, and distribution of, money received**

- (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 as soon as practicable after receiving the money, whether before or after the seizure of the property.

- (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.

### **837 Reserve price provisions**

- (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.

## **Part 5 Enforcement warrants for redirection of debts**

### **Division 1 General**

#### **839 Application of pt 5**

This part does not apply to—

- (a) redirection of earnings;<sup>178</sup> or
- (b) an order for the payment of money into court.

#### **840 Debts that may be redirected under enforcement warrant**

- (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, 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.

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<sup>178</sup> See part 6 (Enforcement warrants for redirection of earnings).

- (4) Subrule (3) does not apply to a regular redirection under division 2.

**841 Attendance of, or information about, the enforcement debtor**

The court may order an enforcement hearing under part 2<sup>179</sup> to decide whether to order that an enforcement warrant authorising redirection of an enforcement debtor's debt be issued.

**842 When debt redirected under enforcement warrant**

- (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 of a regular debt belonging to an enforcement debtor from a financial institution.

**843 Payment to enforcement debtor despite redirection**

- (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.

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<sup>179</sup> Part 2 (Enforcement hearings), particularly rules 808 (Person to whom enforcement hearing summons may be directed and service), 809 (Requirements under enforcement hearing summons) and 810 (Subpoena)

- (2) A court may order that, for this part, the redirected debt be reduced to the extent of its satisfaction.

**844 Third person disputes liability**

- (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.

**845 Claim by other person**

- (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.

**846 Discharge of the third person**

- (1) A payment to an enforcement creditor made by a third person in compliance with an enforcement warrant is a valid discharge of the third person'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

### 847      Application of div 2

- (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.

### 848      Procedure for issue of enforcement warrant for regular redirection

- (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 terms.
- (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.

### 849      Content of enforcement warrant for regular redirection

In an enforcement warrant for regular redirection, the court must, in addition to the details required by rule 820,<sup>180</sup> specify the following—

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180 Rule 820 (Issue and enforcement of enforcement warrant)

- (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.

**850 Service of enforcement warrant for regular redirection**

- (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.

**851 Financial institution to make payments**

- (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 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.

**852 Enforcement debtor not to defeat enforcement warrant**

- (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.
- (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.

**853 No other enforcement while regular redirection**

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.

**854 Setting aside, suspending or varying enforcement warrant for regular redirection**

- (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;



- (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 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.

### **857 Attendance of, or information about, the enforcement debtor**

For deciding whether to issue an enforcement warrant authorising redirection of an enforcement debtor's earnings, the court may—

- (a) order an enforcement hearing under part 2;<sup>182</sup> or
- (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*).

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<sup>182</sup> Part 2 (Enforcement hearings), particularly rules 808 (Person to whom enforcement hearing summons may be directed and service), 809 (Requirements under enforcement hearing summons) and 810 (Subpoena)

**858 Content of enforcement warrant redirecting earnings**

- (1) In an enforcement warrant authorising the redirection of earnings, the court must, in addition to the details required by rule 820,<sup>183</sup> 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.
- (2) An enforcement warrant authorising the redirection of earnings must be in the approved form.

**859 Service of enforcement warrant redirecting earnings**

- (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.

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183 Rule 820 (Issue and enforcement of enforcement warrant)

- (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.

### **860 Employer to make payments**

- (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<sup>184</sup> 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 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.

### **861 No enforcement while redirection of earnings**

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.

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<sup>184</sup> *Administration charge* is defined in schedule 4 (Dictionary). The amount of the charge is fixed under these rules.

**862 Setting aside, suspending or varying enforcement warrant redirecting earnings**

- (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.

**863 Cessation of enforcement warrant redirecting earnings**

- (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.

**864 Two or more warrants redirecting earnings in force**

- (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.

**865 Person served is not enforcement debtor's employer**

- (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) to the registrar and the enforcement creditor.
- (3) To prevent doubt, it is declared the person is not bound by the warrant.

**866 Person ceases to be enforcement debtor's employer**

- (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.

## **867 Directions**

- (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.

## **Part 7 Order for payment of order debt by instalments**

### **868 Order may authorise payment by instalments**

- (1) A court may make an order authorising satisfaction of an order debt by instalment payments (an *instalment order*).
- (2) A court may make the instalment order—
  - (a) when making a money order; or
  - (b) on the application of a party (the *applicant*), at any later time before the money order has been satisfied.
- (3) The application may be made without notice to any other party.

- (4) However, if the application is made without notice to another party and an instalment order is made on the application, the applicant must serve the instalment order on the other party.
- (5) If a party—
  - (a) is served with an instalment order under subrule (4); and
  - (b) was not before the court when the instalment order was made;the party may apply to the court, on notice to the applicant, to set aside or vary the instalment order.
- (6) If the applicant was not before the court when an order setting aside or varying the instalment order was made, the party who applied for the order must serve the order on the applicant.

### **869 Prerequisites for instalment order**

- (1) In deciding whether to make an instalment order, 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, making the order would be consistent with the public interest in enforcing money orders efficiently and expeditiously.
- (2) In deciding the amount and timing of the instalments, the court must be satisfied that the instalment order will not impose unreasonable hardship on the enforcement debtor.
- (3) However, an enforcement hearing is not necessary before the court makes the instalment order.

**870 No enforcement warrant to issue while instalment order**

Unless the court orders otherwise, while an instalment order is in force, no enforcement warrant may be issued in relation to the money order to which the instalment order relates.

**871 Discharge or variation of instalment order**

- (1) The court may, on the application of a party, set aside, suspend or vary an instalment order.
- (2) An order setting aside, suspending or varying the instalment order must be served on any other party not present when the order was made.
- (3) An order suspending or varying the instalment order does not come into force until the end of 7 days after the order was made, or if the order is required to be served under subrule (2), the last day on which the order is served.

**872 Cessation of instalment order**

- (1) An instalment order ceases to have effect if—
  - (a) the order debt is satisfied; or
  - (b) the instalment order is set aside or expires according to its conditions; or
  - (c) the enforcement debtor fails to make 2 consecutive payments; or
  - (d) unless the court orders otherwise, an enforcement warrant is issued in relation to the order debt.
- (2) If an instalment order ceases to have effect under subrule (1), other than by an order made in the presence of the enforcement debtor, the enforcement creditor must give notice to the enforcement debtor that the instalment order has ceased to have effect.
- (3) The notice must be in the approved form.
- (4) The enforcement creditor must file a copy of the notice.



- (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.

**877 Enforcement debtor dealing with charged property**

- (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.

**878 Issuer dealing with charged property**

- (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.

**879 Application to enforce charge**

An application to enforce an enforcement warrant imposing a charging order must be made in the proceeding in which the warrant is issued.

**880 Partnership property**

- (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<sup>185</sup> 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 and stop orders**

### **881 Money in court**

- (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 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.

### **882 Stop orders on money and securities in court**

- (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.

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185 *Partnership Act 1891*, section 26 (Procedure against partnership property for a partner's separate judgment debt)

- (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**

### **883      Application of pt 10**

This part does not apply to a Magistrates Court.

### **884      General provisions relating to receivers apply**

Chapter 8, part 3<sup>186</sup> applies to receivers appointed to enforce a money order.

### **885      Enforcement of a money order**

A receiver may be appointed in an enforcement warrant even though no other proceeding has been taken for enforcement of the money order to which the warrant relates.

### **886      Relevant considerations for appointment**

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.

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186 Chapter 8 (Preservation of rights and property), part 3 (Receivers)

**887 Inquiry**

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.

**888 Receiver's powers**

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****889 Return of enforcement warrant**

- (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 registrar or 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**

#### **890      Definitions for ch 20**

In this chapter—

*enforcement warrant* means a warrant issued under this chapter to enforce a non-money order.

#### **891      Enforcement of non-money orders**

- (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.

#### **892      Enforcement by or against a non-party**

- (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.

#### **893      Amount recoverable from enforcement**

The costs of enforcement of a non-money order are recoverable as part of the order.

**894 Enforcement period**

- (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.

**895 Stay of enforcement**

- (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**

### **896 Order for possession of land**

An order for the possession of land may be enforced by either or both of the following—

- (a) an enforcement warrant under rule 915;<sup>187</sup>
- (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.

### **897 Order for delivery of or payment for goods**

(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;<sup>188</sup>
- (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.

### **898 Order to perform or abstain from an act**

(1) This rule applies to an order if—

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187 Rule 915 (Enforcement warrant for possession)

188 Rule 916 (Enforcement warrant for delivery)

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- (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;<sup>189</sup>
  - (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.

**899 Substituted performance**

- (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.

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189 Rule 917 (Property that may be seized under enforcement warrant)

**900 Undertakings**

- (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.

**901 Attendance of individuals**

- (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.

## **902 Attendance of corporation**

- (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.

## **903 Effect on power to punish for contempt**

Nothing in rule 901 or 902 affects the court's power to punish for contempt.

**904 Prerequisite to enforcement by contempt or seizing property**

- (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;<sup>190</sup> 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.

**905 Conditional order**

- (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—

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<sup>190</sup> See rules 106 (How personal service is performed) and 107 (Personal service—corporations).



**908 Issue and enforcement of enforcement warrant**

- (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,<sup>191</sup> the warrant ends; and
  - (c) what is authorised under the warrant; and
  - (d) the amount recoverable under the warrant; and
  - (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.

**909 Renewal of enforcement warrant**

- (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.

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<sup>191</sup> 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.

- (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.

### **910 Return of enforcement warrant**

The registrar or a person who obtains an enforcement warrant may require the enforcement officer, within the time specified—

- (a) to write on the warrant a statement of the steps the enforcement officer has taken under the warrant; and
- (b) to send a copy of the statement to the person who obtained the warrant; and
- (c) to file a copy of the statement in the registry.

### **911 Priority of enforcement warrants**

- (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.

**912 Enforcement throughout Queensland**

An enforcement warrant issued out of any registry of any court is, without more, enforceable throughout the State.

**Part 4 Enforcement warrants for possession****913 Prerequisites to enforcement warrant for possession**

- (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 under a lease or tenancy agreement, an enforcement warrant under rule 915 may be issued only if the court gives leave.

**914 Procedure**

- (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 under a lease or tenancy agreement; and
  - (b) an affidavit about compliance with rule 913.
- (2) An affidavit 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) The affidavit mentioned in subsection (1)(a) must be made not earlier than 2 business days before the date of the application.

**915 Enforcement warrant for possession**

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****916 Enforcement warrant for delivery**

- (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 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 7                      Contempt**

### **Division 1                Preliminary**

#### **921      Definition for pt 7**

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**

#### **922      Arrest**

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.

#### **923      Custody**

- (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.

**924 Hearing**

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****925 Application of div 3**

- (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.

**926 Procedure under div 3**

- (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.

## **927 Arrest**

- (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.

## **928 Application by registrar**

The court may by order direct the registrar to apply to the court for a respondent to be punished for contempt.

## **Division 4 General**

### **929 Warrant**

- (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.

### **930 Punishment**

- (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 individual by 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.

### **931 Imprisonment**

- (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.

### **932 Costs**

The costs of a proceeding for punishment for contempt are within the court's discretion whether a specific punishment is imposed or not.



**936 Enforcement of warrant for defendant's arrest**

- (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 an appropriately qualified person authorised in writing by the enforcement officer.
- (3) Receipt of a facsimile of a warrant is sufficient authority for the enforcement officer or other person to enforce the warrant.
- (4) In this rule—

*appropriately qualified person*, for a person who may be authorised to enforce a warrant, includes having the qualifications, experience or standing appropriate to enforce the warrant.

*Example—*

an enforcement officer of another court

**937 Costs of enforcement**

- (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).

**938 Service of warrant and claim**

- (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.

**939 Record of enforcement**

A person who enforces a warrant for the arrest of a defendant must write on the warrant the time and place of enforcement.

**940 Procedure after arrest**

- (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.

**941 Release of defendant**

- (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.

## **942 Court powers**

- (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<sup>192</sup> and give any direction it considers appropriate for the conduct of the proceeding.

### **943 Failure to comply with conditions**

- (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.

### **944 Review**

- (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

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192 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.

#### **945 Restriction on further applications**

- (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.

#### **946 Costs**

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.

## **Part 9 Enforcement officer**

#### **947 Return of enforcement warrant**

- (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 registrar or 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 20A Reciprocal enforcement of foreign judgments**

### **Part 1 Preliminary**

#### **947A Definitions for ch 20A**

In this chapter—

*Commonwealth Act* means the *Foreign Judgments Act 1991* (Cwlth).

*judgment* means a judgment to which the Commonwealth Act, part 2<sup>193</sup> applies.

*judgment creditor* see the Commonwealth Act, section 3.<sup>194</sup>

*judgment debtor* see the Commonwealth Act, section 3.

#### **947B Application of rules and practices of court**

Except as otherwise provided in the Commonwealth Act and this chapter, these rules and the general practice of the court apply, with necessary changes, in relation to the matters to which this chapter applies.

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193 Commonwealth Act, part 2 (Reciprocal enforcement of judgments)

194 Commonwealth Act, section 3 (Interpretation)

## **Part 2**                      **Reciprocal enforcement of foreign judgments**

### **947C Definition for pt 2**

In this part—

*the court* means the Supreme Court of Queensland.

### **947D Application for registration of judgment**

- (1) An application to the court for registration of a judgment may be made without notice to any person or on written notice given to the judgment debtor.
- (2) The court may order that the judgment creditor give written notice of the application to the judgment debtor in the way the court considers appropriate.

### **947E Evidence in support of application**

- (1) An application for registration of a judgment must be supported by an affidavit—
  - (a) exhibiting a certified copy of the original court's judgment under its seal; and
  - (b) specifying the regulation under the Commonwealth Act that extends part 2 of the Commonwealth Act to the country of the original court or to the original court; and
  - (c) specifying the following particulars—
    - (i) the full name and last known address of the judgment creditor and judgment debtor;
    - (ii) the nature of the causes of action to which the judgment relates;
    - (iii) that a regulation has not been made under section 13<sup>195</sup> of the Commonwealth Act applying the section to the country of the original court;

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195 Section 13 (Money judgments unenforceable if no reciprocity) of the Commonwealth Act

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- (iv) that the judgment has not been wholly satisfied or, if the judgment has been partly satisfied, the amount in respect of which it remains unsatisfied;
- (v) that there is no reason why the judgment could not be enforced in the country of the original court;
- (vi) the costs of registration of the judgment incurred by the applicant;
- (vii) if the amount of the judgment is expressed in a currency other than Australian currency—whether the judgment creditor wishes the judgment to be registered in the currency in which it is expressed or in Australian currency;
- (viii) if the judgment creditor states under subparagraph (vii) that the judgment creditor wishes the judgment to be registered in Australian currency—the equivalent amount in Australian currency based on the rate of exchange mentioned in section 6(11)(b) of the Commonwealth Act;

*Note—*

See also section 6(11A) and (11B) of the Commonwealth Act.

- (ix) if interest is payable on the judgment under the law of the country of the original court and the interest is not specified in the judgment—the rate of interest;
- (x) if the judgment is a judgment of a court of Papua New Guinea—the amount (if any) payable under the judgment that is recoverable Papua New Guinea income tax or non-recoverable tax;
- (xi) if the judgment is a judgment of a court of New Zealand—that it was not given in a proceeding, or part of a proceeding, in which a matter for determination arose under section 36A, 98H or 99A of the *Commerce Act 1986* (NZ).

- (2) If the certified copy of the judgment exhibited with the affidavit is not in the English language, a translation of the judgment must be filed with the affidavit.
- (3) The translation must be properly certified by a person who is competent to make the translation into the English language.
- (4) The person making the affidavit may state the particulars mentioned in subrule (1)(c) as the belief of the person, giving the sources of the person's information and the grounds of the person's belief.

**947F Security for costs of application**

The court may order that a judgment creditor who has made application for registration of a judgment give security for the costs of any proceeding that may be brought under section 7<sup>196</sup> of the Commonwealth Act to set aside registration of the judgment.

**947G Order for registration**

An order for the registration of a judgment must be in the approved form.

**947H Register of judgments**

The registrar must keep a register of registered judgments.

**947I Registration of judgments**

- (1) The registrar must, immediately after the court orders registration of a judgment, register the judgment by entering in the register the following particulars of the judgment—
  - (a) the full name and last known address of the judgment creditor and judgment debtor;
  - (b) the amount payable under the judgment after deducting any amount paid in part satisfaction of the judgment;

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196 Section 7 (Setting aside a registered judgment) of the Commonwealth Act

- (c) any interest that, under the law of the country of the original court, has become payable under the judgment up to the time of registration.
- (2) The registrar must, at the same time, also record the following details in the register—
  - (a) the reasonable costs of, and incidental to, registration of the judgment;
  - (b) any special directions contained in the order for registration.

**947J Notice of registration**

- (1) The judgment creditor under a registered judgment must, within 28 days from registration of the judgment or the period as extended by the court, serve notice of registration of the judgment on the judgment debtor.
- (2) The notice must be in the approved form.

**947K Details of service to be written on notice**

- (1) A person who serves a notice of registration of a judgment on a judgment debtor must, within 3 days of service of the notice or the period as extended by the court, write on the duplicate notice, or a copy of the notice—
  - (a) the day of service; and
  - (b) the way in which the notice was served.
- (2) A judgment creditor can not enforce a judgment, without the leave of the court, if subrule (1) is not complied with in relation to the judgment.
- (3) An affidavit of service of the notice must state the day on which subrule (1) was complied with.

**947L Application to set aside registration of judgment**

An application to set aside the registration of a judgment must—

- (a) be made within the period stated in the court's order for registration of the judgment or the period as extended by the court; and
- (b) be supported by an affidavit setting out with particularity the grounds on which the application is made.

### **947M Enforcement of judgment**

- (1) A judgment creditor who wishes to enforce a registered judgment must file with the registrar—
  - (a) an affidavit of service of the notice of registration of the judgment; and
  - (b) all orders made by the court in relation to the judgment.
- (2) The form of enforcement warrant used in relation to the enforcement of a registered judgment must be amended, in a way approved by the registrar, by—
  - (a) stating that the judgment is a registered judgment; and
  - (b) specifying the date of, and the amount payable under, the judgment.
- (3) If a registered judgment is enforced, the registrar must, as soon as practicable after the return of the warrant into court, enter details of the enforcement in the register of registered judgments.

## **Part 3 Reciprocal enforcement of Australian judgments**

### **947N Certificate of judgment**

- (1) An application under section 15(1)<sup>197</sup> of the Commonwealth Act in relation to a judgment may be made without notice to

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<sup>197</sup> Section 15 (Issue of certificates of judgments obtained in Australian courts) of the Commonwealth Act

any person.

- (2) The application must be made—
  - (a) in the proceeding in which the judgment was obtained; and
  - (b) by filing a draft of the certificate sought and a supporting affidavit.
- (3) The affidavit must include all information that would enable the certificate to be issued.
- (4) For section 15(1)(b) of the Commonwealth Act, the certificate must be in the approved form.

## Chapter 21 Interpleader orders

### Part 1 Interpretation

#### 948 Definitions for ch 21

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.<sup>198</sup>

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198 *Supreme Court of Queensland Act 1991*, section 83 (Interpleader orders)

*property* means a debt or personal property subject to a claim under this chapter.

*stakeholder* means an applicant under rule 949.

## **Part 2                      Stakeholder’s interpleader**

### **949      Stakeholder’s interpleader**

- (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**

### **950      Enforcement officer’s interpleader**

- (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.

**951 Failure to give notice of claim**

- (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.

**952 Notice to enforcement creditor**

- (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.

**953 Admission of claim**

- (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—

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- (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.

**954 Enforcement officer's interpleader application**

- (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.<sup>199</sup>

**955 Action against enforcement officer or enforcement creditor**

Nothing in this chapter affects a right of the enforcement debtor to bring a claim against the enforcement officer or the enforcement creditor.

## **Part 4 Interpleader orders**

**956 Default by claimant**

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.

**957 Neutrality of applicant**

- (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.

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<sup>199</sup> See rule 17 (Contact details and address for service).

- (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.

**958 Trial**

If, in a proceeding for relief by way of interpleader, the court directs the trial of an issue, chapter 13<sup>200</sup> applies to the trial with necessary changes and subject to directions the court may give.

**959 Disposal of money in court**

If the enforcement officer has paid money into court under rule 953(1)(b), 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**

##### **960 Application of div 1**

- (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.

##### **961 Layout**

- (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
    - (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 10mm 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 1.8mm (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.

**962 Figures may be used**

A date, amount or number stated in a document may be stated in figures.

**963 Alterations**

- (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.

**964 Serial number**

- (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) The court serial number must start with—
  - (a) for the Supreme Court—the letter ‘S’; or
  - (b) for the District Court—the letter ‘D’; or
  - (c) for a Magistrates Court—the letter ‘M’.
- (4) 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.
- (5) 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.

## **965 Copies**

The court may give leave for a fax or other copy of a document to be used.

## **966 Giving copies to other parties**

- (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**

### **967 How documents may be filed**

- (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.

### **968 Filing documents personally**

- (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,<sup>201</sup> 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.

### **969 Filing documents by post**

- (1) This rule applies to a document filed by post.
- (2) The person filing the document must ensure it is sent by prepaid 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.
- (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

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201 See rule 436 (Irregularity).

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.

### **970 Affidavit of debt by post**

An affidavit about a debt filed by post may be relied on only until the end of the fifth business day after the day it is sworn.

### **971 Filing fees**

- (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.
- (3) An individual may apply to the registrar for an order exempting the individual from payment of a relevant fee on the ground that, having regard to the individual's financial position, it is clearly in the interests of justice to make the order.
- (4) The registrar may, by order, exempt an individual from payment of a relevant fee if the registrar considers that, having regard to the individual's financial position, it is clearly in the interests of justice to make the order.
- (5) The registrar may decide the application summarily and without extensive investigation.
- (6) In having regard to the individual's financial position, the registrar must have regard to the following matters—
  - (a) if the individual receives an income-tested pension under the *Social Security Act 1991* (Cwlth), the type and amount of the pension;
  - (b) how much the individual is paying as rent for his or her accommodation;

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- (c) whether a spouse or close relative may be willing to give the individual financial help;
  - (d) any other matter the registrar considers relevant.
- (7) The individual, if dissatisfied with a registrar's decision on the individual's application may apply to a judge for a review of the decision.
- (8) On an application for a review of the registrar's decision, the judge conducting the review may—
- (a) consider the application with or without a hearing; and
  - (b) consider anything the registrar considered under subrule (6); and
  - (c) make the order the judge considers appropriate.
- (9) In this rule—
- relevant fee* means the fee payable under the *Uniform Civil Procedure (Fees) Regulation 1999*, schedule 1, item 1(1)(a), 1(2)(a) or 1(3)(a) for filing any of the following—
- (a) a claim, including a writ of admiralty;
  - (b) any application that is an originating process; or
  - (c) any document initiating any appeal, including a case stated.

**972 Court fees if state-related party**

- (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.

### **973 Scandalous material**

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.<sup>202</sup>

## **Division 3 Other provisions about documents**

### **974 Form of notices**

A notice required or permitted under these rules must be in documentary form, unless the court gives leave for notice to be given orally.

### **975 Use of approved forms**

The approved forms must be used for the purposes for which they are applicable with the necessary changes circumstances may require.<sup>203</sup>

## **Division 4 Electronic court documents**

### **975A Application of div 4**

This division applies only to Magistrates Courts.

### **975B Definitions for div 4**

In this division—

***approved entity*** means an entity that—

(a) is either—

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202 See also rule 15 (Registrar may refer issue of originating process to court).

203 Substantial compliance with an approved form is sufficient—see the *Acts Interpretation Act 1954*, section 49(1).

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- (i) a solicitor or firm of solicitors; or
  - (ii) an entity approved by a practice direction to have documents electronically filed; and
- (b) has an agreement with a service provider for the service provider to electronically file a document for the entity.

***electronically file*** means file by electronic or computer-based means.

***electronic judgment*** means a judgment under rule 283 given as a result of a request for judgment that is electronically filed.

***service provider*** means an entity, approved by a practice direction, to electronically file documents prepared by approved entities.

**975C Electronic filing**

- (1) A document may be electronically filed if—
- (a) the document is—
    - (i) prepared by an approved entity; and
    - (ii) formatted in a way that would result in the document complying with rule 961(1)(c), (d) and (e) if a paper copy were made of the document; and
    - (iii) sent by electronic or computer-based means to a registry by a service provider for filing; and
  - (b) a practice direction prescribes the document as a document that may be electronically filed; and
  - (c) a practice direction prescribes the registry as a registry at which documents may be electronically filed.
- (2) A document that may be electronically filed is taken to have been filed when the registry sends to the service provider—
- (a) for a document that is a claim—a court file number for the relevant proceeding; or
  - (b) for any other document—a document number for the document.

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- (3) A registrar may refuse to electronically file a document if the document does not comply with these rules or may not otherwise be filed.<sup>204</sup>
- (4) If a registrar refuses to electronically file a document, the registrar must advise the service provider that the registrar has refused to file the document.
- (5) The following rules do not apply to a document that is electronically filed—
  - (a) rule 19;
  - (b) rule 20;
  - (c) rule 961.
- (6) Rule 963 applies to a document that is electronically filed as if the rule required the filing of a paper copy of the altered document.

**975D Responsibility for document electronically filed**

- (1) The approved entity that prepared a document that is electronically filed remains responsible for the document.
- (2) However, the service provider is responsible for payment of any fee prescribed for filing the document.
- (3) Rule 971(1) does not apply for a document electronically filed.

**975E Retention and status of document electronically filed**

- (1) A document electronically filed at the registry—
  - (a) must be retained in electronic form by the registry; and
  - (b) is taken for all purposes to be a document in a court file.
- (2) If, under rule 981, a person asks to inspect a document that was electronically filed, the person may inspect the document in either electronic or paper form, at the discretion of the registrar.

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204 See rule 436 (Irregularity).

**975F Approved entity must be sent a copy of document electronically filed**

- (1) After a document prepared by an approved entity is electronically filed, the service provider must send the approved entity, by electronic or computer-based means, a copy of the document.
- (2) The copy of the document must include the following—
  - (a) an image of the seal of the court;
  - (b) for a document that is a claim—the court file number for the relevant proceedings;
  - (c) for a document other than a claim—the document number.
- (3) A paper copy of the document sent to the approved entity is taken for all purposes, including service, to be a copy of the document in the court file issued by the court and stamped with the court's seal.

**975G If both electronic and paper documents filed**

- (1) This rule applies if in a proceeding—
  - (a) 1 or more documents are electronically filed; and
  - (b) at least 1 document is filed in paper form.
- (2) The registrar must—
  - (a) make a paper copy of any document electronically filed; and
  - (b) maintain the court file as if all documents filed in the proceeding had been filed in paper form.

**975H Request for electronic judgment under r 283**

- (1) This rule applies if—
  - (a) a claim has been electronically filed; and
  - (b) no document in the proceeding has been filed in paper form; and

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- (c) a plaintiff intends to electronically file a request for judgment under rule 283.
- (2) Rule 282 does not apply, unless the court, as constituted by a registrar, orders otherwise.
- (3) At the time the request is electronically filed, the approved entity for the plaintiff must have—
  - (a) an affidavit of service of the claim on the defendant; and
  - (b) an affidavit of debt stating—
    - (i) the debt is still owing; or
    - (ii) if some payment has been made, when payment was made, the amount of the payment and how much of the debt is still owing.
- (4) The request for judgment must—
  - (a) be prepared in a way that would result in the request complying with the approved form if a paper copy were made of the request; and
  - (b) unless rule 282 applies, include the following details obtained from the affidavit of service—
    - (i) the full name of the person who served the claim;
    - (ii) the time, day, date and place of service of the claim on the defendant;
    - (iii) the manner of service on the defendant;
    - (iv) how the defendant was identified;
    - (v) the name of the person before whom the affidavit was sworn;
    - (vi) the date and place the affidavit was sworn; and
  - (c) include the following details obtained from the affidavit of debt—
    - (i) the full name of the person who made the affidavit;
    - (ii) whether the debt is still owing;
    - (iii) if some payment has been made, when payment was made, the amount of the payment and how much of the debt is still owing;

- (iv) the name of the person before whom the affidavit was sworn;
- (v) the date and place the affidavit was sworn.

### **975I Electronic judgment**

- (1) Despite rule 660(1), an order that is an electronic judgment is made by the order being set out in an electronic document, with or without reasons, and sent by electronic or computer-based means to the service provider who electronically filed the request for judgment.
- (2) Despite rule 661(2), an order that is an electronic judgment is filed in the court if the electronic document is included in the court file.
- (3) Without limiting the grounds on which a court may set aside or amend an electronic judgment, or any enforcement of it, the court must set aside an electronic judgment if rule 975H(3) is not complied with.

## **Part 2 Registry**

### **976 Office hours**

- (1) The registry must be open between 9.00a.m. and 4.00p.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 other times.
- (3) The court or the registrar may direct that the registry is to be closed between 1.00p.m. and 2.00p.m.

### **977 Registrar to keep records**

- (1) 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.

- (2) The registrar must not, in relation to a record of the court or another court document (*court record*)—
  - (a) permit any court record to be taken out of the court, unless the court otherwise orders; or
  - (b) issue a subpoena for the production of any court record.
- (3) However, for an appeal to another court, the registrar may forward to the other court records relevant to the appeal.

### **978 Registrar to keep and use seal**

- (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) If a document is required to be served on more than 1 person, service of a copy of the document stamped under subrule (2) is sufficient.

### **979 Issue of commissions**

If an Act or these rules require the court to issue a commission, the registrar must issue the commission.

### **980 Copies of documents**

- (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.

### **981 Searches**

- (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, unless there is not enough information for the registrar to be able to comply with it.
- (4) The registrar may also, on payment of the prescribed fee, issue a certificate of the result of the search.

### **982 Referral to judge or magistrate**

- (1) If a question arises in a matter before a registrar that the registrar considers appropriate for the decision of a judge or a magistrate, the registrar may refer the matter to a judge or a magistrate.
- (2) If a party asks a registrar to refer a matter before the registrar to a judge or a magistrate, the registrar must refer the matter to a judge or a magistrate.
- (3) The judge or magistrate may then dispose of the matter or refer it back to the registrar with the directions the judge or magistrate considers appropriate.

### **983 Admiralty**

- (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 can not 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.

**984 Clerks**

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.

**984A Disposal of exhibits**

- (1) This rule applies to an exhibit held by a court in a finalised proceeding.
- (2) The registrar may give notice in the approved form to a party, the solicitor for a party or any other person who appears to the registrar to be the owner or person entitled to possession of the exhibit, to collect the exhibit from the registry within 28 days.
- (3) If the exhibit is not collected from the registry within 3 months after the notice is given, the registrar may destroy or otherwise dispose of the exhibit in the way the registrar considers appropriate.
- (4) The registrar may apply to the court at any time for an order about the return, destruction or other disposal of an exhibit.
- (5) If the registrar returns, destroys or otherwise disposes of an exhibit under this rule, the registrar must ensure a note is placed on the court file specifying the exhibit and details of the person to whom it was returned or the way in which it was destroyed or otherwise disposed of.

- (6) In this rule—

*exhibit* includes an unfiled document held by the court.

*finalised proceeding* means a proceeding—

- (a) that has been discontinued; or
- (b) in relation to which a party has notified the registrar that the proceeding has been settled or otherwise ended other than by discontinuance or the granting of final relief; or



**986 Change between acting personally and acting by solicitor**

- (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<sup>205</sup> 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 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.

**987 Change of solicitor**

- (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

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205 Rule 17 (Contact details and address for service)

- (b) state in the notice the same details that would be required under rule 17<sup>206</sup> 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.

### **988 Removal of solicitor by court**

- (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.

### **989 Solicitor struck off or suspended**

- (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 applies with necessary changes.

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206 Rule 17 (Contact details and address for service)

**990 Application for leave to withdraw as solicitor**

- (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
    - (ii) file and serve a notice under rule 986(2) 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.

**991 Leave to withdraw as solicitor**

- (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.

**992 Effect of leave to withdraw as solicitor**

- (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.

**993 Withdrawal of town agent**

- (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.

**994 Crown solicitor etc.**

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 Act or ASIC Act**

**995 Rules for proceedings under Corporations Act or ASIC Act**

The rules in schedule 1A apply to a proceeding in the Supreme Court under the Corporations Act or the ASIC Act, and are intended to apply in harmony with similar rules in the Federal Court and other Australian courts.

## **Chapter 24 Transitional provisions**

**996 Transitional—Uniform Civil Procedure Amendment Rule (No. 1) 2004**

- (1) Unless the court otherwise orders, chapter 11, part 5,<sup>207</sup> as inserted by the *Uniform Civil Procedure Amendment Rule (No. 1) 2004*, section 7, applies to an existing proceeding,

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<sup>207</sup> Chapter 11 (Evidence), part 5 (Expert evidence)

other than in relation to an expert appointed before the commencement of this rule.

(2) If a difficulty arises in the application of subrule (1) to a particular proceeding, the court may, on application by a party or on its own initiative, make an order it considers appropriate to resolve the difficulty.

(3) In this rule—

*existing proceeding* means a proceeding started in the court, but not completed, before the commencement of this rule.

**997 Transitional provision—Uniform Civil Procedure  
Amendment Rule (No. 1) 2005**

(1) The scales of costs in schedules 1 and 2, as in force immediately before the commencement of this rule, continue to apply for assessing costs on the standard basis, for existing work done by a solicitor.

(2) In this rule—

*existing work* means work done, before the commencement of this rule, for or in a proceeding.

## **Schedule 1A      Rules for proceedings under Corporations Act or ASIC Act**

rule 995

### **Part 1              Preliminary**

#### **1.1      Short title**

The rules in this schedule may be cited as the Corporations Proceedings Rules.

#### **1.2      Notes in text**

A note in the text of this schedule is part of the schedule.

#### **1.3      Application of these rules and other rules of the court**

- (1) Unless the court otherwise orders, these rules apply to a proceeding in the court under the Corporations Act, or the ASIC Act, that is commenced on or after the commencement of these rules.
- (2) The other rules of the court apply, so far as they are relevant and not inconsistent with these rules, to a proceeding in the court under the Corporations Act, or the ASIC Act, that is commenced on or after the commencement of these rules.
- (3) Unless the court otherwise orders, the rules applying to a proceeding in the court under the Corporations Act, or the ASIC Act, as in force immediately before the commencement of these rules, continue to apply to a proceeding under the Corporations Act, or the ASIC Act, that was commenced before the commencement of these rules.

*Note—*

Under the *Acts Interpretation Act 1954*, section 7, a reference to the Corporations Act includes a reference to the Corporations Regulations.

## Schedule 1A (continued)

**1.4 Expressions used in the Corporations Act**

An expression used in these rules and in the Corporations Act has the same meaning in these rules as it has in the Corporations Act.

*Notes—*

- 1 Expressions used in these rules (including the notes to these rules) that are defined in the Corporations Act include—

*ACN* (short for ‘Australian Company Number’)—see section 9

*ARBN* (short for ‘Australian Registered Body Number’)—see section 9

*ASIC*—see section 9

*body*—see section 9

*body corporate*—see section 9

*books*—see section 9

*company*—see section 9

*corporation*—see section 57A

*daily newspaper*—see section 9

*officer*, in relation to a corporation—see section 9

*officer*, in relation to an entity—see section 9

*official liquidator*—see section 9

*Part 5.1 body*—see section 9

*Part 5.7 body*—see section 9

*register*—see section 9

*registered liquidator*—see section 9

*registered office*—see section 9

*statutory demand*—see section 9.

- 2 This rule applies ‘except so far as the context or subject matter otherwise indicates or requires’: *Acts Interpretation Act 1954*, section 32A (Definitions to be read in context) and section 36, definition of *definition* as applied by the *Statutory Instruments Act 1992*, section 14(1).

## Schedule 1A (continued)

**1.5 Definitions for these rules**

In these rules—

*applicant* means a person claiming relief in a proceeding.

*interlocutory application* means an application in a proceeding.

*originating application* means an application starting a proceeding in the court under the Corporations Act or the ASIC Act.

*respondent* means a person against whom relief is claimed.

*the court* means the Supreme Court of Queensland.

*Note—*

See note 2 to rule 1.4.

**1.6 References to rules and forms**

In these rules—

- (a) a reference to a rule is a reference to a rule in this schedule; and
- (b) a reference to a form followed by a number is a reference to the approved form for these rules having that number.

*Note—*

See note 2 to rule 1.4.

**1.7 Substantial compliance with forms**

- (1) It is sufficient compliance with these rules in relation to a document that is required to be in accordance with a form if the document is substantially in accordance with the form required or has only such variations as the nature of the case requires.
- (2) Without limiting subrule (1), the registrar must not reject a document for filing only because a term used to describe a party in the document differs from the term used in these rules.

**Schedule 1A (continued)**

- (3) This rule does not limit the *Acts Interpretation Act 1954*, section 49.

**1.8 Court's power to give directions**

The court may give directions in relation to the practice and procedure to be followed in a proceeding if it is satisfied, in the circumstances of the proceeding, that—

- (a) provisions of the Corporations Act, the ASIC Act, or the rules of the court do not adequately provide for the practice and procedure to be followed in the proceeding;  
or
- (b) a difficulty arises, or doubt exists, in relation to the practice and procedure to be followed in the proceeding.

**1.9 Calculation of time**

- (1) If, for any purpose, these rules—
- (a) prohibit, permit or require an act or thing to be done within, by, or before the end of; or
- (b) otherwise prescribe, allow or provide for;  
a period of time before or after a particular day, act or event, the period is to be calculated without counting that day, or the day of the act or event, as the case may be.
- (2) Without limiting subrule (1), in calculating how many days a particular day, act or event is before or after another day, act or event, only the first day, or the day of the first act or event, is to be counted.
- (3) If the last day of any period prescribed or allowed by these rules for an act or thing to be done falls on a day that is not a business day in the place where the act or thing is to be or may be done, the act or thing may be done on the first business day in the place after that day.
- (4) In calculating a period of time for the purposes of these rules, the period beginning on 25 December in a year and ending at the end of 1 January in the next year is not to be counted.

**Schedule 1A (continued)**

- (5) Subject to subrules (1) to (4), the *Acts Interpretation Act 1954*, section 38 applies in relation to these rules.

**1.10 Extension and abridgment of time**

Unless the Corporations Act, the ASIC Act, or these rules otherwise provide, the rules of the court that provide for the extension or shortening of a period of time fixed for the doing of any act or thing in relation to a proceeding apply to a proceeding to which these rules apply.

**Part 2 Proceedings generally****2.1 Title of documents in a proceeding—form 1**

The title of a document filed in a proceeding must be in form 1.

**2.2 Originating application and interlocutory application—forms 2 and 3**

- (1) Unless these rules otherwise provide, a person must make an application required or permitted by the Corporations Act to be made to the court—
- (a) if the application is not made in a proceeding already commenced in the court—by filing an originating application; and
  - (b) in any other case—by filing an interlocutory application.
- (2) Unless the court otherwise directs, a person may make an application to the court in relation to a proceeding in respect of which final relief has been granted by filing an interlocutory application in that proceeding.
- (3) An originating application must—
- (a) be in form 2; and

**Schedule 1A (continued)**

- (b) state—
  - (i) each section of the Corporations Act or the ASIC Act, or each regulation of the Corporations Regulations, under which the proceeding is brought; and
  - (ii) the relief sought.
- (4) An interlocutory application must—
  - (a) be in form 3; and
  - (b) state—
    - (i) if appropriate, each section of the Corporations Act or the ASIC Act, or each regulation of the Corporations Regulations, or each rule of court under which the interlocutory application is made; and
    - (ii) the relief sought.

**2.3 Fixing of hearing**

On receiving an originating application or interlocutory application, the registrar—

- (a) must fix a time, date and place for hearing and endorse those details on the originating application or interlocutory application; and
- (b) may seal a sufficient number of copies for service and proof of service.

**2.4 Supporting affidavits**

- (1) Unless the court otherwise directs, an originating application, or interlocutory application, must be supported by an affidavit stating the facts in support of the relief claimed.
- (2) An affidavit in support of an originating application must exhibit a record of a search of the records maintained by ASIC, in relation to the company that is the subject of the

### Schedule 1A (continued)

application carried out no earlier than 7 days before the application is filed.

*Note—*

In an application for winding-up in insolvency on the ground that the company has failed to comply with a statutory demand, the applicant should consider completing form 2, part C.

#### **2.5 Affidavits made by creditors**

Subject to rule 5.4, an affidavit that is to be made by a creditor may be made—

- (a) if the creditor is a corporation—by a director, secretary, or other principal officer of the corporation, or by a person employed by the corporation who is authorised to make the affidavit on its behalf; or
- (b) if the creditor is a company to which a liquidator, provisional liquidator, receiver, administrator or controller has been appointed—by that person; or
- (c) in any other case—by the creditor or a person authorised by the creditor to make the affidavit on behalf of the creditor.

#### **2.6 Form of affidavits**

An affidavit must be in a form that complies with—

- (a) the rules of the court; or
- (b) the rules of the Supreme Court of the State (if any) or Territory (if any) where the affidavit was sworn or affirmed; or
- (c) the rules of the Federal Court of Australia.

#### **2.7 Service of originating application or interlocutory application and supporting affidavit**

- (1) As soon as practicable after filing an originating application and, in any case, at least 5 days before the date fixed for

**Schedule 1A (continued)**

hearing, the applicant must serve a copy of the application and any supporting affidavit on—

- (a) each respondent (if any) to the proceeding; and
  - (b) if the corporation to which the proceeding relates is not a party to the proceeding—the corporation.
- (2) As soon as practicable after filing an interlocutory application and, in any case, at least 3 days before the date fixed for hearing, the applicant must serve a copy of the interlocutory application and any supporting affidavit on—
- (a) each respondent (if any) to the interlocutory application and
  - (b) if the corporation to which the interlocutory application relates is not a party to the interlocutory application—the corporation.

**2.8 Notice of certain applications to be given to ASIC**

- (1) This rule has effect in addition to the requirements of the Corporations Act that, in relation to a proceeding, particular documents are to be served on ASIC or notice of particular matters is to be given to ASIC.
- (2) This rule does not apply to a person making an application if the person is ASIC or a person authorised by ASIC.
- (3) Unless the court otherwise orders, if a person makes an application under a provision of the Corporations Act mentioned in column 1 of the following table, the person must serve on ASIC, a reasonable time before the hearing of the application, a copy of the application and supporting affidavit in respect of the application.

**Column 1  
Provision****Column 2  
Description of application**

section 254E(1)

to validate an issue of shares or confirm its terms

section 266(4)

to extend the time for registration of a charge

## Schedule 1A (continued)

<b>Column 1 Provision</b>	<b>Column 2 Description of application</b>
section 445G(1), (2) and (3)	to avoid or validate a deed of company arrangement
section 449B	to remove an administrator
section 473(2) and (3)	to fix the remuneration of a provisional liquidator or liquidator
section 480	for the release of a liquidator of a company and the deregistration of the company
section 482(1)	for the stay of a compulsory winding-up
section 509(6)	for the deregistration of a company
section 511(1)(b)	if the application is for the exercise of the power that would be exercisable under the Corporations Act, section 482(1) <sup>a</sup> if a company were being wound up by the court—for a stay of the voluntary winding-up
section 532(2)	for leave to be appointed or act as a liquidator
section 536(1)	for an inquiry into the conduct of a liquidator
section 598	in respect of fraud, negligence etc. by a person concerned with a corporation
section 601AH(2)	to reinstate the registration of a company
section 601CC(8)	to restore the name of an Australian body to the register
section 601CL(9)	to restore the name of a foreign company to the register
sections 983A(1) and 983B <sup>b</sup>	to restrain dealings with a futures broker's bank accounts
section 983D <sup>c</sup>	for a further order or directions following an order made under the Corporations Act, section 983A(1) or 983B
section 1317S(2) and (4) <sup>d</sup>	for relief from liability for contravention of a civil penalty provision

## Schedule 1A (continued)

Column 1 Provision	Column 2 Description of application
section 1318(2)	for relief from liability for negligence, default or breach of trust or duty
section 1322(4)	to overcome any irregularity in a proceeding
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a	Corporations Act, section 482 (Power to stay or terminate winding up)
b	Corporations Act, sections 983A (Court may freeze certain accounts) and 983B (Interim order freezing accounts)
c	Corporations Act, section 983D (Further orders and directions)
d	Corporations Act, section 1317S (Relief from liability for contravention of civil penalty provision)

**2.9 Notice of appearance (Corporations Act, s 465C)—form 4**

- (1) A person who intends to appear before the court at the hearing of an application must, before appearing—
  - (a) file—
    - (i) a notice of appearance in form 4; and
    - (ii) if appropriate—an affidavit stating any facts on which the person intends to rely; and
  - (b) serve on the applicant a copy of the notice of appearance and any affidavit not later than—
    - (i) if the person is named in an originating application—3 days before the date fixed for hearing; or
    - (ii) if the person is named in an interlocutory application—1 day before the date fixed for hearing.
- (2) If the person intends to appear before the court to oppose an application for winding-up, the person may include in the notice of appearance the notice of the grounds on which the

**Schedule 1A (continued)**

person opposes the application required by the Corporations Act, section 465C.<sup>208</sup>

- (3) The period prescribed for filing and serving the notice and affidavit required by the Corporations Act, section 465C is the period mentioned in subparagraph (1)(b)(i).

*Note—*

Under the Corporations Act, section 465C, a person may not, without the leave of the court, oppose an application for winding-up unless, within the period prescribed by the rules (see subrule (3) of this rule), the person has filed, and served on the applicant, notice of the grounds on which the person opposes the application and an affidavit verifying the matters stated in the notice.

**2.10 Intervention in proceeding by ASIC (Corporations Act, s 1330)—form 5**

- (1) If ASIC intends to intervene in a proceeding, ASIC must file a notice of intervention in form 5.
- (2) Not later than 3 days before the date fixed for the hearing at which ASIC intends to appear in the proceeding, ASIC must serve a copy of the notice, and any affidavit on which it intends to rely, on the applicant and on any other party to the proceeding.

**2.11 Publication of notices**

If a rule requires a notice in relation to a body to be published in accordance with this rule, the notice must be published once in a daily newspaper circulating generally in the State or Territory where the body has its principal, or last known, place of business.

*Note—*

Under the Corporations Act, certain notices may also be required to be published in the Commonwealth Government Gazette. Nothing in this rule is intended to affect the operation of any provision of the law that requires publication of a notice in that gazette.

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<sup>208</sup> Corporations Act, section 465C (Applicant to be given notice of grounds for opposing application)

**Schedule 1A (continued)****2.12 Proof of publication**

- (1) This rule applies in relation to any matter published in connection with a proceeding.
- (2) Unless these rules otherwise provide, or the court otherwise orders, the person responsible for the publication of the matter, or the person's legal practitioner, must file—
  - (a) an affidavit made by the person, or the person's legal practitioner, that states the date of publication and to which is exhibited a copy of the published matter; or
  - (b) a memorandum signed by the person, or the person's legal practitioner, that states the date of publication and refers to and annexes a copy of the published matter.
- (3) The affidavit or memorandum is prima facie evidence that the publication took place on the date and otherwise as stated in the affidavit or memorandum.

**2.13 Leave to creditor, contributory or officer to be heard**

- (1) The court may grant leave to any person who is, or who claims to be—
  - (a) a creditor, contributory or officer of a corporation; or
  - (b) an officer of a creditor, or contributory, of a corporation; to be heard in a proceeding without becoming a party to the proceeding.
- (2) If the court considers that the attendance of a person to whom leave has been granted under subrule (1) has resulted in additional costs for any party, or the corporation, that should be borne by the person to whom leave was granted, the court may—
  - (a) direct that the person pay the costs; and
  - (b) order that the person not be heard further in the proceeding until the costs are paid or secured to the court's satisfaction.

**Schedule 1A (continued)**

- (3) The court may order that a person who is, or who claims to be, a creditor, contributory or officer of a corporation be added as a respondent to the proceeding.
- (4) The court may grant leave to a person under subrule (1), or order that a person be added as a respondent to a proceeding under subrule (3)—
  - (a) on application by the person or a party to the proceeding; or
  - (b) on the court's own initiative.
- (5) The court may—
  - (a) appoint a creditor or contributory to represent all or any class of the creditors or contributories on any question, or in relation to any proceeding, before the court, at the expense of the corporation; and
  - (b) remove any person so appointed.

**2.14 Inquiry in relation to corporation's debts etc.**

The court may direct an inquiry in relation to the debts, claims or liabilities, or a class of debts, claims or liabilities, of or affecting a corporation to which a proceeding relates.

**2.15 Meetings ordered by the court**

Subject to the Corporations Act, these rules and any direction of the court to the contrary, regulations 5.6.12 to 5.6.36A of the Corporations Regulations apply to meetings ordered by the court.

## Schedule 1A (continued)

**Part 3**  
**Compromises and  
arrangements in relation to part  
5.1 bodies****3.1 Application of pt 3**

This part applies if an application is made to the court for approval of a compromise or arrangement between a part 5.1 body and its creditors or members, or any class of its creditors or members.

**3.2 Nomination of chairperson for meeting**

Before the hearing of an application under the Corporations Act, section 411(1), (1A) or (1B),<sup>209</sup> the applicant must file an affidavit stating—

- (a) the names of the persons who have been nominated to be the chairperson and alternate chairperson of the meeting; and
- (b) that each person nominated—
  - (i) is willing to act as chairperson; and
  - (ii) has had no previous relationship or dealing with the body, or any other person interested in the proposed compromise or arrangement, except as disclosed in the affidavit; and
  - (iii) has no interest or obligation that may give rise to a conflict of interest or duty if the person were to act as chairperson of the meeting, except as disclosed in the affidavit; and
- (c) the name of the person (if any) proposed to be appointed to administer the proposed compromise or arrangement; and

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<sup>209</sup> Corporations Act, section 411 (Administration of compromises etc.)

**Schedule 1A (continued)**

- (d) that the person does not fall within the Corporations Act, section 411(7)(a) to (f), except as disclosed in the affidavit.

**3.3 Order for meetings to identify proposed scheme**

- (1) An order under the Corporations Act, section 411(1) or (1A) ordering a meeting or meetings in relation to a proposed compromise or arrangement must set out in a schedule, or otherwise identify, a copy of the proposed compromise or arrangement.
- (2) Unless the court otherwise orders, a meeting of members ordered under the Corporations Act, section 411 must be convened, held or conducted in accordance with—
  - (a) the provisions of the Corporations Act, part 2G.2<sup>210</sup> that apply to the members of the company; and
  - (b) the provisions of the plaintiff's constitution that apply in relation to meetings of members and are not inconsistent with the Corporations Act, part 2G.2.
- (3) Unless the court otherwise orders, a meeting of a class of holders of convertible securities ordered under the Corporations Act, section 411 must be convened, held and conducted—
  - (a) in accordance with, and subject to, the applicable provisions of the instrument under which the securities were issued; and
  - (b) as if—
    - (i) the holders were a separate class of members; and
    - (ii) the meeting was a meeting of members convened, held and conducted under subrule (2).

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210 Corporations Act, part 2G.2 (Meetings of members of companies)

## Schedule 1A (continued)

**3.4 Notice of hearing (Corporations Act, ss 411(4) and 413(1))—form 6**

- (1) This rule applies to—
  - (a) an application, under the Corporations Act, section 411(4), for an order approving a proposed compromise or arrangement in relation to a part 5.1 body; and
  - (b) an application, under the Corporations Act, section 413(1),<sup>211</sup> for an order in relation to the reconstruction of a part 5.1 body, or part 5.1 bodies, or the amalgamation of 2 or more part 5.1 bodies.
- (2) Unless the court otherwise orders, the applicant must publish a notice of the hearing of the application.
- (3) The notice must be—
  - (a) in form 6; and
  - (b) published in accordance with rule 2.11 at least 5 days before the date fixed for the hearing of the application.

**3.5 Copy of order approving compromise or arrangement to be lodged with ASIC**

If the court makes an order under the Corporations Act, section 411(1), (1A) or (4), or 413(1), the applicant must, as soon as practicable after the order is made—

- (a) have the order sealed; and
- (b) lodge a copy of the order with ASIC; and
- (c) serve a copy of the order on any person appointed to administer the compromise or arrangement.

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<sup>211</sup> Corporations Act, section 413 (Provisions for facilitating reconstruction and amalgamation of Part 5.1 bodies)

## Schedule 1A (continued)

**Part 4**                    **Receivers and other controllers  
of corporation property  
(Corporations Act, part 5.2)****4.1**    **Inquiry into conduct of controller (Corporations Act, s  
423)**

A complaint to the court under Corporations Act, section 423(1)(b)<sup>212</sup> about an act or omission of a receiver, or a controller appointed by the court, must be made by an originating application seeking an inquiry in relation to the complaint.

**Part 5**                    **Winding-up proceedings  
(including oppression  
proceedings where winding-up  
is sought)****5.1**    **Application of pt 5**

This part applies to the following applications for the winding-up of a company—

- (a) an application under the Corporations Act, part 2F.1<sup>213</sup> in a case of oppression or injustice;
- (b) an application under the Corporations Act, part 5.4 or 5.4A.<sup>214</sup>

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212 Corporations Act, section 423 (Supervision of controller)

213 Corporations Act, part 2F.1 (Oppressive conduct of affairs)

214 Corporations Act, part 5.4 (Winding up in insolvency) or 5.4A (Winding up by the Court on other grounds)

## Schedule 1A (continued)

**5.2 Affidavit accompanying statutory demand (Corporations Act, s 459E(3))—form 7**

For the purposes of the Corporations Act, section 459E(3),<sup>215</sup> the affidavit accompanying a statutory demand relating to a debt, or debts, owed by a company must—

- (a) be in form 7 and state the matters mentioned in that form; and
- (b) be made by the creditor or by a person with the authority of the creditor or creditors; and
- (c) not state a proceeding number, or refer to a court proceeding, in any heading or title to the affidavit.

**5.3 Application for leave to apply for winding-up in insolvency (Corporations Act, s 459P(2))**

An application for leave to apply to the court for an order that a company be wound up in insolvency may be made at the same time as the application for an order that the company be wound up in insolvency is made.

**5.4 Affidavit in support of application for winding-up (Corporations Act, ss 459P, 462 and 464)**

- (1) The affidavit in support of an originating application seeking an order that a company be wound up must be made by the applicant or by a person with the authority of the applicant or applicants.
- (2) If the application is made in reliance on a failure by the company to comply with a statutory demand, the affidavit must—
  - (a) verify service of the demand on the company; and
  - (b) verify the failure of the company to comply with the demand; and

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<sup>215</sup> Corporations Act, section 459E (Creditor may serve statutory demand on company)

## Schedule 1A (continued)

- (c) state whether and, if so, to what extent the debt, or each of the debts, to which the demand relates is still due and payable by the company at the date when the affidavit is made.

*Note—*

Form 7A is an example of the affidavit in support of an application made in reliance on a failure to comply with a statutory demand.

- (3) If the application is made in reliance on the ground mentioned in the Corporations Act, section 461(1)(a),<sup>216</sup> the affidavit must—
  - (a) state whether the company is able to pay all its debts as and when they become due and payable; and
  - (b) refer to the company's most recent balance sheet and profit and loss statement as an exhibit to the affidavit, or explain their absence.
- (4) The affidavit must be made within 7 days before the originating application is filed.

## 5.5 Consent of liquidator (Corporations Act, s 532(9))—form 8

- (1) In this rule—

*liquidator* does not include a provisional liquidator.
- (2) For the purposes of the Corporations Act, section 532(9),<sup>217</sup> the consent of an official liquidator to act as liquidator of a company must be in form 8.
- (3) In an application for an order that a company be wound up, the applicant must—
  - (a) before the hearing of the application, file the consent mentioned in subrule (2) of an official liquidator who would be entitled to be appointed as liquidator of the company; and

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216 Corporations Act, section 461 (General grounds on which company may be wound up by Court)

217 Corporations Act, section 532 (Disqualification of liquidator)

**Schedule 1A (continued)**

- (b) serve a copy of the consent on the company at least 1 day before the hearing.

**5.6 Notice of application for winding-up—form 9**

- (1) Unless the court otherwise orders, the applicant must publish a notice of the application for an order that a company be wound up.
- (2) The notice must be—
  - (a) in form 9; and
  - (b) published in accordance with rule 2.11—
    - (i) at least 3 days after the originating application is served on the company; and
    - (ii) at least 7 days before the date fixed for hearing of the application.

**5.7 Applicant to make copies of documents available**

A copy of any document filed in a proceeding to which this part applies must be available at the applicant's address for service for inspection by a creditor, contributory or officer of the company, or an officer of a creditor or contributory of the company.

**5.8 Discontinuance of application for winding-up**

An application for an order that a company be wound up may not be discontinued except with the leave of the court.

**5.9 Appearance before registrar**

After filing an originating application seeking an order that a company be wound up, the applicant must, if required—

- (a) appear before the registrar on a date to be appointed by the registrar; and

## Schedule 1A (continued)

- (b) satisfy the registrar that the applicant has complied with the Corporations Act and these rules in relation to applications for a winding-up order.

**5.10 Order substituting applicant in application for winding-up (Corporations Act, s 465B)—form 10**

- (1) If the court makes an order under the Corporations Act, section 465B,<sup>218</sup> the court may also order that the substituted applicant or applicants publish a notice stating that the substituted applicant or applicants intend to apply for an order that the company be wound up.
- (2) The notice must be—
  - (a) in form 10; and
  - (b) published in accordance with rule 2.11 or as otherwise directed by the court.

**5.11 Notice of winding-up order and appointment of liquidator—form 11**

- (1) This rule applies if the court orders that a company be wound up and an official liquidator be appointed as liquidator of the company.
- (2) Not later than the day after the order is made, the applicant must inform the liquidator of the appointment.
- (3) As soon as practicable after being informed of the appointment, the liquidator must publish a notice of the winding-up order and the liquidator's appointment.
- (4) The notice must be—
  - (a) in form 11; and
  - (b) published in accordance with rule 2.11.
- (5) In this rule—  
*liquidator* does not include a provisional liquidator.

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218 Corporations Act, section 465B (Substitution of applicants)



**Schedule 1A (continued)**

- (3) As soon as practicable after the order is made, the provisional liquidator must publish a notice of the provisional liquidator's appointment.
- (4) The notice must be—
  - (a) in form 12; and
  - (b) published in accordance with rule 2.11.

**Part 7                      Liquidators****7.1      Resignation of liquidator (Corporations Act, s 473(1))**

- (1) A liquidator appointed by the court who wishes to resign office must file with the registrar, and lodge with ASIC, a memorandum of resignation.
- (2) The resignation takes effect on the filing and lodging of the memorandum.

**7.2      Filling vacancy in office of liquidator (Corporations Act, ss 473(7) and 502)**

- (1) If, for any reason, there is no liquidator acting in a winding-up, the court may—
  - (a) in the case of a winding-up by the court—appoint another official liquidator whose written consent in form 8 has been filed; and
  - (b) in the case of a voluntary winding-up—appoint another registered liquidator whose written consent in form 8 has been filed.
- (2) The court may make the appointment—
  - (a) in any case—on application by ASIC, a creditor or a contributory; or
  - (b) in the case of a winding-up by the court—on its own initiative.

## Schedule 1A (continued)

**7.3 Report to liquidator as to company's affairs  
(Corporations Act, s 475)**

- (1) If a person is required under the Corporations Act, section 475<sup>220</sup> to submit and verify a report as to the affairs of a company, the liquidator must give to the person the appropriate forms and instructions for the preparation of the report.
- (2) Except by order of the court, no person is to be allowed out of the property of a company any costs or expenses incurred in relation to the preparation of the report that have not been—
  - (a) sanctioned by the liquidator before being incurred; or
  - (b) taxed or assessed.
- (3) The liquidator must report to the court any default in complying with the requirements of the Corporations Act, section 475.
- (4) In this rule—

*liquidator* includes a provisional liquidator.

**7.4 Liquidator to file certificate and copy of settled list of contributories (Corporations Act, s 478)**

If, in a winding-up by the court, a liquidator has settled and certified a list, or supplementary list, of contributories, the liquidator must, within 14 days after doing so, file the certificate and a copy of the list.

**7.5 Release of liquidator and deregistration of company  
(Corporations Act, s 480(c) and (d))**

- (1) This rule applies to an application by the liquidator of a company—
  - (a) for an order that the liquidator be released; or

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<sup>220</sup> Corporations Act, section 475 (Report as to company's affairs to be submitted to liquidator)

**Schedule 1A (continued)**

- (b) for an order that the liquidator be released and that ASIC deregister the company.
- (2) The interlocutory application seeking the order must include—
- (a) a notice stating that any objection to the release of the liquidator must be made by filing and serving a notice of objection, in form 13, within 21 days after the date of service of the interlocutory application; and
  - (b) a statement setting out the terms of the Corporations Act, section 481(3).<sup>221</sup>

*Note—*

The Corporations Act, section 481(3) provides that an order of the court releasing a liquidator discharges the liquidator from all liability in respect of any act done or default made by the liquidator in the administration of the affairs of the company, or otherwise in relation to the liquidator's conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or by concealment of any material fact.

- (3) The supporting affidavit must include details of the following matters—
- (a) whether the whole of the company's property has been realised or whether so much of the company's property has been realised as, in the liquidator's opinion, can be realised without needlessly protracting the winding-up;
  - (b) any calls made on contributories in the course of the winding-up;
  - (c) any dividends paid in the course of the winding-up;
  - (d) whether the committee of inspection (if any) has passed a resolution approving the liquidator's release;
  - (e) whether ASIC has appointed an auditor to report on an account or statement of the position in the winding-up under the Corporations Act, section 539(2);<sup>222</sup>

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221 Corporations Act, section 481 (Orders for release or deregistration)

222 Corporations Act, section 539 (Liquidator's accounts)

**Schedule 1A (continued)**

- (f) whether the court has ordered a report on the accounts of the liquidator to be prepared;
  - (g) whether any objection to the release of the liquidator has been received by the liquidator from—
    - (i) an auditor appointed by ASIC or by the court; or
    - (ii) any creditor, contributory or other interested person;
  - (h) whether any report has been submitted by the liquidator to ASIC under the Corporations Act, section 533;<sup>223</sup>
  - (i) whether the liquidator considers it necessary to report on the affairs of the company or any of its officers;
  - (j) any property disclaimed in the course of the winding-up;
  - (k) any remuneration paid or payable to the liquidator and how such remuneration was determined;
  - (l) any costs, charges or expenses payable by the liquidator if the court grants the liquidator's release;
  - (m) if the application is made under the Corporations Act, section 480(c)<sup>224</sup>—the facts and circumstances by reason of which it is submitted that the company should not be deregistered.
- (4) The liquidator must include in the supporting affidavit the statements set out in paragraphs (a) and (b) of this subrule, including, if appropriate, the words in brackets—
- (a) 'To the best of my belief, there has been no act done or default made by me in the administration of the affairs of the subject corporation or otherwise in relation to my conduct as liquidator that is likely to give rise to any liability to the subject corporation or any creditor or contributory [except as disclosed in this affidavit].';

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223 Corporations Act, section 533 (Reports by liquidator)

224 Corporations Act, section 480 (Release of liquidator and deregistration of company)

**Schedule 1A (continued)**

- (b) 'I am not aware of any claim made by any person that there has been any such act or default [except as disclosed in this affidavit].'
- (5) The liquidator must exhibit to the supporting affidavit—
  - (a) a statement of the financial position of the company at the date when the interlocutory application seeking release was filed; and
  - (b) a summary of the liquidator's receipts and payments in winding up the company.
- (6) Unless the court otherwise orders, the liquidator must serve by prepaid post, on each creditor who has proved a debt in the course of the winding-up, and on each contributory, a copy of the interlocutory application accompanied by—
  - (a) a copy of the summary of the liquidator's receipts and payments in winding up the company; and
  - (b) a copy of the statement of the financial position of the company at the date when the interlocutory application seeking release was filed.

**7.6 Objection to release of liquidator—form 13**

- (1) A creditor or contributory of a company who wishes to object to the release of the liquidator of the company must, within 21 days after the date of service of the interlocutory application seeking release—
  - (a) file—
    - (i) a notice of objection in form 13; and
    - (ii) if appropriate, an affidavit stating any facts relied on; and
  - (b) serve a copy of the notice and the affidavit (if any) on the liquidator.
- (2) If the liquidator is served with a notice of objection by a creditor or contributory, the liquidator must, within 3 days after being served, serve on the creditor or contributory a copy of the affidavit supporting the interlocutory application.

## Schedule 1A (continued)

**7.7 Report on accounts of liquidator (Corporations Act, s 481)**

- (1) If the court orders that a report on the accounts of a liquidator be prepared under the Corporations Act, section 481(1),<sup>225</sup> the liquidator must give to the auditor appointed to prepare the report all information, books and vouchers required to prepare the report.
- (2) On completing the report, the auditor must—
  - (a) file a copy of the report in a sealed envelope that is marked with the title and number of the proceeding and the words ‘Auditor’s report under the Corporations Act, section 481(1)’; and
  - (b) serve a copy of the report on the liquidator; and
  - (c) lodge a copy of the report with ASIC.
- (3) Except with the leave of the court, a report is not available for inspection by any person except the liquidator or ASIC.

**7.8 Application for payment of call (Corporations Act, s 483(3)(b))—form 14**

The affidavit in support of an application by the liquidator of a company, under the Corporations Act, section 483(3)(b),<sup>226</sup> for an order for the payment of a call must be in form 14.

**7.9 Distribution of surplus by liquidator with special leave of the court (Corporations Act, s 488(2))—form 15**

- (1) The affidavit in support of an application for special leave to distribute a surplus must state how the liquidator intends to distribute the surplus including the name and address of each person to whom the liquidator intends to distribute any part of the surplus.

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225 Corporations Act, section 481 (Orders for release or deregistration)

226 Corporations Act, section 483 (Delivery of property to liquidator)

**Schedule 1A (continued)**

- (2) At least 14 days before the date fixed for hearing of the application, the liquidator must publish a notice of the application.
- (3) The notice must be—
  - (a) in form 15; and
  - (b) published in accordance with rule 2.11.

**7.10 Powers delegated to liquidator by the court (Corporations Act, s 488)**

Subject to the Corporations Act, the Corporations Regulations, these rules, and any order of the court, the powers and duties conferred or imposed on the court by the Corporations Act, part 5.4B<sup>227</sup> in respect of the matters mentioned in the Corporations Act, section 488(1)<sup>228</sup> may be exercised or performed by a liquidator appointed by the court as an officer of the court and subject to the control of the court.

**7.11 Inquiry into conduct of liquidator (Corporations Act, s 536(1) and (2))**

- (1) A complaint to the court under the Corporations Act, section 536(1)(b)<sup>229</sup> must be made—
  - (a) in the case of a winding-up by the court—by an interlocutory application seeking an inquiry; and
  - (b) in the case of a voluntary winding-up—by an originating application seeking an inquiry.
- (2) A report to the court by ASIC under the Corporations Act, section 536(2) must be made—
  - (a) in the case of a winding-up by the court, by filing—

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227 Corporations Act, part 5.4B (Winding up in insolvency or by the Court)

228 Corporations Act, section 488 (Delegation to liquidator of certain powers of Court)

229 Corporations Act, section 536 (Supervision of liquidators)



**Schedule 1A (continued)**

- (b) details of the remuneration proposed to be paid to the special manager; and
- (c) whether any committee of inspection in the winding-up, or a meeting of creditors, has approved the appointment of a special manager.

**8.2 Security given by special manager (Corporations Act, s 484)**

- (1) The court may, from time to time, direct that the amount of security given by a special manager be varied.
- (2) Unless the court otherwise directs, the costs of furnishing the security given by a special manager in respect of a particular winding-up—
  - (a) are the personal expenses of the special manager; and
  - (b) must not be charged against the property of the company as an expense incurred in the winding-up.

**8.3 Special manager's receipts and payments (Corporations Act, s 484)**

- (1) A special manager must give to the liquidator—
  - (a) an account of the special manager's receipts and payments; and
  - (b) a statutory declaration verifying the account.
- (2) If the liquidator approves the account, the liquidator must include the total amounts of the special manager's receipts and payments in the liquidator's accounts.

## Schedule 1A (continued)

**Part 9                      Remuneration of office-holders****9.1      Remuneration of receiver (Corporations Act, s 425(1))—form 16**

- (1) This rule applies to an application by a receiver of property of a corporation for an order under the Corporations Act, section 425(1)<sup>230</sup> fixing the receiver's remuneration.

*Note—*

Under the Corporations Act, section 425(2)(b), the court may exercise its power to make an order fixing the remuneration of a receiver even if the receiver has died, or has ceased to act, before the making of the order or the application for the order.

- (2) At least 21 days before filing an originating application, or interlocutory application seeking the order, the receiver must serve a notice in form 16 of the receiver's intention to apply for the order, and a copy of any affidavit on which the receiver intends to rely, on the following persons—
- (a) the person who appointed the receiver;
  - (b) any creditor holding security over all or any of the same property of the corporation (except if the creditor is the person who appointed the receiver);
  - (c) any administrator, liquidator or provisional liquidator of the corporation;
  - (d) any administrator of a deed of company arrangement executed by the corporation;
  - (e) if there is no person of the kind mentioned in paragraph (c) or (d)—
    - (i) each of the 5 largest (measured by amount of debt) unsecured creditors of the corporation; and
    - (ii) each member of the corporation whose shareholding represents at least 10% of the issued capital of the corporation.

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230 Corporations Act, section 425 (Court's power to fix receiver's remuneration)

**Schedule 1A (continued)**

- (3) Within 21 days after the last service of the documents mentioned in subrule (2), any creditor or contributory, or any person mentioned in subrule (2)(c), (d) or (e), may give to the receiver a notice of objection to the remuneration claimed, stating the grounds of objection.
- (4) If the receiver does not receive a notice of objection within the period mentioned in subrule (3)—
  - (a) the receiver may file an affidavit, made after the end of that period, in support of the originating application, or interlocutory application, seeking the order stating—
    - (i) the date, or dates, when the notice and affidavit required to be served under subrule (2) were served; and
    - (ii) that the receiver has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (3); and
  - (b) the receiver may endorse the originating application, or interlocutory application, with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the receiver; and
  - (c) the application may be so dealt with.
- (5) If the receiver receives a notice of objection within the period mentioned in subrule (3), the receiver must serve a copy of the originating application, or interlocutory application, seeking the order on each creditor or contributory, or other person, who has given a notice of objection.
- (6) An affidavit in support of the originating application, or interlocutory application, seeking the order must—
  - (a) state the nature of the work carried out by the receiver; and
  - (b) state the amount of remuneration claimed; and
  - (c) include a summary of the receipts taken and payments made by the receiver for the period for which remuneration is claimed; and

**Schedule 1A (continued)**

- (d) if the receivership is continuing—give details of any matters delaying the completion of the receivership.

**9.2 Remuneration of administrator (Corporations Act, s 449E(1))—form 16**

- (1) This rule applies to an application by the administrator of a company under administration, or of a deed of company arrangement, for an order under the Corporations Act, section 449E(1)<sup>231</sup> fixing the administrator's remuneration.
- (2) The administrator must not apply for the order until after the end of 28 days after the date when a meeting of creditors mentioned in the Corporations Act, section 449E(1)(a) was held.
- (3) At least 21 days before filing an originating application, or interlocutory application, seeking the order, the administrator must serve a notice in form 16 of the administrator's intention to apply for the order, and a copy of any affidavit on which the administrator intends to rely, on the following persons—
  - (a) each creditor who was present, in person or by proxy at the meeting of creditors;
  - (b) each member of any committee of inspection;
  - (c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.
- (4) Within 21 days after the last service of the documents mentioned in subrule (3), any creditor or contributory may give to the administrator a notice of objection to the remuneration claimed, stating the grounds of objection.
- (5) If the administrator does not receive a notice of objection within the period mentioned in subrule (4)—
  - (a) the administrator may file an affidavit, made after the end of that period, in support of the originating

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231 Corporations Act, section 449E (Remuneration of administrator)

**Schedule 1A (continued)**

application, or interlocutory application, seeking the order stating—

- (i) the date, or dates, when the notice and affidavit required to be served under subrule (3) were served; and
  - (ii) that the administrator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (4); and
- (b) the administrator may endorse the originating application, or interlocutory application, with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the administrator; and
- (c) the application may be so dealt with.
- (6) If the administrator receives a notice of objection within the period mentioned in subrule (4), the administrator must serve a copy of the originating application, or interlocutory application, seeking the order on each creditor or contributory who has given a notice of objection.
- (7) An affidavit in support of the originating application, or interlocutory application, seeking the order must—
- (a) state the nature of the work carried out by the administrator; and
  - (b) state the amount of remuneration claimed; and
  - (c) include a summary of the receipts taken and payments made by the administrator for the period for which remuneration is claimed; and
  - (d) if the administration is continuing—give details of any matters delaying the completion of the administration.

**9.3 Remuneration of provisional liquidator (Corporations Act, s 473(2))—form 16**

- (1) This rule applies to an application by a provisional liquidator of a company for an order under the Corporations Act, section

**Schedule 1A (continued)**

473(2)<sup>232</sup> determining the provisional liquidator's remuneration.

- (2) The application must be made by interlocutory application in the winding-up proceeding.
- (3) At least 21 days before filing the interlocutory application seeking the order, the provisional liquidator must serve a notice in form 16 of the provisional liquidator's intention to apply for the order, and a copy of any affidavit on which the provisional liquidator intends to rely, on the following persons—
  - (a) any liquidator (except the provisional liquidator) of the company;
  - (b) each member of any committee of inspection or, if there is no committee of inspection, each of the 5 largest (measured by amount of debt) creditors of the company;
  - (c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.
- (4) Within 21 days after the last service of the documents mentioned in subrule (3), the liquidator, or any creditor or contributory, may give to the provisional liquidator a notice of objection to the remuneration claimed, stating the grounds of objection.
- (5) If the provisional liquidator does not receive a notice of objection within the period mentioned in subrule (4)—
  - (a) the provisional liquidator may file an affidavit, made after the end of that period, in support of the interlocutory application seeking the order stating—
    - (i) the date, or dates, when the notice and affidavit required to be served under subrule (3) were served; and

**Schedule 1A (continued)**

- (ii) that the provisional liquidator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (4); and
  - (b) the provisional liquidator may endorse the interlocutory application with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the provisional liquidator; and
  - (c) the application may be so dealt with.
- (6) If the provisional liquidator receives a notice of objection within the period mentioned in subrule (4), the provisional liquidator must serve a copy of the interlocutory application seeking the order—
- (a) on each creditor or contributory who has given a notice of objection; and
  - (b) on the liquidator (if any).
- (7) An affidavit in support of the interlocutory application seeking the order must—
- (a) state the nature of the work carried out by the provisional liquidator; and
  - (b) state the amount of remuneration claimed; and
  - (c) include a summary of the receipts taken and payments made by the provisional liquidator for the period for which remuneration is claimed; and
  - (d) if the winding-up proceeding has not been determined—give details of—
    - (i) any reasons known to the provisional liquidator why the winding-up proceeding has not been determined; and
    - (ii) any reasons why the provisional liquidator's remuneration should be determined before the determination of the winding-up proceeding.

## Schedule 1A (continued)

**9.4 Remuneration of liquidator (Corporations Act, s 473(3))—form 16**

- (1) This rule applies to an application by a liquidator of a company for an order under the Corporations Act, section 473(3) determining the liquidator's remuneration.
- (2) The application—
  - (a) must be made by interlocutory application in the winding-up proceeding; and
  - (b) must not be made until after the end of 28 days after the date of the meeting of creditors mentioned in the Corporations Act, section 473(4).
- (3) At least 21 days before filing the interlocutory application seeking the order, the liquidator must serve a notice in form 16 of the liquidator's intention to apply for the order, and a copy of any affidavit on which the liquidator intends to rely, on the following persons—
  - (a) each creditor who was present, in person or by proxy, at the meeting of creditors;
  - (b) each member of any committee of inspection;
  - (c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.
- (4) Within 21 days after the last service of the documents mentioned in subrule (3), any creditor or contributory may give to the liquidator a notice of objection to the remuneration claimed, stating the grounds of objection.
- (5) If the liquidator does not receive a notice of objection within the period mentioned in subrule (4)—
  - (a) the liquidator may file an affidavit, made after the end of that period, in support of the interlocutory application seeking the order stating—
    - (i) the date, or dates, when the notice and affidavit required to be served under subrule (3) were served; and

**Schedule 1A (continued)**

- (ii) that the liquidator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (4); and
  - (b) the liquidator may endorse the interlocutory application with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the liquidator; and
  - (c) the application may be so dealt with.
- (6) If the liquidator receives a notice of objection within the period mentioned in subrule (4), the liquidator must serve a copy of the interlocutory application seeking the order on each creditor or contributory who has given a notice of objection.
- (7) An affidavit in support of the interlocutory application seeking the order must—
- (a) state the nature of the work carried out by the liquidator; and
  - (b) state the amount of remuneration claimed; and
  - (c) include a summary of the receipts taken and payments made by the liquidator for the period for which remuneration is claimed; and
  - (d) if the winding-up is continuing—give details of any matters delaying the completion of the winding-up.

**9.5 Remuneration of special manager (Corporations Act, s 484(2))—form 16**

- (1) This rule applies to an application by a special manager of the property or business of a company for an order the Corporations Act, section 484(2)<sup>233</sup> fixing the special manager's remuneration.
- (2) The application must be made by interlocutory application in the winding-up proceeding.

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233 Corporations Act, section 484 (Appointment of special manager)

**Schedule 1A (continued)**

- (3) At least 21 days before filing the interlocutory application seeking the order, the special manager must serve a notice in form 16 of the special manager's intention to apply for the order, and a copy of any affidavit on which the special manager intends to rely, on the following persons—
  - (a) the liquidator of the company;
  - (b) each member of any committee of inspection or, if there is no committee of inspection, each of the 5 largest (measured by amount of debt) creditors of the company;
  - (c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.
- (4) Within 21 days after the last service of the documents mentioned in subrule (3), the liquidator, or any creditor or contributory, may give to the special manager a notice of objection to the remuneration claimed, stating the grounds of objection.
- (5) If the special manager does not receive a notice of objection within the period mentioned in subrule (4)—
  - (a) the special manager may file an affidavit, made after the end of that period, in support of the interlocutory application seeking the order stating—
    - (i) the date, or dates, when the notice and affidavit required to be served under subrule (3) were served; and
    - (ii) that the special manager has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (4); and
  - (b) the special manager may endorse the interlocutory application with a request that the application be dealt with in the absence of the public and without any attendance by, or on behalf of, the special manager; and
  - (c) the application may be so dealt with.
- (6) If the special manager receives a notice of objection within the period mentioned in subrule (4), the special manager must

**Schedule 1A (continued)**

serve a copy of the interlocutory application seeking the order—

- (a) on each creditor or contributory who has given a notice of objection; and
  - (b) on the liquidator.
- (7) The affidavit in support of the interlocutory application seeking the order must—
- (a) state the nature of the work carried out by the special manager; and
  - (b) state the amount of remuneration claimed; and
  - (c) include a summary of the receipts taken and payments made by the special manager for the period for which remuneration is claimed; and
  - (d) if the special management is continuing—give details of any matters delaying the completion of the special management.

## **Part 10                      Winding up generally**

### **10.1 Determination of value of debts or claims (Corporations Act, s 554A(2))**

A reference to the court by a liquidator of a company under the Corporations Act, section 554A(2)(b)<sup>234</sup> must be made—

- (a) in the case of a winding-up by the court—by filing an interlocutory application seeking an order estimating, or determining a method for working out, the value of the debt or claim; and
- (b) in the case of a voluntary winding-up—by filing an originating application seeking an order estimating, or

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<sup>234</sup> Corporations Act, section 554A (Determination of value of debts and claims of uncertain value)

**Schedule 1A (continued)**

determining a method for working out, the value of the debt or claim.

**10.2 Disclaimer of contract (Corporations Act, s 568(1A))**

- (1) The affidavit in support of an application by a liquidator, under the Corporations Act, section 568(1A),<sup>235</sup> for leave to disclaim a contract in relation to a company must—
  - (a) specify the persons interested, and their interests, under the contract; and
  - (b) state the facts on which it is submitted that the contract should be disclaimed.
- (2) The liquidator must serve the affidavit on each party to the contract (except the company) and on any person interested in the contract.

**10.3 Winding up part 5.7 bodies (Corporations Act, ss 583 and 585) and registered schemes (Corporations Act, s 601ND)**

These rules apply, with any necessary adaptations, and in the same way as they apply to a company, in relation to the winding-up of a part 5.7 body or a registered scheme.

**Part 11 Examinations and orders  
(Corporations Act, part 5.9,  
divisions 1 and 2)****11.1 Definition for pt 11**

In this part—

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<sup>235</sup> Corporations Act, section 568 (Disclaimer by liquidator; application to Court by party to contract)

## Schedule 1A (continued)

*examination summons* means a summons under the Corporations Act, section 596A or 596B<sup>236</sup> for the examination of a person about a corporation's examinable affairs.

## 11.2 Application for examination or investigation under Corporations Act, s 411(9)(b), 423 or 536(3)

- (1) An application for an order for the examination or investigation of a person under the Corporations Act, section 411(9)(b), 423 or 536(3)<sup>237</sup> may be made by—
  - (a) ASIC; or
  - (b) a person authorised by ASIC; or
  - (c) a creditor or contributory; or
  - (d) any other person aggrieved by the conduct of—
    - (i) a person appointed to administer a compromise or arrangement; or
    - (ii) a controller; or
    - (iii) a liquidator or provisional liquidator.
- (2) The application may be made ex parte.
- (3) The provisions of this part that apply to an examination under the Corporations Act, part 5.9, division 1<sup>238</sup> apply, with any necessary adaptations, to an examination or an investigation under the Corporations Act, section 411(9)(b), 423 or 536(3).

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236 Corporations Act, section 596A (Mandatory examination) or 596B (Discretionary examination)

237 Corporations Act, section 411 (Administration of compromises etc.), 423 (Supervision of controller) or 536 (Supervision of liquidators)

238 Corporations Act, part 5.9 (Miscellaneous), division 1 (Examining a person about a corporation)

## Schedule 1A (continued)

**11.3 Application for examination summons (Corporations Act, ss 596A and 596B)—form 17**

- (1) An application for the issue of an examination summons must be made by filing an interlocutory application or an originating application, as the case requires.
- (2) The application may be made ex parte.
- (3) The originating application, or interlocutory application, seeking the issue of the examination summons must be—
  - (a) supported by an affidavit stating the facts in support of the application; and
  - (b) accompanied by a draft examination summons.
- (4) The originating application, or interlocutory application, and supporting affidavit must be filed in a sealed envelope marked, as appropriate—
  - (a) ‘Application and supporting affidavit for issue of summons for examination under the Corporations Act, section 596A’;<sup>239</sup> or
  - (b) ‘Application and supporting affidavit for issue of summons for examination under the Corporations Act, section 596B’.<sup>240</sup>
- (5) If the application is not made by the liquidator, the liquidator must be given notice of the application and, if required by the liquidator, served with a copy of the originating application, or interlocutory application, and the supporting affidavit.
- (6) If the application is not made by ASIC, ASIC must be given notice of the application and, if required by ASIC, served with a copy of the originating application, or interlocutory application, and the supporting affidavit.

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239 Corporations Act, section 596A (Mandatory examination)

240 Corporations Act, section 596B (Discretionary examination)

**Schedule 1A (continued)**

- (7) Unless the court otherwise orders, an affidavit in support of an application for an examination summons is not available for inspection by any person.
- (8) An examination summons is to be in form 17.

**11.4 Service of examination summons**

An examination summons issued by the court must be personally served, or served in any other manner as the court may direct, on the person who is to be examined at least 8 days before the date fixed for the examination.

**11.5 Discharge of examination summons**

- (1) This rule applies if a person is served with an examination summons.
- (2) Within 3 days after the person is served with the examination summons, the person may apply to the court for an order discharging the summons by filing—
  - (a) an interlocutory application seeking an order discharging the summons; and
  - (b) an affidavit stating the facts in support of the interlocutory application.
- (3) As soon as practicable after filing the interlocutory application seeking the order and the supporting affidavit, the person must serve a copy of the interlocutory application and the supporting affidavit on—
  - (a) the person who applied for the examination; and
  - (b) unless that person is ASIC or a person authorised by ASIC—ASIC.

## Schedule 1A (continued)

**11.6 Filing of record of examination (Corporations Act, s 597(13))**

If the court makes an order in relation to an examination under the Corporations Act, section 597(13),<sup>241</sup> the court may give directions for the filing of the written record of the examination.

**11.7 Authentication of transcript of examination (Corporations Act, s 597(14))**

For the purposes of the Corporations Act, section 597(14), a transcript of an examination may be authenticated—

- (a) by the person, or persons, who prepared the record of examination, or under whose supervision the record was prepared, certifying in writing signed by the person or persons, that the record is a true transcript of the record of examination; or
- (b) by any person present at the examination, or any part of the examination, signing the person's name at the bottom of each page of the written record that records a part of the examination at which the person was present.

**11.8 Inspection of record or transcript of examination or investigation under Corporations Act, s 411, 423 or 536**

- (1) A written record or transcript of an examination or investigation under the Corporations Act, section 411, 423 or 536<sup>242</sup> is not available for inspection by any person except—
  - (a) with the consent of the liquidator (if any) or ASIC; or
  - (b) by leave of the court.
- (2) This rule does not apply to the liquidator, ASIC or any person authorised by ASIC.

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241 Corporations Act, section 597 (Conduct of examination)

242 Corporations Act, section 411 (Administration of compromises etc.), 423 (Supervision of controller) or 536 (Supervision of liquidators)

## Schedule 1A (continued)

**11.9 Entitlement to record or transcript of examination held in public**

- (1) This rule applies if—
  - (a) an examination under the Corporations Act, section 597<sup>243</sup> is held wholly or partly in public; and
  - (b) a written record or transcript of the examination is filed in the court.
- (2) The person examined may apply to the registrar, within 3 years after the date of completion of the examination, for a copy of the record or transcript of the part of the examination of the person held in public.
- (3) On receiving an application from a person under subrule (2), and any applicable fee, the registrar must give a copy of the record or transcript to the person.

**11.10 Default in relation to examination**

- (1) This rule applies if a person is summoned or ordered by the court to attend for examination, and—
  - (a) without reasonable cause, the person—
    - (i) fails to attend at the time and place appointed; or
    - (ii) fails to attend from day to day until the conclusion of the examination; or
    - (iii) refuses or fails to take an oath or make an affirmation; or
    - (iv) refuses or fails to answer a question that the court directs the person to answer; or
    - (v) refuses or fails to produce books that the summons requires the person to produce; or
    - (vi) fails to comply with a requirement by the court to sign a written record of the examination; or

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243 Corporations Act, section 597 (Conduct of examination)

**Schedule 1A (continued)**

- (b) before the day fixed for the examination, the person who applied for the summons or order satisfies the court that there is reason to believe that the person summoned or ordered to attend for examination has absconded or is about to abscond.
- (2) The court may—
  - (a) issue a warrant for the arrest of the person summoned or ordered to attend for examination; and
  - (b) make any other orders that the court thinks just or necessary.

**11.11 Service of application for order in relation to breaches etc. by person concerned with corporation (Corporations Act, s 598)**

- (1) This rule applies to a person applying for an order under the Corporations Act, section 598.<sup>244</sup>
- (2) In addition to complying with rules 2.7 and 2.8, the person must serve a copy of the originating application, or interlocutory application, as the case requires, and the supporting affidavit on any liquidator or provisional liquidator (except if the person is the liquidator or provisional liquidator) of the corporation or body.

*Note—*

Under rule 2.7, an applicant must serve a copy of the originating application, and any supporting affidavit, on a respondent to the proceeding and, if necessary, on the corporation to which the proceeding relates, and must serve a copy of an interlocutory application, and any supporting affidavit, on a respondent to the proceeding and, if necessary, on the corporation to which the proceeding relates. In certain cases, these documents may also be required to be served on ASIC—see rule 2.8.

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244 Corporations Act, section 598 (Order against person concerned with corporation)

## Schedule 1A (continued)

**Part 12**                      **Takeovers, acquisitions of shares etc. (Corporations Act, chapters 6 to 6D) and Securities (Corporations Act, chapter 7)**

**12.1 Service on ASIC in relation to proceedings under Corporations Act, chapter 6, 6A, 6B, 6C, 6D or 7**

If ASIC is not a party to an application made under the Corporations Act, chapter 6, 6A, 6B, 6C, 6D or 7,<sup>245</sup> the applicant must serve a copy of the originating application and the supporting affidavit on ASIC as soon as practicable after filing the originating application.

**12.1A Reference to court of questions of law arising in proceeding before takeovers panel (Corporations Act, s 659A)**

The *Uniform Civil Procedure Rules 1999*, rule 781<sup>246</sup> applies, with necessary changes, to the reference to the court under the Corporations Act, section 659A<sup>247</sup> of a question of law arising in a proceeding before the takeovers panel.

**12.2 Application for summons for appearance of person (Corporations Act, s 1071D(4))—form 18**

- (1) An application for the issue of a summons under the Corporations Act, section 1071D(4)<sup>248</sup> must be made by filing an originating application or an interlocutory application.

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245 Corporations Act, chapter 6 (Takeovers), 6A (Compulsory acquisitions and buy-outs), 6B (Rights and liabilities in relation to Chapter 6 and 6A matters), 6C (Information about ownership of listed companies and managed investment schemes), 6D (Fundraising) or 7 (Financial services and markets)

246 *Uniform Civil Procedure Rules 1999*, rule 781 (Form and contents of case stated)

247 Corporations Act, section 659A (Panel may refer questions of law to the Court)

248 Corporations Act, section 1071D (Registration of transfer at request of transferor)

**Schedule 1A (continued)**

- (2) The application may be made ex parte.
- (3) The originating application, or interlocutory application, seeking the issue of the summons must be—
  - (a) supported by an affidavit stating the facts in support of the application; and
  - (b) accompanied by a draft summons.
- (4) Unless the court otherwise orders, a summons issued under this rule is to be in form 18.

**12.3 Application for orders relating to refusal to register transfer or transmission of securities (Corporations Act, s 1071F)**

- (1) An application for an order under the Corporations Act, section 1071F(2)<sup>249</sup> must be made by filing an originating application.
- (2) As soon as practicable after filing the originating application, the applicant must serve a copy of the originating application and the supporting affidavit on—
  - (a) the company; and
  - (b) any person against whom an order is sought.

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<sup>249</sup> Corporations Act, section 1071F (Remedy for refusal to register transfer or transmission)

## Schedule 1A (continued)

**Part 14 Powers of courts (Corporations Act, part 9.5)****14.1 Appeal from act, omission or decision of administrator, receiver or liquidator etc. (Corporations Act, ss 554A and 1321)**

- (1) All appeals to the court authorised by the Corporations Act must be commenced by an originating application, or interlocutory application, stating—
  - (a) the act, omission or decision complained of; and
  - (b) in the case of an appeal against a decision—whether the whole or part only and, if part only, which part of the decision is complained of; and
  - (c) the grounds on which the complaint is based.
- (2) Unless the Corporations Act or the Corporations Regulations otherwise provide, the originating application, or interlocutory application, must be filed within—
  - (a) 21 days after the date of the act, omission or decision appealed against; or
  - (b) any further time allowed by the court.
- (3) The court may extend the time for filing the originating application, or interlocutory application, either before or after the time for filing expires and whether or not the application for extension is made before the time expires.
- (4) As soon as practicable after filing the originating application, or interlocutory application, and, in any case, at least 5 days before the date fixed for hearing, the person instituting the appeal must serve a copy of the application, and any supporting affidavit, on each person directly affected by the appeal.
- (5) As soon as practicable after being served with a copy of the application, and any supporting affidavit, a person whose act, omission or decision is being appealed against must file an affidavit—

**Schedule 1A (continued)**

- (a) stating the basis on which the act, omission or decision was done or made; and
- (b) exhibiting a copy of all relevant documents that have not been put in evidence by the person instituting the appeal.

**Part 15                      Proceedings under the ASIC Act****15.1      Reference to court of question of law arising at hearing of ASIC (ASIC Act, s 61)**

A reference of a question of law arising at a hearing by ASIC to the court under the ASIC Act, section 61<sup>250</sup> is to be made by originating application which is to—

- (a) set out in clear terms the question of law to be decided; and
- (b) set out concisely all facts necessary for the decision; and
- (c) have attached to it all documents necessary to enable the court to decide the question.

**15.2      Court may draw inferences**

On the hearing of a reference under rule 15.1 the court may draw any inference from the facts stated and documents annexed to the application that might have been drawn from them if proved at a trial.

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250 ASIC Act, section 61 (Reference to Court of question of law arising at hearing)

**Schedule 1A (continued)****15.3 Application for inquiry (ASIC Act, ss 70, 201 and 219)**

An application for an inquiry under the ASIC Act, section 70(3), 201(3) or 219(7)<sup>251</sup> must be made by filing an originating application seeking an inquiry and orders under the relevant subsection.

**Part 16 Powers of registrars****16.1 Powers of registrars**

- (1) Unless the court otherwise orders, a registrar may exercise a power of the court under a provision of the Corporations Act or the rules mentioned in schedule 1B.
- (2) The Chief Justice may direct the registrar either generally or in a particular matter to hear and decide an application made under the Corporations Act or the ASIC Act.
- (3) A decision, direction or act of a registrar made, given or done under this part, may be reviewed by the court.
- (4) An application for the review of a decision, direction or act of a registrar made, given or done under this part, must be made within—
  - (a) 21 days after the decision, direction or act complained of; or
  - (b) any further time allowed by the court.

**16.2 Reference by registrar**

- (1) If a proceeding before a registrar appears to the registrar to be proper for the decision of the court, the registrar may or, if

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<sup>251</sup> ASIC Act, section 70 (Powers of Court where non-compliance with Part), 201 (Powers of Court where non-compliance with section 192) or 219 (Failure of witnesses to attend and answer questions)

**Schedule 1A (continued)**

required by a party to the proceeding, must, refer the matter to the court.

- (2) If the registrar refers a matter to the court, the court may dispose of the matter or refer it back to the registrar with any direction that the court considers appropriate.

## **Schedule 1B Powers of the court that may be exercised by a registrar**

rule 16.1 of sch 1A

<b>Provision of the Corporations Act or the rules in schedule 1A</b>	<b>Description (for information only)</b>
section 164	power to make order with respect to change of status of company (if uncontested)
section 227	power to declare that conditions prescribed by part 2E.1, division 3 <sup>a</sup> have been satisfied
section 247A	power to order inspection of books of company or registered managed investment scheme
section 247B	power to make ancillary orders relating to inspection of books
section 254E	power to make order validating purported issue of shares
section 266(4)	power to extend period of lodgement of notice in relation to charge or variation in terms of charge
section 267(3)	power to give leave to enforce charge (if uncontested)
section 274	power to rectify register of charges
section 283AE(2)(a)	power to appoint body corporate as trustee for debenture holders
section 283EC	power to make an order for meeting of debenture holders to direct trustee
section 411(1), (4), (6)	for sanction of compromise or arrangement (if uncontested)
section 425	power to fix amount of receiver's remuneration
section 429(3)	power to extend time for report to controller
section 449E	power to fix remuneration of administrator
section 459A	court's power to order winding-up in insolvency (if uncontested)
section 459B	court's power to order winding-up in an insolvency (if uncontested)

## Schedule 1B (continued)

<b>Provision of the Corporations Act or the rules in schedule 1A</b>	<b>Description (for information only)</b>
section 459P(2)	court's power to give leave to make winding-up application (if uncontested)
section 461	court's general power to order winding-up on other grounds (if uncontested)
section 464	court's power to order winding-up in connection with investigation under the ASIC Act (if uncontested)
section 465B	substitution of applicants
section 467	powers on hearing winding-up application
section 470(2)(b)	service of copy of order
section 471B	for leave to proceed (if uncontested)
section 472	appointment of liquidator or provisional liquidator (if uncontested)
section 473(2)	determination of provisional liquidator's remuneration
section 473(3)	determination of liquidator's remuneration
section 473(7)	to fill vacancy in office of liquidator
section 473(8)	power to declare what may be done by liquidator
section 474(2)	order that property vests in liquidator
section 481	report on accounts of liquidator
section 483(1)	power to require property to be delivered to liquidator
section 483(3)	calls on contributories
section 484(2)(b)	power to fix remuneration of special manager
section 486	order for inspection of books by creditors or contributories
section 490	leave of court to wind up voluntarily
section 495(4)	conduct of meetings in member's voluntary winding-up
section 496(3)	list of creditors in member's voluntary winding-up

## Schedule 1B (continued)

<b>Provision of the Corporations Act or the rules in schedule 1A</b>	<b>Description (for information only)</b>
section 497(3)	list of creditors in creditor's voluntary winding-up
section 499	direction where different liquidators chosen
section 500	execution of civil proceedings
section 502	appointment of liquidator in voluntary winding-up
section 504	review of liquidator's remuneration in voluntary winding-up
section 507(6)	power to sanction resolution to accept shares as consideration for sale of property of company
section 507(10)	approval to liquidator's exercise of powers in creditor's voluntary winding-up
section 509(6)	power to declare date of dissolution
section 511	application to exercise powers or determine questions in voluntary winding-up
section 532(2)	leave of court for person to be appointed as liquidator
section 542(3)(a)	directions as to destruction of books
section 543(1)	order as to investment of surplus funds
section 544(2)	court's power to order account of funds in hands of liquidator, audit or payment of money by liquidator
section 545	direction to liquidator to incur a particular expense
section 547	power to direct that meetings of creditors or contributories be held
section 568	disclaim of onerous property (if uncontested)
section 583	powers under part 5.7 in winding up bodies other than companies (if uncontested)
section 585	power to stay or restrain proceeding (if uncontested)
section 596A	summons for examination

## Schedule 1B (continued)

<b>Provision of the Corporations Act or the rules in schedule 1A</b>	<b>Description (for information only)</b>
section 596B	summons for discretionary examination
section 596F	directions about examination
section 597(9)	directions as to production of books
section 597(13)	orders about recording testimony
section 597(15)	direction as to other court
section 597A	to require the filing of an affidavit
section 597B	costs of unnecessary examination
section 600A	court's powers in relation to meetings
section 600B	court's power to set aside or vary resolution
section 600C	order about passing of proposed resolution
section 600D	interim order on application under section 600A, 600B or 600C
section 601AH(2), (3)	reinstatement of company
section 601BJ	power to approve modification of constitution
section 601CC(9)	order for restoration of name of registered Australian body to the register
section 601CL(10)	order for restoration of name of registered foreign company to the register
sections 601ND	order winding up schemes
section 601NE	winding-up of scheme
section 601NF	other orders about winding up
section 1071D	power to make an order in relation to a person summoned
section 1071F	power to make an order in relation to a company's refusal to register a share transfer
section 1071H(6)	power to make an order to remedy default in issuing certificate etc.
section 1274	power to make an order if failure to lodge, amend etc. a document
section 1303	order that books be available for inspection

## Schedule 1B (continued)

<b>Provision of the Corporations Act or the rules in schedule 1A</b>	<b>Description (for information only)</b>
section 1319	power to give directions in relation to meetings ordered by court
section 1322	irregularities
rule 1.8	power to give directions
rule 2.8	notice of application to ASIC
rule 2.12	proof of publication
rule 2.13	power to give leave to creditor, contributory or officer to be heard in proceeding or be added as defendant etc.
rule 2.14	power to direct an inquiry in relation to corporation's debts etc.
rule 3.4	notice of hearing
rule 5.6	notice of application for winding-up
rule 5.10	order substituting applicant in application for winding-up
rule 6.1	power to require undertaking as to damages on appointment of provisional liquidator
rule 7.2	filling vacancy in office of liquidator
rule 7.5(6)	service of application for release of liquidator
rule 7.7	inspection of report of accounts of liquidator
rule 7.11(4)	inspection of report of inquiry into conduct of liquidator
rule 8.2	security given by special manager
rule 11.3(7)	inspection of affidavit in support of application for examination summons
rule 11.4	service of examination summons
rule 11.5	discharge of examination summons
rule 11.6	directions for filing of written record of examination
rule 11.8	inspection of record or transcript of examination or investigation

## Schedule 1B (continued)

<b>Provision of the Corporations Act or the rules in schedule 1A</b>	<b>Description (for information only)</b>
rule 12.2(4)	form of summons
rule 14.1(2), (3)	extension of time for filing application starting an appeal
<hr/>	
a	Corporations Act, part 2E.1 (Member approval needed for related party benefit), division 3 (Procedure for obtaining member approval)

**Schedule 1      Scale of costs—Supreme Court**

rule 691(2)(a)

\$

**(including  
GST)****General matters****General care and conduct**

- 1      In addition to an amount that is to be allowed under another item of this schedule, the amount that is to be allowed for a solicitor's care and conduct of a proceeding is the amount the registrar considers reasonable having regard to the circumstances of the proceeding including, for example—
- (a) the complexity of the proceeding; and
  - (b) the difficulty and novelty of any question raised in the proceeding; and
  - (c) the importance of the proceeding to the party; and
  - (d) the amount involved; and
  - (e) the skill, labour, specialised knowledge and responsibility involved in the proceeding on the part of the solicitor; and
  - (f) the number and importance of the documents prepared or perused, without regard to the length of the documents; and
  - (g) the time spent by the solicitor; and
  - (h) research and consideration of questions of law and fact.

**Registrar's discretion**

- 2      For a matter for which a cost is not provided for in this schedule, the amount to be allowed is the cost the registrar considers reasonable.

## Schedule 1 (continued)

	\$ (including GST)
<b>Costs on quarter hourly basis</b>	
3	If, under an item of this schedule, costs in relation to a matter are allowable on a quarter hourly basis, the amount to be allowed is—
	(a) for less than a quarter hour spent on the matter—the cost of 1 quarter hour; or
	(b) for part of a quarter hour after the first quarter hour spent on the matter—a proportionate amount of the cost of 1 quarter hour.
<b>Drafting documents</b>	
4	Drafting a document—for each 100 words . . . . . 17.00
<b>Producing documents</b>	
5	Producing a document in final form—for each 100 words . . . . . 4.20
<b>Preparing exhibit certificates</b>	
6	Preparing an exhibit certificate—for each exhibit, including a paginated book . . . . . 3.20
<b>Copying documents</b>	
7	Copying a document—for each page . . . . . 0.20
<b>Perusing documents</b>	
8	Perusing a document—for each 100 words . . . . . 4.20
<b>Examining or comparing documents</b>	
9	Examining a document or comparing documents, if perusal is unnecessary—

## Schedule 1 (continued)

		\$
		(including GST)
	(a) by a solicitor—for each quarter hour . . . . .	61.75
	(b) by an employee—for each quarter hour . . . . .	18.00
<b>Serving documents</b>		
10	Serving on a person 1 or more documents at the same time—	
	(a) personal service, by a solicitor or a solicitor’s employee, if personal service is required for 1 or more of the documents served . . . . .	36.00
	However, 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.	
	(b) ordinary service . . . . .	23.00
	(c) service by post . . . . .	16.00
	(d) service by facsimile—	
	(i) for the first page . . . . .	7.40
	(ii) for each extra page . . . . .	1.00
	(e) service by email . . . . .	7.40
<b>Attendances</b>		
11	Attendance, if capable of being done by an employee—	
	(a) to file or deliver a document, obtain an appointment, insert an advertisement, or settle an order; or	
	(b) to search; or	
	(c) to do something of a similar nature . . . . .	23.00
12	Attendance by telephone that does not involve the exercise of skill or legal knowledge . . . . .	14.90

## Schedule 1 (continued)

	\$ (including GST)	
13	Attendance in court, mediation or case appraisal, at a compulsory conference or before the registrar by a solicitor who appears without a barrister—for each quarter hour . . . . .	68.00
14	Attendance for a hearing or trial held at a place other than the town where the solicitor lives or carries on business—	
	(a) by the solicitor—	
	(i) for the time spent in attendance at the hearing or trial—for each quarter hour . . . .	62.00
	(ii) for the time the solicitor is absent from the solicitor’s place of business, including time used in travelling to or from the hearing or trial, other than in attendance at the hearing or trial—	
	(A) for 4 hours or less absence. . . . .	474.00
	(B) for an absence of more than 4 hours— for each quarter hour to a maximum of 8 hours . . . . .	30.00
	(iii) the expenses the registrar considers reasonable for each day of absence, including Saturdays and Sundays; and	
	(iv) the actual expenses of transport to and from the hearing or trial the registrar considers reasonable; or	
	(b) by the solicitor’s employee—the amount the registrar considers reasonable.	
	However, if the solicitor’s absence is to attend more than 1 hearing or trial at the same place, the costs are to be divided proportionately.	
15	Attendance at a callover, to be apportioned if the attendance is for more than 1 proceeding . . . . .	41.00
16	Other attendances—	

## Schedule 1 (continued)

		\$ (including GST)
	(a) by a solicitor, involving skill or legal knowledge—for each quarter hour . . . . .	62.00
	(b) by an employee—for each quarter hour . . . . .	18.00
	However, the costs allowed under this item are to be reduced by 25% in relation to time necessarily spent at court before an appearance in court.	
<b>Correspondence</b>		
17	(1) A short letter of a formal nature, written or received, or forwarding a document without comment . . . . .	12.00
	(2) An ordinary letter, written or received, including a letter between principal and agent . . . . .	30.00
	(3) A special letter involving skill or legal knowledge, including an allowance for drafting and producing . . . . . However, if the registrar considers a higher amount is reasonable for a special letter involving skill or legal knowledge, the amount the registrar considers reasonable.	39.00
	(4) Correspondence between offices of the same firm of solicitors—the allowance that would have been allowable if an agent had been engaged and the engagement was normal and reasonable in the circumstances.	
<b>Sending documents</b>		
18	Postage, carriage or transmission of documents, in addition to the other costs allowed under this schedule—	
	(a) for facsimile transmissions—	
	(i) for the first page . . . . .	7.40
	(ii) for each extra page . . . . .	1.00
	(b) for email transmissions . . . . .	7.40

## Schedule 1 (continued)

		\$ (including GST)
	(c) for the postage, carriage or transmission of any other document—the amount the registrar considers reasonable.	
<b>Electronic conduct of proceedings</b>		
20	(1) Printing an email, sent or received, or electronically scanning or imaging a document, other than a document mentioned in subitem (3)—for each page. . . . .	0.50
	(2) Examining an electronic document or comparing electronic documents, including an email or emails, if perusal is unnecessary—for each 100 words. . . . .	1.00
	(3) Preparing a document for disclosure, or to be exchanged electronically, by—	
	(a) bar coding the document—for each page . . . . .	0.50
	(b) electronically scanning or imaging the document—for each page . . . . .	0.50
	(c) entering data about the document in a database, including delimiting the document to decide start and end pages, and carrying out quality control of the data, for example, to check for missing data and check spelling—for each document . . . . .	4.20
	(4) To the extent a proceeding is conducted electronically, costs, including the costs of any electronic service provider, to the extent the registrar considers the costs have been reasonably incurred and paid.	
<b>Fixed cost items</b>		
21	Costs for issuing a claim . . . . .	580.00
22	Costs for obtaining judgment under chapter 9, part 1, division 2 . . . . .	275.00
23	Costs for obtaining an enforcement warrant . . . . .	230.00

## **Schedule 2      Scale of costs—District Court**

rule 691(2)(b)

\$

**(including  
GST)**

### **General matters**

#### **General care and conduct**

- 1      In addition to an amount that is to be allowed under another item of this schedule, the amount that is to be allowed for a solicitor's care and conduct of a proceeding is the amount the registrar considers reasonable having regard to the circumstances of the proceeding including, for example—
  - (a) the complexity of the proceeding; and
  - (b) the difficulty and novelty of any question raised in the proceeding; and
  - (c) the importance of the proceeding to the party; and
  - (d) the amount involved; and
  - (e) the skill, labour, specialised knowledge and responsibility involved in the proceeding on the part of the solicitor; and
  - (f) the number and importance of the documents prepared or perused, without regard to the length of the documents; and
  - (g) the time spent by the solicitor; and
  - (h) research and consideration of questions of law and fact.

#### **Registrar's discretion**

- 2      For a matter for which a cost is not provided for in this schedule, the amount to be allowed is the cost the registrar considers reasonable.

## Schedule 2 (continued)

	\$ (including GST)
<b>Costs on quarter hourly basis</b>	
3	If, under an item of this schedule, costs in relation to a matter are allowable on a quarter hourly basis, the amount to be allowed is—
	(a) for less than a quarter hour spent on the matter—the cost of 1 quarter hour; or
	(b) for part of a quarter hour after the first quarter hour spent on the matter—a proportionate amount of the cost of 1 quarter hour.
<b>Drafting documents</b>	
4	Drafting a document—for each 100 words . . . . . 16.00
<b>Producing documents</b>	
5	Producing a document in final form—for each 100 words . . . . . 4.20
<b>Preparing exhibit certificates</b>	
6	Preparing an exhibit certificate—for each exhibit, including a paginated book . . . . . 3.20
<b>Copying documents</b>	
7	Copying a document—for each page . . . . . 0.20
<b>Perusing documents</b>	
8	Perusing a document—for each 100 words . . . . . 3.20
<b>Examining or comparing documents</b>	
9	Examining a document or comparing documents, if perusal is unnecessary—

## Schedule 2 (continued)

		\$
		(including GST)
	(a) by a solicitor—for each quarter hour . . . . .	51.00
	(b) by an employee—for each quarter hour . . . . .	16.00
<b>Serving documents</b>		
10	Serving on a person 1 or more documents at the same time—	
	(a) personal service, by a solicitor or a solicitor's employee, if personal service is required for 1 or more of the documents served . . . . .	36.00
	However, 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.	
	(b) ordinary service . . . . .	23.00
	(c) service by post . . . . .	16.00
	(d) service by facsimile—	
	(i) for the first page . . . . .	7.40
	(ii) for each extra page . . . . .	1.00
	(e) service by email . . . . .	7.40
<b>Attendances</b>		
11	Attendance, if capable of being done by an employee—	
	(a) to file or deliver a document, obtain an appointment, insert an advertisement, or settle an order; or	
	(b) to search; or	
	(c) to do something of a similar nature . . . . .	23.00
12	Attendance by telephone that does not involve the exercise of skill or legal knowledge . . . . .	15.00

## Schedule 2 (continued)

	\$ (including GST)	
13	Attendance in court, mediation or case appraisal, at a compulsory conference or before the registrar by a solicitor who appears without a barrister—for each quarter hour . . . . .	57.00
14	Attendance for a hearing or trial held at a place other than the town where the solicitor lives or carries on business—	
	(a) by the solicitor—	
	(i) for the time spent in attendance at the hearing or trial—for each quarter hour . . . .	51.00
	(ii) for the time the solicitor is absent from the solicitor’s place of business, including time used in travelling to or from the hearing or trial, other than in attendance at the hearing or trial—	
	(A) for 4 hours or less absence. . . . .	405.00
	(B) for an absence of more than 4 hours— for each quarter hour to a maximum of 8 hours . . . . .	25.00
	(iii) the expenses the registrar considers reasonable for each day of absence, including Saturdays and Sundays; and	
	(iv) the actual expenses of transport to and from the hearing or trial the registrar considers reasonable; or	
	(b) by the solicitor’s employee—the amount the registrar considers reasonable.	
	However, if the solicitor’s absence is to attend more than 1 hearing or trial at the same place, the costs are to be divided proportionately.	
15	Attendance at a callover, to be apportioned if the attendance is for more than 1 proceeding . . . . .	41.00
16	Other attendances—	

## Schedule 2 (continued)

		\$ (including GST)
	(a) by a solicitor, involving skill or legal knowledge—for each quarter hour . . . . .	51.00
	(b) by an employee—for each quarter hour . . . . .	16.00
	However, the costs allowed under this item are to be reduced by 25% in relation to time necessarily spent at court before an appearance in court.	
<b>Correspondence</b>		
17	(1) A short letter of a formal nature, written or received, or forwarding a document without comment . . . . .	12.00
	(2) An ordinary letter, written or received, including a letter between principal and agent . . . . .	30.00
	(3) A special letter involving skill or legal knowledge, including an allowance for drafting and producing . . . . . However, if the registrar considers a higher amount is reasonable for a special letter involving skill or legal knowledge, the amount the registrar considers reasonable.	33.00
	(4) Correspondence between offices of the same firm of solicitors—the allowance that would have been allowable if an agent had been engaged and the engagement was normal and reasonable in the circumstances.	
<b>Sending documents</b>		
18	Postage, carriage or transmission of documents, in addition to the other costs allowed under this schedule—	
	(a) for facsimile transmissions—	
	(i) for the first page . . . . .	7.40
	(ii) for each extra page . . . . .	1.00
	(b) for email transmissions . . . . .	7.40

## Schedule 2 (continued)

		\$ (including GST)
	(c) for the postage, carriage or transmission of any other document—the amount the registrar considers reasonable.	
<b>Electronic conduct of proceedings</b>		
20	(1) Printing an email, sent or received, or electronically scanning or imaging a document, other than a document mentioned in subitem (3)—for each page. . . . .	0.50
	(2) Examining an electronic document or comparing electronic documents, including an email or emails, if perusal is unnecessary—for each 100 words. . . . .	1.00
	(3) Preparing a document for disclosure, or to be exchanged electronically, by—	
	(a) bar coding the document—for each page . . . . .	0.50
	(b) electronically scanning or imaging the document—for each page . . . . .	0.50
	(c) entering data about the document in a database, including delimiting the document to decide start and end pages, and carrying out quality control of the data, for example, to check for missing data and check spelling—for each document . . . . .	4.20
	(4) To the extent a proceeding is conducted electronically, costs, including the costs of any electronic service provider, to the extent the registrar considers the costs have been reasonably incurred and paid.	
<b>Fixed cost items</b>		
21	Costs for issuing a claim . . . . .	530.00
22	Costs for obtaining judgment under chapter 9, part 1, division 2 . . . . .	250.00
23	Costs for obtaining an enforcement warrant . . . . .	185.00



## Schedule 3 (continued)

## Part 2

## Costs

	A Under \$751	B \$751 to \$1 500	C \$1 501 to \$2 500	D \$2 501 to \$5 000	E \$5 001 to \$10 000	F \$10 001 to \$20 000	G Over \$20 000
	\$	\$	\$	\$	\$	\$	\$
(including GST)							
1 Instructions to sue—claim and statement of claim and service. . . . .	165.00	230.00	290.00	555.00	690.00	965.00	965.00
2 Instructions to defend—notice of intention to defend and defence and filing . . . .	165.00	230.00	290.00	555.00	690.00	965.00	965.00
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 . . . . .	54.00	54.00	77.00	130.00	160.00	220.00	220.00
4 Obtaining judgment by default. . . . .	54.00	54.00	77.00	130.00	160.00	220.00	220.00
5 Preparing for trial, including directions conference—							
(a) including brief if counsel engaged . . .	455.00	595.00	720.00	1 660.00	2 080.00	2 910.00	3 205.00
(b) if no counsel engaged	290.00	500.00	575.00	1 390.00	1 725.00	2 425.00	2 675.00
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							

## Uniform Civil Procedure Rules 1999

## Schedule 3 (continued)

	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
	\$	\$	\$	\$	\$	\$	\$
	(including GST)						
(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 of intention to defend or notice of appeal . .	—	—	—	—	150.00	210.00	230.00
(b) to settle special affidavit, reply or particulars that the magistrate or registrar is satisfied are reasonably necessary or proper . . . . .	—	—	—	—	88.00	135.00	145.00
(c) to settle interrogatories or answers to interrogatories that the magistrate or registrar is satisfied are reasonably necessary or proper.	—	—	—	—	150.00	205.00	225.00
(d) on conference, inspection of works or other site inspection, or a similar attendance that the magistrate or registrar is satisfied is reasonably necessary or proper—each hour	—	—	—	—	150.00	210.00	230.00
(e) to advise on evidence or for any other opinion. . . . .	—	—	—	—	165.00	220.00	235.00
(f) on trial or hearing (other than an application in a proceeding)—first day . . . . .	420.00	520.00	635.00	710.00	935.00	1 315.00	1 445.00

## Schedule 3 (continued)

	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
	\$	\$	\$	\$	\$	\$	\$
	(including GST)						
(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) . . . . .	285.00	355.00	420.00	475.00	625.00	880.00	965.00
(h) on each subsequent day of hearing not included in paragraph (g) . . . . .	145.00	175.00	210.00	235.00	320.00	435.00	485.00
(i) if a proceeding is heard outside the town where counsel ordinarily practises, a further fee by way of out-of-chambers fee (not less than \$52.00 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 8.30a.m. and 5.30p.m.							
(j) on an application in a proceeding . . . . .	—	—	—	—	155.00	215.00	230.00
(k) to hear deferred judgment . . . . .	—	—	—	—	77.00	115.00	130.00
7 Solicitor on hearing—							
(a) appearance without counsel on hearing—first day . .	435.00	500.00	575.00	605.00	760.00	1 070.00	1 180.00

## Schedule 3 (continued)

	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
	\$	\$	\$	\$	\$	\$	\$
(including GST)							
(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) . . . . .	290.00	370.00	410.00	410.00	520.00	735.00	810.00
(c) attendance of clerk with solicitor acting as advocate—each day . . . . .	45.00	56.00	70.00	210.00	235.00	235.00	235.00
Costs under paragraph (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 . . . . .	190.00	230.00	260.00	305.00	375.00	530.00	580.00
(b) attendance of clerk with counsel—each day . . . . .	45.00	56.00	70.00	210.00	235.00	235.00	235.00
Costs under paragraph (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 4)—							

*Uniform Civil Procedure Rules 1999***Schedule 3 (continued)**

	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
	\$	\$	\$	\$	\$	\$	\$
(including GST)							
(a) counsel's fees (if no fee is payable under item 6(f)) . . . . .	165.00	190.00	210.00	225.00	285.00	405.00	435.00
(b) solicitor for appearance without counsel. . . . .	165.00	190.00	210.00	210.00	255.00	365.00	400.00
10 Other applications to the court (other than an application for an adjournment) . . . . .	120.00	120.00	140.00	245.00	320.00	430.00	480.00
11 Instructions—							
(a) for disclosure, preparing list of documents and making inspection and copies of documents—							
(i) allowance to party requesting disclosure . . . . .	54.00	90.00	120.00	185.00	235.00	280.00	305.00
(ii) allowance to party making disclosure . . . . .	54.00	90.00	120.00	420.00	465.00	515.00	565.00
(b) for interrogatories and answers to interrogatories (including preparation, filing and perusing)—							
(i) allowance to party delivering interrogatories. . . . .	54.00	90.00	120.00	320.00	335.00	350.00	385.00
(ii) allowance to party answering interrogatories. . . . .	54.00	90.00	120.00	295.00	310.00	325.00	355.00
12 Enforcement hearing—							
(a) counsel's fees. . . . .	285.00	285.00	285.00	325.00	405.00	565.00	625.00

*Uniform Civil Procedure Rules 1999***Schedule 3 (continued)**

	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
	\$	\$	\$	\$	\$	\$	\$
	(including GST)						
(b) if no counsel engaged	190.00	190.00	210.00	280.00	350.00	495.00	540.00
13 Enforcement warrant—							
(a) costs of preparing warrant and attending issuing and for return—to be marked on warrant (exclusive of court or other fees)	54.00	54.00	62.00	130.00	160.00	220.00	235.00
(b) costs of registration of warrant against land . .	54.00	54.00	62.00	130.00	160.00	220.00	235.00
14 Warrant (other than enforcement warrant)— costs of preparing warrant and attending issuing and for return . . . . .	54.00	54.00	62.00	130.00	160.00	220.00	235.00
15 Applying for summary judgment or showing cause against a summary judgment application . . . . .	54.00	54.00	62.00	130.00	160.00	220.00	235.00

## Schedule 4      Dictionary

rule 4

**account**, for a financial institution, for chapter 19, see rule 793.

**accounting party**, for chapter 14, part 1, 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 Magistrate; or
- (b) if a practice direction is not in force—\$3.00.

**ADR costs**, for chapter 9, part 4, see rule 313.

**applicant**—

- (a) for chapter 15, part 7, see rule 623; or
- (b) for chapter 21, see rule 948.

**application**—

- 1 Each of the following is an *application*—
  - (a) an application starting a proceeding;
  - (b) another application.

## Schedule 4 (continued)

- 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.

***approved document exchange*** means a document exchange approved under rule 102.

***approved entity***, for chapter 22, part 1, division 4, see rule 975B.

***assessed costs***, for chapter 17A, see rule 679.

***assessing registrar***, for chapter 17A, see rule 679.

***attached*** to a document includes incorporated into the document.

***Australia***, for chapter 4, see rule 100.

***Australian lawyer***, for chapter 17A, see rule 679.

***Brisbane registrar***, for chapter 17A, see rule 679.

***business day*** see *Acts Interpretation Act 1954*, section 36.<sup>252</sup>

***caveator***, for chapter 15, part 7, see rule 623.

***central registry***, of the Supreme Court, means the registry at Brisbane, Rockhampton, Townsville or Cairns.

***certificate of assessment***, for chapter 17A, see rule 679.

***claim***—

- 1 A *claim* is a document under chapter 2, part 3 starting a proceeding.

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252 *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)

- 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, see rule 948.

***client***, for chapter 17A, see rule 679.

***Commonwealth Act***, for chapter 20A, see rule 947A.

***condition*** see *Supreme Court of Queensland Act 1991*, schedule 2.<sup>253</sup>

***contested proceeding***, for chapter 15, part 8, see rule 629.

***costs assessment***, for chapter 17A, see rule 679.

***costs assessor***, for chapter 17A, see rule 679.

***costs of the proceeding***, for chapter 17A, see rule 679.

***costs statement***, for chapter 17A, see rule 679.

***decision without an oral hearing***, for chapter 13, part 6, see rule 487.

***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 indemnity; or
- (c) a third, fourth or subsequent party; or
- (d) for chapter 14, part 2, 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 of Queensland Act 1967*; or

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<sup>253</sup> *Supreme Court of Queensland Act 1991*, schedule 2 (Dictionary)—  
***condition*** includes term.

## Schedule 4 (continued)

- (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.<sup>254</sup>

**earnings**, for chapter 19, see rule 793.

**electronically file**, for chapter 22, part 1, division 4 and rule 516, see rule 975B.

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

**employer**, for chapter 19, see rule 793.

**end of trial enforcement hearing**, for chapter 19, part 2, see rule 805.

**enforceable money order**, for chapter 19, see rule 793.

**enforcement creditor**—

- (a) for chapter 19, see rule 793; or  
 (b) for chapter 21, see rule 948.

**enforcement debtor**, for chapter 19, see rule 793.

**enforcement officer** see *Supreme Court of Queensland Act 1991*, schedule 2.<sup>255</sup>

**enforcement warrant**—

- (a) for chapter 19, 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.

254 *Supreme Court Act 1995*, part 19 (Provisions from Supreme Court Act 1921)

255 *Supreme Court of Queensland Act 1991*, schedule 2 (Dictionary)—

**enforcement officer**, for a court, means a sheriff, deputy sheriff or bailiff of the court.

## Schedule 4 (continued)

*estate*, for chapter 15, see rule 596.

*exempt property* see *Supreme Court of Queensland Act 1991*, schedule 2.<sup>256</sup>

*foreign grant*, for chapter 15, part 5, see rule 615.

*fourth person*, for chapter 19, part 5, division 2, see rule 847.

*grant*—

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

(b) for chapter 15, part 7, see rule 623.

*instalment order*, for chapter 19, see rule 868(1).

*interest* in a managed investment scheme see the *Corporations Act*, section 9.

*interpleader order*, for chapter 21, 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.

*itemised bill*, for chapter 17A, see rule 679.

*judgment*—

(a) for chapter 16, see rule 659; and

(b) for chapter 20A, see rule 947A.

*judgment creditor*, for chapter 20A, see rule 947A.

*judgment debtor*, for chapter 20A, see rule 947A.

*land*, for chapter 8, part 4, see rule 275.

*limitation period* means a limitation period under the *Limitation of Actions Act 1974*.

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256 *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.

## Schedule 4 (continued)

**minor claim** see *Supreme Court of Queensland Act 1991*, schedule 2.<sup>257</sup>

**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.

**notice to support a caveat**, for chapter 15, part 7, see rule 623.

**oath** see *Acts Interpretation Act 1954*, section 36.<sup>258</sup>

**offer**, for chapter 9, part 5, 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**, except for chapter 8, part 2, division 2, includes a judgment, direction, decision or determination of a court whether final or otherwise.

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257 *Supreme Court of Queensland Act 1991*, schedule 2 (Dictionary)—

**minor claim** means a claim for an amount, including interest, of not more than \$7500, 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*.

**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.

258 *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.

## Schedule 4 (continued)

**order debt**, for chapter 19, see rule 793.

**part 2 order**, for chapter 8, part 2, see rule 255A.

**partner**, for chapter 19, see rule 793.

**partnership** see the *Partnership Act 1891*.

**party**, for chapter 17A, see rule 679.

**person under a legal incapacity** see *Supreme Court of Queensland Act 1991*, schedule 2.<sup>259</sup>

**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.

**property**, for chapter 21, see rule 948.

**public trustee**, for chapter 15, see rule 596.

**question**, for chapter 13, part 5, see rule 482.

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259 *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)

**referred dispute**, for chapter 9, part 4, see rule 313.

**registrar**—

- (a) for chapter 9, part 4, see rule 313; and
- (b) for schedules 1 to 3, means—
  - (i) an assessing registrar within the meaning of rule 679; or
  - (ii) a costs assessor appointed under rule 743L; and
- (c) 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 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, see rule 449.

**relevant court**, for chapter 17A, part 4, see rule 743.

**respondent**—

- (a) for chapter 14, part 5, see rule 586; or
- (b) for chapter 20, part 7, see rule 921.

**review application**, for chapter 14, part 4, see rule 564.

**script**, for chapter 15, part 8, see rule 629.

**sealed copy** means a copy stamped with the seal of the court.

**seize**, for real property, includes seize under rule 828(5).

**senior judicial officer**, for chapter 9, part 4, see rule 313.

**service provider**, for chapter 22, part 1, division 4 and rule 516, see rule 975B.

**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.

## Schedule 4 (continued)

**simplified procedures** for Magistrates Courts, see rule 514.

**spouse**, for chapter 15, see rule 596.

**stakeholder**, for chapter 21, see rule 948.

**subpoena for production** means a subpoena for the person specified to produce a document or thing.

**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.<sup>260</sup>

**the Act**, for chapter 14, part 4, see rule 564.

**the court**—

(a) for chapter 20A, part 2, see rule 947C; and

(b) otherwise, see rule 3(2).

**third person**—

(a) for chapter 19 generally, see rule 793;

(b) for chapter 19, part 5, division 2, see rule 847.

**trustee**, for chapter 17A, see rule 679.

**will**, for chapter 15, see rule 596.

**writ of habeas corpus**, for chapter 14, part 5, see rule 586.

**young person** see *Supreme Court of Queensland Act 1991*, schedule 2.<sup>261</sup>

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260 *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.

261 *Supreme Court of Queensland Act 1991*, schedule 2 (Dictionary)—

**young person** means an individual who is under 18 years.

## Endnotes

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### 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 10 December 2007. 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

Key	Explanation	Key	Explanation
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	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
1	none	1 July 1999	1 July 1999
1A	2000 SL No. 66	1 May 2000	5 May 2000
2	2000 SL No. 127	1 July 2000	7 July 2000
2A	2000 SL No. 232	8 September 2000	15 September 2000
2B	2001 SL No. 111	30 July 2001	19 October 2001
2C	2001 SL No. 281	21 December 2001	11 January 2002

Reprint No.	Amendments included	Effective	Notes
3	2002 SL No. 223	1 September 2002	
3A	2003 SL No. 54	1 April 2003	
3B	2003 SL No. 87	16 May 2003	
3C	2003 SL No. 237	6 October 2003	
3D	2004 SL No. 115	2 July 2004	
3E	2004 SL No. 178	20 September 2004	
3F	2004 SL No. 276	10 December 2004	

Reprint No.	Amendments included	Effective	Notes
3G	2005 SL No. 64 2005 SL No. 65	22 April 2005	R3G withdrawn, see R4
4	—	22 April 2005	
4A	2005 SL No. 242	1 October 2005	
4B	2005 SL No. 324	16 December 2005	
4C	2005 SL No. 325	19 December 2005	
4D	2006 SL No. 194	28 July 2006	
4E	—	2 October 2006	prov exp 1 October 2006
4F	2006 SL No. 271	13 November 2006	
4G	2007 SL No. 96	1 June 2007	
4H	2007 SL No. 156	1 July 2007	R4H withdrawn, see R5
5	—	1 July 2007	
5A	2007 SL No. 274	26 November 2007	
5B	2007 SL No. 315	10 December 2007	

## 5 Tables in earlier reprints

Name of table	Reprint No.
Corrected minor errors	2, 4, 5

## 6 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))

amending legislation—

### **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)

### **Uniform Civil Procedure Amendment Rule (No. 1) 2000 SL No. 127**

notfd gaz 23 June 2000 pp 652–4  
 ss 1–2 commenced on date of notification  
 remaining provisions commenced 1 July 2000 (see s 2)

### **Uniform Civil Procedure Amendment Rule (No. 2) 2000 SL No. 232 pts 1–2**

notfd gaz 8 September 2000 pp 134–5  
 commenced on date of notification

**Uniform Civil Procedure Amendment Rule (No. 1) 2001 SL No. 107**

notfd gaz 13 July 2001 pp 1041–2  
commenced on date of notification

**Justice Legislation (Variation of Fees and Costs) Regulation 2001 SL No. 111 pts 1, 10**

notfd gaz 20 July 2001 pp 1138–40  
ss 1–2 commenced on date of notification  
remaining provisions commenced 30 July 2001 (see s 2)

**Uniform Civil Procedure Amendment Rule (No. 2) 2001 SL No. 281**

notfd gaz 21 December 2001 pp 1482–8  
commenced on date of notification

**Justice Legislation (Variation of Fees and Costs) Regulation (No. 1) 2002 SL No. 223  
pts 1, 13**

notfd gaz 30 August 2002 pp 1557–61  
ss 1–2 commenced on date of notification  
remaining provisions commenced 1 September 2002 (see s 2)

**Discrimination Law (Marital Status) Amendment Regulation (No. 1) 2003 SL No. 54  
ss 1–3 sch**

notfd gaz 28 March 2003 pp 1125–9  
ss 1–2 commenced on date of notification  
remaining provisions commenced 1 April 2003 (see s 2)

**Uniform Civil Procedure Amendment Rule (No. 1) 2003 SL No. 87**

notfd gaz 16 May 2003 pp 213–4  
commenced on date of notification

**Justice Legislation (Variation of Costs and Fees) Regulation (No. 1) 2003 SL No. 237  
ss 1–3, sch**

notfd gaz 3 October 2003 pp 382–5  
ss 1–2 commenced on date of notification  
remaining provisions commenced 6 October 2003 (see s 2)

**Uniform Civil Procedure Amendment Rule (No. 1) 2004 SL No. 115**

notfd gaz 2 July 2004 pp 705–7  
commenced on date of notification

**Justice Legislation (Costs and Fees) Amendment Regulation (No. 1) 2004 SL No. 178**

notfd gaz 10 September 2004 pp 173–7  
ss 1–2 commenced on date of notification  
remaining provisions commenced 20 September 2004 (see s 2)

**Uniform Civil Procedure Amendment Rule (No. 2) 2004 SL No. 276**

notfd gaz 10 December 2004 pp 1195–8  
commenced on date of notification

**Uniform Civil Procedure Amendment Rule (No. 1) 2005 SL No. 64**

notfd gaz 22 April 2005 pp 1306–8  
commenced on date of notification

**Uniform Civil Procedure Amendment Rule (No. 2) 2005 SL No. 65 pts 1–2, s 2 sch**

notfd gaz 22 April 2005 pp 1306–8  
commenced on date of notification

**Uniform Civil Procedure Amendment Rule (No. 3) 2005 SL No. 242**

notfd gaz 30 September 2005 pp 425–6  
 ss 1–2 commenced on date of notification  
 remaining provisions commenced 1 October 2005 (see s 2)

**Uniform Civil Procedure Amendment Rule (No. 4) 2005 SL No. 324**

notfd gaz 16 December 2005 pp 1490–6  
 commenced on date of notification

**Uniform Civil Procedure Amendment Rule (No. 5) 2005 SL No. 325**

notfd gaz 16 December 2005 pp 1490–6  
 ss 1–2 commenced on date of notification  
 remaining provisions commenced 19 December 2005 (see s 2)

**Uniform Civil Procedure and Other Rules Amendment Rule (No. 1) 2006 SL No. 194  
s 1, pt 2**

notfd gaz 28 July 2006 pp 1480–2  
 commenced on date of notification

**Uniform Civil Procedure Amendment Rule (No. 1) 2006 SL No. 271**

notfd gaz 10 November 2006 pp 1211–12  
 ss 1–2 commenced on date of notification  
 remaining provisions commenced 13 November 2006 (see s 2)

**Uniform Civil Procedure Amendment Rule (No. 1) 2007 SL No. 96**

notfd gaz 1 June 2007 pp 582–4  
 commenced on date of notification

**Uniform Civil Procedure Amendment Rule (No. 2) 2007 SL No. 156**

notfd gaz 29 June 2007 pp 1157–65  
 ss 1–2 commenced on date of notification  
 remaining provisions commenced 1 July 2007 (see s 2)

**Uniform Civil Procedure Amendment Rule (No. 3) 2007 SL No. 274**

notfd gaz 9 November 2007 pp 1355–7  
 ss 1–2 commenced on date of notification  
 remaining provisions commenced 26 November 2007 (see s 2)

**Uniform Civil Procedure Amendment Rule (No. 4) 2007 SL No. 315**

notfd gaz 7 December 2007 pp 1978–82  
 ss 1–2, 3 commenced on date of notification  
 ss 5, 16(3)–(4) commence 1 January 2008 (see s 2(2))  
 remaining provisions commenced 10 December 2007 (see s 2(1))

## **7 List of annotations**

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**r 19** amd 2000 SL No. 127 s 4

**Claim**

**r 22** amd 2000 SL No. 127 s 5; 2007 SL No. 96 s 3

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**r 26** amd 2000 SL No. 127 s 6

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renum 2000 SL No. 127 s 9

**Oral applications**

**r 32** (prev r 32A (orig r 31)) renum and reloc 2000 SL No. 127 s 7  
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pres r 125 (prev r 128) reloc and renum 2001 SL No. 107 s 5

**Service of other process by leave**

**r 127** amd 2001 SL No. 107 s 4

**Order for service outside Australia**

**r 128** (prev r 129) renum 2001 SL No. 107 s 6

**How service outside Australia to be performed**

**r 129** ins 2001 SL No. 107 s 7

**Division 2—Service in convention countries**

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**Service in convention countries**

**r 130** prev r 130 om 2001 SL No. 281 s 7  
pres r 130 (prev r 129A) ins 2001 SL No. 281 s 6  
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- pt hdg** om 2007 SL No. 315 s 6

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- r 675** amd 2007 SL No. 315 s 7

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- r 676** amd 2007 SL No. 315 s 8

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- div hdg** om 2007 SL No. 315 s 10

**Division 3—Costs of a party in a proceeding**

- div hdg** om 2007 SL No. 315 s 10

**Division 4—Registrar**

- div hdg** om 2007 SL No. 315 s 10

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- div hdg** om 2007 SL No. 315 s 10

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**pt hdg**    ins 2007 SL No. 315 s 10

**Division 1—Before application****div hdg** ins 2007 SL No. 315 s 10**Costs statement****r 705** sub 2007 SL No. 315 s 10**Objection to costs statement****r 706** sub 2007 SL No. 315 s 10**Consent order****r 707** sub 2007 SL No. 315 s 10**Default assessment if no objection to costs statement****r 708** sub 2007 SL No. 315 s 10**Setting aside default assessment****r 709** sub 2007 SL No. 315 s 10**Division 2—Application****div hdg** ins 2007 SL No. 315 s 10**Application for costs assessment****r 710** sub 2007 SL No. 315 s 10**Service of application****r 711** sub 2007 SL No. 315 s 10**Agreed costs assessor****r 712** sub 2007 SL No. 315 s 10**Costs assessor if no agreement****r 713** sub 2007 SL No. 315 s 10**Division 3—Assessment****div hdg** ins 2007 SL No. 315 s 10**Powers of an assessing registrar****prov hdg** sub 2001 SL No. 281 s 17(1)**r 714** amd 2001 SL No. 281 s 17(2)–(3)

sub 2007 SL No. 315 s 10

**Powers of a costs assessor****r 715** sub 2007 SL No. 315 s 10**No participation by a party****r 716** sub 2007 SL No. 315 s 10**Issue or question arising****r 717** sub 2007 SL No. 315 s 10**Notice of adjournment****r 718** sub 2005 SL No. 242 s 4; 2007 SL No. 315 s 10**Conflict of interest****r 719** sub 2005 SL No. 242 s 4; 2007 SL No. 315 s 10**Procedure on assessment****r 720** sub 2005 SL No. 242 s 4; 2007 SL No. 315 s 10

**Discretion of a costs assessor**

**r 721** sub 2007 SL No. 315 s 10

**Assessment must be limited**

**r 722** sub 2007 SL No. 315 s 10

**Disbursement or fee not paid**

**r 723** sub 2007 SL No. 315 s 10

**Professional charges and disbursements**

**r 724** sub 2007 SL No. 315 s 10

**Parties with same lawyer**

**r 725** sub 2007 SL No. 315 s 10

**Counsel's advice and settling documents**

**r 726** sub 2007 SL No. 315 s 10

**Evidence**

**r 727** sub 2007 SL No. 315 s 10

**Solicitor advocate**

**r 728** sub 2007 SL No. 315 s 10

**Premature brief**

**r 729** sub 2007 SL No. 315 s 10

**Retainer of counsel**

**r 730** sub 2007 SL No. 315 s 10

**Refresher fees**

**r 731** sub 2007 SL No. 315 s 10

**Division 4—Costs of assessment and offers to settle**

**div hdg** ins 2007 SL No. 315 s 10

**Costs of assessment**

**r 732** sub 2007 SL No. 315 s 10

**Offer to settle costs**

**r 733** sub 2007 SL No. 315 s 10

**Acceptance of offer to settle costs**

**r 734** sub 2007 SL No. 315 s 10

**Reduction of more than 15%**

**r 735** sub 2007 SL No. 315 s 10

**Division 5—Certificate of costs assessor**

**div hdg** ins 2007 SL No. 315 s 10

**Agreement as to costs**

**r 736** amd 2005 SL No. 242 s 5  
sub 2007 SL No. 315 s 10

**Certificate of assessment**

**r 737** amd 2005 SL No. 242 s 6  
sub 2007 SL No. 315 s 10

**Written reasons for decision****r 738** sub 2007 SL No. 315 s 10**Division 6—After assessment****div hdg** ins 2007 SL No. 315 s 10**Application of div 6****r 739** sub 2007 SL No. 315 s 10**Judgment for amount certified****r 740** sub 2007 SL No. 315 s 10**Costs may be set off****r 741** sub 2007 SL No. 315 s 10**Review by court****r 742** sub 2007 SL No. 315 s 10**PART 4—ASSESSMENT OF COSTS UNDER THE LEGAL PROFESSION ACT  
2007****pt hdg** ins 2007 SL No. 315 s 10**Definition for pt 4****r 743** sub 2007 SL No. 315 s 10**Application for costs assessment****r 743A** prev r 743A ins 2005 SL No. 242 s 7  
exp 1 October 2006 (see r 743A(3))  
pres r 743A ins 2007 SL No. 156 s 4  
sub 2007 SL No. 315 s 10**If recovery proceedings started****r 743B** ins 2007 SL No. 315 s 10**Court may direct preparation of itemised bill****r 743C** ins 2007 SL No. 315 s 10**Notice of application****r 743D** ins 2007 SL No. 315 s 10**Agreed costs assessor****r 743E** ins 2007 SL No. 315 s 10**Costs assessor if no agreement****r 743F** ins 2007 SL No. 315 s 10**Directions hearing****r 743G** ins 2007 SL No. 315 s 10**Application to court for directions after certificate of assessment filed****r 743H** ins 2007 SL No. 315 s 10**Application of other rules****r 743I** ins 2007 SL No. 315 s 10**PART 5—COSTS ASSESSORS****pt 5 (rr 743J–743R)** ins 2007 SL No. 315 s 10

**PART 6—TRANSITIONAL RULES ABOUT COSTS****pt hdg** ins 2007 SL No. 315 s 10**Old basis for taxing costs equates to new basis for assessing costs****r 743S** ins 2007 SL No. 315 s 10**Purpose of rules 743U and 743V****r 743T** ins 2007 SL No. 315 s 10  
exp 10 December 2008 (see r 743W)**Costs other than under Legal Profession Act 2007****r 743U** ins 2007 SL No. 315 s 10  
exp 10 December 2008 (see r 743W)**Costs under Legal Profession Act 2007****r 743V** ins 2007 SL No. 315 s 10  
exp 10 December 2008 (see r 743W)**Expiry of particular rules****r 743W** ins 2007 SL No. 315 s 10  
exp 10 December 2008 (see r 743W)**Registry preparation of appeal book****r 759** amd 2000 SL No. 127 s 57; 2003 SL No. 54 s 3 sch  
sub 2004 SL No. 115 s 8**Assessment of costs of appeals****r 771** amd 2007 SL No. 96 s 19**Form and contents of case stated****r 781** amd 2000 SL No. 127 s 58**Application of pt 3****r 782** prev r 782 om 2000 SL No. 127 s 59  
pres r 782 (prev r 784) renum 2000 SL No. 127 s 60  
amd 2001 SL No. 107 s 15**Procedure for appeals to District Court from Magistrates Court****r 783** prev r 783 om 2000 SL No. 127 s 59  
pres r 783 ins 2000 SL No. 127 s 61  
amd 2007 SL No. 96 s 20**Procedure for appeals to a court from other entities****r 784** ins 2000 SL No. 127 s 61**Application of rules to appeals and cases stated under this part****prov hdg** sub 2001 SL No. 107 s 16(1)  
**r 785** sub 2000 SL No. 127 s 61  
amd 2001 SL No. 107 s 16(2)**CHAPTER 19—ENFORCEMENT OF MONEY ORDERS****Definitions for ch 19****r 793** def “**enforcement creditor**” amd 2005 SL No. 65 s 2 sch  
def “**instalment order**” ins 2004 SL No. 115 s 9

**Enforcing money order in different court**

**r 802** amd 2000 SL No. 127 s 62; 2001 SL No. 281 s 18

**Outcome of application for end of trial enforcement hearing**

**r 806** amd 2000 SL No. 127 s 63

**Enforcement hearing after order is made**

**r 807** amd 2000 SL No. 127 s 64; 2007 SL No. 315 s 11

**Person to whom enforcement hearing summons may be directed and service**

**r 808** sub 2000 SL No. 127 s 65

**Requirement under enforcement hearing summons**

**r 809** sub 2000 SL No. 127 s 65

**Subpoena**

**r 810** amd 2000 SL No. 127 s 66

**Conduct money**

**r 811** amd 2000 SL No. 127 s 67

**Order for enforcement hearing outside district**

**r 813** amd 2000 SL No. 127 s 68; 2001 SL No. 281 s 19

**Enforcement hearing warrant**

**r 814** amd 2000 SL No. 127 s 69; 2001 SL No. 281 s 20

**Failure concerning financial position statement or enforcement hearing**

**prov hdg** sub 2000 SL No. 127 s 70(1)

**r 815** amd 2000 SL No. 127 s 70(2)–(4)

**Procedure**

**r 817** amd 2000 SL No. 127 s 71; 2001 SL No. 281 s 21

**Application to set aside enforcement**

**r 819** amd 2000 SL No. 127 s 72; 2004 SL No. 115 s 10

**Issue and enforcement of enforcement warrant**

**r 820** amd 2000 SL No. 127 s 73

**Renewal of enforcement warrant**

**r 821** amd 2000 SL No. 127 s 74

**Return of particular enforcement warrant**

**r 822** sub 2000 SL No. 127 s 75

**Enforcement beyond the district**

**r 826** amd 2000 SL No. 127 s 76

**Seizure of property under enforcement warrant**

**prov hdg** sub 2004 SL No. 115 s 11(1)

**r 828** amd 2000 SL No. 127 s 77; 2004 SL No. 115 s 11(2)

**Order of selling property**

**r 829** amd 2000 SL No. 127 s 78

**Nature of sale**

**r 832** amd 2000 SL No. 127 s 79; 2004 SL No. 115 s 12

**Sale at best price obtainable****r 833** amd 2000 SL No. 127 s 80; 2001 SL No. 107 s 17; 2004 SL No. 115 s 13**Advertising****r 834** amd 2004 SL No. 115 s 14**Accountability for, and distribution of, money received****r 836** amd 2000 SL No. 127 s 81**Enforcement debtor dealing with charged property****r 838** om 2004 SL No. 115 s 15**Debts that may be redirected under enforcement warrant****r 840** amd 2001 SL No. 281 s 22**Discharge of the third person****r 846** amd 2001 SL No. 107 s 18**Procedure for issue of enforcement warrant for regular redirection****r 848** amd 2000 SL No. 127 s 82**Attendance of, or information about, the enforcement debtor****r 857** amd 2000 SL No. 127 s 83**PART 7—ORDER FOR PAYMENT OF ORDER DEBT BY INSTALMENTS****pt hdg** sub 2004 SL No. 115 s 16**Order may authorise payment by instalments****r 868** sub 2004 SL No. 115 s 16**Prerequisites for instalment order****r 869** sub 2004 SL No. 115 s 16**No enforcement warrant to issue while instalment order****r 870** sub 2004 SL No. 115 s 16**Discharge or variation of instalment order****r 871** sub 2004 SL No. 115 s 16**Cessation of instalment order****r 872** sub 2004 SL No. 115 s 16**Cessation of enforcement warrant authorising payment by instalments****r 873** om 2004 SL No. 115 s 16**PART 8—ENFORCEMENT WARRANTS FOR CHARGING ORDERS****pt hdg** amd 2001 SL No. 107 s 19**Issue of warrant****r 875** amd 2001 SL No. 281 s 23**PART 9—MONEY IN COURT AND STOP ORDERS****pt hdg** sub 2001 SL No. 107 s 20**Return of enforcement warrant****r 889** amd 2000 SL No. 127 s 84

**Procedure****r 906** amd 2000 SL No. 127 s 85; 2004 SL No. 115 s 17**Application to set aside enforcement****r 907** amd 2000 SL No. 127 s 86; 2004 SL No. 115 s 18**Return of enforcement warrant****r 910** sub 2000 SL No. 127 s 87**Prerequisites to enforcement warrant for possession****r 913** amd 2000 SL No. 127 s 88; 2004 SL No. 115 s 19**Procedure****r 914** amd 2000 SL No. 127 s 89; 2004 SL No. 115 s 20**Application by registrar****r 928** amd 2000 SL No. 127 s 90**Punishment****r 930** amd 2000 SL No. 127 s 91**Enforcement of warrant for defendant's arrest****r 936** amd 2000 SL No. 127 s 92**Return of enforcement warrant****r 947** amd 2000 SL No. 127 s 93**CHAPTER 20A—RECIPROCAL ENFORCEMENT OF FOREIGN JUDGMENTS****ch hdg** ins 2005 SL No. 65 s 4**PART 1—PRELIMINARY****pt 1 (rr 947A–947B)** ins 2005 SL No. 65 s 4**PART 2—RECIPROCAL ENFORCEMENT OF FOREIGN JUDGMENTS****pt hdg** ins 2005 SL No. 65 s 4**Definition for pt 2****r 947C** ins 2005 SL No. 65 s 4**Application for registration of judgment****r 947D** ins 2005 SL No. 65 s 4**Evidence in support of application****r 947E** ins 2005 SL No. 65 s 4  
amd 2007 SL No. 96 s 21**Security for costs of application****r 947F** ins 2005 SL No. 65 s 4**Order for registration****r 947G** ins 2005 SL No. 65 s 4**Register of judgments****r 947H** ins 2005 SL No. 65 s 4**Registration of judgments****r 947I** ins 2005 SL No. 65 s 4

**Notice of registration****r 947J** ins 2005 SL No. 65 s 4**Details of service to be written on notice****r 947K** ins 2005 SL No. 65 s 4**Application to set aside registration of judgment****r 947L** ins 2005 SL No. 65 s 4**Enforcement of judgment****r 947M** ins 2005 SL No. 65 s 4**PART 3—RECIPROCAL ENFORCEMENT OF AUSTRALIAN JUDGMENTS****pt 3 (r 947N)** ins 2005 SL No. 65 s 4**CHAPTER 22—DOCUMENTS, REGISTRY AND SOLICITORS****PART 1—DOCUMENTS****Serial number****r 964** amd 2000 SL No. 127 s 94**Filing fees****r 971** amd 2002 SL No. 223 s 34; 2003 SL No. 54 s 3 sch**Division 4—Electronic court documents****div 4 (rr 975A–975I)** ins 2003 SL No. 87 s 3**Registrar to keep records****r 977** amd 2000 SL No. 127 s 95**Registrar to keep and use seal****r 978** amd 2000 SL No. 127 s 96**Searches****r 981** amd 2000 SL No. 127 s 97**Referral to judge or magistrate****prov hdg** amd 2000 SL No. 127 s 98(1)**r 982** amd 2000 SL No. 127 s 98(2)–(3)**Disposal of exhibits****r 984A** ins 2004 SL No. 115 s 21**Change of solicitor****r 987** amd 2005 SL No. 65 s 2 sch**CHAPTER 23—PROCEEDINGS UNDER CORPORATIONS ACT OR ASIC ACT****ch hdg** sub 2000 SL No. 232 s 3

amd 2004 SL No. 115 s 22

**Rules for proceedings under Corporations Act or ASIC Act****r 995** ins 2000 SL No. 232 s 3

sub 2004 SL No. 115 s 23

**CHAPTER 24—TRANSITIONAL PROVISIONS****ch hdg** ins 2004 SL No. 115 s 24**Transitional—Uniform Civil Procedure Amendment Rule (No. 1) 2004****r 996** ins 2004 SL No. 115 s 24

**Transitional provision—Uniform Civil Procedure Amendment Rule (No. 1) 2005**

- prov hdg** amd 2005 SL No. 242 s 8  
**r 997** ins 2005 SL No. 64 s 5  
 amd 2007 SL No. 315 s 12

**SCHEDULE 1A—RULES FOR PROCEEDINGS UNDER CORPORATIONS ACT  
OR ASIC ACT**

- sch hdg** amd 2004 SL No. 115 s 2 sch 1  
**sch 1A** ins 2000 SL No. 232 s 3

**PART 1—PRELIMINARY**

- pt hdg** ins 2000 SL No. 232 s 3

**Short title**

- r 1.1** ins 2000 SL No. 232 s 3  
 amd 2004 SL No. 115 s 2 sch 1

**Notes in text**

- r 1.2** ins 2000 SL No. 232 s 3

**Application of these rules and other rules of the court**

- r 1.3** ins 2000 SL No. 232 s 3  
 amd 2004 SL No. 115 s 2 sch 1

**Expressions used in the Corporations Act**

- prov hdg** amd 2004 SL No. 115 s 2 sch 1  
**r 1.4** ins 2000 SL No. 232 s 3  
 amd 2004 SL No. 115 s 2 sch 1; 2007 SL No. 96 s 22

**Definitions for these rules**

- r 1.5** ins 2000 SL No. 232 s 3  
 def “**originating application**” sub 2004 SL No. 115 s 2 sch 1  
 def “**the law**” om 2004 SL No. 115 s 2 sch 1

**References to rules and forms**

- r 1.6** ins 2000 SL No. 232 s 3

**Substantial compliance with forms**

- r 1.7** ins 2000 SL No. 232 s 3

**Court’s power to give directions**

- r 1.8** ins 2000 SL No. 232 s 3  
 amd 2004 SL No. 115 s 2 sch 1

**Calculation of time**

- r 1.9** ins 2000 SL No. 232 s 3

**Extension and abridgment of time**

- r 1.10** ins 2000 SL No. 232 s 3  
 amd 2004 SL No. 115 s 2 sch 1

**PART 2—PROCEEDINGS GENERALLY**

- pt hdg** ins 2000 SL No. 232 s 3

**Title of documents in a proceeding—form 1**

- r 2.1** ins 2000 SL No. 232 s 3

**Originating application and interlocutory application—forms 2 and 3**

**r 2.2** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1

**Fixing of hearing**

**r 2.3** ins 2000 SL No. 232 s 3

**Supporting affidavits**

**r 2.4** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1

**Affidavits made by creditors**

**r 2.5** ins 2000 SL No. 232 s 3

**Form of affidavits**

**r 2.6** ins 2000 SL No. 232 s 3

**Service of originating application or interlocutory application and supporting affidavit**

**r 2.7** ins 2000 SL No. 232 s 3

**Notice of certain applications to be given to ASIC**

**prov hdg** amd 2004 SL No. 115 s 2 sch 1

**r 2.8** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1

**Notice of appearance (Corporations Act, s 465C)—form 4**

**prov hdg** amd 2004 SL No. 115 s 2 sch 1

**r 2.9** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1

**Intervention in proceeding by ASIC (Corporations Act, s 1330)—form 5**

**prov hdg** amd 2004 SL No. 115 s 2 sch 1

**r 2.10** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1

**Publication of notices**

**r 2.11** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1

**Proof of publication**

**r 2.12** ins 2000 SL No. 232 s 3

**Leave to creditor, contributory or officer to be heard**

**r 2.13** ins 2000 SL No. 232 s 3

**Inquiry in relation to corporation's debts etc.**

**r 2.14** ins 2000 SL No. 232 s 3

**Meetings ordered by the court**

**r 2.15** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1

**PART 3—COMPROMISES AND ARRANGEMENTS IN RELATION TO PART 5.1 BODIES**

**pt hdg** ins 2000 SL No. 232 s 3

**Application of pt 3****r 3.1** ins 2000 SL No. 232 s 3**Nomination of chairperson for meeting****r 3.2** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1**Order for meetings to identify proposed scheme****r 3.3** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1; 2006 SL No. 194 s 7**Notice of hearing (Corporations Act, ss 411(4) and 413(1))—form 6****prov hdg** amd 2004 SL No. 115 s 2 sch 1  
**r 3.4** ins 2000 SL No. 232 s 3  
amd 2002 SL No. 223 s 36; 2004 SL No. 115 s 2 sch 1**Copy of order approving compromise or arrangement to be lodged with ASIC****prov hdg** amd 2004 SL No. 115 s 2 sch 1  
**r 3.5** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1**PART 4—RECEIVERS AND OTHER CONTROLLERS OF CORPORATION  
PROPERTY (CORPORATIONS ACT, PART 5.2)****pt hdg** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1**Inquiry into conduct of controller (Corporations Act, s 423)****prov hdg** amd 2004 SL No. 115 s 2 sch 1  
**r 4.1** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1**PART 5—WINDING-UP PROCEEDINGS (INCLUDING OPPRESSION  
PROCEEDINGS WHERE WINDING-UP IS SOUGHT)****pt hdg** ins 2000 SL No. 232 s 3**Application of pt 5****r 5.1** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1**Affidavit accompanying statutory demand (Corporations Act, s 459E(3))—form 7****prov hdg** amd 2004 SL No. 115 s 2 sch 1  
**r 5.2** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1**Application for leave to apply for winding-up in insolvency (Corporations Act, s  
459P(2))****prov hdg** amd 2004 SL No. 115 s 2 sch 1  
**r 5.3** ins 2000 SL No. 232 s 3**Affidavit in support of application for winding-up (Corporations Act, ss 459P, 462  
and 464)****prov hdg** amd 2004 SL No. 115 s 2 sch 1  
**r 5.4** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1

**Consent of liquidator (Corporations Act, s 532(9))—form 8****prov hdg** amd 2004 SL No. 115 s 2 sch 1**r 5.5** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1**Notice of application for winding-up—form 9****r 5.6** ins 2000 SL No. 232 s 3**Applicant to make copies of documents available****r 5.7** ins 2000 SL No. 232 s 3**Discontinuance of application for winding-up****r 5.8** ins 2000 SL No. 232 s 3**Appearance before registrar****r 5.9** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1**Order substituting applicant in application for winding-up (Corporations Act, s 465B)—form 10****prov hdg** amd 2004 SL No. 115 s 2 sch 1**r 5.10** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1**Notice of winding-up order and appointment of liquidator—form 11****r 5.11** ins 2000 SL No. 232 s 3**PART 6—PROVISIONAL LIQUIDATORS (CORPORATIONS ACT, PART 5.4B)****pt hdg** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1**Appointment of provisional liquidator (Corporations Act, s 472)—form 8****prov hdg** amd 2004 SL No. 115 s 2 sch 1**r 6.1** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1**Notice of appointment of provisional liquidator—form 12****r 6.2** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1**PART 7—LIQUIDATORS****pt hdg** ins 2000 SL No. 232 s 3**Resignation of liquidator (Corporations Act, s 473(1))****prov hdg** amd 2004 SL No. 115 s 2 sch 1**r 7.1** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1**Filling vacancy in office of liquidator (Corporations Act, ss 473(7) and 502)****prov hdg** amd 2004 SL No. 115 s 2 sch 1**r 7.2** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1

**Report to liquidator as to company's affairs (Corporations Act, s 475)****prov hdg** amd 2004 SL No. 115 s 2 sch 1**r 7.3** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1**Liquidator to file certificate and copy of settled list of contributories (Corporations Act, s 478)****prov hdg** amd 2004 SL No. 115 s 2 sch 1**r 7.4** ins 2000 SL No. 232 s 3**Release of liquidator and deregistration of company (Corporations Act, s 480(c) and (d))****prov hdg** amd 2004 SL No. 115 s 2 sch 1**r 7.5** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1**Objection to release of liquidator—form 13****r 7.6** ins 2000 SL No. 232 s 3**Report on accounts of liquidator (Corporations Act, s 481)****prov hdg** amd 2004 SL No. 115 s 2 sch 1**r 7.7** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1**Application for payment of call (Corporations Act, s 483(3)(b))—form 14****prov hdg** amd 2004 SL No. 115 s 2 sch 1**r 7.8** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1**Distribution of surplus by liquidator with special leave of the court (Corporations Act, s 488(2))—form 15****prov hdg** amd 2004 SL No. 115 s 2 sch 1**r 7.9** ins 2000 SL No. 232 s 3**Powers delegated to liquidator by the court (Corporations Act, s 488)****prov hdg** amd 2004 SL No. 115 s 2 sch 1**r 7.10** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1**Inquiry into conduct of liquidator (Corporations Act, s 536(1) and (2))****prov hdg** amd 2004 SL No. 115 s 2 sch 1**r 7.11** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1**PART 8—SPECIAL MANAGERS (CORPORATIONS ACT, PART 5.4B)****pt hdg** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1**Application for appointment of special manager (Corporations Act, s 484)****prov hdg** amd 2004 SL No. 115 s 2 sch 1**r 8.1** ins 2000 SL No. 232 s 3**Security given by special manager (Corporations Act, s 484)****prov hdg** amd 2004 SL No. 115 s 2 sch 1**r 8.2** ins 2000 SL No. 232 s 3

**Special manager's receipts and payments (Corporations Act, s 484)****prov hdg** amd 2004 SL No. 115 s 2 sch 1**r 8.3** ins 2000 SL No. 232 s 3**PART 9—Remuneration of office-holders****pt hdg** ins 2000 SL No. 232 s 3**Remuneration of receiver (Corporations Act, s 425(1))—form 16****prov hdg** amd 2004 SL No. 115 s 2 sch 1**r 9.1** ins 2000 SL No. 232 s 3

amd 2004 SL No. 115 s 2 sch 1

**Remuneration of administrator (Corporations Act, s 449E(1))—form 16****prov hdg** amd 2004 SL No. 115 s 2 sch 1**r 9.2** ins 2000 SL No. 232 s 3

amd 2004 SL No. 115 s 2 sch 1

**Remuneration of provisional liquidator (Corporations Act, s 473(2))—form 16****prov hdg** amd 2004 SL No. 115 s 2 sch 1**r 9.3** ins 2000 SL No. 232 s 3

amd 2004 SL No. 115 s 2 sch 1

**Remuneration of liquidator (Corporations Act, s 473(3))—form 16****prov hdg** amd 2004 SL No. 115 s 2 sch 1**r 9.4** ins 2000 SL No. 232 s 3

amd 2004 SL No. 115 s 2 sch 1

**Remuneration of special manager (Corporations Act, s 484(2))—form 16****prov hdg** amd 2004 SL No. 115 s 2 sch 1**r 9.5** ins 2000 SL No. 232 s 3

amd 2004 SL No. 115 s 2 sch 1

**PART 10—WINDING UP GENERALLY****pt hdg** ins 2000 SL No. 232 s 3**Determination of value of debts or claims (Corporations Act, s 554A(2))****prov hdg** amd 2004 SL No. 115 s 2 sch 1**r 10.1** ins 2000 SL No. 232 s 3

amd 2004 SL No. 115 s 2 sch 1

**Disclaimer of contract (Corporations Act, s 568(1A))****prov hdg** amd 2004 SL No. 115 s 2 sch 1**r 10.2**

amd 2004 SL No. 115 s 2 sch 1

**Winding up part 5.7 bodies (Corporations Act, ss 583 and 585) and registered schemes (Corporations Act, s 601ND)****prov hdg** sub 2004 SL No. 115 s 2 sch 1**r 10.3** ins 2000 SL No. 232 s 3**PART 11—EXAMINATIONS AND ORDERS (CORPORATIONS ACT, PART 5.9, DIVISIONS 1 AND 2)****pt hdg** ins 2000 SL No. 232 s 3

amd 2004 SL No. 115 s 2 sch 1

**Definition for pt 11**

- r 11.1** ins 2000 SL No. 232 s 3  
def “**examination summons**” amd 2004 SL No. 115 s 2 sch 1

**Application for examination or investigation under Corporations Act, s 411(9)(b), 423 or 536(3)**

- prov hdg** amd 2004 SL No. 115 s 2 sch 1  
**r 11.2** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1

**Application for examination summons (Corporations Act, ss 596A and 596B)—form 17**

- prov hdg** amd 2004 SL No. 115 s 2 sch 1  
**r 11.3** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1

**Service of examination summons**

- r 11.4** ins 2000 SL No. 232 s 3

**Discharge of examination summons**

- r 11.5** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1

**Filing of record of examination (Corporations Act, s 597(13))**

- prov hdg** amd 2004 SL No. 115 s 2 sch 1  
**r 11.6** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1

**Authentication of transcript of examination (Corporations Act, s 597(14))**

- prov hdg** amd 2004 SL No. 115 s 2 sch 1  
**r 11.7** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1

**Inspection of record or transcript of examination or investigation under Corporations Act, s 411, 423 or 536**

- prov hdg** amd 2004 SL No. 115 s 2 sch 1  
**r 11.8** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1

**Entitlement to record or transcript of examination held in public**

- r 11.9** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1

**Default in relation to examination**

- r 11.10** ins 2000 SL No. 232 s 3

**Service of application for order in relation to breaches etc. by person concerned with corporation (Corporations Act, s 598)**

- prov hdg** amd 2004 SL No. 115 s 2 sch 1  
**r 11.11** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1

**PART 12—TAKEOVERS, ACQUISITIONS OF SHARES ETC. (CORPORATIONS ACT, CHAPTERS 6 TO 6D) AND SECURITIES (CORPORATIONS ACT, CHAPTER 7)**

**pt hdg** ins 2000 SL No. 232 s 3  
sub 2004 SL No. 115 s 2 sch 1

**Service on ASIC in relation to proceedings under Corporations Act, chapter 6, 6A, 6B, 6C, 6D or 7**

**r 12.1** ins 2000 SL No. 232 s 3  
sub 2004 SL No. 115 s 2 sch 1

**Reference to court of questions of law arising in proceeding before takeovers panel (Corporations Act, s 659A)**

**r 12.1A** ins 2004 SL No. 115 s 2 sch 1

**Application for summons for appearance of person (Corporations Act, s 1071D(4))—form 18**

**prov hdg** amd 2004 SL No. 115 s 2 sch 1  
**r 12.2** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1

**Application for orders relating to refusal to register transfer or transmission of securities (Corporations Act, s 1071F)**

**r 12.3** ins 2000 SL No. 232 s 3  
sub 2004 SL No. 115 s 2 sch 1

**PART 13—THE FUTURES INDUSTRY (CHAPTER 8 OF THE LAW)**

**pt 13 (rr 13.1–13.2)** om 2004 SL No. 115 s 2 sch 1

**PART 14—POWERS OF COURTS (CORPORATIONS ACT, PART 9.5)**

**pt hdg** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1

**Appeal from act, omission or decision of administrator, receiver or liquidator etc. (Corporations Act, ss 554A and 1321)**

**prov hdg** amd 2004 SL No. 115 s 2 sch 1  
**r 14.1** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1

**PART 15—PROCEEDINGS UNDER THE ASIC ACT**

**pt hdg** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1

**Reference to court of question of law arising at hearing of ASIC (ASIC Act, s 61)**

**prov hdg** amd 2004 SL No. 115 s 2 sch 1  
**r 15.1** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1

**Court may draw inferences**

**r 15.2** ins 2000 SL No. 232 s 3

**Application for inquiry (ASIC Act, ss 70, 201 and 219)**

**prov hdg** amd 2004 SL No. 115 s 2 sch 1  
**r 15.3** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1

**PART 16—POWERS OF REGISTRARS****pt hdg** ins 2000 SL No. 232 s 3**Powers of registrars****r 16.1** ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 1; 2005 SL No. 65 s 2 sch**Reference by registrar****r 16.2** ins 2000 SL No. 232 s 3**SCHEDULE 1B—POWERS OF THE COURT THAT MAY BE EXERCISED BY A REGISTRAR**ins 2000 SL No. 232 s 3  
amd 2004 SL No. 115 s 2 sch 2**SCHEDULE 1—SCALE OF COSTS—SUPREME COURT****sch hdg** amd 2007 SL No. 315 s 13(1)**sch 1** sub 2000 SL No. 66 s 24; 2001 SL No. 111 s 25; 2002 SL No. 223 s 35; 2003  
SL No. 237 s 3 sch  
amd 2004 SL No. 115 s 25  
sub 2005 SL No. 64 s 6; 2006 SL No. 271 s 4; 2007 SL No. 274 s 4  
amd 2007 SL No. 315 s 13(2)**SCHEDULE 2—SCALE OF COSTS—DISTRICT COURT****sch hdg** amd 2007 SL No. 315 s 14(1)**sch 2** amd 2000 SL No. 66 s 25; 2001 SL No. 111 s 26; 2002 SL No. 223 s 37; 2003  
SL No. 237 s 3 sch  
sub 2005 SL No. 64 s 6; 2006 SL No. 271 s 4; 2007 SL No. 274 s 4  
amd 2007 SL No. 315 s 14(2)**SCHEDULE 3—SCALE OF COSTS—MAGISTRATES COURTS****sch hdg** amd 2007 SL No. 315 s 15**sch 3** amd 2000 SL No. 66 s 26; 2001 SL No. 111 s 27; 2002 SL No. 223 s 38; 2003  
SL No. 237 s 3 sch; 2004 SL No. 178 s 3 sch; 2005 SL No. 325 s 4  
sub 2006 SL No. 271 s 4; 2007 SL No. 274 s 4**SCHEDULE 4—DICTIONARY**def “**administration charge**” amd 2001 SL No. 107 s 21  
def “**approved entity**” ins 2006 SL No. 194 s 8  
def “**assessed costs**” sub 2007 SL No. 315 s 16(1)–(2)  
def “**assessing registrar**” ins 2007 SL No. 315 s 16(2)  
def “**Australian lawyer**” ins 2007 SL No. 315 s 16(2)  
def “**Brisbane registrar**” ins 2007 SL No. 315 s 16(2)  
def “**certificate of assessment**” ins 2007 SL No. 315 s 16(2)  
def “**client**” ins 2007 SL No. 315 s 16(2)  
def “**Commonwealth Act**” ins 2005 SL No. 65 s 5(2)  
def “**costs assessment**” ins 2007 SL No. 315 s 16(2)  
def “**costs assessor**” ins 2007 SL No. 315 s 16(2)  
def “**costs of the proceeding**” sub 2007 SL No. 315 s 16(1)–(2)  
def “**costs statement**” sub 2007 SL No. 315 s 16(1)–(2)  
def “**de facto spouse**” om 2003 SL No. 54 s 3 sch  
def “**district**” amd 2007 SL No. 96 s 23(1)  
def “**electronically file**” ins 2006 SL No. 194 s 8  
def “**electronic judgment**” ins 2006 SL No. 194 s 8

- def “**instalment order**” ins 2004 SL No. 115 s 26
- def “**interest in a managed investment scheme**” ins 2001 SL No. 281 s 24(2)
- def “**itemised bill**” ins 2007 SL No. 315 s 16(2)
- def “**judgment**” sub 2005 SL No. 65 s 5(1)
- def “**judgment creditor**” ins 2005 SL No. 65 s 5(2)
- def “**judgment debtor**” ins 2005 SL No. 65 s 5(2)
- def “**order**” sub 2007 SL No. 96 s 23(2)
- def “**part 2 order**” sub 2007 SL No. 96 s 23(3)
- def “**party**” sub 2007 SL No. 315 s 16(1)–(2)
- def “**prescribed interest**” om 2001 SL No. 281 s 24(1)
- def “**registrar**” amd 2002 SL No. 223 s 39; 2005 SL No. 65 s 2 sch  
sub 2007 SL No. 315 s 16(1)–(2)
- def “**relevant court**” ins 2007 SL No. 315 s 16(2)
- def “**seize**” ins 2004 SL No. 115 s 26
- def “**service provider**” ins 2006 SL No. 194 s 8
- def “**spouse**” ins 2003 SL No. 54 s 3 sch
- def “**the court**” ins 2005 SL No. 65 s 5(2)
- def “**trustee**” sub 2007 SL No. 315 s 16(1)–(2)