



Queensland

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

## Explanatory Notes for SL 2011 No. 296

made under the

*Supreme Court of Queensland Act 1991*

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## General outline

### Short title

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

### Authorising law

*Supreme Court of Queensland Act 1991*, section 118

### Policy objectives and the reasons for them

This Amendment Rule amends the *Uniform Civil Procedure Rules 1999* (UCPR). The principal purpose of the Amendment Rule is to align the procedures for service of foreign judicial documents with those prescribed by the *Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters 1965* (Hague Service Convention). The Amendment Rule also provides for the delegation of the Attorney-General's functions in relation to service of foreign processes or citations.

The Amendment Rule also: clarifies the process for the assessment of 'estate accounts' (previously called executors', administrators' and

trustees' accounts); facilitates the expanded use of electronic court documents; and makes minor technical amendments.

### **Achievement of policy objectives**

The Amendment Rule amends chapter 4 of the UCPR to align the process for the service in Queensland of foreign judicial documents with the Hague Service Convention, including the associated model rules that have been adopted in most Australian States. The amendments apply to the service in Queensland of foreign judicial documents from Hague Convention countries and non-Hague Convention countries.

Further, the Amendment Rule provides for the delegation of the Attorney-General's functions under rule 131. Rule 131 applies, if, in a civil or commercial matter before a court or tribunal of a foreign country (the foreign court), the foreign court requests service on a person in Queensland of any process or citation. Under this rule, to allow service to occur, the Attorney-General is to send the request to the Supreme Court indicating that effect should be given to the process (rule 131(1)(b)). The Amendment Rule amends rule 131 to allow the Attorney-General to delegate this function. This Amendment will streamline the referral process.

In addition, the Amendment Rule amends chapter 15 of the UCPR to replace the existing part 10 (Executors', administrators' and trustees' accounts) with a new part 10 (Assessment of estate accounts) which includes provisions for:

- clarifying and updating the procedure for applying for the assessment and passing of an estate account;
- prescribing the minimum standards for the procedure on assessment;
- clarifying the powers and functions of an account assessor on assessment;
- appointing a costs assessor to assess lawyers' costs charged to an estate; and
- clarifying and updating the procedure for applying for and awarding of a trustee's or executor's commission.

The Amendment Rule also inserts, into chapter 15 of the UCPR, new part 11 which introduces the concept of account assessors and the minimum eligibility requirements for their appointment.

Further, the Amendment Rule amends chapter 22 to expand the use of electronic court documents to the Supreme and District Courts and simplify the process for approving entities to file electronically.

The Amendment Rule also makes minor technical amendments: clarifying the time periods for the delivery of the list of documents and copies under the disclosure provisions in rule 214; replacing the word “witness” with the words “person required to attend” in rules 405 and 406; and replacing references to “Brisbane registrar” with “principal registrar”.

### **Consistency with policy objectives of authorising law**

The Amendment Rule is consistent with the main objectives of the *Supreme Court of Queensland Act 1991*.

Section 118 of the *Supreme Court of Queensland Act 1991* provides that the Governor in Council may make rules of court with the consent of the Rules Committee established under the Act.

### **Inconsistency with policy objectives of other legislation**

The Amendment Rule is not inconsistent with the policy objectives of other legislation.

### **Benefits and costs of implementation**

The benefits of these amendments are:

- consistency with other States will be achieved for court rules and procedures relating to the Hague Service Convention;
- the process of examining estate accounts and calculating executors’ commission will be performed by experts in succession law; and
- the courts will be able to make wider and more appropriate use of electronic documents.

### **Consistency with fundamental legislative principles**

This Amendment Rule is consistent with fundamental legislative principles.

## **Consultation**

The Rules Committee has been consulted on the proposed amendments.

The Queensland Law Society was consulted on the new estate account assessment rules.

The rules regarding the Hague Service Convention reflect the nationally agreed changes co-ordinated by the Federal Attorney-General's Department in 2009-2010.

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## **ENDNOTES**

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Justice and Attorney-General.

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