



Queensland

Uniform Civil Procedure (Subpoenas) Amendment Rule 2018

Subordinate Legislation 2018 No. 128

made under the

Supreme Court of Queensland Act 1991

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1 Short title

This rule may be cited as the *Uniform Civil Procedure (Subpoenas) Amendment Rule 2018*.

2 Rules amended

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

3 Amendment of r 414 (Power to issue subpoena)

(1) Rule 414(2)—

omit, insert—

(2) The court may, on its own initiative or at the request of a party to a proceeding, issue a subpoena requiring the person specified in the subpoena to—

- (a) attend to give evidence as directed by the subpoena; or
- (b) produce a document or thing as directed by the subpoena; or
- (c) do both of the things mentioned in paragraphs (a) and (b).

(2A) The court may issue a subpoena electronically.

(2) Rule 414(3)(a)—

omit, insert—

- (a) must specify the person to whom the subpoena is directed by name or description of office or position unless the registrar otherwise directs or the court otherwise orders; and

(3) Rule 414—

insert—

(3A) A party may file a single request under subrule (3) for the issuing of more than 1 subpoena.

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(4) Rule 414(6) to (8)—

omit.

(5) Rule 414(2A) to (9)—

renumber as rule 414(3) to (8).

4 Amendment of r 415 (Formal requirements)

(1) Rule 415—

insert—

(1A) A subpoena must not be directed to more than 1 person.

(1B) A subpoena must specify the person to whom it is directed by name or description of office or position.

(1C) A subpoena to give evidence must state the date, time and place for attendance.

(1D) A subpoena for production must—

(a) identify the document or thing to be produced; and

(b) state the date, time and place for production.

(2) Rule 415—

insert—

(3) A subpoena for production and to give evidence must state the matters required to be stated in a subpoena under subrules (4), (5) and (6).

(4) Also, a subpoena must state the last date for service of the subpoena.

(5) If the person to whom a subpoena is directed is a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

(6) In this rule—

last date, for service of a subpoena, means—

-
- (a) if the court has fixed a date by which the subpoena must be served—the date fixed by the court; or
 - (b) otherwise—the date that is 5 days before the earliest date the person to whom the subpoena is directed is required to comply with it.
- (3) Rule 415(1A) to (6)—
renumber as rule 415(2) to (10).

5 Insertion of new r 415A

After rule 415—

insert—

415A Change of date or time for attendance or production

- (1) A party on whose behalf a subpoena was issued may give written notice to the person to whom the subpoena is directed of a date or time later than the date or time stated in the subpoena as the date or time to do either or both of the following—
 - (a) attend to give evidence;
 - (b) produce a document or thing.
- (2) If notice is given under subrule (1), the subpoena has effect as if the date or time stated in the notice were the date or time stated in the subpoena.

6 Replacement of r 417 (Order for cost of complying with subpoena)

Rule 417—

omit, insert—

417 Costs and expenses of complying with subpoena

- (1) The court may order the party on whose behalf a

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subpoena was issued to pay the amount of any reasonable loss or expense incurred by the person to whom the subpoena is directed in complying with the subpoena.

- (2) An order made under subrule (1) must fix the amount payable or direct that it be fixed by assessment.
- (3) An amount fixed under this rule is in addition to—
 - (a) any amount payable under rule 419; and
 - (b) any amounts payable as normal witness expenses.

7 Amendment of r 418 (Cost of complying with subpoena if not a party)

Rule 418, ‘addressed’—

omit, insert—

directed

8 Amendment of r 419 (Conduct money)

Rule 419(1)—

omit, insert—

- (1) Despite rule 414(8), the person to whom a subpoena to give evidence or a subpoena for production and to give evidence is directed need not comply with the requirements of the subpoena unless conduct money has been given or tendered to the person a reasonable period before the day the person is required to attend.

9 Amendment of r 420 (Production by non-party)

- (1) Rule 420(1) and (2)—

omit, insert—

-
- (1) This rule applies in relation to the following subpoenas if the person to whom the subpoena is directed is not a party to the proceeding—
 - (a) a subpoena for production;
 - (b) a subpoena for production and to give evidence, to the extent the subpoena requires the production of a document or thing.
 - (2) The person must comply with the subpoena in a way mentioned in subrule (3) or (4).
 - (2A) The person, or an agent of the person, may—
 - (a) attend at the date, time and place stated in the subpoena for production; and
 - (b) produce the subpoena, or a copy of it, and the document or thing required to be produced to the court or to any person authorised to take evidence in the proceeding.
 - (2B) The person, or an agent of the person, may deliver or send the subpoena, or a copy of it, and the document or thing required to be produced to the registry from which the subpoena was issued, so they are received not less than 2 clear business days before the earliest date stated in the subpoena.
- (2) Rule 420(3), after ‘at the registry’—
insert—
under subrule (4)
- (3) Rule 420(4)—
omit, insert—
- (4) Also, if the person produces more than 1 document or thing under subrule (4), the person must, if requested by the registrar, give the officer a list of the documents or things produced.

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(4) Rule 420(5)—

omit.

(5) Rule 420(2A) to (4)—

renumber as rule 420(3) to (6).

10 Insertion of new r 420A

After rule 420—

insert—

420A Copy of document may be produced

- (1) If a subpoena requires a person to produce a document, the person may comply with the subpoena by producing a copy of the document.
- (2) Subrule (1) does not apply if the subpoena states the original document must be produced.
- (3) For subrule (1), a copy of the document may be—
 - (a) a paper copy; or
 - (b) an electronic copy in an electronic file format approved by the registrar.

11 Replacement of r 421 (Service)

Rule 421—

omit, insert—

421 Service

- (1) A subpoena may be served under chapter 4, parts 2, 3, 4 and 5 on the person to whom it is directed.
- (2) Also, a subpoena may instead be served by—
 - (a) if the subpoena was issued electronically— the subpoena being emailed to the person; or
 - (b) if the subpoena was issued in any other way—an imaged copy of the subpoena being emailed to the person.

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- (3) However, compliance with a subpoena served under this rule may be enforced, and a proceeding may be taken for noncompliance with the subpoena, only if it is proved that—
- (a) the subpoena, or an imaged copy of the subpoena, has been received by the person to whom it is directed; or
 - (b) the person to whom the subpoena is directed has actual knowledge of the subpoena.
- (4) Despite rule 414(8), the person to whom a subpoena is directed need not comply with the requirements of the subpoena unless it is served on the person on or before the date stated in the subpoena as the last date for service of the subpoena.
- (5) In this rule—
- imaged copy*, of a subpoena, means a copy of the subpoena in electronic form, created by scanning or otherwise imaging the subpoena in its paper form.
- last date*, for service of a subpoena, see rule 415(10).

12 Insertion of new rr 422–422D

After rule 421—

insert—

422 Court may give directions

The court may give directions about the removal from and return to the court, and the inspection, copying or disposal, of any document or thing that has been produced to the court in response to a subpoena.

422A Inspecting particular documents and things produced

- (1) This rule applies in relation to a document or thing produced under rule 420(4) for a proceeding.
- (2) If requested in writing by a party to the proceeding, the registrar must—
 - (a) tell the party whether production in response to the subpoena has happened; and
 - (b) if a list has been given under rule 420(6)—give the party a copy of the list.
- (3) The registrar may allow a party to the proceeding to inspect the document or thing unless 1 or more of the following persons objects to the inspection under rule 422B—
 - (a) the person who produced the document or thing;
 - (b) another party to the proceeding;
 - (c) another person with a sufficient interest in the document or thing.
- (4) A person other than a party may inspect the document or thing only if—
 - (a) the court gives leave for the inspection; and
 - (b) the inspection is in accordance with the leave.
- (5) Subrule (4) applies subject to rule 422B.

422B Objecting to inspection of particular documents and things produced

- (1) This rule applies in relation to a document or thing produced under rule 420(4) for a proceeding.
- (2) If the person producing the document or thing objects to it being inspected by a party to the proceeding, the person must, when producing the document or thing, give the registrar written

notice of the objection and the grounds of the objection.

- (3) If a party to the proceeding, or a person having a sufficient interest in the document or thing, objects to the document or thing being inspected by a party to the proceeding, the party or person may give the registrar written notice of the objection and the grounds of the objection.
- (4) On receiving a notice of objection under subrule (2) or (3), the registrar—
 - (a) must give written notice of the objection to the party on whose behalf the subpoena was issued; and
 - (b) must not allow any person to inspect, or further inspect, the document or thing.
- (5) The party on whose behalf the subpoena was issued may, on reasonable notice to the person who gave the notice of objection, apply to the court for a decision about the objection.

422C Removal from registry of particular documents and things produced

- (1) This rule applies in relation to a document or thing produced under rule 420(4) for a proceeding.
- (2) The registrar may allow the document or thing to be removed from the registry only on an application in writing signed by the solicitor for a party to the proceeding.
- (3) A solicitor who signs an application mentioned in subrule (2) and removes the document or thing from the registry is taken to undertake to the court that—
 - (a) the document or thing will be kept in the personal custody of the solicitor or of counsel briefed by the solicitor in the proceeding; and

- (b) the document or thing will be returned to the court, as directed by the registrar, in the same condition, order and packaging in which it was removed.
- (4) The registrar may grant an application under subrule (2), with or without conditions, or refuse the application.

422D Production of documents and things in custody of court or another court

- (1) A party to a proceeding may ask the registrar to produce a document or thing in the custody of the court or another court.
- (2) The request must be made in writing and identify the document or thing.
- (3) The registrar may, at any time after receiving the request, inform the party that the party should apply to the court, as constituted by a judge, for directions in relation to the request.

Note—

See rule 977(2)(a) for restrictions on taking particular documents out of the court.

- (4) If the registrar acts under subrule (3), the registrar is not required to take any further action in relation to the request, other than to give effect to a direction made by the court.
- (5) Subject to subrule (4), if the document or thing is in the custody of the court, the registrar must produce the document or thing—
 - (a) in court or to any person authorised to take evidence in the proceeding, as required by the party; or
 - (b) as the court directs.
- (6) Subject to subrule (4), if the document or thing is in the custody of another court, the registrar must—

- (a) ask the other court to send the document or thing to the registrar; and
- (b) after receiving it, produce the document or thing—
 - (i) in court or to any person authorised to take evidence in the proceeding, as required by the party; or
 - (ii) as the court directs.

ENDNOTES

- 1 Made by the Governor in Council on 23 August 2018.
- 2 Notified on the Queensland legislation website on 24 August 2018.
- 3 The administering agency is the Department of Justice and Attorney-General.

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