



Queensland

Uniform Civil Procedure (Service Outside Australia) Amendment Rule 2019

Subordinate Legislation 2019 No. 50

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 (Service Outside Australia) Amendment Rule 2019*.

2 Rules amended

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

3 Amendment of r 16 (Setting aside originating process)

Rule 16(h), ‘rule 127’—

omit, insert—

rule 126(1) or 129G(1)

4 Replacement of ch 4, pt 7, div 1 (Ordinary service outside Australia)

Chapter 4, part 7, division 1—

omit, insert—

Division 1 Ordinary service outside Australia

Subdivision 1 Supreme Court proceedings

124 Application of subdivision

- (1) This subdivision applies only for a proceeding in the Supreme Court.
- (2) However, this subdivision does not apply to service in New Zealand of an originating process for, or any other document to be served in or for, a proceeding an originating process for which may be served in New Zealand under the *Trans-Tasman Proceedings Act 2010* (Cwlth),

part 2, division 2.

125 When service allowed without leave

An originating process may be served outside Australia without leave in the following circumstances—

- (a) if the claim is founded on a tortious act or omission—
 - (i) that was done or that happened wholly or partly in Australia; or
 - (ii) in respect of which the damage was sustained wholly or partly in Australia;
- (b) if the claim is for the enforcement, rescission, dissolution, annulment, cancellation, rectification, interpretation or other treatment of, or for damages or other relief in respect of a breach of, a contract that—
 - (i) was made or entered into in Australia; or
 - (ii) was made by or through an agent trading or residing within Australia; or
 - (iii) was to be wholly or in part performed in Australia; or
 - (iv) was by its terms or by implication to be governed by Australian law or to be enforceable or cognisable in an Australian court;
- (c) if the claim is in respect of a breach in Australia of a contract, wherever made, whether or not the breach was preceded or accompanied by a breach outside Australia that rendered impossible the performance of that part of the contract that ought to have been performed in Australia;

- (d) if the claim—
 - (i) is for an injunction to compel or restrain the performance of an act in Australia; or
 - (ii) is for interim or ancillary relief in respect of a matter or thing in or connected with Australia, and the relief is sought in relation to a judicial or arbitral proceeding started or to be started, or an arbitration agreement made, in or outside Australia (including, without limitation, interim or ancillary relief in relation to a proceeding under the *International Arbitration Act 1974* (Cwlth) or the *Commercial Arbitration Act 2013*); or
 - (iii) without limiting subparagraph (ii), is an application for a freezing order or ancillary order under chapter 8, part 2, division 2 in respect of a matter or thing in or connected with Australia;
- (e) if the subject matter of the claim is land or other property situated in Australia, or an act, deed, will, instrument or thing affecting land or property situated in Australia, or the proceeding is for the perpetuation of testimony relating to land or property situated in Australia;
- (f) if the claim relates to the carrying out or discharge of the trusts of a written instrument of which the person to be served is a trustee and that ought to be carried out or discharged according to Australian law;
- (g) if relief is sought against a person domiciled or ordinarily or habitually resident in Australia (whether present in Australia or not);

- (h) if a person outside Australia is—
 - (i) a necessary or proper party to a proceeding properly brought against another person served or to be served (whether within Australia or outside Australia) under any other provision of these rules; or
 - (ii) a defendant to a claim for contribution or indemnity in respect of a liability enforceable by a proceeding in the court;
- (i) if the claim is for—
 - (i) the administration of the estate of a deceased person who at the time of the person's death was domiciled in Australia; or
 - (ii) relief or a remedy that might be obtained in a proceeding mentioned in subparagraph (i);
- (j) if the claim arises under an Australian enactment and 1 or more of the following applies—
 - (i) an act or omission to which the claim relates was done or happened in Australia;
 - (ii) any loss or damage to which the claim relates was sustained in Australia;
 - (iii) the enactment applies expressly or by implication to an act or omission that was done or happened outside Australia in the circumstances alleged;
 - (iv) the enactment expressly or by implication confers jurisdiction on the court over persons outside Australia (in which case any requirements of the

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enactment relating to service must be complied with);

- (k) if the person to be served has submitted to the jurisdiction of the court;
- (l) if a claim is made for restitution or for the remedy of constructive trust and the alleged liability of the person to be served arises out of an act or omission that was done or happened wholly or partly in Australia;
- (m) if it is sought to recognise or enforce a judgment;
- (n) if the claim is founded on a cause of action arising in Australia;
- (o) if the claim affects the person to be served in respect of the person's membership of a corporation incorporated in Australia, or of a partnership or an association formed or carrying on any part of its affairs in Australia;
- (p) if the claim concerns the construction, effect or enforcement of an Australian enactment;
- (q) if the claim—
 - (i) relates to an arbitration held in Australia or governed by Australian law; or
 - (ii) is to enforce in Australia an arbitral award wherever made; or
 - (iii) is for orders necessary or convenient for carrying into effect in Australia the whole or any part of an arbitral award wherever made;
- (r) if the claim is for relief relating to the custody, guardianship, protection or welfare of a child present in Australia or who is domiciled or ordinarily or habitually

resident in Australia (whether present in Australia or not);

- (s) if the claim, so far as it concerns the person to be served, falls partly within 1 or more of paragraphs (a) to (r) and, as to the residue, within 1 or more of the others of paragraphs (a) to (r).

Notes—

- 1 See rules 178(4) and 195(1)(b) in relation to service under this subdivision of a counterclaim against a person not a party to a proceeding and a third party notice.
- 2 If a proceeding is started in the court and an originating process is served outside Australia under this rule but the court later decides it is more appropriate that the proceeding be decided by a court of another Australian jurisdiction, the court may transfer the proceeding to the other court under the *Jurisdiction of Courts (Cross-vesting) Act 1987* and may make an order for costs against the party who started the proceeding in the court rather than in the transferee court.

126 When service allowed with leave

- (1) The court may, by leave, allow service outside Australia of an originating process if service is not allowed under rule 125.
- (2) An application for leave under this rule must be made on notice to every party other than the person intended to be served.
- (3) Also, an application for leave under this rule must be supported by an affidavit stating any facts or matters related to the desirability of the court assuming jurisdiction, including—
 - (a) the place or country in which the person to be served is or possibly may be found; and
 - (b) whether or not the person to be served is an Australian citizen.

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- (4) The court may grant leave under this rule if satisfied—
 - (a) the claim has a real and substantial connection with Australia; and
 - (b) Australia is an appropriate forum for the trial; and
 - (c) in all the circumstances the court should assume jurisdiction.
- (5) A sealed copy of an order made under this rule must be served with the document to which it relates.

127 Court's discretion whether to assume jurisdiction

- (1) On application by a person on whom an originating process has been served outside Australia, the court may dismiss or stay the proceeding or set aside service of the originating process.
- (2) Without limiting subrule (1), the court may make an order under this rule if satisfied—
 - (a) service of the originating process is not authorised by these rules; or
 - (b) the court is an inappropriate forum for the trial of the proceeding; or
 - (c) the claim has insufficient prospects of success to warrant putting the person served outside Australia to the time, expense and trouble of defending the claim.

128 Notice to person served outside Australia

- (1) If a person is to be served outside Australia with an originating process, the person must also be served with a notice in the approved form informing the person of—

- (a) the scope of the jurisdiction of the court in respect of claims against persons who are served outside Australia; and
 - (b) the grounds alleged by the plaintiff to found jurisdiction; and
 - (c) the person's right to challenge service of the originating process or the jurisdiction of the court or to file a conditional notice of intention to defend.
- (2) Also, if the service of the originating process is by leave of the court, the notice must list the affidavits relied on to obtain the court's leave.

129 Time for notice of intention to defend

- (1) This rule applies if the originating process for a proceeding is a claim.
- (2) Subject to subrule (3), chapter 5 applies to the proceeding.
- (3) Unless the court orders otherwise, rule 137 applies to the proceeding as if the reference in rule 137(1) to 28 days were a reference to 42 days.

129A Service of application and affidavit

- (1) This rule applies if the originating process for a proceeding is an application.
- (2) Unless the court orders otherwise, the application, and any affidavit to be relied on by the applicant at the hearing of the application, must be served on each respondent who is outside Australia at least 10 business days before the day set for hearing the application.

129B Leave to proceed if no notice filed by person

- (1) If a claim is served on a person outside Australia

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and the person does not file a notice of intention to defend, the party serving the claim may proceed against the person served only with the leave of the court.

- (2) An application for leave under subrule (1) may be made without serving notice of the application on the person served with the originating process.

129C Service of other documents outside Australia

- (1) A document other than an originating process may be served outside Australia with the leave of the court.
- (2) On an application for leave under subrule (1), the court may give the directions it considers appropriate.

129D Mode of service

A document to be served outside Australia need not be personally served on a person as long as it is served on the person in accordance with the law of the country in which service is effected.

Subdivision 2 District Court and Magistrates Court proceedings

129E Application of subdivision

- (1) This subdivision applies only for a proceeding in the District Court or a Magistrates Court.
- (2) However, this subdivision does not apply to service in New Zealand of an originating process for, or any other document to be served in or for, a proceeding an originating process for which may be served in New Zealand under the

Trans-Tasman Proceedings Act 2010 (Cwlth),
part 2, division 2.

129F When service allowed without leave

An originating process may be served outside Australia without leave in the following circumstances—

- (a) if the claim is founded on a tortious act or omission—
 - (i) that was done or that happened wholly or partly in Queensland; or
 - (ii) in respect of which the damage was sustained wholly or partly in Queensland;
- (b) if the claim is for the enforcement, rescission, dissolution, annulment, cancellation, rectification, interpretation or other treatment of, or for damages or other relief in respect of a breach of, a contract that—
 - (i) was made or entered into in Queensland; or
 - (ii) was made by or through an agent trading or residing within Queensland; or
 - (iii) was to be wholly or in part performed in Queensland; or
 - (iv) was by its terms or by implication to be governed by Queensland law or to be enforceable or cognisable in a Queensland court;
- (c) if the claim is in respect of a breach in Queensland of a contract, wherever made, whether or not the breach was preceded or accompanied by a breach outside

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Queensland that rendered impossible the performance of that part of the contract that ought to have been performed in Queensland;

- (d) if the claim—
 - (i) is for an injunction to compel or restrain the performance of an act in Queensland; or
 - (ii) is for interim or ancillary relief in respect of a matter or thing in or connected with Queensland, and the relief is sought in relation to a judicial or arbitral proceeding started or to be started, or an arbitration agreement made, in or outside Queensland (including, without limitation, interim or ancillary relief in relation to a proceeding under the *International Arbitration Act 1974* (Cwlth) or the *Commercial Arbitration Act 2013*); or
 - (iii) without limiting subparagraph (ii), is an application for a freezing order or ancillary order under chapter 8, part 2, division 2 in respect of a matter or thing in or connected with Queensland;
- (e) if the subject matter of the claim is land or other property situated in Queensland, or an act, deed, will, instrument or thing affecting land or property situated in Queensland, or the proceeding is for the perpetuation of testimony relating to land or property situated in Queensland;
- (f) if the claim relates to the carrying out or discharge of the trusts of a written instrument of which the person to be served is a trustee and that ought to be carried out or discharged according to Queensland law;

- (g) if relief is sought against a person domiciled or ordinarily or habitually resident in Queensland (whether present in Queensland or not);
- (h) if a person outside Australia is—
 - (i) a necessary or proper party to a proceeding properly brought against another person served or to be served (whether within Queensland or outside Queensland) under any other provision of these rules; or
 - (ii) a defendant to a claim for contribution or indemnity in respect of a liability enforceable by a proceeding in the court;
- (i) if the claim is for—
 - (i) the administration of the estate of a deceased person who at the time of the person's death was domiciled in Queensland; or
 - (ii) relief or a remedy that might be obtained in a proceeding mentioned in subparagraph (i);
- (j) if the claim arises under an Australian enactment and 1 or more of the following applies—
 - (i) an act or omission to which the claim relates was done or happened in Queensland;
 - (ii) any loss or damage to which the claim relates was sustained in Queensland;
 - (iii) the enactment applies expressly or by implication to an act or omission that was done or happened outside Australia in the circumstances alleged;

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- (iv) the enactment expressly or by implication confers jurisdiction on the court over persons outside Australia (in which case any requirements of the enactment relating to service must be complied with);
- (k) if the person to be served has submitted to the jurisdiction of the court;
- (l) if a claim is made for restitution or for the remedy of constructive trust and the alleged liability of the person to be served arises out of an act or omission that was done or happened wholly or partly in Queensland;
- (m) if it is sought to recognise or enforce a judgment;
- (n) if the claim is founded on a cause of action arising in Queensland;
- (o) if the claim affects the person to be served in respect of the person's membership of a corporation incorporated in Queensland, or of a partnership or an association formed or carrying on any part of its affairs in Queensland;
- (p) if the claim concerns the construction, effect or enforcement of a Queensland enactment;
- (q) if the claim—
 - (i) relates to an arbitration held in Queensland or governed by Queensland law; or
 - (ii) is to enforce in Queensland an arbitral award wherever made; or
 - (iii) is for orders necessary or convenient for carrying into effect in Queensland the whole or any part of an arbitral award wherever made;

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- (r) if the claim, so far as it concerns the person to be served, falls partly within 1 or more of paragraphs (a) to (q) and, as to the residue, within 1 or more of the others of paragraphs (a) to (q).

Notes—

- 1 See rules 178(4) and 195(1)(b) in relation to service under this subdivision of a counterclaim against a person not a party to a proceeding and a third party notice.
- 2 See the *Jurisdiction of Courts (Cross-vesting) Act 1987*, section 8 for when the Supreme Court may make an order removing the proceeding to the Supreme Court and for how that Act applies in relation to the proceeding if removed under that section.
- 3 This rule does not extend the jurisdiction the District Court or a Magistrates Court otherwise has apart from this rule.

129G When service allowed with leave

- (1) The court may, by leave, allow service outside Australia of an originating process if service is not allowed under rule 129F.
- (2) An application for leave under this rule must be made on notice to every party other than the person intended to be served.
- (3) An application for leave under this rule must be supported by an affidavit stating any facts or matters related to the desirability of the court assuming jurisdiction, including—
 - (a) the place or country in which the person to be served is or possibly may be found; and
 - (b) whether or not the person to be served is an Australian citizen.
- (4) The court may grant leave under this rule if satisfied—

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- (a) the claim has a real and substantial connection with Queensland; and
 - (b) Queensland is an appropriate forum for the trial; and
 - (c) in all the circumstances the court should assume jurisdiction.
- (5) A sealed copy of an order made under this rule must be served with the document to which it relates.

129H Application of rr 127–129D

Rules 127 to 129D apply for the proceeding as if the proceeding were a proceeding in the Supreme Court.

5 Amendment of ch 4, pt 7, div 3, sdiv 1 (Preliminary)

Chapter 4, part 7, division 3, subdivision 1, note 3 after heading—

omit, insert—

- 3 Information about the Hague Convention, including a copy of the Hague Convention, a list of all Hague Convention countries, details of declarations and reservations made under the Hague Convention by each of those countries and the names and addresses of the Central Authority and other or additional authorities of each of those countries, may be found on the website of the Hague Conference on Private International Law.

6 Omission of r 260F (Service outside Australia of application for freezing order or ancillary order)

Rule 260F—

omit.

ENDNOTES

- 1 Made by the Governor in Council on 18 April 2019.
- 2 Notified on the Queensland legislation website on 19 April 2019.
- 3 The administering agency is the Department of Justice and Attorney-General.

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