

Queensland

Oaths Act 1867
Supreme Court of Queensland Act 1991

Uniform Civil Procedure Rules 1999

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Queensland

Uniform Civil Procedure Rules 1999

Contents

		Page
Chapter 1	**Preliminary**	
1	Short title	53
2	Commencement	53
3	Application	53
4	Dictionary	54
5	Philosophy—overriding obligations of parties and court	54
6	Names of all parties to be used	54
7	Extending and shortening time	55
Chapter 2	**Starting proceedings**	
Part 1	**Starting proceedings**	
8	Starting proceedings	55
9	Claim compulsory	56
10	Application compulsory	56
11	Application permitted	56
12	Oral application permitted	56
13	Proceeding incorrectly started by claim	57
14	Proceeding incorrectly started by application	57
15	Registrar may refer issue of originating process to court	58
16	Setting aside originating process	58
Part 2	**Rules about originating process**	
17	Contact details and address for service	59
18	Representative details required	61
19	Originating process must be signed	61
20	Copy of originating process for court	61
Part 3	**Claims**	
21	Application of pt 3	61

22	Claim	61
23	Claim must include statement about filing notice of intention to defend claim	62
24	Duration and renewal of claim	62
Part 4	**Applications**	
25	Application of pt 4	63
26	Content of application	63
27	Service of application	64
28	Service of affidavit in support of application	65
29	Notice of address for service	65
30	Consent adjournment	66
Part 5	**Applications in a proceeding**	
31	Applications in a proceeding	66
32	Oral applications	67
Part 6	**Where to start a proceeding**	
Division 1	**Central registry**	
33	Central registry	67
Division 2	**Starting proceeding other than in central registry**	
34	Application of div 2	67
35	General rule	68
Division 3	**Area of Magistrates Courts districts**	
36	Application of div 3	69
37	Extended area of Magistrates Courts districts	69
Division 4	**Objection to, and change of, venue**	
38	Objection to venue	69
39	Change of venue by court order	70
40	Change of venue by agreement	71
41	Consequences of transfer	71
Division 5	**Applications heard at a different location**	
50	Applications heard at a different location	71
Part 7	**Cross-vesting**	
51	Definitions for pt 7	72
52	Application of pt 7	72

53 Starting proceedings 72
54 Special federal matters 73
55 Service 73
56 Directions 74
57 Transfer of proceedings 74
58 Transfer on Attorney-General's application 75
59 Transfer to court if no proceeding pending 75
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 75
Division 2 Several parties
61 Application of div 2 76
62 Necessary parties 76
63 Joint entitlement 77
64 Joint or several liability 77
65 Inclusion of multiple parties in a proceeding 77
66 Identical interest in relief unnecessary 78
67 Parties incorrectly included or not included 78
Division 3 Reconstitution of proceeding
68 Inconvenient inclusion of cause of action or party 78
69 Including, substituting or removing party 79
70 Procedure for inclusion of party 81
71 Defendant or respondent dead at start of proceeding 81
72 Party becomes bankrupt, person with impaired capacity or dies during proceeding 82
73 No substitution order after death of plaintiff or applicant 83
74 Amendment of proceedings after change of party 84
Division 4 Representative party
74A Application of division 85
75 Representative party 85
76 Order for representation 85
77 Enforcement of order against representative party 86
Division 5 Representative proceedings in Supreme Court

77A Application of division 86
77B Starting representative proceeding 86
77C Requirements for giving consent to be group member 86
77D Requirements for giving notice to opt out of representative proceeding 87
77E Representative party must give list of opt-out group members . . 87
77F Requirements for particular applications in representative proceedings 87

Part 2 Multiple proceedings

78 Consolidation of proceedings 88
79 Sequence of hearings 88
80 Directions 88
81 Variation of order 89

Part 3 Partnerships and business names

Division 1 Partnerships

82 Meaning of partnership proceeding 89
83 Proceeding in partnership name 89
84 Disclosure of partners' names 90
85 Notice of intention to defend 90
86 Person improperly served as partner 91
87 Defence 91
88 Enforcement against individual partner 91

Division 2 Business names

89 Proceeding if registered business name 92
90 Proceeding in business name if unregistered 92
91 Notice of intention to defend 92
92 Amendment as to parties 93

Part 4 Persons under a legal incapacity

93 Litigation guardian of person under a legal incapacity 94
94 Who may be a litigation guardian 94
95 Appointment of litigation guardian 95
96 No notice of intention to defend by person under a legal incapacity 95
97 Disclosure 95
98 Settlements and compromises 95

99	Proceedings by and against prisoners	96
Chapter 4	**Service**	
Part 1	**Preliminary**	
100	Definitions for ch 4	96
101	Service not allowed on certain days	97
102	Approved document exchanges	97
103	Service after 4.00p.m.	97
Part 2	**Personal service generally**	
104	Application of pt 2	97
105	Personal service for originating process	98
106	How personal service is performed	98
Part 3	**Service in particular cases**	
107	Personal service—corporations	98
108	Personal service—young people	98
109	Personal service—persons with impaired capacity	99
110	Personal service—prisoners	99
111	Personal service in Magistrates Courts proceedings	100
Part 4	**Ordinary service**	
112	How ordinary service is performed	100
113	Service in relation to a business	102
114	Service in relation to a partnership	102
Part 5	**Other service**	
115	Acceptance of service	103
116	Substituted service	103
117	Informal service	103
118	Service on agent	104
119	Service under contract	104
120	Affidavit of service	105
121	Identity of person served	106
122	Special requirements for service by fax	106
Part 6	**Service outside Queensland**	
123	Service outside Queensland	106
Part 7	**Service outside, or emanating from outside, Australia**	

Division 1 Ordinary service outside Australia

Subdivision 1AA Preliminary

123A Definition for division 107

Subdivision 1 Supreme Court proceedings

124 Application of subdivision 107

125 When service allowed without leave 108

126 When service allowed with leave 111

127 Court's discretion whether to assume jurisdiction 112

128 Notice to person served outside Australia 112

129 Time for notice of intention to defend 113

129A Service of application and accompanying documents 113

129B Leave to proceed if no notice filed by person 113

129C Service of other documents outside Australia 114

129D Mode of service 114

Subdivision 2 District Court and Magistrates Court proceedings

129E Application of subdivision 114

129F When service allowed without leave 115

129G When service allowed with leave 118

129H Application of rr 127–129D 119

Division 2 Service in convention countries

130 Service in convention countries 119

Division 3 Service under the Hague Convention

Subdivision 1 Preliminary

130A Definitions for div 3 122

130B Provisions of this division to prevail 124

Subdivision 2 Service abroad of local judicial documents

130C Application of sdiv 2 124

130D Application for request for service abroad 124

130E How application to be dealt with 126

130F Procedure on receipt of certificate of service 127

130G Payment of costs 128

130H Evidence of service 128

Subdivision 3 Default judgment following service abroad of initiating process

130I	Application of sdiv 3	129
130J	Restriction on power to enter default judgment if certificate of service filed	129
130K	Restriction on power to enter default judgment if certificate of service not filed	130
130L	Setting aside judgment in default of appearance	131
Subdivision 4	**Local service of foreign judicial documents**	
130M	Application of sdiv 4	132
130N	Certain documents to be referred back to the Attorney-General's Department of the Commonwealth	133
130O	Service	133
130P	Affidavit as to service	134
Division 4	**Service of foreign legal process in Queensland other than under the Hague Convention**	
130Q	Application of div 4	135
131	Letter of request from foreign tribunal—procedure	136
132	Orders for substituted service	137
133	Noncompliance with rules	137
Chapter 5	**Notice of intention to defend**	
134	Application of ch 5	138
135	No step without notice of intention to defend	138
136	Defendant may act by solicitor or in person	138
137	Time for notice of intention to defend	138
138	Late filing of notice of intention to defend	139
139	Requirements for notice of intention to defend	139
140	Contact details and address for service	139
141	Filing notice of intention to defend	139
142	Service of notice of intention to defend	140
143	Possession of land	140
144	Conditional notice of intention to defend	140
Chapter 6	**Pleadings**	
Part 1	**Introduction**	
145	Application of pt 1	141
146	Formal requirements	142
148	Judgment pleaded	142

Part 2	**Rules of pleading**	
149	Statements in pleadings	142
150	Matters to be specifically pleaded	143
151	Presumed facts	145
152	Spoken words and documents	145
153	Condition precedent	146
154	Inconsistent allegations or claims in pleadings	146
155	Damages	146
156	General relief	147
Part 3	**Particulars**	
157	Particulars in pleading	147
158	Particulars of damages	147
159	Interest	147
160	Way to give particulars	148
161	Application for order for particulars	148
162	Striking out particulars	149
163	Failure to give particulars	149
Part 4	**Progress of pleading**	
164	Time for serving answer to counterclaim and reply	149
165	Answering pleadings	150
166	Denials and non-admissions	150
167	Unreasonable denials and non-admissions	151
168	Implied non-admission	151
169	Close of pleadings	151
170	Confession of defence	152
171	Striking out pleadings	152
Part 5	**Particular pleadings**	
Division 1	**Various**	
172	Defence of tender	153
173	Set-off	153
174	Defamation pleadings	154
Division 2	**Counterclaims**	
175	Application of div 2	154

176 Counterclaim after issue of claim 154
177 Counterclaim against plaintiff 154
178 Counterclaim against additional party 154
179 Pleading and serving counterclaim 155
180 Answer to counterclaim 155
181 Conduct of counterclaim 156
182 Exclusion of counterclaim 156
183 Counterclaim after judgment, stay etc. of original proceeding . . 156
184 Judgment for balance 156
185 Stay of claim 156
Division 3 Admissions
186 Application of div 3 157
187 Voluntary admission 157
188 Withdrawal of admission 157
189 Notice to admit facts or documents 157
190 Admissions 158
Part 6 Third party and similar proceedings
191 Explanation of pt 6 158
192 Reason for third party procedure 159
193 Content of third party notice 159
194 Filing third party notice 159
195 Serving third party notice 160
196 Effect of service on third party 160
197 Notice of intention to defend by third party 161
198 Third party defence 161
199 Pleadings 161
200 Counterclaim by third party 161
201 Default 162
202 Disclosure 163
203 Trial 163
204 Extent third party bound by judgment between plaintiff and defendant 163
205 Judgment between defendant and third party 163
206 Claim against another party 164

207	Subsequent parties	164
208	Contribution under Law Reform Act 1995	165
Chapter 7	**Disclosure**	
Part 1	**Preliminary disclosure**	
208B	Definitions for part	165
208C	Orders to ascertain identity or whereabouts of prospective defendant	166
208D	Orders for preliminary disclosure	167
208E	Security for costs	168
208F	Privilege	168
208G	Costs and other expenses	169
Part 2	**Disclosure generally**	
Division 1	**Preliminary**	
209	Application of part	169
Division 2	**Disclosure by parties**	
Subdivision 1	**Disclosure and inspection of documents**	
210	Nature of disclosure	170
211	Duty of disclosure	170
212	Documents to which disclosure does not apply	171
213	Privilege claim	171
214	Disclosure by delivery of list of documents and copies	172
215	Requirement to produce original documents	173
216	Disclosure by inspection of documents	173
217	Procedure for disclosure by producing documents	173
219	Costs	174
220	Deferral of disclosure	175
221	Disclosure of document relating only to damages	175
222	Inspection of documents referred to in pleadings or affidavits	175
223	Court orders relating to disclosure	175
224	Relief from duty to disclose	177
225	Consequences of nondisclosure	177
226	Certificate by solicitor	178
227	Production of documents at trial	178

Subdivision 2 **Interrogatories**

228 Entitlement to deliver interrogatories 178

229 Delivery of interrogatories 179

230 Granting of leave to deliver interrogatories 179

231 Answering interrogatories 179

232 Statement in answer to interrogatories 180

233 Grounds for objection to answering interrogatories 180

234 Unnecessary interrogatories 181

235 Identity of individual by whom verifying affidavit to be made 181

236 Failure to answer interrogatory 182

237 Failure to comply with court order 183

238 Tendering answers 183

Subdivision 3 **General**

239 Public interest considerations 184

240 Service on solicitors of disclosure orders 184

241 Costs 185

Division 3 **Non-party disclosure**

242 Notice requiring non-party disclosure 185

243 Form and service of notice 186

244 Others affected by notice 186

245 Objection to disclosure 187

246 Objection stays notice 188

247 Court's decision about objection 188

248 Production and copying of documents 189

249 Costs of production 189

Chapter 8 **Preservation of rights and property**

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

250 Inspection, detention, custody and preservation of property 190

251 Perishable property 191

252 Order affecting non-party 191

253 Service of application 191

254 Order before proceeding starts 192

255 Jurisdiction of court not affected 192

Part 2 Injunctions and similar orders

Division 1 Preliminary

255A Definition for pt 2 192

256 Application of pt 2 192

257 Relationship with other law 193

258 Procedure 193

259 Part 2 order without notice 193

Division 2 Freezing orders

260 Definitions for div 2 194

260A Freezing order 194

260B Ancillary order 194

260C Respondent need not be party to proceeding 195

260D Order against judgment debtor or prospective judgment debtor or third party 195

260E Jurisdiction 196

260G Costs 197

Division 3 Search orders

261 Definitions for div 3 197

261A Search order 197

261B Requirements for grant of search order 197

261C Jurisdiction 198

261D Terms of search order 198

261E Independent solicitors 199

261F Costs 199

Division 4 Miscellaneous

262 Part 2 order without trial 200

263 Expedited trial 200

264 Damages and undertaking as to damages 200

265 Other undertakings and security to perform undertaking 201

Part 3 Receivers

Division 1 Application

266 Application of pt 3 202

Division 2 Receivership generally

267	Consent to act as receiver	202
268	Security	202
269	Remuneration	202
270	Accounts	203
271	Default	203
272	Powers	204
273	Death of receiver	204
Division 3	**Enforcement of judgment by appointment of receiver**	
274	Enforcement of judgment	205
Part 4	**Sales by court order**	
275	Definition for pt 4	205
276	Application of pt 4	205
277	Order for sale	205
278	Conduct of sale	205
279	Certificate of result of sale	206
Chapter 9	**Ending proceedings early**	
Part 1	**Default**	
Division 1	**Default by plaintiff or applicant**	
280	Default by plaintiff or applicant	207
Division 2	**Proceedings started by claim**	
281	Application of div 2	208
282	Service must be proved	208
283	Judgment by default—debt or liquidated demand	208
284	Judgment by default—unliquidated damages	210
285	Judgment by default—detention of goods	210
286	Judgment by default—recovery of possession of land	211
287	Judgment by default—mixed claims	211
288	Judgment by default—other claims	212
289	Judgment by default—costs only	212
290	Setting aside judgment by default and enforcement	212
Part 2	**Summary judgment**	
Division 1	**Application**	
291	Application of pt 2	213

Division 2 **Applying for summary judgment**
292 Summary judgment for plaintiff 213
293 Summary judgment for defendant 213
294 Claims not disposed of 214
Division 3 **Evidence**
295 Evidence 214
296 Service 214
Division 4 **Other procedural matters**
298 Directions 215
299 Costs 215
300 Stay of enforcement 216
301 Relief from forfeiture 216
302 Setting aside judgment 216
Part 3 **Discontinuance and withdrawal**
303 Discontinuance by party representing another person 216
304 Discontinuance by plaintiff or applicant 216
305 Discontinuance by defendant or respondent 217
306 Withdrawal of notice of intention to defend 217
307 Costs 217
308 Withdrawal of defence or subsequent pleading 218
308A Discontinuance by parties when proceeding settled 218
309 Notice of discontinuance or withdrawal 218
310 Subsequent proceeding 219
311 Consolidated proceedings and counterclaims 219
312 Stay pending payment of costs 219
Part 4 **Alternative dispute resolution processes**
Division 1 **Preliminary**
313 Definitions for pt 4 219
Division 2 **Establishment of ADR processes**
319 Registrar to give notice of proposed reference to ADR process . 220
320 When referral may be made 220
321 Proceedings referred to ADR process are stayed 221
322 When does a party impede an ADR process 221

Division 3 **Mediation**

323 Referral of dispute to appointed mediator 221

324 When mediation must start and finish 222

325 Parties must assist mediator 222

326 Mediator's role 223

327 Liberty to apply 223

328 Mediator may seek independent advice 223

329 Record of mediation resolution 223

330 Abandonment of mediation 224

331 Requirements for certificate about mediation 224

332 Unsuccessful mediations 225

333 Replacement of mediator 225

Division 4 **Case appraisal**

334 Referral of dispute to appointed case appraiser 225

335 Jurisdiction of case appraiser 226

336 Appearances 227

337 Case appraiser may seek information 227

338 Case appraisal proceeding may be recorded 227

339 Case appraiser's decision 228

340 Case appraiser's decision on costs in the dispute 228

341 Effect of case appraiser's decision 228

342 Requirements for case appraiser's certificate and decision 228

343 Dissatisfied party may elect to continue 229

344 Court to have regard to case appraiser's decision when awarding costs 229

345 Replacement of case appraiser 230

Division 5 **ADR costs**

346 Payment of ADR costs 230

347 Party may pay another party's ADR costs 230

348 If ADR costs paid to registrar 231

349 When ADR convenor or venue provider may recover further costs 231

350 Court may extend period within which costs are to be paid or grant relief 231

351 Costs of failed ADR process are costs in the dispute 231

Part 5	**Offer to settle**	
352	Definitions for pt 5	232
353	If offer available	232
354	Time for making offer	232
355	Withdrawal or end of offer	233
356	Effect of offer	233
357	Disclosure of offer	234
358	Acceptance of offer	234
359	Person under a legal incapacity	235
360	Costs if offer by plaintiff	235
361	Costs if offer by defendant—order obtained by plaintiff	236
361A	Costs if offer by defendant—dismissal of plaintiff's proceeding	236
362	Interest after service of offer	237
362A	Multiple beneficiaries	237
363	Multiple defendants	238
364	Offer to contribute	238
365	Failure to comply with offer	239
Chapter 9A	**Commercial arbitration**	
Part 1	**Preliminary**	
365A	Words and expressions	240
365B	Documents not in English	240
Part 2	**International commercial arbitration**	
365C	Application for stay and referral to arbitration—foreign arbitration agreements	241
365D	Application to enforce foreign award	241
365E	Application for referral to arbitration—Model Law, art 8	242
365F	Subpoenas	242
365G	Application relating to evidence for arbitration	243
365H	Application relating to disclosure of confidential information	243
365I	Application for relief under miscellaneous provisions of Model Law	244
365J	Application to set aside award—Model Law, art 34	244
365K	Enforcement of award—Model Law, art 35	245
365L	Enforcement of Investment Convention award	246

Part 3 **Domestic commercial arbitration**
365M Application for referral to arbitration 246
365N Subpoenas 247
365O Application relating to evidence for arbitration 248
365P Application relating to disclosure of confidential information 248
365Q Application for relief under miscellaneous provisions of Commercial Arbitration Act 2013 249
365R Preliminary point of law 249
365S Application to set aside award 251
365T Appeal 252
365U Application to enforce award 254
Chapter 10 **Court supervision**
Part 1 **Directions**
366 Application for directions 254
367 Directions 255
368 Proceeding already being managed by the court 257
369 Decision in proceeding 257
370 Failure to attend 257
Part 2 **Failure to comply with rules or order**
371 Effect of failure to comply with rules 258
372 Application because of failure to comply with rules 258
373 Incorrect originating process 258
374 Failure to comply with order 259
Part 3 **Amendment**
Division 1 **Amendment generally**
375 Power to amend 260
376 Amendment after limitation period 260
377 Amendment of originating process 261
378 Amendment before request for trial date 262
379 Disallowance of amendment 262
381 Failure to amend after order 262
Division 2 **Procedural matters**
382 Procedure for amending 262
383 Who is required to make amendment 263

384 Serving amendments 263

Division 3 Consequences of amendment

385 Pleading to amendment 264

386 Costs 264

387 When amendment takes effect 264

Division 4 Amending orders or certificates

388 Mistakes in orders or certificates 265

Part 4 Delay

389 Continuation of proceeding after delay 265

Part 5 Restricting particular applications

389A Restricting applications that are frivolous, vexatious or abuse of court's process 266

Chapter 11 Evidence

Part 1 General

390 Way evidence given 267

391 Court may call evidence 268

392 Evidence by telephone, video link or another form of communication 268

393 Plans, photographs, video or audio recordings and models 268

395 Evidence in other proceedings 269

395A Application to obtain evidence for civil proceedings in another jurisdiction 269

Part 2 Evidence given out of court

396 Order for examination 269

397 Documents for examiner 269

398 Appointment for examination 270

399 Conduct of examination 270

400 Examination of additional persons 271

401 Objections 271

402 Recording evidence 271

403 Authentication and filing 272

404 Report of examiner 272

405 Default of person required to attend 272

406 Expenses etc. of person required to attend 273

407	Admissibility of deposition	273
408	Letter of request	274
409	Undertaking	274
Part 3	**Evidence for future right or claim**	
410	Application	275
411	Proceeding to obtain evidence for future right or claim	275
412	Order to obtain evidence for future claim	275
413	Taking, use and admissibility of evidence obtained for future right or claim	276
Part 4	**Subpoenas**	
413A	Definitions for part	276
414	Power to issue subpoena	276
415	Formal requirements	277
415A	Change of date or time for attendance or production	279
415B	Giving notice of way person is to attend to give evidence	279
416	Setting aside subpoena	279
417	Costs and expenses of complying with subpoena	280
418	Cost of complying with subpoena if not a party	280
419	Conduct money	281
420	Production by non-party	281
420A	Copy of document may be produced	282
421	Service	283
422	Court may give directions	283
422A	Inspecting particular documents and things produced	284
422B	Objecting to inspection of particular documents and things produced	284
422C	Removal from registry of particular documents and things produced	285
422D	Production of documents and things in custody of court or another court	286
Part 5	**Expert evidence**	
Division 1	**Preliminary**	
423	Purposes of part	287
424	Application of part	287
425	Definitions for part	288

Division 2 Directions

426 Application for directions 288

427 Directions generally 289

428 Directions about experts' conferences and joint reports 290

Division 3 Experts' conferences and joint reports

429 Application of division 291

429A Experts' conference and joint report 291

429B Permitted communications between experts and parties 291

429C Restriction on admissibility of particular matters 293

Division 4 Giving of evidence by experts and related matters

429D Application of division 293

429E Duty of parties 293

429F Duty of expert 293

429G Expert evidence 294

429H Requirements for report 295

429I Disclosure of report 296

429J Immunity 297

429K Supplementary report following change of opinion 297

Division 5 Appointment of experts by parties jointly and by court

Subdivision 1 Experts appointed by parties jointly

429L Appointment of expert 298

429M Requirements for appointment 298

429N Provision of statement of facts 299

429O Disclosure of report 299

429P Restriction on other expert evidence 299

429Q Cross-examination of expert 299

Subdivision 2 Experts appointed by court

429R Appointment of expert 300

429S Requirements in relation to report 300

429T Disclosure of report 300

429U Orders and directions for court-appointed experts 301

Subdivision 3 Application for directions by experts appointed under subdivision 1 or 2

429V	Expert may apply for directions	301
Part 6	**Interpreters**	
429VA	Main purposes of part	301
429VB	Definitions	302
429VC	Proceedings to be conducted in English	303
429VD	When interpreter must be permitted for party	303
429VE	When interpreter is required by witness	303
429VF	Who may act as interpreter generally	304
429VG	Granting leave for person to act, or continue to act, as interpreter	305
429VH	Duties of interpreter	306
429VI	Code of conduct for interpreters	307
429VJ	Translated evidence	307
429VK	Court may request correction etc. of interpretation, translation or sight translation	308
429VL	Court may give directions in relation to interpreters	308
Part 7	**Affidavits**	
429W	Definitions for part	310
429X	References to witnesses, signatories and substitute signatories	310
430	Contents of affidavit	311
431	Form of affidavit	311
432	Swearing or affirming affidavit	312
433	Certificate of reading or signature for person making affidavit	313
434	Alterations	314
435	Exhibits	314
436	Irregularity	316
437	Filing	316
438	Service	317
439	Examination of signatory for affidavit	317
440	Scandal and oppression	318
441	Affidavit taken before party	318
Part 8	**Exchange of correspondence instead of affidavit evidence**	
442	Definitions for pt 8	318
443	Application of pt 8	318
444	Applicant's letter to respondent	319

445	Respondent's reply	320
446	Additional correspondence	320
447	Application to court	320
448	Hearing of application	321
Part 9	**Access to exhibits**	
448A	References to exhibits	321
448B	Access to exhibits by parties	322
448C	Access to exhibits by non-parties	322
Chapter 12	**Jurisdiction of registrar**	
449	Definition for ch 12	324
450	Application of ch 12	324
452	Registrar's powers to hear and decide applications	324
453	Court may decide that matter can not be heard by registrar	324
454	Relevant application must not be made to the court	325
455	Referring relevant application	325
456	Removing relevant applications	325
457	Involvement of court as constituted by a judge	325
458	General powers	326
459	Decision	326
460	Power to correct mistakes	326
Chapter 13	**Trials and other hearings**	
Part 1	**Listing applications for hearing**	
461	Application of pt 1	327
462	List of applications	327
463	Estimate of hearing time	327
464	Adjournments	327
Part 2	**Setting trial dates and related matters**	
466	Setting trial dates	328
467	Request for trial date	328
468	Trial expedited	329
469	Dispensing with signature on request for trial date	330
470	Leave required for steps after trial date requested or set	330
Part 3	**Trial**	

Division 1 **Mode of trial**

471 Application of pt 3 330

472 Jury 331

473 Third party proceeding 331

475 Changing mode of trial 331

Division 2 **Proceedings at trial**

476 Default of attendance 331

477 Adjournment 332

Division 3 **View**

478 View by court 332

Part 4 **Decision without pleadings**

479 Application of pt 4 332

480 No pleadings 332

481 Directions 333

Part 5 **Separate decision on questions**

482 Definition for pt 5 333

483 Order for decision and statement of case for opinion 333

484 Orders, directions on decision 334

485 Disposal of proceedings 334

486 Form and content of separate question 334

Part 6 **Decision on papers without oral hearing**

487 Definition for pt 6 334

488 Application of pt 6 334

489 Proposal for decision without oral hearing 335

490 Procedure for making application 335

491 Court may decide that decision without an oral hearing is inappropriate 336

492 Respondent's response 336

493 Applicant's reply 337

494 Respondent's right to require oral hearing 337

495 Applicant's right to abandon request for decision without an oral hearing 337

496 Concise written submissions 338

497 Further information 338

498	Order	338
Part 7	**Assessors and referees**	
499	Application of pt 7	338
500	Assessors	338
501	Court may refer question to referee	339
502	Setting aside or varying order	339
503	Conduct of inquiry before referee	339
504	Obligations of parties	340
505	Directions	341
505A	Referee may submit question to court	341
505B	Referee's report	341
505C	Actions by court	342
505D	Use of referee's report	342
506	Remuneration of referee and assessor	342
Part 8	**Assessment of damages**	
507	Conditional order	343
508	Defendant's default or summary decision	343
509	Assessment	344
510	Directions	344
511	Certificate of damages	344
512	Damages to time of assessment	345
Part 9	**Magistrates Courts**	
Division 1	**Application**	
513	Application of pt 9	345
Division 2	**Simplified procedures**	
514	Application of simplified procedures	345
515	Simplified procedures	346
516	Hearing and deciding claim	347
Division 2A	**Employment claims**	
Subdivision 1	**Introduction**	
522A	Application of div 2A	348
522B	Definitions for div 2A	348
Subdivision 2	**Filing employment claims**	

522C	Filing employment claim	348
Subdivision 3	**Conciliation of employment claims**	
522D	Suspension of conciliation process if application to court	349
522E	Conciliation certificate	349
522F	Record of conciliation agreement	349
522G	Abandonment of conciliation	350
Subdivision 4	**Hearing of employment claims**	
522H	Notice of intention to defend employment claim	350
522I	Ending employment claim proceedings early	351
522J	Setting hearing date for employment claim	351
522K	Procedure for hearing of employment claim	351
522L	No cross claim in proceeding for employment claim	352
522M	Failure to appear in an employment claim	352
Subdivision 5	**Miscellaneous**	
522N	Particular rules do not apply to employment claims	353
Division 3	**Settlement conferences**	
523	Court may require settlement conference	354
524	Holding settlement conference	355
525	Failure to attend settlement conference	356
526	General directions about settlement conferences	357
Chapter 14	**Particular proceedings**	
Part 1	**Account**	
527	Order for account	357
528	Directions	358
529	Service of judgment	358
530	Form and verification	359
531	Filing and service	359
532	Challenging account	360
533	Witness	360
534	Allowances	360
535	Delay	360
536	Before whom account taken	360
537	Powers exercisable on taking account	360

538 Class interests 361
539 Reference to court 361
540 Certificate as to account 361
541 Further consideration 362
542 Procedure for inquiries 362
543 Directions 363
Part 2 Personal injury and fatal accidents
544 Definition for pt 2 363
545 Application of pt 2 363
546 Waiving compliance 363
547 Plaintiff's statement of loss and damage 363
548 Plaintiff's statement must identify particular documents 365
549 Plaintiff's statement must be accurate 367
550 Defendant's statement of expert and economic evidence 367
551 Defendant's statement must identify particular documents 367
552 Defendant's statement must be accurate 369
553 Conference if personal injury damages claim 369
554 Insurers 370
555 Privilege 371
556 Pleadings 371
557 Costs 371
558 Assessment of damages 371
Part 3 Moneys in court
560 Payment or deposit of money in court 372
561 Disposal of money in court 373
Part 4 Judicial review
564 Definitions for pt 4 373
565 Application of pt 4 373
566 Form of application for statutory order of review 373
567 Form of application for review 374
568 Application for statutory order of review and for review 374
569 Relief based on application for review if application made for statutory order of review 374

570 Filing documents 375
571 Setting directions hearing 376
572 Service on other parties 376
573 Orders and directions at directions hearing 376
574 Hearing and determination of application at directions hearing if parties agree 377
575 Non-appearance of parties at directions hearing 377
576 Application for dismissal or stay at directions hearing 378
577 Application for dismissal to be made promptly 378
578 Application for costs order at directions hearing 378
579 Orders or directions about or for proceeding to be sought at directions hearing 379
580 Additional requirements for order of certiorari 379
581 No proceeding in relation to things done under mandamus order 379
582 Consolidation of proceedings for prerogative injunctions 379
583 Proceedings in relation to statements of reasons 379
584 Application by unincorporated body 380
585 Proceeding for declaration or injunction 381

Part 5 Habeas corpus

586 Definitions for pt 5 381
587 Application of pt 5 381
588 Originating process 381
589 Application to court 381
590 Parties 382
591 Form and procedure 382
592 Procedure on application 382
593 Return of writ of habeas corpus 383
594 Enforcement 383
595 Form of writ 384

Part 6 Trans-Tasman proceedings

Division 1 Preliminary

595A Definition for pt 6 384
595B Interpretation 384
595C Application of pt 6 385

Division 2 **Starting proceedings and applications in proceedings**

595D Starting proceeding for order under Trans-Tasman Proceedings Act 385

595E Applications in proceeding under Trans-Tasman Proceedings Act 386

Division 3 **Subpoenas**

595F Application for leave to serve subpoena in New Zealand 386

595G Application to set aside subpoena 388

595H Application for issue of certificate of noncompliance with subpoena 388

Division 4 **Registration and enforcement of NZ judgments**

595I Notice of registration of NZ judgment 389

595J Application for extension of time to give notice of registration of NZ judgment 389

595K Enforcement of registered NZ judgment 390

595L Application to set aside registration of NZ judgment 391

595M Applications relating to a stay of enforcement of registered NZ judgment 391

Division 5 **Remote appearances**

595N Application for order for use of audio link or audiovisual link . . . 392

Chapter 15 **Probate and administration, and trust estates**

Part 1 **Introduction**

596 Definitions for ch 15 392

Part 2 **Grants**

597 Application for grant 393

598 General notice of intention to apply for grant 393

599 Requirements for notice of intention to apply for grant 394

600 Registrar may make inquiries 394

601 When registrar may make grant 394

Part 3 **Probate and letters of administration with the will**

602 Contents of supporting affidavit 395

603 Priority for letters of administration with the will 396

604 Evidence of proper attestation of will 397

605 Interlineations, alterations and erasures 398

606 Documents mentioned in or attached to will 398

607 Wills made by blind or illiterate persons 399

608 Marginal note 399

Part 4 Letters of administration on intestacy

609 Contents of supporting affidavit on intestacy 399

610 Priority for letters of administration 400

611 Grant to attorney of absent person or person without prior right . 401

612 Court not to make grant on intestacy within 30 days after death 401

613 Limited administration 401

614 Limited and special administration 402

Part 5 Resealing grants under British Probates Act 1898

615 Application of part 402

616 Who may apply for reseal of foreign grant 402

617 Notice of intention to apply for reseal 402

618 Production of grant and testamentary papers 403

619 Special, limited and temporary grants 403

620 Notice to original court 403

Part 6 Certain proceedings under the Public Trustee Act 1978

621 Order to administer 403

622 Revocation of order to administer 404

Part 7 Caveats

623 Definitions for pt 7 404

624 Caveats by person objecting 404

625 Caveat procedure 405

626 Setting aside caveat 406

627 Withdrawal of caveat 407

628 Effect of caveat filed on day of grant 407

Part 8 Contested proceedings

629 Definitions for pt 8 407

630 Application of pt 8 407

631 Statement of nature of interest 408

632 Affidavit of scripts 408

633 Notice to persons with beneficial interest 409

634 Notice of intention to intervene 409

635 Claim to name defendants 409

636 Grant to be filed 409

Part 9 Miscellaneous

637 Subpoenas 410

638 Administration pending proceedings 410

639 Grants to young persons 411

640 Proof in solemn form 411

641 Notice of revocation or alteration of resealed Queensland grant 412

642 Revocation of grants and limited grants 412

643 Relief against neglect or refusal by executor, administrator or trustee 413

Part 10 Assessment of estate accounts

Division 1 Preliminary

644 Definitions for pts 10 and 11 413

Division 2 Applying for orders for filing, assessing and passing estate accounts etc.

645 Application by beneficiary for filing, assessing and passing estate account 415

646 Requirements for making application for filing, assessing and passing estate account 416

647 Application by trustee for assessing and passing estate account 417

648 Requirements of estate account 418

649 Filing estate account and notice of objection 419

650 Referral of issue to costs assessor 420

Division 3 Assessment of estate accounts

651 Procedure on assessment 421

652 Powers of account assessor 422

653 No participation by party 422

654 Issue or question arising 423

655 Notice of adjournment 423

656 Conflict of interest 423

657 Certificate of account assessment 424

657A Written reasons for decision 425

Division 4 Passing estate accounts

657B Passing estate account 425

Division 5 **Commission**

657C Application for commission 426

657D Court may require filing of estate account 427

657E Decision on application for commission 427

657F Other orders and agreements 428

Part 11 **Account assessors**

657G Eligibility 428

657H Application 429

657I Appointment 429

657J Ongoing disclosure of adverse matters and updated details . . . 430

657K List of account assessors 430

657L Charges for account assessments 431

657M Ending an appointment by request 431

657N Ending an appointment for sufficient reason 432

657O Effect of ending of appointment or notice about possible ending of appointment 432

Chapter 16 **Orders**

658 General 433

659 Judgment 433

660 Order 433

661 Filing an order 434

662 Certified duplicate of filed order 435

663 Reasons for order 435

664 Delivery of reserved decision by a different judicial officer 435

665 Time for compliance 436

666 Consent orders 436

667 Setting aside 437

668 Matters arising after order 437

669 Appointment to settle 438

Chapter 17 **Security for costs**

670 Security for costs 439

671 Prerequisite for security for costs 439

672 Discretionary factors for security for costs 440

673 Way security given 440

674	Stay or dismissal	441
675	Setting aside or varying order	441
676	Finalising security	441
677	Counterclaims and third party proceedings	442
Chapter 17A	**Costs**	
Part 1	**Preliminary**	
678	Application of ch 17A	442
679	Definitions for ch 17A	443
Part 2	**Costs of a proceeding**	
Division 1	**Costs of a proceeding generally**	
680	Entitlement to recover costs	444
681	General rule about costs	444
682	General provision about costs	444
683	Costs in proceeding before Magistrates Court	445
684	Costs of question or part of proceeding	445
685	Costs if further proceedings become unnecessary	445
686	Assessment of costs without order	445
687	Assessed costs to be paid unless court orders otherwise	446
688	Costs when proceeding removed to another court	446
689	Costs in an account	447
690	Lawyer's delay or neglect	447
691	Australian lawyer's costs	447
692	Amendment	448
693	Application in a proceeding	448
694	Default judgment	448
695	Extending or shortening time	448
696	Costs of inquiry to find person	449
697	Costs of proceeding in wrong court	449
698	Reserved costs	449
699	Receiver's costs	449
700	Trustee	449
700A	Estates of deceased persons and trusts	450
Division 2	**Basis of assessment of costs of a party in a proceeding**	

701	Application of div 2	451
702	Standard basis of assessment	451
703	Indemnity basis of assessment	451
704	Trustee	452
Part 3	**Assessment of costs other than under the Legal Profession Act 2007**	
Division 1	**Before application**	
705	Costs statement	452
706	Objection to costs statement	453
707	Consent order	454
708	Default assessment if no objection to costs statement	454
709	Setting aside default assessment	454
709A	Failure to serve costs statement	455
Division 2	**Application**	
710	Application for costs assessment	456
711	Service of application	457
712	Agreed costs assessor	457
713	Costs assessor if no agreement	457
713A	Service of order appointing costs assessor	458
Division 3	**Assessment**	
714	Powers of an assessing registrar	458
715	Powers of a costs assessor	458
716	No participation by a party	459
717	Issue or question arising	459
718	Notice of adjournment	459
719	Conflict of interest	460
720	Procedure on assessment	460
721	Discretion of a costs assessor	461
722	Assessment must be limited	461
723	Disbursement or fee not paid	462
724	Professional charges and disbursements	462
725	Parties with same lawyer	462
726	Counsel’s advice and settling documents	462
727	Evidence	463

728 Solicitor advocate 463
729 Premature brief 463
730 Retainer of counsel 463
731 Refresher fees 464
Division 4 Costs of assessment and offers to settle
732 Costs of assessment 464
733 Offer to settle costs 464
734 Acceptance of offer to settle costs 465
735 Reduction of more than 15% 465
Division 5 Certificate of costs assessor
736 Agreement as to costs 466
737 Certificate of assessment 466
737A Information about outcome of costs assessment 466
738 Written reasons for decision 467
Division 6 After assessment
739 Application of div 6 467
740 Judgment for amount certified 468
741 Costs may be set off 468
742 Review by court 468
Part 4 Assessment of costs under the Legal Profession Act 2007
743 Definition for pt 4 470
743A Application for costs assessment 470
743B If recovery proceedings started 471
743C Court may direct preparation of itemised bill 472
743D Notice of application 472
743E Agreed costs assessor 472
743F Costs assessor if no agreement 473
743G Directions hearing 473
743H Application to court for directions after certificate of assessment filed 474
743I Application of other rules 475
Part 5 Costs assessors
743J Eligibility 476

743K	Application	476
743L	Appointment	477
743M	Ongoing disclosure of adverse matters and updated details	477
743N	List of costs assessors	477
743O	Charges for costs assessments	478
743P	Ending an appointment by request	479
743Q	Ending an appointment for sufficient reason	479
743R	Effect of ending of appointment or notice about possible ending of appointment	479
Part 6	**Transitional rules about costs**	
743S	Old basis for taxing costs equates to new basis for assessing costs	480
Chapter 18	**Appellate proceedings**	
Part 1	**Appeals to the Court of Appeal**	
Division 1	**Preliminary**	
744	Definition for pt 1	481
745	Application of pt 1	481
Division 2	**Procedural**	
746	Starting appeal or making application for new trial	481
747	Content of notice of appeal	482
748	Time for appealing	482
749	Parties to appeal	483
750	Inclusion, removal or substitution of party	483
751	Amendment of notice of appeal	483
752	Service	483
753	Directions conference with registrar	484
754	Cross appeals	484
755	Notice of cross appeal	484
756	Effect of notice of cross appeal	484
757	Affirmation on other ground	485
758	Appeal book	485
759	Registry preparation of appeal book	486
760	Setting a date for appeal	487
Division 3	**Powers**	
761	Stay of decision under appeal	488

762 Dismissal by consent 488
763 Appeals from refusal of applications made in the absence of parties 489
764 Consent orders on appeal 489
765 Nature of appeal and application for new trial 490
766 General powers 490
767 Exercise of certain powers by judge of appeal 491
768 Matter happening in other court 492
769 Insufficient material 492
770 New trial 492
771 Assessment of costs of appeals 493
772 Security for costs of appeal 493
773 Way security for costs of appeal to be given 493
774 Effect of failure to give security for costs of appeal 494
775 Effect of failure to prosecute appeal 494
Division 4 Miscellaneous
776 Appeals from outside Brisbane 494
777 Registrar may publish certain decision 495
Part 2 Applications and cases stated to Court of Appeal
Division 1 Applications to Court of Appeal
778 Application in appeal or case stated 495
779 Procedure 495
780 Documents for application 496
Division 2 Cases stated
781 Form and contents of case stated 496
Part 3 Other appeals
782 Application of pt 3 497
783 Procedure for appeals to District Court from Magistrates Court . 497
784 Procedure for appeals to a court from other entities 498
785 Application of rules to appeals and cases stated under this part 498
786 Notice of appeal 498
787 Procedure for hearing appeal under r 786 500
788 Consent order 500
789 Registrar may give directions 500

790 Preparation for hearing 500
791 Rehearing after decision of judicial registrar or registrar 501
792 Leave to appeal 501
Chapter 19 Enforcement of money orders
Part 1 Preliminary
793 Definitions for ch 19 502
794 Enforcement of money orders 503
795 Enforcement by or against a non-party 504
796 Conditional order 504
797 Amount recoverable from enforcement 504
798 Separate enforcement for costs 505
799 Enforcement period 505
800 Stay of enforcement 506
801 Where to enforce money order 506
802 Enforcing money order in different court 507
Part 2 Enforcement hearings
803 Purpose of enforcement hearing 507
804 When an enforcement hearing may take place 507
805 Application for end of trial enforcement hearing 508
806 Outcome of application for end of trial enforcement hearing 508
807 Statement of financial position 508
808 Enforcement hearing after money order is made 509
809 Person to whom enforcement hearing summons may be directed and service 511
810 Location for enforcement hearing 511
811 Conduct money 512
812 Subpoena 512
813 Enforcement hearing 513
814 Orders at enforcement hearing 513
815 Failure or refusal in relation to statement of financial position or enforcement hearing 514
816 Enforcement hearing warrant 514
Part 3 Enforcement warrants generally
817 Procedure 516

818	Deceased enforcement debtor	517
819	Application to set aside enforcement	517
820	Issue and enforcement of enforcement warrant	517
821	Renewal of enforcement warrant	518
822	Return of particular enforcement warrant	518
823	Priority of enforcement warrants	519
824	Enforcement throughout Queensland	519
825	Concurrent enforcement warrants—Magistrates Court	519
826	Enforcement beyond the district	520
827	Cross orders	521
Part 4	**Enforcement warrants for seizure and sale of property**	
828	Seizure of property under enforcement warrant	521
829	Order of selling property	522
830	Payment by enforcement debtor before sale	522
831	Storage before sale	523
832	Nature of sale	523
833	Sale at best price obtainable	524
834	Advertising	525
835	Postponement of sale	526
836	Accountability for, and distribution of, money received	527
837	Reserve price provisions	527
Part 5	**Enforcement warrants for redirection of debts**	
Division 1	**General**	
839	Application of pt 5	528
840	Debts that may be redirected under enforcement warrant	528
841	Attendance of, or information about, the enforcement debtor	529
842	When debt redirected under enforcement warrant	529
843	Payment to enforcement debtor despite redirection	529
844	Third person disputes liability	530
845	Claim by other person	530
846	Discharge of the third person	531
Division 2	**Regular redirections from financial institutions**	
847	Application of div 2	531

848	Procedure for issue of enforcement warrant for regular redirection	531
849	Content of enforcement warrant for regular redirection	532
850	Service of enforcement warrant for regular redirection	532
851	Financial institution to make payments	532
852	Enforcement debtor not to defeat enforcement warrant	533
853	No other enforcement while regular redirection	533
854	Setting aside, suspending or varying enforcement warrant for regular redirection	534
Part 6	**Enforcement warrants for redirection of earnings**	
855	General	534
856	Procedure for issue of enforcement warrant redirecting earnings	535
857	Attendance of, or information about, the enforcement debtor	535
858	Content of enforcement warrant redirecting earnings	536
859	Service of enforcement warrant redirecting earnings	536
860	Employer to make payments	537
861	No enforcement while redirection of earnings	538
862	Setting aside, suspending or varying enforcement warrant redirecting earnings	538
863	Cessation of enforcement warrant redirecting earnings	538
864	Two or more warrants redirecting earnings in force	539
865	Person served is not enforcement debtor's employer	539
866	Person ceases to be enforcement debtor's employer	540
867	Directions	540
Part 7	**Order for payment of order debt by instalments**	
868	Order may authorise payment by instalments	541
869	Prerequisites for instalment order	541
870	No enforcement warrant to issue while instalment order	542
871	Discharge or variation of instalment order	542
872	Cessation of instalment order	543
Part 8	**Enforcement warrants for charging orders**	
875	Issue of warrant	543
876	Effect of warrant	544
877	Enforcement debtor dealing with charged property	544
878	Issuer dealing with charged property	545

879	Application to enforce charge	545
880	Partnership property	545
Part 9	**Money in court and stop orders**	
881	Money in court	545
882	Stop orders on money and securities in court	546
Part 10	**Enforcement warrants for appointment of a receiver**	
883	Application of pt 10	546
884	General provisions relating to receivers apply	546
885	Enforcement of a money order	547
886	Relevant considerations for appointment	547
887	Inquiry	547
888	Receiver's powers	547
Part 11	**Enforcement officer**	
889	Return of enforcement warrant	547
Chapter 20	**Enforcement of non-money orders**	
Part 1	**Preliminary**	
890	Definition for ch 20	548
891	Enforcement of non-money orders	548
892	Enforcement by or against a non-party	548
893	Amount recoverable from enforcement	549
894	Enforcement period	549
895	Stay of enforcement	549
Part 2	**Enforcement of particular non-money orders**	
896	Order for possession of land	550
898	Order to perform or abstain from an act	550
899	Substituted performance	551
900	Undertakings	551
904	Prerequisite to enforcement by contempt or seizing property	552
905	Conditional order	553
Part 3	**Enforcement warrants generally**	
906	Procedure	553
907	Application to set aside enforcement	554
908	Issue and enforcement of enforcement warrant	554

909 Renewal of enforcement warrant 555
910 Return of enforcement warrant 555
911 Priority of enforcement warrants 556
912 Enforcement throughout Queensland 556
Part 4 Enforcement warrants for possession
913 Prerequisites to enforcement warrant for possession 556
914 Procedure 557
915 Enforcement warrant for possession 557
Part 5 Enforcement warrants for delivery of goods
916 Enforcement warrant for seizure and delivery of goods 558
Part 6 Enforcement warrants for seizure and detention of property
917 Property that may be seized under enforcement warrant 558
918 Prerequisite for enforcement warrant authorising seizure and detention of property 558
919 Enforcement against officer of corporation 559
920 Return of seized property 559
Part 7 Contempt
Division 1 Preliminary
921 Definition for pt 7 559
Division 2 Contempt in face or hearing of court
922 Arrest 560
923 Custody 560
924 Hearing 560
Division 3 Application for punishment for contempt
925 Application of div 3 561
926 Procedure under div 3 561
927 Arrest 561
928 Application by registrar 562
Division 4 General
929 Warrant 562
930 Punishment 563
931 Imprisonment 563
932 Costs 563
Part 8 Warrant for defendant's arrest

933	Constitution of court	564
934	Application	564
935	Issue of warrant for defendant's arrest	564
936	Enforcement of warrant for defendant's arrest	565
937	Costs of enforcement	565
938	Service of warrant and claim	566
939	Record of enforcement	566
940	Procedure after arrest	566
941	Release of defendant	566
942	Court powers	567
943	Failure to comply with conditions	568
944	Review	569
945	Restriction on further applications	569
946	Costs	569
Part 9	**Enforcement officer**	
947	Return of enforcement warrant	570
Chapter 20A	**Reciprocal enforcement of foreign judgments**	
Part 1	**Preliminary**	
947A	Definitions for ch 20A	570
947B	Application of rules and practices of court	571
Part 2	**Reciprocal enforcement of foreign judgments**	
947C	Definition for pt 2	571
947D	Application for registration of judgment	571
947E	Evidence in support of application	571
947F	Security for costs of application	573
947G	Order for registration	573
947H	Register of judgments	573
947I	Registration of judgments	574
947J	Notice of registration	574
947K	Details of service to be written on notice	574
947L	Application to set aside registration of judgment	575
947M	Enforcement of judgment	575
Part 3	**Reciprocal enforcement of Australian judgments**	

947N Certificate of judgment 576
Chapter 21 Interpleader orders
Part 1 Interpretation
948 Definitions for ch 21 577
Part 2 Stakeholder's interpleader
949 Stakeholder's interpleader 577
Part 3 Enforcement officer's interpleader
950 Enforcement officer's interpleader 578
951 Failure to give notice of claim 578
952 Notice to enforcement creditor 579
953 Admission of claim 579
954 Enforcement officer's interpleader application 580
955 Action against enforcement officer or enforcement creditor 580
Part 4 Interpleader orders
956 Default by claimant 581
957 Neutrality of applicant 581
958 Trial 582
959 Disposal of money in court 582
Chapter 22 Documents, registry and solicitors
Part 1 Documents
Division 1AA Preliminary
959A Definitions for part 582
959B Service providers 583
Division 1 General provisions about documents to be filed
960 Application of div 1 583
961 Layout 583
962 Figures may be used 584
963 Alterations to documents other than affidavits and statutory declarations 584
963A Alterations to statutory declarations 585
964 Serial number 586
965 Copies 586
966 Giving copies to other parties 586
Division 2 Filing documents

967	How documents may be filed	587
967A	Filing of affidavits and statutory declarations made using counterparts	587
968	Filing documents personally	588
969	Filing documents by post	588
969A	Electronically filing documents	589
970	Affidavit of debt by post	590
972	Court fees if state-related party	590
973	Scandalous material	590
Division 3	**Other provisions about documents**	
974	Form of notices	591
975	Use of approved forms	591
Division 4	**Particular provisions for electronically filed documents**	
975A	Application of particular provisions to electronically filed documents	591
975B	Retention and status of document electronically filed	593
975C	Electronic filing of affidavits and statutory declarations	593
975D	Particular affidavits and statutory declarations taken to be filed	594
975E	Approvals of principal registrar	595
Division 5	**Retention of particular documents under Oaths Act 1867**	
975F	Minimum period for retention of original physical version—Oaths Act 1867, s 31Y	595
Division 6	**Inspection and copying of filed documents**	
975G	Definition for division	596
975H	Inspection and copying of documents filed in proceedings	596
975I	Application for order permitting inspection of particular documents filed in proceedings	598
Part 2	**Registry**	
976	Office hours	599
977	Registrar to keep records	599
978	Issue of documents	600
978A	Issuing documents electronically	600
979	Issue of commissions	600
982	Referral to judge or magistrate	600
983	Admiralty	601

984	Clerks	601
984A	Disposal of exhibits	602
Part 3	**Solicitors**	
985	Solicitor's act	603
986	Change between acting personally and acting by solicitor	603
987	Change of solicitor	604
988	Removal of solicitor by court	605
989	Solicitor struck off or suspended	605
990	Application for leave to withdraw as solicitor	605
991	Leave to withdraw as solicitor	606
992	Effect of leave to withdraw as solicitor	607
993	Withdrawal of town agent	607
994	Crown solicitor etc.	608
Chapter 23	**Proceedings under Corporations Act, Cross-Border Insolvency Act 2008 (Cwlth) or ASIC Act**	
995	Rules for proceedings under Corporations Act, Cross-Border Insolvency Act 2008 (Cwlth) or ASIC Act	608
Chapter 24	**Transitional provisions**	
Part 1	**Provision for Uniform Civil Procedure Amendment Rule (No. 1) 2004**	
996	Transitional provision	609
Part 2	**Provision for Uniform Civil Procedure Amendment Rule (No. 1) 2005**	
997	Transitional provision	609
Part 3	**Provision for Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Regulation (No. 1) 2009**	
998	Proceeding for claim started	610
Part 4	**Provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010**	
999	Transitional provision	611
Part 5	**Provision for Uniform Civil Procedure (Fees) and Other Legislation Amendment Regulation (No. 1) 2011**	
1000	Transitional provision	611
Part 6	**Provision for Uniform Civil Procedure Amendment Rule (No. 1) 2011**	
1001	Transitional provision	611
Part 7	**Transitional provision for Uniform Civil Procedure Rules and Other Legislation Amendment and Repeal Regulation (No. 1) 2018**	

1002	Existing service providers	612
Part 8	**Transitional provision for Uniform Civil Procedure (Offers to Settle) Amendment Rule 2023**	
1003	Costs in relation to offers to settle	612
Schedule 1A	**Rules for proceedings under Corporations Act or ASIC Act**	613
Part 1	**Preliminary**	
1.1	Short title	613
1.2	Notes in text	613
1.3	Application of these rules and other rules of the court	613
1.4	Expressions used in Corporations Act	614
1.5	Definitions for these rules	615
1.6	References to rules and forms	615
1.7	Substantial compliance with forms	615
1.8	Court's power to give directions	616
1.9	Calculation of time	616
1.10	Extension and abridgement of time	617
Part 2	**Proceedings generally**	
2.1	Title of documents in a proceeding—form 1	617
2.2	Originating application and interlocutory application—forms 2 and 3	617
2.3	Fixing of hearing	618
2.4	Supporting affidavits	618
2.4A	Application for order setting aside statutory demand (Corporations Act, s 459G)	619
2.5	Affidavits made by creditors	619
2.6	Form of affidavits	620
2.7	Service of originating application or interlocutory application and supporting affidavit	620
2.8	Notice of certain applications to be given to ASIC	621
2.9	Notice of appearance (Corporations Act, s 465C)—form 4	622
2.10	Intervention in proceeding by ASIC (Corporations Act, s 1330)—form 5	623
2.12	Proof of publication	623
2.13	Leave to creditor, contributory, officer or interested person to be heard	624
2.14	Inquiry in relation to corporation's debts etc.	625

2.15 Meetings ordered by the court 625

Part 3 Compromises and arrangements in relation to Part 5.1 bodies

3.1 Application of pt 3 625

3.2 Nomination of chairperson for meeting 625

3.3 Order for meetings to identify proposed scheme 626

3.4 Notice of hearing (Corporations Act, ss 411(4) and 413(1))—form 6 627

3.5 Copy of order approving compromise or arrangement to be lodged with ASIC 627

Part 4 Process for seeking inquiry or order in relation to controller, registered liquidator or external administration

4.1 Inquiry into conduct of controller (Corporations Act, s 423) 628

4.2 Order or inquiry in relation to registered liquidator or external administration of company 628

Part 5 Winding up proceedings (including oppression proceedings where winding up is sought)

5.1 Application of pt 5 629

5.2 Affidavit accompanying statutory demand (Corporations Act, s 459E(3))—form 7 629

5.3 Application for leave to apply for winding up in insolvency (Corporations Act, s 459P(2)) 630

5.4 Affidavit in support of application for winding up (Corporations Act, ss 459P, 462 and 464) 630

5.5 Consent of liquidator (Corporations Act, s 532(9))—form 8 631

5.6 Notice of application for winding up—form 9 631

5.7 Applicant to make copies of documents available 632

5.8 Discontinuance of application for winding up 632

5.9 Appearance before registrar 632

5.10 Order substituting applicant in application for winding up (Corporations Act, s 465B)—form 10 632

5.11 Notice of winding up order and appointment of liquidator—form 11 633

Part 6 Provisional liquidators (Corporations Act, part 5.4B)

6.1 Appointment of provisional liquidator (Corporations Act, s 472)—form 8 634

6.2 Notice of appointment of provisional liquidator—form 12 634

Part 7 Liquidators

7.2 Vacancy in office of liquidator (Corporations Act, ss 473A and 499(3) and Insolvency Practice Schedule (Corporations), s 90-15) 635

7.3 Report to liquidator as to company's affairs (Corporations Act, s 475) 636

7.4 Liquidator to file certificate and copy of settled list of contributories (Corporations Act, s 478) 636

7.5 Release of liquidator and deregistration of company (Corporations Act, s 480(c) and (d)) 637

7.6 Objection to release of liquidator—form 13 639

7.7 Report on accounts of liquidator (Corporations Act, s 481) 640

7.8 Application for payment of call (Corporations Act, s 483(3)(b))—form 14 640

7.9 Distribution of surplus by liquidator with special leave of court (Corporations Act, s 488(2))—form 15 640

7.10 Powers delegated to liquidator by the court (Corporations Act, s 488) 641

7.11 Appointment of reviewing liquidator (Insolvency Practice Schedule (Corporations), s 90-23(8)) 641

Part 8 Special managers (Corporations Act, part 5.4B)

8.1 Application for appointment of special manager (Corporations Act, s 484) 642

8.2 Security given by special manager (Corporations Act, s 484) . . . 642

8.3 Special manager's receipts and payments (Corporations Act, s 484) 642

Part 9 Remuneration of office-holders

9.1 Remuneration of receiver (Corporations Act, s 425(1))—form 16 643

9.2 Determination of remuneration of external administrator (Insolvency Practice Schedule (Corporations), s 60-10(1)(c) and (2)(b))—form 16 645

9.2A Review of remuneration determination for external administrator (Insolvency Practice Schedule (Corporations), s 60-11(1)) 647

9.3 Remuneration of provisional liquidator (Insolvency Practice Schedule (Corporations), s 60-16)—form 16 649

9.5 Remuneration of special manager (Corporations Act, s 484(2))—form 16 651

Part 10 Winding up generally

10.1 Determination of value of debts or claims (Corporations Act, s 554A(2)) 653

10.2 Disclaimer of contract (Corporations Act, s 568(1A)) 654

10.3 Winding up Part 5.7 bodies (Corporations Act, ss 583 and 585) and

registered schemes (Corporations Act, s 601ND) 654

Part 11 Inquiries, examinations, investigations, and orders against person concerned with corporation

11.1 Definition for pt 11 654

11.2 Inquiries, examinations and investigations under Corporations Act, s 411(9)(b) or 423(3) or Insolvency Practice Schedule (Corporations), div 90, sdiv B 655

11.3 Application for examination summons (Corporations Act, ss 596A and 596B)—form 17 656

11.4 Service of examination summons 657

11.5 Discharge of examination summons 657

11.6 Filing of record of examination (Corporations Act, s 597(13)) . . . 658

11.7 Authentication of transcript of examination (Corporations Act, s 597(14)) 658

11.8 Inspection of record or transcript of examination or investigation under Corporations Act, s 411 or 423 or Insolvency Practice Schedule (Corporations), div 90, sdiv B 659

11.9 Entitlement to record or transcript of examination held in public . 659

11.10 Default in relation to examination 659

11.11 Service of application for order in relation to breaches etc. by person concerned with corporation (Corporations Act, s 598) 660

Part 11A Warrants (Corporations Act, section 486B and part 5.4B, division 3, subdivision B)

11A.1 Arrest of person (Corporations Act, s 486B)—form 17A 661

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 7 662

12.1A Reference to court of questions of law arising in proceeding before takeovers panel (Corporations Act, s 659A) 662

12.1B Notification to court if proceeding is commenced before end of takeover bid period (Corporations Act, s 659B) 662

12.2 Application for summons for appearance of person (Corporations Act, s 1071D(4))—form 18 663

12.3 Application for orders relating to refusal to register transfer or transmission of securities (Corporations Act, s 1071F) 663

Part 14 Appeals authorised by Corporations Act

14.1 Appeals against acts, omissions or decisions 664

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) 665

15.3 Application for inquiry (ASIC Act, ss 70, 201 and 219) 665

Part 15A **Proceedings under Cross-Border Insolvency Act 2008 (Cwlth)**

15A.1 Application of part and other rules of the court 665

15A.2 Expressions used in Cross-Border Insolvency Act 2008 (Cwlth) 666

15A.3 Application for recognition 667

15A.4 Application for provisional relief under Model Law, art 19 667

15A.5 Registered liquidator's consent to act 668

15A.6 Notice of filing of application for recognition 668

15A.7 Notice of order for recognition, withdrawal etc. 669

15A.8 Relief after recognition 670

15A.9 Application to modify or terminate order for recognition or other relief 670

Part 16 **Powers of registrars**

16.1 Powers of registrars 671

16.2 Reference by registrar 672

Part 17 **Transitional provision for Uniform Civil Procedure (Corporations Proceedings) Amendment Rule 2018**

17.1 Transitional provision 672

Schedule 1B **Powers of the court that may be exercised by a registrar** . . 675

Schedule 1C **Code of conduct for experts** 692

Part 1 **Preliminary**

1 Purpose of code 692

2 Application of code 692

Part 2 **Duty to comply with orders and directions**

3 Duty to comply with court's orders and directions 693

Part 3 **Experts' conferences and joint reports**

4 Application of part 693

5 Experts' conference and joint report [r 429A] 693

6 Permitted communications between experts and parties [r 429B(1), (2), (5) and (6)] 694

Part 4 **Giving of evidence by experts and related matters**

7 Duty of expert [r 429F] 695
8 Requirements for report [r 429H] 695
9 Supplementary report following change of opinion [r 429K(1) and (2)] 697
Schedule 1D Code of conduct for interpreters 698
1 Application of code of conduct 698
2 Definitions for code of conduct 698
3 General duty to the court 699
4 Duty to comply with directions 699
5 Duty of accuracy 699
6 Duty of impartiality 700
7 Duty of competence 701
8 Duty of confidentiality 701
Schedule 1 Scale of costs—Supreme Court and District Court 702
Schedule 2 Scale of costs—Magistrates Courts 710
Schedule 3 Dictionary 724

Uniform Civil Procedure Rules 1999

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.

Note—

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 (repealed) and *Acts Interpretation Act 1954*, section 18. The *Uniform Civil Procedure Rules 1999* commenced at the beginning of 1 July 1999—rule 2 and *Acts Interpretation Act 1954*, section 15B.

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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4 Dictionary

(1) The dictionary in schedule 3 defines terms used in these rules.

(2) Words and expressions used in the *Civil Proceedings Act 2011* have the same meaning in these rules as they have in that Act.

(3) Subrule (2) does not apply to the extent that the context or subject matter otherwise indicates or requires.

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.

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(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.

Note—

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

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.

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

Note—

This is commonly called an *interlocutory application*.

9 Claim compulsory

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

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(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; and

Note—

See rule 367 (Directions).

(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.

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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.

16 Setting aside originating process

The court may—

(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 126(1) or 129G(1); or

(i) make another order the court considers appropriate.

Note—

See also rule 373 (Incorrect originating process).

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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;

(ii) for a proceeding in the Supreme Court or the District Court—if the address specified under subparagraph (i) is not in Queensland, an address in Queensland where documents may be served on the plaintiff or applicant;

(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; or

Note—

The fax number may be relevant for ordinary service—see chapter 4 (Service), part 4 (Ordinary service).

(vi) the email address (if any) of the plaintiff or applicant; or

Notes—

1 The email address may be relevant for ordinary service.

2 See also chapter 4, part 4.

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(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;

(vii) the email address of the solicitor and, if the solicitor practises in a firm of solicitors, the email address of the firm.

(2) 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).

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

(4) 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—

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(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, must sign the originating process.

(2) This rule applies subject to rule 975A(1).

20 Copy of originating process for court

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

(2) This rule applies subject to rule 975A(3).

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

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(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; and

Note—

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

(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.

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(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.

Part 4 Applications

25 Application of pt 4

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

26 Content of application

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

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

Note—

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

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

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

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

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

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

(8) An application filed in the District Court or a Magistrates Court, or material filed with it, must show that the court has jurisdiction to decide the application.

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.

Note—

Under the *Acts Interpretation Act 1954*, section 38(1)(a), the service day and the hearing day are excluded in the reckoning of time.

(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;

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

Example of subrule (3)—

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

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

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

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

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 applies in relation to a notice of address for service as if the notice were an originating process and the respondent were an applicant.

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(5) Despite rule 17, an address for service stated under the *Service and Execution of Process Act 1992* (Cwlth) is the address for service of the respondent.

(6) 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.

Part 5 Applications in a proceeding

31 Applications in a proceeding

(1) A person making an application in 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.

Note—

Under the *Acts Interpretation Act 1954*, section 38(1)(a), the service day and the hearing day are excluded in the reckoning of time.

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(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.

(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

33 Central registry

A proceeding in a court may be started in any central registry of the court.

Division 2 Starting proceeding other than in central registry

34 Application of div 2

This division applies to the following courts if a person decides to start a proceeding other than in a central registry of a court—

(a) the Supreme Court;

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(b) the District Court;

(c) Magistrates Courts.

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.

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(3) For these rules, a division of the Brisbane Magistrates Court is taken to be a district.

Division 3 Area of Magistrates Courts districts

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.

Division 4 Objection to, and change of, venue

38 Objection to venue

(1) This rule applies if a proceeding in a court is started other than in a central registry of the court.

(2) The defendant or respondent to the proceeding may object to the starting of the proceeding in a district of the court other than in accordance with rule 35—

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(a) by application to the court for an order dismissing the proceeding or transferring the proceeding to another place at which the court is held; and

(b) if the proceeding is started by claim—by including the objection in the defendant's notice of intention to defend.

(3) If the defendant or respondent does not object in the way required under subrule (2), the court can not, on its own initiative, decide that the proceeding should have been started at another place at which the court is held.

(4) If the proceeding is started by application, the application under subrule (2)(a) must be made returnable on or before the return date of the originating process.

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

(a) an order dismissing—

(i) the application; or

(ii) the proceeding;

(b) an order transferring the proceeding to another place at which the court is held.

(6) If the court makes an order under subrule (5)(a)(i), the proceeding is taken to have been started in a district of the court in accordance with rule 35.

39 Change of venue by court order

(1) This rule applies if at any time a court is satisfied a proceeding can be more conveniently or fairly heard or dealt with at a place at which the court is held other than the place in which the proceeding is pending.

(2) The court may, on its own initiative or on the application of a party to the proceeding, order that the proceeding be transferred to the other place.

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40 Change of venue by agreement

The parties to a proceeding may apply for a consent order under rule 666 that the proceeding be transferred to another place at which the court is held.

41 Consequences of transfer

If the court or registrar (the ***transferring court***) orders under rule 38(5)(b), 39(2) or 40 that a proceeding be transferred to another place at which the court is held—

(a) the proceeding is pending in the registry at the other place; and

(b) unless the transferring court otherwise orders, the trial or hearing of the proceeding is to be heard and decided by the court at the other place.

Division 5 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;

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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 the *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.

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(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, 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.

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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.

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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

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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.

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(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

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(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.

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(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—

(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—

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(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—

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(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'.

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(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.

Note—

See the *Civil Proceedings Act 2011*, sections 104 and 105 for procedures, relevant to this rule, about estates and grants of representation.

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—

(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.

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(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.

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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—

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(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

74A Application of division

This division does not apply to a representative proceeding under the *Civil Proceedings Act 2011*, part 13A.

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 including the person as a party.

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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.

Note—

See also the *Civil Proceedings Act 2011*, section 18 (Order binds persons who are represented).

(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.

Division 5 Representative proceedings in Supreme Court

77A Application of division

This division applies to a representative proceeding under the *Civil Proceedings Act 2011*, part 13A.

Note—

See rule 4(2) in relation to the meaning in these rules of words and expressions used in the *Civil Proceedings Act 2011*.

77B Starting representative proceeding

A representative proceeding must be started by claim in the approved form.

77C Requirements for giving consent to be group member

(1) This rule applies to the giving of consent under the *Civil Proceedings Act 2011*, section 103D(2) to be a group member.

(2) The consent must—

(a) be in the approved form; and

(b) be filed and served on the representative party for the representative proceeding to which the notice relates.

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77D Requirements for giving notice to opt out of representative proceeding

(1) This rule applies to the giving of notice under the *Civil Proceedings Act 2011*, section 103G(2) to opt out of a representative proceeding.

(2) The notice must—

(a) be in the approved form; and

(b) be filed and served on the representative party for the representative proceeding to which the notice relates.

77E Representative party must give list of opt-out group members

(1) This rule applies if 1 or more group members to whom a representative proceeding relates (each an ***opt-out group member***) file and serve in the proceeding a notice under rule 77D.

(2) The representative party for the representative proceeding must, within 14 days after the opt-out date for the proceeding, give each other party to the proceeding a list of the opt-out group members.

(3) In this rule—

opt-out date, for a representative proceeding, means—

(a) if the court fixes a date for the proceeding under the *Civil Proceedings Act 2011*, section 103G(3)—that date; or

(b) otherwise—the date fixed by the court for the proceeding under section 103G(1) of that Act.

77F Requirements for particular applications in representative proceedings

(1) This rule applies to an application for an order under any of the following sections of the *Civil Proceedings Act 2011*—

(a) section 103H;

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(b) section 103S;

(c) section 103T;

(d) section 103W.

(2) The application must—

(a) be in the approved form; and

(b) be accompanied by an affidavit stating, for the group members of the representative proceeding to which the application relates—

(i) the identity of the group members; and

(ii) the whereabouts of the group members; and

(iii) the way that is most likely to bring notice of a matter to the attention of the group members.

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

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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.

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(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 with an originating process against a partnership may file a notice of intention to defend only in the partner's own name.

Note—

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

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

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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.

(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, the person may be served outside Australia without leave.

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(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 on the Business Names Register.

90 Proceeding in business name if unregistered

(1) This rule applies if—

(a) a person carries on a business under a name other than the person's own name; and

(b) the name is not registered on the Business Names Register.

(2) A proceeding in relation to the business mentioned in subrule (1)(a) may be started against the person in the name under which the person carries on business.

(3) The name under which the business is carried on is sufficient designation of the person in a document filed in the proceeding.

(4) 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 other than the person's own name and regardless of whether the name is registered on the Business Names Register or held under business names legislation.

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(2) A notice of intention to defend must be in the 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 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).

(5) For subrule (1), a name is held under business names legislation only if it is held under—

(a) the *Business Names Registration Act 2011* (Cwlth), section 54; or

(b) the *Business Names Registration (Transitional and Consequential Provisions) Act 2011* (Cwlth), schedule 1, item 5.

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 other than the person's own name; and

(b) the name is not registered on the Business Names Register.

(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 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 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.

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(5) An amendment for this rule must be effected under rules 382 and 384.

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

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

(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.

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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 apply to a party who is a person under a legal incapacity as if the person were not a person under a legal incapacity.

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

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

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

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.

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(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.

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.

Note—

See the *Public Trustee Act 1978*, section 95 (Restrictions on property dealings or proceedings).

(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.

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convention, for part 7, division 2, means an agreement, arrangement, treaty or convention, relating to legal proceedings in civil matters, made between Australia and another country.

convention country, for part 7, division 2, 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.

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.

Note—

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.

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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.

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 must be served in the way provided for the service of documents under the Corporations Act or another applicable law.

Note—

A ***corporation*** includes a body politic or corporate—*Acts Interpretation Act 1954*, schedule 1.

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

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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.

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 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

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(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.

(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;

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(e) if the person has given—

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

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

(f) if the solicitor for the person has—

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

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

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

(g) an electronic means prescribed by practice direction.

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

(3) In this rule—

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

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

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

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

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

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

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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 other than the person's name; and

(b) the name is not registered on the Business Names Register; and

(c) the proceeding is started in the name 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.

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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

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(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

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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;

(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.

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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).

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Part 7 Service outside, or emanating from outside, Australia

Division 1 Ordinary service outside Australia

Subdivision 1AA Preliminary

123A Definition for division

In this division—

accompanying document, for an originating process, means—

(a) for an originating process that is a claim—a statement of claim; or

(b) for an originating process that is an application—any affidavit to be relied on by the applicant at the hearing of the application; or

(c) for any originating process—any other document that is required under these rules to be served with the originating process.

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.

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125 When service allowed without leave

An originating process, together with each accompanying document for the 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

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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

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(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 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

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(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—

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(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—

(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—

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(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 accompanying documents

(1) This rule applies if the originating process for a proceeding is an application.

(2) Unless the court orders otherwise, the application and each accompanying document for 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 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.

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(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) This rule applies to a document other than—

(a) an originating process; or

(b) an accompanying document for an originating process that, under rule 125, may be served outside Australia without leave.

(2) The document may be served outside Australia with the leave of the court.

(3) On an application for leave under subrule (2), 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.

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129F When service allowed without leave

An originating process, together with each accompanying document for the 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 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

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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

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(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;

(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—

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(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;

(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.

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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 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

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

(2) Also, rule 129C applies to the proceeding as if an accompanying document for an originating process that, under rule 129F, may be served outside Australia without leave were an accompanying document mentioned in rule 129C(1)(b).

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

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(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.

(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.

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(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.

Division 3 Service under the Hague Convention

Subdivision 1 Preliminary

Notes—

1 This division was developed by the Council of Chief Justices' Rules Harmonisation Committee and forms part of a scheme to implement Australia's obligations under the *Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*. Under the convention, the Attorney-General's Department of the Commonwealth is designated as the Central Authority (under article 2 of the Hague Convention) and certain courts and government departments are, for certain purposes, designated as 'other' or 'additional' authorities (under article 18 of the Hague Convention).

2 This division provides (in subdivision 2) for service in overseas Hague Convention countries of local judicial documents (documents relating to a proceeding in the Supreme Court, the District Court or a Magistrates Court) and (in subdivision 3) for default judgment in a proceeding in the court after service overseas of such a document. Subdivision 4, on the other hand, deals with

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service by the Supreme Court or arranged by the court in its role as an other or additional authority, of judicial documents emanating from overseas convention countries.

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.

130A Definitions for div 3

In this division—

additional authority, for a Hague Convention country, means an authority that is—

(a) for the time being designated by that country, under article 18 of the Hague Convention, to be an authority (other than the central authority) for that country; and

(b) competent to receive requests for service abroad emanating from Australia.

applicant, for a request for service abroad or for a request for service in Queensland, means the person on whose behalf service is requested.

Note—

The term *applicant* may have a different meaning in other provisions of these rules.

central authority, for a Hague Convention country, means an authority that is for the time being designated by that country, under article 2 of the Hague Convention, to be the Central Authority for that country.

certificate of service means a certificate of service that has been completed for article 6 of the Hague Convention.

certifying authority, for a Hague Convention country, means the central authority for the country or some other authority that is for the time being designated by the country, under

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article 6 of the Hague Convention, to complete certificates of service in the form annexed to the Hague Convention.

civil proceeding means any judicial proceeding in relation to a civil or commercial matter.

defendant, for a request for service abroad of an initiating process, means the person on whom the initiating process is requested to be served.

foreign judicial document means a judicial document that originates in a Hague Convention country and relates to civil proceedings in a court of that country.

forwarding authority means—

(a) for a request for service of a foreign judicial document in Queensland—the authority or judicial officer of the Hague Convention country in which the document originates that forwards the request (being an authority or judicial officer that is competent under the law of that country to forward a request for service under article 3 of the Hague Convention); or

(b) for a request for service of a local judicial document in a Hague Convention country—the registrar.

Hague Convention means the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* done at the Hague on 15 November 1965.

Hague Convention country means a country, other than Australia, that is a party to the Hague Convention.

initiating process means any document, including a counterclaim and a third party notice, by which a proceeding is commenced.

local judicial document means a judicial document relating to a civil proceeding in the Supreme Court, the District Court or a Magistrates Court.

registrar means the registrar of the Supreme Court.

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request for service abroad means a request for service in a Hague Convention country of a local judicial document mentioned in rule 130D.

request for service in Queensland means a request for service in Queensland of a foreign judicial document mentioned in rule 130M(1).

130B Provisions of this division to prevail

If the provisions of this division are inconsistent with any other provisions of these rules, the provisions of this division prevail to the extent of the inconsistency.

Subdivision 2 Service abroad of local judicial documents

130C Application of sdiv 2

(1) Subject to subrule (2), this subdivision applies to service in a Hague Convention country of a local judicial document.

(2) This subdivision does not apply if service of the document is effected, without application of any compulsion, by an Australian diplomatic or consular agent mentioned in article 8 of the Hague Convention.

130D Application for request for service abroad

(1) A person may apply to the registrar, in the registrar's capacity as a forwarding authority, for a request for service in a Hague Convention country of a local judicial document.

(2) The application must be accompanied by 3 copies of each of the following documents—

(a) a draft request for service abroad, which must be in the approved form;

(b) the document to be served;

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(c) a summary of the document to be served, which must be in the approved form;

(d) if, under article 5 of the Hague Convention, the central authority or any additional authority of the country to which the request is addressed requires the document to be served to be written in, or translated into, the official language or 1 of the official languages of that country, a translation into that language of both the document to be served and the summary of the document to be served.

(3) The application must contain a written undertaking to the Supreme Court, signed by the lawyer on the record for the applicant in the proceeding to which the local judicial document relates or, if there is no lawyer on the record for the applicant in the proceeding, by the applicant—

(a) to be personally liable for all costs incurred—

(i) by the employment of a person to serve the documents to be served, being a person who is qualified to do so under the law of the Hague Convention country in which the documents are to be served; or

(ii) by the use of any particular method of service that has been requested by the applicant for the service of the documents to be served; and

(b) to pay the amount of those costs to the registrar within 28 days after receipt from the registrar of a notice specifying the amount of those costs under rule 130F(3); and

(c) to give such security for those costs as the registrar may require.

(4) The draft request for service abroad—

(a) must be completed (except for signature) by the applicant; and

(b) must state whether (if the time fixed for entering an appearance in the proceeding to which the local judicial document relates expires before service is effected) the

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applicant wants service to be attempted after the expiry of that time; and

(c) must be addressed to the central authority, or to an additional authority, for the Hague Convention country in which the person is to be served; and

(d) may state that the applicant requires a certificate of service that is completed by an additional authority to be countersigned by the central authority.

(5) A translation required under subrule (2)(d) must bear a certificate (in both English and the language used in the translation) signed by the translator stating—

(a) that the translation is an accurate translation of the documents to be served; and

(b) the translator's full name and address and his or her qualifications for making the translation.

130E How application to be dealt with

(1) If satisfied that the application and its accompanying documents comply with rule 130D, the registrar—

(a) must sign the request for service abroad; and

(b) must forward 2 copies of the relevant documents—

(i) if the applicant has asked for the request to be forwarded to a nominated additional authority for the Hague Convention country in which service of the document is to be effected—to the nominated additional authority; or

(ii) in any other case—to the central authority for the Hague Convention country in which service of the document is to be effected.

(2) The ***relevant documents*** mentioned in subrule (1)(b) are the following—

(a) the request for service abroad (duly signed);

(b) the document to be served;

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(c) the summary of the document to be served;

(d) if required under rule 130D(2)(d), a translation into the relevant language of each of the documents mentioned in paragraphs (b) and (c).

(3) If not satisfied that the application or any of its accompanying documents complies with rule 130D, the registrar must inform the applicant of the respects in which the application or document fails to comply.

130F Procedure on receipt of certificate of service

(1) Subject to subrule (5), on receipt of a certificate of service in due form in relation to a local judicial document to which a request for service abroad relates, the registrar—

(a) must arrange for the original certificate to be filed in the proceeding to which the document relates; and

(b) must send a copy of the certificate to—

(i) the lawyer on the record for the applicant in the proceeding; or

(ii) if there is no lawyer on the record for the applicant in the proceeding—the applicant.

(2) For subrule (1), a certificate of service is in due form if—

(a) it is in the approved form; and

(b) it has been completed by a certifying authority for the Hague Convention country in which service was requested; and

(c) if the applicant requires a certificate of service that is completed by an additional authority to be countersigned by the central authority, it has been so countersigned.

(3) On receipt of a statement of costs in due form in relation to the service of a local judicial document mentioned in subrule (1), the registrar must send to the lawyer or applicant who gave

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the undertaking mentioned in rule 130D(3) a notice specifying the amount of those costs.

(4) For subrule (3), a statement of costs is in due form if—

(a) it relates only to costs of a kind mentioned in rule 130D(3)(a); and

(b) it has been completed by a certifying authority for the Hague Convention country in which service was requested.

(5) Subrule (1) does not apply unless—

(a) adequate security to cover the costs mentioned in subrule (3) has been given under rule 130D(3)(c); or

(b) to the extent to which the security so given is inadequate to cover those costs, an amount equal to the amount by which those costs exceed the security so given has been paid to the registrar.

130G Payment of costs

(1) On receipt of a notice under rule 130F(3) in relation to the costs of service, the lawyer or applicant, as the case may be, must pay to the registrar the amount specified in the notice as the amount of those costs.

(2) If the lawyer or applicant fails to pay that amount within 28 days after receiving the notice—

(a) except by leave of the court, the applicant may not take any further step in the proceeding to which the local judicial document relates until those costs are paid to the registrar; and

(b) the registrar may take such steps as are appropriate to enforce the undertaking for payment of those costs.

130H Evidence of service

A certificate of service in relation to a local judicial document (being a certificate in due form within the meaning of

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rule 130F(2)) certifying that service of the document was effected on a specified date is, in the absence of any evidence to the contrary, sufficient proof that—

(a) service of the document was effected by the method specified in the certificate on that date; and

(b) if that method of service was requested by the applicant, that method is compatible with the law in force in the Hague Convention country in which service was effected.

Subdivision 3 Default judgment following service abroad of initiating process

130I Application of sdiv 3

This subdivision applies to a civil proceeding for which an initiating process has been forwarded following a request for service abroad to the central authority (or to an additional authority) for a Hague Convention country.

130J Restriction on power to enter default judgment if certificate of service filed

(1) This rule applies if—

(a) a certificate of service of initiating process has been filed in the proceeding (being a certificate in due form within the meaning of rule 130F(2)) stating that service has been duly effected; and

(b) the defendant has not appeared or filed a notice of address for service.

(2) In circumstances to which this rule applies, default judgment may not be given against the defendant unless the court is satisfied that—

(a) the initiating process was served on the defendant—

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(i) by a method of service prescribed by the internal law of the Hague Convention country for the service of documents in a domestic proceeding on persons who are within its territory; or

(ii) if the applicant requested a particular method of service (being a method under which the document was actually delivered to the defendant or to his or her residence) and that method is compatible with the law in force in that country, by that method; or

(iii) if the applicant did not request a particular method of service, in circumstances where the defendant accepted the document voluntarily; and

(b) the initiating process was served in sufficient time to enable the defendant to enter an appearance in the proceeding.

(3) For subrule (2)(b)—

sufficient time means—

(a) 42 days from the date specified in the certificate of service in relation to the initiating process as the date on which service of the process was effected; or

(b) such lesser time as the court considers, in the circumstances, to be a sufficient time to enable the defendant to enter an appearance in the proceeding.

130K Restriction on power to enter default judgment if certificate of service not filed

(1) This rule applies if—

(a) a certificate of service of initiating process has not been filed in the proceeding; or

(b) a certificate of service of initiating process has been filed in the proceeding (being a certificate in due form within the meaning of rule 130F(2)) stating that service has not been effected;

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and the defendant has not appeared or filed a notice of address for service.

(2) If this rule applies, default judgment may not be given against the defendant unless the court is satisfied that—

(a) the initiating process was forwarded to the central authority, or to an additional authority, for the Hague Convention country in which service of the initiating process was requested; and

(b) a period that is adequate in the circumstances (being a period of not less than 6 months) has elapsed since the date on which initiating process was so forwarded; and

(c) every reasonable effort has been made—

(i) to obtain a certificate of service from the relevant certifying authority; or

(ii) to effect service of the initiating process;

as the case requires.

130L Setting aside judgment in default of appearance

(1) This rule applies if default judgment has been entered against the defendant in a proceeding to which this subdivision applies.

(2) If this rule applies, the court may set aside the judgment on the application of the defendant if it is satisfied that the defendant—

(a) without any fault on the defendant's part, did not have knowledge of the initiating process in sufficient time to defend the proceeding; and

(b) has a prima facie defence to the proceeding on the merits.

(3) An application to have a judgment set aside under this rule may be filed—

(a) at any time within 1 year after the date on which the judgment was given; or

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(b) after the expiry of that 1 year period, within such time after the defendant acquires knowledge of the judgment as the court considers reasonable in the circumstances.

(4) Nothing in this rule affects any other power of the court to set aside or vary a judgment.

Subdivision 4 Local service of foreign judicial documents

130M Application of sdiv 4

(1) This subdivision applies to service in Queensland of a foreign judicial document in relation to which a due form of request for service has been forwarded to the court—

(a) by the Attorney-General's Department of the Commonwealth, whether in the first instance or following referral under rule 130N; or

(b) by a forwarding authority.

(2) Subject to subrule (3), a request for service in Queensland is in due form if it is in the approved form and is accompanied by the following documents—

(a) the document to be served;

(b) a summary of the document to be served, which must be in the approved form;

(c) a copy of the request and of each of the documents mentioned in paragraphs (a) and (b);

(d) if either of the documents mentioned in paragraphs (a) and (b) is not in the English language, an English translation of the document.

(3) Any translation required under subrule (2)(d) must bear a certificate (in English) signed by the translator stating—

(a) that the translation is an accurate translation of the document; and

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(b) the translator's full name and address and his or her qualifications for making the translation.

130N Certain documents to be referred back to the Attorney-General's Department of the Commonwealth

If, after receiving a request for service in Queensland, the registrar is of the opinion—

(a) that the request does not comply with rule 130M; or

(b) that the document to which the request relates is not a foreign judicial document; or

(c) that compliance with the request may infringe Australia's sovereignty or security; or

(d) that the request seeks service of a document in some other State or Territory of the Commonwealth;

the registrar must refer the request to the Attorney-General's Department of the Commonwealth together with a statement of his or her opinion.

Note—

The Attorney-General's Department of the Commonwealth will deal with misdirected and non-compliant requests, make arrangements for the service of extrajudicial documents and assess and decide questions concerning Australia's sovereignty and security.

130O Service

(1) Subject to rule 130N, on receipt of a request for service in Queensland, the court must arrange for the service of the relevant documents in accordance with the request.

(2) The relevant documents mentioned in subrule (1) are the following—

(a) the document to be served;

(b) a summary of the document to be served;

(c) a copy of the request for service in Queensland;

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(d) if either of the documents mentioned in paragraphs (a) and (b) is not in the English language, an English translation of the document.

(3) Service of the relevant documents may be effected by any of the following methods of service—

(a) by a method of service prescribed by the law in force in Queensland—

(i) for the service of a document of a kind corresponding to the document to be served; or

(ii) if there is no such corresponding kind of document, for the service of initiating process in proceedings in the Supreme Court;

(b) if the applicant has requested a particular method of service and that method is compatible with the law in force in Queensland, by that method;

(c) if the applicant has not requested a particular method of service and the person requested to be served accepts the document voluntarily, by delivery of the document to the person requested to be served.

130P Affidavit as to service

(1) If service of a document has been effected pursuant to a request for service in Queensland, the person by whom service has been effected must lodge with the court an affidavit specifying—

(a) the time, day of the week and date on which the document was served; and

(b) the place where the document was served; and

(c) the method of service; and

(d) the person on whom the document was served; and

(e) the way in which that person was identified.

(2) If attempts to serve a document pursuant to a request for service in Queensland have failed, the person by whom

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service has been attempted must lodge with the court an affidavit specifying—

(a) details of the attempts made to serve the document; and

(b) the reasons that have prevented service.

(3) When an affidavit as to service of a document has been lodged in accordance with this rule, the registrar—

(a) must complete a certificate of service, sealed with the seal of the court, on the reverse side of, or attached to, the request for service in Queensland; and

(b) must forward the certificate of service, together with a statement as to the costs incurred in relation to the service or attempted service of the document, directly to the forwarding authority from which the request was received.

(4) A certificate of service must be—

(a) in the approved form; or

(b) if a form of certificate of service that substantially corresponds to the approved form mentioned in paragraph (a) accompanies the request for service, in that accompanying form.

Division 4 Service of foreign legal process in Queensland other than under the Hague Convention

130Q Application of div 4

This division applies to a request for the service in Queensland of process of a court or tribunal of a foreign country that is not a Hague Convention country.

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131 Letter of request from foreign tribunal—procedure

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

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

(b) the Attorney-General, or a person authorised by the Attorney-General, sends the request to the Supreme Court indicating that effect should be given to the process.

(2) The following procedures apply—

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

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

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

(iii) either—

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

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

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

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

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

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(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 person mentioned in subrule (1)(b) who sent the request to the Supreme Court—

(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.

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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.

Note—

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

(3) 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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(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.

Note—

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.

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

(1) Rule 17 applies in relation to a notice of intention to defend as if the notice were a claim and the defendant were a plaintiff.

(2) Despite rule 17, an address for service stated under the *Service and Execution of Process Act 1992* (Cwlth) is the address for service of the defendant.

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.

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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.

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, 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) This rule does not apply to a defendant objecting to the starting of a proceeding in a district of a court other than in accordance with rule 35.

Note—

See rule 38 for objections to the starting of a proceeding other than in the correct district.

(2) 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.

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

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

(5) The conditional notice of intention to defend becomes an unconditional notice of intention to defend if—

(a) the defendant does not apply for an order under rule 16 within the 14 days; or

(b) for a defendant who applies for an order under rule 16 within the 14 days—the application is determined and the order is not made.

(6) Within 7 days after a conditional notice of defence becomes an unconditional notice of intention to defend, the defendant must file a defence.

(7) 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.

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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 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

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(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.

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;

Note—

See also rule 155 (Damages).

(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;

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

(l) negligence or contributory negligence;

(m) payment;

(n) performance;

(o) part performance;

(p) release;

(q) undue influence;

(r) voluntary assumption of risk;

(s) waiver;

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

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

(v) that a will was not properly made;

(w) wilful default;

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

(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

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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.

(5) If the plaintiff's claim starts a wrongful death proceeding, the plaintiff must state in the statement of claim the person or persons for whose benefit the claim is brought.

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.

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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.

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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 *Civil Proceedings Act 2011*, part 8 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

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(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.

Note—

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.

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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.

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Note—

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

165 Answering pleadings

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

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

166 Denials and non-admissions

(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 non-admission only if—

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

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

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

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

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

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

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

167 Unreasonable denials and non-admissions

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

168 Implied non-admission

(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 non-admission and rule 165(2) then applies.

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

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.

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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.

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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.

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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—

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(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 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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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 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

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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).

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(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.

(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.

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.

(3) In addition to the provisions of this part, rules 16 to 18, 20 and 23 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.

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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.

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—

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(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

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

(3) The counterclaim starts when it is issued.

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(4) Rule 178 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.

(4) Chapter 9, part 1, division 2, 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.

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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.

Note—

See rule 211 (Duty of disclosure).

(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.

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.

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(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 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.

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.

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(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 against another defendant, the defendant may file and serve a notice claiming contribution without further pleading.

Chapter 7 Disclosure

Part 1 Preliminary disclosure

208B Definitions for part

In this part—

applicant means a person who applies for an order under this part.

document includes a class of documents.

identity, of a prospective defendant, includes the name and the occupation, if any, of the prospective defendant.

prospective defendant, in relation to an applicant, means a person against whom the applicant intends to start a proceeding.

whereabouts, of a prospective defendant, includes a place of residence, registered office, place of business or other location of the prospective defendant.

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208C Orders to ascertain identity or whereabouts of prospective defendant

(1) The court may make an order under subrule (2) if it appears to the court that—

(a) an applicant may have a right to relief against a prospective defendant; and

(b) the applicant has made reasonable inquiries, but is unable to sufficiently ascertain the identity or whereabouts of the prospective defendant; and

(c) another person may have information, or possession or control of a document or thing, that may assist in ascertaining the identity or whereabouts of the prospective defendant.

(2) The court may order that the other person—

(a) attend to give evidence relating to the identity or whereabouts of the prospective defendant as directed by the order; or

(b) produce to the applicant a document or thing relating to the identity or whereabouts of the prospective defendant as directed by the order.

(3) If the court makes an order under subrule (2)(a), it may also order that the other person—

(a) produce to the court a document or thing relating to the identity or whereabouts of the prospective defendant as directed by the order; or

(b) give evidence before a registrar.

(4) Unless the court orders otherwise—

(a) an application for an order under subrule (2) must be supported by an affidavit stating—

(i) the facts on which the applicant relies; and

(ii) the information, document or thing in respect of which the order is sought; and

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(b) a copy of the application and the supporting affidavit must be served personally on the other person.

(5) An application for an order under subrule (2) must be made—

(a) if it relates to an existing proceeding to which the applicant is a party—by application in the proceeding; or

(b) otherwise—by originating application.

208D Orders for preliminary disclosure

(1) The court may make an order under subrule (2) if it appears to the court that—

(a) an applicant may have a right to relief against a prospective defendant; and

(b) it is impracticable for the applicant to start a proceeding against the prospective defendant without reference to a document; and

(c) there is an objective likelihood that the prospective defendant has, or is likely to have, possession or control of the document; and

(d) inspection of the document would assist the applicant to make the decision to start the proceeding; and

(e) the interests of justice require the order to be made.

(2) The court may order that the prospective defendant—

(a) disclose the document to the applicant as directed by the order; or

(b) produce the document to the court as directed by the order.

(3) Unless the court orders otherwise—

(a) an application for an order under subrule (2) must be supported by an affidavit stating—

(i) the facts on which the applicant relies; and

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(ii) the document in respect of which the order is sought; and

(b) a copy of the application and the supporting affidavit must be served personally on the prospective defendant.

(4) An application for an order under subrule (2) must be made—

(a) if it relates to an existing proceeding to which the applicant is a party—by application in the proceeding; or

(b) otherwise—by originating application.

208E Security for costs

An order under this part may be made subject to a condition that the applicant give security for costs and expenses of the person against whom the order is to be made.

208F Privilege

(1) This rule applies if a person against whom an order is made under this part wishes to claim privilege from—

(a) disclosure of information sought from the person when giving evidence as directed by the order; or

(b) disclosure or production of a document ordered to be disclosed or produced under the order.

(2) If the order requires the person making the claim of privilege to attend to give evidence relating to the identity or whereabouts of the prospective defendant, the person may make the claim at the time of attending to give the evidence.

(3) If subrule (2) does not apply, the person making the claim of privilege—

(a) must serve written notice of the claim of privilege on the applicant within 7 days after service of the order or, with the court's leave, at a later time; and

(b) if the applicant challenges the claim of privilege—must comply with the requirements of rule 213(2) and (3).

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208G Costs and other expenses

(1) On an application for an order under this part, the court may make orders for the costs of—

(a) the applicant; or

(b) the person against whom the order is made or sought; or

(c) any other party to the proceeding.

(2) The costs in respect of which an order under subrule (1) may be made include—

(a) payment of conduct money; and

(b) payment of an amount to be made on account of an expense or loss in relation to the proceeding; and

(c) the costs of making and serving a list of documents; and

(d) the costs of producing a document or thing for inspection; and

(e) the costs of otherwise complying with the requirements of an order made under this part.

Part 2 Disclosure generally

Division 1 Preliminary

209 Application of part

(1) This part applies to the following types of proceeding—

(a) a proceeding started by claim;

(b) a proceeding in which the court has made an order under rule 14 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.

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(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.

Division 2 Disclosure by parties

Subdivision 1 Disclosure and inspection of documents

210 Nature of disclosure

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

211 Duty of disclosure

(1) A party to a proceeding has a duty to disclose to each other party each document—

(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.

Note—

Under the *Acts Interpretation Act 1954*, schedule 1—

document—

(a) means a record of information, however recorded; and

(b) includes—

(i) anything on which there is writing; and

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(ii) anything on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them; and

(iii) an electronic document.

(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.

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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 division 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 delivery of lists under subrule (1)(a) 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) if, as a result of a further pleading or amended pleading, additional documents are subject to disclosure—within 28 days after the further pleading or amended pleading is delivered;

(d) 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;

(e) otherwise—within 28 days after the close of pleadings.

(3) A copy of a document requested under subrule (1)(b) must be delivered within 14 days after the request.

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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) or (3); 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—

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(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

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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—

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(a) delivering to the other party in accordance with this division 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 division 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.

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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 division, 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 division, 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.

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(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 subdivision 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 subdivision that is tendered at the trial is admissible in evidence against the disclosing party as relevant and as being what it purports to be.

Subdivision 2 Interrogatories

228 Entitlement to deliver interrogatories

A party may deliver an interrogatory only under this division.

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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; 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 subdivision unless the amount sued for is more than $7,500.

231 Answering interrogatories

(1) Subject to this division, 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

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(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—

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(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

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(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—

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(a) order an answer or further answer be given under rule 231; 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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(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.

Subdivision 3 General

239 Public interest considerations

This division 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

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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 division 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.

Division 3 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 proceeding; 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 division is not an ongoing duty.

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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 proceeding 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

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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;

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(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;

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(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 division.

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) Unless the court otherwise orders, the applicant may apply to the registrar within 1 month after receiving written notice under subrule (2) for assessment of the costs and expenses.

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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, custody or preservation of property 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.

Note—

Under the *Acts Interpretation Act 1954*, schedule 1—

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.

(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;

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(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.

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.

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(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 part 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.

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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 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.

(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.

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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—

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(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

(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

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(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.

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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—

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(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

(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,

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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.

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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 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.

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.

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(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.

Note—

See rule 507 (Conditional order).

(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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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.

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(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

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(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.

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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Division 3 Enforcement of judgment by appointment of receiver

274 Enforcement of judgment

The court may appoint a receiver to receive an amount payable under a judgment or other order if it is impracticable to enforce payment in another way.

Note—

See chapter 19 (Enforcement of money orders), part 10 (Enforcement warrants for appointment of a receiver).

Part 4 Sales by court order

275 Definition for pt 4

In this part—

land includes an interest in land.

276 Application of pt 4

This part applies only for a proceeding in the Supreme Court or the District Court.

277 Order for sale

In a proceeding relating to land, the court may, if it is necessary or expedient, order the land be sold before the proceeding is decided.

278 Conduct of sale

(1) The court may appoint a party or another person to have the conduct of the sale if the court—

(a) makes an order for sale under rule 277; or

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(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) settling the particulars and conditions of sale;

(e) 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.

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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.

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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 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(6).

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 *Civil Proceedings Act 2011*, section 58; 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.

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(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 *Civil Proceedings Act 2011*, section 58.

(5) Subrules (6) to (8) apply if interest is claimed under the *Civil Proceedings Act 2011*, section 58.

(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.

(10) If the court as constituted by a registrar is considering whether to give judgment, the registrar is not required to consider the merits of the plaintiff's claim against the defendant.

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Note—

Under rule 982, the matter could be referred to a judge or magistrate for disposal, or for consideration and referral back, if the circumstances set out in that rule apply.

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, 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 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.

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(5) If the plaintiff seeks an order for the return of specified goods, the plaintiff must apply to the court for the 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.

(5) If the court as constituted by a registrar is considering whether to give judgment, the registrar is not required to consider the merits of the plaintiff's claim against the defendant.

Note—

Under rule 982, the matter could be referred to a judge or magistrate for disposal, or for consideration and referral back, if the circumstances set out in that rule apply.

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.

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(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.

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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;

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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

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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.

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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

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(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—

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(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.

308A Discontinuance by parties when proceeding settled

(1) This rule applies if a proceeding is settled, whether or not a request for trial date has been filed.

(2) Each party must immediately give the registrar written notice that the proceeding has been settled.

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.

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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—

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(a) for a mediation—the extra cost mentioned in rule 328; and

(b) for a case appraisal—the extra cost mentioned in rule 337.

referred dispute means a dispute referred to a case appraiser under rule 334.

registrar means the registrar of the court that referred the proceeding to mediation or case appraisal.

Division 2 Establishment of ADR processes

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.

(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—

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(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; 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

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(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) The order must be made in the approved form.

(5) 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.

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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 *Civil Proceedings Act 2011*, section 48 is—

(a) placed in a sealed container, for example, an envelope; and

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(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.

Note—

The *Civil Proceedings Act 2011*, section 48 provides for a written mediated resolution agreement signed by each party and the mediator.

(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.

(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 Requirements for certificate about mediation

(1) This rule applies to a certificate mentioned in the *Civil Proceedings Act 2011*, section 49(1).

Note—

The *Civil Proceedings Act 2011*, section 49(1) requires a mediator to file a certificate about the mediation.

(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.

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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.

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

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(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.

Note—

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

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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.

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 chapter 13, part 9, division 2.

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—

(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.

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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 Requirements for case appraiser's certificate and decision

(1) This rule applies to—

(a) a certificate mentioned in the *Civil Proceedings Act 2011*, section 49(2)(a); and

(b) a case appraiser's decision mentioned in section 42(2)(b) of that Act.

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Note—

The *Civil Proceedings Act 2011*, section 49(2) requires a case appraiser to file a certificate about the case appraisal and the case appraiser's decision.

(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.

(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

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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.

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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

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settlement of the dispute between the parties are the party's costs in the dispute.

Part 5 Offer to settle

352 Definitions for pt 5

In this part—

offer means an offer to settle made under this part.

proceeding means a proceeding—

(a) started by claim; or

(b) in which the court has made an order under rule 14 ordering the proceeding to continue as if started by claim; or

(c) started by originating application if an order or direction has been made for pleadings, or other documents defining the issues, to be filed and served.

353 If offer 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.

(2) A party may serve more than one offer.

(3) An offer must be in writing and must contain a statement that it is made under this part.

354 Time for making offer

(1) An offer 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.

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(2) However, if an account is claimed in the first instance or if a claim involves taking an account, an offer may be served at any time before the certificate under rule 540 becomes final and binding.

(3) Further, if there is a judgment conditional on the assessment of damages, an offer 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 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 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 is open for acceptance, give leave to a party to withdraw the offer, 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, 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.

356 Effect of offer

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

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357 Disclosure of offer

(1) Subject to rule 365, no statement of the fact that an offer has been made may be contained in a pleading or affidavit.

(2) An offer must not be filed.

(3) If an offer 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.

(5) After an application for leave to withdraw an offer is decided, the court must—

(a) place the application and any affidavits that contain a statement of the fact that an offer 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 may be accepted only by serving a written notice of acceptance on the party making the offer.

(2) An offer does not lapse on the making of a counteroffer.

(3) If an offeree rejects an offer or makes a counteroffer that is not accepted under this part, the offeree may subsequently accept the original offer during the period it is open for acceptance.

(4) If an offer is accepted, the court may incorporate any of its conditions into an order.

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(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—

(a) an order of the court is taken to have been made for the payment of costs in accordance with the offer; and

(b) the costs may, if required, be assessed under these rules.

359 Person under a legal incapacity

(1) A party who is a person under a legal incapacity may make or accept an offer under this part.

(2) However, the making or the acceptance of an offer is not binding on the party unless it is approved by the court under rule 98 or the public trustee acting under the *Public Trustee Act 1978*, section 59.

360 Costs if offer by plaintiff

(1) This rule applies if—

(a) the plaintiff makes an offer that is not accepted by the defendant; and

(b) the plaintiff obtains an order no less favourable than the offer; and

(c) the court is satisfied that the plaintiff was at all material times willing and able to carry out what was proposed in the offer.

(2) Unless the defendant shows another order for costs is appropriate in the circumstances, the court must order the defendant to pay the plaintiff's costs—

(a) calculated on the standard basis, up to and including the day of service of the offer; and

(b) calculated on the indemnity basis, after the day of service of the offer.

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361 Costs if offer by defendant—order obtained by plaintiff

(1) This rule applies if—

(a) the defendant makes an offer that is not accepted by the plaintiff; and

(b) the plaintiff obtains an order that is less favourable to the plaintiff than the offer; and

(c) 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—

(a) the court must—

(i) 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; and

(ii) order the plaintiff to pay the defendant's costs, calculated on the indemnity basis, after the day of service of the offer; and

(b) the plaintiff is not entitled to any costs after the day of service of the offer.

(3) However, if the defendant's offer 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.

361A Costs if offer by defendant—dismissal of plaintiff's proceeding

(1) This rule applies if—

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(a) the defendant makes an offer that is not accepted by the plaintiff; and

(b) the plaintiff's proceeding is dismissed; and

(c) 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 order the plaintiff to pay the defendant's costs—

(a) calculated on the standard basis, up to and including the day of service of the offer; and

(b) calculated on the indemnity basis, after the day of service of the offer.

362 Interest after service of offer

(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.

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.

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(2) If the offer 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 or the public trustee acting under the *Public Trustee Act 1978*, section 59.

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 only if—

(a) for an offer made by the plaintiff—the offer is made to all of the defendants and is an offer to settle the claim against all the defendants; or

(b) for an offer made to the plaintiff—

(i) the offer is an offer to settle the plaintiff's claim against all the defendants; and

(ii) if the offer is made by 2 or more defendants, by the conditions of the offer the defendants who make the offer are jointly or jointly and severally liable to the plaintiff for the whole of the amount of the offer.

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,

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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, subject to any conditions specified in the offer—

(a) to settle the contribution claim; or

(b) to contribute towards an offer to settle the claim made by the plaintiff.

(3) The court may take account of an offer under subrule (2) in deciding whether it should order that the party on whom the offer 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 apply, with any changes necessary, to an offer to contribute as if it were an offer.

365 Failure to comply with offer

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

(a) apply to the court for an order on the conditions of the offer and the court may make the order; or

(b) continue with the proceeding as if an offer had not been accepted.

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Chapter 9A Commercial arbitration

Part 1 Preliminary

365A Words and expressions

(1) Words and expressions used in the *International Arbitration Act 1974* (Cwlth) or the *Commercial Arbitration Act 2013* have the same meaning in this part as they have in those Acts.

(2) Words and expressions used in the *International Arbitration Act 1974* (Cwlth) have the same meaning in part 2 as they have in that Act.

(3) Words and expressions used in the *Commercial Arbitration Act 2013* have the same meaning in part 3 as they have in that Act.

365B Documents not in English

A party to a proceeding to which this chapter applies who seeks to rely on a document that is not in English must provide a certified English translation of the document—

(a) to the court; and

(b) to each other party to the proceeding.

Notes—

1 The *International Arbitration Act 1974* (Cwlth), section 9 also deals with the translation of awards and arbitration agreements in proceedings to which Part II of that Act applies.

2 The *Commercial Arbitration Act 2013*, section 35 also deals with the translation of awards in proceedings to which part 8 of that Act applies.

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Part 2 International commercial arbitration

365C Application for stay and referral to arbitration—foreign arbitration agreements

(1) An application under the *International Arbitration Act 1974* (Cwlth), section 7 to stay the whole or part of a proceeding and refer the parties to arbitration must be in the approved form.

(2) The application must be accompanied by—

(a) a copy of the arbitration agreement; and

(b) an affidavit stating the material facts on which the application for relief is based.

365D Application to enforce foreign award

(1) An application under the *International Arbitration Act 1974* (Cwlth), section 8(2) to enforce a foreign award must be in the approved form.

(2) The application must be accompanied by—

(a) the documents mentioned in the *International Arbitration Act 1974* (Cwlth), section 9; and

(b) an affidavit stating—

(i) the extent to which the foreign award has not been complied with, at the date the application is made; and

(ii) the usual or last known place of business or residence of the person against whom it is sought to enforce the foreign award or, if the person is a company, the last known registered office of the company.

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365E Application for referral to arbitration—Model Law, art 8

(1) An application under the Model Law, article 8 to refer parties to arbitration must be in the approved form.

(2) The application must be accompanied by—

(a) a copy of the arbitration agreement; and

(b) an affidavit stating the material facts on which the application for relief is based.

365F Subpoenas

(1) An application for the issue of a subpoena under the *International Arbitration Act 1974* (Cwlth), section 23(3) must be in the approved form.

(2) The application must be accompanied by—

(a) a draft subpoena in the approved form; and

(b) an affidavit stating the following—

(i) the names of the parties to the arbitration;

(ii) the name of the arbitrator or the names of the arbitrators constituting the arbitral tribunal conducting the arbitration;

(iii) the place where the arbitration is being conducted;

(iv) the nature of the arbitration;

(v) the terms of the permission given by the arbitral tribunal for the application;

(vi) the conduct money, if appropriate, to be paid to the person to whom the subpoena is directed (the ***addressee***);

(vii) the witness expenses payable to the addressee.

(3) The court may—

(a) fix an amount that represents the reasonable loss and expense the addressee will incur in complying with the subpoena; and

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(b) direct that the amount be paid by the applicant to the addressee before or after the addressee complies with the subpoena.

(4) An amount fixed under subrule (3) may be in addition to any conduct money or witness expenses mentioned in subrule (2)(b).

(5) A subpoena must be in the approved form.

(6) A person served with a subpoena must comply with the subpoena in accordance with its terms.

(7) Chapter 11, part 4 applies, as far as practicable, to a subpoena mentioned in this rule.

365G Application relating to evidence for arbitration

(1) An application for an order under the *International Arbitration Act 1974* (Cwlth), section 23A(3) must be in the approved form.

(2) The application must be accompanied by an affidavit stating—

(a) the name of the person against whom the order is sought; and

(b) the order sought; and

(c) the ground under the *International Arbitration Act 1974* (Cwlth), section 23A(1) relied on; and

(d) the terms of the permission given by the arbitral tribunal for the application; and

(e) the material facts relied on.

365H Application relating to disclosure of confidential information

(1) An application under the *International Arbitration Act 1974* (Cwlth), section 23F or 23G for an order prohibiting or allowing the disclosure of confidential information must be in the approved form.

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(2) The application must be accompanied by an affidavit stating—

(a) the name of the person against whom, or in whose favour, the order is sought; and

(b) the order sought; and

(c) the material facts relied on; and

(d) if the application is made under the *International Arbitration Act 1974* (Cwlth), section 23F—the terms of the order of the arbitral tribunal allowing disclosure of the confidential information and the date the order was made; and

(e) if the application is made under the *International Arbitration Act 1974* (Cwlth), section 23G—

(i) the date the arbitral tribunal's mandate was terminated; or

(ii) the date and terms of—

(A) the request made to the arbitral tribunal for disclosure of the confidential information; and

(B) the arbitral tribunal's refusal to make the order.

365I Application for relief under miscellaneous provisions of Model Law

(1) An application for relief under the Model Law, article 11(3), 11(4), 13(3), 14, 16(3), 17H(3), 17I, 17J or 27 must be in the approved form.

(2) The application must be accompanied by an affidavit stating the material facts on which the application for relief is based.

365J Application to set aside award—Model Law, art 34

(1) An application under the Model Law, article 34 to set aside an award must be in the approved form.

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(2) The application must identify—

(a) if the applicant relies on the Model Law, article 34(2)(a)—which subparagraph of article 34(2)(a) is relied on; and

(b) if the applicant relies on the Model Law, article 34(2)(b)—which subparagraph of article 34(2)(b) is relied on; and

(c) brief grounds for seeking the order.

(3) The application must be accompanied by an affidavit—

(a) exhibiting—

(i) a copy of the arbitration agreement; and

(ii) a copy of the award, including the reasons of the arbitral tribunal for the award; and

(b) identifying—

(i) the detailed grounds for seeking the order; and

(ii) the material facts relied on; and

(iii) the date the applicant received the award or, if a request was made under the Model Law, article 33 to the arbitral tribunal to correct the award, the date that request was disposed of by the arbitral tribunal.

(4) The application and supporting affidavit must be served on any person whose interest might be affected by the setting aside of the award.

(5) Any application by a party to the arbitration under the Model Law, article 34(4) must be made by application in the proceeding started under subrule (1).

365K Enforcement of award—Model Law, art 35

(1) An application under the Model Law, article 35 to enforce an award must be in the approved form.

(2) The application must be accompanied by an affidavit—

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(a) exhibiting the documents mentioned in the Model Law, article 35(2); and

(b) stating—

(i) the extent to which the award has not been complied with, at the date the application is made; and

(ii) the usual or last known place of business or residence of the person against whom it is sought to enforce the award or, if the person is a company, the last known registered office of the company.

365L Enforcement of Investment Convention award

(1) An application under the *International Arbitration Act 1974* (Cwlth), section 35(2) for leave to enforce an award to which Part IV of that Act applies must be in the approved form.

(2) The application must be accompanied by an affidavit stating—

(a) the extent to which the award has not been complied with, at the date the application is made; and

(b) the usual or last known place of business or residence of the person against whom it is sought to enforce the award or, if the person is a company, the last known registered office of the company.

Part 3 Domestic commercial arbitration

365M Application for referral to arbitration

(1) An application under the *Commercial Arbitration Act 2013*, section 8 to refer the parties to arbitration must be in the approved form.

(2) The application must be accompanied by an affidavit—

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(a) exhibiting a copy of the arbitration agreement; and

(b) stating the material facts on which the application for relief is based.

365N Subpoenas

(1) An application for the issue of a subpoena under the *Commercial Arbitration Act 2013*, section 27A must be in the approved form.

(2) The application must be accompanied by—

(a) a draft subpoena in the approved form; and

(b) an affidavit stating—

(i) the names of the parties to the arbitration; and

(ii) the name of the arbitrator or the names of the arbitrators constituting the arbitral tribunal conducting the arbitration; and

(iii) the place where the arbitration is being conducted; and

(iv) the nature of the arbitration; and

(v) the terms of the permission given by the arbitral tribunal for the application; and

(vi) the conduct money, if appropriate, to be paid to the person to whom the subpoena is directed (the ***addressee***); and

(vii) the witness expenses payable to the addressee.

(3) The court may—

(a) fix an amount that represents the reasonable loss and expense the addressee will incur in complying with the subpoena; and

(b) direct that the amount be paid by the applicant to the addressee before or after the addressee complies with the subpoena.

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(4) An amount fixed under subrule (3) may be in addition to any conduct money or witness expenses mentioned in subrule (2)(b).

(5) A subpoena must be in the approved form.

(6) A person served with a subpoena must comply with the subpoena in accordance with its terms.

(7) Chapter 11, part 4 applies, as far as practicable, to a subpoena mentioned in this rule.

365O Application relating to evidence for arbitration

(1) An application for an order under the *Commercial Arbitration Act 2013*, section 27B must be in the approved form.

(2) The application must be accompanied by an affidavit stating—

(a) the name of the person against whom the order is sought; and

(b) the order sought; and

(c) the ground under the *Commercial Arbitration Act 2013*, section 27B relied on; and

(d) the terms of the permission given by the arbitral tribunal for the application; and

(e) the material facts relied on.

365P Application relating to disclosure of confidential information

(1) An application under the *Commercial Arbitration Act 2013*, section 27H or 27I for an order prohibiting or allowing the disclosure of confidential information must be in the approved form.

(2) The application must be accompanied by an affidavit stating—

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(a) the name of the person against whom, or in whose favour, the order is sought; and

(b) the order sought; and

(c) the material facts relied on; and

(d) if the application is made under the *Commercial Arbitration Act 2013*, section 27H—the terms of the order of the arbitral tribunal allowing disclosure of the confidential information and the date the order was made; and

(e) if the application is made under the *Commercial Arbitration Act 2013*, section 27I—

(i) the date the arbitral tribunal's mandate was terminated; or

(ii) the date and terms of—

(A) the request made to the arbitral tribunal for disclosure of the confidential information; and

(B) the arbitral tribunal's refusal to make the order.

365Q Application for relief under miscellaneous provisions of Commercial Arbitration Act 2013

(1) An application for relief under the *Commercial Arbitration Act 2013*, section 11(3) or (4), 13(4), 14, 16(9), 17H, 17I, 17J, 19(6) or 27 must be in the approved form.

(2) The application must be accompanied by an affidavit stating the material facts on which the application for relief is based.

365R Preliminary point of law

(1) An application under the *Commercial Arbitration Act 2013*, section 27J for leave to apply for the determination of a question of law arising in the course of an arbitration and, if

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leave is granted, for the determination of the question of law must be in the approved form.

(2) The application must be accompanied by an affidavit—

(a) exhibiting—

(i) a copy of the arbitration agreement; and

(ii) evidence of the consent of the arbitrator or the consent of all the other parties as required by the *Commercial Arbitration Act 2013*, section 27J(2); and

(b) identifying—

(i) the name and usual or last known place of business or residence of any person whose interest might be affected by the proposed determination of the question of law or, if the person is a company, the last known registered office of the company; and

(ii) the nature of the dispute with sufficient particularity to give an understanding of the context in which the question of law arises; and

(iii) the facts on the basis of which the question of law is to be determined and the basis on which those facts are stated, including whether they are agreed, assumed, found by the arbitral tribunal or otherwise; and

(iv) the detailed grounds on which it is contended that leave should be granted.

(3) The application and supporting affidavit must be served on any person whose interest might be affected by the determination of the question of law.

(4) The court may, if it considers it appropriate, hear and determine the question of law at the same time as the application for leave to apply for the determination of the question.

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(5) If the court first hears and grants the application for leave, it may make the orders it considers appropriate for the hearing and determination of the question of law.

365S Application to set aside award

(1) An application under the *Commercial Arbitration Act 2013*, section 34 to set aside an award must be in the approved form.

(2) The application must identify—

(a) if the applicant relies on the *Commercial Arbitration Act 2013*, section 34(2)(a)—which subparagraph of section 34(2)(a) is relied on; and

(b) if the applicant relies on the *Commercial Arbitration Act 2013*, section 34(2)(b)—which subparagraph of section 34(2)(b) is relied on; and

(c) brief grounds for seeking the order.

(3) The application must be accompanied by an affidavit—

(a) exhibiting—

(i) a copy of the arbitration agreement; and

(ii) a copy of the award, including the reasons of the arbitral tribunal for the award; and

(b) identifying—

(i) the detailed grounds for seeking the order; and

(ii) the material facts relied on; and

(iii) the date the applicant received the award or, if a request was made under the *Commercial Arbitration Act 2013*, section 33 to the arbitral tribunal to correct the award, the date that request was disposed of by the arbitral tribunal.

(4) The application and supporting affidavit must be served on any person whose interest might be affected by the setting aside of the award.

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(5) An application by a party to the arbitration under the *Commercial Arbitration Act 2013*, section 34(4) must be made by application in the proceeding started under subrule (1).

365T Appeal

(1) An application under the *Commercial Arbitration Act 2013*, section 34A for leave to appeal on a question of law arising out of an award must be in the approved form.

(2) The application must state—

(a) the question of law to be determined; and

(b) the grounds on which it is alleged that leave to appeal should be granted.

(3) The application must be accompanied by an affidavit showing that, before the end of the appeal period referred to in the *Commercial Arbitration Act 2013*, section 34A(1) and (6), the parties agreed that an appeal may be made under section 34A of that Act.

(4) The affidavit must exhibit—

(a) a copy of the arbitration agreement; and

(b) a copy of the award, including the reasons of the arbitral tribunal for the award.

(5) The application must be accompanied by a submission setting out—

(a) the name and usual or last known place of business or residence of any person whose interest might be affected by the proposed appeal or, if the person is a company, the last known registered office of the company; and

(b) the nature of the dispute with sufficient particularity to give an understanding of the context in which the question of law arises; and

(c) when and how the arbitral tribunal was asked to determine the question of law and where in the award or

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the reasons, and in what way, the arbitral tribunal determined it; and

(d) the relevant facts found by the arbitral tribunal on the basis of which the question of law is to be determined by the court; and

(e) the basis on which it is contended that the determination of the question of law will substantially affect the rights of 1 or more parties; and

(f) the basis on which it is contended that—

(i) the decision of the arbitral tribunal on the question of law is obviously wrong; or

(ii) the question of law is of general public importance and the decision of the arbitral tribunal is open to serious doubt; and

(g) the basis on which it is contended that, despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in the circumstances for the court to determine the question; and

(h) a succinct statement of the argument in support of the application for leave and the appeal if leave is granted.

(6) The application and the supporting material must be served on any person whose interest might be affected by the proposed appeal.

(7) Within 14 days after service on a party or within the further period the court may allow, the party must file and serve any answering material, including a succinct statement of any argument in opposition to the application for leave and the appeal if leave is granted.

(8) If it appears to the court that an oral hearing of the application for leave to appeal is required, the court may, if it considers it appropriate, hear and determine the appeal on the question of law at the same time as it hears the application for leave to appeal.

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(9) If the court grants the application for leave before hearing the appeal, it may make the orders it considers appropriate for the hearing and determination of the appeal.

(10) If an application for leave to appeal is brought or leave to appeal is granted, the court may suspend or discharge any enforcement order made in respect of the award the subject of the proposed appeal.

365U Application to enforce award

(1) An application under the *Commercial Arbitration Act 2013*, section 35 to enforce an award must be in the approved form.

(2) The application must be accompanied by—

(a) the documents mentioned in the *Commercial Arbitration Act 2013*, section 35; and

(b) an affidavit stating—

(i) the extent to which the award has not been complied with, at the date the application is made; and

(ii) the usual or last known place of business or residence of the person against whom it is sought to enforce the award or, if the person is a company, the last known registered office of the company.

Chapter 10 Court supervision

Part 1 Directions

366 Application for directions

(1) This part also applies to the Court of Appeal.

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(2) The court may give directions about the conduct of a proceeding at any time.

Note—

See also the *Supreme Court of Queensland Act 1991*, section 17, the *District Court of Queensland Act 1967*, section 125 and the *Magistrates Act 1991*, section 12(2)(b) which provide for practice directions to be made.

(3) A party may apply to the court for directions at any time.

Note—

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

For other provisions about directions in Magistrates Courts, see chapter 13 (Trials and other hearings), part 9 (Magistrates Courts).

(4) A party may apply for directions either on an application made for the purpose or on application for other relief.

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.

(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;

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(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.

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(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.

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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 for an order under rule 371 must set out details of the failure to comply with these rules.

Note—

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.

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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.

Note—

See also rule 447 (Application to court).

(5) On the hearing of the application, the court may—

(a) give judgment against the party served with the application; or

(b) extend time for compliance with the order; or

(c) give directions; or

(d) make another order.

(6) The party who makes the application may reply to any material filed by the party who was served with the application.

(7) The application may be withdrawn with the consent of all parties concerned in the application or with the court's leave.

(8) A judgment given under subrule (5)(a) may be set aside—

(a) if the application is made without notice—on an application to set the judgment aside; or

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(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.

(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

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(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.

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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.

Note—

See rule 470 in relation to the amendment of pleadings after the filing of the request for trial date.

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.

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

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(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, 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.

(2) However, the court may dispense with the service of an amendment or it may give directions about service.

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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

(1) The costs thrown away as a result of an amendment made under rule 378 are to be paid by the party making the amendment unless the court orders otherwise.

(2) However, unless the court orders otherwise or the parties otherwise agree, the costs mentioned in subrule (1) are not to be assessed, and are not recoverable, until the proceeding ends.

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

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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.

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Part 5 Restricting particular applications

389A Restricting applications that are frivolous, vexatious or abuse of court's process

(1) This rule applies if the court is satisfied that a party (the ***relevant party***) to a proceeding (the ***existing proceeding***) has made more than 1 application in relation to the existing proceeding that is frivolous, vexatious or an abuse of process.

(2) The court may make an order under this rule on application by a party to the existing proceeding or on its own initiative.

(3) The court may order that—

(a) the relevant party must not make a further application in relation to the existing proceeding without leave of the court; or

(b) the relevant party must not start a similar proceeding in the court against a party to the existing proceeding or against a party to the existing proceeding and any other person without leave of the court.

(4) The Supreme Court may also order that the relevant party must not start a similar proceeding in another court against a party to the existing proceeding or against a party to the existing proceeding and any other person without leave of that court.

(5) A court may dismiss an application made to the court in contravention of an order made under subrule (3) or (4) without hearing the applicant or another party to the application.

(6) A court may at any time vary or revoke an order made by it under this rule.

(7) If the Supreme Court makes an order under subrule (4) or varies or revokes an order made under subrule (4), the registrar of the Supreme Court must advise the registrars of the other courts.

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(8) Practice directions may set out procedures in relation to an application or order made under this rule.

(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.

Note—

See part 8 for exchange of correspondence instead of affidavit evidence for certain applications.

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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.

(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.

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(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 rule—

model includes a model or image generated by a computer.

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 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

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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.

(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 at least 3 business days before the examination unless the court directs otherwise.

Note—

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

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.

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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).

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* or recorded in another way and authenticated by the examiner.

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(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 person required to attend

(1) This rule applies if—

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(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 Expenses etc. of person required to attend

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.

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408 Letter of request

(1) This rule applies if the Supreme Court makes an order under the *Evidence Act 1977*, section 22 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

(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—

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(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

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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.

Part 4 Subpoenas

Note—

See the *Civil Proceedings Act 2011*, part 7 which provides for matters relating to compliance with subpoenas.

413A Definitions for part

In this part—

attendance allowance means an attendance allowance under the *Uniform Civil Procedure (Fees) Regulation 2019*, part 3, division 2.

audio link see the *Evidence Act 1977*, section 39C.

audio visual link see the *Evidence Act 1977*, schedule 3.

414 Power to issue subpoena

(1) This rule applies to the following subpoenas—

(a) subpoenas for production;

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(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 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).

(3) The court may issue a subpoena electronically.

(4) A request for a subpoena—

(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

(b) must be filed.

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

(6) If a party files a request for a subpoena, the registrar may issue the subpoena.

(7) A subpoena must not be filed.

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

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

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

(5) A subpoena for production must—

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

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

(6) 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.

(7) 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).

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

(9) 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.

(10) 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.

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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.

415B Giving notice of way person is to attend to give evidence

(1) This rule applies if, under an Act or an order of the court, a person to whom a subpoena is directed is required or permitted to give evidence by audio link or audio visual link.

(2) The party on whose behalf the subpoena was issued may give written notice to the person to whom the subpoena is directed that the person's attendance to give evidence in accordance with the subpoena is to be made by audio link or audio visual link.

(3) The notice must state—

(a) whether the person's attendance is to be made by audio link or audio visual link; and

(b) the place from which the person's attendance is to be made.

(4) If notice is given under subrule (2), the subpoena has effect as if the way stated in the notice for the person's attendance to be made were the way stated in the subpoena.

416 Setting aside subpoena

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

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417 Costs and expenses of complying with subpoena

(1) The court may order the party on whose behalf a 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 an attendance allowance.

418 Cost of complying with subpoena if not a party

(1) This rule applies if—

(a) a subpoena for production is directed 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 directed 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—

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(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) This rule applies if—

(a) a subpoena to give evidence or a subpoena for production and to give evidence is directed to a person; and

(b) either—

(i) the person has not been given a notice under rule 415B in relation to the subpoena; or

(ii) the person has been given a notice under rule 415B in relation to the subpoena and the notice directs the person's attendance to give evidence to be made by audio link or audio visual link from a place other than the person's place of employment, practice or residence.

(2) Despite rule 414(8), the person 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.

(3) Payment of conduct money is in addition to payment of amounts payable as an attendance allowance.

420 Production by non-party

(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.

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(2) The person must comply with the subpoena in a way mentioned in subrule (3) or (4).

(3) 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.

(4) 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.

(5) If a document or thing is produced at the registry under subrule (4), the appropriate officer of the court must—

(a) issue a receipt to the person producing the document or thing; and

(b) produce the document or thing as the court directs.

(6) 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.

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.

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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.

(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).

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.

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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.

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(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.

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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.

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Part 5 Expert evidence

Division 1 Preliminary

423 Purposes of part

The main purposes of this part are to—

(a) provide for the giving of appropriate directions in relation to expert evidence; and

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

(c) provide for the giving of expert evidence by reports; and

(d) provide for the appointment of experts jointly by the parties to a proceeding and by the court.

424 Application of part

(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.

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(2) Also, this part does not apply in relation to a proceeding for a minor claim in a Magistrates Court.

425 Definitions for part

In this part—

appointing parties see rule 429L.

code of conduct means the code of conduct for experts set out in schedule 1C.

court-appointed expert see rule 429R(1).

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

joint report see rule 428(1)(b).

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

Division 2 Directions

426 Application for directions

(1) This rule applies if a party to a proceeding—

(a) intends to call expert evidence in the proceeding; or

(b) becomes aware that another party to the proceeding intends to call expert evidence in the proceeding.

(2) The party may, at any time, apply to the court for directions about the use of expert evidence in the proceeding.

(3) The application may be made—

(a) on an application for that purpose; or

(b) on an application for other relief.

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427 Directions generally

(1) The court may, at any time, give the directions it considers appropriate about the use of expert evidence in a proceeding.

(2) Without limiting subrule (1), 1 or more of the following directions may be given under this rule—

(a) a direction that reports be served within a particular period;

(b) a direction that expert evidence on a particular issue may not be adduced, or may be adduced only with the leave of the court;

(c) a direction that expert evidence may be adduced on particular issues only;

(d) a direction limiting the number of experts who may be called to give evidence on a particular issue or for a particular area of expertise;

(e) a direction providing for the appointment and instruction of an expert under division 5, subdivision 1 or 2 in relation to a particular issue;

(f) a direction requiring experts in relation to the same issue to confer before preparing their reports in relation to the issue;

Note—

See also rule 428.

(g) a direction requiring an expert who has prepared more than 1 report for a proceeding to prepare a single report that reflects the expert's evidence-in-chief in the proceeding;

(h) a direction about how and when expert evidence is to be adduced in the proceeding;

(i) any other direction that may assist an expert in the exercise of the expert's functions.

(3) This rule does not limit any other power of the court to make orders or give directions.

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428 Directions about experts' conferences and joint reports

(1) The court may, at any time, direct that 2 or more experts who are to give evidence in a proceeding—

(a) hold a conference in which they identify, and attempt to resolve, any disagreement between them; and

(b) jointly prepare a report about the conference (a ***joint report***) that states—

(i) the matters, if any, on which the experts agree; and

(ii) the matters, if any, on which the experts disagree and the reasons for any disagreement.

(2) The court may, for the conference, do 1 or more of the following—

(a) set the date and time at which, or the period within which, the conference is to be held;

(b) set the agenda for the conference;

(c) direct the matters the experts are to discuss at the conference;

(d) direct that the conference be held with the assistance of a facilitator;

(e) give directions about the form in which, and the period within which, the joint report is to be prepared by the experts;

(f) give any other direction the court considers appropriate.

(3) This rule does not limit any other power of the court to make orders or give directions.

(4) In this rule—

facilitator, in relation to a conference directed under subrule (1) to be held for a proceeding, means a person who is independent of the parties to the proceeding, whether or not the person is also an expert in relation to an issue being considered at the conference.

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Division 3 Experts' conferences and joint reports

429 Application of division

This division applies if the court gives a direction under rule 428 requiring 2 or more experts to hold a conference and prepare a joint report.

429A Experts' conference and joint report

(1) In holding the conference and preparing the joint report, the experts—

(a) must exercise independent judgement; and

(b) must endeavour to reach an agreement on any matter on which they disagree; and

(c) must not act on any instruction or request to withhold or avoid reaching an agreement.

(2) Unless the court directs otherwise, the experts must—

(a) hold the conference in the absence of the parties or their agents; and

(b) prepare the joint report without reference to, or instructions from, the parties or their agents.

(3) The experts must give the joint report to the parties—

(a) if the court has given a direction about the period within which the report is to be given—as directed by the court; or

(b) otherwise—as soon as practicable after the conference has concluded.

(4) This rule is subject to rule 429B.

429B Permitted communications between experts and parties

(1) Any of the experts may, in writing—

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(a) ask the parties for information that may assist the proper and timely conduct or conclusion of the conference or preparation of the joint report; or

(b) inform the parties of any matter adversely affecting the proper and timely conduct or conclusion of the conference or preparation of the joint report.

(2) A communication mentioned in subrule (1) must—

(a) be made jointly to all of the parties; and

(b) state—

(i) whether or not all of the experts agree on the terms of the communication; and

(ii) if all of the experts do not agree on the terms of the communication—the matters on which the experts disagree.

(3) Any response by a party to a communication mentioned in subrule (1) must—

(a) be in writing; and

(b) be addressed to the experts jointly; and

(c) be in terms agreed to by the parties or directed by the court.

(4) If the conference has not concluded, or the joint report has not been given to the parties as required under this division, a party may, in writing, request the experts to give a written report (a ***progress report***) about the progress of the conference or the joint report.

(5) The experts must, within 2 business days after a request is made under subrule (4), give a progress report to all of the parties.

(6) The progress report must state—

(a) whether or not all of the experts agree on the terms of the report; and

(b) if all of the experts do not agree on the terms of the report—the matters on which the experts disagree.

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429C Restriction on admissibility of particular matters

(1) Evidence of anything done or said at a conference held under the direction is admissible in the proceeding only if all of the parties to the proceeding agree.

(2) However, subrule (1) does not apply in relation to the joint report prepared by the experts about the conference.

Division 4 Giving of evidence by experts and related matters

429D Application of division

This division applies if an expert is appointed in relation to a proceeding, whether under division 5 or otherwise.

429E Duty of parties

(1) As soon as practicable after the expert is appointed, a copy of the code of conduct must be given to the expert by—

(a) if the expert is appointed by 1 or more parties to the proceeding—the parties, or 1 of them as they may agree; or

(b) if the expert is a court-appointed expert—1 or more of the parties to the proceeding, as directed by the court.

(2) A party to the proceeding must not give instructions, or allow instructions to be given, to the expert to adopt or reject a particular opinion.

429F Duty of expert

(1) The expert has a duty to assist the court.

(2) The expert—

(a) is not an advocate for a party to the proceeding; and

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(b) must not accept instructions from any person to adopt or reject a particular opinion.

(3) The expert must comply with the requirements under the code of conduct.

(4) However, subrule (3) does not limit any provision of this part.

(5) The expert's duties under this rule override any obligation the expert may have to—

(a) any party to the proceeding; or

(b) any person who is liable for the expert's fees or expenses.

429G Expert evidence

(1) Subject to subrule (5), the expert may give evidence-in-chief in the proceeding only by a report.

(2) The report may be tendered as evidence in the proceeding only if—

(a) the report has been disclosed under this part; or

(b) the court gives leave.

(3) Subject to a direction given under division 2, any party to the proceeding may tender the report as evidence in the proceeding, but only if the party produces the expert for cross-examination, if required.

(4) Unless the court orders otherwise, the report may be admitted in evidence in the proceeding only if the report confirms the expert has read, and agrees to be bound by, the code of conduct.

(5) The expert may give oral evidence-in-chief in the proceeding only if the court gives leave.

(6) Also, unless the court orders otherwise, the expert may give oral evidence in the proceeding only if the court is satisfied the expert has acknowledged, whether in a report prepared in relation to the proceeding or otherwise in relation to the

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proceeding, that the expert has read, and agrees to be bound by, the code of conduct.

429H Requirements for report

(1) A report prepared by the expert 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) the expert's reasons for each opinion expressed in the report;

(d) references to any literature or other material relied on by the expert to prepare the report;

(e) 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;

(f) 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;

(g) if the expert believes the report may be incomplete or inaccurate without a qualification—the qualification;

(h) a summary of the conclusions reached by the expert;

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(i) a statement about whether access to any readily ascertainable additional facts would assist the expert in reaching a more reliable conclusion.

(3) If the expert believes an opinion expressed in the report is not a concluded opinion, the report must state, where the opinion is expressed, the reason for the expert's belief.

Examples of reasons why an expert may believe an opinion is not a concluded opinion—

- insufficient research
- insufficient data

(4) The expert must confirm in the report that—

(a) the expert has read, and agrees to be bound by, the code of conduct; and

(b) the factual matters stated in the report are, as far as the expert knows, true; and

(c) the expert has made all inquiries considered appropriate; and

(d) the opinions stated in the report are genuinely held by the expert; and

(e) the report contains reference to all matters the expert considers significant; and

(f) the expert understands the expert's duty to the court and has complied with the duty.

429I Disclosure of report

A party intending to rely on a report prepared by the expert must, unless the court orders otherwise, disclose the report as soon as practicable and, in any case—

(a) if the party is a plaintiff—within 90 days after the close of pleadings; or

(b) if the party is a defendant—within 120 days after the close of pleadings; or

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(c) if the party is neither a plaintiff nor a defendant—within 90 days after the close of pleadings for the party.

429J Immunity

The expert has the same protection and immunity for the contents of a report disclosed under this part as the expert could claim if the contents of the report were given orally in the proceeding.

Note—

See also rules 429O and 429T in relation to when particular reports are taken to be disclosed under this part.

429K Supplementary report following change of opinion

(1) Subrule (2) applies if the expert changes, in a material way, an opinion included in a report prepared by the expert under this part (an ***earlier report***).

(2) Unless the expert knows the proceeding has ended, the expert must, as soon as practicable after the change of opinion, give written notice of the change of opinion, and the reason for the change, to—

(a) if the expert is a court-appointed expert—the registrar; or

(b) otherwise—the party who appointed the expert.

(3) If a notice under subrule (2) is given to the registrar, the registrar must refer the matter to the court for directions.

(4) If a notice under subrule (2) is given to the party who appointed the expert, the party must apply to the court for directions.

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Division 5 Appointment of experts by parties jointly and by court

Subdivision 1 Experts appointed by parties jointly

429L Appointment of expert

Two or more parties to a proceeding (the ***appointing parties***) may, in writing, jointly appoint an expert under this subdivision to prepare a report on an issue arising in the proceeding.

429M Requirements for appointment

(1) An appointment may be made under rule 429L only if—

(a) the appointing parties agree in writing on the following matters—

(i) the issue arising in the proceeding the expert evidence may help resolve;

(ii) the identity of the expert;

(iii) when the report must be prepared by the expert and given to the appointing parties;

(iv) liability for the 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—

(a) be signed by each of the appointing parties; and

(b) as soon as practicable after being signed by the appointing parties, be served on any other party to the proceeding who is not an appointing party in relation to the expert.

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429N Provision of statement of facts

(1) The appointing parties must give the expert a statement of facts, agreed to by the appointing parties, on which to base the report.

(2) However, if the appointing parties do not agree on a statement of facts, then—

(a) unless the court directs otherwise, each of the appointing parties 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.

429O Disclosure of report

The report prepared by the expert is taken to be disclosed under this part if—

(a) a copy of the report has been given to each of the appointing parties; and

(b) within 14 days after the day the last of the appointing parties is given a copy of the report, the appointing parties give a copy of the report to each party to the proceeding who is not an appointing party in relation to the expert.

429P Restriction on other expert evidence

Unless the court orders otherwise, the expert is the only expert who, in relation to the appointing parties, may give evidence on the issue in the proceeding.

429Q Cross-examination of expert

Unless the court orders otherwise, each party to the proceeding has the right to cross-examine the expert.

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Subdivision 2 Experts appointed by court

429R Appointment of expert

(1) The court may, at any time, whether on its own initiative or on the application of a party to a proceeding, appoint an expert (a ***court-appointed expert***) to prepare a report on an issue arising in the proceeding.

(2) However, an appointment may be made under subrule (1) only if the expert has been made aware of the content of this part and consents to the appointment.

429S Requirements in relation to report

Unless the court orders otherwise—

(a) a court-appointed expert appointed in relation to an issue arising 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.

429T Disclosure of report

A report prepared for a proceeding by a court-appointed expert is taken to be disclosed under this part if the registrar forwards copies of the report to the parties to the proceeding—

(a) as required under rule 429S(b)(ii); or

(b) as otherwise directed by the court.

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429U Orders and directions for court-appointed experts

(1) The court may make an order, or give a direction, it considers appropriate in relation to a court-appointed expert, including, for example, a direction about liability for the fees and expenses payable to the expert.

(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.

Subdivision 3 Application for directions by experts appointed under subdivision 1 or 2

429V Expert may apply for directions

(1) An expert appointed under subdivision 1 or 2 in relation to a proceeding may apply to the court for directions to facilitate the preparation of a report for the proceeding.

(2) The application must be served on the parties to the proceeding and on any other person as directed by the court.

(3) The court may give the directions the court considers appropriate to facilitate the preparation of the report, including, for example, a direction about an inspection, examination or experiment for the report.

Part 6 Interpreters

429VA Main purposes of part

The main purposes of this part are—

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(a) to ensure the court has control over the giving of evidence that is interpreted, translated or sight translated into English; and

(b) to recognise the special status of an interpreter in the administration of justice by declaring the duties of an interpreter in relation to the court and the parties to a proceeding.

429VB Definitions

In this part—

accurately, in relation to interpreting, translating or sight translating, means—

(a) resulting in the optimal and complete transfer of the meaning of the other language into English and of English into the other language; and

(b) preserving the content and intent of the other language or English (as the case may be) without omission or distortion, including matters the interpreter may consider inappropriate or offensive.

code of conduct means the code of conduct for interpreters set out in schedule 1D.

interpret means to carry out the process by which spoken or signed language is conveyed from one language (known as the source language) to another language (known as the target language) orally.

other language means a spoken or signed language other than English.

recognised agency means—

(a) the National Accreditation Authority for Translators and Interpreters (NAATI); or

(b) another entity approved by the Chief Justice to be a recognised agency for the purposes of this part.

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sight translate means to carry out the process by which an interpreter or translator presents a spoken or signed interpretation of a written text.

translate means to carry out the process by which written language is conveyed from one language (known as the source language) to another language (known as the target language) in written form.

429VC Proceedings to be conducted in English

Subject to this part, proceedings are to be conducted in English.

429VD When interpreter must be permitted for party

(1) This rule applies if the court is satisfied that a party to a proceeding can not understand and speak the English language sufficiently to enable the party to understand and participate in the proceeding.

(2) The court must permit the party to engage an interpreter, who meets the standards and requirements imposed by this part, to enable the party to communicate with the court.

(3) The party is responsible for bearing the costs of the interpreter.

429VE When interpreter is required by witness

(1) This rule applies if the court is satisfied that a witness in a proceeding can not understand and speak the English language sufficiently to enable the witness to understand, and make adequate reply to, questions that may be put to the witness in the proceeding.

(2) The witness may—

(a) give spoken evidence or signed evidence in the other language that is interpreted into English by an interpreter in accordance with this part; or

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(b) give evidence by an affidavit or statement in English that has been sight translated to the witness by an interpreter in accordance with rule 429VJ.

(3) The party calling the witness is responsible for engaging, and bearing the costs of, an interpreter who meets the standards and requirements imposed by this part.

429VF Who may act as interpreter generally

(1) A person must not act as an interpreter in a proceeding unless the person—

(a) is currently certified, registered or recognised as an interpreter for the other language by a recognised agency, or otherwise satisfies the court that the person is qualified to act as an interpreter for the other language; and

(b) has read and agreed to comply with the code of conduct; and

(c) takes an oath, or makes an affirmation, to interpret accurately to the best of the person's ability.

(2) Also, a person must not act as an interpreter in a proceeding if the person—

(a) is or may become a party to, or witness in, the proceeding (other than as an interpreter); or

(b) is related to, or has a close personal relationship with—

(i) a party to the proceeding or a member of a party's family; or

(ii) a witness or potential witness in the proceeding; or

(c) has or may have a financial or other interest of any kind in the outcome of the proceeding, other than an entitlement to a reasonable fee for the services provided by the interpreter in the course of their engagement; or

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(d) is or may be unable to fulfil their duty of accuracy or impartiality under the code of conduct for any reason, including, for example—

(i) personal or religious beliefs; and

(ii) cultural or other circumstances.

(3) If a person acting as an interpreter in a proceeding becomes aware during a hearing of the proceeding that a matter mentioned in subrule (2) applies in relation to the person, the person must—

(a) cease to act as an interpreter in the proceeding; and

(b) immediately disclose the matter to the court.

429VG Granting leave for person to act, or continue to act, as interpreter

(1) This rule applies if a person is prohibited from acting, or continuing to act, as an interpreter under rule 429VF(1), (2) or (3).

(2) The court may grant leave for the person to act, or continue to act, as an interpreter if it is in the interests of justice and, to the extent practicable—

(a) the court is satisfied that, because of the person's specialised knowledge based on the person's training, study or experience, the person is able to interpret and, if necessary, sight translate accurately to the level the court considers satisfactory in all the circumstances from the other language into English and from English into the other language; and

(b) the person takes an oath, or makes an affirmation, to interpret accurately to the best of the person's ability; and

(c) the court is satisfied that the person understands and accepts that, in acting as an interpreter, the person—

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(i) is not an agent, assistant or advocate of the witness for whom the person is to act as an interpreter, or of the party who has engaged the interpreter; and

(ii) owes a paramount duty to the court to be accurate to the best of the person's ability and impartial; and

(d) the court directs that the evidence and interpretation be sound recorded for spoken languages or video recorded for signed languages; and

(e) the person is an adult.

429VH Duties of interpreter

(1) An interpreter owes a paramount duty to the court to be accurate to the best of the interpreter's ability and impartial.

(2) The duty to the court under subrule (1) overrides any duty the interpreter may have to a party to the proceeding (regardless of whether the party engaged the interpreter).

(3) Unless the court orders otherwise, an interpreter must—

(a) interpret questions and all other spoken or signed communications in the hearing of the proceeding for the witness or party from English into the other language and from the other language into English; and

(b) subject to subrule (4), sight translate, whether before or during the course of a witness's evidence, documents shown to the witness.

(4) An interpreter may refuse to sight translate a document if—

(a) the interpreter considers that the interpreter is not competent to do so; or

(b) sight translating the document would be too onerous or difficult because of the length or complexity of the text.

(5) Unless the court orders otherwise, an interpreter may not assist a party or a party's legal representatives in their conduct of a proceeding (including a hearing) other than by—

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(a) interpreting questions and other spoken or signed communications in connection with the proceeding from English into the other language and from the other language into English; or

(b) sight translating documents in connection with the proceeding from English into the other language and from the other language into English.

429VI Code of conduct for interpreters

(1) An interpreter must comply with the code of conduct.

(2) Unless the court orders otherwise, as soon as practicable after an interpreter is engaged for a proceeding, the party who engaged the interpreter must give the interpreter a copy of the code of conduct.

(3) Unless the court orders otherwise, a witness may not give evidence using an interpreter unless the court is satisfied the interpreter has read the code of conduct and agreed to be bound by it.

(4) Subrules (1) to (3) apply subject to rule 429VG.

429VJ Translated evidence

(1) This rule applies if a party seeks to read or rely on a translated affidavit, or translated statement, of a witness who requires an interpreter.

(2) Unless the court orders otherwise, the party may not read or rely on the affidavit or statement unless it includes a certification by the interpreter in the approved form, or the interpreter separately verifies by affidavit, to the effect that—

(a) before sight translating the affidavit or statement to the witness, the interpreter—

(i) had read the code of conduct and agreed to be bound by it; and

(ii) had been given an adequate opportunity to prepare to sight translate the affidavit or statement; and

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(b) after sight translating the entire affidavit or statement to the witness, the witness—

(i) informed the person responsible for preparing the affidavit or statement through the interpreter that the witness had understood the interpreter and agreed with the entire contents of the affidavit or statement; and

(ii) swore or affirmed the affidavit, or signed the statement, in the presence of the interpreter.

(3) Unless the court orders otherwise, an interpreter who certifies or verifies an affidavit or statement of a witness under subrule (2) may, but is not required to, be the interpreter who acts as the interpreter for the witness in any hearing in the proceeding.

429VK Court may request correction etc. of interpretation, translation or sight translation

The court may at any time, on the application of a party to a proceeding or on the court's own initiative, request an interpreter to correct, clarify, qualify or explain the interpreter's interpretation of the evidence or translation or sight translation of a document.

429VL Court may give directions in relation to interpreters

(1) The court may at any time, having regard to the nature of a proceeding (including the type of allegations made in the proceeding and the characteristics of the parties and witnesses), give directions relating to 1 or more of the following matters—

(a) any particular attributes required or not required for an interpreter to accommodate any cultural or other reasonable concerns of a party or a witness, including, but not limited to—

(i) gender; and

(ii) age; and

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(iii) ethnic, cultural or social background;

(b) the number of interpreters required in the proceeding and whether relay interpreting should be used;

(c) establishing the expertise of an interpreter;

(d) the steps to be taken to obtain an interpreter who is certified, registered or recognised by a recognised agency or is otherwise qualified to act as an interpreter;

(e) the steps to be taken before an order under rule 429VG is made;

(f) the information about the proceeding that may be provided to a person in advance of any hearing in the proceeding to assist the person to prepare to act as an interpreter for the hearing, including, but not limited to—

(i) pleadings; and

(ii) affidavits and statements; and

(iii) lists of witnesses; and

(iv) other documents;

(g) when, and in what circumstances and under what conditions (if any), the information mentioned in paragraph (f) may be provided;

(h) whether an interpreter is to interpret a witness's evidence consecutively, simultaneously or in some other way;

(i) other resources an interpreter may need to consult in the course of acting as an interpreter, including, for example, dictionaries and other reference works;

(j) the length of time for which an interpreter should interpret during a hearing without a break;

(k) security for an interpreter, including, if necessary, arrangements to preserve the anonymity of the interpreter;

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(l) practical matters relating to an interpreter, including, for example, the seating for and the location of the interpreter, and any necessary equipment to assist the interpreter;

(m) the disqualification, removal or withdrawal of an interpreter, including on the application of the interpreter or any party to the proceeding or by the court on its own initiative;

(n) the payment of interpreters;

(o) any other direction the court considers appropriate.

(2) Subrule (1) does not limit the generality of the court's power to control its own procedures.

Part 7 Affidavits

429W Definitions for part

In this part—

sign, a document, has the meaning given by the *Oaths Act 1867*, section 1B.

witness, an affidavit, has the meaning given by the *Oaths Act 1867*, section 11.

429X References to witnesses, signatories and substitute signatories

In this part—

(a) a reference to a witness in relation to an affidavit has the same meaning as given to that reference by the *Oaths Act 1867*, section 13; and

(b) a reference to a signatory in relation to an affidavit has the same meaning as given to that reference by the *Oaths Act 1867*, section 13; and

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(c) a reference to a substitute signatory in relation to an affidavit has the same meaning as given to that reference by the *Oaths Act 1867*, section 13.

430 Contents of affidavit

(1) Except if these rules provide otherwise, an affidavit must be confined to the evidence the signatory for the affidavit could give if giving evidence orally.

(2) However, an affidavit for use in an application because of default or otherwise for relief, other than final relief, may contain statements based on information and belief if the signatory for the affidavit states the sources of the information and the grounds for the belief.

Note—

For an application because of default, see chapter 9 (Ending proceedings early), part 1 (Default).

(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 signatory for the affidavit and the name of the party on whose behalf it is filed.

(3) An affidavit must be made in the first person.

(4) An affidavit must describe the signatory for the affidavit and state the signatory'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.

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432 Swearing or affirming affidavit

(1) The signatory or substitute signatory for an affidavit and the witness for an affidavit must sign each page of the affidavit.

(2) Subrule (3) applies if—

(a) there is 1 signatory for the affidavit; or

(b) although there are 2 or more signatories for the affidavit, both or all of the signatories are not swearing or affirming the affidavit at the same time before the same witness.

(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 signatory; and

(b) state whether the affidavit was sworn or affirmed; and

(c) state the day and the place the signatory made the affidavit; and

(d) be signed by the signatory in the presence of the witness; and

(e) be signed in accordance with the *Oaths Act 1867*; and

(f) otherwise be as in the approved form.

Note—

See also the *Oaths Act 1867*, sections 13B and 13E for other matters that must be stated in the jurat or otherwise included on the affidavit.

(4) Subrule (5) applies if there are 2 or more signatories for the affidavit, 2 or more of whom are swearing or affirming the affidavit at the same time before the same witness.

(5) In addition to any statement required under subrule (3), a statement (also the ***jurat***) must be placed at the end of the body of the affidavit and must—

(a) state the full name of each of the signatories; and

(b) state, for each of the signatories, whether the affidavit was sworn or affirmed; and

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(c) state the day and the place both or all of the signatories made the affidavit; and

(d) be signed by the signatories in the presence of the witness; and

(e) be signed in accordance with the *Oaths Act 1867*; and

(f) otherwise be as in the approved form.

Note—

See also the *Oaths Act 1867*, sections 13B and 13E for other matters that must be stated in the jurat or otherwise included on the affidavit.

(6) For this rule, the ***place*** a signatory made an affidavit is the place the signatory was located when the affidavit was made.

433 Certificate of reading or signature for person making affidavit

(1) If the witness for an affidavit considers that the person making it is incapable of reading the affidavit, the witness must certify in or below the jurat that—

(a) the affidavit was read or otherwise communicated in the witness'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 witness for an affidavit considers that the person making it is physically incapable of signing the affidavit, the witness must certify in or below the jurat that—

(a) the affidavit was read or otherwise communicated in the witness'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—

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(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.

Note—

See also the *Oaths Act 1867*, parts 4 and 6A for provisions allowing a substitute signatory to sign a document at the direction of a signatory.

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 be used only if the interlineation, erasure or other alteration—

(a) has been initialled by the signatory or substitute signatory for the affidavit in the same way the signatory or substitute signatory signed the affidavit; and

(b) has been initialled by the witness for the affidavit in the same way the witness signed the affidavit.

(3) To remove any doubt, it is declared that an affidavit must not be altered after it has been made, signed and witnessed under the *Oaths Act 1867*, whether the affidavit is in the form of a physical document or an electronic document.

(4) In this rule—

physical document has the meaning given by the *Oaths Act 1867*, section 1B.

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.

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(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—

(a) must be signed by the signatory or substitute signatory for the affidavit in the same way the signatory or substitute signatory signed the affidavit; and

(b) must be signed by the witness for the affidavit in the same way the witness signed the affidavit.

(7) However, if an affidavit is made under rule 433, only the witness for 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 an affidavit is filed in physical form and either—

(a) an exhibit to the affidavit is comprised of a group of documents; or

(b) there is more than one documentary exhibit to the 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

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(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 an affidavit is filed in electronic form with 1 or more exhibits, an index must be filed with the affidavit listing—

(a) the body of the affidavit; and

(b) the exhibits and related certificates; and

(c) the number of pages in each exhibit that is a document.

(13) 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.

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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 signatory for affidavit

(1) If an affidavit is to be relied on at a hearing, the court may order the signatory for the affidavit 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 signatory for 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 signatory for the affidavit must attend the court to be available for cross-examination unless the party otherwise agrees.

(4) If the signatory for 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 signatory for an affidavit; and

(b) direct that an affidavit be used without the signatory for 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 signatory for an affidavit to attend the court is not liable to pay the expenses of the attendance.

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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 witnessed 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;

(b) an application under chapter 10, part 1;

(c) an application under chapter 10, part 2;

(d) any other application relating to a failure to comply with an order or direction of the court.

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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—

(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; 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.

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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—

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(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.

Part 9 Access to exhibits

448A References to exhibits

A reference in this part to an exhibit, in relation to a proceeding, is a reference to an exhibit tendered in the proceeding.

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448B Access to exhibits by parties

(1) A party to a proceeding may ask the registrar to permit the applicant, on payment of any prescribed fee, to do 1 or more of the following—

(a) inspect an exhibit;

(b) obtain a copy of an exhibit that is a document;

(c) take a photograph of an exhibit that is not a document.

(2) The registrar must comply with the request, subject to—

(a) any court order restricting the inspection, copying or photographing of the exhibit; or

(b) the exhibit being required for the court's use.

(3) Also, a party to a proceeding may apply to the court for an order permitting the applicant to do 1 or more of the following—

(a) inspect an exhibit;

(b) obtain a copy of an exhibit that is a document;

(c) take a photograph of an exhibit that is not a document.

(4) The court may, on the application, make the orders and give the directions it considers appropriate in relation to the exhibit.

448C Access to exhibits by non-parties

(1) A person who is not a party to a proceeding may apply to the court for an order permitting the applicant to do 1 or more of the following—

(a) inspect an exhibit;

(b) obtain a copy of an exhibit that is a document;

(c) take a photograph of an exhibit that is not a document.

(2) The application must—

(a) identify the exhibit the subject of the application; and

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(b) be filed in the proceeding in which the exhibit was tendered; and

(c) be supported by an affidavit stating—

(i) the reason why the order is sought; and

(ii) the use the applicant intends to make of the exhibit, including whether the applicant intends to publish, or otherwise communicate, the exhibit or its subject matter.

(3) Also, unless the court orders otherwise, the application and the supporting affidavit must be served on—

(a) each party to the proceeding in which the exhibit was tendered; and

(b) any other person the applicant has reasonable grounds to believe would be directly affected by the order sought.

(4) The court may, on the application, make the orders and give the directions it considers appropriate in relation to the exhibit, including, for example, an order imposing a condition restricting the nature and extent of any publication or other use of the exhibit or its subject matter.

(5) In deciding whether to make an order under subrule (4), the court may have regard to the following matters—

(a) whether inspection of the exhibit may help the applicant provide a fair and accurate report of the proceeding;

(b) whether access to the exhibit enables the business of the court to be seen to be conducted in open court;

(c) whether access to the exhibit is otherwise in, or contrary to, the public interest or the interests of justice.

(6) Unless the court orders otherwise, an order made under this rule permitting the exhibit to be inspected, copied or photographed is stayed until any prescribed fee for that purpose is paid.

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Chapter 12 Jurisdiction of registrar

449 Definition for ch 12

In this chapter—

relevant application means 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.

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 for an order under the *Public Trustee Act 1978*, part 3.

(2) A registrar of the Supreme Court or District Court may constitute the court to hear and decide—

(a) an application for an order to file any document or take any 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 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 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 registrar because the court, as constituted by a particular judge, is managing the entire proceeding.

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454 Relevant application must not be made to the court

If a 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 registrar considers it would be proper for a relevant application to be decided by the court as constituted by a judge, the registrar must refer the application to the court as constituted by a judge.

(2) The court, as constituted by a 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 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 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

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(b) decide a matter arising under the application or remit a matter to the court as constituted by a registrar with directions that the court considers appropriate; or

(c) remit the application to the court as constituted by a registrar with directions that the court considers appropriate.

458 General powers

(1) A person who contravenes a subpoena issued by a registrar is guilty of contempt of the court, unless the person has a reasonable excuse.

(2) The court as constituted by a 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 registrar may make an order about costs in relation to a relevant application that the registrar considers appropriate.

459 Decision

The court as constituted by a registrar must, if practicable, decide a relevant application within 14 days after starting to consider it.

460 Power to correct mistakes

Rule 388 applies to the registrar constituting the court under this chapter.

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

464 Adjournments

(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.

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(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 and related matters

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 magistrate; or

(c) by a registrar.

467 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.

(3) The party who prepared the request for trial date must file as soon as practicable a copy of the request signed by all parties,

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other than a party whose signature has been dispensed with by the court.

(4) For this rule, a party is ***ready for trial*** if—

(a) any order or requirement by notice under chapter 7, part 2, division 2 for the making of disclosure by or to the party or for the inspection of documents by or to the party has been complied with; and

(b) any order requiring particulars to be given by or to the party has been complied with; and

(c) any interrogatories delivered by or to the party have been answered under chapter 7, part 2, division 2, subdivision 2; 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 for the trial; 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 has been complied with.

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;

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(ii) subject to these rules, specifying the mode of trial;

(c) give a direction the court could give under chapter 10, part 1.

469 Dispensing with signature on request for trial date

On the application of a party who has signed a request for trial date, the court may dispense with the signature of another party who has been served with the request under rule 467(2) and has not signed and returned it within 21 days after service.

470 Leave required for steps after trial date requested or set

(1) This rule applies in relation to a proceeding if—

(a) a request for trial date has been filed; or

(b) a trial date has been set without a request for trial date having been filed.

(2) A party may do the following only with the court's leave—

(a) amend a pleading;

(b) request particulars;

(c) make an application in the proceeding.

Part 3 Trial

Division 1 Mode of trial

471 Application of pt 3

This part only applies to proceedings started by claim.

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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.

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.

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(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.

Note—

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

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,

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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.

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.

Note—

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).

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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.

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

This part does not apply to a type of application exempted from this part by a practice direction.

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Note—

See the *Supreme Court of Queensland Act 1991*, section 17 and the *District Court of Queensland Act 1967*, section 125.

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

(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

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(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, 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.

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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

(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.

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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.

Part 7 Assessors and referees

499 Application of pt 7

This part does not apply to Magistrates Courts.

500 Assessors

(1) The court may sit with 1 or more assessors if the trial is not a trial by jury.

(2) A trial with assessors may be conducted as the court directs.

(3) Assessors may be chosen as the court directs.

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501 Court may refer question to referee

(1) The court may, at any stage of a proceeding, make an order referring a question in the proceeding to a referee to—

(a) conduct an inquiry into the question; and

(b) prepare a report (the ***referee's report***) to the court on the question.

(2) However, the court may not make an order under subrule (1) in relation to a question that is required to be tried by a jury.

(3) An order under subrule (1)—

(a) must appoint a person as the referee for the question; and

(b) must state the question for the referee; and

(c) must require the referee to decide the question or give the referee's opinion on the question; and

(d) may direct the referee to give further information in the referee's report as the court considers appropriate.

(4) In this rule—

question means a question—

(a) whether of fact or law, or both; and

(b) whether identified by the court or raised by pleadings, agreement of the parties or otherwise.

502 Setting aside or varying order

(1) The court may, on application by the referee or a party or on its own initiative, set aside or vary an order made under rule 501.

(2) Nothing in this rule affects any other power of the court to set aside or vary an order made under rule 501.

503 Conduct of inquiry before referee

(1) Subject to a direction given under rule 505, the referee—

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(a) may conduct the inquiry in a way the referee considers appropriate; and

(b) is not bound by the rules of evidence, but may obtain information about a matter in the way the referee considers appropriate; and

(c) may conduct a hearing for the inquiry; and

(d) may require evidence to be given orally or in writing; and

(e) may require evidence to be given on oath; and

(f) has the same authority as a judge.

(2) In conducting the inquiry, the referee must observe the rules of natural justice.

(3) Despite subrule (1)(f), the referee may not deal with a person for contempt.

504 Obligations of parties

(1) Each party must give the referee and each other party a brief statement of the findings of fact and law for which the party contends.

(2) The statement must be given—

(a) if the referee fixes a time for giving the statement—within the time fixed; or

(b) otherwise—before the conclusion of evidence on the inquiry.

(3) Also, the parties must do all things the referee requires to enable the referee to give a just decision or opinion on the question the subject of the inquiry.

(4) A party must not intentionally cause delay or prevent the referee from giving a decision or opinion on the question the subject of the inquiry.

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505 Directions

(1) The court may, on application by the referee or a party or on its own initiative, give directions about—

(a) the conduct of the inquiry; or

(b) a matter arising under the inquiry.

(2) Without limiting subrule (1), directions may be given about—

(a) disclosure; or

(b) the issue of subpoenas returnable before the referee.

505A Referee may submit question to court

(1) The referee may submit for the decision of the court a question that arises during the inquiry.

(2) The referee must comply with the decision of the court given on the question.

(3) If the court does not consider it appropriate to decide the question, the court must give directions about the future conduct of the inquiry.

505B Referee's report

(1) The referee's report must—

(a) be in writing; and

(b) state the referee's decision or opinion on the question the subject of the inquiry and the reasons for the decision or opinion; and

(c) if the referee was directed under rule 501(3)(d) to give further information in the referee's report—state the information; and

(d) attach copies of all statements given under rule 504(1).

(2) The referee must file the referee's report in the court.

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505C Actions by court

After receiving the referee's report, the court—

(a) must supply a copy of the report to each party; and

(b) may order the referee to provide a further report or provide an explanation of any matter mentioned in the report; and

(c) may remit the whole or part of the question the subject of the inquiry for further consideration in accordance with the court's directions.

505D Use of referee's report

(1) The court may do 1 or more of the following—

(a) accept, vary or reject all or part of the referee's decision, opinion or findings in the referee's report;

(b) decide any matter on the evidence given before the referee, with or without additional evidence;

(c) make an order or give a judgment in the proceeding on the basis of the decision, opinion or findings in the referee's report as it considers appropriate.

(2) An application by a party for an order or judgment under subrule (1) must be made on at least 7 days notice to the other parties.

(3) Evidence additional to the evidence given before the referee may not be adduced before the court in relation to the question the subject of the inquiry except with the leave of the court.

506 Remuneration of referee and assessor

(1) The court may decide, either in the first instance or finally—

(a) the remuneration of a referee or assessor; and

(b) by which party or parties, and in what proportion, the remuneration is to be paid.

(2) The court may—

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(a) order a party to give security for the remuneration of a referee or assessor; and

(b) order a stay of the proceeding until the security is given.

Part 8 Assessment of damages

507 Conditional order

(1) This rule applies if judgment is obtained for damages to be assessed.

(2) The order must state which court is to conduct the assessment.

(3) The court may decide that the assessment is to be conducted by that court or by—

(a) for a proceeding in the Supreme Court—the District Court; or

(b) for a proceeding in the Supreme Court or the District Court—a Magistrates Court; or

(c) the court constituted by a registrar or judicial registrar.

(4) A nomination under chapter 9, part 1 for a court that could be selected under subrule (3) is sufficient compliance with subrule (2).

(5) The court conducting the assessment may assess an amount of damages that would otherwise exceed the limits of the court's jurisdiction.

(6) This rule is subject to rule 508.

508 Defendant's default or summary decision

(1) This rule applies if—

(a) a judgment (including a default judgment) is given for damages (including the value of goods) to be assessed—

(i) because of a defendant's default mentioned in chapter 9, part 1 (other than under rule 283); or

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(ii) under chapter 9, part 2; 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.

(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.

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.

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(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

514 Application of simplified procedures

(1) The simplified procedures apply to minor claims.

(2) Also, if the parties to a claim that is not a minor claim—

(a) agree in writing to all or part of the simplified procedures applying to the claim; and

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(b) file the agreement;

the simplified procedures apply to the claim to the extent agreed.

(3) However, subrule (2) does not apply to a claim for a debt or liquidated demand mentioned in the QCAT Act, schedule 3, definition *minor civil dispute*, paragraph 1(a).

515 Simplified procedures

(1) The following procedures are the ***simplified procedures***—

(a) except to the extent necessary to comply with chapter 14, part 2, a party is not required to disclose to another party a document in the possession or under the control of the party and directly relevant to an allegation in issue in a proceeding, unless the court otherwise orders;

(b) all parties must have all relevant documents available at the hearing;

(c) if ordered by the court, or agreed in writing by the parties, a party must not appear by—

(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;

Note—

See also the *Magistrates Courts Act 1921*, section 18.

(d) the court—

(i) is not bound by laws of evidence or procedure applying to a proceeding in the court; and

(ii) may inform itself of the facts in any way it considers appropriate; and

(iii) must observe the rules of natural justice; and

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(iv) must record the reasons for its decision.

(2) Before making an order mentioned in subrule (1)(c), 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;

(d) whether the order is fair and equitable to the parties.

(3) An agreement mentioned in subrule (1)(c) must be filed.

516 Hearing and deciding claim

(1) The court must hear and decide a relevant claim in accordance with the applied procedures, unless the court considers deciding the claim under the applied procedures would be an abuse of process.

(2) In deciding a minor claim, the court—

(a) must make the orders it considers fair and equitable to the parties to the proceeding; but

(b) may, if the court considers it appropriate, dismiss the claim.

Note—

The *Magistrates Courts Act 1921*, section 45A provides that if the parties agree in writing, no appeal lies from a judgment in a proceeding dealt with under the simplified procedures.

(3) Nothing in this division prevents the court—

(a) attempting to settle a relevant claim; or

(b) continuing to hear and decide a relevant claim that can not be settled by mediation or otherwise; or

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

(4) In this rule—

applied procedures, for a relevant claim, means the simplified procedures applying to the claim under rule 514.

relevant claim means a minor claim, or another claim to which all or part of the simplified procedures apply.

Division 2A Employment claims

Subdivision 1 Introduction

522A Application of div 2A

This division applies to employment claims.

522B Definitions for div 2A

In this division—

conciliation certificate see rule 522E.

employment claim see section 42B of the Act.

registrar means a registrar of a Magistrates Court, and 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.

the Act means the *Magistrates Courts Act 1921*.

Subdivision 2 Filing employment claims

522C Filing employment claim

(1) The plaintiff must file and serve an employment claim in the approved form.

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(2) To remove any doubt, it is declared that chapter 2, part 3 applies to an employment claim.

Subdivision 3 Conciliation of employment claims

522D Suspension of conciliation process if application to court

If a party applies to the court under section 42C of the Act for the court's decision whether the claim made in the proceeding is or is not an employment claim, the conciliation process is suspended for the period starting on the day the application is filed and ending on the day the court's decision is made.

522E Conciliation certificate

(1) For section 42L of the Act, a certificate about the conciliation process (a ***conciliation certificate***) must be in the approved form.

(2) The conciliation certificate—

(a) must not contain comment about the extent to which a party participated or refused to participate in the conciliation; and

(b) may state that a party did not attend the conciliation.

(3) The conciliator must give a copy of the conciliation certificate to the parties.

522F Record of conciliation agreement

(1) Unless the parties otherwise agree, the conciliator must ensure that an agreement reached in the conciliation process 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

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(d) given to the registrar.

(2) The container may be opened only if the court orders it to be opened.

522G Abandonment of conciliation

(1) The conciliator may abandon the conciliation if the conciliator considers further efforts at conciliation will not lead to the resolution of the dispute or an issue in the dispute.

(2) Before abandoning the conciliation, the conciliator must—

(a) inform the parties of the conciliator's intention; and

(b) give them an opportunity to reconsider their positions.

Subdivision 4 Hearing of employment claims

522H Notice of intention to defend employment claim

(1) Despite rule 135, a defendant to an employment claim may take the following steps without first filing a notice of intention to defend—

(a) apply to the court under section 42C of the Act for the court's decision whether the claim is or is not an employment claim;

(b) participate in a conciliation process;

(c) apply to a court under section 42N of the Act for an order giving effect to an agreement reached in a conciliation process.

(2) An application made under subrule (1)(a) or (c) must contain an address for service.

(3) Despite rule 137, a notice of intention to defend an employment claim must be filed within 28 days after a conciliation certificate is filed, if the claim has not been entirely resolved during the conciliation process.

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(4) A notice of intention to defend an employment claim and the defence—

(a) must be in the approved form; and

(b) must include—

(i) a response answering the plaintiff's assertions in the employment claim and stating any amount the defendant admits owing the plaintiff; and

(ii) how any amount owing is worked out; and

(iii) why the defendant owes the amount.

(5) To remove any doubt, it is declared that, subject to this rule, chapter 5 applies to a proceeding started by an employment claim.

522I Ending employment claim proceedings early

Despite rule 281, chapter 9, part 1, division 2 applies if—

(a) a defendant in a proceeding started by an employment claim has not filed a notice of intention to defend; and

(b) the time allowed under subrule 522H(3) to file the notice has ended.

522J Setting hearing date for employment claim

The registrar must, as soon as practicable after a notice of intention to defend an employment claim is filed—

(a) set a date for the hearing of the proceeding; and

(b) notify the parties of the time, date and place of the hearing.

522K Procedure for hearing of employment claim

(1) The parties must have all relevant documents available at the hearing of an employment claim.

(2) The court—

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(a) may order a party to disclose a document that—

(i) is in the possession or under the control of the party; and

(ii) is directly relevant to an allegation in issue in the proceeding; and

(b) may hear the claim in private; and

(c) must make a record of the evidence given; and

(d) must record the reasons for its decision and give a copy of the reasons to the parties.

522L No cross claim in proceeding for employment claim

(1) In a proceeding for an employment claim, the defendant may not rely on a cross claim by way of set-off or counterclaim in response to the claim.

(2) However, the court may, if a defendant has brought a proceeding for a claim against a plaintiff for a matter that, apart from subrule (1) may have been the subject of a cross claim, order that the enforcement of any judgment in the first proceeding be stayed for the time and on the conditions the court considers appropriate.

522M Failure to appear in an employment claim

(1) If neither party appears at the hearing of an employment 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

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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 of the facts in issue with a copy of the documents the party considers relevant to the facts in issue as exhibits to the affidavit; and

(b) sends to the other party a copy of the affidavit.

(5) If the court is satisfied, on application made to it within a reasonable time after a judgment given in the absence of a party came to the notice of the absent party, there was sufficient 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.

Subdivision 5 Miscellaneous

522N Particular rules do not apply to employment claims

The following provisions do not apply to an employment claim—

(a) chapter 6;

(b) chapter 7, part 2, division 2;

(c) chapter 9, parts 2 and 4;

(d) chapter 13, parts 2 to 6.

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Division 3 Settlement conferences

523 Court may require settlement conference

(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 (***settlement conference***) be held.

(2) A settlement conference may consider the following matters—

(a) the possibility of settling the proceeding at the settlement 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;

(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 settlement 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

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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 settlement conference.

(6) At a settlement 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 settlement conference may be held.

524 Holding settlement conference

(1) The court must hold a settlement conference in private and for the purpose may be constituted by a magistrate or registrar.

(2) The court may—

(a) adjourn the settlement conference; or

(b) direct that a further settlement 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

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(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 settlement conference, but must not keep a record of anything discussed at the conference.

(4) At a settlement 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 settlement conference.

Note—

See also the *Civil Proceedings Act 2011*, section 35.

(6) Unless the court otherwise orders, the costs of a settlement 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.

Note—

The *Civil Proceedings Act 2011*, section 36, protects the confidentiality of things said and done, and documents tendered at a settlement conference unless all the parties agree or the evidence is a resolution agreement.

525 Failure to attend settlement conference

(1) This rule applies if a person directed to attend a settlement 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 settlement conference, the court may—

(a) if the party failing to attend is the plaintiff or the plaintiff's counsel or solicitor—stay or dismiss the proceeding; or

(b) if—

(i) the party failing to attend is a defendant or the defendant's counsel or solicitor; and

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(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 settlement 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 settlement 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 settlement 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.

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(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.

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(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.

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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 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.

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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 referee, the registrar or 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—

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(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.

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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 part—

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.

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—

(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;

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(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;

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(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.

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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—

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(i) documents about the amount of wages paid to the plaintiff by the defendant in the 3 years immediately before the plaintiff's injury; and

(ii) documents about the tax paid by the plaintiff and the taxable income of the plaintiff in the 3 years immediately before the plaintiff's injury; 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.

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(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.

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Note—

See the *Civil Proceedings Act 2011*, section 36 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 settlement conference under rule 523.

(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;

(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 467(4).

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.

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(3) The obligations of the insurer under subrule (1) are additional to, and not in substitution for, the obligations of the defendant under this part.

(4) However, the defendant and the insurer may make a joint statement of expert and economic evidence about documents in their possession or under their control.

(5) The joint statement must state it is made jointly by the defendant and the insurer.

(6) If a joint statement is not made, the defendant and insurer must serve separate statements.

555 Privilege

Subject to the express requirements of rules 548 and 551, this part does not require a party to disclose, to any extent greater than required by chapter 7, part 2, division 2, 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—

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(a) an order is made or judgment given for the assessment of damages before the plaintiff complies with this part; and

(b) the defendant has an address for service;

the plaintiff must, at least 21 days before the date set for the assessment, serve on the defendant a statement of loss and damage complying in all respects with the requirements of this part.

(3) If the defendant asks for a copy of a document identified in the plaintiff's statement, the plaintiff—

(a) must give the defendant a copy; and

(b) may charge a reasonable amount for giving the copy.

(4) If the defendant intends to appear on the assessment, the defendant must serve on the plaintiff 7 days before the date set for the assessment a statement of expert and economic evidence complying in all respects with the requirements of this part.

(5) This part, with any changes necessary, applies to an assessment of damages.

Part 3 Moneys in court

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 2009*.

(3) The affidavit must be served on all other parties and any other interested person as soon as practicable after it is filed.

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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 *Civil Proceedings Act 2011*, part 11A.

Part 4 Judicial review

564 Definitions for pt 4

In this part—

review application means an application started or continued under rule 566 to 569.

the Act means the *Judicial Review Act 1991*.

565 Application of pt 4

This part applies only to the Supreme Court.

566 Form of application for statutory order of review

(1) An application for a statutory order of review must be made in the approved form.

(2) If the grounds of the application include an allegation of fraud or bad faith, the applicant must include in the application particulars of the fraud or bad faith on which the applicant relies.

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567 Form of application for review

(1) An application for review under section 43 of the Act must be made in the approved form.

(2) If the grounds of the application include an allegation of fraud or bad faith, the applicant must include in the application particulars of the fraud or bad faith on which the applicant relies.

568 Application for statutory order of review and for review

If—

(a) an application for a statutory order of review under the Act; and

(b) an application for any relief mentioned in section 43 of the Act;

relate to the same matter—

(c) the applications may be made in the one application; and

(d) that application must, with necessary changes, be made in the approved form.

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—

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(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 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.

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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.

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

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(k) a matter specified in rule 367.

(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 Non-appearance of parties at directions hearing

(1) If no applicant appears before the court on a directions hearing, the court may—

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(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 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.

Note—

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)

(2) The court may shorten the time for service, or dispense with service, under subrule (1).

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 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.

Note—

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

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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.

582 Consolidation of proceedings for prerogative injunctions

If there is more than 1 application for an injunction under section 42 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.

Note—

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

583 Proceedings in relation to statements of reasons

(1) An application to the court for a declaration or order under part 4 of the Act must be made in the approved form.

Note—

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

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(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).

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.

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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.

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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.

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(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.

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595 Form of writ

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

Part 6 Trans-Tasman proceedings

Division 1 Preliminary

595A Definition for pt 6

In this part—

Trans-Tasman Proceedings Act means the *Trans-Tasman Proceedings Act 2010* (Cwlth).

595B Interpretation

Words and expressions used in this part and the Trans-Tasman Proceedings Act have the same meaning in this part as they have in that Act except so far as the context or subject matter otherwise indicates or requires.

Note—

The following words and expressions are defined in the Trans-Tasman Proceedings Act, section 4—

- audio link
- audiovisual link
- document
- enforcement
- entitled person
- given
- liable person
- NZ judgment
- party
- proceeding

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- registered NZ judgment.

595C Application of pt 6

This part applies to civil proceedings to which the Trans-Tasman Proceedings Act applies.

Division 2 Starting proceedings and applications in proceedings

595D Starting proceeding for order under Trans-Tasman Proceedings Act

(1) A person who wants to start a proceeding for an order under the Trans-Tasman Proceedings Act must start the proceeding by application.

(2) The application must be supported by an affidavit that states the material facts on which the applicant relies that are necessary to give the respondent fair notice of the case to be made against the respondent at the hearing of the proceeding.

(3) Without limiting subrule (2), an affidavit in support of an application for an order for interim relief under the Trans-Tasman Proceedings Act, section 25 must state the following—

(a) if the person has started a civil proceeding in a New Zealand court—

(i) that the person has started the proceeding in a New Zealand court; and

(ii) the relief sought in the New Zealand proceeding; and

(iii) the steps taken in the New Zealand proceeding;

(b) if the person intends to start a proceeding in a New Zealand court—

(i) when the intended proceeding will be started; and

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(ii) the court in which the intended proceeding is to be started; and

(iii) the relief to be sought in the intended proceeding;

(c) the interim relief sought;

(d) why the interim relief should be given.

595E Applications in proceeding under Trans-Tasman Proceedings Act

(1) This rule applies to a proceeding that has already started.

(2) A party to the proceeding who wants to apply for an order under the Trans-Tasman Proceedings Act must make an application in the proceeding.

(3) The application must be supported by an affidavit that states the material facts on which the applicant relies that are necessary to give the other party fair notice of the case to be made against the other party at the hearing of the application.

Division 3 Subpoenas

595F Application for leave to serve subpoena in New Zealand

(1) A party to a proceeding who requires the leave of the court to serve a subpoena in New Zealand under the Trans-Tasman Proceedings Act, section 31 must make an application for leave in the proceeding in which the subpoena was issued.

(2) The application must be accompanied by—

(a) a copy of the subpoena in relation to which leave is sought; and

(b) an affidavit stating, briefly but specifically, the following—

(i) the name, occupation and address of the person named in the subpoena;

(ii) whether the person is over 18 years;

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(iii) the nature and significance of the evidence to be given, or the document or thing to be produced, by the person;

(iv) details of the steps taken to ascertain whether the evidence, document or thing could be obtained by other means without significantly greater expense, and with less inconvenience, to the person;

(v) the date by which it is intended to serve the subpoena in New Zealand;

(vi) details of the amounts to be tendered to the person to meet the person's reasonable expenses of complying with the subpoena;

(vii) details of the way in which the amounts mentioned in subparagraph (vi) are to be given to the person;

(viii) if the subpoena requires the person to give evidence—an estimate of the time that the person will be required to attend to give evidence;

(ix) any facts or matters known to the party making the application that may be grounds for an application by the person to have the subpoena set aside under the Trans-Tasman Proceedings Act, section 36(2) or (3).

Notes—

1 See the Trans-Tasman Proceedings Act, section 31 which allows the court to impose conditions when giving leave to serve a subpoena in New Zealand.

2 See also the Trans-Tasman Proceedings Act, sections 33 and 37 which make provision in relation to the payment of expenses in complying with a subpoena.

(3) Despite rule 975H, a person must not, without the leave of the court, inspect or copy a document in an application under this rule filed in the court.

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595G Application to set aside subpoena

(1) A person applying under the Trans-Tasman Proceedings Act, section 35 to set aside a subpoena served in New Zealand must make the application in the proceeding in which the subpoena was issued.

(2) The application must be accompanied by—

(a) a copy of the subpoena; and

(b) an affidavit stating the following—

(i) the material facts on which the application is based;

(ii) whether the person making the application requests that any hearing be held by audio link or audiovisual link.

595H Application for issue of certificate of noncompliance with subpoena

(1) A party to a proceeding may apply to the court that issued a subpoena for a certificate mentioned in the Trans-Tasman Proceedings Act, section 38 (a ***certificate of noncompliance***).

(2) The application may be made—

(a) if the proceeding in which the subpoena is issued is before the court—orally to the court; or

(b) by filing the application.

(3) The application must be accompanied by—

(a) a copy of the subpoena; and

(b) a copy of the order giving leave to serve the subpoena; and

(c) an affidavit of service of the subpoena; and

(d) a further affidavit stating the following—

(i) whether any application was made to set aside the subpoena;

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(ii) the material in support of an application mentioned in subparagraph (i);

(iii) any order that disposed of an application mentioned in subparagraph (i);

(iv) the material facts relied on for the issue of the certificate of noncompliance.

Note—

A certificate of noncompliance is to be stamped by the registrar with the seal of the court.

Division 4 Registration and enforcement of NZ judgments

595I Notice of registration of NZ judgment

(1) An entitled person must not take any step to enforce a registered NZ judgment, in the period mentioned in the Trans-Tasman Proceedings Act, section 74(2), unless the entitled person has filed an affidavit stating that notice of the registration of the NZ judgment has been given in accordance with the Trans-Tasman Proceedings Act, section 73.

(2) If a liable person against whom the registered NZ judgment is enforceable is not in Australia, the affidavit may be served without leave of the court.

Note—

Chapter 4, part 7, divisions 1 to 3 otherwise provide for service of documents outside Australia.

(3) An entitled person must file a further affidavit proving service of the affidavit mentioned in subrule (1) before any step is taken to enforce the registered NZ judgment.

595J Application for extension of time to give notice of registration of NZ judgment

(1) An entitled person applying for an extension of the time within which to give notice of the registration of an NZ

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judgment under the Trans-Tasman Proceedings Act, section 73(3) must make the application in the proceeding in which the NZ judgment was registered.

(2) The application must be supported by an affidavit stating the following—

(a) briefly but specifically, the grounds relied on in support of the application;

(b) the material facts relied on in support of the application;

(c) why notice will not be, or was not, given within time.

595K Enforcement of registered NZ judgment

(1) The form of enforcement warrant used in relation to the enforcement of a registered NZ judgment must be amended, in a way approved by the registrar, by—

(a) stating that the judgment is a registered NZ judgment; and

(b) specifying the date of, and the amount payable under, the registered NZ judgment; and

(c) specifying the amount of interest that is payable under the Trans-Tasman Proceedings Act, section 78(a) in relation to the registered NZ judgment.

(2) For subrule (1)(b), if the registered NZ judgment is registered in a currency other than Australian currency, the specified amount payable must be the amount payable under the registered NZ judgment as if it were for an equivalent amount in Australian currency based on the Trans-Tasman Proceedings Act rate of exchange.

(3) In this rule—

Trans-Tasman Proceedings Act rate of exchange means the rate of exchange mentioned in the Trans-Tasman Proceedings Act, section 69(2), as if the conversion day mentioned in that section were a reference to the day an application for an enforcement warrant for the amount payable under a registered NZ judgment is filed.

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Note—

See the Trans-Tasman Proceedings Act, section 74 for the effect of registration of an NZ judgment.

595L Application to set aside registration of NZ judgment

(1) A liable person applying to set aside the registration of an NZ judgment under the Trans-Tasman Proceedings Act, section 72(1) must make the application in the proceeding in which the NZ judgment was registered.

(2) The application must be accompanied by an affidavit stating the following—

(a) briefly but specifically, the grounds on which the registration of the NZ judgment should be set aside;

(b) the material facts relied on in support of the application.

Note—

See the Trans-Tasman Proceedings Act, section 72(2) for when an application to set aside the registration of an NZ judgment may be made.

595M Applications relating to a stay of enforcement of registered NZ judgment

(1) This rule applies to an application for an order under the Trans-Tasman Proceedings Act, section 76.

Note—

See the Trans-Tasman Proceedings Act, section 76(1) and (3)(b).

(2) The application must—

(a) be made in the proceeding in which the NZ judgment was registered; and

(b) be accompanied by an affidavit stating the following—

(i) the order sought;

(ii) briefly but specifically, the grounds relied on in support of the order;

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(iii) the material facts relied on in support of the application;

(iv) if the application is for an order under the Trans-Tasman Proceedings Act, section 76(3)(b)—why the application will not be, or was not, made within time.

Division 5 Remote appearances

595N Application for order for use of audio link or audiovisual link

(1) A party to a proceeding applying for leave for an order that an appearance be made, evidence be taken, or submissions be made, by audio link or audiovisual link from New Zealand under the Trans-Tasman Proceedings Act, section 48 or 50, must make the application in the proceeding to which the appearance, evidence or submissions relate.

(2) Subrule (1) does not apply to a request mentioned in rule 595G(2)(b)(ii).

Chapter 15 Probate and administration, and trust estates

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.

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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), 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.

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.

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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 under the *Trusts Act 2025*, section 135 calling on anyone who has a claim to, or 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) The notice must be published in a publication approved by the Chief Justice under a practice direction.

(3) 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

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(b) 2 or more persons claim priority under rule 610; or

(c) the original will is not available; or

(d) the court otherwise directs by practice direction.

(2) Also, the registrar may—

(a) refer any question arising in a grant to the court; or

(b) refer any application to the court.

(3) The registrar must seal each grant and file a copy.

Part 3 Probate and letters of administration with the will

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.

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(2) In addition, a copy of 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) For each copy of a document exhibited to the affidavit under subrule (2)—

(a) the original document must also be filed when the affidavit is filed; and

(b) an additional copy of the document must be given to the registry.

(4) A copy of a document mentioned in subrules (2) and (3)(b)—

(a) if the original document is a written document—may be a legible photocopy of the document; or

(b) otherwise—must be a legible transcription of the contents of the document.

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.

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(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.

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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.

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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.

Part 4 Letters of administration on intestacy

609 Contents of supporting affidavit on intestacy

An affidavit in support of an application for letters of administration on intestacy must—

(a) state the following—

(i) the date of death or, if the date of death is not known, the circumstances of death and the place of death of the deceased;

(ii) the relationship, if any, of the applicant to the deceased;

(iii) the grounds on which the applicant is entitled to a grant in priority to anyone else or, if the applicant does not claim priority, the facts on which the applicant relies for the making of the grant;

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(iv) so far as it is known to the applicant—the name of anyone having, under the *Succession Act 1981*, sections 35 to 37, a beneficial interest in the estate in the particular circumstances; and

(b) if a certificate of the deceased's death is issued under the *Births, Deaths and Marriages Registration Act 2003* or a corresponding law of another jurisdiction—have, as an exhibit, a certified copy of the certificate.

610 Priority for letters of administration

(1) The descending order of priority of persons to whom the court may grant letters of administration on intestacy is as follows—

(a) the deceased's surviving spouse;

(b) the deceased's children;

(c) the deceased's grandchildren or great-grandchildren;

(d) the deceased's parent or parents;

(e) the deceased's brothers and sisters;

(f) the children of deceased brothers and sisters of the deceased;

(g) the deceased's grandparent or grandparents;

(h) the deceased's uncles and aunts;

(i) the deceased's first cousins;

(j) anyone else the court may appoint.

(2) A person who represents a person mentioned in a paragraph of subrule (1) has the same priority as the person represented.

(3) The court may grant letters of administration to any person, in priority to any person mentioned in subrule (1).

(4) Also, if there is 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.

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(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 non-existence 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.

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(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.

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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.

Part 6 Certain proceedings under the Public Trustee Act 1978

621 Order to administer

(1) This rule applies if, under the *Public Trustee Act 1978*, section 29 or 31, the public trustee applies for an order to administer an estate.

(2) The application must be in the approved form and accompanied by an affidavit made by the public trustee.

(3) The application need not be served.

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622 Revocation of order to administer

(1) This rule applies for an order to administer granted under the *Public Trustee Act 1978*, section 29 or 31.

(2) With the consent of the public trustee, the registrar may exercise the jurisdiction of the court under this rule.

(3) The court may revoke the order—

(a) on an application by the public trustee or a person acting with the public trustee's consent; or

(b) if it appears that the order was made because of a mistake of law or fact.

(4) If the court revokes the order, the public trustee must give the copy of the order to the registrar.

Part 7 Caveats

623 Definitions for pt 7

In this part—

applicant means a person who applies for a grant.

caveator means a person who files a caveat under this part.

grant includes a resealing of a foreign grant.

notice to support a caveat means the notice the caveator must give stating the nature of the interest the caveator claims to have.

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

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(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—

(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.

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(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.

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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.

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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) stating that the party does not know who has possession or control of the script.

(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.

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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.

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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.

Note—

For general provisions about subpoenas, see chapter 11, part 4.

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 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.

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(4) Chapter 14, part 1 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

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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.

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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 Assessment of estate accounts

Division 1 Preliminary

644 Definitions for pts 10 and 11

In this part and part 11—

account assessment means the examination and consideration of an estate account under this part to ensure that it is correct and appropriate.

account assessor means an account assessor appointed under rule 657I.

beneficiary, in an estate, includes a person with—

(a) a beneficial interest in the estate; and

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(b) a right to obtain an account of the administration of the estate from the trustee of the estate.

certificate of account assessment see rule 657.

commission means—

(a) remuneration or commission payable to a personal representative under the *Succession Act 1981*, section 68; or

(b) remuneration a trustee may charge under the *Trusts Act 2025*, section 160.

costs assessor means a cost assessor appointed under rule 743L.

estate includes a trust estate.

estate account see rule 648.

inventory, of an estate, means a numbered list of assets and liabilities of, and payments to and from, the estate, in reasonable detail.

party includes—

(a) a person to whom the court has directed that notice of an application for an order that an estate account be assessed and passed be given; and

(b) a person on whom the court has ordered that a copy of an estate account be served.

trustee includes a personal representative of a deceased individual.

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Division 2 Applying for orders for filing, assessing and passing estate accounts etc.

645 Application by beneficiary for filing, assessing and passing estate account

(1) A beneficiary in an estate may apply to the court for an order that a trustee of the estate file an estate account and that the estate account be assessed and passed.

(2) The applicant must file an affidavit stating the reasons for the application and showing—

(a) compliance with rule 646; or

(b) why compliance with rule 646 should be dispensed with.

(3) If the applicant seeks assessment of the estate account, the applicant must, if practicable—

(a) nominate a particular account assessor for the account assessment; and

(b) state the applicable hourly rate of the nominated account assessor; and

(c) provide the nominated account assessor's consent to appointment to carry out the account assessment and confirmation that, if appointed, there would be no conflict of interest.

(4) The trustee is the respondent to the application but the court may direct that notice of the application be given to other beneficiaries or other persons.

(5) The court may make the orders it considers appropriate.

(6) If the court orders that the estate account be assessed, the court—

(a) must appoint an account assessor to carry out the assessment; and

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(b) may give directions to the account assessor about carrying out the account assessment.

646 Requirements for making application for filing, assessing and passing estate account

(1) Before a beneficiary makes an application under rule 645, the beneficiary must serve on the trustee a written notice requesting an estate account be prepared and served on the beneficiary within 30 days after service of the notice.

(2) If the trustee serves an estate account on the beneficiary as requested under subrule (1) and the beneficiary is not satisfied with the estate account, the beneficiary must serve on the trustee a notice of objection to the estate account.

(3) The notice of objection must—

(a) be in the approved form; and

(b) number each objection; and

(c) identify each—

(i) item in the estate account to which the beneficiary objects; or

(ii) omission from the estate account alleged by the beneficiary; and

(d) for each objection—concisely state the reasons for the objection identifying any issue of law or fact the beneficiary contends the trustee should have taken into account.

(4) The reasons for objection may be in abbreviated note form but must be understandable without further explanation.

(5) If the same objection applies to consecutive or nearly consecutive items in the estate account, the notice need not separately state the reasons for objecting to each of the items.

(6) 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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(7) The beneficiary may make an application to the court under rule 645 for filing, assessing and passing an estate account only if—

(a) 30 days have passed after service of the notice under subrule (1) and an estate account has not been served on the beneficiary; or

(b) 21 days have passed after service of a notice of objection under subrule (2) and no response to the objection has been served on the beneficiary; or

(c) a response to the notice of objection has been served on the beneficiary.

(8) The court may dispense with compliance with this rule if urgent circumstances exist or another good reason is shown.

647 Application by trustee for assessing and passing estate account

(1) A trustee of an estate may apply to the court for an order that an estate account for the estate be assessed and passed.

(2) The applicant must file the estate account and an affidavit stating the reasons for seeking the order.

(3) The application may be made ex parte, but the court may give directions for service the court considers appropriate.

(4) If the applicant seeks assessment of the estate account, the applicant must, if practicable—

(a) nominate a particular account assessor for the account assessment; and

(b) state the applicable hourly rate of the nominated account assessor; and

(c) provide the nominated account assessor's consent to carry out the account assessment and confirmation that, if appointed, there would be no conflict of interest.

(5) The court may make the orders it considers appropriate.

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(6) If the court orders that the estate account be assessed, the court—

(a) must appoint an account assessor to carry out the assessment; and

(b) may give directions to the account assessor about carrying out the account assessment.

Example for paragraph (b)—

The court may direct that the account assessment be carried out without detailed consideration of the estate account unless the account assessor identifies a deficiency in the estate account.

648 Requirements of estate account

(1) An ***estate account*** must give an account of the property of the estate to which it applies and include the following—

(a) clear and succinct particulars of all transactions that have occurred in respect of any bank or trust account relating to the estate;

Example of how paragraph (a) may be complied with—

The particulars may be set out in spreadsheet format in chronological order, with—

(a) each receipt and disbursement divided into capital and income components; and

(b) running column totals at the bottom of each page and top of each successive page; and

(c) progressive calculations of total funds on hand.

(b) an inventory of the estate;

(c) all distributions under the will (including the will as varied by a court order), trust instrument or on intestacy for the estate;

(d) the value of all distributions and assets remaining on hand, reconciled to the net balance of the estate;

(e) the changes in any investments made in the course of administration;

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(f) details of any other dealings with the property of the estate.

(2) Subject to subrule (3), if a person is the personal representative of a deceased individual and the trustee of an estate of the deceased individual, the person may include in the same estate account a statement of the administration of the estate both as personal representative of the deceased individual and as trustee of the estate of the deceased individual.

(3) The estate account must identify property received and disbursed by the person in each capacity.

649 Filing estate account and notice of objection

(1) If the court orders an estate account be filed, assessed and passed under rule 645, the trustee of the estate to which the account relates must, within the time specified in the order—

(a) file an estate account complying with rule 648 and verified by affidavit of the trustee; and

(b) serve a copy of the estate account on the applicant, and any other person as directed by the court.

(2) If a beneficiary or other person served with a copy of the estate account is not satisfied with the estate account, the beneficiary or other person may, within 21 days after being served, file and serve on the trustee a notice of objection.

(3) The notice of objection must comply with rule 646(3) to (6).

(4) The court may direct that an assessment of the estate account be limited to the matters raised by a beneficiary or other person in a notice of objection to the estate account filed and served under this rule.

(5) When the time for service of notices of objection to the estate account has ended, the trustee must serve on the account assessor appointed to carry out the account assessment copies of the following—

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(a) the order that the estate account be filed, assessed and passed;

(b) the estate account;

(c) any notice of objection to the estate account filed and served under this rule.

650 Referral of issue to costs assessor

(1) The court may order that any issue relating to a lawyer's fees charged to an estate be referred to a costs assessor for a costs assessment.

(2) On making an order under subrule (1), the court may—

(a) appoint a costs assessor to undertake the costs assessment; and

(b) direct the trustee to cause a costs statement in assessable form to be prepared; and

(c) determine who is to pay the costs of the cost assessment and the lawyer's costs of preparing the costs statement.

(3) The costs assessment is to be made under chapter 17A, part 4.

(4) For the purposes of applying subrule (3)—

(a) despite rule 743I(3), a reference to a notice of objection in chapter 17A, part 4 is taken to be a reference to a notice of objection under rule 649, so far as the notice of objection relates to a lawyer's fees; and

(b) despite rule 743I, rule 720(3) does not apply to a costs assessment referred to a costs assessor under this rule; and

(c) the court may give directions for notice to be given to the persons referred to in the *Legal Profession Act 2007*, section 339(1).

(5) The certificate of the costs assessor must distinguish between professional and non-professional work by the lawyer.

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Division 3 Assessment of estate accounts

651 Procedure on assessment

(1) An account assessor appointed to carry out an account 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 any dispute and any amount in dispute; and

(b) consistent with the rules of natural justice; and

(c) fair and efficient.

(3) Without limiting subrule (1) or (2), the account assessor may decide to do all or any of the following—

(a) hear the account assessment in private;

(b) carry out the account 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) extend or shorten the time for taking any step in the account assessment;

(e) be informed of the facts in any way the account assessor considers appropriate;

(f) require proof of expenditure in the form of receipts or other evidence satisfactory to the account assessor;

(g) require an estate account to be amended or require a further estate account or amended estate account to be provided by the trustee of the estate;

(h) not make a record of the evidence given.

(4) Unless the court orders otherwise, the costs of an account assessment are to be borne by the estate.

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(5) However, the account assessor may make a recommendation in a certificate of account assessment as to how the costs of the account assessment are to be borne.

652 Powers of account assessor

The court may, by order, give an account assessor the power to do any of the following in relation to an account assessment—

(a) administer an oath or receive an affirmation;

(b) examine witnesses;

(c) if the account assessor considers there is any conflict of interest relating to the legal representation of a party—direct that there be separate legal representation for the party;

(d) direct or require a party to produce documents or provide information;

(e) give directions about the conduct of the assessment process;

(f) anything else the court directs.

653 No participation by party

(1) This rule applies if—

(a) an account assessor is appointed to carry out an account assessment; and

(b) a party does not participate in the account assessment in accordance with the procedure decided by the account assessor.

(2) The account assessor may—

(a) proceed with the account assessment without the party's participation; or

(b) refer the matter to the court for directions.

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654 Issue or question arising

(1) An account assessor appointed to carry out an account assessment may decline to decide any issue or question arising in relation to the account assessment that the account assessor considers should not be decided by the account assessor.

(2) The account assessor may refer to the court any issue or question arising in relation to the account assessment the account 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 account assessor with or without directions.

655 Notice of adjournment

(1) This rule applies if an account assessment is adjourned for any reason.

(2) Unless the court or account assessor directs otherwise, the trustee must give notice of the adjournment to any party not present when the hearing or assessment was adjourned.

656 Conflict of interest

If an account assessor has a direct or indirect interest in an account assessment that could conflict with the proper performance of the account assessor's duties, the account assessor must, after the relevant facts come to the account assessor's knowledge—

(a) disclose the nature of the interest to the registrar of the court; and

(b) not continue with the account assessment; and

(c) refer the account assessment to the court for directions.

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657 Certificate of account assessment

(1) At the end of an account assessment, an account assessor must prepare and sign a certificate (a ***certificate of account assessment***) setting out the following—

(a) the account assessor's opinion as to the correctness and appropriateness or otherwise of the estate account;

(b) the account assessor's determination of any issue or question referred to the account assessor under rule 654(3)(b);

(c) the account assessor's decision on any issue raised in any notice of objection under rule 649;

(d) any other matter the court directs.

(2) If an estate account is prepared as allowed under rule 648(2) by a person both as personal representative of a deceased individual and as trustee of the estate of the deceased individual, the certificate of account assessment must set out separately the results of the account assessor's examination of the estate account so far as it relates to each capacity.

(3) The certificate of account assessment may also include—

(a) remarks or findings about the administration of the estate to which the assessment relates; and

(b) a recommendation as to costs made under rule 651(5).

Example of a finding for subrule (3)(a)—

a finding about the value of capital assets gathered in, sold or distributed in the administration of the estate or the income of the estate

(4) The account assessor must—

(a) file the certificate of account assessment in the court within 14 days after the end of the account assessment to which the certificate of account assessment relates; and

(b) on filing, give a copy of the certificate of account assessment to each party.

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657A Written reasons for decision

(1) Within 14 days after receiving a copy of an account assessor's certificate of account assessment, a party may make a written request to the account assessor for reasons for any decision included in the certificate of account assessment.

(2) If an account assessor receives a request under subrule (1), the account assessor must—

(a) within 21 days, give written reasons for the decision to each of the parties who participated in the account assessment; and

(b) give a copy of the written reasons to the registry of the court in which the certificate of account assessment was filed.

(3) A party requesting reasons must pay the account assessor's reasonable costs of preparing the reasons and those costs form part of the party's costs in the proceeding.

(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 4 Passing estate accounts

657B Passing estate account

(1) After a certificate of account assessment is filed in the court, a party may relist the application made under rule 645 or 647 for the account to be passed by the court.

(2) The party must give notice of the request under subrule (1) and the date and time of the hearing of the application to all other parties.

(3) A party dissatisfied with a decision in an account assessor's certificate of account assessment may ask the court to review the decision before the estate account is passed.

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(4) The party must file and serve an affidavit on all other parties—

(a) stating specific and concise grounds for objecting to the decision in the certificate of account assessment; and

(b) exhibiting a copy of the written reasons for the decision given by the account assessor; and

(c) detailing any evidence relied on in support of the objection.

(5) On the review, the court may do all or any of the following—

(a) exercise all the powers of the account assessor in relation to the account assessment;

(b) set aside or vary the decision of the account assessor;

(c) refer any issue to the account assessor for reconsideration, with or without directions;

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

(6) After the conclusion of the review, the court may—

(a) pass the estate account; and

(b) make any other order, including as to costs, as may be appropriate in the circumstances.

Division 5 Commission

657C Application for commission

(1) A trustee of an estate may apply to the court for commission.

(2) The application must be supported by an affidavit of the trustee setting out—

(a) the basis of the application; and

(b) the commission sought; and

(c) the trustee's justification for the commission; and

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(d) an inventory of the estate; and

(e) material to identify the appropriate respondents to the application.

(3) Unless the court otherwise orders, the application must be served on any beneficiary of the estate affected by the order sought.

(4) The court may direct that the application be served on any other person.

657D Court may require filing of estate account

(1) An estate account need not be filed, assessed or passed before an application for commission is determined, but the court may order that an estate account be filed, assessed and passed, and adjourn the application for commission until the estate account has been filed, assessed and passed.

(2) If an order is made under subrule (1)—

(a) the court must appoint an account assessor to carry out the account assessment; and

(b) this part applies as if the order were an order made under rule 645 for an estate account to be filed, assessed and passed.

(3) The court may—

(a) order that any other matter be determined for the purpose of the application for commission; and

(b) give directions to enable that matter to be determined.

657E Decision on application for commission

(1) In deciding an application for commission by a trustee of an estate, the court may take into account—

(a) the value and composition of the estate; and

(b) the provisions of the will or trust instrument for the estate; and

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(c) the conduct of all persons (including the parties) connected with the administration of the estate; and

(d) the nature, extent and value of work done by persons other than the trustee, including non-professional work delegated to a lawyer; and

(e) the result of any assessment of the estate account, including the scope and merit of any objections raised in a notice of objection before the estate account is passed; and

(f) the efficiency of the administration of the estate; and

(g) any other matter the court considers relevant.

(2) The court may make any order for commission the court considers appropriate.

657F Other orders and agreements

Nothing in this part prevents—

(a) the court making an order in relation to an estate account or commission; or

(b) all trustees and beneficiaries of an estate making an agreement in relation to an estate account or commission.

Part 11 Account assessors

657G Eligibility

(1) A person is eligible for appointment as an account assessor only if the person is—

(a) an Australian legal practitioner who is currently accredited by the Queensland Law Society in the area of succession law; and

(b) a fit and proper person to assess estate accounts.

(2) In this rule—

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Australian legal practitioner see the *Legal Profession Act 2007*, section 6(1).

657H Application

(1) A person applying for appointment as an account assessor must—

(a) apply in the approved form; and

(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, if any.

(2) The Chief Justice may make a practice direction under this rule requiring other matters relevant to appointment as an account assessor to be stated in the affidavit.

657I Appointment

(1) If a person who is eligible for appointment as an account assessor applies for appointment under rule 657H, the principal registrar may appoint or refuse to appoint the person as an account assessor.

(2) If the principal registrar refuses to appoint the person, the principal registrar must give the person a statement of reasons for the decision.

(3) A person whose application for appointment is refused under subrule (1) may appeal to a single judge of the Supreme Court.

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657J Ongoing disclosure of adverse matters and updated details

(1) Subrule (2) applies to—

(a) a person who has applied for appointment as an account assessor but whose application has not yet been decided; or

(b) a person who is an account assessor.

(2) The person must give written notice to the principal registrar of any matter coming to the person's knowledge that would, if the person were applying afresh for appointment as an account assessor—

(a) be required in the person's affidavit under rule 657H(1)(b)(i); or

(b) otherwise affect the person's eligibility to be appointed.

Example of a matter otherwise affecting a person's eligibility—

The person ceases to be accredited by the Queensland Law Society in the area of succession law.

(3) An account assessor must also give written notice to the principal registrar of any change in name, contact details or hourly rate or rates for the account assessor.

(4) A person must give any notice required under this rule as soon as practicable.

657K List of account assessors

(1) The principal registrar must keep and publish a current list of account assessors.

(2) The list must contain—

(a) the name, contact details and hourly rate or rates of each account assessor; and

(b) any change notified under rule 657J(3).

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657L Charges for account assessments

(1) The Chief Justice may make a practice direction under this rule setting the maximum hourly rate chargeable by an account assessor.

(2) At any time the hourly rate for an account assessor may not be more than the maximum hourly rate at that time set by the practice direction.

(3) For an account assessment—

(a) the account assessor is entitled to charge only for the number of hours reasonably spent on the assessment (which number may be, or include, a fraction) including time spent reading the material served under rule 649(5) and any other relevant document; and

(b) the account assessor's total charge is the amount calculated by multiplying the number of hours (including part hours) reasonably spent on the assessment, by the account assessor's current hourly rate.

(4) However, for a particular account assessment, an account assessor may agree with the parties to charge an hourly rate that is less than the account assessor's current hourly rate.

(5) In this rule—

current hourly rate, of an account assessor for an account assessment, means the hourly rate of the account assessor applicable for the account assessment that is set out in the list of account assessors at the time the account assessor was appointed to carry out the account assessment.

657M Ending an appointment by request

The principal registrar may end the appointment of a person as an account assessor at the person's request.

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657N Ending an appointment for sufficient reason

(1) The principal registrar may end the appointment of a person as an account assessor for a sufficient reason.

Examples of a sufficient reason—

- the account assessor becoming a judicial officer
- the account assessor ceasing to be a fit and proper person to assess estate accounts

(2) Before ending a person's appointment, the principal registrar must give the person—

(a) reasonable notice of the matters the principal 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 principal registrar ends a person's appointment, the principal 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.

657O Effect of ending of appointment or notice about possible ending of appointment

(1) If an account assessor has been given notice under rule 657N(2), the account assessor may not be appointed to carry out an account assessment unless the principal registrar decides not to end the person's appointment as an account assessor.

(2) Unless the court orders otherwise, an account assessor who has been given notice under rule 657N(2) or whose appointment ends may complete an account assessment started before the notice was given or the appointment ended.

(3) For subrule (2), an account assessment is taken to have started when the account assessor is appointed to carry out the account assessment.

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(4) Unless the court orders otherwise, the ending of a person's appointment as an account assessor does not affect the validity of—

(a) an account assessment carried out by the account assessor before the appointment ended; or

(b) an account assessment completed under subrule (2).

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 when the person making the order—

(a) pronounces the order in court; or

(b) pronounces the order while the court is hearing a proceeding, even though the person making the order is not physically present in court; or

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Example—

an order pronounced during a view, or during a hearing in which the judge participates by telephone or other electronic means

(c) for a proceeding under chapter 13, part 6—initials or signs a document setting out the order; or

(d) for another proceeding—with the consent of all the parties affected by the order, initials or signs a document setting out the order.

(2) An order takes effect from the time it is made.

(3) However, the court may order that an order takes effect at an earlier or later time.

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 by a party and signed by the registrar.

Note—

See rules 969A and 975A for electronic filing of orders.

(3) An order must be filed if—

(a) the court directs it to be filed; or

(b) a party asks for it to be filed.

(4) Unless an order is filed—

(a) the order may not be enforced under chapter 19 or by other process; and

(b) no appeal may be brought against the order without the leave of the court to which the appeal would be made.

(5) However—

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(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—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.

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

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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

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(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;

(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.

Note—

For a default judgment, see rule 290.

668 Matters arising after order

(1) This rule applies if—

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(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.

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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.

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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—

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(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

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(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.

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679 Definitions for ch 17A

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).

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.

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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

Note—

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).

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.

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(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 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

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(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.

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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 and District Court—schedule 1; or

(b) for Magistrates Courts—schedule 2.

(3) For an assessment for Magistrates Courts on the standard basis, the scale in schedule 2 appropriate for the amount the plaintiff recovers applies.

(4) For an assessment for Magistrates Courts on the indemnity basis, the scale in schedule 2 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).

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(7) The costs under the scales of costs for work done are inclusive of any GST payable in relation to the work.

(8) Unless the court otherwise orders, the costs are in accordance with the scale of costs in force when the costs were incurred.

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 thrown away by the amendment, unless the court orders otherwise.

(3) However, unless the court orders otherwise or the parties otherwise agree, the costs mentioned in subrule (2) are not to be assessed, and are not recoverable, until the proceeding ends.

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, 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.

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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.

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.

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(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.

700A Estates of deceased persons and trusts

(1) This rule applies to—

(a) a proceeding under the *Succession Act 1981*, part 4; or

(b) another proceeding relating to an interest in property under a will or trust.

(2) Without limiting the court's discretion under these rules to make an order about costs in relation to all or part of the proceeding, the court may, in determining an order for costs, take into account the following matters—

(a) the value of the property the subject of the proceeding and, in particular, the value of the property about which there is a disputed entitlement;

(b) whether costs have been increased because of any one or more of the following—

(i) noncompliance with these rules;

(ii) noncompliance with a practice direction;

(iii) the litigation of unmeritorious issues;

(iv) failure to make, promptly or at all, appropriate concessions or admissions;

(v) giving unwarranted attention to minor or peripheral issues;

(c) an offer of settlement made by a party to the proceeding.

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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

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(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

Note—

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

Division 1 Before application

705 Costs statement

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

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Note—

See rule 709A for failure to serve a costs statement.

(2) The costs statement must—

(a) contain sufficient details to enable the party liable to pay the costs to understand the basis for the costs, prepare an objection to the costs statement and obtain advice about an offer to settle the costs; and

(b) if practicable, have attached to it copies of all invoices for the disbursements claimed in the costs statement.

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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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 711, 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.

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(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.

709A Failure to serve costs statement

(1) If a party entitled to be paid costs does not serve a costs statement under rule 705 within a reasonable time, the party liable to pay the costs may, by notice, require the other party to serve a costs statement under rule 705.

(2) If the party entitled to be paid costs does not serve a costs statement under rule 705 within 30 days after service of a notice under subrule (1), the court may direct the party entitled to be paid costs to serve a costs statement under rule 705 within a stated time.

(3) If the party entitled to be paid costs does not comply with the court's direction, the court may—

(a) either—

(i) set aside the costs order; or

(ii) allow costs in a fixed amount, which may be nominal; and

(b) order the party to pay to another party costs incurred because of the failure to comply with the direction.

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Division 2 Application

710 Application for costs assessment

(1) This rule applies to a party—

(a) who has served a costs statement under rule 705; or

(b) on whom a costs statement under rule 705 is served.

(1A) The party 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.

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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)—

(a) if the applicant is the party entitled to be paid costs—on the party liable to pay costs; or

(b) if the applicant is the party liable to pay costs—on the party entitled to be paid 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.

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713A Service of order appointing costs assessor

The applicant for an order appointing a costs assessor under rule 713 must serve a copy of the order on the costs assessor appointed by the order at least 14 days after the day the order is made.

Note—

See rule 733(3)(c) for when an offer to settle costs ends.

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.

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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.

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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.

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(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.

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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—

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(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.

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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 be for all of the person's liability for costs to the party to whom it is made; and

(b) 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 a copy of an order appointing a costs assessor is served on the assessor.

(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

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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 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 equal to, or 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 incurred for the assessment on and from the date of service of the offer to settle, and include a fee payable for the assessment.

735 Reduction of more than 15%

(1) This rules 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

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(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.

737A Information about outcome of costs assessment

(1) A party may make a written request to the costs assessor for information about the outcome of the costs assessment for each item in the costs statement.

(2) If a costs assessor receives a request under subrule (1), the costs assessor must, within 7 days after receiving the request, give a document to the party, free of charge, that shows the outcome of the assessment for each item in the costs statement.

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(3) The document mentioned in subrule (2) may be a copy of the costs statement amended to show the outcome of the assessment.

738 Written reasons for decision

(1) Within 21 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.

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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—

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(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

(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.

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Part 4 Assessment of costs under the Legal Profession Act 2007

Note—

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*.

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;

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(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;

(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.

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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.

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(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

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(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.

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743I Application of other rules

(1) The following rules also apply to costs assessed under the *Legal Profession Act 2007*—

- rule 713A
- rule 715
- rule 716
- rule 717
- rule 718
- rule 719
- rule 720
- rule 732
- rule 737
- rule 737A
- 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).

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Part 5 Costs assessors

Note—

A reference in this part to a costs assessor does not include a reference to an assessing registrar—see rule 679, definition *costs assessor*.

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

(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.

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743L Appointment

(1) If a person who is eligible for appointment as a costs assessor applies for appointment under rule 743K, the principal registrar may appoint, or refuse to appoint, the person as a costs assessor.

(2) If the principal registrar refuses to appoint the person, the principal 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 principal 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 principal 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 principal registrar must keep and publish a current list of costs assessors.

(2) The list must contain—

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(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.

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743P Ending an appointment by request

The principal 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 principal registrar may end the appointment of a person as a costs assessor for a sufficient reason.

Examples of a sufficient reason—

- the costs assessor becoming a judicial officer
- the costs assessor ceasing to be a fit and proper person to assess costs

(2) Before ending a person's appointment, the principal registrar must give the person—

(a) reasonable notice of the matters the principal 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 principal registrar ends a person's appointment, the principal 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 principal registrar decides not to end the person's appointment as a costs assessor.

(2) Unless the court orders otherwise, a costs assessor—

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(a) if the costs assessor has been given notice under rule 743Q(2)—may complete a costs assessment started before the notice was given; or

(b) if the costs assessor's appointment ends—

(i) must not complete a costs assessment started before the appointment ended; and

(ii) must return any document, provided to the costs assessor for the costs assessment, to the party who provided it.

(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)—

(a) party and party basis equates to standard basis; and

(b) solicitor and client basis equates to indemnity basis.

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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 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.

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(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—

(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.

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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.

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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

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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—

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(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.

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(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 2009*, schedule 1, item 17.

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.

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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

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(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 Region, Northern Region or Far Northern Region, 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.

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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—

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(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;

(b) an application in a civil proceeding for leave to appeal or for an extension of time to apply for leave to appeal;

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(c) an application for a stay of execution or for an injunction pending an appeal;

(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

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(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 under chapter 17A 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.

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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 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.

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(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 applies, with any changes necessary, to an application under this division.

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(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.

(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.

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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.

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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)—

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(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.

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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.

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.

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(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.

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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.

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—

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(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—

(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.

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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.

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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.

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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

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(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 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—

(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.

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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 Statement of financial position

(1) At any time after a money order is made, an enforcement creditor may, by written notice, require an enforcement debtor to complete and return to the enforcement creditor a statement

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of financial position of an enforcement debtor in the approved form.

(2) The written notice must be given or sent by post to the enforcement debtor together with a blank statement of financial position.

(3) The enforcement debtor must complete and return the statement of financial position to the enforcement creditor within 14 days after receiving the statement.

(4) If the enforcement debtor is a corporation, an officer of the corporation must complete the statement of financial position.

(5) If the enforcement debtor is a partnership, a partner or a person who has or had control or management of the partnership business in Queensland must complete the statement of financial position.

(6) If the enforcement debtor receives regular payments including, for example, wages or social security benefits, the person completing the statement of financial position must include in the statement—

(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.

808 Enforcement hearing after money order is made

(1) 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 may be made only after—

(a) a money order is made; and

(b) the enforcement creditor has, under rule 807, required a statement of financial position to be completed and returned by the enforcement debtor in relation to whom the enforcement hearing is sought; and

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(c) either—

(i) a completed statement of financial position has been returned to the enforcement creditor; or

(ii) the time for returning a completed statement of financial position has expired.

(3) The application must be supported by an affidavit that states the following—

(a) the unpaid amount of the money order;

(b) whether the enforcement creditor has received a completed statement of financial position from the enforcement debtor;

(c) if the enforcement creditor has received a completed statement of financial position from the enforcement debtor, why the enforcement creditor is not satisfied with the information given in the statement.

(4) The application must be made to the court in the district in which the enforcement hearing is sought.

(5) No fee is payable for filing the application.

(6) The registrar must set the date for the enforcement hearing and issue an enforcement hearing summons in the approved form requiring the person to whom the summons is directed to attend an enforcement hearing at the time and place stated in the summons—

(a) to give information and answer questions; and

(b) to produce the documents or things stated in the summons.

(7) The enforcement hearing summons may require the enforcement debtor to complete and return a statement of financial position in the approved form at least 4 business days before the date of the enforcement hearing.

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809 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 may be served on the person to whom it is directed personally or by prepaid ordinary post.

(3) An enforcement hearing summons for an end of trial enforcement hearing must be served within the period directed by the court.

(4) Any other enforcement hearing summons must be served at least 14 days before the day set for the enforcement hearing.

810 Location for enforcement hearing

(1) If practicable, an enforcement hearing, other than an end of trial enforcement hearing, must be held in a district in which the person to whom the enforcement hearing summons is directed resides or carries on business.

(2) If subrule (1) does not apply, an enforcement hearing must be held at the place where the money order was made, unless the court directs otherwise.

(3) If an application for an enforcement hearing is made at a place other than where the money order was made—

(a) a copy of the money order must be filed with the application; and

(b) at the conclusion of the enforcement hearing, the registrar of the court at the place where the summons is issued must send to the registrar of the court where the money order was made a copy of—

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(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.

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 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 must be served with the subpoena by ordinary service at least 14 days before the day set for the enforcement hearing.

(3) Rule 419 applies to a person required to attend an enforcement hearing by subpoena.

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Note—

See chapter 11 (Evidence), part 4 (Subpoenas) for other provisions, including a requirement for conduct money, that apply to a subpoena under this rule.

813 Enforcement hearing

(1) A person to whom an enforcement hearing summons is directed must attend before the court issuing the summons, including the court as constituted by a registrar, at the time and place stated in the summons—

(a) to give information and answer questions; and

(b) to produce the documents or things stated in the summons.

(2) If an enforcement creditor is satisfied with the information provided by a person in a statement of financial position of an enforcement debtor, the enforcement creditor may give written notice to the person and the court that the person is no longer required to attend the enforcement hearing.

(3) 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.

814 Orders at enforcement hearing

(1) At an enforcement hearing, the court may—

(a) order that an enforcement warrant be issued; or

(b) make another order about the enforcement of the order; or

(c) stay the enforcement of the order; or

(d) award costs.

(2) However, unless the court orders otherwise, the costs of the enforcement hearing are costs of enforcement of the order.

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815 Failure or refusal in relation to statement of financial position or enforcement hearing

(1) This rule applies if—

(a) an enforcement hearing summons requires an enforcement debtor to complete and return a statement of financial position in the approved form; and

(b) the enforcement debtor or the person to whom the summons is directed fails, without lawful excuse, to return the completed statement of financial position.

(2) This rule also applies if a person summoned or subpoenaed to attend an enforcement hearing—

(a) attends before the court and without lawful excuse—

(i) refuses to be sworn or to affirm; or

(ii) refuses to answer a question put to the person that the court directs be answered; or

(iii) fails to give an answer to the court's satisfaction; or

(iv) fails or refuses to produce the documents or things stated in the summons; or

(b) fails or refuses to attend at the time and place stated in the summons or subpoena.

(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 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—

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(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 send 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 sent must—

(i) report to the registrar of the issuing court as to the execution of the warrant; and

(ii) send to the registrar of the issuing court the record of any enforcement hearing held and a copy of any order made.

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Part 3 Enforcement warrants generally

817 Procedure

(1) A person applying for an enforcement warrant must file—

(a) an application attaching the enforcement warrant the person wants the court to issue; and

(b) if the person is an enforcement creditor, a statement in the approved form sworn by the enforcement creditor, or the enforcement creditor's agent or solicitor, not earlier than 2 business days before the date of the application disclosing the following—

(i) the date the money order was made;

(ii) the amount for which the order was made;

(iii) the date and amount of any payment made under the order;

(iv) the costs incurred in previous enforcement proceedings in relation to the order debt;

(v) any interest due at the date the statement is sworn;

(vi) any other details necessary to calculate the amount payable under the order at the date the statement is sworn and how the amount is calculated;

(vii) the daily amount of any interest that, subject to any future payment under the order, will accrue after the date the statement is sworn;

(viii) any other information necessary for the warrant being sought.

(2) An enforcement creditor may apply for an enforcement warrant without notice to another party.

(3) A copy of the enforcement warrant must be filed.

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(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, the warrant ends; and

Note—

The *Civil Proceedings Act 2011*, section 91, provides that an enforcement warrant ends 1 year after it issues unless it states that it ends at an earlier time.

(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—

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(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.

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 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—

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(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.

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(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.

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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.

Note—

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).

(2) The registrar must give the enforcement warrant to an enforcement officer to be enforced.

(3) An enforcement officer must—

(a) have the warrant in the enforcement officer's possession when enforcing the warrant; and

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(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

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(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; 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;

(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.

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(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.

Note—

See rule 833 (Sale at best price obtainable), particularly subrule (4).

(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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(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.

Note—

For real property, see also rule 828(6) (Seizure of property under enforcement warrant).

(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—

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advertisement, of a notice, means—

(a) in any case—posting the notice at the registry of the court in the district where the property is located, not less than 2 weeks, and no more than 4 weeks, before the date of sale; and

(b) if there are 2 or more newspapers circulating in the district where the property is located—publication of the notice once in each of 2 of the newspapers not less than 2 weeks, and no more than 4 weeks, before the date of sale; and

(c) if there is only 1 newspaper circulating in the district where the property is located—publication of the notice twice in the newspaper on different days, if practicable, not less than 2 weeks, and no more than 4 weeks, before the date of sale; and

(d) if there is no newspaper circulating in the district where the property is located and the property to be sold is an interest in land—posting the notice on the land not less than 2 weeks, and no more than 4 weeks, before the date of sale; and

(e) if there is no newspaper circulating in the district where the property is located and the property to be sold is not an interest in land—posting the notice at the place where the sale is to take place not less than 2 weeks, and no more than 4 weeks, before the date of sale.

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.

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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.

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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; 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

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the public interest in enforcing orders efficiently and expeditiously;

(d) whether, having regard to the nature of the debt (belonging to the enforcement debtor from the financial institution) and the type of redirection, a regular redirection or otherwise, is appropriate.

(3) A debt may be redirected only if the debt, or the part of the debt belonging to the enforcement debtor, is payable to the enforcement debtor from the third person on the date the enforcement warrant is served on the third person.

(4) Subrule (3) does not apply to a regular redirection under division 2.

841 Attendance of, or information about, the enforcement debtor

The court may order an enforcement hearing under part 2 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—

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(a) the third person acts with reasonable diligence to give effect to the redirection; and

(b) despite the third person acting with reasonable diligence, the third person deals with the redirected debt in a way that satisfies, as between the third person and the enforcement debtor, all or part of the redirected debt, including, for example, by payment to the enforcement debtor.

(2) A court may order that, for this part, the redirected debt be reduced to the extent of its satisfaction.

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.

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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—

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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, specify the following—

(a) the name of the financial institution that must deduct amounts from a regular debt;

(b) details of the enforcement debtor's account from which the deduction is to be made;

(c) the amount the financial institution must deduct each time a regular deposit is made to the account;

(d) the name and address of the enforcement creditor to whom the financial institution must give the deducted amount.

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

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(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.

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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;

(c) the financial institution.

(3) The order does not come into force until the end of 7 days after the day on which it is served on the financial institution.

Part 6 Enforcement warrants for redirection of earnings

855 General

(1) A court may issue an enforcement warrant authorising redirection to an enforcement creditor of particular earnings of an enforcement debtor from a third person.

Note—

The provisions of legislation such as the *Social Security Act 1991* (Cwlth) contain exemptions for social security payments.

(2) An enforcement warrant redirecting earnings continues in force until—

(a) the total amount specified in the warrant is paid; or

(b) the warrant is set aside or expires according to its conditions.

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856 Procedure for issue of enforcement warrant redirecting earnings

(1) An enforcement creditor or enforcement debtor may apply to the court for an enforcement warrant authorising the redirection to the enforcement creditor of part of the enforcement debtor's earnings.

(2) Without limiting subrule (1), the application may be made at an enforcement hearing.

(3) In deciding whether to issue an enforcement warrant authorising the redirection to the enforcement creditor of the enforcement debtor's earnings, the court must have regard to the following—

(a) whether the enforcement debtor is employed and the enforcement debtor's employer has been identified;

(b) whether the enforcement debtor has sufficient means of satisfying the order after deducting—

(i) the necessary living expenses of the enforcement debtor and the enforcement debtor's dependants; and

(ii) any other known liabilities of the enforcement debtor;

(c) whether the amount of earnings to be redirected would impose 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—

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(a) order an enforcement hearing under part 2; 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***).

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, 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—

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(a) a notice in the approved form informing the employer of the effect of the order and the employer's obligations under this part; and

(b) a copy of a notice in the approved form that the employer may use if the enforcement debtor is not employed by the employer.

(3) The enforcement warrant does not come into force until the end of 7 days after the day on which the order was served on the employer.

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 and keep it as a contribution towards the administrative cost of making payments under the warrant; and

Note—

Administration charge is defined in schedule 3 (Dictionary). The amount of the charge is fixed under these rules.

(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.

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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.

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

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which a copy of a following order was served on the employer—

(a) an order discharging the enforcement warrant;

(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.

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(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.

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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;

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(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.

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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.

Part 8 Enforcement warrants for charging orders

875 Issue of warrant

The court may issue an enforcement warrant imposing a charging order charging all or part of the enforcement debtor's legal or equitable interest in 1 or more of the following—

(a) annuities;

(b) debentures;

(c) stocks;

(d) bonds;

(e) shares;

(f) marketable securities;

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(g) interest in a managed investment scheme;

(h) units of—

(i) shares; or

(ii) marketable securities.

876 Effect of warrant

(1) To have effect on a person, an enforcement warrant imposing a charging order must be personally served on the person.

(2) An enforcement warrant imposing a charging order entitles the enforcement creditor to the same remedies as the enforcement creditor would have had if the charge had been made in the enforcement creditor's favour by the enforcement debtor.

(3) However, an enforcement creditor may not take proceedings to obtain a remedy in relation to particular charged property until—

(a) the enforcement warrant imposing the charging order is served on the enforcement debtor and the person who issued or administers the property; and

(b) 3 months has passed since the later service.

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.

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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 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.

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(2) The court may, on the application of an 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 (2) 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.

(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 applies to receivers appointed to enforce a money order.

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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.

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.

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(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 Definition 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.

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(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—

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(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;

(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.

898 Order to perform or abstain from an act

(1) This rule applies to an order if—

(a) the order is a non-money order and requires a person to perform an act and the act is to be performed within a time specified in the order and the person does not comply with the order within the time; or

(b) the order requires a person to abstain from performing an act and the person does not comply with the order.

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(2) An order to which this rule applies may, subject to rule 904, be enforced in 1 or more of the following ways—

(a) punishment for contempt of the person liable under the order;

(b) seizing property of the person liable under the order under rule 917;

(c) if the person liable under the order is a corporation, without limiting paragraphs (a) and (b), either or both of the following—

(i) punishment for contempt of any officer of the corporation;

(ii) seizing property of any officer of the corporation under rule 917.

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.

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;

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(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.

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; and

Note—

See rules 106 (How personal service is performed) and 107 (Personal service—corporations).

(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

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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—

(i) are warranted by the order; or

(ii) might have been taken if the order had not been made.

Part 3 Enforcement warrants generally

906 Procedure

(1) A person applying for an enforcement warrant to enforce an order must file—

(a) an application attaching the warrant the person wants the court to issue; and

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(b) an affidavit in support of the application stating that the person against whom enforcement is sought was served with the order and that there has not been compliance with the order.

(2) A person entitled to enforce a non-money order may apply for an enforcement warrant without notice to another party.

(3) A copy of the enforcement warrant must be filed.

(4) Unless the court or a registrar directs otherwise, an application for an enforcement warrant or an application for renewal of an enforcement warrant must be dealt with by the registrar without a formal hearing.

907 Application to set aside enforcement

(1) In relation to an enforcement warrant for a non-money order, a person affected by the order or another person affected by the warrant may apply to the court to set the warrant aside or to stay enforcement at any time.

(2) The filing of the application does not stay the operation of an enforcement warrant.

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, the warrant ends; and

Note—

See the *Civil Proceedings Act 2011*, section 91, which provides that an enforcement warrant ends 1 year after it issues unless it states that it ends at an earlier time.

(c) what is authorised under the warrant; and

(d) the amount recoverable under the warrant; and

(e) any other details required by these rules.

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(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.

(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—

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(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

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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 subrule (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.

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Part 5 Enforcement warrants for delivery of goods

916 Enforcement warrant for seizure and delivery of goods

(1) An enforcement warrant authorising an enforcement officer to seize and deliver goods specified in a judgment must be in the approved form.

(2) The enforcement warrant may include provision for enforcing the payment of an amount, if the amount is—

(a) required by the judgment to be paid; and

(b) enforceable as a money order.

Part 6 Enforcement warrants for seizure and detention of property

917 Property that may be seized under enforcement warrant

A court may issue an enforcement warrant authorising an enforcement officer to seize and detain all real and personal property (other than exempt property) in which the person who must comply with the judgment has a legal or beneficial interest.

918 Prerequisite for enforcement warrant authorising seizure and detention of property

The court may issue a warrant under rule 917 only if the judgment specifies a time for compliance and the time has passed.

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919 Enforcement against officer of corporation

(1) This rule applies if, to enforce a judgment with which a corporation must comply, a person applies for a warrant under rule 917 to seize and detain property of an officer of the corporation.

(2) A copy of the application and each affidavit in support must be served on the officer, unless the court otherwise orders.

920 Return of seized property

If the person against whom a warrant under rule 917 was issued complies with the judgment or is released from compliance, the court may order that the property, after deduction of the costs of enforcement, be returned to the person.

Part 7 Contempt

Division 1 Preliminary

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.

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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.

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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

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(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

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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.

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Part 8 Warrant for defendant's arrest

933 Constitution of court

Jurisdiction under this part may be exercised only by the Supreme Court constituted by a judge.

934 Application

An application for a warrant for the arrest of a defendant may be made without notice to the defendant, unless the court directs that the defendant be served.

935 Issue of warrant for defendant's arrest

(1) The court may issue a warrant in the approved form for the arrest of a defendant only if it is satisfied that—

(a) the defendant has absconded or is about to abscond; and

(b) the absence of the defendant would materially prejudice the plaintiff in prosecuting the proceeding or enforcing any judgment that may be given.

(2) The court may issue the warrant at any time, for example, before the defendant has been served with the claim or before judgment.

(3) The warrant must state—

(a) the name of the defendant; and

(b) the date, within 2 months after the warrant's issue, the warrant ends.

(4) The court may fix an amount to be stated in the warrant entitling the defendant to be released.

(5) In fixing the amount, the court may have regard to any matter it considers relevant, including the following matters—

(a) the amount (if any) of the plaintiff's claim;

(b) the costs of issuing the warrant;

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(c) an estimate of the costs of executing the warrant.

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).

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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

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(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;

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(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 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.

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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

(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.

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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 applies.

judgment creditor see the Commonwealth Act, section 3.

judgment debtor see the Commonwealth Act, section 3.

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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.

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—

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(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 of the Commonwealth Act applying the section to the country of the original court;

(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;

(viia) 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.

(viii) if it is more than 6 years since the day of the judgment—whether there has been a proceeding by way of appeal against the judgment and, if so, the day of the last judgment in the proceeding;

(ix) if interest is payable on the judgment under the law of the country of the original court and the interest

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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 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.

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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;

(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.

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(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) For subrule (2)(b), if the registered judgment is registered in a currency other than Australian currency, the specified amount payable must be the amount payable under the registered judgment as if it were for an equivalent amount in Australian currency based on the Commonwealth Act rate of exchange.

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(4) 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.

(5) In this rule—

Commonwealth Act rate of exchange means the rate of exchange mentioned in the Commonwealth Act, section 6(11A), as if the conversion day mentioned in that section were a reference to the day an application for an enforcement warrant for the amount payable under the registered judgment is filed.

Note—

See the Commonwealth Act, section 6(7) for the effect of registration of a judgment.

Part 3 Reciprocal enforcement of Australian judgments

947N Certificate of judgment

(1) An application under section 15(1) of the Commonwealth Act in relation to a judgment may be made without notice to 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.

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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 *Civil Proceedings Act 2011*, section 19.

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.

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(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.

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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—

(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—

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(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.

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.

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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.

(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.

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958 Trial

If, in a proceeding for relief by way of interpleader, the court directs the trial of an issue, chapter 13 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 1AA Preliminary

959A Definitions for part

In this part—

imaged document means a document in electronic form created by scanning or otherwise imaging the document in its paper form.

physical document has the meaning given by the *Oaths Act 1867*, section 1B.

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959B Service providers

The principal registrar of a court may approve an entity (a ***service provider***) to electronically file documents in the court on behalf of a party to a proceeding in the court.

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.

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(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.

(3) If an imaged document is to be electronically filed—

(a) the paper form of the document from which the imaged document is created must comply with subrule (1); and

(b) the imaged document must be formatted in a way that would result in the document complying with subrule (1)(a)(i) and (iii), (c), (d) and (e)(i) if a paper copy were made of the imaged document.

(4) If a document, other than an imaged document, is to be electronically filed, the document must be formatted in a way that would result in the document complying with subrule (1)(a)(i) and (iii), (c), (d) and (e)(i) if a paper copy were made of the document.

962 Figures may be used

A date, amount or number stated in a document may be stated in figures.

963 Alterations to documents other than affidavits and statutory declarations

(1) This rule does not apply in relation to a document that is an affidavit or a statutory declaration.

Notes—

1 See rule 434 for alterations to affidavits.

2 See rule 963A for alterations to statutory declarations.

(2) 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.

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(3) The alteration may be handwritten and must be made in black ink, unless the court or registrar otherwise directs.

(4) A document can not be filed if it contains an erasure or alteration that the registrar considers causes a material disfigurement.

Note for subrules (2) to (4)—

For the application of rule 963 to electronically filed documents, see rule 975A(7).

963A Alterations to statutory declarations

(1) This rule applies if there is an interlineation, erasure or other alteration in any part of a statutory declaration.

(2) The statutory declaration may be filed but, unless the court orders otherwise, may be used only if the interlineation, erasure or other alteration—

(a) has been initialled by the signatory or substitute signatory for the statutory declaration in the same way the signatory or substitute signatory signed the statutory declaration; and

(b) has been initialled by the witness for the statutory declaration in the same way the witness signed the statutory declaration.

(3) To remove any doubt, it is declared that a statutory declaration must not be altered after it has been made, signed and witnessed under the *Oaths Act 1867*, whether the declaration is in the form of a physical document or an electronic document.

(4) In this rule—

(a) a reference to a witness in relation to a statutory declaration has the same meaning as given to that reference by the *Oaths Act 1867*, section 13; and

(b) a reference to a signatory in relation to a statutory declaration has the same meaning as given to that reference by the *Oaths Act 1867*, section 13; and

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(c) a reference to a substitute signatory in relation to a statutory declaration has the same meaning as given to that reference by the *Oaths Act 1867*, section 13.

(5) In this rule—

witness, a statutory declaration, has the meaning given by the *Oaths Act 1867*, section 11.

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

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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 to be filed, other than a document in electronic form, may be—

(a) delivered to the registry personally; or

(b) sent to the registry by post.

(2) A practice direction may require a particular class of document to be delivered to the registry personally.

(3) A document may be electronically filed if the electronic filing of the document, or documents of that class, is approved by the principal registrar of the court in which the document is to be filed.

Note—

For additional requirements for electronically filing a document that is sworn or affirmed, see rule 975C.

967A Filing of affidavits and statutory declarations made using counterparts

(1) If an affidavit or a statutory declaration is made using counterparts under the *Oaths Act 1867*, all of the counterparts must be filed at the same time.

(2) In this rule—

counterpart, for a document, has the meaning given by the *Oaths Act 1867*, section 1B.

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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 refuse to file the document if the document does not comply with these rules or may not otherwise be filed.

(4) The document is taken to be filed when the registrar records the date of filing on the document and stamps the seal of the court on it.

(5) Any prescribed fee for filing the document must be paid when the document is given to the registrar.

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 refuse to file the document if the document does not comply with these rules or may not otherwise be filed.

(5) The document is taken to be filed when the registrar records the date of filing on the document and stamps the seal of the court on it.

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(6) After filing the document, the registrar must stamp the seal of the court on the copies of the document filed with the registrar and return them in the envelope provided by the party filing the document.

(7) If a default judgment is given after filing by post of a request for the judgment, the registrar must return the default judgment in the envelope provided by the party filing the request.

(8) If the registrar refuses to file the document, the registrar must return the document, in the envelope provided, to the party who filed it.

(9) A party files a document by post at the party's risk.

969A Electronically filing documents

(1) This rule applies to a document to be filed electronically.

(2) The following may be done by a manual or an electronic process—

(a) the recording of the date of filing on the document by the registrar;

(b) the applying of the seal of the court to the document.

(3) The registrar may refuse to file the document if the document does not comply with these rules or may not otherwise be filed.

(4) The document is taken to be filed when the registrar records the date of filing on the document and applies the seal of the court to it.

(5) If the document is accepted by the registrar, the day on which the document is taken to have been filed is—

(a) if the whole of the document is received by the registry before 4.30p.m. on a day the registry is open for business—that day; or

(b) otherwise—the next day the registry is open for business.

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(6) A service provider may electronically file a document on behalf of a party to a proceeding.

(7) Any prescribed fee for electronically filing a document must be paid in accordance with the requirements of the principal registrar.

(8) The registrar may give, including electronically, a copy of the filed document to the party to the proceeding who filed the document, or on whose behalf the document was filed.

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.

972 Court fees if state-related party

(1) In a proceeding to which a state-related person is a party, despite rules 968(5), 969(3)(c) and 969A(7), the state-related person may file a document without payment of a fee.

(2) 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.

Note—

See also rule 15 (Registrar may refer issue of originating process to court).

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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.

Notes—

1 Forms for use under these rules may be approved under the *Supreme Court of Queensland Act 1991*, section 87.

2 Approved forms are available on the Queensland Courts website.

3 See the *Acts Interpretation Act 1954*, section 48A(1) in relation to the effect of substantial compliance with an approved form.

Division 4 Particular provisions for electronically filed documents

975A Application of particular provisions to electronically filed documents

(1) Rule 19 does not apply to an originating process that is electronically filed if it is not reasonably practicable for a person to comply with that rule in relation to the originating process.

(2) Without limiting subrule (1), it is reasonably practicable for a person to comply with rule 19 in relation to an originating process that is electronically filed if the originating process is an imaged document.

(3) Rule 20 does not apply to an originating process that is electronically filed.

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(4) Rule 661(2) does not apply to an order of a court that is electronically filed.

Note for subrules (1) to (4)—

See rule 969A for electronic filing of documents.

(5) If it is not reasonably practicable for a person to alter an electronically filed document in accordance with rule 963(2) and (3)—

(a) the alteration must be made, in accordance with rule 963(2) and (3), to a paper copy of the document; and

(b) the altered paper copy of the document must be filed or electronically filed.

(6) Without limiting subrule (5), it is reasonably practicable for a person to comply with rule 963(2) and (3) in relation to an electronically filed document if—

(a) the electronically filed document is an imaged document; and

(b) there is an alterable paper form of the electronically filed document; and

(c) a further imaged document, created from an altered version of the alterable paper form, can be electronically filed.

(7) Despite subrules (2) and (6), the registrar may, subject to an order of the court, determine whether or not it is reasonably practicable for a person to comply with rule 19 or 963.

Notes for subrules (5) to (7)—

1 See rule 434 for alterations to affidavits.

2 See rule 963A for alterations to statutory declarations.

(8) In this rule—

alterable paper form, of an electronically filed document, means either of the following that is capable of being altered in accordance with rule 963(2) and (3)—

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(a) the paper form of the imaged document comprising the electronically filed document;

(b) a paper form of the document from which the imaged document was created.

975B Retention and status of document electronically filed

(1) A document electronically filed at the registry—

(a) may 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 975H, a person may make a request 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.

975C Electronic filing of affidavits and statutory declarations

(1) An affidavit or a statutory declaration made in the form of an electronic document may be filed electronically only if the document is sent to the registry in an electronic file format approved, for the purpose of this rule, by the principal registrar of the court for the registry.

(2) An affidavit or a statutory declaration made in the form of a physical document may be filed electronically only if the document is sent to the registry—

(a) as an imaged document; and

(b) in an electronic file format approved, for the purpose of this rule, by the principal registrar of the court for the registry.

Examples of electronic file formats for subrules (1) and (2)—

pdf, jpg, html

(3) The party or solicitor filing an affidavit or a statutory declaration mentioned in subrule (2) must—

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(a) retain or cause to be retained, until 7 years from the date of filing, the paper form of the document from which the imaged document was created; and

(b) produce the paper form of the document if required to do so by the court.

(4) Subrule (3) does not limit rule 985.

975D Particular affidavits and statutory declarations taken to be filed

(1) Despite any other provision of these rules, a person is taken to have filed an exempt affidavit or exempt statutory declaration if—

(a) the person electronically submits to the registrar the prescribed information for the affidavit or statutory declaration; and

(b) the registrar acknowledges receipt of the required information.

(2) The person must—

(a) retain or cause to be retained, until 7 years from the date of filing, the original exempt affidavit or exempt statutory declaration; and

(b) produce the original affidavit or statutory declaration if required to do so by the court.

(3) For this rule, an affidavit is an ***exempt affidavit*** if the affidavit is approved, or is of a class of affidavits approved, by the principal registrar of the court for the proceeding to which the affidavit or class of affidavits relates.

(4) For this rule, a statutory declaration is an ***exempt statutory declaration*** if the statutory declaration is approved, or is of a class of statutory declarations approved, by the principal registrar of the court for the proceeding to which the statutory declaration or class of statutory declarations relates.

(5) In this rule—

prescribed information means—

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(a) for an affidavit or class of affidavits—information prescribed, for the purpose of this rule, under an approval mentioned in subrule (3), for the affidavit or class of affidavits; or

(b) for a statutory declaration or class of statutory declarations—information prescribed, for the purpose of this rule, under an approval mentioned in subrule (4), for the statutory declaration or class of statutory declarations.

975E Approvals of principal registrar

(1) This rule applies to an approval mentioned in rules 967(3), 975C(1) and (2)(b) and 975D(3) and (4).

(2) The approval may be given on conditions.

(3) The approval must be published on the Queensland Courts website.

(4) However, failure to comply with subrule (3) does not affect the validity of the approval.

Division 5 Retention of particular documents under Oaths Act 1867

975F Minimum period for retention of original physical version—Oaths Act 1867, s 31Y

(1) This rule applies in relation to an affidavit or a statutory declaration that—

(a) is a document to which the *Oaths Act 1867*, section 31Y applies; and

(b) is made using an original physical version.

(2) For the *Oaths Act 1867*, section 31Y(3), the minimum period for which the original physical version is to be kept is 7 years from the day the affidavit or statutory declaration is filed or admitted into evidence in a proceeding.

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(3) In this rule—

original physical version, of an affidavit or a statutory declaration, has the meaning given by the *Oaths Act 1867*, section 31B.

Division 6 Inspection and copying of filed documents

975G Definition for division

In this division—

document filed in a proceeding—

(a) means a document filed, under these rules or an order of the court, in a proceeding; but

(b) does not include a document that is an exhibit tendered in a proceeding.

Note—

See chapter 11, part 9 in relation to access to exhibits tendered in a proceeding.

975H Inspection and copying of documents filed in proceedings

(1) Subject to subrules (2) and (4), any person may, under this rule, inspect any document filed in a proceeding.

(2) A person who is not a party to a proceeding may not inspect any of the following documents filed in the proceeding—

(a) an originating process, if none of the following have been filed in the proceeding—

(i) a notice of intention to defend;

(ii) a notice of address for service;

(iii) an application for an order under rule 16;

(b) an affidavit;

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(c) an exhibit to an affidavit;

(d) a witness statement or summary;

(e) a document produced as directed by a subpoena;

(f) an expert report;

(g) a written submission, outline of argument or chronology.

(3) However, subrule (2) does not apply in relation to a document that—

(a) has been read or relied on in open court; or

(b) has been relied on in an application decided without a hearing.

(4) No person may inspect a document filed in a proceeding if—

(a) the court has ordered that the document be confidential or that access to the document be restricted; or

(b) publication of the document is otherwise restricted.

(5) A person may make a request to inspect or obtain a copy of a document filed in a proceeding only if—

(a) the person is entitled under subrule (1) to inspect the document; or

(b) the court has made an order under rule 975I permitting the person to inspect the document.

(6) A request under subrule (5) must—

(a) be in the approved form; and

(b) be accompanied by the prescribed fee, if—

(i) the request is made by a person who is not a party to the proceeding; or

(ii) for a request made by a party to the proceeding—the request is for a copy of a document.

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(7) A copy of a document provided under this rule must have the words 'copy' or 'certified copy', as the case may be, marked on it in the way the registrar decides.

975I Application for order permitting inspection of particular documents filed in proceedings

(1) A person may apply to the court for an order permitting the person to inspect a document filed in a proceeding that the person is not otherwise entitled to inspect under rule 975H.

(2) The application must—

(a) identify the document the subject of the application; and

(b) be filed in the proceeding in which the document was filed; and

(c) be supported by an affidavit stating—

(i) the reason the order is sought; and

(ii) the use the applicant intends to make of the document, including whether the applicant intends to publish or otherwise communicate the document or its subject matter.

(3) Also, unless the court orders otherwise, the application and the supporting affidavit must be served on—

(a) either—

(i) if the applicant is a party to the proceeding in which the document was filed—each other party to the proceeding; or

(ii) if the applicant is not a party to the proceeding in which the document was filed—each party to the proceeding; and

(b) any other person the applicant has reasonable grounds to believe would be directly affected by the order sought.

(4) The court may make the orders and give the directions it considers appropriate in relation to the document, including, for example, an order imposing a condition restricting the

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nature and extent of any publication or other use of the document or its subject matter.

(5) In deciding whether to make an order under subrule (4), the court may have regard to the following matters—

(a) whether inspection of the document may help the applicant provide a fair and accurate report of the proceeding;

(b) whether access to the document enables the business of the court to be seen to be conducted in open court;

(c) whether access to the document is otherwise in, or contrary to, the public interest or the interests of justice.

(6) Unless the court orders otherwise, an order made under this rule permitting the document to be inspected is stayed until any prescribed fee for the inspection is paid.

Part 2 Registry

976 Office hours

(1) The registry must be open between 8.30a.m. and 4.30p.m. on each day other than a Saturday, Sunday or court holiday.

(2) However, the court or the registrar may direct that the registry is to be opened or closed at other times.

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

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(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 Issue of documents

(1) Each document issued by the court, other than an electronically issued document, must be signed by the appropriate officer for the court and stamped with the court seal.

(2) If a document to be stamped with the court seal has 2 or more pages, only 1 page of the document is required to be stamped.

978A Issuing documents electronically

(1) Unless otherwise stated in these rules, a document issued under these rules may be issued electronically.

(2) The electronically issued document must include an image of the seal of the court.

(3) The electronically issued document is valid even if it does not include a signature.

(4) A paper copy of an electronically issued document is taken for all purposes, including, for example, service, to be—

(a) a copy of the electronically issued document; and

(b) stamped with the court's seal.

979 Issue of commissions

If an Act or these rules require the court to issue a commission, the registrar must issue the commission.

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

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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 1988* (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 1988* (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.

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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

(c) in which final relief has been granted if—

(i) 3 months have passed since final relief was granted and no notice of appeal has been filed under rule 746 starting an appeal, or applying for a new trial, in relation to the proceeding; or

(ii) an appeal, or application for a new trial, under rule 746 in relation to the proceeding has been decided and—

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(A) 3 months have passed since the decision and no application for special leave to appeal to the High Court from the decision has been filed; or

(B) an application for special leave to appeal to the High Court from the decision has been decided other than by the grant of special leave and 3 months have passed since the High Court's decision; or

(C) 1 month has passed since an appeal to the High Court in relation to the proceeding has been decided, other than by granting a new trial or remitting the proceeding to another court for final determination.

Part 3 Solicitors

985 Solicitor's act

(1) Every act required or permitted to be done by a party in the conduct of a proceeding in a court may be done by the party's solicitor.

(2) However, subrule (1) does not apply to a document that must be signed by a party.

Examples for subrule (2)—

1 answers to interrogatories

2 an affidavit

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

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(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.

(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

(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 newly appointed solicitor serves the notice of change of solicitor on the former solicitor.

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(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.

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—

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(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.

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(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.

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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, Cross-Border Insolvency Act 2008 (Cwlth) or ASIC Act

995 Rules for proceedings under Corporations Act, Cross-Border Insolvency Act 2008 (Cwlth) or ASIC Act

The rules in schedule 1A apply to a proceeding in the Supreme Court under the Corporations Act, the *Cross-Border Insolvency Act 2008* (Cwlth) or the ASIC Act, and are intended to apply in harmony with similar rules in the Federal Court and other Australian courts.

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Chapter 24 Transitional provisions

Part 1 Provision for Uniform Civil Procedure Amendment Rule (No. 1) 2004

996 Transitional provision

(1) Unless the court otherwise orders, chapter 11, part 5, as inserted by the Uniform Civil Procedure Amendment Rule (No. 1) 2004, section 7, applies to an existing proceeding, 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.

Part 2 Provision for Uniform Civil Procedure Amendment Rule (No. 1) 2005

997 Transitional provision

(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—

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existing work means work done, before the commencement of this rule, for or in a proceeding.

Part 3 Provision for Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Regulation (No. 1) 2009

998 Proceeding for claim started

(1) This rule applies if, before the commencement, a person started a proceeding for a claim, minor claim or minor debt claim and the proceeding has not been completed before the commencement.

(2) Subject to the QCAT Act, section 268(4), the court must hear, or continue to hear, and decide the proceeding under the pre-amended rules as if the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Regulation (No. 1) 2009* had not been made.

(3) In this rule—

commencement means the commencement of this rule.

minor claim means a claim for an amount, including interest, of not more than $7,500, whether as a balance or after an admitted set-off, reduction by any amount paid by or credited to the defendant, abandonment of any excess, or otherwise.

minor debt claim means a minor debt claim as defined under the Act, as in force immediately before 1 December 2009.

pre-amended rules means these rules as in force before the commencement.

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Part 4 Provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010

999 Transitional provision

Schedule 3, as amended by the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010*, applies only to proceedings commenced after the commencement of this rule.

Part 5 Provision for Uniform Civil Procedure (Fees) and Other Legislation Amendment Regulation (No. 1) 2011

1000 Transitional provision

Rule 971, as in force immediately before the commencement of this rule, continues to apply to proceedings started before the commencement of this rule.

Part 6 Provision for Uniform Civil Procedure Amendment Rule (No. 1) 2011

1001 Transitional provision

(1) Chapter 15, part 10, as in force immediately before the commencement, continues to apply to a proceeding under that part started but not completed before the commencement.

(2) In this rule—

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commencement means the commencement of this rule.

Part 7 Transitional provision for Uniform Civil Procedure Rules and Other Legislation Amendment and Repeal Regulation (No. 1) 2018

1002 Existing service providers

(1) This rule applies in relation to an entity that was approved as a service provider for a court immediately before the commencement.

(2) The entity is taken to have been approved as a service provider by the principal registrar of the court under rule 959B.

Part 8 Transitional provision for Uniform Civil Procedure (Offers to Settle) Amendment Rule 2023

1003 Costs in relation to offers to settle

(1) Rules 360 and 361, as in force immediately before the commencement, continue to apply in relation to an offer made before the commencement as if the *Uniform Civil Procedure (Offers to Settle) Amendment Rule 2023* had not commenced.

(2) Rules 360, 361 and 361A, as in force from the commencement, apply only in relation to an offer made after the commencement.

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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—

(a) 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; and

(b) part 15A applies to a proceeding in the court under the *Cross-Border Insolvency Act 2008* (Cwlth).

(2) The other rules of the court apply, to the extent they are relevant and not inconsistent with these rules—

(a) 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; and

(b) to a proceeding in the court under the *Cross-Border Insolvency Act 2008* (Cwlth).

(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

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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.

1.4 Expressions used in Corporations Act

(1) 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.

Note—

Expressions used in these rules (including the notes to these rules) that are defined in the Corporations Act include—

ABN (short for 'Australian Business Number')—see section 9

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

foreign company—see section 9

Part 5.1 body—see section 9

Part 5.7 body—see section 9

register—see section 9

registered liquidator—section 9

registered office—see section 9

statutory demand—see section 9.

(2) An expression used in these rules and in the Insolvency Practice Schedule (Corporations) has the same meaning in these rules as it has in that schedule.

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Note—

Definitions of expressions used in the Insolvency Practice Schedule (Corporations) are set out in part 1, division 5 of that schedule.

1.5 Definitions for these rules

(1) In these rules—

applicant means a person claiming relief in a proceeding.

Insolvency Practice Schedule (Corporations) means the Corporations Act, schedule 2.

Model Law means the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law, the English text of which is set out in the *Cross-Border Insolvency Act 2008* (Cwlth), schedule 1, with the modifications set out in part 2 of that Act.

respondent means a person against whom relief is claimed.

the court means the Supreme Court of Queensland.

(2) A reference in these rules to the *Cross-Border Insolvency Act 2008* (Cwlth) includes a reference to the Model Law.

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.

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.

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(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.

(3) This rule does not limit the *Acts Interpretation Act 1954*, section 48A.

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.

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(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.

(5) Subject to subrules (1) to (4), the *Acts Interpretation Act 1954*, section 38 applies in relation to these rules.

1.10 Extension and abridgement 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, and whether interlocutory relief or final relief is claimed—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.

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(3) An originating application must—

(a) be in form 2; and

(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

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ASIC, in relation to the company that is the subject of the 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.

2.4A Application for order setting aside statutory demand (Corporations Act, s 459G)

(1) This rule applies, and rule 2.4(2) does not apply, to an originating application by a company under the Corporations Act, section 459G for an order setting aside a statutory demand served on the company.

(2) The applicant may file with the originating application seeking the order a copy of the statutory demand and a copy of any affidavit that accompanied the statutory demand.

(3) The applicant must—

(a) no earlier than 7 days before the originating application is filed, and not later than the day before the hearing of the application, carry out a search of the records maintained by ASIC in relation to the applicant; and

(b) either—

(i) annex the record of the search to the affidavit in support of the originating application; or

(ii) file the record of the search before, or tender it on, the hearing of the application.

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

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(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 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.

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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 480	application for the release of a liquidator of a company and the deregistration of the company
section 482(1)	application for the stay of a compulsory winding up
section 509(2)	application for the deregistration of a company
section 601AH(2)	application to reinstate the registration of a company
section 601CC(8)	application to restore the name of an Australian body to the register
section 601CL(9)	application to restore the name of a foreign company to the register
chapter 6, 6A, 6B, 6C, 6D or 7	any application under these chapters
section 1317S(2), (4) and (5)	application for relief from liability for contravention of a civil penalty provision

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Column 1 Provision	Column 2 Description of application
Insolvency Practice Schedule (Corporations), section 45-1(3)	application for an order under the Insolvency Practice Schedule (Corporations), section 45-1(1) in relation to a registered liquidator
Insolvency Practice Schedule (Corporations), section 90-10(1)	application for an inquiry into the external administration of a company
Insolvency Practice Schedule (Corporations), section 90-20	application for an order under the Insolvency Practice Schedule (Corporations), section 90-15 in relation to the external administration of a company

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 person opposes the application required by the Corporations Act, section 465C.

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(3) The period prescribed for filing and serving the notice and affidavit required by the Corporations Act, section 465C is the period mentioned in subrule (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.

2.12 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.

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2.13 Leave to creditor, contributory, officer or interested person 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; or

(c) any other interested person;

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.

(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.

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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 5.6.11 to 5.6.36A of the Corporations Regulations apply to meetings ordered by the court.

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), 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

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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

(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 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) as if—

(i) the holders were a separate class of members; and

(ii) the meeting were a meeting of members convened, held and conducted under subrule (2); but

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(b) in accordance with, and subject to, the applicable provisions of the instrument under which the securities were issued.

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), 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—

(a) for an application in relation to 1 Part 5.1 body—in a daily newspaper circulating generally in the State where the Part 5.1 body has its principal, or last known, place of business; or

(b) for an application in relation to 2 or more Part 5.1 bodies—in a daily newspaper circulating generally in each State where any of the Part 5.1 bodies has its principal, or last known, place of business.

(3) The notice must be—

(a) in form 6; and

(b) published 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—

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(a) have the order sealed; and

(b) lodge an office copy of the order with ASIC; and

(c) serve an office copy of the order on any person appointed to administer the compromise or arrangement.

Part 4 Process for seeking inquiry or order in relation to controller, registered liquidator or external administration

4.1 Inquiry into conduct of controller (Corporations Act, s 423)

(1) A complaint to the court under Corporations Act, section 423(1)(b) 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.

(2) The complaint may be made by a person mentioned in rule 11.2(1)(a), (b), (c) or (d).

4.2 Order or inquiry in relation to registered liquidator or external administration of company

(1) This rule applies to an application to the court—

(a) under the Insolvency Practice Schedule (Corporations), section 45-1 for an order in relation to a registered liquidator; or

(b) under the Insolvency Practice Schedule (Corporations), section 90-10 for an inquiry into the external administration of a company; or

(c) under the Insolvency Practice Schedule (Corporations), section 90-20 for an order in relation to the external administration of a company.

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(2) The application must be made—

(a) in the case of a winding up by the court—by an interlocutory application seeking the inquiry or order; or

(b) in any other case—by an originating application seeking the inquiry or order.

Note—

An application for an order or inquiry in relation to the external administration of a company ordered to be wound up by a court is normally made to the court that made the winding up order.

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;

(b) an application under the Corporations Act, part 5.4 or 5.4A.

5.2 Affidavit accompanying statutory demand (Corporations Act, s 459E(3))—form 7

For the purposes of the Corporations Act, section 459E(3), 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.

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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

(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), 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.

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(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), the consent of a registered 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 a registered liquidator who would be entitled to be appointed as liquidator of the company; and

(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) If a person applies for a company to be wound up other than under the Corporations Act, section 459P, 462 or 464, the person must, unless the court otherwise orders, cause a notice of the application to be published in a daily newspaper circulating generally in the State where the company has its principal, or last known, place of business.

Note—

If a person applies under the Corporations Act, section 459P, 462 or 464 for a company to be wound up, the person must cause a notice, setting out the information prescribed by the Corporations Regulations, regulation 5.4.01A to be published in the way provided by the Corporations Act, section 1367A and the Corporations Regulations, regulation 5.6.75. See the Corporations Act, section 465A(1).

(2) The notice must be in form 9.

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(3) A notice under subrule (1), or under the Corporations Act, section 465A(1)(c), of an application for a company to be wound up must be published—

(a) at least 3 days after the originating application is served on the company; and

(b) at least 7 days before the date fixed for the 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

(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, the court may also order that the substituted applicant or applicants publish a notice stating that the

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substituted applicant or applicants intend to apply for an order that the company be wound up.

(2) The notice must be in form 10.

(3) Unless otherwise directed by the court, the notice must be published—

(a) at least 7 days before the date fixed for the hearing of the application; and

(b) in a daily newspaper circulating generally in the State where the company has its principal, or last known, place of business.

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 a registered 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) If the winding up order results from an application other than an application under the Corporations Act, section 459P, 462 or 464, the liquidator must cause a notice of the winding up order and the liquidator's appointment to be published in a daily newspaper circulating generally in the State where the company has its principal, or last known, place of business.

Note—

If the winding up order results from an application under the Corporations Act, section 459P, 462 or 464, the liquidator must cause a notice, setting out the information prescribed by the Corporations Regulations, regulation 5.4.01B to be published in the way provided by the Corporations Act, section 1367A and the Corporations Regulations, regulation 5.6.75. See the Corporations Act, section 465A(2).

(4) The notice must be in form 11.

(5) A notice under subrule (3), or under the Corporations Act, section 465A(2), of a winding up order must be published as soon as practicable after the liquidator is informed of the appointment.

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(6) In this rule—

liquidator does not include a provisional liquidator.

Part 6 Provisional liquidators (Corporations Act, part 5.4B)

Note—

See also rule 7.3 in relation to the requirement to report to a provisional liquidator as to the affairs of a company.

6.1 Appointment of provisional liquidator (Corporations Act, s 472)—form 8

(1) An application for a registered liquidator to be appointed under the Corporations Act, section 472(2) as a provisional liquidator of a company must be accompanied by the written consent of the registered liquidator.

(2) The consent must be in form 8.

(3) Subrule (4) applies if—

(a) an order is made appointing a provisional liquidator; and

(b) the order provides that the provisional liquidator may take into the provisional liquidator's custody part only of the property of the company.

(4) The order must include a short description of the part of the property of the company that the provisional liquidator may take into custody.

6.2 Notice of appointment of provisional liquidator—form 12

(1) This rule applies if the court orders that a registered liquidator be appointed as provisional liquidator of a company.

(2) Not later than the day after the order is made, the applicant must—

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(a) except if the applicant is ASIC—lodge an office copy of the order with ASIC; and

(b) serve an office copy of the order on the company (except if the applicant is the company) and on any other person as directed by the court; and

(c) give to the provisional liquidator an office copy of the order and a written statement that the order has been served as required by paragraph (b).

(3) If the order results from an application other than an application under the Corporations Act, section 459P, 462 or 464, the provisional liquidator must cause a notice of the provisional liquidator's appointment to be published in a daily newspaper circulating generally in the State where the company has its principal, or last known, place of business.

Note—

If the order results from an application under the Corporations Act, section 459P, 462 or 464, the provisional liquidator must cause a notice, setting out the information prescribed by the Corporations Regulations, regulation 5.4.01B to be published in the way provided by the Corporations Act, section 1367A and the Corporations Regulations, regulation 5.6.75. See the Corporations Act, section 465A(2).

(4) The notice must be in form 12.

(5) A notice under subrule (3), or under the Corporations Act, section 465A(2), of a provisional liquidator's appointment must be published as soon as practicable after the order is made.

Part 7 Liquidators

7.2 Vacancy in office of liquidator (Corporations Act, ss 473A and 499(3) and Insolvency Practice Schedule (Corporations), s 90-15)

If, for any reason, there is no liquidator of a company under external administration, the court may appoint a registered liquidator whose written consent in form 8 has been filed.

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Note—

Under the Insolvency Practice Schedule (Corporations), section 90-15(2), the court may make the appointment—

(a) on its own initiative, during a proceeding before the court; or

(b) on application under the Insolvency Practice Schedule (Corporations), section 90-20.

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 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) Unless the court otherwise orders, a report filed by a liquidator under the Corporations Act, section 475(7) is not available for inspection by any person.

Note—

A report filed by a liquidator under the Corporations Act, section 475(7) may include commercial-in-confidence information that may not be inspected. See the Corporations Act, section 1274(4G).

(5) 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

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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

(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).

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;

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(d) whether the committee of inspection (if any) has passed a resolution approving the liquidator's release;

(e) whether ASIC has caused books in relation to the company to be audited under the Insolvency Practice Schedule (Corporations), section 70-15;

(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;

(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)—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].'; and

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(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.

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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), 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), 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 court (Corporations Act, s 488(2))—form 15

(1) The affidavit in support of an application for special leave to distribute a surplus in relation to a company 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.

(2) At least 14 days before the date fixed for the hearing of the application, the liquidator must publish a notice of the application in a daily newspaper circulating generally in the State where the company has its principal, or last known, place of business.

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(3) The notice must be in form 15.

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 in respect of the matters mentioned in the Corporations Act, section 488(1) 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 Appointment of reviewing liquidator (Insolvency Practice Schedule (Corporations), s 90-23(8))

(1) An application to the court under the Insolvency Practice Schedule (Corporations), section 90-23(8) to appoint a registered liquidator to carry out a review into a matter relating to the external administration of a company must be made—

(a) in the case of a winding up by the court—by filing an interlocutory application seeking the relevant orders; or

(b) in the case of a voluntary winding up—by filing an originating application seeking the relevant orders.

(2) The application must be accompanied by the written declaration made by the proposed reviewing liquidator under the *Insolvency Practice Rules (Corporations) 2016* (Cwlth), section 90-18.

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Part 8 Special managers (Corporations Act, part 5.4B)

8.1 Application for appointment of special manager (Corporations Act, s 484)

(1) An application by a liquidator for the appointment of a special manager in relation to a company must state the powers that, in the liquidator's opinion, should be entrusted by the court to the special manager.

(2) The supporting affidavit must state—

(a) the circumstances making it proper that a special manager be appointed; and

(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—

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(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.

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) fixing the receiver's remuneration.

Note—

1 Under the Corporations Act, section 425(2)(b), the court may exercise its power to make an order fixing the remuneration of a receiver appointed under an instrument even if the receiver has died, or has ceased to act, before the making of the order or the application for the order.

2 The amendment to the Corporations Act, section 425 made by the *Corporations Amendment (Insolvency) Act 2007* applies in relation to a receiver appointed on or after 31 December 2007—see the Corporations Act, section 1480(5).

(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;

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(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.

(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.

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(6) An affidavit in support of the originating application, or interlocutory application, seeking the order must—

(a) include evidence of the matters mentioned in the Corporations Act, section 425(8); and

(b) state the nature of the work performed or likely to be performed by the receiver; and

(c) state the amount of remuneration claimed; and

(d) include a summary of the receipts taken and payments made by the receiver; and

(e) state particulars of any objection of which the receiver has received notice; and

(f) if the receivership is continuing—give details of any matters delaying the completion of the receivership.

9.2 Determination of remuneration of external administrator (Insolvency Practice Schedule (Corporations), s 60-10(1)(c) and (2)(b))—form 16

(1) This rule applies in relation to an application for a determination under the Insolvency Practice Schedule (Corporations), section 60-10(1)(c) or (2)(b) specifying remuneration that an external administrator of a company is entitled to receive for necessary work properly performed by the external administrator in relation to the external administration.

Note—

The Insolvency Practice Schedule (Corporations), section 60-10 does not apply in relation to the remuneration of a provisional liquidator or a liquidator appointed by ASIC under the Corporations Act, section 489EC. See the Insolvency Practice Schedule (Corporations), section 60-2.

(2) At least 21 days before filing an originating application, or interlocutory application, seeking the determination, the external administrator must serve a notice in form 16 of the external administrator's intention to apply for the determination, and a copy of any affidavit on which the external administrator intends to rely, on the following persons—

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(a) each creditor who was present, in person or by proxy, at any meeting of creditors;

(b) each member of any committee of inspection;

(c) if there is no committee of inspection, and no meeting of creditors has been convened and held—each of the 5 largest (measured by amount of debt) creditors of the company;

(d) each member of the company whose shareholding represents at least 10% of the issued capital of the company.

(3) Within 21 days after the last service of the documents mentioned in subrule (2), any creditor or contributory may give the external administrator a notice of objection to the remuneration claimed, stating the grounds of objection.

(4) If the external administrator does not receive a notice of objection within the period mentioned in subrule (3)—

(a) the external administrator may file an affidavit, made after the end of that period, in support of the originating application, or interlocutory application, seeking the determination stating—

(i) the date, or dates, when the notice and affidavit required to be served under subrule (2) were served; and

(ii) that the external administrator has not received any notice of objection to the remuneration claimed within the period mentioned in subrule (3); and

(b) the external 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 external administrator; and

(c) the application may be so dealt with.

(5) If the external administrator receives a notice of objection within the period mentioned in subrule (3), the external administrator must serve a copy of the originating application, or interlocutory application, seeking the determination on

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each creditor or contributory who has given a notice of objection.

(6) An affidavit in support of the originating application, or interlocutory application, seeking the determination must—

(a) include evidence of the matters mentioned in the Insolvency Practice Schedule (Corporations), section 60-12; and

(b) state the nature of the work performed or likely to be performed by the external administrator; and

(c) state the amount of remuneration claimed; and

(d) include a summary of the receipts taken and payments made by the external administrator; and

(e) state particulars of any objection of which the external administrator has received notice; and

(f) if the external administration is continuing—give details of any matters delaying the completion of the external administration.

9.2A Review of remuneration determination for external administrator (Insolvency Practice Schedule (Corporations), s 60-11(1))

(1) This rule applies in relation to an application under the Insolvency Practice Schedule (Corporations), section 60-11(1) for a review of a remuneration determination for an external administrator of a company.

Notes—

1 The Insolvency Practice Schedule (Corporations), section 60-11 does not apply in relation to the remuneration of a provisional liquidator or a liquidator appointed by ASIC under the Corporations Act, section 489EC. See the Insolvency Practice Schedule (Corporations), section 60-2.

2 An application may not be made under the Insolvency Practice Schedule (Corporations), section 60-11(1) for a review of a remuneration determination made by the court under section 60-10(1)(c) or (2)(b) of that schedule. See the Insolvency Practice Schedule (Corporations), section 60-11(5).

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(2) At least 21 days before filing the originating application, or the interlocutory application, applying for a review, the applicant must serve a notice, in form 16A, of intention to apply for the review and a copy of any affidavit on which the applicant intends to rely (other than an affidavit required under subrule (7)) on the following persons—

(a) if there is a committee of inspection—each member of the committee;

(b) if the remuneration of the external administrator was determined by the creditors—each creditor who was present, in person or by proxy, at the meeting of creditors at which the remuneration was determined;

(c) each member of the company whose shareholding represents at least 10% of the issued capital of the company.

(3) Within 21 days after the last service of the documents mentioned in subrule (2), any person on whom the notice has been served may serve on the applicant a notice—

(a) stating the person's intention to appear at the hearing of the application for review; and

(b) setting out the issues the person seeks to raise before the court.

(4) A person mentioned in subrule (2) is entitled to be heard on the application for review, but only (unless the court otherwise orders) if the person has served on the applicant a notice under subrule (3).

(5) If the applicant is served with a notice under subrule (3), the applicant must serve a copy of the originating application, or interlocutory application, applying for the review on each person who has served a notice under subrule (3).

(6) The external administrator must file an affidavit stating the following matters—

(a) the matters mentioned in the Insolvency Practice Schedule (Corporations), section 60-12;

(b) the nature of the work performed or likely to be performed by the external administrator;

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(c) the amount of remuneration claimed by the external administrator if that amount is different from the amount of remuneration that has been determined;

(d) a summary of the receipts taken and payments made by the external administrator;

(e) particulars of any objection to the remuneration as determined, of which the external administrator has received notice;

(f) if the external administration is continuing—details of any matters delaying the completion of the external administration.

(7) The applicant must—

(a) file an affidavit stating whether any notices under subrule (3) have been served; and

(b) annex or exhibit to the affidavit a copy of any notice served under subrule (3).

9.3 Remuneration of provisional liquidator (Insolvency Practice Schedule (Corporations), s 60-16)—form 16

(1) This rule applies in relation to an application by a provisional liquidator of a company for a determination under the Insolvency Practice Schedule (Corporations), section 60-16(1) of the remuneration the provisional liquidator is entitled to receive.

(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 determination, the provisional liquidator must serve a notice in form 16 of the provisional liquidator's intention to apply for the determination, 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;

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(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 determination stating—

(i) the date, or dates, when the notice and affidavit required to be served under subrule (3) were served; and

(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 determination—

(a) on each creditor or contributory who has given a notice of objection; and

(b) on the liquidator (if any).

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(7) An affidavit in support of the interlocutory application seeking the determination must—

(a) state the nature of the work performed or likely to be performed 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; and

(d) state particulars of any objection of which the provisional liquidator has received notice; and

(e) 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.

(8) The affidavit must also provide evidence of the matters mentioned in the Insolvency Practice Schedule (Corporations), section 60-12—

(a) to the extent that they may be relevant to a provisional liquidator; and

(b) as if references in that section to 'external administrator' were references to 'provisional liquidator'.

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) fixing the special manager's remuneration.

(2) The application must be made by interlocutory application in the winding up proceeding.

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(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

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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 performed or likely to be performed 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; and

(d) state particulars of any objection of which the special manager has received notice; and

(e) 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) 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 determining a method for working out, the value of the debt or claim.

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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), 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 Inquiries, examinations, investigations, and orders against person concerned with corporation

11.1 Definition for pt 11

In this part—

examination summons means a summons under the Corporations Act, section 596A or 596B for the examination of a person about a corporation's examinable affairs.

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11.2 Inquiries, examinations and investigations under Corporations Act, s 411(9)(b) or 423(3) or Insolvency Practice Schedule (Corporations), div 90, sdiv B

(1) An application for an order for an examination or investigation under the Corporations Act, section 423(3) in relation to a controller of property of a corporation may be made by any of the following—

(a) a person with a financial interest in the administration of the corporation;

(b) an officer of the corporation;

(c) if the committee of inspection (if any) so resolves—a creditor, on behalf of the committee;

(d) ASIC.

Note—

An application—

(a) under the Corporations Act, section 411(9)(b) for an inquiry into the administration of a compromise or arrangement or an examination or investigation in connection with an inquiry of that type; or

(b) under the Insolvency Practice Schedule (Corporations), division 90, subdivision B for an inquiry into the external administration of a company or an examination or investigation in connection with an inquiry of that type;

may be made by a person mentioned in the Insolvency Practice Schedule (Corporations), section 90-10(2). See the Corporations Act, section 411(9)(b) and the Insolvency Practice Schedule (Corporations), section 90-10(1).

(2) The following applications may be made without notice to any person—

(a) an application under the Corporations Act, section 411(9)(b) for an inquiry into the administration of a compromise or arrangement or an examination or investigation in connection with an inquiry of that type;

(b) an application for an order for an examination or investigation under the Corporations Act, section 423(3);

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(c) an application under the Insolvency Practice Schedule (Corporations), division 90, subdivision B for an inquiry into the external administration of a company or an examination or investigation in connection with an inquiry of that type.

(3) The provisions of this part that apply to an examination under the Corporations Act, part 5.9, division 1 apply, with any necessary adaptations, to an inquiry, examination or investigation under the Corporations Act, section 411(9)(b) or 423(3) or the Insolvency Practice Schedule (Corporations), division 90, subdivision B.

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 without notice to any person.

(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) If the application and supporting affidavit are filed (other than by lodgement by electronic or computer-based means), the 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'; or

(b) 'Application and supporting affidavit for issue of summons for examination under the Corporations Act, section 596B'.

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(5) If the application and supporting affidavit are lodged by electronic or computer-based means, the application and supporting affidavit—

(a) must be marked 'Confidential'; and

(b) must be accompanied by a statement that the application and supporting affidavit are, as appropriate—

(i) 'Application and supporting affidavit for issue of summons for examination under the Corporations Act, section 596A'; or

(ii) 'Application and supporting affidavit for issue of summons for examination under the Corporations Act, section 596B'.

(6) 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.

(7) 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.

(8) Unless the court otherwise orders, an affidavit in support of an application for an examination summons is not available for inspection by any person.

(9) An examination summons must 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.

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(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.

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), 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.

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11.8 Inspection of record or transcript of examination or investigation under Corporations Act, s 411 or 423 or Insolvency Practice Schedule (Corporations), div 90, sdiv B

(1) A written record or transcript of an examination or investigation under the Corporations Act, section 411 or 423 or the Insolvency Practice Schedule (Corporations), division 90, subdivision B 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.

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 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

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(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

(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.

(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

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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.

Part 11A Warrants (Corporations Act, section 486B and part 5.4B, division 3, subdivision B)

11A.1 Arrest of person (Corporations Act, s 486B)—form 17A

(1) An application for the issue of a warrant under the Corporations Act, section 486B(1) for the arrest of a person must state the grounds for the issue of the warrant.

(2) The application must be accompanied by an affidavit stating the facts in support of the application.

(3) The warrant must be in form 17A.

(4) If a person is arrested under the warrant, the person who carried out the arrest must immediately give notice of the arrest to a registrar in the registry from which the warrant was issued.

Note—

The Corporations Act, sections 489A to 489E, inserted by the *Corporations (Amendment) Insolvency Act 2007*, apply in relation to a warrant issued on or after 31 December 2007—see the Corporations Act, section 1481(3).

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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, 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 applies, with necessary changes, to the reference to the court under the Corporations Act, section 659A of a question of law arising in a proceeding before the takeovers panel.

12.1B Notification to court if proceeding is commenced before end of takeover bid period (Corporations Act, s 659B)

(1) This rule applies to a party to a proceeding who suspects or becomes aware that—

(a) the proceeding was commenced in relation to a takeover bid, or proposed takeover bid, before the end of the bid period; and

(b) the proceeding falls within the definition *court proceedings in relation to a takeover bid or proposed takeover bid* in the Corporations Act, section 659B(4).

(2) The party must, immediately on suspecting or becoming aware of the matters mentioned in subrule (1), notify any

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other party to the proceeding and the court of that suspicion or knowledge.

(3) The party must comply with subrule (2), unless any other party to the proceeding has given a notice under this rule to the party.

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) must be made by filing an originating application or an interlocutory application.

(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 must be in form 18.

12.3 Application for orders relating to refusal to register transfer or transmission of securities (Corporations Act, s 1071F)

As soon as practicable after filing an originating application under the Corporations Act, section 1071F, 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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Part 14 Appeals authorised by Corporations Act

14.1 Appeals against acts, omissions or decisions

(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—

(a) stating the basis on which the act, omission or decision was done or made; and

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(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 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.

15.3 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) must be made by filing an originating application seeking an inquiry and orders under the relevant subsection.

Part 15A Proceedings under Cross-Border Insolvency Act 2008 (Cwlth)

15A.1 Application of part and other rules of the court

Unless the court otherwise orders—

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(a) this part applies to a proceeding in the court under the *Cross-Border Insolvency Act 2008* (Cwlth) involving a debtor other than an individual; and

(b) the rules in the other parts of these rules, and the other rules of the court, apply to a proceeding in the court under the *Cross-Border Insolvency Act 2008* (Cwlth) if they are relevant and not inconsistent with this part.

Note—

See rule 1.5(2) in relation to a reference in these rules to the *Cross-Border Insolvency Act 2008* (Cwlth).

15A.2 Expressions used in Cross-Border Insolvency Act 2008 (Cwlth)

(1) An expression used in this part and in the *Cross-Border Insolvency Act 2008* (Cwlth), whether or not a particular meaning is given to the expression in that Act, has the same meaning in this part as it has in that Act.

Note—

The following expressions used in this part (including in the notes to this part) are defined in the Model Law as having the following meanings—

establishment means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services.

foreign court means a judicial or other authority competent to control or supervise a foreign proceeding.

foreign main proceeding means a foreign proceeding taking place in the State where the debtor has the centre of its main interests.

foreign non-main proceeding means a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment within the meaning of subparagraph (f) of the present article.

foreign proceeding means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

foreign representative means a person or body, including one appointed on an interim basis, authorized in a foreign proceeding to

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administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding.

(2) This part is to be interpreted in a way that gives effect to the *Cross-Border Insolvency Act 2008* (Cwlth).

15A.3 Application for recognition

(1) An application by a foreign representative for recognition of a foreign proceeding under the Model Law, article 15 must be made by filing an originating application in form 2.

(2) The originating application must—

(a) be accompanied by the statements mentioned in the Model Law, article 15 and in the *Cross-Border Insolvency Act 2008* (Cwlth), section 13; and

(b) name the foreign representative as the applicant and the debtor as the respondent; and

(c) be accompanied by an affidavit verifying the matters mentioned in the Model Law, article 15, paragraphs 2 and 3 and in the *Cross-Border Insolvency Act 2008* (Cwlth), section 13.

(3) The applicant must serve a copy of the originating application and the other documents mentioned in subrule (2)—

(a) unless the court otherwise orders, in accordance with rule 2.7(1); and

(b) on any other persons the court may direct.

(4) A person who intends to appear before the court at the hearing of an application for recognition must file and serve the documents mentioned in rule 2.9.

15A.4 Application for provisional relief under Model Law, art 19

(1) An application by the applicant for provisional relief under the Model Law, article 19 must be made by filing an interlocutory application in form 3.

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(2) Unless the court otherwise orders, the interlocutory application and any supporting affidavit must be served in accordance with rule 2.7(2).

15A.5 Registered liquidator's consent to act

(1) This rule applies if an application is made for—

(a) an order under the Model Law, article 19 or 21 to entrust the administration or realisation of all or part of the debtor's assets to a person designated by the court (other than the foreign representative); or

(b) an order under the Model Law, article 21 to entrust the distribution of all or part of the debtor's assets to a person designated by the court (other than the foreign representative).

(2) Unless the court otherwise orders, the person must—

(a) be a registered liquidator; and

(b) have filed a consent to act, in form 19, that states an address for service for the person within Australia.

15A.6 Notice of filing of application for recognition

(1) Unless the court otherwise orders, the applicant in a proceeding mentioned in rule 15A.3 must—

(a) send a notice of the filing of the application in form 20 to each person whose claim to be a creditor of the respondent is known to the applicant; and

(b) publish a notice of the filing of the application for recognition of a foreign proceeding in form 20 in a daily newspaper circulating generally in the State where the respondent has its principal, or last known, place of business.

(2) The court may direct the applicant to publish a notice in form 20 in a daily newspaper circulating generally in any State not described in subrule (1)(b).

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15A.7 Notice of order for recognition, withdrawal etc.

(1) If the court makes an order for recognition of a foreign proceeding under the Model Law, article 17, or makes an order under the Model Law, article 19 or 21, the applicant must, as soon as practicable after the order is made, do each of the following—

(a) have the order entered;

(b) serve a copy of the entered order on the respondent;

(c) send a notice of the making of the order in form 21 to each person whose claim to be a creditor of the respondent is known to the applicant;

(d) publish a notice of the making of the order in form 21 in a daily newspaper circulating generally in the State where the respondent has its principal, or last known, place of business.

(2) The court may direct the applicant to publish the notice in form 21 in a daily newspaper circulating generally in any State not described in subrule (1)(d).

(3) If the application for recognition is withdrawn or dismissed, the applicant must, as soon as practicable, do each of the following—

(a) for a dismissal—have the order of dismissal entered;

(b) serve a copy of the entered order of dismissal or notice of the withdrawal on the respondent;

(c) send a notice of the dismissal or withdrawal in form 22 to each person whose claim to be a creditor of the respondent is known to the applicant;

(d) publish a notice of the dismissal or withdrawal in form 22 in a daily newspaper circulating generally in the State where the respondent has its principal, or last known, place of business.

(4) The court may direct the applicant to publish the notice in form 22 in a daily newspaper circulating generally in any State not described in subrule (3)(d).

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15A.8 Relief after recognition

(1) If the court has made an order for recognition of a foreign proceeding, an application by the applicant for relief under the Model Law, article 21, paragraph 1 must be made by filing an interlocutory application, and any supporting affidavit, in form 3.

(2) Unless the court otherwise orders, an interlocutory application under subrule (1) and any supporting affidavit must be served in accordance with rule 2.7(2), but on the following persons—

(a) the respondent;

(b) any person the court directed be served with the originating application by which the application for recognition was made;

(c) any other person the court directs.

(3) A person who intends to appear before the court at the hearing of an application under subrule (1) must file and serve the documents mentioned in rule 2.9.

15A.9 Application to modify or terminate order for recognition or other relief

(1) This rule applies to—

(a) an application under the Model Law, article 17, paragraph 4 for an order modifying or terminating an order for recognition of a foreign proceeding; and

(b) an application under the Model Law, article 22, paragraph 3 for an order modifying or terminating relief granted under the Model Law, article 19 or 21.

(2) An application mentioned in subrule (1) must be made by filing an interlocutory application in form 3.

(3) An interlocutory application for an application mentioned in subrule (1) and any supporting affidavit must be served on—

(a) for an application mentioned in subrule (1)(a)—the respondent and other persons who were served with, or filed a notice of appearance in relation to, the application for recognition; or

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(b) for an application mentioned in subrule (1)(b)—the respondent and other persons who were served with, or filed a notice of appearance in relation to, the application for relief under the Model Law, article 19 or 21.

(4) Unless the court otherwise orders, an applicant who applies for an order mentioned in subrule (1)(a) or (b) must—

(a) send a notice of the filing of the application in form 23 to each person whose claim to be a creditor of the respondent is known to the applicant; and

(b) publish a notice of the filing of the application in form 23 in a daily newspaper circulating generally in the State where the respondent has its principal, or last known, place of business.

(5) The court may direct the applicant to publish the notice in form 23 in a daily newspaper circulating generally in any State not described in subrule (4)(b).

(6) A person who intends to appear before the court at the hearing of an application mentioned in subrule (1)(a) or (b) must file and serve the documents mentioned in rule 2.9.

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—

(a) under a provision of the Corporations Act mentioned in schedule 1B, part 1, column 1 or a provision of these rules mentioned in schedule 1B, part 1, column 2; or

Note—

See also rule 17.1(7).

(b) under a provision of the Insolvency Practice Schedule (Corporations) mentioned in schedule 1B, part 1A,

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column 1 or a provision of these rules mentioned in schedule 1B, part 1A, column 2; or

(c) under a provision of the ASIC Act mentioned in schedule 1B, part 2, column 1 or a provision of these rules mentioned in schedule 1B, part 2, column 2.

(2) A decision, direction or act of a registrar made, given or done under these rules may be reviewed by the court.

(3) An application for the review of a decision, direction or act of a registrar made, given or done under these rules 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 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.

Part 17 Transitional provision for Uniform Civil Procedure (Corporations Proceedings) Amendment Rule 2018

17.1 Transitional provision

(1) Despite the replacement of rule 9.2 by the amendment rule, that rule, as in force immediately before 1 September 2017, continues to apply in relation to the remuneration of an

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external administrator of a company who was appointed before 1 September 2017.

(2) Despite the replacement of rule 9.2A by the amendment rule, that rule, as in force immediately before 1 September 2017, continues to apply in relation to a review of the remuneration of an external administrator of a company who was appointed before 1 September 2017.

(3) Despite the amendment of rule 9.3 by the amendment rule, that rule, as in force immediately before 1 September 2017, continues to apply in relation to the remuneration of a provisional liquidator who was appointed before 1 September 2017.

(4) Despite the repeal of rule 9.4 by the amendment rule, that rule, as in force immediately before 1 September 2017, continues to apply in relation to the remuneration of a liquidator of a company who was appointed before 1 September 2017.

(5) Despite the repeal of rule 9.4A by the amendment rule, that rule, as in force immediately before 1 September 2017, continues to apply in relation to a review of the remuneration of a liquidator of a company who was appointed before 1 September 2017.

(6) Despite the replacement of rule 11.2 by the amendment rule, that rule, as in force immediately before 1 September 2017, continues to apply in relation to an inquiry commenced by ASIC before that date under the old Corporations Act, section 536.

(7) For subrule (6), a reference to an inquiry commenced under the old Corporations Act, section 536 includes a reference to an inquiry commenced because of the extension of that section by the Corporations Act, section 411(9), as in force from time to time before the commencement, to persons appointed under the terms of a compromise or arrangement.

(8) Rule 16.1 applies as if the reference in subrule (1)(a) to a provision of the Corporations Act mentioned in schedule 1B, part 1, column 1 included a reference to the following provisions of the old Corporations Act—

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(a) section 449E;

(b) section 473(2), (3), (7) and (8);

(c) section 542(3)(a).

(9) In this rule—

amendment rule means the *Uniform Civil Procedure (Corporations Proceedings) Amendment Rule 2018*.

old Corporations Act means the Corporations Act as in force immediately before 1 September 2017.

Note—

The court may give directions if a difficulty arises, or doubt exists, in relation to the practice and procedure to be followed in a proceeding. See rule 1.8 and the Corporations Act, section 467(3).

Schedule 1B Powers of the court that may be exercised by a registrar

schedule 1A, rule 16.1

Part 1 Corporations Act or rules in sch 1A

Column 1 Provision of the Corporations Act	Column 2 Provision of the rules in schedule 1A	Column 3 Description (for information only)
	rule 1.8	power to give directions
	rule 2.8	power to order that notice of certain applications need not be given to ASIC
	rule 2.12	power to excuse compliance with rule 2.12
	rule 2.13	power to grant leave to creditor, contributory, officer or interested person to be heard in proceeding or be added as a respondent, etc.
	rule 2.14	power to direct an inquiry in relation to a corporation's debts, etc.
section 164		power to make an order with respect to change of status of company
section 227		power to declare that conditions prescribed by part 2E.1, division 3 have been satisfied

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Column 1 Provision of the Corporations Act	Column 2 Provision of the rules in schedule 1A	Column 3 Description (for information only)
sections 247A and 247B		power to order inspection of books
section 252E		power to order meeting of members of registered scheme
section 254E		power to make an order validating purported issue of shares
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 283HA		power to give directions or determine any questions on application of trustee for debenture holders
section 283HB(1)		power to make an order in relation to borrowing corporations
section 283HB(1)(c)		power to order security for debentures to be enforceable
section 411	rules 3.3 and 3.4	power to make an order in relation to administration of compromise or arrangement etc.
sections 415A and 415B		power to make orders in relation to proposals considered at a meeting of creditors

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Column 1 Provision of the Corporations Act	Column 2 Provision of the rules in schedule 1A	Column 3 Description (for information only)
section 418A		power to make declaration as to validity of controller's appointment and in relation to control of property
section 419		power to make an order relieving person who incurs liability in belief that properly appointed as a receiver
section 419A		power to relieve controller from liability
section 420B		power to authorise managing controller to dispose of property despite prior charge
section 420C		power to authorise receiver to carry on corporation's business during the winding up
section 423		power to inquire into conduct of controller
section 424		power to give directions in relation to controller's functions and powers
section 425	rule 9.1	power to fix amount of remuneration of a receiver
section 429(3)		power to extend time for report
section 434B		power to remove redundant controller
section 438D		power to direct administrator to lodge a report

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Column 1 Provision of the Corporations Act	Column 2 Provision of the rules in schedule 1A	Column 3 Description (for information only)
section 439A(6)		power to extend the convening period fixed by section 439A(5)
section 440B		power to grant leave to enforce a security interest if an administrator has been appointed
section 440D		power to grant leave to begin or proceed with a proceeding in a court against a company that is in administration, or in relation to any of its property
section 440F		power to grant leave to begin or proceed with enforcement process in relation to the property of a company
section 440G(7)		power to authorise a court officer to take action or to make a payment that would otherwise be prohibited
section 440J		power to grant leave to take enforcement action under a guarantee
section 441D		power to limit powers of chargee in relation to charged property
section 441H		power to limit powers of receiver etc. in relation to property used by company
section 442C		power to grant leave to administrator to dispose of encumbered property

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Column 1 Provision of the Corporations Act	Column 2 Provision of the rules in schedule 1A	Column 3 Description (for information only)
section 443B(8)		power to grant relief of administrator from personal liability for rent
section 444B(2)		power to extend time for execution of deed of company arrangement
section 444C(2)		power to grant leave to act inconsistently with deed of company arrangement
section 444E(3)		power to grant leave to person bound by deed of company arrangement to begin or proceed with enforcement process in relation to property of company
section 444F		power to order secured creditor or owner or lessor of property not to take certain actions
section 445B		power to make an order cancelling a variation of a deed of company arrangement
section 445D		power to make an order terminating a deed of company arrangement
section 445G		power to void or validate a deed of company arrangement

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Column 1 Provision of the Corporations Act	Column 2 Provision of the rules in schedule 1A	Column 3 Description (for information only)
section 447A		power to make an order to bring an administration to an end
section 447B		power to make an order to protect interests of company's creditors during an administration
section 447C		power to declare whether administrator is validly appointed
section 449C		power to make an order in respect of vacancy in office of administrator
sections 459A, 459B (other than in respect of an application under part 2F.1), 459C, 459D, 459P, 459R, 459S, 459T, 461, 462, 464, 465B, 465C, 466, 467, 467A and 467B (other than in respect of an application under part 2F.1)	part 5	power to make orders in relation to winding up applications
sections 459F, 459H, 459J, 459L, 459M and 459N		power to make an order in relation to statutory demands
section 468		power in relation to validation of disposition of property

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Column 1 Provision of the Corporations Act	Column 2 Provision of the rules in schedule 1A	Column 3 Description (for information only)
section 468A		power in relation to authorisation of the transfer of shares
section 470(2)(b)		power to direct service of copy of order on another person
section 472	rule 6.1	power to appoint registered liquidator or provisional liquidator
section 473A(1)	rule 7.2	power to fill vacancy in office of registered liquidator
section 473A(4)		power to declare what may be done by liquidator, if more than 1 liquidator is appointed by the court
section 474(2)		power to order that property vest in liquidator
section 475(8)	rule 7.3	power to grant leave for payment of costs and expenses incurred in preparing report under section 475
section 480	rule 7.5	power to release liquidator and deregister company
section 481	rule 7.7	power to order preparation of report on accounts of liquidator
section 482		power to make an order—

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Column 1 Provision of the Corporations Act	Column 2 Provision of the rules in schedule 1A	Column 3 Description (for information only)
		(a) to stay the winding up of a company either indefinitely or for a limited time; or (b) to terminate the winding up of a company on a day specified in the order
section 483(1)		power to require payment of money or transfer of property
section 483(2)		power to order payment of money
section 483(3)		power to order payment of a call
section 483(4)		power to order payment of amount due into a bank named in the order
section 484	rule 8.2	power to appoint special manager
section 486		power to make an order for inspection of books by creditors or contributories
section 488(2)		power to grant leave to distribute a surplus
section 490		power to grant leave to company to wind up voluntarily

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Column 1 Provision of the Corporations Act	Column 2 Provision of the rules in schedule 1A	Column 3 Description (for information only)
section 495(4)		power to make an order in relation to conduct of meeting in course of members' voluntary winding up
section 497(3)		power to order that list of creditors be sent to creditors in creditors' voluntary winding up
section 500		power to make an order as to execution and civil proceedings
section 507(6)		power to sanction resolution to accept shares as consideration for sale of property of company
section 507(9)		power to give directions necessary for arbitration
section 507(10)		power to approve liquidator's exercise of powers in creditors' voluntary winding up
section 509(2)		power to order ASIC to deregister company on specified day
section 510(3)		power to settle dispute as to value of security interest or amount of debt or set-off
section 532(2)		power to grant leave for person to be appointed as liquidator

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Column 1 Provision of the Corporations Act	Column 2 Provision of the rules in schedule 1A	Column 3 Description (for information only)
section 543(1)		power to make an order as to the investment of surplus funds
section 544(2)		power to order account of funds in hands of liquidator, audit or payment of money by liquidator
section 545		power to direct liquidator to incur particular expense
section 554A	rule 14.1	power to estimate or determine value of debts and claims of uncertain value in liquidation
section 554G		power to grant leave to secured creditor to amend valuation of security interest in proof of debt
section 564		power to make an order in favour of creditors who give company indemnity for costs of litigation
sections 568, 568B, 568E and 568F		power to make an order in relation to disclaimer of onerous property
sections 583 and 585	rule 10.3	power in relation to winding up Part 5.7 bodies
section 587		power to stay or restrain proceeding
sections 596A, 596B, 596F, 597(5A) to (17), 597A and 597B	rules 11.3 and 11.6	power to make an order in relation to examinations

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Column 1 Provision of the Corporations Act	Column 2 Provision of the rules in schedule 1A	Column 3 Description (for information only)
section 601AH(2)		power to order reinstatement of registration of a company
section 601AH(3)		power to— (a) validate anything done between deregistration of a company and its reinstatement; or (b) make any other order the court considers appropriate
section 601BJ(2)		power to approve modification in constituent documents of registered company
section 601CC(9)		power to order restoration of name of registered Australian body to the register
section 601CL(10)		power to order restoration of name of registered foreign company to the register
section 1071D	rule 12.2	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.

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Column 1 Provision of the Corporations Act	Column 2 Provision of the rules in schedule 1A	Column 3 Description (for information only)
section 1274		power to make an order if failure to lodge, amend etc. a document
section 1303		power to order that books be available for inspection
section 1319		power to give directions with respect to meetings
section 1322		power to make an order in relation to irregularities
section 1325D		power to make an order if contravention of a provision of chapter 6, 6A, 6B or 6C due to inadvertence
section 1335		power to make an order as to costs

Part 1A Insolvency Practice Schedule (Corporations) or rules in sch 1A

Column 1 Provision of the Insolvency Practice Schedule (Corporations)	Column 2 Provision of the rules in schedule 1A	Column 3 Description (for information only)
section 20-70(3)		power to extend time to apply to ASIC for renewal of a liquidator's registration

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Column 1 Provision of the Insolvency Practice Schedule (Corporations)	Column 2 Provision of the rules in schedule 1A	Column 3 Description (for information only)
section 40-5(4)(b)		power to give a direction to a liquidator to lodge a document or give any information or document
section 40-10(4)(b)		power to direct a liquidator— (a) to confirm to ASIC that information is complete and correct; or (b) to complete or correct information; or (c) to notify any persons specified by ASIC of any additional or corrected information
section 45-1(1)		power to make orders in relation to a registered liquidator
section 60-10(1)(c) and (2)(b)	rule 9.2	power to determine an external administrator's remuneration
section 60-11(3)	rule 9.2A	power to review a remuneration determination for an external administrator of a company
section 60-16(1)	rule 9.3	power to determine a provisional liquidator's remuneration

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Column 1 Provision of the Insolvency Practice Schedule (Corporations)	Column 2 Provision of the rules in schedule 1A	Column 3 Description (for information only)
section 65-45		power to give directions regarding the handling of money and securities by an external administrator
section 70-35(3)(c)		power to give directions in relation to destruction of the books of a company
section 70-90		power to order an external administrator to give relevant material to a person
section 75-41(3)		power to make orders in relation to proposals considered at a meeting of creditors
section 75-42(4)		power to order that a resolution passed at a meeting of creditors because of a casting vote be set aside or varied and make further orders or give further directions
section 75-43(4)		power to order that a resolution considered at a meeting of creditors is taken to have been passed and make further orders or give further directions
section 80-50(2)		power to approve a committee of inspection incurring expenses in obtaining advice or assistance

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Column 1 Provision of the Insolvency Practice Schedule (Corporations)	Column 2 Provision of the rules in schedule 1A	Column 3 Description (for information only)
section 80-55(5)(b)		power to give leave for a member of a committee of inspection to derive a profit or advantage
section 90-5(1)		power to inquire into the external administration of a company
sections 90-5(2) and 90-10(4)		power to require an external administrator or former external administrator to give information, provide a report or produce a document
section 90-15	rules 7.2 and 11.8	power to make orders in relation to the external administration of a company, including the following— (a) determining a question arising in the external administration; (b) that a person cease to be the external administrator; (c) that another registered liquidator be appointed as the external administrator;

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Column 1 Provision of the Insolvency Practice Schedule (Corporations)	Column 2 Provision of the rules in schedule 1A	Column 3 Description (for information only)
		(d) in relation to the costs of an action (including court action) taken by the external administrator or another person in relation to the external administration; (e) in relation to any loss the company has sustained because of a breach of duty by the external administrator; (f) in relation to remuneration, including requiring a person to repay to a company, or the creditors of a company, remuneration paid to the person as external administrator of the company
section 90-23(6) and (9)		power to appoint a registered liquidator to carry out a review into a matter that relates to the external administration of a company and to specify the matters the liquidator is appointed to review and the way the cost of carrying out the review is to be determined

Column 1 Provision of the Insolvency Practice Schedule (Corporations)	Column 2 Provision of the rules in schedule 1A	Column 3 Description (for information only)
section 90-28		power to make orders in relation to a review by a reviewing liquidator on the application of the reviewing liquidator, a person with a financial interest in the external administration of the company or an officer of the company
section 90-35(6)		power to order the reappointment of a former external administrator

Part 2 ASIC Act or rules in sch 1A

Column 1 Provision of the ASIC Act	Column 2 Provision of the rules in schedule 1A	Column 3 Description (for information only)
section 79(4)		power to extend period to give notice of intention to have statements made at examination admitted

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Schedule 1C Code of conduct for experts

rule 425, definition *code of conduct*

Part 1 Preliminary

1 Purpose of code

(1) The purpose of this code of conduct is—

(a) to state an expert's obligations under the following provisions of chapter 11, part 5—

(i) rule 429A;

(ii) rule 429B(1), (2), (5) and (6);

(iii) rule 429F;

(iv) rule 429H;

(v) rule 429K(1) and (2); and

(b) otherwise to state an expert's obligations in relation to an order made, or a direction given, by the court.

(2) In this code of conduct, the information included in square brackets after a rule heading is a reference to the comparable rule under chapter 11, part 5.

(3) The brackets and information do not form part of these rules.

2 Application of code

(1) This code of conduct applies to an expert who is appointed to give opinion evidence, whether orally or in a report, in a proceeding.

Note—

Rule 429F requires the expert to comply with the requirements under this code of conduct.

(2) In a provision of this code of conduct that refers to a direction given under rule 428 requiring 2 or more experts to hold a

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conference and prepare a joint report, a reference to a joint report is a reference to a report about the conference that states—

(a) the matters, if any, on which the experts agree; and

(b) the matters, if any, on which the experts disagree and the reasons for any disagreement.

Part 2 Duty to comply with orders and directions

3 Duty to comply with court's orders and directions

(1) An expert must comply with an order made, or a direction given, by the court.

(2) Without limiting subrule (1), if the court gives a direction under rule 428 requiring 2 or more experts to hold a conference and prepare a joint report, the experts must hold the conference, and prepare the joint report, in compliance with the direction.

Part 3 Experts' conferences and joint reports

4 Application of part

This part applies if the court gives a direction under rule 428 requiring 2 or more experts to hold a conference and prepare a joint report.

5 Experts' conference and joint report [r 429A]

(1) In holding the conference and preparing the joint report, the experts—

(a) must exercise independent judgement; and

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(b) must endeavour to reach an agreement on any matter on which they disagree; and

(c) must not act on any instruction or request to withhold or avoid reaching an agreement.

(2) Unless the court directs otherwise, the experts must—

(a) hold the conference in the absence of the parties or their agents; and

(b) prepare the joint report without reference to, or instructions from, the parties or their agents.

(3) The experts must give the joint report to the parties—

(a) if the court has given a direction about the period within which the report is to be given—as directed by the court; or

(b) otherwise—as soon as practicable after the conference has concluded.

(4) This rule is subject to rule 6.

6 Permitted communications between experts and parties [r 429B(1), (2), (5) and (6)]

(1) Any of the experts may, in writing—

(a) ask the parties for information that may assist the proper and timely conduct or conclusion of the conference or preparation of the joint report; or

(b) inform the parties of any matter adversely affecting the proper and timely conduct or conclusion of the conference or preparation of the joint report.

(2) A communication mentioned in subrule (1) must—

(a) be made jointly to all of the parties; and

(b) state—

(i) whether or not all of the experts agree on the terms of the communication; and

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(ii) if all of the experts do not agree on the terms of the communication—the matters on which the experts disagree.

(3) The experts must, within 2 business days after a request is made under rule 429B(4), give a progress report about the progress of the conference or the joint report.

(4) The progress report must state—

(a) whether or not all of the experts agree on the terms of the report; and

(b) if all of the experts do not agree on the terms of the report—the matters on which the experts disagree.

Part 4 Giving of evidence by experts and related matters

7 Duty of expert [r 429F]

(1) The expert has a duty to assist the court.

(2) The expert—

(a) is not an advocate for a party to the proceeding; and

(b) must not accept instructions from any person to adopt or reject a particular opinion.

(3) The expert's duties under this rule override any obligation the expert may have to—

(a) any party to the proceeding; or

(b) any person who is liable for the expert's fees or expenses.

8 Requirements for report [r 429H]

(1) A report prepared by the expert must be addressed to the court and signed by the expert.

(2) The report must include the following information—

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(a) the expert's qualifications;

(b) all material facts, whether written or oral, on which the report is based;

(c) the expert's reasons for each opinion expressed in the report;

(d) references to any literature or other material relied on by the expert to prepare the report;

(e) 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;

(f) 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;

(g) if the expert believes the report may be incomplete or inaccurate without a qualification—the qualification;

(h) a summary of the conclusions reached by the expert;

(i) a statement about whether access to any readily ascertainable additional facts would assist the expert in reaching a more reliable conclusion.

(3) If the expert believes an opinion expressed in the report is not a concluded opinion, the report must state, where the opinion is expressed, the reason for the expert's belief.

Examples of reasons why an expert may believe an opinion is not a concluded opinion—

- insufficient research
- insufficient data

(4) The expert must confirm in the report that—

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(a) the expert has read, and agrees to be bound by, the code of conduct; and

(b) the factual matters stated in the report are, as far as the expert knows, true; and

(c) the expert has made all inquiries considered appropriate; and

(d) the opinions stated in the report are genuinely held by the expert; and

(e) the report contains reference to all matters the expert considers significant; and

(f) the expert understands the expert's duty to the court and has complied with the duty.

9 Supplementary report following change of opinion [r 429K(1) and (2)]

(1) Subrule (2) applies if the expert changes, in a material way, an opinion in a report prepared by the expert under chapter 11, part 5 (an ***earlier report***).

(2) Unless the expert knows the proceeding has ended, the expert must, as soon as practicable after the change of opinion, give written notice of the change of opinion, and the reason for the change, to—

(a) if the expert is a court-appointed expert—the registrar; or

(b) otherwise—the party who appointed the expert.

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Schedule 1D Code of conduct for interpreters

rule 429VB, definition *code of conduct*

1 Application of code of conduct

This code of conduct applies to any person (an ***interpreter***) who, whether or not for fee or any other reward, is engaged or volunteers to act as an interpreter in a proceeding, or otherwise becomes involved in acting as an interpreter in a proceeding, by—

(a) interpreting from any spoken or signed language (the ***other language***) into English and from English into the other language for any person; and

(b) sight translating documents.

2 Definitions for code of conduct

In this code of conduct—

accurate, in relation to an interpretation, translation or sight translation, means—

(a) resulting in the optimal and complete transfer of the meaning of the other language into English, and of English into the other language; and

(b) preserving the content and intent of the other language or English (as the case may be) without omission or distortion, including matters the interpreter might consider inappropriate or offensive.

interpret means to carry out the process by which spoken or signed language is conveyed from one language (known as the source language) to another language (known as the target language) orally.

interpreter see rule 1.

other language see rule 1.

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sight translate means to carry out the process by which an interpreter or translator presents a spoken or signed interpretation of a written text.

translate means to carry out the process by which written language is conveyed from one language (known as the source language) to another language (known as the target language) in written form.

3 General duty to the court

(1) An interpreter has an overriding duty—

(a) to be accurate to the best of the interpreter's ability; and

(b) to assist the court impartially.

(2) An interpreter's paramount duty is to the court and not to any party to, or witness in, the proceeding (including the person engaging or paying the interpreter).

(3) An interpreter is not an agent, assistant or advocate of a party to, or witness in, the proceeding.

4 Duty to comply with directions

An interpreter must comply with any direction of the court.

5 Duty of accuracy

(1) An interpreter must at all times use their best judgement to be accurate in their interpretation, translation or sight translation.

(2) If an interpreter considers that their interpretation, translation or sight translation is, or could be, in any way inaccurate or incomplete, or that it requires qualification or explanation (including, but not limited to, because the other language is ambiguous or otherwise unclear for any reason)—

(a) the interpreter must immediately inform the party who engaged them and provide the necessary correction, qualification or explanation to the party; and

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(b) if their interpretation, translation or sight translation is being given or was given in court, immediately inform the court and provide the necessary correction, qualification or explanation to the court.

6 Duty of impartiality

(1) An interpreter must, at all times, act as an interpreter impartially so as to be without bias in favour of or against any person, including, but not limited to—

(a) the person whose evidence the interpreter is interpreting; and

(b) the party who has engaged, or is paying, the interpreter; and

(c) any other party to, or person involved in, the proceeding.

(2) Unless the court orders otherwise, an interpreter must not accept an engagement to act as an interpreter in relation to a proceeding if the interpreter—

(a) is or may become a party to, or witness in, the proceeding; or

(b) is related to, or has a close personal relationship with—

(i) a party to the proceeding or a member of a party's family; or

(ii) a witness or potential witness in the proceeding; or

(c) has or may have a financial or other interest of any kind whatsoever in the outcome of the proceeding, other than an entitlement to a reasonable fee for the services provided by the interpreter in the course of their engagement; or

(d) is or may be unable to fulfil their duty of accuracy or impartiality for any reason including, for example—

(i) personal or religious beliefs; and

(ii) cultural or other circumstances.

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(3) Other than carrying out their engagement to act as an interpreter, an interpreter must not provide any other assistance, service or advice in relation to the proceeding to any person, including—

(a) the party, legal representative or other person who has engaged the interpreter; or

(b) any witness or potential witness in the proceeding.

7 Duty of competence

(1) An interpreter must only undertake work they are competent to perform in the languages for which they are qualified by reason of their training, qualifications or experience.

(2) If it becomes apparent in the course of a proceeding that expertise beyond the interpreter's level of competence is required, the interpreter must—

(a) inform the court immediately; and

(b) work to resolve the situation by either withdrawing from the proceeding or following another strategy acceptable to the court.

8 Duty of confidentiality

(1) An interpreter must keep confidential all information in any form whatsoever that the interpreter acquires in the course of their engagement to act as an interpreter (including any communication subject to legal professional privilege).

(2) Subrule (1) does not apply to the extent—

(a) the disclosure of the information is required by an Act or another law; or

(b) the information is in, or comes into, the public domain other than by an act of the interpreter in breach of this duty of confidentiality; or

(c) the beneficiary of the legal professional privilege has waived the privilege.

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Schedule 1 Scale of costs—Supreme Court and District Court

rule 691(2)(a)

	$ (including GST)
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 or a costs assessor considers reasonable, in accordance with any guidelines issued in a practice direction by the Chief Justice and having regard to the circumstances of the proceeding, including, for example—	
(a) the complexity of the proceeding; and	
(b) whether the proceeding is in the Supreme Court or the District Court; and	
(c) if the proceeding is in the Supreme Court—whether the proceeding could have been brought in the District Court; and	
(d) the difficulty and novelty of any question raised in the proceeding; and	
(e) the importance of the proceeding to the party; and	
(f) the amount involved; and	
(g) the skill, labour, specialised knowledge and responsibility involved in the proceeding on the part of the solicitor; and	

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		$ (including GST)
	(h) the number and importance of the documents prepared or perused, without regard to the length of the documents; and	
	(i) the time spent by the solicitor; and	
	(j) research and consideration of questions of law and fact.	
	Registrar's or costs assessor'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 or a costs assessor considers reasonable.	
	Costs on quarter-hourly basis	
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.	
	Drafting documents	
4	Drafting a document—for each 100 words	26.75
	Producing documents	
5	Producing a document in final form—for each 100 words	6.45
	Preparing exhibit certificates	
6	Preparing an exhibit certificate—for each exhibit, including a paginated book	5.05
	Copying documents	

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		$ (including GST)
7	Copying a document—for each page	0.29
	Perusing documents	
8	Perusing a document—for each 100 words	6.45
	Examining or comparing documents	
9	Examining a document or comparing documents, if perusal is unnecessary—	
	(a) by a solicitor—for each quarter-hour	94.90
	(b) by an employee—for each quarter-hour	28.05
	Serving documents	
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 However, if the registrar or a costs assessor 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 to be allowed is the amount the registrar or the costs assessor considers reasonable.	55.45
	(b) ordinary service, other than ordinary service of a type mentioned in paragraph (c), (d) or (e)	34.75
	(c) service by post	25.30
	(d) service by facsimile—	
	(i) for the first page	11.55
	(ii) for each extra page	1.35

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		$ (including GST)
	(e) service by email	11.55
	Attendances	
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	34.75
	(b) to search	34.75
	(c) to do something of a similar nature	34.75
12	Attendance by telephone that does not involve the exercise of skill or legal knowledge	23.30
13	Attendance in court, mediation or case appraisal, at a compulsory conference or before the registrar, by a solicitor who appears without counsel—for each quarter-hour	105.20
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	96.25
	(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 an absence of 4 hours or less	723.05
	(B) for an absence of more than 4 hours—for each quarter-hour to a maximum of 8 hours	46.75

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		$ (including GST)
	(iii) the expenses the registrar or a costs assessor considers reasonable for each day of absence, including Saturdays and Sundays	
	(iv) the actual expenses of transport to and from the hearing or trial the registrar or a costs assessor considers reasonable	
	(b) by the solicitor's employee—the amount the registrar or a costs assessor 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 call-over, to be apportioned if the attendance is for more than 1 proceeding	63.40
16	Other attendances—	
	(a) by a solicitor, involving skill or legal knowledge—for each quarter-hour	96.25
	(b) by an employee—for each quarter-hour	28.05
	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.	
	Correspondence	
17	(1) Correspondence sent—	
	(a) written message or letter (20 words or less)	19.40
	This includes a letter forwarding documents without explanation.	
	(b) short letter (21 to 100 words)	38.70
	(c) any other letter—for each 100 words	33.60

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		$ (including GST)
	This covers any form of written communication including ordinary post, facsimile, email, text or other form of electronic transmission. This includes the charges of the communication provider, other than charges for sending the correspondence by registered post, international post or courier or serving the correspondence personally. For a circular letter, the first is to be allowed under this item. For each circular letter after the first, the charge under item 7 applies.	
(2)	Correspondence received—	
	(a) receiving any correspondence, including by electronic means, and filing, including reading a message (20 words or less) and, for an electronic communication, printing 1 page for filing	19.40
	For printing additional pages received electronically for filing, the charge under item 7 applies.	
	(b) perusing correspondence—	
	(i) for the first 100 words	25.80
	(ii) for each 100 words or part after the first 100 words	12.90
	(c) if perusing the document is not reasonably necessary, to examine the document—for each page	6.50
(3)	Agency correspondence—	
	(a) for sending correspondence to the agent by the principal, or to the principal by the agent—costs under subitem (1)	

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		$ (including GST)
	(b) for receiving correspondence from the agent by the principal, or from the principal by the agent—costs under subitem (2)	
	If engagement of the agent was normal and reasonable in the circumstances, costs may be charged under this item by the principal and the agent.	
	Correspondence between offices of the same firm of solicitors may be charged if it is analogous to agency correspondence and the engagement of an agent was not reasonable in the circumstances.	
	Note—	
	The word count for agency correspondence is based on the body of the correspondence, as defined in schedule 3.	
	Electronic conduct of proceedings	
18 (1)	Examining an electronic document or comparing electronic documents, including emails, if perusal is unnecessary—for each 100 words	1.25
(2)	Preparing a document for disclosure, or to be exchanged electronically—	
	(a) by barcoding the document—for each page	0.71
	(b) by electronically scanning or imaging the document—for each page	0.71
	(c) by 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	6.45

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		$ (including GST)
	(3) To the extent a proceeding is conducted electronically, the costs to be allowed, including the costs of any electronic service provider, are the costs the registrar or a costs assessor considers have been reasonably incurred and paid.	
	Fixed cost items	
19	Instructions to sue—claim and statement of claim and service	2,123.00
20	Costs for obtaining judgment under chapter 9, part 1, division 2	558.00
21	Costs for obtaining an enforcement warrant	558.00

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Schedule 2 Scale of costs—Magistrates Courts

rule 691(2)(b)

Part 1 General

1 Costs allowed for counsel and solicitor or clerk

(1) The costs of or incidental to the attendance of both counsel and a solicitor during a trial are not to be allowed unless a court certifies that the attendance of both counsel and solicitor was necessary.

(2) The costs of or incidental to the attendance of a clerk with counsel or a solicitor acting as advocate during a trial are to be allowed unless a court certifies the attendance of the clerk was not reasonably required.

(3) A court may direct that costs to be allowed for counsel or a solicitor acting as advocate are to be less than the costs set out in part 2 or 3.

2 Costs of unnecessary step

A court may disallow the costs of a step taken by a party in a proceeding if the court considers the step was unnecessary for the proper conduct of the proceeding.

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Part 2 Costs (up to $50,000)

		A $2,500 or under	B Over $2,500 but not over $5,000	C Over $5,000 but not over $20,000	D Over $20,000 but not over $50,000
		$	$	$	$
			(including GST)		
1	Instructions to sue—claim and statement of claim and service	454.55	858.55	1,343.00	1,491.00
2	Instructions to defend—notice of intention to defend and defence and filing	454.55	858.55	1,343.00	1,491.00
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	119.95	200.15	303.40	333.10
4	Obtaining judgment by default	119.95	200.15	303.40	333.10
5	Preparing for trial, up to and including settlement conference—				
	(a) including brief for counsel to appear at conference	516.35	1,227.00	1,975.00	2,325.00
	(b) if no counsel appears at conference	464.80	1,162.00	1,802.00	2,130.00
6	Balance of preparing for trial—				
	(a) including trial brief if counsel engaged	605.40	1,350.00	2,098.00	2,653.00
	(b) if no counsel at trial	426.10	994.05	1,582.00	2,021.00

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		A $2,500 or under	B Over $2,500 but not over $5,000	C Over $5,000 but not over $20,000	D Over $20,000 but not over $50,000
		$	$	$	$
			(including GST)		
7	Preparing for trial, if no settlement conference—				
	(a) including trial brief if counsel engaged	1,033.00	2,452.00	3,951.00	4,843.00
	(b) if no counsel at trial	813.30	2,033.00	3,261.00	4,015.00
8	Counsel's fees—				
	(a) to settle claim and statement of claim, counterclaim, notice of intention to defend or notice of appeal	–	–	290.50	347.35
	(b) to settle special affidavit, reply or particulars that the magistrate, registrar or costs assessor is satisfied are reasonably necessary or proper	–	–	187.30	227.20
	(c) to settle interrogatories or answers to interrogatories that the magistrate, registrar or costs assessor is satisfied are reasonably necessary or proper	–	–	284.00	340.85
	(d) on conference, inspection of works or other site inspection, or a similar attendance that the magistrate, registrar or costs assessor is satisfied is reasonably necessary or proper—each hour	–	–	290.50	347.35

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		A $2,500 or under	B Over $2,500 but not over $5,000	C Over $5,000 but not over $20,000	D Over $20,000 but not over $50,000
		$	$	$	$
			(including GST)		
(e)	to advise on evidence or for any other opinion	–	–	303.40	388.50
(f)	on trial or hearing (other than an application in a proceeding)—first day	981.20	1,110.00	1,845.00	2,246.00
(g)	on each subsequent day of trial or hearing (if the matter occupies 2 or more hours of the day and the appearance is certified for by the court)	652.00	741.10	1,232.00	1,491.00
(h)	on each subsequent day of trial or hearing not included in paragraph (g)	320.20	366.60	606.70	755.25
(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 $60.00 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	–	–	296.95	347.35
(k)	to hear deferred judgment	–	–	154.85	200.15
9	Solicitor on hearing—				

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		A $2,500 or under	B Over $2,500 but not over $5,000	C Over $5,000 but not over $20,000	D Over $20,000 but not over $50,000
		$	$	$	$
			(including GST)		
	(a) appearance without counsel on hearing—first day	890.90	942.50	1,499.00	1,827.00
	(b) appearance without counsel on second and each subsequent day of hearing (if the matter occupies 2 or more hours of the day and the appearance is certified for by the court)	633.95	633.95	1,033.00	1,253.00
	(c) attendance of clerk with solicitor acting as advocate—each day	107.75	320.20	335.60	388.50
	Costs under paragraph (c) are not allowed if the court certifies the attendance of the clerk was not reasonably required.				
10	On hearing with counsel—				
	(a) attendance of solicitor with counsel (if the attendance is certified for by the court)—each day	400.30	473.75	742.40	897.35
	(b) attendance of clerk with counsel—each day	107.75	320.20	335.60	366.60
	Costs under paragraph (b) are not allowed if the court certifies the attendance of the clerk was not reasonably required.				
11	On hearing with counsel—				

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		A $2,500 or under	B Over $2,500 but not over $5,000	C Over $5,000 but not over $20,000	D Over $20,000 but not over $50,000
		$	$	$	$
			(including GST)		
	(a) counsel's fees (if no fee is payable under item 8(f))	320.20	340.85	567.95	671.45
	(b) solicitor for appearance without counsel	320.20	320.20	516.35	621.10
12	Applications to the court (other than an application for an adjournment)	220.05	381.00	600.30	747.65
13	Instructions—				
	(a) for disclosure, preparing list of documents and making inspection and copies of documents—				
	(i) allowance to party requesting disclosure	186.70	286.80	400.30	473.75
	(ii) allowance to party making disclosure	186.70	652.00	723.05	871.55
	(b) for interrogatories and answers to interrogatories (including preparation, filing and perusing)—				
	(i) allowance to party delivering interrogatories	186.70	494.55	520.40	600.30
	(ii) allowance to party answering interrogatories	186.70	461.05	480.20	654.75
14	Enforcement hearing—				
	(a) counsel's fees	446.80	507.45	787.60	968.25
	(b) if no counsel engaged	320.20	440.35	697.10	839.25

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		A $2,500 or under	B Over $2,500 but not over $5,000	C Over $5,000 but not over $20,000	D Over $20,000 but not over $50,000
		$	$	$	$
			(including GST)		
15	Enforcement warrant—				
	(a) costs of preparing warrant and attending issuing and for return—to be marked on warrant (exclusive of court or other fees)	96.25	200.15	303.40	366.60
	(b) costs of registration of warrant against land	96.25	200.15	303.40	366.60
16	Warrant (other than enforcement warrant)—costs of preparing warrant and attending issuing and for return	96.25	200.15	303.40	366.60

Part 3 Costs (over $50,000)

This part applies if the amount recovered or claimed by the plaintiff is over $50,000.

	$ (including GST)
General care and conduct	

		$ (including GST)
1	In addition to an amount that is to be allowed under another item of this part, the amount that is to be allowed for a solicitor's care and conduct of a proceeding is the amount the registrar or a costs assessor considers reasonable, in accordance with any guidelines issued in a practice direction by the Chief Magistrate and 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 or costs assessor's discretion	
2	For a matter for which a cost is not provided for in this part, the amount to be allowed is the cost the registrar or a costs assessor considers reasonable.	
	Costs on quarter-hourly basis	
3	If, under an item of this part, costs in relation to a matter are allowable on a quarter-hourly basis, the amount to be allowed is—	

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		$ (including GST)
	(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.	
	Drafting documents	
4	Drafting a document—for each 100 words	21.40
	Producing documents	
5	Producing a document in final form—for each 100 words	5.15
	Preparing exhibit certificates	
6	Preparing an exhibit certificate—for each exhibit, including a paginated book	4.00
	Copying documents	
7	Copying a document—for each page	0.24
	Perusing documents	
8	Perusing a document—for each 100 words	5.15
	Examining or comparing documents	
9	Examining a document or comparing documents, if perusal is unnecessary—	
	(a) by a solicitor—for each quarter-hour	75.85
	(b) by an employee—for each quarter-hour	22.35
	Serving documents	
10	Serving on a person 1 or more documents at the same time—	

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		$ (including GST)
(a)	personal service, by a solicitor or a solicitor's employee, if personal service is required for 1 or more of the documents served	44.30
	However, if the registrar or a costs assessor 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 to be allowed is the amount the registrar or the costs assessor considers reasonable.	
(b)	ordinary service, other than ordinary service of a type mentioned in paragraph (c), (d) or (e)	27.80
(c)	service by post	20.20
(d)	service by facsimile—	
	(i) for the first page	9.15
	(ii) for each extra page	1.10
(e)	service by email	9.15
	Attendances	
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	27.80
(b)	to search	27.80
(c)	to do something of a similar nature	27.80
12	Attendance by telephone that does not involve the exercise of skill or legal knowledge	18.60
13	Attendance in court, mediation or case appraisal, at a compulsory conference or before the registrar, by a solicitor who appears without counsel—for each quarter-hour	84.20

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		$ (including GST)
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	77.00
	(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 an absence of 4 hours or less	578.45
	(B) for an absence of more than 4 hours—for each quarter-hour to a maximum of 8 hours	37.35
	(iii) the expenses the registrar or a costs assessor considers reasonable for each day of absence, including Saturdays and Sundays	
	(iv) the actual expenses of transport to and from the hearing or trial the registrar or a costs assessor considers reasonable	
	(b) by the solicitor's employee—the amount the registrar or a costs assessor 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 call-over, to be apportioned if the attendance is for more than 1 proceeding	50.75
16	Other attendances—	
	(a) by a solicitor, involving skill or legal knowledge—for each quarter-hour	77.00

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		$ (including GST)
	(b) by an employee—for each quarter-hour	22.35
	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.	
	Correspondence	
17	(1) Correspondence sent—	
	(a) written message or letter (20 words or less)	15.50
	This includes a letter forwarding documents without explanation.	
	(b) short letter (21 to 100 words)	30.95
	(c) any other letter—for each 100 words	26.90
	This covers any form of written communication including ordinary post, facsimile, email, text or other form of electronic transmission.	
	This includes the charges of the communication provider, other than charges for sending the correspondence by registered post, international post or courier or serving the correspondence personally.	
	For a circular letter, the first is to be allowed under this item. For each circular letter after the first, the charge under item 7 applies.	
	(2) Correspondence received—	
	(a) receiving any correspondence, including by electronic means, and filing, including reading a message (20 words or less) and, for an electronic communication, printing 1 page for filing	15.50
	For printing additional pages received electronically for filing, the charge under item 7 applies.	

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		$ (including GST)
	(b) perusing correspondence—	
	(i) for the first 100 words	20.70
	(ii) for each 100 words or part after the first 100 words	10.30
	(c) if perusing the document is not reasonably necessary, to examine the document—for each page	5.20

(3) Agency correspondence—

(a) for sending correspondence to the agent by the principal, or to the principal by the agent—costs under subitem (1)

(b) for receiving correspondence from the agent by the principal, or from the principal by the agent—costs under subitem (2)

If engagement of the agent was normal and reasonable in the circumstances, costs may be charged under this item by the principal and the agent.

Correspondence between offices of the same firm of solicitors may be charged if it is analogous to agency correspondence and the engagement of an agent was not reasonable in the circumstances.

Note—

The word count for agency correspondence is based on the body of the correspondence, as defined in schedule 3.

Electronic conduct of proceedings

18	(1)	Examining an electronic document or comparing electronic documents, including emails, if perusal is unnecessary—for each 100 words	1.05
	(2)	Preparing a document for disclosure, or to be exchanged electronically—	

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		$ (including GST)
	(a) by barcoding the document—for each page	0.60
	(b) by electronically scanning or imaging the document—for each page	0.60
	(c) by 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	5.15
	(3) To the extent a proceeding is conducted electronically, the costs to be allowed, including the costs of any electronic service provider, are the costs the registrar or a costs assessor considers have been reasonably incurred and paid.	
	Fixed cost items	
19	Instructions to sue—claim and statement of claim and service	1,698.00
20	Costs for obtaining judgment under chapter 9, part 1, division 2	446.40
21	Costs for obtaining an enforcement warrant	446.40

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Schedule 3 Dictionary

rule 4

accompanying document, for an originating process, for chapter 4, part 7, division 1, see rule 123A.

account, for a financial institution, for chapter 19, see rule 793.

account assessment see rule 644.

account assessor see rule 644.

accounting party, for chapter 14, part 1, see rule 530(2).

accurately, in relation to interpreting, translating or sight translating, for chapter 11, part 6, see rule 429VB.

additional authority, for chapter 4, part 7, division 3, see rule 130A.

address for service means—

(a) for a plaintiff, applicant or appellant—see rule 17(4); and

(b) for a respondent—the address given under rule 29; and

(c) for a defendant—see rule 17(4) 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.

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applicant—

(a) for chapter 4, part 7, division 3, see rule 130A; or

(b) for chapter 7, part 1, see rule 208B; or

(c) for chapter 15, part 7, see rule 623; or

(d) for chapter 21, see rule 948.

application—

1 Each of the following is an *application*—

(a) an application starting a proceeding;

(b) another application.

2 If the court orders a proceeding started by claim to continue as an application, the claim is also an *application* for these rules.

application because of default means an application under chapter 9, part 1.

appointing parties, for chapter 11, part 5, see rule 429L.

approved document exchange means a document exchange approved under rule 102.

assessed costs see rule 679.

assessing registrar, for chapter 17A, see rule 679.

attached to a document includes incorporated into the document.

attendance allowance, for chapter 11, part 4, see rule 413A.

audio link, for chapter 11, part 4, see rule 413A.

audio visual link, for chapter 11, part 4, see rule 413A.

Australia, for chapter 4, see rule 100.

Australian lawyer, for chapter 17A, see rule 679.

beneficiary, for chapter 15, parts 10 and 11, see rule 644.

body, of correspondence, does not include an address, salutation or other text that is generic to correspondence.

business day see the *Acts Interpretation Act 1954*, schedule 1.

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caveator, for chapter 15, part 7, see rule 623.

central authority, for chapter 4, part 7, division 3, see rule 130A.

central registry means—

(a) for the Supreme Court—the registry of the court at Brisbane, Rockhampton, Townsville or Cairns; or

(b) for the District Court—the registry of the court at Brisbane, Rockhampton, Townsville or Cairns; or

(c) for a Magistrates Court—the registry of a Magistrates Court in the central division of the Brisbane District, or at Rockhampton, Townsville or Cairns.

certificate of account assessment, for chapter 15, parts 10 and 11, see rule 644.

certificate of assessment, for chapter 17A, see rule 679.

certificate of service, for chapter 4, part 7, division 3, see rule 130A.

certifying authority, for chapter 4, part 7, division 3, see rule 130A.

civil proceeding, for chapter 4, part 7, division 3, see rule 130A.

claim—

1 A *claim* is a document under chapter 2, part 3 starting a proceeding.

2 If the court orders a proceeding started by application to continue as a claim, the application is also a *claim* for these rules.

claimant, for chapter 21, see rule 948.

client, for chapter 17A, see rule 679.

code of conduct—

(a) for chapter 11, part 5—see rule 425; or

(b) for chapter 11, part 6—see rule 429VB.

commission, for chapter 15, parts 10 and 11, see rule 644.

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Commonwealth Act, for chapter 20A, see rule 947A.

conciliation certificate, for chapter 13, part 9, division 2A, see rule 522B.

conduct money means a sum of money or its equivalent that is sufficient to meet a reasonable estimate of the following allowances under the *Uniform Civil Procedure (Fees) Regulation 2019*, part 3, division 2—

(a) an accommodation allowance;

(b) a travelling allowance.

contested proceeding, for chapter 15, part 8, see rule 629.

costs assessment see rule 679.

costs assessor—

(a) for chapter 15, parts 10 and 11, see rule 644; or

(b) for chapter 17A, see rule 679.

costs of the proceeding, for chapter 17A, see rule 679.

costs statement see rule 679.

court-appointed expert, for chapter 11, part 5, see rule 429R(1).

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 4, part 7, division 3, see rule 130A; or

(e) for chapter 14, part 2, see rule 544.

district—

(a) for the Supreme Court—see the *Supreme Court of Queensland Act 1991*, section 57; or

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(b) for the District Court—see the *District Court of Queensland Act 1967*; or

(c) for a Magistrates Court—see the *Magistrates Courts Act 1921*.

document, for chapter 7, part 1, see rule 208B.

document filed in a proceeding, for chapter 22, part 1, division 6, see rule 975G.

earnings, for chapter 19, see rule 793.

electronically means by electronic or computer-based means.

electronic enforcement hearings summons, for chapter 22, part 1, division 4, see rule 975B.

employer, for chapter 19, see rule 793.

employment claim, for chapter 13, part 9, division 2A, see rule 522B.

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 chapters 19 and 22, see rule 793; or

(b) for chapter 21, see rule 948.

enforcement debtor, for chapters 19 and 22, see rule 793.

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.

estate—

(a) for chapter 15 generally, see rule 596; and

(b) for chapter 15, parts 10 and 11, see rule 644.

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estate account, for chapter 15, parts 10 and 11, see rule 644.

expert, for chapter 11, part 5, see rule 425.

foreign grant, for chapter 15, part 5, see rule 615.

foreign judicial document, for chapter 4, part 7, division 3, see rule 130A.

forwarding authority, for chapter 4, part 7, division 3, see rule 130A.

fourth person, for chapter 19, part 5, division 2, see rule 847(1)(b).

grant—

(a) for chapter 15 generally, see rule 596; and

(b) for chapter 15, part 7, see rule 623.

Hague Convention, for chapter 4, part 7, division 3, see rule 130A.

Hague Convention country see rule 130A.

identity, of a prospective defendant, for chapter 7, part 1, see rule 208B.

imaged document, for chapter 22, part 1, see rule 959A.

initiating process, for chapter 4, part 7, division 3, see rule 130A.

instalment order, for chapter 19, see rule 868(1).

interest, in a managed investment scheme, see the Corporations Act, section 9.

interpret, for chapter 11, part 6, see rule 429VB.

interpleader order, for chapter 21, see rule 948.

inventory, for chapter 15, parts 10 and 11, see rule 644.

itemised bill, for chapter 17A, see rule 679.

joint report, for chapter 11, part 5, see rule 428(1)(b).

judgment—

(a) for chapter 16, see rule 659; and

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(b) for chapter 20A, see rule 947A.

judgment creditor, for chapter 20A, see rule 947A.

judgment debtor, for chapter 20A, see rule 947A.

jurat see rule 432(3) and (5).

land, for chapter 8, part 4, see rule 275.

limitation period means a limitation period under the *Limitation of Actions Act 1974*.

local judicial document, for chapter 4, part 7, division 3, see rule 130A.

minor claim—

(a) means a claim for an amount, including interest, of not more than $25,000, 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; but

(b) does not include a claim for a liquidated demand mentioned in the QCAT Act, schedule 3, definition *minor civil dispute*, paragraph 1(a).

notice to support a caveat, for chapter 15, part 7, see rule 623.

oath see the *Acts Interpretation Act 1954*, schedule 1.

offer, 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.

order debt, for chapters 19 and 22, see rule 793.

other language, for chapter 11, part 6, see rule 429VB.

part 2 order, for chapter 8, part 2, see rule 255A.

partner, for chapter 19, see rule 793.

partnership see the *Partnership Act 1891*.

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party—

(a) for chapter 15, parts 10 and 11, see rule 644; and

(b) for chapter 17A, see rule 679.

physical document, for chapter 22, part 1, see rule 959A.

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.

principal registrar—

(a) of a Magistrates Court—means the principal clerk of courts appointed under the *Justices Act 1886*, section 22D(1); or

(b) of the District Court—means the principal registrar of the District Court appointed under the *District Court of Queensland Act 1967*, section 36(1); or

(c) of the Supreme Court—means the principal registrar of the Supreme Court appointed under the *Supreme Court of Queensland Act 1991*, section 69(1).

proceeding, for chapter 9, part 5, see rule 352.

property, for chapter 21, see rule 948.

prospective defendant, in relation to an applicant, for chapter 7, part 1, see rule 208B.

public trustee, for chapter 15, see rule 596.

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question, for chapter 13, part 5, see rule 482.

recognised agency, for chapter 11, part 6, see rule 429VB.

referee's report see rule 501(1)(b).

referred dispute, for chapter 9, part 4, see rule 313.

registrar—

(a) for chapter 4, part 7, division 3, see rule 130A; and

(b) for chapter 9, part 4, see rule 313; and

(c) for chapter 13, part 9, division 2A, see rule 522B; and

(d) for schedules 1 and 2, means—

(i) an assessing registrar within the meaning of rule 679; or

(ii) a costs assessor appointed under rule 743L; and

(e) 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(3).

regular deposit, for chapter 19, part 5, division 2, see rule 847(1)(b).

relevant application, for chapter 12, see rule 449.

relevant court, for chapter 17A, part 4, see rule 743.

report, for chapter 11, part 5, see rule 425.

request for service abroad, for chapter 4, part 7, division 3, see rule 130A.

request for service in Queensland, for chapter 4, part 7, division 3, see rule 130A.

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.

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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).

service provider, for chapter 22, part 1, see rule 959B.

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.

sight translate, for chapter 11, part 6, see rule 429VB.

sign, a document, for chapter 11, part 7, see rule 429W.

simplified procedures for Magistrates Courts, see rule 515(1).

spouse, for chapter 15, see rule 596.

stakeholder, for chapter 21, see rule 948.

stamp, in relation to a court seal, includes electronically stamp.

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 the *Acts Interpretation Act 1954*, schedule 1.

the Act, for chapter 13, part 9, division 2A, see rule 522B.

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; or

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(b) for chapter 19, part 5, division 2, see rule 847(1)(a).

translate, for chapter 11, part 6, see rule 429VB.

trustee—

(a) for chapter 15, parts 10 and 11, see rule 644; or

(b) for chapter 17A, see rule 679.

whereabouts, of a prospective defendant, for chapter 7, part 1, see rule 208B.

will, for chapter 15, see rule 596.

witness, an affidavit, for chapter 11, part 7, see rule 429W.

writ of habeas corpus, for chapter 14, part 5, see rule 586.

wrongful death proceeding means a proceeding under the *Civil Proceedings Act 2011*, part 10.

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