

Queensland



Subordinate Legislation 1999 No. 135

Court Funds Act 1973

COURT FUNDS REGULATION 1999

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DICTIONARY

PART 1—PRELIMINARY

Short title

1. This regulation may be cited as the *Court Funds Regulation 1999*.

Commencement

2. This regulation commences on 1 July 1999.

Dictionary

3. The dictionary in the schedule defines particular words used in this regulation.

PART 2—PAYING MONEY OR DEPOSITING SECURITIES INTO COURT

Payment or deposit to be made to or with registrar

4.(1) Money to be paid into court must be paid to the registrar, including, for example, by cheque made payable to the registrar.

(2) Securities to be deposited into court must be deposited with the registrar.

Affidavit to be filed when making payment or deposit

5.(1) A person making a payment or deposit into court must file in the court an affidavit complying with subsection (3).

(2) The affidavit must be filed when the payment or deposit is made.

(3) The affidavit must—

- (a) state the name of the person by or for whom the payment or deposit is made; and

- (b) state the amount of the payment or, for securities, the number and face value of the securities, and the way the deposit is made; and
- (c) describe the money or securities in a way sufficient to identify it; and
- (d) state the provision of the Act or the rules of court that authorises the payment or deposit and the circumstances in which the payment or deposit is made; and
- (e) request the registrar to receive the money or securities.

(4) If the registrar considers the affidavit does not give enough information about the payment or deposit, the registrar may require the person making the payment or deposit to file another affidavit giving the additional information the registrar considers necessary.

(5) An affidavit under this section is in addition to any other affidavit, notice of payment into court or other document that may be required under an Act or rules of court to be filed, served or given in the circumstances of the payment or deposit.

Receipt for money or securities

6.(1) The registrar must issue a receipt for money paid into court or securities deposited into court.

(2) The receipt must identify the action or account to which the payment or deposit relates and, for securities that are or include effects, the effects received.

(3) The registrar must keep securities deposited into court in a safe place.

PART 3—PAYMENTS OF INTEREST INTO THE SUITORS FUND

Interest to be paid into suitors fund

7.(1) This section applies if the Minister receives interest accrued on money invested by the Minister under an order or on securities vested in the

Minister.

(2) The Minister must pay the interest into the suitors fund.

(3) The Minister must also give the relevant registrar a written notice stating the amount of the interest that has been paid into the suitors fund for each action or account to which the interest relates.

(4) As soon as practicable after receiving the notice, the relevant registrar must credit each action or account with the amount of the interest paid into the suitors fund for the action or account.

PART 4—DEALING WITH MONEY OR SECURITIES IN COURT

No payment, transfer or delivery out, investment or sale without order

8. Unless the Uniform Civil Procedure Rules provide otherwise, money or securities in court may only be paid, delivered or transferred out of court, or be invested or sold, under an order of the court.

Party obtaining investment order to serve copy on registrar

9. A person who obtains an order of the court that money or securities in court be invested must serve a copy of the order on the registrar of the relevant court.

Investment of interest on securities

10.(1) This section applies to any of the following interest that an order directs be invested and accumulated—

- (a) interest accruing on securities in, or to be deposited into, court; or
- (b) interest accruing on securities ordered to be purchased with money in court.

(2) If the interest accrued or received for a 6 month period is at least \$200, the Minister must invest the interest and any accumulation of interest on it in accordance with the order.

(3) However, the Minister must not invest the interest if the Minister receives a copy of an order to the contrary.

Amount of money or interest less than \$200

11.(1) This section applies to an amount of—

- (a) money in court that is ordered to be invested; and
- (b) interest accruing on securities in court that is ordered to be invested (whether or not section 10 also applies).

(2) Despite the order, the amount must not be invested if it is less than \$200, unless an order directs the investment of the amount.

(3) However, if the amount is at least \$100 and with accruals of interest on it under part 5¹ totals at least \$200, the total amount is to be invested as required by the order.

Investment in securities—relevant action or account to be credited

12. Securities purchased as an investment of money in court must be credited to the relevant action or account in the court unless an order expressly provides to the contrary.

¹ Part 5 (Interest payable by Minister on money in court)

Securities purchased contrary to order

13.(1) This section applies to money in court and to interest on money or securities in court if all or part of the money or interest is invested by purchasing securities in contravention of an order (“**earlier order**”).

(2) Unless a later order directs otherwise, the securities purchased must be sold as soon as practicable after discovering the contravention of the earlier order.

(3) The sale proceeds and any interest accrued on the securities must be applied in the way the money or interest should have been dealt with under the earlier order.

PART 5—INTEREST PAYABLE BY MINISTER ON MONEY IN COURT

Part prescribes matters about payment of interest by Minister

14. This part prescribes the rate of interest payable by the Minister on money in court, and other matters about the payment of the interest, for section 9 of the Act.²

Rate of interest

15. The interest rate for the Act, section 9 is the rate at which departmental interest declared under the *Financial Administration and Audit Act 1977*, section 41A³ is paid.

How interest is calculated and accrues

16.(1) Interest—

- (a) is calculated on minimum monthly balances; and

² Act, section 9 (Interest on money)

³ Section 41A (Dealing with moneys earned on investments)

(b) is calculated on whole dollars only; and

(c) accrues by calendar months.

(2) However, interest is not payable—

(a) for a period of less than 1 month; or

(b) on an amount of less than \$100.

(3) Interest is payable on money to and including the end of the month before the money is paid out of court.

Interest for payment out if money paid in at different times

17.(1) This section applies if—

(a) money in court to the credit of an action or account consists of amounts paid in at different times; and

(b) to satisfy an order for payment out of court, only part of the money has to be paid out of the suitors fund.

(2) To calculate interest, the money is taken to be paid out of the money paid into court in the reverse order to which the money was paid into court.

(3) Subsection (2) applies unless a court otherwise orders.

Registrars to calculate interest payable

18. Each registrar must—

(a) calculate the interest that has accrued on money in the court for the relevant court district for or during each half year as soon as practicable after the half year ends;

(b) give the chief executive a written statement of—

(i) the amount of accrued interest for the half year for each action or account in the court for the relevant court district; and

(ii) the total amount of accrued interest; and

(iii) the amount in the suitors fund attributable to the district.

Payment of interest

19.(1) The chief executive must—

- (a) pay into the suitors fund the total amount of interest calculated by registrars under section 18; and
- (b) give each registrar a certificate stating that the chief executive has paid into the suitors fund the total amount of accrued interest calculated for the half year for all actions and accounts in the relevant court district.

(2) The certificate must be written on a copy of the statement mentioned in section 18(b).

(3) On receiving the certificate, but not later than the 15th day of the month after the end of the half year to which it relates, the registrar must credit each action or account with the interest accrued for the action or account for the half year.

PART 6—PAYMENT, TRANSFER OR DELIVERY OUT OF COURT

Registrar to be given copy of order for payment of invested money, or transfer or deliver of securities, out of court

20. A party who obtains an order (“**later order**”) directing that money in court invested⁴ under an earlier order be paid out of court, must serve a copy of the later order on the registrar.

Functions under order

21.(1) If the registrar is served with a copy of an order under section 20, the registrar must notify the chief executive of the order.

(2) The Minister must—

⁴ If the order is for the payment out of court of money that has not been invested, a copy of the order is not required to be served on the registrar.

- (a) redeem the money invested; and
- (b) pay the money received on the redemption into the suitors fund; and
- (c) notify the registrar of the amount to be paid out of court.

If costs to be assessed and paid out of money in court

22.(1) If an order directs costs to be assessed and then paid to a person out of money in court, the registrar must pay the amount of the assessed costs to the person to the extent of the amount available out of the money in court for the particular action or account.

(2) If court fees payable for the matter to which the money in court relates have not been paid, the registrar must also deduct from the amount available for complying with subsection (1), the amount of the unpaid fees and pay that amount to the consolidated fund.

PART 7—PERSONAL REPRESENTATIVES AND PARTNERS

Personal representative

23.(1) This section applies if—

- (a) an order directs money or securities in court to be paid, delivered or transferred to a person named or described in the order; and
- (b) the person has died and money or securities remain to be paid, delivered or transferred under the order; and
- (c) the order does not describe who is to be entitled to the money—
 - (i) as a trustee or personal representative; or
 - (ii) in a way other than in the person's own right; or
 - (iii) in a way other than for the person's own use.

(2) If the deceased is named in the order as a creditor, on proof to the registrar's satisfaction of the person's death, whether before or after the

order was made, the registrar may pay, deliver or transfer the remaining money, as directed by the order, to the person's personal representatives.

(3) If the deceased is named in the order other than as a creditor, on proof to the registrar's satisfaction that the person died after the order was made, the registrar may pay, deliver or transfer the remaining money, as directed by the order, to the person's personal representatives.

(4) Subsections (2) and (3) apply unless an order of which the registrar has knowledge provides otherwise.

Death of personal representative

24.(1) This section applies if—

- (a) an order directs money or securities in court to be paid, delivered or transferred to 2 or more persons as personal representatives; and
- (b) 1 or more of the personal representatives dies after the order is made; and
- (b) money or securities remain to be paid, delivered or transferred under the direction.

(2) On proof to the registrar's satisfaction of the personal representative's death, the registrar may pay, deliver or transfer the money or securities to the surviving personal representative or representatives.

Intestacy involving net estate assets of not more than \$1 000

25.(1) This section applies if—

- (a) an order directs money or securities in court to be paid, delivered or transferred to a person named or described in the order; and
- (b) the person has died intestate and money or securities remain to be paid, delivered or transferred under the direction; and
- (c) the person's net estate assets, including the money or securities, are not more than \$1 000.

(2) The money or securities may be paid, delivered or transferred, as directed by the order, to a close relative who would be entitled to take out

administration of the estate and files an affidavit in the court in the approved form.

(3) In subsection (2)—

“**close relative**” means a person who is a surviving spouse, de facto spouse, child, brother, sister, father or mother of the deceased person.

Partners

26. If money in court is ordered to be paid to persons described in the order as partners, the registrar may pay the money to any 1 or more of the partners who are alive.

PART 8—REQUEST TO RECORD NAME AND ADDRESS, OR FOR COPY OR CERTIFICATE

Request to record name and address of person or solicitor

27.(1) This section applies to a person entitled to or interested in money or securities in court and named in an order relating to the money or securities.

(2) The person, or the person’s solicitor, may ask the registrar to record the following information—

- (a) the name and address of the person or of the person’s solicitor; or
- (b) a change of that name or address.

(3) The registrar must record the information in a form convenient for reference.

Request for certificate about money or securities in account

28.(1) A person claiming to be interested in money or securities in court credited to an account, or someone else on the person’s behalf, may give to the registrar a written request for a certificate of the amount and description of the money or securities in court standing to the credit of the account.

(2) The registrar may issue the certificate if satisfied the person has a sufficient interest in the money or securities.

(3) The certificate—

- (a) must not reflect any transactions made on the day of its issue; and
- (b) must state it is current as at the start of the day of its issue; and
- (c) must comply with subsections (4) to (7).

(4) If the person giving the certificate has notice of an order restraining payment, transfer, delivery, sale or another dealing with the money or securities, the certificate must state the person giving the certificate has notice of a restraining order affecting the money or securities.

(5) If the person giving the certificate has notice of a charging order that affects the money or securities, the certificate must state that fact.

(6) A certificate under subsection (4) or (5) must also state—

- (a) the date of the order; and
- (b) whether the order affects principal or interest; and
- (c) the name of the person in whose favour the order has been made; and
- (d) the name of any person the order requires to be notified of the order.

(7) If an account is currently listed in a list of accounts inactive for 6 years,⁵ the certificate must state that fact.

(8) The registrar may reissue the certificate, but only if there has been no change in the amount or description of the money or securities since the certificate was last issued.

Request for information about account

29.(1) A person claiming to be interested in money or securities in court credited to an account, or someone else on the person's behalf, may also give the registrar a written request for a copy of the account or information about, or a certificate for, any transactions or dealings with the money or

⁵ See section 30 (List of inactive accounts)

securities.

(2) The registrar may give the copy, information or certificate if satisfied the person is entitled to receive it.

PART 9—INACTIVE ACCOUNTS

List of inactive accounts

30.(1) On or before 1 April in each year, the registrar must—

- (a) prepare, in the approved form—
 - (i) a list of all inactive accounts for 6 years; and
 - (ii) a notice complying with subsection (3); and
- (b) file the list in the court; and
- (c) display the list and notice in the court registry; and
- (d) if the total of the money and securities mentioned in the list is more than \$1 000—publish the notice in the gazette and in a newspaper circulating generally in the district in which the court is situated.

(2) The list of inactive accounts and the notice must be displayed for at least 42 days.

(3) The notice must contain the list of inactive accounts and state that—

- (a) a person claiming an entitlement to all or part of the money or securities in an account mentioned in the list may apply to the court for an order for payment or delivery of the person's entitlement; and
- (b) if an application is not made by a stated day, an order may be made—
 - (i) for money in an account—that the money be paid into the consolidated fund; or
 - (ii) for securities in an account—that the securities be sold and the net proceeds of the sale be credited to the account and

then transferred into the consolidated fund.

(4) The day stated in the notice must be at least 42 days after the of the following days—

- (a) the day the list and notice are displayed under subsection (1)(c);
- (b) if subsection (1)(b) applies—the day subsection (1)(b) is complied with.

(5) The cost of publishing the list and notice may be debited by the registrar to the accounts mentioned in the list in proportion to the amount or value of the money or securities in the respective accounts.

(6) In this section—

“inactive accounts” means accounts that, at the start of 1 January in the year, were credited with money or securities in court that had not been dealt with, other than by continuous investment or continuous payment of interest, in the previous 6 years.

Payment out order

31.(1) This section applies to a person claiming an entitlement to part or all of the money or securities in an account included in a list of inactive accounts.

(2) The person may apply to the court for an order for payment or delivery of the person’s entitlement (a **“payment out order”**).

(3) However, the application may only be made within the time stated in a notice displayed or published under section 30(1) or the extra time the court may allow.

(4) The application must be supported by an affidavit of the applicant stating the facts relied on.

(5) A copy of the application must be served on the registrar and any other party to the action.

(6) On an application for a payment out order, the court may make—

- (a) a payment out order; or
- (b) a consolidated fund order; or
- (c) any other order the court considers appropriate for the disposal of

the money or securities, without an application being made for the purpose.

(7) If, after filing an application, the applicant does not prosecute the application to finality within 3 months or the extra time the court may allow, the registrar may apply for a consolidated fund order as if no application for a payment out order had been made.

Consolidated fund order

32.(1) This section applies if no payment out order is applied for by the day stated in a notice displayed or published under section 30(1).

(2) The registrar may apply to the court for an order (“**consolidated fund order**”) that—

- (a) the money in an account listed in the notice be paid into the consolidated fund; or
- (b) the securities in an account listed in the notice be sold and the net proceeds be paid into the consolidated fund.

(3) The application must be supported by a copy of the notice and a dated statement signed by the registrar stating—

- (a) section 30 has been complied with for the money or securities; and
- (b) no application for a payment out order has been filed within the time stated in the notice.

(4) A statement under subsection (3) appearing to be signed by the registrar is evidence of the matters it states.

(5) The court may make a consolidated fund order if satisfied of the matters mentioned in subsection (3)(a) and (b).

Order for transfer from consolidated fund

33.(1) This section applies if money in court has been transferred from an account to the consolidated fund under a consolidated fund order.

(2) A person claiming to be entitled to all or part of the money (the “**relevant amount**”) may, at any time, apply to the court for an order that

the relevant amount be transferred back to the account (a “**transfer back order**”).

(3) The application must be supported by an affidavit of the applicant stating the facts relied on.

(4) A copy of the application must be served on the registrar and any other party to the action.

(5) The court may make a transfer back order on the conditions the court considers appropriate.

(6) A party who obtains a transfer back order must serve a copy of the order on the registrar.

(7) No interest accrues on the relevant amount for the period it remains transferred to the consolidated fund, regardless of whether or not a transfer back order is made.

Registrar’s and Minister’s duties after certain orders are made

34.(1) The registrar must arrange for an office copy of each order for transfer to the consolidated fund, or other order for the disposal of securities, to be given to the Minister.

(2) The Minister—

(a) is then authorised to carry out any sale and transfer required by the order; and

(b) must carry out the sale and transfer as soon as possible.

(3) If the registrar is served with a copy of a transfer back order the registrar must inform the Minister of the order.

(4) The Minister must transfer back the moneys as required by the order as soon as practicable after the Minister is informed of the order.

Request for information about accounts in list

35.(1) A person or a person’s solicitor may give the registrar a written request for information about any money or securities identified in a list of inactive accounts.

(2) The request must be signed by the person or the solicitor.

(3) If the request is made by a person's solicitor, it must state—

- (a) the name of the person for whom the request is made; and
- (b) in the solicitor's opinion, the person holds a legal or beneficial interest in the money or securities.

(4) If the request is not made by a person's solicitor, the person making the request must satisfy the registrar it is appropriate to comply with the request.

(5) If the request complies with this section, the registrar may give the person or solicitor information requested that is in the registrar's possession.

PART 10—MISCELLANEOUS

Amendment of slips in orders

36.(1) The court may amend a clerical error or accidental omission in an order in so far as it relates to money or securities in court or that may or are to come into court.

(2) Subsection (1) does not allow an amendment to be made—

- (a) to provide for new circumstances arising after the order was made; or
- (b) to extend a time limit for making a payment, deposit or transfer into court.

Affidavits

37.(1) If a registrar requires evidence of a matter for carrying out an order for the purposes of the Act, the registrar may accept an affidavit filed in the court as evidence of the matter.

(2) However, if a person is entitled to payment of interest under an order and the evidence required is of compliance with a condition affecting the payment, or that the person is alive, the affidavit must be sworn by the person entitled or by the person's solicitor.

Officers prescribed for the Act, definition “order”

38. Each registrar of a court is a prescribed officer of the court for paragraph (b) of the definition “order” in section 4 of the Act.

Approval of forms

39. The chief executive may approve forms for use under the Act.

Repeal

40. The *Court Funds Regulation 1988* is repealed.

SCHEDULE
DICTIONARY

section 3

“action” means cause or matter.

“approved form” see section 39.

“deposited”, into court, includes transferred into court.

“effects”, for securities, means documents or other items that are or are incidental to the securities.

“registrar” means the registrar for the district of the court into which the payment, transfer or deposit in question is being or has been made.

“securities” includes effects.

“order” means order of a court.

“into” includes in.

ENDNOTES

1. Made by the Governor in Council on 24 June 1999.
2. Notified in the gazette on 25 June 1999.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Justice and Attorney-General.