



Queensland

# Uniform Civil Procedure Amendment Rule (No. 2) 2004

## Subordinate Legislation 2004 No. 276

made under the

*Supreme Court of Queensland Act 1991*

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## **1 Short title**

This rule may be cited as the *Uniform Civil Procedure Amendment Rule (No. 2) 2004*.

## **2 Rules amended**

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

## **3 Amendment of r 69 (Including, substituting or removing party)**

Rule 69(2)(f) and (g)—

*omit, insert—*

‘(f) for any other reason—

- (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.’.

## **4 Amendment of r 74 (Amendment of proceedings after change of party)**

Rule 74(5)—

*omit, insert—*

‘(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.’.

## **5 Replacement of rr 375 and 376**

Rules 375 and 376—

*omit, insert—*

### **‘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
  - (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 counter-claiming 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.’.

## 6 Amendment of r 387 (When amendment takes effect)

- (1) Rule 387(1)—

*omit, insert—*

- ‘(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) Rule 387—

*insert—*

- ‘(3) Despite subrule (2), if an amendment mentioned in subrule (2) is made, then, for a limitation period, the proceeding as amended is taken to have started when the original proceeding started, unless the court orders otherwise.’.

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### ENDNOTES

- 1 Made by the Governor in Council on 9 December 2004.
- 2 Notified in the gazette on 10 December 2004.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Department of Justice and Attorney-General.