



Queensland

Uniform Civil Procedure Amendment Rule (No. 2) 2005

Subordinate Legislation 2005 No. 65

made under the

Foreign Judgments Act 1991 (Cwlth)
Supreme Court of Queensland Act 1991

Contents

		Page
Part 1	Preliminary	
1	Short title	3
Part 2	Amendment of Uniform Civil Procedure Rules 1999	
2	Rules amended	3
3	Insertion of new r 362A	3
	362A Multiple beneficiaries	3
4	Insertion of new ch 20A	4
	Chapter 20A Reciprocal enforcement of foreign judgments	
	Part 1 Preliminary	
	947A Definitions for ch 20A	4
	947B Application of rules and practices of court	5
	Part 2 Reciprocal enforcement of foreign judgments	
	947C Definition for pt 2	5
	947D Application for registration of judgment	5
	947E Evidence in support of application	5
	947F Security for costs of application	7
	947G Order for registration	7
	947H Register of judgments	7

Uniform Civil Procedure Amendment Rule (No. 2) No. 65, 2005
2005

	947I	Registration of judgments.	7
	947J	Notice of registration	8
	947K	Details of service to be written on notice	8
	947L	Application to set aside registration of judgment	8
	947M	Enforcement of judgment	9
	Part 3	Reciprocal enforcement of Australian judgments	
	947N	Certificate of judgment	9
5		Amendment of sch 4 (Dictionary)	10
Part 3	Repeal		
6		Repeal	11
Schedule	Minor amendments	12

Part 1 Preliminary

1 Short title

This regulation may be cited as the *Uniform Civil Procedure Amendment Rule (No. 2) 2005*.

Part 2 Amendment of Uniform Civil Procedure Rules 1999

2 Rules amended

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

3 Insertion of new r 362A

After rule 362—

insert—

‘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.
- ‘(2) If the offer to settle 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 98¹ or the public trustee acting under the *Public Trustee Act 1978*, section 59.²

‘(4) In this rule—

wrongful death proceeding means a proceeding under the *Supreme Court Act 1995*, part 4, division 5.³’.

4 Insertion of new ch 20A

After section 947—

insert—

‘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 2⁴ applies.

judgment creditor see the Commonwealth Act, section 3.⁵

judgment debtor see the Commonwealth Act, section 3.

1 Rule 98 (Settlements and compromises)

2 *Public Trustee Act 1978*, section 59 (Compromise of actions by or on behalf of persons under a legal disability claiming moneys or damages valid only with sanction of court or public trustee)

3 *Supreme Court Act 1995*, part 4 (Provisions from Common Law Practice Act 1867), division 5 (Actions against and by executors)

4 Commonwealth Act, part 2 (Reciprocal enforcement of judgments)

5 Commonwealth Act, section 3 (Interpretation)

‘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—
 - (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 13⁶ 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 judgment creditor wishes the judgment to be registered in a currency other than Australian currency—the rate of exchange prevailing on the day of the affidavit;
- (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 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).

6 Commonwealth Act, section 13 (Money judgments unenforceable if no reciprocity)

- ‘(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 77 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.

‘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.
- ‘(2) A judgment creditor cannot 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) 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.

'Part 3 Reciprocal enforcement of Australian judgments

'947N Certificate of judgment

- '(1) An application under section 15(1)⁸ of the Commonwealth Act in relation to a judgment may be made without notice to any person.

⁸ Commonwealth Act, section 15 (Issue of certificates of judgments obtained in Australian courts)

- ‘(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.’.

5 Amendment of sch 4 (Dictionary)

- (1) Schedule 4, definition *judgment*—
omit, insert—
judgment—
- (a) for chapter 16,⁹ see rule 659; and
 - (b) for chapter 20A,¹⁰ see rule 947A.’.
- (2) Schedule 4—
insert—
‘Commonwealth Act, for chapter 20A,¹¹ see rule 947A.
judgment creditor, for chapter 20A,¹² see rule 947A.
judgment debtor, for chapter 20A, see rule 947A.
the court—
- (a) for chapter 20A, part 2,¹³ see rule 947C; and
 - (b) otherwise, see rule 3(2).’.

9 Chapter 16 (Orders)

10 Chapter 20A (Reciprocal enforcement of foreign judgments)

11 Chapter 20A (Reciprocal enforcement of foreign judgments)

12 Chapter 20A (Reciprocal enforcement of foreign judgments)

13 Chapter 20A (Reciprocal enforcement of foreign judgments), part 2 (Reciprocal enforcement of foreign judgments)

Part 3 Repeal

6 Repeal

The Supreme Court (Foreign Judgments) Rules 1993 are repealed.

Schedule Minor amendments

rule 2

- 1 **Rule 793, definition *enforcement creditor*, paragraph (b),
‘by way or’—**
 omit, insert—
 ‘by way of’.

 - 2 **Section 987(2)(b), ‘rules 17’—**
 omit, insert—
 ‘rule 17’.

 - 3 **Schedule 1A, section 16.1(4), paragraph (c)—**
 renumber as paragraph (a).

 - 4 **Schedule 4, definition *registrar*, paragraph (b),
‘rule 679.’—**
 omit, insert—
 ‘rule 679; and’.
-

ENDNOTES

- 1 Made by the Governor in Council on 21 April 2005.
- 2 Notified in the gazette on 22 April 2005.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Department of Justice and
 Attorney-General.