



Queensland

Uniform Civil Procedure Amendment Rule (No. 1) 2007

Subordinate Legislation 2007 No. 96

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. 1) 2007*.

2 Rules amended

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

3 Amendment of r 22 (Claim)

Rule 22(4), from ‘or’—

omit, insert—

‘, the repealed *WorkCover Queensland Act 1996* or the *Workers’ Compensation and Rehabilitation Act 2003*.’.

4 Amendment of r 83 (Proceeding in partnership name)

Rule 83(4), ‘*Partnership (Limited Liability) Act 1988*’ and footnote—

omit, insert—

‘*Partnership Act 1891*’.

5 Amendment of r 114 (Service in relation to a partnership)

Rule 114(1)(c), ‘*Partnership (Limited Liability) Act 1988*’ and footnote—

omit, insert—

‘*Partnership Act 1891*’.

6 Insertion of new ch 8, pt 2, div 1 hdg and s 255A

Chapter 8, part 2, before rule 256—

insert—

‘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.’.

7 Amendment of r 257 (Relationship with other law)

Rule 257, ‘rules 260 and 261’ and footnote—

omit, insert—

‘rules 260A and 261A’.

8 Amendment of r 258 (Procedure)

Rule 258(3)—

omit.

9 Insertion of new ch 8, pt 2, div 2, div 3 and div 4 hdg

Rules 260 and 261—

omit, insert—

‘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—
 - (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
 - (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.

‘260F Service outside Australia of application for freezing order or ancillary order

‘An application for a freezing order or an ancillary order may be served on a person outside Australia without the court’s leave if any of the assets to which the order relates are within the jurisdiction of the court.

‘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—

- (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, 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.

‘Division 4 Miscellaneous’.

10 Amendment of r 318 (Form of consent order for ADR process)

Rule 318, ‘*District Court Act 1967*’ and footnote—

omit, insert—

‘*District Court of Queensland Act 1967*’.

11 Amendment of r 329 (Record of mediation resolution)

Rule 329(1), ‘*District Court Act 1967*’ and footnote—
omit, insert—
‘*District Court of Queensland Act 1967*’.

12 Amendment of r 331 (Mediator to file certificate after mediation)

Rule 331(1), ‘*District Court Act 1967*’ and footnote—
omit, insert—
‘*District Court of Queensland Act 1967*’.

13 Amendment of r 342 (Case appraiser to file certificate and decision)

Rule 342(1), ‘*District Court Act 1967*’ and footnote—
omit, insert—
‘*District Court of Queensland Act 1967*’.

14 Amendment of r 596 (Definitions for ch 15)

Rule 596, definition *spouse*, paragraph (b), ‘a least’—
omit, insert—
‘at least’.

15 Amendment of r 599 (Requirements for notice of intention to apply for grant)

(1) Rule 599(1)(a)(ii) and (iii)—
omit, insert—

‘(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;’.

(2) Rule 599(1)(a)(v), from ‘and’ to ‘address’—
omit.

16 Amendment of r 602 (Contents of supporting affidavit)

Rule 602(1)(c), ‘*Registration of Births, Deaths and Marriages Act 1962*’—

omit, insert—

‘*Births, Deaths and Marriages Registration Act 2003*’.

17 Amendment of r 609 (Contents of supporting affidavit on intestacy)

Rule 609(b), ‘*Registration of Births, Deaths and Marriages Act 1962*’ and footnote—

omit, insert—

‘*Births, Deaths and Marriages Registration Act 2003*’.

18 Amendment of r 698 (Costs of proceeding in wrong court)

Rule 698(1), ‘Subrule’—

omit, insert—

‘Subrules’.

19 Amendment of r 771 (Assessment of costs of appeals)

Rule 771, after ‘Brisbane’—

insert—

‘unless the Court of Appeal orders otherwise’.

20 Amendment of r 783 (Procedure for appeals to District Court from Magistrates Court)

Rule 783(2), ‘*District Court Act 1967*’ and footnote—

omit, insert—

‘*District Court of Queensland Act 1967*’.

21 Amendment of r 947E (Evidence in support of application)

Rule 947E(1)(c)(vii)—

omit, insert—

‘(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;

‘(vii)a)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.’.

22 Amendment of sch 1A (Rules for proceedings under Corporations Act or ASIC Act)

Schedule 1A, section 1.4, note 1, ‘*officer*, in relation to a body corporate—see section 82A’—

omit, insert—

‘*officer*, in relation to a corporation—see section 9

officer, in relation to an entity—see section 9’.

23 Amendment of sch 4 (Dictionary)

(1) Schedule 4, definition *district*, paragraph (b), ‘*District Court Act 1967*’ and footnote—

omit, insert—

‘*District Court of Queensland Act 1967*’.

(2) Schedule 4, definition *order*—

omit, insert—

'order, except for chapter 8, part 2, division 2, includes a judgment, direction, decision or determination of a court whether final or otherwise.'

(3) Schedule 4, definition *part 2 order*—

omit, insert—

'part 2 order, for chapter 8, part 2, see rule 255A.'

ENDNOTES

- 1 Made by the Governor in Council on 31 May 2007.
- 2 Notified in the gazette on 1 June 2007.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Department of Justice and Attorney-General.