



Queensland

Uniform Civil Procedure Amendment Rule (No. 1) 2009

Subordinate Legislation 2009 No. 162

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) 2009*.

2 Rules amended

This rule, including the schedule, amends the *Uniform Civil Procedure Rules 1999*.

3 Amendment of r 100 (Definitions for ch 4)

- (1) Rule 100, definition *convention*, after ‘*convention*’—

insert—

‘, for part 7, division 2,’.

- (2) Rule 100, definition *convention country*, after ‘*convention country*’—

insert—

‘, for part 7, division 2,’.

4 Insertion of new ch 4, pt 7, div 3

Chapter 4, part 7—

insert—

‘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,

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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.
- 3 The Attorney-General’s Department of the Commonwealth maintains a copy of the Hague Convention, a list of all Hague Convention countries, details of declarations and objections made under the Hague Convention by each of those countries and the names and addresses of the central and other authorities of each of those countries. A copy of the Hague Convention can be found at <<http://www.hcch.net>>.

‘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, 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 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.

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.

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

‘130B Provisions of this division to prevail

‘If the provisions of this division are inconsistent with any other provisions of these rules (other than rules 116, 117, 118, 367 and 371), 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;
 - (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—

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- (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 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

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

'(6) In this rule—

forwarding authority, for a request for service of a local judicial document in a Hague Convention country, means the registrar.

'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;

(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 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

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- (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 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—
 - (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

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(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;

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
 - (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.’.

5 Amendment of sch 4 (Dictionary)

- (1) Schedule 4, definition *applicant*, paragraphs (a) and (b)—
renumber as paragraphs (b) and (c).
- (2) Schedule 4, definition *applicant*—
insert—

[s 5]

- ‘(a) for chapter 4, part 7, division 3, see rule 130A; or’.
- (3) Schedule 4, definition *defendant*, paragraph (d)—
renumber as paragraph (e).
- (4) Schedule 4, definition *defendant*—
insert—
‘(d) for chapter 4, part 7, division 3, see rule 130A; or’.
- (5) Schedule 4, definition *registrar*, paragraphs (a) to (d)—
renumber as paragraphs (b) to (e).
- (6) Schedule 4, definition *registrar*—
insert—
‘(a) for chapter 4, part 7, division 3, see rule 130A; and’.

Schedule Minor amendments

section 2

1 **Rule 2, editor's note, 'section 2'—**

omit, insert—

'rule 2'.

2 **Rules 2, 7(2), 8(3), 13(2)(b), 16, 17(1)(a)(v), 23(a), 26(2), 27(1), 31(5), 71(3), 77(1), 85(2), 99(1), 107, 124(1)(j), 136(2), 138, 150(1)(b), 161(1), 164(2), 202(2), 211(1), 250(1), 264(3), 274, 318, 329(1), 331(1), 335(3), 342(1), 366(2) and (3), 372, 374(4), 390, 398(5), 422, 430(2), 432(3)(e), 478, 483(2), 488(2), 514(1)(e) and (3), 515, 524(5) and (6), 553(1), 559, 562(1), 576(1), 578, 582, 583(1), 637(4), 667(3), 810(2), 820(1)(b), 828(1), 832(8)(c), 834(1), 855(1), 860(1)(b), 904(1)(a), 908(1)(b), 968(3), 973, 975, 975C(3), editor's note, 'Editor's note'—**

omit, insert—

'Note'.

3 **Rule 51, definition *special federal matter*, after 'see'—**

insert—

'the'.

4 **Rule 104, editor's notes—**

omit, insert—

'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.'

Schedule

- 5 Rule 124(1)(q), ‘Carrier’s’—**
omit, insert—
‘Carriers’.
- 6 Rules 393(7) and 916(4), ‘section’—**
omit, insert—
‘rule’.
- 7 Rule 433(1), editor’s note—**
omit.
- 8 Rules 522H(2) and 914(3), ‘subsection’—**
omit, insert—
‘subrule’.
- 9 Rule 544, ‘rule’—**
omit, insert—
‘part’.
- 10 Rule 559, heading, ‘division’—**
omit, insert—
‘div’.
- 11 Rule 656, heading, ‘executors’ and trustees’—**
omit.
- 12 Rules 667(1)(a), 767 paragraphs (a) to (c) and 863(2)(a), ‘;**
or’—
omit, insert—
‘;’.

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- 13 Chapter 17A, part 2 before division 1, part 3 before division 1, part 4 before rule 743 and part 5 before rule 743J, editor's note, 'Editor's note'—**
omit, insert—
'Note'.
- 14 Rule 743Q(1), examples—**
omit, insert—
'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'.
- 15 Rule 759(7), 'item 15'—**
omit, insert—
'item 13'.
- 16 Rule 774(b), 'or the court'—**
omit.
- 17 Rule 971(9), definition *relevant fee*, paragraph (b), 'or'—**
omit.
- 18 Rule 983(1) and (2), after 'Rules'—**
insert—
'1988'.
- 19 Schedule 1A, rule 7.5(4)(a) '; '—**
omit, insert—
'; and'.

Schedule

- 20** **Schedule 1B, entry for section 585, ‘585’—**
omit, insert—
‘587’.
- 21** **Schedule 4—**
insert—
‘jurat see rule 432(3).’.
- 22** **Schedule 4, definitions *business day, condition, enforcement officer, exempt property, minor claim, minor debt claim, money order, non-money order, oath, person under a legal incapacity, person with impaired capacity, swear* and *young person*, after ‘see’—**
insert—
‘the’.
- 23** **Schedule 4, definitions *business day, condition, enforcement officer, exempt property, minor claim, oath, person under a legal incapacity, swear* and *young person, editor’s note*—**
omit.
- 24** **Schedule 4, definition *fourth person*, ‘847’—**
omit, insert—
‘847(1)(b)’.
- 25** **Schedule 4, definition *interest*, ‘in a managed investment scheme’—**
omit, insert—
‘, in a managed investment scheme.’.

- 26** **Schedule 4, definition *regular debt*, from ‘*debt*’—**
omit, insert—
‘*debt*, for chapter 19, part 5, division 2, see rule 848(3).’.
- 27** **Schedule 4, definition *third person*, paragraph (a), ‘;’—**
omit, insert—
‘; or’.
- 28** **Schedule 4, definition *third person*, paragraph (b), ‘847’—**
omit, insert—
‘847(1)(a)’.
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ENDNOTES

- 1 Made by the Governor in Council on 30 July 2009.
- 2 Notified in the gazette on 31 July 2009.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Department of Justice and Attorney-General.

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