

Uniform Civil Procedure and Another Rule Amendment Rule (No. 1) 2014

Explanatory notes for SL 2014 No. 320

made under the

Supreme Court of Queensland Act 1991

General Outline

Short title

Uniform Civil Procedure and Another Rule Amendment Rule (No. 1) 2014.

Authorising law

Section 85 of the *Supreme Court of Queensland Act 1991* (the Act).

Policy objectives and the reasons for them

Under section 85 of the Act, the Governor in Council may make rules, with the consent of the rules committee (a committee of magistrates and judges established by the Chief Justice of Queensland under the Act), including practice and procedure rules for Queensland courts.

The amendment rule amends the following rules to improve court practices and procedures:

- the *Criminal Practice Rules 1999* (Criminal Practice Rules); and
- the *Uniform Civil Procedure Rules 1999* (UCPR).

Achievement of policy objectives

Criminal Practice Rules

Schedule 3, form 211, sets out the form for an indictment for the offence of cruelty to children under 16 years under section 364 of the Criminal Code. The form provides that a person having the lawful care of a child under 16 years caused harm to the child by stated failings or conduct. The form is amended to provide that harm is caused when the person in care of the child 'knew or ought reasonably to have known' that the failure (or conduct) would

be likely to cause the child harm. The amendment reflects the wording of section 364 of the Criminal Code.

UCPR

Rule 144 is amended to provide that a conditional notice of intention to defend becomes an unconditional notice of intention to defend when an application for an order under rule 16 is determined and the order is not made.

Rule 352 is amended to update definitions for chapter 9, part 5. The definitions of 'offer' and 'offer to settle' are replaced by a new definition of 'offer'; and a new definition of 'proceeding' is inserted. There are consequential amendments for these changed definitions.

Rules 358, 360, 361 and 365 are amended to replace references to a judgment with references to an order. The changes ensure the rules better reflect current practice.

Rule 364 is amended to provide that, as well as making an offer to contribute towards an offer to settle a plaintiff's claim, a party to a contribution claim may offer to settle the contribution claim.

Rule 602 is amended to provide that, if an affidavit mentions a document as an exhibit, it is a legible copy of that document that must be an exhibit and the original of such a document must be filed when the affidavit is filed and an additional copy given to the registry.

New rule 700A provides for the key considerations in awarding costs in proceedings under the *Succession Act 1981*, Part 4 or another proceeding relating to an interest in property under a will or trust.

Rule 743R is amended to provide that, unless the court orders otherwise, a costs assessor whose appointment ends must not complete a costs assessment started before the appointment ended but must instead return a document relating to the assessment to the party who provided it.

There are also consequential amendments following amendments to the *Acts Interpretation Act 1954*.

Consistency with policy objectives of authorising law

The amendment rule is consistent with the objectives of the Act.

Inconsistency with policy objectives of other legislation

The amendment rule is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The amendment rule will enhance court practices and procedures and will have no implementation costs.

Consistency with fundamental legislative principles

The amendment rule is consistent with fundamental legislative principles.

Consultation

The rules committee has consented to the proposed amendments.

The Office of Best Practice Regulation was consulted and confirmed that the amendment rule is excluded from the Regulatory Impact Statement system.