



*Court Funds Act 1973*

# **Court Funds Regulation 2009**

**Current as at 1 September 2012**

**Reprint note**

This is the last reprint before expiry. Expired on 31 August 2024. See SIA s 56A and SIR s 5 sch 3.

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Queensland

# Court Funds Regulation 2009

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# Court Funds Regulation 2009

## Part 1 Preliminary

### 1 Short title

This regulation may be cited as the *Court Funds Regulation 2009*.

### 2 Commencement

This regulation commences on 1 September 2009.

### 3 Dictionary

The dictionary in the schedule defines particular words used in this regulation.

## Part 2 Paying money or depositing securities into court

### 4 Payment or deposit to be made to or with registrar

- (1) Money to be paid into court must be paid to the registrar, including, for example, by cheque made payable to the registrar.
- (2) Securities to be deposited into court must be deposited with the registrar.

### 5 Affidavit to be filed when making payment or deposit

- (1) A person making a payment or deposit into court must file in the court an affidavit complying with subsection (3).

- (2) The affidavit must be filed when the payment or deposit is made.
- (3) The affidavit must—
  - (a) state the name of the person by or for whom the payment or deposit is made; and
  - (b) state the amount of the payment or, for securities, the number and face value of the securities, and the way the payment or deposit is made; and
  - (c) describe the money or securities in a way sufficient for identification; and
  - (d) state the provision of the Act or the rules of court that authorise the payment or deposit and the circumstances in which the payment or deposit is made; and
  - (e) request the registrar to receive the money or securities.
- (4) If the registrar considers the affidavit does not give enough information about the payment or deposit, the registrar may require the person making the payment or deposit to file another affidavit giving the additional information the registrar considers necessary.
- (5) An affidavit under this section is in addition to any other affidavit, notice of payment into court or other document that may be required under an Act or rules of court to be filed, served or given in the circumstances of the payment or deposit.

## **6 Receipt for money or securities**

- (1) The registrar must issue a receipt for money paid into court or securities deposited into court.
- (2) The receipt must identify the proceeding or account to which the payment or deposit relates and, for securities that are or include effects, the effects received.
- (3) The registrar must keep securities in court in a safe place.

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## **Part 3                      Paying interest into the suitors fund**

### **7                      Interest to be paid into suitors fund**

- (1) This section applies if the Minister receives interest accrued on money invested by the Minister under an order of a court or on securities vested in the Minister.
- (2) The Minister must pay the interest into the suitors fund.
- (3) The Minister must also give the registrar of the court a written notice stating the amount of the interest that has been paid into the suitors fund for each proceeding or account to which the interest relates.
- (4) As soon as practicable after receiving the notice, the registrar must credit each proceeding or account with the amount of the interest paid into the suitors fund for the proceeding or account.

## **Part 4                      Dealing with money or securities in court**

### **8                      No dealing without order**

Unless the *Uniform Civil Procedure Rules 1999* provide otherwise, money or securities in court may only be paid, delivered or transferred out of court, or be invested or sold, under an order of a court.

### **9                      Party obtaining investment order to serve copy on registrar**

A person who obtains an order of a court that money or securities in court be invested must serve a copy of the order on the registrar of the court.

## **10 Investment of interest on securities**

- (1) This section applies to any of the following interest that a court orders to be invested and accumulated—
  - (a) interest accruing on securities in, or to be deposited into, court;
  - (b) interest accruing on securities ordered to be purchased with money in court.
- (2) If the interest accrued for a 6-month period is at least \$200, the Minister must invest the interest and any accumulation of interest on it in accordance with the order.
- (3) However, the Minister must not invest the interest if—
  - (a) a court otherwise orders; and
  - (b) the Minister receives a copy of the order.

## **11 Amount of money or interest less than \$200**

- (1) This section applies to an amount of—
  - (a) money in court that a court orders to be invested; and
  - (b) interest accruing on securities in court that a court orders to be invested (whether or not section 10 also applies).
- (2) Despite the order, the amount must not be invested if it is less than \$200, unless a court expressly orders the investment of the amount.
- (3) However, if the amount is at least \$100 and with accruals of interest on it under part 5 totals at least \$200, the total amount must be invested as required by the order.

## **12 Investment in securities—proceeding or account to be credited**

Securities purchased as an investment of money in court must be credited to the proceeding or account to which the money in court relates, unless a court otherwise orders.



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### **13 Securities purchased contrary to order**

- (1) This section applies to money in court and to interest on money or securities in court if all or part of the money or interest is invested by purchasing securities in contravention of an order of a court (the *earlier order*).
- (2) Unless a court otherwise orders, the Minister must—
  - (a) sell the securities purchased as soon as practicable after becoming aware of the contravention of the earlier order; and
  - (b) apply the net proceeds of the sale and any interest accrued on the purchased securities in the way the money or interest should have been dealt with under the earlier order; and
  - (c) notify the registrar of the action taken.

## **Part 5 Interest payable by Treasurer on money in court**

### **14 Purpose of pt 5**

This part prescribes the rate of interest payable by the Treasurer on money in court, and other matters about the payment of interest, for section 9 of the Act.

### **15 Rate of interest—Act, s 9**

The prescribed rate of interest for section 9 of the Act is the rate at which departmental interest declared under the *Financial Accountability Act 2009*, section 51(2)(a) is paid.

### **16 How interest is calculated and accrues**

- (1) Interest—

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- (a) is calculated on minimum monthly balances; and
  - (b) is calculated on whole dollars only; and
  - (c) accrues by calendar months.
- (2) However, interest is not payable—
- (a) for a period of less than 1 month; or
  - (b) on an amount of less than \$100.
- (3) Interest is payable on money in court to and including the end of the month that is before the month in which the money is paid out of court.

## **17 Interest for payment out if money paid in at different times**

- (1) This section applies if—
- (a) money in court to the credit of a proceeding or account consists of amounts paid in at different times; and
  - (b) to comply with an order for payment out of court, only part of the money has to be paid out of the suitors fund.
- (2) To calculate interest, the money is taken to be paid out of the money paid into court in the reverse order to which the money was paid into court.
- (3) Subsection (2) applies unless a court otherwise orders.

## **18 Registrars to calculate interest payable**

The registrar of a court must—

- (a) calculate the interest that has accrued on money in court for or during each 6 months ending on 30 June and 31 December each year (each being a *half year*) as soon as practicable after the half year ends; and
- (b) give the chief executive a written statement of—

- (i) the amount of accrued interest for the half year for each proceeding or account to which the money in court relates; and
- (ii) the total amount of accrued interest; and
- (iii) the amount in the suitors fund attributable to the court.

## **19 Payment of interest**

- (1) The chief executive must—
  - (a) pay into the suitors fund the total amount of interest calculated by the registrar under section 18; and
  - (b) give the registrar a certificate stating that the chief executive has paid into the suitors fund the total amount of accrued interest calculated for the half year for all proceedings and accounts in the court.
- (2) The certificate must be written on a copy of the statement mentioned in section 18(b).
- (3) On receiving the certificate, but within 15 days after the end of the half year to which it relates, the registrar must credit each proceeding or account with the interest accrued for the proceeding or account for the half year.

## **Part 6 Payment of money out of court**

### **20 Registrar to be given copy of order for payment of invested money out of court**

A party, who obtains an order of a court (the *later order*) directing that money in court invested under an earlier order of a court be paid out of court, must serve a copy of the later order on the registrar of the court.

*Editor's note—*

If a court orders the payment out of court of money that has not been invested, a copy of the order is not required to be served on the registrar of the court.

## **21 Functions of registrar and Minister under order**

- (1) This section applies if a registrar is served with a copy of an order under section 20.
- (2) The registrar must give a copy of the order to the chief executive.
- (3) The Minister must—
  - (a) redeem the money invested; and
  - (b) pay the net proceeds of the redemption, and any interest accrued on the money invested, into the suitors fund; and
  - (c) notify the registrar of the amount paid into the suitors fund.

## **22 Functions of registrar if costs to be assessed under order**

- (1) If a court orders costs to be assessed and then paid to a person out of money in court, the registrar of the court must pay the amount of the assessed costs to the person to the extent of the amount available from the money in court for the particular proceeding or account.
- (2) If court fees payable for the proceeding to which the money in court relates have not been paid, the registrar must deduct from the amount available for complying with subsection (1), the amount of the unpaid fees and pay that amount to the consolidated fund.

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## **Part 7**                      **Personal representatives and partnerships**

### **23**      **Personal representative**

- (1) This section applies if—
  - (a) a court orders money or securities in court to be paid, delivered or transferred to a person stated in the order; and
  - (b) the person has died and money or securities remain to be paid, delivered or transferred under the order; and
  - (c) the order does not describe who is entitled to the money or securities—
    - (i) as a trustee or personal representative; or
    - (ii) in a way other than in the person’s own right; or
    - (iii) in a way other than for the person’s own use.
- (2) If the deceased person is named in the order as a creditor, on proof to the registrar’s satisfaction that the person died (whether before or after the order was made), the registrar may pay, deliver or transfer the money or securities, as directed by the order, to the person’s personal representative.
- (3) If the deceased person is named in the order other than as a creditor, on proof to the registrar’s satisfaction that the person died after the order was made, the registrar may pay, deliver or transfer the money or securities, as directed by the order, to the person’s personal representative.
- (4) Subsections (2) and (3) apply unless—
  - (a) a court otherwise orders; and
  - (b) the registrar receives a copy of the order.

### **24**      **Death of personal representative**

- (1) This section applies if—

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- (a) a court orders money or securities in court to be paid, delivered or transferred to 2 or more persons as personal representatives; and
  - (b) 1 or more of the personal representatives has died and money or securities remain to be paid, delivered or transferred under the order.
- (2) On proof to the registrar's satisfaction that the personal representative died after the order was made, the registrar may pay, deliver or transfer the money or securities, as directed by the order, to the surviving personal representative.

## **25 Intestacy involving net estate assets of \$1000 or less**

- (1) This section applies if—
- (a) a court orders money or securities in court to be paid, delivered or transferred to a person stated in the order; and
  - (b) the person has died intestate and money or securities remain to be paid, delivered or transferred under the order; and
  - (c) the person's net estate assets, including the money or securities, are \$1000 or less.
- (2) On proof to the registrar's satisfaction that the person died intestate, the registrar may pay, deliver or transfer the money or securities, as directed by the order, to a close relative of the deceased person who—
- (a) is entitled to take out administration of the deceased person's estate; and
  - (b) files in the court an affidavit stating the facts relied on.
- (3) In this section—
- close relative*, of a deceased person, means a surviving spouse, child, brother, sister, father or mother of the deceased person.

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**26 Partnership**

If a court orders money or securities in court to be paid, delivered or transferred to a partnership, the registrar may pay, deliver or transfer the money or securities, as directed by the order, to 1 or more of the partners.

## **Part 8 Requests by persons claiming entitlement to money or securities in court**

**27 Request to record name and address of person claiming entitlement to money or securities in court**

- (1) This section applies to a person claiming an entitlement to money or securities in court and named in an order of a court relating to the money or securities.
- (2) The person, or the person's solicitor, may ask the registrar of the court to record the following information—
  - (a) the name and address of the person or of the person's solicitor;
  - (b) a change of that name or address.
- (3) The registrar must record the information in a form convenient for reference.

**28 Request for certificate about money or securities in court**

- (1) A person claiming an entitlement to money or securities in court, or someone else on the person's behalf, may give the registrar of the court a written request for a certificate stating the amount and description of the money or securities.
- (2) The registrar may issue the certificate if satisfied the person has a sufficient interest in the money or securities.
- (3) The certificate must—

- (a) state it is current as at the start of the day of its issue; and
  - (b) not include any transaction made on the day of its issue; and
  - (c) comply with subsections (4) to (7).
- (4) If the registrar has notice of an order restraining payment, transfer, delivery, sale or another dealing with the money or securities, the certificate must state that the registrar has notice of a restraining order affecting the money or securities.
- (5) If the registrar has notice of a charging order, as defined in the *Civil Proceedings Act 2011*, section 90(5), that affects the securities, the certificate must state that fact.
- (6) If the registrar has notice under subsection (4) or (5) the certificate must also state—
- (a) the date of the order; and
  - (b) whether the order affects principal or interest; and
  - (c) the name of the person in whose favour the order has been made; and
  - (d) the name of any person the order requires to be notified of the order.
- (7) If an account is currently listed in a list of inactive accounts the certificate must state that fact.
- (8) The registrar may reissue the certificate, but only if there has been no change in the amount or description of the money or securities since the certificate was last issued.

## **29 Request for information about dealings with money or securities in court**

- (1) A person claiming an entitlement to money or securities in court, or someone else on the person's behalf, may give the registrar of the court a written request for a copy of the account or information about, or a certificate stating, any transactions or dealings with the money or securities.



- (2) The registrar may give the copy, information or certificate if satisfied the person has a sufficient interest in the money or securities.

## **Part 9                      Inactive accounts**

### **30        List of inactive accounts**

- (1) On or before 1 April in each year, the registrar of a court must—
  - (a) prepare—
    - (i) a list of inactive accounts; and
    - (ii) a notice complying with subsection (3); and
  - (b) file the list in the court; and
  - (c) display the notice in the court registry; and
  - (d) if the total of the money and securities mentioned in the list is more than \$1000—publish the notice in the gazette and in a newspaper circulating generally in the district in which the court is constituted.
- (2) The notice must be displayed for at least 42 days.
- (3) The notice must contain the list of inactive accounts and state that—
  - (a) a person claiming an entitlement to money or securities in court mentioned in the list may apply to the court for an order for payment, delivery or transfer of the person's entitlement; and
  - (b) if an application is not made by a stated day, an order may be made—
    - (i) for money in court—that the money be paid into the consolidated fund; or

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- (ii) for securities in court—that the securities be sold and the net proceeds of the sale, and any interest accrued on the securities, be paid into the consolidated fund.
- (4) The day stated in the notice must be at least 42 days after the later of the following days—
  - (a) the day the notice is displayed under subsection (1)(c);
  - (b) if subsection (1)(d) applies—the day subsection (1)(d) is complied with.
- (5) The cost of publishing the notice may be debited by the registrar to the inactive accounts mentioned in the list in proportion to the value of the accounts.

### **31 Payment out order**

- (1) This section applies to a person claiming an entitlement to money or securities in court mentioned in a list of inactive accounts.
- (2) The person may apply to the court for an order for payment, delivery or transfer of the person's entitlement (a *payment out order*) within the time stated in the notice displayed or published under section 30(1) or the further time the court may allow.
- (3) The person must file in the court an affidavit stating the facts relied on.
- (4) The person must serve a copy of the application and the affidavit on—
  - (a) the registrar of the court; and
  - (b) any other party to the proceeding to which the money or securities in court relate.
- (5) The court may make—
  - (a) a payment out order; or
  - (b) a consolidated fund order; or

- (c) any other order the court considers appropriate for the disposal of the money or securities.
- (6) If, after filing an application, the applicant does not prosecute the application to finality within 3 months or the further time the court may allow, the registrar may apply for a consolidated fund order as if no application for a payment out order had been made.

### **32 Consolidated fund order**

- (1) This section applies if no application for a payment out order for money or securities in court mentioned in a list of inactive accounts is made within the period stated in the notice displayed or published under section 30(1) or the further time the court may allow.
- (2) The registrar may apply to the court for an order (a *consolidated fund order*)—
  - (a) for money in court—that the money be paid into the consolidated fund; or
  - (b) for securities in court—that the securities be sold and the net proceeds of the sale, and any interest accrued on the securities, be paid into the consolidated fund.
- (3) The registrar must file in the court—
  - (a) a copy of the notice displayed or published under section 30(1); and
  - (b) a statement signed by the registrar stating—
    - (i) section 30 has been complied with for the money or securities; and
    - (ii) an application for a payment out order has not been made within the period stated in the notice.
- (4) A statement under subsection (3) signed by the registrar is evidence of the matters it states.
- (5) The court may make a consolidated fund order if satisfied of the matters mentioned in subsection (3)(a) and (b).

### **33 Transfer back order**

- (1) This section applies if money in court has been paid into the consolidated fund under a consolidated fund order.
- (2) A person claiming an entitlement to the money may, at any time, apply to the court for an order that the money be transferred back to the proceeding or account to which the money relates (a *transfer back order*).
- (3) The person must file in the court an affidavit stating the facts relied on.
- (4) The person must serve a copy of the application and the affidavit on—
  - (a) the registrar of the court; and
  - (b) any other party to the proceeding to which the money in court relates.
- (5) The court may make a transfer back order on the conditions the court considers appropriate.
- (6) A person who obtains a transfer back order must serve a copy of the order on the registrar.
- (7) No interest accrues on the money in court for the period it remains in the consolidated fund, regardless of whether or not a transfer back order is made.

### **34 Functions of registrar and Minister under orders**

- (1) The registrar must give a copy of each consolidated fund order, or other order for the disposal of securities, to the Minister.
- (2) On receipt of the copy of the order the Minister—
  - (a) is authorised to carry out any sale or transfer required by the order; and
  - (b) must carry out the sale or transfer as soon as practicable.
- (3) If the registrar is served with a copy of a transfer back order under section 33(4)(a), the registrar must give a copy of the order to the Minister.

- (4) On receipt of the copy of the order the Minister must transfer back the money as directed by the order as soon as practicable.

### **35 Request for information about accounts in list**

- (1) A person claiming an entitlement to money or securities in court mentioned in a list of inactive accounts, or the person's solicitor, may give the registrar of the court a written request for information about the money or securities.
- (2) The request must be signed by the person or the person's solicitor.
- (3) If the request is made by the person's solicitor, it must state—
  - (a) the name of the person for whom the request is made; and
  - (b) that, in the solicitor's opinion, the person holds a legal or beneficial interest in the money or securities.
- (4) The registrar may give the information if satisfied the person has a sufficient interest in the money or securities.

## **Part 10 Miscellaneous**

### **36 Amendment of slips in orders**

- (1) The court may amend a clerical error or accidental omission in an order as it relates to money or securities in court or that may or are to come into court.
- (2) Subsection (1) does not allow an amendment to be made—
  - (a) to provide for new circumstances arising after the order was made; or
  - (b) to extend a time limit for making a payment, deposit or transfer into court.

### **37 Affidavits**

- (1) If a registrar requires evidence of a matter to give effect to an order of a court under the Act, the registrar may accept an affidavit filed in the court as evidence of the matter.
- (2) However, if a person is entitled to payment of interest under an order and the evidence required is of compliance with a condition affecting the payment of the interest, or that the person is alive, the affidavit must be sworn by the person entitled or by the person's solicitor.

### **38 Prescribed officer—Act, s 4, definition *order***

For section 4 of the Act, definition *order*, paragraph (b), each registrar of a court is a prescribed officer of the court.

## **Part 11 Repeal**

### **39 Repeal**

The Court Funds Regulation 1999, SL No. 135 is repealed.

## **Part 12 Transitional provisions**

### **40 Definition for pt 12**

In this part—

*commencement* means the commencement of this section.

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## 41 Requests

- (1) This section applies if, before the commencement, a person has made a request under a prescribed provision and the request has not been finally dealt with at the commencement.
- (2) The request—
  - (a) under the *Court Funds Regulation 1999*, section 27(2) is taken to be a request under section 27(2) of this regulation; and
  - (b) under the *Court Funds Regulation 1999*, section 28(1) is taken to be a request under section 28(1) of this regulation; and
  - (c) under the *Court Funds Regulation 1999*, section 29(1) is taken to be a request under section 29(1) of this regulation; and
  - (d) under the *Court Funds Regulation 1999*, section 35(1) is taken to be a request under section 35(1) of this regulation.
- (3) In this section—

***prescribed provision*** means—

  - (a) the *Court Funds Regulation 1999*, section 27(2); or
  - (b) the *Court Funds Regulation 1999*, section 28(1); or
  - (c) the *Court Funds Regulation 1999*, section 29(1); or
  - (d) the *Court Funds Regulation 1999*, section 35(1).

## 42 Applications

- (1) This section applies if, before the commencement, a person made an application for an order under a prescribed provision and the application has not been finally dealt with at the commencement.
- (2) The application—

- (a) under the *Court Funds Regulation 1999*, section 31(2) is taken to be an application under section 31(2) of this regulation; and
  - (b) under the *Court Funds Regulation 1999*, section 32(2) is taken to be an application under section 32(2) of this regulation; and
  - (c) under the *Court Funds Regulation 1999*, section 33(2) is taken to be an application under section 33(2) of this regulation.
- (3) In this section—
- prescribed provision*** means—
- (a) the *Court Funds Regulation 1999*, section 31(2); or
  - (b) the *Court Funds Regulation 1999*, section 32(2); or
  - (c) the *Court Funds Regulation 1999*, section 33(2).



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# Schedule                      Dictionary

## section 3

*consolidated fund order* see section 32(2).

*deposited*, into court, includes transferred into court.

*effects*, for securities, means documents or other items that are or are incidental to the securities.

*half year* see section 18(a).

*into* includes in.

*list of inactive accounts* means a list of accounts that, at the start of 1 January in a particular year, were credited with money or securities in court that had not been dealt with, other than by continuous investment or continuous payment of interest, in the previous 6 years.

*payment out order* see section 31(2).

*securities* includes effects.

*transfer back order* see section 33(2).