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Update Summary

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QUEENSLAND CIVIL PRACTICE

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The Commentary in a number of Chapters of the UCPRs has been reviewed and amended. The main features of the amendments are outlined below.

Author Bernard Cairns has reviewed and updated Chapter 9.

UCPR CH 9 – Ending proceedings early

RULE 283 – Interest

If the plaintiff seeks a higher rate of interest than that promulgated by practice direction from time to time from the relevant court, then the court may decide the interest that is recoverable: *Civil Proceedings Act 2011*, s 58. In this regard the author refers to the decision of the Court of Appeal in *HAP2 Pty Ltd v Bankier* (2020) 93 MVR 256; [2020] QCA 152. Here it was said that the purpose of s 58 was to compensate the plaintiff on just terms for the loss of use of money. The quantum is arrived at in a “broad and practical way” in the exercise of a broad discretion without a separate proceeding. The usual practice, the Court of Appeal said, was apply the rate specified by practice directions for the Registrar’s purposes. See [UCPR283.30].

RULE 310 – Discretionary considerations for continuing a discontinued proceeding

The author refers to the decision of *ABN Amro Morgans Ltd v Alders* [2008] QSC 160, a multi-plaintiff proceeding arising out of a failed investment scheme. The plaintiff’s preferred to discontinue to pursue a negotiated settlement under Rules of the Financial Industry Complaints Service. Jones J accepted it was not desirable to compel a plaintiff to litigate against its will and said that the court should give a plaintiff leave if it can do so without injustice to the defendant. See [UCPR.310.20].

Author John Forbes has updated Chapter 11 addressing Evidence.

UCPR CH 11 – Evidence.

RULE 390 – Way evidence given – Trials

The author notes that unfairness may be a reason for declining to take credit evidence outside the court as where, for example, a remote witness is unable to be sworn and is immune from penalties for perjury. However, in *Li v Wang (No 3)* [2024] NSWSC 661, that consideration did not debar video evidence on credit from witnesses in China. See [UCPR.390.10].

Setting aside subpoena

The party issuing a subpoena bears the onus of demonstrating that the subpoena has a legitimate forensic purpose in relation to the issues in the proceedings. In this regard reference is made to the decision of *Hongkong Xinhe International Investment Company Ltd v Bullseye Mining Ltd (No 4)* [2021] WASC 287, where Hill J listed a number of principles for deciding whether a legitimate forensic purpose existed for the purpose of the applications before her.

Working with interpreters

Part 6 was introduced into CH 11 of the UCPRs by the *Criminal Practice (Interpreters) and Other Rules Amendment Rule 2024* and it commenced 24 May 2024. As explained by the author, this new Part is elaborated in a Queensland Courts publication entitled

Working with Interpreters in Queensland Courts and Tribunals (2022). See [UCPR.Pt.6.10].

The author explains that the need for the rules arose out of the increasing variety of immigrants to Australian society, and a corresponding increase in applications to testify through an interpreter: *Singh (Heer) v Minister for Immigration and Ethnic Affairs* (1987) 15 FCR 4; *Gradidge v Grace Bros Pty Ltd* (1988) 93 FCR 414; *Frank v Police* (2007) 98 SASR 547; 98 SASR 547. The courts recognise that the time has arrived to regulate the former laissez faire approach to the use and selection of interpreters in the courts. It may be that some judges were unduly liberal in that regard, for fear of strident complaints of unfair trials. See [UCPR.429VA] - [UCPR.429VL].

Author Jessica Lambert has revised the commentary to Ch 22 of the UCPRs pursuant to the following recent amendments to the Rules.

For our purposes, the *Justice and Other Legislation Amendment Act 2023* amended r 959A by deleting the definition of "electronic document". The amendment commenced 1 February 2024.

Of greater significance were the amendments made by the *Uniform Civil Procedure (Fees) and Other Legislation Amendment Regulation 2024*, which commenced 16 February 2024.

As explained in the accompanying explanatory Note, the amendments:

- replace rules 980 and 981 with a new rule dealing with inspection and copying of documents on the court file, restricting the approach particularly in relation to nonparties' access, ahead of electronic filing and following consultation with key stakeholders. Provided that there is no court order restricting access to documents, these rules currently permit open access to inspect and copy documents filed under the UCPR, subject to the payment of prescribed fees;
- extend existing rules in relation to preliminary disclosure to the District Court and the Magistrates Courts to assist the effective and expeditious completion of court business by facilitating meritorious claims proceeding against the proper defendant. Preliminary discovery provides a mechanism by which a prospective applicant can obtain relevant documents prior to the commencement of substantive proceedings in order to assess the merits of the potential claim and/or identify the proper defendant; and
- amend rule 660 to ensure that the rule reflects common court practice, which is for a broad outline of the proposed order to be discussed in open court, the parties to prepare an order consistent with the proposed order and the judge to make the order by signing the order in chambers.

Citation of authorities in the Trial Division of the Supreme Court and in the Court of Appeal

The author has referred to the provisions of Supreme Court Practice Direction 1 of 2024 for the acceptable manner for citation of authorities in the Trial Division of the Supreme Court and in the Court of Appeal. See [UCPR.961.20].

Documents may be electronically filed

It is noted that the Principal Registrar (Magistrates Court) issued Approval 1 of 2024 providing approval under r 967(3) for the electronic filing of all documents, in the forms approved for use under the *Uniform Civil Procedure Rules 1999*, to be filed with the court in all civil matters. For the limited purposes of this approval electronic filing will be by the QCase portal after the date of implementation of QCase in a particular Magistrates Court and each document may be no greater than 100MB.

Magistrates Practice Direction Number 4 of 2024 – QCase implementation in civil proceeding provides for the introduction of the new digital case management system known as QCase. See [UCPR.967.50].

Counterparts

Where an affidavit or statutory declaration has been witnessed remotely and the signatures of the deponent and the witness are on different papers, the affidavit or statutory declaration (including court forms containing these) may be filed in multiple parts with court registries. These separate documents are called counterparts. See [UCPR.967A.10].

Filing Documents Personally

A document is filed by personal attendance by the party or their solicitor at the registry. For a document to be considered filed, the prescribed fee must be paid (rr 968(5)), it must be recorded by the registrar and stamped with the seal of the court (rr 968(4)). See [UCPR.968.10].

Filing documents by post

The following commentary has also been updated or added:

- Filing documents by post – see [UCPR.969.10];
- Requirements for documents filed by post – see [UCPR.969.20];
- Risk – see [UCPR.969.30];
- Cases – see [UCPR.969.40];
- Default judgments – see [UCPR.969.50]; and
- Listing of applications filed by post – see [UCPR.969.60].

Pt 1 – Div 6 – Inspection and copying of filed documents

The author notes that on 16 February 2024 amendments to the UCPR commenced. These amendments inserted new rr 975G--975I to replace previous rr 980–981. The new rules include:

- changes to the inspection and copying of documents in civil proceedings;
- the way in which a search and copy request is to be made and assessed; and

- a new application for a court order granting access to documents that a person otherwise would not be entitled to access.

A person may request from the Supreme or District Court, or a Magistrates Court to search, inspect or copy a civil court file using the approved form or through the online portal. See [UCPR.975H.10] – [UCPR 975I.10].

