

Magistrates Courts Act 1921-1989

***ORDER IN COUNCIL**

At the Executive Building, Brisbane, the thirteenth day of
December, 1990

Present:

His Excellency the Governor in Council

HIS Excellency the Governor, acting by and with the advice of the Executive Council, and in pursuance of the provisions of the *Magistrates Courts Act 1921-1989*, does hereby made the following Rules of Court:—

And the Honourable the Minister for Justice and Corrective Services is to give the necessary directions herein accordingly.

E. J. BIGBY, Clerk of the Council

MAGISTRATES COURTS (AMENDMENT) RULES 1990

1. Short title. These rules may be cited as the Magistrates Courts (Amendment) Rules 1990.

2. Principal Rules. The Magistrates Courts Rules, 1960 as previously amended are referred to in these rules as the Principal Rules.

3. Commencement. These rules are to commence on 7 January 1991.

4. Amendment of r.3. Rule 3 of the Principal Rules is amended by—

(a) inserting after the words "PART IX—PAYMENT INTO AND OUT OF COURT (RR. 106—113);" the words "PART IXA—OFFER TO SETTLE (R.113A);";

(b) omitting the words "ATTACHMENT OF DEBTS" where they appear after the words "PART XXX—" and substituting the words "GARNISHEE PROCEEDINGS".

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5. Amendment of r.9. Rule 9 of the Principal Rules is amended by—

- (a) inserting after the definition “Bailiff” the following definition:—
“ “Certified Copy”—Includes an extract certified under the seal of the Court;”;
- (b) omitting the definition “Chief Stipendiary Magistrate” and substituting the following definition:—
“ “Chief Stipendiary Magistrate”—A justice appointed pursuant to Section 11(2) of the Justices Act, 1886-1990;”
- (c) placing inverted commas before and after the word “copy” where it occurs in the definition “Copy”.

6. Omission of reference. The Principal Rules are amended by omitting the expression “(R.33.)” where it occurs before Rule 11.

7. Amendment of r.31. Rule 31 of the Principal Rules is amended by—

- (a) omitting the expression “(R.95.)” where it occurs before sub-Rule (3);
- (b) omitting the expression “(R.S.C. O.91,r.5.)” where it occurs before sub-Rule (5).

8. Amendment of r.35. Rule 35 of the Principal Rules is amended by omitting the expression “(R.S.C. O.4,r.10.)” where it occurs before sub-Rule (2).

9. Amendment of r.43. Rule 43 of the Principal Rules is amended by—

- (a) inserting after sub-Rule (5) the following sub-Rule:—
“(6) Where a plaint is settled by Counsel the name of the Counsel shall be written on the plaint.”;
- (b) omitting the expression “(R.42.)” where it occurs before sub-Rule (7).

10. Amendment of r.45. Rule 45 of the Principal Rules is amended in sub-Rule (1)(a) by omitting from the proviso the words “that where the summons issued upon the plaint being filed is a special summons, the special endorsement under Rule 51 on the summons shall be deemed to be such statement of the particulars of claim and”.

11. Omission of reference. The Principal Rules are amended by omitting the expression “(R.33A)” where it occurs before Rule 48.

12. New r.50A. The Principal Rules are amended by inserting after Rule 50 the following Rule:—

“50A. No original plaint commencing an action for a small debt is to be in force for more than twelve months from the

day of the date thereof, including the day of such date; but if any defendant therein named has not been served within that time, the plaintiff may, before the expiration of twelve months, apply in Form No.16 set forth in the First Schedule to these Rules, suitably amended, to the Registrar for leave to renew the plaint commencing an action for a small debt.

For the purposes of this Rule, the provisions of Rule 50 hereof are, with all necessary adaptations, to apply accordingly.”.

13. Numbering of rule. The Principal Rules are amended by inserting after Rule 51 the expression “52.” before the words “The minimum period”.

14. Amendment of r.54. Rule 54 of the Principal Rules is amended by omitting the word “thereof” and substituting the words “of the plaint”.

15. Amendment of r.55. Rule 55 of the Principal Rules is amended by inserting the expression “(2)” before the words “The term”.

16. Repeal of and new r.55A. The Principal Rules are amended by repealing Rule 55A and substituting the following Rule:—

“55A.A plaint commencing an action for a small debt is to be served upon a defendant in the manner prescribed by Rule 55 of these Rules.”.

17. Amendment of r.59. Rule 59 of the Principal Rules is amended by omitting the words “the *Mental Health Services Act, 1974-1988*” where they twice occur and substituting the words “the *Mental Health Services Act 1974-1989*” in each case.

18. Amendment of r.74. Rule 74 of the Principal Rules is amended by—

(a) re-numbering the present sub-Rule (3) as sub-Rule (4);

(b) inserting after sub-Rule (2) the following sub-Rule:—

“(3) Such affidavit of service shall only be filed when applying for judgment or in conjunction with any enforcement proceedings.”.

19. Amendment of r.85. Rule 85 of the Principal Rules is amended by—

(a) omitting the expression “(R.83.)” where it occurs before sub-Rule (2);

(b) omitting the expression “(R.85.)” where it occurs before sub-Rule (3).

20. Omission of reference. The Principal Rules are amended by omitting the expression “(R.S.C. O.25.r.12.)” where it occurs before Rule 89.

21. Amendment of r.105. Rule 105 of the Principal Rules is amended by omitting the expression “(R.S.C. O.22,r.32.)” where it occurs before sub-Rule (2).

22. Amendment of r.108. Rule 108 of the Principal Rules is amended by—

(a) inserting after the words “the registrar of the Court” the words “and the defendant”;

(b) adding at the end thereof the following paragraph:—

“Upon an order being made for the reinstatement of such action made under this Rule, the plaintiff shall forthwith pay into Court all monies previously paid out to him by the registrar under this Rule.”.

23. New r.113A. The Principal Rules are amended by inserting after Rule 113 the following heading and Rule:—

“PART IXA—OFFER TO SETTLE

113A. (1) In this Rule, unless the contrary intention appears—

“defendant” includes a defendant to a counter-claim and a party against whom a claim is made in accordance with Part XI;

“offer to settle” means an offer to settle made in accordance with this Rule and “offer” has a corresponding meaning;

“plaintiff” includes a defendant who makes a counter-claim or who makes a claim in accordance with Part XI.

(2) (a) A party may serve on any other party an offer to settle any one or more of the claims in an action on the terms specified in the offer to settle.

(b) A party may serve more than one offer to settle.

(c) An offer to settle made in accordance with this Rule shall be in writing and shall contain a statement that it is made in accordance with this Rule.

(3) An offer to settle in accordance with sub-Rule (2) of this Rule shall be served at any time before the judgment is given.

(4) (a) A party shall specify in an offer to settle a period, expiring not less than 14 days after the day of service of the offer, during which the offer is open for acceptance, and the offer shall not be withdrawn during that period without the leave of the Court.

(b) An offer to settle lapses at the expiration of the period during which it is specified to be open.

(c) The Court may at any time within which an offer to settle is open for acceptance, grant leave to a party to withdraw the offer to settle but the offer may be accepted at any time

before the determination of the application for leave to withdraw it.

(d) Paragraph (b) of this sub-Rule has effect even though at the expiry of the period for accepting the offer to settle an application for leave to withdraw it has not been determined by the Court.

(e) The Court shall not, notwithstanding any other provision of these Rules, extend the time for accepting an offer to settle.

(5) An offer to settle made in accordance with this Rule shall be taken to be an offer made without prejudice.

(6) (a) Subject to sub-Rule (12) of this Rule, no statement of the fact that an offer to settle in accordance with this Rule has been made shall be contained in any pleading or affidavit.

(b) Where an offer to settle is not accepted, no communication in respect of the offer shall be made to the Court at the trial or hearing until all questions of liability and the relief to be granted, except costs, have been determined.

(7) (a) Acceptance of an offer to settle shall be effected by serving a written notice of acceptance on the offeror or on the offeror's solicitor.

(b) An offer to settle does not lapse on the making of a counter offer to settle.

(c) Where an offeree rejects an offer or makes a counter offer to settle which is not accepted, the offeree may subsequently accept the original offer to settle during the period that it is open for acceptance.

(d) Where an offer to settle is accepted, the Court may incorporate any of its terms into its judgment or order.

(e) An offer to settle providing for the payment of a sum of money shall, unless it otherwise provides, be taken to be an offer providing for the payment of that sum within 14 days after acceptance of the offer.

(8) A party who is under a legal disability may make or accept an offer to settle in accordance with this Rule but the acceptance of an offer to settle is not binding on the party under a legal disability unless it is sanctioned in accordance with section 59 of the *Public Trustee Act 1978-1989*.

(9) (a) Where the plaintiff makes an offer to settle which is not accepted by the defendant and the plaintiff obtains a judgment no less favourable than the offer to settle, the Court shall order the defendant to pay the plaintiff's costs, unless the defendant shows that another order for costs is proper in the circumstances.

(b) Where the defendant makes an offer to settle which is not accepted by the plaintiff and the plaintiff obtains a judgment which is not more favourable to the plaintiff than the offer to settle, the Court shall order the defendant to pay the plaintiff's costs up to and including the day of service of the offer to settle

and order the plaintiff to pay the defendant's costs after the day of service of the offer to settle, unless the plaintiff shows that another order for costs is proper in the circumstances.

(c) For the purposes of paragraph (b) of this sub-Rule, where the offer to settle is served on the first or later day of the trial then, unless the Court orders otherwise, the plaintiff is entitled to his costs to the opening of the Court on the next day of the trial and the defendant is entitled to the defendant's costs incurred after the opening of the Court on that day.

(d) Where the plaintiff obtains judgment for the recovery of a debt or damages and—

(i) the amount of the judgment includes interest or damages in the nature of interest;
or

(ii) under any Act the Court awards the plaintiff interest or damages in the nature of interest;

for the purposes of making an order for costs under paragraphs (a) or (b) of this sub-Rule, the Court shall disregard the interest or damages in the nature of interest that relates to the period after the day of service of the offer to settle.

(e) Paragraphs (a) and (b) of this sub-Rule shall not apply, unless the Court is satisfied by the party serving the offer that that party was at all material times willing and able to carry out his or her part of what was proposed in the offer.

(10) (a) Subject to paragraph (b) of this sub-Rule, where there are two or more defendants, the plaintiff may offer to settle with any defendant, and any defendant may offer to settle with the plaintiff.

(b) Where defendants are alleged to be jointly or jointly and severally liable to the plaintiff and rights of contribution or indemnity may exist between the defendants, this Rule does not apply to that offer to settle unless—

(i) in the case of an offer made by the plaintiff, the offer is made to all of the defendants and is an offer to settle the claim against all the defendants;

or

(ii) in the case of an offer made to the plaintiff—

(A) the offer is an offer to settle the plaintiff's claim against all the defendants;

and

(B) where the offer is made by two or more defendants, by the terms of the offer the defendants who make the offer are jointly or jointly and severally liable to the plaintiff for the whole of the amount of the offer.

(11) (a) Where a defendant makes a claim (in this sub-Rule called a "contribution claim") to recover a contribution or an

indemnity against any person, whether a defendant to the proceeding or not, in respect of any claim for a debt or damages made by the plaintiff in the proceeding, any party to the contribution claim may serve on any other party to the contribution claim an offer to contribute towards the settlement of the claim made by the plaintiff on the terms specified in the offer.

(b) The Court may take account of an offer to contribute in determining whether it should order that the party on whom the offer to contribute was served should pay the whole or part of—

(i) the costs of the party who made the offer;
and

(ii) any costs which that party is liable to pay to the plaintiff.

(c) Sub-Rules (5) and (6) apply, with such modification as is necessary, to an offer to contribute as if it were an offer to settle.

(12) Where a party does not comply with an accepted offer to settle the other party may elect to—

(a) apply to the Court for judgment in the terms of the offer and the Court may give that judgment;

or

(b) continue with the proceeding as if an offer to settle had not been accepted.”.

24. Amendment of r.121. Rule 121 of the Principal Rules is amended by omitting the words “the *Mental Health Services Act, 1974-1988*” and substituting the words “the *Mental Health Services Act 1974-1989*”.

25. Amendment of r.122. Rule 122 of the Principal Rules is amended in sub-Rule (2) by omitting the words “by summons” and substituting the words “on notice”.

26. Amendment of r.123. Rule 123 of the Principal Rules is amended by omitting the words “by summons” and substituting the words “on notice”.

27. Amendment of r.127. Rule 127 of the Principal Rules is amended by omitting from the proviso the words “by summons” and substituting the words “on notice”.

28. Amendment of r.128. Rule 128 of the Principal Rules is amended by omitting the words “by summons” and substituting the words “on notice”.

29. Amendment of r.130. Rule 130 of the Principal Rules is amended by inserting after the words “such directions as” the word “to”.

30. Omission of reference. The Principal Rules are amended by omitting the expression “(R.S.C. O.61, r.5.)” where it occurs before Rule 137.

31. Amendment of r.141. Rule 141 of the Principal Rules is amended by omitting the expression “(R.S.C. O.30,r.2.)” where it occurs before sub-Rule (2).

32. Omission of reference. The Principal Rules are amended by omitting the expression “(R.79A)” where it occurs before Rule 155.

33. Amendment of r.155. Rule 155 of the Principal Rules is amended in sub-Rule (3) by omitting the expression “,” after the word “defendant” where it first occurs.

34. Omission of reference. The Principal Rules are amended by omitting the expression “(R.87A.)” where it occurs before Rule 156.

35. Repeal of and new r.157. The Principal Rules are amended by repealing Rule 157 and substituting the following Rule:—

“**157.** (1) Judgment by default may be given by a Court for any sum not exceeding the amount claimed and endorsed on the summons, together with interest at the rate provided, if any, and costs, if—

- (a) the time limits prescribed by Rule 52 have elapsed;
- (b) the defendant has not—
 - (i) filed an entry of appearance and defence;
 - or
 - (ii) filed an entry of appearance, defence and counter-claim;
 - or
 - (iii) paid into Court, or filed a confession for, the total amount of the claim and costs;
- (c) service of the summons is proved;
- (d) less than 4 years have elapsed since the summons was served;
- (e) the plaint discloses a sufficient cause of action;
- and
- (f) the plaintiff, or his or her solicitor or agent, requests that judgment by default be given, by—
 - (i) filing a request in Form 32 hereto;
 - and
 - (ii) deposing by affidavit to—
 - (A) the amount, if any, received by the plaintiff since the commencement of the proceedings;
 - and

(B) the amount justly and bona fide due and unpaid to the plaintiff.

(2) Unless the Court otherwise directs, the affidavit referred to in sub-Rule (1)(f)(ii) may contain statements of information and belief giving the sources of such information and the grounds of such belief.

(3) Where a request for judgment by default is for damages arising out of or in relation to personal injuries, defamation or an action for detinue, the request is to be made ex parte, by application, to a Court constituted by a Stipendiary Magistrate.

All other requests for judgment by default are to be made to a Court constituted by a registrar.

(4) Where there are several defendants to the summons a Court may give judgment under this Rule against any defendant who fails to file an entry of appearance and defence or an entry of appearance, defence and counter-claim; and the Court may issue execution upon the judgment without prejudice to the plaintiff's right to proceed with his or her action against any defendants who have filed an entry of appearance and defence or an entry of appearance, defence and counter-claim.

(5) In any case where the claim is not for a debt or liquidated demand but is for damages, when judgment is given under this Rule by a Court constituted by a Stipendiary Magistrate or a registrar, the damages are to be assessed by that Court upon affidavit or evidence on oath or affirmation according to these Rules within the Court's discretion.

(6) In any action under this Rule, a Court constituted by a registrar may, of its own motion or at the request of the plaintiff, refer the matter to a Court constituted by a Stipendiary Magistrate, for determination as to the sum or sums to be paid by a defendant to the plaintiff in any particular case.

(7) Any judgment given under this Rule by a Court, constituted by a Stipendiary Magistrate or by a registrar, may be set aside or varied by a Court constituted by a Stipendiary Magistrate, upon such terms as to costs or otherwise as the Court may think fit."

36. Amendment of heading. The heading to Rule 158 of the Principal Rules is amended by omitting the expression "£200" and substituting the expression "\$2,000".

37. Insertion and deletion of heading. The Principal Rules are amended by—

(a) inserting before Rule 161A the following heading:—

"Defendant entitled to copy of Co-defendant's List";

(b) omitting the words "Defendant entitled to copy of Co-Defendant's List" occurring after Rule 161A.

38. New Rule 167A. The Principal Rules are amended by inserting after Rule 167 the following heading and Rule:—

“Inspection and Preservation of Property

167A. (1) The Court may, upon the application of any party to an action, and upon such terms as may be just, make any order that may be necessary for the inspection, detention, or preservation of any property or thing, being the subject-matter of the litigation, or as to which any question may arise therein.

(2) An application under sub-Rule (1) shall, subject to Rule 289 (9), be made on notice supported by affidavit and the notice and a copy of every affidavit in support and of any exhibit or annexure referred to therein shall be served on the person against whom the order is sought at least three clear days before the return day.

(3) An application under sub-Rule (1) may be made at any time after the commencement of the action and, if the party making the application is not the plaintiff, after appearance by that party.”.

39. New Rule 167B. The Principal Rules are amended by inserting after Rule 167A the following heading and Rule:—

“Inspection of documents in the possession of a person not a party to the cause.

167B. (1) Any party to a proceeding may apply to a Court for an order directing any person not a party to the proceeding to produce for inspection any document in the person’s possession or power relating to any matter in question in the proceeding and which the person could be required to produce at the trial.

(2) An application under sub-Rule (1) shall be made on notice supported by affidavit and the notice and a copy of every affidavit in support and of any exhibit or annexure referred to therein shall be served on the person against whom the order is sought (in this Rule referred to as “the respondent”) at least three clear days before the return day.

(3) If the Court is satisfied that the respondent has in the respondent’s possession or power a document of the kind referred to in sub-Rule (1) and that it is necessary that the party making the application should inspect the document at that stage of the proceeding, the Court may, if the Court deems it just, and on such conditions as the Court thinks fit, order that the respondent produce the document, or part thereof, for the inspection of the party at a time and place to be named in the order and that the party or the party’s solicitor be permitted to take copies thereof.

(4) The place to be named in the order shall, if the respondent requests, be the office or place of business of the respondent or the respondent’s solicitor or the place at which the document is usually kept.

(5) The Court may, whether it grants or dismisses the application, order the party making the application to pay to the respondent the costs of the application and may order that prior payment of the costs be a condition of the inspection of the document.

(6) No order for costs shall in any event be made against the respondent.

(7) Nothing contained in this Rule shall affect the power of the Court to order that the costs of the application (including any costs paid by the party making the application to the respondent) be borne or paid by any other party to the proceeding.”.

40. Amendment of r.182. Rule 182 of the Principal Rules is amended in sub-Rule (1) by omitting the words “Fifty pounds” and substituting the words “2 penalty units”.

41. Amendment of r.187. Rule 187(2) of the Principal Rules is amended by inserting after the word “entered” the expression “,”.

42. Amendment of r.191. Rule 191 of the Principal Rules is amended by inserting after the word “If” the word “an”.

43. Amendment of r.196. Rule 196 of the Principal Rules is amended by—

(a) omitting the expression “(R.36.)” where it occurs before sub-Rule (2);

(b) omitting the expression “(R.7.)” where it occurs before sub-Rule (4).

44. Omission of reference. The Principal Rules are amended by omitting the expression “(R.105.)” where it occurs before Rule 197.

45. Amendment of r.198. Rule 198 of the Principal Rules is amended by inserting after sub-Rule (11) the following sub-Rule:—

“(12) Any moneys ordered to be paid by instalments under this Rule shall be paid directly to the judgment creditor.

The judgment creditor, his solicitor or agent shall notify the registrar by affidavit in Form 55I set forth in the First Schedule to these Rules of any default by the judgment debtor in the payment of any instalment due on an order made under this Rule.”.

46. Omission of reference. The Principal Rules are amended by omitting the expression “(R.108.)” where it occurs before Rule 199.

47. Amendment of r.204. Rule 204 of the Principal Rules is amended by omitting the expression “(R.S.C. O.41,r.5.)” where it occurs before sub-Rule (2).

48. Amendment of r.215. Rule 215 of the Principal Rules is amended by—

(a) omitting the expression “(R.S.C. O.41,r.18.)” where it occurs before sub-Rule (2);

(b) in sub-Rule (3) inserting after the words “of the original” the expression “,”.

49. Omission of reference. The Principal Rules are amended by omitting the expression “(R.38.)” where it occurs before Rule 220.

50. Amendment of r.221. Rule 221 of the Principal Rules is amended in sub-Rule (3) by omitting the word “any” and substituting the word “and”.

51. Omission of reference. The Principal Rules are amended by omitting the expression “(RR.111-114.)” where it occurs before Rule 222.

52. Amendment of r.223A. Rule 223A of the Principal Rules is amended by omitting the word “Rule” where it occurs before the expression “223A”.

53. Omission and insertion of heading. The Principal Rules are amended by omitting the words “PART XXIIA—PRE—TRIAL CONFERENCE” occurring after Rule 223A and inserting them before that Rule.

54. Omission of reference. The Principal Rules are amended by omitting the expression “(RR. 167-171.)” where it occurs before Rule 225.

55. Omission of reference. The Principal Rules are amended by omitting the expression “(R.178.)” where it occurs before Rule 226.

56. Omission of reference. The Principal Rules are amended by omitting the expression “(R.175.)” where it occurs before Rule 227.

57. Amendment of r.227. Rule 227 of the Principal Rules is amended by—

(a) in sub-Rule (1)(c), omitting the words “twenty-five pounds” and substituting the words “20 penalty units”;

(b) omitting the expression “(R.S.C. O.84,r.2.)” where it occurs before sub-Rule (2).

58. Amendment of r.230. Rule 230 of the Principal Rules is amended in sub-Rule (2)(b) by omitting the word “and” where it occurs after the words “with the registrar.”.

59. Amendment of r.231. Rule 231 of the Principal Rules is amended by omitting the expression “(R.125.)” where it occurs before sub-Rule (2).

60. Amendment of r.240. Rule 240 of the Principal Rules is amended in sub-Rule (2) by omitting the words “*The Real Property Acts, 1861 to 1952*” where they twice occur and substituting the words “*The Real Property Act 1861-1990*” in each case.

61. Amendment of r.241. Rule 241 of the Principal Act is amended by—

- (a) omitting the words “*The Real Property Acts, 1861 to 1952*” where they twice occur and substituting the words “*The Real Property Act 1861-1990*” in each case;
- (b) in sub-rule (2) omitting the words “Form U of the Schedule to those Acts” and substituting the words “the Form prescribed under that Act”.

62. Amendment of r.242. Rule 242 of the Principal Rules is amended in paragraph (a) by omitting the words “one hundred pounds” and substituting the words “two hundred dollars”.

63. Amendment of r.258. Rule 258 of the Principal Rules is amended by—

- (a) in sub-Rule (1) omitting the words “twenty-five pounds” where they twice occur and substituting the words “fifty dollars” in each case;
- (b) in sub-Rule (3) omitting the words “twenty-five pounds” where they twice occur and substituting the words “fifty dollars” in each case.

64. Amendment of heading. The Principal Rules are amended in the heading to PART XXX after Rule 258 by omitting the words “ATTACHMENT OF DEBTS” and substituting the words “GARNISHEE PROCEEDINGS”.

65. Amendment of r.259. Rule 259 of the Principal Rules is amended by omitting sub-Rule (3) and substituting the following sub-Rule:—

“(3) (a) For the purposes of this Part and without restricting the meaning of any of the terms “debt”, “debts” and “debts due, owing, or accruing”, those terms shall be deemed to include—

- (i) a sum standing to the credit of the judgment debtor in any bank, building society, co-operative housing society or similar society, credit union, credit society, investment fund or corporation that is payable to the judgment debtor either on call or on notice;
- (ii) the earnings of the judgment debtor (being wages or salary and fees, bonus, commission, overtime pay or other emoluments payable in addition to or in lieu of wages or salary) annuity, moneys payable in lieu of leave, or retirement benefit due or accruing to the judgment debtor;
- (iii) any debt or other sum of money due or accruing to the judgment debtor,

and “indebted” shall have a corresponding meaning.

(b) An amount standing to the credit of a judgment debtor in an account in any bank, building society, co-operative housing society or similar society, credit union, credit society, investment fund or corporation that is payable to the judgment debtor either on call or on notice shall, subject to paragraph (c) of this sub-Rule, for the purposes of this Part, be a debt due to the judgment debtor notwithstanding that any condition relating to the account or a demand or notice for payment under the account is unsatisfied.

(c) Where an amount referred to in paragraph (b) of this sub-Rule is made the subject of an order under this Part then, unless the Court otherwise orders, the first-mentioned order only operates to require payment of the said amount when any necessary period of notice has expired, but service on the garnishee of the order for payment of the said amount shall be deemed to be the giving of that notice.”.

66. Amendment of r.261B. Rule 261B of the Principal Rules is amended by—

(a) in sub-Rule (1) omitting the words “to which Rule 261A applies”;

(b) in sub-Rule (3) omitting the words “to which Rule 261A applies” and substituting the expression “,”.

67. Amendment of r.268. Rule 268 of the Principal Rules is amended by—

(a) in sub-Rule (1)—

(i) omitting the expression “,” where it appears after the words “Rule 259” and substituting the word “or”;

(ii) omitting the words “or Rule 261A”;

(b) renumbering sub-Rules (2) and (3) as sub-Rules (3) and (4) respectively;

(c) inserting after sub-Rule (1) the following sub-Rule:—

“(2) A summons to show cause directed to a garnishee under Rule 261A hereof shall be served not less than six weeks before the return date.”.

68. Amendment of r.271. Rule 271 of the Principal Rules is repealed and the following Rule is substituted:—

“271. Where the amount due from the garnishee to the judgment debtor is due under a judgment obtained by the judgment debtor against the garnishee, unless a Court otherwise orders, the garnishee shall not be liable to pay to the judgment creditor the amount due from the garnishee to the judgment debtor by any larger instalments than those by which the garnishee

is liable to pay the amount under the judgment obtained by the judgment debtor against the garnishee.”.

69. Amendment of r.273. Rule 273 of the Principal Rules is amended in sub-Rule (1) by omitting the words “an attachment of debts” and substituting the words “a garnishee order”.

70. Omission of reference. The Principal Rules are amended by omitting the expression “(R.144.)” where it occurs before Rule 274.

71. Amendment of r.274. Rule 274 of the Principal Rules is amended by—

(a) adding at the end of sub-Rule (1) the following paragraph:—

“It is not a requirement of these Rules that the person ordered to attend and be orally examined be tendered any conduct money, witness expenses, or travelling allowance for an attendance in compliance with an order and notice issued under this Rule.”;

(b) inserting after sub-Rule (10) the following sub-Rule:—

“(11) No order and notice under this Rule shall be in force for more than twelve months from the day of the date thereof, including the day of such date except in the case where a warrant in accordance with sub-Rule (8) of this Rule has issued.

Provided that after the expiration of twelve months from the day of issue of the order, the judgment creditor may apply for a new order to be issued.”.

72. Amendment of r.287. Rule 287(1) of the Principal Rules is amended by omitting the words “half-past”.

73. Omission of reference. The Principal Rules are amended by omitting the expression “(R.6.)” where it occurs before Rule 288.

74. Amendment of r.290. Rule 290 of the Principal Rules is amended by—

(a) omitting the expression “(R.S.C. O.65,r.13.)” where it occurs before sub-Rule (2);

(b) omitting the expression “(R.S.C. O.65,r.14.)” where it occurs before sub-Rule (3);

(c) omitting the expression “(R.S.C. O.65,r.15.)” where it occurs before sub-Rule (4);

(d) omitting the expression “(R.S.C. O.65,r.16.)” where it occurs before sub-Rule (5);

(e) omitting the expression “(R.S.C. O.65,r.17.)” where it occurs before sub-Rule (6).

75. Amendment of r.293. Rule 293 of the Principal Rules is amended in sub-Rule (2) by omitting the words “twenty-five pounds” and substituting the words “fifty dollars”.

76. Amendment of r.299. Rule 299 of the Principal Rules is amended in sub-Rule (3) by—

(a) in paragraph (ii) omitting the words “attachments of debts” and substituting the words “garnishee proceedings”;

(b) in paragraph (iv)—

(i) inserting after the words “foreign district” where they twice occur the words “other than the Central, Logan, Holland Park, Inala, Sandgate and Wynnum Divisions of the Brisbane District” in each case;

(ii) inserting after the word “registrar” where it first occurs the words “, other than the registrar in Brisbane,”;

(iii) omitting the words “but so that any alteration of the return day pursuant to the memorandum shall be initialled by him and sealed with the seal of the Court of which he is registrar (”;

(iv) omitting the expression “)” where it occurs after the words “such non-service”;

(c) re-numbering paragraphs (v), (vi), (vii), (viii), (ix) and (x) as (viii), (ix), (x), (xi), (xii) and (xiii) respectively;

(d) inserting the following paragraphs after paragraph (iv):—

“(v) Where a summons or other document is required to be served by a bailiff in a district other than the Central Division of the Brisbane District, any person requiring such service may transmit the same and a copy thereof to a registrar in such aforementioned district for delivery to the bailiff, with a written request for service together with a sum of money sufficient to defray the cost of such service, and such lastmentioned registrar is hereby empowered to comply with such written request;

(vi) Where a summons or other document is required to be served by a bailiff in a foreign district, namely the Central, Logan, Holland Park, Inala, Sandgate or Wynnum Divisions of the Brisbane District, the registrar shall transmit the same and a copy thereof to the bailiffs’ office in the Central Division for delivery to a bailiff, with a memorandum requesting service, sealed with the seal of the Court, and such bailiff is hereby empowered to comply with the requisition contained in such memorandum and if the summons is returned not served, the registrar shall forthwith give notice to the plaintiff or party concerned of such non-service;

(vii) Where a summons or other document is required to be served by a bailiff in a foreign district, namely the Central,

Logan, Holland Park, Inala, Sandgate or Wynnum Divisions of the Brisbane District, any person requiring such service may transmit the same and a copy thereof to the bailiffs' office in the Central Division for delivery to a bailiff, with a written request for service together with a sum of money sufficient to defray the cost of such service, and such bailiff is hereby empowered to comply with such written request;".

77. Amendment of r.301. Rule 301 of the Principal Rules is amended by inserting after sub-Rule (2) the following sub-Rule:—

"(3) Every person for the time being holding the appointment of or deemed to be an assistant clerk of the court within the meaning of that expression in the Justices Acts 1886—1990 at any place appointed for holding Magistrates Courts, or deemed so to be, under those Acts shall be a deputy registrar of every Magistrates Court held at that place for the purposes of these Rules."

78. Amendment of r.303. Rule 303 of the Principal Rules is amended by—

(a) in sub-Rule (2)—

(i) omitting the words "from any book kept in a form set forth in the First Schedule to these Rules by the registrar";

(ii) omitting the words "for." and substituting the words "for:";

(b) adding the following proviso at the end of sub-Rule (2):—

"Provided that the registrar may provide a certified copy or extract of any judgment for publication in a bona fide credit publication.";

(c) adding at the end thereof the following sub-Rule:—

"(3) The registrar shall, upon the written application of any person who, in the registrar's opinion, has sufficient interest in the proceeding and upon payment of the prescribed fee, supply to the applicant a copy of the plaint and summons relevant to the proceeding, the depositions taken therein, any order made therein, any documentary exhibit therein other than a photograph, or, as the case may require, a copy of such of them as the applicant applies for."

79. Amendment of r.305. Rule 305 of the Principal Rules is amended—

(a) in sub-Rule (2) by—

(i) in paragraph (v)—

(A) inserting after the words "in a foreign district" the words "other than the Central, Logan, Holland Park, Inala, Sandgate and Wynnum Divisions of the Brisbane District,";

(B) omitting the word “court” where it occurs before the words “not later than” and substituting the word “Court”;

(ii) re-numbering paragraphs (iv), (v), (vi), (vii), (viii), (ix), (x) and (xi) as (v), (vi), (viii), (ix), (x), (xi), (xii) and (xiii) respectively;

(iii) inserting after paragraph (iii) the following paragraph:—

“(iv) He shall cause all summonses or other documents to be served on the respective persons as soon as practicable after their delivery to him by the party requesting service, and he shall forthwith transmit the copy thereof with an affidavit of service to the party requesting service, or in case of their non-service, he shall deliver such copies received by him to that party, with a notice, signed by him, stating that fact and why the summons or other document has not been served;”;

(iv) inserting after paragraph (vi) as so renumbered the following paragraph:—

“(vii) Where a summons has been received from the registrar of a Court and has been served in a foreign district, namely the Central, Logan, Holland Park, Inala, Sandgate and Wynnum Divisions of the Brisbane District, by a bailiff of a Court in that district, he shall forthwith transmit the copy thereof to the registrar of the home Court with an affidavit of service, or if the summons has not been served, he shall return it with a notice in the form set forth in the First Schedule to these Rules, signed by him, stating the fact and why it has not been served, and in such case so that the summons or copy and affidavit of service or notice of non-service are received by the registrar of the home Court not later than the time set forth in sub-Rule (1) of Rule 76 hereof; and if the registrar of the home Court so requires, the bailiff shall furnish to that registrar his affidavit of the matters contained in his notice of non-service, and if such affidavit be defective, the bailiff shall amend the same at his own expense in conformity with the directions of the registrar of the home Court;”;

(b) by omitting the expression “(R.23.)” where it occurs before sub-Rule (3).

80. Amendment of r.311. Rule 311 of the Principal Rules is amended by—

(a) omitting the expression “(R.2.)” where it occurs before sub-Rule (2);

(b) inserting after sub-Rule (3) the following sub-Rule:—

“(4) The name, address and telephone number of the party, solicitor or agent shall be endorsed on any document filed in the office of the registrar by that party, solicitor or agent.”.

81. Omission of reference. The Principal Rules are amended by omitting the expression “(R.187.)” where it occurs before Rule 313.

82. Amendment of r.313. Rule 313 of the Principal Rules is amended by omitting the expression “(R.186.)” where it occurs before sub-Rule (3).

83. Omission of reference. The Principal Rules are amended by omitting the expression “(R.187.)” where it occurs before Rule 314.

84. Amendment of r.314. Rule 314 of the Principal Rules is amended by—

(a) re-numbering sub-Rules (2), (3), (4) and (5) as sub-Rules (3), (4), (5) and (6) respectively;

(b) inserting after sub-Rule (1) the following sub-Rule:—

“(2) Unless otherwise provided by these Rules, where a document is required to be filed, the original document shall be filed in the office of the registrar.”.

85. Amendment of r.318. Rule 318 of the Principal Rules is amended by omitting the words “or notice” where they twice occur and substituting the words “, notice or plaint commencing an action for a small debt” in each case.

86. Amendment of r.319. Rule 319 of the Principal Rules is amended by adding at the end of sub-Rule (1A) the words “and a service fee and travelling allowance at the rates set forth in the Third Schedule to these Rules as bailiff fees”.

87. Amendment of r.326. Rule 326 of the Principal Rules is amended by omitting the expression “(Cf.R.195.)” where it occurs before sub-Rule (2).

88. Amendment of r.343. Rule 343 of the Principal Rules is amended by omitting the word “penny” and substituting the word “cent”.

89. Amendment of First Schedule. The First Schedule to the Principal Rules is amended by—

(a) in form M.C. 23—

(i) inserting after the word “within” the expression “20”;

(ii) omitting the words “And you are hereby summoned to attend at the Magistrates Court at _____, on the _____ day of _____, 19____, at the hour of _____ o’clock in the _____ noon, when the plaintiff’s claim against the defendant, and the defendant’s claim against you, will be heard and determined. In default of your appearing” and substituting the words “In default of your filing an entry of appearance and defence.”;

(b) omitting form M.C.32 and substituting the following form:—

QUEENSLAND

The Magistrates Courts Act of 1921 (as amended)

AFFIDAVIT AND REQUEST FOR JUDGMENT
(Rules 138; 157)

In the Magistrates Court at

Plaint No.: /

Between

Plaintiff

of

and

Defendant

of

I,

of

make oath and say that:

- 1. I am the **(Solicitor/Agent for the)* plaintiff/defendant in this action,‡
- 2. † (a) The defendant has not filed an Entry of Appearance and Defence, or an Entry of Appearance, Defence and Counterclaim, or paid into Court, or filed a confession for, the total amount claimed and costs.
The amount now due in respect of the cause of action alleged in the *plaint/summons is detailed hereunder—
- † (b) The defendant has filed with the Registrar of the Court a Confession for *the whole *part of the claim in this action which I *(the plaintiff) hereby elect(s) to accept in satisfaction of the whole claim.
- † (c) The Magistrates Court at _____ on the _____ day of _____, 19____, ordered that the *defendant/plaintiff pay the amount, or be at liberty to obtain judgment as detailed hereunder—

Amount of claim	\$
<u>LESS</u> amount since received by Plaintiff.....	\$
	\$
3. Balance of claim for which judgment to be given.....	\$
4. Costs entered on *plaint/*summons or as determined by the Court.....	\$
5. Other costs.....	\$
6. Professional costs in obtaining judgment.....	\$
7. #Interest.....	\$
TOTAL.....	\$

8. I hereby request that judgment be given in the above amount.

Sworn by the abovenamed deponent at _____ in respect of paragraphs 1 and 2
on / /19 , before me—

.....
Justice of the Peace

.....
Deponent

- * Strike out if not applicable.
- † Delete (a), (b) or (c)—whichever is not applicable.
- ‡ Where applicable insert source of information and grounds of belief.
- # State how calculated.”;

—

(c) in form M.C.55C inserting after the words “I have made an order” the words “that the judgment debt in this”;

(d) inserting after form M.C.55H the following form:—

QUEENSLAND

The Magistrates Courts Act of 1921 (as amended)

AFFIDAVIT OF DEFAULT IN PAYMENT OF INSTALMENT ORDER
(Rule 198(12))

In the Magistrates Court at

Plaint No.: /

Between

Judgment Creditor

of

and

Judgment Debtor

of

I,

of

make oath and say that:

1. I am the **(Solicitor/Agent for the)* abovenamed judgment creditor, in this action.
2. Pursuant to Rule 198 of the Magistrates Courts Rules, 1960, an order was made that the judgment debt in this action be paid by the judgment debtor by instalments of \$ per commencing on
3. The amount of \$ has been received from the judgment debtor in accordance with the instalment order.
4. The judgment debtor has defaulted in the payment of an instalment due on the order made under this Rule.
5. The last instalment received from the judgment debtor was the amount of \$ received on

Sworn by the abovenamed deponent at , on / /19 , before me—

Justice of the Peace

Deponent

*Strike out if not applicable.”;

(e) in form M.C.69—

(i) omitting the words “In accordance with the Magistrates Courts Rules 1960” and substituting the words “In accordance with The Magistrates Courts Rules 1960”;

(ii) omitting the words “Common Law Practices Act 1867-1981” and substituting the words “Common Law Practice Act 1867-1981”;

(f) in form M.C.84 omitting the word “hearby” in item 4 and substituting the word “hereby”;

(g) in form M.C.85 omitting the word “SUMMONSED” and substituting the word “SUMMONED”.

90. Amendment of Third Schedule. The Third Schedule to the Principal Rules is amended by—

(a) In PART C—

(i) omitting the words “above that amount:—” and substituting the words “above that amount (the first \$200 of which shall be paid to the Bailiff)”;

(ii) inserting immediately before that portion of the schedule headed “FEES PAYABLE TO BAILIFF (unless otherwise stated)” the following paragraphs:—

“For opening or keeping the Registry open between 8.00am and 9.00am and between 4.00pm and 6.00pm on any day not being a Saturday, Sunday, Public Holiday or Court Holiday	\$75.00
For time spent when an officer in the registry orally examines on behalf of the judgment creditor	\$50.00”;

(b) in the portion headed “FEES PAYABLE TO BAILIFF (unless otherwise stated)”—

(i) omitting the word “processes” where it occurs after the words “are served with the same” and substituting the word “process”;

(ii) omitting the words “, the amount actually paid, but”;

(iii) omitting the word “advertisement” and substituting the word “advertisements”;

(iv) omitting the word “executention” and substituting the word “detention”;

(v) omitting the words “service or execution” where they twice occur in the last paragraph and substituting the words “execution or apprehension” in each case.

91. Amendment of Fifth Schedule. The Fifth Schedule to the Principal Rules is amended by adding at the end thereof the expression

“ ”

BY AUTHORITY
R. G. GILES, ACTING GOVERNMENT PRINTER, QUEENSLAND—1990