

PRACTICE DIRECTION NUMBER 4 OF 2010

SUPREME COURT OF QUEENSLAND

CONSENT ORDERS OF THE REGISTRAR

1. Practice Directions 3 of 2001 and 5 of 2004 are repealed.
2. This Practice Direction provides a streamlined and cost effective procedure for obtaining a consent order from the Registrar under Rule 666 Uniform Civil Procedure Rules, and offers guidance as to the types of orders which may be made by the Registrar.
3. The Registrar is hereby accorded jurisdiction, where it otherwise does not exist, pursuant to Rule 452(2) UCPR, to hear and determine the applications listed in paragraph 5.
4. The practice direction does not apply to the adjournment of the hearing of an application pursuant to rule 30 UCPR where no other order is sought. Where the parties seek only to adjourn such a hearing, parties must file a *Consent Adjournment of Application form* (Form 11)
5. Applications where consent orders should ordinarily be sought from the Registrar in the first instance include applications for:
 - (a) directions that a matter be deemed resolved pending a final consent order or discontinuance;
 - (b) the awarding or fixing of costs, including reserved costs;
 - (c) the assessment of costs (an affidavit exhibiting a copy of the order or other authority entitling the party to costs is required);
 - (d) the appointment of an assessor to assess costs;
 - (e) the adjournment of an application with a costs or other simple order;
 - (f) the transfer of a District or Magistrates Court proceeding to the Supreme Court (an affidavit justifying the transfer is required);
 - (g) the transfer of a Supreme Court proceeding from one registry to another;
 - (h) the transfer of a Supreme Court proceeding to the District Court (in this instance, the consent form required under PD 22/97 must be filed instead of form 59A);
 - (i) directions as to the conduct of a proceeding not under judicial case management (for example, but not restricted to, judicial review applications);

- (j) extension of time for steps to be taken prior to, or in the course of, a proceeding (eg pre-court procedural steps under the *Personal Injuries Proceedings Act 2002*);
 - (k) extension of an injunction made or an undertaking given in a proceeding before a judge;
 - (l) provision of security for costs, or dealing with security held for that purpose (eg substituting a bank guarantee for money, calling in a guarantee, paying monies out of court);
 - (m) the stay of a judgment or the enforcement of an order pending the determination of an appeal;
 - (n) the setting aside of a judgment (including a default judgment);
 - (o) leave to discontinue a proceeding;
 - (p) leave to commence a proceeding and other orders under the *Personal Injuries Proceedings Act 2002*, *Motor Accident Insurance Act 1994*, *Workers' Compensation & Rehabilitation Act 2003*;
 - (q) orders for mediation or another alternative dispute resolution process;
 - (r) orders under the *Corporations Act 2001* or Schedule 1A UCPR exercising powers of the Court prescribed under Schedule 1B UCPR;
 - (s) security for costs of appeal, dismissing an application for leave to appeal or for other procedural directions in relation to the conduct of an appeal.
6. Applications where consent orders are more appropriately made by a judge, and will generally be refused by the Registrar, include applications for:
- (a) expert evidence orders;
 - (b) directions about limitations on evidence;
 - (c) trial by affidavit;
 - (d) directions in Supervised Case List, Commercial List, and other judicially case managed matters;
 - (e) rectification of a will;
 - (f) declaratory relief;
 - (g) a “guillotine” order;
 - (h) the sanctioning of a settlement (eg for children);

- (i) orders under part 19 of the *Property Law Act 1974* (de facto relationships) where the orders relate to children;
 - (j) an order that an application continue as a claim;
 - (k) consolidation of proceedings or a direction that proceedings be heard together;
 - (l) an order containing an undertaking (other than the extension of an undertaking made or given before a judge);
 - (m) extension of time orders in “out of time” applications under part 19 of the *Property Law Act 1974* (de facto relationships);
 - (n) a cross-vesting order;
 - (o) an order seeking dispensation with a procedural requirement (eg dispensing with the signing of a Request for Trial Date form);
 - (p) an order which a judge would not routinely make without submissions, authorities or detailed evidence or explanation;
 - (q) an order directing the disclosure of information about a third party which is protected by privacy legislation;
 - (r) an order under the *Corporations Act 2001* or Schedule 1A UCPR exercising powers of the Court which are NOT prescribed under Schedule 1B UCPR;
 - (s) the listing or delisting of a matter for trial;
 - (t) an order waiving compliance with rule 467 UCPR (ie the filing of a request for trial date – form 48);
 - (u) an order in a family provision application under part 4 of the *Succession Act 1981*.
7. The documents lodged when a consent order under Rule 666 UCPR is sought must contain sufficient, yet concise information (including copies of relevant statutory provisions), to persuade the Registrar that the order should be made. The Registrar should not need to search out legislation, or material in the court file, to check that pre-requisites for the making of the consent order have been satisfied.

The following documents must be filed together:

- (i) a *Request for Consent Order of Registrar* (Form 59A) - if respective parties have signed separate Request forms, all forms must be attached together when filed. If the party is legally represented the form must be signed by a solicitor personally and must state the solicitor’s name and the firm name;
- (ii) two copies of the proposed draft order - *Consent Order* (Form 59);

- (iii) an affidavit may be filed if necessary (this must be as concise as possible and not exhibit unnecessary or extensive material).

The Registrar will notify the parties of the result and, if requested, will refer the matter to a judge.

- 8. In light of the philosophy and the overriding obligations on parties under rule 5 UCPR, if a matter under paragraph 5 is in the first instance brought before a judge, or a party takes the position of “neither consenting to nor opposing” the making of orders which are reasonably warranted and could have been made by consent utilising Rule 666, the judge may require an affidavit of justification. Adverse cost consequences may follow should the Judge consider the matter in that instance could appropriately have been disposed of by consent, utilising rule 666.



Paul de Jersey
Chief Justice
10 June 2010