

## Procedural Fact Sheets (Civil) – Supreme and District Courts

### Originating applications

**NB:** Think carefully and seek legal advice before commencing a proceeding. There may be serious costs consequences for you if you are unsuccessful. See the fact sheet about costs.

Important information about [commencing court proceedings](#) is available from LawRight, an independent, community legal centre that coordinates pro bono legal services for individuals and community groups involved in current or potential proceedings in Queensland courts. Depending on your circumstances, LawRight may be able to provide you with legal advice and assistance. You can find more information on LawRight's website.

### What is an originating application?

- An originating application is a document filed in a court for the purpose of claiming a legal remedy.
- The person filing the application is called the applicant. The person responding to the application is called the respondent. Once filed, the application is referred to as a proceeding. Both the applicant(s) and respondent(s) may subsequently be referred to as “parties” to the proceeding.

### When should a proceeding be started by originating application?

- A civil claim can be commenced by filing and serving either a claim and statement of claim or an originating application.
- A proceeding must be started by claim unless the *Uniform Civil Procedure Rules 1999* (Qld) [UCPR](#) require or permit the proceeding to be started by application. [rule 9](#)
- A proceeding must be started by originating application if an Act or UCPR requires the person seeking relief to apply to the court, e.g., under s 41(1) *Succession Act 1981* (Qld), a claim for provision out of a deceased estate must be started by originating application. ([rule 10](#))

A proceeding may be started by application if:

- The only or main issue in the proceeding is an issue of law and there is no substantial dispute about the facts; or
- There is insufficient time to prepare a claim because of the urgent nature of the relief claimed. [rule 11](#)

Proceedings started by originating application are much less common than those started by claim as there will ordinarily be a factual dispute between parties.

### How to start a proceeding by originating application

- Use [form 5](#). [rule 26\(1\)](#)
- If self-represented, include your residential or business address, telephone number (or, if you don't have one, a number on which you can be contacted by telephone), your fax number (if you have one), and your email address. [rule 17](#)

- If you change your residential or business address (your address for service) at any time during the proceeding, file and serve a [form 90](#) Notice of Change of Address on all other parties. [rule 17\(3\)](#)
- Name as respondents all persons directly affected by the relief claimed (unless another rule or law permits the application to be heard without notice being given to any other person). [rule 26\(2\)](#)
- List the affidavits to be relied on at the hearing. [rule 26\(4\)](#)
- Specify the orders or other relief claimed. [rule 26\(5\)](#)
- Where applicable, state the name and section number of the Act of Queensland Parliament under which the application is made. [rule 26\(6\)](#)
- If filing in the District Court, ensure that the application, or the affidavit material filed with it, shows that the court has jurisdiction to decide the application. [rule 26\(8\)](#) See more information about the [jurisdiction of Queensland courts](#) on the Queensland Courts' website.
- Sign the application. [rule 19](#)

## Filing and serving an originating application

- The application must be filed in the central registry of the court (Brisbane) or in the geographical [district](#) where the cause of action arose or where the respondent resides. [rule 35](#)
- You must pay a filing fee. See the [Uniform Civil Procedure Rules \(Fees\) Regulation 2009](#) for current filing fees.
- If paying the fee will cause you financial hardship, you may apply to the registrar for [reduction of the fee](#).
- The registry officer will list the application for hearing on your preferred date if that date is available. This will depend on how many other matters are listed for hearing that day. If your preferred date is not available, a date will be allocated that is close in time to that date. Be prepared to provide some alternative suitable dates for the hearing.
- When listing the application, remember that the application and affidavits must be filed and served on each respondent (the party responding to the application) at least three business days before the application hearing date. The service day and the hearing day are excluded in determining this period. [rule 28](#)
- Hearings are listed to commence at 10.00am on the listing date.
- The registry officer will note the date and time of the hearing on the original application and on the service copies. [rule 26\(7\)](#)
- Personally serve the application and affidavit(s) on the respondent(s). [rule 105](#) Rules about serving court documents are contained in [Chapter 4 UCPR](#). See LawRight for [more information](#) about the rules relating to service.

## How to oppose an originating application

- If you are a respondent, you object to the orders applied for in the application, and you intend to oppose the application, file a Notice of Address for Service. This informs the applicant, and the court, of the address at which court documents can be served on you (by post, email, fax, or by leaving them at this address). [rule 29](#)
- Use [Form 8](#).
- See the fact sheet about filing and serving documents.
- There are no pleadings (e.g., statement of claim, defence) to describe the dispute between the applicant and respondent. This is explained in the affidavit evidence.



- Prior to the hearing of the application, you should file and serve an affidavit explaining your position to the applicant and to the court.
- Carefully read the application and ensure you understand what it is about. It will list the orders that the applicant is asking the court to make.
- Prepare an affidavit containing the evidence on which you intend to rely at the hearing of the application.
- The affidavit should contain evidence of any facts you intend to rely on in proving to the court that the orders claimed by the applicant should not be made.
- File and serve the affidavit on the applicant.

## Preparing for an originating application

- Both the applicant and the respondent should prepare a written outline of argument, stating the orders each submits the court should make, and explaining why the orders should be made, referring to the facts set out in the affidavit evidence and applying the relevant legal rules to those facts.
- Some useful information about [drafting an outline](#) is available from LawRight, an independent, community legal centre that coordinates pro bono legal services for individuals and community groups involved in current or potential proceedings in Queensland courts. Depending on your circumstances, LawRight may be able to provide you with legal advice and assistance.

## Appearing at an originating application

- The date on which the originating application will be heard will be written on the document.
- The applicant and respondent must appear at the application hearing in person, or by their legal representative if they are represented.
- If a party fails to attend at the hearing, the court may make orders in their absence at the request of the opposing party.

## What to wear

A court hearing is a formal process, so wear a suit or formal business attire, if possible. Dress neatly and conservatively, and wear closed-in shoes.

## What to bring

If you are the applicant, you must bring every document you intend to rely on in proving that the orders you ask the court to make should be made. If you are the respondent, you should bring any documents you intend to rely on in showing that the orders should not be made:

- Documents should be organised; arranged neatly in a folder and clearly labelled.
- Be clear about how each document assists in proving your position.
- If you intend to rely on any documents that have not yet been filed, including an outline of argument, bring several copies of the document to the hearing: one for your own use, one for the court, and one for each of the opposing party or parties.
- You must supply your own writing materials.

## Using an interpreter

If you, or any of your witnesses, have difficulty in speaking or understanding spoken English, you should arrange for an interpreter to attend the hearing to assist:



- Find a suitable independent interpreter with NAATI (National Accreditation Authority for Translators and Interpreters) certification via NAATI's [online directory](#).
- Well before the hearing date, email the opposing party and the Applications Manager [ApnManager@justice.qld.gov.au](mailto:ApnManager@justice.qld.gov.au) (Supreme) or [dc-civillistmanager@justice.qld.gov.au](mailto:dc-civillistmanager@justice.qld.gov.au) (District) to notify them of your intention to use an interpreter at the hearing—the opposing party has the right to object.\*
- The court will decide whether the interpreter will be permitted to assist at the hearing.

## Access needs

If you, or any of your witnesses, have a disability and require special access to the court building or facilities, email the Applications List Manager [ApnManager@justice.qld.gov.au](mailto:ApnManager@justice.qld.gov.au) (Supreme) or [dc-civillistmanager@justice.qld.gov.au](mailto:dc-civillistmanager@justice.qld.gov.au) (District) well ahead of the hearing date. The List Manager will assist with any concerns about access.\*

## Before the hearing

Check the [daily law list](#) the evening before, or the morning of, the hearing to identify the courtroom where the hearing will take place.

- Arrive at least 15 minutes before the listed time for the hearing.
- Switch off your mobile phone.
- Do not eat or drink in the courtroom.
- If you are unsure whether you are in the right place, approach the bailiff and request their assistance. You will recognise the bailiff by their uniform.
- Appearance sheets will be available at the bar table. The bar table is the long table located towards the front of the courtroom and facing the bench, where the judge sits, and the associate's table, where the associate and the bailiff sit. If you can't find an appearance sheet, request one from the bailiff. Complete the sheet by entering the name and court file number of your matter, your full name, and whether you are the applicant or the respondent.

## During the hearing

When the name of your matter is called by the bailiff, sit or stand at the bar table. Hand your appearance sheet to the bailiff. They will provide the sheet to the judge.

- Drinking water will be available at the bar table.
- Each party will be required to present their case to the court. The applicant will present their case first. The judge may ask questions of the parties.
- Be courteous in all interactions in the courtroom:
  - Bow towards the judge when entering and leaving the courtroom and whenever the judge enters or leaves.
  - Address the judge as "Your Honour".
  - Stand up whenever the judge speaks to you or when you are invited to speak—otherwise remain quietly seated. If you have difficulty standing, you may ask the judge for permission to remain seated.
  - If you refer the judge to a document during the hearing, slowly say the name of the document and the page and paragraph number to which you refer.
  - Listen carefully to any questions the judge may ask and answer carefully and clearly.
  - If the meaning of a question is unclear to you, advise the judge and request that they repeat or rephrase the question.
  - Do not interrupt the judge, or another party, when they are speaking.



- Do not speak to the opposing parties during the hearing.
- Direct all responses, comments, or questions to the judge.

## Support persons

In court, parties must represent themselves or be represented by lawyers.

- If you are a self-represented party, you may ask the court for leave for another person to assist you at the hearing. This person is known as a McKenzie friend. They may be permitted to sit with you at the bar table, prompt you, take notes, and provide emotional support, but may not address the court or present your case.
- You may also arrange for a support person to attend court with you. They may be a relative, colleague, or friend. They will not be permitted to speak to the judge or to represent you in any way and must sit at the back of the courtroom, in the area reserved for members of the public.

*\* These email contacts are for officers in the Brisbane registry. If your proceeding is in another district, request relevant contact details from that [regional registry](#).*

