



# Supreme Court Rules (Amendment No 376) 2003

under the

Supreme Court Act 1970

The Supreme Court Rule Committee made the following rules of court under the *Supreme Court Act 1970* on 19 May 2003.

Steven Jupp

Secretary of the Rule Committee

## **Explanatory note**

The object of these Rules is to amend the *Supreme Court Rules 1970* so that proceedings that are commenced by summons are generally to be commenced by a summons that specifies a return day, rather than a summons under which an appointment for hearing is to be specified at a later time. There will be some exceptions to this general rule.

These Rules also make a minor amendment to the *Supreme Court Rules 1970* by way of statute law revision.

## **2003 No 342**

Rule 1 Supreme Court Rules (Amendment No 376) 2003

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### **Supreme Court Rules (Amendment No 376) 2003**

under the

Supreme Court Act 1970

**1 Name of Rules**

These Rules are the *Supreme Court Rules (Amendment No 376) 2003*.

**2 Commencement**

These Rules commence on 16 June 2003.

**3 Amendment of Supreme Court Rules 1970**

The *Supreme Court Rules 1970* are amended as set out in Schedule 1.

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**Schedule 1 Amendments**

(Rule 3)

**[1] Part 3, rule 2**

Omit “Part 5 rule 4A” from rule 2 (1).

Insert instead “Part 5 rule 3”.

**[2] Part 5, rule 1**

Omit the rule. Insert instead:

**1 Application of Part**

- (1) This Part applies only to proceedings commenced by summons on or after 16 June 2003.
- (2) The provisions of this Part (as in force immediately before 16 June 2003) continue to apply to proceedings commenced by summons before that date in the same way as they would have applied had the *Supreme Court Rules (Amendment No 376) 2003* not been made.
- (3) This Part has effect subject to any contrary provisions of these rules.

**[3] Part 5, rules 4–5**

Omit the rules. Insert instead:

**3 Form of summons**

- (1) A summons commencing proceedings must be in Form 6 and state a return day.
- (2) The return day to be stated in a summons under this rule may be fixed by the Court or, if not fixed by the Court, is to be obtained from the appropriate registry.
- (3) If there is a defendant, the summons is to be served not less than 5 days before the return day unless the Court orders otherwise. A summons is to bear a note of any order made under this subrule.
- (4) If the return day is obtained from the appropriate registry and the summons is to be served outside the State, the return day is to be not less than one month after the date of filing of the summons.

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Schedule 1 Amendments

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### **[4] Part 5, rule 6**

Omit rule 6 (2). Insert instead:

- (2) If a summons names a place outside Sydney as the place for attendance, that place is to be the place for hearing unless the Court otherwise orders.

### **[5] Part 7, rule 3**

Omit “Part 5 rule 4A” wherever occurring in rule 3 (1) and (3).

Insert instead “Part 5 rule 3”.

### **[6] Part 7, rule 5**

Omit “Part 5 rule 4A” from rule 5 (1) (a).

Insert instead “Part 5 rule 3”.

### **[7] Part 7, rule 5 (1) (a)**

Omit “date for hearing”. Insert instead “return day”.

### **[8] Part 14, rule 2**

Omit “forms 6 and 7 (summons)”.

Insert instead “Form 6 (summons)”.

### **[9] Part 14A, rule 3**

Omit “Forms 6 and 7 (summons)”.

Insert instead “Form 6 (summons)”.

### **[10] Part 51, rule 50**

Omit rule 50 (1). Insert instead:

- (1) Subject to the rules and in particular rule 4 (1) (b) and (2) (b) and rule 57, proceedings (except appeals) in the Court of Appeal are to be commenced by summons under Part 5 rule 3.

### **[11] Part 51, rule 50 (3) (a)**

Omit the paragraph.

**[12] Part 51AA, rule 32**

Insert “(as in force at the relevant time before 1 September 1997)” after “Part 5 rule 4A” in rule 50 (1).

**[13] Part 51AA, rule 32 (3) (a)**

Insert “(as in force at the relevant time before 1 September 1997)” after “Part 5 rules 4, 4C and 5”.

**[14] Part 51B, rule 5**

Omit rule 5 (1). Insert instead:

- (1) An application for leave to appeal and, subject to subrule (2), to cross-appeal must be made by summons under Part 5 rule 3.

**[15] Part 51B, rule 7**

Omit rule 7. Insert instead:

**7 Institution of appeal**

Subject to rule 5, an appeal to the Court is to be instituted by filing a summons under Part 5 rule 3 that claims the decision that the party instituting the appeal seeks in place of the decision of the tribunal below.

**[16] Part 52, rule 48**

Omit “Part 5 rule 4B and in Form 7” from rule 48 (2).

Insert instead “Part 5 rule 3”.

**[17] Part 73, rule 4**

Insert after rule 4 (5):

- (6) Despite Part 5, a summons commencing proceedings under the Adoption Act is not to state a return day for the proceedings. However, nothing in this subrule affects any requirement under rule 8 to state an appointment for a preliminary hearing in the summons.
- (7) The Court may, of its own motion, appoint a date for the hearing of proceedings under the Adoption Act commenced by summons.

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- (8) If the Court appoints a date for hearing of proceedings commenced by summons, the Court must give the parties, or ensure that the parties are given, notice of the appointment at least 5 days before the date appointed. Any such notice must be in writing or by email or facsimile transmission.
- (9) If the Court makes an appointment for hearing under this rule, the Court may give directions for service of notice of the appointment or for otherwise notifying the parties of the appointment.

### [18] Part 73, rule 5

Insert at the end of rule 5:

- (2) A summons commencing proceedings under the Adoption Act is to contain the following statement:  
“The proceedings commenced by this summons will be dealt with by a Judge out of court unless the Court directs otherwise.”

### [19] Part 75, rule 6

Omit rule 6 (a). Insert instead:

- (a) Part 5 rules 1, 3 (2) and (3) and 5A and Form 74A of Schedule F,

### [20] Part 77, rule 24

Omit “Part 5 rule 4A” from rule 24 (1).

Insert instead “Part 5 rule 3”.

### [21] Part 78, rule 4C

Insert after rule 4B:

#### **4C Appointments for hearing for proceedings commenced by summons with no return day**

- (1) Despite Part 5, a summons commencing proceedings under this Part (other than under rule 69 (2) (b) or 75A) is not to state a return day.

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- (2) A summons commencing proceedings under this Part (other than under rule 69 (2) (b) or 75A) is to contain the following statement:

“The proceedings commenced by this summons will be dealt with by a Judge or a registrar out of court. However, the Court may, of its own motion, appoint a date for the hearing in Court of the proceedings.”

- (3) The Court may, of its own motion, appoint a date for the hearing of proceedings commenced by summons under this Part where a return day has not been appointed.
- (4) If the Court appoints a date for the hearing of proceedings commenced by summons, the Court must give the parties, or ensure that the parties are given, notice of the appointment at least 5 days before the date appointed. Any such notice must be in writing or by email or facsimile transmission.

**[22] Part 78, rule 5**

Insert after rule 5 (1) (s):

- (t) making an appointment for hearing for a summons under rule 4C (3).

**[23] Part 78, rule 8 (1)**

Omit “the form prescribed”. Insert instead “Form 90”.

**[24] Part 78, rule 40**

Omit “in the form prescribed”.

**[25] Part 80, rule 2**

Omit “Part 5 rule 4A” from rule 2 (1). Insert instead “Part 5 rule 3”.

**[26] Part 80A, rule 3**

Insert “(as in force at the relevant time before the commencement of the *Corporations Law Rules*)” after “Part 5 rule 4B” in rule 3 (1).

**[27] Part 80A, rule 3 (2)**

Insert “(as in force at the relevant time before the commencement of the *Corporations Law Rules*)” after “Part 5 rule 4A” wherever occurring.

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**[28] Part 81, rule 9**

Omit “Part 5 rule 4A” from rule 9 (2) (b). Insert instead “Part 5 rule 3”.

**[29] Schedule F**

Omit “P 5, r 4A” from Form 6. Insert instead “P 5, r 3”.

**[30] Schedule F, Form 6**

Omit “To the defendant (*address*):”.

Insert instead:

To the defendant (*address*):

The return day of this summons is:

Date:      Time:      Place:

**[31] Schedule F, Form 6**

Omit “time and place specified below”.

Insert instead “date, time and place specified above”.

**[32] Schedule F, Form 6**

Omit (where firstly occurring):

Time: 7 May, 19      , at 10 a.m.

Place: (*address of court*)

**[33] Schedule F, Form 6**

Omit “Part 5 rule 4A (3)”. Insert instead “Part 5 rule 3 (3)”.

**[34] Schedule F, Form 6**

Omit:

(Where there is no defendant, add the following:

Time and place for attendance

Time: 7 May, 19      , at 10 a.m.

Place: (*address of Court*) continue—

**[35] Schedule F, Form 7**

Omit the Form.



**[36] Schedule F, Form 11B**

Omit the Form.

**[37] Schedule F, Form 59**

Omit “*Part 5*”. Insert instead “*Part 5I*”.

**[38] Schedule F, Form 62**

Omit “*Part 5 rule 4A (3)*”. Insert instead “*Part 5 rule 3 (3)*”.

**[39] Schedule F, Form 72**

Omit “Appointment for preliminary hearing”.

Insert instead:

The proceedings commenced by this summons will be dealt with by a Judge out of court. However, the Court may, of its own motion, appoint a date for the hearing in Court of the proceedings.

Appointment for preliminary hearing

**[40] Schedule F, Form 90**

Omit “Plaintiff: (*name, address and occupation*)”.

Insert instead:

The proceedings commenced by this summons will be dealt with by a Judge or a registrar out of court. However, the Court may, of its own motion, appoint a date for the hearing in Court of the proceedings.

Plaintiff: (*name, address and occupation*)

**[41] Schedule F, Form 107**

Omit the Form.

**[42] Schedule F**

Omit the matter relating to Forms 7, 11B and 107 from the Index of Forms at the end of the Schedule.