



New South Wales

Uniform Civil Procedure Rules (Amendment No 13) 2007

under the

Civil Procedure Act 2005

The Uniform Rules Committee made the following rules of court under the *Civil Procedure Act 2005* on 2 April 2007.

Jennifer Atkinson
Secretary of the Uniform Rules Committee

Explanatory note

The object of these Rules is to make miscellaneous amendments to Parts 4, 6, 9, 19, 20, 21, 33, 36 and 45 of, and Schedule 8 to, the *Uniform Civil Procedure Rules 2005*.

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Rule 1 Uniform Civil Procedure Rules (Amendment No 13) 2007

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1 Name of Rules

These Rules are the *Uniform Civil Procedure Rules (Amendment No 13) 2007*.

2 Commencement

These Rules commence on 5 April 2007.

3 Amendment of Uniform Civil Procedure Rules 2005

The *Uniform Civil Procedure Rules 2005* are amended as set out in Schedule 1.

Schedule 1 Amendments

(Rule 3)

[1] **Rule 4.16**

Insert after rule 4.15

4.16 Court to be advised as to subrogation to corporation

A person, when paying a filing fee, must advise the court if the proceedings to which the fee relates are being carried on by a corporation in the name of a natural person pursuant to a right of subrogation.

[2] **Part 6, Division 8**

Insert after Division 7 of Part 6:

Division 8 Referred questions of law and stated cases

6.33 Definitions

In this Division:

original proceedings, in relation to a referred question of law or stated case, means the proceedings (if any) in which the question or case has arisen.

referred matter means a question of law or stated case that has been referred to the Supreme Court for determination.

referring body means the court or other authority by which a question of law or stated case is referred to the Supreme Court for determination.

6.34 Application of Division

This Division applies to proceedings in the Supreme Court for an order with respect to a referred matter under any of the following legislative provisions:

Administrative Decisions Tribunal Act 1997, section 118 or 118D,

Constitution Further Amendment (Referendum) Act 1930, section 28,

Mental Health Act 1990, section 174,

Powers of Attorney Act 2003, section 39,

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Real Property Act 1900, section 123 or 124,

Note. This Division also applies by force of rule 12.1A and 15.1 of the *Supreme Court (Corporations) Rules 1999* to questions referred to the Supreme Court under the following Commonwealth legislation:

Australian Securities and Investments Commission Act 2001, section 61,

Corporations Act 2001, section 659A.

6.35 Originating process

- (1) Proceedings to which this Division applies must be commenced by an originating process naming as plaintiff:
 - (a) in the case of proceedings under section 123 of the *Real Property Act 1900*, the applicant referred to in that section, or
 - (b) in any other case, the referring body.
- (2) The originating process:
 - (a) in the case of proceedings to which the *Supreme Court (Corporations) Rules 1999* apply, must be in the form of the originating process prescribed by rule 2.2 of those rules, and
 - (b) in any other case, must be in the form of a summons.
- (3) The referred matter:
 - (a) must be in the form of a special case, and
 - (b) must be filed with the originating process.
- (4) The originating process must join as defendants:
 - (a) if the referred matter has arisen in original proceedings, all of the parties to the original proceedings, or
 - (b) in any other case, all of the persons who may be directly affected by the Supreme Court's determination of the referred matter.
- (5) In the case of proceedings under section 123 of the *Real Property Act 1900*, the originating process must also join the Registrar-General as a defendant.
- (6) The Supreme Court may order that such other persons as it considers appropriate be joined as defendants.

6.36 Form of special case (cf Federal Court Rules Order 50, rule 1)

A special case:

- (a) must be divided into consecutively numbered paragraphs, and
- (b) must state concisely the questions to be decided and the facts from which those questions arise, and
- (c) must annex all documents necessary to enable the Supreme Court to decide those questions.

6.37 Procedure for preparing special case (cf Federal Court Rules Order 50, rule 2)

- (1) In the case of a referred matter that has arisen in original proceedings, a special case:
 - (a) must be prepared in draft by the party having the conduct of the original proceedings in consultation with the other parties to those proceedings, and
 - (b) must be settled by the referring body, unless the referring body otherwise directs.
- (2) In the case of a referred matter that has arisen otherwise than in original proceedings, a special case must be prepared:
 - (a) in the case of proceedings under section 123 of the *Real Property Act 1900*, by the applicant referred to in that section, or
 - (b) in any other case, by the referring body.

6.38 Conduct of proceedings (cf Federal Court Rules Order 50, rule 4)

- (1) This rule applies to any proceedings with respect to a referred matter that has arisen in original proceedings.
- (2) Subject to rule 7.8, the party at whose instance the matter has been referred is to have the conduct of the proceedings.

6.39 Insufficient case (cf SCR Part 32, rule 7)

- (1) This rule applies to any proceedings in which it appears to the Supreme Court that a special case:
 - (a) does not sufficiently state the questions to be decided or the facts from which those questions arise, or
 - (b) does not annex sufficient documents, to enable it to determine the proceedings.

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- (2) In these circumstances, the Supreme Court:
 - (a) may add to or otherwise alter the special case, or
 - (b) may send the special case back to the referring body for the purpose of addition or other alteration, or
 - (c) may receive evidence, make findings of fact and add to the special case in accordance with the Supreme Court's findings of fact.

6.40 Inferences (cf FCR Ord 50, rule 1 (3))

The Supreme Court may draw from the facts stated in, and the documents annexed to, a special case any inference, whether of fact or law, that might have been drawn from them if proved at a trial.

6.41 Referred matters under section 28 of the Constitution Further Amendment (Referendum) Act 1930

- (1) This rule applies to any question that is referred to the Supreme Court under section 28 of the *Constitution Further Amendment (Referendum) Act 1930*.
- (2) Proceedings on the question are commenced by transmission to the Prothonotary of a statement of the question, as provided for in section 29 of the *Constitution Further Amendment (Referendum) Act 1930*.
- (3) On receiving the statement, the Prothonotary must list the matter before a Judge of the Supreme Court for directions.
- (4) The Supreme Court may give all such directions as are necessary for the conduct and disposal of the proceedings on the question.
- (5) Rules 6.35–6.40 do not apply to the proceedings on the question.

[3] Rule 9.1 Making of cross-claim

Omit rule 9.1 (1). Insert instead:

- (1) A party (*the cross-claimant*) may make a cross-claim:
 - (a) in proceedings commenced by statement of claim, within the time limited for the party to file a defence, or
 - (b) in proceedings commenced by summons, before the return day specified in the summons,or within such further time as the court may allow.

[4] Rule 19.1 Amending a statement of claim

Omit rule 19.1. Insert instead:

- (1) A plaintiff may, without leave, amend a statement of claim once within 28 days after the date on which it was filed, but, unless the court otherwise orders, may not amend it after a date has been fixed for trial.

[5] Part 20, Division 5

Omit the Division.

[6] Rule 21.2 Order for discovery

Insert after rule 21.2 (3):

- (4) An order for discovery may not be made in respect of a document unless the document is relevant to a fact in issue.

[7] Rule 33.3 Form of subpoena

Omit rule 33.3 (8). Insert instead:

- (8) The last date for service of a subpoena:
 - (a) is the date falling 5 days before the earliest date on which an addressee is required to comply with the subpoena or an earlier or later date fixed by the court, and
 - (b) must be specified in the subpoena.

[8] Rule 33.10 Disposal of documents and things produced

Omit rule 33.10 (3) and (4).

[9] Rule 36.1A

Insert after rule 36.1:

36.1A Consent orders

- (1) The court may give judgment, or order that judgment be entered, in the terms of an agreement between parties in relation to proceedings between them.
- (2) Unless the court, for special reasons, otherwise orders, the court must refuse to give judgment, or order that judgment be entered, in terms that restrict, or purport to restrict, any disclosure of the terms of the judgment or order.
- (3) Subrule (2) does not limit the effect of any agreement between the parties that contains provisions that restrict the parties, or

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purport to restrict the parties, from disclosing the terms of the agreement or of the judgment or order.

[10] Rule 36.16 Further power to set aside or vary judgment or order

Omit “Without limiting” from rule 36.16 (3).

Insert instead “In addition to its power under”.

[11] Rule 45.7A The Revenue List

Omit rule 45.7A (b) (i). Insert instead:

- (i) the Chief Commissioner of State Revenue, or the Commissioner of State Revenue, in and for New South Wales, or

[12] Schedule 8 Assignment of business in the Supreme Court

Insert “, 118D” after “118” in Column 2 of the matter relating to the *Administrative Decisions Tribunal Act 1997* in Part 1 of the Schedule.

[13] Schedule 8

Insert in alphabetical order in Part 1 of the Schedule, in Columns 1, 2 and 3, respectively:

*Constitution Further Amendment
(Referendum) Act 1930*

Section 28

Common Law

BY AUTHORITY