



New South Wales

# Uniform Civil Procedure Rules (Amendment No 23) 2008

under the

Civil Procedure Act 2005

The Uniform Rules Committee made the following rules of court under the *Civil Procedure Act 2005* on 3 November 2008.

J Atkinson  
Secretary of the Rule Committee

## Explanatory note

The object of these Rules is to amend the *Uniform Civil Procedure Rules 2005* so as:

- (a) to require court process filed on behalf of a person who is represented by a solicitor to include the name of the solicitor, and
- (b) to make provision with respect to court appointed referral for legal assistance, and
- (c) to extend Part 25 (Interim preservation) to proceedings in the Land and Environment Court, and
- (d) to make provision with respect to the return of exhibits, and
- (e) to simplify the procedure for paying money into and out of court, and
- (f) to make other minor adjustments.

## **2008 No 494**

Rule 1 Uniform Civil Procedure Rules (Amendment No 23) 2008

---

## **Uniform Civil Procedure Rules (Amendment No 23) 2008**

under the

Civil Procedure Act 2005

### **1 Name of Rules**

These Rules are the *Uniform Civil Procedure Rules (Amendment No 23) 2008*.

### **2 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 2)

**[1] Rule 4.2 Documents to be filed to contain certain information**

Insert after rule 4.2 (1) (e):

- (e1) if the party has engaged a solicitor to act as the party's legal representative, the name of the solicitor,

**[2] Rule 4.2 (2) (d1)**

Insert after rule 4.2 (2) (d):

- (d1) if the person has engaged a solicitor to act as the person's legal representative, the name of the solicitor,

**[3] Rule 6.4 Where summons required**

Insert after rule 6.4 (1) (i):

- (j) any other proceedings that, pursuant to these rules or any other rules of court, are required to be commenced by summons.

**[4] Part 7, Division 9**

Insert after Division 8:

### **Division 9 Court appointed referral for legal assistance**

**7.33 Objectives** (cf SCR Part 66A, rule 1; DCR Part 28C, rule 1)

- (1) In the interpretation of this Division, preference must be given to a construction that will promote, and be consistent with, the purpose in subrule (2) and the statements in subrules (3) and (4).
- (2) The purpose of this Division is to facilitate, where it is in the interests of the administration of justice, the provision of legal assistance to litigants who are otherwise unable to obtain assistance.
- (3) The provision of legal assistance under this Division is not intended to be a substitute for legal aid.
- (4) A referral under this Division is not an indication that the court has formed an opinion on the merits of a litigant's case.
- (5) Nothing in this Division requires the court to make a referral, or to consider a litigant's case for referral, under this Division.

## 2008 No 494

Uniform Civil Procedure Rules (Amendment No 23) 2008

Schedule 1 Amendments

---

### 7.34 Definitions (cf SCR Part 66A, rule 2; DCR Part 28C, rule 2)

In this Division:

**litigant**, in relation to any proceedings, means:

- (a) a party to the proceedings, or
- (b) a person who has been served with a subpoena in the proceedings, or
- (c) a person who has applied to be joined in the proceedings.

**Pro Bono Panel** means the list of barristers and solicitors referred to in rule 7.35.

**registrar** means:

- (a) in relation to the Supreme Court, the principal registrar of that Court, and
- (b) in relation to the Land and Environment Court, the registrar of that Court, and
- (c) in relation to the District Court when sitting at a proclaimed place (within the meaning of the *District Court Act 1973*), the registrar of the District Court for that place, and
- (d) in relation to a Local Court, the registrar for that Local Court.

**scheme** means the scheme for the provision of legal assistance to litigants under this Division.

### 7.35 Pro Bono Panel (cf SCR Part 66A, rule 3; DCR Part 28C, rule 3)

The registrar may maintain a list of persons:

- (a) who are barristers or solicitors, and
- (b) who have agreed to participate in the scheme in relation to that court.

### 7.36 Referral to a barrister or solicitor (cf SCR Part 66A, rule 4; DCR Part 28C, rule 4)

- (1) If satisfied that it is in the interests of the administration of justice, the court may, by order, refer a litigant to the registrar for referral to a barrister or solicitor on the Pro Bono Panel for legal assistance.
- (2) For the purposes of subrule (1), the court may take into account:
  - (a) the means of the litigant, and
  - (b) the capacity of the litigant to obtain legal assistance outside the scheme, and

- 
- (c) the nature and complexity of the proceedings, and
  - (d) any other matter that the court considers appropriate.
- (3) The power to refer may be exercised in the absence of the public and without any attendance by or on behalf of any person.
  - (4) If a litigant is referred for assistance under this rule, the registrar must attempt to arrange for legal assistance to be provided to the litigant by a barrister or solicitor on the Pro Bono Panel.
  - (5) The registrar may refer a litigant to a particular barrister or solicitor only if the barrister or solicitor has agreed to accept the referral.
  - (6) A referral to a barrister does not prevent a referral also being made to a solicitor and a referral to a solicitor does not prevent a referral also being made to a barrister.

**7.37 Kind of assistance** (cf SCR Part 66A, rule 5; DCR Part 28C, rule 5)

A referral may be made for the following kinds of assistance:

- (a) advice in relation to the proceedings,
- (b) representation on directions hearing, interlocutory or final hearing, arbitration or mediation,
- (c) drafting or settling of documents to be filed or used in the proceedings,
- (d) representation generally in the conduct of the proceedings or of part of the proceedings.

**7.38 Provision of assistance by barrister or solicitor** (cf SCR Part 66A, rule 6; DCR Part 28C, rule 6)

Subject to rule 7.39, if a barrister or solicitor agrees to accept a referral, he or she must provide assistance to the litigant in accordance with the referral.

**7.39 Cessation of assistance** (cf SCR Part 66A, rule 7; DCR Part 28C, rule 7)

- (1) A barrister or solicitor who has agreed to accept a referral may cease to provide legal assistance to the litigant only:
  - (a) in the circumstances set out in any practice rules governing professional conduct that apply to the barrister or solicitor, or
  - (b) with the written agreement of the litigant, or
  - (c) with the leave of the registrar.

## 2008 No 494

Uniform Civil Procedure Rules (Amendment No 23) 2008

Schedule 1 Amendments

---

- (2) If a barrister or solicitor ceases to provide legal assistance to a litigant, the barrister or solicitor must inform the registrar in writing within 7 days of so ceasing.

### **7.40 Application for leave** (cf SCR Part 66A, rule 8; DCR Part 28C, rule 8)

- (1) An application by a barrister or solicitor to the registrar for leave to cease to provide legal assistance must be in writing and must briefly state the reasons for the application.
- (2) A copy of the application for leave must be served on the litigant.
- (3) An application for leave may be heard by the registrar in the absence of the public and without any attendance by or on behalf of any person.
- (4) In deciding whether to grant leave under this rule, the registrar may consider any of the following matters:
  - (a) whether the barrister or solicitor would be likely to be able to cease to provide legal assistance to the litigant under any practice rules governing professional conduct that apply to the barrister or solicitor,
  - (b) any conflict of interest that the barrister or solicitor may have,
  - (c) whether there is a substantial disagreement between the barrister or solicitor and the litigant in relation to the conduct of the litigation,
  - (d) any view of the barrister or solicitor:
    - (i) that the litigant's case is not well founded in fact or law, or
    - (ii) that the litigant's prosecution of the litigation is an abuse of process,
  - (e) whether the barrister or solicitor lacks the time to provide adequate legal assistance to the litigant because of other professional commitments,
  - (f) whether the litigant has refused or failed to pay any disbursements requested under rule 7.42,
  - (g) whether it is unfair to the barrister or solicitor to require him or her to continue to provide legal assistance under the scheme,
  - (h) any other matter that the registrar considers relevant.
- (5) An application for leave under this rule and any related correspondence:
  - (a) is confidential, and

- (b) is not part of the proceedings in relation to which the referral was made, and
- (c) does not form part of the court file in relation to those proceedings.

**7.41 Costs** (cf SCR Part 66A, rule 9; DCR Part 28C, rule 9)

- (1) Subject to subrules (2) and (3) and rule 7.42, a barrister or solicitor who provides legal assistance to a litigant under the scheme must not seek or recover any costs for the legal assistance.
- (2) If an order for costs is made in favour of a litigant who is assisted under the scheme, the barrister or solicitor who has provided the legal assistance is entitled to recover the amount of costs that another person is required to pay under the order.
- (3) A barrister or solicitor must account to the litigant for any money received by the barrister or solicitor in respect of any disbursements that have been paid by the litigant.

**7.42 Disbursements** (cf SCR Part 66A, rule 10; DCR Part 28C, rule 10)

A barrister or solicitor who provides legal assistance to a litigant under the scheme may request the litigant to pay any disbursements that have been, or may reasonably be, incurred by the barrister or solicitor on the litigant's behalf in connection with the legal assistance.

**[5] Rule 11.13 Application**

Insert “, or some other person authorised by the Attorney General for the purposes of this rule,” after “Attorney General” in rule 11.13 (b) (ii).

**[6] Rule 20.6 Mediation session procedure**

Insert at the end of the rule:

- (2) A person who is required by subrule (1) (a) to attend a mediation session may do so by telephone, video link or other form of communication, but only with the leave of the court or the mediator.

**[7] Rule 25.1 Application**

Insert “, Land and Environment Court” after “Supreme Court” in rule 25.1 (1).

## 2008 No 494

Uniform Civil Procedure Rules (Amendment No 23) 2008

Schedule 1 Amendments

---

### [8] Rule 31.16A

Insert after rule 31.16:

#### **31.16A Return of exhibits** (cf SCR Part 75, rule 31)

Where proceedings have been concluded and:

- (a) 4 months have expired since the conclusion, and
- (b) there is no undisposed of appeal, or application for leave to appeal, in respect of the proceedings,

the registrar may, unless the court otherwise orders, return any exhibit in the proceedings still in the custody of the registrar by forwarding it to the party from whom it was received.

### [9] Rule 36.11 Entry of judgments and orders

Omit rule 36.11 (2). Insert instead:

- (2) Unless the court orders otherwise, a judgment or order is taken to be entered when it is recorded in the court's computerised court record system.

### [10] Rule 41.3 Withdrawal of deposited funds

Omit rule 41.3 (2) and (3).

### [11] Part 55, Division 3

Omit the Division. Insert instead:

#### **Division 3 Payment into court**

##### **55.8 Application** (cf SCR Part 70, rule 10)

This Division applies to the payment of funds into court under Part 4 of the *Trustee Act 1925* and to proceedings arising out of payment into court under that Part.

##### **55.9 Proceedings for directions as to payment into court** (cf SCR Part 70, rules 11 and 12)

- (1) Proceedings to pay money into court are to be commenced by summons.
- (2) The summons:
  - (a) must be supported by an affidavit that complies with rule 55.10, and
  - (b) must be accompanied by a cheque payable to "The Supreme Court of New South Wales" in the amount of the funds to be paid into court.



- (3) Unless the Supreme Court otherwise orders, the summons must not join any person as a defendant in the proceedings.
- (4) Unless the Supreme Court otherwise orders, a copy of the summons must be served, within one day after it is filed, on each person identified in the affidavit as a person interested in or entitled to the funds.

**55.10 Affidavit in support of summons** (cf SCR Part 70, rule 13)

The affidavit under rule 55.9 must set out the following:

- (a) a short description of the trust and of the instrument creating it or, as the case may be, of the circumstances in which the trust arose,
- (b) the amount and description of the funds,
- (c) the name and address, so far as known to the deponent, of each person interested in or entitled to the funds,
- (d) if any person interested in or entitled to the funds is a minor:
  - (i) the name and address, so far as known to the deponent, of a parent or guardian of the minor's person or estate, or
  - (ii) if the minor has no such parent or guardian or any such parent's or guardian's name or address is unknown to the deponent, the name and address, so far as known to the deponent, of a person with whom the minor resides or in whose care the minor is,
- (e) if any person interested in or entitled to the funds is a protected person:
  - (i) the name and address, so far as known to the deponent, of the protected person's manager, or
  - (ii) if the protected person has no manager or any such manager's name or address is unknown to the deponent, the name and address, so far as known to the deponent, of a person with whom the protected person resides or in whose care the protected person is,
- (f) the name of the person paying the funds into court and his or her address for service.

## 2008 No 494

Uniform Civil Procedure Rules (Amendment No 23) 2008

Schedule 1 Amendments

---

### **55.11 Proceedings for directions as to payment out of court**

- (1) Funds that have been paid into court may only be paid out of court pursuant to the directions of the Supreme Court.
- (2) An application for such directions is to be made by filing a notice of motion in the proceedings in which the funds were paid into court.

### **55.12 Inquiries** (cf SCR Part 70, rule 15)

A person paying funds into court must answer all such inquiries relating to the application of the funds as the Supreme Court may make or direct.

BY AUTHORITY

---