



New South Wales

# Uniform Civil Procedure Rules (Amendment No 37) 2010

under the

Civil Procedure Act 2005

The Uniform Rules Committee has made the following rules of court under the *Civil Procedure Act 2005*.

Steven Jupp  
Secretary of the Rule Committee

## **Explanatory note**

The object of these Rules is to update the Uniform Civil Procedure Rules 2005 relating to commercial arbitration as a result of the commencement of the *Commercial Arbitration Act 2010*, which replaces the *Commercial Arbitration Act 1984*.

## **2010 No 571**

Rule 1 Uniform Civil Procedure Rules (Amendment No 37) 2010

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## **Uniform Civil Procedure Rules (Amendment No 37) 2010**

under the

Civil Procedure Act 2005

### **1 Name of Rules**

These Rules are the *Uniform Civil Procedure Rules (Amendment No 37) 2010*.

### **2 Commencement**

These Rules commence on the day on which they are published on the NSW legislation website.

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## Schedule 1      Amendment of Uniform Civil Procedure Rules 2005

**[1] Part 47 Matters arising under the Commercial Arbitration Act 1984**

Omit “*Commercial Arbitration Act 1984*” from the heading.

Insert instead “*Commercial Arbitration Act 2010*”.

**[2] Division 1 General**

Omit the Division. Insert instead:

### **Division 1      General**

**47.1 Definitions** (cf SCR Part 72A, rule 1)

In this Part:

*arbitral tribunal* has the same meaning as it has in the *Commercial Arbitration Act 2010*.

*arbitration* has the same meaning as it has in the *Commercial Arbitration Act 2010*.

*the court* means the Supreme Court or a court exercising functions under section 6 (2) of the *Commercial Arbitration Act 2010*.

**47.2 Preliminary point of law** (cf SCR Part 72A, rule 3)

An application to the court for a determination under section 27J of the *Commercial Arbitration Act 2010* must be made within 14 days after the date on which the consent of the arbitral tribunal or the consents of all other parties have been obtained.

**47.3 Time for applications and appeals** (cf SCR Part 72A, rule 5)

- (1) An application made to the Court pursuant to section 34 of the *Commercial Arbitration Act 2010* must include:
  - (a) a statement by the applicant as to the date that the party received the award, or
  - (b) if a request has been made under section 33 of that Act, the date on which that request was disposed of by the arbitral tribunal.
- (2) If a party appeals on a question of law arising out of an award and the parties have agreed before the end of the appeal period specified in section 34A (6) of the *Commercial Arbitration Act 2010* that an appeal may be made under section 34A (1), the originating process for the appeal is to contain a statement:

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- (a) providing the date (or dates if there are more than two parties) that such agreement was reached, and
  - (b) identifying the question of law, and
  - (c) describing the nature of the dispute with sufficient particularity for an understanding as to the context in which the question of law arises under section 34A (3) and (4), and
  - (d) specifying the respects in which it is asserted that the arbitral tribunal fell into error.
- (3) If a party seeks leave to appeal on a question of law arising out of an award, the originating process for the application for leave is to contain a statement of the party's case:
- (a) providing the dates relevant to the calculation of the appeal period specified in section 34A (6) of the *Commercial Arbitration Act 2010*, and
  - (b) describing the nature of the case with sufficient particularity for an understanding of the matters referred to in the statement, and
  - (c) identifying the question of law, and
  - (d) specifying how the determination of the question will substantially affect the rights of one or more of the parties, and
  - (e) specifying that the question is one which the arbitral tribunal was asked to determine, and
  - (f) specifying the reasons for which it is asserted that, on the basis of the findings of fact in the award:
    - (i) the decision of the tribunal on the question is obviously wrong, or
    - (ii) the question is one of general public importance and the decision is at least open to serious doubt, and
  - (g) specifying the reasons for which, despite the agreement of the parties to resolve the matter by arbitration, it is just and proper in all the circumstances for the court to determine the question.

### **47.4 Subpoena** (cf SCR Part 72A, rule 7)

- (1) Part 33 applies to the issue of a subpoena under section 27A of the *Commercial Arbitration Act 2010* in the same way as it applies to the issue of a subpoena in proceedings in the court.

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- (2) A subpoena for production before an arbitral tribunal may, with the leave of the court or the arbitral tribunal, require production on any day.
  - (3) Unless the court otherwise orders, a subpoena requiring production of any document or thing before an arbitral tribunal must permit the person named, instead of attending and producing it before the arbitral tribunal, to produce the document or thing:
    - (a) to a person, and at a place, nominated in writing by the arbitral tribunal and stated in the subpoena, and
    - (b) by hand or by post,so that the person nominated receives it not later than 2 days before the first date on which production before the arbitral tribunal is required.
  - (4) If a document or thing is produced in accordance with subrule (3) the person nominated:
    - (a) if required to do so, must give a receipt to the person producing the document or thing, and
    - (b) must produce the document or thing as the nature of the case requires or as the arbitral tribunal may direct.
  - (5) Subrule (3) does not apply to so much of a subpoena as requires a person to attend to give evidence.

**47.5 Court assistance in taking evidence** (cf SCR Part 72A, rule 8)

- (1) This rule applies where a request for assistance of the court is made by an arbitral tribunal or party to an arbitration with the approval of an arbitral tribunal.
- (2) Rule 24.3 applies to an arbitration under the *Commercial Arbitration Act 2010* in the same way as it applies to proceedings in the court.
- (3) If any order is made pursuant to rule 24.3 as so applied, the other provisions of Part 24 apply as if:
  - (a) a reference in that Part to proceedings included a reference to the arbitration proceedings, and
  - (b) the provisions of rule 24.14 (4), (5) and (6) were omitted.
- (4) Unless the court otherwise orders, the examiner must send the transcript of evidence, any document that constitutes an audio-visual recording and the exhibits to the registrar.

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- (5) On receiving the transcript of evidence, the registrar must file it in the proceedings on the examination.
- (6) The court may make orders for the transmission to the arbitral tribunal of the transcript of evidence, document, any exhibit or copy of any exhibit and any such transcript, document, exhibit or copy is taken to have been taken or received (as the case requires) in the course of the arbitration proceedings.

### **47.6 Application to enforce award** (cf SCR Part 72A, rule 9)

- (1) An application to the court under section 35 of the *Commercial Arbitration Act 2010* must join the party who seeks enforcement of the award as plaintiff and the party against whom the enforcement is sought as defendant.
- (2) Section 9 of the *International Arbitration Act 1974* of the Commonwealth applies to proceedings in which a person seeks leave under section 35 of the *Commercial Arbitration Act 2010* to enforce an award in the same way as it applies to proceedings in which a person seeks the enforcement of a foreign award by virtue of the Commonwealth Act.

### **47.7 Leave to appeal** (cf SCR Part 72A, rule 10)

An appeal does not lie from a direction or decision in proceedings in the court under the *Commercial Arbitration Act 2010* except by leave of the court to which the appeal is to be made.

### **47.8 Method of entry into the Commercial Arbitration List**

An application made to the court pursuant to the *Commercial Arbitration Act 2010* (including an application for an interim measure pursuant to section 17J of that Act) and the rules is to be made by summons and entered in the Commercial Arbitration List in the manner specified in the Commercial Arbitration List Practice Note as amended from time to time.