



New South Wales

Uniform Civil Procedure Rules (Amendment No 40) 2011

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 Uniform Rules Committee

Explanatory note

The object of these Rules is to amend the *Uniform Civil Procedure Rules 2005* to establish rules in relation to matters arising under the *Surrogacy Act 2010*.

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Rule 1 Uniform Civil Procedure Rules (Amendment No 40) 2011

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1 Name of Rules

These Rules are the *Uniform Civil Procedure Rules (Amendment No 40) 2011*.

2 Commencement

These Rules commence on 1 March 2011 and are required to be published on the NSW legislation website.

Schedule 1 **Amendment of Uniform Civil Procedure Rules 2005**

[1] **Part 56A**

Insert after Part 56:

Part 56A Matters arising under the Surrogacy Act 2010

56A.1 Interpretation

- (1) Words and expressions used in this Part have the same meanings as they have in the *Surrogacy Act 2010*.
- (2) In this Part, a reference to an originating process includes a reference to a notice of motion referred to in rule 56A.2 (1).

56A.2 Commencement of proceedings

- (1) Once proceedings (*the original proceedings*) have been commenced under the *Surrogacy Act 2010* in relation to any person, any further proceedings under that Act in relation to the same person (whether or not they form part of, or relate to, the original proceedings), are to be commenced by notice of motion filed in the original proceedings.

Note. Pursuant to rule 6.4, the original proceedings must be commenced by summons.

- (2) The originating process is not to state a return day.
- (3) The Supreme Court may of its own motion appoint a day for the hearing of the proceedings.
- (4) If the Supreme Court appoints a day for hearing the proceedings, it must ensure that the parties are given notice of the appointment at least 5 days before the day appointed.
- (5) If the Supreme Court makes an appointment for hearing under this rule, it may give directions for service of notice of the appointment or for otherwise notifying the parties of the appointment.

56A.3 Duty to make full and frank disclosure

Each party to proceedings in the Supreme Court under the *Surrogacy Act 2010* has a duty to the Court to make known fully and frankly all matters relevant to the making of a parentage

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order, whether those matters tend to support or tend not to support making the order.

Note. See also rule 56A.9 which requires affidavit evidence of the legal advice given to the affected parties.

56A.4 How application for parentage order is to be dealt with

- (1) Unless the Supreme Court otherwise orders, an application for a parentage order is to be dealt with and determined by the Court in the absence of the public and without any attendance by or on behalf of the plaintiff.
- (2) If it is not appropriate for an application for a parentage order to be dealt with without the attendance by and on behalf of the plaintiff, the plaintiff must, in the originating process, apply for a preliminary hearing and for directions relating to the hearing.

56A.5 Preliminary hearing

- (1) The plaintiff may, in the originating process, apply for a preliminary hearing and, if the plaintiff does so, the originating process must contain an appointment for a preliminary hearing.
- (2) A party may apply for a preliminary hearing by filing a notice of motion.
- (3) The party applying for a preliminary hearing must state shortly in the originating process or notice of motion the terms, or the effect, of any order or direction for which the party will apply at the preliminary hearing.
- (4) A person other than a party may apply for a preliminary hearing by filing a notice of motion.
- (5) If a party or other person applies for a preliminary hearing by filing a notice of motion, the Supreme Court may grant a preliminary hearing on perusal of the notice of motion and the evidence filed in support of the notice of motion before hearing the notice of motion and without affording any person other than the applicant an opportunity to be heard.

56A.6 Applications appropriate for preliminary hearing

- (1) Applications appropriate for a preliminary hearing are applications for any order or direction that the Supreme Court should determine before it determines the application for a parentage order or other principal application.

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- (2) Applications appropriate for a preliminary hearing include applications relating to the following:
- (a) joinder of a party,
 - (b) giving notice of proceedings to any person,
 - (c) appointing a guardian ad litem or amicus curiae,
 - (d) whether the application for a parentage order should not be dealt with under rule 56A.4 (1).

56A.7 Filing of report in accordance with section 17 of the Surrogacy Act 2010

A plaintiff applying for a parentage order must file a report under section 17 of the *Surrogacy Act 2010*:

- (a) except as provided by paragraph (b), when filing the originating process, or
- (b) if there is a preliminary hearing, before the preliminary hearing.

56A.8 Evidence in support of application for parentage order

Evidence in support of an application for a parentage order must include evidence of the following:

- (a) the date and place of the child's birth,
- (b) the names of the child, including all names that the child has or has had, and the facts relating to any change of the child's name,
- (c) the names that it is proposed the child should have on the making of the parentage order, showing separately the proposed given name or names and the proposed surname,
- (d) the name, place of residence and occupation of each person with whom the child resides or who has the child in that person's care or custody,
- (e) the name, place of residence, age and occupation of each birth parent,
- (f) the name, place of residence, age and occupation of each intended parent,
- (g) if a single intended parent is seeking leave to make a sole application (in relation to a surrogacy arrangement involving 2 intended parents), the facts and circumstances that show that leave may be given having regard to section 14 of the *Surrogacy Act 2010*,

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- (h) the facts and circumstances that show that a parentage order may be made, demonstrated by reference to each of the preconditions to the making of a parentage order set out in Division 4 of Part 3 of the *Surrogacy Act 2010*,
- (i) in relation to any precondition to the making of a parentage order that is not met, the facts and circumstances that show that a parentage order may be made despite the precondition having not been met, having regard to section 18 of the *Surrogacy Act 2010*,
- (j) the medical or social need for the surrogacy arrangement, including copies of all medical or other reports relied on to establish the medical or social need for the surrogacy arrangement,
- (k) the consent of the affected parties to the making of the parentage order.

56A.9 Affidavit of Australian legal practitioner

- (1) An application for a parentage order must be accompanied by an affidavit sworn by each Australian legal practitioner who gave advice to a person for the purpose of satisfying the precondition to the making of a parentage order referred to in section 36 of the *Surrogacy Act 2010*.
- (2) The affidavit must state:
 - (a) the name of the affected party to whom the advice was given, the role of the affected party and the date the advice was given, and
 - (b) that independent legal advice was given to the person before the person entered into the surrogacy arrangement, and
 - (c) the Australian legal practitioner's belief that the person appeared to understand the legal advice given.
- (3) This rule does not apply in respect of a pre-commencement surrogacy arrangement (within the meaning of the *Surrogacy Act 2010*).

56A.10 Access to Court records

- (1) This rule applies to any application under section 53 of the *Surrogacy Act 2010* for leave of the Court to access court records that relate to proceedings in respect of a parentage order.

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- (2) An applicant for leave must file an affidavit:
- (a) identifying the proceedings in the Supreme Court to which the application relates, and
 - (b) setting out the basis on which leave is sought and the facts relevant to the application, and
 - (c) identifying the affected persons and whether notice of the application has been given to the affected persons.

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

Insert in appropriate order in columns 1 and 3 of Part 1:

Surrogacy Act 2010

Equity