



Uniform Civil Procedure Rules (Amendment No 58) 2013

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 make provision with respect to judicial review proceedings in the Supreme Court and the Land and Environment Court.

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Rule 1 Uniform Civil Procedure Rules (Amendment No 58) 2013

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1 Name of Rules

These Rules are the *Uniform Civil Procedure Rules (Amendment No 58) 2013*.

2 Commencement

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

Schedule 1 Amendment of Uniform Civil Procedure Rules 2005

[1] Part 59

Insert after Part 58:

Part 59 Judicial review proceedings

59.1 Application

- (1) This Part applies to the following proceedings for judicial review:
 - (a) proceedings under section 65 and 69 of the *Supreme Court Act 1970* and other proceedings in the supervisory jurisdiction of the Supreme Court, and
 - (b) proceedings for or in the nature of judicial review in the Class 4 or Class 8 jurisdiction of the Land and Environment Court.
- (2) This Part does not apply to proceedings commenced before the commencement of this Part.

59.2 Definitions

In this Part:

defendant means a person against whom proceedings are commenced.

judicial review proceedings means proceedings to which this Part applies.

plaintiff means a person by whom proceedings are commenced or on whose behalf proceedings are commenced by a tutor.

public authority includes a public officer.

59.3 Commencement and parties

- (1) Judicial review proceedings are to be commenced by summons.
- (2) If a decision to be reviewed arose in the course of a dispute between parties, each party who is interested in maintaining the decision must be joined as a defendant.
- (3) If the proceedings seek to prohibit, injunct or mandate a step that has not been taken, each body or person who may be directly affected by the relief sought must be joined as a defendant.

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- (4) The body or person responsible for a decision to be reviewed must be joined as a defendant, but not as the first defendant unless there is no other defendant.

59.4 Content of summons

The summons must state:

- (a) the orders sought, and
- (b) if there is a decision in respect of which relief is sought:
 - (i) the identity of the decision-maker, and
 - (ii) the terms of the decision to be reviewed, and
 - (iii) whether relief is sought in respect of the whole or part only of the decision and, if part only, which part, and
- (c) with specificity, the grounds on which the relief is sought.

59.5 Service of summons

Within 5 days of filing the summons, or such other time as the court may direct, the plaintiff must serve the summons on each defendant.

59.6 Response to summons

Within 21 days, or such other time as the court may direct, after being served with the summons, each defendant must file and serve a response stating whether the defendant opposes the relief sought and, if so, on what grounds.

59.7 Procedure—evidence generally

- (1) Evidence is to be given by way of affidavit, unless the court directs otherwise.
- (2) Affidavits are to be served on the other parties in accordance with any timetable fixed by the court.
- (3) Cross-examination is permitted only by leave of the court. Leave should, if practicable, be sought prior to the hearing.
- (4) A party may not, without the leave of the court, seek discovery from, or interrogate, another party to the proceedings. An application for leave is to include a draft list of categories of documents to be discovered or draft interrogatories.

59.8 Procedure—Court Book, defendant’s argument and plaintiff’s argument in reply

- (1) The parties are to confer and prepare a paginated Court Book with a table of contents in a white folder (or folders) containing the following sections with dividers between them:
 - (a) a copy of the summons, each defendant’s response to the summons and (if applicable) pleadings,
 - (b) a summary of the plaintiff’s argument (not exceeding 10 pages),
 - (c) the decision under review and the statement of reasons (if any) of the decision-maker,
 - (d) an agreed chronology or, failing agreement, the respective chronologies of the parties,
 - (e) an agreed schedule of any relevant legislative provisions or, failing agreement, the respective schedules of the parties of any relevant legislative provisions,
 - (f) each party’s list of objections (if any) to evidence.
- (2) The plaintiff must, at least 7 working days before the hearing, file and serve the Court Book.
- (3) A defendant must, at least 4 working days before the hearing, file and serve a summary of the defendant’s argument (not exceeding 10 pages).
- (4) The plaintiff must, at least 1 working day before the hearing, file and serve a summary of the plaintiff’s argument in reply if the plaintiff considers a reply is needed (not exceeding 5 pages).
- (5) This rule is subject to any directions given by the court.

59.9 Special procedure where public authority is defendant

- (1) This rule applies to proceedings for judicial review in which relief is sought in relation to a decision of a public authority.
- (2) The plaintiff may, within 21 days of commencing proceedings against a public authority or within such other time as the court may direct, serve on the public authority a notice requiring the public authority to provide to the plaintiff:
 - (a) a copy of the decision, and
 - (b) a statement of reasons for the decision.
- (3) A statement of reasons for the decision must:
 - (a) set out findings on material questions of fact, and

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- (b) refer to the evidence or other material on which those findings were based, and
- (c) explain why the decision was made.
- (4) If:
 - (a) the public authority does not comply with a notice under this rule within 14 days of service, or
 - (b) the plaintiff has not served a notice within the time prescribed by subrule (2),the plaintiff may apply to the court for an order that the public authority provide the plaintiff with a copy of the decision and a statement of reasons for the decision.

59.10 Time for commencing proceedings

- (1) Proceedings for judicial review of a decision must be commenced within 3 months of the date of the decision.
- (2) The court may, at any time, extend the time for commencing proceedings fixed by subrule (1).
- (3) In considering whether to extend time under subrule (2), the court should take account of such factors as are relevant in the circumstances of the particular case, including the following:
 - (a) any particular interest of the plaintiff in challenging the decision,
 - (b) possible prejudice to other persons caused by the passage of time, if the relief were to be granted, including but not limited to prejudice to parties to the proceedings,
 - (c) the time at which the plaintiff became or, by exercising reasonable diligence, should have become aware of the decision,
 - (d) any relevant public interest.
- (4) This rule does not apply to proceedings in which there is a statutory limitation period for commencing the proceedings.
- (5) This rule does not apply to any proceedings in which the setting aside of a decision is not required.

59.11 Security for costs

- (1) A plaintiff is not to be required to provide security for costs in respect of judicial review proceedings except in exceptional circumstances.

- (2) Where a plaintiff:
 - (a) invokes an open standing provision, or
 - (b) commences representative proceedings,
the court is not to treat the plaintiff as bringing proceedings for the benefit of a third party for the purposes of considering whether exceptional circumstances exist.
- (3) This rule has effect despite rule 42.21.

[2] Rule 6.12A Proceedings for order in the nature of prerogative writ

Omit the rule.

[3] Rule 51.45 Proceedings in supervisory jurisdiction

Insert after rule 51.45 (1):

- (1A) Part 59 (other than rule 59.8) applies to any such proceedings, but is subject to this rule.

[4] Rule 51.45 (3) (b)

Omit “the orders”. Insert instead “any orders”.