



New South Wales

# Uniform Civil Procedure (Amendment No 80) Rule 2016

under the

Civil Procedure Act 2005

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

Rebel Kenna  
Secretary of the Uniform Rules Committee

## Explanatory note

The object of this Rule is to amend the *Uniform Civil Procedure Rules 2005* to make provision, consequent on the abolition of the Industrial Court, for:

- (a) the originating process for certain proceedings commenced in the Supreme Court under the *Industrial Relations Act 1996*, and
- (b) the referral of certain proceedings commenced in the Supreme Court under the *Industrial Relations Act 1996* for conciliation by the Industrial Relations Commission, and
- (c) the award of costs in certain proceedings in the Supreme Court that could have been commenced in the Local Court under the *Industrial Relations Act 1996* rather than the Supreme Court.

## **Uniform Civil Procedure (Amendment No 80) Rule 2016**

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Civil Procedure Act 2005

### **1 Name of Rule**

This Rule is the *Uniform Civil Procedure (Amendment No 80) Rule 2016*.

### **2 Commencement**

This Rule commences on 8 December 2016 and is required to be published on the NSW legislation website.

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

### **[1] Rule 6.3 Where statement of claim required**

Insert after rule 6.3 (h):

- (i) proceedings for an order under section 106 of the *Industrial Relations Act 1996* that a contract is unfair,
- (j) proceedings on a claim for a civil penalty under section 357 of the *Industrial Relations Act 1996*,
- (k) proceedings on a claim for remuneration or other amounts under Part 2 of Chapter 7 of the *Industrial Relations Act 1996*.

### **[2] Rule 6.4 When summons required**

Insert after rule 6.4 (1) (h):

- (h1) proceedings on an application under Chapter 5 of the *Industrial Relations Act 1996*,

### **[3] Part 20, Division 3A**

Insert after Division 3:

#### **Division 3A      Conciliation**

##### **20.24A      Application of Division**

This Division applies to proceedings on a claim for the recovery of remuneration or other amounts under Part 2 of Chapter 7 of the *Industrial Relations Act 1996* (*recovery proceedings*).

##### **20.24B      Referral of recovery proceedings for conciliation**

The Supreme Court must refer recovery proceedings to the Industrial Relations Commission for conciliation if the Court is satisfied that a conciliation by the Commission has not been attempted by the parties.

**Note.** Section 371 of the *Industrial Relations Act 1996* provides that the Supreme Court is not to make an order under Part 2 of Chapter 7 of that Act until the parties to the application for the order satisfy the Court that they unsuccessfully attempted to settle the matter by means of a conciliation conducted by the Commission.

##### **20.24C      Certificate of result of conciliation of recovery proceedings**

If during a conciliation of recovery proceedings by the Industrial Relations Commission:

- (a) the matters in dispute are settled, or
- (b) the member of the Industrial Relations Commission conducting the conference forms the opinion that all reasonable attempts to settle the matter by conciliation have been made but have been unsuccessful,

the member of the Commission conducting the conference must issue a certificate to that effect.

##### **20.24D      Resolution of recovery proceedings after certificate issued**

- (1) This rule applies to any proceedings in respect of which the member of the Industrial Relations Commission conducting a conciliation has issued a certificate under rule 20.24C.

- (2) If the certificate indicates that the member of the Commission conducting the conference has formed the opinion that all reasonable attempts to settle the matter by conciliation have been made but have been unsuccessful, the Supreme Court is to determine the proceedings.

**Note.** If a conciliation results in the proceedings being settled, section 371 (2) of the *Industrial Relations Act 1996* requires the Court to make an order that, to the extent authorised by that Act, gives effect to the terms of the settlement.

**[4] Rule 42.34 Costs order not to be made in proceedings in Supreme Court unless Court satisfied proceedings in appropriate court**

Omit rule 42.34 (2). Insert instead:

- (2) An order for costs may be made, but will not ordinarily be made, unless the Supreme Court is satisfied that:
- (a) for proceedings that could have been commenced in the District Court—the commencement and continuation of the proceedings in the Supreme Court, rather than the District Court, was warranted, or
  - (b) for proceedings under Part 2 of Chapter 7 of the *Industrial Relations Act 1996*—the commencement and continuation of the proceedings in the Supreme Court, rather than the Local Court, was warranted.