



New South Wales

Uniform Civil Procedure Rules (Amendment No 34) 2010

under the

Civil Procedure Act 2005

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

J Atkinson
Secretary of the Rule Committee

Explanatory note

The object of these Rules is to amend the *Uniform Civil Procedure Rules 2005* to provide for the manner in which the Supreme Court is to deal with an issue in proceedings that a party contends is an issue governed by foreign law.

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Rule 1 Uniform Civil Procedure Rules (Amendment No 34) 2010

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under the

Civil Procedure Act 2005

1 Name of Rules

These Rules are the *Uniform Civil Procedure Rules (Amendment No 34) 2010*.

2 Commencement

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

Schedule 1 Amendment of Uniform Civil Procedure Rules 2005

Part 6, Division 9

Insert after Division 8:

Division 9 Issues arising under foreign law

6.42 Definitions

In this Division:

foreign court means a court of a country other than Australia.

foreign law means the law of a country other than Australia.

6.43 Filing of notices

- (1) A party who contends that an issue in proceedings in the Supreme Court is governed by foreign law must file and serve on the other parties affected by the issue a notice (a *foreign law notice*) setting out the relevant principles of foreign law and their application to the issue.
- (2) The foreign law notice must be filed and served by the party contending that an issue is governed by foreign law not more than 6 weeks after the filing by that party of a summons, statement of claim, statement of cross-claim or defence in respect of the proceedings.
- (3) A party on whom a foreign law notice is served who disputes the principles of foreign law or their application must file and serve on the other parties affected by the issue a notice setting out the matter or matters in dispute (a *notice of dispute as to foreign law*).
- (4) The notice of dispute as to foreign law must be filed and served not more than 8 weeks after the date of service of the foreign law notice.

6.44 Orders

- (1) The Supreme Court may, on the application of one or more of the parties and with the consent of all of the parties, order that proceedings be commenced in a foreign court in order to answer a question as to the principles of foreign law or as to their application.
- (2) The Supreme Court may, on the application of one or more of the parties or of its own motion, order that the question of foreign law

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be answered by a referee appointed in accordance with Division 3 of Part 20.

- (3) An order under subrule (1) must:
 - (a) state the question of foreign law to be answered, and
 - (b) state the facts or assumptions upon which the answer to the question is to be determined, and
 - (c) contain a statement to the effect that the foreign court may vary the facts or assumptions and the question to be answered, and
 - (d) state whether and to what extent the parties may depart from the facts or assumptions in the determination of the question by the foreign court.
- (4) The Supreme Court may give directions for the preparation of a statement as to the nature of the issue out of which the question arises for inclusion with the question to be answered by the foreign court or the referee.

6.45 Determination of issues arising in foreign court proceedings

Proceedings for determination of an issue of Australian law, being an issue with respect to which the Supreme Court may exercise its jurisdiction and which is relevant to an issue in proceedings in a foreign court, may be commenced by summons seeking a declaration of the answer to a question in the form determined by the foreign court.