

LITIGATION AND DISPUTE MANAGEMENT SUMMARY



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SAMPLE ONLY

00 Introduction

0.1 Background

Procedural law are the rules and regulations which oversee court proceedings and conduct. It is concerned with the enforcement of a right, but not the establishment of a right (unlike substantive law).

Procedural law draws its authority from a range of sources including; the Uniform Civil Procedure Rules (“UCPR”), various state legislation such as the Civil Procedure Act 2005 (NSW) (“CPA”), various court acts (e.g. the Local Court Act), and the Evidence Act 1995 (Cth).

The CPA mostly contains provisions copied from the specific acts governing each court (e.g. District Court Act). The UCPR is flexible enough to accommodate the unique characteristics of each individual court.

NOTE: For NSW much of the procedural regulations are contained in the UCPR, which is fortunately relatively easy to read. It is advisable that the actual text of the UCPR should be read when referenced in the notes below.

Also the following summary will contain procedural regulations for ACT and NSW. Please be careful when reading. Rules which apply to one State often does not apply in another.

0.2 Overriding Purpose

In the NSW CPA, which is one of the key statutes governing civil proceedings in NSW, is to ensure a “just, quick, and cheap” resolution of civil proceedings; s 56 CPA. In NSW this is known as the ‘overriding purpose’ of civil litigation. The provision is overriding in the sense that when the court exercises procedural powers, it must always have regard to this purpose (s 56(2)). Furthermore, any parties or legal practitioners which are part of the proceedings must also assist the court in achieving this objective (ss 56(3), (4)).

The overriding purpose help interpret other rules in the context of the overriding purpose. It informs the application of other rules, provides a guide to interpretation and is most useful in resolving issues where UCPR is silent or unclear or there is a conflict between rules. In other words, you should take a purposive approach.

0.3 Principle of Open Justice

In support of this ‘overriding purpose’ is the principle of open justice. The general principle is that the public is free to observe all court proceedings. This acts as a safeguard to ensure that court proceedings are just as it allows the public to scrutinise the legal process, and most importantly it creates the perception that justice is delivered which instils public confidence into the legal system (Enfield v R (No 2) [2008] NSWCCA 243). Only in extreme

circumstances is there an exception to open justice. A non-exhaustive list of exceptions includes:

- To protect the identity of an informer (*Cain v Glass*).
- Protect the identity of victims of blackmail
- Matters of national security (*Mirror Newspaper v Waller*).

Section 71 of the CPA provides a broad range of categories in which proceedings can be conducted with the absence of the public.

0.3 Principle of Fair Trial

Due to the court's inherent ability to control its own processes, there is a duty on the courts to prevent the abuse of process. This helps maintain public confidence in the justice system.

- In *Stead v State Government Insurance Commission* (1986) 161 CLR 141 the majority held that in spite of the principle of fair trial not every departure from the rules of natural justice will entitle the aggrieved party to a new trial. An appellate court will not order a new trial if the denial of natural justice does not have a material effect on the outcome of the trial.
- In NSW, the requirements for a new trial are stated in UCPR r 51.53.

01 Limitation of Actions



General common law limitation period is 6 years (s 11(1), LA).

NB exceptions –

- Defamation – 1 year from publication (s 21B) unless P did not know – then 2 yrs.
- Personal injury – 3 years after injury *or* the day on which P discovered the injury.

***Trade Practices Act* (s 52 etc → s 82 damages or s 87 remedies): 6 years (ss 82(2), 87(1CA)).**



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