



## ***Amendments to Ethical Resolution of Civil Disputes: South Australian Theory and Practice 2020***

As noted in the introduction to the 2020 edition of *Ethical Resolution of Civil Disputes: South Australian Theory and Practice*, the manuscript for the text was prepared before the final version of the 2020 Rules was available. The rules were finalised and enacted in May 2020, at which time there were a number of minor changes which were not captured in the original text.

We provide the following list of changes to identify where these minor changes have occurred. Christina Devetzidis has contributed enormously to the task of compiling the list, and we are grateful for her assistance.

Margaret Castles and Anne Hewitt  
 30 November 2020

<b>Paragraph number</b>	<b>Current content</b>	<b>Change to</b>
1.75	‘overarching purpose’	‘object of these Rules’
1.95	UCCR rr 5.1 and 5.2	UCCR rr 3.1 and 3.2
1.210	‘1(a) act honestly at all times;’	‘1(a) act honestly;’
1.210	‘1(c) not take a step in the proceeding that is frivolous, vexatious or an abuse of process;’	‘1(c) not take a step that is frivolous, vexatious or an abuse of process;’
1.210	‘1(d) not make a claim or response to a claim for which the person does not, on the material available to the person at the time, have a proper basis;’	‘1(d) not make an assertion or response to an assertion for which they do not, on the material available at the time, have a proper basis;’
1.210	‘1(e) not take a step in the proceeding unless the person reasonably believes that it is necessary to facilitate the resolution or determination of the proceeding;’	‘1(e) not take a step unless they reasonably believe that it is necessary to facilitate the resolution or determination of the proceeding;’
1.210	‘1(f) cooperate with other parties to the proceeding and with the Court in relation to the conduct of the proceeding;’	‘1(f) cooperate with other parties and with the Court in relation to the conduct of the proceeding;’
1.210	‘1(j) be prepared and ready proceed with a hearing, directions hearing or trial at the appointed time;’	‘1(j) be prepared for and ready to proceed with a hearing, directions hearing or trial at the appointed time; and’
1.210	‘(3) A lawyer acting or appearing for a party, or a person who is exercising	‘(2) A lawyer acting or appearing for a party, or a person exercising subrogated rights (including an insurer or

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	subrogated rights, must in relation to a proceeding or appellate proceeding —  (a) act in accordance with the requirements imposed by subrule (1);  (b) not engage in any conduct that causes or permits that party to act contrary to the requirements imposed by paragraphs (a) to (k) of subrule (1).'	indemnifier) in respect of, or who is otherwise entitled to exercise control or influence over, a party (by reason of providing litigation funding or otherwise) must, in relation to a proceeding or an appellate proceeding —  (a) act in accordance with subrule (1); and  (b) not engage in conduct that causes or permits that party to act contrary to subrule (1).'
1.210	(2) The Court may make any order it considers appropriate in the interests of justice by reason for any failure by a person to comply with the overarching obligations.	(2) The Court may make such order as it thinks fit in the interests of justice by reason of a failure by a person to comply with overarching obligations.
1.210	(c) make any other order to avoid or mitigate the prejudice suffered by any person arising from the failure.	(c) make any other or further order to avoid or mitigate the prejudice suffered by a person arising from the failure.
1.300	'The relevant definitions in the Federal Court Act provided that summary judgment could be given if, <i>inter alia</i> :	'The relevant definitions in s 25A of the <i>Federal Court Act</i> provided that summary judgment could be given if, <i>inter alia</i> :
2.65	UCCR r 59.1	UCCR r 61.4
2.80	UCCR r 59	UCCR rr 61 and 131
3.15	An extension can only be granted if:  (i) the facts material to the plaintiff's case were not ascertained by him until some point of time occurring within twelve months before the expiration of the period of limitation or occurring after the expiration of that period and that the action as instituted within twelve months after the ascertainment of those facts by the plaintiff;	An extension can only be granted if:  (3)(b)(i) the facts material to the plaintiff's case were not ascertained by him until some point of time occurring within twelve months before the expiration of the period of limitation or occurring after the expiration of that period and that the action as instituted within twelve months after the ascertainment of those facts by the plaintiff;
3.15	Note that the definition of 'material' requires any new fact ascertained to have a significant impact on the claim (s 48(3a)).	Note that the definition of 'material' requires any new fact ascertained to form an essential element of the plaintiff's cause of action (s 48(3a)(a)) or have a significant impact on an assessment of the plaintiff's loss (s 48(3)(b)).
3.35	UCCR r 61.6 provides that a person who has suffered a personal injury should notify the alleged negligent party within six weeks of the time of the suffering of the wrongdoing, or within one month of	UCCR r 61.6(2) provides that a person who has suffered a personal injury should notify the alleged negligent party within 6 months after the day on which the incident giving rise to the personal

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	becoming aware that they have a potential claim.	injury occurred. UCCR r 61.6(3) provides that if the injured person was unaware that they were injured or that the loss or damage was arguably caused by the respondent's negligence, the period in subrule (2) is extended to one month after the person becomes aware that they have a potential claim.
3.35	It has additional requirements for pre-action steps if the case involves a personal injury claim.	It has additional requirements for pre-action steps if the case involves a criminal injuries compensation.
3.65	UCCR r 63(5)	UCCR r 63.1(5)
3.70	UCCR r 63	UCCR r 63.1
3.70	UCCR r 65	UCCR r 65.1
3.70	UCCR r 66	UCCR r 66.2
3.80	UCCR Ch 4	UCCR Ch 5
3.80	UCCR r 64.2	UCCR 64.1
3.110	UCCR r 71.2(2)	UCCR r 71.2
3.110	Note the words in that rule ' <i>should have been but was not</i> '.	Note the words in that rule ' <i>should have been, but is not</i> '.
3.120 fn 6	UCCR r 33.5(2)	UCCR r 67.5(2)
3.175	UCCR r 36.3	UCCR r 70.3
3.220	67.6 — Defence pleading rules  (1) A defence must specifically admit, not admit or deny (in each case with or without qualification or elaboration) each allegation of fact in the statement of claim. This rule does not derogate from the obligation to comply with rule 67.2(2).	67.6 — Defence pleading rules  (1) A defence must specifically admit, not admit or deny (in each case with or without qualification or elaboration) each allegation of fact in the statement of claim.  (2) This rule does not derogate from the obligation to comply with rule 67.2(2).  → Each subrule under 67.6 in the textbook after this split of (1), into (1) and (2) is therefore +1 more than what it currently is.
3.225	UCCR r 67.6(2)	UCCR r 67.6(3)
4.50	UCCR r 10.1(7)	UCCR r 21.1(8)
4.65	UCCR r 70.1(2)	UCCR r 70.2
4.70	UCCR r 36.3	UCCR r 70.3
4.70	<i>Supreme Court Rules</i> r 70.3	UCCR r 70.3
4.80	UCCR r 34.4	UCCR r 34.1
5.20	UCCR r 73	UCCR r 73.7
5.20	UCCR r 74	UCCR r 74.3
5.20	UCCR r 38.7 specifies that if a discoverable document comes into a party's possession, they have seven days to include it in a revised list of documents, although it may be sufficient to send a copy of it to the other side.	UCCR r 73.10 specifies that if a discoverable document comes into a party's possession, they must include it in a revised list of documents that are filed and served as soon as practicable,

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		although in practice it may be sufficient to send a copy of it to the other side.
5.25	An action for pre-action disclosure may be successful if:	Under UCCR r 242.2, an action for pre-action disclosure may be successful if:
5.30	UCCR r 123	UCCR r 242.2(1)(c)
5.40	It clearly anticipates using pre-action discovery in order to ‘facilitate a decision about whether to take proceedings,’ which would seem on its face to suggest a lower threshold.	It clearly anticipates using pre-action discovery in order to decide whether to bring or to formulate a claim, which would seem on its face to suggest a lower threshold.
5.55	UCCR r 73.7(4)	UCCR r 73.7(5)
5.95	UCCR r 73.13	UCCR r 73.14
5.95	<p>The court can order to modify the rules of discovery in any of the following ways:</p> <ul style="list-style-type: none"> <li>the parties, or a party, need not make discovery;</li> <li>the criteria for a relevant document be modified;</li> <li>the time for filing a list of documents be modified;</li> <li>discovery be made in stages;</li> <li>a document or class of documents need not be disclosed or disclosed separately in a list of documents;</li> <li>a bundle of certain documents may be listed as a single item;</li> <li>the complex electronic protocol apply instead of a simple protocol;</li> <li>the simple physical protocol apply instead of the simple electronic protocol or vice versa;</li> <li>the form of a list of documents (otherwise) be modified;</li> <li>a person’s list of documents be verified on oath.</li> </ul>	<p>The court can order to modify the rules of discovery in any of the following ways:</p> <ul style="list-style-type: none"> <li>the parties, or a party need not make discovery;</li> <li>the parties' obligations to make discovery be limited;</li> <li>the criteria for a relevant document be modified;</li> <li>the time for filing a list of documents be modified;</li> <li>discovery be made in stages;</li> <li>a document, or class of documents need not be disclosed, or disclosed separately;</li> <li>documents be described in greater precision;</li> <li>a bundle of documents may be listed as a single item;</li> <li>the simple or complex electronic protocol apply instead of the physical protocol;</li> <li>the form of a list of documents (otherwise) be modified;</li> <li>documents be produced for inspection in a specified manner or copies be provided on specified terms;</li> <li>a person’s list of documents be verified on oath.</li> </ul>
5.115	UCCR r 73.10	UCCR r 73.11
5.120	UCCR r 73.14	UCCR r 73.15
5.120	UCCR r 73.14	UCCR r 73.15
5.130	UCCR r 73.11	UCCR r 73.12
5.130	UCCR r 73.16	UCCR r 73.17
5.145	UCCR r 21.1	UCCR r 21.1(4)

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5.145	An <i>interested party</i> is a party (whenever joined) against whom no relief is sought and whose interests are not directly and adversely affected by the claim, cross claim or originating application but who should be given the opportunity to be heard therein or who must be joined to be bound by the result.	An <i>interested party</i> is a party (whenever joined) who should be given the opportunity to be heard in relation to the proceeding or who must be joined to be bound by the result.
6.10	UCCR r 73.13	UCCR r 73.14
6.60	UCCR r 73.16	UCCR r 73.17
6.135	The copy of the letter of advice in the possession of the ANZ Banking Group Ltd was held to be protected by privilege because the bank and Capital Television Holdings Ltd had a common interest sufficient to support legal professional privilege.	The copy of the letter of advice in the possession of the ANZ Banking Group Ltd was held to be protected by privilege for reasons other than common interest. The common legal interest argument was rejected.
7.100	r 103(1)	UCCR r 71
7.105	UCCR r 154	UCCR r 154.8
7.110	UCCR r 74	UCCR r 74.3
8.105	In doing this, it is useful to consider the overarching purpose of the rules as set out in UCCR r 1.5 which provides: ‘the overarching purpose of these Rules is to facilitate the just, efficient, timely, cost-effective and proportionate resolution or determination of the real issues in proceedings.’	In doing this, it is useful to consider the object of the rules as set out in UCCR r 1.5 which provides: ‘[t]he object of these Rules is to facilitate the just, efficient, timely, cost-effective and proportionate resolution or determination of the issues in proceedings governed by these Rules.’
8.120	UCCR r 243	UCCR 243.1
9.20	<i>Legal Practitioners Act 1981</i> (SA) Sch 1 cl 21	<i>Legal Practitioners Act 1981</i> (SA) sch 3 cl 21
9.25	UCCR r 194.5	UCCR r 194.5(2)
9.115	Discretionary factors: <ul style="list-style-type: none"> <li>• misconduct or unreasonable conduct</li> <li>• breach of the overriding obligations</li> <li>• breach of an order of the Court</li> <li>• breach of pre-action obligations</li> <li>• making or not making an offer to resolve the proceeding</li> <li>• non-acceptance of an offer</li> <li>• value of the relief sought</li> <li>• whether costs are to be met by a person or out of a fund</li> </ul>	Discretionary factors: <ul style="list-style-type: none"> <li>• misconduct or unreasonable conduct</li> <li>• breach of the overriding obligations</li> <li>• breach of the UCCR</li> <li>• breach of an order of the Court</li> <li>• breach of pre-action obligations</li> <li>• making or not making an offer to resolve the proceeding</li> <li>• non-acceptance of an offer</li> <li>• value of the relief sought</li> <li>• public interest in the subject matter of the proceeding</li> <li>• public benefit from the prosecution or defence of the proceeding</li> <li>• whether costs are to be met by a person or out of a fund</li> </ul>
9.150	UCCR r 194.5(9)	UCCR r 194.5(11)

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9.155	UCCR r 132	UCCR r 132.4
9.155	However, the rules also make specific provisions for what is referred to as a “complying offer”.	However, the rules also make specific provisions for what is referred to as a ‘relevant offer’.
9.155	Such an offer must: <ul style="list-style-type: none"> <li>• be filed and served on the offeree at least 21 days before the commencement of the trial</li> <li>• relate to an entire action or cross action</li> <li>• involve genuine compromise</li> <li>• provide the other party is to pay the costs of the offeree on a standard basis up to acceptance of the offer or 14 days after service of the offer</li> <li>• if it is a contract offer — be a monetary offer payable within 28 days</li> </ul>	Such an offer must: <ul style="list-style-type: none"> <li>• be filed and served on the offeree at least 21 days before the commencement of the trial</li> <li>• remain open for acceptance at least 14 days after service</li> <li>• relate to an entire action or cross action</li> <li>• involve genuine compromise</li> <li>• provide that the other party is to pay the costs of the offeree on a standard basis up to acceptance of the offer or 14 days after service of the offer</li> <li>• if it is a contract offer — be a monetary offer payable within 28 days</li> </ul>
10.20	UCCR r 151.10	UCCR r 151.12
10.20	UCCR r 151.4	UCCR r 154.6
10.25	(b) the Court may only grant permission for the introduction of a defendant against whom a fresh action would be statute barred if satisfied that the plaintiff’s failure to join the defendant arose from a genuine mistake.	(b) the Court may only grant permission for the introduction of a defendant or applicant, where the action would be statute barred, if satisfied that the failure to join the party arose from a genuine mistake.
10.25	UCCR r 37.1	UCCR r 117.2(5)
10.50	UCCR r 151.10	UCCR r 151.12
10.50	UCCR r 151.10	UCCR r 151.12
10.75	The court also has the power to strike out any filed document (ie, other than a claim or pleading) if it is scandalous, irrelevant or an abuse of process (UCCR r 34.4).	The court also has the power to strike out any filed document (ie, other than a claim or pleading) if it is frivolous, vexatious or an abuse of process (UCCR r 34.1).
10.85	UCCR r 12.2 enables the courts to have regard to the overarching purpose in making any orders.	UCCR 12.2 enables the courts to have regard to the objects of the UCCR in making any orders.
10.85	Court can take into account <ul style="list-style-type: none"> <li>• The complexity of the case</li> <li>• The monetary value of the subject matter</li> <li>• The time and cost of the proceedings</li> <li>• The efficient conduct of the court</li> <li>• The efficient use of judicial and administrative resources</li> </ul>	Court can take into account <ul style="list-style-type: none"> <li>• The complexity of the case</li> <li>• The importance and value of the subject matter</li> <li>• The time and cost of the proceedings</li> <li>• The proportionality between the time and cost incurred and the importance and value of the subject matter of the proceeding</li> </ul>

Paragraph number	Current content	Change to
	<ul style="list-style-type: none"> <li>The extent to which parties have complied with pre-action processes</li> <li>Compliance with the overarching obligations</li> <li>Any prejudice that either party would suffer</li> </ul>	<ul style="list-style-type: none"> <li>The proportionality between the time and cost incurred and the complexity of the issues in the proceeding</li> <li>The desirability of early resolution by agreement of disputes</li> <li>The efficient conduct of the court</li> <li>The efficient use of judicial and administrative resources</li> <li>The extent to which parties have complied with pre-action steps</li> <li>Compliance with the overarching obligations</li> <li>Any prejudice that either party would suffer</li> </ul>
10.95	UCCR r 115	UCCR r 115.1
10.95	UCCR 215	UCCR r 215.4
11.20	UCCR r 101	UCCR rr 63.5 and 101.2
11.25	UCCR r 101.6	UCCR r 101.7
11.30	UCCR r 316	UCCR r 316.11
11.50	Chapter 24	UCCR Chapter 24
11.55	UCCR r 332.3	UCCR r 332.2
11.55	A respondent has 7 days to respond with a counter offer and details of any defence, including details of any proposed counter claim (UCCR r 332.4).	A respondent has 21 days to respond with a counter offer and details of any defence, including details of any proposed counter claim (UCCR r 332.3).
11.55	Claimants (applicants) are also entitled to request pre-litigation discovery of documents by letter. The potential respondent has 14 days to respond, failing which the applicant can seek an order for disclosure (UCCR r 332.1). A person who unreasonably refuses to provide documents and must be ordered to do so by the court may have costs awarded against them (UCCR r 332.1).	UCCR r 332.1 does not have an equivalent in the October 2020 rules. It seems that parties in minor civil actions are only entitled to regular discovery (UCCR r 336.1).
11.70	UCCR r 336.1	UCCR r 336.3
11.120	The Court specifies mediation, arbitration, judicial intimation and referral to an external referee as potential ADR options ( <i>Federal Court Act</i> (Cth) s 28).	The Court specifies mediation, arbitration and other alternative dispute resolution processes as potential ADR options ( <i>Federal Court Act 1976</i> (Cth) s 53A).
11.120	More importantly, s 3 of the <i>Commonwealth Civil Dispute Resolution Act 2011</i> requires parties to litigation to take ‘genuine steps’ to try to resolve the dispute prior to taking action.	More importantly, s 3 of the <i>Civil Dispute Resolution Act 2011</i> (Cth) requires parties to litigation to take ‘genuine steps’ to try to resolve the dispute prior to taking action.
12.10	UCCR r 186.4	UCCR r 186.1

<b>Paragraph number</b>	<b>Current content</b>	<b>Change to</b>
12.10	UCCR r 72.1	UCCR r 186.1
12.20	<i>Magistrates Court Act 1991 (SA) s 42(1A)</i>	<i>Magistrates Court Act 1991 (SA) s 42(1a)</i>
12.125	UCCR r 5.2(1)	UCCR r 12.1
12.130	The party could still apply to have it set aside on the basis of error or that there was a good reason for failure to attend, in the interests of justice.	The party that failed to appear can apply to have the default judgement set aside on the basis that there was a reasonable excuse for having not appeared, or that there is a reasonable basis for prosecuting the action or defending the claim/ contesting the original application (UCCR r 145.4(1)–(2)). The Court can set aside or vary the default judgment if satisfied that it is in the interests of justice to do so (UCCR r 145.4(3)).