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# Introduction to Pleadings

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&  
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Barristers

# After – other constitutive documents

- ▶ *Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited* [2019] FCA 1284 (Allsop CJ)
- ▶ 7 ...*(a) the fundamentally agreed narrative of relevant facts, even if their legal significance is to be debated; (b) a body of agreed facts the relevance of which may be debated; (c) such facts as are contested and the nature of that contest; and (d) the competing legal analysis of all the above.*
- ▶ Statements of agreed facts (s 191 CEA)
- ▶ Statements of facts, issues and contentions
- ▶ Agreed list of issues in dispute

# After – strike out (FCR, 16.21)

## 16.21 Application to strike out pleadings

(1) A party may apply to the Court for an order that all or part of a pleading be struck out on the ground that the pleading:

- (a) contains scandalous material; or
- (b) contains frivolous or vexatious material; or
- (c) is evasive or ambiguous; or
- (d) is likely to cause prejudice, embarrassment or delay in the proceeding; or
- (e) fails to disclose a reasonable cause of action or defence or other case appropriate to the nature of the pleading; or
- (f) is otherwise an abuse of the process of the Court.

# After – strike out (UCPR, r 171)

## **171 Striking out pleadings**

*(1) This rule applies if a pleading or part of a pleading—*

*(a) discloses no reasonable cause of action or defence; or*

*(b) has a tendency to prejudice or delay the fair trial of the proceeding; or*

*(c) is unnecessary or scandalous; or*

*(d) is frivolous or vexatious; or*

*(e) is otherwise an abuse of the process of the court.*

*(2) The court, at any stage of the proceeding, may strike out all or part of the pleading and order the costs of the application to be paid by a party calculated on the indemnity basis.*

*(3) On the hearing of an application under subrule (2), the court is not limited to receiving evidence about the pleading.*

# After – amendment (FCR)

## **8.21 Amendment generally**

*(1) An applicant may apply to the Court for leave to amend an originating application for any reason, including...*

## **16.51 Amendment without needing the leave of the Court**

*(1) A party may amend a pleading once, at any time before the pleadings close, without the leave of the Court.*

*(2) However, a party may not amend a pleading if the pleading has previously been amended in accordance with the leave of the Court.*

*(3) A party may further amend a pleading at any time before the pleadings close if each other party consents to the amendment.*

*(4) An amendment may be made to plead a fact or matter that has occurred or arisen since the proceeding started.*

# After – amendment (FCR)

## **16.52 Disallowance of amendment of pleading**

- (1) If a party amends a pleading under rule 16.51(1), another party may apply to the Court for an order disallowing the amendment.*
- (2) If a party purports to amend a pleading under rule 16.51(3) without obtaining the consent of another party, any other party may apply to the Court for an order disallowing the amendment.*
- (3) A party applying for an order under subrule (1) or (2) must apply by interlocutory application within 14 days after the date on which the amended pleading was served on the party.*

# After – amendment (UCPR)

## **377 Amendment of originating process**

*(1) An originating process may not be amended except—*

*(a) if the amendment is a technical matter—with the leave of the registrar or the court; or*

*(b) if the originating process has not been served and all sealed copies of the originating process, and other documents filed with the originating process, are returned to the court that issued the originating process—with the leave of the registrar or the court; or*

*(c) otherwise—with the leave of the court.*

*(2) Subrule (1) does not apply to a pleading or particular included in an originating process.*

# After – amendment (UCPR)

## **378 Amendment before request for trial date**

*Before the filing of the request for trial date, a party may, as often as necessary, make an amendment for which leave from the court is not required under these rules.*

## **379 Disallowance of amendment**

*(1) If a party makes an amendment without leave before the filing of the request for trial date, another party may, within 8 days after service on the party of the amendment, apply to the court to disallow all or part of the amendment.*

*(2) On the application, the court may make an order it considers appropriate.*





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