

## PRELIMINARY

### Title and commencement

#### 1.1 (1) These Rules are the Constitutional Procedures Rules.

- [1.1.1] History The *Rules* (No 26 of 2003) were made under s.66(3), *Judicial Services and Courts* [Cap 270]. As to the rule-making power see CPR [1.1.3] *et seq* and r.1.2.
- [1.1.2] Correct name of Rules This is the only correct name of the *Rules*, a simple fact which is complicated by the inexplicable use of several other names. For example, the index to the official version refers to the "Constitutional Petitions Rules" and the PaCLII version refers first to the "Constitutional Applications Rules" and then to the "Constitutional Procedural Rules".
- [1.2.3] Former rules Rules governing various forms of constitutional litigation were formerly to be found in Ch.13 of the *Criminal Procedure Code* [Cap 136], a location described as "odd" by the Court of Appeal in *The Application by Ganke and Brinds Ltd* [1983] VUSC 1; [1980-1988] 1 Van LR 53 and echoed by Muria J in *In re the Constitution; Malifa v Attorney-General* [1999] VUSC 43; CC 66 of 1999. These were repealed on 4 August 2003 by the *Criminal Procedure Code (Amendment) Act* 2003.

#### (2) These Rules come into operation on 1 August 2003.

### Purpose

#### 1.2 The purpose of these Rules is to set out the procedures to be used in Constitutional proceedings brought in the Supreme Court under the Constitution of the Republic of Vanuatu.

- [1.2.1] Purposive Interpretation The *Rules* should, in addition to the interpretive requirements of r.1.4(1)(b), be interpreted consistently with their purpose. See further CPR [1.1.3] and s.8, *Interpretation* [Cap. 132]. As to the meaning of "Constitutional proceedings" see r.1.5(1).

EPR r1.3

### Application of the Civil Procedure Rules

#### 1.3 If these rules do not make provision for a matter relating to a constitutional proceeding, the Civil Procedure Rules apply to that matter.

EPR r1.4  
PaAR r1.4

### Overriding objective and case management

CPR r1.3

#### 1.4 (1) The Supreme Court must give effect to the overriding objective, as set out in the Civil Procedure Rules, when it:

- [1.4.1] See CPR r.1.2 as to the overriding objective

- (a) does any act under these Rules; or
- (b) interprets these Rules.

CPR r1.4(1)

#### (2) In particular, the Court must actively manage cases brought under these Rules, as set out in the Civil Procedure Rules.

- [1.4.2] See CPR r.1.4(2) as to active case management

## Interpretation

### 1.5 (1) Some words used in these Rules have a particular meaning. These are defined as follows:

CPR r20.1

**"applicant" means the person who makes an application.**

- [1.5.1] Meaning of "applicant" There is no definition of "applicant" or "application". The various uses of these words throughout the *Rules* suggest that an application may be an application within Constitutional proceedings *and* a Constitutional Application itself. The position does not seem very clear but little appears to turn on it.

**"Conference" means a conference held under Rule 2.8, 3.7, 4.8 or 5.4.**

**"Constitutional Application" means an Application under Article 6 or 53(1) of the Constitution.**

- [1.5.2] See Part 2.

**"Constitutional proceedings" means proceedings under Article 6, 16(4), 39(3), 53(1), 53(3) or 72 of the Constitution.**

- [1.5.3] Meaning of "Constitutional proceedings" Only proceedings brought under these articles are "Constitutional proceedings" within the meaning of the *Rules* with the result that other proceedings which may happen to touch on the Constitution do not. See further r.1.2.

EPR r1.5(1)

**"Court" means the Supreme Court.**

- [1.5.4] Establishment of Supreme Court The Supreme Court is established by art.49 of the *Constitution*. See further Part 4, *Judicial Services and Courts* [Cap 270].

**"Emergency Regulation Complaint" or "Complaint" means a complaint made under Article 72 of the Constitution.**

- [1.5.5] See Part 4.

**"Emergency Regulation" means a regulation made under Article 69 of the Constitution.**

- [1.5.6] See Part 4.

**"President's Referral" or "Referral" means the referral of a matter to the Court by the President under Article 16(4) or 39(3) of the Constitution.**

- [1.5.7] See Part 3.

**"Submission" means a submission of a question by a subordinate court under Article 53(3) of the Constitution (this is a case stated as mentioned in Rule 16.22(1)(a) of the Civil Procedure Rules).**

- [1.5.8] See Part 5.

**(2) The Notes in these Rules do not form part of the Rules and are for information only.**

[1.5.9] The notes are not reproduced in this publication.

EPR r1.6  
PaAR r1.6  
CPR r1.9

**Forms**

**1.6 A reference to a Form by number is a reference to the form identified by that number in the Schedule at the end of these Rules.**

[1.6.1] In this publication forms appear in the Chapter “Forms”. See further rr.2.6(3), 18.9, CPR and s.37, *Interpretation* [Cap 132] as to formal defects.

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