

## PRELIMINARY

### Title and commencement

#### 1.1 (1) These Rules are the Election Petitions Rules.

- [1.1.1] History of election disputes Election disputes in the Westminster system of government were originally dealt with by Parliament, and subsequently, by the courts. A short history of election disputes and the evolution of the “extremely special” jurisdiction conferred by art.54 of the Constitution is to be found in the decision of the majority in *Rarua v Electoral Commission* [1999] VUCA 13; CAC 7 of 1999. See also *Morgan v Simpson* [1975] 1 QB 151 at 161-4; [1974] 3 All ER 722 at 725-7.
- [1.1.2] History of rules The new *Rules* (Order 29 of 2003) came into force on 1 August 2003. Rules relating to election disputes were formerly to be found in the *Election Petition Rules* 1998 which came into force on 7 May 1998. Unusually, the new *Rules* do not expressly repeal the old. It is likely that the old *Rules* were impliedly repealed by the new.
- [1.1.3] Rule-making power The *Rules* were made by the Chief Justice under s.59(1), *Representation of the People* [Cap 146] which permits the making of rules “not inconsistent with this Act concerning the conduct of proceedings before the Supreme Court under [Part 16], the times and places of hearings and adjournment thereof as he shall consider proper”. Whether this is qualitatively different to the usual power to make rules for “practice and procedure” is uncertain and there appears to be at least superficial tension between the expression of this power and r.1.2.
- [1.1.4] Rules to be read with Act Section 59 of the *Representation of the People Act* also contains important and detailed procedural provisions.

#### (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 proceedings about electoral disputes brought in the Supreme Court under Article 54 of the Constitution and Section 54 of the Representation of the People Act [Cap 146].

- [1.2.1] General observations This rule generates a number of uncertainties. First, the purpose of the *Rules* is not, contrary to expectation and convention, expressed in the similar terms to the enabling power in s.59, *Representation of the People* [Cap 146], as to which see [1.1.3]. Second, the Rules are said to set out the procedures relating to disputes brought under art.54 of the *Constitution* and s.54 of the *Representation of the People Act*. Part 2 of the *Rules* (noting r.2.1) seems clearly designed to relate to the first part of this purpose – disputes under art.54 and s.54. Part 3, however, (noting r.3.1) is designed to relate to proceedings about disqualification and vacation – these have nothing to do with disputes under either art.54 of the *Constitution*, nor s.54 of the Act. Rather, this would seem to be a subject for *Members of Parliament (Vacation of Seats)* [Cap 174], which contains no rule-making power. See further [3.1.1].

ConPR r1.3  
PaAR r1.3

### Application of the Civil Procedure Rules

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

- [1.3.1] Rarity The majority decision of the Court of Appeal in *Rarua v Electoral Commission* [1999] VUCA13; CAC 7 of 1999 noted that it will rarely be necessary to look beyond *Representation of the People* [Cap 146] and the (former) *Rules*. In *Samuel v Electoral Commission* [1998] VUSC 69; CC 33 of 1998, however, the Chief Justice drew from common law authority relating to the manner and nature of an application for a recount.

ConPR 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] Prompt determination In election matters is important that disputes be determined quickly in recognition of the public interest in early finality of election outcomes: *Rarua v Electoral Commission* [1999] VUCA 13; CAC 7 of 1999 (approving of *Senana v Navaratnyakee* [1954] AC 640 and *Arzu v Arthurs* [1965] 1 WLR 675). Accordingly, time limitations are likely to be quite strictly applied, as they were in *Tasso v Omawa* [2009] VUSC 1; EPC 1 of 2008.

[1.4.2] 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.

[1.4.3] 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:

ConPR r1.5

"Court" means the Supreme Court;

[1.5.1] 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].

"electoral dispute proceeding" means a proceeding under Article 54 of the *Constitution* about the validity of an election to Parliament;

"member" means a member of the Parliament of Vanuatu;

"petition" means a petition under Part 16 of the Representation of the People Act [Cap 146];

"Representation Act" means the Representation of the People Act [Cap 146];

"Seat" means a seat in the Parliament.

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

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

ConPR 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 for all annotated rules appear in the chapter "Forms".
- [1.6.2] Formal defects In this publication forms for all annotated rules appear in the chapter "Forms". See further rr.2.6(3), 18.9, *CPR* and s.37, *Interpretation* [Cap 132] as to formal defects. There are indications, however, that formal defects will be treated more strictly in election disputes owing to their serious nature. See for example *Tasso v Omwa* [2009] VUSC 1; EPC 1 of 2008; *Biri v Re Bill Ninkama* [1982] PNGLR 342 (noting that the statutory framework there also suggested greater strictness). It is further noted that r.40 of the former *Rules*, which stated that no proceedings shall be defeated for any formal objection, is omitted from the new *Rules*.

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