

# NSW rules rewrite puts resolution first

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Lawyers in NSW will now be legally required in all courts to assist in the "just, quick, and cheap resolution" of cases, as state governments around Australia push for more non-litigated resolutions of disputes to reduce legal costs for litigants.

Under new uniform civil procedure rules and the Civil Procedure Act 2005 that came into effect in NSW this week, a party to a dispute is now under a duty to assist the court to facilitate resolution of "the real issues in the proceedings". The new requirement on practitioners mirrors a provision previously in the NSW Supreme Court rules.

Judge John Hamilton of the NSW Supreme Court, chairman of the working party that drafted the new uniform civil procedure rules in the state, said part of the price in coming to the court to resolve a dispute was that people be prepared to co-operate with the court and to not take the "pointless" objections that may once have been taken.

"The extent to which you [clients] do take those objections you and your legal practitioners may be reminded by the court of your obligations and that you are not paying that price for participating in the court system," Justice Hamilton told *The Australian Financial Review*.

The coming into effect of the new

## KEY POINTS

- The new rules are largely based on the existing court rules, though simplified.
- They will also apply to the NSW Dust Diseases Tribunal.
- The number of forms in the Supreme Court will drop from 230 to 60.

rules came as Victorian Attorney-General Rob Hulls flagged the possibility of making mediation compulsory before filing any matter in a Victorian court.

"This would no doubt frustrate the flamboyance of countless prac-

## "A more conciliatory and constructive way of initiating resolution."

tioners who enjoy the gothic drama of throwing down the gauntlet on behalf of their client, or who relish the chance to impress their clients with extravagant ambit claims: perhaps a good enough reason in itself," Mr Hulls says in an article published in the *AFR* today.

"Rather than launch an attack and then detour into mediation, our first port of call should be the most appropriate, least traumatic way of resolving the dispute. This means we

must shun the knee jerk reaction: the writ or letter of demand shooting out at the press of a button to flex the parties' muscles, opting instead for a more conciliatory and constructive way of initiating resolution."

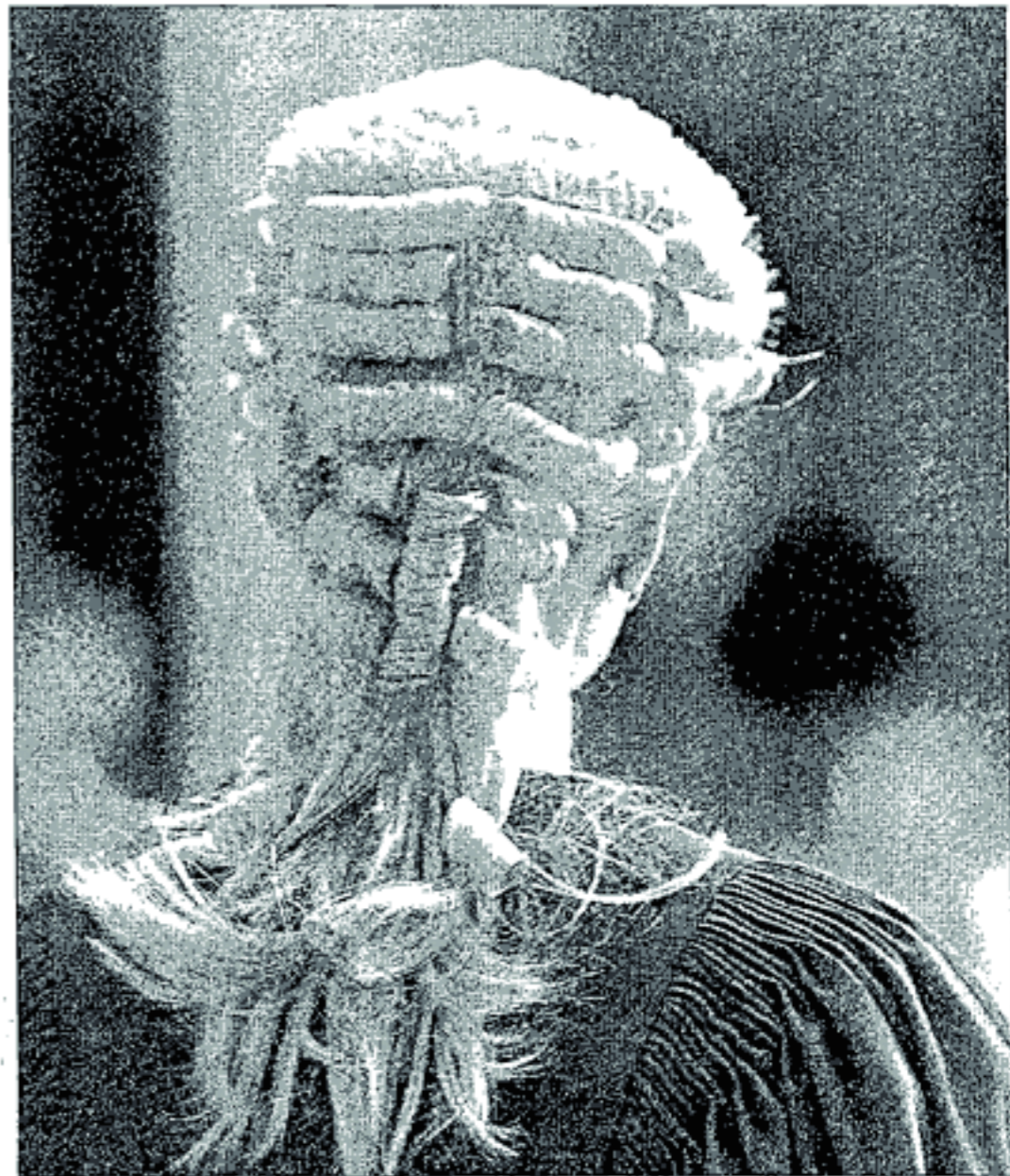
Under the new NSW rules, the number of court forms has been radically cut with number of forms just in the Supreme Court slashed from 230 to 60. They are largely based on the existing court rules although rules have been simplified where possible.

Justice Hamilton said the new rules, that will also apply in the NSW Dust Diseases Tribunal, would not require lawyers to substantially relearn civil procedure because they incorporated all the changes to procedure over the last 30 years.

"The important thing for the profession is that they will not need to keep up with legal practice in four jurisdictions," Justice Hamilton said. "There is no vast change in the way things are done."

The new rules took over 2½ years to complete and follow a number of previous aborted attempts to unify civil procedure rules.

"One of the difficulties [in the past] has been that courts — apart from anything else — have not been ready to give up the autonomy of their own rule-making powers," Justice Hamilton said.



NSW lawyers face a new set of uniform civil procedure rules.

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