



New South Wales

Uniform Civil Procedure Rules (Amendment No 1) 2005

under the

Civil Procedure Act 2005

The Uniform Rules Committee made the following rules under the *Civil Procedure Act 2005* on 1 August 2005.

Jennifer Atkinson
Secretary of the Rules Committee

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Rule 1 Uniform Civil Procedure Rules (Amendment No 1) 2005

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under the

Civil Procedure Act 2005

1 Name of Rules

These Rules are the *Uniform Civil Procedure Rules (Amendment No 1) 2005*.

2 Commencement

These Rules commence on the commencement of section 9 of the *Civil Procedure Act 2005*.

3 Amendment of Uniform Civil Procedure Rules 2005

The *Uniform Civil Procedure Rules 2005* are amended as set out in Schedule 1.

Schedule 1 Amendments

(Rule 3)

- [1] **Rule 4.2 Documents to be filed to contain certain information**
Omit “a party in” from rule 4.2 (2). Insert instead “a person in relation to”.
- [2] **Rule 4.2 (2) (e)**
Omit “the party” and “the party’s”.
Insert instead “a party” or “a party’s”, respectively.
- [3] **Rule 4.2 (2) (f)**
Omit rule 4.2 (2) (f). Insert instead:
(f) an address to which documents addressed to the person may be sent, being (in the case of a person who is a party to the proceedings) that person’s address for service.
- [4] **Rule 4.2 (3)**
Omit “the party” and “the party’s” wherever occurring.
Insert instead “the person” and “the person’s”, respectively.
- [5] **Rule 4.13 Place for filing**
Omit rule 4.13 (a). Insert instead:
(a) subject to paragraphs (b), (c) and (d), in the registry for the venue specified in the originating process pursuant to rule 4.2 (1) (c), or
- [6] **Rule 5.1 Definitions**
Insert at the end of the heading to the rule:
(cf Federal Court Rules, Order 15A, rule 1)
- [7] **Rule 5.2 Discovery to ascertain prospective defendant’s identity or whereabouts**
Insert at the end of the heading to the rule:
(cf Federal Court Rules, Order 15A, rules 3, 5 and 9)
- [8] **Rule 5.3 Discovery of documents from prospective defendant**
Insert at the end of the heading to the rule:
(cf Federal Court Rules, Order 15A, rules 6, 7 and 9)

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[9] Rule 5.4 Discovery of documents from other persons

Insert at the end of the heading to the rule:
(cf Federal Court Rules, Order 15A, rule 8)

[10] Rule 5.5 Discovery and inspection generally

Insert at the end of the heading to the rule:
(cf Federal Court Rules, Order 15A, rule 10)

[11] Rule 5.6 Security for costs

Insert at the end of the heading to the rule:
(cf Federal Court Rules, Order 15A, rule 11)

[12] Rule 5.7 Privilege

Insert at the end of the heading to the rule:
(cf Federal Court Rules, Order 15A, rule 2)

[13] Rule 5.8 Costs and other expenses

Insert “; *Federal Court Rules*, Order 15A, rules 4 and 11” after “DCR Part 39A, rule 5” in the heading to the rule.

[14] Rule 6.4 Where summons required

Omit “rule 2A” from the heading to the rule. Insert instead “rules 2, 2A and 3”.

[15] Rule 6.4 (2)

Omit “also”.

[16] Rule 6.4 (2)

Omit “made in relation to”. Insert instead “made in”.

[17] Rule 6.4 (2) (c)

Omit “, otherwise than in relation to proceedings that have been commenced by or against the person”.

[18] Rule 6.4 (4)

Insert after rule 6.4 (3):

- (4) Proceedings:
 - (a) in which the sole or principal question at issue is, or is likely to be, one of:
 - (i) the construction of an Act or a Commonwealth Act, or
 - (ii) the construction of an instrument made under an Act or a Commonwealth Act, or
 - (iii) the construction of a deed, will, contract or other document, or
 - (iv) some other question of law, or
 - (b) in which there is unlikely to be a substantial dispute of fact, are amongst those which are appropriate to be commenced by summons unless the plaintiff considers the proceedings more appropriate to be commenced by statement of claim.

[19] Rule 10.5 The various methods of service

Omit “working” from rule 10.5 (1) (c). Insert instead “employed”.

[20] Rule 10.20 Personal service required only in certain circumstances

Omit “working” wherever occurring in rule 10.20 (2) (b) (ii) or (c) (ii).

Insert instead “employed”.

[21] Rule 10.20 (2) (c)

Omit “any subpoena for production in proceedings in the District Court, and any order for examination, garnishee order or subpoena for proceedings in a Local Court”.

Insert instead “any order for examination, garnishee order or subpoena for attendance in proceedings in a Local Court”.

[22] Rule 10.20 (2) (d)

Insert after rule 10.20 (2) (c):

- , and
- (d) any subpoena for production in proceedings in the District Court or a Local Court must be served in one of the following ways:
 - (i) it may be served personally on the person to whom it is directed,

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- (ii) it may be left, addressed to the person to whom it is directed, at that person's business or residential address, with a person who is apparently of or above the age of 16 years and apparently employed or residing at that address,
- (iii) it may be sent by post, addressed to the person to whom it is directed, to the person's business or residential address in an envelope marked with the return address of the party at whose request the subpoena was issued.

[23] Rule 10.20 (3)

Omit the subrule. Insert instead:

- (3) If an envelope, posted as referred to in subrule (2) (b) (iii), is returned to the court by the postal authority as having not been delivered to the addressee:
 - (a) service of the document contained in the envelope is taken not to have been effected, and
 - (b) any judgment given or entered on the basis of that service is to be set aside,and the registrar must so advise the party by whom or on whose behalf it was posted.

[24] Rule 10.20 (4)

Insert "or (d) (ii) or (iii)" after "(c) (ii)".

[25] Rule 12.7 Dismissal of proceedings etc for want of due despatch

Omit "rules 1, 2 and 3" from the heading to the rule.

Insert instead "rules 1 and 2".

[26] Rule 12.8 Additional grounds for dismissal of proceedings by Supreme Court

Omit "Part 40, rule 8" from the heading to the rule.

Insert instead "Part 32A, rules 1 and 2".

[27] Rule 12.8 (3)

Omit the subrule. Insert instead:

- (3) Such an order may not be made unless the registrar has given notice of the proposal to make such an order to the plaintiff and to each other active party, being notice that gives each of them a reasonable opportunity to be heard in relation to the proposal.

[28] Rule 13.6

Insert after rule 13.5:

13.6 Non-appearance by plaintiff (cf SCR Part 13, rule 5A)

- (1) If there is no attendance by or on behalf of a plaintiff at a hearing of which the plaintiff has had due notice, the court may adjourn the hearing to another date and direct that not less than 5 days before that date a notice of the adjournment be served on the plaintiff advising that the proceedings may be dismissed if there is no attendance by or on behalf of the plaintiff at the adjourned hearing.
- (2) If the plaintiff has been given notice in accordance with subrule (1) and there is no attendance by or on behalf of the plaintiff at the adjourned hearing, the court may dismiss the proceedings.
- (3) This rule does not restrict any other power of the court to dismiss proceedings.

[29] Rule 16.3 Procedure where defendant in default

Insert after rule 16.3 (1):

- (1A) Unless the court otherwise orders, an application under this rule:
 - (a) may be dealt with in the absence of the parties, and
 - (b) need not be served on the defendant.

[30] Rule 18.3 Contents of notice of motion

Insert “unless the motion is to be moved in the absence of the public,” before “must state” in rule 18.3 (1) (d).

[31] Rule 29.14 Court may refuse to hear proceedings if fees unpaid

Insert at the end of the heading to the rule:

(cf Supreme Court Regulation 2000, clause 12; District Court Regulation 2000, clause 9A)

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[32] Rule 31.1 Manner of giving evidence at trial

Omit “subrules (3) and (4)” from rule 31.1 (2).

Insert instead “subrules (3), (4) and (5)”.

[33] Rule 31.1 (5)

Insert after rule 31.1 (4):

- (5) Unless the court otherwise orders, at any trial on an assessment of the amount to be recovered by a plaintiff after default judgment has been given, the following evidence may be given by affidavit:
 - (a) evidence of the identity of any motor vehicle,
 - (b) evidence of the damage sustained by a motor vehicle in a particular collision,
 - (c) evidence of the reasonable cost of repairing that damage.

[34] Rule 31.18A

Insert after rule 31.18:

31.18A Admissibility of expert’s report (cf SCR Part 36, rule 13B)

- (1) If an expert’s report is served in accordance with rule 31.18 or an order made under that rule, the report is admissible:
 - (a) as evidence of the expert’s opinion, and
 - (b) if the expert’s direct oral evidence of a fact on which the opinion was formed would be admissible, as evidence of that fact,without further evidence, oral or otherwise.
- (2) Unless the court otherwise orders, a party may require the attendance for cross-examination of the expert by whom the report was prepared by notice served on the party by whom the report was served.
- (3) Unless the court otherwise orders, such a requirement may not be made later than:
 - (a) in the case of proceedings for which the court has fixed a date for trial, 35 days before the date so fixed, or
 - (b) in any other case, 7 days before the date on which the court fixes a date for trial.
- (4) The parties may not by consent abridge the time fixed by or under subrule (3).

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- (5) If the expert's attendance for cross-examination is required under subrule (2), the report may not be tendered under section 63, 64 or 69 of the *Evidence Act 1995* or otherwise used unless the expert attends or is dead or the court grants leave to use it.
 - (6) The party using the report may re-examine the expert if the expert attends for cross-examination pursuant to a requirement under subrule (2).
 - (7) This rule does not apply to proceedings in the District Court or a Local Court or to proceedings on a trial with a jury.

[35] Rule 31.19 Admissibility of expert's report in District Court and Local Courts

Insert before rule 31.19 (1):

- (1A) This rule applies to proceedings in the District Court or a Local Court.

[36] Rule 31.19 (4) (b)

Insert "must" before "pay".

[37] Rule 31.19 (6)

Omit the subrule.

[38] Rule 33.5 Service

Insert "active" after "other" in rule 33.5 (2).

[39] Rule 35.3 Persons who may make affidavit

Omit "Part 38, rule 2" from the heading to rule 35.3.

Insert instead "Part 24, rule 7".

[40] Rule 35.3 (2) (a) and (b)

Omit the paragraphs. Insert instead:

- (a) by the party's solicitor, or by a commercial agent or subagent (within the meaning of the *Commercial Agents and Private Inquiry Agents Act 1963*), in relation only to proceedings on an application for:
 - (i) an instalment order, or
 - (ii) an order for examination, or
 - (iii) a writ of execution, or
 - (iv) a garnishee order, or

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- (b) by a person holding a licence as a real estate agent, strata managing agent or on-site residential property manager within the meaning of the *Property, Stock and Business Agents Act 2002* in relation only to:
 - (i) proceedings on an application referred to in paragraph (a), or
 - (ii) the filing of a certificate under section 51 of the *Consumer, Trader and Tenancy Tribunal Act 2001*.

[41] Rules 35.7A and 35.7B

Insert after rule 35.7:

35.7A Name of legal practitioner or commissioner for affidavits on affidavit (cf SCR Part 38, rule 2 (4A), (4B) and (5))

- (1) A legal practitioner who takes and receives an affidavit concerning any matter within the jurisdiction of the court must, by use of a stamp or otherwise, add, legibly below the legal practitioner's signature, the legal practitioner's name and address together with the word "barrister" or "solicitor", as the case requires.
- (2) A commissioner for affidavits who takes and receives an affidavit concerning any matter within the jurisdiction of the court, must, by use of a stamp or otherwise, add, legibly below the commissioner's signature, the commissioner's name and address together with the words "commissioner for affidavits".
- (3) In this rule, *commissioner for affidavits* means a person who is authorised by the Chief Justice of the Supreme Court, under section 27 (2) of the *Oaths Act 1900*, to take and receive affidavits.

35.7B Each page of affidavit to be signed

Each page of an affidavit must be signed by the deponent and by the person before whom it is sworn.

[42] Rule 36.7 Payment of interest

Insert at the end of rule 36.7:

- (2) A Local Court may not order the payment of interest up to judgment in any proceedings in which the amount claimed is less than \$1,000.

[43] Rule 37.3 Instalment order made by registrar

Omit "debtor" from rule 37.3 (1) (a). Insert instead "debt".

[44] Rule 38.2 Application for order for examination

Insert at the end of rule 38.2:

- (2) The provisions of subrule (1) (b) and (c) do not apply in relation to a judgment or order of the Supreme Court.
- (3) Unless the court otherwise orders, an application under this rule:
 - (a) may be dealt with in the absence of the parties, and
 - (b) need not be served on the person bound by the judgment or order.

[45] Rule 39.32

Omit the rule. Insert instead:

39.32 Sheriff or auctioneer to report (cf SCR Part 45, rule 14; DCR Part 34, rule 9; LCR Part 30, rule 8)

As soon as practicable after the sale of goods under a writ for the levy of property has been completed, the Sheriff or auctioneer appointed to sell the goods must make a report to the judgment creditor as to results of the sale.

[46] Rule 39.44 Application for charging order

Omit rule 39.44 (3).

[47] Rule 39.45 Affidavit in support of application for charging order

Insert after rule 39.45 (2) (b):

- , and
- (c) must indicate the extent (if any) to which the judgment debt has been satisfied under any other writ of execution, garnishee order or charging order issued by the court.

[48] Rule 39.51

Insert after rule 39.50:

39.51 Return of writ (cf SCR Part 44, rule 9; DCR Part 44, rule 6; LCR Part 30, rule 22)

On request by the judgment creditor, the Sheriff must return the writ to the court by which it was issued, together with a notice indicating:

- (a) what action, if any, has been taken in execution of the writ, and
- (b) whether or not the writ has been satisfied.

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[49] Rule 42.21 Security for costs

Omit “rules 2, 3 and 4” from the heading to the rule.

Insert instead “rules 2, 3, 4 and 5”.

[50] Rule 42.21 (4)

Insert after rule 42.21 (3):

- (4) This rule does not affect the provisions of any Act under which the court may require security for costs to be given.

[51] Rule 42.32

Insert after rule 42.31:

42.32 Smyth orders

At any stage of proceedings, the court may order a party’s legal representative to serve on the party:

- (a) a notice that specifies:
- (i) an estimate of the largest amount (inclusive of costs) for which judgment is likely to be given if the party is successful, and
 - (ii) an estimate of the largest amount (by way of costs) that the party may be ordered to pay if the party is unsuccessful, or
- (b) a notice that specifies:
- (i) an estimate of the best outcome that the party is likely to achieve if the party is successful, and
 - (ii) an estimate of the worst outcome that the party is likely to undergo if the party is unsuccessful.

[52] Part 45, Division 1

Omit the Division. Insert instead:

Division 1 Matters before Supreme Court constituted by associate Judge

45.1 Construction of certain references

In this Division:

- (a) a reference to the Supreme Court is a reference to the Supreme Court constituted by a Judge of the Supreme Court, and

- (b) a reference to an associate Judge of the Supreme Court is a reference to the Supreme Court constituted by that associate Judge.

45.2 Reference and removal of proceedings (cf SCR Part 60, rules 6 and 7)

- (1) An associate Judge of the Supreme Court may refer any proceedings before the associate Judge to the Supreme Court.
- (2) Before the conclusion of any proceedings before an associate Judge of the Supreme Court, the Supreme Court may order that the proceedings be removed into the Supreme Court.

45.3 Disposal of proceedings referred or removed (cf SCR Part 60, rule 8)

On the reference or removal to the Supreme Court of any proceedings before an associate Judge of the Supreme Court, the Supreme Court:

- (a) may hear and determine any matter in the proceedings in respect of which the proceedings were before the associate Judge, or
- (b) may determine any question arising in the proceedings and remit the proceedings to the associate Judge with such directions as it thinks fit.

45.4 Right of appeal (cf SCR Part 60, rule 10)

An appeal lies to the Supreme Court from any decision of an associate Judge of the Supreme Court, except in any case where an appeal lies to the Court of Appeal.

[53] Rule 45.7A

Insert before rule 45.8:

45.7A Construction of certain references

In this Division:

- (a) a reference to the Supreme Court is a reference to the Supreme Court constituted by a Judge of the Supreme Court, and
- (b) a reference to an associate Judge of the Supreme Court is a reference to the Supreme Court constituted by that associate Judge.

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[54] Rule 45.8

Omit the rule. Insert instead:

45.8 Institution of appeal (cf SCR Part 60, rule 11)

- (1) An appeal from a decision of an associate Judge of the Supreme Court under rule 45.4, or an application under section 18FB (2) of the *District Court Act 1973* for the varying or setting aside of a judgment or order of the judicial registrar of the District Court (also referred to in this Division as an *appeal*), is to be instituted by filing a notice of motion.
- (2) The appeal must be instituted within 28 days after the material date.
- (3) The associate Judge or judicial registrar may extend the time allowed under subrule (2) within 28 days after the material date, or on a notice of motion filed within 28 days after the material date, and not otherwise.
- (4) The Supreme Court or District Court may extend the time allowed under subrule (2) at any time.
- (5) For the purposes of this rule, the *material date* is:
 - (a) in the case of an appeal from a judgment, the date on which the judgment was given, or
 - (b) in the case of an appeal from an order, the date of the order, or
 - (c) in any other case, the date of the decision under appeal.

[55] Rule 45.10

Omit the rule. Insert instead:

45.10 Stay and reinstatement (cf SCR Part 60, rule 14)

- (1) An appeal under this Division:
 - (a) does not operate as a stay of execution or stay of proceedings under the decision of the associate Judge of the Supreme Court or the judicial registrar of the District Court, and
 - (b) does not invalidate any intermediate act or proceedings, except so far as the Supreme Court or District Court (or, subject to any direction of the Supreme Court or District Court, the associate Judge or judicial registrar) may direct.

- (2) If any step has been taken for the enforcement of a judgment or order and the Supreme Court or District Court varies or sets aside the judgment or order on appeal under this Division, the Supreme Court or District Court may make such orders for reinstatement as the Supreme Court or District Court thinks fit.

[56] Rule 45.18 Disposal of proceedings referred or removed

Omit “of any proceedings to the court under this Division”.

Insert instead “to the court of any proceedings before a registrar”.

[57] Rule 45.20 Applications generally

Insert at the end of the rule:

- (6) This rule does not apply to:
- (a) an order to which Part 80 rule 23A (1) or Part 80A rule 21 (1) of the *Supreme Court Rules 1970* applies, or
 - (b) an order to which rule 16.1 of the *Supreme Court (Corporations) Rules 1999* applies, or
 - (c) a direction, order, decision or other act of a registrar in relation to the functions of the Court under the *Mutual Recognition Act 1992* of the Commonwealth or the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth.

[58] Schedule 1 Application of rules

Omit “*Local Courts Act 1970*” wherever occurring in the matter in Column 2 in relation to a Local Court.

Insert instead “*Local Courts Act 1982*”.

[59] Schedule 1

Omit “Rule 6.13 (b)” from Column 4 in relation to a Local Court sitting in its Small Claims Division.

[60] Schedule 1

Omit “, 3, 4” from the matter relating to Part 7 in Column 4 in relation to a Local Court sitting in its Small Claims Division.

[61] Schedule 1

Insert in appropriate order in Column 4 in relation to a Local Court sitting in its Small Claims Division:

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[62] Schedule 1

Omit “Parts 24, 25, 26 and 27” from Column 4 in relation to a Local Court sitting in its Small Claims Division.

Insert instead “Parts 24, 25, 26, 27, 28 and 29”.

[63] Schedule 1

Omit “Rules 29.7 and 29.9” from Column 4 in relation to a Local Court sitting in its Small Claims Division.

[64] Schedule 1

Omit “Rules 36.8, 36.15 and 36.16” from Column 4 in relation to a Local Court sitting in its Small Claims Division.

Insert instead “Rule 36.8”.

[65] Schedule 2 Local rules that prevail over these rules

Insert in appropriate order in the matter relating to the *Supreme Court Rules 1970*:

Part 14 (Commercial List)	Rules 2, 3, 4 and 5
Part 14A (Technology and Construction List)	Rules 3 and 4
Part 51 (Court of Appeal)	All rules in that Part
Part 55 (Contempt)	Rule 7
Part 67 (Defamation)	Rules 11 and 11C
Part 68 (Administration of estates; execution of trusts)	Rule 5
Part 70 (Trustee Act rules)	Rules 3 and 12
Part 71A (<i>Service and Execution of Process Act 1992</i> (Commonwealth))	Rule 8
Part 73 (Adoption of Children)	All rules in that Part
Part 76 (Protective business)	All rules in that Part
Part 78 (Probate)	All rules in that Part
Part 80 (<i>Companies (New South Wales) Code and Corporations Law</i>)	All rules in that Part
Part 80A (<i>Corporations Law</i> and ASC Law)	All rules in that Part
Part 81 (Intellectual property)	Rule 5
Part 82 (<i>Public Notaries Act 1997</i>)	Rules 2 and 7

[66] Schedule 6 Proceedings in respect of which originating process may be served outside Australia

Omit “the following proceedings:”.

Insert instead “the following circumstances:”.

[67] Schedule 7 Expert witness code of conduct

Omit “the preceding paragraph” from clause 3 (5).

Insert instead “subclause (4)”.