



New South Wales

# District Court Amendment (Uniform Civil Procedure) Rule 2005

under the

District Court Act 1973

The District Court Rule Committee made the following rule of court under the *District Court Act 1973* on 2 June 2005.

A Grew  
Secretary of the Rule Committee

## **Explanatory note**

The object of these Rules is to amend the *District Court Rules 1973* in connection with the commencement of the *Civil Procedure Act 2005* and the *Uniform Civil Procedure Rules 2005*.

## **2005 No 326**

Clause 1            District Court Amendment (Uniform Civil Procedure) Rule 2005

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### **District Court Amendment (Uniform Civil Procedure) Rule 2005**

under the

District Court Act 1973

**1 Name of Rule**

This Rule is the *District Court Amendment (Uniform Civil Procedure) Rule 2005*.

**2 Commencement**

This Rule commences on the date on which section 9 of the *Civil Procedure Act 2005* commences.

**3 Amendment of District Court Rules 1973**

The *District Court Rules 1973* are amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Clause 3)

**[1] Part 1, rule 4 Interpretation**

Omit the definitions of *ABN*, *claim for relief*, *cross-claim*, *curator*, *defendant*, *disable person*, *dismiss*, *document*, *expert*, *folio*, *incommunicate person*, *incompetent person*, *medical practitioner*, *minor*, *originating process*, *personal injuries*, *place of business*, *plaintiff*, *statement of claim* and *tutor* from rule 4 (1).

**[2] Part 1, rule 4 (2), (2A) and (3)**

Omit the subrules. Insert instead:

- (2) In these rules, words and expressions that are defined in the *Civil Procedure Act 2005* or the *Uniform Civil Procedure Rules 2005* have the same meanings as they have in that Act and those rules.

**[3] Part 1, rules 5, 5A, 7 and 7A**

Omit the rules.

**[4] Parts 2A and 3–5**

Omit the Parts.

**[5] Part 6, Divisions 1 and 2**

Omit the Divisions.

**[6] Part 6, rule 16 Application**

Omit rule 16 (2).

**[7] Part 6, rule 16 (4)**

Omit “A notice mentioned in subrule (2)”.

Insert instead “The summons by which an application is commenced”.

**[8] Part 6, rule 17**

Omit the rule.

**[9] Part 6, rule 18 Medical practitioner to advise registrar**

Omit “the notice of an application” from rule 18 (1).

Insert instead “a summons”.

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- [10] **Part 6, rule 18 (1)**  
Omit “service of the application”. Insert instead “service”.
- [11] **Part 6, rule 18 (3)**  
Omit “notice of the application”. Insert instead “summons”.
- [12] **Part 6, rule 19 Registrar to advise person concerned**  
Omit “notice of the application” from rule 19 (1). Insert instead “summons”.
- [13] **Part 6, rule 35 Interpretation**  
Insert “, and so applies subject to Part 46 of the *Uniform Civil Procedure Rules 2005*” after “Care Act” in rule 35 (1).
- [14] **Part 6, rule 36**  
Omit the rule.
- [15] **Part 6, rule 37 Defendants in appeal**  
Omit “respondents to”. Insert instead “defendants in”.
- [16] **Part 6, rule 38 Venue of appeal**  
Omit “notice of appeal” wherever occurring in rule 38 (2).  
Insert instead “summons”.
- [17] **Part 6, rule 39 Making of appeal**  
Omit “notice of the appeal”.  
Insert instead “the summons commencing the appeal”.
- [18] **Part 6, rule 40 Summons**  
Omit “notice of appeal” from rule 40 (1).  
Insert instead “summons commencing an appeal”.
- [19] **Part 6, rule 40 (2)**  
Omit “notice of appeal” where firstly occurring.  
Insert instead “summons commencing an appeal”.
- [20] **Part 6, rule 40 (2)**  
Omit “notice of appeal” where secondly occurring.  
Insert instead “summons”.

- [21] Part 6, rule 40 (3)**  
Omit “notice of appeal”.  
Insert instead “summons commencing an appeal”.
- [22] Part 6, rule 40 (3)**  
Omit “the notice” wherever occurring.  
Insert instead “the summons”.
- [23] Part 6, rule 40 (4)**  
Omit the subrule.
- [24] Part 6, rule 41 Children’s Court record**  
Omit “being served with a copy of a notice of appeal”.  
Insert instead “the filing in that Court of a copy of the summons commencing an appeal”.
- [25] Part 6, rule 42**  
Omit the rule.
- [26] Part 6, rule 44 Withdrawal of appeal**  
Omit “Part 16” from rule 44 (3).  
Insert instead “Part 18 of the *Uniform Civil Procedure Rules 2005*”.
- [27] Part 6, rule 44 (4)**  
Omit the subrule.
- [28] Part 6, rule 47 Application**  
Omit rule 47 (1). Insert instead:  
    (1) An application for a suspension order under section 83 of the *Home Building Act 1989* must be made by filing a summons, supported by an affidavit verifying the grounds of the application, at Sydney.
- [29] Part 6, rule 47 (2)**  
Omit “notice” where firstly, secondly and thirdly occurring.  
Insert instead “summons”.
- [30] Part 6, Division 7**  
Omit the Division.
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**[31] Part 6, rule 60A Interpretation**

Insert at the end of the rule:

- (2) This Division has effect subject to Part 46 of the *Uniform Civil Procedure Rules 2005*.

**[32] Part 6, rule 60B Venue**

Omit “order made under section 40 of the Act”.

Insert instead “order of the Court for a change of venue”.

**[33] Part 6, rule 60C Application for leave**

Omit rule 60C (1). Insert instead:

- (1) An application for leave must be made by summons.

**[34] Part 6, rule 60C (3)**

Omit “notice of motion under Part 16”. Insert instead “summons”.

**[35] Part 6, rule 60C (5)**

Omit “respondent to”. Insert instead “defendant in”.

**[36] Part 6, rule 60C (5)**

Omit “a motion referred to in subrule (1) or (3)”.

Insert instead “an application for leave or an application to allow further time to appeal”.

**[37] Part 6, rule 60C (6)**

Omit the subrule.

**[38] Part 6, rule 60D Tribunal record**

Omit “notice of motion under rule 60C (6)”.

Insert instead “summons commencing an appeal”.

**[39] Part 6, rule 62 Application for leave**

Omit rule 62 (1)–(3).

**[40] Part 6, rule 62 (4)**

Omit “notice of motion”. Insert instead “summons”.

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- [41] **Part 6, rule 64 Application for order issuing debt certificate**  
Omit “notice of the application” from rule 64 (2).  
Insert instead “the summons commencing the application”.
- [42] **Part 6, rule 65 Application for attachment order**  
Omit “applicant”. Insert instead “plaintiff”.
- [43] **Part 6, rule 65**  
Omit “notice of the application”.  
Insert instead “the summons commencing the application”.
- [44] **Parts 7–11, 11A, 12, 13, 14, 14A, 15–19, 19A, 20, 21, 22, 22A, 23 and 24**  
Omit the Parts.
- [45] **Part 24A, rule 6 Motion for entry in List**  
Omit “under Part 16” from rule 6 (1).
- [46] **Part 24B, rule 5 Motion for entry in List**  
Omit “under Part 16” from rule 5 (1).
- [47] **Part 24C, heading**  
Omit “**Motor Accidents List**”.  
Insert instead “**Motor accident claims**”.
- [48] **Part 24C, rule 2 Motor accident claims**  
Omit rule 2 (1).
- [49] **Part 24C, rule 2 (2)**  
Omit “shall bear in the heading the words ‘Motor Accidents List’, and”.
- [50] **Part 24C, rule 10**  
Omit the rule.
- [51] **Part 24C, rule 11 Statement of claim**  
Omit “must bear in the heading the words ‘Motor Accidents Compensation Act 1999’ and”.

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**[52] Part 24D, rule 1A**

Insert after rule 1:

**1A Commencement of proceedings**

Subject to these rules, an action under the Acts must be commenced by statement of claim.

**[53] Part 24D, rule 2 Coal Miners' Workers Compensation List**

Insert "under section 7 (1) (a) of the *Compensation Court Repeal Act 2002*" after "transferred" in rule 2 (1).

**[54] Part 24D, rules 5 (2), 7 (1), 8, 9, 10 (2) and 22 (2) (b)**

Omit "under Part 16" wherever occurring.

**[55] Part 24D, rule 14 Submission to award**

Omit rule 14 (1).

**[56] Part 24D, rule 15 Offer of compromise**

Omit "Part 19A".

Insert instead "Division 4 of Part 20 of the *Uniform Civil Procedure Rules 2005*".

**[57] Part 24D, rule 16 Schedule of earnings**

Omit "Part 10 rule 1 (1)" from rule 16 (b).

Insert instead "rule 14.3 of the *Uniform Civil Procedure Rules 2005*".

**[58] Part 24D, rule 19 Medical examination**

Omit "Part 23 rule 2 (1)" from rule 19 (1).

Insert instead "rule 23.2 of the *Uniform Civil Procedure Rules 2005*".

**[59] Part 24D, rule 20 Expert evidence and hospital reports**

Omit "Part 28, rule 8" from rule 20 (1).

Insert instead "rule 31.18 of the *Uniform Civil Procedure Rules 2005*".

**[60] Part 24D, rule 21**

Omit the rule.



**[61] Part 24E, rule 1A**

Insert after rule 1:

**1A Transferred applications**

Applications under section 122 of the 1998 Act that have been transferred under section 7 (1) (a) of the *Compensation Court Repeal Act 2002* are to be dealt with under this Part.

**[62] Part 24F, rule 1A**

Insert after rule 1:

**1A Commencement of proceedings**

Subject to these rules, an action under the Acts must be commenced by statement of claim.

**[63] Part 24F rule 2 Special Statutory Compensation List**

Insert “under section 7 (1) (a) of the *Compensation Court Repeal Act 2002*” after “transferred” in rule 2 (1).

**[64] Part 24F, rule 3 Directions**

Omit “the application of Part 23,” from rule 3 (3).

**[65] Part 24F, rule 4 Expert evidence and hospital reports**

Omit “Part 28 rules 8 and 9”.

Insert instead “Division 2 of Part 31 of the *Uniform Civil Procedure Rules 2005*”.

**[66] Part 24F rule 4**

Omit “Part 28 rule 9 (2)”.

Insert instead “rule 31.19 of the *Uniform Civil Procedure Rules 2005*”.

**[67] Part 25**

Omit the Part.

**[68] Part 26, rule 1A**

Omit the rule.

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### [69] Part 26, rule 1

Omit the rule. Insert instead:

#### 1 Examination under section 66A of the Motor Accidents Act 1988 or section 119 of the Motor Accidents Compensation Act 1999

- (1) The following applications to the Court must be made on notice of motion before the day on which the proceedings commence to be heard unless the Court in special circumstances otherwise orders:
  - (a) an application under section 66A (1) of the *Motor Accidents Act 1988* or an application for leave under section 66A (3) or (4) of that Act,
  - (b) an application under section 119 (1) of the *Motor Accidents Compensation Act 1999* or an application for leave under section 119 (3) or (4) of that Act.
- (2) A notice of motion referred to in subrule (1) must be served on all parties to the proceedings (other than the applicant) and, if the witness sought to be examined or cross-examined is not a party, on the witness.
- (3) The Court may order that, on the hearing of an application referred to in subrule (1) or on the hearing of proceedings after such an application is granted, any owner or driver who is a party to the proceedings, and any witness who is the subject of leave sought or given under section 66A of the *Motor Accidents Act 1988* or section 119 of the *Motor Accidents Compensation Act 1999*, may be separately represented.
- (4) If the Court is satisfied that an insurer has not made out its allegation that a claim has not been made in good faith, the Court may if it thinks fit order the insurer to pay the costs of the whole or any specified part of the proceedings incurred by any owner or driver or any witness whom the insurer has sought leave to examine or cross-examine.

### [70] Part 26, rules 2–5, 5A, 5AA, 5B, 6, 6A, 7, 8, 8A and 9

Omit the rules.

### [71] Parts 27, 28, 28A, 28B, 29–31, 31A, 32–39 and 39A

Omit the Parts.

- [72] Part 39B, rule 8 Preliminary discovery**  
Omit “Part 4”.  
Insert instead “Part 5 of the *Uniform Civil Procedure Rules 2005*”.
- [73] Parts 40–43**  
Omit the Parts
- [74] Part 43A, rules 2–4**  
Omit the rules.
- [75] Part 43A, Division 2**  
Omit the Division.
- [76] Parts 44–46**  
Omit the Parts
- [77] Part 47, rules 1, 3–5 and 7–10**  
Omit the rules.
- [78] Part 47, rule 2 Forms**  
Omit rule 2 (1).
- [79] Part 47, rule 2 (3)**  
Insert after rule 2 (2):  
(3) Subrule (2) authorises the publication of a form only if no form for the same purpose has been approved by the Uniform Rules Committee under section 17 of the *Civil Procedure Act 2005*.
- [80] Part 48**  
Omit the Part.
- [81] Part 49, rule 11 Particulars: publication and innuendo**  
Omit “Part 9 rule 19”.  
Insert instead “rule 15.1 of the *Uniform Civil Procedure Rules 2005*”.
- [82] Part 49, rule 16 Comment**  
Omit “Part 9 rule 19” wherever occurring.  
Insert instead “rule 15.1 of the *Uniform Civil Procedure Rules 2005*”.
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- [83] Part 49, rule 17 Particulars of defence**  
Omit “Part 9 rule 19” from rule 17 (1).  
Insert instead “rule 15.1 of the *Uniform Civil Procedure Rules 2005*”.
- [84] Part 49, rule 17 (5) and (6)**  
Omit the subrules.
- [85] Parts 50, 51 and 51A**  
Omit the Parts.
- [86] Part 51B, rule 2 Commencement of applications under the subject Act**  
Omit “notice of application under Part 5 Division 3” from rule 2 (1).  
Insert instead “summons”.
- [87] Part 51B, rule 2 (2)**  
Omit “Subject to Part 29 rule 6 (4), application”.  
Insert instead “Application”.
- [88] Part 51B, rule 5 Subpoenas**  
Omit “Part 29 (except Part 29 rules 2A, 3, 6 (6), (7), (8) and 7A) applies” from rule 5 (1).  
Insert instead “The *Uniform Civil Procedure Rules 2005* (except rules 31.20, 31.21, 31.22, 33.2 and 33.7) apply”.
- [89] Part 51B, rule 5 (1)**  
Omit “it applies”. Insert instead “they apply”.
- [90] Part 51B, rule 6 Leave to enforce award**  
Omit “respondent to”. Insert instead “defendant in”.
- [91] Part 51C**  
Omit the Part.
- [92] Part 52, rules 1 and 2**  
Omit the rules.
- [93] Part 52, rule 3 Searches**  
Omit “Subject to Part 43 rule 3 (3), no”. Insert instead “No”.

- [94] Part 52, rule 7 Affidavit of service of certain process**  
Omit “notice of appeal or application (whether as originating process or otherwise),” from rule 7 (1).
- [95] Part 52, rules 8, 10, 11, 13, 14 and 16**  
Omit the rules.
- [96] Part 53, rule 5 Representation**  
Omit rule 5 (7).
- [97] Part 53, rule 10C Notice under section 67 or 99 of the Evidence Act 1995**  
Omit “Part 28 rule 9A”.  
Insert instead “Rule 31.5 of the *Uniform Civil Procedure Rules 2005*”.
- [98] Schedules 1 and 2**  
Omit the Schedules.