

2005 No 717



New South Wales

# Uniform Civil Procedure Rules (Amendment No 4) 2005

under the

Civil Procedure Act 2005

The Uniform Rules Committee made the following rules of court under the *Civil Procedure Act 2005* on 7 November 2005.

Jennifer Atkinson  
Secretary of the Committee

## **2005 No 717**

Rule 1 Uniform Civil Procedure Rules (Amendment No 4) 2005

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## **Uniform Civil Procedure Rules (Amendment No 4) 2005**

under the

Civil Procedure Act 2005

### **1 Name of Rules**

These Rules are the *Uniform Civil Procedure Rules (Amendment No 4) 2005*.

### **2 Amendment of Uniform Civil Procedure Rules 2005**

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

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## Schedule 1 Amendments

(Rule 2)

**[1] Rule 4.2 Documents to be filed to contain certain information**

Insert “address and the party’s” after “the party’s” in rule 4.2 (1) (g).

**[2] Rule 4.2 (1) (h)**

Omit “for service”.

**[3] Rule 4.3 Paper and writing**

Insert “, and a top margin of 30 millimetres,” after “25 millimetres” in rule 4.3 (2) (c).

**[4] Rule 12.1 Discontinuance of proceedings**

Omit rule 12.1 (1). Insert instead:

- (1) The plaintiff in any proceedings may, by filing a notice of discontinuance, discontinue the proceedings, either as to all claims for relief or as to the whole or any part of a claim for relief:
  - (a) with the consent of each other active party in the proceedings, or
  - (b) with the leave of the court.

**[5] Rule 12.1 (2) (b)**

Insert “except where it is filed with the leave of the court,” before “must”.

**[6] Rule 12.2 Discontinuance of claim by leave**

Omit the rule.

**[7] Rule 29.7**

Omit the rule. Insert instead:

**29.7 Procedure to be followed if party is absent** (cf SCR Part 5, rule 9, Part 13, rule 5A, Part 34, rule 5; DCR Part 26, rule 5A; LCR Part 21, rule 2)

- (1) This rule applies when a trial is called on.
- (2) If any party is absent, the court:
  - (a) may proceed with the trial generally or so far as concerns any claim for relief in the proceedings, or
  - (b) may adjourn the trial.

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Schedule 1 Amendments

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- (3) If, in relation to a liquidated claim, the plaintiff appears, but a defendant does not appear, the court may, without proceeding to trial, give judgment against that defendant on evidence of:
  - (a) the amount then due to the plaintiff in respect of the cause of action for which the proceedings were commenced, and
  - (b) any payments made or credits accrued since the commencement of the proceedings in reduction of the amount of the plaintiff's claim or costs.
- (4) If, in relation to any proceedings, the defendant appears, but the plaintiff does not appear, the court may dismiss the proceedings.
- (5) Subrules (3) and (4) do not limit the court's powers under subrule (2).

### **[8] Rule 31.2 Evidence of witnesses at other hearings**

Omit "at an interlocutory hearing". Insert instead "at any hearing".

### **[9] Rule 36.11 Entry of judgments and orders**

Insert after rule 36.11 (2):

- (2A) If the court directs that a judgment or order be entered forthwith, the judgment or order is taken to be entered:
  - (a) when a document embodying the judgment or order is signed and sealed by a registrar, or
  - (b) when the judgment or order is recorded as referred to in subrule (2),whichever first occurs.

### **[10] Rule 42.13A**

Insert after rule 42.13:

#### **42.13A Where offer accepted**

- (1) This rule applies if the offer concerned:
  - (a) is made by the plaintiff and accepted by the defendant, or
  - (b) is made by the defendant and accepted by the plaintiff.
- (2) Unless the court orders otherwise, the plaintiff is entitled to an order against the defendant for the plaintiff's costs in respect of the claim, assessed on the ordinary basis up to the time when the offer was made.

**[11] Rule 42.19 Proceedings discontinued**

Omit rule 42.19 (1). Insert instead:

- (1) This rule applies to proceedings that are discontinued by the plaintiff, as referred to in rule 12.1.

**[12] Rule 42.19 (2)**

Omit “the claim”.

Insert instead “each claim in respect of which the proceedings have been discontinued”.