



New South Wales

# Uniform Civil Procedure Rules (Amendment No 11) 2006

under the

Civil Procedure Act 2005

The Uniform Rules Committee made the following rules of court under the *Civil Procedure Act 2005* on 4 December 2006.

Jennifer Atkinson  
Secretary of the Uniform Rules Committee

## Explanatory note

The object of these Rules is to amend the *Uniform Civil Procedure Rules 2005* with respect to:

- (a) proceedings arising under the Commonwealth Constitution or involving its interpretation, and
- (b) the manner in which land is to be formally described in court process, and
- (c) the preparation of affidavits, and
- (d) the awarding of costs following a defendant's unaccepted offer of compromise, and
- (e) the rate at which interest is payable on unpaid judgment debts, and
- (f) other matters of a miscellaneous nature.

## **2006 No 716**

Rule 1 Uniform Civil Procedure Rules (Amendment No 11) 2006

---

## **Uniform Civil Procedure Rules (Amendment No 11) 2006**

under the

Civil Procedure Act 2005

### **1 Name of Rules**

These Rules are the *Uniform Civil Procedure Rules (Amendment No 11) 2006*.

### **2 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 2)

**[1] Rule 1.3 References to barristers and solicitors**Omit “and section 18 of the *Legal Profession Act 1987*” from rule 1.3 (1).**[2] Rule 1.3 (1), note**

Omit “1987”. Insert instead “2004”.

**[3] Rule 1.3 (2) (b)**

Omit “belonging to the same firm or organisation (whether as partner or employee)”.

Insert instead “belonging to or employed by the same firm or organisation”.

**[4] Rule 1.3 (3) (b) (i) and (iii)**

Omit “belonging (whether as partner or employee) to” wherever occurring.

Insert instead “belonging to or employed by”.

**[5] Part 1, Division 5**

Insert after Division 4:

### **Division 5 Notices under section 78B of Judiciary Act 1903 of Commonwealth**

**1.22 Notice of constitutional matter** (cf Federal Court Rules, Order 51, rule 1)

- (1) If proceedings pending in a court involve a matter arising under the Commonwealth Constitution or involving its interpretation within the meaning of section 78B of the *Judiciary Act 1903* of the Commonwealth, the party whose case raises the matter must file a notice of a constitutional matter.

**Note.** Section 78B of the *Judiciary Act 1903* of the Commonwealth provides that if a cause is pending in a State court that involves a matter arising under the Commonwealth Constitution or involving its interpretation, the court is under a duty not to proceed in the cause unless or until it is satisfied that notice of the cause and the matter raised in the cause has been served on the Attorneys-General of the Commonwealth and the States.

The purpose of such a notice is to afford the Attorneys-General a reasonable time to consider whether or not they wish to intervene in the proceedings or to have the cause removed into the High Court for determination.

## 2006 No 716

Uniform Civil Procedure Rules (Amendment No 11) 2006

Schedule 1 Amendments

---

- (2) Notice of a constitutional matter must state:
  - (a) specifically the nature of the matter, and
  - (b) facts showing the matter is one to which subrule (1) applies.

**1.23 Time for filing and service of notice of constitutional matter** (cf Federal Court Rules, Order 51, rule 2)

- (1) The party whose case raises the constitutional matter, or such other party as the court may direct, must file notice of a constitutional matter and serve a copy of the notice on all other parties and the Attorneys-General of the Commonwealth, the States, the Australian Capital Territory and the Northern Territory:
  - (a) if the matter arises before any directions hearing or case management conference in the proceedings, not later than 2 days before the date of that hearing or conference, or
  - (b) if no directions hearing or case management conference has been fixed or is imminent, as soon as practicable, or
  - (c) if the matter arises at a hearing, within such time as the court directs.
- (2) As soon as practicable after a party files and serves a notice in the circumstances referred to in subrule (1) (b), the party must apply to the court for directions.

**1.24 Affidavit of service** (cf Federal Court Rules, Order 51, rule 3)

The party whose case raises a constitutional matter must file an affidavit of service of each notice required to be served under rule 1.23, and must do so promptly after the notice is served.

**1.25 Documents for intervening Attorneys-General** (cf Federal Court Rules, Order 51, rule 4)

The party whose case raises a constitutional matter must provide copies of any other documents that have been filed in the proceedings and that are relevant to the matter to any intervening Attorney-General as soon as practicable after notice of the intervention is given to the party.

**[6] Rule 4.4 Signing documents**

Omit “belonging to the same firm or organisation (whether as partner or employee)” from rule 4.4 (1) (a) (iii).

Insert instead “belonging to or employed by the same firm or organisation”.

---

**[7] Rule 4.7A**

Insert after rule 4.7:

**4.7A Land descriptions**

- (1) Unless the court otherwise orders, in any claim or judgment for the possession of land, and in any writ of execution in relation to land, the description of the land must include:
  - (a) a formal description of the land sufficient to identify the land in any document establishing title to the land, together with any appropriate reference to title, and
  - (b) the postal address (if any) of the land.
- (2) Without limitation, a formal description of land referred to in subrule (1) (a) may be given:
  - (a) in the case of land under the provisions of the *Real Property Act 1900* that comprises the whole of the land referred to in one or more folios of the register under that Act, by reference to the relevant folio identifiers, or
  - (b) in the case of any land (including land referred to in paragraph (a)), by reference to:
    - (i) a registered plan (within the meaning of the *Conveyancing Act 1919*), or
    - (ii) a formal land survey plan (within the meaning of the *Surveying Act 2002*), or
    - (iii) a metes and bounds description prepared by a registered land surveyor (within the meaning of the *Surveying Act 2002*).

**[8] Rule 6.12 Relief claimed**

Omit “section 196 (1) (b) of the *Legal Profession Act 1987* or” wherever occurring in rule 6.12 (3) and (4).

**[9] Rule 6.17 Payment towards liquidated claim stays proceedings on claim**

Omit “1987” from rule 6.17 (2) (b). Insert instead “2004”.

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

Omit “as to the whole or any part of a claim for relief” from rule 12.1 (1).

Insert instead “as to all claims for relief so far as they concern a particular defendant”.

## 2006 No 716

Uniform Civil Procedure Rules (Amendment No 11) 2006

Schedule 1 Amendments

---

**[11] Rule 14.23 Verification of certain pleadings**

Omit rule 14.23 (6). Insert instead:

- (6) Unless the court otherwise orders, the affidavit verifying a pleading must be subscribed to the pleading.

**[12] Rule 14.26 Admission and traverse from pleadings**

Omit rule 14.26 (4). Insert instead:

- (4) Subrule (1) does not apply to an opposite party who is a person under a legal incapacity.

**[13] Rule 15.12 Particulars required for proceedings generally**

Omit “it must also be accompanied by the following documents” from rule 15.12 (6).

Insert instead “copies of the following documents must be served on all active parties”.

**[14] Rule 15.13 Particulars required for proceedings under Compensation to Relatives Act 1897**

Omit rule 15.13 (2) and (3). Insert instead:

- (2) On or as soon as practicable after serving the statement of claim, the plaintiff must serve on the defendant, or on the defendant’s insurer or solicitor:
  - (a) in respect of each person on whose behalf the proceedings are commenced, a statement containing the following information:
    - (i) the person’s name, address, relationship to the deceased person the subject of the proceedings, marital status and any anticipated alteration to that status,
    - (ii) whether the person’s dependency on the deceased person, or the person’s reliance on services provided by the deceased person, is claimed to have been whole or partial, the circumstances in which the person received support or services from the deceased person, and the quantum of that support or those services during the 12-month period immediately before the death of the deceased person, and

- (b) in respect of each person on whose behalf the proceedings are commenced, copies of the following documents:
  - (i) a copy or extract of the person's birth certificate and, if the person has been married, a copy of the person's marriage certificate,
  - (ii) copies of any bank statements, financial records or other documents on which the person intends to rely to establish the extent of the support and other benefits provided to the person by the deceased person, covering a period of not less than 12 months immediately before the date of the death of the deceased person, and
- (c) in respect of the deceased person, copies of the following documents:
  - (i) a letter from the employer (if any) of the deceased person immediately before the accident, providing particulars of the deceased person's remuneration and prospects of promotion at the date of his or her death,
  - (ii) copies of the deceased person's income tax returns relating to income received during the period of 2 financial years ending immediately before the financial year that included the date of his or her death,
  - (iii) copies of all documents, including accounts and receipts, in support of any claim for the cost of a funeral or headstone or for any other expenses relating to the deceased person's death,
  - (iv) copies of documents evidencing the net value of the estate of the deceased person.

**[15] Rule 15.15 Provision of schedule of documents and reports**

Omit the rule.

**[16] Rules 16.4, 16.5, 16.6 and 16.7**

Insert after rule 16.4 (3) (e), 16.5 (2) (d), 16.6 (2) (e) and 16.7 (2) (c) (before the notes), with appropriate paragraph numbers:

, and

- ( ) must state when and how the originating process was served on the defendant.

## 2006 No 716

Uniform Civil Procedure Rules (Amendment No 11) 2006

Schedule 1 Amendments

---

**[17] Rules 16.4, 16.5, 16.6 and 16.7**

Omit “section 196 (1) (b) of the *Legal Profession Act 1987* or” wherever occurring in the notes in those rules.

**[18] Rule 34.1 Notice to produce to court**

Insert after rule 34.1 (a):

- (a1) at any time fixed by the court for the return of subpoenas,  
or

**[19] Rule 34.1 (2)**

Insert at the end of the rule:

- (2) The other party must comply with a notice to produce:
- (a) by producing the notice or a copy of it, and the document or thing, to the court, or to the examiner authorised to take evidence in the proceeding as permitted by the court, at the date, time and place specified for production, or
- (b) by delivering or sending the notice or a copy of it, and the document or thing, to the registrar at the address specified for the purpose in the notice, so that they are received not less than 2 clear days before the date specified in the notice for production.

**[20] Rule 34.2 Production under notice to produce to court**

Omit rule 34.2 (2).

**[21] Rule 35.3A**

Insert after rule 35.3:

**35.3A Heading to affidavit**

The heading to an affidavit must include the name of the deponent and the date on which the affidavit is made.

**[22] Rule 39.3 Affidavit in support of application for writ of execution**

Omit “section 196 (1) (b) of the *Legal Profession Act 1987* or” from the note to rule 39.3 (2).



---

**[23] Rule 39.3 (4) (c) and 39.35 (2) (c)**

Omit the paragraphs. Insert instead, with appropriate paragraph numbers:

- ( ) if the judgment was entered as a result of the filing of a cost assessor's certificate, must include a statement to that effect, together with a statement to the effect that the determination set out in the certificate:
  - (i) is not subject to any suspension under section 377 (1) of the *Legal Profession Act 2004* that has not been ended under section 377 (2) of that Act, and
  - (ii) is not subject to any suspension under section 386 (1) of the *Legal Profession Act 2004* that has not been ended under section 386 (2) of that Act.

**[24] Rule 39.21 Judgment creditor's notice to judgment debtor**

Insert "or mortgage" after "sell" in rule 39.21 (2) (c).

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

Omit rule 39.45 (2) (b). Insert instead:

- (b) if the judgment was entered as a result of the filing of a cost assessor's certificate, must include a statement to that effect, together with a statement to the effect that the determination set out in the certificate:
  - (i) is not subject to any suspension under section 377 (1) of the *Legal Profession Act 2004* that has not been ended under section 377 (2) of that Act, and
  - (ii) is not subject to any suspension under section 386 (1) of the *Legal Profession Act 2004* that has not been ended under section 386 (2) of that Act, and

**[26] Rule 42.15A**

Insert after rule 42.15:

**42.15A Where offer not accepted and judgment as or more favourable to defendant** (cf SCR Part 52A, rule 22; DCR Part 39A, rule 25; LCR Part 31A, rule 20)

- (1) This rule applies if the offer concerned is made by the defendant, but not accepted by the plaintiff, and the defendant obtains an order or judgment on the claim concerned as favourable to the defendant, or more favourable to the defendant, than the terms of the offer.

## 2006 No 716

Uniform Civil Procedure Rules (Amendment No 11) 2006

Schedule 1 Amendments

---

- (2) Unless the court orders otherwise:
- (a) the defendant is entitled to an order against the plaintiff for the defendant's costs in respect of the claim, to be assessed on the ordinary basis, up to the time from which the defendant becomes entitled to costs under paragraph (b), and
  - (b) the defendant is entitled to an order against the plaintiff for the defendant's costs in respect of the claim, assessed on an indemnity basis:
    - (i) if the offer was made before the first day of the trial, as from the beginning of the day following the day on which the offer was made, and
    - (ii) if the offer was made on or after the first day of the trial, as from 11 am on the day following the day on which the offer was made.

### [27] Rule 45.1 Entry as indicated by originating process

Omit rule 45.1 (2). Insert instead:

- (2) If the originating process in proceedings in the Equity Division of the Supreme Court indicates that the proceedings are intended to be entered in one of the following lists, the proceedings are to be entered in that list:
- The Admiralty List
  - The Commercial List
  - The Technology and Construction List
  - The Revenue List

### [28] Rule 45.7A

Insert after rule 45.7:

#### 45.7A The Revenue List

The following proceedings in the Equity Division of the Supreme Court may be entered in the Revenue List:

- (a) proceedings in which:
- (i) the Commissioner of Taxation, or a Second Commissioner of Taxation or Deputy Commissioner of Taxation, in and for the Commonwealth, or

- 
- (ii) the holder of an equivalent office in and for a jurisdiction outside Australia,  
is a party,
  - (b) proceedings in which:
    - (i) the Commissioner of State Revenue in and for New South Wales, or
    - (ii) the holder of an equivalent office in and for a jurisdiction outside New South Wales,  
is a party,
  - (c) proceedings in which an issue has arisen in relation to a law under which the holder of an office referred to in paragraph (a) or (b) exercises functions.

**[29] Rule 50.4 Statement of ground**

Omit “A summons commencing an appeal must state” from rule 50.4 (1).

Insert instead “The plaintiff must file and serve, with a summons commencing an appeal, a statement of”.

**[30] Rule 50.12 Leave to appeal**

Omit “, or subscribe to,” from rule 50.12 (3).

**[31] Schedule 5 Interest rates**

Omit “after 28 February 2002”.

Insert instead “the beginning of 1 March 2002 to the end of 31 December 2006”.

**[32] Schedule 5**

Insert at the end of the table to the Schedule in Columns 1 and 2, respectively:

after 31 December 2006

10

**[33] Dictionary**

Omit the definition of *costs assessor’s certificate*. Insert instead:

*costs assessor’s certificate* means a certificate issued under Division 11 of Part 3.2 of the *Legal Profession Act 2004* in relation to a determination of costs under that Division.

**Note.** Pursuant to clause 3 of Schedule 9 to the *Legal Profession Act 2004*, a costs assessor’s certificate issued under the *Legal Profession Act 1987* is taken to be a costs assessor’s certificate issued under the *Legal Profession Act 2004*.