



New South Wales

# Uniform Civil Procedure Rules (Amendment No 7) 2006

under the

Civil Procedure Act 2005

The Uniform Rules Committee made the following rules of court under the *Civil Procedure Act 2005* on 6 March 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*:

- (a) to clarify the circumstances in which a party may take a step in proceedings without having filed a statement of claim or summons or entered an appearance, and
- (b) to include a provision in relation to the substitution of a party in relation to proceedings under the *Property (Relationships) Act 1984*, and
- (c) to clarify that a registrar may, in certain circumstances, seal a document provided by an applicant that sets out the terms of a judgment or order, and
- (d) to clarify the circumstances in which a court may examine a person under an order for examination under rule 38.3 and the circumstances in which a warrant may be issued for the arrest of a person for failing to comply with any such order, and
- (e) to clarify the costs that are payable in relation to the proving of a fact or the proving of the authenticity of a document that has been in dispute, and
- (f) to preclude a plaintiff from obtaining costs where an offer of compromise has been made and accepted and that offer states that it is a verdict for the defendant and that the parties are to bear their own costs.

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Rule 1 Uniform Civil Procedure Rules (Amendment No 7) 2006

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## **Uniform Civil Procedure Rules (Amendment No 7) 2006**

under the

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### **1 Name of Rules**

These Rules are the *Uniform Civil Procedure Rules (Amendment No 7) 2006*.

### **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 6.1**

Insert “(including any appearance in court)” after “step in proceedings” in rule 6.1 (1).

**[2] Rule 6.1 (2)**

Omit the subrule. Insert instead:

- (2) Subrule (1) does not apply to:
  - (a) a defendant who applies for an order under rule 12.11 (Setting aside originating process etc), or
  - (b) a plaintiff who applies for an order under rule 25.2 (Order in urgent case before commencement of proceedings), or
  - (c) a defendant who makes an application in relation to the setting aside or enforcement of any judgment.

**[3] Rule 6.1 (3)**

Omit the subrule. Insert instead:

- (3) In any proceedings, a person (not being a party and not having filed a notice of motion) may not take any step in the proceedings (including any appearance in court) unless he or she has filed a notice of address for service.

**[4] Rule 6.30**

Insert after rule 6.30 (2):

- (3) Without limiting subrule (2), if a party to an application under section 20 of the *Property (Relationships) Act 1984* dies, the court may order the substitution of the legal representative, as mentioned in section 24 (1) of that Act, as a party to the application.

**[5] Rule 36.12**

Omit rule 36.12 (1). Insert instead:

- (1) Unless the court orders otherwise, on payment of the fee prescribed by the regulations under the *Civil Procedure Act 2005*, the registrar must:
  - (a) furnish a sealed copy of any judgment or order that has been entered in the proceedings to any person who applies for such a copy, or

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(b) seal a document provided by the person that, in the opinion of the registrar, accurately sets out the terms of the judgment or order.

(1A) A document sealed by a registrar in accordance with subrule (1) (b) is taken to be a sealed copy of the relevant judgment or order.

### [6] Rule 38.5 Examination under an order for examination under rule 38.3

Omit rule 38.5 (2) (a). Insert instead:

(a) the person attends for examination following his or her arrest pursuant to a warrant issued under section 97 of the *Civil Procedure Act 2005* as a consequence of the person's failure to comply with an order for examination, or

### [7] Rule 38.5 (5)

Omit the subrule. Insert instead:

(5) In this rule:  
*order for examination* means an order for examination referred to in rule 38.3.

### [8] Rule 38.6

Omit the rule. Insert instead:

#### **38.6 Arrest warrant where person fails to comply with order for examination under rule 38.3** (cf Act No 9 1973, section 92; Act No 11 1970, section 42; DCR Part 32, rule 6; LCR Part 28, rule 7)

A warrant issued under section 97 of the *Civil Procedure Act 2005* as a consequence of a person's failure to comply with an order for examination referred to in rule 38.3:

- (a) may be issued or revoked by the court of its own motion or on the application of the person in whose favour a judgment or order has been given or made, and
- (b) must be expressed to expire no later than 3 months after the date on which it is issued, and
- (c) may not be issued in relation to a person's failure to comply with an order for examination earlier than 14 days, nor later than 3 months, after the court has served notice on the person to whom the order for examination is addressed that failure to attend for examination may result in the person's arrest.

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**[9] Rule 42.8**

Omit the rule. Insert instead:

**42.8 Dispute of fact subsequently proved or admitted**

- (1) In this rule:
  - disputing party* means the party who serves a notice disputing a fact under rule 17.3 (2).
  - fact in dispute* means the fact that is the subject of a notice served under rule 17.3 (2).
  - requesting party* means the party who is served with a notice disputing a fact under rule 17.3 (2).
- (2) Unless the court orders otherwise, the disputing party must, after the conclusion of proceedings in which a fact in dispute is subsequently proved or is subsequently admitted by the disputing party, pay the requesting party's costs, assessed on an indemnity basis, being costs incurred by the requesting party:
  - (a) in proving the fact, or
  - (b) if the fact has not been proved—in preparation for the purpose of proving the fact.
- (3) An entitlement to costs under this rule is not affected by any order as to costs unless that order makes particular reference in that regard.

**[10] Rule 42.9**

Omit rule 42.9. Insert instead:

**42.9 Dispute of authenticity of document subsequently proved or admitted**

- (1) In this rule:
  - disputing party* means a party who serves a notice disputing the authenticity of a document under rule 17.4 (2) or 17.5 (3).
  - document in dispute* means a document that is the subject of a notice served under rule 17.4 (2) or 17.5 (3).
  - requesting party* means a party who is served with a notice disputing the authenticity of a document under rule 17.4 (2) or 17.5 (3).
- (2) Unless the court orders otherwise, the disputing party must, after the conclusion of proceedings in which the authenticity of a document in dispute is subsequently proved or is subsequently admitted by the disputing party, pay the requesting party's costs,

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assessed on an indemnity basis, being costs incurred by the requesting party:

- (a) in proving the authenticity of the document, or
  - (b) if the authenticity of the document has not been proved—  
in preparation for the purpose of proving the authenticity of the document.
- (3) An entitlement to costs under this rule is not affected by any order as to costs unless that order makes particular reference in that regard.

**[11] Rule 42.13A**

Omit rule 42.13A (2). Insert instead:

- (2) 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, unless:
  - (a) the offer states that it is a verdict for the defendant and the parties are to bear their own costs, or
  - (b) the court orders otherwise.

BY AUTHORITY

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