



New South Wales

# Uniform Civil Procedure Rules (Amendment No 14) 2007

under the

Civil Procedure Act 2005

The Uniform Rules Committee made the following rules of court under the *Civil Procedure Act 2005* on 2 July 2007.

Jennifer Atkinson  
Secretary of the Rule Committee

## Explanatory note

The object of these Rules is to make provision with respect to the following matters:

- (a) the procedure to be followed in relation to the obtaining of default judgment,
- (b) the procedure to be followed in relation to the making of certain appeals,
- (c) the payment of costs and expenses incurred in complying with an order for discovery or a notice to produce,
- (d) the giving of directions with respect to expert evidence,
- (e) other matters of a minor, consequential or ancillary nature.

## **2007 No 327**

Rule 1 Uniform Civil Procedure Rules (Amendment No 14) 2007

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## **Uniform Civil Procedure Rules (Amendment No 14) 2007**

under the

Civil Procedure Act 2005

### **1 Name of Rules**

These Rules are the *Uniform Civil Procedure Rules (Amendment No 14) 2007*.

### **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 12.9 Additional grounds for dismissal of proceedings by District Court or Local Court**

Omit rule 12.9 (2) (b). Insert instead:

- (b) an application for default judgment is not filed, or

**[2] Rules 16.2, 16.3, 16.4, 16.5, 16.6, 16.7, 16.8 and 16.9**

Omit “entered” wherever occurring in rules 16.2 (2) (c), 16.3 (1) (a) and (2), 16.4 (1), 16.5 (1), 16.6 (1), 16.7 (1), 16.8 (1) and 16.9 (1).

Insert instead “given”.

**[3] Rule 16.4 Default judgment on claim for possession of land**

Omit rule 16.4 (2). Insert instead:

- (2) If, before judgment is given, any person files notice of motion for the person’s addition as a defendant, judgment may not be given under this rule until the motion is disposed of.

**[4] Rule 21.13**

Insert after rule 21.12:

**21.13 Costs and expenses of compliance** (cf rule 33.11)

- (1) The court may order party A to pay the amount of any reasonable loss or expense incurred by party B in complying with a notice to produce.
- (2) If an order is made under subrule (1), the court must fix the amount or direct that it be fixed in accordance with the court’s usual procedure in relation to costs.

**[5] Rule 31.19 Parties to seek directions before calling expert witnesses**

Insert after rule 31.19 (3):

- (4) This rule does not apply to proceedings with respect to a professional negligence claim.

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**[6] Rule 31.36 Service of experts' reports in professional negligence claims**

Omit rule 31.36 (4). Insert instead:

- (4) Without limiting subrule (1) or (2), the court may, on the application of any of the parties, give directions as to the expert evidence to be adduced at trial.
- (5) Directions under subrule (4) may be sought at any directions hearing or case management conference or by notice of motion.
- (6) Unless the court otherwise orders, no party may adduce any expert evidence at trial unless the evidence:
  - (a) has been filed and served under subrule (1) or (2), or
  - (b) has been served pursuant to directions given under subrule (4).

**[7] Rule 34.3**

Insert after rule 34.2:

**34.3 Costs and expenses of compliance** (cf rule 33.11)

- (1) The court may order the party requiring production to pay the amount of any reasonable loss or expense incurred by the party required to produce in complying with a notice to produce.
- (2) If an order is made under subrule (1), the court must fix the amount or direct that it be fixed in accordance with the court's usual procedure in relation to costs.

**[8] Rule 36.16 Further power to set aside or vary judgment or order**

Omit rule 36.16 (2) (a). Insert instead:

- (a) it is a default judgment, or

**[9] Rule 36.16 (2) (b) and (c)**

Omit "the judgment or order has" wherever occurring. Insert instead "it has".

**[10] Rule 40.7 Service of copy of judgment before committal or sequestration**

Insert after rule 40.7 (5):

- (6) This rule does not apply to a committal or sequestration arising from a failure to comply with the requirements of a subpoena.

**[11] Rule 42.16 Costs with respect to interest**

Omit "or 42.15" from rule 42.16 (1). Insert instead ", 42.15 or 42.15A".

**[12] Rule 42.33**

Insert after rule 42.32:

**42.33 Certain costs orders not to be made unless parties have attempted to agree on amount**

Unless the court otherwise orders, an order as to costs is not to be made under rule 21.13, 33.11 or 34.3 if the court is not satisfied that the parties concerned have attempted, but failed, to agree on the amount of costs to be paid in relation to the matter for which such an order may be made under that rule.

**[13] Rule 45.4 The Possession List**

Omit “a claim for professional negligence” from rule 45.4 (2) (a).

Insert instead “a professional negligence claim”.

**[14] Rule 45.5 The Professional Negligence List**

Omit rule 45.5 (2).

**[15] Rule 45.13 The Professional Negligence List**

Omit rule 45.13 (2).

**[16] Rule 49.11 Cross-appeal**

Omit “notice of appeal” from rule 49.11 (2).

Insert instead “notice of motion instituting an appeal”.

**[17] Rule 49.11 (3)**

Omit “notice of appeal” and “notice of cross-appeal”.

Insert instead “notice of motion instituting an appeal” and “notice of motion instituting a cross-appeal”, respectively.

**[18] Rule 50.4**

Omit the rule. Insert instead:

**50.4 Statement of ground**

- (1) The summons commencing an appeal must contain a statement as to:
  - (a) whether the appeal relates to the whole or part only, and what part, of the decision of the court below, and
  - (b) what decision the plaintiff seeks in place of the decision of the court below.

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- (2) The plaintiff must file and serve with the summons a statement setting out briefly but specifically the grounds relied on in support of the appeal including, in particular, any grounds on which it is contended that there is an error of law in the decision of the court below.
- (3) This rule does not apply to proceedings that are entered in the Commercial List in the Supreme Court.

### [19] Rule 50.12 Leave to appeal

Omit rule 50.12 (3). Insert instead:

- (3) The summons must contain a statement as to:
  - (a) whether the appeal relates to the whole or part only, and what part, of the decision of the court below, and
  - (b) what decision the plaintiff seeks in place of the decision of the court below.
- (4) The plaintiff must file and serve with the summons a statement of:
  - (a) the nature of the case, and
  - (b) the reasons why leave should be given, and
  - (c) if applicable, the reasons why time to apply for leave should be extended,setting out briefly but specifically the grounds relied on in support of the appeal including, in particular, any grounds on which it is contended that there is an error of law in the decision of the court below.

### [20] Rule 50.13 Leave to cross-appeal

Omit rule 50.13 (3). Insert instead:

- (3) The cross-summons must contain a statement as to:
  - (a) whether the cross-appeal relates to the whole or part only, and what part, of the decision of the court below, and
  - (b) what decision the defendant seeks in place of the decision of the court below.
- (4) The defendant must file and serve with the cross-summons a statement of:
  - (a) the nature of the case, and
  - (b) the reasons why leave should be given, and

(c) if applicable, the reasons why time to apply for leave should be extended,

setting out briefly but specifically the grounds relied on in support of the cross-appeal including, in particular, any grounds on which it is contended that there is an error of law in the decision of the court below.

**[21] Dictionary**

Insert in alphabetical order:

*default judgment* means judgment given under Part 16.

*professional negligence claim* means a claim for damages, indemnity or contribution based on an assertion of professional negligence.