

2007 No 579



New South Wales

Uniform Civil Procedure Rules (Amendment No 19) 2007

under the

Civil Procedure Act 2005

The Uniform Rules Committee made the following rules of court under the *Civil Procedure Act 2005* on 3 December 2007.

Jennifer Atkinson
Secretary of the Rules Committee

2007 No 579

Rule 1 Uniform Civil Procedure Rules (Amendment No 19) 2007

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under the

Civil Procedure Act 2005

1 Name of Rules

These Rules are the *Uniform Civil Procedure Rules (Amendment No 19) 2007*.

2 Commencement

- (1) Subject to subrules (2)–(5), these Rules commence on the day on which they are published in the Gazette.
- (2) Schedule 2 commences on the commencement of section 7 of the *Local Court Act 2007*.
- (3) Schedule 3 commences on the commencement of the *Uniform Civil Procedure Rules (Amendment No 16) 2007*.
- (4) Schedule 4 (other than Schedule 4 [2]) commences on the commencement of Schedule 1 [34] to the *Confiscation of Proceeds of Crime Amendment Act 2005*.
- (5) Schedule 4 [2] commences on the commencement of:
 - (a) section 7 of the *Local Court Act 2007*, or
 - (b) Schedule 1 [34] to the *Confiscation of Proceeds of Crime Amendment Act 2005*,whichever is the later.

3 Amendment of Uniform Civil Procedure Rules 2005

The *Uniform Civil Procedure Rules 2005* are amended as set out in Schedules 1–4.

Schedule 1 General amendments

(Rule 3)

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

Omit rule 4.2 (2) (f).

[2] Rule 4.2 (3A)

Insert after rule 4.2 (3):

- (3A) Court documentation within the meaning of section 347 (Restrictions on commencing proceedings without reasonable prospects of success) of the *Legal Profession Act 2004* that is not required by that section to be certified must include a statement to the effect that it is not required to be so certified.

[3] Rule 4.2A

Insert after rule 4.2:

4.2A List of parties

- (1) This rule applies to proceedings in which there are more than 2 plaintiffs or more than 2 defendants.
- (2) The plaintiff must file a list of parties with the originating process.
- (3) When a party files a document that first records a change in the parties to the proceedings, that party must also file a list of parties.

[4] Rule 4.3 Paper and writing

Omit “and underlined” from rule 4.3 (3A).

[5] Rule 4.3 (3A) (c) and (d)

Omit rule 4.3 (3A) (c). Insert instead:

- (c) in the case of a notice of motion, the name of the person affected by the orders sought,
- (d) in all cases, the name of the person specified in the filing details as the person for whom the document is filed.

[6] Rule 4.6 Changing address for service

Omit rule 4.6 (2).

2007 No 579

Uniform Civil Procedure Rules (Amendment No 19) 2007

Schedule 1 General amendments

[7] Rule 7.4, heading

Omit “current”. Insert instead “concurrent”.

[8] Rule 10.5 The various methods of service

Omit “mail” from rule 10.5 (2) (c). Insert instead “service”.

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

Omit rule 16.4 (3) (e). Insert instead:

- (e) must state whether costs are claimed and, if so, how much is claimed for costs, indicating:
 - (i) how much is claimed on account of professional costs (not exceeding the amount fixed by the regulations made for the purposes of section 329 of the *Legal Profession Act 2004*), and
 - (ii) how much is claimed on account of filing fees, and
 - (iii) how much is claimed on account of the costs of serving the originating process, and

[10] Rule 16.4 (3)

Omit the note at the end of the subrule.

[11] Rule 16.5 Default judgment on claim for detention of goods

Omit rule 16.5 (2) (d). Insert instead:

- (d) must state whether costs are claimed and, if so, how much is claimed for costs, indicating:
 - (i) how much is claimed on account of professional costs (not exceeding the amount fixed by the regulations made for the purposes of section 329 of the *Legal Profession Act 2004*), and
 - (ii) how much is claimed on account of filing fees, and
 - (iii) how much is claimed on account of the costs of serving the originating process, and

[12] Rule 16.5 (2)

Omit the note at the end of the subrule.

[13] Rule 16.6 Default judgment on debt or liquidated claim

Omit rule 16.6 (2) (e). Insert instead:

- (e) must state whether costs are claimed and, if so, how much is claimed for costs, indicating:

- (i) how much is claimed on account of professional costs (not exceeding the amount fixed by the regulations made for the purposes of section 329 of the *Legal Profession Act 2004*), and
- (ii) how much is claimed on account of filing fees, and
- (iii) how much is claimed on account of the costs of serving the originating process, and

[14] Rule 16.6 (2)

Omit the note at the end of the subrule.

[15] Rule 16.7 Default judgment on claim for unliquidated damages

Omit rule 16.7 (2) (c). Insert instead:

- (c) must state whether costs are claimed and, if so, how much is claimed for costs, indicating:
 - (i) how much is claimed on account of professional costs (not exceeding the amount fixed by the regulations made for the purposes of section 329 of the *Legal Profession Act 2004*), and
 - (ii) how much is claimed on account of filing fees, and
 - (iii) how much is claimed on account of the costs of serving the originating process, and

[16] Rule 16.7 (2)

Omit the note at the end of the subrule.

[17] Rule 19.5 Mode of amendment generally

Insert after rule 19.5 (3):

- (4) An amended document must retain the existing paragraph numbering, with any additional paragraphs that are inserted after an existing paragraph bearing the number of that paragraph together with the letters “A”, “B” and so on, as in these rules.

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

Omit “which goods have, and which have not,” from rule 39.3 (3) (a).

Insert instead “which goods have not”.

2007 No 579

Uniform Civil Procedure Rules (Amendment No 19) 2007

Schedule 1 General amendments

[19] **Rule 39.52**

Insert after rule 39.51:

39.52 Orders authorising entry to premises by Sheriff

An order under section 135 (2) (a) of the *Civil Procedure Act 2005* may not be made in respect of any goods unless the court is satisfied:

- (a) that, while attempting to seize the goods, the Sheriff has been refused entry to the premises where they are believed to be, or
- (b) that there are special circumstances that justify the making of such an order.

[20] **Rule 50.1 Application**

Omit “*Local Courts*” from rule 50.1 (b).

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

Insert “must be in the approved form and” after “an appeal” in rule 50.4 (1).

[22] **Rule 50.4 (2)**

Omit “plaintiff must file and serve with the summons”.

Insert instead “summons must also contain”.

[23] **Rule 50.5 Parties**

Insert after rule 50.5 (2):

- (2A) Subrule (2) does not apply to the extent to which a provision of these rules, or of any other Act or law, provides to the contrary.

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

Insert “must be in the approved form and” after “summons” in rule 50.12 (3).

[25] **Rule 50.12 (4)**

Omit “plaintiff must file and serve with the summons”.

Insert instead “summons must also contain”.

[26] **Rule 50.13 (4)**

Omit “defendant must file and serve with the cross-summons”.

Insert instead “cross-summons must also contain”.

Schedule 2 Amendments relating to the Local Court

(Rule 3)

[1] All rules

Omit “A Local Court” and “a Local Court” wherever occurring.

Insert instead “The Local Court” and “the Local Court”, respectively.

[2] Rules 6.4 and 10.24

Omit “the *Local Courts Act 1982*” wherever occurring.

Insert instead “the *Local Court Act 2007*”.

[3] Part 8, note

Omit the note appearing under the heading to Part 8.

[4] Rule 31.30, heading

Omit “**Local Courts**”. Insert instead “**Local Court**”.

[5] Rule 33.1 Definitions

Insert “for the venue” before “where the subpoena” in paragraph (c) of the definition of *registrar* in rule 33.1 (1).

[6] Rule 37.2 Application for instalment order by judgment debtor

Omit rule 37.2 (5).

[7] Rule 38.4 Venue of examination

Omit rule 38.4 (3). Insert instead:

- (3) If, in the case of proceedings before the Local Court, the Court is satisfied that the person neither resides nor carries on business within 30 kilometres of the venue where the judgment or order was entered, then the examination is to be conducted at the premises of the Court nearest to where the person resides or carries on business, as the Court may determine.

[8] Part 44, Division 1

Omit the Division.

[9] Schedule 1 Application of rules

Omit “Part 7 of the *Local Courts Act 1982*” wherever occurring.

Insert instead “Part 3 of the *Local Court Act 2007*”.

2007 No 579

Uniform Civil Procedure Rules (Amendment No 19) 2007

Schedule 3 Amendments relating to the Court of Appeal

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(Rule 3)

[1] Rule 51.7, heading

Omit “served”. Insert instead “filed”.

[2] Rule 51.10 Filing and service of summons seeking leave to appeal

Insert after rule 51.10 (3):

- (4) A summons seeking leave to appeal must state whether the appellant has filed and served a notice of intention to seek leave to appeal, and the date the notice was served on the prospective respondent or on the last of the prospective respondents.

[3] Rule 51.13 Opposing party to file a response

Omit “unless the opposing party is a submitting party” from rule 51.13 (1).

[4] Rule 51.40 Notices of contention

Insert at the end of the rule:

- (2) A respondent who files a notice of contention in proceedings is taken to have entered an appearance in the proceedings.

[5] Rules 51.60 and 51.61

Insert after rule 51.59:

51.60 Application for expedited hearing

- (1) A party may apply for the hearing of proceedings in the Court to be expedited.
- (2) An interested party may file a notice of non-objection to the hearing of the proceedings being expedited.
- (3) If notices of non-objection are filed by each of the interested parties, the application may be decided in the absence of the public and the parties.
- (4) Reasons for a decision under subrule (3) need not be given.
- (5) This rule does not limit any other power of the Court to order that the hearing of proceedings be expedited.

51.61 Affidavits in support of orders sought by notice of motion

- (1) Unless the Court orders otherwise:
 - (a) a party that files a notice of motion must also file an affidavit setting out the evidence that the party relies on in support of the orders sought by the notice, and
 - (b) a party that opposes an order sought by a notice of motion must file an affidavit setting out the evidence that the party relies on in opposition to the order.
- (2) An affidavit referred to in subrule (1) (b) must be filed as soon as practicable and, in any case, before the hearing date listed in the notice of motion that seeks the orders opposed.

2007 No 579

Uniform Civil Procedure Rules (Amendment No 19) 2007

Schedule 4 Amendment relating to Confiscation of Proceeds of Crime Act 1989

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(Rule 3)

[1] Part 7, Division 8

Insert after Division 7 of Part 7:

Division 8 Commencement of proceedings under particular Acts

7.32 Proceedings under the Confiscation of Proceeds of Crime Act 1989

- (1) Without limiting rule 7.1 (1), an appropriate officer within the meaning of the *Confiscation of Proceeds of Crime Act 1989* may commence and carry on proceedings in a Local Court by a police prosecutor in relation to an application under that Act:
 - (a) for a pecuniary penalty order, forfeiture order or drug proceeds order under that Act, or
 - (b) for confirmation of a freezing notice.
- (2) Once proceedings of the kind referred to in subrule (1) (a) or (b) (*the original proceedings*) have been commenced under the *Confiscation of Proceeds of Crime Act 1989* in relation to any person, whether in a Local Court or elsewhere, any further proceedings under that Act in relation to the same person (whether or not they form part of, or relate to, the original proceedings), are to be commenced by notice of motion filed in the original proceedings.

Note. Pursuant to rule 6.4, the original proceedings must be commenced by summons.

[2] Rule 7.32 (as inserted by item [1])

Omit “a Local Court” wherever occurring. Insert instead “the Local Court”.

[3] Part 10, Division 4

Insert after Division 3 of Part 10:

Division 4 Service under particular Acts

10.28 Service under the Confiscation of Proceeds of Crime Act 1989

In any proceedings in which notice under the *Confiscation of Proceeds of Crime Act 1989* is required to be given in accordance with rules of court, the notice is to be given by filing it, and serving it on:

- (a) all active parties, and
- (b) all other persons to whom it is required by that Act to be given,

as soon as practicable after it has been filed.