



New South Wales

# Uniform Civil Procedure Rules (Amendment No 29) 2009

under the

Civil Procedure Act 2005

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

J Atkinson  
Secretary of the Uniform Rules Committee

## Explanatory note

The object of these Rules is to amend the *Uniform Civil Procedure Rules 2005* so as:

- (a) to require claims for possession of land to include information as to existing tenancies under the *Residential Tenancies Act 1987*, and
- (b) to require an applicant for substituted service of originating process in proceedings for possession of land to file an affidavit as to the applicant's knowledge of the defendant's whereabouts and of any communications that have occurred between the applicant and the defendant, and
- (c) to enable a court to order that legal proceedings commenced by a person acting on behalf of another person under a power of attorney be carried on by a solicitor, and
- (d) to make other minor amendments.

## **2009 No 501**

Rule 1 Uniform Civil Procedure Rules (Amendment No 29) 2009

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## **Uniform Civil Procedure Rules (Amendment No 29) 2009**

under the

Civil Procedure Act 2005

### **1 Name of Rules**

These Rules are the *Uniform Civil Procedure Rules (Amendment No 29) 2009*.

### **2 Commencement**

These Rules commence on the day on which they are published on the NSW legislation website.

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## Schedule 1      Amendment of Uniform Civil Procedure Rules 2005

**[1] Rule 4.9 Delegation by NSW Trustee and Guardian**

Omit “section 5A of the *Protected Estates Act 1983*” from rule 4.9 (1).

Insert instead “section 9 of the *NSW Trustee and Guardian Act 2009*”.

**[2] Rule 6.4 Where summons required**

Insert after rule 6.4 (1) (b):

- (b1) proceedings before the Supreme Court in the exercise of its jurisdiction under section 69 of the *Supreme Court Act 1970*,

**[3] Rule 6.12A**

Insert after rule 6.12:

**6.12A Proceedings for order in the nature of prerogative writ**

A summons in proceedings before the Supreme Court in the exercise of its jurisdiction under section 69 of the *Supreme Court Act 1970*:

- (a) must contain a statement as to:
  - (i) whether the relief claimed by the plaintiff relates to the whole, or to part only, of the decision of the court below and, if to part only, to which part, and
  - (ii) what decision the plaintiff seeks in place of the decision of the court below, and
- (b) must contain a statement setting out briefly but specifically the grounds relied on in support of the plaintiff’s claim including, in particular, any grounds on which it is contended that there is an error of law in the decision of the court below, and
- (c) must annex a copy of the decision of the court below and a copy of the reasons, if any, for the court’s decision.

**[4] Rule 7.1 By whom proceedings may be commenced and carried on**

Insert after rule 7.1 (1):

- (1A) Despite subrule (1), but subject to subrule (5), the court may order that proceedings commenced by a natural person acting on behalf of another person pursuant to a power of attorney be carried on, on behalf of that other person, by a solicitor.

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**[5] Rule 7.15 Tutors generally**

Omit “the *Protected Estates Act 1983*” from rule 7.15 (3).

Insert instead “the *NSW Trustee and Guardian Act 2009*”.

**[6] Rule 10.12 Service of process on person under legal incapacity**

Omit “the *Protected Estates Act 1983*” from rule 10.12 (6).

Insert instead “the *NSW Trustee and Guardian Act 2009*”.

**[7] Rule 10.15 Substituted and informal service of originating process in proceedings for possession of land**

Insert after rule 10.15 (5):

(5A) An application for an order under this rule must be supported by an affidavit by the applicant that includes:

- (a) a statement as to the applicant’s knowledge of the defendant’s whereabouts, and
- (b) a statement as to any communications that have occurred between the applicant and the defendant since the cause of action in the proceedings arose (including any communications by telephone, fax or electronic mail).

**[8] Rule 10.25 Personal service on inmate of correctional centre**

Omit “governor” from rule 10.25 (1). Insert instead “general manager”.

**[9] Rule 11.9 Definitions**

Insert “, or by some other person authorised by the Attorney General for the purposes of this definition” after “Attorney General” in paragraph (b) of the definition of *participating country*.

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

Omit “made, and” from rule 16.4 (3) (a) (ii). Insert instead:

made,

and, if any such person was in occupation of the land pursuant to a right of occupation under a residential tenancy agreement within the meaning of the *Residential Tenancies Act 1987*, must contain a statement to that effect, and

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

Insert “(other than a default judgment given in open court)” after “default judgment” in rule 36.16 (2) (a).

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

Omit “made, and” from rule 39.3 (2) (a) (ii). Insert instead:

made,

and, if any such person was in occupation of the land pursuant to a right of occupation under a residential tenancy agreement within the meaning of the *Residential Tenancies Act 1987*, must contain a statement to that effect, and

**[13] Rule 39.3A**

Insert after rule 39.3:

**39.3A Sheriff to be informed of persons in occupation of land**

- (1) This rule applies to:
  - (a) a writ for the possession of land, and
  - (b) a writ for the levy of property in respect of which a notice of sale of land has been filed as referred to in rule 39.22 (1) (b).
- (2) If the Sheriff so requests, the judgment creditor or other person for whose benefit the writ has been issued must inform the Sheriff as to whether any person is in occupation of the land pursuant to a right of occupation under a residential tenancy agreement, within the meaning of the *Residential Tenancies Act 1987*, and, if so:
  - (a) whether the person has been given a notice to vacate under section 71A of that Act, and
  - (b) if the person has been given such a notice, the date specified in the notice as the date by which the person is required to vacate the land.

**[14] Rule 39.22 Judgment creditor’s application for sale**

Insert after rule 39.22 (1) (d):

- (d1) if required to do so under rule 39.3A, the judgment creditor has informed the Sheriff, in accordance with that rule, as to whether any person is in occupation of the land,

**[15] Rules 41.6, 41.7, 41.8 and Schedule 11**

Omit “Public Trustee” wherever occurring in rules 41.6 (2), 41.7 (1) (a) and (b) and (3), 41.8 (1) and (5) and clause 7 (1) (e) of Schedule 11.

Insert instead “NSW Trustee and Guardian”.

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- [16] **Rule 41.7 Payment to the NSW Trustee and Guardian**  
Omit “Public Trustee’s” from 41.7 (1) (a).  
Insert instead “NSW Trustee and Guardian’s”.
- [17] **Rule 41.7 (2)**  
Omit “under section 36G (1) of the *Public Trustee Act 1913*”.  
Insert instead “referred to in subrule (1) (a).”
- [18] **Rule 41.7 (3)**  
Omit “under section 36G (2) of the *Public Trustee Act 1913*”.  
Insert instead “referred to in subrule (1) (b).”
- [19] **Part 57 heading**  
Omit “**the Protected Estates Act 1983**”.  
Insert instead “**the NSW Trustee and Guardian Act 2009**”.
- [20] **Rule 57.1 Interpretation**  
Omit “the *Protected Estates Act 1983*” from rule 57.1 (1).  
Insert instead “the *NSW Trustee and Guardian Act 2009*”.
- [21] **Rule 57.2 Commencement of proceedings**  
Omit “the *Protected Estates Act 1983*” from 57.2 (1).  
Insert instead “the *NSW Trustee and Guardian Act 2009*”.
- [22] **Rule 57.2 (2)**  
Omit “Protective Commissioner”.  
Insert instead “NSW Trustee and Guardian”.
- [23] **Rule 57.2 (2)**  
Omit the note to the subrule.
- [24] **Part 57, Division 2 heading**  
Omit “**the Protected Estates Act 1983**”.  
Insert instead “**the NSW Trustee and Guardian Act 2009**”.

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- [25] **Rule 57.3 Parties to application under section 41 or 54**  
Omit “section 13 or 68 of the *Protected Estates Act 1983*” from 57.3 (1).  
Insert instead “section 41 of the *NSW Trustee and Guardian Act 2009*”.
- [26] **Rule 57.3 (2)**  
Omit “section 21C of the *Protected Estates Act 1983*”.  
Insert instead “section 54 of the *NSW Trustee and Guardian Act 2009*”.
- [27] **Rule 57.4 Business concerning application under section 41 in the absence of parties**  
Omit “section 13, or an order under section 68, of the *Protected Estates Act 1983*” from 57.4 (a).  
Insert instead “section 41 of the *NSW Trustee and Guardian Act 2009*”.
- [28] **Rule 57.5 Evidence in support of application under section 41 or 54**  
Omit “section 13, 21C or 68 of the *Protected Estates Act 1983*” from 57.5 (1).  
Insert instead “section 41 or 54 of the *NSW Trustee and Guardian Act 2009*”.
- [29] **Rule 57.5 (1) (c) (i)**  
Omit “Protective Commissioner”.  
Insert instead “NSW Trustee and Guardian”.
- [30] **Rule 57.5 (1) (c) (ii)**  
Omit the subparagraph.
- [31] **Rule 57.5 (1) (d) (i)**  
Omit “Protective Commissioner”.  
Insert instead “NSW Trustee and Guardian”.
- [32] **Rule 57.5 (2)**  
Omit “section 21C of the *Protected Estates Act 1983*”.  
Insert instead “section 54 of the *NSW Trustee and Guardian Act 2009*”.
- [33] **Rule 57.6 Appointment of managers under section 52**  
Omit “under section 22 of the *Protected Estates Act 1983*” from rule 57.6 (a).  
Insert instead “pursuant to a special order referred to in section 52 of the *NSW Trustee and Guardian Act 2009*”.

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- [34] Rule 57.7 “Usual orders” under sections 41 and 54**  
Omit “section 13 of the *Protected Estates Act 1983*” from rule 57.7 (1) (a).  
Insert instead “section 41 of the *NSW Trustee and Guardian Act 2009*”.
- [35] Rule 57.7 (1) (b)**  
Omit “section 21C of the *Protected Estates Act 1983*”.  
Insert instead “section 54 of the *NSW Trustee and Guardian Act 2009*”.
- [36] Rule 57.7 (2) (a)**  
Omit “the *Protected Estates Act 1983*”.  
Insert instead “the *NSW Trustee and Guardian Act 2009*”.
- [37] Rule 57.7 (2) (b) and (c)**  
Omit “Protective Commissioner” wherever occurring.  
Insert instead “NSW Trustee and Guardian”.
- [38] Rule 57.7 (2)**  
Omit the note to the subrule.
- [39] Rule 57.8 Evidence in support of application under section 86**  
Omit “section 35 of the *Protected Estates Act 1983*”.  
Insert instead “section 86 of the *NSW Trustee and Guardian Act 2009*”.
- [40] Rule 57.9 Mode of making application under section 87**  
Omit “section 35A of the *Protected Estates Act 1983*” from rule 57.9 (1).  
Insert instead “section 87 of the *NSW Trustee and Guardian Act 2009*”.
- [41] Rule 57.9 (1)**  
Omit “section 21C”. Insert instead “section 54”.
- [42] Rule 57.10**  
Omit the rule.



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**[43] Schedule 8 Assignment of business in the Supreme Court**

Omit the matter relating to the *Protected Estates Act 1983* from Part 1 of Schedule 8.

Insert instead, in Columns 1 and 3 respectively, in alphabetical order of Acts:

*NSW Trustee and Guardian Act 2009*

Equity