



New South Wales

Uniform Civil Procedure Rules (Amendment No 24) 2009

under the

Civil Procedure Act 2005

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

Jennifer 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 exclude proceedings under the *Crimes (Domestic and Personal Violence) Act 2007* from all of Parts 3–9 of the *Civil Procedure Act 2005*, and
- (b) to require the solicitor on the record for any party in proceedings to hold an unrestricted practising certificate, and
- (c) to clarify the circumstances in which a list of parties must be filed, and
- (d) to change the rate at which interest is payable on unpaid judgment debts, and
- (e) to make other changes of a minor, consequential or ancillary nature.

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Rule 1 Uniform Civil Procedure Rules (Amendment No 24) 2009

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1 Name of Rules

These Rules are the *Uniform Civil Procedure Rules (Amendment No 24) 2009*.

2 Commencement

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

Schedule 1 Amendment of Uniform Civil Procedure Rules 2005

[1] Rule 1.6 Exclusion of provisions of Civil Procedure Act 2005

Omit rule 1.6 (b) (iv). Insert instead:

- (iv) proceedings under the *Crimes (Domestic and Personal Violence) Act 2007*,

[2] Rule 1.9 Objections to production of documents and answering of questions founded on privilege

Omit “but does not apply in circumstances in which Part 3.10 of the *Evidence Act 1995* or Part 3.10 of the *Evidence Act 1995* of the Commonwealth applies.” from rule 1.9 (1).

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

Insert at the end of rule 4.2 (1):

Note. A solicitor named on the originating process pursuant to paragraph (e1) is thereby the solicitor on the record in relation to the party on whose behalf the process is filed.

[4] Rule 4.2 (2), Note

Omit the Note. Insert instead:

Note 1. In relation to paragraph (c), see rule 9.1 (4) and (5) which require cross-claims to be numbered.

Note 2. A solicitor named in the document pursuant to paragraph (d1) is thereby the solicitor on the record in relation to the party on whose behalf the document is filed.

[5] Rule 4.2A

Omit the rule. Insert instead:

4.2A List of parties

- (1) In any proceedings in which there are more than 2 plaintiffs, or more than 2 defendants, the plaintiff must file, together with the originating process, a list of parties.
- (2) In any proceedings in which there is a cross-claim brought by more than 2 cross-claimants, or to which there are more than 2 cross-defendants, or against a cross-defendant who is not already a party to the proceedings, the cross-claimant must file with the statement of cross-claim or cross-summons:
 - (a) if no list of parties has yet been filed in the proceedings, a list of parties, or

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(b) if a list of parties has already been filed in the proceedings, an amended list of parties.

(3) In any proceedings in which a list of parties has been filed, any party who files a document that effects a change of parties (including a change that involves the addition of a party who is not already a party to the proceedings) must file, together with the document, an amended list of parties.

[6] Rule 4.5 Address for service

Omit rule 4.5 (2). Insert instead:

(2) The address for service of a person who has a solicitor on the record is to be:

(a) the office of the solicitor on the record, or

(b) if the solicitor on the record has another solicitor acting as agent, the office of the agent.

[7] Rule 6.34 Application of Division

Omit “section 118”. Insert instead “section 79A, 118”.

[8] Rule 7.1 (6)

Insert after rule 7.1 (5):

(6) A solicitor who is a person’s solicitor on the record must hold an unrestricted practising certificate.

Note. The term *solicitor on the record* is defined in the Dictionary.

[9] Rule 7.26 Change of solicitor or agent

Omit “having a solicitor” from rule 7.26 (1).

Insert instead “for whom there is a solicitor on the record”.

[10] Rule 7.26 (1A)

Insert after rule 7.26 (1):

(1A) The new solicitor on the record must hold an unrestricted practising certificate.

[11] Rule 20.7

Omit the rule. Insert instead:

20.7 Notifications after mediation

Within 7 days after the conclusion of the last mediation session, the mediator must advise the court of the following:

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- (a) the time and date the first mediation session commenced, and
 - (b) the time and date the last mediation session concluded.

[12] Rule 52.5 Certificate

Omit “the principal registrar of the Supreme Court”.

Insert instead “a registrar of the Supreme Court”.

[13] Rule 52.5 (b)

Omit “the principal registrar”. Insert instead “the Supreme Court”.

[14] Rule 55.9

Omit the rule. Insert instead:

55.9 Proceedings for directions as to payment into court (cf SCR Part 70, rules 11 and 12)

- (1) If a trustee proposes to pay money or securities into court, the trustee must commence proceedings in the court by filing a summons seeking to have the money or the securities paid into court.
- (2) The summons:
 - (a) must be supported by an affidavit that complies with rule 55.10, and
 - (b) if the payment is wholly or partly money, must be accompanied by a cheque payable to “The Supreme Court of New South Wales” in the amount of the money to be paid into court.
- (3) If the money is paid into court by a cheque, the money is to be taken to have been paid into court on the filing of the summons, without the need for any further directions.
- (4) Unless the Supreme Court otherwise orders, the summons must not join any person as a defendant in the proceedings.
- (5) Unless the Supreme Court otherwise orders, a copy of the summons must be served on each person identified in the affidavit as a person interested in or entitled to the money or securities.
- (6) A person paying money or securities into court may make an application, by notice of motion in the proceedings in which the money or securities were paid, for an order that the person’s costs be payable from the money or securities.

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Schedule 1 Amendment of Uniform Civil Procedure Rules 2005

[15] Schedule 1 Application of rules

Omit “or 3” from Column 2 of the matter relating to the Land and Environment Court.

Insert instead “, 3 or 8”.

[16] Schedule 5 Interest rates

Omit “after 31 December 2006”.

Insert instead “the beginning of 1 January 2007 to the end of 5 March 2009”.

[17] Schedule 5

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

after 5 March 2009

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[18] Schedule 8 Assignment of business in the Supreme Court

Omit “or 474E” from Column 2 of the matter relating to the *Crimes Act 1900* in Part 1.

[19] Schedule 8, Part 1

Insert after the matter relating to the *Crimes Act 1900*, in Columns 1, 2 and 3:

Crimes (Appeal and Review) Act 2001 Section 79 Common Law

[20] Dictionary

Insert in alphabetical order:

mediation session means a meeting arranged for the mediation of a matter, and includes any steps taken in the course of making arrangements for the session or in the course of the follow-up of a session.

solicitor on the record, in relation to any party to proceedings, means the solicitor who is for the time being named as the party’s legal representative in the documentation for the proceedings.

unrestricted practising certificate has the same meaning as it has in the *Legal Profession Act 2004*.