



New South Wales

Uniform Civil Procedure Rules (Amendment No 42) 2011

under the

Civil Procedure Act 2005

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

Steven Jupp
Secretary of the Uniform Rules Committee

Explanatory note

The object of these Rules is to amend the *Uniform Civil Procedure Rules 2005* to provide for the procedure to be followed in making an election for a jury trial under section 21 of the *Defamation Act 2005*.

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Rule 1 Uniform Civil Procedure Rules (Amendment No 42) 2011

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1 Name of Rules

These Rules are the *Uniform Civil Procedure Rules (Amendment No 42) 2011*.

2 Commencement

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

Schedule 1 Amendment of Uniform Civil Procedure Rules 2005

Rules 29.2 and 29.2A

Omit rule 29.2. Insert instead:

29.2 Applications and requisitions for juries in proceedings other than defamation proceedings

- (1) This rule applies to proceedings other than defamation proceedings.
- (2) An application in proceedings to which this rule applies for the proceedings to be tried by jury must be made by notice of motion.
- (3) For the purposes of section 85 of the *Supreme Court Act 1970* and section 76A of the *District Court Act 1973*, a requisition for a jury in proceedings to which this rule applies must be filed at the same time as the notice of motion referred to in subrule (2) is filed.
- (4) Unless the court otherwise orders, a notice of motion under subrule (2) must be filed:
 - (a) if the notice is filed by the plaintiff:
 - (i) within 56 days after service on the defendant of the statement of claim, or
 - (ii) if a defence is served on the plaintiff within that period, within 28 days after service of the defence on the plaintiff, or
 - (b) if the notice is filed by the defendant:
 - (i) within 28 days after service on the defendant of the statement of claim, or
 - (ii) if, pursuant to rule 14.3, the court directs some other date for the filing of a defence, within 28 days after the date fixed by the court's direction.

29.2A Elections for juries in defamation proceedings

- (1) An election under section 21 of the *Defamation Act 2005* for defamation proceedings to be tried by jury must be made by filing a notice of election for a jury trial and serving the notice on each other active party in the proceedings.

Note. Section 21 (2) (b) of the *Defamation Act 2005* requires an election to be accompanied by the fee prescribed by the regulations under the *Civil Procedure Act 2005* for the requisition of a jury in the court concerned.

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Schedule 1 Amendment of Uniform Civil Procedure Rules 2005

- (2) A party may file and serve a notice of election for a jury trial only if:
 - (a) the party has served a notice of intention to file the notice of election on each other active party before a date has been fixed for the hearing of the defamation proceedings, and
 - (b) a notice of motion has not been filed under subrule (4) or, if such a notice of motion has been filed and served, the court has refused to make the order sought in the notice of motion.
- (3) A party who serves a notice of intention to file a notice of election for a jury trial must, before a date has been fixed for the hearing of the defamation proceedings, inform the court that the notice of intention has been served.
- (4) A party on whom a notice of intention to file a notice of election for a jury trial is served may, within 21 days of being served with the notice, file a notice of motion seeking an order under section 21 of the *Defamation Act 2005* that the proceedings not be tried by jury.
- (5) If a notice of motion is filed under subrule (4), a date may not be fixed for the hearing of the defamation proceedings until the court has disposed of the motion.
- (6) Without limiting subrule (2), a notice of election for a jury trial may not be filed or served if:
 - (a) the court makes an order under section 21 of the *Defamation Act 2005* (whether or not of its own motion) that the defamation proceedings not be tried by jury, or
 - (b) a date has been fixed for the hearing of the defamation proceedings.