



Uniform Civil Procedure Rules (Amendment No 59) 2013

under the

Civil Procedure Act 2005

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

Steven Jupp
Secretary of the Uniform Rules Committee

Explanatory note

The object of this Rule is to make further provision regarding:

- (a) offers to compromise in claims in civil proceedings, and
- (b) the consequences as to costs in accepting or rejecting such offers.

2013 No 259

Clause 1 Uniform Civil Procedure Rules (Amendment No 59) 2013

Uniform Civil Procedure Rules (Amendment No 59) 2013

under the

Civil Procedure Act 2005

1 Name of Rule

This Rule is the *Uniform Civil Procedure Rules (Amendment No 59) 2013*.

2 Commencement

This Rule commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Uniform Civil Procedure Rules 2005

[1] Rule 20.25 Definitions

Omit the definition of *final deadline*.

[2] Rule 20.25

Insert in alphabetical order:

judgment in favour of the defendant includes a dismissal of a summons or a statement of claim.

[3] Rule 20.25

Omit the definition of *period for acceptance*. Insert instead:

period of acceptance for an offer means the period of time during which the offer is open for acceptance.

[4] Rule 20.26 Making of offer

Omit the rule 20.26 (2)–(7). Insert instead:

- (2) An offer under this rule:
 - (a) must identify:
 - (i) the claim or part of the claim to which it relates, and
 - (ii) the proposed orders for disposal of the claim or part of the claim, including, if a monetary judgment is proposed, the amount of that monetary judgment, and
 - (b) if the offer relates only to part of a claim in the proceedings, must include a statement:
 - (i) in the case of an offer by the plaintiff, as to whether the balance of the proceedings is to be abandoned or pursued, or
 - (ii) in the case of an offer by a defendant, as to whether the balance of the proceedings will be defended or conceded, and
 - (c) must not include an amount for costs and must not be expressed to be inclusive of costs, and
 - (d) must bear a statement to the effect that the offer is made in accordance with these rules, and
 - (e) if the offeror has made or been ordered to make an interim payment to the offeree, must state whether or not the offer is in addition to that interim payment, and

2013 No 259

Uniform Civil Procedure Rules (Amendment No 59) 2013

Schedule 1 Amendment of Uniform Civil Procedure Rules 2005

- (f) must specify the period of time within which the offer is open for acceptance.
- (3) An offer under this rule may propose:
 - (a) a judgment in favour of the defendant:
 - (i) with no order as to costs, or
 - (ii) despite subrule (2) (c), with a term of the offer that the defendant will pay to the plaintiff a specified sum in respect of the plaintiff's costs, or
 - (b) that the costs as agreed or assessed up to the time the offer was made will be paid by the offeror, or
 - (c) that the costs as agreed or assessed on the ordinary basis or on the indemnity basis will be met out of a specified estate, notional estate or fund identified in the offer.
- (4) If the offeror makes an offer before the offeree has been given such particulars of the offeror's claim, and copies or originals of such documents available to the offeror, as are necessary to enable the offeree to fully consider the offer, the offeree may, within 14 days of receiving the offer, give notice to the offeror that:
 - (a) the offeree is unable to assess the reasonableness of the offer because of the lack of particulars or documents, and
 - (b) in the event that rule 42.14 applies to the proceedings, the offeree will seek an order of the court under rule 42.14 (2).
- (5) The closing date for acceptance of an offer:
 - (a) in the case of an offer made two months or more before the date set down for commencement of the trial—is to be no less than 28 days after the date on which the offer is made, and
 - (b) in any other case—is to be such date as is reasonable in the circumstances.

[5] Rule 42.13–42.13A

Omit the rules. Insert instead:

42.13 Application

This Division applies to proceedings in respect of which an offer of compromise (the *offer*) is made under rule 20.26 with respect to a plaintiff's claim (the *claim*).

42.13A Where offer accepted and no provision for costs

- (1) This rule applies if the offer:
 - (a) is accepted by the offeree, and
 - (b) does not make provision for costs in respect of the claim.
- (2) If the offer proposed a judgment in favour of the plaintiff in respect of the claim, the plaintiff is entitled to an order against the defendant for the plaintiff's costs in respect of the claim, assessed on the ordinary basis up to the time when the offer was made.
- (3) If the offer proposed a judgment in favour of the defendant in respect of the claim (including a dismissal of a summons or a statement of claim), the defendant is entitled to an order against the plaintiff for the defendant's costs in respect of the claim, assessed on the ordinary basis up to the time when the offer was made.

[6] Rule 42.14 Where offer not accepted and judgment no less favourable to plaintiff

Omit "concerned" wherever occurring in rule 42.14 (1).

[7] Rule 42.15 Where offer not accepted and judgment no more favourable to plaintiff

Omit rule 42.15 (1). Insert instead:

- (1) This rule applies if the offer is made by the defendant, but not accepted by the plaintiff, and the plaintiff obtains an order or judgment on the claim no more favourable to the plaintiff than the terms of the offer.

[8] Rule 42.15A Where offer not accepted and judgment no less favourable to defendant

Omit rule 42.15A (1). Insert instead:

- (1) This rule applies if the offer is made by the defendant, but not accepted by the plaintiff, and the defendant obtains an order or judgment on the claim no less favourable to the defendant than the terms of the offer.

[9] Schedule 12

Insert after Schedule 11:

2013 No 259

Uniform Civil Procedure Rules (Amendment No 59) 2013

Schedule 1 Amendment of Uniform Civil Procedure Rules 2005

Schedule 12 Savings and transitional provisions

Part 1 Provision consequent on making of Uniform Civil Procedure Rules (Amendment No 59) 2013

1 Offers of compromise made before commencement of amendments

- (1) Rules 20.25–20.26 and 42.13–42.15A, as in force immediately before the commencement of the amending rule, continue to apply to an offer made before that commencement.
- (2) In this clause:
amending rule means the *Uniform Civil Procedure Rules (Amendment No 59) 2013*.
offer has the same meaning as in rule 20.25 as in force immediately before the commencement of the amending rule.