



Uniform Civil Procedure Rules (Amendment No 61) 2013

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 give effect to certain recommendations made by the New South Wales Law Reform Commission in its report entitled *Security for costs and associated costs orders*, Report 137 (2012). The amendments give effect to the recommendations as follows:

- (a) Rule 42.21 has been amended:
 - (i) to limit the power of a court to order security for costs because the plaintiff is not ordinarily a resident of New South Wales to circumstances where the plaintiff resides outside of Australia (See recommendation 2.2), and
 - (ii) to enable a court to order security for costs where there are grounds to believe that the plaintiff has divested assets with the intention of avoiding the consequences of the proceedings (See recommendation 2.4), and
 - (iii) to include a non-exhaustive list of matters to which the court may have regard in determining whether to order security for costs (See recommendation 2.5),
- (b) A new rule has been inserted to require a party who changes his or her address during the course of the proceedings to notify the court and the other active parties of the new address within a reasonable time (See recommendation 2.3),
- (c) Rules 50.8 and 51.50 have been amended to enable a court to which Part 50 applies and the Court of Appeal, respectively, to dismiss an appeal or cross-appeal for failure to provide security for costs (See recommendation 5.2).

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1 Name of Rules

These Rules are the *Uniform Civil Procedure Rules (Amendment No 61) 2013*.

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 7.3A

Insert after rule 7.3:

7.3A Notice of change of address by party

- (1) A party who changes his or her address must, within a reasonable time after the change, file a notice of the change.
- (2) A copy of the notice of change, as filed, must be served on all other active parties.
- (3) It is sufficient compliance with this rule if:
 - (a) the new address of the party is also his or her address for service, and
 - (b) the party has changed his or her address for service to the new address in accordance with rule 4.6.

[2] Rule 42.21 Security for costs

Omit “New South Wales” from rule 42.21 (1) (a).

Insert instead “Australia”.

[3] Rule 42.21 (1) (f)

Insert at the end of rule 42.21 (1) (e):

or

- (f) that there is reason to believe that the plaintiff has divested assets with the intention of avoiding the consequences of the proceedings,

[4] Rule 42.21 (1A) and (1B)

Insert after rule 42.21 (1):

- (1A) In determining whether it is appropriate to make an order that a plaintiff referred to in subrule (1) give security for costs, the court may have regard to the following matters and such other matters as it considers relevant:
 - (a) the prospects of success or merits of the proceedings,
 - (b) the genuineness of the proceedings,
 - (c) the impecuniosity of the plaintiff,

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- (d) whether the plaintiff's impecuniosity is attributable to the defendant's conduct,
 - (e) whether the plaintiff is effectively in the position of a defendant,
 - (f) whether an order for security for costs would stifle the proceedings,
 - (g) whether the proceedings involves a matter of public importance,
 - (h) whether there has been an admission or payment in court,
 - (i) whether delay by the plaintiff in commencing the proceedings has prejudiced the defendant,
 - (j) the costs of the proceedings,
 - (k) whether the security sought is proportionate to the importance and complexity of the subject matter in dispute,
 - (l) the timing of the application for security for costs,
 - (m) whether an order for costs made against the plaintiff would be enforceable within Australia,
 - (n) the ease and convenience or otherwise of enforcing a New South Wales court judgment or order in the country of a non-resident plaintiff.
- (1B) If the plaintiff is a natural person, an order for security for costs cannot be made merely on account of his or her impecuniosity.

[5] Rule 50.8 Security for costs

Insert after rule 50.8 (2):

- (2A) If an appellant or cross-appellant fails to comply with an order under this rule, the court may order that the appellant's appeal or cross-appellant's cross-appeal be dismissed.

[6] Rule 50.8 (3)

Omit "Subrules (1) and (2)". Insert instead "Subrules (1), (2) and (2A)".

[7] Rule 51.50 Security for costs

Insert after rule 51.50 (2):

- (2A) If an appellant or cross-appellant fails to comply with an order under this rule, the Court may order that the appellant's appeal or cross-appellant's cross-appeal be dismissed.

[8] Rule 51.50 (3)

Omit “Subrules (1) and (2)”. Insert instead “Subrules (1), (2) and (2A)”.