



New South Wales

Uniform Civil Procedure (Amendment No 73) Rule 2015

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 amend the *Uniform Civil Procedure Rules 2005* concerning substituted service:

- (a) to provide that an application for substituted service must be supported by an affidavit as to the applicant's knowledge of the whereabouts of the person to be served and any communications between the applicant and that person since the cause of action in the proceedings arose, and
- (b) to make it clear that substituted service of originating process in proceedings for possession of land is an additional procedure to substituted service of originating process in proceedings generally, and
- (c) to make it clear that an order for substituted service of originating process in proceedings for possession of land may only be made without orders for other steps to be taken to effect service if the document cannot be served on the defendant without undue delay or expense, and
- (d) to provide that if an order for substituted service of originating process in proceedings for possession of land is made without orders for other steps to be taken to effect service, any application for default judgment made by the plaintiff must be limited to the possession of land and not include other relief (unless the originating service is served or taken to be served on the defendant).

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1 Name of Rule

This Rule is the *Uniform Civil Procedure (Amendment No 73) Rule 2015*.

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 10.14 Substituted and informal service generally

Insert after rule 10.14 (3):

- (3A) 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 whereabouts of the person to be served, and
 - (b) a statement as to any communications that have occurred between the applicant and the person to be served since the cause of action in the proceedings arose (including any communications by telephone, fax or electronic mail).

[2] Rule 10.15

Omit the rule. Insert instead:

10.15 Substituted and informal service of originating process in proceedings for possession of land (cf SCR Part 9, rule 5)

- (1) Without limiting rule 10.14, this rule applies to any originating process that is required to be served on a defendant in connection with proceedings for the possession of land.
- (2) On application under rule 10.14, the court may order that the plaintiff may serve the originating process on the defendant by affixing a copy of the originating process to a conspicuous part of the land:
 - (a) in addition to any other steps ordered to be taken for the purpose of bringing the originating process to the notice of the person concerned, or
 - (b) if the originating process cannot be served on the defendant without undue delay or expense.
- (3) An order under subrule (2) may direct that the originating process be taken to have been served on the defendant on the expiry of a specified time.
- (4) If a copy of the originating process has been affixed to a conspicuous part of the land otherwise than under an order under subrule (2), the court may order that the originating process be taken to have been served on the defendant on a date specified in the order.
- (5) If an originating process is served pursuant to an order under subrule (2) and the plaintiff applies for default judgment under rule 16.3, the application for default judgment must be limited to the possession of land (and not include any other relief such as damages) unless:
 - (a) the originating process is taken to have been served because of a direction under rule 10.14 (3), or
 - (b) the originating process was served directly on the defendant while attempting to serve it in accordance with an order made under subrule (2) and the plaintiff's application for default judgment is supported by an affidavit specifying when, where and how service was effected.
- (6) Service in accordance with this rule is taken to constitute personal service.