



New South Wales

Uniform Civil Procedure (Amendment No 75) 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 to amend the rules in the *Uniform Civil Procedure Rules 2005* concerning the Court of Appeal:

- (a) to provide that a party who files a response to oppose an application for leave to appeal or cross-appeal is taken to have entered an appearance, and
- (b) to provide that an application for an extension of time to file and serve a notice of appeal may be included in the notice of appeal, and
- (c) to provide that a party seeking to appeal or cross-appeal as of right with an amount or value restriction is required to include a certificate with the notice (instead of filing and serving an affidavit) if the amount or value is exceeded unless the Registrar directs that an affidavit be filed and served on each necessary party, and
- (d) to clarify the duties of the Registrar of the Court of Appeal with respect to collecting documents when a notice of appeal is filed, and
- (e) to remove the requirement for the proper officer of the court below to certify a list of the exhibits and to enable the Registrar, if an exhibit is not available, to direct the proper officer to provide the information necessary to obtain the exhibit, and
- (f) to provide that a person who files and serves a notice of intention to appeal or relevant originating process must also file a copy of a notice of discontinuance in the registry or office of the court below, and
- (g) to make further provision with respect to the contents of the Appeal Book and written submissions in an appeal, and
- (h) to enable an appellant to file written submissions in reply to any submissions filed by a respondent within 12 weeks of the notice of appeal being filed, and
- (i) to make further provision with respect to the documents to be provided to the Court in proceedings in its supervisory jurisdiction and the content of written submissions in such proceedings and to enable applicants to file submissions in reply to those of the respondent, and
- (j) to provide that, in an application to review a decision of a single Judge of Appeal, written submissions are to be filed and an affidavit in support of the application is not required to be filed.

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1 Name of Rule

This Rule is the *Uniform Civil Procedure (Amendment No 75) 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 51.2 Interpretation

Insert in alphabetical order:

submissions in reply—see rule 51.34 (1A).

[2] Rule 51.13 Opposing party to file a response

Insert after subrule (7):

- (8) An opposing party who files a response is taken to have entered an appearance in the proceedings.
- (9) An opposing party who has not filed an appearance must include in the party's response the information required by rule 4.2 (2).

[3] Rule 51.16 Time for filing and service of notice of appeal

Omit rule 51.16 (3). Insert instead:

- (3) A party applying for an extension under subrule (1) (a) or (c) may include the application in the notice of appeal.

[4] Rule 51.22

Omit the rule. Insert instead:

51.22 Absence of restriction on appeals as of right to be shown by certificate or affidavit

- (1) This rule applies to an appeal or cross-appeal as of right that is restricted by any Act by reference to a specified amount or value.
- (2) If an amount in issue in an appeal or cross-appeal to which this rule applies exceeds the specified amount or value, the notice of appeal or cross-appeal must include a certificate to the effect that the amount in issue exceeds the specified amount or value, signed by:
 - (a) a legal practitioner, or
 - (b) if an appellant or cross-appellant is not represented by a legal practitioner, by the appellant or cross-appellant.
- (3) The Registrar may direct a party in an appeal or cross-appeal to which this rule applies to file and serve on each necessary party an affidavit which sets out the material facts on which the appellant or cross-appellant relies to show that the restriction does not apply.

[5] Rule 51.24 Registrar to collect certain papers when notice of appeal filed or concurrency determination is made

Insert “, or if the Court orders a concurrent hearing under rule 51.14” after “notice of appeal” in rule 51.24 (1).

[6] Rule 51.24 (1) (a1)

Insert after rule 51.24 (1) (a):

- (a1) may direct a party having custody of a document from the court below to produce that document to the Registrar, and

- [7] **Rule 51.24 (1) (b)**
Omit “must”. Insert instead “is to”.
- [8] **Rule 51.24 (1) (b) (ii)**
Omit the subparagraph. Insert instead:
(ii) the list of exhibits (if available), and
- [9] **Rule 51.24 (1) (b) (iii)**
Omit “, together with a list, certified by the proper officer of the court below”.
- [10] **Rule 51.24 (1) (b) (iv)**
Omit “in the court below certified by or on behalf of the court below”.
- [11] **Rule 51.24 (2)**
Omit the subrule. Insert instead:
(2) The Registrar must allow the party required to prepare the Appeal Book to have custody of the documents necessary to prepare it unless the Registrar makes copies of the documents available to the party.
- [12] **Rule 51.24 (6)**
Insert after rule 51.24 (5):
(6) A party may not obtain a copy of a transcript unless the Registrar is satisfied that the party has made arrangements to pay, or has paid, for the transcript.
- [13] **Rule 51.25 Preparation of Appeal Book**
Insert at the end of the rule:
Note. Under rule 51.39, the Court may order the use of a White Folder instead of the preparation of an Appeal Book and submissions.
- [14] **Rule 51.27 Contents of Red Book**
Insert after rule 51.27 (2):
(3) Where evidence or reports were required to be included in the process or pleadings of the court below, those documents are:
(a) not to be included in the Red Book unless they are necessary for the purposes of understanding the process or pleadings, and
(b) to be included instead in the Blue Book if they are necessary for the purposes of the appeal.
- [15] **Rule 51.29 Contents of Blue Book**
Omit rule 51.29 (5). Insert instead:
(5) If there are no such documents:
(a) a Blue Book does not have to be prepared, and
(b) a statement is to be included in the Orange Book to the effect that a Blue Book has not been prepared because there are no such documents.

[16] Rule 51.30 Contents of Orange Book

Insert at the end of rule 51.30 (1) (e):

- , and
- (f) any statement required by rule 51.29 (5) (b), and
- (g) any notice of discontinuance filed in the proceedings, and
- (h) any submitting notice of appearance filed in the proceedings, and
- (i) any notice of motion the hearing of which has been adjourned to the hearing of the appeal, and
- (j) any notice of a constitutional matter filed under rule 1.22, and
- (k) any affidavit of service in relation to a respondent who has not filed a notice of appearance in the proceedings, and
- (l) any notice of objection to the contents of the Appeal Book under rule 51.31 to the extent that those contents are still in dispute.

[17] Rule 51.34 Filing written submissions and chronologies

Insert after rule 51.34 (1):

- (1A) An appellant may file written submissions in reply to any submissions filed by a respondent.

[18] Rule 51.36 Content of written submissions

Omit rule 51.36 (1) (f). Insert instead:

- (f) not exceed (not counting the pages of any document included in the submissions for the purposes of subrule (2)):
 - (i) in the case of submissions other than submissions in reply—20 pages, and
 - (ii) in the case of submissions in reply—10 pages, and
- (g) in the case of submissions in reply, refer by paragraph number to the matter in the respondent's submissions to which the submissions in reply respond, and
- (h) be in typeface that is no smaller in appearance than an Arial font in 11 point size or a Times New Roman font in 12 point size, and
- (i) the lines of typing must be set at least 1.5 lines spacing from each other.

[19] Rule 51.36 (2)

Omit the subrule. Insert instead:

- (2) Submissions raising any challenges to findings of fact must include a statement in narrative form (not exceeding 2 pages) at the end of the submission setting out only the following:
 - (a) the findings challenged and supporting references to the judgment of the court below,
 - (b) the findings contended for and supporting references to the transcript and other evidence in the court below.

[20] Rule 51.37 Time for filing of written submissions and chronologies

Omit rule 51.37 (1). Insert instead:

- (1) Written submissions must be filed:
 - (a) by the appellant (other than in the case of submissions in reply)—within 6 weeks of the notice of appeal being filed, and
 - (b) by the respondent—within 10 weeks of the notice of appeal being filed, and
 - (c) by the appellant (in the case of submissions in reply)—within 12 weeks of the notice of appeal being filed.

[21] Rule 51.37 (2)

Omit “amended written submissions”.

Insert instead “any written submissions that have been amended to comply with rule 51.36 (1) (b)”.

[22] Rule 51.42 Copies of certain documents to be filed or lodged with court below

Insert at the end of the rule:

- (2) If appeal proceedings are discontinued or settled before the Court determines the proceedings on the merits, the initiating party must:
 - (a) where it relates to a decision in a Division of the Supreme Court—file in the registry of the Division a copy of the notice of discontinuance, settlement or consent order, or
 - (b) in any other case:
 - (a) file a copy of it in the registry or office of the court below, or
 - (a) lodge a copy of it with an officer of the court below concerned with its records or process.

[23] Rule 51.43 Court below to retain exhibits if its decision is appealable

Omit rule 51.43 (2) and (3). Insert instead:

- (2) If an exhibit is not available, the proper officer of the court below must, if the Registrar so directs, provide such information as the officer can to enable the Registrar to obtain the exhibit.

[24] Rule 51.45 Proceedings in supervisory jurisdiction

Omit “must be accompanied by” from rule 51.45 (3).

Insert instead “must, on filing, be accompanied by 4 copies of”.

[25] Rule 51.45 (3) (d)

Omit “the parties (when available)”. Insert instead “the applicant”.

[26] Rule 51.45 (5)

Omit “within 28 days of filing”. Insert instead “on the filing of”.

[27] Rule 51.45 (5) (g)

Insert at the end of rule 51.45 (5) (f):

- , and
- (g) refer to any matters in the White Folder by page number.

[28] Rule 51.45 (6A)

Insert after rule 51.45 (6):

- (6A) The applicant may file and serve a reply not exceeding 5 pages within 14 days after receipt of the respondent's response.

[29] Rule 51.58 Review of order of Judge of Appeal

Insert at the end of the rule:

- (2) An application must be accompanied by written submissions.
- (3) Written submissions filed with an application must:
- (a) not exceed 5 pages, and
 - (b) be in typeface that is no smaller in appearance than an Arial font in 11 point size or a Times New Roman font in 12 point size, and
 - (c) the lines of typing must be set at least 1.5 lines spacing from each other.
- (4) An application under subrule (1) (b) must be included in the notice of motion.
Note. Rule 51.61 (3) provides that an affidavit is not required to be filed with the notice of motion under this rule.

[30] Rule 51.61 Affidavits in support of orders sought by notice of motion

Insert after rule 51.61 (2):

- (3) This rule does not apply to a notice of motion filed under rule 51.58.