



New South Wales

Uniform Civil Procedure (Amendment No 95) Rule 2020

under the

Civil Procedure Act 2005

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

Rebel Kenna
Secretary of the Uniform Rules Committee

Explanatory note

The object of this Rule is to amend the *Uniform Civil Procedure Rules 2005* as a consequence of the enactment of the *Defamation Amendment Act 2020* for the following purposes in relation to causes of action for defamation—

- (a) to ensure the allegation and particulars of serious harm are included in the statement of claim,
- (b) to specify the allegations that must be included for the following defences to be sufficiently pleaded—
 - (i) defence of publication of matter concerning issue of public interest,
 - (ii) defence of scientific or academic peer review,
- (c) to specify the particulars of the facts, matters and circumstances that a pleading must give for the following defences—
 - (i) defence of publication of matter concerning issue of public interest,
 - (ii) defence of scientific or academic peer review,
- (d) to make it clear that rules relating to the defence of triviality apply only to causes of action in defamation where the publication of the defamatory matter occurred before the commencement of the *Defamation Amendment Act 2020*.

Uniform Civil Procedure (Amendment No 95) Rule 2020

under the

Civil Procedure Act 2005

1 Name of Rule

This Rule is the *Uniform Civil Procedure (Amendment No 95) Rule 2020*.

2 Commencement

This Rule commences on the day on which the *Defamation Amendment Act 2020* commences.

Schedule 1 **Amendment of Uniform Civil Procedure Rules 2005**

[1] **Rule 14.30 Allegations in statements of claim generally**

Insert at the end of rule 14.30(2)(b)—

, and

- (c) allege that the publication of the defamatory matter has caused, or is likely to cause, serious harm to the reputation of the plaintiff.

[2] **Rule 14.36A**

Insert after rule 14.36—

14.36A Defence of publication of matter concerning issue of public interest

A defence under section 29A of the *Defamation Act 2005* is sufficiently pleaded if it alleges that—

- (a) the matter concerns an issue of public interest, and
- (b) the defendant reasonably believed that the publication of the matter was in the public interest.

[3] **Rule 14.37 Defence of qualified privilege**

Insert “, 29A, 30A” after “29” in rule 14.37(1)(b)(ii).

[4] **Rule 14.37A**

Insert after rule 14.37—

14.37A Defence of scientific or academic peer review

- (1) A defence under section 30A(1) of the *Defamation Act 2005* is sufficiently pleaded if it alleges that—
 - (a) the matter was published in a scientific or academic journal (whether published in electronic form or otherwise), and
 - (b) the matter relates to a scientific or academic issue, and
 - (c) an independent review of the matter’s scientific or academic merit was carried out before the matter was published in the journal by—
 - (i) the editor of the journal if the editor has expertise in the scientific or academic issue concerned, or
 - (ii) one or more persons with expertise in the scientific or academic issue concerned.
- (2) A defence under section 30A(2) of the *Defamation Act 2005* is sufficiently pleaded if it alleges that—
 - (a) the assessment was written by one or more of the persons who carried out the independent review of the matter, and
 - (b) the assessment was written in the course of that review.
- (3) A defence under section 30A(3) of the *Defamation Act 2005* is sufficiently pleaded if it alleges that the matter was contained in a fair summary of, or fair extract from, a matter or assessment for which there is a defence because of section 30A(1) or (2) of that Act.

[5] Rule 14.40 Defence of triviality

Insert after rule 14.40(2)—

Note. This rule applies to the publication of defamatory matter before the commencement of the *Defamation Amendment Act 2020*.

[6] Rule 15.19 Particulars in relation to statements of claim for defamation

Omit “known, and” from rule 15.19(1)(d). Insert instead “known,”.

[7] Rule 15.19(1)(f)

Insert after rule 15.19(1)(e)—

- (f) particulars of the serious harm that the publication has caused, or is likely to cause, to the reputation of the plaintiff.

[8] Rule 15.19(2)(c)

Insert after rule 15.19(2)(b)—

- (c) a copy of the concerns notice in respect of the matter concerned that was given to the defendant.

[9] Rule 15.26A

Insert after rule 15.26—

15.26A Particulars in relation to defence of publication of matter concerning issue of public interest

Without limiting rule 15.21, the particulars required by rule 15.1 for a defence under section 29A of the *Defamation Act 2005* must include particulars of the facts, matters and circumstances on which the defendant relies to establish that—

- (a) the matter concerns an issue of public interest, and
- (b) the defendant reasonably believed that the publication of the matter was in the public interest.

[10] Rule 15.27 Particulars in relation to defence of qualified privilege

Insert “, 29A, 30A” after “29” in rule 15.27(1)(b)(ii).

[11] Rule 15.27A

Insert after rule 15.27—

15.27A Particulars in relation to defence of scientific or academic peer review

- (1) Without limiting rule 15.21, the particulars required by rule 15.1 for a defence under section 30A(1) of the *Defamation Act 2005* must include particulars of the facts, matters and circumstances on which the defendant relies to establish that—
 - (a) the matter was published in a scientific or academic journal (whether published in electronic form or otherwise), and
 - (b) the matter relates to a scientific or academic issue, and
 - (c) an independent review of the matter’s scientific or academic merit was carried out before the matter was published in the journal by—
 - (i) the editor of the journal if the editor has expertise in the scientific or academic issue concerned, or
 - (ii) one or more persons with expertise in the scientific or academic

issue concerned.

- (2) Without limiting rule 15.21, the particulars required by rule 15.1 for a defence under section 30A(2) of the *Defamation Act 2005* must include particulars of the facts, matters and circumstances on which the defendant relies to establish that—
 - (a) the assessment was written by one or more of the persons who carried out the independent review of the matter, and
 - (b) the assessment was written in the course of that review.
- (3) Without limiting rule 15.21, the particulars required by rule 15.1 for a defence under section 30A(3) of the *Defamation Act 2005* must include particulars of the facts, matters and circumstances on which the defendant relies to establish that the matter was contained in a fair summary of, or fair extract from, a matter or assessment for which there is a defence because of section 30A(1) or (2) of that Act.

[12] Rule 15.30 Particulars in relation to defence of triviality

Insert after rule 15.30(2)—

Note. This rule applies to the publication of defamatory matter before the commencement of the *Defamation Amendment Act 2020*.