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SPECIAL SUPPLEMENT



New South Wales

Uniform Civil Procedure Rules (Amendment No 3) 2005

under the

Civil Procedure Act 2005

The Uniform Rules Committee made the following rules of court under the *Civil Procedure Act 2005* on 28 September 2005.

Jennifer Atkinson
Secretary of the Rules Committee

Rule 1 Uniform Civil Procedure Rules (Amendment No 3) 2005

Uniform Civil Procedure Rules (Amendment No 3) 2005

under the

Civil Procedure Act 2005

1 Name of Rules

These Rules are the *Uniform Civil Procedure Rules (Amendment No 3) 2005*.

2 Amendment of Uniform Civil Procedure Rules 2005

The *Uniform Civil Procedure Rules 2005* are amended as set out in Schedule 1.

Uniform Civil Procedure Rules (Amendment No 3) 2005

Amendments

Schedule 1

Schedule 1 Amendments

(Rule 2)

[1] Rule 3.4 Electronic filing of documents

Omit rule 3.4 (2). Insert instead:

- (2) In any proceedings, a document so specified may be filed in the court on behalf of a party, by means of the ECM system, by any registered user for the proceedings who is:
 - (a) a person who is authorised by rule 4.4 to sign documents on the party's behalf, or
 - (b) a person who has been directed to file the document by a person who is so authorised.
- (2A) When filed by means of the ECM system, a document that is required to be signed by a person is taken:
 - (a) to have been duly signed for the purposes of rule 4.4, and
 - (b) to have been duly authenticated for the purposes of section 14E of the *Electronic Transactions Act 2000*,
if the person's name is printed where his or her signature would otherwise appear.

[2] Rule 3.4A

Insert after rule 3.4:

3.4A Written record to be kept of direction to e-file document

- (1) A person who directs that a document be filed as referred to in rule 3.4 (2) (b) must make a written record of the fact that he or she has given such a direction.
- (2) If the person by whom the direction was given is a legal practitioner, the legal practitioner is taken:
 - (a) to have affirmed to the court that he or she has given the direction, and
 - (b) to have undertaken to the court that, if the court so directs, he or she will produce to the court the written record referred to in subrule (1).
- (3) A written direction for the purposes of rule 3.4 (2) (b) is taken to be a written record for the purposes of this rule.

Uniform Civil Procedure Rules (Amendment No 3) 2005

Schedule 1 Amendments

[3] Rule 3.9 Use of ECM system in business conducted in the absence of the public

Insert at the end of the rule:

- (2) A legal practitioner who is a registered user for any proceedings may participate in any such business:
 - (a) directly (the legal practitioner sends a communication in his or her own name), or
 - (b) indirectly (someone authorised by the legal practitioner sends a communication in the legal practitioner's name).
- (3) A legal practitioner who authorises someone else to send a communication, as referred to in subrule (2) (b), is taken to have affirmed to the court that he or she has actual knowledge of the contents of the communication.

[4] Rule 4.2 Documents to be filed to contain certain information

Insert after rule 4.2 (3):

- (4) In this rule, *originating process* does not include any process (such as a statement of cross-claim or cross-summons) by which a cross-claim is made.

[5] Rule 4.4 Signing documents

Omit rule 4.4 (1) and (2). Insert instead:

- (1) If, in any proceedings, a document is required to be signed by a party:
 - (a) in the case of a party who is represented by a solicitor, the document may not be signed by the party but must instead be signed:
 - (i) by the party's solicitor, or
 - (ii) by a solicitor acting as agent for the party's solicitor, or
 - (iii) by some other solicitor belonging to the same firm or organisation (whether as partner or employee) as the party's solicitor or party's solicitor's agent, and
 - (b) in the case of a party who is not represented by a solicitor, the document may be signed by the party and may also be signed by any other person who is authorised by these rules to commence proceedings on the party's behalf.
- (2) Subrule (1) is subject to the requirements of rule 35.3.

Uniform Civil Procedure Rules (Amendment No 3) 2005

Amendments

Schedule 1

[6] **Rule 4.4 (3)**

Omit “subrules (1) and (2)”. Insert instead “subrule (1)”.

[7] **Rule 4.13**

Omit the rule. Insert instead:

4.13 Place for filing

- (1) Subject to Part 3, a document (other than originating process) that is filed in relation to any proceedings must be filed:
 - (a) subject to paragraphs (b) and (c), in the same registry as that in which the originating process was filed, or
 - (b) if the proceedings have been transferred to another court, in the registry for that other court, or
 - (c) if the court has ordered that documents are to be filed in some other registry, in that other registry.
- (2) In this rule, *originating process* does not include any process (such as a statement of cross-claim or cross-summons) by which a cross-claim is made.

[8] **Rule 6.1 No step without originating process or notice of appearance**

Omit rule 6.1 (2) (a).

[9] **Rule 9.4 Defence**

Omit “the cross-claim”. Insert instead “a statement of cross-claim”.

[10] **Rule 9.5 Default of cross-defendant to cross-claim**

Omit “the cross-claim” where firstly occurring.

Insert instead “a statement of cross-claim”.

[11] **Rule 12.1 Discontinuance of claim by consent**

Omit rule 12.1 (1) (a). Insert instead:

- (a) so far as they concern the whole of the plaintiff’s claim for relief, with the consent of each other active party, or

[12] **Rule 12.8**

Omit the rule. Insert instead:

12.8 Additional grounds for dismissal of proceedings by Supreme Court (cf SCR Part 32A, rules 1 and 2)

- (1) This rule applies to proceedings in the Supreme Court.

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Schedule 1 Amendments

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- (2) The Supreme Court may, of its own motion, make an order dismissing the proceedings if it appears from the Court's records that, for over 5 months, no party to the proceedings has taken any step in the proceedings.
 - (3) Such an order may not be made:
 - (a) if the proceedings, or any part of the proceedings, are listed for a future date, or
 - (b) if there are any notices of motion or other applications in the proceedings that are yet to be determined, or
 - (c) if a party satisfies the Supreme Court that such an order should not be made.
 - (4) Before such an order is made, notice of the proposed order is to be given to the plaintiff and to each other active party, being a notice that gives each of them a reasonable opportunity to be heard in relation to the proposal.
 - (5) Such a notice is to be sent by post, addressed to the person to whom it is directed:
 - (a) at the person's address for service, or
 - (b) if the person has no address for service, at the person's last known address,
 in an envelope marked with the Supreme Court's return address.
 - (6) A notice, posted as referred to in subrule (5), is taken to have been received by the person to whom it was addressed even if it is returned to the Supreme Court as having not been delivered to the addressee.

[13] Rule 21.3 List of documents to be prepared

Insert "(other than excluded documents)" after "all of the documents" in rule 21.3 (1).

[14] Rule 41.13 Payment to partners

Omit "a master". Insert instead "an associate Judge of the Supreme Court".

[15] Rule 41.14 Payment to executors or administrators

Omit "a master" from rule 41.14 (1) (a).

Insert instead "an associate Judge of the Supreme Court".

[16] Rule 41.14 (2) (a)

Omit "a master". Insert instead "an associate Judge of the Supreme Court".

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Schedule 1

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- [17] **Part 45, Division 3, heading**
Omit “master”. Insert instead “associate Judge”.
- [18] **Rule 45.13 Notice of contention**
Omit “master”. Insert instead “associate Judge”.
- [19] **Schedule 1 Application of rules**
Omit “, 98 and 130” from Column 3 in relation to a Local Court sitting in its Small Claims Division.
Insert instead “and 98”.
- [20] **Schedule 4 Documents to be filed by means of ECM system**
Insert in Schedule 4:
Statement of claim
Statement of cross-claim
Summons
Cross-summons
Notice of appearance
Defence
Reply
Notice of motion
Affidavit
Subpoena
Originating process under the *Corporations Act 2001* of the Commonwealth
Interlocutory process under the *Corporations Act 2001* of the Commonwealth
Liquidator’s consent under the *Corporations Act 2001* of the Commonwealth
- [21] **Dictionary**
Omit the definition of *hearing*.

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