



New South Wales

Uniform Civil Procedure Rules (Amendment No 63) 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 objects of these Rules are:

- (a) to replace Part 3 of the *Uniform Civil Procedure Rules 2005* to make provision with respect to the use of Online Registry and e-Court electronic case management systems, and
- (b) to update the list of documents that are to be filed by means of the electronic case management system in relation to proceedings in the Land and Environment Court.

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1 Name of Rules

The Rules are the *Uniform Civil Procedure Rules (Amendment No 63) 2013*.

2 Commencement

These Rules commence on 10 February 2014 and are required to be published on the NSW legislation website.

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

[1] Part 3

Omit the Part. Insert instead:

Part 3 Electronic case management

Division 1 Preliminary

3.1 Definitions

(1) In this Part:

applicable ECM system means:

- (a) in relation to proceedings in the Supreme Court, District Court or Local Court—Online Registry, and
- (b) in relation to proceedings in the Land and Environment Court—e-Court.

coversheet means a page that is generated by Online Registry that includes details about the case in which the document is being filed (including the case number).

e-Court means the electronic case management system of that name established under clause 2 of Schedule 1 to the *Electronic Transactions Act 2000*.

Online Registry means the electronic case management of that name established under clause 2 of Schedule 1 to the *Electronic Transactions Act 2000*.

registered user, in relation to an applicable ECM system, means a person who is registered as a user of the system.

upload, in relation to a document, means to transfer an electronic version of the document from a computer or other device to the ECM system.

(2) In this Part, a reference to filing a document in a court includes a reference to any other method of sending a document to the court.

3.2 Application of Part

This Part applies to those courts, and for the purposes, for which the use of an applicable ECM system is authorised by an order in force under clause 3 of Schedule 1 to the *Electronic Transactions Act 2000*.

Division 2 Registration of users of applicable ECM system

3.3 Registration of users

- (1) Any person may apply to be a registered user of an applicable ECM system, by completing and submitting the application form, and agreeing to comply with the terms and conditions, published on:
 - (a) in the case of Online Registry—the Online Registry website, or
 - (b) in the case of e-Court—the Land and Environment Court website.
- (2) A person applying to be a registered user of an applicable ECM system must provide such information as may be required by the application form

including, in the case of a person applying to be a registered user of Online Registry, whether or not the applicant is a legal practitioner.

- (3) A registrar of the court may direct that the registration of a person be cancelled if, in the opinion of the registrar, the person should not have been registered as a user of the applicable ECM System.

Division 3 Filing documents using applicable ECM System— general

3.4 Electronic filing of documents

- (1) This rule applies:
 - (a) in relation to proceedings in the Supreme Court, District Court or Local Court—to any document that is permitted to be filed using Online Registry, and
 - (b) in relation to proceedings in the Land and Environment Court—to documents of a kind referred to in Schedule 4.
- (2) In any proceedings, a document permitted to be filed using the applicable ECM system may be filed in the court on behalf of a party to the proceeding by a registered user of an applicable ECM system who:
 - (a) is authorised under rule 4.4 to sign documents on the party's behalf, or
 - (b) has been given permission to file the document on behalf of a person who is authorised under rule 4.4 to sign documents on the party's behalf.
- (3) A document that is filed by means of the applicable ECM system is taken to have been filed when the applicable ECM system gives notice of acceptance of the document.
- (4) Notice of acceptance of a document, and of the date and time of the acceptance, is to be given, by means of the applicable ECM system, to the registered user by whom the document was filed.
- (5) Despite a document being submitted to be filed by means of the applicable ECM system, and notice of acceptance given by the applicable ECM system, the document may subsequently be rejected by the court if:
 - (a) the document fails to comply with any substantial requirements of the approved form or the rules in relation to such a document, or
 - (b) the document was filed using e-Court and any fee payable in respect of the document is not received by the court within 2 working days after the notice of acceptance being given.

3.5 Uploading documents

- (1) In this rule, *document* means a document submitted for filing in accordance with rule 3.4 and includes any attachment that forms part of or accompanies that document.
- (2) This rule applies to any document that may be, or is required to be, uploaded and submitted for filing by an applicable ECM system.
- (3) A true and complete copy of the document must be uploaded in a format that is permitted by the applicable ECM system.
- (4) Each document uploaded must be accurately described.

- (5) If the document is an affidavit, the description of the document must include the name of the deponent and the date that the affidavit was sworn or affirmed.
- (6) If a document that is required to be signed under rule 4.4 is uploaded, the document must be a scanned copy that includes a clear, legible copy of the signature of the person who signed the document.
- (7) If an affidavit or statement of evidence is uploaded, it must include:
 - (a) a clear, legible copy of the signature of the deponent of the affidavit or person making the statement, and
 - (b) if the document has been witnessed, a clear legible copy of the signature of the witness, and
 - (c) if the document is an affidavit executed in New South Wales, a duly completed certificate under the *Oaths Act 1900*.
- (8) A person who has filed a document by uploading it is taken to have agreed that, if the court so requires, he or she will file the original document in accordance with the court's directions.
- (9) The original signed copy of a document filed under this rule must be kept until the later of the following:
 - (a) 2 years from after the date that proceedings in which the document was filed are determined by judgment, order or discontinuance, or
 - (b) if the proceedings in which the document was filed is appealed, 2 years after the date that appeal is determined by judgment, order or discontinuance, or
 - (c) 2 years after the date the document was filed.

3.6 Electronic issuing of a document

- (1) The court may, by means of an applicable ECM system, issue a document to any party to proceedings who is a registered user of the applicable ECM system.
- (2) The date and time at which the document was issued must be set out in the document.
- (3) When issued by means of an applicable ECM system, a document that is required to be signed by a person is taken to have been duly authenticated for the purposes of clause 5 of Schedule 1 to the *Electronic Transactions Act 2000* if the person's name is printed where his or her signature would otherwise appear.

3.7 Electronic service of a document

A party to any proceedings before the court may use electronic mail to serve a document on any other party to proceedings, whether by means of an applicable ECM system or otherwise, but only with the consent of the other party.

3.8 Use of applicable ECM system in business conducted in absence of public

- (1) Any business that, pursuant to section 71 of the *Civil Procedure Act 2005*, may be conducted in the absence of the public may be conducted by electronic communication sent and received by means of an applicable ECM system, as provided by clause 9 of Schedule 1 to the *Electronic Transactions Act 2000*.

- (2) A legal practitioner who is a registered user of an applicable ECM system in relation to proceedings may participate in any such business:
 - (a) directly (the legal practitioner sends 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 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.

Division 4 Filing documents using Online Registry

3.9 Party filing document required to serve notice of listing

If, as a result of a document being filed using Online Registry, the registrar of the court lists proceedings, the party filing the document is required to serve any notice of listing issued by the registrar in relation to that listing on all other active parties.

3.10 Request for a certified copy of a judgment or order

- (1) This rule applies to a request by a party or on behalf of a party for a sealed copy of a judgment or order submitted to the court using the Online Registry.
- (2) A request under this rule does not constitute a document being filed in the proceedings.
- (3) If the request is a valid request then a sealed copy of the judgment will be issued.

3.11 Filing of affidavits using Online Registry's XML filing

- (1) This rule applies to an affidavit that is filed in court by means of the Online Registry's XML filing facility.
- (2) The person filing the affidavit is taken:
 - (a) to have affirmed to the court that he or she has possession of the original affidavit, and
 - (b) to have undertaken to the court that, if the court so directs, he or she will file the original affidavit in accordance with the court's directions.
- (3) The original signed copy of the affidavit filed under this rule must be kept until the later of the following:
 - (a) 2 years from after the date that proceedings in which the document was filed are determined by judgment, order or discontinuance, or
 - (b) if the proceedings in which the document was filed is appealed, 2 years after the date that appeal is determined by judgment, order or discontinuance, or
 - (c) 2 years after the date the document was filed.

3.12 Written record to be kept of direction to e-file document submitted using Online Registry's XML filing or if scanned copy of document is not uploaded

- (1) If a document is submitted for filing using:
 - (a) the Online Registry's XML filing facility, or

- (b) the Online Registry facility where Online Registry generates the document and a copy of the document is not uploaded by the user:
the person who has given permission for a document to 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 that permission.
- (2) The person who gave the permission is taken:
 - (a) to have affirmed to the court that he or she has given the permission, 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) If any proceedings in which a document has been filed and the court requires production of the written record referred to in subrule (1), it may also stay proceedings until the record is produced.
- (4) A written permission for the purposes of rule 3.4 (2) (b) is taken to be a written record for the purposes of this rule.
- (5) A written record must be kept until the later of the following:
 - (a) 2 years from when the proceedings in which the document was filed are determined by a judgment, order or discontinuance, or
 - (b) if the proceedings in which the document was filed is appealed, 2 years from when that appeal is determined by a judgment, order or discontinuance, or
 - (c) 2 years from the date on which the document was filed.

3.13 Filing of wills

- (1) This rule applies to a will that is required to be filed in court together with an application for probate of the will or for administration of a person's estate with the will annexed, if the application is filed by means of Online Registry.
- (2) A true and complete scanned copy of the will must be submitted with the application.
- (3) The original will (or if the application relates to a copy of the will, the copy of the will sought to be proved) must be filed at, or mailed to, the Sydney Registry of the Supreme Court within 7 days after the date on which the application is filed.
- (4) The will filed under subrule (3) must be accompanied by a coversheet that includes the case number assigned to the application.
- (5) The person filing the application is taken to have affirmed to the court that he or she has possession of the will when the application is filed and that the will will be filed at or sent to the court in accordance with subrule (4).
- (6) In this rule, *will* includes any codicil or other testamentary instrument.

3.14 Request to issue subpoena

- (1) This rule applies to a request on behalf of a party to issue a subpoena submitted to the court using the Online Registry.
- (2) A request to issue a subpoena using the online registry can only be made on behalf of a party who is represented by a solicitor.
- (3) A request to issue a subpoena is made by:
 - (a) providing the name of the person to whom the subpoena is addressed, and

- (b) uploading a copy of the proposed subpoena in the approved form.
- (4) The registered user who submitted the request to issue a subpoena will receive confirmation that the request has been accepted when a coversheet is inserted as the first page of the uploaded subpoena in accordance with rule 3.16.
- (5) If the request to issue a subpoena is for a subpoena for production and to allocate an early return date, the coversheet will also include a notice of the date, time and place where the person is required to attend to produce documents sought under the subpoena if the documents are not produced to the registry beforehand.
- (6) The coversheet will be sealed.
- (7) The coversheet is taken to be part of the issued subpoena for the purposes of these rules.

3.15 Coversheet generated by Online Registry

- (1) The coversheet will include a seal and a note of the date and time of filing.
- (2) If a document is submitted for filing under rule 3.5 and accepted by the Online Registry, the registered user who submitted the document will be sent a copy of the document submitted for filing with a coversheet inserted as the first page of the document.
- (3) If a coversheet has been inserted as the first page of the document in accordance with subrule (2), the coversheet is taken to be part of the document for the purposes of this Part.
- (4) If, as a result of the filing of a document, Online Registry has automatically listed the proceedings, then the coversheet will include a notice of the date, time and place that the proceedings have been listed.
- (5) If the document submitted for filing under rule 3.5 includes the other associated documents as attachments under that rule, then the document and the other associated documents will all be included under the one coversheet.

[2] Schedule 4

Omit the Schedule. Insert instead:

Schedule 4 Documents relating to proceedings in the Land and Environment Court

Affidavit

Agreement pursuant to section 34 (3) of the *Land and Environment Court Act 1979*

Application

Cross-claim

Cross-summons

Defence

Draft conditions of development consent

Draft conditions of other approvals

Expert report (including a joint expert report)

Notice of appearance

Notice of discontinuance
Notice of motion
Notice to produce
Points of claim
Points of defence
Points of reply
Proposed orders (including proposed consent orders)
Reply
Statement identifying issues for separate determination
Statement of agreed facts
Statement of claim
Statement of cross-claim
Statement of evidence
Statement of facts and contentions
Statement of facts and contentions in reply
Statement of preliminary points of law
Submission
Subpoena
Summons
Undertaking to the Court
Any other document directed by the Court to be filed electronically