



Australian Capital Territory

# Court Procedures Act 2004

A2004-59

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Australian Capital Territory

# Court Procedures Act 2004

**A2004-59**

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An Act to provide for certain matters relating to courts and tribunals, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

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2003 233B

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Court Procedures Act 2004*.

### 2 Commencement

This Act commences on a day fixed by the Minister by written notice.

*Note 1* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

*Note 3* If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*fee*, for part 3 (Court and tribunal fees)—see section 12.’ means that the term ‘fee’ is defined in that section for part 3.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

#### 4 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

#### 5 Objects of Act

- (1) The objects of this Act include—
  - (a) recognising the importance of court procedures in our system of justice; and
  - (b) facilitating cooperation between ACT courts in the common goals of—
    - (i) improved access to justice through the development of procedures that are, as far as practicable, the same for all ACT courts; and
    - (ii) better court procedures.
- (2) In subsection (1):

*court* includes a tribunal that is a prescribed tribunal under section 6.

## Part 2 Court rules and forms

### 6 Definition for pt 2 and sch 1

In this part and schedule 1:

*prescribed tribunal* means a tribunal prescribed under the regulations for this part.

### 7 Rule-making power

- (1) The rule-making committee may make rules in relation to the following:
  - (a) the practice and procedure of Territory courts, prescribed tribunals and their registries;
  - (b) anything else mentioned in schedule 1 (Subject matter for rules).

*Note 1* The power to make rules for a court or tribunal includes power to make rules in relation to any matter necessary or convenient to be prescribed for carrying out or giving effect to the jurisdiction of the court or tribunal under any Territory or Commonwealth law that authorises or requires anything to be done in or in relation to the court or tribunal (see Legislation Act, s 45 (Power to make court rules)).

*Note 2* Rules must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) Rules are taken to be made by the rule-making committee if they are signed by 3 or more committee members, 1 of whom must be the member mentioned in section 9 (2) (a) and another of whom must be the member mentioned in section 9 (2) (d) or (e).
- (3) This section does not limit any inherent or other power of a court, judge or magistrate to control proceedings.



**8 Approved forms**

- (1) The rule-making committee may, in writing, approve forms—
  - (a) for this Act; or
  - (b) for use in or in relation to Territory courts, prescribed tribunals and their registries.

*Note* For other provisions about forms, see Legislation Act, s 255.

- (2) If the rule-making committee approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) A form is taken to be approved by the rule-making committee if it is approved by 3 or more committee members, 1 of whom must be the member mentioned in section 9 (2) (a) and another of whom must be the member mentioned in section 9 (2) (d) or (e).
- (4) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

**9 Rule-making committee**

- (1) A rule-making committee is established.
- (2) The rule-making committee consists of the following members:
  - (a) the Chief Justice;

*Note* The Chief Justice may delegate this function to a resident judge (see s 10).

- (b) the President of the Court of Appeal or, if the President and Chief Justice are the same person, a resident judge appointed by the Chief Justice;

*Note 1* The President may delegate this function to a resident judge (see s 10).

*Note 2* For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

(c) another resident judge appointed by the Chief Justice or, if no appointment is made, the master;

(d) the Chief Magistrate;

*Note* The Chief Magistrate may delegate this function to a magistrate (see s 10).

(e) another magistrate appointed by the Chief Magistrate.

- (3) The rule-making committee may conduct its proceedings in the way it decides, whether by holding meetings or in any other way.
- (4) The Chief Justice is the chairperson of the rule-making committee.
- (5) However, if the Chief Justice is not personally present at a meeting of the rule-making committee, the President is to chair the meeting if personally present at the meeting.
- (6) Also, if the Chief Justice and the President are not personally present at a meeting of the rule-making committee, the member present chosen by the committee is to chair the meeting.
- (7) The Chief Justice must approve a public servant as secretary of the rule-making committee.

## **10 Delegation by Chief Justice, President and Chief Magistrate**

- (1) The Chief Justice may delegate a function under this part to a resident judge.
- (2) The President of the Court of Appeal may delegate a function under this part to a resident judge.
- (3) The Chief Magistrate may delegate a function mentioned under this part to a magistrate.

- (4) However, the Chief Justice, the President or the Chief Magistrate may not delegate the function of being a member of the rule-making committee to a person who is already a member of the committee because of an appointment under section 9 (2).

*Note* For the making of delegations and the exercise of delegated functions, see Legislation Act, pt 19.4. In particular, the delegation may have effect only in stated circumstances, eg if the appointer is away from the ACT.

## **11 Advisory committee**

- (1) An advisory committee is established.
- (2) The advisory committee consists of the following members:
- (a) a resident judge appointed by the Chief Justice;  
*Note* For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.
  - (b) the master;
  - (c) 2 magistrates appointed by the Chief Magistrate;
  - (d) the registrar of the Supreme Court;
  - (e) the registrar of the Magistrates Court;
  - (f) a person appointed by the Australian Capital Territory Bar Association to represent the association;
  - (g) a person appointed by the Law Society of the Australian Capital Territory to represent the society;
  - (h) the director of public prosecutions;
  - (i) the parliamentary counsel;
  - (j) a public servant appointed by the chief executive;
  - (k) the secretary of the rule-making committee.

- (3) The functions of the advisory committee are to—
  - (a) initiate, consider, develop, and advise the rule-making committee on, proposals for making rules and approving forms under this Act; and
  - (b) make recommendations to the rule-making committee about the making of rules and approving of forms under this Act.
- (4) The advisory committee must consider, and advise the rule-making committee on, proposals for making rules and approving forms under this Act that are referred to it by the rule-making committee.
- (5) The advisory committee may conduct its proceedings in the way it decides, whether by holding meetings or in any other way.
- (6) The resident judge mentioned in subsection (2) (a) is the chairperson of the advisory committee.
- (7) However, if the resident judge is not present at a meeting of the advisory committee, the master is to chair the meeting if present at the meeting.
- (8) Also, if the resident judge and the master are not present at a meeting of the advisory committee, the member present chosen by the committee is to chair the meeting.

## Part 3 Court and tribunal fees

### 12 Definitions for pt 3

In this part:

*determined fee* means a fee determined under this part.

*essential services consumer council*—means the Essential Services Consumer Council established under the *Utilities Act 2000*, section 169.

*fee* includes a charge and a tax.

*relevant legislation* means any of the following:

- (a) the *Administrative Appeals Tribunal Act 1989*;
- (b) the *Consumer and Trader Tribunal Act 2003*;
- (c) the *Consumer Credit (Administration) Act 1996*;
- (d) the *Coroners Act 1997*;
- (e) this Act;
- (f) the *Discrimination Act 1991*;
- (g) the *Leases (Commercial and Retail) Act 2001*;
- (h) the *Magistrates Court Act 1930*;
- (i) the *Residential Tenancies Act 1997*;
- (j) the *Supreme Court Act 1933*;
- (k) the *Utilities Act 2000*, part 11;

- (l) any other legislation prescribed under the regulations for this definition.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

**tribunal** means any of the following:

- (a) the administrative appeals tribunal;
- (b) the consumer and trader tribunal;
- (c) the credit tribunal;
- (d) the discrimination tribunal;
- (e) the essential services consumer council;
- (f) the residential tenancies tribunal.

### 13 Determination of fees

- (1) The Minister may, in writing, determine fees for any of the following purposes:
  - (a) proceedings in a court or tribunal, and matters incidental to the proceedings, including—
    - (i) for the Supreme Court—the admission and enrolment of lawyers; and
    - (ii) the service and execution of the process of a court or tribunal; and
    - (iii) the taxation of costs by the registrar or other officers of a court or tribunal;
  - (b) facilities and services provided by the court or tribunal, including the service and execution of the process of a court of the Commonwealth, a State, another Territory or a foreign country;

(c) the general purposes of relevant legislation.

*Note 1* The Legislation Act contains provisions about the making of determinations and regulations relating to fees and charges (see pt 6.3).

*Note 2* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations and rules (see Legislation Act, s 104).

(2) A determination under subsection (1) may provide for any of the following matters:

(a) exempting people from liability to pay determined fees, completely or partly, in all or particular circumstances;

(b) remitting, refunding or waiving, by a registrar of a court or tribunal, determined fees, completely or partly, in particular circumstances;

(c) deferring, by a registrar of a court or tribunal, liability to pay determined fees, completely or partly, in particular circumstances.

(3) A determination under subsection (1) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

## **14 Payment of fees**

(1) A determined fee is payable, in advance, in accordance with the determination that determined the fee, but subject to this section.

(2) A determined fee is payable on notice from the registrar of the court or tribunal if it is worked out by reference to expenses actually incurred in exercising the function, or in providing the facility or service, for which the fee is payable.

**15 Remission, refund, deferral, waiver and exemption of fees**

- (1) A determined fee may be remitted or refunded, or liability for its payment deferred, in accordance with the determination that determined the fee.
- (2) A determined fee is not payable—
  - (a) if the person otherwise liable to pay the fee or charge is—
    - (i) exempt from liability to pay the fee under the determination that determined the fee; or
    - (ii) exempt from paying the fee under the *Legal Aid Act 1977*, section 93 (1) (Exemption from fees and taxes); or
    - (iii) legally assisted under a scheme or service provided or approved by the Attorney-General; or
  - (b) if the registrar of the court or tribunal waives payment by a person of the fee completely or partly because the registrar considers that payment of the fee would impose hardship on the person—to the extent of the waiver; or
  - (c) for lodging a document, or for the service and execution of process, in relation to a proceeding in the Supreme Court—
    - (i) in a criminal matter, including an appeal; or
    - (ii) under the *Coroners Act 1997*; or
    - (iii) under the *Legal Practitioners Act 1970*, part 8 (Discipline); or
    - (iv) under any of the following Acts:
      - (A) the *Adoption Act 1993*;
      - (B) the *Children and Young People Act 1999*;
      - (C) the *Protection Orders Act 2001*;



- (D) the *Guardianship and Management of Property Act 1991*;
- (E) the *Mental Health (Treatment and Care) Act 1994*;
- (F) the *Testamentary Guardianship Act 1984*;
- (v) on appeals in relation to the following matters:
  - (A) a matter under the *Children and Young People Act 1999*;
  - (B) a matter under the *Mental Health (Treatment and Care) Act 1994*;
  - (C) a decision of the Guardianship and Management of Property Tribunal; or
- (vi) on a matter that has been remitted to the court by the High Court under the *Judiciary Act 1903* (Cwlth), section 44; or
- (vii) in relation to which a convention to which Australia is a party provides that a fee is not to be payable; or
- (viii) on an application to the court for an extension of the time within which a proceeding may be begun; or
- (ix) on an application mentioned in the *Juries Act 1967*, section 24 (10), section 26A (2) or section 51A (3); or
- (d) for the laying of an information in the Magistrates Court—
  - (i) by the director of public prosecutions acting in the exercise of an official function under a Territory law; or
  - (ii) by a police officer acting in the exercise of an official function under a Territory law; or
  - (iii) for an offence against the *Magistrates Court Act 1930*, section 290 (Contempt in face of court); or

- (e) if it is not payable under another provision of this Act or another Territory law.

*Note* The Territory Crown is not liable to pay a determined fee in a civil proceeding (see s 28 (Court fees and charges)).

- (3) If the administrative appeals tribunal is satisfied that a proceeding ends in a way that is favourable to an applicant for a review by the tribunal of a decision, it may order another party to the proceeding to pay the amount of the application fee to the applicant.
- (4) This section is subject to section 16 and section 17.

**16 Recovery of fees in civil proceedings if fees otherwise not payable**

- (1) This section applies in relation to a civil proceeding in the Supreme Court or the Magistrates Court, or a proceeding in a tribunal, between at least 2 parties (the *first party* and the *second party*), if—
- (a) a filing fee, or a fee for the service and execution of process, otherwise payable by the first party is—
- (i) not payable, completely or partly, because of the exemption of the first party under this part; or
- (ii) remitted, refunded or waived, completely or partly, under this part; and
- (b) judgment is given or entered, or an order is made, in favour of the first party; and
- (c) the first party's costs are payable by the second party.
- (2) If this section applies, the second party must pay to the registrar of the court or tribunal the amount of the fee exempted, remitted, refunded or waived.

**17 Recovery of fees in criminal proceedings if fees not otherwise payable**

- (1) This section applies in relation to a criminal proceeding in the Magistrates Court if—
  - (a) the fee (the *information fee*) that would otherwise be payable by the informant for the laying of the information in the proceeding is not payable, completely or partly, under this part; and
  - (b) the defendant is convicted of the offence alleged in the information and ordered to pay a fine.
- (2) If this section applies, the defendant must pay to the registrar of the Magistrates Court, in addition to the fine—
  - (a) if payment of the fee is waived in part under this part—the amount of the fee waived; or
  - (b) in any other case—the information fee.

**18 Review of decisions**

- (1) This section applies to any of the following decisions made under this part by the registrar of a court or tribunal in relation to a person (the *eligible person*):
  - (a) a decision refusing to remit, completely or partly, a determined fee payable by the person;
  - (b) a decision refusing to refund, completely or partly, a determined fee paid by the person;
  - (c) a decision refusing to defer, completely or partly, the person's liability to pay a determined fee;
  - (d) a decision refusing to waive, completely or partly, payment of a determined fee by the person;

- (e) a decision refusing to allow the person the benefit of an exemption to pay a determined fee.
- (2) If the registrar makes a decision to which this section applies, the registrar must give written notice of the decision to the eligible person.
- (3) The notice must tell the eligible person that the person may—
  - (a) apply to the registrar for a statement of reasons for the decision; and
  - (b) apply for review of the decision under this section.
- (4) The eligible person may apply to the registrar for a statement of reasons for the decision within 28 days after the day when the person is given notice of the decision by the registrar.
- (5) The eligible person may apply to the court or tribunal for review of the decision within—
  - (a) 28 days after the day the person is given notice of the decision by the registrar; or
  - (b) if the person applies within the 28 days for a statement of reasons for the decision—28 days after the day when the person is given the statement of reasons.
- (6) For the review, the court or tribunal—
  - (a) must be constituted by—
    - (i) for the Supreme Court—a judge or the master; or
    - (ii) for the Magistrates Court—a magistrate; or
    - (iii) for a tribunal—a member of the tribunal; and
  - (b) may make the orders the court or tribunal considers appropriate.
- (7) A fee is not payable for an application under this section.

## **Part 4**                      **Crown proceedings**

### **Explanatory note**

The remaining provisions of this part are relocated from the *Crown Proceedings Act 1992* by amendments in the *Court Procedures (Consequential Amendments) Act 2004*.

### **Division 4.1**                      **Preliminary**

#### **20**                      **Definitions for pt 4**

In this part:

*corresponding law* means a law of a State or another Territory that is declared under the regulations to be a law that corresponds to this part.

*Crown* includes a Minister, instrumentality or agency of the Crown and a person prescribed under the regulations.

*judgment* means any judgment or order of a court.

*proceeding* means civil proceeding.

*the Territory* includes a Minister, instrumentality or agency of the Territory and a person prescribed under the regulations.

*the Territory Crown* means the Crown in right of the Territory.

#### **Division 4.2**                      **Proceedings by and against Crown generally**

#### **Division 4.3**                      **Provisions applying only to the Territory**

#### **Division 4.4**                      **Other provisions**

## **Part 5** Court security

### **Explanatory note**

The provisions of this part are relocated from the *Court Security Act 2001* by amendments in the *Court Procedures (Consequential Amendments) Act 2004*.

### **40** Definitions for pt 5

In this part:

## Part 6                      Miscellaneous

### 53                      **Assignment of earnings not enforceable**

- (1) An assignment of earnings is not enforceable.
- (2) Subsection (1) has effect regardless of—
  - (a) the nature of the instrument effecting the assignment; or
  - (b) the nature of the transaction that gave rise to the assignment.
- (3) In this section:

#### **Explanatory note**

A definition of *earnings* is relocated to this section from the *Earnings (Assignment and Attachment) Act 1966*, section 4 by an amendment in the *Court Procedures (Consequential Amendments) Act 2004*.

### 54                      **Regulation-making power**

The Executive may make regulations for this Act.

*Note*                      Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.





Magistrates Court (Civil Jurisdiction) (Solicitors' Costs) Regulations 1982 is—

- (a) in relation to anything to which the *Magistrates Court Act 1930* applies—a reference to the corresponding provision of that Act; and
  - (b) in relation to anything to which the *Magistrates Court (Civil Jurisdiction) Rules 2004* applies—a reference to the corresponding provision of those rules.
- (3) In an Act, statutory instrument or document, a reference to the *Magistrates Court Act 1930* is, in relation to anything to which the *Magistrates Court Rules 1932* applies, a reference to those rules.
- (4) In an Act, statutory instrument or document, a reference to a provision of the *Magistrates Court Act 1930* is—
- (a) in relation to anything to which the *Magistrates Court Rules 1932* applies—a reference to the corresponding provision of those rules; and
  - (b) in relation to a provision relocated or renumbered as another provision of that Act by this Act—a reference to the corresponding provision of that Act.
- (5) In an Act, statutory instrument or document, a reference to the *Magistrates Court Act 1930*, part 13A or the *Supreme Court Act 1933*, section 37, section 37A, section 37B, section 37C or section 37D is, in relation to anything to which this Act, part 3 applies, a reference to the corresponding provision of part 3.
- (6) In an Act, statutory instrument or document, a reference to any of the following Acts is, in relation to anything to which this Act applies, a reference to this Act:
- *Arrest on Mesne Process Act 1902*
  - *Court Security Act 2001*
  - *Crown Proceedings Act 1992*
  - *Earnings (Assignment and Attachment) Act 1966*

- *Judgment Creditors Remedies Act 1901*
- *Judiciary (Stay of Proceedings) Act 1933*.

- (7) In an Act, statutory instrument or document, a reference to a provision of an Act mentioned in subsection (6) is, in relation to anything to which this Act applies, a reference to the corresponding provision of this Act.
- (8) This section expires on the existing rules expiry day.
- (9) In this section:  
*existing rules expiry day*—see section 60 (3).

## Division 7.2 Arrest on mesne process

### Explanatory note

The remaining provisions of this division are relocated from the *Arrest on Mesne Process Act 1902* by amendments in the *Court Procedures (Consequential Amendments) Act 2004*.

### 62 Meaning of *capias* for div 7.2

In this division:

*capias* means *capias ad respondendum*.

### 74 Expiry of div 7.2

- (1) This division expires on the existing rules expiry day or, if the rules fix an earlier expiry day for this division, that day.
- (2) In this section:  
*existing rules expiry day*—see section 60 (3).

## Division 7.3 Attachment of earnings

### Explanatory note

The remaining provisions of this division are relocated from the *Earnings (Assignment and Attachment) Act 1966* by amendments in the *Court Procedures (Consequential Amendments) Act 2004*.

**76 Definitions for div 7.3**

In this division:

*earnings*—see section 53 (3).

**78 Expiry of div 7.3**

(1) This division expires on the existing rules expiry day or, if the rules fix an earlier expiry day for this division, that day.

(2) In this section:

*existing rules expiry day*—see section 60 (3).

**Division 7.4 Stay of proceedings**

**Explanatory note**

The remaining provisions of this division are relocated from the *Judiciary (Stay of Proceedings) Act 1933* by amendments in the *Court Procedures (Consequential Amendments) Act 2004*.

**83 Expiry of div 7.4**

(1) This division expires on the existing rules expiry day or, if the rules fix an earlier expiry day for this division, that day.

(2) In this section:

*existing rules expiry day*—see section 60 (3).

**Division 7.5 Set-off of debts**

**Explanatory note**

The remaining provisions of this division are relocated from the *Set-off of Debts Act 1728* 2 Geo 2 c 22 and the *Set-off of Debts Act 1735* 8 Geo 2 c 24 by amendments in the *Court Procedures (Consequential Amendments) Act 2004*.

**86 Expiry of div 7.5**

(1) This division expires on the existing rules expiry day or, if the rules fix an earlier expiry day for this division, that day.

(2) In this section:

*existing rules expiry day*—see section 60 (3).

## **Division 7.6 Judgment creditors remedies**

### **Explanatory note**

The remaining provisions of this division are relocated from the *Judgment Creditors Remedies Act 1901* by amendments in the *Court Procedures (Consequential Amendments) Act 2004*.

### **94 Expiry of div 7.6**

(1) This division expires on the existing rules expiry day or, if the rules fix an earlier expiry day for this division, that day.

(2) In this section:

*existing rules expiry day*—see section 60 (3).

## Part 8 Transitional

### 100 New Magistrates Court (Civil Jurisdiction) Rules

- (1) The provisions in schedule 2 (as amended by the *Court Procedures (Consequential Amendments) Act 2004*) are taken, on the commencement of this section, to be rules (the *interim rules*) made under this Act, part 2.
- (2) To remove any doubt and without limiting subsection (1), the interim rules may be amended or repealed as if they had been made as rules by the rule-making committee under this Act, part 2.
- (3) To remove any doubt, the interim rules are taken—
  - (a) to have been notified under the Legislation Act on the day this Act is notified; and
  - (b) to have commenced on the day this section commences; and
  - (c) not to be required to be presented to the Legislative Assembly under the Legislation Act, section 64 (1).
- (4) Subsections (1) to (3) are laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (5) This section expires on the day it commences.

### 101 Rules and forms in force under Supreme Court Act

- (1) The *Supreme Court Rules* (other than schedule 1), as in force immediately before the commencement of this section, are taken to have been made under this Act, part 2.
- (2) The *Supreme Court (Admission of Legal Practitioners) Rules*, as in force immediately before the commencement of this section, are taken to have been made under this Act, part 2.

- (3) A form in the *Supreme Court Rules*, schedule 1, as in force immediately before the commencement of this section, is taken to be a form approved under this Act, part 2.
- (4) A form approved under the *Supreme Court Act 1933*, section 75 immediately before the commencement of this section is taken to be a form approved under this Act, part 2.
- (5) This section expires on the day it commences.

**102 Rules and forms in force under Magistrates Court Act**

- (1) The *Magistrates Court Rules 1932*, as in force immediately before the commencement of this section, are taken to have been made under this Act, part 2.
- (2) A form approved under the *Magistrates Court Act 1930*, section 256 immediately before the commencement of this section is taken to be a form approved under this Act, part 2.
- (3) This section expires on the day it commences.

**103 Forms in force under Magistrates Court (Civil Jurisdiction) Act etc**

- (1) A form approved under a relevant provision immediately before the commencement of this section is taken to be a form approved under this Act, part 2.
- (2) In this section:

*relevant provision* means any of the following provisions:

- *Children and Young People Act 1999*, section 58
- *Common Boundaries Act 1981*, section 29
- *Coroners Act 1997*, section 101
- *Magistrates Court (Civil Jurisdiction) Act 1982*, section 471
- *Protection Orders Act 2001*, section 96.

- (3) A form approved under the *Crimes Act 1900*, section 443 for the following is taken to be a form approved under this Act, part 2:
- a warrant under section 252 (When case not to be proceeded with gaoler to discharge prisoner on certificate from Attorney-General etc)
  - section 357 (Outstanding charges may be taken into account when passing sentence)
  - section 408 (Directions to perform work).
- (4) This section expires on the day it commences.

**104      Modification of pt 8's operation**

The regulations may modify the operation of this part (including in its operation in relation to another Territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately, dealt with in this part.

**105      Expiry of pt 8**

This part expires 2 years after the day it commences.

## **Schedule 1            Subject matter for rules**

(see s 7)

### **Part 1.1              General**

#### **1                      Jurisdiction**

- (1) The jurisdiction of Territory courts, including civil, criminal and any appellate jurisdiction.
- (2) The jurisdiction of prescribed tribunals.
- (3) The jurisdiction of the master, registrars and deputy registrars, including review of their decisions.

#### **2                      Service of documents**

Service of documents, including, for example, the following:

- (a) the kinds of service, including personal service and electronic service;
- (b) service outside the ACT or Australia;
- (c) service of foreign legal process in the ACT.

*Note*      An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

#### **3                      Evidence**

Taking evidence generally, including, for example, the following:

- (a) the way evidence may be given;
- (b) dispensing with the rules of evidence;
- (c) taking evidence out of court;
- (d) taking of evidence for future claims;



- (e) subpoenas;
- (f) affidavits and exchange of correspondence instead of affidavit evidence;
- (g) obtaining evidence, including calling witnesses;
- (h) taking evidence outside the ACT or Australia;
- (i) taking evidence in the ACT for foreign courts and tribunals.

**4 Certain proceedings**

- (1) Review of Magistrates Court decisions by order nisi.
- (2) Cases stated and questions reserved to the Supreme Court.
- (3) Cases stated and questions reserved from the Supreme Court to the Court of Appeal.

**5 Admission of lawyers**

The admission of lawyers.

**6 Miscellaneous**

The following matters:

- (a) case management;
- (b) documents filed in registries, including electronic filing;
- (c) the receipt, issue or transmission electronically of forms and other documents and material for use in, or in relation to, proceedings;
- (d) functions of registries generally;
- (e) exhibits and other things held by a Territory court or prescribed tribunal for a proceeding, including, for example, disposal or destruction of unclaimed things;
- (f) rules relating to lawyers acting for parties in proceedings;

- (g) rules about the reckoning of time and anything else about time;
- (h) the conduct of business in chambers;
- (i) transitional arrangements.

## **Part 1.2                      Civil proceedings**

### **7                      Beginning proceedings**

Beginning proceedings, including, for example, the following:

- (a) originating process, including duration, renewal and setting aside;
- (b) where to begin proceedings;
- (c) preliminary discovery, including discovery to identify defendants.

### **8                      Transfer between courts**

Transfer of proceedings between courts, including, for the Supreme Court, cross-vesting of jurisdiction.

### **9                      Parties and proceedings**

Parties and proceedings, including, for example, the following:

- (a) several causes of action and parties in civil proceedings, including reconstitution of proceedings and representative parties;
- (b) multiple civil proceedings;
- (c) interpleader proceedings;
- (d) proceedings by or against businesses or people with a legal disability;
- (e) third-party procedure.

**10 Appearance**

Appearances, including, for example, the following:

- (a) entering appearances;
- (b) conditional appearances.

**11 Pleadings**

Pleadings, including, for example, the following:

- (a) matters in pleadings and particulars;
- (b) progress of pleadings;
- (c) particular pleadings, including statements of claim, defences and counterclaims;
- (d) striking out pleadings and particulars.

**12 Disclosure**

Disclosure, including, for example, the following:

- (a) disclosure by parties, including discovery and inspection of documents and interrogatories;
- (b) non-party disclosure;
- (c) admissions;
- (d) disclosure of experts reports and hospital reports;
- (e) disclosure of other material to which legal professional privilege may attach, including by direction or order of the court or tribunal.

**13 Preservation of rights and property**

Preservation of rights and property, including, for example, the following:

- (a) inspection, detention and preservation of property;

(b) injunctions, including, for the Supreme Court, Mareva injunctions and Anton Piller orders;

(c) for the Supreme Court—receivers and sales by court order.

**14 Ending proceedings early**

Ending proceedings early, including, for example, the following:

(a) ending proceedings because of default;

(b) summary decisions;

(c) discontinuance and withdrawal;

(d) offers to settle and payments by defendants;

(e) the referral of cases to arbitration;

(f) alternative dispute resolution processes.

**15 Court supervision**

Court supervision, including, for example, the following:

(a) directions about conducting proceedings;

(b) consequences of failing to comply with rules, directions or court orders;

(c) amendments, with and without leave;

(d) continuation of proceedings after delay;

(e) pre-trial matters, including pre-trial directions and rulings.

**16 Expert evidence**

Expert evidence generally, including, for example, the following:

(a) giving immunity from action to experts in relation to reports tendered in evidence;

- (b) matters relating to court experts, including—
  - (i) how the court is to choose an expert; and
  - (ii) how experts may give evidence and be questioned;
- (c) defining the duty of expert witnesses in relation to the court and the parties;
- (d) prescribing the basis of, and conditions for, admissibility of expert evidence.

**17 Trials and other hearings**

Trials and other hearings, including, for example, the following:

- (a) practice lists;
- (b) list applications for hearing and setting trial dates;
- (c) conduct of trials;
- (d) decisions without pleadings or without hearings;
- (e) separate decisions on questions;
- (f) assessors and special referees;
- (g) assessment of damages;
- (h) simplified procedures for minor debt claims and other claims.

**18 Judgments**

Judgments, including, for example, the following:

- (a) effect of judgments;
- (b) setting aside judgments.

**19 Particular proceedings**

Particular proceedings, including, for example, the following:

- (a) taking of accounts;

- (b) proceedings for damages for personal injury or death;
- (c) the payment of amounts into court;
- (d) for the Supreme Court—judicial review proceedings;
- (e) for the Supreme Court—prerogative remedy proceedings.

**20                      Interest**

Interest, including, for example, the following:

- (a) interest up to judgment;
- (b) interest on judgments.

**21                      Administration and probate**

For the Supreme Court, administration and probate, including, for example, the following:

- (a) applications for grants of probate or letters of administration and the documents required;
- (b) resealing grants;
- (c) caveats objecting to grants, orders to administer or resealing grants;
- (d) contested proceedings.

**22                      Adoption**

For the Supreme Court, adoption, including, for example, applications for adoptions.

**23                      Arbitration**

For the Supreme Court, arbitration, including, for example, the use of court-appointed referees.

**24 Contempt of court**

For the Supreme Court, contempt of court, including, for example, the following:

- (a) contempt of the court as constituted other than by a judge;
- (b) proceedings for failure to comply with orders, other than orders to pay an amount.

**25 Trusts**

For the Supreme Court, trusts.

**26 Costs**

Costs, including, for example, the following:

- (a) security for costs;
- (b) entitlement to recover costs;
- (c) costs of parties in proceedings;
- (d) assessment of costs;
- (e) taxation of costs.

**27 Appeals**

Appeals, including, for example, the following:

- (a) for the Magistrates Court and prescribed tribunals—appeals to the Supreme Court;
- (b) for the Supreme Court—
  - (i) appeals to the Supreme Court other than to the Court of Appeal; and
  - (ii) appeals to the Court of Appeal.

**28 Enforcement of judgments**

Enforcement of judgments, including, for example, the following:

- (a) enforcement hearings, including examination procedures;
- (b) enforcement orders, including the following:
  - (i) enforcement orders for entry onto, and delivery of possession of, land;
  - (ii) enforcement orders for seizure and sale of property;
  - (iii) enforcement orders for seizure and delivery of particular goods;
  - (iv) enforcement orders for seizure and detention of property;
  - (v) enforcement orders for the attachment or redirection of debts, income and other money;
  - (vi) for the Supreme Court—enforcement orders for charging orders and stop orders;
- (c) instalment orders;
- (d) powers of enforcement officers.

**29 Reciprocal enforcement of foreign judgments**

Reciprocal enforcement of foreign judgments.

**Part 1.3 Criminal proceedings**

**30 Practice and procedure in criminal jurisdiction**

Practice and procedure in the criminal jurisdiction of the Magistrates Court and Supreme Court (including any appellate jurisdiction) generally, including, for example, the following:

- (a) forms for proceedings;



- (b) beginning criminal proceedings, including indictments and informations;
- (c) appearance;
- (d) arraignments;
- (e) applications;
- (f) pleadings;
- (g) duties of lawyers and the court;
- (h) pre-trial matters, including pre-trial directions and rulings;
- (i) regulating hearings and trial proceedings;
- (j) expert evidence;
- (k) custody and inspection of exhibits;
- (l) recording of proceedings and access to records;
- (m) costs payable to defendants in particular circumstances;
- (n) inspecting registry files;
- (o) appeals, including appeals to the Supreme Court and Court of Appeal;
- (p) listing trials, sentences, applications and appeals for hearing, and setting hearing dates;
- (q) enforcement of decisions.

## Schedule 2 New Magistrates Court (Civil Jurisdiction) Rules 2004

(see s 100)



Australian Capital Territory

## Magistrates Court (Civil Jurisdiction) Rules 2004

Subordinate Law SL2004-

made under the

Court Procedures Act 2004

### Part 1 Preliminary

#### 1 Name of rules

These rules are the *Magistrates Court (Civil Jurisdiction) Rules 2004*.

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## 2 Dictionary

The dictionary at the end of these rules is part of these rules.

*Note 1* The dictionary at the end of these rules defines certain terms used in these rules, and includes references (*signpost definitions*) to other terms defined elsewhere in these rules.

For example, the signpost definition ‘*account*, for part 19 (Enforcement of judgments)—see section 287’. means that the term ‘account’ is defined in that section and applies to that part.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire rules unless the definition, or another provision of the rules, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

## 3 Notes

A note included in these rules is explanatory and is not part of these rules.

*Note* See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

## 4 Application of rules

These rules do not apply in relation to—

- (a) proceedings under the *Protection Orders Act 2001*; and
- (b) proceedings under the *Workers Compensation Act 1951*; and
- (c) proceedings on an information for an offence.

## 5 Meaning of *plaintiff* and *defendant*

(1) In these rules—

- (a) a reference to the *plaintiff* in a proceeding is, for a proceeding in which there are 2 or more plaintiffs, a reference to any or all of the plaintiffs; and

(b) a reference to the *defendant* in a proceeding is, for a proceeding in which there are 2 or more defendants, a reference to any or all of the defendants.

(2) In these rules—

(a) a reference to the *plaintiff* in a proceeding is, in relation to a proceeding begun by filing an application mentioned in section 22, a reference to the applicant in the proceeding; and

(b) a reference to the *defendant* in a proceeding is, in relation to a proceeding mentioned in paragraph (a), a reference to the respondent in the proceeding.

## **6 Meaning of *lawyer***

In these rules, a reference to the *lawyer* (however expressed) for a party to a proceeding includes, in relation to a party whose lawyer has another lawyer acting as his or her agent for the proceeding, a reference to the other lawyer.

## **7 Terms defined in Magistrates Court Act**

A term defined in the *Magistrates Court Act 1930*, dictionary has the same meaning in these rules.

## **8 References to forms by number**

(1) In these rules, other than in part 22 (Small Claims Court), a reference to a form by number is a reference to the form so numbered that—

(a) is approved under the *Court Procedures Act 2004*; and

(b) either—

(i) was in force under the *Magistrates Court (Civil Jurisdiction) Act 1982* immediately before its repeal; or

(ii) is expressed to be made for these rules or the court in its civil jurisdiction.

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- (2) In part 22, a reference to a form by number is a reference to the form so numbered that—
- (a) is approved under the *Court Procedures Act 2004*; and
  - (b) is headed ‘Small Claims Court’ or is otherwise expressed to apply to the Small Claims Court.

## Dictionary

(see s 2)

*Note 1* The Legislation Act contains definitions and other provisions relevant to these rules.

*Note 2* For example, the Legislation Act, dict, pt 1 defines the following terms:

- child
- government solicitor.

*Note 3* For the meaning of terms defined in the *Magistrates Court Act 1930*, dict, see s 7.

**account**, for part 19 (Enforcement of judgments)—see section 287.

**appellant**, for an appeal in which there are 2 or more appellants, for part 21 (Appeals to Supreme Court), means all or any of the appellants.

**copy**, in relation to a document to be served in a proceeding, means—

- (a) if the document has been filed—a true copy sealed or stamped with the court’s seal; and
- (b) in any other case—a true copy.

**costs**, in relation to a proceeding, means costs between party and party of and incidental to the proceeding.

**cross-claim** means a claim (whether by way of counterclaim, cross-action, set-off or otherwise) pleaded in a notice of grounds of defence filed by a defendant in a proceeding.

***debt due or accruing***, for part 19 (Enforcement of judgments)—see section 287 (3).

***defendant*** means the person against whom a proceeding has been begun.

***earnings***, in relation to a person, for part 19 (Enforcement of judgments)—see section 287.

***examination summons***, for part 19 (Enforcement of judgments)—see section 287.

***examiner*** means a person appointed by the court to conduct an examination under section 202.

***file*** a document means lodge the document in the court registry for inclusion in the court record.

***garnishee***, for part 19 (Enforcement of judgments)—see section 287.

***garnishee order***, for part 19 (Enforcement of judgments)—see section 287.

***giving***, of a judgment, for part 19 (Enforcement of judgments)—see section 287 (2).

***instalment order***, for part 19 (Enforcement of judgments)—see section 287.

***insurer*** means a person who gives a bond mentioned in section 85.

***judgment***, for part 19 (Enforcement of judgments)—see section 287.

***judgment creditor***, for part 19 (Enforcement of judgments)—see section 287.

***judgment debt***, for part 19 (Enforcement of judgments)—see section 287.

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***judgment debtor***, for part 19 (Enforcement of judgments)—see section 287.

***officer***, of a corporation, includes a director and a person having (whether alone or with others) powers of management, direction or control of the corporation.

***originating process*** means—

- (a) a claim; or
- (b) an application mentioned in section 22.

***person named***, in relation to a subpoena issued under section 187, means the person to whom the subpoena is addressed.

***person under disability*** means—

- (a) a child; or
- (b) a person with a mental disability.

***person with a mental disability***, in relation to a proceeding, means a person who is not legally competent to be a party to the proceeding, and includes such a person even if a guardian or manager has not been appointed for the person under the *Guardianship and Management of Property Act 1991*.

***plaintiff*** means the person by whom a proceeding has been begun.

***pleading*** means a claim, notice of grounds of defence, reply or third or subsequent party notice filed in a proceeding.

***prescribed percentage*** means—

- (a) if the relevant amount is less than \$10 000—33%; or
- (b) if the relevant amount is not less than \$10 000 but is less than \$25 000—67%; or
- (c) if the relevant amount is not less than \$25 000 but is less than \$40 000—80%; or

(d) if the relevant amount is not less than \$40 000—90%.

***proceeding*** means a proceeding in the court.

***property***, for part 17 (Interpleader)—see section 239.

***relevant amount***, in relation to proceedings—see section 259.

***subpoena for production*** means a written order requiring the person named in it to attend as directed by the order and to produce a document or thing for the purpose of evidence.

***subpoena to give evidence*** means a written order requiring the person named in it to attend as directed by the order for the purpose of giving evidence.

***third party***, for part 8 (Third-party procedure)—see section 56.

***writ of execution***, for part 19 (Enforcement of judgments)—see section 287.



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## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1 defines the following terms:

- administrative appeals tribunal
- chief executive (see s 163)
- consumer and trader tribunal
- credit tribunal
- custodial escort
- discrimination tribunal
- government solicitor
- Magistrates Court
- public servant
- residential tenancies tribunal
- Supreme Court
- Territory authority.

*advisory committee* means the advisory committee established under section 11.

*assistant sheriff*, for part 5 (Court security)—see section 40.

*corresponding law*, for part 4 (Crown proceedings)—see section 20.

*court*, for part 5 (Court security)—see section 40.

*court premises*, for part 5 (Court security)—see section 40.

*Crown*, for part 4 (Crown proceedings)—see section 20.

*deputy sheriff*, for part 5 (Court security)—see section 40.

*determined fee*, for part 3 (Court and tribunal fees)—see section 12.

*explosive*, for part 5 (Court security)—see the *Dangerous Substances Act 2004*, section 73.

*fee*, for part 3 (Court and tribunal fees)—see section 12.

*firearm*, for part 5 (Court security)—see the *Firearms Act 1996*, section 4.

*judge*, for part 5 (Court security)—see section 40.

*judgment*, for part 4 (Crown proceedings)—see section 20.

*magistrate*, for part 5 (Court security)—see section 40.

*master* means the Master of the Supreme Court.

*offensive weapon*, for part 5 (Court security)—see section 40.

*prescribed tribunal*, for part 2 (Court rules and forms) and schedule 1 (Subject matter for rules)—see section 6.

*proceeding*, for part 4 (Crown proceedings)—see section 20.

*relevant legislation*, for part 3 (Court and tribunal fees)—see section 12.

*rule-making committee* means the rule-making committee established under section 9.

*screening search*, for part 5 (Court security)—see section 40.

*security officer*, for part 5 (Court security)—see section 40.

*sheriff*, for part 5 (Court security)—see section 40.

*sheriff's officer*, for part 5 (Court security)—see section 40.

*the Territory*, for part 4 (Crown proceedings)—see section 20.

*the Territory Crown*, for part 4 (Crown proceedings)—see section 20.

*tribunal*, for part 3 (Court and tribunal fees)—see section 12.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 14 May 2004.

**2 Notification**

Notified under the Legislation Act on 2 September 2004.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Court Procedures Bill 2004, which was passed by the Legislative Assembly on 17 August 2004.

Acting Clerk of the Legislative Assembly

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