

EXPLANATORY STATEMENT

Subordinate Law No. 38 of 1997

Issued by the Authority of the Judges
of the Supreme Court of the Australian Capital Territory

SUPREME COURT RULES (AMENDMENT)

The resident Judges of the Court (of whom there are four, including the Chief Justice) or any two of the resident Judges, may make Rules of Court for regulating the practice and procedure of the Court pursuant to section 36 of the Supreme Court Act 1933.

New Order 34B provides for non-party production of documents. It enables a party to an action to apply to the Registrar for the issue of a notice requiring a person who is not a party to the action to produce for inspection a document in the person's possession or control relating to a matter in question in the action that the person could be required to produce at the trial of the action.

A form of notice for non-party production is prescribed in Form 27A of the First Schedule to the Supreme Court Rules.

A person who is served with a notice for non-party production is required either to comply with the notice, or to seek to have the notice set aside or varied, within 14 days after service of the notice for production.

The applicant for the notice is required to pay the reasonable costs of the person required to produce the document. The applicant is permitted to copy a document produced in compliance with the notice at the expense of the applicant.

Objection may be made to the production of a document on the ground that the document is privileged, or on some other ground. In such a case, either the applicant for the notice or the objector may apply to the Court for a determination in relation to the claim or objection.

The main difference between non-party production and a subpoena for the production of a document is that in the case of non-party production the document will remain in possession or control of the non-party, whereas in the case of a subpoena, the document is required to be produced to the Court, thus depriving the non-party of the possession of its document.

Non-party production will also enable a party to have access to documents for inspection at an earlier stage of the proceedings which should lead to the elucidation of the real issues between the parties at the earliest possible stage of the proceedings.

It is proposed that the operation of the new system of non-party production be reviewed at regular intervals in order to evaluate its effect.