

EXPLANATORY STATEMENT

Subordinate Law No. of 1996

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 three, 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.

Commencement

Rule 1: These Rules commence on the day on which they are notified in the Gazette.

Principal Rules:

Rule 2: In these Rules, "Principal Rules" are defined to mean the Supreme Court Rules.

Privileged Documents

Rule 3: Inserts new rule 1A of Order 34 into the Principal Rules. Part 3.10 of the Evidence Act 1995 (Cth) ('the Act') sets out the law relating to privileges and restricts the adducing of evidence in relation to the specified privileges, eg. client legal privilege. There is some ambiguity as to whether the specified privileges extend to pre-trial discovery and production of documents. The amendment provides for privilege from production of a document in respect of which Part 3.10 of the Act would not permit evidence to be adduced.

Documents which may incriminate a person or that relate to matters of state as provided for in sections 128 and 130 of the Act, respectively, are also privileged from production.

Counsel's Fees:

Rule 4: Repeals Rule 75 of Order 65 of the Principal Rules and substitutes a new rule which removes the need for payment of counsel's fees to be vouched by signature before those fees may be allowed on taxation.

Application for reseal of foreign grant - supporting affidavits

Rules 5, 7 and Third Schedule : Recently, by Subordinate Law No. 11 of 1996, the Principal Rules were amended to simplify the procedure for the making of an application to the Supreme Court for representation in the Administration and Probate jurisdiction of the Court.

These rules complete that simplification process by making provision for affidavits to accompany an application for the reseal of a foreign grant of representation.

The form of the affidavits is set out in Forms 3GA and 3H of the Third Schedule to the Principal Rules.

First Schedule:

Rule 6: This rule amends Forms 45,46,47 and 48 of the First Schedule to the Principal Rules. Each of these forms prescribes a form of subpoena. The amendments:

- (a) make some plain English amendments to the forms;
- (b) make it clear that a subpoena for production (Form 46) does not require the person to whom the subpoena is addressed and who has produced the subpoenaed documents to the Registrar in advance of the hearing to personally attend at the hearing. Conversely, a person to whom a subpoena for production and to give evidence (Form 48) is addressed is still required to attend at the hearing for the purpose of giving evidence notwithstanding that that person has produced the subpoenaed documents to the Registrar in advance of the hearing;
- (c) direct that any questions relating to the requirements of a subpoena be addressed to the party who issued the subpoena (or that party's solicitor) and not to the Court;
- (d) provide for an alternative mode of proof of entries in banker's books in accordance with section 48 of the Evidence Act 1995 (Cth) where a subpoena for production is addressed to an officer of a bank.