

EXPLANATORY STATEMENT

Subordinate Law No. (1 of 1995

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

SUPREME COURT RULES (AMENDMENT)

These amendments make a number of miscellaneous amendments to the Supreme Court Rules. An explanation of each amendment is set out below.

Amending Rule 3:

Rule 5 of Order 1: This rule is repealed. Sub-rule 5(1) of Order 1 deals only with the ambit of PART 2 - CIVIL JURISDICTION and is therefore more appropriately located in that Part. Amending rule 4 will accomplish this.

Sub-rules 5(2) and 5(3) of Order 1 are obsolete and are no longer necessary. To the extent that proceedings on the Crown side of the Court survive, they are dealt with in Order 55.

Sub-rule 5(4) of Order 1 is of general application and therefore has been reproduced in substance as rule 1 of new Order 1A in Part 2 (amending rule 4).

Amending Rule 4: Order 1A: Application of Part:

New Order 1A deals with the application of Part 2 of the Rules. The Part has a general application to all proceedings in the Court in any of its jurisdiction, other than the criminal jurisdiction, subject to the Rules or order of the Court.

Amending Rule 5: Claim for debt or liquidated demand:

Rule 6 of Order 4 is amended by requiring a plaintiff in a claim for debt or liquidated demand to specify, where interest is claimed, the rate of interest claimed to be payable as of right (whether by virtue of agreement or otherwise); or to state that the plaintiff applies for an order for interest under section 69 of the Supreme Court Act (interest up to judgment), or an order made in accordance with another law specified in the indorsement, that interest, or a lump sum in lieu of interest be included in the sum for which judgment is given. This will preclude the need for a judgment creditor to make a separate application for interest where default judgment is given as the interest component will be included in the order.

Amending Rule 6: Affidavit of Service:

Rule 2 of Order 14 is amended by omitting the reference in the rule to Order 15, rule 1 and Order 16, rule 1. An affidavit of service is unnecessary in the context of those rules as they apply to the situation where a defendant has entered an appearance to a writ of summons.

Amending Rule 7 : Final judgment when writ indorsed for debt or liquidated demand:

Rule 3 of Order 14 is amended by extending its operation to include proceedings for debt in addition to a liquidated demand, consistent with rule 6 of Order 4. The amendments also provide, in the case of default judgment where a defendant fails to appear, the procedure for the calculation of interest. Where the indorsement on the writ specifies the rate of interest claimed to be payable as of right, that rate is applied, and in any other case, the Court determines the rate or amount of interest. In exercising its discretion in determining interest the Court may have regard to the Practice Directions. The Court continually revises the rate of interest up to judgment in accordance with market rates and incorporates those rates in Practice Directions. It is preferable that the rate applicable is reviewed regularly rather than be fixed at the arbitrary rate of fifteen per cent per annum as is presently the case. The current rate specified in the Practice Directions is ten per cent per annum.

Amending Rule 8 : Final judgment when writ indorsed for debt or liquidated demand and only some defendants fail to appear:

Rule 4 of Order 14 is amended consequentially upon the amendments to rule 3 of Order 14.

Amending Rule 9 : Interlocutory and final judgment when writ includes indorsement for debt or liquidated demand:

Rule 7 of Order 14 is amended consequentially in accordance with the amendments to rule 3 of Order 14.

Amending Rule 10 : Final judgment when writ indorsed for debt or liquidated demand:

Rule 2 of Order 31 which applies to a default judgment where a defendant fails to deliver a defence, is amended to operate similarly to rule 3 of Order 14 in relation to interest up to judgment.

Amending Rule 11 : Interlocutory and final judgment when writ includes indorsement for debt or liquidated demand

Rule 6 of Order 31 is amended consequentially upon the amendments to rule 2 of Order 31.

Amending Rule 12 : Authority of Master

Rule 1 of Order 61A is amended by omitting sub-paragraph (x)(v) which duplicates sub-paragraph (x)(iv) and substitutes a reference to section 81 of the Trustee Act 1925 of the State of New South Wales in its application in the Territory (advantageous dealings). The Master in the New South Wales Supreme Court exercises a similar jurisdiction.

Amending Rule 13 : Further amendments relating to Public Trustee

The Office of Curator of Estates of Deceased Persons was replaced with that of the Public Trustee in 1985.

Order 72 and the Third Schedule are amended by substituting a reference to "Public Trustee" in lieu of "Curator", wherever occurring.