

EXPLANATORY STATEMENT
SUPREME COURT AMENDMENT RULES 2004 (No 5)
Subordinate Law SL2004-54

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

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

These Rules have been made as part of the process adopted by the Court to modernise the Rules and to provide for more cost efficient and cost-effective procedures. The Rules cover the following areas.

(1) Subpoenas

Division 39.6 of the Rules has been replaced with Order 1 AA which gives effect to the harmonised rules developed by the Council of Chief Justices Harmonised Rules Committee.

The new subpoena rules provide for a single form subpoena, which is Form 1.1A in the schedule of forms. The Rules apply to both civil and criminal proceedings. The form of subpoena allows the issuing party to indicate whether the subpoena is to require the addressee to attend to give evidence, produce documents or to do both of these. Depending on the option chosen, certain parts of the subpoena need not be completed.

The Rules also make provision for:

- setting aside a subpoena – Rule 4
- service of a subpoena – Rule 5
- compliance with a subpoena – Rule 6
- production and inspection of documents produced on subpoena – Rules 7 & 9
- return and disposal of documents and things produced – Rules 8 & 10
- costs of complying with a subpoena – Rule 11
- failure to comply with a subpoena – Rule 12
- production of documents in the custody of another court – Rule 13

The Rules are made applicable to subpoenas under the Commercial Arbitration Act – Rule 15.

The retention of Rules relating to bankers books – Rule 14, and service of a notice in lieu of a subpoena – Rule 18 is a departure from the model rules but reflects the current practice and the practice in some other jurisdiction.

The Registrar is given power under Order 61 Rules 3(a) and 3AA to make a range of decisions in relation to subpoenas.

The Rules also make alternative provisions for service of subpoenas on parties (Order 10 rule 17) and retain the local arrangements for notices instead of subpoenas to be served on medical practitioners (Order 10 rules 18 and 19).

There are also consequential amendments to give effect to these rules.

(2) Discovery

Order 34 contains Rules relating to discovery. Rule 3 (2A) has been inserted with associated formal amendments to clarify the exemption from disclosure of privileged documents as a result of experience with the Rules.

(3) Access to Court documents

A new Rule 11(5) has been inserted in Order 66 to make it clear that “documents” in Order 66 Rule 11 extends to electronic documents and other non-paper documents.

(4) Interstate Confiscation Orders

Provision has been made in Orders 81 and 82 for registration of foreign orders under the Mutual Assistance in Criminal Matters Act 1987 (Cth) and the International War Crimes Tribunals Act 1995 (Cth). Both Acts provide for interstate orders to be registered in the court if the property (or part of the property) is situated in the ACT. Registration is required to be in accordance with the procedure of the relevant court.

(5) Appeals

Order 84 contains rules relating to appeals to the Supreme Court other than to the Court of Appeal. Rules 22 to 25 have been inserted in Order 84 to provide for the filing of summaries of arguments by both parties and lists of authorities and for the abandonment of ground of appeal. The new rules are consistent with similar provisions in the Court of Appeal jurisdiction contained in Order 86.

(6) Court of Appeal

Order 86 Subdivision 86.5.2 provides an expeditious means of dealing with applications by convicted or sentenced persons to appeal out of time. The application is made to the Registrar who provides a copy to the DPP. The

new rule prescribes a form in which the DPP instead of merely entering an appearance responds to the application and indicates whether any affidavit in support is to be filed.

(7) Forms

The forms in schedule 1 have been amended so that each form is self-contained. This will enable forms to be downloaded and engrossed. The text of form headings, introductory words and signature blocks of affidavits have been standardised. Some minor changes to language and style to achieve consistency have been made.

(8) A new schedule 3 has been inserted pursuant to Order 65 Rule 7 which has not been adjusted since February 2002. The schedule increases the present scale components by 12.85% with each item rounded to the next ten cents.

The figure is based on a combination of Consumer Price Index (CPI) and Wage Cost Index (WCI) data from the Australian Bureau of Statistics and follows a similar consideration of costs by the Federal Costs Advisory Committee, whose reasoning was adopted.

(9) Minor amendments have been made to update references to repealed Acts, to make a number of provisions consistent with changes in the Rules and to make a sensible separation of the provisions for arbitration and for court-appointed referees.