

## Explanatory Statement

### Court Procedures Amendment Rules 2009 (No 1) Subordinate Law SL2009 – 11

Issued by the Authority of the Rule-Making Committee

#### **Introduction**

The Rule-Making Committee (currently comprising the Chief Justice, the President of the Court of Appeal, Justice Refshauge, the Chief Magistrate and Magistrate Burns) or any 3 or more committee members, (of whom must be the Chief Justice and another of whom must be either the Chief Magistrate or Magistrate Burns, may make rules in relation to the practice and procedure of ACT courts and prescribed tribunals and their registries under section 7 of the *Court Procedures Act 2004*.

#### **Background**

The *Domestic Violence and Protection Orders Act 2008* (the 2008 Act) was passed by the ACT Legislative Assembly on 26 August 2008 to commence on 30 March 2009. It is a replacement for the *Domestic Violence and Protection Orders Act 2001* (the 2001 Act), intended to address a number of issues and make a substantial restructure to improve ease of use and understanding.

The 2008 Act, however, did not reproduce s 93 of the 2001 Act which empowered the Registrar of the Magistrates Court (or a named deputy registrar), if authorised in writing by the Chief Magistrate, to exercise the powers of the Magistrates Court to make consent orders. This was a mere procedure which was more appropriately effected by rules of court.

The number of consent orders regularly made justifies such a delegation. There is already a similar delegation under r 1611 of the *Court Procedures Rules 2006*, but which does not apply because r 4 excludes the operation of the Rules from proceedings under the 2001 Act. It is proposed to continue that exclusion, save for the matter of the making of consent orders.

#### ***Court Procedures Amendment Rules 2009 (No 1)***

- Rule 1: The name of the rules is in conventional and uncontroversial terms.
- Rule 2: As is appropriate in the circumstances, the commencement of the Rules is the date when the Domestic Violence and Protection Orders Act 2008 commences, namely 30 March 2009.
- Rule 3: Specifies the principal legislation being amended, namely the *Court Procedures Rules 2006*.

- Rule 4: Inserts a new paragraph (3)(a) into rule 6251 (Jurisdiction exercisable by registrar of Magistrates Court), namely the power to make consent orders under part 5 (Consent Orders) of the *Domestic Violence and Protection Orders Act 2008*.
- Rule 5: Inserts a new sub-rule to rule 6251 to make it clear that the exclusion of the procedures provided for by the *Court Procedures Rules 2006* from proceedings under the *Domestic Violence and Protection Orders Act 2008* does not exclude the power given by the new power granted by rule 6251(3)(ca).
- Rule 6: Adds to rule 4 (Application of rules) the *Domestic Violence and Protection Orders Act 2008* as proceedings to which the rules do not apply, save for Div 6.8.10 (Service of subpoenas in New Zealand) which does apply to proceedings under that Act.