

Explanatory Statement

Court Procedures Amendment Rules 2009 (No 3)
Subordinate Law SL2009 - 56

Issued by the Authority of the Rule-Making Committee

The Rule-Making Committee (currently comprising the Chief Justice, President Gray, Justice Refshauge, the Acting Chief Magistrate and Magistrate Burns) may make rules in relation to the practice and procedure of ACT courts and their registries pursuant to section 7 of the *Court Procedures Act 2004*.

From the time of commencement of the Court Procedures Rules 2006, the Courts and the Joint Rules Advisory Committee have conducted a continuous and consultative review of the rules. This process has resulted in the attached *Court Procedures Amendment Rules 2009 (No 3)*.

In addition to some minor amendments, new subrules have been introduced under rule 76 (Reinstating dismissed proceeding) (subrules 2A and 2B) to provide for a proceeding that has been dismissed under rule 76(2) to be reinstated if, before the end of 1 year after the day the proceeding is dismissed, a party files any document in the proceeding.

New rules have also been introduced, and an amendment to Form 5.1 (Appeal from Master or Registrar – notice of appeal), requiring the setting out of the grounds of an appeal in a notice of appeal, appealing from an interlocutory decision of the Master (rule 5013(1)(ea)). In an appeal from the Registrar, it is not necessary to set out the grounds of the appeal in the notice of appeal (rule 5013(2)).

New rules set out the procedure for the referral of appeals to the Supreme Court by the ACAT appeal president, and the procedure in the Supreme Court following the referral (new division 5.3.3A).

The rules relating to the service of subpoenas and the service of notices instead of subpoenas on medical experts have been amended so that those rules also apply to members of the ACT Ambulance Service (division 6.8.8). A medical expert and a member of the ACT Ambulance Service are both defined as a “special witness”. A subpoena is taken to be served personally on a special witness if served at the witness’ practice or work place in accordance with rule 6482(1). A subpoena requiring a special witness to give evidence must be served at least 6 weeks before the hearing date (rule 6482(2)), unless leave is given under rule 6482(3) or (8). Rule 6483 provides for a notice to be served requiring the special witness’ attendance, instead of serving a subpoena. This notice must also be served at least 6 weeks before the hearing date.

Rule 6610 – Disposal of subpoenaed documents and things produced – has been amended so as to provide for a requirement for the issuing party of a subpoena to

produce, to attach a new form (Form 6.10A – Subpoena – declaration by addressee) to the front of a subpoena to be served on an addressee. The addressee must complete the form and attach it to the documents produced to the Court. The form requires a declaration by the addressee as to whether the documents produced are copies and whether they can be destroyed by the Court when no longer required.

New rule 6615 introduces a procedure for an application for leave under the *Service and Execution of Process Act 1992 (Cwlth)*, section 57, to serve a subpoena issued by ACAT, outside the ACT. New forms 6.23 (Affidavit in support of application to serve ACAT subpoena outside ACT) and 6.24 (Order to serve ACAT subpoena outside ACT) have been introduced.

A number of court forms have been amended to improve their operation within the working environment of the courts. In the Magistrates Court, warrant forms have been enhanced to make them more user-friendly and also to ensure that they are compliant with the *Human Rights Act 2004*. Form 2.13 (Notice claiming contribution or indemnity) has also been improved in line with suggestions from the profession.