

## **Explanatory Statement**

### **Court Procedures Amendment Rules 2011 (No 2) Subordinate Law SL2011 - 17**

Issued by the Authority of the Rule-Making Committee

The Rule-Making Committee (currently comprising the Chief Justice, President Gray, Justice Refshauge, Chief Magistrate Burns and Magistrate Dingwall) 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 amendments contained in the *Court Procedures Amendment Rules 2011 (No 2)*.

#### **Civil jurisdiction**

In response to representation from the profession, the rules relating to notices for non-party production have been reviewed and streamlined so as to provide clearer guidance to both applicants and respondents with respect to such notices. Rule 662 has been substantially overhauled and replaced with a version which outlines the obligations of all parties involved. Rule 664 has also been amended removing the need to file and serve an affidavit supporting any objection to production unless specifically requested by the other party. Consistent with these changes, Form 2.27 has also been amended to better reflect the requirements of compliance with the notice imposed upon a non-party.

A new Division 2.14.1B provides for a procedure for the removal of applications from ACAT to the Supreme Court under section 83 of the *ACT Civil and Administrative Tribunal Act 2008*. A further new Division 3.11.3 provides for a procedure for cost assessments under the *Legal Profession Act 2006*, with a new originating application Form 3.47. This procedure is similar to that of cost assessments under Part 2.17 of the Rules.

Minor amendments have also been made to the costs penalty rule in Rule 1722, which has been adjusted to take into account the increase in the civil jurisdiction of the Magistrates Court. Similar adjustments have been made to costs amounts in Schedule 3, Tables 3.1 and 3.2. Minor amendments have also been made in Part 3.1 of the Rules, relating to the probate jurisdiction of the Court, providing for the Public Trustee of the ACT to be able to file a certified copy of an original Will kept in electronic form by the Public Trustee. Further amendments have been made throughout the Rules and in adoption forms substituting the reference to the Chief Executive with the Director-General, reflecting the recent changes in government

departments and heads of departments. The Scale of Costs in Schedule 4 has also been amended to provide for an increase across all items.

### **Supreme Court criminal jurisdiction**

The *Bail Amendment Act 2011* commenced on 16 May 2011. The *Court Procedures Amendment Rules 2011 (No 2)* makes amendments to the rules in Division 4.3.3 and to the approved bail application forms to reflect the changes in the Bail Act. In particular, rule 4721 has been expanded to require further evidence to meet the criteria under sections 20C, 43 or 43A, as applicable.

The amended form 4.8 (Supreme Court application in relation to bail) requires the applicant to state the section of the Bail Act under which the application is being made (section 20B, 43 or 43A), and no longer requires the grounds of the application to be repeated in the application. The grounds are to be set out in the affidavit.

The approved form of affidavit in support of an application for bail is to be repealed. Applicants will need to draft an affidavit in support that is relevant to the type of application being made under the Bail Act, and which complies with the rules in Division 4.3.3 and in particular, rule 4721.

Rule 4723 has been introduced to provide for a simplified form of application for unrepresented accused persons and a new Form 4.9 has been introduced for that purpose, requiring a declaration at the end of the application rather than a supporting affidavit.

A new Form 4.15 – Supreme Court special hearing – notice by guardian - is to be used when an accused person has been found unfit to plead, a guardian has been appointed and the guardian wishes to notify the Court under section 316(2) of the *Crimes Act 1900* that, in his or her opinion, it is in the best interests of the accused for the special hearing to be a trial by a single judge without a jury. This new form takes the place of the Election for judge alone trial (Form 4.11) in these particular circumstances.