

Australian Capital Territory

Magistrates Court Rules 1932

in force under the

Court Procedures Act 2004

Republication No 9

Effective: 22 December 2005 – 30 June 2006

Republication date: 22 December 2005

Last amendment made by A2005-60

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Magistrates Court Rules 1932*, in force under the *Court Procedures Act 2004* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 22 December 2005. It also includes any amendment, repeal or expiry affecting the republished law to 22 December 2005.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

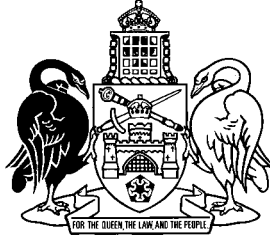
Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



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Contents

		Page
Part 1	Preliminary	
1	Name of rules	2
2	Certain references to <i>Act</i> or <i>the Act</i>	2
3	Terms defined in Magistrates Court Act	2
3A	References to <i>rules</i> of Magistrates Court	2
Part 2	Title of proceedings	
4	Form of heading and conclusion of notices	3
Part 3	Officers	
5	Office hours	4
6	Duties of registrar	4

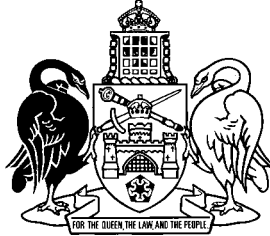
R9
22/12/05

Magistrates Court Rules 1932
Effective: 22/12/05-30/06/06

contents 1

	Page
Part 4	Criminal proceedings
7	Examination of witnesses—application of Magistrates Court (Civil Jurisdiction) Rules 5
8	Affidavits—application of Magistrates Court (Civil Jurisdiction) Rules 5
9	Warrants to which Act, div 3.4.4 applies—Act, s 73A 5
10	Ex parte order may be set aside 6
11	Ex parte conviction may be set aside on application by informant 7
12	Informant may request witnesses to attend 8
13	Power of magistrate to subpoena witness 8
14	Service of subpoena on witness 8
15	Witnesses entitled to claim expenses 9
16	Production of documents before magistrate 9
17	Setting aside subpoena 10
18	Ascertainment of capacity to pay fine 10
19	Garnishee orders and writs of execution 11
20	Application of Magistrates Court (Civil Jurisdiction) Rules, pt 19 12
21	Witnesses expenses 14
Part 6	Australian register of judgments
31	Entry of Australian judgments in register 16
Part 14	Securities
71	Form of security 17
72	Security to be forwarded to court 17
Part 18A	Service of foreign documents
97A	Service of foreign documents 18
Part 18B	Obtaining evidence for foreign tribunals
97B	Obtaining evidence for foreign tribunals 19
Part 19	Miscellaneous
98	Clerk or agent may sign for legal practitioner 21
99	Authentication of acts of magistrate or registrar 21
100	Witness expenses 21
101	Court seals 22
<hr/>	
contents 2	Magistrates Court Rules 1932 R9
	Effective: 22/12/05-30/06/06 22/12/05

Endnotes		Page
1	About the endnotes	23
2	Abbreviation key	23
3	Legislation history	24
4	Amendment history	28
5	Earlier republications	38



Australian Capital Territory

Magistrates Court Rules 1932

in force under the

Court Procedures Act 2004

Part 1 Preliminary

1 Name of rules

These rules are the *Magistrates Court Rules 1932*.

2 Certain references to *Act* or *the Act*

A reference to *Act* or *the Act*, without mentioning a particular Act, is a reference to the *Magistrates Court Act 1930*.

3 Terms defined in Magistrates Court Act

A term defined in the *Magistrates Court Act 1930* has the same meaning in these rules.

3A References to *rules* of Magistrates Court

A reference to the *rules* of the Magistrates Court is a reference to the rules under the *Court Procedures Act 2004* applying in relation to the Magistrates Court.

Part 2 Title of proceedings

4 Form of heading and conclusion of notices

The general form of heading and conclusion of all notices, orders and writs in relation to proceedings to enforce a judgment given or entered, or an order made, shall be in accordance with the appropriate form approved under the *Court Procedures Act 2004*.

Part 3 Officers

5 Office hours

- (1) The office of the registrar shall be kept open from 10am to 12.30pm and from 1.30pm to 4pm on Mondays, Tuesdays, Wednesdays, Thursdays and Fridays, but shall be closed on any day as is appointed a public holiday or as is directed by the Attorney-General.
- (2) On every day when any court sits, the office shall be kept open from 9.15am.

6 Duties of registrar

- (1) The registrar shall—
 - (a) register all records, orders and convictions of the court; and
 - (b) keep an account of all proceedings of the court; and
 - (c) take charge, and keep an account, of all court fees, fines, penalties and costs and other money payable or paid into court, and of all money paid out of court; and
 - (d) enter an account of all such fees, fines, penalties, costs and money in a ledger belonging to the court to be kept by him or her for that purpose; and
 - (e) in the month of July of each year make out a correct list of all sums of money belonging to suitors in the court that have been paid into court and have remained unclaimed for 5 years before the first day of that month, specifying the names of the parties for whom or on whose account the sums were so paid into court.
- (2) A copy of that list shall be put up and remain during the court hours in some conspicuous part of the court house and in the registrar's office.

Part 4 Criminal proceedings

7 Examination of witnesses—application of Magistrates Court (Civil Jurisdiction) Rules

The *Magistrates Court (Civil Jurisdiction) Rules 2004*, section 202 (Order for examination of witnesses) applies in relation to proceedings (*criminal proceedings*) on an information for an offence against a law in force in the ACT as if a reference to proceedings were a reference to criminal proceedings.

8 Affidavits—application of Magistrates Court (Civil Jurisdiction) Rules

The following provisions of the *Magistrates Court (Civil Jurisdiction) Rules 2004* apply in relation to affidavits for use in a proceeding under the *Magistrates Court Act 1930*, chapter 3 (Criminal proceedings):

- section 203 (Time for swearing affidavits)
- section 204 (Form of affidavit)
- section 205 (Irregularity in affidavit)
- section 210 (Affidavit by illiterate or blind person)
- section 211 (Affidavit by person unable to understand English)
- section 212 (Annexures and exhibits to affidavits)
- section 213 (Alterations in affidavits)
- section 214 (Scandalous or offensive matter).

9 Warrants to which Act, div 3.4.4 applies—Act, s 73A

The *Magistrates Court Act 1930*, division 3.4.4 (Committal and recognisance) applies in relation to a person for whom a warrant has been issued under the *Magistrates Court (Civil Jurisdiction) Rules 2004*.

10 Ex parte order may be set aside

- (1) If a conviction or order is made when one party does not appear, the party in whose absence the conviction or order was made may apply to the court for an order that the court set aside the conviction or order.
- (2) Subsection (1) does not apply to or in relation to a conviction or order made in the absence of a defendant who has entered a plea of guilty in accordance with the *Magistrates Court Act 1930*, section 116D (Pleas to prescribed offence) and has not, before the entry of the conviction or the making of the order, withdrawn his or her plea.
- (3) If, in his or her absence, a conviction is entered or an order is made against a person who has duly been served with a summons in accordance with the *Magistrates Court Act 1930*, section 116B (Service of summons for prescribed offence) and—
 - (a) that person did not return the notice of intention to defend form or the plea of guilty form to the registrar before the day when he or she was required by the summons to appear before the court; or
 - (b) the court, if it has previously, in the absence of that person, adjourned the hearing under the *Magistrates Court Act 1930*, section 116E (3) (Procedure if plea of guilty entered), is satisfied that a notice under that subsection did not come to his or her attention before the conviction is entered or the order made; or
 - (c) the court is satisfied that the notice referred to in the *Magistrates Court Act 1930*, section 116F (Procedure if notice of intention to defend given) or section 116H (Restricted penalties under pt 3.7) did not come to his or her attention before the date fixed under that section for the hearing of the matter;

the court, on the application of that person, shall set aside the conviction or order.

- (4) In any case other than an application to set aside a conviction or order referred to in subsection (3), the court may set aside the conviction, order or judgment on such terms as to costs or otherwise as the court thinks just.
- (5) If, under this section, the court has set aside a conviction, the court may set aside a warrant issued under the *Magistrates Court Act 1930* in consequence of the conviction.
- (6) If, under this section, the court has set aside a conviction or order, the court may, on service of such reasonable notice on the parties as the court directs, proceed to hear and determine the matter, or may adjourn the hearing to the time and place the court thinks fit.
- (7) If the court has adjourned the hearing of a matter under subsection (6), the court shall direct such notice as the court thinks fit of the adjourned hearing to be given to the parties.

11 Ex parte conviction may be set aside on application by informant

- (1) Subject to subsection (2), if a conviction is entered or an order is made against a person charged with an offence and the conviction is entered or the order is made in the absence of that person, the informant may apply to the court for an order that the court set aside the conviction or order.
- (2) Subsection (1) does not apply to, or in relation to, a conviction entered or an order made in the absence of a defendant who has entered a plea of guilty in accordance with the *Magistrates Court Act 1930*, section 116D (Pleas to prescribed offence) and has not, before the entry of the conviction or the making of the order, withdrawn his or her plea.
- (3) If an application to set aside a conviction or order is made under this section, the court may set aside the conviction or order on such terms as to costs or otherwise as the court thinks just.

- (4) If, under this section, the court sets aside a conviction or order, the court shall dismiss the information and set aside any warrant issued under the *Magistrates Court Act 1930* in consequence of the conviction.

12 Informant may request witnesses to attend

- (1) The informant may, by letter sent by a form of post that requires a signature on receipt, request a person to appear as a witness at the hearing of an information.
- (2) The letter shall—
- (a) set out the time and place for the hearing; and
 - (b) be accompanied by an undertaking to appear for the signature of the person and return to the informant by the date specified in the undertaking; and
 - (c) be accompanied by a form to be completed by the person to claim his or her reasonable costs and expenses of attendance at the hearing.

13 Power of magistrate to subpoena witness

- (1) If it appears to a magistrate that a person who is likely to give material evidence at the hearing of an information will not voluntarily appear at the hearing, the magistrate shall issue a subpoena requiring the person to appear before the court at the time and place specified in the subpoena to give that evidence.
- (2) In considering whether a person will voluntarily appear at a hearing or not, a magistrate may take into account any response by the person to any request made of the person to appear.

14 Service of subpoena on witness

- (1) A subpoena may be served on a witness—
- (a) personally; or

- (b) by sending it to the witness's last-known place of residence or employment by a form of post that requires a signature on receipt; or
 - (c) by leaving it with a responsible adult at the witness's last-known place of residence or employment.
- (2) The subpoena shall be accompanied by—
- (a) an undertaking to appear for the signature of the person and return to the court by the date specified in the undertaking; and
 - (b) a form to be completed by the person to claim his or her reasonable costs and expenses of attendance at the hearing.
- (3) Service of a subpoena on a witness may be proved by the oath of the person who served it or by affidavit.
- (4) In this section:
subpoena includes summons.

15 Witnesses entitled to claim expenses

- (1) Any notice (however described and whether written or oral) requiring a person to appear as a witness at a hearing shall be accompanied by a form to be completed by the person to claim his or her reasonable costs and expenses of attendance at the hearing.
- (2) A person is not entitled to refuse to comply with such a notice because it was not accompanied by that form.

16 Production of documents before magistrate

- (1) If a magistrate has authority to subpoena any person as a witness, he or she shall have the like authority to require and compel him or her to bring and produce, for the purposes of evidence, all documents and writings in his or her possession or power, and to proceed against him or her, in case of neglect or refusal so to do, in the same manner as in case of neglect or refusal to attend or refusal to be examined.

- (2) A person shall not be bound to produce any document or writing not specified or otherwise sufficiently described in the subpoena, or that he or she would not be bound to produce on a subpoena in the Supreme Court.

17 Setting aside subpoena

- (1) A subpoena issued under section 13 (Power of magistrate to subpoena witness) or section 16 (Production of documents before magistrate) may be set aside, wholly or in part, by the court on the application of the person to whom the subpoena is addressed.
- (2) An applicant shall serve a copy of the application on the party to the proceedings on whose request the subpoena was issued.

18 Ascertainment of capacity to pay fine

- (1) The registrar may orally examine a person who is liable to pay a fine—
- (a) as to the person's property or other means of satisfying the fine; and
 - (b) generally as to the person's financial circumstances.
- (2) An examination—
- (a) shall be taken on oath administered by the registrar; and
 - (b) may be conducted in open court or in chambers, as the registrar directs.
- (3) If at the time set down (whether originally or on an adjournment) for the examination of a person to whom an examination summons is directed—
- (a) the person fails to attend before the registrar; and
 - (b) the registrar is satisfied that—
 - (i) the person has been served with the summons in accordance with the *Magistrates Court (Civil*

Jurisdiction) Rules 2004, section 297 as applied by section 20; or

- (ii) if the examination has been adjourned—the person has been notified of the date, time and place fixed for the examination;

the registrar must issue a warrant in accordance with the *Magistrates Court (Civil Jurisdiction) Rules 2004*, section 303 as applied by section 20 for the apprehension of the person to whom the summons was directed.

- (4) A person apprehended under such a warrant shall be brought before the registrar for the purposes of examination under subsection (1).
- (5) In this section:

fine—see the *Magistrates Court Act 1930*, section 146.

19 Garnishee orders and writs of execution

- (1) If the registrar is satisfied that a fine defaulter has the capacity to pay an outstanding fine, the registrar may—
 - (a) make a garnishee order under the *Magistrates Court (Civil Jurisdiction) Rules 2004*, section 319 as applied by section 20 in relation to the outstanding fine; or
 - (b) issue a writ of execution under the *Magistrates Court (Civil Jurisdiction) Rules 2004*, section 343 (2) and (3) as applied by section 20 against goods of the fine defaulter to enforce the outstanding fine.
- (2) If the registrar issues a writ of execution in respect of 2 or more outstanding fines payable by a person, the writ operates in respect of the amount of each outstanding fine separately.

- (3) In this section:

fine defaulter—see the *Magistrates Court Act 1930*, section 146.

outstanding fine—see the *Magistrates Court Act 1930*, section 146.

20 Application of Magistrates Court (Civil Jurisdiction) Rules, pt 19

- (1) The purpose of this section is to ensure, as far as practicable, that—
 - (a) a fine defaulter may be examined under section 18 (Ascertainment of capacity to pay fine) and dealt with in the same way as a judgment debtor in relation to whom an examination summons has been issued; and
 - (b) a garnishee order under section 19 has the same effect as a garnishee order in relation to a judgment debtor; and
 - (c) a writ of execution under section 19 has the same effect as a writ of execution against goods of a judgment debtor.
- (2) For subsection (1) (a), the *Magistrates Court (Civil Jurisdiction) Rules 2004*, division 19.3, other than sections 294, 298, 300, 302, 305 and 306, applies so far as applicable, with the necessary changes.
- (3) For subsection (1) (b), the *Magistrates Court (Civil Jurisdiction) Rules 2004*, division 19.5, other than sections 317, 321 and 331, applies so far as applicable, with the necessary changes, and in particular, as if—
 - (a) sections 319 (1) (c) (i) and (e) (i) and 340 (2) (a) were omitted; and
 - (b) a reference in sections 320 and 329 (1) to the judgment creditor were a reference to the registrar; and
 - (c) the words ‘may order the registrar to repay’ were omitted from section 325 (8) and ‘shall repay’ were substituted; and
 - (d) the reference in section 330 to an application in accordance with section 123 were a reference to an application to the registrar; and
 - (e) sections 332 and 334 (1) did not refer to the judgment creditor.

- (4) For subsection (1) (c), the *Magistrates Court (Civil Jurisdiction) Rules 2004*, division 19.6, other than sections 344, 355, 357, 358, 359, 377 and 378, applies so far as applicable, with the necessary changes, and in particular, as if—
- (a) section 343 (1) were omitted; and
 - (b) the reference in section 346 (3) to a writ that issues out of the Magistrates Court included a reference to a writ issued by the registrar; and
 - (c) section 363 (2) (a) and 363 (3) were omitted; and
 - (d) section 376 (2) were omitted.
- (5) The provisions applied by subsections (2), (3) and (4) have effect as if, in addition to any other necessary changes—
- (a) a reference in such a provision to an examination summons were a reference to an examination summons under applied section 295; and
 - (b) a reference in such a provision to a garnishee order were a reference to a garnishee order under section 19 (1) (a); and
 - (c) a reference in such a provision to a writ of execution were a reference to a writ of execution under section 19 (1) (b) or applied section 333; and
 - (d) a reference in such a provision to a bailiff included a reference to the sheriff or a deputy sheriff under the *Supreme Court Act 1933*; and
 - (e) a reference in such a provision to a judgment debt were a reference to an outstanding fine; and
 - (f) a reference in such a provision to a judgment debtor were a reference to a fine defaulter; and
 - (g) a reference in such a provision to a judgment creditor, other than in applied section 320 or 329 (1), were a reference to the Territory; and

- (h) a reference to the court in such a provision, other than in applied section 349, were a reference to the registrar.
- (6) If, but for this subsection, a power of the registrar under a provision applied by subsection (2), (3) or (4) would be dependent on action being taken by the judgment creditor, the registrar may act on his or her own initiative in the exercise of the power.
- (7) The registrar shall not make an order under a provision applied by subsection (2), (3) or (4) for the payment of a fine or administrative fee by instalments.
- (8) If—
- (a) a provision of the *Magistrates Court (Civil Jurisdiction) Rules 2004* applies in relation to a matter; and
 - (b) a provision of other rules or a determination under the *Court Procedures Act 2004* also applies in relation to the matter; and
 - (c) the provision of the *Magistrates Court (Civil Jurisdiction) Rules 2004* is applied to a corresponding matter by subsection (2), (3) or (4);
- a reference in this section to the applied provision mentioned in paragraph (c) includes a reference to the provision mentioned in paragraph (b).
- (9) A reference in this section to an applied provision by number is a reference to the provision so numbered of the *Magistrates Court (Civil Jurisdiction) Rules 2004*, as applied by subsection (2), (3) or (4).
- (10) In this section:
- fine defaulter*—see the *Magistrates Court Act 1930*, section 146.

21 Witnesses expenses

The amount of costs that may be awarded under the *Magistrates Court Act 1930*, section 244 (Award of costs in criminal matters) in respect of the attendance of a person who attends for the purpose of

giving evidence before the court is the amount the court directs in accordance with the scale and conditions applicable in relation to persons who attend as witnesses before the Supreme Court.

Part 6 Australian register of judgments

31 Entry of Australian judgments in register

A judgment required to be registered in the court under the *Service and Execution of Process Act 1992* (Cwlth), section 105 (Enforcement of judgments) must be entered in the Australian register of judgments kept by the registrar.

Part 14 Securities

71 Form of security

If, under the *Magistrates Court Act 1930*, section 148, time is allowed for the payment of any sum or payment of any sum is directed to be made by instalments, and it is ordered that the person liable to pay the sum shall give security with or without sureties for the due payment of it, the security, if given by an oral or written acknowledgment, shall be in accordance with the form approved under the *Court Procedures Act 2004*.

72 Security to be forwarded to court

If any security is not entered into at the court house when the conviction or order was made, the person before whom it is entered shall forward it to the court.

Part 18A Service of foreign documents

97A Service of foreign documents

If, in connection with any civil or commercial cause or matter pending before a court or tribunal in any foreign country that is a party to a convention regarding legal proceedings in civil and commercial matters that has been extended to Australia, a request for service of any document on a person in the ACT is received by the registrar from the consular or other authority of the country, the following procedure shall, subject to any special provisions contained in the convention, be adopted:

- (a) the service shall be effected by the person the magistrate from time to time appoints for that purpose, or by the authorised agent of that person, by delivering to and leaving with the person to be served the original document or a copy of that document, as indicated in the request, and 1 copy of the translation of it, in accordance with the rules and practice of the Magistrates Court regulating the service of process;
- (b) no court fees shall be charged for the service, but the particulars of the charges of the person or agent employed to effect service shall be submitted to the registrar who shall certify the amount properly payable in relation to it;
- (c) the registrar shall transmit to the Attorney-General of the Commonwealth for transmission to the consular or other authority making the request a certificate establishing the fact and the date of the service, or indicating the reasons why it has not been possible to effect it, and a statement of the amount of the charges properly payable certified in accordance with paragraph (b).

Part 18B Obtaining evidence for foreign tribunals

97B Obtaining evidence for foreign tribunals

- (1) If, under any convention regarding legal proceedings in civil and commercial matters to which Australia is a party, it is made to appear to a magistrate by letters of request, or other evidence as the magistrate may require, that a judicial authority in any other country which is a party to the convention wishes to obtain, for the purposes of any cause or matter that is pending before that authority, the testimony of any witness or witnesses within the ACT, the magistrate may, on the ex parte application of any person shown to be duly authorised to make the application and on production of the letter of request, or on application made in an other way as is provided in the convention, make the order or orders that may be necessary to give effect to the intention of the convention.
- (3) The examination may be ordered to be taken before any fit and proper person nominated by the person applying, or before an officer of the court, or another qualified person that the Magistrate considers appropriate.
- (4) Unless otherwise provided in the order for examination, the person before whom the examination is taken shall, on its completion, forward it to the registrar of the court and on receipt of it the registrar shall append a certificate in accordance with the form approved under the *Court Procedures Act 2004*, and shall forward the depositions so certified, and the letter of request (if any) to the Attorney-General of the Commonwealth for transmission to the judicial authority wishing to obtain the testimony in accordance with the terms of the convention.
- (5) An order made under subsection (1) may, if the magistrate considers appropriate, direct the examination to be taken in a way that may be requested by the letter of request from the foreign judicial authority,

or signified in the letter of request to be in accordance with the practice or requirements of that judicial authority, or that may, for the same reason, be requested by the applicant for the order, but in the absence of any such special directions, the examination shall be taken in the way prescribed under the *Magistrates Court (Civil Jurisdiction) Rules 2004* and the rules and practice of the Magistrates Court in relation to civil proceedings.

- (6) If a letter of request is transmitted to the court with an intimation that it is desirable that effect should be given to it without requiring an application to the court by the agents of any of the parties to the action or matter in the foreign country, the registrar shall transmit it to the Australian Government Solicitor who may, with the consent of the Attorney-General of the Commonwealth, make an application and take the steps that may be necessary to give effect to the letter of request in accordance with these rules.

Part 19 Miscellaneous

98 Clerk or agent may sign for legal practitioner

Any documents whatsoever to which a signature of the legal practitioner on the record or his or her agent is required shall be equally valid if signed by a clerk of the legal practitioner or agent respectively.

99 Authentication of acts of magistrate or registrar

- (1) Every summons, warrant, writ, conviction, and order (other than one by law authorised to be made by word of mouth only) must be in writing signed by the magistrate or registrar issuing or making it and sealed with the court's seal.
- (2) Documents relating to court process must not be signed in blank.

100 Witness expenses

- (1) A person is not required to comply with a subpoena served on the person for the Act unless a reasonable amount for expenses that the person would incur in complying with the subpoena on any day when the person's attendance is required is paid or tendered to the person—
 - (a) when the subpoena is served; or
 - (b) within a reasonable time before the date for compliance mentioned in the subpoena.
- (2) In this section:

reasonable amount, for expenses for a person, means the amount that would be payable in relation to the person if the party on whose request the subpoena was issued were entitled to claim witness expenses in relation to the person as costs in the proceeding.

101 Court seals

- (1) The registrar shall have custody of the seals of the court.
- (2) The registrar shall seal or stamp with the seal of the court—
 - (a) any judgment, order, notice, warrant, writ, summons, certificate or process, or any copy of any of those documents, made, given or issued by the court or by him or her; and
 - (b) any document filed in proceedings, and any copy of such a document lodged with him or her; and
 - (c) any document required under these rules or any other territory law to be sealed or stamped with the seal of the court.
- (3) In subsection (2) in its application to proceedings in the Small Claims Court, a reference to the seal of the court is to be taken to be a reference to the seal of the Small Claims Court.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

3 Legislation history

3 Legislation history

These rules were originally called the *Court of Petty Sessions Rules* and were originally made under a Commonwealth ordinance—the *Court of Petty Sessions Ordinance (No 2) 1930* No 21 (Cwlth). The *Magistrates Court Ordinance 1985* No 67 (Cwlth) renamed the ordinance as the *Magistrates Court Act 1930* and the rules as the *Magistrates Court Rules*. These rules were later renamed as the *Magistrates Court Rules 1930* under the *Legislation Act 2001*. Under the *Court Procedures Act 2004* A2004-59, s 102, these rules are taken to have been made under that Act, pt 2.

The *ACT Self-Government (Consequential Provisions) Act 1988* No 109 (Cwlth), s 12) converted some former Commonwealth ordinances in force in the ACT, and the regulations and rules made under them, into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. The *Magistrates Court Ordinance 1930* and the *Magistrates Court Rules* were converted into ACT enactments on 1 July 1990.

As with most ordinances in force in the ACT, the name of the ordinance was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on its conversion to an ACT enactment on 1 July 1990.

Before 12 September 2001, rules commenced on their notification day unless otherwise stated (see *Interpretation Ordinance 1914* s 5, *Interpretation Ordinance 1937* s 16, *Interpretation Act 1967* s 50, *Subordinate Laws Act 1989* s 6).

Commonwealth legislation

Magistrates Court Rules 1932

notified 7 July 1932

commenced 7 July 1932

Note [Rules exp 1 July 2006 \(see Court Procedures Act 2004 A2004-59, s 100\)](#)

as amended by

Amendment of Court of Petty Sessions Rules

notified 1 December 1932

commenced 1 December 1932

Amendment of Court of Petty Sessions Rules

notified 23 December 1937

commenced 23 December 1937

Amendment of Court of Petty Sessions Rules 1950 No 2

notified 29 June 1950
commenced 29 June 1950

Amendments of Court of Petty Sessions Rules 1953 No 15

notified 27 November 1953
commenced 3 December 1953 (r 1)

Amendments of Court of Petty Sessions Rules 1958 No 9

notified 31 July 1958
commenced 31 July 1958

Amendment of Court of Petty Sessions Rules 1960 No 7

notified 30 August 1960
commenced 1 September 1960 (r 2)

Amendments of Court of Petty Sessions Rules 1965 No 9

notified 24 December 1965
commenced 1 January 1966 (r 1)

Amendments of Court of Petty Sessions Rules 1967 No 2

notified 23 February 1967
commenced 23 February 1967

Amendments of Court of Petty Sessions Rules 1968 No 9

notified 19 December 1968
commenced 1 January 1969 (r 1 and Cwlth Gaz 1968)

Amendments of Court of Petty Sessions Rules 1969 No 4

notified 30 June 1969
commenced 30 June 1969

Amendment of Court of Petty Sessions Rules 1970 No 7

notified 2 April 1970
commenced 2 April 1970

Amendment of Court of Petty Sessions Rules 1974 No 12

notified 13 August 1974
commenced 13 August 1974

Amendments of Court of Petty Sessions Rules 1977 No 7

notified 31 March 1977
commenced 31 March 1977

Endnotes

3 Legislation history

Regulations to revise regulations in force under ordinances of the ACT 1979 No 26

notified 29 November 1979
commenced 29 November 1979

Amendments of Court of Petty Sessions Rules 1980 No 5

notified 31 March 1980
commenced 31 March 1980

Magistrates Court Ordinance 1985 No 67

notified 19 December 1985
commenced 1 February 1986 (Cwlth Gaz 1986 No G3)

Magistrates Court (Amendment) Ordinance (No 3) 1986 No 74

notified 14 November 1986
commenced 14 November 1986

Magistrates Court Rules (Amendment) 1987 No 1

notified 24 March 1987
commenced 24 March 1987

Magistrates Court Rules (Amendment) 1988 No 15

notified 27 July 1988
commenced 27 July 1988 (r 1)

Magistrates Court Rules (Amendment) 1989 No 16

notified 30 June 1989
commenced 1 July 1989 (r 1)

Self-Government (Consequential Amendments) Ordinance 1990 No 5 sch 3

notified 27 June 1990
s 1, s 2 commenced 27 June 1990
sch 3 commenced 1 July 1990

Legislation after becoming Territory enactment

Magistrates Court Rules (Amendment) 1991 No 14

notified 28 June 1991
commenced 1 July 1991 (r 1)

Magistrates and Coroner's Courts (Registrar) Act 1991 No 44 sch 2

notified 20 September 1991 (Gaz 1991 No S95)
s 1, s 2 commenced 20 September 1991 (s 2 (1))
sch 2 commenced 25 September 1991 (s 2 (2) and Gaz 1991
No S103)

Magistrates Court Rules (Amendment) 1991 No 20

notified 25 September 1991
commenced 25 September 1991 (r 2 and Gaz 1991 No S103)

Magistrates Court (Enforcement of Judgments) Act 1994 No 61 pt 5

notified 11 October 1994
s 1, s 2 commenced 11 October 1994 (s 2 (1))
pt 5 commenced 10 April 1995 (s 2 (2) and Gaz 1995 No S75)

**Legal Practitioners (Consequential Amendments) Act 1997 No 96
sch 3**

notified 1 December 1997 (Gaz 1997 No S380)
s 1, s 2 commenced 1 December 1997 (s 2 (1))
sch 3 commenced 1 June 1998 (s 2 (2))

Legislation (Consequential Amendments) Act 2001 No 44 pt 238

notified 26 July 2001 (Gaz 2001 No 30)
s 1, s 2 commenced 26 July 2001 (IA s 10B)
pt 238 commenced 12 September 2001 (s 2 and see Gaz 2001
No S65)

Statute Law Amendment Act 2003 (No 2) A2003-56 sch 3 pt 3.15

notified LR 5 December 2003
s 1, s 2 commenced 5 December 2003 (LA s 75 (1))
sch 3 pt 3.15 commenced 19 December 2003 (s 2)

**Court Procedures (Consequential Amendments) Act 2004
A2004-60 sch 1 pt 1.40 (in part), pt 1.50**

notified LR 2 September 2004
s 1, s 2 commenced 2 September 2004 (LA s 75 (1))
sch 1 pt 1.50 commenced 10 January 2005 (s 2 and see Court
Procedures Act 2004 A2004-59, s 2 and CN2004-29)

Statute Law Amendment Act 2005 A2005-20 amdt 3.202

notified LR 12 May 2005
s 1, s 2 taken to have commenced 8 March 2005 (LA s 75 (2))
amdt 3.202 commenced 2 June 2005 (s 2 (1))

Endnotes

4 Amendment history

Criminal Code (Administration of Justice Offences) Amendment Act 2005 A2005-53 sch 1 pt 1.21

notified LR 26 October 2005
s 1, s 2 commenced 26 October 2005 (LA s 75 (1))
sch 1 pt 1.21 commenced 23 November 2005 (s 2)

Justice and Community Safety Legislation Amendment Act 2005 (No 4) A2005-60 sch 1 pt 1.18

notified LR 1 December 2005
s 1, s 2 taken to have commenced 23 November 2005 (LA s 75 (2))
sch 1 pt 1.18 commenced 22 December 2005 (s 2 (4))

4 Amendment history

Name of rules

s 1 am 1985 No 67 sch; R4 LA

Certain references to *Act* or *the Act*

s 2 am 1953 No 15
sub 1958 No 9
am 1967 No 2 r 1
om 1979 No 26
ins A2004-60 amdt 1.441

Terms defined in *Magistrates Court Act*

s 3 am 1937 (rules made 17 Dec 1937); Act 2001 No 44
amdt 1.2772-1.2774
om R4 LA
ins A2004-60 amdt 1.441
def **Clerk** sub 1985 No 67 sch
om 1986 No 74 s 67
def **the Act** om Act 2001 No 44 amdt 1.2773
def **the Ordinance** om 1986 No 74 s 67

References to *rules of Magistrates Court*

s 3A ins A2004-60 amdt 1.441

Form of heading and conclusion of notices

s 4 sub 1986 No 74 s 68
am Act 1994 No 61 s 57; Act 2001 No 44 amdt 1.2775; A2004-60 amdt 1.442

Office hours

s 5 am Act 1991 No 44 sch 2

Duties of registrar

s 6 am 1979 No 26; ord 1990 No 5 sch 3; Act 1991 No 44 sch 2;
Act 1991 No 61 s 60; R4 LA

Criminal proceedings

pt 4 hdg om 1986 No 74 s 70
ins A2004-60 amdt 1.443

Examination of witnesses—application of Magistrates Court (Civil Jurisdiction) Rules

s 7 om 1986 No 74 s 69
ins A2004-60 amdt 1.443

Affidavits—application of Magistrates Court (Civil Jurisdiction) Rules

s 8 am 1937 (rules made 17 Dec 1937); 1979 No 26
om 1986 No 74 s 69
ins A2004-60 amdt 1.443

Warrants to which Act, div 3.4.4 applies (Act, s 73A)

s 9 am 1937 (rules made 17 Dec 1937); 1953 No 15; 1979 No 26;
ord 1990 No 5 sch 3; Act 1991 No 44 sch 2
om Act 1994 No 61 s 58
ins A2004-60 amdt 1.443

Ex parte order may be set aside

s 10 am ord 1990 No 5 sch 3; Act 1991 No 44 sch 2
om Act 1994 No 61 s 58
reloc from Magistrates Court Act 1930 s 23 by A2004-60 amdt
1.210

Ex parte conviction may be set aside on application by informant

s 11 am 1953 No 15; 1979 No 26; ord 1990 No 5 sch 3
om Act 1994 No 61 s 58
reloc from Magistrates Court Act 1930 s 23AA by
A2004-60 amdt 1.216

Informant may request witnesses to attend

s 12 am 1953 No 15; ord 1990 No 5 sch 3; Act 1991 No 44 sch 2
om Act 1994 No 61 s 58
reloc from Magistrates Court Act 1930 s 60A by
A2004-60 amdt 1.239

Power of magistrate to subpoena witness

s 13 om 1986 No 74 s 70
reloc from Magistrates Court Act 1930 s 61 by
A2004-60 amdt 1.242

Service of subpoena on witness

s 14 om 1986 No 74 s 70
reloc from Magistrates Court Act 1930 s 62 by
A2004-60 amdt 1.245

Witnesses entitled to claim expenses

s 15 om 1986 No 74 s 70
reloc from Magistrates Court Act 1930 s 62A by
A2004-60 amdt 1.246

Endnotes

4 Amendment history

Production of documents before magistrate

s 16 om 1986 No 74 s 70
reloc from Magistrates Court Act 1930 s 66 by
A2004-60 amdt 1.254

Setting aside subpoena

s 17 am 1979 No 26
om 1986 No 74 s 70
reloc from Magistrates Court Act 1930 s 66A by
A2004-60 amdt 1.257

Ascertainment of capacity to pay fine

s 18 am 1979 No 26
om 1986 No 74 s 70
reloc from Magistrates Court Act 1930 s 154A by
A2004-60 amdt 1.321

Garnishee orders and writs of execution

s 19 om 1986 No 74 s 70
reloc from Magistrates Court Act 1930 s 154B by
A2004-60 amdt 1.324

Application of Magistrates Court (Civil Jurisdiction) Rules, pt 19

s 20 om 1986 No 74 s 70
reloc from Magistrates Court Act 1930 s 154C by
A2004-60 amdt 1.335

Witnesses expenses

s 21 om 1986 No 74 s 70
reloc from Magistrates Court Act 1930 s 247 by
A2004-60 amdt 1.377

Appointment of guardian ad litem

pt 5 hdg om 1986 No 74 s 70

Court may require guardian ad litem to be appointed

s 22 om 1986 No 74 s 70

Part 5 to apply to lunatics etc

s 23 om 1986 No 74 s 70

Default judgment

s 24 sub 1970 No 7
om 1986 No 74 s 71

Successive default summonses

s 25 am 1979 No 26
om 1986 No 74 s 71

Default summons not returned within 12 months to be struck out

s 26 am 1979 No 26
om 1986 No 74 s 71

Default summons to be struck out after 3 months where no action taken

s 27 am 1979 No 26
om 1986 No 74 s 71

Hearing

s 28 om 1986 No 74 s 71

Default summons may be exchanged for ordinary summons

s 29 sub 1937 (rules made 17 Dec 1937)
am 1953 No 15; 1967 No 2 r 2; 1979 No 26
om 1986 No 74 s 71

Costs

s 30 am 1937 (rules made 17 Dec 1937)
sub 1950 No 2; 1958 No 9
am 1965 No 9 r 2, r 3; 1967 No 2 r 3; 1969 No 4 r 2; 1977 No 7
r 1, r 2
om 1986 No 74 s 71

Australian register of judgments

pt 6 hdg sub A2003-56 amdt 3.163

Entry of Australian judgments in register

s 31 am 1979 No 26; 1986 No 74 s 72; Act 1991 No 44 sch 2
sub A2003-56 amdt 3.163

Successive ordinary summonses

s 32 am 1979 No 26
om 1986 No 74 s 73

Discontinuance, confession, admission, and payment into court

pt 7 hdg om 1986 No 74 s 74

Notice of discontinuance

s 33 om 1986 No 74 s 74

Effect of notice of discontinuance

s 34 om 1986 No 74 s 74

Statement of confession or agreement

s 35 om 1986 No 74 s 74

Effect of statement of confession or agreement

s 36 om 1986 No 74 s 74

Delivery of confession to clerk

s 37 am 1979 No 26
om 1986 No 74 s 74

Confession as to costs

s 38 om 1986 No 74 s 74

Endnotes

4 Amendment history

Admission may be filed

s 39 am 1979 No 26
om 1986 No 74 s 74

Either party may admit truth of claim of other party

s 40 om 1986 No 74 s 74

Notice to admit facts

s 41 am 1979 No 26
om 1986 No 74 s 74

Effect of filing notice of certain grounds of defence to a default summons

s 42 am 1979 No 26
om 1986 No 74 s 74

Payment into court in full satisfaction of claim

s 43 am 1979 No 26
om 1986 No 74 s 74

Payment into court after prescribed time

s 44 om 1986 No 74 s 74

Notice of acceptance of sum paid into court

s 45 om 1986 No 74 s 74

Payment into court in answer to set-off

s 46 om 1986 No 74 s 74

Payment into court of court fees and costs

s 47 om 1986 No 74 s 74

Payment into court under a defence of tender

s 48 om 1986 No 74 s 74

Payment into court of sum less than sum claimed with notice of denial of liability

s 49 om 1986 No 74 s 74

Payment into court by infant or person of unsound mind

s 50 om 1968 No 9 r 2

Special defence

pt 8 hdg om 1986 No 74 s 74

Special defence in cases of misjoinder of co-complainant

s 52 om 1986 No 74 s 74

In case of tender, amount to be paid into court

s 53 om 1986 No 74 s 74

Change of parties

pt 9 hdg om 1986 No 74 s 74

Change of parties

s 54 om 1986 No 74 s 74

Order changing parties to be served on other parties

s 55 am 1979 No 26
om 1986 No 74 s 74

Discharge or variation of order changing parties

s 56 om 1986 No 74 s 74

Action where complainant or defendant dies

s 57 om 1986 No 74 s 74

Effect of Bankruptcy Act, s 63

s 58 am 1979 No 26
om 1986 No 74 s 74

Recording of depositions

pt 9A hdg ins 1958 No 9
om 1967 No 2 r 4

Notation of direction to record depositions

s 58A ins 1958 No 9
om 1967 No 2 r 4

Transcript to be prepared in triplicate

s 58B ins 1958 No 9
om 1967 No 2 r 4

Transcript to be certified as correct

s 58C ins 1958 No 9
om 1967 No 2 r 4

Transmission of transcript to registrar when notice of appeal given

s 58D ins 1958 No 9
om 1967 No 2 r 4

Depositions to be records of the court

s 58E ins 1958 No 9
om 1967 No 2 r 4

Examination de bene esse

pt 10 hdg om 1986 No 74 s 74

Examination of persons

s 59 om 1986 No 74 s 74

Payment of conduct money

s 60 om 1986 No 74 s 74

Examiner to be supplied with documents

s 61 om 1986 No 74 s 74

Place of examination

s 62 om 1986 No 74 s 74

Endnotes

4 Amendment history

Depositions to be taken down and signed

s 63 om 1986 No 74 s 74

Action where witness objects to answer question

s 64 om 1986 No 74 s 74

Original depositions to be filed with clerk

s 65 om 1986 No 74 s 74

Examiner may furnish special report to court

s 66 om 1986 No 74 s 74

Proceedings under New South Wales Acts continued in force as Territory laws

pt 11 hdg om A2003-56 amdt 3.164

Proceedings under New South Wales Acts continued in force in ACT

s 67 am 1968 No 9 r 3, r 4; 1986 No 74 s 75
om A2003-56 amdt 3.164

Fees

pt 12 hdg sub 1953 No 15
am 1986 No 74 s 76
om Act 2001 No 44 amdt 1.2776

Court fees

s 68 am 1937 (rules made 17 Dec 1937)
sub 1953 No 15; 1980 No 5 r 1
am 1985 No 67 sch; 1986 No 74 s 77; 1987 No 1 r 1; 1988 No
15 r 2; 1989 No 16 r 3; 1991 No 14 r 3
om 1991 No 20 r 3

Witnesses' expenses

s 68A ins 1953 No 15
om 1967 No 2 r 5

Motions

pt 13 hdg om 1986 No 74 s 78

Applications to be made by motion

s 69 sub 1980 No 5 r 1
am 1985 No 67 sch
om 1986 No 74 s 78

Notice of motion to be served on opposite party

s 70 am 1979 No 26
om 1986 No 74 s 78

Form of security

s 71 am Act 2001 No 44 amdt 1.2777; A2004-60 amdt 1.444, amdt
1.445

Amendment	
pt 15 hdg	om 1986 No 74 s 79
Application to amend defects and errors	
s 73	om 1986 No 74 s 79
Misjoinder or nonjoinder of parties	
s 74	om 1986 No 74 s 79
Order adding defendant	
s 75	om 1986 No 74 s 79
Amended particulars of demand and amended notice of special defence may be filed	
s 76	om 1986 No 74 s 79
Abandonment of any part of claim	
s 77	om 1986 No 74 s 79
Affidavits	
pt 16 hdg	om 1986 No 74 s 80
Form of affidavit	
s 78	om 1986 No 74 s 80
Affidavit not to be sworn before party's solicitor	
s 79	om 1986 No 74 s 80
Affidavit to be explained to blind or literate persons	
s 80	om 1986 No 74 s 80
Court may receive affidavit notwithstanding defect	
s 81	om 1986 No 74 s 80
Enforcement of orders	
pt 17 hdg	om Act 1994 No 61 s 58
Date of warrant of execution	
s 82	am 1979 No 26 om Act 1994 No 61 s 58
Fees to be lodged before warrant is executed	
s 83	am Act 1991 No 44 sch 2 om Act 1994 No 61 s 58
Conditional order suspending execution of warrant not to be acted upon	
s 84	om Act 1994 No 61 s 58
Endorsement of amounts to be levied on warrant	
s 85	am Act 1991 No 44 sch 2 om Act 1994 No 61 s 58
Debtor may select goods to be sold first	
s 86	am 1990 No 5 sch 3 om Act 1994 No 61 s 58

Endnotes

4 Amendment history

Sales by auction

s 87 am 1979 No 26
om Act 1994 No 61 s 58

Removal of goods outside town to town for sale

s 88 am 1979 No 26
om Act 1994 No 61 s 58

Inventory to be handed to debtor

s 89 am 1979 No 26
om Act 1994 No 61 s 58

Account sales to be supplied to debtor

s 90 am ord 1990 No 5 sch 3
om Act 1994 No 61 s 58

Possession fee, when payable

s 91 om Act 1994 No 61 s 58

Issue of process where death in parties occurs after judgment etc

s 92 am 1986 No 74 s 8; ord 1990 No 5 sch 3
om Act 1994 No 61 s 58

Attachment of debts and imprisonment of fraudulent debtors

pt 18 hdg om Act 1994 No 61 s 58

Summonses under ss 170 or 181 of ordinance

s 93 am Act 1991 No 44 sch 2
om Act 1994 No 61 s 58

Failure to appeal when summoned

s 94 am ord 1990 No 5 sch 3
om Act 1994 No 61 s 58

Service of summonses

s 95 om Act 1994 No 61 s 58

Failure to obey summons

s 96 am ord 1990 No 5 sch 3
om Act 1994 No 61 s 58

Payment of reasonable travelling expenses to person summoned

s 97 am ord 1990 No 5 sch 3
om Act 1994 No 61 s 58

Service of foreign documents

pt 18A hdg ins 1932 (rules made 26 November 1932)

Service of foreign documents

s 97A ins 1932 (rules made 26 November 1932)
am 1985 No 67 sch; ord 1990 No 5 sch 3; Act 1991 No 44 sch
2

Obtaining evidence for foreign tribunals

pt 18B hdg ins 1932 (rules made 26 November 1932)

Obtaining evidence for foreign tribunals

s 97B ins 1932 (rules made 26 November 1932)
 am 1986 No 74 s 82; ord 1990 No 5 sch 3; Act 1991 No 44 sch
 2; Act 2001 No 44 amdt 1.2778, amdt 1.2779; A2004-60
 amdt 1.446, amdt 1.447

Clerk or agent may sign folegal practitioner

s 98 am ord 1990 No 5 sch 3; Act 1994 No 61 s 60; Act 1997 No 96
 sch 2

Authentication of acts of magistrate or registrar

s 99 om Act 2001 No 44 amdt 1.2780
 reloc from Magistrates Court Act 1930 by A2005-20
 amdt 3.202

Witness expenses

s 100 ins A2005-53 amdt 1.114

Court seals

s 101 reloc from Magistrates Court (Civil Jurisdiction) Rules 2004,
 s 478 by A2005-60 amdt 1.107

The Schedules

hdg om Act 2001 No 44 amdt 1.2781

Forms

sch 1 hdg sub 1979 No 26
 om Act 2001 No 44 amdt 1.2782
 sch 1 am 1932 (rules made 26 November 1932); 1985 No 67 sch;
 1986 No 74 sch 3; ord 1990 No 5 sch 3; Act 1991 No 44 sch
 2; Act 1994 No 61 s 59
 om Act 2001 No 44 amdt 1.2782

Fees

sch 2 sub 1953 No 15; 1960 No 7 r 2; 1967 No 2 r 7; 1974 No 12;
 1980 No 5 r 2
 am 1986 No 74 s 84; 1989 No 16 r 4; 1991 No 14 r 4
 om 1991 No 20 r 4

Witnesses expenses

sch 3 ins 1953 No 1
 sub 1958 No 9
 om 1967 No 2 r 6

Endnotes

5 Earlier republications

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	SL 1991 No 20	30 September 1991
2	Act 1994 No 61	10 April 1995
3	Act 1994 No 61	30 November 1996
4	A2001-44	30 April 2002
5	A2003-56	19 December 2003
6*	A2004-60	10 January 2005
6 (RI)	A2004-60	10 August 2005
7 (RI)	A2005-20	10 August 2005
8	A2005-53	23 November 2005

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