



Australian Capital Territory

Supreme Court Amendment Rules 2004 (No 3)

Subordinate Law SL2004-15

We, Judges of the Supreme Court, make the following rules of court under the *Supreme Court Act 1933*, section 36.

Dated 13 May 2004.

T J HIGGINS
Chief Justice

M F GRAY
Judge

K J CRISPIN
Judge

T CONNOLLY
Judge



Australian Capital Territory

Supreme Court Amendment Rules 2004 (No 3)

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made under the

Supreme Court Act 1933

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1 Name of rules

These rules are the *Supreme Court Amendment Rules 2004 (No)*.

2 Commencement

These rules commence on the day after their notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Legislation amended

These rules amend the *Supreme Court Rules*.

4 Order 39 rules 45 to 49

renumber as order 39 rules 38 to 42

5 New division 39.8A

insert

**Division 39.8A Appointment of medical expert for
Civil Law (Wrongs) Act****43 Definitions for div 39.8A**

In this division:

appointed expert—see the Wrongs Act, section 84.

expert, in relation to an issue—see the Wrongs Act, section 82.

expert medical evidence—see the Wrongs Act, section 82.

Wrongs Act means the *Civil Law (Wrongs) Act 2002*.

44 Application for appointment of expert—Wrongs Act, s 86

- (1) An application to the court by a party to a proceeding for the appointment of a person to give expert medical evidence in the proceeding must be made by notice of motion under order 54.
- (2) The application may seek any of the following orders:
 - (a) an order for the appointment of a person, an additional person, or 2 or more people, to give expert medical evidence;
 - (b) an order about payment of costs and expenses of a person proposed to be appointed.

45 Supporting affidavit for appointment of expert

An application under rule 44 must be supported by an affidavit setting out—

- (a) the attempts made by the parties to agree on the appointment of a person to give expert medical evidence in the proceeding; and
- (b) the issues on which expert medical evidence is proposed to be given in the proceeding; and
- (c) if the application is for the appointment of an additional expert to give expert medical evidence in the proceeding—the issues for which the appointment is proposed to be made and why the appointment should be made; and
- (d) if the application is for the appointment of 2 or more experts to give expert medical evidence on a particular issue—the issue for which the appointment is proposed to be made and why more than 1 expert should be appointed to give expert medical evidence on the issue; and
- (e) for each appointment for which application is made—a list of appropriately qualified people who are available and willing to be appointed; and

-
- (f) for each person on a list mentioned in paragraph (e)—the following information:
 - (i) why the person is an expert in relation to the issue for which the appointment is proposed to be made;
 - (ii) the hourly rate of the fees the person proposes to charge and, if possible, an estimate of the total amount likely to be charged for the person’s expert medical evidence; and
 - (g) if an order is sought about the payment of the costs and expenses of a person proposed to be appointed—why the order should be made; and
 - (h) any matters relevant to whether the party or parties should be heard on the application.

46 Service on other parties

The party making an application under rule 44 must serve a copy of the application and supporting affidavit on each other party on or before the day the party files the application.

47 Response by other parties

- (1) A party on whom a copy of an application under rule 44 (the ***rule 44 application***) and supporting affidavit is served may, within the required time, do either or both of the following:
 - (a) apply to the court by notice of motion under order 54 for any of the orders mentioned in rule 44 (2);
 - (b) file, and serve on each other party, an affidavit responding to anything mentioned in the rule 44 application or its supporting affidavit.
- (2) For subrule (1), the ***required time*** for a party is 14 days after the day the party receives the rule 44 application and its supporting affidavit or, if the court allows a longer period, that period.

- (3) Rule 45 (Supporting affidavit for appointment of expert) applies in relation to an application under subrule (1) (a) as if it were an application under rule 44.

48 Selection of expert etc by court

- (1) This rule applies to the making of the following decisions by the court:
 - (a) a decision whether to appoint an expert;
 - (b) a decision about the person to be appointed as an expert;
 - (c) a decision whether to make an order under the Wrongs Act, section 90 about payment of the costs and expenses of an appointed expert.
- (2) The court must make a decision to which this rule applies by considering the applications and affidavits filed by the parties and need not hear the parties unless it is satisfied that the interests of justice require the parties to be heard.
- (3) A person appointed as an expert in relation to an issue by the court may (but need not) be a person mentioned in a list of appropriately qualified people in relation to the issue set out in an affidavit filed by a party.
- (4) If the court proposes to make a decision to which this rule applies, the court must give each of the parties written notice of the proposed decision.
- (5) Within 7 days after the day a party is given notice of the proposed decision, the party may apply to the court by notice of motion under order 54 for an order in relation to the proposed decision.
- (6) If an application is not made under subrule (5) in relation to the proposed decision, the court must, within 7 days of the day the period mentioned in the subrule expires, make the decision and give each of the parties written notice of the making of the decision.

49 Appointed experts to be briefed etc

- (1) Within 14 days after the day a party is given written notice of the appointment of an expert by the court, the party must—
 - (a) give the expert a statement of the issues on which the expert is to give expert medical evidence; and
 - (b) comply with the Wrongs Act, section 88 (Documents etc to be given to expert).
- (2) Not later than 14 days after the day the expert files the expert's report under rule 49B, each party must pay any amount payable by the party to the expert.

49A Request by appointed expert for directions

- (1) An appointed expert may write to the registrar seeking directions in relation to the expert medical evidence the expert is to give.

Example

letter requesting directions about whether the plaintiff should be physically examined

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) Unless the court otherwise orders, the registrar must give a copy of the letter seeking directions to each party at least 7 days before the day the letter is placed before a judge or the master.
- (3) A party to the proceeding may file written submissions about the directions sought within 7 days after the day the party is given a copy of the letter.
- (4) The court may appoint a date for a directions hearing about the directions sought by the appointed expert.
- (5) After considering any submissions made by the parties, the court may give the appointed expert directions the court considers just.

49B Expert to report

- (1) As soon as practicable after an expert is appointed by the parties or the court, the expert must prepare and file a written report on the issues on which the expert is to give expert medical evidence.
- (2) In preparing the report, the expert must comply with any expert witness code of conduct adopted under rule 49C.
- (3) The expert must give a copy of the report to each of the parties within 7 days after the day the expert files the report.

49C Expert witness code of conduct

- (1) The registrar may, with the judges' approval, issue practice directions adopting, for these rules (including this division), a code of conduct for experts.
- (2) A practice direction is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

49D Expert report to be admitted in evidence

Unless the court otherwise orders, an expert's report filed under rule 48C must be admitted in evidence at the beginning of the hearing of the proceeding if that rule is complied with in relation to the report.

49E Attendance of expert

- (1) An expert must, on reasonable notice by the registrar or a party, attend the hearing of the proceeding for which the expert has filed a report under rule 49B.
- (2) A party may cross-examine the expert in relation to the report.

6 Order 61 rule 3 (a)

insert

- division 39.8A

7 Order 61 rule 3 (d)

omit

part 2.2.

substitute

part 2.2; and

8 Order 61 new rule 3 (e)

insert

(e) under the *Civil Law (Wrongs) Act 2002*, chapter 6 (Expert medical evidence).

9 Order 61A rule 1 (zc)

omit

part 2.2.

substitute

part 2.2; and

10 Order 61A new rule 1 (zd)

insert

(zd) under the *Civil Law (Wrongs) Act 2002*.

Endnotes

1 Notification

Notified under the Legislation Act on 20 May 2004.

2 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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