



Australian Capital Territory

# Court Procedures Amendment Rules 2007 (No 1)

Subordinate Law SL2007-16

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We, members of the rule-making committee, make the following rules of court under the *Court Procedures Act 2004*, section 7.

Dated 20 June 2007.

T J HIGGINS

Chief Justice

K J CRISPIN

President of the Court of Appeal

T CONNOLLY

Judge

R CAHILL

Chief Magistrate

M SOMES

Magistrate





Australian Capital Territory

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Subordinate Law SL2007-16

made under the

**Court Procedures Act 2004**

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**1 Name of rules**

These rules are the *Court Procedures Amendment Rules 2007 (No 1)*.

**2 Commencement**

These rules commence on 1 July 2007.

*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 *Court Procedures Rules 2006*.

**4 Rule 504 (1), note**

*substitute*

*Note 1* Pt 6.2 (Applications in proceedings) applies to an application for leave under this rule.

*Note 2* The registrar may make an order amending the originating process if the parties affected by the order consent to it and the registrar considers it appropriate (see r 1611 (Orders—by consent)).

**5 Rule 507, note**

*substitute*

*Note 1* Pt 6.2 (Applications in proceedings) applies to an application for leave under this rule.

*Note 2* The registrar may make an order amending a pleading if the parties affected by the order consent to it and the registrar considers it appropriate (see r 1611 (Orders—by consent)).

**6 Rule 509 (2) (b)**

*omit*

the amendments and

**7 Rule 509 (4) (b)**

*omit*

the amendments and

**8 Rule 670**

*substitute*

**670 Contravention of pt 2.8 order—contempt of court**

(SCR o 34 r 22)

- (1) If a person, without reasonable excuse, contravenes an order of the court made under this part, the person may be dealt with for contempt of court.
- (2) This rule does not limit any other power of the court in relation to the contravention.

*Note 1* Failure to answer a question or give information in a legal proceeding may be an offence (see Criminal Code, s 722).

*Note 2* See also r 671 (Contravention of pt 2.8 order—other action), r 2444 (Enforcement—failure of individual to comply with subpoena etc), r 2445 (Enforcement—failure of corporation to comply with subpoena etc).

**9 Rule 1016**

*relocate as rule 282 in division 2.4.9*

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**10 New division 2.14.1A***insert***Division 2.14.1A Transfer of proceedings between courts****1430 Transfer of proceeding from Supreme Court to Magistrates Court—application**

- (1) The Supreme Court may, on application by a party to a proceeding started in the Supreme Court or its own initiative, order that the proceeding be transferred to the Magistrates Court.

*Note* Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

- (2) The Court may make an order under subsection (1) only if satisfied that—
  - (a) the amount claimed (whether initially or as reduced by payment, admitted set-off or otherwise) is not more than the amount for which the Magistrates Court has jurisdiction to decide; and
  - (b) the proceeding could properly have been started in the Magistrates Court; and
  - (c) the Court considers it just to do so.

**1431 Transfer of proceeding from Supreme Court to Magistrates Court—procedure**

- (1) This rule applies if the Supreme Court orders under rule 1430 that a proceeding be transferred to the Magistrates Court.
- (2) A party to the proceeding may file in the Magistrates Court a copy of—
  - (a) the order; and

- (b) each of the pleadings in the proceeding; and
  - (c) any other relevant documents filed in the Supreme Court.
- (3) When the documents mentioned in subrule (2) are filed, the proceeding—
- (a) stops being a proceeding in the Supreme Court; and
  - (b) becomes a proceeding in the Magistrates Court.
- (4) The proceeding is taken to have been started in the Magistrates Court on the day the proceeding was started in the Supreme Court.
- (5) Costs in the proceeding are to be allowed—
- (a) for costs incurred before the order under rule 1430 is made (including the costs of getting the order) and the costs of getting the copies mentioned in subrule (2)—
    - (i) if the Court makes an order in relation to the costs—in accordance with the order; or
    - (ii) in any other case—at the prescribed scale of costs; and
  - (b) for costs incurred after the order is made (not including the costs of getting the copies mentioned in subrule (2))—in accordance with rule 1722 (Costs—solicitors’ costs generally) as if the proceeding were a proceeding in the Magistrates Court immediately after the order is made.

**1432 Transfer of proceeding from Magistrates Court to Supreme Court—application**

- (1) The Supreme Court may, on application by a party to a proceeding started in the Magistrates Court, order that the proceeding be transferred to the Supreme Court.

*Note* Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.



- (2) The Court may make an order under subsection (1) on the conditions about costs, security for the amount claimed for costs, or otherwise, that the Court considers just.

**1433 Transfer of proceeding from Magistrates Court to Supreme Court—stay of proceeding**

- (1) This rule applies to an application under rule 1432.
- (2) The Supreme Court may, on application by a party to the proceeding, order that the proceeding be stayed until the application is decided or the Court otherwise orders.

*Note* Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

- (3) An order under this rule takes effect immediately on filing a copy of the order in the Magistrates Court.

**11 Rule 2441 (1) (b) (i)**

*substitute*

- (i) punishment for contempt of the person liable under the original order; or

*Note* For provisions about contempt, see div 2.18.16.

**12 Rule 2442 (2) (a)**

*substitute*

- (a) punishment for contempt of the person liable under the original order;

*Note* For provisions about contempt, see div 2.18.16.

**13 Rule 2442 (2) (c) (i)**

*substitute*

- (i) punishment for contempt of any senior officer of the corporation;

**14 Rule 2442 (5) (b)**

*substitute*

- (b) punish for contempt.

**15 Rule 2443 (1) (a)**

*substitute*

- (a) punishment for contempt of the person liable under the undertaking;

*Note* For provisions about contempt, see div 2.18.16.

**16 Rule 2443 (1) (c) (i)**

*substitute*

- (i) punishment for contempt of any senior officer of the corporation;

**17 Rule 2500 (1)**

*omit*

**18 New rule 3736 (3) and (4)**

*insert*

- (3) However, subrule (2) does not apply if—
- (a) the officer or employee has already filed with the court an instrument that—
    - (i) states the position the person holds in the corporation; and
    - (ii) authorises, or evidences the authority of, the person to represent the corporation in proceedings in the court; and
    - (iii) states that the person is aware that the person may be liable to pay some or all of the costs of a proceeding in which the corporation is a party; and
- Note* An *instrument* is defined in the Legislation Act, s 14 as any writing or other document. *Writing* and *document* are defined in the Legislation Act, dict, pt 1.
- (b) the authority has not been revoked.
- (4) An authority mentioned in subrule (3) remains in force until notice of its revocation is filed with the court.

**19 Rule 3793 (b)**

*substitute*

- (b) make any other order it considers appropriate.

**20 Rule 3903 (4), definition of *applied civil rules***

*after 3rd dot point, insert*

- rule 1015 (Payment into court—amount recovered by person with legal disability)
- rule 1016 (Person with legal disability—approval of settlement etc)

- rule 1017 (Person with legal disability—orders about recovered amounts etc)

**21 Rule 3966 (4)**

*substitute*

- (4) The copy of the agreement filed or handed to the court must—
- (a) be signed by the injured worker, the injured worker’s representative and each other party or the party’s representative; and
  - (b) include a statement by a lawyer that the lawyer—
    - (i) has provided independent legal advice about the agreement to the injured worker; and
    - (ii) based on the lawyer’s experience in worker’s compensation proceedings and knowledge of the injured worker’s claim, considers that the amount of compensation set out in the agreement is not manifestly inadequate.

**22 Rule 5101 (2) (a)**

*substitute*

- (a) the notice of appeal must state—
  - (i) that the appeal is brought by leave; and
  - (ii) the date of the court order giving leave; and

**23 Rule 6250 (2) (i)**

*omit*

- rule 2311 (Debt redirection order—third person disputes liability)

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**24 Rule 6250 (7)**

*omit*

**25 New rule 6251**

*insert*

**6251 Jurisdiction exercisable by registrar of Magistrates Court**

- (1) This rule applies only to the registrar of the Magistrates Court.
- (2) The registrar may exercise the following jurisdiction of the court:
  - (a) to hear and decide an application in a proceeding, other than an application under a provision of these rules mentioned in schedule 5, part 5.4;

*Note* **Application** in a proceeding is defined in r 6006 (Application—pt 6.2).
  - (b) to hear and decide an originating application mentioned in any of the following provisions of these rules:
    - rule 650 (2) (Discovery to identify potential defendant);
    - rule 651 (2) (Discovery to identify right to claim relief);
  - (c) in relation to an application for default judgment under rule 1118 (3) (Default judgment—generally) or rule 1138 (3) (Default judgment—partial defence);
  - (d) in relation to a directions hearing under rule 1303 (Directions hearing—category C proceedings) or rule 1308 (Directions hearing—category A, category B and category D proceedings);
  - (e) in relation to a listing hearing under rule 1309 (Listing hearing);
  - (f) in relation to the setting down under rule 1310 (Special fixture) of a proceeding for trial as a special fixture;

- (g) to hear and decide a proceeding on an application for directions under rule 1403 (Decision in proceeding);
- (h) the setting of a date for a directions hearing under rule 1522 (Separate decisions on questions—directions);
- (i) in relation to an application mentioned in any of the following rules:
  - rule 2010 (Enforcement—enforcement of Magistrates Court order in Supreme Court)
  - rule 2052 (Enforcement orders—duration and renewal of certain enforcement orders given to enforcement officers)
  - rule 2100 (Enforcement hearing—application by enforcement creditor)
  - rule 2101 (Enforcement hearing—otherwise than on enforcement creditor’s application)
  - rule 2151 (Instalment order—application by enforcement debtor)
  - rule 2201 (Seizure and sale order—application)
  - rule 2302 (Debt redirection order—application)
  - rule 2351 (Earnings redirection order—application)
  - rule 2460 (Order for seizure and delivery of goods—making);
- (j) in relation to an enforcement hearing under division 2.18.3 (Enforcement of money orders—enforcement hearings);
- (k) in relation to an instalment order agreement under rule 2157 (Instalment order—instalment order agreement);
- (l) in relation to the giving of directions under rule 2307 (Debt redirection order—claim by someone else);
- (m) in relation to a notice of objection under rule 2311 (Debt redirection order—third person disputes liability);

- (n) in relation to an application for default judgment under rule 3751 (3) (Small Claims Court—default by third party);
- (o) in relation to an application for default judgment under rule 3757 (4) (Small Claims Court—default judgment);
- (p) in relation to changing the time or place of, or adjourning, a conference under rule 3762 (Small Claims Court conference—changing time or place of);
- (q) in relation to a party’s failure to attend a conference under rule 3765 (Small Claims Court conference—failure to attend);
- (r) in relation to a conference under rule 3766 (Small Claims Court conference—procedure);
- (s) in relation to changing the time or place of, or adjourning, an inquiry under rule 3769 (Small Claims Court inquiry—changing time or place of);
- (t) in relation to the appointment of an investigator under rule 3773 (1) (Small Claims Court inquiry—investigators) and the remuneration of the investigator under rule 3773 (5);
- (u) to make an order under rule 3793 (Small Claims Court order—other orders);
- (v) to make an order under rule 3920 (4) (Arbitration—including other parties);
- (w) in relation to holding a case management meeting under rule 3942 (Arbitration—case management generally);
- (x) in relation to the settlement of a claim at a case management meeting under rule 3946 (Arbitration—settling of claim at case management meeting);
- (y) to make directions under rule 3947 (Arbitration—settling of claim unlikely at case management meeting);

- (z) to make directions under rule 3967 (2) (Registered agreement—application for amendment or cancellation);
  - (za) in relation to an application under rule 6439 (Service of originating application to recover unoccupied land);
  - (zb) in relation to an application for leave under rule 6481 (Subpoena—service on medical expert);
  - (zc) in relation to the making of an order under rule 6510 (9) (Service outside Australia—service in convention countries) or rule 6511 (14) (Service outside Australia—service in non-convention countries);
  - (zd) in relation to an application for leave under rule 6603 (Subpoena to produce—leave to serve late).
- (3) The registrar may also exercise the following jurisdiction of the court:
- (a) under the *Bail Act 1992*, section 19;
  - (b) under the *Civil Law (Wrongs) Act 2002*, chapter 6 (Expert medical evidence);
  - (c) under the following provisions of the *Commercial Arbitration Act 1986*:
    - section 17 (Subpoenas to attend etc)
    - section 34 (2) (Costs);
  - (d) under the following provisions of the *Magistrates Court Act 1930*:
    - section 84 (1) (Particular cases may be adjourned) in relation to a proceeding in which the defendant is not in custody and the informant does not oppose bail
    - section 85 (2) (b) (Proceeding if either party not present at adjourned hearing)



- 
- section 109 (Dismissal or adjournment in absence of informant);
- (e) under the following provisions of the *Service and Execution of Process Act 1992* (Cwlth):
- section 11 (8) (Proof of service)
  - section 17 (1) (b) (Time for appearance)
  - section 30 (1) (b) (Time for service)
  - section 35 (3) (Entitlement to expenses)
  - section 45 (3) (Entitlement to expenses)
  - section 105 (4) (Enforcement of judgments).

*Note* The court may order the registrar to do, or not do, an act relating to the registrar's duties (see r 6904 (Mandatory order to registrar etc)).

- (4) If the registrar may exercise the jurisdiction of the court to hear and decide an application in a proceeding about a matter under subrule (2) (a), the registrar may, on the registrar's own initiative, exercise the jurisdiction of the court in relation to the matter even if there is no application.
- (5) If, under this rule, the registrar may exercise the jurisdiction of the court in relation to a matter, the registrar may exercise the jurisdiction of the court to make any order the court could make, and do anything else the court could do, in relation to the matter, including making any order that the court could make, or doing anything the court could do, on its own initiative in relation to the matter.

**Example of thing court could do**

issue warrant

*Note* An example is part of these rules, 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).

- (6) A deputy registrar may exercise the jurisdiction of the court under this rule only if authorised in writing by the Chief Magistrate.

- (7) An authorisation under subrule (6) is a notifiable instrument.

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

**26 Rule 6411 (1)**

*omit*

A document in a proceeding

*substitute*

A document in a proceeding, other than a subpoena,

**27 Rule 6411 (1), new note**

*insert*

*Note 2* A subpoena must be served personally on the addressee (see r 6605 (Service of subpoena)).

**28 Rule 6603**

*substitute*

**6603 Subpoena—leave to serve late**

- (1) The court may give leave for a subpoena to be served later than 5 days before the date stated in the subpoena for compliance with it (the *compliance date*).
- (2) An application for leave is made by filing—
  - (a) a draft of the subpoena with a statement on its first page that leave is granted to serve the subpoena later than 5 days before the compliance date; and
  - (b) an affidavit in support of the application.

- (3) The affidavit in support of the application must state—
- (a) for a subpoena to attend to give evidence—
    - (i) the need for the addressee for the subpoena to give evidence in the proceeding; and
    - (ii) the reason the subpoena was not issued in enough time to enable it to be served at least 5 days before the compliance date; and
    - (iii) whether the addressee for the subpoena has been told about the hearing and, if so, whether the addressee is able to attend the hearing; and
    - (iv) the earliest date when the subpoena can be served; and
  - (b) for a subpoena to produce—
    - (i) the need for production of the document or thing required to be produced by the subpoena; and
    - (ii) the reason the subpoena was not issued in enough time to enable it to be served at least 5 days before the compliance date; and
    - (iii) whether the addressee for the subpoena has been told about the subpoena and, if so, whether the addressee is able to produce the document or thing before the compliance date; and
    - (iv) the earliest date when the subpoena can be served.
- (4) If the court gives leave, it must set a date for the last date of service for the subpoena.
- (5) Part 6.2 (Applications in proceedings) does not apply to an application under this rule.
- (6) The draft subpoena and supporting affidavit need not be served on anyone unless the court otherwise orders on its own initiative.

- (7) Unless the court otherwise orders on its own initiative, an application under this rule may be dealt with without a hearing and in the absence of the parties.
- (8) This rule is subject to rule 6481 (Subpoena—service on medical expert).

*Note 1* Rule 6481 (2) provides that a subpoena requiring a medical expert to give evidence in a proceeding must be served at least 6 weeks before the date set by the court for the hearing of the proceeding unless the subpoena is served in accordance with leave under the rule.

*Note 2* The *Service and Execution of Process Act 1992* (Cwlth), s 30 deals with applications for a shorter period to serve subpoenas under that Act.

**29 Schedule 5, part 5.1, items 27 and 28**

*omit*

**30 Schedule 5, part 5.2, new item 26A**

*insert*

26A	section 439A (6)		power to extend the convening period fixed by subsection 439A (5)
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**31 Schedule 5, part 5.2, new item 67A**

*insert*

67A	section 482		power to make an order— (a) to stay the winding up of a company either indefinitely or for a limited time; or (b) to terminate the winding up of a company on a day specified in the order
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**32 Schedule 5, new part 5.4***insert*

## **Part 5.4 Jurisdiction under rules in relation to applications in proceedings not exercisable by registrar of Magistrates Court**

(see r 6251)

<b>column 1 item</b>	<b>column 2 provision, and if relevant, case</b>	<b>column 3 provision heading</b>
1	317	Third party—extent bound by judgment between plaintiff and defendant
2	716	Disposal of property other than land
3	729	Division 2.9.4 order without notice etc
4	730	Division 2.9.4 order without trial
5	sdiv 2.9.4.2 (other than r 745 (Freezing orders—costs))	Freezing orders
6	sdiv 2.9.4.3 (other than r 755 (Search orders—costs))	Search orders
7	1015	Payment into court—amount recovered by person with legal disability

<b>column 1 item</b>	<b>column 2 provision, and if relevant, case</b>	<b>column 3 provision heading</b>
8	1016	Person with legal disability—approval of settlement etc
9	1226	Request by appointed expert for directions
10	1228	Expert report to be admitted in evidence
11	1240	Application—div 2.12.4
12	1241	Service of expert reports
13	1243	Expert evidence to be covered by expert report
14	1246	Tender of expert report
15	1505	Trial—defendant or plaintiff not appearing
16	1521	Separate decisions on questions—order
17	1530	Assessors
18	1531	Referee—referral of question etc to
19	1532	Referee—appointment
20	1533	Referee—amendment of order referring question etc
21	1536	Referee—report
22	1537	Referee—proceeding on report
23	1548	Partial judgment for damages to be assessed

<b>column 1 item</b>	<b>column 2 provision, and if relevant, case</b>	<b>column 3 provision heading</b>
24	1607	Orders—certified duplicate
25	1855	Costs—review by court
26	2220	Seizure and sale order—sale at best price obtainable
27	2443	Enforcement—undertakings
28	2501	Contempt—applications generally
29	2600	Interpleader—application by stakeholder
30	2606	Interpleader—failure to give notice of claim
31	2608	Interpleader—admission of claim
32	2609	Interpleader—enforcement officer’s interpleader application
33	3918 (4)	Application for arbitration—discontinuance
34	3924	Arbitration—party may be represented
35	3927	Arbitration listing procedure—certificate of readiness not signed
36	3928 (4)	Arbitration—service of medical reports
37	3930	Arbitration—doctor’s evidence to be covered by medical report
38	3933 (2)	Arbitration—tender of medical report

<b>column 1 item</b>	<b>column 2 provision, and if relevant, case</b>	<b>column 3 provision heading</b>
39	3934	Arbitration—party may apply for medical referee etc
40	3937	Arbitration—assessment of worker by medical referee
41	3952 (4)	Conduct of arbitration—directions and orders if remedy against employer and stranger
42	3960 (2)	Arbitration—payment on worker’s acceptance
43	3961 (3)	Arbitration—payment on dependant’s etc acceptance
44	3962 (3)	Arbitration—no prompt acceptance of submission or payment
45	3965 (1)	Arbitration—setting aside or amending award
46	3967 (1)	Registered agreement—application for amendment or cancellation
47	4020	Criminal proceedings—failure of individual to comply with subpoena etc
48	4021	Criminal proceedings—failure of corporation to comply with subpoena etc
49	4050	Criminal proceedings—production of person in custody
50	part 5.2	Appeals from master or registrar



column 1 item	column 2 provision, and if relevant, case	column 3 provision heading
51	6142 (3) (c)	Rejecting documents—abuse of process etc
52	6610 (2) or (4)	Disposal of subpoenaed documents and things produced
53	6613	Documents and things in custody of court
54	6762	Custody of exhibits after proceeding
55	6816	Appointment of examiner
56	6817	Documents for examiner
57	6904	Mandatory order to registrar etc
58	6906, if order or certificate of magistrate	Mistakes in orders or court certificates

**33 Schedule 6, rule 2.2 (4) (a)**

*omit*

interlocutory

**34 Schedule 6, rule 2.7 (2) (a) and (b)**

*omit*

interlocutory application

*substitute*

application in the interlocutory process

**35 Schedule 6, new rule 12.1B**

*insert*

**12.1B Notification to court if proceeding started before end of takeover bid period (Corporations Act, s 659B)**

- (1) This rule applies to a party to a proceeding who suspects or becomes aware that—
  - (a) the proceeding was started in relation to a takeover bid, or proposed takeover bid, before the end of the bid period; and
  - (b) the proceeding falls within the definition of *court proceedings in relation to a takeover bid or proposed takeover bid* in the Corporations Act, section 659B (4).
- (2) The party identified in subrule (1) must, immediately on suspecting or becoming aware of the matters mentioned in subrule (1), notify any other party to the proceeding and the court of the suspicion or knowledge.
- (3) The party must comply with subrule (2), unless any other party to the proceeding has given a notice under this rule to the party.

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## **Endnotes**

### **1 Notification**

Notified under the Legislation Act on 25 June 2007.

### **2 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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