



Australian Capital Territory

Court Procedures Amendment Rules 2008 (No 2)

Subordinate Law SL2008-44

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

Dated 25 September 2008.

T J HIGGINS

Chief Justice

M F GRAY

President of the Court of Appeal

R REFSHAUGE

Judge

R CAHILL

Chief Magistrate

J BURNS

Magistrate



Australian Capital Territory

Court Procedures Amendment Rules 2008 (No 2)

Subordinate Law SL2008-44

made under the

Court Procedures Act 2004

Contents

	Page
1 Name of rules	1
2 Commencement	1
3 Legislation amended	1
4 New rule 2010A	1
5 New rule 2015 (4)	3
6 Rule 6250 (2) (i), new dot point	3
7 Rule 6251 (2) (i), new dot point	3
8 New division 6.10.3A	3
9 Schedule 4, rule 4.12	4

J2008-386

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Contents

10	Schedule 4, part 4.2	Page 5
----	----------------------	-----------

1 Name of rules

These rules are the *Court Procedures Amendment Rules 2008 (No 2)*.

2 Commencement

These rules commence on 1 October 2008.

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 New rule 2010A

insert

2010A Enforcement—certificate of registration of enforceable order under Service and Execution of Process Act

- (1) This rule applies in relation to an application for the registration in a court of an enforceable order of another court or tribunal under the *Service and Execution of Process Act 1992 (Cwlth)*, section 105.
- (2) An application under subrule (1) is made by filing in the court—
 - (a) a copy, sealed by the court or tribunal that made the order, of the enforceable order, or a fax of the copy so sealed; and
 - (b) a draft certificate with a copy of the sealed copy of the order attached.
- (3) Part 6.2 (Applications in proceedings) does not apply to the application.
- (4) A copy of the enforceable order and draft certificate need not be served on anyone unless the court otherwise orders on its own initiative.

- (5) The court may give the applicant a sealed copy of the certificate of registration of the enforceable order, with a copy of the enforceable order sealed by the registering court attached.

Note See approved form 2.85 (Certificate of registration of enforceable order).

- (6) If a fax is filed under subrule (2) (a)—
- (a) the copy, sealed by the court or tribunal that made the order, of the enforceable order must be filed with the court not later than 7 working days after the day the fax is filed; and
 - (b) if the copy so sealed is not filed with the court within the 7-day period, a proceeding to enforce the enforceable order must not be started or continued until the copy is filed or unless the court gives leave.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave.

- (7) An application for leave to start, or continue, an enforcement proceeding need not be served on anyone unless the court otherwise orders on its own initiative.

- (8) In this rule:

certificate of registration, of an order, means the certificate given under subrule (5), signed by the registrar, certifying that the enforceable order is registered.

enforceable order means—

- (a) an enforceable money order; or
- (b) an enforceable non-money order.

working day means a day that is not—

- (a) a Saturday or Sunday; or
- (b) a public holiday or bank holiday in the ACT under the *Holidays Act 1958*.

5 New rule 2015 (4)

insert

(4) In this rule:

order includes a certificate of registration given under rule 2010A.

6 Rule 6250 (2) (i), new dot point

insert

- rule 2010A (Enforcement—certificate of registration of enforceable order under Service and Execution of Process Act)

7 Rule 6251 (2) (i), new dot point

insert

- rule 2010A (Enforcement—certificate of registration of enforceable order under Service and Execution of Process Act)

8 New division 6.10.3A

insert

Division 6.10.3A Notice to produce**6748 Notice to produce**

- (1) A party to a proceeding may serve a notice on another party to the proceeding requiring the other party to produce to the court at the hearing of the proceeding a document or thing mentioned in the notice for the purpose of evidence in the proceeding.

Note See approved form 6.20 (Notice to produce).

- (2) The notice must be served on the other party not later than 14 days before the date set for the hearing of the proceeding unless the court otherwise orders.

- (3) The other party must produce the document or thing mentioned in the notice to the court at the hearing if—
 - (a) the notice is served on the party in accordance with subrule (2); and
 - (b) the document or thing is in the party's possession.
- (4) If the party required to produce the document or thing does not produce the document or thing to the court in accordance with the notice, the party requesting the production may—
 - (a) give secondary evidence of the contents or nature of the document or thing; or
 - (b) apply to the court for an order—
 - (i) that the other party produce the document or thing; or
 - (ii) adjourning the hearing.
- (5) The court may order the other party to pay any costs caused by the party's failure to comply with the notice.
- (6) The court may order the party requesting the production of the document or thing to pay any costs caused by the other party's compliance with the notice, if the court considers the production of the document or thing to be unnecessary.

9 Schedule 4, rule 4.12

substitute

4.12 Costs—transitional

(SCR o 65 r 7)

- (1) In this rule:

commencement day means the day the *Court Procedures Amendment Rules 2008 (No 2)*, rule 9 commences.

- (2) A solicitor is entitled to charge and be allowed the costs set out in this schedule for work done or services performed on or after 1 July 2008.
- (3) However, if work done or services performed by a solicitor after 1 July 2008 was assessed before commencement day, rule 4.12 as in effect immediately before commencement day continues to apply to the work and services.
- (4) Rule 4.12 as in effect immediately before commencement day continues to apply to work done or services performed by a solicitor before 1 July 2008.

10 Schedule 4, part 4.2

substitute

Part 4.2 Scale of costs—items

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
Division 4.2.1 Instructions		
1	to sue or defend, to appeal or oppose an appeal	143.50
2	for statement of claim, petition, special case or counterclaim	143.50
3	for defence	122.80

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
4	for— (a) a reply; or (b) amending a pleading; or (c) a notice claiming contribution or indemnity; or (d) a document to be brought into the registrar’s office (for example, an account or deed); or (e) adding parties by order; or (f) a bond or other deed; or (g) retaining counsel, including preparing retainer	51.20

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
5	for— (a) a pleading not otherwise provided for; or (b) interrogatories for the examination of a party or witness; or (c) an affidavit in answer to interrogatories or other special affidavit; or (d) disclosure or a list of documents; or (e) an application for an order that a matter be heard before the Full Court; or (f) a brief on application in chambers	102.40

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
6	for— (a) an application whether in court, before the registrar or in chambers; or (b) opposition to an application; or (c) the assessment of a bill of costs	102.40
7	for brief to advise on evidence	92.20
8	for— (a) a statement of facts in an action; or (b) a request for particulars; or (c) particulars	102.40
9	for brief in preparation for trial	the amount the registrar considers appropriate
Division 4.2.2 Drawing		
10	for an originating process or counterclaim	107.00 or, if longer than 700 words, 15.10 per 100 words
11	for any other pleading, a notice claiming contribution or indemnity, or an amendment of a pleading	71.70 or, if longer than 400 words, 15.10 per 100 words

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
12	for— (a) a notice of an application in a proceeding; or (b) a notice to produce documents; or (c) a notice to admit facts; or (d) a special case; or (e) interrogatories; or (f) a special affidavit; or (g) a brief (including observations)	65.60 or, if the document is longer than 400 words, 15.10 per 100 words
13	a formal affidavit, including an affidavit of service	36.00
14	any other document	28.40 or, if longer than 100 words, 16.80 per 100 words
Division 4.2.3 Engrossing		
15	of a document	4.40 per 100 words

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
Division 4.2.4 Copies		
16	of any document, or of multiple documents copied at the same time— (a) for each of the first 10 copies; or (b) for each additional copy up to 100 copies; or (c) for each additional copy over 100 copies	2.80 per page 1.20 per page 0.40 per page
Division 4.2.5 Perusal		
17	of— (a) an originating process; or (b) a pleading; or (c) an application in a proceeding; or (d) interrogatories; or (e) a special case; or (f) a notice to admit	50.50 or, if the document is longer than 800 words, 5.70 per 100 words
18	of any other document, if it is necessary to peruse	5.70 per 100 words

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
19	of a document by scanning it, if it is not necessary to peruse	5.60 or, if the document has more than 10 pages, the additional amount the registrar considers appropriate
Division 4.2.6 Attendances		
20	for personal service, if necessary, of 1 or more documents at the same time	76.60
21	for service of 1 or more documents at the same time— (a) at the office of a solicitor on the record or the address for service of a party; or (b) by post; or (c) made through a document exchange	30.90

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
22	<p>by a solicitor, necessarily or properly engaged, if the solicitor holds an unrestricted practising certificate or has been the holder of a practising certificate for at least 2 years—</p> <p>(a) to instruct counsel; or</p> <p>(b) on assessment of a bill of costs or other matter; or</p> <p>(c) at conference with counsel; or</p> <p>(d) on a view; or</p> <p>(e) on witness or other person; or</p> <p>(f) to produce a document; or</p> <p>(g) to inspect a document, if the registrar is satisfied there were appropriate and sufficient reasons for the inspection; or</p> <p>(h) to prepare appeal papers</p>	204.80 per hour

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
23	<p>by a solicitor, necessarily or properly engaged, other than a solicitor mentioned in item 22—</p> <p>(a) to instruct counsel; or</p> <p>(b) on assessment of a bill of costs or other matter; or</p> <p>(c) at conference with counsel; or</p> <p>(d) on a view; or</p> <p>(e) on witness or other person; or</p> <p>(f) to produce a document; or</p> <p>(g) to inspect a document, if the registrar is satisfied there were appropriate and sufficient reasons for the inspection; or</p> <p>(h) to prepare appeal papers</p>	143.50 per hour

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
24	by a clerk, necessarily or properly engaged— (a) to instruct counsel; or (b) on assessment of a bill of costs or other matter; or (c) at conference with counsel; or (d) on a view; or (e) on witness or other person; or (f) to produce a document; or (g) to inspect a document, if the registrar is satisfied there were appropriate and sufficient reasons for the inspection; or (h) to prepare appeal papers	71.60 per hour

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
25	<p>other than an attendance already mentioned, in court or any hearing without counsel—</p> <p>(a) by a solicitor holding an unrestricted practising certificate, or a solicitor who has been the holder of a practising certificate for at least 2 years; or</p> <p>(b) by any other solicitor</p>	<p>307.10 per hour</p> <p>215.00 per hour</p>
26	by a solicitor involving a high degree of skill and responsibility	307.10 per hour
27	<p>in court or chambers or before the registrar—</p> <p>(a) to take a reserved judgment; or</p> <p>(b) to mention a matter; or</p> <p>(c) for an adjournment; or</p> <p>(d) for settling the terms of and entering orders; or</p> <p>(e) for another reason</p>	81.90 or 204.80 per hour

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
28	at the registry or other office or place for— (a) filing, delivering, or collecting a document; or (b) a purpose not involving the exercise of legal skill or knowledge	25.40
29	formal telephone attendance	25.40
30	telephone attendance leaving message only	12:70
31	any other attendance by a solicitor (including travelling and waiting time and including a telephone attendance)	41.00 or 51.20 per quarter hour
32	any other attendance by a clerk (including travelling and waiting time and including a telephone attendance)	25.40 or 17.80 per quarter hour

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
33	<p>if the registrar is satisfied, in relation to travel, that the purpose of the journey could not have been satisfactorily accomplished by an agent and that—</p> <p>(a) a solicitor has been necessarily absent from the place where the solicitor carries on practice; or</p> <p>(b) a clerk has attended in place of the solicitor</p>	<p>an allowance (in addition to reasonable travelling expenses), for each day (other than Saturdays and Sundays) that the solicitor is absent, of not more than 1 195.70</p> <p>an allowance (in addition to reasonable travelling expenses), for each day (other than Saturdays and Sundays) that the clerk is absent, of not more than 307.10</p>
Division 4.2.7 Letters		
34	ordinary letter	35.50 or 17.30 per 100 words
35	special letter	59.00 or 17.30 per 100 words
36	formal letter—short letter, without legal content	17.20
37	circular letters after the first	7.80
38	fax copy or telex, including attendance to send	40.30

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
39	receiving and filing any incoming letter, other than a letter received by email (postage and transmission fees properly incurred may be claimed as a disbursement)	10.70
40	receiving, printing and filing incoming letter received by email	11.50
41	printing any attachment to an email, or multiple attachments to an email printed at the same time— (a) for each of the first 10 pages; or (b) for each additional page up to 100 copies; or (c) for each additional page over 100 copies	2.80 per page 1.20 per page 0.40 per page
Division 4.2.8 Witness expenses		
42	a witness called because of the witness's professional, scientific or other special skill or knowledge	1004.60 per day
43	a witness called other than because of the witness's professional, scientific or other special skill or knowledge	106.00 per day

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
44	a witness paid in the witness's occupation by wages, salary or fees	the amount lost by attendance at court
45	a witness qualifying to give skilled evidence	the additional amount the registrar considers reasonable and properly incurred and paid
46	if the witness lives more than 50km from the court	the additional amount the registrar considers reasonable for the actual cost of travel, and for accommodation and meals
47	attendance at court by a witness acting as an expert in assisting counsel or a solicitor for a period during the trial or hearing	the amount the registrar considers appropriate (but not affecting the existing practice of allowing qualifying fees for witnesses)
Division 4.2.9 Disbursements		
48	all court fees, counsel's fees and other fees and payments	allowed to the extent that they have been properly and reasonably incurred and paid

Endnotes

1 Notification

Notified under the Legislation Act on 29 September 2008.

2 Republications of amended laws

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

© Australian Capital Territory 2008