



Australian Capital Territory

Court Procedures Amendment Rules 2009 (No 2)

Subordinate Law SL2009-32

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

Dated 29 June 2009.

T J HIGGINS

Chief Justice

M F GRAY

President of the Court of Appeal

R REFSHAUGE

Judge

R CAHILL

Chief Magistrate

J BURNS

Magistrate



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Court Procedures Act 2004

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1 Name of rules

These rules are the *Court Procedures Amendment Rules 2009 (No 2)*.

2 Commencement

These rules commence on 1 July 2009.

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 276 (2), examples

substitute

Examples

- 1 The *Guardianship and Management of Property Act 1991*, s 7 (3) provides that a person's guardian may be given the power by the ACAT to bring or continue a proceeding for or in the name of the person.
- 2 That Act, s 8 provides that the ACAT may appoint a manager to manage a person's property. The powers that may be given to a person's manager are the powers that the person would have if the person were legally competent to exercise powers in relation to the person's property.

5 Rule 3563 (1) (b) (i)

substitute

- (i) for an application for a statutory order of review—a statement under the Judicial Review Act, section 13 (Reasons for decision may be obtained) or the *ACT Civil and Administrative Tribunal Act 2008*, section 22B (Requirement to give reasons statements); or

6 Part 3.12

omit

7 Table 5051*substitute***Table 5051 Courts and tribunals that may be appealed from**

column 1 item	column 2 court or tribunal	column 3 constitution of Supreme Court for appeal	column 4 law appealed under
1	ACT civil and administrative tribunal	judge or master	<i>ACT Civil and Administrative Tribunal Act 2008</i> , s 86 <i>Mental Health (Treatment and Care) Act 1994</i> , s 141
2	admissions board	Full Court or judge	<i>Legal Profession Act 2006</i> , s 25
3	licensing body, bar council or relevant council	Full Court	<i>Legal Profession Act 2006</i> , s 81
4	licensing body or relevant council	judge	<i>Legal Profession Act 2006</i> , s 207, s 239 (4), s 249 (5), s 514 and s 589 (4)
5	Magistrates Court	judge or master	<i>Health Records (Privacy and Access) Act 1997</i> , s 32 (1) <i>Leases (Commercial and Retail) Act 2001</i> , s 155 <i>Magistrates Court Act 1930</i> , s 274 <i>Victims of Crime (Financial Assistance) Act 1983</i> , s 61
6	Magistrates Court	judge	<i>Magistrates Court Act 1930</i> , s 207 (1) (a)
7	occupational health and safety review authority	judge or master	<i>Occupational Health and Safety Act 1989</i> , s 194

8 Rule 5070 (2), note*substitute*

Note Leave to appeal is required for orders of the following courts and tribunals:

- the ACAT (for applications to appeal mentioned in the *ACT Civil and Administrative Tribunal Act 2008*, s 85 (Referral of appeals to Supreme Court) and s 86 (Appeals to Supreme Court))
- the Magistrates Court (for appeals mentioned in the *Magistrates Court Act 1930*, s 274 (1) (Cases in which appeal may be brought)).

9 Rule 5110 (3) and (4)*substitute*

- (3) If the appeal is from an order of the ACAT, the list mentioned in subrule (1) (a) (iv) must—
- (a) state any documents that were the subject of an order under the *ACT Civil and Administrative Tribunal Act 2008*, section 39 (2) (Hearings in private or partly in private); and
 - (b) state any documents for which a certificate of the Minister is in force under that Act, section 22E (Certain material not required to be disclosed); and
 - (c) state any documents for which a certificate is in force under that Act, section 22I (Non-disclosure certificates) and whether an order was made by the tribunal under that Act, section 22J (Dealing with non-disclosable matters—tribunal) in relation to the document.

- (4) If the appeal is from an order of the ACAT and the ACAT has not given written reasons for the order, the appellant must—
- (a) ask the ACAT for a written statement of reasons for the order; and
 - (b) file a copy of the statement in the Supreme Court, not later than 14 days after the day the appellant receives the statement.

10 Table 5800

substitute

Table 5800 Referring courts and tribunals

column 1 item	column 2 referring court or tribunal	column 3 constitution of Supreme Court for special case	column 4 law under which question referred
1	ACT civil and administrative tribunal	judge or master	<i>ACT Civil and Administrative Tribunal Act 2008, s 84</i>
2	Magistrates Court	judge or master	<i>Magistrates Court Act 1930, s 267</i>
3	occupational health and safety review authority	judge or master	<i>Occupational Health and Safety Act 1989, s 193</i>

11 Division 6.8.9, note

substitute

Note 1 This division does not apply to a criminal proceeding (see r 4006 (Criminal proceedings—application of pt 6.8)).

Note 2 Service outside Australia under the Hague Convention is dealt with in div 6.8.12 (Service under the Hague Convention).

12 New division 6.8.12

insert

Division 6.8.12 Service under the Hague Convention

Note This division does not apply to a criminal proceeding (see r 4006 (Criminal proceedings—application of pt 6.8)).

Subdivision 6.8.12.1 Preliminary**6550 Definitions—div 6.8.12**

In this division:

additional authority, for a convention country, means an authority that is—

- (a) designated by the country, under the Hague Convention, article 18, to be an authority (other than the central authority) for the country; and
- (b) competent to receive requests for service abroad emanating from Australia.

applicant, for a request for service abroad or a request for service in the ACT, means the person on whose behalf service is requested.

central authority, for a convention country, means an authority that is designated by the country, under the Hague Convention, article 2, to be the central authority for the country.

certificate of service means a certificate of service that is completed for the Hague Convention, article 6.

certifying authority, for a convention country, means the central authority for the country or another authority that is designated by the country, under the Hague Convention, article 6, to complete certificates of service in the form annexed to the Hague Convention.

civil proceeding means any judicial proceeding in relation to a civil or commercial matter.

defendant, for a request for service abroad of an initiating process, means the person on whom the initiating process is requested to be served.

foreign judicial document means a judicial document that originates in a convention country and relates to a civil proceeding in a court of the country.

forwarding authority means—

- (a) for a request for service of a foreign judicial document in the ACT—the authority or judicial officer of the convention country in which the document originates that—
 - (i) sends the request; and
 - (ii) is competent under the law of the country to send the request under the Hague Convention, article 3; or
- (b) for a request for service of a local judicial document in a convention country—the registrar.

Hague Convention means the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* done at the Hague on 15 November 1965.

Hague Convention country means a country, other than Australia, that is a party to the Hague Convention.

initiating process means any document by which a proceeding, including a proceeding on a counterclaim or third-party notice, is started.

local judicial document means a judicial document that relates to a civil proceeding in the court.

registrar means the registrar of the Supreme Court.

request for service abroad means a request for service in a convention country of a local judicial document mentioned in rule 6553.

request for service in the ACT means a request for service in the ACT of a foreign judicial document mentioned in rule 6562.

6551 Rules under this division prevail

If a rule under this division is inconsistent with another provision of these rules, the rule prevails to the extent of the inconsistency.

Subdivision 6.8.12.2 Service abroad of local judicial documents

6552 Application—subdiv 6.8.12.2

- (1) This subdivision applies to service of a local judicial document in a Hague Convention country.
- (2) However, this subdivision does not apply if the document is served, without application of any compulsion, by an Australian diplomatic or consular agent mentioned in the Hague Convention, article 8.

6553 Application for request for service abroad

- (1) A person may apply to the registrar, as a forwarding authority, for a request for service of a local judicial document in a Hague Convention country.
- (2) The application must be accompanied by 3 copies of the following documents:
 - (a) a draft request for service abroad;
Note See approved form 6.21, part 1 (Request for service abroad of judicial documents).
 - (b) the document to be served;

- (c) a summary of the document to be served;

Note See approved form 6.22 (Summary of document to be served).

- (d) if, under the Hague Convention, article 5, the central authority or any additional authority of the country to which the request is addressed requires the document to be served to be written in, or translated into, 1 or more official languages of the country, a translation into the languages of the document to be served and the summary of the document to be served.

- (3) The application must contain a written undertaking to the court, signed by the legal practitioner on the record for the applicant (or if there is no legal practitioner on the record, the applicant) in the proceeding to which the local judicial document relates—

- (a) to be personally liable for all costs that are incurred—

- (i) by employing a person to serve the documents to be served, who is qualified to do so under the law of the Hague Convention country in which the documents are to be served; or

- (ii) by using any particular method of service that has been requested by the applicant for serving the documents to be served; and

- (b) to pay the amount of the costs mentioned in paragraph (a) to the registrar within 28 days after the day the applicant receives a notice from the registrar stating the amount of the costs under rule 6555; and

- (c) to give any security for the costs mentioned in paragraph (a) that the registrar may require.

- (4) The draft request for service abroad—

- (a) must be completed (except for signature) by the applicant; and

- (b) must state whether, if the time fixed for entering an appearance in the proceeding to which the local judicial document relates expires before the document is served, the applicant wants service to be attempted after the expiry of the time; and
 - (c) must be addressed to the central authority, or to an additional authority, for the Hague Convention country in which the documents are to be served; and
 - (d) may state that the applicant requires a certificate of service that is completed by an additional authority to be countersigned by the central authority.
- (5) A translation required under subrule (2) (d) must bear a certificate (in English and the language used in the translation) signed by the translator stating—
- (a) that the translation is an accurate translation of the documents to be served; and
 - (b) the translator's full name, address and qualifications for making the translation.

6554 How application to be dealt with

- (1) The registrar must, if satisfied that an application and its accompanying documents comply with rule 6553—
- (a) sign the request for service abroad; and
 - (b) send 2 copies of the relevant documents—
 - (i) if the applicant has asked for the request to be sent to a nominated additional authority for the Hague Convention country in which the documents are to be served—to the nominated additional authority; or
 - (ii) in any other case—to the central authority for the Hague Convention country in which the documents are to be served.

- (2) The registrar must, if not satisfied that the application or any of the accompanying documents complies with rule 6553, tell the applicant how the application or document fails to comply.
- (3) In this section:
relevant documents means the following:
 - (a) the signed request for service abroad;
 - (b) the document to be served;
 - (c) the summary of the document to be served;
 - (d) if a translation is required under rule 6553 (2) (d), each translation of the documents mentioned in paragraphs (a) and (b).

6555 Procedure on receipt of certificate of service

- (1) The registrar must, on receipt of a certificate of service in due form of a local judicial document to which a request for service abroad relates—
 - (a) arrange for the original certificate to be filed in the proceeding to which the document relates; and
 - (b) send a copy of the certificate to—
 - (i) if there is a legal practitioner on the record for the applicant in the proceeding—the legal practitioner; or
 - (ii) if there is not a legal practitioner on the record for the applicant in the proceeding—the applicant.
- (2) For subrule (1), a certificate of service is in due form if—
 - (a) the certificate is in accordance with approved form 6.21, part 2; and

Note See approved form 6.21 (Request for service abroad of judicial documents and certificate).

- (b) the certificate has been completed by a certifying authority for the Hague Convention country in which service was requested; and
 - (c) if the applicant requires that a certificate completed by an additional authority is countersigned by the central authority—the certificate is countersigned by the central authority.
- (3) The registrar must, on receipt of a statement of costs in due form in relation to the service of a local judicial document mentioned in subrule (1), send a notice stating the amount of the costs to the legal practitioner, or applicant, who signed the undertaking mentioned in rule 6553.
- (4) For subrule (3), a statement of costs is in due form if it—
 - (a) relates only to costs of a kind mentioned in rule 6553 (3) (a); and
 - (b) has been completed by the certifying authority for the Hague Convention country in which service was requested.
- (5) Subrule (1) does not apply unless—
 - (a) adequate security to cover the costs mentioned in subrule (3) has been given under rule 6553 (3) (c); or
 - (b) if the security given under rule 6553 (3) (c) is inadequate to cover the costs, an amount equal to the amount by which the costs exceed the security has been paid to the registrar.

6556 Payment of costs

- (1) On receipt of a notice under rule 6555 (3), the legal practitioner or applicant must pay to the registrar the amount stated in the notice as the amount of the costs.

- (2) If the legal practitioner or applicant fails to pay the amount of the costs within 28 days after the day the notice is received—
- (a) except with the leave of the court, the applicant may not take a further step in the proceeding to which the local judicial document relates until the costs are paid; and
 - (b) the registrar may take appropriate steps to enforce the undertaking for payment of the costs.

6557 Evidence of service

A certificate of service of a local judicial document in due form under rule 6555 (2) that certifies that the document was served on a stated date is, in the absence of any evidence to the contrary, sufficient proof that—

- (a) the document was served by the method stated in the certificate on the date; and
- (b) if the method of service was requested by the applicant, the method is compatible with the law in force in the Hague Convention country in which the document was served.

Subdivision 6.8.12.3 Default judgment following service abroad of initiating process

6558 Application—subdiv 6.8.12.3

This subdivision applies to a civil proceeding for which an initiating process has been sent following a request for service abroad to the central authority, or an additional authority, for a Hague Convention country.

6559 Restriction on power to enter default judgment if certificate of service filed

- (1) This rule applies if—
 - (a) a certificate of service of initiating process in due form under rule 6555 (2) is filed in a proceeding stating that the initiating process has been served; and
 - (b) the defendant in the proceeding has not filed a notice of intention to respond or defence.
- (2) The court must not enter default judgment against the defendant unless satisfied that—
 - (a) the initiating process was served on the defendant—
 - (i) by a method of service prescribed by the internal law of the Hague Convention country in which the document was served for the service of documents in domestic proceedings on people within its territory; or
 - (ii) by a particular method of service—
 - (A) that the applicant requested; and
 - (B) under which the document was delivered to the defendant or the defendant's home; and
 - (C) that is compatible with the law in force in the Hague Convention country in which the document was served; or
 - (iii) if the applicant did not request a particular method of service—in circumstances in which the defendant accepted the document voluntarily; and
 - (b) the initiating process was served in sufficient time for the defendant to file a notice of intention to respond or defence in the proceeding.

- (3) In this rule:

sufficient time means—

- (a) 42 days after the date stated in the certificate of service of initiating process as the date on which the document was served; or
- (b) if, in the circumstances, the court considers a shorter time is sufficient time for the defendant to file a notice of intention to respond—the shorter time.

6560 Restriction on power to enter default judgment if certificate of service not filed

- (1) This rule applies if—
 - (a) a certificate of service of initiating process in due form under rule 6555 (2) is either—
 - (i) not filed in a proceeding; or
 - (ii) filed in a proceeding, but states that the initiating process has not been served; and
 - (b) the defendant has not filed a notice of intention to respond or defence.
- (2) The court must not enter default judgment against the defendant unless satisfied that—
 - (a) the initiating process was sent to the central authority, or additional authority, for the Hague Convention country in which service of the initiating process was requested; and
 - (b) a period has elapsed since the day the initiating process was sent that is—
 - (i) adequate in the circumstances; and
 - (ii) at least 6 months; and

- (c) all reasonable steps have been taken—
 - (i) to serve the initiating process; or
 - (ii) to obtain a certificate of service of initiating process from the certifying authority for the Hague Convention country in which service was requested.

6561 Setting aside default judgment

- (1) This rule applies if the court has entered default judgment against the defendant in a proceeding to which this subdivision applies.
 - (2) On application by the defendant, the court may set aside the default judgment if satisfied that the defendant—
 - (a) without any fault on the defendant's part, did not know about the initiating process in sufficient time to file a notice of intention to respond or defence; and
 - (b) has a good defence to the proceeding on the merits.
- Note* Pt 6.2 (Applications in proceedings) applies to an application under this rule.
- (3) An application to set aside default judgment under this rule may be made—
 - (a) at any time within 1 year after the day the judgment was entered; or
 - (b) if the 1-year period has expired—within the time after the defendant learns of the judgment that the court considers reasonable in the circumstances.
 - (4) The powers of the court under this rule are additional to any other powers of the court.

Subdivision 6.8.12.4 Local service of foreign judicial documents

6562 Application—subdiv 6.8.12.4

- (1) This subdivision applies to service in the ACT of a foreign judicial document for which a due form of request for service has been sent to the court—
 - (a) by the Attorney-General of the Commonwealth, whether in the first instance or following a referral under rule 6563; or
 - (b) by a forwarding authority.

- (2) A request for service in the ACT is in due form if it is in accordance with approved form 6.21, part 1 and accompanied by the following:

Note See approved form 6.21 (Request for service abroad of judicial documents and certificate).

- (a) the document to be served;
- (b) a summary of the document to be served;

Note See approved form 6.22 (Summary of document to be served).
- (c) a copy of the request and each document mentioned in paragraphs (a) and (b);
- (d) if a document mentioned in paragraphs (a) and (b) is not in the English language, an English translation of the document.

- (3) A translation required under subrule (2) (d) must bear a certificate in English signed by the translator stating—
 - (a) that the translation is an accurate translation of the document; and
 - (b) the translator's full name, address and qualifications for making the translation.

6563 Certain documents to be referred back to Attorney-General of the Commonwealth

- (1) This rule applies if the registrar reasonably believes that—
 - (a) a request for service in the ACT does not comply with rule 6562; or
 - (b) the document to which the request relates is not a foreign judicial document; or
 - (c) compliance with the request may infringe Australia's sovereignty or security.
- (2) The registrar must refer the request for service in the ACT to the Attorney-General of the Commonwealth together with a statement of the registrar's belief.

Note The Attorney-General of the Commonwealth will deal with misdirected and non-compliant requests, make arrangements for the service of extrajudicial documents and assess and decide questions concerning Australia's sovereignty and security.

6564 Service of foreign judicial documents etc

- (1) Subject to rule 6563, on receipt of a request for service in the ACT, the court must arrange for service of the relevant documents in accordance with the request.
- (2) The relevant documents may be served by any of the following methods:
 - (a) if a method of service is prescribed by the law in force in the ACT for the service of a document of a kind corresponding to the document to be served—the prescribed method of service;
 - (b) if a method of service is not prescribed by the law in force in the ACT for the service of a document of a kind corresponding to the document to be served—the method of service of initiating process in a proceeding in the court;

- (c) if the applicant has requested a particular method of service, and the method of service is compatible with the law in force in the ACT—the particular method of service requested;
 - (d) if the applicant has not requested a particular method of service and the person requested to be served accepts the relevant documents voluntarily—delivery of the relevant documents to the person requested to be served.
- (3) In this rule:
- relevant documents* means the following documents:
- (a) the document to be served;
 - (b) a summary of the document to be served;
 - (c) a copy of the request for service in the ACT;
 - (d) if a document mentioned in paragraphs (a) and (b) is not in the English language, an English translation of the document.

6565 Affidavit about service

- (1) A person who serves a document in accordance with a request for service in the ACT must file with the court an affidavit stating—
 - (a) the time, day of the week and date on which the document was served; and
 - (b) the place where the document was served; and
 - (c) the method of service; and
 - (d) the person on whom the document was served; and
 - (e) the way in which the person served was identified.
- (2) If attempts to serve a document in accordance with a request for service in the ACT have failed, the person who attempted the service must file with the court an affidavit stating—
 - (a) details of the attempts made to serve the document; and

- (b) the reasons why service was prevented.
- (3) On the filing of an affidavit about service under this rule, the registrar must—
 - (a) complete a certificate of service, sealed by the court, on the reverse side of, or attached to, the request for service in the ACT; and
 - Note* See approved form 6.21, pt 2 (Certificate of service).
 - (b) send the certificate of service, together with a statement of the costs incurred in relation to the service or attempted service of the document, directly to the forwarding authority from which the request was received.

13 New rule 6710 (1) (d)

insert

- (d) together with any annexure to the affidavit, numbered on each page consecutively, starting at '1' for the 1st page.

14 Rule 6712 (12) and (13)

substitute

- (12) If an exhibit to an affidavit contains a document, or group of documents, the document or documents must be—
 - (a) presented in a way that will facilitate the court's efficient and quick reference to them; and
 - (b) numbered on each page.
- (13) Subrule (14) applies if there is more than 1 documentary exhibit to an affidavit.

15 Dictionary, note 2

insert

- ACAT

16 Dictionary, note 2

omit

- guardianship tribunal

17 Dictionary, new definition of *additional authority*

insert

additional authority, for division 6.8.12 (Service under the Hague Convention)—see rule 6550.

18 Dictionary, definition of *applicant*

substitute

applicant—

- for subdivision 2.9.4.2 (Freezing orders)—see rule 740; and
- for subdivision 2.9.4.3 (Search orders)—see rule 750; and
- for division 5.6.1 (Reference appeals—Supreme Court)—see rule 5750; and
- for division 5.6.2 (Reference appeals—Court of Appeal)—see rule 5770; and
- for division 6.8.12 (Service under the Hague Convention)—see rule 6550; and
- for division 6.10.3 (Exchange of correspondence before making application in proceeding)—see rule 6740; and
- for schedule 6 (Corporations Rules)—see schedule 6, rule 1.5.

19 Dictionary, new definitions of *central authority*, *certificate of service* and *certifying authority*

insert

central authority, for division 6.8.12 (Service under the Hague Convention)—see rule 6550.

certificate of service, for division 6.8.12 (Service under the Hague Convention)—see rule 6550.

certifying authority, for division 6.8.12 (Service under the Hague Convention)—see rule 6550.

20 Dictionary, definition of *defendant*

substitute

defendant—

- (a) for these rules generally—see rule 20; and
- (b) for division 2.18.17 (Enforcement—arrest warrant for absconding defendants)—see rule 2551; and
- (c) for part 3.9 (Habeas corpus)—see rule 3500; and
- (d) for part 4.2 (Magistrates Court criminal proceedings)—see rule 4300; and
- (e) for division 6.8.12 (Service under the Hague Convention)—see rule 6550; and
- (f) for schedule 6 (Corporations Rules)—see schedule 6, rule 1.5.

21 Dictionary, new definitions

insert

foreign judicial document, for division 6.8.12 (Service under the Hague Convention)—see rule 6550.

forwarding authority, for division 6.8.12 (Service under the Hague Convention)—see rule 6550.

Hague Convention, for division 6.8.12 (Service under the Hague Convention)—see rule 6550.

Hague Convention country, for division 6.8.12 (Service under the Hague Convention)—see rule 6550.

initiating process, for division 6.8.12 (Service under the Hague Convention)—see rule 6550.

local judicial document, for division 6.8.12 (Service under the Hague Convention)—see rule 6550.

22 Dictionary, definition of *registrar*

substitute

registrar—

- (a) for these rules generally—see rule 5 (4) (References to *court*, *judicial officer* etc); and
- (b) of a court or tribunal, for part 5.3 (Appeals to Supreme Court)—see rule 5050; and
- (c) for division 6.8.12 (Service under the Hague Convention)—see rule 6550.

23 Dictionary, new definitions of *request for service abroad* and *request for service in the ACT*

insert

request for service abroad, for division 6.8.12 (Service under the Hague Convention)—see rule 6550.

request for service in the ACT, for division 6.8.12 (Service under the Hague Convention)—see rule 6550.

Endnotes

1 Notification

Notified under the Legislation Act on 29 June 2009.

2 Republications of amended laws

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