



Australian Capital Territory

Court Procedures Amendment Rules 2016 (No 1)

Subordinate Law SL2016-17

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

Dated 28 June 2016.

H G MURRELL

Chief Justice

R REFSHAUGE

Justice

K FRYAR

Acting Chief Magistrate

L CAMPBELL

Magistrate



Australian Capital Territory

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made under the

[Court Procedures Act 2004](#)

Contents

	Page
1 Name of rules	1
2 Commencement	1
3 Legislation amended	1
4 Rule 1618 (1), note	1
5 New rule 1618A	1
6 New rule 6006 (2) (c)	2
7 Rule 6250 (2) (a), except note	2
8 New rule 6250 (3) (ha)	2
9 Rule 6251 (2) (a), except note	3

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

Contents

		Page
10	Schedule 1	3
11	Further amendments, mentions of <i>public trustee</i>	6

1 Name of rules

These rules are the *Court Procedures Amendment Rules 2016 (No 1)*.

2 Commencement

These rules commence on 1 July 2016.

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 1618 (1), note

omit everything after

paid out to the public trustee

substitute

and guardian (see *Public Trustee and Guardian Act 1985*, s 25).

5 New rule 1618A

insert

1618A Person with mental disability—payment out to public trustee and guardian

- (1) This rule applies if—
- (a) an amount is paid into court under rule 1617 in relation to a person with a mental disability (the *claimant*); and
 - (b) the amount is to be paid out of court to the public trustee and guardian under the *Public Trustee and Guardian Act 1985*, section 25 (Payment of money etc to public trustee and guardian on behalf of person under disability).

- (2) The court must—
- (a) note that the claimant is a person with a mental disability; and
 - (b) direct the claimant’s solicitor to serve a copy of the principal affidavit and medical documents filed in the proceeding on the public trustee and guardian.

6 New rule 6006 (2) (c)

before the examples, insert

- (c) an application for leave to begin a proceeding in a court based on a motor accident claim under the *Road Transport (Third-Party Insurance) Act 2008*, section 150 (Need for urgent proceeding).

7 Rule 6250 (2) (a), except note

substitute

- (a) to hear and decide an application in a proceeding, other than an application—
 - (i) under a provision of these rules mentioned in schedule 5, part 5.1; or
 - (ii) mentioned in rule 6006 (2) (c) (Application—pt 6.2) if the application is opposed;

8 New rule 6250 (3) (ha)

insert

- (ha) under the *Crimes (Sentence Administration) Act 2005*, section 106 (Good behaviour—summons to attend court);

9 Rule 6251 (2) (a), except note

substitute

- (a) to hear and decide an application in a proceeding, other than an application—
- (i) under a provision of these rules mentioned in schedule 5, part 5.4; or
 - (ii) mentioned in rule 6006 (2) (c) (Application—pt 6.2) if the application is opposed;

10 Schedule 1

substitute

Schedule 1 Expert witness code of conduct

(see r 1201)

1.1 Application of code

This code of conduct applies to any expert witness engaged or appointed—

- (a) to provide an expert's report for use as evidence in a proceeding or proposed proceeding; or
- (b) to give opinion evidence in a proceeding or proposed proceeding.

1.2 General duty to court

- (1) An expert witness has a paramount duty to assist the court impartially on matters relevant to the expert's area of expertise.
- (2) This paramount duty to the court, overrides any duty to a party to the proceeding or other person retaining the expert.
- (3) An expert witness is not an advocate for a party.

1.3 Content of report

Every report prepared by an expert witness for use in court must state the opinion of the expert and state or provide the following:

- (a) the expert's name and address;
- (b) an acknowledgment that the expert has read this code and agrees to be bound by it;
- (c) the expert's qualifications to prepare the report;
- (d) the material facts and assumptions on which each opinion expressed in the report is based (a letter of instructions may be annexed);
- (e) the reasons for each opinion expressed and references to any literature or other materials used by the expert to support each opinion;
- (f) if applicable, that a particular question, issue or matter falls outside the expert's area of expertise;
- (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and the person's qualifications;
- (h) to the extent that any opinion expressed by the expert involves the acceptance of another person's opinion, the identification of the other person and the opinion expressed by the person;
- (i) a declaration that—
 - (i) the expert has made all the inquiries which the expert believes are desirable and appropriate, other than for any matters identified specifically in the report; and
 - (ii) no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the court;
- (j) any qualification of an opinion expressed in the report without which the report is, or may be, incomplete or inaccurate;

- (k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research, or insufficient data or for any other reason;
- (l) if the report is lengthy or complex, a brief summary of the report at the beginning of the report.

1.4 Supplementary report following change of opinion

- (1) This section applies if an expert witness has provided a report for use in court to a party, or the party's legal representative (the *earlier report*) and the expert witness subsequently changes their opinion on a material matter.
- (2) The expert witness must immediately provide a supplementary report to the party, or the party's legal representative, stating or providing the information mentioned in rule 1.3 (a), (d), (e), (g) to (l) and, if applicable, rule 1.3 (f).
- (3) In any subsequent report, whether prepared under subrule (2) or not, the expert witness may refer to material contained in the earlier report without repeating it.

1.5 Duty to comply with court's directions

If directed by the court, an expert witness must—

- (a) confer with any other expert witness; and
- (b) give the court a report identifying—
 - (i) the matters on which the experts agree; and
 - (ii) the matters on which the experts disagree; and
 - (iii) the reasons for the experts not agreeing; and
- (c) comply with any direction of the court in a timely way.

1.6 Experts' conference etc

An expert witness must—

- (a) exercise independent judgement in relation to every conference held, or report prepared, under the court's direction under rule 1.5, and must not act on any instruction or request to withhold or avoid agreement; and
- (b) try to reach agreement with the other expert witness, or witnesses, on any issue on which they disagree, or failing agreement, try to identify and clarify the reasons why.

11 Further amendments, mentions of *public trustee*

after

public trustee

insert

and guardian

in

- rule 276
- rule 3005
- rule 3009
- rule 3010 (1), note 2
- rule 3045
- division 3.1.6 heading
- rule 3055
- rule 3056
- rule 3057
- rule 3058
- rule 3116
- rule 3120

Endnotes

1 Notification

Notified under the [Legislation Act](#) on 30 June 2016.

2 Republications of amended laws

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

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