

## **Exposure Draft: Court Procedures Rules 2006**

### **Overview**

The Court Procedures Rules 2006 are intended to reduce the overall costs of litigation, by modernising and simplifying current procedures and removing unnecessary differences between the two ACT courts. The language and structure of the new rules is more user-friendly, using modern drafting style and non-legal language as much as possible.

The new rules are generally based on the existing practice and procedure in the Supreme Court, with some changes to time limits and terminology. New national uniform rules on freezing orders and search orders have also been incorporated. Complex matters before the Magistrates Court will now have the benefit of additional procedures to assist in identifying and narrowing the issues in the pre-trial phase. This will help to resolve serious disputes more quickly and efficiently. However, simple cases in the Magistrates Court can be dealt with in much the same way as they are currently.

The only other significant change to current procedures in both courts is in the area of enforcement. These provisions were drafted after lengthy consultations between the courts and representatives from the legal profession who could bring the perspective of both judgment debtors and judgment creditors. The result is a delicate balance of interests that is designed to minimise the costs of enforcement by reducing the need for court attendance for all procedures.

Chapter 2 contains the joint court rules for civil proceedings only. The Chapter is organised chronologically, beginning with “starting civil proceedings” and concluding with “enforcement” (plus a few miscellaneous matters including “representation by solicitors”). All civil proceedings will need to be commenced either by “originating claim” or “originating application” – these terms currently may have different meanings. An originating process remains valid for service for 1 year from filing. A defendant who is served with originating process will generally have to file a “notice of intention to respond” and/or a defence, within 28 days, rather than filing an “appearance”. The rules distinguish between “active parties” and others, in order to reduce unnecessary costs such as serving documents on parties who are no longer actively involved in the proceedings. The rules on pleadings and particulars have been simplified greatly. “Close of pleadings” and payment into court have both been retained, because these practices continue to work well in the ACT, even though some other jurisdictions have abandoned them. Some of the procedural provisions of the Civil Law (Wrongs) Act 2002 have been moved into the rules. Most of the key Supreme Court practice directions on differential case management have also been moved into the rules. There is a new provision about the purpose of civil proceedings.

Chapter 6 contains all the joint court rules that apply to both civil and criminal matters. These include rules on service, evidence, and most interlocutory applications.

The remaining Chapters will include rules for appeals and other matters that are only relevant to one jurisdiction – such as adoption, probate, appeals.

## **Consultation Arrangements**

### **Exposure Draft: Court Procedures Rules 2006**

The Court Procedures Act 2004 (the Act) created a rule-making power for both the ACT Supreme Court and ACT Magistrates Court, allowing for harmonisation of court rules as far as possible. This harmonisation process is intended to make improvements and significantly reduce differences in practice and procedure in ACT courts, thereby facilitating resolution of matters in the courts with minimum delay and expense.

The Act also established a Joint Rules Advisory Committee, comprised of representatives from the courts, court Registrars, ACT Law Society, ACT Bar Association, the Director of Public Prosecutions, Parliamentary Counsel, and a nominee of the Chief Executive of the Department of Justice and Community Safety. This Committee assists the Rule-making Committee, which is comprised of the Chief Justice, Chief Magistrate, President of the Court of Appeal (or Judge if this is the same person as the Chief Justice), a Judge and a Magistrate.

The exposure draft is the outcome of a series of workshops and drafting meetings involving an expanded Working Group of the Joint Rules Advisory Committee. The draft includes rules for all proceedings (civil and criminal), as well as rules that are jurisdiction-specific – adoption, probate, appeals.

The exposure draft and a summary of its main features can be accessed on the ACT Government Legislation Register (<http://www.legislation.act.gov.au/>).

The closing date for submissions is 1 June 2006.

Written submissions should be sent to:

Mrs Jill Circosta  
Secretary, Rule-Making Committee  
Supreme Court of the ACT  
GPO Box 1548  
Canberra ACT 2601

Or email to [jill.circosta@act.gov.au](mailto:jill.circosta@act.gov.au)