

Explanatory Statement

Court Procedures Amendment Rules 2012 (No 2) Subordinate Law SL2012 - 43

Issued by the Authority of the Rule-Making Committee

The Rule-Making Committee (currently comprising the Chief Justice, Justice Refshauge, Chief Magistrate Walker and Magistrate Campbell) may make rules in relation to the practice and procedure of ACT courts and their registries pursuant to section 7 of the *Court Procedures Act 2004*. The Courts and the Joint Rules Advisory Committee have conducted a consultative review of the rules which has resulted in the amendments contained in the *Court Procedures Amendment Rules 2012 (No 2)*.

Rule 1205 has been amended to enable the court to give directions about the payment of costs, or for a party to give security, in relation to the remuneration of a court-appointed expert witness.

Rule 1241 and the rules on pre-trial procedures in Division 2.13.1 and the rules on directions in civil matters in Division 2.14.1 have been amended to ensure consistency with the docket system in the Supreme Court while still recognising and providing for the differences in procedures between the Supreme and Magistrates Courts resulting from the introduction of the docket system. A new division 2.13.2 has been created for pre-trial procedures that now only apply to the Magistrates Court.

Division 4.3.4 relating to Supreme Court pre-trial procedures in criminal matters has also been amended to reflect the changes in procedure due to the introduction of the docket system. The Registrar has been given the power to make directions in criminal matters under rules 4732 and 4733, as amended, and the new general directions rule 4738.

A new part 4.4 has been introduced dealing with forensic proceedings under the *Crimes (Forensic Procedures) Act 2000*, including the application of certain civil and criminal rules to a forensic proceeding, the filing and service of an application to carry out a forensic procedure, and costs in forensic proceedings.

Part 6.2A introduces rules on proceedings in the Supreme Court to which the *Human Rights Act 2004* applies, including requirements regarding the notice to the Attorney-General and the Commission, and the procedures for the intervention of the Human Rights Commissioner. New rules 407A and 407B provide new pleading rules in human rights proceedings, requiring details on the particular human right being relied on and, if section 40C of the Human Rights Act applies, the particular human right allegedly breached by the public authority and details of the alleged breach, and details of the relief sought.

A new part 6.2B introduces rules on procedures for the intervention of the Attorney-General in proceedings under the *Administrative Decisions (Judicial Review) Act 1989*, the *Court Procedures Act 2004* or the *Human Rights Act 2004*.

Recent amendments to the *Corporations Act 2001 (Cth)* and the *Corporations Regulations* require the publication of notices (such as in winding up applications) in an electronic communication to ASIC for publication on a website maintained by ASIC for publishing notices. Schedule 6 has been amended so as to ensure that the rules are consistent with the amendments to the Corporations legislation.

A number of consequential minor amendments have also been made.

The rules will commence on 1 January 2013.