

# EXPLANATORY STATEMENT

## SUPREME COURT AMENDMENT RULES 2004 (No 1)

### Subordinate Law SL2004-7

#### Issued by the Authority of the Judges of the Supreme Court of the Australian Capital Territory

The resident Judges of the Court (of whom there are currently four, including the Chief Justice) or any two of the resident Judges, may make Rules of Court regulating the practice and procedure of the Court pursuant to section 36 of the *Supreme Court Act 1933*.

These rules have been made as part of the process adopted by the Court to modernise the Rules and to provide for more efficient and cost-effective procedures.

The Rules make the following amendments:

In keeping pace with technology and reflecting the manner many legal practitioners already communicate with each other, provision is made for the service of documents between solicitors by e-mail and for the inclusion of an email address in a party's address for service. The new rules do not permit electronic filing of documents. Provision is made for the certification that the original filed document has been signed or sworn or affirmed as the case may be. This amendment will reduce the delay and expense.

New rules have been included to give the Registrar discretion to refuse to accept documents for filing or to issue a subpoena. If a document is not substantially complete, does not substantially comply with a prescribed form, is not properly signed or appears on its face to be an abuse of process or to be frivolous or vexatious, the Registrar may reject the document or refer the matter to a judge for direction. The Registrar's decision may be appealed to the Master. This will reduce the imposition on people made party to hopeless or inadequate process.

A new order 26 (Payment into and out of court and tender) has been introduced to replace the existing Order following a review of the procedure and to comply with the *Civil Law (wrongs) Act 2002*. The new Order provides a more workable regime for payment into court by bond or other security and modernises the provisions for acceptance of the amount paid into court, for recovery of costs and for approval of a compromise where the plaintiff is under legal disability. It also prescribes new forms which will assist the profession.

Provision is made to clarify that a court order must state the date it was made and that it will then take effect unless the court otherwise orders.

A new Order 42B (Notices to Sheriff) has been introduced to relocate rules which were previously included in Order 54 but which are inappropriate for the revised order.

A new order 54 (Motions) has been substituted to modernise the rules relating to motions for both interlocutory and originating applications and to align the rules with current practice where it was considered to be satisfactory. The order also authorises the use of common practices such as the use of a schedule of correspondence or other material with a notice of motion. The order specifies modern and simplified procedures for service, making *ex parte* applications, dismissal, adjournment and taking out orders. A form is, for the first time, prescribed and this will also assist the profession and litigants in person.

A new rule rectifies an anomaly which was identified by the profession has been rectified in the costs penalty imposed by the rules for actions commenced in the Supreme Court which should have been commenced in the Magistrates Court. New Order 65 Rule 7A provides for the costs recovered by a successful plaintiff in cases where the amount of damages awarded less than \$40,000 will be on the Magistrates Court scale. As disbursements are payable in full under the Magistrates Court legislation, these are no longer affected save that any additional fees or amount of fees payable because the action is heard in the Supreme Court are not recoverable. This amendment will protect defendants from unfairly paying higher costs where an action is determined in an inappropriate court.

Amendments to Order 72 modernise the provisions for administration bonds in the probate jurisdiction consequent upon amendments to the *Administration and Probate Act 1929*. A new, simplified bond is prescribed and the procedure for entering into a bond and fixing the amount or to dispense with a bond has been brought up-to-date and simplified. The new rules also make simpler provisions for raising and considering objections to the passing of accounts, to the filing of a caveat against administration and for applications for revocation of grants. These changes will assist litigants generally.

A number of forms have been prescribed, simplified or modernised to improve the efficiency of court procedures and to reduce costs.

A number of other small amendments have been made to widen the application of service provisions, to modernise the service of pleadings, to simplify equitable procedures and to extend service methods of appeal documents.