

## EXPLANATORY STATEMENT

Subordinate Law 2000 No. 46

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

### SUPREME COURT RULES AMENDMENT

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 for regulating the practice and procedure of the Court pursuant to Section 36 of the *Supreme Court Act 1933*.

These amending Rules are part of a process being undertaken by the Court to modernise the Supreme Court Rules, in particular, by removing or updating outmoded, irrelevant or outdated provisions.

**1. The provisions relating to persons with a legal disability**

The rules relating to children and persons with a mental disability have been substantially remodelled. The archaic terms "guardian ad litem" and "next friend" have been replaced by the modern and widely used term "litigation guardian". The amendments include prescription of relevant forms.

The occasion of this change has also been used to update the language and style of many of the Rules using the term without changing the procedure, unless necessary.

**2. Change of parties**

Order 21, which relates to change of parties as a result of various circumstances including death or bankruptcy, has been modernised to remove archaisms such as references to "coverture", "abatement" and "pendente lite". At the same time a shorter more relevant set of provisions has been enacted to deal with these circumstances.

The provisions of Order 19 rule 12 relating to joining new parties and removing parties from proceedings have been amended to render them in a more modern form and make them consistent with the other rules relating to change of parties.

**3. Latinate and archaic terms**

Terms such as "viva voce evidence", "of its own motion", "mutatis mutandis", "attachment" "Writ of Procedendo" and "cestui qui trust" have been rendered in modern English, wherever appearing.

More common terms which, although Latin in origin, are well understood, such as "affidavit" and "subpoena", have been retained.

**4. Unnecessary provisions**

A number of unnecessary provisions have been repealed. Order 34 rule 1A is unnecessary following the decision of the High Court in *Esso Australia Resources Ltd v Federal Commissioner of Taxation* (1999) 168 ALR 123 which declared that legal professional privilege at common law was consistent with that in the *Evidence Act 1995* (Commonwealth). A number of provisions have been repealed or amended consequent upon the abolition of the distinction between Court and Chambers. The provisions relating to the registration and enforcement of foreign judgments under the *Foreign Judgments (Reciprocal Enforcement) Act 1954* (Commonwealth) have been repealed consequent upon the repeal of that Act in 1994.

**5. Order of evidence and address**

The archaic provision relating to the addresses to juries in civil cases, which has never occurred in the Court, has been replaced with a more contemporary provision identifying the appropriate order for giving of evidence and addresses, subject to any directions given by the trial judge.

**6. Equity Proceedings**

The provisions of Order 58, relating to equity proceedings including the administration of trusts, taking of accounts and wardship proceedings, have been substantially remodelled to remove archaic terms and provisions and to make them consistent with the balance of the Rules.

**7. Commercial Arbitration**

The *Commercial Arbitration Act 1986* permits parties to use the Supreme Court for the purpose of issuing subpoenas and for compromise of proceedings by way of payment into court. Rules are required by the Act to be made and these are now included in Order 83 to regulate these processes in ways similar to the procedures used in civil litigation in the Court.

Relevant forms for these procedures have also been prescribed.

**8. Schedule 1**

Schedule 1 contains minor amendments to remove unnecessary or inoperative provisions, renumbers rules especially to make them easier to read and use and to bring the form of the Rules into a consistent format.