

EXPLANATORY STATEMENT

Subordinate Law No. 34 of 1992

Issued by the Authority of the Judges
of the Supreme Court

AMENDMENT OF THE SUPREME COURT RULES

These amendments make a number of purely formal amendments to the Supreme Court Rules ('the Rules').

The amendments fall into three categories:

- (i) amendments relating to the distinction between court and chambers;
- (ii) amendments which update references to the Supreme Court Act 1933 ('the Act') before it was renumbered under the A.C.T. Supreme Court (Transfer) Act 1992 of the Commonwealth ('the Commonwealth Act'); and
- (iii) amendments designed to rationalise interpretation provisions of the Rules, and to clarify a number of ambiguous legislative references.

In respect of the first category of proposed amendments, proposed rule 2 removes all reference in the Rules to the expressions "Court or Judge", "Court or a Judge" and "Court or the Judge" and substitutes in their place "Court". These references were designed to distinguish between a Judge sitting in open court and a Judge sitting in Chambers. Proposed amendments to the Act which will abolish the formal distinction between court and chambers will make this distinction superfluous. Since section 21(1) of the Act currently provides for the exercise of the jurisdiction of the Court by a Judge sitting in Chambers, there is no present difficulty with referring to the Court alone in the context of the Rules governing the conduct of proceedings in Chambers. These amendments thus need not await the passing of the proposed amendments to the Act. The Schedule to the draft rules effects a number of related amendments.

Amendments in the second category will replace outdated references in the Rules to the Act (in its form before the Commonwealth Act was passed) with references to the Act as renumbered by section 14 of the Commonwealth Act. Although section 14(5) of the Commonwealth Act provides for such references in Commonwealth and Territory laws to be construed as references to the Act as renumbered, that subsection does not, of its own force, effect that renumbering.

Amendments in the third category are largely designed simply to 'tidy up' the interpretation provisions in Order 1, rule 4 and Order 75B, rule 2 of the Rules. The definitions of "ASC Law" are unnecessary, since section 1D(2) of the Australian Securities Commission Act 1989 of the Commonwealth provides for the shortened citation of that Act as such in the laws of the Territory; similarly, the definitions of "Corporations Law" and "Corporations Regulations" are redundant in view of section 14(2) of the Corporations Act 1989 of the Commonwealth. Current drafting practice is to rely on the Commonwealth citation provisions for these shortened references rather than reproduce them in Territory legislation. For related reasons, the definition of "Magistrates Court" is omitted because it is already defined in section 14(1) of the Interpretation Act 1967.

The definitions of "the Registrar" and "the Sheriff" and the combined definition of "the Court" and "the Supreme Court" in Order 1, rule 4 of the Rules are omitted because they simply reproduce definitions in section 2 of the Act. By virtue of section 9(2) of the Subordinate Laws Act 1989, there is no need to reiterate the definitions in this way. The definition of "the Act" is proposed to be amended in order to update its citation, and the definition of "to file" is amended in order to omit the reference to alternative grammatical forms (redundant in the light of section 14B of the Interpretation Act). The latter two definitions are also altered so as to place them in a more appropriate alphabetical position.

The definition of "Crown Solicitor" is proposed to be amended for presentational purposes only, in acknowledgment of the effect of section 7 of the Government Solicitor Act 1989, which is to construe references to the Crown Solicitor of the Commonwealth in Territory laws as including references to the Government Solicitor appointed under that Act. The amended definition will make the Government Solicitor's functions under the Rules apparent on the face of the Rules.

Finally, Order 61, paragraph 3(b) and Order 61A, paragraph 1(j) are amended in order to clarify references to the Service and Execution of Process Act 1901 of the Commonwealth.