

EXPLANATORY STATEMENT

Subordinate Law No. 27 of 1996

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 three, 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 make provision in Order 39 of the Supreme Court Rules for certain evidentiary matters which arise under the *Evidence Act* 1995 of the Commonwealth ("the Act"). The Act applies in A.C.T Courts.

The new rules provide as follows:

New Rule 50:

Section 67 of the Act requires written notice to be given to each other party of an intention to adduce evidence of a 'first hand hearsay' representation in civil proceedings where the maker of the representation will not be called as a witness. Notice may be dispensed with.

New Rule 50 prescribes a form of notice of intention to adduce evidence of a representation (Form 49 in the First Schedule) and requires that notice to be accompanied by an affidavit setting out the evidence of the representation. The Court may dispense with the requirement for notice.

New Rule 51:

Section 68 of the Act provides a procedure to determine, at or before hearing, whether a party in civil proceedings is to be permitted to adduce evidence of a 'first hand hearsay' representation or, in effect, will be required either to call as a witness the person who made the representation or not to adduce the evidence. Sub-section 68 (2) of the Act requires written notice of objection to the tender of the hearsay evidence to be given to each other party.

New Rule 51 prescribes a form of notice of objection to the tender of hearsay evidence of a representation (Form 49 A in the First Schedule) where notice has been given of an intention to adduce the evidence. The Court may dispense with the requirement for a notice of objection.

New Rule 52:

Section 97 of the Act applies to evidence of a person's character, reputation or conduct or of a tendency that the person has or had. It sets out the conditions for admissibility of evidence of that kind to prove that a person has or had a tendency to act in a particular way or to have a particular state of mind, including the giving of notice to all other parties of intention to adduce the evidence.

New Rule 52 prescribes a form of notice of intention to adduce tendency evidence (Form 49 B in the First Schedule). The Court may dispense with the requirement for notice.

New Rule 53:

Section 98 of the Act sets out the conditions for admissibility of similar fact evidence to prove a fact by coincidence reasoning (that is, by reason of the improbability of the relevant events occurring coincidentally). One of the conditions specified is that the party adducing the evidence must give reasonable written notice to all other parties of intention to adduce the evidence or such notice must be dispensed with by the Court.

New Rule 53 prescribes a notice of intention to adduce coincidence evidence (Form 50 in the First Schedule). The Court may dispense with the requirement for notice.

The Federal Court had made similar rules to these amending rules.