

EXPLANATORY STATEMENT

SUPREME COURT AMENDMENT RULES 2004 (No 4)

Subordinate Law SL2004-53

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 principally to regulate procedure in the Court's criminal jurisdiction

General Amendments

Order 1 AB prescribes the form of the notices to be given in civil and criminal proceedings as required by sections 67, 68, 97 and 98 of the Evidence Act 1995 (Commonwealth).

Order 39 is amended to insert in rule 2A to permit evidence to be given by telephone or video link when the parties consent.

Criminal Proceedings

The Rules insert a new Order 80 which makes comprehensive provision for the regulation of the Court's procedure in criminal proceedings, defined to include trials, sentencing proceedings and bail applications.

The Court is given power under *Order 80 Rule 2* to dispense with compliance with the criminal rules in *Order 80*.

Division 80.3 makes relevant provisions of Part 2 of the Rules (the Rules applicable to non-criminal proceedings) applicable to criminal proceedings.

Division 80.4 contains rules for service in criminal proceedings, including provision for service on an unrepresented accused person in custody. These provisions are consistent with the present provisions in *Order 86* (Court of Appeal).

Division 80.5 regulates the representation of accused persons by solicitors. A simplified form of appearance is required which solicitors who represent accused persons must lodge at Court and serve on the Director of Public Prosecutions (ACT or Commonwealth) [*Order 80 rule 10*] [Form 4.4].

The rules also require notification by a solicitor ceasing to act where the solicitor's instructions are ended [*Order 80 rule 11*]. No application to the Court is required in these circumstances. Where, however, a solicitor wishes to withdraw from acting for an accused

person leave of the court is required and notification must follow the grant of leave [*Order 80 rule 12*] [Forms 4.4 and 4.5].

Under section 108 of the Magistrates Court 1930 an accused person is entitled to a copy of the committal depositions. *Order 80 rule 13* is designed to ensure that the depositions are handed over when there is a change of solicitor. It is intended that the rule would apply notwithstanding any solicitor's lien.

Division 80.6 regulates the procedures for applications under the Bail Act 1992. *Order 80 rule 15* such an application is to be made by notice of motion [Form 4.6] supported by an affidavit [Form 4.7].

Division 80.7 enshrines in the Rules the current pre-trial management of criminal matters contained in Practice Direction No.3 of 2004. At the first appearance following committal for sentence directions with respect to the provision of a case statement and pre sentence report are provided for. A sentence date may be fixed at this time [*Order 80 rule 19*]. The object of the rules is to ensure that both the prosecution and defence are ready to proceed on the allocated date.

At the first appearance following committal for trial the court is given power actively to supervise the matter until hearing [*Order 80 rule 20*]. The court gives directions for the Director of Public Prosecutions to lodge and provide to the accused person a draft indictment, case statement and list of proposed witnesses together with a direction to both parties to complete and lodge a pre-trial questionnaire [*Order 80 rule 21*] [Form 4.8].

Following completion of the pre-trial questionnaire a pre-arraignment conference is allocated at which the Registrar may give directions concerning matters raised in the questionnaire and set a date for arraignment [*Order 80 rule 22*]. The accused person is then arraigned and, depending on the plea, a date set for trial or sentence and, for a trial, a date is also set for a pre-trial directions hearing [*Order 80 rule 23*].

At the pre-trial directions hearing the Court may decide preliminary matters, thus monitoring the matter once a trial date is fixed [*Order 80 rule 24*].

Division 80.8 provides the procedure for pre-trial applications, namely applications to set aside or stay proceedings [*Order 80 rule 25*], applications for separate trials [*Order 80 rule 26*] and other pre-trial applications [*Order 80 rule 27*]. Such applications are to be made by notice of motion and supported by an affidavit [*Order 80 rule 28*].

Division 80.9 contains some important rules relating to criminal procedure. These include the annual publication of arraignment dates [*Order 80 rule 29*], the making of orders for production of persons in custody [*Order 80 rule 30*], the content of the defence response to the prosecutor's opening address [*Order 80 rule 32*], inspection of registry files [*Order 80 rule 33*], judgments in criminal matters [*Order 80 rule 35*] and other matters.