

# EXPLANATORY STATEMENT

## Supreme Court Amendment Rules 2002 (No 1)

### Subordinate Law SL2002-016

#### 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 amend the Supreme Court Rules:

1. **Affidavit Evidence** - The amendment to Order 40 rules 12, 15 and 24 relates to affidavit evidence. The rules were inconsistent with sections 54 and 55 of the *Supreme Court Act 1933* and with each other. The amendment deals specifically with the time for service of affidavits intended to be used by a party in a proceeding (rule 12), the time for service of a written notice requiring the attendance of the person making the affidavit (rule 15) and clarifies the Court's discretion to set a time for such service. Any agreement by the parties in relation to affidavit evidence is to be communicated to the Court prior to the suit being set down for trial (rule 24).
2. **Stamping Rule** – A new stamping rule (Order 62 rule 1A) has been inserted in response to the need to formalise the procedure in the Registry by which a copy of a document, such as a notice of motion, which is required to be served, may be stamped to indicate that it is a copy of a filed document. A further amendment requires that any notice of motion served pursuant to Order 54 rule 8 be a stamped copy.
3. **Non-publication Order – Appeals to the Supreme Court** – The new Order 81 rule 2A relates to an appeal brought from a decision of a tribunal, and extends the operation of a non-publication order made, and not discharged, by the tribunal, as if it were an order of the Court.
4. **Discontinuance of Appeals** – Order 61 rule 3(a) has been amended to include Order 84 rule 14(3) (Order 81 rule 14(3) prior to the renumbering), to allow the Registrar to exercise jurisdiction in relation to the discontinuance of appeals to the Supreme Court.
5. **Further Evidence on Appeal – Magistrates Court Act 1930, s.214** – This new rule (Order 81 rule 21) introduces a procedure by which an application may be made for fresh evidence to be received by the Court

on the hearing of an appeal. The respondent is to be given notice, by affidavit, of such evidence prior to the hearing.

6. **Judicial Review Applications** – A new Order 82 rule 3A has been inserted requiring that a party to proceedings before the tribunal be joined as a respondent to an application for an order of review, if the decision was made by a tribunal, and the party would be affected by the order sought in the application or is interested in maintaining the decision. This amendment is made in response to the established principle that a tribunal should not normally present a substantive argument upon application for judicial review of its decision. The tribunal will normally enter a submitting appearance, leaving no true contradictor to the application. It is therefore appropriate that other parties affected by the order sought be made additional respondents in the judicial review proceedings. The form of Application for Order of Review – Form 81 – has been amended slightly, including changing the reference of “appellant” to “applicant”.
7. **Form of Consent Judgment** – A new form of Consent Judgment under Order 42 rule 11 – Form 50AD – has been included so as to make a clear distinction between a consent order (Form 50AC) and a consent judgment. Form 50AC has also been amended to further clarify the difference between a consent order made pursuant to Order 42 rule 11 (Form 50AC) and an order made in Court by consent of the parties (Form 50AB).
8. **Forms** – All Supreme Court forms, previously located in different schedules to the Rules, have been regrouped into one schedule with different parts, and renumbered using composite numbers relating to the different rule (for example, 1.1, 1.2, 1.3). This should avoid the confusion that currently exists of having a number several forms with the same number, located in different schedules.
9. **Technical and Consequential Amendments** – Several technical amendments have been made to definitions, to renumber rules and to comply with current drafting practice. Several minor consequential amendments have also been made to achieve consistency.