

EXPLANATORY STATEMENT

Supreme Court Amendment Rules 2002 (No 3)

Subordinate Law 2002 No 27

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 (“the amendment rules”) amend the Supreme Court Rules by introducing a new Order 86 which regulates the practice and procedure with respect to appeals to the ACT Court of Appeal, and by making several consequential amendments to existing Rules, including Order 84 (Appeals to the Supreme Court other than to the Court of Appeal).

The Supreme Court is known as the Court of Appeal when exercising its appellate jurisdiction under Part 2A of the *Supreme Court Act 1933*. The ACT Court of Appeal was created pursuant to S.37E of the *Supreme Court Act 1933* (as amended by the *Supreme Court Amendment Act 2001*(No. 2)).

The *Jurisdiction of Courts Legislation Amendment Act 2002 (C’wth)*, which amends the *Federal Court of Australia Act 1976* by removing the appellate jurisdiction of the Federal Court in relation to appeals from the ACT Supreme Court, was passed by the Federal Parliament on 22 August 2002.

The relevant provisions of this Act commence on 14 October 2002, the same day as which, the yet uncommenced provisions of the *Supreme Court Act 1933* (s.37E(2)(a)(ii), (b) and (4); s.37Q and s.37S) will come into effect, enabling the Court of Appeal to exercise its full general appellate jurisdiction, including the hearing of appeals from final and interlocutory judgments (in both criminal and civil matters) of single judges of the Supreme Court.

The amendment rules will also commence on this day.

The *Jurisdiction of Courts Legislation Amendment Act 2002 (C’wth)* contains transitional provisions which provide for the transfer of all ACT Supreme Court appeals from the Federal Court to the ACT Court of Appeal upon commencement of the Act, except those matters in which the substantive hearing of the appeal has already commenced in the Federal Court.

The amendment rules relating to the Court of Appeal are based on the Federal Court Rules which regulate appeals and set out the procedure to be followed for civil and criminal matters. Separate Divisions regulate the procedure for applications for leave to appeal from interlocutory judgments as required by section 37E(4) of the *Supreme Court Act 1933*, for applications for leave to appeal out of time from final judgment, for appeals, for cases stated by the Supreme Court and reference appeals under section 37S of the *Supreme Court Act 1933*. Special Divisions provide rules for criminal appeals, simplifying the procedure, and for appeals to be disposed of entirely on written submissions. The Amendment rules also insert necessary appellate forms as Forms 6.4 to 6.14 Schedule 1. Some minor amendments are listed in Schedule 2, particularly in relation to Order 84.