

Explanatory Statement

Court Procedures Amendment Rules 2011 (No 4) Subordinate Law SL2011 - 34

Issued by the Authority of the Rule-Making Committee

The Rule-Making Committee (currently comprising the Chief Justice, Justice Refshauge, Chief Magistrate Walker and Magistrate Campbell) may make rules in relation to the practice and procedure of ACT courts and their registries pursuant to section 7 of the *Court Procedures Act 2004*.

From the time of commencement of the *Court Procedures Rules 2006*, the Courts and the Joint Rules Advisory Committee have conducted a continuous and consultative review of the rules. This process has resulted in the amendments contained in the *Court Procedures Amendment Rules 2011 (No 4)*.

In response to the recent changes to the civil jurisdiction of the Magistrates Court, the rules relating to costs penalties have been amended. Rule 1725 provides for a costs penalty when the judgment entered for the plaintiff in a proceeding in the Supreme Court, is for an amount of less than \$175,000.

A new rule 1741 provides for a procedure for applying fixed costs (schedule 3, part 3.4) if the court makes an enforcement order. If the enforcement creditor's costs are more than the costs in the schedule, the costs and disbursements must be agreed or assessed. A similar procedure is provided for in new rule 2010B in relation to assessment of costs when the court registers an enforceable order of another court. The costs and disbursements must be allowed without assessment if those claimed are not more than those applying under schedule 3, part 3.5.

Schedule 3 Part 3.1, 3.2 and 3.3 have also been amended to increase costs entitlements in relation to claims for debt or liquidated demand, default judgments and the winding up of companies.

A number of consequential minor amendments have been made in response to the introduction of the *Evidence Act 2011* and the *Business Names Registration (Transition to Commonwealth) Act 2011*. Rule 6434, in relation to service on a defendant operating under a business name, has also been amended. The amendments relating to the *Evidence Act 2011* will commence on the commencement of that Act, section 3; those amendments which relate to the *Business Names Registration (Transition to Commonwealth) Act 2011* will commence on the commencement of that Act, section 17.

The remaining rules will commence on 1 January 2012.