

Explanatory Statement

Court Procedures Amendment Rules 2016 (No 1)

Subordinate Law SL2016-17

Issued by the Authority of the Rule-Making Committee

The Rule-Making Committee (currently comprising of the Chief Justice, Justice Refshauge, Chief Magistrate Walker, and Magistrate Campbell) may make rules in relation to the practice and procedure of the ACT courts and their registries under section 7 of the *Court Procedures Act 2004*. The Courts and the Joint Rules Advisory Committee conducted a consultative review of the rules which has resulted in the amendment contained in the *Court Procedures Amendment Rules 2016 (No 1)*.

The note to rule 1618 (1) has been amended to reflect the change of name of the public trustee to the public trustee and guardian in accordance with the *Public Trustee and Guardian Act 1985*. Further consequential amendments have been made throughout the rules to reflect that change.

A new rule 1618A has been introduced in Part 2.16. This rule provides that when an amount is paid into court under rule 1617 in relation to a person with a mental disability following approval of a compromise of that person's claim, and the amount is to be paid out of the court to the public trustee and guardian under to section 25 of the *Public Trustee and Guardian Act 1985*, the Court must note that the claimant is a person with a mental disability and direct the claimant's solicitor to serve a copy of the principal affidavit in support of the application to approve the compromise and medical documents filed in the proceeding on the public trustee and guardian.

Rule 6006, which specifies the applications to which Part 6.2 applies, has been amended to include a new paragraph 6006(2)(c) to provide that an application under section 150 of the *Road Transport (Third-Party Insurance) Act 2008* is to be made by an Application in Proceeding.

Rules 6250(2)(a) and 6251(2)(a), which sets out the jurisdiction exercisable by the registrars of the Supreme Court and Magistrates Court respectively, has been amended to provide that the registrars will have jurisdiction to hear and decide an application mentioned in new rule 6006(2)(c) if the application is not opposed.

A Practice Note has also been made to regulate the process for commencing certain personal injury claims urgently under section 150 of the *Road Transport (Third-Party Insurance) Act*.

Rules 6250 has been amended to include new paragraph 6250(3)(ha) which gives power to the registrar of the Supreme Court to issue a summons directing an offender to appear before the court under section 106 of the *Crimes (Sentence Administration) Act 2005*.

Schedule 1 Expert witness code of conduct ('the code') has been amended to reflect the harmonised national code for expert witnesses as drafted by the Harmonisation of Rules Committee of the Council of Chief Justices and approved by the Council. The code is similar to the previous code contained in Schedule 1. The code applies to any expert witness engaged or appointed to provide an expert's report for use as evidence or to give opinion evidence in a proceeding or proposed proceeding. The content of a report prepared by an expert witness under the code has been

expanded. The code provides that any supplementary report must be provided immediately rather than as soon as possible. The code also provides that if an expert witness is directed by the court to confer with any other expert witness, the witness is to comply with directions of the court in a timely way and try to reach agreement with the other expert witness or witnesses on any issue on which they disagree, or try to identify and clarify the reasons why they disagree.

Forms 3.23, 3.24 and 3.25 have been amended to reflect the change of name of the public trustee and guardian. Form 3.28 “Application for adoption order” has been amended to replace all reference to ‘adoptive father’ and ‘adoptive mother’ with ‘adoptive parent’.

The rules and new forms will commence on 1 July 2016.