

## Explanatory Statement

### Court Procedures Amendment Rules 2017 (No 2) Subordinate Law SL2017-10

Issued by the Authority of the Rule-Making Committee

The Rule-Making Committee (currently comprising of the Chief Justice, Justice Elkaim, Chief Magistrate Walker, and Magistrate Morrison) may make rules in relation to the practice and procedure of the ACT Courts 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 2017 (No 2)*.

Rule 4(1), which sets out the application of the rules, has been amended to extend the application of the rules to proceedings under the *Family Violence Act 2016* (FV Act) and the *Personal Violence Act 2016* (PV Act). The application of the rules to these Acts is limited by a new Part 3.12, Family Violence and Personal Violence proceedings. References and notes relating to the repealed *Domestic Violence and Protection Orders Act 2001* (DVPO Act) and *Domestic Violence and Protection Orders Act 2008* (DVPO Regulation) have been removed.

The second note to rule 22(1) has been amended to clarify that chapter 2 has been disappplied (with exceptions) by rule 3803 in relation to family and personal violence proceedings and rule 3903 in relation to workers compensation proceedings.

A new note to rule 2802(3)(b) has been inserted to clarify that a party is not required to serve a stamped copy of the notice to act in person on another party to a family violence or personal violence proceeding.

New notes have been inserted in rules 2901(2) and 2903(1) to highlight the application of new rule 3803(2)(r) and (s).

A new Part 3.12 Family Violence and Personal Violence proceedings has been inserted to govern the application of the rules to the FV and PV Acts. This new part makes necessary changes to the application of the rules to ensure that Court procedures are simple, quick and inexpensive. This is consistent with achieving justice as required by sections 12 and 9 of the FV and PV Acts respectively.

New rules 3800 and 3801 set out definitions and terms used in the Acts. New rule 3802 provides that part 3.12 only applies to a family violence and personal violence proceeding. The new note specifies that this part also applies to proceeding under the repealed DVPO Act.

New rule 3803 provides a general disapplication of chapter 2 to a family violence or personal violence proceeding except as provided by subsection 2. Subsection 2 provides a list of rules that apply to family violence and personal violence proceedings. The new subsection provides that rules 30, 270, 502, 1401, 1166, divisions 2.14.2, 1506, 1508, parts 2.12, 1600, 1601, 1607, 1608, 1609 and part 2.18 apply to family or personal violence proceedings without amendment. The application of rule 1605 has been limited to subsections 1 and 2.

Part 2.21 has been applied with the exception of rule 2802(3)(b) which requires a party to serve a stamped copy of a notice on all other active parties and the party's former solicitor. Division 4.4A of both the FV and PV Acts governs the service of documents in family violence and personal violence order proceedings.

The application of rules 2901 and 2903 has been limited to ensure that a respondent to a family violence or personal violence order is not able to utilise these rules to locate the applicant. Rule 2901 requires the Registrar to provide a copy of certified copy or an order of the court or document filed in a proceeding if asked in writing by a person who is a party to the proceeding or appears to the Registrar to have a significant interest in the order or document requested. Rule 2903 allows anyone to search the registry for, inspect, or take a copy of, any document filed in the registry. This rule provides specific exceptions for a person seeking to search the registry who is not a party to the proceeding. New rule 3803 (2)(r) provides that this rule does not apply in relation to an order or document that includes an affected person's home or work address or other information that may allow the affected person to be located. New rule 3803(2)(s) provides that the application of rule 2903 is limited to circumstances in which a party to the proceeding seeks to inspect, or take copy of a document that does not include an affected person's home or work address or other information that may allow the affected person to be located. These rules have been limited to ensure that the safety of an affected person is not compromised by the application of the rules.

New rule 3803 includes two new notes. Note 1 clarifies that the Court may, by order, dispense with disapplication of a rule under section (1) or the application of rules under section (2). New note 2 clarifies that Court procedures must be as simple, quick and inexpensive as is consistent with achieving justice, as required by the Acts.

New rule 3804 provides a list of rules, other than those in chapter 2, that do not apply to a family violence or personal violence proceeding.

Under new rules 3804(a) and (b) rules 6103(1)(a)(i) and 6120(b) are disapplied as family and personal violence proceedings have a simplified application process in order to ensure procedures are as simple as possible as is required by the Acts.

New rule 3804(c) provides that rule 6256 does not apply to family and personal violence proceedings. Rule 6256 provides that a party may appeal an order from the registrar in accordance with the rules. Part 5.2 sets out the procedure to be followed for appeal against the order of Registrar which requires a formal notice of appeal to be filed and sets out what must be included in the notice of appeal, timeframes and other requirements for appeals of this type. In order to ensure family violence and personal violence proceeding processes are as simple, quick and inexpensive as possible, appeals from the Registrar's order are immediately referred to a Magistrate. A practice direction will outline the procedure for the immediate review to a Magistrate from a Registrar's order in family and personal violence proceedings.

New rule 3804 (d)-(k) provides that division 6.8.3 and rules 6430, 6435, 6436, 6460, 6464(4), 6467(2)(a)(iii) and 6469(2)(b) do not apply to family and personal violence proceedings. The application of these rules is not necessary as divisions 4.4A of both the FV and PV Acts governs the service of documents in family violence or personal violence order proceedings.

Table 5051, item 6, column 4 has been updated to reflect the repeal of the DVPO Act and the enactment of the FV and PV Acts.

New notes have been inserted into rules 6103 (1)(a), 6120, 6256 and 6400 to clarify the operation of new rule 3804.

Rules 6251(3)(i) and (j), which set out the jurisdiction exercisable by the Registrar of the Magistrates Court in relation to protection order matters, has been amended to reflect the replacement of the DVPO Act and DVPO Regulation with the FV and PV Acts and to expand the jurisdiction of the Registrar in relation to matters of this type.

The jurisdiction to the Registrar reflects the requirements of the FV and PV Acts to ensure that procedures are simple, quick and inexpensive.

Rule 6251(4) and note, and rule 6864(2) and note have been removed to reflect the repeal of the DVPO Act and DVPO Regulation.

Approved forms have been made to reflect the Family Violence Act 2016 and Personal Violence Act 2016

The rules and forms commence on 1 May 2017.