

Explanatory Statement

Court Procedures Amendment Rules 2023 (No 1)

Subordinate Law 2023-15

Issued by Authority of the Rule-Making Committee

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

The amendments:

- introduce new sub-rules 75(5) and (6) to provide for the payment of costs where a proceeding is dismissed under r 75 or reinstated under r 76;
- amend r 630 (and associated provisions) to require that interrogatories be issued by order of the Court instead of available as of right in civil proceedings;
- omit r 6250(2)(v) to remove the jurisdiction of a Registrar to make orders under a rule which no longer exists (r 5091); and
- omit rr 407A and 407B and replicate their content in a new r 6022

Notes on Clauses

New sub-rule 75(5) provides that where proceedings are dismissed under r 75 because the plaintiff does not take a step in the proceeding for a period of one year, the plaintiff is to pay the costs of the defendant. The requirement to pay costs does not extend to the costs of third parties. New sub-rule 75(6) provides that if the proceeding is reinstated by the plaintiff under r 76, the requirement of the plaintiff to pay the costs of the defendant no longer applies, unless the court otherwise orders. These amendments seek to reduce the need for a party to make an application as to costs upon the dismissal or reinstatement of a proceeding under rr 75 and 76.

Rule 630 is amended to require that interrogatories are to be issued by order of the Court and no longer available as of right. Requiring interrogatories to be issued by order of the Court provides for Court supervision over what can be a lengthy and costly process, in accordance with main purpose of civil procedure provisions under s 5A of the *Court Procedures Act 2004*. The amendments to rr 633, 636 and 672 are consequential to the amendment to r 630. New r 7012 preserves the application of the former rr 630, 633, 636 and 672 to interrogatories served under the former r 630 for two years.

Omission of r 6250(2)(v): Rule 6250(2)(v) refers to the setting of a date for hearing under r 5091. Rule 5091 was omitted in 2011 and hence the reference to it in r 6250(2)(v) is redundant.

New rule 6022: The omission of rr 407A and 407B and the insertion of new r 6022 is to ensure consistency in the content of pleadings or originating processes in proceedings which rely on the *Human Rights Act 2004* for relief, whether started by originating claim or originating application. Rules 407A and 407B only applied to pleadings (where the matter was commenced by originating claim) and did not apply where the proceedings were commenced by originating application: *Millard v Collins* [2021] ACTSC 216 at [22]. The new r 6022 will apply to pleadings (where the matter is started by originating claim) or to the originating application.