

Court Procedures Amendment Rules 2024 (No 1)

SL2024-9

Explanatory Statement

Background

The *Court Procedures Act 2004* (the **Act**) governs the practice and procedure of ACT Courts, prescribed tribunals and their registries. Section 9 of the Act establishes the rule making committee and confers power on the rule making committee to:

- make rules relating to the practice and procedure of ACT Courts, prescribed tribunals, and their registries, and in relation to any of the other matters mentioned in Schedule 1 to the Act (s 7); and
- approve forms for the Act, or for use or in relation to ACT Courts, prescribed tribunals, and their registries (s 8).

This explanatory statement describes amendments to the *Court Procedures Rules 2006* (the **Rules**) as made by the rule making committee under s 7 of the Act and set out in the *Court Procedures Amendment Rules 2024 (No 1)* (the **Amendment Rules**).

Detail

The Amendment Rules update the practice and procedure in the Supreme and Magistrates Courts, and their registries, as it relates to:

- Solicitors notifying the Court when they act, or cease to act, for accused persons in criminal proceedings.

The Amendment Rules apply the current process in the Supreme Court, whereby a solicitor acting for an accused person must provide notification to the Court that they are instructed to act, to the Magistrates Court. This change is implemented by the introduction of a new Division 4.1.1A, the omission of Division 4.3.2 and amendment to rule 4802. The new practice and procedure commences on 1 July 2024.

- The filing and entry of orders in civil proceedings.

The Amendment Rules abolish the practice of parties needing to file orders in the Court after they are made, and provide that orders become final orders 14 days after entry into the Court's case management system subject to the Court or the parties taking steps to set them aside within that timeframe. This change is implemented by amendments to rules 1605A, 1606, 1611 and 1613. The new practice and procedure commences on 1 October 2024.

The Amendment Rules also make minor amendments to the Rules, to:

- remove references to the Associate Judge following the removal of that position by the *Court Legislation Amendment Act 2023* (rules 5(2), 5(3), 1326(2)(b)(ii), 1402(3), 2732(1), 2732(1), 2732(3), 2732(4), 5300(2), 6142(5), 6252(3), 6256(2), Part 6.4, Tables 5051, 5800, Schedule 6, part 6.16);
- clarify the point at which:
 - a plaintiff may discontinue a proceeding, or withdraw a part of it, without requiring the leave of the Court or agreement of other parties (rule 1160(1));
 - a solicitor may withdraw from the record without requiring the leave of the Court (rule 2806(2)(a));
 - subpoenas may be issued without requiring the leave of the Court (rule 6601A(2)),

as being either prior to (rules 1160(1) and 2806(2)(a)), or after (rule 6601A(2)) the originating process is set down for hearing;

- remove references to the ‘docket judge’, the docket system otherwise having been abolished by the *Court Procedures Amendment Rules 2015 (No 2)* (rules 1402(3), 4739, Dictionary);
- amend the procedure on arraignment and remove the reference to a ‘pre-trial directions hearing’ in criminal proceedings in the Supreme Court, so that it reflects current practice (rules 4736 and 4737); and
- make consequential amendments to the Dictionary and the powers of the Registrars of each Court.

The rules committee have separately approved new forms:

- to be used in criminal proceedings to advise when a solicitor is acting for an accused person, when a solicitor is no longer acting for an accused person, or when a solicitor withdraws from acting for an accused person;
- to update the Notice of Intended Distribution by which an executor or administrator of a deceased person’s estate gives public notice before distributing the assets of an estate, for consistency with s 64(2) of the *Administration and Probate Act 1929*; and
- to apply to register a recognised protection order under s 91 of the *Personal Violence Act 2016*, for consistency with the raised age of criminal responsibility introduced by the *Justice (Age of Criminal Responsibility) Legislation Amendment Act 2023*.

Pursuant to s 36(1)(i) of the *Legislation Act 2001*, a regulatory impact statement is not required for the Amendment Rules.

Human Rights

The Amendment Rules are procedural and administrative in nature. The *Human Rights Act 2004* establishes a right to a fair trial (s 21) and rights in criminal proceedings (s 22). Neither of these rights, nor any other human right established by the *Human Rights Act 2004*, is engaged or impacted by the Amendment Rules.