



Australian Capital Territory

Supreme Court Rules¹ (Amendment)

Subordinate Law No. 27 of 1996²

We, Judges of the Supreme Court, make the following Rules of Court under section 36 of the *Supreme Court Act 1933*.

Dated 31 October 1996.

JEFFREY MILES

Chief Justice

J F GALLOP

Judge

T J HIGGINS

Judge

A G TOWILL

Registrar

Commencement

1. These Rules commence on the day on which they are notified in the *Gazette*.

Principal Rules

2. In these Rules, “Principal Rules” means the Supreme Court Rules.

Insertion

3. After rule 49 of Order 39 of the Principal Rules the following Division is inserted in that Order:

“Division 9—Matters arising under the Evidence Act 1995 of the Commonwealth”

Evidence of previous representation

“50. (1) In this rule, ‘notice of intention to adduce evidence of previous representation’ means a notice under subsection 67 (1) of the *Evidence Act 1995* of the Commonwealth.

“(2) A notice of intention to adduce evidence of previous representation shall be in accordance with Form 49 in the First Schedule.

“(3) A notice of intention to adduce evidence of previous representation may be accompanied by an affidavit setting out the evidence of the previous representation.

“(4) Compliance with subrule (2) may be dispensed with in whole or in part if the Court thinks fit.

Objection to hearsay evidence

“51. (1) In this rule, ‘notice of objection to tender of hearsay evidence’ means a notice under subsection 68 (2) of the *Evidence Act 1995* of the Commonwealth.

“(2) A notice of objection to tender of hearsay evidence shall be in accordance with Form 49A in the First Schedule.

“(3) Compliance with subrule (2) may be dispensed with in whole or in part if the Court thinks fit.

Tendency evidence

“52. (1) In this rule, ‘notice of intention to adduce tendency evidence’ means a notice under subsection 97 (1) of the *Evidence Act 1995* of the Commonwealth.

“(2) A notice of intention to adduce tendency evidence shall be in accordance with Form 49B in the First Schedule.

“(3) Compliance with subrule (2) may be dispensed with in whole or in part if the Court thinks fit.

Coincidence evidence

“53. (1) In this rule, ‘notice of intention to adduce coincidence evidence’ means a notice under subsection 98 (1) of the *Evidence Act 1995* of the Commonwealth.

“(2) A notice of intention to adduce coincidence evidence shall be in accordance with Form 50 in the First Schedule.

“(3) Compliance with subrule (2) may be dispensed with in whole or in part if the Court thinks fit.”.

First Schedule

4. The First Schedule to the Principal Rules is amended by inserting after Form 48 the forms set out in the Schedule to these Rules.

SCHEDULE

Rule 4

FORM 49

O. 39 r. 50

NOTICE OF INTENTION TO ADDUCE EVIDENCE OF PREVIOUS REPRESENTATION

[*Heading as in Form 1*]

To *(name)* of *(address)*

Pursuant to subsection 67 (1) of the *Evidence Act 1995* of the Commonwealth, I, *(name)* give notice that I intend to adduce evidence of a previous representation.

I intend to rely on subsection *[63 (2)/ 64 (2)] of the Act in arguing that the hearsay rule does not apply to the evidence.

The substance of the evidence of a previous representation that I intend to adduce is as follows:

(substance of that evidence—note that it is sufficient compliance to refer to an accompanying affidavit)

The substance of all other relevant representations made by the person who made the previous representation, so far as they are known to me, is as follows:

(substance of those other representations)

Particulars of—

- (a) the date, time, place and circumstances on, at or in which each of the representations mentioned above was made; and
- (b) the names and addresses of the persons by whom, and the persons to whom, those representations were made;

so far as they are known to me, are as follows:

(particulars)

(If it is intended to rely on paragraph 63 (2) (a) or (b) of the Evidence Act 1995 of the Commonwealth) *[Particulars of the facts on the basis of which it is alleged that the person who made the representation is not available to testify concerning the fact to be proved by adducing evidence of that representation are as follows:

(particulars)]

(If it is intended to rely on paragraph 64 (2) (a) or (b) of the Evidence Act 1995 of the Commonwealth) *[It would *[cause undue expense/ cause undue delay/ not be reasonably practicable] to call the person who made the representation to give evidence. Particulars of the facts that I will rely on to establish the *[that ground/ those grounds] are as follows:

(particulars)]

Date:

(name of party or party's solicitor)

(address)

**(Delete if, or whichever is, inapplicable)*

SCHEDULE—continued

FORM 49A

O. 39 r. 51

NOTICE OF OBJECTION TO TENDER OF HEARSAY EVIDENCE
[Heading as in Form I]

To (name) of (address)

Pursuant to subsection 68 (1) of the *Evidence Act 1995* of the Commonwealth, I, (name) give notice that I object to the tender of *[the/ a part of the] evidence referred to in the notice of intention to adduce evidence of previous representation dated (date) given by (name) to me.

*[The part of the evidence the tender of which is objected to is as follows:

(description of part of evidence)]

The grounds on which the objection is made are as follows:

(grounds)

Date:

(name of party or party's solicitor)

(address)

*(Delete if, or whichever is, inapplicable)

FORM 49B

O. 39 r. 52

NOTICE OF INTENTION TO ADDUCE TENDENCY EVIDENCE
[Heading as in Form I]

To (name) of (address)

Pursuant to subsection 97 (1) of the *Evidence Act 1995* of the Commonwealth, I, (name) give notice that I intend to adduce evidence of *[the [character/ reputation/ conduct] of (name)/ a tendency that (name) [has/had]] to prove that *[he/she] *[has/had] a tendency to *[act in a particular way/ have a particular state of mind].

The substance of the evidence that I intend to adduce is as follows:

(substance of the evidence)

Particulars of the *[character/ reputation/ conduct/ tendency] of which evidence is to be adduced are as follows:

(particulars)

(If that evidence consists of, or includes, evidence of the conduct of a person) *[Particulars of—

- (a) the date, time, place and circumstances on, at or in which the conduct occurred; and
- (b) the names and addresses of the persons who saw, heard or otherwise perceived the conduct;

so far as they are known to me, are as follows:

(particulars)

Particulars of the tendency sought to be proved by the evidence are as follows:

(particulars)

Date:

(name of party or party's solicitor)

(address)

*(Delete if, or whichever is, inapplicable)

FORM 50

O. 39 r. 53

SCHEDULE—continued

NOTICE OF INTENTION TO ADDUCE COINCIDENCE EVIDENCE

[Heading as in Form I]

To *(name)* of *(address)*

Pursuant to subsection 98 (1) of the *Evidence Act 1995* of the Commonwealth, I, *(name)* give notice that I intend to adduce evidence that *(number)* related events occurred to prove that, because of the improbability of the events occurring coincidentally, *(name)* *[did a particular act/ had a particular state of mind].

The substance of the evidence that I intend to adduce is as follows:

(substance of the evidence)

Particulars of—

- (a) the date, time, place and circumstances on, at or in which each of those events occurred;
and
- (b) the names and addresses of the persons who saw, heard or otherwise perceived those events;

so far as they are known to me, are as follows:

(particulars)

Particulars of any additional evidence to be relied on to establish the improbability of the events having occurred coincidentally are as follows:

(particulars)

Particulars of the *[act/ state of mind] sought to be proved by the evidence are as follows:

(particulars)

Date:

(name of party or party's solicitor)
(address)

*(Delete whichever is inapplicable)

NOTES

Principal Rules

1. Reprinted as at 31 January 1996. See also Subordinate Laws Nos. 4, 10, 11 and 22, 1996.

Notification

2. Notified in the ACT Gazette on 13 November 1996.