



Australian Capital Territory

Supreme Court Amendment Rules 2002 (No 1)

Subordinate Law SL2002-16

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

Dated 14 June 2002.

JEFFREY MILES
Chief Justice

T.J. HIGGINS
Judge

M.F. GRAY
Judge

J. CIRCOSTA
Registrar



Australian Capital Territory

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made under the

Supreme Court Act 1933

Contents

	Page
1 Name of rules	1
2 Commencement	1
3 Rules amended	1
4 Order 1 rule 4, new definition of <i>stamped</i>	1
5 Order 33 rule 1 (2), new note	1
6 Order 40 rule 12	1
7 Order 40 rule 15 (2)	2

Contents

		Page
8	Order 40 rule 15	2
9	Division 40.2	2
10	Order 42 rule 11 (1) (a)	3
11	Order 54 rule 5	3
12	Order 54 rule 8	3
13	Order 59 rule 9	3
14	Order 62 new rule 1A	4
15	Order 81 new rule 2A	4
16	Order 81 new rule 21	4
17	Order 82 rule 3 (3)	5
18	Order 82 new rule 3A	5
19	Order 82 rule 4 (1)	6
20	Schedule 4, part 4.1, item 1, column 2	6
21	Schedule 4, part 4.6, items 22 to 24, column 2, paragraph (f)	6
Schedule 1	Minor amendments	7
Schedule 2	Forms	16

1 Name of rules

These rules are the *Supreme Court Amendment Rules 2002 (No 1)*.

2 Commencement

- (1) These rules, other than rule 5, commence 28 days after their notification day.
- (2) Rule 5 commences on the commencement of the amendment of the Act, section 55 made by the *Statute Law Amendment Act 2002*, or on the commencement of rule 4, whichever is later.

3 Rules amended

These rules amend the *Supreme Court Rules*.

4 Order 1 rule 4, new definition of *stamped*

insert

stamped, for a document, means stamped under order 62 rule 1A.

5 Order 33 rule 1 (2), new note

insert

Note The Act, s 55 provides that the court may order that all or part of the evidence in a civil matter may or must be given by affidavit. The court may make the order when giving directions.

6 Order 40 rule 12

substitute

12 Copies of affidavits to be served

- (1) A copy of an affidavit intended to be used by a party in a proceeding must be served on each other party to the proceeding.
- (2) The copy must be served—
 - (a) if the court sets a time for the service—within that time; or

- (b) if the court does not set a time for the service—a reasonable time before the hearing of the proceeding.
- (3) This rule does not apply to an application made without notice to another party.

7 Order 40 rule 15 (2)

substitute

- (2) The party must serve a written notice on the party filing or proposing to use the affidavit, requiring the attendance of the person making the affidavit.
- (2A) The notice must be served—
 - (a) if the court sets a time for the service—within that time; or
 - (b) if the court does not set a time for the service—a reasonable time before the attendance is required.

8 Order 40 rule 15

renumber subrules when rules next republished under Legislation Act 2001

9 Division 40.2

substitute

Division 40.2 Trial on affidavit

24 Evidence on affidavit by consent—Act, s 54

- (1) An agreement of the parties to a suit, that the evidence at the trial of the suit will be given by affidavit, must be made before the suit is set down for trial.
- (2) The parties must tell the court about the agreement before the suit is set down for trial.

10 Order 42 rule 11 (1) (a)

substitute

- (a) the solicitor for a party to a cause or matter has lodged with the registrar a draft order in accordance with schedule 1, form 50AC or draft judgment in accordance with schedule 1, form 50AD.

11 Order 54 rule 5

omit

12 Order 54 rule 8

substitute

8 Service of notice of motion

- (1) The plaintiff may, without the court's leave, serve a copy of a notice of motion on a defendant.
- (2) The copy must be a stamped copy.
- (3) Unless the court otherwise orders, there must be at least 2 clear days between the service of a notice of motion and the day named in the notice for hearing the motion.
- (4) This rule applies whether or not the defendant has appeared.

13 Order 59 rule 9

omit

Federal Court

substitute

Court of Appeal

14 Order 62 new rule 1A

insert

1A Stamping

If a document has been filed by a party, and the document must or may be served on another party, the registrar may stamp a copy of the document to indicate that it is a copy of a filed document.

15 Order 81 new rule 2A

insert

2A Non-publication order

- (1) This rule applies if—
 - (a) an appeal is brought from a decision of a tribunal; and
 - (b) the tribunal made an order prohibiting the publication of a party's name (the *non-publication order*); and
 - (c) the non-publication order has not been discharged by the tribunal or the court.
- (2) For the notice of appeal, the non-publication order remains in force as if it were an order of the court.
- (3) In this rule:

party means a party to the proceeding to which the decision relates.

16 Order 81 new rule 21

insert

21 Further evidence on appeal—*Magistrates Court Act 1930*, s 214

- (1) This rule applies to an application to the court to receive evidence mentioned in the *Magistrates Court Act 1930*, section 214 (3) and (4) in an appeal mentioned in that section.

- (2) The application must be made by motion on the hearing of the appeal.
- (3) The grounds of the application must be stated in an affidavit.
- (4) Any evidence necessary to establish the grounds of the application, and the evidence that the applicant wants the court to receive, must be given by affidavit.
- (5) Within 21 days before the hearing of the appeal, the applicant must file an affidavit mentioned in subrules (3) and (4) and serve it on the other party to the appeal.
- (6) Unless the court otherwise orders, the evidence of the other party to the appeal must be given by affidavit.
- (7) Within 14 days before the hearing of the appeal, the other party to the appeal must file the affidavit and serve it on the applicant.

17 Order 82 rule 3 (3)

omit

review

substitute

application

18 Order 82 new rule 3A

insert

3A Other parties—decision made by tribunal

- (1) A person must be joined as a respondent to an application for an order of review of a decision if the decision was made by a tribunal and the person—
 - (a) was a party to the proceedings before the tribunal; and
 - (b) would be affected by the order sought by the applicant or is interested in maintaining the decision.

(2) In this rule:

tribunal means an entity authorised to make a decision to which the Review Act applies.

19 Order 82 rule 4 (1)

omit

a decision

substitute

a decision to which the Review Act applies

20 Schedule 4, part 4.1, item 1, column 2

substitute

to sue or defend, to appeal or oppose an appeal

21 Schedule 4, part 4.6, items 22 to 24, column 2, paragraph (f)

substitute

(f) to inspect or produce a document; or

(g) to prepare appeal papers.

Schedule 1 Minor amendments

[1.1] Order 1 rule 4, definition of *Act*, paragraph (g)

omit

80A

substitute

81

[1.2] Order 1 rule 4, definition of *Act*, paragraph (h)

omit

80B

substitute

82

[1.3] Order 1 rule 4, definition of *Act*, paragraph (i)

omit

80C

substitute

83

[1.4] Order 1 rule 5

substitute

5 General heading style—sch 1, pt 1.1 forms

A document in accordance with a form in part 1.1 must be headed in the way set out in form 1, unless otherwise stated in the form.

[1.5] Order 61 rule 3 (a)

omit

- order 69; and

substitute

- order 69
- order 84 rule 14 (3); and

[1.6] Order 61A rule 1, note

omit

o 83

substitute

o 88

[1.7] Order 72 rule 1

omit everything before the definition of Act, substitute

1 Definitions for o 72

In this order:

[1.8] Order 72 rule 1A

substitute

1A Words and expressions used in Administration and Probate Act

A word or expression used in the Act has the same meaning in this order and in schedule 1, part 1.2.

[1.9] Order 72 rule 1B

omit

[1.10] Order 76 rule 1A

substitute

1A Words and expressions used in Adoption Act

A word or expression used in the Act has the same meaning in this order and in schedule 1, part 1.3.

[1.11] Order 76 rule 1B

omit

[1.12] Division 80.1

omit

[1.13] Divisions 80.2 to 80.4

renumber as divisions 80.1 to 80.3

[1.14] Order 80A

renumber as order 81

[1.15] Order 80A rule 1 heading

substitute

1 Definitions for o 81**[1.16] Order 80B**

renumber as order 82

[1.17] Order 80B rule 1 heading

substitute

1 Definitions for o 82

[1.18] Order 80C heading

substitute

Order 83 Evidence and Procedure (New Zealand) Act 1994 (Cwlth)

Division 83.1 Preliminary

[1.19] Order 80C rule 1 heading

substitute

1 Meaning of Act in o 83

[1.20] Order 80C rule 1A

substitute

1A Words and expressions used in Evidence and Procedure (New Zealand) Act

A word or expression used in the Act has the same meaning in this order and in schedule 1, part 1.5.

[1.21] Order 80C rule 1B

omit

[1.22] Order 80D heading

substitute

Division 83.2 Service of subpoena in New Zealand

[1.23] Order 80E heading

substitute

Division 83.3 Failure to comply with subpoena**[1.24] Order 80F heading***substitute***Division 83.4 Setting aside subpoena****[1.25] Order 80G heading***substitute***Division 83.5 Evidence by videolink or telephone****[1.26] Order 80H heading***substitute***Division 83.6 Fax copies****[1.27] Orders 80C to 80H, rules***renumber rules, beginning at rule 1, when rules next republished under Legislation Act 2001***[1.28] Order 81***renumber as order 84***[1.29] Order 81 rule 1***substitute***1 Definitions for o 84****[1.30] Order 81A***renumber as order 85***[1.31] Order 81A rule 1 heading***substitute*

1 Definitions for o 85

[1.32] Order 82

renumber as order 87

[1.33] Order 82 rule 1 heading

substitute

1 Meaning of *Review Act* in o 87

[1.34] Order 83

renumber as order 88

[1.35] Order 83 rule 1 heading

substitute

1 Definitions for o 88

[1.36] Order 83 rule 1, definition of *proceeding*

omit

83.2

substitute

88.2

[1.37] Order 83 rule 11H (1)

omit

83

substitute

88

[1.38] Divisions 83.1 to 83.4

renumber as divisions 88.1 to 88.4

[1.39] Parts

renumber parts when rules next republished under Legislation Act 2001

[1.40] Schedule 1 heading

substitute

Schedule 1 Forms

Part 1.1 Civil proceedings forms

[1.41] Schedule 1 form 82

omit

(see o 82 r 4)

substitute

(see o 87 r 4)

[1.42] Schedule 1 forms 83 to 88

omit

o 83

substitute

o 88

[1.43] Schedule 1 forms 85 to 88

omit

order 83

substitute

order 88

[1.44] Schedule 1 forms

renumber (beginning with form 1.1) when rules next republished under Legislation Act 2001

[1.45] Schedule 1

after form 88, insert

Part 1.2 Administration and probate forms

Part 1.3 Adoption forms

Part 1.4 Criminal proceedings forms

Part 1.5 Evidence and Procedure (New Zealand) Act 1994 (Cwlth) forms

Part 1.6 Appeal forms

[1.46] Schedule 3 forms

relocate to schedule 1, part 1.2, and renumber (beginning with form 2.1) when rules next republished under Legislation Act 2001

[1.47] Schedule 4

renumber as schedule 3, and renumber its parts, when rules next republished under Legislation Act 2001

[1.48] Schedule 8 forms

relocate to schedule 1, part 1.3, and renumber (beginning with form 3.1) when rules next republished under Legislation Act 2001

[1.49] Schedule 11 forms

relocate to schedule 1, part 1.4, and renumber (beginning with form 4.1) when rules next republished under Legislation Act 2001

[1.50] Schedule 13B forms

relocate to schedule 1, part 1.5, and renumber (beginning with form 5.1) when rules next republished under Legislation Act 2001

[1.51] Schedule 14 forms 1 and 2

omit

o 81

substitute

o 84

[1.52] Schedule 14 forms

relocate to schedule 1, part 1.6, and renumber (beginning with form 6.1) when rules next republished under Legislation Act 2001

[1.53] Schedules 8, 11, 13B and 14

omit

Schedule 2 Forms

(see r 3)

[2.1] Schedule 1, form 50AC

substitute

Form 50AC Consent order

(see o 42 r 11)

[*Heading as in form 1*]

Date of order: [*court to enter*]

Originating process: [*originating application (or other) and date filed*]

How obtained: By consent of parties

Other matters: [*if applicable*]

THE COURT ORDERS BY CONSENT THAT:

1

2

We consent for order 42 rule 11 to the order(s).

Signature(s) of
solicitor(s) for the plaintiff (s)
name:
date:

Signature(s) of
solicitor(s) for the defendant(s)
name:
date:

Date entered: [*court to enter*]

Registrar

Form 50AD **Consent judgment**

(see o 42 r 11)

*[Heading as in form 1]*Date of judgment: *[court to enter]*Originating process: *[originating application (or other) and date filed]*

How obtained: By consent of parties

Other matters: *[if applicable]***THE COURT ORDERS BY CONSENT THAT:**

- 1 Judgment be entered for the plaintiff for \$.
- 2 The defendant pay the plaintiff's costs.
- 3 *[if applicable, any other orders, for example interest]*

THE JUDGMENT OF THE COURT IS THAT:

The plaintiff recover against the defendant \$ and costs.

We consent for order 42 rule 11 to the order(s).

Signature(s) of
solicitor(s) for the plaintiff(s)
name:
date:Signature(s) of
solicitor(s) for the defendant(s)
name:
date:Date entered: *[court to enter]*

Registrar

[2.2] Schedule 1, form 81

substitute

Form 81 Application for order of review

(see o 87 r 3)

In the Supreme Court of the Australian Capital Territory

No of [year]

Between:

AB Applicant
and

CD Respondent(s)

Application for order of review

Application to review the decision of (*the respondent or the first respondent*)
that

(*specify decision*)

OR

Application to review the conduct of (*the respondent or the first respondent*),
being

(*identify conduct*)

OR

Application to review conduct in which (*the respondent or the first respondent*)
proposes to engage, being

(*identify conduct*)

OR

Application to review the failure of (*the respondent or the first respondent*)
to decide that

(*specify the decision which it is alleged ought to have been made*)

The applicant is aggrieved by the (*decision or conduct or proposed conduct or failure*) because:

1
2
etc (reasons)

The grounds of the application are:

1
2
etc (particulars of fraud or bad faith, if alleged)

The applicant claims:

1 An order (*or declaration*) that (*specify relief sought*).
2 etc

Date:

Signature of *applicant/*applicant's solicitor:

Applicant's address for service:

Notice to respondent

[*respondent's name and address*]

1 Entry of appearance

Before taking any step in these proceedings, you must enter an appearance in the Registry.

2 Directions hearing

1 A directions hearing will be heard in the court as follows:

Date:

Time:

Place:

[*Registrar to insert date and time (unless set by court) and place*].

2 If you do not attend the directions hearing, either in person or by your legal representative, directions may be given, the application may be dealt with, and a judgment may be given against you, in your absence.

(If the time for service has been abridged, add:)

The time by which this application, with its notice of the directions hearing, is to be served has been abridged by the court to *(specify time)*.

Date:

By the court

(signature and description of officer of the court)

**Strike out where inapplicable*

Endnotes

Republications of amended laws

- 1 For the latest republication of amended laws, see www.legislation.act.gov.au.

Notification

- 2 Notified under the *Legislation Act 2001* on 19 June 2002.
(see www.legislation.act.gov.au)