



Australian Capital Territory

Court Procedures Amendment Rules 2009 (No 3)

Subordinate Law SL2009-56

We, members of the rule-making committee, make the following rules under the *Court Procedures Act 2004*, section 7.

Dated 16 December 2009.

T J HIGGINS

Chief Justice

R REFSHAUGE

Judge

M F GRAY

President of the Court of Appeal

J BURNS

Magistrate

J2009-528

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au



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Court Procedures Act 2004

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1 Name of rules

These rules are the *Court Procedures Amendment Rules 2009 (No 3)*.

2 Commencement

These rules commence on 1 January 2010.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Legislation amended

These rules amend the *Court Procedures Rules 2006*.

4 Rule 32 (3) (b)

substitute

(b) that the proceeding started by the originating process is later dismissed under rule 75 (When proceeding taken to be dismissed); or

5 Rule 32 (3) (c)

omit

struck out

substitute

dismissed

6 Rule 75 heading

substitute

75 When proceeding taken to be dismissed

7 Rule 75

omit

struck out

substitute

dismissed

8 Rule 76 heading

substitute

76 Reinstating dismissed proceeding

9 Rule 76 (1)

omit

struck out

substitute

dismissed

10 New rule 76 (2A) and (2B)

insert

(2A) A proceeding that has been dismissed under rule 75 (2) is reinstated if, before the end of 1 year after the day the proceeding is dismissed, a party to the proceeding files a document in the proceeding.

(2B) The party filing the document must serve a copy of the document on each other active party to the proceeding not later than 3 days after the day the document is filed.

Note **Active party**—see the dictionary.

11 Rule 76 (3)

omit

struck out

substitute

dismissed

12 Rule 242 (3)

substitute

- (3) However, an earlier date must not be stated in the order if the inclusion or substitution of the person on that date would bring the start of the proceeding within a limitation period applying to the person.

13 Rule 319 heading

substitute

319 Notice claiming contribution or indemnity against another party

14 Rule 319 (1)

substitute

- (1) A party to a proceeding, other than a plaintiff, may file a notice claiming a contribution or indemnity (a ***notice claiming contribution or indemnity***) if the party wants to—
- (a) claim against another party to the proceeding a contribution or indemnity; or
 - (b) claim against another party to the proceeding relief—
 - (i) relating to or connected with the original subject matter of the proceeding; and

- (ii) substantially the same as some relief claimed by the plaintiff; or
- (c) require an issue relating to or connected with the original subject matter of the proceeding to be decided not only as between the plaintiff and defendant but also between either of them and another party to the proceeding.

15 Rule 319 (6) (b) and (c)

substitute

- (b) the party who filed the notice were the defendant; and
- (c) the party against whom the claim in the notice is made were a third party.

16 Rule 320

omit

defendant

substitute

party

17 Rule 320 (1) (b) (ii)

omit

plaintiff agrees

substitute

plaintiff and the defendant, if the defendant is not the party filing the notice, agree

18 Rule 321

omit

defendant

substitute

party

19 Rule 651 (1) (a)

omit

is likely to

substitute

may

20 Rule 1505 (4)

omit

struck out

substitute

dismissed

21 New rule 1620

in part 2.16, insert

1620 Change in interest rates up to and after judgment

The advisory committee may recommend a change in the rates of interest set out in schedule 2 to take effect on 1 January of the year following the recommendation.

22 New rule 3158 (1) (f)

insert

- (f) if any conditions under the Adoption Act, section 40 (Adoption order subject to certain conditions) are sought by anyone in relation to the adoption—a document signed by the birth parents and adoptive parents stating their agreement that the adoption order should be subject to the conditions.

23 New rule 5013 (1) (ea)

insert

- (ea) if the appeal is from a decision of the master—briefly, but specifically, the grounds relied on in support of the appeal; and

24 Rule 5013 (2)

substitute

- (2) If the appeal is from a decision of the registrar, the notice of appeal need not set out grounds of appeal.

25 Rule 5070 (2), note

substitute

Note Leave to appeal is required for orders of the following courts and tribunals:

- the ACAT (for applications to appeal mentioned in the *ACT Civil and Administrative Tribunal Act 2008*, s 86 (Appeals to Supreme Court))
- the Magistrates Court (for appeals mentioned in the *Magistrates Court Act 1930*, s 274 (1) (Cases in which appeal may be brought)).

26 New division 5.3.3A*insert***Division 5.3.3A Referral of appeal to Supreme Court by ACAT appeal president—leave****5090 Application—div 5.3.3A**

This division applies if the ACAT appeal president requires the Supreme Court's leave to refer to the Supreme Court an appeal that has been made to ACAT.

5091 Referral of appeal—procedure for leave

- (1) The appeal president must—
 - (a) lodge the following with the Supreme Court:
 - (i) the ACAT order appealed from;
 - (ii) if the ACAT gave reasons for the order—a copy of the reasons;
 - (iii) a copy of the application for appeal;
 - (iv) the appeal president's written reasons why leave should be given; and
 - (b) give a copy of the appeal president's reasons to each party to the appeal.
- (2) A party to the appeal may file written submissions about the request to refer the appeal to the Supreme Court not later than 14 days after the day the party is given a copy of the appeal president's reasons.
- (3) Part 6.2 (Applications in proceedings) does not apply to an application under this rule.
- (4) However, if a party to the appeal wants to be heard—
 - (a) the court must set a date for a hearing; and

- (b) the registrar must tell the appeal president and each party to the appeal the date set for the hearing.

5092 Referral of appeal—notice of intention to respond to application for leave to appeal

A respondent to the appeal must file in the Supreme Court a notice of intention to respond in accordance with division 2.3.1 (Notice of intention to respond and defence—general) as if—

- (a) the application for appeal were an originating application; and
- (b) the respondent were a defendant; and
- (c) the appellant were a plaintiff; and
- (d) any other necessary changes were made.

5093 Referral of appeal—leave granted

- (1) This rule applies if the Supreme Court grants leave to the appeal president to refer the appeal to the Supreme Court.
- (2) The application for appeal is taken to be a notice of appeal filed in the Supreme Court in accordance with division 5.3.4 (Appeals to Supreme Court—procedure generally).
- (3) The registrar must—
 - (a) serve on each party to the appeal—
 - (i) a copy of the order granting leave; and
 - (ii) the court’s brief reasons for granting the order; and
 - (b) set a date for settlement of the appeal papers; and
 - (c) tell the parties the date set.

5094 Referral of appeal—costs

The costs of a proceeding under this division are costs in the appeal unless the Supreme Court otherwise orders.

27 Rule 5108 (2)

substitute

- (2) However, this rule does not apply to a respondent if the respondent filed a notice of intention to respond under rule 5075 (Appeals to Supreme Court—notice of intention to respond to application for leave to appeal), rule 5086 (Appeals to Supreme Court—notice of intention to respond to application for leave to appeal out of time) or rule 5092 (Referral of appeal—notice of intention to respond to application for leave to appeal) in the proceeding, and the information provided in the notice has not changed.

28 New rule 6250 (2) (ra)

insert

- (ra) the setting of a date for a hearing under rule 5091 (Referral of appeal—procedure for leave);

29 Rule 6250 (2) (t)

omit

rule 6481 (Subpoena—service on medical expert)

substitute

rule 6482 (Subpoena—service on special witness)

30 Rule 6251 (2) (zb)

omit

rule 6481 (Subpoena—service on medical expert)

substitute

rule 6482 (Subpoena—service on special witness)

31 Division 6.8.8

substitute

**Division 6.8.8 Service of subpoenas and notices
instead of subpoenas—general**

6480 Definitions—div 6.8.8

In this division:

ACT Ambulance Service means the ACT Ambulance Service established under the *Emergencies Act 2004*, section 40.

medical expert means a health professional registered under the *Health Professionals Act 2004*.

special witness means—

- (a) a medical expert; or
- (b) a member of the ACT Ambulance Service.

6481 Subpoena—service on solicitor

If the addressee for a subpoena in a proceeding is a party and is represented by a solicitor in the proceeding, the subpoena may, with the solicitor's agreement, be served on the addressee by leaving it at the addressee's address for service.

6482 Subpoena—service on special witness

- (1) A subpoena is taken to be served personally on a special witness if, at a place where the witness's practice or work is carried on—
 - (a) it is given to a person apparently engaged (whether as employee or otherwise) in relation to the practice, or at the place of work, and apparently at least 16 years old; or

- (b) if a person mentioned in paragraph (a) does not accept the subpoena—the subpoena is put down in the person’s presence and the person is told in general terms what it is.
- (2) A subpoena requiring a special witness to give evidence in a proceeding must be served at least 6 weeks before the date set by the court for the hearing of the proceeding (the *hearing date*) unless the subpoena is served in accordance with leave given under subrule (3) or (8).
- (3) The court may give leave for a subpoena to be served on a special witness requiring the witness to attend to give evidence later than 6 weeks before the hearing date.
- (4) An application for leave under subrule (3) is made by filing—
- (a) the subpoena with a statement on its first page that leave is granted to serve the subpoena later than 6 weeks before the hearing date; and
 - (b) an affidavit in support of the application.
- (5) The affidavit in support of the application must state—
- (a) the need for the special witness to give evidence in the proceeding; and
 - (b) the reason the subpoena was not issued in enough time to enable it to be served at least 6 weeks before the hearing date; and
 - (c) whether the witness has been told about the hearing and, if so, whether the witness is able to attend the hearing; and
 - (d) the earliest date when the subpoena can be served.
- (6) Part 6.2 (Applications in proceedings) does not apply to an application for leave under subrule (3).
- (7) If the court gives leave under subrule (3), it must set a date for the last date of service for the subpoena.

- (8) If a special witness to whom a notice has been given in accordance with rule 6483 fails to attend the court on the date and at the time stated in the notice, the court may give leave for the service of a subpoena on the witness requiring the attendance of the witness.

Note Pt 6.2 (Applications in proceedings) applies to an application for leave under r (8).

6483 Special witness—notice instead of subpoena

- (1) In a proceeding, a notice stating the date and time set for the hearing for the proceeding and requesting a special witness's attendance may be given to the witness instead of a subpoena.
- (2) The notice may be given in the same way as a subpoena may be served on a special witness.
- (3) However, the notice must not be given later than 6 weeks before the date set for the hearing.

6484 Special witness—no shortening of time for service

The parties to a proceeding cannot, by agreement, shorten the time for service of a subpoena on, or the giving of a notice under rule 6483 to, a special witness.

32 Rule 6602 (9) and note

substitute

- (9) Subrule (8) is subject to rule 6482 (Subpoena—service on special witness).

Note Rule 6482 (2) provides that a subpoena requiring a special witness to give evidence in a proceeding must be served at least 6 weeks before the date set by the court for the hearing of the proceeding unless the subpoena is served in accordance with leave under the rule.

33 Rule 6603 (8) and note 1

substitute

- (8) This rule is subject to rule 6482 (Subpoena—service on special witness).

Note 1 Rule 6482 (2) provides that a subpoena requiring a special witness to give evidence in a proceeding must be served at least 6 weeks before the date set by the court for the hearing of the proceeding unless the subpoena is served in accordance with leave under the rule.

34 Rule 6605 (2), except note

substitute

- (2) Subrule (1) is subject to rule 6481 (Subpoena—service on solicitor) and rule 6482 (Subpoena—service on special witness).

35 New rule 6606 (6) and (7)

insert

- (6) Unless a subpoena specifically requires the production of the original, the addressee may produce a copy of any document required to be produced by the subpoena.
- (7) A copy of the document may be—
- (a) a photocopy; or
 - (b) in PDF format on a CD-ROM; or
 - (c) in any other electronic form that the issuing party has indicated will be acceptable.

36 Rule 6610

substitute

6610 Disposal of subpoenaed documents and things produced

- (1) Unless the court otherwise orders, the registrar may return to the addressee any document or thing produced in the proceeding in response to the subpoena.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering under this rule.

- (2) The registrar must not return any document or thing under subrule (1) unless the registrar has given the issuing party at least 14 days notice of the registrar's intention to do so and that period has ended.
- (3) The issuing party must attach to the front of a subpoena to produce to be served on the addressee a notice and declaration.

Note See approved form 6.10A (Subpoena—declaration by addressee).

- (4) The addressee must complete the notice and declaration and attach it to the subpoena or copy of the subpoena that accompanies the documents produced to the court in response to the subpoena.
- (5) Subject to subrule (6), the registrar may, at the end of 4 months after the end of the proceeding, destroy all the documents produced in response to the subpoena that were declared by the addressee to be copies.
- (6) The registrar may destroy the documents declared by the addressee to be copies that have become exhibits in the proceeding when they are no longer required in relation to the proceeding, including on any appeal.

37 New rule 6615

in part 6.9, insert

6615 Subpoena issued by ACAT—leave to serve outside ACT

- (1) This rule applies to an application for leave made under the *Service and Execution of Process Act 1992* (Cwlth), section 57 to serve a subpoena issued by the ACAT outside the ACT.
- (2) An application for leave is made by filing—
 - (a) an affidavit in support of the application; and
Note See approved form 6.23 (Affidavit in support of application for leave to serve ACAT subpoena outside ACT).
 - (b) a copy of the subpoena, annexed to the affidavit; and
 - (c) a draft order.
Note See approved form 6.24 (Order to serve ACAT subpoena outside ACT).
- (3) The affidavit in support of the application must state—
 - (a) for a subpoena to attend to give evidence—
 - (i) the evidence the addressee is expected to give in the proceeding; and
 - (ii) why the addressee's evidence is necessary; and
 - (iii) whether the addressee for the subpoena has been told about the hearing and, if so, whether the addressee is able to attend the hearing; and
 - (iv) the hearing date for the proceeding and the date the subpoena must be served before; and
 - (b) for a subpoena to produce—
 - (i) why the document or thing required to be produced by the subpoena are necessary; and

- (ii) whether the addressee for the subpoena has been told about the subpoena and, if so, whether the addressee is able to produce the document or thing before the compliance date; and
 - (iii) the hearing date for the proceeding and the date the subpoena must be served before.
- (4) Part 6.2 (Applications in proceedings) does not apply to an application under this rule.
- (5) The affidavit need not be served on anyone unless the court otherwise orders on its own initiative.
- (6) Unless the court otherwise orders on its own initiative, an application under this rule may be dealt with without a hearing and in the absence of the parties.

38 Rule 6764

omit

39 Rule 6825 (1) (a)

omit

rule 6482 (Medical expert—notice instead of subpoena)

substitute

rule 6483 (Special witness—notice instead of subpoena)

Endnotes

1 Notification

Notified under the Legislation Act on 17 December 2009.

2 Republications of amended laws

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

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