



Australian Capital Territory

Court Procedures Amendment Rules 2011 (No 2)

Subordinate Law SL2011-17

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

Dated 24 June 2011.

T J HIGGINS

Chief Justice

M F GRAY

President of the Court of Appeal

P DINGWALL

Acting Chief Magistrate

R REFSHAUGE

Judge



Australian Capital Territory

Court Procedures Amendment Rules 2011 (No 2)

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made under the

Court Procedures Act 2004

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J2011-11

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

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1 Name of rules

These rules are the *Court Procedures Amendment Rules 2011 (No 2)*.

2 Commencement

- (1) Rules 12, 41 and 47 commence on the commencement of the *Statute Law Amendment Act 2011 (No 2)*.

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

- (2) The remaining rules commence on 1 July 2011.

3 Legislation amended

These rules amend the *Court Procedures Rules 2006*.

4 Rule 4 (1), new note 3

insert

Note 3 Pt 5.3 (Appeals to Supreme Court) applies to appeals under the *Domestic Violence and Protection Orders Act 2001* and the *Domestic Violence and Protection Orders Act 2008* (see r 5051 (Application—pt 5.3)).

5 Rule 22 (1), note 2

substitute

Note 2 The Magistrates Court includes the Childrens Court (see *Magistrates Court Act 1930*, s 287).

6 Rule 661 (3)

omit

not later than 2 days after the day

substitute

before

7 Rule 662

substitute

662 Notice for non-party production—inspection by other parties

- (1) The respondent to a notice for non-party production issued in a proceeding must produce any document stated in the notice by delivering the document to the party to the proceeding stated in the notice (the *receiving party*) within—
 - (a) 14 days after the notice is served on the respondent; or
 - (b) if a longer time is stated in the notice—the longer time.
- (2) The receiving party must within 14 days after the document is delivered to the receiving party—
 - (a) if there is another active party to the proceeding other than the applicant for the notice—deliver the document to the other party; or
 - (b) in any other case—deliver the document to the applicant for the notice.
- (3) If a document is delivered to another active party under subrule (2) (a), the other party must within 14 days after the document is delivered to the party—
 - (a) if there is another active party to the proceeding, other than the applicant for the notice, that the document has not been delivered to—deliver the document to the other party; or
 - (b) in any other case—deliver the document to the applicant for the notice.

- (4) For the purpose of deciding whether to make a claim mentioned in rule 664 (1) (a) (which deals with claims for privilege), any party to the proceeding on whom a copy of the notice for non-party production is served is entitled to inspect a document stated in the notice other than a document in relation to which any other party makes such a claim.

8 Rule 664 (2)

omit everything before paragraph (a), substitute

- (2) The person objecting must give notice of the objection to the applicant for the notice and, if required by the applicant, file an affidavit, and serve a stamped copy on the applicant, stating—

9 Rule 664 (4)

substitute

- (4) The person objecting need not produce the document and the applicant for the notice, the respondent or another party to the proceeding may apply to the court for orders in relation to the claim or objection.

10 New division 2.14.1B

insert

Division 2.14.1B Removal of applications from ACAT to Supreme Court

1440 Removal of applications from ACAT to Supreme Court—application

This division applies if—

- (a) an application is made to the ACAT; and

- (b) the ACAT orders that the application be removed to the Supreme Court under the *ACT Civil and Administrative Tribunal Act 2008*, section 83.

**1441 Removal of applications from ACAT to Supreme Court—
procedure**

- (1) The ACAT must, within 14 days after the order is made, file in the Supreme Court a copy of—
 - (a) the application; and
 - (b) the order removing the application to the court.
- (2) When the documents mentioned in subrule (1) are filed—
 - (a) the court must set a date for a directions hearing; and
 - (b) the registrar must tell the parties the date set for the directions hearing.
- (3) The application is taken to be an originating application started in the Supreme Court on the day the application was started in the ACAT.
- (4) The respondent to the application must file a notice of intention to respond within 14 days after the ACAT orders the removal.

**11 Rule 1722 (4), definition of *prescribed percentage*,
paragraph (b) (iv)**

substitute

- (iv) if the relevant amount is not less than \$40 000 but less than \$50 000—90%; or
- (v) if the relevant amount is not less than \$50 000—100%.

12 Rule 2010A (8), definition of *working day*, paragraph (b)

substitute

- (b) a public holiday or bank holiday.

13 Rule 3005 (2) (c)

substitute

- (c) for an application for grant of probate or letters of administration with the will annexed—
- (i) if the application is made by the public trustee—the original will, or a copy of the original will kept in electronic form certified by the public trustee, signed in the margin by the applicant and the person before whom the supporting affidavit is taken; or
 - (ii) in any other case—the original will, signed in the margin by the applicant and the person before whom the supporting affidavit is taken; and

14 New rule 3005 (2A)

insert

- (2A) If a copy of an original will kept in electronic form, certified by the public trustee, accompanies the application, the public trustee must, if the court directs, produce the original will to the court.

15 Rule 3120

substitute

3120 Proved wills to be kept by court

The court must keep—

- (a) the original of any will filed in the court; and

(b) if the public trustee files a certified copy of an original will kept in electronic form—the certified copy.

Note 1 Rule 2901 (Copies of documents from registrar) deals with obtaining copies of documents (including wills) filed in a proceeding.

Note 2 Rule 2903 (Inspection of registry files) deals with the inspection of registry files.

16 Rule 3150, definition of *chief executive*

omit

17 Rule 3150, new definition of *CYP director-general*

insert

CYP director-general means the director-general responsible for the *Children and Young People Act 2008*.

18 Rule 3155

omit

chief executive

substitute

CYP director-general

19 Rule 3156 (1) (b) (i)

substitute

(i) the CYP director-general; or

20 Rule 3158

omit

chief executive

substitute

CYP director-general

21 Rule 3159

omit

chief executive

substitute

CYP director-general

22 Rule 3160

omit

chief executive

substitute

CYP director-general

23 Rule 3171 (b)

omit

chief executive

substitute

CYP director-general

24 Rule 3172 (2)

omit

chief executive

substitute

CYP director-general

25 Rule 3180 (2) (b)

omit

chief executive

substitute

CYP director-general

26 Rule 3201 (a)

substitute

(a) the CYP director-general; and

27 Rule 3210 (2) (a)

omit

chief executive

substitute

CYP director-general

28 Rule 3210 (2) (a)

omit

chief executive's

substitute

CYP director-general's

29 Rule 3600, new definition of *application for a costs assessment*

insert

application for a costs assessment means an application for costs assessment under the Legal Profession Act, division 3.2.7.

30 Rule 3601, note

insert

- costs assessment (see s 261)
- law practice

31 New division 3.11.3

insert

Division 3.11.3 Assessment of client costs**3620 Application—div 3.11.3**

This division applies to an application for a costs assessment.

3621 Form of application

- (1) An application for a costs assessment must be made by originating application.

Note See approved form 3.47 (Originating application for assessment of legal costs) AF2011-66.

- (2) The application must be supported by—
 - (a) if the legal costs are subject to a costs agreement—a copy of the agreement; and
 - (b) if the legal costs are subject to a retainer—a copy of the retainer; and

- (c) if the application is made under the Legal Profession Act, section 296—
 - (i) an affidavit by the applicant stating the matters set out in that Act, section 300 (2); and
 - (ii) a sufficient description of the work to which the legal costs relate to enable the legal costs to be assessed.
- (3) The applicant must file with the application 2 copies of the application and supporting documents.

3622 Application for leave to apply out of time

An application for leave to apply for a costs assessment out of time must be in accordance with part 6.2 (Applications in proceedings).

3623 Directions

- (1) On the filing of an application, the registrar must—
 - (a) set a date for directions before the registrar; and
 - (b) tell the parties the date.
- (2) At the directions hearing, the registrar must set a time and date for the assessment of the legal costs.

3624 Response to application

- (1) This rule applies if the respondent to an application is a law practice.
- (2) The respondent must file—
 - (a) an affidavit stating the matters set out in the Legal Profession Act, section 300 (2); and
 - (b) a sufficient description of the work to which the legal costs relate to enable the legal costs to be assessed; and

- (c) if the legal costs are subject to a costs agreement—a copy of the costs agreement if the applicant has not filed a copy of the agreement; and
- (d) if the legal costs are subject to a retainer—a copy of the retainer if the applicant has not filed a copy of the retainer.

3625 Notice of objections to legal costs

- (1) The party liable to pay the legal costs may by notice object to all or part of the legal costs.
- (2) A notice of objections must briefly state the reasons for the objection identifying any issue of law or fact that the objector considers the registrar must consider to make a decision in favour of the objector.
- (3) The party liable to pay the legal costs must file the notice of objections and serve a stamped copy on the other party not later than 14 days before the day the legal costs are to be assessed.

32 Rule 4721 (2) (c)

omit

33 Rule 4721 (3) (l), (m) and (n) and note

substitute

- (l) if a court has made a decision in relation to an application for bail by the accused person and the application is a further application for bail—
 - (i) for each previous application for bail—
 - (A) the name of the judge or magistrate who heard the application; and
 - (B) the date the application was made; and

(ii) either—

- (A) the change in circumstances relevant to the granting of bail since the last application for bail was made; or
- (B) the fresh evidence or information of relevance to the granting of bail that was unavailable when the last application for bail was made; and

Note See the *Bail Act 1992*, s 20C (Repeat application for bail—Supreme Court).

(m) if the application is for review of a decision of an authorised officer in relation to bail—

- (i) the change in circumstances relevant to the granting of bail since the officer's decision was made; or
- (ii) the fresh evidence or information of relevance to the granting of bail that was unavailable when the officer's decision was made; and

Note See the *Bail Act 1992*, s 43 (Power of Supreme Court to review—decision of authorised officer).

(n) if the application is for review of a decision of a court in relation to bail—

(i) for each previous application for bail—

- (A) the name of the judge or magistrate who heard the application; and
- (B) the date the application was made; and

(ii) either—

- (A) a change in circumstances relevant to the granting of bail since the court's decision was made; or

- (B) the fresh evidence or information of relevance to the granting of bail that was unavailable when the last application for bail was made; and

Note See the *Bail Act 1992*, s 43A (Power of Supreme Court to review—decision of Magistrates Court or Supreme Court).

- (o) the conditions (if any) on which bail is sought.

34 New rule 4721 (5)

insert

- (5) This rule is subject to rule 4723 (Supreme Court application for review of bail by unrepresented accused person).

35 New rule 4723

in division 4.3.3, insert

4723 Supreme Court application for bail by unrepresented accused person

- (1) This rule applies if—
- (a) an accused person is unrepresented; and
 - (b) the person applies for review of bail under the *Bail Act 1992*, section 20B (Power in relation to bail—Supreme Court), section 43 (Power of Supreme Court to review—decision of authorised officer) or section 43A (Power of Supreme Court to review—decision of Magistrates Court or Supreme Court).
- (2) The accused person may apply for bail using a short form of application.

Note 1 Pt 6.2 (Applications in proceedings) also applies to an application under this rule.

Note 2 See approved form 4.9 (Supreme Court application for bail by unrepresented accused person) AF2011-64.

- (3) The accused person must serve a stamped copy of the application on the director of public prosecutions.

36 Table 5051, item 5

substitute

5	Magistrates Court	judge or master	<p><i>Domestic Violence and Protection Orders Act 2001, s 79</i></p> <p><i>Domestic Violence and Protection Orders Act 2008, s 97</i></p> <p><i>Health Records (Privacy and Access) Act 1997, s 32 (1)</i></p> <p><i>Leases (Commercial and Retail) Act 2001, s 155</i></p> <p><i>Magistrates Court Act 1930, s 274</i></p> <p><i>Victims of Crime (Financial Assistance) Act 1983, s 61</i></p>
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37 Rule 5102 (2)

substitute

- (2) If the order appealed from is an order of a tribunal other than the ACAT, the tribunal must be included as a respondent to the appeal.

38 Rule 6000 (1), note 2

substitute

Note 2 The Magistrates Court includes the Childrens Court (see *Magistrates Court Act 1930, s 287*)

39 New rule 6250 (3) (g)

before the note, insert

- (g) under the *Supreme Court Act 1933*, section 55A (Hearing of bail applications).

40 Rule 6251 (2) (n) to (u)*omit***41 Rule 6300 (1)***omit*in the ACT under the *Holidays Act 1958***42 Rule 6303 (2) (d)***omit***43 Schedule 3, table 3.1, new item 4A***insert*

4A	Magistrates Court—not less than \$50 000 but less than \$250 000	1 000.00
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44 Schedule 3, table 3.2, new item 4A*insert*

4A	Magistrates Court—not less than \$50 000 but less than \$250 000	1 500.00
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45 Schedule 4, part 4.2*substitute***Part 4.2 Scale of costs—items**

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
Division 4.2.1 Instructions		
1	to sue or defend, to appeal or oppose an appeal	158.20
2	for statement of claim, petition, special case or counterclaim	158.20
3	for defence	135.40
4	for— (a) a reply; or (b) amending a pleading; or (c) a notice claiming contribution or indemnity; or (d) a document to be brought into the registrar's office (for example, an account or deed); or (e) adding parties by order; or	56.50

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
	(f) a bond or other deed; or (g) retaining counsel, including preparing retainer	
5	for— (a) a pleading not otherwise provided for; or (b) interrogatories for the examination of a party or witness; or (c) an affidavit in answer to interrogatories or other special affidavit; or (d) disclosure or a list of documents; or (e) an application for an order that a matter be heard before the Full Court; or (f) a brief on application in chambers	112.90

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
6	for— (a) an application whether in court, before the registrar or in chambers; or (b) opposition to an application; or (c) the assessment of a bill of costs	112.90
7	for brief to advise on evidence	101.70
8	for— (a) a statement of facts in an action; or (b) a request for particulars; or (c) particulars	112.90
9	for brief in preparation for trial	the amount the registrar considers appropriate
Division 4.2.2 Drawing		
10	for an originating process or counterclaim	118.00 or, if longer than 700 words, 16.70 per 100 words
11	for any other pleading, a notice claiming contribution or indemnity, or an amendment of a pleading	79.10 or, if longer than 400 words, 16.70 per 100 words

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
12	for— (a) a notice of an application in a proceeding; or (b) a notice to produce documents; or (c) a notice to admit facts; or (d) a special case; or (e) interrogatories; or (f) a special affidavit; or (g) a brief (including observations)	72.40 or, if the document is longer than 400 words, 16.70 per 100 words
13	a formal affidavit, including an affidavit of service	39.70
14	any other document	31.30 or, if longer than 100 words, 18.60 per 100 words
Division 4.2.3 Engrossing		
15	of a document	4.90 per 100 words

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
Division 4.2.4 Copies		
16	<p>of any document, or of multiple documents copied at the same time—</p> <p>(a) for each of the first 10 copies; or</p> <p>(b) for each additional copy up to 100 copies; or</p> <p>(c) for each additional copy over 100 copies</p>	<p>3.10 per page</p> <p>1.40 per page</p> <p>0.50 per page</p>
Division 4.2.5 Perusal		
17	<p>of—</p> <p>(a) an originating process; or</p> <p>(b) a pleading; or</p> <p>(c) an application in a proceeding; or</p> <p>(d) interrogatories; or</p> <p>(e) a special case; or</p> <p>(f) a notice to admit</p>	<p>55.70 or, if the document is longer than 800 words, 6.30 per 100 words</p>
18	of any other document, if it is necessary to peruse	6.30 per 100 words

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
19	of a document by scanning it, if it is not necessary to peruse	6.20 or, if the document has more than 10 pages, the additional amount the registrar considers appropriate
Division 4.2.6 Attendances		
20	for personal service, if necessary, of 1 or more documents at the same time	84.50
21	for service of 1 or more documents at the same time— (a) at the office of a solicitor on the record or the address for service of a party; or (b) by post; or (c) made through a document exchange	34.10

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
22	by a solicitor, necessarily or properly engaged, if the solicitor holds an unrestricted practising certificate or has been the holder of a practising certificate for at least 2 years— (a) to instruct counsel; or (b) on assessment of a bill of costs or other matter; or (c) at conference with counsel; or (d) on a view; or (e) on witness or other person; or (f) to produce a document; or (g) to inspect a document, if the registrar is satisfied there were appropriate and sufficient reasons for the inspection; or (h) to prepare appeal papers	225.80 per hour

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
23	by a solicitor, necessarily or properly engaged, other than a solicitor mentioned in item 22— (a) to instruct counsel; or (b) on assessment of a bill of costs or other matter; or (c) at conference with counsel; or (d) on a view; or (e) on witness or other person; or (f) to produce a document; or (g) to inspect a document, if the registrar is satisfied there were appropriate and sufficient reasons for the inspection; or (h) to prepare appeal papers	158.20 per hour

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
24	by a clerk, necessarily or properly engaged— (a) to instruct counsel; or (b) on assessment of a bill of costs or other matter; or (c) at conference with counsel; or (d) on a view; or (e) on witness or other person; or (f) to produce a document; or (g) to inspect a document, if the registrar is satisfied there were appropriate and sufficient reasons for the inspection; or (h) to prepare appeal papers	79.00 per hour

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
25	<p>other than an attendance already mentioned, in court or any hearing without counsel—</p> <p>(a) by a solicitor holding an unrestricted practising certificate, or a solicitor who has been the holder of a practising certificate for at least 2 years; or</p> <p>(b) by any other solicitor</p>	<p>338.60 per hour</p> <p>237.10 per hour</p>
26	by a solicitor involving a high degree of skill and responsibility	338.60 per hour
27	<p>in court or chambers or before the registrar—</p> <p>(a) to take a reserved judgment; or</p> <p>(b) to mention a matter; or</p> <p>(c) for an adjournment; or</p> <p>(d) for settling the terms of and entering orders; or</p> <p>(e) for another reason</p>	90.30 or 225.80 per hour

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
28	at the registry or other office or place for— (a) filing, delivering, or collecting a document; or (b) a purpose not involving the exercise of legal skill or knowledge	28.00
29	formal telephone attendance	28.00
30	telephone attendance leaving message only	14.00
31	any other attendance by a solicitor (including travelling and waiting time and including a telephone attendance)	45.20 or 56.50 per quarter hour
32	any other attendance by a clerk (including travelling and waiting time and including a telephone attendance)	28.00 or 19.70 per quarter hour

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
33	<p>if the registrar is satisfied, in relation to travel, that the purpose of the journey could not have been satisfactorily accomplished by an agent and that—</p> <p>(a) a solicitor has been necessarily absent from the place where the solicitor carries on practice; or</p> <p>(b) a clerk has attended in place of the solicitor</p>	<p>an allowance (in addition to reasonable travelling expenses), for each day (other than Saturdays and Sundays) that the solicitor is absent, of not more than 1 318.20</p> <p>an allowance (in addition to reasonable travelling expenses), for each day (other than Saturdays and Sundays) that the clerk is absent, of not more than 338.60</p>
Division 4.2.7 Letters		
34	ordinary letter	39.20 or 19.10 per 100 words
35	special letter	65.10 or 19.10 per 100 words
36	formal letter—short letter, without legal content	19.00
37	circular letters after the first	8.60
38	fax copy or telex, including attendance to send	44.50

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
39	receiving and filing any incoming letter, other than a letter received by email (postage and transmission fees properly incurred may be claimed as a disbursement)	11.80
40	receiving, printing and filing incoming letter received by email	12.70
41	printing any attachment to an email, or multiple attachments to an email printed at the same time— (a) for each of the first 10 pages; or (b) for each additional page up to 100 copies; or (c) for each additional page over 100 copies	3.10 per page 1.40 per page 0.50 per page
Division 4.2.8 Witness expenses		
42	a witness called because of the witness's professional, scientific or other special skill or knowledge	1 107.50 per day
43	a witness called other than because of the witness's professional, scientific or other special skill or knowledge	116.90 per day

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
44	a witness paid in the witness's occupation by wages, salary or fees	the amount lost by attendance at court
45	a witness qualifying to give skilled evidence	the additional amount the registrar considers reasonable and properly incurred and paid
46	if the witness lives more than 50km from the court	the additional amount the registrar considers reasonable for the actual cost of travel, and for accommodation and meals
47	attendance at court by a witness acting as an expert in assisting counsel or a solicitor for a period during the trial or hearing	the amount the registrar considers appropriate (but not affecting the existing practice of allowing qualifying fees for witnesses)
Division 4.2.9 Disbursements		
48	all court fees, counsel's fees and other fees and payments	allowed to the extent that they have been properly and reasonably incurred and paid

46 Schedule 5, part 5.1, new item 71A

insert

71A	4723	Supreme Court application for review of bail by unrepresented accused person
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47 Dictionary, note 2

insert

- bank holiday
- public holiday

48 Dictionary, new definition of *application for a costs assessment*

insert

application for a costs assessment, for part 3.11 (Legal profession)—see rule 3600.

49 Dictionary, definition of *chief executive*

omit

50 Dictionary, definition of *conference*

omit

51 Dictionary, definition of *court*, paragraph (b)

omit

52 Dictionary, new definition of *CYP director-general*

insert

CYP director-general, for part 3.2 (Adoption)—see rule 3150.

53 Dictionary, definition of *Magistrates Court Act*

omit

54 Dictionary, definition of *order*, paragraph (b)

omit

55 Dictionary, definition of *restoration order*

omit

Endnotes

1 Notification

Notified under the Legislation Act on 30 June 2011.

2 Republications of amended laws

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