



Australian Capital Territory

Court Procedures Amendment Rules 2011 (No 4)

Subordinate Law SL2011-34

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

Dated 13 December 2011.

T J HIGGINS

Chief Justice

R REFSHAUGE

Judge

L WALKER

Chief Magistrate

L CAMPBELL

Magistrate

J2011-740

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



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Court Procedures Amendment Rules 2011 (No 4)

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made under the

Court Procedures Act 2004

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1 Name of rules

These rules are the *Court Procedures Amendment Rules 2011 (No 4)*.

2 Commencement

- (1) The following rules commence on the commencement of the *Evidence Act 2011*, section 3:
 - (a) rules 4 to 7
 - (b) rules 13 and 14;
 - (c) rules 27 to 29;
 - (d) rules 32, 33 and 35.

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

- (2) The following rules commence on the commencement of the *Business Names Registration (Transition to Commonwealth) Act 2011*, section 17:
 - (a) rules 22 to 26;
 - (b) rules 31 and 34.
- (3) The remaining rules commence on 1 January 2012.

3 Legislation amended

These rules amend the *Court Procedures Rules 2006*.

4 Rule 600, definition of *document*

substitute

document—see the Evidence Act, dictionary, part 1 and part 2, section 8.

Note **Document** is defined in the Legislation Act, dict, pt 1 as any record of information, and includes—

- (a) anything on which there is writing; or
- (b) anything on which there are figures, marks, numbers, perforations, symbols or anything else having a meaning for people qualified to interpret them; or
- (c) anything from which images, sounds, messages or writings can be produced or reproduced, whether with or without the aid of anything else; or
- (d) a drawing, map, photograph or plan.

The Evidence Act, dict, pt 2, s 8 extends the meaning of document as follows:

‘A reference in this Act to a document includes a reference to the following:

- (a) any part of the document;
- (b) any copy, reproduction or duplicate of the document or of any part of the document;
- (c) any part of the copy, reproduction or duplicate.’

5 Rule 601 (c) and notes

substitute

- (c) it is a document of which evidence could not be adduced, or could not be adduced over the objection of a person, because of the Evidence Act, section 130, unless the court decides that the document has stopped being privileged from production.

Note 1 The Evidence Act, dict, pt 2, s 9 deals with the meaning of references to laws, and dict, pt 1 defines **Australian law**.

Note 2 The Evidence Act, dict, pt 2, s 3 provides that a person is taken to be liable to a **civil penalty** if, in an Australian or overseas proceeding (other than a criminal proceeding), the person would

be liable to a penalty arising under an Australian law or a law of a foreign country.

6 Rule 674 (3)

omit

Commonwealth Evidence Act, part 3.11 (Discretions to exclude evidence)

substitute

Evidence Act, part 3.11 (Discretionary and mandatory exclusions)

7 Rule 715 (7)

omit

Commonwealth Evidence Act, section 169 (Failure or refusal to comply with requests)

substitute

Evidence Act, section 169 (Failure to comply with requests)

8 Rule 1202 (1)

after

code of conduct

insert

as soon as practicable after the expert witness is engaged

9 Rule 1725

substitute

1725 Solicitors' costs and determined fees—Supreme Court judgment within Magistrates Court jurisdiction

- (1) This rule applies to a proceeding in the Supreme Court if—
 - (a) the Magistrates court—
 - (i) would have had jurisdiction and power to hear and decide the proceeding; or
 - (ii) would, apart from the amount claimed, have had jurisdiction and power to hear and decide the proceeding; and
 - (b) the plaintiff is entitled to the costs of the proceeding; and
 - (c) judgment (including judgment by consent) is entered for the plaintiff in the proceeding for an amount (excluding costs) of less than \$175 000.
- (2) The plaintiff is entitled to the following determined fee and costs only—
 - (a) the amount of any Magistrates Court determined fee that the plaintiff would have been entitled to recover had the proceeding been started in the Magistrates Court;
 - (b) if the plaintiff is awarded an amount (excluding costs) of less than \$50 000—50% of the disbursements that the plaintiff would have been entitled to recover in the Supreme Court had the judgment been more than \$250 000;
 - (c) if the plaintiff is awarded an amount (excluding costs) of \$50 000 or more, but less than \$100 000—50% of the costs and disbursements that the plaintiff would have been entitled to recover in the Supreme Court had the judgment been more than \$250 000;

- (d) if the plaintiff is awarded an amount (excluding costs) of \$100 000 or more, but less than \$175 000—75% of the costs and disbursements that the plaintiff would have been entitled to recover in the Supreme Court had the judgment been more than \$250 000.
- (3) Despite subrule (2), the court may order that the plaintiff is entitled to a different amount for the costs and disbursements (including the amount of any determined fee).

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

- (4) In this rule:

determined fee means the relevant determined fee under the *Court Procedures Act 2004*, part 3 (Court and tribunal fees) in relation to a proceeding in the Magistrates Court or the Supreme Court (and includes a fee determined under any other territory law that applied to a proceeding in that court before the commencement of that part).

10 New rule 1741

in division 2.17.2, insert

1741 Costs—fixed costs for enforcement order

- (1) This rule applies to an application for an enforcement order under part 2.18 (Enforcement) if the court makes an enforcement order.
- (2) The enforcement creditor's costs (plus any disbursements actually paid) must be allowed without assessment if the costs claimed (other than any disbursements actually paid) are not more than the costs amount applying, from time to time, under—
- (a) if the work was done by the enforcement creditor's solicitor as an agent for another solicitor—schedule 3, part 3.4, column 3; or
- (b) in any other case—schedule 3, part 3.4, column 4.

- (3) The costs allowed under subrule (2) are inclusive of any GST payable in relation to the work.
- (4) However, the costs payable to the enforcement creditor are reduced by the amount of any input tax credit for GST to which the enforcement creditor is entitled in relation to the enforcement creditor's costs.
- (5) The enforcement creditor's costs and disbursements must be agreed or assessed if the costs claimed (other than disbursements actually paid) are more than the costs amount applying, from time to time, under schedule 3, part 3.4 (Enforcement orders).

Note See r 1702 (Costs—agreement about costs).

11 Rule 2004 (1), new note

insert

Note The costs of enforcement may be allowed without assessment if the costs (other than disbursements incurred) are not more than the amount in sch 3, pt 3.4.

12 New rule 2010B

insert

2010B Enforcement—assessment of costs for certificate of registration

- (1) This rule applies if the court registers an enforceable order of another court under rule 2010A.
- (2) The applicant's costs and disbursements (plus any filing and service fees actually paid):
 - (a) must be allowed without assessment if the costs and disbursements claimed (other than any filing and service fees actually paid) are not more than the costs amount applying, from time to time, under schedule 3, part 3.5 (Certificate of registration); and

- (b) must be agreed or assessed if the costs and disbursements claimed (other than any filing and service fees actually paid) are more than the costs amount applying under schedule 3, part 3.5.

Note See r 1702 (Costs—agreement about costs).

13 Rule 3504 (4), note

omit

(see Commonwealth Evidence Act, s 75 (Exception: interlocutory proceedings))

substitute

(see Evidence Act, s 75 (Exception—interlocutory proceedings))

14 Rule 3569 (3), note

omit

Commonwealth Evidence Act

substitute

Evidence Act 1995 (Cwlth)

15 Rule 3609

omit

14 days

substitute

21 days

16 Rule 5001 (3), def *applied civil rules*, new dot points

insert

- division 2.4.3 (Changing parties)
- division 2.4.4 (Included or changed parties—future conduct of proceedings).

17 Table 5051, new item 1A

insert

1A	adjudicator	judge or master	<i>Building and Construction Industry (Security of Payment) Act 2009, s 43</i>
----	-------------	-----------------	--

18 Table 5051, item 7

omit

19 New rule 5171 (5A)

insert

- (5A) If an appeal in a criminal proceeding from an order of the Magistrates Court by an appellant other than the director of public prosecutions is discontinued, the court may make any order it could make under the *Magistrates Court Act 1930*, section 218 that is appropriate to deal with the effect of the discontinuance on the stay under that Act, section 216.

20 Table 5800, new item 1A

insert

1A	adjudicator	judge or master	<i>Building and Construction Industry (Security of Payment) Act 2009, s 43</i>
----	-------------	-----------------	--

21 Table 5800, item 3

omit

22 Rule 6431 (1), note 5, 2nd dot point

omit

23 Rule 6434 heading

substitute

6434 Service on defendant operating under business name**24 Rule 6434 (1) and (2)**

substitute

- (1) This rule applies in relation to a person if—
 - (a) the person (the *defendant*) is carrying on business under a business name; and
 - (b) a proceeding is started against the defendant under the business name.
- (2) The originating process for the proceeding may be served on the defendant—
 - (a) if the business name is registered under the *Business Names Registration Act 2011* (Cwlth)—
 - (i) by serving it personally on someone at the address shown in the Commonwealth business names register as the address for service who appears to be at least 16 years old and to be employed at the business; or
 - (ii) by sending it by prepaid post, addressed to the defendant, to any place where business is carried on under the registered name, whether or not the place is in the ACT; or

- (b) if the business name is not registered under the *Business Names Registration Act 2011* (Cwlth)—by serving it personally on someone at the place of business who appears—
- (i) to have control or management of the business at the place; and
 - (ii) to be at least 16 years old.

25 Rule 6434 (3) (b)

omit

under the unregistered name

26 New rule 6434 (5)

insert

- (5) In this rule:

Commonwealth business names register means the business names register under the *Business Names Registration Act 2011* (Cwlth), section 22.

27 Rule 6711 (2), note 2

omit

(see Commonwealth Evidence Act, s 75 (Exception: interlocutory proceedings))

substitute

(see Evidence Act, s 75 (Exception—interlocutory proceedings))

28 Rule 6715 (2) (d), note 2

omit

Commonwealth Evidence Act

substitute

Evidence Act 1995 (Cwlth)

29 Rules 6800 (1) and 6801 (1)*omit*

outside ACT

substitute

participating States

30 Schedule 3*substitute*

Schedule 3 Costs amount—debts, liquidated demands, company windings-up, enforcement orders and certificates of registration

Part 3.1 Claim for debt or liquidated demand

(see r 51, r 304, r 1102 and r 1104)

Table 3.1 Prescribed costs amount—claim for debt or liquidated demand

column 1 item	column 2 court and amount claimed	column 3 prescribed amount (\$)
1	Magistrates Court—< \$10 000	367.00
2	Magistrates Court—≥ \$10 000 but < \$25 000	745.00
3	Magistrates Court—≥ \$25 000 but < \$40 000	890.00
4	Magistrates Court—≥ \$40 000 but < \$50 000	1 001.00
5	Magistrates Court—≥ \$50 000 but < \$250 000	1 112.00

Part 3.2 Default judgment

Rule 30

column 1 item	column 2 court and amount claimed	column 3 prescribed amount (\$)
6	Supreme Court—any amount	1 112.00

Part 3.2 Default judgment

(see r 1121)

Table 3.2 Prescribed costs amount—default judgment

column 1 item	column 2 court and amount claimed	column 3 prescribed amount (\$)
1	Magistrates Court—< \$10 000	556.00
2	Magistrates Court—≥ \$10 000 but < \$25 000	1 112.00
3	Magistrates Court—≥ \$25 000 but < \$40 000	1 335.00
4	Magistrates Court—≥ \$40 000 but < \$50 000	1 502.00
5	Magistrates Court—≥ \$50 000 but < \$250 000	1 669.00
6	Supreme Court—any amount	1 669.00

Part 3.3 Company winding-up

(see r 1740)

Table 3.3 Prescribed costs amount—company winding-up

column 1 item	column 2 claimed amount (\$)
1	3 782.00

Part 3.4 Enforcement orders

(see r 1741)

Table 3.4 Prescribed costs amount—enforcement orders

column 1 item	column 2 court and amount claimed	column 3 amount claimed— with agent (\$)	column 4 amount claimed— no agent (\$)
1	Magistrates Court—< \$10 000	726.00	528.00
2	Magistrates Court—≥ \$10 000 but < \$25 000	1 474.00	1 072.00
3	Magistrates Court—≥ \$25 000 but < \$40 000	1 760.00	1 280.00
4	Magistrates Court—≥ \$40 000 but < \$50 000	1 980.00	1 440.00
5	Magistrates Court—≥ \$50 000 but < \$250 000	2 200.00	1 600.00
6	Supreme Court—any amount	2 200.00	1 600.00

Part 3.5 Certificate of registration

(see r 2010B)

Table 3.5 Prescribed costs amount—certificate of registration

column 1 item	column 2 court and amount claimed	column 3 claimed amount (\$)
1	Magistrates Court—< \$10 000	76.00
2	Magistrates Court—≥ \$10 000 but < \$25 000	154.00
3	Magistrates Court—≥ \$25 000 but < \$40 000	184.00
4	Magistrates Court—≥ \$40 000 but < \$50 000	207.00
5	Magistrates Court—≥ \$50 000 but < \$250 000	230.00
6	Supreme Court—any amount	230.00

31 Dictionary, definitions of *business*, *business name* and *carrying on business*

substitute

business—see the *Business Names Registration Act 2011* (Cwlth), section 4.

business name—see the *Business Names Registration Act 2011* (Cwlth), section 3.

carrying on, a business—see the *Business Names Registration Act 2011* (Cwlth), section 3.

32 Dictionary, definition of *Commonwealth Evidence Act*

omit

33 Dictionary, new definition of *Evidence Act*

insert

Evidence Act means the *Evidence Act 2011*.

34 Further amendments, mentions of *Business Names Act 1963*

omit

Business Names Act 1963

substitute

Business Names Registration Act 2011 (Cwlth)

in

- rule 110 (1)
- rule 290
- rule 291 (1)
- rule 292 (1)

35 Further amendments, mentions of *Commonwealth Evidence Act*

omit

Commonwealth Evidence Act

substitute

Evidence Act

in

- rule 601 (a) and (b)
- rule 605 (6)
- rule 609 (4), note 1
- rule 631 (1) (e)
- rule 634 (4)
- rule 6700 (3) (b)
- division 6.10.4 heading
- rules 6750 to 6753
- rule 6828 (1) (b)

Endnotes**1 Notification**

Notified under the Legislation Act on 15 December 2011.

2 Republications of amended laws

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

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