



Australian Capital Territory

Court Procedures Amendment Rules 2024 (No 1)

Subordinate Law SL2024-9

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

Dated 26 June 2024.

LUCY MCCALLUM

Chief Justice

DAVID MOSSOP

Judge

LORRAINE WALKER

Chief Magistrate

IAN TEMBY

Magistrate



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[Court Procedures Act 2004](#)

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1 Name of rules

These rules are the *Court Procedures Amendment Rules 2024 (No 1)*.

2 Commencement

- (1) These rules (other than rules 9 to 11) commence on 1 July 2024.

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

- (2) Rules 9 to 11 commence on 1 October 2024.

3 Legislation amended

These rules amend the *Court Procedures Rules 2006*.

4 Rule 5 (2) and notes

substitute

- (2) For the exercise of jurisdiction given to the registrar under a territory law, a reference to the *court* in these rules includes a reference to the registrar.

Note Pt 6.5 deals with the jurisdiction of the registrar (see also sch 5).

5 Rule 5 (3) (a) (ii)

omit

6 Rule 1160 (1)

omit

hearing date for the proceeding

substitute

date for the hearing of the originating process

7 Rule 1326 (2) (b) (ii)

omit

or the associate judge

8 Rule 1402 (3)

omit

9 Rules 1605A and 1606

substitute

1606 Orders—entry

- (1) If the court makes an order, it must be entered.
- (2) If the order is expressed to be the usual order or is otherwise in shortened form, the full terms of the order must be included when the order is entered.

Examples—usual order or shortened form of orders

- 1 Rule 732 (Division 2.9.4 order—damages and undertaking as to damages) requires the usual undertaking as to damages to be given.
 - 2 Rule 1622 (Interest after judgment—usual order as to interest) provides for the usual order as to interest.
- (3) Unless the court orders otherwise, the order is taken to be entered when the earlier of the following happens:
 - (a) if the court directs that the order be entered immediately—a judicial officer or the registrar signs and seals a document that states the terms of the order and the date the order was made;
 - (b) in any case—the order is recorded in the court’s case management system.

- (4) If a judicial officer or the judicial officer's associate records the terms of an order and the date the order was made on a court file or document that is part of a court file, the writing is sufficient proof of the following until the order is entered:
 - (a) the making of the order;
 - (b) the terms of the order;
 - (c) the date the order was made.
- (5) An order is enforceable only if it has been entered.
- (6) A person may bring an appeal against an order that has not been entered only with the leave of the court to which the appeal would be made.

10 Rule 1611 (2) to (5)

omit

11 Rule 1613

substitute

1613 Orders—setting aside etc

- (1) This rule applies to an order other than a default judgment.

Note See r 1128 (Default judgment—setting aside etc) in relation to setting aside a default judgment.
- (2) The court may amend or set aside the order—
 - (a) if the order has been entered—on its own initiative not later than 14 days after the day the order was entered; or
 - (b) in any case—on application made not later than 14 days after the day the order is entered.
- (3) Despite rule 6351 (Time—extending and shortening by court order), the court must not extend the time mentioned in subrule (2).

- (4) Despite subrule (2), the court may set aside the order on application or its own initiative at any time if—
- (a) the order was made in the absence of a party; or
 - (b) the order was obtained by fraud; or
 - (c) the order is for an injunction or the appointment of a receiver; or
 - (d) the order does not reflect the court’s intention at the time the order was made; or
 - (e) the party who has the benefit of the order consents; or
 - (f) for a judgment for specific performance, the court considers it appropriate for reasons that have arisen since the order was made.
- (5) If the court sets aside the order under this rule, it may also set aside any order made to enforce the order.
- (6) If the court sets aside the order under subrule (4), the setting aside of the order does not affect the title to any property sold under the order before it is set aside.
- (7) Nothing in this rule affects any other power of the court to amend or set aside an order.

12 Rule 2732 (1)

omit

associate judge or

13 Rule 2732 (3), 1st dot point

omit

14 Rule 2732 (4), definition of *judicial officer*

substitute

judicial officer means—

- (a) for the registrar of the Supreme Court—a judge; or
- (b) for the registrar of the Magistrates Court—a magistrate.

15 Rule 2806 (2) (a)

omit

a hearing date for the proceeding

substitute

the date for the hearing of the originating process

16 New division 4.1.1A

before division 4.1.1, insert

Division 4.1.1A Criminal proceedings—representation

4000A Definitions—div 4.1.1A

In this division:

accused person means—

- (a) a person charged with an indictable offence—
 - (i) who is committed to the Supreme Court for trial or sentence; or
 - (ii) for whom an indictment has been filed in the Supreme Court; or
- (b) a defendant.

criminal proceeding, in relation to a proceeding in the Supreme Court, does not include an application in relation to bail.

Note See also dict, def *criminal proceeding*.

defendant means a person against whom an information is laid.

4000B Criminal proceedings—notice of solicitor acting

- (1) If a solicitor is acting for an accused person in a criminal proceeding in a court, the solicitor must, as soon as practicable, but not later than 14 days after the day the solicitor begins acting—
 - (a) file with the court a notice that the solicitor is acting for the accused person; and
 - (b) serve a stamped copy of the notice on—
 - (i) the director of public prosecutions; and
 - (ii) any solicitor who was acting for the accused person immediately before the notice was filed.

Note See the following approved forms:

- (a) approved form 4.4 (Supreme Court criminal proceeding—notice of solicitor acting) [AF2024-7](#);
 - (b) approved form 4.4A (Magistrates Court criminal proceeding—notice of solicitor acting) [AF2024-8](#);
 - (c) approved form 4.5 (Supreme Court criminal proceeding—notice of change of solicitor) [AF2024-9](#);
 - (d) approved form 4.5A (Magistrates Court criminal proceeding—notice of change of solicitor) [AF2024-10](#).
- (2) For subsection (1) (a), if a person charged with an indictable offence is committed to the Supreme Court for trial or sentence, the solicitor acting for the accused person in that proceeding must file a notice with the Supreme Court even if the solicitor previously filed a notice with the Magistrates Court.
 - (3) A notice under subrule (1) must include an address for service.

- (4) If a solicitor acts for 2 or more accused people in the same criminal proceeding, the solicitor may file a single notice under subrule (1) that lists all the people the solicitor acts for in the proceeding.
- (5) To remove any doubt, an accused person may, at any stage of a criminal proceeding and without an order being made by the court, instruct another solicitor to act for them in place of the solicitor who is on the record for them in the proceeding.
- (6) If a solicitor files and serves a notice under subrule (1), the solicitor is taken to act for the accused person until—
 - (a) another solicitor—
 - (i) files a notice under subrule (1) (a); and
 - (ii) serves a stamped copy of the notice in accordance with subrule (1) (b); or
 - (b) the solicitor files a notice under rule 4000C and serves a stamped copy of the notice in accordance with that rule; or
 - (c) the court makes an order under rule 4000E that the solicitor's name be removed from the record; or
 - (d) the solicitor's name is removed from the local roll under the *Legal Profession Act 2006*; or
 - (e) a solicitor's local practising certificate under the *Legal Profession Act 2006* is cancelled or suspended; or
 - (f) the solicitor is given leave to withdraw under rule 4000D, and complies with rule 4000D (5).

4000C Criminal proceedings—solicitor’s instructions to act for accused person ended

- (1) This rule applies if—
- (a) a solicitor for an accused person is on the record in a criminal proceeding; and
 - (b) the solicitor’s instructions to act for the accused person in the proceeding are ended before the proceeding is finally disposed of in the court.

Note Rule 5537 (Appeals to Court of Appeal—solicitor’s instructions to act for convicted person ended) applies to a solicitor if the solicitor’s instructions to act for a convicted person who is a party to an application or appeal in the Court of Appeal are ended.

- (2) The solicitor must—
- (a) file a notice stating that the solicitor is no longer acting for the accused person; and
 - (b) serve a stamped copy of the notice on each party to the proceeding (including the accused person).

Note See approved form 4.6 (Supreme Court criminal proceeding—notice that solicitor no longer acting) [AF2024-11](#) and approved form 4.6A (Magistrates Court criminal proceeding—notice that solicitor no longer acting) [AF2024-12](#).

- (3) The solicitor must file and serve the notice as soon as practicable, but not later than 14 days after the day the solicitor’s instructions are ended.

- (4) In this rule:

accused person includes a person who has been convicted of an offence and is awaiting sentence for the offence in the court.

Note See also r 4000A, def ***accused person***.

court does not include the Court of Appeal.

4000D Criminal proceedings—withdrawal of solicitor

- (1) If a solicitor for an accused person is on the record in a criminal proceeding, the solicitor may withdraw from acting for an accused person only with the court's leave.

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

- (2) The application must be made in writing and—
- (a) state the name of the solicitor making the application; and
 - (b) state briefly the order sought.
- (3) A stamped copy of the application must be served—
- (a) on the accused person—
 - (i) personally; or
 - (ii) by registered letter addressed to the person's last-known address; or
 - (iii) if the court orders another way of service—as ordered; and
 - (b) on the director of public prosecutions.
- (4) However, the application may be made orally to the court if the solicitor wants to withdraw from acting for the accused person during—
- (a) for a proceeding before the Magistrates Court—the hearing of the information laid against the person; or
 - (b) for a proceeding before the Supreme Court—the person's trial; or
 - (c) the person's sentence hearing.
- (5) If the court gives the solicitor leave to withdraw, the solicitor must—
- (a) file a notice of withdrawal; and

- (b) serve a stamped copy of the notice on the accused person—
 - (i) personally; or
 - (ii) by registered letter addressed to the person’s last-known address; and
- (c) serve a stamped copy of the notice on the director of public prosecutions.

Note See approved form 4.7 (Supreme Court criminal proceeding—notice of withdrawal of solicitor) [AF2024-13](#) and approved form 4.7A (Magistrates Court criminal proceeding—notice of withdrawal of solicitor) [AF2024-14](#).

4000E Criminal proceedings—removal of solicitor by court

- (1) This rule applies if—
 - (a) a solicitor for an accused person is on the record in a criminal proceeding; and
 - (b) the solicitor—
 - (i) loses the capacity to act as the solicitor for the accused person; or
 - (ii) cannot be found; and
 - (b) the solicitor does not file a notice that they are no longer acting for the accused person; and
 - (c) another solicitor does not file a notice of solicitor acting under rule 4000B.
- (2) The accused person may apply to the court for the removal of the solicitor’s name from the record.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.
- (3) On application under subrule (2), the court may order that the solicitor’s name be removed from the record.

4000F Criminal proceedings—solicitor removed from roll etc

- (1) This rule applies if—
 - (a) a solicitor’s name is removed from the local roll under the *Legal Profession Act 2006*; or
 - (b) a solicitor’s local practising certificate under the *Legal Profession Act 2006* is cancelled or suspended.
- (2) A copy of all processes and other documents to be served in a criminal proceeding in which the solicitor is a solicitor on the record must be served on—
 - (a) if a receiver is appointed under the *Legal Profession Act 2006* for the solicitor’s practice—the receiver; or
 - (b) if a receiver is not appointed—the accused person’s home or business address until another solicitor is appointed.

4000G Criminal proceedings—handing over depositions

- (1) This rule applies if—
 - (a) a person charged with an indictable offence is committed to the Supreme Court for trial; and
 - (b) a solicitor (the *original solicitor*) is the solicitor on the record in relation to the person for the proceeding in the Supreme Court; and
 - (c) the original solicitor stops acting for the accused person.
- (2) The original solicitor must, as soon as practicable after the solicitor stops acting, give any depositions received by the original solicitor under the *Magistrates Court Act 1930*, section 108 (Accused person may obtain copies of depositions etc) to—
 - (a) if another solicitor has served a notice under rule 4000B on the original solicitor—the other solicitor; or

- (b) if the original solicitor has not been served with a notice under rule 4000B—the accused person.

17 Division 4.3.2

omit

18 Rule 4736 (3) and (4)

substitute

- (3) After the accused person enters a plea, the court may make any order, or give any direction, about the conduct of the proceeding it considers appropriate.

19 Rules 4737 and 4739

omit

20 Rule 4802 (2)

substitute

- (2) In this rule:

applied criminal rules means the following:

- (a) division 4.1.1A (Criminal proceedings—representation);
- (b) division 4.1.2 (Criminal proceedings—service);
- (c) rule 4053 (Criminal proceedings—inspection of registry files).

21 Table 5051, column 3

omit

or associate judge

22 Rule 5300 (2)

omit

23 Rule 5310 (1)

omit

, or by the associate judge

24 Table 5800, column 3

omit

or associate judge

25 Rule 6030, note

substitute

Note The [Human Rights Act 2004](#), s 34 applies if a question arises in a proceeding in the Supreme Court that involves the application of that Act or the Supreme Court is considering making a declaration of incompatibility in a proceeding.

26 Rule 6142 (5), definition of *judicial officer*, paragraph (a)

omit

or the associate judge

27 Part 6.4

omit

28 Rule 6252 (3), definition of *judicial officer*, paragraph (a) etc

omit

or the associate judge

in

- rule 6252 (3), definition of *judicial officer*, paragraph (a)
- rule 6254 (4), definition of *judicial officer*, paragraph (a)
- rule 6255 (4), definition of *judicial officer*, paragraph (a)

29 Rule 6256 (2)

omit

or the associate judge

30 Rule 6601A (2)

omit

hearing

substitute

the hearing of the originating claim

31 Schedule 5, part 5.1, new items 62A and 62B

insert

62A	4000D	Criminal proceedings—withdrawal of solicitor
62B	4000E	Criminal proceedings—removal of solicitor by court

32 Schedule 5, part 5.1, items 66 and 67

omit

33 Schedule 6, part 6.16, note

omit

associate judge or registrar of the court (see pt 6.4 (Associate judge) and

substitute

registrar of the court (see

34 Dictionary, definition of *accused person*, new paragraph (aa)

before paragraph (a), insert

(aa) for division 4.1.1A (Criminal proceedings—representation)—
see rule 4000A.

35 Dictionary, definition of *criminal proceeding*, paragraph (b) (ii)

substitute

(ii) in relation to a proceeding in the Supreme Court, for
division 4.1.1A (Criminal proceedings—representation)—an
application in relation to bail.

36 Dictionary, definition of *defendant*, new paragraph (ca)

insert

(ca) for division 4.1.1A (Criminal proceedings—representation)—
see rule 4000A.

37 Dictionary, definition of *docket*

omit

Endnotes

1 Notification

Notified under the [Legislation Act](#) on 28 June 2024.

2 Republications of amended laws

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

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