



# Federal Court Amendment Rules 2006 (No. 1)<sup>1</sup>

**Select Legislative Instrument 2006 No. 88**

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We, Judges of the Federal Court of Australia, make the following Rules of Court under the *Federal Court of Australia Act 1976*.

Dated 2 May 2006

M.E.J. BLACK C.J.  
M.R. WILCOX J.  
J.E.J. SPENDER J.  
P.R.A. GRAY J.  
D.M. RYAN J.  
R.S. FRENCH J.  
M.C. LEE J.  
T.J. HIGGINS J.  
P.C. HEEREY J.  
M.F. MOORE J.  
K.E. LINDGREN J.  
B.J.M. TAMBERLIN J.  
R. SACKVILLE J.  
S.M. KIEFEL J.  
R.D. NICHOLSON J.  
R.A. SUNDBERG J.  
S.R. MARSHALL J.

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A.M. NORTH J.  
R.N. MADGWICK J.  
R. MERKEL J.  
J.R. MANSFIELD J.  
A.H. GOLDBERG J.  
A.R. EMMETT J.  
R.A. FINKELSTEIN J.  
M.S. WEINBERG J.  
J.A. DOWSETT J.  
S.C. KENNY J.  
R.V. GYLES J.  
R.A. CONTI J.  
J.L.B. ALLSOP J.  
P.M. JACOBSON J.  
A.C. BENNETT J.  
B.T. LANDER J.  
A.N. SIOPIS J.  
R.F. EDMONDS J.  
P.R. GRAHAM J.  
A.P. GREENWOOD J.  
N.J. YOUNG J.  
S.D. RARES J.  
B. COLLIER J.  
D.A. COWDROY J.  
A.J. BESANKO J.

Judges of the Federal  
Court of Australia

W.G. Soden  
Registrar

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**1 Name of Rules**

These Rules are the *Federal Court Amendment Rules 2006 (No. 1)*.

**2 Commencement**

These Rules commence on the day after they are registered.

**3 Amendment of Federal Court Rules**

Schedule 1 amends the Federal Court Rules.

**Schedule 1 Amendment**

(rule 3)

**[1] After Order 25**

*insert*

**Order 25A Freezing Orders**

**1 Interpretation**

In this Order, unless the contrary intention appears:

*ancillary order* has the meaning given by rule 3.

*another court* means a court outside Australia or a court in Australia other than the Court.

*applicant* means a person who applies for a freezing order or an ancillary order.

*freezing order* has the meaning given by rule 2.

*judgment* includes an order.

*respondent* means a person against whom a freezing order or an ancillary order is sought or made.

**2      Freezing order**

- (1) The Court may make an order (a *freezing order*), upon or without notice to a respondent, for the purpose of preventing the frustration or inhibition of the Court's process by seeking to meet a danger that a judgment or prospective judgment of the Court will be wholly or partly unsatisfied.
- (2) A freezing order may be an order restraining a respondent from removing any assets located in or outside Australia or from disposing of, dealing with, or diminishing the value of, those assets.

**3      Ancillary order**

- (1) The Court may make an order (an *ancillary order*) ancillary to a freezing order or prospective freezing order as the Court considers appropriate.
- (2) Without limiting the generality of subrule (1), an ancillary order may be made for either or both of the following purposes:
  - (a) eliciting information relating to assets relevant to the freezing order or prospective freezing order;
  - (b) determining whether the freezing order should be made.

**4      Respondent need not be party to proceeding**

The Court may make a freezing order or an ancillary order against a respondent even if the respondent is not a party to a proceeding in which substantive relief is sought against the respondent.

**5      Order against judgment debtor or prospective judgment debtor or third party**

- (1) This rule applies if:
  - (a) judgment has been given in favour of an applicant by:
    - (i) the Court; or
    - (ii) in the case of a judgment to which subrule (2) applies — another court; or

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- (b) an applicant has a good arguable case on an accrued or prospective cause of action that is justiciable in:
- (i) the Court; or
  - (ii) in the case of a cause of action to which subrule (3) applies — another court.
- (2) This subrule applies to a judgment if there is a sufficient prospect that the judgment will be registered in or enforced by the Court.
- (3) This subrule applies to a cause of action if:
- (a) there is a sufficient prospect that the other court will give judgment in favour of the applicant; and
  - (b) there is a sufficient prospect that the judgment will be registered in or enforced by the Court.
- (4) The Court may make a freezing order or an ancillary order or both against a judgment debtor or prospective judgment debtor if the Court is satisfied, having regard to all the circumstances, that there is a danger that a judgment or prospective judgment will be wholly or partly unsatisfied because any of the following might occur:
- (a) the judgment debtor, prospective judgment debtor or another person absconds; or
  - (b) the assets of the judgment debtor, prospective judgment debtor or another person are:
    - (i) removed from Australia or from a place inside or outside Australia; or
    - (ii) disposed of, dealt with or diminished in value.
- (5) The Court may make a freezing order or an ancillary order or both against a person other than a judgment debtor or prospective judgment debtor (a *third party*) if the Court is satisfied, having regard to all the circumstances, that:
- (a) there is a danger that a judgment or prospective judgment will be wholly or partly unsatisfied because:
    - (i) the third party holds or is using, or has exercised or is exercising, a power of disposition over assets (including claims and expectancies) of the judgment debtor or prospective judgment debtor; or

- (ii) the third party is in possession of, or in a position of control or influence concerning, assets (including claims and expectancies) of the judgment debtor or prospective judgment debtor; or
  - (b) a process in the Court is or may ultimately be available to the applicant as a result of a judgment or prospective judgment, under which process the third party may be obliged to disgorge assets or contribute toward satisfying the judgment or prospective judgment.
- (6) Nothing in this rule affects the power of the Court to make a freezing order or ancillary order if the Court considers it is in the interests of justice to do so.

**6      Jurisdiction**

Nothing in this Order diminishes the inherent, implied or statutory jurisdiction of the Court to make a freezing order or ancillary order.

**7      Service outside Australia of application for freezing order or ancillary order**

An application for a freezing order or an ancillary order may be served on a person who is outside Australia (whether or not the person is domiciled or resident in Australia) if any of the assets to which the order relates are within the jurisdiction of the Court.

**8      Costs**

- (1) The Court may make any order as to costs as it considers appropriate in relation to an order made under this Order.
- (2) Without limiting the generality of subrule (1), an order as to costs includes an order as to the costs of any person affected by a freezing order or ancillary order.

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## Order 25B Search Orders

### 1 Interpretation

In this Order, unless the contrary intention appears:

*applicant* means an applicant for a search order.

*described* includes described generally whether by reference to a class or otherwise.

*premises* includes a vehicle or vessel of any kind.

*respondent* means a person against whom a search order is sought or made.

*search order* has the meaning given by rule 2.

### 2 Search order

The Court may make an order (a *search order*), in any proceeding or in anticipation of any proceeding in the Court, with or without notice to the respondent, for the purpose of securing or preserving evidence and requiring a respondent to permit persons to enter premises for the purpose of securing the preservation of evidence which is, or may be, relevant to an issue in the proceeding or anticipated proceeding.

### 3 Requirements for grant of search order

The Court may make a search order if the Court is satisfied that:

- (a) an applicant seeking the order has a strong prima facie case on an accrued cause of action; and
- (b) the potential or actual loss or damage to the applicant will be serious if the search order is not made; and
- (c) there is sufficient evidence in relation to a respondent that:
  - (i) the respondent possesses important evidentiary material; and
  - (ii) there is a real possibility that the respondent might destroy such material or cause it to be unavailable for use in evidence in a proceeding or anticipated proceeding before the Court.

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#### 4      **Jurisdiction**

Nothing in this Order diminishes the inherent, implied or statutory jurisdiction of the Court to make a search order.

#### 5      **Terms of search order**

- (1) A search order may direct each person who is named or described in the order:
  - (a) to permit, or arrange to permit, such other persons as are named or described in the order:
    - (i) to enter premises specified in the order; and
    - (ii) to take any steps that are in accordance with the terms of the order; and
  - (b) to provide, or arrange to provide, such other persons named or described in the order with any information, thing or service described in the order; and
  - (c) to allow such other persons named or described in the order to take and retain in their custody any thing described in the order; and
  - (d) not to disclose any information about the order, for up to 3 days after the date on which the order was served, except for the purposes of obtaining legal advice or legal representation; and
  - (e) to do or refrain from doing any act as the Court considers appropriate.
- (2) Without limiting the generality of subparagraph (1) (a) (ii), the steps that may be taken in relation to a thing specified in a search order include:
  - (a) searching for, inspecting or removing the thing; and
  - (b) making or obtaining a record of the thing or any information it may contain.
- (3) A search order may contain such other provisions as the Court considers appropriate.
- (4) In subrule (2):

**record** includes a copy, photograph, film or sample.



**6 Independent solicitors**

- (1) If the Court makes a search order, the Court must appoint one or more solicitors, each of whom is independent of the applicant's solicitors, (the *independent solicitors*) to supervise the execution of the order, and to do such other things in relation to the order as the Court considers appropriate.
- (2) The Court may appoint an independent solicitor to supervise execution of the order at any one or more premises, and a different independent solicitor or solicitors to supervise execution of the order at other premises, with each independent solicitor having power to do such other things in relation to the order as the Court considers appropriate.

**7 Costs**

- (1) The Court may make any order as to costs that it considers appropriate in relation to an order made under this Order.
- (2) Without limiting the generality of subrule (1), an order as to costs includes an order as to the costs of any person affected by a search order.

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**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See [www.frli.gov.au](http://www.frli.gov.au).