

Federal Court Amendment Rules 2004 (No. 2) 2004 No. 98

EXPLANATORY STATEMENT

Statutory Rules 2004 No. 98

Issued by the authority of the Judges of the Federal Court of Australia

Federal Court Amendment Rules 2004 (No. 2)

Section 59 of the *Federal Court of Australia Act 1976* permits the Judges of the Court or a majority of them, to make rules of Court not inconsistent with the Act. These rules may provide for the practice and procedure to be followed in the Court and in Registries of the Court. They may extend to all matters incidental to any such practice or procedure that are necessary or convenient to be prescribed for the conduct of any business of the Court.

Under sub-section 59 (4) of the *Federal Court of Australia Act 1976*, sections 48, 48A, 48B, 49 and 50 of the *Acts Interpretation Act 1901* which relate to the making of regulations, apply to these Rules of Court as if references to the regulations in those sections were references to Rules of Court.

The present Federal Court Rules came into operation on 1 August 1979. They are reviewed regularly.

RULE 1 - Name of rules

This rule provides that the rules are the *Federal Court Amendment Rules 2004 (No. 2)*.

RULE 2 - Commencement

This rule provides that these rules commence on gazettal.

RULE 3 - Amendment of Federal Court Rules

This rule provides that the Federal Court Rules are amended as set out in Schedule 1.

SCHEDULE 1

Short form bill for migration cases

These amendments provide for a short form bill to be used in certain migration cases. The short form bill will provide a quick and efficient mechanism for determining the amount of costs to be paid pursuant to a costs order in less complex matters concerning the review of decisions under the *Migration Act 1958* (Cth).

The amendments were the subject of consultations with the Law Council of Australia and the Department of Immigration, Multicultural and Indigenous Affairs.

[1] Order 62, subrule 8 (2)

This amendment replaces the words 'rule 40A' with 'rule 40A or 40B'. The amendment is consequential to the insertion of Order 62 rule 40B.

[2] Order 62, after rule 40A

This amendment inserts a new rule 40B, which provides for short form bills in certain migration cases.

Subrule 40B (1) contains definitions of 'migration case', 'migration court book' and 'standard migration case' for the purposes of the rule.

Subrule 40B (2) provides that a party to a standard migration case may claim as costs of the proceeding, including disbursements, the amount that, on the date when the proceeding was commenced, was the prescribed amount in item 43D in Schedule 2.

Subrule 40B (3) provides that the respondent to a migration case that is discontinued or dismissed after the applicant has been served with the migration court book and before the trial, may claim as costs of the proceeding, including disbursements, the amount that, on the date when the proceeding was commenced, was the prescribed amount in item 43E in Schedule 2.

Subrule 40B (4) provides that a party who claims costs under this rule (***claimant***) must serve on the other party a bill of costs, including disbursements, (***bill***), which need not include an itemised account of:

- the work or services performed; or
- the disbursements incurred in relation to the proceeding.

Subrule 40B (5) provides that within 14 days of being served with a bill under subrule 40B (4), the party served with the bill must advise the claimant, in writing, if he or she objects to the claim being made under this rule.

Subrule 40B (6) provides that within 14 days of receiving an advice under subrule 40B (5), the claimant must file a copy of the following documents:

- the advice;
- the bill served on the other party under subrule (4);
- the affidavit of service of the bill on the other party.

Subrule 40B (7) provides that the claimant and the other party and their respective solicitors must not attend on taxation of the bill, unless directed to do so by the taxing officer.

Subrule 40B (8) provides that this rule does not limit a party's right to claim the taxed costs of the proceeding under Order 62.

However, paragraph 40B (9) (a) provides that a party who claims costs under this rule has no further claim to recover any of the taxed costs of the proceeding under Order 62. Paragraph 40B (9) (b) provides that a party who claims costs otherwise under Order 62 has no further claim to recover any of the taxed costs of the proceeding under this rule.

[3] Schedule 2, after item 43C

This amendment inserts two new items in Schedule 2. Item 43D is the prescribed amount that may be claimed by a party pursuant to subrule 40B (2). Item 43E is the prescribed amount that may be claimed by a party pursuant to subrule 40B (3).