

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 340

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

Federal Court Amendment Rules 2009 (No. 3)

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 subsection 59 (4) of the *Federal Court of Australia Act 1976*, the *Legislative Instruments Act 2003* (other than sections 5, 6, 7, 10, 11 and 16 of that Act) applies in relation to rules of court made by the Court under the *Federal Court of Australia Act 1976* or another Act:

- (a) as if a reference to a legislative instrument were a reference to a rule of court; and
- (b) as if a reference to a rule-maker were a reference to the Chief Justice acting on behalf of the Judges of the Court; and
- (c) subject to such further modifications or adaptations as are provided for in regulations made under section 59A of the *Federal Court of Australia Act 1976*.

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

The Judges have agreed to amend the Federal Court Rules by:

1. amending Order 1 rule 5AC to make it clear that a party who has filed an affidavit by electronic communication by sending an image of the affidavit pursuant to Order 1 subrules 5AC(2) and (5) must produce the original of the affidavit to the Court if directed to do so;
2. amending Orders 1, 4, 15, 22, 42 and 49 to clarify that a reference to a 'directions hearing' for the purposes of the computation of time within which acts must be done is a reference to the hearing date appointed in a document commencing a proceeding in the Court's original jurisdiction;
3. inserting a new Order 7 subrule 11(3) to provide for how service may be effected on a party, having originally appeared by a solicitor, parts company with the solicitor and fails to file a new address for service, and the insertion of a new Order 45 rule 7A setting out the information to be included in a new address for service;

4. amending Order 27 and Form 41 and inserting a new Form 41A to deal with the destruction of copies of documents produced on subpoena;
5. amending Order 46 subrule 6(2) of the Federal Court Rules to include ‘a statement of agreed facts’;
6. amending Order 46 rule 7A to include appropriate references to ‘filing’ and allow a Registrar, when determining whether a document appears to be an abuse of process of the Court or to be frivolous or vexatious, to have regard to the document and to any documents submitted for filing with the document or referred to in the document or any accompanying documents;
7. amending Order 52 rule 19 and inserting new subrules 19A and 22A and new forms 29A and 29B to prescribe a procedure and forms by which an appellant, cross-appellant or applicant can discontinue an appeal or related application (such as an application for leave to appeal or an application for an extension of time to appeal);
8. amending Order 52 rule 26 and Order 53 rule 15A to simplify the content of the appeal books;
9. amending Order 54B rule 8 and Form 56A to provide for the manner in which an application for extension of time to file an application under the *Migration Act 1958* must be made and prescribe the information that must be filed in support of such an application – these amendments are consequential upon changes made to the *Migration Act* by the *Migration Legislation Amendment Act (No. 2) 2008* which commenced on 15 March 2009;
10. amending Orders 76 and 81 and Forms 167 and 168 to replace each reference to the ‘Human Rights and Equal Opportunity Commission’ with a reference to the ‘Australian Human Rights Commission’ and each reference to the *Human Rights and Equal Opportunity Commission Act 1986* with a reference to the *Australian Human Rights Commission 1986*;
11. replacing Order 80 rule 9 and 10 with a new rule 9 which provides that the Court may make a costs order entitling a pro bono practitioner representing a successful party to recover from the losing party the practitioner’s fees and disbursements reasonably incurred;
12. amending Forms 3, 8, 9, 10 and 20 to include a reference to the relevant Divisions;
13. amending each form that refers to an address for service to include a reference to Order 7 rule 6 (unless such a reference already exists);
14. amending Schedule 2 to adjust the quantum of prescribed costs.

The amendments mentioned in items 3, 5-7, 9 and 13 were agreed at the Judges’ Meeting held in April 2009 and in items 1-2, 8, 10 and 11 were agreed at the Judges’ Meeting held in September 2009. The amendment to Order 27 and Form 41 mentioned in item 4 above gives effect to a recommendation by the Chief Justices’ Harmonised Subpoena Rules Monitoring Committee. The amendment to Schedule 2 mentioned in item 14 above gives effect to recommendations made in the Second Report of the Joint Costs Advisory Committee.

Details of the Rules are in **Attachment 1**.

All of the amendments except the amendments mentioned in item 14 above will commence on the day after they are registered on the Federal Register of Legislative Instruments. The amendment mentioned in item 14 will commence on 4 January 2010.

Federal Court Amendment Rules 2009 (No. 3)

RULE 1 Name of rules

This rule provides that the Rules are to be cited as the *Federal Court Amendment Rules 2009 (No. 3)*.

RULE 2 Commencement

This rule provides that these Rules commence as follows:

- Rules 1 to 3 and Schedule 1 – on the day after they are registered; and
- Schedule 2 – on 4 January 2010.

RULE 3 Amendment of Federal Court Rules

Schedules 1 and 2 amends the Federal Court Rules.

SCHEDULE 1

[1] Order 1, rule 4, definition of *directions hearing*

[2] Order 1, rule 4, after the definition of *organisation*

Order 1 rule 4 sets out the meaning of various terms used in the Rules.

Order 1 rule 4 is amended:

- so that, in the definition of ‘directions hearing’, the part of the definition that provides for a directions hearing appointed in an application pursuant to Order 4 is replaced with a hearing appointed in an originating process;
- by inserting a definition of ‘originating process’ as meaning a document filed in the Court that commences a proceeding in the Court’s original jurisdiction.

These amendments are to clarify that a reference to a ‘directions hearing’ for the purposes of the computation of time within which acts must be done is a reference to the hearing date appointed in a document commencing a proceeding in the Court’s original jurisdiction.

[3] Order 1, subrule 5A (7) and (8)

Order 1 rule 5A sets out the process by which documents are to be filed and lodged.

Subrule 5A (7) outlines the requirements for filing a document, if accepted, that is sent by facsimile transmission or electronic communication. Subrule 5A (8) provides that a document must not be accepted without the leave of the Court, a Judge or a Registrar, if the document is not substantially complete or does not substantially comply with these Rules or is not properly signed or executed.

This amendment replaced subrules 5A (7) and (8) with new subrules. The new subrule 5A (7) outlines the process for documents sent by electronic communication.

The new subrule 5A (8) sets out the requirements where the Court directs that an original affidavit or paper copy of a document filed electronically is to be produced. The new subrule states that the person who sent the document electronically must, for an original affidavit, attach a statement that it is the original of the affidavit sent electronically and the date that the affidavit was sent by electronic communication and, for any other document, endorse the first page with a statement that the paper copy is a true copy of the document sent by electronic communication.

This amendment is to make it clear that a party who has filed an affidavit by electronic communication by sending an image of the affidavit pursuant to Order 1 subrules 5AC (2) and (5) must produce the original of the affidavit to the Court if directed to do so.

[4] Order 4, rule 8

Order 4 rule 8 deals with the date for a directions hearing, providing that, subject to rule 9, the application shall state a date for a directions hearing.

This amendment replaces rule 8 with a new rule 8 that states that an application must state a date for a hearing at which the Court may hear the proceeding in whole or part, or give directions for the further conduct of the proceeding.

The amendment is, in conjunction with the amendment referred to in items [1] and [2], to clarify the use of the term ‘directions hearing’.

[5] Order 4, subrules 9 (2) to (4)

Order 4 rule 9 deals with the claim for interlocutory relief, providing that:

- a date for the hearing of the claim for interlocutory relief shall be endorsed on the application (subrule 2);
- where a date for hearing is endorsed on the application under subrule 9 (2), a separate date for a directions hearing shall not also be endorsed on the application (subrule 3)
- at the hearing of the claim for interlocutory relief that Court may give such directions as it thinks fit as on a directions hearing.

This amendment replaces subrule 9 (2), omits subrule 9 (3) and amends subrule 9 (4) as follows:

- the Court may hear and determine the claim for interlocutory relief on the hearing date specified in the application (subrule 2);
- at the hearing for the claim for interlocutory relief the Court may give any directions it thinks fit (subrule 3).

The amendment is to provide that on the hearing date specified in the application the Court may hear and determine any claim for interlocutory relief.

[6] Order 7, after subrule 11 (2)

Order 7 deals with service of a document and subrule 11 deals specifically with service of a document by filing.

Item [4] inserts into Order 7 a new subrule 11 (3) to provide for how service may be effected on a party, where personal service is not required and the party has not filed a new address for service in accordance with the new Order 45 rule 7A although having originally appeared by a solicitor, parts company with the solicitor and fails to file a new address for service.

This amendment inserts into the Rules an obligation to ensure that a new address for service is filed contemporaneously with a change in representation arrangements.

[7] Order 15, rule 1

Order 15 rule 1 deals with the discovery and inspection of documents, requiring the notice for discovery to be in accordance with Form 21.

This amendment replaces rule 1 with a new rule 1 that states that a party in a proceeding may, with leave of the Court and within any period fixed by the Court for this purpose, require another party to the proceeding to give discovery by filing and serving on that party a notice for discovery in accordance with Form 21.

This amendment removes the requirement for a directions hearing to occur beforehand. The amendment is, in conjunction with the amendment referred to in items [1] and [2], to clarify the use of the term 'directions hearing'.

[8] Order 22, paragraph 2 (1) (a)

Order 22 rule 2 deals with discontinuance of a proceeding. Subrule 2 (1) states that, subject to subrules 2 and 3, a party making a claim for relief may discontinue a proceeding so far as concerns the whole or any part of any claim for relief, by notice in accordance with Form 29, inter alia any time before the directions hearing appointed in the application, without leave of the Court or the consent of any other party.

This amendment removes from paragraph 2 (1) (a) the words 'appointed in the application'. The amendment is, in conjunction with the amendment referred to in items [1] and [2], to clarify the use of the term 'directions hearing'.

[9] Order 27, after subrule 6 (5)

[10] Order 27, after subrule 10 (2)

These amendments insert new subrules 6 (6) and (7) and subrules 10 (3) to (6) to deal with the destruction of copies of documents produced on subpoena.

Item [9] inserts new subrules 6 (6) and (7).

Order 27 rule 6 deals with compliance with subpoenas. The new subrule 6 (6) states that unless a subpoena specifically requires the production of the original, the addressee may produce a copy of any document required to be produced by the subpoena. The new subrule 6 (7) states that the copy of the document may be a photocopy, in PDF format on a CD-ROM or in any other electronic form that the issuing party has indicated will be acceptable.

Item [10] inserts new subrules 10 (3) to (6).

Rule 10 deals with the return of documents and things produced. The new subrules provide that the issuing party must attach, to the front of the subpoena, a notice and declaration in accordance with the new Form 41A: subrule 10 (3). The addressee must complete the notice and declaration and attach it to the subpoena or copy of the subpoena that accompanies the documents produced to the Court under the subpoena: subrule 10 (4). Subject to subrule (6), the Registrar may, on the expiry of 4 months from the conclusion of the proceeding, cause to be destroyed all the documents, produced in the proceedings in compliance with a subpoena, that were declared by the addressee to be copies: subrule 10 (5). The Registrar may cause to be destroyed those documents, declared by the addressee to be copies, that have become exhibits in the proceeding when they are no longer required in connection with the proceeding, including any appeal: subrule 10 (6).

[11] Order 42, subrule 6 (1)

Order 42 rule 6 deals with partnerships and business names and appearance under protest of a person served as a partner. Subrule 6 (1) states that where a person served under rule 4 denies that he is a partner of the partnership or denies that he was a partner of the partnership at the time the cause of action arose, he shall file an affidavit making that denial before the directions hearing appointed in the application.

This amendment removes from subrule 6 (1) the words ‘appointed in the application’ as well as replacing gender specific terms for gender neutral ones. The amendment is, in conjunction with the amendment referred to in items [1] and [2], to clarify the use of the term ‘directions hearing’.

[12] Order 45, after rule 7

Order 45 deals with the solicitor.

Item [12] inserts into Order 45 a new subrule 7A which sets out the procedures to be followed for the provision of a new address for service when a solicitor withdraws from a matter. Subrule 7A (1) states that a notice of change mentioned in rule 3, 5 or 6 must include the information required by Order 9, paragraphs 4 (1) (a), (b) and (d) and, if applicable, the information required by paragraph 4 (1) (c).

Subrule 7A (2) inserts a requirement that, where a notice of change of agent by a party is filed in accordance with rule 4 and the party's address for service was that of the agent, the notice must include the party's new address for service in accordance with Order 7 rule 6.

Subrule 7A (3) states that a party served with a notice of intention in accordance with subrule 7 (2) must, within 7 days of being served with the notice, file and serve on each party to the proceeding a notice that sets out the information required by Order 9, paragraphs 4 (1) (a), (b) and (d) and, if applicable, the information required by paragraph 4 (1) (c).

This amendment inserts into the Rules an obligation to ensure that a new address for service is filed contemporaneously with a change in representation arrangements.

[13] Order 46, paragraph 6 (2) (m)

Order 46 rule 6 deals with the inspection of documents. Subrule 6 (2) lists the documents that fall within the scope of subrule 6 (1), being the documents in a proceeding that can be searched for and inspected without the leave of the Court or a Judge.

The amendment replaces paragraph 6 (2) (m) with a new paragraph (m) and renumbers the old paragraph (m) as paragraph (n). The new paragraph (m) being inserted is a statement of agreed facts.

This amendment is to remove the requirement that access to a statement of agreed facts requires the leave of the Court or a Judge unless an order has been made to that effect.

[14] Order 46, rule 7A

Order 46 rule 7A sets out the rules for refusing to accept a document for filing.

The amendment replaces Order 46 rule 7A with a new Order 46 rule 7A.

The amended subrule 7A includes appropriate references to 'filing' and allows a Registrar, when determining whether a document appears to be an abuse of process of the Court or to be frivolous or vexatious, to have regard to the document and to any documents submitted for filing with the document or referred to in the document or any accompanying documents.

[15] Order 49, subrule 5 (3)

Order 49 deals with proceedings for an offence. Order 49 rule 5 sets out the rules for the affidavits as to fine or penalty.

Subrule 5 (3) provides that this rule applies in a case where there has been a plea of guilty or where after a finding of guilty the matter has been adjourned to enable evidence as to the appropriate fine or penalty or where the defendant proposes to plead guilty or not to

deny the charge alleged in the summons and has so advised the prosecutor at the directions hearing or with the time then appointed.

The amendment to subrule 5 (3) omits the term ‘directions hearing’ and replaces it with ‘hearing on the date appointed under subrule 4 (1). The amendment is, in conjunction with the amendment referred to in items [1] and [2], to clarify the use of the term ‘directions hearing’.

[16] Order 52, rule 19

Order 52 deals with appeals. Order 52 rule 19 sets out the rules for the discontinuance of an appeal.

The amendment replaces Order 52 rule 19 with a new Order 52 rule 19 and insert a new Order 52 subrule 19A. The effect of the amendment is set out the rules and forms by which an appellant, cross-appellant or applicant may discontinue an appeal or related application (such as an application for leave to appeal or an application for an extension of time to appeal).

The amendment to Order 52 subrule 19 (1) provides that an appellant may discontinue the whole or any part of an appeal by filing and serving a notice of discontinuance in accordance with the new Form 29A.

Subrule 19 (2) combines the old subrules 19 (1A) and 19 (2).

The amendment clarifies in subrules 19 (3) and (4) that these provisions apply for the discontinuance of the appeal or part of the appeal.

The new subrule 19 (3) clarifies that the appellant who files a notice of discontinuance under subrule (1) is liable to pay the costs of any other party to the appeal for the appeal or part of the appeal that has been discontinued. The new subrule 19 (4) clarifies that a party may enter judgment for the taxed costs against the appellant who discontinued the appeal or part of the appeal.

The amendment inserts a new subrule 19A. The new subrule provides for requirements in the same terms as in the amended Order 52 rule 19 for the discontinuance of an application made under subsection 25 (2) of the Act, i.e. applications for leave or special leave to appeal to the Court, for extension of time within which to appeal to the Court or leave to amend the grounds of an appeal to the Court or to stay an order of a Full Court.

[17] Order 52, after rule 22

Order 52 deals with appeals. Order 52 rule 22 sets out the rules for a cross-appeal.

This amendment inserts a new rule 22A which provides for the discontinuance of a cross-appeal.

Subrule 22A (1) states that a cross-appellant may discontinue the whole, or any part, of a cross-appeal by filing and serving a notice of discontinuance in accordance with Form 29A. Subrule 22A (2) states that Order 52 rule 19 applies to a discontinuance under subrule (1) in the same way that it applies to a discontinuance of an appeal under subrule 19 (1).

[18] Order 52, rule 26, table, items 15 to 20

[19] Order 52, rule 26, table, items 21 to 27

Order 52 deals with appeals. Order 52 rule 26 sets out the rules for the contents of the appeal papers.

This amendment replaces items 15 to 20 and items 21 to 27 in the table in rule 26. The effect of the amendment is to address concerns that the current rules dealing with the content of appeal papers may have added significantly to the time, complexity and costs of preparing, settling and producing the appeal books.

The amendment replaces in item 15 the requirement to include all exhibits in the court below with a requirement for only those not reproduced in the Part with a brief description of each exhibit and the number or letter used to identify each exhibit in the court below.

Item 16, previously being a list of all documents that were received into evidence, now requires a copy of all exhibits relevant to the appeal, in the order in which the exhibits were lettered or numbered as exhibits in the court below. Items 17 and 19 are omitted and the old item 18 is renumbered as item 17 and the old item 20 is renumbered as item 18.

As a consequence of the amendments to items 15 to 18, the items after the heading Part C are renumbered as follows: the old item 21 becomes item 19, the old item 22 becomes item 20. Item 23 is omitted. The old item 24 is amended to clarify that it is a list of the pages of transcript of *oral evidence* and that it should also include the names of the relevant witnesses. The old item 25 is renumbered as item 22, the old item 26 is renumbered as item 23 and the old item 27 is renumbered as item 24.

[20] Order 53, rule 15A, table, items 13 to 18

[21] Order 53, rule 15A, table, items 19 to 25

Order 53 deals with appeals from the Administrative Appeals Tribunal. Order 53 rule 15A sets out the rules for the contents of the appeal papers.

This amendment replaces items 13 to 18 and items 19 to 25 in the table in rule 15A. The effect of the amendment is to address concerns that the current rules dealing with the content of appeal papers may have added significantly to the time, complexity and costs of preparing, settling and producing the appeal books. The amendments are in similar terms to those mentioned in items [18] and [19].

[20] Order 54B, rule 8

Order 54B deals with applications in relation to migration decisions under the *Migration Act 1958*. Rule 8 sets out requirements for an application for extension of time pursuant to section 477A of the *Migration Act*.

This amendment replaces rule 8 with a new rule 8. The new subrule 8 (1) inserts a requirement that an application for extension of time must be made by lodging an application in accordance with Form 56A that includes a claim for each remedy sought and the extension of time.

The new subrule 8 (2) requires that the application must be accompanied by an affidavit showing the nature of the case, the questions involved, the reasons why it is necessary, in the administration of justice, that the extension of time be given.

The provisions of the old rule 8 are contained in the new subrule 8 (3). It states that a lawyer (within the meaning of section 486K of the *Migration Act*) must not file an application for extension of time unless the application includes or is accompanied by a certificate under section 486I of the *Migration Act* is in accordance with Form 56B and is signed by the lawyer.

The new subsection 8 (4) provides the definition of the term ‘application for extension of time’ as being an application for an order under subsection 477A (2) of the *Migration Act* for an extension of time within which to lodge an application for a remedy to be granted in exercise of the court’s original jurisdiction under paragraph 476A (12) (b) or (c) of the *Migration Act*.

The effect of the amendment is to provide for the manner in which an application under the *Migration Act* must be made and prescribe the information that must be filed in support of such an application.

These amendments are consequential upon changes made to the *Migration Act* by the *Migration Legislation Amendment Act (No 2) 2008* that commenced on 15 March 2009. The amendment is to reinstate ‘effective’ time limits for applying to the courts for judicial review of migration decisions.

[23] Order 76, heading

[24] Order 76, paragraph 1 (a)

Order 76 deals with the enforcement of determinations of the Human Rights and Equal Opportunity Commission or Privacy Commissioner.

This amendment replaces each reference to the ‘Human Rights and Equal Opportunity Commission’ with a reference to the ‘Australian Human Rights Commission’ and each reference to the *Human Rights and Equal Opportunity Commission Act 1986* with a reference to the *Australian Human Rights Commission 1986*. This amendment is

consequential upon the *Disability Discrimination and other Human Rights Legislation Amendment Act 2009* which commenced on 5 March 2009.

[25] Order 80, rules 9 and 10

Order 80 deals with court appointed referrals for legal assistance.

Rule 9 states that, subject to rule 10, a legal practitioner who provides legal assistance to a litigant under the scheme must not seek to recover any professional fees or disbursements for the legal assistance unless an order for costs is made in favour of the litigant. Where such an order is made the legal practitioner who has provided the legal assistance is entitled to recover the amount of fees and disbursements that another party is required to pay under the order.

Rule 10 states that a legal practitioner who provides legal assistance to a litigant under the scheme may request that the litigant pay any disbursements reasonably incurred by the practitioner on behalf of the litigant in connection with the legal assistance.

The effect of the amendment is to replace rules 9 and 10 with a new rule 9 clarifying that a legal practitioner who provides legal assistance should be able to recover professional fees in the event that a costs order is made in favour of the person receiving legal assistance under the scheme.

The new subrule 9 (1) provides that where the legal practitioner enters into an agreement with the litigant receiving assistance (referred to as assisted litigant), subject to the new subrule 9 (5), the legal practitioner may seek or recover from the assisted litigant professional fees or disbursements for the legal assistance.

The new subrule 9 (2) states that the agreement referred to in subrule 9 (1) must provide that the legal practitioner is entitled to charge and the assisted litigant liable to pay professional fees and disbursements only if an order for costs is made in favour of the assisted litigant and only to the extent that the litigant against whom the order for costs is made in fact pays the fees and disbursements.

The new subrule 9 (3) states that, if an agreement is entered into, the Court may also order the litigant against whom the costs order is made to pay the fees and disbursements instead of the assisted litigant.

The new subrule 9 (4) states that payment to the legal practitioner in accordance with an order under the subrule (3) satisfies, to the extent of the payment, the order for costs made in favour of the assisted litigant.

The new subrule 9 (5) is similar to the old rule 10, stating that the legal practitioner may ask the assisted litigant to pay any disbursements reasonably incurred by the practitioner on behalf of the litigant in connection with the legal assistance.

[26] Order 81, rule 2, definitions of *Commission* and *Human Rights Act*

Order 81 deals with human rights proceedings.

This amendment replaces each reference to the ‘Human Rights and Equal Opportunity Commission’ with a reference to the ‘Australian Human Rights Commission’ and each reference to the *Human Rights and Equal Opportunity Commission Act 1986* with a reference to the *Australian Human Rights Commission 1986*. This amendment is consequential upon the *Disability Discrimination and other Human Rights Legislation Amendment Act 2009* which commenced on 5 March 2009.

[27] Schedule 1, Forms 3, 8 and 9

[27A] Schedule 1, Form 10

[28] Schedule 1, Form 20

Form 3 is the prescribed form of a document where there is no respondent. Form 8 is the prescribed form of a cross-claim where the cross-claim is served before the date of the directions hearing appointed in the application. Form 9 is the prescribed form of a cross-claim where the cross-claim is not served before the date of the directions hearing appointed in the application. Form 10 is the prescribed form of a defence and cross-claim against a party. Form 20 is the prescribed form of affidavit.

These forms are amended to insert the word ‘DIVISION’ in the heading immediately under the line containing the words ‘DISTRICT REGISTRY’. A person using the form must insert the location of the District Registry and the particular Division which is to hear and determine the proceeding to which the document relates.

This amendment is consequential upon the amendments made to the *Federal Court of Australia Act 1976* by the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* which create a General Division and a Fair Work Division in the Court.

[29] Schedule 1, after Form 29

This amendment inserts into Schedule 1 the forms mentioned above in items [16] and [17] which amend Order 52 rules 19 and 19A: The new forms are:

- Form 29A – Notice of discontinuance of an appeal or cross-appeal
- Form 29B – Notice of discontinuance of an application (s 25 (2) of the Act).

These new forms are the prescribed forms by which an appellant, cross-appellant or applicant can discontinue an appeal or related application.

[30] Schedule 1, Form 41, note 9

[31] Schedule 1, after Form 41

Form 41 is the prescribed form for a subpoena. Note 9 deals with the production of a copy instead of the original document. This amendment is consequential upon the

amendments mentioned in items [9] and [10] to deal with the destruction of copies of documents produced on subpoena.

This amendment replaces note 9 with new notes 9 and 9A which are in the terms of the amendments to Order 27 subrules 6 (5) and 6 (7) respectively.

Item [31] inserts into Schedule 1 a new Form 41A which provides in relation to a subpoena, the declaration by the addressee required by the new Order 27 subrule 10 (3). This amendment is consequential upon the amendments referred to in items [9] and [10].

[32] Schedule 1, Form 50

[33] Schedule 1, Form 50

Form 50 is the prescribed form of Notice of Claim.

Item [32] inserts an asterisk after the phrase: ‘Address for service:’ and, at the foot of the form, item [33] inserts a reference to Order 7 rule 6.

The effect of the amendment is to amend the form to include a reference to Order 7 rule 6 at the foot of the form. The amendment in item [33] also replaces in Form 50 ‘Version 1’ with ‘Version 2’.

[34] Schedule 1, Form 53B

[35] Schedule 1, Form 53B

[36] Schedule 1, Form 53C

[37] Schedule 1, Form 53C

[38] Schedule 1, Form 55CA

[39] Schedule 1, Form 55CA

Each of the above mentioned forms are amended to:

- insert an asterisk after the first or only mention of an address for service;
- at the foot of the form, insert a reference to Order 7, rule 6; and
- replace the number appearing after the word: ‘Version’ with the next chronological number.

[40] Schedule 1, Form 55DA

This amendment to Form 55DA replaces the words ‘address service’ with the words ‘address for service’.

[41] Schedule 1, Form 56A

[42] Schedule 1, Form 56A

[43] Schedule 1, Form 56A, after the note

Form 56A is the prescribed form of an Application under the *Migration Act*.

This amendment inserts a reference to an oral migration decision as well as the written decision, written statement or written notice of the migration decision.

The amendment replaces the word 'Note' with the word 'Note 1' and insert a new Note 2 after Note 1 providing a reference to section 477A of the *Migration Act*. Note 2 states that section 477A of the *Migration Act* provides that an application for a remedy in relation to which the Court has original jurisdiction under paragraph 467A (1) (b) or (c) of that Act must be made within 35 days of the date of the migration decision. An application to the Court for an extension of the 35 day period may be made as a claim in this form – see Order 54B rule 8.

These amendments are consequential upon changes made to the *Migration Act* by the *Migration Legislation Amendment Act (No 2) 2008* which commenced on 15 March 2009.

[44] Schedule 1, Form 167, heading

[45] Schedule 1, Form 167

[46] Schedule 1, Form 167, table, item 11

Form 167 is the prescribed form of Claim under the *Human Rights and Equal Opportunity Commission Act 1986* alleging unlawful discrimination.

These amendments replace each reference to the 'Human Rights and Equal Opportunity Commission' with a reference to the 'Australian Human Rights Commission' and each reference to the *Human Rights and Equal Opportunity Commission Act 1986* with a reference to the *Australian Human Rights Commission 1986*. This amendment is consequential upon the *Disability Discrimination and other Human Rights Legislation Amendment Act 2009* which commenced on 5 March 2009.

[47] Schedule 1, Form 167, table, item 15

[48] Schedule 1, Form 167, table, item 15

[49] Schedule 1, Form 167, table, item 16

Form 167 is the prescribed form of Claim under the *Human Rights and Equal Opportunity Commission Act 1986* alleging unlawful discrimination. Item 15 in the table is the request for an extension of time to lodge the application.

An extension of time was required if the application and claim was made more than 28 days after the date of issue of written notice of the termination of the complaint by the President of the Commission. This amendment extends the time allowed before a request for an extension is required by replacing '28' with '60'.

The amendment in item [48] replaces '*Human Rights and Equal Opportunity Commission*' with '*Australian Human Rights Commission*'.

The amendment in item [49] replaces each mention in item 16 of the table 'Human Rights and Equal Opportunity Commission' with 'Australian Human Rights Commission'.

These amendments are consequential upon the *Disability Discrimination and other Human Rights Legislation Amendment Act 2009* which commenced on 5 March 2009.

[50] Schedule 1, Form 168, heading

[51] Schedule 1, Form 168

Form 168 is the prescribed form of Defence to an application under the *Human Rights and Equal Opportunity Commission Act 1986* alleging unlawful discrimination.

These amendments replace each reference to the ‘Human Rights and Equal Opportunity Commission’ with a reference to the ‘Australian Human Rights Commission’ and each reference to the *Human Rights and Equal Opportunity Commission Act 1986* with a reference to the *Australian Human Rights Commission 1986*. This amendment is consequential upon the *Disability Discrimination and other Human Rights Legislation Amendment Act 2009* which commenced on 5 March 2009.

[52] Schedule 1, Form 169

Form 169 is the prescribed form of Notice of Proceeding.

This form is amended to insert the word ‘DIVISION’ in the heading immediately under the line containing the words ‘DISTRICT REGISTRY’. A person using the form must insert the location of the District Registry and the particular Division which is to hear and determine the proceeding to which the document relates.

This amendment is consequential upon the amendments made to the *Federal Court of Australia Act 1976* by the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* which create a General Division and a Fair Work Division in the Court.

[53] Further amendments

This item lists the forms in the Rules that include a mention of ‘address for service’, that do not already have a reference to Order 7 rule 6. Order 7 rule 6 sets out the requirements for the address for service.

The amendment inserts into the forms listed in the table, after the first or only mention in a form to ‘address for service’, a reference to Order 7, rule 6.

[54] Further amendments

This item lists the forms that have been amended. For each of the forms listed in the table, the version number in the middle column is replaced with the version number in the right hand column.

This amendment is to update the version numbers inserted at the foot of the forms as appropriate.

SCHEDULE 2

[1] Schedule 2 – updating costs

Schedule 2 sets out the costs that solicitors are allowed in respect of work done and services performed in Federal Court proceedings.

This amendment replaced Schedule 2 with a new Schedule 2 and has the effect of increasing the amount for each item in the Schedule.

The increase has been determined having regard to the recommendation made by the Joint Costs Advisory Committee in its Second Report on Legal Practitioners' Costs (September 2009).