

Federal Court Rules (Amendment) 1992 No. 44

EXPLANATORY STATEMENT

Statutory Rules 1992 No. 44

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

AMENDMENT OF THE RULES OF THE COURT OF AUSTRALIA

Section 59 of the *Federal Court of Australia Act 1976* permits the Judges of the Court (of whom there are thirty-two (32) including the Chief Justice) or a majority of them to make Rules of Court not inconsistent with the Act, making provision for or in relation to the practice and procedure to be followed in the Court, including practice and procedure to be followed in Registries of the Court, and for or in relation to all matters and things incidental to any such practice or procedure, or necessary or convenient to be prescribed for the conduct of any business of the Court. Section 59 of the Act also provides that sections 48, 48A, 48B, 49 and 50 of the *Acts Interpretation Act 1901* apply in relation to these Rules of Court made under that section as if references in those sections of that Act to regulations were references to Rules of Court.

The present Federal court Rules came into operation on 1 August 1979. They have been reviewed regularly since then. These amendments are necessary because of amendments to the Federal Court of Australia Act 1976 which introduced representative proceedings to the Court.

Rule 1

Provides a commencement date of 4 March 1992.

Rule 2

Provides for the amendment of the Rules as set out.

Rule 3

Inserts New Order 73 - Representative Proceedings provided for by the Federal Court of Australia Amendment Act 1991 ("the Act").

New Order 73 rule 1

Provides an Interpretation of 'application for an order involving notice' as the notice referred to in sections 33K, 33W, 33X or 33ZA of the Act where members of a group may be required to be informed that an application for an order has been made to the Court. 'Opt out notice' is defined as that notice referred to in section 33J of the Act being a notice of a member of a group of intention to opt out of a representative proceeding.

New Order 73 rule 2

Provides that this Order applies to representative proceedings.

New Order 73 rule 3

Provides for representative proceedings to be commenced by application *in* accordance with Form 129.

New Order 73 rule 4

Provides for the consent of a person referred to in subsection 33E(2) of the Act to be a group member in accordance with Form 130. Those persons are the Commonwealth, a State or a Territory; a Minister or a Minister of a State or Territory, a body corporate established for a public purpose by a law of the Commonwealth, of a State or of a Territory, other than an incorporated company or association; or an officer of the Commonwealth of a State or of a Territory, in his or her capacity as such an officer.

New Order 73 rule 5

Provides that an application for an order involving notice must be by notice of motion and sets out details which must be included in the supporting affidavit. For example, the name of persons who are group members, their whereabouts etc and for service of the documents.

New Order 73 rule 6

Provides that an opt out notice under section 33J of the Act may be in accordance with Form 131. Section 33J provides for the right of a group member to opt out including the requirement for written notice before an application can be heard in the Court.

Rule 4

Provides for the Numerical Table of Forms to be amended by adding to the existing list of forms the new forms mentioned above in the Rules.

Rule 5

Provides for the insertion of Forms 129, Form 130 and Form 131.