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## Statutory Rules 1992 No. 44<sup>1</sup>

### Federal Court Rules <sup>2</sup> (Amendment)

WE, Judges of the Federal Court of Australia, under section 4 of the *Acts Interpretation Act 1901*, make the following Rules of Court under the *Federal Court of Australia Act 1976*.

Dated 18 February 1992.

(L.S.)

M. E. J. BLACK C. J.  
C. A. SWEENEY J.  
J. A. KEELY J.  
J. F. GALLOP J.  
J. D. DAVIES J.  
J. S. LOCKHART J.  
I. F. SHEPPARD J.  
T. R. MORLING J.  
K. J. JENKINSON J.  
A. R. NEAVES J.  
B. A. BEAUMONT J.  
M. R. WILCOX J.  
J. E. J. SPENDER J.  
J. A. MILES J.  
D. M. RYAN J.  
W. M. C. GUMMOW J.  
R. S. FRENCH J.  
M. R. EINFELD J.  
M. L. FOSTER J.  
M. C. LEE J.  
H. W. OLNEY J.  
J. W. VON DOUSSA J.

D. G. HILL J.  
M. F. O'LOUGHLIN J.  
D. F. O'CONNOR J.  
T. J. HIGGINS J.  
D. P. DRUMMOND J.  
Judges of the Federal  
Court of Australia

A. C. DAWSON  
Acting Registrar

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## 1. Commencement

1.1 These Rules commence on 4 March 1992.

## 2. Amendment

2.1 The Federal Court Rules are amended as set out in these Rules.

## 3. New Order 73

3.1 After Order 72, insert:

### **“ORDER 73—REPRESENTATIVE PROCEEDINGS**

#### **Interpretation**

“1. (1) In this Order, unless the contrary intention appears:  
‘**application for an order involving notice**’ means an application for an order under section 33K, 33W, 33X or 33ZA of the Act in relation to which the Court may require notice to be given to group members;  
‘**opt out notice**’ means a notice under section 33J of the Act.

“(2) An expression used in this Order that is defined for the purposes of Part IVA of the Act has the same meaning in this Order as it has in that Part.

#### **Application of Order**

“2. This Order applies to the commencement of representative proceedings and, as far as practicable, to the conduct of those proceedings.

**Commencement of proceedings**

“3. Representative proceedings must be commenced by filing an application in accordance with Form 129.

**Consent to be a group member**

“4. A person referred to in subsection 33E (2) of the Act may give consent to be a group member in accordance with Form 130.

**Applications for orders involving notice**

“5. (1) An application for an order involving notice must be made by notice of motion.

“(2) The notice of motion must:

- (a) have attached a supporting affidavit that sets out to the best information, knowledge and belief of the applicant:
  - (i) the identity or description of the group members; and
  - (ii) the whereabouts of the group members; and
  - (iii) the means by which a notice ordered by the Court is most likely to come to the attention of the group members; and
- (b) be served on all other parties.

**Opt out notices**

“6. An opt out notice filed under section 33J of the Act may be in accordance with Form 131.”.

**4. Numerical Table of Forms**

4.1 The Numerical Table of Forms before the the First Schedule is amended by adding at the end:

“129	Application under Part IVA of the <i>Federal Court of Australia Act 1976</i>
130	Notice of consent to be a group member
131	Notice of opting out by group member”.

**5. First Schedule (Forms)****5.1 Add at the end:****“FORM 129**

**Application under Part IVA of the Federal Court of Australia Act 1976**

**(Order 73, rule 3)**

**(Heading in Form 1)**

1. This application is brought by the applicant as a representative party.
2. The group members to whom this proceeding relates are (identify the group members in accordance with paragraph 33H (1) (a) of the *Federal Court of Australia Act 1976*)
3. The applicant claims (specify the nature of the claims made on behalf of the group in accordance with paragraph 33H (1) (b) of the *Federal Court of Australia Act 1976*)  
and claims relief as follows: (specify the relief claimed)
4. The questions of law or fact common to the claims of the group members are (see paragraph 33H (1) (c) of the *Federal Court of Australia Act 1976*)
5. And the applicant claims by way of interlocutory relief: (specify the interlocutory relief sought)

Date: e.g. 7 May 19

.....

Signature of applicant or applicant's solicitor

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FORM 130

NOTICE OF CONSENT TO BE A GROUP MEMBER

(Order 73, rule 4)

(Heading in Form 1)

TO: The Applicant and the Respondent:

TAKE NOTICE THAT (insert name of person) , a person referred to in subsection 33B (2) of the *Federal Court of Australia Act 1976*, consents to be a group member in these proceedings.

Date: e.g. 7 May 19

.....  
Signature of person or his or her solicitor  
Name and position of person signing consent notice:  
Address of person signing the consent notice:

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FORM 131

NOTICE OF OPTING OUT BY GROUP MEMBER

(Order 73, rule 6)

(Heading in Form 1)

TO: The Registrar  
Federal Court of Australia

The Applicant

The Respondent

I, (name of group member) , a group member in the above representative proceedings, give notice under subsection 33J of the *Federal Court of Australia Act 1976*, that I am opting out of the representative proceedings.

Date: e.g. 7 May 19

.....  
Signature of group member or his or her solicitor

Address of group member:

”.

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### NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 28 February 1992.
2. Statutory Rules 1979 No. 140 as amended by 1980 No. 87; 1982 Nos. 217 and 408; 1983 No. 264; 1984 Nos. 9 and 258; 1985 Nos. 16, 97, 168 and 227; 1986 Nos. 61, 157 and 324; 1987 Nos. 73, 174 and 197; 1988 Nos. 14, 54, 144, 217 and 306; 1989 Nos. 50, 253 and 318; 1990 Nos. 72, 102, 276, 319, 414 and 453; 1991 Nos. 70, 249, 395 and 461; 1992 No. 43.