

Federal Court Rules (Amendment) 1995 No. 239

EXPLANATORY STATEMENT

Statutory Rules 1995 No. 239

AMENDMENT TO THE RULES OF THE FEDERAL COURT OF AUSTRALIA

Section 59 of the Federal Court of Australia Act 1976 permits the Judges of the Court (of whom there are forty-three (43), including the Chief Justice) or a majority of them, to make Rules of Court not inconsistent with the Act, providing for the practice and procedure to be followed in the Court and in Registries of the Court, and in relation to all matters incidental to any such practice or procedure, or necessary or convenient to be prescribed for the conduct of any business of the Court. Under sub-section 59(4) of the *Federal Court Act*, 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 - Commencement

This rule provides the date of commencement of these amending rules.

Rule 2 - Amendment

This rule provides that the Federal Court Rules are amended as set out in these Statutory Rules.

Rule 3

Order 1 Rule 4 - Interpretation

Following the inception of the Industrial Relations Court of Australia the Federal Court of Australia no longer has jurisdiction under the *Industrial Relations Act 1988* (*Industrial Relations Act*). Those Industrial matters retained *by the* Federal Court under the transitional provisions have generally been dealt with and references in the Rules to matters under the *Industrial Relations Act* are now being removed. This rule deletes the definition of "organisation", which specifically relates to industrial matters.

Rule 4

Order 1 Rule 10 - Industrial Relations Regulations

This rule removes reference to the Industrial Relations Regulations.

Rule 5

Order 4 Rule 14(3) - Suit in Person

This rule omits a reference to "an organisation", the definition of which is removed by Rule 3.

Rule 6

Order 4 Rule 15 - Proceeding by rule

This rule removes the procedure governing applications for a rule to show cause in a proceeding under s208 or s209 of the *Industrial Relations Act*.

Rule 7

Order 4 Rule 16 - Proceedings under s261 of *Industrial Relations Act 1988*

The rule setting out procedures which applied to matters under s261 of *Industrial Relations Act* is removed.

Rule 8

Order 27 Rule 4(1) - Production by non party

This rule is intended to ensure that documents produced by a non-party under a subpoena are Produced to the registry whom proceedings are being conducted or at the Registry nearest to the place where the subpoena was served.

It also provides that if documents are produced at the registry closest to the place where the subpoena was served, the person requesting the issue of the subpoena is responsible for the cost of forwarding the documents to the registry where proceedings are being conducted and for the cost of returning documents to the person who produced them.

Rule 9

Order 27 Rule 6 - Issue of Subpoena

This amendment is intended to have a subpoena issued at "the proper place" ie. the Registry where proceedings are being conducted, rather than at any registry.

Rule 10

Order 35 Rule 5 - Fine

This rule removes reference to the *Industrial Relations Act* in relation to fines.

Rule 11

Order 35 Rule 10 - Consent Orders

Order 35 rule 10 deals with the filing of written consent orders. This rule broadens Order 35 rule 10 to enable a Registrar who has power to make the orders sought, to enter an order in terms of the consent filed.

Rule 12

Order 48 - Inquires under the *Industrial Relations Act 1988*.

This rule omits Order 48 which dealt with "Inquiries under the *Industrial Relations Act 1988*".

Rule 13

Order 50 Rule 1 - Applications

This rule revises the requirements for preparing a case stated, or a question reserved or referred for consideration of the Court. The rule now tabs a more general approach and is intended to apply to all the circumstances in which a case may be stated to the Court.

Rule 14

Order 50 Rule 2 - Special case to be prepared

This rule removes particular reference to "Commission" and "Industrial Registrar" being references under the *Industrial Relations Act*.

Rule 15

Order 50 Rule 4 - Party having carriage of the proceedings

This rule again removes references to aspects of the *Industrial Relations Act*.

Rule 16

Order 50 Rule 5 - Question referred pursuant to s82 of *Industrial Relations Act 1988*.

This rule removes the procedure for the referral of a question to the Court under s82 of the *Industrial Relations Act*.

Rule 17

Order 52 Rule 26 - Draft Index of Appeal Papers

This rule is intended to make the appeal papers prepared for a Full Court more comprehensive and provides for easier access to *the* papers from the original proceedings. It introduces a chronological list of all documents that were in evidence before the original court or tribunal. This is to be prepared with the draft index to the appeal papers.

Rule 18

Order 52 Rule 28 - Preparation of Appeal Papers

This rule provides that a chronological list of all documents in evidence appear after the Index in an appeal book. It also slightly changes the order in which the material is to be arranged in an appeal book.

Rule 19

Order 62 Rule 27 - Payment Into Court

This rule omits the rule covering payment into Court in respect of costs. This is now covered by Order 23, the general rules on payment into Court.

Rule 20

Order 62 Rule 41 - Appointment to tax bill

This rule varies the time for service of a Bill of Costs to 14 days before the appointment for taxation and varies the time for service of objections to 7 days before the taxation appointment. It also adds a requirement that a list of objections must include the amount to be taxed off. This rule makes it clear that subject to the taxing officer's discretion which is to be exercised in

exceptional circumstances. items will only be taxed off if they are mentioned in an objection. It further provides that the taxing officer apportion the costs of objections as appropriate.

Rule 21

Order 62 Rule 43 - Reconsideration

This rule deals with re-consideration of a bill of costs and allows a taxing officer to deal with the cost of objections in the same manner as for an original bill of costs by adding or deducting costs payable by or to a party to the taxation.

Rule 22

Order 62 Rule 46 - Assessment procedures

This rule makes it clear that a party objecting to an estimate or provisional taxation of a bill of costs must bear the costs of objecting to a bill unless there is a variation of 15% in their favour in the amount of costs finally detected. It also adds a provision that if a confidential conference is to be held for mediation of the bill, a summary of the issues and contentions is to be provided before that date. It also provides *that* the Registrar may determine the distribution of amounts paid into Court as security for a taxation.

Rule 23

Schedule - Forms

This rule omits Form 6 which was the application form for a "Rule to Show Cause" under the *Industrial Relations Act*. It also amends Form 41 and Form 43 (subpoenas) to ensure consistency with the above rules.

Rule 24

Second Schedule - Costs

This rule amends the schedule of legal costs by adopting the recommendations of the Eleventh and Twelfth Reports of the Federal Costs Advisory Committee. The Eleventh Report, issued March 1994 recommended an Increase of 3.09% and the Twelfth Report issued February 1995 recommended an increase of 2.75%.

Rule 25 - Transitional

The transitional provisions indicate that the increased scale of costs only applies to work performed after the commencement of these rules.