

Federal Court Amendment Rules 1999 (No. 3) 1999 No. 94

EXPLANATORY STATEMENT

Statutory Rule 1999 No. 94

Issued by the authority of the

Judges of the Federal Court of Australia

Federal Court Amendment Rules 1999 (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 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 1999 (No. 3).

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 - Amendments

Vexatious litigant

[1] Order 21, paragraph (a)

This amendment amends Order 21 paragraph 1 (a) by omitting the word "State" and inserting the words "State or Territory". The inclusion of Territory is to give Territories the same advantage as the States with regards to applications to seek declarations of vexatious litigants.

[2] Order 21, paragraph 1 (b)

Order 21, paragraph 1(b) is omitted as the office of Crown Solicitor no longer exists, that position having been replaced by the Australian Government Solicitor. It is ample for the AttorneysGeneral or Solicitors-General of the Commonwealth, State or Territory, together with the Registrar of the Court to have standing to bring an application before the Court.

Cross-appeals and notices of contention

[3] Order 58, rule 5A

Rule 5A is inserted into Order 58 ***Intellectual Property to*** provide a facility for a **Cross**appeal to be made in respect of appeals from *the* Commissioner of Patents, as is currently provided in the Rules of Court with regard to single judge appeals.

It is possible for a respondent to such an appeal to file its own Notice of Appeal **within** the 21 day period allowed under Order 58, subrule 4(2). It may be, however, that the respondent decides to appeal only because of the initiation of the substantive appeal procedures. With regards to the Cross-appeal time begins to run from the date of service of the Notice of Appeal. This amendment also provides for a Notice of Contention. The Notice of Contention would be used where the respondent on an appeal from a decision of the Commissioner proposes to contend that some matter of fact or **law has** been erroneously decided against the respondent. In this case the respondent would not be seeking a reversal or variation of the Commissioner's decision. The respondent is required to give notice to the applicant and the Commissioner of the record of evidence or documents relevant to the contention.

Powers of Registrars

[4] Order 71, paragraphs 7(1)(a)

The amendment to paragraph 7(1)(a) of Order 71 **Corporations Law and Australian Securities Commission Law sets** out that the powers of Registrars relate not only to the provisions of the Corporations Law as specified in column 2 of Part 1 of the Third Schedule of the *Federal Court Rules* but also to a provision of the Rules specified in column 3 of the same Part of the Schedule. The paragraph prior to this amendment was confusing, in suggesting that column 3 specified provisions of the Corporations Law, which it does not.

[5] Order 71, paragraphs 7(1)(b)

The amendment to paragraph 7(1)(b) of Order 71 sets out that the powers of Registrars relate not only to the provisions of the **Australian Securities and Investments Commission Law** as specified in column 2 of Part 2 of the Third Schedule of the *Federal Court Rules* but also to the provision of the Rules specified in column 3 of the same Part of the Schedule. The paragraph prior to this amendment was confusing, in suggesting that column 3 specified provisions of the ASIC Law, which it does not.

Application for order declaring deed of composition void (Act, s.222)

[6] Order 77, subrule 53(1),

This replacement subrule declares in any application to the Court in relation to a deed, composition or a provision of the deed that the Court can not only declare that the deed, composition or the provision of the deed is void but also declare it to be not void. This new rule is in accordance with the provisions of section 222 of the *Bankruptcy Act 1966*. The old rule only related to the Court declaring the deed or composition or the provision of the deed void.