

Federal Court Amendment Rules 1999 (No. 7) 1999 No. 296

EXPLANATORY STATEMENT

Statutory Rule 1999 No. 296

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

Federal Court Amendment Rules 1999 (No. 7)

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. 7).

RULE 2 - Commencement

This rule provides that these rules commence on the date of commencement of Schedule 1 to the Human Rights Legislation Amendment Act (No. 1) 1999.

Schedule 1 includes amendments to the Human Rights and Equal Opportunity Commission Act 1986 which confer jurisdiction on the Court to deal with applications alleging unlawful discrimination under that Act.

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

Human rights proceedings

[1] Order 81

The amendment inserts a new Order 81 which sets out the rules for proceedings in the Court alleging unlawful discrimination under the Human Rights and Equal Opportunity Commission Act 1986.

Order 81 rule 1 provides that the Order may be cited as the Human Rights Rules.

Order 81 rule 2 defines "Commission" as meaning the Human Rights and Equal Opportunity Commission, and "Human Rights Act" as meaning the Human Rights and Equal Opportunity Commission Act 1986.

Order 81 rule 3 provides that, unless the contrary intention appears, an expression in the Order and in the Human Rights Act is to have the same meaning in the Order as it has in the Human Rights Act.

Order 81 subrule 4(1) provides that the Human Rights Rules apply to a proceeding in the Court. For the purposes of the Rules and the Human Rights Act, unlawful discrimination means any acts, omissions or practices that are unlawful under Part 2 of the Disability Discrimination Act 1992, Part H or HA of the Racial Discrimination Act 1975, or Part H of the Sex Discrimination Act 1984. It also includes any conduct that is an offence under any of those Acts.

Order 81 subrule 4(2) provides that the other Orders of the Federal Court Rules also apply, so far as they are relevant and not inconsistent with the Human Rights Rules, to a proceeding alleging unlawful discrimination.

Order 81 rule -5 provides that a proceeding alleging unlawful discrimination must be commenced by filing an application in accordance with Form 167, and that the application must be accompanied by a supporting affidavit.

Under Order 81 rule 6, an applicant must give the Commission a stamped copy of the application and a copy of the supporting affidavit at least 5 days before the date fixed for the directions hearing for the application. This notification of a proceeding is intended to support the provisions of the Human Rights Act which relate to the President providing a written report to the Court (section 46PR), and a special-purpose Commissioner applying to the Court for leave to appear as amicus curiae (section 46PV).

Order 81 rule 7 provides that a defence to an application must be in accordance with Form 168 and must be accompanied by a supporting affidavit.

Order 81 rule 8 provides that a special-purpose Commissioner who is given leave by the Court to assist it as amicus curiae must file and serve a notice of appearance in accordance with Order 9.

Order 81 rule 9 provides that Order 43 subrule 5(2), which requires a tutor to act by a solicitor, does not apply to a proceeding alleging unlawful discrimination.

Amendments to forms in Schedule 1 to the Court's rules

[2] Schedule 1, Form 167 and Form 168

This amendment inserts a new Form 167 which must be completed by a person making an application under the Human Rights Act alleging unlawful discrimination. It is prescribed by Order 81 rule 5.

The amendment also inserts a new Form 168, which is the defence to an application under the Human Rights Act alleging unlawful discrimination. It is prescribed by Order 81 rule 7.