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Federal Court Amendment Rules 1999 (No. 7)

Statutory Rules 1999 No. 4

296

We, Judges of the Federal Court of Australia, make the following
Rules of Court under the *Federal Court of Australia Act 1976*.

Dated 30 November 1999.

M.E.J. BLACK C.J.
J.F. GALLOP J.
B.A. BEAUMONT J.
M.R. WILCOX J.
J.E.J. SPENDER J.
P.R.A. GRAY J.
J.A. MILES J.
D.M. RYAN J.
R.S. FRENCH J.
M.C. LEE J.
H.W. OLNEY J.
J.W. von DOUSSA J.
D.G. HILL J.
M.F. O'LOUGHLIN J.
T.J. HIGGINS J.

P.C. HEEREY J.
D.P. DRUMMOND J.
R.E. COOPER J.
A.P. WHITLAM J.
C.J.S.M. CARR J.
M.F. MOORE J.
C.M. BRANSON J.
J.H. MATHEWS J.
K.E. LINDGREN J.
B.J.M. TAMBERLIN J.
R. SACKVILLE J.
S.M. KIEFEL J.
P.D. FINN J.
R.A. SUNDBERG J.
S.R. MARSHALL J.
A.M. NORTH J.
R. MERKEL J.
J.R. MANSFIELD J.
A.H. GOLDBERG J.
A.R. EMMETT J.
R.A. FINKELSTEIN J.
M.S. WEINBERG J.
J.A. DOWSETT J.
L.S. KATZ J.
P.G. HELY J.
S.C. KENNY J.
R.V. GYLES J.
Judges of the Federal
Court of Australia

W.G. SODEN
Registrar



Federal Court Amendment Rules 1999 (No. 7)¹

Statutory Rules 1999 No. 7²

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made under the

Federal Court of Australia Act 1976

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1 Name of Rules

These Rules are the *Federal Court Amendment Rules 1999 (No. 7)*.

2 Commencement

These Rules commence on the date of commencement of Schedule 1 to the *Human Rights Legislation Amendment Act (No. 1) 1999*.

3 Amendment of Federal Court Rules

Schedule 1 amends the Federal Court Rules.

Schedule 1 Amendments

(rule 3)

[1] After Order 80

insert

Order 81 Human rights proceedings

1 Citation

This Order may be cited as the Human Rights Rules.

2 Definitions for Order 81

In this Order:

Commission means the Human Rights and Equal Opportunity Commission.

Human Rights Act means the *Human Rights and Equal Opportunity Commission Act 1986*.

3 Expressions used in the Human Rights Act

Unless the contrary intention appears, an expression used in this Order and in the Human Rights Act has the same meaning in this Order as it has in the Human Rights Act.

Note See the definitions of ***affected person***, ***alleged unlawful discrimination***, ***complaint*** and ***unlawful discrimination*** in subsection 3 (1) of the Human Rights Act, and the definition of ***special-purpose Commissioner*** in subsection 46PV (3) of that Act.

4 Application of Order 81

- (1) This Order applies to a proceeding in the Court alleging unlawful discrimination.

Note Under section 46PO of the Human Rights Act, an affected person may apply to the Court for an order in relation to a complaint alleging unlawful discrimination if the complaint has been terminated by the President of the Commission.

- (2) The other Orders of these Rules apply, so far as they are relevant and not inconsistent with this Order, to a proceeding in the Court alleging unlawful discrimination.

5 Commencement of proceeding — Form 167

- (1) A proceeding alleging unlawful discrimination must be commenced by filing an application in accordance with Form 167.

Note See section 33C of the *Federal Court of Australia Act 1976* and Order 6, rule 2 in relation to representative proceedings and joinder of parties.

- (2) The application must be accompanied by an affidavit in support of the application.

6 Copy of application to be given to Commission

At least 5 days before the date fixed for the directions hearing for the application, the applicant must give the Commission:

- (a) a stamped copy of the application, showing the date, time and place of the directions hearing; and
- (b) a copy of the supporting affidavit.

7 Defence to an application — Form 168

- (1) A defence to an application must be in accordance with Form 168.
- (2) The defence must be accompanied by an affidavit in support of the grounds of defence.

Note See Order 11, rule 20 in relation to the time in which a defence to an application must be filed.

8 Appearance by special-purpose Commissioner

If the Court grants leave to a special-purpose Commissioner to assist the Court in a proceeding alleging unlawful discrimination, the special-purpose Commissioner must:

- (a) file a notice of appearance in accordance with Order 9, rule 3; and
- (b) serve a stamped copy of the notice on each party to the proceeding in accordance with Order 9, rule 5.

9 Conduct of proceeding by tutor

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

[2] Schedule 1, after Form 166*insert***Form 167 Application under the *Human Rights and Equal Opportunity Commission Act 1986* alleging unlawful discrimination**

(Order 81, rule 5)

Application alleging unlawful discrimination*Human Rights and Equal Opportunity Commission Act 1986,*
section 46PO**Details of applicant(s)**

1	Full name(s)	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms Family name: Given names: <i>Attach extra page for any additional applicants</i>
2	Home or contact address	Postcode:
3	Telephone No.	Business hours: () After hours: ()
	Fax No.	()

-
- | | | |
|---|---|--|
| 4 | Are you more than 18 years old? | <input type="checkbox"/> Yes
<input type="checkbox"/> No |
| 5 | If you are an individual, what is your first language?

Do you need an interpreter? | <i>This includes languages such as Sign and Auslan.</i>

<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, please state language or type: |
| 6 | Do you have any special requirements? | <i>Please give details of any special requirements (eg wheelchair access, hearing loop, presence of personal assistant or carer) to enable this matter to proceed in Court</i> |
-

Details of respondent(s)	
7	<p>Against whom are you bringing this application?</p>
	<p>Name of person:</p> <p>Address:</p> <p style="text-align: right;">Postcode:</p> <p>Phone: ()</p> <p>Fax: ()</p> <p>Name of organisation:</p> <p>Address:</p> <p style="text-align: right;">Postcode:</p> <p>Phone: ()</p> <p>Fax: ()</p> <p><i>Attach extra page for any additional respondents</i></p>
8	<p>What is your relationship to the person or organisation in question 7?</p> <p><input type="checkbox"/> Employee of person/organisation</p> <p><input type="checkbox"/> Former employee of person/organisation</p> <p><input type="checkbox"/> Co-employee</p> <p><input type="checkbox"/> Customer of person/organisation</p> <p><input type="checkbox"/> Other (<i>please specify</i>)</p>

Representation	
9	<p>Are you represented by a lawyer, or will you seek to be represented by someone else (eg a union official) who is not a lawyer?</p>
	<p><input type="checkbox"/> No <i>Go to question 10</i></p> <p><input type="checkbox"/> Yes</p> <p>Representative's name:</p> <p>Name of firm or organisation:</p> <p>Address:</p> <p>Postcode:</p> <p>DX:</p> <p>Phone: ()</p> <p>Fax: ()</p> <p><i>Go to question 11</i></p>
10	<p>Have you applied for legal aid?</p>
	<p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p>

Relevant legislation and affidavit	
11 Under what Act is the action you are complaining of unlawful?	<input type="checkbox"/> the <i>Disability Discrimination Act 1992</i> <input type="checkbox"/> the <i>Racial Discrimination Act 1975</i> <input type="checkbox"/> the <i>Sex Discrimination Act 1984</i> Please state all sections of the Act that are relevant to this application.
12 Affidavit	<i>You must attach an affidavit that complies with Order 14 of the Federal Court Rules stating the facts in support of this application. (The affidavit must be in accordance with Form 20 of the First Schedule to the Federal Court Rules and must be sworn before a solicitor or justice of the peace.)</i>
Remedy sought	
13 What remedy are you asking the Court for?	<input type="checkbox"/> Apology from respondent <input type="checkbox"/> Compensation <i>Please give details on an attached sheet of how much compensation you are claiming and how the amount has been calculated (eg loss of income).</i> <input type="checkbox"/> Other <i>Please give details on an attached sheet</i>

Interlocutory remedy	
14 If you are asking the Court for an interlocutory remedy, what interlocutory remedy are you asking for?	<p><i>You must complete this section if you are seeking a temporary remedy until the case can be finalised or the Court makes some other order.</i></p> <p>I am seeking by way of interlocutory relief: (specify all interlocutory relief sought)</p> <p><i>Attach an extra page if necessary</i></p>
Extension of time	
15 Do you need an extension of time?	<p><i>You must complete this section if this application is made more than 28 days after you received written notice of the termination of the complaint by the President of the Human Rights and Equal Opportunity Commission.</i></p> <p>I am seeking an extension of time to lodge this application because (give reasons).</p> <p><i>Attach an extra page if necessary</i></p>
Notices from the Court	
16 Where do you want notices from the Court sent?	<p><input type="checkbox"/> To the address in question 2</p> <p><input type="checkbox"/> To the representative in question 9</p> <p><input type="checkbox"/> Other (give details)</p>

Required documents	
17 <i>You must attach these documents</i>	<input type="checkbox"/> A copy of your original complaint to the Human Rights and Equal Opportunity Commission (if available) <input type="checkbox"/> The notice of termination of complaint given by the President of the Human Rights and Equal Opportunity Commission <input type="checkbox"/> The affidavit mentioned in item 12
Report of the President of the Commission	
18 Is a report being prepared by the President of the Human Rights and Equal Opportunity Commission?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Do not know

TO the respondent of (*insert address*):

This application has been set down for the time and place stated below. If you or your legal representative do not attend the Court at that time, the application may be dealt with and judgment may be given, or an order made, in your absence. As soon after that time as the business of the Court allows, any of the following may happen:

- (a) the application may be heard;
- (b) directions may be given for the further conduct of the proceeding;
- (c) any application for interlocutory relief may be heard.

Before any attendance at Court, you must file an appearance in the Registry.

Time and date for hearing: *(to be entered by Registry unless fixed by Court)*

Place: *(address of Court)*

Prepared and filed by:

Name: *(please print)*

Signature:

Date:

**Form 168 Defence to application under the
*Human Rights and Equal
Opportunity Commission Act 1986*
alleging unlawful discrimination**

(Order 81, rule 7)

**Defence to application alleging unlawful
discrimination**

*Human Rights and Equal Opportunity Commission Act 1986,
section 46PO*

Details of applicant(s)

1 Full name of person(s) bringing application against you	<p>Family name:</p> <p>Given names:</p> <p><i>Attach extra page for any additional applicants</i></p>
---	---

Details of respondent(s)

2 Full name of person(s) or organisation

☐ Mr ☐ Mrs ☐ Ms

Family name:

Given names:

Name of organisation:

Attach extra page for any additional respondents

3 Home or contact address

Postcode:

Telephone No.

Business hours: ()

After hours: ()

Fax No.

()

4 Who is the contact person in your organisation (if applicable)?

Family name:

Given names:

Phone: ()

Fax: ()

5 If you are an individual, what is your first language?

This includes languages such as Sign and Auslan.

Do you need an interpreter?

☐ Yes ☐ No

If yes, please state language or type:

6 Do you have any special requirements?	<i>Please give details of any special requirements (eg wheelchair access, hearing loop, presence of personal assistant or carer) to enable this matter to proceed in Court</i>
Representation	
7 Are you represented by a lawyer, or will you seek to be represented by someone else (eg a union official) who is not a lawyer?	<input type="checkbox"/> No <i>Go to question 8</i> <input type="checkbox"/> Yes Representative's name: Name of firm or organisation: Address: <div style="text-align: right;">Postcode:</div> DX: Phone: () Fax: () <i>Go to question 9</i>
8 Have you applied for legal aid?	<input type="checkbox"/> No <input type="checkbox"/> Yes
Notices from the Court	
9 Where do you want notices from the Court sent?	<input type="checkbox"/> To the address in question 3 <input type="checkbox"/> To the representative in question 7 <input type="checkbox"/> Other (<i>give details</i>)

Affidavit

10 Affidavit

You must attach an affidavit that complies with Order 14 stating the facts in support of your defence. (The affidavit must be in accordance with Form 20 of the First Schedule to the Federal Court Rules and must be sworn before a solicitor or justice of the peace.)

Prepared and filed by:

Name: *(please print)*

Signature:

Date:

Notes

1. These Rules amend 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 Nos. 43, 44, 86, 87, 186, 330, 421 and 453; 1993 No. 40, 45, 137, 225 and 290; 1994 Nos. 63, 130, 224, 279, 332 and 463; 1995 Nos. 31, 46, 239 and 449; 1996 Nos. 29 and 308; 1997 Nos. 82, 87, 143, 174, 204, 277 and 425; 1998 Nos. 224, 297 and 323; 1999 Nos. 15, 70, 94, 194, 232 and 295.

2. Notified in the *Commonwealth of Australia Gazette* on
L 1999.

3 December