

Federal Magistrates Court Amendment Rules 2002 (No. 1) 2002 No. 80

EXPLANATORY STATEMENT

STATUTORY RULES 2002 No. 80

Issued by the authority of the Federal Magistrates of the Federal Magistrates Court of Australia.

FEDERAL MAGISTRATES COURT AMENDMENT RULES 2002 (NO. 1)

AMENDMENT OF THE FEDERAL MAGISTRATES COURT RULES

Section 81 of the *Federal Magistrates Act 1999* provides that the Federal Magistrates, or a majority of them, may make Rules of Court providing for the practice and procedure to be followed in the Federal Magistrates Court.

Section 81(3) provides that Rules of Court are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

The *Federal Magistrates Court Rules 2001* came into operation on 30 July 2001. This is the first amendment to the rules since that date.

DETAILS OF AMENDMENTS

Rule 1.05

This amendment is to ensure that the general outline for Chapter 6 is not confined to proceedings under the *Administrative Decisions (Judicial Review) Act 1977* and appeals under the *Administrative Appeals Tribunal Act 1975*. This will mean that if, in the future, additional proceedings are added to Chapter 6 it will not be necessary to amend the general outline.

Rule 1.06

This amendment clarifies that, in the event of a conflict between a rule and a direction or order of the court, the direction or order of the court prevails.

Subrule 4.03

The amendment omits the reference to cross-claims in this sub-rule as cross-claims are dealt with in Part 28.

Subrule 6.08(2)

Since the commencement of the Rules the *Corporations Act 1989* has been repealed and replaced by the *Corporations Act 2001*. This minor amendment reflects this change.

Subrule 8.02(4)

This amendment adds an additional factor that the Court is to consider in deciding whether to transfer proceedings to the Family Court. In considering whether to exercise the discretion to transfer a proceeding to the Family Court, federal magistrates will need to consider, in addition

to other factors, whether the proceeding is likely to take longer than two days. The consideration of the additional factor is confined to proceedings for family law or child support.

Rule 21.06

This amendment omits rule 21.06 which is otiose/redundant as it duplicates rule 21.07.

Subdivision 21.3.1

This is a minor drafting amendment.

Subrule 21.09(2)

A drafting amendment to clarify that Order 38 of the Family Law Rules applies to new subrule 21.11(2)(a).

Rule 21.10

This amendment provides that unless the Court otherwise orders, costs awarded in bankruptcy proceedings will not be in accordance with Schedule 1. The note to the amendment refers to new Rule 29.08. This Rule provides that unless the Court otherwise orders, costs awarded in bankruptcy proceeding will be in accordance with the Federal Court Rules.

Rule 21.11

The amendments to Rule 21.11 are to clarify that if costs are taxed, a taxing officer must apply the cost scales in the Family Law Rules (in a family law or child support proceeding) or Federal Court Rules (for a general federal law proceeding).

Subdivision 21.3.2

The amendment removes Subdivision 21.3.2 which provides a mechanism to determine costs in some bankruptcy proceedings. New Rule 29.08 provides that unless the Court otherwise orders, a party entitled to costs in a proceeding under the Bankruptcy Act is entitled to costs in accordance with the Federal Court Rules.

Subrule 27.03(2)

This amendment is to correct a drafting error in the numbering of the subrule.

Rule 28.05

This minor drafting amendment is consequent upon the amendment to subrule 4.03 and clarifies that a response to a cross-claim is to be filed within 14 days of service of the cross-claim.

New Rule 29.08

This new Rule provides that unless the Court otherwise orders, costs awarded in bankruptcy proceedings will be in accordance with the Federal Court Rules and not those set out in Schedule 1 Part 3.

Schedule 2 Part 1

There are some amendments to the prescribed Application form. The changes make provision for two new application types - for proceedings commenced under the *Migration Act 1958* or the *Privacy Act 1988*. In addition, the Application has been amended to provide in the Note to Respondents that respondents have 14 days to file a response.

Schedule 2 Part 2

There were some typographical errors on the Form 4 previously prescribed. The amendments correct these errors.

Schedule 2, Part 3, Form 152

A minor amendment to Form 152 has been made as a result of the amendment to Rule 21.11.

Dictionary

This amendment alters the dictionary definition of *family law proceeding* and inserts a definition for *child support proceeding*. These amendments remove any potential confusion.

Further amendments

These further amendments are a consequence of the amendment to the dictionary definitions.