

Federal Court Amendment Rules 2004 (No. 1) 2004 No. 38

EXPLANATORY STATEMENT

Statutory Rule 2004 No. 38

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

Federal Court Amendment Rules 2004 (No. 1)

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 2004 (No. 1)*.

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

Exercise of Court's power

[1] Order 1, after rule 4

This amendment inserts a new rule 4A that provides that, unless these Rules provide otherwise, the Court may exercise a power under these Rules in a proceeding on its own initiative; or on the application of a party, or a person who has sufficient interest in the proceeding.

Proceedings wanting or in doubt

[2] Order 1, subrule 9 (1)

This amendment replaces the words 'the Court may, on application by that person' with 'the Court may'. The amendment is consequential to the insertion of Order 1 rule 4A.

Name, address etc

[3] Order 4, paragraph 4 (2) (a)

This amendment replaces the reference to 'him' with a reference to 'the solicitor'.

[4] Order 4, paragraph 4 (2) (b)

This amendment replaces Order 4 paragraph 4 (2) (b) with a new paragraph 4 (2) (b). The amendment is consequential to the insertion of Order 1 rule 4A.

Addition of parties

[5] Order 6, subrule 8 (1)

This amendment replaces the text after paragraph 8 (1) (b) with new text. The amendment is consequential to the insertion of Order 1 rule 4A.

[6] Order 6, subrule 8 (2)

This amendment replaces the reference to 'his' with a reference to 'the person's'.

Removal of parties

[7] Order 6 rule 9

This amendment replaces rule 9 with a new rule 9. The amendment is consequential to the insertion of Order 1 rule 4A.

Death, transmission etc

[8] Order 6 subrule 10 (3)

The subrule is omitted. The amendment is consequential to the insertion of Order 1 rule 4A.

Failure to proceed after death of party

[9] Order 6, paragraph 12 (1) (a)

This amendment replaces the reference to 'his' with a reference to 'the party's'.

[10] Order 6, subrule 12 (1)

This amendment replaces the words 'the Court may, on application by a party or by a person to whom liability on the cause of action survives on the death,' with the words 'the Court may'. The amendment is consequential to the insertion of Order 1 rule 4A.

Representation: concurrent interests

[11] Order 6, subrule 13 (2)

This amendment replaces the words 'the Court, on the application of the applicant,' with 'the Court'. The amendment is consequential to the insertion of Order 1 rule 4A.

Deceased person

[12] Order 6, subrule 15 (1)

This amendment replaces the reference to 'he' with a reference to 'the deceased person'.

[13] Order 6, subrule 15 (1)

This amendment replaces the words 'the Court may, on the application of any party:' with 'the Court may:'. The amendment is consequential to the insertion of Order 1 rule 4A.

Interveners

[14] Order 6, subrule 17 (1)

The words 'on its own motion or on the application of a person' are omitted. This amendment is consequential to the insertion of Order 1 rule 4A.

Setting aside original process etc

[15] Order 9, rule 7

This amendment substitutes rule 7 with a new rule 7. The amendment is consequential to the insertion of Order 1 rule 4A.

Procedure on default

[16] Order 10, subrule 7 (1) except the note

This amendment substitutes subrule 7 (1) with a new subrule 7 (1). The amendment is consequential to the insertion of Order 1 rule 4A.

Private recording of proceedings

[17] Order 10, after rule 8

This amendment inserts a new rule 9 to allow the Court to regulate the use of recording and communication devices during a proceeding.

Subrule 9 (1) contains definitions of 'communication device' and 'recording device' for the purposes of the rule.

Subrule 9 (2) provides that, except with the leave of the Court or a Judge, a person must not use a communication device or recording device in a place where a hearing is taking place. It will apply where the person is participating in a hearing by telephone or video link.

Subrule 9 (3) provides that an application for leave under subrule (2) may be made to the Court or a Judge at any time before the date of the hearing in which the communication device or recording device is sought to be used.

Paragraph 9 (4) (a) provides that the Court or a Judge may grant leave to use a communication device or recording device subject to any conditions that the Court or a Judge considers appropriate. Paragraph 9 (4) (b) provides that the Court or a Judge may, either generally or in relation to a particular part of the hearing:

- withdraw such leave; or
- impose new conditions or vary or remove any existing conditions to which leave is subject.

Subrule 9 (5) sets out the matters to which the Court or a Judge may have regard in considering whether to grant leave under subrule (2). These are:

(a) whether the person seeking leave has a reasonable need to use the device in relation to the hearing;

(b) if a direction has been given excluding one or more witnesses from the Court, the risk that the device could be used for the purpose of briefing a witness out of court;

(c) any possibility that use of the device would disturb the hearing or distract or cause concern to a witness or other participant in the hearing.

Paragraph 9 (5) (a) will allow the Court or a Judge to, among other things, have regard to whether a media organisation wishing to provide media coverage of a hearing has a reasonable need to use a recording device or a communication device for that purpose.

Subrule 9 (6) provides that the rule does not prevent:

- the making of, or the use of a recording device for the purpose of making, an official transcript of a hearing; or
- the use of a communication device for the purpose of allowing a person to appear before, or make a submission to, the Court or a Judge.

Subrule 9 (7) provides that the rule does not limit the power of the Court to punish for contempt.

Conduct of proceedings

[18] Order 10A, subrule 7 (1)

This amendment replaces the word 'shall' with 'must'.

[19] Order 10A, paragraph 7 (2) (b)

The words 'of its own motion' are omitted. This amendment is consequential to the insertion of Order 1 rule 4A.

Procedure on default

[20] Order 23, subrule 23 (1)

This amendment substitutes subrule 23 (1) with a new subrule 23 (1). The amendment is consequential to the insertion of Order 1 rule 4A.

Amendments - general

[21] Order 13, subrule 2 (1)

The words 'on application by any party or of its own motion,' are omitted. This amendment is consequential to the insertion of Order 1 rule 4A.

Disallowance of amendment

[22] Order 13, subrules 5 (1), (2) and (3)

This amendment substitutes subrules 5 (1), (2) and (3) with new subrules 5 (1), (2) and (3). The amendments are consequential to the insertion of Order 1 rule 4A.

Affidavits - irregularity

[23] Order 14, rules 5 and 6

This amendment substitutes rules 5 and 6 with new rules 5 and 6 and inserts a new rule 5A.

Rule 5 provides that, unless the Court otherwise orders, an affidavit may be filed despite any irregularity in form.

Rule 5A establishes a new procedure whereby a legal practitioner must certify that an affidavit complies with Order 14 rule 2 (which relates to the form of an affidavit).

Subrule 5A (1) provides that an affidavit which is prepared by a party's legal representative must, when filed, be accompanied by a certificate ('a compliance certificate') in accordance with new Form 20A completed by the legal representative.

Subrule 5A (2) provides that a compliance certificate may be endorsed on the affidavit on or immediately after the last page of the affidavit.

Subrule 5A (3) provides that an affidavit that is not accompanied by a compliance certificate must not be accepted for filing without the leave of the Court or a Registrar.

Rule 6 provides that an affidavit must not be used in a proceeding without the leave of the Court if:

- it has not been filed; or
- it has been filed but is irregular in form; or
- it has been accepted for filing under subrule 5A (3).

Limitation of discovery on notice

[24] Order 15, subrule 3 (2)

This amendment replaces the word 'shall, on application,' with 'may'. The amendment is consequential to the insertion of Order 1 rule 4A.

Discovery - procedure on default

[25] Order 15, subrule 16 (1)

This amendment substitutes subrule 16 (1) with a new subrule 16 (1). The amendment is consequential to the insertion of Order 1 rule 4A.

Discovery from non-party

[26] Order 15A, rule 8

This amendment replaces the words 'On the application of any party to a proceeding the Court' with 'The Court'. The amendment is consequential to the insertion of Order 1 rule 4A.

Preliminary discovery and discovery from non-party - costs

[27] Order 15A, subrule 11 (1)

This amendment replaces the words 'On an application under this Order the Court' with 'The Court'. The amendment is consequential to the insertion of Order 1 rule 4A.

Power to order inspection, preservation etc of property

[28] Order 15A, rule 12

This amendment replaces the words 'On an application under this Order the Court' with 'The Court'. The amendment is consequential to the insertion of Order 1 rule 4A.

[29] Order 15A, rule 12

This amendment corrects a problem with the structure of the existing paragraph 12 (b).

Limitation of interrogatories by notice

[30] Order 16, subrule 3 (2)

This amendment replaces the words 'the Court may, on application by him,' with 'the Court may'. The amendment is consequential to the insertion of Order 1 rule 4A.

[31] Order 16, subrule 3 (3)

This amendment replaces the words 'shall, on application,' with 'may'. The amendment is consequential to the insertion of Order 1 rule 4A.

Interrogatories - Procedure on default

[32] Order 16, subrule 9 (1)

This amendment substitutes subrule 9 (1) with a new subrule 9 (1). The amendment is consequential to the insertion of Order 1 rule 4A.

Judgment on admissions

[33] Order 18, subrule 4 (1)

This amendment substitutes subrule 4 (1) with a new subrule 4 (1). The amendment is consequential to the insertion of Order 1 rule 4A.

Summary judgment

[34] Order 20, subrule 1 (1)

This amendment replaces the text after paragraph 1 (1) (b) with new text. The amendment is consequential to the insertion of Order 1 rule 4A.

Offer of compromise and payment into court - interpretation

[35] Order 23, rule 1, definition of *proceeding*

This amendment amends the definition of *proceeding* for the purposes of Order 23 to make it clear that the Order does not apply to an interlocutory application that is not capable of finalising the proceeding.

Failure to comply with accepted offer

[36] Order 23, subrule 9 (1)

This amendment substitutes subrule 9 (1) with a new subrule 9 (1). The amendment is consequential to the insertion of Order 1 rule 4A.

Costs and offers of compromise

[37] Order 23, subrule 11 (5)

This amendment replaces paragraphs 11 (5) (c) and (d) with new paragraphs 11 (5) (c) and (d).

This amendment means that, if an offer is made by a respondent and not accepted by the applicant, and the applicant obtains judgment on the claim to which the offer relates not more favourable than the terms of the offer, then unless the Court otherwise orders:

- pursuant to paragraph 5 (c), the applicant is entitled to an order that the respondent pay the applicant's costs in respect of the claim incurred up to 11.00 am on the day after the day when the offer is made, taxed on a party and party basis; and
- pursuant to paragraph 5 (d), the respondent is entitled to an order that the applicant pay the respondent's costs in respect of the claim incurred after that time, taxed on an indemnity basis.

[38] Order 23, subrule 11 (6)

Subrule 11 (6) is omitted. This amendment is consequential to the amendment of Order 23, subrule 11 (5).

Evidence - Objection

[39] Order 24, rule 7

This amendment substitutes rule 7 with a new rule 7. The amendment is consequential to the insertion of Order 1 rule 4A.

Default of witness

[40] Order 24, subrule 11 (1)

This amendment replaces the reference to 'he refuses' with a reference to 'the person refuses'.

[41] Order 24, subrule 11 (1)

This amendment replaces the words 'the examiner shall,' with the words 'the examiner must,'.

[42] Order 24, subrule 11 (2)

This amendment replaces the text before paragraph 11 (2) (a) with new text. The amendment is consequential to the insertion of Order 1 rule 4A.

[43] Order 24, paragraph 11 (2) (b)

This amendment replaces the reference to 'his' with a reference to 'the person's'.

Account on death

[44] Order 26, subrule 8 (1)

The words 'on motion in the proceeding,' are omitted. This amendment is consequential to the insertion of Order 1 rule 4A.

[45] Order 26, subrule 8 (2)

This amendment replaces the words 'the motion' with 'the proposed order'. The amendment is consequential to the amendment to Order 26 subrule 8 (1) in item [44] above.

[46] Order 26, subrule 8 (3)

This amendment replaces the words 'a motion' with 'a proposed order'. The amendment is consequential to the amendment to Order 26 subrule 8 (1) in item [44] above.

Request to fix date for trial

[47] Order 30, subrule 6 (2)

This amendment replaces the words 'On the application of a party or of its own motion, the Court' with 'The Court'. The amendment is consequential to the insertion of Order 1 rule 4A.

Absence of party

[48] Order 32, subrule 2 (2)

This amendment replaces the words 'the Court, on motion by that party,' with 'the Court'. The amendment is consequential to the insertion of Order 1 rule 4A.

Parties in lawful custody

[49] Order 33, subrule 15 (1)

The words 'on the request of that party, or of any other party, or of its own motion' are omitted. This amendment is consequential to the insertion of Order 1 rule 4A.

Form of expert report

[50] Order 33, after rule 19

This amendment inserts a new rule 20 that prescribes the form of an expert report to be provided to the Court.

Subrule 20 (1) defines 'expert' and 'expert report' for the purposes of the rule.

Subrule 20 (2) provides that the body of an expert report must be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct part of the subject.

Subrule 20 (3) provides that each page of an expert report, including any annexure, must be numbered legibly and distinctively, beginning on the first page of the report with the numeral '1'.

Subrule 20 (4) provides that each annexure to an expert report must be identified sequentially on the first page of each annexure by a letter of the alphabet, beginning with the letter 'A' for the first annexure.

Subrule 20 (5) provides that the full name of the author of the expert report and the date on which the report was prepared must appear on the first visible page of the report (being the first page, cover page or front cover page, as the case may be).

Subrule 20 (6) provides that non-compliance with rule 20 does not affect the admissibility of an expert report.

Appointment of court expert

[51] Order 34, subrule 2 (1)

This amendment replaces the text before paragraph 2 (1) (a) with new text. The amendment is consequential to the insertion of Order 1 rule 4A.

[52] Order 34, paragraph 2 (1) (b)

This amendment replaces the reference to 'his inquiry' with a reference to 'the inquiry'.

Remuneration of expert

[53] Order 34, subrule 5 (1)

This amendment replaces subrule 5 (1) with a new subrule 5 (1). The effect of the amendment is to replace each reference to 'his' with a reference to 'the expert's', and each reference to 'he' with a reference to 'the expert'.

[54] Order 34, subrule 5 (3)

This amendment substitutes subrule 5 (3) with a new subrule 5 (3). The amendment is consequential to the insertion of Order 1 rule 4A.

Evidence by expert witnesses

[55] Order 34A, subrule 3 (2)

This amendment replaces the text before paragraph 3 (2) (a) with new text. The amendment is consequential to the insertion of Order 1 rule 4A.

Order for attendance

[56] Order 37, subrule 1 (1)

This amendment replaces the words 'the Court may, on application by a party or of its own motion:' with 'the Court may:'. The amendment is consequential to the insertion of Order 1 rule 4A.

[57] Order 37, paragraph 1 (1) (e)

This amendment replaces the reference to 'his detention in custody' with a reference to 'the detention in custody of the person in default'.

Account: summary order

[58] Order 39, subrule 1 (1)

This amendment replaces the words 'the Court may, on application by that party at any stage of the proceedings:' with 'the Court may, at any stage of the proceeding:'. The amendment is consequential to the insertion of Order 1 rule 4A.

[59] Order 39, paragraph 1 (1) (b)

This amendment replaces the reference to 'him.' with a reference to 'the party.'.

[60] Order 39, paragraph 1 (2) (a)

This amendment replaces the reference to 'he' with a reference to 'the respondent'.

Account or inquiry at any stage

[61] Order 39, rule 2

This amendment replaces the words 'The Court may, on application by a party at any stage of proceedings:' with 'The Court may, at any stage of a proceeding,'.

The amendment is consequential to the insertion of Order 1 rule 4A.

Appointment of tutor by the court

[62] Order 43, subrule 2 (1)

This amendment substitutes subrule 2 (1) with a new subrule 2 (1). The amendment is consequential to the insertion of Order 1 rule 4A.

Removal of tutor

[63] Order 43, subrule 3 (1)

This amendment substitutes subrule 3 (1) with a new subrule 3 (1). The amendment is consequential to the insertion of Order 1 rule 4A.

[64] Order 43, subrule 3 (2)

This amendment replaces the reference to 'he is tutor.' with a reference to 'the tutor was appointed.'.

Interpleader - interpretation

[65] Order 44, rule 1, after definition of *property in dispute*

This amendment inserts a definition of 'stakeholder' for the purposes of the Order.

Interpleader - case for relief

[66] Order 44, paragraph 2 (b)

This amendment replaces the reference to 'he' with a reference to 'the person'.

[67] Order 44, rule 2

This amendment replaces the text after paragraph 2 (b) with new text. The amendment is consequential to the insertion of Order 1 rule 4A.

Sheriff - security

[68] Order 47, paragraph 5 (1) (a)

This amendment replaces the reference to 'him' with a reference to 'the Sheriff'.

[69] Order 47, paragraph 5 (1) (a)

This amendment replaces the reference to 'his' with a reference to 'the Sheriff's'.

[70] Order 47, subrule 5 (2)

This amendment replaces the words 'the Court, on motion by the party,' with 'the Court'. The amendment is consequential to the insertion of Order 1 rule 4A.

[71] Order 47, subrule 5 (4)

This amendment replaces the words 'shall repay the excess to the party depositing the money or to his solicitor.' with 'must repay the excess to the party depositing the money or to the party's solicitor.'.

Sheriff - taxation

[72] Order 47, subrule 8 (1)

This amendment replaces the words 'the Court may, on motion by a person interested,' with 'the Court may'. The amendment is consequential to the insertion of Order 1 rule 4A.

Appeals - interveners

[73] Order 52, subrule 14AA (1)

This amendment replaces the words 'The Court, at any stage of an appeal, on its own motion or on the application of a person,' with 'The Court'. The amendment is consequential to the insertion of Order 1 rule 4A.

Appeals - directions

[74] Order 52, subrule 31 (1)

This amendment substitutes subrule 3 (1) with a new subrule 3 (1). The amendment is consequential to the insertion of Order 1 rule 4A.

[75] Order 52, subrule 31 (2)

This amendment replaces the word 'shall' with 'must'.

Appeals - time; want of prosecution

[76] Order 52, subrule 38 (2)

This amendment substitutes subrule 38 (2) with a new subrule 38 (2). The amendment is consequential to the insertion of Order 1 rule 4A.

Appeals - absence of party

[77] Order 52, subrule 38A (2)

This amendment replaces the words 'the Court may, on motion by the party against whom the order is made:' with 'the Court may:'. The amendment is consequential to the insertion of Order 1 rule 4A.

Appeals - order for production of prisoner

[78] Order 52, subrule 40 (1)

This amendment replaces the words 'the Court or a Judge may, at the request of a party or on its, his or her own initiative,' with 'the Court or a Judge may'. The amendment is consequential to the insertion of Order 1 rule 4A.

Taxation appeals - dismissal of appeal for want of prosecution

[79] Order 52A, subrule 14 (2)

This amendment substitutes subrule 14 (2) with a new subrule 14 (2). The amendment is consequential to the insertion of Order 1 rule 4A.

Taxation appeals - commencement

[80] Order 52B, subparagraph 4 (3) (b) (ii)

[81] Order 52B, paragraph 4 (3) (c)

This amendment omits paragraph 4 (3) (c) which required that an appeal against an appealable objection decision under the *Taxation Administration Act 1953* be filed in the Registry of the Court in the State or Territory in which the Taxation Office that issued the notice of the decision is located.

Taxation appeals - time: want of prosecution

[82] Order 53, subrule 20 (2)

This amendment substitutes subrule 20 (2) with a new subrule 20 (2). The amendment is consequential to the insertion of Order 1 rule 4A.

Form and filing of intellectual property appeals

[83] Order 58, subrule 4 (2)

This amendment replaces the words 'the Court, on application,' with 'the Court'.

The amendment is consequential to the insertion of Order 1 rule 4A.

Disbursements in solicitors' bills

[84] Order 62, rule 20

This amendment gives a taxing officer power to allow a disbursement which has not been paid at the time of the taxation, such as where services are provided under a conditional fee agreement.

Subrule 20 (1) provides that, subject to subrule 20 (2), a disbursement must not be allowed if the disbursement has not been paid before the delivery of the bill of costs.

Subrule 20 (2) provides that if a bill expressly states that a disbursement was not paid before the bill was delivered, and the bill sets out the unpaid items of disbursement under a separate heading in the bill, the disbursement may be allowed by the taxing officer if:

- the disbursement:
 - is paid before certificate of taxation is given; and
 - is paid in discharge of an antecedent liability of the solicitor, including counsel's fees, properly incurred on behalf of the client; or
- the solicitor provides an unconditional undertaking to the Court to pay the unpaid disbursement from any costs recovered.

Bill of costs

[85] Order 62, subrule 40 (2)

This amendment omits the words 'adding machine or computer slips or working papers together with'.

Appointment to tax bill

[86] Order 62, subrule 41 (6) and (7)

Order 62 rule 41 sets out the process for taxing a bill of costs.

Subrule 41 (1) provides that, if a bill of costs is filed, the taxing officer must appoint a time to tax the bill and endorse the bill with the date and time of the appointment. The party who filed the bill must serve a copy of the bill on each other party to the taxation at least 7 days before the date appointed for taxation in accordance with subrule 41 (2).

Under subrule 41 (3), a party on whom a bill is served may by notice object to any item in the bill. Subrule 41 (4) provides that the notice shall list each item or part thereof in the bill which is objected to, and shall also state shortly but specifically the nature and grounds of objection to each item or part objected to and the amount which it is contended should be taxed off. Subrule 41 (5) provides that the notice shall be filed and served on the party in whose favour the bill is to be taxed and on any other interested party not less than 7 days before the day appointed for taxing the bill.

This amendment replaces subrules 41 (6) and (7) with new subrules 41 (6), (7), (8) and (9).

The new subrule 41 (6) provides that a party on whom a notice of objection is served under subrule 41 (5) must prepare a written statement of response to each item or part of an item of the bill objected to, stating briefly, but specifically, the basis on which it is claimed the item or part is allowable and the reason the objection cannot be sustained, including references to any authorities relied on.

The new subrule 41 (7) provides that oral submissions may be made at the taxation conference:

- subject to the discretion of the taxing officer; and

- only for the purpose of explaining or clarifying an objection set out in a notice under subrule 41 (3) or a response to an objection set out in a statement under subrule (6).

Subrule 41 (8) provides that, subject to the discretion of the taxing officer to be exercised in exceptional circumstances, on taxation of the bill:

- no amount is to be taxed off, nor any ground of objection to an item or part of an item of a bill allowed, unless each amount, ground, item or part, is specifically set out in a notice under subrule 41 (3); and
- no amount is to be allowed in respect of an item or part of an item of a bill which is objected to in a notice under subrule 41 (3) if no response to the objection has been made under subrule 41 (6).

Subrule 41 (9) provides that, subject to subrule 46 (4A), the taxing officer has a discretion:

- to tax the costs of a notice under subrule 41 (3), and of any other objections, and:

add them, or a part of them, to; or

deduct them, or a part of them, from;

any sum payable by or to a party to the taxation; or

- to fix a lump sum in respect of the costs of the notice or other objection and add it to, or deduct it from, any sum payable by or to a party to the taxation.

Objection to the decision of taxing officer

[87] Order 62, subrule 42 (5)

This amendment replaces the word 'objection.' with the words 'objection, including references to any authorities relied on.'. This amendment is consequential to the amendment to Order 62 subrule 41 (6) as set out in item [86] above.

Review

[88] Order 62, subrule 44 (1)

This amendment substitutes subrule 44 (1) with a new subrule 44 (1). The amendment is consequential to the insertion of Order 1 rule 4A.

[89] Order 62, subrule 44 (3)

This amendment substitutes subrule 44 (3) with a new subrule 44 (3). The amendment is consequential to the insertion of Order 1 rule 4A.

Power to order maximum costs

[90] Order 62A, rule 1

This amendment replaces rule 1 with a new rule 1. The amendment is consequential to the insertion of Order 1 rule 4A.

Transfer to the Family Court

[91] Order 66, rules 3 and 4

This amendment replaces rules 3 and 4 with new rules 3 and 4. The amendments are consequential to the insertion of Order 1 rule 4A.

Trade practices - non-compliance with subpoena

[92] Order 69, subrule 9 (1)

The words 'either on the application of a party or on its own motion,' are omitted. This amendment is consequential to the insertion of Order 1 rule 4A.

Document in New Zealand proceeding filed in Australian registry

[93] Order 69, rule 17

This amendment replaces rule 17 with a new rule 17. The amendment is consequential to the insertion of Order 1 rule 4A.

Bankruptcy - leave to be heard

[94] Order 77, subrule 9 (5)

[95] Order 77, subrule 9 (6)

Subrule 9 (5) is omitted and subrule 9 (6) is renumbered as subrule 9 (5). These amendments are consequential to the insertion of Order 1 rule 4A.

Appeals from decisions or determinations of the National Native Title Tribunal - appeal books

[96] Order 78, rule 27A

The words 'on the application of a party to the proceeding or on its own motion,' are omitted. This amendment is consequential to the insertion of Order 1 rule 4A.

Native title proceedings - Adjournments for the purpose of an agreement between the parties

[97] Order 78, subrule 46 (1)

The words 'on its own initiative or at the request of a party,' are omitted. This amendment is consequential to the insertion of Order 1 rule 4A.

[98] Order 78, subrule 46 (3)

This amendment replaces subrule 46 (3) with a new subrule 46 (3). The amendment is consequential to the insertion of Order 1 rule 4A.

Native title proceedings - Agreements regarding the practical outcome of a native title determination

[99] Order 78, rule 47

This amendment replaces the words 'the Court may, at the request of a party or on its own initiative,' with 'the Court may'. The amendment is consequential to the insertion of Order 1 rule 4A.

Amendments to the First Schedule

[100] Schedule 1, after Form 20

This amendment inserts a new Form 20A, which is the certificate prescribed by Order 14 rule 5A.

[101] Schedule 1, Form 150

[102] Schedule 1, Form 150

This amendment inserts a new item 5 in Form 150 (which is the Creditor's Petition prescribed by Order 77 subrule 16 (1)). The new item invites the applicant creditor to provide the following information, to the extent it is known to the applicant creditor, for use by the Insolvency and Trustee Service Australia:

- any alias used by the respondent debtor;
- the date of birth of the respondent debtor;
- the business name of the respondent debtor;
- the business address of the respondent debtor.

Form 150 is also amended by replacing the words 'Version 1' at the end of the Form with the words 'Version 2'. This is intended to help identify the currency of the Form.

[103] Schedule 1, Form 151, paragraph 2

[104] Schedule 1, Form 151

Form 151, which is the Summons to attend examination prescribed by Order 77 subrules 20 (5), 29 (2) and 36 (2), is amended by inserting a new paragraph 1A to make it clear that a fresh summons is not required to compel the attendance of an examinee at a resumed examination.

Form 151 is also amended by replacing the words 'Version 1' at the end of the Form with the words 'Version 2'. This is intended to help identify the currency of the Form.

Amendments to the Second Schedule

[105] Schedule 2, item 41

Item 41 is to amended to make it clear that, where an allowance is appropriate, the allowance for general care and conduct is calculated as a percentage of the total amount of professional costs.

Amendments to the Third Schedule

[106] Schedule 3, item 12

Item 12 is omitted consequential to the repeal of section 139ZU of the *Bankruptcy Act 1966* by the *Bankruptcy Legislation Amendment Act 2002*.