



# Federal Court Amendment Rules 2010 (No. 2)<sup>1</sup>

**Select Legislative Instrument 2010 No. 338**

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

Dated 20 December 2010

P.A. KEANE CJ  
P.R.A. GRAY J  
D.M. RYAN J  
T.J. HIGGINS J  
M.F. MOORE J  
S.R. MARSHALL J  
A.M. NORTH J  
J.R. MANSFIELD J  
A.R. EMMETT J  
R.A. FINKELSTEIN J  
J.A. DOWSETT J  
S.C. KENNY J  
M.A. STONE J  
P.M. JACOBSON J  
B.T. LANDER J  
A.N. SIOPIS J

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A.P. GREENWOOD J  
S.D. RARES J  
B. COLLIER J  
D.A. COWDROY J  
A.J. BESANKO J  
C.N. JESSUP J  
R.R.S. TRACEY J  
J.E. MIDDLETON J  
J. GILMOUR J  
M.M. GORDON J  
J.A. LOGAN J  
G.A. FLICK J  
N.W. McKERRACHER J  
J.E. REEVES J  
N. PERRAM J  
L.G. FOSTER J  
M.L. BARKER J  
J.V. NICHOLAS J  
M. BROMBERG J  
J. DODDS-STREETON J  
J.A. KATZMANN J

Judges of the Federal  
Court of Australia

W.G. SODEN  
Registrar

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**1 Name of Rules**

These Rules are the *Federal Court Amendment Rules 2010* (No. 2).

**2 Commencement**

These Rules commence on 1 January 2011.

**3 Amendment of Federal Court Rules**

Schedule 1 amends the Federal Court Rules.

**Schedule 1 Amendments**

(rule 3)

**[1] Order 62, rule 9, heading**

*substitute*

**9 Liability of lawyer**

**[2] Order 62, paragraph 9 (4) (a)**

*omit*

legal practitioner's

*insert*

lawyer's

**[3] Order 78, subrule 16 (1)**

*substitute*

(1) A reference to the Court of the following matters must be in the form of a special case:

- (a) a question of fact or law referred under subsection 94H (1) of the Native Title Act by a person conducting a mediation (a *mediator*);

- (b) a question of law referred under subsection 145 (1) of the Native Title Act by the NNTT.

**[4] Order 78, rules 17 to 19**

*substitute*

**17 Special case to be prepared — referral by mediator**

For a reference under subsection 94H (1) of the Native Title Act, unless the Court otherwise directs, the special case must be:

- (a) settled by the mediator; and
- (b) transmitted, with 4 additional copies, by the mediator to the Registrar.

**17A Special case to be prepared — referral by NNTT**

For a reference under subsection 145 (1) of the Native Title Act, unless the Court otherwise directs, the special case must be:

- (a) settled by the presiding member of the NNTT; and
- (b) transmitted, with 4 additional copies, by the NNTT to the Registrar.

**18 Setting down for hearing — referral by mediator**

For a reference under subsection 94H (1) of the Native Title Act, the Registrar must:

- (a) set down the proceeding for a directions hearing; and
- (b) notify the mediator, and each party to the proceedings, of the date for the directions hearing.

**18A Setting down for hearing — referral by NNTT**

For a reference under subsection 145 (1) of the Native Title Act, the Registrar must:

- (a) set down the proceeding for a directions hearing; and
- (b) notify the NNTT, and each party to the proceedings, of the date for the directions hearing.

**19 Party having carriage of proceeding — referral by mediator**

For a reference under subsection 94H (1) of the Native Title Act, the party having carriage of the proceeding is:

- (a) if the question is referred by the mediator at the request of a party — that party; and
- (b) if the question is referred by the mediator of the mediator's own motion — the party appointed by the mediator to have carriage of the proceeding.

**19A Party having carriage of proceeding — referral by NNTT**

For a reference under subsection 145 (1) of the Native Title Act, the party having carriage of the proceeding is:

- (a) if the question is referred by the NNTT at the request of a party — that party; and
- (b) if the question is referred by the NNTT of its own motion — the party appointed by the NNTT to have carriage of the proceeding.

**[5] Order 78, Division 3A, heading**  
*substitute*

**Division 3A Referral to Court of questions under section 94J of Native Title Act**

**[6] Order 78, subrule 20A (1)**

*omit*

136DA

*insert*

94J

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**[7] Order 78, paragraph 20B (a)**

*omit*

relevant presiding member of the NNTT;

*insert*

person conducting the mediation (the *mediator*);

**[8] Order 78, paragraph 20B (b)**

*omit*

NNTT

*insert*

mediator

**[9] Order 78, subparagraph 20C (b) (i)**

*omit*

NNTT;

*insert*

mediator;

**[10] Order 78, Division 4, heading, including the note**

*substitute*

**Division 4                      Mediation**

*Note* See also Division 4 of Part 4 of the Native Title Act.

**[11] Order 78, rule 21**

*omit*

**[12] Order 78, subrule 21A (1), except the note**

*omit*

136GA (4)

*insert*

94P (4)

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**[13] Order 78, subrule 21A (1), note**

*substitute*

*Note* If a person conducting a mediation considers that a party, or the party's representative, did not act or is not acting in good faith in relation to the conduct of the mediation, the presiding member may report the failure to the Court — see subsections 94P (4) and (5) of the Native Title Act.

**[14] Order 78, subrule 21A (3)**

*omit*

presiding member of the NNTT

*insert*

mediator

**[15] Order 80, rule 4, heading**

*substitute*

**4 Referral to a lawyer**

**[16] Form 15B, heading**

*substitute*

**Form 15B Certificate of lawyer**

(Order 11, rule 1B)

**[17] Form 15B**

*omit*

(name of legal practitioner)

*insert*

(name of lawyer)

**[18] Schedule 2**

<i>Item</i>	<i>omit each mention of</i>	<i>insert</i>
1	254	262
2	114	118
3	110	113
4	153	158
5	139	143
8	140	144
9	114	118
10	91	94
11	114	118
12	97	100
13	77	79
14	11	12
19	91	94
20	14	15
23	62	64
24	77	79
26	76	78
28	166	171
28	41	42
30	41	42
31	74	76
31	15	16
32	68	70
33	13	14
34	42	43
34	13	14
35	114	118



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<i>Item</i>	<i>omit each mention of</i>	<i>insert</i>
35	165	170
36	330	340
36	1 481	1 530
37	268	276
37	1 217	1 242
37	114	118
37	496	511
37	61	63
37	264	272
38	76	78
39	165	170
39	41	43
40	376	388
43A	3 471	3 579
43B	2 225	2 294
43C	1 917	1 976
43D	5 670	5 846
43E	2 001	2 063
43F	1 614	1 664
43G	3 767	3 885
43H	5 920	6 104
44	196 to 970	202 to 1 000
45	114 to 182	118 to 188

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### Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.