

FEDERAL COURT AMENDMENT (2025 MEASURES NO. 1) RULES 2025

EXPLANATORY STATEMENT

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

Section 59(1) of the *Federal Court of Australia Act 1976* (Cth) ('the Act') provides that the Judges of the Court or a majority of them may make Rules of Court, not inconsistent with the Act, making provision for or in relation to the practice and procedure to be followed in the Court (including the practice and procedure to be followed in Registries of the Court) and for or in relation to all matters and things incidental to any such practice or procedure, or necessary or convenient to be prescribed for the conduct of any business of the Court.

The Judges of the Court or a majority of them have previously made the *Federal Court Rules 2011*. These amending rules, the *Federal Court Amendment (2025 Measures No.1) Rules 2025* ('the amendments'), have now been made by a majority of the Judges of the Court to amend those Rules.

Subsection 59(4) of the Act provides that the *Legislation Act 2003* (Cth) (other than sections 8, 9, 10, 16 and Part 4 of Chapter 3) applies to rules of court. In this application, a reference to a legislative instrument in the *Legislation Act 2003* (Cth) is to be read as a reference to a rule of court and a reference to a rule-maker as a reference to the Chief Justice acting on behalf of the Judges of the Court, subject to such further modification or adaptations as are provided for in regulations made under section 59A of the Act.

The Court holds the view that a statement of compatibility with human rights is not required to be included in an explanatory statement to rules of court, as whilst the Act applies the *Legislation Act 2003* (Cth) to rules of court, it does not expressly translate a reference to a legislative instrument in legislation other than the *Legislation Act 2003* (Cth) into a reference to rules of court, such as in the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

The Court notes that different views are held as to whether a statement of compatibility with human rights is formally required to be included in an explanatory statement to rules of court. However, for the avoidance of doubt, a statement of compatibility with human rights is included below.

Statement of Compatibility with Human Rights

Federal Court Amendment (2025 Measures No.1) Rules 2025

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

Human rights implications

This legislative instrument engages the following applicable human rights or freedoms:

- ***Equality before courts and tribunals:*** Article 14 of the *International Covenant on Civil and Political Rights* provides for equality of all persons before courts and tribunals, and the right to a fair and public hearing before a competent, independent and impartial decision maker established by law.

These amendments aid in achieving the right to a fair and timely hearing in several ways. The amendments ensure an effective application process in relation to the inspection of documents. They clarify the provisions with respect to return dates for attending hearings, directions and filing of material, as well as service of originating documents. Further, they also clarify the time for filing of a notice of address for service, and discontinuance. They refine the rules with respect to varying or setting aside a judgment or order before it has been entered, and the entry of an order.

Otherwise, as these amendments are minor and generally procedural only, they do not have any significant effect on human rights or freedoms.

Conclusion

This legislative instrument is therefore compatible with human rights as it does not raise any human rights issues.

1. General Outline

Schedule 1 – Amendments

Schedule 1 contains amendments to the *Federal Court Rules 2011*, including the following:

- Amending rule 2.32(2) with respect to inspection of documents.
- Amending rules 5.01, 5.02, subrule 5.03(1), subrule 5.04(2) and rule 5.06 to clarify return dates, filing of material and directions.
- Amending rule 8.06 with respect to the timing of service of originating documents.
- Amending rule 10.43C(1)(a) with respect to when an originating application may be served outside Australia without leave.
- Amending rule 11.06 to clarify when a notice of address for service must be filed.
- Amending subparagraph 26.12(2)(a)(i) with respect to the timing within which a party may discontinue a proceeding without leave of the Court or the other party's consent.
- Amending rule 39.04 by adding subrules 39.04(2), (3), (4) and (5) which extends the provision with respect to varying or setting aside a judgment or order before it has been entered.
- Amending subrule 39.32(3) by removing the reference to a specific number of days after authentication before which a judgment or order is taken to be entered.
- Adding Division 43.1 Transitional provisions relating to the *Federal Court Amendment (2025 Measures No. 1) Rules 2025*.
- Amending Part 3.7 of Schedule 2 by repealing items 104 and 112.
- Amending Part 3.7 of Schedule 2 by omitting rule 39.04 and substituting with subrule 39.04(1).
- Repealing Item 1A of Schedule 3 and substituting with a new item 1A to reference the updated legislation.
- Amending Schedule 3 to provide for an increase in the costs allowable for work done and services performed consistent with the recommendations of the 17th Report of the Joint Cost Advisory Committee.

2. Consultation

The *Legislation Act 2003* (Cth) provides for certain consultation obligations when rules are made.

The Court consults regularly with the legal profession, both nationally and locally, about practice and procedure generally and in its different practice areas.

Internally, the Court consulted with judges, registrars and staff.

External consultation was undertaken with representatives of the media through the Federal Court Media Committee on changes to rule 2.32(2) with respect to the inspection of documents.

In respect of other amendments, external consultation was not considered necessary due to their very limited impact on parties to proceedings and the fact that they are administrative or internal in nature.

3. Details of Amendments

[1] Name

The name of the rules is the *Federal Court Amendment (2025 Measures No.1) Rules 2025*.

[2] Commencement

The whole of the *Federal Court Amendment (2025 Measures No.1) Rules 2025* commence on the fourteenth day after registration.

[3] Authority

The *Federal Court Amendment (2025 Measures No.1) Rules 2025* are made under the *Federal Court of Australia Act 1976* (Cth).

[4] Schedules

Indicates that each instrument that is specified in a schedule to these *Federal Court Amendment (2025 Measures No.1) Rules 2025* is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to these Rules has effect according to its terms.

Schedule 1 – Amendment of the Federal Court Rules 2011

[1] Subrule 2.32(2)

Repeals the subrule and substitutes it with the new rule 2.32(2) and (2A).

[2] Subrule 2.32(4)

Omits “A person may apply to the Court” and substitutes “Subject to subrule (3), a person may apply to a Registrar”.

[3] Division 5.1 (heading)

Omits the words “Return date” and substitutes with “Attendance”.

[4] Rule 5.01

Repeals the rule and substitutes with the new rule 5.01.

[5] Rule 5.02 (heading)

Omits the words “before return date”.

[6] Rule 5.02

Omits the words “return date fixed in the originating application”, and substitute with “first directions hearing or the hearing, whichever is the earlier”.

[7] Subrule 5.03(1)

Omits the words “return date fixed in the originating application”, substitutes with “first directions hearing or the hearing, whichever is the earlier”.

[8] Subrule 5.04(2)

This subrule is repealed.

[9] Rule 5.06

This rule is repealed.

[10] Rule 8.06

Omits the words “return date fixed in an originating application,” and substitutes with “first directions hearing or the hearing, whichever is the earlier,”.

[11] Rule 8.06 (note 3)

Omits the words “This will provide time for steps required under practice notes issued by the Chief Justice to be undertaken before the return date.”.

[12] Paragraph 10.43C(1)(a)

Repeals the paragraph, and substitutes with “(a) the first directions hearing; and”.

[13] Rule 11.06

Omits the words “before the return date fixed in the originating application”, and substitutes with “within the time required by rule 5.02”.

[14] Subparagraph 26.12(2)(a)(i)

Omits the words “return date fixed in the originating application”, and substitutes with “earlier of the first directions hearing and the hearing”.

[15] Rule 39.04

The amendment inserts “(1)” before “The Court”.

[16] At the end of rule 39.04

This amendment adds subrules (2), (3), (4) and (5) to the rule. The subrules clarifies the way in which the Court may vary or set aside a judgment before it is entered.

[17] Subrule 39.32(3)

This amendment omits the words “the 14th day after”, thereby removing the reference to a specific number of days after authentication before which a judgment or order is taken to be entered.

[18] In the appropriate position in Part 43

The amendment inserts “Division 43.1—Transitional provisions relating to the Federal Court Amendment (2025 Measures No. 1) Rules 2025”, and rules 43.01 and 43.02 which define and outline the application of the amendments.

[19] Part 3.7 of Schedule 2 (table items 104 and 112)

This amendment repeals the items.

[20] Part 3.7 of Schedule 2 (table item 215, column headed “Provision”)

This amendment omits “Rule 39.04”, and substitutes with “Subrule 39.04(1)”.

[21] Item 1A of Schedule 3

This amendment repeals the item and substitutes it with an updated subrule which refers to *Federal Court Amendment (2025 Measures No. 1) Rules 2025*.

[22] Amendments of listed provisions—Schedule 3

The provisions of Schedule 3 are amended as listed in the table set out in this amendment.