



Statutory Rules 1994 No. 145¹

**Industrial Relations Court Rules ²
(Amendment)**

WE, Judges of the Industrial Relations Court of Australia, make the following Rules of Court under the *Industrial Relations Act 1988*.

M. R. WILCOX C.J.
R. M. NORTHROP J
J. E. J. SPENDER J
P. R. A. GRAY J
D. M. RYAN J
M. C. LEE J
J. W. VON DOUSSA J
M. F. MOORE J
M. J. BEAZLEY J
Judges of the Industrial
Relations Court of Australia

A. DAWSON
Registrar

1. Order 9 is amended as follows:

- (a) by omitting from subrule (1) of rule 1, the word “solicitor”, and substituting the words and figures “solicitor, by a person authorised to represent a party by or under section 469 of the Act”;
- (b) by omitting from subrule (3) of rule 1 the words “Notwithstanding subrule (1) and subject to any Act,” and substituting the words “Except as is permitted under subrule (1) or any Act”;
- (c) by inserting into subrule (2) of rule 3, after the word “solicitor”, the words “or person”; and
- (d) by omitting from paragraph (b) of subrule (1) of rule 4 all the words after “solicitor” and substituting the words “or person authorised to represent a party by or under section 469 of the Act, the name, address and telephone number of the solicitor or person”.

2. Order 75 is amended as follows:

- (a) by omitting rule 2 and substituting the following new rule:

“2. A case to which this Order applies must be commenced by filing an application substantially in accordance with Form 132 together with an affidavit containing the following information:

- (a) the nature of the person’s employment with the respondent;
- (b) the name of the award or enterprise agreement, if any, under which the person is or was employed;
- (c) if that award or enterprise agreement was not made under a law of the Commonwealth, the name of the State or Territory under whose law it was made;
- (d) the dates of commencement and termination, or proposed termination, of the person’s employment with the respondent;

- (e) the reason, if any, given by or on behalf of the respondent for the respondent's decision to terminate the person's employment; and
- (f) the date on which written notice, if any, of the termination was received by the person."

(b) by omitting rule 3 and substituting the following new rule:

“3. In a case to which this Order applies, the respondent must file with the appearance an affidavit in which the respondent, or an officer of the respondent with personal knowledge of the facts, indicates:

- (a) which, if any, of the matters stated by the applicant under paragraphs (a) to (f) of rule 2 are disputed;
- (b) in relation to any of the matters that are disputed, the respondent’s contention as to the true position;
- (c) the reason, according to the respondent, for the respondent’s decision to terminate the person’s employment; and
- (d) if the respondent contends that there is available to the person an adequate alternative remedy, in respect of the termination, under existing machinery that satisfies the requirements of the Termination of Employment Convention (see section 170EB of the Act), the nature of that remedy”.

(c) by omitting from rule 4:

- (a) the words “solicitors for” and substituting the words “solicitors for, or representatives of,”; and
- (b) the figures and symbols “170EB” and substituting the figures and symbols “170EC”.

3. The First Schedule is amended by adding thereto the following Form 132:

FIRST SCHEDULE

FORM I32

**APPLICATION UNDER SECTION 170EA
OF THE INDUSTRIAL RELATIONS ACT 1988**

This application is made in respect of the termination of the employment of (“the employee”). The applicant claims:

1.
 - (a) an order declaring the termination of the employer’s employment of the employee to have contravened Division 3 of Part VIA of the *Industrial Relations Act 1988* (“the Act”);
 - (b) an order requiring the respondent to reinstate the employee in employment; and
 - (c) an order that the respondent pay compensation to the employee.

2. Such other order or orders as will put the employee in the same position (as nearly as can be done) as if the employment of the employee by the respondent had not been terminated: see section 170EE of the Act.

(Delete any paragraphs that are inapplicable to the claim and add any additional orders sought).

Date: e.g. 7 May 19 .

(Signed, applicant, trade union representative or solicitor)

To the respondent *(address)*

FIRST SCHEDULE—continued

A directions hearing will be held by the Court at the time and place specified below. If there is no attendance before the Court by you or by your counsel, solicitor, or other representative, the application may be dealt with, and judgment given or an order made, in your absence. Before any attendance at that time you or your solicitor or other representative must file an appearance in the Registry.

Time: *(Date and time to be entered by Registry unless fixed by Court).*

Place: *(Address of Court)*

(Where the time for service has been abridged, add)

The time by which this application is to be served has been abridged by the Court to *(specify time)*.

Date: e.g. 7 May 19 .
(Signed, Registrar)

The applicant's address for service is *(specify address for service)*.

The applicant's address is *(state residence)*.

NOTE: THIS APPLICATION SHOULD BE SERVED AS SOON AS POSSIBLE AND NOT LESS THAN FIVE WORKING DAYS BEFORE THE DIRECTIONS HEARING, UNLESS THE COURT OTHERWISE ORDERS.

FIRST SCHEDULE—continued

IN THE INDUSTRIAL RELATIONS)
COURT OF AUSTRALIA)
DISTRICT REGISTRY)

No. of 199

BETWEEN:

Applicant

AND:

Respondent

APPLICANT'S AFFIDAVIT

On 1994, I

of

in the State/Territory of

say on oath—

1. I am the abovenamed applicant.

or

1. I am an officer of

a trade union, as defined by section 4 of the *Industrial Relations Act 1988*. The information set out in this affidavit is made after inquiry by me and is accurate to the best of my knowledge, information and belief.

2. In compliance with Order 75 of the Rules of this Court I supply the following information:

(a) The nature of the employee's employment with the respondent is/was

FIRST SCHEDULE—continued

- (b) The award or enterprise agreement under which the employee is/was employed is:
- (c) The award or enterprise agreement was made under a law of:
 - the Commonwealth;
 - the State/Territory of .
 - (Delete whichever is inapplicable).*
- (d) The date the employee started work with the respondent was .
- (e) The date of termination/proposed termination of the employee's employment with the respondent was/is .
- (f) The reason given by the respondent for dismissing the employee was .
- (g) The date on which the employee received notice of the termination was .

SWORN at)

.....)

before me)

FIRST SCHEDULE—continued

IN THE INDUSTRIAL RELATIONS)
COURT OF AUSTRALIA)
DISTRICT REGISTRY) No. of 199

BETWEEN:

Applicant

AND:

Respondent

RESPONDENT'S AFFIDAVIT

On , 1994, I
of
in the State/Territory of ,
say on oath —

1. I am the abovenamed respondent.
or
1. I am the of the respondent and have
personal knowledge of the facts of this case.
2. I have read the affidavit of the applicant filed in this proceeding and
supplying information required by Order 75 of the Rules of this
Court.
3. I dispute the correctness of the information set out in paragraphs
(*specify disputed paragraphs*) of that affidavit. In relation to those
paragraphs, I say the true position is (*here state the respondent's
contention as to the true position in relation to each paragraph*).
(*If none of the applicant's information is disputed, delete this
paragraph*).
4. The reason for the respondent's decision to terminate the employee's
employment is .

FIRST SCHEDULE—continued

5. The respondent contends that there is available to the employee an adequate alternative remedy, in respect of the termination, under existing machinery that satisfies the requirements of the Termination of Employment Convention, namely (*specify the alternative remedy*).

(If the respondent does not contend that there is an adequate alternative remedy, delete this paragraph).

Sworn at)
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before me)
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NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 30 May 1994.
2. Statutory Rules 1994 No. 110.