

Industrial Relations Court Rules 1994 No. 357

EXPLANATORY STATEMENT

Statutory Rules 1994 No. 357

Issued by the authority of the Judges of the Industrial Relations Court of Australia

RULES OF THE INDUSTRIAL RELATIONS COURT OF AUSTRALIA

Section 486 of the *Industrial Relations Act* 1988 (the Act) permits the Judges of the Court (of whom there are ten (10) including the Chief Justice) or a majority of them to 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 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, Section 486 of the Act also provides that sections 48, 48A, 48B, 49 and 50 of the *Acts Interpretation Act 1901* apply in relation to these Rules of Court made under that section as if references in those sections of that Act to regulations were references to Rules of Court.

The present Industrial Relations Court of Australia Rules will come into operation on gazettal.

The jurisdiction of the Industrial Relations Court of Australia is both original and appellate. Its original jurisdiction effectively includes all matters arising under the Act, in relation to which proceedings may be brought before the Court including appeals, proceedings for the recovery of penalties under the Act or prosecutions for most offences. The Court also has jurisdiction vested in it by either the Act or any other laws made by the Parliament.

This means in effect that matters under the formerly constituted Industrial Division of the Federal Court of Australia will be exercised by the Industrial Relations Court of Australia, as well as new areas of jurisdiction conferred by the Industrial Relations Reform Act 1993, for example, the jurisdiction to deal with claims of unlawful termination.

The Rules of Court now made follow the Rules of the Federal Court of Australia except where it was inappropriate to do so. In this regard the following Federal Court Rules which apply to the General Division of that Court have not been included in the Industrial Relations Court Rules:

10A - Cross-vesting

52A - Taxation Appeals

52B - Appeals against appealable objection decisions made under the Taxation Administration Act 1953

- 53 - Administrative Appeals Tribunal Act 1975
- 53A - Appeals from Immigration Review Tribunal
- 54 - Administrative Decisions (Judicial Review) Act 1977
- 54A - Judiciary Act 1903 - Section 39B
- Mandamus, Prohibition, Injunction against an officer of the Commonwealth
- 54B - Intellectual Property
- 55 - National Health Act 1953
- 56 - Health Insurance Act 1973
- 57 - National Crime Authority Act 1984
- 60 - Customs Act 1901
- 61 - Complaints (Australian Federal Police) Act 1981
- 61A - Australian Federal Police Act 1979
- 62A - Determination of maximum costs at directions hearing
- 64 - Transitional Provisions
- 65 - Life Insurance Act 1945
- 66 - Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1988
- 67 - Lands Acquisition Act 1989
- 69 - Trade Practices (Misuse of Trans-Tasman Market Power) Act 1990
- 70 - Aboriginal and Torres Strait Islander Commission Act 1989
- 71 - Corporations Law and Australian Securities Commission Law
- 74 - Reciprocal enforcement of judgments under the Foreign Judgments Act 1991
- 75 - Native Title Rules
- 76 - Determinations of the Human Rights and Equal Opportunity Commission or

It should be noted that there are no Orders 58, 59 or 68 in the Federal Court of Australia Rules and consequently those Orders also do not exist within the Industrial Relations Court Rules.

The Federal Court Rules were first made pursuant to Statutory Rules 1977 No. 20 and have been reviewed regularly since 1977. In the majority of amendments the Rules made were not accompanied by Explanatory Statements as this was only a requirement from the late 1980's onwards.

Where the Industrial Relations Court Rules have followed the Federal Court Rules they have been varied slightly to reflect the fact that the basis of the Rules of the Court is the Industrial Relations Act 1988 (as amended) and not the Federal Court of Australia Act 1976.

This has meant the deletion from the Rules of words and phrases such as Federal Court of Australia, Federal Court of Australia Act 1976, Federal Court Rules and Industrial Division and the insertion in their place of Industrial Relations Court of Australia, Industrial Relations Act 1988 and Industrial Relations Court Rules. In addition, wherever the Rules referred to Divisions, Parts or sections of the Federal Court of Australia Act 1976 they were deleted and replaced with the relevant Divisions, Parts or sections of the Industrial Relations Act 1988. Those Rules within Orders which specifically related to matters concerning the jurisdiction of the General Division of the Federal Court of Australia or where the Industrial Relations Court of Australia does not have jurisdiction were deleted.

The Rules of Court have also varied the Federal Court Rules to remove sexist language or to make them gender neutral.

Order 62, relating to costs, is fundamentally different to Order 62 in the Federal Court Rules. This is because section 347 of the Act provides that costs will not be awarded in proceedings under the Act except where a party instituted a proceeding vexatiously or without reasonable cause. Therefore, Order 62 simply provides that where the Court has made a costs order it may direct that a scale of costs be used to calculate the amount; specify the amount of costs to be allowed; or direct the Registrar to determine the amount of costs following the procedure set out in Order 62 rule 42 of the Federal Court Rules.

The Industrial Relations Reform Act 1993 gave jurisdiction to the Court in a number of new areas, including certain remittals from the High Court and unlawful termination claims. The Reform Act also created within the Court the office of "Judicial Registrar". Three new Rules of Court have been made which are not reflected in the Federal Court Rules, namely: Order 51B -Mandamus, Prohibition, Injunction against an officer of the Commonwealth holding office under the Industrial Relations Act 1988 or the Coal Industry Act 1946, Order 74 - Delegation of Powers to Judicial Registrars and Order 75 Applications to the Court under section 170EA of the Act in respect of Termination of Employment.

ORDER 51B - Mandainus, Prohibition, Injunction against an officer of the Commonwealth holding office under the Industrial Relations Act 1988 or the Coal Industry Act 1946.

Rule 1

Section 44 of the Judiciary Act 1903 gives the High Court of Australia power to remit a matter to a federal court that has jurisdiction with respect to that matter. Section 412(2) of the Industrial Relations Act 1988 gives the Court jurisdiction with respect to applications for a writ of mandamus, prohibition or injunction sought against an officer of the Commonwealth holding office under the Industrial Relations Act 1988 or the Coal Industry Act 1946. This Order states that such applications come within the ambit of Order 51B.

Rule 2

For the purpose of Order 51B the application must follow Form 53A Notice of Proceeding. This is the same form that is required under Order 51A which follows the Federal Court Rules.

Rule 3

This allows the joinder in an application under Order 51B of claims for relief connected with the same subject matter.

ORDER 74 - Delegation of Powers to Judicial Registrars.

Rule 1.

This relates to section 375 of the Act which allows the Governor-General to appoint Judicial Registrars of the Court. **Rule 2.**

Section 376 of the Act provides that Rules of Court may delegate to Judicial Registrars any or all of the Court's powers in relation to proceedings where

- (a) a claim is made for an amount of not more than \$10,000 (or such greater amount as the regulations prescribe); or
- (b) it is claimed that termination of employment has been unlawful or would be unlawful whether because of the Act or any other law (including an unwritten law) of the Commonwealth or of a State or Territory.

This Rule encapsulates section 376 and delegates to each Judicial Registrar all the powers of the Court in relation to the above matters.

Rule 3

Section 377 of the Act states that a party to a proceeding before a Judicial Registrar may apply to the Court for a review of a Judicial Registrar's exercise of power. The section does not set out a prescribed time in relation to review. This rules makes that time 21 days or such further time as is allowed by the Court or a Judge.

ORDER 75 - Applications to the Court under Section 170EA of the Act in Respect of Termination of Employment

Rule 1

This Rule defines "claim" as an application under section 170EA of the Act for the purposes of Order 75.

Rule 2

The Court is to administer these claims without undue formality and with regard to the need of minimising costs to the parties.

Rule 3

A claim of unlawful termination of employment is commenced by filing an application in accordance with Form 132. The Registrar may accept an application where it substantially complies with Form 132. An application that has not been signed by the employee may be accepted where the Registrar is satisfied that obtaining the employee's signature would cause undue difficulty or delay and a union is applying on behalf of the employee or a solicitor has prepared the application.

Upon accepting the application, the Registry will then send a copy to the respondent. This removes the onus of serving the respondent from the applicant and reflects the Court's aim of making applications under s. 170EA of the Act as simple and speedy as possible.

Rule 4

Within 7 days of receiving an application claiming an employee has been unlawfully terminated, the respondent is required to file a notice of appearance in accordance with Form 133.

Rule 5

After the respondent has filed a notice of appearance the Court may order that the matter be referred to the Australian Industrial Relations Commission for conciliation under section 170ED of the Act. The Court may alternatively refer the matter for an informal mediation before a Judge, Judicial Registrar or Registrar. Referral to conciliation or mediation will usually take place without a directions hearing.

The Rule provides that a party must be promptly advised by the person representing them that the matter has been referred to a conciliation or mediation hearing, and of the importance of their attending in person.

Rule 6

Section 170ED(2) of the Act provides that if the Australian Industrial Relations Commission decides that a matter cannot be settled by conciliation, the Commission must prepare a certificate to that effect to give to the Registrar of the Court. This Rule provides that, upon receipt of such a certificate, the Registrar must promptly notify the parties of a date and time for a directions hearing. At the directions hearing the Court will usually fix a date for the earliest possible hearing of the application.

FORMS

The Forms set out in the First Schedule of the Federal Court Rules have been adopted into the First Schedule of the Industrial Relations Court Rules. Forms 31A, 44A, 46A, 55A-F, 56 through 128, 132 through 143 have not been included in the First Schedule as they relate to forms applicable to the General Division of the Federal Court of Australia or matters not within the jurisdiction of the Industrial Relations Court of Australia. The Forms have been re-entitled where necessary to reflect that they are Industrial Relations Court Forms rather than Federal Court Forms.

A new Form 132 relating to applications under s. 170EA of the Act has been inserted. This Form was designed with the aid of a plain English language expert to ensure easy comprehension by the many unrepresented litigants seeking a remedy under the unlawful termination provisions of the Act. The new Form 133, the Notice of Employer's Appearance, was also designed for easy comprehension.