

Industrial Relations Court Rules (Amendment) 1996 No. 39

EXPLANATORY STATEMENT

Statutory Rules 1996 No. 39

AMENDMENT TO THE 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 eleven (11) 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 the Rules of Court.

The present Industrial Relations Court Rules came into operation on 14 October 1994. The amendments to the Rules will come into operation on gazettal.

Rule 1 - Amendment

This rule provides that the Industrial Relations Court Rules are amended as set out in the following rules.

Rules 2, 3, 4 and 5

These rules amend Order 22 to allow discontinuance of unlawful termination applications without requiring either leave of the Court or consent of the other parties. The amendments are designed to minimise the cost and inconvenience to the parties in unlawful termination claims.

Rule 6

This rule changes Order 62, rule 1 to correct a reference to the Federal Court Rules which gave the wrong rule number.

Rule 7

This rule omits the words "for special reasons" from Order 74, rule 3. This change allows the Court an unfettered discretion to extend time for the filing of an application for review of a judicial registrar's decision without requiring consideration of the complicated body of case law concerning those words.

Rule 8

This rule substitutes a new Order 75 to reflect the changes to the Act whereby claims of unlawful termination are commenced in the Australian Industrial Relations Commission, not in the Court. As a result, the new Order omits any requirement for a form of application or a notice of appearance, as these documents are now filed in the Commission and forwarded to the Court when a matter is so referred. Rule 3 provides that once a matter has been referred to the Court it is set down for a directions hearing. At the directions hearing the application will be set down for hearing at the earliest practicable date or referred to mediation.

This rule also inserts two new orders, Order 76 and Order 77.

Order 76 - Enforcement of agreements to comply with consent arbitration awards

This Order has been inserted to deal with applications under s170ECB of the Act which was inserted in the recent amendments to the legislation. The Order outlines the procedure required when a party to a consent arbitration at the Commission wishes to enforce the agreement to comply with the terms of a consent arbitration award.

Rule 2 requires that the application be in accordance with the new Form 132 which has been designed to ensure easy comprehension. The application must be accompanied by .copies of the application lodged with the Commission, notice of employer's appearance, notice of election to have the matter dealt with by consent arbitration and the award made by the Commission.

Rule 3 requires the respondent to an application to file a notice of appearance in accordance with Form 133 and, if the respondent wishes to defend the application, a written statement of defence. If a written statement of defence is not filed within 14 days, rule 4 requires the applicant to file an affidavit of service of the application on the respondent. A judge or judicial registrar may then make orders in chambers to enforce the agreement to comply with the terms of the award. The objective is to provide a procedure that ensures that no further hearing occurs unless it is clear that the respondent wishes to defend the matter. If the respondent does file a statement of defence, rule 4 provides that the Registrar must list the matter for a directions hearing at which the Court must fix the earliest practicable date for the hearing of the application.

Order 77 - Enforcement of money orders by special procedure

This new Order provides an alternative procedure to the current rules *which govern* the enforcement of orders made by the Court. The existing rules provide that enforcement action shall be taken using the same forms and processes as would apply in the Supreme Court of the state or territory in which the enforcement action is to take place. The current rules impose a significant cost burden on any party who wishes to enforce the Court's orders. Enforcement processes involve considerable expertise on the part of either solicitors representing the creditor or registrars of the Court providing assistance to the creditor. The need to enforce orders has become more commonplace as the volume of the Court's work has grown, particularly orders which are of small amounts in the unlawful termination jurisdiction. The current state

Supreme Court procedures provide a cost regime far above what is warranted for what are, in substance, small debts recovery actions.

Order 77 provides an alternative only in those cases where it is intended to proceed to recover money amounts by seizure of goods or chattels. Rule 3 provides that the application must be in accordance with Form 135 which requires the applicant to provide particulars of the judgment debt. If the Registrar makes an order for seizure of property, rule 5 enables a sheriff to enforce that order.

The new rule does not extend to recovery by committal or sequestration because the new procedure is aimed at money amounts which are not likely to warrant arresting persons or selling interest in land. The current rule provisions are adequate for enforcement of large debts.

Rule 9

This rule changes the Numerical Table of Forms to allow for changes to Forms 132 and 133 and the addition of Forms 134 and 135.

Rule 10

This rule amends the First Schedule (Forms) to substitute the new Forms 132 and 133 and to add Forms 134 and 135.