



Statutory Rules 1996 No. 39<sup>1</sup>

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## **Industrial Relations Court Rules<sup>2</sup> (Amendment)**

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

Dated 29 March 1996.

M R WILCOX C 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  
S R MARSHALL J  
A M NORTH J  
R N MADGWICK J  
Judges of the Industrial  
Relations Court of Australia

B R WALSH  
Registrar

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**1. Amendment**

1.1 The Industrial Relations Court Rules are amended as set out in these Rules.

[NOTE: These Rules commence on gazettal: see *Acts Interpretation Act 1901*, s. 48, as applied by *Industrial Relations Act 1988*, s. 486 (4).]

**2. Order 22, rule 2 (Discontinuance—Form 29)**

2.1 After “relief” (first occurring), insert “(except in respect of unlawful termination of employment)”.

**3. Order 22 (Withdrawal and discontinuance)**

3.1 After rule 2, insert:

**Discontinuance—unlawful termination of employment**

“**2A.** An applicant for relief in respect of unlawful termination of employment may discontinue the proceeding at any time.”.

**4. Order 22, rule 3 (Costs)**

4.1 Subrule 3 (1):

Omit “2,”, substitute “2 or 2A,”.

**5. Order 22, rule 5 (Mode of discontinuance or withdrawal)**

5.1 Subrule 5 (1):

Omit “2, 3 or 4”, substitute “2, 2A, 3 or 4”.

**6. Order 62, rule 1 (Determination of amount of costs)**

6.1 Paragraph (c):

Omit “42”, substitute “46”.

**7. Order 74, rule 3 (Prescribed time in relation to review)**

7.1 Omit “for special reasons”.

**8. Order 75 (Applications to the Court under section 170EA of the Act in respect of termination of employment)**

8.1 Omit the Order, substitute:

**“ORDER 75**

**“APPLICATIONS IN RESPECT OF TERMINATION OF  
EMPLOYMENT**

**Interpretation**

“1. In this Order, ‘**application**’ means an application for relief in respect of a person’s employment that:

- (a) is lodged with the Commission under section 170EA of the Act; and
- (b) is referred to the Registrar of the Court under section 170ED of the Act.

**Consideration of application**

“2. The Court must consider and determine an application:

- (a) without undue formality; and
- (b) with regard to the need to avoid unnecessary cost to the parties to the application.

**Directions hearing**

“3. (1) As soon as practicable after an application is referred, the Registrar must:

- (a) set a date and time for a directions hearing in relation to the application; and

(b) notify the parties of the date and time.

“(2) Subject to rule 4, at the directions hearing, the Court must fix the earliest practicable date for the hearing of the application.

### **Application referred for informal mediation**

“4. (1) Whether or not the parties are present at the directions hearing, a Judge, Judicial Registrar or Registrar may make an order referring the application to a person mentioned in subrule (2) for informal mediation in an attempt to settle the dispute between the parties, or any issue in the dispute, by amicable agreement.

“(2) An application may be referred to:

- (a) a Judge; or
- (b) a Judicial Registrar; or
- (c) a Registrar; or
- (d) a person appointed by the Court or a Registrar as the mediator.

“(3) If the application is not settled by agreement, the Registrar may:

- (a) set a date and time for a further directions hearing in relation to the application, and notify the parties of that date and time; or
- (b) fix a date and time for the hearing of the application, and notify the parties of the date and time.

“(4) At the further directions hearing (if any), the Court must fix the earliest practicable date for the hearing of the application.

**“ORDER 76**

**“ENFORCEMENT OF AGREEMENTS TO COMPLY WITH  
CONSENT ARBITRATION AWARDS**

**Application of Order**

“1. This Order applies to an application under section 170ECB of the Act (‘Enforcement of consent arbitration awards by the Court’) by a party to a consent arbitration.

**Form of application**

**“2. (1)** An application must be:

- (a) in accordance with Form 132; and
- (b) accompanied by a copy of each of the following documents:
  - (i) the relevant application for relief lodged with the Commission under section 170EA of the Act in respect of termination of employment;
  - (ii) the notice of employer’s appearance filed in the Commission in respect of the application for relief;
  - (iii) the notice of election, under section 170EB of the Act, to have the matter dealt with by consent arbitration;
  - (iv) the award made by the Commission on that arbitration.

**“(2)** Order 41 rule 1 does not apply to the application.

[Note: For the form of a document mentioned in subparagraph 2 (1) (b) (i), (ii) or (iii), see the Schedule to the Rules of the Australian Industrial Relations Commission.]

**Appearance**

**“3. (1)** To answer an application under rule 2, the respondent must file:

- (a) a notice of appearance in accordance with Form 133; and
- (b) if the respondent wants to defend the application—a written statement of defence setting out each ground on which the respondent opposes the making of an order to enforce the award made by the Commission.

“(2) The notice of appearance, and statement of defence (if any), must be filed on or before 14 days after service of the application on the respondent.

“(3) Order 41 rule 1 does not apply to the notice of appearance.

“(4) It is sufficient service of a notice of appearance and statement of defence (if any) on the applicant for the purposes of this Order if the Registrar sends a copy of the notice and statement (if any) by pre-paid post or facsimile to the applicant’s address for service set out in the application.

### **Enforcement of award**

“4. (1) If the respondent to an application does not file a statement of defence on or before 14 days after being served with the application:

- (a) the applicant must file an affidavit of service of the application on the respondent; and
- (b) a Judge or Judicial Registrar may make orders in chambers, without a hearing on the application, to enforce the award made by the Commission.

“(2) If the respondent files a statement of defence before the end of that period, the Registrar must, as soon as practicable:

- (a) set a date and time for a directions hearing in relation to the application; and
- (b) notify the parties of the date and time.

“(3) At the directions hearing, the Court must fix the earliest practicable date for the hearing of the application.

**“ORDER 77****“ENFORCEMENT OF MONEY ORDERS BY SPECIAL  
PROCEDURE****Interpretation**

“1. In this Order:

‘**application**’ means an application under this Order for the enforcement of a judgment or order that involves the payment of money;

‘**judgment debtor**’ means the person against whom is made a judgment or order to which this Order applies.

**Alternative method of enforcement**

“2. This Order provides an alternative to the procedure provided by Order 37 rule 7 for the enforcement of a judgment or order that involves the payment of money.

**Form of application for enforcement**

“3. An application must be in accordance with Form 134.

**Registrar may order seizure of property**

“4. After an application is filed, the Registrar may make an order for the seizure of property of the judgment debtor, in accordance with Form 135.

**Enforcement of judgment or order by Sheriff**

“5. (1) An order for the seizure of property may be enforced by a Sheriff in any place in which the judgment debtor has assets.



“(2) In enforcing the order, the Sheriff may act in the same manner and to the same extent as a sheriff, or other officer, of the Supreme Court of the State or Territory in which the order is being enforced, would be entitled to act in enforcing an order of a similar kind.”.

**9. Numerical Table of Forms**

9.1 Omit Forms 132 and 133, substitute:

“132	Application to enforce an agreement to comply with a consent arbitration award
133	Enforcement of consent arbitration award— Notice of employer’s appearance
134	Application to enforce judgment or orders
135	Order for seizure of property”.

**10. First Schedule (Forms)**

10.1 Form 132:

Omit the form, substitute:

“FORM 132

“APPLICATION TO ENFORCE AN AGREEMENT TO COMPLY  
WITH A CONSENT ARBITRATION AWARD

“(Order 76, subrule 2 (1))

[to be inserted]

page 2 Form 132

10.2 Form 133 (Claim of unlawful termination of employment—  
notice of employer's appearance):

Omit the heading, substitute:

“FORM 133

“ENFORCEMENT OF CONSENT ARBITRATION AWARD—  
NOTICE OF EMPLOYER'S APPEARANCE

“(Order 76, subrule 3 (1))

“**Industrial Relations Court of Australia**

“**Enforcement of consent arbitration award**  
— **notice of employer's appearance**

“Industrial Relations Act 1988 (Cth) section 170ECB—form 133”.

10.3 Add at the end:

“FORM 134

“APPLICATION TO ENFORCE JUDGMENT OR ORDERS

“(Order 77, rule 3)

[to be inserted]



“FORM 135

“ORDER FOR SEIZURE OF PROPERTY

“(Order 77, rule 4)

[to be inserted]

**NOTES**

1. Notified in the *Commonwealth of Australia Gazette* on 12 April 1996.
2. Statutory Rules 1994 No. 357.