



and to:

Legislative Services Section,
Office of Legislative Drafting,
Attorney-General's Department.Statutory Rules 1997 No. ¹ _k

204

Federal Court Rules² (Amendment)

WE, Judges of the Federal Court of Australia, make the following
Rules of Court under the *Federal Court of Australia Act 1976*.

Dated _k 1997.

4 August

M.E.J. BLACK C.J.
J.D. DAVIES J.
J.S. LOCKHART J.
B.A. BEAUMONT J.
M.R. WILCOX J.
J.E.J. SPENDER J.
J.C.S. BURCHETT J.
J.A. MILES J.
D.M. RYAN J.
R.S. FRENCH J.
M.R. EINFELD J.
M.L. FOSTER J.
H.W. OLNEY J.
D.G. HILL J.
M.F. O'LOUGHLIN J.
D.F. O'CONNOR J.
T.J. HIGGINS J.
P.C. HEEREY J.
D.P. DRUMMOND J.
R.E. COOPER J.

A.P. WHITLAM J.
M.F. MOORE J.
C.M. BRANSON J.
J.H. MATHEWS J.
K.E. LINDGREN J.
B.J.M. TAMBERLIN J.
R. SACKVILLE J.
R.D. NICHOLSON J.
P.D. FINN J.
S.R. MARSHALL J.
J.R.F. LEHANE J.
A.M. NORTH J.
R.N. MADGWICK J.
R. MERKEL J.
J.R. MANSFIELD J.
A.H. GOLDBERG J.
A.R. EMMETT J.
R.A. FINKELSTEIN J.
Judges of the Federal
Court of Australia

W.G. SODEN
Registrar

1. Amendment

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

[NOTE: These Rules commence on gazettal: see *Acts Interpretation Act 1901*, s. 48.]

2. Order 1, rule 4 (Interpretation)

2.1 Insert the following definitions:

“**Judicial Registrar**” means a Judicial Registrar appointed under section 18AA of the Act;

[NOTE: Under item 73 of Schedule 16 to the *Workplace Relations and Other Legislation Amendment Act 1996*, a person appointed as a Judicial Registrar of the Industrial Relations Court of Australia is taken to have been appointed, under section 18AA of the *Federal Court of Australia Act 1976*, as a Judicial Registrar of the Federal Court of Australia.]

‘**organisation**’ has the meaning given by subsection 4(1) of the *Workplace Relations Act 1996*.”.

3. Order 35, rule 5 (Fine)

3.1 Add at the end:

“(3) This rule does not apply to a fine imposed under the *Workplace Relations Act 1996*.”.

4. New Order 48

4.1 After Order 47, insert Order 48 as set out in Schedule 1.

5. Order 50, new rule 1A

5.1 Before rule 1, insert:

Definition for Order 50

“1A. In this Order:

‘**Industrial Registrar**’:

- (a) means the Industrial Registrar appointed under section 67 of the *Workplace Relations Act 1996*; and
- (b) includes a Deputy Industrial Registrar appointed under section 75 of the *Workplace Relations Act 1996*.”.

6. Order 50, rule 2 (Special case to be prepared, etc.)

6.1 After “Tribunal” (wherever occurring), insert “, Commission, Industrial Registrar”.

7. Order 50, new rule 3A

7.1 After rule 3, insert:

Setting down for hearing (*Workplace Relations Act 1996*, s. 82)

“3A. If a question is referred to the Court by the Industrial Registrar under section 82 of the *Workplace Relations Act 1996*, the District Registrar must:

- (a) set down the proceeding for a directions hearing; and
- (b) notify the Industrial Registrar, and each party to the proceeding, of the date appointed for the directions hearing.”.

8. Order 50, rule 4 (Party having carriage of the proceedings)

8.1 Omit “Tribunal,” substitute “Tribunal or the Australian Industrial Relations Commission,”.

8.2 Paragraph 4 (a):

After “Tribunal”, insert “or the Commission”.

8.3 Add at the end:

“; and (c) if the question is referred by the Commission of its own motion—the party appointed by the Commission for that purpose.”.

9. New Order 79

9.1 After Order 78, insert Order 79 as set out in Schedule 2.

10. First Schedule

10.1 New Forms 5A and 6:

After Form 5, insert Forms 5A and 6 as set out in Schedule 3.

10.2 Forms 1, 2, 3, 8, 9, 10, 53A, 55, 55C, 55CA, 55CB and 56:
Omit from each Form "DIVISION".

10.3 Forms 53, 54, 54A, 55A, 55B, 58A, 59, 60, 61, 62, 63, 64, 65,
75, 76, 137, 138, 141, 142 and 143:
Omit from each Form "GENERAL DIVISION".

11. Revocation of the Rules of the Industrial Relations Court of Australia

11.1 The Rules of the Industrial Relations Court of Australia, as in force under section 486 of the *Workplace Relations Act 1996* in force immediately before 26 May 1997, are revoked.

[NOTES:

1. Item 67 of Schedule 16 to the *Workplace Relations and Other Legislation Amendment Act 1996* provides that the Rules of the Industrial Relations Court of Australia, as in force under section 486 of the *Workplace Relations Act 1996* in force immediately before 26 May 1997, are to be taken, on and after that date, also to be Rules of the Federal Court of Australia made under section 59 of the *Federal Court of Australia Act 1976*, and, as so included, may be amended or revoked under that section.
2. 26 May 1997 is the date when the jurisdiction and powers of the Industrial Relations Court of Australia, or a Judge of that Court, were vested in the Federal Court of Australia under Division 2 of Part 3 of Schedule 16 to the *Workplace Relations and Other Legislation Amendment Act 1996*.]

SCHEDULE 1

Rule 4

NEW ORDER 48

**“ORDER 48—WORKPLACE RELATIONS
PROCEEDINGS***“Division 1—General***Definition for Order 48**

“1. In this Order:

‘**Workplace Relations Act**’ or ‘**Act**’ means the *Workplace Relations Act 1996*.

Expressions used in the Workplace Relations Act

“2. Unless the contrary intention appears, an expression used in this Order and in the Workplace Relations Act has the same meaning in this Order as it has in the Workplace Relations Act.

Application of Order 48

“3. (1) This Order applies to a proceeding in the Court to which the Workplace Relations Act applies.

“(2) The other Orders of these Rules apply, so far as they are relevant and not inconsistent with this Order, to a proceeding in the Court to which the Workplace Relations Act applies.

SCHEDULE 1—continued***“Division 2—Unlawful termination of employment*****Application in relation to alleged unlawful termination of employment (Act, s. 170CP)**

“4. (1) This rule applies to an application by an employee for an order in relation to an alleged unlawful termination of the employee’s employment.

[NOTE: Section 170CR of the Workplace Relations Act states the orders the Court may make.]

- “(2)** The application must be:
- (a) in accordance with Form 5; and
 - (b) accompanied by a claim in accordance with Form 5A.

“Division 3—Rules to show cause**Definition for Division 3**

“5. In this Division:

‘rule to show cause’ means a rule calling on a person, or an organisation, to show cause why an order should not be made under section 208, 209 or 261 (8) of the Workplace Relations Act in relation to the person or organisation.

[NOTES:

1. Under section 208 of the Workplace Relations Act, a member of an organisation may apply to the Court for an order declaring that the whole or a part of a rule of an organisation contravenes section 196 of that Act (which states general requirements for rules), or that the rules of an organisation contravene section 196 in a particular respect.
2. Under section 209 of the Workplace Relations Act, a member of an organisation may apply to the Court for an order giving directions for the performance or observance of any of the rules of an organisation by any person who is under an obligation to perform or observe the rules.

SCHEDULE 1—continued

3. Under subsection 261 (7) of the Workplace Relations Act, a person or organisation may apply to the Court for a declaration as to the entitlement of a person to be admitted as a member of an organisation or to remain a member of an organisation. Under subsection 261 (8), the Court may make an order to give effect to a declaration made under subsection 261 (7).]

Application of Division 3

“**6. (1)** This Division applies to an application for a rule to show cause.

“(2) However, this Division does not apply unless the granting of a rule to show cause is necessary, under paragraph 342 (2) (a) or (q) of the Workplace Relations Act, for the Minister to authorise payment of financial assistance to an applicant for an order under section 208, 209 or 261 (8) of that Act.

Requirements of applications (Act, ss. 208, 209 and 261)

“**7. (1)** An application may be made to a Judge ex parte.

“(2) The application must be accompanied by an affidavit in accordance with subrule (3), (4) or (5).

“(3) If the application is made under section 208 of the Workplace Relations Act, the affidavit must state:

- (a) the rule, or part of the rule, of the organisation that is alleged to contravene section 196 of that Act; and
- (b) the ground on which the rule, or part of the rule, is alleged to contravene the section; and
- (c) the facts and other reasons relied on by the applicant in support of the application.

SCHEDULE 1—continued

“(4) If the application is made under section 209 of the Workplace Relations Act, the affidavit must state:

- (a) the nature of the order sought by the applicant; and
- (b) each rule of the organisation the applicant seeks to have performed or observed by a person who is under an obligation to perform or observe the rule; and
- (c) the ground relied on by the applicant to establish the obligation of the person to perform or observe the rule.

“(5) If the application is made under section 261 of the Workplace Relations Act, the affidavit must state:

- (a) the nature of the order sought by the applicant; and
- (b) each rule of the organisation on which the application is based; and
- (c) the facts and other reasons relied on by the applicant in support of the application.

Form of rule to show cause—Form 6

“8. A rule to show cause must be in accordance with Form 6.

Filing of rule to show cause

“9. If the Court grants a rule to show cause, the applicant must file with the Court the rule and the supporting affidavit as soon as practicable after the rule is granted.

Division 4—Inquiries and ballots in relation to registered organisations

Application of Division 4

“10. This Division applies to:

- (a) an application, under section 218 of the Workplace Relations Act, for an inquiry in relation to an election for an office in an organisation, or branch of an organisation; or

SCHEDULE 1—continued

- (b) an application, under subsection 253M(1) of the Workplace Relations Act, for an inquiry into an alleged irregularity in relation to a ballot conducted under Division 7 of that Act; or
- (c) an application, under subsection 253ZJ of the Workplace Relations Act, for a ballot to be held to decide whether a constituent part of an amalgamated organisation should withdraw from the organisation; or
- (d) an application, under subregulation 98ZC(1) of the Workplace Relations Regulations, for an inquiry into an alleged irregularity in relation to a ballot held under Division 7A of the Workplace Relations Act; or
- (e) an application, under subsection 253ZP(1) of the Workplace Relations Act, for an order in relation to the withdrawal of a constituent part of an amalgamated organisation from the organisation.

[NOTES:

1. Under subregulation 62(2) of the Workplace Relations Regulations, an application mentioned in paragraph 10(a) must be in accordance with Form 4 of the Workplace Relations Regulations and accompanied by a statutory declaration by the applicant verifying the facts stated in the application.
2. Under subregulation 98(1) of the Workplace Relations Regulations, an application mentioned in paragraph 10(b) must be in accordance with Form 11 of the Workplace Relations Regulations and accompanied by a statutory declaration by the applicant verifying the facts stated in the application.
3. Under regulation 98J of the Workplace Relations Regulations, an application mentioned in paragraph 10(c) must be in accordance with Form 11A of the Workplace Relations Regulations.
4. Under subregulation 98ZC(2) of the Workplace Relations Regulations, an application mentioned in paragraph 10(d) must be in accordance with Form 11C of the Workplace Relations Regulations and accompanied by a statutory declaration by the applicant verifying the facts stated in the application.
5. Under Order 4, rules 4 and 6 of these Rules, an application mentioned in paragraph 10(e) must be in accordance with Form 5 of these Rules and accompanied by an affidavit stating the nature of the applicant's claim and the material facts on which the claim is based.]

SCHEDULE 1—continued

Duties of District Registrar on receiving application

“**11.** On receiving an application and any supporting documents, the District Registrar must:

- (a) sign and stamp the application with the stamp of the Court; and
- (b) endorse on the application:
 - (i) the date, time and place fixed for a directions hearing; and
 - (ii) if the Court or a Judge has directed that a person be given notice of the application—the name and address of the person; and
- (c) send a stamped copy of the application, and a copy of any supporting documents, to the applicant.

Service of application and supporting documents

“**12. (1)** At least 2 days before the date fixed for the directions hearing, the applicant must serve a stamped copy of the application, and a copy of any supporting documents, on each party to the proceeding.

- “(2) The stamped copy of the application must:
- (a) have endorsed on it the date, time and place fixed for the directions hearing; and
 - (b) state that, if the party, or the party’s counsel, solicitor or authorised representative, does not appear at the directions hearing, the proceeding may be heard and orders may be made in the absence of the party, or the party’s counsel, solicitor or authorised representative.

SCHEDULE 1—continued**Application for interim orders**

“**13. (1)** This rule applies to:

- (a) an application for an interim order to be made, under section 221 of the Workplace Relations Act, in relation to an inquiry in relation to an election for an office in an organisation, or a branch of an organisation; or
- (b) an application for an interim order to be made, under subregulation 98D(1) of the Workplace Relations Regulations, in relation to an inquiry into an alleged irregularity in relation to a ballot conducted under Division 7 of the Workplace Relations Act.

“(2) An application may be made:

- (a) *ex parte*; or
- (b) in any other way directed by the Court or a Judge.

Court directions to issue subpoenas

“**14. (1)** If the Court is of the opinion that an inquiry would be assisted by the production of a document or other item, or by calling a witness, the Court may direct the Registrar to issue a subpoena for the production of the document or other item, or for the witness to attend the inquiry.

“(2) The Registrar must arrange for:

- (a) service of each subpoena; and
 - (b) payment of attendance money and witness expenses for each witness attending the inquiry.”.
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SCHEDULE 2

Rule 9

NEW ORDER 79

**“ORDER 79—DELEGATION OF POWERS TO
JUDICIAL REGISTRARS****General delegation of powers (Act, s. 18AB (1A))**

“1. All the Court’s powers in relation to a proceeding in the Court in which the Court is exercising original jurisdiction (except a proceeding mentioned in subsection 18AB (1A) of the Act) are delegated to each Judicial Registrar.

[NOTE: Under subsection 18AB (1A) of the Act, unless the Act or another Act expressly provides otherwise, the Court’s powers in relation to the following proceedings may not be delegated to a Judicial Registrar:

- (a) a proceeding in which the amount sought, or the value of the subject matter, is more than \$100,000;
- (b) a proceeding for a prerogative writ or an order in the nature of a prerogative writ;
- (c) a proceeding that involves a claim under the *Workplace Relations Act 1996*;
- (d) a proceeding under the *Human Rights and Equal Opportunity Commission Act 1986*;
- (e) a proceeding under the *Native Title Act 1993*.]

Delegation of powers in relation to a proceeding under the Workplace Relations Act (Act, s. 18AB (1))

“2. The Court’s powers in relation to the following proceedings in the Court under the *Workplace Relations Act 1996* are delegated to each Judicial Registrar:

- (a) a proceeding involving a claim under that Act for an amount of not more than \$10,000;

SCHEDULE 2—continued

- (b) a proceeding involving a claim under that Act that the termination of an employee's employment was unlawful, or that the proposed termination of an employee's employment would be unlawful, under any law (including an unwritten law) of the Commonwealth or of a State or Territory;
- (c) a proceeding involving an application under section 170JC of that Act for enforcement of an order of the Australian Industrial Relations Commission.

[NOTE: See subsection 18AB (1) of the Act which expressly provides that the Court's powers in relation to these proceedings may be delegated to a Judicial Registrar.]

Exercise of powers by Judicial Registrars

“3. A Judicial Registrar may exercise the powers delegated to the Judicial Registrar under this Order in a proceeding, or part of a proceeding, referred to the Judicial Registrar by the Court or a Judge.

Review of decisions of Judicial Registrars (Act, s. 18AC)

“4. (1) This rule applies to an application by a party to a proceeding for review of an exercise of power in the proceeding by a Judicial Registrar.

“(2) The application must be made within:

- (a) 21 days after the day when the Judicial Registrar exercises the power; or
- (b) any longer period allowed by the Court or a Judge.

“(3) The Court or a Judge may allow a longer period within which the application may be made even if the period mentioned in paragraph (2) (a) has passed when the Court or the Judge is asked to allow the longer period.”.

SCHEDULE 3

Subrule 10.1

NEW FORMS 5A AND 6**FORM 5A****CLAIM OF UNLAWFUL TERMINATION OF EMPLOYMENT**

(Order 48, paragraph 4 (2) (b))

Federal Court of Australia	Court use only
Claim of unlawful termination of employment	file number
<i>Workplace Relations Act 1996 (Cth) section 170CP</i>	date received

application by the employee alone union - give name of union:**Details of employee**

1	full name	Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/>
		Family name given names
2	home address	
3	phone	postcode
		(business hours) ()
4	date of birth	(after hours) ()
		day/month/year
5	first language	English <input type="checkbox"/> other <input type="checkbox"/> (specify)

Details of employment

6	employer's name	
7	employer's trading address or registered office	postcode
		phone ()
		fax ()

SCHEDULE 3—continued**FORM 5A—continued**

8	work performed for employer (occupation)		
9	place of work	suburb/town	postcode
10	period of employment	date started work / /	last date worked / /
11	were you given a written notice of termination?	No <input type="checkbox"/> Yes <input type="checkbox"/> - I attach a copy	

Details of union

12	Is your union acting on your behalf?	No <input type="checkbox"/> go to 16 Yes <input type="checkbox"/> go to 13	
13	name of union		
14	address	postcode	
15	contact person - name - phone	()	fax ()

Details of solicitor

16	Is a solicitor representing you?	No <input type="checkbox"/> go to 20 Yes <input type="checkbox"/> go to 17	
17	solicitor's name		
18	name of solicitor's firm		
19	address	postcode	
		DX phone ()	fax ()

Notices from the Court

20	Where do you want notices from the Court sent?	address in 2 <input type="checkbox"/> union in 13-15 <input type="checkbox"/> solicitor in 17-19 <input type="checkbox"/> other <input type="checkbox"/> give details	
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SCHEDULE 3—continued

FORM 5A—continued

Remedy sought

21 What are you asking the Court for? reinstatement compensation
other - give details

Declaration

I declare that all the facts in this form are correct and complete to the best of my knowledge and belief. *If a union is applying on behalf of the employee, a union representative must sign here*

I understand that the Court usually arranges for mediation first. If the matter is settled at a mediation conference, it will not be necessary to go to Court.
*The employee must sign this declaration**

signature for union	date
	/ /
name (print)	position

signature of employee	date
	/ /

If a solicitor or representative has prepared the application, that person must sign here

**Note: The application need not be signed by the employee if the Registrar is satisfied that obtaining the employee's signature would cause undue difficulty or delay AND the claim is made by a trade union on the employee's behalf, or the application has been prepared by a solicitor or a representative under section 469 of the Workplace Relations Act 1996.*

signature of solicitor or authorised representative	date
	/ /
name (print)	position

SCHEDULE 3—continued**FORM 6****RULE TO SHOW CAUSE**

(Order 48, rule 8)

ORDER

JUDGE:

DATE OF ORDER:

WHERE MADE:

THE COURT ORDERS THAT *(insert name of respondent)* appear before the Federal Court of Australia at *(address of Court)* in the State/Territory of *(State or Territory)* on *(insert date)* at *(insert time)* to show cause why *(insert nature of relief required)* on the grounds, or for the reasons, set out in the affidavit of *(insert name of deponent)* sworn on *(insert date affidavit was sworn)* accompanying this Rule.

(signed, District Registrar)

Date entered:

AND THE APPLICANT CLAIMS BY WAY OF INTERLOCUTORY RELIEF:

1.

2.

(give details)

Date: eg, 7 May 19

(Signed, applicant or applicant's solicitor)

SCHEDULE 3—continued**FORM 6**—continued

TO THE RESPONDENT (*insert name and address*):

A directions hearing (and any claim by the applicant for interlocutory relief) will be heard by the Court at the time and place mentioned above. If you or your counsel or solicitor do not appear before the Court, the rule to show cause may be dealt with and judgment may be given or an order made in your absence. Before you or your counsel or solicitor appear before the Court at the time and place mentioned above, you must file an appearance in the Registry.

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

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on *1* 1997. *8 August*
2. Statutory Rules 1979 No. 140 as amended by 1980 No. 87; 1982 Nos. 217 and 408; 1983 No. 264; 1984 Nos. 9 and 258; 1985 Nos. 16, 97, 168 and 227; 1986 Nos. 61, 157 and 324; 1987 Nos. 73, 174 and 197; 1988 Nos. 14, 54, 144, 217 and 306; 1989 Nos. 50, 253 and 318; 1990 Nos. 72, 102, 276, 319, 414 and 453; 1991 Nos. 70, 249, 395 and 461; 1992 Nos. 43, 44, 86, 87, 186, 330, 421 and 453; 1993 No. 40, 45, 137, 225 and 290; 1994 Nos. 63, 130, 224, 279, 332 and 463; 1995 Nos. 31, 46, 239 and 449; 1996 Nos. 29 and 308; 1997 Nos. 82, 87, 143 and 174.