

Federal Court Amendment Rules 1999 (No. 4) 1999 No. 194

EXPLANATORY STATEMENT

Statutory Rule 1999 No. 194

Issued by the authority of the Judges of the Federal Court of Australia

Federal Court Amendment Rules 1999 (No. 4)

Section 59 of the *Federal Court of Australia Act 1976* permits the Judges of the Court or a majority of them, to make rules of Court not inconsistent with the Act. These rules may provide for the practice and procedure to be followed in the Court and in Registries of the Court. They may extend to all matters incidental to any such practice or procedure that are necessary or convenient to be prescribed for the conduct of any business of the Court.

Under sub-section 59(4) of the *Federal Court of Australia Act 1976*, sections 48, 48A, 48B, 49 and 50 of the *Acts Interpretation Act 1901* which relate to the making of regulations, apply to these Rules of Court as if references to the regulations in those sections were references to Rules of Court.

The present Federal Court Rules came into operation on 1 August 1979. They are reviewed regularly.

RULE 1 - Name of rules

This rule provides that the rules are the Federal Court Amendment Rules 1999 (No. 4).

RULE 2 - Commencement

This rule provides that these rules commence on gazettal.

RULE 3 - Amendment of Federal Court Rules

This rule provides that the Federal Court rules are amended as set out in Schedule 1.

SCHEDULE 1 - Amendments

Access to documents in proceedings under section 61 *Native Title Act 1993*

[1] Order 46, paragraph 6(2)(k)

Order 46 paragraph 6(2) sets out the categories of documents that under paragraph 6(1) may be inspected by a person (including a person who is not a party to the proceedings), subject to any orders relating to confidentiality. This amendment inserts a new paragraph 6(2)(1) which provides that an affidavit accompanying an application, or amended application, under section 61 of the *Native Title Act 1993*, and an extract from the Registrar of Native Title Claims received by the Court from the Native Title Registrar, may be inspected under paragraph 6(1). The amendment is consistent with the fundamental rule that the Court operates in public.

[2] Order 46, paragraph 6(3)(a)

Order 46 paragraph 6(3)(a) provides that an affidavit may not be inspected by a person who is not a party to the proceedings without the leave of the Court. This amendment allows an affidavit accompanying an application, or amended application, under section 61 of the *Native Title Act 1993* to be inspected by a person (including a person who is not a party to the proceedings), subject to any orders relating to confidentiality. The amendment ensures paragraph 6(3)(a) is consistent with paragraph 6(2)(1).

[3] Order 46, after paragraph 6(6)

Order 46 paragraph 6(7) is inserted to define the words "Native Title Registrar" and "Register of Native Title Claims" used in paragraph 6(2)(1) as having the same meaning as in Order 78 and the *Native Title Act 1993* respectively.

Applications and Affidavits in proceedings under section 61 *Native Title Act 1993*

[4] Order 78, subrule 6(2)

The effect of section 61(1) and section 62(1) of the *Native Title Act 1993* is that a claimant application must be signed and accompanied by an affidavit sworn or affirmed by "the applicant". In the case of a native title determination application or a compensation application made by a person or persons authorised to make the application by a native title claim group or a compensation claim group respectively, the person is or the persons jointly are "the applicant".

The amendment repeals Order 78 subrule 6(2) and replaces it with subrules 6(2), 6(2A) and 6(2B) which set out who may sign the application and make the affidavit where the applicant is an individual, a body corporate, or a number of individuals jointly.

Subrule 6(2) provides that if the applicant is an individual, the applicant must sign the application and swear or affirm the accompanying affidavit.

Subrule 6(2B) provides that if the applicant is a body corporate, the application must be signed, and the accompanying affidavit made by, a director, secretary or other principal officer of the body corporate, or a person employed by the body corporate who is authorised to sign the application and make the affidavit.

Subrule 6(2B) provides that if the applicant is a number of individuals jointly, the application must be signed by each individual or by one individual who is authorised by each other individual to sign the application. The subrule also provides that the affidavit accompanying the application must be sworn or affirmed by each individual.

[5] Order 78, paragraph 9(a)

This amendment provides that a party, other than the applicant, wishing to cease to be a party before the first hearing of the proceedings must give written notice to the Court in accordance with a new form, Form 162.

[6] Order 78, subrule 10(3)

This amendment deals with who must sign an application under the *Native Title Act 1993* which is not a native title determination application or a compensation application, and who must swear or affirm the affidavit accompanying that application.

The amendment repeals Order 78 subrule 10(3) and replaces it with subrules 10(3), 10(3A) and 10(3B) which set out who may sign the application and make the affidavit where the applicant is an individual, a body corporate, or a number of individuals jointly.

Subrule 10(3) provides that if the applicant is an individual, the applicant must sign the application and swear or affirm the accompanying affidavit.

Subrule 10(3A) provides that if the applicant is a body corporate, the application must be signed, and the accompanying affidavit made by, a director, secretary or other principal officer of the body corporate, or a person employed by the body corporate who is authorised to sign the application and make the affidavit.

Subrule 10(3B) provides that if the applicant is a number of individuals jointly, the application must be signed by each individual or by one individual who is authorised by each other individual to sign the application. The subrule also provides that the affidavit accompanying the application must be sworn or affirmed by each individual.

Access to documents in appeals from decisions or determinations of the National Native Title Tribunal

[7] Order 78, heading to rule 27

This amendment reflects the fact that the subject matter of rule 27 is no longer limited to the duties of the Registrar after a notice of appeal to the Court under section 169 of the *Native Title Act 1993* is filed. Rule 27 now deals more generally with the rights of the parties to an appeal to be notified of, and to seek orders in relation to, the documents and other things that were before the National Native Title Tribunal at the end of the National Native Title Tribunal proceedings.

[8] Order 78, paragraph 27(2)(b)

This amendment inserts paragraph 27(2)(c). The effect of the amendment is that the Registrar must notify the applicant that the Registrar, having received from the Native Title Registrar a list of the documents and other things that were before the National Native Title Tribunal at the end of the National Native Title Tribunal proceedings, has endorsed the date of receipt on the list and sent a copy of the list endorsed with the date to the Native Title Registrar. Prior to the amendment the Registrar was not required to give this notification to the applicant.

[9] Order 78, after subrule 27(2)

This amendment inserts subrules 27(3), 27(4), 27(5) and 27(6). Subrule 27(3) provides that, as soon as possible after receiving the notice under paragraph 27(2)(c), the applicant must serve each respondent to the appeal with a notice that the Native Title Registrar has given the Registrar the list and the documents and other things mentioned in the list.

The effect of subrules 27(4) and 27(5) is that an applicant may, within 28 days of receiving the notice under paragraph 27(2)(c), apply to the Court for an order that a document or thing in the list, or any part of a document or thing in the list, not be disclosed to one or parties, or that disclosure be on conditions as included in the order. The subrules also allow a respondent to make the same type of application within 28 days of receiving the notice under subrule 27(3).

Subrule 27(6) allows the Court to make any order it considers appropriate in relation to an application under subrule 27(4).

[10] Order 78, after rule 27

Rule 27A is inserted into Order 78 to allow the Court, at any time in a proceeding, on the application of a party or on its own motion, to make any order it considers appropriate for the preparation, filing and service of an appeal book.

New forms to go in Schedule 1 to the Court's rules

[11] Order 78, rule 41

This amendment provides that a party giving written notice to the Court of any change in address for service or contact details must do so in accordance with a new form, Form 163.

[12] Order 78, subrule 42(1)

This amendment provides that a party giving written notice to the Court of the appointment of an agent, and of the agent's name, contact details and address for service, must do so in accordance with a new form, Form 164.

[13] Order 78, subrule 42(2)

This amendment provides that a party giving written notice to the Court of any change in the agent's name, contact details and address for service, must do so in accordance with a new form, Form 165.

[14] Order 78, after rule 42

Section 85 of the Native Title Act 1993 provides that a party may appear in person or may be represented by a barrister, a solicitor or, with the leave of the Federal Court, another person.

Rule 42A is inserted into Order 78 to provide for an application to be made for the leave of the Court pursuant to section 85, and for such application to be in accordance with a new form, Form 166.

[15] Schedule 1, after Form 161

This amendment inserts Form 162 "Notice by party other than applicant that the party wishes to cease to be a party", Form 163 "Notice of change of address for service or contact details", Form 164 "Notice by party other than applicant that the party wishes to cease to be a party", Form 165 "Notice of change in name, contact details or address for service of society, association or other body appointed as agent for party of appointment of new agent", and Form 166 "Application for leave to be represented by a person who is not a barrister or solicitor".