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Legislative Services Section,
Office of Legislative Drafting,
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Federal Court Amendment Rules 1999 (No. 4)

Statutory Rules 1999 No. /

194

We, Judges of the Federal Court of Australia, make the following rules of court under the *Federal Court of Australia Act 1976*.

Dated / 1999.

20 August

M.E.J. BLACK C.J.
J.F. GALLOP J.
B.A. BEAUMONT J.
M.R. WILCOX J.
J.E.J. SPENDER J.
P.R.A. GRAY J.
J.C.S. BURCHETT J.
J.A. MILES J.
D.M. RYAN J.
R.S. FRENCH J.
M.R. EINFELD J.
M.C. LEE J.
J.W. von DOUSSA 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.
C.J.S.M. CARR J.
M.F. MOORE J.
C.M. BRANSON J.
K.E. LINDGREN J.
B.J.M. TAMBERLIN J.
R. SACKVILLE J.
S.M. KIEFEL J.
P.D. FINN J.
R.A. SUNDBERG 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.
M.S. WEINBERG J.
J.A. DOWSETT J.
L.S. KATZ J.
P.G. HELY J.
S.C. KENNY J.
R.V. GYLES J.
Judges of the Federal
Court of Australia

W.G. SODEN
Registrar



Federal Court Amendment Rules 1999 (No. 4)¹

Statutory Rules 1999 No. 4²

194

made under the

Federal Court of Australia Act 1976

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1999, 4

Federal Court Amendment Rules 1999 (No. 4)

1

194

1 Name of Rules

These Rules are the *Federal Court Amendment Rules 1999 (No. 4)*.

4

2 Commencement

These Rules commence on gazettal.

3 Amendment of Federal Court Rules

Schedule 1 amends the Federal Court Rules.

Schedule 1 Amendments

(rule 3)

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

substitute

- (k) a notice of ceasing to act;
- (l) in a proceeding to which Order 78 applies:
 - (i) an affidavit accompanying an application, or an amended application, under section 61 of the *Native Title Act 1993*;
 - (ii) an extract from the Register of Native Title Claims received by the Court from the Native Title Registrar.

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

substitute

- (a) an affidavit (other than an affidavit mentioned in subparagraph (2) (l) (i));

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

insert

- (7) In this Rule:
 - Native Title Registrar* has the same meaning as in Order 78.
 - Register of Native Title Claims* has the same meaning as in the *Native Title Act 1993*.

[4] Order 78, subrule 6 (2)

substitute

(2) If the applicant is an individual, the application must be signed, and the accompanying affidavit sworn or affirmed, by the applicant.

(2A) If the applicant is a body corporate, the application must be signed, and the accompanying affidavit sworn or affirmed, by a director, secretary or other principal officer of the body corporate, or by a person employed by the body corporate who is authorised to sign the application and make the affidavit.

(2B) If the applicant is a number of individuals jointly:

(a) the application must be signed by each individual, or by 1 individual who is authorised by each other individual to sign the application; and

(b) the accompanying affidavit must be sworn or affirmed by each individual.

[5] Order 78, paragraph 9 (a)

after

Court

insert

in accordance with Form 162

[6] Order 78, subrule 10 (3)

substitute

(3) If the applicant is an individual, the application must be signed, and the accompanying affidavit sworn or affirmed, by the applicant.

- (3A) If the applicant is a body corporate, the application must be signed, and the accompanying affidavit sworn or affirmed, by a director, secretary or other principal officer of the body corporate, or by a person employed by the body corporate who is authorised to sign the application and make the affidavit.
- (3B) If the applicant is a number of individuals jointly:
- (a) the application must be signed by each individual, or by 1 individual who is authorised by each other individual to sign the application; and
 - (b) the accompanying affidavit must be sworn or affirmed by each individual.

[7] Order 78, heading to rule 27

substitute

27 Procedure after notice of appeal is filed

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

substitute

- (b) send a copy of the list endorsed with the date to the Native Title Registrar; and
- (c) notify the applicant that paragraphs (a) and (b) have been complied with.

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

insert

- (3) As soon as possible after receiving notice under paragraph (2) (c), the applicant must serve notice on each respondent that the Native Title Registrar has given the Registrar the list and the documents and other things mentioned in the list.

-
- (4) A party may 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, which would otherwise be able to be inspected under Order 46, subrule 6 (2) not be disclosed to 1 or more parties, or that disclosure be on conditions as included in the order.
- (5) An application under subrule (4) must be made:
- (a) if the party applying is the applicant — within 28 days after the day the applicant receives notice from the Registrar under paragraph (2) (c); and
 - (b) if the party applying is a respondent — within 28 days after the day the respondent is served with notice from the applicant under subrule (3).
- (6) The Court may make any order it considers appropriate in relation to the application.

[10] Order 78, after rule 27

insert

27A Appeal book

The Court may, at any time in a proceeding, on the application of a party to the proceeding or on its own motion, make any order it considers appropriate relating to the preparation, filing and service of an appeal book.

[11] Order 78, rule 41

after

in writing

insert

in accordance with Form 163

[12] Order 78, subrule 42 (1)

after

in writing

insert

in accordance with Form 164

[13] Order 78, subrule 42 (2)

after

in writing

insert

in accordance with Form 165

[14] Order 78, after rule 42

insert

42A Leave to be represented by person who is not a barrister or solicitor

An application by a party under section 85 of the Native Title Act for leave to be represented by a person who is not a barrister or a solicitor must be in accordance with Form 166.

[15] Schedule 1, after Form 161

insert

Form 162 Notice by party other than applicant that the party wishes to cease to be a party

(Order 78, paragraph 9 (a))

[Heading in Form 1]

I/We
(type or print name of party wishing to cease to be a party)

notify the Court that I/we wish to cease to be a party to this proceeding.

.....
(Signature of party wishing to cease to be a party)

Date:

Note Section 84 (6) of the *Native Title Act 1993* and Order 78, paragraph 9 (a) allow a party (other than an applicant) to withdraw at any time before the first substantive hearing. After that date the leave of the Court is required.

Form 163 Notice of change in address for service or contact details

(Order 78, rule 41)

[Heading in Form 1]

I/We
(type or print name of party informing the Court of the change)

inform the Court of the following change in address for service or contact details.

If address for service has changed, state new address for service:

.....
.....
.....
..... Postcode:

If telephone contact number has changed, state the new telephone number:

Telephone: (.....)

If facsimile contact number has changed, state the new facsimile number:

Facsimile: (.....)

.....
(Signature of party informing the Court of the change)

Date:

**Form 164 Notice of appointment of society,
organisation, association or other body
to act as agent for party**

(Order 78, subrule 42 (1))

[Heading in Form 1]

I/We
(type or print name of party informing the Court of appointment)

inform the Court that I/we have appointed the following society,
organisation, association or other body to act as agent on my/our behalf
in relation to this proceeding.

Name of society, organisation, association or other body appointed:

.....
(type or print name of society, organisation, association or other body appointed)

Address for service of society, organisation, association or other body:

.....
.....
..... Postcode:

Telephone: (.....)

Facsimile: (.....)

.....
(Signature of party informing the Court of the appointment)

Date:

**To be completed by society, organisation, association or other body
accepting appointment as agent:**

..... accepts appointment as agent for
*(type or print name of society, organisation,
association or other body accepting appointment)*

..... in relation to this proceeding.
(type or print name of party)

.....
*Signed (also indicate capacity in which signatory
signs, such as president, director, etc of the society,
organisation, association or other body)*

Date:

Form 165 Notice of change in name, contact details or address for service of society, organisation, association or other body appointed as agent for party or of appointment of new agent

(Order 78, subrule 42 (2))

[Heading in Form 1]

I/We
(type or print name of party informing the Court of the change)

inform the Court that a change has occurred in:

- the name of the society, organisation, association or other body that is my/our agent in relation to this proceeding;*
- the contact details of the society, organisation, association or other body that is my/our agent;*
- the address for service of the society, organisation, association or other body that is my/our agent.*

*(delete if not applicable)

I/We now inform the Court:
(insert details of change in space below)

To be completed if new agent appointed:

New agent's name:
 (type or print name)

Address for service:

 Postcode

Telephone: (.....)

Facsimile: (.....)

.....
 (Signature of party informing the Court of the change)

Date:

To be completed by society, organisation, association or other body accepting appointment as new agent:

..... accepts appointment as agent for
 (type or print name of society, organisation,
 association or other body accepting appointment)

..... in relation to this proceeding.
 (type or print name of party)

.....
 Signed (also indicate capacity in which signatory signs, such as president, director, etc
 of the society, organisation, association or other body)

Date:

**Form 166 Application for leave to be represented
by a person who is not a barrister or
solicitor**

(Order 78, rule 42A)

[Heading in Form 1]

I/We
(type or print name of party seeking leave)

seek the leave of the Court to be represented by the person named below
in this proceeding and I/we agree, if the Court gives leave, to be
represented by that person.

Name of proposed representative:

.....
(type or print name of proposed representative)

Address of proposed representative:

.....
.....
..... Postcode:

Telephone: (.....)

Facsimile: (.....)

.....
(Signature of party seeking leave)

Date:

To be completed by proposed representative:

If the Court gives leave, I agree to represent:

..... in relation to this proceeding.
(type or print name of party)

.....
(Signature of proposed representative)

Date:

Notes

1. These Rules amend 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, 174, 204, 277 and 425; 1998 Nos. 224, 297 and 323; 1999 Nos. 15, 70 and 94.
2. Notified in the *Commonwealth of Australia Gazette* on 1 September 1999.