

Federal Court Amendment Rules 1999 (No. 5) 1999 No. 232

EXPLANATORY STATEMENT

Statutory Rule 1999 No. 232

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

Federal Court Amendment Rules 1999 (No. 5)

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. 5).

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

Filing and lodging documents in the Court

[1] Order 1, rule 5A

This amendment replaces the existing Order 1 rule 5A, which allowed for a document other than an originating process to be filed in the Court by sending it by post or by delivering it to the Court's box at the Australian Document Exchange, with a new rule 5A and rule 5AB. The effect of the amendment is to provide for documents to be filed or lodged in the Court in person or by post, document exchange or facsimile transmission.

Subrule 5A(1) provides that a document which is required or permitted by the Rules to be filed or lodged may be presented to a Registry or sent to a Registry by post, document exchange or facsimile transmission. Pursuant to subrule 5A(2), a document which is more than 20 pages long, or which is an Affidavit referred to in Order 77 paragraph 19(6)(b) (with respect to a creditor's petition seeking a sequestration order), may not be sent by facsimile transmission.

Subrule 5A(3) requires that a document which is to be signed or stamped must be accompanied by the number of copies required by the Rules, unless the document is sent by facsimile transmission.

Subrule 5A(4) provides that if the fee for a document to be filed is not payable, a statement of the reason it is not payable and any supporting evidence must accompany the document.

Subrule 5A(5) states that a document presented, or sent by post or document exchange, to a Registry that is not the proper place for a proceeding must be accompanied by a letter identifying the proper place and requesting that the document be sent to that place. The 'proper place' in relation to a proceeding is defined in Order 1 rule 4 as being the place at which the proceeding was commenced or, if there has been a transfer of the proceeding, the place to which the proceeding has been transferred.

Subrule 5A(6) provides that a document is filed when it is accepted and stamped by the Registry. However, pursuant to subrule 5A(7), a document sent by facsimile transmission is taken to have been filed, if the whole document is received by 4.30 pm on a day when the Registry is open for business, on that day, otherwise on the next day when the Registry is open for business.

Under subrule 5A(8), if it appears to a Registrar that a document is substantially incomplete, does not substantially comply in form with the Rules, or is not properly signed or executed, the document must not be accepted without the leave of the Court, a Judge or a Registrar. Subrule 5A(9) provides that a document, which appears, to a Registrar to be an abuse of process of the Court or to be frivolous or vexatious under Order 46 rule 7A, must not be accepted if the Registrar refuses to accept or issue the document, or is directed by a Judge to refuse to accept or issue the document (with or without the leave of a Judge). Subrule 5A(10) provides that, if a document sent by post, document exchange or facsimile transmission is not accepted, the Registrar must notify the sender by telephone, post or facsimile transmission.

Subrule 5A(11) provides that, if a document sent to a Registry by post or document exchange is required to be signed or stamped and is accepted, the Registrar must hold the document for collection for 7 days if requested by the sender to do so. If the sender does not make such a request, or having made the request fails to collect the document within 7 days, the Registrar must return the document in the same way it was sent.

Order 1 rule 5AB deals with documents filed or lodged by facsimile transmission. At least one facsimile number for the purpose of receiving documents must be approved for each Registry (subrule 5AB(1)). A document sent to a Registry by facsimile transmission must be sent to the approved facsimile number for the Registry (paragraph 5AB(2)(ii)). It must also be accompanied by a cover sheet clearly stating the sender's name and contact details, the number of pages transmitted, and the processing of the documents required (paragraph 5AB(2)(b)).

Subrule 5AB(3) provides that a document in an existing proceeding must be sent to an approved facsimile number for the Registry that is the proper place for the proceeding.

Under subrule 5AB(4), if the document is required to be signed or stamped and is accepted, the Registrar must make one copy of the document and hold it for collection for 7 days if requested by the sender to do so. If the sender does not make such a request, or having made the request fails to collect the document within 7 days, the Registrar must return the document by facsimile transmission to the facsimile number stated on the cover sheet. If more than one copy of the document is required, the sender of the document must give the Registry any additional copies (subrule 5AB(5)).

Subrule 5AB(6) provides that a person who sends a documentary facsimile transmission must keep the original document and transmission report evidencing successful transmission, and must produce the original document or transmission report as directed by the Court.

Under subrule 5AB(7), if the Court directs that the original document be produced, the first page of the document must be endorsed with a statement that the document is the original of a document sent by facsimile transmission, and the date on which it was sent.

Information that must be contained in an application to the Court

[2] Order 4, paragraph 4(c)

The effect of the amendment is that, where a solicitor represents an applicant, the application must contain the facsimile number of the solicitor in addition to the solicitor's name, address and telephone number.

[3] Order 4, paragraph 4(d)

The effect of the amendment is that. Where an applicant is represented by a solicitor who has another solicitor acting as agent for him or her in the proceeding, the application must contain the facsimile number of the solicitor's agent in addition to the agent's name, address and telephone number.

Amendments to forms in Schedule 1 to the Court's rules

[4] Schedule 1, Form 15

Form 15 is the Notice of Appearance that must be filed by a respondent to a proceeding in the Court. This amendment provides for the facsimile number of the solicitor appearing for the respondent, and of the solicitor's agent, to be included in the Notice of Appearance.

[5] Schedule 1, Form 55CA

Form 55CA is the Notice of Address for Service that must be filed by a person ("the applicant") who requests the referral of a decision on an objection with respect to taxation to the Court. This amendment provides for the facsimile number of the solicitor appearing for the applicant, and of the solicitor's agent to be included in the Notice of Address for Service.