

Federal Magistrates Court Amendment Rules 2003 (No. 1) 2003 No. 272

Explanatory Statement

Statutory Rules 2003 No. 272

Issued by the authority of the Federal Magistrates of the Federal Magistrates Court of Australia.

Federal Magistrates Court Amendment Rules 2003 (No. 1)

Section 81 of the *Federal Magistrates Act 1999* (the **Act**) provides that the Federal Magistrates, or a majority of them, may make Rules of Court providing for or in relation to the practice and procedure to be followed in the Federal Magistrates Court.

Subsection 81(3) of the Act provides that Rules of Court are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

The *Federal Magistrates Court Rules 2001* came into operation on 30 July 2001. This is the second amendment of the Rules since that date.

Rule 1 - Name of Rules

This rule provides that the Rules are the *Federal Magistrates Court Amendment Rules 2003 (No. 1)*.

Rule 2 - Commencement

This rule provides that the Rules commence on 3 November 2003, the same day as the day on which the *Federal Magistrates Court (Delegation to Registrars) Repeal Rules 2003* commence.

Rule 3 - Amendment of *Federal Magistrates Court Rules 2001*

This rule provides that the *Federal Magistrates Court Rules 2001* (**principal Rules**) are amended as set out in Schedule 1.

Rule 4 - Transitional provisions- approval for Registrars to exercise delegated powers

The *Federal Magistrates Court (Delegation to Registrars) Rules 2000* are repealed at the same time as the commencement of the Rules.

This rule provides that an existing approval for Registrars to exercise powers delegated under the repealed Rules is taken to be an approval to exercise the same powers delegated under the principal Rules (as amended by the Rules).

SCHEDULE 1

[1] Subrule 2.06 (2)

This is an amendment consequential on the insertion of Division 20.1 by item [14].

[2] Rule 5.03

This is an amendment consequential on the insertion of subrule 5.03 (2) by item [3].

[3] Rule 5.03

This amendment provides that paragraph 5.03 (1)(d) does not apply to an application for an interim injunction under section 46PP of the *Human Rights and Equal Opportunity Commission Act 1986*. That paragraph requires an applicant to establish the steps that have been taken to tell the respondent or the respondent's legal representative of the applicant's intention to make the application or the reasons why no steps were taken. The requirement would not be appropriate for an applicant under section 46PP who comes to the court on an ex parte basis because he or she fears that the situation might change before a court is seized of the dispute.

[4] Rule 13.03, heading

This is an amendment consequential on the insertion of rules 13.03A and 13.03B by item [6]. The amendment distinguishes between default mentioned in rule 13.03 and default mentioned in the new rules.

[5] Subrule 13.03 (4)

This amendment omits subrule 13.03 (4) which is replaced by new rule 13.03C.

[6] After rule 13.03

New rule 13.03A sets out the powers of the Court if a party to a proceeding is absent from a hearing, other than the first court date which is dealt with under subrule 10.01 (2).

New rule 13.03B sets out the power of the Court if no party to a proceeding appears at a hearing, other than the first court date which is dealt with under subrule 10.01 (2).

New rule 13.03C clarifies that nothing in rule 13.03, 13.03A or 13.03B is intended to limit the Court's contempt powers or sanctions for failure to comply with an order.

[7] Rule 13.06

This amendment omits rule 13.06 so that Division 13.3 applies to all proceedings.

[8] Rule 13.07, heading

This amendment distinguishes between disposal under rule 13.07 and disposal under rule 13.10.

[9] Rule 13.10

As a result of the omission of rule 13.06 by item [7], rule 13.10 now applies also to family law proceedings. The note at the foot of rule 13.10 clarifies that section 118 of the *Family Law Act 1975* applies in addition to rule 13.10.

Opportunity is also taken to include minor drafting changes.

[10] Subrule 13.11 (6), at the foot

This amendment inserts a note at the foot of subrule 13.11 (6) referring to the additional power of the Court, under section 118 of the *Family Law Act 1975*, in relation to a family law proceeding that is frivolous or vexatious.

[11] Before rule 15.07

This amendment inserts rule 15.06A which defines 'expert' for the purpose of Division 15.2. This definition reflects the definition contained in the *Federal Court Rules*.

[12] Subrule 15.09 (3)

This amendment omits subrule 15.09 (3) which is replaced by the new definition in rule 15.06A.

[13] Part 20, heading

This is an amendment consequential on the insertion of Division 20.1 by item [14].

[14] Before rule 20.01

This amendment inserts a new Division which provides for the delegation of powers to Registrars. The delegation was previously found in the *Federal Magistrates Court (Delegation to Registrars) Rules 2000* which is repealed at the same time as the commencement of the new Division. It is considered useful to have all the rules in relation to Registrars relocated into the principal Rules. Transitional provisions ensure that any existing approval to exercise a power mentioned in the repealed Rules is taken to be an approval under new subrule 20.00A(2) of the principal Rules to exercise that power.

[15] Paragraphs 20.01(1) (a) and (b)

This is an amendment consequential on the amendment made by item [14]. Opportunity is also taken to include minor drafting changes.

[16] Subrule 21.09 (3), note

This amendment substitutes the note at the foot of subrule 21.09 (3) to better reflect the regulatory framework governing lawyer-client fee disputes.

[17] Subrule 21.11 (1)

This amendment omits subrule 21.11 (1) as it is intended that there should not be any provision for taxation of costs when an order is made in accordance with Schedule 1.

[18] Rule 21.16

This is an amendment consequential on the omission of Part 2 of Schedule 1 by item [29].

[19] Rule 24.02

This is an amendment consequential on the amendment of the *Family Law Act 1975* by the *Family Law Legislation Amendment (Superannuation) Act 2001*.

New subrules 24.02 (2), (3) and (4) clarify what an applicant or respondent must file and serve in relation to financial matters when an applicant or a respondent is seeking an order for property settlement and has a superannuation interest.

[20] Paragraph 24.03 (1) (a)

This amendment amends paragraph 24.03 (1) (a) to specify that a party required to file a financial statement or an affidavit must make in the statement or affidavit a full and frank disclosure in relation to any superannuation interest of the party.

[21] Paragraph 24.03 (1) (c)

This amendment amends paragraph 24.03 (1) (a) to set out what documents are to be produced by a party in relation to the party's superannuation interest.

[22] After rule 24.06

This amendment inserts a new rule 24.07 which makes provision for the service of certain documents on the trustee of an eligible superannuation plan if a flagging order or a splitting order is sought in relation to a superannuation interest of a member of the plan, or if an application is made under section 79A of the *Family Law Act 1975* to set aside an earlier order made in relation to the superannuation interest.

Rule 24.07 also makes provision for the service on the trustee of an eligible superannuation plan of any order made in relation to a superannuation interest of a member of the plan.

[23] Rule 25.12

This amendment omits rule 25.12 as it is considered inconsistent with the policy intent of the Court not to make rules regulating the fees to be charged by lawyers as between lawyer and client in relation to proceedings in the Court (see subrule 21.09(3)).

[24] After subrule 31.02 (2)

This amendment inserts new subrule 31.02 (3) which provides that a creditor's petition must not be attached to the affidavit mentioned in paragraph 31.02 (2) (b).

[25] Paragraph 43.04 (1) (a)

This amendment corrects a drafting error.

[26] Schedule 1, heading, except the note

This amendment corrects a drafting error.

[27] Schedule 1, Part 1, heading

This is an amendment consequential on the omission of Part 2 of Schedule 1 by item [29].

[28] Schedule 1, Part 1, column 1, Stage 1A

This amendment clarifies that the reference to interim orders in Schedule 1, Part 1, column 1, Stage 1A, does not include procedural orders.

[29] Schedule 1, Part 2

This is an amendment consequential on the omission of rule 25.12 as set out in item [23].

[30] Schedule 2, Part 1, Application

An amendment has been made to the Application to make provision for proceedings to be filed under the *Copyright Act 1968*.

[31] Schedule 2, Part 3, Form 150, at the foot

Form 150 is the prescribed form for a creditor's petition.

A note has been inserted at the foot of Form 150 referring to subregulation 4.05 (1) of the *Bankruptcy Regulations 1996* which requires a creditor to give a copy of the petition to the Official Receiver within 3 working days of presentation.

[32] Schedule 2, Part 3, Form 152

Form 152 is the prescribed form for a sequestration order.

The form has been amended by replacing 'Date entered' with 'Date that entry is stamped' so that there is a clear distinction between the date of the order and the date on which it is stamped by the Registrar.

[33] Schedule 3, Part 1, after first dot point

The effect of this amendment is that Order 8, rule 13A of the *Family Law Rules 1984* will apply to a family law proceeding.

Order 8, rule 13A provides that if a party is required to give the Registrar a written notice under subsection 79B (3) or 90M (3) of the *Family Law Act 1975*, the notice must be given as soon as possible and must be accompanied by a sealed copy of the proceeds of crime order or forfeiture application, if not already filed.

[34] Schedule 3, Part 2, after fifth dot point

The effect of this amendment is that Order 54B and Division 2 of Part III of Order 58 of the *Federal Court Rules* will apply to a general federal law proceeding.

Order 54B applies to the making of an application under the *Judiciary Act 1903* in relation to certain decisions under the *Migration Act 1958*.

Division 2 of Part III of Order 58 applies to proceedings for infringement of copyright.

[35] After Schedule 3

This amendment inserts a new Schedule 4. The new Schedule sets out the powers of the Court under the *Bankruptcy Act 1966* that may be exercised by a Registrar. The new Schedule replaces similar provisions in the *Federal Magistrates Court (Delegation to Registrars) Rules 2000* which is repealed at the same time as the commencement of the new Schedule, with the addition of items 3 and 11.