



# Federal Court Amendment Rules 2010 (No. 1)<sup>1</sup>

**Select Legislative Instrument 2010 No. 191**

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

Dated 25 June 2010

P.A. KEANE C.J.  
J.E.J. SPENDER J.  
D.M. RYAN J.  
M.F. MOORE J.  
P.D. FINN J.  
R.A. SUNDBERG J.  
S.R. MARSHALL J.  
A.H. GOLDBERG J.  
A.R. EMMETT J.  
R.A. FINKELSTEIN J.  
J.A. DOWSETT J.  
S.C. KENNY J.  
M.A. STONE J.  
P.M. JACOBSON J.  
A.C. BENNETT J.  
B.T. LANDER J.  
A.N. SIOPIIS J.  
R.F. EDMONDS J.

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P.R. GRAHAM J.  
A.P. GREENWOOD J.  
B. COLLIER J.  
D.A. COWDROY J.  
A.J. BESANKO J.  
C.N. JESSUP J.  
R.R.S. TRACEY J.  
J.E. MIDDLETON J.  
R.J. BUCHANAN J.  
J. GILMOUR J.  
M.M. GORDON J.  
J.A. LOGAN J.  
G.A. FLICK J.  
N.W. McKERRACHER J.  
J.E. REEVES J.  
N. PERRAM J.  
L.G. FOSTER J.  
M.L. BARKER J.  
J.V. NICHOLAS J.  
D.M. YATES J.  
M. BROMBERG J.  
J. DODDS-STREETON J.  
J.A. KATZMANN J.

Judges of the Federal  
Court of Australia

W.G. SODEN  
Registrar

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## 1 Name of Rules

These Rules are the *Federal Court Amendment Rules 2010 (No. 1)*.

## 2 Commencement

These Rules commence as follows:

- (a) on the day after they are registered — rules 1 to 3 and Schedule 1;
- (b) on 5 July 2010 — Schedule 2.

## 3 Amendment of Federal Court Rules

Schedules 1 and 2 amend the Federal Court Rules.

## **Schedule 1 Amendments commencing on day after registration**

(rule 3)

- [1] **Order 1, rule 4, definitions of *legal practitioner* and *solicitor***  
*omit*
- [2] **Order 1, subrule 5AC (5A)**  
*omit*
- [3] **Order 8, paragraph 3 (2) (c), except the note**  
*substitute*  
(c) the person seeking leave has a prima facie case for all or any of the relief claimed by the person in the proceeding.
- [4] **Order 10, subparagraph 1 (2) (a) (xx)**  
*omit*  
assisted dispute resolution (including mediation)  
*insert*  
mediation, arbitration or an alternative dispute resolution process
- [5] **Order 10, paragraph 1 (2) (d)**  
*omit*  
order  
*insert*  
order, under paragraph 37P (3) (c) of the Act,

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**[6] Order 10, paragraph 1 (2) (g)**

*substitute*

- (g) order, under section 53A of the Act, that proceedings, a part of proceedings or a matter arising out of proceedings be referred to a mediator, arbitrator or a person suitable to conduct an alternative dispute resolution process;

**[7] Order 13, subrule 2 (2)**

*omit*

**[8] Order 13, subrules 3 (1) and (2)**

*substitute*

- (1) A party may, without leave, amend any pleading filed by the party unless:
- (a) the time for pleadings has closed; or
  - (b) the party has previously amended the pleading.

**[9] Order 32, after paragraph 4A (1) (b)**

*insert*

- (ba) the number of documents that may be tendered in evidence; or

**[10] Order 32, rule 4A, at the foot**

*insert*

*Note* See section 37P of the Act for the powers of the Court to give directions about practice and procedure in a civil proceeding.

[11] **After Order 32**

*insert*

## **Order 32A Dealing with applications and matters in original jurisdiction without oral hearing**

### **1 Court may deal with certain applications and matters without an oral hearing**

The Court or a Judge may order that the Court will deal with an application mentioned in subsection 20 (3) of the Act, or a matter mentioned in subsection 20 (5) of the Act, without an oral hearing.

### **2 Request that Court deal with application or matter without an oral hearing**

- (1) A party who wants the Court or a Judge to deal with an application or civil matter without an oral hearing under subsection 20A (2) of the Act or rule 1 must file a notice to this effect and serve a copy of the notice on each other party to the application or matter.
- (2) If a party objects to the Court or a Judge dealing with an application or civil matter without an oral hearing, the party must file a notice to this effect and serve a copy of the notice on each other party to the application or matter.

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### 3 Summary of argument

- (1) If the Court or a Judge makes an order under subsection 20A (2) of the Act or rule 1 in relation to an application or matter, each party to the application or matter must file a summary of argument and serve a copy of the summary on each other party within the time specified in the order.
- (2) A summary of argument must:
  - (a) not exceed 10 pages; and
  - (b) include the title of the proceeding; and
  - (c) include the name of the party by whom it is to be filed; and
  - (d) consist of paragraphs numbered consecutively; and
  - (e) state as concisely as possible:
    - (i) if the summary of argument is to be filed by the applicant — the factual background to the application; and
    - (ii) if the summary of argument is to be filed by a respondent — the factual issues in dispute; and
    - (iii) the claims to be argued by the party concerned; and
    - (iv) the reasons relied upon for those claims; and
  - (f) be clear and legible; and
  - (g) be securely fastened.

#### [12] Order 35, subrule 7 (2)

*omit*

The Court, where it is not exercising its appellate or related jurisdiction under Division 2 of Part III of the Act, may if it thinks fit

*insert*

The Court may

**[13] Order 37, rule 9**

*substitute*

**9 Warrant for committal — Forms 49 and 49A**

If the Court makes an order that a person be committed, a Judge may issue a warrant for committal:

- (a) if the order is made in relation to a contempt of court — in accordance with Form 49; or
- (b) in any other case — in accordance with Form 49A.

**[14] Order 46, after paragraph 7AA (b)**

*insert*

- (ba) the power of the Court under subsection 20A (2) of the Act to deal with a matter without an oral hearing if the requirements of paragraphs (a) to (c) of that subsection are met, if:
  - (i) the application was made *ex parte*; or
  - (ii) the parties to the matter consent to the Court dealing with the matter without an oral hearing;

**[15] Order 46, paragraph 7AA (d)**

*substitute*

- (d) the power of the Court under section 53A of the Act to make an order referring a proceeding, a part of a proceeding or any matter arising out of a proceeding:
  - (i) to an arbitrator for arbitration; or
  - (ii) to a mediator for mediation; or
  - (iii) to a suitable person for resolution by an alternative dispute resolution process;

**[16] Order 52, rule 2AA**

*omit*



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**[17] Order 52, subrule 10 (1), at the foot**

*insert*

*Note* Subsection 24 (1AA) of the Act specifies judgments from which an appeal cannot be brought, and subsection 24 (1C) of the Act specifies interlocutory judgments for which leave to appeal is not required.

**[18] Order 52, rule 31**

*omit*

**[19] Order 52, subrule 32 (2)**

*omit*

**[20] Order 52, subrule 33 (1)**

*omit*

rule 30 or under rule 31:

*insert*

rule 30:

**[21] Order 53, rule 16A**

*omit*

31,

**[22] Order 62, subrule 9 (1), at the foot**

*insert*

*Note* A lawyer acting for a party in a civil proceeding must take account of the party's duty to conduct the proceeding consistently with the overarching purpose described in section 37M of the Act, and assist the party to comply with that duty. When deciding whether to award costs, a Court or Judge must take into account any failure by the lawyer to comply with this obligation — see subsection 37N (4) of the Act.

**[23] Order 63, rule 2, definition of *Litigants' Fund***

*substitute*

*Litigants' Fund* means the Federal Court of Australia Litigants' Fund established under rule 3.

**[24] Order 63, rule 3**

*substitute*

**3 Litigants' Fund**

- (1) The Registrar of the Court must establish with a bank an account titled 'Federal Court of Australia Litigants' Fund'.
- (2) Subject to subrule 5 (1), money paid into Court must be paid to the credit of the Litigants' Fund.
- (3) The Litigants' Fund comprises the money standing, from time to time, to the credit of the account established under subrule (1).

**[25] Order 63, subrule 5 (2), note**

*omit*

Practice Note No. 28.

*insert*

Practice Note CM 10.

**[26] Order 72, rule 1**

*substitute*

**1 Definition for Order 72**

In this Order:

*suitable person* means a person appointed under rule 10 to conduct an alternative dispute resolution process.

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**1A      Mediation, arbitration or alternative dispute resolution process procedure**

If the Court or a Judge orders proceedings, part of proceedings, or any matter arising out of proceedings, to be referred to a mediator, arbitrator or suitable person, the mediation, arbitration or alternative dispute resolution process must proceed in accordance with this Order unless the Court or a Judge orders otherwise.

**[27]      Order 72, rule 4**

*substitute*

**4            Adjournment of proceedings**

- (1) If the Court or a Judge makes an arbitration, mediation or alternative dispute resolution process order in relation to proceedings, the proceedings are adjourned until the mediator, arbitrator or suitable person reports back to the Court unless the Court or a Judge considers that in all the circumstances the proceedings should not be adjourned.
- (2) The Court or a Judge may adjourn the proceedings to a fixed date when the mediator, arbitrator or suitable person must report to the Court on progress in the mediation, arbitration or alternative dispute resolution process.

**[28]      Order 72, rule 5, heading**

*substitute*

**5            Court may terminate mediation, arbitration or alternative dispute resolution process**

**[29] Order 72, subrule 5 (1)***substitute*

- (1) Nothing in this Order prevents the Court from:
  - (a) terminating a mediation, arbitration or alternative dispute resolution process at any time; or
  - (b) terminating the appointment of a mediator, arbitrator or suitable person; or
  - (c) appointing a new mediator, arbitrator or suitable person to replace a mediator, arbitrator or suitable person who has died or ceased to hold office, or whose appointment has been terminated.

**[30] Order 72, subrule 5 (3)***substitute*

- (3) If the Court appoints a new mediator or a new suitable person, the Court may order that the mediation or alternative dispute resolution process continue in any way the Court directs.

**[31] Order 72, rule 8, heading***substitute***8 Termination of mediation****[32] Order 72, after Division 3***insert***Division 4 Alternative dispute resolution process****10 Nomination of suitable person**

- (1) As soon as practicable after an alternative dispute resolution process order is made, the Registrar must:
  - (a) nominate a person as the suitable person; and

- 
- (b) give the parties written notice:
    - (i) of the name and address of the suitable person; and
    - (ii) of the time, date and place of the alternative dispute resolution process; and
    - (iii) of any further documents that one or more of the parties must give direct to the suitable person for the purposes of the alternative dispute resolution process.
  - (2) In fixing the time and date for the alternative dispute resolution process, the Registrar must:
    - (a) consult the parties to ascertain their wishes; and
    - (b) have regard to the time fixed by the Court within which the alternative dispute resolution process must be commenced or completed, or both.

## **11 Conduct of alternative dispute resolution process**

- (1) An alternative dispute resolution process must be conducted in accordance with any directions given by the Court or a Judge.
- (2) If part only of proceedings before the Court is the subject of an alternative dispute resolution process order, the suitable person may, on the conclusion of the alternative dispute resolution process, report back to the Court in terms agreed between the parties.

## **12 Termination of alternative dispute resolution process**

If the suitable person considers that an alternative dispute resolution process should not continue, the suitable person must, subject to any order of the Court or a Judge:

- (a) terminate the alternative dispute resolution process; and
- (b) report back to the Court.

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**[33] Schedule 1, form 5***substitute***Form 5 Application**

(Order 4, rule 1)

*(State briefly the nature of the subject of the application or cross-claim and the legislative basis of the court's jurisdiction to hear it and grant the relief sought.)*

**A. DETAILS OF CLAIM**

On the grounds stated in the accompanying affidavit or statement of claim (or any other accompanying document prescribed by the Rules), the applicant claims:

1. *(Specify in numbered paragraphs all final relief sought and the Act and provision or provisions of that Act on which the relief claimed may depend)*
- 2.
- 3.

*Note* Documents that must accompany an application are prescribed by Order 48 rules 4, 5, 6 and 7 and Order 81 rule 5.

**B. CLAIM FOR INTERLOCUTORY RELIEF**

*(Complete this section if you wish to claim interlocutory relief)*

AND the applicant claims by way of interlocutory relief:

1. *(Specify in numbered paragraphs all interlocutory relief sought and the Act and provision or provisions of that Act on which the relief claimed may depend)*
- 2.
- 3.

Date:

*(signed, applicant or applicant's lawyer)*

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**C. NOTICE TO RESPONDENT**

*(Complete this section if there is a respondent)*

TO the respondent of *(insert address)*:

This application has been set down for the time and place stated below. If you or a lawyer representing you do not attend the Court at that time, the application may be dealt with and judgment may be given, or an order made, in your absence. As soon after the time mentioned as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard;
- (b) directions may be given for the further conduct of the proceeding;
- (c) any application for interlocutory relief may be heard.

Before any attendance at Court, you must file an appearance in the Registry.

Time and date for hearing: *(to be entered by Registry unless fixed by Court)*

Place: *(address of Court)*

**D. ABRIDGMENT OF SERVICE**

*(Complete this section if the time for service has been abridged)*

The time by which this application is to be served has been abridged by order made on *(insert date)* to *(insert time and date)*.

Date:

*(signed, Registrar)*

**E. FILING AND SERVICE**

This application is filed by *(insert name)* for *(insert name)* whose address for service (see Order 7, rule 6) is *(insert address)*.

The applicant's address is *(if the applicant is an individual, specify place of residence or business; if the applicant is a corporation, specify principal place of business)*.

It is not intended to serve this application on any person.

OR

It is intended to serve this application on each person listed below:

*(insert name of each person on whom application is to be served)*

**Version 7**

**[34] Schedule 1, form 49**

*substitute*

**Form 49 Warrant for committal for contempt**

(Order 37, paragraph 9 (a))

IN THE FEDERAL COURT OF AUSTRALIA }  
DISTRICT REGISTRY }  
DIVISION } No. of 20 .  
A.B. }  
Applicant }  
C.D. }  
Respondent }

**WARRANT FOR COMMITTAL FOR CONTEMPT**

To the Sheriff of [*State/Territory*] and all of that Sheriff's officers and to all officers of the police force of [*State/Territory*]:

Take (*name*) to (*name of prison*) and deliver him\*/her\* to the Officer in Charge of that prison.

To the Officer in Charge of (*name of prison*):

Receive (*name*) into your custody and keep him\*/her\* there until the further order of this Court (*or as the case may be*).

His\*/Her\* committal is for contempt of court in that he\*/she\* (*state the nature of the contempt, for example, wilfully insulted the Judge while the Judge was sitting in Court*).



*\*omit if inapplicable*

Date:

Judge

Version 2

## Form 49A Warrant for committal

(Order 37, paragraph 9 (b))

IN THE FEDERAL COURT OF AUSTRALIA

DISTRICT REGISTRY

DIVISION

No. of 20 .

A.B.

Applicant

C.D.

Respondent

### WARRANT FOR COMMITTAL

To the Sheriff of [*State/Territory*] and all of that Sheriff's officers and to all officers of the police force of [*State/Territory*]:

Take (*name*) (***the offender***) to (*name of prison*) and deliver him\*/her\* to the Officer in Charge of that prison.

To the Officer in Charge of (*name of prison*):

Receive the offender into your custody and keep the offender in accordance with the imprisonment imposed by the Court as follows.

Offender	Name:			Date of birth:	
	Charge* Indictment* File* No	Date of offence	Description of offence	Term imposed	Cumulative Concurrent
Offences and sentences					

*\*omit if inapplicable*

Date:

Judge

**Version 1**

**[35] Schedule 1, form 129, paragraph 4**

*substitute*

4. The questions of law or fact common to the claims of the group members are (see paragraph 33H (1) (c) of the *Federal Court of Australia Act 1976*)

**[36] Schedule 3, Part 3.3, after item 24**

*insert*

- 24A subsection 37N (3) Power to require a party’s lawyer to give the party an estimate of the likely duration of the proceeding or part of the proceeding and of the likely amount of costs the party will have to pay in connection with the proceeding or part of the proceeding
- 24B subsection 37P (2) Power to give directions about the practice and procedure to be followed in relation to the proceeding or any part of the proceeding
- 24C subsection 37P (5) Power to make such order or direction as is appropriate when a party fails to comply with a direction about the practice and procedure to be followed in relation to the proceeding or any part of the proceeding

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24D 43 (3)	subsection 43 (3)	Power to do any of the things mentioned in paragraphs 43 (3) (a) to (g) in relation to costs of or in connection with an application heard by a Registrar
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**[37] Further amendments**

<i>Provision</i>	<i>omit each mention of</i>	<i>insert</i>
Order 4, paragraphs 5 (a) and 12 (b)	legal practitioner	lawyer
Order 8, paragraph 9 (2) (c)	legal practitioner	lawyer
Order 11, rule 1B	legal practitioner	lawyer
Order 24, subrule 5 (1)	legal practitioner	lawyer
Order 35, subrules 10 (1) and 10A (1)	legal practitioners	lawyers
Order 41, rule 6	legal practitioner	lawyer
Order 45, rule 9	legal practitioner	lawyer
Order 46, paragraph 7AA (c)	legal practitioners	lawyers
Order 52, paragraph 28B (1) (b)	legal practitioner	lawyer
Order 52, subparagraph 28C (1) (a) (i)	legal practitioner	lawyer
Order 53, paragraph 15B (1) (c)	legal practitioner	lawyer
Order 53, subparagraph 16 (1) (a) (i)	legal practitioner	lawyer
Order 62, rule 1A	legal practitioner	lawyer
Order 62, rule 1A	practitioner	lawyer
Order 62, paragraph 8 (1) (a)	legal practitioners	lawyers
Order 62, subrule 9 (1)	legal practitioner's	lawyer's
Order 62, subrules 9 (1), (2), (4) and (5)	legal practitioner	lawyer
Order 62, rule 35	practitioner	lawyer
Order 62, subrule 40D (4)	legal practitioners	lawyers
Order 80, rule 2, definition of <i>Pro Bono Panel</i>	legal practitioners	lawyers
Order 80, rule 3	legal practitioners	lawyers
Order 80, subrules 4 (1), (4) and (5)	legal practitioner	lawyer
Order 80, subrule 4 (5)	practitioner	lawyer

<i>Provision</i>	<i>omit each mention of</i>	<i>insert</i>
Order 80, rule 6	legal practitioner	lawyer
Order 80, rule 6	practitioner	lawyer
Order 80, rule 6A	legal practitioner	lawyer
Order 80, subrules 7 (1) and (2)	legal practitioner	lawyer
Order 80, subrule 7 (2)	practitioner	lawyer
Order 80, subrules 8 (1) and (4)	legal practitioner	lawyer
Order 80, paragraph 8 (4) (a)	practitioner	lawyer
Order 80, rules 9 and 10	legal practitioner	lawyer
Schedule 1, Form 6	legal practitioner	lawyer
Schedule 1, Form 6	<b>Version 4</b>	<b>Version 5</b>
Schedule 1, Form 8	legal practitioner	lawyer
Schedule 1, Form 8	<b>Version 4</b>	<b>Version 5</b>
Schedule 1, Form 15B	Legal practitioner	Lawyer
Schedule 1, Form 15B	<b>Version 3</b>	<b>Version 4</b>
Schedule 1, Form 53A	legal practitioner	lawyer
Schedule 1, Form 53A	<b>Version 3</b>	<b>Version 4</b>
Schedule 1, Forms 53B, 55C and 55CB	legal practitioner	lawyer
Schedule 1, Forms 53B, 55C and 55CB	<b>Version 4</b>	<b>Version 5</b>
Schedule 1, Forms 55D and 55DA	legal practitioner	lawyer
Schedule 1, Forms 55D and 55DA	<b>Version 3</b>	<b>Version 4</b>
Schedule 1, Forms 56 and 56A	legal practitioner	lawyer
Schedule 1, Forms 56 and 56A	<b>Version 5</b>	<b>Version 6</b>
Schedule 1, Forms 58A, 59, 61, 62, 64 and 65	legal practitioner	lawyer
Schedule 1, Forms 58A, 59, 61, 62, 64 and 65	<b>Version 4</b>	<b>Version 5</b>
Schedule 1, Form 129	legal practitioner	lawyer
Schedule 1, Form 129	<b>Version 3</b>	<b>Version 4</b>
Schedule 1, Form 166A	legal practitioner	lawyer

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<i>Provision</i>	<i>omit each mention of</i>	<i>insert</i>
Schedule 1, Form 166A	<b>Version 1</b>	<b>Version 2</b>
Schedule 1, Form 169	legal practitioner	lawyer
Schedule 1, Form 169	<b>Version 3</b>	<b>Version 4</b>
Schedule 3, paragraph 64A (b)	legal practitioner	lawyer
Schedule 3, items 194, 195 and 208	legal practitioner	lawyer

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## Schedule 2      Amendments commencing on 5 July 2010

(rule 3)

**[1]      Order 35, rule 7A**

*omit*

**[2]      Order 35, rule 8**

*substitute*

**8      Interest on judgment**

The prescribed rate at which interest is payable under paragraph 52 (2) (a) of the Act is:

- (a) in respect of the period from 1 January to 30 June in any year — the rate that is 6% above the cash rate last published by the Reserve Bank of Australia before that period commenced; and
- (b) in respect of the period from 1 July to 31 December in any year — the rate that is 6% above the cash rate last published by the Reserve Bank of Australia before that period commenced.

*Note* Subsection 52 (2) of the Act provides that interest is payable:

- (a) at such rate as is fixed by the Rules of Court; or
- (b) if the Court, in a particular case, thinks that justice so requires — at such lower rate as the Court determines.

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**Note**

- 1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.