

EXPLANATORY STATEMENT

Federal Magistrates Court Legislation Amendment Rules 2013 (No. 1)

Select Legislative Instrument 2013 No. 56

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

Section 81 of the *Federal Magistrates Act 1999* permits the Federal Magistrates 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 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 81(3) of the *Federal Magistrates Act 1999* the *Legislative Instruments Act 2003* (other than sections 5, 6, 7, 10, 11 and 16 of that Act) applies in relation to rules of court made by the Court under the *Federal Magistrates Act 1999* or another Act:

- (a) as if a reference to a legislative instrument were a reference to a rule of court; and
- (b) as if a reference to a rule-maker were a reference to the Chief Federal Magistrate acting on behalf of the Federal Magistrates of the Court; and
- (c) subject to such further modifications or adaptations as are provided for in regulations made under section 120 *Federal Magistrates Act 1999*.

The Federal Magistrates have agreed to adopt the *Federal Magistrates Court Legislation Amendment Rules 2013 (No. 1)* ('the Amendment Rules').

The Amendment Rules include amendments to the *Federal Magistrates Court Rules 2001* and the *Federal Magistrates Court (Bankruptcy) Rules 2006*. Schedule 1 includes miscellaneous rule amendments to the *Federal Magistrates Court Rules 2001*. In respect of the amendments which implement the recommendations of the Joint Costs Advisory Committee (JCAC), these are being implemented following a review by JCAC which review was the subject of public consultation. Schedule 2 of the Amendment Rules has been the subject of consultation with the Federal Court and the Family Court. Schedule 3 amendments have not been the subject of consultation as they comprise only consequential amendments as a result of the name change of the Court and the judicial officers.

Rules of court are not legislative instruments for the purpose of the *Legislative Instruments Act 2003* requirement for a statement of compatibility for the purposes of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Schedule 1- comprises miscellaneous amendments to the *Federal Magistrates Court Rules 2001* which are to commence the day after registration.

Schedule 2 - comprises amendments to the *Federal Magistrates Court Rules 2001* which commence at the same time as Schedule 3 to the *Access to Justice (Federal Jurisdiction) Amendment Act 2012*

Schedule 3 - comprises amendments commencing at the same time as Schedule 1 to the *Federal Circuit Court of Australia Legislation Amendment Act 2012*.

Details of the amendments are set out in the attachment below.

ATTACHMENT

Federal Magistrates Court Legislation Amendment Rules 2013 (No 1)

Rule 1 – Name of Rules

Rule 1 provides that the Rules are to be cited as the *Federal Magistrates Court Legislation Amendment Rules 2013 (No 1)*.

Rule 2 – Commencement

Rule 2 provides that the Rules will commence as follows:

Schedule 1 - The day after registration;

Schedule 2 - At the same time as Schedule 3 to the *Access to Justice (Federal Jurisdiction) Amendment Act 2012* commences;

Schedule 3 - At the same time as Schedule 1 to the *Federal Circuit Court of Australia Legislation Amendment Act 2012* commences.

Rule 3 – Authority

Rule 3 provides that the Rules are made pursuant to the *Federal Magistrates Act 1999*

Rule 4 - Schedule(s)

Provides for the amendments or repeals of the Rules in accordance with the following Schedules.

Schedule 1—Amendments commencing day after registration

Federal Magistrates Court Rules 2001

1 Subrule 1.05(2)

The reference to the *Family Law Rules 1984* is no longer necessary in view of an amendment in the *Federal Magistrates Court Amendment Rules 2011 (No1)* to repeal the application of Order 33 and the reference in that Order to the Family Law Rules 1984. The omission of “2004” from the reference to the “Family Law Rules” is consistent with the dictionary definition.

2 Rule 6.12

The amendment is merely to recast the rule for ease of understanding.

3 Rule 8.02 (notes 1 and 2)

The amendment to the notes refers to the provisions of the Act rather than setting them out in full in the notes.

4 Subrule 20.00A(1) - Table

The subrule is amended to better clarify the description of the power.

5 Rule 25A.03

The amendment is intended to exclude from the rules in respect of child support and child maintenance, the requirement to file a financial statement in respect of Applications under section 106A or 107 of the Assessment Act.

6 Rule 25B.05 (note)

The omission of “2004” from the reference to the “Family Law Rules” is consistent with the dictionary definition.

7 Subrule 44.15(1)

This amendment is as a consequence of drafting amendments to the format of Part 3 of Schedule 1.

8 Subrule 44.15(2)

This amendment is as a consequence of drafting amendments to the format of Part 3 of Schedule 1

9 Paragraph 45.13B(2)(d)

10 Subrule 45.13B(8) (definition of *FWA Member*)

11 Subrule 45.13B(8)

12 Subparagraphs 45.06(b)(ii) and 45.07(b)(ii)

These amendments are as a consequence of amendments to omit references to “Fair Work Australia” (wherever occurring), consistent with the new name of “Fair Work Commission”.

13 Schedule 1

The Cost Schedule is repealed and a new Schedule with formatting changes and increases in the costs by 2.7% as recommended by the Joint Costs Advisory Committee.

14 Schedule 3

Part 1 - Family Law Rules

The Schedule has been repealed and substituted with a new Part 1 with formatting changes and the additional application of Rule 6.15 Family Law Rules (progress of case after death following the death of a party).

Part 2—Federal Court Rules

The Schedule has been repealed and substituted with a new Part 2 with no substantive change other than formatting changes

15 Dictionary (definition of *Fair Work Australia*)

16 Dictionary

These amendments are as a consequence of amendments to the Fair Work Act to omit references to “Fair Work Australia” (wherever occurring), consistent with the new name of “Fair Work Commission”.

17 Dictionary (definition of *Family Law Rules 1984*)

The reference to the *Family Law Rules 1984* is no longer necessary in view of an amendment in the *Federal Magistrates Court Amendment Rules 2011(No1)* to repeal the application of Order 33 and the reference in that Order to the Family Law Rules 1984.

Schedule 2—Amendments commencing at the same time as Schedule 3 to the Access to Justice (Federal Jurisdiction) Amendment Act 2012

Federal Magistrates Court Rules 2001

1 Rule 13.11

The vexatious litigant rule has been repealed and replaced with a new Rule 13.11 which sets out the processes required if a person wishes to request a certificate from the Chief Executive Officer stating whether a person named in the request has been the subject of a vexatious proceedings order by the Court in accordance with subsection 88R of the Act.

New Rule 13.11A sets out the procedure for making an application for leave to institute a proceeding that is subject to a vexatious proceedings order

2 Dictionary

Includes amendments to insert the following new terms in the dictionary

vexatious proceeding—see subsection 88N(1) of the Act.

vexatious proceedings order—see subsection 88N(1) of the Act.

Schedule 3—Amendments commencing at the same time as Schedule 1 to the Federal Circuit Court of Australia Legislation Amendment Act 2012

Part 1—Main amendments

Federal Magistrates Court (Bankruptcy) Rules 2006

1 Rule 1.01

This amendment has the effect of renaming these Rules the *Federal Circuit Court (Bankruptcy) Rules 2006* and is as a consequence of the amendments to the name of the Court pursuant to the *Federal Circuit Court of Australia Legislation Amendment Act 2012*

2 After rule 1.02

This amendment inserts the legislative authority for the enactment of these Rules being the *Federal Circuit Court of Australia Act 1999*.

3 Subrule 1.04(1) (definition of Act)

4 Subrule 2.03(1)

5 Form 7 of Schedule 1

6 Form 7 of Schedule 1 (note)

7 Form 7 of Schedule 1 (note)

8 Form 7 of Schedule 1 (note)

9 Schedule 3

10 Schedule 3

The *Federal Circuit Court of Australia Legislation Amendment Act 2012* amends the *Federal Magistrates Act 1999* and other legislation to rename the Federal Magistrates Court as the “Federal Circuit Court of Australia” and to change the title of the “Chief Federal Magistrate” to “Chief Judge” and Federal Magistrates to “Judge”. These amendments are as a consequence of these changes

Federal Magistrates Court Rules 2001

11 Rule 1.01

This amendment has the effect of renaming these Rules the *Federal Circuit Court Rules 2001* and is as a consequence of the amendments to the name of the Court pursuant to the *Federal Circuit Court of Australia Legislation Amendment Act 2012*

12 After rule 1.02

This amendment inserts the legislative authority for the enactment of these Rules being the *Federal Circuit Court of Australia Act 1999*.

13 Subrule 1.03(2)

14 Subrule 1.05(1)

15 Subrule 2.04 (3)

16 Subrule 2.05(1) note

17 Subrule 2.05(2)

18 Subrule 4.05(3)

19 Paragraph 8.02(4)(c)

20 Rule 21.10(note)

These are consequential amendments as a result of the change of the name of the court and judicial officers.

21 Rule 20.00A (heading before table item 31, column headed “Legislative provision”)

22 Dictionary (definition of Act)

23 Dictionary (definition of *approved form*)

24 Dictionary (definition of *Court*)

25 Dictionary (definition of *Regulations*)

26 Dictionary (definition of *the Court or a Federal Magistrate*)

27 Dictionary

The *Federal Circuit Court of Australia Legislation Amendment Act 2012* amends the *Federal Magistrates Act 1999* and other legislation to rename the Federal Magistrates Court as the 'Federal Circuit Court of Australia' and to change the title of the Chief Federal Magistrate to 'Chief Judge' and Federal Magistrates to 'Judge'. These amendments are as a consequence of these changes

Part 2—Amendments of listed provisions: Court Rules

Federal Magistrates Court (Bankruptcy) Rules 2006

28 Amendments of listed provisions—Federal Circuit Court

The *Federal Circuit Court of Australia Legislation Amendment Act 2012* amends the *Federal Magistrates Act 1999* and other legislation to rename the Federal Magistrates Court as the 'Federal Circuit Court of Australia' and to change the title of the Chief Federal Magistrate to 'Chief Judge' and Federal Magistrates to 'Judge'. These amendments are as a consequence of these changes

Part 3—Amendments of listed provisions: Judge

Federal Magistrates Court Rules 2001

29 Amendments of listed provisions—Judge

The *Federal Circuit Court of Australia Legislation Amendment Act 2012* amends the *Federal Magistrates Act 1999* and other legislation to rename the Federal Magistrates Court as the 'Federal Circuit Court of Australia' and to change the title of the Chief Federal Magistrate to 'Chief Judge' and Federal Magistrates to 'Judge'. These amendments are as a consequence of these changes