



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

Select Legislative Instrument No. 56, 2013

We, Federal Magistrates, make the following Rules of Court under the *Federal Magistrates Act 1999*.

Dated 4 April 2013

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Federal Magistrates

Richard Foster
Chief Executive Officer

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1 Name of Rules

These Rules are the *Federal Magistrates Court Legislation Amendment Rules 2013 (No. 1)*.

2 Commencement

Each provision of these Rules specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Rules 1 to 4 and anything in this rule not elsewhere covered by this table	The day after registration.	
2. Schedule 1	The day after registration.	
3. Schedule 2	At the same time as Schedule 3 to the <i>Access to Justice (Federal Jurisdiction) Amendment Act 2012</i> commences.	
4. Schedule 3	At the same time as Schedule 1 to the <i>Federal Circuit Court of Australia Legislation Amendment Act 2012</i> commences.	

3 Authority

These Rules are made under the *Federal Magistrates Act 1999*.

4 Schedule(s)

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1—Amendments commencing day after registration

Federal Magistrates Court Rules 2001

1 Subrule 1.05(2)

Omit “2004 or the Family Law Rules 1984”.

2 Rule 6.12

After “A document”, insert “served by post, fax or electronic communication”.

3 Rule 8.02 (notes 1 and 2)

Repeal the notes, substitute:

Note: See subsections 39(3) and (4) of the Act for matters the Court must have regard to in deciding whether to transfer a proceeding to the Federal Court or the Family Court.

4 Subrule 20.00A(1) (table item 30)

Omit “Regulations, Rules or procedures”, substitute “Family Law Regulations, these Rules or procedures related to these Rules”.

5 Rule 25A.03

Repeal the rule, substitute:

25A.03 Documents to be filed with applications

- (1) A person must file with an application under this Part, the following documents:
 - (a) an affidavit setting out the facts and circumstances relied on and the grounds of the application, attaching:
 - (i) a copy of any assessment relevant to the application made by the Child Support Registrar; and
 - (ii) a copy of any decision relevant to the application made by the Child Support Registrar or SSAT, and any statement of reasons for that decision; and
 - (iii) a copy of any orders relevant to the application;

(b) a completed financial statement in accordance with the approved form.

(2) However, paragraph (1)(b) does not apply to:

- (a) an appeal from a decision of the SSAT or the Child Support Registrar; or
- (b) an application under subsection 106A(2) or 107(1) of the Assessment Act.

6 Rule 25B.05 (note)

Omit “2004”.

7 Subrule 44.15(1)

Omit “item 1”, substitute “Division 1”.

8 Subrule 44.15(2)

Omit “item 2”, substitute “Division 2”.

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

Omit “Fair Work Australia” (wherever occurring), substitute “the Fair Work Commission”.

10 Paragraph 45.13B(2)(d)

Repeal the paragraph, substitute:

- (d) an FWC member nominated by the President of the Fair Work Commission.

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

Repeal the definition.

12 Subrule 45.13B(8)

Insert:

FWC member has the meaning given by section 12 of the Fair Work Act.

13 Schedule 1

Repeal the Schedule, substitute:

Schedule 1—Costs

Note: See rules 21.10, 21.16 and 44.15.

Part 1—Family law proceedings and general federal law proceedings

Costs for family law proceedings and general federal law proceedings			
Item	Description	Amount for a family law proceeding (including GST)	Amount for a general federal law proceeding (including GST)
1	Initiating or opposing an application up to the completion of the first court date	Both: (a) \$1,994.00; and (b) the daily hearing fee mentioned in item 13 that applies to the hearing	Both: (a) \$2,663.00; and (b) the daily hearing fee mentioned in item 13 that applies to the hearing
2	Initiating or opposing an application which includes interim orders (other than procedural orders) up to the completion of the first court date	Both: (a) \$2,494.00; and (b) the daily hearing fee mentioned in item 13 that applies to the hearing	Both: (a) \$3,332.00; and (b) the daily hearing fee mentioned in item 13 that applies to the hearing
3	Interim or summary hearing—as a discrete event Note: This stage applies to an interim application or a summary proceeding of a type not otherwise addressed in this fee structure. It does not include the item 1 or 2 component.	Both: (a) \$1,661.00; and (b) the daily hearing fee mentioned in item 13 that applies to the hearing	Both: (a) \$1,661.00; and (b) the daily hearing fee mentioned in item 13 that applies to the hearing
4	Up to and including the	\$1,661.00	Not applicable

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Costs for family law proceedings and general federal law proceedings			
Item	Description	Amount for a family law proceeding (including GST)	Amount for a general federal law proceeding (including GST)
	conciliation conference		
5	Dispute resolution litigation intervention	\$1,661.00	\$2,793.00
6	Preparation for final hearing—one day matter	\$4,250.00	\$5,988.00
7	Preparation for final hearing—2 day matter	\$5,270.00	\$8,998.00
8	Preparation for final hearing—each additional hearing day after the second hearing day	\$1,128.00	\$1,893.00
9	Final hearing costs for attendance of solicitor at hearing to take judgement and explain orders	Both: (a) \$271.00; and (b) the daily hearing fee mentioned in item 13 that applies to the hearing	Both: (a) \$271.00; and (b) the daily hearing fee mentioned in item 13 that applies to the hearing
10	Application for family law location, recovery or enforcement of an order (other than an application for enforcement by a Registrar under item 11)	Both: (a) \$844.00; and (b) the daily hearing fee mentioned in item 13 that applies to the hearing	Not applicable
11	Application for enforcement by a Registrar of: (a) a warrant under rule 25B.22; or (b) a third party debt notice under rule 25B.40	\$558.00	Not applicable
12	Advocacy loading	50% of the daily hearing fee	50% of the daily hearing fee

Schedule 1 Amendments commencing day after registration

Costs for family law proceedings and general federal law proceedings			
Item	Description	Amount for a family law proceeding (including GST)	Amount for a general federal law proceeding (including GST)
		mentioned in item 13 that applies to the hearing	mentioned in item 13 that applies to the hearing
13	Daily hearing fee	Either: (a) for a short mention— \$271.00; or (b) for a half day hearing— \$997.00; or (c) for a full day hearing— \$1,994.00	Either: (a) for a short mention— \$271.00; or (b) for a half day hearing— \$997.00; or (c) for a full day hearing— \$1,994.00
14	Disbursements—Court fees and other fees and payments to the extent that they have been reasonably incurred	The amount of the fees and payments	The amount of the fees and payments
15	Disbursements—photocopying for each page	\$0.69	\$0.69
16	Agents fees and travelling costs	\$561.00	\$561.00
	Note: For 2 or more hours travel		

Part 2—Child support proceedings

Division 1—Application for enforcement order in relation to child support proceedings

Costs for child support proceedings		
Item	Description	Amount (including GST)
1	Initiating or opposing an application up to the completion of the first court date Note: This item includes final hearing of up to one day if it is held on the first court date.	Both: (a) \$2,100; and (b) the daily hearing fee mentioned in item 6 that applies to the hearing
2	Interim or summary hearing—as a discrete event Note: This item applies to an interim application, or a summary proceeding of a type not otherwise addressed in this fee structure such as an application for an order that a proceeding be stayed. It does not include the item 1 component.	Both: (a) \$1,601.00; and (b) the daily hearing fee mentioned in item 6 that applies to the hearing
3	Preparation of final hearing for a matter of 2 or more days—for every day after the first court date	\$1,088.00
4	Final hearing costs for attendance of solicitor at hearing to take judgement and explain orders	Both: (a) \$262.00; and (b) the daily hearing fee mentioned in item 6 that applies to the hearing
5	Advocacy loading	50% of the daily hearing fee mentioned in item 6 that applies to the hearing
6	Daily hearing fee	Either: (a) for a short mention—\$262.00; or (b) for a half day hearing—\$961.00; or (c) for a full day hearing—\$1,924.00
7	Disbursements—Court fees and other fees and payments to the extent that they have been reasonably incurred	The amount of the fees and payments

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Schedule 1 Amendments commencing day after registration

Costs for child support proceedings

Item	Description	Amount (including GST)
8	Disbursements—photocopying documents first 10 pages—for each page	\$0.69
9	Disbursements—photocopying documents after first 10 pages—for each page	\$0.21
10	Agents fees and travelling costs Note: For 2 or more hours travel.	\$541.00

Division 2—Costs for appeal of an SSAT or Child Support Registrar decision

Costs for an appeal of an SSAT or Child Support Registrar decision

Item	Description	Amount (including GST)
1	A proceeding concluded at or before the first court date for the proceeding	\$1,284.00
2	A proceeding concluded: (a) after the first court date for the proceeding; and (b) at least 4 weeks before the final hearing for the proceeding	\$3,207.00
3	A proceeding concluded at a final hearing	\$6,408.00

Part 3—Migration proceedings

Division 1—Costs for migration proceedings that have concluded

Costs for migration proceedings that have concluded

Item	Description	Amount (including GST)
1	A proceeding concluded at or before the first court date	\$1,331.00

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Costs for migration proceedings that have concluded

Item	Description	Amount (including GST)
	for the proceeding	
2	A proceeding concluded: (a) after the first court date for the proceeding; and (b) at or before the hearing under rule 44.12 or other interlocutory hearing	\$3,326.00
3	A proceeding concluded at a final hearing	\$6,646.00

**Division 2—Costs for migration proceedings that have
been discontinued****Costs for migration proceedings that have been discontinued**

Item	Description	Amount (including GST)
1	A proceeding in which the notice of discontinuance is filed and served at least 14 days before the first court date for the proceeding	\$662.00
2	A proceeding in which the notice of discontinuance is filed and served: (a) less than 14 days before the first court date for the proceeding; and (b) at least 15 days before the hearing under rule 44.12 or other interlocutory hearing	\$1,661.00
3	A proceeding in which the notice of discontinuance is filed and served: (a) less than 15 days before the hearing under rule 44.12 or other interlocutory hearing; and (b) at least 15 days before the final hearing	\$3,326.00
4	Any other case	\$4,652.00

14 Schedule 3

Repeal the Schedule, substitute:

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Schedule 3—Family Law Rules and Federal Court Rules applied

Note: See rule 1.05.

Part 1—Family Law Rules

Family Law Rules	
Item	Provision
1	rules 1.19 and 1.20
2	Part 2.2
3	Part 2.3
4	rules 4.08 to 4.10
5	rule 6.15
6	Part 6.5
7	rule 16.10
8	Part 21.2
9	Part 23.1
10	rule 24.11

Part 2—Federal Court Rules

Federal Court Rules	
Item	Provision
1	rules 1.41 and 1.42
2	rules 2.41 to 2.43
3	rules 5.22 to 5.24
4	rules 10.41 to 10.52
5	Division 10.6
6	rule 15.10
7	rule 16.01

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Federal Court Rules	
Item	Provision
8	paragraphs 16.02(1)(a), (b) and (d)
9	subrules 16.02(3) and (5)
10	rules 16.03 to 16.12
11	rule 16.21
12	rules 16.31 to 16.33
13	rules 16.41 to 16.45
14	rule 25.01 to 25.06
15	rules 25.10 to 25.12
16	rule 25.14
17	rule 30.29 to 30.33
18	Divisions 34.2 and 34.3
19	rules 39.01 to 39.03
20	rule 39.06
21	rule 39.11
22	rule 39.21
23	Division 42.3

15 Dictionary (definition of *Fair Work Australia*)

Repeal the definition.

16 Dictionary

Insert:

Fair Work Commission has the meaning given by section 12 of the *Fair Work Act 2009*.

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

Repeal the definition.

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

Repeal the rule, substitute:

13.11 Certificate of vexatious proceedings order

- (1) A person who wants the Chief Executive Officer of the Court to issue a certificate under subsection 88R(1) of the Act must make the request in writing and include in the request:
 - (a) the applicant's name and address; and
 - (b) the person's interest in making the request.
- (2) The request must be lodged in the Registry in which the vexatious proceedings order was made.
- (3) The certificate will state:
 - (a) the name of the person subject to the vexatious proceedings order; and
 - (b) if applicable, the name of the person who applied for the vexatious proceedings order; and
 - (c) the date on which the vexatious proceedings order was made; and
 - (d) the orders made by the Court.

13.11A Application for leave to institute proceedings

An application under subsection 88T(2) of the Act for leave to institute a proceeding that is subject to a vexatious proceedings order must be made:

- (a) in accordance with the approved form; and
- (b) without notice to any other person.

Note 1: See subsection 88T(2) of the Act for the power for a person who is subject to a vexatious proceedings order to apply to the Court to institute a proceeding.

Note 2: See subsection 88T(3) of the Act for the contents of the affidavit that must be filed with the application.

2 Dictionary

Insert:

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

Omit “*Magistrates*”, insert “*Circuit*”.

2 After rule 1.02

Insert:

1.02A Authority

These Rules are made under the *Federal Circuit Court of Australia Act 1999*.

3 Subrule 1.04(1) (definition of Act)

Repeal the definition, substitute:

Act means the *Federal Circuit Court of Australia Act 1999*.

4 Subrule 2.03(1)

Omit “Federal Magistrate”, substitute “Judge”.

5 Form 7 of Schedule 1

Omit “*FEDERAL MAGISTRATE”.

6 Form 7 of Schedule 1 (note)

Omit “*Magistrates*” (first occurring), substitute “*Circuit Court of Australia*”.

7 Form 7 of Schedule 1 (note)

Omit “*Magistrates*” (second and last occurring), substitute “*Circuit*”.

8 Form 7 of Schedule 1 (note)

Omit “Federal Magistrate” (wherever occurring), substitute “Judge”.

9 Schedule 3

Omit “/*Federal Magistrate”.

10 Schedule 3

Omit “/*Federal Magistrate”.

Federal Magistrates Court Rules 2001

11 Rule 1.01

Omit “Magistrates”, insert “Circuit”.

12 After rule 1.02

Insert:

1.02A Authority

These Rules are made under the *Federal Circuit Court of Australia Act 1999*.

13 Subrule 1.03(2)

Omit “Federal Magistrates”.

14 Subrule 1.05(1)

Omit “Federal Magistrates”.

15 Subrule 2.04(3)

Omit “MAGISTRATES”, substitute “CIRCUIT”.

16 Subrule 2.05(1) (note)

Repeal the note, substitute:

Note: The *Federal Court and Federal Circuit Court Regulation 2012* and the *Family Law (Fees) Regulation 2012* provide that a document may not be filed in a registry of the Court unless the fee payable for the filing has been paid. Both regulations also provide for an exemption or deferral of a fee, or payment of the fee on invoice, in certain circumstances.

17 Subrule 2.05(2)

Omit “Federal Magistrates”.

18 Subrule 4.05(3)

Omit “Federal Magistrates” (wherever occurring).

19 Paragraph 8.02(4)(c)

Omit “Federal Magistrates”.

20 Rule 21.10 (note)

Omit “*Magistrates*”, substitute “*Circuit*”.

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

Repeal the heading, substitute:

Federal Circuit Court Rules 2001

22 Dictionary (definition of Act)

Repeal the definition, substitute:

Act means the *Federal Circuit Court of Australia Act 1999*.

23 Dictionary (definition of *approved form*)

Repeal the definition, substitute:

approved form, for a provision of these Rules, means a form approved by the Chief Judge under subrule 2.04(1A) for the provision.

24 Dictionary (definition of Court)

Repeal the definition, substitute:

Court means the Federal Circuit Court of Australia.

25 Dictionary (definition of *Regulations*)

Repeal the definition.

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

Repeal the definition.

27 Dictionary

Insert:

the Court or a Judge includes a Judge sitting in chambers.

Part 2—Amendments of listed provisions: Court Rules

Federal Magistrates Court (Bankruptcy) Rules 2006

28 Amendments of listed provisions—Court Rules

Amendments of listed provisions—Federal Circuit Court			
Item	Provision	Omit	Substitute
1	subrule 1.04(2)	<i>Magistrates</i>	<i>Circuit</i>
2	subrule 2.05(2)	<i>Magistrates</i>	<i>Circuit</i>
3	subrule 4.08(3)	<i>Magistrates</i>	<i>Circuit</i>
4	paragraph 4.09(2)(a)	<i>Magistrates</i>	<i>Circuit</i>
5	rule 10.05	<i>Magistrates</i>	<i>Circuit</i>
6	rule 11.04	<i>Magistrates</i>	<i>Circuit</i>
7	Form 6 of Schedule 1 (note 1)	<i>Magistrates</i>	<i>Circuit</i>

Part 3—Amendments of listed provisions: Judge

Federal Magistrates Court Rules 2001

29 Amendments of listed provisions—Judge

Amendments of listed provisions—Judge			
Item	Provision	Omit	Substitute
1	subrule 2.04(1A)	Federal Magistrate	Judge
2	paragraph 2.09(b)	Federal Magistrate	Judge
3	rule 2.09 (note 2)	Federal Magistrate	Judge
4	subrule 3.01(1)	Federal Magistrate	Judge
5	subrule 3.01(2)	Federal Magistrate	Judge
6	subrule 3.02(2)	Federal Magistrate	Judge
7	rule 7.02	Federal Magistrate's	Judge's
8	paragraph 10.05(2)(a)	Federal Magistrate	Judge
9	subrule 10.05(5)	Federal Magistrate	Judge
10	rule 14.01 (note)	Federal Magistrate	Judge
11	subrule 14.02(1) (note)	Federal Magistrate	Judge
12	rule 15.03	Federal Magistrate	Judge
13	subparagraph 16.08(1)(b)(i)	Federal Magistrate	Judge
14	subrule 20.00A(1)	Federal Magistrate	Judge
15	rule 20.00A (paragraph (a) of the note)	Federal Magistrate	Judge
16	subrule 25A.07(5)	Federal Magistrate	Judge
17	paragraph 25B.17(3)(b)	Federal Magistrate	Judge
18	paragraph 25B.41(b)	Federal Magistrate	Judge
19	paragraph 45.13B(2)(a)	Federal Magistrate	Judge
20	subrule 45.13B(7)	Federal Magistrate	Judge
