



Federal Court Amendment Rules 2013 (No. 1)

Select Legislative Instrument No. 65, 2013

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

Dated 3 May 2013

J.L.B. ALLSOP CJ
P.R.A. GRAY J
T.J. HIGGINS J
A.M. NORTH J
J.R. MANSFIELD J
J.A. DOWSETT J
S.C. KENNY J
P.M. JACOBSON J
A.C. BENNETT J
B.T. LANDER J
A.N. SIOPIIS J
R.F. EDMONDS J
A.P. GREENWOOD J
S.D. RARES J
B. COLLIER J
D.A. COWDROY 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
J.M. JAGOT J

L.G. FOSTER J
M.L. BARKER J
J.V. NICHOLAS J
D.M. YATES J
M. BROMBERG J
J.A. DODDS-STREETON J
A.J. KATZMANN J
A. ROBERTSON J
B.M. MURPHY J
J.E. GRIFFITHS J
D.J.C. KERR J
L.K. FARRELL J

Judges of the Federal Court
of Australia

Warwick Soden
Registrar

Contents

1	Name of Rules	1
2	Commencement	1
3	Authority	1
4	Schedule(s)	1
Schedule 1—Amendments commencing day after registration		2
	<i>Federal Court Rules 2011</i>	2
Schedule 2—Amendments commencing immediately after the commencement of Schedule 3 of the Access to Justice (Federal Jurisdiction) Amendment Act 2012		10
	<i>Federal Court Rules 2011</i>	10

1 Name of Rules

These Rules are the *Federal Court 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 these Rules not elsewhere covered by this table	The day after these Rules are registered.	
2. Schedule 1	The day after these Rules are registered.	
3. Schedule 2	Immediately after the commencement of Schedule 3 of the <i>Access to Justice (Federal Jurisdiction) Amendment Act 2012</i> .	

3 Authority

These Rules are made under the *Federal Court of Australia Act 1976*.

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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments commencing day after registration

Federal Court Rules 2011

1 At the end of subrule 2.32(2)

Add:

; (m) a transcript of a hearing heard in open Court.

2 Subrule 2.32(3) (note)

Omit “section 50”, substitute “sections 37AF and 37AI”.

3 Subrule 5.04(3) (table items 26 to 28)

Repeal the items, substitute:

26	The providing and limiting of written submissions
27	The taking of evidence and receipt of submissions by video link, audio link, electronic communication or other means that the Court considers appropriate
28	The proportion in which the parties are to bear the costs (if any) of taking evidence or making submissions in accordance with a direction mentioned in item 27

4 Paragraph 7.23(1)(a)

Omit “he or she”, substitute “the prospective applicant”.

5 Subparagraphs 9.64(b)(i) and (ii)

Repeal the subparagraphs, substitute:

- (i) if the litigation representative is a lawyer—the litigation representative; and
- (ii) if the litigation representative is not a lawyer—the litigation representative’s lawyer.

6 Rule 10.04

Omit “Fair Work Australia”, substitute “Fair Work Commission”.

7 At the end of rule 19.01

Add:

- (3) The respondent's affidavit should state the following:
- (a) whether there is reason to believe that the applicant will be unable to pay the respondent's costs if so ordered;
 - (b) whether the applicant is ordinarily resident outside Australia;
 - (c) whether the applicant is suing for someone else's benefit;
 - (d) whether the applicant is impecunious;
 - (e) any other relevant matter.

Note: Section 56 of the Act deals with security for costs.

- (4) In this rule:

applicant includes a cross-claimant.

respondent includes a cross-respondent.

8 Rule 19.02

Repeal the rule.

9 At the end of rule 20.13

Add:

- (5) If a party who is required to give discovery wants an order under paragraph 43(3)(h) of the Act, the party must file an affidavit stating:
- (a) the orders sought; and
 - (b) the party's calculation of the cost of making discovery; and
 - (c) why the orders should be made.

Note: Section 43 of the Act provides for the Court or a Judge to do any of the following in relation to discovery:

- (i) order the party requesting discovery to pay in advance for some or all of the estimated cost of discovery;
- (ii) order the party requesting discovery to give security for the payment of the cost of discovery;
- (iii) make an order specifying the maximum cost that may be recovered for giving discovery or taking inspection.

10 Subrule 20.23(4)

Omit "this rule", substitute "subrule (1)".

11 Subrule 20.31(3)

Omit “and”, substitute “for”.

12 Subrule 20.32(2)

Omit “inspection be given”, substitute “production for inspection be”.

13 At the end of subrule 23.02(2)

Add:

; and (g) contain an acknowledgement that the opinions are based wholly or substantially on the specialised knowledge mentioned in paragraph (b).

14 After paragraph 23.13(1)(g)

Insert:

(ga) contain an acknowledgement that the expert’s opinions are based wholly or substantially on the specialised knowledge mentioned in paragraph (c); and

15 Rule 23.15 (note 1)

Repeal the note, substitute:

Note 1: For the directions a Court may make before trial about expert reports and expert evidence, see rule 5.04 (items 14 to 19).

16 Subrule 27.13(1)

Omit “Federal Magistrates Court’s”, substitute “Federal Circuit Court of Australia’s”.

17 Rule 30.03

Repeal the rule.

18 Division 30.1

Omit “**Rules 30.04—30.10 left blank**”, substitute “**Rules 30.03—30.10 left blank**”.

19 At the end of Division 30.3

Add:

30.34 Attendance and production

- (1) At any hearing of a proceeding, including the trial of the proceeding, a party may apply to the Court for an order for the attendance of any person before the Court, a Registrar, an examiner, a referee, or other person authorised to take evidence:
 - (a) for examination; or
 - (b) for production by that person of any document or thing specified in the order.
- (2) An order may be made under subrule (1) even if the person whose attendance is required by the order has also been required to attend by subpoena.

20 Division 30.3

Omit “**Rules 30.34—30.40 left blank**”, substitute “**Rules 30.35—30.40 left blank**”.

21 Subrules 31.05(4) and 31.24(4)

Omit “incompetent”, substitute “not competent”.

22 Subrule 32.15(1)

Omit “wishes”, substitute “wants”.

23 Paragraph 33.11(c)

Omit “District, Registrar”, substitute “District Registrar”.

24 Subparagraph 33.26(a)(vii)

Omit “submitting appearance or”.

25 Subrule 33.30(4)

Omit “incompetent”, substitute “not competent”.

26 Subrule 34.03(3)

Omit “Fair Work Australia”, substitute “the Fair Work Commission”.

27 Subrules 34.04(3) and 34.05(3)

Omit “Fair Work Australia”, substitute “the Fair Work Commission”.

28 Division 34.4

Omit “**Rules 34.78—34.89 left blank**”, substitute “**Rules 34.78—34.80 left blank**”.

29 Paragraphs 35.32(a), (b) and (c)

Omit “a failure”, substitute “an applicant’s failure”.

30 Subparagraph 36.54(a)(ix)

Omit “submitting appearance or”.

31 Subrule 36.72(4)

Omit “incompetent”, substitute “not competent”.

32 Paragraph 40.43(2)(a)

Omit “15.1 (b)”, substitute “15.1(a)”.

33 Paragraph 40.43(3)(a)

Omit “15.1 (d)”, substitute “15.1(c)”.

34 Paragraph 40.43(3)(b)

Omit “15.1 (e)”, substitute “15.1(d)”.

35 Subrule 41.07(1)

Omit “made under”, substitute “mentioned in”.

36 Paragraph 41.08(3)(a)

Omit “; and”, substitute “; or”.

37 Subrule 41.10(1)

Repeal the subrule, substitute:

- (1) A party who wants to enforce a judgment or order of the Court may apply to the Court to make an order, to issue any writ, or to take any other step that can be taken in the Supreme Court of the State or Territory in which the judgment or order has been made as if the judgment or order was a judgment or order of that Supreme Court.

38 Schedule 1 (definition of *principal proceeding*)

Repeal the definition, substitute:

principal proceeding means a proceeding in which:

- (a) a respondent wants to make a cross-claim; or
- (b) a cross-claim has been made under Part 15.

39 Schedule 2 (after table item 24)

Insert:

- 24A Sections 37AF and 37AI Power to make an order prohibiting or restricting the publication or other disclosure of particular evidence or the name of a party or witness

40 Schedule 2 (table item 38)

Repeal the item.

41 Schedule 2 (table item 135)

Omit “made under”, substitute “mentioned in”.

42 Schedule 2 (after paragraph (c) of table item 193)

Insert:

- ; and (d) make an order about the conduct of the mediation or alternative dispute resolution process

43 Schedule 2 (table item 202)

Repeal the item.

44 Schedule 2 (after table item 211)

Insert:

- 211A Rule 30.34 Power to make an order for the attendance of a person for examination, or for the attendance of the person and the production of a document or thing by the person

45 Schedule 3 (note to Schedule heading)

Repeal the note.

46 Subitem 1.1 of Schedule 3

Omit “\$55”, substitute “\$56”.

47 Subitem 1.2 of Schedule 3

Omit “\$20”, substitute “\$21”.

48 Subitem 2.1 of Schedule 3

Omit “\$50”, substitute “\$51”.

49 Subitem 2.2 of Schedule 3

Omit “\$20”, substitute “\$21”.

50 Subitem 2.3 of Schedule 3

Omit “\$40”, substitute “\$41”.

51 At the end of item 2 of Schedule 3

Add:

2.5 Bill of costs—at the discretion of the taxing officer.

52 Subitem 3.3 of Schedule 3

Omit “\$30”, substitute “\$31”.

53 Subitem 10.1 of Schedule 3

Omit “\$100”, substitute “\$103”.

54 Subitem 13.1 of Schedule 3

Omit “\$3,580”, substitute “\$3,677”.

55 Subitem 14.1 of Schedule 3

Omit “\$2,300”, substitute “\$2,362”.

56 Subitem 14.2 of Schedule 3

Omit “\$1,980”, substitute “\$2,033”.

57 Paragraphs 15.1(a) to (e) of Schedule 3

Repeal the paragraphs, substitute:

- (a) a respondent in a migration case on dismissal or discontinuance of the case: \$2,121; or

- (b) a party in an application for leave to file a migration appeal or extension of time within which to file a migration appeal: \$1,710; or
- (c) a party in a migration appeal case finalised before a final hearing: \$3,990; or
- (d) a party in a migration appeal case finalised after a final hearing: \$6,270.

58 Subitem 17.1 of Schedule 3

Omit “\$500”, substitute “\$513”.

59 Further amendments

The following provisions are amended by omitting “**Federal Magistrates Court**” and substituting “**Federal Circuit Court of Australia**”:

- (a) Division 27.2 (heading);
- (b) rule 27.11 (heading);
- (c) rule 27.13 (heading).

60 Further amendments

The following provisions are amended by omitting “Federal Magistrates Court” and substituting “Federal Circuit Court of Australia”:

- (a) rule 27.11;
- (b) subrule 27.12(3) (note);
- (c) subrules 27.13(1) and (3);
- (d) subrule 35.41(2);
- (e) paragraph 36.01(1)(a);
- (f) subrule 36.01(4) (paragraph (a) of note 4);
- (f) paragraph 36.02(c);
- (g) subrules 40.43(2) and (3);
- (h) Schedule 2 (table items 23 and 24).

Schedule 2—Amendments commencing immediately after the commencement of Schedule 3 of the Access to Justice (Federal Jurisdiction) Amendment Act 2012

Federal Court Rules 2011

1 Rules 6.02 and 6.03

Repeal the rules, substitute:

6.02 Certificate of vexatious proceedings order

- (1) A person who wants the Registrar to issue a certificate under subsection 37AP(1) of the Act must make the request in writing and include in the request:
 - (a) the person's name and address; and
 - (b) the person's interest in making the application.
- (2) The request must be lodged in the District 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.

6.03 Application for leave to institute proceedings

An application under subsection 37AR(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 Form 2; and

(b) without notice to any other person.

Note 1: See subsection 37AR(2) of the Act for the right of a person who is subject to a vexatious proceedings order to apply to the Court to institute a proceeding.

Note 2: See subsection 37AR(3) of the Act for the contents of the affidavit that must be filed with the application.

2 Schedule 1 (definition of *vexatious proceeding*)

Repeal the definition.

3 Schedule 1

Insert:

vexatious proceeding: see section 37AM of the Act.

vexatious proceedings order: see section 37AM of the Act.