



# Federal Court Legislation Amendment Rules 2022

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We, Judges of the Federal Court of Australia, make the following Rules of Court.

Dated 16 December 2022

J L B ALLSOP CJ  
S C KENNY J  
S D RARES J  
B J COLLIER J  
A J BESANKO J  
J E MIDDLETON J  
J A LOGAN J  
N PERRAM J  
J V NICHOLAS J  
D M YATES J  
M BROMBERG J  
A J KATZMANN J  
B M MURPHY J  
K FARRELL J  
D S MORTIMER J  
D C RANGIAH J  
M A WIGNEY J  
M A PERRY J  
J B R BEACH J  
B S MARKOVIC J  
M K MOSHINSKY J  
R J BROMWICH J  
N CHARLESWORTH J  
S C G BURLEY J  
D J O'CALLAGHAN J  
M B J LEE J  
R M DERRINGTON J  
D G THOMAS J  
S C DERRINGTON J  
K F BANKS-SMITH J  
C G COLVIN J  
T M THAWLEY J  
M F WHEELAHAN J

A M STEWART J  
M H O'BRYAN J  
D J JACKSON J  
J L SNADEN J  
S M ANDERSON J  
W J ABRAHAM J  
J A HALLEY J  
E A CHEESEMAN J  
H M J ROFE J  
K E DOWNES J  
S A GOODMAN J  
P O'SULLIVAN J  
S B MCELWAIN J  
M J FEUTRILL J  
F M R MEAGHER J  
T J F MCEVOY J  
L A HESPE J  
E RAPER J

Judges of the Federal Court  
of Australia

Sia Lagos  
Chief Executive Officer and Principal Registrar

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## 1 Name

These Rules are the *Federal Court Legislation Amendment Rules 2022*.

## 2 Commencement

- (1) 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of these Rules	The day after these Rules are registered.	13 January 2023

Note: This table relates only to the provisions of these Rules as originally made. It will not be amended to deal with any later amendments of these Rules.

- (2) Any information in column 3 of the table is not part of these Rules. Information may be inserted in this column, or information in it may be edited, in any published version of these Rules.

## 3 Authority

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

## 4 Schedules

Each instrument that is specified in a Schedule to these Rules is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to these Rules has effect according to its terms.

## Schedule 1—Amendment of the Federal Court Rules 2011

### *Federal Court Rules 2011*

#### **1 Rule 1.04 (note 1)**

Omit “*Regulations 1996*”, substitute “*Regulations 2021*”.

#### **2 Subparagraphs 2.25(1)(b)(i) and (ii)**

Omit “being stamped as ‘filed’”, substitute “having the seal of the Court affixed to it”.

#### **3 At the end of subrule 2.25(1)**

Add:

Note: A document that is accepted for filing is added to the Court file. See the definition of *Court file* in the Dictionary.

#### **4 Subrule 2.32(2)**

After “may”, insert “, after the first directions hearing or the hearing (whichever is earlier),”.

#### **5 Subrule 2.32(5) (note 1)**

Omit “*Federal Court and Federal Circuit Court Regulation 2012*”, substitute “*Federal Court and Federal Circuit and Family Court Regulations 2012*”.

#### **6 Subrule 7.11(1) (note 1)**

Omit “, for a person under legal incapacity,”.

#### **7 Subrule 7.24(1)**

Repeal the subrule, substitute:

- (1) A prospective applicant who wants to make an application under rule 7.22 or 7.23 must:
  - (a) for an application under rule 7.22—file an originating application, in accordance with Form 14A; or
  - (b) for an application under rule 7.23—file an originating application, in accordance with Form 14.

#### **8 Rule 8.22 (heading)**

After “**amendment**”, insert “**to substitute a party**”.

#### **9 At the end of rule 8.22**

Add “or as otherwise ordered by the Court”.

#### **10 Rule 9.02**

Repeal the rule, substitute:

**9.02 Joinder in proceedings involving common questions etc.**

- (1) Two or more persons may be joined (as applicants or respondents) in any proceeding:
  - (a) if separate proceedings by or against each of them would give rise to a common question of fact or of mixed fact and law; or
  - (b) if all rights to relief claimed in the originating application are in respect of, or arise out of, the same transaction or series of transactions; or
  - (c) by leave of the Court.
- (2) Leave under paragraph (1)(c) may be granted before or after the originating application is filed.
- (3) If 2 or more persons are joined under subrule (1), the Court may at any stage of the proceedings order that proceedings by or against any party or parties be conducted separately.

**11 Subrule 9.63(1) (note)**

Omit “, in relation to a person under a legal incapacity,”.

**12 Paragraph 10.32(a)**

Omit “fourth”, substitute “seventh”.

**13 Division 10.4**

Repeal the Division, substitute:

**Division 10.4—Service outside Australia**

Note: **This Division contains rules that have been harmonised in accordance with the advice of the Council of Chief Justices’ Rules Harmonisation Committee.**

**10.41 Division does not apply to service in New Zealand of documents in or for certain trans-Tasman proceedings**

This Division (which contains rules about service outside Australia) does not apply to service in New Zealand of an originating application for a proceeding, or of any other document to be served in or for a proceeding, if an originating application for the proceeding may be served in New Zealand under Division 2 of Part 2 of the *Trans-Tasman Proceedings Act 2010*.

**10.42 When an originating application may be served outside Australia without leave**

An originating application may be served outside Australia without leave in the following cases:

- (a) if the proceeding is founded on a tortious act or omission:
  - (i) that was done or occurred wholly or partly in Australia; or
  - (ii) in respect of which the damage was sustained wholly or partly in Australia;
- (b) if the proceeding is for the enforcement, rescission, dissolution, annulment, cancellation, rectification, interpretation or other treatment of, or for damages or other relief in respect of a breach of, a contract that:
  - (i) was made or entered into in Australia; or

- (ii) was made by or through an agent trading or residing within Australia;  
or
  - (iii) was to be wholly or partly performed in Australia; or
  - (iv) was by its terms or by implication to be governed by a law of the Commonwealth, a State or a Territory, or to be enforceable or cognizable in an Australian court;
- (c) if the proceeding is for a breach in Australia of any contract, wherever made, whether or not that breach was preceded or accompanied by a breach outside Australia that rendered impossible the performance of that part of the contract that ought to have been performed in Australia;
- (d) if the proceeding:
  - (i) is for an injunction to compel or restrain the performance of any act in Australia; or
  - (ii) is for interim or ancillary relief in respect of any matter or thing in or connected with Australia, where such relief is sought in relation to judicial or arbitral proceedings commenced or to be commenced, or an arbitration agreement made, in or outside Australia (including without limitation interim or ancillary relief in relation to any proceedings under the *International Arbitration Act 1974* or any proceedings under a law of a State or Territory relating to commercial arbitration in relation to which the Court may exercise jurisdiction); or
  - (iii) without limiting subparagraph (ii), is an application for a freezing order or ancillary order under Division 7.4 in respect of any matter or thing in or connected with Australia;
- (e) if the subject matter of the proceeding is land or other property situated in Australia, or any act, deed, will, instrument, or thing affecting such land or property, or the proceeding is for the perpetuation of testimony relating to such land or property;
- (f) if the proceeding relates to the carrying out or discharge of the trusts of any written instrument of which the person to be served is a trustee and which ought to be carried out or discharged according to the law of the Commonwealth, a State or a Territory;
- (g) if any relief is sought against any person domiciled or ordinarily or habitually resident in Australia (whether present in Australia or not);
- (h) if any person outside Australia is:
  - (i) a necessary or proper party to a proceeding properly brought against another person served or to be served (whether within Australia or outside Australia) under any other provision of these Rules; or
  - (ii) a respondent to a proceeding seeking contribution or indemnity in respect of a liability enforceable by a proceeding in the Court;
- (i) if the proceeding is for:
  - (i) the administration of the estate of any deceased person who died domiciled in Australia; or
  - (ii) any relief or remedy that might be obtained in any such proceeding;
- (j) if the proceeding arises under a law of the Commonwealth, a State or a Territory, and:
  - (i) any act or omission to which the proceeding relates was done or occurred in Australia; or
  - (ii) any loss or damage to which the proceeding relates was sustained in Australia; or

- (iii) the law applies expressly or by implication to an act or omission that was done or occurred outside Australia in the circumstances alleged; or
- (iv) the law expressly or by implication confers jurisdiction on the Court over persons outside Australia (in which case any requirements of the law relating to service must be complied with);
- (k) if the person to be served has submitted to the jurisdiction of the Court;
- (l) if a claim is for restitution or for the remedy of a constructive trust and the alleged liability of the person to be served arises out of an act or omission that was done or occurred wholly or partly in Australia;
- (m) if it is sought to recognise or enforce any judgment;
- (n) if the proceeding is founded on a cause of action arising in Australia;
- (o) if the proceeding affects the person to be served in respect of the person's membership of a corporation incorporated in Australia, or of a partnership or an association formed or carrying on any part of its affairs in Australia;
- (p) if the proceeding relates to the construction, effect or enforcement of a law of the Commonwealth, a State or a Territory;
- (q) if the proceeding:
  - (i) relates to an arbitration held in Australia or governed by a law of the Commonwealth, a State or a Territory; or
  - (ii) is to enforce in Australia an arbitral award wherever made; or
  - (iii) is for orders necessary or convenient for carrying into effect in Australia the whole or any part of an arbitral award wherever made;
- (r) if the proceeding is for relief relating to the custody, guardianship, protection or welfare of a minor present in Australia or who is domiciled or ordinarily or habitually resident in Australia (whether present in Australia or not);
- (s) if the proceeding, so far as it relates to the person to be served, falls partly within one or more of paragraphs (a) to (r) and, as to the residue, within one or more of the others of paragraphs (a) to (r).

Note 1: An originating application includes certain third party claims and other cross-claims—see the definitions of *originating application* and *cross-claim* in the Dictionary.

Note 2: If a proceeding is instituted in the Court and an originating application is served outside Australia under this rule but the Court later decides that it is more appropriate that the proceeding be determined by another court, the Court may transfer the proceeding to that other court under the *Jurisdiction of Courts (Cross-vesting) Act 1987* and may make an order for costs that relate to the conduct of the proceeding before the transfer.

### **10.43 When an originating application may be served outside Australia with leave**

- (1) In any proceeding, if service is not allowed under rule 10.42, an originating application may be served outside Australia with the leave of the Court.
- (2) An application for leave under this rule must be made on notice to every party other than the party intended to be served.
- (3) An application for leave under this rule must be accompanied by an affidavit stating any facts or matters related to the desirability of the Court assuming jurisdiction, including the place or country in which the person to be served is or possibly may be found, and whether or not the person to be served is an Australian citizen.

- (4) The Court may give leave if satisfied that:
  - (a) the proceeding has a real and substantial connection with Australia; and
  - (b) Australia is an appropriate forum for the proceeding; and
  - (c) in all the circumstances the Court should exercise jurisdiction.
- (5) A sealed copy of every order made under this rule must be served with the document to which it relates.

#### **10.43A Court's discretion whether to exercise jurisdiction**

- (1) On application by a person on whom an originating application has been served outside Australia, the Court may dismiss or stay the proceeding or set aside service of the originating application.
- (2) Without limiting subrule (1), the Court may make an order under this rule if satisfied that:
  - (a) service of the originating application is not authorised by these Rules; or
  - (b) Australia is an inappropriate forum for the proceeding; or
  - (c) the claim has insufficient prospects of success to warrant putting the person served outside Australia to the time, expense and trouble of defending it.

#### **10.43B Notice to person served outside Australia**

If a person is to be served outside Australia with an originating application, the person must also be served with a notice, in accordance with Form 26A, informing the person of:

- (a) the scope of the jurisdiction of the Court in respect of proceedings against persons who are served outside Australia; and
- (b) the grounds alleged by the applicant to found jurisdiction; and
- (c) the person's right to challenge service of the originating application or the jurisdiction of the Court or to file a conditional appearance.

#### **10.43C Time for filing notice of address for service**

- (1) Unless the Court otherwise orders, a respondent who has been served outside Australia must file a notice of address for service before the later of:
  - (a) the return date fixed in the originating application; and
  - (b) the 43rd day after the day of service.
- (2) Subrule (1) has effect despite rules 5.02 and 11.06.

#### **10.43D Leave to proceed if notice of address for service not filed**

- (1) If an originating application is served on a person outside Australia and the person does not file a notice of address for service within the time fixed by rule 10.43C, the party serving the document may not proceed against the person served except by leave of the Court.
- (2) An application for leave under subrule (1) may be made without notice.

Note: *Without notice* is defined in the Dictionary.

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#### **10.44 Service of other documents outside Australia**

Any document other than an originating application may be served outside Australia with the leave of the Court, which may be given with any directions that the Court considers appropriate.

#### **10.45 Application of other rules**

The other provisions of this Part apply to service of a document on a person outside Australia in the same way as the provisions apply to service on a person in Australia, to the extent that the provisions are:

- (a) relevant and consistent with this Division; and
- (b) consistent with:
  - (i) if a convention applies—the convention; or
  - (ii) if the Hague Convention applies—the Hague Convention; or
  - (iii) in any other case—the law of the country in which service is to be effected.

#### **10.46 Method of service**

A document to be served outside Australia need not be personally served on a person so long as it is served on the person in accordance with the law of the country in which service is effected.

Note: The law of a foreign country may permit service through the diplomatic channel or service by a private agent—see Division 10.5.

#### **10.47 Proof of service**

- (1) This rule does not apply to a document served in accordance with the Hague Convention.

Note: Rules 10.63 to 10.68 deal with service of local judicial documents in a country, other than Australia, that is a party to the Hague Convention.

- (2) An official certificate or declaration (whether made on oath or otherwise) is sufficient proof of the service of a document on a person in a country other than Australia if the certificate or declaration states:
  - (a) that the document has been personally served on the person in that other country; or
  - (b) that the document has been served on the person in accordance with the law of that other country.
- (3) If filed, a certificate or declaration mentioned in subrule (2):
  - (a) is taken to be a record of the service of the document; and
  - (b) has effect as if it were an affidavit of service.

#### **10.48 Deemed service**

A party may apply to the Court without notice for an order that a document is taken to have been served on a person on the day mentioned in the order, if:

- (a) it is not practicable to serve the document on the person outside Australia in accordance with a convention, the Hague Convention or the law of the country in which the person resides; and

- (b) the party provides evidence that the document has been brought to the attention of the person.

Note: *Without notice* is defined in the Dictionary.

#### **10.49 Substituted service**

If service on a person outside Australia, in accordance with a convention, the Hague Convention or the law of a foreign country, was not successful, a party may apply to the Court without notice for an order:

- (a) substituting another method of service; or  
(b) specifying that, instead of being served, certain steps be taken to bring the document to the attention of the person; or  
(c) specifying that the document is taken to have been served:  
(i) on the happening of a specified event; or  
(ii) at the end of a specified time.

Note: *Without notice* is defined in the Dictionary.

**Rule 10.50 left blank**

#### **14 Rule 10.51**

Omit “party has been given leave”, substitute “party wants”.

#### **15 Rule 10.51 (note)**

Repeal the note, substitute:

Note: This rule does not apply if service of a document is to be effected on a person in a country, other than Australia, that is a party to the Hague Convention. Service in a country that is a party to the Hague Convention is dealt with in Division 10.6.

#### **16 Rule 10.61 (definition of *Hague Convention*)**

Repeal the definition.

#### **17 Paragraph 13.01(1)(d)**

Omit “or confirming service of an originating application outside Australia”.

#### **18 Subrule 13.01(1) (note)**

Repeal the note, substitute:

Note: Rule 10.43 deals with service of originating applications outside Australia with leave.

#### **19 Rule 16.53**

Before “Unless”, insert “(1)”.

#### **20 At the end of rule 16.53**

Add:

- (2) A party may apply under subrule (1) for leave to amend a pleading to add or substitute a new claim for relief, or a new foundation in law for a claim for relief that arises out of the same facts or substantially the same facts as those already pleaded to support an existing claim for relief by the party, even if the application is made after the end of any relevant period of limitation applying at the date the proceeding was started.

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- (3) A party must not apply under subrule (1) for leave to amend a pleading to add or substitute a new claim for relief, or a new foundation in law for a claim for relief, that arises, in whole or in part, out of facts or matters that have occurred or arisen since the start of the proceeding if the application would be made after the end of any relevant period of limitation applying at the date the proceeding was started.

## **21 At the end of rule 16.54**

Add “or as otherwise ordered by the Court”.

## **22 At the end of Part 23**

Add:

Rules 23.16–23.20 left blank

## **Division 23.3—Examinations by a medical expert**

### **23.21 Examinations by a medical expert**

#### *Application of this rule*

- (1) This rule applies to a proceeding if:
- (a) a person’s (the **relevant person’s**) physical or mental condition is relevant to a matter in question; and
  - (b) the relevant person is a party or a person for whose benefit a party is claiming relief.

#### *Party may request medical examination*

- (2) A notice requesting the relevant person to submit to an examination by a specified medical expert at a specified time and place may be served on the party referred to in paragraph (1)(b) by another party to the proceeding.
- (3) The relevant person may have a medical expert of their choice attend the examination.
- (4) A party who serves a notice under subrule (2) must, on request by the relevant person, pay to the relevant person a reasonable sum to meet the travel and other expenses incurred by the relevant person in connection with the examination, including the expenses of having a medical expert chosen by the relevant person attend the examination in accordance with subrule (3).
- (5) The party who serves a notice under subrule (2) must, as soon as reasonably practicable after the examination:
- (a) obtain a medical report from the medical expert referred to in that subrule; and
  - (b) serve a copy of that report on the relevant person.

#### *Court may order medical examination*

- (6) The Court may:
- (a) order the relevant person to submit to an examination by a medical expert (including an order that the relevant person submit to an examination by a specified medical expert at a specified time and place); and

(b) make any other order the Court considers appropriate in relation to the examination.

- (7) If the Court makes an order under subrule (6) requiring the relevant person to submit to an examination by a medical expert, the relevant person must do all things reasonably requested, and answer all questions reasonably asked, by the medical expert for the purposes of the examination.

*Definitions for this rule*

- (8) In this rule:

**medical expert** means a person who, under a law of a State or Territory, is registered or licenced to practice in a health profession or allied health profession, including the following:

- (a) dental;
- (b) medical;
- (c) occupational therapy;
- (d) optometry;
- (e) physiotherapy;
- (f) psychology.

**23 Subrule 24.17(1)**

Repeal the subrule, substitute:

- (1) An addressee need not comply with the requirements of a subpoena if conduct money has not been handed or tendered to the addressee a reasonable time before the date or time specified in the subpoena as the date or time for attendance or for production or for both.

**24 After subrule 24.17(7)**

Insert:

- (7A) If the addressee produces a document in accordance with subrule (4), the addressee must declare whether the document is an original by completing the declaration within the subpoena, or the copy of the subpoena, that accompanies the document produced.

**25 Subrules 24.21(3) to (6)**

Repeal the subrules, substitute:

- (3) A Registrar may, on the expiry of 4 months from the conclusion of the proceeding, cause to be destroyed all the documents produced in the proceeding in compliance with a subpoena that:
- (a) the addressee did not declare, in accordance with subrule 24.17(7A), to be original documents; and
  - (b) are no longer required in connection with the proceeding, including on any appeal.

**26 Divisions 27.1 and 27.2**

Repeal the Divisions, substitute:

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**Division 27.1—Federal Circuit and Family Court of Australia****27.01 Transfer to the Federal Circuit and Family Court of Australia**

- (1) The Court must not make an order under subsection 32AB(1) of the Act on its own initiative transferring a proceeding from the Court to the Federal Circuit and Family Court of Australia unless the parties to the proceeding have been notified of the proposed transfer and have been given an opportunity to be heard in relation to the proposed transfer.

Note: Subsection 32AB(1) of the Act provides that the Court may, by order, transfer a proceeding that is pending in the Court to the Federal Circuit and Family Court of Australia. Subsection 32AB(2) of the Act provides that the Court may transfer the proceeding on the application of a party to the proceeding or on its own initiative.

- (2) Before the Court makes an order under subsection 32AB(1) of the Act transferring a proceeding from the Court to the Federal Circuit and Family Court of Australia (Division 1):
- (a) the Court must consult the Chief Justice of the Court in relation to the proposed transfer; and
  - (b) the Chief Justice of the Court must consult the Chief Justice of the Federal Circuit and Family Court of Australia (Division 1) in relation to the proposed transfer.
- (3) Before the Court makes an order under subsection 32AB(1) of the Act transferring a proceeding from the Court to the Federal Circuit and Family Court of Australia (Division 2):
- (a) the Court must consult the Chief Justice of the Court in relation to the proposed transfer; and
  - (b) the Chief Justice of the Court must consult the Chief Judge of the Federal Circuit and Family Court of Australia (Division 2) in relation to the proposed transfer.
- (4) A failure to comply with this rule in relation to a proposed transfer of a proceeding under subsection 32AB(1) of the Act does not affect the validity of an order made under that subsection transferring the proceeding.

**27.02 Transfer from the Federal Circuit and Family Court of Australia (Division 2)**

- (1) The Court must not make an order under subsection 32AC(1) of the Act on its own initiative transferring a proceeding from the Federal Circuit and Family Court of Australia (Division 2) to the Court unless the parties to the proceeding have been notified of the proposed transfer and have been given an opportunity to be heard in relation to the proposed transfer.

Note: Subsection 32AC(1) of the Act provides that the Court may, by order, transfer a proceeding that is pending in the Federal Circuit and Family Court of Australia (Division 2) and is not a family law or child support proceeding to the Court. Subsection 32AC(2) of the Act provides that the Court may transfer the proceeding on the application of a party to the proceeding or on its own initiative.

- (2) Before the Court makes an order under subsection 32AC(1) of the Act transferring a proceeding from the Federal Circuit and Family Court of Australia (Division 2) to the Court:

- (a) the Court must consult the Chief Justice of the Court in relation to the proposed transfer; and
  - (b) the Chief Justice of the Court must consult the Chief Judge of the Federal Circuit and Family Court of Australia (Division 2) in relation to the proposed transfer.
- (3) A failure to comply with this rule in relation to a proposed transfer of a proceeding under subsection 32AC(1) of the Act does not affect the validity of an order made under that subsection transferring the proceeding.

### **27.03 Order transferring proceeding from the Federal Circuit and Family Court of Australia (Division 2) to the Court must be filed in the Federal Circuit and Family Court of Australia (Division 2)**

- (1) This rule applies if the Court makes an order:
  - (a) under subsection 32AC(1) of the Act transferring a proceeding from the Federal Circuit and Family Court of Australia (Division 2) to the Court; or
  - (b) under subsection 32AD(1) of the Act confirming the transfer of a proceeding from the Federal Circuit and Family Court of Australia (Division 2) to the Court.
- (2) If the order was made on the application of a party to the proceeding, the party must file a sealed copy of the order in the Federal Circuit and Family Court of Australia (Division 2).
- (3) If the order was made on the Court's own initiative, the applicant in the proceeding must file a sealed copy of the order in the Federal Circuit and Family Court of Australia (Division 2).

## **27 Division 28.5 (after the heading)**

Insert:

Note: **This Division contains rules that have been harmonised in accordance with the advice of the Council of Chief Justices' Rules Harmonisation Committee.**

## **28 Rule 28.43 (heading)**

Omit "arbitration", substitute "a proceeding".

## **29 After rule 28.44**

Insert:

### **28.44A Application for referral to arbitration under article 8 of the Model Law**

An application under article 8 of the Model Law to refer parties to arbitration must be accompanied by:

- (a) a copy of the arbitration agreement; and
- (b) an affidavit stating the material facts on which the application for relief is based.

## **30 Subrule 28.45(1)**

Omit "17J, 27 or 34", substitute "17J or 27".

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**31 After rule 28.45**

Insert:

**28.45A Application to set aside award under Model Law**

- (1) An application under article 34 of the Model Law to set aside an award must be made by filing an originating application, in accordance with Form 53.
- (2) The application must identify:
  - (a) if the applicant relies on article 34(2)(a) of the Model Law—which subparagraph of article 34(2)(a) is relied upon; and
  - (b) if the applicant relies on article 34(2)(b) of the Model Law—which subparagraph of article 34(2)(b) is relied upon; and
  - (c) in any case—brief grounds for seeking the order.
- (3) The application must be accompanied by an affidavit identifying:
  - (a) the detailed grounds for seeking the order; and
  - (b) the material facts relied on; and
  - (c) the date on which the applicant received the award or, if a request was made under article 33 of the Model Law to the arbitral tribunal to correct the award, the date on which that request was disposed of by the arbitral tribunal.
- (4) The affidavit must be accompanied by:
  - (a) a copy of the arbitration agreement; and
  - (b) a copy of the award (including the reasons, if any, of the arbitral tribunal for the award).
- (5) A copy of the application and affidavit must be served on any person whose interest might be affected by the setting aside of the award.
- (6) An application by a party to the arbitration under article 34(4) of the Model Law must be made by interlocutory application in the proceeding started under subrule (1).

**32 At the end of rule 28.46**

Add:

- (6) The addressee must comply with the subpoena in accordance with its terms.

**33 After rule 28.48**

Insert:

**28.48A Enforcement of Investment Convention**

An application under section 35(4) of the International Arbitration Act for leave to enforce an award to which Part IV of that Act applies must be accompanied by an affidavit stating:

- (a) the extent to which the award has not been complied with, at the date the application is made; and
- (b) the usual or last-known place of residence or business of the person against whom it is sought to enforce the award or, if the person is a company, the last-known registered office of the company.

**34 Division 34.5A**

Repeal the Division.

**35 Subrule 35.41(2)**

Omit “Federal Circuit Court of Australia”, substitute “Federal Circuit and Family Court of Australia (Division 2)”.

**36 Paragraph 36.01(1)(a)**

Omit “Federal Circuit Court of Australia”, substitute “Federal Circuit and Family Court of Australia (Division 2)”.

**37 Subrule 36.01(4) (note 4, paragraph (a))**

Omit “Federal Circuit Court of Australia”, substitute “Federal Circuit and Family Court of Australia (Division 2)”.

**38 Paragraph 36.02(c)**

Omit “Federal Circuit Court of Australia”, substitute “Federal Circuit and Family Court of Australia (Division 2)”.

**39 After paragraph 36.41(1)(e)**

Insert:

(ea) an application to make or vary an order for costs;

**40 Subrule 36.41(2)**

Omit “(e)”, substitute “(ea)”.

**41 Rule 36.43**

Omit “respondent”, substitute “party”.

**42 Rule 39.32**

Repeal the rule, substitute:

**39.32 Entry of an order**

- (1) An order may be entered by being authenticated in accordance with subrule 39.35(1).
- (2) A Registrar may enter an order by authenticating the order in accordance with subrule 39.35(1) if:
  - (a) the order has been settled in accordance with rule 39.33; and
  - (b) the Court directs, or a party requests, that the order be entered.
- (3) An order that has been authenticated in accordance with subrule 39.35(1) is taken to be entered on the 14th day after the day it was authenticated, unless the Court otherwise directs.

**43 Paragraph 40.43(1)(a)**

Omit “Federal Circuit Court”, substitute “Federal Circuit and Family Court of Australia (Division 2)”.

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**44 Subrule 41.05(1)**

Repeal the subrule, substitute:

- (1) This rule applies if:
  - (a) the Court has issued a subpoena or made an order that a person attend Court:
    - (i) to give evidence; or
    - (ii) to produce any document or thing; or
    - (iii) to answer a charge of contempt; or
    - (iv) for any other reason; and
  - (b) the person fails to attend.
- (1A) A party may apply to the Court for the issue of a warrant, in accordance with Form 90:
  - (a) for the person's arrest and detention in custody until the person is brought before the Court; and
  - (b) for the production of the person before the Court.
- (1B) The warrant may be issued to one of the following persons:
  - (a) the Sheriff of the Court;
  - (b) a Deputy Sheriff of the Court;
  - (c) the Sheriff of a court of a State or Territory;
  - (d) a Deputy Sheriff of a court of a State or Territory;
  - (e) a police officer.

**45 Subrule 41.05(2)**

Omit "Subrule (1)", substitute "This rule".

**46 Subrule 41.05(2)**

Omit "court", substitute "Court".

**47 Rule 42.01**

Repeal the rule, substitute:

**42.01 Arrest for contempt**

- (1) If a party alleges that a person is guilty of contempt of court, committed in the face of the Court or in the hearing of the Court, the party may apply to the Court for:
  - (a) an order directing the person be brought before the Court; or
  - (b) the issue of a warrant, in accordance with Form 90:
    - (i) for the person's arrest and detention in custody until the person is brought before the Court; and
    - (ii) for the production of the person before the Court.
- (2) The warrant may be issued to one of the following persons:
  - (a) the Sheriff of the Court;
  - (b) a Deputy Sheriff of the Court;
  - (c) the Sheriff of a court of a State or Territory;
  - (d) a Deputy Sheriff of a court of a State or Territory;

(e) a police officer.

#### **48 Subrule 42.14(1)**

Repeal the subrule, substitute:

- (1) If an application for punishment of a contempt has been filed, or a proceeding has been started for punishment of a contempt, a party making the charge may apply to the Court for:
  - (a) an order that the person charged give security for the person's appearance to answer the charge; or
  - (b) the issue of a warrant, in accordance with Form 90:
    - (i) for the person's arrest and detention in custody until the person is brought before the Court; and
    - (ii) for the production of the person before the Court.

#### **49 At the end of rule 42.14**

Add:

- (4) A warrant referred to in this rule may be issued to one of the following persons:
  - (a) the Sheriff of the Court;
  - (b) a Deputy Sheriff of the Court;
  - (c) the Sheriff of a court of a State or Territory;
  - (d) a Deputy Sheriff of a court of a State or Territory;
  - (e) a police officer.

#### **50 In the appropriate position in Part 43**

Insert:

### **Division 43.1—Transitional provisions relating to the Federal Court Legislation Amendment Rules 2022**

#### **43.01 Definitions**

In this Division:

*amending Rules* means the *Federal Court Legislation Amendment Rules 2022*.

#### **43.02 Application of Division 10.4**

Division 10.4 of these Rules, as substituted by the amending Rules, applies in relation to originating applications served on or after the commencement of the amending Rules.

#### **43.03 Application of amendments relating to subpoenas**

Subrules 24.17(1), 24.17(7A) and 24.21(3) of these Rules, as in force immediately after the commencement of the amending Rules, apply in relation to subpoenas issued on or after that commencement.

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**43.04 Expiry of this Division**

This Division is repealed at the start of the day after the end of the period of 6 months beginning on the day the amending Rules commence.

**51 Schedule 1 (definition of *conduct money*)**

Omit “required by subpoena or order to attend Court”, substitute “attending Court for the purposes of complying with a subpoena or order”.

**52 Schedule 1**

Insert:

***convention*** means a convention (other than the Hague Convention), agreement, arrangement or treaty about service abroad of judicial documents to which the Crown in right of the Commonwealth or, if applicable, in right of a State, and a foreign country are parties.

***Court file***: a document is part of the Court file of a particular proceeding if:

- (a) the document:
  - (i) has been accepted for filing in respect of the proceeding, in accordance with rule 2.25; or
  - (ii) is a redacted copy replaced on the Court file in accordance with rule 2.29; and
- (b) the document has not been the subject of an order, under rule 2.28 or 2.29, that the document be removed from the Court file.

***Hague Convention*** means the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, done at The Hague on 15 November 1965.

Note: The Convention is in Australian Treaty Series 2010 No. 23 ([2010] ATS 23) and could in 2022 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

**53 Schedule 1 (definition of *interested person*, twice occurring)**

Repeal the definitions.

**54 Schedule 1**

Insert:

***interested person*** means:

- (a) for a minor under a legal incapacity—the person’s parent or guardian; or
- (b) for a mentally disabled person under a legal incapacity—the person’s guardian; or
- (c) in any other case—a person affected:
  - (i) by an order of the Court; or
  - (ii) by any act or thing done by another person.

**55 Schedule 1 (after paragraph (c) of the definition of *pleading*)**

Insert:

- (ca) a concise statement in response; or

**56 Schedule 1 (after paragraph (d) of the definition of *pleading*)**

Insert:

(da) a concise statement in reply; or

**57 Part 3.3 of Schedule 2 (table items 23 and 24, column headed “Description (for information only)”)**

Omit “Federal Circuit Court of Australia”, substitute “Federal Circuit and Family Court of Australia (Division 2)”.

**58 Item 1A of Schedule 3**

Repeal the item, substitute:

**1A Application of this Schedule**

1A.1 This Schedule, as amended by the *Federal Court Legislation Amendment Rules 2022*, applies to work done or services performed on or after the commencement of those Rules.

**59 Amendments of listed provisions—Schedule 3**

The provisions of Schedule 3 listed in the following table are amended as set out in the table.

<b>Amendments relating to costs</b>			
<b>Item</b>	<b>Provision</b>	<b>Omit</b>	<b>Substitute</b>
1	Item 1.1	\$65	\$72
2	Item 1.2	\$24	\$26
3	Item 1.3	\$11	\$12
4	Item 2.1	\$59	\$65
5	Item 2.2	\$24	\$26
6	Item 2.3	\$48	\$53
7	Item 3.2	\$18	\$20
8	Item 3.3	\$36	\$40
9	Item 10.1	\$119	\$131
10	Item 13.1	\$4,230	\$4,653
11	Item 14.1	\$2,718	\$2,990
12	Item 14.2	\$2,339	\$2,573
13	Item 15.1	\$4,592	\$5,051
14	Item 15.2	\$7,241	\$7,965
15	Item 15.3	\$2,180	\$2,398
16	Item 17.1	\$590	\$649

## **Schedule 2—Amendment of the Federal Court (Criminal Proceedings) Rules 2016**

### ***Federal Court (Criminal Proceedings) Rules 2016***

#### **1 Subrule 8.08(1)**

Repeal the subrule, substitute:

- (1) An addressee need not comply with the requirements of a subpoena if conduct money has not been handed or tendered to the addressee a reasonable time before the date or time specified in the subpoena as the date or time for attendance or for production or for both.

#### **2 After Part 9**

Insert:

### **Part 10—Transitional provisions**

#### **Division 10.1—Transitional provisions relating to the Federal Court Legislation Amendment Rules 2022**

##### **10.01 Application of amendments relating to subpoenas**

Subrule 8.08(1) of these Rules, as in force immediately after the commencement of the *Federal Court Legislation Amendment Rules 2022*, applies in relation to subpoenas issued on or after that commencement.

##### **10.02 Expiry of this Division**

This Division is repealed at the start of the day after the end of the period of 6 months beginning on the day the *Federal Court Legislation Amendment Rules 2022* commence.

#### **3 After paragraph (1)(b) of Schedule 1**

Insert:

- (ba) *convention*;

#### **4 Subclause (2) of Schedule 1 (definition of *convention*)**

Repeal the definition.

## **Schedule 3—Amendment of the Federal Court (Bankruptcy) Rules 2016**

### ***Federal Court (Bankruptcy) Rules 2016***

#### **1 Subrule 1.05(1) (definition of *Bankruptcy Regulations*)**

Omit “1996”, substitute “2021”.

#### **2 Paragraphs 2.01(3)(a) and (4)(a)**

Omit “regulation”, substitute “section”.

#### **3 Rule 10.05 (note)**

Repeal the note, substitute:

Note: Subject to subsection 67(2) of the Bankruptcy Regulations, a copy of the order must be given to the Official Receiver within 2 business days after the order is made: see subsection 67(1) of that instrument.

#### **4 Rule 11.04 (note)**

Omit “Regulation 11.01 of the Bankruptcy Regulations sets out the particulars that must be included in the statement.”.

