



## HIGH COURT OF AUSTRALIA

### HIGH COURT AMENDMENT (ELECTRONIC FILING AND OTHER MATTERS) RULES 2019 19 DECEMBER 2019 EXPLANATORY STATEMENT

These Amendment Rules of Court, signed on 19 December 2019, are made by the Justices of the High Court of Australia under the *Judiciary Act 1903*, the *Commonwealth Electoral Act 1918*, the *Nauru (High Court Appeals) Act 1976* and the *High Court of Australia Act 1979*.

The High Court of Australia will in 2020 introduce a Digital Lodgment System Portal (DLS Portal) to permit parties to initiate cases, file documents, pay fees, receive notifications from the Court and track the progress of a case without attending the Registry. Electronic lodgment of documents will be required for all documents in cases commenced on or after 1 January 2020.

The *High Court Amendment (Electronic Filing and Other Matters) Rules 2019* amend the *High Court Rules 2004* to make provision for the electronic lodgment of documents.

#### *Lodged or filed*

Documents lodged in the DLS Portal will not be filed unless approved by the Registry (and any payment is received by the Court).

If approved by the Registry a lodged document will be taken to have been filed (rule 1.10.5):

- (a) if a fee is payable:
  - (i) on the day the fee is received; or
  - (ii) if the fee is not received during the office hours of the relevant office of the Registry on the next day the office is open; or
- (b) if no fee is payable:
  - (i) on the day the document is received; or
  - (ii) if the document is not received during the office hours of the relevant office of the Registry on the next day the office is open.

#### *Public access*

The DLS Portal will provide public access to documents filed by the parties, subject to access provisions in rule 4.07.4 and payment of requisite fees under the *High Court (Fees) Regulation 2012*.



### *Use of seals and stamps*

The Seal of the Court will be affixed, either manually by the Registry or automatically by the DLS Portal, to all documents identified in rule 4.06.2 except service copies of documents. The filing party will print service copies from the DLS Portal.

The FILED stamp prescribed by Rule 4.06.3 will be replaced by a watermark endorsed on the cover sheet of every filed document.

### *Service*

In addition to the lodging of documents the DLS Portal will be used for serving documents (other than originating process) and for communications between the parties and between the parties and the Registry. Notification that a document has been filed through the DLS Portal will be automated by email to all parties. Ordinary service will be deemed to have been effected by the DLS Portal for non-originating documents – on the day the notification email is sent by the DLS Portal or, if sent outside Registry office hours, the next day the office is open (rule 9.04A).

The filing party will not be required to file an affidavit of service of documents served through the DLS Portal (rule 9.04.A.3).

Service of initiating process in the original and appellate jurisdiction of the Court will be by the methods provided by the current rule 9.01 (namely, personal or ordinary service, depending on the case type).

### *Schedule 1 Forms – general*

To protect the privacy of parties filing documents electronically (in particular, self-represented litigants) the parties' residential and service details will be removed from the footer and text of all Forms. Instead, contact details of legal practitioners and litigants will be entered in the DLS Portal on lodging a document (rule 1.07.2). These details will be accessible to the parties and the Court only.

### *Schedule 2 Fees for work done and services performed*

Some items in the scale of costs in Schedule 2 will be removed (item 8) or recast (item 14) to reflect the different type of work involved in the preparation and lodgment of documents electronically rather than in paper.

### **Commencement**

The amendments relating to electronic filing and the amendments to the Forms will apply to cases commenced on or after 1 January 2020.

### **Consultation**

Consultations on the amendments to the Rules have taken place with relevant professional organisations and the Special Committee of Solicitors-General.



## **Additional amendments to the Rules**

### *Form 21 Summons*

To better reflect the modern procedure for considering interlocutory applications (including on the papers) the Court will move to a form of “application” rather than the traditional summons requiring “all parties concerned [to] attend before a Justice...on the hearing of an application...”. A new Form 21 is included in the amendment Rules.

### *Schedule 2 – Fees for work done and services performed*

Schedule 2 of the High Court Rules 2004 specifies the amount which solicitors, who are entitled to practise in the High Court, may charge and be allowed on taxation of costs by the Taxing Officer of the Court in respect of proceedings in the Court. The amounts in the Schedule were last varied by the *High Court Amendment (Fees) Rules 2018* made on 3 December 2018, and which came into operation on 1 January 2019.

The Joint Costs Advisory Committee (JCAC) was established in 2007 to review annually and recommend variations in the quantum of costs contained in the Rules made by the High Court of Australia, the Federal Court of Australia, the Family Court of Australia and the Federal Circuit Court of Australia. It comprises representatives of those courts. In conducting its reviews, the JCAC applies a formula which has regard to movements in wages and salaries and other costs of solicitors’ practices.

In its 2019 annual review, the JCAC wrote to the Commonwealth Attorney-General’s Department, the Law Council of Australia, the National Association of Community Legal Centres and National Legal Aid inviting them and their respective constituent bodies or State and Territory counterparts to make submissions to the review. A notice of the review was also placed on the website of each court. Following its annual review, the JCAC provided a report in September 2019 to the High Court of Australia, the Federal Court of Australia, the Family Court of Australia and the Federal Circuit Court of Australia recommending an increase of 2.1% to the solicitors’ costs provided for in the Rules of each Court. Issues raised in consultations were addressed in the report.

The Court has agreed to implement the JCAC recommendation. The 2.1% increase will apply in respect of all work done and services performed by solicitors after 31 December 2019.

### **Statement of Compatibility**

Rules of court are not legislative instruments (see paragraph 8(8)(d) of the *Legislation Act 2003*). Accordingly, section 9 of the *Human Rights (Parliamentary Scrutiny) Act 2011* does not require a statement of compatibility to be prepared in respect of rules of court made by the High Court, and no statement of compatibility for the purposes of that latter Act is included in the Explanatory Statement.