



# HIGH COURT OF AUSTRALIA

## **Explanatory Statement** **High Court Amendment (Fees and Other Matters) Rules 2022** **7 March 2022**

These Amendment Rules of Court, signed by the Justices of the High Court of Australia on 7 March 2022, are made by the Justices under the *Judiciary Act 1903*, the *Commonwealth Electoral Act 1918* and the *High Court of Australia Act 1979*.

### *Part 1 – Amendments relating to fees in Schedule 2*

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 (Electronic Filing and Other Matters) Rules 2019 F2019L01677 made on 19 December 2019 and apply to work done and services performed by solicitors after 1 January 2020.

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.

The Committee's Thirteenth Report on Legal Practitioners' Costs was published in October 2020. The Committee deferred making a recommendation for any increase in scales of costs for each Court in 2020. This approach was adopted due to the impacts of the COVID-19 pandemic and noting that the recommendation for 2020 would have been for a very modest proposed increase of 0.97%. The Committee recommended deferral of the proposed increase for 2020 for consideration in 2021 as part of the Fourteenth Report on Legal Practitioners' Costs.

The JCAC conducted its annual review in 2021, writing 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. The Committee received submissions from the Law Council of Australia, the National Legal Aid and from a citizen. Following its review, the JCAC published its Fourteenth Report on Legal Practitioners' Costs in September 2021. Issues raised in submissions received by the Committee were addressed in the report.

In its report the Committee recommended an increase of 2.5% to the solicitors' costs provided for in the Rules of each Court in addition to the 0.97% increase deferred from the Committee's Thirteenth Report. The High Court has accepted both recommendations. The increases to the solicitors' costs provided in Schedule 2 will take effect on 1 May 2022 and will apply in respect of all work done and services performed by solicitors after 30 April 2022.

#### *Part 2 – Repeal of Part 43 - Applications and appeals from the Supreme Court of Nauru*

Section 5 of the *Nauru (High Court Appeals) Act 1976* conferred upon the High Court jurisdiction to hear and determine appeals from the Supreme Court of Nauru in accordance with the terms of the *Agreement between the Government of Australia and the Government of the Republic of Nauru Relating to Appeals to the High Court of Australia from the Supreme Court of Nauru* (the Agreement), signed on 6 September 1976. Part 43 of the *High Court Rules 2004* prescribed the procedure for applications and appeals from the Supreme Court of Nauru.

The *Nauru (High Court Appeals) Act 1976* was repealed on 18 February 2022 by Schedule 3 of the *Courts and Tribunals Legislation Amendment (2021 Measures No. 1) Act 2022* as a consequence of the termination on 13 March 2018 of the Agreement and the subsequent creation of the Nauru Court of Appeal. Part 43 of the *High Court Rules 2004* is repealed as it is no longer required.

#### *Statement of compatibility*

Section 9 of the *Legislative Instruments Act 2003* provides that Rules of Court made for the High Court of Australia are not legislative instruments for the purposes of that Act. The *Human Rights (Parliamentary Scrutiny) Act 2011* does not apply to any such Rules of Court and no statement of compatibility for the purposes of that latter Act is included in the Explanatory Statement.