



# HIGH COURT OF AUSTRALIA

## **Explanatory Statement** **High Court Amendment (Forms and Other Matters) Rules 2022** **18 November 2022**

These Amendment Rules of Court, signed by the Justices of the High Court of Australia on 18 November 2022, are made by the Justices under the *Judiciary Act 1903*, the *Commonwealth Electoral Act 1918* and the *High Court of Australia Act 1979*.

### *Schedule 1 – Amendments relating to forms*

Section 86(1)(d) of the *Judiciary Act 1903 (Cth)* was amended by the *Courts and Tribunals Legislation Amendment (2021 Measures No 1) Act 2022* to clarify the power of the Court to prescribe court forms other than in the Rules of Court. This allows the Court to remove the court forms from the Rules of Court and to prescribe the forms by Practice Direction. This approach reflects modern best practice for prescribing court forms and is consistent with the practice adopted by other Commonwealth courts.

Rule 1.09.2 of the Amendment Rules provides that the Justices of the Court, or a majority of them, may approve a form for the purposes of the Rules. Forms will be approved by the Court and published in a Practice Direction rather than through an amendment to the *High Court Rules 2004*.

### *Schedule 2 – Amendments relating to fees*

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 and Other Matters) Rules 2022 F2022L00322* made on 7 March 2022 and apply to work done and services performed by solicitors after 1 May 2022.

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 federal courts. It comprises representatives of the High Court of Australia, the Federal Court of Australia, the Federal Circuit and Family Court of Australia (Division 1) and the Federal Circuit and Family Court of Australia (Division 2). 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 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 each of them, and their respective constituent bodies or State/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. Following its review, the JCAC published its Fifteenth Report on Legal Practitioners' Costs in September 2022. Issues raised in submissions received by the Committee were addressed in the report.

In its report the Committee recommended an increase of 4% to the current scale of costs specified in the Rules of each court. The Court has accepted the recommendation. The amounts in the Schedule have been increased by 4%, rounded to the nearest 5 cents. The increases to the solicitors' costs provided in Schedule 2 will apply in respect of all work done and services performed by solicitors on or after 1 January 2023.

### *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.