



## FEDERAL CIRCUIT COURT OF AUSTRALIA

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### EXPLANATORY STATEMENT

Issued by the authority of the Judges of the Federal Circuit Court of Australia

#### *Federal Circuit Court Amendment (Costs and Other Measures) Rules 2018*

#### **Authority for Federal Circuit Court Rules**

Section 81 of the *Federal Circuit Court of Australia Act 1999* permits the Judges of the Federal Circuit Court of Australia (Federal Circuit Court) or a majority of them, to make Rules of Court not inconsistent with the Act. These rules may provide for the practice and procedure to be followed in the Court and may extend to all matters incidental to any such practice or procedure that are necessary or convenient to be prescribed for the conduct of any business of the Court.

Under sub-section 81(3) of the *Federal Circuit Court of Australia Act 1999*, the *Legislation Act 2003* (other than sections 8, 9, 10 and 16 of that Act) applies in relation to rules of court made by the Court under the *Federal Circuit Court of Australia Act 1999* or another Act:

- (a) as if a reference to a legislative instrument were a reference to a rule of court; and
- (b) as if a reference to a rule-maker were a reference to the Chief Judge acting on behalf of the Judges of the Court; and
- (c) subject to such further modifications or adaptations as are provided for in regulations made under section 120 of the *Federal Circuit Court of Australia Act 1999*.

#### **General outline of amendments**

The *Federal Circuit Court Rules 2001* (“the Rules”) are reviewed regularly. The judges have agreed to miscellaneous amendments which are comprised in these Amendment Rules.

The amendments in **Schedule 1 Part 1** increase the itemised amounts of costs comprised in Schedule 1 of the Rules. These increases follow recommendations made by the Joint Costs Advisory Committee in their 10th Report.

The amendments in **Schedule 1 Part 2** comprise other miscellaneous amendments to the Rules including:

#### **Consultation**

In respect of the amendments in Schedule 1 Part 1 to increase the amount of itemised costs set out in Schedule 1 of the Rules, there was no consultation as the increases were consistent with the

recommendations of the Joint Costs Advisory Committee as set out in their 9<sup>th</sup> Report. That Committee consults as part of its annual review of costs.

In respect of the amendments in Schedule 1 Part 2 as these amendments introduce no substantive changes to the practices and procedures, detailed consultation was unnecessary.

In respect of the amendments in Schedule 2 which extends the time for the filing and service of a response from 14 days to 28 days, there has been consultation with the professional associations including the Family Law Section and the Law Council of Australia. This amendment does not commence until 3 months after registration to ensure litigants and practitioners have sufficient time to be aware of the changed timeline for filing a response.

### **Human Rights Scrutiny**

Subsection 8(8) of the *Legislation Act* provides that Rules of Court made for the Federal Circuit Court are not legislative instruments for the purposes of that Act. As a result 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 this Explanatory Statement.

### **Explanation and Commencement of the Rules**

Details of the Rules are in the Attachment.

The amendments in Schedule 1 commence the day after registration. The amendments in Schedule 2 commence three months after registration.

## **ATTACHMENT**

### **Schedule 1 Part 1 - Costs**

#### **[1] Repeal the Schedule**

Schedule 1 is repealed and a new costs schedule which increases the itemised amounts of costs as recommended by the Joint Costs Advisory Committee in their 9<sup>th</sup> Report (which recommended a 1.7% increase). These increases are to apply to work done or services performed after the commencement of the Schedule.

Part 1A provides that these increases apply to work done or services performed after the commencement of the Schedule.

### **Schedule 1 Part 2 - Other amendments**

#### **[2] Paragraph 10.01(3)(g)**

The amendment removes reference to the terminology 'primary dispute resolution' which is terminology which is no longer used in family law proceedings. This has been replaced with the terminology 'dispute resolution' in new para 10.01(3)(g) and 'family counselling' in new para 10.01(30(ga)).

#### **[3] Part 2 of Schedule 3 (after table item 3)**

Although the practice and procedure of the Court is governed principally by the *Federal Circuit Court Rules 2001*, rule 1.05 provides the Court may apply the Family Law Rules of the Federal Court Rules.

The amendments made to Part 2 of Schedule 3 set out additional Federal Court Rules which the Court has decided to apply being rule 6.11 (Use of communication device or recording device in place where hearing taking place), and Division 7.3 (Preliminary Discovery).