

# EXPLANATORY STATEMENT

## Select Legislative Instrument No. 52, 2015

**Issued by the authority of the Chief Justice of the Federal Court of Australia on behalf of the Judges of the Court**

### **Federal Court (Corporations) Amendment (Examination Summons) Rules 2015**

Section 59 of the *Federal Court of Australia Act 1976* permits the Judges of the Federal Court of Australia (Federal 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 in Registries of the Court. They 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 59 (4) of the *Federal Court of Australia Act 1976*, the *Legislative Instruments Act 2003* (other than sections 5, 6, 7, 10, 11 and 16 of that Act) applies in relation to rules of court made by the Court under the *Federal Court of Australia Act 1976* 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 Justice 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 59A of the *Federal Court of Australia Act 1976*.

The Judges have agreed to amend the *Federal Court (Corporations) Rules 2000* to facilitate the transition from paper based files to electronic court files by amending subrule 11.3(4) to replicate, in an electronic environment, the requirement that an application and supporting affidavit for the issue of a summons for an examination of a person under either sections 596A or 596B of the *Corporations Act 2001*, be filed in a sealed envelope.

The *Federal Court (Corporations) Rules 2000* are part of a harmonisation arrangement between the Federal Court, Family Court of Australia and the Supreme Court of each State and Territory in Australia. The Amendment Rules are of a minor nature. Nevertheless they were considered by the Council of Chief Justices' of Australian and New Zealand Harmonisation of Rules Committee (the Committee). The Committee consists of representatives from the Federal Court, Family Court of Australia, Supreme Courts of each State and Territory in Australia and High Court in New Zealand.

Section 9 of the *Legislative Instruments Act 2003* provides that Rules of Court made for the Federal 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.

Details of the Rules are in the Attachment.

The Rules commence on the day after they are registered.

**Federal Court (Corporations) Amendment  
(Examination Summons) Rules 2015**

**RULE 1      Name of rules**

This rule provides that the Rules are to be cited as the *Federal Court (Corporations) Amendment (Examination Summons) Rules 2015*.

**RULE 2      Commencement**

This rule provides that these Rules commence on the day after registration.

**RULE 3      Authority**

This rule provides that these Rules are made under the *Federal Court of Australia Act 1976*.

**RULE 4      Schedules**

This rule provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms. Accordingly, the *Federal Court (Corporations) Rules 2000* are amended as set out in Schedule 1.

**SCHEDULE 1**

[1]      Subrules 11.3(4)

Sections 596A and 596B of the *Corporations Act 2000* permits an eligible person to apply in specified circumstances to the Court for the issue of a summons requiring that officers and provisional liquidators of a corporation which is in administration or has been wound up and others with relevant knowledge of the affairs of such a corporation attend before the Court at a specified place and time to be examined on oath.

Rule 11.3 sets out the procedural requirements for making such an application. Subrule 11.3(4) requires that the applicant for such a summons file the application and supporting affidavit in a sealed envelope. Subrule 11.3(6) provides that the supporting affidavit for such an application is not available for inspection by any person unless the Court orders otherwise.

The Federal Court is in the process of transition from paper based files to electronic court files and, during this period, must support both the existing paper based files and the new electronic court files.

This amendment repeals subrule 11.3(4) and replaces it with new subrules 11.3(4) and (4A) which require the applicant for such a summons to file the application and supporting affidavit, if paper based, in a sealed envelope or, if sent to a Registry of the Court for filing by electronic communication, to mark each as “Confidential” and accompany each with a statement that it is (as appropriate) “an application or a supporting affidavit for issue of a summons for examination under section 596A or section 596B of the *Corporations Act 2000*”.