

EXPLANATORY STATEMENT

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

Federal Court Legislation Amendment (Criminal Proceedings) Rules 2016

Authority for Federal Court Rules

Section 59 of the *Federal Court of Australia Act 1976* permits the Judges of the Court, or a majority of them, to make Rules of Court not inconsistent with that 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 *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 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*.

Purpose

These Rules are consequential to the enactment of the *Federal Court (Criminal Proceedings) Rules 2016*.

The Rules will repeal the *Federal Court (Criminal Proceedings) (Interim) Rules 2016*, which will not be needed when the *Federal Court (Criminal Proceedings) Rules 2016* come into force.

The Rules will also amend the *Federal Court Rules 2011* to make changes consequential to the enactment of the *Federal Court (Criminal Proceedings) Rules 2016*. In particular the Rules will repeal provisions in the *Federal Court Rules 2011* which deal with summary prosecutions and criminal appeals. Those topics will be covered by the *Federal Court (Criminal Proceedings) Rules 2016*.

The Rules include transitional provisions to preserve the operation of all the repealed Rules to proceedings commenced while they were in force.

Commencement

The *Federal Court Legislation Amendment (Criminal Proceedings) Rules 2016* will come into operation on the same day as the *Federal Court (Criminal Proceedings) Rules 2016*. Those Rules will come into operation the day after they are registered.

Human Rights Scrutiny

Subsection 8(8) of the Legislation Act 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.

Attachment

The *Federal Court Legislation Amendment (Criminal Proceedings) Rules 2016* are explained in the Attachment.

The *Federal Court (Criminal Proceedings) Rules 2016* are explained in the Explanatory Statement for those Rules.

ATTACHMENT

Federal Court Legislation Amendment (Criminal Proceedings) Rules

Item 1 provides that the Rules will be the *Federal Court Legislation Amendment (Criminal Proceedings) Rules 2016*.

Item 2 provides that the whole of the Rules will commence at the same time as the *Federal Court (Criminal Proceedings) Rules 2016*.

Item 3 notes that the Rules are made under the authority of the *Federal Court of Australia Act 1976*.

Item 4 provides that the Rules will be repealed after six months. By that time any criminal proceedings before the Federal Court that were commenced before the *Federal Court (Criminal Proceedings) Rules 2016* came into force will have been finalised.

Item 5 provides that each instrument specified in the Schedule to the Rules will be amended or repealed as set out in the Schedule.

Schedule 1 - Repeals**Part 1 - Repeals**

- **Item 1** will repeal the *Federal Court (Criminal Proceedings) (Interim) Rules 2016*.

Part 2 – Transitional provisions

- **Item 2** will preserve the operation of the *Federal Court (Criminal Proceedings) (Interim) Rules 2016* to any proceedings commenced while they were in force.

Schedule 2 – Other amendments

- **Item 1** will add a note referring to *Federal Court (Criminal Proceedings) Rules 2016* at the end of Rule 1.04 of the *Federal Court Rules 2011*.
- **Item 2** will add a note referring to Rule 1.10 of *Federal Court (Criminal Proceedings) Rules 2016* to Rule 3.01 of the *Federal Court Rules 2011*.
- **Item 3** will repeal Division 34.2 of the *Federal Court Rules 2011*, which deals with summary criminal proceedings. Rules for summary criminal proceedings will appear in Part 2 of the *Federal Court (Criminal Proceedings) Rules 2016*.

- **Item 4** will delete a reference to subrule 34.14 from subrule 35.32 of the *Federal Court Rules 2011*. Subrule 34.14 is part of Division 34.2, which will be repealed under Item 3 of this Schedule.
- **Item 5** will repeal Part 37 of the *Federal Court Rules 2011*, which deals with criminal appeals from the Supreme Court of a Territory. Rules for criminal appeals will appear in Part 4 of the *Federal Court (Criminal Proceedings) Rules 2016*.
- **Item 6** will add two transitional Rules to the *Federal Court Rules 2011*.
 - New Rule 43.01 will preserve the operation of the repealed provisions of the *Federal Court Rules 2011* for any proceedings that are on foot when the provisions are repealed.
 - New Rule 43.02 will repeal the two transitional Rules after six months. By that time any relevant proceedings before the Federal Court that were commenced before the *Federal Court (Criminal Proceedings) Rules 2016* came into force will have been finalised.
