



# High Court Rules 2004

Statutory Rules No. 304, 2004

made under the

*Judiciary Act 1903, Commonwealth Electoral Act 1918, Nauru (High Court Appeals) Act 1976 and High Court of Australia Act 1979*

## Compilation No. 15

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Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### **This compilation**

This is a compilation of the *High Court Rules 2004* that shows the text of the law as amended and in force on 1 January 2015 (the *compilation date*).

This compilation was prepared on 2 January 2015

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### **Uncommenced amendments**

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on ComLaw ([www.comlaw.gov.au](http://www.comlaw.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on ComLaw for the compiled law.

### **Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### **Modifications**

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on ComLaw for the compiled law.

### **Self-repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## **Chapter 1—General rules**

### **Part 1—Preliminary**

#### **1.01 Title**

These Rules may be referred to as the *High Court Rules 2004*.

#### **1.02 Object**

These Rules prescribe the rules of procedure in proceedings in the High Court of Australia.

#### **1.03 Commencement, repeal and transition**

1.03.1 These Rules are effective on 1 January 2005.

1.03.2 The *High Court Rules 1952* (*the former Rules*) are repealed.

1.03.3 These Rules govern all proceedings commenced in the Court on or after the effective date.

1.03.4 In any proceeding that was commenced before the effective date these Rules govern all steps taken on or after that date unless the Court or a Justice orders that the former Rules shall apply, with or without modification, to that step.

#### **1.04 Causes removed into the Court**

If a cause, or part of a cause, is removed into the Court, these Rules govern all steps taken in the Court in that cause after the order for removal is made.

## Rule 1.05

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### 1.05 Proceedings remitted by the Court

If a proceeding, or part of a proceeding, is remitted by the Court to another court, the Rules of that other court govern all steps taken in that other court after the order for remitter is made.

### 1.06 Interpretation

In these Rules, unless the contrary intention appears:

**month** means calendar month.

**proceeding** includes an application to commence a proceeding.

**Registrar** means the Chief Executive and Principal Registrar, the Senior Registrar or a Deputy Registrar appointed under the *High Court of Australia Act 1979*.

**the Court** means the High Court of Australia.

**vexatious proceeding**: see subsection 77RL(1) of the *Judiciary Act 1903*.

**vexatious proceedings order**: see subsection 77RL(1) of the *Judiciary Act 1903*.

### 1.07 Filing documents

- 1.07.1 Documents filed in the Court shall be filed in the office of the Registry in which the initiating process was filed or, if the file has been transferred to another office of the Registry, in that office.
- 1.07.2 A document is filed when it is accepted in the Registry and is stamped.
- 1.07.3 If it appears to a Registrar that a document presented for filing:
- (a) is not substantially complete;
  - (b) does not substantially comply with these Rules;
  - (c) is not properly signed or executed; or
  - (d) is not accompanied by the fee payable for its filing;
- the Registrar may refuse to accept the document.

## **1.08 Documents**

- 1.08.1 Unless the Rules provide to the contrary, all documents filed in the Court shall be printed:
- (a) in clear, sharp, legible and permanent type of at least 12 point size;
  - (b) on only one side of durable white paper of A4 size;
  - (c) with margins of at least 2.5 cm at the top, 2.5 cm at the bottom and 2.5 cm on each side of each sheet;
  - (d) with each page numbered and every tenth line on each page numbered in the left margin; and
  - (e) without erasure or alteration that causes material disfigurement.
- 1.08.2 Unless the Rules provide to the contrary, the first page of every document filed in the Court shall be indorsed:
- (a) first, with the title of the proceeding or proposed proceeding in which it is filed;
  - (b) next, with a short description of the document including, in the case of an affidavit, the name of the deponent;
  - (c) at the foot of the page with:
    - (i) the date of the document;
    - (ii) the party or other persons on whose behalf it is filed; and
    - (iii) if a solicitor prepares the document, the particulars referred to in rule 1.08.3; or
    - (iv) if the party or person on whose behalf it is filed is acting without a solicitor, the particulars referred to in rule 1.08.4.
- 1.08.3 If a solicitor prepares a document to be filed in the Court, the particulars which are to be indorsed at the foot of the first page of the document are the firm name, address, document exchange box number, telephone number and facsimile number of the solicitor, and the name of an individual in the firm to whom reference can be made in respect of the matter.

**Chapter 1** General rules

**Part 1** Preliminary

Rule 1.09

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- 1.08.4 If the party or person on whose behalf a document to be filed in the Court is acting without a solicitor, the particulars which are to be indorsed at the foot of the first page of the document are the name, address, telephone number, and any facsimile number of that party or person.
- 1.08.5 Where a fee is payable in respect of the filing, issuing, sealing or dealing with any document, a Registrar shall, immediately upon payment of that fee, mark upon the document the amount of the fee paid and the date of payment.

**1.09 Forms**

A form prescribed in Schedule 1 to these Rules must be used, with any variations that are necessary or as the Registrar directs.



## **Part 2—Application and compliance with these Rules**

### **2.01 Application of these Rules**

- 2.01.1 Chapters 1 and 5 of these Rules apply to all proceedings in the Court.
- 2.01.2 Other Chapters of these Rules apply to the proceedings with which they deal.

### **2.02 Dispensing with compliance**

The Court or a Justice may dispense with compliance with any of the requirements of these Rules, either before or after the occasion for compliance arises.

### **2.03 Failure to comply**

- 2.03.1 A failure to comply with these Rules or a direction of the Registrar is an irregularity and does not render a proceeding, or any step taken in a proceeding, or any document, judgment or order in a proceeding a nullity.
- 2.03.2 Subject to rule 2.03.3, where there has been a failure to comply with these Rules or a direction of the Registrar the Court or a Justice may:
- (a) set aside the proceeding or any step taken in the proceeding;
  - (b) make such other order whether allowing amendment or otherwise as is appropriate.
- 2.03.3 A proceeding or a step taken in any proceeding shall not be set aside on the application of a party to the proceeding made on the ground of a failure to comply with these Rules or a direction of the Registrar unless the application is made within a reasonable time

**Chapter 1** General rules

**Part 2** Application and compliance with these Rules

Rule 2.03

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and before the applicant has taken any fresh step after becoming aware of the irregularity.

2.03.4 The Registrar may refer to the Court or a Justice a failure to comply with a direction of the Registrar.

## **Part 3—Amendment**

### **3.01 Amendment**

- 3.01.1 The Court or a Justice may, at any stage of a proceeding, allow a party to amend any document in the proceeding.
- 3.01.2 The Court or a Justice may, at any time, correct a clerical mistake in a judgment or order, or an error arising in a judgment or order from any accidental slip or omission.
- 3.01.3 An amendment in a document may be made by filing and serving an amended document, or by written alteration to the document and copies of the document which have been filed or served.
- 3.01.4 An amendment shall be made in such a way as distinguishes the amendment from the original matter.
- 3.01.5 Where a document is amended it shall be marked with the date of the order under which it is amended and the day on which the amendment is made by indorsing it as follows ‘Amended on [date] pursuant to order of \_\_\_ made on [date]’.

## **Part 4—Time, recesses and the Registry**

### **4.01 Time**

- 4.01.1 Any period of time fixed by or under these Rules shall be calculated in accordance with this Part.
- 4.01.2 Where a time of 1 day or longer is to begin on or to be calculated from a day or event, the day or the day of the event shall be excluded.
- 4.01.3 Where a time of 1 day or longer is to end on or to be calculated to a day or event the day or the day of the event shall be included.
- 4.01.4 Where a period of 5 days or less would include a day on which the office of the Registry is not open in the State or Territory where the act is to be done or may be done that day shall be excluded.
- 4.01.5 Where the last day for doing any act is a day on which the office of the Registry is not open in the State or Territory where the act is to be done or may be done the act may be done on the next day the Registry is open.
- 4.01.6 In calculating any period of time fixed by or under these Rules an act done after 4.00 pm on a day shall be taken to have been done on the next day on which the Registry in the State or Territory where that act was done is open.

### **4.02 Enlargement and abridgment of time**

Any period of time fixed by or under these Rules may be enlarged or abridged by order of the Court or a Justice whether made before or after the expiration of the time fixed.

### **4.03 Delays**

- 4.03.1 Where a year or more has elapsed since any party has taken any step in a proceeding, any party desiring the proceeding to continue shall give every other party not less than 1 month's notice in writing of the party's intention to proceed.
- 4.03.2 Where 3 years or more has elapsed since any party has taken any step in a proceeding, no step shall be taken in the proceeding without the leave of the Court or a Justice.

### **4.04 Recesses**

- 4.04.1 There shall be a Summer Recess in each year beginning on a day appointed annually by the Justices or a majority of them.
- 4.04.2 There shall be a Winter Recess in each year beginning on a day appointed annually by the Justices or a majority of them.

### **4.05 Registry**

- 4.05.1 The office hours of the Registry shall be from 9.00 am to 1.00 pm and from 2.00 pm to 4.00 pm.
- 4.05.2 A Registrar may, and if directed to do so by a Justice shall, open the Registry at any time for urgent business.
- 4.05.3 Each office of the Registry shall be open during office hours on each day except:
- (a) Saturdays and Sundays;
  - (b) any day observed as a holiday by the Australian Public Service or observed as a public holiday in the State or Territory of that office;
  - (c) the days between Christmas Day and New Years Day inclusive.

### **4.06 Use of Seals and Stamps**

- 4.06.1 The Seal of the Court shall be in the form:
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Rule 4.06

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- 4.06.2 The Seal of the Court shall be affixed to:
- (a) Rules of Court made by the Justices;
  - (b) writs of certiorari, mandamus, prohibition and habeas corpus;
  - (c) copies of originating process which are copies for service;
  - (d) any document which is not to be served on a party to a proceeding but is for use outside Australia;
  - (e) any other document to which the Court or a Justice directs it to be affixed.
- 4.06.3 A Registry Stamp of the Court shall be in the form of:

HIGH COURT OF AUSTRALIA
FILED
[DATE]
THE REGISTRY <small>(State or Territory of the office of the Registry)</small>

- 4.06.4 Any document which these Rules require to be stamped and to which rule 4.06.2 does not apply shall be sufficiently stamped if stamped with a Registry Stamp.

**4.07 Custody and inspection of documents in the Registry**

- 4.07.1 Each Registrar shall have the custody of the records of the Court kept in the Registry and of the documents filed in the Registry.
- 4.07.2 Each Registrar shall keep proper indexes to the documents filed in the Registry.
- 4.07.3 Each Registrar shall keep a record of all documents filed and all steps taken in every application and proceeding pending in the Registry showing the dates of filing of the documents and taking the steps so that all steps are shown consecutively and in chronological order.
- 4.07.4 Any person, on payment of the prescribed fee, may during office hours inspect and take a copy of any document filed in an office of the Registry except:
- (a) affidavits and exhibits to affidavits which have not been received in evidence in Court; and
  - (b) documents containing information disclosing the identity of a person where disclosure of the identity of that person is prohibited, whether by Act, order of the Court or otherwise.
- 4.07.5 Except for the purpose of transmission between offices of the Registry, no document may be taken out of an office of a Registry without the permission of the Court or a Justice.
- 4.07.6 A subpoena for production of a document in an office of the Registry shall not be issued.

Rule 5.01

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**Part 5—Judiciary Act 1903—section 78B notice of a constitutional matter and section 78A notice of intervention**

**5.01 Filing notice of a constitutional matter**

- 5.01.1 Where a proceeding pending in the Court involves a matter arising under the Constitution or involving its interpretation, within the meaning of section 78B of the *Judiciary Act 1903*, the party, intervener, or applicant for leave to intervene or appear who raises the matter shall file a notice of a constitutional matter in the office of the Registry in which the proceeding is pending.
- 5.01.2 Notice of a constitutional matter shall state:
- (a) specifically the nature of the matter;
  - (b) the facts showing that the matter is one to which rule 5.01.1 applies.
- 5.01.3 The notice of a constitutional matter shall be in Form 1.

**5.02 Serving notice of a constitutional matter**

- 5.02.1 If the proceeding is an appeal, or an application for leave or special leave to appeal referred to an enlarged Court for hearing as if on appeal, the party, intervener, or applicant for leave to intervene or appear who raises the constitutional matter, or such other party as the Court or a Justice may direct, must:
- (a) file notice of a constitutional matter; and
  - (b) serve a copy of the notice on every other party and on the Attorneys-General of the Commonwealth, the States, the Australian Capital Territory and the Northern Territory:
    - (i) if the matter arises in the notice of appeal—within 7 days after the notice of appeal is filed; or



Rule 5.03

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- (ii) if the matter arises in the application for leave or special leave to appeal—within 21 days after the application is referred to an enlarged Court; or
- (iii) if the matter arises in a notice of cross-appeal or a notice of contention—within 7 days after the notice of cross-appeal or notice of contention is filed; or
- (iv) otherwise—within the time that the Court or a Justice directs.

5.02.2 If rule 5.02.1 does not apply to the proceeding, the party, intervener, or applicant for leave to intervene or appear who raises the constitutional matter, or such other party as the Court or a Justice may direct, must:

- (a) file notice of a constitutional matter; and
- (b) serve a copy of the notice on every other party and on the Attorneys-General of the Commonwealth, the States, the Australian Capital Territory and the Northern Territory:
  - (i) if the matter arises in any pleading—within 7 days of the delivery of the pleading; or
  - (ii) if the matter arises in any originating process—within 7 days of the filing of the process; or
  - (iii) if neither subparagraph (i) nor (ii) applies, and the matter arises before the date fixed for a hearing of a proceeding—not later than 14 days before that date; or
  - (iv) if neither subparagraph (i) nor (ii) applies, and the matter arises during the hearing of any proceeding before the Court or a Justice—within such time as the Court or a Justice directs.

### **5.03 Affidavit of service and provision of documents**

The party, intervener, or applicant for leave to intervene or appear who serves the notice of a constitutional matter:

- (a) must file an affidavit of service of the notice, proving compliance with rule 5.02, within 2 days after service and not

**Rule 5.04**

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later than 2 days before the date appointed for the hearing of the proceeding; and

- (b) must, on request, and as soon as reasonably practicable, supply to any person giving notice of intention to intervene or seek leave to intervene or appear, 2 copies of all relevant documents and books filed in the proceeding.

**5.04 Filing and serving notice of intervention**

5.04.1 If the Attorney-General of the Commonwealth, of a State, of the Australian Capital Territory or of the Northern Territory intends to intervene in a proceeding before the Court under section 78A of the *Judiciary Act 1903*, the Attorney-General must, before taking any step in the proceeding:

- (a) file a notice of intervention in an office of the Registry; and
- (b) serve a copy of the notice on each party and any other intervener.

5.04.2 The notice of intervention must be in Form 1A.

## **Part 6—General rules**

### **6.01 Cases not provided for by Rules**

- 6.01.1 Where the manner or form of procedure for commencing or taking any step in a proceeding or exercising the jurisdiction of the Court is not prescribed by these Rules or there is any doubt about the manner or form of that procedure the Court, a Justice or the Registrar shall determine what procedure is to be adopted and may give directions.
- 6.01.2 A step taken in accordance with directions given by the Court, a Justice or the Registrar is regular and sufficient.

### **6.02 Solicitors**

- 6.02.1 Where these Rules permit or require an act to be done by or to a party, if the party sues or appears by a solicitor, the act shall be done by or to the solicitor unless it is expressly provided that it shall be done by or to the party personally.
- 6.02.2 A solicitor whose name is indorsed on originating process shall, on demand in writing by a defendant, forthwith file and serve on that defendant a statement in writing stating whether that process was issued by or with the solicitor's authority and on the instructions of the person named as plaintiff or applicant.
- 6.02.3 If, within 1 month of the making of a demand in writing under rule 6.02.2, the solicitor does not file and serve a statement in writing stating that the originating process was issued by or with the solicitor's authority and on the instructions of the person named as plaintiff or applicant further proceedings on the process shall not be taken without the leave of the Court or a Justice.
- 6.02.4 A party suing or defending by a solicitor may change solicitors without order.

**Rule 6.03**

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- 6.02.5 A solicitor for a party may cease to be solicitor for that party only:
- (a) if a new solicitor for the party files notice of change of solicitor in the office of the Registry in which the proceeding is pending and serves on every other party a copy of that notice stating the new address for service of the party;
  - (b) if the party files in the office of the Registry in which the proceeding is pending a notice that the solicitor has ceased to act for that party and serves on every other party a copy of that notice stating the new address for service; or
  - (c) if, the solicitor having first given notice in writing to the party of intention to apply for leave to withdraw as solicitor, the Court or a Justice grants the solicitor leave to withdraw and the solicitor serves a copy of that order on every other party.
- 6.02.6 A party suing or defending in person may at any time appoint a solicitor to act on that party's behalf.
- 6.02.7 A solicitor appointed to act for a person previously suing or defending in person shall file and serve on every other party notice of that appointment stating the new address for service of the party.

**6.03 Publication of written reasons for judgment**

When a judgment is given in a proceeding, either by a Full Court or a single Justice, and the opinion of a Justice is reduced to writing, it is sufficient to state orally the opinion of the Justice without stating the reasons for the opinion, but the written opinion shall be then published by delivering it to the Registrar or associate in open Court.

**6.04 Sittings**

- 6.04.1 Sittings of a Full Court shall be held at the places and on the days fixed by rule of Court.
- 6.04.2 Sittings of a Full Court may also be held at a place and on days appointed by the Chief Justice.

- 6.04.3 The distinction between a Justice sitting in Court and sitting in Chambers is abolished.
- 6.04.4 A Justice may sit to hear and determine applications to a single Justice at the places and on the days that the Justice thinks fit.

### **6.05 Scandalous matter**

The Court or a Justice of its own motion or on application may order that an affidavit or other document which is filed and contains scandalous matter shall be taken off the file.

### **6.06 Vexatious proceedings**

- 6.06.1 An application for a vexatious proceedings order must be in Form 21.

Note: For the persons who are eligible to apply for a vexatious proceedings order, see paragraphs 77RN(3)(a) to (d) of the *Judiciary Act 1903*.

- 6.06.2 The application must be:

- (a) accompanied by an affidavit in support of the application;  
and
- (b) served:
  - (i) at least 3 days before the day when the application is to be heard; or
  - (ii) within a shorter period ordered by the Court or a Justice.

- 6.06.3 An application under subsection 77RQ(2) of the *Judiciary Act 1903* for leave to institute a proceeding that is subject to a vexatious proceedings order must be in Form 30.

Note: See subsection 77RQ(4) of the *Judiciary Act 1903* in relation to service of the application.

### **6.07 Refusal to issue or file a document**

- 6.07.1 If a writ, application, summons, affidavit or other document (the **document**) appears to a Registrar on its face to be an abuse of the process of the Court, to be frivolous or vexatious or to fall outside

**Rule 6.07**

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the jurisdiction of the Court, the Registrar may seek the direction of a Justice.

6.07.2 The Justice may direct the Registrar to issue or file the document, or to refuse to issue or file the document, without the leave of a Justice first had and obtained by the party seeking to issue or file the document.

6.07.3 An application for leave to issue a proceeding that is subject to the direction of a Justice under subrule 6.07.2:

- (a) must be in Form 31; and
- (b) must not be served on any person, unless the Court or a Justice otherwise orders.

## **Part 7—Officers**

### **7.01 The Marshal**

- 7.01.1 Where the Marshal is required to serve or execute any document or process issued from the Court the Marshal personally or by a deputy shall serve it and shall make any return of the service or execution that is required by the instrument.
- 7.01.2 A return of service or execution of a document or process shall be made by filing the document or process in the office of the Registry from which it was issued with a certificate indorsed on or annexed to it signed by the Marshal or deputy and stating what was done.

### **7.02 Registrars**

The Principal Registrar shall:

- (a) countersign all Rules of Court made by the Justices;
- (b) cause copies of Rules of Court certified by the Principal Registrar to be sent to the Attorney-General's Department;  
and
- (c) keep the originals of all Rules of Court whether made before or after these Rules in safe custody.

## **Part 8—Judgment and orders**

### **8.01 Form of judgments and orders**

8.01.1 A judgment shall be in Form 2.

8.01.2 An order shall be in Form 3.

### **8.02 Effective date**

Subject to any contrary order of the Court or a Justice a judgment or order, whether of the Full Court or a Justice, shall take effect from and be dated on the day on which it is given or made.

### **8.03 Preparation**

8.03.1 A judgment or order, whether of the Full Court or of a Justice, shall be prepared by or under the direction of a Registrar.

8.03.2 A Registrar may require any party to prepare one or more drafts of any judgment or order and to prepare a final copy of the order for filing and sealing.

### **8.04 Consent orders**

8.04.1 The parties to a proceeding, or their solicitors, may file a written consent to the making of an order in a proceeding.

8.04.2 A written consent to the making of an order shall be in Form 4.

8.04.3 Where a written consent under rule 8.04.1 is filed the Registrar shall refer the matter to a Justice who may, without any other application, direct the Registrar to draw up, sign and seal an order in accordance with the terms of the consent.

8.04.4 An order made under rule 8.04.3 shall state that it is made by consent and it shall have the same effect as if made after a hearing by a Justice.



- 8.04.5 For rule 8, the written consent need not be signed by:
- (a) a party who has not filed an appearance; or
  - (b) a party who has filed a submitting appearance if the order consented to does not require the party to pay costs.

### **8.05 Judgment or orders to do an act**

Where any judgment or order, whether of the Full Court or a Justice, requires a person to do an act:

- (a) it shall state the time within which it is to be done; and
- (b) the copy served upon the person required to obey it shall be indorsed with the memorandum:  
‘If you do not obey this judgment or order by the time limited in it, you may be punished for not obeying it.’.

### **8.06 Interest on judgments and costs**

- 8.06.1 Every judgment debt under a judgment of the Court shall carry interest from the date the judgment takes effect at the rate of interest applicable to judgments of the Supreme Court of the State or Territory where the office of the Registry in which the judgment is entered is located.
- 8.06.2 Every award of costs under a judgment or order of the Court shall carry interest from the date of the order or certificate of taxation quantifying those costs at the rate of interest applicable to judgments of the Supreme Court of the State or Territory where the office of the Registry in which the proceeding is pending is located.

### **8.07 Stay, bail, preservation of property and other interlocutory orders**

- 8.07.1 The Court or a Justice of its own motion or on application may at any time make such order as is necessary to effectuate the grant of original or appellate jurisdiction in the Court.

**Rule 8.07**

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- 8.07.2 Without limiting the generality of rule 8.07.1, where any proceeding is pending in the Court, whether in its original or its appellate jurisdiction, the Court or a Justice on the application of a party may make such orders as are appropriate:
- (a) staying proceedings, whether in the Court or elsewhere, in whole or in part;
  - (b) staying proceedings under any judgment or order, whether of the Court or otherwise;
  - (c) admitting a person in custody to bail;
  - (d) for the preservation of the subject matter of the proceeding.
- 8.07.3 Unless the Court or a Justice otherwise orders, an order admitting a person in custody to bail:
- (a) shall state the conditions on which that person is admitted to bail;
  - (b) may be conditioned upon that person giving security by recognisance, one or more sureties or both by recognisance and one or more sureties; and
  - (c) shall specify the time and place at which, and the person or court to whom, the person admitted to bail shall surrender.

## **Part 9—Service of process and other documents**

### **9.01 Manner of service**

- 9.01.1 An application for an order to show cause and a writ of summons shall be served personally on each defendant unless:
- (a) the solicitor for that defendant undertakes in writing to enter an appearance or a submitting appearance; or
  - (b) the Court or a Justice otherwise orders.
- 9.01.2 An application for an order of removal shall be served by ordinary service on each party to the cause sought to be removed as if the address for service given by that party in the cause were that party's address for service in this Court.
- 9.01.3 An election petition shall be served in accordance with Chapter 3.
- 9.01.4 An application for special leave to appeal shall be served by ordinary service on each party to the proceeding in which the orders sought to be challenged were made as if the address for service given by that party in that proceeding were that party's address for service in this Court.
- 9.01.5 Unless these Rules provide otherwise, any other document may be served by ordinary service.

### **9.02 Effecting personal service**

- 9.02.1 Personal service of a document is effected by handing to the person a copy of the document to be served or, if the person does not accept the copy, by putting the copy down, in the presence of the person to be served and telling the person the nature of the document.
- 9.02.2 In the case of initiating process, the copy for service shall be sealed in accordance with rule 20.02.

**Rule 9.03**

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9.02.3 To effect personal service it is not necessary to show the original document.

**9.03 Effecting service on particular defendants**

9.03.1 Unless otherwise provided by or under an Act of the Parliament, personal service of a document may be effected on a body politic by serving the document on the Government Solicitor for that polity.

9.03.2 Personal service of a document may be effected on a body corporate by serving the document on the Secretary or other proper officer of the body corporate.

9.03.3 Personal service of a document may be effected on a person under disability:

- (a) in the case of a minor, by serving the document on a parent or guardian of the minor or, if there is none, on the person with whom the minor resides or who has the care of the minor; or
- (b) in the case of a person under some other disability, on the guardian or other person having responsibility for the conduct of the person's affairs, or if there is none, on the person with whom the person with a disability resides or who has the care of the person with a disability.

**9.04 Ordinary service**

9.04.1 When personal service of a document is not required, the document may be served by:

- (a) leaving it at the person's address for service;
- (b) posting it to the person's address for service;
- (c) delivering it for transmission through a document exchange to the person's document exchange box; or
- (d) facsimile transmission to the person's facsimile number.

9.04.2 Any document served by facsimile transmission shall be accompanied by a cover page stating:

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- (a) the name, address, telephone number and facsimile number of the sender; and
- (b) the total number of pages transmitted.

### **9.05 Address for service**

- 9.05.1 The address for service of a party commencing a proceeding in the Court shall be the address stated on the originating process as that party's address for service, or if notice of change of address has been given, the address last notified as that party's address for service.
- 9.05.2 The address for service of a party against whom proceedings have been commenced in the Court shall be the address stated on that party's notice of appearance, or if notice of change of address has been given, the address last notified as that party's address for service.

### **9.06 Change of address for service**

A party wishing to change its address for service shall file and serve on all other parties to the proceeding notice of its new address for service.

### **9.07 Service out of Australia**

- 9.07.1 Originating process may be served out of Australia without order of the Court in any case where, under the Federal Court Rules, originating process in the Federal Court may be served out of Australia.
- 9.07.2 Originating process which is served out of Australia need not be served personally as long as it is served in accordance with the law of the place in the country in which service is effected.
- 9.07.3 If a party served with originating process out of Australia does not file an appearance, and if the Court or a Justice is satisfied:
- (a) that the subject matter of the proceeding so far as it concerns that party is within rule 9.07.1; and

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**Part 9** Service of process and other documents

**Rule 9.07**

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(b) that the originating process was duly served on that party;  
the Court or a Justice may order that the plaintiff shall be at liberty  
to proceed.

## **Part 10—Execution**

### **10.01 Execution by parties and others**

- 10.01.1 As between the original parties to a judgment or order execution may issue at any time within 6 years from the date of the judgment or order.
- 10.01.2 Where rule 10.01.1 does not apply a person claiming to be entitled to issue execution may apply to the Court or a Justice for leave to issue execution.
- 10.01.3 The Court or a Justice may grant leave to issue execution on such terms as to costs or otherwise as appear just.

### **10.02 Enforcement**

- 10.02.1 An order of the Court or a Justice in a proceeding may be enforced against all persons bound by it in the same way as a judgment to the same effect.
- 10.02.2 If a mandamus, mandatory order, injunction, or other judgment requiring a person to do an act is not obeyed, the Court or a Justice, whether or not proceedings for contempt have been taken against the disobedient party, may direct that the act be done, so far as practicable and at the expense of the disobedient party, by the party who obtained the order or by some other person.
- 10.02.3 Where a direction has been made under rule 10.02.2, upon the act being done, the expenses incurred may be ascertained in such manner as the Court or a Justice directs and the amount ascertained and the costs may be recovered from the disobedient party.
- 10.02.4 A judgment or order for the payment of money into Court or for the performance of any act other than payment of money to another may be enforced by attachment.

Rule 10.02

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- 10.02.5 A judgment or order requiring a person to abstain from doing an act may be enforced by committal.



## **Part 11—Contempt of Court**

### **11.01 Contempt in the face of the Court**

- 11.01.1 When it is alleged, or it appears to the Court, that a person (*the alleged contemnor*) has been guilty of contempt of Court, committed in the face of the Court or in the hearing of the Court, the presiding Justice may, by oral order, direct that the alleged contemnor be arrested and brought before the Court forthwith or may issue a warrant under the Justice's hand for the arrest of the alleged contemnor.
- 11.01.2 When the alleged contemnor is brought before the Court, the Court shall:
- (a) orally inform the alleged contemnor of the contempt charged;
  - (b) require the alleged contemnor to make his or her defence to that charge;
  - (c) after hearing the alleged contemnor proceed then or after adjournment to determine the charge; and
  - (d) make whatever order for the punishment or discharge of the alleged contemnor as is just.
- 11.01.3 Unless the Court admits the alleged contemnor to bail he or she shall be detained in custody as directed by the Court or a Justice until the charge is heard and determined.

### **11.02 Other cases**

- 11.02.1 In a case where rule 11.01.1 does not apply application for punishment for contempt of Court shall be made by summons for an order that the alleged contemnor be committed to prison for contempt.
- 11.02.2 A summons under rule 11.02.1 shall:
- (a) specify the contempt alleged against the alleged contemnor;

**Rule 11.03**

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- (b) be served personally on the alleged contemnor; and
- (c) be served together with any affidavit upon which the party applying intends to rely.

11.02.3 Where a summons under rule 11.02.1 has been filed and it is made to appear to a Justice that the alleged contemnor is likely to abscond or otherwise withdraw from the jurisdiction of the Court the Justice may by warrant direct that the alleged contemnor be arrested and detained in custody until brought before the Court or a Justice to answer the charge unless, in the meantime, that alleged contemnor gives security in an amount and on terms determined by the Justice for the alleged contemnor's appearance to answer the charge and to submit to the judgment of the Court.

**11.03 Warrant**

- 11.03.1 A warrant for the arrest or the detention or imprisonment of a person under this Part shall be addressed to the Marshal and may be issued under the hand of the Justice or presiding Justice.
- 11.03.2 An arrest warrant shall be in Form 5.
- 11.03.3 A committal warrant shall be in Form 6.

**11.04 Punishment**

- 11.04.1 Where an alleged contemnor is found guilty of contempt of Court the Court or Justice may order:
- (a) where the contemnor is a natural person, that the contemnor pay a fine, be committed to prison, or both pay a fine and be committed to prison; or
  - (b) where the contemnor is a body corporate, that the contemnor pay a fine, that some or all of the property of the contemnor be sequestered or that both the contemnor pay a fine and some or all of the property of the contemnor be sequestered.
- 11.04.2 Where a contemnor is ordered to pay a fine the Court or Justice may order:

Rule 11.05

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- (a) where the contemnor is a natural person, that the contemnor be imprisoned or further imprisoned until the fine is paid; or
- (b) where the contemnor is a body corporate, that if the fine is not paid in accordance with the order, some or all of the property of the contemnor be sequestrated.

11.04.3 An order committing a contemnor to prison shall specify the prison to which the contemnor is to be committed.

11.04.4 Where an order has been made that a contemnor be committed to prison, the Court or Justice may order that the contemnor be discharged notwithstanding that the term of imprisonment fixed by the order has not expired.

**11.05 Costs**

The costs of an application for committal shall be in the discretion of the Court whether an order for committal is made or not.

## Part 12—Moneys in Court

### 12.01 Interpretation

For the purposes of this Part, unless the contrary intention appears:

*funds* means any money, government stock, bonds or securities, or any other securities or investments standing or to be placed to the credit of an account in the books of the Court.

*the Bank* means the Commonwealth Bank of Australia.

### 12.02 Moneys paid into Court

Moneys paid into Court are subject to the order of the Court or a Justice and shall be dealt with pursuant to that order or these Rules and not otherwise, and, in the meantime, shall not be considered as held for, or on account of, or for the use or benefit of any person.

### 12.03 Moneys in Court

- 12.03.1 An order which directs funds to be paid into Court shall direct the credit to which the funds are to be placed.
- 12.03.2 An order which directs funds in Court to be paid, transferred, delivered or carried over to a credit other than that to which they are standing, or to be otherwise dealt with, shall state the particulars of the payment or other operation to be carried out.
- 12.03.3 Funds paid into Court under an order shall be paid into the Bank to the credit of an account entitled ‘High Court of Australia Suitors’ Fund’.
- 12.03.4 Funds paid into the Bank pursuant to rule 12.03.3 shall not be withdrawn or paid from the Bank otherwise than in accordance with these Rules or under the authority or order of the Court or a Justice, but the Bank may make a payment under an order signed

Rule 12.03

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by a Registrar, and countersigned by the Marshal, without enquiry whether an order has been made.

- 12.03.5 The Court or a Justice may direct that any funds paid or to be paid into Court under an order shall be deposited at interest in the Bank, or invested at interest in stock or securities of the Commonwealth, in the names of a Registrar and the Marshal.
- 12.03.6 The Court or a Justice may direct how, and in what manner, in what amounts and to what accounts interest shall be credited.

## **Part 13—Interlocutory applications**

### **13.01 Interlocutory applications**

This Part applies to an interlocutory or other application in a proceeding.

### **13.02 Form and service of interlocutory application**

13.02.1 The application must be made by summons in Form 21.

13.02.2 The summons must:

- (a) be accompanied by an affidavit in support of the application; and
- (b) be served, together with the affidavit:
  - (i) within 3 days after the summons is filed; or
  - (ii) within such other period ordered by the Court or a Justice.

### **13.03 Determination of application**

13.03.1 The Court or a Justice may direct that the application is to be determined without listing it for hearing.

13.03.2 The Court or a Justice may direct a party to file written submissions before hearing or considering the application.

13.03.3 If:

- (a) the application is listed for hearing; and
- (b) a person to whom a summons is addressed fails to attend; and
- (c) the Court or a Justice is satisfied that the summons was duly served;

the Court or Justice may hear the application in the absence of the person.

Rule 13.03

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- 13.03.4 If the application is listed for hearing, and the applicant fails to attend the hearing, the Court or a Justice may dismiss the application or make any other appropriate order.

*[End of Chapter 1. Chapter 2 commences with Part 20]*

## **Chapter 2—Proceedings in the original jurisdiction of the Court**

### **Part 20—Commencing proceedings**

#### **20.01 Form of initiating process**

- 20.01.1 If the relief sought is or includes:
- (a) a writ of mandamus or prohibition or certiorari, whether against an officer of the Commonwealth or some other person; or
  - (b) a writ of habeas corpus or quo warranto;
- a proceeding shall be commenced in the Court by filing an application for an order to show cause in accordance with Part 25.
- 20.01.2 If the relief sought is an order removing a cause or part of a cause pursuant to section 40 of the *Judiciary Act 1903*, a proceeding shall be commenced in the Court by filing an application for removal in accordance with Part 26.
- 20.01.3 If a person wishes to dispute the validity of an election or return pursuant to Part XXII of the *Commonwealth Electoral Act 1918*, a proceeding shall be commenced in the Court by filing a petition in accordance with Chapter 3.
- 20.01.4 In any other case a proceeding shall be commenced in the Court by the issue of a Writ of Summons in accordance with Part 27.

#### **20.02 Issue of initiating process**

An application for an order to show cause, an application for removal, an election petition or a writ of summons shall be issued by the Registrar:

- (a) stamping, signing and numbering the original and accepting the original for filing; and



- (b) sealing as many copies for service as there are defendants or respondents.

## **Part 21—Parties**

### **21.01 Joinder of parties**

Two or more persons may be joined as plaintiffs or as defendants in any proceeding:

- (a) where the Court or a Justice, before or after the joinder, gives leave to do so; or
- (b) where
  - (i) if separate proceedings were brought by or against each of them, some common question of law or fact would arise in all of the proceedings; or
  - (ii) all rights to relief in the proceeding (whether joint, several or alternative) are in respect of or arise out of the same transaction or series of transactions.

### **21.02 Joinder of claims**

A plaintiff may join any number of claims against a defendant whether the plaintiff makes the claims in the same or different capacities and whether the claims are made against the defendant in the same or different capacities.

### **21.03 Joinder inconvenient**

Where the joinder of claims or parties may embarrass or delay the trial of the proceeding or cause prejudice to any party or is otherwise inconvenient the Court or a Justice may at any time order that:

- (a) there be separate trials;
- (b) any claim be excluded; or
- (c) any party cease to be a party, with or without a condition that the party be bound by the determination of the questions in the proceeding.

#### **21.04 Misjoinder and non-joinder**

A proceeding shall not be defeated because of the misjoinder or non-joinder of any party or person and the Court may determine all questions in the proceeding so far as they affect the rights and interests of the parties.

#### **21.05 Addition, removal and substitution of party**

- 21.05.1 At any stage of a proceeding the Court or a Justice may order that:
- (a) a person who is not then a proper or necessary party cease to be a party;
  - (b) any person who ought to have been joined as a party or whose presence in the proceedings is necessary to ensure that all questions in the matter are effectually and completely determined be joined as a party; or
  - (c) any person between whom and any party to the proceeding there may exist a question arising out of or relating to or connected with any claim in the proceeding which it is just and convenient to determine as between that person and the party as well as between the parties to the proceeding be joined as a party.
- 21.05.2 A person shall not be added as plaintiff without that person's written consent.

#### **21.06 Death of a party**

- 21.06.1 Where the cause of action survives against the estate of a deceased person a proceeding may be commenced against the estate of the deceased.
- 21.06.2 Until a grant of representation of the estate of a deceased person is made:
- (a) a proceeding may be commenced and continued against the estate of the deceased naming the estate as defendant; or

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(b) the Court or a Justice may, by order, appoint a person to represent the estate of the deceased for the purposes of the proceeding.

21.06.3 Where a grant of representation of the estate of a deceased person has been made, a proceeding may be commenced and continued naming the personal representative of the deceased as defendant.

**21.07 Transmission of interest or liability**

21.07.1 Where, at any stage of a proceeding, the interest or liability of a party is assigned or transmitted to another person, whether on death, bankruptcy or for some other reason the Court or a Justice may order that the other person be added as a party or made a party in substitution for the original party and that the proceeding be carried on as so constituted.

21.07.2 The person on whose application an order is made under rule 21.07.1 shall serve the order on every party to the proceeding, and on any person who ceases to be a party or becomes a party under the order.

21.07.3 Where a person is added as a defendant by an order made under rule 21.07.1 the originating process shall be served on that person in accordance with Part 22 of these Rules.

**21.08 Persons under disability**

21.08.1 A person under disability shall commence or defend a proceeding by litigation guardian.

21.08.2 Anything in a proceeding that is required or permitted by these Rules to be done by a party shall or may, if the party is a person under disability, be done by that person's litigation guardian.

21.08.3 A litigation guardian of a person under disability shall act by a solicitor.

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- 21.08.4 Where a person is authorised by or under any Act or any law of a State or Territory to act as litigation guardian for a person under disability that person shall be entitled, unless the Court or a Justice otherwise orders, to be litigation guardian for the person under disability.
- 21.08.5 Where, after a proceeding is commenced, a party becomes a person under a disability, the Court or a Justice may appoint a person to be litigation guardian for the person under a disability.
- 21.08.6 Where the interests of a person under a disability so require, the Court or a Justice may appoint or remove a litigation guardian or substitute another person as litigation guardian.
- 21.08.7 An order shall not be made appointing a person as litigation guardian, and the name of a person shall not be used in a proceeding as litigation guardian, of a person under disability unless the litigation guardian has consented in writing to act as litigation guardian and certifies in writing that he or she has no interest in the proceeding adverse to the person with a disability.

**21.09 Representative proceedings**

- 21.09.1 Where numerous persons have the same interest in any proceeding the proceeding may be commenced and, unless the Court or a Justice otherwise orders, may be continued by or against any one or more persons having the same interest as representing some or all of them.
- 21.09.2 A judgment given or order made in a proceeding to which rule 21.09.1 applies shall bind the parties and those whom the parties represent.
- 21.09.3 A judgment or order shall not be enforced against a person who is not a party except by leave of the Court or a Justice.
- 21.09.4 An application for leave shall be made by summons served personally on the person against whom enforcement of the judgment or order is sought.

## **Part 22—Service**

### **22.01 Service of initiating process**

- 22.01.1 An application for an order to show cause and a writ of summons shall be served personally in accordance with Part 9.
- 22.01.2 An application for an order for removal shall be served by ordinary service in accordance with Part 9.
- 22.01.3 An election petition shall be served in accordance with Chapter 3.

### **22.02 Affidavit of service**

Within 7 days of the service of any initiating process, the plaintiff or applicant shall file an affidavit deposing to the time and manner of the service of that process.

## **Part 23—Appearance**

### **23.01 Appearance before taking a step**

- 23.01.1 Except as provided by rule 23.03, or by leave of the Court or a Justice, a defendant shall not take any step in a proceeding unless that defendant has first filed an appearance.
- 23.01.2 A defendant may file an appearance by a solicitor or, if the defendant is a natural person, in person.
- 23.01.3 An appearance shall be filed by filing in the office of the Registry where the initiating process was issued a notice of appearance in Form 7.
- 23.01.4 An appearance shall be indorsed with an address for service which, if the defendant appears by a solicitor, shall be the solicitor's place of business and, if the defendant does not appear by a solicitor, shall be the defendant's place of residence.

### **23.02 Submitting appearance**

A defendant willing to submit to any order that the Court may make, save as to costs, may file a submitting appearance in Form 8.

### **23.03 Conditional appearance**

- 23.03.1 Where a defendant wishes to object to the jurisdiction, to the originating process, or to the service of the originating process, the defendant may file a conditional appearance.
- 23.03.2 A notice of conditional appearance shall be in Form 9.
- 23.03.3 A conditional appearance shall have effect for all purposes as an unconditional appearance, unless on application by the defendant the Court or a Justice otherwise orders.

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23.03.4 Application under rule 23.03.3 shall be made by summons filed within 14 days after the day the conditional appearance is filed.

**23.04 Service of notice of appearance**

23.04.1 Upon a defendant filing a notice of appearance, a submitting appearance, or a conditional appearance, the Registrar shall seal a sufficient number of copies of the document for service.

23.04.2 On the day the defendant files a notice of appearance, a submitting appearance, or a conditional appearance, the defendant shall serve a sealed copy of the document on the plaintiff.



## **Part 24—Evidence**

### **24.01 Evidence by affidavit**

- 24.01.1 An affidavit shall be made in the first person.
- 24.01.2 Where a deponent makes an affidavit in a professional or other occupational capacity, the affidavit shall state the deponent's place of business, the position the deponent holds and the name of the deponent's firm or employer, if any.
- 24.01.3 Where rule 24.01.2 does not apply the affidavit shall state the deponent's place of residence, the deponent's occupation or description, and if the deponent is a party to the proceeding or employed by a party the affidavit shall state that fact.
- 24.01.4 An affidavit shall be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct part of the subject.
- 24.01.5 An affidavit shall, except as provided by rule 24.01.6, be confined to such facts as the witness is able to prove of the witness's own knowledge.
- 24.01.6 On interlocutory proceedings an affidavit may contain statements of information and belief with the sources and grounds of that information and belief.
- 24.01.7 An affidavit may be sworn before a Justice, a Registrar, a person having authority to administer an oath and to take and receive affidavits for the purposes of the Federal Court of Australia, or the Supreme Court of a State or Territory, or a Justice of the Peace.
- 24.01.8 The name and title of the person before whom, and the date when and the place where, the affidavit was sworn shall be stated in the jurat.

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- 24.01.9 Where the seal or signature, as the case may be, of a person authorised under rule 24.01.7 to take an affidavit appears on an affidavit, the Court, the Justices and Registrars and Marshal shall take judicial notice of that seal and signature.
- 24.01.10 An affidavit sworn before:
- (a) a party;
  - (b) a partner in a firm which is a party; or
  - (c) an employee of a party other than a body politic;
- shall not be used in evidence by or on behalf of the party.
- 24.01.11 Every affidavit shall be signed on each page by the person before whom the affidavit was sworn and, unless rule 24.01.12 applies, by the deponent.
- 24.01.12 The person before whom an affidavit is to be sworn may attest the affidavit only if:
- (a) for a deponent who is blind or illiterate:
    - (i) the affidavit was first read to the deponent in the person's presence and the deponent appeared perfectly to understand it; and
    - (ii) the deponent made his or her signature or mark in the person's presence; and
    - (iii) the person certifies those facts in or below the jurat; or
  - (b) for a deponent who has had the assistance of an interpreter:
    - (i) the interpreter has sworn that he or she has interpreted accurately to the deponent the contents of the affidavit and the oath administered to the deponent, and that the deponent appeared to understand perfectly the affidavit and the oath; and
    - (ii) the person certifies those facts in or below the jurat.
- 24.01.13 A document referred to in an affidavit shall not be annexed to the affidavit but may be referred to as an exhibit and, if referred to as an exhibit, shall be filed with the affidavit.

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- 24.01.14 An exhibit to an affidavit shall be identified by a separate certificate attached to it bearing the same heading as the affidavit and signed by the person before whom the affidavit is sworn.
- 24.01.15 The certificate attached to each exhibit to an affidavit shall bear a distinguishing mark for the exhibit and a brief and specific description of the exhibit.

**24.02 Subpoenas**

- 24.02.1 No subpoena shall be issued except upon a note from a Justice.
- 24.02.2 A subpoena to give evidence shall be in Form 10.
- 24.02.3 A subpoena to give evidence and produce documents shall be in Form 11.
- 24.02.4 A subpoena shall be served personally.
- 24.02.5 A subpoena may not be served more than 12 weeks after its issue.
- 24.02.6 A person named in the subpoena shall be excused from complying with it unless a reasonable time before the date for compliance a sum sufficient to meet that person's reasonable expenses of complying with the subpoena by attending on the day and at the place nominated together with any documents to be produced has been paid or tendered to that person.

## **Part 25—Mandamus, prohibition, certiorari, habeas corpus and quo warranto**

### **25.01 Form of an application for an order to show cause**

An application for an order to show cause shall:

- (a) be in Form 12;
- (b) bear the date on which it is issued;
- (c) contain a statement of the relief which the applicant seeks and of the ground or grounds on which the relief is sought;
- (d) state that the time limited for the appearance of a defendant, where service is effected within Australia, is 14 days from the date of service on the defendant, and in any other case is 42 days from the date of service on the defendant;
- (e) be indorsed with an address for service which, if the applicant applies by a solicitor, shall be the solicitor's place of business and, if the applicant does not apply by a solicitor, shall be the applicant's place of residence;
- (f) be accompanied by one or more affidavits in support; and
- (g) not be served more than 90 days after the date on which it is issued or such further time as the Court or a Justice may, by order, allow.

### **25.02 Parties to an application for an order to show cause**

25.02.1 The party seeking an order to show cause shall be called the plaintiff and other parties shall be called defendants.

25.02.2 Where a writ of mandamus or prohibition is sought against an officer of the Commonwealth the officer shall be described in the title of the proceeding by the name of the office held.

- 25.02.3 In all cases other than those for which rule 25.02.2 provides, a defendant may be described by name or by the name of the office held or both.

### **25.03 Application on notice**

- 25.03.1 The plaintiff shall give notice to a defendant of the hearing of an application for an order to show cause by serving on the defendant, by personal service in accordance with Part 9:
- (a) the application;
  - (b) the affidavit or affidavits in support;
  - (c) a summons which has been filed and made returnable before a Justice specifying the orders which the plaintiff will ask the Justice to make; and
  - (d) an outline of submissions prepared in accordance with rule 25.03.2.
- 25.03.2 The plaintiff shall file and serve with the summons referred to in rule 25.03.1 an outline of the submissions which the plaintiff wishes to make on the hearing of the summons:
- (a) stating why the matter should not be remitted to another court or, if the plaintiff submits that it should be remitted, identifying the Court to which it should be remitted;
  - (b) stating what further steps, if any, should be taken in the Court, whether by way of reference of a question of law to a Full Court or otherwise;
  - (c) specifying the times by which, and manner in which, further steps in the Court are to be taken; and
  - (d) setting out the precise terms of the orders which the plaintiff submits should be made on the hearing of the summons.
- 25.03.3 On the hearing of an application for an order to show cause a Justice may order that:
- (a) the application be dismissed;
  - (b) the application be referred for further hearing by a Full Court; or

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(c) the defendants show cause before the Court or a Justice why relief claimed by the plaintiff and specified in the order should not be made on grounds specified in the order.

25.03.4 Without first making an order to show cause the Court or a Justice may grant an order for a writ of habeas corpus, certiorari, mandamus or prohibition or for the production of a person in any case where it appears necessary for the advancement of justice.

25.03.5 Without first making an order to show cause the Court or a Justice shall grant an order for a writ of certiorari or for leave to file an information of quo warranto where the application for that writ or that leave is made by a Law Officer and the Law Officer asks for that order.

25.03.6 An application for an order to show cause may be discontinued in the same manner as a proceeding commenced by Writ of Summons.

25.03.7 Subject to any contrary order of the Court or a Justice, a plaintiff discontinuing an application for an order to show cause shall pay the costs of each defendant in respect of the application, and such costs shall be taxed, unless agreed.

**25.04 Relief and grounds**

The plaintiff shall be confined to the relief sought and grounds stated in an order to show cause.

**25.05 Stay**

The Court or a Justice may at any time grant, dissolve or vary a stay of the proceedings to which an application for an order to show cause relates.

**25.06 Certiorari**

25.06.1 An order to show cause why a writ of certiorari should not issue to remove a judgment, order, conviction or other proceeding, for the

purpose of its being quashed shall not be granted unless the application for the order is made not later than six months after the date of the judgment, order, conviction or other proceeding, or within such shorter period as may be prescribed by any law.

- 25.06.2 Where the judgment, order, conviction or other proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the Court or a Justice may adjourn the application for the order to show cause until the appeal is determined or the time for appealing has expired.
- 25.06.3 A writ of certiorari shall be in Form 13.

### **25.07 Mandamus**

- 25.07.1 An order to show cause why a writ of mandamus or relief of a like nature should not issue shall not be granted except upon the application of a person interested in the relief sought.
- 25.07.2 An application for an order to show cause why a writ of mandamus should not issue to a judicial tribunal to hear and determine a matter shall be made within 2 months of the date of the refusal to hear or within such further time as is, under special circumstances, allowed by the Court or a Justice.

### **25.08 Form, service and return of writ of mandamus**

- 25.08.1 Unless otherwise ordered by the Court or a Justice, a writ of mandamus shall command the person to whom it is addressed to do the act in question or show cause why it has not been done.
- 25.08.2 A writ of mandamus shall be in Form 14.
- 25.08.3 Unless otherwise ordered by the Court or a Justice a writ of mandamus shall be returnable within 14 days after service.
- 25.08.4 Unless otherwise ordered by the Court or a Justice a writ of mandamus shall be served personally.

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- 25.08.5 The person or persons to whom a writ of mandamus is directed shall within the time allowed by the writ, file the writ or a copy of it in the office of the Registry from which it was issued, together with a certificate indorsed on or attached to the writ or copy signed by that person or those persons certifying that the act commanded by the writ has been done or stating the reason why it has not been done.
- 25.08.6 On the day a return is filed a copy of the return shall be served on the plaintiff.
- 25.08.7 If the return does not certify that the act commanded by the writ has been done any further proceeding in the matter, whether for a peremptory writ or otherwise, shall be as directed by a Justice.
- 25.08.8 Subject to section 75 (v) of the Constitution when the Court or a Justice directs that the command shall be peremptory in the first instance, the command may be expressed in an order of the Court without the issue of a writ and shall have the same effect as a peremptory writ of mandamus.
- 25.08.9 No action or proceeding shall be commenced or continued against a person in respect of something done in obedience to a writ of mandamus or an order of the Court or a Justice for relief of the like nature.

**25.09 Habeas corpus**

- 25.09.1 An application for an order to show cause why a writ of habeas corpus should not issue shall be supported by an affidavit:
- (a) made by the person restrained showing that the application is made by that person; and
  - (b) setting out the nature of the restraint.
- 25.09.2 Rule 25.09.1 shall not apply:
- (a) where the application is made on behalf of an infant; or
  - (b) where the person restrained cannot make the affidavit.
- 25.09.3 A writ of habeas corpus shall be in Form 15.
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- 25.09.4 Without the issue of a writ of habeas corpus, the Court or a Justice may order the production, at a time and place named in the order, of a person in confinement, for the purpose of that person's examination as a witness.

### **25.10 Service of a writ of habeas corpus or order for production**

- 25.10.1 A writ of habeas corpus or an order for production directed to a person charged by law with the custody of persons in lawful custody or confinement or to a public officer may be served personally or by leaving the original with a servant, agent or officer of the person to whom the writ or order is directed at the place where the person is confined or detained.
- 25.10.2 Where rule 25.10.1 does not apply a writ of habeas corpus shall, unless the Court or a Justice otherwise orders, be served personally.
- 25.10.3 When a writ of habeas corpus is served there shall be served with the writ a notice, directed to the person to whom the writ is addressed, stating:
- (a) the Court or Justice before whom and the date and time on which the person restrained is to be brought;
  - (b) the acts to be done in obedience to the writ by the person on whom the notice is served; and
  - (c) that in default of obedience, proceedings to punish the party disobeying the writ will be brought under Part 11.

### **25.11 Return to a writ of habeas corpus**

- 25.11.1 An order that a writ of habeas corpus issue shall give directions as to the Court or Justice before whom the writ is returnable and the writ shall be returnable immediately.
- 25.11.2 The person to whom a writ of habeas corpus is directed shall, at the time and place specified in the writ, make a return to the writ.
- 25.11.3 A return to a writ of habeas corpus shall:

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- (a) be indorsed on or attached to the writ;
- (b) set out all the causes of the detention of the person named in the writ; and
- (c) be filed in the Registry from which the writ was issued.

25.11.4 A return to a writ of habeas corpus may, by leave of the Court or a Justice, be amended or another return substituted for it.

**25.12 Proceedings on return**

25.12.1 Upon the return of a writ for habeas corpus application shall be made for the disposition of the person named in the writ or for amending or quashing the return.

25.12.2 When a person in custody (*the prisoner*) is brought before the Court or a Justice in obedience to a writ of habeas corpus, subject to any contrary order, the prisoner or prisoner's counsel shall be heard first, then the person denying the prisoner's right to discharge or counsel for that person and then the prisoner or prisoner's counsel in reply.

**25.13 Discharge without writ**

Where an order to show cause why a writ of habeas corpus should not issue has been made the Court or a Justice may, on the return of that order, direct the discharge or other disposition of the person in question without the issue of a writ of habeas corpus and that order is as effectual as if it had been made on the return of a writ.

**25.14 Application for an information of quo warranto**

25.14.1 Application for an order to show cause why an information of quo warranto, or like relief, should not issue may be made by the Attorney-General for the Commonwealth or by some other person seeking to be named as the relator.

- 25.14.2 An application for an order to show cause why an information of quo warranto, or like relief, should not issue shall be supported by an affidavit made by the party applying.

### **25.15 Form of information**

- 25.15.1 An information of quo warranto shall be in the name of the Attorney-General for the Commonwealth or a relator on behalf of Her Majesty and shall be signed by the Attorney-General or the relator.
- 25.15.2 The information shall state, in the same manner as a Statement of Claim, the facts relied on as invalidating the defendant's title to the office in question.
- 25.15.3 The Court or a Justice may allow a new relator to be substituted for the original relator on such terms as to costs or otherwise as are just.

### **25.16 Service of information**

- 25.16.1 If the defendant has appeared by a solicitor, an information of quo warranto may be served on the solicitor.
- 25.16.2 If rule 25.16.1 does not apply an information of quo warranto shall be served personally.

### **25.17 Subsequent proceedings**

Proceedings after the issue and service of an information of quo warranto shall be as directed by the Court or a Justice.

### **25.18 Disclaimer**

- 25.18.1 A defendant may disclaim the office in question by notice of disclaimer, signed by the defendant and attested by a person before whom an affidavit for use in the Court may be sworn.
- 25.18.2 A notice of disclaimer shall be served on the relator forthwith.

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25.18.3 Upon a notice of disclaimer being filed and served the relator shall, subject to any contrary order of the Court or a Justice, be entitled to judgment with costs.

**25.19 Judgment**

If judgment is given for the Crown, the judgment shall award that the defendant be ousted from the office usurped.

**25.20 Writ of Prohibition**

A writ of prohibition shall be in Form 16.

## **Part 26—Applications for removal pursuant to section 40 of the Judiciary Act 1903**

### **26.01 Form of application for removal**

An application for an order removing a cause or part of a cause pursuant to section 40 of the *Judiciary Act 1903* shall:

- (a) be in Form 17;
- (b) bear the date on which it was issued;
- (c) contain a statement of the order which the applicant seeks and of the ground or grounds on which that order is sought;
- (d) state that the time limited for the appearance of a respondent, where service is effected within Australia is 14 days from the date of service on the respondent, and in any other case is 42 days from the date of service on the respondent;
- (e) be indorsed with an address for service which, if the applicant sues by a solicitor, shall be the solicitor's place of business and, if the applicant does not sue by a solicitor, shall be the applicant's place of residence;
- (f) be accompanied by one or more affidavits in support; and
- (g) not be served more than 90 days after the date on which it is issued or such further time as the Court or a Justice may, by order, allow.

### **26.02 Affidavits in support**

26.02.1 The affidavit or affidavits filed in support of an application for an order for removal should state concisely:

- (a) the court in which the cause is pending and the nature of the cause pending;
- (b) whether the application is for removal of the whole or part, and if so, which part, of the cause pending;
- (c) the factual background to the proceedings;

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- (d) what findings of fact have been made;
- (e) what constitutional issues are said to arise; and
- (f) why the application for removal should be granted.

26.02.2 The affidavit or affidavits in support of an application for an order of removal should exhibit such documents as are necessary for the proper determination of the application.

**26.03 Summary of argument—applicant**

26.03.1 The applicant shall, within 28 days after filing an application for an order for removal, file and serve a summary of argument in support of the application.

26.03.2 The applicant's summary of argument shall:

- (a) be in Form 18;
- (b) not exceed 10 pages; and
- (c) be signed by a legal practitioner on behalf of the applicant or, if the applicant is unrepresented, by the applicant.

**26.04 Summary of argument—respondent**

26.04.1 A respondent shall, within 21 days after service of the applicant's summary of argument, file and serve a summary of argument.

26.04.2 A respondent's summary of argument shall:

- (a) be in Form 19;
- (b) not exceed 10 pages;
- (c) state concisely the points in issue between the applicant and the respondent; and
- (d) be signed by a legal practitioner on behalf of the respondent or, if the respondent is unrepresented, by the respondent.

**26.05 Reply**

26.05.1 An applicant may file and serve a reply within 7 days after service of the respondent's summary of argument.

- 26.05.2 A reply must not exceed 5 pages.
- 26.05.3 A reply must be signed by:
- (a) a legal practitioner on behalf of the applicant; or
  - (b) if the applicant is unrepresented—by the applicant personally.

**26.06 Application book and subsequent proceedings**

- 26.06.1 An application book must be prepared, filed and served as directed by the Registrar.
- 26.06.2 Subject to any contrary order of the Court or a Justice, Part 41 applies to all proceedings in an application for an order for removal after the preparation and filing of an application book.
- 26.06.3 Without limiting rule 26.06.2, an application for an order for removal is to be determined, discontinued or taken to be abandoned as if it were an application for special leave under Part 41.

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## **Part 27—Writ of Summons**

### **27.01 Form of Writ of Summons**

A Writ of Summons shall:

- (a) be in Form 20;
- (b) bear the date on which it is issued;
- (c) contain either an indorsement setting out the nature of the claim made and the relief which the plaintiff seeks or a Statement of Claim;
- (d) state that the time limited for the appearance of a defendant, where service is effected within Australia is 14 days from the date of service on the defendant, and in any other case is 42 days from the date of service on the defendant;
- (e) be indorsed with an address for service which, if the plaintiff sues by a solicitor, shall be the solicitor's place of business and, if the plaintiff does not sue by a solicitor, shall be the plaintiff's place of residence; and
- (f) not be served more than 12 months after the date on which it is issued or such further time as the Court or a Justice may, by order, allow.

### **27.02 Form of pleadings**

- 27.02.1 Every pleading shall be divided into paragraphs numbered consecutively.
- 27.02.2 So far as practicable every pleading shall set out each allegation in a separate paragraph.
- 27.02.3 A pleading settled by counsel shall be signed by counsel.
- 27.02.4 A pleading not settled by counsel shall be signed by the solicitor for the party, or if there is none, by the party.



### **27.03 Filing and serving a Statement of Claim**

- 27.03.1 In every proceeding commenced by Writ of Summons the plaintiff shall file and serve a Statement of Claim.
- 27.03.2 In any proceeding commenced by application for an order to show cause the Court or a Justice may direct the plaintiff to file and serve a Statement of Claim.
- 27.03.3 In a proceeding commenced by Writ of Summons:
- (a) the plaintiff's Statement of Claim may be filed and served with the writ;
  - (b) if a Statement of Claim is not filed and served with the writ, the plaintiff shall file and serve its Statement of Claim within 21 days after the filing of a notice of appearance, a submitting appearance, or a conditional appearance.

### **27.04 Contents of a Statement of Claim**

A Statement of Claim:

- (a) shall state the basis on which it is claimed that the matter is within the original jurisdiction of the Court;
- (b) shall contain in a summary form a statement of all the material facts on which the plaintiff relies, but not the evidence by which those facts are to be proved;
- (c) where any claim arises by or under any Act, shall identify the specific provisions relied on; and
- (d) shall contain the necessary particulars of any fact or matter pleaded, including:
  - (i) all particulars necessary to enable the opposite party to plead or to define the questions for trial or to avoid surprise at trial; and
  - (ii) particulars of any misrepresentation, fraud, breach of trust, wilful default, or like matter; and
- (e) shall state specifically the relief or remedy claimed.

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**27.05 Pleadings after a Statement of Claim**

In any pleading after a Statement of Claim a party shall plead specifically any fact or matter which:

- (a) it is alleged makes a claim or defence of the opposite party not maintainable;
- (b) if not pleaded specifically might take the opposite party by surprise; or
- (c) raises matters of fact not arising out of the preceding pleading.

**27.06 Summons for directions**

27.06.1 No later than 14 days after the time prescribed by rule 27.01 for a defendant to file a notice of appearance, the plaintiff shall file and serve on all parties, whether or not those parties have appeared, a summons for directions returnable before a Justice.

27.06.2 The plaintiff shall file and serve with the summons for directions referred to in rule 27.06.1 an outline of the submissions which the plaintiff wishes to make on the hearing of the summons:

- (a) stating why the matter should not be remitted to another court or, if the plaintiff submits that it should be remitted, identifying the Court to which it should be remitted;
- (b) stating what further steps, if any, should be taken in the Court, whether by way of reference of a question of law to a Full Court or otherwise;
- (c) specifying the times by which, and manner in which, further steps in the Court are to be taken; and
- (d) setting out the precise terms of the orders which the plaintiff submits should be made on the summons for directions.

27.06.3 On the hearing of the summons for directions a Justice may give such directions for the further conduct of the proceeding as appear necessary or desirable for the just and efficient disposition of the matter.

### **27.07 Demurrer**

- 27.07.1 A party may demur to a pleading of the opposite party or to so much of that pleading as sets up a distinct cause of action, a distinct and severable claim for damages, or a distinct ground of defence, set-off, counterclaim or reply.
- 27.07.2 A demurrer shall state whether it is to the whole or part of the claim or pleading of the opposite party, and, if to part, it shall identify that part of the claim or pleading.
- 27.07.3 A demurrer shall state the ground or grounds in law for the demurrer.
- 27.07.4 A party may plead and demur to the same matter.
- 27.07.5 If the claim or defence of a party depends, or may depend, upon the construction of a written document referred to in the pleading, the party demurring may, in its demurrer, set out, or sufficiently identify, the part or parts of the document it alleges are material.
- 27.07.6 A party demurring to the pleading of the opposite party shall:
- (a) file and serve its demurrer on all other parties to the proceeding, whether or not those parties have appeared; and
  - (b) no later than 14 days after the filing of its demurrer, file and serve a summons returnable before a Justice seeking directions for the further conduct of the proceeding.

### **27.08 Questions of law**

- 27.08.1 The parties to a proceeding may agree in stating the questions of law arising in the proceeding in the form of a special case for the opinion of the Full Court.
- 27.08.2 The special case shall be divided into paragraphs numbered consecutively.
- 27.08.3 The special case shall state the facts and identify the documents necessary to enable the Court to decide the questions raised.

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- 27.08.4 Upon the argument of the special case the Court and the parties may refer to the content of the documents identified in the special case.
- 27.08.5 The Court may draw from the facts stated and documents identified in the special case any inference, whether of fact or law, which might have been drawn from them if proved at a trial.
- 27.08.6 The special case shall:
- (a) be prepared by the plaintiff;
  - (b) be signed by the parties or their counsel or their solicitors;
  - (c) be served on all parties to the proceeding who have filed an appearance; and
  - (d) be filed together with sufficient copies for the use of each of the Justices of the Full Court.

**27.09 Summary disposition**

- 27.09.1 If, in a proceeding commenced by Writ of Summons, a defendant does not file an appearance within the time limited the plaintiff may apply to a Justice for judgment against that defendant in accordance with this order.
- 27.09.2 Upon proof of service of the Writ of Summons on the defendant and proof that the defendant has not filed any appearance the Court or a Justice may, without notice to the defendant, give judgment for the plaintiff against that defendant upon the Statement of Claim.
- 27.09.3 A plaintiff who obtains judgment against a defendant in accordance with this order may enforce the judgment and continue the proceeding against any other defendant.
- 27.09.4 Where a proceeding generally, or any claim in a proceeding:
- (a) does not disclose a cause of action;
  - (b) is scandalous, frivolous or vexatious; or
  - (c) is an abuse of the process of the Court

the Court or a Justice may stay the proceeding or a claim made in the proceeding or may give judgment in the proceeding or in relation to a claim made in the proceeding.

- 27.09.5 Where a pleading:
- (a) does not disclose a cause of action or defence;
  - (b) is scandalous, frivolous or vexatious;
  - (c) may prejudice, embarrass or delay the fair trial of the proceedings; or
  - (d) is otherwise an abuse of the process of the Court;
- the Court or a Justice may order the whole or part of the pleading be struck out or amended.
- 27.09.6 On application by a defendant who has filed an appearance the Court or a Justice may at any time give judgment for that defendant against the plaintiff if the defendant has a good defence on the merits.
- 27.09.7 Where a plaintiff, being required to file a Statement of Claim, fails to do so the Court or a Justice may order that the proceeding is dismissed for want of prosecution.

## **27.10 Discontinuance and withdrawal**

- 27.10.1 A party who has filed an appearance in a proceeding may withdraw the appearance at any time with the leave of the Court or a Justice.
- 27.10.2 A plaintiff may discontinue a proceeding or withdraw any part of it:
- (a) before the defendant against whom the proceeding or claim is to be discontinued has filed an appearance; or
  - (b) at any time by leave of the Court or a Justice or with the consent of all other parties.
- 27.10.3 A discontinuance or withdrawal shall be made by filing a notice stating the extent of the discontinuance or withdrawal.

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- 27.10.4 When the discontinuance or withdrawal is with the consent of other parties the notice shall be indorsed with the consent of each party who consents.
- 27.10.5 On the day a notice of discontinuance is filed a copy shall be served on each other party.
- 27.10.6 Subject to any contrary order of the Court or a Justice a plaintiff discontinuing a proceeding or withdrawing a claim shall pay the costs of each party to whom the discontinuance or withdrawal relates to the time of the discontinuance or withdrawal.

*[End of Chapter 2. Chapter 3 commences with Part 30.]*

## **Chapter 3—Election petitions**

### **Part 30—Commencing proceedings**

#### **30.01 Form of petition**

A petition disputing the validity of an election or return shall be in Form 22.

#### **30.02 Publication and advertisement**

30.02.1 Forthwith after filing a petition, the petitioner shall publish a copy of the petition in the Commonwealth Gazette and in the official Gazette of the State or Territory in which the election was held.

30.02.2 In addition to the publication required by rule 30.02.1 the petitioner, forthwith after filing a petition concerning the election of a member of the House of Representatives, shall publish in a newspaper circulating in the Electoral Division for which the election was held a notice stating:

- (a) that the petition has been filed;
- (b) the date on which the petition was filed;
- (c) the name of the petitioner;
- (d) the nature of the relief claimed; and
- (e) concisely the grounds on which the election is disputed.

30.02.3 Within 14 days of the later of the publications required by rules 30.02.1 and 30.02.2, the petitioner shall file an affidavit proving the making of those publications and exhibiting a copy of each of the notices as they were published in each of the gazettes and newspaper.

#### **30.03 Address for service**

30.03.1 A person who has been returned as a Member or Senator may file in the Registry in the State or Territory in which the election was

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held a notice in writing signed by the Member or Senator stating an address for service of a petition under these Rules.

- 30.03.2 The address for service stated under this rule:
- (a) shall be in the State or Territory in which the election was held; and
  - (b) if the Member or Senator has appointed a solicitor, shall be the solicitor's place of business and, if the Member or Senator has not appointed a solicitor, shall be the place of residence of the Member or Senator.

**30.04 Service of petition**

- 30.04.1 Within 28 days after filing the petition, or such further time as the Court or a Justice allows, the petitioner shall serve the petition upon every person whose election or return is disputed by the petition and all other parties.
- 30.04.2 Where the person upon whom the petition is to be served has filed a notice stating an address for service, the petition shall be served at that address.
- 30.04.3 Where the person upon whom the petition is to be served has not filed a notice stating an address for service, the petition shall be served personally.



## **Part 31—Appearances and parties**

### **31.01 Appearances**

- 31.01.1 A notice of appearance shall be in Form 7.
- 31.01.2 A person returned as a Member or Senator whose election or return is disputed by a petition shall file and serve on the petitioner and any other party notice of appearance to the petition within 14 days after service of the petition.
- 31.01.3 A person who voted or had a right to vote at the election to which the petition relates may, within 14 days after the publication of the petition in the official Gazette of the State or Territory in which the election was held, file notice of appearance to the petition and shall forthwith serve that notice of appearance on all other parties.

### **31.02 Parties**

All persons filing notice of appearance to the petition are parties to the proceedings upon the petition and, subject to any contrary order of the Court or a Justice, shall be named in all subsequent proceedings as respondents to the petition.

## **Part 32—Subsequent proceedings**

### **32.01 Summons for directions**

- 32.01.1 Within 14 days after any person has filed notice of appearance to the petition, the petitioner shall file and serve on all parties, whether or not they have appeared, a summons for directions returnable before a Justice.
- 32.01.2 The petitioner shall file and serve with the summons for directions an outline of the submissions which the petitioner wishes to make on the hearing of the summons:
- (a) stating why the matter should not be remitted to the Federal Court of Australia;
  - (b) stating what further steps, if any, should be taken in the Court whether by way of reference of a question of law to a Full Court or otherwise;
  - (c) specifying the times by which, and manner in which, further steps in the Court are to be taken; and
  - (d) setting out the precise terms of the orders which the petitioner submits should be made on the summons for directions.
- 32.01.3 On the hearing of the summons for directions a Justice may give such directions for the further conduct of the petition as appear necessary or desirable for the just and efficient disposition of the matter.

### **32.02 Counter charges**

Where a petition claims a seat for a person who has not been returned as a Member or Senator and a respondent wishes to contend that the person for whom the seat is claimed was not duly elected for some reason other than that the person did not have the requisite majority of valid votes, that respondent shall, within 7

days after filing a notice of appearance, or within such further time as the Court or a Justice allows, file and serve on the petitioner a statement of the grounds on which that person intends to rely setting out those grounds in the same manner in which facts relied on to invalidate an election or return are to be set out in a petition.

### **32.03 Particulars**

- 32.03.1 The Court or a Justice may order a party to deliver to another party particulars, or further and better particulars, of any matter alleged by that party.
- 32.03.2 When the petition, not being a petition merely claiming a fresh count of the votes actually counted at the election, claims the seat for a person who has not been returned as a Member or Senator, alleging that that person had a majority of valid votes, each party shall within such time as is fixed by the Court or a Justice file and serve on all other parties to the petition a list of the ballot-papers or classes of ballot-papers intended to be claimed or objected to, specifying in the case of ballot-papers objected to, the ground of objection on which it is intended to rely.
- 32.03.3 An objection shall not be entertained against the validity of a ballot-paper upon a ground not specified in the lists filed and served except by leave of the Court or a Justice and upon such terms as to amendment of the list, adjournment and payment of costs as the Court or Justice orders.

### **32.04 Notice of trial**

- 32.04.1 The petitioner shall give not less than 14 days' notice of the day fixed for commencement of the trial of the petition.
- 32.04.2 The petitioner shall give that notice by serving it on all other parties to the petition and by advertisement in a newspaper circulating in the State, Territory or Electoral Division for which the election was held.

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- 32.04.3 Within 7 days of the publication of the notice required by rule 32.04.2, the petitioner shall file an affidavit proving the making of that publication, exhibiting a copy of the notice as it was published in the newspaper and shall serve a copy of that affidavit and the exhibits to the affidavit on all other parties to the petition.
- 32.04.4 An order appointing the time and place of trial may be varied from time to time.

**32.05 Withdrawal of petition and substitution of another petitioner**

- 32.05.1 A petition may be withdrawn by leave of the Court or a Justice upon such terms as the Court or Justice thinks fit.
- 32.05.2 The petitioner is to give 14 days' notice of intention to apply for leave to withdraw a petition by advertisement in a newspaper circulating in the State, Territory or Electoral Division for which the election was held.
- 32.05.3 At the hearing of an application for leave to withdraw a petition the Court or a Justice may allow any other person who is competent to file a petition on the grounds alleged in the petition to be substituted for the petitioner and the proceedings upon the petition shall be continued as if the person substituted had been the original petitioner.
- 32.05.4 Where the sole petitioner dies before trial of the petition the Court or a Justice may allow some other person who was competent to file a petition on the grounds alleged in the petition to be substituted for the petitioner and the proceedings upon the petition shall be continued as if the person substituted had been the original petitioner.

*[End of Chapter 3. Chapter 4 commences with Part 40.]*

## **Chapter 4—Proceedings in the appellate jurisdiction of the Court**

### **Part 40—Interpretation and application of Chapter 2**

#### **40.01 Interpretation**

In Chapter 4 of the Rules, unless the contrary intention appears:

*appeal* means an appeal to the Court.

*appellant*, in relation to an appeal, means the person appealing.

*applicant*, in relation to an application for leave or special leave to appeal, means the person making the application.

*application* means an application for leave or special leave to appeal to the Court.

*certificate to appeal* means a certificate granted by the Full Court of the Family Court under section 95 of the *Family Law Act 1975*.

*court below* means the court pronouncing the judgment below.

*indictment* includes an information or other process setting out the offence with which an applicant was charged before the court first recording a conviction or sentence.

*Judge* includes a Justice.

*judgment* includes an order, a conviction and a sentence.

*judgment below*, in relation to an application, means the judgment from which it is sought to appeal, and in relation to an appeal, means the judgment from which the appeal is brought.

*parties*, in relation to an application, means an applicant and any respondent who has filed an appearance.

*respondent*, in relation to an application, means a person who is required to be served with the application, other than the proper officer of the court below, and in relation to an appeal, means a person who has been served with a notice of appeal.

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*unrepresented applicant* means an applicant to an application for leave or special leave to appeal who does not have legal representation.

*unrepresented person* means an applicant or respondent to an application who does not have legal representation.

**40.02 Application of Chapter 2**

Without limiting the operation of Part 6 of the Rules where Chapter 4 does not make adequate provision for the taking of a step in the appellate jurisdiction of the Court, the provisions of Chapter 2 shall be applied with any modification necessary to give proper effect to those Rules in the appellate jurisdiction.

## **Part 41—Applications for leave or special leave to appeal**

### **41.01 Initiation of application for leave or special leave to appeal**

- 41.01.1 An application shall be in Form 23 and shall name as parties all those who were parties to the proceeding in the court below at the time of the judgment below.
- 41.01.2 An application shall be accompanied by:
- (a) a copy of the sealed order or judgment of the court below;
  - (b) a copy of the reasons for the judgment below;
  - (c) if the judgment below determines an appeal or reviews a decision:
    - (i) a copy of the primary sealed order or judgment or decision; and
    - (ii) the reasons (if any) of the primary court or decision-maker that were before the court below;
  - (d) in a criminal case:
    - (i) the indictment;
    - (ii) the transcript of entry of a plea of guilty or the summing up or charge;
    - (iii) the transcript of entry of verdict; and
    - (iv) the Judge's remarks on sentencing; and
  - (e) the notice of appeal or application for leave to appeal to the court below.

### **41.02 Time for filing application**

- 41.02.1 An application shall be filed within 28 days after the judgment below was pronounced.
- 41.02.2 Where an application is not filed within the time limited by rule 41.02.1, the applicant shall:

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- (a) in the application, seek an order that compliance with that time limit be dispensed with; and
- (b) file and serve an affidavit explaining the failure to comply with rule 41.02.1.

41.02.3 Subject to any other direction which may be given by the Registrar, the application shall be filed in the office of the Registry in the State or Territory in which the proceedings in the court below were commenced.

**41.03 Service**

41.03.1 A copy of the application and of the documents filed under rule 41.01.2 shall be served on each respondent in any manner provided by these Rules for the service of documents or by leaving a copy at the address for service, if any, of the parties to be served in the proceedings in the court below and shall be effected within 7 days after filing the application.

41.03.2 A copy of the application shall be lodged with the Prothonotary, Registrar or other proper officer of the court below within 7 days after filing the application.

41.03.3 Within 7 days after serving or lodging documents in accordance with rules 41.03.1 and 41.03.2 the applicant shall file an affidavit deposing to the time and manner of that service or lodging.

**41.04 Appearance**

41.04.1 A respondent opposing or intending to appear on the hearing of an application shall, within 14 days of service of the application, file and serve on the applicant a notice of appearance.

41.04.2 A respondent's notice of appearance shall be in Form 7.

41.04.3 A respondent willing to submit to any order that the Court may make, save as to costs, may file a submitting appearance in Form 8.



**41.05 Summary of argument—applicant**

- 41.05.1 Subject to rule 41.10, the applicant shall, within 28 days after filing an application, file and serve a summary of argument and a draft notice of appeal on any party who has filed an appearance.
- 41.05.2 The applicant's summary of argument shall be in Form 18.
- 41.05.3 The applicant's draft notice of appeal shall be in Form 24.

**41.06 Summary of argument—respondent**

- 41.06.1 A respondent shall, within 21 days after service of the applicant's summary of argument and draft notice of appeal, file and serve a summary of argument.
- 41.06.2 A respondent's summary of argument shall be in Form 19 and shall state concisely the points in issue between the applicant and the respondent.

**41.07 Summary of argument—general**

- 41.07.1 A summary of argument must:
- (a) not exceed 10 pages; and
  - (b) be signed by:
    - (i) a legal practitioner on behalf of the applicant or respondent; or
    - (ii) for an unrepresented party—by the party personally; and
  - (c) have annexed the documents mentioned in rule 41.09.7 as necessary.
- 41.07.3 A party wishing to appear and present oral argument in relation to an application must state that wish in that party's summary of argument.
- 41.07.4 A supplementary summary of argument may be filed only with the leave of the Court or a Justice or the Registrar.

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**41.08 Reply**

- 41.08.1 An applicant may, within 7 days of service of a respondent's summary of argument, file and serve a reply.
- 41.08.2 A reply must:
- (a) not exceed 5 pages; and
  - (b) be signed by:
    - (i) a legal practitioner on behalf of the applicant; or
    - (ii) for an unrepresented applicant—by the applicant personally; and
  - (c) have annexed the documents mentioned in rule 41.09.7 as necessary.

**41.09 Application book**

- 41.09.1 For the purpose of an application, there shall be an application book.
- 41.09.2 The contents of the application book shall be all of the documents referred to in rule 41.01.2 together with:
- (a) the application for leave or special leave;
  - (b) the draft notice of appeal;
  - (c) the parties' summaries of argument (with any annexures) and reply;
  - (d) any affidavit filed under rule 41.02.2 explaining a failure to comply with rule 41.02.1; and
  - (e) any submitting appearance by a respondent.
- 41.09.3 The documents in the application book shall be arranged in the following order:
- (a) documents in the primary court or tribunal, arranged in the following order:
    - (i) in a civil matter:
      - (A) decision and reasons for decision of the tribunal (if any) where that decision is the subject of review;

- (B) reasons;
  - (C) sealed order or judgment;
  - (ii) in a criminal matter:
    - (A) indictment;
    - (B) transcript of entry of plea of guilty, or summing up or charge;
    - (C) transcript of entry of verdict;
    - (D) Judge's remarks on sentencing;
  - (b) documents in the court below, arranged in the following order:
    - (i) notice of appeal or application for leave to appeal;
    - (ii) reasons;
    - (iii) sealed order or judgment;
  - (c) documents in this Court, arranged in the following order:
    - (i) application for leave or special leave;
    - (ii) any affidavit filed pursuant to rule 41.02.2 explaining a failure to comply with rule 41.02.1;
    - (iii) draft notice of appeal;
    - (iv) applicant's summary of argument (including any annexure);
    - (v) respondent's summary of argument (including any annexure);
    - (vi) reply (including any annexure);
    - (vii) any submitting appearance by a respondent.
- 41.09.4 The pages of the documents shall in every case be numbered consecutively.
- 41.09.5 The original pagination of any document reproduced in the application book, including any transcript of proceedings and the reasons for judgment in the court below, shall be retained.
- 41.09.6 If any document is referred to in a summary of argument by reference to its original pagination, that reference shall be accompanied by a notation in the right hand margin of the

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summary of argument of the corresponding page number in the application book.

- 41.09.7 A party shall annex to the summary of argument filed by that party, for inclusion in the application book:
- (a) any document necessary for the proper determination of the application which was tendered in evidence at trial or was tendered in evidence in the court below, and which would not otherwise be included in the application book, preceded, in each case, by a sheet stating the date of the document, a short description of the nature of the document, and when and where the document was tendered; and
  - (b) any affidavit deposing to facts not otherwise in evidence at trial or in the court below and upon which the party seeks to rely in support of or in opposition to the grant of leave or special leave to appeal, together with any exhibits to that affidavit.
- 41.09.8 Within 21 days after the time fixed for filing and serving a reply, or such other time as a Justice or the Registrar may direct, the applicant shall:
- (a) prepare and file 9 copies of the application book; and
  - (b) serve 3 copies of the application book on each respondent who has filed a notice of appearance.
- 41.09.9 The applicant shall prepare an application book in the same manner and form as required in the case of an appeal book by rules 42.13.1 to 42.13.8.
- 41.09.10 The application book shall be prepared and produced in a manner satisfactory to the Registrar.

**41.10 Unrepresented applicants**

- 41.10.1 An unrepresented applicant shall present his or her argument to the Court in the form of a draft notice of appeal and written case, which, unless the Court or a Justice otherwise directs, shall not be

served on any person who was a party to the proceedings in the court below.

- 41.10.2 The draft notice of appeal of an unrepresented applicant shall be in Form 24.
- 41.10.3 The written case of an unrepresented applicant:
- (a) shall be in Form 18;
  - (b) shall not exceed 10 pages; and
  - (c) shall be filed within 28 days of the filing of the application, together with two additional copies of the written case, the draft notice of appeal and all of the documents filed by the applicant in accordance with rule 41.01.2.
- 41.10.4.1 If an unrepresented applicant does not comply with paragraph 41.10.3 (c), the application is taken to be abandoned unless the Court or a Justice orders or directs otherwise.
- 41.10.4.2 If the application is taken to be abandoned, the Registrar must, if asked by the respondent, give the respondent a certificate to that effect.
- 41.10.5 Where an unrepresented applicant has filed a written case, any two Justices may, without requiring any party to the proceedings in the court below to respond to the applicant's written case, determine that the application should be dismissed and direct the Registrar to draw up, sign and seal an order dismissing the application.
- 41.10.6 Where no direction has been given under rule 41.10.5, the Court or a Justice shall direct the applicant to serve a copy of the written case and the draft notice of appeal on the respondent and the provisions of these Rules relating to the filing and service of a summary of argument by the respondent and a reply by the applicant shall apply as if the applicant's written case were that party's summary of argument.

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**41.11 Oral argument**

- 41.11.1 Any two Justices may determine an application without listing it for hearing and direct the Registrar to draw up, sign and seal an order determining the application.
- 41.11.2 If an application is listed for hearing, a party who is present at the hearing, or a legal practitioner on behalf of a party, may appear and, subject to rule 41.11.3, present oral argument.
- 41.11.3 The time allocated to the parties for oral argument on the hearing of an application shall be as the Court orders or, in default of any order, shall be:
- (a) applicant—20 minutes;
  - (b) respondent—20 minutes; and
  - (c) applicant in reply—5 minutes.

**41.12 Discontinuance of application**

- 41.12.1 An applicant may discontinue an application by filing a notice of discontinuance in Form 25 and by serving the notice on the respondent.
- 41.12.2 Unless the Court or a Justice, or the Registrar, otherwise orders or directs, an applicant who discontinues an application shall pay the respondent's costs in respect of the application, and such costs shall be taxed, unless agreed.
- 41.12.3 Filing the notice of discontinuance shall be sufficient authority for the taxation of costs.
- 41.12.4 Rules 41.12.2 and 41.12.3 apply only to applications for leave or special leave to appeal in civil matters in which there is no statutory prohibition against, or limitation of, an award of costs in favour of the respondent.

### **41.13 Deemed abandonment of application by delay**

- 41.13.1 Where an applicant fails to comply with rules 41.03.1 and 41.03.2 within 3 months after filing the application or an applicant fails to comply with rules 41.05.1 and 41.09.8 within 6 months after filing the application, the application shall be deemed to be abandoned unless the Court or a Justice or Registrar has otherwise ordered or directed.
- 41.13.2 On a request by the respondent, the Registrar shall provide a certificate of deemed abandonment and rules 41.12.2, 41.12.3 and 41.12.4, with the necessary adaptations, shall apply.

### **41.14 Directions by Registrar**

- 41.14.1 At any time, after the filing of an application, the Registrar may give directions as to any matter which appears to the Registrar to be a convenient matter upon which to give directions.
- 41.14.2 The Registrar may give directions under rule 41.14.1 without any hearing or, at the Registrar's discretion, the Registrar may, at any time, issue a summons requiring the parties to an application to attend before the Registrar.

### **41.15 Determination of application**

- 41.15.1 A party may, in his or her summary of argument, elect not to seek to present oral argument.
- 41.15.2 Where an application is listed for hearing and it appears to the Court or a Justice that a party is likely to be unable, or that it is likely to be impracticable for a party, to appear personally or by a legal representative to present oral argument, the Court or a Justice may direct that the party's case be considered on the basis of his or her summary of argument and any reply without oral argument from that party.
- 41.15.3 Nothing in rule 41.15.2 prevents any other party from presenting oral argument.

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## **Part 42—Appeals**

### **42.01 Institution of appeals**

An appeal shall be instituted by filing a notice of appeal.

### **42.02 Form of notice of appeal**

42.02.1 A notice of appeal shall be in Form 24.

42.02.2 A notice of appeal shall:

- (a) state the name of the court below, or the Judge pronouncing the judgment below, and the date when the judgment below was given;
- (b) where applicable, state the date on which leave or special leave to appeal was granted;
- (c) when leave or special leave has been granted on terms, set out the particulars of those terms;
- (d) state whether the whole, or part only and what part, of the judgment below is appealed from;
- (e) briefly, but specifically, set out the grounds of appeal which shall not depart from those set out in the draft notice of appeal furnished to the Court on the hearing of the application for leave or special leave to appeal, unless the Court or a Justice otherwise orders; and
- (f) specify the precise form of order which the appellant contends the Court should make including any special order as to costs.

### **42.03 Time for filing**

A notice of appeal must be filed within 14 days after the latest of the following:

- (a) the grant of leave to appeal;
- (b) the grant of special leave to appeal;



(c) the date of the judgment below.

#### **42.04 Place for filing**

A notice of appeal shall be filed in the office of the Registry in the State or Territory in which the proceedings in the court below were commenced.

#### **42.05 Service**

- 42.05.1 A notice of appeal shall be served on each person named as a respondent to the appeal within the time limited by rule 42.03.
- 42.05.2 The Court or a Justice may direct that the notice of appeal be served on any other person who shall thereupon be added as a party to the appeal.
- 42.05.3 Unless the appeal is from a Justice, a copy of the notice of appeal shall be lodged with the Prothonotary, the Registrar or other proper officer of the court below within the time limited by rule 42.03.
- 42.05.4 Service of the notice of appeal may be effected in any manner provided by these Rules for the service of documents or by leaving a copy at the address for service, if any, of the parties to be served in the proceedings from which the appeal is brought.
- 42.05.5 Within 7 days after serving or lodging documents in accordance with rule 42.05.1, 42.05.2 or 42.05.3, the appellant must file an affidavit stating the time and manner of the service or lodgment.

#### **42.06 Appearance**

- 42.06.1 A respondent opposing or intending to appear on the hearing of an appeal shall, within 7 days of service of the notice of appeal, file and serve on the appellant a notice of appearance.
- 42.06.2 A respondent's notice of appearance shall be in Form 7.

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- 42.06.3 A respondent willing to submit to any order that the Court may make, save as to costs, may file a submitting appearance in Form 8.

**42.07 Change of parties to an appeal**

- 42.07.1 Where, at any stage of an appeal, the interest or liability of a party is assigned or transmitted to another person, whether on death, bankruptcy or for some other reason, the Court or a Justice may order that the other person be added as a party or made a party in substitution for the original party and that the appeal be carried on as so constituted.
- 42.07.2 The person on whose application an order is made under rule 42.07.1 shall serve the order on every party to the appeal and on any person who ceases to be a party or becomes a party under the order.
- 42.07.3 Where a person is added as a respondent by an order made under rule 42.07.1 the notice of appeal shall be served on that person in accordance with rule 42.05.
- 42.07.4 Where, after an appeal is commenced, a party becomes a person under a disability, the Court or a Justice may appoint a person to be litigation guardian for the person under a disability and make such other order, whether of a kind referred to in rule 21.08 or otherwise, as may be necessary or appropriate.

**42.08 Cross-appeal**

- 42.08.1 A respondent who wishes to appeal from a part of the judgment below, or who seeks a variation of part of that judgment may, within 7 days after service upon that respondent of the notice of appeal, file a notice of cross-appeal.
- 42.08.2 A notice of cross-appeal shall:
- (a) be in Form 26;
  - (b) state what part of the judgment below the respondent cross-appeals from, or contends should be varied;

- (c) briefly, but specifically, set out the grounds relied upon in support of the cross-appeal; and
  - (d) specify the relief which the respondent seeks in place of the order of the court below or the variation of that order which the respondent seeks.
- 42.08.3 Rules 42.14 and 42.15 apply with the necessary adaptation to a cross-appeal.
- 42.08.4 A cross-appellant will be entitled to proceed with the cross-appeal only if special leave, which may be sought when the appeal is called on for hearing, is granted.
- 42.08.5 Where a respondent does not seek a discharge or variation of a part of the judgment actually pronounced or made, but contends that the judgment ought to be upheld on the ground that the court below has erroneously decided, or has failed to decide, some matter of fact or law, it is not necessary to give a notice of cross-appeal, but that respondent shall file and serve, within the time limited by rule 42.08.1, a notice of that contention in Form 27.

#### **42.09 Stay of proceedings**

Unless the Court or a Justice otherwise orders, an appeal shall not operate as a stay of proceedings.

#### **42.10 Documents**

- 42.10.1 The appellant must, when the notice of appeal is filed, file:
- (a) a copy of the appeal book or documents before the Judge or court below; and
  - (b) a list of all exhibits before the primary judge or court below together with those exhibits.
- 42.10.2 When an exhibit cannot be filed in accordance with rule 42.10.1, the appellant shall state the circumstances in writing and give such information as is necessary to enable the Registrar to cause the exhibit to be available to the Court.

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**42.11 Preparation of index**

- 42.11.1 When the documents mentioned in rule 42.10 have been filed, the Registrar shall appoint a time, date and place for the settling of the index of the appeal book and notify the parties.
- 42.11.2 Within 14 days after filing the notice of appeal, the appellant must file a draft index of the proposed contents of the appeal book and serve it on each respondent who has filed a notice of appearance.
- 42.11.3 The appellant shall serve the draft index on each respondent a reasonable time before the appointment to settle the index.

**42.12 Settling the index**

- 42.12.1 In settling the index the Registrar and the parties shall have regard to the issues of fact and of law that appear from the grounds of appeal as set out in the notice of appeal or cross-appeal.
- 42.12.2 The Registrar and the parties shall endeavour, in settling the index, to:
- (a) exclude from the appeal book documents that are irrelevant or unnecessary; and
  - (b) reduce, as far as possible, the number and the length of documents to be included in the appeal book, taking care to avoid the repetition of merely formal parts of documents and unnecessary duplication.
- 42.12.3 Within 3 days after the index has been settled, the appellant shall file a clean copy of the index as settled.
- 42.12.4 Where an appeal is pending in an office of the Registry other than Canberra, Melbourne or Sydney, an index may be settled by the Registrar in the absence of the parties.
- 42.12.5 Where the index has been settled in the absence of the parties, the Registrar shall serve a copy of the index on each party by post or facsimile transmission.

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- 42.12.6 Unless the contrary is shown, an index served by post or facsimile transmission shall be deemed to have been served, if posted, at the time at which it would be delivered in the ordinary course of post and if transmitted by facsimile at the time of transmission.
- 42.12.7 If any party is dissatisfied with the index as settled, the Registrar may, if he or she thinks it necessary, obtain the direction of a Justice.

**42.13 Preparation and filing of appeal books**

- 42.13.1 Unless a Justice or the Registrar otherwise orders or directs, the appeal book shall be prepared by the appellant in accordance with this rule.
- 42.13.2 The appeal book shall be printed or reproduced by a process which gives uniform copies of pages in a clear and legible type.
- 42.13.3 The pages of the appeal book shall be numbered consecutively and printed on both sides of the sheet.
- 42.13.4 The pages of the appeal book shall be international size A4 and shall be bound in separate volumes of not more than 500 pages (which is to say 250 sheets).
- 42.13.5 Where the appeal book is bound as two or more volumes;  
(a) the title page of each volume shall bear the appropriate volume number immediately following the heading ‘Appeal Book’; and  
(b) the index shall contain a sub-heading giving the appropriate volume number before the entry for the first document in each volume.
- 42.13.6 The contents of the appeal book shall be printed with a 2.5 cm margin upon each side of each page and every tenth line numbered in the left margin.
- 42.13.7 The appeal book may be bound by means of either a flexi binding or spiral binding process.

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- 42.13.8 The appeal book shall have in each volume:
- (a) a title page setting out the full and correct title of the proceedings, including the title of the court below, the names of the solicitors for each party, the address for service of each party and the telephone, facsimile and reference number of each party; and
  - (b) after the title page, an index consisting of a complete list of documents contained in the record before the Court, as settled under rule 42.12 indicating, in the case of each document, whether its text is reproduced and included in the book or not, and, if it is reproduced and included, indicating the page of the book on which it appears.
- 42.13.9 The index to an appeal book shall comply with the index prepared under rule 42.12.
- 42.13.10 The index shall give the date of each document and shall give, in the case of exhibits, the exhibit mark and, in the case of documents marked only for identification, the exhibit mark, if any, with the letters 'MFI' following the exhibit mark.
- 42.13.11 In the index, the exhibits shall be arranged in the order in which they have been lettered or numbered and there shall be a reference to the page of the appeal book on which the tendering of exhibits is recorded.
- 42.13.12 The documents in an appeal book shall be arranged in the following order:
- (a) process and pleadings;
  - (b) evidence, oral and affidavit;
  - (c) testimony taken on commission or before an examiner and put in, or used as, evidence; and
  - (d) exhibits:
    - (i) arranged, not in the order in which they have been lettered or numbered as exhibits, but in chronological order according to the dates borne by the documents or, in the case of manifestly or admittedly misdated documents, their known dates;

- (ii) if a document is undated it shall be placed in the sequence contended for by the appellant, but the appellant shall inform the respondent of the position, or order, proposed for the document and the respondent may require that a note 'date and order disputed' be inserted at the head of the document;
- (iii) if the exhibits include correspondence between, or among, two or more persons which should be read consecutively and not interspersed among other documents, the documents forming the correspondence may be arranged in chronological order and given a position together, at a convenient place in relation to the other exhibits; and
- (iv) interrogatories, answers and affidavits of documents shall not be copied, except so far as they were put in evidence;
- (e) the reasons for judgment of the primary Judge or court;
- (f) a copy of the sealed judgment or order of the primary Judge or court;
- (g) the notice of appeal, if any, from that judgment to a court other than the Court;
- (h) if the judgment below is that of a court exercising appellate jurisdiction:
  - (i) the reasons for the judgment below; and
  - (ii) a copy of the sealed order or judgment of the court below;
- (i) the order of the Court granting leave or special leave to appeal;
- (j) the notice of appeal to the Court;
- (k) any notice of contention;
- (l) any application for special leave to cross-appeal; and
- (m) a certificate that the appeal book has been examined and is correct, signed by the solicitors for the parties.

42.13.13 The date and a short description of the nature of each document shall precede it, but formal headings shall not be printed or copied,

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and jurats, formal identification of exhibits, and the like, shall be omitted.

- 42.13.14 The appeal book shall be prepared and produced in a manner satisfactory to the Registrar.
- 42.13.15 Unless a Justice or the Registrar otherwise orders or directs, the appellant must, within 14 days after the day when the index is settled under rule 42.12:
- (a) file 12 copies of the appeal book; and
  - (b) serve 3 copies of the appeal book on each respondent who has filed a notice of appearance.
- 42.13.16 One of the 12 copies of the appeal book referred to in rule 42.13.15 shall be an examined copy containing an original certificate by the parties, or their solicitors, that it has been examined and is correct.

**42.14 Discontinuance of appeal**

- 42.14.1 An appellant may discontinue an appeal by filing a notice of discontinuance in Form 25 and by serving the notice on the respondent.
- 42.14.2 Unless the Court or a Justice, or the Registrar, otherwise orders or directs, an appellant who discontinues an appeal shall pay the respondent's costs in respect of the appeal, and such costs shall be taxed, unless agreed.
- 42.14.3 Filing the notice of discontinuance shall be sufficient authority for the taxation of costs.

**42.15 Directions by Registrar**

- 42.15.1 At any time after the filing of the notice of appeal, the Registrar may give directions as to any matter which appears to the Registrar to be a convenient matter upon which to give directions.



- 42.15.2 The Registrar may give directions under rule 42.15.1 without any hearing, or, at the Registrar's discretion, may, at any time, issue a summons requiring the parties to attend before the Registrar.

#### **42.16 Dismissal for want of prosecution**

- 42.16.1 When an appellant has not done any act required to be done by or under these Rules, or otherwise has not prosecuted the appeal with due diligence, the Court or a Justice may:

- (a) order that the appeal shall be dismissed for want of prosecution;
- (b) fix a time for the doing of an act and, at the same time, order that upon non-compliance the appeal shall stand dismissed for want of prosecution or, subsequently and in the event of non-compliance, order that it be so dismissed; or
- (c) make any other order as may seem just.

- 42.16.2 The Court or a Justice may make an order under rule 42.16.1:

- (a) on application by a respondent on notice; or
- (b) of its own motion after notice has been given by the Registrar to the appellant.

- 42.16.3 An order under rule 42.16.1 (b) may be varied at any time before the appeal stands dismissed for want of prosecution and, in special circumstances, may be varied or revoked after that time.

#### **42.17 Appeal without notice**

An appeal from the refusal by a Justice of an application made without notice to any other party shall be brought within the time and in the manner prescribed by Part 42, except that if there is no person interested in resisting the application, or affected by the relief sought, service of the notice of appeal and of other process or notices is not required.

## **Part 43—Applications and appeals from the Supreme Court of Nauru**

### **43.01 Application**

This part applies to applications and appeals to the Court from the Supreme Court of Nauru under the *Nauru (High Court Appeals) Act 1976*.

### **43.02 Appeals**

Where an appeal lies to the Court as of right or by leave of the trial Judge, the provisions of Part 42 apply to that appeal with such variations as are necessary.

### **43.03 Applications**

Where an appeal lies to the Court with the leave of this Court, the provisions of Part 41 apply to the application for leave to appeal with such variations as are necessary.

## **Part 44—Written and oral submissions**

### **44.01 Application and definitions**

- 44.01.1 This Part applies to:
- (a) appeals; and
  - (b) applications for leave or special leave to appeal referred to an enlarged Court for hearing as if on appeal.
- 44.01.2 In this Part:
- appellant* includes a moving party before the Full Court.
- intervener* includes a person intervening or seeking leave to intervene or to be heard as *amicus curiae* before the Full Court.
- respondent* includes a defendant or other party opposing before the Full Court.

### **44.02 Written submissions—appellant**

- 44.02.1 Unless otherwise directed by the Court or a Justice the appellant must, within 35 days after the grant of special leave or referral of an application to an enlarged Court:
- (a) file the original and 9 copies of its written submissions, not exceeding 20 pages, and chronology; and
  - (b) serve a copy of each document on the respondent and any intervener.
- 44.02.2 The appellant's written submissions must be in Form 27A.
- 44.02.3 The appellant's chronology must be in Form 27B.

### **44.03 Written submissions—respondent**

- 44.03.1 Unless otherwise directed by the Court or a Justice, the respondent must, within 21 days after service of the appellant's written submissions:

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- (a) file the original and 9 copies of its written submissions, not exceeding 20 pages; and
  - (b) serve a copy on the appellant and any intervener.
- 44.03.2 The respondent's submissions must address all submissions made by the appellant and by any interveners supporting the interests of the appellant.
- 44.03.3 The respondent's written submissions must be in Form 27D.

**44.04 Written submissions—interveners**

- 44.04.1 Unless otherwise directed by the Court or a Justice an intervener must:
  - (a) file the original and 9 copies of its written submissions, not exceeding 20 pages; and
  - (b) serve a copy on each party and any other intervener.
- 44.04.2 Unless otherwise directed by the Court or a Justice, an intervener must file and serve its written submissions within 7 days after written submissions by the party in support of whom the intervention is to be made are filed.
- 44.04.3 An intervener who intervenes in support of more than 1 party or without supporting any party must file and serve its written submissions within 7 days after the respondent's written submissions are filed.
- 44.04.4 An intervener's written submissions must be in Form 27C.

**44.05 Written submissions in reply**

- 44.05.1 The appellant may file a single written submission of no more than 5 pages in reply to all submissions made by:
  - (a) the respondent (including submissions made by the respondent on any notice of cross-appeal); and
  - (b) interveners supporting the interests of the respondent.

- 44.05.2 Unless otherwise directed by the Court or a Justice, the appellant's written submissions in reply must be filed and served within 14 days after the respondent's written submissions are filed.
- 44.05.3 The respondent may file a single written submission of no more than 5 pages in length in reply to submissions made by appellant about any notice of cross-appeal.
- 44.05.4 Unless otherwise directed by the Court or a Justice, the respondent's written submissions in reply must be filed and served within 7 days after the appellant's written submissions in reply are filed.
- 44.05.5 Written submissions in reply must be in Form 27E.

#### **44.06 Annotated form of written submissions and chronology**

- 44.06.1 Each party or intervener must file and serve on the other parties and interveners, at least 7 days before the hearing of the appeal, the original and 9 copies of its written submissions and chronology, annotated to refer to the pages of the appeal book that contain relevant documents, findings of fact and evidence.
- 44.06.2 The annotated written submissions must:
- (a) be signed by:
    - (i) the senior legal practitioner who is to present the case in Court; or
    - (ii) if a party is unrepresented—the party; and
  - (b) must include the name, telephone, fax and email address of the signatory and the date of filing.

#### **44.07 Publication of written submissions and chronology**

- 44.07.1 A written submission, including the annotated form of a written submission, and a chronology must:
- (a) include a certification that the submission and chronology is in a form suitable for publication on the Internet; or

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- (b) be accompanied by a redacted form of the submission and chronology suitable for publication on the Internet.

**44.08 Outline of oral submissions**

- 44.08.1 No later than the commencement of oral argument for a party or intervener, the party or intervener must give the Court, and other parties and interveners, an outline of the propositions that the party or intervener intends to advance in oral argument:
- (a) of no more than 3 pages; and
  - (b) stated sequentially; and
  - (c) related to the written submissions filed for the party or intervener.

*[End of Chapter 4. Chapter 5 commences with Part 50.]*

## **Chapter 5—Costs**

### **Part 50—General**

#### **50.01 Costs in the discretion of the Court**

Subject to the provisions of any law of the Commonwealth and to these Rules, the costs of and incidental to all proceedings in the Court are in the discretion of the Court or a Justice.

#### **50.02 Methods of assessment**

50.02.1 The Court or a Justice may order that costs:

- (a) be taxed;
- (b) be fixed in an amount specified in the order or by these Rules; or
- (c) be assessed by such other method as the Court or a Justice directs.

50.02.2 Unless the Court or a Justice orders that costs be fixed or assessed, a party entitled to costs shall be entitled:

- (a) to costs taxed in accordance with these Rules; and
- (b) to tax those costs without an order for taxation.

#### **50.03 Causes removed**

Where a cause, or part of a cause, is removed into the Court, the costs in the court below shall be costs in the cause.

#### **50.04 Order for proportion of costs**

Where the Court or a Justice awards costs to a party, the Court or Justice may direct payment of only a proportion of the costs determined in accordance with these Rules.

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**50.05 Default by practitioners**

- 50.05.1 Where a hearing cannot conveniently proceed because counsel or the solicitor for a party:
- (a) has neglected to attend personally or by some proper person;  
or
  - (b) has omitted to deliver a document necessary for the use of the Court or a Justice and which, according to the practice of the Court or these rules, ought to have been delivered;
- the Court or a Justice may order the counsel or solicitor concerned personally to pay some or all of the costs incurred by some or all of the parties.
- 50.05.2 The Court or a Justice may, after reference to and report by the Taxing Officer, order counsel or a solicitor to repay to a client costs ordered to be paid by that client to another party where those costs were incurred by that party in consequence of the delay or misconduct of the counsel or solicitor.



## **Part 51—Costs of interlocutory applications**

### **51.01 Costs reserved**

Where the costs of an application are reserved by the Court or a Justice, and no order is later made directing by and to whom those costs are to be paid, the costs shall be costs in the cause.

### **51.02 Costs of applications in a matter**

51.02.1 Unless the Court or a Justice otherwise orders, the costs of an application in a matter shall be part of the costs of the cause of the party in whose favour the application is determined unless the application is unopposed.

51.02.2 Where an application in a matter is unopposed, the costs of both parties shall be part of their costs of the cause unless the Court or a Justice otherwise orders.

### **51.03 Interlocutory costs included in final judgment**

51.03.1 All costs to which a party is entitled under an interlocutory order made in a matter shall be included in the final judgment when it is entered, unless the costs have then been paid.

51.03.2 An order for costs of an interlocutory proceeding shall not entitle a party, unless the Court or a Justice otherwise orders, to have the costs taxed until the principal proceeding in which the interlocutory order is made is concluded.

## **Part 52—Scale of costs**

### **52.01 Fixed costs**

Subject to these Rules, where the Court or a Justice orders that costs fixed in an amount specified in the order or in these Rules are to be paid:

- (a) those costs shall not be taxed; and
- (b) the solicitor for the party in whose favour the order is made is entitled to charge and be allowed an amount not exceeding that sum in respect of the matter or part of a matter dealt with by that order.

### **52.02 Costs other than fixed costs**

Subject to these Rules, where rule 52.01 does not apply, solicitors are entitled to charge and to be allowed the fees set out in Schedule 2 in respect of the matters referred to in that Schedule, and higher fees shall not be allowed in any case except as these Rules provide.

## **Part 53—Taxing Officers**

### **53.01 Interpretation**

Each Registrar is a Taxing Officer.

### **53.02 Taxation by Taxing Officer**

Bills of costs which are to be taxed shall be taxed, allowed and certified by a Taxing Officer.

### **53.03 Taxing Officers to assist each other**

Taxing Officers shall assist each other and, in the discharge of their duties and for the proper dispatch of the business of their respective offices, a Taxing Officer may tax, or assist in the taxation, of a bill of costs which has been referred to another Taxing Officer for taxation, and may review or assist in the reconsideration of a taxation in accordance with rule 57.03.

### **53.04 Powers of a Taxing Officer**

- 53.04.1 For the purpose of taxation of costs, a Taxing Officer may:
- (a) summon and examine witnesses either orally or upon affidavit;
  - (b) administer oaths;
  - (c) direct or require the production of books, papers and documents;
  - (d) issue summonses to witnesses;
  - (e) make separate or interim certificates;
  - (f) require any party to be represented by a separate solicitor; and
  - (g) do such other acts and direct or take all such other steps as are directed by these Rules or by the Court or a Justice.

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- 53.04.2 Where a party entitled to costs refuses or neglects to have those costs taxed, and thereby prejudices another party, the Taxing Officer may, so as to prevent another party being prejudiced by that refusal or neglect:
- (a) certify the costs of the other party and the refusal or neglect;  
or
  - (b) allow a nominal or other sum to the party refusing or neglecting to have that party's costs taxed.
- 53.04.3 Where, in proceedings before the Taxing Officer, a party is guilty of neglect or delay, or puts any other party to any unnecessary or improper expense, the Taxing Officer may exercise the powers set out in rule 53.04.2.
- 53.04.4 A Taxing Officer may limit or extend any time for taking any step in a taxation whether or not the time for taking that step has expired.

**53.05 Attendance of parties**

On any taxation of costs the Taxing Officer may:

- (a) direct which parties are to attend the taxation;
- (b) direct which parties are to be served with copies of bills of costs; and
- (c) disallow the costs of any party whose attendance at the taxation the Taxing Officer considers to have been unnecessary.

## **Part 54—Commencing taxation of costs and content of bill**

### **54.01 Commencing taxation**

Taxation of costs shall be commenced by the party whose costs are to be taxed filing, and serving on the party liable to pay the costs, a copy of the bill of costs to be taxed not less than 7 days before the time appointed for taxation.

### **54.02 Content of bill**

- 54.02.1 A bill of costs shall be prepared in Form 28 showing:
- (a) each item consecutively numbered;
  - (b) the date on which each item was incurred;
  - (c) particulars of the service charged for and of the item or items in the Schedule used to fix the charge;
  - (d) disbursements; and
  - (e) professional charges.
- 54.02.2 Professional charges shall be entered in a separate column from the disbursements.
- 54.02.3 At the end of the bill, a bill of costs shall state the total of the costs claimed and the total of the column of professional charges and the total of the column of disbursements.
- 54.02.4 Every bill of costs shall contain or be accompanied by proof of payment of all disbursements claimed.
- 54.02.5 Every bill of costs shall be endorsed with the name and address of:
- (a) the solicitor by whom it is filed;
  - (b) in agency matters, the principal solicitor; and
  - (c) any solicitor who is entitled or intended to participate in the costs to be taxed.

## **Part 55—Taxation of costs—General**

### **55.01 General principle**

On every taxation, the Taxing Officer shall allow all such costs, charges and expenses as appear to the Taxing Officer to have been necessary or proper for the attainment of justice or for maintaining or defending the rights of a party, but, except as against the party who incurred them, costs shall not be allowed which appear to the Taxing Officer to have been incurred or increased:

- (a) through overcaution, negligence or mistake;
- (b) by payment of special fees to counsel or special charges or expenses whether to witnesses or others; or
- (c) by other unusual expenses.

### **55.02 Special allowances**

In the case of:

- (a) special cases;
- (b) cases stated or questions reserved under an Act; and
- (c) pleadings;

the Taxing Officer may, in lieu of the allowances fixed by these Rules, make such allowance for work, labour and expenses in or about the preparation of the documents as the Taxing Officer thinks proper.

### **55.03 No fee prescribed**

Where a step in a matter has required skill and labour in respect of which no fee has been prescribed, the Taxing Officer may allow such special fee as the Taxing Officer thinks fit.

**55.04 Duplication of fees**

Only one fee shall be allowed for taking a step for or against more than one party unless the charging of a separate fee was necessary and proper.

**55.05 Fees not provided for**

Such sum shall be allowed as the Taxing Officer thinks just and reasonable having regard to all the circumstances of the case for work and labour properly performed and not specifically provided for by these Rules but in respect of which, in the opinion of the Taxing Officer, an allowance should be made.

## **Part 56—Taxation of costs—Particular items**

### **56.01 Instructions**

If the Taxing Officer, on special grounds, considers a fee set out in Schedule 2 for instructions to be inadequate, the Taxing Officer may make such further allowance as the Taxing Officer considers reasonable.

### **56.02 Preparing documents (other than court books)**

The fees set out in Schedule 2 for preparing a document (other than court books) include the following:

- (a) typing the document;
- (b) printing the document;
- (c) posting the document;
- (d) faxing the document;
- (e) emailing the document;
- (f) any other administrative task relating to the preparation or transmission (by any means) of the document.

No additional amount will be allowed for such administrative tasks.

### **56.03 Evidence**

Such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence and the attendance of witnesses shall be allowed.

### **56.04 Evidence by affidavit**

- 56.04.1 Where there are several deponents to an affidavit to be sworn or it is necessary for the purpose of an affidavit being sworn to go to a distance or to employ an agent, the Taxing Officer shall make such reasonable allowance as the Taxing Officer thinks fit.



- 56.04.2 The allowances for instructions for and preparing an affidavit include all attendances on the deponent to settle and read over the affidavit.

### **56.05 Copies**

The Taxing Officer shall allow only the copying of such documents or parts of documents accompanying briefs as the Taxing Officer considers necessary for the proper instruction of counsel or for use at the hearing.

### **56.06 Reading or examining documents**

- 56.06.1 Fees for reading or examining documents do not apply where the same solicitor acts for both parties.
- 56.06.2 The fees for reading or examining any document are in the discretion of the Taxing Officer, but no allowance is to be made unless it is shown to the satisfaction of the Taxing Officer that there were good and sufficient reasons for reading or examining the document.

### **56.07 Agency matters**

- 56.07.1 The Taxing Officer may make special allowance in respect of agency correspondence that is special and extensive.
- 56.07.2 The Taxing Officer shall allow the necessary expense in agency matters of postage, carriage and transmission of documents.

### **56.08 Orders**

The Taxing Officer may make such allowance as is reasonable in respect of the preparation and settling of judgments and orders.

### **56.09 Counsel**

- 56.09.1 The Taxing Officer shall allow such costs as the Taxing Officer considers reasonable for procuring the advice of counsel and for

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preparing such documents as the Taxing Officer thinks proper to be prepared by counsel.

- 56.09.2 Where a practitioner acts as both barrister and solicitor, or as counsel, instructed by another practitioner in the same firm or other legal office acting as solicitor, the Taxing Officer shall, in cases where a fee would have been allowed to independent counsel, allow to the practitioner such sum as a counsel's fee for preparing any document or appearing as counsel as the Taxing Officer considers reasonable in the circumstances.
- 56.09.3 Subject to rules 56.09.4, 56.09.5 and 56.09.6, no disbursement, whether as a fee to counsel or otherwise, shall be allowed unless:
- (a) it has been paid before the filing of the bill of costs; and
  - (b) unconditional payment of the disbursement is proved to the satisfaction of the Taxing Officer.
- 56.09.4 Where a party is represented as counsel by a Law Officer or by an employee of the Crown, and the party is unable to vouch payment of a fee to that practitioner, the Taxing Officer may, in cases where a fee would have been allowed to counsel, allow to the party such sum as counsel's fee for preparing any document or for appearing as counsel as the Taxing Officer considers reasonable in the circumstances.
- 56.09.5 Where a party is represented by counsel appearing without fee, and the party is unable to vouch payment of a fee to counsel, the Taxing Officer may, in cases where a fee would have been allowed to counsel, allow to the party such sum as counsel's fee for preparing any document or for appearing as counsel as the Taxing Officer considers reasonable in the circumstances.
- 56.09.6 If a fee would have been allowed to counsel for preparing a document or for appearing as counsel, the Taxing Officer may allow to a party a sum the Taxing Officer considers reasonable as counsel's fee if:
- (a) the party is represented by counsel; and

- (b) the party is unable to provide proof of payment of the fee to counsel; and
- (c) the party's solicitor gives an unconditional undertaking to the Court to pay the fee from any costs recovered.

### **56.10 Experts**

The allowances in respect of fees to any expert whose aid or assistance is obtained shall be regulated by the Taxing Officers.

### **56.11 Costs of particular parties**

56.11.1 Where it is ordered that costs shall be paid or retained out of any fund or estate, the Court or a Justice may direct out of what portion or portions of that fund or estate the costs are to be paid.

56.11.2 Where the Court or a Justice appoints a solicitor or public trustee to be litigation guardian of a person, the Court or Justice may direct that the costs to be incurred in the performance of the duties of litigation guardian shall be borne and paid:

- (a) by the parties or one or more of the parties; or
- (b) out of any fund in Court in which the person may be interested;

and may give such directions for the repayment or allowance of the costs as the Justice thinks fit.

56.11.3 When a solicitor acts as litigation guardian without any order of the Court or a Justice appointing the solicitor as guardian, the costs incurred in the performance of the duties of that office are in the discretion of the Court or a Justice.

### **56.12 Disallowance of unnecessary costs**

56.12.1 The Court or a Justice may of its own motion or on application by any party:

- (a) direct that any costs which have been improperly, unreasonably or negligently incurred be disallowed; or

**Rule 56.13**

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(b) direct a Taxing Officer to examine the costs incurred in a proceeding or in taking a step in the proceeding and to disallow such costs as the Taxing Officer finds to have been improperly, unreasonably or negligently incurred.

56.12.2 Where costs are disallowed pursuant to rule 56.12.1, the party whose costs are disallowed shall pay to each other party the costs incurred by those parties in relation to the proceeding or step in respect of which the party's costs have been disallowed.

56.12.3 Without limiting the generality of rules 56.12.1 or 56.12.2, the Taxing Officer shall disallow any costs which the Taxing Officer finds to have been improperly, unreasonably or negligently incurred.

**56.13 Costs of application for extension of time**

56.13.1 Costs of an application for consent to an extension of time for taking any step in a proceeding are in the discretion of the Taxing Officer.

56.13.2 The Taxing Officer shall not allow the costs of more than one extension of time unless satisfied that the extension was necessary and could not, with due diligence, have been avoided.

56.13.3 The costs of an application to extend time shall not be allowed unless the party making the application has previously applied to the opposite party to consent to a sufficient extension of time and the opposite party has not consented, or the Taxing Officer considers that there was a good reason for not making application to the opposite party.

## **Part 57—Assessment, taxation and review of taxation**

### **57.01 Assessment**

- 57.01.1 A party filing a bill of costs for taxation may indorse on the bill a request that a Taxing Officer, in the absence of the parties and without making any determination of any individual item in the bill, make an estimate of the approximate amount of professional charges and disbursements that, in the opinion of the Taxing Officer, would be allowed if the bill of costs were taxed.
- 57.01.2 Where a party indorses a bill with a request under rule 57.01.1:
- (a) the Taxing Officer shall mark on the bill and on as many copies of the bill as the party filing the bill reasonably requires for the purpose of service, a day not less than 14 days later as the day after which the Taxing Officer will make that estimate and return the marked copies of the bill to the party filing it;
  - (b) the party filing the bill shall, not less than 7 days before the day marked by the Taxing Officer on the bill, serve a marked copy of the bill and each of the documents referred to in rule 54.02.4 on each other party to the taxation; and
  - (c) the party filing the bill shall file an affidavit deposing to the time and manner of service of the bill and each of the documents referred to in rule 54.02.04 on each other party to the taxation within 7 days after service.
- 57.01.3 The Taxing Officer will notify each party to the taxation, in writing, of the estimate made under rule 57.01.1.
- 57.01.4 Unless, within 14 days of the Taxing Officer sending notice of the estimate made under rule 57.01.1:
- (a) the party who has filed the bill gives notice that that party disputes the estimate and requires taxation of the bill; or

**Rule 57.02**

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- (b) a party interested files and serves on all other parties to the taxation a notice of objection under rule 57.02;  
there shall be no taxation of the bill and a Certificate of Taxation shall be issued for the amount of the estimate.
- 57.01.5 Where a Taxing Officer has been asked to make an estimate under this rule, no notice of dispute or notice of objection may be filed:
- (a) until after that estimate has been made; and
  - (b) unless the party seeking to file it shall first have paid into the High Court of Australia Suitors' Fund the sum of \$1 250 as security for the costs of the taxation.
- 57.01.6 Where a notice of dispute or notice of objection is filed in accordance with this rule, the Taxing Officer shall appoint a time and place for the taxation of the bill.

**57.02 Objections to bill**

- 57.02.1 Subject to rule 57.01, a party on whom a bill of costs is served may by notice object to any item in the bill.
- 57.02.2 A notice of objection pursuant to rule 57.02.1 shall:
- (a) state each item to which the party objects;
  - (b) state concisely the grounds of objection;
  - (c) state the amount (if any) which the party contends should be allowed for the item; and
  - (d) be filed and served not less than 3 days before the time appointed for taxation on the party seeking taxation of the bill.
- 57.02.3 Without the leave of the Taxing Officer a party on whom a bill of costs is served may not object to any item in a bill to which no notice of objection has been given in accordance with these Rules.
- 57.02.4 Where no objection to a bill is made in accordance with these Rules, the Taxing Officer may allow or disallow the amount of the costs in the bill in whole or in part.

**57.03 Reconsideration of taxation**

- 57.03.1 Any party dissatisfied with the allowance or disallowance by the Taxing Officer in a bill of costs of the whole or a part of any item may, at any time before the Taxing Officer's certificate is signed apply to the Taxing Officer for reconsideration of that item or part.
- 57.03.2 Application under rule 57.03.1 for reconsideration of an item or part of an item shall, be made by:
- (a) filing and delivering to the other party interested in the allowance or disallowance a notice in writing objecting to the allowance or disallowance specifying each item or part of item to which objection is made and the grounds and reasons for the objection; and
  - (b) applying to the Taxing Officer to reconsider the taxation in respect of those items or parts.
- 57.03.3 Pending consideration and determination of the objection, the Taxing Officer may issue a certificate of taxation for or on account of the remainder or of a part of the bill of costs and any further certificate which may be necessary shall be issued by the Taxing Officer after decision of the objections.
- 57.03.4 Upon application under rule 57.03.1 to reconsider the taxation, the Taxing Officer shall reconsider and review the taxation in relation to the objections and may, if the Taxing Officer thinks fit, receive further evidence in respect of the objections.
- 57.03.5 If required by a party, the Taxing Officer shall state in the certificate of taxation by reference to the objection the grounds and reasons of decision on the objection and any special fact or circumstance relating to that decision.
- 57.03.6 The Taxing Officer may tax the costs of the objections and add them to or deduct them from any sum payable by or to a party to the taxation.
- 57.03.7 Except as provided by this rule the Taxing Officer shall not, after a certificate is signed, review the taxation or amend the certificate

**Rule 57.04**

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other than to correct, before payment or process is issued for recovery of the costs, a clerical or manifest error.

**57.04 Certificate and taxing fee**

- 57.04.1 At the conclusion of each taxation of costs:
- (a) the Taxing Officer shall state the total amount allowed on the taxation;
  - (b) the taxing fee shall be due and payable.
- 57.04.2 Unless the parties otherwise agree, the Taxing Officer shall not sign a Certificate of Taxation until not less than 14 days after the conclusion of the taxation.
- 57.04.3 A certificate of taxation shall:
- (a) be in Form 29;
  - (b) be prepared by or under the direction of a Taxing Officer; and
  - (c) certify the total amount of the costs allowed on taxation.
- 57.04.4 A certificate of taxation shall not be signed until the taxing fee has been paid.

**57.05 Review of taxation**

- 57.05.1 If a party is dissatisfied with the certificate of the Taxing Officer as to any item or part of an item reconsidered by the Taxing Officer under rule 57.03.2, that party may, within 14 days from the date of the certificate, or such other time as the Court or a Justice or the Taxing Officer at the time of signing the certificate allows, apply to a Justice for an order to review the taxation as to that item or part of an item.
- 57.05.2 An application under rule 57.05.1 shall be made by filing and serving a summons in Form 21 together with an affidavit in support setting out the evidence that was before the Taxing Officer in relation to the item or items concerned.



Rule 57.05

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- 57.05.3 The Justice may make such order on the review as the Justice thinks fit.
- 57.05.4 The certificate of the Taxing Officer is final and conclusive as to all matters which have not been objected to in accordance with rule 57.05.1.
- 57.05.5 An application under rule 57.05.1 shall be heard and determined by the Justice upon the evidence which was before the Taxing Officer and no further evidence shall be received upon the hearing of the application unless the Justice otherwise directs.

Rule 58.01

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## Part 58—Costs of taxation

### 58.01 Costs of preparing and taxing bill

The Taxing Officer shall fix the costs of preparing and taxing a bill of costs.

### 58.02 Costs and the Taxing Officer's estimate

58.02.1 Rule 58.02.1A applies if:

- (a) a Taxing Officer has made an estimate under rule 57.01; and
- (b) a party (the *filing party*) has filed a notice of dispute or a notice of objection, in accordance with rule 57.01, in relation to the estimate.

58.02.1A If, after taxation of the bill, the total of the professional charges and disbursements allowed:

- (a) is varied in the filing party's favour by one-sixth or more—the costs of, and incidental to, the taxation that the Taxing Officer considers reasonable must be paid by such party as the Taxing Officer directs; or
- (b) is not varied in the filing party's favour by one-sixth or more—the filing party must pay the costs of, and incidental to, the taxation (including any taxing fee).

58.02.2 An amount paid into the High Court of Australia Suitors' Fund as security for the costs of the taxation shall be paid out, after the hearing and determination of any application for reconsideration of a taxation and any review of the taxation, or where no reconsideration or review is sought, after the expiration of the time limited for the taking of those steps as the Taxation Officer sees fit.

### 58.03 Reduction by one-sixth

58.03 Where a Taxing Officer has not made an estimate under rule 57.01, and on the taxation of a bill of costs, the amount of the professional

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charges and disbursements contained in the bill is reduced by one-sixth or more:

- (a) no costs of, and incidental to, the taxation (including any taxing fee) shall be allowed to the party entitled to the costs; and
- (b) the Taxing Officer may order the party entitled to the costs to pay some or all of the costs of, and incidental to, the taxation incurred by any opposite party.

#### **58.04 Amount allowed less than amount offered**

If, before the Taxing Officer certifies the total amount of costs allowed on a taxation of costs, the party liable to pay those costs offers in writing to pay a stated amount for the costs of the party entitled to the costs, and if the total amount certified is less than the amount offered:

- (a) no costs shall be allowed to the party entitled to the costs for any step in the taxation taken after the date on which the offer was made; and
- (b) the Taxing Officer may order the party entitled to the costs or the solicitor who prepared the bill to pay some or all of the costs of or incidental to the taxation which were incurred by the party liable to pay the costs.

## **Part 59—Security for costs**

### **59.01 Security for costs**

The Court or a Justice may, at any time on the application of a defendant or respondent to any proceeding in the Court, other than an application for special leave to appeal, order that a party who instituted the proceeding give security, within a time fixed by the order and in such amount as the Court or a Justice may fix, for the prosecution of the proceeding without delay and for the payment of such costs as may be awarded by the Court to that defendant or respondent.

### **59.02 Giving security**

59.02.1 Security may be given by payment into Court or in such manner as the Registrar may approve.

59.02.2 The party instituting the proceeding shall, upon giving any security, forthwith serve upon the party having the benefit of the order written notice of the time when, and manner in which, the security was given.

### **59.03 Failure to give security**

If security is not given in accordance with an order that it be given, the Court or a Justice may, on the application of the party having the benefit of the order, direct that the proceeding be dismissed and enter judgment accordingly.

### **59.04 Variation of order for security**

In any case, the Court or a Justice may reduce or increase the amount of security, or otherwise vary or rescind an order already made relating to security.

## **Chapter 6—Transitional provisions**

### **Part 60—Transitional provisions relating to the High Court Amendment (2014 Measures No. 1) Rules 2014**

#### **60.01 Application of amendments relating to interlocutory applications**

- (1) The amendment of rule 13.02 made by the *High Court Amendment (2014 Measures No. 1) Rules 2014* applies in relation to applications made after the commencement of this rule.
- (2) Rule 13.03 applies in relation to applications made after the commencement of this rule.

#### **60.02 Application of amendment relating to Taxing Officers’ estimates**

Rules 58.02.1 and 58.02.1A apply in relation to notices of dispute and notices of objection filed after the commencement of this rule.

#### **60.03 Repeal of this Part**

This Part is repealed at the end of the period of 2 years beginning on the day this Part commences.

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## Schedule 1—Forms

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<b>Forms</b>		
<b>Title</b>	<b>Form</b>	<b>Rule</b>
Notice of a constitutional matter	1	5.01.3
Notice of intervention	1A	5.04.2
Judgment	2	8.01.1
Order	3	8.01.2
Consent	4	8.04.2
Arrest warrant	5	11.03.2
Committal warrant	6	11.03.3
Notice of appearance	7	23.01.3 31.01.1 41.04.2 42.06.2
Submitting appearance	8	23.02 41.04.3 42.06.3
Conditional appearance	9	23.03.2
Subpoena to give evidence	10	24.02.2
Subpoena to give evidence and produce documents	11	24.02.3
Application for an order to show cause	12	25.01
Writ of certiorari	13	25.06.3
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Writ of habeas corpus	15	25.09.3
Writ of prohibition	16	25.20
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Applicant's summary of argument	18	26.03.2 41.05.2 41.10.3
Respondent's summary of argument	19	26.04.2 41.06.2
Writ of summons	20	27.01

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<b>Forms</b>		
<b>Title</b>	<b>Form</b>	<b>Rule</b>
Summons	21	57.05.2
Election petition	22	30.01
Application for leave or special leave to appeal	23	41.01.1
Notice of appeal	24	41.05.3 41.10.2 42.02.1
Notice of discontinuance	25	41.12.1 42.14.1
Notice of cross-appeal	26	42.08.2
Notice of contention	27	42.08.5
Appellant's submissions	27A	44.02.2
Appellant's chronology	27B	44.02.3
Intervener's submissions	27C	44.04.4
Respondent's submissions	27D	44.03.3
Appellant's reply	27E	44.05.5
Bill of costs	28	54.02.01
Certificate of taxation	29	57.04.3
Ex parte application for leave to issue a proceeding that is subject to a vexatious proceedings order	30	6.06.3
Ex parte application for leave to issue a proceeding that is subject to the direction of a Justice under subrule 6.07.2	31	6.07.3

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## Form 1—Notice of a constitutional matter

(rule 5.01.3)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN:

AB

Plaintiff/Appellant/  
Applicant

and

CD

Defendant/Respondent

### NOTICE OF A CONSTITUTIONAL MATTER

1. The [party whose case raises the matter e.g., plaintiff, appellant, etc] gives notice that this proceeding involves a matter arising under the Constitution or involving its interpretation within the meaning of Section 78B of the *Judiciary Act 1903*.
2. [State the nature of the matter (e.g., the constitutional issue which is said to arise).]
3. [State the facts showing the matter is one to which Section 78B of the *Judiciary Act 1903* applies.]

Dated: [e.g., 6 October 2003]

.....(signed).....  
[Plaintiff/ Appellant/ Applicant or  
solicitor for Plaintiff/ Appellant/  
Applicant]

To: [Include Attorneys-General of the Commonwealth, the States, the  
Australian Capital Territory and the Northern Territory]

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## Form 1A—Notice of intervention

Note: See rule 5.04.2.

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Plaintiff/Appellant/  
Applicant  
  
and  
  
CD  
Defendant/Respondent

### NOTICE OF INTERVENTION

1. The Attorney-General of [*the Commonwealth of Australia or the name of a State or Territory*] gives notice of the Attorney-General's intervention in this proceeding under Section 78A of the *Judiciary Act 1903*.
2. [*If applicable, state that the Attorney-General intervenes in support of the position of [specify relevant appellant/plaintiff or respondent/defendant].*]
3. The address for service of the Attorney-General of [*the Commonwealth of Australia or the name of a State or Territory*] is .....

Dated: [*e.g., 6 October 2003*]

.....(signed).....  
[*Attorney-General or  
solicitor for the Attorney-General*]

## Form 2—Judgment

(rule 8.01.1)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Plaintiff/Appellant/  
Applicant  
  
and  
  
CD  
Defendant/Respondent

### JUDGMENT

JUSTICE(S)

DATE GIVEN

INITIATING PROCESS [*State whether by application or appeal.*]

APPEARANCE [*Set out names of persons who appeared; state whether counsel or solicitor and whom they represented; state the non-appearance of any person entitled to appear who did not.*]

THE JUDGMENT OF THE COURT IS:

DATE AUTHENTICATED

.....  
Registrar

## Form 3—Order

(rule 8.01.2)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Plaintiff/Appellant/  
Applicant  
  
and  
  
CD  
Defendant/Respondent

### ORDER

JUSTICE(S)

DATE GIVEN

INITIATING PROCESS [*State whether by application or appeal.*]

APPEARANCE [*Set out names of persons who appeared; state whether counsel or solicitor and whom they represented; state the non-appearance of any person entitled to appear who did not.*]

THE COURT ORDERS THAT:

DATE AUTHENTICATED

.....  
Registrar

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## Form 4—Consent

(rule 8.04.2)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN:

AB

Plaintiff/Appellant/  
Applicant

and

CD

Defendant/Respondent

### CONSENT

We consent to the making of the following order in this proceeding:

*[State order sought]*

Dated: *[e.g., 6 October 2003]*

.....(signed).....

*[Plaintiff/ Appellant/ Applicant  
or solicitor for Plaintiff/  
Appellant/ Applicant]*

.....(signed).....

*(Defendant/Respondent or  
solicitor for Defendant/Respondent)*

## **Form 5—Arrest warrant**

(rule 11.03.2)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Plaintiff  
and  
CD  
Defendant

### **ARREST WARRANT**

TO THE MARSHAL

Arrest [*name*] and bring that person before the Court [or a Justice] forthwith to answer a charge of contempt. If it is not practicable to bring [*name*] before the Court forthwith detain him/her in custody and, when it is practicable to bring him/her before the Court, do so forthwith.

Dated: [*e.g., 6 October 2003*]

.....  
Justice

## Form 6—Committal warrant

(rule 11.03.3)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Plaintiff  
and  
CD  
Defendant

### COMMITTAL WARRANT

TO THE MARSHAL

TAKE [*name*] to the prison at ..... and deliver him/her to the  
Governor of that prison.

OR

ARREST [*name*] and take him/her to the prison at ..... and  
deliver him/her to the Governor of that prison.

.....  
Justice

TO THE GOVERNOR of the prison at .....

RECEIVE [*name*] into your custody and keep him/her until the further order of  
the Court.

[*name's*] committal is for contempt of Court in that [*state nature of contempt*].

Dated: [*e.g., 6 October 2003*]

.....  
Justice

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*High Court Rules 2004*

*131*

Compilation No. 15

Compilation date: 1/1/15

Registered: 8/1/15

## Form 7—Notice of appearance

(rules 23.01.3, 31.01.1, 41.04.2 and 42.06.2)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Plaintiff/Applicant/Petitioner/  
Appellant  
  
and  
  
CD  
Defendant/Respondent

### NOTICE OF APPEARANCE

The defendant/respondent [CD] appears.

The address for service of [CD] is .....

Dated: [*e.g.*, 6 October 2003]

.....(signed).....  
(*Defendant/Respondent or  
solicitor for Defendant/Respondent*)



## **Form 8—Submitting appearance**

(rules 23.02, 41.04.3 and 42.06.3)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Plaintiff/Applicant/Appellant  
and  
CD  
Defendant/Respondent

### **SUBMITTING APPEARANCE**

The defendant/respondent [CD] submits to any order the Court may make in this matter save as to costs.

The address for service of [CD] is .....

Dated: [*e.g.*, 6 October 2003]

.....(signed).....  
(*Defendant/Respondent or  
solicitor for Defendant/Respondent*)

## Form 9—Conditional appearance

(rule 23.03.2)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Plaintiff/Applicant  
and  
CD  
Defendant/Respondent

### CONDITIONAL APPEARANCE

The defendant/respondent [CD] enters a conditional appearance in this matter.

The address for service of [CD] is .....

Dated: [e.g., 6 October 2003]

.....(signed).....  
[Defendant/Respondent or solicitor for Defendant/ Respondent]

## Form 10—Subpoena to give evidence

(rule 24.02.2)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Plaintiff  
and  
CD  
Defendant

### SUBPOENA

To

of [*address*]

YOU ARE SUMMONED to attend and produce this subpoena before the Court [or a Justice] at [*address of Court*] on [*date*] at [*time*] [*am or pm*] or, if notice of a later day is given to you by the party by whom this subpoena is filed, or by the solicitor for that party, on that later day, and until you are excused from further attending.

Dated: [*e.g., 6 October 2003*]

.....  
Registrar

This subpoena was filed by ..... on behalf of [*party by whom subpoena filed*].

## Form 11—Subpoena to give evidence and produce documents

(rule 24.02.3)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Plaintiff  
and  
CD  
Defendant

### SUBPOENA

To

of *[address]*

YOU ARE SUMMONED to attend and produce this subpoena and the other documents and things specified in the Schedule before the Court [or a Justice] at *[address of Court]* on *[date]* at *[time]* *[am or pm]* or, if notice of a later day is given to you by the party by whom this subpoena is filed, or by the solicitor for that party, on that later day, and until you are excused from further attending.

#### Schedule

*[description of documents and things to be produced]*

Filed: *[e.g., 6 October 2003]*

.....  
Registrar

This subpoena was filed by ..... on behalf of [*party by whom subpoena filed*].

## Form 12—Application for an order to show cause

(rule 25.01)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Plaintiff  
and  
CD  
Defendant

To [Defendant]  
of [Address]

TAKE NOTICE that this application has been made by the plaintiff for the relief that is set out below on the grounds that are set out below.

IF YOU INTEND TO DEFEND the proceeding you must file a notice of appearance in the office of the Registry named above.

IF YOU ARE WILLING TO SUBMIT to any order that the Court may make, save as to costs, you may file a submitting appearance in the office of the Registry named above.

THE TIME FOR FILING AN APPEARANCE is as follows:

- (a) where you are served with the application within Australia—  
14 days from the date of service;
- (b) in any other case—42 days from the date of service.

THE RELIEF CLAIMED is

1. [state precisely the relief claimed]
-

2.

THE GROUNDS ON WHICH THE RELIEF IS CLAIMED are

1. [*state precisely the grounds relied on*]

2.

This application shall be heard at the time and place stated

*Either*      [*if a summons is to be served with the application*] in the summons served with this application

*Or*            [*if no summons is to be served with the application*] in a summons to be served at a later time.

This application was filed by the plaintiff [or by ..... on behalf of the plaintiff].

Dated: [*e.g., 6 October 2003*]

.....(signed).....  
(*Plaintiff or Plaintiff's solicitor*)

The plaintiff's address is .....

The plaintiff's address for service is .....

## Form 13—Writ of certiorari

(rule 25.06.3)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Plaintiff  
and  
CD  
Defendant

### WRIT OF CERTIORARI

To [Name]  
of [Address]

THIS WRIT REQUIRES you on or before [date] to send to the High Court of Australia [ ] Registry at [address] [state the record or decision to be quashed] together with this Writ for that Court to deal with as it sees fit.

Dated: [e.g., 6 October 2003]

.....  
Registrar



## Form 14—Writ of mandamus

(rule 25.08.2)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Plaintiff  
and  
CD  
Defendant

### WRIT OF MANDAMUS

To [Name]  
of [Address]

THIS WRIT COMMANDS you to [*set out act to be done*] or show cause why it has not been done.

YOU ARE REQUIRED TO make a return to this Writ by filing a notice on or before [*date*] stating whether you have done what you are commanded to do by this Writ or stating why it has not been done.

TAKE NOTICE that disobeying this Writ is a contempt of Court which may be punished by imprisonment, fine or both.

Dated: [*e.g., 6 October 2003*]

.....  
Registrar

## Form 15—Writ of habeas corpus

(rule 25.09.3)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Plaintiff  
and  
CD  
Defendant

### WRIT OF HABEAS CORPUS

To [Name]  
of [Address]

HAVE the plaintiff [*or name of person restrained*] before Justice ..... at [*address of Court*] at [*time*] [*am or pm*] on [*date*] and thereafter to submit to the further order of the Court or a Justice as to the custody of that person (*the detainee*).

YOU ARE REQUIRED to make a return to this Writ by filing a notice stating the ground or grounds of detention of the detainee and serving a copy on the plaintiff on or before the time referred to above.

TAKE NOTICE that disobeying this Writ is a contempt of Court which may be punished by imprisonment, fine or both.

Dated: [*e.g., 6 October 2003*]

.....  
Registrar

## **Form 16—Writ of prohibition**

(rule 25.20)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Plaintiff  
and  
CD  
Defendant

### **WRIT OF PROHIBITION**

To [Name]  
of [Address]

THIS WRIT PROHIBITS YOU from further proceeding [*state what is prohibited*].

Dated: [*e.g., 6 October 2003*]

.....  
Registrar

## Form 17—Application for removal

(rule 26.01)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Applicant  
and  
CD  
Respondent

### APPLICATION FOR REMOVAL

To [Respondent]  
of [Address]

TAKE NOTICE that this application has been made by the applicant for an order pursuant to Section 40 of the *Judiciary Act 1903* removing [the whole or part] of the cause now pending in the [Court in which cause pending] which is proceeding number [number of proceeding in Court in which cause pending] between [name all parties to cause pending].

IF YOU INTEND TO DEFEND this application you must file a notice of appearance in the office of the Registry named above.

IF YOU ARE WILLING TO SUBMIT to any order that the Court may make, save as to costs, you may file a submitting appearance in the office of the Registry named above.

THE TIME FOR FILING AN APPEARANCE is as follows:

- (a) where you are served with the application within Australia—  
14 days from the date of service;
- (b) in any other case—42 days from the date of service.

THE ORDER SOUGHT is

1. [*state precisely the order sought*]
- 2.

THE GROUNDS ON WHICH THE ORDER IS SOUGHT are

1. [*state precisely the grounds relied on*]
- 2.

This application was filed by the applicant [or by ..... on behalf of the applicant].

Dated: [*e.g., 6 October 2003*]

.....(signed).....  
(*Applicant or Applicant's solicitor*)

The applicant's address is .....

The applicant's address for service is .....

## Form 18—Applicant's summary of argument

(rules 26.03.2, 41.05.2 and 41.10.3)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Applicant  
and  
CD  
Respondent

### APPLICANT'S SUMMARY OF ARGUMENT

Part I: *[A concise statement, in the case of an application for an order for removal, of the constitutional question, and in the case of an application for leave or special leave to appeal, of the leave or special leave questions, said to arise.]*

Part II: *[A brief statement of the factual background to the application.]*

Part III: *[A brief statement of the applicant's argument.]*

Part IV: *[Reasons why an order for removal should be made or leave or special leave should be granted with reference to section 35A of the Judiciary Act 1903.]*

Part V: *[Any reasons why an order for costs should not be made in favour of the respondent in the event that the application is refused.]*

Part VI: *[A table of the authorities, legislation or other material on which the applicant relies, identifying the pages at which the relevant passages appear.]*

Part VII: [*Indicate whether the applicant seeks to supplement this summary with oral argument.*]

Dated: [*e.g., 6 October 2003*]

.....(signed).....  
(*Applicant or Applicant's counsel*)

## Form 19—Respondent's summary of argument

(rules 26.04.2 and 41.06.2)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Applicant  
and  
CD  
Respondent

### RESPONDENT'S SUMMARY OF ARGUMENT

Part I: [*Reasons why an order for removal should/should not be made, or leave or special leave should/should not be granted.*]

Part II: [*A brief statement of the factual issues in contention.*]

Part III: [*A brief statement of the respondent's argument.*]

Part IV: [*Any special order for costs sought by the respondent.*]

Part V: [*A table of the authorities, legislation or other material on which the respondent relies, identifying the pages at which the relevant passages appear.*]

Part VI: [*Indicate whether the respondent seeks to supplement this summary with oral argument.*]

Dated: [*e.g., 6 October 2003*]

.....(signed).....  
(Respondent or Respondent's counsel)



## **Form 20—Writ of summons**

(rule 27.01 (a))

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Plaintiff  
and  
CD  
Defendant

### **WRIT OF SUMMONS**

TO THE DEFENDANT  
[*state name*]  
[*state address*]

TAKE NOTICE that this proceeding has been brought against you by the plaintiff for the claim set out in this writ.

IF YOU INTEND TO DEFEND the proceeding you must file a notice of appearance in the office of the Registry named above.

IF YOU ARE WILLING TO SUBMIT to any order that the Court may make, save as to costs, you may file a submitting appearance in the office of the Registry named above.

THE TIME FOR FILING AN APPEARANCE is as follows:

- (a) where you are served with the application within Australia—  
14 days from the date of service;
- (b) in any other case—42 days from the date of service.

**Schedule 1** Forms  
**Form 20** Writ of summons

---

*Either* The nature of the claim made and the relief which the plaintiff seeks are as follows:

[*state nature of claim and relief*]

*Or* STATEMENT OF CLAIM

[*set out Statement of Claim*]

This writ was filed by the plaintiff [or by ..... on behalf of the plaintiff].

Dated: [*e.g., 6 October 2003*]

.....(signed).....  
(*Plaintiff or Plaintiff's solicitor*)

The plaintiff's address is .....

The plaintiff's address for service is .....

## Form 21—Summons

(rules 13.02.1, 32.01.1 and 57.05.2)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Plaintiff  
and  
CD  
Defendant

### SUMMONS

To [identify party]  
[state address]

YOU ARE SUMMONED to attend before a Justice at [address of Court] on [date] at [time] [am or pm] on the hearing of an application by [party making application] for [set out the orders sought].

Filed: [e.g., 6 October 2003]

.....  
Registrar

This summons was filed by ..... of .....  
Solicitor for [identify party]

## Form 22—Election petition

(rule 30.01)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Petitioner  
  
and  
  
CD  
Respondent

### ELECTION PETITION

This petition concerns the election for [*details of election or return challenged*]  
held on [*date on which the election was held*].

### RETURN OF WRIT

The writ for the election was returned on [*date*].

### ENTITLEMENT TO FILE THIS PETITION

The petitioner is entitled to file this petition because [*set out bases of entitlement*].

### STATEMENT OF FACTS

[*Set out the facts relied on to invalidate the election or return, setting out those facts with sufficient particularity to identify the specific matter or matters on which the petitioner relies as justifying the grant of relief.*]

### RELIEF

The petitioner asks the Court to make the following orders:

---

[*details of orders and relief sought*]

DATED:

.....  
(Signed by the Petitioner)

IN THE PRESENCE OF:

.....  
Signed by Witness

.....  
Signed by Witness

.....  
Name of Witness

.....  
Name of Witness

.....  
Occupation of Witness

.....  
Occupation of Witness

.....  
Address of Witness

.....  
Address of Witness

TO: THE RESPONDENT  
[*state address*]

The Petitioner's address for service is [*state address for service*]:

## Form 23—Application for leave or special leave to appeal

(rule 41.01.1)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Applicant  
and  
CD  
Respondent

### APPLICATION FOR [LEAVE OR] SPECIAL LEAVE TO APPEAL

1. The applicant applies for [leave or] special leave to appeal from [*state part or whole*] of the judgment of [*state Court, Justice or Judge below*] given on [*state date*].

#### Grounds

2. [*State briefly the grounds on which the judgment below is said to be wrong.*]

#### Order(s) sought

3. [*State the judgment which will be sought if special leave is granted and the appeal is successful, including any special order as to costs.*]

Dated:

.....(signed).....  
(Applicant or Applicant's solicitor)

To: The Respondent [*address*]

**TAKE NOTICE:** Before taking any step in the proceedings you must, within **14 DAYS** after service of this application, enter an appearance in the office of the Registry in which the application is filed, and serve a copy on the applicant.

THE APPLICANT'S SOLICITOR IS:

[*name of firm and address for service, telephone and facsimile numbers*]

OR

THE APPLICANT'S ADDRESS FOR SERVICE IS:

[*if the applicant is unrepresented—address for service, telephone and facsimile numbers*]

## Form 24—Notice of appeal

(rules 41.05.3, 41.10.2 and 42.02.1)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

**ON APPEAL FROM THE [Name of Court appealed from]**  
[or, where applicable, from a Justice]

BETWEEN: AB  
Appellant  
and  
CD  
Respondent

### NOTICE OF APPEAL

1. The appellant appeals [pursuant to special leave to appeal granted on [date]] from [state whether whole or part and which part] of the judgment of [state Court or Judge below] given on [date].

### Grounds

2. [State briefly the grounds of appeal]

### Order(s) sought

3. [State the judgment sought in lieu of that appealed from including any special order as to costs]

Dated: [e.g., 6 October 2003]

.....(signed).....  
(Appellant or Appellant's solicitor)

TO: The Registrar  
[Court appealed from]

AND TO: The respondent and the respondent's solicitor [name]  
[address]



THE APPELLANT'S SOLICITOR IS: [*name of firm and address for service*]

## Form 25—Notice of discontinuance

(rules 41.12.1 and 42.14.1)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Applicant/Appellant  
and  
CD  
Respondent

### NOTICE OF DISCONTINUANCE

The [*applicant/appellant*] discontinues this [*application/appeal*].

Dated: [*e.g., 6 October 2003*]

.....(signed).....  
(*Applicant/Appellant* or  
*solicitor for Applicant/Appellant*)

TO: The Respondent [*address*]

## Form 26—Notice of cross-appeal

(rule 42.08.2 (a))

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

**ON APPEAL FROM THE [Name of Court appealed from]**  
[or, where applicable, from a Justice]

BETWEEN: AB  
Appellant  
and  
CD  
Respondent

### NOTICE OF CROSS-APPEAL

1. Subject to the grant of special leave, the respondent cross-appeals from [state whole or part and which part] of the judgment of [state Court or Judge below] given on [date].

#### Grounds

2. [State briefly the grounds of the cross-appeal]

#### Order(s) sought

3. [State the judgment sought in lieu of that appealed from]

Dated:

.....(signed).....  
(Respondent or  
Respondent's solicitor)

TO: The Appellant

**Schedule 1** Forms  
**Form 26** Notice of cross-appeal

---

THE RESPONDENT'S SOLICITOR IS: [*name of firm and address for service*]

## **Form 27—Notice of contention**

(rule 42.08.5)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

**ON APPEAL FROM THE [Name of Court appealed from]**  
[or, where applicable, from a Justice]

BETWEEN: AB  
Appellant  
and  
CD  
Respondent

### **NOTICE OF CONTENTION**

The respondent wishes to contend that the decision of the Court below should be affirmed but on the ground that the Court below erroneously decided or failed to decide some matter of fact or law.

#### **Grounds**

1. [State briefly the grounds]
- 2.

Dated: [e.g., 6 October 2003]

.....(signed).....  
(Respondent or  
Respondent's solicitor)

**Schedule 1** Forms  
**Form 27** Notice of contention

---

TO: The Appellant

## Form 27A—Appellant's submissions

(rule 44.02.2)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Appellant  
and  
CD  
Respondent

### APPELLANT'S SUBMISSIONS

- Part I:** *[Certification that the submission or the redacted version of the submission (as the case requires) is in a form suitable for publication on the Internet.]*
- Part II:** *[A concise statement of the issue or issues the appellant contends that the appeal presents.]*
- Part III:** *[Certification that the appellant has considered whether any notice should be given in compliance with section 78B of the Judiciary Act 1903.]*
- Part IV:** *[A citation of the authorised report of the reasons for judgment of both the primary and the intermediate court in the case (or, if there is no authorised report of a decision, the citation of any other report of that decision, and in the absence of any report, the Internet citation).]*
- Part V:** *[A narrative statement of the relevant facts found or admitted in the court from which the proceedings are brought with appropriate reference to the appeal book for the annotated version.]*

**Part VI:** [A succinct argument addressing the following points:  
(a) the error or errors complained of in the court from which the proceedings are brought;  
(b) the applicable legislation, principle or rule of law relied upon, with references to authority or legislation signifying their relevance to the appellant's argument;  
(c) where relevant, an analysis of the rationale of the legislation, principle or rule;  
(d) how the legislation, principle or rule applies to the facts or other relevant material in the case.]

**Part VII:** [The applicable constitutional provisions, statutes and regulations as they existed at the relevant time, set out verbatim, and either:  
(a) a statement that those provisions are still in force, in that form, at the date of making the submissions; or  
(b) a copy of each later provision amending or repealing those provisions, together with any relevant transitional provision.  
If more than one page in length this Part should be attached as an annexure.]

**Part VIII:** [Set out the **precise** form of orders sought by the appellant.]

**Part IX:** [An estimate of the number of hours required for the presentation of the appellant's oral argument.]

Dated: [e.g., 6 October 2003]

.....(signed).....  
[Senior legal practitioner  
presenting the case in Court,  
or appellant if unrepresented]

Name:  
Telephone:



Facsimile:  
Email:

## Form 27B—Appellant's chronology

(rule 44.02.3)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Appellant  
and  
CD  
Respondent

### APPELLANT'S CHRONOLOGY

**Part I:** [*Certification that the chronology or the redacted version of the chronology (as the case requires) is in a form suitable for publication on the Internet.*]

**Part II:** [*List of principal events leading to the litigation, with appropriate references to the appeal book in respect of findings of fact and evidence relating to those events.*]

Dated: [*e.g., 6 October 2003*]

.....(signed).....  
[*Senior legal practitioner  
presenting the case in Court,  
or appellant if unrepresented*]

Name:  
Telephone:  
Facsimile:  
Email:

## Form 27C—Intervener's submissions

(rule 44.04.4)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Appellant  
and  
CD  
Respondent

### INTERVENER'S SUBMISSIONS

**Part I:** *[Certification that the submission or the redacted version of the submission (as the case requires) is in a form suitable for publication on the Internet.]*

**Part II:** *[A statement of the asserted basis of intervention and the party or parties in support of whom the intervention is, or is sought to be, made.]*

**Part III:** *[Where necessary, why leave to intervene or to be heard as amicus curiae should be granted.]*

**Part IV:** *[The applicable constitutional provisions, statutes and regulations as they existed at the relevant time, set out verbatim, and either:*

- (a) a statement that those provisions are still in force, in that form, at the date of making the submissions; or*
- (b) a copy of each later provision amending or repealing those provisions, together with any relevant transitional provision.*

*If more than one page in length this Part should be attached as an annexure.]*

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**Schedule 1** Forms  
**Form 27C** Intervener's submissions

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**Part V:**        *[A statement addressing so many of the issues presented by the appeal as the intervener desires to make the subject of submissions to the Court.]*

**Part VI:**        *[An estimate of the number of hours required for the presentation of the intervener's oral argument.]*

Dated: *[e.g., 6 October 2003]*

.....(signed).....  
*[Senior legal practitioner  
presenting the case in Court]*

Name:  
Telephone:  
Facsimile:  
Email:

## **Form 27D—Respondent's submissions**

(rule 44.03.3)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Appellant  
and  
CD  
Respondent

### **RESPONDENT'S SUBMISSIONS**

**Part I:** [*Certification that the submission or the redacted version of the submission (as the case requires) is in a form suitable for publication on the Internet.*]

**Part II:** [*A concise statement of the issue or issues the respondent contends that the appeal presents.*]

**Part III:** [*Certification that the respondent has considered whether any notice should be given in compliance with section 78B of the Judiciary Act 1903.*]

**Part IV:** [*A statement of any material facts set out in the appellant's narrative of facts or chronology that are contested with appropriate reference to the appeal book for the annotated version.*]

**Part V:** [*A statement that the appellant's statement of applicable constitutional provisions, statutes and regulations is accepted or, if not, a statement identifying the respect or respects in which it is alleged to be wrong or incomplete.*]

**Schedule 1** Forms  
**Form 27D** Respondent's submissions

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**Part VI:**        *[A statement of argument in answer to the argument of the appellant and any intervener supporting the appellant.]*

**Part VII:**       *[Where applicable, a statement of the respondent's argument on the respondent's notice of contention or notice of cross-appeal.]*

**Part VIII:**      *[An estimate of the number of hours required for the presentation of the respondent's oral argument.]*

Dated: *[e.g., 6 October 2003]*

.....(signed).....  
*[Senior legal practitioner  
presenting the case in Court,  
or respondent if unrepresented]*

Name:  
Telephone:  
Facsimile:  
Email:



## Form 28—Bill of costs

(rule 54.02.1)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Plaintiff/Applicant/Appellant  
and  
CD  
Defendant/Respondent

### BILL OF COSTS

The costs of the [party] to be taxed pursuant to the order of [state by whom made and the date on which the order was made].

---

Item No	Date	Item	Disbursements	Charges
Summary			..... Disbursements	..... Charges
Page 1				
Page 2				
			..... (Total Disbursements)	..... (Total Charges)

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Add Disbursements	.....
	(Total Disbursements)
<hr/>	
Total	.....
<hr/>	
Less taxed off	.....
<hr/>	
Add taxing fee	.....
<hr/>	
Taxed and allowed at	.....

---

I certify that the additions contained in this bill of costs are correct.

.....(signed).....  
(Party or Party's Solicitor)

## Form 29—Certificate of taxation

(rule 57.04.3)

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

BETWEEN: AB  
Plaintiff/Applicant/Appellant  
and  
CD  
Defendant/Respondent

### CERTIFICATE OF TAXATION

I certify that the costs of the [party] against the [party] pursuant to the order of the Court [or Justice] dated ..... have been taxed [or assessed] and allowed at \$.....

Dated: [e.g., 6 October 2003]

.....  
Taxing Officer

## **Form 30—Ex parte application for leave to issue a proceeding**

Note: See rule 6.06.3.

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

In the Matter of an  
Application by [*full name of  
the Applicant*] for leave to  
issue a proceeding

### **EX PARTE APPLICATION FOR LEAVE TO ISSUE A PROCEEDING**

1. The Applicant applies for leave to issue the attached proceeding.
2. On [date] [the Court or name of Justice] made a vexatious proceedings order.

#### **Grounds**

The grounds of the application appear in the supporting affidavit of [*name of person*] [*sworn or affirmed*] on [*date*].

Dated:

.....(signed).....  
(*Applicant or Applicant's solicitor*)

THE APPLICANT'S SOLICITOR IS:

[*name of firm and address for service, DX, telephone and facsimile numbers and name of solicitor*].

OR

THE APPLICANT'S ADDRESS FOR SERVICE IS:

[*if the applicant is unrepresented—address for service, telephone and facsimile numbers*].

## Form 31—Ex parte application for leave to issue a proceeding

Note: See rule 6.07.3.

IN THE HIGH COURT OF AUSTRALIA No. of 20—  
[ ] REGISTRY

In the Matter of an  
Application by [*full name of  
the Applicant*] for leave to  
issue a proceeding

### EX PARTE APPLICATION FOR LEAVE TO ISSUE A PROCEEDING

1. The Applicant applies for leave to issue the attached proceeding.
2. On [*date*] [*name of Justice*] directed the Registrar to refuse to issue the proceeding without the leave of a Justice first had and obtained by the party seeking to issue it.

#### Grounds

The grounds of the application appear in the supporting affidavit of [*name of person*] [*sworn or affirmed*] on [*date*].

Dated:

.....(signed).....  
(*Applicant or Applicant's solicitor*)

THE APPLICANT'S SOLICITOR IS:

[*name of firm and address for service, DX, telephone and facsimile numbers and name of solicitor*].

OR

THE APPLICANT'S ADDRESS FOR SERVICE IS:

[*if the applicant is unrepresented—address for service, telephone and facsimile numbers*].

## Schedule 2—Fees for work done and services performed

Note: See rule 52.02.

### 1 Application of this Schedule

This Schedule, as substituted by the *High Court Amendment (2014 Measures No. 1) Rules 2014*, applies to work done or services performed on or after 1 January 2015.

### 2 Fees for work done and services performed

The following table sets out the fees allowable for work done and services performed.

<b>Fees for work done and services performed</b>		
<b>Item</b>	<b>Matter for which fee may be charged</b>	<b>Fee</b>
<b>INSTRUCTIONS</b>		
1	Instructions to commence or oppose a proceeding	\$500
2	Instructions to make or oppose any interlocutory application	\$250
3	Instructions to prepare any pleading	\$250
4	Instructions to brief counsel	\$250
5	Instructions to do any other thing not otherwise provided for	\$250
<b>PREPARING DOCUMENTS</b>		
6	Preparing any document, other than court books and correspondence:	
	(a) by a solicitor, if 5 minutes or less; or	\$40
	(b) by a solicitor, if more than 5 minutes; or	\$125 per quarter hour or part thereof
	(c) by a law clerk, if 5 minutes or less; or	\$20
	(d) by a law clerk, if more than 5 minutes	\$62.50 per quarter hour or part thereof

*High Court Rules 2004*

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Compilation No. 15

Compilation date: 1/1/15

Registered: 8/1/15

**Schedule 2** Fees for work done and services performed

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<b>Fees for work done and services performed</b>		
<b>Item</b>	<b>Matter for which fee may be charged</b>	<b>Fee</b>
<b>PREPARING COURT BOOKS</b>		
7	Preparing court books, including application books, appeal books, case stated books, special case books and questions reserved books	\$125 per quarter hour or part thereof
8	If court books are prepared in-house, the Taxing Officer may allow a reasonable amount in the circumstances for their copying and binding	
<b>PREPARING CORRESPONDENCE</b>		
9	Preparing:	
	(a) simple correspondence; or	\$50 per page of text
	(b) other correspondence	\$125 per page of text
<b>READING DOCUMENTS</b>		
10	Reading:	
	(a) simple correspondence; or	\$10 per page of text
	(b) other correspondence	\$125 per quarter hour or part thereof
11	Reading documents, other than correspondence:	
	(a) up to 10 pages of text; or	\$10 per page of text
	(b) otherwise	\$125 per quarter hour or part thereof
<b>EXAMINING DOCUMENTS</b>		
12	Examining a document to ensure that it is correct or complete (for example, a proof print of a court book):	
	(a) up to 10 pages of text; or	\$5 per page of text
	(b) otherwise	\$62.50 per quarter hour or part thereof

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<b>Fees for work done and services performed</b>		
<b>Item</b>	<b>Matter for which fee may be charged</b>	<b>Fee</b>
<b>COPYING DOCUMENTS</b>		
13	Copying documents:	
	(a) black and white photocopies; or	50 cents per page
	(b) colour photocopies	\$1.50 per page
<b>ATTENDANCES</b>		
14	Attendances, including telephone attendances, research, conferences with clients, conferences with counsel and attendances at Court to file or collect documents:	
	(a) by a solicitor, if 5 minutes or less; or	\$40
	(b) by a solicitor, if more than 5 minutes; or	\$125 per quarter hour or part thereof
	(c) by a law clerk, if 5 minutes or less; or	\$20
	(d) by a law clerk, if more than 5 minutes	\$62.50 per quarter hour or part thereof
15	Attendances in Court, including travelling time to and from Court:	
	(a) by a solicitor; or	\$125 per quarter hour or part thereof
	(b) by a law clerk	\$62.50 per quarter hour or part thereof
	Note: The Taxing Officer has the discretion to allow for the attendance of more than one solicitor or law clerk in Court if the circumstances warrant it	
16	Any other attendance not otherwise provided for	\$62.50 per quarter hour or part thereof
<b>GENERAL CARE AND CONDUCT</b>		
17	In complex or novel matters the Taxing Officer may allow an additional amount for the general care and conduct of the matter, not exceeding 5% of the total of the fees and	

**Schedule 2** Fees for work done and services performed

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<b>Fees for work done and services performed</b>		
<b>Item</b>	<b>Matter for which fee may be charged</b>	<b>Fee</b>
	disbursements otherwise allowed	
<b>WITNESSES' EXPENSES</b>		
18	For each witness, including that witness' travelling time	\$250 per hour or part thereof
19	If a witness is an expert, the Taxing Officer may allow an amount equal to the expert's actual fees for preparing to give evidence and for attending to give evidence	
<b>DISBURSEMENTS</b>		
20	All disbursements reasonably incurred and paid are to be allowed	
<b>MISCELLANEOUS</b>		
21	In unusual cases, or in instances which are not otherwise covered by the preceding items, the Taxing Officer may allow such additional charges or disbursements as are reasonable in the circumstances	

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Endnotes about misdescribed amendments and other matters are included in a compilation only as necessary.

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the amendment is set out in the endnotes.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

A = Act	orig = original
ad = added or inserted	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
am = amended	pres = present
amdt = amendment	prev = previous
c = clause(s)	(prev...) = previously
C[x] = Compilation No. x	Pt = Part(s)
Ch = Chapter(s)	r = regulation(s)/rule(s)
def = definition(s)	Reg = Regulation/Regulations
Dict = Dictionary	reloc = relocated
disallowed = disallowed by Parliament	renum = renumbered
Div = Division(s)	rep = repealed
exp = expires/expired or ceases/ceased to have effect	rs = repealed and substituted
F = Federal Register of Legislative Instruments	s = section(s)/subsection(s)
gaz = gazette	Sch = Schedule(s)
LI = Legislative Instrument	Sdiv = Subdivision(s)
LIA = <i>Legislative Instruments Act 2003</i>	SLI = Select Legislative Instrument
(md) = misdescribed amendment	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
o = order(s)	<u>underlining</u> = whole or part not commenced or to be commenced
Ord = Ordinance	

## Endnote 3—Legislation history

**Endnote 3—Legislation history**

<b>Number and year</b>	<b>FRLI registration or gazettal</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
2004 No. 304	14 Oct 2004	1 Jan 2005	
2005 No. 13	14 Feb 2005 (F2005L00255)	1 Mar 2005	r 1.01.2
2006 No. 105	22 May 2006 (F2006L01555)	1 July 2006	—
2006 No. 218	10 Aug 2006 (F2006L02612)	1 Sept 2006	—
2008 No. 246	10 Dec 2008 (F2008L04589)	1 Jan 2009	r 1.01.2
2009 No. 315	10 Nov 2009 (F2009L04135)	1 Jan 2010	r 1.01.2
2010 No. 240	12 Oct 2010 (F2010L02635)	1 Jan 2011	—
2010 No. 274	5 Nov 2010 (F2010L02913)	1 Jan 2011	r 1.01.2
2011 No. 283	16 Dec 2011 (F2011L02720)	1 Jan 2012	r 1.01.2
2012 No. 96	5 June 2012 (F2012L01158)	1 July 2012	—
2012 No. 253	9 Nov 2012 (F2012L02165)	1 Jan 2013	r 1.01.2
107, 2013	6 June 2013 (F2013L00924)	11 June 2013 (r 2)	—
257, 2013	5 Dec 2013 (F2013L02048)	1 Jan 2014	—
139, 2014	17 Sept 2014 (F2014L01233)	Sch 1 (items 12–19): 1 Jan 2015 (s 2 item 3) Remainder: 18 Sept 2014 (s 2 items 1, 2)	—

**Endnotes**

Endnote 3—Legislation history

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*High Court Rules 2004*

Compilation No. 15

Compilation date: 1/1/15

Registered: 8/1/15

## Endnote 4—Amendment history

**Endnote 4—Amendment history**

<b>Provision affected</b>	<b>How affected</b>
<b>Chapter 1</b>	
<b>Part 1</b>	
r. 1.06.....	am. No. 107, 2013
r. 1.08.1.....	am. 2006 No. 218; 2010 No. 240
r. 1.09.....	rs. 2010 No. 240 am. No. 107, 2013
<b>Part 2</b>	
r. 2.03.1.....	am. 2010 No. 240
r. 2.03.2.....	am. 2010 No. 240
r. 2.03.3.....	am. 2010 No. 240
r. 2.03.4.....	ad. 2010 No. 240
<b>Part 4</b>	
r. 4.04.1.....	am. 2010 No. 240
r. 4.04.2.....	am. 2010 No. 240
<b>Pt 5</b>	
hdg to Pt 5.....	rs No 139, 2014
hdg to r 5.01.....	rs No 139, 2014
r 5.01.1.....	am No 139, 2014
r 5.02.....	rs No 139, 2014
r 5.02.1.....	ad No 139, 2014
r 5.02.2.....	ad No 139, 2014
r 5.03.....	am 2010 No. 240 rs No 139, 2014
r 5.04.....	ad No 139, 2014
r 5.04.1.....	ad No 139, 2014
r 5.04.2.....	ad No 139, 2014
<b>Part 6</b>	
r. 6.01.1.....	am. 2010 No. 240

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
r. 6.01.2.....	am. 2010 No. 240
r. 6.06.....	rs. No. 107, 2013
r. 6.06.1.....	rs. No. 107, 2013
r. 6.06.2.....	rs. No. 107, 2013
r. 6.06.3.....	ad. No. 107, 2013
r. 6.07.....	am. 2010 No. 240 rs. No. 107, 2013
r. 6.07.1.....	ad. No. 107, 2013
r. 6.07.2.....	ad. No. 107, 2013
r. 6.07.3.....	ad. No. 107, 2013
<b>Part 8</b>	
r. 8.04.5.....	ad. 2010 No. 240
<b>Part 9</b>	
r. 9.03.1.....	rs. 2006 No. 218
<b>Part 13</b>	
Part 13 of Chapt. 1 .....	ad. 2010 No. 240
r. 13.01.....	ad. 2010 No. 240
r. 13.02.....	ad. 2010 No. 240
r. 13.02.1.....	ad. 2010 No. 240
r. 13.02.2.....	ad. 2010 No. 240 am. No. 139, 2014
r. 13.03.....	ad. 2010 No. 240 rs. No. 139, 2014
r. 13.03.1.....	ad. 2010 No. 240 rs. No. 139, 2014
r. 13.03.2.....	ad. 2010 No. 240 rs. No. 139, 2014
r. 13.03.3.....	ad. No. 139, 2014
r. 13.03.4.....	ad. No. 139, 2014
<b>Chapter 2</b>	
<b>Part 24</b>	

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
r. 24.01.12.....	rs. 2010 No. 240
<b>Part 25</b>	
r. 25.03.1.....	rs. 2006 No. 218 am. 2010 No. 240
r. 25.03.6.....	ad. 2006 No. 218
r. 25.03.7.....	ad. 2006 No. 218
r. 25.13.....	am. 2012 No. 96
<b>Part 26</b>	
r. 26.05.....	rs. 2010 No. 240
r. 26.05.1.....	rs. 2010 No. 240
r. 26.05.2.....	rs. 2010 No. 240
r. 26.05.3.....	rs. 2010 No. 240
r. 26.06.....	ad. 2010 No. 240
r. 26.06.1.....	ad. 2010 No. 240
r. 26.06.2.....	ad. 2010 No. 240
r. 26.06.3.....	ad. 2010 No. 240
Part 28 of Chapt. 2.....	rep. 2010 No. 240
r. 28.01.....	rep. 2010 No. 240
r. 28.02.....	rep. 2010 No. 240
r. 28.02.1.....	rep. 2010 No. 240
r. 28.02.2.....	rep. 2010 No. 240
r. 28.02.3.....	ad. 2006 No. 218 rep. 2010 No. 240
r. 28.03.....	rep. 2010 No. 240
r. 28.03.1.....	rep. 2010 No. 240
r. 28.03.2.....	rep. 2010 No. 240
<b>Chapter 4</b>	
<b>Part 41</b>	
r. 41.01.2.....	am. 2006 No. 105
r. 41.07.1.....	rs. 2010 No. 240
r. 41.07.2.....	rep. 2010 No. 240

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
r. 41.08.2.....	rs. 2010 No. 240
r. 41.08.3.....	rep. 2010 No. 240
r. 41.09.2.....	rs. 2006 No. 105; 2006 No. 218
r. 41.09.3.....	rs. 2006 No. 105 am. 2006 No. 218; 2010 No. 240
r. 41.09.7.....	rs. 2006 No. 105 am. 2010 No. 240
r. 41.09.8.....	rs. 2006 No. 105 am. 2010 No. 240
r. 41.09.9.....	rs. 2006 No. 105
r. 41.09.10.....	rs. 2006 No. 105
r. 41.09.11.....	rep. 2006 No. 105
r. 41.09.12.....	rep. 2006 No. 105
r. 41.10.3.....	am. 2006 No. 218
r. 41.10.4.....	rs. 2006 No. 218 rep. 2010 No. 240
r. 41.10.4.1.....	ad. 2010 No. 240
r. 41.10.4.2.....	ad. 2010 No. 240
r. 41.10.6.....	rs. 2006 No. 218
r. 41.13.1.....	am. 2006 No. 105
<b>Part 42</b>	
r. 42.02.2.....	am. 2010 No. 240
r. 42.13.6.....	rs. 2006 No. 218
r. 42.03.....	rs. 2010 No. 240
r. 42.05.5.....	ad. 2010 No. 240
r. 42.06.1.....	am. 2010 No. 240
r. 42.08.1.....	am. 2010 No. 240
r. 42.10.1.....	am. 2010 No. 240
r. 42.11.2.....	rs. 2010 No. 240
r. 42.12.3.....	am. 2010 No. 240
r. 42.13.6.....	rs. 2006 No. 218

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
	am. 2010 No. 240
r. 42.13.12.....	am. 2010 No. 240
r. 42.13.15.....	am. 2010 No. 240
r. 42.13.16.....	am. 2010 No. 240; 2012 No. 96
<b>Part 44</b>	
Part 44 of Chapt. 4.....	ad. 2010 No. 240
r. 44.01.....	ad. 2010 No. 240
r. 44.01.1.....	ad. 2010 No. 240
r. 44.01.2.....	ad. 2010 No. 240
r. 44.02.....	ad. 2010 No. 240
r. 44.02.1.....	ad. 2010 No. 240
	am. 2012 No. 96
r. 44.02.2.....	ad. 2010 No. 240
r. 44.02.3.....	ad. 2010 No. 240
r. 44.03.....	ad. 2010 No. 240
r. 44.03.1.....	ad. 2010 No. 240
r. 44.03.2.....	ad. 2010 No. 240
r. 44.03.3.....	ad. 2010 No. 240
r. 44.04.....	ad. 2010 No. 240
r. 44.04.1.....	ad. 2010 No. 240
r. 44.04.2.....	ad. 2010 No. 240
r. 44.04.3.....	ad. 2010 No. 240
r. 44.04.4.....	ad. 2010 No. 240
r. 44.05.....	ad. 2010 No. 240
r. 44.05.1.....	ad. 2010 No. 240
r. 44.05.2.....	ad. 2010 No. 240
	am. 2012 No. 96
r. 44.05.3.....	ad. 2010 No. 240
r. 44.05.4.....	ad. 2010 No. 240
r. 44.05.5.....	ad. 2012 No. 96
Heading to r. 44.06.....	rs. 2012 No. 96

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
r. 44.06.....	ad. 2010 No. 240
r. 44.06.1.....	ad. 2010 No. 240 am. 2012 No. 96
r. 44.06.2.....	ad. 2010 No. 240
r. 44.07.....	ad. 2010 No. 240
r. 44.07.1.....	ad. 2010 No. 240
r. 44.08.....	ad. 2010 No. 240
r. 44.08.1.....	ad. 2010 No. 240
Pt 45 of Ch 4.....	ad. 2012 No. 96 rep No 139, 2014
r 45.01.....	ad 2012 No. 96 rep No 139, 2014
r 45.01.1.....	ad 2012 No. 96 rep No 139, 2014
r 45.01.2.....	ad 2012 No. 96 rep No 139, 2014
r 45.01.3.....	ad2012 No. 96 rep No 139, 2014
r 45.02.....	ad 2012 No. 96 rep No 139, 2014
r 45.03.....	ad 2012 No. 96 rep No 139, 2014
<b>Chapter 5</b>	
<b>Part 56</b>	
r 56.01.....	am No 139, 2014
r 56.02.....	rs No 139, 2014
r 56.04.....	am No 139, 2014
r 56.06.....	rs No 139, 2014
r. 56.09.....	am. 2010 No. 240; No 139, 2014
<b>Part 57</b>	
r. 57.01.1.....	rs. 2006 No. 218

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
r. 57.01.2.....	am. 2006 No. 218; 2010 No. 240
r. 57.01.4.....	rs. 2006 No. 218
r. 57.01.5.....	rs. 2006 No. 218
r. 57.01.6.....	rs. 2006 No. 218
r. 57.02.2.....	rs. 2006 No. 218
r. 57.02.3.....	rs. 2006 No. 218
r. 57.05.1.....	rs. 2006 No. 218
<b>Part 58</b>	
r. 58.02.1.....	rs. 2006 No. 218; 2010 No. 240; No 139, 2014
r 58.02.1A.....	ad No 139, 2014
r. 58.02.2.....	am. 2010 No. 240
r. 58.03.....	rs. 2006 No. 218
r. 58.04.....	am. 2010 No. 240
<b>Ch 6</b>	
Ch 6.....	ad No 139, 2014
<b>Pt 60</b>	
r 60.01.....	ad No 139, 2014
r 60.02.....	ad No 139, 2014
r 60.03.....	ad No 139, 2014
<b>Schedule 1</b>	
Table.....	rs. 2012 No. 96; No. 107, 2013 am No 139, 2014
Form 1.....	am. 2010 No. 240
Form 1A.....	ad No 139, 2014
Form 2.....	am. 2010 No. 240
Form 3.....	am. 2010 No. 240
Form 4.....	am. 2010 No. 240
Form 7.....	am. 2010 No. 240
Form 9.....	am. 2010 No. 240
Form 12.....	am. 2012 No. 96
Form 18.....	am. 2010 No. 240

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
Form 20 .....	rs. 2006 No. 218
Heading to Form 21 .....	am. 2010 No. 240
Form 21 .....	rs. 2006 No. 218
Form 24 .....	am. 2010 No. 240
Form 27A .....	ad. 2010 No. 240 am. 2012 No. 96
Form 27B.....	ad. 2010 No. 240
Form 27C.....	ad. 2010 No. 240 am. 2012 No. 96
Form 27D .....	ad. 2010 No. 240 am. 2012 No. 96
Form 27E.....	ad. 2012 No. 96
Form 29 .....	rs. 2006 No. 218
Form 30 .....	ad. No. 107, 2013
Form 31 .....	ad. No. 107, 2013
<b>Schedule 2</b>	
Schedule 2 .....	rs. 2005 No. 13; 2008 No. 246; 2009 No. 315; 2010 No. 274; 2011 No. 283; 2012 No. 253; No 257, 2013; No 139, 2014

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