

High Court Rules 2004 2004 No. 304

Statutory Rules 2004 No. 304

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EXPLANATORY STATEMENT

The High Court Rules 2004 ("the new Rules") prescribe the rules of procedure for proceedings in the High Court of Australia. They are made by the Justices under rule-making powers which include the powers given by s 86 of the *Judiciary Act* 1903, s 48 of the *High Court of Australia Act* 1979, and s 375 of the *Commonwealth Electoral Act* 1918.

It is now more than 50 years since the High Court Rules were completely revised. The new Rules reflect the significant changes in the work of the Court that have occurred since the making of the High Court Rules 1952 ("the former Rules"). In particular, they reflect the fact that, apart from some matters in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth, and some matters arising under the Constitution or involving its interpretation, most matters arising in the original jurisdiction of the Court are now remitted for hearing by another court. Many of the provisions made by the former Rules for the trial of actions find no application in the day to day business of the Court.

The new Rules recognise this change. Provisions of the former Rules that are no longer relevant have been excluded. The new Rules provide that in matters issued in the original jurisdiction of the Court the party initiating the proceeding must seek directions from a Justice soon after the proceeding is commenced and seek a determination of whether the matter should proceed in the High Court or be remitted to another court.

The new Rules introduce some changes to the procedures governing applications for leave or special leave to appeal to the Court. These changes recognise the increase in the Court's workload in relation to applications to commence appeals. In the year ended 30 June 1998, 358 applications for special leave to appeal were filed. By the year ended 30 June 2004, that number had grown to 729. Of those, 353 were made by applicants who were not represented by a legal practitioner.

In all applications for leave or special leave to appeal, both under the new Rules and under the former Rules, the written submissions of the applicant are the principal vehicle for demonstrating that the case is one in which leave should be given. In some cases, the Court is assisted by presentation of short oral argument (generally limited under the former Rules, and under the new Rules, to 20 minutes for each party and 5 minutes in reply). In order to deal with the increasing number of applications by unrepresented applicants, many of which applications are unmeritorious, and put respondents to needless expense, new procedures are established by which the applications of unrepresented applicants are first considered on the papers. If two Justices conclude that the application is without merit, it will be dismissed without calling on the respondent to answer. In addition, any application for leave or special leave to appeal, whether the applicant is represented or unrepresented, may be determined on the papers without oral hearing, if two Justices consider it appropriate to do so.

Numerous other changes have been made to the Rules to simplify their drafting and to make them easier to follow and use.

The new Rules are divided into five Chapters. Chapter 1 contains general rules applicable to all proceedings in the Court. Chapter 2 deals with proceedings in the original jurisdiction of the

Court. Chapter 3 deals with election petitions. Chapter 4 deals with proceedings in the appellate jurisdiction of the Court. Chapter 5 deals with costs.

Each Chapter of the Rules is divided into parts dealing with particular topics. In Chapter 1, Part 1 contains preliminary rules, Part 2 deals with the application of and compliance with the Rules, Part 3 deals with amendment, Part 4 deals with time, recesses and the Registry, Part 5 deals with notices under s 78B of the Judiciary Act 1903, Part 6 contains a number of general rules, Part 7 deals with officers of the Court, Part 8 deals with judgments and orders, Part 9 deals with service of process and other documents, Part 10 deals with execution, Part 11 deals with contempt of Court, and Part 12 deals with moneys in Court.

Chapter 2 is organised by reference to the course of proceedings in the original jurisdiction of the Court. Thus, Part 20 deals with commencing proceedings, Part 21 with parties to proceedings, Part 22 with service of proceedings, Part 23 with appearance to proceedings, and Part 24 with evidence in proceedings. Part 25 makes particular provision for proceedings in which mandamus, prohibition, certiorari, habeas corpus and quo warranto are sought. (Under the former Rules, an application for an order nisi was commenced by filing an affidavit and draft order nisi. Under the new Rules, a party applying for relief of this kind will have to file a written application for an order to show cause. That application will specify the relief which the applicant seeks and the ground or grounds on which the relief is sought.) Part 26 deals with applications for removal pursuant to s 40 of the *Judiciary Act* 1903. Part 27 governs proceedings commenced by writ of summons. Part 28 deals with interlocutory applications.

Chapter 3 deals with election petitions. Part 30 deals with commencing proceedings, Part 31 with appearance and parties and Part 32 with subsequent proceedings.

Chapter 4 deals with proceedings in the appellate jurisdiction of the Court. Part 40 contains rules concerning the interpretation of Chapter 4 and the application of Chapter 2, Part 41 deals with applications for leave or special leave to appeal, Part 42 with appeals, and Part 43 deals with applications and appeals from the Supreme Court of Nauru. The nature of the changes made to the procedures governing applications for leave or special leave to appeal is set out above.

Chapter 5 of the new Rules deals with costs. Part 50 provides some general rules concerning the subject of costs. Part 51 deals with costs of interlocutory applications, Part 52 with scales of costs, Part 53 with taxing officers and Part 54 with commencing taxations of costs and the content of bills of costs. Parts 55 and 56 make provision for how costs are to be taxed. Part 57 deals with fixing costs by preliminary assessment, without taxation, by a taxing officer and by detailed taxation, as well as the procedure for review of a taxation. Part 58 provides for the costs of taxation. Part 59 deals with the subject of security for costs.

Schedule 1 to the Rules sets out forms to be used in the Court.

Schedule 2 to the Rules sets out the scale of fees, costs and charges for proceedings in the Court.

A draft of the new Rules was provided to the Law Council of Australia, the Australian Bar Association, and the Special Committee of Solicitors-General with the request that they consider and comment on the draft. Very detailed comments were received and due account has been taken of the suggestions. The Law Council of Australia and the Australian Bar Association have indicated their support for the new Rules and, in particular, their support for the changes to procedures governing applications for leave or special leave to appeal.