



High Court Rules 2004

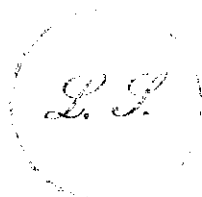
Statutory Rules 2004 No. 1¹

304

We, Justices of the High Court of Australia, make the following Rules of Court under the *Judiciary Act 1903*, *Commonwealth Electoral Act 1918*, *Nauru (High Court Appeals) Act 1976* and *High Court of Australia Act 1979*.

Dated 5 October 2004

A M Gleeson
M H McHugh
W M C Gummow
M D Kirby
K M Hayne
I D F Callinan
J D Heydon



Justices of the
High Court of Australia

C M Doogan

Chief Executive and
Principal Registrar

Contents

Chapter 1	General rules	
Part 1	Preliminary	
1.01	Title	12
1.02	Object	12
1.03	Commencement, repeal and transition	12
1.04	Causes removed into the Court	12
1.05	Proceedings remitted by the Court	12
1.06	Interpretation	13
1.07	Filing documents	13
1.08	Documents	13
1.09	Forms	15
Part 2	Application and compliance with these Rules	
2.01	Application of these Rules	16
2.02	Dispensing with compliance	16
2.03	Failure to comply	16
Part 3	Amendment	
3.01	Amendment	17
Part 4	Time, recesses and the Registry	
4.01	Time	18
4.02	Enlargement and abridgment of time	18
4.03	Delays	19
4.04	Recesses	19
4.05	Registry	19
4.06	Use of Seals and Stamps	20
4.07	Custody and inspection of documents in the Registry	21

	Page
Part 5	Judiciary Act 1903 — section 78B notice
5.01	Filing notice 22
5.02	Serving notice 22
5.03	Affidavit of service and provision of documents 23
Part 6	General rules
6.01	Cases not provided for by Rules 24
6.02	Solicitors 24
6.03	Publication of written reasons for judgment 25
6.04	Sittings 25
6.05	Scandalous matter 26
6.06	Vexatious proceedings 26
6.07	Refusal to issue or file a document 26
Part 7	Officers
7.01	The Marshal 27
7.02	Registrars 27
Part 8	Judgment and orders
8.01	Form of judgments and orders 28
8.02	Effective date 28
8.03	Preparation 28
8.04	Consent orders 28
8.05	Judgment or orders to do an act 29
8.06	Interest on judgments and costs 29
8.07	Stay, bail, preservation of property and other interlocutory orders 29
Part 9	Service of process and other documents
9.01	Manner of service 31
9.02	Effecting personal service 31
9.03	Effecting service on particular defendants 32
9.04	Ordinary service 32

		Page	
	9.05	Address for service	33
	9.06	Change of address for service	33
	9.07	Service out of Australia	33
Part 10		Execution	
	10.01	Execution by parties and others	34
	10.02	Enforcement	34
Part 11		Contempt of Court	
	11.01	Contempt in the face of the Court	35
	11.02	Other cases	35
	11.03	Warrant	36
	11.04	Punishment	36
	11.05	Costs	37
Part 12		Moneys in Court	
	12.01	Interpretation	38
	12.02	Moneys paid into Court	38
	12.03	Moneys in Court	38
Chapter 2		Proceedings in the original jurisdiction of the Court	
Part 20		Commencing proceedings	
	20.01	Form of initiating process	40
	20.02	Issue of initiating process	41
Part 21		Parties	
	21.01	Joinder of parties	42
	21.02	Joinder of claims	42
	21.03	Joinder inconvenient	42
	21.04	Misjoinder and non-joinder	43
	21.05	Addition, removal and substitution of party	43
	21.06	Death of a party	43
	21.07	Transmission of interest or liability	44
	21.08	Persons under disability	44
	21.09	Representative proceedings	45

		Page
Part 22	Service	
22.01	Service of initiating process	46
22.02	Affidavit of service	46
Part 23	Appearance	
23.01	Appearance before taking a step	47
23.02	Submitting appearance	47
23.03	Conditional appearance	47
23.04	Service of notice of appearance	48
Part 24	Evidence	
24.01	Evidence by affidavit	49
24.02	Subpoenas	51
Part 25	Mandamus, prohibition, certiorari, habeas corpus and quo warranto	
25.01	Form of an application for an order to show cause	52
25.02	Parties to an application for an order to show cause	52
25.03	Application on notice	53
25.04	Relief and grounds	54
25.05	Stay	54
25.06	Certiorari	54
25.07	Mandamus	54
25.08	Form, service and return of writ of mandamus	55
25.09	Habeas corpus	56
25.10	Service of a writ of habeas corpus or order for production	56
25.11	Return to a writ of habeas corpus	57
25.12	Proceedings on return	57
25.13	Discharge without writ	58
25.14	Application for an information of quo warranto	58
25.15	Form of information	58
25.16	Service of information	58
25.17	Subsequent proceedings	59
25.18	Disclaimer	59
25.19	Judgment	59
25.20	Writ of Prohibition	59

	Page
Part 26	Applications for removal pursuant to section 40 of the <i>Judiciary Act 1903</i>
26.01	Form of application for removal 60
26.02	Affidavits in support 60
26.03	Summary of argument — applicant 61
26.04	Summary of argument — respondent 61
26.05	Application book and subsequent proceedings 62
Part 27	Writ of Summons
27.01	Form of Writ of Summons 63
27.02	Form of pleadings 63
27.03	Filing and serving a Statement of Claim 64
27.04	Contents of a Statement of Claim 64
27.05	Pleadings after a Statement of Claim 65
27.06	Summons for directions 65
27.07	Demurrer 66
27.08	Questions of law 66
27.09	Summary disposition 67
27.10	Discontinuance and withdrawal 68
Part 28	Interlocutory applications
28.01	Interlocutory applications 70
28.02	Form and service of interlocutory application 70
28.03	Failure to attend 70
Chapter 3	Election petitions
Part 30	Commencing proceedings
30.01	Form of petition 71
30.02	Publication and advertisement 71
30.03	Address for service 72
30.04	Service of petition 72
Part 31	Appearances and parties
31.01	Appearances 73
31.02	Parties 73

	Page
Part 32	Subsequent proceedings
32.01	Summons for directions 74
32.02	Counter charges 75
32.03	Particulars 75
32.04	Notice of trial 75
32.05	Withdrawal of petition and substitution of another petitioner 76
Chapter 4	Proceedings in the appellate jurisdiction of the Court
Part 40	Interpretation and application of Chapter 2
40.01	Interpretation 77
40.02	Application of Chapter 2 78
Part 41	Applications for leave or special leave to appeal
41.01	Initiation of application for leave or special leave to appeal 79
41.02	Time for filing application 79
41.03	Service 80
41.04	Appearance 80
41.05	Summary of argument — applicant 81
41.06	Summary of argument — respondent 81
41.07	Summary of argument — general 81
41.08	Reply 81
41.09	Application book 82
41.10	Unrepresented applicants 83
41.11	Oral argument 84
41.12	Discontinuance of application 84
41.13	Deemed abandonment of application by delay 85
41.14	Directions by Registrar 85
41.15	Determination of application 85

		Page
Part 42	Appeals	
42.01	Institution of appeals	87
42.02	Form of notice of appeal	87
42.03	Time for filing	87
42.04	Place for filing	88
42.05	Service	88
42.06	Appearance	88
42.07	Change of parties to an appeal	89
42.08	Cross-appeal	89
42.09	Stay of proceedings	90
42.10	Documents	90
42.11	Preparation of index	90
42.12	Settling the index	91
42.13	Preparation and filing of appeal books	92
42.14	Discontinuance of appeal	95
42.15	Directions by Registrar	95
42.16	Dismissal for want of prosecution	95
42.17	Appeal without notice	96
Part 43	Applications and appeals from the Supreme Court of Nauru	
43.01	Application	97
43.02	Appeals	97
43.03	Applications	97
Chapter 5	Costs	
Part 50	General	
50.01	Costs in the discretion of the Court	98
50.02	Methods of assessment	98
50.03	Causes removed	98
50.04	Order for proportion of costs	98
50.05	Default by practitioners	99
Part 51	Costs of interlocutory applications	
51.01	Costs reserved	100
51.02	Costs of applications in a matter	100
51.03	Interlocutory costs included in final judgment	100

		Page
Part 52	Scale of costs	
52.01	Fixed costs	101
52.02	Costs other than fixed costs	101
Part 53	Taxing Officers	
53.01	Interpretation	102
53.02	Taxation by Taxing Officer	102
53.03	Taxing Officers to assist each other	102
53.04	Powers of a Taxing Officer	102
53.05	Attendance of parties	103
Part 54	Commencing taxation of costs and content of bill	
54.01	Commencing taxation	104
54.02	Content of bill	104
Part 55	Taxation of costs — General	
55.01	General principle	105
55.02	Special allowances	105
55.03	No fee prescribed	105
55.04	Duplication of fees	106
55.05	Fees not provided for	106
Part 56	Taxation of costs — Particular items	
56.01	Instructions	107
56.02	Pleadings	107
56.03	Evidence	107
56.04	Evidence by affidavit	107
56.05	Copies	108
56.06	Perusal and inspection	108
56.07	Agency matters	108
56.08	Orders	108
56.09	Counsel	108
56.10	Experts	109
56.11	Costs of particular parties	109
56.12	Disallowance of unnecessary costs	110
56.13	Costs of application for extension of time	111

		Page
Part 57	Assessment, taxation and review of taxation	
57.01	Assessment	112
57.02	Objections to bill	113
57.03	Reconsideration of taxation	113
57.04	Certificate and taxing fee	114
57.05	Review of taxation	115
Part 58	Costs of taxation	
58.01	Costs of preparing and taxing bill	116
58.02	Costs and the Taxing Officer's estimate	116
58.03	Reduction by one-sixth	116
58.04	Amount allowed less than amount offered	117
Part 59	Security for costs	
59.01	Security for costs	118
59.02	Giving security	118
59.03	Failure to give security	118
59.04	Variation of order for security	118
Schedule 1	Forms	119
Form 1	Notice of a constitutional matter	121
Form 2	Judgment	122
Form 3	Order	123
Form 4	Consent	124
Form 5	Arrest warrant	125
Form 6	Committal warrant	126
Form 7	Notice of appearance	127
Form 8	Submitting appearance	128
Form 9	Conditional appearance	129
Form 10	Subpoena to give evidence	130
Form 11	Subpoena to give evidence and produce documents	131
Form 12	Application for an order to show cause	132
Form 13	Writ of certiorari	134
Form 14	Writ of mandamus	135
Form 15	Writ of habeas corpus	136

		Page
Form 16	Writ of prohibition	137
Form 17	Application for removal	138
Form 18	Applicant's summary of argument	140
Form 19	Respondent's summary of argument	141
Form 20	Writ of summons	142
Form 21	Summons	144
Form 22	Election petition	145
Form 23	Application for leave or special leave to appeal	147
Form 24	Notice of appeal	149
Form 25	Notice of discontinuance	150
Form 26	Notice of cross-appeal	151
Form 27	Notice of contention	152
Form 28	Bill of costs	153
Form 29	Certificate of taxation	155
Schedule 2	Schedule of fees for work done or services performed	156

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.

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.

Rule 1.08

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.

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 30 mm at the top, 30 mm at the bottom and 30 mm on the left-hand side of each sheet;
- (d) with each page numbered and every tenth line on each page numbered in the margin; and

Rule 1.08

(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.
- 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.

Rule 1.09

1.09 Forms

Where these Rules prescribe a form of document or process that form shall be used with such variations as circumstances require.

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]’.

Rule 4.01

**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.

Rule 4.05

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 in December 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 in July 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.

Rule 4.06

4.06 Use of Seals and Stamps

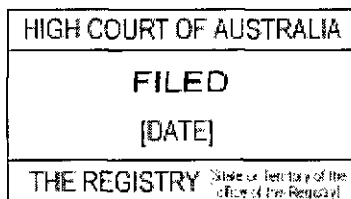
4.06.1 The Seal of the Court shall be in the form:



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:



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.

Rule 4.07

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 5.03

5.03 Affidavit of service and provision of documents

The party, intervener, or applicant for leave to intervene or appear who raises the constitutional matter:

- (a) shall file an affidavit of service of the notice of a constitutional matter proving compliance with rule 5.02 not later than 2 days before the date appointed for the hearing of a proceeding; and
- (b) shall, 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.

Rule 6.01

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 or a Justice 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 or a Justice 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 6.04

- 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.

Rule 6.05

- 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 Upon the application of a Law Officer, the Australian Government Solicitor, or the Principal Registrar, the Court or a Justice, if satisfied that a person, alone or in concert with any other, frequently and without reasonable ground has instituted or has attempted to institute vexatious legal proceedings may, having given that person an opportunity to be heard, order that he or she shall not, without the leave of the Court or a Justice, commence any proceeding or make any application in the original or the appellate jurisdiction of the Court.
- 6.06.2 Leave shall not be given under this rule unless the Court or a Justice is satisfied that the proposed proceeding or application is not an abuse of the process of the Court and that there is prima facie ground for the proceeding.

6.07 Refusal to issue or file a document

If any writ, application, summons or other document appears to a Registrar on its face to be an abuse of the process of the Court or to be frivolous or vexatious, the Registrar may seek the direction of a Justice who may direct the Registrar to issue or file it or to refuse to issue or file it without the leave of a Justice first had and obtained by the party seeking to issue or file it.

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.

Rule 8.07

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.

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;

Rule 8.07

(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

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 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:

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

Rule 9.07

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
 - (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.

Rule 10.01

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.
- 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;
 - (b) be served personally on the alleged contemnor; and

Rule 11.03

- (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 sequestrated or that both the contemnor pay a fine and some or all of the property of the contemnor be sequestrated.

Rule 11.05

- 11.04.2 Where a contemnor is ordered to pay a fine the Court or Justice may order:
- (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 sequestered.
- 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.

Rule 12.01

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

Rule 12.03

- 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.

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

Rule 20.01

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.

Rule 20.02

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.

Rule 21.01

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.

Rule 21.06

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
- (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.

Rule 21.07

- 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.
- 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.

Rule 21.09

- 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.

Rule 22.01

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.
- 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.

Rule 23.04

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.

Rule 24.01

- 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 Where it appears to the person before whom an affidavit is to be sworn that the deponent is blind or illiterate he or she shall not attest the affidavit unless:
- (a) the affidavit was first read in his or her presence to the deponent and the deponent appeared perfectly to understand it;
 - (b) in his or her presence the deponent made his or her signature or mark; and
 - (c) he or she 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.
- 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.

Rule 24.02

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.

Rule 25.01

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.

Rule 25.03

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, the application together with the affidavit or affidavits in support and a summons returnable before a Justice specifying the orders which the plaintiff will ask the Justice to make.
- 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
 - (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.

Rule 25.04

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.

25.04 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.

Rule 25.08

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.

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.

Rule 25.09

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.

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.

Rule 25.12

- 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:
- (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.

Rule 25.13

25.13 Discharge without writ

Where an order to show cause why a writ of habeas corpus 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.

Rule 25.20

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.

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.

Rule 26.01

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;

Rule 26.04

- (c) the factual background to the proceedings;
- (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.

Rule 26.05

26.05 Application book and subsequent proceedings

- 26.05.1 An application book shall be prepared, filed and supplied in the same manner as an application book is to be prepared under Part 41.
- 26.05.2 Subject to any contrary order of the Court or a Justice, all proceedings in an application for an order for removal subsequent to the preparation and filing of an application book shall be governed by Part 41.
- 26.05.3 Without limiting the generality of rule 26.05.2, an application for an order for removal shall be determined, discontinued, or deemed abandoned in the same manner as an application for special leave to appeal may be under Part 41.

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.

Rule 27.03

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.

Rule 27.06

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.

Rule 27.07

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.

Rule 27.09

- 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.

Rule 27.10

- 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.
- 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.

Rule 27.10

- 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.

Rule 28.01

Part 28 Interlocutory applications

28.01 Interlocutory applications

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

28.02 Form and service of interlocutory application

28.02.1 An application to be made to the Court or a Justice on notice to any person shall be made by summons in Form 21.

28.02.2 Unless the Court or a Justice, by order, allows a shorter time, a summons shall be served at least 3 days before the day on which it is to be heard.

28.03 Failure to attend

28.03.1 Where any person to whom a summons is addressed fails to attend, the Court or a Justice may hear the application if satisfied that the summons was duly served.

28.03.2 Where on an application by summons the applicant fails to attend the Court or a Justice may dismiss the application or make such other order as is appropriate.

[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.

Rule 30.03

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 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.

Rule 32.01

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.

Rule 32.04

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.

Rule 32.05

- 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.
- 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.

Rule 40.02

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.

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) such other documents, if any, as are necessary for the proper determination of the application.

41.02 Time for filing application

41.02.1 An application shall be filed within 28 days after the judgment below was pronounced.

Rule 41.03

- 41.02.2 Where an application is not filed within the time limited by rule 41.02.1, the applicant shall:
- (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.

Rule 41.08

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 shall not exceed 10 pages.
- 41.07.2 A summary of argument shall be signed by a legal practitioner on behalf of the applicant or respondent or, in the case of an unrepresented party, by the party personally.
- 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.

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 shall not exceed 5 pages.

Rule 41.09

41.08.3 A reply shall be signed by a legal practitioner on behalf of the applicant or, in the case of an unrepresented applicant, by the applicant personally.

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 in accordance with an index settled by the Registrar after consultation with the parties.

41.09.3 The index shall list only those documents that, having regard to the issues of law that appear from the grounds of application set out in the applicant's summary of argument, are necessary to enable the Court to determine the application.

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

41.09.7 The Registrar shall furnish a copy of the index to each party to the application.

41.09.8 A copy of an index may be sent by post or by facsimile transmission.

41.09.9 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.

Rule 41.10

- 41.09.10 The applicant shall prepare an application book in the same manner and form as is required in the case of an appeal book in rule 42.13.
- 41.09.11 Within 21 days after the receipt of the index, or such other time as a Justice or the Registrar may direct, the applicant shall:
- (a) prepare and file 7 copies of the application book; and
 - (b) supply 3 copies of the application book to each respondent who has filed a notice of appearance.
- 41.09.12 If, on the hearing of an application, a party intends to refer to a document which is not included in the application book, that party shall give notice to the registry and to each other party not less than 3 working days before the date fixed for the hearing.

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.
- 41.10.4 Where an unrepresented applicant does not file a written case within 28 days of the filing of the application, the application shall be deemed to be abandoned, unless, either before or after the expiration of that period, the Court or a Justice has otherwise ordered or directed.

Rule 41.11

- 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, a Justice shall direct the applicant to serve a copy of the written case 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.

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.

Rule 41.15

- 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 41.09.11 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.

Rule 41.15

- 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.

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 or a certificate 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 shall be filed within 21 days after:

- (a) the grant of leave or special leave to appeal;
 - (b) the grant of a certificate to appeal; or
 - (c) the date of the judgment below;
- whichever is the latest.

Rule 42.04

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.

42.06 Appearance

- 42.06.1 A respondent opposing or intending to appear on the hearing of an appeal shall, within 14 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.
- 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.

Rule 42.08

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 14 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.

Rule 42.09

- 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 shall, within 14 days of the institution of an appeal, 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 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.

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 The appellant shall, within 7 days of being notified of the appointment, prepare and file a draft index of the proposed contents of the appeal book.

Rule 42.12

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 7 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.

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.

Rule 42.13

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 5 centimetre margin upon each side of each page and every fifth line numbered in the margin.
- 42.13.7 The appeal book may be bound by means of either a flexi binding or spiral binding process.
- 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.

Rule 42.13

- 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;

Rule 42.13

- (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, or the certificate of appeal, if applicable;
- (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, 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 shall file 10 copies of the appeal book and deliver 3 copies to each respondent within 21 days after the date on which the index is settled under rule 42.12.

42.13.16 One of the 10 copies of the appeal book referred to in rule 42.13.15 shall be an examined copy with a certificate by the parties, or their solicitors, that it has been examined and is correct.

Rule 42.16

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.

Rule 42.17

- 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.

[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.

Rule 50.05

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.

Rule 51.01

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.

Rule 53.01

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.

Rule 53.05

- 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.

Rule 54.01

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.

Rule 55.04

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 the fee provided in Schedule 2 for instructions to sue or defend, or for the preparation of briefs, to be inadequate, the Taxing Officer may make such further allowance as the Taxing Officer considers reasonable.

56.02 Pleadings

The fees allowed for drawing a pleading or other document shall include a copy made for the use of the solicitor, agent or client or for counsel to settle.

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 drawing an affidavit include all attendances on the deponent to settle and read over the affidavit.

Rule 56.05

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 Perusal and inspection

- 56.06.1 Fees for perusals do not apply where the same solicitor acts for both parties.
- 56.06.2 The fees for perusing or inspecting any document shall be in the discretion of the Taxing Officer but no allowance shall be made unless it is shown to the satisfaction of the Taxing Officer that there were good and sufficient reasons for perusing or inspecting 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 settling such documents as the Taxing Officer thinks proper to be settled by counsel.

Rule 56.11

- 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 drawing or settling any document or appearing as counsel as the Taxing Officer considers reasonable in the circumstances.
- 56.09.3 Subject to rules 56.09.4 and 56.09.5, 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 drawing or settling 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 drawing or settling any document or for appearing as counsel as the Taxing Officer considers reasonable in the circumstances.

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.

Rule 56.12

- 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
 - (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.

Rule 56.13

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.

Rule 57.01

**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 total for which, if the bill of costs were taxed, the Certificate of Taxation would be likely, in the opinion of the Taxing Officer, to issue.
- 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; and
 - (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.
- 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 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 assessment under this rule, no notice of objection may be filed:
- (a) until after that estimate has been made; and

Rule 57.03

- (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 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 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 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.

Rule 57.04

- 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 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.

Rule 57.05

- 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 objected to under rule 57.02.1 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.
- 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

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 Where a Taxing Officer has made an estimate under rule 57.01, a party filing a notice of objection shall pay the costs of and incidental to the taxation unless, after taxation of the bill, the certificate of taxation is for an amount less than the amount of the estimate by an amount of one-sixth or more of that estimate.

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:

- (a) to the party entitled to the costs of the taxation; or
- (b) if no party is entitled to the costs of the taxation, to the party paying it into the High Court of Australia Sutor's Fund.

58.03 Reduction by one-sixth

If, on the taxation of a bill of costs, the amount of the professional charges and disbursements contained in the bill is reduced by one-sixth or more:

- (a) no costs shall be allowed to the party entitled to the costs for drawing or copying the bill or for attending the taxation; and
- (b) the Taxing Officer may order the solicitor who prepared the bill to pay some or all of the costs incurred by any opposite party of or incidental to the taxation.

Rule 58.04

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 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.

Rule 59.01

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.

Schedule 1 Forms

Title	Form	Rule
Notice of a constitutional matter	1	5.01.3
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
Writ of mandamus	14	25.08.2
Writ of habeas corpus	15	25.09.3
Writ of prohibition	16	25.20
Application for removal	17	26.01
Applicant's summary of argument	18	26.03.2 41.05.2 41.10.3

Title	Form	Rule
Respondent's summary of argument	19	26.04.2 41.06.2
Writ of summons	20	27.01
Summons	21	28.02.1 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
Bill of costs	28	54.02.01
Certificate of taxation	29	57.04.3

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
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 or
solicitor for Plaintiff/Appellant*)

To:

Form 3 Order
(rule 8.01.2)

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

BETWEEN: AB
Plaintiff/Appellant
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

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 9 Conditional appearance

(rule 23.03.2)

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

BETWEEN:

AB

Plaintiff

and

CD

Defendant

CONDITIONAL APPEARANCE

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

The address for service of [CD] is

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

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

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 applicant 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

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.]*

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

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.

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 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

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

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

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)
		Add Disbursements	 (Total Disbursements)
		Total	
		Less taxed off	

Add taxing fee

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 and allowed at \$.....

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

.....
Taxing Officer

Schedule 2 Schedule of fees for work done or services performed

(rule 52.02)

Item	Matter for which fee may be charged	Fee (\$)
INSTRUCTIONS		
1	To sue or defend, or to make or oppose an application for leave or special leave to appeal, or to appeal, or oppose an appeal or to cross appeal, or for any other originating proceedings	197.70
2	To make or oppose any interlocutory application	87.70
3	For a special case, case stated or reservation of question of law for the consideration of a Full Court, or for a statement of claim or a petition	197.70
4	For any pleading (other than a statement of claim)	153.60
5	To amend any pleading	52.90
6	For a statement of facts or an agreed statement of facts in a matter	153.60
7	For interrogatories, answers to interrogatories, special affidavits or an affidavit (not being a formal affidavit)	118.50
8	For counsel to advise	84.60
9	For a document not otherwise provided for	33.00
10	For a brief for counsel on a hearing or application in Court or brief notes for solicitor	109.90
<p><i>Note</i> Instructions are not to be allowed where the work intended to be included therein is charged for and allowed in detail. Instead of the above costs for instructions, such larger sum may be claimed as is reasonable in all the circumstances of the case, and is allowed on taxation at the discretion of the Taxing Officer.</p>		
WRITS		
11	Writ of Summons for the commencement of an action or other writ not specifically provided for	91.40

Item	Matter for which fee may be charged	Fee (\$)
12	Concurrent Writ of Summons	32.80
13	Writ of Subpoena	47.80
14	If any of the above writs exceeds 3 folios, for each extra folio	6.60
	<i>Note</i> These costs include all endorsements, and copies (for the officers sealing them) and attendances to issue or seal, but not the Court fees.	
	SUMMONSES	
15	Any summons including preparation, copies and attendance to issue, including attendance to fix return date	56.10
	— if more than 3 folios, for each extra folio	6.60
	APPEARANCES AND NOTICES	
16	Preparing and entering an appearance including duplicate memorandum and Notice of Appearance for service	92.50
17	Any necessary or proper notice or memorandum not otherwise provided for, or any demand	30.90
	— if more than 3 folios, for each extra folio	6.60
	<i>Note</i> This provision shall not apply to short notices or memoranda endorsed on other documents but the words or folios therein may be allowed as part of the documents so endorsed.	
	DRAWING	
18	Drawing any pleading or affidavit not exceeding 5 folios	87.70
	— or, per folio	12.30
19	Drawing any other document where no other provision is made — per folio	12.10
	ENGROSSING	
20	Marking each exhibit to an affidavit	2.20
21	Engrossing any document — per folio	4.50

Item	Matter for which fee may be charged	Fee (\$)
COPIES		
22	Of any document including carbon, photographic or machine made copy per page. Except that where the allowance for 10 or more pages is claimed, in respect of any document, the sum allowed for such copies shall be at the discretion of the Taxing Officer	2.20
PERUSAL AND EXAMINATION		
23	Perusal of any document including special letter, telegram, telex or similar document	32.70
	— or, per folio	4.50
	Except that where an allowance for 30 or more folios is claimed, in respect of any document, the sum allowed for perusal shall be at the discretion of the Taxing Officer	
24	Where it is not necessary to peruse a document, such as checking a proof print of, or examining an application or appeal book, per quarter hour	
	— solicitor	32.80
	— clerk	10.70
CORRESPONDENCE		
25	Short letter including a formal acknowledgment, making appointments, forwarding documents without comment	15.60
26	Ordinary letter (including letters between principal and agent)	26.50
27	Circular letter (after the first) each	8.80
28	Special letter or letter containing opinion and including letters of substance between principal and agent	43.80
	or	
	Such sum as the Taxing Officer thinks reasonable in the circumstances	

Item	Matter for which fee may be charged	Fee (\$)
29	Telegram, facsimile copy, telex or other document by similar transmitting process including attendance to dispatch (where necessary)	43.80
	or	
	Such sum as the Taxing Officer thinks reasonable in the circumstances	
30	Receiving and filing any incoming special letter, facsimile, telegram or telex	2.20
	<i>Note</i> Postage and transmission fees may be claimed as a disbursement properly incurred.	
	SERVICE	
31	Personal service of any process or proceeding where necessary	54.50
	or	
	Such sum may be allowed as is reasonable having regard to time occupied, distance travelled and other relevant circumstances	
32	When, in consequence of the distance of the party to be served, it is proper to effect service through an agent, instead of the allowance for service for:	
	(a) correspondence	48.50
	(b) agent's charges and such disbursements as may reasonably be incurred	92.60
33	Service of any document at the office of the address for service either by delivery or by post	18.70
	ATTENDANCES	
34	An attendance which requires the attendance of a solicitor, per quarter hour	52.40
35	An attendance which is capable of being made by a clerk	32.70
	— or, per quarter hour	8.60
36	Making an appointment or similar attendance by telephone	15.60

Item	Matter for which fee may be charged	Fee (\$)
37	An attendance on counsel:	
	— with brief or other papers	33.30
	— to appoint a conference or consultation	14.60
38	A conference or consultation with counsel	87.70
	— or, per half hour	66.20
39	On a summons	49.40
	— or, per half hour	87.70
40	In Court instructing counsel on any hearing or application	
	— if a solicitor attends, per hour	210.90
	or	
	— if a clerk attends, per hour	87.80
41	On an application or appearance before a Registrar or a Taxing Officer	109.90
	— or, per hour	131.70
	<i>Note</i> Instead of the above costs for attendances, such larger sum may be claimed as is reasonable in all the circumstances of the case, and is allowed on taxation at the discretion of the Taxing Officer.	
42	To hear judgment	57.50
43	When in the opinion of the Taxing Officer it is necessary for two solicitors, or a solicitor and a clerk to attend on a hearing, such additional allowance as the Taxing Officer thinks reasonable shall be made	
	Not exceeding per day	440.80

Item	Matter for which fee may be charged	Fee (\$)
44	Where the Taxing Officer is satisfied that the principal place of practice of a solicitor is in a place other than that in which the Court is sitting, and it is necessary for the solicitor to leave that place to attend in Court at the hearing of an appeal, application, or cause, an allowance (in addition to reasonable travelling expenses) may be made for each day that the solicitor is necessarily absent from the principal place of practice of such amount that the Taxing Officer thinks reasonable having regard to such other charges as the solicitor may be entitled to make in the matter	
	Not exceeding per day	984.70
45	An attendance for which no other provision is made	43.80
	PREPARATION OF APPEAL AND APPLICATION BOOKS	
46	Preparation of appeal and application books including collating all necessary material, all necessary attendances and general oversight of their preparation in cases where the Registrar is satisfied it has been done efficiently. Per hour:	
	— solicitor	142.50
	— clerk	47.50
47	Where appeal or application books are prepared in a solicitor's office, the Taxing Officer may allow such sum as the Taxing Officer thinks just and reasonable having regard to work and labour properly performed and charged for material used. In exercising this discretion the Taxing Officer shall have regard to commercial rates for copying and binding and is not obliged to apply the photographic or machine made copy costs otherwise allowable in this scale	

Item	Matter for which fee may be charged	Fee (\$)
GENERAL CARE AND CONDUCT		
48	<p>The Taxing Officer may, where the case or circumstances warrant it, allow an amount to be claimed under this item, in addition to any item which appears in this scale, for general care and conduct. In exercising this discretion the Taxing Officer may have regard to any matters which the Taxing Officer considers relevant including:</p> <ul style="list-style-type: none"> (a) the complexity of the matter and the difficulty and novelty of the questions raised or any of them; (b) the importance of the matter to the party and the amount involved; (c) the skill, labour, specialised knowledge and responsibility involved therein on the part of the solicitor; (d) the number and importance of the documents prepared or perused without regard to length; (e) the time expended by the solicitor; and (f) research and consideration of questions of law and fact 	
WITNESSES EXPENSES		
49	<p>Witnesses called because of their professional, scientific or other special skill or knowledge</p> <p>Per day</p>	802.10
50	<p>Witnesses called, other than those covered in item 49</p> <p>Per day</p>	84.60
51	Witnesses remunerated in their occupation by wages, salary or fees, the amount lost by attendance at Court	
52	Where the witness resides more than 50 kilometres from the Court, such sum as the Taxing Officer thinks reasonable for the actual cost of conveyance, together with a reasonable amount for sustenance or maintenance	
53	The Taxing Officer may also allow such amount as the Taxing Officer thinks reasonable and properly incurred and paid to witnesses for qualifying to give skilled evidence	
162	<i>High Court Rules 2004</i>	2004,

Item	Matter for which fee may be charged	Fee (\$)
54	Notwithstanding anything in the scale, the Taxing Officer may allow to an expert witness a special fee for attendance at Court not covered by the foregoing paragraphs of this item when the witness is acting as an expert in assisting counsel or a solicitor for a period during the trial or hearing. The scale in this item does not affect the existing practice of allowing qualifying fees to witnesses	
	DISBURSEMENTS	
55	All Court fees, counsel's fees and other fees and payments, to the extent to which they have been properly and reasonably incurred and paid, shall be allowed	
56	The remuneration allowed to a solicitor shall be governed by the foregoing scale but in special cases the Taxing Officer may allow such additional charges or disbursements as the Taxing Officer considers reasonable	

Note

1. Notified in the *Commonwealth of Australia Gazette* on *1* 2004. *14 October*