



High Court Amendment (2014 Measures No. 1) Rules 2014

Select Legislative Instrument No. 139, 2014

We, Justices of the High Court of Australia, make the following Rules of Court.

Dated 09 September 2014

R. S. French
K. M. Hayne
S. M. Crennan
S. M. Kiefel
V. M. Bell
S. J. Gageler
P. A. Keane

Justices of the High Court of Australia

A. M. Phelan
Chief Executive and
Principal Registrar

OPC60467 - A

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1 Name of Rules

These Rules are the *High Court Amendment (2014 Measures No. 1) Rules 2014*.

2 Commencement

Each provision of these Rules specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information	
Column 1	Column 2
Provisions	Commencement
1. Rules 1 to 4 and anything in these Rules not elsewhere covered by this table	The day after these Rules are registered.
2. Schedule 1, Part 1	The day after these Rules are registered.
3. Schedule 1, Part 2	1 January 2015.

3 Authority

These Rules are made under the following Acts:

- (a) the *Judiciary Act 1903*;
- (b) the *Commonwealth Electoral Act 1918*;
- (c) the *Nauru (High Court Appeals) Act 1976*;
- (d) the *High Court of Australia Act 1979*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Part 1—Amendments commencing day after registration

High Court Rules 2004

1 Part 5 (heading)

Repeal the heading, substitute:

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

2 Rule 5.01 (heading)

Repeal the heading, substitute:

5.01 Filing notice of a constitutional matter

3 Rule 5.01.1

Omit “matter is”, substitute “proceeding is”.

4 Rules 5.02 and 5.03

Repeal the rules, substitute:

5.02 Serving notice of a constitutional matter

5.02.1 If the proceeding is an appeal, or an application for leave or special leave to appeal referred to an enlarged Court for hearing as if on appeal, the party, intervener, or applicant for leave to intervene or appear who raises the constitutional matter, or such other party as the Court or a Justice may direct, must:

- (a) file notice of a constitutional matter; and
- (b) serve a copy of the notice on every other party and on the Attorneys-General of the Commonwealth, the States, the Australian Capital Territory and the Northern Territory:
 - (i) if the matter arises in the notice of appeal—within 7 days after the notice of appeal is filed; or

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

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

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

5.03 Affidavit of service and provision of documents

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

- (a) must file an affidavit of service of the notice, proving compliance with rule 5.02, within 2 days after service and not later than 2 days before the date appointed for the hearing of the proceeding; and
- (b) must, on request, and as soon as reasonably practicable, supply to any person giving notice of intention to intervene or seek leave to intervene or appear, 2 copies of all relevant documents and books filed in the proceeding.

5.04 Filing and serving notice of intervention

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

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

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

5 Paragraph 13.02.2(b)

Repeal the paragraph, substitute:

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

6 Rule 13.03

Repeal the rule, substitute:

13.03 Determination of application

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

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

13.03.3 If:

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

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

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

7 Part 45

Repeal the Part.

8 Rule 58.02.1

Repeal the rule, substitute:

58.02.1 Rule 58.02.1A applies if:

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

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

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

9 After Chapter 5

Insert:

Chapter 6—Transitional provisions

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

60.01 Application of amendments relating to interlocutory applications

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

Schedule 1 Amendments

Part 1 Amendments commencing day after registration

60.02 Application of amendment relating to Taxing Officers' estimates

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

60.03 Repeal of this Part

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

10 Schedule 1 (table item dealing with Notice of a constitutional matter)

Repeal the item, substitute:

Notice of a constitutional matter	1	5.01.3
Notice of intervention	1A	5.04.2

11 Schedule 1 (after Form 1)

Insert:

Form 1A—Notice of intervention

Note: See rule 5.04.2.

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

BETWEEN: AB
Plaintiff/Appellant/
Applicant

and

CD
Defendant/Respondent

NOTICE OF INTERVENTION

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

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

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

Part 2—Amendments commencing 1 January 2015

High Court Rules 2004

12 Rule 56.01

Omit “the fee provided in Schedule 2 for instructions to sue or defend, or for the preparation of briefs,” substitute “a fee set out in Schedule 2 for instructions”.

13 Rule 56.02

Repeal the rule, substitute:

56.02 Preparing documents (other than court books)

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

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

No additional amount will be allowed for such administrative tasks.

14 Rule 56.04.2

Omit “drawing”, substitute “preparing”.

15 Rule 56.06

Repeal the rule, substitute:

56.06 Reading or examining documents

56.06.1 Fees for reading or examining documents do not apply where the same solicitor acts for both parties.

56.06.2 The fees for reading or examining any document are in the discretion of the Taxing Officer, but no allowance is to be made

unless it is shown to the satisfaction of the Taxing Officer that there were good and sufficient reasons for reading or examining the document.

16 Rule 56.09.1

Omit “settling”, substitute “preparing”.

17 Rule 56.09.1

Omit “settled”, substituted “prepared”.

18 Rules 56.09.2, 56.09.4, 56.09.5 and 56.09.6

Omit “drawing or settling”, substitute “preparing”.

19 Schedule 2

Repeal the Schedule, substitute:

Schedule 2—Fees for work done and services performed

Note: See rule 52.02.

1 Application of this Schedule

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

2 Fees for work done and services performed

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

Fees for work done and services performed		
Item	Matter for which fee may be charged	Fee
INSTRUCTIONS		
1	Instructions to commence or oppose a proceeding	\$500
2	Instructions to make or oppose any interlocutory application	\$250
3	Instructions to prepare any pleading	\$250
4	Instructions to brief counsel	\$250

Schedule 1 Amendments**Part 2** Amendments commencing 1 January 2015

Fees for work done and services performed		
Item	Matter for which fee may be charged	Fee
5	Instructions to do any other thing not otherwise provided for	\$250
PREPARING DOCUMENTS		
6	Preparing any document, other than court books and correspondence:	
	(a) by a solicitor, if 5 minutes or less; or	\$40
	(b) by a solicitor, if more than 5 minutes; or	\$125 per quarter hour or part thereof
	(c) by a law clerk, if 5 minutes or less; or	\$20
	(d) by a law clerk, if more than 5 minutes	\$62.50 per quarter hour or part thereof
PREPARING COURT BOOKS		
7	Preparing court books, including application books, appeal books, case stated books, special case books and questions reserved books	\$125 per quarter hour or part thereof
8	If court books are prepared in-house, the Taxing Officer may allow a reasonable amount in the circumstances for their copying and binding	
PREPARING CORRESPONDENCE		
9	Preparing:	
	(a) simple correspondence; or	\$50 per page of text
	(b) other correspondence	\$125 per page of text
READING DOCUMENTS		
10	Reading:	
	(a) simple correspondence; or	\$10 per page of text
	(b) other correspondence	\$125 per quarter hour or part thereof
11	Reading documents, other than correspondence:	
	(a) up to 10 pages of text; or	\$10 per page of text
	(b) otherwise	\$125 per

Fees for work done and services performed		
Item	Matter for which fee may be charged	Fee
		quarter hour or part thereof
EXAMINING DOCUMENTS		
12	Examining a document to ensure that it is correct or complete (for example, a proof print of a court book):	
	(a) up to 10 pages of text; or	\$5 per page of text
	(b) otherwise	\$62.50 per quarter hour or part thereof
COPYING DOCUMENTS		
13	Copying documents:	
	(a) black and white photocopies; or	50 cents per page
	(b) colour photocopies	\$1.50 per page
ATTENDANCES		
14	Attendances, including telephone attendances, research, conferences with clients, conferences with counsel and attendances at Court to file or collect documents:	
	(a) by a solicitor, if 5 minutes or less; or	\$40
	(b) by a solicitor, if more than 5 minutes; or	\$125 per quarter hour or part thereof
	(c) by a law clerk, if 5 minutes or less; or	\$20
	(d) by a law clerk, if more than 5 minutes	\$62.50 per quarter hour or part thereof
15	Attendances in Court, including travelling time to and from Court:	
	(a) by a solicitor; or	\$125 per quarter hour or part thereof
	(b) by a law clerk	\$62.50 per quarter hour or part thereof
	Note: The Taxing Officer has the discretion to allow for the attendance of more than one solicitor or law clerk in	

Schedule 1 Amendments

Part 2 Amendments commencing 1 January 2015

Fees for work done and services performed

Item	Matter for which fee may be charged	Fee
	Court if the circumstances warrant it	
16	Any other attendance not otherwise provided for	\$62.50 per quarter hour or part thereof

GENERAL CARE AND CONDUCT

17	In complex or novel matters the Taxing Officer may allow an additional amount for the general care and conduct of the matter, not exceeding 5% of the total of the fees and disbursements otherwise allowed	
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WITNESSES' EXPENSES

18	For each witness, including that witness' travelling time	\$250 per hour or part thereof
19	If a witness is an expert, the Taxing Officer may allow an amount equal to the expert's actual fees for preparing to give evidence and for attending to give evidence	

DISBURSEMENTS

20	All disbursements reasonably incurred and paid are to be allowed	
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MISCELLANEOUS

21	In unusual cases, or in instances which are not otherwise covered by the preceding items, the Taxing Officer may allow such additional charges or disbursements as are reasonable in the circumstances	
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