



HIGH COURT OF AUSTRALIA

HIGH COURT AMENDMENT (2016 MEASURES No. 1) RULES 2016

7 JUNE 2016

EXPLANATORY STATEMENT

These Amendment Rules of Court, signed by the Justices on 7 June 2016, are made by the Justices under the *Judiciary Act* 1903, the *Commonwealth Electoral Act* 1918, the *Nauru (High Court Appeals) Act* 1976 and the *High Court of Australia Act* 1979.

The High Court has reviewed the procedures governing the filing and determination of applications for leave and special leave to appeal to the Court and has decided to streamline some of the processes in order to reduce the time between filing and determination of applications and to reduce the cost to the parties.

The Amendment Rules incorporate the new special leave procedures (in Part 41) and the amendments required to bring Part 26 (dealing with applications for removal of proceedings pending in other courts) into line with the new procedures. The Amendment Rules also provide a new Form for the outline of oral submissions required in Full Court hearings.

The Amendment Rules amend the following parts of the High Court Rules:

Part 26 – Applications for removal pursuant to section 40 of the *Judiciary Act* 1903;

Part 41 – Applications for leave or special leave to appeal;

Part 44 – Written and oral submissions; and

Schedule 1 – Forms.

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

1. The Application for removal (Form 17) and the Summary of argument of the applicant (Form 18) will be consolidated into one **Form 17 – Application for removal** and will be limited to 12 pages.
2. The time specified in Rule 26.01(g) for service of an application will be reduced from 90 days to 7 days.
3. The applicant is required to file an affidavit in support of the application, setting out the details of the proceedings sought to be removed into the Court. The Amendment Rules will add to Rule 26.04 a requirement that a respondent file an affidavit setting out any factual issues in contention.



4. The Respondent's summary of argument (Form 19) will be renamed and numbered as **Form 18 – Response to application for removal** and will be limited to 10 pages.
5. Unrepresented applicants will no longer be required to prepare and file an application book. There will instead be added a new requirement for copies of documents to be provided in applications filed by unrepresented applicants.
6. Represented applicants will need to prepare and file an application book unless the Registrar directs that an application book is not required. It is envisaged that Attorneys-General making an application pursuant to section 40(1) of the *Judiciary Act* will not be required to prepare multiple copies of an application book.
7. In place of the existing Rules 26.06.2 and 26.06.3 applying the provisions in Part 41 for the determination, discontinuance or deemed abandonment of an application, and the making of directions by the Registrar, the provisions will be set out in full in Rule 26.

Part 41 – Applications for leave or special leave to appeal

1. The Application (Form 23), draft Notice of appeal (Form 24), and Summary of argument/written case (Form 18) for all applicants will be consolidated into one single **Form 23 – Application for leave or special leave to appeal**.
2. The Application for leave or special leave to appeal should identify the judgment sought to be appealed, the proposed grounds of appeal and the orders which will be sought if leave or special leave is granted, the leave or special leave questions said to arise and the argument in support of the grant of leave or special leave.
3. The Application for leave or special leave to appeal should be accompanied by the documents currently required by Rule 41.01.2 to be filed with the Application.
4. The time for filing the Application for leave or special leave to appeal will be 28 days from the date of judgment of the Court below.
5. The requirement in Rule 41.07.3 that a party wishing to appear and present oral argument in an application must state that wish in the summary of argument will be removed. In determining whether to list an application for oral argument the Court will consider, on merit, whether it will be assisted by oral argument.

6. The page limit for the Application for leave or special leave to appeal will be 12 pages and will apply to the entire document, including the proposed grounds of appeal and the orders to be sought.
7. Form 19 – Respondent’s summary of argument will be renamed and renumbered as **Form 23A – Response to application for leave or special leave to appeal** and will be limited to 10 pages.
8. The provision allowing parties to file additional material (Rule 41.09.7) will be removed, leaving to the direction of the Registrar the question of filing and reproducing material not otherwise required by the Rules.
9. A new rule will be added to require the applicant to provide an electronic copy of the application book in addition to paper copies.

Part 44 – Written and oral submissions

1. Rule 44.08.1 requires the parties and interveners to provide, at the commencement of argument in Full Court hearings, a brief outline of the propositions to be advanced on behalf of the party or intervener. A new Rule 44.08.2 will be inserted prescribing the form (**Form 27F**) of the outline of oral submissions. As with written submissions filed by the parties and interveners, the new Form 27F will include a certification that the document (or a redacted form of the document) is suitable for publication on the Internet.

Commencement

The amendment provisions will commence on 1 July 2016.

Consultation

Consultations on the changes have taken place with relevant professional organisations and the Special Committee of Solicitors-General.

Statement of Compatibility

Rules of court are not legislative instruments (see paragraph 8(8)(d) of the *Legislation Act 2003*). Accordingly, section 9 of the *Human Rights (Parliamentary Scrutiny) Act 2011* does not require a statement of compatibility to be prepared in respect of rules of court made by the High Court, and no statement of compatibility for the purposes of that latter Act is included in the Explanatory Statement.