



# High Court Amendment (2016 Measures No. 2) Rules 2016

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

Dated 6 December 2016

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Justices of the High Court of Australia

A. M. Phelan  
Chief Executive and  
Principal Registrar

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## 1 Name

These Rules are the *High Court Amendment (2016 Measures No. 2) Rules 2016*.

## 2 Commencement

- (1) 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of these Rules	The day after these Rules are registered.	9 December 2016

Note: This table relates only to the provisions of these Rules as originally made. It will not be amended to deal with any later amendments of these Rules.

- (2) Any information in column 3 of the table is not part of these Rules. Information may be inserted in this column, or information in it may be edited, in any published version of these Rules.

## 3 Authority

These Rules are made under the following:

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Each instrument that is specified in a Schedule to these Rules is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to these Rules has effect according to its terms.

## Schedule 1—Amendments

### *High Court Rules 2004*

#### **1 Rule 1.07.1**

Repeal the rule, substitute:

- 1.07.1 A document to be filed in the Court in a proceeding must be filed:
- (a) in the office of the Registry in which the proceeding was started; or
  - (b) if the file for the proceeding has been transferred to another office of the Registry, in that office.

#### **2 Paragraph 4.06.2(c)**

Repeal the paragraph, substitute:

- (c) writs of summons and any other writs, and commissions and process;
- (ca) copies of a document referred to in paragraph (b) or (c) that are copies for service;

#### **3 Rules 6.02.2 and 6.02.3**

After “was issued”, insert “or filed”.

#### **4 Rule 6.04.3**

Repeal the rule.

#### **5 Rule 6.07.3**

Omit “for leave to issue a proceeding”, substitute “for leave for the Registrar to issue, or for leave to file, a document”.

#### **6 Rule 9.02.2**

Repeal the rule.

#### **7 At the end of Part 13**

Add:

#### **13.04 Orders other than in open court in relation to applications**

A Justice may make orders other than in open court in relation to an application.

Note: For the power of a Justice sitting in Chambers to exercise the jurisdiction of the Court, see section 16 of the *Judiciary Act 1903*.

#### **8 Rule 20.01 (heading)**

Repeal the heading, substitute:

#### **20.01 Form of originating document**

#### **9 Rule 20.02**

Repeal the rule, substitute:

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**20.02 Copies of originating documents for service**

20.02.1 An application for an order to show cause, an application for removal, an election petition or a writ of summons must be accompanied by as many copies for service as there are defendants or respondents.

20.02.2 The copies of an application for an order to show cause, an application for removal or an election petition must be stamped by the Registrar.

Note: Copies of a writ of summons must be sealed: see paragraph 4.06.2(ca).

**10 Rule 22.01 (heading)**

Repeal the heading, substitute:

**22.01 Service of originating documents****11 Rule 22.02**

Repeal the rule, substitute:

**22.02 Affidavit of service**

Within 7 days of the service of an originating document, the plaintiff or applicant must file an affidavit deposing to the time and manner of the service.

**12 Rule 23.01.3**

Repeal the rule, substitute:

23.01.3 A notice of appearance must be in Form 7.

**13 Rule 23.04.1**

Omit “shall seal”, substitute “must stamp”.

**14 Rule 23.04.2**

Omit “shall serve a sealed”, substitute “must serve a stamped”.

**15 Paragraphs 25.01(b) and (g)**

Omit “issued”, substitute “filed”.

**16 Paragraph 26.01.1(c)**

Omit “issued”, substitute “filed”.

**17 In the appropriate position in Chapter 6**

Insert:

**Part 60—Transitional provisions relating to the High Court  
Amendment (2016 Measures No. 2) Rules 2016****60.01 Application of amendments relating to orders other than in open court**

Rule 13.04 applies in relation to applications made after the commencement of this rule.

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## 60.02 Repeal of this Part

This Part is repealed at the start of the day after the end of the period of 12 months beginning on the day the *High Court Amendment (2016 Measures No. 2) Rules 2016* commence.

## 18 Schedule 1 (table items dealing with Forms 30 and 31)

Repeal the items, substitute:

Ex parte application for leave to institute a proceeding	30	6.06.3
Ex parte application for leave to issue or file	31	6.07.3

## 19 Schedule 1 (Forms 5 and 6)

Repeal the forms, substitute:

### 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

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO THE MARSHAL

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

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

.....  
Justice

### Form 6—Committal warrant

(rule 11.03.3)



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

BETWEEN: AB  
Plaintiff  
and  
CD  
Defendant

**COMMITTAL WARRANT**

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO THE MARSHAL

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

OR

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

.....  
Justice

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

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

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

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

.....  
Justice

**20 Schedule 1 (Forms 10 and 11)**

Repeal the forms, substitute:

**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**

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

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 who requested the issue of the subpoena, 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 issued at the request of [*name of party*], whose address for service is.....

**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**

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

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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 who requested the issue of the subpoena, 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]*

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

.....  
Registrar

This subpoena was issued at the request of *[name of party]*, whose address for service is.....

**21 Schedule 1 (Forms 13 to 16)**

Repeal the forms, substitute:

**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**

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

To *[Name]*  
of *[Address]*

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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

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

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)

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

BETWEEN: AB  
Plaintiff  
  
and  
  
CD  
Defendant

**WRIT OF HABEAS CORPUS**

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

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**

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

To [Name]  
of [Address]

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

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

.....  
Registrar

**22 Schedule 1 (Form 20)**

Repeal the form, substitute:

**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**

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

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

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

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

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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]*

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

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

The plaintiff's address is .....

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

### **23 Schedule 1 (Form 21)**

Omit "YOU ARE SUMMONED to", substitute "Let all parties concerned".

### **24 Schedule 1 (Forms 30 and 31)**

Repeal the forms, substitute:

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

Note: See rule 6.06.3.

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

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

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

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

### **Grounds**

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

Dated:

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

THE APPLICANT'S SOLICITOR IS:

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

OR

THE APPLICANT'S ADDRESS FOR SERVICE IS:

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

### **Form 31—Ex parte application for leave to issue or file**

Note: See rule 6.07.3.

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

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

#### **EX PARTE APPLICATION FOR LEAVE TO ISSUE OR FILE**

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

#### **Grounds**

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

Dated:

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

THE APPLICANT'S SOLICITOR IS:

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

OR

THE APPLICANT'S ADDRESS FOR SERVICE IS:

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