



## HIGH COURT OF AUSTRALIA

### HIGH COURT AMENDMENT (APPEALS AND OTHER MATTERS) RULES 2017 9 OCTOBER 2017 EXPLANATORY STATEMENT

These Amendment Rules of Court, signed by the Justices on 9 October 2017, 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.

#### **Appellate procedures**

Following a comprehensive review of the current appellate procedures in the High Court of Australia the Justices of the Court have decided to expand the timeline for the filing of material in advance of the hearing of appeals. The Justices wish to ensure that the parties have sufficient time to prepare their written argument and to select the material to which the Court will be taken during the hearing. The Justices also propose related changes to the sequence and form of some of the material filed by the parties. The changes have been considered by the legal professional bodies.

The procedural changes require a number of amendments to Chapter 4 of the High Court Rules 2004.

#### *Core Appeal Book*

The Core Appeal Book will replace the current full version of the appeal book and will be filed shortly after the Notice of Appeal is filed. The Core Appeal Book will comprise the lower court material presently reproduced in the application books for special leave applications plus the order granting special leave and the Notice of Appeal. The index of the record below will be included as a separate item in the Core Appeal Book.

The content of the Core Appeal Book for most appeals will be prescribed by the Rules. In some instances (for example, those involving questions as to the application of the proviso in a criminal appeal) the Registrar will settle with the parties an expanded index to the Core Appeal Book. Additional lower court material required for the hearing of the appeal will be provided to the Court after the arguments to be presented at the hearing have been formulated by counsel.

#### *Further Material*

The appellant and the respondent will each file with their Written Submissions (in hard copy and electronic form) an indexed book of Further Material comprising any additional lower court material (including oral and documentary evidence) to which the party intends to refer at the hearing.

Written Submissions will be annotated to refer to the documents reproduced in the Core Appeal Book and to the Further Material filed by the parties. Annotated Written Submissions presently required by Rule 44.06 will no longer be required.

### *Interveners*

Applicants for leave to intervene or to appear as amicus curiae will no longer be required to file a summons and supporting affidavit in addition to the Form 27C Intervener's Submissions.

### **Additional amendments**

In addition to the amendments to the appeal processes prescribed by Chapter 4 the Court will amend the following general provisions in the Rules.

#### **1. Rule 1.07.1**

To provide more flexibility for the lodgement and acceptance of documents electronically it is proposed to amend this provision to provide for filing in *an office* of the Registry rather than a particular office.

#### **2. Rule 4.05**

Consistent with the approach of the Court to move purely administrative matters into the Practice Directions, and in preparation for the change to permit the lodgement and acceptance of documents electronically, it is proposed to remove from the Rules the detailed Registry opening hours and working days (rules 4.05.1 and 4.05.3).

#### **3. Rule 5.02**

The Court has agreed to the suggestions of the Special Committee of Solicitors-General that (i) the time for the service of a notice of a constitutional matter be brought forward to *the time of filing* the notice of appeal (or other initiating document) rather than within 7 days after filing the notice of appeal (or other initiating document); and (ii) a party be required to file and serve a notice if the constitutional matter forms any part of the *argument* to be advanced in support of the notice of appeal or pleading, even if the matter is not formally pleaded.

#### **4. Rule 9.04**

The Court has agreed to add provision for ordinary service by email.

#### **5. Rule 13.04**

The Court has agreed that, in addition to the provision for the pronouncement of orders in chambers (inserted by *High Court Amendment (2016 Measures No. 2) Rules 2016*), provision should be made for the publication in chambers of any associated reasons for decision.

#### **6. Form 23 – Application for leave or special leave to appeal**

The Court proposes to insert in Form 23 a separate paragraph relating to applications for an extension of time within which to apply for leave or special leave (see Rule 41.02.2(a)). Practitioners have suggested that it is not clear where such a request should be included in the current form.



## **Commencement**

The amendment provisions commence on 1 January 2018.

## **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.