



# HIGH COURT OF AUSTRALIA

## HIGH COURT AMENDMENT (CONSTITUTIONAL WRITS AND OTHER MATTERS) RULES 2018 9 OCTOBER 2018 EXPLANATORY STATEMENT

These Amendment Rules of Court, signed by the Justices of the High Court of Australia on 9 October 2018, 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*.

### **Applications for constitutional and other writs**

Following a review of the provisions in the *High Court Rules 2004* relating to applications for writs of mandamus, prohibition, certiorari, habeas corpus and quo warranto, the Justices of the High Court propose a number of amendments to Part 25 of the Rules to provide a more streamlined procedure for the filing and consideration of applications.

#### **Part 25 Chapter 2**

##### *Title of the application*

The Court proposes to move away from using the phrase “*application for an order to show cause*”, which was more appropriate in the pre-2004 rules of court which provided for a two-step (initially ex parte) process for such applications. The Rules have been amended to reflect this change in terminology by substituting the words “*application for a constitutional or other writ*”.

##### *Time for service*

The time for service of an application is reduced from the present 90 days to 7 days.

##### *Written response*

To ensure the issues between the parties are identified at an early stage of the proceedings the Justices propose to include a requirement for the filing of a response by the defendant to an application (proposed rule 25.07) and a reply by the applicant (proposed rule 25.08), along the lines of the procedures adopted for applications for removal and applications for special leave to appeal.

##### *Consideration and determination of an application*

In light of the new requirement for the defendant to respond in writing to the application, the revised Rules will make clear that an application may be finally determined on the first occasion it comes before the Court, without the need for a preliminary directions hearing.

Rule 25.09 provides for the manner of determination of an application, including that the Court or a Justice may dismiss an application, without listing it for hearing, on the ground that the application does not disclose an arguable basis for the relief sought or is an abuse of the process of the Court.



### *Schedule 1 Form of Application, Response and Writs*

The Application (Form 12) has been amended to require in paragraph 1 reference to any extension of time sought in relation to the application.

A new form (Form 12A) – Response to Application for a Constitutional or Other Writ has been added to Schedule 1.

The rules pertaining to particular writs have been simplified and the language of the forms of a Writ of mandamus (Form 13) and a Writ of Habeas Corpus (Form 16) modified accordingly.

### **Additional amendments to the Rules**

The Court has taken the opportunity to update and clarify the following additional provisions in the Rules:

#### *Part 27 – Writ of Summons*

Rule 27.08.1 has been amended to provide that the referral to the Full Court of the parties' agreed special case is "by leave of the Court or a Justice".

#### *Part 28 – Summary dismissal and other orders*

This new part relates to all proceedings filed in the Court's original jurisdiction.

Rule 28.01.1 provides that where a proceeding is not prosecuted with due diligence the Court or a Justice may make orders including dismissing a proceeding or fixing a time for the doing of an act in the proceeding.

If a proceeding or claim does not disclose a cause of action, is scandalous, frivolous or vexatious, is an abuse of process, or has no reasonable prospect of success the Court or a Justice may stay the proceeding or give judgment in the proceeding (Rule 28.01.2).

In both instances the Court or a Justice may make an order on the application of a party or of the Court's or the Justice's own motion (Rule 28.01.3).

### **Commencement**

The amendment provisions commence on 1 November 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.