



High Court Amendment (2016 Measures No. 1) Rules 2016

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

Dated 7 June 2016

R. S. French
S. M. Kiefel
V. M. Bell
S. J. Gageler
P. A Keane
G. A. A. Nettle
M. M. Gordon

Justices of the High Court of Australia

A. Phelan
Chief Executive and
Principal Registrar

Contents

1	Name.....	1
2	Commencement	1
3	Authority.....	1
4	Schedules.....	1
	Schedule 1—Amendments	2
	<i>High Court Rules 2004</i>	2

1 Name

These are the *High Court Amendment (2016 Measures No. 1) 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.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of these Rules	1 July 2016.	1 July 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Note: This table relates only to the provisions of these Rules as originally made.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Each instrument that is specified in a Schedule to these Rules is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to these Rules has effect according to its terms.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 Part 26

Repeal the Part, substitute:

Part 26—Applications for removal under section 40 of the Judiciary Act 1903

26.01 Form of application for removal

- 26.01.1 An application for an order removing a cause or part of a cause under section 40 of the *Judiciary Act 1903* shall:
- (a) be in Form 17; and
 - (b) be accompanied by one or more affidavits in support; and
 - (c) be served within 7 days after the date on which the application is issued or such further time as the Court or a Justice may, by order, allow.
- 26.01.2 An application shall be signed:
- (a) by a legal practitioner on behalf of the applicant; or
 - (b) if the applicant is unrepresented—by the applicant.
- 26.01.3 An application:
- (a) must not exceed 12 pages; and
 - (b) must be typed in at least 12 point (Times New Roman or equivalent font size) with line spacing of 1.5 lines.
- 26.01.4 If an application is filed by an unrepresented applicant, the applicant must, at the time of filing the application, file:
- (a) 2 additional copies of the application; and
 - (b) 2 additional copies of each affidavit in support.

26.02 Affidavits in support

- 26.02.1 The affidavit or affidavits filed in support of an application for an order for removal must state concisely:
- (a) the court in which the cause is pending and the nature of the cause pending; and
 - (b) the factual background to the proceedings; and
 - (c) what findings of fact have been made.
- 26.02.2 The affidavit or affidavits in support of an application for an order for removal must exhibit such documents as are necessary for the proper determination of the application.

26.03 Appearance

A respondent shall, within 14 days after service of the application, file and serve on the applicant:

- (a) a notice of appearance in Form 7; or
- (b) a submitting appearance in Form 8.

26.04 Response

26.04.1 A respondent shall file and serve a response within 21 days after service of the application.

26.04.2 A response shall be in Form 18.

26.04.3 A response shall be signed:

- (a) by a legal practitioner on behalf of the respondent; or
- (b) if the respondent is unrepresented—by the respondent.

26.04.4 A response:

- (a) must not exceed 10 pages; and
- (b) must be typed in at least 12 point (Times New Roman or equivalent font size) with line spacing of 1.5 lines.

26.04.5 A respondent who disputes any facts set out in the application must, at the time of filing the response, file and serve an affidavit setting out the facts in dispute.

26.04.6 If the application was filed by an unrepresented applicant, the respondent must, at the time of filing the response, file:

- (a) 2 additional copies of the response; and
- (b) 2 additional copies of any affidavit filed under rule 26.04.5.

26.05 Reply

26.05.1 An applicant may, within 7 days after service of a response, file and serve a reply.

26.05.2 A reply shall be signed:

- (a) by a legal practitioner on behalf of the applicant; or
- (b) if the applicant is unrepresented—by the applicant.

26.05.3 A reply:

- (a) must not exceed 5 pages; and
- (b) must be typed in at least 12 point (Times New Roman or equivalent font size) with line spacing of 1.5 lines.

26.05.4 If an unrepresented applicant files a reply, the applicant must file 2 additional copies of the reply at the time of filing the reply.

26.06 Application book

26.06.1 An applicant (other than an unrepresented applicant) must prepare, file and serve an application book as directed by the Registrar, unless the Registrar directs that an application book is not required.

- 26.06.2 An unrepresented applicant must not prepare an application book, unless the Registrar directs the applicant to prepare an application book.

26.07 Determination of application

- 26.07.1 Any 2 Justices may determine an application without listing it for hearing and direct the Registrar to draw up, sign and seal an order determining the application.
- 26.07.2 If an application is listed for hearing, a party who is present at the hearing, or a legal practitioner on behalf of a party, may appear and, subject to rule 26.07.3, may present oral argument.
- 26.07.3 The time allocated to the parties for oral argument on the hearing of an application shall be as the Court orders or, in default of any order, shall be:
- (a) applicant—20 minutes; and
 - (b) respondent—20 minutes; and
 - (c) applicant in reply—5 minutes.

26.08 Discontinuance of application

- 26.08.1 An applicant may discontinue an application by filing a notice of discontinuance in Form 25 and serving the notice on the respondent.
- 26.08.2 Unless the Court or a Justice, or the Registrar, otherwise orders or directs, an applicant who discontinues an application shall pay the respondent's costs in respect of the application, and such costs shall be taxed, unless agreed.
- 26.08.3 Filing the notice of discontinuance shall be sufficient authority for the taxation of costs.
- 26.08.4 Rules 26.08.2 and 26.08.3 apply only to applications for removal in civil matters in which there is no statutory prohibition against, or limitation of, an award of costs in favour of the respondent.

26.09 Deemed abandonment of application by delay

- 26.09.1 Unless the Court or a Justice or the Registrar otherwise orders or directs, an application shall be deemed to have been abandoned if:
- (a) the applicant fails to comply with paragraph 26.01.1(c); or
 - (b) in a case where an application book is required—the applicant fails to prepare, file and serve an application book, as directed by the Registrar, within 4 months after filing the application.
- 26.09.2 On a request by the respondent, the Registrar shall provide a certificate of deemed abandonment and rules 26.08.2, 26.08.3 and 26.08.4, with the necessary adaptations, shall apply.

26.10 Directions by Registrar

- 26.10.1 At any time after an application is filed, the Registrar may give directions as to any matter that appears to the Registrar to be a convenient matter upon which to give directions.
- 26.10.2 The Registrar may:

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- (a) give directions under rule 26.10.1 without a hearing; or
 - (b) at the Registrar's discretion and at any time, issue a summons requiring the parties to an application to attend before the Registrar.

2 Part 41

Repeal the Part, substitute:

Part 41—Applications for leave or special leave to appeal

41.01 Initiation of application for leave or special leave to appeal

- 41.01.1 An application shall be in Form 23 and shall name as parties all those who were parties to the proceeding in the court below at the time of the judgment below.
- 41.01.2 An application shall be signed:
 - (a) by a legal practitioner on behalf of the applicant; or
 - (b) if the applicant is unrepresented—by the applicant.
- 41.01.3 An application:
 - (a) must not exceed 12 pages; and
 - (b) must be typed in at least 12 point (Times New Roman or equivalent font size) with line spacing of 1.5 lines.
- 41.01.4 An application shall be accompanied by the following:
 - (a) a copy of the sealed order or judgment of the court below;
 - (b) a copy of the reasons for the judgment below;
 - (c) if the judgment below determines an appeal or reviews a decision:
 - (i) a copy of the primary sealed order or judgment or decision; and
 - (ii) the reasons (if any) of the primary court or decision-maker that were before the court below;
 - (d) in a criminal case:
 - (i) the indictment; and
 - (ii) the transcript of entry of a plea of guilty or the summing up or charge; and
 - (iii) the transcript of entry of verdict; and
 - (iv) the Judge's remarks on sentencing;
 - (e) the notice of appeal or application for leave to appeal to the court below.
- 41.01.5 If an application is filed by an unrepresented applicant, the applicant must, at the time of filing the application, file:
 - (a) 2 additional copies of the application; and
 - (b) 2 additional copies of each document required by rule 41.01.4.

41.02 Time for filing application

- 41.02.1 An application shall be filed within 28 days after the judgment below was pronounced.
- 41.02.2 If an application is not filed within the time limited by rule 41.02.1, the applicant shall:

- (a) in the application, seek an order that compliance with that time limit be dispensed with; and
- (b) file and serve an affidavit explaining the failure to comply with rule 41.02.1.

41.02.3 Subject to any other direction that may be given by the Registrar, an application shall be filed in the office of the Registry in the State or Territory in which the proceedings in the court below were commenced.

41.03 Service

41.03.1 A copy of the application and of the documents required by rule 41.01.4 shall be served on each respondent in any manner provided by these Rules for the service of documents, or by leaving a copy at the address for service, if any, of the parties to be served in the proceedings in the court below, within 7 days after filing the application.

41.03.2 A copy of the application shall be lodged with the Prothonotary, Registrar or other proper officer of the court below within 7 days after filing the application.

41.03.3 Within 7 days after serving or lodging documents in accordance with rules 41.03.1 and 41.03.2, the applicant shall file an affidavit deposing to the time and manner of that service or lodging.

41.04 Appearance

A respondent shall, within 14 days after service of the application, file and serve on the applicant:

- (a) a notice of appearance in Form 7; or
- (b) a submitting appearance in Form 8.

41.05 Response

41.05.1 If the applicant is represented by a legal practitioner, a respondent shall file and serve a response within 21 days after service of the application.

41.05.2 If the applicant is unrepresented, any 2 Justices may direct that a respondent file and serve a response. If such a direction is given, the respondent shall file and serve a response within 21 days after the direction is given.

41.05.3 A response shall be in Form 23A.

41.05.4 A response shall be signed:

- (a) by a legal practitioner on behalf of the respondent; or
- (b) if the respondent is unrepresented—by the respondent.

41.05.5 A response:

- (a) must not exceed 10 pages; and
- (b) must be typed in at least 12 point (Times New Roman or equivalent font size) with line spacing of 1.5 lines.

41.06 Reply

41.06.1 An applicant may, within 7 days after service of a response, file and serve a reply.

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- 41.06.2 A reply shall be signed:
- (a) by a legal practitioner on behalf of the applicant; or
 - (b) if the applicant is unrepresented—by the applicant.
- 41.06.3 A reply:
- (a) must not exceed 5 pages; and
 - (b) must be typed in at least 12 point (Times New Roman or equivalent font size) with line spacing of 1.5 lines.

41.07 Application book

- 41.07.1 If there is a response to an application, there shall be an application book.
- 41.07.2 The contents of the application book shall be as follows:
- (a) each document required by rule 41.01.4;
 - (b) the application for leave or special leave;
 - (c) the response;
 - (d) any reply;
 - (e) any affidavit filed under rule 41.02.2 explaining a failure to comply with rule 41.02.1;
 - (f) any submitting appearance filed by a respondent;
 - (g) any other document directed by the Registrar to be included in the application book.
- 41.07.3 The documents in the application book shall be arranged in the following order:
- (a) in a civil case—documents in the primary court or tribunal, arranged in the following order:
 - (i) if a decision of a tribunal is the subject of review—the decision and any reasons for the decision;
 - (ii) reasons of the primary court;
 - (iii) sealed order or judgment of the primary court;
 - (b) in a criminal case—documents in the primary court, arranged in the following order:
 - (i) indictment;
 - (ii) transcript of entry of plea of guilty, or summing up or charge;
 - (iii) transcript of entry of verdict;
 - (iv) Judge’s remarks on sentencing;
 - (c) documents in the court below, arranged in the following order:
 - (i) notice of appeal or application for leave to appeal;
 - (ii) reasons;
 - (iii) sealed order or judgment;
 - (d) documents in this Court, arranged in the following order:
 - (i) application for leave or special leave to appeal;
 - (ii) any affidavit filed under rule 41.02.2 explaining a failure to comply with rule 41.02.1;
 - (iii) response;
 - (iv) any reply;
 - (v) any submitting appearance by a respondent.
- 41.07.4 The pages of the documents shall in every case be numbered consecutively.

- 41.07.5 The original pagination of any document reproduced in the application book, including any transcript of proceedings and the reasons for judgment in the court below, shall be retained.
- 41.07.6 Within 21 days after the time fixed for filing and serving a reply, or such other time as a Justice or the Registrar may direct, the applicant shall:
- (a) prepare and file 9 copies of the application book; and
 - (b) serve 3 copies of the application book on each respondent who filed a notice of appearance; and
 - (c) give an electronic copy of the application book to the Registrar.
- 41.07.7 The applicant shall prepare an application book in the same manner and form as is required in the case of an appeal book by rules 42.13.1 to 42.13.8.
- 41.07.8 The application book shall be prepared and produced in a manner satisfactory to the Registrar.

41.08 Determination of application

- 41.08.1 Any 2 Justices may determine an application without listing it for hearing and direct the Registrar to draw up, sign and seal an order determining the application.
- 41.08.2 If an application is listed for hearing, a party who is present at the hearing, or a legal practitioner on behalf of a party, may appear and, subject to rule 41.08.3, may present oral argument.
- 41.08.3 The time allocated to the parties for oral argument on the hearing of an application shall be as the Court orders or, in default of any order, shall be:
- (a) applicant—20 minutes; and
 - (b) respondent—20 minutes; and
 - (c) applicant in reply—5 minutes.

41.09 Discontinuance of application

- 41.09.1 An applicant may discontinue an application by filing a notice of discontinuance in Form 25 and serving the notice on the respondent.
- 41.09.2 Unless the Court or a Justice, or the Registrar, otherwise orders or directs, an applicant who discontinues an application shall pay the respondent's costs in respect of the application, and such costs shall be taxed, unless agreed.
- 41.09.3 Filing the notice of discontinuance shall be sufficient authority for the taxation of costs.
- 41.09.4 Rules 41.09.2 and 41.09.3 apply only to applications for leave or special leave to appeal in civil matters in which there is no statutory prohibition against, or limitation of, an award of costs in favour of the respondent.

41.10 Deemed abandonment of application by delay

- 41.10.1 Unless the Court or a Justice or the Registrar otherwise orders or directs, an application shall be deemed to have been abandoned if the applicant:
- (a) fails to comply with rules 41.03.1 and 41.03.2; or

(b) fails to comply with rule 41.07.6 within 4 months after filing the application.

41.10.2 On a request by the respondent, the Registrar shall provide a certificate of deemed abandonment and rules 41.09.2, 41.09.3 and 41.09.4, with the necessary adaptations, shall apply.

41.11 Directions by Registrar

41.11.1 At any time after an application is filed, the Registrar may give directions as to any matter that appears to the Registrar to be a convenient matter upon which to give directions.

41.11.2 The Registrar may:

- (a) give directions under rule 41.11.1 without a hearing; or
- (b) at the Registrar's discretion and at any time, issue a summons requiring the parties to an application to attend before the Registrar.

3 At the end of rule 44.08

Add:

44.08.2 The outline of oral submissions must be in Form 27F.

4 Schedule 1 (table of forms)

Repeal the table, substitute:

Forms		
Title	Form	Rule
Notice of a constitutional matter	1	5.01.3
Notice of intervention	1A	5.04.2
Judgment	2	8.01.1
Order	3	8.01.2
Consent	4	8.04.2
Arrest warrant	5	11.03.2
Committal warrant	6	11.03.3
Notice of appearance	7	23.01.3 26.03 31.01.1 41.04 42.06.2
Submitting appearance	8	23.02 26.03 41.04 42.06.3
Conditional appearance	9	23.03.2
Subpoena to give evidence	10	24.02.2
Subpoena to give evidence and produce documents	11	24.02.3
Application for an order to show cause	12	25.01
Writ of certiorari	13	25.06.3

Schedule 1 Amendments

Forms		
Title	Form	Rule
Writ of mandamus	14	25.08.2
Writ of habeas corpus	15	25.09.3
Writ of prohibition	16	25.20
Application for removal	17	26.01.1
Response to application for removal	18	26.04.2
Writ of summons	20	27.01
Summons	21	6.06.1 13.02.1 57.05.2
Election petition	22	30.01
Application for leave or special leave to appeal	23	41.01.1
Response to application for leave or special leave to appeal	23A	41.05.3
Notice of appeal	24	42.02.1
Notice of discontinuance	25	26.08.1 41.09.1 42.14.1
Notice of cross-appeal	26	42.08.2
Notice of contention	27	42.08.5
Appellant's submissions	27A	44.02.2
Appellant's chronology	27B	44.02.3
Intervener's submissions	27C	44.04.4
Respondent's submissions	27D	44.03.3
Appellant's reply	27E	44.05.5
Outline of oral submissions	27F	44.08.2
Bill of costs	28	54.02.1
Certificate of taxation	29	57.04.3
Ex parte application for leave to issue a proceeding that is subject to a vexatious proceedings order	30	6.06.3
Ex parte application for leave to issue a proceeding that is subject to the direction of a Justice under rule 6.07.2	31	6.07.3

5 Schedule 1 (Form 7 (heading))

Repeal the heading (including the note), substitute:

Form 7—Notice of appearance

(rules 23.01.3, 26.03, 31.01.1, 41.04 and 42.06.2)

6 Schedule 1 (Form 8 (heading))

Repeal the heading (including the note), substitute:

Form 8—Submitting appearance

(rules 23.02, 26.03, 41.04 and 42.06.3)

7 Schedule 1 (Form 17)

Repeal the form, substitute:

Form 17—Application for removal

(rule 26.01.1)

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

BETWEEN: AB
Applicant
and
CD
Respondent

APPLICATION FOR REMOVAL

The applicant applies for an order under section 40 of the *Judiciary Act 1903* removing [the whole or part] of the cause now pending in the [*court in which cause pending*] which is proceeding number [*number of proceeding in court in which cause pending*] between [*name all parties to cause pending*].

Part I: [*The precise order sought.*]

Part II: [*A concise statement of the constitutional or other question.*]

Part III: [*A brief statement of the factual background to the application.*]

Part IV: [*A brief statement of the applicant's argument in support of the removal.*]

Part V: [*Any reasons why an order for costs should not be made in favour of the respondent in the event that the application is refused.*]

Part VI: [*A list of the authorities on which the applicant relies, identifying the paragraphs at which the relevant passages appear.*]

Part VII: [*The particular constitutional provisions, statutes and statutory instruments applicable to the questions the subject of the application set out verbatim. If more than one page in length, this Part should be attached as an annexure.*]

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

.....(signed).....
(*Applicant or the legal practitioner representing the Applicant*)

To: The Respondent [*address*]

TAKE NOTICE: Before taking any step in the proceedings you must, within **14 DAYS** after service of this application, enter an appearance in the office of the Registry in which the application is filed, and serve a copy on the applicant.

THE APPLICANT IS REPRESENTED BY:

[*name of firm and address for service, telephone and facsimile numbers, and email address*]

OR

THE APPLICANT'S ADDRESS FOR SERVICE IS:

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

8 Schedule 1 (Forms 18 and 19)

Repeal the forms, substitute:

Form 18—Response to application for removal

(rule 26.04.2)

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

BETWEEN: AB Applicant
and
CD Respondent

RESPONSE

Part I: [*Reasons why an order for removal should/should not be made.*]

Part II: [*A brief statement of the factual issues in contention.*]

Part III: [*A brief statement of the respondent's argument.*]

Part IV: [*Any special order for costs sought by the respondent.*]

Part V: [*A list of the authorities on which the respondent relies, identifying the paragraphs at which the relevant passages appear.*]

Part VI: [*The particular constitutional provisions, statutes and statutory instruments applicable to the questions the subject of the application set out verbatim. If more than one page in length, this Part should be attached as an annexure.*]

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

.....(signed).....
 (Respondent or the legal practitioner representing
 the Respondent)

9 Schedule 1 (Form 23)

Repeal the form, substitute:

Form 23—Application for leave or special leave to appeal

(rule 41.01.1)

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

BETWEEN: AB
 Applicant
 and
 CD
 Respondent

APPLICATION FOR [LEAVE OR] SPECIAL LEAVE TO APPEAL

The applicant applies for [leave or] special leave to appeal from [*state part or whole*] of the judgment of [*state Court, Justice or Judge below*] given on [*state date*].

Part I: [*The proposed grounds of appeal and the orders that will be sought if leave or special leave is granted.*]

Part II: [*A concise statement of the leave or special leave questions said to arise.*]

Part III: [*A brief statement of the applicant's argument in support of the grant of leave or special leave.*]

Part IV: [*Any reasons why an order for costs should not be made in favour of the respondent in the event that the application is refused.*]

Part V: [*A list of the authorities on which the applicant relies, identifying the paragraphs at which the relevant passages appear.*]

Part VI: [*The particular constitutional provisions, statutes and statutory instruments applicable to the questions the subject of the application set out verbatim. If more than one page in length, this Part should be attached as an annexure.*]

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

.....(signed).....

(Applicant or the legal practitioner representing the Applicant)

To: The Respondent [*address*]

TAKE NOTICE: Before taking any step in the proceedings you must, within **14 DAYS** after service of this application, enter an appearance in the office of the Registry in which the application is filed, and serve a copy on the applicant.

THE APPLICANT IS REPRESENTED BY:

[name of firm and address for service, telephone and facsimile numbers, and email address]

OR

THE APPLICANT'S ADDRESS FOR SERVICE IS:

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

Form 23A—Response to application for leave or special leave to appeal

(rule 41.05.3)

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

BETWEEN:

AB

Applicant

and

CD

Respondent

RESPONSE

Part I: [*Reasons why leave or special leave should/should not be granted.*]

Part II: [*A brief statement of any factual issues in contention.*]

Part III: [*A brief statement of the respondent's argument.*]

Part IV: [*Any special order for costs sought by the respondent.*]

Part V: [*A list of the authorities on which the respondent relies, identifying the paragraphs at which the relevant passages appear.*]

Part VI: [*The particular constitutional provisions, statutes and statutory instruments applicable to the questions the subject of the application set out verbatim. If more than one page in length, this Part should be attached as an annexure.*]

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

.....(signed).....
*(Respondent or the legal practitioner representing
the Respondent)*

10 Schedule 1 (Form 24 (heading))

Repeal the heading (including the note), substitute:

Form 24—Notice of appeal

(rule 42.02.1)

11 Schedule 1 (Form 25 (heading))

Repeal the heading (including the note), substitute:

Form 25—Notice of discontinuance

(rules 26.08.1, 41.09.1 and 42.14.1)

12 Schedule 1 (after Form 27E)

Insert:

Form 27F—Outline of oral submissions

(rule 44.08.2)

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

BETWEEN: AB
Appellant
and
CD
Respondent

**APPELLANT’S/RESPONDENT’S/INTERVENER’S OUTLINE OF ORAL
SUBMISSIONS**

Part I: [*Certification that the outline or the redacted version of the outline (as the case
requires) is in a form suitable for publication on the internet.*]

Part II: [*An outline of the propositions that the party intends to advance in oral argument.*]

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

.....(signed).....

Name:

*[Senior legal practitioner
presenting the oral argument in Court, or the
party if unrepresented]*