



# HIGH COURT OF AUSTRALIA

## **Explanatory Statement** **High Court Amendment (Fees and Other Measures) Rules 2025** **28 February 2025**

These Amendment Rules of Court, signed by the Justices of the High Court of Australia on 28 February 2025 are made by the Justices under the *Judiciary Act 1903*, the *Commonwealth Electoral Act 1918* and the *High Court of Australia Act 1979*.

### **Amendments to Chapter 2 – Proceedings in the original jurisdiction of the Court**

The amendments are aimed at clarifying the circumstances in which applications made in the Court’s original jurisdiction may be determined on the papers. The amendments will enhance the efficiency of the process for the consideration and determination of applications and spare the parties the cost of preparing for and attending a hearing where the Court or a Justice considers that a hearing is not otherwise required.

#### **Part 25 – Mandamus, prohibition, certiorari, habeas corpus and quo warranto**

Rule 25.09.1 presently provides that the Court or a Justice may dismiss an application for a constitutional or other writ, without listing the application 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. The rule does not provide for the determination of an application for a constitutional or other writ on the papers where the application is dismissed on a different basis to that identified. Similarly, the rule does not contemplate the granting of an application without a hearing. Rule 25.09 is amended to ensure that the Court or a Justice may determine an application, without listing it for hearing, regardless of the outcome of the application or, if an application is to be dismissed, the grounds on which an application is dismissed.

#### **Part 26 – Applications for removal under section 40 of the Judiciary Act 1903**

Applications for removal of proceedings from another court are routinely determined by a Full Court of two or more Justices on the papers pursuant to rule 26.07. Where an application is made by an Attorney-General seeking to remove a cause arising under the *Constitution* or involving its interpretation the application is generally considered by a single Justice. It is more efficient for this type of application to be considered by a single Justice rather than referring the application to a Full Court because, provided there is a relevant constitutional cause pending in another court, there is no discretion to refuse an application by an Attorney-General, with an order for removal to be made “as of course” (see section 40(1) of the *Judiciary Act 1903* (Cth)). In these cases it may also be preferable for the Justice to make orders on the papers without requiring the legal representatives of the Attorney-General and the substantive parties to attend a hearing. Rules 26.07.1 and 26.07.1A do not include provision for the determination of applications for removal on the papers by a single Justice. Rules 26.07.1 and 26.07.1A are amended to provide that a single Justice may determine an application for removal, and publish reasons for the decision, without listing it for hearing.

**Amendments to Schedule 2 – Fees for work done and services performed**

Schedule 2 of the High Court Rules 2004 specifies the amount which solicitors, who are entitled to practise in the High Court, may charge and be allowed on taxation of costs by the Taxing Officer of the Court in respect of proceedings in the Court. The amounts in the Schedule were last varied by the *High Court Amendment (Fees) Rules 2023* (F2023L01522) made on 13 November 2023 and apply to work done and services performed by solicitors after 1 January 2024.

The Joint Costs Advisory Committee (JCAC) was established in 2007 to review annually and recommend variations in the quantum of costs contained in the Rules made by the High Court of Australia, the Federal Court of Australia, the Federal Circuit and Family Court of Australia (Division 1) and the Federal Circuit and Family Court of Australia (Division 2). It comprises representatives of those courts. In conducting its reviews, the JCAC applies a formula which has regard to movements in wages and salaries and other costs of solicitors' practices.

In its report the JCAC recommended an increase of 4.0% to the solicitors' costs provided for in the Rules of each Court. The High Court has accepted the recommendation of the Committee. The increases to the solicitors' costs provided in Schedule 2 will take effect on 1 March 2025 and will apply in respect of all work done and services performed by solicitors on or after 1 March 2025.

***Consultation***

The amendments to Part 25 and Part 26 will have no impact on the parties or their legal representatives other than to avoid the preparatory work and associated costs involved in attending unnecessary hearings. In these circumstances no consultation in relation to the amendments to Chapter 2 was necessary.

When the JCAC conducted its annual review of costs in 2024, the Committee wrote to the Commonwealth Attorney-General's Department, the Law Council of Australia, the National Association of Community Legal Centres and National Legal Aid inviting them, and their respective constituent bodies or State and Territory counterparts, to make submissions to the review. A notice of the review was also placed on the website of each court. The JCAC received submissions from the Law Council of Australia and from National Legal Aid. Following its review, the JCAC published its Seventeenth Report on Legal Practitioners' Costs in September 2024. Issues raised in submissions received by the Committee were addressed in the report.

***Statement of compatibility***

Section 8 of the *Legislation Act 2003* provides that Rules of Court made for the High Court of Australia are not legislative instruments for the purposes of that Act. The *Human Rights (Parliamentary Scrutiny) Act 2011* does not apply to any such Rules of Court and no statement of compatibility for the purposes of that latter Act is included in the Explanatory Statement.