



# HIGH COURT OF AUSTRALIA

## **Explanatory Statement** **High Court Amendment (2023 Measures) Rules 2023** **13 November 2023**

These Amendment Rules of Court, signed by the Justices of the High Court of Australia on 13 November 2023, are made by the Justices under the *Judiciary Act 1903*, the *Commonwealth Electoral Act 1918* and the *High Court of Australia Act 1979*.

### *Part 1 – Publication of reasons for decision*

The decisions of the Court in applications for special leave to appeal, applications for leave to appeal and applications for removal have previously been published by the Justices sitting in Court, in the absence of the parties, to pronounce orders and publish their written reasons for the decision in each application. The Justices have decided to publish their decisions on the Court's website rather than in open court. This will streamline the publication process and will ensure the publication of the Court's decisions is immediate and that the decisions are publicly accessible on the Court's website.

The amendments to rules 6.03, 26.07.1 and 41.08.1 enabling this new arrangement will apply in relation to applications decided on or after 1 December 2023.

### *Part 2 – Application books*

The Court has dispensed with the requirement to file application books in represented applications for special leave to appeal and applications for leave to appeal and in applications for removal. This will reduce by at least one month the time taken to prepare an application for referral to the Court for consideration. This will also reduce the work of and cost to the parties associated with the preparation and filing of the application book.

Where a represented party considers that a document not prescribed by the Rules is necessary for the Court's consideration of the application the party has previously sought a direction of the Registrar to include the document in the application book. To ensure the parties are still able to put this material before the Court in the absence of an application book rule 41.07 will be amended to provide a mechanism for filing an additional document as an exhibit to an affidavit. The affidavit must set out the reason or reasons for filing a document in addition to the documents required by the rules. The Court notes that the need to file additional documents will be limited to exceptional cases.

The amendments provided in this part of the Amendment Rules will apply in relation to applications filed on or after 1 December 2023.

*Part 3 – Notices of Appeal*

Rule 42.02.2 is amended to remove a reference to the draft notice of appeal furnished to the Court on the hearing of the application. This reference was made obsolete by a previous amendment to Part 41 of the *High Court Rules 2004* in which the application, draft notice of appeal and summary of argument were consolidated into one single form called an application for leave or special leave to appeal.

This amendment will apply in relation to notices of appeal filed on or after 1 December 2023.

*Consultation*

The Amendment Rules will have no impact on the parties or their legal representatives other than to reduce the work and costs previously associated with the preparation of application books. In these circumstances no consultation in relation to the amendments was necessary.

*Statement of compatibility*

Section 9 of the *Legislative Instruments 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.