



High Court Amendment Rules 2010 (No. 1)¹

Select Legislative Instrument 2010 No. 240

We, Justices of the High Court of Australia, make the following Rules of Court under the *Judiciary Act 1903*, *Commonwealth Electoral Act 1918*, *Nauru (High Court Appeals) Act 1976* and *High Court of Australia Act 1979*.

Dated 1 October 2010

R. S. FRENCH
W. M C. GUMMOW
K. M. HAYNE
J. D. HEYDON
S. M. CRENNAN
S. M. KIEFEL
V. M. BELL

Justices of the
High Court of Australia

A. PHELAN
Chief Executive and
Principal Registrar

1 Name of Rules

These Rules are the *High Court Amendment Rules 2010 (No. 1)*.

2 Commencement

These Rules commence on 1 January 2011.

3 Amendment of *High Court Rules 2004*

Schedule 1 amends the *High Court Rules 2004*.

Schedule 1 Amendments

(rule 3)

[1] Paragraph 1.08.1 (d)

after
the
insert
left

[2] Rule 1.09

substitute

1.09 Forms

A form prescribed by these Rules must be used, with any variations that are necessary or as the Registrar directs.

[3] Rules 2.03.1 to 2.03.3

after

Rules

insert

or a direction of the Registrar

[4] After rule 2.03.3

insert

2.03.4 The Registrar may refer to the Court or a Justice a failure to comply with a direction of the Registrar.

[5] Rule 4.04.1

omit

in December

[6] Rule 4.04.2

omit

in July

[7] Paragraph 5.03 (a)

after

rule 5.02

insert

within 2 days after service and

[8] Rules 6.01.1 and 6.01.2

omit

Court or a Justice

insert

Court, a Justice or the Registrar

[9] Rule 6.07

omit

summons

insert

summons, affidavit

[10] Rule 6.07

omit

Court or to be frivolous or vexatious,

insert

Court, to be frivolous or vexatious or to fall outside the jurisdiction of the Court,

[11] After rule 8.04.4

insert

8.04.5 For rule 8, the written consent need not be signed by:

- (a) a party who has not filed an appearance; or
- (b) a party who has filed a submitting appearance if the order consented to does not require the party to pay costs.

[12] After Part 12

insert

Part 13 Interlocutory applications

13.01 Interlocutory applications

This Part applies to an interlocutory or other application in a proceeding.

13.02 Form and service of interlocutory application

13.02.1 The application must be made by summons in Form 21.

13.02.2 The summons must:

- (a) be accompanied by an affidavit in support of the application; and
- (b) be served:
 - (i) at least 3 days before the day when the application is to be heard; or
 - (ii) within a shorter period ordered by the Court or a Justice.

13.03 Failure to attend

13.03.1 The Court or a Justice may hear the application if:

- (a) a person to whom a summons is addressed fails to attend; and
- (b) the Court or Justice is satisfied that the summons was duly served.

13.03.2 If the applicant fails to attend when the application is to be heard, the Court or a Justice may dismiss the application or make any other appropriate order.

[13] Rule 24.01.12

substitute

24.01.12 The person before whom an affidavit is to be sworn may attest the affidavit only if:

- (a) for a deponent who is blind or illiterate:
 - (i) the affidavit was first read to the deponent in the person's presence and the deponent appeared perfectly to understand it; and
 - (ii) the deponent made his or her signature or mark in the person's presence; and
 - (iii) the person certifies those facts in or below the jurat; or

- (b) for a deponent who has had the assistance of an interpreter:
 - (i) the interpreter has sworn that he or she has interpreted accurately to the deponent the contents of the affidavit and the oath administered to the deponent, and that the deponent appeared to understand perfectly the affidavit and the oath; and
 - (ii) the person certifies those facts in or below the jurat.

[14] Paragraph 25.03.1 (b)

omit
and

[15] Paragraph 25.03.1 (c)

omit
make.
insert
make; and

[16] After paragraph 25.03.1 (c)

- insert*
- (d) an outline of submissions prepared in accordance with rule 25.03.2.

[17] Rule 26.05

substitute

26.05 Reply

- 26.05.1 An applicant may file and serve a reply within 7 days after service of the respondent's summary of argument.
- 26.05.2 A reply must not exceed 5 pages.

-
- 26.05.3 A reply must be signed by:
- (a) a legal practitioner on behalf of the applicant; or
 - (b) if the applicant is unrepresented — by the applicant personally.

26.06 Application book and subsequent proceedings

- 26.06.1 An application book must be prepared, filed and served as directed by the Registrar.
- 26.06.2 Subject to any contrary order of the Court or a Justice, Part 41 applies to all proceedings in an application for an order for removal after the preparation and filing of an application book.
- 26.06.3 Without limiting rule 26.06.2, an application for an order for removal is to be determined, discontinued or taken to be abandoned as if it were an application for special leave under Part 41.

[18] Part 28

omit

[19] Rules 41.07.1 and 41.07.2

substitute

- 41.07.1 A summary of argument must:
- (a) not exceed 10 pages; and
 - (b) be signed by:
 - (i) a legal practitioner on behalf of the applicant or respondent; or
 - (ii) for an unrepresented party — by the party personally; and
 - (c) have annexed the documents mentioned in rule 41.09.7 as necessary.

[20] Rules 41.08.2 and 41.08.3

substitute

41.08.2 A reply must:

- (a) not exceed 5 pages; and
- (b) be signed by:
 - (i) a legal practitioner on behalf of the applicant; or
 - (ii) for an unrepresented applicant — by the applicant personally; and
- (c) have annexed the documents mentioned in rule 41.09.7 as necessary.

[21] Subparagraph 41.09.3 (c) (vi)

substitute

- (vi) reply (including any annexure);

[22] Rule 41.09.7

omit

attach

insert

annex

[23] Paragraph 41.09.8 (a)

omit

7

insert

9

[24] Paragraph 41.09.8 (b)

omit

supply 3 copies of the application book to

insert

serve 3 copies of the application book on

[25] Rule 41.10.4

substitute

41.10.4.1 If an unrepresented applicant does not comply with paragraph 41.10.3 (c), the application is taken to be abandoned unless the Court or a Justice orders or directs otherwise.

41.10.4.2 If the application is taken to be abandoned, the Registrar must, if asked by the respondent, give the respondent a certificate to that effect.

[26] Paragraph 42.02.2 (b)

omit

or a certificate

[27] Rule 42.03

substitute

42.03 Time for filing

A notice of appeal must be filed within 14 days after the latest of the following:

- (a) the grant of leave to appeal;
- (b) the grant of special leave to appeal;
- (c) the date of the judgment below.

[28] After 42.05.4

insert

42.05.5 Within 7 days after serving or lodging documents in accordance with rule 42.05.1, 42.05.2 or 42.05.3, the appellant must file an affidavit stating the time and manner of the service or lodgment.

[29] Rules 42.06.1 and 42.08.1

omit

14

insert

7

[30] Rule 42.10.1

omit

shall, within 14 days of the institution of an appeal,

insert

must, when the notice of appeal is filed,

[31] Paragraph 42.10.1 (b)

omit

Judge

insert

primary judge

[32] Rule 42.11.2

substitute

42.11.2 Within 14 days after filing the notice of appeal, the appellant must file a draft index of the proposed contents of the appeal book and serve it on each respondent who has filed a notice of appearance.

[33] Rule 42.12.3*omit*

7

insert

3

[34] Rule 42.13.6*after*

in the

insert

left

[35] Paragraph 42.13.12 (i)*omit*

appeal, or the certificate of appeal, if applicable;

insert

appeal;

[36] Rule 42.13.15*substitute*

42.13.15 Unless a Justice or the Registrar otherwise orders or directs, the appellant must, within 14 days after the day when the index is settled under rule 42.12:

- (a) file 12 copies of the appeal book; and
- (b) serve 3 copies of the appeal book on each respondent who has filed a notice of appearance.

[37] Rule 42.13.16

omit

with a

insert

containing an original

[38] After Part 43

insert

Part 44 Written and oral submissions

44.01 Application and definitions

44.01.1 This Part applies to:

- (a) appeals; and
- (b) applications for leave or special leave to appeal referred to an enlarged Court for hearing as if on appeal.

44.01.2 In this Part:

appellant includes a moving party before the Full Court.

intervener includes a person intervening or seeking leave to intervene or to be heard as *amicus curiae* before the Full Court.

respondent includes a defendant or other party opposing before the Full Court.

44.02 Written submissions — appellant

44.02.1 Unless otherwise directed by the Court or a Justice the appellant must, within 28 days after the grant of special leave or referral of an application to an enlarged Court:

- (a) file the original and 9 copies of its written submissions, not exceeding 20 pages, and chronology; and
- (b) serve a copy of each document on the respondent and any intervener.

44.02.2 The appellant's written submissions must be in Form 27A.

44.02.3 The appellant's chronology must be in Form 27B.

44.03 Written submissions — respondent

44.03.1 Unless otherwise directed by the Court or a Justice, the respondent must, within 21 days after service of the appellant's written submissions:

- (a) file the original and 9 copies of its written submissions, not exceeding 20 pages; and
- (b) serve a copy on the appellant and any intervener.

44.03.2 The respondent's submissions must address all submissions made by the appellant and by any interveners supporting the interests of the appellant.

44.03.3 The respondent's written submissions must be in Form 27D.

44.04 Written submissions — interveners

44.04.1 Unless otherwise directed by the Court or a Justice an intervener must:

- (a) file the original and 9 copies of its written submissions, not exceeding 20 pages; and
- (b) serve a copy on each party and any other intervener.

44.04.2 Unless otherwise directed by the Court or a Justice, an intervener must file and serve its written submissions within 7 days after written submissions by the party in support of whom the intervention is to be made are filed.

44.04.3 An intervener who intervenes in support of more than 1 party or without supporting any party must file and serve its written submissions within 7 days after the respondent's written submissions are filed.

44.04.4 An intervener's written submissions must be in Form 27C.

44.05 Written submissions in reply

- 44.05.1 The appellant may file a single written submission of no more than 5 pages in reply to all submissions made by:
- (a) the respondent (including submissions made by the respondent on any notice of cross-appeal); and
 - (b) interveners supporting the interests of the respondent.
- 44.05.2 Unless otherwise directed by the Court or a Justice, the appellant's written submissions in reply must be filed and served within 7 days after the respondent's written submissions are filed.
- 44.05.3 The respondent may file a single written submission of no more than 5 pages in length in reply to submissions made by appellant about any notice of cross-appeal.
- 44.05.4 Unless otherwise directed by the Court or a Justice, the respondent's written submissions in reply must be filed and served within 7 days after the appellant's written submissions in reply are filed.

44.06 Annotated form of written submissions

- 44.06.1 Each party or intervener must file and serve on the other parties and interveners, at least 7 days before the hearing of the appeal, the original and 9 copies of its written submissions annotated to refer to the pages of the appeal book that contain relevant documents, findings of fact and evidence.
- 44.06.2 The annotated written submissions must:
- (a) be signed by:
 - (i) the senior legal practitioner who is to present the case in Court; or
 - (ii) if a party is unrepresented — the party; and
 - (b) must include the name, telephone, fax and email address of the signatory and the date of filing.

44.07 Publication of written submissions and chronology

- 44.07.1 A written submission, including the annotated form of a written submission, and a chronology must:
- (a) include a certification that the submission and chronology is in a form suitable for publication on the Internet; or
 - (b) be accompanied by a redacted form of the submission and chronology suitable for publication on the Internet.

44.08 Outline of oral submissions

- 44.08.1 No later than the commencement of oral argument for a party or intervener, the party or intervener must give the Court, and other parties and interveners, an outline of the propositions that the party or intervener intends to advance in oral argument:
- (a) of no more than 3 pages; and
 - (b) stated sequentially; and
 - (c) related to the written submissions filed for the party or intervener.

[39] Rule 56.09.3

omit

rules 56.09.4 and 56.09.5,

insert

rules 56.09.4, 56.09.5 and 56.09.6,

[40] After rule 56.09.5

insert

- 56.09.6 If a fee would have been allowed to counsel for drawing or settling a document or for appearing as counsel, the Taxing Officer may allow to a party a sum the Taxing Officer considers reasonable as counsel's fee if:
- (a) the party is represented by counsel; and
 - (b) the party is unable to provide proof of payment of the fee to counsel; and

- (c) the party's solicitor gives an unconditional undertaking to the Court to pay the fee from any costs recovered.

[41] Paragraph 57.01.2 (c)

omit

taxation.

insert

taxation within 7 days after service.

[42] Rule 58.02.1

substitute

58.02.1 If a Taxing Officer has made an estimate under rule 57.01, a party filing a notice of objection must pay:

- (a) if, after taxation of the bill, the total of the professional charges and disbursements allowed is varied in the party's favour by at least a sixth of the estimate — costs of, and incidental to, the taxation that the Taxing Officer considers reasonable; or
- (b) in any other case — the costs of, and incidental to, the taxation (including any taxing fee).

[43] Rule 58.02.2

omit everything after

those

insert

steps as the Taxation Officer sees fit.

[44] Paragraph 58.04 (b)

after

order

insert

the party entitled to the costs or

[45] Schedule 1, Form 1*after*

Plaintiff/Appellant

insert

/Applicant

[46] Schedule 1, Form 1*omit**(Plaintiff/Appellant or solicitor for Plaintiff/Appellant)**insert**[Plaintiff/ Appellant/ Applicant or solicitor for Plaintiff/
Appellant/ Applicant]***[47] Schedule 1, Form 1***after*

To:

*insert**[Include Attorneys-General of the Commonwealth, the
States, the Australian Capital Territory and the Northern
Territory]***[48] Schedule 1, Forms 2, 3 and 4***after*

Plaintiff/Appellant

insert

/Applicant

[49] Schedule 1, Form 4

omit

(Plaintiff/Appellant or solicitor for Plaintiff/Appellant)

insert

*[Plaintiff/ Appellant/ Applicant or solicitor for Plaintiff/
Appellant/ Applicant]*

[50] Schedule 1, Form 7

after

/Applicant

insert

/Petitioner

[51] Schedule 1, Form 9

after

Plaintiff

insert

/Applicant

[52] Schedule 1, Form 9

after

Defendant

insert

/Respondent

[53] Schedule 1, Form 9

after

defendant

insert

/respondent

[54] Schedule 1, Form 9*omit**(Defendant or solicitor for Defendant)**insert**[Defendant/Respondent or solicitor for Defendant/
Respondent]***[55] Schedule 1, Form 18, Part IV***omit**granted**insert**granted with reference to section 35A of the Judiciary Act 1903***[56] Schedule 1, Form 21, heading***omit**(rules 28.02.1 and 57.05.2)**insert**(rules 13.02.1, 32.01.1 and 57.05.2)***[57] Schedule 1, Form 24***after*

REGISTRY

*insert***ON APPEAL FROM THE [Name of Court appealed from]****[or, where applicable, from a Justice]**

[58] Schedule 1, after Form 27*insert***Form 27A Appellant's submissions**

(rule 44.02.2)

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

BETWEEN: AB
Appellant
and
CD
Respondent

APPELLANT'S SUBMISSIONS

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

Part II: [*A concise statement of the issue or issues the appellant contends that the appeal presents.*]

Part III: [*Certification that the appellant has considered whether any notice should be given in compliance with section 78B of the Judiciary Act 1903.*]

Part IV: [*A citation of the authorised report of the reasons for judgment of both the primary and the intermediate court in the case (or, if there is no authorised report of a decision, the citation of any other report of that decision, and in the absence of any report, the Internet citation).*]

Part V: [*A narrative statement of the relevant facts found or admitted in the court from which the proceedings are brought with appropriate reference to the appeal book for the annotated version.*]

-
- Part VI:** [A succinct argument addressing the following points:
- (a) *the error or errors complained of in the court from which the proceedings are brought;*
 - (b) *the applicable legislation, principle or rule of law relied upon, with references to authority or legislation signifying their relevance to the appellant's argument;*
 - (c) *where relevant, an analysis of the rationale of the legislation, principle or rule;*
 - (d) *how the legislation, principle or rule applies to the facts or other relevant material in the case.]*

- Part VII:** [The applicable constitutional provisions, statutes and regulations as they existed at the relevant time, set out verbatim, and either:
- (a) *a statement that those provisions are still in force, in that form, at the date of making the submissions; or*
 - (b) *a copy of each later provision amending or repealing those provisions, together with any relevant transitional provision.*
- If more than one page in length this Part should be attached as an annexure.]*

- Part VIII:** [Set out the **precise** form of orders sought by the appellant.]

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

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

[Senior legal practitioner
presenting the case in Court,
or appellant if unrepresented]

Name:
Telephone:
Facsimile:
Email:

Form 27B Appellant's chronology
(rule 44.02.3)

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

BETWEEN: AB
Appellant
and
CD
Respondent

APPELLANT'S CHRONOLOGY

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

Part II: [*List of principal events leading to the litigation, with appropriate references to the appeal book in respect of findings of fact and evidence relating to those events.*]

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

.....(signed).....
[*Senior legal practitioner presenting the case in Court, or appellant if unrepresented*]

Name:
Telephone:
Facsimile:
Email:

Form 27C Intervener's submissions

(rule 44.04.4)

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

BETWEEN: AB
Appellant
and
CD
Respondent

INTERVENER'S SUBMISSIONS

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

Part II: [*A statement of the asserted basis of intervention and the party or parties in support of whom the intervention is, or is sought to be, made.*]

Part III: [*Where necessary, why leave to intervene or to be heard as amicus curiae should be granted.*]

Part IV: [*The applicable constitutional provisions, statutes and regulations as they existed at the relevant time, set out verbatim, and either:*

- (a) *a statement that those provisions are still in force, in that form, at the date of making the submissions; or*
- (b) *a copy of each later provision amending or repealing those provisions, together with any relevant transitional provision.*

If more than one page in length this Part should be attached as an annexure.]

Part V: *[A statement addressing so many of the issues presented by the appeal as the intervener desires to make the subject of submissions to the Court.]*

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

.....(signed).....
*[Senior legal practitioner
presenting the case in Court]*

Name:
Telephone:
Facsimile:
Email:

Form 27D Respondent's submissions

(rule 44.03.3)

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

BETWEEN: AB
Appellant
and
CD
Respondent

RESPONDENT'S SUBMISSIONS

- Part I:** [*Certification that the submission or the redacted version of the submission (as the case requires) is in a form suitable for publication on the Internet.*]
- Part II:** [*A concise statement of the issue or issues the respondent contends that the appeal presents.*]
- Part III:** [*Certification that the respondent has considered whether any notice should be given in compliance with section 78B of the Judiciary Act 1903.*]
- Part IV:** [*A statement of any material facts set out in the appellant's narrative of facts or chronology that are contested with appropriate reference to the appeal book for the annotated version.*]
- Part V:** [*A statement that the appellant's statement of applicable constitutional provisions, statutes and regulations is accepted or, if not, a statement identifying the respect or respects in which it is alleged to be wrong or incomplete.*]
- Part VI:** [*A statement of argument in answer to the argument of the appellant and any intervener supporting the appellant.*]

Part VII: [*Where applicable, a statement of the respondent's argument on the respondent's notice of contention or notice of cross-appeal.*]

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

.....(signed).....
[*Senior legal practitioner
presenting the case in Court,
or respondent if unrepresented*]

Name:
Telephone:
Facsimile:
Email:

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.