



HIGH COURT OF AUSTRALIA

HIGH COURT AMENDMENT (CONFIDENTIAL DOCUMENTS) RULES 2016 23 AUGUST 2016 EXPLANATORY STATEMENT

These Amendment Rules of Court, signed by the Justices on 23 August 2016, 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.

The Amendment Rules complement Practice Direction No. 1 of 2016 which the Justices issued on 7 July 2016 relating to applications for suppression orders and non-publication orders made under Part XAA of the *Judiciary Act* 1903. The amendment Rules are intended to ensure that the terms of any suppression order, non-publication order, or other confidentiality order made by a court in relation to documents filed in the High Court are identified at the time of filing the documents and that the provisions in the High Court Rules permitting inspection and copying of documents on the court file do not impede the operation of such orders.

The Amendment Rules amend Part 1 and Part 4 of the High Court Rules as follows:

Part 1 – Preliminary

Rule 1.08 Documents

Rule 1.08.6 has been added to require a party filing a document containing information which is the subject of a suppression order, a non-publication order, or any other confidentiality order made by a court to file with the document a copy of the relevant order.

Part 4 – Time, recesses and the Registry

Rule 4.07.4 Custody and inspection of documents in the Registry

Rule 4.07.4 permits, on payment of the prescribed fee, the inspection and copying of documents filed in an office of the Registry, with the exception of certain documents. The current exceptions are evidence provided in affidavits not yet received in evidence (Rule 4.07.4(a)) and documents containing information disclosing the identity of a person where disclosure of the identity of that person is prohibited (Rule 4.07.4(b)). The amendment Rules add to the exceptions to Rule 4.07.4 documents containing information the subject of a suppression order, non-publication order, or any other confidentiality order (Rule 4.07.4(c)) or the subject of an application, not yet determined, for such an order (Rule 4.07.4(d)).



Commencement

The amendment provisions commence on the day after the Rules are registered.

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.