



# High Court Amendment (Constitutional Writs and Other Matters) Rules 2018

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

Dated 9 October 2018

S. M. Kiefel

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G. A. A. Nettle

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Justices of the High Court of Australia

P. A. Lynch  
Chief Executive and  
Principal Registrar



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## 1 Name

These Rules are the *High Court Amendment (Constitutional Writs and Other Matters) Rules 2018*.

## 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 November 2018.	1 November 2018

Note: This table relates only to the provisions of these Rules as originally made.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Each instrument that is specified in a Schedule to these Rules is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to these Rules has effect according to its terms.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**

### **Part 1—Main amendments**

#### *High Court Rules 2004*

##### **1 Part 25**

Repeal the Part, substitute:

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

#### **25.01 Form of an application for a constitutional or other writ**

- 25.01.1 An application for a constitutional or other writ must:
- (a) be in Form 12; and
  - (b) be accompanied by one or more affidavits in support.
- 25.01.2 The application must be signed:
- (a) by a legal practitioner on behalf of the plaintiff; or
  - (b) if the plaintiff is unrepresented—by the plaintiff.
- 25.01.3 The 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.

#### **25.02 Time for filing an application for a writ of mandamus or certiorari**

- 25.02.1 An application for a writ of mandamus commanding a person to hear and determine a matter must be filed within 2 months after the day of the refusal to hear.
- 25.02.2 An application for a writ of certiorari must be filed:
- (a) within 6 months after the day the decision sought to be quashed was made;  
or
  - (b) if any other law requires the application to be filed within a shorter period—within that shorter period.

#### **25.03 Time for service**

An application, together with the affidavits in support, must be served within 7 days from the day the application is filed.

Note: For other rules relating to service, see Part 22.

#### **25.04 Parties to an application**

- 25.04.1 A party who makes an application is a plaintiff, and each other party is a defendant.

- 25.04.2 A defendant must be referred to in the title of the proceeding:
- (a) if the defendant is an officer of the Commonwealth, and a writ of mandamus or prohibition is sought against the officer—by the name of the office held; or
  - (b) in any other case—by name, or by the name of the office held by the defendant, or both.

### **25.05 Affidavits in support**

- 25.05.1 An affidavit filed in support of an application must:
- (a) state concisely:
    - (i) the factual background to the proceeding; and
    - (ii) the decision or conduct the subject of the application; and
  - (b) if the application is not filed within an applicable time limit, explain the failure to comply with that time limit.
- 25.05.2 The affidavit or affidavits in support of an application must exhibit such documents as are necessary for the proper determination of the application.

### **25.06 Time for filing appearance**

An appearance by a defendant must be filed within 14 days from service of the application.

Note: For the requirement to file and serve the appearance, see Part 23.

### **25.07 Response**

- 25.07.1 A defendant must file and serve a response within 28 days from service of the application.
- 25.07.2 The response must be in Form 12A.
- 25.07.3 The response must be signed:
- (a) by a legal practitioner on behalf of the defendant; or
  - (b) if the defendant is unrepresented—by the defendant.
- 25.07.4 The 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.
- 25.07.5 If the defendant disputes or seeks to supplement any facts set out in the application or any affidavit in support of the application, the defendant must, at the time of filing the response, file and serve an affidavit setting out those facts.

### **25.08 Reply**

- 25.08.1 A plaintiff may, within 7 days from service of a response, file and serve a reply.
- 25.08.2 The reply must be signed:
- (a) by a legal practitioner on behalf of the plaintiff; or
  - (b) if the plaintiff is unrepresented—by the plaintiff.
- 25.08.3 The 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.

### **25.09 Determination of application**

- 25.09.1 The Court or a Justice may dismiss an application, 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.
- 25.09.2 A Justice may make an order under rule 25.09.1, and may publish reasons for the decision, other than in open court.
- Note: For the power of a Justice sitting in Chambers to exercise the jurisdiction of the Court, see section 16 of the *Judiciary Act 1903*.
- 25.09.3 Without limiting rule 28.01, on hearing an application the Court or a Justice may:
- (a) if the plaintiff fails to attend the hearing, dismiss the application on that ground or make any other appropriate order; or
  - (b) if the application does not disclose an arguable basis for the relief sought or is an abuse of the process of the Court, dismiss the application on that ground; or
  - (c) finally determine the whole or a part of the application; or
  - (d) refer the whole or a part of the application for further hearing by a Full Court.

### **25.10 Discontinuance of application**

- 25.10.1 A plaintiff may discontinue an application by filing a notice stating the extent of the discontinuance.
- 25.10.2 If the discontinuance is with the consent of the other parties, the notice must be indorsed with the consent of each other party.
- 25.10.3 On the day a notice of discontinuance is filed, the plaintiff must serve a copy of the notice on each other party.
- 25.10.4 Unless the Court or a Justice otherwise orders, a plaintiff discontinuing an application must pay the costs of each defendant to the time of the discontinuance, and such costs are to be taxed unless agreed.

### **25.11 Stay**

Without limiting rule 8.07, the Court or a Justice may at any time grant, dissolve or vary a stay of the proceeding to which an application relates.

### **25.12 Directions by Registrar**

- 25.12.1 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.
- 25.12.2 The Registrar may:
- (a) give directions under rule 25.12.1 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.

### **25.13 Writ of mandamus**

- 25.13.1 Unless otherwise ordered by the Court or a Justice, a writ of mandamus must command the person to whom it is addressed to do the act in question or show cause why it has not been done.
- 25.13.2 A writ of mandamus must be in Form 13.
- 25.13.3 A writ of mandamus must be served on the person to whom it is addressed.
- 25.13.4 Unless otherwise ordered by the Court or a Justice, a writ of mandamus must be returnable within 14 days from service of the writ.
- 25.13.5 The person to whom a writ of mandamus is addressed must, within the time allowed by the writ, file and serve on the plaintiff an affidavit stating:
- (a) that the act commanded by the writ has been done; or
  - (b) the reason why it has not been done.
- 25.13.6 If the act commanded by a writ of mandamus has not been done, the Court or a Justice may issue a writ of peremptory mandamus to enforce the command contained in the original writ, or may make any other orders necessary.
- 25.13.7 If the Court or a Justice directs that the command sought in an application for a writ of mandamus shall be peremptory in the first instance, the command may be expressed in an order of the Court without the issue of a writ and has the same effect as a peremptory writ of mandamus.

### **25.14 Writ of prohibition**

A writ of prohibition must be in Form 14.

### **25.15 Writ of certiorari**

A writ of certiorari must be in Form 15.

### **25.16 Writ of habeas corpus**

- 25.16.1 On application for a writ of habeas corpus, the Court or a Justice may order:
- (a) the production of a detained person, for the purposes of that person's examination as a witness; or
  - (b) the release or other disposition of a person;
- without issuing a writ of habeas corpus.
- 25.16.2 A writ of habeas corpus must be in Form 16.
- 25.16.3 A writ of habeas corpus or an order made under rule 25.16.1 must be served:
- (a) personally; or
  - (b) by leaving the original with an employee, agent or officer of the person to whom the writ or order is addressed at the place where the person is detained.

- 25.16.4 The person to whom a writ of habeas corpus is addressed must, within the time allowed by the writ, file and serve on the plaintiff an affidavit deposing to the ground or grounds of detention of the person named in the writ.

### **25.17 Writ of quo warranto**

If a person wrongfully claims to hold an office under the Commonwealth, the Court or a Justice may grant an injunction restraining the person from purporting to act in that office and may, if the case so requires, declare the office to be vacant.

### **2 Rule 27.08.1**

Omit “The”, substitute “By leave of the Court or a Justice, the”.

### **3 Rule 27.09.4**

Repeal the rule.

### **4 At the end of Chapter 2**

Add:

## **Part 28—Summary dismissal and other orders**

### **28.01 Summary dismissal and other orders**

- 28.01.1 If a plaintiff or applicant has not done any act required to be done by or under these Rules, or otherwise has not prosecuted a proceeding with due diligence, the Court or a Justice may:
- (a) order that the proceeding be dismissed for want of prosecution; or
  - (b) fix a time for the doing of an act and, at the same time, order that upon non-compliance the proceeding shall stand dismissed for want of prosecution or, subsequently and in the event of non-compliance, order that it be so dismissed; or
  - (c) make any other order as may seem just, including as to the costs of the proceeding.
- 28.01.2 If a proceeding generally, or any claim in a proceeding:
- (a) does not disclose a cause of action; or
  - (b) is scandalous, frivolous or vexatious; or
  - (c) is an abuse of the process of the Court; or
  - (d) has no reasonable prospect of success;
- the Court or a Justice may stay the proceeding or a claim made in the proceeding or may give judgment in the proceeding or in relation to a claim made in the proceeding.
- 28.01.3 The Court or a Justice may make an order under rule 28.01.1 or 28.01.2:
- (a) on application by a defendant or respondent on notice; or
  - (b) of the Court’s or the Justice’s own motion after notice has been given by the Registrar to each plaintiff or applicant.

## Part 2—Consequential amendments

### *High Court Rules 2004*

#### **5 Rule 9.01.1**

Omit “application for an order to show cause and a writ of summons shall”, substitute “application for a constitutional or other writ, or a writ of summons, must”.

#### **6 Rule 20.01.1**

Omit “shall be commenced in the Court by filing an application for an order to show cause”, substitute “must be commenced in the Court by filing an application for a constitutional or other writ”.

#### **7 Rule 20.02**

Omit “application for an order to show cause” (wherever occurring), substitute “application for a constitutional or other writ”.

#### **8 Rule 22.01.1**

Omit “application for an order to show cause and a writ of summons shall”, substitute “application for a constitutional or other writ, or a writ of summons, must”.

#### **9 Rule 27.03.2**

Omit “application for an order to show cause”, substitute “an application for a constitutional or other writ,”.

#### **10 Schedule 1 (table items dealing with Forms 12 to 16)**

Repeal the items, substitute:

Application for a constitutional or other writ	12	25.01.1
Response to application for a constitutional or other writ	12A	25.07.2
Writ of mandamus	13	25.13.2
Writ of prohibition	14	25.14
Writ of certiorari	15	25.15
Writ of habeas corpus	16	25.16.2

#### **11 Schedule 1 (Forms 12 to 16)**

Repeal the forms, substitute:

### **Form 12—Application for a constitutional or other writ**

Note: See rule 25.01.1.

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

BETWEEN: [Plaintiff's full name]  
Plaintiff

and

[Defendant's full name]  
Defendant

**APPLICATION FOR A CONSTITUTIONAL OR OTHER WRIT**

The plaintiff applies for the relief set out in Part I below on the grounds set out in Part II below.

Part I: [The precise orders sought, including any extension of time sought.]

Part II: [A concise statement of the grounds of the application.]

Part III: [Reasons why the application should not be remitted to another court or, if the plaintiff submits that it should be remitted, identify the court to which it should be remitted.]

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

Part V: [A brief statement of the plaintiff's argument in support of the application.]

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

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

Part VIII: [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).....  
(Plaintiff or legal practitioner representing the plaintiff)

To: The Defendant  
[Defendant's address for service]

**TAKE NOTICE:** Before taking any step in the proceeding you must, within **14 DAYS** from 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 plaintiff.

THE PLAINTIFF IS REPRESENTED BY:  
[name of firm and address for service, telephone and fax numbers, and email address ]

or

THE PLAINTIFF'S ADDRESS FOR SERVICE IS:  
[If the plaintiff is self-represented—address for service, telephone and fax numbers, and email address]

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## Form 12A—Response to application for a constitutional or other writ

Note: See rule 25.07.2.

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

BETWEEN: [Plaintiff's full name]  
Plaintiff

and

[Defendant's full name]  
Defendant

### RESPONSE TO APPLICATION FOR A CONSTITUTIONAL OR OTHER WRIT

Part I: [Reasons why the orders sought by the plaintiff should/should not be made.]

Part II: [Reasons why the application should/should not be remitted to another court or referred in whole or in part for hearing by a Full Court.]

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

Part IV: [A brief statement of the defendant's argument.]

Part V: [Any special order for costs sought by the defendant.]

Part VI: [A list of the authorities on which the defendant 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).....  
(Defendant or legal practitioner representing the defendant)

## Form 13—Writ of mandamus

Note: See rule 25.13.2.

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

BETWEEN: [Plaintiff's full name]  
Plaintiff

and

[*Defendant's full name*]  
Defendant

### WRIT OF MANDAMUS

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

To [Name]  
of [Address]

THIS WRIT COMMANDS you to [*set out act to be done*].

YOU ARE REQUIRED TO make a return to this Writ by filing an affidavit on or before [*date*] deposing to whether you have done what you are commanded to do by this Writ or why it has not been done.

TAKE NOTICE that disobeying this Writ is a contempt of Court which may be punished by imprisonment, fine or both.

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

.....  
Registrar

### Form 14—Writ of prohibition

Note: See rule 25.14.

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

BETWEEN: [Plaintiff's full name]  
Plaintiff

and

[Defendant's full name]  
Defendant

### WRIT OF PROHIBITION

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

To [Name]  
of [Address]

THIS WRIT PROHIBITS YOU from further proceeding [*state what is prohibited*].

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

.....  
Registrar

## Form 15—Writ of certiorari

Note: See rule 25.15.

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

BETWEEN: [Plaintiff's full name]  
Plaintiff

and

[Defendant's full name]  
Defendant

### WRIT OF CERTIORARI

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

To [Name]  
of [Address]

THIS WRIT REQUIRES you on or before [*date*] to send to the High Court of Australia [ ] Registry at [*address*] [*state the record or decision to be quashed*] together with this Writ for that Court to deal with as it sees fit.

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

.....  
Registrar

## Form 16—Writ of habeas corpus

Note: See rule 25.16.2.

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

BETWEEN: [Plaintiff's full name]  
Plaintiff

and

[*Defendant's full name*]  
Defendant

**WRIT OF HABEAS CORPUS**

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

To [Name]  
of [Address]

HAVE the plaintiff [*or name of person detained*] before Justice ..... at [*address of Court*] at [*time*] [*am or pm*] on [*date*] and thereafter to submit to the further order of the Court or a Justice as to the custody of that person (*the detainee*).

YOU ARE REQUIRED to make a return to this Writ by filing an affidavit deposing to the ground or grounds of detention of the detainee and serving a copy on the plaintiff on or before the time referred to above.

TAKE NOTICE that disobeying this Writ is a contempt of Court which may be punished by imprisonment, fine or both.

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

.....  
Registrar

## **Part 3—Transitional provisions**

### *High Court Rules 2004*

#### **12 In the appropriate position in Chapter 6**

Insert:

## **Part 61—Transitional provisions relating to the High Court Amendment (Constitutional Writs and Other Matters) Rules 2018**

### **61.01 Amendments relating to constitutional and other writs**

Unless the Registrar otherwise directs, the amendments made by items 1 and 5 to 11 of Schedule 1 to the *High Court Amendment (Constitutional Writs and Other Matters) Rules 2018* apply in relation to a proceeding:

- (a) commenced, but not completed, before 1 November 2018; or
- (b) that commences on or after 1 November 2018.

### **61.02 Amendments relating to summary dismissal and other orders**

Unless the Registrar otherwise directs, the amendments made by items 3 and 4 of Schedule 1 to the *High Court Amendment (Constitutional Writs and Other Matters) Rules 2018* apply in relation to a proceeding:

- (a) commenced, but not completed, before 1 November 2018; or
- (b) that commences on or after 1 November 2018.

### **61.03 Amendments relating to questions of law**

The amendment of rule 27.08.1 made by item 2 of Schedule 1 to the *High Court Amendment (Constitutional Writs and Other Matters) Rules 2018* applies in relation to a question of law to be stated on or after 1 November 2018.

### **61.04 Repeal of this Part**

This Part is repealed at the start of 1 November 2019.