

HIGH COURT OF AUSTRALIA

New Special Leave Application Rules

On 22 November 1993, the Justices made a Rule of Court, introducing a new set of rules to govern the conduct of both civil and criminal special leave applications. These rules come into effect on Tuesday, 1 February 1994.

The new order 69A introduces a number of significant changes to the rules, including the imposition of time limitations on oral argument and the requirement of written summaries of argument prior to the hearing.

There are also new rules governing the conduct of special leave applications by unrepresented persons.

The amendments to Order 69A continue the practice begun in 1986 of introducing procedures which will facilitate the management of the Court's case flow.

The proposed rules eliminate the preliminary examination of criminal special leave applications by a panel of three Justices, and the subsequent allocation of an application to an "A" or "B" list. This procedure entailed more work for the Justices than was originally envisaged when the Practice Direction was introduced in 1 April 1991.

Features of the Rules

1. Common Procedure for civil and criminal applications

There will be a common procedure for civil and criminal special leave applications.

Rule 3 replaces the affidavit in support of the application with a specified list of accompanying documents. Subrule (f) provides for a concise statement containing similar information to the previously required to be sworn or affirmed.

2. Written summary of argument prior to hearing

The concept of a written summary of argument, a requirement for criminal applications under the practice direction, has been modified and introduced into the rules. The parties will be required by Rule 8 to file and serve written summaries of their argument prior to the hearing of the application: 10 days prior for applicants, and 5 days for respondents. By requiring a respondent to answer the applicant's case in advance, the Justices will be assisted in having the issues which arise for determination clearly defined.

3. Time limitations on oral argument

Rule 9 introduces time limitations on the presentation of oral argument: 20 minutes for each party, and 5 minutes for the applicant's reply. There is provision for the Court to extend time, although it is not envisaged that the Court would routinely exercise the power. Counsel would have to show a convincing reason before an extension of time would be granted. The imposition of time limitations has reluctantly been forced on the court by the increase in the volume of civil and criminal special leave applications coming to the court.

4. Unrepresented persons

Rules 13 and 14 introduce a procedure for the presentation by unrepresented persons of their applications for leave or special leave to appeal, and the determination of that application by the Court.

Rule 13 provides that an unrepresented person is in the first instance required to present his or her argument in the form of a written case. The written case is not to be served on any

person who was a party to proceedings in a court below unless directed by the Court or Justice.

The purpose of this rule is to filter those cases from the system which have no merit whatsoever, with a consequential saving in the resources of the Court and with reduced costs to respondents to applications.

Rule 14 provides that in those cases where the respondent has been directed to respond to an unrepresented applicant's written argument in writing, the application may be determined, at the discretion of the Court or a Justice on the papers, or after an oral hearing.

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President's Column

The President is currently on leave. Nevertheless, he takes this opportunity from afar to wish all members a very Merry Christmas and a Happy and prosperous New Year.



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GROPE HAMILTON, a City based law firm, is available to undertake agency work in most litigious and non-litigious legal areas.

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