

Order 51 *Judiciary Act 1903* — section 78B

1 Notice of a constitutional matter — Form 53

- (1) Where a proceeding pending in the Court involves a matter arising under the Constitution or involving its interpretation, within the meaning of section 78B of the *Judiciary Act 1903* the party whose case raises the matter shall file a notice of a constitutional matter in the Registry at the proper place.
- (2) Notice of a constitutional matter shall state:
 - (a) specifically the nature of the matter; and
 - (b) the facts showing that the matter is one to which subrule (1) applies.
- (3) The notice of a constitutional matter shall be in or substantially in the form numbered 53 in Schedule 1.

2 Notices of a constitutional matter

The party whose case raises the constitutional matter, or such other party as the Court may direct, must file notice of a constitutional matter and serve a copy of the notice on all other parties and the Attorneys-General of the Commonwealth, the States, the Australian Capital Territory and the Northern Territory:

- (a) if the matter arises before the directions hearing — not later than 2 days before the date of the directions hearing;
- (b) if the matter arises at the directions hearing — within such time as the Court or a Judge directs; or
- (c) otherwise if the matter arises before the date fixed for trial — not later than 10 days before that date.

3 Affidavit of service

The party whose case raises the constitutional matter shall file an affidavit of service of the notice of a constitutional matter proving compliance with paragraph 2 (a), (b) or (c) not later than the day before:

- (a) the date appointed for the directions hearing;
- (b) the date ordered by the Court or a Judge at the directions hearing; or
- (c) the date fixed for trial.

4 Additional papers for intervening Attorneys-General

The party whose case raises the constitutional matter shall provide copies of any additional papers filed in the matter to any intervening Attorney-General as soon as practicable after notice of the intervention is given to the party.

Order 52 Appeals

Division 1AA General

1 Interpretation

In this Order unless the contrary intention appears:

application means application for leave to appeal, and *applicant* has a corresponding meaning.

Court means the Court exercising its appellate or related jurisdiction under Part III Division 2 of the Act.

judgment means the judgment, decree, order, or sentence of a court or judge under appeal, or in respect of which leave to appeal is sought.

2 Service

Where in this Order service is required of a document it may be effected:

- (a) in the case of a notice of appeal or an application for leave to appeal:
 - (i) by serving a signed and sealed copy of the document personally on the party to be served; or
 - (ii) by delivering a signed and sealed copy of the document to that party's address for service in the proceeding in the court appealed from; and
- (b) in the case of any other document:
 - (i) by serving it in the manner prescribed in paragraph (a) above; or
 - (ii) by serving it in the manner prescribed in Order 7, rule 4 for service of documents which need not be served personally.

2AA Exercise of appellate jurisdiction (Act s 25)

An application mentioned in subsection 25 (2) of the Act must be heard and determined by a single Judge unless:

- (a) a Judge directs that the application be heard and determined by a Full Court; or
- (b) the application is made in a proceeding that has already been assigned to a Full Court, and the Full Court considers it is appropriate for it to hear and determine the application.

2AB Certain applications and matters may be dealt with without an oral hearing

- (1) The Court may order that:
 - (a) an application mentioned in paragraph 25 (2) (b) or (c) of the Act; or
 - (b) a matter mentioned in subsection 25 (2B) of the Act; or
 - (c) an application for leave to appeal under Division 1; or
 - (d) an application for leave to appeal under subrule 10 (2); or
 - (e) an application for leave to file and serve a notice of appeal under subrule 15 (2);

be dealt with without an oral hearing.

- (2) If the Court makes an order under subrule (1) in relation to an application or matter, each party to the application or matter must file a summary of argument and serve a copy of the summary on each other party.
- (3) A summary of argument must comply with rule 2AC.

2AC Summary of argument

- (1) A summary of argument must:
 - (a) not exceed 10 pages; and
 - (b) include the title of the proceeding; and
 - (c) include the name of the party by whom it is to be filed; and
 - (d) consist of paragraphs numbered consecutively; and
 - (e) state as concisely as possible:
 - (i) if the summary of argument is to be filed by the applicant — the factual background to the application; and
 - (ii) if the summary of argument is to be filed by a respondent — the factual issues in dispute; and
 - (iii) the claims to be argued by the party concerned; and
 - (iv) the reasons relied upon for those claims.
- (2) So far as is practicable:
 - (a) a reference in a summary of argument to a part of a transcript of proceedings of a court must be given by page and line number; and
 - (b) each relevant part of the transcript must be attached to the summary.
- (3) A summary of argument must be clear and legible, and securely fastened.

Division 1 Leave to Appeal from judgments other than interlocutory judgments of the Court

2A Application of Division

This Division applies to an application for leave to appeal from a judgment other than an interlocutory judgment of the Court.

4 Form of application — Form 54

- (1) An application shall be made in or substantially in the form numbered 54 in Schedule 1.
- (2) An application shall be accompanied by an affidavit showing:
 - (a) the nature of the case;
 - (b) the questions involved; and
 - (c) the reasons why leave should be given.
- (3) An application must include a statement indicating whether the applicant wishes to have the application dealt with without an oral hearing.

5 Time for filing application

- (1) This rule applies only to applications where an appeal from the judgment lies to the Court only with leave.
- (2) An application shall be filed within 21 days after:
 - (a) the judgment was pronounced; or
 - (b) a later date fixed for that purpose by the court or judge who pronounced the decision.
- (3) Where an application is not filed within the time limited by subrule (2), an order shall be sought in the application that compliance with subrule (2) be dispensed with.

6 Service

An application and accompanying affidavit shall be served on each person who was a party to or given leave to intervene in the proceeding in the court appealed from within 5 days of the filing of the application.

7 Appearance by respondent

If there is a respondent to the application, the respondent must enter an appearance before taking any step in the proceedings.

7A Objection to application being dealt with without oral hearing

If a respondent objects to an application being dealt with without an oral hearing, the respondent must:

- (a) file a notice to this effect; and
- (b) serve a copy of the notice on each other party to the application.

8 Time for filing and service of affidavits

A respondent who desires to adduce evidence shall file and serve his affidavits within 14 days of the service of the application on him.

9 Setting down for hearing

The application shall be set down for hearing (or, if the application is to be determined on written cases, for decision) by the Registrar at the proper place, who shall notify the parties of the date appointed for such hearing (or decision).

Division 1A Leave to appeal from interlocutory judgments of the Court

10 Leave to appeal from interlocutory judgments of the Court

- (1) An application for leave to appeal from an interlocutory judgment of the Court may be made orally to the Judge who has pronounced the judgment at the time of its pronouncement.
- (2) If an application has not been made in accordance with subrule (1), an application may be made by motion on notice.

- (2A) Order 19 applies to an application under subrule (2), and the notice of motion must be filed:
- (a) if the interlocutory judgment is in the nature of a decision on a question under Order 29 — within 21 days after the date on which the interlocutory judgment was pronounced; and
 - (b) in any other case — within 7 days after the date on which the interlocutory judgment was pronounced;
or within such further time as the Court or a Judge may allow.
- (3) An application under subrule (2) must include a statement indicating whether the applicant wishes to have the application dealt with without an oral hearing.
- (4) If a respondent objects to an application being dealt with without an oral hearing, the respondent must:
- (a) file a notice to this effect; and
 - (b) serve a copy of the notice on each other party to the application.

10A Revocation or variation of a grant of leave by a single judge

- (1) This rule applies if leave to appeal has been granted.
- (2) The Full Court or, for an appeal from a judgment of the Federal Magistrates Court that is to be heard by a Judge, the Judge may:
 - (a) revoke the leave to appeal, wholly or in part; or
 - (b) impose a condition on the leave to appeal; or
 - (c) vary a condition of the leave to appeal.

Division 2 Appeals

11 Interpretation

If the Court directs that a party other than the appellant shall have the carriage of the appeal, or of a proceeding in or arising out of an appeal, these Rules apply as if that party were included in the description ‘appellant’.

12 Form and filing of notice of appeal — Form 55

- (1) An appeal is instituted by filing a notice of appeal in accordance with Form 55.
- (2) A notice of appeal must be filed in an appropriate Registry.
- (3) In this rule:
appropriate Registry means:
 - (a) if the appeal is from a judgment of a Court of a State or Territory — the District Registry in that State or Territory; or
 - (b) if the appeal is from a single Judge of the Court — the Registry at the proper place; or
 - (c) if the appeal is from a judgment of the Federal Magistrates Court — the District Registry in the State or Territory where the judgment was delivered; or
 - (d) in any other case — the Principal Registry or an appropriate District Registry; or
 - (e) a Registry that, before or after the filing of any document in the appeal, the Court or a Judge orders is an appropriate Registry.

12A Certification of merits of appeal commencing migration litigation

- (1) For the purposes of section 486I of the *Migration Act 1958*, a lawyer must not file a notice of appeal commencing migration litigation unless the notice includes, or is accompanied by, a certificate in accordance with Form 56B signed by the lawyer.
- (2) In this rule:
lawyer has the meaning given by section 486K of the *Migration Act 1958*.
migration litigation has the meaning given by section 486K of the *Migration Act 1958*.

13 Title of proceeding

- (1) A notice of appeal and all subsequent proceedings in an appeal shall be entitled 'In the Federal Court of Australia' with the name of the Registry in which they are filed, 'On Appeal From' the court from which the appeal is brought, naming it, and shall also be entitled as between the party appellant and the party respondent.
- (2) The notice of appeal shall state:
 - (a) whether the whole or part only, and what part, of the judgment is appealed from;
 - (b) briefly, but specifically, the grounds relied upon in support of the appeal; and
 - (c) what judgment the appellant seeks in lieu of that appealed from.
- (3) If the appeal is brought by leave of the Court:
 - (a) the notice of appeal shall so state; and
 - (b) a copy of the order giving leave to appeal shall be annexed to the notice of appeal filed in the court appealed from pursuant to subrule 16 (1), and to every copy of the notice of appeal served pursuant to subrule 16 (2).

14 Parties

- (1) Each party to the proceeding in the court appealed from who is affected by the relief sought by a notice of appeal or is interested in maintaining the judgment under appeal shall be joined as a party appellant or respondent to the appeal.
- (2) The Court or a Judge may order the addition or removal of any person as a party appellant or respondent to an appeal.
- (3) A person shall not be made an appellant without his consent.

14AA Interveners

- (1) The Court may give leave to a person (the *intervener*) to intervene in the appeal, on the terms and conditions, and with the rights, privileges and liabilities (including liabilities for costs), determined by the Court.
- (2) In deciding whether to give leave, the Court must have regard to:
 - (a) whether the intervener's contribution will be useful and different from the contribution of the parties to the appeal; and
 - (b) whether the intervention might unreasonably interfere with the ability of the parties to conduct the appeal as they wish; and
 - (c) any other matter that the Court considers relevant.

- (3) The role of the intervener is solely to assist the Court in its task of resolving the issues raised by the parties.
- (5) When giving leave, the Court must specify the form of assistance to be given by the intervener and the manner of participation of the intervener, and, in particular, must specify:
 - (a) the matters that the intervener may raise; and
 - (b) whether the intervener's submissions are to be oral, in writing, or both.

14A Appearance by respondent

Where there is a respondent to the appeal, the notice of appeal shall bear a note that before taking any step in the proceedings, the respondent must enter an appearance in the Registry and the respondent shall enter an appearance accordingly unless he has already entered a notice of appearance pursuant to rule 7.

15 Time for filing and serving notice of appeal

- (1) The notice of appeal shall be filed and served:
 - (a) within 21 days after:
 - (i) the date when the judgment appealed from was pronounced;
 - (ii) the date when leave to appeal was granted; or
 - (iii) any later date fixed for that purpose by the court appealed from; or
 - (b) within such further time as is allowed by the Court or a Judge upon application made by motion upon notice filed within the period of 21 days referred to in the last preceding paragraph.
- (2) Notwithstanding anything in the preceding subrule, the Court or a Judge for special reasons may at any time give leave to file and serve a notice of appeal.
- (3) An application for leave under subrule (2) must:
 - (a) be in accordance with Form 54A; and
 - (b) include a statement indicating whether the applicant wishes to have the application dealt with without an oral hearing; and
 - (c) be accompanied by an affidavit setting out:
 - (i) the nature of the matter; and
 - (ii) the factual and legal issues in dispute; and
 - (iii) the reasons why leave should be given.
- (4) If a respondent objects to an application being dealt with without an oral hearing, the respondent must:
 - (a) file a notice to this effect; and
 - (b) serve a copy of the notice on each other party to the application.

16 Filing in courts and service upon parties

- (1) Where the court appealed from is the Court of a State or Territory, a copy of the notice of appeal shall be filed in the office of the Registrar, Master or other proper officer of that court.
- (2) The notice of appeal shall be served upon each person who was a party to or given leave to intervene in the proceeding in the court appealed from.

- (3) The Court may direct that the notice of appeal be served on any other person.

17 Stay

- (1) An appeal to the Court shall not:
 - (a) operate as a stay of execution or of proceedings under the judgment appealed from; or
 - (b) invalidate any intermediate act or proceedings;except so far as the Court or a Judge or the court below may direct.
- (2) The Court may vary or vacate any direction of the Court or the court below referred to in subrule (1).
- (3) An application for a direction of the Court or a Judge under subrule (1) shall be made to the Court or a Judge by motion upon notice, and may be made whether or not a similar application has been made to the court below. An application for a direction under subrule (2) shall be made to the Court by motion upon notice, and may be made whether or not a similar application has been made to the court below.

18 Competency of appeal

- (1) A respondent may move on notice at any time for an order dismissing an appeal as incompetent.
- (2) Upon the hearing of the motion, the burden of establishing the competency of the appeal is on the appellant.
- (3) If a respondent does not move under subrule (1) but the appeal nevertheless is dismissed by the Court as incompetent, the respondent shall not, unless the Court otherwise orders, receive any costs of the appeal, and the Court may order that he pay the appellant any costs of the appeal proving useless or unnecessary.

19 Discontinuance of appeal

- (1) An appellant may file and serve a notice of discontinuance:
 - (a) at any time before the hearing of the appeal, without the leave of the Court; or
 - (b) at the hearing, or after the hearing and before judgment is pronounced or made, with the leave of the Court.
- (1A) If a notice of discontinuance is filed and served under subrule (1), the appeal is abandoned.
- (2) The notice of discontinuance filed by an appellant under subrule (1) does not affect any other appellant in the appeal.
- (3) A party filing a notice of discontinuance under subrule (1) shall be liable to pay the costs of the other party or parties occasioned by the appeal.
- (4) A party whose costs are payable under subrule (3) may tax the costs and if the taxed costs are not paid within 14 days after service of the certificate of taxation may enter judgment for the taxed costs.

20 Security for costs

Unless the Court or a Judge otherwise directs no security for costs of an appeal to the Court shall be required.

21 Amendment by supplementary notice

- (1) A notice of appeal may, before the date of the appointment made under rule 24, be amended without leave by filing a supplementary notice.
- (2) A party who files a supplementary notice under subrule (1) shall serve and file it in accordance with rule 16 as if it were a notice of appeal.
- (3) The Court may allow a notice of appeal to be amended on such terms and conditions as the Court thinks fit.

22 Cross-appeal

- (1) A respondent who desires to appeal from a part of the judgment or to seek a variation of a part of the judgment, need not institute a substantive appeal, but he shall:
 - (a) within 21 days after the service upon him of the notice of appeal, or within such further time as the Court or a Judge fixes, file in the Registry a notice of cross-appeal; and
 - (b) serve a copy of the notice upon the appellant and any other person affected by the relief which he seeks.
- (2) The notice of cross-appeal shall state what part of the judgment he cross-appeals from or contends should be varied, and shall state briefly, but specifically, the grounds of the cross-appeal and:
 - (a) the relief which he seeks in lieu of the order cross-appealed; or
 - (b) the variation of that order which he seeks.
- (3) If the respondent proposes to contend that the judgment should be affirmed on grounds other than those relied on by the court below, but does not seek a discharge or variation of any part of the judgment, the respondent need not file a notice of cross-appeal, but must:
 - (a) file a notice of the respondent's contention within 21 days after the service upon the respondent of the notice of appeal, or within such further time as the Court or a Judge fixes; and
 - (aa) serve a copy of the notice on the appellant; and
 - (b) give notice to the appellant of the record of evidence or documents before the court below relating to the contention, for inclusion in the appellant's draft index of appeal papers; and
 - (c) at the appointment to settle the appeal papers, request the Registrar to include the record of evidence or documents in the appeal papers.

23 Retention of exhibits

- (1) Where an appeal from a judgment lies, by leave or without leave, to the Court, the officer of the court below who has custody of the exhibits in the proceeding, shall, unless the court below otherwise orders, retain the exhibits:
 - (a) for 21 days after the date when the judgment is pronounced; or
 - (b) if within the period of 21 days leave to appeal to the Court from the judgment is granted,

for a period of 21 days after leave is granted.

- (2) Upon an appeal to the Court being instituted:
 - (a) the proper officer of the court below or the associate to the judge below, shall make out and certify a list of exhibits; and
 - (b) the exhibits, the list, and any other document before the court below, shall be delivered or transmitted to the Registry at the proper place.
- (3) Where an exhibit cannot be so delivered or transmitted, the associate or officer shall, in his certificate, state the circumstances and give such information as he can to enable the Registrar to cause the exhibit to be available to the Court.
- (4) The Registrar shall retain the documents obtained under subrules (2) and (3) until the disposal of the appeal and shall thereupon return them to the officer or persons from whom he obtained them.

24 Appointment to settle

- (1) On filing the notice of appeal, the appellant must make an appointment to settle the appeal papers.
- (2) The appellant must serve notice of the appointment on each person on whom the notice of appeal is served.
- (3) The notice of appointment may be subscribed to the notice of appeal.
- (4) Unless the Court or a Judge otherwise orders, this rule does not apply to an appeal from a judgment of the Federal Magistrates Court.

Note Rule 24A deals with the procedure for an appeal from a judgment of the Federal Magistrates Court.

24A Appeal from a judgment of the Federal Magistrates Court

Unless the Court or a Judge otherwise orders, a notice of appeal from a judgment of the Federal Magistrates Court must state a date for a directions hearing or a date for the final hearing of the appeal.

26 Content of appeal papers

The appeal papers must:

- (a) consist of the documents mentioned in the following table, in the order that they appear in the table; and
- (b) be divided into Parts A, B and C as shown in the table.

Item	Document
Part A	
1	Title page
2	The index to Part A
3	The originating application and pleadings, including each relevant notice of motion (if any)
4	If the court below was hearing an appeal from a tribunal or the board: <ol style="list-style-type: none">(a) the reasons for the decision of the tribunal or board; and

Item Document

(b) the formal decision of the tribunal or board; and

(c) any notice of appeal to the court below

5 The reasons for the judgment of the court below

6 The sealed orders of the court below

7 The notice of appeal

8 Any notice of cross-appeal or any notice of contention

9 Any submitting appearance

10 The certificate of correctness mentioned in paragraph 28C (1) (a)

Part B

11 Title page

12 The index to Part B

13 The transcript of relevant oral evidence

14 Each additional relevant transcript (if any)

Part C

15 Title page

16 The index to Part C

17 A chronological list of all documents received in evidence, showing the date and page number of each document

18 Each affidavit containing relevant evidence, followed by each document exhibited or annexed to the affidavit, in the order in which the documents were lettered or numbered in the affidavit

19 Each relevant exhibit, other than an exhibit mentioned in item 18, in the order in which the exhibits were lettered or numbered as exhibits in the court below

20 If there is a list of exhibits in the transcript — that list

21 Relevant testimony received in evidence that was taken on commission or before an examiner

22 Each relevant interrogatory and answer, to the extent that those documents were received in evidence

23 Each relevant affidavit of a document, to the extent that the affidavit was received in evidence

27 Filing and service of draft indexes of appeal papers

At least 7 days before the date appointed for settling the appeal papers, the appellant must file in the Registry, and serve on the respondent, each of the following:

(a) a draft index of each Part of the appeal papers;

(b) a chronological list of all documents received in evidence that the appellant proposes to reproduce in the appeal papers, including documents exhibited or annexed to affidavits.

28 Text of oral judgment or summing up

- (1) If a party proposes to include the text of a Judge's oral judgment or summing up in the appeal papers, the party must:
 - (a) submit the text to the Judge for correction; and
 - (b) ask the Registrar for a certificate stating that the party has submitted the text for correction.
- (2) The text of a Judge's oral judgment or summing up may be included in the appeal papers only if the text is accompanied by a certificate mentioned in paragraph (1) (b).

28A Settlement of appeal papers

- (1) At the appointment to settle the appeal papers the Registrar must:
 - (a) settle the appeal papers in accordance with subrule (2); or
 - (b) refer the appeal papers to the Court or a Judge for settling.
- (2) If paragraph (1) (a) applies, the Registrar must:
 - (a) determine the documents and matters to be included in the appeal papers; and
 - (b) determine:
 - (i) the order of inclusion of the appeal papers; and
 - (ii) any other matters about the preparation of copies of the appeal papers that he or she considers to be appropriate; and
 - (c) settle the indexes in accordance with rules 26 and 28B; and
 - (d) determine the number of copies of the appeal papers required; and
 - (e) obtain an estimate of the duration of the hearing from each party; and
 - (f) if practicable:
 - (i) fix a date for a hearing; or
 - (ii) list the appeal for hearing in appellate sittings of the Court.

28B Preparation of appeal papers

- (1) The title page of each Part of the appeal papers must include:
 - (a) the title of the proceeding, including the title of the court from which the appeal is brought; and
 - (b) the name and address for service of the legal practitioner for each party.
- (2) The index of each Part of the appeal papers must show the date and page number of each document included in that Part.
- (3) The numbering of the pages of Parts A and C of the appeal papers must:
 - (a) be legible and distinct from any other numbering; and
 - (b) begin with the number 1.
- (4) If Part A or C of the appeal papers consists of more than one volume, the page numbers must continue consecutively from one volume to the next volume.
- (5) The pages of Part B of the appeal papers must be numbered in accordance with the official transcript page numbers.

- (6) The appeal papers need not be in bound and printed form but must be clear and legible and securely fastened.

28C Filing of appeal papers

- (1) The appellant must file:
 - (a) a copy of the appeal papers with a certificate, signed by each party or the party's legal practitioner, stating that each Part of the appeal papers has been examined and is correct; and
 - (b) the number of copies of the appeal papers determined by the Registrar under paragraph 28A (2) (d).
- (2) The Registrar may refuse to accept appeal papers that do not comply with these Rules.

29 Setting down appeal

- (1) Unless an appeal is set down or listed for hearing at the appointment to settle the appeal papers pursuant to paragraph 27 (e), the appellant shall set the appeal down for hearing in accordance with this rule.
 - (2) Unless otherwise ordered by the Court or a Judge an appeal shall be heard at the proper place.
 - (3) Unless otherwise ordered by the Court or a Judge an appeal shall be set down for hearing at the first sittings of the Court in its appellate jurisdiction appointed to be held at the place of hearing after the expiration of 6 weeks from the institution of the appeal.
 - (4) An appeal shall be set down at least 21 days before the day appointed for the commencement of the sittings.
 - (5) Within 7 days after being notified of the date of the hearing of an appeal, the appellant must:
 - (a) file in the Registry a notice in accordance with Form 44A; and
 - (b) serve a copy of the notice on all other parties to the appeal.
- Note* See Part 2 of the *Federal Court of Australia Regulations 2004* in relation to setting-down fees.
- (5A) If an appellant does not comply with subrule (5), the Registrar must:
 - (a) so advise the respondent forthwith; and
 - (b) give notice to the appellant that the Court may, of its own motion, make an order under subrule 38 (1).
 - (6) The Court or a Judge, if satisfied that it is expedient to do so, may at any time order that an appeal be heard at a place and or time other than that provided for by this rule.

30 Written submissions

- (1) Subject to subrule (2) a party to an appeal may serve on the other parties a notice that he proposes to prepare and file written submissions.
- (2) Where a date for the hearing of the appeal has been fixed, a party shall not, unless the Court or a Judge otherwise orders, give a notice under subrule (1) later than 14 days before that date.

- (3) Where a notice under subrule (1) is served on any party, he may, by notice filed within 2 days after service on him of the notice under subrule (1), object to the use of written submissions.
- (4) A party filing a notice of objection under subrule (3) shall, on the day of filing, serve the notice on each other party.
- (5) Upon the filing of a notice of objection under subrule (3), the Registrar shall forthwith obtain the direction of the Chief Justice or the senior Judge available, and communicate it to the parties.

31 Directions

- (1) The Court may direct the preparation of written submissions.
- (2) The Registrar must serve notice on the parties of a direction under subrule (1).

32 Preparation

- (1) Subject to any determination under subrule 30 (5), upon service of a notice under subrule 30 (1), each party shall prepare written submissions.
- (2) Upon service of notice of a direction under rule 31, each party shall prepare written submissions.
- (3) Written submissions:
 - (a) shall be divided into paragraphs numbered consecutively;
 - (b) shall state concisely:
 - (i) the circumstances out of which the appeal arises;
 - (ii) the contentions to be urged by the party concerned; and
 - (iii) the reasons relied upon; and
 - (c) shall, so far as practicable, refer to matter in the copies of appeal papers by page number, and shall not extract that matter.

33 Filing and lodgment

- (1) Each party required to prepare written submissions shall, not more than 10 days after service on him of a notice under rule 30 or under rule 31:
 - (a) file his written submissions; and
 - (b) lodge with the Registrar such number of copies of the written submissions as the Registrar may direct.
- (2) A party filing written submissions under subrule (1) shall, on the day of filing, serve notice of the filing on each other party.
- (3) A written submission shall not be available for inspection until all parties have filed their submissions.

34 Service

When all parties have filed their written submissions, each party shall serve 3 copies of his written submissions on each other party.

35 Criminal cases

- (1) In criminal cases an appellant may present his case and his argument to the Court in writing if he so desires, and, if he does so, it is not necessary for him to appear or to be represented upon the hearing of the appeal.
- (2) An appellant who is in custody is not entitled to be present on the hearing of his appeal, or of his application for leave to appeal, without the leave of the Court.
- (3) The Court or a Judge may, upon such terms as it thinks fit, admit an appellant to bail pending the hearing of his appeal or his application for leave to appeal.

36 Further evidence on appeal

- (1) This rule applies to any application to the Court to receive evidence in a proceeding on an appeal additional to evidence in the court below.
- (2) This rule applies unless the Court otherwise directs.
- (3) The application shall be made by motion on the hearing of the appeal without filing or serving notice of the motion.
- (4) The grounds of the application shall be stated in an affidavit.
- (5) Any evidence necessary to establish the grounds of the application, and the evidence which the applicant wants the Court to receive shall be given by affidavit.
- (6) The applicant shall file any affidavit not later than 21 days before the hearing of the appeal.
- (7) The evidence of any other party to the appeal shall unless the Court or a Judge otherwise orders be given by affidavit filed not later than 14 days before the hearing of the appeal.
- (8) A party to the appeal shall, not later than the time limited for him to file an affidavit under this rule:
 - (a) lodge as many copies of the affidavit as the Registrar may direct; and
 - (b) serve 3 copies of the affidavit on each other party to the appeal.

37 Expediting appeals

- (1) The Court or a Judge may at any time make such orders as appear just for expediting of the appeal.
- (2) A party requiring leave to appeal may move on notice before the Court for an order that the application for leave to appeal be heard concurrently with or immediately before the hearing of the appeal, and for such consequential orders as may be necessary.

38 Time; want of prosecution

- (1) Where an appellant has not done any act required to be done by or under these Rules, or otherwise has not prosecuted his appeal with due diligence, the Court may:
 - (a) order that the appeal shall be dismissed for want of prosecution;
 - (b) fix a time peremptorily for the doing of the act and at the same time order that upon non-compliance the appeal 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.
- (2) The Court may not make an order under subrule (1) unless notice of the proposed order has been served on the appellant.
- (3) An order under paragraph (1) (b) may be varied at any time before the appeal stands dismissed for want of prosecution, and in special circumstances may be varied or revoked after that time.

38A Absence of party

- (1) If a party is absent when an appeal is called on for hearing, the Court may:
 - (a) order that the hearing not proceed unless the appeal is again set down for hearing or such other steps are taken as the Court directs; or
 - (b) adjourn the hearing; or
 - (d) proceed with the hearing, either generally or in relation to any claim for relief in the appeal.
- (2) If the Court proceeds with the hearing under paragraph (1) (d), the Court may:
 - (a) set aside or vary any order made after so proceeding; and
 - (b) give directions for the further conduct of the appeal.

Note See also subsection 25 (2B) of the Act in relation to the failure of an appellant to attend a hearing relating to an appeal.

39 Appeals in criminal cases from Supreme Courts of a Territory

- (1) The Judges constituting a Full Court or a majority of them may during the course of hearing an appeal against conviction or sentence request the Supreme Court Judge of the Territory from whose judgment, order or sentence an appeal is brought to the Court to forward to the Registrar for the information of the Judges hearing the appeal a report on any specified aspect.
- (2) The Judge may when so requested give a report on any aspect of the case specified in the request.
- (3) The Judge's report shall not be available for inspection by the parties or any other person except on the direction of the Court or a Judge.

40 Order for production of prisoner (Form 46A)

- (1) In the case of an appeal against conviction or sentence where a prisoner is in lawful custody, the Court or a Judge may make:
 - (a) an order requiring the production of the prisoner; and
 - (b) an order, as the Court or Judge considers appropriate, in relation to the continuing custody of the prisoner.
- (2) An order under subrule (1) may, if the Court or Judge considers it appropriate, be in accordance with Form 46A.

41 Reference to Court by single Judge

In any rule in this order where power is conferred on the Court or a Judge, a single Judge may refer a question to the Court if he considers it appropriate.

Order 53 ***Administrative Appeals Tribunal Act 1975***

1 Interpretation

In this Order unless the contrary intention appears:

appropriate Registry means a District Registry in the State or Territory in which the Tribunal heard the matter.

Tribunal means the Administrative Appeals Tribunal.

Registrar of the Tribunal means the Registrar of the Tribunal, and includes the Deputy Registrar in the Registry in which the matter before the Tribunal is pending, or other officer for the time being discharging the duties of such Registrar or Deputy Registrar.

2 Form and filing notice of appeal — Form 55A

- (1) An appeal to the Court from a decision of the Tribunal shall be instituted by filing a notice of appeal which shall be in or substantially in the form numbered 55A in Schedule 1.
- (2) A notice of appeal must be filed in an appropriate Registry.
- (3) Before or after the filing of a notice of appeal, the Court or a Judge may order that a nominated Registry is the appropriate Registry for that appeal.

2A Certification of merits of appeal from a migration decision

- (1) For the purposes of section 486I of the *Migration Act 1958*, a lawyer must not file a notice of appeal commencing migration litigation unless the notice includes, or is accompanied by, a certificate in accordance with Form 56B signed by the lawyer.
- (2) In this rule:
lawyer has the meaning given by section 486K of the *Migration Act 1958*.
migration litigation has the meaning given by section 486K of the *Migration Act 1958*.

3 Title of proceedings

- (1) A notice of appeal and all subsequent proceedings in an appeal shall be entitled ‘In the Federal Court of Australia’ with the name of the Registry in which they are filed, ‘On Appeal From’ the Division of the Tribunal from which the appeal is brought and shall also be entitled as between the party applicant and the party respondent.
- (2) The notice of appeal shall be signed by the applicant or his solicitor and shall state:
 - (a) the decision of the Tribunal from which the appeal is brought, the members constituting the Tribunal and the date when the decision was made;
 - (b) the question or questions of law to be raised on the appeal;
 - (c) the order sought; and
 - (d) briefly, but specifically, the grounds relied upon in support of the order sought.

- (3) The Court may on such terms and conditions as the Court thinks fit, allow a notice of appeal to be amended.
- (4) On the hearing of an appeal, the applicant shall not, without the leave of the Court, raise any question of law or rely on any ground in support of the order sought other than those stated in the notice of appeal.

4 Appearance

Where there is a respondent to the appeal, the notice of appeal shall bear a note that before taking any step in the proceedings the respondent must enter an appearance in the Registry.

5 Parties

- (1) A party who commences a proceeding in the original jurisdiction of the Court under this order shall be an applicant and a party against whom the proceeding is commenced shall be a respondent.
- (2) Each party to the proceeding in the Tribunal who is affected by the order sought by a notice of appeal or is interested in maintaining the decision under appeal shall be joined as a respondent to an appeal.
- (3) The Court may order the addition or removal of any person as an applicant or respondent to an appeal.
- (4) A person shall not be made an applicant without his consent.

6 Filing and service of notice of appeal

- (1) Within the time specified in paragraph 44 (2A) (a) of the *Administrative Appeals Tribunal Act 1975*, the party desiring to appeal from the decision shall file a notice of appeal in the appropriate Registry.
- (2) Within 7 days after the filing of the notice of appeal the applicant shall serve a copy of the notice of appeal upon all the other parties to the proceeding before the Tribunal and upon the Registrar of the Tribunal.

7 Extension of time

- (1) Application may be made to the Court or a Judge for an extension of the time specified in subsection 44 (2A) of the *Administrative Appeals Tribunal Act 1975* for the filing or serving of a notice of appeal either before or after the expiration of the specified time.
- (2) Such application shall be made in or substantially in the form numbered 55B in Schedule 1.
- (3) An application shall be accompanied by an affidavit showing:
 - (a) the nature of the case;
 - (b) the questions involved; and
 - (c) the reason why an extension of time should be given.

8 Security for costs

- (1) The Court may, in special circumstances, order that such security for costs of appeal to the Court be given as it thinks fit.

- (2) Subject to subrule (1), no security for costs of an appeal to the Court shall be required.

9 Stay

- (1) An application pursuant to section 44A of the *Administrative Appeals Tribunal Act 1975* for an order staying or otherwise affecting the operation or implementation of a decision subject to appeal shall be made to the Court or a Judge by motion upon notice and such motion may be made returnable upon the date fixed for the directions hearing.
- (2) Such an application may in an urgent case be made *ex parte*.

10 Documents to be forwarded

- (1) Within 21 days from the service of the notice of appeal upon the Registrar of the Tribunal there shall be forwarded to the Registry at the proper place:
 - (a) all documents referred to in paragraph 46 (1) (a) of the *Administrative Appeals Tribunal Act 1975*;
 - (b) a copy of the decision of the Tribunal;
 - (c) where the Tribunal gave reasons in writing for its decision, a copy of the reasons;
 - (d) where a transcript or notes of proceedings before the Tribunal were taken, that transcript or those notes; and
 - (e) a list of the documents forwarded specifying the documents which were before the Tribunal and specifying the documents (if any) in respect of which:
 - (i) the Tribunal has made an order under subsection 35 (2) of the *Administrative Appeals Tribunal Act 1975*;
 - (ii) a certificate of the Attorney-General is in force under subsection 28 (2) of the *Administrative Appeals Tribunal Act 1975*; and
 - (iii) a certificate of the Attorney-General is in force under subsection 36 (1) of the *Administrative Appeals Tribunal Act 1975* and indicating whether an order was made by the Tribunal with respect to such documents under subsection 36 (3) of the *Administrative Appeals Tribunal Act 1975*.
- (2) Where the Tribunal does not give reasons in writing for its decision the party appealing shall obtain from the Tribunal in accordance with subsection 43 (2A) of the *Administrative Appeals Tribunal Act 1975* a statement in writing of the reasons for its decision and shall forward a copy of the statement to the Registrar of the Tribunal and to the Registry at the proper place within 10 days after receiving it.
- (3) When the documents referred to in subrules (1) and (2) of this rule have been received in the Registry, the Registrar shall, subject to the provisions of sections 35 and 36 of the *Administrative Appeals Tribunal Act 1975* forward a copy of the list of documents to all parties to the appeal.

11 Discontinuance of appeal

- (1) An applicant may at any time file and serve a notice of discontinuance of the appeal and upon its being filed the appeal shall be abandoned.
- (2) The notice of discontinuance filed by an applicant under subrule (1) does not affect any other applicant in the appeal.

- (3) A party filing a notice of discontinuance under subrule (1) shall be liable to pay the costs of the other party or parties occasioned by his appeal.
- (4) A party whose costs are payable under subrule (3) may tax the costs and if the taxed costs are not paid within 14 days after service of the certificate of taxation may enter judgment for the taxed costs.

12 Amendment by supplementary notice

- (1) A notice of appeal may, before the date of the directions hearing, be amended without leave by filing a supplementary notice.
- (2) A party who files a supplementary notice under subrule (1) shall file and serve it in accordance with rule 6 as if it were a notice of appeal.
- (3) The Court may allow a notice of appeal to be amended at such time and on such conditions as the Court thinks fit.

13 Notices of contention

- (1) A respondent who wishes to appeal from a decision, or a part of a decision, from which the applicant has appealed, must:
 - (a) file in the Registry a notice of cross-appeal within the time mentioned in subsection 44 (2A) of the *Administrative Appeals Tribunal Act 1975*; and
 - (b) serve a copy of the notice of cross-appeal upon the applicant and every other party to the proceeding.
- (2) The notice of cross-appeal shall state what part of the decision he cross-appeals from or contends should be varied and shall state:
 - (a) the question or questions of law to be raised on the cross-appeal;
 - (b) the relief sought in lieu of the decision appealed from or the variation of that decision which is sought; and
 - (c) briefly but specifically the grounds relied upon in support of the relief or variation sought.
- (3) It is not necessary to give notice of cross-appeal if a respondent proposes to contend that some matter of law has been erroneously decided against him but does not seek a discharge or variation of a part of the decision actually pronounced or made but he shall:
 - (a) give notice of his contention to the applicant;
 - (b) give notice to the applicant of the record of evidence or documents before the Tribunal relevant to his contention for inclusion in the applicant's draft index; and
 - (c) at the time when the appeal papers are settled, request that such record of evidence or documents be included in the appeal papers.

14 Directions hearing

- (1) A notice of appeal shall state a date for a directions hearing.
- (2) The date for the directions hearing shall be obtained from the Registry and shall be endorsed on the notice of appeal before it is served.

- (3) A notice of appeal shall, unless the Court or a Judge otherwise orders, be served upon the respondent not less than five days before the date appointed for the directions hearing.
- (4) Where the Court or a Judge has made an order abridging time, the notice of appeal shall bear a note of the order made.

15 Directions

- (1) The Court or a Judge may give directions about the conduct of the proceeding.
- (2) Without limiting subrule (1), the Court or a Judge may do any of the following:
 - (a) determine what documents and matters must be included in the appeal papers and the order of inclusion;
 - (b) determine what documents and matters were before the Tribunal;
 - (c) settle the index in accordance with rule 15A;
 - (d) determine the number of copies of the appeal papers required;
 - (e) give directions, for paragraph 44 (8) (b) of the *Administrative Appeals Tribunal Act 1975*, for the giving of further evidence;
 - (f) direct the joinder of parties;
 - (g) refer the notice of appeal and any other necessary papers to the Chief Justice for a direction on whether the appeal should be heard by a Full Court;
 - (h) direct the place, time and mode of hearing;
 - (i) determine any other matter for the purpose of preparing the appeal for hearing.

15A Content of appeal papers

The appeal papers must:

- (a) consist of the documents mentioned in the following table, in the order that they appear in the table; and
- (b) be divided into Parts A, B and C as shown in the table.

Item	Document
Part A	
1	Title page
2	The index to Part A
3	The originating application and pleadings, including each relevant notice of motion (if any)
4	The reasons for the decision of the tribunal
5	The formal decision of the tribunal
6	The sealed orders of the tribunal
7	The notice of appeal
8	Any notice of cross-appeal or any notice of contention
9	Any submitting appearance
10	The certificate of correctness mentioned in paragraph 16 (1) (a)
Part B	

Item Document

- 11 Title page
- 12 The index to Part B
- 13 The transcript of relevant oral evidence
- 14 Each additional relevant transcript (if any)

Part C

- 15 Title page
 - 16 The index to Part C
 - 17 A chronological list of all documents received in evidence, including all documents necessary to enable the questions of law raised in the appeal to be determined by the Court, showing the date and page number of each document
 - 18 Each affidavit containing relevant evidence, followed by each document exhibited or annexed to the affidavit, in the order in which the documents were lettered or numbered in the affidavit
 - 19 Each relevant exhibit, other than an exhibit mentioned in item 18, in the order in which the exhibits were lettered or numbered as exhibits in the tribunal
 - 20 If there is a list of exhibits in the transcript — that list
 - 21 Relevant testimony received in evidence that was taken on commission or before an examiner
 - 22 Each relevant interrogatory and answer, to the extent that those documents were received in evidence
 - 23 Each relevant affidavit of a document, to the extent that the affidavit was received in evidence
-

15B Preparation of appeal papers

- (1) The title page of each Part of the appeal papers must include:
 - (a) the title of the proceeding, including the title of the Tribunal from which the appeal is brought; and
 - (b) the names of the members constituting the Tribunal; and
 - (c) the name and address for service of the legal practitioner for each party.
- (2) The index of each Part of the appeal papers must show the date and page number of each document included in that Part.
- (3) The numbering of the pages of Parts A and C of the appeal papers must:
 - (a) be legible and distinct from any other numbering; and
 - (b) begin with the number 1.
- (4) If Part A or C of the appeal papers consists of more than one volume, the page numbers must continue consecutively from one volume to the next volume.
- (5) The pages of Part B of the appeal papers must be numbered in accordance with the official transcript page numbers.

- (6) The appeal papers need not be in bound and printed form but must be clear and legible and securely fastened.

16 Filing of appeal papers

- (1) The appellant must file:
 - (a) a copy of the appeal papers with a certificate, signed by each party or the party's legal practitioner, stating that each Part of the appeal papers has been examined and is correct; and
 - (b) the number of copies of the appeal papers determined by the Registrar under paragraph 15 (2) (d).
- (2) The Registrar may refuse to accept appeal papers that do not comply with these Rules.

16A Written submissions

The provisions of Order 52 rules 30, 31, 32, 33 and 34 shall apply *mutatis mutandis* to an appeal under this Order.

18 Setting down appeal

- (1) Within 14 days after settlement of appeal papers, an applicant must file a notice in accordance with Form 44 requesting the Registrar to fix a date for trial.
- (2) Within 7 days after being notified by the Registrar of the date for trial, the applicant must:
 - (a) file in the Registry a notice in accordance with Form 44A; and
 - (b) serve a copy of the notice on all other parties to the proceeding.

Note See Part 2 of the *Federal Court of Australia Regulations 2004* in relation to setting-down fees.

19 Time for entry of appeal

- (1) If the applicant does not enter the appeal for hearing within the time prescribed by rule 18, any other party to the appeal may enter the appeal for hearing or apply to the Court or a Judge by motion upon notice for an order dismissing the appeal for want of prosecution.
- (2) When an application is made to the Court or a Judge under subrule (1), the Court or a Judge may order the appeal to be dismissed or may make such other order as is thought to be just.

20 Time: want of prosecution

- (1) Where an applicant has not done any act required to be done by or under these Rules, or otherwise has not prosecuted his appeal with due diligence, the Court may:
 - (a) order that the appeal shall be dismissed for want of prosecution; or
 - (b) fix a time peremptorily for the doing of the act and at the same time order that upon non-compliance the appeal 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.
- (2) The Court may not make an order under subrule (1) unless notice of the proposed order has been served on the appellant.

- (3) An order under paragraph (1) (b) may be varied at any time before the appeal stands dismissed for want of prosecution, and in special circumstances may be varied or revoked after that time.

Order 54 *Administrative Decisions (Judicial Review) Act 1977*

1 Application

Subject to this Order, the Rules of Court prescribe the manner of making an application under the *Administrative Decisions (Judicial Review) Act 1977*.

2 Form of application — Form 56

- (1) An application for an order of review made under the *Administrative Decisions (Judicial Review) Act 1977* shall be in, or substantially in, the form numbered 56 in Schedule 1.
- (2) If the grounds of the application include an allegation of fraud or bad faith, the applicant shall set out in the application particulars of the fraud or bad faith on which he relies.

2A Extension of time

- (1) An application under paragraph 11 (1) (c) of the *Administrative Decisions (Judicial Review) Act 1977* for an extension of the time in which to lodge an application for an order of review must:
 - (a) be accompanied by a proposed application for the order of review in accordance with Form 56; or
 - (b) be made by lodging an application for an order of review, in accordance with Form 56, that includes a claim for the order of review and for the extension of time.
- (2) An application for an extension of time must be supported by an affidavit stating:
 - (a) the nature of the applicant's case; and
 - (b) the questions involved in the case; and
 - (c) the reasons why the extension of time should be granted.

3 Documents to be filed

- (1) On the filing of an application for an order of review or as soon afterwards as is practicable, the applicant shall file copies of such of the following documents as are in his possession:
 - (a) a statement of the terms of the decision the subject of the application; and
 - (b) a statement with respect to that decision furnished to the applicant pursuant to section 13 of the *Administrative Decisions (Judicial Review) Act 1977* or section 28 of the *Administrative Appeals Tribunal Act 1975*, or any other statement furnished by or on behalf of the person who made the decision purporting to set out findings of facts or a reference to the evidence or other material on which those findings were based or the reasons for making the decision;

unless a copy of that document has been filed previously in the proceeding.

- (2) An applicant who files a copy of a statement pursuant to subrule (1) of this rule shall serve a copy of the statement on the other parties to the application within 5 days of filing.

4 Notice of objection to competency — Form 57

If a respondent to an application objects to the competency of the application he shall, within 14 days after service upon him of the application, file and serve upon the other parties to the proceeding a notice of objection to competency, in accordance with Form 57, stating briefly the grounds of his objection.

5 Directions

In addition to the powers of the Court under Order 10 of these Rules the Court may give directions:

- (a) that a party serve a copy of the application upon the Attorney-General of the Commonwealth;
- (b) that a party give notice of the application to such persons or classes of persons in such manner as the Court directs; and
- (c) where a notice of objection to competency has been filed by a party, that the objection be heard and determined before the hearing of the application to which the objection to competency relates.

6 Staying or dismissal of applications

In applying Order 20, rule 4 to an application under the *Administrative Decisions (Judicial Review) Act 1977*, the rule must be interpreted as if paragraph (1) (a) of the rule read 'no reasonable basis for the application is disclosed'.

7 Application for summary judgment, stay or dismissal

- (1) A party may apply to the Court:
 - (a) for a judgment in an application for an order of review under Order 20, rule 2 or section 31A of the Act; or
 - (b) to have an application for an order of review stayed or dismissed:
 - (i) under Order 20, rule 4 or 5; or
 - (ii) on a ground set out in section 10 of the *Administrative Decisions (Judicial Review) Act 1977*; or
 - (iii) in the exercise of the Court's discretion.
- (2) An application under this rule must be made within 14 days after the party is served with the application for an order of review.

8 Use of affidavit without cross-examination of maker

Notwithstanding Order 14 rule 9, the Court may dispense with the attendance for cross-examination of a person making an affidavit and may direct that an affidavit be used without the person making the affidavit being cross-examined thereon.

Order 54A *Judiciary Act 1903*; section 39B

Mandamus, prohibition, injunction

against an officer of the

Commonwealth

1 Application

Subject to this Order, the Rules of Court prescribe the manner of making an application under section 39B of the *Judiciary Act 1903*.

2 Form of application

- (1) An application shall be in or substantially in the form numbered 5 in Schedule 1.
- (2) The application shall be entitled:

(name of applicant(s))

Applicant(s)

(name and title of the officer or officers of the Commonwealth against whom the order is sought and the name or names of any other person against whom orders are sought)

Respondent(s)

3 Joinder of claims for relief

- (1) Subject to subrule (2) any other claim for relief coming within the jurisdiction of the Court and which arises out of or relates to or is connected with the same subject matter, may be joined in an application under this Order.
- (2) Where, on an application for an order of review under the *Administrative Decisions (Judicial Review) Act 1977*, relief is sought also pursuant to section 39B of the *Judiciary Act 1903* and this arises out of or relates to or is connected with the same subject matter, then the application for that order of review and for relief under section 39B of the *Judiciary Act 1903* shall be made in the one application which shall, with all necessary adaptations, be in or substantially in the form numbered 56 in Schedule 1 and the provisions of Order 54 shall, with all necessary adaptations, apply to that application.