

HIGH COURT OF AUSTRALIA

Information regarding making an application for a constitutional or other writ

The High Court's original jurisdiction to grant a constitutional or other writ is set out in section 75(v) of the Constitution and sections 30 to 33 of the *Judiciary Act 1903* (Cth). Such writs comprise writs of mandamus, prohibition, certiorari, habeas corpus and quo warranto.

A writ of mandamus, prohibition or an injunction is limited to being sought against an officer of the Commonwealth (section 75(v) of the Constitution). This jurisdiction is concurrent with the jurisdiction of the Federal Court under section 39B of the *Judiciary Act 1903*, although there are limitations on the jurisdiction of the Federal Court. Applicants should be aware of this as an application made to the High Court which could have been made to the Federal Court may be remitted for hearing to the Federal Court with costs consequences. An "officer of the Commonwealth" includes Commonwealth bodies as well as individuals holding Commonwealth office, public servants, Commonwealth police, Commonwealth Ministers, Judges of the Federal Court and the Family Court but not Judges of the State or Territory Courts or bodies corporate.

Rule 25 of the *High Court Rules 2004* deals with applications for a constitutional or other writ. Rule 25.01.1 provides that an application must be in Form 12 and must be accompanied by one or more affidavits in support. Rule 25.05 sets out the requirements for affidavits.

Rule 25.02 sets out the time limits for filing an application for a writ of mandamus or certiorari. Rule 25.03 provides that an application, together with affidavits in support must be served within 7 days of filing.

Rule 25.04 provides that the party who makes the application is a "plaintiff" and each other party is a "defendant" and sets out the requirements for naming of the defendant in the title of the proceeding.

A defendant to an application must file an appearance within 14 days of service (Rule 25.06) and a response within 28 days of service (Rule 25.07.1). Rule 25.07 provides that a response must be in Form 12A.

A plaintiff may file a reply within 7 days from service of a response (Rule 25.08.1). When filing an application for a constitutional or other writ the application must be accompanied by the relevant filing and hearing fees (or application for fee exemption or for fee reduction based on financial hardship). The current fees are: Filing fee \$3320 (or \$1105 for hardship), hearing fee \$625 (or \$205 for hardship).

The grounds for fee exemption include the applicant holding a current Commonwealth concession card, being in receipt of a grant of legal aid, being in prison or being under the age of 18 years.

IMPORTANT

The above information is intended only as a procedural guide. It is recommended that intending applicants seek legal advice before commencing proceedings. In any event, intending applicants should familiarise themselves with the requirements of the *High Court Rules 2004*, in particular with Rule 25 and the relevant legislation relating to their application.