

HIGH COURT OF AUSTRALIA

Information which may be of assistance if you are applying for special leave to appeal in a civil matter without legal representation

Process of applying for special leave

Appealing to the High Court of Australia ("the High Court") is a two-step process. You first need to apply for, and be granted, special leave to appeal ("special leave"). These are the main things that you need to know about when applying for special leave.

1. With very few exceptions, you may only seek special leave from the judgments of:
 - a) the Full Court of the Federal Court of Australia;
 - b) the Full Court or the Court of Appeal of a State or Territory Supreme Court;
 - c) the Full Court of the Federal Circuit and Family Court of Australia – Division 1; and
 - d) a single judge of the Federal Court of Australia or the Federal Circuit and Family Court of Australia – Division 1 (in limited circumstances).
2. The High Court is not an appellate court in the ordinary sense. In granting special leave Section 35A of the *Judiciary Act* 1903 (Cth) states:

“...the High Court may have regard to any matters that it considers relevant but shall have regard to:

 - (a) whether the proceedings in which the judgment to which the application relates was pronounced involve a question of law:
 - (i) that is of public importance, whether because of its general application or otherwise; or
 - (ii) in respect of which a decision of the High Court, as the final appellate court, is required to resolve differences of opinion between different courts, or within the one court, as to the state of the law; and
 - (b) whether the interests of the administration of justice, either generally or in the particular case, require consideration by the High Court of the judgment to which the application relates.”
3. Understanding Part 41 of the *High Court Rules* 2004 ("the Rules") will assist you greatly in making your application for special leave. You can access the Rules, including Part 41, from the High Court's website on www.hcourt.gov.au.

Filing the documents

4. All documents are to be filed using the High Court's Digital Lodgment System Portal which is available at dls.hcourt.gov.au.
5. You will need to register, using a valid email address, so that you may file your application.
6. The Court will communicate with you using the email address you use to register.

7. Information on how to file is available through the Digital Lodgment System Portal once you have registered.

Documents to be provided

8. Please note the following:
 - a) documents to be filed must be PDF;
 - b) you must upload your application for special leave, which must comply with Form 23;
 - c) your application should be lodged within 28 days of the judgment below;
 - d) if you are out of time in filing your application for special leave, you must seek an order that compliance with the 28 day time limit be dispensed with. This must also be supported by an affidavit explaining the reasons for your delay (see Rule 41.02.2);
 - e) your application for special leave must be typed, it must be single sided and be in a minimum of 12 font. It must also comply with the general formatting requirements which include, but are not limited to, things like margins and line numbering. Please see Rule 1.08 which deals with the preparation of documents generally;
 - f) your application for special leave cannot exceed 12 pages;
 - g) your application for special leave must include, in Part VI, the particular constitutional provisions, statutes and regulations applicable to the questions the subject of the application. The provisions should be set out exactly as they are in the statute or regulation;
 - h) pursuant to Rule 41.01.4, one copy of the following documents ("the accompanying documents") must be lodged at the same time as your application for special leave:
 - i) a copy of the sealed order or judgment of the court below;
 - ii) a copy of the reasons for the judgment below;
 - iii) if the judgment below determines an appeal or reviews a decision, a copy of the primary sealed order or judgment or decision;
 - iv) the reasons (if any) of the primary court or decision maker that were before the court below; and
 - v) the notice of appeal or application for leave to appeal to the court below.
 - i) your application for special leave must be accompanied by the relevant fee or application for exemption from filing and hearing fees or application to pay the financial hardship fee. A fee of \$4,315 is currently payable. If you hold a current health care card or are in custody, you are totally exempt from paying that filing fee. You can apply to pay the financial hardship fee (\$1,435) if paying the full fee would cause you financial hardship; and
 - j) your application for special leave must be filed in the same State or Territory in which the proceedings below were commenced.

Serving the documents

9. Once your application for special leave has been accepted for filing, you must:
 - a) serve your application for special leave (along with a copy of the accompanying documents) on each Respondent within 7 days of it being filed;
 - b) lodge a copy of your application for special leave with the court below within 7 days of it being filed; and
 - c) file an affidavit of service within 7 days of your application for special leave being served or lodged.

What happens once the special leave application has been filed.

10. The High Court has revised the process for the consideration and determination of special leave applications. As was the previous practice, all applications will be considered by the Court, in the first instance, on the basis of the written material. The Registry will refer your application to the Justices at the commencement of the next sitting period after your application is ready. The Justices will meet on the first Monday of the following sitting period to consider your application. The result of your application will be published on the High Court website on the afternoon of the first Thursday of that sitting period and you will be notified of the Court's decision through the Court's Digital Lodgment System.
11. You may find the following documents available from the High Court website useful:
 - a) Revised special leave process;
 - b) Form 23 an application for special leave to appeal;
 - c) Part 41 of the Rules;
 - d) Rule 1.08 of the Rules; and
 - e) an application for an exemption from filing and hearing fees or application to pay the financial hardship fee.

IMPORTANT

The above information is intended only as a procedural guide. It is recommended that intending applicants seek legal advice before commencing proceedings and, in any event, intending applicants should familiarise themselves with the requirements of the High Court Rules (in particular Part 41, which deals with applications for special leave) and the relevant legislation relating to their application.