



Australian Capital Territory

Supreme Court Rules¹ (Amendment)

Subordinate Law No. 42 of 1994²

We, Judges of the Supreme Court, make the following Rules of Court under section 254 of the *Electoral Act 1992* and section 36 of the *Supreme Court Act 1933*.

Dated 29 November 1994.

JEFFREY MILES
Chief Justice

J F GALLOPP
Judge

T J HIGGINS
Judge

A G TOWILL
Registrar

Commencement

1. These Rules commence on 19 February 1995.

Substitution

2. Part 10 of the Supreme Court Rules is repealed and the following Part substituted:

**“PART 10—DISPUTED ELECTIONS AND QUESTIONS
REFERRED BY THE LEGISLATIVE ASSEMBLY—ELECTORAL
ACT 1992**

“ORDER 79

“Division 1—Preliminary

Interpretation

- “1. In this Order, unless the contrary intention appears—
- ‘Act’ means the *Electoral Act 1992*;
 - ‘application’, ‘Court’, ‘election’ and ‘file’ have the same respective meanings as in Part XVI of the Act;
 - ‘MLA’ means a member of the Legislative Assembly;
 - ‘proceeding’ has the same meaning as in Part XVI of the Act;
 - ‘respondent’ has the meaning given by subsection 262 (2) of the Act.

Application of Rules

“2. (1) The other Orders of these Rules apply in relation to proceedings, so far as they are applicable and not inconsistent with this Order.

- “(2) Order 13 applies in relation to a proceeding as if—
- (a) an application; and
 - (b) a statement under section 276 of the Act setting out a question referred by the Assembly;

were each a writ of summons.

“Division 2—Disputed elections

Deposit as security for costs

“3. For the purposes of subsection 260 (1) of the Act, the amount that an applicant must deposit with the Registrar as security for costs is \$1,000.

Public notice of application

“4. (1) As soon as practicable after filing an application, the applicant shall—

- (a) publish a copy of the application in the *Gazette*; and
- (b) publish a notice of the filing in a daily newspaper circulating in the Territory.

“(2) The notice referred to in paragraph (1) (b) shall specify—

- (a) the applicant’s name, the date of filing and the declaration sought; and
- (b) as concisely as practicable, the facts relied on to invalidate the election.

Parties to proceeding

“5. The parties to a proceeding under Division 3 of Part XVI of the Act are—

- (a) the applicant; and
- (b) each other person who—
 - (i) is entitled under section 262 or 263 of the Act to appear in the proceeding; and
 - (ii) enters an appearance in accordance with Order 13.

Particulars of contested ballot papers

“6. (1) Where an application—

- (a) seeks—
 - (i) a declaration that a person who has been declared elected was not duly elected; or
 - (ii) a declaration that a person who has not been declared elected was duly elected; and
- (b) specifies a claim or an objection to ballot papers or a class of ballot papers;

each party to the proceeding shall, not later than 7 days before the day appointed for the hearing of the application, file and deliver to each other party at his or her address for service a list of the ballot papers or classes of ballot papers intended to be claimed or objected to, specifying in the case of the latter ballot papers, the ground on which the objection is made.

“(2) An objection shall not be entertained against the validity of a ballot-paper on a ground not specified in the grounds so filed and delivered except by leave of the Court, and on such terms as to amendment of the grounds, adjournment of the hearing and payment of costs, as the Court orders.

Counter-charges

“7. (1) A respondent to an application referred to in rule 6 who intends to oppose the application on a ground not mentioned in a list referred to in rule 6 shall, within 7 days after entering his or her appearance, or within such further time as the Court allows, file and deliver to the applicant at his or her address for service a statement of the grounds on which he or she intends to rely.

“(2) The statement shall set out the facts relied on with sufficient particularity to identify the ground on which the respondent opposes the application.

Evidence of voting in Antarctica

“8. (1) Where a matter raised in an application relates to voting in Antarctica, the Commissioner shall—

- (a) file the statement prepared under paragraph 175 (c) of the Act in respect of the election concerned; and
- (b) deliver a copy of the statement to each other party to the proceeding at his or her address for service.

“(2) The Commissioner shall comply with subrule (1)—

- (a) where the Commissioner is the applicant—within 7 days after the day on which the application is filed; and
- (b) in any other case—within 7 days after the day on which he or she is served with a copy of the application.

Trial

“9. (1) The trial of an application shall be held at a time and place appointed by the Court.

“(2) Where the Court makes an order appointing the time and place for the trial, the applicant shall—

- (a) give each other party written notice of the order; and
- (b) publish notice of the trial in a daily newspaper circulating in the Territory;

not later than 14 days before the date appointed.

“(3) An order appointing the time and place of the trial may be varied by the Court from time to time.

Substitution of applicant

“10. The Court may—

- (a) when determining whether to grant leave under section 263 of the Act for the withdrawal of an application disputing the validity of an election; or
- (b) where a sole applicant disputing the validity of an election dies before the trial of the application;

allow any other person who was entitled to dispute the validity of the election on like grounds to be substituted for the applicant, and the proceedings on the application shall thereupon be continued as if the person substituted had been the applicant.

Withdrawal and substitution of respondent

“11. (1) For the purpose of paragraph 263 (9) (a) of the Act, the respondent’s notice of intention not to oppose an election application within the meaning of that section shall be filed.

“(2) For the purpose of paragraph 263 (9) (e) of the Act, the period within which a notice of appearance is to be filed by a person seeking to become a respondent is the period of 7 days commencing on the day on which notice that a person has ceased to be a respondent is published in accordance with subparagraph 263 (9) (d) (i) of the Act.

Inspection of list of applications

“12. For the purposes of section 264 of the Act, a copy of the list of applications disputing the validity of an election may be inspected during ordinary office hours at the Registrar’s office.

“Division 3—Questions referred by Legislative Assembly

Parties to proceeding

“13. Each person who—

- (a) is entitled under section 277 of the Act to appear in a proceeding under Division 4 of Part XVI of the Act; and
- (b) enters an appearance in accordance with Order 13;

is a party to the proceeding.

“Division 4—Miscellaneous**Further particulars**

“14. The Court may order a party to a proceeding to deliver to another party particulars, or further and better particulars, of a matter alleged by that party.”

NOTES

1. Reprinted as at 31 December 1993. See also Subordinate Laws Nos. 2, 17, 20, 21 and 34, 1994.
2. Notified in the ACT Gazette on 5 December 1994.

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