



Australian Capital Territory

Supreme Court Rules¹ (Amendment)

Subordinate Law No. 19 of 1995²

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

Dated 7 June 1995.

J F GALLOP
Chief Justice

T J HIGGINS
Judge

A G TOWILL
Registrar

Commencement

1. These Rules commence on the day on which they are notified in the *Gazette*.

Principal Rules

2. In these Rules, “Principal Rules” means the Supreme Court Rules.

Renumbering of Magistrates Court (Civil Jurisdiction) Act— consequential amendments

3. The Principal Rules are amended as set out in the following table:

Provision amended	Omit	Substitute
Order 39, rule 8	“section 201”	“section 202”
Order 69A, subrule 2 (1)	“section 279”	“section 381”
Order 69A, subrule 2 (2)	“section 281 or 282”	“section 383 or 384”

Repeal

4. Part 8 of the Principal Rules is repealed.

Other parties

5. Rule 5 of Order 82A of the Principal Rules is amended by omitting paragraph (1) (b) and substituting the following:

“(b) would be affected by the order sought by the notice of appeal or is interested in maintaining the decision under appeal;

shall be joined as a respondent to the appeal.”.

Insertion

6. After Part 13B of the Principal Rules the following Part is inserted:

**“PART 13C—APPEALS FROM THE MENTAL HEALTH
TRIBUNAL
ORDER 82C**

Interpretation

“1. In this Order, unless the contrary intention appears—

‘Mental Health Act’ means the *Mental Health (Treatment and Care) Act 1994*;

‘Registrar’, in relation to the Tribunal, means the Registrar or a Deputy Registrar of the Magistrates Court;

‘Tribunal’ means the Mental Health Tribunal.

Instituting an appeal

“2. An appeal under section 141 of the Mental Health Act shall be instituted by filing a notice of appeal in accordance with Form 85 in the First Schedule.

Notice of appeal

“3. (1) A notice of appeal shall be signed by the appellant or the appellant’s solicitor and shall state—

- (a) the decision appealed from, the names of the members constituting the Tribunal and the date when the decision was made;
- (b) the question in respect of which the appeal is brought;
- (c) the order sought; and
- (d) briefly, but specifically, the grounds relied on in support of the order sought.

“(2) The Court may allow a notice of appeal to be amended on such terms and conditions as it thinks fit.

“(3) On the hearing of an appeal, the appellant shall not, without the leave of the Court—

- (a) raise any question that is not stated in the notice of appeal; or
- (b) rely on any ground in support of the order sought that is not set out in the notice of appeal.

Appearance

“4. If there is a respondent to an appeal, the notice of appeal shall include an instruction that, before taking any other step in the proceeding, the respondent shall enter an appearance in the Registry.

Other parties

“5. (1) Each person who—

- (a) appeared, or was entitled to appear, before the Tribunal at the proceeding in which the decision under appeal was made; and
- (b) would be affected by the order sought by the notice of appeal or who is interested in maintaining the decision under appeal;

shall be joined as a respondent to an appeal.

“(2) The Court may order—

- (a) the addition of any person as a party to an appeal; or
- (b) the removal of any person as a party from an appeal.

Filing and service of notice of appeal

“6. (1) Subject to rule 7, a notice of appeal shall be filed within the time specified in paragraph 141 (3) (a) or (b) of the Mental Health Act, whichever is applicable.

“(2) Not later than 7 days after filing a notice of appeal, the appellant shall serve a copy of the notice personally on each other party and on the Registrar of the Tribunal.

Extension of time

“7. (1) Application may be made to the Court for an extension of the time specified in paragraph 141 (3) (a) or (b) of the Mental Health Act either before or after the expiration of that time.

“(2) An application for an extension of time shall be in accordance with Form 86 in the First Schedule.

“(3) An application for an extension of time shall be accompanied by an affidavit showing—

- (a) the nature of the case;
- (b) the question involved; and
- (c) the reasons why an extension of time should be given.

Documents to be forwarded

“8. (1) Within 21 days after service of a notice of appeal on the Registrar of the Tribunal, the appellant shall send, or cause to be sent, to the Registry of the Court—

- (a) a copy of the decision appealed from;
- (b) if the Tribunal has given reasons in writing for its decision—a copy of the reasons;
- (c) the transcript, or notes, of proceedings in the Tribunal (if any); and
- (d) a list, certified by the Registrar of the Tribunal, of the documents or other exhibits that were before the Tribunal.

“(2) When the documents referred to in subrule (1) have been received in the Registry, the Registrar shall send a copy of the list of documents to each party to the appeal.

Discontinuance of appeal

“9. (1) An appellant may discontinue his or her appeal by filing and serving a notice of discontinuance.

“(2) A 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 is liable to pay the costs of the other parties occasioned by the appeal unless the Court otherwise orders.

“(4) A party whose costs are payable under subrule (3) may submit a bill of costs to the taxing officer 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.

Amendment by supplementary notice

“10. (1) A notice of appeal may be amended without leave, before the date appointed by the Registrar for settling the appeal papers, by filing a supplementary notice.

“(2) A party who files a supplementary notice shall file and serve it in accordance with rule 6 as if it were a notice of appeal.

Notice of cross-appeal

“11. (1) A respondent who desires—

- (a) to appeal from a part of the decision from which an appellant has appealed; or
- (b) to seek a variation of a part of that decision;

need not institute a substantive appeal, but shall, within 21 days after the service on that respondent of the notice of appeal, or within such further time as the Court may allow—

- (c) file in the Registry a notice of cross-appeal; and
- (d) serve a copy of the notice on the appellant and every other party to the appeal.

“(2) A notice of cross-appeal shall state—

- (a) what part of the decision the respondent cross-appeals from or contends should be varied;
- (b) the question to be raised in the cross-appeal;

- (c) the relief sought in place of the decision appealed from or the variation of that decision that is sought; and
- (d) briefly, but specifically, the grounds relied on in support of the relief or variation sought.

“(3) If a respondent proposes to contend that some matter of fact or law has been erroneously decided against him or her but does not seek a discharge or variation of a part of the judgment pronounced, the respondent need not give a notice of cross-appeal but shall—

- (a) file and serve notice of the contention on the appellant;
- (b) give notice to the appellant of the record of evidence or documents before the Tribunal relevant to the contention; and
- (c) at the time when the appeal papers are settled under rule 13, request that those records of evidence or documents be included in the appeal papers.

Date for settling appeal papers

“12. (1) A notice of appeal shall state the date appointed by the Registrar for settling the appeal papers.

“(2) A notice of appeal shall, unless the Court otherwise orders, be served on the respondent not later than 5 days before the date appointed for settling the appeal papers.

“(3) If the Court has made an order under subrule (2), the notice of appeal shall bear a note of the order made.

Settling of appeal papers

“13. (1) On settling the appeal papers, the Court may give such directions in relation to the conduct of the proceeding as the Court thinks proper.

- “(2) Without limiting the generality of subrule (1), the Court may—
- (a) determine what documents and matters are to 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 of documents comprising the appeal papers;
 - (d) determine the number of copies of the appeal papers required;
 - (e) direct the joinder of parties; and
 - (f) direct the place, time and mode of hearing.

“(3) The jurisdiction exercisable by the Court under this rule is exercisable by the Master or the Registrar.

Preparation of appeal papers

“14. (1) The preparation of appeal papers shall comply with the following requirements to the satisfaction of the Registrar:

- (a) the title page of the appeal papers shall state the title of the proceeding, the names of the members constituting the Tribunal, and the names, and addresses for service, of the solicitors for each party;
- (b) the settled index referred to in paragraph 13 (2) (c) shall appear after the title page and shall show the date and page number of each document;
- (c) the appeal papers shall be paginated and shall include all documents necessary to enable the questions raised by the appeal to be determined by the Court but formal headings need not be included and jurats and formal identification of exhibits and the like may be omitted;
- (d) the appeal papers need not be in bound and printed form but shall be clear, legible and securely fastened.

“(2) A copy of the appeal papers shall be filed by the appellant together with a certificate by the parties or their solicitors stating that the copy has been examined and is correct.

“(3) The appellant shall file as many additional copies of the appeal papers as the Registrar directs.

“(4) The requirements of this rule are subject to any direction that may be given by the Court or the Registrar.

Setting down appeal

“15. The date for the hearing of an appeal may be fixed by the Registrar, on the Registrar’s motion or on the request of a party, when the Registrar is satisfied that the appeal is ready for hearing.”.

First Schedule

7. The First Schedule to the Principal Rules is amended by adding at the end the forms set out in the Schedule to these Rules.

Repeal

- 8.** The Tenth Schedule to the Principal Rules is repealed.

SCHEDULE

R. 7

FORM 85

O. 82C r. 2

AUSTRALIAN CAPITAL TERRITORY

Mental Health (Treatment and Care) Act 1994

NOTICE OF APPEAL FROM MENTAL HEALTH TRIBUNAL

In the Supreme Court of the)
Australian Capital Territory) No. of 19

On appeal from the Mental Health Tribunal constituted by *(names of the members constituting the Tribunal which made the decision)*

Between: (name) Appellant
and
(name) Respondent

1. TAKE NOTICE that the appellant appeals from the decision of the Tribunal constituted by *(members constituting the Tribunal)* given on (date) at (place) whereby the Tribunal decided *(decision appealed from)*.
2. QUESTIONS OF FACT OR LAW raised on the appeal are: *(specify each question)*
3. ORDERS SOUGHT are: *(state the orders or relief sought)*
4. GROUNDS relied on are: *(specify grounds relied on in support of the orders or relief sought)*

Dated: 19 .

.....
Appellant (or appellant's solicitor)

To the Respondent: *(name and address)*

TAKE NOTICE that the appeal papers in this appeal will be settled by the Court at the time and place specified below. If there is no attendance before the Court by you or your counsel or solicitor, directions may be given and orders made in your absence.

Before taking any step in the proceeding or attending at the settling of the appeal papers you must enter an appearance in the Registry.

SETTLING OF APPEAL PAPERS:

Time: *(date and time to be entered by Registry unless fixed by Court)*

Place: *(address of Court)*

(If the time for service has been abridged, add)

The time by which this notice of appeal (with its notice of the date appointed for settling the appeal papers) is to be served has been abridged by the Court to *(specify time)*.

Dated: 19 .

By the Court
(signature and description of officer of the Court)

The appellant's address for service is *(specify address for service)*.

SCHEDULE—continued

FORM 86

O. 82C r. 7 (2)

AUSTRALIAN CAPITAL TERRITORY

*Mental Health (Treatment and Care) Act 1994*APPLICATION FOR EXTENSION OF TIME TO APPEAL FROM MENTAL HEALTH
TRIBUNAL

In the Supreme Court of the)
 Australian Capital Territory) No. of 19
 BETWEEN: (name). Appellant
 and
 (name). Respondent

1. The appellant applies for an extension of time in which to file or serve (*as the case may be*) a notice of appeal from the decision of the Tribunal constituted by (*names of the members constituting the Tribunal*) given on (*date*) at (*place*) whereby the Tribunal decided (*decision sought to be appealed from*).
2. An extension of time is required because a notice of appeal was not filed or served (*as the case may be*) within the time specified in paragraph 141 (3) (a) or (b) of the *Mental Health (Treatment and Care) Act 1994* (whichever is applicable).
3. This application will be heard by the Court at (*place—to be inserted by Registrar*) on (*date—to be inserted by Registrar*).
4. The grounds of the application appear in the annexed affidavit.

Dated: 19 .

.....
 Appellant (*or* appellant's solicitor)

NOTES**Principal Rules**

1. Reprinted as at 19 February 1995. See also Subordinate Laws Nos. 11, 12, 13 and 15, 1995.

Notification

2. Notified in the ACT Gazette on 15 June 1995.