



Australian Capital Territory

# Supreme Court Amendment Rules 2002 (No 3)

Subordinate Law SL2002-27

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

Dated 11 October 2002.

K J CRISPIN  
A/Chief Justice

M F GRAY  
Judge

J E CIRCOSTA  
Registrar

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made under the

*Supreme Court Act 1933*

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**1 Name of rules**

*These are the Supreme Court Amendment Rules 2002 (No 3).*

**2 Commencement**

These rules commence on 14 October 2002.

*Note* The provisions of rules providing for the name and commencement automatically commence on the notification day (see *Legislation Act 2000*, s 75).

**3 Rules amended**

These rules amend the *Supreme Court Rules*.

*Note* The rules are amended in the body of these rules and in sch 1 and 2.

**4 Part 12, new order 86**

*insert*

**Order 86 Appeals to Court of Appeal**

**Division 86.1 Interpretation for order 86**

**1 Meaning of *court* in o 86**

(1) In this order:

*court* means the court other than when it is the Court of Appeal.

(2) Also, *court* includes the master, except in relation to interlocutory judgments of the master.

(3) However, *court* does not include—

- (a) the Full Court exercising appellate jurisdiction; or
- (b) the registrar.

## **Division 86.2            Leave to appeal from interlocutory judgments of court**

### **2            Application of div 86.2**

This division applies to an application for leave to appeal from an interlocutory judgment of the court.

### **3            Application for leave to appeal—interlocutory judgment**

The application must be made to the Court of Appeal by motion on notice in accordance with this division and, for matters not dealt with in this division, in accordance with order 54 (Motions and other applications).

### **4            Requirements for notice of motion for leave to appeal—interlocutory judgment**

- (1) The notice of motion must be in accordance with form 6.4.
- (2) If the applicant wants to present the applicant's case in writing under division 86.8 (Written cases), the notice of motion must state that the applicant wants to do so.
- (3) The notice of motion must be accompanied by an affidavit showing—
  - (a) the nature of the case; and
  - (b) the questions involved; and
  - (c) the reasons why leave should be given.

### **5            Time for filing notice of motion for leave to appeal—interlocutory judgment**

The notice of motion and accompanying affidavit must be filed within 7 days after the day the interlocutory judgment is given, or within any further time allowed by the Court of Appeal or the judge who gave the interlocutory judgment.

**6 Service of notice of motion for leave to appeal—interlocutory judgment**

- (1) The notice of motion and accompanying affidavit must be served on each person who was a party to, or given leave to intervene in, the proceeding in which the interlocutory judgment was given.
- (2) The notice of motion and accompanying affidavit must be served within 3 days after the day the notice is filed.

**7 Appearance to notice of motion for leave to appeal—interlocutory judgment**

A respondent to the notice of motion must enter an appearance in accordance with order 13 (Appearance) as if—

- (a) the notice were an originating application; and
- (b) the respondent were a defendant; and
- (c) the appellant were the plaintiff.

**8 Time for filing and service of affidavits by respondents to notice of motion for leave to appeal—interlocutory judgment**

A respondent who wants to present evidence must file and serve the respondent's affidavits within 14 days after the day the notice of motion is served on the respondent.

**Division 86.3 Leave to appeal out of time from final judgments of court**

**9 Definitions for div 86.3**

In this division:

*conviction* means, if a person has been found guilty at a trial on an indictment or pleaded guilty to an offence charged in an indictment—

- (a) a conviction recorded by the court for the person; or
- (b) a finding of guilt recorded by the court for the person.

**final judgment**, of the court, means a judgment that is not an interlocutory judgment, but does not include a conviction or sentence.

**out of time**, for leave to appeal from a final judgment, means more than 21 days after the day the judgment was given.

**sentence** means an order, decision or other sentence (however described) imposed by the court on a person—

- (a) after the person has been convicted or found guilty; or
- (b) after the person has pleaded guilty to an indictable offence under the *Magistrates Court Act 1930*, section 90A (7) (Plea of guilty in committal proceedings).

**Examples of sentences**

- 1 a reparation order under the *Crimes Act 1900*, section 350 (Reparation orders)
- 2 a person released on conditions under the *Crimes Act 1900*, section 403 (Conditional release of offenders)
- 3 a treatment order under the *Drugs of Dependence Act 1989*, section 123 (Treatment orders)

*Note* An example is part of the rules, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act 2001*, s 126 and s 132).

## 10 Application of div 86.3

This division applies to an application for leave to appeal out of time from a final judgment of the court.

*Note* For leave to appeal out of time from a conviction or sentence (as defined in r 9), see subdiv 86.5.2 (Leave to appeal out of time against certain convictions and sentences—convicted person) and subdiv 86.5.3 (Leave to appeal out of time against sentence—director of public prosecutions).

**11 Application for leave to appeal out of time—final judgment**

The application must be made to the Court of Appeal by motion on notice in accordance with this division and, for matters not dealt with in this division, in accordance with order 54 (Motions and other applications).

**12 Requirements for notice of motion for leave to appeal out of time—final judgment**

- (1) The notice of motion must be in accordance with form 6.5.
- (2) If the applicant wants to present the applicant's case in writing under division 86.8 (Written cases), the notice of motion must state that the applicant wants to do so.
- (3) The notice of motion must be accompanied by an affidavit showing—
  - (a) the nature of the case; and
  - (b) the questions involved; and
  - (c) the reasons why leave should be given.

**13 Filing and service of notice of motion for leave to appeal out of time—final judgment**

- (1) The notice of motion and accompanying affidavit must be filed, and served on each person who was a party to, or given leave to intervene in, the proceeding in which the final judgment was given.
- (2) The notice of motion and accompanying affidavit must be served within 3 days after the day the notice is filed.

**14 Appearance to notice of motion for leave to appeal out of time—final judgment**

A respondent to the notice of motion must enter an appearance in accordance with order 13 (Appearance) as if—

- (a) the notice were an originating application; and
- (b) the respondent were a defendant; and
- (c) the appellant were the plaintiff.

**15 Time for filing and service of affidavits by respondents to notice of motion for leave to appeal out of time—final judgment**

A respondent who wants to present evidence must file and serve the respondent's affidavits within 14 days after the day the notice of motion is served on the respondent.

**Division 86.4 Appeals from court**

*Note* See also subdiv 86.5.4 (Additional rules for appeals against certain convictions and sentences).

**16 Meaning of *appeal* in div 86.4**

- (1) In this division:

*appeal* means an appeal from a judgment of the court.

*judgment* includes—

- (a) a decree, order or direction of the court; or
- (b) a conviction recorded by the court; or
- (c) a sentence imposed by the court.

- (2) However, an *appeal* does not include—

- (a) a case stated or question reserved by the court about any matter in relation to which an appeal may be brought to the Court of Appeal; or

- (b) an appeal under the Act, section 37S (Reference appeal following acquittal on indictment).

**17 Application of div 86.4**

This division applies to an appeal.

**18 Filing of notice of appeal**

The appeal is begun by filing a notice of appeal.

**19 Requirements for notice of appeal**

- (1) The notice of appeal must be in accordance with form 6.6.
- (2) The notice of appeal must state—
  - (a) whether the appeal is from all or part of the judgment; and
  - (b) if the appeal is from part of the judgment—the part appealed from; and
  - (c) briefly, but specifically, the grounds relied on in support of the appeal; and
  - (d) the judgment sought.
- (3) If the appeal is brought by leave of the Court of Appeal—
  - (a) the notice of appeal must state that the appeal is brought by leave; and
  - (b) a copy of the judgment giving leave to appeal must be attached to the notice of appeal and every copy of the notice of appeal served under rule 23 (Service of notice of appeal).
- (4) If the appellant wants to present the appellant's case in writing under division 86.8 (Written cases), the notice of appeal must state that the appellant wants to do so.

## **20 Parties to appeal**

- (1) Each party to the proceeding in which the judgment appealed from was given must be joined as an appellant or respondent to the appeal if the party is affected by the judgment sought by the notice of appeal or is interested in maintaining the judgment under appeal.
- (2) The Court of Appeal may order the addition or removal of anyone as a party to the appeal.
- (3) However, a person may be made an appellant only with the person's consent.

## **21 Appearance to appeal**

- (1) A respondent to the appeal must enter an appearance in accordance with order 13 (Appearance) as if—
  - (a) the notice of appeal were an originating application; and
  - (b) the respondent were a defendant; and
  - (c) the appellant were the plaintiff.
- (2) However, this rule does not apply to a respondent if the respondent has already entered a notice of appearance under rule 7 (Appearance to notice of motion for leave to appeal—interlocutory judgment) or rule 14 (Appearance to notice of motion for leave to appeal out of time—final judgment).

## **22 Time for filing and serving notice of appeal**

- (1) The notice of appeal must be filed and served—
  - (a) if leave to appeal has been given—
    - (i) within 21 days after the day leave to appeal is given or within any further time allowed by the Court of Appeal on motion on notice in accordance with order 54 (Motions and other applications) filed within the 21 days; or

- (ii) if the Court of Appeal sets a time for the filing and service when giving leave to appeal—within the time or within any further time allowed by the Court of Appeal on motion on notice in accordance with order 54 filed within the time set; or
  - (b) in any other case—within 21 days after the day the judgment appealed from was given.
- (2) However, the Court of Appeal may, at any time, give leave to file and serve a notice of appeal, for special reasons.

### **23 Service of notice of appeal**

- (1) The notice of appeal must be served on each person who was a party to, or was given leave to intervene in, the proceeding in which the judgment appealed from was given.
- (2) However, a notice of appeal from a decision refusing an application made without notice does not have to be served unless the Court of Appeal otherwise orders.
- (3) The Court of Appeal may direct that the notice of appeal be served on anyone else.

### **24 Stay**

- (1) Unless the Court of Appeal or the court otherwise directs, an appeal to the Court of Appeal does not—
  - (a) operate as a stay of execution or of a proceeding under the judgment appealed from; or
  - (b) invalidate any intermediate act or proceeding.
- (2) The Court of Appeal may, by order, vary or set aside a direction mentioned in subrule (1).
- (3) An application for a direction of the Court of Appeal under subrule (1)—

- (a) must be made by motion on notice in accordance with order 54 (Motions and other applications); and
  - (b) may be made whether or not a similar application has been made to the court.
- (4) An application for an order under subrule (2) must be made by motion on notice in accordance with order 54.

## **25 Competency of appeal**

- (1) A respondent may apply to the Court of Appeal at any time by motion on notice in accordance with order 54 (Motions and other applications) for an order striking out an appeal as incompetent.
- (2) The notice of motion must be in accordance with form 6.7.
- (3) The burden of establishing the competency of the appeal is on the appellant.

## **26 Failure to apply for appeal to be struck out as incompetent—costs**

- (1) This rule applies if a respondent does not make an application under rule 25 (1) and the appeal is struck out by the Court of Appeal as incompetent.
- (2) The respondent must not receive any costs of the appeal, unless the Court of Appeal otherwise orders.
- (3) The Court of Appeal may order that the respondent pay the appellant any costs of the appeal wasted because of the respondent's failure to make an application under rule 25 (1).

## **27 Discontinuance of appeal**

- (1) An appellant may file and serve a notice of discontinuance of the appeal or part of the appeal—
  - (a) at any time before the hearing of the appeal without the leave of the Court of Appeal; or

- (b) at the hearing, or after the hearing and before judgment, with the leave of the Court of Appeal.
- (2) However, if an appeal is to be decided by written cases under division 86.8 (Written cases), an appellant may file and serve a notice of discontinuance of the appeal or part of the appeal—
  - (a) at any time before (and including) the last day that the appellant may file a written submission under rule 83 (3) (Filing and serving written case—appeal), without the leave of the Court of Appeal; or
  - (b) after the period mentioned in paragraph (a), and before judgment, with the leave of the Court of Appeal.
- (3) The notice of discontinuance must be in accordance with form 6.8.
- (4) If an appellant files and serves a notice of discontinuance of an appeal or part of an appeal—
  - (a) the appeal or part of the appeal is abandoned by the appellant; but
  - (b) the notice of discontinuance does not affect any other appellant in the appeal.
- (5) If subrule (4) applies, the appellant must pay the costs of the other parties caused by the appeal or part of the appeal, unless the Court of Appeal otherwise orders.
- (6) A party whose costs are payable under subrule (5) may tax the costs and may enter judgment for the taxed costs if they are not paid within 14 days after the day of service of the certificate of taxation.

## **28 Security for costs**

Security for costs of an appeal is not required, unless the Court of Appeal otherwise directs.

## **29 Amending notice of appeal**

- (1) Before the date set for settling the appeal papers, an appellant may, without leave, amend a notice of appeal.
- (2) After that date, the Court of Appeal may give leave for a notice of appeal to be amended.
- (3) The following rules of order 32 (Amendment) apply to an amendment of a notice of appeal as if it were a pleading (and with all other necessary changes):
  - rule 7 (Disallowance of amendment)
  - rule 9 (Directions for mode)
  - rule 10 (Mode—simple amendment)
  - rule 11 (Mode—fresh document)
  - rule 12 (Service after amendment)
  - rule 13 (Costs).

## **30 Cross-appeal**

- (1) A respondent who wants to appeal from part of a judgment, or to seek a variation of part of a judgment, need not begin a substantive appeal.
- (2) However, the respondent must—
  - (a) file a notice of cross-appeal within 21 days after the day the notice of appeal is served on the respondent, or within any further time allowed by the Court of Appeal; and
  - (b) serve the notice on—
    - (i) the appellant (or each appellant); and
    - (ii) any other party to the proceeding in which the judgment appealed from was given, who is affected by the judgment that the respondent seeks.
- (3) The notice of cross-appeal must state—

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- (a) what part of the judgment the respondent cross-appeals from or contends should be varied; and
  - (b) briefly, but specifically, the grounds of the cross-appeal; and
  - (c) either—
    - (i) the judgment that the respondent seeks instead of the judgment cross-appealed; or
    - (ii) the variation of the judgment that the respondent seeks.
- (4) If a respondent proposes to contend that a matter of fact or law has been incorrectly decided against the respondent but does not seek a discharge or variation of a part of the judgment, the respondent need not file a notice of cross-appeal.
- (5) However, the respondent must—
- (a) file and serve notice of the respondent’s contention on the appellant (or each appellant) before the date set for settling the appeal papers; and
  - (b) give notice to the appellant of the record of evidence or documents before the court relevant to the respondent’s contention, for inclusion in the appellant’s draft index to be prepared in accordance with rule 35 (1) (Draft index of appeal papers); and
  - (c) when the appeal papers are being settled, ask the Court of Appeal to include the record of evidence or documents in the appeal papers.
- (6) The master or registrar may exercise the jurisdiction of the Court of Appeal for subrule (5) (c).

### **31 Application of certain rules to cross-appeals**

- (1) The rules and forms mentioned in subrule (2) apply to a cross-appeal as if—
  - (a) a reference to an appeal were a reference to a cross-appeal; and

- (b) a reference to the appellant were a reference to the respondent filing the cross-appeal; and
  - (c) a reference to the respondent were a reference to the appellant (or an appellant) on whom the cross-appeal is served; and
  - (d) any other necessary changes were made.
- (2) The rules and forms applying to a cross-appeal are as follows:
- rule 25 (Competency of appeal)
  - rule 26 (Failure to apply for appeal to be struck out as incompetent—costs)
  - rule 27 (Discontinuance of appeal)
  - rule 45 (Abandonment of ground of appeal)
  - form 6.7 (Notice of motion for striking out appeal)
  - form 6.8 (Notice of discontinuance).

### **32 Keeping exhibits**

- (1) This rule applies in relation to an appeal in the Court of Appeal from a judgment given in a proceeding in the court.
- (2) If the clerk at the proceeding has the exhibits in the proceeding, the clerk must give the exhibits to the registrar.
- (3) The registrar must keep the exhibits in the proceeding until 21 days after the day the appeal is disposed of.
- (4) However, the register may lend an exhibit in accordance with order 39A (Exhibits, documents and objects) rule 8 (Power to lend documents and objects).
- (5) In this rule:  
*clerk at a proceeding*—see order 39A rule 2.

### **33 Date for settlement of appeal papers**

The registrar must set a date for settlement of the appeal papers by writing the date on the notice of appeal.

### **34 Filing of things before settlement of appeal papers**

- (1) Before the date set for settling the appeal papers, the appellant must get and file—
  - (a) the reasons for judgment or the summing up of the judge or master who gave the judgment appealed from, certified by the judge's or master's associate; and
  - (b) a copy of the transcript of the proceeding in which the judgment was given, corrected in accordance with subrules (2) and (3).
- (2) If the appellant gets a copy of the transcript of the proceeding, the appellant must—
  - (a) correct any errors in it; and
  - (b) give a list of the corrections to the respondent; and
  - (c) give the respondent a reasonable time to examine the transcript and corrections.
- (3) If the parties disagree on the accuracy of any part of the transcript, or cannot agree on a correction, the disagreement must be submitted to the judge or master who gave the judgment appealed from, or to the registrar, for directions.

### **35 Draft index of appeal papers**

- (1) Before the date set for settling the appeal papers, an appellant must prepare and file—
  - (a) a draft index of the appeal papers; and
  - (b) a separate, chronological list of all documents received in evidence in the proceeding in which the judgment appealed from was given, including documents exhibited or attached to affidavits.
- (2) The appellant must serve the draft index, and list, on the respondent a reasonable time before the date set for settling the appeal papers.

### **36 Content of appeal papers**

- (1) The title page of the appeal papers must give the title of the proceeding and the names of each party (and the party's solicitor (if any)) and their addresses for service.
- (2) Following the title page of the appeal papers, there must be—
  - (a) an index of the documents making up the appeal papers that shows the date and page number of each document; and
  - (b) a chronological list of all documents received in evidence in the proceeding in which the judgment appealed from was given, including documents exhibited or attached to affidavits, showing the date and page number of each document.
- (3) The appeal papers must be paginated, and the documents arranged, in the following order:
  - (a) notice of appeal or, if amended, the amended notice of appeal;
  - (b) any notice of cross-appeal or notice of contention;
  - (c) if leave to appeal has been given—the judgment giving leave;
  - (d) the formal order of the court from which the appeal is brought;
  - (e) reasons for the judgment of the court;
  - (f) process and pleading;
  - (g) evidence, as follows:
    - (i) the transcript of any oral evidence;
    - (ii) affidavit evidence in which, after each affidavit, documents exhibited or attached to the affidavit are arranged in the order in which they have been numbered in the affidavit;
    - (iii) other exhibits that are documents (other than affidavits and documents exhibited or attached to each affidavit) arranged in the order in which they have been numbered

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as exhibits in the court, and any list of the exhibits appearing in the transcript;

- (iv) a list of exhibits that are not documents.
  - (h) testimony taken on commission or before an examiner and received in evidence in the proceeding in which the judgment appealed from was given;
  - (i) if the judgment appealed from was given in an appeal from a tribunal, as follows:
    - (i) reasons for decisions of the tribunal;
    - (ii) the formal decision of the tribunal;
    - (iii) any notice of appeal to the court;
  - (j) the certificate under rule 39 (1) (Filing and serving appeal papers).
- (4) Interrogatories and answers and affidavits of documents must not be copied except so far as they were put in evidence in the proceeding in which the judgment appealed from was given.
- (5) If the text of an oral judgment or summing up of a judge or master is included in the appeal papers, the text must first be submitted to the judge or master for correction and must, when included in the appeal papers, be accompanied by a certificate from the judge's or master's associate that this has been done.
- (6) The requirements of this rule are subject to any direction given by the Court of Appeal, master or registrar.
- (7) In subrule (3) (i):

***appeal*** includes an application for—

- (a) an order nisi to review a decision of the Magistrates Court; or
- (b) remedy or relief by way of prerogative writ.

***tribunal***—see order 84 rule 1.

### **37 Settlement of appeal papers**

- (1) When settling the appeal papers, the Court of Appeal may give directions about the conduct of the appeal that the court considers appropriate.
- (2) Without limiting subrule (1), the Court of Appeal may do the following:
  - (a) work out what documents and matters were before the judge or master who gave the judgment appealed from;
  - (b) decide what documents and matters are to be included in the appeal papers, and the order of inclusion;
  - (c) settle the index in accordance with rule 36 (Content of appeal papers);
  - (d) decide the number of copies of the appeal papers required and when they should be served;
  - (e) direct the joinder of parties;
  - (f) get an estimate of the length of the hearing from the parties;
  - (g) direct the place, date and kind of hearing.
- (3) The master or registrar may exercise the jurisdiction of the Court of Appeal for this rule.

### **38 Presentation of appeal papers**

- (1) The appeal papers need not be printed or in bound form, but must be clear, legible and securely fastened.
- (2) The registrar must be satisfied about the presentation of the appeal papers.
- (3) The requirements of this rule are subject to any direction given by the Court of Appeal, master or registrar.

### **39 Filing and serving appeal papers**

- (1) An appellant must file the appeal papers with a certificate by the parties or their solicitors that the papers have been examined and are correct.
- (2) The certificate must be in accordance with form 6.9.
- (3) The appellant must file the number of copies of the appeal papers, and serve them, as decided under rule 37 (2) (d) (Settlement of appeal papers).

### **40 Setting down appeal for hearing**

- (1) This rule applies if the Court of Appeal, the master or registrar does not set down a date for hearing when the appeal papers are settled under rule 37 (Settlement of appeal papers).
- (2) The registrar may set a hearing date for the appeal when the registrar is satisfied that the appeal is ready for hearing.

### **41 Power to change appeal hearing date**

The Court of Appeal may, at any time, order that an appeal be heard on a date other than that set under rule 37 (Settlement of appeal papers) or rule 40 (Setting down appeal for hearing).

### **42 Written summary and list for appeal hearing**

- (1) A party to an appeal that has been set down for hearing must prepare a written summary of arguments in accordance with rule 43 (Summaries of arguments) and a list of authorities, legislation and texts in accordance with rule 44 (List of authorities, legislation and texts), unless the Court of Appeal otherwise orders.
- (2) At least 5 days before the day set down for the hearing of the appeal, the appellant must file 5 copies of the appellant's summary and list, and serve a copy of each on each other party to the appeal.

- (3) At least 2 days before the day set down for the hearing of the appeal, the respondent must file 5 copies of the respondent's summary and list, and serve a copy of each on each other party to the appeal.
- (4) At least 1 day before the day set down for the hearing of the appeal, the appellant may file 5 copies of a written summary of arguments in reply, and serve a copy on each other party to the appeal.

### **43 Summaries of arguments**

- (1) A party's summary of arguments must state as briefly as possible—
  - (a) the issues in the appeal; and
  - (b) an outline of the argument expected to be made on each issue, mentioning the steps in the argument and any legislation, authority or finding of fact to be relied on for each step; and
  - (c) if there is to be a challenge to any of the court's findings of fact—
    - (i) the claimed error (including any failure to make a finding of fact); and
    - (ii) the reasons why the party considers the finding was an error; and
    - (iii) the finding that the party considers should have been made; and
  - (d) for an appellant—a chronology of the facts; and
  - (e) if a respondent disagrees with an appellant's chronology of facts—the respondent's chronology of facts that highlights where the respondent's chronology differs from the appellant's chronology.
- (2) If the summary relies on a matter in another document, the summary must—

- (a) for a document mentioned in rule 44 (2) (a) to (c) (List of authorities, legislation and texts)—identify the document as mentioned in the rule; and
- (b) for other documents—if relevant, identify the page of the document relied on.

#### **44 List of authorities, legislation and texts**

- (1) A party's list of authorities, legislation and texts must be divided into 2 parts (parts A and B) and list any authority, legislation or text—
  - (a) in part A—that the party expects will be quoted from by the party; and
  - (b) in part B—that may be referred to by the party.
- (2) An authority, legislation or text must be identified as follows:
  - (a) for an authority—by case, citation and relevant part;
  - (b) for legislation—by provision;
  - (c) for a text—by edition and page number.

#### **45 Abandonment of ground of appeal**

- (1) This rule applies if an appellant wants to abandon a ground of appeal.
- (2) The appellant must give notice to each other party that the ground will not be relied on—
  - (a) as soon as possible; and
  - (b) if the appeal is not to be decided by written cases under division 86.8 (Written cases)—within a reasonable time before the day set down for the hearing.
- (3) The Court of Appeal may make any order the court considers just in relation to costs incurred because of a failure by the appellant to comply with this rule.

#### **46 Further evidence on appeal**

- (1) This rule applies—
  - (a) to an application to the Court of Appeal to receive evidence on a hearing of an appeal in addition to evidence in the proceeding appealed from; and
  - (b) unless the Court of Appeal otherwise directs.
- (2) The application must be made by motion, in accordance with order 54 (Motions and other applications), on the hearing of the appeal.
- (3) Not later than 21 days before the hearing of the appeal, the applicant must file 1 or more affidavits stating—
  - (a) the grounds of the application; and
  - (b) any evidence necessary to establish the grounds of the application; and
  - (c) any evidence that the applicant wants the Court of Appeal to receive.
- (4) The evidence of any other party to the appeal must be given by affidavit filed not later than 7 days before the day set for the start of the hearing of the appeal.
- (5) A party to the appeal must, within the time for the party to file an affidavit under this rule—
  - (a) file the number of copies of the affidavit that the registrar directs; and
  - (b) serve 3 copies of the affidavit on each other party to the appeal.

#### **47 Absence of party**

- (1) If a party is not present when an appeal is called on for hearing, the Court of Appeal may—

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- (a) order that the hearing not proceed unless the appeal is again set down for hearing or the other steps directed by the Court of Appeal are taken; or
  - (b) adjourn the hearing; or
  - (c) if the absent party is an appellant or cross-appellant—dismiss the appeal or cross-appeal; or
  - (d) proceed with the hearing, either generally or in relation to the judgment sought in the appeal; or
  - (e) for an appeal against conviction or sentence, if the party is the appellant who is on bail and is not legally represented—make another order the court considers appropriate or issue a warrant for the appellant’s arrest.
- (2) If the hearing proceeds in the absence of the party and an order is made, the Court of Appeal may, on motion by notice by the party in accordance with order 54 (Motions and other applications)—
- (a) set aside or vary the order; and
  - (b) give directions for the further conduct of the appeal.

## **Division 86.5            Certain convictions and sentences**

### **Subdivision 86.5.1    Preliminary**

#### **48    Definitions for div 86.5**

In this division:

*appeal* means an appeal against conviction or sentence.

*convicted person* means a person who has been convicted or found guilty of an offence.

*conviction* means, if a person has been found guilty at a trial on an indictment or pleaded guilty to an offence charged in an indictment—

- (a) a conviction recorded by the court for the person; or
- (b) a finding of guilt recorded by the court for the person.

*director of public prosecutions* includes the director of public prosecutions under the *Director of Public Prosecutions Act 1983* (Cwlth).

*out of time*, for leave to appeal against conviction or sentence, means more than 21 days after the day the conviction was recorded or sentence was imposed.

*sentence* means an order, decision or other sentence (however described) imposed by the court on a person—

- (a) after the person has been convicted or found guilty; or
- (b) after the person has pleaded guilty to an indictable offence under the *Magistrates Court Act 1930*, section 90A (7) (Plea of guilty in committal proceedings).

**Examples of sentences**

- 1 a reparation order under the *Crimes Act 1900*, section 350 (Reparation orders)
- 2 a person released on conditions under the *Crimes Act 1900*, section 403 (Conditional release of offenders)
- 3 a treatment order under the *Drugs of Dependence Act 1989*, section 123 (Treatment orders)

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act 2001*, s 126 and s 132).

**Subdivision 86.5.2 Leave to appeal out of time against certain convictions and sentences—convicted person**

**49 Application of subdiv 86.5.2**

This subdivision applies to an application by a convicted person for leave to appeal out of time against conviction or sentence.

**50 Application for leave to appeal out of time—conviction or sentence**

The application must be made to the registrar in the first instance.

**51 Requirements for application for leave to appeal out of time—conviction or sentence**

- (1) The application must be in accordance with form 6.10.
- (2) If the applicant wants to present the applicant's case in writing under division 86.8 (Written cases) the application must state that the applicant wants to do so.
- (3) The application must be accompanied by an affidavit showing—
  - (a) the nature of the case; and
  - (b) the questions involved; and
  - (c) the reasons why leave should be given.

**52 Service of application for leave to appeal out of time—conviction or sentence**

The application and accompanying affidavit must be served on the director of public prosecutions within 5 days after the day the application is filed.

*Note* Rule 60 (Service of documents when unrepresented party in custody) deals with the service of documents if a party is in custody and not represented by a lawyer.

**53 Appearance by director of public prosecutions to application for leave to appeal out of time—conviction or sentence**

The director of public prosecutions must enter an appearance in accordance with order 13 (Appearance) as if—

- (a) the notice were an originating application; and
- (b) the director were a defendant; and

(c) the convicted person were the plaintiff.

**54 Time for filing and service of affidavits by director of public prosecutions**

If the director of public prosecutions wants to present evidence, the director must file and serve the director's affidavits within 14 days after the day the application is served on the director.

**55 Registrar's decision to give or refuse leave to appeal out of time—conviction or sentence**

- (1) The registrar must tell the applicant, and the director of public prosecutions, of the registrar's decision to give or refuse leave to appeal out of time.
- (2) If the registrar gives leave, the director of public prosecutions may move by motion on notice to the Court of Appeal in accordance with order 54 (Motions and other applications) for an order that the application be refused.
- (3) If the registrar refuses leave—
  - (a) the registrar must give the applicant a copy of form 6.11 when telling the applicant about the refusal; and
  - (b) the applicant may apply to the Court of Appeal by notice of motion in accordance with subrule (4) to have the application decided by the Court of Appeal.
- (4) The notice of motion must be—
  - (a) in accordance with form 6.11 and order 54; and
  - (b) filed within 14 days after the day the applicant is told about the registrar's decision.

**Subdivision 86.5.3 Leave to appeal out of time against sentence—director of public prosecutions**

**56 Application of div 86.3 to certain appeals by DPP**

Division 86.3 (Leave to appeal out of time from final judgments of court) applies to an application for leave to appeal out of time against sentence by the director of public prosecutions as if—

- (a) a reference to a final judgment were a reference to a sentence; and
- (b) any other necessary changes were made.

**Subdivision 86.5.4 Additional rules for appeals against certain convictions and sentences**

**57 Application may be treated as appeal**

If an application for leave to appeal out of time against conviction or sentence is made by a convicted person to the Court of Appeal, the court may treat the hearing of the application as the hearing of the appeal.

**58 Grounds of appeal**

Unless the Court of Appeal otherwise orders, the following may not be allowed as a ground for appeal unless objection was taken at the trial by the party appealing:

- (a) a direction given by the trial judge;
- (b) the trial judge's failure to give a direction;
- (c) the trial judge's decision about the admission or rejection of evidence.

**59 Trial judge's report**

- (1) During the hearing of an appeal against conviction or sentence, the Court of Appeal may ask the trial judge to give the court (through the registrar) a report on any aspect of the case.
- (2) The report is not available for inspection by the parties or anyone else unless the Court of Appeal otherwise directs.

**Subdivision 86.5.5 Certain convictions and sentences—miscellaneous**

**60 Service of documents when unrepresented party in custody**

- (1) This rule applies if a party to an application or appeal—
  - (a) is in custody; and
  - (b) is not represented by a lawyer.
- (2) A document required or permitted to be served by the party for the application or appeal may be served on the registrar for service by the registrar on another party.
- (3) A document required or permitted to be served on the party for the application or appeal may be served by leaving the document with the person in charge of the place where the party is in custody.
- (4) In this rule—

*application* means—

  - (a) an application for further time to apply for leave to appeal; or
  - (b) an application for leave to appeal; or
  - (c) an application for further time to appeal; or
  - (d) an application for leave to file and serve a notice of appeal under rule 22 (2) (Time for filing and serving notice of appeal).

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**61 Convicted person is appellant—written case and presence**

- (1) This rule applies to a convicted person who is the appellant.
- (2) The convicted person may present the person's case to the Court of Appeal in writing if the person wants to, whether or not the respondent director of public prosecutions presents his or her case in writing.

*Note* The convicted person must state that he or she wants to present his or her case in writing. See the following:

- rule 4 (2) (Requirements for notice of motion for leave to appeal—interlocutory judgment)
- rule 19 (4) (Requirements for notice of appeal)
- rule 51 (2) (Requirements for application for leave to appeal out of time—conviction or sentence).

- (3) If the convicted person presents his or her case in writing, the person need not appear or be present at the hearing of the application or appeal unless the Court of Appeal otherwise orders.
- (4) If the convicted person is in custody and does not present his or her case in writing, the person is entitled to be present at the hearing of the application or appeal in the way that the Court of Appeal orders.
- (5) The Court of Appeal may order that the convicted person be present—
  - (a) in person; or
  - (b) by audiovisual link or audio link in accordance with the *Evidence Act (Miscellaneous Provisions) Act 1991*, part 3 (Use of audiovisual links and audio links).
- (6) In this rule:  
***appellant*** means—
  - (a) a person applying for further time to apply for leave to appeal;  
or
  - (b) an applicant for leave to appeal; or

- (c) a person appealing against conviction or sentence; or
- (d) an applicant for further time to appeal; or
- (e) an applicant for leave to file and serve a notice of appeal under rule 22 (2) (Time for filing and serving notice of appeal).

**application**—see rule 60 (Service of documents when unrepresented party in custody).

## **62 Order for production of prisoner**

- (1) The Court of Appeal may make the following orders in relation to the hearing of an application or appeal:
  - (a) an order requiring the production of a person who is in custody;
  - (b) an order about the continuing custody of a person who is in custody.
- (2) The Court of Appeal may order that the person in custody be produced—
  - (a) in person; or
  - (b) by audiovisual link or audio link in accordance with the *Evidence Act (Miscellaneous Provisions) Act 1991*, part 3 (Use of audiovisual links and audio links).
- (3) The registrar may exercise the jurisdiction of the Court of Appeal for subrule (1) (a) or (2).
- (4) An order under this rule may be made on the application of a party or on the Court of Appeal's initiative.
- (5) An order under this rule may, but need not, be in accordance with form 6.12.
- (6) In this rule:

**application**—see rule 60 (Service of documents when unrepresented party in custody).

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**63 Fine paid to be kept pending appeal**

- (1) This rule applies if a convicted person is sentenced to pay a fine.
- (2) If the convicted person appeals against the conviction or sentence, an amount paid by the person as the fine, or part of the fine, must be kept by the person authorised to receive the fine until the appeal is finally decided.
- (3) If the convicted person has paid an amount mentioned in subrule (2), and the person's appeal is upheld, the person is entitled to a refund, unless the Court of Appeal otherwise orders.
- (4) In this rule:

*fine* includes an amount for costs or any other amount ordered to be paid by a convicted person in relation to an offence.

**Examples**

- 1 a financial penalty imposed by a court for an offence
- 2 a fee or charge payable to the Territory that is imposed by a court in a proceeding for an offence
- 3 costs payable to the Territory under a court order in a proceeding for an offence
- 4 a levy imposed under the *Victims of Crime (Financial Assistance) Act 1983*
- 5 an amount payable under an order for reparation under the *Crimes Act 1900*, section 350 (Reparation orders)

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act 2001*, s 126 and s 132).

**64 Lawyer's instructions to act for convicted person ended**

- (1) This rule applies to a lawyer if the lawyer's instructions to act for a convicted person who is a party to an application or appeal are ended before—
  - (a) for an application—the application is decided; or
  - (b) for an appeal—judgment is given in the appeal.

- (2) The lawyer must file and serve on each party to the application or appeal (including the convicted person) written notice that the lawyer is no longer acting for the convicted person.
- (3) The lawyer must file and serve the notice as soon as possible.
- (4) In this rule:  
*application*—see rule 60 (Service of documents when unrepresented party in custody).

**65 Lawyer wants to withdraw from acting for convicted person**

- (1) This rule applies to a lawyer if the lawyer no longer wants to act for a convicted person who is a party to an application or appeal.
- (2) The lawyer must—
  - (a) give the registrar written notice that the lawyer intends to ask the Court of Appeal for leave to withdraw; and
  - (b) give a copy of the notice to each party other than the convicted person; and
  - (c) if the lawyer knows the convicted person's current address—give a copy of the notice to the person.
- (3) The copies of the notice must be given as soon as possible after the lawyer gives the notice to the registrar.
- (4) The lawyer may withdraw from acting for the convicted person only with the Court of Appeal's leave.
- (5) In this rule:  
*application*—see rule 60 (Service of documents when unrepresented party in custody).

**66 Notification of result etc**

- (1) For an application or appeal, the registrar must give written notice—

- (a) to each relevant person about the final determination of the application or appeal; and
  - (b) to each party to the application or appeal, or anyone else the registrar considers appropriate, about an order or direction made in relation to the application or appeal.
- (2) However, the registrar need only give notice to a person mentioned in subrule (1) if the person was not present when the application or appeal was decided, or the order or direction made.
- (3) In this rule:

**application**—see rule 60 (Service of documents when unrepresented party in custody).

**present** means—

- (a) present in person; or
- (b) present by audiovisual link or audio link in accordance with the *Evidence Act (Miscellaneous Provisions) Act 1991*, part 3 (Use of audiovisual links and audio links).

**relevant person** means—

- (a) a party to the application or appeal; or
- (b) the judge who gave the judgment appealed from; or
- (c) anyone else the registrar considers appropriate.

## **Division 86.6            Cases stated or questions reserved**

### **67    Form and contents**

- (1) A case stated or question reserved by the court about any matter in relation to which an appeal may be brought to the Court of Appeal must be in the form of a special case.
- (2) The special case must—

- (a) be in accordance with form 6.13; and
  - (b) briefly state the facts, and have attached all documents, necessary to allow the Court of Appeal to decide the questions raised by the special case; and
  - (c) state the questions to be decided.
- (3) If the special case is to be presented in writing under division 86.8 (Written cases), the special case must state that.

#### **68 Preparation and settling of special case**

Unless the court stating the case or reserving the question otherwise directs, the special case must be—

- (a) prepared in draft by the party having carriage of the proceeding after consultation with the other parties concerned, and include an address for service for each party; and
- (b) settled by the court stating the case or reserving the question; and
- (c) given to the registrar.

#### **69 Setting down special case for hearing**

On receipt of a special case, if the registrar is satisfied that all parties concerned have been served with the special case, the registrar must set a date for hearing by the Court of Appeal.

#### **70 Court of Appeal can draw inferences for special case**

For a special case, the Court of Appeal may draw from the facts stated in, and the documents attached to, the special case any inference (of fact or law) that might have been drawn from them if proved at a trial.

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## **Division 86.7                      Reference appeals following acquittals on indictment**

### **71        Definitions for div 86.7**

In this division:

*applicant*—see the Act, section 37S (2) (Reference appeal following acquittal on indictment).

*Note*        The *applicant* for a reference appeal is the Attorney-General or director of public prosecutions.

*interested party*—see the Act, section 37S (4).

*Note*        An *interested party*, for a reference appeal arising from a trial, is a person charged at the trial or a person affected by any decision in the trial.

*reference appeal* means an appeal under the Act, section 37S.

### **72        Application for reference appeal**

- (1) An application for a reference appeal must—
  - (a) be in accordance with form 6.14; and
  - (b) state the grounds of the application; and
  - (c) state the question of law to be decided.
- (2) If the applicant wants to present the applicant's case in writing under division 86.8 (Written cases), the application must state that the applicant wants to do so.

### **73        Service of application or amended application for reference appeal**

The application or an amended application (if any) must be served on each interested party within 7 days after the day the application is filed.

**74 Appearance by interested party in reference appeal**

- (1) An interested party may enter an appearance in accordance with order 13 (Appearance) as if—
  - (a) the application were an originating application; and
  - (b) the party were a defendant; and
  - (c) the applicant were the plaintiff.
- (2) If an interested party is not represented in the appeal, counsel instructed by the applicant under the Act, section 37S (5) appears for the party and must enter an appearance as mentioned in subrule (1).

**75 Discontinuance of reference appeal**

- (1) The applicant may file and serve on each interested party a notice of discontinuance of the reference appeal or part of the reference appeal—
  - (a) at any time before the hearing of the reference appeal, without the leave of the Court of Appeal; or
  - (b) at the hearing, or after the hearing and before judgment, with the leave of the Court of Appeal.
- (2) However, if a reference appeal is to be decided on written cases without oral argument, the applicant may file and serve a notice of discontinuance of the appeal or part of the appeal—
  - (a) at any time before (and including) the last day that the applicant may file written submissions under rule 83 (3), (Filing and serving written case—appeal), without the leave of the Court of Appeal; or
  - (b) after the period mentioned in paragraph (a), with the leave of the Court of Appeal.

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- (3) If the applicant files and serves a notice of discontinuance of a reference appeal or part of a reference appeal, the appeal or part of the appeal is abandoned by the applicant.

## **76 Application of certain rules to reference appeals**

- (1) The rules and forms mentioned in subrule (2) apply to a reference appeal as if—
- (a) a reference to an appeal were a reference to the reference appeal; and
  - (b) a reference to the appellant were a reference to the applicant; and
  - (c) a reference to the respondent were a reference to each interested party; and
  - (d) a reference to a notice of appeal were a reference to the application for a reference appeal; and
  - (e) any other necessary changes were made.
- (2) The rules and forms applying to reference appeals are as follows:
- rule 29 (Amending notice of appeal)
  - rule 32 (Keeping exhibits)
  - rule 33 (Date for settlement of appeal papers)
  - rule 34 (Filing of things before settlement of appeal papers)
  - rule 35 (Draft index of appeal papers)
  - rule 36 (Content of appeal papers)
  - rule 37 (Settlement of appeal papers)
  - rule 38 (Presentation of appeal papers)
  - rule 39 (Filing and serving appeal papers)
  - rule 40 (Setting down appeal for hearing)
  - rule 41 (Power to change appeal hearing date)
  - rule 42 (Written summary and list for appeal hearing)
  - rule 43 (Summaries of arguments) other than subrule (1) (c)
  - rule 44 (List of authorities, legislation and texts)

- rule 45 (Abandonment of ground of appeal)
- rule 47 (Absence of party)
- form 6.8 (Notice of discontinuance)
- form 6.9 (Certificate about appeal papers).

## **Division 86.8            Written cases**

### **77    Definitions for div 86.8**

In this division:

*appeal* means an appeal from a judgment of the court, and includes a reference appeal.

*appellant* means—

- (a) a person applying for further time to apply for leave to appeal; or
- (b) an applicant (including a convicted person under division 86.5.2 (Leave to appeal out of time against certain convictions and sentences—convicted person)) for leave to appeal; or
- (c) a person appealing from a judgment of the court; or
- (d) an applicant for further time to appeal; or
- (e) an applicant for leave to file and serve a notice of appeal under rule 22 (2) (Time for filing and serving notice of appeal); or
- (f) an applicant for a reference appeal.

*applicant*, for a reference appeal—see the Act, section 37S (2) (Reference appeal following acquittal on indictment).

*Note*     The *applicant* for a reference appeal is the Attorney-General or director of public prosecutions.

*application* means—

- (a) an application for further time to apply for leave to appeal; or

- (b) an application for leave to appeal (including a convicted person's application); or

*Note* An application under subdiv 86.5.3 (Leave to appeal out of time against sentence—director of public prosecutions) is taken to be an application under r 12 (see r 56).

- (c) an application for further time to appeal; or
- (d) an application for leave to file and serve a notice of appeal under rule 22 (2) (Time for filing and serving notice of appeal).

***convicted person's application*** means an application by a convicted person under subdivision 86.5.2 (Leave to appeal out of time against certain convictions and sentences—convicted person).

***interested party***, for a reference appeal—see the Act, section 37S (4).

*Note* An ***interested party***, for a reference appeal arising from a trial, is a person charged at the trial or a person affected by any decision in the trial.

***judgment*** includes—

- (a) a decree, order or direction of the court; or
- (b) a conviction recorded by the court; or
- (c) a sentence imposed by the court.

***reference appeal*** means an appeal under the Act, section 37S.

***respondent***, for a reference appeal, means an interested party.

## **78 Application of div 86.8 to case stated etc**

This division applies, with any necessary changes, to a case stated or question reserved by the court about any matter in relation to which an appeal may be brought to the Court of Appeal.

## **79 When are written cases used?**

- (1) If all the parties to an appeal or application indicate, in accordance with this order, that they want to present their cases in writing, the appeal or application may be dealt with by written cases.
- (2) If any of the parties to an appeal or application (other than the director of public prosecutions as respondent to a convicted person's application) does not indicate, in accordance with this order, that the party wants to present his or her case in writing, the appeal or application must be dealt with by oral hearing.

*Note* Rule 61 (2) (Convicted person is appellant—written case and presence) provides that a convicted person who is the appellant may present the person's case to the Court of Appeal in writing if the person wants to, whether or not the respondent director of public prosecutions presents his or her case in writing.

- (3) This rule does not prevent the Court of Appeal requiring the parties or a party to present oral argument.

## **80 Appellant wants written case**

An appellant may indicate, in accordance with this order, that the appellant wants to present his or her case in writing.

*Note* See the following provisions:

- rule 4 (2) (Requirements for notice of motion for leave to appeal—interlocutory judgment)
- rule 12 (2) (Requirements for notice of motion for leave to appeal out of time—final judgment)
- rule 19 (4) (Requirements for notice of appeal)
- rule 51 (2) (Requirements for application for leave to appeal out of time—conviction or sentence)
- rule 67 (3) (Form and contents)
- rule 72 (2) (Application for reference appeal).

## **81 Respondent wants written case**

- (1) This rule applies if—

- (a) an appellant indicates, in accordance with this order, that the appellant wants to present the appellant's case in writing; and
  - (b) a respondent also wants to present his or her case in writing.
- (2) The respondent must file a notice stating that the respondent wants to present his or her case in writing.
  - (3) The notice must be filed, and served on each other party, within 7 days after the day the appellant's application or notice of appeal is served on the respondent.
  - (4) If all the parties to an appeal or application indicate, in accordance with this order, that they want to present their cases in writing, the hearing date for the appeal or application is vacated on the filing of the respondent's notice under subrule (2) (or, if there are 2 or more respondents, on the filing of the last notice under subrule (2)).

## **82 Filing and serving written case—applications**

- (1) This rule applies if an application is to be dealt with by written case.
- (2) The appellant (or each appellant) to an application must—
  - (a) if there is only 1 respondent—file 4 copies, and serve 3 copies on the respondent, of the appellant's written case within 28 days after the day the notice mentioned in rule 81 (2) is served on the appellant; or
  - (b) if there are 2 or more respondents and the notice mentioned in rule 81 (2) was served by them on different days—file 4 copies, and serve 3 copies on each respondent, of the appellant's written case within 28 days after the earliest of those days.
- (3) The respondent (or each respondent) to an application must file 4 copies, and serve 3 copies on each other party, of the respondent's written case within 28 days after the day the appellant's written case is served on the respondent (or, if there are 2 or more appellants, the day the last of the appellants' written cases are served on the respondent).

- (4) An appellant to an application may file 4 copies, and serve 3 copies on the respondent (or each respondent), of written submissions in reply to a respondent's written case within 14 days after the day the written case is served on the appellant.

### **83 Filing and serving written case—appeal**

- (1) The appellant (or each appellant) to an appeal must file 4 copies, and serve 3 copies on the respondent (or each respondent), of the appellant's written case within 28 days after the day the appeal papers are filed.
- (2) The respondent (or each respondent) to an appeal must file 4 copies, and serve 3 copies on each other party, of the respondent's written case within 35 days after the day the appellant's written case is served on the respondent (or, if there are 2 or more appellants, the day the last of the appellants' written cases are served on the respondent).
- (3) An appellant to an appeal may file 4 copies, and serve 3 copies on the respondent (or each respondent), of written submissions in reply to a respondent's written case within 14 days after the day the written case is served on the appellant.

### **84 Form of written case**

- (1) The written case of a party must—
  - (a) have a title that includes the name of the proceeding; and
  - (b) identify the party; and
  - (c) have consecutively numbered paragraphs; and
  - (d) state the issues; and
  - (e) state the argument to be made on each issue, mentioning the steps in the argument and any authority, legislation or finding of fact to be relied on for each step; and

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- (f) if there is to be a challenge to any of the court's findings of fact, state—
    - (i) the claimed error (including any failure to make a finding of fact); and
    - (ii) the reasons why the party considers the finding was an error; and
    - (iii) the finding that the party considers should have been made; and
  - (g) include a chronology of the facts; and
  - (h) include a list of authorities, legislation and texts relied on by the party that identifies them in accordance with rule 44 (2) (List of authorities, legislation and texts).
- (2) If the written case relies on a matter in another document, the following applies:
- (a) for a document mentioned in subrule (1) (h)—the document must be identified as mentioned in that subrule;
  - (b) for a transcript—relevant parts must be identified by page and line and attached to the case;
  - (c) for other documents—if relevant, the page of the document relied on must be identified.
- (3) A written case need not be printed or in bound form, but must be clear, legible and securely fastened.

## **85 Inspection of written cases**

A case cannot be inspected at the registry unless all parties have filed their cases.

## **Division 86.9            Miscellaneous**

### **86    Service for o 86 generally**

- (1) This rule applies if service of a document is required under this order.
- (2) If the document is an appeal document, the document must be served—
  - (a) by serving a signed and sealed, or signed and stamped, copy of the document personally on the party to be served; or
  - (b) by delivering a signed and sealed, or signed and stamped, copy of the document to the party's address for service in the proceeding in which the judgment appealed from was given.
- (3) If the document is not an appeal document, the document must be served—
  - (a) as mentioned in subrule (2) (a); or
  - (b) in accordance with order 10 (Service of documents in Australia) rule 4 (Non-personal service of documents).
- (4) This rule is subject to rule 60 (Service of documents when unrepresented party in custody).
- (5) In this rule:

*appeal document* means—

  - (a) a notice of appeal; or
  - (b) an application for further time to apply for leave to appeal; or
  - (c) an application for leave to appeal; or
  - (d) an application for further time to appeal; or
  - (e) an application for leave to file and serve a notice of appeal under rule 22 (2) (Time for filing and serving notice of appeal).

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**87 Power to amend proceedings in court below**

The Court of Appeal may amend the proceeding in which the judgment appealed from was given.

**88 Expediting appeals**

- (1) The Court of Appeal may, at any time, make any order the Court of Appeal considers just to expedite an appeal.
- (2) A party wanting leave to appeal may move by motion on notice to the Court of Appeal in accordance with order 54 (Motions and other applications) for an order that the application for leave to appeal be heard with, or immediately before, the hearing of the appeal, and for any consequential orders.

**89 Directions by Court of Appeal and registrar about appeal etc**

- (1) At any time after the filing of a notice of appeal or application for leave to appeal, the Court of Appeal or registrar may give directions about any matter relevant to the appeal or application.
- (2) A direction under this rule may be made at the request of a party or on the initiative of the Court of Appeal.
- (3) A request by a party must be made by motion on notice to the Court of Appeal in accordance with order 54 (Motions and other applications).

**90 Want of prosecution of appeal**

- (1) In this rule:

*appeal* includes—

- (a) an application for further time to apply for leave to appeal; or
- (b) an application for leave to appeal; or
- (c) an application for further time to appeal; or

- (d) an application for leave to file and serve a notice of appeal under rule 22 (2) (Time for filing and serving notice of appeal).

*appellant* includes—

- (a) a person applying for further time to apply for leave to appeal; or
  - (b) an applicant for leave to appeal; or
  - (c) an applicant for further time to appeal; or
  - (d) an applicant for leave under rule 22 (2).
- (2) If an appellant has not done anything required to be done under these rules, or otherwise has not prosecuted the appellant's appeal with appropriate effort, the Court of Appeal may—
- (a) order that the appeal be dismissed for want of prosecution; or
  - (b) on its own initiative, set a time for the doing of the thing and—
    - (i) at the same time order that, if the appellant does not do the thing within the time, the appeal will be dismissed for want of prosecution; or
    - (ii) if the appellant does not do the thing within the time—order that the appeal be dismissed for want of prosecution; or
  - (c) make any other order the Court of Appeal considers just.
- (3) A respondent may apply to the Court of Appeal by motion on notice in accordance with order 54 (Motions and other applications) to require the appellant to show cause why the appeal should not be dismissed for want of prosecution.
- (4) If the respondent makes an application, the respondent must serve the application on each other party to the appeal.
- (5) On the hearing of the motion, the Court of Appeal may make an order mentioned in subrule (2).

- (6) An order mentioned in subrule (2) (b) may be varied at any time before the appeal is dismissed for want of prosecution and, in special circumstances, may be varied or revoked after that time.

**91 Judgments—accidental slips or omissions**

The Court of Appeal may, on application by a party or on its own initiative, correct a clerical mistake in a judgment or an error in a judgment arising from an accidental slip or omission.

**92 Practice directions about electronic documents and communications**

- (1) The registrar may, with the President's approval, issue practice directions about—
- (a) the preparation, filing, service and exchange of electronic documents relating to proceedings before the Court of Appeal; or
  - (b) the preparation and issue of electronic documents by the Court of Appeal; or
  - (c) the conduct of proceedings before the Court of Appeal by means of the electronic communication of written information between the Court of Appeal and parties to the proceedings.
- (2) A practice direction is a notifiable instrument.
- Note* A notifiable instrument must be notified under the *Legislation Act 2001*.
- (3) A practice direction must be complied with despite anything to the contrary in these rules.
- (4) This rule expires on 1 January 2005.

## Schedule 1 Court of Appeal forms

(see r 3)

### [1.1] Schedule 1, new forms 6.4 to 6.14

*insert*

#### Form 6.4 Notice of motion for leave to appeal from interlocutory judgment of court

(see o 86 r 4)

In the Supreme Court of the Australian Capital Territory

Court of Appeal

ACTCA No of [year]

Interlocutory judgment of [judge] (SC No of [year])

Between:

*AB* Applicant  
and

*CD* Respondent

#### Notice of motion for leave to appeal from interlocutory judgment

**Take notice** that the Court of Appeal will be moved on [date] at [time] (or as soon after that as this motion can be heard) for the following orders:

1 That the applicant have leave to appeal from the interlocutory judgment of [judge] given on [date].

2 *[if necessary]* That the applicant have leave to make this application even though this notice was filed more than 7 days after the day the judgment was given.

3 Any other orders that the court considers appropriate.

The grounds of the application are set out in the affidavit of *[name]* *[\*sworn/affirmed]* on *[date]* and filed with this notice.

*[if o 86 r 4 (2) applies]* The applicant wants to present the applicant's case in writing.

Date:

Signature of *\*applicant/\*applicant's solicitor*:

Address for service:

**To:           the Registrar**

**And to:    the respondent**

*[respondent's name and address]*

**Notice to respondent—entry of appearance**

Before taking any further step in this proceeding, you must enter an appearance in the registry.

*\*Strike out if inapplicable*

**Form 6.5**                      **Notice of motion for leave to  
appeal out of time from final  
judgment of court**

(see o 86 r 12)

In the Supreme Court of the Australian Capital Territory

Court of Appeal

ACTCA No      of [year]

Judgment of [judge/master] (SC No    of [year])

Between:

*AB*    Applicant  
and

*CD*    Respondent

**Notice of motion for leave to appeal out of time from final  
judgment**

**Take notice** that the Court of Appeal will be moved on [date] at [time] (or as soon after that as this motion can be heard) for the following orders:

- 1 That the applicant have leave to appeal out of time from the judgment of [judge/master] given on [date].
- 2 Any other orders that the court considers appropriate.

A notice of appeal [\*will not be/\*has not been] filed in the Court of Appeal within 21 days after the day the judgment was given.

The grounds of the application are set out in the affidavit of [name] [\*sworn/affirmed] on [date] and filed with this notice.

*[if o 86 r 12 (2) applies]* The applicant wants to present the applicant's case in writing.

Date:

Signature of \*applicant/\*applicant's solicitor:

Address for service:

**To:           the registrar**

**And to:    the respondent**

*[respondent's name and address]*

**Notice to respondent—entry of appearance**

Before taking any further step in this proceeding, you must enter an appearance in the registry.

*\*Strike out if inapplicable*

## Form 6.6 Notice of appeal

(see o 86 r 19)

In the Supreme Court of the Australian Capital Territory

Court of Appeal

ACTCA No of [year]

[\*Appeal from [judge/master] / Appeal against [\*conviction recorded/sentence imposed by [judge] ](SC No of [year])

Between

AB Appellant

and

CD Respondent

### Notice of appeal

1 The appellant appeals from all [*or, if from a part, state part*] of the judgment of [judge/master] given on [date].

2 [*if leave to appeal has been given*] The appeal is brought by leave of the Court of Appeal given on [date]. [*Attach a copy of judgment giving leave to appeal*]

3 The grounds of the appeal are—[*set out briefly the grounds of the appeal with all necessary or appropriate particulars*].

4 The judgment sought is—

5 [*if o 86 r 19 (4) or r 61 (2) applies*] The appellant wants to present the appellant's case in writing.

[*or*]

5 [*if the appellant is in custody and does not present the appellant's case in writing, the appellant is entitled to be present at the hearing in the way*

*that the Court of Appeal orders*]. The appellant [\*wants/does not want] to be present at the hearing.

Date:

Signature of \*appellant/\*appellant's solicitor:

Address for service:

**Notice to respondent**

[*respondent's name and address*]

**1 Entry of appearance**

Before taking any further step in this appeal, you must enter an appearance in the registry if you have not entered an appearance under order 86 rule 7 (Appearance to notice of motion for leave to appeal—interlocutory judgment) or rule 14 (Appearance to notice of motion for leave to appeal out of time—final judgment).

**2 Settling appeal papers**

1 The appeal papers will be settled on [*date*] at [*time*] at [*place*]. [*registrar to insert date, time and place*]

2 If you do not attend to settle the appeal papers, either in person or by your lawyer, directions may be given, and orders made, in your absence.

Date:

Registrar

*\*Strike out if inapplicable*

## Form 6.7 Notice of motion for striking out appeal

(see o 86 r 25/r 31)

In the Supreme Court of the Australian Capital Territory

Court of Appeal

ACTCA No of [year]

[\*Appeal from [judge/master] / Appeal against [\*conviction recorded/sentence imposed by [judge] ](SC No of [year])

Between:

AB Appellant  
and

CD Respondent

### Notice of motion for striking out appeal

**Take notice** that the Court of Appeal will be moved on [date] at [time] (or as soon after that as this motion can be heard) for the following orders:

- 1 That the notice of appeal be struck out as incompetent.
- 2 That the appellant pay the respondent's costs.
- 3 Any other orders that the court considers appropriate.

Date:

Signature of \*respondent/\*respondent's solicitor:

Address for service:

**To: the registrar**

**And to: the appellant**

[appellant's name and address]

*\*Strike out if inapplicable*

**Form 6.8**                      **Notice of discontinuance**

(see o 86 r 27/r 31/r 76)

In the Supreme Court of the Australian Capital Territory

Court of Appeal

ACTCA No      of [year]

[\*Appeal from [judge/master] / Appeal against [\*conviction  
recorded/sentence imposed by [judge] ](SC No      of [year])

Between:

AB      Appellant  
and

CD      Respondent

**Notice of discontinuance**

The appellant discontinues the appeal [*or part of the appeal: state part*].

Date:

Signature of \*appellant/\*appellant's solicitor:

*\*Strike out if inapplicable*

## Form 6.9 Certificate about appeal papers

(see o 86 r 39/r 76)

In the Supreme Court of the Australian Capital Territory

Court of Appeal

ACTCA No of [year]

[\*Appeal from [judge/master] / Appeal against [\*conviction recorded/sentence imposed by [judge] ](SC No of [year])

Between

AB Appellant

and

CD Respondent

### Certificate about appeal papers

I have examined the appeal papers and certify that they are correct.

Signature(s) of  
\*appellant(s)/\*solicitor(s)  
for the appellant(s)

name:

date:

Signature(s) of  
\*respondent(s)/\*solicitor(s)  
for the respondent(s)

name:

date:

*\*Strike out if inapplicable*

**Form 6.10****Application to registrar for leave to appeal out of time against conviction or sentence**

(see o 86 r 51)

In the Supreme Court of the Australian Capital Territory

Court of Appeal (jurisdiction exercised by the registrar)

ACTCA No      of [year]

Appeal against [\*conviction recorded/sentence imposed by [judge] ]

(SC No            of      [year]).

Between:

*AB*      Applicant

and

*CD*      Respondent

**Application for leave to appeal out of time against conviction or sentence**

1 The applicant applies for leave to appeal out of time from the [\*conviction recorded on [date] [\*or/and] sentence imposed by [judge] on [date]].

2 A notice of appeal [\*will not be/\*has not been] filed in the Court of Appeal within 21 days after the day the [\*conviction was entered [or] sentence handed down].

3 The grounds of the application are set out in the affidavit of [deponent] [\*sworn/affirmed] on [date] and filed with this application.

4 [*if o 86 r 51 (2)) applies*] The applicant wants to present the applicant's case in writing.

[or]

**Schedule 1** Court of Appeal forms

Amendment [1.1]

---

4 *[if the applicant is in custody and does not present the applicant's case in writing, the applicant is entitled to be present at the hearing in the way that the Court of Appeal orders].* If the registrar grants leave to appeal out of time, the applicant [*\*wants/does not want*] to be present at the hearing.

Date:

Signature of *\*applicant/\*applicant's solicitor*:

Address for service:

**To:** the registrar

**And to:** the director of public prosecutions

[*address*]

*\*Strike out if inapplicable*

**Form 6.11****Notice of motion to have  
application for extension of time  
decided by Court of Appeal**

(see o 86 r 55)

In the Supreme Court of the Australian Capital Territory

Court of Appeal

ACTCA No      of [year]

Appeal against [\*conviction recorded/sentence imposed by [judge] ]

(SC No          of      [year]).

Between:

*AB*      Applicant

and

*CD*      Respondent

**Notice of motion to have application for extension of time  
decided by Court of Appeal**

**Take notice** that the Court of Appeal will be moved on [date] at [time] (or as soon after that as this motion can be heard) for the following orders:

1 That the applicant, having received the registrar's notification that the applicant's application for extension of time within which [\*notice of appeal/application for leave to appeal] may be given has been refused, wants to have the application decided by the Court of Appeal and be given an extension of time by the Court of Appeal within which [\*notice of appeal/application for leave to appeal] may be given [because (*if there are reasons additional to those set out in the application to the registrar, briefly describe the reasons*)].

2. Any other orders the court considers appropriate.

**Schedule 1** Court of Appeal forms

Amendment [1.1]

---

*[if additional material is attached]* The applicant attaches the following additional material: *[briefly describe the additional material]*.

*[if o 86 r 61(2) applies]* The applicant wants to present the applicant's case in writing.

*[or]*

*[if the applicant is in custody and does not present the applicant's case in writing, the applicant is entitled to be present at the hearing in the way that the Court of Appeal orders]*. The applicant *[\*wants/does not want]* to be present at the hearing.

Date:

Signature of \*applicant/\*applicant's solicitor:

**To: the registrar**

**And to: the respondent**

*[respondent's name and address]*

*\*Strike out if inapplicable*

**Form 6.12**                      **Order for production of prisoner**

(see o 86 r 62)

In the Supreme Court of the Australian Capital Territory

Court of Appeal

ACTCA No     of [year]

Appeal against [\*conviction recorded/sentence imposed by [judge] ]

(SC No            of     [year]).

Between

*AB*    Appellant

and

*CD*    Respondent**Order for production of prisoner**

The Court of Appeal orders that:

1 The superintendent (*or as the case may be*) must bring (*name*) (the **prisoner**) before the court to be present during the hearing of an [*appeal/application for leave to appeal*] in relation to the prisoner and then returned to confinement.

2 The first day the prisoner must be before the court is (*eg 7 September 2002, at 10 am*) at (*address of court*).

Date:

Registrar

*\*Strike out if inapplicable*

## **Form 6.13 Special case**

(see o 86 r 67)

In the Supreme Court of the Australian Capital Territory

Court of Appeal

ACTCA No of [year]

Special case from [judge/master]

(SC No of [year]).

Between:

AB Appellant

and

CD Respondent [if any]

### **Special case**

[Agreed] statement of facts

1

2

3

[etc]

**Question[s] to be decided**

[next par no]

[etc]

### **Written case**

[if o 86 r 67 (3) applies] The special case is to be presented in writing.

Date:

Signature of \*appellant/\*respondent/\*appellant's/\*respondent's solicitor:

Address for service:

*\*Strike out if inapplicable*

## Form 6.14 Application for reference appeal

(see o 86 r 72)

In the Supreme Court of the Australian Capital Territory

Court of Appeal

ACTCA No of [year]

Appeal from [judge]

(SC No of [year]).

Between

The Queen (the appellant)

and

CD [the respondent]

### Application for reference appeal

#### Grounds

1

2

3

[etc]

#### Question[s] of law to be decided

[next par no]

[etc]

#### Written case

[if o 86 r 72 (2) applies] The applicant wants to present the applicant's case in writing.

Date:

Signature of applicant:

Address for service:

**Notice to interested party**

*[interested party's name and address]*

**1 Entry of appearance**

Before taking any further step in this application, you must enter an appearance in the registry.

**2 Settling appeal papers**

1 The appeal papers will be settled on *[date]* at *[time]* at *[place]*.  
*[Registrar to insert date, time and place]*

2 If you do not attend to settle the appeal papers, either in person or by your lawyer, directions may be given, and orders made, in your absence.

Date:

Registrar

## Schedule 2 Minor amendments

(see r 3)

### [2.1] Order 39A rule 4 (1)

*substitute*

- (1) Unless the court otherwise orders, the clerk at a proceeding must keep exhibits in the proceeding for—
- (a) 21 days after the day judgment is given in the proceeding; or
  - (b) if leave to appeal from the judgment is given within that period of 21 days—21 days after the day leave is given.

*Note* O 86 r 32 (Keeping exhibits) deals with the keeping of the exhibits if an appeal is begun in the Court of Appeal from a judgment given in the proceeding.

### [2.2] Order 39A rules 4 (2) and 5 (3)

*omit*

and the *Federal Court Rules*

### [2.3] Order 42 rule 13

*omit*

### [2.4] Order 84 heading

*substitute*

## Order 84 Appeals to Supreme Court other than to Court of Appeal

**[2.5] Order 84 rule 1**

*substitute*

**1 Definitions for o 84**

In this order:

***appeal*** means an appeal from a decision of a tribunal.

***court*** means the court other than when it is the Court of Appeal or Full Court, but does not include—

- (a) the master in relation to interlocutory judgments of the master;  
or
- (b) the registrar.

***decision*** includes judgment.

*Note* ***Judgment*** is defined in the Act, dict.

***relevant Act***, in relation to an appeal, means the Act under which the appeal is brought.

***tribunal*** means a court, tribunal or other entity from which an appeal may be made to the court, and includes—

- (a) the master in relation to interlocutory judgments of the master;  
and
- (b) the registrar of the court.

**[2.6] Order 84 new rule 1A**

*insert*

**1A Meaning of *registrar* for o 84**

- (1) In this order:

***registrar***, of a tribunal, means—

- (a) except in relation to the master or registrar of the court—the registrar of the tribunal or, if there is not a registrar of the

**Schedule 2** Minor amendments

Amendment [2.7]

---

tribunal, the person in charge of the tribunal's administration;  
or

(b) in relation to the master or registrar of the court—the registrar of the court.

(2) In this rule:

*registrar of the tribunal* includes a deputy registrar of the tribunal.

**[2.7] Order 84 rule 2**

*substitute*

**2 Application of o 84**

This order applies to an appeal subject to—

- (a) any Act or subordinate law applying to the appeal; and
- (b) any direction of the court on the application of a party to the appeal.

*Note* Appeals may be made to the court from the tribunals mentioned in the following table:

**Tribunals appealed from**

<b>column 1 item</b>	<b>column 2 tribunal</b>	<b>column 3 law appealed under</b>
1	administrative appeals tribunal	<b><i>Administrative Appeals Tribunal Act 1989</i></b> , section 46
2	credit tribunal	<b><i>Consumer Credit (Administration) Act 1996</i></b> , section 94
3	discrimination tribunal	<b><i>Discrimination Act 1991</i></b> , section 108D
4	guardianship tribunal	<b><i>Guardianship and Management of Property Act 1991</i></b> , section 56

column 1 item	column 2 tribunal	column 3 law appealed under
5	Magistrates Court	<b><i>Community and Health Services Complaints Act 1993</i></b> , section 39G (1) <b><i>Consumer Credit (Administration) Act 1996</i></b> , section 95 <b><i>Health Records (Privacy and Access) Act 1997</i></b> , section 32 (1) <b><i>Magistrates Court Act 1930</i></b> , divisions 11.1 and 11.2 <b><i>Magistrates Court (Civil Jurisdiction) Act 1982</i></b> , part 21
6	mental health tribunal	<b><i>Mental Health (Treatment and Care) Act 1994</i></b> , section 141
7	registrar of the Supreme Court	<b><i>Criminal Injuries (Compensation) Act 1983</i></b> , section 28
8	residential tenancies tribunal	<b><i>Residential Tenancies Act 1997</i></b> , section 126
9	Small Claims Court	<b><i>Magistrates Court (Civil Jurisdiction) Act 1982</i></b> , part 21
10	Supreme Court (constituted by the master in relation to interlocutory judgments of the master)	<b><i>Supreme Court Act 1933</i></b> , section 9 (2) (a)
11	tenancy tribunal	<b><i>Tenancy Tribunal Act 1994</i></b> , section 58

**[2.8] Order 84 rule 4 (1) (b), (c) and (6) (b) and rule 6 (1) (b) and (2) (b)**

*omit*

order

*substitute*

judgment

**[2.9] Order 84 rule 9**

*substitute*

**9 Date for settlement of appeal papers**

The registrar must set a date for settlement of the appeal papers for an appeal by writing the date on the notice of appeal.

**[2.10] Order 84 rule 16 (4) (b) and (c)**

*omit*

order

*substitute*

judgment

**[2.11] Schedule 1, form 6.1**

*omit*

**Entry of appearance**

*substitute*

**1 Entry of appearance**

**[2.12] Schedule 1, form 6.1**

*omit*

**Settling appeal papers**

*substitute*

**2 Settling appeal papers**

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## Endnotes

### Republications of amended laws

- 1 For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

### Notification

- 2 Notified under the *Legislation Act 2001* on 11 October 2002.  
(see [www.legislation.act.gov.au](http://www.legislation.act.gov.au))

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