Western Australia

Supreme Court Act 1935

Supreme Court (Court of Appeal) Rules 2005

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Defined terms

Supreme Court (Court of Appeal) Rules 2005

Part 1 — Preliminary

1. Citation

These rules are the *Supreme Court (Court of Appeal) Rules 2005*.

2. Commencement

These rules come into operation on 2 May 2005, or on the day on which they are published in the *Gazette*, whichever is the later.

3. Interpretation

(1) In these rules, unless the contrary intention appears —

Act means the *Supreme Court Act 1935*;

appeal includes an application for leave to appeal;

appeal notice means a notice in the form of Form 1, 1A or 2, as the case requires;

appellant includes an applicant for leave to appeal or for an extension of time within which to appeal or apply for leave to appeal;

audio link means facilities (for example, telephone facilities) that enable audio communication between persons in different places;

CA matter means any cause or matter, however described, that, under the Act section 58(1) or any other written law, the Court of Appeal has jurisdiction to hear and determine;

civil appeal means any appeal to the Court of Appeal that is not a criminal appeal;

concluded, in relation to a CA matter, means decided, dismissed or discontinued;

criminal appeal means an appeal under the *Criminal Appeals Act 2004* Part 2 Division 3, Part 3 or 3A;

decision includes decree, determination, direction, judgment and order;

file, in relation to a document, means —

(a) for a civil appeal, to file the document in accordance with the RSC Order 67A; or

(b) for a criminal appeal, to file the document at the Court of Appeal Office at the Supreme Court, together with any fee required to be paid under the *Supreme Court (Fees) Regulations 2002*;

Form, if followed by a number, means the form of that number in Schedule 1 completed in accordance with these rules;

interim order in an appeal, means —

(a) a suspension order made under the *Civil Judgments Enforcement Act 2004* section 15;

(b) an order staying the proceedings in the primary court or the execution of the primary court's decision;

(c) an order made under the *Criminal Appeals Act 2004* section 12 or 29;

(d) an order granting bail made under the *Bail Act 1982*;

(e) an urgent appeal order;

(f) an order that an appellant provide security for a respondent's costs;

(g) an order that extends or shortens the time for obeying —

(i) a requirement of these rules, other than the time for commencing an appeal; or

(ii) an order made under these rules;

(ga) an order granting leave for any matter for which leave is required under rule 42A;

(h) any other order that the Court of Appeal may make before the appeal is concluded, other than an order giving or refusing to give leave to appeal;

interlocutory civil appeal means —

(a) an appeal from an interlocutory decision made in civil proceedings in the General Division by a judge or master; or

(b) an appeal under the *District Court of Western Australia Act 1969* section 79(1)(b);

party means a party to a CA matter;

primary court, in relation to an appeal, means the court, tribunal, person or body that made the decision being appealed;

primary court case, in relation to an appeal, means the action, case, matter or proceedings in the primary court in which the decision being appealed was made;

primary court's decision in an appeal, means the decision of the primary court that is the subject of the appeal;

primary court's transcript means —

(a) the transcript of the proceedings in the primary court; or

(b) if there is no electronic recording of the proceedings that can be transcribed —

(i) the notes made by the judicial officer who presided at the proceedings; and

(ii) one or more affidavits of people who were present at the proceedings about what happened in the proceedings;

record means any thing or process —

(a) on or by which information is recorded or stored; or

(b) by means of which a meaning can be conveyed by any means in a visible or recoverable form,

whether or not the use or assistance of some electronic, electrical, mechanical, chemical or other device or process is required to recover or convey the information or meaning;

registrar means —

(a) the Court of Appeal Registrar;

(b) a registrar directed under section 155(4) of the Act to assist the Court of Appeal Registrar;

RSC means the *Rules of the Supreme Court 1971*;

sentence appeal means a criminal appeal that is solely an appeal against a sentence;

single judge means a judge of appeal sitting alone;

urgent appeal order has the meaning given by rule 46;

video link means facilities (for example, closed-circuit television facilities) that enable audio and visual communication between persons in different places;

working day means a day other than a Saturday, a Sunday, or a public holiday in Perth.

(2) A term defined in the RSC has the same meaning in these rules as it has in the RSC, unless the contrary intention appears.

(3) Examples in these rules do not form part of them and are provided to assist understanding.

[Rule 3 amended: Gazette 22 Aug 2017 p. 4517-18; SL 2021/34 r. 4; SL 2022/60 r. 4; SL 2022/74 r. 17; SL 2022/209 r. 4; SL 2025/76 r. 4.]

4. Application of these rules

(1) These rules apply to and in respect of any CA matter.

[(2) deleted]

(3) The President may direct that some of these rules (specified in the direction) apply to and in respect of a class of CA matters (specified in the direction).

[Rule 4 amended: Gazette 22 Aug 2017 p. 4518.]

5. Application of the *Rules of the Supreme Court 1971*

(1) These rules must be read with the RSC.

(2) For the purposes of subrule (1) —

(a) a reference in the RSC to the RSC (whether "these Rules" or other words are used) is to be taken as including a reference to these rules, unless the context requires otherwise;

(b) a reference in these rules to these rules (whether "these rules" or other words are used) is to be taken as including a reference to the RSC, unless the context requires otherwise; and

(c) a single judge has jurisdiction to exercise any power of the Court or the Court of Appeal under those rules, unless the contrary intention appears.

(3) If there is a conflict or inconsistency between these rules and the RSC, these rules prevail.

(4) The RSC Order 3, other than rules 2(2) and 5(3), applies for the purposes of these rules.

Part 2 — Delegated jurisdiction

Division 1 — General

5A. Delegated jurisdiction may be exercised by Court of Appeal

(1) A delegation by these rules of jurisdiction to a single judge or a registrar does not —

(a) limit the jurisdiction of the Court of Appeal; or

(b) prevent the Court of Appeal from exercising the jurisdiction.

(2) Anything that a single judge or a registrar may do under these rules may be done by the Court of Appeal in the same manner as a single judge or a registrar unless otherwise provided for by these rules.

[Rule 5A inserted: Gazette 22 Aug 2017 p. 4518; amended: SL 2022/60 r. 5; SL 2025/76 r. 5.]

*[**6.** Deleted: SL 2022/60 r. 6.]*

Division 2 — Single judge's jurisdiction

7. General jurisdiction

(1) For the purposes of exercising the jurisdiction conferred by any other rule on a single judge, a single judge has jurisdiction —

(a) to make a decision on the application of a party or on the judge's own initiative;

(b) to make a decision on an application on the basis of the documents filed and without listing the matter for hearing;

(c) to make a decision, otherwise than pursuant to an application, on the basis of the documents filed and without listing the matter for hearing, if notice has been given to the parties;

(d) to hear and decide an application in the absence of any party other than the applicant;

(e) to order some or all of the parties to an application to do one or more of the following in respect of the application, or any aspect of it specified by the judge —

(i) to file, before a date set by the judge, any document specified by the judge that the judge considers will or may facilitate the application being conducted and concluded efficiently, economically and expeditiously;

(ii) to appear and make oral submissions on a date set by the judge;

(f) to limit the time a party has to make oral submissions at a hearing;

(g) to order some or all of the parties to an appeal to attend a hearing.

[(2) deleted]

[Rule 7 amended: Gazette 22 Aug 2017 p. 4519; SL 2022/60 r. 7; SL 2022/209 r. 5; SL 2025/76 r. 6.]

Division 3 — Reviewing decisions by a single judge

8. Application for review by Court of Appeal

(1) If under the Act section 61(3) a person who is dissatisfied with a decision made by a single judge in a CA matter wants to apply to the Court of Appeal to set aside or vary the decision, the person must file a Form 13 within 5 working days after the date of the decision.

(2) If a single judge dismissed the CA matter, an application may be made under the Act section 61(3) despite the dismissal.

(3) Except as provided in subrule (2), an application made under subrule (1) does not stay the single judge's decision or the CA matter unless the Court of Appeal orders otherwise.

Note for this rule:

This rule does not apply to a decision made by the Court of Appeal.

[Rule 8 amended: SL 2022/60 r. 8.]

9. Dealing with the application

(1) Part 5 Division 4 applies to and in respect of an application made under rule 8 as if the application were an appeal.

(2) The application will be decided —

(a) if necessary, at a hearing before the CA matter itself is heard; or

(b) otherwise at the hearing of the CA matter.

(3) If the Court of Appeal decides that the application will be heard before the CA matter itself is heard, the registrar must notify the parties to the hearing.

(4) If a single judge dismissed the CA matter and the Court of Appeal sets aside the decision, the CA matter is reinstated.

Division 4 — Registrar's jurisdiction

10. General jurisdiction

(1) A registrar may refuse to accept for filing any document that is required or permitted by these rules, or an order made under these rules, if it does not obey these rules or any order made under these rules.

(2) A registrar has the same jurisdiction in respect of a CA matter as a single judge has under these rules, but does not have jurisdiction to do any of the following —

(a) to make an order that concludes the CA matter;

(b) to extend or to refuse to extend the time within which to appeal;

(c) to give or refuse to give leave to appeal or to refer the question to the hearing of the appeal;

(d) to make a suspension order under the *Civil Judgments Enforcement Act 2004* section 15;

(e) to make an order in an appeal staying the proceedings in the primary court or the execution of the primary court's decision;

(f) to make an order under the *Criminal Appeals Act 2004* section 12, 27, 29 or 40(1)(d), (e), (f), (g), (h) or (l);

(g) to grant bail under the *Bail Act 1982*;

(h) to exercise the jurisdiction conferred on a single judge by rule 43(2)(f), (fa)(i), (fb) or (g) or (2B), 49(2) or 64(5);

(i) to grant leave for the filing of a document under rule 10A(1).

(3) For the purposes of exercising the jurisdiction conferred on a registrar, a registrar has the same jurisdiction as a single judge has under rule 7(1).

[Rule 10 amended: Gazette 22 Aug 2017 p. 4519 and 4543; SL 2025/76 r. 7.]

10A. Document that is abuse of process, frivolous or vexatious must not be accepted for filing without leave

(1) A registrar must not accept for filing any document that appears to the registrar to be an abuse of process, or frivolous or vexatious, unless the party seeking to file the document first obtains the leave of a single judge.

(2) An application for leave under subrule (1) must be supported by an affidavit.

(3) The applicant is not required to serve the application on, or give notice of the application to, any party.

[Rule 10A inserted: SL 2025/76 r. 8.]

11. Registrar may refer questions to single judge or Court of Appeal

(1) A registrar may at any time refer any of the following to a single judge —

(a) any question arising in respect of a CA matter or its conduct, or of an order made under these rules;

(b) any breach of these rules or an order made under them;

(c) any application for an order that a registrar has jurisdiction to make,

and may make an order pending the judge's decision.

(2) The single judge may deal with it or refer it back to the registrar with or without directions.

(3) If under these rules a registrar may refer any question or other matter to a single judge, the registrar may instead refer it to the Court of Appeal and may make an order pending the Court of Appeal's decision.

[Rule 11 amended: Gazette 22 Aug 2017 p. 4520 and 4543.]

12. Hearing before single judge or registrar, parties to be notified

(1) If a single judge or a registrar decides that a hearing of any matter within, respectively, a single judge's or the registrar's jurisdiction is necessary, a registrar must notify the parties of the hearing.

(2) The notice issued by a registrar —

(a) must be in a form approved by the President; and

(b) must state the matters that will be dealt with at the hearing.

(3) The notice must be served on the party at least 3 clear working days before the date of the hearing.

[(4) deleted]

[Rule 12 amended: Gazette 22 Aug 2017 p. 4543; SL 2021/34 r. 5.]

13. Written order by registrar, issue and service of

(1) A registrar may at any time issue a written order to any or all of the parties to a CA matter for the purpose of requiring the party or parties to obey a requirement of these rules.

(2) Such an order —

(a) may be issued to a party without having notified or heard the party;

(b) must state a date on or before which the written order must be obeyed; and

(c) must be served on the party at least 3 clear working days before the date on which the party has to obey it.

[(3) deleted]

(4) This rule does not limit a registrar's other powers under these rules to make orders at a hearing.

[Rule 13 amended: Gazette 22 Aug 2017 p. 4543-4; SL 2021/34 r. 6.]

Division 5 — Reviewing decisions by a registrar

[Heading amended: Gazette 22 Aug 2017 p. 4544.]

*[**14.** Deleted: SL 2022/60 r. 9.]*

15. Application for review by single judge

(1A) In this rule —

reviewable decision —

(a) means a decision made by a registrar under these rules, other than the following —

(i) a decision made under rule 11;

(ii) a decision to list a CA matter;

(iii) a decision made as a taxing officer;

and

(b) includes a decision made by a registrar under rule 10(1) to refuse to accept for filing any document, including an originating document, that is required or permitted by these rules or an order made under these rules.

(1) A party who is dissatisfied with a reviewable decision may apply to a single judge to set aside or vary it.

(2) An application under subrule (1) must be made by filing a Form 13 within 5 working days after the date of the reviewable decision.

(3) An application made under subrule (1) does not stay the reviewable decision or the CA matter unless a single judge orders otherwise.

[Rule 15 amended: SL 2022/60 r. 10.]

16. Dealing with the application

A single judge has jurisdiction to decide an application made under rule 15 and in doing so must consider afresh the matter that was decided by a registrar.

[Rule 16 amended: Gazette 22 Aug 2017 p. 4543.]

Division 6 — Miscellaneous

17. Consequences of non-attendance by party

(1) Subject to the *Criminal Appeals Act 2004* section 35, if a hearing before a single judge or a registrar is adjourned because a party who has been notified of it does not attend, the judge or registrar may order the party or the party's legal practitioner to pay the costs of any party who attended.

(2) If a party who has been notified of a hearing does not attend the hearing before a single judge or a registrar, the judge or registrar may proceed in the party's absence.

Note for this rule:

If a party does not attend a hearing before the Court of Appeal, the Court may proceed in the party's absence.

[Rule 17 amended: Gazette 22 Aug 2017 p. 4543; SL 2022/60 r. 11; SL 2022/74 r. 18.]

18. Decisions made in absence of party

(1) If a single judge or a registrar makes a decision in a party's absence, whether or not at a hearing, the judge or registrar may subsequently, but before the decision is carried out, set aside the decision and again deal with the matter that gave rise to the decision.

(2) If in a party's absence a single judge or a registrar makes a decision in a CA matter, whether or not at a hearing, a registrar must notify the party of the decision.

[Rule 18 amended: Gazette 22 Aug 2017 p. 4543-4; SL 2022/60 r. 12.]

*[**19.** Deleted: SL 2025/76 r. 9.]*

Part 3 — Administrative matters

20. Completion of forms

(1) This rule is in addition to the RSC Order 69.

[(2) deleted]

(3) A party completing a form in Schedule 1 must adapt the form to the circumstances of the CA matter, such as where there is more than one respondent.

(4) If an item in a form in Schedule 1 does not have enough space to complete it, the party completing it must —

(a) insert in the item "See attachment [*number*]"; and

(b) attach to the form a separate document headed "[*name of form*] attachment [*number*] — [*name of the item*]".

[Example: A single attachment to Form 13 for the item "Grounds of this application" will be headed:

" [Appeal No.]

Form 13: Application for review of single judge's decision
Attachment 1 — Grounds of this application".

".]

(5) If a form in Schedule 1 is filed to which is attached one or more other documents, each attached document —

(a) must not repeat the formal heading on the form; and

(b) must bear the Court of Appeal's file number; and

(c) must bear any heading required by subrule (4) or any other rule.

(6) A party completing a form in Schedule 1 must not attach a document to the form except as specifically provided for in rule 32, 33 or 67 or this rule.

[Rule 20 amended: Gazette 22 Aug 2017 p. 4520-1; SL 2021/34 r. 7; SL 2022/60 r. 14.]

21. Filed documents, technical requirements

(1AA) For the purposes of documents filed electronically, this rule applies with any necessary changes.

(1) Unless these rules provide otherwise or a single judge orders otherwise, any document that is filed —

(a) must use durable white A4 paper; and

(b) must, in order to allow the document to be bound with others, have a 5 cm margin on the left of the first side of each sheet of paper and, if the sheet is printed on both sides, a 5 cm margin on the right of the second side of each sheet of paper; and

(c) must comply with subrule (1A); and

[(d) deleted]

(e) if it is more than one page long —

(i) must have its pages numbered consecutively in the top right corner; and

(ii) may be printed on both sides of each sheet of paper;

and

(f) if it contains more than one sheet of paper, must be stapled in the top left corner or otherwise bound.

(1A) The textual content of any document that is filed, including any endnotes, footnotes and quotations, must be typed using —

(a) at least the size of type used for these rules (12 point Times New Roman); and

(b) a line spacing of at least 1.5.

(2) Subrules (1) and (1A) do not apply to a document that is not prepared for a CA matter by a party to the matter.

(3) An affidavit that is filed must have a cover sheet in the form of Form 11.

(4) If a document that is not a form in Schedule 1 is filed, it must be in a format that is consistent with the forms in Schedule 1.

[Rule 21 amended: Gazette 22 Aug 2017 p. 4521; SL 2021/34 r. 8.]

22. Filed documents to be served

(1) Unless these rules expressly provide otherwise or a single judge orders otherwise, a person who files a document in an appeal must serve it on the other party or parties within 3 working days after the date on which it is filed.

(2) The document must be served in accordance with the RSC Order 72.

22A. Service of documents

If under these rules a registrar or other proper officer is required to serve a document on a party or other person, or give notice or notification to a party or other person or a court, the relevant document may be served on the person or given to the person or court —

(a) by posting the document by pre-paid post to the address for service of the person or the address of the court; or

(b) if the person has given a fax number for service or the court has a fax number — by sending the document to the person or court at that number; or

(c) if the person has given an email address for service or the court has an email address — by sending the

document to the person or court as an attachment to an email sent to that address; or

(d) if the person or court is an authorised user of the ECMS —

(i) by putting the document in an electronic mailbox maintained by the Court; and

(ii) by sending to the email address of the person or court recorded on the ECMS an email that says the document is in the mailbox.

[Rule 22A inserted: SL 2021/34 r. 9.]

Part 4 — Duties of legal practitioners who act for parties

[Heading amended: SL 2022/74 r. 18.]

23. Duty to notify when acting for a party

(1) On being instructed to act for a party to an appeal as a solicitor, whether or not also as counsel, a legal practitioner must file a Form 5 as soon as practicable.

(2) Subrule (1) does not apply to a legal practitioner whose name and address for service is on a Form 1, 1A, 2 or 4 that has been filed.

[Rule 23 amended: SL 2022/74 r. 18; SL 2022/209 r. 6.]

24. Presumptions as to who is acting for a party

(1) A legal practitioner who is said to be acting for a party by reason of a Form 1, 1A, 2, 4 or 5 that has been filed is to be taken to be acting for the party until —

(a) another legal practitioner files a Form 5 under rule 23; or

(b) the party files a Form 6 notifying the Court of Appeal that the party is self-represented; or

(c) the Court of Appeal gives leave for the legal practitioner to cease to act.

(2) If the Court of Appeal gives leave for a legal practitioner to cease to act for a party, the legal practitioner is taken to be continuing to act for the party until the legal practitioner has complied with subrule (3).

(3) The legal practitioner must —

(a) serve the order giving leave on the party; and

(b) file a Form 5A (Service certificate by legal practitioner ceasing to act) that —

(i) certifies the party has been served; and

(ii) states the party's last known geographical address in accordance with Order 71A rule 2 of the RSC; and

(iii) states an email address used by the party (if known).

(4) The last known geographical address of the party stated in Form 5A is taken to be the party's service details until —

(a) another legal practitioner files a Form 5 under rule 23 giving notice that the legal practitioner is acting for the party; or

(b) the party files a Form 6 notifying the Court of Appeal that the party is self-represented.

(5) Within 7 days after the party is served under subrule (3)(a), the party must file a Form 6 notifying the Court of Appeal that the party is self-represented.

(6) Subrule (5) does not apply if, within the period referred to in subrule (5), a legal practitioner files a Form 5 under rule 23 giving notice that the legal practitioner is acting for the party.

[Rule 24 amended: Gazette 22 Aug 2017 p. 4522-3; SL 2022/60 r. 15; SL 2022/74 r. 18; SL 2022/209 r. 7.]

Part 5 — Procedure for appeals

Division 1 — General

25. Nature of appeals

An appeal to the Court of Appeal will be by way of a rehearing unless another written law provides otherwise.

26. Time for appealing

(1) An interlocutory civil appeal to the Court of Appeal must be commenced within 14 days after the date of the decision being appealed.

(2) Unless another written law expressly provides otherwise, any other appeal to the Court of Appeal must be commenced within 21 days after the date of the decision being appealed.

26A. Parties to appeals

(1) Each person who would be directly affected by the relief sought in an appeal must be made a respondent to the appeal.

(2) In an appeal, the primary court must not be made a respondent unless the Court of Appeal orders otherwise.

(3) A person cannot be made an appellant in an appeal without their consent.

(4) Subject to subrule (3), the Court of Appeal may order that a person be added as a party and may order a party to be removed.

[Rule 26A inserted: Gazette 22 Aug 2017 p. 4523.]

Division 2 — Commencing an appeal

26B. Term used: alleged evidence

In this Division —

alleged evidence means evidence that is alleged to be —

(a) fresh and compelling; or

(b) new and compelling.

[Rule 26B inserted: SL 2022/209 r. 8.]

27. When appeal is commenced

An appeal is not commenced until an appeal notice (with any other document required by rule 28, 28A or 29) has been —

(a) filed in accordance with rule 28, 28A or 29, as the case requires; and

(b) served in accordance with rule 29A.

[Rule 27 inserted: SL 2022/209 r. 9.]

28. Commencing appeal under *Criminal Appeals Act 2004* Part 2 Division 3 or Part 3

(1) To commence an appeal, or to apply for an extension of time within which to commence an appeal, under the *Criminal Appeals Act 2004* Part 2 Division 3 or Part 3 the appellant must file —

(a) a Form 1; and

(b) any document required by subrule (2).

(2) If the Form 1 says that an extension of time within which to commence the appeal is needed, the form must be filed with an affidavit by the applicant or the applicant's legal practitioner or both explaining why the appeal was not commenced within time.

(3) A Form 1 may be filed together with an application, made in accordance with rule 44, for an interim order.

(4) For the purposes of the *Criminal Appeals Act 2004* section 17 or 28(2), a Form 1 filed in accordance with this rule is to be taken to be an application for leave to appeal.

(5) When preparing the grounds of appeal for the "Appellant's case" under rule 32, the appellant may amend or omit any of the draft grounds of appeal in the appellant's Form 1, and may include additional grounds of appeal.

[(6), (7) deleted]

(8) This rule does not affect the operation of the *Criminal Appeals Act 2004* section 28.

[Rule 28 amended: SL 2022/60 r. 16; SL 2022/74 r. 18; SL 2022/209 r. 10.]

28A. Commencing appeal under *Criminal Appeals Act 2004* Part 3A

(1) To commence an appeal under the *Criminal Appeals Act 2004* Part 3A the appellant must file —

(a) a Form 1A; and

(b) an affidavit containing the information set out in subrule (2); and

(c) the "Appellant's case" in accordance with rule 32.

(2) For the purposes of subrule (1)(b), the information is as follows —

(a) details of all previous appeals against the conviction;

(b) a statement of the issues in dispute at the trial, with reference to that part of the trial transcript which shows those issues to be in dispute;

(c) the alleged evidence relating to the offence the subject of the conviction that is to be relied on in the appeal;

(d) whether the evidence set out in accordance with paragraph (c) is alleged to be fresh and compelling, or new and compelling;

(e) an explanation as to why the alleged evidence that is to be relied on in the appeal was not tendered during the trial or during any previous appeal;

(f) when the appellant, and any legal practitioner representing the appellant, became aware of the alleged evidence that is to be relied on in the appeal;

(g) if the evidence is alleged to be fresh and compelling — details, if any, of alleged negligence or incompetence of the legal practitioner representing the appellant at the trial;

(h) a statement of information or belief as to whether, with the exercise of reasonable diligence, the alleged evidence could have been tendered at the trial.

(3) A Form 1A may be filed together with an application, made in accordance with rule 44, for an interim order.

(4) For the purposes of the *Criminal Appeals Act 2004* section 35G(2), a Form 1A filed in accordance with this rule is taken to be an application for leave to appeal.

[Rule 28A inserted: SL 2022/209 r. 11.]

29. Commencing civil appeal

(1) To commence a civil appeal, or to apply for an extension of time within which to commence a civil appeal, the appellant must file —

(a) a Form 2; and

(b) any document required by subrule (2); and

(c) if the civil appeal is an appeal under the *Criminal Law (Mental Impairment) Act 2023* Part 12 — a document that sets out the grounds of appeal.

(2) If the Form 2 says that an extension of time within which to commence the appeal is needed, the form must be filed with an affidavit by the applicant or the applicant's legal practitioner or both explaining why the appeal was not commenced within time.

(3) A Form 2 may be filed together with an application, made in accordance with rule 44, for an interim order.

(4) For the purposes of the *Criminal Law (Mental Impairment) Act 2023* section 214(4), a Form 2 filed in accordance with this rule, accompanied by a document that sets out the grounds of appeal, is taken to be an application for leave to appeal that sets out the grounds of the appeal.

[(4), (5) deleted]

[Rule 29 amended: Gazette 22 Aug 2017 p. 4523; SL 2022/74 r. 18; SL 2022/209 r. 12; SL 2024/166 r. 4.]

29A. Service of appeal documents

(1) Any document filed under rule 28, 28A or 29 —

(a) must be served on the respondent personally; or

(b) if the appellant is in custody — may be served on the respondent by post, fax or email.

(2) As soon as practicable after serving the respondent the appellant must file a Form 3 (Service certificate).

[Rule 29A inserted: SL 2022/209 r. 13.]

30. Primary court to be notified and to supply records

[(1) deleted]

(2) As soon as practicable after an appeal notice is filed, a registrar must give the primary court concerned —

(a) a copy of the appeal notice; and

(b) a notice that specifies —

(i) the records or things held by the primary court in relation to the primary court case that the primary court must give to the Court of Appeal for the purposes of the appeal; and

(ii) the date by which the primary court must provide the records or things.

(3) Any copy of a document given by the primary court to the Court of Appeal need not be certified by the primary court.

(4) If any record given to the Court of Appeal contains information to which access by any person is or should be restricted, the primary court must advise the Court of Appeal.

[Rule 30 amended: Gazette 22 Aug 2017 p. 4543; SL 2022/60 r. 17.]

31. Respondent's options

(1) On being served with an appeal notice, a respondent may file a Form 4.

(2) If the respondent files a Form 4, it must be filed within 7 days after the date on which the respondent is served with the appeal notice.

(3) A Form 4 may be filed together with an application, made in accordance with rule 44, for an interim order.

(4) If a respondent does not file a Form 4, the respondent —

(a) is not entitled to receive or be served with any document filed for the purposes of the appeal, unless a single judge orders otherwise; and

(b) is not entitled to take part or be heard in the appeal; and

(c) is not a party to the appeal for the purposes of these rules.

[(5) deleted]

[Rule 31 amended: Gazette 22 Aug 2017 p. 4524.]

31A. Cross appeals

(1) If under rule 31 a respondent files a Form 4, the respondent may also appeal (***cross appeal***) against the decision specified in the appellant's appeal notice.

(2) To commence a cross appeal, a respondent must file a Form 4A within 7 days after the date on which the respondent is served with the appeal notice.

(3) These rules apply to a cross appeal to the same extent as they apply to an appeal, unless a single judge orders otherwise in a particular case.

(4) After a respondent cross appeals, a registrar must —

(a) set the time within which the respondent must file documents in respect of the cross appeal that correspond to the "Appellant's case" referred to in rule 32; and

(b) set the time within which the appellant must file documents in respect of the cross appeal that correspond to the "Respondent's answer" referred to in rule 33.

[Rule 31A inserted: Gazette 22 Aug 2017 p. 4524-5.]

31B. Time within which to file "Appellant's case"

(1) This rule applies to an appeal commenced under rule 28 or 29.

(2) After an appeal notice is filed, the appellant must file the "Appellant's case" in accordance with rule 32 within a period of —

(a) in the case of an appeal under the *Criminal Appeals Act 2004* Part 2 Division 3 or Part 3 — 56 days after the day on which the appeal notice is filed, unless a single judge or registrar orders otherwise; or

(b) in the case of a civil appeal, unless a single judge or registrar orders otherwise —

(i) 35 days after the day on which the appeal notice is filed; or

(ii) if the appeal is an interlocutory civil appeal — 14 days after the day on which the appeal notice is filed.

[Rule 31B inserted: SL 2022/209 r. 14.]

32. "Appellant's case" to be filed

[(1), (2) deleted]

(3) The "Appellant's case" consists of a Form 7 to which is attached —

(a) in an interlocutory civil appeal or a sentence appeal, these documents —

(i) a document titled "Appellant's grounds of appeal";

(ii) a document titled "Appellant's submissions";

(iii) a document titled "Appellant's legal authorities";

(iv) a document titled "Orders wanted";

(v) a document titled "Draft appeal book indexes";

(b) in any other appeal, these documents —

(i) a document titled "Appellant's grounds of appeal";

(ii) a document titled "Appellant's submissions";

(iii) a document titled "Appellant's legal authorities";

(iv) a document titled "Orders wanted";

(v) a document titled "Draft chronology";

(vi) a document titled "Draft appeal book indexes".

(4) The document titled "Appellant's grounds of appeal" —

(a) must contain all of the grounds of appeal on which the appellant intends to rely at the hearing of the appeal; and

(b) must state the grounds, and concise particulars of them, succinctly in numbered paragraphs; and

(c) must, for any ground that alleges an error by the primary court, state whether it is —

(i) an error of fact; or

(ii) an error of law; or

(iii) an error of mixed fact and law;

and

(d) must, for any ground that alleges an error by the primary court, identify by reference to the paragraph number or page number of the reasons for the primary court's decision, each passage where each such error is alleged to occur; and

(e) if, under the written law under which the appeal is made, an appeal lies only if it is on or involves a question of law, must state the question of law; and

(f) must, for any ground that alleges a miscarriage of justice, state the basis on which the miscarriage of justice is alleged to arise; and

(g) must, for any ground that alleges the primary court acted without or in excess of jurisdiction, state the basis for the allegation.

(4A) For the purposes of subrule (4)(b), the grounds and their particulars must not merely allege —

(a) that the primary court erred in fact or in law; or

(b) that the decision of the primary court —

(i) is against the evidence or the weight of evidence; or

(ii) is unreasonable and cannot be supported having regard to the evidence; or

(iii) is unsafe or unsatisfactory;

or

(c) in the case of an appeal against a sentence — that the sentence is excessive or inadequate; or

(d) in the case of an appeal against conviction —

(i) that the verdict of guilty for which the conviction is based is unreasonable and cannot be supported having regard to the evidence; or

(ii) that the judge made the wrong decision on a question of law; or

(iii) that there was a miscarriage of justice.

(5) The document titled "Appellant's submissions" —

(a) must, for each ground of appeal, contain the appellant's written submissions (or argument) expressed so as to convey the substance of them clearly and as succinctly as possible; and

(b) must set out the submissions about the ground in numbered paragraphs; and

(c) must include references to —

(i) each page number of the primary court's transcript on which relevant material appears; and

(ii) the number of each exhibit, and a description of any other piece of documentary evidence, in the primary court that is relevant; and

(iii) each principal legal authority on which the appellant relies in support of the ground; and

(iv) in the case of an appeal under the *Criminal Appeals Act 2004* Part 3A — each passage in the

alleged evidence on which the appellant relies in support of the ground;

and

(d) must not be more than 20 pages long; and

(e) must include the signature and below it the printed name of the person who prepared it.

(6) The document titled "Appellant's legal authorities" —

(a) must list, and number consecutively, each principal legal authority to which the Court of Appeal is referred, under these headings in this order —

(i) "Written laws";

(ii) "Judgments";

(iii) "Legal texts";

and

(b) must mark with an asterisk any legal authority from which it is intended to read any text to the Court of Appeal at the hearing; and

(c) for each written law listed, include its short title, its jurisdiction and each relevant section or provision of it; and

[Example:
Written laws:
*1. Interpretation Act 1984 (WA) s. 5 "under"; s. 61.
2. Acts Interpretation Act 1901 (Cth) s. 22(1).]

(d) for each judgment listed, include —

(i) 1st, its medium neutral citation (if any) and any numbered paragraph of it that is a relevant passage; and

(ii) 2nd, its citation in an authorised law report (if any) and any numbered paragraph of it that is a relevant passage or, if there are no numbered

paragraphs, any page of it on which is a relevant passage;

[Example:
Judgments:
*3. Ward v The Queen [2000] WASCA 413 at [106]; (2000) 23 WAR 254 at [106].
4. Talbot v Lane (1994) 14 WAR 120 at 153.]

and

(e) for each authoritative legal text listed, refer to the edition concerned and to each relevant passage.

(7) The document titled "Orders wanted" must set out —

(a) the orders that the appellant wants the Court of Appeal to make; and

(b) if in a criminal appeal the appellant wants the Court of Appeal to give a guideline judgment — the guidelines that it is proposed the court should give.

(8) The document titled "Draft chronology" must state succinctly in numbered paragraphs arranged in date order the date and facts of each event that is material to the appeal.

(9) The document titled "Draft appeal book indexes" must set out for each of the 3 parts of the appeal book a draft index of the proposed contents of the part, being the documents required by rule 38 to be in the part.

[Rule 32 amended: Gazette 22 Aug 2017 p. 4525-7; SL 2022/60 r. 18; SL 2022/209 r. 15; SL 2024/166 r. 5.]

33. "Respondent's answer" to be filed

(1) In this rule —

appellant's grounds of appeal means the appellant's grounds of appeal as modified by any order made under rule 43.

(2) After being served with the "Appellant's case", the respondent must file the "Respondent's answer".

(3) The "Respondent's answer" must be filed —

(a) in an interlocutory civil appeal, within 14 days after;

(b) in any other appeal within 28 days after,

the date the respondent is served with a notice issued by a registrar requiring the answer to be filed.

(4) The "Respondent's answer" consists of a Form 8 to which is attached —

(a) in an interlocutory civil appeal, these documents —

(i) a document titled "Respondent's submissions";

(ii) if the respondent seeks to uphold the primary court's decision on a ground not relied on by the primary court — a document titled "Respondent's notice of contention";

(iii) a document titled "Respondent's legal authorities";

(iv) a document titled "Reply to the appellant's draft indexes";

(b) in a sentence appeal, these documents —

(i) a document titled "Respondent's submissions";

(ii) a document titled "Respondent's legal authorities";

(iii) a document titled "Reply to the appellant's draft indexes";

(c) in any other appeal, these documents —

(i) a document titled "Respondent's submissions";

(ii) if the respondent seeks to uphold the primary court's decision on a ground not relied on by the primary court — a document titled "Respondent's notice of contention";

(iii) a document titled "Respondent's legal authorities";

(iv) a document titled "Reply to the appellant's draft chronology";

(v) a document titled "Reply to the appellant's draft indexes".

(5) The document titled "Respondent's submissions" must, in respect of each of the appellant's grounds of appeal, either concede the allegation in the ground or —

(a) set out in numbered paragraphs all of the submissions that the respondent makes about the ground; and

(b) include references to —

(i) each page number of the primary court's transcript on which relevant material appears; and

(ii) the number of each exhibit, and a description of any other piece of documentary evidence, in the primary court that is relevant; and

(iii) each principal legal authority on which the respondent relies; and

(iv) in the case of an appeal under the *Criminal Appeals Act 2004* Part 3A — each passage in the appellant's alleged evidence on which the respondent relies.

(6) Rule 32(5), with any necessary changes, applies to the document titled "Respondent's submissions".

(7) The document titled "Respondent's notice of contention" must —

(a) state succinctly in numbered paragraphs each ground, not relied on by the primary court, on which the respondent relies to uphold the primary court's decision; and

(b) in respect of each such ground, set out in numbered paragraphs the respondent's submissions together with references to —

(i) each page number of the primary court's transcript on which relevant material appears; and

(ii) the number of each exhibit in the primary court that is relevant; and

(iii) each principal legal authority on which the respondent relies in support of the ground.

(7A) Rule 32(5), with any necessary changes, applies to the document titled "Respondent's notice of contention".

(8) Rule 32(6), with any necessary changes, applies to the document titled "Respondent's legal authorities".

(9) The document titled "Reply to the appellant's draft chronology" must, in respect of the appellant's chronology, either state that the respondent agrees the chronology is correct or —

(a) identify any errors the respondent alleges exists; and

(b) list any events that the respondent alleges ought to be included or excluded.

(10) The document titled "Reply to the appellant's draft indexes" must, in respect of each of the appellant's draft appeal book indexes, either state that the respondent agrees the indexes are correct or —

(a) identify any errors the respondent alleges exists; and

(b) list any documents that the respondent alleges ought to be included or excluded from the contents of the appeal book.

[Rule 33 amended: Gazette 22 Aug 2017 p. 4527-8; SL 2022/209 r. 16; SL 2025/76 r. 10.]

34. When "Appellant's reply to respondent's notice of contention" is required

(1) If as part of the "Respondent's answer", a respondent files a "Respondent's notice of contention", the appellant must file a document titled "Appellant's reply to respondent's notice of contention" within 21 days after the day on which the appellant is served with it.

(2) The document titled "Appellant's reply to respondent's notice of contention" must, in respect of each ground in the "Respondent's notice of contention", either concede the allegation in the ground or —

(a) set out in numbered paragraphs all of the submissions that the appellant makes about the ground; and

(b) include references to —

(i) each page number of the primary court's transcript on which relevant material appears; and

(ii) the number of each exhibit in the primary court that is relevant; and

(iii) each principal legal authority on which the appellant relies.

(3) Rule 32(5), with any necessary changes, applies to the document titled "Appellant's reply to respondent's notice of contention".

[Rule 34 amended: Gazette 22 Aug 2017 p. 4528-9; SL 2022/209 r. 17.]

Division 3 — Appeal books

35. Appeal book, when required

(1) An appeal book, containing the documents required for the hearing of the appeal, is required for every appeal, unless a single judge orders otherwise in a particular appeal.

(2) If, in a criminal appeal, the Court of Appeal orders that the application for leave to appeal is to be heard by itself and separately from the appeal, an appeal book is not required, unless a single judge orders otherwise.

[Rule 35 inserted: Gazette 22 Aug 2017 p. 4529.]

36. Settling of indexes

(1) If draft appeal book indexes are filed in an appeal, a registrar must settle the indexes as soon as practicable after the "Respondent's answer", is filed.

(2) When settling the appeal book indexes a registrar must —

[(a) deleted]

(b) reduce as far as possible the number and length of the documents to be included in the appeal book; and

(c) avoid unnecessary duplication in the appeal book of documents or the information in them; and

(d) if the respondent also appeals against the primary court's decision, ensure that the appeal book also contains the documents required for the hearing of the respondent's appeal.

(3) A registrar has jurisdiction —

(a) to order that any document that is or may be needed to decide the appeal, including a document not mentioned in or excluded by rule 38(2), (3) or (4), be included in an appeal book;

(b) to order that any document, including a document mentioned in rule 38(2), (3) or (4), be excluded from an appeal book;

(c) to order that the documents in an appeal book be in a different order to that required by rule 38(2), (3), (4) or (5);

(d) to order that the contents of 2 or more parts of an appeal book be amalgamated in 1 part;

(e) to make orders as to the form or content or both of any document in an appeal book;

(f) to order that an electronic version of the transcript of proceedings in a primary court be used instead of a printed transcript (or parts of it) in the appeal book;

(g) to order a party or parties, or direct the Court of Appeal Office, to prepare the appeal book.

(4) If a registrar settles the appeal book indexes in the absence of a party the registrar must give the party a copy of them.

(5) The appellant must file a clean copy of the settled appeal book indexes on or before the date set by the registrar when settling them.

[Rule 36 amended: Gazette 22 Aug 2017 p. 4529-30 and 4543-4; SL 2021/34 r. 10; SL 2022/60 r. 19; SL 2022/209 r. 18.]

37. Appeal book, general provisions

The appeal book for an appeal must conform to rules 38 and 39 except to the extent that rule 40 provides otherwise or a single judge orders otherwise.

[Rule 37 inserted: Gazette 22 Aug 2017 p. 4530.]

38. Contents of appeal book

(1) Subject to rule 40, an appeal book must be comprised of 3 separate parts as follows —

(a) the first part, comprised of as many numbered volumes as are necessary with white covers, to be referred to as the "White Appeal Book";

(b) the second part, comprised of as many numbered volumes as are necessary with light blue covers, to be referred to as the "Blue Appeal Book";

(c) the third part, comprised of as many numbered volumes as are necessary with light green covers, to be referred to as the "Green Appeal Book".

(2) The White Appeal Book must contain these documents in this order —

(a) a cover page;

(b) an index, with page numbers, of the book's contents;

(c) the appeal notice;

(ca) any notice of the respondent's intention (Form 4);

(cb) any notice of a cross appeal by the respondent (Form 4A);

(d) any order extending the time within which to appeal;

(e) any order giving leave to appeal;

[(f) deleted]

(g) the "Appellant's case" filed in accordance with rule 32 as amended by any order made under rule 43 but without —

(i) the draft chronology; and

(ii) the draft appeal book indexes;

(h) the "Respondent's answer" filed under rule 33 but without —

(i) the reply to the appellant's draft chronology; and

(ii) the reply to the appellant's draft indexes;

(i) the chronology, if it is required and has been agreed by the parties;

(j) if a chronology is required but has not been agreed by the parties —

(i) the draft chronology filed under rule 32 as part of the "Appellant's case"; and

(ii) the reply to the appellant's draft chronology filed under rule 33 as part of the "Respondent's answer";

(ja) any affidavits filed with the appeal notice;

(k) the signed Form 14A (Certificate of correctness of appeal book), required by rule 41(c);

(l) any other document filed in the Court of Appeal that a registrar orders to be included.

(3) The Blue Appeal Book must contain these documents in this order —

(a) a cover page;

(b) an index, with page numbers, of the book's contents;

(c) the primary court's formal decision;

(d) the primary court's written reasons for its decision, if any;

(e) if the appeal is against a primary court's decision in civil proceedings at first instance — the relevant pleadings in the primary court in their final form;

(f) if the appeal is against a primary court's decision in criminal proceedings at first instance the prosecution notice or indictment, as the case requires;

(g) if the appeal is against a primary court's decision in an appeal — the documents filed in the primary court for the appeal;

(h) any other document filed in the primary court that a registrar orders to be included;

(i) in the case of an appeal under the *Criminal Appeals Act 2004* Part 3A —

(i) the Court of Appeal's formal decision in each previous appeal; and

(ii) the Court of Appeal's written reasons for its decision in each previous appeal; and

(iii) any document filed in a previous appeal that a registrar orders to be included.

(4) The Green Appeal Book must contain these documents in this order —

(a) a cover page;

(b) an index, with page numbers, of the book's contents;

(c) unless an order has been made that an electronic version of the transcript is to be used, those parts of the primary court's transcript required by subrule (4A);

(ca) in the case of an appeal under the *Criminal Appeals Act 2004* Part 3A — an electronic version of each appeal hearing transcript;

(d) a copy of those documentary exhibits in the primary court and, if applicable, the Court of Appeal, required by subrule (4A) arranged in accordance with subrule (5);

(e) if the appeal is a sentence appeal or a criminal appeal that includes an appeal against a sentence — the accused's antecedent report and criminal record, as provided to the primary court;

(f) any other document containing evidence considered by the primary court and, if applicable, the Court of Appeal, when making its decision that a registrar orders to be included.

(4A) In the Green Appeal Book, the documents referred to in subrule (4)(c), (ca) and (d) must be only those, or those parts of those, that are referred to specifically in —

(a) the "Appellant's case"; or

(b) the "Respondent's answer"; or

(c) the respondent's notice of contention; or

(d) the appellant's reply to the respondent's notice of contention,

unless a registrar orders otherwise.

(5) The documentary exhibits must be arranged in the Green Appeal Book in the order in which they are lettered or numbered as exhibits in the primary court or the Court of Appeal, as the case may be, unless a registrar orders otherwise.

(6) The Green Appeal Book must not contain —

(a) in a civil appeal — interrogatories or answers to them, an affidavit verifying discovery, or any other affidavit, unless and to the extent that they or it were admitted in evidence in the primary court;

(b) in a criminal appeal — a pre-sentence report or a victim impact statement or a confidential medical report.

[Rule 38 amended: Gazette 22 Aug 2017 p. 4531-2 and 4544; SL 2022/209 r. 19.]

39. Technical requirements for appeal books

(1AA) For the purposes of documents filed electronically, this rule applies with any necessary changes.

(1) Each document in an appeal book must be clearly legible.

(1A) A registrar may order that a document which is to be included in an appeal book and which is not clearly legible be typed or retyped, checked against the original, and certified as correct, before it is included.

(1B) A document in an appeal book must not be reduced in size from its original size unless a registrar orders otherwise.

(2) Unless it is a form in Schedule 1, each page in an appeal book must have every fifth line on the page numbered, or letters placed beside the text at 50 mm intervals, in the left margin.

(3) The pages in each part of an appeal book, other than the cover page and the pages of the index, must be numbered consecutively, even if the part comprises 2 or more volumes.

(4) Each volume of each part of an appeal book —

(a) may but need not have a clear plastic sheet over the cover page and on the back of the volume; and

(b) must start with the cover page for that part and volume; and

(c) must contain the index for that part; and

(d) must not comprise more than 500 pages (which is to say 250 sheets of paper); and

[(e) deleted]

(f) must be bound so that when it is opened at a page, both sides of the volume lie flat and open at the page.

(4A) If an appeal book is filed under the RSC Order 67A using the ECMS, each volume of each part of the appeal book —

(a) must not be greater than 200 megabytes; and

(b) must contain a colour version of a document if the original is a colour document; and

(c) must be in a form that allows the text to be electronically searchable.

(5) The cover page of each volume of each part of an appeal book must —

(a) be in the form of Form 14; and

(b) be of durable paper of the colour required for that part.

(6) The index in each volume of each part of an appeal book must —

(a) be typed using one and a half line spacing or more; and

(b) if there are 2 or more volumes in the part, indicate which pages of the part are in which volume.

[Rule 39 amended: Gazette 22 Aug 2017 p. 4532-3; SL 2021/34 r. 11; SL 2022/60 r. 20; SL 2025/76 r. 11.]

40. Sentence appeal, appeal book for

(1) The appeal book for a sentence appeal must conform to this rule except to the extent that a single judge orders otherwise.

(2) In a sentence appeal —

(a) the 3 parts of the appeal book referred to in rule 38(1) must be in one volume and in the order set out in that rule;

(b) there must be only one cover page for the appeal book;

(c) the indexes for the 3 parts of appeal book must be consolidated into one document;

(d) the pages in the appeal book, other than the cover page and the pages of the index, must be numbered consecutively;

(e) the appeal book must have white covers and be titled the "Appeal Book"; and

(f) rules 37 and 39, with any necessary changes, apply to the appeal book subject to this rule.

41. Appeal book to be prepared by appellant

(1) Unless a registrar has ordered otherwise under rule 36(3)(g), the appellant must —

(a) prepare the parts of the appeal book in accordance with the settled indexes for it and this Division; and

(b) prepare as many copies of the appeal book as the registrar orders when settling the indexes for it; and

(c) ensure that before the appeal book is filed each party to the appeal, or their legal practitioner, checks it and signs a Form 14A (Certificate of correctness of appeal book); and

(d) file the appeal book on or before the date set by the registrar when settling the indexes for it.

(2) On the application of a party, a registrar may dispense with the requirement in subrule (1)(c).

[Rule 41 amended: Gazette 22 Aug 2017 p. 4533-4; SL 2022/74 r. 18.]

Division 4 — Matters relevant to any appeal

[Heading inserted: SL 2025/76 r. 12.]

42. Application of Division

This Division applies to any appeal, civil or criminal, unless the contrary intention appears.

42A. Matters requiring leave

The leave of a single judge is required for these actions —

(a) the addition or removal of a party after an appeal has been commenced;

(b) the amendment of a document that has been filed;

(c) in the case of a civil appeal — the issue of a subpoena that would require a person to give oral evidence or produce anything to the Court of Appeal.

[Rule 42A inserted: Gazette 22 Aug 2017 p. 4534; amended: SL 2022/209 r. 20.]

43. Single judge's jurisdiction

[(1) deleted]

(2) A single judge has jurisdiction to do any of the following —

(a) to extend or to refuse to extend the time within which the appeal can be commenced or to refer the question to the hearing of the appeal;

(b) to give or to refuse to give leave to appeal or to refer the question to the hearing of the appeal;

(c) in a criminal appeal, to exercise the Court of Appeal's functions under the *Criminal Appeals Act 2004* section 27;

(d) to amend any ground of appeal;

(e) to add any ground of appeal;

(f) to strike out any ground of appeal that —

(i) does not have a reasonable prospect of succeeding; or

(ii) does not comply with these rules or any order made under them; or

(iii) is an abuse of process;

(fa) to strike out an appeal notice if —

(i) the appeal is incompetent or has not been validly commenced; or

(ia) the appellant has not filed the required documents under rule 28, 28A or 29, as the case may be; or

(ii) a Form 3 (Service certificate) is not filed within 7 days after the last date on which the appeal could have been commenced;

(fb) to dismiss an application for an interim order if the application —

(i) does not have a reasonable prospect of succeeding; or

(ii) does not comply with these rules or any order made under them; or

(iii) is an abuse of process;

(g) to dismiss the appeal if —

(i) none of the grounds of appeal has a reasonable prospect of succeeding; or

(ii) the appellant has not obeyed these rules or any order made under them; or

(iii) the appeal is an abuse of process;

(ga) if a respondent to an appeal has not obeyed these rules or any order made under them, to bar the respondent from taking part in the appeal;

(h) to make an interim order in an appeal;

(i) to make an interim order before a respondent is served with the appeal notice;

(j) to make an interim order subject to a condition, including, without limiting that power, a condition that requires —

(i) a party to give an undertaking;

(ii) a party to give security for the costs of the other party to the appeal;

(k) to adjourn proceedings in relation to the making of an interim order from time to time;

(ka) to refer any application for an interim order to the hearing of the appeal;

(kb) to make any order that it is appropriate to make —

(i) for the due and effective administration of justice; or

(ii) because a person has not obeyed these rules or any order made under these rules by the Court of Appeal, a single judge or a registrar;

(l) to make any order that it is necessary or convenient to make as a result of an order made under any of the above paragraphs.

(2A) Subrule (2)(kb) is not limited by subrule (2)(a) to (ka) or (2B).

(2B) A single judge has jurisdiction to make an order —

(a) specifying the manner in which a person must communicate in relation to an appeal with any or all of the following —

(i) the Court of Appeal;

(ii) a judge of appeal;

(iii) a registrar;

(iv) a member of staff in the Court of Appeal Office;

(v) a member of the personal staff of a judge of appeal or registrar;

(vi) a party to the appeal or their legal practitioner;

and

(b) requiring the person to so communicate in the manner specified in the order, or as otherwise permitted by law, and not otherwise.

(3) An order made under subrule (2) or (2B), as varied by the Court of Appeal under the Act section 61(4), is to be taken to be an order made by the Court of Appeal unless it is set aside by the Court of Appeal under that section.

[Rule 43 amended: Gazette 22 Aug 2017 p. 4534-5; SL 2022/60 r. 21; SL 2022/209 r. 21; SL 2025/76 r. 13.]

44. Applying for interim order

(1) At any time after an appeal is commenced and before it is concluded a party may apply for an interim order.

(2) To make such an application, the party must file —

(a) a Form 9 (Application in an appeal); and

(b) an affidavit by the applicant or the applicant's legal practitioner or both stating why the interim order is wanted,

unless —

(c) these rules (other than the RSC) provide otherwise; or

(d) another written law provides otherwise; or

(e) a single judge orders otherwise.

[Rule 44 amended: Gazette 22 Aug 2017 p. 4535-6; SL 2022/60 r. 22; SL 2022/74 r. 18.]

45. Consenting to orders

(1) The parties to an appeal may consent to an interim or other order, other than an urgent appeal order, being made by filing a Form 10.

(2) If the order is not one a registrar can make, the registrar must refer the Form 10 to a single judge who may make the order if it is just to do so.

(3) If the order is one a registrar can make, the registrar may make the order if it is just to do so.

[Rule 45 amended: Gazette 22 Aug 2017 p. 4544.]

46. Urgent appeal order, nature of

(1) An urgent appeal order in relation to an appeal is an order that the appeal is an urgent appeal that must be heard as quickly as practicable consistent with the proper administration of justice.

(2) An urgent appeal order must include an order setting a timetable for the various requirements of these rules and may include —

(a) an order dispensing with or modifying any such requirement;

(b) any order that will or may facilitate the appeal being heard as quickly as practicable consistent with the proper administration of justice.

47. Case management

(1) In this rule —

approved mediator means —

(a) a registrar; or

(b) an approved mediator as defined in the RSC Order 4A rule 1.

(2) At any time after an appeal is commenced, a single judge has jurisdiction to make any order that will or may facilitate the appeal, or any application for an interim order in the appeal, being conducted and concluded efficiently, economically and expeditiously.

(3) Without limiting subrule (2), a single judge has jurisdiction —

(a) to order a party to file an affidavit as to any matter;

(b) to dispense with or modify a requirement of these rules;

(c) to require any or all of the parties to confer or exchange letters in order to identify the issues between them, to resolve as many of them as possible, and to identify the issues to be decided by the Court of Appeal;

(d) to make an order relating to the admission of additional evidence, either before or at the hearing of the appeal, by the Court of Appeal;

(e) to limit the time that a party has to present oral submissions at the hearing of the appeal;

(f) to limit the issues on which oral submissions may be made at the hearing of the appeal;

(g) if the appeal has been listed for hearing, to cancel the hearing on that date;

(ga) if a document, including an appeal book, has been filed electronically, to order the provision of a paper version of the document;

(h) to make any order it is necessary or convenient to make as a result of an order made under any of the above paragraphs.

(4) An order made under subrule (3)(c) requiring the parties to confer may require them to confer before an approved mediator but, unless the party consents, the order must not result in a party being liable to remunerate a mediator.

[Rule 47 amended: Gazette 16 Aug 2017 p. 4427; SL 2021/34 r. 12; SL 2022/60 r. 23.]

48. Applications for adjournments to be made promptly

An application for an adjournment of the hearing of an appeal must be made immediately after it is known that an adjournment is wanted.

[Rule 48 amended: SL 2025/76 r. 14.]

49. Offers of compromise

(1) In a civil appeal, the RSC Order 24A applies as if —

(a) any reference to "plaintiff" were a reference to "appellant";

(b) any reference to "defendant" were a reference to "respondent";

(c) any reference to "the trial" were a reference to "the hearing of the appeal";

(d) the time prescribed for paragraphs (1) and (5) of Order 24A rule 3 were immediately before the Court of Appeal's judgment is, or reasons for judgment are, first made known to the parties to the appeal;

(e) the reference in Order 24A rule 8(1)(a)(i) to "the proceedings" were a reference to "the appeal";

(f) the reference in Order 24A rule 8(1)(a)(ii) to "the defence" were a reference to "the respondent's answer".

(2) For the purposes of subrule (1), a single judge has the jurisdiction conferred on "the Court" under the RSC Order 24A.

(3) In a civil appeal where the respondent also appeals against the primary court's decision, subrule (1) applies as if any reference to "appellant" were a reference to "respondent".

50. Court to be advised immediately of settlement etc.

If the parties to an appeal agree to settle the whole or any part of an appeal, they must notify the Court of Appeal Office immediately.

Division 5 — Matters relevant to a criminal appeal

[Heading inserted: SL 2025/76 r. 15.]

51. Application of Division

This Division applies to criminal appeals.

52. Applications for certain orders under CAA s. 40(1)

An application for an order under the *Criminal Appeals Act 2004* section 40(1)(a) to (e) must be filed with an affidavit stating the evidence to be produced or given and how it is relevant to the grounds of appeal or to an issue in the appeal.

53. Single judge's jurisdiction

A single judge has jurisdiction to make any order under the *Criminal Appeals Act 2004* section 40 or 43(3) or (4).

54. Orders made under *Criminal Appeals Act 2004*

(1) In an appeal under the *Criminal Appeals Act 2004* Part 3A the Court of Appeal may refuse to make an order under section 40(1) of that Act that may result in the production of evidence if the Court of Appeal is not satisfied that making the order will result in the production of evidence that —

(a) is likely to be relevant and probative; and

(b) may assist the Court of Appeal to determine the issue of whether to give leave to appeal.

(2) The *Criminal Procedure Act 2004* Part 5 Division 7 and Schedule 4, and the *Criminal Procedure Rules 2005*, apply for the purposes of an order made by the Court of Appeal under the *Criminal Appeals Act 2004* section 40(1) requiring —

(a) a person to produce to the Court of Appeal any record or thing; or

(b) a witness to attend before the Court of Appeal or before an examiner appointed by the Court of Appeal.

(3) Unless the Court of Appeal orders otherwise, a witness summons issued for the purposes of the *Criminal Appeals Act 2004* section 40(1) must be served —

(a) by the party that applied for the order under section 40(1) of that Act; and

(b) in accordance with the *Criminal Procedure Act 2004* section 162.

[Rule 54 inserted: SL 2022/209 r. 22.]

55. Proceedings before an examiner

(1) If under the *Criminal Appeals Act 2004* section 40(1)(c) the Court of Appeal orders that a witness is to be examined before a person other than the court (the ***examiner***), a registrar must —

(a) fix the time and place for the examination;

(b) notify the examiner;

(c) notify the parties;

(d) issue a witness summons to the witness; and

(e) if necessary, notify the party that applied for the order of the party's duty under rule 54(2)(a) to serve the summons.

(2) An examination of a witness before an examiner must be on oath and be recorded.

(3) The examiner may administer an oath to the witness.

(4) A party to the appeal is entitled to be present at and take part in the examination unless it is ordered otherwise.

(5) On completing the examination, the examiner must —

(a) certify that the recorded version of the witness's evidence is accurate; and

(b) give a registrar the certified recorded version and any record or thing referred to by the witness.

(6) A registrar must keep the material supplied by the examiner in safe custody and deal with it in accordance with the directions of the Court of Appeal.

[Rule 55 amended: Gazette 22 Aug 2017 p. 4543-4.]

56. Special commissioners and assessors (CAA s. 40(1))

(1) If the Court of Appeal makes an order under the *Criminal Appeals Act 2004* section 40(1)(f), the order —

(a) must identify the special commissioner who has been appointed;

(b) must specify the records to be examined, or the scientific or local investigation to be conducted;

(c) may give orders as to how and when the examination or investigation is to be conducted and as to whether and how any party to the appeal or matter may participate in it;

(d) may give any other orders necessary for the conduct of the examination or investigation.

(2) If the Court of Appeal makes an order under the *Criminal Appeals Act 2004* section 40(1)(g), the order —

(a) must identify the assessor who has been appointed;

(b) must specify the special expert knowledge for which the assessor has been appointed;

(c) may specify any question that the assessor is to assist the Court of Appeal with;

(d) may give orders as to how and when the assessor is to assist the court;

(e) may give any other orders necessary for the use by the Court of Appeal of the assessor.

(3) A registrar must serve the order on the special commissioner or the assessor together with any records that the Court of Appeal orders to be served.

(4) A special commissioner or assessor must give any report required of him or her by the Court of Appeal to a registrar who must deal with it in accordance with the court's orders.

[Rule 56 amended: Gazette 22 Aug 2017 p. 4543-4.]

Division 6 — Hearing an appeal

57. Hearing date to be set

When a date for hearing an appeal is set, a registrar must send each party a Form 15.

[Rule 57 amended: Gazette 22 Aug 2017 p. 4543-4.]

58. Hearings by audio link or video link

(1) The Court of Appeal, a single judge or a registrar may conduct a hearing with 1 or more of the parties to a CA matter by audio link or video link.

(1A) Without limiting subrule (1), a hearing in a CA matter may be conducted at which any judge of appeal, registrar, party or other person is present by audio link or video link.

(2) The hearing is taken to be in the presence of the Court of Appeal, judge or registrar.

(3) A registrar must confirm in writing any order made at the hearing.

[Rule 58 inserted: SL 2022/60 r. 24; amended: SL 2025/76 r. 16.]

Division 7 — Concluding an appeal

59. Discontinuing an appeal

(1) The appellant may discontinue an appeal by filing and serving a Form 16.

(1A) If the appeal is a criminal appeal, the Form 16 must be signed by both the appellant and a legal practitioner (if any) acting for the appellant.

(1B) Subject to subrule (2), the appeal is deemed to be dismissed on filing a Form 16.

(2) If the appellant is a person under disability (as defined in the RSC Order 70 rule 1), the Form 16 does not have effect unless it is approved by a single judge.

(3) An application for the approval of a single judge must be filed with an affidavit and, unless a single judge orders otherwise, an opinion by an independent legal practitioner.

(4) Unless the *Criminal Appeals Act 2004* section 35 applies or a single judge orders otherwise, an appellant who discontinues an appeal must pay the respondent's costs in respect of the appeal which must be taxed if they are not agreed.

(5) In an appeal where the respondent also appeals against the primary court's decision, subrules (1) to (4) and Form 16 apply with any necessary changes.

(6) The discontinuance of an appeal by the appellant does not affect any appeal by a respondent who also appeals against the primary court's decision.

[Rule 59 amended: SL 2022/60 r. 25; SL 2022/74 r. 18; SL 2022/209 r. 23.]

60. Settling an appeal

(1) The parties to an appeal may file a Form 10, modified as necessary, stating the final order that the parties consent to being made in the appeal.

(2) When a consent notice is filed, a registrar must refer it to a single judge who may direct the registrar —

(a) to issue a final order in accordance with the notice; or

(b) to notify the parties that the judge will decide the final orders at a hearing.

(3) A settlement or compromise of an appeal to which a person under disability (as defined in the RSC Order 70 rule 1) is a party has no effect unless it is approved by a single judge.

(4) An application for the approval of a single judge must be filed with an affidavit and, unless a single judge orders otherwise, an opinion by an independent legal practitioner.

[Rule 60 amended: Gazette 22 Aug 2017 p. 4544; SL 2022/74 r. 18.]

61. Guideline judgments

(1) This rule does not limit the *Sentencing Act 1995* section 143.

(2) A guideline judgment may be given in respect of one appeal or in respect of a number of appeals, even if they are not heard together.

(3) A guideline judgment may be given on the application of a party to an appeal or by the Court of Appeal on its own initiative.

62. Criminal appeals, certificate of conclusion of

(1) This rule applies to any criminal appeal.

(2) When the appeal is concluded, a registrar must issue a Form 17.

(3) The Form 17 is the formal record of the Court of Appeal and forms part of the Supreme Court's record.

(4) A registrar must send a copy of the Form 17 to —

(a) the primary court, unless it is the Supreme Court;

(b) the Commissioner of Police;

(c) the chief executive officer of the department of the public service principally assisting the Minister who administers the *Sentence Administration Act 2003*;

(d) the chairperson of the Parole Board;

(e) if the case requires, the President of the Mental Impairment Review Tribunal; and

(f) any other person to whom an order made by the Court of Appeal in the appeal is directed.

(5) If a warrant is issued to enforce a judgment or order of the Court of Appeal, a copy of the Form 17 must be sent with the warrant to any person to whom the warrant is directed.

[Rule 62 amended: Gazette 22 Aug 2017 p. 4543-4; SL 2024/166 r. 6.]

63. Other appeals, final orders on

(1) This rule applies to any appeal that is not a criminal appeal.

(2) When the appeal is concluded other than due to it being discontinued, a registrar must prepare, sign and seal the judgment or order of the Court of Appeal or a single judge, as the case requires.

[(3) deleted]

(4) A registrar must send a copy of the Court of Appeal's judgment or order to the primary court, unless it is the Supreme Court.

[Rule 63 amended: Gazette 22 Aug 2017 p. 4536 and 4543; SL 2021/34 r. 13.]

64. Return of records and things

(1) After an appeal is concluded, a registrar must, unless the Court of Appeal has ordered otherwise —

(a) return any record or thing given to the Court of Appeal by the primary court to the primary court;

(b) by a written notice, require the party who tendered any record or thing that was admitted in evidence by the Court of Appeal to collect it from the court; and

(c) by a written notice, require any person who, under a summons or subpoena, produced any record or thing to the Court of Appeal that was not admitted in evidence, to collect it from the court.

(2) A registrar must not act under subrule (1) until —

(a) the time for commencing proceedings in the High Court in relation to the appeal has expired; or

(b) if proceedings in the High Court in relation to the appeal are commenced before that time expires, the proceedings are concluded.

(3) Despite subrule (2), a registrar —

(a) may dispose of a record or thing that the registrar considers is dangerous to retain or return to a person; or

(b) may release a record or thing to a person who is entitled to custody of it if the registrar considers that —

(i) it is dangerous, impracticable or inconvenient to retain the record or thing under this rule; or

(ii) it is necessary for that person to have use of the record or thing.

(4) If under subrule (3)(b) a registrar releases a record or thing to a person, the registrar may require the person, as a condition of being given it, to give a written undertaking to the Court of Appeal as to the care, maintenance and custody of it and its re-delivery to the court.

(5) If a record or thing remains in the possession of the Court of Appeal after reasonable steps have been taken to identify a person who is entitled to possession of it and to require the person to collect it from the court, a single judge may order a registrar to destroy it or dispose of it in some other way.

[Rule 64 amended: Gazette 22 Aug 2017 p. 4543-4; SL 2025/76 r. 17.]

65. Enforcing judgments and orders

(1) A single judge has jurisdiction to make any order, and to issue any warrant or other document, to enforce a judgment or order of the Court of Appeal.

(2) A warrant to arrest an accused must be in the form of Form 1 in the *Criminal Procedure Regulations 2005* Schedule 1.

(3) A warrant to remand an accused in custody must be in the form of Form 2 in the *Criminal Procedure Regulations 2005* Schedule 1.

(4) A warrant of commitment to imprison an offender must be in the form of Form 1 in the *Sentencing Regulations 1996* Schedule 1.

66. Costs

(1) In this rule —

costs includes disbursements.

(2) If a party does not file a document required by these rules within the time specified for doing so in —

(a) these rules; or

(b) an order made under these rules, other than an order that extends any such time,

the party is not entitled to the costs of preparing and filing the document unless the Court of Appeal orders otherwise.

(2A) If —

(a) an order made under these rules extends the time for filing a document specified in these rules or in an order made under them; and

(b) the document is filed within that extended time,

the party who filed it is entitled to the costs of preparing and filing the document unless the order extending time is accompanied by an order that, unless the Court of Appeal orders otherwise, the party is not so entitled.

(3) Subrules (2) and (2A) do not prevent the Court of Appeal from making an order under the RSC Order 66 rule 5 in respect of the costs of preparing and filing the document concerned.

(4) The costs of preparing and settling the indexes to, and of preparing, filing and serving, the appeal book are costs in the appeal unless the Court of Appeal orders otherwise.

(5) The costs of copies of unnecessary documents or of copies of unnecessary parts of documents will not be allowed.

[Rule 66 amended: Gazette 22 Aug 2017 p. 4536-7.]

Part 6 — Referred and other CA matters

67. Referring a legal issue to the Court of Appeal

(1) In this rule —

legal issue includes a question or point of law, a stated case and a petition;

refer to includes to reserve for.

(2) This rule applies to and in respect of any legal issue that may be referred to the Court of Appeal under any written law.

(3) The requirements of this rule are in addition to any requirements of the written law under which a legal issue may be referred to the Court of Appeal.

(4) To refer a legal issue to the Court of Appeal, the court or person who may refer the issue must file a Form 18.

(5) The Form 18 and any documents attached to it must be served on the parties in the referring court and on any person who the referring person considers has a direct interest in the issue.

(6) When completing a Form 18 —

(a) if there is more than one legal issue being referred, they must be in numbered paragraphs; and

(b) the circumstances out of which the legal issue being referred arose must refer to all the facts out of which the issue arose; and

(c) the circumstances out of which the legal issue being referred arose must be set out in numbered paragraphs; and

(d) the list of materials to be considered must include any document to which the Court of Appeal may need to refer to decide the legal issue.

[(e) deleted]

[Rule 67 amended: Gazette 22 Aug 2017 p. 4537-8.]

68. Dealing with referred and other CA matters

(1) This rule applies to the following CA matters —

(a) a legal issue to which rule 67 applies and that has been referred to the Court of Appeal under that rule;

(b) an application for a prerogative writ that, under the RSC Order 56, is directed to be decided by the Court of Appeal;

(c) a rule nisi or an order to show cause that, under the Act section 43(2) or the RSC Order 56, is made returnable before the Court of Appeal;

(d) a review order that, under an order made under the RSC Order 56A, is to be heard by the Court of Appeal;

(e) an application for a writ of *habeas corpus ad subjiciendum* that, under the RSC Order 57 —

(i) is directed to be made to the Court of Appeal; or

(ii) is made to the Court of Appeal;

(f) a writ of *habeas corpus ad subjiciendum* that, under an order made under the RSC Order 57, is returnable before the Court of Appeal;

(g) an appeal that, under the *Criminal Appeals Act 2004* section 13, has been ordered to be dealt with by the Court of Appeal;

(h) any other CA matter that is neither a criminal appeal nor a civil appeal.

(2) A single judge has jurisdiction to make any order that will or may facilitate the CA matter being conducted and decided efficiently, economically and expeditiously.

(3) Without limiting subrule (2), a single judge has jurisdiction —

(a) if it is uncertain who are the parties to the proceedings in the Court of Appeal in respect of the CA matter, to decide the question;

(b) to order a particular party to have the conduct of the CA matter;

(c) to order that a rule in Part 5, with or without modifications, applies to the CA matter;

(d) to modify or dispense with the operation of a rule in, or any order made by the General Division under, the RSC in respect of the CA matter.

Part 7 — Miscellaneous

69. Removal of District Court appeal into Court of Appeal

(1) An application under the *Magistrates Court (Civil Proceedings) Act 2004* section 41 must be made by filing a Form 9, modified as necessary and excluding the item "Conference between parties", within 28 days after the date on which the appeal to the District Court was commenced.

(2) If the Court of Appeal makes an order under the *Magistrates Court (Civil Proceedings) Act 2004* section 41(3) —

(a) the appellant in the appeal to the District Court must file a Form 2 within 3 days after the date of the order; and

(b) these rules apply to the conduct of the appeal in the Court of Appeal.

70. Non-parties may apply for transcripts or other records in criminal appeals

(1) In this rule —

media manager means the person who, on behalf of the Supreme Court, manages its relations with media organisations;

media organisation means an organisation that disseminates news or information to the public through the press or by means of radio, television or the internet.

(2) A person who is not a party to a criminal appeal may apply to the Court of Appeal for leave to inspect or obtain a copy of —

(a) the record, or the certified transcript of the record, of any proceedings in the appeal; or

(b) any other record in the possession of the Court of Appeal in relation to the appeal, including documents (including those in electronic form) and other things tendered in evidence in the appeal.

(3) The application —

(a) may be made orally to the media manager if —

(i) it is made by a person employed in a media organisation; and

(ii) the Court of Appeal, on a written application made under this rule by another person employed in a media organisation, has already granted leave to that other person to inspect or obtain a copy of the record the subject of the application;

but

(b) otherwise must be made in writing to the Court of Appeal and must set out the grounds of the application.

(4) The applicant need not give notice of the application to any party to the appeal unless an order is made under rule 71(5)(b).

(5) On an oral application made under subrule (3)(a), the media manager —

(a) may grant the application if satisfied that the Court of Appeal has already granted leave to another person who is employed by a media organisation to inspect or obtain a copy of the record the subject of the application; but

(b) otherwise must refuse the application.

(6) If under subrule (5)(a) the media manager grants an oral application, the application must be granted on the same terms and subject to the same conditions (if any) that were imposed by the Court of Appeal when it gave leave to the other person employed by a media organisation.

(7) A person whose oral application is refused under subrule (5)(b) may make a written application under subrule (3)(b).

[Rule 70 inserted: SL 2025/76 r. 18.]

71. Dealing with written application under r. 70(3)(b)

(1) This rule applies to a written application under rule 70(3)(b).

(2) A single judge or registrar may deal with the application.

(3) A single judge may refer the application to a registrar.

(4) A registrar may refer the application to a single judge.

(5) A single judge or registrar dealing with the application —

(a) may deal with the application even though no party to the appeal has been served with it; or

(b) may order the applicant to serve a party to the appeal, specified in the order, with the application and a notice entitling the party to be heard on the application, and deal with the application accordingly.

(6) A single judge or registrar dealing with the application may grant the application if satisfied that the applicant has sufficient cause to be granted leave, but otherwise must refuse the application.

(7) Subrule (6) has effect subject to —

(a) the *Sentencing Act 1995* section 22; and

(b) any other order or written law that prohibits or restricts the publication or possession of the record to which the application relates.

(8) A single judge or registrar may grant the application —

(a) wholly or in part; and

(b) unconditionally or subject to conditions.

[Rule 71 inserted: SL 2025/76 r. 18.]

72. Cost of supplying copy of transcript or other record

(1) In this rule —

child sexual abuse action has the meaning given in the *Limitation Act 2005* section 6A(1);

National Redress Scheme means the National Redress Scheme for Institutional Child Sexual Abuse established under the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Commonwealth).

(2) If a person, pursuant to leave granted under rule 70 or 71, wants to obtain a copy of a record, the person must pay, or make arrangements to pay, the cost of supplying the copy, unless the Court of Appeal orders otherwise.

(3) Subrule (2) does not apply in relation to an application if the application is for the purposes of an appeal relating to —

(a) a child sexual abuse action; or

(b) a claim under the National Redress Scheme.

(4) A registrar may determine the cost of supplying the copy.

[Rule 72 inserted: SL 2025/76 r. 18.]

73. Court of Appeal not prevented from publishing proceedings

Rules 70 to 72 do not prevent the Court of Appeal from publishing, on its own initiative, all or any part of the proceedings in an appeal to any person, and in any manner, it thinks fit.

[Rule 73 inserted: SL 2025/76 r. 18.]

Schedule 1 — Forms

[r. 3]

1. Appeal notice (*Criminal Appeals Act 2004* Pt. 2 Div. 3 and Pt. 3) (r. 28)

Supreme Court of Western Australia Court of Appeal	No:	
	Appeal notice (*Criminal Appeals Act 2004* Pt. 2 Div. 3 and Pt. 3)	
Parties to the appeal	Appellant Respondent	
Offender	Full name:	Date of birth:
Primary court's decision		
Primary court Indictment No./SJA No. Date of decision Judicial officer	at	
Decision details[1]		
Conviction recorded[2] Sentence imposed[3] Other orders made[4]		
Appeal details		
Notice of appeal [Tick one or more boxes]	The appellant applies to the Court of Appeal for leave to appeal against the above conviction. The appellant applies to the Court of Appeal for leave to appeal against — the above sentence the above order [5] The appellant applies to the Court of Appeal for leave to appeal against the above decision.	
Draft grounds of appeal[6]	1.	
Notice to the respondent	If you want to take part in this appeal you must file a Form 4 under the *Supreme Court (Court of Appeal) Rules 2005* within 7 days after you are served with this notice and serve it on the appellant.	
Last date for appealing	Last date: Is an extension of time needed? Yes/No	
Legal representation	Is the appellant legally represented in this appeal? Yes/No Is the appellant applying for legal aid? Yes/No	

Form 1A

Appellant's details for service[7]		
Name Street address Telephone Email address Reference No.	Fax No.	
Signature of appellant or legal practitioner	Appellant/Appellant's legal practitioner	Date:

Notes to Form 1 —

1. If the appeal is not against a conviction or sentence or other order made as a result of a conviction (e.g. an appeal under the *Criminal Appeals Act 2004* s. 23(1)(c), 23(2)(c), 24(1)(c), 24(2), 25(2), 25(3) or 26), delete the following and describe the decision being appealed.
2. Describe the offence. E.g. Dangerous driving causing death. If there is more than one conviction, put the details of the other convictions, sentences and orders on an attachment.
3. State the sentence. E.g. Imprisonment for 18 months with a parole eligibility order cumulative on the sentence for robbery.
4. State any other order made. E.g. Disqualified from holding or obtaining a driver's licence for 4 years.
5. Tick this box if the appeal is against a decision other than a conviction or sentence or other order made as a result of a conviction. See note 1.
6. Set out the draft grounds in numbered paragraphs.
7. If the appellant is represented by a legal practitioner, the appellant's details below must be the legal practitioner's. If the appellant is self-represented, the details must be the appellant's personal details.

[8. deleted]

[Form 1 amended: Gazette 22 Aug 2017 p. 4538; SL 2022/74 r. 18; SL 2022/209 r. 24.]

1A. Appeal notice (*Criminal Appeals Act 2004* Pt. 3A) (r. 28A)

Supreme Court of Western Australia Court of Appeal	No:
	Appeal notice *(Criminal Appeals Act 2004* Pt. 3A)

Parties to the appeal		Appellant Respondent
Offender	Full name:	Date of birth:

Form 1A

Primary court's decision		
Primary court Indictment No. Date of decision Judicial officer	at	
Decision details		
Conviction recorded [1]		
Previous appeal details		
Date appeal(s) dismissed		
Matter number(s)		
Appeal details		
Notice of appeal	The appellant applies to the Court of Appeal for leave to appeal against the above conviction.	
Notice to the respondent	If you want to take part in this appeal you must file a Form 4 under the *Supreme Court (Court of Appeal) Rules 2005* within 7 days after you are served with this notice and serve it on the appellant.	
Legal representation	Is the appellant legally represented in this appeal? Yes/No Is the appellant applying for legal aid? Yes/No	
Appellant's details for service [2]		
Name Street address Telephone Email address Reference No.	Fax No.	
Signature of appellant or legal practitioner	Appellant/Appellant's legal practitioner	Date:

Notes to Form 1A —

1. Describe the offence, e.g. dangerous driving causing death. If there is more than 1 conviction, state the details of the other convictions.
2. If the appellant is represented by a legal practitioner, the appellant's details below must be the legal practitioner's. If the appellant is self-represented, the details must be the appellant's personal details.

[Form 1A inserted: SL 2022/209 r. 25.]

Form 2

2. Appeal notice (civil) (r. 29)

Supreme Court of Western Australia Court of Appeal		No:
		Appeal notice (civil)
Parties to the appeal		Appellant Respondent
Primary court's decision		
Primary court Case number Parties Date of decision Judicial officer		
Decision details[1]		
Appeal details		
Notice of appeal	The appellant appeals to the Court of Appeal against the above decision.	
Act that allows the appeal[2]	section:	
Notice to the respondent	If you want to take part in this appeal you must file a Form 4 under the *Supreme Court (Court of Appeal) Rules 2005* within 7 days after you are served with this notice and serve it on the appellant.	
Last date for appealing	Last date: Is an extension of time needed? Yes/No	
Leave to appeal	Is leave to appeal needed? Yes/No If yes, state the Act and section requiring leave:	
Legal representation	Is the appellant legally represented in this appeal? Yes/No Is the appellant applying for legal aid? Yes/No	
Appellant's details for service[3]		
Name Street address Telephone Email address Reference No.	Fax No.	
Signature of appellant or legal practitioner	Appellant/Appellant's legal practitioner	Date:

Notes to Form 2 —

1. Examples:
   - Judgment against the defendant for $70 000.
   - Dismissal of negligence action.
2. State the short title of the Act under which the appeal is being made.

3. If the appellant is represented by a legal practitioner, the appellant's details below must be the legal practitioner's. If the appellant is self-represented, the details must be the appellant's personal details.

[4. deleted]

[Form 2 amended: Gazette 22 Aug 2017 p. 4538-9; SL 2022/74 r. 18.]

3. Service certificate (r. 29A(2))

<table>
<tr><td colspan="2">Supreme Court of Western Australia
Court of Appeal</td><td colspan="2">No:
Service certificate</td></tr>
<tr><td>Parties to the appeal</td><td colspan="3">Appellant
Respondent</td></tr>
<tr><td>Certificate</td><td colspan="3">I certify that on [date] at [place] [name of server] served the respondent personally with —
● a copy of an appeal notice dated [date]; and
● [1] a copy of every other document that was filed with the appeal notice.
I undertake to file an affidavit of service if the Court of Appeal requires me to.</td></tr>
<tr><td>Signature of appellant or legal practitioner</td><td colspan="2">Appellant/Appellant's legal practitioner</td><td>Date:</td></tr>
</table>

Note to Form 3 —

1. Delete if no documents are required under the *Supreme Court (Court of Appeal) Rules 2005* rule 28(1)(b) (for an appeal under the *Criminal Appeals Act 2004* Pt. 2 Div. 3 or Pt. 3) or 29(1)(b) (for a civil appeal).

[Form 3 amended: Gazette 22 Aug 2017 p. 4539; SL 2022/60 r. 26(1); SL 2022/74 r. 18; SL 2022/209 r. 26.]

Form 4

4. Notice of respondent's intention (r. 31)

Supreme Court of Western Australia Court of Appeal		No.: **Notice of respondent's intention**
Parties to the appeal		Appellant Respondent
Notice [*Tick one box*]		□ The respondent intends to take part in this appeal. □ The respondent does not intend to take part in this appeal and will accept any order made by the Court of Appeal in the appeal other than as to costs.
Legal representation		Is the respondent legally represented in this appeal? Yes/No Is the respondent applying for legal aid? Yes/No
Respondent's details for service[1]		
Name Street address Telephone Email address Reference No.		Fax No.
Signature of respondent or legal practitioner	Respondent/Respondent's legal practitioner	Date:

Note to Form 4 —

1. If the respondent is represented by a legal practitioner, the respondent's details below must be the legal practitioner's. If the respondent is self-represented, the details must be the respondent's personal details.

[Form 4 inserted: Gazette 22 Aug 2017 p. 4539; amended: SL 2022/74 r. 18.]

4A. Notice of respondent's cross appeal (r. 31A)

Supreme Court of Western Australia Court of Appeal		No.: **Notice of respondent's cross appeal**
Parties to the appeal		Appellant Respondent
Notice		The respondent also appeals against the primary court's decision specified in the appellant's appeal notice.
Last date for appealing		Last date: Is an extension of time needed? Yes/No
Leave to appeal		Is leave to appeal needed? Yes/No If yes, state the Act and section requiring leave:

Signature of respondent or legal practitioner	Respondent/Respondent's legal practitioner	Date:

[Form 4A inserted: Gazette 22 Aug 2017 p. 4540; SL 2022/74 r. 18.]

5. Legal practitioner's notice of acting (Part 4)

Supreme Court of Western Australia Court of Appeal	No:	
	Legal practitioner's notice of acting	
Parties to the appeal	Appellant Respondent	
Client	Appellant/Respondent	
Notice	The legal practitioner or firm of practitioners named below is acting for the above client in this appeal.	
Legal practitioner or firm of practitioners		
Name Street address Telephone Email address Reference No.	Fax No.	
Signature of legal practitioner		Date:

[Form 5 amended: Gazette 22 Aug 2017 p. 4540; SL 2022/74 r. 18.]

5A. Service certificate by legal practitioner ceasing to act (r. 24(3))

Supreme Court of Western Australia Court of Appeal	No.:	
	Service certificate by legal practitioner ceasing to act	
Parties to the appeal	Appellant Respondent	
Details of order giving leave to cease to act	On [*date*] the Court of Appeal made an order giving leave for [*name of legal practitioner*] to cease to act for the *appellant/ respondent.	
Certificate	I certify that on [*date*] at [*place*] [*name of server*] served [*name of party*], the *appellant/respondent, with a copy of that order. I undertake to file an affidavit of service if the Court of Appeal requires me to.	

Last known address	The last known geographical address of the *appellant/ respondent is[1]	
Email address	The following email address is used by the *appellant/ respondent [2]	
Signature of legal practitioner	Name of legal practitioner	Date:

Notes to Form 5A —
* Delete the inapplicable.
1. Geographical address: see RSC Order 71A rule 2.
2. Leave blank if no email address is known.

[Form 5A inserted: Gazette 22 Aug 2017 p. 4540-1; amended: SL 2022/60 r. 26(2); SL 2022/74 r. 18.]

6. Notice of self-representation (r. 24)

Supreme Court of Western Australia Court of Appeal	No:	
	Notice of self-representation	
Parties to the appeal	Appellant Respondent	
Notice	I, the [*party*], no longer have a legal practitioner acting for me in this appeal. My address for service is set out below.	
Address for service		
Street address Telephone Email address Reference No.	Fax No.	
Signature of party		Date:

[Form 6 amended: SL 2022/74 r. 18.]

7. Appellant's case (r. 32)

Supreme Court of Western Australia Court of Appeal	No:	
	Appellant's case	
Parties to the appeal	Appellant Respondent	
Notice	Attached to this form are these documents in this order — • Appellant's grounds of appeal • Appellant's submissions • Appellant's legal authorities • Orders wanted • [1] Draft chronology • Draft appeal book indexes	
Certificate	I certify — • that in preparing the attached documents I have fully prepared the appellant's case; and • that in all respects, other than the preparation of the appeal book, the appellant is ready for the hearing of the appeal.	
Time estimate	I estimate it will take minutes/hours to orally present the appellant's case at the hearing of this appeal.	
Signature of appellant or legal practitioner	Appellant/Appellant's legal practitioner	Date:

Notes to Form 7 —

1. Delete this if the appeal is an interlocutory civil appeal or a sentence appeal.

[Form 7 amended: Gazette 22 Aug 2017 p. 4541; SL 2022/74 r. 18.]

8. Respondent's answer (r. 33)

Supreme Court of Western Australia Court of Appeal	No: **Respondent's answer**	
Parties to the appeal	Appellant Respondent	
Notice	Attached to this form are these documents in this order — • Respondent's submissions • Respondent's notice of contention • Respondent's legal authorities • [1] Reply to the appellant's draft chronology • Reply to the appellant's draft indexes	
Certificate	I certify — • that in preparing the attached documents I have fully prepared the respondent's answer; and • that in all respects the respondent is ready for the hearing of the appeal.	
Time estimate	I estimate it will take minutes/hours to orally present the respondent's answer at the hearing of this appeal.	
Signature of respondent or legal practitioner	Respondent/Respondent's legal practitioner	Date:

Notes to Form 8 —

1. Delete this if the appeal is an interlocutory civil appeal or a sentence appeal.

[Form 8 amended: Gazette 22 Aug 2017 p. 4541; SL 2022/74 r. 18.]

9. Application in an appeal (r. 44)

Supreme Court of Western Australia Court of Appeal	No: **Application in an appeal**	
Parties to the appeal	Appellant Respondent	
Applicant	Appellant/Respondent	

Application[1]	The applicant applies for —	
Conference between parties [*Tick one box*]	□ The parties to this application have conferred about the issues giving rise to this application but have not resolved them. The unresolved issues are:[2] □ The parties to this application have not conferred about the issues giving rise to this application because:[3]	
Signature of applicant or legal practitioner	Applicant/Applicant's legal practitioner	Date:

Notes to Form 9 —

1. State —
   - the order or orders sought; and
   - the written law and provision under which the application is made.
2. List the unresolved issues in numbered paragraphs.
3. State the reasons why the parties have not conferred.

[Form 9 amended: Gazette 22 Aug 2017 p. 4541-2; SL 2022/74 r. 18.]

10. Consent notice (r. 45 & 60)

Supreme Court of Western Australia Court of Appeal	No:	
	Consent notice	
Parties to the appeal	Appellant Respondent	
Consent	We consent to the following order being made —	
Signature of appellant or legal practitioner	Appellant/Appellant's legal practitioner	Date:
Signature of respondent or legal practitioner	Respondent/Respondent's legal practitioner	Date:

[Form 10 amended: SL 2022/74 r. 18.]

Form 11

11. Affidavit cover sheet (r. 21(3))

Supreme Court of Western Australia Court of Appeal	No:	
	Affidavit[1]	
Parties to the appeal	Appellant Respondent	
Person making affidavit		
Date made		
Purpose		
Filed by	Appellant/Respondent	
Index[2]	Contents	Page
	1. Affidavit of Vincent van Gogh *2. Annexure VVG 1 — M J Citizen's birth certificate* *3. Annexure VVG 2 — Letter from J Smith to T Jones dated 3 March 1999*	*1* *7* *8*

Notes to Form 11 —
1. The affidavit must comply with the RSC Order 37.
2. The index must comply with the RSC Order 37 Rule 2(7). The above form contains in italics an example of an index.

[Form 12 deleted: SL 2025/76 r. 19.]

13. Application for review of single judge's or registrar's decision (r. 8 & 15)

Supreme Court of Western Australia Court of Appeal	No:	
	Application for review of single judge's or registrar's decision	
Parties to the appeal	Appellant Respondent	
Decision to be reviewed		
Decision maker Date of decision Brief description		
Applicant	Appellant/Respondent	
Application [*Delete one]	The applicant applies to the *Court of Appeal/a single judge of appeal to set aside or vary the above decision.	
Grounds of this application[1]	1.	

Stay	Is a stay of proceedings needed? Yes/No If yes, state the order and why it is needed:	
Orders wanted		
Signature of applicant or legal practitioner	Applicant/Applicant's legal practitioner	Date:

Notes to Form 13 —

1. Set out the grounds in numbered paragraphs.

[Form 13 amended: SL 2022/74 r. 18.]

14. Appeal book, cover page (r. 39(5))

Supreme Court of Western Australia Court of Appeal	No:	
	Green Appeal Book **Volume 2 of 3**[1]	
Parties to the appeal	Appellant Respondent	
Appellant's details for service[2]		
Name Street address Telephone Email address Reference No.	Fax No.	
Respondent's details for service[2]		
Name Street address Telephone Email address Reference No.	Fax No.	

Notes to Form 14 —

1. This must reflect the part [*E.g. White Appeal Book*], and the number of the volume of the part in which the cover page appears. If the part consists of only one volume, omit the reference to "Volume". If the appeal is a sentence appeal and the appeal book is one volume only, this must read "Appeal Book".
2. If the party is represented by a legal practitioner, these details must be the legal practitioner's. If the party is self-represented, these details must be the party's personal details.

[Form 14 amended: SL 2022/74 r. 18.]

Form 14A

14A. Certificate of correctness of appeal book (r. 41(c))

Supreme Court of Western Australia Court of Appeal	No.:	
	Certificate of correctness of appeal book	
Parties to the appeal	Appellant Respondent	
Appellant's certificate	The appellant certifies that — (a) this appeal book contains those materials, and only those materials, necessary for this appeal; and (b) each document copied has been compared to the original document and is correct; and (c) all documents copied are legible.	
Signature of appellant or legal practitioner	Appellant/Appellant's legal practitioner	Date:
Respondent's certificate	The respondent certifies that — (a) this appeal book contains those materials, and only those materials, necessary for this appeal; and (b) each document copied has been compared to the original document and is correct; and (c) all documents copied are legible.	
Signature of respondent or legal practitioner	Respondent/Respondent's legal practitioner	Date:

[Form 14A inserted: Gazette 22 Aug 2017 p. 4542; amended: SL 2022/74 r. 18.]

15. Notice of hearing date (r. 57)

Supreme Court of Western Australia Court of Appeal	No:	
	Notice of hearing date	
Parties to the appeal	Appellant Respondent	
Hearing date	This appeal will be heard by the Court of Appeal at [*place*] on [*date*] at [*time*] or as soon after then as possible.	
Time limits	The following time limits will apply to the parties when making oral submissions to the court —	
Signature of registrar	Court of Appeal Registrar	Date:

16. Discontinuance notice (r. 59)

Supreme Court of Western Australia Court of Appeal	No: **Discontinuance notice**	
Parties to the appeal	Appellant Respondent	
Notice	The *appellant/respondent discontinues *this appeal/the cross appeal in this appeal.	
Acknowledgment of *appellant/ respondent	The *appellant/respondent acknowledges that by discontinuing *this appeal/the cross appeal in this appeal — (a) the *appeal/cross appeal is brought to an end; and (b) the *appeal/cross appeal cannot subsequently be continued or reinstated.	
Signature of *appellant/ respondent or legal practitioner [1]	*Appellant/Appellant's legal practitioner/ Respondent/Respondent's legal practitioner	Date:

Notes to Form 16 —

* Delete the inapplicable.

1. If the appeal is a criminal appeal, this form must be signed by both the appellant and a legal practitioner (if any) acting for the appellant: see the *Supreme Court (Court of Appeal) Rules 2005* rule 59(1A).

[Form 16 inserted: SL 2022/60 r. 26(3); amended: SL 2022/74 r. 18.]

17. Certificate of conclusion of criminal appeal (r. 62)

Supreme Court of Western Australia Court of Appeal	No: **Certificate of conclusion of criminal appeal**	
Parties to the appeal	Appellant Respondent	
Primary court's decision that was appealed		
Primary court Indictment No. Case name Date of decision Judicial officer		

Form 18

Result of appeal		
Court of Appeal proceedings[1]	Date(s): Presiding judges of appeal:	
Final outcome[2]	Date:	
Certificate	I certify that the information in this certificate is true and correct.	
Signature	Court of Appeal Registrar	Date:

Notes to Form 17 —
1. Do not complete if appeal is discontinued.
2. Set out the Court of Appeal's judgment and any consequential orders made or, if the appeal was discontinued, that it was discontinued.

18. Referral of legal issue to Court of Appeal (r. 67)

Supreme Court of Western Australia Court of Appeal	No:
	Referral of legal issue to Court of Appeal

Parties to the primary court case		
Primary court case details[1]	In the [*name of court*] at [*place*] on [*date*],	
Law allowing the referral[2]	This referral is made under:	
Legal issue referred	The following legal issue is referred to the Court of Appeal:	
How the issue arose	The legal issue arose out of the following circumstances:	
Material to be considered[3]	The material that ought to be considered by the Court of Appeal is:	
Signature of judge or person referring	[*Name and title of person referring*]	Date:

Notes to Form 18 —
1. Set out the nature of the primary court case. Examples:
   - … the accused was indicted on the attached indictment …
   - … the plaintiff sued the defendant in negligence …

2. State the short title and section of the Act under which the referral is being made.
3. List the records, documents, transcripts and exhibits to be considered by the Court of Appeal.

Notes

This is a compilation of the *Supreme Court (Court of Appeal) Rules 2005* and includes amendments made by other written laws. For provisions that have come into operation see the compilation table.

Compilation table

Citation	Published	Commencement
Supreme Court (Court of Appeal) Rules 2005	29 Apr 2005 p. 1803-75	2 May 2005 (see r. 2)
Supreme Court Rules Amendment Rules 2017 Pt. 3	16 Aug 2017 p. 4391-427	30 Aug 2017 (see r. 2(c))
Supreme Court (Court of Appeal) Amendment Rules 2017	22 Aug 2017 p. 4517-44	r. 1 and 2: 22 Aug 2017 (see r. 2(a)); Rules other than r. 1 and 2: 5 Sep 2017 (see r. 2(b))
Supreme Court Rules Amendment (Court of Appeal) Rules 2021 Pt. 2	SL 2021/34 30 Mar 2021	3 May 2021 (see r. 2(b))
Supreme Court (Court of Appeal) Amendment Rules 2022	SL 2022/60 20 May 2022	r. 1 and 2: 20 May 2022 (see r. 2(a)); Rules other than r. 1 and 2: 3 Jun 2022 (see r. 2(b))
Supreme Court Rules Amendment (Legal Profession) Rules 2022 Pt. 5	SL 2022/74 14 Jun 2022	1 Jul 2022 (see r. 2(b) and SL 2022/113 cl. 2)
Supreme Court (Court of Appeal) Amendment Rules (No. 2) 2022	SL 2022/209 16 Dec 2022	r. 1 and 2: 16 Dec 2022 (see r. 2(a)); Rules other than r. 1 and 2: 1 Jan 2023 (see r. 2(b) and SL 2022/212 cl. 2)
Supreme Court (Court of Appeal) Amendment Rules 2024	SL 2024/166 7 Aug 2024	r. 1 and 2: 7 Aug 2024 (see r. 2(a)); Rules other than r. 1 and 2: 1 Sep 2024 (see r. 2(b))
Supreme Court (Court of Appeal) Amendment Rules 2025	SL 2025/76 22 May 2025	r. 1 and 2: 22 May 2025 (see r. 2(a)); Rules other than r. 1 and 2: 23 May 2025 (see r. 2(b))

Defined terms

[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

Defined term	Provision(s)
Act	3(1)
alleged evidence	26B
appeal	3(1)
appeal notice	3(1)
appellant	3(1)
appellant's grounds of appeal	33(1)
approved mediator	47(1)
audio link	3(1)
CA matter	3(1)
child sexual abuse action	72(1)
civil appeal	3(1)
concluded	3(1)
costs	66(1)
criminal appeal	3(1)
cross appeal	31A(1)
decision	3(1)
examiner	55(1)
file	3(1)
Form	3(1)
interim order	3(1)
interlocutory civil appeal	3(1)
legal issue	67(1)
media manager	70(1)
media organisation	70(1)
National Redress Scheme	72(1)
party	3(1)
primary court	3(1)
primary court case	3(1)
primary court's decision	3(1)
primary court's transcript	3(1)
record	3(1)
refer to	67(1)
registrar	3(1)
reviewable decision	15(1A)
RSC	3(1)
sentence appeal	3(1)
single judge	3(1)
urgent appeal order	3(1)

video link ..... 3(1)
working day ..... 3(1)

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