



New South Wales

Criminal Appeal Rules (Amendment No 2) 2002

under the

Supreme Court Act 1970

The Supreme Court Rule Committee made the following rules of court under the *Supreme Court Act 1970* on 20 May 2002.

Steven Jupp

Secretary to the Supreme Court Rule Committee

Explanatory note

The objects of these Rules are as follows:

- (a) to make provision with respect to notices of intention to appeal and notices of intention to apply for leave to appeal,
- (b) to revise procedures relating to notices of appeal and notices of application for leave to appeal as a consequence of the amendments providing for notices of intention to appeal and to apply for leave to appeal,
- (c) to prescribe what matters are to be included in shorthand notes taken under section 21 of the *Criminal Appeal Act 1912* (the Act),
- (d) to replace the term “Registrar”, where appropriate, in relation to the Court of Trial with the term “proper officer of the Court of Trial”,
- (e) to provide for the transcript of the shorthand notes of the proceedings subject to appeal to be forwarded to the Registrar by the proper officer of the Court of Trial,
- (f) to provide for exhibits in the Court of Trial to remain available to the Court of Criminal Appeal for the determination of an appeal or application for leave to appeal,

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- (g) to insert new forms, and amend certain other forms, as a consequence of the amendments relating to notices of intention to appeal, notices of intention to apply for leave to appeal, notices of appeal and notices of application for leave to appeal.

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1 Name of Rules

These Rules are the *Criminal Appeal Rules (Amendment No 2) 2002*.

2 Commencement

These Rules commence on the day on which Schedule 6 [3] to the *Criminal Legislation Amendment Act 2001* commences.

3 Amendment of Criminal Appeal Rules

The *Criminal Appeal Rules* are amended as set out in Schedule 1.

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Schedule 1 Amendments

Schedule 1 Amendments

(Rule 3)

[1] Rule 1 Name of Rules and interpretation

Insert in alphabetical order:

appellant includes an applicant for leave to appeal, and a person who gives notice of intention to appeal or to apply for leave to appeal.

[2] Heading after Rule 2

Omit the Heading. Insert instead:

Notices relating to appeals

[3] Rule 3

Omit the Rule. Insert instead:

3 Notices to be signed

- (1) Subject to subrules (2) and (3), all notices with respect to an appeal or proposed appeal are to be signed by the appellant or the appellant's solicitor or counsel on the appellant's behalf.
- (2) A notice of abandonment of appeal is to be signed by the appellant.
- (3) If the appellant is unable to write, the appellant may affix his or her mark to the notice in the presence of a witness who is to attest by his or her signature that the mark is that of the appellant.

3A Duration of notices of intention

- (1) The following notices have effect for 6 months after the day of filing of the notice:
 - (a) a notice of intention to appeal,
 - (b) a notice of intention to apply for leave to appeal.
- (2) The Court may extend the period for which such a notice has effect, before or after the expiry of the period.

3B Time for filing notice of appeal or notice of application for leave to appeal

- (1) A notice of appeal, or a notice of application for leave to appeal, in respect of a conviction or sentence may only be given:
- (a) if a notice of intention to appeal or notice of intention to apply for leave to appeal has been given with respect to the conviction or sentence—within the period during which that notice of intention has effect, or
 - (b) if a notice of intention to appeal or a notice of intention to apply for leave to appeal has not been given with respect to the conviction or sentence— within the period of 3 months after the conviction or sentence.
- (2) The period of 3 months referred to in subrule (1) (b) may be extended by the Court before or after the expiry of the period.

3C Registrar may exercise certain powers of Court

The power of the Court under section 10 (1) (b) of the Act or rule 3A or 3B to extend a period of time may be exercised by the Registrar.

[4] Rule 6

Omit the rule. Insert instead:

6 Matters to be included in shorthand notes

- (1) Shorthand notes taken under section 21 of the Act are to be taken of the following matters:
- (a) the oral evidence,
 - (b) any objections taken,
 - (c) any directions asked for during the trial,
 - (d) any points of law raised during the trial,
 - (e) any rulings, orders or judgments in the proceedings,
 - (f) any statement made by the accused,
 - (g) the opening and closing addresses by counsel to the jury,
 - (h) the summing up,

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- (i) the proceedings following conviction,
 - (j) the remarks on sentence.
- (2) The notes may be taken by writing or by audio or audio visual recording.

[5] Rule 7 Notes to be signed by Shorthand-writer

Omit "Registrar". Insert instead "proper officer of the Court of Trial".

[6] Rule 8 Transcripts

Omit "Registrar" wherever occurring.

Insert instead "proper officer of the Court of Trial".

[7] Rule 8A

Omit the Rule. Insert instead:

8A Copy of summing up and remarks on sentence

- (1) Subject to subrules (3) and (4), access to a copy of the summing up, the remarks on sentence or any judgment is not to be allowed to the proper officer of the Court of Trial, the Registrar, any Judge of the Court, or any party, until it has been submitted to the Judge of the Court of Trial and copied in accordance with his or her revision.
- (2) Upon the proper officer of the Court of Trial notifying the Reporting Services Branch of the Attorney General's Department that notice of intention to appeal, notice of intention to apply for leave to appeal, notice of appeal or notice of application for leave to appeal has been sent to the Registrar in relation to any proceedings, the Reporting Services Branch is to furnish to the proper officer, when available, a copy of the summing up, the remarks on sentence and any judgment, being a copy that has been submitted to and corrected by the Judge of the Court of Trial.
- (3) If a corrected copy of the summing up, the remarks on sentence or any judgment has not been received by the Reporting Services Branch within 3 weeks, or such other period as the Registrar of the Court of Criminal Appeal may fix, from the date when a copy of the unrevised transcript of it was made

available to the Judge of the Court of Trial, the Reporting Services Branch is, on the expiration of the period, to furnish to the proper officer of the Court of Trial a copy of the unrevised transcript.

- (4) The Court or a Judge of the Court may, for special cause, order that access be allowed to an uncorrected copy of the summing up, remarks on sentence or judgment.

[8] Rule 9

Omit the rule.

[9] Rule 12 Custody etc of exhibits

Omit “in the case.”

Insert instead “in the case, as long as those exhibits remain available to the Court of Criminal Appeal for the determination of any appeal or application for leave to appeal arising from the case.”

[10] Rule 19

Omit the rule. Insert instead:

19 Certificates of conviction not to issue for 28 days

- (1) The proper officer of the Court of Trial is not to issue a certificate of the conviction of any person for a period of 28 days after the conviction.
- (2) When application for a certificate of conviction is made to such officer after the expiration of 28 days, the officer is not to issue such a certificate except on production of a certificate from the Registrar (Form XXII), that:
- (a) there is no appeal or application for leave to appeal, against such conviction then pending in the Court, and
- (b) no notice of intention to appeal, or of intention to apply for leave to appeal, has been given and is in effect with respect to the conviction.
- (3) The Registrar is to supply such a certificate in all cases where:
- (a) there is no appeal or application for leave to appeal, against such conviction then pending in the Court, and

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(b) no notice of intention to appeal, or of intention to apply for leave to appeal, is in effect with respect to the conviction.

(4) A certificate of conviction may be issued by the proper officer of the Court of Trial on application except in cases where:

(a) an appeal or application for leave to appeal against the conviction is still undetermined, or

(b) a notice of intention to appeal, or of intention to apply for leave to appeal, is still in effect with respect to the conviction.

[11] Rule 20 Notes and report of Judge of Court of Trial

Omit rule 20 (1) (a). Insert instead:

(a) any notice of appeal or notice of application for leave to appeal is given,

[12] Rules 23 and 24

Omit the rules. Insert instead:

23 Notice of intention to appeal against conviction or sentence

A person who intends to appeal to the Court against his or her conviction or sentence is to send the Registrar a notice of intention to appeal or notice of intention to apply for leave to appeal (Form IVA) together with, where appropriate, a notice of application for extension of time to give the notice (Form VE).

23A Notice of appeal against conviction or sentence

A person who seeks to appeal against his or her conviction or sentence is to send to the Registrar a notice of appeal or a notice of application for leave to appeal (Form IV) together with, where appropriate, a notice of application for extension of time to give the notice (Form V).

23B Notice of appeal against interlocutory judgment or order

A person who seeks to appeal to the Court under section 5F (3) of the Act is to send to the Registrar a notice of appeal (Form

VC) together with, where appropriate, a notice of application for extension of time (Form VD).

23C Documents to accompany notice of appeal or notice of application for leave to appeal

A notice of appeal against conviction, or a notice of application for leave to appeal against sentence, may not be filed, except with the leave of the Court or the Registrar, unless it is accompanied by the following:

- (a) a statement of the grounds for appeal,
- (b) written submissions in support of the appeal,
- (c) a certificate by or on behalf of the appellant that the following are available from the proper officer of the Court of Trial:
 - (i) the transcript of the proceedings in the Court of Trial (including the transcript of the summing-up to the jury in the case of an appeal against conviction, and the transcript of the remarks on sentence in the case of an appeal against sentence),
 - (ii) the exhibits in the Court of Trial,
- (d) a statement nominating the solicitor and counsel acting for the appellant.

23D Effect of incomplete notice of appeal or leave to appeal

A notice of appeal against conviction, or a notice of application for leave to appeal against sentence, that is not accompanied by all the documents listed in rule 23C has effect as a notice of intention to appeal, or a notice of intention to apply for leave to appeal, as the case may be.

23E Notice of Crown appeal

- (1) Notice of an appeal under section 5C, 5D, 5DA, 5DB or 5F (2) of the Act is to be sent to the Registrar by the appellant.
- (2) The appellant is to serve a copy of the notice referred to in subrule (1) on the respondent as soon as practicable after sending the notice to the Registrar.

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24 Requirement to complete form of notice of appeal etc

- (1) Every person sending the following notices is to answer the questions and comply with the requirements set out in the relevant forms for the notices:
 - (a) notice of intention to appeal,
 - (b) notice of intention to apply for leave to appeal,
 - (c) notice of appeal,
 - (d) notice of application for leave to appeal,
 - (e) notice of an appeal under section 5F (3) of the Act.
- (2) The answers to the questions in such forms are taken to be applications to the Court in respect of the matters referred to in the forms.

24A Registrar to forward copy of notices

Within 3 days after receiving a notice under rule 23, 23A or 23B, the Registrar is to send a copy of the notice to the proper officer of the Court of Trial and to the respondent.

24B Proper officer of Court of Trial to obtain shorthand notes and exhibits

On receiving a copy of a notice referred to in rule 23, 23A or 23B, the proper officer of the Court of Trial is to obtain a copy of the shorthand notes of the proceedings and of the exhibits and other documents from the proceedings and, on request, supply a copy of the shorthand notes, exhibits and other documents to the appellant.

[13] Rule 25

Omit the rule. Insert instead:

25 Documents to be furnished to Registrar

If:

- (a) the Registrar receives in relation to a conviction or sentence any notice of appeal, notice of application for leave to appeal or notice of application for extension of time to lodge such a notice, or

- (b) the Minister administering section 474C (1) of the *Crimes Act 1900*:
 - (i) refers to the Court any case, or
 - (ii) requests the Court to give an opinion on any point arising in a case,at the request of the Registrar:
- (c) the Director of Public Prosecutions is to forward to the Registrar particulars of the trial and conviction (Form No II), and
- (d) the proper officer of the Court of Trial is to forward the following to the Registrar:
 - (i) all exhibits in the possession of the officer,
 - (ii) the indictment,
 - (iii) any plea or demurrer filed in the Court of Trial,
 - (iv) the shorthand notes of the relevant proceedings in the form of a transcript.

[14] Rule 28

Omit the rule. Insert instead:

28 Extension of time for appeal

A notice of application for extension of time (Form V, VD, VE or VF) is to be accompanied by the notice of intention to appeal, notice of intention to apply for leave to appeal, notice of appeal or notice of application for leave to appeal to which it relates.

[15] Rule 50A

Insert after rule 50:

50A Determination of appeal or application

An appeal or application for leave to appeal is determined on the making of orders disposing of the appeal or application.

[16] Heading after rule 57

Omit the heading.

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[17] Rule 58

Omit the rule.

[18] Forms IV, IVA and V

Omit Forms IV and V. Insert instead:

Form IV Notice of appeal or notice of application for leave to appeal

(Criminal Appeal Act 1912)

[Rule 23C of the Criminal Appeal Rules requires this notice to be accompanied by a statement of the grounds for appeal, written submissions in support of the appeal, a certificate of availability of transcript and exhibits and a statement nominating the solicitor and counsel acting for the appellant.]

Name of appellant:

Date of birth:

M.I.N.

C.N.I.

Lower Court File No:

The appellant appeals against: Conviction only
 Conviction and sentence
 Sentence only

Plea entered: Guilty
 Not guilty

Details of Court of Trial: Supreme Court
 District Court

At:
[Location]

Name of Judge:

Dates of trial and sentence hearings:

Date of sentence:

Convicted of:
[List all offences]

Longest sentence:

Non-parole period:

If held in custody, location of gaol:

If not held in custody, residential address:

Legal representative:

[List name and address. If seeking legal aid, an application for legal aid must be sent to the Legal Aid Commission of New South Wales]

Does the appellant wish to be present at the hearing of the appeal? Yes/No

Signed:

[Signature of appellant or solicitor or counsel]

Date:

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Form IVA Notice of intention to appeal or notice of intention to apply for leave to appeal

(Criminal Appeal Act 1912)

Name of intending appellant:

Date of birth:

M.I.N.

C.N.I.

Lower Court File No:

The intending appellant intends to appeal against:

- Conviction only
- Conviction and sentence
- Sentence only

Plea entered:

- Guilty
- Not guilty

Details of Court of Trial:

- Supreme Court
- District Court

At:
[Location]

Name of Judge:

Dates of trial and sentence hearings:

Date of sentence:

Convicted of:
[List all offences]

Longest sentence:

Non-parole period:

**If held in custody, location of
gaol:**

**If not held in custody, residential
address:**

Proposed legal representative:
*[List name and address. If seeking
legal aid, an application for legal
aid must be sent to the Legal Aid
Commission of New South Wales]*

Signed:
*[Signature of intending
appellant or solicitor or
counsel]*

Date:

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**Form V Notice of application for extension of time
for notice of appeal or notice of application
for leave to appeal**

(Criminal Appeal Act 1912)

Name of appellant:

Date of birth:

M.I.N.

C.N.I.

Lower Court File No:

The appellant applies for an extension of time within which to appeal or to give notice of intention to apply for leave to appeal against:

- Conviction only
- Conviction and sentence
- Sentence only

Details of Court of Trial:

- Supreme Court
- District Court

At:

[Location]

.....

Date of conviction or sentence:

.....

Signed:

.....

[Signature of intending appellant or solicitor or counsel]

Date:

.....

The notice of appeal or notice of application for leave to appeal was not given within 3 months after conviction or sentence, or during the period

within which a notice of intention to appeal or to apply for leave to appeal had effect, for the following reasons:

.....

[19] Form VE and Form VF

Insert after Form VD:

Form VE Notice of application for extension of time for notice of intention to appeal or to apply for leave to appeal

(Criminal Appeal Act 1912)

Name of intending appellant:

Date of birth:

M.I.N.

C.N.I.

Lower Court File No:

The intending appellant applies for an extension of time within which to give notice of intention to appeal or to give notice of intention to apply for leave to appeal against:

- Conviction only
- Conviction and sentence
- Sentence only

Details of Court of Trial:

- Supreme Court
- District Court

At:

[Location]

.....

Date of conviction or sentence:

.....

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Signed:
[Signature of intending
appellant or solicitor or
counsel]

Date:

The notice of intention to appeal or notice of intention to apply for leave to appeal was not given within 28 days after conviction or sentence for the following reasons:

.....
.....
.....

Form VF Notice of application for extension of period within which notice of intention to appeal or to apply for leave to appeal has effect

(Criminal Appeal Act 1912)

Name of intending appellant:

Date of birth:

The intending appellant applies for an extension of the period of time within which the following notice of intention to appeal or notice of intention to apply for leave to appeal has effect:
[Notice of intention to appeal number or notice of intention to apply for leave to appeal number]

Signed:
[Signature of intending
appellant or solicitor or
counsel]

Date:

The notice of appeal or the notice of application for leave to appeal was not given during the period within which a notice of intention to appeal or to apply for leave to appeal had effect for the following reasons:

.....
.....
.....

[20] Form XXII

Omit Form XXII. Insert instead:

Form XXII Registrar's certificate of no appeal pending

(Criminal Appeal Act 1912)

Regina v

I certify that:

- (a) no notice of intention to appeal or notice of intention to apply for leave to appeal against the conviction or sentence has effect, and

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(b) there is no appeal or application for leave to appeal now pending in the Court of Criminal Appeal against the conviction or sentence on
..... for the offence of
[insert date] [insert offence]

.....
Registrar **Date**

BY AUTHORITY