

# Criminal Appeal Rules (1952 SI 2)

[1952-2]



New South Wales

## Status Information

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### Authorisation

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New South Wales

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# Criminal Appeal Rules (1952 SI 2)



New South Wales

## 1 Name of Rules and interpretation

These rules shall be called the *Criminal Appeal Rules*, and unless the context or subject-matter otherwise requires or indicates:

**The Act** means the *Criminal Appeal Act 1912*.

**Proper Officer of the Court of Trial** means the officer who has the custody of the records of the Court of Trial.

**Registrar** includes any persons for the time being performing the duties of the Registrar.

**Shorthand-writer** means the person appointed as such for the purposes of the Act.

**Exhibits** includes all books, papers and documents, and all other things used in evidence at the trial of an appellant, and includes any written statement handed in to the Judge of the Court of Trial by the appellant.

**Examiner** means the Judge, Officer of the Court, Justice, or other person appointed by the Court under section 12 (b) of the Act.

## Forms

### 2 Forms

The forms set out in the Schedule to these Rules, with such alterations as circumstances require, shall be used in all cases where such forms are applicable; but any variance therefrom not being in matter of substance, shall not affect the validity of the proceedings.

## Notices of Appeal

### 3 Notices of appeal etc to be signed by appellant

Notices of appeal, of application for leave to appeal, and of application for extension of time shall, except as hereinafter provided, be signed by the appellant; and if he is unable to write he may sign the notice by affixing his

mark thereto in the presence of a witness, who shall attest the signature. All other notices may be signed by the appellant, his solicitor, or counsel.

#### **4 Exclusion of certain matters as grounds for appeal etc**

No direction, omission to direct, or decision as to the admission or rejection of evidence, given by the Judge presiding at the trial, shall, without the leave of the Court, be allowed as a ground for appeal or an application for leave to appeal unless objection was taken at the trial to the direction, omission, or decision by the party appealing or applying for leave to appeal.

#### **5 Signing of notices by solicitor or agent**

- (1) Any notice may be signed on behalf of the person giving the same by his solicitor or authorised agent:
  - (1) Where such person is unable to sign such notice in consequence of illness or other sufficient cause,
  - (2) Where the sanity of the appellant is in question, and
  - (3) When such person is a corporation.
- (2) For the purposes of rule 3 and this rule, a notice is to be taken to have been signed by a solicitor (being a solicitor corporation) if:
  - (a) it has the corporation's seal affixed to it, or
  - (b) it is signed by a director of the corporation or by an officer or employee of the corporation who is a solicitor.

#### **Appeals under section 5AA of the Act**

##### **5A Appeals under section 5AA of the Act**

On an appeal under section 5AA (1) of the Act (which section relates to cases dealt with by the Supreme Court in its summary jurisdiction), or under section 5AA (1) as applied by sections 5AB, 5AC or 5AD of the Act, an appellant who has been sentenced to penal servitude or imprisonment shall, subject to the [Bail Act 1978](#), be detained in custody or ordered into any former custody until the appeal has been determined.

#### **Appeals etc under sec 5F (3) of the Act**

##### **5B Appeals etc under sec 5F (3) of the Act**

Any party to whom section 5F (3) of the Act applies (which section relates to



appeals against interlocutory judgments or orders) desiring to appeal to the Court, or to obtain the leave of the Court to appeal from any interlocutory judgment or order, shall give notice of appeal or notice of application for leave to appeal within 14 days of the date of the judgment or order or within such extended time as may in any case be allowed by the Court.

## **Shorthand-writers and transcript of notes**

### **6 Matters to be included in shorthand notes**

The shorthand notes to be taken under section 21 of the Act shall include the oral evidence, any objections taken, directions asked for, or points of law raised during the trial, any statement made by the accused, and the summing up, but, unless otherwise ordered by the Judge of the Court of Trial, shall not include any part of the addresses.

### **7 Notes to be signed by Shorthand-writer**

The Shorthand-writer shall sign the shorthand notes taken by him, and shall retain such notes unless otherwise directed by the Registrar.

### **8 Transcripts**

A transcript of the shorthand notes may be made by any person authorised by the Registrar, and every transcript of any shorthand notes supplied to the Registrar or any person shall be certified as correct by the person making the same.

### **8A Copy of summing up and remarks on sentence**

- (1) Subject to subrules (3) and (4), access to a copy of the summing up or of remarks on sentence is not to be allowed to 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 Registrar notifying the Reporting Services Branch of the Attorney General's Department that 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 Registrar, when available, a copy of the summing up and remarks on sentence that has been submitted to and corrected by the Judge of the Court of Trial.
- (3) If a corrected copy of the summing up or remarks on sentence has not been received by the Reporting Services Branch within 3 weeks, or such other

period as the Registrar may direct, 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, upon the expiration of the period, to furnish to the Registrar 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 or remarks on sentence.

### **9 Registrar to be notified if transcript supplied**

The Shorthand-writer shall notify the Registrar when he supplies any party interested with a transcript of his notes or any part thereof.

## **Certificate of Judge of Court of Trial**

### **10 Certificate of trial Judge**

A certificate of the Judge of the Court of Trial under section 5 (1) (b) of the Act shall be in Form No I, and may be given by such Judge without any application being made by the person convicted.

### **11 (Repealed)**

#### **11A Form of certificate**

A certificate of the Judge of the Court of Trial under section 5F (3) (b) of the Act shall be in Form 1A and may be given by such Judge without any application being made by the party to which that subsection applies.

### **12 Custody etc of exhibits**

The Judge of the Court of Trial may make any order he thinks fit for the custody, disposal, or production of any exhibits in the case.

## **Appeals where sentence directs payment of fine**

### **13 Debtor in custody deemed a person sentenced**

Where a person who on his conviction has been ordered to pay money as a penalty or for costs, and in default of payment to imprisonment, remains in custody in default of payment, he shall be deemed to be a person sentenced to imprisonment.

### **14 Refund of penalty or costs paid**

Where a person ordered to pay money as a penalty or for costs has paid the

money and is successful in an appeal under the Act, he shall be entitled to a return of the amount paid by him unless the Court otherwise orders.

### **15 Suspension of penalty or costs pending appeal**

Where a person is ordered to pay money as a penalty or for costs, the Judge of the Court of Trial may suspend the payment thereof upon such person entering into recognisances (Forms Nos XX and XXI) to prosecute an appeal and abide the judgment of the Court thereon, before such persons, in such amount and with or without sureties, or upon any other terms and conditions that such Judge directs.

#### **15A Appellant to be notified of terms or conditions**

The proper officer of the Court of Trial shall notify the appellant of the terms or conditions directed by the Judge of the Court of Trial.

### **16 Recognisances to be forwarded to Registrar**

Any recognisances so entered into by the appellant and sureties shall be forwarded by the proper officer of the Court of Trial to the Registrar, and if the appeal is not duly prosecuted the Registrar shall report the matter to the Court, and the Court may thereupon make such order as may be required.

### **Orders of restitution and persons affected thereby**

#### **17 Orders of restitution and persons affected thereby**

Where, upon any trial, an order for the restitution of any property, or an order affecting any property, has been made by the Judge of the Court of Trial, the person in whose favour, and the person against whom such order has been made, and, by leave of the Court, any person interested, shall be entitled to be heard before any order confirming, annulling, or varying such order is made by the Court.

### **Orders for safe custody of property**

#### **18 Orders for safe custody of property**

The Judge of the Court of Trial may make such orders as he thinks proper:

- (1) for the safe custody of any property, and
- (2) for the production on the hearing of an appeal of any property, or of any sample portion or facsimile representation thereof.

### **Certificates of conviction not to issue for 28 days**

### **19 Certificates of conviction not to issue for 28 days**

- (1) The proper officer of the Court of Trial shall not 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, he shall not issue such certificate except upon production of a certificate from the Registrar (Form No XXII), that there is no appeal, or application for leave to appeal, against such conviction then pending in the Court.
- (3) The Registrar shall supply such certificate in all cases where no appeal, or application for leave to appeal, against such conviction is pending in the court.
- (4) A certificate of conviction may, after the expiration of two months from the conviction, be issued by the proper officer of the Court of Trial on application, except in cases where an appeal or application for leave to appeal is still undetermined.

### **Notes and report of Judge of Court of Trial**

#### **20 Notes and report of Judge of Court of Trial**

- (1) Where:
  - (a) any notice of application for extension of time is given, 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, the Judge of the Court of Trial may, and if requested to do so by the Chief Justice shall, furnish to the Registrar his notes of the trial and a report giving the Judge's opinion upon the case or any point arising in the case.
- (2) A transcript of evidence made by or on behalf of the Reporting Services Branch may be furnished in lieu of the Judge's notes.

#### **21 Registrar to furnish copy of notice of appeal etc to Judge of Court of Trial**

Where:

- (a) any notice of appeal or of application for leave to appeal or of application

for extension of time is given, 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,

the Registrar shall furnish to the Judge of the Court of Trial a copy of the notice, reference or request and such other documents or information as the Judge may require.

## **22 Copies of Judge's report to be given to certain persons**

Where the Registrar receives a Judge's report, the Registrar shall furnish a copy of it to the Director of Public Prosecutions or the Attorney General, as may be appropriate, and to the appellant or his legal representative and, shall, if so directed by the Court or a Judge, furnish a copy of, or part of a copy of, it to any other person interested.

## **Notice of appeal**

### **23 Notice of appeal**

A person desirous of appealing to the Court against his conviction or sentence or under section 5F (3) of the Act shall send the Registrar a notice of appeal, a notice of application for leave to appeal (Form No IV or VC), or a notice of application for extension of time (Form No V or VD), as the case may be.

### **24 Requirement to complete form of notice of appeal etc**

Every such person shall answer the questions and comply with the requirements set forth in the said forms, and the answers to the questions on such forms shall be deemed to be applications to the Court in respect of the matters therein referred to.

## **Documents to be furnished to Registrar**

### **25 Documents to be furnished to Registrar**

Where:

(a) the Registrar receives in relation to a conviction or sentence any notice of appeal or of application for leave to appeal or of application for extension of time, 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 shall forward to the Registrar particulars of the trial and conviction (Form No II), and
  - (d) the proper officer of the Court of Trial shall forward to the Registrar:
    - (i) all exhibits in the possession of the officer,
    - (ii) the indictment, and
    - (iii) any plea or demurrer filed in the Court of Trial.

### **Further grounds of appeal**

#### **25A Further grounds of appeal**

- (1) Where the appellant intends to rely on grounds of appeal not stated in his notice of appeal or application for leave to appeal, he shall, within 28 days after giving his notice of appeal, or of application for leave to appeal send his notice of additional grounds of appeal to the Registrar.
- (2) The Court may at any time extend the time fixed by subrule (1).

### **Application for leave to appeal**

#### **26 Application for leave to appeal**

Where an application for leave to appeal has been granted, the notice of application for leave to appeal shall be deemed a notice of appeal in respect of the grounds upon which the Court has granted such leave.

### **Abandonment of appeal**

#### **27 Abandonment of appeal**

An appellant who has given notice of appeal, or of any application, may abandon such appeal or application by forwarding a notice of abandonment (Form No III) to the Registrar, whereupon the appeal or application shall be deemed to have been dismissed or refused by the Court.

### **Extension of time**

## **28 Extension of time for appeal**

A notice of application for extension of time (Form No V or VD), shall be accompanied by a notice of appeal or a notice of application for leave to appeal.

## **Submission of question of law**

### **29 Submission of question of law**

Any question of law submitted to the Court for determination under sections 5A, 5B or 5BA of the Act shall be in writing and signed by the Judge. Such submission shall be sent to the Registrar together with a summary of the evidence and a statement showing the names of the parties and their legal representatives, if any.

### **30 Copy of submission to parties etc**

The Registrar shall forward a copy of any such submission to the parties named in such statement, or their legal representatives.

### **31 Determination etc by Court to be notified by Registrar**

The Judge and the proper officer of the Court of Trial shall be notified by the Registrar of any such determination by the Court and of any order made thereon.

## **Crimes (Administration of Sentences) Act 1999**

### **31A Application to Court—section 155 (1) or section 176 (1) of Crimes (Administration of Sentences) Act 1999**

Application may be made to the Court under section 155 (1) or section 176 (1) of the *Crimes (Administration Of Sentences) Act 1999* by sending to the Registrar an application in Form VA.

### **31B Application to Court—section 156 (1) or section 177A (1) of Crimes (Administration of Sentences) Act 1999**

Application may be made to the Court under section 156 (1) or section 41A (1) of the *Crimes (Administration Of Sentences) Act 1999* by sending to the Registrar an application in Form VBA.

### **31C Secretary of Parole Board to forward copies of reports etc to Registrar**

Where the Registrar has received a form of application in Form VA or Form VBA

duly completed, the secretary of the Board shall, unless the Court otherwise orders, at the request of the Registrar, forward to the Registrar copies of all reports, documents and other information placed before the Board and a copy of that part of the minutes in which the reason for the decision was recorded.

**31D, 31E (Repealed)**

**Proceedings before Judge of Court**

**32 Notification to appellant of Judge's decision**

When any application has been determined by a judge of the Court the Registrar shall send a notification (Form No IX) of the decision to the appellant, and in the event of any application being refused shall also forward a form of application for determination by the Court. (Form No X.)

**33 Effect of refusal of application**

The refusal of any application by such judge shall be final unless the appellant, within 14 days from the receipt of such notification, completes and returns such application to the Registrar.

**34 Leave for presence of appellant at hearing**

An appellant may, by leave of the Court, be present at the hearing of such last-mentioned application, but such leave shall not be granted when the appellant is legally represented unless special circumstances are shown.

**35 Procedure on application for leave to be present at hearing**

If the appellant completes and returns the notice of application, and therein applies for leave to be present on the determination of his application the Registrar shall inform the Court of such application to be present and shall notify the appellant of the Court's decision.

**36 Certain persons to be notified if application granted**

If the application to be present is granted, the Registrar shall also notify the officer in charge of the gaol where the appellant is in custody, and the Director-General of Corrective Services or the Sheriff, as the case may be.

**36A Exemption**

(1) Rules 32, 33, and, subject to subrule (2), 35 and 36 do not apply to an application in relation to bail or to a request to review any decision made by a judge of the Court in relation to bail.



- (2) Rules 34, 35 and 36 apply to an application to be present on a review of any decision made by a judge of the Court in relation to bail as they apply to an application to be present at the hearing of any other application for determination by the Court.

## **Notification of appeal to Attorney-General**

### **37 Notification of appeal etc to Attorney-General**

The Registrar shall give notice to the Attorney-General of all appeals and applications for leave to appeal pursuant to section 16 of the Act by sending him a copy of the notice received.

## **Bail**

### **38 Bail application**

An application to the Court of Criminal Appeal:

- (a) for bail pursuant to section 22 of the *Bail Act 1978*, where the accused person is not then appearing before the Court, or
- (b) pursuant to Part 6 of the *Bail Act 1978*, if made by or on behalf of an accused person,

shall be:

- (c) in the case of an application for a variation of bail conditions—in form 74AF of the *Supreme Court Rules 1970*, or
- (d) in any other case—in form 74AG of the *Supreme Court Rules 1970*.

### **39 Acceptable person information**

A person who wishes to have a determination made that he or she is an acceptable person, for the purposes of a condition referred to in section 36 (2) (b), (d), (f), or (h) of the *Bail Act 1978*, must send to the Registrar:

- (a) an information form, verified by statutory declaration, in Form 74AH of the *Supreme Court Rules 1970*, or
- (b) a copy of the document referred to in paragraph (a).

### **40, 41 (Repealed)**

## **Inquiry as to sureties**

## **42 Inquiry as to sureties**

Officers of the Police Force shall, if requested by the person taking the recognizance of any surety, inquire and report to him as to the sufficiency of any person offering himself as a surety.

## **Recognisances**

### **43 Recognisances**

Any recognisance of an appellant or his sureties shall be signed by the person entering into the same, and shall be forwarded to the Registrar by the person taking the recognisance.

### **44 (Repealed)**

### **45 Forfeiture of recognizance**

- (1) Where the Court forfeits a recognizance, Part 53 rule 8 and Part 42 rule 3 of the *Supreme Court Rules 1970* apply to proceedings in the Court as they apply to proceedings in the Supreme Court.
- (2) For the purposes of subrule (1), **registrar** in Part 53 rule 8 and Part 42 rule 3 means the Registrar.

### **46 Failure of appellant to appear at hearing**

If an appellant fails without reasonable excuse (proof of which lies upon him) to appear at the hearing of his appeal in accordance with his bail undertaking, the Court may summarily dismiss the appeal, or decline to hear the appeal, or may consider the appeal in his absence, and may also issue a warrant for the apprehension of the appellant, or make such other order as it thinks fit.

#### **46A Issue of warrant**

A warrant may be issued under the hand of the Registrar.

### **47 Power of Court**

The Court may, at any time when an appellant is present before the Court, revoke or vary any order or direction under rule 15, enlarge any recognizance or substitute for a surety some other person not previously bound.

### **48 Notice to Registrar of committal to prison**

If any appellant has been surrendered by his surety and committed to prison,

notification of such committal shall be sent to the Registrar by the officer in charge of the gaol to which he is committed.

#### **49 Notice to Court of committal to prison**

The Registrar shall thereupon inform the Court of such commitment, and the Court may make such order, or give such directions, as to the appellant or his appeal as may be required.

### **Inspection of exhibits**

#### **50 Inspection of exhibits**

The Registrar may appoint a time and place for the inspection of any exhibits used at the trial by any party interested in an appeal.

### **Notifying results of appeal**

#### **51 Notice of determination of appeal etc**

The Registrar shall send a notice (Forms Nos XI and XII) of the determination of any appeal, or of any application incidental thereto, to the appellant, if he was not present when the matter was determined, to the proper officer of the Court of Trial, to the Director-General of Corrective Services and to the Sheriff, if the appeal is against a conviction involving a sentence of death or is against a sentence of death.

#### **52 Notice of orders or directions by Court**

The Registrar shall also notify the proper officer of the Court of Trial of any orders or directions made or given by the Court in relation to such appeal.

#### **53 Records of Court of Trial to be noted**

- (1) Such proper officer shall thereupon enter the particulars of such notification on the records of the Court of Trial.
- (2) Such entry shall be made in conformity with the administration of the Court of Trial on:
  - (a) the indictment,
  - (b) the appropriate Court file, or
  - (c) the appropriate computer record.

#### **54 Depositions etc to be returned**

After the final determination of any appeal, or the final refusal of any application for leave to appeal, the Registrar shall, subject to any order made by the Court, return to the officer from whom he received them all depositions, pleadings, inquisitions or other documents relating to such matter.

#### **New trial**

##### **55 New trial**

Where the Court orders a new trial, the appellant shall, subject to the [Bail Act 1978](#), be detained in custody or ordered into any former custody until the fresh trial has terminated.

##### **56 (Repealed)**

##### **57 Time spent on bail or in custody not part of term**

The time during which an appellant is at liberty on bail or detained in custody shall not, unless the Court otherwise orders, count as part of any term of imprisonment or penal servitude under any sentence passed upon him as the result of the fresh trial.

#### **Copies of documents in possession of Registrar**

##### **58 Charges for copies of documents etc**

Copies of all documents and exhibits which are necessary for the purpose of an appeal may be obtained from the Registrar, by or on behalf of the appellant or respondent, on payment of the following charges:

- (1) For copies of any document, a charge of 6d per folio, and
- (2) For copies of any plan, map, section, drawing, photograph, or diagram, the actual reasonable cost of production.

##### **59 Exemptions from charges**

No charge shall be made for any such copies of any document when applied for by (1) the counsel or solicitor assigned to any appellant, or, (2) an appellant who, in the opinion of the Registrar, is unable to pay the prescribed charges, provided that a transcript of the shorthand note of the proceedings at the trial shall not be supplied without charge except when so ordered by the Court or a judge.

#### **Witnesses before Court of Appeal**

**60 Service of order for witness to attend before Court**

Every person ordered by the Court to:

- (a) attend and be examined before the Court or an Examiner, or
- (b) produce any document or thing to the Court,

shall be personally served with a copy of the order.

**61 Order for witness to attend before Examiner**

- (1) An order to attend and be examined before the Court shall be in Form XIII.
- (2) An order to produce any document or thing to the Court shall be in Form XIV.
- (3) An order to attend and be examined, otherwise than before the Court, shall be in Form XVI and shall specify the person appointed as Examiner and the place where the witness is to be examined.

**62 Registrar to furnish certain documents etc to Examiner**

At the request of such Examiner the Registrar shall furnish him with any documents, exhibits, or other material, relating to the appeal, and these shall be returned by the Examiner to the Registrar, together with any depositions taken.

**63 Notice to witness of time appointed for examination**

The Registrar shall serve a notice (Form No XVII) of the day and time appointed by the Examiner for the examination, upon the witness personally, and shall inform the appellant and respondent thereof, and, when the appellant is in custody, the officer in charge of the gaol in which he is imprisoned.

**64 Evidence to be given on oath**

Every witness so examined shall give his evidence upon oath, to be administered by such Examiner.

**65 Depositions**

The examination of every such witness shall be taken down in writing, in the form of a deposition. A caption (Form No XVIII) shall be attached to every such deposition.

## **66 Witness's expenses**

The officer serving any witness with an order to attend before the Court, or an Examiner, shall pay him a reasonable sum, in accordance with the scale sanctioned by the Minister administering the *Justices Act 1902*, for the expenses of such witness, and shall forward the Registrar a certificate of the amount so paid.

## **67 Parties to examination**

The appellant and respondent, or their legal representatives, shall be entitled to be present at and take part in any such examination.

### **67A Evidence by audio-visual method or by telephone**

- (1) Part 36 rule 2A and Part 36A rules 7 and 8 of the *Supreme Court Rules 1970* apply to proceedings in the Court as they apply to proceedings in the Supreme Court.
- (2) Directions under Part 36 rule 2A may not be given if they prevent the attendance at any part of the proceedings by, or relate to the evidence given by:
  - (a) an appellant,
  - (b) an applicant, or
  - (c) a respondent to an appeal by the Attorney-General or by the Director of Public Prosecutions,without the consent of that appellant, applicant or respondent.

## **References to Commissioners**

### **68 Reference to Commissioner**

When the Court refers a question for inquiry and report, the order shall specify the question referred and the Commissioner appointed.

### **69 Power of Court re reference**

The Court may, in such order, or from time to time:

- (1) Direct whether the appellant or respondent may be present or represented at any examination or investigation involved in such question, or at any stage thereof; and if the appellant is allowed to be present, and is in

custody, give all necessary directions to the officer in charge of the gaol where such appellant is imprisoned, to enable him to be present,

- (2) Specify what powers are conferred upon the Commissioner,
- (3) Require the Commissioner to make interim reports,
- (4) Direct the Registrar whether copies of any report are to be furnished to the appellant and respondent, or to anyone on their behalf, and
- (5) Give all such directions as may be necessary for giving due effect to such order.

### **Cause lists**

#### **70 Notices of appeal etc to be entered in register**

The Registrar shall enter in order of receipt all notices of appeal and notices of any application to the Court, in a register and list them for hearing as early as the business of the Court will permit after all necessary documents are to hand.

#### **71 Parties to be notified where appellant in custody**

The Registrar shall, where an appellant is in custody notify the appellant and the Director-General of Corrective Services of the day appointed for the hearing of his appeal or any application.

### **Service of orders and notices**

#### **72 Service of orders for production of documents etc or for attendance of witness**

All orders for the production of any documents, exhibits, or other things connected with the proceedings, or for the attendance of any witness, shall, unless otherwise directed by the Court, be personally served.

#### **73 Service by police officer**

Where personal service of any order or other document is required, the Commissioner of Police shall, at the request of the Registrar, cause such order or other document to be served by one of his officers.

#### **74 Service by post**

Any notice or other document, of which personal service is not required by any rule or by direction of the Court, may be served by post.

## **75 Time of service of notice of appeal or application**

Any notice of appeal, or of any application to the Court by an appellant in custody, shall be deemed to have been given at the time when it is delivered for posting to the officer of the gaol where the appellant is imprisoned, and the time of such delivery shall be indorsed thereon by such officer.

## **Non-compliance with rules**

### **76 Non-compliance with rules**

Non-compliance by an appellant with these rules, or with any rule of practice, shall not, unless otherwise ordered by the Court or a judge, prevent the appeal being prosecuted, but the Court or a judge may make such amendments and give such directions as may be required.

## **Matters not provided for**

### **77 Matters not provided for**

Where provision as to any matter of procedure is not contained in these rules, the Court or a judge may direct what proceedings are to be taken.

## **Petitions etc**

### **78 Petitions under section 474C (1) of the [Crimes Act 1900](#)**

When the Minister under section 474C (1) of the [Crimes Act 1900](#), on a petition for a review of a conviction or the exercise of the pardoning power, refers the whole case to the Court, the person convicted shall be deemed an appellant who has obtained the leave of the Court to appeal.

### **78A References and applications under sections 474H (2) and 474J of the [Crimes Act 1900](#)**

These rules shall apply, making such changes as it is necessary to make, to:

- (a) a reference under sec 474H (2), and
- (b) an application under sec 474J,

of the [Crimes Act 1900](#) as if:

- (c) any reference to an appeal were a reference to proceedings on such a reference or application,
- (d) any reference to an applicant were a reference to the convicted person, and



(e) leave to appeal has been given.

## **Payment of expenses under section 17**

### **79 Registrar's certificate of expenses**

The Registrar shall certify (Form No XIX) to the Minister administering the *Justices Act 1902* what expenses have been allowed by him in respect of any appeal or proceeding hereunder.

### **80 Review of amount of expenses**

Within fourteen days from the receipt of such certificate the Minister administering the *Justices Act 1902* shall notify the Registrar whether he requires the amount of such expenses, or any part thereof, to be reviewed by the Court or a judge.

### **81 Notice of time and place appointed for review**

If the amount is required by the Minister administering the *Justices Act 1902* to be reviewed, the Registrar shall notify that Minister of the time and place appointed for such review.

### **82 Amendment of certificate of expenses**

The certificate shall be amended, if necessary, in accordance with any directions given by the Court or a judge.

### **83 Payment of expenses**

The certificate of the Registrar:

- (1) when not so required to be reviewed, or
- (2) after it has been so reviewed,

shall be final and conclusive, and shall be deemed sufficient authority for the payment to the persons named therein of the amounts set opposite their names.

## **Sittings of the Court**

### **84 Sittings**

The Court shall sit at such times as may be directed, and may sit during vacation.

## **Short reasons for decision**

## **85 Short reasons for decision**

The Court may, when dismissing an appeal, exercise its power under section 21A of the Act to give reasons for its decision in short form by stating them in Form No XXIII.

## **86 Application for guideline judgment**

- (1) Application may be made for a guideline judgment under section 174 of the *Criminal Procedure Act 1986* by sending to the Registrar an application in Form XXIV.
- (2) The Attorney General shall, unless the Court or a Judge of the Court otherwise orders, send to the Senior Public Defender:
  - (a) a copy of the application—on the day the application is sent to the Registrar,
  - (b) a statement or summary of any submissions that the Attorney General proposes to make on the hearing of the application—within a reasonable time before the hearing, and
  - (c) a copy of any written submissions sent by the Attorney General to the Registrar and not previously sent to the Senior Public Defender—on the day the submissions are sent to the Registrar.
- (3) The Senior Public Defender shall, unless the Court or a Judge of the Court otherwise orders, send to the Attorney General:
  - (a) a statement or summary of any submissions that the Senior Public Defender proposes to make on the hearing of the application—within a reasonable time before the hearing, and
  - (b) a copy of any written submissions sent by the Senior Public Defender to the Registrar and not previously sent to the Attorney General—on the day the submissions are sent to the Registrar.
- (4) Subrules (2) and (3) apply to the Director of Public Prosecutions as they apply to the Senior Public Defender.

## **87 Discontinuance of application**

- (1) The Attorney General may discontinue an application under section 174 of the *Criminal Procedure Act 1986* by sending written notice of discontinuance to the Registrar.

(2) Discontinuance under this rule shall not prevent the Attorney General from bringing a fresh application seeking the same guideline judgment.

## Forms

### I

#### Criminal Appeal Act 1912

R. v.

In the \_\_\_\_\_ Court, held at \_\_\_\_\_

#### *Judge's Certificate*

The \_\_\_\_\_ day of \_\_\_\_\_ 19 .

I hereby certify that this case, in which the abovenamed ..... was convicted before me on the ..... day of ..... 19.. of the offence of ....., is a fit case for an appeal by the said ..... against his conviction upon the following grounds:

Judge

### 1A

#### Criminal Appeal Act 1912

R. v.

In the ..... Court held at .....

#### *Judge's certificate (s. 5F (3) (b))*

The ..... day of ..... 19..

I hereby certify that the above (or annexed) judgment or order is a proper one for the determination on appeal by the Court of Criminal Appeal upon the following grounds:

Judge.

### II

#### Criminal Appeal Act 1912

R. v.

#### *Particulars of Trial*

The \_\_\_\_\_ day of \_\_\_\_\_ 19 .

1. Age and occupation of Appellant
2. Date of trial and sentence
3. Place and Court of trial
4. Before whom tried
5. Charge
6. Plea
7. Verdict
8. Sentencet



**IV**

CRIMINAL APPEAL ACT, 1912

NOTICE OF APPEAL OR APPLICATION FOR LEAVE TO APPEAL

*(This form is to be used only for appeal after conviction. If this Notice is signed more than 28 days after conviction or sentence, a form (FORM V) of application for extension of time must also be forwarded to the Registrar.)*

APPELLANT'S NAME: .....

THE APPELLANT DESIRES TO APPEAL AGAINST:

CONVICTION

CONVICTION AND SENTENCE

SENTENCE ONLY

ON THE GROUNDS SET OUT ON PAGE 2.

PLEA AT TRIAL: GUILTY  NOT GUILTY

CONVICTED IN THE: SUPREME COURT  DISTRICT COURT

AT (TOWN) .....

NAME OF JUDGE OF TRIAL: .....

DATES OF TRIAL (LIST ALL DATES OF TRIAL): .....

DATE OF SENTENCE: .....

CONVICTED OF (LIST ALL OFFENCES): .....

.....

SENTENCE IMPOSED: .....

NON-PROBATION OR NON-PAROLE PERIOD: .....

IF THE APPELLANT IS IN GAOL—NAME OF GAOL: .....

IF NOT IN GAOL—RESIDENTIAL ADDRESS: .....

.....

DID THE JUDGE GIVE A CERTIFICATE THAT THE CASE IS FIT FOR APPEAL?

YES  NO

If the answer is "yes", the appellant must forward the certificate with this notice.

DOES THE APPELLANT WANT LEGAL AID?

YES  NO

DOES THE APPELLANT DESIRE TO BE PRESENT WHEN THE COURT CONSIDERS THE APPEAL?

YES  NO

NAME AND ADDRESS OF APPELLANT'S SOLICITOR AT THE TRIAL: .....

.....

NAME AND ADDRESS OF SOLICITOR ACTING ON THIS APPEAL: .....

.....

Signed by the Solicitor for the Appellant   
or Signed by the Appellant

DATED: .....

*(Page 2 of Notice)*

GROUND(S) OF APPEAL OR APPLICATION

(Set out below the reasons why the conviction should be quashed or the sentence reduced. The appellant can also, in addition to giving grounds of appeal, etc, set out in writing the case and argument in support of it. This will then be considered by the court without any person appearing on the appellant's behalf.)

**V**

CRIMINAL APPEAL ACT, 1912  
APPLICATION FOR EXTENSION OF TIME

(This form must be used only in an appeal after conviction. The Notice of Appeal must be filled in, signed and forwarded to the Registrar with this Notice.)

APPELLANT'S NAME: .....

THE APPELLANT APPLIES FOR AN EXTENSION OF TIME WITHIN WHICH TO APPEAL OR APPLY FOR LEAVE TO APPEAL.

CONVICTION IN THE SUPREME COURT   
DISTRICT COURT

PLACE OF TRIAL (TOWN): .....

DATES OF TRIAL (LIST ALL DATES OF TRIAL): .....

.....

IF THE APPELLANT IS IN GAOL—NAME OF GAOL: .....

IF NOT IN GAOL—RESIDENTIAL ADDRESS: .....

.....

Signed by Solicitor for the Appellant   
or Signed by the Appellant

DATED: .....

(Page 2 of Notice)

NOTICE OF APPEAL WAS NOT GIVEN WITHIN 28 DAYS OF CONVICTION OR SENTENCE FOR THE FOLLOWING REASONS: .....

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

**VA**

Criminal Appeal Act 1912  
Parole Board and (name of applicant)  
Application to the Court

To the Registrar:

The            day of            20 .

I apply to the Court for a direction to be given by the Court to the Parole Board that the information upon which the Board on (date) made a decision:

- pursuant to section (141 or 149 or 150\*) of the *Crimes (Administration of Sentences) Act 1999* that I should not be released on parole was (false misleading irrelevant.\*)
- pursuant to section (130 or 170 (1)\*) of the *Crimes (Administration of Sentences) Act 1999* that the parole order relating to me be revoked was (false misleading irrelevant.\*)
- to revoke my licence was (false misleading irrelevant.\*)
- pursuant to section 163 of the *Crimes (Administration of Sentences) Act 1999* that an order for periodic

detention in force in respect of me be cancelled was (false misleading irrelevant.\*)

- pursuant to section 167 of the *Crimes (Administration of Sentences) Act 1999* that an order for home detention in force in respect of me be cancelled was (false misleading irrelevant.\*)

The information which I contend was (false misleading irrelevant\*) is set forth on page 2 hereof.

\* *Strike out any word or words which is or are not applicable.*

(signed)†  
Applicant

† *This application must be signed by the applicant and, if he or she cannot write, his or her mark must be attested by a witness whose name and address must be given.*

The applicant must answer the following question:

Do you desire to appear in person at the hearing or determination of your application?

If the answer is "yes", the applicant must state the grounds on which the applicant contends he or she should be allowed to do so.

(Page 2 of application)

The following information was false: (set out the information) or

The following information was misleading (set out the information) or

The following was irrelevant (set out the information).

**VB**

(Repealed)

**VBA**

**Criminal Appeal Act 1912**

Parole Board and (name of inmate)

Application to the Court

To the Registrar:

The            day of            20 .

The Attorney General (or The Director of Public Prosecutions) applies to the Court for a direction to be given by the Court to the Parole Board that the information upon which the Board on (date) made a decision pursuant to section (number of appropriate section) of the *Crimes (Administration of Sentences) Act 1999* that

(name of inmate) should be released on parole\* was (false misleading irrelevant.\*)

the parole order relating to (name of inmate) be not revoked\* was (false misleading irrelevant.\*)

The information which I contend was (false misleading irrelevant\*) is set forth on page 2 hereof.

\* *Strike out any inapplicable word or words.*

(signed)Applicant

(Page 2 of application)

The following information was false: (set out the information) or

The following information was misleading (set out the information) or

The following was irrelevant (set out the information).

**VC**

Criminal Appeal Act 1912

NOTICE OF APPEAL OR APPLICATION FOR LEAVE TO APPEAL AGAINST INTERLOCUTORY JUDGMENT OR ORDER

*(This form is not to be used in an appeal after conviction. If this Notice is given more than 14 days after the order was made, a form (FORM VD) of an application for extension of time must also be forwarded to the Registrar.)*

APPELLANT'S NAME: .....

THE APPELLANT APPEALS OR APPLIES FOR LEAVE TO APPEAL AGAINST THE JUDGMENT OR ORDER SET OUT ON PAGE 2 ON THE GROUNDS SET OUT ON PAGE 2.

ORDER GIVEN OR MADE

IN THE SUPREME COURT  DISTRICT COURT

AT (TOWN) .....

ON (DATE) .....

NAME OF JUDGE WHO GAVE OR MADE THE JUDGMENT OR ORDER: .....

.....

IF THE APPELLANT IS IN GAOL—NAME OF GAOL: .....

IF NOT IN GAOL—RESIDENTIAL ADDRESS: .....

.....

DID THE JUDGE GIVE A CERTIFICATE THAT THE JUDGMENT OR ORDER IS PROPER FOR DETERMINATION ON APPEAL?

YES  NO

If the answer is "yes", the appellant must forward the certificate with this notice.

DOES THE APPELLANT WANT LEGAL AID?

YES  NO

DOES THE APPELLANT DESIRE TO BE PRESENT WHEN THE COURT CONSIDERS THE APPEAL?

YES  NO

NAME AND ADDRESS OF APPELLANT'S SOLICITOR AT THE TRIAL: .....

.....

NAME AND ADDRESS OF APPELLANT'S SOLICITOR ACTING ON THIS APPEAL: .....

Signed by the Solicitor for the Appellant   
or Signed by the Appellant

DATED: .....

(Page 2 of Notice)

JUDGMENT OR ORDER APPEALED AGAINST

*(State the judgment or order)*

JUDGMENT OR ORDER SOUGHT

*(State what judgment or order the appellant seeks in place of the judgment or order appealed against.)*

GROUND(S) OF APPEAL OR APPLICATION

*(Set out the grounds. The appellant can also, in addition to giving grounds of appeal, etc, set out in writing the case and argument in support of it. This will then be considered by the Court without any person appearing on the appellant's behalf.)*

**VD**

Criminal Appeal Act 1912

APPLICATION FOR EXTENSION OF TIME

*(This form must not be used in an appeal after conviction. The Notice of Appeal must be filled in, signed and*



forwarded to the Registrar with this Notice.)

APPELLANT'S NAME: .....

THE APPELLANT APPLIES FOR AN EXTENSION OF TIME WITHIN WHICH TO APPEAL OR APPLY FOR LEAVE TO APPEAL.

JUDGMENT GIVEN OR ORDER MADE IN SUPREME COURT   
THE DISTRICT COURT

AT (TOWN) .....

ON (DATE) .....

NAME OF JUDGE WHO GAVE OR MADE THE JUDGMENT OR ORDER: .....

IF APPELLANT IS IN GAOL—NAME OF GAOL:.....

IF NOT IN GAOL—RESIDENTIAL ADDRESS: .....

Signed by the Solicitor for the Appellant   
or Signed by the Appellant

DATED: .....

(Page 2 of Notice)

NOTICE OF APPEAL WAS NOT GIVEN WITHIN 14 DAYS OF THE GIVING OR MAKING OF THE JUDGMENT OR ORDER FOR THE FOLLOWING REASONS:

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

**VI-VIII**

(Repealed)

**IX**

Criminal Appeal Act 1912

R. v.

Notification to Appellant of Judge's Decision on his Application

The ..... day of ..... 19..

THIS is to give you notice that a Judge of the Court has granted your applications for\* ..... and has refused your applications for†.....

\* Here set out applications granted.

† Here set out applications refused.

If you desire to have any of the applications which have been refused, determined by the Court of Criminal Appeal, you must complete the enclosed form and return it to me forthwith.

Registrar.

To the abovenamed .....

**X**

Criminal Appeal Act 1912

R. v.

*Application to the Court*

The ..... day of ..... 19..

I desire to have my application for ..... determined by the Court of Criminal Appeal. [†and I apply for leave to be present at the hearing.]

† Strike out this part if you do not desire to be present.

To the Registrar.

Appellant

**XI**

**Criminal Appeal Act 1912**

R. v.

*Notification of Court's Determination of Application*

The ..... day of ..... 19..

THIS is to give you notice that the Court of Criminal Appeal has this day considered the application of the above-named Appellant for ..... and has .....

Registrar

To the Corrective Services Commission of New South Wales.

To the Registrar of the (*Court of Trial*).

To the above-named Appellant.

**XII**

**Criminal Appeal Act 1912**

R. v.

*Notification of Result of Appeal*

The ..... day of ..... 19..

THIS is to give you notice that the Court of Criminal Appeal has this day considered the appeal of the above-named appellant ..... and has†

† Set out decision of Court.

Registrar

To the Corrective Services Commission of New South Wales.

To the Registrar of the (*Court of Trial*).

To the above-named Appellant.

**XIII**

**Criminal Appeal Act 1912**

R. v.

*Order for Witness to attend before Court*

The ..... day of ..... 19..

In the Court of Criminal Appeal.

THE Court of Criminal Appeal hereby orders that you attend before the said Court and be examined as a witness on ..... the ..... day of ..... 19., at the Law Courts Building, Queen's Square, Sydney, at the hour of .....

By the Court,

To .....

Registrar

**XIV**

Criminal Appeal Act 1912

R. v.

*Order to Produce*

The ..... day of ..... 19..

In the Court of Criminal Appeal.

THE Court of Criminal Appeal hereby orders that you produce to the (said Court/Registrar) on ..... the ..... day of ..... 19.., at the Law Courts Building, Queen's Square, Sydney, at the hour of ....., the following documents and things\*:

.....  
.....

† Strike out word or words which are not applicable.

\* Here insert documents and things which the witness has been ordered to produce.

By the Court,

To .....

Registrar

**XV**

Criminal Appeal Act 1912

R. v.

*Application for further Witnesses*

The ..... day of ..... 19..

I hereby apply to the Court of Criminal Appeal for an order directing the examination of the witnesses specified in the Schedule hereto.

*Schedule of Witnesses*

The appellant must fill in these particulars and answer these questions.

1. Name and address of witness:
2. Was such witness examined at the trial?
3. If not so examined, state the reasons.
4. State shortly why you want such witness examined, and the evidence you think he can give.

Appellant

**XVI**

Criminal Appeal Act 1912

R. v.

*Order for Witness to attend before Examiner*

The ..... day of ..... 19..

In the Court of Criminal Appeal.

THE Court of Criminal Appeal hereby orders that you attend and be examined as a witness before\* ..... at ..... on ..... the ..... day of ..... 19., at such time as shall be appointed by the said\* ....., (and have with you the following documents and things:†\*\*)

\* Specify Examiner.

† Specify place of examination.

‡ Here insert anything which the witness has been ordered to produce.

\*\* Strike out if not applicable.

By the Court,

To .....

Registrar

**XVII**

Criminal Appeal Act 1912

R. v.

*Notice to Witness of Time appointed*

The ..... day of ..... 19..

YOU are hereby notified that the Examiner appointed by the Court of Criminal Appeal has fixed the hour of ....., on the ..... day of ..... 19., as the time for your attendance to be examined as a witness.

To .....

Registrar

**XVIII**

Criminal Appeal Act 1912

R. v.

THE depositions of ..... of ..... and ..... of ..... taken under an order of the Court of Criminal Appeal at ..... on the ..... day of ..... 19..

The deposition of ..... of ..... who on oath saith as follows: .....

Taken before me the ..... day of ..... 19..

Examiner

**XIX**

Criminal Appeal Act 1912

R. v.

*Registrar's Certificate of Expenses*

The ..... day of ..... 19..

I HEREBY certify that I have allowed as expenses in respect of this appeal the amounts set out in the Schedule hereto, and that such amounts are due to the persons whose names are set out in the first column of the said Schedule.

Registrar

To (the Minister administering the Justices Act 1902)

THE SCHEDULE

Name and Address of Payee	Particulars of Expenses Incurred	Amount Allowed		
		£	s.	d.

**XX**

**Criminal Appeal Act 1912**

R. v.

*Recognisance of Appellant Sentenced to Payment of money as a penalty or for costs*

BE it remembered that whereas ..... of ....., was convicted on the ..... day of ..... 19.. of ..... and was thereupon ordered to pay the sum of £..... of money as a penalty or for costs and whereas the Judge of the Court of Trial has directed that the payment of the said sum of £..... be suspended upon the said ..... entering into his own recognisance in the sum of £..... (with ..... sureties each in the sum of £.....) to prosecute an appeal against the said conviction and abide by the judgment of the Court, the said ..... acknowledges himself to owe to our Sovereign Lady the Queen the said sum of £..... of good and lawful money of the Commonwealth of Australia, to be made and levied of his goods and chattels, lands and tenements, to the use of our said Sovereign Lady the Queen, her heirs and successors, if he the said ..... fails in the condition indorsed hereon.

Appellant

Taken and acknowledged this ..... day of ..... 19.. at .....

Before me—  
\*

\* Stipendiary Magistrate or Officer in Charge of Gaol.

*Condition*

The condition of the within-written recognisance is such that if the said ..... duly prosecutes an appeal to the Court of Criminal Appeal against his said conviction, abides the judgment of the said Court, and pays the said sum of £....., or so much thereof as the said Court orders to the Registrar, then this recognisance to be void, or else to stand in full force and effect.

**XXI**

**Criminal Appeal Act 1912**

*Recognisance of Sureties for Appellant Sentenced to payment of money as a penalty or for costs*

BE it remembered that on the ..... day of ..... 19.. of .....,\*..... and ..... of .....\*,....., came before me and severally acknowledged themselves to owe to our Sovereign Lady the Queen the several sums following, that is to say, the said ..... the sum of £..... and the said ..... the sum of £..... of good and lawful money of the Commonwealth of Australia to be made and levied of their goods and chattels, lands and tenements, respectively, to the use of our said Lady the Queen, her heirs and successors, if the abovenamed ..... fails in the condition indorsed hereon.

\* Occupation

Taken and acknowledged this ..... day of ..... 19.. at .....

Before me—  
†

† Stipendiary Magistrate or Clerk of Petty Sessions

*Condition*

The condition of the within-written recognisance is such that whereas the abovenamed ..... was convicted on the ..... day of ..... 19.. and was thereupon ordered to pay the sum of £..... as a fine, and whereas the payment of the said sum of £..... has been suspended upon the said ..... entering into recognisances with ..... sureties if the said ..... duly prosecutes his appeal against the said conviction, abides the judgment of the Court and pays the said sum of £..... or so much thereof as the said Court orders to the Registrar, then this recognisance to be void, or else to stand in full force and effect.

**XXII**

[Criminal Appeal Act 1912](#)

R. v.

*Registrar's Certificate of no Appeal pending*

The ..... day of ..... 19..

I HEREBY certify that there is no appeal or application for leave to appeal by the abovenamed now pending in the Court of Criminal Appeal, against his conviction on the ..... day of ..... 19.. of the offence of .....

Registrar

**XXIII**

[Criminal Appeal Act 1912](#)

R. v.

*Short Reasons for Decision*

The appeal is dismissed and the Court is of the unanimous decision that the appeal does not raise any question of general principle. Pursuant to section 21A of the [Criminal Appeal Act 1912](#), the Court's reasons in short form are (*set out short reasons*).

(Date)

**XXIV**

[Criminal Procedure Act 1986](#)

Application for Guideline Judgment

Application is hereby made by the Attorney General to the Court of Criminal Appeal under section 174 of the [Criminal Procedure Act 1986](#) for a guideline judgment concerning (*set out the offence or category of offences to which the application relates*).

(*Submissions with respect to the framing of the guidelines may be set out here.*)

Dated (date)

Attorney General