

NORTHERN TERRITORY OF AUSTRALIA
SUPREME COURT AMENDMENT (APPEALS) RULES 2022

Subordinate Legislation No. 22 of 2022

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NORTHERN TERRITORY OF AUSTRALIA

Subordinate Legislation No. 22 of 2022

Supreme Court Amendment (Appeals) Rules 2022

We, the undersigned Judges of the Supreme Court of the Northern Territory of Australia, under section 86 of the *Supreme Court Act 1979*, make the following Rules of Court.

Dated 18 November 2022

M. GRANT CJ

S. R. SOUTHWOOD J

J. KELLY J

J. BLOKLAND J

S. BROWNHILL J

J. BURNS J

Judges of the Supreme Court
of the Northern Territory of Australia

1 Title

These Rules may be cited as the *Supreme Court Amendment (Appeals) Rules 2022*.

2 Commencement

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

3 Rules amended

These Rules amend the *Supreme Court Rules 1987*.

4 Rule 1.02 amended (Application)

After rule 1.02(3)

insert

- (3A) This Chapter applies to any matter respecting an appeal, whether civil or criminal, only to the extent provided in rule 82.03.

5 Rule 63 amended (Application)

- (1) Rule 63.35(1)(a)(i) and (ii), at the end

insert

and

- (2) Rule 63.35(1)(a)(iii), (iv) and (v)

omit, insert

- (iii) the costs of an appeal or an application for leave to appeal, under Part III of the Act, or an application for an extension of time to appeal or to apply for leave to appeal; and
- (iv) in the case of an appeal to the Court from another court or tribunal – the costs of proceedings in that court or before that tribunal; and
- (v) in the case of proceedings in another court or tribunal that are remitted or transferred to or removed into the Court – the costs of the whole of the proceeding, both before and after the remission, transfer or removal which by or under these Rules or an order of the Court are to be paid to a party by another party or out of a fund; and

6 Rule 81A.02 amended (Application)

(1) Rule 81A.02, before "The"

insert

(1)

(2) Rule 81A.02, at the end

(2) This Chapter does not apply to any matter respecting an appeal.

7 Chapter 2 replaced

Chapter 2

repeal, insert

Chapter 2 Appeal rules

Order 82 Rules for appeals

Part 1 Preliminary matters

82.01 Definitions

In this Chapter:

civil appeal means an appeal in the civil jurisdiction.

court of trial, see section 406(1) of the Criminal Code.

court or tribunal below means the court, tribunal, person or body whose decision is being appealed from.

criminal appeal means an appeal in the criminal jurisdiction.

cross-appellant means a respondent who appeals from the decision being appealed from by the appellant.

decision includes a judgment.

file means to file in the Registry.

Notes for rule 82.01

1 Other terms are also defined in the Act.

2 The definitions in rule 1.09 also apply to this Chapter, see rule 82.03.

82.02 Application to appeals

- (1) This Chapter applies to all appeals made under a law of the Territory to the following:
 - (a) the Supreme Court constituted as a single judge or the Full Court;
 - (b) the Supreme Court constituted as the Court of Appeal under Part III of the Act;
 - (c) the Supreme Court constituted as the Court of Criminal Appeal under section 407 of the Criminal Code.
- (2) To avoid doubt, an appeal includes a civil appeal or criminal appeal.

82.03 Operation of Chapter 1

The definitions and rules in Chapter 1 apply to any matter respecting an appeal not otherwise provided for in this Chapter, with the necessary changes and to the extent that they are consistent with this Chapter.

Part 2 Appeals

82.04 Filing and service of notice of appeal

- (1) To commence an appeal, the appellant must file a notice of appeal.
- (2) A notice of appeal must be filed and served:
 - (a) within any period required for the commencement of the appeal under an Act; or
 - (b) if no period is required under an Act – within 28 days after the day the decision being appealed from is made.
- (3) A notice of appeal must be served on:
 - (a) all respondents; and
 - (b) any other person known by the appellant to be directly affected by the relief sought by the appellant.

Note for rule 82.04

The necessary respondents to an appeal are identified in rule 82.26(1). The Court may join other persons as respondents under rule 82.26(2) and (3).

82.05 Contents of notice of appeal

- (1) In a civil appeal, the notice of appeal must include or attach the following:
 - (a) a brief but specific statement of the decision appealed against;
 - (b) any formal order or other document comprising or setting out the decision being appealed against, and any written reasons for the decision;
 - (c) a statement whether the appeal is from the whole or part only of the decision and, if part only, a description of what part;
 - (d) the grounds of the appeal;
 - (e) the judgment, relief or decision sought by the appellant.
- (2) In a criminal appeal, the notice of appeal must include or attach the following:
 - (a) a brief but specific statement of the decision appealed against;
 - (b) any formal order or other document comprising or setting out the decision being appealed against, and any written reasons for the decision;
 - (c) a statement whether the appeal is against a finding of guilt or a special finding referred to in section 410(a) of the Criminal Code;
 - (d) for an appeal under section 410(b) of the Criminal Code on a certificate of the Judge of the court of trial – a copy of the certificate;
 - (e) for an appeal under section 414(1) of the Criminal Code – a statement whether the appeal is from the whole or part only of the decision and, if part only, a description of what part;
 - (f) the grounds of the appeal;
 - (g) the judgment, relief or decision sought by the appellant.

82.06 Amendment by supplementary notice

- (1) An appellant may amend the notice of appeal by filing and serving a supplementary notice of appeal.
- (2) A notice of appeal must not be amended after the directions hearing under rule 82.12, without leave of the Court.

82.07 Competency of appeal

- (1) A respondent may, on summons, apply at any time for an order dismissing an appeal as incompetent.
- (2) On the hearing of a summons under subrule (1), the burden of establishing the competency of the appeal is on the appellant.
- (3) If an appeal is dismissed by the Court as incompetent, without an application by the respondent under subrule (1):
 - (a) the respondent must not receive any costs of the appeal, unless the Court otherwise orders; and
 - (b) the Court may order that the respondent pay the appellant's costs of the appeal proving useless or unnecessary.

82.08 Cross-appeal

- (1) A respondent who wishes to appeal from the decision being appealed from must file a notice of cross-appeal.
- (2) A notice of cross-appeal must be filed and served within 14 days after the day the notice of appeal is served on the respondent.
- (3) A notice of cross-appeal must be served on:
 - (a) the other parties to the appeal; and
 - (b) any other person known by the cross-appellant to be directly affected by the relief sought by the cross-appellant.
- (4) The notice of cross-appeal must include the following information:
 - (a) a statement whether the cross-appeal is from the whole or part only of the decision and, if part only, a description of what part;
 - (b) for a cross-appeal in a criminal appeal:
 - (i) if the cross-appeal is by a person found guilty – a statement whether the cross-appeal is against a finding of guilt or a special finding referred to in section 410(a) of the Criminal Code; or
 - (ii) if the cross-appeal is by a Crown Law Officer under section 414(1) of the Criminal Code – a description of what part of the sentence, determination, declaration or order is the subject of the cross-appeal;
 - (c) the grounds of the cross-appeal;

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- (d) the judgment, relief or decision sought by the cross-appellant.
 - (5) The rules applicable to a notice of appeal apply to a notice of cross-appeal, with the necessary changes.

Note for rule 82.08

The necessary respondents to a cross-appeal are identified in rule 82.26(1). The Court may join other persons as respondents under rule 82.26(2) and (3).

82.09 Notice of contention

- (1) A respondent must file and serve a notice of contention, not a notice of cross-appeal, if the respondent contends that a matter of fact or law was erroneously decided against the respondent, but does not seek a discharge or variation of the decision being appealed from.
- (2) A notice of contention must be filed and served within 14 days after the day the notice of appeal is served on the respondent.
- (3) The respondent must give written notice to the appellant of the record of evidence or documents before the court or tribunal below, relevant to the respondent's notice of contention, for inclusion in the appellant's draft index of appeal book.

82.10 Party's submissions and list of authorities

- (1) Each party must prepare the following:
 - (a) the party's written submissions;
 - (b) the party's list of authorities.
- (2) The appellant must file the appellant's written submissions and list of authorities and serve them on the respondent within 28 days after the day the notice of appeal is filed.
- (3) The respondent must file the respondent's written submissions and list of authorities and serve them on the appellant within 14 days after the day the appellant serves the respondent under subrule (2).
- (4) This rule also applies to a cross-appeal, with the necessary changes.

Note for rule 82.10

The form, content and length of written submissions and lists of authorities will be governed by Practice Directions.

82.11 Preparation of draft index to appeal book

- (1) The appellant must prepare a draft index for an appeal book that lists the documents required in an appeal book under rule 82.13(3).
- (2) The index must state the name and date of each document and its page number in the sequence in which it will appear in the appeal book.
- (3) The appellant must serve the draft index on the respondent within 28 days after the day the notice of appeal is filed.

82.12 Directions hearing

- (1) The Registrar must set a date for a directions hearing and inform the parties.
- (2) At the directions hearing, the Registrar must:
 - (a) in the case of an appeal to the Supreme Court – determine whether an appeal book is necessary; and
 - (b) settle the index to the appeal book; and
 - (c) settle any other matters related to the appeal book; and
 - (d) set the hearing date; and
 - (e) make any other necessary programming orders.
- (3) To settle the appeal book, the Registrar must determine the following:
 - (a) the documents that should be included in the appeal book;
 - (b) the sequence of the documents;
 - (c) the number of copies of the appeal book required;
 - (d) the time within which those copies are to be filed and served;
 - (e) any other matters the Registrar considers are required for the preparation of copies of the appeal book.

82.13 Appeal book

- (1) The appellant must prepare an appeal book for the following appeals:
 - (a) an appeal to the Supreme Court, whether constituted as a single judge or the Full Court, if the Registrar considers it necessary;
 - (b) an appeal to the Court of Appeal;
 - (c) an appeal to the Court of Criminal Appeal.

Note for subrule (1)(a)

The draft index under rule 82.11 is still required for an appeal to the Supreme Court even if an appeal book is not necessary.

- (2) An appeal book must be legible, paginated and securely fastened.
- (3) An appeal book consists of the following documents to the extent they are relevant to the appeal:
 - (a) the indictment or originating process and pleadings;
 - (b) a transcript of oral evidence;
 - (c) any affidavits before the court or tribunal below;
 - (d) the exhibits, arranged in the order in which they were lettered or numbered as exhibits in the court or tribunal below;
 - (e) in a civil appeal – any prior decision relevant to the decision being appealed from and the reasons for that decision;
 - (f) in a criminal appeal:
 - (i) a transcript of the trial Judge's directions and summing up to the jury; and
 - (ii) a transcript of any remarks on sentence by the trial Judge;
 - (g) the notice of appeal and any supplementary notice of appeal, cross-appeal or contention;
 - (h) any relevant certificate required by subrule (4).

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- (4) If a transcript is to be included in the appeal book, a certificate of the appellant and respondent must also be included in the appeal book certifying that:
 - (a) the transcript was examined by them; and
 - (b) any dispute regarding the transcript was resolved after consultation with the trial judge; and
 - (c) the transcript is correct.
 - (5) The appellant must file and serve the appeal book, as settled by the Registrar.

Part 3 Applications for leave or to extend time

82.14 Application of Part

This Part applies in relation to the following applications:

- (a) an application for leave to appeal;
- (b) an application for an extension of time to:
 - (i) file a notice of appeal; or
 - (ii) apply for leave to appeal;
- (c) an application under section 429 of the Criminal Code.

82.15 Filing and service of applications

- (1) An application for leave to appeal must be filed and served in the same manner and within the same time as a notice of appeal under rule 82.04.
- (2) An application for an extension of time must be filed and served in the same manner as a notice of appeal under rule 82.04.

82.16 Supporting documents

- (1) The application must be accompanied by the following:
 - (a) the proposed notice of appeal;
 - (b) written submissions in support of the application;
 - (c) an affidavit deposing any fact relied on in support of the application.

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- (2) The written submissions must concisely set out the following:
 - (a) the nature of the case;
 - (b) the questions involved;
 - (c) in the case of an extension of time – the reasons for the delay in giving notice of appeal or applying for leave to appeal;
 - (d) the reasons why the leave or extension should be given.

Note for rule 82.16

The form, content and length of written submissions and lists of authorities will be governed by Practice Directions.

82.17 Hearing at same time as appeal

- (1) If an applicant wishes the hearing of the application to be deferred until the hearing of the appeal, the applicant may include a request for that purpose in the application.
- (2) The Court may, on request or on its own initiative:
 - (a) order that an application be heard at the same time as the appeal; and
 - (b) make any consequential orders that may be necessary.

82.18 Response to application

- (1) If served with an application for leave to appeal or for an extension of time, the respondent must file and serve on the applicant the respondent's written submissions.
- (2) Any fact relied on in opposition to the application must be set out in a supporting affidavit.
- (3) The submissions and any affidavit must be filed and served within 14 days after the day the application is served on the respondent.

82.19 Determination of application

- (1) The application may be determined on the papers by a single Judge.
- (2) A single Judge may refer the application to 3 Judges to determine on the papers.
- (3) The Judge or Judges may call for further submissions on the application from the parties.

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- (4) Instead of determining the matter on the papers, the Judge or Judges may:
 - (a) call for and hear oral submissions on the application; or
 - (b) make an order under rule 82.17(2) and hear the application at the same time as the appeal.
 - (5) Leave may be granted on any or all proposed grounds of appeal.
 - (6) If all or part of the application is refused by a single Judge, the applicant may request that the application be determined by 3 Judges in accordance with subrules (3) to (5).
 - (7) The request must be filed and served within 14 days after the day the applicant receives notice of the refusal by a single Judge.
 - (8) If the Court grants the request, the application is to be determined by 3 Judges in accordance with subrules (3) to (5).
 - (9) A single Judge who refused an application may sit as one of the 3 Judges determining the same application.

82.20 If leave granted

- (1) The Registrar must notify the parties if leave to appeal or an extension of time is granted.
- (2) Subject to the order granting leave or an extension of time, the parties may proceed with the appeal in accordance with this Chapter.
- (3) The date the appellant is notified by the Registrar under subrule (1) is to be used for the purpose of calculating when to file and serve documents in the appeal, instead of the date the notice of appeal is filed.
- (4) The proposed notice of appeal filed in the application for leave to appeal or an extension of time is taken to be filed as the notice of appeal in the appeal, subject to any order of the Court.

Part 4 Specific matters relating to criminal appeals

82.21 Criminal Code certificate

A certificate issued under section 410(b) of the Criminal Code may be given at the trial or within 10 days after the finding of guilt.

82.22 Consequential orders

- (1) The Court of Criminal Appeal may, on application, make orders or give directions under subrule (2) if:
 - (a) a person is found guilty of an offence; and
 - (b) the court of trial made orders consequential on that finding of guilt; and
 - (c) an appeal is instituted by:
 - (i) the person found guilty; or
 - (ii) a Crown Law Officer under section 414(1) of the Criminal Code.
- (2) In the circumstances referred to in subrule (1), the Court of Criminal Appeal may make the following orders and directions:
 - (a) orders suspending or refusing to suspend the consequential orders pending the determination of the appeal;
 - (b) orders or directions in relation to the effect of the consequential orders pending the determination of the appeal;
 - (c) orders or directions in relation to the vesting, preservation or disposition of property that is subject to the consequential orders.

82.23 Reservation of points of law

- (1) This rule applies in relation to a case stating a question of law reserved under section 408, 409 or 414(2) of the Criminal Code on the trial of a person charged with an indictable offence.
- (2) If the case states a question of law reserved under section 408 of the Criminal Code, the case must state:
 - (a) whether judgment on the finding of guilt was pronounced and respited or was postponed; and
 - (b) whether the person found guilty was committed to prison or admitted to bail or to receive judgment.
- (3) On receiving the case, the Registrar must:
 - (a) set the case down for hearing on the first day on which the Court of Criminal Appeal is next appointed to sit; and

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- (b) give a copy of the case, without delay, to:
 - (i) the Solicitor for the Northern Territory; and
 - (ii) the parties; and
 - (iii) for an application under section 414(2) of the Criminal Code – the accused.
 - (4) The Judge who signed the case may amend it at any time before argument.
 - (5) The accused person has the carriage of the proceeding, except for an application under section 414(2) of the Criminal Code.

82.24 Failure to appear

- (1) If the appellant is required by a bail undertaking or bail condition to appear at the hearing of the appeal or an application but fails to appear without reasonable cause, the Court may:
 - (a) summarily dismiss or decline to hear the appeal or application;
or
 - (b) consider the appeal or application in the appellant's absence.
- (2) The evidentiary burden of proving reasonable cause under subrule (1) lies on the appellant.

82.25 Notice under Criminal Code

A notice given by the Registrar under section 426(4) and (5) of the Criminal Code may be given to a solicitor representing the appellant or respondent.

Part 5 General matters

82.26 Parties

- (1) Each party to the proceeding in the court or tribunal below and directly affected by the relief sought in the notice of appeal or interested in maintaining the decision being appealed must be made a respondent to the appeal.
- (2) A person who was not a party to the proceeding in the court or tribunal below may be joined as a respondent if the person is directly affected by the relief sought in an appeal or interested in maintaining the decision being appealed from.

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- (3) The Court may order the addition or removal of a person as a party to an appeal.
 - (4) Despite subrule (3), a person must not be made an appellant without that person's consent.
 - (5) A Local Court Judge whose decision is being appealed from must not be joined as a party to an appeal.

82.27 Serial numbers and seals

- (1) When the following documents are filed, the Registrar must allocate a serial number to them and seal them:
 - (a) a notice of appeal;
 - (b) an application for leave to appeal;
 - (c) an application for an extension of time to file a notice of appeal;
 - (d) an application for an extension of time to file an application for leave to appeal.
- (2) A sufficient number of copies of the documents for service and proof of service provided by the party must also be numbered and sealed.
- (3) The serial number of the notice or application must be endorsed on each subsequent document filed in relation to that notice or application.

82.28 No stay of proceedings or execution

- (1) An appeal does not:
 - (a) operate as a stay of proceedings or execution under the decision appealed against; or
 - (b) invalidate an intermediate act or proceeding.
- (2) Subrule (1) is subject to the following:
 - (a) any Act that provides otherwise;
 - (b) any decision made by the court or tribunal below;
 - (c) any direction of the Court.

82.29 Discontinuance of appeal

- (1) Subject to rule 97.02, an appellant may discontinue the appeal.
- (2) To discontinue an appeal, the appellant must file and serve a notice of discontinuance.
- (3) The appeal is taken to be discontinued once the notice of discontinuance is filed.
- (4) The filing of a notice of discontinuance by an appellant does not affect any other appellant in the appeal.
- (5) An appellant who discontinues an appeal under this rule, other than in a criminal matter, is liable to pay the costs of the other parties caused by that appeal.

82.30 Forms

- (1) Parties must use the forms published on the Court's website for any notice, application or document required or authorised to be given or filed for the purposes of this Chapter.
- (2) The notice, application or document must be signed in accordance with any requirements in the form.

8 Rule 97.02 replaced

Rule 97.02

repeal, insert

97.02 Certificate that fees paid or waived

Without leave of the Court or a certificate from the Registrar that all fees required to be paid by a party have been paid or waived:

- (a) an application for leave to discontinue the proceeding by the party must not be accepted for filing; and
- (b) a notice of discontinuance of the proceeding by the party must not be accepted for filing; and
- (c) a judgment or order in relation to the proceeding must not be authenticated.

Note for rule 97.02

Regulation 5 of the Supreme Court Regulations 1985 is also relevant to the payment of fees.

9 Schedule 1 amended

Schedule 1, Forms 81A-E and 83A to 87A

omit

10 Rules further amended

The Schedule has effect.

11 Repeal of Rules

These Rules are repealed on the day after they commence.

Schedule Rules further amended

rule 10

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
rule 48.08(1), (2) and (3)	Master (<i>all references</i>)	Associate Judge
rule 63.01(1), definition Taxing Master	Master or by the	Associate Judge or by the Taxing
rule 63.01(3)	Master	Associate Judge
rule 63.33	a Master	an Associate Judge
rule 63.52(1)(b)	taxing	Taxing
rule 63.59(3)	Master	Associate Judge
rule 63.75(1)	master	Master
rule 77.04(6)	Pillar	Piller
rule 81A.01(2)(a)	Master	Associate Judge
rule 81A.38(1)(b)(i)	Order 86	Chapter 2
Form 60A	Master Jones	Jones AsJ
