

## Supreme Court (Court of Appeal) Amendment Rules 2022

SL 2022/60

Made by the judges of the Supreme Court.

### 1. Citation

These rules are the *Supreme Court (Court of Appeal) Amendment Rules 2022*.

### 2. Commencement

These rules come into operation as follows —

- (a) rules 1 and 2 — on the day on which these rules are published in the *Gazette*;
- (b) the rest of the rules — on the 14<sup>th</sup> day after that day.

### 3. Rules amended

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

### 4. Rule 3 amended

- (1) In rule 3(1) delete the definition of *interlocutory civil appeal*.
- (2) In rule 3(1) insert in alphabetical order:

***audio link*** means facilities, including telephones, that enable, at the same time, a court at one place to hear a person at another place and vice versa;

***interlocutory civil appeal*** means —

- (a) an appeal from an interlocutory decision made in civil proceedings in the General Division by a judge or master; or
- (b) an appeal under the *District Court of Western Australia Act 1969* section 79(1)(b);

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

***video link*** means facilities, including closed-circuit television, that enable, at the same time, a court at one

place to see and hear a person at another place and vice versa;

**5. Rule 5A amended**

At the end of rule 5A insert:

Note for this rule:

Any jurisdiction that a single judge or registrar is able to exercise under these rules may be exercised by the Court of Appeal in the same manner as a single judge or registrar unless otherwise provided for by these rules.

**6. Rule 6 deleted**

Delete rule 6.

**7. Rule 7 amended**

At the end of rule 7(2) insert:

Note for this subrule:

Rule 19 does not apply to a decision made by the Court of Appeal.

**8. Rule 8 amended**

At the end of rule 8 insert:

Note for this rule:

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

**9. Rule 14 deleted**

Delete rule 14.

**10. Rule 15 amended**

Before rule 15(1) insert:

(1A) In this rule —

***reviewable decision*** —

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

- (i) a decision made under rule 11;
  - (ii) a decision to list a CA matter;
  - (iii) a decision made as a taxing officer;
- and

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

**11. Rule 17 amended**

At the end of rule 17 insert:

Note for this rule:

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

Note: The heading to amended rule 17 is to read:

**Consequences of non-attendance by party**

**12. Rule 18 amended**

In rule 18(2) delete “the registrar” and insert:

a registrar

Note: The heading to amended rule 18 is to read:

**Decisions made in absence of party**

**13. Rule 19 amended**

In rule 19(1) delete “rules” and insert:

rule

**14. Rule 20 amended**

After rule 20(5) insert:

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

Note: The heading to amended rule 20 is to read:

**Completion of forms**

**15. Rule 24 amended**

(1) In rule 24(3)(b):

- (a) in subparagraph (ii) delete “RSC.” and insert:

RSC; and

(b) after subparagraph (ii) insert:

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

(2) In rule 24(4):

(a) in paragraph (a) delete “rule 23; or” and insert:

rule 23 giving notice that the lawyer is acting for the  
party; or

(b) delete paragraph (b) and insert:

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

(3) After rule 24(4) insert:

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

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

## **16. Rule 28 amended**

In rule 28(6) delete “post.” and insert:

post, fax or email.

Note: The heading to amended rule 28 is to read:

**How to commence criminal appeal**

## **17. Rule 30 amended**

Delete rule 30(1).

## **18. Rule 32 amended**

Delete rule 32(6)(d)(i) and (ii) and insert:

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

- (ii) 2<sup>nd</sup>, its citation in an authorised law report (if any) and any numbered paragraph of it that is a relevant passage or, if there are no numbered paragraphs, any page of it on which is a relevant passage;

Note:

The example at the end of rule 32(6)(d) is to be altered:

- (a) by deleting “(2000) 23 WAR 254 at 274; [2000] WASCA 413 at [106].” and inserting:  
[2000] WASCA 413 at [106]; (2000) 23 WAR 254 at [106].
- (b) by deleting “120.]” and inserting:  
120 at 153.]

## **19. Rule 36 amended**

- (1) Delete rule 36(2)(a).
- (2) Delete rule 36(3)(g) and insert:

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

Note: The heading to amended rule 36 is to read:  
**Settling of indexes**

## **20. Rule 39 amended**

Delete rule 39(4)(e).

Note: The heading to amended rule 39 is to read:  
**Technical requirements for appeal books**

## **21. Rule 43 amended**

- (1) Delete rule 43(1).
- (2) After rule 43(2)(ka) insert:

- (kb) to make any order that it is appropriate to make —
  - (i) for the due and effective administration of justice; or
  - (ii) because a person has not obeyed these rules or any order made under these rules by the Court of Appeal, a single judge or a registrar;

- (3) After rule 43(2) insert:

(2A) Subrule (2)(kb) is not limited by subrules (2)(a) to (ka).

**22. Rule 44 amended**

In rule 44(1) delete “order or an order amending or cancelling an interim”.

Note: The heading to amended rule 44 is to read:

**Applying for interim order**

**23. Rule 47 amended**

In rule 47(1) in the definition of *approved mediator* delete paragraph (a) and insert:

(a) a registrar; or

**24. Rule 58 inserted**

At the end of Part 5 Division 6 insert:

**58. Hearings by audio link or video link**

- (1) The Court of Appeal, a single judge or a registrar may conduct a hearing with 1 or more of the parties to a CA matter by audio link or video link.
- (2) The hearing is taken to be in the presence of the Court of Appeal, judge or registrar.
- (3) A registrar must confirm in writing any order made at the hearing.

**25. Rule 59 amended**

After rule 59(1) insert:

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

**26. Schedule 1 amended**

- (1) In Schedule 1 Form 3 delete the Notes and insert:

Note to Form 3 —

1. Delete if no documents are required under the *Supreme Court (Court of Appeal) Rules 2005* rule 28(1)(d) (for a criminal appeal) or 29(1)(d) (for a civil appeal).

- (2) In Schedule 1 Form 5A:

(a) after the row beginning “Last known address” insert:

Email address	The following email address is used by the *appellant/ respondent <sup>2</sup>
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(b) after Note 1 insert:

2. Leave blank if no email address is known.

(3) Delete Schedule 1 Form 16 and insert:

**16. Discontinuance notice (r. 59)**

Supreme Court of Western Australia Court of Appeal		No:
		<b>Discontinuance notice</b>
Parties to the appeal	Appellant Respondent	
Notice	The *appellant/respondent discontinues *this appeal/the cross appeal in this appeal.	
Acknowledgment of *appellant/ respondent	The *appellant/respondent acknowledges that by discontinuing *this appeal/the cross appeal in this appeal — (a) the *appeal/cross appeal is brought to an end; and (b) the *appeal/cross appeal cannot subsequently be continued or reinstated.	
Signature of *appellant/ respondent or lawyer <sup>1</sup>	*Appellant/Appellant’s lawyer/ Respondent/Respondent’s lawyer	Date:

Notes to Form 16 —

\* Delete the inapplicable.

1. If the appeal is a criminal appeal, this form must be signed by both the appellant and a lawyer (if any) acting for the appellant: see the *Supreme Court (Court of Appeal) Rules 2005* rule 59(1A).

Note: The heading to rule 64 is to read:

**Return of records and things**

The Hon. Chief Justice Peter Quinlan, Chief Justice of Western Australia  
Supreme Court of Western Australia