



AUSTRALIAN CAPITAL TERRITORY

Supreme Court Rules (Amendment)

Subordinate Law No. 21 of 1992

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AUSTRALIAN CAPITAL TERRITORY

Supreme Court Rules¹ (Amendment)

Subordinate Law No. 21 of 1992²

We, Judges of the Supreme Court, make the following Rules of Court under section 36 of the *Supreme Court Act 1933*.

Dated 16 October 1992.

JEFFREY MILES
Chief Justice

JF GALLOP
Judge

TJ HIGGINS
Judge

AG TOWILL
Registrar

Principal Rules

1. In these Rules, “Principal Rules” means the Supreme Court Rules.

Interpretation

2. Rule 4 of Order 1 of the Principal Rules is amended by omitting from subrule (1) the definition of “ ‘Registrar’s office’ or ‘the office of the Registrar’ ” and substituting the following definition:

- “ ‘Registrar’s office’, ‘Registry’ or ‘the office of the Registrar’ means the offices of the Court;”.

Insertion

3. After Order 34 of the Principal Rules the following Order is inserted:

“ORDER 34A**PRELIMINARY DISCOVERY****Interpretation**

- “1. In this Order, unless the contrary intention appears—
- ‘applicant’ means an applicant for an order under this Order;
- ‘description’, in relation to the person against whom the applicant desires to bring a proceeding, includes—
- (a) in the case of a natural person—the name, place of residence, occupation and sex; and
 - (b) in the case of a corporation—the registered office and place of business;
- ‘possession’ includes custody and power.

Privilege

- “2. An order made under this Order does not operate to require the person against whom the order is made to produce any document that, on the ground of privilege, the person could not be required to produce—
- (a) in the case of an order under rule 3 or 5—if the applicant had commenced a proceeding against the person;
 - (b) in the case of an order under subrule 6 (1) or (2)—if the applicant had made the person a party to the proceeding; or
 - (c) in the case of an order made under rule 9—if the person had been served with a subpoena for production of the document at the trial of the proceeding.

Discovery to identify defendant

“3. (1) If an applicant, having made reasonable inquiries, is unable to ascertain the description of a person sufficiently for the purpose of commencing a proceeding in the Court against that person (in this rule called ‘the person concerned’) and it appears that a person—

- (a) has or is likely to have knowledge of facts; or
- (b) has or is likely to have, or has had or is likely to have had, possession of any document or thing;

tending to assist in the ascertainment, the Court may make an order under this rule.

“(2) An order may require the person who is the subject of the order or, in the case of a corporation, an appropriate officer to—

- (a) attend before the Court to be examined in relation to the description of the person concerned;
- (b) produce to the Court any document or thing that is, or has been, in the person’s possession relating to the description of the person concerned;
- (c) make and serve on the applicant a list of the documents or things that are, or have been, in the person’s possession relating to the description of the person concerned; or
- (d) produce for inspection by the applicant any document or thing that is, or has been, in the person’s possession relating to the description of the person concerned.

“(3) An order may direct that the examination by the Court be held before a Registrar.

Conduct money

“4. Rule 27 of Order 39 applies in relation to an order for attendance under rule 3 as if the order were a subpoena.

Discovery from prospective defendant

“5. If—

- (a) it is reasonable to believe that the applicant has, or may have, the right to obtain relief from a person whose description has been ascertained;
- (b) having made reasonable inquiries, the applicant has not gained sufficient information to enable a decision to be made whether to institute a proceeding to obtain the relief;

- (c) it is reasonable to believe that the person—
 - (i) has, or is likely to have; or
 - (ii) has had, or is likely to have had;possession of a document relating to the question whether the applicant has the right to obtain the relief; and
- (d) inspection of the document by the applicant would assist in making the decision;

the Court may order the person to produce the document to the applicant.

Applicant who is party to a proceeding

“6. (1) Rule 3 applies, with any necessary modification, in relation to an applicant who is a party to a proceeding and proposes to make, in the proceeding, a claim—

- (a) that is against a person who is not a party; and
- (b) that could properly have been made in the proceeding had the person been a party.

“(2) Rule 5 applies, with any necessary modification, in relation to an applicant who is a party to a proceeding and who proposes to make, in the proceeding, a claim against a person who is not a party—

- (a) that it is reasonable to believe is a claim that the applicant has, or may have, the right to make against the person; and
- (b) that could properly have been made in the proceeding had the person been a party.

Service of application and supporting affidavit

“7. (1) An application for an order under rule 3 or 5 shall be served personally on the person the subject of the intended order unless a Judge orders otherwise.

“(2) An application under this Order shall be supported by an affidavit—

- (a) stating the facts on which the applicant relies; and
- (b) specifying or describing the documents or class of documents in respect of which an order is sought.

“(3) A copy of the supporting affidavit shall be served on every person on whom the notice of motion is served.

Order for inspection, preservation etc. of property

“8. When making an order under this Order, the Court may make a further order in relation to the subject-matter of the proceedings or property that relates to the subject-matter or as to which any question arises in the proceedings, providing for any of the following matters:

- (a) the inspection, observation, measurement, photocopying, preservation, custody or detention of the subject-matter or other property;
- (b) taking samples;
- (c) carrying out experiments;
- (d) making, playing or screening any kind of recording of sight or sound;
- (e) making and reproducing or displaying other instrumental recordings or tracings.”.

Substitution

4. Division 1 of Order 60 is repealed and the following Division substituted:

“Division 1—Appeals other than appeals by way of order to review

Procedure

“1. (1) Institution of an appeal to the Court from a decision of the Magistrates Court or a magistrate—

- (a) shall be by notice of appeal in accordance with Form 72 in the First Schedule; and
- (b) shall, as far as possible, be in accordance with the rules of this Division, subject to—
 - (i) the provisions of the Act under which the appeal is made; and
 - (ii) any direction given by the Court or a Judge on the application of any party to the appeal.

“(2) A notice of appeal shall be filed—

- (a) if the provisions of the Act under which the appeal is instituted do not provide otherwise—within 21 days after the date of the judgment complained of; or
- (b) within any further time allowed by the Court or a Judge on application made at any time.

“(3) Subject to subrule (4), a notice of appeal may be amended by filing before the date appointed under paragraph (5) (a)—

- (a) a notice adding further evidence for a further ground for the appeal; or
- (b) a supplementary notice of appeal.

“(4) In relation to subrule (3), a Judge may give any direction that the Judge thinks fit, on the Judge’s motion or on the application of a party.

“(5) At the time of filing the notice of appeal, the appellant shall—

- (a) appoint a date with the Registrar to settle the appeal papers; and
- (b) record on the notice, and on each copy for service, the date of the appointment.

“(6) The appellant shall serve on each respondent to the appeal—

- (a) as soon as practicable after filing—a copy of the notice of appeal and of any supplementary notice of appeal; and
- (b) with the notice of appeal, if leave to appeal is required—a copy of the order granting leave to appeal.

“(7) At an appointment to settle appeal papers, the Registrar may—

- (a) give the parties such directions as the Registrar thinks appropriate; and
- (b) if appropriate—adjourn the appointment.

“(8) The date for the hearing of an appeal may be fixed by the Registrar, on the Registrar’s motion or on the request of a party, when the Registrar is satisfied that the appeal is ready for hearing.

Parties

“2. (1) The appellant instituting the appeal shall join—

- (a) as an appellant—each party to the proceedings appealed from who would be affected by the relief sought, if the party consents to joinder; and
- (b) as a respondent—each person who is interested in maintaining the judgment complained of.

“(2) The Court or a Judge may order the addition or removal of any person as an appellant or respondent.

Cross-appeal

“3. (1) A respondent to an appeal who proposes—

- (a) to appeal against a part of the judgment complained of; or

- (b) to seek a variation of the judgment;

need not institute a separate appeal if, within 21 days after service on him or her of the notice of appeal, or within any further time allowed by the Court or a Judge, the respondent files a notice of cross-appeal and serves a copy of the notice on the appellant and any other person who would be affected by the relief sought.

“(2) A notice of cross-appeal shall state—

- (a) what part of the judgment the respondent cross-appeals against or contends should be varied;
- (b) briefly, but specifically, the grounds of the cross-appeal; and
- (c) the relief sought in lieu of that part of the judgment, or the variation sought.

“(3) A respondent to an appeal who proposes to contend that some matter of fact or law has been erroneously decided against the respondent in the proceedings appealed from, but does not propose to seek a discharge or variation of a part of the judgment entered, need not file and serve a notice of cross-appeal if, before the date appointed under paragraph 1 (5) (a), the respondent—

- (a) gives to the appellant notice of the respondent’s contention and of the record of evidence or documents relevant to the contention; and
- (b) files a copy of the notice.

Discontinuance

“4. (1) An appellant may discontinue an appeal at any time by filing and serving on each other party to the appeal, a notice of discontinuance of the appeal.

“(2) An appellant’s appeal is not discontinued by a notice of discontinuance filed and served by another appellant in the appeal.

“(3) A party who files a notice of discontinuance is liable to pay the costs of other parties that are occasioned by the appeal.

“(4) If—

- (a) a party whose costs are payable by another party under subrule (3) has the costs taxed by the Registrar; and
- (b) the taxed costs remain unpaid at the end of 14 days after service of the certificate of taxation;

the party entitled to the costs may enter judgment for the taxed costs.

Proceedings not stayed by appeal

“5. The institution of an appeal does not operate as a stay of proceedings unless the Court or a Judge so orders.”.

Sealing of winding up order and notice of appointment of liquidator

5. Rule 39 of Order 75B is amended by omitting from paragraph (b) “and”.

Substitution

6. Rules 17, 18 and 19 of Order 81 of the Principal Rules are repealed and the following rule is substituted:

Setting down appeal

“17. The date for the hearing of an appeal may be fixed by the Registrar, on the Registrar’s motion or on the request of a party, when the Registrar is satisfied that the appeal is ready for hearing.”.

Insertion

7. After Part 13 of the Principal Rules the following Part is inserted:

**“PART 13A—APPEALS FROM THE GUARDIANSHIP AND
MANAGEMENT OF PROPERTY TRIBUNAL**

ORDER 82A

Interpretation

“1. In this Order, unless the contrary intention appears—

‘decision’, in relation to the Tribunal, includes an order made, or a direction given, by the Tribunal;

‘Guardianship Act’ means the *Guardianship and Management of Property Act 1991*;

‘Registrar of the Tribunal’ includes the Deputy Registrar of the Tribunal or other officer for the time being performing the duties of the Registrar or Deputy Registrar;

‘Tribunal’ means the Guardianship and Management of Property Tribunal established under the Guardianship Act.

Instituting an appeal

“2. An appeal to the Court under section 56 of the Guardianship Act may be instituted by filing a notice of appeal in accordance with Form 1 in Schedule 14.

Notice of appeal

“3. (1) A notice of appeal shall be signed by the appellant or the appellant’s solicitor and, if the appeal is brought in respect of a question other than a question of law, shall include a request for leave to bring the appeal.

“(2) A notice of appeal shall state—

- (a) the decision appealed from, the names of the members constituting the Tribunal and the date when the decision was made;
- (b) the questions in respect of which the appeal is brought;
- (c) the order sought; and
- (d) briefly, but specifically, the grounds relied on in support of the order sought.

“(3) The Court may, on such terms and conditions as the Court thinks fit, allow a notice of appeal to be amended.

“(4) On the hearing of an appeal, the appellant shall not, without the leave of the Court—

- (a) raise any question of law or fact that is not stated in the notice of appeal; or
- (b) rely on any ground in support of the order sought that is not set out in the notice of appeal.

Appearance

“4. If there is a respondent to an appeal, the notice of appeal shall include an instruction that, before taking any other step in the proceeding, the respondent is required to enter an appearance in the Registry.

Other parties

“5. (1) Each person who—

- (a) appeared or was entitled to appear before a Tribunal inquiry that is the subject of an appeal; and
- (b) would be affected by the order sought by the notice of appeal or is interested in maintaining the decision under appeal shall be joined as a respondent to the appeal.

“(2) The Court may order—

- (a) the addition of any person to an appeal—
 - (i) as a respondent; or
 - (ii) with the consent of the person—as an appellant; or
- (b) the removal of any person from an appeal.

Filing and service of notice of appeal

“6. (1) A notice of appeal shall be filed in the Registry within the time specified in paragraph 56 (3) (a) or (b) of the Guardianship Act.

“(2) An appellant shall, within 7 days after filing a notice of appeal, serve a copy of the notice personally on each other person who appeared or was entitled to appear before the Tribunal inquiry and on the Registrar of the Tribunal.

Extension of time

“7. (1) Application may be made to the Court or a Judge for an extension of the time specified in paragraph 56 (3) (a) or (b) of the Guardianship Act either before or after the expiration of the specified time.

“(2) An application for an extension of time shall be in accordance with Form 2 in Schedule 14.

“(3) An application for an extension of time shall be accompanied by an affidavit showing—

- (a) the nature of the case;
- (b) the questions involved; and
- (c) the reasons why an extension of time should be given.

Documents to be forwarded

“8. (1) Within 21 days after service of a notice of appeal on the Registrar of the Tribunal, the appellant shall send, or cause to be sent, to the Registry—

- (a) a copy of the decision appealed from;
- (b) if the Tribunal has given reasons in writing for its decision, a copy of the reasons;
- (c) the transcript, or notes, of proceedings in the Tribunal (if any); and
- (d) a list of all documents sent to the Registry in relation to the appeal specifying the documents that were before the Tribunal.

“(2) If the Tribunal has not given reasons in writing for its decision, the appellant shall—

- (a) obtain from the Tribunal under section 45 of the Guardianship Act a statement in writing of the reasons; and
- (b) send a copy of the statement to the Registrar of the Tribunal and to the Registry within 10 days after receiving it.

“(3) When the documents referred to in subrules (1) and (2) have been received in the Registry, the Registrar shall send a copy of the list of documents to each party to the appeal.

Discontinuance of appeal

“9. (1) An appellant may file and serve a notice of discontinuance of the appeal at any time.

“(2) Subject to subrule (3), if an appellant files and serves a notice of discontinuance under subrule (1), the appeal is taken to be abandoned.

“(3) A notice of discontinuance filed by an appellant under subrule (1) does not affect any other appellant in the appeal.

“(4) A party filing a notice of discontinuance is liable to pay the costs of the other parties occasioned by the appeal.

“(5) A party whose costs are payable under subrule (4) may submit a bill of costs to the taxing officer and, if the taxed costs are not paid within 14 days after service of the certificate of taxation, may enter judgment for the taxed costs.

Amendment by supplementary notice

“10. (1) A notice of appeal may be amended without leave, before the date of the directions hearing, by filing a supplementary notice.

“(2) A party who files a supplementary notice shall file and serve it in accordance with rule 6 as if it were a notice of appeal.

Notice of cross appeal

“11. (1) A respondent who desires—

- (a) to appeal from a part of the decision from which the appellant has appealed; or
- (b) to seek a variation of a part of that decision;

need not institute a substantive appeal, but shall, within 21 days after the service on that respondent of the notice of appeal, or within such further time as the Court or a Judge may allow—

- (c) file in the Registry a notice of cross-appeal; and
- (d) serve a copy of the notice on the appellant and every other party to the proceeding.

“(2) A notice of cross-appeal shall state—

- (a) what part of the decision the respondent cross-appeals from or contends should be varied;
- (b) the questions of law to be raised in the cross-appeal;
- (c) the relief sought in place of the decision appealed from or the variation of that decision that is sought; and
- (d) briefly, but specifically, the grounds relied on in support of the relief or variation sought.

“(3) It is not necessary to give a notice of cross-appeal in accordance with subrule (1) if the respondent—

- (a) proposes to contend that a matter of law has been erroneously decided against that respondent, but does not seek a discharge or variation of a part of the decision actually pronounced or made;
- (b) gives notice to the appellant of—
 - (i) the respondent’s contention; and
 - (ii) the record of evidence or documents before the Tribunal relevant to the respondent’s contention; and
- (c) at the time when the appeal papers are settled under rule 13, requests that those records of evidence or documents be included in the appeal papers.

Date of directions hearing

“12. (1) A notice of appeal shall state the date appointed by the Registrar for a directions hearing.

“(2) A notice of appeal shall, unless the Court or a Judge otherwise orders, be served on the respondent within 5 days before the date appointed for the directions hearing.

“(3) If the Court or a Judge has made an order under subrule (2), the notice of appeal shall bear a note of the order made.

Directions hearing

“13. (1) At a directions hearing under this Order, the Court or a Judge may give such directions in relation to the conduct of the proceeding as the Court or Judge thinks proper.

“(2) Without prejudice to the generality of subrule (1), the Court or a Judge may—

- (a) determine what documents and matters are to be included in the appeal papers and the order of inclusion;
- (b) determine what documents and matters were before the Tribunal;
- (c) settle the index of documents comprising the appeal papers;
- (d) determine the number of copies of the appeal papers required;
- (e) direct the joinder of parties; and
- (f) direct the place, time and mode of hearing.

“(3) The jurisdiction exercisable by the Court under this rule is exercisable by the Master or the Registrar.

Preparation of appeal papers

“14. (1) The preparation of appeal papers shall comply with the following requirements to the satisfaction of the Registrar:

- (a) the title page of the appeal papers shall state the title of the proceeding, the names of the members constituting the Tribunal, and the names, and addresses for service, of the solicitors for each party;
- (b) the settled index referred to in paragraph 13 (2) (c) shall appear after the title page and shall show the date and page number of each document;
- (c) the appeal papers shall be paginated and shall include all documents necessary to enable questions of law raised by the appeal to be determined by the Court;
- (d) each document shall be headed by its date and a short description of its nature but formal headings shall not to be included and jurats and formal identification of exhibits and the like shall be omitted;
- (e) the appeal papers need not be in bound and printed form but shall be clear, legible and securely fastened.

“(2) A copy of the appeal papers in relation to a proceeding shall be filed by the appellant together with a certificate by the parties or their solicitors stating that the copy has been examined and is correct.

“(3) The appellant shall file as many additional copies of the appeal papers as the Registrar directs.

“(4) The requirements of this rule are subject to any direction that may be given by the Court, a Judge or the Registrar.

Setting down appeal

“15. The date for the hearing of an appeal may be fixed by the Registrar, on the Registrar’s motion or on the request of a party, when the Registrar is satisfied that the appeal is ready for hearing.”.

First Schedule

8. The First Schedule to the Principal Rules is amended by omitting Forms 72, 73, 74, 75 and 76 and substituting the following form:

FORM 72

O. 60 r. 1

NOTICE OF APPEAL

IN THE SUPREME COURT OF
THE AUSTRALIAN CAPITAL
TERRITORY

No. of 19 .

ON APPEAL FROM THE
MAGISTRATES COURT

Between

Appellant

and

Respondent

Take notice that the respondent appeals from the [*conviction, order, sentence, penalty or order, (as the case requires) by/of*] the Magistrates Court made on [*date*].

[*In the case of an appeal from an order*]

The appeal is from *the whole of the order/*the part of the order whereby [*specify part appealed from*].

Grounds: [*specify grounds*]

Order sought: [*state order sought*]

Dated 19 .

*Appellant/ *Appellant's solicitor

To:
the Registrar of the Magistrates Court; and
the respondent

*Omit inapplicable words

Addition

9. The Principal Rules are amended by adding at the end the following Schedule:

SCHEDULE 14
FORMS—APPEALS FROM THE GUARDIANSHIP AND
MANAGEMENT OF PROPERTY TRIBUNAL

FORM 1

O. 82A r. 2

NOTICE OF APPEAL FROM THE GUARDIANSHIP AND
MANAGEMENT OF PROPERTY TRIBUNAL

IN THE SUPREME COURT OF
THE AUSTRALIAN CAPITAL
TERRITORY

No. of 19 .

On appeal from the Guardianship and Management of Property Tribunal constituted by
[names of the members of the Tribunal that made the decision appealed from].

Between

Appellant

and

Respondent

Take notice that the appellant appeals from the decision of the Tribunal, made on [date],
that [decision appealed from].

The appeal is from *the whole of the decision/ *the part of the decision that requires [set
out part appealed from].

OR

[if the appeal is in respect of a question other than a question of law]

Take notice that the appellant seeks leave to appeal from the decision of the Tribunal,
made on [date], that [decision appealed from].

Questions: [specify each question of law or fact]

Order sought: [state order sought]

Grounds: [specify grounds relied on]

Dated 19 .

.....
*Appellant/ *Appellant's solicitor

To the respondent:
[name and address]

TAKE NOTICE that a directions hearing in this appeal will be heard by the Court at [time and date]. If there is no attendance before the Court by you, your counsel or your solicitor, directions may be given and orders made in your absence.

Before taking any other step in the proceeding or attending the directions hearing, you are required to file an appearance in the Registry.

[if the time for service has been abridged by order]

The period of time within which this notice is required to be served has been abridged by the Court to [period].

Dated 19 .

.....
By the Court
[signature and description of officer of the Court]

*Omit inapplicable words

FORM 2

O. 82A r. 7

APPLICATION FOR EXTENSION OF TIME TO FILE
NOTICE OF APPEAL FROM THE GUARDIANSHIP
AND MANAGEMENT OF PROPERTY TRIBUNAL

IN THE SUPREME COURT OF
THE AUSTRALIAN CAPITAL
TERRITORY

No. of 19 .
Between Appellant
and Respondent

The appellant applies for an extension of time in which to file notice of appeal from the decision of the Guardianship and Management of Property Tribunal constituted by [names of the members of the Tribunal that made the decision appealed from], made on [date], that [decision appealed from].

An extension of time is required because a notice of appeal was not filed within the time specified in paragraph 56 (3) (a) or (b) of the *Guardianship and Management of Property Act 1991*.

This application will be heard by the Court on [date—to be inserted by Registrar].

The annexed affidavit sets out—

- (a) the nature of the case;
- (b) the questions involved; and
- (c) the reasons why an extension should be given.

Dated 19 .

.....
*Appellant/ *Appellant's solicitor

NOTES

1. Reprinted by the Commonwealth as at 2 October 1991. See also Commonwealth Statutory Rules 1991 Nos. 416 and 472; 1992 Nos. 79 and 82; Subordinate Law No. 16, 1992.
2. Notified in the ACT Gazette on 28 October 1992.

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