

HIGH COURT OF AUSTRALIA

PRACTICE DIRECTION NO 1 OF 2000

WRITTEN SUBMISSIONS AND AUTHORITIES: ALL FULL COURT MATTERS EXCEPT REMOVAL APPLICATIONS OR LEAVE OR SPECIAL LEAVE APPLICATIONS

Objects

1. The objects of the procedures contained in this Practice Direction are:
 - (a) To provide detailed written submissions of the parties to an appeal or other proceeding before the Full Court so that the Justices may better understand the contentions of the parties before the hearing of the matter commences;
 - (b) To enhance the utility of oral argument, in particular by identifying and focusing attention upon the central issue (or issues) in the matter; and
 - (c) To avoid uncertainty or disputes about the documents that are required and the receipt of such documents.

Application

2. This Practice Direction applies to all matters before a Full Court other than applications for leave or special leave to appeal and applications for removal pursuant to s 40 of the *Judiciary Act* 1903 (Cth).
3.
 - (1) "Appellant" includes a moving party before the Full Court.
 - (2) "Respondent" includes a defendant or other party opposing before the Full Court.
 - (3) "Intervener" includes any person intervening or seeking leave to intervene or to be heard as *amicus curiae* before the Full Court.
 - (4) "Day" means clear working day.

In the case of proceedings which are not an appeal, the requirements of this Practice Direction shall be modified as appropriate.

4. Unless otherwise directed by the Court, a Justice or a Registrar, written submissions shall be furnished by the parties in accordance with this Practice Direction.

General Requirements

5. Every written submission shall:

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- (a) on the first page state the title of the proceeding and its number, a short description of the document, and the name of the party for whom the submissions are filed;
- (b) be legibly and clearly written, typewritten or printed;
- (c) be upon paper of the size known as international paper size A4 of good and durable quality and capable of receiving ink writing;
- (d) be upon one side only of the paper with a margin upon the left-hand side of each sheet of not less than 3 cm and a margin of not less than 3 cm at the top and at the bottom of each sheet;
- (e) be printed or typed in typeface not smaller than 12 point and in line spacing that is not less than single spacing.

Appellant's Submissions

- 6. An appellant shall, at least ten (10) days before the hearing of an appeal, file nine (9) copies of its written submissions.
- 7. The written submissions of the appellant shall:
 - (a) without the leave of the Court or a Justice be no more than 20 pages in length;
 - (b) contain, first, a concise statement of the issue or issues the appellant contends that the appeal presents;
 - (c) certify that the appellant has considered whether any notice (or, if notice has been given any further notice) should be given to Attorneys General in compliance with s78B of the *Judiciary Act* 1903 (Cth);
 - (d) contain, second, a citation of the authorised report of the reasons for judgment of both the primary and the intermediate court in the case (or, if there is no authorised report of a decision, the citation of any other report of that decision, and in the absence of any report, the internet citation);
 - (e) set out a narrative statement of the relevant facts found or accepted in the court from which the proceedings are brought with appropriate reference to the appeal book;
 - (f) contain a succinct argument, but with appropriate detail, setting out:
 - (i) the error or errors complained of in the court from which the proceedings are brought;

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- (ii) the applicable legislation, principle or rule of law relied upon, with references to authority or legislation signifying their relevance to the appellant's argument;
 - (iii) where relevant, an analysis of the rationale of the legislation, principle or rule;
 - (iv) how the legislation, principle or rule applies to the facts or other relevant material in the case;
- (g) contain (or if more than one page long, attach as an annexure) the relevant constitutional provisions, statutes and regulations as they existed at the time in question, set out verbatim and either (i) a statement that those provisions are still in force, in that form, at the date of making the submissions; or (ii) a copy of each later provision amending or repealing those provisions, together with any relevant transitional provision;
- (h) be accompanied by a chronology, listing the principal events leading to the litigation, with appropriate references to the appeal book in respect of findings of fact and evidence relating to those events;
- (i) be accompanied by any unreported decisions, statutory materials, decisions of foreign or other courts, academic articles or book extracts and other relevant material to which reference may be made in the course of argument if any of these materials is unlikely to be readily available to the opposing party;
- (j) state the precise form of order or orders sought by the appellant.

Respondent's Submissions

8. A respondent to the appeal shall, at least seven (7) days before the hearing of an appeal, file nine (9) copies of its written submissions.
9. The written submissions of the respondent shall:
- (a) without the leave of the Court or a Justice be no more than 20 pages in length;
 - (b) contain, first, a concise statement of the issue or issues the respondent contends that the appeal presents;
 - (c) certify that the respondent has considered whether any notice (or, if notice has been given any further notice) should be given to Attorneys General in compliance with s78B of the *Judiciary Act* 1903 (Cth);
 - (d) contain a statement of any material facts set out in the appellant's narrative of facts or chronology that are contested, with appropriate reference to the appeal book;

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- (e) state whether the appellant's statement of applicable constitutional provisions, statutes and regulations is accepted and, if not, identify the respect or respects in which it is alleged to be wrong or incomplete;
- (f) contain a statement in accordance with par 7(f) of that party's argument in answer to the arguments of the appellant;
- (g) contain any necessary accompanying material in accordance with the requirements of par 7(i).

Interveners

- 10. Not less than fifteen (15) days before the day fixed for the hearing of the proceeding any intervener in the proceeding shall give notice in writing to the Court and to all parties to the proceeding of:
 - (a) that person's intention to intervene;
 - (b) the asserted basis of intervention; and
 - (c) the party or parties in support of whom the intervention is to be made.
- 11. Not less than five (5) days before the day fixed for hearing any intervener in the proceeding shall file nine (9) copies and serve on all parties to the proceeding and on all other interveners who have given notice of intention to intervene written submissions no longer than 20 pages addressing, where necessary, why leave to intervene or to be heard as amicus curiae should be granted and addressing so many of the matters referred to in par 7(f) of this Practice Direction as the person seeking to intervene desires to make the subject of submissions to the Court.

Submissions in Reply

- 12. No later than two (2) days before the day fixed for hearing of the appeal the appellant may file nine (9) copies of a single written submission in reply to all submissions made by the respondent and interveners supporting the interests of the respondent. That submission shall be no more than five (5) pages in length.
- 13. No later than two (2) days before the day fixed for hearing of the appeal a respondent may file nine (9) copies of a single written submission in reply to all submissions made by interveners supporting the interests of the appellant. That submission shall be no more than five (5) pages in length.

Cross-Appeals

- 14. If a respondent seeks special leave to cross-appeal at the hearing of the appeal,

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- (a) that party shall file nine (9) copies of separate written submissions no longer than ten (10) pages in support of the cross-appeal at the same time as that party's submissions in relation to the appeal;
- (b) any appellant who is respondent to a cross-appeal shall file nine (9) copies of written submissions no longer than five (5) pages in answer to the cross-appeal at the same time as that party's submissions in reply in relation to the appeal.

Signature, Filing and Service

- 15. The written submissions shall be signed by the senior legal practitioner who is to present the case in Court or, if a party is unrepresented, by the party and shall contain a clear statement of the name, telephone and facsimile number of the signatory and the date of filing.
- 16. The written submissions, together with the chronology and accompanying material, shall be filed in the Principal Registry in Canberra or in the Registry of the Court in the jurisdiction in which the proceedings were commenced (or, in the case of interveners, in the Registry of their home State or Territory).
- 17. The written submissions shall be served on the other party or parties on the same day as they are filed in the Court.

Supplementary Submissions

- 18. No supplementary written submission may be filed before the hearing except with the leave of the Court, a Justice or the Registrar.

Authorities

- 19. Each party or intervener must lodge with the Principal Registry in Canberra a typewritten list of all cases, text books, articles, legislation and other authorities which counsel intend to cite in any matter. The list must be lodged at least two (2) days before the day fixed for the hearing of that matter. It must contain only those cases, text books, articles, legislation and authorities from which passages are to be read. The list must also show the page numbers of those passages and the sections of any relevant legislation that are to be cited. Cases, text books, articles, legislation and authorities to which reference may be made are not to be included in the list.
- 20. If it becomes necessary to cite material that is not on the list, nine (9) copies of the material must be provided for the Court.

21. Because of difficulties of access to reports and statutes while the Court is sitting in Adelaide, Brisbane, Hobart and Perth, counsel are asked to provide seven (7) copies of all reports (other than Commonwealth Law Reports), statutes and other materials from which they intend to read. Counsel should consider whether it will be enough for the purpose of argument to provide a copy of the headnote of a report and the passages to be read, similarly in the case of statutes and other materials. Counsel are urged to liaise with each other well before the hearing of a matter so as to avoid duplication of photocopies.

Commencement

22. This Practice Direction takes effect in relation to matters set down for hearing in the June 2000 sittings of the Court and thereafter and replaces the previous Practice Direction No. 2 of 1996 relating to authorities and Practice Direction No 4 of 1996 relating to written submissions.

23 February 2000