

P *Practice Directions – High Court*

The Justices of the High Court have issued the following new Practice Directions:

Written Submissions for 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)

Objects

1. The objects of the procedure contained in this Practice Direction are:
 - (a) To provide detailed written submission of the parties of an appeal or other proceedings 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; 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 and a cross appellant.
(2) "Respondent" includes a defendant or other party opposing or intervening or seeking leave to intervene in any proceeding before the Full Court
(3) "Day" means 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.

Appellant's Submission

5. An appellant shall, at least six (6) days before the hearing of an appeal, file nine (9) copies of its written submissions.
6. The written submission of the appellant shall:
 - (a) without the leave of the Court or a Justice, be no more than 20 pages in length;
 - (b) 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;
 - (c) contain a succinct argument, but with

appropriate details, setting out:

- (i) the error(s) complained of in the court from which the proceedings are brought;
 - (ii) the applicable legislation, principle or rule of law relied upon, with references to authority or legislation (including extracts from the principle authorities or legislation relied upon) signifying their relevance to the appellant's arguments;
 - (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;
- (d) be accompanied by a chronology, set out in columns, containing the principal events leading to the litigation, with appropriate references to the Appeal Book in respect of such events;
 - (e) 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 the argument if any of these materials is unlikely to be readily available to the opposing party;
 - (f) state succinctly the order(s) sought if they vary from those stated in the notice of appeal.

Respondent's submissions

7. A respondent to the appeal shall, at least two (2) days before the hearing of an appeal, file nine (9) copies of its written submission.
8. The written submissions of the respondent or other party shall:
 - (a) 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;
 - (b) contain a statement of that party's argument in accordance with par 6(c); and
 - (c) accompanying material in accordance with the requirements of par 6(e).

Signatures, filing and service

9. 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 date of filing.
10. The written submissions together with the chronology and accompanying material shall be filed in the Principal Registry of the Court or in the Registry of the Court in the jurisdiction in which the proceedings were commenced. They shall contain the title of the proceedings, the

file number and the hearing date.

11. The written submissions shall be served on the other party or parties on the same day as they are filed in the Court.
 12. A party who furnishes material in accordance with par 6(e) is deemed to have complied with Practice Direction 2 of 1996 in so far as it covers that material.
- Supplementary submissions
13. Supplementary written submissions, not exceeding three (3) pages may be filed at any time before the hearing with the leave of the Court, a Justice or the Registrar. Thereafter, supplementary written submissions are filed in advance of the oral hearing shall be filed as directed by the Court or may be filed by leave of a Justice. The supplementary written submissions shall be served on all other parties on the same day as they are filed.

Urgent transmission

14. Where by leave of the Court, a Justice or the Registrar, supplementary written submissions are filed in advance of the oral hearing, such written submissions, not exceeding three (3) pages, may in the case of urgency be transmitted by facsimile to the Principal Registry.

Commencement

15. This Practice Direction takes effect in relation to matters set down for hearing in the February 1997 sittings of the Court and thereafter and replaces the previous Practice Direction relating to "Outlines of Submission"

Practice Direction No 4 of 1996

5 December 1996

Use of Initials or Pseudonyms in Applications for Leave or Special Leave to Appeal and Applications for Removal Pursuant to s 40 of the *Judiciary Act 1903* (Cth)

1. This Practice Direction applies to applications for leave or special leave to appeal and applications for removal pursuant to s 40 of the *Judiciary Act 1903* (Cth) filed after 1 January 1997.

Interpretation

2. (a) "application" means an application for leave or special leave to appeal or an application for removal pursuant to s 40 of the *Judiciary Act 1903* (Cth)
(b) Court below means the Court, Justice or Judge pronouncing the judgment below.
(c) "party" includes an applicant and a respondent.
(d) "summary of argument" means a

(continued on page 17)

Practice Directions – High Court

(continued from page 5)

summary of argument filed in accordance with Order 69A of the High Court Rules

3. Except as provided by this Practice Direction the names of the parties in applications shall be identical to the names used to identify the relevant parties in the Court below.
4. Where, in proceedings before the Court below, a party was identified by the use of initials or a pseudonym or the publication or disclosure of the name of a party was prohibited by operation of a statute or order of a Court that party may file an application in this Court using the initials or pseudonym of the party. However, the use of initials or a pseudonym may continue in the proceedings in this Court only if leave is granted by the Court upon the hearing of the application. A party seeking leave to continue the use of initials or a pseudonym shall specify, in part III of the summary of argument in support of the use of initials or a pseudonym.
5. In the case of an application which is pending but has not yet been determined by the Court before the commencement of this Practice Direction the Registrar may give a direction to the parties as to the procedures to be followed to enable a party to apply for leave to continue to use initials or a pseudonym.

Practice Direction No 5 of 1996
5 December 1996

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