

Chapter 12

Appellate Reasons¹

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Craft of Individualists

The judiciary is (and should be) an empire of individualists. Expressing reasons must always have integrity. Reasons need to reflect the conscientious opinion of the particular judge.

Among such a group of individualists it would be a mistake to attempt to lay down a settled way of writing reasons. In any case, some individuals have special talents for expressing themselves clearly and persuasively.

For the most part, judicial reasons in Australia cannot be reduced to a rigid formula. The facts of cases are almost infinitely varied. The applicable law is often complex and constantly changing. The application of the law to the facts calls for individual judgments. These invite different ways of expressing even comparatively routine and simple reasons for decision.

Judges display distinctive personal traits in expressing their reasons for decision. Arguments that attract some judges will seem irrelevant or unpersuasive to others. Some are minimalists, given to perceiving legal problems as requiring no more than analysis of critical words in a legislative text or in a contract, will or in past judicial decisions. This approach was more common in the days when textual interpretation was viewed as generally requiring no more than the identification of the literal meaning of the disputed words. Now that purpose, context, policy

¹ This chapter is a shortened and adapted version of a paper prepared for a seminar held with the judges of the Supreme Court of Western Australia and the District Court of Western Australia in October 2007. The editing reflects a change of audience, from those writing the reasons to those who are advocating what those reasons should be. The full paper is published in (2007) 30 *Australian Bar Review* 3.

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