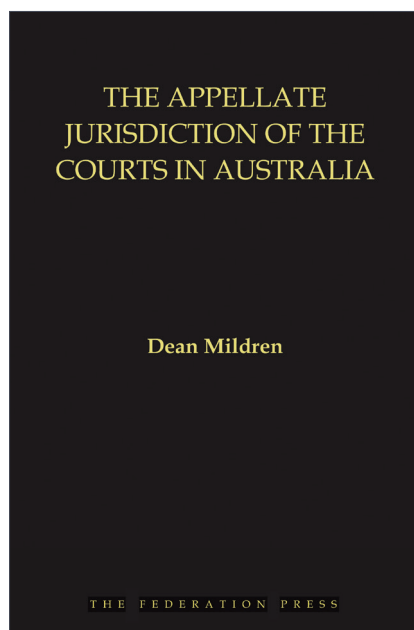


The Appellate Jurisdiction of the Courts in Australia

By Dean Mildren AM RFD QC | The Federation Press | 2015



Especially for junior counsel with an interest in developing an appellate practice, this book is a welcome addition. Indeed, its author (previously a judge of the Supreme Court of Northern Territory and of the Northern Territory Court of Criminal Appeal) states that his text was written for lawyers and barristers who are new to appellate work. Equally though, the text offers helpful insights for seasoned veterans of the appellate arena.

From cover to cover, Mildren offers an astute dissection of his subject that gives credence to his title, *'The Appellate Jurisdiction of the Courts in Australia'*. The text identifies the principles and procedures of Australia's appellate courts and fora, including both civil and criminal appeals from the perspective of both the appellant and the respondent. It canvasses the breadth of jurisdictions in Australia (there is even a dedicated chapter on lesser known appellate fora such as the Defence Force Discipline Tribunal, of which Mildren was a member for nearly two decades). Many of the references to different jurisdictions are short and introductory. By contrast, considerable detail is afforded to

articulating the appellate process in the High Court of Australia, including special leave applications. This includes a useful list of the most common reasons for granting and refusing leave to appeal to the High Court of Australia (page 175).

The introductory chapters succinctly walk through foundational issues such as the question of the right to appeal (Chapter 1) and types of appeal (such as appeals *de novo*, appeals by way of rehearing and appeals against discretionary decisions) (Chapter 2).

The book is a useful resource for procedural requirements involved in appellate work. For instance, the common requirements for lodging an appeal (Chapter 4), the task of preparing written submissions (Chapter 5) and responding to an appeal (Chapter 6). While much of the book has generic application to any appeal in any court, it also helpfully distinguishes some of the procedural aspects particular to criminal appeals and civil appeals. For instance, chapters 9 and 10 are dedicated to criminal appeals (including sentencing appeals) whereas chapter 11 refers to civil appeals.

The chapter concerning written submissions provides a useful outline of how to structure and write effective written submissions for an appeal. Sound advice is offered to urge written discipline and accuracy. For instance:

You should carefully consider every sentence in it. Remove anything which is unnecessary, repetitive, or which might otherwise detract from your case or cause the court to spend time chasing down points which go nowhere. Remember too, that after the court has reserved its decision it will be the written submissions that the members of the court are most likely to go to first when crafting their judgments.

The book concludes with a didactic and

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encouraging reflection on the advocacy of 'arguing an appeal'. Numerous tips are given on a variety of subjects including court appearance, apparel, opening statements, demeanour, body language and breathing techniques. In Mildren's opinion, the purpose of the oral hearing is for counsel and the bench to engage in Socratic dialogue to test the various propositions in issue. Accordingly, counsel should anticipate questions that are likely to arise, and how they will effectively respond to them, including being able to immediately take the court to relevant written passages as required. Similarly, helpful (and somewhat reassuring) guidance is given for a situation in which an answer might not be immediately apparent during questions from the bench, and how counsel can effectively deal with that situation to best assist the court as well as advance their submissions.

Although the chapters of the text are relatively short in ambit (arguably though, its brevity is its strength) the chapters are well referenced and exactly footnoted with leading current authorities cited which makes the text both a helpful overview as well as an invaluable resource for work in the appellate jurisdictions of Australia.

Reviewed by Talitha Fishburn