

**SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY**

**Practice Direction 1 of 2016**

***Applications and Appeals to the Court of Appeal***

***Filing of Documents and Appeal Papers***

This Practice Direction sets out the practice to be followed with respect to the filing of documents and appeal papers in the Court of Appeal in relation to applications for leave to appeal and appeals filed after 1 January 2017, the commencement date for the *Court Procedures Amendment Rules 2016 (No 3)*.

This Practice Direction also applies to appeals commenced before 1 January 2017 that have not, as at 1 January 2017, been listed in the Court of Appeal call over on 1 February 2017 or in a previous call over.

The requirements of this Practice Direction are subject to any contrary direction of the Court or the Registrar.

The *Legislation Act 2001 (ACT)*, sections 151 and 151A (Working out periods of time), and the *Court Procedures Rules 2006 (ACT)*, Rule 6300 (Office hours) and Part 6.7 (Time), apply to this Practice Direction.

**General formatting requirements**

1. Any items created for the purpose of the appeal and provided in hard copy in accordance with this Practice Direction must adhere to the following formatting:
  - (a) printed double sided;
  - (b) printed on international paper size A4;
  - (c) typed in 12 point font size;
  - (d) spacing of 1.5 between lines;
  - (e) margins of 2.54cm.

2. Where a party is directed to file and serve a digital version of any items created for the purpose of the appeal, such items must adhere to the following formatting:
  - (a) typed in 12 point font size;
  - (b) spacing of 1.5 between lines;
  - (c) margins of 2.54cm;
  - (d) submitted in full text searchable Portable Document Format (PDF).
  
3. Where a party is directed, or required under paragraph [10], to file and serve a digital version of a transcript of proceedings, the transcript must be the version provided by the transcript provider contracted to the Court at the time that the proceedings were recorded, and filed by emailing the transcript to the Registrar at [SCDR@courts.act.gov.au](mailto:SCDR@courts.act.gov.au).

**Leave to appeal from interlocutory orders** (Div 5.4.2 *Court Procedures Rules 2006*)

4. The application for leave to appeal from an interlocutory order must be accompanied by the following supporting material:
  - (a) the draft notice of appeal, labelled “DRAFT”;
  - (b) any affidavit (no more than 4 pages in length);
  - (c) written submissions (no more than 4 pages in length) outlining:
    - (i) the nature of the case;
    - (ii) the questions involved;
    - (iii) the reasons why leave should be given.
  
5. Within 14 days of being served with the application for leave to appeal from an interlocutory order, the respondent must file and serve a stamped copy of:
  - (a) any affidavit (no more than 4 pages in length), if the respondent wants to present evidence;
  - (b) any written submissions (no more than 4 pages in length), if the respondent wants to make submissions.

## **Leave to appeal out of time from final judgments** (Div 5.4.3 *Court Procedures Rules 2006*)

6. The application for leave to appeal out of time must be accompanied by the following supporting material:
  - (a) the draft notice of appeal, labelled “DRAFT”;
  - (b) an affidavit (no more than 5 pages in length) outlining:
    - (i) the reasons for the delay;
    - (ii) any other evidence;
  - (c) written submissions (no more than 4 pages in length) outlining:
    - (i) the nature of the case;
    - (ii) the questions involved;
    - (iii) the reasons why leave should be given.
  
7. Within 14 days of being served with the application for leave to appeal out of time, the respondent must file and serve a stamped copy of:
  - (a) any affidavit (no more than 4 pages in length), if the respondent wants to present evidence;
  - (b) any written submissions (no more than 4 pages in length), if the respondent wants to make submissions.

## **Appeals to the Court of Appeal** (Div 5.4.5 *Court Procedures Rules 2006*)

### **Filing of documents before settlement of appeal papers**

#### ***Draft index to appeal papers***

8. Not later than 5 days before the date set for settling the appeal papers, the appellant must prepare and file a draft index of the appeal papers that are to be included in Appeal Folder A [“draft index”] (see paragraph [23]).
  
9. The appellant must serve a copy of the draft index on each respondent not later than 5 days before the date set for settling the appeal papers.

### ***Transcript of proceedings***

10. Not later than 5 days before the date set for settling the appeal papers, the appellant must file a complete digital version of the transcript of the proceedings which are the subject of the appeal (see paragraph [3]).
11. The appellant must serve a complete digital version of the transcript on each respondent not later than 5 days before the date set for settling the appeal papers.
12. Before filing and serving the transcript, the appellant must, subject to paragraph [13]:
  - (a) correct any errors in it;
  - (b) give a list of the corrections to each respondent.
13. If the parties disagree on the accuracy of any part of the transcript, or cannot agree on a correction:
  - (a) any correction not agreed to should not be made to the transcript;
  - (b) the disagreement must be submitted to the judicial officer who gave the order appealed from, or to the Registrar, for directions, which may include a direction as to the corrections to be made to the transcript and the refiling of the transcript.

### **Preparation and presentation of appeal papers**

14. The items comprising the appeal papers must be contained in 3 folders. The folders are to be denoted:
  - (a) Appeal Folder A – **Key Documents**;
  - (b) Appeal Folder B – **Submissions and Referenced Material**;
  - (c) Appeal Folder C – **Authorities**.
15. The folders must be high quality, 2-ringed, A4 binders.
16. The binders must be white in colour, except as follows:

- (a) the front exterior and spine of Appeal Folder B must be blue;
  - (b) the front exterior and spine of Appeal Folder C must be yellow.
17. The front exterior of Appeal Folders A, B and C must comprise a title page that gives:
- (a) the title and file number of the proceedings;
  - (b) the name of each party (and the party's solicitor, if any);
  - (c) each party's address for service, including email address.
18. Each item in the folder must be:
- (a) listed on a contents page at the beginning of the folder;
  - (b) allocated a sequential number that must be visible when the folder is opened, using a tab or sticker that protrudes from between the pages.
19. Each item in the folder must be copied on both sides of the page, and each new item must commence on a new page.
20. Each and every page in each item must be numbered in such a way as to make them readily identifiable.
21. The Registrar must be satisfied as to the presentation of the folders and their contents.
22. Unless otherwise directed by the Registrar, parties to an appeal are to file and serve the Appeal Folders and their contents in hard copy.

## **Content of Appeal Folders**

### ***Appeal Folder A – Key Documents***

23. Appeal Folder A is to contain, arranged as listed (and applicable), the following:
- (a) the contents page (see paragraph [18]);
  - (b) the notice of appeal or, if amended, the amended notice of appeal;
  - (c) any notice of cross-appeal or notice of contention;

- (d) any interlocutory orders made by the Court of Appeal, including any order for leave to appeal;
- (e) the formal order(s), the subject of the appeal;
- (f) the reasons for the order appealed from, certified by the judicial officer's associate;
- (g) pleadings, including particulars, as amended (civil matters);
- (h) indictment and case statement (or agreed statement of facts on sentence) (criminal matters);
- (i) an **INDEX** (see paragraph [24]), agreed between the parties ("**agreed index**"), listing all:
  - (i) exhibits;
  - (ii) affidavits and annexures;
  - (iii) the transcript of proceedings, referencing the hearing dates and witnesses;

in the proceedings, the subject of the appeal. All items must be listed, regardless of their relevance to the matters raised on appeal;

- (j) a certificate, signed by the parties or their solicitors, stating that the papers contained in Appeal Folder A have been examined and are correct (see *approved form 5.14 – Court of Appeal – certificate of examination of appeal papers – AF2015-58*).

24. The items listed in the agreed index are not to be reproduced with Appeal Folder A. It is an index only.

### ***Appeal Folder B – Submissions and Referenced Material***

25. Each party to the appeal must prepare written submissions in accordance with paragraphs [26], [27] and [28].
26. A party's written submissions must state as briefly as possible:
- (a) the issues in the appeal;
  - (b) an outline of the argument expected to be made on each issue, mentioning the steps in the argument and referring to any legislation, authority or finding of fact to be relied on for each step;
  - (c) if there is to be a challenge to any of the court's findings of fact:

- (i) the claimed error (including any failure to make a finding of fact);
  - (ii) the reasons why the party considers the finding was an error;
  - (iii) the finding that the party considers should have been made.
27. Appeal Folder B must contain one copy of each of the following:
- (a) the contents page (see paragraph [18]);
  - (b) the written submissions of the appellant, respondent and appellant in reply;
  - (c) an agreed chronology of the facts;
  - (d) extracts only from those items listed in the agreed index (see paragraph [23(i)]) to which the parties refer in their written submissions (“**referenced material**”). The referenced material may include so much of the document as is required to make sense of the document and the submissions.
28. If the parties disagree on the chronology of the facts, Appeal Folder B must include the appellant’s chronology of the facts, and the respondent’s chronology of the facts highlighting where the respondent’s chronology differs from the appellant’s chronology.

**Appeal Folder C – Authorities**

29. Each party to the appeal must prepare a list and copies of the legislation, authorities and texts in accordance with paragraph [30].
30. Appeal Folder C must contain one copy of each of the following:
- (a) the contents page (see paragraph [18]);
  - (b) a list of the legislation to which the parties refer in their written submissions, identified by title, year, jurisdiction and relevant provision (“**list – legislation**”);
  - (c) subject to paragraph [30(d)], a copy of each provision of the legislation to which the parties refer in their written submissions (“**legislation**”);
  - (d) if the provision of the legislation is contained in one of the following:
    - (i) *Supreme Court Act 1933* (ACT);
    - (ii) *Magistrates Court Act 1930* (ACT);
    - (iii) *Evidence Act 2011* (ACT);

- (iv) *Court Procedures Act 2004* (ACT);
- (v) *Court Procedures Rules 2006* (ACT);

this is to be identified in the *list-legislation*. The relevant provisions of the legislation are also to be noted in the *list-legislation*. They are not to be reproduced;

- (e) a list of the authorities to which the parties refer in their written submissions, identified by title, citation and relevant paragraph/s (or page/s) ("**list – authorities**");
- (f) if the authority is not contained in any "bundle of common authorities (criminal appeals)" approved by the Court, a copy of the head note to each authority and those paragraph/s (or page/s) to which the parties refer in their written submissions, and any other parts that are necessary to understand the submissions ("**authorities**");
- (g) if the authority is contained in the "bundle of common authorities (criminal appeals)", this is to be identified in the *list-authorities*. The relevant paragraph/s (or page/s) of the authority are also to be noted in the *list-authorities*. They are not to be reproduced;
- (h) a list of the texts to which the parties refer in their written submissions, identified by title, edition and relevant paragraph/s (or page/s) ("**list - texts**");
- (i) a copy of the title page of each text and those paragraph/s (or page/s) to which the parties refer in their written submissions, and any other parts that are necessary to understand the submissions ("**texts**").

## **Timetable for filing and service of appeal folders**

### ***Appeal Folder A – Key Documents***

- 31. The appellant must file and serve Appeal Folder A on each other party to the appeal by the date as directed by the Registrar.

### ***Appeal Folder B – Submissions and Referenced Material***

- 32. The appellant must serve on each other party to the appeal:
  - (a) the written submissions of the appellant;
  - (b) the appellant's chronology of the facts;
  - (c) the appellant's referenced material in relation to the appellant's written submissions (see paragraph [27(d)]);

not later than **42 days (6 weeks)** before the date set down for the hearing of the appeal.

33. The respondent must serve on each other party to the appeal:
- (a) the written submissions of the respondent;
  - (b) an agreement to the appellant's chronology of the facts, or if unable to agree, the respondent's chronology of the facts, highlighting where the respondent's chronology differs from the appellant's chronology (see paragraph [28]);
  - (c) the respondent's referenced material in relation to the respondent's written submissions (see paragraph [27(d)]);

not later than **28 days (4 weeks)** before the date set down for the hearing of the appeal.

34. The appellant must serve on each other party to the appeal:
- (a) any written submissions in reply;
  - (b) the appellant's referenced material in relation to any written submissions in reply (see paragraph [27(d)]);

not later than **21 days (3 weeks)** before the date set down for the hearing of the appeal.

35. A party is not to reproduce and serve with their written submissions any referenced material previously served by another party with their written submissions.
36. The appellant must file, and serve on each other party to the appeal, the complete Appeal Folder B (see paragraph [27]) not later than **14 days (2 weeks)** before the date set down for the hearing of the appeal.

### ***Appeal Folder C – Authorities***

37. The appellant must serve on each other party to the appeal, a list and copies of the legislation, authorities and texts relied upon by the appellant and referred to in the appellant's written submissions, prepared in accordance with paragraph [30], not later than **42 days (6 weeks)** before the date set down for the hearing of the appeal.
38. The respondent must serve on each other party to the appeal, a list and copies of the legislation, authorities and texts relied upon by the respondent and referred to in

the respondent's written submissions, prepared in accordance with paragraph [30], not later than **28 days (4 weeks)** before the date set down for the hearing of the appeal.

39. The appellant must serve on each other party to the appeal, a list and copies of the legislation, authorities and texts relied upon by the appellant and referred to in the appellant's written submissions in reply, prepared in accordance with paragraph [30], not later than **21 days (3 weeks)** before the date set down for the hearing of the appeal.
40. The appellant must file, and serve on each other party to the appeal, the complete Appeal Folder C not later than **14 days (2 weeks)** before the date set down for the hearing of the appeal.

### **Number of copies of appeal folders**

41. The appellant must file 4 copies of each complete appeal folder, or such other number as the Registrar directs, with the Registry for use by the Court.
42. The appellant must file an additional 2 copies for each other party to the appeal, of each complete appeal folder, or such other number as the Registrar directs, with the Registry for stamping, and service by the appellant.

### **Non compliance and costs**

43. The parties must strictly comply with any directions made by the Court.
44. A failure by one party to comply with the Court's directions will not be considered as an adequate excuse for any failure to comply by another party.
45. In the event of a party being unable to comply with directions of the Court, the party should, prior to defaulting, arrange to have the matter relisted.

46. In the event that a party has failed to take a step required by any directions in the time required, and has not made a prior application for amendment of the directions, the other party must arrange to have the matter listed no later than **one (1) day** after the time specified for the taking of the step.
47. A matter may be relisted by sending an email to the Registrar at [SCDR@courts.act.gov.au](mailto:SCDR@courts.act.gov.au) and copying in each other party to the appeal. The email should also state:
- (a) whether the matter is sought to be relisted in accordance with paragraph [45] or paragraph [46];
  - (b) the name and file number of the matter;
  - (c) the direction that has not been complied with.
48. Without limiting the range of orders that the Court might make, a party that has failed to comply with the directions of the Court may be subject to an adverse costs order. In appropriate cases, the Court may consider making costs orders against the legal practitioner for the defaulting party. In exceptional cases, the Court may vacate the appeal hearing.
49. A party will generally not be entitled to any costs relating to the inclusion of unnecessary items in the appeal folders and will generally be subject to an adverse costs order of the costs incurred by any other party to the appeal that result from the inclusion of the material.

By direction of the Judges

Annie Glover

Registrar

13 December 2016