

# **COURT OF APPEAL: DIRECTIONS HEARINGS** **CONDUCTED BY THE REGISTRAR OR AN** **ASSOCIATE JUDGE**

## **Explanatory note**

- 1. There are two sets of directions, depending on whether the appeal book is settled and filed prior to submissions (Standard Directions I: Appeal Book before Submissions) or after (Standard Directions II: Submissions before Appeal Book). Standard Directions II will ordinarily be used in large appeals, with a view to limiting the appeal book to only those documents strictly necessary for the determination of the appeal. Where this approach is taken, directions are made at the initial directions hearing for submissions and a revised note of proposed contents of the appeal book to reflect the submissions (Standard Directions II A) and the appeal is adjourned to a later directions hearing to settle the contents of the appeal book and make directions for hearing (Standard Directions IIB).**
- 2. The Standard Directions implement the intention of Practice Statement C.A. No 1 of 2006.**
- 3. Prepare the proposed orders (agreed if possible) drawn from Standard Directions I or II as appropriate leaving out the instruction boxes and headings and any unnecessary directions.**
- 4. Please email a copy of proposed orders to the Court of Appeal Registry [coaregistry@supremecourt.vic.gov.au](mailto:coaregistry@supremecourt.vic.gov.au) no later than 12 noon on the last working day prior to the directions hearing.**
- 5. Not all orders in the Standard Directions may be appropriate in a particular appeal and the sequence of orders may vary. For example, mediation may occur after documentation (appeal book, summary and submissions) not before as in these orders; the summary may be ordered after the submissions rather than before if appropriate; the directions hearing may need to be adjourned with limited directions.**
- 6. If expedition is sought, an affidavit filed and served in advance of the hearing is ordinarily required and the application should be made at the commencement of the directions hearing.**
- 7. Please note the following in relation to the preparation of the note of proposed contents of the appeal book:**
  - (1) The contents must be limited to evidence admitted at trial. Any fresh evidence must be the subject of an application for leave to rely on that evidence, commenced by summons and supported by an affidavit which addresses the requirements for the admission of fresh evidence. Consider the appropriate stage for the determination of such an application- can it be made returnable at the hearing of the appeal, or will the outcome of the application so determine the course of the appeal that it must be determined at an early stage?**

- (2) The contents must be organised as required by the Registrar's Notes on the Preparation of Appeal Books (these can be found in *Civil Procedure: Victoria* and on the website) unless there is good reason to the contrary. In particular note the following:
- Tabs as per the Notes are required (this requires amongst other things the reasons and order to be in separate tabs).
  - Each item must be numbered for ease of reference.
  - Transcript and Reasons for Judgment are not to be repaginated.
- (3) Only essential material should be included. In particular:
- Under Tab A (process and pleadings), the last versions of pleadings only should be included (unless there is good reason to the contrary) and no purely procedural or uninformative documents (e.g. notice of appearance, notice to admit, requests for further and better particulars and answers, directions) unless essential.
  - Under transcript, no written or oral submissions should be included unless there is good reason, which will ordinarily only be if there is a ground of appeal which requires them (e.g. the trial judge misunderstood the case as put).
  - Also in transcript, the evidence must be identified by witness and stage (examination, cross-examination, re-examination).
  - Under exhibits, all documents by the same author e.g. medical reports should be grouped together in date order, irrespective of who tendered them, unless there is a compelling reason to the contrary. This form of organisation is more user friendly than grouping the exhibits by court books at trial. It is not usually necessary to know who tendered a document, and the court books often contain duplication.
  - Also in relation to exhibits, tax returns should be summarised, as should other repetitive or uninformative documents e.g. multiple certificates of capacity, unless there is compelling reason for the individual documents to be included.
  - The appeal tabs should be limited to the last amended notice of appeal, any notice of contention and interlocutory orders of one or more Judges of Appeal (e.g. leave to appeal, security for costs, stay) only, unless there is good reason to the contrary. So, for example, the documents leading to an interlocutory order and previous directions are generally not required.

Judicial Registrar Pedley  
Registrar of the Court of Appeal  
26 September 2011