

Court of Appeal

REGISTRAR'S NOTE ON THE PREPARATION OF APPLICATION BOOKS 30 September 2019

Introduction

This note is published under r 64.24 of the *Supreme Court (General Civil Procedure) Rules* 2015 with the approval of the President of the Court of Appeal.

In this note:

- **applicant** includes appellant;
- **leave application** includes appeal;
- **leave application book** includes appeal book; and
- **Rule** refers to the *Supreme Court (General Civil Procedure) Rules 2015.*

This note should be read with the following in mind:

- application books should be prepared as economically as possible and must <u>not</u> contain material that is unnecessary for the determination of the application to which it relates;
- if unnecessary or illegible documents are included in the application book, the costs of that inclusion and its rectification will be expected to fall on the practitioner or party responsible; and
- the contents of a leave application book must be limited to evidence admitted at trial, and must contain all such evidence upon which any party intends to rely. Any fresh evidence must be the subject of an application for leave to rely on that evidence.

Index and outline of process

1. When to file a draft index

- (a) An application for leave to appeal must be accompanied by a draft leave application book index, and a written case in response must be accompanied by a marked up version of that index showing any proposed changes.¹
- (b) An application other than for leave to appeal must be accompanied by a draft application book index, and a notice of opposition in response must be accompanied by a marked up version of that index showing any proposed changes.²

2. Format of index and documents to be included

- (a) Regardless of the type of application to which the book relates, the index must be structured as follows:
 - (i) it must contain all the sections identified in the first column of the table in Annexure 1, and in the same order as they appear in that table;
 - (ii) the name of each section must be the same as it appears in Annexure 1, however sub-headings can be included within a section where appropriate;
 - (iii) guidance as to what documents should be included in each section is contained in the second column of the table in Annexure 1; and
 - (iv) where there are no documents in a particular section, state 'Not applicable' in the document description column of the index.
- (b) The index must:
 - (i) list each document separately, and number each document consecutively;
 - (ii) contain a description of each document, giving its date and the page or pages of the book at which it appears;
 - (iii) in the case of exhibits to an affidavit, separately list and describe each exhibit that is to be included;.

¹ Practice Note SC CA 3 s 6.4; Registrar's Note on the Preparation of a Written Case [9].

² Practice Note SC CA 3 ss 13.3, 13.5.

- (iv) in the case of lower court/tribunal exhibits, also give the exhibit mark (eg. Exhibit A, Exhibit P1) and the page of the transcript of oral evidence at which the exhibit was so marked; and
- (v) if the application book comprises more than one volume, identify where each volume begins with appropriate headings (eg. Volume 1, Volume 2 etc.).
- (c) Documents such as interrogatories and answers, affidavits of documents and the lower court book must only be included to the extent they were admitted into evidence and are relevant to the application in the Court of Appeal.
- (d) In relation to transcript:
 - (i) it must only be included to the extent it is relevant to the application in the Court of Appeal;
 - (ii) the precise page(s) included must be stated in the index (noting that transcript is not repaginated; see 13(a) below);
 - (iii) consideration should be given to whether or not it is appropriate to separate it in the manner shown in the sample index in Annexure 2, whether it should be included as a single item, or whether it should be separated by date only; and
 - (iv) each page of transcript must only be included once, and must not be referred to in multiple items of the index.
- (e) To the extent that the lower court book (or tribunal book, if applicable) is included, an index to the lower court book should also be included. If some pages of the lower court book are omitted from the application book, this should be indicated in the lower court book index. If documents formerly included in the lower court book were marked as separate exhibits, they should be included in the application book according to their exhibit marks.
- (f) If in the court/tribunal below a document was made an exhibit more than once (whether to an affidavit or otherwise), it may be included in the index in all appropriate places, but should be reproduced only once in the application book. Each entry for the document in the index should clearly identify where it is reproduced.
- (g) A sample format of an index is set out in Annexure 2.

3. Registrar to settle the contents of an application book

(a) Parties are expected to seek to agree upon the application book index. However, the Registrar will settle the contents of an application book.

- (b) While the Registrar will consider each party's draft index, and the extent to which they are in agreement, the Registrar may give such directions as they consider appropriate when settling the contents of an application book. This can include directions that:
 - (i) particular documents not be included;
 - (ii) particular documents be included in the index but not reproduced in the application book (where this occurs, 'Not reproduced' should be included at the appropriate item in the index); and
 - (iii) the location of particular documents be rearranged.

4. Hard copy and electronic copy books

- (a) The application book must be prepared in accordance with the settled index. In most cases the Court will require both hard copies and an electronic copy of the application book to be prepared.
- (b) A hard copy book is to be filed by delivering it to the Court of Appeal registry. See 10 to 14 below for further requirements regarding the hard copy application book.
- (c) An electronic copy of an application book must be contained on a USB flash drive which is to be filed by delivering it to the Court of Appeal registry. It should not be submitted for filing on RedCrest. See 15 to 19 below for further requirements regarding the electronic copy application book.

5. Time for filing an application book

- (a) Application for leave to appeal
 - (i) In most cases the Registrar will make directions which include a timetable for the preparation, filing and service of a leave application book.
 - (ii) Typically, a date is set for the applicant to file and serve one copy of the leave application book, that copy is assessed for compliance by the registry who notify the applicant of any corrections, and a date is set for the applicant to file and serve final copies of the leave application book (corrected, if required).
 - (iii) Where the Registrar does not set a timetable, the timetable in ss 14.4 and 14.5 of Practice Note SC CA 3 applies.
- (b) Application other than for leave to appeal
 - (i) Where an application book is required to be prepared for an application other than for leave to appeal, the Registrar will make

such directions as they consider appropriate regarding the preparation, filing and service of the book.

(ii) Where an application other than for leave to appeal is to be heard at the same time as an application for leave to appeal, documents relating to all applications should be included in the one application book unless otherwise directed.

6. Deemed abandonment and extension of time

- (a) Pursuant to Rule 64.45(2), an application for leave to appeal will be taken to be abandoned if an applicant does not file or serve a leave application book within the time fixed or allowed by the Registrar.
- (b) It is recognised that occasionally the preparation of the leave application book will take longer than expected. Parties are advised that Rule 64.35(2) empowers the Registrar to extend the time to file or serve the book. To avoid the operation of Rule 64.45(2), an applicant's request for an extension must be made:
 - (i) <u>in writing</u>, copied to the respondent(s); and
 - (ii) well <u>before</u> the due date for filing and service of the leave application book.

7. Certification of corrections to leave application book

(a) Where corrections to a leave application book are required, the filing party must, at the same time as filing the corrected copies, file on RedCrest a written certification that all required corrections have been made to the copies filed and served. That certification must be in accordance with the form at Annexure 3, and must be signed by either the party's lawyer or the party personally.

8. Setting down fee and form

- (a) At the same time as filing the final copies of a leave application book, the applicant must:
 - (i) file on RedCrest a setting down form, in accordance with the form at Annexure 4; and
 - (ii) pay the applicable setting down fee.
- (b) Failure to file the setting down form and pay the setting down fee may result in the application not being listed for a hearing, or not heard.

9. Departure from this note

(a) In particular cases, the Registrar may authorise a departure from the requirements of this note and may, if warranted, extend or abridge the time for compliance (see Rule 64.35).

Hard copy application book

10. Reproduction

- (a) An application book may be either printed or reproduced by photocopying.
- (b) The book must comprise uniform pages on which the text is clear, sharp, legible and permanent.

11. Volumes, cover and spine

- (a) Every volume must have a cover page, a spine label and contain a copy of the index. See Annexure 5 for a sample cover and spine.
- (b) If there is more than one volume, the volume number must be stated on the cover and spine.
- (c) The cover page must have:
 - (i) the full court heading, identifying each party by the correct designation (eg. Applicant, First respondent, Second respondent, Cross-applicant, Cross-respondent);
 - (ii) the name of the lower court/tribunal and the number of the proceeding in the lower court/tribunal; and
 - (iii) the name, address, telephone number, facsimile number, document exchange number and code reference of all solicitors' firms, and the name and email address of the lawyer in each firm who has responsibility for the matter.
- (d) If space does not permit the inclusion of all the information required in (c) above, the cover may contain the title to the application in abbreviated form, and other information may be set out on a page at the front of each folder.
- (e) Each volume must be filed loose leaf in a lever arch folder unless otherwise directed.

12. Pages

(a) All pages must be of international paper size A4 and be capable of receiving writing in ink.

- (b) Individual documents must be printed double sided. Each document must be separated; a document must not commence on the rear side of the previous document.
- (c) Each document included in the leave application book must be preceded by a page containing a short description of the document (including exhibit mark, if applicable) and its date. However, this is not required for a document prepared by a party and filed in either the Court of Appeal or lower court/tribunal proceeding if the description and date are apparent on its first page.
- (d) If pages of transcript are omitted, a single page which identifies those pages should be inserted at the point of omission.
- (e) Where a document is listed in the index more than once, it must be reproduced in the application book only once and, where later (or earlier) referred to, a single page should be included in the book in its place. The inserted page must identify the document and the page or pages of the book where it is reproduced.

13. Pagination

- (a) Save for the index, reasons for judgment and transcript (which shall not be repaginated), all pages of the application book must be numbered consecutively, section by section, and include the letter corresponding with the section (eg. A1-A14, B15-B35 etc.). The numbering must appear near the edge of the page, furthest from the spine.
- (b) Application book pagination should not obscure the text of documents (including a document's original page numbers and lower court book page numbers).

14. Dividers

- (a) A tab divider must be included at the start of each section, with the name of the section appearing on the divider. However, no tab divider is required for a section that does not contain any documents.
- (b) A numbered sub-divider must be included before each document, including each exhibit to an affidavit.

Electronic copy application book

15. Contents

(a) The electronic copy of the application book must comprise the index and all documents included in the hard copy, including the same pagination.

(b) Any pages inserted in the hard copy, such as those referred to in 12(c), 12(d) and 12(e) above, must also be included in the electronic copy.

16. File format

- (a) The index and each document must be in separate electronic files.
- (b) Unless otherwise directed:
 - (i) the index must be in Word format; and
 - (ii) all other files must be in searchable PDF format and allow for text to be copied and pasted. Annexure 6 contains a guide on steps that can be taken to ensure PDF files meet those requirements (particularly where the PDF file is a scan of a document).
- (c) If it is intended to include any files in a different format, such as Excel, that should be brought to the attention of the registry when filing a draft application book index.

17. File names

- (a) The electronic files must be named so that:
 - (i) for all files the name includes a <u>very brief</u> description of the document; and
 - (ii) other than the index, the names of all files commence with the number of the document according to the index, and in the format specified in the following table:

Total no. documents in book	Format
Up to 99	Commence with: "01", "02", "03" etc. Example: "01. App for leave to appeal"
More than 99 and up to 999	Commence with: "001", "002", "003" etc. Example: "001. App for leave to appeal"

18. File folder structure

(a) The electronic files must be organised in the folder structure set out in Annexure 7. That structure mirrors the structure of the hard copy application book. (b) Please note that the names of folders must be <u>identical</u> to those set out in Annexure 7, including full stops and spaces. This is to ensure the electronic application book can be uploaded to the Court's network. For parties' assistance, the folder structure can be downloaded via <u>this link</u> to the Supreme Court website and via the link in Annexure 7.

19. Hyperlinked index

- (a) The index must be hyperlinked to each document. Annexure 8 contains guidance on how to create hyperlinks.
- (b) For an example of how hyperlinks should appear in the index, Annexure 9 contains the first page of a sample hyperlinked index.
- (c) The party preparing hyperlinks must check each one to confirm they are all correct.

AMENDMENT HISTORY

30 September 2019: This Registrar's Note was reissued on 30 September 2019 and replaced the version issued in March 2017.

March 2017: This Registrar's Note was first issued in March 2017.

Ian Irving Judicial Registrar 30 September 2019

Application book structure and documents included in each section

Section	Documents included in section, as applicable to the hearing for which the book is to be used
A. Appeal documents	 Application for leave to appeal / notice of appeal Cross-application for leave to appeal / notice of cross-appeal Notice of contention Notice of objection to competency Written cases Notice of intention not to respond or contest the application for leave/appeal Notice under s 35 of the <i>Charter of Human Rights and Responsibilities Act 2006</i> (Vic) Notice under s 78B of the <i>Judiciary Act 1903</i> (Cth) Agreed summary
B. Other applications	 Application other than for leave to appeal Notice of opposition Submissions in support / response Affidavit in support / response (including exhibits to an affidavit) Notice of intention not to respond or contest the application
C. Lower court reasons and orders	 Judgment / reasons under appeal Orders under appeal Any other relevant reasons or orders of the court or tribunal from which the appeal is brought

Section	Documents included in section, as applicable to the hearing for which the book is to be used	
D. Significant	Key documents in the dispute between the parties	
documents	These should be few in number and are likely to be referred to in the judgment / reasons under appeal, for example:	
	• an offer of compromise where the appeal concerns whether leave ought to have been given for the offer to be withdrawn	
	• a contract where the appeal concerns interpretation of the contract	
E. Lower court process and pleadings	Originating process (including schedule of parties) and pleadings in the court or tribunal from which the appeal is brought, for example:	
	Writ or originating motion	
	Statement of claim	
	• Defence	
	• Request for further and better particulars and any response to such request (if relevant)	
	Include only the final version of pleadings unless earlier versions are relevant to a ground of appeal	
F. Lower court affidavits	Affidavit evidence before the court or tribunal under appeal, including relevant exhibits to affidavits	
	Note: An affidavit and each exhibit to it that is included must be itemised separately in the index	
G. Transcript	Agreed list of transcript references	
	• Relevant parts of transcript or notes of oral evidence	
H. Court book below	Relevant portions of the court book used in the court or tribunal under appeal	
I. Lower court exhibits	Exhibits tendered in the court or tribunal under appeal	
J. Court of Appeal reasons and orders	• Any relevant earlier reasons of the Court of Appeal in the same proceeding	
	• Any relevant earlier orders of the Court of Appeal in the same proceeding (generally timetabling orders will not be relevant)	

Sample application book index

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE IN THE COURT OF APPEAL CIVIL DIVISION

BETWEEN

[APPLICANT'S NAME]

and

[RESPONDENT'S NAME]

APPLICATION BOOK INDEX

Attention: Email:

Date of document:	Solicitor's code:
Filed on behalf of:	DX:
Party's or lawyer's name and address:	Tel:
	Fax:
	Ref:

NO. DESCRIPTION DATE PAGE Α. **APPEAL DOCUMENTS** Application for leave to appeal A1 – A# 1. Application for leave to appeal A# - A# 2. Applicant's written case 3. Respondent's written case A# - A#Notice of contention 4. Notice of contention A# - A# 5. A# - A# Respondent's written case (notice of contention)

S EAPCI 20xx xxxx

Respondent

Applicant

NO.	DESCRIPTION	DATE	PAGE
6.	Applicant's written case (notice of contention)		A# - A#
	Cross-application for leave to appeal		
7.	Cross-application for leave to appeal		A# - A#
8.	Cross-applicant's written case		A# - A#
9.	Cross-respondent's written case		A# - A#
	Summary		
10.	Agreed summary		A# - A#
В.	OTHER APPLICATIONS		
	[eg. Leave to adduce further evidence]		
11.	Application other than for leave to appeal		B# – B#
12.	Applicant's submissions		B# – B#
13.	Affidavit of [name]		B# – B#
14.	Exhibit AB1 – [Description]		B# – B#
15.	Notice of opposition		B# – B#
16.	Respondent's submissions		B# – B#
17.	Affidavit of [name]		B# – B#
18.	Exhibit XY1 – [Description]		B# – B#
C.	LOWER COURT REASONS AND ORDERS		
19.	AAA v BBB [2019] VSC 999 ([name] J)		
20.	Order ([name] J)		C# - C#
D.	SIGNIFICANT DOCUMENTS		
21.	[Description]		D# - D#
22.	[Description]		D# - D#

NO.	DESCRIPTION	DATE	PAGE
Е.	LOWER COURT PROCESS AND PLEADINGS		
23.	Writ and statement of claim		E# – E#
24.	Defence		E# – E#
25.	Reply		E# – E#
F.	LOWER COURT AFFIDAVITS		
26.	Affidavit of [name]		F# – F#
27.	Exhibit CD1 – [Description]		F# – F#
28.	Exhibit CD2 - [Description]		F# – F#
G.	TRANSCRIPT		
29.	Agreed list of transcript references		G# - G#
	[Witness' full name]		
30.	Examination in chief		T# – T#
31.	Cross-examination		T# – T#
32.	Re-examination		T# – T#
	[Witness' full name]		
33.	Examination in chief		T# – T#
34.	Cross-examination		T# – T#
35.	Re-examination		T# – T#
H.	COURT BOOK BELOW		
36.	Court book index		H# - H#
37.	[Description] (CB##)		H# - H#
38.	[Description] (CB##)		H# - H#

NO.	DESCRIPTION	DATE	PAGE
I.	LOWER COURT EXHIBITS		
39.	Exhibit [P1] – [Description] Tendered at [transcript reference]		I# – I#
40.	Exhibit [D6] – [Description] Tendered at [transcript reference]		I# – I#
J.	COURT OF APPEAL REASONS AND ORDERS		
41.	BBB v AAA [2019] VSCA 666 ([name] JA)		
42.	Order ([name] JA)		J# – J#

Certification of corrections to application book

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE IN THE COURT OF APPEAL CIVIL DIVISION

S EAPCI 20xx xxxx

Applicant

BETWEEN

[APPLICANT'S NAME]

and

[RESPONDENT'S NAME]

Respondent

CERTIFICATION OF CORRECTIONS TO APPLICATION BOOK

Date of document: Filed on behalf of: Party's or lawyer's name and address:	Solicitor's code: DX: Tel:
	Fax:
	Ref:
	Attention:
	Email:

I certify that the corrections to the application book identified by the Court of Appeal

registry have been made to all copies of the application book filed with the Court

and served on the other parties.

Date:

[Name]

[Signature of lawyer/self-represented party]

Setting down form

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE IN THE COURT OF APPEAL CIVIL DIVISION

BETWEEN

[APPLICANT'S NAME]

and

[RESPONDENT'S NAME]

SET DOWN FOR HEARING

Solicitor's code:
DX:
Tel:
Fax:
Ref:
Attention:
Email:

Set this application for leave to appeal/appeal down for hearing.

Date:

•••••

[Name] [Signature of lawyer/self-represented party]

Respondent

S EAPCI 20xx xxxx

Applicant

Hard copy application book - sample cover and spine

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE IN THE COURT OF APPEAL CIVIL DIVISION

BETWEEN

[APPLICANT'S NAME]

and

[RESPONDENT'S NAME]

S EAPCI 20xx xxxx

Applicant

Respondent

APPLICATION BOOK VOLUME

Lower court: [Eg. County Court of Victoria, CI-19-0001]

Date of document: Filed on behalf of:

Applicant's details

[Lawyer's name] [Lawyer's address]

Respondent's details

[Lawyer's name] [Lawyer's address] Solicitor's code: DX: Tel: Fax: Ref: Attention: Email:

Solicitor's code: DX: Tel: Fax: Ref: Attention: Email:

IN THE SUPREME COURT OF VICTORIA AT MELBORUNE IN THE COURT OF APPEAL CIVIL DIVISION	< Adjust width
S EAPCI 20xx xxxx	
BETWEEN	
[NAME OF APPLICANT] Applicant	
and	
[NAME OF RESPONDENT] Respondent	
APPLICATION BOOK	
VOLUME ##	
	AT MELBORUNE IN THE COURT OF APPEAL SEAPCI 20XX XXXX BETWEEN [NAME OF APPLICANT] and [NAME OF RESPONDENT] Respondent APPLICATION BOOK

Electronic application book – Ensuring PDF files are searchable and text can be copied

The guidance below applies to Adobe Acrobat X Pro. Please consult the instructions applicable to your software.

- Step 1 Open the document in Adobe Acrobat X Pro
- Step 2 Choose View in the top menu bar > Tools > Recognize Text > and select In This File – a Recognize Text box has now appeared OR

Choose **Tools** in the top right corner of the page > **Recognize Text** > **In This File**

Step 3 In the box that appears, select **All pages** (if there is only one page, you will only be able to select **Current page**) then click **OK**

Reco	ognize Text	×
Г	Pages	
	All pages	
	○ Current page	
	○ From page 1 to 10	
	Settings	
	Primary OCR Language: English (US) PDF Output Style: Searchable Image Downsample To: 600 dpi	
	Edit	
	OK Cancel]

Electronic application book – folder structure

A .zip file containing the folder structure, shown below, can be downloaded via <u>this</u> <u>link</u> to the Supreme Court website.

Ľ	Name \checkmark
	Index
	A. Appeal documents
	B. Other applications
	C. Lower court reasons and orders
	D. Significant documents
	E. Lower court process and pleadings
	F. Lower court affidavits
	G. Transcript
	H. Court book below
	I. Lower court exhibits
	J. Court of Appeal reasons and orders

Electronic application book – guidance on creating hyperlinks

The hyperlinked index to the electronic application book must be in Word format.

- Step 1 Open the index in Word the file must be located in the Index folder in accordance with the structure set out in Annexure 7
- Step 2 Select the text in the 'description' column that will be the text that displays as a hyperlink
- Step 3 On the **Insert** tab, click **Hyperlink** OR right click on the highlighted text and select **Hyperlink** from the menu this will open an **Insert Hyperlink** box
- Step 4 Under Link to, select Existing File or Web Page, then find the file in the Look in list or Current Folder list

Insert Hyperlin	?	×		
Link to:	o: Text to display:			
Existing File or Web Page	<u>L</u> ook in:	💶 USB Drive (E:)		
	C <u>u</u> rrent		B <u>o</u> okma	irk
Pl <u>a</u> ce in This Document	Folder		Tar <u>q</u> et Fra	ame
	<u>B</u> rowsed Pages			
Create <u>N</u> ew Document	Re <u>c</u> ent Files			
E- <u>m</u> ail Address	Addr <u>e</u> ss:			
		ØK	Car	ncel

- Step 5 Select the file and click OK the hyperlink has now been created, as indicated by the text you had highlighted now being blue and underlined
- Step 6 Repeat steps 2 to 5 until all hyperlinks have been created
- Step 7 Check that all hyperlinks in the PDF work and link to the correct documents

Electronic application book – appearance of hyperlinked index

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE IN THE COURT OF APPEAL CIVIL DIVISION

S EAPCI 2019 4321

BETWEEN

ABC PTY LTD (ACN 123 456 789)

Applicant

and

XYZ PTY LTD (ACN 987 654 321)

Respondent

APPLICATION BOOK INDEX

Date of Document: 1 December 2019	Solicitor's code: 00001
Filed on behalf of: Applicant	DX: 999 Melbourne
Party's or lawyer's name and address:	Tel: (03) 9000 0001
ABC Lawyers	Fax: (03) 9000 0002
123 Litigation Street	Ref: 1234
Melbourne Vic 3000	Attention: Patti Snyder
	Email: lawyer@lawfirm.com.au

NO.	DESCRIPTION	DATE	PAGE
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4.	Agreed summary	30 October 2019	A25 - A34
В.	OTHER APPLICATIONS		
5.	Application other than for leave to appeal	30 September 2019	B35 – B36
6.	Applicant's submissions	30 September 2019	B37 - B41