



## Court of Appeal

### REGISTRAR'S NOTE ON THE PREPARATION OF A WRITTEN CASE 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, unless the context otherwise requires:

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

#### When to file and purpose

1. A written case must be filed:
  - (a) at the same time as filing a leave application or notice of contention; and
  - (b) when responding to a leave application or notice of contention, if opposed.<sup>1</sup>
2. The purpose of the written case is to enable the Court and Registrar to quickly grasp the facts, issues and contentions in a case. This means that a written case must set out specific and concise submissions in relation to each proposed ground of appeal.

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<sup>1</sup> Rules 64.02, 64.03, 64.11, 64.30, 64.31, 64.32.

## **Format of written case**

3. A written case relating to a leave application must not exceed 10 A4 pages unless the Registrar otherwise permits.
4. A written case relating to a notice of contention must not exceed 5 A4 pages unless the Registrar otherwise permits.
5. All written cases must:
  - (a) be in legible and easily read type, with text in the body in 1.5 line spacing;
  - (b) have 3 cm margins;
  - (c) be filed in searchable PDF format;
  - (d) be signed by counsel or, if counsel is not retained, by the party's lawyer or, if the party is not legally represented, by the party personally; and
  - (e) contain the name of the person signing it, typed immediately below their signature.

## **Content of a written case**

6. Proposed grounds of appeal must:
  - (a) be numbered consecutively;
  - (b) where there are multiple contentions of the same error (eg. findings not supported by the evidence), be expressed as a single ground with sub-grounds for each instance contended for; and
  - (c) precisely identify each error or error of law alleged.
7. All parties' written cases must, under a heading for each ground of appeal (where appropriate, multiple grounds can be dealt with together):
  - (a) concisely outline each argument to be advanced in relation to the ground;
  - (b) include references to all authorities relied upon or sought to be distinguished;
  - (c) include precise references to all transcript relied upon; and
  - (d) clearly identify any document referred to.

## **Documents to accompany applicant's written case**

8. An applicant must, at the same time as filing and serving their written case, file and serve (together with any other required documents):

- (a) a list of authorities which complies with s 11 of Practice Note SC CA 3;
- (b) a draft application book index which complies with the Registrar's Note on the Preparation of Application Books; and
- (c) a draft summary for the Court of Appeal which complies with s 12 of Practice Note SC CA 3.

### **Documents to accompany respondent's written case**

9. A respondent must, at the same time as filing and serving their written case, file and serve:
- (a) a list of authorities which complies with s 11 of Practice Note SC CA 3; and
  - (b) a copy of the applicant's draft application book index which is marked up to clearly identify any amendments proposed by the respondent.
10. A respondent must also, at the same time as **servicing** their written case, notify the applicant of any proposed changes to the applicant's version of the draft summary for the Court of Appeal. The respondent is not required to inform the Court of those proposed changes unless directed to do so. It is expected that:
- (a) the parties will work co-operatively to agree on a summary so that the applicant can file it within 10 days of receiving the respondent's proposed changes (or such other time as specified by the Registrar); and
  - (b) the applicant will inform the Registrar the summary cannot be agreed only after the parties have made every effort to do so.

### **AMENDMENT HISTORY**

30 September 2019: This Note was reissued on 30 September 2019 and replaced the version issued in January 2017.

January 2017: This Note was first issued in January 2017.

**Ian Irving**  
**Judicial Registrar**  
**30 September 2019**

## ANNEXURE 1

### **Guideline for the Preparation of a Written Case in Support of a Civil Appeal or Application for Leave to Appeal Prepared by the Court of Appeal Registry**

The *Supreme Court (General Civil Procedure) Rules 2015* ('Rules'), Practice Note SC CA 3 ('Practice Note'), and Registrar's Note on the Preparation of a Written Case specify what must be included in a written case. If there is any disparity between this guideline and those materials, the latter are controlling.

What follows is designed to assist litigants and the profession in setting out an example of the way in which the requirements of the Rules, Practice Note and Registrar's Note might be complied with. This is illustrative only as the written case is not a prescribed form under the Rules.

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

S EAPCI 20xx xxxx

BETWEEN

[APPLICANT'S NAME]

Applicant

and

[RESPONDENT'S NAME]

Respondent

**WRITTEN CASE FOR THE [APPLICANT / RESPONDENT]**

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Date of document:

Solicitor's code:

Filed on behalf of:

DX:

Party's or lawyer's name and  
address:

Tel:

Fax:

Ref:

Attention:

Email:

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1. Please note that the written case must be accompanied by a list of authorities (as below) and a draft application book index.<sup>2</sup> The list of authorities and the draft application book index are not part of the written case but must be filed with it.
2. A written case relating to a leave application may not exceed 10 pages, and a written case relating to a notice of contention may not exceed 5 pages, unless leave is obtained from the Registrar.<sup>3</sup> All written cases must be in legible and easily read type, with text in the body in 1.5 line spacing, and have 3 cm margins.<sup>4</sup>

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<sup>2</sup> Practice Note SC CA 3 ss 6.4, 6.5, 9.3 ('Practice Note'); Registrar's Note on the Preparation of a Written Case [8], [9] ('Registrar's Note').

<sup>3</sup> Practice Note s 9.3; Registrar's Note [3], [4].

<sup>4</sup> Practice Note s 4.4; Registrar's Note [5].

3. Any clear and readable font may be used in the written case. For purposes of illustration, some acceptable fonts (in 12 point type for text in the body, and 10 point type in footnotes) are:
  - Times New Roman;
  - Book Antiqua;
  - Garamond;
  - Arial; and
  - Calibri.
4. Please note that written cases must be filed in searchable PDF format to allow for copying of parts of the document.<sup>5</sup>

## GROUNDINGS

**Ground 1 - Your written case will not comply, and so may not be accepted, unless it states and numbers each proposed ground of appeal consecutively.**<sup>6</sup>

5. Each argument to be advanced in support of a ground must be concisely outlined under a heading for that ground.<sup>7</sup>
6. The grounds must be prepared with sufficient precision for the Registrar and Court to clearly identify the issues and matters relied upon.<sup>8</sup> A ground must be particularised and must not be expressed in general terms. It is not sufficient to state: “the judgment is against the evidence and the weight of the evidence”. The ground must instead specifically identify the evidence and other matters relied upon.

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<sup>5</sup> Practice Note s 5.1; Registrar’s Note [5].

<sup>6</sup> Registrar’s Note [6], [7].

<sup>7</sup> Ibid [7].

<sup>8</sup> Practice Note s 1.3; Registrar’s Note [2].

7. For example, where a party intends to challenge an evidential finding, the written case must identify the error (including any failure to make a finding of fact); identify the finding that the party contends ought to have been made; state concisely why, in the party's submission, the finding, or failure to make a finding, is erroneous; and refer to the evidence to be relied upon in support of the argument. This may be best addressed by including a schedule to the written case. Such a schedule is to be included in the page limit of a written case.
8. The written case will not be compliant unless the ground contains reference to each authority relied upon or sought to be distinguished.<sup>9</sup>

**Ground 2 - Your written case will not comply, and so may not be accepted, unless:<sup>10</sup>**

9. Any claimed errors or errors of law in the decision below are identified precisely.
10. Precise transcript references are provided in relation to each ground.
11. A clear description is provided of any document that is referred to in the ground which allows it to be identified. Imprecise descriptions such as "the accountant's report" or "the note" are insufficient as the author's name and date of the document (or its exhibit number) should also be included.

Date:

.....  
[Signature of counsel / lawyer / party  
with their name typed below the signature]

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<sup>9</sup> Registrar's Note [7].

<sup>10</sup> See Registrar's Note [6], [7].

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

S EAPCI 20xx xxxx

BETWEEN

[APPLICANT'S NAME]

Applicant

and

[RESPONDENT'S NAME]

Respondent

**LIST OF AUTHORITIES**

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

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**Part A**

1. Cases (authorised version if exists) and legislation from which counsel intends to read should be listed in this part.

**Part B**

2. Cases (authorised version if exists) and legislation to which counsel intends to refer but not read should be listed in this part.

**Part C**

3. Textbooks and articles that a party considers will be of substantial assistance to the Court should be listed in this part.

Date:

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