

# Registrar's Note on the Preparation of a Written Case



## Introduction

This Note relates to the Written Case, a requirement of the regime for civil applications for leave to appeal and appeals commenced on or after 10 November 2014.

This Note is published under the *Supreme Court (General Civil Procedure) Rules 2005* (the 'Rules') with the approval of the President of the Court of Appeal and should be read with the following in mind:

1. An applicant for leave to appeal or an appellant ('applicant/appellant') must file a written case with an application/appeal, and a respondent must file a written case if contesting the leave to appeal application or appeal and must also file a written case to accompany an application for leave to cross-appeal or cross-appeal. A written case is also required for a notice of contention. A written case is not required for other applications to the Court.
2. The purpose of the written case is to enable the Court and Registrar to quickly grasp the facts, issues and contentions in a matter and should be prepared accordingly. This means that a written case must set out specific and concise submissions in support of each proposed ground of appeal.<sup>1</sup>
3. Unless the respondent does not intend to respond to or contest an application/appeal – and clearly indicates this by filing an appropriate notice – the respondent must file a written case in response to an applicant's/appellant's written case.<sup>2</sup>
4. Section 4 of Practice Note SC CA 3 sets out the other documents that are to be filed with the application/appeal and written case. All of the required documents must be filed as a package with the applicable filing fee. Failure to file any of the documents required by the Rules and the Practice Direction, or failure to comply with the requirements for those documents, will result in the documents not being accepted for filing and the requirement that they be re-filed as a package.
5. Parties and legal practitioners must also comply with their overarching obligations set out in the *Civil Procedure Act 2010* in preparing the relevant documents and in conducting litigation.

## Format of Written Case

6. A written case must not, unless the Registrar or Court otherwise directs in advance of filing, exceed 10 A4 single sided pages of legible and easily read type, 1.5 spaced, including footnotes of no less than 10 point type, and with margins of no less than 3 centimetres.

<sup>1</sup> See Rule 64.04 and s 9 of the Practice Note SC CA 3.

<sup>2</sup> See Rule 64.11 and s 9 of Practice Note SC CA 3.

7. A written case in support of a notice of contention must not, unless the Registrar or Court otherwise directs in advance of filing, exceed 5 A4 single sided pages of legible and easily read type, 1.5 spaced, including footnotes of legible and easily read type, and with margins of no less than 3 centimetres.
8. A written case that is filed electronically must be in Word and searchable PDF format.
9. A written case must be signed by counsel or, if counsel is not retained, by the applicant's/appellant's lawyer or, if the applicant/appellant is not legally represented, by the applicant/appellant personally.
10. The name and contact details, *including an email address* (unless the Registrar approves the omission of it in any particular case), of the person signing a written case must be typed in legible and easily read type immediately below his or her signature as shown in Annexure A.

### **Content of Written Case - Applications for Leave to Appeal and Appeal**

11. The written case in relation to an application for leave to appeal or appeal must :
  - a) Set out the proposed ground/s in respect of an appeal in accordance with the following requirements:
    - i) proposed ground/s must be consecutively numbered;
    - ii) multiple contentions of the same error, eg findings not supported by the evidence, should be expressed as a single proposed ground with sub-grounds for each instance contended for;
    - iii) as in the Sample Written Case, attached as Annexure A, each proposed ground should be accompanied by:
      - (a) a concise outline of each argument to be advanced in support of the proposed ground and a reference to each case law authority relied upon or sought to be distinguished;
      - (b) where an error or error of law in the decision below is contended this must be identified precisely;
      - (c) a precise transcript reference must be provided in relation to each proposed ground; and
      - (d) if a document is referred to in the proposed ground or grounds, a description must be provided which identifies the document clearly.
  - b) attach a List of Authorities divided into Parts A, B and C.
    - i) Part A containing case citations and legislation from which counsel intends to read.
    - ii) Part B containing case citations and legislation to which counsel intends to refer to but not read.
    - iii) Part C is to refer to textbooks and articles that the party considers are likely to be of substantial assistance to the Court.

- c) attach the following documents:
- i) a Draft Summary for the Court of no more than ten pages in accordance with s 13 of Practice Note SC CA 3;
  - iii) a Draft Leave Application Book Index or draft appeal book index, see Annexure 1 to the *Registrar's Note on the Preparation of Leave Application Books and Appeal Books (2017)*.

The documents required in paragraphs 11(b)-(c) do not count towards the 10 page limit specified in paragraph 6.

### **Respondent's Written Case**

12. A respondent's written case in response must address, point by point and in sequence, each proposed ground of appeal or ground advanced in the applicant's or appellant's written case (or revised written case). A respondent's written case must comply with paragraphs 11(a)-(b) above. Any notice of contention must also be filed at this time and must be accompanied by a written case, of no more than 5 pages, in support of the notice of contention.
13. A respondent must notify the applicant/appellant, at the time the respondent files and serves the written case in response, of any proposed changes to the Draft Summary that the applicant/appellant filed with their written case. As is set out in ss 14.2-14.3 of Practice Note SC CA 3, any proposed changes need not be notified to the Court at that time, unless directed to. It is expected that the parties will work co-operatively to agree on a summary with the requirement that the applicant/appellant file it within 10 days of receiving the respondent's proposed changes, or such other time as specified by the Registrar. The applicant/appellant is to advise the Registrar only if the Summary cannot be agreed and after the parties have made every effort to agree on the Summary.
14. A respondent's written case in response must attach a document entitled "Respondent's Position on Draft Leave Application Book", or "Respondent's Position on Draft Index to Appeal Book", which sets out whether the respondent agrees with the draft index prepared by the applicant/appellant. Where the respondent disagrees with the draft index, the respondent must:
- a) attach to the written case in response a marked up copy of the draft index clearly identifying any proposed amendments, and
  - b) attach a further document setting out the precise and specific reasons for the proposed amendments. General assertions of relevancy/irrelevancy are insufficient. The suggested amendments must be explained in detail and transcript references must be provided where relevant.

Neither of the documents required of the respondent in paragraphs 14(a)-(b) count towards the 10 page limit for a written case specified in paragraph 6.

### **Amendment of Written Case**

15. It is expected that it will be uncommon for an application/appeal and

accompanying written case to require amendment. An application for leave to appeal, notice of appeal and written case may not be amended without the permission of the Registrar or Court.

16. If an application/appeal is listed for hearing or in respect of an application for leave to appeal where the Court has decided the application will be determined without an oral hearing, amendment requires the leave of the Court. Prior to that time, the Registrar may grant leave or direct amendment.<sup>3</sup>

**Ian Irving**  
**Judicial Registrar**  
**January 2017**

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<sup>3</sup> See Rule 64.12.

## ANNEXURE A

### **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**

**2017**

*Practice Note SC CA 3 ('Practice Note'), the Registrar's Practice Note on the Preparation of a Written Case (2017) and the Supreme Court (General Civil Procedure) Rules 2005 ('Rules')* 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 only indicative and designed to assist litigants and the profession in setting out an example of the way in which the requirements of the Rules, Registrar's Note and Practice Direction 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  
IN THE COURT OF APPEAL

BETWEEN

[APPLICANT/APPELLANT'S NAME]

and

[RESPONDENT'S NAME]

[APPLICATION FOR LEAVE TO APPEAL AGAINST (IDENTIFY DECISION)]  
[CROSS-APPLICATION FOR LEAVE TO APPEAL]  
[APPEAL AGAINST (IDENTIFY DECISION)]  
[CROSS-APPEAL AGAINST (IDENTIFY DECISION)]  
[NOTICE OF CONTENTION]

**WRITTEN CASE FOR THE [APPLICANT/APPELLANT/RESPONDENT]<sup>4</sup>**

1. Please note the Written Case must attach a List of Authorities (as below) and a draft appeal or leave application book index for the Court of Appeal.<sup>5</sup> The List of Authorities and the draft appeal or leave application book index are not part of the Written Case but must be filed with the Written Case.
2. A Written Case may not exceed 10 pages unless leave is obtained from the Registrar in advance of submission.<sup>6</sup> All text in the body of the document should be in legible and easily read type,<sup>7</sup> with 1.5 spacing, 3 cm margins as used throughout this document, and footnotes should also be in legible and easily read type.

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<sup>4</sup> The headings in square brackets above need to be adjusted depending on the matter filed/party filing: pick the option that suits your case and delete the others.

<sup>5</sup> *Practice Note SC CA 3 s 6.4* ('Practice Note'); *Registrar's Note on the Preparation of a Written Case (2017)* [11] ('Registrar's Note').

<sup>6</sup> *Practice Note s 9.3*; *Registrar's Note* [6].

<sup>7</sup> *Registrar's Note* [6].

3. Any clear and readable font may be used in the Written Case. Without intending to express a preference and merely for purposes of illustration, it is noted that some of the most common fonts (in 12 point type) are:

- Times New Roman;
- Book Antiqua;
- Garamond;
- Arial; and
- Calibri.

4. Please note that written cases filed electronically are required to be filed in Word and searchable PDF format to allow for copying of parts of the document.<sup>8</sup>

## GROUNDINGS

*Ground 1 – Your Written Case will not comply, and so may not be accepted, unless it states and numbers each ground of appeal or proposed ground of appeal, in respect of a leave application, consecutively.*<sup>9</sup>

5.1 Each argument to be advanced in support of a ground must then be concisely outlined under that ground.<sup>10</sup>

5.2 The grounds must be prepared with sufficient precision for the Registrar and Court to clearly identify the issues and matters relied upon.<sup>11</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.

5.3 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

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<sup>8</sup> *Practice Note* s 5.1

<sup>9</sup> *Registrar’s Note* [11(a)(i)].

<sup>10</sup> *Ibid* [11(a)(iii)(a)].

<sup>11</sup> *Practice Note* s 1.3; *Registrar’s Note* [2].

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 10 page limit of a written case.

- 4.4) The Written Case will not be compliant unless the ground contains reference to each authority relied upon or sought to be distinguished.<sup>12</sup>

***Ground 2 – Your Written Case will not comply, and so may not be accepted, unless:***

- 5.1) Any claimed errors or errors of law in the decision below are identified precisely.<sup>13</sup>
- 5.2) Precise transcript references are provided in relation to each ground.<sup>14</sup>
- 5.3) A clear description is provided of any document that is referred to in the ground which allows it to be identified.<sup>15</sup> 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

\_\_\_\_\_  
Signed:  
[Signature of lawyer/self-represented party]<sup>16</sup>

<sup>12</sup> Registrar’s Note [11(a)(iii)(a)].

<sup>13</sup> Ibid [11(a)(iii)(b)].

<sup>14</sup> Ibid [11(a)(iii)(c)].

<sup>15</sup> Ibid [11(a)(iii)(d)].

<sup>16</sup> Ibid [10] (contact details, ***including email***, must appear beneath the signature).



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

BETWEEN

Applicant/ Appellant

and

Respondent

**LIST OF AUTHORITIES**

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Date of Document:

Filed on behalf of:

Party's or lawyer's name and address:

Solicitor Code:

Tel:

Fax:

Ref:

Email:

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**Part A**

1. The authorities (authorised version if exists) from which counsel intends to read should be listed in this part.<sup>17</sup>

**Part B**

1. Case citations (authorised version if exists) and legislation to which counsel intends to refer to but not read should be listed in this part.<sup>18</sup>

**Part C**

1. Textbooks and articles that a party considers will be of substantial assistance to the Court should be listed in this part.<sup>19</sup>

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signed:

[Signature of lawyer/self-represented party]<sup>20</sup>

<sup>17</sup> Ibid [11(b)(i)].

<sup>18</sup> Ibid [11(b)(ii)].

<sup>19</sup> Ibid [11(b)(iii)].

<sup>20</sup> Ibid [10] (contact details, *including email*, must appear beneath the signature).