

Registrar's Note on the Preparation of Leave Application Books and Appeal Books



Introduction

In this note a reference to:

1. applicant includes appellant;
2. leave application includes appeal; and
3. leave application book includes appeal book, as a particular case may require.

This note relates to the preparation of leave application books in respect of leave applications commenced on or after 10 November 2014.

This Note is published under *Supreme Court (General Civil Procedure) Rules 2005* r 64.24 with the approval of the President of the Court of Appeal and should be read with the following in mind:

1. An application book in respect of an application for leave to appeal should contain ALL evidence admitted into evidence at the hearing below upon which any party intends to rely on the hearing of the application. A leave application book index pro forma is attached to this Note as Annexure 1.
2. Application books are working documents for the Court; they must be legible, they must be set out logically and they must be complete.
3. Application books should be prepared as economically as possible and should not contain material that is unnecessary for the determination of the application for leave to appeal or appeal.
4. 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.
5. The contents of the application book 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.

General Guidelines

6. **Time for filing the Leave Application Book/Appeal Book**
 - a) The applicant, or any other party as directed by the Registrar, must, within 28 days (or such other time as directed) after the Registrar has settled the

contents of the book and advised the parties, submit to the Registrar one copy of the book for checking.

7. **Settling the leave application book by the Registrar**

- a) Upon receipt of the book, the Registrar will scrutinise it for compliance with the Rules, the Practice Direction, the settled index, this Note and any directions of the Registrar.
- b) If the Registrar considers that the book requires amendment or rectification, the Registrar will direct the party filing the book to make amendments as appropriate.
- c) The party filing the book must, within 14 days (or other time as directed) after being notified of the Registrar's approval or required corrections, file 3 copies of the book as so corrected (or 2 copies if no corrections are required) with the Registry and every other party. The Registrar will direct the book, or part of it, also be filed in electronic format. A guide to the preparation and provision of electronic application and appeal books is at Annexure 2 to this note.
- d) The party filing the book must provide a written certification, either through their lawyer or personally, that the copies of the amended leave application book or appeal book delivered to the Registrar and to every other party comply with the Registrar's directions.

8. **Extension of Time**

- a) It is recognised that occasionally the preparation of the book will take longer than expected. The attention of parties is drawn to Rule 64.35(2), which empowers the Registrar to extend time for filing application books. To avoid the operation of Rule 64.45(2), which will result in the application for leave or appeal being taken to be abandoned, a request for an extension of time **must be made in writing and copied to the respondent/s before the due date for filing the book.**

9. **Assistance from Registrar**

- a) A party who requires the Registrar's assistance to settle the contents of a leave application book must apply in writing to the Registrar.
- b) Assistance by the Registrar will be required only in exceptional circumstances as it is expected the parties will be able to agree on the contents of the book. Accordingly, the request for assistance must set out the reasons for seeking assistance, and detailing the matters for which it is sought, with particularity.

10. **Setting-Down Fee and Form**

- a) When the book is delivered to the Registry for filing, with any necessary amendments, the applicant must pay the applicable setting-down fee and file and serve a setting down form in accordance with the form at Annexure 3 to this note. The form must be provided to the Registry in PDF format and on the same USB as the application book. Failure to pay the fee and file the form may result in the application not being listed for a hearing, or not heard, or an

application for leave to appeal not being referred to a single judge for consideration under Rule 64.27.

11. Departure

- a) In particular cases, the Registrar may authorise a departure from these guidelines and may, if warranted, extend or abridge the time for compliance (see rule 64.35).

Guidelines as to the Preparation of Leave Application Books/Appeal Books

12. Reproduction

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

13. Volumes and Cover Page

- a) Every volume must contain a cover page and a copy of the index to the book (and if more than one, be numbered on the cover and on the spine).
 - i. The cover page must give the full and correct title of the application for leave. It must identify each party by the correct designation (e.g. Applicant, Cross-Applicant). It must also identify both the court from which the appeal is brought and the number of the proceeding in that court.
 - ii. The cover page must also give the name, address, telephone number, facsimile number, document exchange number and code reference of all solicitors' firms and the name of the lawyer, **including email**, in each firm having responsibility for the application/appeal.
 - iii. If space does not permit inclusion of all the information required, the cover may contain the title to the application in an abbreviated form, but it must contain the names and all other information required in relation to those acting for all parties to the matter.
- b) Each volume must be filed loose leaf in a lever arch folder unless otherwise directed.

14. Pages

- a) All pages must be of international paper size A4 and be capable of receiving writing in ink.
- b) Wherever practicable, documents for inclusion in the book must be reproduced on pages complying with paragraph 14(a).
- c) Where a page is prepared by an applicant specially for inclusion in a book, the page must be typed in a legible and easily readable font size, with 1.5 spacing between the lines and a left hand margin of at least 30 millimetres.

- d) Individual documents included in the book must be printed double sided wherever possible. Each document is to be separated; a document must not commence on the rear side of the previous document in the book.

15. Index

- a) The index to a book must contain a complete list of the contents of the book, as settled.
- b) The index must identify each document contained within the book, giving its date and the page or pages of the book at which it appears.
- c) In the case of exhibits, the index must give not only the date of the document but also the exhibit mark and, where possible, the page of the transcript of oral evidence at which the exhibit was so marked.
- d) If a document or other evidence is not included in the book but is to be produced on the application for leave to appeal, that document or other evidence must be identified in the index and marked with the words “to be produced”.

16. Documents for Inclusion

- a) Subject to sub-paragraph c, documents will ordinarily be arranged in the book in the following order after the index:
 - A. Notice of Application for Leave to Appeal (including the schedule of parties) and/or Notice of Appeal, Cross-Application for Leave to Appeal, Notice of Contention and Cross Appeal (as relevant); all Written Cases, the Agreed Summary;
 - B. reasons for judgment or charge to the jury and any relevant ruling;
 - C. copy of the authenticated judgment or order (including the schedule of parties) from which the application is brought;
 - D. significant documents¹;
 - E. originating process (including the schedule of parties) and pleadings, (however, only the final version of pleadings are to be included, unless earlier versions relate to a ground of appeal), any relevant request and particulars;

¹ Significant documents are those key documents in the dispute between the parties. They should be few in number and are likely to be referred to in the reasons for judgment. For example, where the appeal concerns whether leave ought to have been given for the withdrawal of an Offer of Compromise, the Offer of Compromise should be included in the ‘Significant Documents’ category. They should be preceded by a page containing a short description of the document and its date and, in the case of exhibits, the exhibit mark. Each document should be referred to in the index. Significant documents should NOT be reproduced again in the Leave Application Book/ Appeal Book.

- F. affidavit evidence (with the exhibits to each affidavit, itemised and described, immediately following that affidavit, or, in the case of matters from the Commercial Court in chronological order);
 - G. transcript or notes of oral evidence;
 - H. other parts of the Court Book (if any) that are relevant;
 - I. other relevant exhibits arranged in the order in which they were lettered or numbered as exhibits;
 - J. in order of date, any interlocutory orders made in respect of leave application, whether made by the Court of Appeal or otherwise.
- b) Each document included in the book must be preceded by a page containing a short description of the document and its date and, in the case of exhibits, the exhibit mark. This does not apply to any document prepared by a party and filed in the proceeding (either at first instance or on the application) if the description of the document and its date are apparent on its first page.
- c) Parties must have regard to paragraph 16(a) above when determining the number of volumes of the book. Subject to any direction of the Registrar, the transcript (if lengthy), the Court Book (if voluminous) and the exhibits (if numerous) may comprise a separate volume or volumes. In such cases the first volume of the book may contain:
- A. Application for leave to appeal, and/or Notice of Appeal, Cross-Applcation for Leave to Appeal, Notice of Contention and Cross Appeal (as relevant); written cases and agreed summary;
 - B. reasons for judgment or charge to the jury and any relevant ruling;
 - C. copy of the authenticated judgment or order (including the schedule of parties) from which the appeal is brought;
 - D. significant documents;
 - E. originating process and pleadings (including the schedule of parties, any relevant request and particulars, however, only the final version of pleadings are to be included, unless earlier versions relate to a ground of appeal);
 - J. any interlocutory orders made in respect of the application for leave to appeal or appeal (as relevant), whether made by the Court of Appeal or otherwise, excluding the Registrar's directions.

17. Particular Documents

- a) Interrogatories and answers, affidavits of documents and the Court Book must be included in the book only to the extent that they were put in evidence and only if they are relevant to the application for leave.
- b) Transcript must be included only to the extent relevant to the application for leave. If pages are omitted, a single page may be inserted at the point of omission identifying the pages omitted.

- c) To the extent that a Court Book is included, an index to the Court Book should also be included. If some pages of the Court Book are omitted from the application book, the index to the Court Book should so indicate. If documents formerly included in the Court Book were marked below as separate exhibits, they should be included in the book according to their exhibit marks.
- d) If in the court below a document was made an exhibit more than once (whether to an affidavit or otherwise) it should be reproduced once only and where later (or earlier) referred to a single page should be included in the book in its place, identifying the document and the page or pages of the book where it is reproduced.

18. Sections

- a) The book will ordinarily be divided into sections. Each section must be marked at its start by a tab divider bearing sequential alphabetical marking and a general (but brief) description of the documents contained within the section, as for example:
 - A. APPLICATION FOR LEAVE TO APPEAL, WRITTEN CASES AND SUMMARY
 - B. REASONS (for judgment)
 - C. JUDGMENT (or ORDER) appealed from
 - D. SIGNIFICANT DOCUMENTS
 - E. PROCESS & PLEADINGS
 - F. AFFIDAVIT EVIDENCE (IF ANY)
 - G. TRANSCRIPT
 - H. RELEVANT PORTIONS OF THE COURT BOOK
 - I. EXHIBITS
 - J. INTERLOCUTORY ORDERS (made on the application for leave to appeal)
- b) If some or all parts of the transcript do not appear in the book in a consecutive order (eg, pp 573 – 580 followed by p 728 - 730 then followed by p 581 again), sub-dividers separating each part of the transcript and giving a brief description should be inserted.
- c) Parties must use numbered sub-dividers between the documents to increase ease of working with the book.

19. Pagination

- a) Save for the index, transcript and reasons for judgment, all pages of the book must be numbered consecutively, section by section (eg A1-A14, B15-B35, etc),

as part of the book. The numbering must appear near the edge of the page, furthest from the spine.

- b) The documents from the Court Book must retain their Court Book number and remain in the same chronological order as in the Court Book.
- c) Transcript and reasons for judgment should not be repaginated.

Ian Irving
Judicial Registrar
March 2017

ANNEXURE 1

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

File No.

BETWEEN

Applicant/ Appellant

and

Respondent

[APPLICATION/APPEAL] BOOK INDEX

Date of Document:

Filed on behalf of:

Party's or lawyer's name and address:

Solicitor Code:

Tel:

Fax:

Ref:

Email:

List documents to be included in the relevant categories as set out below (re-letter the category if required). Note that categories A, B, G & H are essential.

A. Application for leave to appeal (or appeal)

Application for leave to appeal/
notice of appeal of claim [page]

Applicant's written case

Respondent's written case

Agreed summary

B. Reasons for Judgment

Reasons for judgment of [*Judicial Officer's name*]

C. Authenticated Order from which application for leave to appeal or appeal is brought

Order

D. Significant Documents

E. Process and Pleadings

Statement of claim

[page]

Defence

Reply

F. Affidavit Evidence (if any)

Affidavits

Affidavit of [*Deponent's full name*] sworn
with exhibits/annexures:

[*list exhibits/annexures*]

G. Transcript

Witnesses

[*Witness' full name*]

Examination in chief

Cross-Examination

Re-Examination

[*Witness' full name*]

Examination in chief

Cross-Examination

Re-Examination

H. Relevant Portions of Court Book

I. Other Relevant Exhibits

Exhibits

Exhibit 1: [*description*]

(tendered at AB...)

J. Interlocutory Orders made on application for leave to appeal/appeal

Date

Signed:

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

ANNEXURE 2

Guidelines for providing an electronic Application for leave to appeal book (electronic book) for the Court of Appeal

The Court of Appeal requires an electronic application book. Documents must be in searchable PDF and Word format with a hyperlinked index to each document making up the book. The electronic book must be filed in one folder containing all documents. The electronic book should be filed on a memory stick (USB) to the Court of Appeal Registry on the date specified by the Registry, located at Level 1, 436 Lonsdale Street, Melbourne.

Hyperlinks are references to data that the reader can directly open by clicking on the name of the specific document in the index. These hyperlinks must be visible to the reader and must be created to enable each document to be opened in a 'new window'.

Please complete the following steps to create a hyperlink to each document or [refer to the Adobe Acrobat X Pro website](#).

- Step 1** - Open your PDF Application/ Appeal book index.
Click view > tools > content and select Link.
- Step 2** - Your mouse icon will become a cross which you will then draw a rectangular box around the document number, name, date and page number fields in the index. A create link box will appear.
- Step 3** - Select the following for link appearance:
link type > visible rectangle, highlight style > none, line thickness > medium and colour > blue.
- Step 4** - Select link action > Open a file and click next.
Choose the corresponding file from the folder that matches the document from the index.
- Step 5** - Specify Open Preference box will appear and select New Window and OK.
- Step 6** - Repeat for each document in the index.

(Refer to page 2 of this Annexure for Application/Appeal book index appearance)

Appearance of Hyperlinked Index

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

SAPCI20160001

BETWEEN

MR X

Applicant/Appellant

-and-

MRS Y

Respondent

APPLICATION /APPEAL BOOK INDEX

Filed on behalf of: Applicant

Solicitor code: 00001

Prepared by

Ref: 00001

ABC Solicitors

Tel: 9000 0001

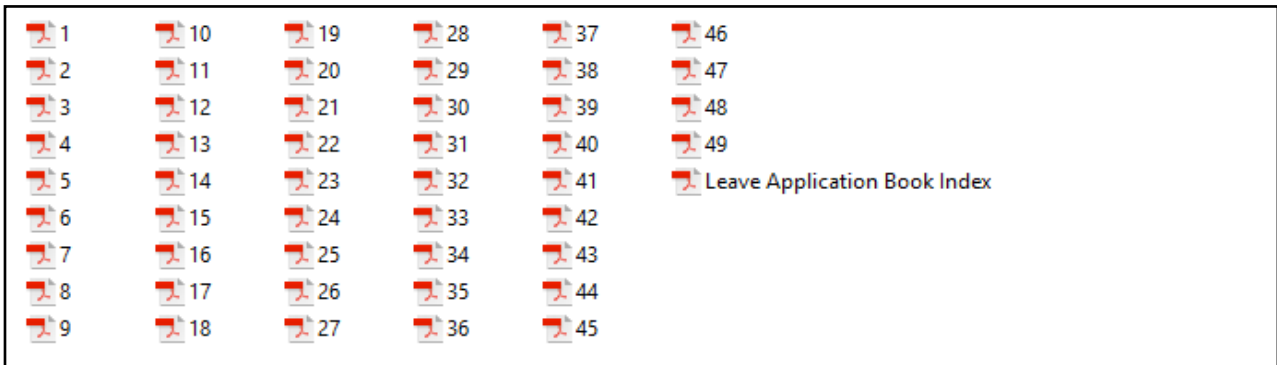
123 Williams Street

Fax: 9000 0002

Melbourne VIC 3000

No.	Document description	Date of doc.	Page No.
A. APPLICATION FOR LEAVE TO APPEAL (OR APPEAL)			
1.	Application for leave to appeal	01/01/2016	A1-A4
2.	Applicant's written case	02/02/2016	A5-A9
3.	Respondent's written case	04/02/2016	A10-A14
4.	Agreed summary	07/02/2016	A15-A20
B. REASONS FOR JUDGMENT			
5.	Reasons for Judgment - <i>Mrs Y v Mr X [2013] VSC 123</i>	01/07/2015	
C. AUTHENTICATED ORDER			
6.	Authenticated order of Justice Smith	01/07/2015	C51-C53
D. SIGNIFICANT DOCUMENTS			
7.	Contract of sale	01/02/2014	D54-D60
E. PROCESS AND PLEADINGS			
8.	Writ	01/01/2015	E61-E64
9.	Statement of claim	01/01/2015	E65-E70
F. AFFIDAVIT EVIDENCE			
10.	Affidavit of Mr Z	01/05/2015	F71-F79
G. TRANSCRIPT			
11.	Discussion	01/06/2015	
12.	Examination of Mr X	01/06/2015	
13.	Cross examination of Mr X	02/06/2015	
14.	Re-examination of Mr X	03/06/2015	
H. RELEVANT PORTIONS OF COURT BOOK			
15.	Map of Jones Street	01/10/2014	H211
I. OTHER RELEVANT EXHIBITS			
16.	Plaintiff's Exhibit 'A' - letter	01/02/2015	I212-I215
17.	Plaintiff's Exhibit 'B' - letter	02/02/2015	I216-I220
J. INTERLOCUTORY ORDERS MADE ON APPLICATION FOR LEAVE TO APPEAL			
18.	Orders of Judicial Registrar Irving	28/04/2016	J221-J223
19.	Orders of Judicial Registrar Irving	20/06/2016	J224-J225

Each document listed on the index must be numbered consecutively, throughout the electronic book. Therefore, each individual document must be renamed with the corresponding number in the index. for example, if under part A. Process and Pleadings, document 1 is named Writ, then that PDF document should be renamed 1 and hyperlinked to document description on the index. (See below as an example)

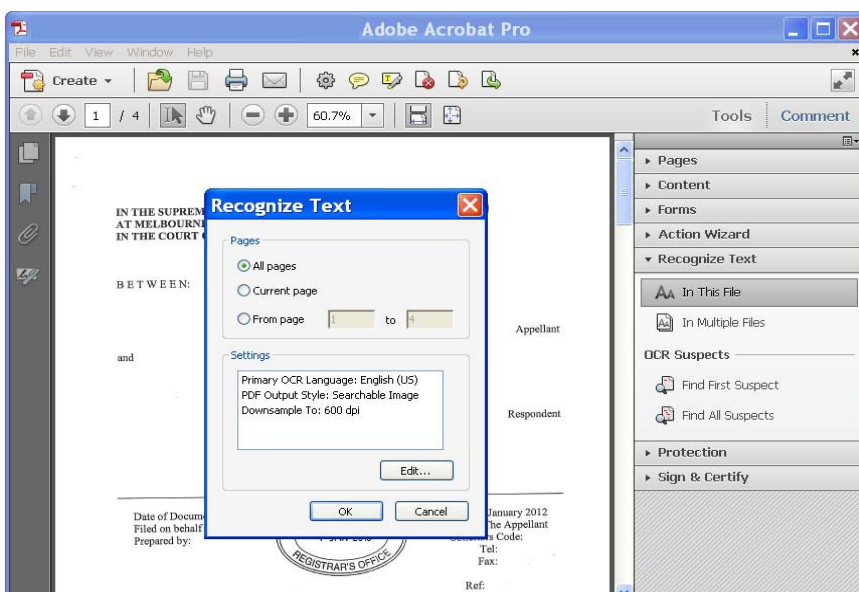


For all scanned documents converted to PDF format, you must ensure each document is capable of being word searched, copied and pasted (see instructions below).

How to ensure PDF documents can be searched and text copied when converted from a scanned document

- Open the document through the Adobe Reader program
- Click “Tools” in the top right hand corner
- Click “Recognize Text” – 5 tabs down on the list
- Click “In this file”
- Click “All pages”
- Click “OK”

(Note: these instructions may differ slightly for different versions of Adobe).



ANNEXURE 3

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

File No.

BETWEEN

Applicant/Appellant

and

Respondent

APPLICATION TO SET DOWN [APPLICATION FOR LEAVE TO APPEAL/APPEAL]

Date of Document:

Filed on behalf of:

Party's or lawyer's name and address:

Solicitor Code:

Tel:

Fax:

Ref:

Email:

Set this appeal down for hearing.

Date

Signed:

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