



PRACTICE NOTE APP 2: CONTENT OF APPEAL BOOKS AND PREPARATION FOR HEARING

Appeals Practice Note

1. INTRODUCTION AND RELEVANT INFORMATION

1.1 This Practice Note deals with the content and preparation of:

- Appeal Books
- Submissions
- Abandoning Grounds of Appeal
- Lists of Authorities
- Electronic appeals.

1.2 Any reference in this Practice Note to an “appellant” includes an “applicant”, where applicable.

1.3 This Practice Note:

- (a) takes effect from the date it is reissued and, to the extent practicable, applies to proceedings whether filed before, or after, the date of reissuing.
- (b) applies to all parties in respect of the following proceedings:
 - (i) appeals from the Administrative Review Tribunal, the Superannuation Complaints Tribunal and the National Native Title Tribunal (“**Tribunal appeals**”);
 - (ii) appeals or applications to be heard by a Full Court; and
 - (iii) appeals to be heard by a single judge in the Court’s *appellate* jurisdiction pursuant to sections 24 and 25 of the *Federal Court of Australia Act 1976* (Cth) (“**Federal Court Act**”) excluding appeals brought under the *Migration Act 1958* (Cth).

(Appeals and applications in (b) are referred to as “**appeals**”)

2. DEFAULT BY A PARTY

2.1 Where a party is in default of any of the requirements of this practice note or any directions or orders that have been made by a Registrar or National Appeals Coordinating Judge by more

than 5 business days, the parties including the party or parties not in default have an obligation to bring this matter to the attention of the chambers of the judge hearing the appeal (or the chambers of the presiding judge if there is more than one judge) or the appeals registrar of the NOR who will then give or arrange for appropriate directions. At the same time, that party will also notify the other parties to the appeal.

3. APPEAL BOOKS

3.1 Subject to any order or direction of the Court and eBooks Practice Note (GPN-eBOOKS) which prevails to the extent of any inconsistency in respect of any appeal eBook, appeal books must be prepared in accordance with:

- (a) for appeals – Division 36.5 of the Federal Court Rules; and
- (b) for Tribunal appeals – Division 33.2 of the Federal Court Rules.

4. OUTLINES OF SUBMISSIONS AND CHRONOLOGY

4.1 Each party must prepare an outline of that party's submissions (see r 36.55 for appeals and r 33.27 for Tribunal appeals of the Federal Court Rules).

4.2 The outline of submissions must:

- (a) contain a concise statement of the issues on appeal;
- (b) contain an outline of the argument to be presented on each issue, specifying the steps in the argument, and any legislation, authorities or findings of fact to be relied upon in support of each step;
- (c) not exceed 10 pages (5 pages for submissions in reply), including any annexures, unless leave has been given; and
- (d) be easily legible using a font size of at least 12 points and one and a half line spacing throughout, including in any footnotes and annexures. Italics or underlining should be used for legislation and case citations and boldface or italics may be used for occasional emphasis.

4.3 Where a party intends to challenge any of the primary Judge's findings of fact, the outline must:

- (a) identify the error (including any failure to make a finding of fact);
- (b) identify the finding that the party contends ought to have been made;
- (c) state concisely why, in the party's submission, the finding, or failure to make a finding, is erroneous; and
- (d) refer to the evidence to be relied upon in support of the argument.

- 4.4 The outline of submissions must be accompanied by a chronology (see r 36.55(1)(b) for appeals and r 33.27(1)(b) for Tribunal appeals of the Federal Court Rules).
- 4.5 The appeal books will be separated and arranged behind labelled or numbered tabs. Therefore, all references in the outlines of submissions must be to the relevant tab.
- 4.6 All references to documents in Part A must refer to
- (a) the relevant unique tab number; and
 - (b) the relevant internal page number and the relevant part of the internal page number of the original document (eg. Pt A tab 10, 10 – 15.2).
- 4.7 All references to authority must give the case name and citation and refer to the relevant page and the relevant part of the page (eg. *A v B* (1964) 112 CLR 210, 212-213). For further details on how to reference cases refer to the Lists of Authorities and Citations Practice Note (GPN-AUTH).
- 4.8 It is expected that oral arguments will follow the outline of submissions. New issues, not included in the outline, may not be advanced on the hearing except with the leave of the Court.

5. NOTICE OF GROUNDS OF APPEAL (OR CONTENTION) ABANDONED

- 5.1 Within a reasonable time before the hearing of an appeal, notice must be given to the Court and to the other parties:
- (a) by the appellant, of any abandoned grounds of appeal; and
 - (b) by the respondent, of any abandoned grounds in a notice of contention.
- 5.2 Counsel should also be ready to indicate, at the conclusion of oral argument, whether any, and if so which, grounds of appeal are no longer pressed.

6. ELECTRONIC APPEALS

- 6.1 Subject to any order of the Court to the contrary, appeals will be conducted by reference to appeal eBooks.

Note: see eBooks Practice Note (GPN-eBOOKS).

D S Mortimer
Chief Justice
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