

SUPREME COURT OF TASMANIA

PRACTICE DIRECTION

No. 3 of 2022

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APPEAL BOOKS, LISTS OF AUTHORITIES AND SUBMISSIONS

The following Practice Direction is published by direction of the Chief Justice, the Honourable Justice Alan Blow AO.

This Practice Direction defines the requirements for the following:

- Appeal books for appeals to the Court of Criminal Appeal and the Full Court.
- Lists of authorities in all proceedings.
- Written submissions in appeals to the Court of Criminal Appeal and the Full Court.

It supports the Court's increasing use of electronic resources for the conduct of its business, particularly electronic appeal books and electronic lists of authorities.

This Practice Direction replaces Practice Directions 7/2005, 4/2014, and 5/2019, and Circular 11/2017.

APPEAL BOOKS

- 1 In appeals and applications to the Court of Criminal Appeal, other than proceedings instituted by the Crown, judges will continue to conduct directions hearings in accordance with Practice Direction 1/2017. In those directions hearings, judges will give directions as to the preparation and contents of appeal books. Subject to any such directions, the requirements as to the preparation and contents of appeal books are as follows.
- 2 The appellant (and, if more than one, the appellant selected by the Registrar) in an appeal will be responsible for the preparation of the appeal book.
- 3 Every appellant must, within 7 days of filing either a Notice of Appeal or Notice of Application for Leave to Appeal, deliver to the Registrar a list of the contents proposed to be included in the appeal book.
- 4 Upon the filing of the list the Registrar shall give an appointment for the settlement of the appeal book contents, and every appellant shall forthwith serve a copy of the proposed list of contents and notice of appointment on every other party interested in the appeal.

- 5 The Registrar shall settle the contents of the appeal book when satisfied that the parties or their representatives have been given a sufficient opportunity to be heard.
- 6 Only material which is directly relevant to the appeal is to be included in the appeal book.
- 7 For the purpose of settling the appeal book contents, the Registrar may consult with the trial judge. A judge may direct the parties to attend before the judge for the purpose of settling the contents of the appeal book.
- 8 The appeal book must be prepared by the appellant in the manner prescribed by Rules 668 (1) - (6) of the *Supreme Court Rules 2000* or the *Criminal Rules 2006* r 17 unless otherwise determined by a judge or the Registrar.
- 9 Appeal Books may be in either hard copy or in electronic format, although the Court encourages the parties to file electronic appeal books wherever practicable.

HARD COPY

- 10 The Appeal Book is to be in 2 volumes, and contain the documents listed in the order required by the *Criminal Rules 2006* r17 or the *Supreme Court Rules 2000* r 665.
- 11 Volume 1 is to:
 - contain all documents other than the trial transcript
 - be paginated using a consecutive numbering system;
 - contain an index of all documents in the volume .
- 12 Volume 2 is to contain only the trial transcript (or relevant portions thereof), retaining the original transcript numbering, and transcript index.
- 13 Three copies of the appeal book must be filed for the use of the judges of the Court. The book must contain a certificate of the appellant's solicitor certifying that the book has been inspected and is correct and complete.
- 14 The appellant must deliver a copy of the Appeal Book to each other party.

ELECTRONIC FORMAT

- 15 The settled version of the electronic appeal book is to be created by the Appellant and forwarded to the court by email, Microsoft Sharepoint, or on a USB stick, with documents arranged in the order prescribed by the *Criminal Rules* 2006 r17(8) or the *Supreme Court Rules* 2000, r 665.
- 16 The rules relating to compilation of electronic Appeal Books are as follows:
 - the Appeal Book must be created using Adobe Acrobat Pro.
 - the Appeal Book is to be in two "volumes", each containing one .pdf file.
 - Volume 1 is to:
 - contain all documents (other than the trial transcript) per the Criminal Rules 2006 r17(8) or the Supreme Court Rules 2000 r665
 - be paginated using the consecutive Bates numbering system (available in Adobe Acrobat Pro). The numbering system should be distinct from other numbering systems used on the documents eg. numbered with a letter prefix such as "CCA00001" and following; or in a conspicuous colour;
 - be bookmarked at the start of each new document in the .pdf file for ease of navigation within a .pdf file containing multiple documents (the bookmarks are displayed on the left margin of Adobe on screen and shows the title and structure of the various documents in the .pdf file).
 - Volume 2 is to:
 - contain only the trial transcript (or relevant portions thereof), retaining the original transcript numbering, and the transcript index (no Bates numbering is to be included).
 - be bookmarked at the commencement of relevant parts of the transcript eg. Opening Addresses, Witnesses, Rulings, Closing Addresses, Summing Up, Crown Facts, and Plea in mitigation.
 - Counsel for each party:
 - must have IT capacity to send and receive very large .pdf files by email ; or
 - must provide a USB stick with sufficient capacity for such files to be uploaded, and collect the USB from the Registry.
 - may use the Supreme Court's Microsoft Sharepoint account for lodging large files (such as Appeal Books) for ease of access. Arrangements must be made with the Senior Registry Administration Officer to access the Sharepoint account for the relevant appeal.

- Any documentary exhibits or transcript included within the .pdf files in the electronic appeal book are to be "clean" copies, containing no annotation or marking by the parties or counsel. Marked copies may have to be redacted if necessary.
 - The electronic appeal book must contain a certificate of the appellant's solicitor certifying that the book has been inspected and is correct and complete.
 - The appellant must deliver a copy of the Appeal Book to each other party.
 - The Appellant is to provide hard copies of the electronic Appeal Book to the Court or any of the other parties upon request.
- 17 In cases where the Registrar is satisfied it would cause undue hardship for the appellant to prepare the appeal book, the Registrar will prepare the appeal book. An appellant aggrieved by a decision of the Registrar to refuse to prepare the appeal book may apply to a judge to review that decision.

LISTS OF AUTHORITIES

- 1 In any appeal, contested cause or matter or any complex ex parte matter, a list of all authorities and legislation must be lodged with the Registry in electronic format and delivered to each other party not less than 48 hours prior to the time when the counsel estimates that he or she will address the Court. Saturdays, Sundays and Court holidays shall be excluded from the reckoning of the period of 48 hours.
- 2 Failure to do so may result in the hearing being adjourned.
- 3 The list of authorities should be headed as a document and divided into three parts:
 - Part 1 should contain only those authorities which counsel intend to cite in submissions before the Court. In all cases citations should be supplemented by the paragraph or page number/s to which counsel wish to draw the Court's attention.
 - Part 2 should contain those authorities which counsel consider might be referred to during the course of argument, but which counsel do not intend to cite.
 - Part 3 should list legislation noting sections that will be referred to.
- 4 In any appeal, contested cause or matter or any complex ex parte matter, the list of authorities must be accompanied by a single electronic .pdf file for the judge or for each of the judges, as the case may be, of the:
 - relevant parts of all decisions referred to in Part 1 of the list. The relevant parts of a decision are the cover page(s), the headnote where one exists, any page(s) to be referred to and any page(s) required to give context and meaning to any such page(s) ;
 - relevant sections of any legislation to be referred to other than Tasmanian legislation.
- 5 The rules relating to compilation of electronic Lists of Authorities (including copy authorities) are as follows:
 - The List and the copies of authorities should be created as a single, bookmarked .pdf master document complete with a hyperlinked Index.
 - The electronic List of Authorities may contain a combination of cases and legislation that are hyperlinked and:
 - downloaded from subscription services (such as Thompson Reuters or Lexis Advance);

- downloaded from "free subscription" legal databases (such as AustLII or Jade); and
 - scanned/digitised copies of hard copy authorities (if the party does not subscribe to a relevant legal database)
 - Parties will be responsible for compiling their own electronic Lists of Authorities as the Tasmanian Law Library does not have sufficient resources to undertake hyperlinking on practitioners' behalf.
- 6 Only if there is some insuperable reason for not filing an electronic List should three copies of authorities ever be filed again.
- 7 The Court does not regard the furnishing of a list of authorities as equivalent to the citation of the authorities in it. The only authorities which the Court will regard as having been cited or relied upon are those to which reference has been made during the hearing.

WRITTEN SUBMISSIONS TO THE FULL COURT AND THE COURT OF CRIMINAL APPEAL

- 1 Written submissions are required in all appeals heard by the Full Court or the Court of Criminal Appeal.
- 2 Written submissions should be prepared in accordance with the following guidelines:

2.1 General

- 2.1.1 The written submissions required are not full submissions and will supplement, not displace, oral argument. They should state carefully and concisely the propositions to be argued, and the authorities to be relied upon in support of them, plus, where appropriate, references to the transcript, exhibits or other documents. They are not to be a mere paraphrase of the notice of appeal.
- 2.1.2 Assume that the judgment or summing up and the notice of appeal have already been read.
- 2.1.3 Give notice of any grounds of appeal which will not be supported in argument and of any proposed amendments to the grounds of appeal.
- 2.1.4 Submissions should be linked by cross-reference to the grounds of appeal under which they are raised.

2.2 Submissions of law

- 2.2.1 Specify the ruling or direction being challenged and locate it by page and line reference in the appeal book.
- 2.2.2 Indicate the ruling or direction which according to the submission ought to have been made or given.
- 2.2.3 Formulate the proposition or several propositions upon which the submission is based.
- 2.2.4 Identify the authorities relied on to support the propositions with full citation and page and line reference to the beginning and the end of the passage. Reproduction of passages from reports and text books is quite unnecessary.

2.3 Submissions on the evidence

- 2.3.1 Identify the finding under challenge by page and line reference to the appeal book.
- 2.3.2 Specify if it is submitted
 - (i) that there is no evidence to support the finding, or
 - (ii) that a finding by a judge is wrong or a jury finding is perverse.
 - (iii) in the latter case summarise the nature of the evidence giving page and line references in the light of which the finding is submitted to be wrong or perverse.

2.3.3 In the case of a discretionary finding, specify the nature of the error which is said to have occurred.

2.4 Unsafe or unsatisfactory verdict

Where a ground of appeal against a conviction is to the effect that the weight of the evidence was such that a jury properly instructed would not have returned a verdict of guilty or that the verdict was unsafe and unsatisfactory, the written submissions shall identify the ingredients of the crime in respect of which it is alleged proof was deficient and the evidence relating to those ingredients and particularise the deficiencies of that evidence.

2.5 Overruling previous decision

If any party proposes to argue that a previous decision of the Court should not be followed notice that leave will be sought to do so must be included in the written submissions.

3 Procedure

Subject to any directions by a judge, the timetable for lodging and serving written submissions is as follows.

The appellant's submissions must be lodged at the Court (in both Word and .pdf formats) and served on the respondent's solicitors within 21 clear business days of the date of the filing of the notice of appeal.

The respondent's submissions must be lodged at the Court (in both Word and .pdf formats) and served within 7 clear business days of service of the appellant's submissions.

Where it is apparent at the first directions hearing held in the appeal proceeding that the appellant is unrepresented and is otherwise unable to prepare written submissions, the respondent's submissions must be lodged and served within 21 clear business days of the date of the directions hearing.

Departure from the above timetables requires the permission of the judge case managing the appeal, if there is one, the Chief Justice, or the senior puisne judge available.

"Service" means service on solicitors or their agents.

Failure to comply will result in the appeal being unlisted. Complaints of delay, and procedural problems arising (such as in for example cross appeals) may be taken up with the Chief Justice or the senior puisne judge available.

J A Connolly
REGISTRAR