



PRACTICE DIRECTION: NO. 1 OF 2017

CONDUCT OF APPEALS

1. Introduction

- 1.1 Part X of the *Family Law Act 1975* (Cth) deals with appeals. Chapter 22 of the Family Law Rules 2004 (Cth) sets out procedures relating to appeals, including where leave to appeal is required. Regulation 15A of the Family Law Regulations 1984 (Cth) prescribes decrees which are subject to a leave to appeal requirement.
- 1.2 This Practice Direction must be read subject to the Act, the Rules, the Regulations and any procedural orders made in the appeal.

2. Application

- 2.1 This Practice Direction applies to appeals in which a procedural hearing is conducted after 1 January 2017.

3. Appeal books

- 3.1 Appellants must file a draft appeal book index in accordance with r 22.13. Failure to do so within the prescribed time will result in the appeal being deemed abandoned (r. 22.21).
- 3.2 Appeal books must be prepared in accordance with rr 22.18, 22.19 and 22.20 and any procedural orders or directions. Only orders, applications, affidavits, exhibits and parts of the trial transcript relevant to the grounds of appeal or contention and necessary to enable the court hearing the appeal to reach its decision should be included.
- 3.3 Where it is necessary for trial transcript to be provided, an electronic copy obtained from the Court's authorised provider must be provided with the appeal books and served on the other party or parties. Unless ordered, a paper version of the transcript must not be included in the appeal books.
- 3.4 One week prior to the hearing the parties must give the Appeal Registrar a schedule which identifies any material in the appeal books which was not relied upon at trial or struck out. In the event of disagreement, at the commencement of the hearing the parties must be able to direct the court to the relevant transcript.

4. Summaries of argument

4.1 Each party must prepare a summary of argument in accordance with r 22.22 and this Practice Direction. The summary of argument must:

- a) set out each ground of appeal and, for each ground of appeal, a statement of the arguments, setting out the points of law or fact and the authorities relied on (together with references to the relevant page(s) of the appeal books and transcript);
- b) set out the orders sought (but only if they differ from the orders sought in the Notice of Appeal or any Amended Notice of Appeal);
- c) not exceed 15 pages unless leave has been given;
- d) be easily legible, using a font size of at least 12 points and 1.5 line spacing;
- e) have all paragraphs numbered consecutively;
- f) be signed by the person who prepared the summary of argument; and
- g) include the signatory's name, telephone number, facsimile number and email address (if any) or document exchange number (if any) at which the signatory can be contacted.

4.2 Where a party intends to challenge any findings of fact, the summary 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 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 (including any reference to the relevant page(s) of the appeal books and transcript).

4.3 Issues not identified in the summary of argument may not be advanced at the hearing of the appeal except with leave of the appeal court.

5. List of authorities

5.1 The list of authorities pursuant to r 22.22(1) should be divided into two parts:

- Part 1 should contain only those authorities which will be cited during the appeal.
- Part 2 should contain those authorities which might be called for during the appeal, but which it is not intended to cite.

5.2 All references to reported authority must give the case name, citation **and** the relevant page(s). Where a judgment is reported in an authorised report that citation should be used. Other recognised series of reports (including Family Law Cases and Family Law Reports) should be used where the judgment is not reported in the authorised reports.

5.3 The Medium Neutral Citation of unreported judgments should be provided where available. An unreported judgment should not usually be cited unless it contains a statement of legal principle or a material application of principle which is not found in reported authority.

5.4 If a party proposes to read from passages of an unreported judgment, they should provide copies of the judgment for each member of the bench and each other party. Copies of unreported decisions downloaded from Austlii should be in PDF/A format where available.

6. Further evidence on appeal

6.1 Where a party applies for further evidence to be received in the appeal pursuant to r 22.39, the affidavit supporting the application must state:

- a) briefly but specifically, the facts on which the application relies;
- b) the ground(s) of appeal to which the application relates;
- c) the evidence that the applicant wants the appeal court to receive or at least the nature of the further evidence; and
- d) the reason why the evidence was not adduced at the hearing.

7. Notice of abandoned grounds of appeal

7.1 Not later than five days before the hearing of an appeal, notice must be given to the Appeal Registrar and to the other parties of any grounds that are to be abandoned.

8. Default

8.1 Where a party is in default of any requirement of this Practice Direction, any party not in default may bring the matter to the attention of the Appeal Registrar, who may then give appropriate directions.

8.2 Where a party has failed to comply with an order, and the appeal has not otherwise been taken to be deemed abandoned, the appeal may be dismissed for non-compliance or delay pursuant to rule 22.45.



**THE HONOURABLE JUSTICE DIANA BRYANT AO
CHIEF JUSTICE
FAMILY COURT OF AUSTRALIA**

DATE: 22 DECEMBER 2016