

PRACTICE DIRECTION NUMBER 26 OF 1999

COURT OF APPEAL

PART A - GENERAL

1. The purpose of this Practice Direction is to consolidate and clarify the procedure to be undertaken by parties participating in appeals and applications to the Court of Appeal.
2. Practice Direction Numbers 1 of 1982; 2 of 1983; 2 of 1984; 2 of 1986; 9 of 1989; 11 of 1991 and 4 of 1992 are repealed.
3. In this Practice Direction, the following definitions apply, unless the context otherwise indicates:
 - (a) “appeal record book” is the compilation which contains material from the primary court hearing and includes a transcript of evidence, exhibits and a transcript of any summing up or sentencing remarks together with, where appropriate, any material reports and records or other material relevant for the consideration and determination of the appeal hearing
 - (b) “appeal records section” refers to the section of the Court of Appeal registry where the appeal records co-ordinator and appeal records staff prepare appeal record books
 - (c) “court” refers to the Court of Appeal unless otherwise specified
 - (d) “index” where referred to in paragraphs 11 and 32 means the appeal record book index and is a concise list of documents to be included in the appeal record book; otherwise index means the index to a paginated bundle of documents prepared in accordance with this Practice Direction for a civil application
 - (e) an “outline of argument” is a concise written statement of the issues and arguments in a proceeding, which includes references to relevant pages in the appeal record book and cases and legislation relied upon by the party
 - (f) “proceeding” includes an application to the Court of Appeal or a Judge of Appeal
 - (g) “registrar” is the Senior Deputy Registrar (Court of Appeal), unless otherwise stated
 - (h) “registry” is the place where Court of Appeal forms and documents are filed and lodged and where appeal record books are stored, and unless otherwise stated refers to the Court of Appeal Registry in Brisbane

- (i) “respondent” means any party to a proceeding, other than the applicant/appellant, and includes a respondent who is a cross-appellant

4. In this Practice Direction, unless otherwise stated:

- (a) days which fall within a court vacation are to be included for the purpose of calculating when to file or lodge Court of Appeal documents, unless otherwise provided in the *Uniform Civil Procedure Rules 1999*, *Criminal Practice Rules 1999* or in this Practice Direction; and
- (b) if a copy of all or part of the record of the proceedings below is necessary to take a step required by this Practice Direction, a period fixed by this Practice Direction for taking that step will not begin until the needed material is received by the registrar.

Documents filed and served in, or lodged with, the registry

- 5. (a) In all cases, any document filed and served pursuant to the Court rules will include in the document the name and contact details of every party to the matter including contact details of each party’s legal representatives (if any).
- (b) In all cases, any document lodged with the registry pursuant to this practice direction will include in the document the name and contact details of the person who prepared the document and the date the document was prepared.

Documents necessary for appeal

- 6. When a copy of the notice of appeal or any other originating documentation is filed and served in accordance with the rules, within seven days the registrar will notify the proper officer of the court or tribunal below and the Director of the State Reporting Bureau and request that the court file and all relevant documentary and photographic exhibits be transmitted immediately to the registry.
- 7. The registrar of the primary court in which the proceedings were commenced, will forward to the registrar the court file and all relevant documentary and photographic exhibits.

Written outline of argument

- 8. Unless otherwise provided by this Practice Direction or directed by the Court of Appeal, Judge of Appeal or registrar or other person authorised by the President or a Judge of Appeal:
 - (a) a written outline of argument from both parties is required in every proceeding in the Court of Appeal;

- (b) a written outline of argument will ordinarily be no more than ten pages in length; if a party is of the opinion that the party's written outline of argument will substantially exceed ten pages, the registrar should be informed;
- (c) the name of the person who prepared the written outline of argument, the name of the party on whose behalf it was prepared and the date of lodgement will be stated in the written outline of argument;
- (d) five copies of the written outline of argument will be lodged with the registry by each party and an extra copy will be served on all parties; and
- (e) the Court of Appeal or a Judge of Appeal may require a written outline of argument to be expanded or supplemented by written submissions.

8A If a party to an appeal or application lodges a written outline of argument outside the designated time period (see paras 18,19, 21, 29, 32):

- (a) the party will provide the Court of Appeal Registry with a written explanation as to why the written outline of argument is being filed after the due date;
- (b) the written explanation may be contained either within the written outline of argument or else in a separate document;
- (c) the late written outline of argument may not be accepted for filing in the Court of Appeal Registry, without such written explanation;
- (d) the written explanation will include details of when the legal representative (if any) was instructed in the appeal or application, and the particular reason why the material is being filed after the due date; and
- (e) if the written explanation is not contained within the written outline of argument, then the party will file five copies of the written explanation in the Court of Appeal Registry and an extra copy will be served on all parties.

List of authorities

- 9. In all appeals and applications, four copies of each party's list of authorities will be lodged by both parties with the registry no less than two clear court days prior to the hearing and will contain two sections, being:
 - (a) Part A which is a list of all cases and legislation upon which the party definitely intends to rely; and
 - (b) Part B which is a list of all other cases and legislation to which the party might refer, but upon which the party will not necessarily rely.
- 10. Each party will provide to the court three copies of each authority listed in Part A of the list of authorities, unless:

- (a) no less than two clear days prior to the hearing, the party notifies the registrar in writing that financial hardship will be caused to that party; and
- (b) upon receipt of such notification, the registrar exercises his or her discretion to waive the provision of such copies.

General provision regarding appeal record book

11. In relation to the preparation of an appeal record book, unless otherwise provided by this Practice Direction or directed by the Court of Appeal, Judge of Appeal or registrar, or other person authorised by the President or a Judge of Appeal:
- (a) an appeal record book is required for the following criminal matters:
 - (i) sentence applications;
 - (ii) conviction appeals;
 - (iii) s.118 (criminal) applications; and
 - (iv) references and cases stated;
 - (b) an appeal record is required for all civil appeals, but not for civil applications;
 - (c) the appeal records section will prepare the appeal record book for all criminal matters;
 - (d) appellants in civil appeals will either prepare the appeal record book themselves or request the appeal records section to prepare an appeal record book after providing an undertaking to the registrar in the appropriate form, being Form 67, *Uniform Civil Procedure Rules 1999*, to pay the cost of preparation;
 - (e) the format and production of the appeal record book will comply with the “Court of Appeal Guidelines for Preparation of Civil Appeal Record Books”, copies of which can be obtained from the registry;
 - (f) in civil appeals, parties will prepare a concise list of the exhibits and other evidence to be included in the appeal record book which has been settled between the parties - if after all efforts to agree have been made and it is impossible to reach agreement on the list, the registrar may be consulted;
 - (g) at the time of lodging a draft index for the appeal record book with the Court of Appeal Registry, the appellant’s solicitor will provide a written certification that the index has been agreed to by all the parties to the appeal;

- (h) in all cases, the contents of the appeal record book will be limited to material necessary for the consideration and determination of the issues and arguments raised by the written outlines of argument, and only those documents which are relevant to the issues on appeal will be included in the appeal record book;
- (i) all relevant documentary exhibits will be included in the appeal record book;
- (j) the judgment or order and reasons for judgment from the primary court and the notice of appeal will be included in the appeal record book;
- (k) the written outlines of argument prepared for the Court of Appeal hearing will not be included in the appeal record book;
- (l) a comprehensive index found at the beginning of every volume of the appeal record book will:
 - (i) describe fully the nature of each and every document, including each and every annexure and exhibit attached to the document, and giving a page number for each document; and
 - (ii) not include identical documents more than once, although a reference to the relevant page should be included in the index;
- (m) preparation of the appeal record book will commence immediately after the notice of appeal has been filed in the registry;
- (n) four copies of the appeal record book will be lodged with the registry and one further copy will be served on every party to the appeal;
- (o) the court may make a costs order against any party who is responsible for the inclusion of irrelevant or unnecessary material in the appeal record book; and
- (p) the registrar may refuse the filing of appeal record books which fail to comply with this Practice Direction and with the Court of Appeal guidelines.

Time fixed for appeal hearing

12. A time may be fixed for the hearing of a proceeding at any time, but where appropriate, regard will be had to the period needed for preparation of the appeal record book, any prior request by a party that particular dates not be allocated and any other relevant factors.

Listing date

13. A listing date in the Court of Appeal set down by the registry is final subject to alteration by the court or registrar.

Direction to parties

14. The Court of Appeal, a Judge of Appeal or registrar, or other person authorised by the President or a Judge of Appeal, may, at any time:
- (a) extend or abridge times in relation to the filing of Practice Direction documents;
 - (b) order further or different directions in an appeal proceeding; and
 - (c) give directions upon or without an application by a party.

Oral argument

15. Unless otherwise provided by this Practice Direction, or directed by the Court of Appeal, a Judge of Appeal or registrar, or other person authorised by the President or a Judge of Appeal:
- (a) oral argument will ordinarily be restricted to issues raised by the written outlines of argument, and may be restricted to specific issues so raised; and
 - (b) oral argument may be confined to time periods set either generally or for particular kinds of proceedings or for a particular proceeding.

Application for dismissal for want of prosecution

16. Where a respondent files an application for dismissal for want of prosecution based on the fact that the appellant has failed to comply with the direction of the Court of Appeal or registrar:
- (a) the application will not be accepted by the registry unless seven days have passed since the appellant failed to comply with the direction; and
 - (b) the respondent will give the appellant two clear court days notice that the respondent intends to bring such an application.

PART B - CRIMINAL PROCEEDINGS***Grounds for bringing criminal proceedings***

17. A notice of appeal or application for leave to appeal against conviction or sentence will not be accepted unless the grounds of appeal or application are contained in the notice.

***Appeal against conviction; and
Appeal against conviction and application for leave to appeal against sentence***

18. A written outline of argument will be:

- (a) lodged and served by the appellant no less than twenty-one days prior to the hearing; and
- (b) lodged and served by the respondent no less than seven days prior to the hearing.

Application for leave to appeal against sentence, s.118 application (criminal) and Attorney General's appeal against sentence

19. A written outline of argument will be:

- (a) lodged and served by the applicant no less than fourteen days prior to the hearing; and
- (b) lodged and served by the respondent no less than seven days prior to the hearing.

Written outline of argument

20. (a) Unrepresented appellants unfamiliar with the Court's practice should note that the written outline of argument on an appeal against conviction:
- (i) identifies any errors the trial judge is said to have made, in conducting the trial;
 - (ii) is to be concise;
 - (iii) when it includes any statement about the facts, gives a reference to the relevant page of the record of the evidence at trial; and
 - (iv) as to the facts, deals with the evidence at trial (not committal); generally, only evidence actually given before the court at trial is considered.
- (b) Applicants/appellants and respondents to an application for leave to appeal against sentence or to an Attorney General's appeal against sentence will use the sample provided by the Court of Appeal Registry; the respondent, however, will not repeat accurate information already in the applicant/appellant's outline, but will indicate what part, if any of the applicant/appellant's outline is accepted.

Application for an extension of time within which to appeal or within which to apply for leave to appeal

21. A written outline of argument will be:

- (a) lodged and served by the applicant no less than fourteen days prior to the hearing;
and
- (b) lodged and served by the respondent no less than seven days prior to the hearing.

List of authorities

22. In all criminal proceedings, a list of authorities will be lodged with the registry by both parties in accordance with the procedure set down in paragraphs 9 and 10 of this Practice Direction.

Amendment to time frames for written outline of argument

23. An amendment to the time frame for a written outline of argument will be allowed on application to and at the discretion of the registrar or person authorised by the President or a Judge of Appeal.

Appeal or application heard on the record only

24. (a) An appeal or application is ordinarily heard on the record of the evidence given at the primary court hearing and any other evidence or matter not contained in the record is ordinarily treated as irrelevant and will not be submitted either in the written outline of argument or at the hearing of the appeal or application.
- (b) If the appellant/applicant wishes the court to consider evidence which does not appear from the record, it is necessary for the appellant/applicant to apply to the court for leave to adduce such evidence by:
- (i) identifying the new evidence;
 - (ii) obtaining affidavits supporting the new evidence; and
 - (iii) pursuant to the *Criminal Practice Rules* 1999, filing and serving in the registry and on the other parties Form 395 “Application for leave to adduce evidence” and the affidavits, well before the appeal hearing date.
- (c) The court will grant leave to adduce further evidence only in very special circumstances.

Abandonment of criminal proceedings

25. (a) Pursuant to rules 69 and 70 of the *Criminal Practice Rules* 1999, an applicant for leave to appeal, an applicant for extension of time or an appellant may abandon an application or appeal, prior to the hearing, by signing and filing a

notice of abandonment of appeal or application in Form 387, *Criminal Practice Rules* 1999, with the registry.

- (b) Pursuant to rule 86 of the *Criminal Practice Rules* 1999, an applicant for leave to appeal under section 118 of the *District Court Act* 1967 may abandon the application prior to the hearing, by signing and filing a notice of abandonment of application in Form 388, *Criminal Practice Rules* 1999, with the registry.
- (c) Legal representatives may sign the notice on behalf of the applicant or the appellant.

PART C - CIVIL PROCEEDINGS

Use of mediation prior to the appeal hearing date

- 26. (a) In some civil applications and civil appeals, mediation may be appropriate prior to the listing of the appeal.
- (b) An appeal may be referred to mediation with the consent of all the parties to an appeal or by order of the court, which may be made on an application of a party or without such application.

Civil application

- 27. Pursuant to rules 778, 779 and 780 of the *Uniform Civil Procedure Rules* 1999, to initiate a civil application, an applicant will file, within twenty-eight days of the day in which the judgment or order is pronounced by the primary court, or within any extended time allowed by the Court of Appeal:
 - (a) an application in the appropriate form, being Form 69 “Application to Court of Appeal”, *Uniform Civil Procedure Rules* 1999; and
 - (b) supporting affidavit material exhibiting:
 - (i) a copy of the judgment or order from the primary court or courts;
 - (ii) a copy of the reasons for judgment from the primary court or courts or, if none, a statement to that effect;
 - (iii) if there are no reasons for judgment or if otherwise needed to enable the court to understand the nature of the question in dispute, the latest set of pleadings or, if none, the originating process in the matter; and
 - (iv) a copy of the notice of appeal filed in the matter, or if the application is for leave to appeal, a copy of the notice of appeal

the appellant intends to file if granted leave by the Court of Appeal.

Timetable for the lodgment and exchange of an indexed paginated bundle of documents

28. Within 10 days of the filing of the application, the Applicant must:
- (i) prepare an indexed paginated bundle of documents and file 3 copies with the registry; and
 - (ii) serve a copy on each respondent to the application.
- 28A Within 10 days of service of the Applicant's indexed paginated bundle of documents, the Respondent must, if the Respondent intends to rely on any supporting material:
- (i) prepare an indexed paginated bundle of documents and file 3 copies with the registry; and
 - (ii) serve a copy on the Applicant.
- 28B Within 7 days of service of the Respondent's indexed paginated bundle, the Applicant may, if necessary, file and serve a supplementary indexed paginated bundle of documents in reply. The numbering of the Applicant's supplementary bundle should be sequential from the indexed paginated bundle already filed and served by the Applicant.

Pagination of Bundle of Documents

- 28C The Applicant must consecutively number in the lower right hand corner in clear and legible print, each page of the documentation the Applicant intends to rely upon at the hearing. Each number on each page will be preceded with the letter "A". For example, A1, A2, A3.
- 28D The Applicant's paginated bundle of documents must include a copy of the application.
- 28E After service of the Applicant's indexed paginated bundle of documents, the Respondent must consecutively number in the lower right hand corner in clear and legible print, each page of the documentation the Respondent intends to rely upon at the hearing. Each number on each page will be preceded with the letter "R". For example, R1, R2, R3.
- 28F Where there is more than one separately represented respondent to the application, each Respondent must within 10 days of service of the Applicant's indexed paginated bundle, consecutively number in the lower right hand corner in clear and legible print, each page of the documentation that Respondent intends to rely upon at hearing. Each number on each page will be preceded with the number of the respondent and the letter "R". For example 2R1, 2R2, 2R3

28G The following documents are not to be included in the paginated bundle of documents: -

- written outlines of argument;
- any reply to written outlines of argument;
- lists of authorities; and
- photocopies of case authorities.

Binding of paginated bundle of documents

28H A party's paginated bundle of documents of more than 50 pages must be securely bound and the binding used must be flat and not obscure documents or their contents, particularly along the left hand margin. Spiral binders are not to be used.

28I A party's paginated bundle of documents must be bound into volumes where the total number of pages exceeds 250 pages.

Index to paginated bundle of documents

28J Before filing and serving a paginated bundle of documents, both the Applicant and the Respondent must prepare and affix an index to the front of the bundle. The index must include the following detail: -

- a. a description of each document in the bundle;
- b. the page or pages at which the document appears;
- c. if the bundle contains an affidavit, all exhibits to the affidavit must also be separately described and the page or pages at which the exhibit appears recorded.

Parties are encouraged to follow the format of the sample index Annexure "A" to this Practice Direction.

28K If there is more than one volume to a party's paginated bundle of documents, an index must be prepared and affixed to each volume.

Rule 780 Uniform Civil Procedure Rules

28L Completion of the steps set out in paragraphs 28, and 28A to 28K is deemed to be sufficient compliance by the parties with the requirements of Rule 780 of the *Uniform Civil Procedure Rules*.

Urgent Civil Applications

28M The steps set out in paragraphs 28, and 28A to 28 K of this Practice Direction shall apply to all civil applications unless otherwise directed by a judge of appeal or by the registrar.

29. Once the application has been filed and served, unless otherwise specified by the registrar:
- (a) the applicant will lodge and serve the applicant's written outline of argument no less than 28 days prior to the hearing; and
 - (b) the respondent will lodge and serve the respondent's outline of argument no less than 14 days prior to the hearing.
 - (c) All replies, if any, by the parties to a written outline of argument will be lodged and served no later than 7 days prior to the hearing.

Civil appeal

30. Pursuant to rule 748 of the *Uniform Civil Procedure Rules* 1999, a notice of appeal will be:
- (a) filed in the registry by the appellant within twenty-eight days of the date of the original judgment from the primary court; and
 - (b) served on all other parties to the appeal as soon as practicable.
31. In all civil proceedings, unless otherwise provided by this Practice Direction or directed by the Court of Appeal, a Judge of Appeal or registrar, or other person authorised by the President or a Judge of Appeal:
- (a) an appellant's written outline of argument will:
 - (i) briefly explain what the case is about and summarise the judge's reasons, so far as they are relevant to the points taken on appeal;
 - (ii) set out the arguments for the appellant, giving a reference to any authorities relied upon;
 - (iii) contain a reference to the record supporting any factual assertions made, particularly if the primary judge's factual conclusions are being challenged; and
 - (iv) be free from exaggeration or misstatement, when setting out the effect of the evidence.
 - (b) the respondent's written outline of argument will:
 - (i) not repeat matters set out in the appellant's outline of argument;
 - (ii) summarise the respondent's answers to the appellant's arguments and give reference to authorities relied on - and references to the record for any factual assertions made, particularly if the judge's or the appellant's account of the facts is challenged.

32. In all civil proceedings, unless otherwise provided by this Practice Direction or directed by the Court of Appeal, a Judge of Appeal or registrar, or other person authorised by the President or a Judge of Appeal:
- (a) a written outline of argument will be lodged and served by the appellant within twenty-one days of the commencement of the appeal;
 - (b) the respondent's written outline of argument will be lodged and served within twenty-one days of service of the appellant's written outline of argument;
 - (c) a party may lodge and serve one further written outline of argument or reply in accordance with the timetable letter distributed by the registry;
 - (d) parties will settle and file a draft index for the appeal record book within ten weeks of the commencement of the appeal; and
 - (e) parties will lodge an appeal record book within twelve weeks of the commencement of the appeal.

Amendment to time frames for written outline of argument

33. An amendment to the time frame for a written outline of argument will be made at the discretion of the registrar or other person authorised by the President or a Judge of Appeal, and will not affect the time period for the preparation of the appeal record book.

List of authorities

34. In all civil proceedings, a list of authorities will be lodged with the registry by both parties in accordance with the procedure set down in paragraphs 9 and 10 of this Practice Direction.

Civil appeal by way of written outlines of argument only

35. If the Court of Appeal or a Judge of Appeal so orders, a party or parties may present an argument on appeal by way of written outlines of argument only without the necessity for appearance in court.

Application for an Indemnity Certificate

36. An application for an indemnity certificate under s.15(1) of the *Appeal Costs Fund Act 1973-1981* and accompanying submissions will be made either orally at the appeal hearing or parties may indicate that they intend to provide written submissions to the court within seven days of judgment of the court.

Submissions on Costs of Appeal

36A. In the event that parties are given leave by the Court or a Judge of Appeal to make written submissions on the costs of an appeal or of proceedings in the court or courts from which it came, the submissions from each party:

- (a) must be in double spacing and must not exceed two A4 pages rendered in type no smaller than 1.8mm (10 point); and
- (b) must be provided to the Court within ten (10) days of the date of delivery of the judgment on appeal or the grant of leave.

This direction does not authorize the provision of further submissions by either party in response or in reply.

Disposal of a civil appeal prior to the appeal hearing date

37. Pursuant to rule 762 of the *Uniform Civil Procedure Rules 1999*, effectively to dispose of an appeal when an appeal settles prior to hearing, the appellant will file a notice of dismissal of appeal in the approved form, being Form 68, “Notice of agreement to dismissal of appeal”, *Uniform Civil Procedure Rules 1999*, signed by all the parties to the appeal.

Incorrectly instituted civil appeal

38. (a) When an appeal is filed outside the twenty-eight day appeal period, it has not been correctly instituted pursuant to the *Uniform Civil Procedure Rules 1999*.
- (b) An incorrectly instituted appeal will not be case managed by the registry and the matter will not be heard as an appeal by the Court, unless time is extended by the Court.
- (c) To proceed with an incorrectly instituted appeal, an appellant will:
- (i) file a Form 69, “Application to Court of Appeal”, *Uniform Civil Procedure Rules 1999*, seeking an extension of time within which to file the appeal;
 - (ii) file affidavit material in support of the application, advising the court of any reason for the delay and whether any prejudice might result to the respondent because of the delay;
 - (iii) the affidavit material will include a copy of the reasons for judgment and the order of the primary court, or if there are no reasons for judgment, a copy of the latest pleadings in the matter; and
 - (iv) the affidavit material will include a copy of the notice of appeal.

- (d) If an appeal is incorrectly instituted and no action is taken, the appeal may be struck out for want of prosecution.

Non-compliance with Practice Direction

- 39. Failure to comply with any part of this Practice Direction or with directions of the Court or registrar may result in the matter being listed before a Judge of Appeal for directions and consequently:
 - (a) a costs order may be made against the party at fault; and/or
 - (b) the matter may be struck out.

**PART D - TELEPHONE AND VIDEO LINKS IN
THE COURT OF APPEAL**

- 40. Where special circumstances exist, a party to an appeal may appear before or make submissions to the Court of Appeal by telephone or video link.
- 41. A party may request that telephone or video link facilities be used in a hearing by applying to the registrar in writing, no less than 14 days prior to the hearing, indicating special circumstances justifying the telephone or video link hearing.
- 42. The registrar, if necessary, in consultation with the President or the presiding Judge of Appeal if available, or a Judge of Appeal, will decide if special circumstances are established.
- 43. Without limiting the term, “special circumstances” includes a case where there is an appreciable economic benefit or where very substantial inconvenience will be avoided through the use of a telephone or video link.
- 44. The registrar will advise the parties in writing, prior to the appeal hearing, if a hearing is to utilise the telephone or video link facilities.

Annexure A
SAMPLE – INDEX TO PAGINATED BUNDLE OF DOCUMENTS FOR A CIVIL
APPLICATION

IN THE COURT OF APPEAL
IN THE SUPREME COURT OF QUEENSLAND

Appeal No. XXXX/XX
Lower Court File No. XXX/XX

(Insert name of Applicant)

Applicant

and

(Insert name of Respondent)

Respondent

APPLICANT'S INDEX TO BUNDLE

No.	Description of Document	Date	Page
1	Application	xx/xx/xx	A1 – A3
2	Affidavit of John Smith sworn xx/xx/xx	xx/xx/xx	A4 -A8
3	Exhibit JS1 to affidavit of John Smith	xx/xx/xx	A9-A12
4	Exhibit JS2 to affidavit of John Smith	xx/xx/xx	A13
5	Exhibit JS3 to affidavit of John Smith	xx/xx/xx	A14 -A15
6	Affidavit of Mary Brown sworn xx/xx/xx	xx/xx/xx	A16 -A18
7	Exhibit A to affidavit of Mary Brown	xx/xx/xx	A19
8	Notice of Appeal	Undated	A20-A24

Indexed Paginated Bundle of Documents
 Filed by the Applicant

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