

HIGH COURT OF AUSTRALIA

PRACTICE NOTE NO 1 OF 2006

APPLICATION BOOKS FOR APPLICATIONS FOR LEAVE OR SPECIAL LEAVE TO APPEAL

The Court has amended the provisions of rule 41.09 of the High Court Rules 2004 to do away with the requirements for settling the index of an application book to be used on an application for leave or special leave to appeal. It is expected that this will reduce the time that elapses between the making of the orders which it is sought to challenge on appeal to this Court and the application for leave or special leave being ready for hearing.

One of the consequential changes made to the rules has been to move the requirement that the application for leave or special leave be accompanied by "such other documents, if any, as are necessary for the proper determination of the application" from the rule specifying the documents that are to accompany an application (rule 41.01.2) to a new rule (rule 41.09.7) that requires the attachment of a document of this kind to a summary of argument filed in the application. (It is expected that more often than not any such document would be annexed to the applicant's summary of argument.)

No document may be annexed to a party's summary of argument that was not in evidence in the primary court or the court below, except any affidavit upon which it is sought to rely to demonstrate facts not otherwise appearing from the record which it is alleged are relevant to the decision to grant or refuse special leave.

There will be very few cases in which it will be necessary, for the proper determination of the application, to annex any document to a party's summary of argument. However, in a case where the point which it is sought to agitate in this Court concerns the construction of a particular document, contract or instrument tendered in evidence at trial, a copy of the relevant exhibit should be annexed to the applicant's summary of argument.

If a party seeks to rely on an affidavit deposing to facts not appearing in the record, but alleged to bear upon whether special leave should be granted or refused, that affidavit shall be limited to facts bearing upon the alleged general public importance of the point which it is sought to agitate on appeal to this Court, and the consequences beyond the particular case and parties. The affidavit shall not address particular facts or issues evident from the record, whether in the courts below or in this Court, and shall not contain argumentative matter.

If a party annexes to a summary of argument material not in compliance with rule 41.09.7, a direction may be given that such material not be included in the application book.

1 July 2006