

White Paper November 2019

Steps in Preparing an Appeal Book



LAW IN ORDER



NSW Court of Appeal

This checklist goes through the rules, the requirements under the various rules, the legislation and the practice notes for Appeal Books in the New South Wales Court of Appeal.

Many litigators will go through their entire career without working on an appeal, so it's a very niche area. As such, it's important to have an understanding of the requirements that apply in your jurisdiction and in your particular matter.

Appeal Books are required to be prepared by the appellant unless there are orders to the contrary.



Step 1

Are you filing an appeal, or are you seeking leave to appeal?

- White Folder in support of an Application for Leave to Appeal

OR

- Appeal Books in a formal appeal, that is the Red, Black, Blue & Orange Appeal Books

Step 2

Have you identified the timetable for preparing, filing and serving the Appeal Books at each stage?

6 weeks after filing notice of appeal...*

- File and Serve Red Appeal Book

10 Weeks before hearing...*

- Serve the Black and Blue Appeal Books

4 weeks before the hearing...*

- File and serve the Orange Appeal Book
- File the Black & Blue Appeal Books
- Lodge the remaining (if any) copies of the Red Appeal Book

Keep in mind the number of copies to be produced:

4 File
Registry (1 electronic copy)
Judges (3)

3 Appellant
Solicitor (1)
Senior Counsel (1)
Junior Counsel (1)

3 Respondent
Solicitor (1)
Senior Counsel (1)
Junior Counsel (1)

- Three copies and one electronic copy of each book for the court

- Three copies of each Appeal Book for each interested party

*Unless ordered otherwise.

Step 3

Do you have an understanding of the category of documents required for each part of the Appeal Books?



Red Appeal Book

The formal section containing:

- The relevant process and pleadings from the court below
- The reasons for judgment and order on appeal
- The Notice of Appeal
- Any Notice of Contention
- Any Notice of Submitting Appearance



Black Appeal Book

- Relevant transcript from the lower court
- Relevant written submissions from the lower court



Blue Appeal Book

- Relevant affidavits and their annexures and/or exhibits
- Relevant exhibits tendered in the court below
- Any other relevant documents



Orange Book

- The consolidated index
- The parties' written submissions, in final form (cross-referenced to the preceding Appeal Book)
- Agreed (or separate) chronology
- Any amended, or other, Court of Appeal documents filed since the Red Book

Step 4

Have you considered the general and specific requirements for the Appeal Books?

- The four sections of the Appeal Book
- Pagination requirements
- Line referencing requirements
- Binding requirements
- Production – which books are single-sided and which are double-sided
- Indexing requirements, specific to each type of Appeal Book
- Requirements for the electronic Appeal Book required for the court file

Common Traps

- Make sure to include relevant and up to date version of pleadings, for example, a Further Amended Statement of Claim which supersedes the original Statement of Claim
- Make sure to obtain a sealed or certified copy of the order, separate from the reasons for judgment. Although, if the reasons are certified and include the orders, this should suffice
- The Black & Blue Appeal Books should not contain 'new' evidence and should only contain documents tendered in the lower court proceedings
- Distinguish between oral evidence of the witness (from the transcript, reproduced in the Black Book) and written evidence of the witness (written evidence in a statement or affidavit, reproduced in the Blue Book)
- In the preparation of the Blue Appeal Book, it is important to distinguish between UCPR 51.29(2) applicable to the preparation and order of the Blue Appeal Book index and UCPR 51.29(4) which applies to the order of the documents compiled into the hard copy Blue Appeal Book
- Also, note the special requirements when reproducing medical reports
- Affidavits should be marked up to indicate rulings on objections, as well as those rulings outlined in the Blue Book index



Step 5

Have you identified the main points on appeal and the documents before the lower court that are relevant to those points?

- Are the documents included in the Appeal Books relevant and necessary to determine the appeal?
- Bear in mind that the court can make a costs order if a large volume of material is reproduced but is not relevant to the grounds of appeal

Step 6

Do you have copies of those documents on file or do you need to access the court file?

- Allow time for court files to be retrieved, reviewed and documents identified
- Be aware that the court file may not still have copies of exhibits if they have been returned to parties

Law In Order can assist with every step of the Appeal Books process and most importantly, ensure your submission is on time, compliant and cost effective. We prepare Appeal Books for all jurisdictions including the Family Court, The Federal Court and the High Court of Australia.

We prepare Appeal Books for all jurisdictions including:

- + **High Court of Australia**
- + **Federal Court of Australia**
- + **Supreme Court of Appeal**
- + **Family Court of Australia**
- + **Industrial Relations Commission**
- + **Fair Work Australia**



Talk to us about support and solutions for your team.

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