

Supreme Court of Victoria

Practice Note No. 1 of 1989

Civil appeals from the County Court

The Chief Justice has authorized the issue of the following Practice Note:

Having regard to two recent decisions of the Full Court, viz *Sun Alliance Insurance Ltd v Massoud* [1989] VR 8 and *Cook v Blackburn* [1989] VR 35, both delivered 26 May 1988 it is desirable that the attention of practitioners should be drawn to the following requirements in connection with the preparation of the material for the use of the Full Court in civil appeals from the County Court.

Where a party having the carriage of such an appeal regards the notes of evidence, of the judge's charge, of any ruling or of the reasons for judgment as insufficient for the purposes of the appeal, he should in the first instance seek to obtain the agreement of all other parties to the appeal to the inclusion in the appeal book of such other evidence or notes as may be required. Where such agreement has been obtained the additional material should be submitted to the Listing Master for the approval of the trial judge.

If approved by his Honour it may then be included in the appeal book.

Where the agreement of all parties or the approval of the trial judge cannot be obtained, a party may prepare an affidavit setting out the additional material upon which it is sought to rely. Such an affidavit must be served upon all other parties to the appeal and a copy must be left at the County Court addressed to the trial judge. Any party wishing to contradict anything in such an affidavit may prepare and serve an answering affidavit, a copy of which should similarly be left at the County Court addressed to the trial judge. The affidavits should be included in the appeal book but may only be relied upon with the leave of the Full Court. Where there is a conflict between the parties as disclosed in any such affidavits, such conflict will ordinarily be resolved by the Full Court, where it allows the affidavits to be relied upon, by accepting the version of the party who supports the decision of the County Court: cf *Martin v O'Sullivan* (1899) 24 VLR 856.

These requirements will of course have no application whenever there is a full transcript of the proceedings in the County Court.

Dated this 24th day of February 1989.

AR Traves Senior Associate to the Chief Justice

Reporter: A.R. Traves