LEGALWISE SEMINARS

COMMERCIAL LITIGATION ROUNDUP

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COMPETITION AND CONSUMER LAW LITIGATION – PREPARING FOR TRIAL

Geoffrey Hancy

INTRODUCTION

1 Commercial and civil disputes might go to trial. My paper is about preparing for trial. Taking instructions is the departure point on a journey to resolution by trial or sooner settlement. The journey along the litigation road requires a road map. Road mapping is a vital element. This should be seen to be compatible with endeavouring to reach earlier resolution by agreement. Understanding and applying road mapping enhances the prospect of successful resolution.

2 Running litigation in a manner that lacks demonstrable planning, structure and order has the potential adversely to affect the course and outcome of the litigation. For example, there may be delayed or mistaken appreciation of the prospects of success of a claim. This may result in delayed resolution, a lost opportunity to settle for a reasonable amount, or legal costs may be incurred that are out of proportion to the value of a claim.

3 Within the context of road mapping and structure I spend much of this paper addressing two important issues:

3.1 Managing information in litigation;

3.2 Preparing witness statements.

4 I will not address the substantive law governing resolution of consumer and trading disputes. A summary of remedies provided by the *Australian Consumer Law* and the *Sales of Good Act 1895* (WA), and practical recommendations, may be found in my paper *Consumer v Corporation* Contracts Conference, Legalwise 30 March 2012, accessible from http://hancy.net/papers/dispute-resolution-civil-commercial/. Nor will I cover issues of proportionate liability.

5 An important area I will not cover is obtaining expert advice. It is a sub-set of obtaining witness statements.

MANAGING INFORMATION IN LITIGATION

Introduction

6 The core work of litigation lawyers is resolving legal disputes. In many cases questions for determination include liability for loss, causation, and value of loss. These broad issues in turn lead to numerous sub-issues that must be considered and determined.

7 The process of resolving disputes produces information. Much of that information will be found in documents that were not created by lawyers – promotional documents, contract documents, invoices, receipts, real objects, investigators' reports, letters and emails. In addition lawyers will play an important role by obtaining statements from witnesses and opinions from experts. The amount of information that is generated might range from comparatively minimal to thousands of documents.

8 This section of my paper offers suggestions on steps to take to manage information with the goal of enhancing the prospect of timely resolution or success at trial.

Look forward to the trial

9 What do you do after you have taken initial instructions? Start by thinking about the trial. Look forward to the trial as the potential future destination rather than as a joyful prospect. Assume from the outset that the dispute will go to trial, but hope that it will not. Ask yourself what you, or trial counsel, will be saying to the court at trial about:

9.1 What order the court should make;

9.2 Why that order should be made.

10 The same questions and your answers to them should guide the advice you give your client and they provide the context that will shape your dealings with another party. Other issues that are not strictly legal in character might be relevant to mediation. My paper is not concerned with mediation issues.

11 In a few sentences you should articulate what the case is about, what you want from the court, and why the court should make the orders you want. This is the "case concept". Case management should start by thinking about the potential end point of a dispute and working backwards.

12 Almost all disputes do not go to trial. However if we act as if the dispute will go to trial we are likely to improve the quality of case preparation work. I have started with the end of the litigation process because what you do and the decisions you make about managing information will be controlled by what may happen in the future.

13 At the outset you must road map what you are going to do, bearing in mind the potential future final destination is a trial. At a trial your views of the factual and legal relevance of the evidence will be put to the test. Will you pass that test or not? Whether your assessment before trial was right or wrong will be decided by someone else. How can you maximise the probability that that you have made a correct assessment and the Court will agree with you? Will your client win or lose? Should your client avoid a trial and settle the dispute?

14 Better knowledge of what can be proved improves your understanding of the relevant facts and strengthens your ability to resolve a dispute or make a better judgment about prospects in the event of a trial.

Process drivers

Case concept and case strategy

15 It is essential that you formulate a case concept as soon as you can. It will drive what you do. It should be kept under review as the dispute progresses. It will guide you as to the evidence you must look for and collect – both for and against relevant factual propositions. As further evidence is acquired you may find it is necessary to change your case concept. That may lead you to change direction.

16 The case strategy is the methodology that you apply to implement the case concept. I will mention key conceptual elements of that process. Later, I will identify key documents that should be produced as you put the case strategy into action.

Knowledge, analysis, simplification and structure

17 The key process elements are:

17.1 Knowledge;

17.2 Analysis;

17.3 Simplification;

17.4 Structure.

<u>Knowledge</u>

18 In order to make sense of dispute information you must know the law and the relevant facts. Invariably the "facts" are conclusions about what has happened in the past and those conclusions derive from the evidence that has been left behind. That evidence will

take the form of documents that were produced in the past, the recollections of witnesses, images of scenes and objects, or the actual objects. You must have and know your evidence.

Analysis

19 The application of the case concept through the case strategy entails accumulation and review and analysis of evidence. That review includes an assessment of the legal significance of evidence as it is acquired and what further work must be done to find additional relevant evidence if required. Let your case concept guide your evidentiary enquiries but modify the case concept, or even abandon a case concept for another one, where that is necessary to explain the accumulating evidence. Your ultimate responsibility is to find out what is true rather than to build up a case to support pre-determined conclusions or presumptions.

Simplification

20 The process of analysing the accumulating evidence is enhanced by simplifying the information. Simplification occurs through summarising evidence. This should take written form. Analysis entails forming a view about what the summarised evidence means in terms of issues of liability, quantum and indemnity and the need for any further evidence.

Structure

21 The quality of your analysis will be enhanced by having a structured brief, reducing the analysis to written advice, and giving structure to the written advice.

Process drivers in action

22 All of this leads to the key requirements for and production of:

22.1 A **Brief**;

22.2 **Written opinions**.

23 At the outset create a brief. The brief is your library of the knowledge that is relevant to the dispute. It contains evidence and other documents that aid analysis, such as pleadings, and documents that set out or summarise the relevant law. Its contents are likely to change over time as additional information is identified or acquired.

24 Written opinions simplify the knowledge and provide and record analysis of the legal relevance of the information in a structured manner. Advice is easier to comprehend, and it is easier to evaluate the strength of the advice, if it is structured. Structured advice will be easier to produce if you start by structuring your information. In order to produce structured advice you should imagine yourself both as instructing lawyer and counsel and brief yourself to provide that advice.

25 The brief should change over time as new evidence is collected, or new court documents are created. Similarly it is important to review and revise written advice on an ongoing basis.

Collecting evidence and preparing witness statements

26 In order to give advice properly, evidence should be collected at the earliest possible stage. This will consist of documentary material, plans, objects, photographs and any other items of real evidence, and witness statements. It is better to prepare proper witness statements as early as possible, rather than “proofs of evidence” that cannot or will not be used in court.

27 Witnesses should be located and statements taken. It is important that each witness statement is signed and witnessed. There are various reasons for that requirement. Witnesses can disappear or die, or change a story. A signed statement may be capable of

being used at trial. It is also important that the significance and relevance of each document, plan, photograph or item of real evidence is explained by a witness statement.

28 I recommend that statements for use at trial, in every case, are prepared by lawyers rather than investigators or loss adjusters.

29 I will address the topic of witness statements in more detail in a separate section of this paper.

Key documents

30 As you travel the journey from instructions through to trial a **Brief**, **Written advice** and **Closing submissions** are essential.

31 The process that generates the brief, written advice and the closing submissions should also result in creation of:

31.1 A **Brief index;**

31.2 In all but the most simple cases, an **Evidence chronology** (a summary of evidence);

31.3 A **Written opinion, or a series of opinions** (eg on liability, causation, or quantum and remedy issues);

31.4 **Advice on evidence;**

31.5 Written **Opening submissions.**

32 You should view as mandatory the creation of each and every one of these documents before trial. If any one of these documents is not produced there must be a very good reason. One good reason, for example, might be that the journey ended with a settlement so that advice on evidence and opening submissions were not required.

33 In a large case you may wish to prepare an **Action list** (a “to-do” list) that sets out tasks that lawyers and others are required to do. This will resemble your recommendations for

future action in your written advice. It should include sections for task, person responsible, whether outstanding and completion date.

The Brief

34 The brief should be made from the documents that may be used at trial. It is important therefore that you have an understanding of what happens at a trial, what documents will be required to support written and oral submissions, what documents may be tendered in evidence, what copies are needed, and how counsel at trial will have most convenient physical access to relevant documents.

35 Many, if not most, of the documents that are accumulated for a case will not be necessary for the trial. In the case of some documents it may be obvious that they are potential trial documents. They include pleadings (primarily, statement of claim and defence), documents that were produced in the past that evidence factual allegations in the pleadings, witness statements, and expert reports.

36 The process of preparing and maintaining a brief requires that you decide whether each document is or is not a trial document. A copy of each document that you decide is a trial document should be placed in the brief. Only documents that contain information that is likely to be used at trial should be put in the brief. The process of thinking about whether a document should or should not be included in a brief should start as soon as you have your first relevant document. You should start preparing the brief at the outset of the case.

37 The process of deciding whether to include a document in the brief will be assisted if you ask yourself whether the document contains information that may be used at trial and, in the case of a possible exhibit, what would counsel say about the document at trial and what it means to the case.

38 The brief should have a structure. That structure should equate with the structure of your likely submissions.

39 Submissions at trial often commence by referring to the admissions and issues that are identified from the pleadings. Typically the first category of documents in a trial brief is the pleadings. Trial submissions will then address questions of anticipated evidence, including documentary material by category and identification of proposed witnesses, and may cover some aspects of relevant law and a summary of the case concept.

40 In conformity with the anticipated structure of submissions it is convenient for the brief to be organised so that documents are filed in categories and that it includes sections for witness statements, the law, written submissions, and for other categories of relevant material.

41 Your task of preparing a brief will be aided by first preparing a **brief index**. This index is a list, in order, of the relevant categories of documents that are to go into the brief. You should take time to identify and articulate the categories of documents that you have, or should have, for the matter. Next, create a numbered list of categories in the order that you consider is the order in which the documents should be filed in the brief. This produces your brief index.

42 Each category in the brief index then becomes a heading for a tab in the brief. In my experience numbered tabs are unhelpful. The tabs in a brief should state in words the category of documents that will be found after the tab. Documents are easier to find in the brief if tabs use words and category descriptions rather than numbers.

43 In cases where there is a substantial number of documents that require numerous lever arch files it may be appropriate to colour code the brief files. It may be easier to find pleadings when you know that they are in, for example, the red file. Colours can be

given to a file by coloured paper inserts for the front of the file and the file spine. The contents of the file should be indicated by the cover sheet and the spine.

44 A properly prepared physical brief reinforces the commitment to know what your case is about and where it is going.

45 Briefs often include photographs. It is essential that the copies that go onto the brief are in colour and good quality. Preferably they should be duplicate photographs rather than colour photocopies. Black and white photocopies of coloured photographs should never be put on a brief. Nor should poor quality colour reproductions be put in the brief.

46 Before the trial you should re-evaluate your brief structure. You may then create another brief in reduced form that includes only the documents that you have decided are needed to run the case in the court room at trial. A number of documents that were in the brief before trial may not be admissible documentary evidence or you may have decided you do not need to use or refer to them at trial.

Written opinions

47 Written advice will summarise and analyse the relevant aspects of the evidence and law. For example, in a failed transaction, injury or loss the opinion should address, in a structured manner, wherever possible:

47.1 The nature of the transaction and any loss and when and how it occurred;

47.2 What is being claimed and by whom;

47.3 Summary of the evidence and what are the factual conclusions from that evidence. This may include expert evidence;

47.4 Summary of the applicable legal principles;

47.5 What the legal outcome may be when the legal principles are applied to the factual conclusions from the evidence;

47.6 What further action may be required and by whom; for example, to find further evidence or better understand the law that applies to the anticipated factual conclusions from the evidence;

47.7 A summary of conclusions about likely or potential legal outcomes and recommendations for future action. This last element tells you where you are taking the case.

48 Use topic headings. They give the advice structure. The can include, for example, at the outset "Nature of Dispute" and at the end "Summary of advice and recommendations". Between the beginning and the end you should include topic headings and sub-headings.

49 The significance of the ultimate destination highlights the need for your advice to be in a form that is capable of being translated into closing submissions at trial. It does not matter that initially it may merely resemble a draft that contains tentative conclusions. You are creating a road map for yourself.

50 At the outset you are likely to have a limited amount of information. Your advice should not be confined to advice about what you have. You must think about, and try to articulate, other issues that might be relevant. This will enable you to formulate ideas for enquiries to obtain further information that will make those issues relevant or rule them out. As an obvious example, if you have material that is relevant to a liability question you obviously need, in addition, material about quantum.

51 Performing the task of identifying and listing categories of documents or evidence that might be relevant should lead you to form conclusions about steps to take along the pathway from instructions to trial. Particular kinds of disputes generate the same or similar categories of documents. You need to identify the patterns that emerge from

your experience of cases. This will aid you to make decisions to look for relevant types of information that you do not have.

52 The written advice may be provided by a series of letters or memoranda. A substantial written advice might emerge in time and follow preliminary advice documents. The substantial form might be followed by a series of documents that contain updated advice.

53 A written opinion should be done periodically. An updated opinion will summarise the past position and conclusions, the present position, and what action if any is required for the future. The commitment to prepare periodic advice ensures that you continue to know where you are, and where you are going, with the case. The periodic opinion is your ongoing road map. It keeps you on track. You keep yourself on track. It enables you to decide whether additional or improved evidence is required. It helps you to decide whether the dispute should be settled or allowed to go to trial.

Evidence chronology

54 An important technique for summarising and simplifying evidence, so as to facilitate the process of analysis, is the preparation of what I call an "evidence chronology". This is not a chronology of the type that is commonly required by a Court in litigation. It is a summary of the important aspects of the evidence. Although it is a summary, it sets out the evidence in considerable detail.

55 The summary is in date order. It sets out information that is obtained from the relevant documents in a summary form about events that have occurred in the past. An event is something that has happened – something that a witness did, saw, heard, read or wrote.

56 Every event has these features:

56.1 Time;

56.2 Place;

56.3 Action (what a person did, saw, heard, read or wrote).

57 The evidence chronology contains:

57.1 The date of the event;

57.2 Author (of the document that contains information that evidences the “event”);

57.3 A description of the event (what a person did, saw, heard, read or wrote. It paraphrases the material contained in the document from which the detail of the event is extracted);

57.4 Detail of the document from which the summary is obtained, the party’s discovery number for the document or some other document identifier;

57.5 Provision for recording a comment about the “event”;

57.6 Provision for recording the name of a witness who may be required to give evidence or cross-examined about the event.

58 It is important, wherever possible, that the summary of the event is described by reference to human perception. This is important because one use of the evidence chronology is as an aid to preparing witness statements.

59 Witnesses give evidence about clear recollection of past experience of events and not merely by description of outcomes. For example, if the relevant event was the creation of a contract a useful description of the event might be “individual X of company A contracted with individual Y of company B to …” rather than “a contract was made between company A and company B”. A better summary would be “At [place] individual X of company A said to individual Y of company B [words comprising offer]. In reply individual Y said [words comprising acceptance]”. An appropriate summary of the evidence increases the chance that work will not have to be re-done when witness statements are prepared.

60 The comment section enables you to record any pertinent thought you have when you read the document. Comments may include, for example, that a particular person should be asked to comment on the document, further enquiries should be made about evidence that may exist, or the legal significance of the document or the information in it. The advantage of the comment section is that any thoughts about a document (and irrespective of whether ultimately it proves to be an important comment or not) can be recorded and not lost. This may result in reduced double handling in the future by avoiding the need to re-read the document to retrieve or recall your earlier thought or comment. Your thoughts might benefit someone who in the future has to consider the evidence. They will not have the benefit of your memory but will have your record.

61 The witness section enables you to record your view about potential witnesses or potential cross examination (and not lose the relevant information). An evidence chronology may be used as an aid to preparing witness statements. Another potential use is preparation of cross examination.

62 The importance of putting a document identifier (such as the document discovery number and party, or trial bundle number) in the evidence chronology is that it facilitates locating the document. This is a vital requirement in cases with many documents.

63 The evidence summary can be prepared document by document and later sorted into time order. This can be done easily using a table in Word or spreadsheet software. The process of preparing the evidence chronology enables you to summarise documents in whatever order they are presented to you and you can later use the capability of a computer and software to order the material from earliest in time to most recent.

64 The evidence summary makes the information in the documents more comprehensible by reducing the quantity of the information that you have to digest and putting it in time order. Every evidence summary tells a story, and stories are easier to understand if the

relevant events are told in the order in which they happened. An evidence chronology often reveals issues and questions that were not apparent to you in the past. In my experience it is an essential document for any major case that will be going to trial.

65 An evidence chronology facilitates preparation for trial by:

65.1 Identifying gaps in evidence;

65.2 Identifying required witnesses and documents;

65.3 Aiding preparation of advice and submissions;

65.4 Aiding preparation of witness statements and cross examination.

Lead up to trial

66 Before trial the following are essential documents:

66.1 Evidence chronology;

66.2 Written opinion on relevant issues and potential outcomes of the trial;

66.3 Advice on evidence;

66.4 Opening submissions.

67 The **written opinion** should address relevant liability and quantum issues, pertinent factual and legal conclusions, and likely or potential outcomes from a trial.

68 **Advice on evidence** is essential to ensure that bases are covered and you know what is admitted, whether your evidence is admissible, and what can and will be proved by the evidence.

69 **Opening submissions** should spring from the most comprehensive written opinion and any later updates. The comprehensive written opinion forms the foundation for opening submissions. As the trial progresses, day by day, the opening submissions should be modified into draft closing submissions. The closing submissions should largely resemble the opening submissions, and the opening submissions in turn should largely resemble the comprehensive written opinion that was given some time before trial.

70 Ideally, the bulk of the closing address should have been written months before the commencement of the trial. If you achieve that result it will show that you knew where the case was going well in advance of trial, during the trial and at the conclusion of the trial.

Other technology

71 I have referred to use of a Word format table or a spreadsheet for an evidence summary. Portable document format (pdf) software may also be useful to create a bookmarked searchable single brief file. I have personally used a single pdf file for a trial bundle of almost 3,000 pages – the equivalent of more than 10 full lever arch files.

72 I have developed my own software for secure web based briefing. I can be provided with, and can access, a structured and organised brief from anywhere in the world that has Internet access.

73 Using technological aids for trial work is a large enough topic for its own seminar.

WITNESS STATEMENTS

74 A witness statement must contain truthful and reliable evidence, according to the clear recollection and personal experience of the witness. Its contents should tell the trial lawyer what the witness recalls, and do so in a way that can be translated into questions that extract from the witness in court admissible, honest, and reliable answers.

75 These objectives may be achieved if a number of rules are followed when the statement is prepared.

Tell the story as a series of events

76 A witness statement is a story told by the witness about a series of events that the witness experienced in the past. The events follow in a time sequence.

77 Each event usually can be described in the words of the witness against a background of a time and place. Against this background the witness states what the witness experienced.

78 For the most part the relevant personal experience is described by:

78.1 Something the witness saw;

78.2 What the witness did;

78.3 A meeting or telephone conversation with someone and what the witness said or heard;

78.4 A document that the witness prepared and sent off;

78.5 A document the witness received, read and acted on.

Describe by reference to the sight, sound, and action

79 Each event is part of the witness' personal experience. The description of the event should be what the witness saw, said, heard, or did. When another person forms part of the experience of the witness then the description of the event should refer to what that other was heard to say or seen to do.

80 A witness statement that is prepared in this way becomes a written version of what otherwise might be imagined to be a script for a film of the described events. If an event cannot be imagined as image or sound then it is likely that the witness statement is not in the correct form.

Recollection of events

81 In my view the witness should be told that the witness should only say in court what the witness clearly recollects and knows to be true. That knowledge comes from recollection of personal experience of events. The witness should be confident about that recollection. The witness should not speculate or guess. If not confident about

whether an event occurred then the true answer to a question about it may be that the witness does not have a clear recollection, does not know or does not remember.

82 If the witness is "pretty sure", is "90% certain", "thinks it is so", says "I would have done", says "it would have been", says "I imagine" or prefaces a description of an event with a like expression then there is risk that what is being said is not true. In these cases the witness is not confidently saying what he or she knows to be true. Documents created at the relevant time or other objective evidence might be available to disprove the evidence. If this occurs at trial an adverse light might be cast on what the witness has said about other events.

Past events

83 Most evidence concerns events that occurred in the past. Witness statements should therefore use past and not present tense. The problem of incorrect use of present tense often arises when a witness describes a scene, or talks about a relationship between things, system, practice, or state of affairs.

84 Examples of incorrect use of present tense when past events are in issue include "The site is surrounded by trees ...", "Every worker who comes on site is given instructions to ...", "The company has standard terms of exclusion on its contract documents", "Smith is managing director of the company and has authority to ... ", "Orders for supplies are placed by ...".

85 Use of present tense disguises the true evidence about the state of affairs at the relevant time.

State the words spoken

86 Frequently witness statements set out conclusions about the nature or the subject of what was said rather than state the words used. This is not evidence. Usually it is a

conclusion about or evaluation of personal experience that has not been set out in the statement. The specified substance of the words spoken constitutes the evidence.

87 Forms like "He talked about ...", "I informed her ...", "I related to him my concern about ...", "We discussed ..." do not set out what happened according to the personal experience of the witness. They tend to identify the label given by the witness to the topic or issue that was discussed without properly saying what was said. They cannot evoke an image of what happened. The safe form is "I said" or "he/she said" followed, as best as can be done, the substance of the words that were used. If topics of discussion are identified they should be followed, where relevant, by evidence of what was said.

88 I do not agree with standardised use of quotation marks for recollection of something that was said, unless the witness has a clear memory of the precise words used. Usually human memory is not that good and a recollection is about the substance of the content of words used rather than word for word what was said. More often the truthful answer is that the witness can only state the substance of what was said. In that event placing language in quotation marks is not only unhelpful but it is not the true evidence.

Avoid lawyer speak

89 The language used in the statement should reflect the way people talk and not legalistic equivalents. People "see" rather than "observe" things. They "say" rather than "inform" or "advise". They "read" and do not "peruse" and they "send", "post" "fax" or "email" rather than "forward" documents. The witness "went" rather than "proceeded" somewhere. Most people drive "cars" rather than "vehicles" (although sometimes the best description is "vehicle").

Use the active form

90 Most sentences should identify the actor (usually the witness) and if another person is involved should identify that person. The sentence should then say what the witness saw, said, heard or did. The actor may however be revealed by the context provided by the statement.

Avoid passive forms

91 Passive expressions that simply describe an event without identifying the individuals concerned should be avoided. For example "The side of the house was where the man came from" does not reveal anything about what the witness experienced. The sentence should reveal that the witness saw the man come from the side of the house. Unless it is clear from the context the form should be "I saw the man walk from the side of the house".

Avoid "collective" expressions

92 The individual experience of the witness is usually relevant and not some form of collective or corporate experience. The witness should talk about what "I" saw, did, said or heard rather than what "we" or some corporate entity saw, did, said or heard.

93 Likewise where another individual said or did something the individual should be identified and not "they" or the name of some corporate or collective entity. Corporations do not talk or act. Only people do and hence they must be identified. A sentence that links conduct to a corporation is a conclusion about who the individual represented rather than a statement about what happened.

94 It is rarely helpful or admissible to state in a witness statement what "we agreed" or what "we discussed". These are expressions of conclusions from words spoken that have not been stated.

Avoid stating the state of mind

95 In most cases the state of mind of the witness is not relevant. It may be relevant where an allegation is made that there was a common intention in a contractual context that was not correctly recorded in the final written contract and a claim is made for rectification. It might also be relevant in the context of foreseeability and the actual knowledge of the defendant when an allegation of negligence is made. In most cases however the state of mind of the witness is not relevant. It is not a description of the personal experience of the witness. It is not what the witness saw, said, did or heard.

96 There are numerous expressions that reveal an irrelevant state of mind and should not be included in witness statements. They include "I understood", "I thought" or "I intended".

Avoid interpreting documents

97 A related problem is interpretation of a document. In most cases what the words used in a document mean is an issue to be decided by the court. The author's interpretation is not admissible. A sentence in the form "When I wrote this letter I meant in paragraph 2 ..." is not likely to be admissible. The same applies to conversations. "When I said to her [words spoken] I meant ..." and like forms should not be used. Again, interpretation usually is not a description of what the witness saw, said, heard or did.

Avoid repeating contents of documents

98 In most cases it is not necessary to repeat the contents of a document identified by the witness. It is sufficient for the witness to say that a document was prepared and what was done with it or that a document was received and read and then acted on and to describe the action. If the content of the document is admissible then the document should be and can be annexed as a potential exhibit. Sometimes a portion of the content of the document might be appropriately inserted in the witness statement if there is some

good reason to do that; for example, to emphasise a particular point. Repetition of large slabs of document content should be avoided.

Structure

One sentence per paragraph

99 In my view it is better to have only one sentence per paragraph in a witness statement. This serves to remind counsel that there should be only one question on one piece of information at a time. It is common for solicitors to draft witness statements with numerous sentences per paragraph.

Number paragraphs

100 In cases where witness statements are exchanged paragraphs should be numbered.

Exhibits

101 The relevance of a document that is to be tendered through the witness should be explained by reference to the personal experience of the witness. Clearly identify a potential exhibit at the point where its relevance is explained in the statement.

Geoffrey Hancy

B.Juris (Hons), LLB (Hons), B.Ec (UWA), LLM (Melb)

geoff@hancy.net
www.hancy.net