

# COAT WA Chapter


Oral Decisions – Some  
Suggestions

Justice John Chaney


Thursday 3 April 2014

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# Why give oral decisions

- ◆ To promote better reception of the decision
  - ◆ To avoid delay and reduce anxiety for the parties
  - ◆ To better manage workload
  - ◆ To promote objectives of speed, efficiency, minimising costs
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# Why give oral reasons


- ◆ Focus minds on the critical issues
  - ◆ Deal with issues and evidence while they are freshest in the mind
  - ◆ Enable more effective communication to the losing party
  - ◆ Reduce delay and cost in the system
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# The Content of Reasons


- ◆ In *Comcare v Lees* (1997) 151 ALR 647 at 656, Finkelstein J said that, in determining whether the obligation to give reasons has been discharged a number of principles must be borne in mind.
- ◆ First as Shepherd J said in *Bisley Investments Corp Ltd v Australian Broadcasting Tribunal* (1982) 40 ALR 233 **no standard of perfection is required in their preparation. What is required is that the reasons should be expressed in clear language so that they are capable of being understood:** *Ansett Transport Industries (Operations) Pty Ltd v Wraith* (1983) 48 ALR 500.

- **The reasons need not deal with every detail of the evidence but must set out those parts of the evidence which are important for the conclusions arrived at:** *Our Town FM Pty Ltd v Australian Broadcasting Tribunal (No 1)* (1987) 77 ALR 577.
- **The reasons must disclose the reasoning process of the tribunal:** *Telescourt v Commonwealth* (1991) 29 FCR 227.
- **Finally, in determining whether the reasons are adequate they must be considered fairly and not combed through “with a fine appellate toothcomb to find an error”:** *Minister for Immigration and Ethnic Affairs v Wu Shian Liang* (1996) 185 CLR 259 at 291.

# When to give an oral decision

- ◆ Urgent cases
  - ◆ Interlocutory matters
  - ◆ Simple cases
  - ◆ Cases where you are well prepared
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# When not to give oral decisions

- ◆ Complicated cases
  - ◆ Cases turning on fine analysis of the law or the evidence
  - ◆ When you are not very confident as to the right outcome
  - ◆ Cases where you are not adequately prepared to deliver reasons
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# Suggestion 1

## ◆ PREPARE


- Master relevant materials
- Consider applicable legal principles
- Identify key issues and how case might be decided
- Organise the file for hearing
- Prepare an outline
- Utilise any available template



# Example of outline

- ◆ Claim -  
S435 LP Act
- ◆ Allegation -  
Failure to XXn witness as to criminal record
- ◆ Practitioner's response –  
See response[12]-[14]
- ◆ Definition of unsatisfactory professional conduct and improper conduct
- ◆ Key Issues
  1. Was failure to XXN a breach of duty
- ◆ Facts –
  - nature of original proceedings
  - witness's evidence
  - relevance of criminal record
- ◆ Duty of counsel
  - see *Giannarelli v Wraith* per Mason CJ
- ◆ Conclusions-
- ◆ Applicants other arguments

# Suggestion 2 – During hearing

- ◆ Make short additions to outline as the case unfolds (or create and outline as the hearing proceeds)
  - ◆ Cross reference notes to outline rather than expand outline too much
  - ◆ Use breaks to organise thoughts and refine outline
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# Suggestion 3

- ◆ Take a short break before delivering decision
  - Signifies no prejudgment
  - Enables you to re-affirm that you have heard and need to consider their submissions
  - Gives you the opportunity to finally organise your thoughts
  - Gives you the opportunity to organise you papers
  - Enables you to write out any passage requiring careful expression

# Suggestion 4

- ◆ Delivering the decision
  - Organise material to be quoted from so that it is close at hand
  - Place material in a logical order, flagged and highlighted appropriately
  - Try to make it as palatable as possible to the loser
  - Recognise and deal with the strengths of loser's case
  - Couch rejection of evidence in as uncritical terms as possible

# Suggestion 4

- Avoid too much praise to the winner's submissions or evidence
  - Avoid reciting evidence unnecessarily
  - Avoid unnecessary detailed analysis of the law
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# Conclusion

- ◆ Remember that an important object of the exercise is to have all parties leave the hearing with a sense that they have been heard and dealt with fairly