

## Chapter 2

# Frequent Issues

*Graeme Blank and Hugh Selby*

### Commencing the Appeal

#### Parties to an appeal

Each party to a proceeding in the court appealed from who is affected by the relief sought by a notice of appeal or is interested in maintaining the judgment under appeal shall be joined as a party to the appeal.<sup>1</sup>

The notice of appeal must nominate the parties involved and the person or party on whom it is proposed to serve the notice. An appeal is duly instituted once served on all affected parties: *Tylor v Harris Scarfe & Co Ltd*.<sup>2</sup>

For a single judge of the appeal court to order service on a person who is not a party to the appeal, it must be established that the person to be served has a legal interest in the outcome. A mere commercial interest is not sufficient.<sup>3</sup> Co-defendants who may be affected by the appeal should be served.<sup>4</sup>

The appeal court has the power to alter a judgment even in favour of a party that has not appealed from that part of the judgment.<sup>5</sup>

#### Standing to appeal

Any person who was a party in the hearing at first instance may appeal from the order or judgment. However, it is important to check that the person's status has not changed since the first instance hearing. For instance a person who has been made a bankrupt may only appeal

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1 *Suncorp-Metway Ltd v Sapuppo* [2001] FCA 708.

2 [1906] SALR 4.

3 *Re IG Farbenindustrie AG Agreement* [1944] Ch 41 at 43.

4 *Purnell v Great Western Railway Co* (1876) 1 QBD 636 at 641.

5 *Attorney-General v Simpson* [1901] 2 Ch 671 at 713, 720.

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