

# Civil Appeal from the Magistrates' Court

## Self-Help Information Pack

October 2018



**Principal Registry**  
Supreme Court of Victoria  
Level 2, 436 Lonsdale Street  
Melbourne Victoria 3000  
W: [supremecourt.vic.gov.au](http://supremecourt.vic.gov.au)



# Contents

<b>1</b>	<b>Civil Appeal from the Magistrates' Court</b>	<b>3</b>
1.1	Time to Appeal	3
1.2	Commencing an Appeal	3
1.3	Service of Documents	4
1.4	Filing with the Supreme Court	4
<b>2</b>	<b>Legal Assistance</b>	<b>4</b>
2.1	Law Institute of Victoria	5
2.2	Victoria Legal Aid	5
2.3	Community Legal Centres	5
2.4	Justice Connect	6
2.5	Other Online Information	6
<b>3</b>	<b>General Information</b>	<b>6</b>
3.1	Self-represented Litigant Coordinator	6
3.2	Supreme Court Registry	6
3.3	Duty Barrister Scheme	7
3.4	Court Network	7
<b>4</b>	<b>Supreme Court Fees</b>	<b>7</b>
4.1	Fee Waiver Application	7

**In this information pack, you will find basic relevant information on how to appeal on a question of law from a decision of a magistrate in a civil matter to the Supreme Court of Victoria.**

Legislation, rules and all other information are up to date as at the time of making this pack. Please check the legislation and rules before you commence your action. If in doubt, contact the Self-represented Litigant Coordinator's office on (03) 9603 9240 or by email to [unrepresented@supcourt.vic.gov.au](mailto:unrepresented@supcourt.vic.gov.au) (see section 3.1 below).

# 1 Civil Appeal from the Magistrates' Court

## 1.1 Time to Appeal

An appeal from the Magistrates' Court is made from a final order in a civil matter under section 109 of the *Magistrates Court Act 1989*. There is no right of appeal against an interlocutory (non-final) order made in the Magistrates' Court, although a 'judicial review' may be an option if you wish to dispute an interlocutory order (for more information, see the 'Judicial Review Self-Help Pack', available at [www.supremecourt.vic.gov.au](http://www.supremecourt.vic.gov.au)).

The appeal is commenced by filing a **notice of appeal** within 30 days from the date of the Magistrates' Court order you wish to appeal.

If you are outside the 30 day time limit, leave to appeal (permission) out of time is required.

The notice of appeal must be served on the registrar of the Magistrates' Court and all parties affected by the order as soon as practicable after filing the notice of appeal with the Supreme Court.

Within 7 days of filing the notice of appeal, you must file an **affidavit**, stating the acts, facts, matters and circumstances relating to the order you are appealing, the grounds of appeal and, if leave to appeal is sought, why leave to appeal should be given. This affidavit must also exhibit the order and reasons for decision of the order; if these are not available at the time of filing, their absence must be accounted for in the content of your affidavit.

Also, within 7 days of filing the notice of appeal, you must file a **summons for directions** and (if necessary) for leave to appeal. Upon filing this document and submitting a 'Judicial Review and Appeals List hearing date information form' (available from the Registry) a first directions hearing will be assigned before a Judicial Officer (this may take up to one business day). Note, directions hearings are short listings to set out a timetable for the filing and service of documents and will often set down a date for the trial of the proceeding.

## 1.2 Commencing an Appeal

Appealing a decision of a court or tribunal can be very costly. In most cases if you lose, you must pay the other party's legal expenses and costs. You need to

be sure you have a good chance of success before you start any legal action. It is best to try to settle your legal problem outside of the courts if possible. If you are going to represent yourself, make sure you are familiar with the rules and legislation of the Court.

As noted above, if you are appealing a decision, your appeal is commenced by filing and serving a notice of appeal. The main things to consider before you appeal are what are your questions of law (what error/s in the law do you think the Magistrate has made) and what are your grounds of appeal (what mistakes or errors in the law do you think the Magistrate has made in your particular case) as these form the basis of your notice of appeal.

It is always best to submit typed/printed documents rather than handwritten ones. Be as concise as you can, and make the document look professional. These will be the main documents used in your court action—if they read well, they may give you a better chance of settling or winning your action.

Even if you intend to represent yourself in court, it may be to your benefit to employ a solicitor just to do the documentation work for you. You can then continue your representing yourself for the remainder of your case.

### **1.3 Service of Documents**

There are rules concerning the serving of documents to the Court and to the other parties involved in your case that must be adhered to. Any document required or permitted to be served in a proceeding may be served personally, but unless personal service is required by these rules or by order, it need not be served personally. Personal service of a document is effected by:

- a. leaving a copy of the document with the person to be served or
- b. if the person does not accept the copy, by putting the copy down in the person's presence and telling the person the nature of the document.

Where personal service of a document is not required, the document may be served by leaving the document at the proper address of the person on a day when the Prothonotary's office is open, by posting the document or by email where an email address for service has been provided. If you are serving on a solicitor, the document can be served by post, document exchange, fax or by email where an email address for service has been provided.

### **1.4 Filing with the Supreme Court**

You should file your documents in RedCrest, the Supreme Court of Victoria's electronic filing system and serve the documents on the other parties.

If you are representing yourself, please make an appointment with the Self-represented Litigant Coordinator (see section 3.1 below) before you file or serve any documents.

Further information on how to file documents in RedCrest is available at [redcrest.com.au](http://redcrest.com.au) or can be obtained by contacting the Self-represented Litigant Coordinator.

## 2 Legal Assistance

Have you had any legal assistance in relation to your appeal? If you have a legal problem it is always best to seek legal advice. If, however, you do not want or cannot afford legal advice from a solicitor, there are various places you can go to seek initial legal help.

Do some research in the area of law your matter is concerned with, and try to find out everything you can before you commence a legal action. The best place to start is to search the internet for your specific legal problem; there are various websites that can give you advice. A good place to start could be the websites listed in sections 2.1–2.5 below.

Before you start or continue court proceedings, we suggest you try seeking out one or more of the following resources if you do not want or cannot afford legal advice or representation.

### 2.1 Law Institute of Victoria

The Law Institute of Victoria (LIV) offers a legal referral service to members of the community who cannot afford legal representation. A litigant can complete a referral form for a free 30-minute consultation with a solicitor.

To obtain a referral form, or to find out more about the LIV's legal referral service you can:

- visit the following webpage, [www.liv.asn.au/Referral](http://www.liv.asn.au/Referral), and follow the prompts
- phone (03) 9607 9550 or
- contact the LIV via email at [referrals@liv.asn.au](mailto:referrals@liv.asn.au).

The LIV is located at 470 Bourke St, Melbourne. Their website can be found at [www.liv.asn.au](http://www.liv.asn.au).

### 2.2 Victoria Legal Aid

We encourage self-represented litigants seeking free legal advice to visit the Victoria Legal Aid (VLA) website, available at [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au), or contact their helpline on 1300 792 387. The VLA helpline gives advice on a range of civil and criminal issues.

### 2.3 Community Legal Centres

Community Legal Centres (CLCs) are independent community organisations that provide free legal services. There are two types of CLC:

- **generalist CLCs** provide services on a range of legal issues to people in their local area. There are generalist CLCs who may be able to assist with your legal issues across metropolitan Melbourne and throughout rural and regional Victoria
- **specialist CLCs** can help with particular areas of law (such as tenancy, consumer, employment, welfare, human rights, environmental issues and immigration law) or assist specific groups of people (such as young people, women, or people with mental illness or disabilities).

For a list of CLCs and their relevant contact details, or other general information, please visit their website at [www.fclc.org.au](http://www.fclc.org.au).

## 2.4 Justice Connect

Justice Connect (formerly PILCH) helps individuals access pro bono assistance and coordinates a number of pro bono schemes in Victoria. Justice Connect may be able to help you find pro bono legal assistance if:

- your matter has merit (a good chance of success)
- you are ineligible for legal aid
- you meet a means test and
- your matter has public interest.

You can find out more information about Justice Connect and getting pro bono help by visiting their website, available at [www.justiceconnect.org.au](http://www.justiceconnect.org.au), or by phoning (03) 8636 4444.

## 2.5 Other Online Information

You can also browse free legal information at various websites, such as:

- The Law Handbook: Your Practical Guide to the Law in Victoria: [www.lawhandbook.org.au/handbook.php](http://www.lawhandbook.org.au/handbook.php)

# 3 General Information

## 3.1 Self-represented Litigant Coordinator

The Supreme Court has a Self-represented Litigant Coordinator who specialises in assisting litigants who, for various reasons, find themselves without legal representation. Just like any court registry officer, the Self-represented Litigant Coordinator cannot give you any legal advice. However, the Coordinator's office will be able to provide you with procedural and practical advice, as well as information about alternative dispute resolution measures and the availability of any free legal services. Self-help packs on various types of proceedings that can be commenced in the Supreme Court are available in hardcopy at the Supreme Court Registry, can be posted by request or can be found on the [www.supremecourt.vic.gov.au](http://www.supremecourt.vic.gov.au) website.

If you would like to make an appointment with the Self-represented Litigant Coordinator, please phone (03) 9603 9240 and ask to make an appointment or send an email to [unrepresented@supcourt.vic.gov.au](mailto:unrepresented@supcourt.vic.gov.au). The Coordinator's office is located in the Supreme Court Registry (see section 3.2).

## 3.2 Supreme Court Registry

The Supreme Court Registry is located on Level 2, 436 Lonsdale St, Melbourne. They are open from 9.30am to 4pm Monday–Friday, except public holidays. Contact details include:

- Supreme Court Registry (General) phone: (03) 9603 9300

- Self-represented Litigant Coordinator phone: (03) 9603 9240

The Supreme Court conducts hearings on the ground floor of 436 Lonsdale St, Melbourne for hearings before an Associate Judge or Judicial Registrar or at 210 William St, Melbourne for hearings before a Supreme Court Judge. The Court will also hear matters before a Judge, Associate Judge or Judicial Registrar at the William Cooper Justice Centre (WCJC), located at 223 William St, Melbourne.

### 3.3 Duty Barrister Scheme

The Duty Barrister Scheme of the Victorian Bar provides a roster of duty barristers to assist self-represented litigants in the Supreme Court and Court of Appeal on an ad hoc basis.

A pro bono (free of charge) barrister can only appear in court on your behalf to help you with the hearing; they cannot assist you with your paperwork or give legal advice before the hearing.

Persons seeking assistance are referred to the scheme via the Self-represented Litigant Coordinator or the Court of Appeal.

### 3.4 Court Network

Rather than provide legal advice, Court Network provides support and crisis assistance. Court Network is a unique non-legal court support, information and referral service operating throughout Victoria.

Court Network volunteers can provide support and information about going to court, be with you in person on your day in court, explain how the courts and legal systems operate (in person or by telephone) and refer you to other community services that can help you.

For more information, please visit their website at [www.courtnetwork.com.au](http://www.courtnetwork.com.au) or call (03) 9603 7433.

## 4 Supreme Court Fees

See fees page on our website. [www.supremecourt.vic.gov.au](http://www.supremecourt.vic.gov.au).

### 4.1 Fee Waiver Application

#### Automatic Waiver

A fee may be automatically waived, if, at the time the fee is payable, the person or other entity –

- (a) is legally represented in the proceeding under a pro bono scheme administered by or on behalf of the Victorian Bar, the Law Institute of Victoria or Justice Connect;
- (b) is legally represented in the proceeding on a pro bono basis by a member of the Federation of Community Legal Centres;
- (c) has been granted legal aid for the proceeding;
- (d) is serving a sentence of imprisonment or is otherwise detained in a detention facility; or
- (e) is a person under the age of 18 years.

Fees for late filing, litigation searches, searching a file and photocopying cannot be waived under these categories and can only be waived on the grounds of financial hardship (in accordance with section 129(3) of the *Supreme Court Act 1986*).

### **Financial Hardship Waiver**

The prothonotary has the power to waive the payment of court fees if the payment of the fee will cause financial hardship.

Section 129 (3) of the Supreme Court Act 1986 states the following:

The Prothonotary or Deputy Prothonotary at or for the place where a proceeding is to be heard may, having regard to the income, day to day living expenses, liabilities and assets of the person liable to pay a fee prescribed under subsection (1) (a), waive payment of that fee if, in his or her opinion, the payment of that fee by that person would cause him or her financial hardship and, in that case, that prescribed fee is not payable.

Fee waiver applications require a thorough examination of an individual's assets, liabilities, income and expenditures. The individual must provide evidence to support the details they state in the application. For example bank statements, pension card details (if applicable), details about any loans or shares, any assets currently owned and an individual's current employment status must all be made available.

### **Waiver Form**

If you believe you satisfy the eligibility criteria for an automatic fee waiver or wish to apply based on financial hardship, you must complete and submit the [Application for Waiver of Court Fees](#) form for assessment. You must ensure that you attach the requested documentation to that form.

You may be requested to provide further documentary evidence to support your claim. If you are successful in obtaining a fee waiver, that will apply for any future fees which may be payable in the proceeding. Following the submission of that initial form and until the end of your court proceeding, you will need to notify the Court if your circumstances change.



# Civil Appeal from the Magistrates' Court

## Rules and Forms

### Self-Help Information Pack

October 2018



**Principal Registry**  
Supreme Court of Victoria  
Level 2, 436 Lonsdale Street  
Melbourne Victoria 3000  
W: [supremecourt.vic.gov.au](http://supremecourt.vic.gov.au)



# Contents

<b>1 Rules and Legislation</b>	<b>3</b>
Magistrates Court Act 1989 – Section 109	3
Supreme Court (General Civil Procedure) Rules 2015	4
<b>2 Forms and Guides</b>	<b>6</b>
• Notice of Appeal	
• Form 46A: Summons	
• Affidavit	
• Certificate identifying exhibit	

**In this information pack, you will find the relevant rules and forms to appeal a decision from the Magistrates' Court**

Legislation, rules and all other information are up to date as at the time of making this pack. Please check the legislation and rules before you commence your action. If in doubt, contact the Self-represented Litigant Coordinator's office on (03) 9603 9240 or by email to [unrepresented@supcourt.vic.gov.au](mailto:unrepresented@supcourt.vic.gov.au).

# 1 Rules and Legislation

## ***Magistrates Court Act 1989 – Section 109***

### **Appeal to Supreme Court from final order made in civil proceeding**

- (1) A party to a civil proceeding in the Court may appeal to the Supreme Court, on a question of law, from a final order of the Court in that proceeding.
- (2) An appeal under subsection (1)—
  - (a) must be instituted not later than 30 days after the day on which the order complained of was made; and
  - (b) does not operate as a stay of any order made by the Court unless the Supreme Court so orders.
- (3) Subject to subsection (2), an appeal under subsection (1) must be brought in accordance with the rules of the Supreme Court.
- (4) An appeal instituted after the end of the period referred to in subsection (2)(a) is deemed to be an application for leave to appeal under subsection (1).
- (5) The Supreme Court may grant leave under subsection (4) and the appellant may proceed with the appeal if the Supreme Court—
  - (a) is of the opinion that the failure to institute the appeal within the period referred to in subsection (2)(a) was due to exceptional circumstances; and
  - (b) is satisfied that the case of any other party to the appeal would not be materially prejudiced because of the delay.
- (6) After hearing and determining the appeal, the Supreme Court may make such order as it thinks appropriate, including an order remitting the case for re-hearing to the Court with or without any direction in law.

## ***Supreme Court (General Civil Procedure) Rules 2015***

### **58.07 Commencement of appeal**

Except as otherwise provided by any Act or Rule, an appeal under this Part is commenced by filing a notice of appeal in the Trial Division.

### **58.08 Notice of appeal**

(1) A notice of appeal under this Part shall—

(a) be in writing signed by the appellant or the appellant's solicitor;

(b) set out or state—

(i) whether leave to appeal is required;

(ia) the order which is the subject of appeal;

(i) the order which is the subject of appeal;

(ii) whether the appeal is from the whole or part only of the order and, if so, what part;

(iii) the question of law upon which the appeal is brought;

(iv) concisely the grounds of appeal;

(v) the order sought in place of that from which the appeal is brought; and

(c) at its end, name all the persons on whom it is proposed to serve the notice of appeal.

(2) As soon as practicable after filing the notice of appeal, the appellant shall—

(a) deliver a copy to the registrar or other proper officer of the court that made the order the subject of the appeal;

(b) unless the Court otherwise orders, serve a copy of the notice on all persons directly affected by the appeal.

(3) The Court may give leave to amend the grounds of appeal or make any other order to ensure the proper determination of the appeal.

### **59.09 Appellant to file affidavit**

(1) Within seven days after filing notice of appeal, the appellant shall file an affidavit stating the acts, facts, matters and circumstances relating to—

(a) the order under appeal;

(b) the grounds set out in the notice of appeal; and

(c) if leave to appeal is needed, why leave to appeal should be given.

(2) There shall be included as exhibits to the affidavit—

(a) a copy of the order under appeal; and

(b) a copy of any reasons given for the order—

or their absence as exhibits shall be accounted for in the affidavit.

### **58.10 Directions**

- (1) Within seven days after filing notice of appeal, the appellant shall apply on summons for directions and, if necessary, for leave to appeal.
- (2) The application under paragraph (1) is taken to be made when the summons is filed.
- (3) Not less than 14 days before the day for hearing named in the summons, the appellant shall serve on the respondent to the appeal the summons together with a copy of the affidavit filed under Rule 58.09 and any exhibit.
- (4) Not less than five days before the day for hearing named in the summons, the respondent shall file and serve a copy of any affidavit in answer and shall serve a copy of any exhibit.
- (5) If at any time the Court is satisfied that the hearing of the summons should be expedited, the Court may, on the Court's own motion or on application, bring the summons on for hearing.
- (6) Subject to paragraphs (7), (8) and (9), on the return of the summons, the Court shall give directions with respect to the appeal.
- (7) If leave to appeal is required, the Court may, as appropriate—
  - (a) direct that the application for leave to appeal be heard and determined by the Court which, if leave is granted, is to hear and determine the appeal; or
  - (b) hear and determine the application for leave to appeal.
- (8) If leave to appeal is refused, the Court shall dismiss the appeal.
- (9) The Court may dismiss the appeal if satisfied that—
  - (a) the notice of appeal does not identify sufficiently or at all a question of law on which the appeal may be brought;
  - (b) the appellant does not have an arguable case on appeal or to refuse leave would impose no substantial injustice; or
  - (c) the appeal is frivolous, vexatious or otherwise an abuse of the process of the Court.

### **58.11 Leave to appeal**

An appeal commenced more than 30 days after the day on which the order under appeal was made is to be taken to be an application for leave to appeal.

### **58.12 Stay**

The Court may grant any stay necessary for the proper hearing and determination of the application or the appeal.

### **58.13 Expedition**

- (1) Where it is satisfied that the delay caused by proceeding in accordance with this Part would or might entail injustice, the Court may make an order under this Part without notice to any party upon such terms as to costs or otherwise and subject to such undertaking, if any, as it thinks fit.
- (2) The Court may set aside any order made under paragraph (1) on the application of any person affected.

### **58.14 Report**

The Court may call for a report from the Court that made the order from which the appeal is brought and, if the contents of that report have first been made available to the parties to the appeal, the Court may act upon the report.

## 2 Forms and Guides

- Notice of Appeal
- Form 46A: Summons
- Affidavit
- Certificate identifying exhibit

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMON LAW DIVISION  
JUDICIAL REVIEW AND APPEALS LIST**

**No. S CI**

**B E T W E E N**

Appellant

-and-

Respondent

**NOTICE OF APPEAL**

---

Date of Document:	Solicitors Code:
Filed on behalf of:	DX:
Prepared by:	Telephone:
	Ref:
	Email:

---

**TAKE NOTICE** that the Appellant seeks to appeal to the Supreme Court of Victoria pursuant to section 109 of the *Magistrates' Court Act 1989 (Victoria)* against the judgment given and final orders made by ..... on .....

**LEAVE TO APPEAL:\*\***

*[State whether leave to appeal is required outside of the timeframe specified by the Magistrates' Court Act]*

*\*\* [Complete or strike out as appropriate.]*

**ORDER SUBJECT TO APPEAL:**

*[Specify the Order/s made and whether the appeal is from the whole or part only of the order and, if so, what part.]*

**QUESTION OF LAW:**

*[Specify the question of law upon which the appeal is brought.]*

**THE GROUNDS RELIED UPON ARE:**

*[State concisely the grounds upon which the appeal is sought.]*

**ORDER SOUGHT:**

*[State the Order/s sought in place of that from which the appeal is brought.]*

It is proposed to serve this Notice of Appeal on:

*[Name all persons]*

---

**Signed**

*[Print name and Title]*

*[Dated]*

**FILED** [insert date].



**FORM 46A**

Rule 46.04(1)

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMON LAW DIVISION  
JUDICIAL REVIEW AND APPEALS LIST**

**No. S CI**

**B E T W E E N**

Appellant

-and-

Respondent

**SUMMONS**

---

Date of Document:	Solicitors Code:
Filed on behalf of:	DX:
Prepared by:	Telephone:
	Ref:
	Email:

---

To: *[identify each party or other person to whom summons is addressed and state address of each person not a party.]*

You are summoned to attend before the Court on the hearing of an application by the Appellant for:

- [Leave to appeal and/or extension of time, where appropriate]*
- Directions as to the future conduct of the proceeding;
- [Describe any further orders sought]*

The application will be heard before the \_\_\_\_\_ sitting in the Judicial Review and Appeals  
List in Court No. \_\_\_\_\_ Supreme Court, \_\_\_\_\_, Melbourne, on  
at \_\_\_\_\_ a.m. or so soon afterwards as the business of the Court allows.

FILED *[insert date]*.

This summons was filed by

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMON LAW DIVISION  
JUDICIAL REVIEW AND APPEALS LIST**

**No. S CI**

**B E T W E E N**

Appellant

-and-

Respondent

**AFFIDAVIT**

---

Date of Document:

Solicitors Code:

Filed on behalf of:

DX:

Prepared by:

Telephone:

Ref:

Email:

---

I,.....,of.....

[make oath and say or solemnly and sincerely declare and affirm] as follows:

SWORN or AFFIRMED at

in the State of Victoria

this ..... day of ..... 20

BEFORE ME:

**FORM 43A**

Rule 46.04(1)

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMON LAW DIVISION  
JUDICIAL REVIEW AND APPEALS LIST**

No. S CI

**B E T W E E N**

Appellant

-and-

Respondent

**CERTIFICATE IDENTIFYING EXHIBIT**

Date of Document:

Solicitors Code:

Filed on behalf of:

DX:

Prepared by:

Telephone:

Ref:

Email:

This is the exhibit marked “ ” now produced and shown to *[identify deponent]* at the time of swearing/affirming that person’s affidavit on *[insert date]*:

.....  
*[Signature of person taking Affidavit]*

**Exhibit “ ”**

*[Describe exhibit]*