

Judicial Review

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



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In this information pack, you will find relevant information on commencing a Judicial Review within the Trial Division of the Supreme Court of Victoria.

The information in this pack is up to date as at May 2018. Please refer to the relevant statutory rules and legislation before you commence your action. For any procedural queries, you may contact the Self-represented Litigant Coordinator's office on (03) 9603 9240, or by email to unrepresented@supcourt.vic.gov.au (see section 3.1 below).

1. Judicial Review to the Supreme Court

The Supreme Court of Victoria oversees the operation of the other courts and tribunals in this state. A specific function of the Court is to hear and determine appeals and reviews from the lower jurisdictions. When an Applicant seeks a 'Judicial Review', the Court does not necessarily consider whether the order was right or wrong, but whether the particular authority obeyed the law, and had the appropriate jurisdiction to make that order. Often, a successful outcome for the Applicant would see the matter referred back to the original court or tribunal for reconsideration.

Historically, there were four main types of 'prerogative writs' that are relevant to applications for Judicial Review. Although the court no longer issues these writs to successful applicants, the resulting orders are substantially the same – namely, orders in the nature of *certiorari*, *mandamus*, *prohibition* and *quo warranto*. These terms are still frequently used when applying for, or seeking final orders for Judicial Review.

Thus, while Judicial Review is an important safeguard in the administration of justice in our society, it is also a complicated, specialised area of law that can give rise to complex, intricate legal issues for the Applicant. Therefore, it is strongly recommended that you seek legal advice before commencing this type of proceeding.

1.1 Commencing a Judicial Review

An application for Judicial Review must be filed in the Supreme Court within 60 days of the order, judgment or decision in contention.

To commence a Judicial Review, you must file an **Originating Motion in Form 5G** – see forms at the rear of this pack.

At the time of filing the Originating Motion, you must also file an **Affidavit** setting out the legislation, facts, matters and circumstances relied upon to support your claim. The Affidavit must also exhibit the copy of the order, judgment or decision, as well as any reasons that the authority has given for making this

order, judgment or decision. Otherwise, in their absence, you should account for this in your Affidavit.

As soon as practicable after filing the Originating Motion (but no later than 7 days after the Originating Motion is filed) you must file a **Summons for Directions**. 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.

Please note, if you fail to file your documents within the stipulated 60 day timeframe, a Judicial Officer can only grant an extension in special circumstances. This will usually be dealt with from the onset of your application. The supporting Affidavit should also attest to the facts and material relating to these special circumstances, for the Judicial Officer's consideration.

Other important information:

Commencing a proceeding within the Supreme Court can be very costly. In most cases, if you lose, you must pay the other party's legal costs and expenses. Often, it can be more beneficial to attempt to settle any legal issues outside of the court system. Before commencing any legal action, you would also need to consider whether your case is likely to succeed (that is, whether you have the stronger legal argument). If you still wish to bring an action to court, and you are going to represent yourself, you should ensure that you are familiar with the statutory rules of that court, as well as the relevant legislation.

It is recommended that you submit typed or printed documents, rather than handwritten ones. Be as clear and 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, it may facilitate the court process.

Even if you intend to represent yourself in court, you may still benefit by employing a solicitor just to draft the documentation for you. You may then still choose to proceed to your represent yourself for the remainder of your case.

1.2 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 or can be obtained by contacting the Self-represented Litigant Coordinator.

1.3 Service of Documents

You must adhere to the Supreme Court's statutory rules concerning the service of documents on parties involved in your case. Any document required or permitted to be served in a proceeding may be served personally, but unless personal service is required by the Supreme Court 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.

Note, the Supreme Court Rules state that the Originating Motion must be served personally on all parties to the proceeding; the Rules also require the Affidavit and Summons to be served with the Originating Motion and soon as practicable after filing the Originating Motion and Summons.

2. Legal Assistance

Have you consulted a lawyer in relation to your Judicial Review? 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, there are various places you can go to seek legal assistance.

You should conduct research in the area of law your matter is concerned with, and try to explore all avenues before you commence a legal action. The internet may prove a valuable resource; various websites are listed in sections 2.1 - 2.5 below, which may assist in giving certain advice.

Before you start or continue court proceedings, we suggest you try seeking out one or more of the following resources if you do not wish to employ legal 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 their webpage at www.liv.asn.au/Referral, and follow the prompts;

- Phone (03) 9607 9550, or;
- contact the LIV via email at referrals@liv.asn.au.

The LIV is located at 470 Bourke St, Melbourne. Their website can be found at 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, 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 CLCs:

- **Generalist CLCs** provide services on a range of legal issues for 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.

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 high chance of succeeding);
- you are ineligible for legal aid;
- you meet a means test, and;
- your matter is of 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, or by phoning (03) 8636 4444.

2.5 Other Online Information

You can also browse free legal information across various websites, such as the Law Handbook: Your Practical Guide to the Law in Victoria:

www.lawhandbook.org.au/handbook.php.

3. General Information

3.1 Self-represented Litigant Coordinator

The Supreme Court employs 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 certain free legal services.

It is recommended that you make an appointment with the Self-represented Litigant Coordinator prior to attending the Supreme Court Registry, in order to assist in resolving procedural queries or to review any paperwork prior to lodgment.

To do so, please phone (03) 9603 9240, or send an email to unrepresented@supcourt.vic.gov.au.

The Coordinator's office is located in the Supreme Court Registry (see below).

3.2 The Supreme Court Registry

The Supreme Court Registry is located on Level 2, 436 Lonsdale St, Melbourne. The office is open from 9:30am to 4:00pm on Monday - Friday, except public holidays. Contact details include:

- Supreme Court Registry: (03) 9603 9300
- Self-represented Litigant Coordinator: (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.

3.4 Court Network

Rather than provide legal advice, Court Network provides support and crisis assistance. Court Network operates throughout Victoria, providing a unique, non-legal court support service, as well as information and referral services.

Court Network volunteers can provide support and information about going to court, be a support person for you on the day of your court hearing, explain how the courts and legal systems operate and refer you to other community services that may be able to assist you.

For more information, please visit their website at www.courtnetwork.com.au or call (03) 9603 7400.

4. Supreme Court Fees

See current list of fees on the Supreme Court of Victoria website: www.supremecourt.vic.gov.au.

4.1 Applying for a Fee Waiver

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.

Judicial Review

Self-Help Information Pack

October 2018



Rules and Forms

Principal Registry
Supreme Court of Victoria
Level 2, 436 Lonsdale Street
Melbourne Victoria 3000
W: supremecourt.vic.gov.au



Contents

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

2 Forms and Guides

- Originating Motion For Judicial Review
- Summons for Directions
- Affidavit
- Certificate identifying exhibit

In this information pack, you will find the relevant rules, forms and guides relevant to commencing a Judicial Review within the Trial Division of the Supreme Court.

The information in this pack is up to date as at May 2018. Please refer to the relevant statutory rules and legislation before you commence your action.

For any procedural queries, you may contact the Self-represented Litigant Coordinator's office on (03) 9603 9240, or by email to unrepresented@supcourt.vic.gov.au.

1. Supreme Court (*General Civil Procedure*) Rules 2015

56.01 Judgment or order instead of writ

- (1) Subject to any Act, the jurisdiction of the Court to grant any relief or remedy in the nature of certiorari, mandamus, prohibition or quo warranto shall be exercised only by way of judgment or order (including interlocutory order) and in a proceeding commenced in accordance with these Rules.
- (2) The proceeding shall be commenced by filing an originating motion in Form 5G naming as defendant—
 - (a) a person, if any, having an interest to oppose the claim of the plaintiff; and
 - (b) the court, tribunal or person in respect of whose exercise of jurisdiction or failure or refusal to exercise jurisdiction the plaintiff brings the proceeding.
- (3) A person named as defendant in accordance with paragraph (2)(b) who is sued in the capacity of a judicial or public authority or as the holder of a public office shall be described in the originating motion by the name of that authority or the name of that office.
- (4) In addition to complying with the requirements of Rule 5.05, the originating motion—
 - (a) shall state the grounds upon which the relief or remedy specified in the originating motion is sought; and
 - (b) where any mistake or omission in any judgment, order or other proceeding in respect of which relief or remedy is sought is a ground, shall specify the mistake or omission.
- (5) Without limiting paragraph (6), at the time of filing the originating motion the plaintiff shall file an affidavit setting out the acts, facts, matters and circumstances relied upon in support of the plaintiff's claim.
 - (5.1) There shall be included as exhibits to the affidavit—
 - (a) a copy of any judgment, order, conviction, determination or decision in respect of which relief is sought; and
 - (b) a copy of any reasons given for any such judgment, order, conviction, determination or decision—or their absence as exhibits shall be accounted for in the affidavit.

- (6) The Court shall not grant any relief or remedy in the nature of certiorari unless—
- (a) a copy of the warrant, order, conviction, inquisition or record in respect of which the relief is sought, verified by affidavit, is produced; or
 - (b) if a copy is not produced, the non-production is accounted for to the satisfaction of the Court.

56.02 Time for commencement of proceeding

- (1) A proceeding under this Order shall be commenced within 60 days after the date when grounds for the grant of the relief or remedy claimed first arose.
- (2) Where the relief or remedy claimed is in respect of any judgment, order, conviction, determination or proceeding, the date when the grounds for the grant of the relief or remedy first arose shall be taken to be the date of the judgment, order, conviction, determination or proceeding.
- (3) The Court shall not extend the time fixed by paragraph (1) except in special circumstances.

56.03 Service of originating motion and of summons for directions

The plaintiff shall serve the originating motion and a copy of the affidavit referred to in Rule 56.01(5), together with a summons for directions under Rule 56.04(3), on each defendant as soon as practicable after the filing of the originating motion and the filing of the summons for directions.

56.04 Appearance and summons for directions

- (1) Rules 45.01, 45.02 and 45.03 apply to an originating motion under this Order, but Rules 45.04 and 45.05 do not so apply.
- (2) Where a defendant has filed an appearance pursuant to Order 8, no judgment shall be given for the relief or remedy sought except on application by the plaintiff on further notice to that defendant.
- (3) As soon as practicable after the filing of the originating motion, and in any event no later than seven days after the originating motion has been filed, the plaintiff shall apply on summons for directions.
- (4) The application for directions is taken to be made when the summons is filed.
- (5) Subject to this Rule, Order 46 applies, with any necessary modifications, to an application for directions under this Rule.

56.05 Directions generally

The Court may, on application or on its own motion, conduct a directions hearing in the proceeding at any time.

2. Forms and Guides

- Originating Motion For Judicial Review – Form 5G
- Summons for Directions
- Affidavit
- Certificate identifying exhibit

FORM 5G

Rule 5.02(2), 56.01(2)

**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

Plaintiff

-and-

Defendant

ORIGINATING MOTION FOR JUDICIAL REVIEW

Date of Document:

Solicitors Code:

Filed on behalf of:

DX:

Prepared by:

Telephone:

Ref:

Email:

TO: THE DEFENDANT

TAKE NOTICE that this proceeding by originating motion has been commenced by the plaintiff for the relief or remedy set out below.

IF YOU INTEND TO DEFEND the proceeding, **YOU MUST GIVE NOTICE** of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by:

- (a) filing a "Notice of Appearance" in the Prothonotary's office, 436 Lonsdale Street, Melbourne, or, where the originating motion has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this originating motion.

IF YOU FAIL to file an appearance within the proper time, the plaintiff **MAY OBTAIN JUDGMENT AGAINST YOU** without further notice.

IF YOU FILE an appearance within the proper time, the plaintiff cannot obtain judgment against you except by application to the Court after further notice to you. There will first be a directions hearing of which you will receive notice by summons or otherwise.

THE PROPER TIME TO FILE AN APPEARANCE is as follows:

- (a) where you are served with the originating motion in Victoria, within 10 days after service;
- (b) where you are served with the originating motion out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the originating motion in Papua New Guinea, within 28 days after service;
- (d) where you are served with the originating motion in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;
- (e) in any other case, within 42 days after service of the originating motion.

FILED [insert date].

Prothonotary

THE PLAINTIFF CLAIMS:

[Set out the relief or remedy sought and the Act, if any, under which the claim is made, and where it includes the answer to any question, state the question.]

THE GROUNDS RELIED UPON ARE:

[State the grounds upon which the relief or remedy is sought, and where any mistake or omission in any judgment, order or other proceeding in respect of which relief or remedy is sought is a ground, specify the mistake or omission.]

EXTENSION OF TIME:**

[If an extension of time is required under Rule 56.02 of Chapter I of the Rules of the Supreme Court or otherwise, say so and state briefly the circumstances relied upon for the extension of time sought.]

FURTHER PARTICULARS of the claim appear in the affidavit made in support of the claim. A copy of the affidavit and of any exhibit to the affidavit is served with this originating motion.

1. Place of trial—

(If no place of trial is specified, trial will be held in Melbourne.)

2.** This originating motion was filed—

(a) by the plaintiff in person;

(b) for the plaintiff by [name or firm of solicitor], solicitor, of [business address of solicitor];

(c) for the plaintiff by [name or firm of solicitor], solicitor, of [business address of solicitor] as agent for [name or firm of principal solicitor], solicitor, of [business address of principal].

3. The address of the plaintiff is—

4. The address for service of the plaintiff is—

[Where the plaintiff sues by a solicitor, the address for service is the business address of the solicitor or, where the solicitor acts by an agent, the business address of the agent. Where the plaintiff sues without a solicitor, the address for service is stated in 3, but, where that address is outside Victoria, the plaintiff must state an address for service within Victoria.]

5. The email address for service of the plaintiff is—

6. The address of the defendant is—

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

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

Plaintiff

-and-

Defendant

SUMMONS FOR DIRECTIONS

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 plaintiff for:
[describe the order sought]

- 1. [An extension of time, where appropriate]*
2. Directions as to the future conduct of the proceeding;
- 3. [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

Plaintiff

-and-

Defendant

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

Plaintiff

-and-

Defendant

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]