



Supreme Court of Victoria

Practice Note SC CA 4

Second or subsequent appeal against conviction for an indictable offence

1. INTRODUCTION

- 1.1 The Chief Justice has authorised the issue of the following Practice Note.
- 1.2 The purpose of this Practice Note is to set out the practice to be followed in the Court of Appeal in dealing with second or subsequent applications for leave to appeal against conviction.
- 1.3 This Practice Note must be read together with Practice Note SC CA 1: Criminal Appeals.

2. COMMENCEMENT

- 2.1 This Practice Note was issued on 4 December 2019 and applies to all second and subsequent applications for leave to appeal against conviction commenced on or after that date.

3. DEFINITIONS

- 3.1 In this Practice Note:
CPA means the *Criminal Procedure Act 2009*
Rule or Rules means the *Supreme Court (Criminal Procedure) Rules 2008*

4. APPLICATION OF PRACTICE NOTE SC CA 1: CRIMINAL APPEALS

- 4.1 The following parts of Practice Note SC CA 1: Criminal Appeals apply with any necessary modification to applications for leave to bring a second or subsequent appeal:

Part 4	Filing and correspondence with the Court;
Part 8	Grounds of appeal;
Part 11	Service of application for leave to appeal;
Part 12	Transcript;
Part 13	Amendment of notice of application for leave to appeal or written case;

Part 14	Crown response to applications for leave to appeal;
Part 15	Referral by the Registrar;
Part 16	Bail pending appeal;
Part 18	Powers of a single judge;
Part 19	Renewed applications where single judge refuses leave;
Part 21	Powers of Court comprising two or more judges;
Part 22	Representation by counsel at further hearings;
Part 24	Registrar's preparation of appeals for hearing; ¹
Part 25	Hearing of applications and appeals; and
Part 26	Abandonment of appeals and appeal grounds.

5. LEAVE TO APPEAL

- 5.1 Leave to appeal is required in all cases of second or subsequent appeal against conviction.²
- 5.2 Applications pursuant to s 326F for a stay of sentence or bail pending appeal will usually be determined by a single judge of appeal.³

6. APPLICATION FOR LEAVE TO BRING A SECOND OR SUBSEQUENT APPEAL

- 6.1 An application for leave to bring a second or subsequent appeal is commenced by filing a notice in Form 6-2A.⁴
- 6.2 At the time of filing a notice of application for leave to bring a second or subsequent appeal, the applicant must also file:
- a) an affidavit setting out the evidence said to be fresh and compelling within the meaning of s 326C of the *CPA*;
 - b) a written case in support;⁵ and
 - c) a list of authorities and materials relied upon.
- 6.3 The purpose of the written case is to enable the Court to grasp the facts and issues in the case and it should be prepared accordingly.
- 6.4 The written case must, unless the Registrar otherwise directs:
- a) outline arguments in support of the contention that the Court of Appeal should be satisfied that there is fresh and compelling evidence that should, in the interests of justice, be considered on an appeal;
 - b) otherwise comply with the requirements of section 9.4 of Practice Note SC CA 1: Criminal Appeals.

¹ Summaries in a second or subsequent appeals will be produced at the Registrar's discretion.

² *CPA* s 326A.

³ *CPA* s 326H.

⁴ Rule 2.05(1).

⁵ Rule 2.05(4)(b).

6.5 The list of authorities and materials relied upon must comply with the requirements of section 9.5 of Practice Note SC CA 1: Criminal Appeals.

6.6 Where the requirements of this Practice Note regarding a document to be filed are not complied with, or not all required documents have been submitted, the application for leave to appeal will be deemed unacceptable and rejected by the Registrar.

7. STAY OF SENTENCE

7.1 An application for a stay of sentence is commenced by filing a notice in Form 6-1D.

7.2 At the time of filing an application for a stay of sentence, the applicant must also file:

- a) an affidavit setting out the evidence sought to be adduced on the application;
- b) short written submissions of no more than 3 pages in support of the application; and
- c) a list of authorities and materials relied upon.

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4 December 2019