



Supreme Court of Victoria

Criminal Division

Trial by Judge Alone COVID-19 Emergency Protocol

1 APPLICATION FOR TRIAL BY JUDGE ALONE

Application of Emergency Protocol

- 1.1 The *COVID-19 Omnibus (Emergency Measures) Act 2020* inserts Chapter 9 into the *Criminal Procedure Act 2009* ('CPA') to temporarily change the CPA in response to the COVID-19 pandemic.
- 1.2 This Emergency Protocol concerns the application of the new s 420D of the CPA, namely applications for trial by judge alone.
- 1.3 This Emergency Protocol applies to matters involving State charges on an indictment. An application for trial by judge alone ('the application') cannot be made for any matter involving a Commonwealth charge.¹
- 1.4 This Emergency Protocol applies to both Melbourne and Circuit matters.
- 1.5 This Emergency Protocol does not cover the application of Part 3.7 of the *COVID-19 Omnibus (Emergency Measures) Act 2020*, which relates to the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*.
- 1.6 For the sake of clarity, the pre-recording of evidence or the conducting of a special hearing for a child or cognitively impaired complainant (before a judge) for use in a jury trial.
- 1.7 Engagement in case conferencing and case management under Practice Note SC CR 8 does not preclude an application for trial by judge alone.
- 1.8 This Emergency Protocol is repealed on the day on which Chapter 9 of the CPA is repealed. Chapter 9 of the CPA is repealed on the day that is six months after its commencement.²

Application by the accused for trial by judge alone

- 1.9 Where an accused intends to make an application for trial by judge alone, they

¹ CPA s 420D(1)(a).

² CPA s 420ZN.

must:

- (a) Notify the Court, in writing, and via email to the Criminal Division inbox criminaldivision@supcourt.vic.gov.au of their intention to make an application for trial by judge alone.
- (b) The notification must include:
 - (i) The name of the accused;
 - (ii) The proceeding number (S CR or S ECR number);
 - (iii) The details of any co-accused, including name and proceeding number; and
 - (iv) The Supreme Court location to which the accused was committed.

1.10 The application will be assigned to a Criminal Division lawyer ('assigned lawyer'). The assigned lawyer will be the principal point of contact for practitioners during the application and case management process.

Application by an accused

Application and written submissions by the accused

- 1.11 No later than seven days after notifying the Court of their intention to make an application for trial by judge alone, the accused must file electronically via RedCrest, and serve on the prosecution and each co-accused (if applicable):
- (a) An [application for trial by judge alone form](#), which must contain:
 - (i) Confirmation that each charge on the indictment is an offence under the law of Victoria;
 - (ii) The accused's consent to be tried by judge alone without a jury;
 - (iii) Confirmation that the accused has obtained legal advice on whether to give that consent, including the legal effect if an order is made for trial by judge alone;
 - (iv) The details of any co-accused, including name and proceeding number; and
 - (v) An accurate and up to date trial estimate for a trial by judge alone.
 - (b) Detailed written submissions which must include any reason(s) why it is in the interests of justice for the Court to order a trial by judge alone in the matter.

Response by any co-accused

1.12 Where there is a co-accused, no later than seven days after service by an accused of their application and detailed written submissions, each co-accused who has been served must file via RedCrest, and serve on the prosecution and each co-

accused:

- (a) A notice confirming their position as to the matter proceeding by judge alone trial. If also seeking a judge alone trial, this notice must also contain:
 - (i) The accused's consent to be tried by judge alone without a jury;
 - (ii) Confirmation that the accused has obtained legal advice on whether to give that consent, including the legal effect if an order is made for trial by judge alone; and
 - (iii) An accurate and up to date trial estimate for a trial by judge alone.
 - (b) If seeking a judge alone trial, detailed written submissions which must include any reason(s) why it is in the interests of justice for the Court to order a trial by judge alone in the matter.
- 1.13 Where any co-accused does not consent, the application made by an accused for a trial by judge alone cannot proceed.

Response by the prosecution

- 1.14 The prosecution must file electronically via RedCrest, and serve on each accused, a detailed written response, either:
- (a) Where there is no co-accused, no later than seven days after service of the accused's application and written submissions; or
 - (b) Where there is or are co-accused, no later than seven days after service of the last of any of the co-accused's written submissions.
- 1.15 The prosecution's full written response must address the matters raised in each of the accused's written submissions and specifically include:
- (a) The prosecution's position in relation to a trial by judge alone, including whether they consent to a trial by judge alone without a jury;
 - (b) The reason(s) for the position adopted by the prosecution regarding a trial by judge alone without a jury.

Application by the prosecution

Application and written submissions by the prosecution

- 1.16 No later than seven days after notifying the Court of their intention to make an application for trial by judge alone, the prosecution must file via RedCrest, and serve on each accused:
- (a) An [application for trial by judge alone form](#), which must contain:
 - (i) Confirmation that each charge on the indictment is an offence under the law of Victoria;
 - (ii) The details of each accused, including name and proceeding number;

and

- (iii) An accurate and up to date trial estimate for a trial by judge alone.
- (b) Detailed written submissions which must include the reason(s) why it is in the interests of justice for the Court to order a trial by judge alone in the matter.

Response by each accused

- 1.17 No later than seven days after service by the prosecution of their application and full written submissions regarding trial by judge alone, each accused who has been served must file electronically via RedCrest, and serve on the prosecution and any co-accused, a written response that addresses the matters raised in the prosecution's application and written submissions.
- 1.18 The written response by the accused must address:
 - (a) The accused's position in relation to a trial by judge alone, including whether they consent to a trial by judge alone without a jury;
 - (b) Whether the accused has obtained legal advice on whether to give that consent, including the legal effect if an order is made for trial by judge alone; and
 - (c) The reason(s) for the position adopted by the accused regarding a trial by judge alone without a jury, including any reason(s) why it is in the interests of justice for the Court to order a trial by judge alone in the matter.
- 1.19 Where any accused does not consent, the application made by the prosecution for a trial by judge alone cannot proceed.

Timing of applications

- 1.20 The Court will receive applications for trial by judge alone from the parties at staged intervals. These intervals correspond with previously allocated trial dates (being trial dates which have been vacated in response to COVID-19).

1.21 Parties may make an application to the Court for a trial by judge alone according to the following schedule:

Previously allocated trial date	Timeframe for making an application for trial by judge alone
Trial date previously listed in the month of March, April or May 2020	May 2020
Trial date previously listed in the month of June 2020	June 2020
Trial date previously listed in the month of July 2020	July 2020
Trial date previously listed in the month of August 2020	August 2020
Trial date previously listed in the month of September 2020	September 2020
Trial date previously listed in the month of October 2020, up to and including 24 October 2020 ³	October 2020

1.22 The above general rule and schedule⁴ are subject to an exception to allow an application for trial by judge alone to be expedited, where a party identifies that the circumstances of the matter necessitate hearing the application urgently.

Extensions of time for filing

1.23 If a party seeks an extension of time for filing the application and/or written submissions, they must seek leave from the Court not less than two days before the application and/or written submissions are due for filing.

1.24 An application for an extension of time ('EOT application') must be made in writing, via email, to the assigned lawyer. The EOT application must include:

- (a) The date the application and/or written submissions are due for filing; and
- (b) An indication of what additional period of time is sought; and
- (c) The reason(s) for seeking an extension of time.

1.25 The EOT application will be determined by the Principal Judge or the Judicial Registrar of the Criminal Division, and will be decided on the papers.

³ The provisions contained in 'Part 9.2 - Trial by judge alone' of the *COVID-19 Omnibus (Emergency Measures) Act 2020* will be repealed on 24 October 2020.

⁴ Sections 1.20-1.21 above.

Matters involving co-accused

- 1.26 In accordance with s 420D(1)(b) of the CPA, where there is more than one accused to be tried on an indictment, the Court will only make an order for trial by judge alone if each accused has consented to being tried by judge alone.
- 1.27 Consent of the other co-accused is not required where separate trials have been ordered.

Manner of hearing

- 1.28 All applications by the parties, unless otherwise directed, will be heard and determined by the Principal Judge or the Judicial Registrar of the Criminal Division.
- 1.29 All applications will be conducted as much as possible on the papers.
- 1.30 The Court may seek further written submissions and information electronically in advance of any hearing, if an oral hearing is required.
- 1.31 Where the Court requires further written submissions and/or information, the Court will contact the parties via email or telephone.
- 1.32 Where a party seeks to provide further written submissions or information on their own motion, parties must:
 - (a) Notify the Court, in writing, via email to the assigned lawyer; and
 - (b) File electronically via RedCrest, and serve on the other party(s), the additional material as soon as practicable, unless otherwise directed by the Court.
- 1.33 Where a party seeks an oral hearing for the application, they must notify the Court, in writing, via email to the assigned lawyer, and the other party(s), as soon as practicable unless otherwise directed by the Court. The notification must set out the reason(s) for requesting an oral hearing.
- 1.34 The Court will consider the request for an oral hearing in accordance with the Court's protocols and responses to the COVID-19 pandemic.
- 1.35 It is the Court's default position that any oral hearing of the application will be conducted via Webex, so that parties and practitioners do not attend court in person without the consent of the Court.
- 1.36 Information about any oral hearing will be provided by the relevant judge's associate when the matter is allocated.

Allocation of trial date and trial judge

- 1.37 If an application for a trial by judge alone is granted, at this point in time, the Court will allocate:

- (a) The matter to an appropriate trial date for trial by judge alone; and
- (b) The trial judge, who will hear the matter without a jury.

1.38 This date is a new trial date and will not be the previously allocated trial date.