



Notice to the Profession

The Chief Justice has authorised the issue of the following notice.

Criminal trials by judge alone pursuant to Chapter 9 of the *Criminal Procedure Act 2009*

1 Introduction

- 1.1 The *Justice Legislation Amendment (Trial by Judge Alone and Other Matters) Act 2022* re-inserts Chapter 9 into the *Criminal Procedure Act 2009* ('CPA') to temporarily provide for criminal trials by judge alone.
- 1.2 Pursuant to s 420E of the CPA, a Court may order that there be a trial by judge alone while a pandemic declaration¹ is in force. The provisions apply to proceedings involving charges for an offence under Victorian law on an indictment. An application for trial by judge alone cannot be made for any trial on indictment which includes a Commonwealth charge.
- 1.3 This notice applies to criminal proceedings listed in the Supreme Court sitting at Melbourne and at regional locations, but does not apply to proceedings under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*.
- 1.4 This notice remains in force until Chapter 9 of the CPA is repealed, on the first anniversary of its commencement.
- 1.5 The Court may dispense with some or all of the requirements set out in this notice, or may give additional directions, in respect of any application for an order for trial by judge alone, as required.

¹ See s 420B, CPA for the definition of "pandemic declaration".

2 Application for trial by judge alone

Defence application

- 2.1 To apply for trial by judge alone, the accused must file via RedCrest and serve on the prosecution an application using Form 6-1D of the *Supreme Court (Criminal Procedure) Rules 2017*, appropriately modified to include:
- (a) Confirmation that each charge on the indictment is an offence under the law of Victoria;
 - (b) The accused's consent to be tried by judge alone without a jury;
 - (c) Confirmation that the accused has obtained legal advice on whether to give that consent, including legal advice on the effect of the order for trial by judge alone;
 - (d) The details of any co-accused, including name and proceeding number; and
 - (e) An accurate and up-to-date trial estimate for a trial by judge alone.
- 2.2 Once filed, the parties will be contacted either by chambers or a Criminal Division case management lawyer, who will, in consultation with the parties, set a timetable for:
- (a) The defence to file and serve on the prosecution a detailed outline of 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;
 - (b) Where there is a co-accused, each co-accused to file and serve on the prosecution and each co-accused:
 - (i) confirmation of their position as to the trial proceeding by judge alone; and
 - (ii) if also seeking a judge alone trial, an application for trial by judge alone in accordance with paragraph 2.1 and submissions in accordance with paragraph 2.2(a);
 - (c) The prosecution to file and serve on each accused a detailed outline of submissions, which must include the prosecution's position in relation to a trial by judge alone, including whether it consents to such an order, and the reason(s) for the position adopted by the prosecution; and
 - (d) The hearing of the application.
- 2.3 Where any co-accused does not consent, the Court cannot make an order for a joint trial by judge alone.² Consent of the other co-accused is not required where an order for separate trials has been made.

Prosecution application

- 2.4 In the event that the prosecution applies for an order for trial by judge alone, the prosecution must first seek an indication from the legal representatives of each accused whether that accused will consent to the order. In the event that one or more accused do not consent, then the Court cannot make an order for trial by judge alone.

² s 420E(1)(b), CPA

- 2.5 If the accused indicate consent to such an order, the prosecution should file an application in accordance with paragraph 2.1, and the Court will set a timetable for the filing of material by the parties in accordance with paragraph 2.2.

3 Hearing of the application for a trial by judge alone

- 3.1 All applications for a trial by judge alone will be heard and determined by the Principal Judge or a Judicial Registrar of the Criminal Division, unless otherwise directed. All applications will be conducted as far as possible on the papers.
- 3.2 Where a party seeks an oral hearing for the application, they must notify the Court 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.
- 3.3 If an application for a trial by judge alone is granted, the Court will set a trial date for trial by judge alone.

4 Contact

- 4.1 For all enquiries relating to trials by judge alone, please contact the Criminal Division case management lawyers on criminal.casemgmt@supcourt.vic.gov.au.

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