SUPREME COURT
OF VICTORIA

A guide to **representing yourself** when

Appealing a Magistrates' Court civil decision

in the Trial Division of the Supreme Court

SUPREMECOURT.
VIC.GOV.AU

Contact details

Supreme Court staff can answer questions about court process. They cannot give legal advice, or help you prepare or present your case.

Website

supremecourt.vic.gov.au

Self-represented Litigant Coordinator

Phone: 03 8600 2031

Email: unrepresented@supcourt.vic.gov.au

Appointments with the Self-represented Litigant Coordinator are held at the Principal Registry

Principal Registry

Level 2, 436 Lonsdale Street
Melbourne VIC 3000

Phone: 03 8600 2004
Mon-Fri 9.30am-4pm, closed public holidays

Court locations

Visit the Supreme Court website for court locations throughout Victoria. Check your court documents to make sure you attend the correct location for your hearing. Also check the Daily Hearing List on our website.

Security

You must go through security screening before entering a Supreme Court building. Items not allowed include anything explosive, sharp or a potential weapon, including cans and glass bottles. Alcohol is also not allowed.

This guide contains general information only and is not intended to be legal advice.

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About Magistrates' Court appeals

What is an appeal?

An appeal is not a new trial or re-hearing of your case.

It must be based on 'a question of law'. This means you can only appeal a decision if you believe the magistrate made a legal error in the way they applied the law.

You cannot appeal for any other reason. For example, your appeal may not be allowed if your argument is that you are unhappy with the decision or if you want to show the Court new material that was not part of the case heard in the Magistrates' Court.

See Section 109 of the *Magistrates Court Act 1989*.

If you are appealing to the Supreme Court a decision made in a **criminal** matter, refer to Section 272 of the *Criminal Procedure Act 2009*. Contact the Self-represented Litigant Coordinator to discuss your situation.

Where are Magistrates' Court appeals heard?

The Supreme Court of Victoria has two parts: Trial Division and Court of Appeal.

The Trial Division hears Magistrates' Court appeals.

ABOUT THIS GUIDE

This guide is for people who want to appeal a Magistrates' Court **civil decision** in the Trial Division of the Supreme Court and may not have a lawyer.

If you are appealing a decision made in a criminal matter, contact the Self-represented Litigant Coordinator.

Read this guide to find out:

- what it means to represent yourself in a court proceeding
- court fees that apply
- stages in the process and what you do at each stage
- documents you need to provide
- forms you need to complete.

The Appendix has links to the forms and resources you may find helpful.

Forms are also available in hard copy from the Principal Registry.

This guide contains general information only and is not intended to be legal advice.

The content in this guide is based on the *Supreme Court (General Civil Procedure) Rules 2015* and *Supreme Court (Miscellaneous Civil Proceedings) Rules 2018*. The Rules set out the process you must follow.

If you are reading a print version of this guide, note that the online version has links to forms and other resources you may need. Visit **supremecourt.vic.gov.au/representingyourself** for the online version. References to links in the appendix are only relevant if you are reading the online guide.

Stages in the appeal process

A Magistrates' Court civil appeal in the Trial Division usually goes through these stages:

STAGE 1	Start your appeal
STAGE 2	Serve your documents on the respondent
STAGE 3	Respondent may respond to your documents
STAGE 4	Attend the directions hearing
STAGE 5	Get your case ready for the judge
STAGE 6	The hearing
STAGE 7	The decision

Sometimes the Court orders parties to attend a mediation — a confidential discussion held between parties with the help of a skilled independent mediator.

The mediator cannot force anyone to resolve a dispute, but can help parties explore options, negotiate and reach a settlement agreement, without the need for a hearing. The Court may order parties to go to mediation at any stage of the process.

Time limits

There is a time limit on appealing a Magistrates' Court civil decision.

You have 30 days, from the date the decision was made, to file a Notice of Appeal form. The date of the decision is on the Magistrates' Court order. See Stage 1 for details on how to file this form.

Extension of time to appeal

If 30 days have passed, you must apply for the Court's permission to appeal outside the time limit. This is called 'seeking leave to appeal out of time'.

You do this in the documents you file in Stage 1 of the appeal process.

In the Notice of Appeal, briefly explain why you are seeking leave to appeal out of time. In the affidavit, briefly explain why you are applying late and any special circumstances you want the Court to consider – for example, if you were ill or injured.

Attach to the affidavit as an 'exhibit' any documents that support your request to appeal out of time, such as a medical certificate. Complete a cover sheet for each exhibit. See the Appendix for a link to a template cover sheet called Certificate Identifying Exhibit (Form 43A).

IMPORTANT INFORMATION

Legal word

Applicant – a person or company who makes an application to the Court, sometimes called the **plaintiff**. As an applicant in an appeal proceeding you may also be referred to as the **appellant**.

Respondent – a person or company that an application or appeal is made against. If you are appealing a Magistrates' Court decision, the respondent is the other party (or parties) in the appeal – usually the other parties from the Magistrates' Court case. The magistrate who made the decision and the Magistrates' Court are generally not respondents in an appeal.

Filing a document – giving it to the Registry, where it officially becomes part of the Court file. You do this using RedCrest. More details appear later in this guide.

Affidavit – a document that presents written evidence in a court case. It must be sworn to be true and correct in front of an authorised person, on oath or by affirmation. It is a serious crime to knowingly make a false statement. Attachments to an affidavit are called **exhibits**.

Watch the video

For information on how to complete an affidavit, watch the video on our website:

- *Completing an affidavit*

What it means to represent yourself

Representing yourself in court means you take responsibility for the tasks that a lawyer would otherwise do for you.

People who represent themselves in the court are known as self-represented litigants.

In the Trial Division of the Supreme Court, individuals are allowed to represent themselves. Companies must be represented by a lawyer. If you are the sole director of a company and you wish to represent your company, you must get the Court's permission. Contact the Self-represented Litigant Coordinator if you need to discuss your situation.

Some things you may need to do yourself include:

- become familiar with legal language and legal concepts
- read and understand relevant legislation, rules of procedure and case law
- prepare your case, working out the law that applies and where you believe the magistrate has made an error in applying the law
- prepare a written statement that explains your arguments in a logical way
- gather relevant documents that support your case
- present your case to the judge, explaining each of your arguments and answering questions about them from the judge, the other party or their lawyer
- understand and follow the correct court procedures.

The Court prefers any documents you prepare to be typed, not handwritten. You will be relying on these documents during your proceeding. If they read well and look professional it may help everyone involved get a better understanding of the case you are making.

IMPORTANT INFORMATION

Who can help me?

Principal Registry

Registry staff can provide information on how the appeal process works.

Self-represented Litigant Coordinator

The Supreme Court has a Self-represented Litigant Coordinator who specialises in helping people who do not have a lawyer. They can give information and guidance on Court procedures, but are not allowed to give legal advice. You can make an appointment with the Coordinator to discuss the appeal process and to check you have the right documents. See page 2 for contact details.

Free and low-cost legal help

See the Appendix for a link to organisations that provide free or low-cost legal services and information.

Court fees and costs

Legal proceedings in the Supreme Court can be very expensive.

You need to pay court fees at different stages unless you have a fee waiver (see below). If you lose your case, you may need to pay some or all of the other party's costs. This includes what they spent on lawyers and any other expenses, such as the cost of expert reports.

* **Be aware – these costs can be substantial.**

Consider paying for some legal advice even if it is only to help you with a particular part of the process. For example, it is highly recommended that you get a lawyer to help you work out your 'grounds of appeal' and 'submissions' – two key things that you need to argue your case.

See the Appendix for a link to organisations that provide legal information and free or low-cost legal services.

Court fees

You need to pay court fees at various stages of your proceeding, using PayPal, a credit card or debit card. **See the fees table on our website called Prothonotary's Office Fees**, under the Fees tab.

You may need to pay court fees for:

- Filing a Notice of Appeal (to start an appeal)
- Filing an interlocutory application (e.g. stay application)
- Setting down (confirming a date) for the hearing
- Hearing fees per day or part day.

Your fees will depend on the type of proceeding and the division that hears your matter. If you have questions about what fees apply, contact the Self-represented Litigant Coordinator.

Fee waivers and concession rates

You may be eligible for a fee waiver if you can prove that paying the fees would cause you financial hardship. In some circumstances, you may be automatically entitled to a fee waiver. However, you must still apply for it. This includes if you are:

- represented by Legal Aid, a community legal centre or under a pro bono scheme administered by or on behalf of the Victorian Bar, the Law Institute of Victoria or Justice Connect
- serving a prison sentence or are in a detention facility
- under 18 years of age.

If you have a Commonwealth Health Care Card, you can apply to pay the concession rate. This is the only type of concession card the Court accepts. If you do not have this card, and do not have a fee waiver, you pay the standard fee.

Read the *RedCrest Electronic Filing User Guide* for instructions on how to apply for a fee waiver or pay the concession rate. If you have questions about using RedCrest, contact the Principal Registry.

IMPORTANT INFORMATION

! Note

You pay fees online in RedCrest, using:

- PayPal
- credit card, or
- debit card.

Fees normally change on 1 July each year.

Tip

The Law Institute of Victoria has a free referral service that helps you find a private lawyer. See the Appendix for a link to organisations that provide legal information and free or low-cost legal services.

Tip

If you have a current Commonwealth Health Care Card you can apply to pay the concession rate shown in the fees table. If you do not have this card, and do not have a fee waiver, you pay the standard fee.

Legal word

Costs – fees for lawyers' professional services and disbursements (out-of-pocket expenses), such as court fees, fees for expert reports, medical reports and photocopying. If you are representing yourself and you win, you can claim your out-of-pocket expenses but you cannot claim the time you spent working on your case as a cost.

Fee waiver – permission from the Court to not pay the court fees.

Financial hardship – decided after taking into account your day-to-day living expenses, liabilities and assets.

Preparing for your appeal

Get to know legal terms

See Important Information box for common legal words and terms.

Get to know Court procedures

Read the following documents carefully, as they provide important information and guidance:

- Magistrates Court Act 1989 – Section 109
- Supreme Court (General Civil Procedure) Rules 2015 – Part 3 of Order 58
- Practice Note SC CL 9 – Judicial Review and Appeals List
- Practice Note SC Gen 7 – Transcript in Civil Proceedings.

Get to know your obligations

As a party in a civil proceeding, you need to understand what's known as overarching obligations. These are in Sections 16-26 of the *Civil Procedure Act 2010.*

Do your legal research

Make sure you understand the law that applies to your case by doing some legal research. Read about cases similar to yours, and note any cases where the law you are relying on has been applied in a way that you think proves your arguments. You may want to refer to these cases in your submissions (your arguments for why your appeal should succeed) and/or your list of authorities (your list of cases and other references you will use to support your appeal). You can find cases from all courts on the AustLII website.

Create a RedCrest account for filing documents

You file documents with the Court using the online system RedCrest (redcrest.com.au). You need an email address to create a RedCrest account. If you do not have an email address and cannot get one, contact the Self-represented Litigant Coordinator to discuss your situation.

You are notified in RedCrest when any documents you file are ready for you to serve with the Court's seal (official stamp) on them. The notification has a link to where you can download and print copies.

Read the *RedCrest Electronic Filing User Guide* for information and instructions (redcrest.com.au). If you have questions about using RedCrest, contact the Principal Registry.

Check if you need to order a transcript

A transcript must be arranged by the parties and paid for in advance for all final hearings and sometimes for other hearings. Read Practice Note SC Gen 7 (Transcript in Civil Proceedings) for details of when and how to get the transcript. Contact the Self-represented Litigant Coordinator if you want to discuss your situation.

IMPORTANT INFORMATION

Tip

See the Appendix for links to forms, legislation and resources you may find helpful.

Legal word

Applicant – a person or company who makes an application to the Court, sometimes called the **plaintiff**. An applicant in an appeal proceeding may also be referred to as the **appellant**.

Respondent – a person or company that an application or appeal is made against. If you are appealing a Magistrates' Court decision, the respondent is the other party (or parties) in the appeal – usually the other parties from the Magistrates' Court case. The magistrate who made the decision and the Magistrates' Court are generally not respondents in an appeal.

Filing a document – giving it to the Registry, where it officially becomes part of the Court file. You do this using RedCrest.

Serving a document – formally delivering it to a person or company. There are rules about which documents need to be served in person and which can also be served by email or post. See order 6 of the *Supreme Court (General Civil Procedure) Rules 2015*.

Directions hearing – a short hearing held to work out matters of timing, such as dates for when certain things need to happen and who does them.

Practice note – a document that details Supreme Court procedures, instructions, rules, processes and information. As well as general practice notes that apply to all Supreme Court proceedings, some lists have their own practice notes with specific information for their list.

Know how to stop an appeal

You can stop an appeal if you have the consent of all parties or permission from the Court.

Be aware if you stop your appeal, you usually need to pay the respondent's costs up to that point unless:

- you and the respondent agree you do not have to pay their costs

or

- the Court orders that you do not have to pay their costs.

To stop your appeal, complete a Notice of Discontinuance form stating that you are stopping your appeal and sign it. See the Appendix for a link to this form.

Ask the respondent to sign the form too, to show they agree. Then file the form in RedCrest. Wait for RedCrest to advise that a copy with the Court's seal (official stamp) is available. Download and print the sealed copy and serve it on the respondent.

If the respondent will not sign the form, you need to get the Court's permission to stop your appeal. Contact the Self-represented Litigant Coordinator to discuss your situation.

IMPORTANT INFORMATION

Tip

Whenever you contact the Court, quote the proceeding number for your case. You are given this number when your documents are accepted by the Court in Stage 1 of the appeal process. It looks something like this:
S ECI 2019 54321.

Tip

Before you file documents, the Court encourages you to contact the Self-represented Litigant Coordinator. The Coordinator cannot give legal advice, but can talk to you about Court process and check you have the right documents.

Legal word

Hearing transcript – a written copy of the exact words spoken during a hearing.

Costs – fees for lawyers' professional services and disbursements (out-of-pocket expenses), such as court fees, fees for expert reports, medical reports and photocopying. If you are representing yourself and you win, you can claim your out-of-pocket expenses but you cannot claim the time you spent working on your case as a cost.

STAGE 1 Start your appeal

File a Notice of Appeal form

To start your appeal, file a Notice of Appeal form.

Pay the court fee or apply for a fee waiver.

You can file your **additional documents** at the same time, if you have them ready.

You must file your Notice of Appeal within 30 days of the original decision. If you are filing later, outline in the Notice of Appeal why you are 'seeking leave to appeal out of time' (requesting an extension of time). The affidavit you file with your additional documents must contain evidence that supports your request.

Questions of Law

In your Notice of Appeal, you must state each law or legal principle the magistrate had to apply and you believe they got wrong. These are your 'questions of law'. Each question of law is written as a single question. For example: Did the magistrate make an error regarding the definition of 'firearm' in the *Customs (Prohibited Import) Regulations 1956*?

Grounds of appeal

You must also clearly state your 'grounds of appeal', which directly relate to each question of law. Think of your grounds of appeal as concise explanations for why you believe the magistrate made the wrong decision from a legal point of view, in relation to each question of law.

When completing your form, number each question of law paragraph consecutively (Question of law 1, Question of law 2 etc.). Number your grounds of appeal as well, so it is easy for the judge to refer to a paragraph number during the proceeding.

For example:

Questions of law

Question of law 1

1.

Question of law 2

2.

Grounds of Appeal

Grounds of appeal relating to Question of law 1

1.

2.

3.

Grounds of appeal relating to Question of law 2

4.

5.

IMPORTANT INFORMATION

! Note

You can only appeal a Magistrates' Court decision on a question of law. This means, if you believe the magistrate made a legal error in deciding your case. You cannot appeal for any other reason. For example, the Court will generally not allow your appeal to go ahead if your argument is that you are unhappy with the decision or if you want to show the Court new material that wasn't part of your Magistrates' Court case. You can only appeal a final order of the Court.

Tip

A question of law is usually framed as a question and asks what the Magistrates' Court was legally required to do or consider in your case. For example: Did the magistrate take into account irrelevant considerations and fail to consider relevant considerations when applying the law relating to serious misconduct and the summary dismissal of an employee? Keep your grounds of appeal concise and to the point. You will get a chance to write a more detailed explanation of your arguments when you prepare 'submissions' in Stage 5.

Tip

Working out your questions of law and grounds of appeal can be difficult. Consider engaging a lawyer to help you with this part of the process. The success of your appeal depends on the strength of these two things.

Tip

Before you file documents, the Court encourages you to contact the Self-represented Litigant Coordinator. The Coordinator cannot give legal advice, but can talk to you about Court process and check you have the right documents.

Tip

The Appendix has links to the forms you need.

Watch the video

Watch the video on our website:

- *Preparing a grounds of appeal*

Start your appeal (continued)

Get a date for your directions hearing

You need a date for your directions hearing before you can file additional documents. *Do not delay – you must file your additional documents within seven days of filing your Notice of Appeal.*

To get a date for your directions hearing:

- complete a Judicial Review and Appeals List hearing date information form
- complete a draft Summons (Form 46A)
- email both documents to the address on the form
- check your email for a Supreme Court notice advising the date, usually sent within one or two business days.

File additional documents

No later than seven days after filing the Notice of Appeal, you must file the following additional documents:

- a completed Summons (Form 46A), which includes the date for the directions hearing
- the Supreme Court notice you received which advised the date for the directions hearing
- affidavit with the following attachments (called 'exhibits'):
  - copy of the Magistrates' Court order
  - any written reasons the Magistrates' Court prepared in relation to the decision
  - any other documents you intend to rely on for your appeal, such as a court transcript.

IMPORTANT INFORMATION

! Note

The Court will notify you in RedCrest when your documents have been accepted. The notification has a link to where you can download and print the approved documents, which have the Court's seal (official stamp) on them.

Tip

You may be able to get copies of the Magistrates' Court order and written reasons from the:

- lawyer, if you had one, in your Magistrates' Court case
- other parties
- Magistrates' Court registry (you may need to pay a fee to get copies)
- AustLII website, which regularly publishes many Magistrates' Court decisions.

Legal word

Directions hearing – a short hearing to decide matters related to the timing of when things happen during the proceeding, including what has to happen, who does it and when it needs to be done.

Summons – a type of document filed in a proceeding and served on another party that requires them to attend court. A summons for directions requires the party to attend a directions hearing.

Affidavit – a document that presents written evidence in a court case. It must be sworn to be true and correct in front of an authorised person, on oath or by affirmation. It is a serious crime to knowingly make a false statement. Attachments to an affidavit are called **exhibits**.

Watch the video

Watch the video on our website:

- *Completing an affidavit*

Start your appeal (continued)

Summons (Form 46A)

Complete the Summons, and include details the Court gave you on the place, date and time for the directions hearing.

Affidavit

An affidavit sets out the facts and circumstances you will rely on to support your appeal. If you do not have the Magistrates' Court order and written reasons, say so in your affidavit and explain why you could not get them.

The Court is likely to need a transcript of the Magistrates' Court hearing, which you include with your affidavit. Do not delay filing your affidavit if you do not have it yet. You can file another affidavit later, with the transcript attached.

If you are 'seeking leave to appeal out of time' (requesting a time extension), briefly explain why you are applying late and any special circumstances – for example, if you were ill or injured. Attach to the affidavit as an 'exhibit' any documents that support your request, such as a medical certificate. Complete a cover sheet – Certificate Identifying Exhibit (Form 43A) – for the exhibit. See the Appendix for a link to it.

Any affidavit that is filed with the Court must include a maximum of one exhibit. If more than one document is referred to in the affidavit, the documents must be combined into a single 'bundle exhibit', ordered in the sequence they are referred to in the affidavit.

For more information, see the Prepare an Affidavit page on our website.

Checklist - STAGE 1

- ☐ File a Notice of Appeal form
- ☐ Pay the court fee or apply for a fee waiver
- ☐ Get a date for your directions hearing
- ☐ File additional documents
- ☐ Check RedCrest notification that your documents are accepted – they will now have the Court's seal on them.

IMPORTANT INFORMATION

! Note

The Court will notify you in RedCrest when your documents have been accepted. The notification has a link to where you can download and print the approved documents, which have the Court's seal (official stamp) on them.

Tip

You may be able to get copies of the Magistrates' Court order and written reasons from the:

- lawyer, if you had one, in your Magistrates' Court case
- other parties
- Magistrates' Court registry (you may need to pay a fee to get copies)
- AustLII website, which regularly publishes many Magistrates' Court decisions.

Legal word

Directions hearing – a short hearing to decide matters related to the timing of when things happen during the proceeding, including what has to happen, who does it and when it needs to be done.

Summons – a type of document filed in a proceeding and served on another party that requires them to attend court. A summons for directions requires the party to attend a directions hearing.

Affidavit – a document that presents written evidence in a court case. It must be sworn to be true and correct in front of an authorised person, on oath or by affirmation. It is a serious crime to knowingly make a false statement. Attachments to an affidavit are called **exhibits**.

Watch the video

Watch the video on our website:

- *Completing an affidavit*

STAGE 2 Serve your documents on the respondent

Who to serve

You serve your documents on the respondent, or on each respondent if there is more than one.

Although the Magistrates' Court is not a party, you must serve the Magistrates' Court with your Notice of Appeal. This is how you officially let the Magistrates' Court know that their decision is being appealed.

What documents to serve

Serve the documents that RedCrest notified you were accepted. They have the Court's seal on them. This includes the:

- Notice of Appeal
- Affidavit, including the Magistrates' Court order and any written reasons prepared by the Magistrates' Court
- Summons (Form 46A).

When to serve documents

You must serve these documents as soon as possible after you were notified in RedCrest that your documents were accepted.

Do this at least 14 days before the directions hearing.

How to serve documents

If you are serving an individual, you must serve the Notice of Appeal in person. This means you must:

- leave a copy of the document with the person to be served

or

- if the person does not accept the copy, put it down near them and tell them the nature of the document.

You are allowed to serve the additional documents by email or post. However, if your additional documents (summons, affidavit and exhibits) are ready, you can serve them at the same time as the Notice of Appeal.

If you are serving a company, you can serve the Notice of Appeal and other documents by posting them to the registered office of the company.

The Court may request you to swear or affirm an affidavit stating that you have served your documents.

If you have any questions about serving documents contact the Self-represented Litigant Coordinator.

Checklist - STAGE 2

- ☐ Download and print your documents with the Court's seal
- ☐ Serve your documents on the respondent

IMPORTANT INFORMATION

Legal word

Serving a document – formally delivering it to a person or company. There are rules about which documents need to be served in person and which can also be served by email or post. See order 6 of the *Supreme Court (General Civil Procedure) Rules 2015.*

Tip

Although some documents need to be served in person, you do not need to do this yourself. You can ask a friend, family member or a professional to serve the documents for you. They must be prepared to sign an affidavit confirming they served the documents, if the Court requests this.

STAGE 3 Respondent may respond to your documents

Once you have served your documents on the respondent, they may do nothing or they may respond in a number of ways.

For example, the respondent may:

- **File a Notice of Appearance** and serve it on you. A Notice of Appearance is how a respondent officially lets you and the Court know that they want to be involved in the proceeding. It means they are likely to attend the directions hearing.
- **Make an application to the Court** of their own. There are many different types of applications the respondent can make. You can read about them in the *Supreme Court (General Civil Procedure) Rules 2015, Supreme Court (Miscellaneous Civil Proceedings) Rules 2018* and the relevant law.
- **File an affidavit opposing your application.**

The respondent must serve on you any documents they file with the Court.

IMPORTANT INFORMATION

! Note

A Notice of Appearance is how a respondent officially lets you and the Court know that they want to be involved in the proceeding. The respondent may also choose to appear at the first directions hearing without notifying you.

! Note

A Notice of Appearance must be filed before the directions hearing. However, the respondent can make an application to the Court of their own at any time leading up to the final hearing.

Checklist - STAGE 3

- ☐ The respondent may serve documents on you in response to your documents

STAGE 4 Attend the directions hearing

In Stage 1, the Court gave you a date for the directions hearing.

The directions hearing is a short hearing to decide matters related to the timing of when things happen during the proceeding, including what has to happen, who does it and when it needs to be done. It is not when you present your arguments to the Court.

At the directions hearing, you will usually also find out the date for the hearing of your appeal. The judge may ask you to estimate how many days you think this hearing will take.

Following the directions hearing, the Court will send all parties a copy of its orders setting out the steps each party must take and by when.

The applicant and respondent both usually attend the directions hearing. If you cannot attend for any substantial reason, for example if you have a medical emergency, contact the Court immediately.

IMPORTANT INFORMATION

! Note

The directions hearing is **not** when you present your arguments to the Court. This happens at the final hearing.

Tip

You only need to bring to the directions hearing the documents you filed in Stage 1, something to make notes on such as a notepad, tablet or laptop and your diary (so you can check if dates proposed are suitable).

Checklist - STAGE 4

- ☐ Attend the directions hearing

STAGE 5 Get your case ready for the judge

Follow the Court's instructions

The orders made at the directions hearing will tell you what you have to do to get your case ready for the judge. This includes which documents to prepare and when they need to be filed with the Court.

Some things you may need to prepare include:

List of authorities

This is a document you prepare that lists the cases, legislation and other resources such as textbooks and journal articles you say support your case. These are things you will refer to in your submissions – the arguments you want the judge to consider.

Outline of submissions

This is a document you prepare that summarises your arguments, it draws together your facts of the case, what happened in the Magistrates' Court case, the law that applies (legislation and cases) and your explanation of why you believe the magistrate made any legal errors. These should be arranged under headings that correspond to the questions of law and grounds of appeal, which you prepared in Stage 1. You can expand on some or all of these points at the hearing.

Affidavit

In addition to the affidavit you filed in Stage 1, this contains any additional evidence you want the Court to consider.

Court book

This is a clearly-labelled folder of all the documents that you and the respondent intend to rely on during the hearing. For example, it might contain witness statements, expert reports, invoices or other material relevant to your case. Each document is numbered, and listed in an index at the front. The Court will order who is responsible for filing the folder.

Your response to the respondent's outline of submissions

You usually have the opportunity to respond to the respondent's outline of submissions, if they prepared these and served them on you.

You do this by preparing a seperate document that numbers each item you want to dispute, followed by your reason for disputing it.

Checklist - STAGE 5

- ☐ Follow the Court's instructions about what to do
- ☐ Prepare for the hearing by watching the Court's videos

IMPORTANT INFORMATION

Tip

Include in your outline of submissions all the important points you want the judge to consider. The more clear and complete your outline of submissions, the less you will need to explain them in the hearing.

Legal word

Submissions – arguments you want the judge to consider. This is a combination of what you write in your outline of submissions and what you say in the final hearing.

Watch the video

To help prepare for your hearing and know what to expect, watch the videos on our website:

- *Preparing for a hearing*
- *Attending Court – the day of your hearing*

STAGE 6 The hearing

Finding out your hearing date

The date for the final hearing is usually decided at the directions hearing you attended in Stage 4. The Court will send you an order that confirms the date.

The hearing is usually 6-9 months after the directions hearing, except in urgent cases. This gives all parties enough time to properly prepare their case.

What to expect at the hearing

To help understand what to expect, including what to bring with you, how to address the judge, where to sit and what you will need to do, watch the video on our website:
Attending Court – the day of your hearing.

A final hearing of an appeal case usually takes between half a day and two full days, depending on the complexity of the case. The hearing does not usually involve the calling of witnesses. It focuses on the documents both parties have filed.

Checklist - STAGE 6

- ☐ Expect an order confirming the date for your final hearing
- ☐ Watch the video:
  Attending Court – the day of your hearing
- ☐ Attend the final hearing

IMPORTANT INFORMATION

Watch the video

To help understand what to expect at the hearing, including what to bring with you, how to address the judge, where to sit and what you will need to do, watch the video on our website:

- *Attending Court – the day of your hearing*

STAGE 7 The decision

When to expect the decision

The judge usually 'reserves' their decision (judgment). This means they do not give a judgment on the day of the hearing but at a later date. This gives the judge time to consider both parties' submissions and write reasons for their decision.

You can expect a decision within weeks or months of the final hearing, depending on the complexity of the case.

Finding out the decision

The Court will email you a date and time when you need to return to Court to get the judge's decision. This is called the 'handing down' of the decision.

Applicants and respondents are expected to attend. However, if you do not attend the Court will email you the decision automatically.

At the handing down of the decision, if you lose the appeal the respondent usually asks the Court to order you to pay their costs. If you win, you can ask the Court to order the respondent to pay your costs, if you had any.

If your appeal is successful

If your appeal is successful, the Court may make one or more of the following orders (under Section 109 of the *Magistrates Court Act 1989)*:

- an order requiring the proceeding to be heard and decided again by the Magistrates' Court, either with or without the hearing of further evidence
- any other order the Court thinks appropriate.

If your appeal is dismissed

If your appeal is dismissed (rejected), you can seek the Court's permission to appeal this decision in the Court of Appeal.

Checklist - STAGE 7

- ☐ Expect an email from the Court advising when to come to the Court to get the decision
- ☐ Attend the decision 'hand down'
- ☐ Know your options, if your appeal is dismissed

IMPORTANT INFORMATION

Legal word

Costs – fees for lawyers' professional services and disbursements (out-of-pocket expenses), such as court fees, fees for expert reports, medical reports and photocopying. If you are representing yourself and you win, you can claim your out-of-pocket expenses but you cannot claim the time you spent working on your case as a cost.

Appendix

If you are reading a print version of this guide, note that the online version has links to forms and other resources you may need. Visit supremecourt.vic.gov.au/representingyourself for the online version. References to links in the appendix are only relevant if you are reading the online guide.

A. Glossary

B. Organisations that may be able to help you

C. Legal reference material

D. Forms

- Notice of Appeal
- Form 46A – Summons
- Affidavit
- Form 43A – Certificate identifying exhibit
- Notice of Discontinuance
- Judicial Review and Appeals List Hearing Date Information Form

E. Guidance

- *Magistrates Court Act 1989* (Section 109)
- *Supreme Court (General Civil Procedure) Rules 2015* (Sections 58.06 – 58.14)
- *Supreme Court (General Civil Procedure) Rules 2015* – Order 6 (Service)
- *Civil Procedure Act 2010* (Sections 16-26, and sections 41-42)
- Practice Note SC CL 9 – Judicial Review and Appeals List
- Practice Note SC Gen 7 – Transcript in Civil Proceedings

F. Videos

- Completing an affidavit
- Preparing for a hearing
- Attending Court - the day of your hearing
- Preparing a grounds of appeal