



# Supreme Court of Victoria

## Practice Note SC CA 1

### Criminal Appeals

#### 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 applications for leave to appeal against conviction or sentence and Crown appeals against sentence.
- 1.3 Further, this Practice Note aims to ensure that matters of fact and law which were in issue at trial (or on the plea) are clearly identified and properly ventilated, and that appeal grounds are drawn and argued by reference to what took place at trial (or on the plea). Experience suggests that this objective is likely to be achieved in most cases by the involvement of trial counsel in the appeal process. There will of course be cases in which appellate review of a conviction or sentence will require the involvement of counsel other than, or in addition to, trial counsel. These may include cases in which it is necessary to consider a matter of law which was not ventilated at trial. What follows should be read accordingly.

#### 2. COMMENCEMENT

- 2.1 This Practice Note was reissued on 10 July 2023, replaces the earlier version issued on 9 December 2019, and applies to all criminal appeals and applications in the Court of Appeal, whenever commenced.
- 2.2 This Practice Note replaces Court of Appeal Practice Direction No. 2 of 2011 (First Revision) which is hereby revoked.

#### 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 2017*.

*VGRS* means the Victorian Government Reporting Service.

#### **4. FILING AND CORRESPONDENCE WITH THE COURT**

- 4.1 Subject to Rule 1A.01 and unless otherwise directed by the Court, all documents required to be filed must be filed electronically in searchable PDF format in RedCrest.<sup>1</sup>
- 4.2 All correspondence to the Court of Appeal must be sent to the registry by email to [coaregistry@supcourt.vic.gov.au](mailto:coaregistry@supcourt.vic.gov.au) and be copied to all other parties. Such correspondence may also be copied to a specific person at the registry, however they should not be the sole addressee.
- 4.3 A party who is self-represented and in custody without access to email may file documents and send correspondence to the Court by post.

#### **5. LEAVE TO APPEAL**

- 5.1 Leave to appeal is required for all appeals against conviction or sentence, except appeals against sentence by the Director of Public Prosecutions.<sup>2</sup>
- 5.2 The usual practice in the Court of Appeal will be for applications for leave to appeal to be determined by a single Judge of Appeal, without oral argument, pursuant to s 315 of the CPA.<sup>3</sup>

#### **6. ADVICE ON PROSPECTS OF APPEAL; ROLE OF TRIAL COUNSEL**

- 6.1 It is assumed that counsel briefed for criminal trials and/or pleas will be required to give written advice on the prospects of success of an appeal against conviction and/or sentence.
- 6.2 Within seven days of conviction or sentence (as the case may be), trial counsel and/or instructing solicitors should confer with the offender and convey counsel's view on the prospects of a successful appeal.
- 6.3 Counsel's advice should be confirmed in writing as soon as practicable.
- 6.4 Advice on prospects of an appeal against sentence should draw attention to the power of the Court to increase sentence (subject to the Court's obligation to give a warning<sup>4</sup>) as well as reduce it.<sup>5</sup>
- 6.5 It is assumed that, if counsel advises an appeal, he/she will be briefed to prepare the grounds of appeal and accompanying written case, in accordance with this Practice Note.

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<sup>1</sup> Rules 1.10(1), ord 1A; *Supreme Court (General Civil Procure Rules) 2015* r 27.03(13.1); Practice Note SC Gen 19 (RedCrest Electronic Case Management System).

<sup>2</sup> CPA ss 274, 278, 283, 287, 291.

<sup>3</sup> Rules 2.06–2.07.

<sup>4</sup> CPA s 281(3).

<sup>5</sup> CPA s 282(1)(a).

## **7. ACCESS TO SOUND RECORDING OF CHARGE, PLEA AND SENTENCE**

- 7.1 To facilitate the provision of prompt advice on the prospects of appeal and the timely preparation of grounds of appeal and written case, VGRS will make available to counsel, on request, a sound recording of the relevant part(s) of the criminal trial (charge, plea and/or sentence), providing written transcript has not been prepared.
- 7.2 Counsel or instructing solicitors should, at the conclusion of the relevant part of the proceeding, submit to VGRS a copy of the order form available at <http://www.courts.vic.gov.au/court-system/transcripts-and-judgments/criminal-transcripts>. The form should be submitted by email to [vgrs.enquiries@courts.vic.gov.au](mailto:vgrs.enquiries@courts.vic.gov.au).
- 7.3 VGRS will notify the practitioner by email when the sound recording is available for collection at the VGRS office. Ordinarily, the sound recording will be available within 48 hours of the request being made.
- 7.4 It should be noted that, under these arrangements, defence counsel will be able to obtain prompt access to the sound recording of the Judge's charge. This will enable consideration to be given to an application for leave to appeal against conviction in the period between conviction and sentence, that is, before time begins to run for the filing of an application for leave.

## **8. GROUNDS OF APPEAL**

- 8.1 Grounds of appeal must be prepared with sufficient precision to enable the Registrar, and subsequently the Court, to identify readily and clearly the issues and the matters relied upon.
- 8.2 Grounds must be set out in the notice of application for leave to appeal or notice appeal, and referred to in the supporting written case, in accordance with the following requirements:
- (a) grounds must be numbered consecutively;
  - (b) grounds must be specific and concise rather than expressed generally;<sup>6</sup>
  - (c) grounds must be sufficiently particularised to identify the matters relied on, particularly when expressed in terms such as 'the conviction is unreasonable or cannot be supported having regard to the evidence';
  - (d) a complaint about the weight attributed to a particular sentencing factor is not a ground of specific error, unless it is to be contended that a statement about weight made by the sentencing Judge discloses a specific error in describing the facts or evaluating their significance, in which case the ground of appeal should be expressed accordingly.<sup>7</sup>

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<sup>6</sup> Rules 2.05(4)(a), 2.15(1)(b).

<sup>7</sup> See *DPP (Vic) v Terrick* (2009) 24 VR 457; *Pesa v The Queen* [2012] VSCA 109.

8.3 Counsel are reminded of their obligation to exercise their forensic judgment and to give advice independently and for the proper administration of justice, notwithstanding any contrary desires of their clients.<sup>8</sup>

## **9. APPLICATION FOR LEAVE TO APPEAL**

9.1 An application for leave to appeal is commenced by filing a notice in Form 6-2A, Form 6-2B or Form 6-2C, as appropriate.<sup>9</sup>

9.2 At the time of filing a notice of application for leave to appeal, the applicant must also file:

- (a) a written case in support;<sup>10</sup>
- (b) a list of authorities and materials relied upon; and
- (c) if an application for leave to appeal against conviction includes a ground that the conviction is unreasonable or cannot be supported having regard to the evidence, a schedule of the evidence and transcript references relevant to that ground, a sample format of which is shown in Annexure 1 to this Practice Note.

9.3 The purpose of the written case is to enable the Court to grasp the facts and issues in the case and to decide the application without oral argument, and it should be prepared accordingly.

9.4 The written case must, unless the Registrar otherwise directs:

- (a) specify the conviction and/or sentence from which leave to appeal is sought;
- (b) in the case of an application for leave to appeal against sentence, identify the applicable statutory maximum penalty and any other relevant statutory provisions in a table in the format shown in Annexure 2 to this Practice Note. If a ground alleges disparity as against the sentence of one or more co-offenders, a table in identical format must be included for each co-offender;
- (c) contain a summary of the relevant facts and, if the matter proceeded at first instance on the basis of an agreed summary of facts, note that fact and provide a copy of the agreed summary if available;
- (d) under a heading for each ground of appeal:
  - (i) outline concisely each argument to be advanced in support of the ground and, as part of the argument, include a reference to each authority relied upon or sought to be distinguished;

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<sup>8</sup> *Legal Profession Uniform Conduct (Barristers) Rules 2015* rule 4(e).

<sup>9</sup> Rule 2.05(1), (2), (3).

<sup>10</sup> Rule 2.05(4)(b).

- (ii) identify (by date and time) each passage of transcript considered necessary to be obtained for the purposes of deciding the application;
  - (iii) identify any document mentioned in the ground, by exhibit number or other sufficient means;
- (e) be concise and, unless the Registrar otherwise permits, not exceed 10 A4 pages of 12 point type, 1½ spaced, including footnotes of no less than 10 point type; and
- (f) be signed by counsel or, if counsel is not retained, by the applicant’s solicitor or, if the applicant is not legally represented, then by the applicant personally. The signature of counsel or solicitor must be accompanied by their name in type below their signature.

9.5 A list of authorities and materials relied upon must:

- (a) be in the form set out in Annexure 3 and comprise the following parts:
  - (i) ‘Part A’ containing a list of authorities and legislation which will be read from in any hearing;
  - (ii) ‘Part B’ containing a list of additional authorities and legislation to be referred to but not read from in any hearing; and
  - (iii) ‘Material Relied Upon’ containing a list of all materials upon which the applicant intends to rely. Those materials must be identified by detailed descriptions, including any exhibit number, to enable them to be identified by the Registrar;
- (b) reference authorities in accordance with the current edition of the *Australian Guide to Legal Citation*. Where a case is reported, the reported version rather than the unreported version must be cited, and authorised reports must be used over unauthorised reports.

9.6 Where the requirements of this Practice Note regarding a notice of application for leave to appeal, written case or other 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. This rejection will not, however, prevent time from continuing to run against the applicant.

**10. TIME LIMITS FOR FILING APPLICATION FOR LEAVE TO APPEAL**

10.1 A notice of application for leave to appeal, written case and other required documents must be filed within 28 days after the day on which the applicant is sentenced, unless the time for filing is extended under s 313 of the *CPA*.<sup>11</sup>

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<sup>11</sup> *CPA* ss 275(1), 279(1), 284(1).

- 10.2 As the 28 day period is set by the *CPA*, Rules 1.07 to 1.09 relating to the calculation of time do not apply to applications for leave to appeal against sentence or conviction.
- 10.3 An application for an extension of the 28 day period must be supported by an affidavit stating the reasons for not filing within time. Ordinarily, time will not be extended unless there is an adequate explanation for failing to file within time.
- 10.4 An application for extension of time and the supporting affidavit must be filed together with the notice of application for leave to appeal, written case and other required documents.<sup>12</sup> Otherwise, the Registrar will not permit the application for leave to appeal to be filed out of time.

## **11. SERVICE OF APPLICATION FOR LEAVE TO APPEAL**

- 11.1 It is the Registrar's obligation to provide the respondent with a copy of the notice of application for leave to appeal within seven days after the day on which it is accepted for filing.<sup>13</sup> The Registrar will also provide a copy of the applicant's written case and other filed documents. Accordingly, the applicant need not provide copies of those documents to the respondent at the time of filing with the registry.

## **12. TRANSCRIPT**

- 12.1 Once an application for leave to appeal has been filed, the Registrar will as a matter of course obtain the following transcripts:
- (a) in the case of an application for leave to appeal against conviction, transcripts of the Trial Judge's charge and of the proceedings from the conclusion of the charge down to verdict; and
  - (b) in the case of an application for leave to appeal against sentence, transcripts of the addresses on the plea and of the Judge's sentencing remarks.
- 12.2 The transcript will be obtained and supplied by the registry electronically to the parties in an unrevised form. The Trial Judge may comment on the unrevised transcript in his or her report.
- 12.3 A written case filed in support of an application for leave to appeal must identify (by date and time) any further transcript considered necessary, with an explanation of the necessity.
- 12.4 Whether any further trial transcript is obtained is a matter for the Registrar.<sup>14</sup>

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<sup>12</sup> Rule 2.22.

<sup>13</sup> *CPA* ss 275(2), 279(2), 284(2).

<sup>14</sup> Rule 2.33.

12.5 Parties must refer to the PDF format version of the transcript supplied by the registry, both in their documents and during any oral hearing, to ensure it is the same as the version used by the bench.

**13. AMENDMENT OF NOTICE OF APPLICATION FOR LEAVE TO APPEAL, NOTICE OF APPEAL OR WRITTEN CASE**

13.1 A notice of application for leave to appeal, notice of appeal or the written case may be amended in accordance with this section.

13.2 The purpose of amendment is:

- (a) to enable modification of, substitution of, deletion of or addition to the original grounds where this is considered necessary or appropriate; and
- (b) for the assistance of the Court, to identify the part(s) of the transcript relevant to each ground.

13.3 In an application for leave to appeal against conviction the Registrar will ordinarily invite the applicant to amend the grounds of appeal or written case if they consider it appropriate to do so in light of the transcript once obtained.

13.4 In an application for leave to appeal against sentence it is unlikely that amendment will be required. However, the Registrar may invite the applicant or appellant, as applicable, to amend if they consider it necessary for the assistance of the Court in light of the transcript once obtained.

13.5 Subject to any direction to the contrary by the Registrar, the amendment procedure is as follows:

- (a) after transcript has been supplied by the registry electronically to the parties and the respondent's written case has been filed, the applicant or appellant, as applicable, may be invited to amend the grounds of appeal or written case within 21 days or such other time as specified by the Registrar ('the revision period');
- (b) the grounds of appeal and written case may be amended without leave provided the amended notice of application for leave and/or amended written case are filed within the revision period and they otherwise comply with the requirements set out in ss 8 and 9.4 above. This includes adding new grounds that were not apparent at the time the notice of application for leave or notice of appeal was filed, or deleting grounds that, upon reflection, counsel has determined are not reasonably arguable;
- (c) the Registrar will provide a copy of the amended document(s) to the respondent, which will have 21 days in which to file an amended written case in response;
- (d) if the applicant determines before the expiry of the revision period that no amendments will be made, they must inform the Registrar as soon as

possible so that the matter may be progressed without waiting for the revision period to expire;

- (e) if the applicant does not file any amended document within the revision period, they will be taken to have determined to make no amendments and the existing filed material will be placed before the Court for determination without further notice;
- (f) grounds of appeal and written cases may not be amended after the revision period except by leave of the Court.

13.6 If counsel concludes that there are no valid grounds of appeal:

- (a) counsel should so advise their instructing solicitors, in writing, within the revision period;
- (b) the instructing solicitors should send a copy of counsel's advice to the applicant and obtain instructions; and
- (c) if the applicant decides not to proceed with the application for leave, the registry should be notified immediately (see further s 26 below regarding abandonment).

13.7 Where the applicant has not been invited to amend but wishes to do so, the applicant must apply to the Registrar for permission to do so within seven days of provision of the transcript and respondent's written case, setting out the reasons.

13.8 Where a party amends a document:

- (a) the word 'amended' must be added to the heading of the document (eg. 'amended notice of application for leave to appeal against sentence', 'amended written case');
- (b) the party must file two versions of the amended document:
  - (i) a version in which all amendments are marked up so that additions are underlined and deletions are struck through; and
  - (ii) a 'clean' version.

#### **14. CROWN RESPONSE TO APPLICATIONS FOR LEAVE TO APPEAL**

14.1 Where the Crown determines to respond to an application for leave to appeal, the Crown must, within 28 days of being provided with a copy of the applicant's notice of application for leave to appeal and other filed documents, or such other time as directed by the Registrar, file:

- (a) a written case in response;
- (b) a list of authorities and materials relied upon that complies with the requirements of s 9.5 above; and
- (c) if an application for leave to appeal against conviction includes a ground that the conviction is unreasonable or cannot be supported having



regard to the evidence, a schedule of the evidence and transcript references on which the Crown relies to rebut that contention, a sample format of which is shown in Annexure 1 to this Practice Note.

14.2 The Crown's written case:

- (a) must respond, point by point and in sequence, to each ground of appeal and to each argument advanced in the applicant's written case;
- (b) need not re-summarise the facts but may, by explicit statement, adopt the summary of facts as set out in the applicant's written case wholly or in part. If the matter proceeded on the basis of agreed facts and the agreed summary of facts was not provided with the applicant's written case, the Crown must provide that summary or advise in its written case that the summary is not available;
- (c) must otherwise comply with the requirements of s 9.4 above (as modified to apply to a Crown response).

**15. REFERRAL BY THE REGISTRAR**

15.1 When the Registrar has obtained the documents necessary for an application to be determined (which will include the notice of application for leave to appeal, written case(s), lists of authorities and materials relied upon, schedules of evidence (if required), transcripts and the materials relied upon by parties), the Registrar will refer the application either to:

- (a) the Court constituted by a single Judge;<sup>15</sup> or
- (b) in those cases where it is considered appropriate to do so, to the Court constituted by two or more Judges.<sup>16</sup>

15.2 Cases which would be suitable for referral directly to two or more Judges include, but are not limited to, those which involve a novel point of law and those in which the sentence passed is unlawful, such that the applicant must be re-sentenced.

15.3 In considering whether to refer the application to a single Judge or to two or more Judges, the Registrar will have regard to the efficient and expeditious dispatch of applications.<sup>17</sup>

**16. BAIL PENDING APPEAL**

16.1 An application for bail pending appeal must be served on the Crown at least 24 hours before the application is filed with the Court. This will enable the Crown to make representations (written or oral) about the application and any

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<sup>15</sup> CPA s 315.

<sup>16</sup> Rule 2.06.

<sup>17</sup> *Supreme Court Act 1986* s 113P.

conditions of bail. In the ordinary course, following confirmation of service on the Crown, the Registrar will invite the Crown to file short submissions on bail.

- 16.2 Most applications for bail pending appeal will be determined by a single Judge.<sup>18</sup>
- 16.3 Ordinarily, an application for bail pending appeal will not be considered before the applicant's notice of application for leave to appeal, written case and other required documents have been filed.

## **17. CONSIDERATION OF APPLICATIONS FOR LEAVE TO APPEAL BY A SINGLE JUDGE**

- 17.1 It is assumed that ordinarily an applicant for leave to appeal will be content to rely upon their notice of application for leave to appeal, written case and other filed documents and, therefore, will not require an oral hearing of the application.
- 17.2 In those circumstances, a single Judge will, without hearing oral argument, consider the application for leave to appeal.<sup>19</sup>
- 17.3 Where appropriate, the single Judge considering the leave application may also consider any ancillary application (for example, an application for extension of time).
- 17.4 An applicant may request an oral hearing of the application by so indicating in the application for leave to appeal.<sup>20</sup> That request must be confirmed in writing if so required by the Registrar. Failure to confirm in writing that an oral hearing is requested, when required to do so by the Registrar, will be taken as a decision by the applicant that he/she does not request an oral hearing.
- 17.5 If an applicant requests an oral hearing, the Registrar will fix a hearing date.
- 17.6 Unless the Registrar gives notice to the Crown that it is required to appear, the Crown is not expected to appear at an oral hearing of an application for leave to appeal.
- 17.7 Subject to any contrary direction by the Judge, the time for oral argument will ordinarily be limited:
- (a) in the case of the applicant, to 15 minutes; and
  - (b) in the case of the Crown (if appearing), to 10 minutes.

## **18. POWERS OF A SINGLE JUDGE**

- 18.1 A single Judge considering an application for leave to appeal may:<sup>21</sup>

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<sup>18</sup> CPA s 315(1)(e); Rule 2.38.

<sup>19</sup> CPA s 315; Rule 2.07(2).

<sup>20</sup> Rules 2.07(4), 2.36.

<sup>21</sup> Rule 2.07(2)(a).

- (a) grant leave to appeal on all grounds of appeal;
  - (b) grant leave to appeal on one or more grounds of appeal and refuse leave to appeal on other grounds of appeal ('limited leave'); or
  - (c) refuse leave to appeal.
- 18.2 The Judge may also grant or refuse any ancillary application.
- 18.3 The Judge considering an application for leave to appeal may, instead of determining the application, refer the application (and any ancillary application) to two or more Judges, of whom the single Judge may but need not be one.<sup>22</sup>
- 18.4 At the time of granting leave to appeal or referring an application to two or more Judges, the single Judge may give such directions for the filing of outlines of argument and other matters as the Court thinks fit for the hearing of the appeal or may remit the matter to the Registrar for directions and further case management.

## **19. RENEWED APPLICATIONS WHERE SINGLE JUDGE REFUSES LEAVE**

- 19.1 If a single Judge refuses an application for leave to appeal or grants limited leave, and the applicant elects pursuant to s 315(2) of the *CPA* to renew the application, the renewed application will be determined by two or more Judges of the Court.<sup>23</sup>
- 19.2 In most such cases, the Court will expect to determine the renewed application without oral argument, on the basis of the notice of application for leave to appeal, written case(s) and other filed documents. Grounds of appeal may not be added or amended upon a renewed application, except with the leave of the Court.
- 19.3 An applicant may request an oral hearing of a renewed application, by notice in writing to that effect filed with the election.<sup>24</sup> That request must be confirmed in writing if so required by the Registrar.
- 19.4 If an applicant requests an oral hearing of a renewed application, the Registrar will fix a hearing date.
- 19.5 Unless the Registrar gives notice to the Crown requiring it to appear, the Crown will not be expected to appear at a hearing of a renewed application.
- 19.6 Subject to any contrary direction by the Court, the time for oral argument will ordinarily be limited:
- (a) in the case of the applicant, to 15 minutes; and
  - (b) in the case of the Crown (if appearing), to 10 minutes.

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<sup>22</sup> Rule 2.07(2)(b).

<sup>23</sup> Rule 2.08(3).

<sup>24</sup> Rule 2.08(5).

## **20. ELECTIONS AGAINST REFUSALS OF APPLICATIONS FOR EXTENSION OF TIME**

- 20.1 If the Registrar refuses an application for extension of time for filing a notice of appeal or notice of application for leave to appeal, and the applicant elects<sup>25</sup> to renew the application, the renewed application will be determined by the Court, usually constituted by a single Judge of Appeal.
- 20.2 In most such cases, the Court will expect to determine the renewed application without oral argument, on the basis of the application and any supporting materials.
- 20.3 An applicant may request an oral hearing of a renewed application, by returning the required election notice<sup>26</sup> indicating that an oral hearing is requested.
- 20.4 If an applicant requests an oral hearing of a renewed application, the Registrar will fix a hearing date.
- 20.5 Ordinarily the Court will also consider the application for leave at the hearing if it grants the extension of time application. Where the Crown determines to respond to an application for leave in the event that an extension is granted, the Crown must file the documents referred to in s 14.1 above.
- 20.6 Unless the Registrar gives notice to the Crown requiring it to appear, the Crown will not be expected to appear at the hearing of a renewed application for an extension of time.
- 20.7 Subject to any contrary direction by the Court, the time for oral argument on the renewed application will ordinarily be limited:
- (a) in the case of the applicant, to 15 minutes; and
  - (b) in the case of the Crown (if appearing), to 10 minutes.

## **21. POWERS OF COURT COMPRISING TWO OR MORE JUDGES**

- 21.1 Where the Court comprising two or more Judges considers an application for leave to appeal (including a renewed application), the Court may:
- (a) grant leave to appeal on all grounds;
  - (b) grant limited leave to appeal;
  - (c) refuse leave to appeal;
  - (d) refer the application for leave to appeal to the Court constituted by not fewer than three Judges, of which any member of the referring court may be but need not be a member; or

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<sup>25</sup> CPA s 313(2).

<sup>26</sup> Rules, Form 6-2J.

- (e) treat the hearing of the application as the hearing of the appeal.<sup>27</sup>
- 21.2 Upon a grant of leave or a referral, the Court may give such directions for the filing of outlines of argument and other matters as the Court thinks fit for the hearing of the appeal, or may remit the matter to the Registrar for directions and further case management.

## **22. REPRESENTATION BY COUNSEL AT FURTHER HEARINGS**

- 22.1 Where the Court grants leave or limited leave to appeal, or where an application for leave is referred to two or more Judges, the Court expects that the applicant will be represented by counsel at the subsequent hearing of the application or appeal.

## **23. CROWN APPEALS**

- 23.1 A Crown appeal against sentence is commenced by filing:
- (a) a notice of appeal<sup>28</sup> (for which there is no prescribed form) which is signed by the DPP personally<sup>29</sup>, and states each ground of appeal specifically and concisely and not merely in general terms;<sup>30</sup>
  - (b) a written case which complies with the requirements set out in s 9.4 above;<sup>31</sup> and
  - (c) a list of authorities and materials relied upon which complies with the requirements set out in s 9.5 above.
- 23.2 An appeal under s 287 of the *CPA* must be filed within 28 days after the day on which the sentence was imposed, unless the time for filing is extended under s 313 of the *CPA*.<sup>32</sup>
- 23.3 In relation to service of the appeals:
- (a) for an appeal under s 287 of the *CPA*, the appeal documents must be served personally on the respondent by the Crown within 7 days after being filed, and a copy provided to their last known legal practitioner;<sup>33</sup>
  - (b) for an appeal under s 291 of the *CPA*, the appeal documents must be served personally on the respondent by the Crown within 14 days after being filed, and a copy provided to their last known legal practitioner;<sup>34</sup> and

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<sup>27</sup> Rules 2.08(3), 2.09.

<sup>28</sup> *CPA* ss 288(1), 292(1); Rule 2.15(1).

<sup>29</sup> *CPA* ss 288(2), 292(2).

<sup>30</sup> Rule 2.15(1)(b).

<sup>31</sup> Rule 2.15(1)(c).

<sup>32</sup> *CPA* s 288(1).

<sup>33</sup> *CPA* s 288(3), (4).

<sup>34</sup> *CPA* s 292(3), (4).

- (c) in all cases, within 7 days after serving the respondent, the Crown must file an affidavit of service with the Court.<sup>35</sup>
- 23.4 To the extent necessary, the procedures described above regarding sound recordings and transcript will apply to Crown appeals.
- 23.5 The respondent may, but need not, file and serve within one month of being given notice of the Crown appeal:
  - (a) a written case in response; and
  - (b) a list of authorities and materials relied upon.<sup>36</sup>
- 23.6 The respondent's written case, if filed, must respond, point by point and in sequence, to each ground of appeal and to each argument advanced in the Crown's written case, and must otherwise comply with the requirements of ss 9.4 and 14.2 above (as modified to apply to a response to a Crown appeal). The respondent's list of authorities and materials relied upon must comply with the requirements set out in s 9.5 above.

## **24. REGISTRAR'S PREPARATION OF APPEALS FOR HEARING**

- 24.1 If leave to appeal is granted, the Registrar will prepare a summary.
- 24.2 As a general rule, a short summary in sentence appeals will be prepared. In conviction appeals, a longer summary of the proceeding, with appropriate references to the materials and transcript, will be prepared.
- 24.3 The summary will be sent to the legal representatives of the parties for their information. The summary is the Registrar's document and is designed to assist the bench in the prompt disposition of the appeal. However, if a summary contains a factual error, a party should so advise the Registry promptly.
- 24.4 Summaries prepared in accordance with this section may provide the basis for statements of facts and arguments in the Court's judgments. To enable the Court to deal with appeals by judgment delivered after oral argument, it will be the responsibility of counsel, in conjunction with the Registrar, to ensure that summaries are accurate.
- 24.5 The Registrar may give such other directions as the case requires.

## **25. HEARING OF APPLICATIONS AND APPEALS**

- 25.1 The Court aims to dispose of applications and appeals in a timely and efficient manner, subject always to allowing sufficient time for complex cases. Accordingly, any oral argument should supplement the submissions in the parties' written cases.

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<sup>35</sup> Rule 2.15(3).

<sup>36</sup> Rule 2.15(4).

- 25.2 The time for argument on an appeal may be limited by direction of the Registrar or by order.
- 25.3 The aim of the Court is wherever possible to deliver judgment shortly after oral argument concludes.

## **26. ABANDONMENT OF APPEALS AND APPEAL GROUNDS**

- 26.1 An appeal (including any application for leave or renewal, or an application for an extension of time) may be abandoned at any time before the hearing is commenced by filing a notice of abandonment.<sup>37</sup> A notice of abandonment must be signed by the appellant/applicant personally before a witness.<sup>38</sup> The appeal or application, as applicable, shall be taken to be dismissed on the date such notice is filed.<sup>39</sup>
- 26.2 An abandonment may not be set aside except upon application with leave of the Court.<sup>40</sup>
- 26.3 The Court recognises that, upon reflection, counsel may wish to abandon a ground or grounds of appeal. The proper time for such action to be taken is during the revision period as set out in s 13 above. In all cases, counsel briefed to appear in criminal applications and appeals are expected to review the grounds well in advance of the listed date and to advise the Registrar as soon as possible if any ground will not be maintained.

## **AMENDMENT HISTORY**

10 July 2023: This Practice Note was reissued on 10 July 2023 and replaced the version issued on 9 December 2019.

9 December 2019: This Practice Note was reissued on 9 December 2019 and replaced the version issued on 30 September 2019.

30 September 2019: This Practice Note was reissued on 30 September 2019 and replaced the version issued on 30 January 2017.

30 January 2017: This Practice Note was issued on 30 January 2017 and replaced Practice Direction No 2 of 2011 and Practice Direction No 2 of 2011 (First Revision).

Vivienne Macgillivray  
Executive Associate to the Chief Justice  
10 July 2023

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<sup>37</sup> CPA s 314; Rule 2.40(1).

<sup>38</sup> Rule 2.40(2).

<sup>39</sup> Rule 2.41.

<sup>40</sup> Rule 1.18; *Keshtiar v The Queen* [2011] VSCA 122.

## Annexure 1 -Example Schedule of Evidence

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
IN THE COURT OF APPEAL  
CRIMINAL DIVISION

S EAPCR 20xx xxxx

[APPLICANT'S NAME]

v

THE KING

### [APPLICANT'S / RESPONDENT'S] SCHEDULE OF EVIDENCE

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Date of document:	Solicitor's code:
Filed on behalf of:	Tel:
	Fax:
Prepared by:	Ref:
[Name of lawyer / law firm]	Attention:
[Address of lawyer / law firm]	Email:

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WITNESS	TOPIC	EVIDENCE
[Insert name of applicant, complainant, informant, relevant witness]	[Insert the conduct/allegations the evidence relates to, eg. "Charge 6" or "XX incident" or "credibility of witness X"]	[Briefly summarise the evidence provided that the party submits supports or rebuts (as applicable) the contention that the conviction is unreasonable or cannot be supported having regard to the evidence, and insert the relevant page/s of the transcript: eg. "T200"]

Dated:

\_\_\_\_\_  
[Counsel's name]  
Counsel for the [applicant / respondent]



## **Annexure 2 - Tabular Summary of Offences, Sentences and Orders**

<b>Charge on Indictment</b>	<b>Offence</b>	<b>Maximum</b>	<b>Sentence</b>	<b>Cumulation</b>
1.	Intentionally causing serious injury	20y	5y	Base
2.	Fail to answer bail	2y	3m	-
3.	Fail to answer bail	2y	3m	3m
<b>Total Effective Sentence:</b>		5y 3m		
<b>Non-Parole Period:</b>		2y 6m		
<b>Pre-sentence detention declared:</b>		75 days		
<b>6AAA Statement:</b> 8y with a non-parole period of 5y.				
<b>Other relevant orders:</b> eg, forfeiture.				

## **Annexure 3 -List of Authorities and Material Relied Upon**

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
IN THE COURT OF APPEAL  
CRIMINAL DIVISION**

**S EAPCR 20xx xxxx**

[APPLICANT'S NAME]

**v**

[THE KING / RESPONDENT'S NAME]

### **[APPLICANT'S / RESPONDENT'S] LIST OF AUTHORITIES AND MATERIAL RELIED UPON**

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Date of document:	Solicitor's code:
Filed on behalf of:	Tel:
	Fax:
Prepared by:	Ref:
[Name of lawyer / law firm]	Attention:
[Address of lawyer / law firm]	Email:

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#### **Part A - Authorities and legislation to be read from**

1. *DPP (Vic) v Terrick* (2009) 24 VR 457.

#### **Part B - Authorities and legislation to be referred to**

1. *R v Verdins* (2007) 16 VR 269.
2. *Scerri v The Queen* (2010) 206 A Crim R 1.

#### **- Material Relied Upon -**

1. Photobook (Exhibit A).
2. Sketch of room by complainant (Exhibit B).
3. 10 page Report of Dr A Citizen dated 5 March 2012 (Exhibit C).
4. Sentencing Advisory Council, *Snapshot 98 Sentencing Trends for Aggravated Burglary in the Higher Courts of Victoria June 2010*.