



# **Guideline for the Preparation of a Written Case**

**Prepared by the Court of Appeal Registry**

**January 2017**

*Practice Note SCCA 1* ('Practice Note') and the *Supreme Court (Criminal Procedure) Rules 2008* ('Rules') specify what must be included in a Written Case. If there is any disparity between this guideline and those materials, the latter are controlling. What follows is only indicative and designed to assist the profession in setting out an example of the way in which the requirements of the Rules and Practice Direction might be complied with.

**IN THE SUPREME COURT  
OF VICTORIA  
COURT OF APPEAL  
(CRIMINAL DIVISION)**

**[APPLICANT'S NAME]**

**v**

**THE QUEEN**

**[APPLICATION FOR LEAVE TO APPEAL AGAINST CONVICTION]  
[APPLICATION FOR LEAVE TO APPEAL AGAINST SENTENCE]  
[APPLICATION FOR LEAVE TO APPEAL AGAINST CONVICTION AND  
SENTENCE]**

**WRITTEN CASE FOR THE APPLICANT**<sup>1</sup>

1. Please note the Written Case may not exceed 10 pages<sup>2</sup> unless leave is obtained from the Registrar in advance of submission.<sup>3</sup> All text in the body of the document should be in 12 point type,<sup>4</sup> with 1.5 spacing as used throughout this document, and footnotes should be in not less than 10 point type.<sup>5</sup>

2. Any clear and readable font may be used in the Written Case. Without intending to express any preference and merely for purposes of illustration, it is noted that some of the most common fonts (in 12 point type) are:

- Times New Roman;
- Book Antiqua;
- Garamond;
- Arial; and
- Calibri.

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<sup>1</sup> The heading in square brackets above needs to be adjusted depending on the application filed: pick the option that suits your case and delete the others.

<sup>2</sup> *Practice Note SCCA 1*, s 7.5(h).

<sup>3</sup> *Supreme Court (Criminal Procedure) Rules 2008* r 1.15(2.1).

<sup>4</sup> See *Practice Note SCCA 1*, s 7.5(h).

<sup>5</sup> *Ibid.* (By way of illustration, all footnotes in this sample Written Case are in 10 point type).

3. Please note that written cases filed electronically are required to be filed in Word or searchable PDF format to allow for copying of parts of the document.<sup>6</sup>

### **PARTICULARS OF CONVICTION AND/OR SENTENCE**

4. The conviction and/or sentence from which leave to appeal is sought must be specifically identified.<sup>7</sup> Moreover, in an Application for Leave to Appeal Against Sentence the applicable statutory maximum penalty and any other relevant statutory provisions must be identified.<sup>8</sup> Whilst not required, the Court frequently finds that a summary table of the offences and sentences, such as this, is most helpful and encourages its use. Note the font size has not changed, it remains in 12 point type.

<b>Charge on Indictment</b>	<b>Offence</b>	<b>Maximum</b>	<b>Sentence</b>	<b>Cumulation</b>
1.	Intentionally causing serious injury [s 16 of the <i>Crimes Act 1958</i> ]	20 years	5 years	Base
2.	Fail to answer bail [s 30(1) of the <i>Bail Act 1977</i> ]	2 years	3 months	-
3.	Fail to answer bail [s 30(1) of the <i>Bail Act 1977</i> ]	2 years	3 months	3 months
<b>Total Effective Sentence:</b>		5 years 3 months		
<b>Non-Parole Period:</b>		2 years 6 months		
<b>Pre-sentence detention declared:</b>		75 days		
<b>6AAA Statement:</b> The learned trial Judge stated that the sentence she would have been imposed if the applicant had been convicted of this offence after a trial would have been 8 years' imprisonment, with the applicant becoming eligible for parole after serving 5 years of that sentence.				
<b>Other relevant orders:</b> eg, forfeiture.				

### **SUMMARY OF RELEVANT FACTS**

<sup>6</sup> Ibid s 7.3.

<sup>7</sup> Ibid s 7.5(a).

<sup>8</sup> Ibid s 7.5(b).

5. It is important to emphasise that the facts are to be *summarised* in this section of the Written Case.<sup>9</sup> It is not sufficient to state that the judge’s sentencing remarks contain all the necessary facts and thus the Court need look no further than the transcript of those remarks. Rather, the relevant facts should be set out. If, however, a respondent agrees with the applicant’s summary of the facts it is unnecessary for the respondent to restate them. A simple affirmative statement noting acceptance, or acceptance with specifically identified exceptions, is sufficient.<sup>10</sup>

6. Relevant facts are those necessary to the Court’s disposition of the application and will depend on whether the application is for leave to appeal a conviction or sentence or both, and what the grounds entail.

7. Where a matter has proceeded on the basis of an agreed statement of facts, the applicant should attach that statement if it is available to them. If not, the Crown should attach the statement or advise that it is not in its possession.<sup>11</sup>

## **GROUND**S

***Ground 1 – Your Written Case will not comply, and so may not be accepted, unless it states and numbers each ground of appeal consecutively.***<sup>12</sup>

8.1. Each argument in support of a ground must be concisely outlined under each heading of the ground.<sup>13</sup> Holding grounds are no longer sufficient, and will not comply with the requirements in the Practice Note. The grounds must be prepared with sufficient precision for the Registrar and Court to clearly identify the issues and matters relied upon.<sup>14</sup>

8.2 The argument is not complete unless it contains reference to each authority relied upon or sought to be distinguished.<sup>15</sup>

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<sup>9</sup> Ibid s 7.5(c) (emphasis added).

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid s 7.7.

<sup>13</sup> Ibid s 7.5(g)(i).

<sup>14</sup> Ibid s 7.1; *Supreme Court (Criminal Procedure) Rules 2008* r 2.05(4).

<sup>15</sup> *Practice Note SCCA 1*, s 7.5(e).

***Ground 2 – Your Written Case will not comply, and so may not be accepted, unless each ground also identifies these specific items.***

- 9.1 Each passage of transcript (identified by date and time -- for examples see footnote<sup>16</sup>) considered necessary for the purpose of deciding the application.<sup>17</sup>
- 9.2 Any document mentioned in the ground, either by exhibit number or other sufficient means.<sup>18</sup> Imprecise descriptions such as “the psychologist’s report” or “the character reference” are insufficient descriptions, as the author’s name and date of any document (or exhibit number) should also be included.

***Ground 3 – Grounds that are particulars of another should not be identified separately but should appear under one heading.***

- 10.1 For example: a sentence might be manifestly excessive in light of the sentencing judge’s failure to:
- Have appropriate regard for the principles of general and specific deterrence;
  - Give due weight to *Verdins* principles;
  - Allow any more than a 5% discount for the early plea of guilty pursuant to s 6AAA(2) of the *Sentencing Act 1991* (Vic).
- 10.2 None of the above are separate grounds; each is a particular of manifest excess and should appear under that ground.
- 10.3 This includes the last point regarding the s 6AAA statement and plea discount. Counsel should be mindful of the Court’s remarks in *Scerri v The Queen* [2010] VSCA 287 [19]-[25] noting that this last contention is only a particular of manifest excess.
- 10.4 The Court has directed that a Written Case advancing such ‘grounds’ separately be rejected.<sup>19</sup>

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<sup>16</sup> Transcript of Proceedings, *Doe v Doe* (County Court of Victoria, File number, Judge Jones, 11 April 2000) or [Reasons for Sentence, para 9] or [T1892-1894] or [Plea, 29 L 13-24].

<sup>17</sup> *Practice Note SCCA 1*, s 7.5(g)(ii).

<sup>18</sup> *Ibid* s 7.5(g)(iii).

<sup>19</sup> See *DPP (Vic) v Terrick* (2009) 24 VR 457, 459-60 [5]

11. Further, if counsel decides to abandon a ground of appeal s/he must advise the Registry of that fact not less than 7 days before the date of the hearing.<sup>20</sup>
12. The Practice Direction clearly identifies the transcript that will be routinely ordered by the Registry.<sup>21</sup> Requests for further transcript should be particularised by reference to the ground of appeal and point of argument that creates the necessity for the request. All requests must provide an explanation of the necessity, but it is expected that such necessity will also be apparent from the ground of appeal and argument advanced in support. Broad requests couched in general terms at the end of a written case are unlikely to be approved by the Registrar.<sup>22</sup>
13. Lastly, as shown on the next page, a list of authorities<sup>23</sup> and of materials (with a detailed description including any exhibit number) upon which the applicant intends to rely<sup>24</sup> should be attached.

[Signature of counsel/solicitor/self-represented applicant]<sup>25</sup>

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<sup>20</sup> *Practice Note SCCA 1*, s23.3.

<sup>21</sup> *Practice Note SCCA 1*, s 9.1.

<sup>22</sup> *Ibid* s 9.3.

<sup>23</sup> *Ibid* s 7.5 (e).

<sup>24</sup> *Ibid* s 7.5(e).

<sup>25</sup> *Ibid* s 7.5(i).

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**APPLICANT'S LIST OF AUTHORITIES AND MATERIAL RELIED UPON<sup>26</sup>**

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**- Part A -<sup>27</sup>**

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

**- Part B -<sup>28</sup>**

1. *R v Verdins* (2007) 16 VR 269.
2. *Scerri v The Queen* [2010] VSCA 287.

**- 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 2016 (Exhibit C).
4. Sentencing Advisory Council, *Snapshot 98 Sentencing Trends for Aggravated Burglary in the Higher Courts of Victoria June 2010*.

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<sup>26</sup> This list is required by *Practice Note SCCA 1*, s 7.5(f).

<sup>27</sup> This part should include only those authorities relied upon for a point of principle and which may be read at hearing.

<sup>28</sup> This part should include those authorities relied upon for another purpose.