# Guidance note: Sentence appeal merits advice

## Overview

In making decisions in relation to the funding of higher court appeals, Victoria Legal Aid (VLA) relies upon the advice of counsel briefed to determine whether there are reasonable grounds of appeal.

The purpose of this note is to provide guidance to counsel when drafting advices in relation to the merits of appealing against sentence.

## Guideline 7.4 – leave to appeal against sentence

[Guideline 7.4](https://handbook.vla.vic.gov.au/handbook/3-criminal-law-guidelines/guideline-74-leave-to-appeal-against-sentence-in-court-of-appeal) of VLA’s *Handbook for Lawyers* provides that:

Victoria Legal Aid may make a grant of legal assistance for leave to appeal against sentence where:

* the applicant was sentenced to a term of immediate imprisonment or detention (unless the applicant is a child
* there are reasonable grounds for the appeal
* there is a reasonable prospect that the court would reduce the total effective sentence, youth detention order, non-parole period or period prior to recognisance release order (unless the applicant is a child).

## Content of the merits advice

The purpose of the merits advice is to assist the VLA decision maker in determining whether guideline 7.4 has been met.

Counsel should identify the issue with the sentence (for example, double punishment, totality, application of *Verdins*, parity, technical error, erroneous findings of fact or law) with sufficient detail of argument and case law to be relied upon. Also, counsel should outline the impact that this issue has had on the sentence.

Where the issue is that the sentence is manifestly excessive, counsel should specify what it is about the particular case that means that the sentence falls outside of the range. Noting the impact of *Dalgliesh v The Queen* [[2017] HCA 41](http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2017/41.html) on the use of current sentencing practices, comparable cases (where available), will assist in determining the range.

Counsel should also be mindful of pronouncements of the Court of Appeal indicating the need for an increase in sentences for particular offences. In this way, the argument is clear, is easily understood, and allows for prompt and well considered decision making.