# Guidance note: High Court appeal merits advice

In making decisions in relation to the funding of criminal appeals to the High Court, Victoria Legal Aid (VLA) relies upon the advice of counsel briefed to determine whether there are reasonable grounds for special leave or appeal.

The purpose of this note is to provide guidance to counsel when drafting advices in relation to the merits of appeal to the High Court.

## Guideline 7.3 – appeals to the High Court

[Guideline 7.3](https://handbook.vla.vic.gov.au/handbook/3-criminal-law-guidelines/guideline-73-appeals-to-high-court) of VLA’s *Handbook for Lawyers* provides that:

Victoria Legal Aid may make a grant of legal assistance for an application for special leave or criminal appeal to the High Court 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 reasonable prospect that the court would reduce the total effective sentence, youth detention order, non-parole period or period to recognisance release order (unless the applicant is a child).

Where the prosecution has filed the appeal, VLA may make a grant of assistance to respond to an application for special leave or a criminal appeal to High Court.

## Content of the merits advice

The purpose of the merits advice is to assist the VLA decision maker to make a timely decision about whether guideline 7.3 has been met. If initiating the appeal, counsel will need to identify the special leave question(s) and reasonable ground(s) for the appeal (that is, how the Court of Appeal was wrong, or whether the case raises a Constitutional issue, or if a decision of the High Court is required to resolve differences of opinion as to the state of the law), whilst addressing High Court requirements in s 35A *Judiciary Act 1903* (Cth). Counsel should also discuss, with reasons:

* whether the same error afflicts the first instance decision and whether the ground of appeal or special leave question was argued in the courts below
* how it is in the interests of the administration of justice, either generally or in the particular case, that the High Court determine the special leave questions
* why the case is a suitable vehicle to agitate the special leave question
* how a favourable resolution of the special leave question would affect the outcome of the case
* what orders are sought on successful appeal.

Counsel should also explain how judicial determination of the case would benefit a wide range of people, not merely the individual client. The question is whether the case raises an issue of legal principle which is likely to have practical implications for the administration of justice in future cases.