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**LOCAL COURT
OF NEW SOUTH WALES**

CORONIAL PRACTICE NOTE No. 3 of 2021

**Case management of mandatory inquests involving
section 23 deaths**

ISSUED 24 August 2021
COMMENCES 24 September 2021

PART A: INTRODUCTION

1. APPLICATION

1.1. This Practice Note is issued pursuant to section 52 of the *Coroners Act 2009* (the Act).

1.2. This Practice Note applies to all deaths or suspected deaths reported to a Coroner which fall within the scope of section 23 of the Act, being where it appears the person died:

- While in the custody of a police officer or in other lawful custody
- While escaping, or attempting to escape, from the custody of a police officer or other lawful custody
- As a result of police operations
- While in, or temporarily absent from, any of the following institutions or places of which the person was an inmate:
 - A detention centre within the meaning of the *Children (Detention Centres) Act 1987*
 - A correctional centre within the meaning of the *Crimes (Administration of Sentences) Act 1999*
 - A lock-up

- While proceeding to any of the above institutions or places for the purpose of being admitted as an inmate and while in the company of a police officer or other official charged with the person's care or custody.

2. THE FIRST NATIONS PROTOCOL

2.1. State Coroner's Protocol: 'Supplementary arrangements applicable to section 23 deaths involving First Nations Peoples' (the First Nations Protocol) is to be read in conjunction with this Practice Note and sets out supplementary arrangements which apply where the deceased is a First Nations person.

2.2. Through this Protocol, the Court is committed to maintaining cultural appropriateness at each stage of an investigation into the death of a First Nations person, particularly in ensuring that the impact of the work of the coronial jurisdiction on First Nations families does not perpetuate cycles of grief and loss.

3. PURPOSE OF CORONIAL INVESTIGATION

3.1. When a death or suspected deaths falls within the scope of section 23 of the Act, the purposes of the coronial investigation are to:

- a. Signify respect for life,
- b. Ensure, as far as possible, that the full facts are brought to light,
- c. Ensure accountability by identifying any systems failures or conduct warranting criticism and recommend remedial action for any such matters, and
- d. Reassure the family and friends of the deceased that lessons learned from these deaths may save lives in the future.

4. OBJECTS

4.1. This Practice Note sets out the procedural requirements for the listing and case management of deaths which fall within the scope of section 23 of the Act.

4.2. In setting out these requirements, the objects of this Practice Note are to ensure:

- a. All coronial investigations and inquests into reported deaths which fall within its scope are conducted in a timely and proper manner.
- b. The families of the deceased are provided with appropriate information and material on the status of the investigation and the coronial process in a timely and proper manner, including advice in relation to delay and the reason(s) for the delay.
- c. Together with the First Nations Protocol, all coronial investigations and mandatory inquests into deaths of First Nations Peoples are conducted in a culturally sensitive and appropriate manner which is respectful of the needs of First Nations Peoples.

5. COMMENCEMENT

5.1. This Practice Note commences on 24 September 2021 and applies to deaths which fall within the scope of section 23 which occur on or after this date.

6. REVOCATION OF PRACTICE NOTES

6.1. The following Practice Notes are repealed on the commencement of this Practice Note:

- (i) 2 of 2018 Case Management of mandatory inquests involving Critical Incident Investigations

7. DEFINITIONS

7.1. *Determination of jurisdiction* refers to the point at which a Senior Coroner makes a post-mortem direction pursuant to section 89 of the Act.

7.2. *Coronial advocate* refers to the advocate from the NSW Police Force who assists the Senior Coroner in relation to the coronial proceedings where no 'solicitor assisting' is instructed.

7.3. *Solicitor assisting* refers to the solicitor from the Crown Solicitor's Office (CSO) or DCJ Legal who is instructed by the Senior Coroner to assist in relation to the coronial proceedings.

7.4. *Officer in Charge* refers to a member of the NSW Police Force nominated by the Chief Commissioner of Police or any other person nominated by the Senior Coroner to assist with his or her investigation into a reportable death.

7.5. *Family legal representative* refers to the solicitor with carriage from the Aboriginal Legal Service NSW/ACT (ALS), Legal Aid NSW (Legal Aid) or other legal representative(s) nominated by the family of the deceased person who advises the senior next of kin.

7.6. *First Nations Peoples* refers to all Aboriginal and Torres Strait Islander peoples in Australia.

8. INTERESTS OF JUSTICE

8.1. Adjournments and other variations to the below timetable will not be granted unless the Senior Coroner is satisfied that departure is in the interests of justice.

9. RECOGNITION OF FIRST NATIONS FAMILY STRUCTURES

9.1. First Nations Peoples have an extended family structure and a complex and dynamic kinship system which defines where a person fits into their family and community. These family structures and kinship systems are a cohesive force which binds First Nations Peoples together, providing support which is essential to their wellbeing. This support is critical throughout the coronial process.

- 9.2. In recognition of the above, references to ‘family’ throughout this Practice Note should be interpreted flexibly and with respect for these structures and systems. So far as is possible, arrangements should be made to accommodate the deceased’s extended family and community, as is appropriate in the circumstances of each case.

PART B: PROCEDURE

10. STAGE ONE: JURISDICTION AND INSTRUCTIONS

- 10.1. Upon the report of a death, a Senior Coroner will make a determination of jurisdiction under section 23 of the Act.
- 10.2. Following a determination of jurisdiction, a Senior Coroner will ensure the Crown Solicitor’s Office or DCJ Legal is instructed to assist in relation to the conduct of the coronial proceedings if the Senior Coroner considers it necessary and appropriate to do so.
- 10.3. Following a determination of jurisdiction, the Officer in Charge must contact persons identified as involved officers or employees to ascertain:
- a. Whether the agency will represent the person(s) or whether they are otherwise represented, and if so, by whom, and
 - b. Whether voluntary accounts have been provided by the person(s), and if not, whether they are willing to provide statements voluntarily.
- 10.4. The Officer in Charge must advise the Senior Coroner of the outcome of these inquiries in the preliminary report to be provided at Stage Two (in accordance with [11.2.e]).
- 10.5. Throughout the coronial investigation, the Officer in Charge, or if instructed, the solicitor assisting must ensure that the senior next of kin (and any other family member as appropriate in the circumstances), or if applicable their legal representative, are kept informed of the progress of the coronial investigation, including:
- a. Providing updates following completion of each of Stage Two to Stage Five below, and
 - b. Any delays arising in the completion of any of the abovementioned Stages and the reason for those delays.

11. STAGE TWO: PRELIMINARY REPORT AND EARLY PROVISION OF GUIDELINES AND POLICIES

- 11.1. Within 8 weeks of a determination of jurisdiction, the Officer in Charge must provide a preliminary report of no more than five pages to the Senior Coroner and the solicitor assisting or coronial advocate.
- 11.2. The report should contain the following information:

- a. The background of the reported death (the known circumstances based on information currently available at the time of the report).
 - b. The current status of the investigation.
 - c. Identified issues arising from the investigation, including matters which are likely to delay the timely conduct of the investigation
 - d. The names of any doctors/ clinicians who treated the person while in custody (immediately before their death) and details of the role they played in treating the person.
 - e. The names of any persons identified as officers or employees involved in the death, details of their legal representative(s), and advice as to whether they have provided (or will provide) witness statements voluntarily.
 - f. In the case of a death that has occurred in a correctional centre, the names of any officers or employees on duty at the correctional centre, or at the relevant area of the correctional centre, at the time of the death of the person.
 - g. Identified NSW Police Force, Corrective Services NSW, Youth Justice NSW or Justice Health and Forensic Mental Health Network NSW policies or operational guidelines relating to the investigation and/or circumstances of death.
 - h. The status of the brief of evidence, including any outstanding items, and whether the brief of evidence will be provided in compliance with the timetable set out at [13.1.a] below.
 - i. In the case of a death that has occurred in a correctional centre, the status of any investigation being conducted by Corrective Services NSW and whether the investigation report will be provided in compliance with the timetable set out at [13.1.c] below (following consultation with the Corrective Services investigator).
 - j. Advice as to whether the senior next of kin (or any other family members as appropriate in the circumstances) has been contacted and if so, any issues which they have raised and, if not, the reason why this has not occurred and when contact is proposed to be made.
- 11.3. Upon assessing the advice provided at [11.2.e], the Senior Coroner may call an early directions hearing to obtain accounts from any involved officer or employee who does not wish to provide a statement voluntarily.
- 11.4. Upon receipt of the preliminary report, the solicitor assisting or coronial advocate:
- a. Will provide to the relevant agency a list of its policies or operational guidelines that are identified in accordance with [11.2.g] above.

- b. May request from the relevant agency copies of any policies or operational guidelines listed in accordance with [11.4.a].
 - c. May request the relevant agency to identify, and provide copies of, any policies or operational guidelines in addition to those listed in accordance with [11.4.a] which are of relevance, or potential relevance, to the circumstances of the death.
 - d. Will confer with the agency, or their representatives if applicable, in relation to any potential protective orders proposed to be made or sought, or public interest immunity claims proposed to be made, over such policies or guidelines.
- 11.5. Upon receipt of a request for copies of any policies or operational guidelines under [11.4.b] and/or [11.4.c], the agency must produce the copies requested to the Senior Coroner within 10 business days.
- 11.6. At the time of production of the policies or operational guidelines, an agency may provide notice to the Senior Coroner of an intention to make an application for protective orders or a claim for public interest immunity over particular material or parts of material should the Senior Coroner wish to serve that material on any other interested party. If such notice is provided, the identified material will only be accessed by the Senior Coroner and the solicitor and counsel assisting or coronial advocate, until such time as the foreshadowed application or claim is determined in accordance with any timetable set under [14.2.g], or is otherwise resolved by agreement.
- 11.7. A Senior Coroner may extend the timeframe set out in [11.5] on application by the agency where reasonable grounds are established.

12. STAGE THREE: SENIOR CORONER'S CONFERENCE

- 12.1. If the Senior Coroner considers it necessary and appropriate, upon receipt of the preliminary report a conference will be conducted to discuss the matters in the report with the Officer in Charge and the solicitor assisting or coronial advocate.

13. STAGE FOUR: BRIEF OF EVIDENCE, INVESTIGATION REPORT AND POST-MORTEM REPORT

- 13.1. Within 12 weeks of a determination of jurisdiction:
- a. The Officer in Charge must provide the brief of evidence to the Senior Coroner.
 - b. The Forensic Pathologist who conducted any post-mortem must provide the final post-mortem report to the Senior Coroner.
 - c. In the case of a death that has occurred in a correctional centre, the Corrective Services investigator must provide their report to the Senior Coroner.

- 13.2. A Senior Coroner may extend the timetable set out at [13.1] (and where necessary, the timeframe for the Directions Hearing below in Stage Five) on application where reasonable grounds for a longer period are established. Any such application must be made in writing no less than 14 days prior to the date on which the relevant material is due, and should set out the reasons for delay, as well as the date on which the material will be complete.
- 13.3. Following receipt of such application in respect of the brief of evidence, the Senior Coroner may request, and the Officer in Charge must provide, a partial brief of evidence consisting of the material available at that time.
- 13.4. Following receipt of such application in respect of the Corrective Services investigation report, the Senior Coroner may request, and the Corrective Services investigator must provide, any investigation material available at that time, including any witness statements, accounts or incident reports.
- 13.5. Following receipt of the material referred to in [13.1], [13.3] or [13.4], the solicitor assisting or coronial advocate is to notify any persons who, in the opinion of the Senior Coroner, have a sufficient interest in the subject-matter of the proceedings.

14. STAGE FIVE: DIRECTIONS HEARING

- 14.1. Within 16 weeks of a determination of jurisdiction, the matter will be listed for a directions hearing before the Senior Coroner to facilitate case management in accordance with section 49 of the Act.
- 14.2. The Senior Coroner will set a timetable for:
 - a. The provision of a list of proposed witnesses and proposed issues to be raised in the inquest.
 - b. The provision of comments by interested parties regarding the proposed witnesses and proposed issues to be raised in the inquest.
 - c. The provision of any statements including from involved police officers, correctional officers, juvenile justice officers and/ or treating clinicians (as appropriate).
 - d. The provision of the final post mortem report, if it has not yet been made available.
 - e. The provision of any other material sought from any parties, including pursuant to a notice to produce or subpoena issued under sections 53 or 66 of the Act.
 - f. The service of the brief of evidence on the interested parties.
 - g. Consideration of any protective orders sought or claims for public interest immunity or other objections to material being included in the brief.

h. Any other matters with respect to the conduct of the proceedings as the Senior Coroner considers appropriate.

14.3. If a hearing date cannot be allocated at the directions hearing, the matter will be called over every 12 weeks until a hearing date for the inquest has been allocated.


PART C: SPECIFIC PROCEEDINGS

15. NSW POLICE FORCE CRITICAL INCIDENT INVESTIGATIONS

15.1. This Part applies to a death or suspected death reported to a Senior Coroner where NSW Police Force has declared a Critical Incident in accordance with the NSW Police Force Critical Incident Guidelines (the Guidelines).

15.2. Upon declaration of a Critical Incident by the NSW Police Force, a Senior Critical Incident Investigator is to be assigned to the case without delay in accordance with the Guidelines.

15.3. The matter is to proceed in accordance with Stages One to Five above, with the Senior Critical Incident Investigator responsible for those obligations which are placed on the Officer in Charge.


Judge Graeme Henson AM
Chief Magistrate





Magistrate Teresa O'Sullivan
State Coroner

ANNEXURE A

PRACTICE NOTE 3 of 2021 - TIMELINE AND OBLIGATIONS

	TIMELINE	OBLIGATION
STAGE 1 – JURISDICTION AND INSTRUCTIONS	Following a determination of jurisdiction	<ul style="list-style-type: none"> • Senior Coroner to instruct CSO or DCJ Legal ('solicitor assisting') • OIC to contact persons identified as involved officers/ employees
STAGE 2 –PRELIMINARY REPORT & EARLY PROVISION OF POLICIES/GUIDELINES	Within 8 weeks of s 23 determination	<ul style="list-style-type: none"> • OIC preliminary report provided to Senior Coroner and solicitor assisting/ coronial advocate • Upon receipt of preliminary report, solicitor assisting/ coronial advocate to liaise with agency regarding provision of relevant policies/ operational guidelines and potential protective orders/ public interest immunity claims over this material
STAGE 3 – SENIOR CORONER'S CONFERENCE	Upon receipt of preliminary report	<ul style="list-style-type: none"> • Senior Coroner's conference with OIC and, if appointed, solicitor assisting/ coronial advocate (discretionary)
STAGE 4 – BRIEF AND PM REPORT	Within 12 weeks of s 23 determination	<ul style="list-style-type: none"> • OIC brief of evidence, final PM report and CSNSW investigation report provided to Senior Coroner • If OIC/ CSNSW unable to comply, Senior Coroner may request partial brief/ report

<p style="text-align: center;">STAGE 5 – DIRECTIONS HEARING</p>	<p>Within 16 weeks of s 23 determination</p>	<ul style="list-style-type: none"> • Directions hearing: Senior Coroner to set procedural timetable and list matter for hearing • If cannot list hearing, call over every 12 weeks thereafter until hearing date allocated
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DISTRICT COURT ACT 1973

District Court of New South Wales

Direction

Pursuant to section 173 of the District Court Act 1973, I direct that the District Court shall sit in its criminal jurisdiction at the place and time shown as follows:-

Gosford	10.00am	17 January 2022 (2 weeks)
Lismore	10.00am	17 January 2022 (2 weeks)
Newcastle	10.00am	17 January 2022 (2 weeks)
Parramatta	10.00am	17 January 2022 (2 weeks)
Sydney	10.00am	4 January 2022 (4 weeks)
Wollongong	10.00am	17 January 2022 (2 weeks)

Dated this 26th day of August 2021

Justice D M Price AO
Chief Judge

DISTRICT COURT ACT 1973

District Court of New South Wales

Direction

Pursuant to section 32 of the District Court Act 1973, I direct that the District Court shall sit in its civil jurisdiction at the place and time shown as follows:-

Tamworth	10.00am	25 July 2022 (2 weeks) Special Fixture
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Dated this 26th day of August 2021.

Justice D Price AO
Chief Judge



PRACTICE NOTE No. SC CCA 1

Court of Criminal Appeal – General

Commencement

1. This Practice Note was issued on 22 July 2021 and commences on 22 July 2021.

Application

2. This Practice Note applies to all new and existing matters in the Court of Criminal Appeal save that its requirements do not apply to documents filed on or before 1 May 2021.

Definitions

3. In this Practice Note:

Appellant has the same meaning as in the *Rules*, and includes an Appellant's legal representative

Act means the *Criminal Appeal Act 1912*

Court means the Court of Criminal Appeal

Crown refers to all prosecuting bodies

Registrar means the Registrar of the Court of Criminal Appeal

Registry means the Registry of the Court of Criminal Appeal

Respondent has the same meaning as in the *Rules*, and includes a Respondent's legal representative

Rules means the *Supreme Court (Criminal Appeal) Rules 2021*

Trial Court has the same meaning as in the *Rules*

Introduction

4. The purpose of this Practice Note is to explain the administrative and case management procedures followed in the Court.

Filing Documents (Rules, Division 2.2)

5. A Notice of Intention to Appeal (“NIA”) and an Application for an Extension of Time for the filing of an NIA can be filed by sending it electronically to niacourtofcriminalappeal@justice.nsw.gov.au, or by delivering it or posting it to the Registry. The Registrar will acknowledge receipt of every Notice lodged.
6. Subject to any orders which may be made by the Court or the Registrar pursuant to Rule 2.3(1)(c) and 2.3(3)(b), all documents that are to be filed with the Court may be filed by email (“e-filing”), except the following:
 - Appeal Books
 - Colour exhibits
 - Non-documentary exhibits (such as audio-visual exhibits)
 - Sensitive, Confidential and/or Court-sealed documents (only the original is required);

Three hard copies of these documents and a fourth copy on an electronic storage device must be filed at the Registry (by hand delivery or post).

- (a) Three copies and the original of the following documents must be provided to the Court either at the time of filing at the Registry or within 24 hours of e-filing:
 - Notice of Appeal
 - Application to the Court
 - Written submissions
 - Affidavits
 - Particulars of Trial
 - Summary of Trial
- (b) When e-filing, documents should be emailed to both the following email addresses:

sc.emailfiling@justice.nsw.gov.au and cca@justice.nsw.gov.au
- (c) Unrepresented parties need only file one copy of a document.

Provision of Transcripts and Exhibits after filing Notice of Intention to Appeal

7. (a) It is the responsibility of intending Appellants to request transcripts and exhibits from the Trial Court;
- (b) The Trial Court will, upon the request of an intending Appellant, and upon receipt of a sealed copy of a filed NIA, arrange for the supply of a copy of the transcript and exhibits from the trial and/or sentence proceedings (Rules, Division 2.5);
- (c) If no NIA has been filed with the Registry, or the NIA has been rejected for filing by the Court, the intending Appellant should contact the Trial Court for information

as to what that Court's requirements are for the provision of transcripts and exhibits;

(d) The intending Appellant should forward the sealed copy of the filed NIA to the relevant Trial Court, as follows:

- **Appeals from the District Court**
Email the Trial Court where the matter was finalised
- **Appeals from the Drug Court**
Email the Drug Court at Drug.Court.Registry@justice.nsw.gov.au
- **Appeals from the Supreme Court**
Email the Supreme Court at niacourtofcriminalappeal@justice.nsw.gov.au
- **Appeals from the Land and Environment Court**
Email the Land and Environment Court at lecourt@justice.nsw.gov.au

Intending Appellants should contact the above courts for up to date postal addresses if they propose to send their sealed NIA by post.

(e) The Registrar should be contacted if difficulties persist in obtaining transcripts and/or exhibits.

Lodging a Notice of Appeal or Notice of Application for Leave to Appeal

8. A Notice of Appeal must be accompanied by all the documents listed in the approved form. If not, it will have effect only as a Notice of Intention to Appeal (Rule 3.6).
9. Where a Notice of Intention to Appeal has expired, then a Notice of Application to file a Notice of Appeal after the expiry of the filing period under subrule 3.5(5) must be filed.
10. New Notices of Appeals filed before 5:00 PM on a Thursday will be listed for call-over on the Thursday in the following week before the Registrar with a view to fixing the first available hearing date.
11. Available hearing dates will be posted on the Supreme Court website two days prior to the call over. It is expected that parties will be ready to take a hearing date at the first call-over. It should not be assumed that dates will be allocated to suit the convenience of Counsel.

Directions and case management

12. At the call-over, the Registrar may make directions including directions for:
 - the filing of exhibits;
 - the filing of any outstanding submissions or submissions in reply;

- the filing of ancillary applications such as applications for orders to attend or produce documents under s 12 of the Act;
 - the filing of evidence;
 - the filing of Particulars of Trial by the Crown;
 - the filing of a Summary of Trial (see 20 below);
 - the filing of appeal book indexes and exhibits;
 - the preparation and filing of appeal books; and
 - the referral of the matter to a judge for case management.
13. Where there are sealed exhibits, the moving party must make arrangements with the Trial Court for the sealed exhibits to be sent to the Registrar.

Appeal Books and Appeal Book Indexes

14. Appeal Book indexes and Appeal Books must be paginated, and must include:
- all relevant transcripts and judgments from the Trial Court;
 - all relevant exhibits from the Trial Court (including – where an exhibit was an audio/visual item – an agreed transcript);
 - all relevant MFIs from the Trial Court;
 - all relevant Motions and affidavits in support of interlocutory proceedings in the Trial Court;
 - all written directions to the jury;
 - all relevant written submissions from the Trial Court; and
 - where parity is raised on an appeal against sentence, all relevant transcripts, judgments and exhibits for co-offenders

Changes to Counsel in Conviction Appeals

15. Where, after the filing of written submissions, a different legal representative is engaged to appear for the Appellant at the hearing of a conviction appeal, the Court shall be notified of the representative appearing no later than five working days prior to the hearing and be provided with a written submission from the new counsel which confirms that reliance is to be placed upon the existing grounds of appeal and the submissions already filed, accompanied by any short additional written submissions which are intended to be made.

Filing and Format of Written Submissions

16. All written submissions shall:
- (a) use a minimum font size of 12;

- (b) have a minimum line spacing of 1.5 save that quotes should be single spaced and indented;
 - (c) use headings;
 - (d) use paragraph numbering;
 - (e) use pagination for pages; and
 - (f) be signed by the legal representative(s) who prepared or settled the submissions and include the name and email address of the signatory.
17. Written submissions by all parties (except persons who do not have legal representation) should be emailed to the Registry (at cca@justice.nsw.gov.au) in WORD format no later than three working days before the hearing (unless they have previously been electronically filed in that format).

Written submissions in an Appeal or Application for Leave to Appeal against Conviction

18. The submissions of the Appellant or Applicant for leave to appeal against conviction shall contain:
- (a) a statement as to whether:
 - (i) any party to the appeal or application is serving a sentence in custody and, if so, their earliest release date;
 - (ii) any party to the appeal or application is on bail pending appeal and, if so, the terms of that bail;
 - (iii) there is any non-publication or suppression order made in the Court below that is relevant to the matters raised on appeal and, if so, the terms of that order and whether it is necessary for that order to remain in force;
 - (iv) there is any other prohibition or restriction on publication or dissemination of any matter relevant to the appeal including the identity of any victim and, if so, the terms of the prohibition or restriction (eg, *Crimes Act 1900*, s 578A);
 - (v) any suppression or non-publication order is sought in relation to any part of the proceedings or any judgment in the proceedings and, if so, the terms of the order sought;
 - (vi) the party requests that any judgment in the proceedings not be published on www.caselaw.nsw.gov.au for a specified period (see *Matthews v R (No 2)* [2013] NSWCCA 194);
 - (vii) there is any objection to a grant of third party access, including the press, to the parties' submissions and, if so, the basis for that opposition; and
 - (viii) the party contends that there is some matter that warrants the sitting of five judges and, if so, the basis for that contention;

- (b) a brief statement in narrative form of the Crown case and of the case raised or put forward by the Appellant at the trial;
 - (c) an outline of the argument to be put in relation to each ground of appeal with:
 - (i) the terms of that ground of appeal set out in full;
 - (ii) page references to the transcript relating to any evidence referred to;
 - (iii) appropriate citations of authority relied upon for the propositions of law stated (including page or paragraph references);
 - (iv) where a ground of appeal involves a contention that a judicial direction was inadequate or omitted, a statement of the terms of the direction that is asserted the trial judge should have given; and
 - (v) a statement as to whether Rule 4.15 is engaged and, if so, what step, if any, should have been taken by the trial judge and why leave to raise the ground should be granted;
 - (d) reference to any relevant legislative provisions and whether they have been amended since the events the subject of the trial or hearing; and
 - (e) a statement of the orders sought.
19. The written submissions of the Crown should address the same topics as those specified in [18], as well as the application of the proviso in s 6 of the Act if that is relied on, although, where there is no dispute with the relevant section of the Applicant's submissions, only that should be stated.
20. Subject to any order to the contrary, in appeals against conviction after a trial and appeals by the Crown against acquittals, the Crown shall file a "Summary of Trial" with a statement in summary form of the evidence of the material witnesses, and an index to the material evidence.

Written submissions in an Application for Leave to Appeal against Sentence

21. The Applicant's submissions shall contain:
- (a) a statement addressing the matters noted in [18(a)];
 - (b) a statement of the offence and the relevant legislative provision(s) that specify the offence in respect of which the Applicant was convicted, the relevant maximum penalty, any applicable standard non-parole period and whether the provisions have been amended since the events the subject of the trial (or sentence);
 - (c) a brief statement in narrative form of the Crown case which led to the conviction, but only where it is not sufficiently apparent from the sentencing judge's remarks on sentence;

- (d) a statement of the grounds of appeal in respect of the sentence and the argument in support of those grounds;
 - (e) a brief statement of whether, if the Court proceeds to resentence the Applicant, any of the sentencing judge's findings are disputed and, if so, what findings are sought in their stead;
 - (f) a statement of what findings are sought in reliance on any evidence filed on the "usual basis" (see *Betts v The Queen* [2016] HCA 25; 258 CLR 420 at [2]); and
 - (g) a statement as to whether the application involves any question concerning the issue of assistance to the authorities and if so, specify:
 - (i) what steps, if any, were taken in the sentencing court to restrict disclosure of those matters; and
 - (ii) what steps are proposed to be taken in this Court in relation to those matters (see *Brown v R (a pseudonym) (No 2)* [2019] NSWCCA 69).
22. The written submissions of the Crown should address the same topics as those specified in [21] although, where there is no dispute with the relevant section of the Applicant's submissions, only that should be stated.

Written submissions in a Crown appeal against Sentence

23. The Crown's submissions shall address the matters specified in [21] and shall specify:
- (a) when and how the Respondent was notified of the Crown's intention to appeal; and
 - (b) any matter which bears upon the exercise of the Court's residual discretion not to intervene.
24. The written submissions of the Respondent should address the same topics as those specified in [21] and [23] although, where there is no dispute with the relevant section of the Crown's submissions, only that should be stated.

Written submissions in other appeals and applications to the Court including bail and interlocutory applications

25. In all other matters, the submissions of the Applicant or Appellant are to contain:
- (a) a statement addressing the matters noted in [18(a)];
 - (b) a brief statement in narrative form of the factual background to the appeal or application;
 - (c) where applicable, the terms of any question of law submitted to the Court or the grounds of appeal as the case may be;
 - (d) an outline of the argument in support of each question for determination, each ground of appeal or the application as the case may be;

- (e) page references to any transcript relating to any evidence referred to, and appropriate citations of authority relied upon for the propositions of law stated (including page or paragraph references);
 - (f) reference to any relevant legislative provisions and whether they have been amended since the events the subject of the trial or hearing as the case may be; and
 - (g) the orders sought by the party.
26. The written submissions of the Respondent should address the same topics as those specified in [25] although, where there is no dispute with the relevant section of the Appellant's or Applicant's submissions, only that need be stated.

List of Authorities

27. The list of authorities should only include authorities to which it is expected the Court will be referred during oral argument. Authorities cited in submissions that are not likely to be referred to in oral argument should *not* be included in a list of authorities.
28. Where an unreported authority is to be referred to in oral argument, the party citing that authority shall attach a copy of the unreported judgment to the list of authorities. An authority published on Caselaw with a medium neutral citation is not considered to be a reported judgment.
29. Lists of authorities and unreported judgments (or embedded links to unreported judgments) should be emailed to the Registry (at cca@justice.nsw.gov.au) by no later than 10:00am on the working day before the hearing. The parties are not required to file a hard copy of that material if it has been sent by email.

Listing of Interlocutory Appeals

30. Interlocutory appeals will be heard by the Court as expeditiously as possible and directions may be made without the matter being placed into a call-over. Appellants and Respondents must be ready to take a date for hearing once the interlocutory appeal has been filed, especially where a pending appeal may have an effect on a trial pending or due to start. The parties will be expected to supply written submissions within a short timeframe. The moving party will also be expected to file and serve a paginated and indexed appeal book.
31. When filing a Notice of Appeal in relation to an interlocutory ruling, the Appellant must advise the Registrar (and the other parties) by email of the following matters:
- (a) Is there urgency to the application? If so, what is the urgency?
 - (b) What are the substantive charges?
 - (c) Over how many days was there legal argument and/or evidence in the Trial Court on the issue relevant to the judgment which is the subject of appeal?
 - (d) What is the status of any trial, and when is the next listing?

- (e) Is the trial judge aware of the application?
- (f) What is the status of the judgment and all transcript?
- (g) Who will appear on the application for the Appellant and Respondent and what is their availability?
- (h) What is the time estimate for the appeal?

The Registrar will determine the urgency of the matter and will make suitable arrangements for the listing of the interlocutory appeal. Counsel's availability will not be a factor in determining the hearing date.

- 32. Interlocutory Appeals will not be adjourned on the basis of the Appellant obtaining a "merits advice" from the Legal Aid Commission of New South Wales.

Listing of Interlocutory appeals against the discharge of a jury

- 33. Where a trial judge proposes to discharge a jury, a party may ask the judge to delay the making of the order pending the filing of an Application for Leave to Appeal.
- 34. The Court will hear any appeal against a decision to discharge a jury on an urgent basis. Counsel's availability will not be a factor in determining the hearing date.



T F Bathurst AC
Chief Justice of New South Wales

22 July 2021

Related Information:

Criminal Appeal Act 1912
Supreme Court (Criminal Appeal) Rules 2021

Amendment History:

22 July 2021: This Practice Note replaces former Practice Note SC CCA 1, which was issued on 30 April 2021 and commenced on 1 May 2021.

30 April 2021: This Practice Note replaces former Practice Note SC CCA 1, which was issued on 30 September 2013 and commenced on 7 October 2013.

30 September 2013: This Practice Note replaces former Practice Note SC CCA 1 which was issued and commenced on 14 October 2005.

14 October 2005: This Practice Note replaced former Practice Note SC CCA 1 that was issued and commenced on 17 August 2005.

17 August 2005: Practice Note SC CCA 1 was issued and commenced. It replaced former Practice Notes numbered 57, 98 and 112.