



## INFORMATION / FACT SHEET

### UNDERSTANDING APPEALS IN CRIMINAL COURT MATTERS

#### WHAT IS AN APPEAL?

An appeal is where the *Court of Criminal Appeal* ("the *CCA*") is asked to consider the question that an error may have been made in either the convicting or sentencing of a defendant.

#### WHO CAN APPEAL?

In certain circumstances the defendant may appeal against their CONVICTION and / or SENTENCE.

The defendant must first make an application to the *CCA* for this to occur. This will involve outlining valid legal reasons in their application (e.g. that an error of law or fact was made)

The *DPP* has a limited right of appeal in certain circumstances (see *How does the DPP decide whether or not to Appeal?*).

Victims themselves do not have a right of appeal in criminal matters.

#### WHY MIGHT AN APPEAL BE PURSUED?

A defendant (via their appointed legal representative) may appeal against their CONVICTION if they feel they were unfairly convicted.

A defendant may also appeal against their SENTENCE if they feel that the sentence imposed is '*manifestly excessive*' (it is too harsh or severe).

The *DPP* on the other hand may appeal a SENTENCE outcome if they feel that the sentence is '*manifestly inadequate*' (it is too lenient).

It is important to note that the *DPP* can only lodge an appeal against CONVICTION in very specific and rare circumstances (see *How the DPP decides whether or not to Appeal?*). As a general rule the *DPP* cannot appeal an acquittal (a *not guilty* finding)

#### HOW DOES THE DPP DECIDE WHETHER OR NOT TO APPEAL?

*DPP* appeals are guided by case law principles which state that Crown appeals should only be undertaken in rare / exceptional circumstances where it is necessary to establish a matter of principle.

The right of appeal by the *DPP* is always exercised with restraint and only where there is a reasonable prospect of success.

The *DPP* has only a very limited right to appeal against a *not guilty* finding (called an acquittal). This relates only to an acquittal from a trial by judge alone for offences committed after July 2000, and only with the permission of the Full Court.

It is important to note that the *DPP* reviews all sentences after they are handed down.

In certain circumstances, the *DPP* is able to lodge an appeal against the SENTENCE of a defendant where it believes that the sentence handed down was '*manifestly inadequate*' (too lenient).

#### WHAT IS THE GENERAL PROCESS OF AN APPEAL?

The party wishing to appeal must file a *Notice* with the *CCA* seeking *Permission to Appeal*.

This notice must be filed within 21 days of the conviction or sentence being handed down.

An extension of this time may be sought, and is often granted in the case of defendant appeals.

If the notice for *Permission to Appeal* is filed by a defendant, it is heard in front of a single Justice of the *Supreme Court of South Australia (SCSA)* who decides whether or not to grant permission for the appeal to be heard before three Justices in the *CCA*.

However, if the *DPP* files a notice for *Permission to Appeal*, the matter is automatically heard before three Justices in the *CCA*.

## WHAT IF THE SINGLE JUSTICE REFUSES PERMISSION TO APPEAL?

If the single Justice does not grant *Permission to Appeal*, the appellant may file a *Form 7 Appeal*, requesting that the Full Court (a panel of three Supreme Court Justices) consider the question of *Permission to Appeal*.

If *Permission to Appeal* is granted, the matter will proceed to an *Appeal Argument Hearing* in front of the CCA - where both the prosecution and defence counsel argue their case as to why the appeal should / should not be granted. This court sits for one week every month, except for January.

Most times the CCA reserves its decision (does not give a decision at the time of the hearing), and the matter is then adjourned to a *date to be fixed*, whilst the Court deliberates.

When the CCA is ready to deliver their *Judgment* on the appeal the relevant parties are notified of the date and the Court; then delivers the *Judgment*.

Decisions of the CCA are by majority (e.g. if two of the judges agree that the appeal should be dismissed and the third judge dissents, then a dismissal of the appeal is the outcome).

## WHAT MIGHT BE THE OUTCOME OF AN APPEAL AGAINST A CONVICTION?

Again, the CCA will either dismiss or allow the appeal against CONVICTION.

If an appeal is allowed, the CCA may *Order a Re-Trial* or *Quash the Conviction* (i.e. the accused is free to go).

In cases where a re-trial has been ordered, the DPP will then assess the file anew and decide whether or not to proceed with a new Trial.

## WHAT MIGHT BE THE OUTCOME OF AN APPEAL AGAINST A SENTENCE?

The CCA will either dismiss or allow the appeal.

Note that the court may only modify a sentence if an error has been made and if the sentence is either manifestly excessive or inadequate.

If the appeal is *dismissed* then no change is made to the sentence.

If the appeal is *allowed* the CCA can increase\*, reduce or maintain the original sentence.

\*It is important to note that the Court cannot increase the sentence when a defendant appeals. The Court only has the power to increase or maintain the original sentence when the DPP appeals.

## WHAT IS THE HIGH COURT?

The *High Court of Australia (HCOA)* is the highest level of the court system in our country. Appeals to this court must be a 'question of law of general importance'.

The HCOA sits in person in Adelaide in one month in any year, and can be heard interstate via video link at other times.

Where the CCA in South Australia has dismissed an appeal, the defendant may apply to the HCOA for *Special Leave to Appeal*.

Both prosecution and defence must submit a written outline to the HCOA regarding their respective arguments, and are time limited to 20 minutes each in their legal arguments before the Panel of HCOA Judges.

Generally a decision is given at the time of the hearing as to whether or not *Special Leave* is granted.

If *Special Leave to Appeal* is granted then the *Appeal Argument* will be heard on a different date in front of a panel of 5-7 High Court Judges.

The HCOA may elect to *Reserve* its judgement following the appeal argument. You should note that if this is the case, then the timeframe for the decision to be delivered can sometimes be lengthy.

## CAN I ATTEND APPEAL HEARINGS?

Unless otherwise directed, appeal hearings are heard in open court. You may attend these hearings if you wish.

## IS THE DEFENDANT PRESENT AT APPEAL HEARINGS?

The defendant is required to be present at the appeal hearings, unless he / she has been excused.

Sometimes the defendant will be permitted to appear via an Audio Visual Link

## WHAT IF I AM NOT SATISFIED WITH THE OUTCOME?

Under *Section 10A* of the *Victims of Crime Act, 2001 (SA)*, a victim may *Request Consideration of an Appeal*.

The legislation states that:

(1) *A victim who is dissatisfied with a determination made in relation to the relevant criminal proceedings (being a determination against which the prosecution is entitled to appeal) may request the prosecution to consider an appeal against the determination.*

(2) *A request under the section must be made within 10 days after the making of the determination.*

(3) *The prosecution must give due consideration to a request made under this section.*

## WHO WILL KEEP ME INFORMED?

If you have indicated that you wish to be kept informed then the *Witness Assistance Officer* allocated to you (where applicable), the *ODPP Prosecutor* with conduct of the file and / or the *Investigating Officer* (SAPOL) are the main points of contact during this process.

Usually the *Witness Assistance Officer* will be the person who contacts you with updates.

If you cannot recall the names of *DPP* staff allocated to the matter, the reception staff at the *DPP* should be able to assist you to locate them.

Please note that you can choose not to have continued involvement and updates about any appeal, if you wish.

## WHAT IF I HAVE FURTHER QUESTIONS?

Similarly, if you require further information to understand the Appeal process, you can:

- Speak to the *DPP Prosecutor*
- Speak to the allocated *Investigating Officer*
- Speak to a *Witness Assistance Officer* if one has been provided to you

Any of the above people should be in a position to assist you with your further questions and enquiries.

Where you have questions about your rights or entitlements as a victim of crime, you can contact the *Office of the Commissioner for Victim Rights*.

## IS THERE ANYTHING ELSE I SHOULD BE MINDFUL OR AWARE OF?

The process of appeals is often involved, lengthy and complex.

We therefore recommend that you be aware of the following:

### Delays and adjournments:

The process of the *CCA* determining whether an appeal should be upheld is sometimes lengthy and may involve a considerable amount of time passing before a final judgement is made.

Please remember that it is important for the *CCA* to act cautiously and decisively in such matters.

It is not uncommon however, for victims and family members to become frustrated with delays, adjournments and the length of time it may take to resolve such matters.

### Emotional Impact:

It is important not to underestimate the emotional impact of the legal process.

It is not uncommon for victims and families to find the appeal processes frustrating, confusing, overwhelming and exhausting.

It is important that victims and families are well supported throughout the legal process.

Some families may prefer to nominate a "family spokesperson" who can be the contact point for the family, make decision for them or provide views on behalf of the family.

### Media Involvement / Interest:

Where a serious crime has been committed it is not uncommon for the media to take an interest and report on particular developments or outcomes.

Victims and family members should be mindful of media involvement and make an early decision about responding (or not responding) to the media in the event you are approached.

If you decide to speak with the media, it is important to remember that courts have strict rules which prevent you from talking about most aspects of a case (i.e. evidence) whilst the proceedings are ongoing.

## ARE THERE PARTICULAR TERMS OR PHRASES I SHOULD KNOW?

*Appellant* - the party appealing against the decision which was not in his / her favour

*Judgment* - the decision of the court, often including the reasoning which led to the decision.

*Judgment reserved* - the decision as to whether or not an appeal in granted will not be made now, but delivered at a later date. Usually a date is not set at that time, but relevant parties are notified when the court is ready to deliver judgement.

*Permission to Appeal* - an application made requesting permission from the court to appeal against conviction and / or sentence.

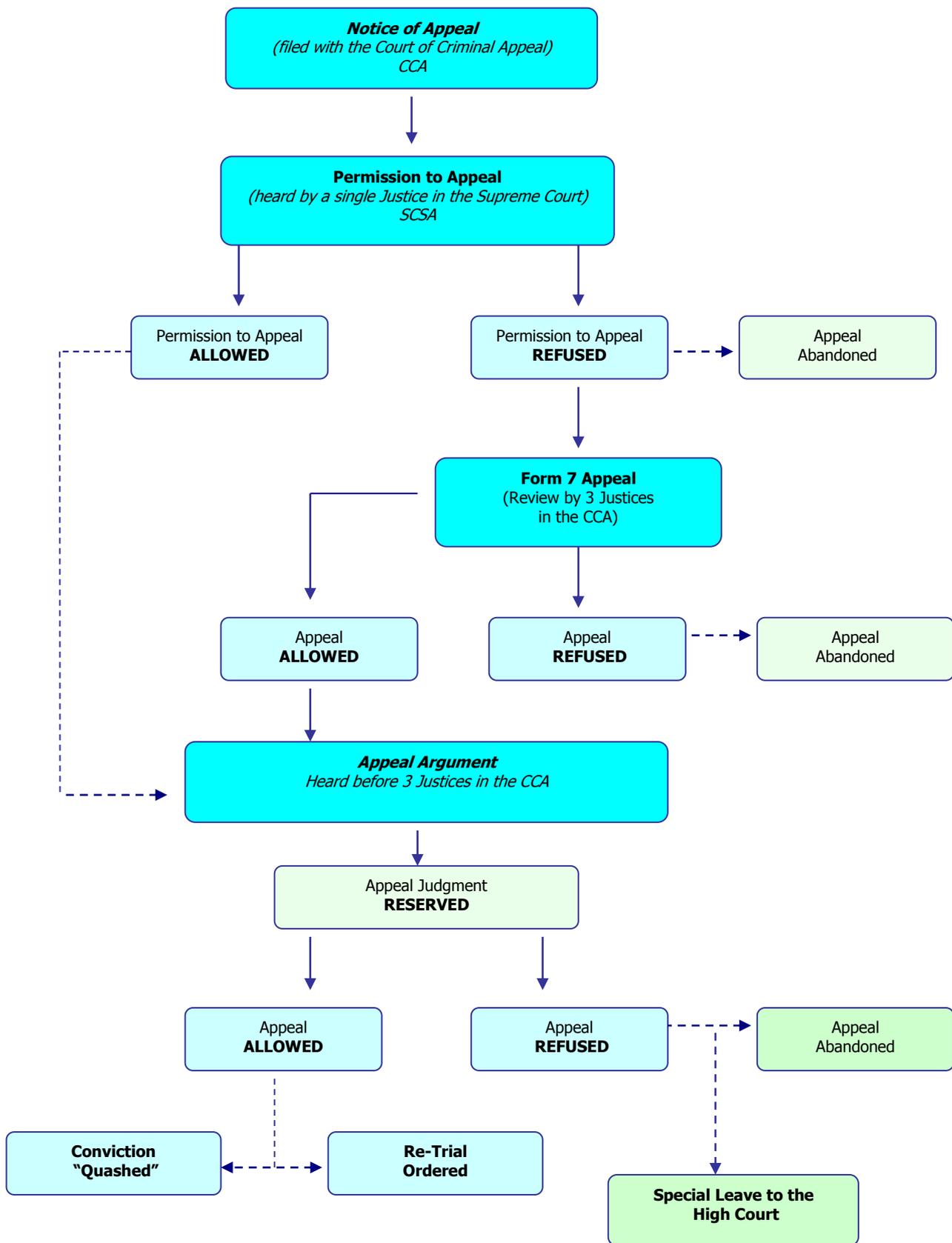
*Party* - a person, group or organisation who takes part in a legal proceeding

*Quash* - to set aside, cancel.

*Respondent* - the party called to respond to the appeal application

*Retrial* - a new trial, sometimes ordered by the *CCA* in certain circumstances.

# APPEALS AGAINST CONVICTION (in District & Supreme Court Matters) FLOW CHART



# APPEALS AGAINST SENTENCE FLOW CHART (in District & Supreme Court Matters)

