# Guidance note: Conviction appeal merits advice

## Overview

In making decisions in relation to the funding of higher court appeals, 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 conviction.

## Guideline 7.6 – leave to appeal against conviction

[Guideline 7.6](https://handbook.vla.vic.gov.au/handbook/3-criminal-law-guidelines/guideline-76-leave-to-appeal-against-conviction/conviction-and-sentence-in-court-of-appeal) of VLA’s *Handbook for Lawyers* provides that:

Victoria Legal Aid (VLA) may make a grant of legal assistance for leave to appeal against conviction or conviction and sentence in the Court of Appeal where:

* the applicant was sentenced to a term of immediate imprisonment or detention (unless the applicant is a child)
* 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)
* there are reasonable grounds for the appeal, which is demonstrated by either:
  + the verdict of the jury being unreasonable or not supported having regard to the evidence
  + a substantial miscarriage of justice was caused by an error or irregularity in or in relation to the trial
  + a substantial miscarriage of justice was caused by any other reason
* it is reasonable to provide legal assistance, having regard to all the circumstances including any benefit or detriment that may accrue to the applicant or to the public.

## 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 7.6 has been met. It is therefore recommended that the nature of the alleged error (that is, unreasonable verdict, error of law or fact, irregularity, or substantial miscarriage of justice for other reasons) and its significance, is clearly set out.

For example, where the issue raised is that the jury verdict is unreasonable, counsel should identify the evidence that supports this conclusion and explain why the evidence was insufficient to remove reasonable doubt or why the jury was obliged to have felt a doubt.

Counsel dealing with appeals based on errors of law or in directions to the jury, or where evidence has been improperly admitted, should identify relevant authorities and explain why the evidence was significant enough for its admission to affect the outcome of the trial.

In all advices, counsel should give clear reasons. That way, the basis for the complaint is clear, is easily understood and allows for prompt and well considered decision making.