# Brief analysis and case strategy

**VLA staff lawyers** must complete this Brief Analysis and Case Strategy for all indictable matters.

VLA highly recommends **private practitioners** complete this Brief Analysis and Case Strategy for all indictable matters.

## Major Criminal Cases Framework

A major criminal case includes major criminal trials (criminal trials that are likely to last more than 15 days, including severed trials less than 15 days that collectively equate to more than 15 days) and contested committals beyond 4 days.

## Mandatory requirements under the Major Criminal Cases Framework

From 1 February 2016, practitioners must apply for a grant of legal assistance for contested committals (beyond 4 days) within 14 days of the committal mention. The following documents must also be submitted to Victoria Legal Aid via ATLAS *Submit correspondence – Committal documentation* within this timeframe:

* evidence of brief analysis and case strategy;
* the Form 32;
* prosecution summary;
* witness list;
* all charge sheets (if it is a Commonwealth matter); and
* the [Contested Committals – exceeding four days worksheet](http://handbook.vla.vic.gov.au/invoice-forms-and-worksheets).

**Private practitioners** are not required to use this Brief Analysis and Case Strategy document as long as all the information required under *Brief Analysis*, *Case Strategy, Possible admissibility objections, Other matters and Supervision* is submitted to Victoria Legal Aid.

## Brief analysis

Determine the primary charge or charges and extract each element of the offence into the table below.

Analyse the strength of the case by examining whether each element can be proved by admissible evidence.

Admissible evidence includes witness statements, exhibits, physical or documentary evidence, photographs or other material that the prosecution may rely on.

Detailed analysis is not required of every element if it is obvious that an element is not an issue (e.g. cause of injury or identification).

For all elements of the offence that are potentially an issue, analyse the strength of the case by categorising all admissible evidence as either:

* supporting the element
* not supporting an element.

Include other evidence which may be relevant to that element of the offence, but for which there is insufficient information to determine whether the evidence supports or does not support that element.

| **Element of offence** | **Witness** | **Evidence in support** | **Witness** | **Evidence against** | **Undetermined evidence** |
| --- | --- | --- | --- | --- | --- |
| Brief description | Name/page | Brief description | Name/page | Brief description | Description/page |
|  |  |  |  |  |  |
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## Case strategy

### *Seek to resolve matter as a plea of guilty?*

If so, what are the appropriate charges? Provide details

What is the factual basis for a plea? Provide details

### *What is my theory for committal?*

To advance case theory for trial? (Delete if not applicable) Provide details

To explore potential defences? (Delete if not applicable) Provide details

### *What further issues do I need to explore:*

Provide details

### *Do I need to ‘tie down’ a witness to a particular account?*

Provide details

### *How will a committal advance the theory for trial?*

Provide details

## Possible admissibility objections?

CA – *Crimes Act* 1958, CPA – *Criminal Procedure Act* 2010, EA – *Evidence Act* 2009, FA – *Firearms Act* 1996*,* JDA – *Jury Directions Act* 2013

| **Possible admissibility objections** | **Refer to** | **Comment** |
| --- | --- | --- |
| Admissions – reliability | [ss 81– 90 EA](http://www.judicialcollege.vic.edu.au/eManuals/UEM/index.htm#28436.htm) | Comment |
| Admissions – fairness | [ss 81– 90 EA](http://www.judicialcollege.vic.edu.au/eManuals/UEM/index.htm#28436.htm) | Comment |
| Improperly or illegally obtained | [s 138](http://www.judicialcollege.vic.edu.au/eManuals/UEM/index.htm#28738.htm) & [s 139EA](http://www.judicialcollege.vic.edu.au/eManuals/UEM/index.htm#28739.htm), [s 464A CA](http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/vic/consol_act/ca195882/s464a.html?stem=0&synonyms=0&query=464a%20Crimes%20act), [s 464B CA](http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/vic/consol_act/ca195882/s464b.html?stem=0&synonyms=0&query=464B%20Crimes%20act), [s 464C CA](http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/vic/consol_act/ca195882/s464c.html?stem=0&synonyms=0&query=464c%20Crimes%20act), [s 464 D CA](http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/vic/consol_act/ca195882/s464d.html?stem=0&synonyms=0&query=464d%20Crimes%20act), [s 464E CA](http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/vic/consol_act/ca195882/s464e.html?stem=0&synonyms=0&query=464e%20Crimes%20act), [s 464F CA](http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/vic/consol_act/ca195882/s464f.html?stem=0&synonyms=0&query=464f%20Crimes%20act), [s 464G CA](http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/vic/consol_act/ca195882/s464g.html?stem=0&synonyms=0&query=464g%20Crimes%20act) and [s 464H CA](http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/vic/consol_act/ca195882/s464h.html?stem=0&synonyms=0&query=464h%20Crimes%20act) | Comment |
| General exclusion | [ss 135 – 137EA](http://www.judicialcollege.vic.edu.au/eManuals/UEM/index.htm#28733.htm) | Comment |
| Search warrant | [s 465 CA](http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/vic/consol_act/ca195882/s465.html?stem=0&synonyms=0&query=s465), [s 138 (1) EA](http://www.judicialcollege.vic.edu.au/eManuals/UEM/index.htm#28738.htm), [s 81 DPCSA](http://www.austlii.edu.au/au/legis/vic/consol_act/dpacsa1981422/s81.html), [s 146 FA](http://www.austlii.edu.au/au/legis/vic/consol_act/fa1996102/s146.html) | Comment |
| No warrant: | [s 138 (1) EA](http://www.judicialcollege.vic.edu.au/eManuals/UEM/index.htm#28738.htm), [s 459A (CA)](http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/vic/consol_act/ca195882/s459a.html?stem=0&synonyms=0&query=s459a), [s 82 DPCSA](http://www.austlii.edu.au/au/legis/vic/consol_act/dpacsa1981422/s82.html), [s 149 FA](http://www.austlii.edu.au/au/legis/vic/consol_act/fa1996102/s149.html) | Comment |
| Arrest | [s 458 CA](http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/vic/consol_act/ca195882/s458.html?stem=0&synonyms=0&query=S458%20CRIMES%20ACT), [s 459 CA](http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/vic/consol_act/ca195882/s459.html?stem=0&synonyms=0&query=S459%20CRIMES%20ACT) and [s 461 CA](http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/vic/consol_act/ca195882/s461.html?stem=0&synonyms=0&query=S461%20CRIMES%20ACT) | Comment |
| Expert evidence | [s 56](http://www.judicialcollege.vic.edu.au/eManuals/UEM/index.htm#27290.htm), [79](http://www.judicialcollege.vic.edu.au/eManuals/UEM/index.htm#28434.htm) & [135 EA](http://www.judicialcollege.vic.edu.au/eManuals/UEM/index.htm#28735.htm) | Comment |
| Identification | [ss 113 to 116 EA](http://www.judicialcollege.vic.edu.au/eManuals/UEM/index.htm#28603.htm) | Comment |
| Tendency/coincidence | [ss 97 & 98 EA](http://www.judicialcollege.vic.edu.au/eManuals/UEM/index.htm#28457.htm) | Comment |
| Incriminating conduct | [s 23 JDA](http://www.austlii.edu.au/au/legis/vic/consol_act/jda2013197/s23.html) | Comment |
| Separate trial | [s 193 CPA](http://www.austlii.edu.au/cgi-bin/sinodisp/au/legis/vic/num_act/cpa20097o2009234/s193.html?stem=0&synonyms=0&query=s193%20Criminal%20Procedure%20Act) | Comment |
| Other  relevance, hearsay, opinion | [Judicial College of Victoria Uniform Evidence manual](http://www.judicialcollege.vic.edu.au/publications/uniform-evidence-resources) | Comment |

## Other matters

| **Other matters to consider** | **Refer to** | **Comment** |
| --- | --- | --- |
| Defence evidence/investigation required | N/a | Comment |
| Further disclosure required | [ss 110, 111 & 416 CPA](http://www.austlii.edu.au/au/legis/vic/consol_act/cpa2009188/), [OPP](http://www.opp.vic.gov.au/Resources/DPP-s-policies) or [CDPP](http://www.cdpp.gov.au/publications/disclosure-policy) policy | Comment |
| Negotiation/discontinuance strategy, referencing prosecution policy | [OPP](http://www.opp.vic.gov.au/Resources/DPP-s-policies) or [CDPP](http://www.cdpp.gov.au/publications/prosecution-policy-of-the-commonwealth)  policy | Comment |

## Supervision

The supervising panel certifier (Level 1 panel certifier for major criminal cases) or the supervising lawyer (VLA4 lawyer or above for major criminal cases) must sign off on the completed Committal Report and Trial Preparation Plan.

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Supervisor's full name Date