



Supreme Court of Victoria

Practice Note SC CR 8

Case Management Procedure for Criminal Trials

1. INTRODUCTION

- 1.1 The Chief Justice has authorised the issue of the following Practice Note.
- 1.2 The purpose of this Practice Note is to outline the case management procedure for criminal trials in the Supreme Court and to achieve:
 - The identification of more complex cases, so that they receive greater and earlier judicial case management;
 - Greater certainty of trial dates;
 - More efficient resolution of pre-trial and interlocutory issues; and
 - Earlier resolution of charges, where appropriate and possible.

2. COMMENCEMENT

- 2.1 This Practice Note was issued on 1 January 2019.
- 2.2 The Practice Note applies to all matters listed for post-committal directions hearings on or after 1 January 2019.
- 2.3 Practice Note SC CR 1 will continue to apply to proceedings listed before that date.

3. DEFINITIONS

- 3.1 In this Practice Note:
 - Criminal Registry* means the Criminal Registry of the Supreme Court of Victoria;
 - Judge* means a judge of the Supreme Court of Victoria, and includes a Reserve Judge;
 - Judicial Registrar* means the Judicial Registrar of the Criminal Division of the Supreme Court of Victoria;
 - Principal Judge* means the Principal Judge of the Criminal Division of the Supreme Court of Victoria;

Reserve Judge means either a retired or interstate judge who has been appointed as a Reserve Judge of the Supreme Court of Victoria under the *Constitution Act 1975* (Vic).

4. POST-COMMITTAL DIRECTIONS HEARING BEFORE THE JUDICIAL REGISTRAR

- 4.1 The Criminal Division of the Supreme Court continues to manage matters committed to the Supreme Court for trial or plea. Pursuant to Division 1 of Part 5.5 of the *Criminal Procedure Act 2009* (Vic), such matters are listed for a post-committal directions hearing ('PCDH').
- 4.2 Pursuant to rule 4.15 of the *Supreme Court (Criminal Procedure) Rules 2017*, the Judicial Registrar will normally conduct the PCDH.
- 4.3 At the conclusion of the committal hearing, the Magistrates' Court will contact the Supreme Court Criminal Registry to schedule the PCDH. The Criminal Registry will advise the Magistrates' Court to bail or remand the accused to the relevant PCDH date. The Magistrates' Court will forward the relevant documents to the Criminal Registry PCDH inbox (PCDH@supcourt.vic.gov.au) on the day the accused is committed.
- 4.4 The PCDH will normally be listed within a day or two of the completion of the committal hearing, or the filing of a direct indictment.
- 4.5 If the committal hearing has been conducted in a Magistrates' Court outside the Melbourne metropolitan area, then the PCDH will normally occur within five days of the completion of the committal hearing.
- 4.6 With the exception of those bailed to appear at the Supreme Court, accused persons will not be required to be present, but will appear by video-link.
- 4.7 An indictment is not required to be filed at the PCDH, however, the relevant Director of Public Prosecutions will be required to provide a police summary to the Criminal Registry prior to the PCDH.
- 4.8 Counsel who appeared at the committal hearing will be expected to appear at the PCDH.
- 4.9 If the accused intends to plead guilty, the Judicial Registrar will set a timetable and a date for the plea hearing. The Judicial Registrar may arraign the accused at the PCDH.
- 4.10 In a typical contested homicide case, with no fitness issues, the Judicial Registrar will set the trial date based on the parties' estimates and make orders in the following terms:
 - Prosecution opening, notice(s) of additional evidence, notice of proposed admissions, *Evidence Act 2008* (Vic) and *Jury Directions Act 2015* (Vic) notices: due 8 weeks after the PCDH;
 - Defence response to the opening and to any notices: due 11 weeks after the PCDH;
 - Directions hearing before the Principal Judge: 13 weeks after the PCDH.

- 4.11 In a more complex case, or where possible fitness issues arise, there may need to be some modification to that timetable.
- 4.12 If the parties believe that the matter may be capable of resolution in the short term, either by direct discussions between the parties or facilitated by a case conference before the Judicial Registrar or a Judge, the timetable could be modified to permit that to happen before the filing of the formal documents.

5. DIRECTIONS HEARING BEFORE THE PRINCIPAL JUDGE

- 5.1 At this hearing, counsel are expected to be in a position to identify any evidentiary or other disputes which would benefit from early judicial involvement and resolution, either because:
- They are very substantial and/or complex; or
 - Their resolution may lead to:
 - amendment or severance of the charges; or
 - a plea; or
 - an interlocutory appeal.
- 5.2 Cases which fall into one of the categories in paragraph 5.1 will then be referred to a particular Judge to determine the disputed issues as soon as reasonably practicable and well before trial. In the ordinary course, that Judge will become the Trial Judge, and will be responsible for any other case management that may be required and conduct further directions hearings as necessary.
- 5.3 Cases which do not fall into one of the categories in paragraph 5.1 will be allocated to a Trial Judge as soon as reasonably practicable. Until such allocation has occurred, management of those cases will remain with the Principal Judge. Resolution of evidentiary and other pre-trial issues will occur before the Trial Judge, before the jury is empanelled.
- 5.4 Trial counsel will be expected to appear at this directions hearing.
- 5.5 In addition to the matters contained in s 181(2) of the *Criminal Procedure Act 2009* (Vic), counsel are expected to identify the following at this directions hearing before the Principal Judge:
- Any potential problems with legal representation or funding;
 - Any potential issues in relation to witness availability;
 - Whether the prosecution have any investigations that have not been completed;
 - What, if any, further notices of additional evidence are anticipated;
 - What, if any, *Basha* hearings are anticipated;
 - Any outstanding requests for the provision of documents or information from the prosecution;
 - When any additional expert reports will be provided by either side;
 - Any anticipated subpoena issues, including whether the defence intend to subpoena documents from third parties, the production of which is likely to be substantial or contested;

- Whether a further directions hearing needs to be held to deal with any of the above matters;
 - Any specific technology requirements for the trial;
 - Whether the original trial estimate needs to be revised; and
 - Whether the case would benefit from being referred to a Judicial Registrar or Judge for a case conference.
- 5.6 Counsel having the conduct of the matter at the relevant time are required to keep the Court informed and up-to-date as to any progress towards resolution and any issues or problems that may affect the trial commencement date at the earliest possible stage to ensure that the trial commences on the trial date by communicating with the Associate to the Principal Judge, and by e-mail to the Criminal Registry PCDH inbox (PCDH@supcourt.vic.gov.au).
- 6. FINAL DIRECTIONS HEARINGS BEFORE THE TRIAL JUDGE**
- 6.1 A final directions hearing will be conducted at least six weeks prior to the trial date. The precise date will be set:
- In a case which had been referred to a specific Judge for the determination of pre-trial issues, by that Judge;
 - In all other cases, by the Principal Judge at the directions hearing.
- 6.2 Counsel briefed for the trial will be expected to attend the final directions hearing.
- 6.3 Wherever practicable the final directions hearing will be held before the Trial Judge. The Trial Judge will ensure all orders regarding the filing of documentation are complied with and that the trial is ready to proceed on the trial date.

AMENDMENT HISTORY

1 January 2019: This Practice Note was issued on 1 January 2019.

Vivienne Macgillivray
Executive Associate to the Chief Justice
1 January 2019

B E T W E E N:

THE QUEEN

- and -

[ACCUSED]

**NOTICE OF INTENTION TO ADDUCE EVIDENCE OF PREVIOUS
REPRESENTATION**

To: *(insert full name of party to whom notice is to be given)*

1. I, *(insert full name of party giving notice)*, give notice, under section 67 of the *Evidence Act 2008*, that I intend to adduce evidence of a previous representation and to argue that the hearsay rule does not apply to the evidence in reliance on:

*(a) subsection 65(2);

*(b) subsection 65(3);

*(c) subsection 65(8)

of that Act.

2. *(As required by subregulation 5(1) of the Evidence Regulations, state:*

(a) *the substance of the evidence of the previous representation that is intended to be adduced; and*

(b) *any other relevant representation made by the person who made the previous representation, so far as it is known to the party giving the notice; and*

(c) *so far as it is known:*

(i) *the date, time, place and circumstances at or in which each representation mentioned in subparagraph (a) or (b) was made; and*

(ii) *the name of each person by whom, and each person to whom, the representation was made.)*

3. Particulars of the facts on the basis of which I allege that the person who made the representation is not available to testify concerning the fact to be proved by the evidence of the representation are as follows:

(State particulars of the facts.)

4. *(Complete if the previous representation is in writing.)*

I attach a copy of the following documents containing the previous representation:

(List documents.)

Dated:

.....
(Signed, party giving notice or party's solicitor)

* Omit if not applicable.

B E T W E E N:

THE QUEEN

- and -

[ACCUSED]

NOTICE OF INTENTION TO ADDUCE TENDENCY EVIDENCE

To: *(insert full name of party to whom notice is to be given)*

1. I, *(insert full name of party giving notice)*, give notice, under subsection 97(1) of the *Evidence Act 2008*, that I intend to adduce evidence of character, reputation, conduct or tendency to prove that *(insert full name of person who it is alleged has, or had, the tendency)* has, or had, a tendency to act in a particular way, or to have a particular state of mind.

2. *(As required by regulation 7 of the Evidence Regulations, state:*

- (a) the substance of the evidence of the kind referred to in subsection 97(1) of the Evidence Act 2008 that the party giving the notice intends to adduce; and*
- (b) if that evidence consists of or includes, evidence of the conduct of a person – so far as it is known :*
 - (i) the date, time, place and circumstances at or in which the conduct occurred; and*
 - (ii) the name of each person who saw, heard or otherwise perceived the conduct.)*

3. *(Specify the character, reputation, conduct or tendency of which evidence is to be adduced.)*

4. *(Specify the tendency sought to be proved by the evidence.)*

Dated:

.....
(Signed, party giving notice or party's solicitor)

B E T W E E N:

THE QUEEN

- and -

[ACCUSED]

NOTICE OF INTENTION TO ADDUCE COINCIDENCE EVIDENCE

To: *(insert full name of party to whom notice is to be given)*

1. I, *(insert full name of party giving notice)*, give notice, under section 98(1) of the *Evidence Act 2008*, that I intend to adduce evidence of the occurrence of two or more related events to prove that, because of the improbability of the events occurring coincidentally, *(insert the full name of the person who it is alleged did a particular act, or had a particular state of mind)*, did a particular act or had a particular state of mind.

2. *(As required by regulation 7 of the Evidence Regulations, state:*

- (a) the substance of the evidence of the occurrence of two or more related events that the party giving the notice intends to adduce; and*
- (b) so far as it is known:*
 - (i) the date, time, place and circumstances at or in which each event occurred; and*
 - (ii) the name of each person who saw, heard or otherwise perceived each event.)*

3. *(Specify the substance of any evidence in addition to the evidence given in paragraph 2 to be relied on to establish the improbability of two or more related events having occurred coincidentally.)*

4. *(Specify the particular act, or state of mind, sought to be proved by the evidence.)*

Dated:

.....
(Signed, party giving notice or party's solicitor)