



Supreme Court of Victoria

Practice Note SC CR 9

Joint Jurisdictional Practice Note for the Electronic Filing of Indictments

1 INTRODUCTION

- 1.1 The Chief Justice has authorised the issue of the following Practice Note.
- 1.2 This Practice Note has been prepared by the Criminal Divisions of the Supreme Court of Victoria ('Supreme Court') and the County Court of Victoria ('County Court').
- 1.3 The purpose of this Practice Note is to outline the procedure to be followed in relation to the electronic filing of indictments, which commenced on 29 January 2019 in the Supreme Court and on 29 April 2019 in the County Court.
- 1.4 This Practice Note is to be read in conjunction with the Supreme Court of Victoria Practice Notes SC CR 8 - Case Management Procedure for Criminal Trials and SC CR 4 - Sentencing hearings, for Supreme Court matters and the County Court of Victoria Practice Note PNCR 1-2015, for County Court matters.

2 COMMENCEMENT

- 2.1 This Practice Note was issued on 29 August 2019. The Practice Note applies to all criminal trials in the Supreme Court.

3 CHANGES TO LEGISLATIVE FRAMEWORK

- 3.1 Rule 1A of the *Supreme Court (Criminal Procedure) Rules 2017* has been inserted to allow for the electronic filing of indictments through RedCrest, the Supreme Court's online filing system.
- 3.2 Rule 2.02 of the *County Court Criminal Procedure Rules 2009* has been amended to allow for the electronic filing of indictments through eLodgement, the County Court's online filing system.

4 BENEFITS OF ELECTRONIC INDICTMENTS

4.1 Indictments filed electronically provide the following benefits:

- (a) **Immediate filing:** As soon as an indictment is signed, it can be filed immediately electronically. There will be no need for a solicitor to wait until the next substantive court date to file the indictment in open court.

This avoids the issue of an indictment being invalid when an indictment is signed by a Crown Prosecutor or an authorised person who retires, returns to the bar or is appointed to the bench prior to the indictment being filed.

- (b) **Circuit cases:** When an indictment is required on circuit, for example a fresh indictment that is signed by an authorised person in Melbourne, it can be filed immediately electronically. The indictment is then immediately accessible by the Judge on circuit to enable an accused to be arraigned. This negates the need to wait for the hard copy to arrive via post and avoids the issue of indictments being lost in the mail.
- (c) **Reduced risk:** Indictments filed electronically will reduce the risk of indictments going missing.

5 PROCESS FOR ELECTRONIC FILING OF INDICTMENTS

5.1 Practitioners must file signed indictments electronically using the Court's relevant online filing system unless otherwise specified in this Practice Note or any other Act or Rule.

5.2 The relevant online filing systems for the Courts are RedCrest for the Supreme Court and eLodgement for the County Court.

5.3 A signed indictment filed electronically satisfies the requirements under s 159 of the *Criminal Procedure Act 2009* ('*Criminal Procedure Act*').¹

5.4 An indictment must contain the signature of an authorised person. An electronic signature may be used to sign an indictment provided the requirements of s 9 of the *Electronic Transactions (Victoria) Act 2000* are met. An electronic signature must be a handwritten depiction of an authorised person's name and not merely the typed name of an authorised person.

¹ Section 159 of the *Criminal Procedure Act 2009* provides (1) Subject to the *Public Prosecutions Act 1994*, the DPP or a Crown Prosecutor in the name of the DPP may file an indictment. (2) An indictment may be filed at any time, except where otherwise provided by or under this or any other Act. (3) An indictment must – (a) be in writing; and (b) be signed by the DPP or a Crown Prosecutor in the name of the DPP; and (c) comply with Schedule 1. For Commonwealth charges sections 9(2) and 31 of the *Director of Public Prosecutions Act 1983 (Cth)* are also relevant.

- 5.5 When a signed indictment is filed electronically, there will not be a need to file a paper indictment in open court unless otherwise specified in this Practice Note or any other Act or Rule.
- 5.6 The date a signed indictment is filed electronically is the date of filing of the indictment unless otherwise specified in this Practice Note or any other Act or Rule. In the Supreme Court, it is the date the indictment is sealed.
- 5.7 Leave of the Court is not required to file a fresh indictment under s 164 of the *Criminal Procedure Act*.
- 5.8 On the filing of a fresh indictment against an accused, proceedings in relation to a charge for the same offence or a related offence in an indictment previously filed against that accused are discontinued pursuant to s 164(4) of the *Criminal Procedure Act*. Practitioners should take note of this consequence before filing any fresh indictment.
- NB: Practitioners should ensure paragraphs 10.1 – 10.6 of this Practice Note are adhered to in order to negate any unintended consequences of filing a fresh indictment in circumstances where there is also a severed indictment.
- 5.9 All indictments filed electronically must be in a PDF format unless otherwise approved, or specified, in any other form by the relevant Court.

6 HARD COPY INDICTMENTS

- 6.1 The option to file a signed paper indictment in court remains for certain circumstances only. These circumstances include:
- (a) when a proceeding is commenced by way of a direct indictment;
 - (b) when an indictment is filed over on the day of a plea hearing (i.e. when a trial turns into a plea hearing) and in circumstances where filing the indictment electronically would cause unnecessary delay to the hearing;
- NB: Where possible, an indictment filed over for a plea hearing should be filed electronically in advance of the plea date and within any timelines specified in the relevant Court's Practice Note (For example PNCR 1-2015).
- (c) if there is a disruption to the Court's online filing system; or
 - (d) as directed by the Judge for any other purpose.

7 DIRECT INDICTMENTS

- 7.1 The prosecution may lodge a draft direct indictment (that is, a draft copy of the direct indictment that does not contain the signature of an authorised person) electronically, via the relevant Court's online filing system, in advance of filing the signed direct indictment in court.
- 7.2 The parties must contact the relevant Court to list the matter for mention in order to file the signed direct indictment in court.

- 7.3 A signed direct indictment must be filed in court and not electronically.
- 7.4 The date a signed direct indictment is filed in court is the date of filing of the direct indictment. In the Supreme Court it is the date the indictment is sealed.
- 7.5 On the filing in court of a direct indictment against an accused, the DPP may apply to the court for the issue of a summons or a warrant to arrest in order to compel the attendance of the accused under s 174(1) of the *Criminal Procedure Act*.

8 AMENDING AN INDICTMENT FILED ELECTRONICALLY

- 8.1 Once a signed indictment is filed electronically, the prosecution may seek to amend the indictment in court. If the Court grants the prosecution leave to amend the indictment, the associate will print the signed indictment from the Court's document management system and hand it to the prosecutor in court.
- 8.2 The amendment will then be made by the prosecutor, or his/her instructing solicitor, using a red pen to cross out an error on an indictment, insert the correct text and annotate that the amendment was made.
- 8.3 The annotation is placed in the margin of the indictment and takes the form of: "*Amended pursuant to leave granted by [insert name of Judge] at the [Supreme/County] Court at [insert place i.e. Melbourne] on the [insert day, month, year]*", for example.
- 8.4 The marked up "red pen" amended copy of the signed indictment will then be handed back to the associate who will scan the amended indictment into the relevant Court's document management system; RedCrest for the Supreme Court and iManage for the County Court.
- 8.5 The amended copy of the signed indictment will supersede the version of the signed indictment that was previously filed electronically.

9 ONE INDICTMENT PER CASE NUMBER

- 9.1 Each indictment must have its own case number.
- 9.2 When a single indictment is filed in relation to an accused, the indictment will contain a 'S ECR' case number for all matters initiated from 29 January 2019 in the Supreme Court or a 'CR' case number for all matters in the County Court ('case number').
- 9.3 Case numbers in relation to Supreme Court matters are accessible by contacting the Supreme Court Registry at criminaldivision@supcourt.vic.gov.au.
- 9.4 Case numbers in relation to County Court matters are accessible from the [Court Connect website](#) or by contacting the County Court's criminal registry at crim.reg@countycourt.vic.gov.au.

10 SEVERED INDICTMENTS

- 10.1 If an indictment is to be severed, the prosecution must contact the Criminal Registry of the relevant Court *prior* to the indictment being filed. The prosecution must advise that a severed indictment is sought to be filed and that a new case number is required.
- 10.2 A new case number must only be requested if a decision has been made to sever the indictment, not if severance is merely being considered.
- 10.3 The new case number should be included on the severed indictment before it is filed.
- 10.4 If the severed indictment has been filed without the new case number, the Court may grant leave to the prosecution to amend the indictment to include the new case number.
- 10.5 The severed indictment must be filed electronically under the corresponding new case number in the relevant Court's online filing system (RedCrest for the Supreme Court or eLodgement for the County Court) unless a paper copy of the severed indictment is filed in court for any of the reasons set out in paragraph 6.1 of this Practice Note.
- 10.6 Filing the severed indictment under the corresponding new case number ensures any indictment filed for the initial case number is not filed over.

11 MULTIPLE CASE NUMBERS FOR RELATED CASES

- 11.1 An accused may have multiple matters in the Court, resulting from multiple briefs of evidence and multiple Magistrates' Court case reference numbers being generated.
- 11.2 If the accused pleads guilty, these matters may be consolidated into a single indictment. That indictment must contain *all* relevant case numbers.
- 11.3 All other notices and documents filed with the Court must also include all relevant case numbers.
- 11.4 The case number for each accused must be listed on an indictment where there is more than one accused on the indictment.

12 BAIL FOR SUBSEQUENT INDICTMENTS AND CASE NUMBERS

- 12.1 When a new case number is created for a new indictment, the bail or remand status of the accused must be entered against the new case number.
- 12.2 If an accused has been remanded in custody on the head case number, the prosecution should advise the Judge whether it is intended for that custody status to be replicated for the new case number.
- 12.3 Please refer to the relevant Court's Practice Note in relation to circumstances where the accused is on bail on the head case number.

13 OTHER DOCUMENTS

13.1 A number of documents are often filed at the same time as the indictment or filed in relation to an indictment.

13.2 Notice of discontinuance

(a) A draft notice of discontinuance may be lodged electronically via RedCrest (Supreme Court) or eLodgement (County Court).

(b) A signed notice of discontinuance must be filed in court in accordance with s 177 of the *Criminal Procedure Act*.

(c) Pursuant to s 177 of the *Criminal Procedure Act*, the DPP may discontinue a prosecution by:

(i) announcing the discontinuance in court; or

(ii) filing in court written notice of the discontinuance signed by the DPP

at any time except during trial and whether or not an indictment against the accused has been filed.

(d) A discontinuance may be announced in open court, however the written notice of discontinuance, signed by the DPP, must be filed in court as soon as practicable after the announcement under s 177(4) of the *Criminal Procedure Act*.

13.3 Criminal records

Criminal records must be filed electronically. Criminal records should be prepared as a separate document and not annexed to an indictment.

13.4 Notice of related summary offences

A notice of related summary offences must be filed electronically as a separate document and not annexed to an indictment.

AMENDMENT HISTORY

29 August 2019: This Practice Note was issued on 29 August 2019.

Vivienne Macgillivray
Executive Associate to the Chief Justice

29 August 2019