



# Supreme Court of Victoria

## Practice Note SC CR 5

### Applications and Reviews under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*

#### 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 describe the procedures to be followed in applications and reviews heard under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*.
- 1.3 Applications and reviews under the CMIA are matters heard in the Common Law Division.

#### 2. COMMENCEMENT

- 2.1 This Practice Note was issued on 30 January 2017 and commences on 30 January 2017 and will apply to all crimes mental impairment applications and reviews commenced on or after that date.

#### 3. DEFINITIONS

- 3.1 In this Practice Note:

*CMIA* means the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic);

*Common Law Division* means the Common Law Division of the Supreme Court of Victoria;

*Judge* means a judge of the Supreme Court of Victoria;

*Registry* means the Principal Registry of the Supreme Court of Victoria.

#### 4. FILING AND SERVICE

##### *Applications*

- 4.1 Any notice of an application for extended leave (s 57) or a variation or revocation of a supervision order (s 31) must be filed with the Registry no later than ten weeks (excluding Court holiday periods) before any expiry date that may be in existence at the time of the application.

- 4.1.1 Applicants should comply with Order 28, Part 1 of the *Supreme Court (General Civil Procedure) Rules 2005* regarding the filing and sealing of an application and accompanying material.
- 4.1.2 Filing may be either by submitting these materials to the Registry in person at, or by post to, 450 Lt Bourke Street, Melbourne VIC 3000.
- 4.1.3 Subject to an explicit order to the contrary, no application should be filed with any individual Judge of the Court or a staff member of the Court.
- 4.2 A notice of an application for extended leave or a variation or revocation of a supervision order must be given to the Director of Public Prosecutions, the Attorney-General, the Secretary to the Department of Health and Human Services and the person having the custody, care, control or supervision of the person subject to the supervision order by the applicant, within two days of filing with the Registry.
- 4.3 Once an application is filed, the solicitor for the Secretary to the Department of Health and Human Services should advise the Criminal Division Legal Officer of the treating clinicians' availabilities as soon as practicable.
- 4.4 The Criminal Division Legal Officer will advise the parties of the hearing date and issue directions for filing of material.
- 4.5 Urgent applications such as an application for revocation of extended leave (s 58) will be given a hearing date as a matter of urgency and directions for filing of material will be issued accordingly.

### *Reviews*

- 4.6 In the case of a major review under ss 35(1)(a) or 35(1)(b) or a review directly by a Judge under ss 27(2), 32(5) or 33(2), the Criminal Division Legal Officer will issue a notice advising the parties of the hearing date and issue directions for filing no later than ten weeks before the day of the hearing.

### *Timeframe for filing of materials*

- 4.7 Below is a list of the usual directions that the Criminal Division Legal Officer issues for applications and reviews. The timeframes for compliance indicated below are based on an application filed ten weeks prior to the expiry of an order. Timeframes can vary depending on the circumstances of each case.
  - The solicitor for the Secretary to the Department of Health and Human Services is to file and serve copies of medical and psychiatric reports it intends to rely on within 6-7 weeks from receiving the notification of the hearing date.
  - The solicitor for the person subject to the supervision order is to notify the parties of any intention to obtain further medical and/or psychiatric reports

within one week from receiving the medical and psychiatric reports from the Department of Health and Human Services.

- The solicitor for the person subject to the supervision order is to file and serve any further medical or psychiatric reports within 3-4 weeks from receiving the reports from the Department of Health and Human Services.
- The solicitor for the Director of Public Prosecutions is to file and serve the summary of proceedings and summary of facts of the case within six weeks from receiving the notification of the hearing date.
- The solicitor for the Secretary to the Department of Health and Human Services and the solicitor for the Attorney-General are to notify the Court and other parties of their respective positions in relation to the application at least one week prior to the hearing date.
- The solicitor for the Director of Public Prosecutions is to file an affidavit of service directed to the family members of the applicant and the victims in this matter advising of the date of hearing and outlining their rights at least two days prior to the hearing date.
- If, at the hearing of a review, the solicitor for the person subject to the supervision order intends to apply for extended leave, or any variation to or revocation of the supervision order, the solicitor is to notify the Court and other parties within one week from receiving the reports from the Department of Health and Human Services.

4.8 Practitioners should contact the Criminal Division Legal Officer for any queries in relation to the hearing of applications and reviews under the CMIA. If the Criminal Division Legal Officer is unavailable for any reason, practitioners may contact the Associate to the Principal Judge of the Criminal Division.

## **AMENDMENT HISTORY**

30 January 2017: This Practice Note was issued on 30 January 2017.

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Executive Associate to the Chief Justice  
30 January 2017