

Fast-tracking homicide matters to the Supreme Court



1 Introduction

- 1.1 Ordinarily, murder and manslaughter charges against an accused undergo a committal process in the Magistrates' or Children's Courts before the accused is committed to stand trial in the Supreme Court. During the committal process, the prosecution is required to disclose material to the defence, and there may be an opportunity to test some of the evidence through the cross-examination of prosecution witnesses with the leave of the court. At the end of the committal hearing, the magistrate makes a decision whether or not to commit the accused to stand trial.
- 1.2 In response to the COVID-19 pandemic, and having regard to the volume of pending matters before the Magistrates' Court, the Supreme Court introduced the fast-track committal process to:
 - Relieve some of the listing pressures on the Magistrates' and Children's Courts;
 - Support homicide prosecutions to resolve where appropriate, or become ready for trial sooner; and
 - Be able to more directly manage listings and throughput of homicide cases, with appropriate flexibility.

2 Eligibility

- 2.1 A matter may be fast-tracked if:
 - The accused is charged with murder and/or manslaughter, as well as attempted murder, conspiracy to murder and incitement to murder;
 - The hand-up brief has been served;
 - The accused elects to stand trial, pursuant to s 143 of the *Criminal Procedure Act 2009* (Vic) (the CPA); and
 - In prosecutions involving two or more co-accused, **all co-accused** have consented to fast-track their matters to the Supreme Court at the same time.
- 2.2 Once 'fast-tracked' to the Supreme Court, the matter will be case managed by a judicial registrar. This will include resolving any outstanding disclosure issues, conducting preparatory cross-examination of prosecution witnesses (see below at 4) which ordinarily would have occurred during the committal proceeding, and convening a case conference in appropriate cases.
- 2.3 An eligible matter can be fast-tracked from any venue of the Magistrates' or Children's Court in Victoria.

Fast-tracking homicide matters to the Supreme Court



3 Procedure

- 3.1 In order to fast-track an eligible matter to the Supreme Court, the accused **must** elect to stand trial pursuant to s 143 of the CPA. Pursuant to rule 66 of the *Magistrates' Court Criminal Procedure Rules 2019*, a Form 38 **must** be filed in the Magistrates' Court evidencing such election.
- 3.2 Once the accused elects to stand trial, a magistrate will commit the accused to the Supreme Court in accordance with s 144 of the CPA. Legal practitioners should be aware that the election of the accused to stand trial is a different process to an accused being committed by a magistrate on the basis that the evidence is of sufficient weight to support a conviction pursuant to s 141 of the CPA.
- 3.3 The matter will be listed for post-committal directions hearing (PCDH) in the Supreme Court approximately 14 days after the date of committal.
- 3.4 Shortly after the accused is committed, the parties will receive a listing email from the Supreme Court's Criminal Division case management lawyers attaching the following documents:
 - **PCDH questionnaire**

This document must be completed jointly by the legal representatives of the accused and the prosecution to provide the court with relevant information to assist with the initial case management and listing requirements of the matter.
 - **Section 198B application template form**

The accused must use this form to apply for preparatory cross-examination of prosecution witnesses pursuant to s 198B of the CPA. This document should be completed jointly by the the legal representatives of the accused and prosecution. Further information is provided below.
 - **WebEx hearing booking form**
- 3.5 All completed forms must be filed at least three business days prior to the PCDH, or as directed by the case management lawyer. The solicitors for the accused must also file and serve a Notice that Legal Practitioner Acts pursuant to rule 4.04 of the *Supreme Court (Criminal Procedure) Rules 2017*.
- 3.6 At the PCDH, the court will make orders for the further conduct of the proceeding, which may include:
 - Provision of documents and/or pre-trial disclosure to the defence;
 - The preparatory examination of witnesses pursuant to s 198B of the CPA (or, if an application under s 198B has not been filed prior to the PCDH, directions for the filing of an application);

Fast-tracking homicide matters to the Supreme Court



- Filing and service of subpoenas for production to third parties for the production of documents; and
- In appropriate cases, filing and service of the summary of prosecution opening, statutory evidence notices, and defence responses to those documents.

3.7 The Supreme Court will otherwise make its usual pre-trial directions in accordance with s 181 of the CPA and *Practice Note SC CR 8* (Case management procedure for criminal trials), at an appropriate time. This may occur at the PCDH or at subsequent directions hearings.

3.8 Fast-track matters will generally only be fixed for trial once the summary of prosecution opening for trial and the defence response to the summary of prosecution opening have been filed and served, as is the case with matters committed via the standard committal procedure.

4 Preparatory cross-examination of witnesses pursuant to s 198B

4.1 The accused may apply for leave to conduct preparatory cross-examination of prosecution witnesses, pursuant to s 198B of the CPA, in lieu of cross-examination at a committal hearing. This application must be made using the template application form, which is provided to the parties by the case management lawyer and is also available on the Supreme Court's website.

4.2 Any s 198B application should be made at least three business days prior to the PCDH, or as directed in the listing email. There will be circumstances where the parties are not yet able to deal with such an application at the PCDH, in which case directions will be made at the PCDH for the filing of the application.

4.3 If a s 198B application is opposed by the prosecution, the Court expects that counsel for the prosecution and the accused will have conferred prior to the filing of the application in an endeavour to narrow the issues in dispute and/or resolve those contested aspects of any application. If, following those discussions, there remains contested aspects of the application at the time of filing, the Court may make further directions in order to deal with the application in an efficient way, including the filing of submissions by the parties.

4.4 The hearing of preparatory cross-examination will generally proceed before a Judicial Registrar, but may also proceed before a Judge.

5 Case conferences

5.1 Parties in fast-track matters may be offered an opportunity to participate in a confidential case conference with the aim of resolving the matter or narrowing the issues in dispute. This can occur at any time but will often be offered after the conclusion of the preparatory cross-examination of witnesses under s 198B of the CPA.

Fast-tracking homicide matters to the Supreme Court



6 Contact details

6.1 Any enquiries in relation to fast-tracking cases can be directed to the Criminal Division case management lawyers.

✉ criminal.casemgmt@supcourt.vic.gov.au

☎ (03) 8600 2059 (Criminal Registry)

Originally published 25 March 2020, first revision 20 August 2020; second revision 4 November 2021 | SCV Criminal Division