



Supreme Court of Victoria

Practice Note No. 4 of 2010

Criminal Division: Case Management Procedure for Criminal Trials

This Practice Note provides an explanation of the practice of case management in the Supreme Court from 1 January 2010 upon the commencement of the *Criminal Procedure Act 2009* and *Evidence Act 2008*.

1.0 Post-Committal Directions Hearing

From 1 January 2010, the cases committed to the Supreme Court for trial will commence with a Post-Committal Directions Hearing held within 14 days of the completion of the committal hearing. The Principal Judge of the Criminal Division (or a Judge nominated by the Principal Judge of the Criminal Division) will preside over the Post-Committal Directions Hearings and Counsel retained for the committal or the trial will be required to appear and be in a position to address the Court on the following matters:

1. For the prosecution to file an indictment or advise when an indictment is to be filed;
2. Whether the accused intends to plead guilty;
3. Whether the prosecution and the accused intend to enter into negotiations in relation to the plea of the accused;
4. The anticipated issues at the trial;
5. The admissions likely to be sought and/or offered;
6. Any potential issues that might warrant one or more early pre-trial hearings pursuant to s 199 *Criminal Procedure Act 2009* and if so –
 - (a) an estimate of the hearing time of those issues;
 - (b) appropriate directions for the disposition of those pre-trial issues.
7. The identification of any other pre-trial issues and the appropriate directions for the disposal of those pre-trial issues;
8. Whether there is any alibi evidence;
9. Whether there are any issues arising under the *Charter of Human Rights and Responsibilities Act 2006*;
10. Whether there are any related or unrelated summary offences to be considered.
11. Whether extensive pre-trial management is desirable;
12. An estimate of the hearing time of the trial;
13. Trial date problems;
14. Any potential problems that might prevent the trial proceeding expeditiously;
15. Any potential legal representation and funding problems;
16. The estimated number and availability of witnesses for trial and whether any of the witnesses are interstate or overseas;
17. Whether there are any special requirements or facilities needed for witnesses;

18. Any issues as to obtaining psychiatric reports as to fitness to stand trial or mental impairment;
19. Any other potential witness issues that require orders pursuant to s 198 *Criminal Procedure Act 2009*;
20. Any subpoena issues, such as whether the defence intends to subpoena substantial police or other documentation;
21. Any security issues;
22. The possibility of an application for non-publication or like orders by the prosecution or defence, or both; and
23. Whether a request should be made to the Magistrates' Court for immediate preparation of the whole or any part of the transcript of the committal hearing.

If, at the Post-Committal Hearing, a case is identified as requiring intensive pre-trial management, the Principal Judge will allocate the case to the trial judge as soon as possible. The trial judge will then have responsibility for that case and will conduct further directions hearings as necessary.

In all other cases, the Principal Judge will allocate a trial date and a Final Directions Hearing date. Each case will be allocated to the trial judge as soon as possible. Until such allocation, the management of these cases remains with the Principal Judge.

In all cases, the Principal Judge or a Judge nominated by the Principal Judge of the Criminal Division may make orders, as appropriate, in respect of filing and serving the following documents:

1. Summary of the Prosecution opening and notice of pre-trial admissions.
2. Defence response to the summary of the Prosecution opening and notice of pre-trial admissions
3. Any expert witness statements that the defence are to call are filed and served at least 14 days prior to the date that the trial is listed to commence.
4. An agreed list of prosecution witnesses.
5. An agreed statement of the legal elements of the charge or charges (to be settled by the trial judge).
6. That any notices of intention to adduce tendency evidence, coincidence evidence and evidence of a previous representation are served in writing to each party and filed with the Court. (An example of the appropriate forms for giving notice are provided at the conclusion of this Practice Note.)

2.0 Final Directions Hearings

A Final Directions Hearing will be conducted at least 14 days prior to the trial date. Counsel briefed for the trial will be expected to attend. 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.

Please note that this Practice Note repeals the following Practice Notes:

- ***Notice to Practitioners 1998, Criminal List Practice Direction - Pegasus Two – 1998;***
- ***Practice Note No. 1 of 2004: Criminal Division: Final Directions***
- ***Practice Note No. 5 of 2006: Criminal Division: Case Management by Section 5 Hearings***

DATED: This 21st day of December, 2009

Tiphannie Acreman
Associate to the Chief Justice

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)