



# Supreme Court of Victoria

## Practice Note SC CR1

### 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 describe the case management for criminal trials in the Supreme Court.

#### 2. COMMENCEMENT

- 2.1 This Practice Note was issued on 30 January 2017 and commences on 30 January 2017 and will apply to all matters listed for post-committal directions hearings, further directions hearings, or final directions hearings, on or after that date.
- 2.2 This Practice Note replaces Practice Notes No. 4 of 2010 and No. 6 of 2014 which are hereby revoked.

#### 3. DEFINITIONS

- 3.1 In this Practice Note:

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

*Judicial Registrar* means the Judicial Registrar for Crime of the Supreme Court of Victoria;

*Principal Judge* means the Principal Judge of the Criminal Division of the Supreme Court of Victoria.

#### 4. POST-COMMITTAL DIRECTIONS HEARING

##### *Listing and filing*

- 4.1 The Criminal Division of the Supreme Court continues to manage matters committed to the Supreme Court for trial or plea. Pursuant to Part 5.5 of the *Criminal Procedure Act 2009* (Vic), such matters are listed for a post-committal directions hearing ('PCDH') usually within 24 hours of the completion of the committal hearing.

- 4.2 An indictment is not required to be filed at the PCDH, however the relevant Director of Public Prosecutions will provide a police summary to the Supreme Court Criminal Registry prior to the PCDH.
- 4.3 Counsel retained for the committal is expected to appear at the PCDH.
- 4.4 At the conclusion of the committal hearing, the Magistrates' Court will contact the Supreme Court Criminal Registry (Registry) to schedule the PCDH. The Supreme Court Registry will advise the Magistrates' Court to bail or remand the accused to the relevant PCDH date. The Magistrates' Court will forward relevant documents to the PCDH Registry inbox ([PCDH@supcourt.vic.gov.au](mailto:PCDH@supcourt.vic.gov.au)) on the day the accused is committed.
- 4.5 Where the committal proceeding concludes before 2pm, and where feasible, the PCDH may be heard in the afternoon on the same day and otherwise will be heard at 9:30 am the following sitting day.
- 4.6 Where a committal proceeding concludes outside of business hours, and it is not feasible to list the matter for the PCDH the following morning, subject to the availability of counsel, the matter may be heard the following afternoon, or otherwise will be heard at 9:30 the morning after that.
- 4.7 If the committal has been conducted in a Magistrates' Court outside the Melbourne metropolitan area, then the PCDH will occur within five days of the completion of the committal hearing. Counsel who appeared at the committal will be required to appear at the PCDH.
- 4.8 Although where feasible, it is preferable for accused persons to attend the PCDH, with the exception of those defendants bailed to appear at the Supreme Court, accused persons will not be required to be present. A videolink will be arranged by the Criminal Registry.

***Additional matters to be addressed***

- 4.5 Supplementary to the matters contained in s 181(2) of the *Criminal Procedure Act 2009*, counsel is expected to be in a position to address the Court on the following matters:
  1. Whether the accused intends to plead guilty;
  2. Whether the prosecution and the accused intend to enter into negotiations in relation to the plea of the accused;
  3. The anticipated issues at the trial;
  4. The admissions likely to be sought and/or offered;
  5. Any potential issues that might warrant one or more early pre-trial hearings, and if so –
    - (a) an estimate of the hearing time of those issues;
    - (b) appropriate directions for the disposition of those pre-trial issues.
  6. The identification of any other pre-trial issues and the appropriate directions for the disposal of those pre-trial issues;
  7. An estimate of the hearing time of the trial;

8. Trial date problems;
9. Any potential problems that might prevent a trial proceeding expeditiously;
10. Any potential legal representation and funding problems;
11. The estimated number and availability of witnesses for trial and whether any of the witnesses are interstate or overseas;
12. Whether there are any special requirements or facilities needed for witnesses;
13. Any issues as to obtaining psychiatric reports as to fitness to stand trial or mental impairment;
14. Any other potential expert witness issues;
15. Any subpoena issues, such as whether the defence intends to subpoena substantial police or other documentation;
16. Any security issues;
17. The possibility of an application for non-publication or like orders by the prosecution or defence, or both;
18. 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;
19. Whether extensive pre-trial management is desirable;
20. Whether a directions hearings timetable is desirable.

*Case management*

- 4.6 If, at the PCDH, 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.
- 4.7 In all other cases, the Principal Judge or the Judicial Registrar 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 or the Judicial Registrar.
- 4.8 In all cases, the Principal Judge or the Trial Judge or the Judicial Registrar 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, incriminating conduct 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.)

- 4.9 Counsel at the PCDH, or the nominee or nominees of such counsel, are required to keep the Criminal Division informed and up-to-date as to any progress towards resolution and as to any later problems at the earliest possible stage to ensure that the trial commences on the proposed or fixed trial date. That should be done by communicating with the Associate to the Principal Judge and by e-mail to the Supreme Court PCDH Registry inbox ([PCDH@supcourt.vic.gov.au](mailto:PCDH@supcourt.vic.gov.au)).

## **5. FINAL DIRECTIONS HEARINGS**

- 5.1 A final directions hearing will be conducted at least 14 days prior to the trial date.
- 5.2 Counsel briefed for the trial will be expected to attend.
- 5.3 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**

30 January 2017: This Practice Note was re-issued on 30 January 2017 and replaced former Practice Notes No. 6 of 2014 and No. 4 of 2010.

Vivienne Macgillivray  
Executive Associate to the Chief Justice  
30 January 2017

**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)*