



LOCAL COURT PRACTICE NOTE NO 1 of 2010

ISSUED: 4 January 2010

Amended: 28 June 2010

Procedures to be adopted for Committal hearings in the Local Court for proceedings commenced on or after 1 May 2008

This Practice Note applies to all matters for which a Court Attendance Notice was filed on or after 1 May 2008 but before 1 January 2011 (irrespective of whether the offence was committed before or after 1 May 2008) and supersedes Practice Notes 1 of 2007 and 4 of 2008 for these matters.

Part A of this Practice Note applies in relation to committal proceedings heard at Downing Centre Local Court and Central Local Court in Sydney. Part B of this Practice Note applies to committal proceedings heard at all other Local Court locations.

This Practice Note does not apply to offences in the Children's Court.

PART A

This Part applies in relation to committal proceedings in respect of indictable offences heard at Downing Centre Local Court and Central Local Court in Sydney, for which a Court Attendance Notice was filed on or after 1 May 2008 but before 1 January 2011 (irrespective of whether the offence was committed before or after 1 May 2008) pursuant to the *Criminal Case Conferencing Trial Act 2008*.

The procedures outlined in the Practice Note are intended as best practice to ensure Time Standards for cases committed for trial or sentence to the Supreme or District Court are complied with and to enable accused persons who are adults and are legally represented to attend a Compulsory Case Conference (**Compulsory Conference**) in accordance with the *Criminal Case Conferencing Trial Act 2008*.

Paragraph 2.2 and all of Item 4 of Part A do not apply in proceedings relating to Commonwealth offences.

The procedures outlined are also intended to ensure that the utilisation of Audio Visual Link technology is conducted in the most efficient manner.

1. Matters where Election to proceed on indictment to be considered pursuant to Criminal Procedure Act

1.1 On first appearance, matters to which Table 1 of the Criminal Procedure Act (CPA) apply will be adjourned for 14 days for determination as to whether an Election is to be made to have the matter dealt with on indictment. No brief orders are to be made on the first appearance in these circumstances.

1.2 If an Election is made after the fourteen (14) day adjournment, the matter is to proceed in accordance with item 2 of this Practice Note.

1.3 If no Election is made, the matter is to proceed in the same way as any summary proceeding (see Practice Note 7 of 2007).

2. Strictly Indictable matters or matters where election made to proceed on indictment – 1st Appearance

2.1 On the first appearance date, a brief order must be made by the Court.

2.2 The Court will give the accused person a statement in writing explaining the effect of Part 3 of the *Criminal Case Conferencing Trial Act 2008* (see Attachment A).

2.3 The brief order will depend on the nature of the evidence to be included in the brief and will be either:

- (a) a brief service order (see 2.4-2.6 below), or
- (b) an extended brief service order (see 2.7-2.11 below).

Brief Service Order

2.4 Where the prosecution does not seek extended brief service orders, or the Court is not satisfied that extended brief service orders should be made, the Court will order service of the brief in no less than six weeks.

2.5 The matter will be adjourned to a date no less than one week after the brief service date for review.

2.6 The Prosecuting Authority is to ensure the informant is notified not more than 72 hours after the brief orders are made of the need to prepare a brief for service on an accused person.

Extended Brief Service Order

2.7 An extended brief service order will generally only be made when the Court is informed that the Prosecuting Authority intends to rely on evidence drug analysis,

DNA or fingerprints or where the Court is informed that other evidence is required that justifies the making of an extended brief service order¹.

2.8 The Court may make extended brief service orders if it is satisfied that the brief is to include evidence that cannot be obtained within six weeks.

2.9 If the prosecution seeks extended brief service orders, it must advise the Court of the categories of evidence that cannot be obtained within six weeks and the date the evidence is expected to be obtained.

2.10 If the Court is satisfied that extended brief service orders should be made the Court will order:

- (a) the brief, excluding the evidence referred to in paragraph 2.9 above, be served in no less than six weeks (the **brief service date**)
- (b) the brief, including the evidence referred to in paragraph 2.9 above, be served in no less than twelve weeks or such time as is necessary for the prosecution to obtain that evidence (the **further evidence date**)
- (c) the matter be adjourned to a date no less than one week after the further evidence date ordered in under paragraph 2.10(b).
- (d) The Prosecuting Authority is to ensure the informant is notified not more than 72 hours after the extended brief service orders are made of the need to prepare a brief for service on an accused person.

2.11 Either party may seek leave to restore the matter to the list on giving at least three days notice in writing to the other party/parties and the Court.

3. Case Management at the 2nd appearance where brief served and accused not legally represented or charged with a Commonwealth offence

3.1 The accused must be at Court on this date. If in custody, the accused must appear by AVL unless the Court otherwise directs.

3.2 The following directions apply only where the accused is not represented by a barrister or solicitor, or is charged with a Commonwealth offence.

The Court may proceed with;

- (a) a committal for sentence or hearing of a plea of guilty where an election to proceed on indictment is withdrawn; or
- (b) the hearing of committal proceedings either by paper committal or waiver; or
- (c) the setting down for hearing of a contested s 91 CPA application or an application to which s 93 CPA (special reasons) applies at the earliest

¹ Such evidence may include medical evidence, telephone intercepts or listening device transcripts, translations, computer analysis evidence, business record affidavits and/or evidence from overseas.

available opportunity. The Court may order that any submissions by the accused in support of an application for a direction under s 91 CPA or s 93 CPA be served on the DPP and filed with the Court at least seven days before the application is to be heard; or

- (d) the hearing of a contested s 91 CPA application or s 93 CPA application; or
- (e) the setting down of the proceedings for committal hearing.

3.3 The Court may make such further orders as it thinks fit.

3.4 Where proceedings under this section are further adjourned, the Court may order that a Disclosure Certificate be served on the accused within two weeks of this date.

4. Case Management at the 2nd appearance where brief served and accused is legally represented

Where an adult accused is legally represented by a barrister or a solicitor and a plea of guilty has not been entered for an offence other than an offence mentioned in section 6(1) of the *Criminal Case Conferencing Act 2008*, a Compulsory Conference is to be held.

The following practice directions are to apply:

4.1 A Compulsory Conference must be held in accordance with Part 3 of the *Criminal Case Conferencing Trial Act 2008*.

4.2 The Court will:

- (a) Order that the prosecution pursuant to section 9 of the *Criminal Case Conferencing Trial Act 2008* serve on the accused, within twenty-eight (28) days, a Pre-Conference Disclosure Certificate in relation to the offence.
- (b) Order that a Compulsory Conference be held within forty-two (42) days unless compelling circumstances exist in the interests of justice for a later date.
- (c) Order that in the event of agreement between the parties as to a plea of guilty at any time the parties have liberty to restore the matter to the list.
- (d) Order that in the event of agreement not being reached at a Compulsory Conference, any submissions by the accused in support of an application for a direction under s 91 or s 93 CPA are to be in writing, served on the DPP and filed with the Court not more than seven (7) days after a Compulsory Conference.
- (e) Order that the DPP to respond within seven (7) days of being served with those submissions.

- (f) Adjourn the proceedings for a period not more than eight weeks or for such time as the Court considers appropriate in the interests of justice, **(the Adjournment Date)** when the Pre-Conference Disclosure Certificate and Compulsory Conference certificate will be filed with the Local Court.

4.3 Failure to comply with orders under 4.2(d) and (e) may result in the Court refusing to make a second or subsequent order without cause being shown. In such case the matter may proceed by way of paper committal, with or without submissions.

4.4 Where a Court makes a second or subsequent order, it may consider an order for costs against the defaulting party in accordance with section 118 of the *Criminal Procedure Act 1986*.

4.5 This item does not apply where an accused is charged with a Commonwealth offence.

5. Case management on the Adjournment Date

Failure by the accused or the accused's legal representative to attend at a Compulsory Conference will not entitle the accused to an adjournment unless compelling circumstances exist in the interests of justice.

5.1 On the adjournment date, the Court may proceed with;

- (a) a committal for sentence or hearing of a plea of guilty where an election to proceed on indictment is withdrawn; or
- (b) the hearing of committal proceedings either by paper committal or waiver; or
- (c) the setting down for hearing of a contested s 91 CPA application or an application to which s 93 CPA (special reasons) applies at the earliest available opportunity. The Court may order that any submissions by the accused in support of an application for a direction under s 91 CPA or s 93 CPA be served on the DPP and filed with the Court at least seven days before the application is to be heard; or
- (d) the hearing of a contested s 91 CPA application or s 93 CPA application; or
- (e) the setting down of the committal proceedings for hearing.

5.2 The Court may make such further orders as it thinks fit.

6. Listing of committal proceedings for hearing in the Local Court

Subject to the interests of justice, committal proceedings are to be completed as expeditiously as possible to enable the transfer, if appropriate, of these cases to either the Supreme or District Court.

7. Adjournments

No variations of the above procedural timetable will be granted unless compelling circumstances exist in the interests of justice.

Criminal Case Processing – A

Process of Matters through the Local Court at *Downing Centre* and *Central* – except where accused is unrepresented or is charged with a Commonwealth offence

First Appearance

If matter is Table 1

- Matter adjourned for not less than 14 days for Election to be made.
- No brief service orders made.

If Strictly Indictable or election made

- Brief service orders or extended brief service orders made
- Explanation of Compulsory Case Conference
- Adjourned for **not less than 7 weeks** for service of the brief for review.
- Where extended brief service orders made, brief service in not less that six weeks, further evidence service in no less than 12 weeks or further period as required and matter adjourned until one week after further evidence date for review.

Second Appearance²

Accused must participate in a conference³

Matter adjourned for **eight weeks**:

- Disclosure Certificate to be served within 28 days
- Conference within 42 days of second appearance.
- Liberty to restore to list if plea negotiated.
- If not negotiated, defence to serve 91/93 application submissions on DPP within 7 days after conference.
- DPP to reply 7 days after that.

Third Appearance

Disclosure Certificate and Compulsory Conference certificate filed.

Matter proceeds in Local Court or as Paper Committal for Sentence or Trial or 91/93 Application determined by the Court:

- If granted: matter adjourned for Committal Hearing
- If refused: matter proceeds as Paper Committal for Trial

Fourth Appearance: Committal Hearing

Only applies where the Court has made orders under sections 91 or 93.

Notes

- *DPP Disclosure Certificate to be served in all matters where accused is participating in the case conference.*

² Assumes brief served – otherwise, further brief service orders to be made

³ Assumes accused legally represented – otherwise paragraph 3 applies

PART B

This Part applies in relation to committal proceedings in respect of indictable offences heard at Local Courts other than the Downing Centre and Central Local Courts, for which a court attendance notice was filed on or after 1 May 2008 but before 1 January 2011 (irrespective of whether the offence was committed before or after 1 May 2008).

The procedures outlined in the Practice Note are intended as best practice to ensure that Time Standards for cases committed for trial or sentence to the Supreme or District Court, are as far as possible complied with and to enable accused persons who are adults and are legally represented to attend a Case Conference (**Conference**).

Item 4 of Part B does not apply in proceedings relating to Commonwealth offences.

The procedures outlined are also intended to ensure that the utilisation of Audio Visual Link technology is conducted in the most efficient manner.

1. Matters where Election to proceed on indictment to be considered pursuant to Criminal Procedure Act

1.1 On first appearance, to which Table 1 of the CPA applies matters will be adjourned for 14 days for determination of whether an Election is to be made to have the matter dealt with on indictment. No brief orders are to be made on the first appearance in these circumstances.

1.2 If an Election is made after the fourteen (14) day adjournment, the matter is to proceed in accordance with item 2 of this Practice Note.

1.3 If no Election is made, the matter is to proceed in the same way as any summary proceeding (see Practice Note 7 of 2007).

2. Strictly Indictable Matters, or matters where election made to proceed on indictment – 1st Appearance

2.1 On the first appearance date a brief order must be made by the Court.

2.2 The Court will order service of the brief in no less than six weeks.

2.3 The matter will be adjourned to a date no less than one week after the brief service date for review.

2.4 The Prosecuting Authority is to ensure the informant is notified not more than 72 hours after the brief orders are made of the need to prepare a brief for service on an accused person.

3. Case Management at the 2nd appearance where brief served and accused is not legally represented or charged with a Commonwealth offence

3.1 The accused must be at Court on this date. If in custody, the accused must appear by AVL unless the Court otherwise directs.

3.2 The Court may proceed with:

- (a) a committal for sentence or hearing of a plea of guilty where an election to proceed on indictment is withdrawn; or
- (b) the hearing of committal proceedings either by paper committal or waiver; or
- (c) the setting down for hearing of a contested s 91 CPA application or an application to which s 93 CPA (special reasons) applies at the earliest available opportunity. The Court may order that any submissions by the accused in support of an application for a direction under s 91 CPA or s 93 CPA be served on the DPP and filed with the Court at least seven days before the application is to be heard; or
- (d) the hearing of a contested s 91 CPA application or s 93 CPA application; or
- (e) the setting down of committal proceedings for hearing.

3.3 The Court may make such further orders as it thinks fit.

4. Case Management at the 2nd appearance where brief served and accused is legally represented

4.1 The following practice directions are to apply only where an adult accused is legally represented by a barrister or a solicitor and a plea of guilty has not been entered:

- (a) the legal representative of the accused must inform the Court whether a legal representative of the accused will attend a Conference. Where an accused will not attend a Conference the Court will proceed in accordance with Paragraph 3 above.
- (b) Upon being informed that the legal representative of the accused will attend a Conference the Court will:
 - (i) Order that a Conference be held within forty-two (42) days unless compelling circumstances exist in the interests of justice for a later date.
 - (ii) Order that in the event of agreement between the parties as to a plea of guilty at any time the parties have liberty to restore the matter to the list.
 - (iii) Order that in the event of agreement not being reached at a Conference, any submissions by the accused in support of an application for a direction under s 91 or s 93 CPA are to be in writing, served on the DPP and filed with the Court not more than seven (7) days after a Conference.

- (iv) The DPP to respond within seven (7) days of being served with those submissions
- (v) Adjourn the proceedings for a period not more than eight weeks or for such time as the Court considers appropriate in the interests of justice (the adjournment date).

4.2 The committal hearing will not be adjourned to another date to allow such a Conference to be held.

4.3 Failure to comply with orders under 4.1(b)(iii) and (iv) may result in the Court refusing to make a second or subsequent order without cause being shown. In such case the matter may proceed by way of paper committal, with or without submissions.

4.4 Where a Court makes a second or subsequent order, it may consider an order for costs against the defaulting party in accordance with section 118 of the *Criminal Procedure Act 1986*.

4.5 This item does not apply where the accused is charged with a Commonwealth offence.

5. Case management on the adjournment date

Failure by the accused or the accused's legal representative to attend at a Conference will not entitle the accused to an adjournment unless compelling circumstances exist in the interests of justice.

5.1 On the adjournment date, the Court may proceed with;

- (a) a committal for sentence or hearing of a plea of guilty where an election to proceed on indictment is withdrawn; or
- (b) the hearing of committal proceedings either by paper committal or waiver; or
- (c) the setting down for hearing of a contested s 91 CPA application or an application to which s 93 CPA (special reasons) applies at the earliest available opportunity. The Court may order that any submissions by the accused in support of an application for a direction under s 91 CPA or s 93 CPA be served on the DPP and filed with the Court at least seven days before the application is to be heard; or
- (d) the hearing of a contested s 91 CPA application or s 93 CPA application; or
- (e) the setting down of the committal proceedings for hearing.

5.2 The Court may make such further orders as it thinks fit.

6. Listing of committal proceedings for hearing in the Local Court

Subject to the interests of justice, committal proceedings are to be completed as expeditiously as possible to enable the transfer, if appropriate, of these cases to either the Supreme or District Court.

7. Adjournments

No variations of the above procedural timetable will be granted unless compelling circumstances exist in the interests of justice.

Graeme Henson
Chief Magistrate

Criminal Case Processing – B

Process of Matters through the Local Court *other than* Downing Centre and Central

First Appearance

If matter is Table 1

- Matter adjourned for not less than 14 days for Election to be made.
- No brief service orders made.

If Strictly Indictable or election made

- At first appearance (not necessarily first DPP appearance): Brief service orders made – 6 weeks
- Adjourned for **not less than 7 weeks** for review

Second Appearance¹ – does not apply to Commonwealth matters or unrepresented parties

If accused informs court they are **not participating** in a conference² then usual committal proceedings continue.

If accused **is participating**, matter adjourned for **eight weeks**:

- Conference within 28 days of second appearance.
- Liberty to restore to list if plea negotiated
- If not negotiated, defence to serve 91/93 application submissions on DPP within 7 days after conference
- DPP to reply 7 days after that

Third Appearance

Matter proceeds in Local Court or as Paper Committal for Sentence or Trial or 91/93 Application determined by the Court:

- If granted: matter adjourned for Committal Hearing
- If refused: matter proceeds as Paper Committal for Trial

Fourth Appearance: Committal Hearing

Only applies where the Court has made orders under sections 91 or 93.

Notes

- *Participation in the conference is not compulsory.*
- *Unrepresented accused may not participate in a conference.*

¹ Assumes brief served – otherwise, further brief service orders to be made

² Or accused is not legally represented, paragraph 3 applies

CRIMINAL CASE CONFERENCING
Statement of effect of legislation and accused person's rights
Section 10(2) Criminal Case Conferencing Trial Act 2008

To the Defendant:

Statement

Compulsory conferences

A compulsory conference is to be held in relation to the offence with which you have been charged.

Purpose of compulsory conference

The purpose of the compulsory conference is to determine whether there is any offence or are any offences to which you are prepared to plead guilty and whether you and the prosecution can reach agreement on certain other matters, such as the details of the agreed facts and facts in dispute in relation to any offence to which you have offered to plead guilty.

Who must attend the compulsory conference

Your legal representative and an officer from the Office of the Director of Public Prosecutions representing the prosecution are to attend the compulsory conference.

Documents to be provided to your legal representative

The prosecution must give a brief of evidence and then a pre-conference disclosure certificate to your legal representative before the holding of the compulsory conference. Those documents will outline the offence or offences with which you have been charged and the prosecution's case in relation to those offences.

Holding of compulsory conference

If you don't plead guilty, the pre-conference disclosure certificate will then be filed and the compulsory conference will be held.

If you plead guilty before the filing of the pre-conference disclosure certificate, the compulsory conference will not be held.

Outcome of compulsory conference

The prosecution and your legal representative will sign a compulsory conference certificate after the holding of the compulsory conference and that document will be filed with the court. The certificate will set out the offence or offences with which you have been charged and other matters arising from the compulsory conference, such as whether you offered to plead guilty to any offences and whether you or the prosecution rejected any such offers. It may also include whether you consider the brief of evidence to have been inadequate.

The compulsory conference certificate can only be used by a sentencing court for limited purposes.

Disclosing any information in a compulsory conference does not count as a pre-trial disclosure for the purposes of any additional sentence discounts.

Sentence discounts

Maximum sentence discount for guilty plea before committal for trial

If you plead guilty before being committed for trial, you are entitled to a 25% discount on your sentence for the guilty plea.

Maximum sentence discount for guilty plea after committal for trial

If you plead guilty at any time after being committed for trial, a court may discount your sentence by up to 12.5% for the guilty plea depending on how much of a benefit will result from you pleading guilty at that stage of the proceedings. If the court considers there is no benefit gained from the guilty plea at that stage, no discount for the guilty plea will be allowed.

In certain exceptional circumstances, you may be allowed a sentence discount of up to 25%.

Prosecutor may exclude offences

The prosecution may exclude any offence from the operation of the sentence discounting provisions by a notice in writing filed with the court at the same time as the pre-conference disclosure certificate. The prosecution can only exclude an offence if the prosecutor is satisfied that the case in question is an extreme case and there is a high probability of conviction.