



## LOCAL COURT PRACTICE NOTE NO. 1 of 2007

ISSUED: 1 February 2007

Re-issued pursuant to section 27 Local Court Act 2007

### **Procedures to be adopted for Committal hearings in the Local Court for proceedings commenced on or after 1 February 2007**

This Practice Note relates to matters that are either strictly indictable, to indictable offences listed in Table 1 to Schedule 1 of the *Criminal Procedure Act* 1986 (CPA) where an election has been made to proceed on indictment and Table 2 to Schedule 1 of the CPA where an election has been made by the prosecution to proceed on indictment. 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).

The aim of a Conference is to encourage early appropriate pleas of guilty, the resolution of any other matters relevant to sentence proceedings and to recognise the benefit of such pleas to the community and the accused. Conferences are not compulsory.

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

#### **Matters where Election to proceed on indictment to be considered pursuant to Criminal Procedure Act**

1. On first appearance, Table 1 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.
- 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.

#### **Strictly Indictable Matters, or matters where election made to proceed on indictment – 1<sup>st</sup> Appearance**

2. Case Management of matters being heard upon indictment from the first appearance date

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

2.2 The Court will adjourn the matter for not less than six weeks for service of the brief. .

2.3 The matter will be listed for further orders.

**3. Case Management at the - 2nd appearance where brief served:**

The accused must be at Court on this date even if legally represented unless otherwise excused. The accused if in custody must appear by AVL unless the Court otherwise directs.

3.1 The following practice directions are to apply only where the accused is not represented by a barrister or solicitor or the legal representative of the accused informs the Court that a legal representative of the accused will not attend a Conference.

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 s91 CPA application or an application to which s93 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 s91 CPA or s93 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 s91 CPA application or s93 CPA application; or

(e) the setting down of committal proceedings for hearing.

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

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

3.2 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.

- (b) Upon being informed that the legal representative of the accused will attend a Conference the Court will:
- (i) Order a Disclosure Certificate within fourteen (14) days.
  - (ii) Order that a Conference be held within twenty eight (28) days unless compelling circumstances exist in the interests of justice for a later date.
  - (iii) 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.
  - (iv) 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 s91 or s93 CPA are to be in writing, served on the DPP and filed with the Court not more that seven (7) days after a Conference.
  - (v) The DPP to respond within seven (7) days of being served with those submissions
  - (vi) 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).

3.3 Where the parties determine that a Conference may be more usefully held after a s91 or s93 application and on the day of committal hearing, the parties may ask the Court for the matter to be stood down on the day of the application or the committal hearing for a short period for this purpose.

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

#### **4. 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.

4.1 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 s91 CPA application or an application to which s93 CPA (special reasons) applies at the earliest available opportunity or may proceed to hear the application; or

(d) the setting down of the committal proceedings for hearing.

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

## **5. Listing of committal proceedings for hearing in the Local Court**

5.1 Committal proceedings are to be completed as expeditiously as possible to enable the transfer of these cases to either the Supreme or District Court.

5.2 If the matter is not finalised on the afternoon of the last day allocated for hearing, the case will proceed on the next sitting day of the Court until completed. All committal hearings listed for hearing within the metropolitan area are listed on this basis.

5.3 With this in mind, it is imperative that parties provide the Court with an accurate estimate of the time necessary for hearing of the matter.

## **6. Utilisation of Audio Visual Link (AVL) facilities**

6.1 Attention is drawn to s5BA(1)(a) of the Evidence (Audio and Audio Visual Links) Act, 1998. This section stipulates that after the initial appearance of the accused in custody, the accused who remains in custody must appear by AVL on the next occasion, unless the Court otherwise directs. There is no requirement for the accused or the legal representative to consent to this course. [Note that this provision does not apply to accused persons attending court cells in custody for the purposes of attending a Conference].

6.2 Where facilities exist to enable the appearance of accused persons in custody via AVL, this technology must be utilised.

6.3 It is imperative that the accused appear by AVL wherever possible. To facilitate this, the Court papers must be clearly endorsed with the letters "AVL" for the accused to appear by AVL on the next remand date. If required, an appropriate stamp for this purpose may be requested from the Registrar of the Court.

## **7. Adjournments**

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

This Practice Note commences on 1 February 2007 for proceedings commenced on or after 1 February 2007.

This Practice Note does not apply to Federal offences to which Practice Note 9/2003 continues to apply.

G.L. Henson  
CHIEF MAGISTRATE



