



LOCAL COURT PRACTICE NOTE NO. 3 of 2004

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CRIMINAL PROCEEDINGS INVOLVING CHILDREN AND INTELLECTUALLY IMPAIRED PERSONS AS WITNESSES

The purpose of this Practice Note is to ensure the timely management and expeditious hearing of criminal proceedings involving children and intellectually impaired persons as witnesses and to ensure such witnesses are afforded protection available under the *Criminal Procedure Act 1986* and other relevant legislation as are appropriate in the circumstances of each case.

In criminal proceedings involving a **witness who is a vulnerable person for the purposes of the provisions of the *Criminal Procedure Act 1986*** the following shall apply:

1. The parties obligation to notify the Court

On the date listed for reply following the service of the brief of evidence on the defendant, the parties are to notify the Court that the proceedings involve a witness who is a vulnerable person for the purposes of the provisions of the *Criminal Procedure Act 1986*.

2. Directions to be made by the Court – recordings of interviews with vulnerable persons.

The Court will make such directions as are appropriate to ensure:

- a) that arrangements are made, where necessary, to facilitate the giving of evidence in chief by the vulnerable witness in the form of a recording of the vulnerable witness' initial investigative interview, in accordance with the provisions of S76 of the *Criminal Procedure Act 1986*. In particular, the directions should include as necessary:
 - i) that the prosecution serve a notice of intention to adduce a recorded interview in accordance with s19E of the *Criminal Procedure Regulations 2005* not less than 14 days before the summary trial/committal hearing is to commence;

- ii) that the defence serve a notice of intention to access a recorded interview in accordance with clause s19F of the *Criminal Procedure Regulations* 2005 not less than 7 days before the summary trial/committal hearing is to commence;
 - iii) that the responsible authority provide access to a recorded interview in accordance with s19F of the *Criminal Procedure Regulations* 2005 within 7 days of receiving notice of intention to access the recording.
- b) that where necessary, arrangements are made to facilitate editing of the recorded interview and any transcript of that interview as agreed between the parties or as directed by the Court.
 - c) that where necessary, an order is made under section 76 (2) *Criminal Procedure Act* 1986 to supply a transcript of the recorded interview to the Court.
 - d) that consideration, where necessary, is given to any order which may be made under section 306Y *Criminal Procedure Act* 1986 prohibiting the vulnerable witness from giving evidence by means of a recording.

It is to be noted that section 185 (5) *Criminal Procedure Act* 1986 provides that nothing in Division 2 *Criminal Procedure Act* 1986 requires the prosecutor to serve on the accused person a copy of the actual recording made by an investigating official of an interview with a vulnerable person.

3. Further Directions – CCTV Facilities or other arrangements

The Court will make such directions as are appropriate to ensure:

- a) that arrangements are made to facilitate the giving of evidence by the vulnerable witness by:
 - i) closed circuit television or other similar technology; or
 - ii) using screens or planned seating arrangements where closed circuit television facilities are not available;
 in accordance with the provisions of Division 4 of the *Criminal Procedure Act* 1986.
- b) that consideration, where necessary, is given to any order which may be made under section 306ZB of the *Criminal Procedure Act* 1986 prohibiting the vulnerable witness from giving evidence by means of closed-circuit television facilities or any other similar technology.

It is to be noted that the Court may only make such an order if it is satisfied that it is not in the interest of justice for the vulnerable person's evidence to be given by such means or that the urgency of the matter makes their use inappropriate.

- c) the presence of a court officer and/or an interpreter, in accordance with section 306ZD of the *Criminal Procedure Act* 1986, if the vulnerable witness will be giving evidence from a location outside a Court;

- d) the presence of a supportive person or persons near the vulnerable witness and within the vulnerable person's sight when giving evidence, in accordance with section 306ZK of the *Criminal Procedure Act 1986*;
- e) that if identification evidence is to be given by the vulnerable witness, arrangements are in place to facilitate the giving of such evidence in accordance with section 306ZE of the *Criminal Procedure Act 1986*;
- f) that, where necessary, arrangements are in place to facilitate the presentation of exhibits or images of those exhibits if the vulnerable witness will be giving evidence from a location outside a Court.

4. Further Directions – accused unrepresented

The Court will make such directions as are appropriate to ensure that if the accused is to be unrepresented at the hearing, a person is appointed to ask the questions that the accused requests that person to put to a vulnerable witness in accordance with section 306ZL of the *Criminal Procedure Act 1986*, subject to the exception set out in that section. **It is to be noted that in sexual offence proceedings, section 294A of the *Criminal Procedure Act 1986*, which is a mandatory provision, will be applicable.**

5. Committal Hearings

It is to be noted that a direction may not be given under section 91 *Criminal Procedure Act 1986* requiring the attendance of the complainant in proceedings for a child sexual assault offence if the complainant was under the age of 16 years at the time of the alleged offence and is currently under the age of 18 years.

This Practice Note commences on 20 September 2004

Graeme Henson
Chief Magistrate