



LOCAL COURT PRACTICE NOTE NO. 4 of 2008

ISSUED: 29 April 2008

REISSUED: 9 May 2008

REISSUED: 5 May 2009

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 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 July 2010 (irrespective of whether the offence was committed before or after 1 May 2008) and supersedes Practice Note 1 of 2007 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 Commonwealth offences or 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 July 2010 (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*.

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 in accordance with section 8 of the *Criminal Case Conferencing Act 2008*.

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*

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

2.4 The matter will be listed for further orders.

3. Case Management at the 2nd appearance where brief served and accused not legally represented

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.

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 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 will 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 s91 or s93 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.

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 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 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

6.1 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.

6.2 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.

6.3 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.

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*

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 made
- Explanation of Compulsory Case Conference
- Adjourned for **not less than 6 weeks** for service of the brief

Second Appearance¹

Accused must participate in a conference²

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.*

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

² 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 July 2010 (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**).

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 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 and accused is not legally represented

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 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.

3.3 The Court may make such further orders at 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 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.
 - (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.

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 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 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

6.1 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.

6.2 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.

6.3 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.

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
- Adjourned for **not less than 6 weeks** for service of the brief

Second Appearance¹

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