



Local Court of New South Wales

PRACTICE NOTE NO. 7 of 2007

ISSUED: 9 November 2007

Re-issued pursuant to section 27 Local Court Act 2007

## **LISTING PROCEDURE FOR SUMMARY CRIMINAL TRIALS**

This Practice Note applies where a plea of not guilty is entered in respect of proceedings for summary offences, including proceedings for indictable offences that are being dealt with summarily. It applies to proceedings commenced after the enactment of the Criminal Procedure Amendment (Local Court Process Reforms) Act 2007. Practice Note No. 2/2004 no longer applies to this category of proceedings.

The objects of the Practice Note are to ensure summary criminal trials are heard within the Local Court's published time standards and to avoid unnecessary attendance at Court of prosecution witnesses who are not required for cross-examination.

To achieve these objects, the following practice directions are to apply:

### **1. Table 1 matters where Election to proceed on indictment to be considered pursuant to the Criminal Procedure Act 1986**

- 1.1 On first appearance, if there is no decision as to whether or not an Election is to be made in Table 1 matters, such 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 and an order made for a copy of the person's criminal record (known to the prosecutor) to be served on the Accused Person. In such circumstances, no brief orders are to be made other than in accordance with this Practice Note.
- 1.2 If a plea of not guilty is indicated on the first appearance despite the fact that no Election has been made by the prosecution, the court may

proceed to order a Brief of Evidence in accordance with this Practice Note.

1.3 If an election is made, the matter is to proceed in accordance with Practice Note 4 of 2008.

1.4 If no Election is made, the proceedings are to be dealt with summarily.

## **2. Procedure for ordering Briefs in matters that proceed summarily**

2.1 If the accused enters a plea of not guilty, a Magistrate or the Registrar is to fix a timetable for service of the prosecution brief of evidence upon the accused in all matters other than those mentioned in clause 24 of the Criminal Procedure Regulation 2005, which do not require a brief of evidence.

2.2 Where a plea of not guilty is entered in relation to a matter mentioned in clause 24 of the Criminal Procedure Regulation 2005 as a matter for which a brief of evidence is not required, the matter is to be listed for hearing without requiring the prosecution to serve a brief.

2.3 Where a plea of not guilty is entered in relation to a Table 2 matter, or a summary offence to which a period of imprisonment applies, the brief need not include certain prescribed statements in accordance with clause 24A of the Criminal Procedure Regulation 2005. Under clause 24A(6) reasons must be given where a Magistrate orders, on the application of the accused, that a prescribed statement be included in the brief. Proceedings should not be further adjourned for the service of prescribed statements. Those statements should be served in accordance with section 183(3) of the Criminal Procedure Act.

2.4 Service is to be effected upon the accused in accordance with the provisions of the Local Courts (Criminal and Applications Procedure) Rule 2003.

2.5 Unless the Court considers otherwise, the period allowed for service of the brief shall be not less than 4 weeks from the date of the making of the order.

2.6 Where a brief of any type is ordered, unless the Court otherwise orders, the matter should be listed to fix a date for hearing, 14 days after the date for the service of the brief.

2.7 Unless the interests of justice otherwise dictate, failure by the prosecution to comply with the order of the Court for service of the brief will not of itself be regarded as a reason to grant a further adjournment for the sole purpose of allowing additional time for service. Where a plea of not guilty is confirmed, the Court will list the matter for hearing and make a consequential order that the balance of the brief be served not less than 14 days prior to the allocated hearing date.

3. A Brief of Evidence must include a "Court Listing Advice" listing the statements contained within the Brief in the form attached to this Practice Note.

4. The following further practice directions are to apply *only where the accused is represented by a barrister or a solicitor*.
  - 4.1 To assist in the prompt and effective service of the brief the legal representative of the accused at the time of the making of the brief order is to complete, sign and hand to the prosecutor and to the Court, a Notice of Appearance. The form of the Notice of Appearance is that attached to this Practice Note.
  - 4.2 Upon the adjourned date, in the event that a plea of not guilty is adhered to, the legal representative of the accused is to hand to the Court and to the prosecutor a completed Local Court Listing Advice.
  - 4.3 The prosecution is required only to call at the hearing those witnesses nominated for cross-examination on the Listing Advice. A notation on the Listing Advice Form by the legal representative of the accused that a witness is not required to be called for cross-examination does not prevent the prosecution calling that witness in the prosecution case if the prosecutor is of the opinion the witness is required. The remainder of the brief of evidence must be tendered by the prosecution in its case.
5. Where it is satisfied that a party has incurred additional costs because of the unreasonable conduct or delays of another party, the court may order that other party to pay such costs as it may determine.<sup>1</sup>

This Practice Note does not operate to make a written statement or any part of the written statement admissible if it is not otherwise admissible.

This amended Practice Note commences on 12 November 2007.

Graeme Henson  
**Chief Magistrate**

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<sup>1</sup> S. 216 Criminal Procedure Act

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# LOCAL COURT LISTING ADVICE

(IMPORTANT – Where the accused person is represented by a barrister or solicitor a completed and signed copy of this document must be given to the Court and the prosecutor on the return date)

<b>CASE:</b>	<b>POLICE v</b>			
<b>CHARGE/SUMMONS REFERENCE NUMBER:</b>				
<b>FOR MENTION:</b>		<b>LOCAL COURT //</b>		
<b>PNG:</b>	<b>CONFIRMED</b>	<b>WITHDRAWN</b>		
<b>STATEMENT IN POLICE BRIEF</b>		<b>WITNESS REQUIRED FOR CROSS-EXAMINATION</b>		<small>IF WITNESS NOT REQUIRED FOR CROSS EXAMINATION IS THE TENDER OF THE STATEMENT CONSENTED TO</small>
<b>1.</b>	<b>YES</b>	<b>NO</b>	<b>YES</b>	<b>NO</b>
<b>2.</b>	<b>YES</b>	<b>NO</b>	<b>YES</b>	<b>NO</b>
<b>3.</b>	<b>YES</b>	<b>NO</b>	<b>YES</b>	<b>NO</b>
<b>4.</b>	<b>YES</b>	<b>NO</b>	<b>YES</b>	<b>NO</b>
<b>5.</b>	<b>YES</b>	<b>NO</b>	<b>YES</b>	<b>NO</b>
<b>6.</b>	<b>YES</b>	<b>NO</b>	<b>YES</b>	<b>NO</b>
<b>7.</b>	<b>YES</b>	<b>NO</b>	<b>YES</b>	<b>NO</b>
<b>8.</b>	<b>YES</b>	<b>NO</b>	<b>YES</b>	<b>NO</b>
<b>9.</b>	<b>YES</b>	<b>NO</b>	<b>YES</b>	<b>NO</b>
<b>10.</b>	<b>YES</b>	<b>NO</b>	<b>YES</b>	<b>NO</b>
<b>11.</b>	<b>YES</b>	<b>NO</b>	<b>YES</b>	<b>NO</b>
<b>12.</b>	<b>YES</b>	<b>NO</b>	<b>YES</b>	<b>NO</b>
<b>13.</b>	<b>YES</b>	<b>NO</b>	<b>YES</b>	<b>NO</b>
<b>14.</b>	<b>YES</b>	<b>NO</b>	<b>YES</b>	<b>NO</b>
<b>15.</b>	<b>YES</b>	<b>NO</b>	<b>YES</b>	<b>NO</b>
<b>ESTIMATED DURATION OF HEARING</b>		<b>HOURS</b>		
<b>NUMBER OF DEFENCE WITNESSES</b>				
<b>IS AN INTERPRETER REQUIRED?</b>	<b>YES</b>		<b>NO</b>	
<b>WHAT LANGUAGE?</b>				
<b>IS CCTV COURT REQUIRED?</b>	<b>YES</b>		<b>NO</b>	
<b>NOTICE, REG 5 EVIDENCE (CHILDREN) ACT GIVEN?</b>	<b>YES</b>		<b>NO</b>	
<b>ACCUSED PERSON'S SOLICITOR / COUNSEL SIGNATURE AND NAME</b>				
<b>CONTACT PHONE NUMBER</b>				

PRACTICE NOTE 7/2007

NOTICE OF APPEARANCE IN SUMMARY  
CRIMINAL TRIALS

In the Local Court at: \_\_\_\_\_

I advise I appear on behalf of (name) \_\_\_\_\_

In the matter of Police v \_\_\_\_\_

Police "H" Number reference \_\_\_\_\_

Listed on \_\_\_\_\_

NAME of Legal Representative \_\_\_\_\_

FIRM OF SOLICITORS \_\_\_\_\_

\_\_\_\_\_

Telephone \_\_\_\_\_

Fax Number \_\_\_\_\_

Email \_\_\_\_\_

SERVICE OF BRIEF DIRECTIONS

I hereby consent that the written statements and copies of proposed exhibits be served on the accused person in the above case by:

- 1) Facsimile transmission to the legal representative to the above fax number

OR

- 2) Emailing it to the legal representative to the above email address

OR

- 3) Posting it to the legal representative to the above postal address

OR

- 4) Leaving it at the address of the legal representative at the above address

\_\_\_\_\_  
(Signature of Legal Representative)