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ELODGEMENT APPLICATION & EXCEPTIONS

1. What to File, What NOT to File, and How to File

1.1. The requirement in this Practice Note to file documents via [eLodgement](#) **only** applies to:

(a) Melbourne matters:

- (i) All Plea, Trial, Contravention and Supervision Order matters with a CR-15 (or later) case number;
- (ii) All active Plea, Trial and Supervision Order matters with a CR-14 case number¹; and
- (iii) All Appeal and Contravention files with a case number of AP-16-1800 or later.

(b) Circuit matters:

- (i) All Plea, Trial, Contravention and Supervision Order matters with a CR-14 or later case number; and
- (ii) All Appeal and Contravention files with a case number of AP-16-1800 or later.

1.2. For Melbourne matters with a CR-14 case number that does not validate on the eLodgment portal, any Circuit or Melbourne matter with a CR-13 or earlier case number and for all Appeal files with a case number of AP-16-1799 or earlier any requirement in this Practice Note to file must be done by emailing the Criminal Registry and not via eLodgement.

What not to file via eLodgement

1.3. The following documents should not be lodged via [eLodgement](#):

- (a) Signed Indictments – must be filed in open court
- (b) Draft Warrants – must be emailed to the relevant Associate
- (c) Executed Warrants – must be handed up in open court
- (d) Any charge that is required to be issued by the court – must be filed with the Criminal Registry in person
- (e) Commonwealth Depositions – may be delivered or handed to the Criminal Registry

¹ For 'CR-14' Contravention Hearings, please contact the Criminal Registry to check whether the particular case can be eLodged.

- (f) Voluminous material produced pursuant to a subpoena – may be delivered or handed to the Criminal Registry
- (g) Affidavit and supporting material in Supervision Order proceedings – may be delivered or handed to the Criminal Registry
- (h) Subpoenas requiring urgent/short service - may be delivered or handed to the Criminal Registry
- (i) Notice of an Application for a Suppression order – see [Suppression Order chapter](#)

Self-Represented Litigants

- 1.4. The requirement to file via [eLodgement](#) does not apply to a self-represented accused person. A self-represented person may file documents with the County Court in person or via postal delivery to the County Court of Victoria, 250 William Street, Melbourne, VIC, 3000, or with the relevant circuit Court registry.

Voluminous documents

- 1.5. The requirement to file via [eLodgement](#) does not apply where documents to be filed with the Court are voluminous. In such cases, contact should be made with the Registry so that other arrangements can be made.

COMMITTED FOR TRIAL: PLEA OF NOT GUILTY

2. Initial Directions Hearing (Melbourne Matters)

- 2.1. Upon an accused being committed for trial on charges (that do not include a sexual offence involving a child/cognitively impaired complainant) the matter will be listed for a 24 hr Initial Directions Hearing (IDH) on the next sitting day (or later the same day if requested and possible).
- 2.2. Where the matter does not involve a sexual offence the 24hr IDH will be listed in the General List Court at 9AM usually in Court 2-9, however parties should check the [Crime & Appeals Daily List](#) for the allocated courtroom.
- 2.3. Where a matter involves a sexual offence the 24hr IDH will be listed at 9AM in the Sexual Offences List usually in Court 2-10, however parties should check the [Crime & Appeals Daily List](#) for the allocated courtroom.

Filing Requirements

- 2.4. The Prosecution **must** file the Police Summary [via eLodgement](#):
 - (a) No later than 4:30PM on the same day where an accused is committed before 4:15PM; or
 - (b) No later than 8:45AM on the day of the IDH where an accused is committed after 4:15PM.
- 2.5. The Defence **must** file a [Notice that Legal Practitioner Acts](#) via [eLodgement](#) and serve a copy on the Prosecution:
 - (a) No later than 8:45AM on the day of the IDH.

Appearances

- 2.6. The practitioner who appeared at the committal **must** appear at the IDH. Both parties must be fully familiar with the matter.
- 2.7. Practitioners are not required to robe for IDHs.
- 2.8. A practitioner may request to appear via video link, and should contact the Video Link Coordinator on (03) 8636 6521 or via email at videolinks@countycourt.vic.gov.au for all enquiries and bookings. [[see Video links](#)]
- 2.9. All accused **must** attend the IDH:
 - (a) Accused in custody must attend IDHs by way of video link unless the accused is committed after 4:30PM, the Court orders otherwise, or a party makes a request to attend in person [[see Video links](#)].

IDH Questions

2.10. Both parties **must** be prepared to answer the following questions (non-exhaustive list):

- (a) Are all counsel same as at the committal yesterday?
- (b) How long did the committal run?
- (c) Did all required witnesses attend?
- (d) What are the factual issues in dispute?
- (e) What is not in dispute?
- (f) How can the prosecution and defence narrow the issues in dispute?
- (g) Have any plea offers been made or will be made?
- (h) Have discussions been had with a Crown Prosecutor?
- (i) Are there any outstanding disclosure issues?
- (j) Are there any co-accused, and if so what is their status?
- (k) The admissions, if any, likely to be sought and/or offered?
- (l) Do the Defence propose to file an Alibi notice?
- (m) Was the question of fitness of the accused to stand trial reserved at committal or is it an issue in this proceeding?
- (n) Are there any issues in relation to obtaining psychiatric reports as to fitness to stand trial or mental impairment?
- (o) The possibility of an application for a suppression order or like orders by the Prosecution or Defence, or both?

If the matter will proceed as a trial:

- (a) How many witnesses, including any expert witness issues?
- (b) Are there any overseas witnesses?
- (c) Do any witnesses require s.18 or s.128 advice?
- (d) Will an application be made for any witnesses to give evidence by alternative arrangements such as a video link, remote room or from behind a screen in the courtroom?
- (e) Are there any reasons for a priority listing?
- (f) Will there be any application for severance?

- (g) Trial estimate and how was this arrived at?
- (h) Will any Evidence Act notices be served? If so, which ones?
- (i) Will any subpoenas be sought?
- (j) Any pre-trial issues?
- (k) Is funding in place?
- (l) Is the accused currently remanded to, or serving sentence in a youth justice facility?

If the matter involves a sexual offence:

- (a) Any pre-trial issues and defence applications relating to whether:
 - (i) Competency and/or cognitive impairment of the complainant is in issue, and if so, whether expert evidence is to be relied upon by the defence;
 - (ii) An application will be made for the separate trial of any accused or any charge;
 - (iii) An application will be made pursuant to section 342 of the CPA for leave to cross-examine the complainant as to her or his sexual activities;
 - (iv) Will any evidence, (and if so which evidence) sought to be relied upon by the Prosecution (e.g. including an application to exclude evidence of a previous representation, tendency evidence, coincidence evidence, hearsay evidence, or all or part of any recording of evidence under Part 8.2 of the CPA) be objected to by the Defence;
 - (v) Whether there are documents which may need to be produced at the trial and whether such documents will need to be the subject of a subpoena, including where leave is required before the subpoena can be issued or documents produced (s 32C).

2.11. At the conclusion of the 24hr IDH the proceeding will either be:

- (a) Adjourned for Final Directions Hearing (if a Trial date is set); or
- (b) Adjourned for Further IDH or Mention.

2.12. In the event a Final Directions Hearing date is set the Court will generally make the '[Usual Orders](#)'. These are orders in relation to the filing of documents before the Final Directions Hearings. All parties are required to be familiar with these orders.

- 2.13. If evidence in support of an Alibi is sought to be relied on, the Defence **must** file [via eLodgement](#) within 14 days of the committal a [Notice of Alibi](#).

3. Initial Directions Hearing (Circuit matters)

- 3.1. Upon an accused being committed for trial to a circuit location on charges (that do not include a sexual offence involving a child/cognitively impaired complainant) the matter will be listed for a Directions Hearing in the next Circuit Directions Hearing list for that particular circuit location.

Filing Requirements

- 3.2. The Prosecution must file the Police Summary via eLodgement no later than 4:30PM the day after an accused is committed.
- 3.3. The Defence must file a Notice that Legal Practitioner Acts via eLodgement and serve a copy on the Prosecution no later than 4:30PM the day after an accused is committed.

Appearances

- 3.4. Both parties must be fully familiar with the matter.
- 3.5. Practitioners are not required to robe for Directions Hearings.
- 3.6. A practitioner may request to appear via video link, and should contact the Video Link Coordinator on (03) 8636 6521 or via email at videolinks@countycourt.vic.gov.au for all enquiries and bookings. [[see Video links](#)]
- 3.7. All accused on bail must attend the Directions Hearing but can appear from any County Court location.
- 3.8. Accused in custody are not required to attend the Directions Hearing in person or via video link unless the Court orders otherwise or at the written request of the parties.

4. Initial Directions Hearing (sexual offence – child/cognitively impaired complainant)

- 4.1. Upon an accused being committed for trial on sexual offences involving a child or cognitively impaired complainant the matter will be listed for an Initial Directions Hearing (IDH) within 14 days.
- 4.2. The IDH will be listed at 9AM in the Sexual Offences List usually in Court 2-10, however parties should check the [Crime & Appeals Daily List](#) for the allocated courtroom.

Filing Requirements

- 4.3. The Prosecution **must** file [via eLodgement](#), and serve on the Defence no later than 24 hours before the IDH, the:
 - (a) Draft Indictment;
 - (b) Summary of Prosecution Opening;
 - (c) [Prosecution Witness Information Sheet](#); and
 - (d) A [Family Violence Checklist](#). (where applicable)
- 4.4. The Prosecution **must** file in court at the IDH:
 - (a) The signed Indictment - unless an application for an extension of time for the filing of the Indictment is made. Such application must be filed [via eLodgement](#) no later than 24 hours before the IDH.
- 4.5. The Defence **must** file a [Notice that Legal Practitioner Acts](#) via [eLodgement](#) and serve a copy on the Prosecution:
 - (a) No later than 8:45AM on the day of the IDH.

Appearances

- 4.6. Both parties must be fully familiar with the matter.
- 4.7. Practitioners are not required to robe for IDHs
- 4.8. A practitioner may request to appear via video link, and should contact the Video Link Coordinator on (03) 8636 6521 or via email at videolinks@countycourt.vic.gov.au for all enquiries and bookings. [[see Video links](#)]
- 4.9. All accused **must** attend the IDH:
 - (a) Accused in custody **must** attend IDHs by way of video link unless the accused is committed after 4:30PM or the Court orders otherwise, or a party makes a request to attend in person [[see Video links](#)].

IDH Questions

4.10. Both parties must be prepared to answer the following questions (non-exhaustive list) whether:

- (a) How long did the committal run?
- (b) Did all required witnesses attend?
- (c) What are the factual issues in dispute?
- (d) What is not in dispute?
- (e) How can the prosecution and defence narrow the issues in dispute?
- (f) Have any plea offers been made or will be made?
- (g) Have discussions been had with a Crown Prosecutor?
- (h) Are there any outstanding disclosure issues?
- (i) Are there any co-accused, and if so what is their status?
- (j) The admissions, if any, likely to be sought and/or offered?
- (k) Do the Defence propose to file an Alibi notice?
- (l) Was the question of fitness of the accused to stand trial reserved at committal or is it an issue in this proceeding?
- (m) Are there any issues in relation to obtaining psychiatric reports as to fitness to stand trial or mental impairment?
- (n) The possibility of an application for non-publication or like orders by the Prosecution or Defence, or both?

If the matter will proceed as a trial:

- (a) How many witnesses, including any expert witness issues?
- (b) Will any complainant seek to be exempt from giving evidence by alternative arrangements?
- (c) Will leave be sought to lead direct evidence from a complainant whose evidence has previously been recorded?
- (d) Are there any overseas witnesses?
- (e) Do any witnesses require s.18 or s.128 advice?
- (f) Will an application be made for any witnesses to give evidence by alternative arrangements such as a video link, remote room or from behind a screen in the courtroom?

- (g) Are there any reasons for a priority listing?
- (h) Trial estimate and how was this arrived at?
- (i) Will any subpoenas be sought, including leave sought to issue subpoenas to compel the production of protected evidence (confidential communications)?
- (j) Will an application will be made to adduce recorded evidence at the trial (if so and these are external recordings, arrangements must be made to test these in court before the date they are to be used in a trial);
- (k) Does the prosecution propose to adduce any tendency evidence, coincidence evidence or hearsay evidence;
- (l) The issues that are likely to be in dispute at the trial;
- (m) Any pre-trial issues and defence applications relating to whether:
 - (i) Competency and/or cognitive impairment of the complainant is in issue, and if so, whether expert evidence is to be relied upon by the defence;
 - (ii) An application will be made for the separate trial of any accused or any charge;
 - (iii) An application will be made pursuant to section 342 of the CPA for leave to cross-examine the complainant as to her or his sexual activities;
 - (iv) Will any evidence, (and if so which evidence) sought to be relied upon by the Prosecution (e.g. including an application to exclude evidence of a previous representation, tendency evidence, coincidence evidence, hearsay evidence, or all or part of any recording of evidence under Part 8.2 of the CPA) be objected to by the Defence;
 - (v) Whether there are documents which may need to be produced at the trial and whether such documents will need to be the subject of a subpoena, including where leave is required before the subpoena can be issued or documents produced (s 32C).
- (n) Whether funding arrangements are in place for the trial.
- (o) Is the accused currently remanded to, or serving sentence in a youth justice facility?

4.11. At the conclusion of the IDH the proceeding will either be:

- (a) Adjourned for Final Directions Hearing (if a Trial date is set); or

(b) Adjourned for Further IDH.

- 4.12. In the event a Final Directions Hearing date is set the Court will generally make the '[Usual Orders](#)'. These are orders in relation to the filing of documents before the Final Directions Hearings. All parties are required to be familiar with these orders.

5. Depositions (and E-Depositions)

- 5.1. The Office of Public Prosecutions must file the depositions with the Court via e-Depositions and serve a copy on the accused as soon as practicable after the committal.
- 5.2. The Commonwealth Director of Public Prosecutions must file the depositions in hardcopy with the Criminal Registry and serve a copy on the accused as soon as practicable after the committal.

6. Final Directions Hearing

- 6.1. A Final Directions Hearing (FDH) will be fixed at an Initial Directions Hearing and will be held approximately 6-8 weeks before the day on which the trial is listed to commence.
- 6.2. Counsel briefed to appear at the trial **must** appear at the Final Directions Hearing.

Prosecution Filing Requirements

- 6.3. The Prosecution **must** file [via eLodgement](#) and serve on the Defence not less than 21 days before the FDH:
 - (a) The Draft Indictment which has a draft watermark (the original signed Indictment must be filed in Court during the FDH);
 - (b) The Summary of the Prosecution Opening;
 - (c) A full list of all pre-trial issues;
 - (d) A [Family Violence Checklist](#) (where applicable);
 - (e) Notice of Pre-Trial Admissions (see s 182 CPA);
 - (f) Evidence Act notices, if applicable, including full details of the evidence subject of the notice:
 - (i) Hearsay Notice (see s 67 EA);
 - (ii) Tendency Notice (see s 97 EA);
 - (iii) Coincidence Notice (see s 98 EA);
 - (iv) Evidence of Previous Representation Notice (see s 65 EA); and
 - (v) Expert Certificate as Opinion Evidence Notice (see s 177 EA).

Defence Filing Requirements

- 6.4. The Defence **must** file [via eLodgement](#) and serve on the Prosecution not less than 7 days before the FDH:
 - (a) A Defence Response to the Prosecution Opening;
 - (b) A full list of all pre-trial issues;
 - (c) Notice of Pre-trial Admissions (see s 183 CPA);
 - (d) Evidence Act notices, if applicable, including full details of the evidence subject of the notice:
 - (i) Hearsay Notice (see s 67 EA);

- (ii) Tendency Notice (see s 97 EA);
 - (iii) Coincidence Notice (see s 98 EA);
 - (iv) Evidence of Previous Representation Notice (see s 65 EA); and
 - (v) Expert Certificate as Opinion Evidence Notice (see s 177 EA).
- (e) Any statement of an expert witness intended to be called at the trial (see s 189 CPA)

FDH Questions

- 6.5. At the Final Directions Hearing both parties must inform the Court of any matter which may affect whether the trial is able to proceed on the day it is listed, including the following (non-exhaustive list):
- (a) Are there any plea discussions that have not yet been resolved?
 - (b) Have all requirements to disclose evidence been met?
 - (c) Have all issues concerning documents subject to, or proposed to be subject to, a subpoena been resolved?
 - (d) What are the pre-trial issues (must list all issues)?
 - (e) Are there any (further) pre-trial applications that will be made (e.g. application for leave to cross-examine the complainant as to his or her sexual activities, application to produce or adduce protected evidence under section 32C of the Evidence (Miscellaneous Provisions) Act 1958, application for a witness to be exempt from giving evidence under section 18 of the Evidence Act 2008)?
 - (f) Will any special arrangements be required for the trial (e.g. is an interpreter required, is a video link for an overseas witness required, are there any security issues)?
 - (g) Are all funding arrangements in place for the trial?
 - (h) Is there any other matter which may impact upon the trial commencing as listed (e.g. witness unavailability)?
 - (i) Current estimate for pre-trial hearing/s?
 - (i) In sexual offence matters involving a child or cognitively impaired complainant, current estimate for Special Hearings to be held before empanelment.
 - (j) Current estimate for the duration of the trial?
 - (k) Do any witnesses require independent legal advice?

Relinquishing a Brief before Trial

- 6.6. A legal practitioner may only relinquish a brief or withdraw from an agreement to appear for an accused within 7 days of the day on which the trial is due to commence with the leave of the Court.
- 6.7. Where a practitioner intends to relinquish a brief or withdraw they **must**:
 - (a) contact Criminal Registry via phone (03 8636 6570) immediately to list a Mention before the List Judge; and
 - (b) Advise the other party.

PLEA HEARING (Following Committal or Verdict)

7. Plea Hearing

- 7.1. Where an accused is committed for trial and has entered plea/s of guilty at the committal proceeding, the Magistrates' Court will be given a plea date by Criminal Registry and the accused will be remanded in custody or bailed to the Plea Hearing.
- 7.2. Where a jury has returned a verdict of guilty following a trial, the trial judge at the conclusion of the trial will list the matter for Plea Hearing on the next suitable date before the trial judge.
- 7.3. The requirements in this chapter apply whenever a matter has been listed for Plea Hearing, regardless of whether the accused entered a plea of guilty at committal or has been found guilty by a jury.
- 7.4. The Defence **must** contact Criminal Registry via phone (03 8636 6570) as soon as any issue in relation to funding comes to a practitioners attention which may prevent the Plea proceeding on the listed date so the matter can be listed for a funding mention before the List Judge.

Prosecution Filing Requirements

- 7.5. In every case where a matter has been listed for Plea Hearing, the Prosecution **must** file [via eLodgement](#), and serve on the Defence:
 - (a) At least 28 days before the plea date:
 - (i) The Draft Indictment (which has a draft watermark) (Not required for a plea post-verdict);
 - (ii) The Criminal Record (if any);
 - (iii) The Prosecution Opening upon Plea ([see below](#)) (Not required for a plea post-verdict); and
 - (iv) A chronology.
 - (b) At least 10 days before the plea date, where applicable:
 - (i) A [Family Violence Checklist](#);
 - (ii) Victim Impact Statement ([see below](#)); and
 - (iii) Copies of any ancillary orders sought.
 - (c) At least 2 days before the plea date:
 - (i) A Prosecution Response to Defence Submissions (if sought to be relied upon).

Prosecution Opening upon Plea

- 7.6. The Prosecution Opening upon Plea in addition to setting out the factual circumstances of the offending, **must** include:
- (a) The amount of pre-sentence detention (if any) as at the date of the plea;
 - (b) The status of any co-accused;
 - (c) Whether it is submitted that the offender is to be sentenced as a serious offender or a continuing criminal enterprise offender;
 - (d) Whether it is submitted that provisions imposing a minimum non-parole period are applicable (e.g. intentionally or recklessly causing serious injury in circumstances of gross violence, offences against an emergency worker on duty) and whether or not special reason should be found to exist;
 - (e) Whether it is submitted that a custodial sentence (other than a combination imprisonment and Community Corrections Order) pursuant to Division 2 of Part 3 of the *Sentencing Act 1991* must be imposed because the accused has been found guilty of a Category 1 offence pursuant to the *Sentencing Act 1991*;
 - (f) Whether it is submitted that a custodial sentence (other than a combination imprisonment and Community Corrections Order) pursuant to Division 2 of Part 3 of the *Sentencing Act 1991* must be imposed (unless certain circumstances exist), because the accused has been found guilty of a Category 2 offence pursuant to the *Sentencing Act 1991*; and
 - (g) Any ancillary orders which are sought by the Prosecution in addition to sentence (e.g. alcohol exclusion orders, Sex Offender Registration applications).
- 7.7. Where any of the matters set out in (c)-(e) above are applicable, the Prosecution Opening should include submissions regarding the matters said to support the application of the provisions and outline any evidence to be called in support of those matters.

Victim Impact Statements

- 7.8. The Prosecution **must** attach to the Victim Impact Statement:
- (a) A letter indicating whether the statements are to be tendered in written form, read by the prosecutor, read by the victim or whether application will be made for them to be read by another person. The Prosecution should also indicate if application is to be made for alternative arrangements for the giving of evidence.

- 7.9. Where it is proposed that a Victim Impact Statement or parts of a Victim Impact Statement are to be read aloud the Prosecution is to be mindful of the obligation to the Court under s 8Q(2) *Sentencing Act 1991* to ensure that only admissible parts are read aloud.
- 7.10. As soon as reasonably practicable after receiving a Victim Impact Statement, the Defence must inform the Prosecution of any objections to the admissibility of all or any part of it.
- 7.11. The Prosecution, in accordance with s 11 of the *Victims Charter Act 2006*, is to inform all victims about the process relating to the determination of an issue of admissibility of their victim impact statement.

Defence Filing Requirements

- 7.12. In every case where a matter has been listed for Plea Hearing, the defence **must** file via eLodgement, and serve on the Prosecution:
- (a) At least 14 days before the Plea date:
 - (i) An Expert Report (if applicable).²
 - (b) At least 5 days before the Plea date:
 - (i) A chronology; and
 - (ii) A Defence Outline of Submissions.

Defence Outline of Submissions

- 7.13. The Defence Outline of Submissions must set out in brief, concise and clear language:
- (a) What matters are relied upon in mitigation and the evidence that will be relied upon in support;
 - (b) A brief personal history of the accused in bullet point format;
 - (c) The disposition sought, and the basis on which this submission is made in bullet point format;
 - (d) Whether the amount of pre-sentence detention (if any) as at the date of the plea as calculated by the Prosecution is agreed; and
 - (e) An updated estimate as to the expected duration of the plea hearing; being either one hour, two hours, half a day or a full day.

² Refer also to the Supreme Court of Victoria Practice Note SC CR 7 'Sentencing Hearings: Expert Reports on Mental Functioning of Offenders', which is endorsed by the County Court.

- 7.14. In every case where a matter has been listed for Plea Hearing regardless of the offence charged, the Defence Outline of Submissions must specify if section A applies, and if so address the requirements as specified below.

A. Minimum Non-Parole Period

- 7.15. Where the Prosecution contends that a minimum non-parole period is applicable the Defence must address the following in its written submissions:

- (a) Whether it is conceded that the relevant provisions apply or the basis on which it is said the Prosecution has failed to establish the application of the provisions; and
- (b) Whether, and if so, on what basis special reason should be found to exist.

B. Imposition of a Custodial Sentence for Category 1 and 2 Offences

- 7.16. Where the prosecution contends that a custodial sentence (other than a combination imprisonment and Community Corrections Order) pursuant to Division 2 of Part 3 of the *Sentencing Act 1991* must be imposed because the accused has been found guilty of a Category 1 offence or a Category 2 offence (unless certain circumstances exist), the defence must address the following in its written submissions:

- (a) Whether it is conceded that the relevant provisions apply or the basis on which it is said the Prosecution has failed to establish the application of the provisions; and
- (b) Whether, and if so, on what basis the exceptions in s.5(2H)(a) – (e) of the *Sentencing Act 1991* are said to apply.

Other Matters

- 7.17. Practitioners are required to robe for Plea Hearings. Enquiries about whether practitioners ought to be wigged should be directed to the Plea Judge's Associate via [phone/email](#).

- 7.18. In addition to filing [via eLodgement](#), parties **must** bring the original and 2 copies of any document sought to be tendered to court.

- (a) 1 copy for the other party
- (b) 1 copy for the Judge

It is not the responsibility of court staff to make copies for practitioners.

- 7.19. Where a pre-sentence assessment is ordered, practitioners will be directed to the appropriate location by the Judge's Associate, and will receive a copy of the report when it is available.

APPLICATIONS

8. Bail

Application for Bail

- 8.1. Where the Defence intends to apply for bail for the first time in the County Court, they **must**:
- (a) Obtain the Prosecution's position to the application and any unsuitable dates for the hearing of the application.
 - (i) If opposed – obtain the estimated duration of the hearing;
 - (ii) If not opposed – discuss proposed conditions of bail,
 - (b) Contact Criminal Registry via phone (03 8636 6570) to obtain a date for the application. Criminal Registry will direct the party to the relevant Associate where appropriate. The party must advise Registry/Associate of:
 - (i) Whether the application is opposed or not;
 - (ii) Any unsuitable dates; and
 - (iii) The estimated duration, including the number of witnesses to be called.
 - (c) File an [Application for Bail](#) via [eLodgement](#) and serve on the Prosecution no later than 3 days before the hearing date. The Application must include:
 - (i) The applicable threshold (Prima Facie Entitled, Show Cause, Exceptional Circumstances);
 - (ii) The grounds in support of the application;
 - (iii) The details of any co-accused;
 - (iv) Whether the application is opposed or not; and
 - (v) The estimated duration of the hearing.
- 8.2. Attached to the application must be a Chronology.
- 8.3. Where the application is not opposed – the proposed conditions of Bail **must** be attached to the application and filed [via eLodgement](#).
- 8.4. Where a surety is proposed, the Defence must ensure all relevant documentation in support of the proposed surety amount is available on the listed hearing date and the surety is present at court for the application.

- 8.5. Where a surety is imposed by the Court, Criminal Registry will determine whether the documentation provided is adequate. The Defence are encouraged to make enquiries with Criminal Registry via phone (03 8636 6570) before the hearing of an application regarding adequate/correct surety documentation.
- 8.6. Where an applicant is granted bail, they will return to the County Court cells to be discharged from custody.

Application to Vary Bail

- 8.7. Where a party intends to apply to vary bail, they **must**:
- (a) Obtain the other party's position to the application and any unsuitable dates for the hearing of the application.
 - (i) If opposed – obtain the estimated duration of the hearing;
 - (ii) If not opposed – agree on proposed variation to the bail conditions.
 - (b) Contact Criminal Registry via phone (03 8636 6570) to obtain a date for the application. Criminal Registry will direct the party to the relevant Associate where appropriate. The party must advise Registry/Associate of:
 - (i) Whether the application is opposed or not;
 - (ii) Any unsuitable dates; and
 - (iii) The estimated duration.
- 8.8. File either:
- (a) [Defence Application to Vary Bail](#) or
 - (b) [Prosecution Application to Vary Bail](#)
- [via eLodgement](#) and serve on the other party no later than 3 days before the hearing date. The Application must include:
- (i) A copy of the current Bail Undertaking;
 - (ii) A list of the conditions which are sought to be varied, and how it is proposed they be varied;
 - (iii) The purpose of the variation sought;
 - (iv) Whether the application is opposed or not; and
 - (v) The estimated duration of the hearing.

- 8.9. Where a party seeks to vary bail, and a surety has been set, the party is required to file a [Notice to Surety](#) via [eLodgement](#) and serve a copy on the surety before the listing of the application.
- 8.10. Where any variation of bail is granted, including any suspension of conditions, the applicant will be required to enter into a fresh Bail Undertaking.
- 8.11. The party **must** also ensure the surety is present at court on the hearing of the application to vary bail, as the surety is required to sign the fresh Bail Undertaking.
- 8.12. In the event a surety cannot attend upon the application to vary bail, the party **must** file an [Affidavit](#) from the surety [via eLodgement](#) and serve a copy on the other party stating that the surety understands and consents to the variation sought.

Further Application for Bail

- 8.13. Where the Defence intends to make a further application for bail, where bail has previously been refused in the County Court, they **must**:
 - (a) Obtain the Prosecution's position to the application and any unsuitable dates for the hearing of the application.
 - (i) If opposed – obtain the estimated duration of the hearing;
 - (ii) If not opposed – discuss proposed conditions of bail,
 - (b) Contact Criminal Registry via phone (03 8636 6570) to obtain a date for the application. Criminal Registry will direct the party to the relevant Associate where appropriate. The party must advise Registry/Associate of:
 - (i) The name of the Judge who refused bail;
 - (ii) Whether the application is opposed or not;
 - (iii) Any unsuitable dates; and
 - (iv) The estimated duration, including the number of witnesses to be called.
 - (c) File a [Further Application for Bail](#) via [eLodgement](#) and serve on the Prosecution no later than 3 days before the hearing date. The Application must include:
 - (i) The date bail was refused;
 - (ii) The name of the Judge who refused bail;
 - (iii) The new facts and circumstances relied upon;

- (iv) Whether the application is opposed or not; and
 - (v) The estimated duration of the hearing.
- 8.14. Where the application is not opposed, the proposed conditions of Bail **must** be attached to the application when it is filed [via eLodgement](#).
- 8.15. Where a surety is proposed, the Defence must ensure all relevant documentation in support of the proposed surety amount is available on the listed hearing date and the surety is present at court for the application.
- 8.16. Where a surety is imposed by the Court, Criminal Registry will determine whether the documentation provided is adequate. The Defence are encouraged to make enquiries with Criminal Registry via phone (03 8636 6570) before the hearing of an application regarding adequate/correct surety documentation.
- 8.17. Where an applicant is granted bail, they will return to the County Court cells to be discharged from custody.

Application to Revoke Bail

- 8.18. Where the Prosecution intends to apply to revoke bail they **must**:
- (a) Obtain the Defence position to the application.
 - (b) Contact Criminal Registry via phone (03 8636 6570) to obtain a date for the application. Criminal Registry will direct the party to the relevant Associate where appropriate. The Prosecution must advise Registry/Associate of:
 - (i) Whether the application is opposed or not;
 - (ii) The estimated duration.
 - (c) File a Prosecution Application to Revoke Bail – (Bail Reg Form 13) [via eLodgement](#) and serve on the Defence before the hearing. The Application must include:
 - (i) A copy of the current Bail Undertaking;
 - (ii) The grounds in support of the application;
 - (iii) Whether it is proposed that the surety be forfeited under the *Crown Proceedings Act 1958*.

Filing of Prior Convictions

- 8.19. Regardless of whether or not the application is opposed, on any Application for Bail, Further Application for Bail, Application to Vary Bail or Application to Revoke Bail, the Prosecution must file with the Court

via [eLodgement](#) and serve on the Defence a current version of the Accused's prior convictions prior to the hearing.

9. Application for an Adjournment

9.1. Where a party to a proceeding intends to apply for an adjournment of a hearing they **must**:

(a) Obtain the position of the other party to the application (unless prohibited by an order of a court);

(b) Contact Criminal Registry via phone **as a matter of priority** (03 8636 6570) to obtain a date for the application and advise the court the matter will not be ready to proceed on the listed date. Criminal Registry will direct the party to the relevant Associate where appropriate;

(c) Complete [General Application](#) indicating:

(i) The current listed hearing sought to be adjourned;

(ii) Other party's position to the application;

(iii) The basis for the application;

(iv) Whether, if a Judge deems it appropriate, the application is sought to be determined on the papers or at a hearing;

(v) Whether the accused is in custody or on bail:

- If custody – is a video link required, or will the application proceed in the accused's absence;
- If bail – whether an order extending bail in the absence of the accused is sought.

(d) File the completed General Application form via [eLodgement](#) and serve a copy on the other party.

9.2. Any adjournment application must be filed **not later than 3 days before** the listed hearing date, unless unforeseen circumstances arise. In this situation the court may waive the notice requirements or strike out the application depending on the basis for the application and inability to comply with the notice requirement.

10. Application for a Warrant to Arrest

- 10.1. Where the Court issues a Warrant to Arrest, the Prosecution **must**:
 - (a) Email a draft copy of the warrant to the [Associate to the relevant Judge](#).
- 10.2. The Judge will sign the warrant, and have it returned to the Prosecution.
- 10.3. If there is a condition of surety attached to the Accused's bail, the Prosecution must bring this to the Judge's attention and if appropriate, make application for the forfeiture of the surety at the same time as the application for a warrant.

Return of Warrant

- 10.4. Where a warrant has been executed, at the next hearing the Prosecution must file the execution copy in court by handing it to the Judge's Associate.

11. Application for a Sentence Indication

- 11.1. An application for a Sentence Indication can only be made
- (a) After the Indictment has been filed; and
 - (b) With the consent of the Prosecution.
- 11.2. Where the Prosecution consent to the application, the Defence **must**:
- (a) Obtain from the Prosecution:
 - (i) The estimated duration of the hearing;
 - (ii) Any unsuitable dates for the listing of the application.
 - (b) Contact Criminal Registry via phone (03 8636 6570) to obtain a date for the application. Criminal Registry will direct the party to the relevant Associate where appropriate. The party must advise Registry/Associate of:
 - (i) Whether the Prosecution consent;
 - (ii) Any unsuitable dates; and
 - (iii) The estimated duration, including the number of witnesses to be called.

Defence Filing Requirements

- 11.3. The Defence **must** file [via eLodgement](#) and serve on the Prosecution at least 7 days before the hearing date a [General Application](#), which includes:
- (a) That the consent of the Prosecution has been obtained;
 - (b) The charge/s on the Indictment (or another charge/s) the accused would plead guilty to.
- 11.4. The Defence **must** file [via eLodgement](#) serve on the Prosecution at least 24 hours before the hearing date;
- (a) A brief Outline of Submissions setting out the facts or evidence upon which the defence seek to rely, including any mitigating factors that the defence is capable of proving at a plea hearing.

Prosecution Filing Requirements

- 11.5. The Prosecution **must** then file [via eLodgement](#) and serve on the Defence at least 3 days before the hearing date:
- (a) A list of which charges the requested Sentence Indication relates to, including any charges not included on the Indictment;

- (b) A summary of the agreed factual basis of the alleged offending upon which the application is to proceed;
- (c) A statement indicating whether the Prosecution will or will not submit that the Court should impose an immediate custodial sentence; and
- (d) The Criminal Record of the accused (if any).

12. Application to Take Evidence Before Trial

- 12.1. A party to a proceeding may make an application to the court at any time, except during the trial, for an order that the evidence of a person be taken before trial.
- 12.2. Where such an order is made upon the hearing of the application, a date will be set for the evidence of the person to be taken. The evidence will not be taken on the date of the application itself.
- 12.3. A party intending to apply for such an order **must**:
 - (a) Contact the other party to ascertain whether the application is opposed or not, and any unsuitable dates for the listing of the application
 - (b) Contact Criminal Registry via phone (03 8636 6570) to obtain a date for the application. Criminal Registry will direct the party to the relevant Associate where appropriate. The party must advise Registry/Associate of:
 - (i) The next listed hearing date (i.e. FDH or Trial date);
 - (ii) The other party's position on the application;
 - (iii) Any unsuitable dates;
 - (iv) The estimated duration of the application; and
 - (v) The estimated duration for the taking of the evidence.
 - (c) File an [Application to Take Evidence Before Trial](#) via [eLodgement](#) and serve a copy on the other party, which include the grounds for the order (see s 198 CPA)

13. Application for the Extension of the Time Limit for commencing trials for offences other than sexual offences

- 13.1. Section 211 of the *Criminal Procedure Act 2009* requires that a trial for an offence other than a sexual offence must commence either within 12 months of the committal date, or within 12 months of a direct Indictment being filed or within six months after the day on which the Court of Appeal orders a new trial.
- 13.2. If the trial is initially listed **outside** of the statutory time period, an application must be made by the Prosecution for an extension of time.
- 13.3. Where a trial is listed **within** the relevant statutory time period, and the trial is then adjourned by application of either party or by the Court's own motion, to a date outside the statutory period, an application must be made by the Prosecution for an extension of time.

14. Application for the Extension of the Time Limit for commencing sexual offence trials

- 14.1. Section 212(a) *Criminal Procedure Act 2009* requires that a trial for a sexual offence must commence within 3 months of the committal date.
- 14.2. The Court, acting on its own motion, will list an application for the extension of the time limit for the holding of sexual offences once a month in the Sexual Offences List usually in Court 2-10. This will occur on the first and/or last Thursday of each month. The applications will appear in the [Crime & Appeals Daily List](#).
- 14.3. Where the court is satisfied it is in the interests of justice to do so, it will direct an extension of the time limit and record this on an Extension of Time Directions List which will be sent to the Office of Public Prosecutions and the Commonwealth Director of Public Prosecutions on the day prior to these orders being made in Court.
- 14.4. The Office of Public Prosecutions and Commonwealth Director of Public Prosecutions are to each have a representative attend Court for their respective matters. The relevant Extension of Time order is to be read aloud and then the corresponding item number and page number are to be read aloud. The Sexual Offences List Judge will then certify that the order has been made against the corresponding item numbers and page numbers that were read aloud.
- 14.5. Other than as stated in 14.4, neither party, nor the accused is required to attend court for the determination of the application, but may attend if they wish.
- 14.6. If a party intends to be heard on an application, they must contact the Criminal Registry via phone (03 8636 6570) who will direct the party to the relevant Associate where appropriate.

15. Application to adduce confidential communications

15.1. A party who intends to *adduce* evidence which would disclose a confidential communication **must**:

(a) Advise the Sexual Offences List Judge at the Final Directions Hearing of their intention to do so. The party will be required to make an application before the Trial Judge to leave to adduce such evidence.

(b) File not less than 14 days before the Trial date (or as directed) [via eLodgement](#):

(i) an [Application for Leave to Adduce Evidence](#); and

(c) Serve not less than 14 days before the Trial date a copy of the Application on each party to the proceeding, the medical practitioner or counsellor and informant.

15.2. The Application must include:

(a) The date, time and place of the hearing;

(b) That the person receiving the notice may attend and/or be represented at the hearing; and

(c) Advice that the person receiving the notice (the producing party) may provide to the court a written outline of any objection.

(d) That if the producing party objects to material being adduced but does not wish to appear at the hearing of the application, they may send to the Court a brief outline of the reasons for their objection which the Court will provide to all parties by [email](#) to the Registry or by mail to 250 William Street Melbourne.

16. Application for an order requiring VLA to provide legal representation s 197 CPA

16.1. An accused intending to apply for an order requiring Victoria Legal Aid (VLA) to provide legal representation under section 197 of the CPA **must:**

(a) Contact Criminal Registry via phone on (03) 8636 6570 or the relevant circuit Court Registry to obtain a mention date for the application.

(b) Complete a [General Application](#) setting out:

(i) The date VLA declined to provide assistance;

(ii) Any internal VLA review sought, and the outcome;

(c) Attach a letter to the application from VLA indicating that VLA has declined to give legal assistance to the accused for the trial of the matter.

(d) No later than 7 days before the mention date file with the Registry and serve on the Prosecution and VLA a copy of the [General Application](#).

16.2. If VLA has declined to give the accused legal assistance on the ground that the accused has not met VLA's means test criteria, on the hearing of the application the accused **must:**

(a) Bring copies of all the documents that the accused relied upon in support of his or her application to VLA for legal assistance to court on the Mention date to provide to the Judge.

17. Applications for a Suppression Order (Open Courts Act 2013)

17.1. A party intending to apply for a suppression order **must**:

- (a) Obtain the other party's position to the application and any unsuitable dates for the hearing of the application.
 - (i) If opposed – obtain the estimated duration of the hearing;
 - (ii) If not opposed – agree on proposed terms of the order.
- (b) Contact Criminal Registry via phone (03 8636 6570) to obtain a date for the application. Criminal Registry will direct the party to the relevant Associate where appropriate. The party must advise Registry/Associate of:
 - (i) Whether the application is opposed or not;
 - (ii) Any unsuitable dates; and
 - (iii) The estimated duration.

Filing Requirements

17.2. The party applying for a suppression order **must**:

- (a) File at least 3 days before the application date a [Notice of Application](#) via [email](#) to the Criminal Registry.
- (b) Serve at least 3 days before the application date a copy of the [Notice of Application](#) on the other party to the proceeding.

17.3. Upon receipt of the Notice of Application, the Court's Strategic Communications Manager will email a copy of the Notice to recognised news media organisations and their lawyers.

17.4. As the notices themselves will be treated by the Court as open, non-confidential documents, if the identity of an applicant or any other aspect of an application is sought to be kept confidential the applicant will need to take such steps to that end.

17.5. If notice has not been given for the making of a suppression order, the court may still hear the application. However, this is **not the default position**. The onus is on the parties to demonstrate why the court should exercise its discretion to waive the notice requirement.

17.6. Where a Judge proposes to make a suppression order, the prosecution must be prepared to make submissions in terms of framing the order.

17.7. Once a suppression order has been made, the order will be provided to Registry and the Strategic Communications Manager to disseminate to

news media organisations and their lawyers. A copy of the order will also be posted on the relevant courtroom door for the duration of any hearing to which an order applies.

- 17.8. A person is taken to be aware that a suppression order or an interim order is in force if the court has electronically transmitted notice of the order to the person.
- 17.9. Any queries about suppression orders should be directed to the Strategic Communications Manager (Phone: 03 8636 6272 | media@countycourt.vic.gov.au)

18. Application to Uplift Unrelated Summary Charges

18.1. Where an accused is listed for a plea hearing and indicates an intention to plead guilty to an unrelated summary charge, the charge may upon application be uplifted from the Magistrates' Court and heard and determined in the County Court.

18.2. The Defence **must**:

(a) Contact Criminal Registry (on (03) 8636 6570) or the relevant circuit Court Registry to obtain a date for the application to uplift. An application to uplift unrelated summary charges **must** be listed at least 21 days before the Plea Hearing.

(b) Complete an [Application to Uplift](#) unrelated summary charges which must include:

(i) A list of the unrelated summary charges including the Magistrates' Court file number, venue and next mention date of each charge;

(ii) A statement about whether the accused is or is not on bail in relation to those charges; and

(iii) If the accused is on bail, a copy of the accused's bail undertakings in relation to each of those charges.

(c) File at least 7 days before the hearing date, the Application to uplift [via eLodgement](#) and serve a copy on the Prosecution.

18.3. The Prosecution **must**:

(a) File at least 3 days before the hearing date [via eLodgement](#)

(i) An agreed written summary of the factual basis for the charge(s) and serve a copy on the Defence.

18.4. Following an order to uplift the unrelated summary charges being made, the Defence is responsible for ensuring that the accused's bail, if any, in relation to each charge is varied or revoked in the Magistrates' Court.

19. Application to remit charges to the Magistrates' Court or Children's Court

- 19.1. Upon application by either party, related and unrelated summary charges which have been transferred to the County Court, as well as indictable offences triable summarily may be transferred back to the Magistrates' Court or Children's Court for determination.
- 19.2. Where a party intends to apply to have charges transferred back to the Magistrates' Court or Children's Court they **must**:
- (a) Obtain the position of the other party to the application; and
 - (b) Contact Criminal Registry via phone (03 8636 6570) to obtain a date for the Application. Applications by consent will usually be heard in the 9:00am General or Sexual Offences List. Contested Applications will usually be heard in the 10:30am General or Sexual Offences List; and
 - (c) Advise Registry whether the application is opposed or not; and
 - (d) File an [Application to Transfer Charges](#) to the Magistrates' Court or Children's Court via [via eLodgement](#) no later than 3 days before the hearing date.
 - (e) The Application must:
 - (i) Indicate whether the Application is to be made pursuant to s.168(1) or s.242(5) of the *Criminal Procedure Act 2009*;
 - (ii) Include the Indictment number and a copy of the Indictment (if an Indictment has been filed);
 - (iii) Include a copy of the charge sheets for those related or unrelated summary charges sought to be transferred;
 - (iv) Outline which charges are sought to be transferred and pursuant to which section of the *Criminal Procedure Act 2009*;
 - (v) State whether the charges are sought to be transferred to the Magistrates' Court or Children's Court and at which location; and
 - (vi) Provide the date to which the charges are to be adjourned to, if the Application is successful, if the date is known.

- 19.3. The Application must ensure that all charges the subject of Committal or Transfer Order are dealt with. Any charge that is not sought to be transferred to the Magistrates' Court or Children's Court must then be dealt with by the County Court either by way of Indictment or Notice of Related or Unrelated Summary Charges.

20. Application for Compensation under Section 85B Sentencing Act 1991

- 20.1. Applications for compensation orders under section 85B of the *Sentencing Act 1991* **must** be made within 12 months of conviction.
- 20.2. Where an applicant proposes to bring an application outside of 12 months since conviction, the applicant **must** apply for an extension of time for making the application.
- 20.3. A party intending to make an application for compensation **must**:
- (a) Contact Criminal Registry (on (03) 8636 6570) to obtain a date for the application. Criminal Registry will direct the party to the relevant Associate where appropriate
 - (b) Where the party is legally represented, file a [General Application](#) via [eLodgement](#) and comply with the time frames set out in [Attachment 5](#)
 - (c) Where the party is not legally represented file a [General Application](#) in person at Criminal Registry and comply with the time frames set out in [Attachment 5](#)

Application requirements

- 20.4. The Application must include:
- (a) The applicant's age and date of birth;
 - (b) The injury for which compensation is sought, including particulars of injury;
 - (c) The offence which directly resulted in the incurring of the claimed injury;
 - (d) Particulars of costs and expenses which the applicant seeks to recover;
 - (e) A copy of the Prosecution Opening (if available);
 - (f) A copy of the sentencing remarks (if available);
 - (g) Any "medical expenses" which the applicant seeks as defined in section 85A;
 - (h) Victims of Crime Assistance Tribunal Award (if applicable);
 - (i) A list of expert and other witnesses which the applicant intends to call; and

- (j) An address to which correspondence may be served.
- 20.5. Upon the application being filed, if the respondent is in custody, he/she must inform the court whether he/she wishes to attend in person at the hearing or by video link, so that the arrangements can be made, where the Judge deems such arrangements appropriate.
- 20.6. At the hearing of the Application, the Applicant must provide the Judge's Associate with a completed [Beneficiary Details Form](#). The details contained within this form ensure that payments made by the Respondent to the County Court are forwarded to the correct beneficiary. The personal details of the beneficiary must not be disclosed to the Respondent.

21. Applications for Costs / Compensation / Restitution / Reparation / Monetary Orders or where some Fines are Imposed

21.1. In the following cases, the Applicant or party to whom costs are awarded must complete the [Beneficiary Details Form](#) and provide the form to the Judge's Associate at the hearing of the Application:

- (a) Compensation Order;
- (b) Restitution Order;
- (c) Reparation Order;
- (d) Commonwealth fine;
- (e) Workcover fine;
- (f) Costs awarded to the Office of Public Prosecutions;
- (g) Commonwealth costs;
- (h) Costs awarded in appeals under the *Children, Youth and Families Act 2005*;
- (i) Federal costs;
- (j) Intervention Order costs;
- (k) Witness / Third Party costs; and
- (l) Chief Commissioner of Police costs.

21.2. The Beneficiary Details Form must not be provided to the Accused / Appellant / Respondent.

SUBPOENAS

22. General Subpoenas

22.1. A party who intends to issue a subpoena in a criminal proceeding, **must**:

(a) Determine whether the material sought may come within the definition of a '**confidential communication**' under section 32C *Evidence (Miscellaneous Provision) Act 1958*.

(b) If it does or might - [refer to subpoenas relating to confidential communications section](#).

(c) If not, follow the below procedure.

(i) Contact the Criminal Registry via phone (03 8636 6570) to obtain a date upon which application may be made for leave to inspect the documents.

(ii) Complete the [Subpoena](#) and [file it via eLodgement](#).

22.2. Unless a Judge orders otherwise, a subpoena **must** be made returnable:

(a) At least 3 days before the date provided by Registry for inspection;

(b) Where possible, before the Final Directions Hearing; and

(c) Well in advance of the listed Trial date.

22.3. The Court will seal the subpoena and email it back to the issuing party.

22.4. The issuing party **must** attach a [Notice and Declaration to the addressee](#) to the front of the sealed subpoena and may then serve it.

22.5. The party to whom the subpoena is addressed (the addressee) upon being served with the Subpoena and Notice must:

(a) Complete the Notice and Declaration referred to above; and

(b) Attach it to the subpoena

(c) Post/Deliver to the Court the subpoena (or copy) with the attached notice and the documents sought under the subpoena, unless objection is taken to the production of the documents on a legal basis, when a letter should be sent to the Court attached to the Subpoena and the Notice.

Short Service Subpoenas

22.6. A party who is seeking an order for short service should [complete the template](#) and provide it the judge in court when making the application.

23. Subpoenas relating to confidential communications

- 23.1. A party who intends to issue a subpoena in a criminal matter, likely to contain a confidential communication must list an application with court to obtain leave to compel production. The issuing party, **must**:
- (a) Contact the Associate to the Sexual Offences List via [email](#), no later than 8 weeks before the Trial date to obtain a hearing date for an application for leave to issue a subpoena.
 - (b) File not less than 14 days before the hearing date [via eLodgement](#):
 - (i) An [Application for Leave to Issue a Subpoena](#);
 - (ii) A brief outline of submissions in support of the application; and
 - (iii) A draft of the proposed subpoena.
 - (c) Serve not less than 14 days before the hearing date
 - (i) A copy the Application and draft subpoena on each party to the proceeding and informant;
 - (ii) A copy of the Application only on the medical practitioner or counsellor.
- 23.2. Where a party has listed an application for leave to issue a subpoena but no longer intends to pursue the application, and seeks to vacate the hearing date, the party must contact the Associate to the Sexual Offences List via [email](#) at least 5 days before to the hearing date and notify the other party to the proceeding, the producing party and the informant.
- 23.3. Upon the hearing of the Application, if leave to issue the subpoena is granted, the issuing party must then:
- (a) If not already ordered by the Judge granting leave to compel production, contact the Associate to the Sexual Offences List via [email](#) to obtain a date upon which an application may be made for leave to inspect the documents.
 - (b) Complete the [Subpoena](#) and [file it via eLodgement](#) along with a copy of the order granting leave.
- 23.4. Unless a Judge orders otherwise, the subpoena **must** be made returnable:
- (a) At least 3 days before the date provided by the Associate to the Sexual Offences List for inspection (production);
 - (b) Where possible, before the Final Directions Hearing; and

- (c) Well in advance of the listed Trial date.
- 23.5. The Court will seal the subpoena and email it back to the issuing party.
- 23.6. The issuing party **must** attach [Notice and Declaration to the addressee](#) to the front of the sealed subpoena and may then serve it.
- 23.7. The party to whom the subpoena is addressed (the addressee) upon being served with the Subpoena and Notice must:
 - (a) Complete the Notice and Declaration referred to above;
 - (b) Attach it to the subpoena;
 - (c) Attach a letter advising if the producing party wishes to attend the hearing and make submissions on whether leave should be granted to produce the documents for inspection, or attach a written outline of the producing party's submissions; and
 - (d) Post/Deliver to the Court the subpoena (or copy) with the attached notice and the documents sought under the subpoena.

Expert Evidence

24. Witness Code of Conduct

- 24.1. If a party to a proceeding intends to adduce expert evidence either orally or by way of report that party must, at the time of engaging the expert, provide the expert with a copy of the '[Expert Witness Code of Conduct](#)'.
- 24.2. Any expert report tendered must contain an acknowledgment that the expert has read and complied with the code in preparation of the report.
- 24.3. Practitioners must also be familiar with [PNCR 1-2014](#) which sets out comprehensively the requirements regarding expert evidence sought to be adduced in the County Court.
- 24.4. Specifically, practitioners must be aware that a party wishing to introduce expert evidence must:
 - (a) Where the report is a primary expert report, serve it on each other party as early as reasonably practicable and, in any event, **no less than 60 days before the trial** (or inquiry) is listed to commence;
 - (b) Where the report is a responding expert report, serve it on each other party as early as reasonably practicable and, in any event, **no less than 14 days before the trial** (or inquiry) is listed to commence; and
 - (c) At the time of service of the expert report, provide a copy of any photograph, plan or other document referred to in the report.
- 24.5. A party may not introduce expert evidence if that party has not complied with the above filing requirements, unless
 - (a) Every other party agrees; or
 - (b) The Court gives leave.

INTERLOCUTORY APPEALS

25. Interlocutory Appeals before Trial

- 25.1. If a party identifies an issue that is appropriate to be the subject a pre-trial ruling before the listed Trial Date, and the issue is of a kind that may lead to an interlocutory appeal, the party **must**:
- (a) Contact the other party and advise them of:
 - (i) The issue;
 - (ii) The proposed course (i.e. listing an application)
 - (b) Contact the Criminal Registry via phone (03 8636 6570) to advise the court. Criminal Registry will direct the party to the relevant Associate where appropriate.
- 25.2. These kinds of issues should be raised through the directions hearing process so that they may be resolved before the trial commences.
- 25.3. When an interlocutory decision is made and a party proposes to apply for an interlocutory appeal against the decision, the party must advise Criminal Registry and the Judge's Associate of that fact [via email](#) as soon as possible.
- 25.4. A party requesting certification of an interlocutory decision **must**:
- (a) Complete a [Request for Certificate for Interlocutory Appeal](#)
 - (i) The request **must** identify the interlocutory decision and the reasons why the decision should be certified (see s 295(3)(a) or (b) of the CPA).
 - (b) File the Request [via eLodgement](#) and serve on the other party.
- 25.5. If the Judge certifies the interlocutory decision for appeal, the party who obtained certification **must** notify [via email](#) the Registry and the Associate of the Judge who made the interlocutory decision of the following events as soon as practicable after they occur:
- (a) Filing of an application for leave to appeal under section 298 of the CPA;
 - (b) A decision by the Court of Appeal to grant or refuse leave;
 - (c) If leave is granted, the hearing date that is set for the appeal; and
 - (d) Any orders made by the Court of Appeal following the hearing.
- 25.6. If the Judge refuses to certify the interlocutory decision a party may apply for review of that decision with the Court of Appeal.

- 25.7. Where an application for review is filed with the Court of Appeal the party **must** notify Registry and the Judge's Associate of this fact [via email](#) as soon as is practicable.
- 25.8. Practitioners should be aware of the time limits which apply to filing an application for review (see s 296 CPA).

26. Interlocutory Appeals during the Trial

- 26.1. If an interlocutory decision is made during trial and a party proposes to apply for an interlocutory appeal against the decision, the party **must** advise the Court immediately of that possibility so that the trial Judge can give directions as to the conduct of the trial.
- 26.2. A party requesting certification of an interlocutory decision **must**:
- (a) Complete a [Request for Certificate for Interlocutory Appeal](#)
 - (i) The request **must** identify the interlocutory decision and the reasons why the decision should be certified (see s 295(3)(a) or (b) of the CPA).
 - (b) File the Request by giving it to the Trial Judge's Associate and immediately serve it on the other party.
- 26.3. If the Judge certifies the interlocutory decision for appeal, the party who obtained certification **must** notify [via email](#) the Registry and the Associate of the Judge who made the interlocutory decision of the following events as soon as practicable after they occur:
- (a) Filing of an application for leave to appeal under section 298 of the CPA;
 - (b) A decision by the Court of Appeal to grant or refuse leave;
 - (c) If leave is granted, the hearing date that is set for the appeal; and
 - (d) Any orders made by the Court of Appeal following the hearing.
- 26.4. If the Judge refuses to certify the interlocutory decision a party may apply for review of that decision with the Court of Appeal.
- 26.5. Where an application for review is filed with the Court of Appeal the party **must** notify Registry and the Judge's Associate of this fact [via email](#) as soon as is practicable.
- 26.6. Practitioners should be aware of the time limits which apply to filing an application for review (see s 296 CPA).

MENTAL IMPAIRMENT AND UNFITNESS TO STAND TRIAL

27. Fitness to Stand Trial

Where the issue of fitness to stand trial is raised at Committal

27.1. Where the issue of fitness to stand trial is raised at the Committal Hearing, the matter will be listed for an Initial Directions Hearing.

27.2. At the Initial Directions Hearing:

- a) The Defence must indicate to the Judge that the issue of Fitness to Stand Trial has been raised; and
- b) If a psychiatric report addressing the accused's fitness to stand trial **has** already been obtained, it must be served on the Prosecution and filed via [eLodgement](#) the day prior to the Initial Directions Hearing; or
- c) If a psychiatric report addressing the accused's fitness to stand trial **has not** yet been obtained, the Court will, if appropriate:
 - i. Set a date for the filing of the Defence psychiatric report;
 - ii. Set a date for the filing of the Prosecution psychiatric report; and
 - iii. Set a date for Further Initial Directions Hearing at a time when the relevant psychiatric reports will have been obtained and filed.

27.3. At the Further Initial Directions Hearing, once the relevant psychiatric reports have been filed, if the Judge is satisfied that there is a real and substantial question as to the accused's fitness to stand trial, the matter will be listed for an Investigation.

Where the issue of fitness to stand trial is raised after the filing of an Indictment

27.4. At any time after the filing of an Indictment, where the issue of fitness to stand trial is raised, the Trial Judge may adjourn the matter so that psychiatric reports addressing the accused's fitness to stand trial can be prepared.

27.5. The Trial Judge may then:

- (a) Set a date for the filing of the Defence psychiatric report;
- (b) Set a date for the filing of the Prosecution psychiatric report; and

(c) Set a date for a Mention at a time when the relevant psychiatric reports will have been obtained and filed.

27.6. At the Mention, once the relevant psychiatric reports have been filed, if the Judge is satisfied that there is a real and substantial question as to the accused's fitness to stand trial, the matter will be listed for an Investigation.

28. Review Hearings Under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*

28.1. Where a date for a Review Hearing is sought, the Secretary to the Department of Health and Human Services will contact the Senior Co-ordinator Criminal Listings at senior.coordinator@countycourt.vic.gov.au three months prior to the date sought for the Review Hearing.

28.2. The Senior Co-ordinator will provide a date for the Review Hearing.

28.3. Review Hearings will generally be heard by the Judge who imposed the Supervision Order.

28.4. If the Judge who imposed the Supervision Order has retired or is otherwise unavailable, the Senior Co-ordinator will allocate the Review Hearing to another Judge.

28.5. The presiding Judge may set [Standard Directions](#) for the filing of documents prior to the Review Hearing. Standard Directions may require a Mention or may be signed in chambers, at the discretion of the presiding Judge.

29. Applications Under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*

Applications Pursuant to:

- s.29 – Variation of a Non-Custodial Supervision Order; and
- s.58 – Revocation of Extended Leave

29.1. Where a person subject to a Supervision Order:

- Is arrested pursuant to the Emergency Power of Apprehension under s.30 of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*; or
- Is arrested pursuant to a warrant issued under s.30A of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*; or
- Has their extended leave suspended by the Chief Psychiatrist or the Secretary to the Department of Health and Human Services (The Secretary) pursuant to s.58(2) of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*,

the Secretary or their delegate **must:**

- (a) File an Application form via [eLodgement](#) and serve a copy on the other party within **48 hours** of the person's apprehension or suspension of extended leave. The Application must include details of the Non-Custodial Supervision Order such as:
- (i) The date the Non-Custodial Supervision Order was made;
 - (ii) The nominal term of the Non-Custodial Supervision Order;
 - (iii) The conditions attached to the Non-Custodial Supervision Order;
 - (iv) The date when Extended Leave was granted (if applicable);
 - (v) The date when the person subject to the Non-Custodial Supervision Order:
 - Was **arrested pursuant to s.30** of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*; or
 - Was **arrested pursuant to a warrant issued under s.30A** of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*; or
 - Had their **extended leave suspended pursuant to s.58(2)** of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*.
 - (vi) Where applicable, the location where the person subject to the Non-Custodial Supervision Order is being detained; and
 - (vii) Any other details as required.

- (b) Contact Criminal Registry via telephone **as a matter of priority** (03 8636 6570) to obtain a date for a Mention. Registry will list a Mention in the 9:00am General List **within seven days**.

29.2. The person subject to the Supervision Order **must attend** the Mention, unless the Court orders otherwise. Attendance may be via video link.

29.3. At the Mention the Secretary or delegate will inform the Court of the following:

- (a) A brief history of the Supervision Order, including any previous Judge involved in the matter;
- (b) A brief summary as to the circumstances of the Application and the events leading up to the Application being made;
- (c) A preliminary view as to how the person subject to the Supervision Order is presenting clinically (noting that there may not have been an opportunity for a formal clinical assessment); and
- (d) An estimation of time required to obtain clinical reports and the availability of witnesses to attend the hearing.

COUNTY COURT CASE NUMBERS

30. Severed Indictments, Related Cases and County Court Case Numbers

Case Numbers for Severed Indictments

- 30.1. When a single Indictment is filed in relation to an accused person the Indictment will contain a 'CR' case number which is provided by the County Court and is accessible from the [Court Connect website](#) or by contacting Criminal Registry. If the Indictment is severed into two or more Indictments, each Indictment requires its own 'CR' case number.
- 30.2. If an Indictment is to be severed the prosecution must contact the relevant List Associate or Judge's Associate (prior to the Indictment being filed in Court where possible) and advise that a severed Indictment is sought to be filed and that a new 'CR' case number will be required. The new 'CR' case number then must be included on the Indictment either before it is filed or by amendment with leave of the Court if the Indictment has already been filed.
- 30.3. A 'CR' case number must only be requested if a decision has been made to sever the Indictment, not if it is merely being considered.

Multiple Case Numbers for Related Cases

- 30.4. An accused person may have multiple matters in the County Court, resulting from multiple briefs of evidence being prepared and multiple Magistrates' Court reference numbers being generated.
- 30.5. If the accused person pleads guilty these matters may be consolidated into a single Indictment. That Indictment must contain all 'CR' case numbers. All other notices and documents filed with the Court must also include all relevant 'CR' case numbers.

DISCONTINUING A PROSECUTION

31. Before Indictment is filed

31.1. Where the Prosecution intends to discontinue a prosecution they **must**:

- (a) Contact Criminal Registry via phone (03 8636 6570) to list an Announcement of Discontinuance hearing.
- (b) File at least 24 hours before the hearing date [via eLodgement](#) a Notice of Discontinuance signed by the Director of Public Prosecutions including the details of the charges on which the accused was committed for trial (including Magistrates' Court reference numbers); and

32. After an Indictment has been filed

32.1. Where the Prosecution intends to discontinue a prosecution they **must**:

- (a) Contact Criminal Registry via phone (03 8636 6570) to list an Announcement of Discontinuance hearing.
- (b) File at least 24 hours before the hearing date [via eLodgement](#) a Notice of Discontinuance signed by the Director of Public Prosecutions.

33. Related summary offences

33.1. If the Prosecution intends to discontinue a prosecution and *there are related summary offences* in the court, the Prosecution **must**, at least 24 hours before the hearing date:

- (a) File [via eLodgement](#) a Notice including the details of the summary charges and whether they are to be withdrawn, or transferred to the Magistrates' Court for hearing and determination.

CONTRAVENTION HEARINGS

34. Offender alleged to contravene County Court order (s 83AG Sentencing Act)

- 34.1. Where the Prosecution intend to file a charge for contravention of a Community Correction Order imposed by the County Court, where there is no current proceeding before the court they **must**:
- (a) Contact Criminal Registry via phone (03 8636 6570) or email to obtain a date for the return of the summons. Criminal Registry will obtain a date from the relevant Associate where appropriate. The date for the return of the summons should be no less than 6-8 weeks from the proposed issuing date.
 - (b) File the Charge Sheet and Summons in the Magistrates' Court; and
 - (c) Serve the Charge Sheet and Summons on the offender at least 14 days prior to the Contravention Hearing.
- 34.2. If the Prosecution wish to obtain a new date for service, due to any delay in locating the offender, the prosecution must contact Criminal Registry to obtain a new date.
- 34.3. Once the offender has been served, the Prosecution **must** file no later than 7 days before the hearing date, [via eLodgement](#):
- (a) The Charge Sheet and Summons;
 - (b) Affidavit of Service;
 - (c) s 83AJ Transfer order made by the Magistrates' Court; and
 - (d) Contravention Report and any supporting material.
- 34.4. Unless otherwise required by the Judge, the Office of Public Prosecutions will determine whether the Community Corrections Officer is required to attend the Contravention Hearing, either in person or by way of a video link.

35. Offender listed for Plea Hearing on offences committed during the operational period of a County Court order (s 83AL Sentencing Act)

- 35.1. Where the accused is committed for trial by way of a Plea of Guilty in relation to offences committed during the operational period of a Community Corrections order imposed by the County Court, and the Prosecution intend to file a charge in relation to that contravention, the Prosecution **must**:
- (a) Within 21 days of the accused being committed for trial contact Criminal Registry via phone (03 8636 6570) or email to obtain a date for the accused to be Arraigned. Criminal Registry will obtain a date from the relevant Associate where appropriate.
- 35.2. Upon the accused being arraigned, the pleas of guilty will be entered into the records of the court, which constitutes a finding of guilt. Where necessary, the Plea Hearing date may be adjourned for the contravention package to be prepared. The Plea hearing date will constitute the return date for the Charge-Sheet and Summons.
- 35.3. Following the Arraignment, the Prosecution **must**:
- (a) File the Charge Sheet and Summons in the Magistrates' Court; and
- (b) Serve the Charge Sheet and Summons on the offender at least 14 days prior to the Plea Hearing.
- 35.4. Once the offender has been served, the Prosecution **must** file no later than 7 days before the Plea Hearing, via eLodgement:
- (a) The Charge Sheet and Summons;
- (b) Affidavit of Service;
- (c) s 83AJ Transfer order made by the Magistrates' Court; and
- (d) Contravention Report and any supporting material.
- 35.5. Unless otherwise required by the Judge, the Office of Public Prosecutions will determine whether the Community Corrections Officer is required to attend the Contravention Hearing, either in person or by way of a video link.

36. Offender listed for Plea Hearing on offences committed during the operational period of a Magistrates' Court order (s 83AM Sentencing Act)

- 36.1. Where the accused is committed for trial by way of a Plea of Guilty in relation to offences committed during the operational period of a Community Corrections order imposed by the Magistrates' Court, and the Prosecution intend to file a charge in relation to that contravention, the Prosecution **must** within 21 days of the accused being committed for trial:
- (a) Obtain the consent of the Defence to uplifting the contravention charge;
 - (b) Obtain an indication from the Defence that the offender intends to plead guilty to the contravention charge; and
 - (c) Contact Criminal Registry via phone (03 8636 6570) or email to obtain a date for the accused to be arraigned. Criminal Registry will obtain a date from the relevant Associate where appropriate.
- 36.2. Upon the accused being arraigned, the pleas of guilty will be entered into the records of the court, which constitutes a finding of guilt. Where necessary, the Plea Hearing date may be adjourned for the charge to be filed and uplifting and contravention package prepared. The Plea hearing date will constitute the return date for the Charge-Sheet and Summons.
- 36.3. Following the Arraignment, the Prosecution **must**:
- (a) File the Charge Sheet and Summons in the Magistrates' Court; and
 - (b) Serve the Charge Sheet and Summons on the offender at least 14 days prior to the Plea Hearing.
- 36.4. Once the offender has been served, the Prosecution **must** file no later than 7 days before the Plea Hearing, via eLodgement:
- (a) The Charge Sheet and Summons;
 - (b) Affidavit of Service;
 - (c) Contravention Report and any supporting material;
 - (d) An [Application to Transfer an Unrelated Summary Charge](#). The application must include:
 - (i) A copy of the charge including the Magistrates' Court file number, venue and next hearing date;
 - (ii) A statement about whether the accused is or is not on bail in relation to the charge; and

(iii) If the accused is on bail, a copy of the accused's bail undertaking in relation to the charge;

36.5. Unless otherwise required by the Judge, the Office of Public Prosecutions will determine whether the Community Corrections Officer is required to attend the Contravention Hearing, either in person or by way of a video link.

APPEALS FROM THE MAGISTRATES' COURT

37. First Listing – No Witnesses Required

- 37.1. All appeals against conviction and sentence from the Magistrates' Court and Children's Court with a duration of one day or more will be given a First Listing date 21 days from the date the appeal is lodged. The First Listing will be listed at 9AM in the General List Court in Court 2-9.
- 37.2. Witnesses are not required to attend the First Listing.
- 37.3. Practitioners are not required to robe for the First Listing.
- 37.4. Appellants **must** attend the First Listing.
- (a) Appellants in custody **must** attend the First Listing by way of video link unless the Court orders otherwise, or a party makes a request to attend in person [[see Video links](#)].
- (b) Non-attendance by an appellant may result in the appeal being struck out.

Appeals regarding Criminal Charges

- 37.5. At the First Listing, both parties **must** be prepared to answer the following questions (non-exhaustive list),:
- (a) How long did the hearing in the Magistrates' Court or Children's Court run?
- (b) Did all required witnesses attend?
- (c) What are the factual issues in dispute?
- (d) What is not in dispute?
- (e) How can the appellant and respondent narrow the issues in dispute?
- (f) Have any plea offers been made or will they be made?
- (g) Are there any co-accused? If so, what is their status?
- (h) If the matter will proceed as an Appeal Hearing:
- (i) How many witnesses, including any expert witness issues?
- (ii) Hearing estimate and how was this arrived at?
- (iii) Will any Evidence Act notices be served?
- (iv) Will any subpoenas be sought?
- (v) Is funding in place?

Appeals regarding Intervention Orders

37.6. At the First Listing, both parties **must** be prepared to answer the following questions (non-exhaustive list):

- (a) How long did the hearing in the Magistrates' Court run?
- (b) What are the factual issues in dispute?
- (c) What is not in dispute?
- (d) Are any orders required in regards to legal representation for the purpose of cross-examining a protected witness required (ss 71, 72 Family Violence Protection Act 2008)
- (e) How can the applicant and respondent narrow the issues in dispute?
- (f) If the matter will proceed as an Appeal Hearing:
 - (i) How many witnesses will be required?
 - (ii) Hearing estimate and how was this arrived at?
 - (iii) Will any subpoenas be sought?
 - (iv) Is funding in place?

38. Abandoning an Appeal before the Hearing Date

No longer wish to proceed with the Appeal at all

38.1. If a party wishes to no longer proceed with the Appeal, at all, they **must** before the Appeal Hearing:

(a) Complete a [Notice of Abandonment](#)

(b) File the Notice with the Criminal Registry [via eLodgement](#).

38.2. Appellants should be aware that upon filing a Notice of Abandonment, the order of the Magistrates' Court immediately takes effect, which means that if an Appellant was sentenced to a term of imprisonment and was on bail pending appeal a warrant will be issued for their imprisonment.

Only want to proceed with an Appeal against Sentence Only

38.3. If a party wishes to no longer proceed with the Appeal against Conviction, and only wants to Appeal against the Sentence Only, they **must** before the Appeal Hearing:

(a) Complete a [Notice of Abandonment](#)

(b) File the Notice with the Criminal Registry [via eLodgement](#).

38.4. Parties must be aware that once an appeal is abandoned, **it cannot be reinstated**. If an appellant is representing themselves they should obtain legal advice before filing a Notice of Abandonment.

39. Abandoning an Appeal on the Hearing Date

- 39.1. If a party wishes to no longer proceed with the Appeal, on the date of the Hearing they must advise the Judge who is hearing the Appeal in court.
- 39.2. Appellants should be aware that upon Abandoning an Appeal, the order of the Magistrates' Court immediately takes effect, which means that if an Appellant was sentenced to a term of imprisonment and was on bail pending Appeal they will be taken into custody immediately.

40. eLodgment and County Court Appeals³

Respondent Filing Requirements – Sentence-only Appeals

- 40.1. The Respondent must file via [eLodgement](#) at least 2 days before the Appeal Hearing:
 - (a) Police Summary or summaries;
 - (b) Criminal Record;
 - (c) Victim Impact Statement/s; and
 - (d) Chart of Offences (see below).

The above documents **are not** to be filed in the case of Conviction and Sentence Appeals.

Appellant Filing Requirements

- 40.2. The Appellant must file via [eLodgement](#) and serve on the Respondent, at least 2 days before the Appeal Hearing any reports or other material upon which the Appellant wishes to rely.

Chart of Offences

- 40.3. Where the Appeal is a consolidated matter, involves numerous charges and informants, numerous Notices of Appeal, breaches of previous orders or has any other complicating characteristic, the Respondent should prepare a Chart of Offences to assist the Judge hearing the

³ Only applicable for appeals lodged after 1 July 2016 or with a case number of AP-16-1800 or higher. See also chapter 1.1 of this Practice Note.

Appeal. The Chart of Offences should make reference to and outline the following details for each charge:

- (a) Charge number as per the Appeal Notice, not the Charge Sheets;
- (b) Informant;
- (c) Offence and source of offence;
- (d) Sentence imposed;
- (e) Any concurrency or cumulation ordered;
- (f) Maximum penalty;
- (g) Any other orders made against each offence (Disposal, Forfeiture, Licence Cancellation etc); and
- (h) Any pre-sentence detention.

41. Application to re-instate an Appeal

41.1. Where an appeal is struck out as a result of the Appellant failing to appear at the Appeal Hearing, the Appellant may apply to the court to have the Appeal reinstated. An Appellant applying to reinstate an Appeal **must**:

- (a) Contact the other party to ascertain their position to the application (unless prohibited by an intervention order);
- (b) Contact Criminal Registry via phone as a matter of priority (03 8636 6570) to obtain a date for the application. Criminal Registry will direct the party to the relevant Associate where appropriate.
- (c) Complete an [Application to set aside order striking out an appeal due to non-appearance](#)
- (d) File the Notice with the Criminal Registry via [email](#).

41.2. An Appellant **must** be aware that the order of the Magistrates' Court continues even after the filing of an Application to reinstate an Appeal, until the Application is successful and the Appeal is reinstated and heard.

SUPERVISION ORDERS

42. Interim and Final Supervision Order Applications

Appropriate Venue for Application

- 42.1. An application for a Supervision Order can be made to the County Court if the court that sentenced the offender for the relevant offence was the County Court or the Magistrates' Court.⁴

Listing an Application for an Interim or Final Supervision Order

- 42.2. Where the Secretary intends to apply for an Interim or Final Supervision Order the Secretary must **at least three months prior** to the expiration of the offender's sentence:

(a) Contact the Sexual Offences List Coordinator via phone (03 8636 6535) to obtain a date for a Directions Hearing.

- 42.3. The Directions Hearing will normally be listed at 9:00am in Court 2-10 before the Judge sitting in the Sexual Offences List within two weeks.

- 42.4. The Sexual Offences List Coordinator will provide the Secretary with a 'CR' number so that documents may then be eLodged.

Directions Hearing

- 42.5. Upon being given a Directions Hearing date by the Sexual Offences List Coordinator the Secretary **must**:

(a) File via eLodgement and serve on the Respondent the Application for an Interim or Final Supervision Order within 2 days of being given the Directions Hearing date.⁵

(b) Ensure that the Application for an Interim or Final Supervision Order is accompanied by at least one assessment report.⁶

- 42.6. At the Directions Hearing, the Court will provide a date for the hearing of the Interim or Final Supervision Order Application.

- 42.7. A timetable for the filing of documents will also be provided.

⁴ s.7(3) *Serious Sex Offenders (Detention and Supervision) Act 2009*.

⁵ N.B: s.80 *Serious Sex Offenders (Detention and Supervision) Act 2009* requires the application and assessment/progress report to be served on any other party as soon as practicable.

⁶ s.8 *Serious Sex Offenders (Detention and Supervision) Act 2009*.

Applicant Filing Requirements

- 42.8. In every case where a matter has been listed for an Interim or Final Supervision Order Application, the Applicant **must** file [via eLodgement](#), and serve on the Respondent at least 5 days before the hearing date:
- (a) Assessment Report / Progress Report;
 - (b) List of suggested conditions (if applicable);
 - (c) Draft Interim or Final Supervision Order;
 - (d) Outline of Submissions;
 - (e) Psychological, psychiatric or medical reports (if applicable);
 - (f) Chronology; and
 - (g) Any other material upon which the Applicant seeks to rely.⁷

Respondent Filing Requirements

- 42.9. In every case where a matter has been listed for an Interim or Final Supervision Order Application, the Respondent **must** file [via eLodgement](#), and serve on the Applicant, at least 2 days before the hearing date:
- (a) Notice of Intention to Dispute Suggested Conditions (if applicable);
 - (b) Notice of Intention to Dispute Assessment Report⁸ (if applicable);
 - (c) Outline of Submissions;
 - (d) Psychiatric, psychological or medical reports (if applicable); and
 - (e) Any other material upon which the Respondent seeks to rely.
- 42.10. In the event that the Respondent does not intend to dispute the Suggested Conditions or Assessment Report, or does not intend to file any further material, they must advise the Applicant and the Court at least 2 days before the Hearing date.
- 42.11. Where the Respondent is self-represented, filing via eLodgment is not required. A self-represented Respondent may file documents with the County Court in person or via postal delivery to the County Court of Victoria, 250 William Street, Melbourne, VIC, 3000.

⁷ Refer to paragraph 1.3(f) of this Practice Note which provides that voluminous material such as affidavit and supporting material in Supervision Order proceedings may be delivered or handed to the Criminal Registry.

⁸ ss.113 & 113A *Serious Sex Offenders (Detention and Supervision) Act 2009*

43. Non-Publication Order

- 43.1. The Secretary to the Department of Justice and Regulation (the Secretary) or an offender may apply for an order restricting the identification of the offender pursuant to s.184 of the *Serious Sex Offenders (Detention and Supervision) Act 2009*.
- 43.2. Where a party intends to apply for a Non-Publication Order or a Revocation of a Non-Publication Order they must file via eLodgement and serve on the other party a Notice of Intention to Apply for a Non-Publication Order or a Revocation of a Non-Publication Order at least 5 days before the hearing date.

44. Victim Submissions

- 44.1. Victim submissions may apply to any of the five Supervision Order hearing types addressed in this chapter.
- 44.2. The Secretary must notify the Victim Support Agency of the Department of Justice and Regulation (VSA) of any Supervision Order application under Parts 2, 4 or 5 of the *Serious Sex Offenders (Detention and Supervision) Act 2009* as soon as possible but by no later than three working days following the Secretary's decision to lodge an application, or when an application is filed in Court.
- 44.3. The VSA must give notice to any registered victim regarding any such application. The notice must specify the nature of the application and the period within which the victim submission can be made in relation to the application.⁹
- 44.4. The victim submission must be addressed to the 'Sexual Offences List Coordinator' and must be filed in person and not via eLodgment at least 5 days before the hearing date.
- 44.5. The Sexual Offences List Coordinator will confirm receipt of the victim submission via email to the VSA at victimsregister@justice.vic.gov.au.
- 44.6. In the event that a victim submission cannot be filed with the Court 5 days before the hearing date, the presiding Judge may allow the victim submission to be provided to the Court on the day of the hearing.
- 44.7. The VSA may send email notification to the Sexual Offences List Coordinator advising of a pending victim submission.
- 44.8. The victim submission is not to be served on the Respondent or their legal representative.¹⁰

⁹ s.94(2) & (3) *Serious Sex Offenders (Detention and Supervision) Act 2009*

¹⁰ However s.95 *Serious Sex Offenders (Detention and Supervision) Act 2009* provides that the Court may disclose to the offender or their legal representative the substance of a victim submission in some circumstances.

45. Review of Supervision Order Applications

Listing an Application for a Review of a Supervision Order

- 45.1. Where the Secretary intends to apply for a Review of a Supervision Order the Secretary must, **at least three months prior** to the proposed Application:
- (a) Contact the Sexual Offences List Coordinator via phone (03 8636 6535) to obtain a date for a Directions Hearing or hearing date for the application.

Directions Hearing

- 45.2. Upon being given a Directions Hearing date or hearing date for the application by the Sexual Offences List Coordinator the Secretary **must**:
- (a) File via eLodgement and serve on the Respondent the Application for a Review of a Supervision Order within 2 days of being given the Directions Hearing date or hearing date for the application; and
- (b) Ensure that the Application for a Review of a Supervision Order sets out the nature of the order sought and is accompanied by at least one progress report.¹¹
- 45.3. At the Directions Hearing, the Court will provide a date for the hearing of the Review of Supervision Order Application.

Applicant Filing Requirements

- 45.4. In every case where a matter has been listed for a Review of Supervision Order Application, the Applicant **must** file via eLodgement, and serve on the Respondent at least 5 days before the hearing date:
- (a) Assessment Report / Progress Report;
- (b) List of suggested conditions (if applicable);
- (c) Draft Supervision Order;
- (d) Outline of Submissions;
- (e) Psychological, psychiatric or medical reports (if applicable);
- (f) Chronology; and

¹¹ s.70 *Serious Sex Offenders (Detention and Supervision) Act 2009*

(g) Any other material upon which the Applicant seeks to rely.¹²

Respondent Filing Requirements

- 45.5. In every case where a matter has been listed for a Review of a Supervision Order Application, the Respondent **must** file via eLodgement, and serve on the Applicant, at least 2 days before the Hearing date:
- (a) Notice of Intention to Dispute Suggested Conditions (if applicable);
 - (b) Notice of Intention to Dispute Assessment Report (if applicable);
 - (c) Outline of Submissions;
 - (d) Psychiatric, psychological or medical reports (if applicable); and
 - (e) Any other material upon which the Respondent seeks to rely.
- 45.6. In the event that the Respondent does not intend to dispute the Suggested Conditions or Assessment Report, or does not intend to file any further material, they must advise the Applicant and the Court at least 2 days before the Hearing date.
- 45.7. Where the Respondent is self-represented, filing via eLodgment is not required. A self-represented Respondent may file documents with the County Court in person or via postal delivery to the County Court of Victoria, 250 William Street, Melbourne, VIC, 3000.

¹² Refer to paragraph 1.3(f) of this Practice Note which provides that voluminous material such as affidavit and supporting material in Supervision Order proceedings may be delivered or handed to the Criminal Registry.

46. Review of Conditions of Supervision Order Applications

Listing an Application for a Review of Conditions of a Supervision Order

- 46.1. Where the Secretary or Offender intends to apply for a Review of Conditions of a Supervision Order the Secretary must, **at least three months prior** to the proposed Application:
- (a) Contact the Sexual Offences List Coordinator via phone (03 8636 6535) to obtain a date for a Directions Hearing or hearing date for the application.

Listing an Urgent Application for a Review of Conditions of a Supervision Order

- 46.2. The Adult Parole Board may exercise its power under s.120 of the *Serious Sex Offenders (Detention and Supervision) Act 2009* to give directions to an offender to manage the offender in a way that is inconsistent with, or not provided for by the conditions of the Supervision Order.
- 46.3. An emergency power of direction under s.120 ceases to have effect 72 hours after it is given.
- 46.4. When the emergency power of direction under s.120 has been exercised and the Secretary or the Offender intends to apply for an urgent Review of Conditions of a Supervision Order the Secretary or Offender must, **as soon as possible before the expiration of the 72 hour period**:
- (a) Contact the Sexual Offences List Coordinator via phone (03 8636 6535) to obtain a hearing date for the application.

Directions Hearing Date or Hearing Date

- 46.5. Upon being given a Directions Hearing date or hearing date for the application by the Sexual Offences List Coordinator the Applicant **must**:
- (a) In the case of a **Standard** Review of Conditions Application, file [via eLodgement](#) and serve on the Respondent the Application for a Review of Conditions of a Supervision Order within 2 days of being given the Directions Hearing date or hearing date for the application.
- (b) In the case of an **Urgent** Review of Conditions Application, file [via eLodgement](#) and serve on the Respondent the Application for a Review of Conditions of a Supervision Order as soon as possible, prior to the hearing of the application.
- 46.6. At the Directions Hearing, the Court will provide a date for the hearing of the Review of Conditions of a Supervision Order Application.

Applicant Filing Requirements

- 46.7. In every case where a matter has been listed for a Review of Conditions of a Supervision Order Application, the Applicant **must** file [via eLodgement](#), and serve on the Respondent at least 5 days before the hearing date:
- (a) Progress Report (if applicable);
 - (b) Certificate of Available Resources (if applicable);
 - (c) List of suggested conditions (if applicable);
 - (d) Draft Supervision Order;
 - (e) Outline of Submissions;
 - (f) Psychological, psychiatric or medical reports (if applicable);
 - (g) Chronology; and
 - (h) Any other material upon which the Applicant seeks to rely.¹³
- 46.8. In the case of an **Urgent** Review of Conditions Application, where applicable, the above documents must be filed [via eLodgement](#), and served on the Respondent as soon as possible prior to the hearing of the application.
- 46.9. Where the Applicant is the Offender and is self-represented, filing via eLodgment is not required. A self-represented Respondent may file documents with the County Court in person or via postal delivery to the County Court of Victoria, 250 William Street, Melbourne, VIC, 3000.

Respondent Filing Requirements

- 46.10. In every case where a matter has been listed for a Review of Conditions of a Supervision Order Application, the Respondent **must** file [via eLodgement](#), and serve on the Applicant, at least 2 days before the Hearing date:
- (a) Notice of Intention to Dispute Suggested Conditions (if applicable);
 - (b) Notice of Intention to Dispute Assessment Report (if applicable);
 - (c) Outline of Submissions;

¹³ Refer to paragraph 1.3(f) of this Practice Note which provides that voluminous material such as affidavit and supporting material in Supervision Order proceedings may be delivered or handed to the Criminal Registry.

- (d) Psychiatric, psychological or medical reports (if applicable); and
 - (e) Any other material upon which the Respondent seeks to rely.
- 46.11. In the event that the Respondent does not intend to dispute the Suggested Conditions or Progress Report, or does not intend to file any further material, they must advise the Applicant and the Court at least 2 days before the Hearing date.
- 46.12. In the case of an **Urgent** Review of Conditions Application, where applicable, the above documents must be filed [via eLodgement](#), and served on the Applicant as soon as possible prior to the hearing of the application.
- 46.13. Where the Respondent is self-represented, filing via eLodgment is not required. A self-represented Respondent may file documents with the County Court in person or via postal delivery to the County Court of Victoria, 250 William Street, Melbourne, VIC, 3000.

47. Renewal of Supervision Order Applications

Listing an Application for a Renewal of a Supervision Order

47.1. Where the Secretary intends to apply for a renewal of a Supervision Order the Secretary must, **at least three months prior** to the proposed application:

- (a) Contact the Sexual Offences List Coordinator via phone (03 8636 6535) to obtain a date for a Directions Hearing or hearing date for the application.

Directions Hearing

47.2. Upon being given a Directions Hearing date or hearing date for the application by the Sexual Offences List Coordinator the Secretary **must**:

- (a) File [via eLodgement](#) and serve on the Respondent the Application for Renewal of a Supervision Order within 2 days of being given the Directions Hearing date or hearing date for the application.
- (b) Ensure that the Application for Renewal of a Supervision Order is accompanied by an assessment or progress report.¹⁴

47.3. At the Directions Hearing, the Court will provide a date for the hearing of the Renewal of a Supervision Order Application.

Applicant Filing Requirements

47.4. In every case where a matter has been listed for a Renewal of Supervision Order Application, the Applicant **must file via eLodgement**, and serve on the Respondent at least 5 days before the hearing date:

- (a) Assessment Report / Progress Report;
- (b) List of suggested conditions (if applicable);
- (c) Draft Supervision Order;
- (d) Outline of Submissions;
- (e) Psychological, psychiatric or medical reports (if applicable);

¹⁴ s.8 *Serious Sex Offenders (Detention and Supervision) Act 2009*

- (f) Chronology; and
- (g) Any other material upon which the Applicant seeks to rely¹⁵

Respondent Filing Requirements

- 47.5. In every case where a matter has been listed for a Renewal of Supervision Order Application, the Respondent **must** file via eLodgement, and serve on the Applicant at least 2 days before the hearing date:
- (a) Notice of Intention to Dispute Suggested Conditions (if applicable);
 - (b) Notice of Intention to Dispute Assessment Report (if applicable);
 - (c) Outline of Submissions;
 - (d) Psychiatric, psychological or medical reports (if applicable); and
 - (e) Any other material upon which the Respondent intends to rely.
- 47.6. In the event that the Respondent does not intend to dispute the Suggested Conditions, Assessment Report or Progress Report, or does not intend to file any further material, they must advise the Applicant and the Court at least 2 days before the Hearing date:
- 47.7. Where the Respondent is self-represented, filing via eLodgment is not required. A self-represented Respondent may file documents with the County Court in person or via postal delivery to the County Court of Victoria, 250 William Street, Melbourne, VIC, 3000.

¹⁵ Refer to paragraph 1.3(f) of this Practice Note which provides that voluminous material such as affidavit and supporting material in Supervision Order proceedings may be delivered or handed to the Criminal Registry.

48. Breach of Supervision Order Applications

Listing an Application for a Breach of Supervision Order

- 48.1. Where the Secretary intends to file a charge for breach of a Supervision Order imposed by the County Court, the Secretary **must**:
- (a) Contact the Sexual Offence List Coordinator via phone (03 8636 6535) to obtain a date for a Mention. The Sexual Offence List Coordinator will obtain a date from the relevant Associate where appropriate. A date for hearing the Application for a Breach of Supervision Order will be given. A date will also be given for a Mention in the Sexual Offences List.
 - (b) File the charge-sheet in the Magistrates' Court;¹⁶ and
 - (c) Serve the charge and summons on the Accused.
- 48.2. Once the charge and summons has been issued at the Magistrates' Court, the Secretary must contact the Sexual Offence List Coordinator to obtain the 'CR' number for the case so that documents may be eLodged. The 'CR' number will be a different number to the 'CR' number used for the Application for a Supervision Order.

Prosecution Filing Requirements

- 48.3. In every case where a matter has been listed for a Breach of Supervision Order Application, the Prosecution **must** file via eLodgement, and serve on the Respondent at least 5 days before the Mention:
- (a) Charge Sheet and Summons;
 - (b) Order for Transfer of Proceedings for Breach of Supervision Order; and
 - (c) Affidavit of Service.
- 48.4. At least 5 days before the Breach of Supervision Order Hearing date, the Prosecution **must** file via eLodgement, and serve on the Defence:
- (a) Summary of Prosecution Opening;
 - (b) Criminal Record (if applicable, and only if it is to be a plea of guilty);

¹⁶ When a charge sheet is filed in the Magistrates' Court, the Magistrates' Court must order that the proceeding be transferred to the Court that made the Supervision Order. See s.172A *Serious Sex Offenders (Detention and Supervision) Act 2009*

- (c) Outline of Submissions;
- (d) Chronology; and
- (e) Any other material upon which the Applicant seeks to rely.¹⁷

Defence Filing Requirements

- 48.5. In every case where a matter has been listed in this Court for a Breach of Supervision Order Application, the Defence **must** file via eLodgement, and serve on the Applicant, at least 2 days before the Hearing date:
- (a) Outline of Submissions;
 - (b) Psychiatric, psychological or medical reports (if applicable); and
 - (c) Any other plea material sought to be relied upon.
- 48.6. Where the Accused is self-represented, filing via eLodgment is not required. A self-represented Respondent may file documents with the County Court in person or via postal delivery to the County Court of Victoria, 250 William Street, Melbourne, VIC, 3000.

¹⁷ Refer to paragraph 1.3(f) of this Practice Note which provides that voluminous material such as affidavit and supporting material in Supervision Order proceedings may be delivered or handed to the Criminal Registry.

ADMINISTRATIVE ARRANGEMENTS

49. Electronic Evidence in the Courtroom

49.1. Unless otherwise directed by a Judge, electronic evidence may only be played if it is contained on a:

- (a) DVD; or
- (b) CD.

Playback of A DVD or CD

49.2. A DVD or CD may be played in court in one of two ways.

- (a) **Option A: Court-controlled:** The practitioner can provide the disc to the Court (via the Tipstaff) to playback the electronic evidence through the DVD players installed in each court.
- (b) **Option B: Practitioner-controlled:** The practitioner can play the disc from their own device (PC, Mac etc) which can be plugged into the bar table and displayed on a monitor in the courtroom.

Types of Devices that can be Practitioner-Controlled from the Bar Table

49.3. All County Court courtrooms are equipped with the capacity to play evidence from the bar table from Windows or Apple Mac devices.

Windows-based laptop

49.4. All courtrooms are equipped with a male VGA video lead and a male 3.5mm analogue stereo audio lead to enable media to be played from a Windows-based laptop.

Apple Mac Devices

49.5. A limited number of adaptors are available for late model Apple devices to enable them to be played from the Bar Table, being:

- (a) Apple iPad (4th generation, from October 2012);
- (b) Apple iPhone (5 or 6 from September 2013); and
- (c) Apple MacBook computers with thunderbolt or mini display port (from April 2010).

49.6. Where a practitioner requires an Apple device adapter they must reserve it, by contacting the Tipstaff Coordinator's Office at 8636-6485 or on 0417 537 162.

Any other device

- 49.7. Any other devices will require the party presenting the evidence to provide a suitable adaptor to enable connectivity to a male VGA lead and male 3.5mm analogue stereo audio lead.

Physical Media

- 49.8. Where a disc is sought to be played the following standards must be adhered to in order to ensure the evidence can be played on the court's DVD players, both in court and in the jury room.

- 49.9. The physical media, or type of discs, supported by the court's DVD players are:

- CD-R
- CD+R
- CD-RW
- DVD-R
- DVD+R
- DVD+RW

File Formats

Audio Files

- 49.10. The only playable format for audio files on a disc is:

- Compact Disc Digital Audio (CD-DA) Red Book.

Video files

- 49.11. The only playable format for video files is:

- DVD Video - ISO9660

Digital Images

- 49.12. The only digital images standards supported are:

- DVD Video - ISO9660

Confirmation of Media Playback

- 49.13. One week before the hearing date, practitioners must contact the Tipstaff assigned to the Judge hearing the case to arrange a suitable time to test the media.
- 49.14. Where no Judge has yet been allocated to a case, practitioners should attend the nominated Media Test Court between 4:15pm and 4:45pm where a Tipstaff will test the media in the standard Court DVD player.
- 49.15. Unless otherwise indicated, the Media Test Court will be in courtroom 2-10. The Tipstaff's role is not to diagnose any media or software issues, but to confirm whether or not the media will play on the standard Court DVD player.
- 49.16. Media prepared and tested by the OPP Audio Visual Unit and confirmed to be Court compatible does not need to be tested in Court, however prosecution solicitors are encouraged to test media in any circumstances where they are concerned that compatibility may be an issue.

Contact

- 49.17. Any questions regarding the playback of audio visual material should be directed to the Tipstaff Co-ordinator on (03) 8636-6485 or 0417 537 162.
- 49.18. Any technical questions regarding audio visual material, equipment or software should be directed to the In-Court Technology Group on (03) 9603-2410.

50. Video link & Attendance at Hearings

Pre-Trial Hearings

- 50.1. An accused person who is in custody must attend pre-trial hearings by way of video link unless the Court orders otherwise. The Court will arrange the video link in these circumstances.
- 50.2. The Court may order that an accused who is in custody attend in person (rather than by video link) on its own motion or at the request of either party.
- 50.3. A request by a party that the accused be required to attend in person must be made by contacting the Criminal Registry via phone (03 8636 6570) **no later than 3 days before the date** on which the attendance in person would be required. The request must state the basis for the request.
- 50.4. An order that the accused be required to attend in person will be made by the Judge in Chambers. If the order is made then arrangements to bring the accused to court will be made by the Registry. No gaol orders are required to be filed by the Defence.
- 50.5. A practitioner may appear by video link where it is convenient to do so. It is the responsibility of the practitioner who wants to appear by video link to ensure that all necessary arrangements, including completing an [application form](#) have been made with the Video Link Coordinator who can be contacted on (03) 8636 6521 or via email at videolinks@countycourt.vic.gov.au and the appropriate circuit Court Registry. Such arrangements must be made **no later than 3 days before the hearing date**. Where the request relates to a 24 hour Initial Directions Hearing arrangements must be made as soon as practicable after the accused has been committed for trial. A practitioner, who does not appear from another Victorian court will be required to cover the cost of the video link.
- 50.6. An accused who is not in custody may appear by video link. It is the responsibility of the Defence to ensure that all necessary arrangements, including completing an [application form](#), have been made with the Video Link Coordinator who can be contacted on (03) 8636 6521 or via email at videolinks@countycourt.vic.gov.au and the appropriate circuit Court Registry. Such arrangements must be made **no later than 3 days before the hearing date** and the party requesting the video link will be required to cover the cost of the video link where they do not appear from another Victorian court.

Plea & Appeal Hearings

- 50.7. All accused (whether in custody or on bail) must appear in person for Plea and Appeal hearings, unless alternative arrangements are made with the leave of the court. If an accused seeks to appear at a Plea or Appeal hearing via video link the practitioner must send the request in writing to the Associate to the Judge hearing the matter. Contact details for Associates can be found on the Court webpage.

- 50.8. If the matter is unallocated the practitioner must contact the Associate to the Listing Judge via email. A mention may be listed for the application to be made formally in court. The practitioner must contact the **Associate no later than 3 business days before the hearing date**.
- 50.9. Where the application is granted, a completed application form with a copy of the Judge's approval attached is sent to the Video Link Coordinator via email at videolinks@countycourt.vic.gov.au .

Witness arrangements

- 50.10. Where a practitioner is seeking to have a witness appear via video link to give evidence it is the responsibility of the practitioner to make all the necessary arrangements including completing an [application form](#). The practitioner must arrange a suitable location from which the witness is to appear and provide all details to the Video Link Coordinator.
- 50.11. Video Link site details must be provided to the Video Link Coordinator in writing at videolinks@countycourt.vic.gov.au **no later than 3 days before the hearing date**.
- 50.12. The requesting party is responsible for the associated video link booking fee and the applicable line rental charges. The booking fee and first hour line, or first 15 minutes line rental in overseas links, rental payment must be made via two separate cheques to the Video Link Coordinator **no later than 2 days before the scheduled commencement of the video link**. Any further charges will be invoiced to the firm after the video link has concluded.
- 50.13. If the Video link is cancelled the line fee will be returned to the requesting party. The booking fee is non-refundable.

Contravention Hearings

- 50.14. Where the informant (Community Corrections) wishes to appear via video link the informant should notify the Prosecution, who must make a request via email for the informant to appear via video link to the sentencing Judge's Associate or to the List Judge where the matter is not yet allocated. Contact details for Associates can be found on the [Court webpage](#).
- 50.15. Where such a request is granted, the Prosecution is responsible for booking the video link by emailing the completed [application form](#) to the videolink coordinator, and the associated video link booking fee and the applicable line rental charges.

51. Transcripts

- 51.1. Transcripts of pre-trial hearings may only be obtained by a **legal practitioner** who represented a party to the hearing. Such a request should be made by contacting the Victorian Government Reporting Service via phone on (03) 9603 2401. A transcript will not ordinarily be provided without a specific request made in writing, or by direction in open court by the List Judge.
- 51.2. Appeal Hearings are not transcribed. It is the obligation of the legal practitioner requesting transcript to obtain the recording of the hearing from the court and provide that to a transcription service and pay for the production of transcript. The court does not provide or pay for transcript in this circumstances. Some private transcribers are:
- (a) Spark and Cannon (T) 9248 5608
 - (b) Legal Transcripts (T) 9642 0322
 - (c) CRS/Merrill Legal (T) 8628 5520
 - (d) Court Transcript Services (T) 9600 2445
- 51.3. Where a legal practitioner would like to obtain the recording of an Appeal hearing, a request **must** be made via email to the Associate to the Judge who determined the appeal. The Judge who determined the appeal may at their discretion release a copy of the recording to a party for transcription.

52. Interpreters

- 52.1. The Court is not responsible for arranging or paying for interpreters for accused or witnesses.
- 52.2. Where an interpreter may be required, the Defence should advise the Prosecution who are responsible for arranging for interpreters to attend Court.
- 52.3. Where an interpreter is required for the preparation of a pre-sentence report, Corrections Victoria will cover the cost of the interpreting services.

COURT CONTACT DETAILS

53. Criminal Registry (Melbourne)

53.1. For all Melbourne matters except those in the Sexual Offences List

(a) Email: crim.reg@countycourt.vic.gov.au

(b) Phone: (03) 8636 6570

54. Sexual Offences List

54.1. For all Melbourne **and** Circuit matters in the Sexual Offences List

(a) Email: sexualoffences.list@countycourt.vic.gov.au.

(b) Phone: (03) 8636 6459 or (03) 8636 6603

55. Circuit Courts

55.1. For all circuit matters **except** those in the Sexual Offences List to the individual circuit Court Registry at one of the following email addresses:

| Circuit Court | Email address |
|---------------|--|
| Bairnsdale | registry.bairnsdale@countycourt.vic.gov.au |
| Ballarat | registry.ballarat@countycourt.vic.gov.au |
| Bendigo | registry.bendigo@countycourt.vic.gov.au |
| Geelong | registry.geelong@countycourt.vic.gov.au |
| Horsham | registry.horsham@countycourt.vic.gov.au |
| Mildura | registry.mildura@countycourt.vic.gov.au |
| Morwell | registry.latrobe@countycourt.vic.gov.au |
| Sale | registry.sale@countycourt.vic.gov.au |
| Shepparton | registry.shepparton@countycourt.vic.gov.au |
| Wangaratta | registry.wangaratta@countycourt.vic.gov.au |
| Warrnambool | registry.warrnambool@countycourt.vic.gov.au |
| Wodonga | registry.wodonga@countycourt.vic.gov.au |

55.2. For circuit matters in the Sexual Offences List, contact the Sexual Offences List Associate – sexualoffences.list@countycourt.vic.gov.au.

56. Judge's Associates

- 56.1. Judge's Associates: Please see the [County Court website](#) for current phone numbers and email addresses (where available).

Attachment 1 - Prosecution Witness Information Sheet

(sexual offence matters)

IN THE COUNTY COURT

CASE No:

OF VICTORIA

INDICTMENT No:

AT [LOCATION]

IN THE MATTER OF:

THIS MATTER IS LISTED FOR AN INITIAL DIRECTIONS HEARING ON:
[date]

The Prosecution advises as follows –

1. Are there complainants who are children and / or cognitively impaired? YES / NO
2. If the answer to question one is yes, how many are there, what is their date of birth and what is their relationship to the accused?
3. If a complainant is cognitively impaired, if known, what is the level of cognitive development of the complainant? (Please attach any written material supporting a finding of cognitive impairment and any expert report on which the prosecution seeks to rely or which will assist the Trial Judge and the parties with management of the witness during evidence.)
4. If a complainant is a child, if known, what is the level of ability of the child in giving evidence?
5. Will evidence be sought to be given in the form of a recording pursuant to section 367 of the CPA (Division 5 Recording), and if yes, what is the length of the recording? YES / NO Note: the recording **must** be tested in court before it is played before the jury.
6. Is the competency of the complainant as a witness likely to be in issue? YES / NO / NOT KNOWN (If yes, please attach any written material on this issue and any expert report on which the prosecution seeks to rely.)
7. Will there be an application on behalf of the complainant pursuant to section 370 of the CPA to give evidence in the courtroom rather than use the remote witness facility? YES / NO
8. Will any other alternative arrangements be applied for? If yes, which? YES/NO

9. What is the name of the support person for the complainant at the special hearing?
10. Has the complainant been referred for support (eg Child Witness Service, Witness Assistance Service, and Victims Support Agency) or has some other form of support been arranged? YES / NO
11. Will the Prosecutor see the complainant in conference in advance of the date fixed for the special hearing? YES / NO

Attachment 2 - Usual Orders made at Initial Directions Hearing

(General List and Sexual Offences List-non child/cognitively impaired complainant)

IN THE COUNTY COURT OF VICTORIA

AT MELBOURNE

CRIMINAL DIVISION

In the matter of:

Date of Trial:

Date of Pre-trial Hearing:

Date of Final Directions Hearing:

Date Order Made:

Judge Making Order:

Order:

Pursuant to section 181(1) of the *Criminal Procedure Act 2009* (the Act) the Court Orders that:

1. The prosecution must file with the Court and serve a copy of the following documents on the defence **not less than 21 days before** the day on which the Final Directions Hearing is due to be conducted [unless filing is required before this date by the Act or by direction of a Judge]:
 - (a) The Draft Indictment;
 - (b) A Summary of the Prosecution Opening;
 - (c) Notice of pre-trial admissions under section 182 of the Act; and
 - (d) Notice of Evidence (if the prosecution intends to adduce evidence of a kind which the *Evidence Act 2008* requires Notice to be given such as tendency evidence, coincidence evidence, hearsay evidence).
2. The defence must file with the Court and serve a copy of the following documents on the prosecution **not less than 7 days before** the day on which the Final Directions Hearing is due to be conducted:
 - (a) A response of the accused to the summary of the prosecution opening;

- (b) Notice of pre-trial admissions in accordance with section 183 of the Act;
 - (c) Notice of Evidence (if the defence intends to adduce evidence of a kind which the *Evidence Act 2008* requires Notice to be given (eg tendency evidence, coincidence evidence, hearsay evidence); and
 - (d) Any expert witness statement in accordance with section 189 of the Act.
3. The time within which the indictment must be filed / trial must commence is extended /abridged to [date].
 4. The parties are at liberty to apply to the Court for variation of any of these orders.

Judge

Attachment 3 - Usual orders made at Initial Directions Hearing
(Sexual Offences List-child/cognitively impaired complainants)

IN THE COUNTY COURT OF VICTORIA

AT MELBOURNE

CRIMINAL DIVISION

In the matter of:

Date of Trial:

Date of Special Hearing:

Date of Pre-trial Hearing:

Date of Final Directions Hearing:

Date Order Made:

Judge Making Order:

Order:

Pursuant to sections 181(1) [and 247(1) if time limits are extended or abridged] of the *Criminal Procedure Act 2009* (the Act) the Court Orders that:

1. The prosecution must file with the Court and serve a copy of the following documents on the defence **not less than 21 days before** the day on which the Final Directions Hearing is due to be conducted [unless filing is required before this date by the Act or by direction of a Judge]:
 - (a) Notice of pre-trial admissions under section 182 of the Act; and
 - (b) Notice of Evidence that the prosecution intends to adduce including–
 - (i) evidence of a kind which the *Evidence Act 2008* requires Notice to be given such as tendency evidence, coincidence evidence, hearsay evidence; and
 - (ii) hearsay evidence under section 377 of the *Criminal procedure Act 2009*).

2. The defence must file with the Court and serve a copy of the following documents on the prosecution **not less than 7 days before** the day on which the Final Directions Hearing is due to be conducted:
 - (a) A response of the accused to the summary of the prosecution opening;
 - (b) Notice of pre-trial admissions in accordance with section 183 of the Act;
 - (c) Notice of Evidence that the defence intends to adduce including—
 - (i) evidence of a kind which the *Evidence Act 2008* requires Notice to be given (eg tendency evidence, coincidence evidence, hearsay evidence); and
 - (ii) evidence which is protected evidence under section 32C of the *Evidence (Miscellaneous Provisions) Act 1958*; and
 - (d) Any expert witness statement in accordance with section 189 of the Act.
3. The time within which the indictment must be filed / trial must commence is extended /abridged to [date].
4. The time within which the special hearing must be held is, because it is in the interest of justice to do so, extended to [date].
5. Direct that the Special Hearing be held before/during trial on [date].
6. The parties are at liberty to apply to the Court for variation of any of these orders.

Judge

Attachment 4 – Family Violence Checklist

IN THE COUNTY COURT
OF VICTORIA
AT [LOCATION]

CASE No:
INDICTMENT No:

IN THE MATTER OF:

THIS MATTER IS LISTED FOR: [HEARING TYPE] ON [DATE]

| | Question | | Please circle | |
|----|---|--|---------------|----|
| | | | Yes | No |
| 1. | Are there witnesses (incl the complainant) who are alleged to be subject to family violence as part of the alleged offending? <i>IF YES, list the witnesses name, DOB and relationship to accused</i> | | | |
| 2. | Are there any Intervention Orders in Force? <i>IF YES, must attach an extract of the order</i> | | | |
| 3. | Have these witnesses been referred for support to a support agency (eg Child Witness Service, Witness Assistance Service)? <i>IF YES, detail what type of support has been arranged</i> | | | |
| 4. | Have the witnesses been advised of the presence of Court Network at the County Court and the services they can provide? | | | |
| 5. | Have these witnesses be advised of the alternative arrangements for giving their evidence (under s 360 CPA)? | | | |
| 6. | Have any of these witnesses indicated a preference for an alternative arrangement for giving evidence <i>IF YES, specify which witness is seeking what arrangement? Have these preferences been discussed with defence, and is there any opposition?</i> | | | |
| 7. | If any witness has expressed a preference for giving evidence by video, have the prosecution made a booking with the Videolink Coordinator? | | | |

| | | | | |
|-----|--|--|------------|-----------|
| 8. | If any of the witnesses intend to be present in court, is there a need for any additional security? | | Yes | No |
| | | | | |
| 9. | Do any of the witnesses require the assistance of an interpreter? <i>IF YES, specify which witness requires what language</i> | | Yes | No |
| | | | | |
| 10. | Do any of the witnesses require advice re s 18 or s 128 <i>Evidence Act 2008</i> <i>IF YES, specify which witness requires what advice, and whether it has been arranged, or when it will be arranged</i> | | Yes | No |
| | | | | |

ONLY COMPLETE IF MATTER IS LISTED FOR A PLEA HEARING

| Question | | Yes | No |
|-----------------|--|--------------------------|--------------------------|
| 1. | Has the complainant been advised of their right to make a Victim Impact Statement and their rights under s8Q & 8R <i>Sentencing Act 1991</i> ? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. | Has the complainant indicated a willingness to make a Victim Impact Statement? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. | Does the complainant wish to have their Victim Impact Statement read aloud, and by whom? <i>IF YES, are any alternative arrangements required for the reading aloud of the Victim Impact Statement?</i> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. | If the complainant has expressed a preference for reading the Victim Impact Statement by video, have the prosecution made a booking with the Videolink Coordinator? | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. | Has the Victim Impact Statement been served on Defence? <i>IF NO, why not? And when will it be served?</i> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. | Have both parties discussed any admissibility issues with respect to the Victim Impact Statement? <i>IF YES, can these issues be resolved between the parties, or do the defence intend to make submissions to the court?</i> | <input type="checkbox"/> | <input type="checkbox"/> |

Attachment 5 – Standard timetabling orders for applications for compensation under section 85B of the *Sentencing Act 1991*

IN THE COUNTY COURT
OF VICTORIA
AT [LOCATION]

CASE No:
INDICTMENT No:

In the matter of:

Date Order Made:

Judge Making Order:

1. The section 85B application is set down for hearing on [date] at [time] for [number of] days, before Judge [name of Judge].
2. The application is listed for a directions hearing on [date] at [time] before Judge [name of Judge].
3. Within 1 month of making the application, the Applicant must file and serve any material on which it intends to rely unless otherwise directed by the Judge.
4. Within 2 months of being served with the application, the Respondent must file and serve any material in response of which it intends to rely unless otherwise directed by the Judge.
5. The Applicant must file no later than 14 days before the hearing date a brief outline of written submissions.
6. The Respondent must file no later than 7 days before the hearing date a brief response to the applicant's written submissions.

Judge

**Attachment 6 – Standard Directions for Review Hearings under the
Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**

**IN THE COUNTY COURT OF VICTORIA
AT [MELBOURNE]
CRIMINAL JURISDICTION**

Case No: CR []

IN THE MATTER of section [] of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*

– and –

IN THE MATTER of []

Judge Making Order: Judge []

Date Order Made: []

Originating Process: Notice of Application/Review for

How Obtained: In Chambers

Other Matters: Not applicable

The Court Orders that:

5. The matter is listed for hearing on [], with an estimate of [] day/s.
6. The Department of Health and Human Services is to file and serve copies of any medical and/or psychiatric and/or psychological reports upon which it intends to rely on or before [] (**21 days before hearing**).
7. The Applicant/Reviewee is to notify the Attorney-General, the Department of Health and Human Services and the Director of Public Prosecutions of her/his intention to obtain further medical and/or psychiatric reports on or before [] (**14 days before hearing**).
8. The Applicant/Reviewee is to file and serve copies of any medical and/or psychiatric and/or psychological reports upon which he/she intends to rely on or before [] (**7 days before hearing**).
9. Parties seeking orders by consent in chambers are to notify the Court and all other parties on or before [] (**7 days before hearing**).
10. The Director of Public Prosecutions is to file an affidavit regarding service on the family members and victims on or before [] (**2 days before hearing**).
11. All parties are to file and serve an indication of position on or before 3:00pm on [] (**5 days before hearing**).
12. Liberty to apply.

13. The parties to be served are:

Victorian Government Solicitor
Level 25, 121 Exhibition Street
MELBOURNE VIC 3000
DX 300077 Melbourne
Attention:
litigation@vgso.vic.gov.au

Office of Public Prosecutions
565 Lonsdale Street
MELBOURNE VIC 3000
DX 210290 Melbourne
Attention: Legal Prosecution Specialist -
Mental Impairment
opp.mentalimpairment@opp.vic.gov.au

Manager, Health Team,
Department of Health
and Human Services
Legal Branch
12/50 Lonsdale Street
MELBOURNE VIC 3000
DX 210311 Melbourne
Attention: Kiera Dingle
(Where Forensicare Supervise)
general.counsel@dhhs.vic.gov.au

OR

Manager, Children, Youth, Disability Team,
Department of Health and
Human Services
Legal Services
24/50 Lonsdale Street
MELBOURNE VIC 3000
DX 210081 Melbourne
Attention: Kirsty McIntyre, Director
(Where Disability Services supervise)
general.counsel@dhhs.vic.gov.au

Solicitor for person subject to a
supervision order
c/o

MHDL
Civil Justice, Access and Equity
Victoria Legal Aid
570 Bourke Street
Melbourne Vic 3000
DX 210646
Attention: Sophie Delaney
VLA_CMI@vla.vic.gov.au

DATE AUTHENTICATED:

.....
JUDGE



County Court
VICTORIA

EXPERT WITNESS CODE OF CONDUCT

1. A person engaged as an expert witness has an overriding duty to assist the Court impartially on matters relevant to the area of expertise of the witness.
2. An expert witness is not an advocate for a party.
3. Every report prepared by an expert witness for the use of the Court shall state the opinion or opinions of the expert and shall state, specify or provide—
 - (a) the name and address of the expert;
 - (b) an acknowledgement that the expert has read this code and agrees to be bound by it;
 - (c) the qualifications of the expert to prepare the report;
 - (d) the facts, matters and assumptions on which each opinion expressed in the report is based (a letter of instructions may be annexed);
 - (e) a summary of—
 - (i) the reasons for; and
 - (ii) any literature or other materials utilised in support of.
 - (f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise;
 - (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;
 - (h) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate, and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Court;
 - (i) any qualification of an opinion expressed in the report without which the report is or may be incomplete or inaccurate; and
 - (j) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason.
4. Where an expert witness has provided to a party (or that party's legal representative) a report for the use of the Court, and the expert thereafter changes his or her opinion on a material matter, the expert shall forthwith provide to the party (or that party's legal representative) a supplementary report which shall state, specify or provide the information referred to in paragraphs (a), (d), (e), (g), (h), (i) and (j) of clause 3 of this code and, if applicable, paragraph (f) of that clause.

5. If directed to do so by the Court, an expert witness shall—
 - (a) confer with any other expert witness; and
 - (b) provide the Court with a joint report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing.
6. Each expert witness shall exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the Court and in relation to each report thereafter provided, and shall not act on any instruction or request to withhold or avoid agreement.