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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: all proceedings with a CR-15 (or later) case number only:
 - (i) Does include all Plea/Trial/Supervision Order matters
 - (ii) **Does not** include Appeal files.
 - (b) Circuit matters: all proceedings with any CR case number:
 - (i) Does include all Plea/Trial/Supervision Order matters
 - (ii) **Does not** include Appeal files.
- 1.2. For any Melbourne matter which has a CR-14 (or earlier) case number, and for all Appeal files any requirement in this Practice Note to file must be done by [emailing the Criminal Registry](#) and not via eLodgement.

Late-filed documents

- 1.3. Any party who files a document via eLodgement after 4PM on the day before a hearing **must**:

General List Court matters

- (a) [Email the Coordinating List Associate](#) and the [Listing Associate](#) to notify them of the late filing.

Sexual Offences List matters

- (b) [Email the Coordinating Associate to the SOL](#) to notify them of the late filing.

All other matters

- (c) Email the [relevant Associate](#) where a Judge is allocated to the matter or the [Criminal Registry](#) where the matter is not allocated to notify them of the late filing.

What not to file via eLodgement

- 1.4. 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 – must be delivered or handed to the Criminal Registry
- (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

- 1.5. 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

- 1.6. 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

- 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) Will there be any application for severance?
- (c) Trial estimate and how was this arrived at?
- (d) Will any Evidence Act notices be served?
- (e) Will any subpoenas be sought?
- (f) Any pre-trial issues?
- (g) Is funding in place?

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 (sexual offence – child/cognitively impaired complainant)

- 3.1. 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.
- 3.2. 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

- 3.3. 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; and
 - (c) [Prosecution Witness Information Sheet](#).
- 3.4. 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.
- 3.5. 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

- 3.6. Both parties must be fully familiar with the matter.
- 3.7. Practitioners are not required to robe for IDHs
- 3.8. 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](#)]
- 3.9. 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

3.10. 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) Will an application be made for a witness to give evidence by alternative arrangements;
- (e) Trial estimate and how was this arrived at?
- (f) Will any subpoenas be sought, including leave sought to issue subpoenas to compel the production of protected evidence (confidential communications)?

- (g) 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) ;
- (h) Does the prosecution propose to adduce any tendency evidence, coincidence evidence or hearsay evidence;
- (i) The issues that are likely to be in dispute at the trial;
- (j) 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).
- (k) Whether funding arrangements are in place for the trial.

3.11. 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.

3.12. 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.

3. Depositions (and E-Depositions)

- 3.1. 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.
- 3.2. 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.

4. Final Directions Hearing

- 4.1. 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.
- 4.2. Counsel briefed to appear at the trial **must** appear at the Final Directions Hearing.

Prosecution Filing Requirements

- 4.3. 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) Notice of Pre-Trial Admissions (see s 182 CPA);
 - (e) Notices in relation to certain evidence if sought to be adduced:
 - (i) Notice of intention to adduce Hearsay Evidence (see s 67 EA);
 - (ii) Notice of intention to adduce Tendency Evidence (see s 97EA);
 - (iii) Notice of intention to adduce Evidence of Previous Representation (see s 65 EA);
 - (iv) Notice of intention to adduce Coincidence Evidence (see s 98 EA);
 - (v) Notice to adduce Expert Certificate as Opinion Evidence (see s 177 EA)

Defence Filing Requirements

- 4.4. 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) Notices in relation to certain evidence if sought to be adduced:
 - (i) Notice of intention to adduce Hearsay Evidence (see s 67 EA);

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

FDH Questions

- 4.5. 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?

Relinquishing a Brief before Trial

- 4.6. 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.
- 4.7. 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.

COMMITTED FOR TRIAL: PLEA OF GUILTY

5. Plea Hearing

- 5.1. 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.
- 5.2. 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

- 5.3. The Prosecution **must** file [via eLodgement](#), and serve on the Defence at least 5 days before the plea date:
 - (a) The Draft Indictment (which has a draft watermark);
 - (b) The Criminal Record (if any);
 - (c) The Prosecution Opening upon Plea ([see below](#));
 - (d) A chronology;
 - (e) Victim Impact Statement ([see below](#)); and
 - (f) Copies of any ancillary orders sought.

Prosecution Opening upon Plea

- 5.4. 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 any of the offences is a baseline offence; and

- (f) Any ancillary orders which are sought by the Prosecution in addition to sentence (e.g. alcohol exclusion orders, Sex Offender Registration applications).
- 5.5. Where any of the matters set out in (c)-(f) 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.
- 5.6. If an offence is a baseline offence the Prosecution must address the following matters in its opening:
 - (a) Whether and for what reasons the offence is said to require a sentence at, above or below the baseline;
 - (b) Any relevant statistical material on which the Prosecution proposes to rely; and
 - (c) Any sentencing decisions on which the Prosecution proposes to rely.

Victim Impact Statements

- 5.7. 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.
- 5.8. 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.
- 5.9. 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.
- 5.10. 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

- 5.11. The defence **must** file [via eLodgement](#), and serve on the Prosecution, at least 2 days before the Plea date:
 - (a) A chronology;
 - (b) A Defence Outline of Submissions; ([see below](#))

- (c) Any expert reports;
- (d) The amount of pre-sentence detention (if any) as at the date of the plea;

Defence Outline of Submissions

5.12. If the accused is pleading guilty to an offence which is a baseline offence the Defence **must** address the following matters in its written submissions:

- (a) Whether and for what reasons the offence is said to require a sentence at, above or below the baseline;
- (b) Whether the statistical material provided by the Prosecution is accepted or whether the defence seek to rely on its own material which must be provided to the court; and
- (c) Any sentencing decisions on which the Defence proposes to rely.

5.13. 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.

5.14. 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](#).

5.15. Unless it has occurred previously, the accused will be arraigned at the commencement of the Plea Hearing, following the signed Indictment being filed in open court.

5.16. 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.

5.17. 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

6. Bail

Application for Bail

- 6.1. 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.
- 6.2. Attached to the application must be a Chronology.
- 6.3. Where the application is not opposed – the proposed conditions of Bail **must** be attached to the application and filed [via eLodgement](#).
- 6.4. 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.

- 6.5. 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.
- 6.6. Where an applicant is granted bail, they will return to the County Court cells to be discharged from custody.

Application to Vary Bail

- 6.7. 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.
- 6.8. 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 estimate duration of the hearing.

- 6.9. 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.
- 6.10. Where any variation of bail is granted, including any suspension of conditions, the applicant will be required to enter into a fresh Bail Undertaking.
- 6.11. 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.
- 6.12. 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

- 6.13. 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.
- 6.14. Where the application is not opposed, the proposed conditions of Bail **must** be attached to the application when it is filed [via eLodgement](#).
- 6.15. 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.
- 6.16. 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.
- 6.17. Where an applicant is granted bail, they will return to the County Court cells to be discharged from custody.

Application to Revoke Bail

- 6.18. 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*.

7. Application for an Adjournment

7.1. 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.

7.2. 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.

8. Application for a Warrant to Arrest

- 8.1. 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](#).
- 8.2. The Judge will sign the warrant, and have it returned to the Prosecution.

Return of Warrant

- 8.3. 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.

9. Application for a Sentence Indication

- 9.1. 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.
- 9.2. 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

- 9.3. 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.
- 9.4. 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

- 9.5. 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).

10. Application to Take Evidence Before Trial

- 10.1. 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.
- 10.2. 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.
- 10.3. 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)

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

- 11.1. Section 212(a) *Criminal Procedure Act 2009* requires that a trial for a sexual offence must commenced within 3 months of the committal date.
- 11.2. 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. The applications will appear in the [Crime & Appeals Daily List](#).
- 11.3. 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 parties in each proceeding.
- 11.4. Neither party, nor the accused is required to attend the determination of the application, but may attend if they wish.
- 11.5. 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.

12. Application to adduce confidential communications

12.1. 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.

12.2. 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.

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

13.1. 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](#).

13.2. 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.

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

14.1. 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

14.2. 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.

14.3. 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.

14.4. 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.

14.5. 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.

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

14.7. 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.

- 14.8. 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.
- 14.9. Any queries about suppression orders should be directed to the Strategic Communications Manager (Phone: 03 8636 6272 | media@countycourt.vic.gov.au)

15. Application to Uplift Unrelated Summary Charges

15.1. 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.

15.2. 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.

15.3. 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.

15.4. 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.

**16. Application to remit related/unrelated summary charges
back to the Magistrates' Court**

16.1. NEW SECTION TO BE CREATED – MAY 2015

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

- 17.1. Applications for compensation orders under section 85B of the *Sentencing Act 1991* **must** be made within 12 months of conviction.
- 17.2. 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.
- 17.3. 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 4](#)
 - (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 4.

Application requirements

- 17.4. 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.

- 17.5. 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.

SUBPOENAS

18. General Subpoenas

- 18.1. 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](#).
- 18.2. 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.
- 18.3. The Court will seal the subpoena and email it back to the issuing party so that it can be served.

Subpoena to Produce Documents

- 18.4. Where the subpoena requires a person to produce a document, the issuing party **must** attach a [Notice and Declaration to the addressee](#) to the front of the sealed subpoena and may then serve it.
- 18.5. 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 (if applicable); 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.

19. Subpoenas relating to confidential communications

- 19.1. 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, the medical practitioner or counsellor and informant.
- 19.2. 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.
- 19.3. 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.
- 19.4. 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.

- 19.5. The Court will seal the subpoena and email it back to the issuing party so that it can be served.

Subpoena to Produce Confidential Documents

- 19.6. The issuing party **must** attach [Notice and Declaration to the addressee](#) to the front of the sealed subpoena and may then serve it.
- 19.7. 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

20. Witness Code of Conduct

- 20.1. 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](#)'.
- 20.2. Any expert report tendered must contain an acknowledgment that the expert has read and complied with the code in preparation of the report.
- 20.3. 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.
- 20.4. 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.
- 20.5. 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

21. Interlocutory Appeals before Trial

- 21.1. 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.
- 21.2. These kinds of issues should be raised through the directions hearing process so that they may be resolved before the trial commences.
- 21.3. 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.
- 21.4. 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.
- 21.5. 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.
- 21.6. If the Judge refuses to certify the interlocutory decision a party may apply for review of that decision with the Court of Appeal.

- 21.7. 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.
- 21.8. Practitioners should be aware of the time limits which apply to filing an application for review (see s 296 CPA).

22. Interlocutory Appeals during the Trial

- 22.1. 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.
- 22.2. 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.
- 22.3. 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.
- 22.4. If the Judge refuses to certify the interlocutory decision a party may apply for review of that decision with the Court of Appeal.
- 22.5. 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.
- 22.6. Practitioners should be aware of the time limits which apply to filing an application for review (see s 296 CPA).

FITNESS TO STAND TRIAL

NEW SECTION TO BE CREATED – MAY 2015

DISCONTINUING A PROSECUTION

23. Before Indictment is filed

23.1. 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

24. After an Indictment has been filed

24.1. 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.

25. Related summary offences

25.1. 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

26. Offender alleged to contravene County Court order (s 83G Sentencing Act)

- 26.1. 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) 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 in the Magistrates' Court; and
 - (c) Serve the charge and summons on the offender.
- 26.2. 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 via phone (03 8636 6570) to obtain a new date.
- 26.3. 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 schedule;
 - (b) Affidavit of Service;
 - (c) s 83AJ Transfer order made by the Magistrates' Court; and
 - (d) Contravention Report and any supporting material.

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

- 27.1. 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) to obtain a date for the accused to be Arraigned. Criminal Registry will obtain a date from the relevant Associate where appropriate.
- 27.2. 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.
- 27.3. Within 7 days of the Arraignment, the Prosecution **must**:
- (a) File the charge-sheet by attending in person at the registry of the County Court.
- (b) Serve the charge and summons on the offender.
- 27.4. 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 schedule;
- (b) Affidavit of Service; and
- (c) Contravention Package.

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

- 28.1. 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) to obtain a date for the accused to be Arraigned. Criminal Registry will obtain a date from the relevant Associate where appropriate.
- 28.2. 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 uplifted and contravention package prepared. The Plea hearing date will constitute the return date for the Charge-Sheet and Summons.
- 28.3. The Prosecution **must** ensure that 7 days before the listed Plea Hearing that:
- (a) The charge has been filed with the registrar of the appropriate Magistrates' Court;
 - (b) File an [Application to Transfer an Unrelated Summary Charge](#) has been filed [via eLodgement](#). 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;
 - (iii) If the accused is on bail, a copy of the accused's bail undertaking in relation to the charge; and
 - (iv) A Certified Extract of the relevant Magistrates' Court Order.
 - (c) File the Contravention package [via eLodgement](#).

APPEALS FROM THE MAGISTRATES' COURT

29. Pre-Appeal Mentions

- 29.1. All appeals from the Magistrates' Court against conviction and sentence with a duration of one day or more will be listed for a Pre-Appeal Mention 21 days from the date the appeal is lodged. The Mention will be listed at 9AM in the General List Court in Court 2-9.
- 29.2. Practitioners are not required to robe for Pre-Appeal Mention.
- 29.3. Appellants **must** attend the Pre-Appeal Mention.
- (a) Appellants **in custody must** attend Pre-Appeal Mention by way of video link unless the Court orders otherwise, or a party makes a request to attend in person [[see Video links](#)].

Appeals regarding Criminal Charges

- 29.4. At the Pre-Appeal Mention, 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) 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 be made?
 - (g) Are there any co-accused, and 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

- 29.5. At the Pre-Appeal Mention, 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?

30. Abandoning an Appeal before the Hearing Date

No longer wish to proceed with the Appeal at all

30.1. 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) If the appellant is legally represented, File the Notice via [eLodgement](#), and serve it on the other party.

(c) If the appellant is representing themselves, File the Notice with the Criminal Registry via [email](#).

30.2. 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

30.3. 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) If the appellant is legally represented, File the Notice via [eLodgement](#), and serve it on the other party.

(c) If the appellant is representing themselves, File the Notice with the Criminal Registry via [email](#).

30.4. 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.

31. Abandoning an Appeal on the Hearing Date

- 31.1. 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.
- 31.2. 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.

32. Application to re-instate an Appeal

- 32.1. 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](#)
 - (i) If the appellant is legally represented, File the Notice via [eLodgement](#), and serve it on the other party.
 - (ii) If the appellant is representing themselves, File the Notice with the Criminal Registry via [email](#).
- 32.2. 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

NEW SECTION TO BE CREATED – MAY 2015

ADMINISTRATIVE ARRANGEMENTS

33. Video link & Attendance at Hearings

Pre-Trial Hearings

- 33.1. 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.
- 33.2. 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.
- 33.3. 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.
- 33.4. 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.
- 33.5. 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 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 may be required to cover the cost of the video link.
- 33.6. 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 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 may be required to cover the cost of the video link where they do not appear from another Victorian court.

Plea & Appeal Hearings

- 33.7. 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.

- 33.8. 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](#).
- 33.9. 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.
- 33.10. Where the application is granted, a written request **must** be made to the Video Link Coordinator via email at videolinks@countycourt.vic.gov.au.

Witness arrangements

- 33.11. 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. The practitioner must arrange a suitable location from which the witness is to appear and provide all details to the Video Link Coordinator.
- 33.12. Video Link site details **must** be provided to the Video Link Coordinator in writing at videolinks@countycourt.vic.gov.au no later than 14 days before the hearing date.
- 33.13. 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 rental payment **must** be made via cheque 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.
- 33.14. If the Video link is cancelled all payments will be returned to the requesting party.

Contravention Hearings

- 33.15. 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](#).
- 33.16. Where such a request is granted, the informant is responsible for booking the video link and the associated video link booking fee and the applicable line rental charges.

34. Transcripts

- 34.1. 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.
- 34.2. 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
- 34.3. 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.

35. Interpreters

- 35.1. The Court is not responsible for arranging or paying for interpreters for accused or witnesses.
- 35.2. Where an interpreter may be required, the Defence should advise the Prosecution who are responsible for arranging for interpreters to attend Court.
- 35.3. 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

36. Criminal Registry (Melbourne)

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

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

(b) Phone: (03) 8636 6570

37. Sexual Offences List

37.1. 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

38. Circuit Courts

38.1. 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

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

39. Judge's Associates

- 39.1. 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 – 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



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.