



## LOCAL COURT PRACTICE NOTE COMM 1

ISSUED: 24 April 2012

COMMENCES: 1 May 2012

AMENDED: 26 June 2017

### Procedures to be adopted for committal hearings in the Local Court

#### 1. Application

- 1.1. This Practice Note, as amended, commences on 26 June 2017 and applies to all committal proceedings before the Local Court on and from that date.
- 1.2. This Practice Note supersedes the following Practice Notes, which are repealed on the commencement of this Practice Note:
  - Practice Note 1 of 2010
  - Practice Note 7 of 2003
  - Practice Note 9 of 2003
  - Practice Note 1 of 2007
- 1.3. This Practice Note does not apply to offences in the Children's Court.

#### 2. Definitions

- 2.1. In this Practice Note:

***“committal proceedings”*** means committal proceedings conducted pursuant to Part 2 of Chapter 3 of the CPA in relation to a strictly indictable matter, a Table matter, or a Commonwealth optional indictable matter **in respect of which a party DOES NOT consent to summary disposition**

***“Commonwealth optional indictable matter”*** means proceedings for an offence against a law of the Commonwealth punishable by imprisonment for a period not exceeding 10 years, which **MUST be dealt with on indictment unless the prosecution and the defence each consent to summary disposition**

“**CPA**” means the *Criminal Procedure Act 1986*

“**Table matter**” means proceedings for an offence listed in Table 1 or Table 2 of Schedule 1 of the CPA

“**strictly indictable matter**” means proceedings for:

- an indictable offence against a law of the State that is not listed in Table 1 or Table 2 of Schedule 1 of the CPA;
- an offence against a law of the Commonwealth punishable by imprisonment for a period of at least 10 years

### 3. Purpose

3.1. The procedures outlined in this Practice Note are intended as best practice to ensure that:

- The legislative purpose set out in s 260 CPA is applied;
- Time Standards for cases committed for trial or sentence to the Supreme or District Court are as far as possible complied with; and
- The utilisation of Audio Visual Link (AVL) technology is conducted in the most efficient manner.

3.2. An overview of the procedures outlined in this Practice Note is set out at Attachment A.

### 4. Election in Table matters and Commonwealth optional indictable matters

4.1. A brief of evidence will not be ordered in a Table matter unless the Court is informed that a plea of not guilty is entered.

4.2. A Table matter will proceed summarily pursuant to Chapter 5 of Practice Note Crim 1 unless an election is made to proceed on indictment in accordance with section 260 of the CPA within the timeframes set out in paragraph 4.3.

4.3. Pursuant to section 263(1) of the CPA, an election must be made on or by the first return date after an order is made for service of the brief of evidence.

4.4. Where a plea of guilty is entered at the first mention, the prosecution is entitled to an adjournment for 2 weeks to consider whether or not an election is to be made and facts are not to be tendered.

4.5. Committal proceedings are to proceed in accordance with the following timetable unless the Court is satisfied that departure from the timetable is in the interests of justice.

4.6. In Commonwealth optional indictable matters, **the prosecution and the defence MUST EACH INDICATE whether or not they consent to the summary hearing**

**of the charge/s** at the time at which a plea is entered. Where both parties consent, the matter is to proceed in accordance with Chapter 5 of Practice Note Crim 1.

## **5. First mention – Strictly indictable matters**

5.1. At the first mention, unless a plea of guilty is entered, orders will be made for:

- (a) The service of the brief in 6 weeks; and
- (b) Further mention for reply to the brief in 9 weeks.

## **6. Second mention**

6.1. At the second mention, unless a plea of guilty is entered or there is a waiver of committal, orders will be made in the following terms to allow for any negotiations between the parties to be conducted:

- (a) Within the initial 2 weeks, the service of any:
  - Defence submissions on the prosecution; and
  - Prosecution offers on the defence.
- (b) Within the following 2 weeks, consideration of and response to any submission or offer of a party by the other party.
- (c) Within the final 2 weeks:
  - All negotiations between the parties to be concluded; and
  - If a plea of guilty is to be entered, agreed facts to be prepared for presentation to the court on the next mention date.
- (d) Next mention in 6 weeks.

6.2. It is expected that the parties will be in a position to continue with the committal process by the next mention date. Further adjournment/s for the purpose of negotiations will not be granted except in accordance with paragraph 4.5.

## **7. Third mention**

7.1. At the third mention, unless there is a plea of guilty or the matter proceeds by waiver of committal or paper committal, the matter is to be adjourned with orders made for:

- (a) The filing and service of written submissions by the accused in support of an application under s 91 CPA or s 93 CPA in 2 weeks, and
- (b) Further mention for reply in 4 weeks.

## **8. Fourth mention**

- 8.1. At the fourth mention, a failure to file and serve s 91/93 submissions in accordance with the timetable set out in paragraph 7.1 will result in a presumption that the application is abandoned.
- 8.2. Unless there is a plea of guilty or the matter proceeds by waiver of committal or paper committal, the matter will be listed at the first available opportunity for:
  - (a) The hearing of any contested s 91 or s 93 application; or
  - (b) A committal hearing (if there is agreement under s 91/93).

## **9. Adjournments**

- 9.1. Adjournments or other variations to the above timetable will not be granted apart from in accordance with paragraph 4.5.
- 9.2. Subject to paragraph 4.5, failure to finalise a brief in accordance with the above timetable will not, of itself, provide the basis for an adjournment for further time for service of the brief.
- 9.3. In the event the Court is informed of a failure to finalise a brief in accordance with the above timetable due to delays in forensic analysis of material, the Court will consider whether to grant an adjournment only if:
  - (a) The party seeking the forensic analysis informs the Court of the date the material was sent for forensic analysis, and
  - (b) The Court is satisfied the results of the forensic analysis are likely to assist in the determination of the committal proceedings.

## **10. Attendance of accused**

- 10.1. Unless excused by the Court, the accused must appear, either in person or via AVL in accordance with paragraph 10.2, on each court date. An accused cannot be excused for the purpose of the next appearance unless legally represented.
- 10.2. Subject to paragraph 10.1, an accused in custody must appear via AVL on each court date except for the first mention (or any other occasion that is not a physical appearance proceeding within the meaning of the *Evidence (Audio and Audio Visual Links) Act 1998*) unless the Court directs otherwise. This includes a court date upon which:
  - (a) There is to be a waiver of committal;
  - (b) The matter is to proceed by way of paper committal;

- (c) A committal hearing is listed; or
- (d) The accused is to be committed for sentence.

## **11. Committals for trial involving co-defendants**

- 11.1. Co-defendants should be committed for trial together so as to avoid unnecessary separate trials unless the Court considers it is in the interests of justice not to do so.
- 11.2. If a defendant seeks a paper committal and a co-defendant makes an application under s 91 CPA, the proceedings involving the defendant are to be adjourned to the same time as the proceedings involving the co-defendant. The hearing of the s 91 application should be expedited so as to not unduly delay the defendant's opportunity for an early trial, particularly where the defendant is in custody.
- 11.3. It is the responsibility of the prosecution to advise the Court of matters involving co-defendants if the matters are not listed at the same time.

## **12. Listing of committal proceedings for hearing in the Local Court**

- 12.1. Subject to the interests of justice, committal proceedings are to be completed as expeditiously as possible to enable the transfer, if appropriate, of matters to either the Supreme Court or District Court.
- 12.2. If the matter is not finalised on the afternoon of the last day allocated for hearing, it will proceed on the next sitting day of the Court until completed. All committal hearings listed for hearing within the metropolitan area are listed on this basis.

Judge Graeme Henson AM  
**Chief Magistrate**

## Attachment A

### Criminal Case Processing

Process of Matters through the Local Court

#### First Appearance

##### Table matters

- Matter to proceed summarily in accordance with Chapter 5 of PN Crim 1 unless election made: at first appearance, where plea of not guilty entered, matter adjourned for **4 weeks** for service of brief and **3 weeks** for reply
- Election must be made by first return date after orders for service of brief

##### Strictly Indictable matters or Table matters where election made at or by first appearance

- At first appearance unless plea of guilty entered: brief service orders made
- Matter adjourned for **6 weeks** for service of brief and **3 weeks** for reply

#### Second Appearance

- Matter adjourned for **6 weeks** for any negotiations between the parties, comprising:
  - The initial 2 weeks for service of any defence submissions or prosecution offers
  - The second 2 weeks for consideration and response by the other party to any submissions or offers
  - The final 2 weeks for all negotiations to be concluded, and in the case of a plea of guilty, the preparation of agreed facts to be presented to the court on the adjourned date

#### Third Appearance

- Matter proceeds by waiver of committal

*-or-*

- Matter adjourned with orders made for:
  - The filing and service of s 91/93 submissions by the accused in **2 weeks**
  - Further mention for reply in **4 weeks**

#### Fourth Appearance

- Matter proceeds by waiver of committal

*-or-*

- Matter listed at first available opportunity for
  - Hearing of contested s 91/93 application; or
  - Committal hearing (if there is agreement under s 91/93).