

District Court Criminal Practice Note 11

CHILD SEXUAL OFFENCE EVIDENCE PROGRAM SCHEME - DOWNING CENTRE

COMMENCEMENT

This Practice Note revises the version published 17 December 2015.

INTRODUCTION

The purpose of this Practice Note is to facilitate the operation of the Child Sexual Offence Evidence Program Scheme, which commenced on 31 March 2016, in the Sydney District Court. The Scheme has been extended to 30 June 2022. The *Criminal Procedure Act 1986* ("CP Act") was amended by the *Criminal Procedure Amendment (Child Sexual Offence Evidence Pilot) Act 2015* No 46, which came into force on 6 November 2015. The Act inserted Part 29 into Schedule 2 of CP Act.

The Part generally applies to proceedings for prescribed sexual offences commenced after the commencement of the Part (s 83).

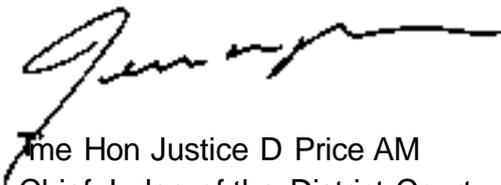
SUMMARY OF AMENDMENTS

1. All evidence of a child under 16 must be given by way of pre-recorded evidence, and such evidence may be given for a child under 18 (s 84). Pre-recorded evidence hearings are conducted where additional oral evidence in chief, cross-examination and re-examination is recorded before Judge Traill or Judge Shead SC. The Prosecution and Defence are represented to conduct any additional evidence in chief, cross-examination and re-examination of the child complainant. This is the evidence of the complainant at the balance of the trial.
2. Witness intermediaries, who are officers of the Court, are appointed to assist the parties and the Court to communicate with child complainants. Their role includes explaining questions to, and the answers of, child complainants (ss 88-90). A ground rules hearing concerns the provision of information to the Court about how counsel should question the witness to elicit reliable evidence.

PRACTICE DIRECTION

1. From 6 August 2019, all prescribed sexual offences (s 3 CP Act) committed for trial from the Local Court to the **Downing Centre District Court**, where the complainant is under 18 at the time of committal for trial, are to be listed for arraignment and case management call over on a **Monday at 9.15am**, no later than 14 days after committal for trial.
2. This list will be known as the **Child Sexual Assault List** and will be managed separately from the general arraignments list.
3. For matters in the Child Sexual Assault List, the Court expects the Prosecution to be represented by either the Crown Prosecutor or Solicitor Advocate briefed to appear at trial and will also expect Counsel who represents the accused at trial to appear. Judges in the Downing Centre will be requested, as much as possible, to accommodate Counsel who are required to appear in the Child Sexual Assault List.
4. The Court will expect the Prosecution to present an indictment in accordance with s 129 of the CP Act (that is, within 4 weeks of committal for trial) and with an expectation that an indictment be filed in court as soon as possible after committal.
5. For matters in the Child Sexual Assault List, the Judge will set a timetable for the filing of the Prosecutor's Notice (s 142 of the CP Act), the Defence Response (s 143 of the CP Act) and the Prosecutor's Response to the Defence Response (s 144 of the CP Act), bearing in mind the provisions of the amending legislation that pre-recorded hearings are to be "held as soon as practicable" after the first appearance in court: s 85(1).
6. The Court will set a ground rules hearing date (GRH), a pre-recorded evidence date (PRH) and fix a trial date for the balance of the trial, following the pre-recorded evidence hearing. A witness who gives evidence at a pre-recorded evidence hearing cannot give further evidence without the leave of the Court (s 87).
7. The Court will appoint a witness intermediary in accordance with the provisions of Division 2, s 89.
8. The GRH will ordinarily be set down at least one week before the PRH.
9. There is an expectation that representatives for both the Crown and Defence appearing at the pre-recorded hearing will continue as representatives in the balance of the trial.

10. Practitioners should ensure that Legal Aid applications have been lodged and finalised immediately after committal for trial and representatives briefed both for the Crown and Defence will be available for a pre-recorded hearing within approximately 2 months and thereafter at the balance of the trial.
11. The Crown should provide the Court with a copy of the indictment, Crown Case Statement, s 142 Notice and s 143 Notice, JIRT interviews, discs and exhibits at least 2 weeks prior to the PRH.
12. The Child Sexual Assault List will be conducted in a Court to be advised in the Downing Centre.



The Hon Justice D Price AM
Chief Judge of the District Court
6 August 2019