



LOCAL COURT PRACTICE NOTE COMM 2

ISSUED: 14 March 2018

COMMENCES: 30 April 2018

Procedures to be adopted for committal proceedings in the Local Court pursuant to the Early Appropriate Guilty Plea Scheme

1. Application

- 1.1. This Practice Note commences on 30 April 2018 and applies to committal proceedings which deal with offences commenced on or after this date.
- 1.2. Committal proceedings which deal with offences commenced before 30 April 2018 will continue to be governed by Practice Note Comm 1 and provisions of the *Criminal Procedure Act 1986* (NSW) (“CPA”) as in force before its amendment by the *Justice Legislation Amendment (Committals and Guilty Pleas) Act 2017* (NSW).
- 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 which is proceeding on indictment in accordance with Commonwealth law.

“**Commonwealth optional indictable matter**” means proceedings for an offence against a law of the Commonwealth that may be heard either upon indictment or summarily.

“**CPA**” means the *Criminal Procedure Act 1986* (NSW).

“**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.

“**charge certificate**” means a document pursuant to section 66(1) of the CPA in the prescribed form.

“**case conference**” means a conference held under Division 5 of Part 2 of Chapter 3 of the CPA.

“**case conference certificate**” means a case conference certificate required to be completed and filed under Division 5 of Part 2 of Chapter 3 of the CPA.

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 section 260 of the CPA is applied;
- Time Standards for cases committed for trial or sentence to the Supreme Court 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 no later than 14 days prior to the allocated hearing date.

4.4. Where a plea of guilty to a charge for a Table offence or a Commonwealth optional indictable matter is entered at the first mention, upon application by the prosecution the Court will grant an adjournment for 2 weeks to consider whether or not an election is to be made. A statement of facts is not to be tendered.

4.5. In Commonwealth optional indictable matters, **the prosecution, and, where legislatively required, the defence, MUST INDICATE whether or not they consent to the summary hearing of the charge/s** at the time at which a plea is entered. Where the required party/ parties consent, the matter is to proceed in accordance with Chapter 5 of Practice Note Crim 1.

NOTE: Certain offences under Commonwealth legislation do not require the consent of the accused to proceed summarily.

5. Matters to proceed expeditiously and in accordance with timetable

- 5.1. Committal proceedings are to progress as expeditiously as possible and in accordance with the following timetable unless the Court is satisfied that departure from the timetable is in the interests of justice.

6. Fitness for trial

- 6.1. If the question of the accused's fitness for trial is properly raised pursuant to section 93 of the CPA, the Court may, in its discretion, suspend the operation of this Practice Note pending resolution of this issue.

NOTE: Although the question of the accused's fitness to be tried can be raised at any time in committal proceedings (section 93(2) of the CPA), a magistrate may only commit a person for trial in such circumstances **after** the charge certificate has been filed (section 94 of the CPA).

7. First Step – Brief orders

- 7.1. At the first step orders are to be made for the service of the brief and the matter is to be adjourned for 8 weeks to allow for service.

8. Second Step – Brief service

- 8.1. At the second step:
- (a) the prosecution is to confirm that the brief has been served; and
 - (b) the matter is to be adjourned for 6 weeks for filing of the charge certificate.

9. Third Step – Charge certificate and criminal case conferencing

- 9.1. At the third step, a charge certificate is to be filed by the prosecution.
- 9.2. Unless a plea of guilty is entered, the following procedure applies:
- (a) **If the accused is legally represented** proceedings will be adjourned for a total of 8 weeks, with the expectation that a criminal case conference(s) is to occur within the first 6 weeks; and the case conference certificate is to be finalised, and any further charges are to be filed, within the remaining 2 weeks.

NOTE: The Court is to be advised of the date set for the criminal case conference at the time the adjournment for the case conference is granted. If the Court is not provided with such a date, the proceedings are to be adjourned

for a period **not exceeding 7 days** to enable the setting of a date for the case conference.

-OR-

- (b) **If the accused is unrepresented** proceedings will be adjourned for 2 weeks to allow the accused to obtain legal advice and/or representation.

NOTE: This period does not affect any subsequent orders in respect of case conferencing should the accused obtain legal representation.

-OR-

- (c) **Where an application is made for the examination of a prosecution witness** proceedings will be adjourned with orders made for:

- i. the accused to file and serve written submissions in support of an application under section 82 or 84 of the CPA within 2 weeks; and
- ii. further mention for reply in 4 weeks and where necessary, a hearing date is to be set at the first available opportunity for the hearing of any contested application.

NOTE: A failure to file and serve submissions in accordance with the timetable set out in paragraph 9.2(c)(i) will result in a presumption that the application is abandoned. Where it is presumed that the application is abandoned or upon finalisation of the application, the matter will be **adjourned for criminal case conferencing pursuant to paragraphs 9.2(a) or 9.2(b), as appropriate.**

10. Fourth Step – Case conference certificate, amended charge certificate, and committal

10.1. At the fourth step:

- (a) **If the accused is legally represented:**

- i. A case conference certificate along with any amended charge certificate is to be filed, and the accused must enter a plea to the offence/s.
- ii. Unless the Magistrate accepts a plea of guilty, the accused will be committed for trial. Where the Magistrate accepts a plea of guilty, the accused will be committed for sentence.

-OR-

- (b) **If the accused is unrepresented:**

- i. The accused must enter a plea to the offence/s.
- ii. Subject to section 98 of the CPA:

- Unless the Magistrate accepts a plea of guilty, the accused will be committed for trial.
- Where the Magistrate accepts a plea of guilty, the accused will be committed to for sentence.

11. Adjournments

- 11.1. Adjournments or other variations to the above timetable will not be granted apart from in accordance with paragraph 5.1.

12. Attendance of accused and representation

- 12.1. **Attendance of the accused:** The accused **must** appear, either in person or via AVL, on each court date, **unless an application is made by an accused who is legally represented to be excused and the Court grants the application on proper grounds.** An accused cannot be excused for the purpose of the next appearance unless legally represented.
- 12.2. **Appearance by agent or legal representative:** Any agent or legal representative must be sufficiently instructed to enable the Court to make all appropriate orders and directions.

13. Committals for trial involving co-accused

- 13.1. Where it is reasonably practical, co-accused 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.
- 13.2. If a co-accused makes an application under section 82 or 84 of the CPA and it is reasonably practicable to do so, the proceedings involving the accused are to be adjourned to the same time as the proceedings involving the co-accused. The hearing of the section 82 or 84 application should be expedited so as to not unduly delay the accused's opportunity for an early trial, particularly where the defendant is in custody.
- 13.3. It is the responsibility of the prosecution to advise the Court of matters involving co-accused if the matters are not listed at the same time.

Judge Graeme Henson AM
Chief Magistrate

Progress of Committal Proceedings through the Local Court

