



**Children's Court
Victoria**

PRACTICE DIRECTION

No. 4 of 2018

SEXUAL OFFENCES – SUMMARY CONTEST LISTINGS

This Practice Direction is issued pursuant to section 592 of the *Children, Youth and Families Act 2005*.

Preamble

1. This Practice Direction applies with respect to criminal proceedings, which relate wholly or partly to a charge of a sexual offence and where the proceedings are to be listed for a summary contested hearing.
2. A contest mention information form for summary contested hearings must be in Form A. Before the date for a summary contested hearing is fixed, this form must be filed with the Court either at the contest mention hearing or any other hearing where it is sought to fix the proceeding for a summary contested hearing.
3. A Notice of Readiness for Hearing must be in Form B. This form must be filed with the Court not less than 14 days before the date for the summary contested hearing.

This Practice Direction revokes Practice Direction No. 2 of 2009.

This Practice Direction commences on 4th June 2018.

A handwritten signature in blue ink that reads "Jennifer Bowles".

Magistrate Jennifer Bowles
Acting President
Children's Court of Victoria
1st June 2018

FORM A

SEXUAL OFFENCES LIST

CONTEST MENTION INFORMATION FORM
(for summary contested hearings)

This form is to be completed by practitioners in criminal proceedings which relate wholly or partly to a charge of a sexual offence where the matter is to be listed for a summary contested hearing.

Court Ref _____

PARTIES

Accused(s) _____

Informant _____

Station _____ Phone _____

Are there any related proceedings? If yes, state court reference number, parties names and how related.

READINESS FOR HEARING

Is the matter ready to proceed to hearing? ☐ Yes ☐ No If not, why not:

LEGAL REPRESENTATION

The court must be advised of the name of the legal representatives who will appear for the parties not later than 2 weeks prior to the date of hearing

Accused's Solicitors _____

Has legal representation for the accused been confirmed? ☐ Yes ☐ No

Accused's barrister who will appear at the contested hearing (if known) _____

Prosecutor who will prosecute at the contested hearing (if known) _____

WITNESSES

Total number of witnesses _____

Has witness availability been confirmed for the listing period? ☐ Yes ☐ No

If not, witness availability must be confirmed NOT LATER than one month prior to the date of hearing and the Court advised accordingly

Prosecution

Complainant(s) _____

Expert _____

Non-Expert _____

Police _____

Defence

Accused _____
Expert _____
Non-Expert _____

Child Witness(es)

Name of witness(es) DOB

What, if any, support has been arranged? ☐ Child Witness Service ☐ Witness Assistance Service
☐ Intermediary ☐ Other _____

Is competence to give sworn evidence in issue? ☐ Yes ☐ No

Cognitively Impaired Witness(es)

Name of witness(es) Nature of Impairment

What, if any, support has been arranged? ☐ Child Witness Service ☐ Witness Assistance Service
☐ Intermediary ☐ Other _____

Is competence to give sworn evidence in issue? ☐ Yes ☐ No

SPECIAL ARRANGEMENTS**Interpreters**

Name of witness(es) Language

Remote facilities/video conferencing/other alternative arrangements

Name of witness(es) Arrangement

Other special needs of any party(ies)/Witness(es)

Name of witness(es) Need

Technology requirements

What equipment is required, e.g. DVD, video, cassette, etc.

OTHER ISSUES WHICH MAY AFFECT THE HEARING**Plea**

The accused intends to plead not guilty to all charges

☐ Yes ☐ No

If no: The accused intends to plead guilty to the following charges:

The accused intends to plead not guilty to the following charges:

Indictable charges

Does the accused consent to the jurisdiction of the Children's Court to hear any indictable charges?

☐ Yes ☐ No

Record of Interview ("ROI")

Has the ROI been transcribed?

☐ Yes ☐ No

If not, what is the earliest date it can be served on the accused/s? _____

Is the ROI in issue?

☐ Yes ☐ No

S. 366 and 367 Criminal Procedure Act 2009/VARE

Has any witness given a VARE statement?

☐ Yes ☐ No

If yes, has the VARE been transcribed?

☐ Yes ☐ No

If not, what is the earliest date it can be served on the accused/s? _____

Is it proposed to admit the VARE as evidence in chief?

☐ Yes ☐ No

If, yes, what are the witness(es)' name(s)

Does the accused object to the admissibility of all or part of the VARE?

☐ Yes ☐ No

Special defences and related (e.g. mental impairment, alibi)

Disclosure issues

Has the accused sought additional material from the prosecution which has not yet been provided?

☐ Yes ☐ No

If not, why not? _____

What is outstanding and when will it be served?

S.342 Criminal Procedure Act

Will the accused be seeking leave pursuant to s.342?

☐ Yes ☐ No

S.18 Evidence Act 2008

Does s.18 potentially apply to any witness?

☐ Yes ☐ No

If, yes, what are the witness(es)' name(s)

Witness summonses

(Refer to Children's Court Practice Direction No. 5 of 2018)

Confidential communications – Has leave been sought/is it proposed to seek leave to issue a confidential communications witness summons?

☐ Yes ☐ No

If, yes, to whom

Other – Is it proposed to issue any other witness summonses/summons to produce documents?

☐ Yes ☐ No

If, yes, to whom

What if any facts/issues are agreed between the parties?

Legal Issues

Is it anticipated that preliminary legal submissions and/or rulings will need to be made: ☐ Yes ☐ No

If, yes, what are the issues

How long is it expected to take? _____ days

Are there any other issues which may affect the hearing?

Estimated length of hearing _____ days

THE FOLLOWING ORDERS ARE SOUGHT:

☐ By the Informant

☐ By the Accused

☐ On or before (date) _____

The informant/accused serve upon the accused/informant the following

☐ On or before (date) _____

The Application by the informant/accused be filed with respect to:

☐ Witnesses Summonses

☐ S.342

☐ Other

☐ On or before (date) _____

Any summons to produce be filed with a return date sought of not later than (date) _____

☐ The matter be listed for further **mention** or **special mention** at the _____ Court

on (date) _____ to address the following issues:

☐ The matter be listed for a **ground rules hearing** at the _____ Court

on (date) _____

☐ The matter be listed for **final contested hearing** at the _____ Court

on (date) _____

☐ Other Orders

NOTATIONS

Dated: _____

Signed _____
Signature of prosecutor

Name of prosecutor

Signed _____
Signature of solicitor/counsel for accused

Name of solicitor/counsel for accused

FORM B

SEXUAL OFFENCES LIST

NOTICE OF READINESS FOR HEARING -
(for summary contested hearings)

TO: The Co-ordinating Registrar

Court Ref _____

PARTIES

Accused _____

Informant _____

Station _____

Phone _____

TAKE NOTICE that -

These proceedings have been listed for a summary contested hearing on (date) _____

for _____ days

at _____ Children's Court

INFORMANT'S PART

I _____ (Name of prosecutor)

1. have the brief to appear on behalf of the informant, I have read and considered the brief, I have viewed the VARE/s (if applicable) and I intend to appear on behalf of the informant. ☐ Yes ☐ No
2. have discussed with the legal practitioner briefed to appear for the accused whether this matter can be resolved without the need for a contested hearing ☐ Yes ☐ No
3. have obtained instructions from the informant and confirm that all prosecution witnesses are available to give evidence and the matter is ready to proceed ☐ Yes ☐ No
4. confirm that arrangements have been made for an intermediary, interpreters, remote witness facilities and support persons where appropriate ☐ Yes ☐ No
5. confirm that arrangements have been made for a ground rules hearing ☐ Yes ☐ No
6. have considered all preliminary issues which may affect the proceedings including the following:
 - a. issues related to s 18 *Evidence Act 2008*;
 - b. if a witness/s is a child or cognitively impaired; the admissibility of the VARE tape and whether it is intended to use the VARE as the evidence in chief of the witness/s pursuant to s 367 of the *Criminal Procedure Act 2009*and I do not anticipate that any preliminary issues will be raised which will delay the commencement of the proceedings and the calling of the first witness to give evidence ☐ Yes ☐ No
7. there has not been a material change to the proceedings from the position which was indicated at the contest mention/ when the case was listed for contested hearing /as set out in the contest mention information form ☐ Yes ☐ No

If yes (there has been a material change), provide particulars

Dated: _____

Signed _____
Signature of prosecutor

Print name _____

NOTE: If the answer to any of questions 1-5 is no or the answer to question 6 is yes, the parties MUST list the matter for mention not less than 7 days before the hearing date and the prosecutor and counsel for the accused are required to appear before the court at that mention.

ACCUSED'S PART

I _____ (Name of Barrister or Solicitor)

7. am briefed to appear on behalf of the accused, I have read and considered the brief, I have viewed the VARE/s (if applicable) and I intend to appear on behalf of the accused. ☐ Yes ☐ No
8. have obtained instructions from the accused and have confirmed my instructions that he/she consents to the jurisdiction of the Children's Court to hear any indictable charges and he/she intends to plead not guilty to *all charges/ *the following charge/s ☐ Yes ☐ No
-
9. have discussed with the prosecutor whether this matter can be resolved without the need for a contested hearing ☐ Yes ☐ No
10. confirm that all defence witnesses are available to give evidence and the matter is ready to proceed ☐ Yes ☐ No
11. (If the accused is in custody) confirm that a gaol order has been issued to bring the accused before the Court or the accused has been remanded to appear before the Court on the hearing date ☐ Yes ☐ No
12. confirm that arrangements have been made for interpreters, remote witness facilities and appropriate support persons (if applicable) ☐ Yes ☐ No
13. have considered all preliminary issues which may affect the proceedings including the following (where applicable):
- a. the application for and issuing of subpoenas;
 - b. whether a 3rd party may seek to appear at the hearing e.g. the respondent to a subpoena;
 - c. applications pursuant to s 342 of the *Criminal Procedure Act 2009*;
 - d. if a witness/s is a child or cognitively impaired; the admissibility of all or part of the VARE tape;
 - e. issues related to s 18 of the *Evidence Act 2008*.
- and I do not anticipate that any preliminary issues will be raised which will delay the commencement of the proceedings and the calling of the first witness to give evidence ☐ Yes ☐ No
14. there has not been a material change to the proceedings from the position indicated at the contest mention/ when the case was listed for contested hearing /as set out in the contest mention information form ☐ Yes ☐ No
- If yes (there has been a material change), provide particulars

Dated: _____

Signed _____
Signature of counsel for the accused

Print name _____

NOTE: If the answer to any of questions 7-13 is no or the answer to question 14 is yes, the parties MUST list the matter for mention not less than 7 days before the hearing date and the prosecutor and counsel for the accused are required to appear before the court at that mention.