



Children's Court of Victoria

Practice Direction

No. 2 of 2009

SEXUAL OFFENCES

SUMMARY CONTEST LISTINGS

**PRACTICE DIRECTION ISSUED PURSUANT TO
SECTION 592 OF THE
CHILDREN, YOUTH AND FAMILIES ACT 2005**

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 commences on 2 February 2009

**JUDGE PAUL GRANT
PRESIDENT**

29 January 2009

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

Defendant(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

Defendant's Solicitors _____

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

If Defendant is self-represented, has an order been made for VLA limited representation? (s.37CA(6) Evidence Act 2008 see also p2 Protected Witnesses) ☐ Yes ☐ No

If yes, has VLA confirmed representation? ☐ Yes ☐ No

Has the defendant been given any warnings required by s37CA Evidence Act 2008? ☐ Yes ☐ No

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

Defendant(s) _____
Expert _____
Non-Expert _____

Child Witness(es)

Name of Witness(es) _____ DOB _____

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

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

Protected Witness(es) (s37CA Evidence Act) (only to be completed if defendant is self represented)

Name of Witness(es) _____ Category of protection _____

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 defendant intends to plead not guilty to all charges ☐ Yes ☐ No

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

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

Indictable charges

Does the defendant consent to the jurisdiction of the Magistrates' /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 defendant/s? _____

Is the ROI in issue?

☐ Yes ☐ No

S.37B Evidence Act/VATE

Has any witness given a VATE statement?

☐ Yes ☐ No

If yes, has the VATE been transcribed?

☐ Yes ☐ No

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

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

☐ Yes ☐ No

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

Does the defendant object to the admissibility of all or part of the VATE?

☐ Yes ☐ No

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

Disclosure issues

Has the defendant 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.37A Evidence Act

Will the defendant be seeking leave pursuant to S.37A?

☐ Yes ☐ No

S.400 Crimes Act

Does S.400 potentially apply to any witness?

☐ Yes ☐ No

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

Witness summonses

(See Magistrates' Court Practice Directions 5 of 2005 and 5 of 2007 and Children's Court Practice Direction 2 of 2007)

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/summonses 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? _____

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 Defendant

☐ On or before (date) _____

The Informant/Defendant serve upon the Defendant/Informant the following

☐ On or before (date) _____

The Application by the Informant/Defendant be filed with respect to:

☐ Witnesses Summonses

☐ S.37A

☐ 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** at the _____ Court
on (date) _____ to address the following issues:

☐ 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 defendant

Name of solicitor/counsel for defendant

NOTE

A NOTICE OF READINESS FOR HEARING – (for summary contested hearings) must be filed with the Court not later than 14 days before the summary contest hearing date.

SEXUAL OFFENCES LIST**NOTICE OF READINESS FOR HEARING -
(for summary contested hearings)****TO: The Co-ordinating Registrar**

Court Ref _____

PARTIES

Defendant(s) _____

Informant _____

Station _____ Phone _____

TAKE NOTICE that -

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

for _____ days

at _____ 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 VATE/s (if applicable) and I intend to appear upon behalf of the informant. ☐ Yes ☐ No
2. have discussed with the legal practitioner briefed to appear for the defendant 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 interpreters, remote witness facilities and support persons where appropriate ☐ Yes ☐ No
5. have considered all preliminary issues which may affect the proceedings including the following:
 - a. issues related to S400 of the *Crimes Act 1958*;
 - b. If a witness/s is a child or cognitively impaired; the admissibility of the VATE tape and whether it is intended to use the VATE as the evidence in chief of the witness/s pursuant to S37B of the *Evidence Act 1958*
 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
6. 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

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 defendant are required to appear before the court at that mention.

DEFENDANT'S PART

I _____ (Name of Barrister or Solicitor)

7. am briefed to appear on behalf of the defendant, I have read and considered the brief, I have viewed the VATE/s (if applicable) and I intend to appear upon behalf of the defendant. ☐ Yes ☐ No

8. have obtained instructions from the defendant and have confirmed my instructions that he/she consents to the jurisdiction of the Magistrates' Court/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 defendant is in custody) confirm that a gaol order has been issued to bring the defendant before the Court or the defendant 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):

- the application for and issuing of subpoenas;
- whether a 3rd party may seek to appear at the hearing e.g. the respondent to a subpoena;
- applications pursuant to S37A of the *Evidence Act 1958*;
- If a witness/s is a child or cognitively impaired; the admissibility of all or part of the VATE tape;
- issues related to S400 of the *Crimes Act 1958*.

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 defendant

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 defendant are required to appear before the court at that mention.