



## LOCAL COURT PRACTICE NOTE COMM 3

ISSUED: 12 December 2022

COMMENCES: 9 January 2023

This Practice Note replaces and supercedes the practice note of the same name commenced on 30 April 2018 and prior versions.

### Procedure for committal proceedings in the Local Court pursuant to the Early Appropriate Guilty Plea Scheme

#### 1. Application

- 1.1. This Practice Note commences on 9 January 2023 and applies to committal proceedings relating to offences commenced on or after this date.
- 1.2. Committal proceedings which deal with offences commenced before 9 January 2023 will continue to be governed by previous [Practice Note\(s\)](#) Comm 1 and 2, and any applicable law in-force at the time.
- 1.3. This Practice Note does not apply to offences in the Children's Court of New South Wales.

#### 2. Definitions

- 2.1. In this Practice Note:

**“committal proceedings”** means committal proceedings conducted pursuant to [Part 2 of Chapter 3 of the Criminal Procedure Act 1986 \(“CPA”\)](#) 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.

**“Complex matter”** means matters where the prosecution:

- is a large-scale matter involving an exceptional number of accused and/or witness/complainants whose statements are unable to be obtained within the usual timeframe
- relies on specialised forensic evidence which will not be available within the standard time period (e.g. an autopsy for death matters)
- relies on an exceptionally large volume of surveillance material that requires

- transcribing and/or translating and summarising
- relies on digital evidence that requires a referral for expert opinion or extraction (i.e. SEEB (State Electronic Evidence Branch) referral)
- relies on key brief items which are unable to be obtained within the usual time period as they require statutory notices or subpoenas to produce to be issued and returned
- relies on statement/s from key witness/es which are unable to be obtained within the standard time period due to exceptional circumstances (e.g. victim in hospital etc.)
- is a large-scale matter involving an exceptional number of accused and/or complainants/witnesses
- involves an exceptional number of charges
- involves an exceptionally large brief (greater than 6 lever-arch volumes)
- relies on an exceptionally large volume of surveillance/recorded material which requires reviewing
- relies on specialised expert evidence and/or involves exceptionally complex legal issues.

“**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 made pursuant to [s 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](#)

“**remote appearance**” or (in context) “remotely”, or “remote means” refers to appearances either via Audio Visual Link, Telephone, or other remote means

### 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 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
  - Remote appearances are conducted in the most efficient manner.
- 3.2. An overview of the procedures outlined in this Practice Note is set out as a flow chart 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 [s 260 of the CPA](#) within the timeframes set out in paragraph 4.3.
- 4.3. Pursuant to [s 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 timetable set out in this Practice Note, unless the Court is satisfied that :

it is a complex matter; or

it is in the interests of justice to depart from the timetable.

#### 6. **Fitness for trial**

- 6.1. If the question of the accused's fitness for trial is properly raised pursuant to [s 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 ([s 93\(2\)](#) of the CPA), a judicial officer may only commit a person for trial in such circumstances **after** the charge certificate has been filed ([s 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 8 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 [s 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 judicial officer accepts a plea of guilty, the accused will be committed for trial. Where the judicial officer 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 [s 98](#) of the CPA:
  - o Unless the judicial officer accepts a plea of guilty, the accused will be committed for trial.
  - o Where the judicial officer 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 in the interests of justice not to do so.

13.2. If a co-accused makes an application under [s 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 [s 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.



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CHIEF MAGISTRATE

**Progress of Committal Proceedings through the Local Court**

