



## LOCAL COURT PRACTICE NOTE CRIM 1

ISSUED: 24 April 2012  
COMMENCES: 1 May 2012  
AMENDED: 16 September 2013, 8 August 2014, 1 December 2014, 15 June 2015, 22 January 2016, 26 June 2017

### Case management of criminal proceedings in the Local Court

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## **PART A - INTRODUCTION**

### **1. APPLICATION**

This Practice Note applies in relation to matters in the Local Court's criminal jurisdiction, including summary proceedings and proceedings for indictable offences being dealt with summarily.

### **2. OBJECTS**

The objects of this Practice note are to ensure that matters in the Local Court's criminal jurisdiction are finalised in a timely and proper fashion in accordance with the Local Court's published time standards, and to set out practices in relation to other procedural or ancillary aspects of such proceedings.

### **3. COMMENCEMENT**

This Practice Note, as amended, commences on 26 June 2017.

### **4. REVOCATION OF PRACTICE NOTES**

The following Practice Notes are repealed on the commencement of this Practice Note:

- (i) 1 of 2001 Vacating hearing dates and applications for adjournment (insofar as it applies to criminal proceedings only)
- (ii) 5 of 2002 Magistrates Early Referral Into Treatment (MERIT) programme
- (iii) 3 of 2004 Criminal proceedings involving child witnesses
- (iv) 4 of 2005 Media access to sexual assault proceedings heard in camera
- (v) 4 of 2007 Provision of Psychiatric Reports to Correctional Facilities
- (vi) 5 of 2007 Procedures for persons in custody at Courts / Circuits with no AVL facilities
- (vii) 7 of 2007 Listing Procedure for Summary Criminal Trials
- (viii) 7 of 2008 Use of Audio Visual Link in criminal and civil proceedings (insofar as it applies to criminal proceedings only)
- (ix) 2 of 2010 State Debt Recovery Office Annulment Applications
- (x) 2 of 2011 Forum Sentencing Program
- (xi) 1 of 2012 Procedures to be adopted for Domestic Violence matters

## **PART B – PROCEDURE**

### **5. SUMMARY CRIMINAL TRIALS**

#### **5.1 Application**

- (a) Subject to Chapter 10 (Summary hearings for domestic violence offences), this Chapter applies to:
- Proceedings for summary offences,
  - Proceedings for offences listed in Table 1 or 2 of Schedule 1 to the *Criminal Procedure Act 1986* ('CPA') where no election to proceed on indictment has been made ('Table matters'), and
  - Proceedings for offences against a law of the Commonwealth that are punishable by imprisonment for a period not exceeding 10 years and **in respect of which the consent of BOTH the prosecution and the defence is required for summary disposition** ('Commonwealth optional indictable matters').

#### **5.2 Objects**

- (a) In addition to the objects specified in Part A, this Chapter has the objects of ensuring that:
- summary criminal trials are heard within the Local Court's published time standards;
  - the unnecessary attendance at Court of prosecution witnesses who are not required for cross-examination is avoided; and
  - the legislative purpose in s 260 CPA in respect of Table matters is applied.
- (b) To achieve these objects, paragraphs 5.3 - 5.8 apply.

#### **5.3 Table matters and Commonwealth optional indictable matters**

- (a) On the first mention, if there is no decision as to whether or not an election is to be made in a Table matter:
- (i) If the accused enters a plea of not guilty – orders will be made for the service of the brief in accordance with paragraph 5.4;
  - (ii) If the accused enters a plea of guilty –
    - the prosecution will be entitled to an adjournment for 2 weeks to consider whether or not to make an election; and
    - the facts are not to be tendered.
- (b) Pursuant to s 263(1) CPA, an election in relation to a Table matter must be made on or by the first return date after an order is made for service of the

brief of evidence (ordinarily, the second mention). The proceedings are to be dealt with summarily in accordance with this Chapter unless an election is made.

- (c) In proceedings involving a Commonwealth optional indictable matter, the prosecution and the defence must each indicate to the court whether or not they consent to the summary hearing of the charge/s no later than the time at which a plea is entered.
- (d) If an election is made in relation to a Table matter, or **a party DOES NOT consent to a summary hearing** in relation to a Commonwealth optional indictable matter, the proceedings are to continue in accordance with Practice Note Comm 1.

#### **5.4 First mention**

- (a) On the first mention, if the accused enters a plea of not guilty, a Magistrate or the Registrar is to:
  - (i) Make orders for service of the prosecution brief of evidence upon the accused in 4 weeks; and
  - (ii) Adjourn the proceedings for mention for reply in 7 weeks.

in all matters other than those mentioned in clause 24 of the Criminal Procedure Regulation 2017, which do not require a brief of evidence.

- (b) Where a plea of not guilty is entered in relation to a matter mentioned in clause 24 of the Criminal Procedure Regulation 2017 as a matter for which a brief of evidence is not required, the matter is to be listed for hearing without requiring the prosecution to serve a brief.
- (c) A brief of evidence must include a Court Listing Advice that:
  - (i) Lists the statements contained within the brief, and
  - (ii) Indicates any witness who is identified by the prosecution as a member of the NSW Police Force who the prosecution intends to call to give evidence in proceedings to corroborate evidence in chief given by another member of the NSW Police Force ('corroborative witness')

in the form set out in Attachment B.

- (d) Service is to be effected upon the accused in accordance with the provisions of the Part 5 of the Local Court Rules 2009.

## **5.5 Second mention**

On the second mention, unless the accused enters a plea of guilty, the Court will list the matter for hearing at the earliest available opportunity.

## **5.6 Adjournments**

- (a) Adjournments or other variations to the above timetable will not be granted unless the Court is satisfied that departure from the timetable is in the interests of justice.
- (b) Failure to finalise a brief in accordance with the above timetable will not, of itself, provide the basis for an adjournment for further time for service of the brief. Unless a plea of guilty is entered or the interests of justice require otherwise, the Court will:
  - (i) List the matter for hearing; and
  - (ii) Order that the balance of the brief be served not less than 14 days prior to the allocated hearing date.
- (c) In the event the Court is informed of a failure to finalise a brief in accordance with the above timetable due to delays in forensic analysis of material, the Court will consider whether to grant an adjournment only if:
  - (i) The party seeking the forensic analysis informs the Court of the date the material was sent for forensic analysis, and
  - (ii) The Court is satisfied the results of the forensic analysis are likely to assist in the determination of the proceedings.

## **5.7 Matters where accused is legally represented**

- (a) This paragraph applies only where the accused is represented by a barrister or a solicitor.
- (b) To assist in the prompt and effective service of the brief, the legal representative of the accused at the time of the making of the brief service order is to complete, sign and hand to both the prosecutor and the Court a Notice of Appearance (Attachment A).
- (c) Upon the adjourned date, in the event that a plea of not guilty is adhered to:
  - (i) the legal representative of the accused is to hand to the Court and to the prosecutor a completed Court Listing Advice (Attachment B);
  - (ii) the prosecution is to indicate whether it seeks that any witness identified to the defence as a corroborative witness in accordance with paragraph 5.4(c)(ii) give evidence by audio link or audio visual link in accordance with s 5BAA, *Evidence (Audio and Audio Visual Links) Act 1998*.

- (d) When listing the matter for hearing, notwithstanding sub-paragraph (c)(ii) and without limiting the Court's discretion under s 5BAA, the Court may direct that a witness is to attend to give evidence in person if:
  - (i) The written statement of the witness and/or a list of corroborative witnesses has not been served upon the defence in accordance with paragraph 5.4, such that the Court cannot be satisfied that the witness is a corroborative witness;
  - (ii) The necessary audio link or audio visual link facilities are not available and cannot reasonably be made available on the first available date for listing the matter for hearing.
- (e) Any audio link or audio visual link proposed to be used must be capable of enabling the witness' evidence to be recorded by the court's recording system, in accordance with the constitution of the Local Court as a court of record under s 7, *Local Court Act 2007*.
- (f) Nothing in this paragraph precludes the defence from making an application that the court direct a witness to attend to give evidence in person under s 5BAA(3).
- (g) The prosecution is required only to call at the hearing those witnesses nominated for cross-examination on the Court Listing Advice. A notation on the Court Listing Advice by the legal representative of the accused that a witness is not required to be called for cross-examination does not prevent the prosecution calling that witness in the prosecution case if the prosecutor is of the opinion the witness is required. The remainder of the brief of evidence must be tendered by the prosecution in its case.

## **5.8 Costs**

Pursuant to s 216 CPA, the court may order that a party to pay such costs as it may determine where it is satisfied that the other party has incurred additional costs because of the unreasonable conduct or delays of the first party.

## **6. VACATING HEARING DATES**

### **6.1 General**

- (a) When a hearing date has been allocated, it will not be vacated unless the party seeking to vacate shows cogent and compelling reasons.
- (b) Any application to vacate a hearing date must be in writing in the form of Attachment C and must be made not less than 21 days prior to the allocated hearing date, or such other period (whether longer or shorter) as in the opinion of the presiding magistrate will allow time to list other matters for hearing on the date(s) to be vacated.
- (c) In the first instance the application shall be dealt with by a Magistrate in Chambers and shall only be listed in court at the direction of the Magistrate.
- (d) The party bringing the application must give notice to the opposing party or parties of the application.

### **6.2 Urgent applications**

- (a) Where urgent and unforeseen circumstances arise within the 21 days of the allocated hearing date, an application to vacate a hearing date should be made as soon as practicable after a party has become aware of grounds for such application and, in any event, not later than the next working day.
- (b) Upon an application to vacate a hearing date on the grounds of illness, the party making the application will be required to produce a medical certificate within a period specified by the court.

### **6.3 Change of plea**

When instructions are received to enter a plea of guilty in a matter fixed for defended hearing, the prosecution and the court should be advised at the earliest opportunity.

## **7. AUDIO VISUAL LINK (AVL) FACILITIES**

### **7.1 Procedures to be adopted for persons in custody at Courts/ Circuits with no AVL facilities**

- (a) **Courts without AVL facilities:** Presiding magistrates at the Local Court locations without AVL facilities ('original courts') will adjourn all matters (other than matters for hearing) where accused persons are in custody, to the nearest or appropriate allocated courthouse with AVL facilities in accordance with the Listing and Sitting Arrangements published on the Local Court website (<http://www.localcourt.justice.nsw.gov.au/>) from time to time.
- (b) **Courts with AVL facilities:** Presiding Magistrates at Local Court locations with AVL facilities will manage all matters involving persons in custody from surrounding courts including:
  - (i) Hearing of bail applications;
  - (ii) Making of brief orders;
  - (iii) Making of further brief orders;
  - (iv) Listing matters for hearing or sentence at the original Court;
  - (v) Adjournments.
- (c) When a matter from a surrounding court is ready to be listed for hearing or sentence, it will be necessary for the parties through the registrar at the Court with the AVL facility to ascertain a suitable date for the adjournment of the matter to the original court for hearing or sentence.
- (d) This Chapter does not affect arrangements currently in place for Centralised Committals nor the courts at which committal proceedings are dealt with.

### **7.2 Applications for witnesses to give evidence via AVL or telephone**

- (a) An application for a witness to give evidence via AVL or telephone in a summary hearing is to be made in the form set out at Attachment D, no less than 10 days prior to the hearing date.
- (b) An application is to be determined by a magistrate in chambers, unless:
  - (i) At the time of lodgment of the application, a party indicates that they do not consent to the application being determined in chambers; and
  - (ii) The magistrate considers it is in the interests of justice that the application be heard and determined in court.



## **8. DEFENDANTS WITH A MENTAL ILLNESS**

### **8.1 Provision of Psychiatric Reports to Correctional Facilities**

- (a) In many cases coming before the Court, psychiatric reports (including those from Justice Health prepared by Court Nurse Clinicians) are tendered during the proceedings. Often it would be of assistance to the Department of Corrective Services and prisoners if these reports were transported back to the prison with the prisoner. The Department of Corrective Services has agreed to facilitate this.
- (b) In cases where it is requested that a report accompany the prisoner, a separate copy of the report should be placed in a sealed envelope and addressed to the Nursing Unit Manager of the correctional centre or a nominated person within Justice Health.

### **8.2 Section 33(1)(a) applications**

When making an order for a defendant to be taken to hospital for assessment and possible admission for treatment under section 33(1)(a) of the *Mental Health (Forensic Provisions) Act 1990*, no bail determination is required. A bail determination is not to be made unless and until the person is brought back before the Court after not being admitted for treatment.

## **9. MEDIA RECORDING OF PROCEEDINGS**

### **9.1 Object**

- (a) This Chapter sets out the procedure for making arrangements pursuant to section 9(2)(a) of the *Court Security Act 2005* for the recording and dissemination of court proceedings by media representatives.
- (b) The object of this Chapter is to facilitate the fair and accurate reporting of proceedings having regard to the principle of open justice.

### **9.2 Definitions**

In this Chapter:

- **media representative** means a person with appropriate professional identification who is engaged in preparing a report of court proceedings for a recognised media organisation;
- **publication** means the publishing, broadcasting, transmitting, printing or disseminating by other means of all or part of a recording, whether on the Internet or otherwise;
- **recording** means the capturing on a medium of audio and/or visual content.

### **9.3 Application**

- (a) A media representative seeking to use a recording device in court at the hearing of a proceeding must apply to the presiding Magistrate through the registrar of the court where the proceeding is to be held.
- (b) Wherever possible, the application is to be made prior to the date of hearing and will be dealt with in chambers. This is to ensure that, where an application is approved, suitable arrangements for the placement of recording devices can be made where required prior to the proceeding being held.

### **9.4 Determination**

- (a) Determination of whether or not to approve an application to use a recording device in court is at the discretion of, and subject to any reasonable conditions imposed by, the presiding Magistrate.
- (b) In making a determination referred to in sub-paragraph (a), the presiding Magistrate may consider to whether it is in the interests of justice to allow the application, having regard to:
  - (i) The principle of open justice;
  - (ii) The purpose for which the approval to use a recording device in the courtroom is sought;

- (iii) Any disruption or other adverse effect that use of a recording device in the courtroom may have upon the conduct of the proceeding, or any party or other participant in the proceeding;
- (iv) Any other matter the Magistrate considers relevant.

## **9.5 Conditions upon approved use of recording device**

- (a) Without limiting sub-paragraph 9.4(a), the following standard conditions will apply to the use of a recording device in court unless varied by the presiding Magistrate:
  - (i) The use of a recording device must not cause any disruption to the proceeding. The presiding Magistrate may direct a media representative to cease using a recording device in the event that the Magistrate is of the view that a disruption is being caused.
  - (ii) A recording device must not be used to record the private conversations of any person in the courtroom before, during or after the proceeding.
  - (iii) Only one recording device will be permitted in the courtroom. It is a condition of approval that access to any recording made in court is to be shared amongst media organisations if media representatives from more than one media organisation wish to access the recording.
  - (iv) Only sound or images of the presiding Magistrate may be recorded, unless the prior approval of the Magistrate to record sound or images of another person in the courtroom is sought and obtained prior to the hearing.

## **9.6 Costs**

Any additional costs incurred in making arrangements for media recording pursuant to this Chapter are to be met by the media representative. The presiding Magistrate may require an undertaking to be given by the media representative when making an application to pay any additional costs.

## **PART C – SPECIFIC PROCEEDINGS**

### **10. SUMMARY HEARINGS FOR DOMESTIC VIOLENCE OFFENCES**

#### **10.1 Application**

This Chapter applies to all summary proceedings in respect of domestic violence offences, as defined in section 11 of the *Crimes (Domestic and Personal Violence) Act 2007*, that are listed for mention or hearing in the Local Court of New South Wales.

#### **10.2 Object**

- (a) The object of this Chapter is to ensure that, where appropriate, pleas of guilty are entered at the first available opportunity and if a plea of not guilty is entered that a hearing occurs with expedition.
- (b) The time standard applying to such matters is that the matter will be listed for hearing within 3 months of the charges being laid.

#### **10.3 Procedure**

To achieve the object set out in paragraph 10.2, the following practice directions apply:

- (a) Where a person is charged with a domestic violence offence, the prosecution shall serve on the defendant at the first available opportunity, and not later than the first mention date in court a copy of the mini brief of evidence upon which the prosecution relies. The mini brief may be served upon the defendant's representative. The mini brief is to include:
  - (i) The alleged facts;
  - (ii) A copy of the victim's statement; and
  - (iii) Any photographs on which the prosecution will rely.
- (b) The court may require the defendant to enter a plea at the first time the matter is mentioned in court. If no plea can be entered at that time, or the defendant has not had a reasonable opportunity to view the recorded statement, the court will allow an adjournment of not more than 14 days for a plea to be entered, or for the recorded statement to be viewed.
- (c) Unless a plea of guilty is entered, that matter shall be adjourned to a hearing date, with a direction that the balance of the brief be served not less than 14 days before the date fixed for hearing, in accordance with s 183 of the *Criminal Procedure Act 1986*.
- (d) Where the defendant is legally represented, within 7 days of the service of the balance of the brief, the prosecutor should be advised of which witnesses are required for cross examination and which if any witnesses statements can be tendered without the need to call them for cross-examination.

- (e) In the event that representations are sought to be made to Police, the making of representation will not delay the listing of a hearing or any other part of these standard directions.

#### **10.4 Interpretation**

This Chapter does not operate to make any statement admissible in a proceeding for a domestic violence matter if it is not otherwise admissible.

## **11. SDRO ANNULMENT APPLICATIONS**

### **11.1 Application**

The procedures outlined in this Practice Note set out the manner in which an appeal against a refusal by the State Debt Recovery Office (SDRO) to grant an annulment of a penalty notice enforcement order pursuant to section 50 of the *Fines Act 1996* (*an appeal*) and, if the appeal is granted, subsequent proceedings for the offence are to proceed.

### **11.2 Lodging an appeal**

An appeal may be lodged at *any* Local Court Registry.

### **11.3 Appearances by the SDRO**

- (b) The SDRO may make written submissions on the appeal instead of being legally represented.
- (c) The SDRO's submissions must include a copy of the penalty notice enforcement order, and:
  - (i) The name and address for service of the prosecuting authority, and
  - (ii) The driver licence number, if known, of the person allegedly responsible for the offence.

### **11.4 Annulment granted – Plea of Guilty**

If the Court grants the annulment, and the defendant pleads guilty to the offence, the Court will, where appropriate, proceed to determine the offence.

### **11.5 Annulment granted – Plea of Not Guilty**

- (a) If the Court grants an annulment, and the defendant pleads not guilty to the offence, the Court will adjourn the matter to for hearing at a Court proximate to where the offence took place.
- (b) Where possible, the matter will be listed for hearing *no less than* two months after the annulment is granted.
- (c) The prosecuting authority may make an application to vacate the hearing if any witnesses will be unavailable on the adjourned date in accordance with Chapter 6 (Vacating Hearing Dates).

### **11.6 Costs**

The Court will not consider an order in relation to costs in the appeal proceedings unless the other party has been notified that such an application is to be made.

## **PART D – DIVERSIONARY PROGRAMS**

### **12. MERIT**

#### **12.1 Description, objects and availability**

- (a) The MERIT program is a pre plea diversion program for defendants with drug problems conducted in the Local Court of NSW. At selected locations the MERIT program includes Alcohol MERIT for persons charged with offences before the Local Court who have alcohol problems.
- (b) The program provides for the early referral for assessment of arrested persons who are eligible for bail (or do not require bail consideration) and who are motivated and volunteer to engage in treatment and rehabilitation for their drug use problem.
- (c) The program brings together the health, justice and law enforcement systems with the focus on the reduction of criminally offending behaviour associated with drug use.
- (d) The successful engagement in the MERIT program can be taken into account in sentence proceedings.
- (e) The MERIT program is available at over 50 Local Court locations across New South Wales. Additional locations may be added from time to time. Those wishing to make a referral to the program should contact their nearest Local Court registry for information as to whether the MERIT program is available at a particular location.

#### **12.2 Referrals to the MERIT program**

- (a) Referrals for assessment into the program may come from one of the following sources:
  - (i) on apprehension by the Police who may refer a defendant for assessment into the program;
  - (ii) at the commencement of proceedings, by:
    - the defendant;
    - the defendant's lawyer;
    - the presiding Magistrate; or
    - any other person (such as family/friend, health professional, probation and parole officer).

### **12.3 Preliminary considerations for entry into the MERIT program**

- (a) The MERIT program is designed as a pre-plea scheme to encourage referral for assessment at an early stage of the court process and entry into the program is not dependant on the person's guilt or innocence.
- (b) Notwithstanding paragraph 12.3(a) above, a plea may be entered at any time from the person's first appearance before the court until the conclusion of the program.

### **12.4 Criteria for eligibility to participate in the MERIT program**

- (a) To be eligible to participate in the MERIT program the defendant must meet the following criteria:
  - (i) The defendant must be an adult;
  - (ii) The offences should not involve strictly indictable offences or sexual offences and the defendant should not have like offences pending before a Court.
  - (iii) The defendant must be suspected of using drugs or have a history of drug use
  - (iv) The defendant must be eligible for bail and suitable for release on bail or not require bail consideration
  - (v) The defendant must voluntarily agree to participate

### **12.5 General procedure**

- (a) If considered eligible to participate, the defendant should be referred to the MERIT assessment team attached to the Court for the relevant assessment to be undertaken to ensure that the defendant is suitable for the program. The Court proceedings should be adjourned for a short period to allow that assessment to occur.
- (b) As part of the assessment, the MERIT case worker will assess the nature of the defendant's drug use and other associated problems.
- (c) The case worker is to assess the defendant against the criteria for suitability for entry to the program and then formulate a proposed treatment plan for the defendant to undertake and prepare a report for the Court.
- (d) If the defendant is considered suitable for the MERIT program, the Magistrate may approve placement of the defendant onto the program.
- (e) If the defendant is considered not suitable for the program, the defendant will be asked to enter a plea and the matter will proceed in the usual way.



## **12.6 Treatment**

- (a) Once the Magistrate formally approves the placement of the defendant on the MERIT program, the treatment plan as devised by the MERIT case worker, if it has not already commenced, will be commenced.
- (b) The determination of an appropriate treatment module is a matter solely within the discretion of the MERIT case worker. Their trained role is to identify the needs, risks, long and short term goals of the participant and then to oversee the provision of available treatment services in the best interests of that participant. Examples of the drug treatment programs available include:
  - (i) medically supervised and home based detoxification;
  - (ii) methadone and other pharmacotherapies such as naltrexone and buprenorphine;
  - (iii) residential rehabilitation;
  - (iv) individual and group counselling and psychiatric treatment.
- (c) The MERIT program is generally planned as a 12 week intensive program. It may be extended in special circumstances with the agreement of the Magistrate, the MERIT case worker and the defendant.
- (d) During the treatment phase the Court effectively case manages the process. Once accepted into the MERIT Program, the defendant is required to return to Court at such intervals as determined by the Magistrate usually on the recommendation of the MERIT Team. At each adjournment, an update report is provided and the defendant required to attend unless excused by the Court with the concurrence of the MERIT Team. At the conclusion of the program a final report is provided by the MERIT team.

## **12.7 Breaches**

- (a) Should the defendant fail the program despite sufficient opportunities to comply with the directions of the MERIT Team, the MERIT Team must, as soon as possible, notify the Court. The defendant's continuation on the program is a matter for Magisterial discretion. If the defendant is removed from the program by the Magistrate, or withdraws voluntarily at any time, the matter should be relisted as soon as possible for normal judicial management.
- (b) While minor issues of non-compliance with the agreed treatment plan need not necessarily be actioned, reference to such conduct should appear in the interim or final reports.

## **12.8 Conclusion of MERIT program**

- (a) At the conclusion of the program, the final report will set out the achievements or otherwise of the participant under the program. At that time, the defendant will be asked (if it has not already happened) to enter a plea. The case will then proceed through the normal justice process.

- (b) On sentence, the successful completion of the MERIT program is a matter of some weight to be taken into account in the defendant's favour. At the same time, as the MERIT program is a voluntary opt in program, its unsuccessful completion should not, on sentence, attract any additional penalty.
- (c) The final sentencing outcome should be formally communicated by the Court to the MERIT Team for their recording purposes.

## 13. FORUM SENTENCING

### 13.1 Description, objects and availability

(a) The Forum Sentencing Program is an additional sentencing option available at the following Local Court locations across New South Wales:

- Burwood / Balmain / Newtown
- Campbelltown / Moss Vale / Picton
- Liverpool / Fairfield
- Tweed Heads / Murwillumbah / Byron Bay / Mullumbimby
- Newcastle / Toronto/ Belmont / Raymond Terrace
- Gosford / Wyong / Woy Woy
- Parramatta
- Bankstown / Sutherland / Kogarah
- Lismore / Ballina / Casino / Kyogle
- Coffs Harbour / Grafton / Bellingen / Macksville / Maclean
- Downing Centre / Central / Waverley
- Port Macquarie / Foster/ Taree / Kempsey/ Wauchope / Gloucester
- Maitland / Cessnock / Muswellbrook / Singleton / Dungog / Scone / Murrurundi / Kurri Kurri / East Maitland

Additional court locations may be added from time to time.

(b) The program provides for the referral of offenders who have pleaded guilty or have been found guilty of offences where the Court considers that the facts of the case and the offender's antecedents indicate it is likely a **conviction** will be recorded and the person will be required to:

- Serve a sentence of imprisonment, including a suspended sentence or a sentence the subject of an intensive correction order or a home detention order under the *Crimes (Sentencing Procedure) Act 1999*; or
- Perform community service work in accordance with a community service order; or
- Enter into a good behaviour bond.

At a conference, the offender and the victim or victims of the offence are brought together with a Forum Facilitator to develop an intervention plan for the offender.

(c) The eligibility criteria along with the aims of the program are set out in Part 7 of the Criminal Procedure Regulation 2010.

### **13.2 Referrals to Forum Sentencing**

- (a) Offenders charged with certain offences are excluded from eligibility to be referred for participation in the Forum Sentencing Program. A list of excluded offences is set out in clause 55(2), Criminal Procedure Regulation 2010. Offences committed against corporate victims are excluded from eligibility insofar as a corporation or body corporate is not a 'victim' within the meaning of the definition in clause 56, Criminal Procedure Regulation 2010.
- (b) The Court may make a referral either on application by the offender or their representative, by a prosecutor, or on its own motion.
- (c) If eligible to participate, court proceedings are to be adjourned for up to 2 weeks for Forum Sentencing staff (the Operations Team and the Forum Facilitator) to conduct a suitability assessment.
- (d) During the adjourned period, an assessment of the appropriateness of the offender's case being dealt with under the program is to be carried out. A locally based Forum Facilitator will assess the offender's suitability while an Operations Team employee will assess the case and contact the victim/s to ascertain their willingness to participate.
- (e) Case suitability takes into account offender suitability, victim participation and the appropriateness of the case being dealt with under the program. A suitability assessment report is to be provided to the Court that indicates whether the case meets the following requirements:
  - (i) The offender's case has been assessed as appropriate for being dealt with under the program; and
  - (ii) The offender has been assessed as being suitable for participation in the program; and
  - (iii) At least one victim wishes to participate or to have his or her nominated representative participate, in a conference.

### **13.3 Conference participation order**

- (a) If assessed as suitable, the Magistrate will consider placement of the offender into the program and may make a conference participation order. Both the offender and the prosecutor may be heard. If **not** considered suitable, the matter will proceed through the ordinary court process.
- (b) The Court will adjourn the matter for no longer than 8 weeks in order for the conference to be conducted.
- (c) During the adjournment period, a Forum Facilitator will conduct a conference in respect of the offender to whom the order applies.
- (d) Following initial management of case suitability by an Operations Team employee, a Forum Facilitator is to advise any participating victim/s or offender/s of their right to participate in the conference.

- (e) The Court is to be notified and the offender's case is to be returned to the Court to be dealt with in accordance with the ordinary court process if, before a conference is held:
  - (i) The offender becomes unsuitable to participate in the program;
  - (ii) All victim/s withdraw their consent to participate or have their nominated representative participate in a conference; or
  - (iii) The offender's case otherwise becomes inappropriate for being dealt with under the program.

#### **13.4 Intervention plans**

- (a) On the adjournment date, the Court is to receive a draft intervention plan and a supporting forum report.
- (b) A draft intervention plan arising from the conference is based on recommendations made and agreed to by victim/s and offender/s and the majority of other participants at the conference. The draft intervention plan is to include any further action required on behalf of the offender.
- (c) A forum report sets out any recommendations not included in the draft intervention plan, including any recommendation to the Court that a compensation order be made and/or details of financial reparations or a donation that the offender has agreed to make. The report is to advise the Court if participants were unable to agree on an intervention plan or if victim/s and/or offender/s exercised their right to veto recommendations.
- (d) If the Court approves the draft intervention plan, an intervention plan order is made.
- (e) The Forum Facilitator is to establish the offender's commencement of an approved intervention plan, then transfer supervision to an Operations Team employee. Monitoring, supervision and reporting on intervention plans is the responsibility of the Operations Team and may also be shared with Community Corrections. The forum report and draft intervention plan is to make recommendations in relation to supervision where appropriate.
- (f) The Court may refer the intervention plan back to the Operations Team for consultation or amendment. Amendments **must** be approved by the victim/s and offender/s or they will not be made. If approved, the Operations Team will revise the intervention plan and report back to the Court if practicable within seven days.
- (g) No more than one referral to revise the intervention plan will be made. If the plan is not approved and a revised plan is not approved, sentencing will proceed in the ordinary manner.

#### **13.5 Sentencing**

- (a) Following approval of the Intervention Plan the Court may exercise the following sentencing options:

- (i) Make a further order adjourning the proceedings pursuant to s 11(1)(b2) of the *Crimes Sentencing Procedure Act 1999* ('CSP Act'); or
  - (ii) Proceed to sentence pursuant to ss 9, 10, or 12 of the CSP Act. Section 95A of the CSP Act may apply to sentences imposed under these provisions.
- (b) If the Court proceeds to sentence in accordance with paragraph 9(b)(ii) and imposes a good behaviour bond, any recommendation in the forum report and relevant form for the making of financial reparations or a donation by the offender is **not** to be included as a condition of the good behaviour bond.
  - (c) The Court may make a compensation order in accordance with any recommendations contained in the forum report.
  - (d) Successful completion of the Forum Sentencing program is a matter that may be taken into account by the Court upon sentence.
  - (e) Where the Court makes an order in which an approved intervention plan is part of the sentence, the Court will specify where relevant:
    - (i) Any supervision required as part of the sentence other than that undertaken by the Operations Team. An order may be supervised by the Operations Team, Community Corrections, or both; and
    - (ii) The time limits within which parts of the intervention plan are to be completed.

### **13.6 After sentencing**

- (a) The Court is to be advised by the supervising Operations Team employee or other supervising party when an offender does not complete, partially completes or satisfactorily completes an intervention plan.
- (b) In the event the Court is advised that the intervention plan has not been satisfactorily completed, the Court may:
  - (i) Take no action;
  - (ii) Issue a notice of call up; or
  - (iii) Issue a warrant.
- (c) If the intervention plan is part of a sentence supervised in part or solely by Community Corrections (for instance, a good behaviour bond), breach action by Community Corrections is to be dealt with in accordance with the usual process for that type of sentence.

Judge Graeme Henson AM  
**Chief Magistrate**

## NOTICE OF APPEARANCE IN SUMMARY CRIMINAL TRIALS

In the Local Court at: .....

I advise I appear on behalf of (name) .....

In the matter of Police v .....

Police "H" Number reference .....

Listed on .....

NAME of Legal Representative .....

FIRM OF SOLICITORS .....

.....

Telephone ..... Fax Number .....

Email .....

### SERVICE OF BRIEF DIRECTIONS

I hereby consent that the written statements and copies of proposed exhibits be served on the defendant in the above case by:

### **MARK BOX**

- 1) Facsimile transmission to the legal representative to the above fax number; or
- 2) Emailing it to the legal representative to the above email address; or
- 2) Posting it to the legal representative to the above postal address; or
- 3) Leaving it at the address of the legal representative at the above address.


.....  
(Signature of Legal Representative)

**LOCAL COURT LISTING ADVICE**

(IMPORTANT – Where the defendant is represented by a barrister or solicitor a completed and signed copy of this document must be given to the Court and the prosecutor on the return date)

<b>CASE:</b>	<b>POLICE v</b>				
<b>CHARGE/SUMMONS REFERENCE NUMBER:</b>					
<b>FOR MENTION:</b>	<b>LOCAL COURT / /</b>				
<b>PNG:</b>	<b>CONFIRMED</b>			<b>WITHDRAWN</b>	
<b>STATEMENT IN POLICE BRIEF</b>	<b>Corroborative witness*?</b>		<b>If yes, corroborative of which other witness?</b>	<b>Required for cross-examination**?</b>	
1.	YES	NO		YES	NO
2.	YES	NO		YES	NO
3.	YES	NO		YES	NO
4.	YES	NO		YES	NO
5.	YES	NO		YES	NO
6.	YES	NO		YES	NO
7.	YES	NO		YES	NO
8.	YES	NO		YES	NO
9.	YES	NO		YES	NO
10.	YES	NO		YES	NO
11.	YES	NO		YES	NO
12.	YES	NO		YES	NO
13.	YES	NO		YES	NO
14.	YES	NO		YES	NO
15.	YES	NO		YES	NO
<b>ESTIMATED DURATION OF HEARING</b>			<b>HOURS</b>		
<b>NUMBER OF DEFENCE WITNESSES</b>					
<b>IS AN INTERPRETER REQUIRED?</b>			<b>YES</b>	<b>NO</b>	
<b>WHAT LANGUAGE?</b>					
<b>TECHNOLOGY REQUIRED?</b>					
• <b>AUDIO VISUAL LINK</b>			<b>YES</b>	<b>NO</b>	
• <b>REMOTE WITNESS (CHILD/VULNERABLE PERSON/DV COMPLAINANT)</b>			<b>YES</b>	<b>AGE:</b>	<b>SEX: M / F</b> <b>NO</b>
• <b>CCTV FOOTAGE/ELECTRONIC EVIDENCE TO BE PLAYED</b>			<b>YES</b>	<b>NO</b>	
<b>NOTICE, cl 25 CRIMINAL PROCEDURE REGULATION 2010 GIVEN?</b>			<b>YES</b>	<b>NO</b>	
<b>DEFENDANT'S SOLICITOR / COUNSEL SIGNATURE AND NAME</b>					
<b>CONTACT PHONE NUMBER</b>					

\* A member of the NSW Police Force called to give evidence in proceedings to corroborate evidence in chief given by another member of the NSW Police Force for the prosecution: s 5BAA, *Evidence (Audio and Audio Visual Links) Act 1998*

\*\* Where a witness is not required for cross-examination it will prima facie be assumed that the tender of the statement is consented to, subject to the *Evidence Act 1995*.





**Form 1 –  
APPLICATION TO VACATE A HEARING DATE**

**PARTS A & B MUST BE COMPLETED IN FULL PRIOR TO THE APPLICATION BEING LODGED IN PERSON BY THE APPLICANT OR THE APPLICANT'S REPRESENTATIVE**

**Note:** This application will be dealt with in Chambers unless there is good reason for it to be listed before a Court. This application, together with all relevant information should be submitted in writing not less than **21 days** before the hearing date **OR**, in the case of urgent circumstances arising after that time, as soon as practicable before the date of hearing.

You will be advised of the outcome of the application and the date on which it is next listed (where applicable).

You must lodge all relevant supporting documentation with this application.

---

**PART A** (Applicant to complete)

Name of the matter:.....

Date listed for hearing.....Time estimate.....

Place listed for hearing.....Local Court

Offence(s).....

Application lodged on behalf of the.....(Prosecution/defence)

Name of applicant: Signature:

(Informant/Defendant/Representative) Address:

Date:...../...../..... Phone: Fax:

**I apply to vacate the hearing date for the following reasons:**

*(Please provide as much information as possible in support of the application - attach additional pages if more space required)*

.....  
.....  
.....  
.....  
.....  
.....

Attachment C

If the application has arisen because of the non-availability of any relevant person in the matter, including witnesses, legal representatives or a defendant you must provide answers to the following questions:

- 1. When was this person first notified of the hearing date?.....(date)
- 2. Was the event which has caused this person to be unavailable arranged before or after the person became aware of the hearing date? .....
- 3. If before, why was the court advised that this date was a suitable date for hearing? .....
- 4. If after, why did this person arrange another commitment for the day of hearing? .....
- 5. Why is it essential for this person to be present at the hearing? .....

Contact address (include telephone number/e-mail)

Applicant.....	Respondent.....
.....	.....
.....	.....

**PART B** (Other party to complete - a faxed copy is sufficient)

**(Note: Adjournments will not be granted simply because both parties consent to an adjournment)**

I agree with this application. I have notified the applicant of my unavailable dates

I do not agree to this application because:

.....  
.....

I do/do not wish to be present if the application is heard in court

Name of other party:

(Informant/Defendant/Representative) Signed:

(Delete where not applicable) Address:

Date: Phone: Fax:

Attachment C

---

**PART C** (Court/office use only)

APPLICATION:

GRANTED - NEW HEARING DATE IS.....

REFUSED - WILL BE HEARD IN COURT (NO:    ) ON...../...../.....

.....

Magistrate

Date:..../..../....

- COPY TO:
1. List Office/Registry
  2. Police Prosecutors
  3. Other (specify)

## Application for Witness to Give Evidence via Audio Visual Link or Telephone

### Evidence (Audio and Audio Visual Links) Act 1998

**Note:** This application will be dealt with in Chambers unless there is good reason for it to be listed before a Court, which must be indicated at the time of lodgment. This application, together with all relevant information, should be submitted in writing not less than 10 days before the hearing date.

You will be advised of the outcome of the application.

#### Part A (Applicant to complete)

In the matter of:

Hearing date:

Court location:

Offence(s):

Application lodged on behalf of:

Prosecution / Defence

I consent to this application being dealt with in Chambers: Yes / No

(If 'No') I submit it is in the interests of justice for this application to be determined in court because:

Method of giving evidence: Audio Visual Link (AVL) (*preferred*) / Telephone

Name of witness:

Interpreter required: Yes / No

If yes - language required:

- The witness is:
- a Government Agency Witness (*pursuant to s 5BAA*)
  - an expert in relation to (*specify, if applicable*):
  - required to give corroborative evidence
  - otherwise required for (*specify, if applicable*):

Estimated time of witness evidence:

Minutes / Hours / Days

Confirmation: AVL facilities are available at the following location from which the witness is able to appear to give evidence:

- Nature of facilities:
- Jabber (*preferred*)
  - Skype
  - Facetime
  - Commercial videoconferencing facilities
  - Telephone
  - Other (*specify, if applicable*):

I submit it is in the interests of the administration of justice for the court to grant the application for the following reason/s:

Name of applicant:

Signature:

Date:

(Informant / Government Agency Witness / Representative)

Address:

Email:

Phone:

Fax:

Attachment D

**Part B** (Other party to complete – a faxed or emailed copy is sufficient)

I **agree** to this application: Yes / No

I **do not agree** to this application for the following reason/s (s 5B(2)):

The evidence can more conveniently be given in the courtroom, because:

The direction would be unfair to a party to the proceeding, because:

The person in respect of whom the direction is sought will not give evidence, because:

Other:

I consent to this application being dealt with in Chambers: Yes / No

(If 'No') I submit it is in the interests of justice for this application to be determined in court because:

Name of other party:

Signature:

Date:

(Informant / Defendant / Representative)

Address:

Email:

Phone:

Fax:

**Part C** (Magistrate/Office use only)

AVL facilities are available: Yes / No

Registrar / List Clerk of the Local Court at:

Signature:

Date:

Magistrate decision: Application Granted / Refused

Magistrate:

Date:

Copy to: Registry / Prosecution