



Magistrates' Court Victoria

Practice Direction

No. 6 of 2018

INTERMEDIARY PILOT PROGRAM AT MELBOURNE MAGISTRATES' COURT

This Practice Direction is issued pursuant to section 419 of the *Criminal Procedure Act 2009*.

Background

The introduction of an intermediary scheme, based on the English model, was recommended in the 2016 Victorian Law Reform Commission Report 'The Roles of Victims of Crime in the Criminal Trial Process'. It was endorsed in *R v Ward (a pseudonym) [2017] VSCA 37*.

This Practice Direction gives effect to the new Part 8.2A of the *Criminal Procedure Act 2009* (the Act) as it relates to the Intermediary Pilot Program at Melbourne Magistrates' Court.

The Intermediary Pilot Program (the Pilot Program) commenced on 2 July 2018 and applies to criminal proceedings commenced on or after 28 February 2018 that relate to a sexual offence (as defined in s 4(1) *Criminal Procedure Act 2009*) or a homicide offence.

Intermediaries are trained professionals with specialist communication skills. They are officers of the court. Their expertise is utilised to facilitate vulnerable witnesses, being a person under the age of 18 years or a person with a cognitive impairment, to give their evidence.

The Pilot Program operates more narrowly than the scheme in the Act. Intermediaries will be utilised in the Pilot Program for vulnerable complainants in sexual offence proceedings and for vulnerable witnesses in homicide proceedings.

Directions

1. An application to appoint an Intermediary may be made orally or in writing by a party to the proceeding or the Court may appoint an Intermediary on its own motion.
2. An application to appoint an Intermediary shall be using the attached form and is to be listed at the contest mention or committal mention.
3. If an Intermediary is appointed, a Ground Rules Hearing must be held.
4. The Ground Rules Hearing will be listed before the Magistrate who is to hear the contested hearing or committal no later than 7 days before the hearing or committal.
5. The Intermediary's assessment report regarding the witness's communication needs will be provided to the parties at least 7 days prior to the Ground Rules Hearing.

6. The prosecutor and defence practitioner who will appear at the hearing or committal must attend the Ground Rules Hearing.
7. The prosecutor and defence practitioner are expected to discuss their proposed questioning of the witness with the Intermediary prior to the Ground Rules Hearing.
8. At the Ground Rules Hearing, the Court may direct that the prosecution and defence provide their proposed questions in writing to the Intermediary to ensure that they are in a form that will be understood by the witness and complies with the directions made at the Ground Rules Hearing.
9. Directions which may be made at the Ground Rules Hearing include the matters detailed in s 389E(2) of the Act, namely:
 - a direction about the manner of questioning a witness;
 - a direction about the duration of questioning a witness;
 - a direction about the questions that may or may not be put to a witness;
 - if there is more than one accused, a direction regarding the allocation among the accused of the topics about which a witness may be asked;
 - a direction about the use of models, plans, body maps or similar aids to help communicate a question or answer;
 - a direction that if a party intends to lead evidence which contradicts the evidence of a witness or that otherwise discredits a witness, the party is not obliged to put that evidence in its entirety to the witness in cross-examination.
10. This Practice Direction should be read in conjunction with the *Multi-Jurisdictional Court Guide for the Intermediary Pilot Program: Intermediaries and Ground Rules Hearings*. Practitioners are expected to be familiar with the Guide.

This Practice Direction operates in conjunction with Practice Direction No. 7 of 2018.

This Practice Direction commences on the 23 July 2018.

PETER LAURITSEN

Chief Magistrate

Date: 20 July 2018