



Magistrates' Court Victoria

Practice Direction

No. 7 of 2018

SEXUAL OFFENCES – SUMMARY CONTEST LISTINGS

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

Background

This Practice Direction provides for updated forms to be used in 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.

Directions

1. This Practice Direction revokes Practice Direction No.5 of 2008
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 at the contest mention hearing.
3. A Notice of Readiness for Hearing must be in Form B. This form must be filed with the Court either at the contest mention or at a special mention not later than 14 days before the date for the summary contested hearing.

This practice Direction commences on 23 July 2018

A handwritten signature in black ink, appearing to read 'Peter Lauritsen', written over a horizontal line.

PETER LAURITSEN
Chief Magistrate

Dated: 20 July 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 _____
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 _____

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

If Accused is self-represented, has an order been made for VLA limited representation? (s.357 Criminal Procedure Act 2009) Yes No

If yes, has VLA confirmed representation? Yes No

Has the accused been given any warnings required by s.357 Criminal Procedure Act 2009? 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

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
 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) (s.357 Criminal Procedure Act 2009) (only to be completed if accused is self represented)

Name of Witness(es) _____ Category of protection _____

SPECIAL ARRANGEMENTS

Intermediaries

Name of Witness(es) _____
Child
Cognitively Impaired
Name of Intermediary (if known) _____ Profession of Intermediary (if known) _____

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:

[Empty box for charges]

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

[Empty box for charges]

Indictable charges

Does the accused consent to the jurisdiction of the Magistrates' 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? _____

Is the ROI in issue? Yes No

S. 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? _____

Is it proposed to admit the VARE as evidence in chief? Yes No

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

[Empty box for witness names]

Does the accused object to the admissibility of all or part of the VARE? Yes No

Special defences and related (eg mental impairment, alibi)

[Empty box for special defences]

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?

[Empty box for outstanding issues]

Tendency and/or Coincidence evidence

Is it proposed to give notice seeking to adduce evidence under s.97 or 98 of the Evidence Act 2008? Yes No

S. 342 Criminal Procedure Act 2009

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)

S.128 Evidence Act 2008

Does s.128 potentially apply to any witnesses? Yes No

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

[Empty box for witness names]

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 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
 Tendency/Coincidence evidence
 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 further ground rules hearing
at the _____ Court

on (date) _____ to address the following issues:

NOTATIONS

Dated _____

Signed _____
Signature of prosecutor

Signed _____
Signature of solicitor/counsel for accused

Name of prosecutor

Name of solicitor/counsel for accused

NOTE

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

FORM B

SEXUAL OFFENCES LIST

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

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 _____ 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 upon 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 intermediaries, interpreters, remote witness facilities and support persons where appropriate Yes No
- 5. confirm that arrangements have been made for a ground rules hearing where applicable Yes No
- 6. have considered all preliminary issues which may affect the proceedings including the following:
 - a. issues related to s18 and s128 of the 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 s367 of the Criminal Procedure Act 2009
 - c. Tendency and coincidence evidence
 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. Confirm that 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, provide particulars

Dated: _____

Signed _____
Signature of prosecutor

NOTE: If the answer to any question is no, 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)

8. 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 upon behalf of the accused. Yes No
9. have obtained instructions from the accused and have confirmed my instructions that he/she consents to the jurisdiction of the Magistrates' Court to hear any indictable charges and he/she intends to plead not guilty to *all charges/ *the following charge/s Yes No
10. have discussed with the prosecutor whether this matter can be resolved without the need for a contested hearing. Yes No
11. confirm that funding is in place for the contested hearing Yes No
12. confirm that all defence witnesses are available to give evidence and the matter is ready to proceed Yes No
13. (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
14. confirm that arrangements have been made for interpreters, remote witness facilities and appropriate support persons (if applicable) Yes No
15. have considered all preliminary issues which may affect the proceedings including the following (where applicable):
- a. the application for and issuing of subpoenas;
 - b. the application for leave to produce/adduce evidence of confidential communications;
 - c. applications pursuant to s342 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 s18 and s128 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
16. confirm that 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, provide particulars

Dated: _____

Signed _____

Signature of counsel for the accused

NOTE: If the answer to any question is no, 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.