



Magistrates' Court Victoria

Practice Direction

No. 11 of 2016

Applications Under s42L of the Justice Legislation (Evidence and other Acts) Amendment Act 2016

Background

Since 2013, the Magistrates' Court of Victoria has experienced the phenomenon of persons in custody not being brought before its venues in response to remand warrants and gaol orders. This failure causes the adjournment of proceedings and delay in their determination. The damage done by the disturbances at the Metropolitan Remand Centre together with a rising number of persons held in custody has exacerbated the phenomenon.

On 23 June 2016, Parliament passed the Justice Legislation (Evidence and other Acts) Amendment Act 2016 (the Act), which amended Division 3 of Part 2A of the Evidence (Miscellaneous Provisions) Act 1958 regarding the use of audio visual links insofar as its concerns adults. The Act inserted into the Principal Act a new section 42JA which establishes, subject to qualification, a presumption that an accused being held in custody who is required to appear, or be brought before the Court is required to appear before it by audio visual link. The qualifications are:

- (a) when the Court directs an accused be brought physically before it;
- (b) on an inquiry into the accused's fitness to plead to the charge;
- (c) on the hearing of the charge if the accused is pleading not guilty;
- (d) on a committal hearing;
- (e) when first brought before the Court following arrest.

The purpose of this Practice Direction is to set out the procedure for applying for a direction that an accused person in custody is to appear physically before the Court¹.

Directions

1. An application to the Court under section 42L for a direction that the accused appear, or be brought, physically before it must be in Form 45 of the Magistrates' Court Criminal Procedure Rules 2009.

¹ s 42L deals with when these applications may be made and how they may be determined.

2. The application must be filed at the venue of the Court where the proceeding is listed.
3. If the application is granted, the Court will arrange for the issue of a gaol order to compel the physical appearance of the accused before the Court and forward it to Corrections Victoria.
4. Where an accused is charged on summons and is being held in custody on another matter, then the accused's legal practitioner and the police informant, if aware of this circumstance, must notify the Court of the fact that the accused is held in custody so that an audio visual link can be arranged. If the accused is to appear, or be brought, physically before the Court then an application under section 42L must be made.

This Practice Direction commences on 12 September 2016.

Peter Lauritsen
Chief Magistrate
Date: 6 September 2016