



Magistrates' Court Victoria

Practice Direction

No. 3 of 2019

PROCEDURAL REQUIREMENTS FOR SECTION 123 COMMITTAL PROCEEDINGS Sexual Offences where the complainant is a child or is cognitively impaired

Background

On 3 March 2019 a new section 123 of the *Criminal Procedure Act 2009* was substituted by the *Justice Legislation Miscellaneous Amendment Act 2018*. The new s123 prohibits cross-examination at committal of **any** witness in sexual offence proceedings where the complainant is a child or is cognitively impaired and where the proceedings commenced on or after 3 March 2019. The reason for the amendment was to reduce the time between the complainant making their VARE statement and giving their evidence at the special hearing in the County Court.

Purpose

This Practice Direction is to ensure that the parties are ready to proceed by way of hand up brief procedure at the first committal mention.

Direction

1. At the time of serving the hand up brief, the informant must also serve upon the accused the standard disclosure material. The "Standard Disclosure Material" is set out in the attached Appendix;
2. Upon receiving the hand up brief and the standard disclosure material, the accused must within 14 days notify the informant if there is any further disclosure material specific to the case that the accused requires before being committed to stand trial;
3. Parties are expected to be ready to make submissions at the committal mention about any disputed disclosure material;

4. The accused must be ready to make submissions as to whether the evidence is of sufficient weight to support convictions for the charge/s;
5. Any charge involving child abuse material where the material is not relevant to a charge involving a child or cognitively impaired complainant may be severed at the committal mention and adjourned for further committal mention pending E-Crime (VicPOL) or Digital Forensics (AFP) analysis. If the material to be analysed is likely to contain evidence which has direct relevance to the charge/s involving the child or cognitively impaired complainant, the informant must advise E Crime or Digital Forensics of this likelihood within 7 days of the filing hearing.
6. The informant must lodge the material for analysis with E Crime/Digital Forensics no later than 7 days from the filing hearing;
7. Any relevant forensic material must be lodged for analysis with Forensic Service Department/AFP Forensics no later than 7 days from the filing hearing;
8. If the complainant is a child or is cognitively impaired, the informant must ensure E Crime, Digital Forensics, Forensic Service Department or the AFP Forensics are informed of this when the exhibits are lodged;
9. If the complainant is a child under 12 years of age, the informant must ensure E Crime, Digital Forensics, Forensic Services Department of AFP Forensics are informed of this when the exhibits are lodged;
10. As an interim measure, pending the amendment of r 48 of the *Magistrates' Court Criminal Procedure Rules 2009* creating a specific form of case direction for s 123 committals, the parties must complete the Certificate of Committal Readiness (attached) and file it with the court 7 days prior to the date of the committal mention hearing. Subject to any contrary direction by a magistrate, the parties will not be required to complete and file a Form 32.

This Practice Direction commences 19 July 2019.



Judge Peter Lauritsen
Chief Magistrate

Date: 17 July 2019

FORM 32A

**CASE DIRECTION NOTICE AND
CERTIFICATE OF COMMITTAL READINESS**
Criminal Procedure Act 2009 s.123 Committal Proceedings

**IN THE MAGISTRATES' COURT
OF VICTORIA**

AT *[venue]*

Case No:

IN THE MATTER OF

[Informant]

And

[Accused]

Forensic and E-crime material

1. Any 'E-Crime' material described in the hand up brief has been completed and served on the accused.
- Yes No N/A – Go to Question 2

If the answer to Question 1. is 'No', the informant is to advise of the following:

- a. Does the 'E-Crime' material contain evidence directly relevant to a charge against a child/cognitively impaired complainant? (i.e not stand-alone child abuse material offence/s)
- Yes No
- b. Has E-Crime (VicPOL) or Digital Forensics (AFP) been informed that the evidence is required for a sexual offence where the complainant is a child/cognitively impaired?
- Yes No
- c. Where relevant, has E-Crime or Digital Forensics been informed that the complainant is a child under the age of 12 years?
- Yes No

Disclosure outstanding:	Timeframes for provision/grounds for objection:

2. Any forensic procedure, examination or test described in the hand up brief has been completed and served on the accused.

Yes No N/A – Go to Question 3

If the answer to Question 2 is ‘No’, the informant is to advise of the following:

a. Has the Forensic Services Department or Commonwealth Forensics been informed the complainant is a child/cognitively impaired complainant?

Yes No

b. Where relevant, has the Forensic Services Department or Commonwealth Forensics been informed that the complainant is a child under the age of 12 years?

Yes No

Disclosure outstanding:	Timeframes for provision/grounds for objection:

If the answer to Question 1 or 2 is ‘No’, is the accused prepared to proceed with the committal hearing while that forensic procedure, examination or test described in the hand up brief remains uncompleted?

Yes No

Material in the possession of police

3. Has the informant served the standard disclosure material* on the accused with the hand up brief?

Yes No

****The standard disclosure material is set out in the attached appendix***

If the answer to Question 3 is 'No', the informant is to advise of the following:

Disclosure outstanding:	Timeframes for provision/grounds for objection:

If the answer to Question 3 is 'No', is the accused prepared to proceed with the committal hearing while the production of those items remains outstanding?

Yes No

4. Has a request been made for further disclosure material specific to this case?

Yes No

a. If the answer to Question 4. is yes, has the material been provided?

Yes No

b. If the answer to Question 4 (a) is no, on what date was the request to the informant made? *[insert date]*

c. If the answer to Question 4 (a) is no, the informant is to advise of the following:

Material outstanding:	Timeframes for provision/grounds for objection:

5. Have all witness statements that are intended to be relied upon by the prosecution at trial been served on the accused?

Yes No

If the answer to Question 5 is 'No', the informant is to advise of the following:

Statement outstanding:	Timeframes for provision:

<u>Informant</u>
Name:
Signature:
Dated:

Material not in the possession of the police

6. Are there any documents which may need to be produced at the trial which will need to be the subject of a subpoena to be issued in the County Court, including where leave is required before the subpoena can be issued or documents produced (s 32C)?

Yes No

Details of subpoena/ s. 32C application for leave:

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7. The accused and the DPP or informant have discussed whether this matter can be resolved by a plea*/pleas of guilty

Yes No

8. Will the accused submit at the committal mention that the evidence is not of sufficient weight to support a conviction?

Yes No

If the answer to Question 7 is yes, the submission will relate to charge/charges *[list]*:

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9. (a) Will the accused apply for a summary hearing of any of the charges?

Yes No – go to question 10

If yes, in relation to which charges?

(b) is the application for summary jurisdiction opposed?

Yes

No

*10. The Court should determine the committal proceeding at the committal mention hearing and commit the accused to trial.

When committed for trial, the accused intends to plead *Guilty/*Not guilty/*Not applicable (charge to be withdrawn) to the charge/charges *[list]*:

*11. The accused and the DPP seek an adjournment of the committal proceeding.

Reason(s) for the adjournment *[indicate the reason(s) for the proposed adjournment]*

*delete if not applicable.

Certificate completed by:

<u>For the Director of Public Prosecutions</u>

Name:

Signature:

Dated:

<u>Accused/ Representative for the accused</u>

Name:

Signature:

Dated:
