

GROUND RULES HEARINGS: INFORMANT'S FACT SHEET

What is a Ground Rules Hearing?

A ground rules hearing occurs before a contested summary hearing or contested committal in eligible proceedings where a child or cognitively impaired person will give evidence. The purpose of a ground rules hearing is to inform the judicial officer and counsel (including police prosecutors) of the communication needs and capacity of child and cognitively impaired witnesses. At a ground rules hearing the court may give directions about a range of matters relevant to the needs and capacity of the witness and the running of the case e.g.:

- Timely preparation and provision of charts, body maps, photos, and plans
- Whether the parties will meet the witness prior to the contest
- When and how the court will schedule breaks
- Use of a support dog
- The form of questions in cross-examination
- Whether there will be a limit on the length of cross-examination.

The Intermediary Pilot Program is limited to sexual offences and homicides at gazetted courts: currently Melbourne, Bendigo, Geelong and Warrnambool.

Legislation

The *Criminal Procedure Act 2009 (Vic)* provides for ground rules hearings: see sections 389A to 389J.

Which witnesses are eligible for a Ground Rules Hearing?

A useful rule of thumb is that where a child or cognitively impaired witness has made a VARE statement in relation to an offence against the person, and the matter is to be set down for a contested summary hearing or a contested committal, an enquiry should be made with the prosecutor as to whether a ground rules hearing is appropriate.

Ground rules hearings are not confined to proceedings at courts where the Intermediary Pilot Program operates.

An eligible witness is any child or cognitively impaired witness (other than the accused) in proceedings for the following charges (set out in s389A Criminal Procedure Act): -

- a sexual offence
- a family violence offence
- an indictable offence which involves an assault on, or injury or threat of injury to, a person
- a related summary assault.

Further information about ground rules hearings may be found in the *Multi-Jurisdictional Court Guide to Intermediaries and Ground Rules Hearings* on the Magistrates' Court of Victoria website.

When should a Ground Rules Hearing be held?

Consideration should be given to a ground rules hearing in eligible cases where a child or cognitively impaired witness is to give evidence.

Note also that while an intermediary may have been appointed for a complainant in a sexual offence, there may be other child or cognitively impaired witnesses who would benefit from a ground rules hearing being held.

The Role of the Informant

Where there is no intermediary involved, the informant is best placed to provide information to the court about the witness as they have personal knowledge of the witness and have generally conducted the VARE.

The informant will have further relevant information as a result of interactions with the witness's carers and the Child Witness Service.

The informant should complete the ground rules hearing Questionnaire after the contest mention or committal mention and provide it to the court and the parties at least 7 days prior to the Ground Rules Hearing.

The Ground Rules Hearing Questionnaire

The ground rules hearing Questionnaire is designed to capture the informant's knowledge of the witness's comprehension capacity and communications needs.

The ground rules hearing will be listed before the magistrate who will hear the summary contest or contested committal. The ground rules hearing should be held at least 7 days before the contested hearing unless otherwise directed by the court. The informant must complete the ground rules hearing Questionnaire and provide it to the court and the parties at least 7 days before the ground rules hearing.

There is no limit to the information which may be provided by the informant so long as it is relevant to the witness's capacity to comprehend or respond to questioning in court. Any potentially controversial material may be addressed during the discussion at the ground rules hearing.

The free text section at the end of the questionnaire allows an informant to add any further relevant information about the witness.