

SUPREME COURT OF TASMANIA

PRACTICE DIRECTION

No. 3 of 2009

1 July 2009

The following Practice Direction is published by direction of the Chief Justice, the Honourable Justice Crawford.

This practice direction replaces Practice Direction 1 of 2008 and mentions additional material that must be provided in the notice at point 4(b)(iii) and provides an example of a form for the notice of intention to request a preliminary proceedings order.

REQUESTS FOR PRELIMINARY PROCEEDINGS ORDERS:

The Chief Justice and the Judges of the Supreme Court have determined that unless otherwise advised by a Judge:

1. Counsel intending to seek a preliminary proceedings order are to give notice of that intention not less than 7 days prior to the directions hearing in which the request will be made.
2. Such notice must be filed with the Supreme Court and delivered to the office of the Director of Public Prosecutions, or, where the DPP is the applicant, to the accused's legal representative.
3. Such notice must also be sent electronically to the relevant registry of the Supreme Court. The email addresses are:
Hobart, "SupremeCourtHobart@justice.tas.gov.au";
Launceston, "SCLRegistry@justice.tas.gov.au";
Burnie "SupremeCourtBurnie@justice.tas.gov.au".
4. A notice of intention to request a preliminary proceedings order must include the following information:
 - a) The name of the accused, the relevant complaint number or numbers and the date of the committal order.
 - b) The information required by section 331B of the *Criminal Code 1924* including:
 - i. the names of the witnesses sought to be questioned;
 - ii. the matter or matters in respect of which each witness is to be questioned; and
 - iii. a brief statement of the reasons why the evidence of those witnesses is relevant to that matter and why cross examination or examination of those witnesses is justified;
 - iv. in cases where the witness is an affected person within the meaning of the *Justices Act 1959*, a brief statement of the exceptional circumstances upon which the application will rely.

- c) An estimate of the hearing time necessary for the preliminary proceeding.
 - d) A draft of the orders that the applicant wishes the court to make.
5. An example of a form for the notice of intention to request a preliminary proceedings order can be found at the foot of this practice direction.
6. After delivery of a notice of an intention to request a preliminary proceedings order and before the directions hearing, the accused's legal representative and Crown Counsel are to confer to identify areas of agreement or disagreement with respect to the request, an estimated hearing time for the preliminary proceedings and identify a tentative date upon which, and the place at which, the preliminary proceeding can be heard.

With regard to identifying a date and time when a preliminary proceeding can be heard, unless otherwise advised by the Court of Petty Sessions the following details apply to preliminary proceedings:

- a) In cases involving homicide, or sexual matters, or for commonwealth offences preliminary proceedings are heard by Magistrates and information about possible hearing times will be available from the Court of Petty Sessions in the district where the order of committal was made. Contact should be made with the Clerk of the Magistrate who made the order of committal outside court sitting times. As Magistrates' diaries are subject to frequent change it is recommended that tentative dates are sourced at a time near to the directions hearing.
- b) In other cases preliminary proceedings are heard by Justices of the Peace. Information about available hearing times before Justices of the Peace in different districts will be available to the Office of the Director of Public Prosecutions.

FORM FOR NOTICE OF REQUEST FOR PRELIMINARY PROCEEDINGS ORDERS.

(This form is an example only and should be amended as required by particular circumstances. It is based on a form drafted by the Legal Aid Commission of Tasmania.)

IN THE SUPREME COURT OF TASMANIA
HOBART/LAUNCESTON/BURNIE REGISTRY

No of 200

IN THE MATTER OF:

<applicant's name> Applicant

AND

<respondent's name> Respondent

Pursuant to s331B of the *Criminal Code 1924*:

<accused's name> was committed to this jurisdiction on
C/N **<complaint number>** on the **<date>** day of 200
and is next before this jurisdiction on the **<date>** day of 200 .

<applicant's name> makes application
for a Preliminary Proceedings Order in respect to the following:

1. Witness: **<name of witness>**

(a) *Matter/s in respect of which the witness will be questioned:*

<details>

(b) *It is submitted that the evidence of this witness is relevant and that cross examination / examination of the witness is justified for the following reasons:*

<details>

(c) *This witness is / is not an affected person within the meaning of the Justices Act 1959.*

<Repeat details required at paragraph 1 as necessary for each witness>

It is estimated that the taking of depositions will require a hearing time of **<estimated hearing time>**.

Attached and marked Annexure 'A' are the draft orders that the Applicant is seeking the Court make.

Annexure "A"

Orders sought:

1. That the witness(es) below give evidence on oath in preliminary proceedings in the Magistrates Court in **<location of Court>** on the **<date>** at **<time>**.

<list names of all witnesses>

2. Examination / cross examination of **<name of witness>** is to be limited to the following matter(s):

(a)

(b)

(c)

<repeat as necessary for each witness>