

A GUIDE TO NEW PROCEEDINGS

FOR THE DISPOSITION OF INDICTABLE OFFENCES

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Introduction

This guide provides information about the procedures for the disposition of indictable offences for the benefit of legal practitioners and others, including a summary and explanation of the process and a process diagram.

This guide was produced as a consequence of new procedures for the disposition of indictable offences that commenced on the 1st of February 2008 as a consequence of the *Justices Amendment Act 2007* and related changes to relevant practice.

Relevant pieces of legislation and practice directions are:

- *The Criminal Code 1924* (sections 331A-331C, 421A, 421B)
- *The Justices Act 1959* (sections 55-62)
- *The Criminal Amendment (Directions Hearing) Rules 2008*
- *Practice Direction No 3 of 2009*

The procedures described are those applying to indictable offences dealt with by the Supreme Court. The objectives of the new procedures included:

- Reduction of time elapsed between first appearance in a court of petty sessions and final disposition in the Supreme Court.
- Elimination of unnecessary committal hearings.
- Early identification of crime or crimes to be charged by indictment.
- Early identification and disposition of pleas of guilty.
- Elimination of unnecessary remand appearances.

- Certainty of trial date and elimination of adjournments.
- Reduction of costs.

In summary the procedures provide for:

- early file disclosure to defendants by police for all indictable offences;
- early involvement of the Office of the Director of Public Prosecutions with respect to those indictable offences where there is no right of election and those indictable offences where an election is made to be sentenced or tried by the Supreme Court so that:
 - the charges will be settled without delay; and
 - preliminary proceedings for the taking of depositions only occur at the order of a Judge and are conducted by Crown Counsel instead of police prosecutors; and,
- increased case management by the Supreme Court.

SOME BACKGROUND

The *Justices Amendment Act 2007* was developed in order to: “limit delays in the court and confer case management powers upon the Supreme Court for indictable offences by: limiting the delays that occur between first appearance in the Court of Petty Sessions and having the matter transferred to and tried in the Supreme Court; setting and controlling the timetable for disclosure of prosecution witnesses at committal proceedings; and involving the Office of the Director of Public Prosecutions at the earliest practical point in the process.” (Attorney General, “2nd Reading Speech”, *Hansard* Wed 4th July 2007).

The structural changes represented by the *Justices Amendment Act 2007* joined administrative changes in case handling within Tasmania Police, allowing earlier engagement of the Director of Public Prosecution’s office in the review of indictable files, and previous alterations to the committal process in Tasmania, made in the year 2000.

Preliminary, or committal, hearings evolved in England in the 1800s as part of the system to determine whether or not a prosecution should be brought by the Grand Jury. If there was insufficient evidence to convict the case would be summarily dismissed. In 2000 the *Justices Act 1959 (Tas)* was amended providing that in every case where there has been a plea of not guilty there must be an order committing the accused for trial in the Supreme Court. Thus the original "filtering function" of committal proceedings was brought to an end, although such hearings continue to fulfil other purposes, such as being a method of giving an accused notice of the evidence to support a charge and a chance to test some of the evidence to be brought against him or her.

It is worth noting that since the 1980s there has been commentary in Australia and the United Kingdom in favour of the limitation or even abolition of "ritualised" committal proceedings. Among other things, it has been argued that a considered decision into the merits of the prosecution case, taken at an early stage by an independent prosecuting authority, is preferable and more efficient than the committal process (see Bishop, J., *Criminal Procedure*, 2nd ed., Butterworths, 1998, Ch 6). For example, in 1981 a UK Royal Commission on Criminal Procedure advised abolishing committals in England. Also, the *Western Australian Law Reform Commission Report* of 1999 "Review of the Criminal and Civil Justice System in Western Australia" recommended that committal hearings be abolished on condition that processes for pre-trial disclosure by the prosecution and limited scrutiny of the discretion to lay indictments were implemented. These recommendations were incorporated in the *Criminal Procedure Act 2004 (WA)*.

In Tasmania, the "committal hearing" has been retained and called a "preliminary proceeding". It takes place after committal to the Supreme Court and its conduct, though heard by a justice of the peace or a magistrate, is an aspect of case management in the Supreme Court.

Further slight adjustments to the process have been made by the *Justice and Related Legislation (Further Misc Amendments) Act 2009* and by concurrent changes to practice.

SUMMARY OF THE NEW PROCESS

The stage numbers referred to below match the numbers provided in the flow chart following this commentary. It should be noted that this summary and the flow chart only illustrate the processes for the majority of matters. For example, outcomes such as directed verdicts or discharges as the result of the filing of a nolle prosequi do not appear.

Stage 1. File Disclosure By Police Prior To Committal (Magistrates Court):

Section 55 of the *Justices Act 1959* provides for an adjournment of 4 weeks between the defendant's first and second appearance in the Court of Petty Sessions. In this adjournment period section 56 provides that:

- any legal practitioner representing the defendant is to notify police of that fact and;
- police must provide the defendant or his legal counsel with the complaint; a copy of the transcript of any police interview (or an audiovisual copy, or viewing access to the same); copies of all witness statements; and a summary of the material facts relevant to the charge.
- There is also an ongoing duty on police to disclose any further witness statements or revised summaries of facts to the defendant if and when they come to light.

Stage 2: Plead/Elect And Committal Order On 2nd Appearance (Magistrates Court):

Unless there is a further adjournment for some exceptional reason, section 59 of the *Justices Act 1959* provides that defendants will be called upon to plead to the complaint and make an election, if relevant, on their

second appearance in the Court of Petty Sessions. If the crime is one that gives a defendant a right to elect summary trial and an election for that mode of trial is made, the proceeding will be managed in the same way as all summary proceedings are managed in a court of petty sessions. If a defendant refuses to make an election he or she will be deemed to have elected summary trial. If there is no election the defendant will be committed to the Supreme Court for sentence, or for trial according to the plea that has been entered. The office of the DPP will receive copies of the police file for review at this point (though police will retain the original file for any necessary further investigation) and will take over the conduct of the matter thereafter.

As a matter of practice, the minimum period of time between the committal order and the date of first appearance for the defendant in the Supreme Court will be:

- 7 days for a committal for sentence; and,
- 7 weeks for a committal for trial.

The Court of Petty Sessions will therefore remand the defendant to appear in the Supreme Court on the "directions day" that next occurs after 7 days, or 7 weeks, have elapsed, depending on the plea. Directions days are on the first Monday of every Criminal sitting.

In cases of a committal for sentence the 7-day minimum period allows for a number of things to occur including:

- Receipt and review of the file by the office of the DPP;
- Filing of notice of legal representation with the Crown and the Supreme Court by the defendant's legal representative as required by the *Criminal Amendment (Directions Hearing) Rules 2008*; and,
- Any necessary discussions between the Crown and the defendant's legal representative.

In cases of a committal for trial the 7 week minimum period allows for a number of things to occur including:

- Receipt and review of the file by the office of the DPP;
- Filing of notice of legal representation with the Crown and the Supreme Court by the defendant's legal representative as required by the *Criminal Amendment (Directions Hearing) Rules 2008*;
- Complying with the practices outlined in Practice Direction 3 of 2009 with respect to giving notice of an intention to make an application for a preliminary proceedings order.

Stage 3: Directions Day (1st Day Of The Criminalittings)

The *Criminal Amendment (Directions Hearing) Rules 2008* provide that the first appearance of the accused after the committal order will be for a directions hearing. The type of inquiry and orders or directions made by the Judge at that directions hearing will depend upon the circumstances of each case, for example: whether there has been a plea of guilty; and, whether a request for a preliminary proceedings order is made. Other directions might be sought with respect to trial dates, psychiatric or probation reports and the like.

Section 331B of the Criminal Code 1924 provides that if an accused, or a Crown law officer, requests that a preliminary proceedings order be made they must:

- identify the matter in respect of which the witness is to be questioned;
- specify why the evidence of the witness is relevant to that matter; and
- state why examination or cross-examination is justified.

Such examination of a witness will only be justified if there are "exceptional circumstances" in the case of witnesses in sexual offence cases and if it is "necessary in the interests of justice" in other cases.

Counsel are encouraged to arrange the order of directions hearings on directions day, and collaborate with the Supreme Court with respect to those arrangements, as occurs with respect to the arrangement of matters on a busy plea day.

Stage 4: Preliminary Proceedings (Court of Petty Sessions)

Preliminary proceedings take place in the Court of Petty Sessions before a Magistrate in the case of sexual offences and homicide offences and before a Justice of the Peace in other cases. The office of the Director of Public Prosecutions conducts preliminary proceedings before the Magistrate or Justice of the Peace.

Witnesses named in the preliminary proceedings order may be examined, cross-examined and re-examined in accordance with the order. The limits upon questioning are particularly strict where the proceedings involve a sexual offence. Justices can request that the Supreme Court give directions with respect to preliminary proceedings.

Stage 5: Returning Directions Hearings (Supreme Court)

At the conclusion of preliminary proceedings the accused is remanded to appear in the Supreme Court on the next occurring first day of a Criminal Sittings (Directions Day) not less than four weeks distant. It is anticipated that a record of the proceedings in the Court of Petty Sessions and transcript of the preliminary proceedings will have been filed with the Supreme Court and made available to the parties by this date.

Stage 6: Subsequent Directions Hearings (Supreme Court)

Subsequent directions hearings are listed on a Directions Day, or at any other time at the discretion of the Judge and in accordance with the

requirements of the relevant matter. Directions hearings may occur by telephone conference and be with or without the attendance of the accused at the direction of the Judge.

Stage 7: Supreme Court Mention (First Day of the Criminal Sittings)

Mentions for no other purpose but to remand the accused to appear on another day are avoided where possible.

Stage 8: Plea Date or Trial Date (Supreme Court)

Pleas of guilty are listed for the second and third Wednesday of each criminal sittings. Counsel organise between themselves convenient times throughout the plea day in order to minimise expense and inconvenience of waiting for the matter to be called on.

The order of listings for trial is the primary responsibility of the Crown in response to the circumstances relevant to the matter, collaboration with defence Counsel, necessary priorities and any requirements or directions of the Court.

Trial matters are listed to each week of the criminal sittings to commence during that week. Adjournments are only be granted in exceptional circumstances, or where there is insufficient court-time in that week for the matter to proceed to trial. The practice of listing matters for trial will be monitored and adjusted if necessary.

FLOW CHART OF THE PROCESS:

The new process can be summarised by the following flow-chart:

