

District Court Criminal Practice Note 11

CHILD SEXUAL OFFENCE EVIDENCE PILOT – DOWNING CENTRE

The purpose of this Practice Note is to facilitate operation of the Child Sexual Offence Evidence Pilot (“the Pilot”) which commences on Monday 4th April in the Downing Centre District Court.

The Criminal Procedure Act was amended by the Criminal Procedure Amendment (Child Sexual Offence Evidence Pilot) Act, 2015 No46 which came into force on 6 November, 2015. This inserts Part 29 into Schedule 2 of the Criminal Procedure Act (CP Act).

SUMMARY OF AMENDMENTS

1. All evidence of a child under 16 must be given by way of pre-recorded evidence and may be given for a child under 18. Separate hearings will be conducted where the pre-recorded evidence in chief (JIRT interview) will be called with any further oral evidence in chief, then cross-examination and re-examination being recorded in a hearing before a Judge with Crown and Defence represented to conduct the cross-examination and re-examination. This will become the evidence of the complainant at a later trial with very limited opportunities for the child to be called to give further oral evidence. (Sections 84-87).
2. Witness intermediaries (also called children’s champions in the legislation) may be appointed to assist the parties and the Court to communicate and explain questions and answers of child complainants (Sections 88-90).

PRACTICE DIRECTION

1. From Monday 18 January, 2016 all prescribed sexual offences (S3 of CP Act) committed from the Local Court to the **Downing Centre District Court**, where the complainant is under 18 at the time of committal for trial, are to be listed for arraignment and case management to a **Monday at 3pm** no later than 14 days after committal for trial.
2. This list will be known as the **Child Sexual Assault Pilot List** and will be managed separately from the general arraignments list in the Downing Centre Court 3.1.
3. At callover the Court will expect the Prosecution to be represented by either the Crown Prosecutor or Trial Advocate who will appear at trial and will also expect Counsel who intends to appear at trial for the accused to attend. The time and day for this list have been chosen to minimise disruption to other Courts where Counsel are appearing so that Counsel can appear. Judges in the Downing Centre will be

requested, as much as possible, to accommodate counsel who need to appear in this Child Sexual Assault Pilot List.

4. The Court will expect the Prosecution to present an indictment at least in accordance with S129 of the CP Act (within 4 weeks of committal for trial) but with an expectation that an indictment be filed in court as soon as possible after committal.
5. At the Child Sexual Assault Pilot List callover the Judge will set a timetable for the filing of the Prosecutor's Notice (S142 of the CP Act), the Defence Response (S143 of the CP Act) and Prosecutor's Response to Defence Response (S144 of the CP Act) bearing in mind the provisions of the amending legislation that pre-recorded hearings are to be held as soon as practicable after the first appearance in court.
6. The Court will set a pre-recorded evidence hearing in accordance with Division 2, Section 84 and generally as soon as possible after committal for trial. The Court will at the same callover fix a trial date for the balance of the trial following the pre-recorded evidence hearing.
7. The Court will appoint a witness intermediary where appropriate either on application of either party or of its own motion in accordance with the provisions of Division 2, Section 89.
8. There is an expectation that counsel for both the Crown and Defence appearing at the pre-recorded hearing will continue as counsel in the ultimate trial.
9. Practitioners should ensure that legal aid applications have been lodged and finalised immediately after committal for trial and counsel briefed both for the Crown and Defence will be available for a pre-recorded hearing within approximately 2 months and thereafter at the subsequent trial.

10. The pre-recorded hearings will be conducted primarily in Court 14D of the John Madison Tower. Other arrangements will be made where a custody court is required for an accused. Access to CCTV Remote Witness suites is available for complainants. It is anticipated that evidence will be given in that way by complainants.
11. The Child Sexual Assault Pilot Project Callover will be conducted in a Court to be advised in the Downing Centre.
12. The Child Sexual Assault Pilot Project Callovers will commence on Monday 1st February, 2016.
13. Pre-recorded hearings will commence from Monday 4 April, 2016.

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Justice D Price AM
Chief Judge
17 December 2015