

8 October 2014

The Hon. Judge Graeme Henson  
Chief Magistrate of the  
Local Court of New South Wales  
Office of the Chief Magistrate of the Local Court  
Level 5, 143-147 Liverpool Street  
SYDNEY NSW 2000

Dear Chief Magistrate,

### **Proposed amendment of Local Court Practice Note Crim 1**

Thank you for your letter dated 5 September, 2014 seeking our comments about amendments that you propose to make to the Local Court Practice Note Crim 1. We do not have any significant concerns with the proposed changes to the Practice Note, but we do have a concern and some comments about aspects of the proposed changes to the Local Court Listing Advice form.

In our view, the effectiveness of the proposed changes will hinge on the extent to which the NSW Police Force provides the relevant information to the defence and the court. In particular, the NSW Police Force will need to serve all police statements on the defence in a timely manner to enable the defence to: determine whether a police officer is required for cross examination; identify corroborative witnesses in the Court Listing Advice contained in the brief of evidence; and indicate whether an audio visual link is required.

If the proposed changes are introduced, it may be useful to review their impact approximately six months after commencement to consider whether there are any implementation or compliance issues in relation to the new procedures.

We have a concern about the potential impact of the proposed notation on the Local Court Listing Advice which states that '[w]here a witness is not required for cross-examination it will prima facie be assumed that the tender of the statement is consented to.' On occasion, the defence will not require a police officer for cross examination but will take issue with certain parts of a police officer's statement being tendered on the basis that the evidence is inadmissible or irrelevant. The wording of this notation may encourage defence solicitors to indicate that they require a police officer for cross-examination, to avoid the assumption that they consent to the statement being tendered in its entirety. This concern could be addressed by changing the wording of this notation or by removing the notation.

Further, we note that although the legal representative of the accused is required to hand to the court a completed Court Listing Advice, the defence will be reliant on the NSW Police Force for key information required to complete certain sections of this form. In particular, the practice note specifies that the prosecution is to indicate in the court listing advice who they intend to call as a corroborative witness, but the listing advice form does not specify that the 'corroborative witness' section is to be completed by the prosecution. In our view, it would be useful to have this requirement noted on the listing advice form.

In our experience, the defence and the prosecution can disagree about who is a corroborative witness. The defence may consider that all police witnesses of an alleged offence are direct witnesses, each as important as each other, while the police may assert that a witness is corroborative. This may be a relevant consideration for the Court when deciding whether to direct that a witness attend to give evidence in person, in accordance with clause 5.7(d).

Thank you for the opportunity to provide these comments. If you wish to discuss any aspect of this submission, please contact Dara Read on (02) 9219 5714 or at [Dara.Read@legalaid.nsw.gov.au](mailto:Dara.Read@legalaid.nsw.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bill Grant', written in a cursive style.

Bill Grant  
**Chief Executive Officer**