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| Practice note |

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# County Court contacts

* 1. Throughout this practice note, where it refers to contacting the Court, practitioners should direct their enquiry to the relevant area and take into account the below principles.

## Communication with the Court

* 1. The Court requires all communication between the Court, litigants and/or practitioners to be open (that is, be disclosed to all parties to the proceeding). As such, all parties to the proceeding must be copied into any correspondence with the Court.
  2. Requests for legal advice will not be answered.
  3. Practitioners must respond to Court correspondence in a timely manner for matters to progress efficiently and effectively. This includes correspondence with the chambers of the presiding judicial officer, Criminal Division lawyers and Criminal Registry staff who all communicate on behalf of the Court.
  4. All written correspondence to the Court must include the correct case name and ‘CR’ or ‘AP’ case number in the subject line.
  5. If the solicitor with conduct of a matter has changed within the firm or organisation, the new solicitor with conduct of the matter must advise the Court of same as soon as possible.

## All matters where a judge is allocated

* 1. For all matters where a judge is allocated, contact the [presiding judge’s chambers](https://www.countycourt.vic.gov.au/contact-us/judicial-support).
  2. Practitioners may search [Court Connect](http://cjep.justice.vic.gov.au/pls/p100/ck_public_qry_main.cp_main_idx) to ascertain whether a judge has been allocated to a matter.

## All not guilty matters where no judge is allocated

* 1. For all not guilty matters where a judge is not allocated, contact the allocated Criminal Division lawyer [divisionlawyer@countycourt.vic.gov.au](mailto:divisionlawyer@countycourt.vic.gov.au)
  2. When a not guilty matter is initiated, the allocated Criminal Division lawyer will correspond with the parties and provide their relevant contact information.
  3. The Criminal Division lawyer will continue to communicate with the parties as required throughout the [case management process](#_Case_management_system). This includes correspondence relating to listing enquiries and any applications sought to be made (for example, applications relating to bail and/or pre-trial matters).
  4. If a matter has been allocated to a judge for a substantive hearing (for example, contested bail application, case conference, sentence indication hearing, pre-trial hearing) and at the conclusion of any substantive hearing, the matter is referred to a judicial registrar for further case management, the allocated Criminal Division lawyer will once again become the principal point of contact for the parties.

## All matters where no judge or Criminal Division lawyer allocated

* 1. For Melbourne pleas, appeals, contravention hearings and matters where a judge or Criminal Division lawyer is not allocated, contact:
  + Criminal Registry Services via email: [criminal.registry@countycourt.vic.gov.au](mailto:criminal.registry@countycourt.vic.gov.au), or phone: 03 8636 6570
  1. For all circuit matters where a judge or Criminal Division lawyer is not allocated, contact the relevant circuit court registry.

|  |  |
| --- | --- |
| Circuit court | Email address |
| Bairnsdale | [registry.bairnsdale@countycourt.vic.gov.au](mailto:registry.bairnsdale@countycourt.vic.gov.au) |
| Ballarat | [registry.ballarat@countycourt.vic.gov.au](mailto:registry.ballarat@countycourt.vic.gov.au) |
| Bendigo | [registry.bendigo@countycourt.vic.gov.au](mailto:registry.bendigo@countycourt.vic.gov.au) |
| Geelong | [registry.geelong@countycourt.vic.gov.au](mailto:registry.geelong@countycourt.vic.gov.au) |
| Horsham | [registry.horsham@countycourt.vic.gov.au](mailto:registry.horsham@countycourt.vic.gov.au) |
| Mildura | [registry.mildura@countycourt.vic.gov.au](mailto:registry.mildura@countycourt.vic.gov.au) |
| Morwell | [registry.latrobe@countycourt.vic.gov.au](mailto:registry.latrobe@countycourt.vic.gov.au) |
| Shepparton | [registry.shepparton@countycourt.vic.gov.au](mailto:registry.shepparton@countycourt.vic.gov.au) |
| Wangaratta | [registry.wangaratta@countycourt.vic.gov.au](mailto:registry.wangaratta@countycourt.vic.gov.au) |
| Warrnambool | [registry.warrnambool@countycourt.vic.gov.au](mailto:registry.warrnambool@countycourt.vic.gov.au) |
| Wodonga | [registry.wodonga@countycourt.vic.gov.au](mailto:registry.wodonga@countycourt.vic.gov.au) |

# Filing forms and documents

* 1. Where there is a requirement to file any document, form or material in this practice note, any reference to the word ‘day’ or ‘days’ means calendar day or calendar days respectively, unless specified otherwise.

## Legal practitioners

* 1. The [eLodgement](http://elodge.courts.vic.gov.au/ccv) system is an online portal for legal practitioners to electronically lodge forms and documents for criminal and appeal matters.
  2. Legal practitioners must file forms and documents with the Court electronically via eLodgement, subject to paragraph 2.4.
  3. The following documents should not be filed via eLodgement:

draft warrants – must be emailed to the relevant judicial officer’s associate

executed warrants – must be handed up in open court

any charge that is required to be issued by the Court – must be filed with Criminal Registry Services in-person

depositions filed by the Office of Public Prosecutions – must be filed via e-Depositions

Commonwealth depositions – may be delivered or handed to Criminal Registry Services until further notice. If Commonwealth depositions are available electronically, the Office of the Commonwealth Director of Public Prosecutions must contact the Court to arrange electronic delivery of the depositions

forms and documents for a matter represented by a pre ‘CR-15’ or pre ‘AP-16’ case number.

* 1. eLodgement is available for any case represented by a ‘CR-15+’ or ‘AP-16+’ case number.
  2. First time users will need to [create a user account](https://elodge.courts.vic.gov.au/ols-vcc/#!/ols-user-registration) before the user can eLodge a document or form.
  3. Legal practitioners are encouraged to read the [eLodgement user guide](https://www.countycourt.vic.gov.au/going-court/lodging-court-document/elodgement) to assist with eLodging their documents and forms.

## Self represented litigants

* 1. Self represented litigants may file documents and forms with the Court via email [criminal.registry@countycourt.vic.gov.au](mailto:criminal.registry@countycourt.vic.gov.au) or post to:

Criminal Registry Services  
250 William Street  
MELBOURNE VIC 3000

## Extensions of time for filing documents or forms

* 1. If a party seeks an extension of time for filing any document or form in accordance with this practice note, they must seek leave from the Court two days before the document or form is due for filing, unless specified otherwise by any Act, Regulation or other section in this practice note.
  2. An application for an extension of time (EOT application) must be made in writing and include:

the date the document or form is due for filing

an indication of what additional period of time is sought

the reason(s) for seeking an extension of time.

* 1. The EOT application may be determined by the Court administratively or at an in-court hearing.

# County Court case numbers for indictable matters and indictments

## ‘CR’ case numbers

* 1. A ‘CR’ case number for indictable matters is used by the Court to identify a group of charges proceeding together for a single accused.
  2. Each ‘CR’ case number can only contain one active indictment.
  3. Electronically filing a fresh indictment on the ‘CR’ case number, which already contains an indictment, will have the effect of filing over the existing indictment.

## Multiple case numbers for related cases

### Single accused with multiple matters

* 1. An accused may have multiple matters in the County Court, resulting from multiple briefs of evidence and multiple Magistrates’ Court reference numbers. If the accused pleads guilty, these matters may be consolidated into a single indictment. That indictment must:

contain all relevant ‘CR’ case numbers

be filed against all relevant ‘CR’ case numbers.

* 1. All other documents and forms filed with the Court must also:

include all relevant ‘CR’ case numbers

be filed against all relevant ‘CR’ case numbers.

### Multiple accused

* 1. If an indictment names more than one accused, whether in the same charge or separate charges:

the ‘CR’ case number for each accused must be listed on the indictment

the indictment must be filed against the ‘CR’ case number for each accused.

* 1. All other documents and forms filed with the Court must also:

include all relevant ‘CR’ case numbers

be filed against all relevant ‘CR’ case numbers.

## Filing indictments

* 1. The prosecution must file signed indictments via eLodgement.[[1]](#footnote-1)
  2. An indictment must contain the signature of an authorised person.

An electronic signature may be used to sign an indictment provided the requirements of s 9 of the *Electronic Transactions (Victoria) Act 2000* are met.

An electronic signature must be a handwritten depiction of an authorised person’s name and not merely the typed name of an authorised person.

* 1. All indictments filed must be in PDF format.
  2. The date a signed indictment is filed via eLodgement is the date of filing of the indictment.
  3. Leave of the Court is not required to file a fresh indictment under s 164 of the *Criminal Procedure Act 2009*.
  4. Before filing any fresh indictment, the prosecution must take note that on the filing of a fresh indictment against an accused, proceedings in relation to a charge for the same offence, or a related offence, in an indictment previously filed against that accused are discontinued pursuant to s 164(4) of the *Criminal Procedure Act 2009*.
  5. A hard copy indictment will not be required to be filed in court where a signed indictment has been filed via eLodgement.
  6. The option to file a hard copy indictment in court remains for certain circumstances including when:

a proceeding is commenced by way of a direct indictment

filing the indictment via eLodgement will cause unnecessary delay to the proceeding (for example, when an indictment is filed over on the first day of trial)

there is a disruption to eLodgement

directed by a judicial officer for any other purpose.

## Severed indictments

* 1. If the existing indictment is to be severed into two or more indictments, each severed indictment will require its own separate ‘CR’ case number.
  2. The prosecution must only request a new ‘CR’ case number if a decision has been made to sever the indictment, not if it is merely being considered.
  3. If an indictment is to be severed, the prosecution must contact the Court and advise:

a severed indictment will be filed

a new ‘CR’ case number is required.

* 1. The new ‘CR’ case number must be included on the indictment before it is filed.
  2. The severed indictment must be filed via eLodgement under the corresponding new ‘CR’ case number unless any of the circumstances in paragraph 3.15 apply.
  3. The prosecution must ensure the correct indictment is filed against the relevant corresponding ‘CR’ case number to avoid indictments being filed over in error.

## Bail or remand status for subsequent indictments and case numbers

* 1. When a new ‘CR’ case number is created for a new indictment, the bail or remand status of the accused must be entered against the new ‘CR’ case number.
  2. If an accused has been remanded in custody on the initial ‘CR’ case number, the prosecution must advise the Court whether it is intended for that remand status to be replicated on the new ‘CR’ case number.
  3. If an accused is on bail on the initial ‘CR’ case number:

the prosecution must advise the Court whether it is intended for the bail conditions to be replicated on a bail undertaking for the new ‘CR’ case number

defence must indicate their position on bail for the new ‘CR’ case number

the accused will be required to enter bail on the new ‘CR’ case number. At the discretion of a judicial officer, the new bail undertaking may be entered into administratively or at an in-court hearing

if an accused is on remand and is granted bail on the initial and new ‘CR’ case number, the accused will only be released if they are not on remand for any other matter in any other jurisdiction (for example remanded on matters proceeding through the Magistrates’ Court).

## Direct indictments

* 1. A signed direct indictment must be filed in court and not via eLodgement.
  2. The prosecution must contact the Court to obtain a date for a directions hearing to file the direct indictment in court.
  3. The date a signed direct indictment is filed in court is the date of filing of the direct indictment.
  4. Pursuant to s 171(4) of the *Criminal Procedure Act 2009*, on the filing in court of a direct indictment against an accused, the Director of Public Prosecutions may apply to the court for the issue of a summons or a warrant to arrest in order to compel the attendance of the accused.
  5. The prosecution may eLodge a draft indictment (containing a draft watermark and the typed name of the authorised person signing the indictment) before filing the signed direct indictment in court.

## Amending an indictment

* 1. After an indictment has been filed with the Court, the prosecution may seek leave to amend the indictment.
  2. If the Court grants the prosecution leave to amend the indictment, the presiding judicial officer’s associate will provide the signed indictment to the prosecution electronically via email.
  3. The prosecutor or their instructing solicitor should then make the amendments by using red pen or font to:

strike through any error on an indictment

insert the correct text

annotate that the amendment was made.

* + - 1. The annotation should be placed in the margin of the indictment and should take the form of:

Amended pursuant to leave granted by [*his/her*] Honour Judge [*insert name of judge*] at the County Court of Victoria at [*insert location i.e., Melbourne*] on the [*insert day, month, year*].

* 1. The prosecution must provide the amended signed indictment back to the presiding judicial officer’s associate via email. The associate will then load the amended indictment onto the Court’s document management system.

## New trial ordered by the Court of Appeal

* 1. Where the Court of Appeal has ordered a new trial under s 277 or s 326E of the *Criminal Procedure Act 2009* and the accused is to be re-tried in the County Court, the Court will generate a new ‘CR’ case number for the new trial.
  2. The new ‘CR’ case number will be provided to the parties by the Court.
  3. All corresponding documents and materials relating to the new trial, including the indictment for which the accused will be tried on, must be filed against the new ‘CR’ case number.

# Robing for hearings

## Types of hearings where robing required

* 1. Unless specified otherwise by the presiding judicial officer, practitioners are required to robe for hearings which include:

hearings in the 10.30am General Crime List or Sexual Offences List before a judge

contested bail applications

case conference hearings

sentence indication hearings

pre-trial hearings

trial

plea hearings

sentencing hearings

sentence appeal hearings

conviction and sentence appeal hearings

contravention hearings.

## Types of hearings where robing not required

* 1. Unless specified otherwise by the presiding judicial officer, practitioners are not required to robe for hearings which include:

directions hearings

mentions

case assessment hearings

hearings in the 9am General Crime List or Sexual Offences List

conviction appeal first listing (where it is not the substantive appeal).

## Wigs

* 1. Enquiries about whether practitioners should be wigged should be directed to the [presiding judge’s chambers](https://www.countycourt.vic.gov.au/contact-us/judicial-support).

# Case management

## Purpose

* 1. The purpose of case management in the Criminal Division is to:

facilitate the timely resolution of matters, where appropriate

ensure where matters proceed to trial, they are fully prepared and ready to commence (trial ready)

achieve these outcomes in a timely, tailored and efficient manner.

## Application

* 1. The case management system applies to matters:

committed to the Court from Melbourne and regional locations

where the accused intends to plead not guilty to any charge, including changes of plea, direct indictments and re-trials (herein referred to collectively as ‘initiations’)

that do not involve charges of sexual offending where the complainant is a child and/or person with a cognitive impairment.

## Long Trials List

* 1. The Long Trials List case manages matters committed to the Court as a plea of not guilty with a trial estimate of five weeks or more.
  2. Matters are generally identified for referral into the Long Trials List at the initial directions hearing.
  3. A judicial officer may refer a matter for case management in the Long Trials List where:

the case has an estimated trial duration of five weeks or more, and/or

a judicial officer considers the matter is appropriate for case management in the Long Trials List.

* 1. Once a matter has been referred into the Long Trials List, the matter will be adjourned for a directions hearing on the next available date in the Long Trials List which sits on Fridays at 9.30am.
  2. The judge presiding over the Long Trials List may:

discuss with parties the prospects of resolution

discuss with parties any pre-trial or trial issues

set timelines for further case management.

* 1. After the directions hearing, the matter may:

continue to be managed in the Long Trials List, or

be allocated to a judge to case manage outside of the Long Trials List and hear any pre-trial hearings as appropriate.

## Principles

* 1. Practitioners should keep the following principles in mind throughout the whole case management process.

### Case management is customised to the specific needs of each matter

* 1. Case management ensures:

Court resources are used effectively

each matter only receives the level of case management that is required to achieve the purposes set out in paragraph 5.1.

### Court processes that do not require an in-court hearing are conducted administratively

* 1. Court processes will be conducted administratively, where appropriate.

### Meaningful in-court hearings

* 1. The Court expects in-court hearings to be meaningful. Practitioners must comply with Court directions so that they are prepared to progress the matter at an in-court hearing.
  2. Practitioners must be proactive and advise the Court, in a timely manner, if further time is required to continue discussions or meet Court directions. This allows the Court to determine whether a hearing date should be retained or administratively adjourned.
  3. Failure to respond to correspondence from the Court, including correspondence from a Criminal Division lawyer, will impact the meaningfulness of a hearing.

## Case management system

### Overview

* 1. There are four stages in the case management system:

Initiation: this stage involves the process of gathering case information following the initiation of a matter.

Triage: involves judicial determination of the appropriate case management approach for a matter.

Case management: administrative and in-court hearings required to progress the matter towards resolution or trial readiness.

Trial listing: the trial listing process for Melbourne and circuit matters.

* 1. A visual representation of the case management process is annexed (see [Appendix 1](#_Appendix_1:_Visual)).
  2. A matter’s priority factor(s) will be taken into account during case management. Priority factors include where:

a witness is under the age of 18 years old

a witness is a person with a cognitive impairment

a witness and/or accused is over the age of 70 years old

an accused is under the age of 21 years old

an accused is Aboriginal or Torres Strait Islander

there is a vulnerable witness and/or accused (for example, due to medical reasons)

an accused is in custody

the matter involves a fatality.

### Stage one: initiation

* 1. When a matter is initiated in the Court, and the accused pleads not guilty to one or more charges, it is listed for an initial directions hearing. The initial directions hearing will be:

approximately 28 days post-committal if the accused is an adult

14 days post-committal if the accused is a child

on a nominated date if the matter involves a change of plea, direct indictment or re-trial.

#### Prosecution filing requirements

* 1. No later than seven days after committal the prosecution must file, and serve on defence, the:
     1. police summary
     2. [prosecution Case initiation notice](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bdivision%5d%5b0%5d=13&filter%5bkeyword%5d=case%20initiation%20notice:%20prosecution).

#### Defence filing requirements

* 1. No later than seven days after committal defence must file, and serve on the prosecution, a:

[Notice of practitioner acting (Form 1A)](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bdivision%5d%5b0%5d=13&filter%5bkeyword%5d=Form%201A)

[defence Case initiation notice](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bdivision%5d%5b0%5d=13&filter%5bkeyword%5d=case%20initiation%20notice:%20defence).

#### Case initiation notice

* 1. The Case initiation notice provides the Court with important information about a matter at the time it is initiated in the Court with a plea of not guilty. It will be used to help determine a matter’s specific case management needs.

### Stage two: triage

* 1. Before the initial directions hearing, a judicial officer will consider the appropriate case management approach for a matter, including whether the matter can proceed directly to trial. The judicial officer will take into account a matter’s priority factors, the matters set out in the Case initiation notice and case management requirements.
  2. The Criminal Division lawyer may contact the parties to clarify matters or obtain further information if required by the Court.
  3. The Court will determine the case management requirements with the parties administratively via email or at the initial directions hearing. Specific case management needs will be reviewed on an ongoing basis as required.
  4. If a judicial officer determines a matter is unlikely to resolve and does not require any case management, the matter will be considered for the direct to trial process (see [direct to trial](#_Direct_to_trial) process).

### Stage three: case management

* 1. Case management may involve administrative and/or in-court hearings.

#### Administrative processes

* 1. Administrative processes progress the case management of a matter without an in-court hearing and may include the allocated Criminal Division lawyer contacting parties via email on behalf of a judicial officer to:

gather case information or material from the parties

administratively adjourn a hearing where appropriate

manage filing timelines, including extensions of time

communicate Court directions to the parties.

#### Directions hearings

* 1. Judicial officers provide case management directions to parties at an in-court directions hearing. Directions hearings are brief and may include the Court:

confirming the initial case management for a matter

making orders with respect to filing of documents

addressing case management issues, including outstanding disclosure or non-compliance with Court directions and confirmation of funding status

confirming trial readiness and listing a matter for trial.

#### Case assessment hearing

* 1. A case assessment hearing is expected to take between 15–30 minutes to complete.
  2. The Court will list a case assessment hearing for a matter if the issue(s) to be addressed can be properly dealt with in the allocated timeframe.
  3. A case assessment hearing is conducted on a without prejudice basis.
  4. At a case assessment hearing, the following matters may be discussed with the parties:

the evidence

clarification of the prosecution case (if required)

potential for resolution.

* 1. A case assessment hearing may be used to:

facilitate resolution discussions where there is a discrete issue preventing resolution

determine whether the issue preventing resolution may benefit from further case management before a judge (for example a case conference hearing or a sentence indication hearing).

* 1. Counsel appearing at a case assessment hearing must be prepared to discuss the issue(s) in dispute and the evidence in the depositions relating to those issues. Counsel, however, are not expected to be ‘trial ready’ at the case assessment hearing.
  2. The prosecution must file, and serve on defence, the depositions before a case assessment hearing.
  3. The Court may, in appropriate circumstances, also require additional material to be filed and served before a case assessment hearing including written submissions, certain trial documents and/or audio-visual material.
  4. The Court will communicate the filing timelines for all required material to the parties at an in-court directions hearing or administratively via email.

#### Case conference hearing

* 1. A case conference hearing is a substantive in-court hearing presided over by a judge.
  2. A case conference hearing may take a significant amount of time and counsel must be available to appear for the entirety of the case conference. If counsel is briefed to appear in other matters on the same day, they must notify the presiding judge in advance of the case conference.
  3. As a case conference takes place before a trial, it is important for parties and any court users observing the proceeding, to ensure any reporting or publication of what takes place at a case conference hearing does not prejudice the trial.
  4. An accused is required to attend the case conference hearing in-person unless directed otherwise by the Court.
  5. A case conference hearing is primarily used to:

facilitate resolution discussions where appropriate, including for multi-accused matters

narrow the issue(s) in dispute

clarify the prosecution case (if required)

discuss and/or determine any substantial pre-trial legal issues.

* 1. At a case conference hearing, a judge conducts an in-depth and without prejudice discussion with the parties about matters, including:

the state of the evidence

factual issue(s) in dispute

legal issue(s).

* 1. A judge may test the strengths and weaknesses of the parties’ positions in relation to matters discussed at the case conference hearing.
  2. Counsel appearing at a case conference hearing must be prepared to:

discuss the matter in detail, including the issue(s) in dispute and the evidence in the depositions

obtain relevant instructions in a timely manner, where necessary.

* 1. The judge presiding over a case conference may hear and determine any pre-trial applications before or after the case conference hearing.
  2. A case conference is a ‘without prejudice’ hearing. This means, nothing said by or on behalf of a party, or any information, document or thing obtained as a direct or indirect consequence of anything said, will be admissible at trial.
  3. Anything said or done by the presiding judge during a case conference is to be taken solely for the purpose of the case conference hearing and will in no way bind or fetter future determinations made by the trial judge other than rulings made under paragraph 5.46.[[2]](#footnote-2)
  4. No failure by any party to answer a question at a case conference hearing will be admissible at trial.
  5. Any written material filed and served by either party solely for the purpose of the case conference hearing may not be relied upon at trial.
  6. Where a case conference hearing is adjourned to enable parties to consider their position, the matter may be listed for a directions hearing on the next occasion.
  7. The following material should be filed, and served on the other party, before a case conference hearing unless the Court directs otherwise:

**Prosecution filing requirements**

depositions

trial indictment

summary of prosecution opening for trial

written submissions relevant to the particular case conference hearing

*Evidence Act* and/or *Jury Directions Act* notices (if necessary).

**Defence filing requirements**

* + 1. written submissions relevant to the particular case conference hearing.
  1. Before a case conference hearing, the Court may also make orders for the filing of:

an outline of submissions, and/or

* + 1. any other document prepared for the purposes of a case conference hearing.
  1. The timelines for filing any material, for the purpose of a case conference hearing, will be communicated to the parties at an in-court hearing or administratively via email.
  2. The Court expects that counsel briefed to appear at the case conference hearing will also be briefed or hold the brief for trial.
  3. A case conference hearing may be stood down or adjourned to allow the parties to engage in discussions and/or obtain any necessary instructions.

#### Sentence indication hearings

* 1. If charge(s) are agreed on for the purposes of an application for a sentence indication hearing, parties may request the Court to list the matter for an application for a sentence indication hearing. The Court will list and conduct these hearings as soon as practicable during the case management stage.
  2. Practitioners must comply with the requirements in [Chapter 7: Sentence indication hearings](#_Sentence_indication_hearings).

#### Pre-trial argument

* 1. The Court may list and conduct pre-trial argument in matters where the:

pre-trial issue(s) may determine whether the matter proceeds to trial or resolves

determination of pre-trial issue(s) may be the subject of an interlocutory appeal

length and/or complexity of the pre-trial argument warrants judicial determination well in advance of the trial date.

#### Section 198 and 198B pre-trial applications

* 1. Where a party intends to make a s 198 or 198B application, they must:

Obtain the position of the other party to the application and obtain any unsuitable dates for the hearing of the application.

Contact the Court to obtain a date for the application and advise:

* + - 1. the other party’s position to the application
      2. any unsuitable dates for the hearing of the application
      3. the estimated duration of the hearing of the application, and s 198 or 198B hearing if the application is granted.

After obtaining a hearing date for the application and where the matter relates to a s 198B application file, and serve on the other party, an [Application for an accused to conduct limited preparatory cross-examination](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bdivision%5d%5b0%5d=13&filter%5bkeyword%5d=application%20for%20an%20accused%20to%20conduct%20limited%20preparatory%20cross-examination).

**Section 198B application for limited preparatory cross-examination**

* 1. An accused may make an application to the court at any time for an order that the accused cross-examine a witness.
  2. Where such an order is made on the hearing of the application, a date will be set for the evidence of the witness to be taken. The application may be listed on the same date as the examination hearing at the discretion of the Court.

**Section 198 application to take evidence before trial**

* 1. A party to the proceeding may make an application to the court at any time, except during trial, for an order that the evidence of a person be taken before trial.
  2. Where such an order is made on the hearing of the application, a date will be set for the evidence of the person to be taken. The evidence will not be taken on the date of the application itself.

### Stage four: trial listing

* 1. The Court will list a matter for trial if it has not resolved after the Court has conducted appropriate case management.
  2. The trial listing stage will commence approximately six months before a matter’s expected trial date and will be conducted at an in-court hearing or administratively depending on the circumstances of the matter.

#### In-court hearing trial listing process

* 1. At an in-court hearing, the presiding judicial officer may determine the matter is ready to be listed for trial and:

list the matter for trial

make orders which may include:

* + - 1. listing a final directions hearing approximately two to four months before the trial date
      2. directing the prosecution to file, and serve on defence, all remaining trial material approximately four to six weeks before the final directions hearing. This includes:
         1. depositions
         2. trial indictment
         3. summary of prosecution opening for trial
         4. notice of pre-trial admissions
         5. any *Evidence Act* and/or *Jury Directions Act* notices
         6. any other required material
      3. listing the matter for a s 32C application
      4. making an order pursuant to s 357 of the *Criminal Procedure Act 2009* for Victoria Legal Aid to provide legal representation to an accused for the purpose of cross-examining a protected witness

direct defence to file, and serve on the prosecution, all remaining trial material approximately two weeks before the final directions hearing. This includes:

* + - 1. defence response
      2. response to pre-trial admissions
      3. any other required material.

### Administrative trial listing process

* 1. The Court may also communicate with the parties to administratively fix a trial date. The time at which the Court communicates with the parties about fixing a trial date is determined on a case-by-case basis and may depend on:

whether the matter has any priority factors

the Court’s listing capacity

any other factors considered relevant by the Court.

* 1. When fixing a trial date, the parties may be required to advise the Court of:

any outstanding pre-trial issues not previously identified (at the last hearing of the matter or otherwise) or any other outstanding matters that may prevent the matter from being listed for trial

any trial funding issues

mutually suitable dates on which the matter may be listed for trial within a period of time (trial listing window) nominated by the Court.[[3]](#footnote-3)

* 1. A matter’s trial listing window is a three-month period in which the Court expects to be able to list the matter for trial.
  2. Once a suitable trial date has been identified, the Court will administratively list the matter for trial and make administrative orders which may include any of the orders outlined in paragraph 5.66.

### Direct to trial process

* 1. A judicial officer may determine that a matter should proceed through the direct to trial process after discussion with the parties at the initial directions hearing. A matter may proceed through the direct to trial process where the matter:

is unlikely to resolve

does not require any case management.

* 1. The matter will proceed through the case management stage (see [Stage three: case management](#_Stage_three:_case)) if a judicial officer determines a matter is not suitable for the direct to trial process.
  2. If a judicial officer considers a matter suitable for the direct to trial process, the matter will be adjourned to an administrative hearing approximately six months before the start of the trial listing window.
  3. During the period between the initial directions hearing and administrative hearing, the Court will not case manage the matter unless specifically requested to do so by either or both parties.
  4. Before the administrative hearing, the Court will communicate with the parties to fix a trial date. The time at which the Court communicates with the parties about fixing a trial date is determined on a case-by-case basis and may depend on:

whether the matter has any priority factors

the Court’s listing capacity

any other factors considered relevant by the Court.

* 1. When fixing a trial date, the parties may be required to advise the Court of:

any outstanding pre-trial issues not previously identified (at the last hearing of the matter or otherwise) or any other outstanding matters that may prevent the matter from being listed for trial

any trial funding issues

mutually suitable dates on which the matter may be listed for trial within the trial listing window nominated by the Court.[[4]](#footnote-4)

* 1. If the parties advise that the matter may or does require case management, the Court will triage the matter in accordance with its case management needs.
  2. When a suitable trial date has been identified, the Court will administratively list the matter for trial and make administrative orders which may include any of the orders outlined in paragraph 5.66.

### Final directions hearing

* 1. At a final directions hearing, the presiding judicial officer will determine whether the matter is ready to commence on the trial date.
  2. A matter is considered ‘trial ready’ if:

all prospects of resolution have been exhausted and the accused has instructed that the matter will proceed as a trial

the following prosecution material has been filed and served:

* + - 1. depositions
      2. trial indictment
      3. summary of prosecution opening for trial
      4. notice of pre-trial admissions
      5. all *Evidence Act* and/or *Jury Directions Act* notices to be relied upon

all disclosure requirements have been complied with

defence response has been filed and served

pre-trial rulings that may resolve the matter or that have structural significance to the trial, have been determined

all remaining pre-trial issues have been sufficiently identified

trial funding is in place.

* 1. If the presiding judicial officer is satisfied that the matter is ‘trial ready’, the trial date will be confirmed and the matter adjourned to the trial date.
  2. If the Court is not satisfied that the matter is ‘trial ready’, the Court may:

administratively adjourn the final directions hearing

retain the final directions hearing date and, if appropriate, adjourn the matter to a suitable hearing under the case management stage (see [Stage three: case management](#_Stage_three:_case_1)) including a further final directions hearing

consider whether the trial date can be maintained or whether the matter will need to be relisted.

* 1. Subject to the resolution of any pre-trial issues and/or legal argument by the trial judge, the Court expects parties to be ready to proceed with a jury empanelment and commence the trial on the trial date, namely the first day of trial.

### Circuit trial listings

* 1. The case management system is a state-wide system. Circuit matters will proceed through the same case management processes as Melbourne matters, namely [Stages one to three of the case management system](#_Case_management_process) as described above.
  2. Circuit matters are listed for trial via an in-court hearing in accordance with any priority factors.
  3. Circuit matters proceeding to trial will be provided with a circuit commencement date as opposed to a fixed trial date. The presiding judge sitting at that circuit location will hear the trial in accordance with a rolling list of trials.
  4. When the Court has allocated a trial to a particular circuit, the Court will contact the parties approximately 12 weeks before the commencement of the circuit. This correspondence will state which matters are listed in the circuit and the preliminary order of trials.
  5. Parties are required to advise the Court if any of the following apply:

outstanding pre-trial issues not previously identified

any trial funding issues

any other outstanding issues that may prevent the matter from proceeding as listed.

* 1. If no response is received, the Court will assume the matter is ‘trial ready’ (subject to any previously identified pre-trial issues). Parties must be ready to proceed with the trial at any point within the circuit when called upon by the Court.
  2. The presiding judge for the relevant circuit will then maintain the carriage and case management of the matter before the circuit commences. Case management may include:
     1. directions hearings

determination of any outstanding pre-trial issues (if appropriate)

any other type of hearing, order or direction the judge considers appropriate and necessary to ensure the matter is ‘trial ready’

any other type of hearing outlined in [Stage three: case management](#_Stage_three:_case) (directions hearings, case assessment hearings, case conferences, sentence indication hearings, pre-trial).

* 1. If a trial is ‘not reached’ in the relevant circuit, the matter will be adjourned to a later circuit or to a directions hearing date.
  2. The matter will be relisted for trial in another circuit, with consideration given to any priority factors of that ‘not reached’ trial and any other trials awaiting a circuit listing.
  3. Parties are to liaise with the allocated Criminal Division lawyer for any enquiries until the matter has been reallocated to another trial judge.

### Relinquishing a brief before trial

* 1. A legal practitioner may only relinquish a brief or withdraw from an agreement to appear for an accused within seven days of the day on which the trial is due to commence with the leave of the Court.
  2. Where a practitioner intends to relinquish a brief or withdraw, they must:

contact the Court immediately to seek leave to relinquish a brief or withdraw from an agreement to appear

advise the other party.

* 1. The Court may list a directions hearing to hear the application to relinquish or withdraw from an agreement to appear. This will be communicated to the parties by the Court.

### Extension of time limit for commencement of trials

#### Offences other than sexual offences

* 1. Section 211 of the *Criminal Procedure Act 2009* requires that a trial for an offence, other than a sexual offence, must commence:

within 12 months after the day on which the person is committed for trial

within 12 months of a direct indictment being filed, or

within six months after the day on which the Court of Appeal orders a new trial.

* 1. Parties must indicate on the Case initiation notice whether they consent to all extensions of time for the commencement of the trial being made, on the Court’s own motion, until the trial commences.
  2. The Court may extend time for the commencement of the trial if the Court considers that it is in the interests of justice to do so.
  3. If a party does not consent to extensions of time being made, the party must contact the Court and advise the other party.

#### Sexual offences

* 1. Section 212 of the *Criminal Procedure Act 2009* requires that a trial for a sexual offence must commence:

within three months after the day on which the person is committed for trial

within three months of a direct indictment being filed, or

within three months after the day on which the Court of Appeal orders a new trial.

* 1. Parties must indicate on the Case initiation notice whether they consent to all extensions of time for the commencement of the trial being made, on the Court’s own motion, until the trial commences.
  2. The Court may extend time for the commencement of the trial if the Court considers that it is in the interests of justice to do so.
  3. If a party does not consent to extensions of time being made, the party must contact the Court and advise the other party.

### Application for an order requiring Victoria Legal Aid to provide legal representation

* 1. An accused intending to apply for an order requiring Victoria Legal Aid to provide legal representation under s 197 of the *Criminal Procedure Act 2009* must:

advise the prosecution

contact the Court to obtain a date for the hearing of the application.

* 1. The Court may list the matter for a directions hearing or application.
  2. At the hearing of the application, the accused must be prepared to provide the Court with the following information:

the date Victoria Legal Aid declined to provide assistance

any internal Victoria Legal Aid review sought and the outcome.

* 1. The accused must file, and serve on the prosecution and Victoria Legal Aid, the following materials before the hearing of the application:

a letter from Victoria Legal Aid indicating Victoria Legal Aid has declined to provide legal assistance to the accused for the trial of the matter

financial records

payslips

bank statements

any other material relied upon for the application.

* 1. If Victoria Legal Aid has declined to provide the accused legal assistance on the ground that the accused has not met Victoria Legal Aid’s means test criteria, on the hearing of the application the accused must have copies of all the documents the accused relied on in support of their application to Victoria Legal Aid for assistance, available at the hearing.

# Special hearing matters under the *Criminal Procedure Act 2009*

* 1. Where the accused has entered a plea of not guilty at committal in the Magistrates’ Court and the charge(s) relate to a sexual offence which involves a child complainant or complainant with a cognitive impairment, the following procedures apply.
  2. Practitioners should refer to the [Multi-jurisdictional court guide for the Intermediary Pilot Program: intermediaries and ground rules hearings](https://www.countycourt.vic.gov.au/practice-notes?filter%5bkeyword%5d=intermediaries%20and%20ground%20rules%20hearings) for information on the Court’s expectations, and guidance, on the use of intermediaries and ground rules hearings.

## Prosecution filing requirements

* 1. No later than seven days after committal the prosecution must file, and serve on defence, the:

police summary

[prosecution Case initiation notice](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bdivision%5d%5b0%5d=13&filter%5bkeyword%5d=case%20initiation%20notice:%20prosecution)

* 1. No later than 14 days after committal the prosecution must file, and serve on defence, the:

indictment

summary of prosecution opening for trial

depositions

any *Evidence Act* and/or *Jury Directions Act* notices.

## Defence filing requirements

* 1. No later than seven days after committal defence must file, and serve on the prosecution, a:

[Notice of practitioner acting (Form 1A)](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bdivision%5d%5b0%5d=13&filter%5bkeyword%5d=Form%201A)

[defence Case initiation notice](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bdivision%5d%5b0%5d=13&filter%5bkeyword%5d=case%20initiation%20notice:%20defence).

* 1. No later than seven days before the initial directions hearing, defence must file a completed [s 198A Application for pre-trial cross-examination](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bkeyword%5d=Application%20for%20pre-trial%20cross-examination), signed by both parties, if such an application will be made by defence.

## Section 198A applications

* 1. If any s 198A applications are to be made, defence must file a completed [s 198A Application for pre-trial cross-examination](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bkeyword%5d=Application%20for%20pre-trial%20cross-examination) in accordance with paragraph 6.6.
  2. If defence seek to file a s 198A application at any time after the initial directions hearing, defence must:

Contact the Court to obtain a date for the application. At the discretion of the Court, the application may be listed on the same date as the pre-trial cross-examination hearing.

File and serve a completed [s 198A Application for pre-trial cross-examination](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bkeyword%5d=Application%20for%20pre-trial%20cross-examination) signed by both parties.

* 1. A s 198A Application for pre-trial cross-examination may be determined administratively or at an in-court hearing.

## Section 32C application for leave to produce a confidential communication

* 1. Practitioners should be able to address the Court at the initial directions hearing as to whether:

a s 32C application for leave to produce a confidential communication (s 32C application) will be made

whether the application requires determination before any s 198A cross-examination hearing.

* 1. Failure to identify any s 32C application at the earliest opportunity will not ordinarily be considered a basis to adjourn a s 198A pre-trial cross-examination hearing or special hearing.
  2. A date for the hearing of the s 32C application may be provided to the parties administratively or at a directions hearing. Once a hearing date is set, parties should comply with the relevant filing requirements set out in [Chapter 12: Subpoenas](#_Subpoenas) of this practice note.

## Extension of time limit for holding of special hearing

* 1. Section 371 of the *Criminal Procedure Act 2009* requires that a special hearing must be held within three months after the day on which the accused is committed for trial.
  2. Parties must indicate on the Case initiation notice whether they consent to all extensions of time being made for special hearings, on the Court’s own motion, until the special hearing is held.
  3. The Court may extend time for the holding of a special hearing if the Court considers that it is in the interests of justice to do so.
  4. If a party does not consent to extensions of time being made, the party must contact the Court and advise the other party.

# Sentence indication hearings

## Obtaining a hearing date

* 1. Where the accused seeks to make an application for a sentence indication, defence must:

Obtain the position of the prosecution and any unsuitable dates for the hearing of the application and sentence indication hearing if the application is granted.

Contact the Court to obtain a date for the application and advise:

* + - 1. whether the application is opposed or not
      2. any unsuitable dates for the listing of the hearing
      3. the estimated duration of the application, and sentence indication hearing if the application is granted.
  1. The parties must agree on the proposed charge(s) and facts for the sentence indication hearing before seeking a date and filing the application.

## Defence filing requirements

* 1. Defence must file, and serve on the prosecution, seven days before the application hearing date:

An [Application for a sentence indication hearing](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bdivision%5d%5b0%5d=13&filter%5bkeyword%5d=application%20for%20a%20sentence%20indication), which includes:

* + - 1. whether the sentence indication would be the first, second or subsequent sentence indication
         1. if it would be a second or subsequent sentence indication, defence must outline the change in circumstances since the previous sentence indication that is likely to materially affect the sentence indication previously given
      2. the charge(s) on the indictment (or another charge) the accused would plead guilty to
      3. whether the prosecution opposes the application for a sentence indication hearing.

A brief outline of submissions setting out:

* + - 1. facts or evidence upon which defence seek to rely on, including any mitigating factors
      2. any submissions which defence might seek to make on a specified maximum total effective sentence.

Any material defence seek to rely on, if available, including:

* + - 1. expert reports
      2. character references.

## Prosecution filing requirements

* 1. The prosecution must file, and serve on defence, no later than three days before the application hearing date:

A summary of the agreed factual basis of the alleged offending to which the application relates if a plea of guilty would be accepted to that charge.

A statement indicating:

* + - 1. whether the prosecution opposes or does not oppose the application. If the application is opposed, the prosecution must outline the reason(s) for opposing
      2. the views of the complainant (if any and known)
      3. whether there will be sufficient information before the Court of the impact of the offence on any victim of the offence.

Criminal record of the accused (if any).

## Sentence indication hearing

* 1. If the application is granted, the sentence indication hearing may proceed immediately thereafter.
  2. If the application is granted and a sentence indication is given, the matter will be stood down or adjourned for a reasonable period of time to enable the accused to consider the sentence indication.

## Plea hearing after sentence indication

* 1. The matter will be listed for a plea hearing if:

the accused agrees to plead guilty to the charge(s) that would be contained on any plea indictment and/or any related summary offences

the prosecution accepts a plea of guilty to the charge(s) that would be contained on any plea indictment and/or any related summary offence, and

the accused accepts the sentence indication given.

* 1. The plea hearing will be conducted by the judge who provided the sentence indication and the usual processes for a plea will apply (see [Chapter 22: Plea hearing](#_Plea_hearing_1)).

# Bail applications

## Application for bail

### Obtaining a hearing date

* 1. Where an applicant intends to make an application for bail, the applicant must:

Obtain the respondent’s position to the application and any unsuitable dates for the hearing of the application

* + - 1. if opposed – obtain the estimated duration of the hearing, including the number of witnesses to be called if applicable
      2. if not opposed – discuss the following with the respondent:
         1. whether each party consents to the application being determined administratively if a judicial officer considers it appropriate
         2. proposed conditions for bail
         3. whether the application will involve the Court Integrated Services Program (CISP).

Contact the Court to obtain a date for the application and advise:

* + - 1. whether the application is opposed or not
         1. if not opposed – whether each party consents to an administrative hearing if a judicial officer considers it appropriate
      2. any unsuitable dates for the hearing of the application
      3. the estimated duration of the hearing, including the number of witnesses to be called
      4. whether the application will involve the Court Integrated Services Program (CISP).

### Defence filing requirements

* 1. Once an application for bail hearing date has been obtained from the Court defence must file, and serve on the prosecution, an [Application for bail](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bdivision%5d%5b0%5d=13&filter%5bkeyword%5d=application%20for%20bail) no later than three days before the hearing date. The application must include:

the applicable threshold (prima facie entitled, compelling reasons, exceptional circumstances)

whether the accused is an Aboriginal and/or Torres Strait Islander? If yes, whether s 3A of the *Bail Act 1977* will be relied upon

the grounds in support of the application

the details of any co-accused

whether the application is opposed or not

if not opposed – the proposed conditions of bail must be attached

the estimated duration of the hearing.

* 1. A chronology must be attached to the application for bail.

### Prosecution filing requirements

* 1. The prosecution must file, and serve on defence, a current version of the accused’s prior convictions (if any) 24 hours before the hearing of the application.

### Sureties

* 1. Where an application for bail is made and a surety is proposed, defence must ensure all relevant documents in support of the proposed surety amount is available on the listed hearing date and the surety is present at court for the application.
  2. Where a surety is imposed, a Deputy Registrar of the Court will determine whether the documents provided are accurate and sufficiently substantiate the surety. Defence is encouraged to make enquires with Criminal Registry Services [criminal.registry@countycourt.vic.gov.au](mailto:criminal.registry@countycourt.vic.gov.au) before the hearing of an application, regarding adequate and correct surety documentation.

## Further application for bail

### Obtaining a hearing date

* 1. Where an applicant intends to make a further application for bail, the applicant must:

Obtain the respondent’s position to the application and any unsuitable dates for the hearing of the application

* + - 1. if opposed – obtain the estimated duration of the hearing, including the number of witnesses to be called if applicable
      2. if not opposed – discuss the following with the respondent:
         1. whether each party consents to the application being determined administratively if a judicial officer considers it appropriate
         2. proposed conditions for bail
         3. whether the application will involve the Court Integrated Services Program (CISP).

Contact the Court to obtain a date for the application and advise:

* + - 1. whether the application is opposed or not
         1. if not opposed – whether each party consents to an administrative hearing if a judicial officer considers it appropriate
      2. any unsuitable dates for the hearing of the application
      3. the name of the judge who previously refused bail
      4. the estimated duration of the hearing, including the number of witnesses to be called
      5. whether the application will involve the Court Integrated Services Program (CISP).

### Defence filing requirements

* 1. After a further application for bail hearing date has been obtained from the Court, defence must:

In accordance with s 18AK of the *Bail Act 1977*,give notice to the prosecution in the [prescribed form](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bdivision%5d%5b0%5d=13&filter%5bkeyword%5d=notice%20of%20further%20application%20for%20bail) of a further application for bail no later than three days before the hearing of the application.[[5]](#footnote-5)

File, and serve on the prosecution, a [Further application for bail (Form 12)](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bdivision%5d%5b0%5d=13&filter%5bkeyword%5d=Further%20application%20for%20bail) no later than three days before the hearing date.

* 1. The application must:

include the date bail was refused or revoked

specify in the application or on an outline of submissions attached to the application:

* + - 1. the name of the judge who refused bail
      2. the new facts and circumstances relied on
      3. whether the application is opposed or not
      4. if not opposed – the proposed conditions of bail must be attached
      5. the estimated duration of the hearing.

### Prosecution filing requirements

* 1. The prosecution must file, and serve on defence, a current version of the accused’s prior convictions (if any) 24 hours before the hearing.

### Sureties

* 1. Where a further application for bail is made and a surety is proposed, defence must ensure:

all relevant documents in support of the proposed surety amount is available on the listed hearing date

the surety is present at court for the application.

* 1. Where a surety is imposed, a Deputy Registrar of the Court will determine whether the documents provided are accurate and sufficiently substantiate the surety. Defence is encouraged to make enquires with Criminal Registry Services [criminal.registry@countycourt.vic.gov.au](mailto:criminal.registry@countycourt.vic.gov.au) before the hearing of an application, regarding adequate and correct surety documentation.

## Application to vary bail

### Obtaining a hearing date

* 1. Where an applicant intends to make an application to vary bail, the applicant must:

Obtain the respondent’s position to the application and any unsuitable dates for the hearing of the application

* + - 1. if opposed – obtain the estimated duration of the hearing, including the number of witnesses to be called if applicable
      2. if not opposed – discuss the following with the respondent:
         1. whether each party consents to the application being determined administratively if a judicial officer considers it appropriate
         2. proposed variation to condition(s) of bail and the reason(s) for the variation sought
         3. whether the application will involve the Court Integrated Services Program (CISP).

Contact the Court to obtain a date for the application and advise:

* + - 1. whether the application is opposed or not
         1. if not opposed – whether each party consents to an administrative hearing if a judicial officer considers it appropriate
      2. any unsuitable dates for the hearing of the application
      3. the conditions sought to be varied and the reason(s) for the variation
      4. if a surety has been imposed, whether written notice has been provided to the surety pursuant to s 18AI of the *Bail Act 1977*
      5. the estimated duration of the hearing, including the number of witnesses to be called
      6. whether the application will involve the Court Integrated Services Program (CISP).

### Filing requirements

* 1. In accordance with s 18AK of the *Bail Act 1977*,if an accused is making the application, defence must give notice to the prosecution in the [prescribed form](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bdivision%5d%5b0%5d=13&filter%5bkeyword%5d=notice%20of%20further%20application%20for%20bail) of the application to vary bail no later than three days before the hearing of the application.[[6]](#footnote-6)
  2. After an application to vary bail hearing date has been obtained from the Court, the applicant must file and serve on the respondent, no later than three days before the hearing date, an:

[Application by person on bail for variation of amount or conditions of bail (Form 12)](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bdivision%5d%5b0%5d=13&filter%5bkeyword%5d=variation%20to%20the%20conditions%20of%20bail), or

[Application by informant or Director of Public Prosecutions for an order to vary amount of bail, vary conditions of bail or impose conditions of bail (Form 14)](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bkeyword%5d=Application%20by%20the%20prosecution%20to%20vary%20the%20amount%20of%20bail%20or%20conditions%20of%20bail).

* 1. The application must include:

a copy of the current bail undertaking

a list of the condition(s) which are sought to be varied, and how it is proposed they be varied

the reason(s) for the variation sought

whether the application is opposed or not

the estimated duration of the hearing.

* 1. The prosecution must file, and serve on defence, a current version of the accused’s prior convictions (if any) 24 hours before the hearing of the application.

### Sureties

* 1. Where a party seeks to vary bail and a surety has been imposed, the party is required to file, and serve a copy on the surety, a [Notice](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bdivision%5d%5b0%5d=13&filter%5bkeyword%5d=notice%20to%20a%20surety) to surety of application by person on bail for an order to vary amount or conditions of bail (Form 16) before the listing of the application.
  2. Where any variation of bail is granted, including any suspension of conditions, the accused will be required to enter a fresh bail undertaking.
  3. The applicant must ensure the surety is present at court for the application, as the surety is also required to sign the fresh bail undertaking.
  4. In the event a surety cannot attend or is not available for the application to vary bail, the applicant must file an affidavit from the surety, and serve a copy on the respondent, stating that the surety understands and consents to the variation sought.

## Application to revoke bail

### Obtaining a hearing date

* 1. Where the prosecution intends to make an application to revoke bail, the prosecution must:

Obtain the defence’s position to the application and any unsuitable dates for the hearing of the application

* + - 1. if opposed – obtain the estimated duration of the hearing, including the number of witnesses to be called if applicable
      2. if not opposed – discuss with defence whether each party consents to the application being determined administratively if a judicial officer considers it appropriate.

Contact the Court to obtain a date for the application and advise:

* + - 1. whether the application is opposed or not
         1. if not opposed – whether each party consents to an administrative hearing if a judicial officer considers it appropriate
      2. any unsuitable dates for hearing of the application
      3. the estimated duration of the hearing, including the number of witnesses to be called.

### Prosecution filing requirements

* 1. After an application to revoke bail hearing date has been obtained the prosecution must file, and serve on defence, before the hearing an [Application by informant or Director of Public Prosecutions for an order to revoke bail (Form 15)](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bdivision%5d%5b0%5d=13&filter%5bkeyword%5d=revoke%20bail).
  2. The application must include:

whether the application is opposed or not

a copy of the current bail undertaking

the ground(s) in support of the application

whether it is proposed the surety (if any) be forfeited under the *Crown Proceedings Act* *1958*

a current version of the accused’s prior convictions (if any).

## Mode of attendance

* 1. If an accused has appeared in-court and has been granted bail, they will return to the County Court cells to enter bail and be discharged from custody.
  2. If an accused has appeared virtually and has been granted bail, an authorised person at the prison or police station at which the accused is held, will enter the accused into bail.

# Application for warrant to arrest

* 1. Where the Court issues a warrant to arrest the accused, the prosecution must email a draft copy of the warrant to the chambers of the judicial officer.
  2. The presiding judicial officer will sign the warrant and have it returned to the prosecution.
  3. If there is a condition of surety attached to the accused’s bail, the prosecution must bring this to the presiding judicial officer’s attention.
  4. If the prosecution seeks forfeiture of the surety, they must contact the Court to list the matter for an application to forfeit the surety.

## Return of warrant

* 1. Where a warrant has been executed, at the next hearing the prosecution must file the executed warrant in-court.

# Application for an adjournment

* 1. Where a party intends to apply for an adjournment of a hearing they must:

Obtain the position of the other party to the application and obtain any unsuitable dates for the hearing of the application

* + - 1. if opposed – obtain the estimated duration of the hearing
      2. if not opposed – discuss with the other party, whether the parties’ consent to the application being determined administratively if a judicial officer considers it appropriate.
    1. Contact the Court to obtain a date for the application and advise:
       1. the current listed hearing sought to be adjourned
       2. the other party’s position to the application
       3. the basis for the application
       4. whether the parties’ consent to the application being determined administratively if a judicial officer considers it appropriate
       5. whether the accused is in custody or on bail
          1. if custody – whether a videolink or video conference (Zoom or Webex) is required
          2. if bail – whether an order extending bail in the absence of the accused is sought.
  1. Where an application is made to adjourn a matter, the party making the application must file, and serve on the other party, any evidence to substantiate the basis for the application (for example, a medical report).

# Application for a suppression order

* 1. A party intending to apply for a suppression order must:

Obtain the other party’s position to the application and any unsuitable dates for the hearing of the application

* + - 1. if opposed – obtain the estimated duration of the hearing
      2. if not opposed – agree on proposed terms of the order.

Contact the Court to obtain a date for the application and advise:

* + - 1. whether the application is opposed or not
      2. any unsuitable dates for the hearing of the application
      3. the estimated duration of the application.

## Filing requirements

* 1. The party applying for a suppression order must file and email [suppressionnotice@countycourt.vic.gov.au](mailto:suppressionnotice@countycourt.vic.gov.au), and serve on the other party, a [Notice of application for a suppression order](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bkeyword%5d=suppression%20order&filter%5bdivision%5d%5b0%5d=13) no later than three days before the application hearing date.
  2. On receipt of the Notice of application for a suppression order, the Court’s Media Manager will email a copy of the Notice to recognised news media organisations and their lawyers.
  3. Practitioners are reminded that the Notice of application for a suppression order will be treated by the Court as an open, non-confidential document.
  4. If any aspect or part of the Notice of application for a suppression order is to be kept confidential, an affidavit in support of the application for a suppression order must be attached and filed with the Notice. The affidavit must set out the part(s) of the Notice which are to be kept confidential.
  5. If notice has not been given for making an application for a suppression order, the Court may still hear the application. However, this is not the default position. The onus is on the parties to demonstrate the reason(s) the Court should exercise its discretion to waive the notice requirement.
  6. Where a judicial officer proposes to make a suppression order, the parties must be prepared to make submissions on the framing of the order.

## Suppression orders

* 1. Once a suppression order has been made, the order will be provided to the Court’s Criminal Registry Services, and Media Manager, to disseminate to news media organisations and their lawyers. A copy of the order will also be posted on the relevant courtroom door for the duration of any hearing to which a suppression order applies.
  2. A person is taken to be aware that a suppression order or an interim suppression order is in force if the Court has electronically transmitted notice of the order to the person, media organisation or their lawyer.
  3. Any queries about suppression orders should be directed to the Court’s Media Manager [media@countycourt.vic.gov.au](mailto:media@countycourt.vic.gov.au).

# Subpoenas

## Subpoena to attend to give evidence

* 1. A party who intends to issue a subpoena to attend to give evidence in a criminal proceeding must file a [Subpoena to attend to give evidence (Form 1D)](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bdivision%5d%5b0%5d=13&filter%5bkeyword%5d=subpoena%20to%20attend%20to%20give%20evidence).
  2. The subpoena to attend to give evidence must specify the date, time and place for attendance.
  3. The date specified in the subpoena is the date of trial or any other date as ordered by the Court.
  4. The last date for service of a subpoena is:
     1. five business days before the date of attendance if the addressee is located in Victoria, or
     2. 14 calendar days before the date of attendance if the addressee is located outside of Victoria.
  5. The recipient of the subpoena (the addressee), upon being served with the subpoena, must attend at the date, time and County Court location as specified in the subpoena unless objection is taken to attending to give evidence.
  6. If the addressee objects to attending to give evidence, the addressee must lodge via [eCase](https://ecase.countycourt.vic.gov.au/static/) a letter setting out the reason(s) for the objection.

## Subpoena to produce

### Issuing party

* 1. A party who intends to issue a subpoena to produce in a criminal proceeding must file a [Subpoena to produce (Form 1E)](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bdivision%5d%5b0%5d=13&filter%5bkeyword%5d=subpoena%20to%20produce).
  2. The subpoena to produce must specify the date, time and place for production.
  3. The issuing party should nominate the date of production in the subpoena, which must be a reasonable time before any future hearing date for which the material is required.
  4. The last date for service of a subpoena is:
     1. five business days before the date of production if the addressee is located in Victoria, or
     2. 14 calendar days before the date of production if the addressee is located outside of Victoria.
  5. The issuing party should contact the Court and copy in the other party to the proceeding (non-issuing party), after the date of production, to request a subpoena release hearing.

The issuing party must advise the Court whether they consent to the subpoena release hearing being determined administratively.

The non-issuing party must advise the Court whether they also seek access to the subpoenaed material.

### Addressee

* 1. The addressee upon being served with the subpoena must:

complete the Declaration by addressee (Declaration)

lodge the subpoena (or copy) with the completed Declaration and material sought under the subpoena via eCase unless objection is taken to the production of the subpoenaed material on a legal basis.

* 1. If the addressee objects to the production of the subpoenaed material, the addressee should lodge via eCase a letter setting out the reason(s) for the objection.
  2. If the addressee objects to the release of part of the subpoenaed material, the addressee should lodge via eCase:

a redacted and unredacted version of the subpoenaed material

a letter setting out the reason(s) for the objection.

## Subpoena both to attend to give evidence and to produce

### Issuing party

* 1. A party who intends to issue a subpoena both to attend to give evidence and to produce in a criminal proceeding must file a [Subpoena both to attend to give evidence and to produce (Form 1EA)](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bdivision%5d%5b0%5d=13&filter%5bkeyword%5d=subpoena%20both%20to%20attend%20to%20give%20evidence%20and%20to%20produce).
  2. The subpoena both to attend to give evidence and to produce must specify the date, time and place for attendance and production.
  3. The date specified in the subpoena is the date of trial or any other date as ordered by the Court.
  4. The last date for service of a subpoena is:
     1. five business days before the date of attendance and production if the addressee is located in Victoria, or
     2. 14 calendar days before the date of attendance and production if the addressee is located outside of Victoria.

### Addressee

* 1. The addressee upon being served with the subpoena must:

complete the Declaration by addressee (Declaration)

lodge the subpoena (or copy) with the completed Declaration and material sought under the subpoena via eCase unless objection is taken to the production of the subpoenaed material on a legal basis.

* 1. If the addressee objects to attend to give evidence and/or produce, the addressee should lodge via eCase a letter setting out the reason(s) for the objection.
  2. If the addressee objects to the release of part of the subpoenaed material, the addressee should lodge via eCase:

a redacted and unredacted version of the subpoenaed material

a letter setting out the reason(s) for the objection.

## Trans-Tasman subpoenas

* 1. A party who seeks to make an application for leave to issue a subpoena to an addressee in New Zealand must provide the Court with:

a summons in Form 1C

supporting affidavit

draft subpoena in Form 1F, 1G or 1H.

* 1. The affidavit in support of the application must state:

the name, occupation and address of the addressee

whether the addressee has attained the age of 18 years

the nature and significance of the evidence to be given, or the document or thing to be produced, by the addressee

details of the steps taken to ascertain whether the evidence, document or thing could be obtained by other means without significantly greater expense, and with less inconvenience to the addressee

the date by which it is intended to serve the subpoena in New Zealand

details of the amounts to be given to the addressee to meet the addressee's reasonable expenses of complying with the subpoena

details of the way in which the amounts referred to in subparagraph 12.23(f) are to be given to the addressee

if the subpoena requires a specified person to give evidence, an estimate of the time that the addressee will be required to attend to give evidence

any facts or matters known to the applicant that may be grounds for an application by the addressee to have the subpoena set aside under s 36(2) or (3) of the *Trans-Tasman Proceedings Act.*

* 1. The affidavit must exhibit a copy of the subpoena in relation to which leave is sought.
  2. The last date for service of a subpoena will be ordered by a judicial officer if leave is granted.
  3. If leave is granted, a party who intends to issue a subpoena to an addressee in New Zealand must file a Form 1F, 1H or 1G with a copy of the signed order granting leave attached to the back of the subpoena.

## Short service subpoenas

* 1. A party who seeks an order for short service of a subpoena must email the Court[[7]](#footnote-7) (copying in the other party to the proceeding):

providing a draft [Order fixing last date for service of subpoena (Form 1I)](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bkeyword%5d=Form%201I).

advising the reason(s) a short service subpoena order is sought

advising whether the proposed addressee is already aware of the date of the hearing.

* 1. The party who seeks an order for short service of a subpoena must file the draft subpoena to which the application for a short service of a subpoena relates.

## Subpoenas relating to confidential communications – 32C

### Issuing party

* 1. A party who intends to issue a subpoena (issuing party) in a criminal proceeding likely to contain a confidential communication must apply to the Court for leave to issue a subpoena (s 32C application).
  2. The party making the s 32C application must:
     1. Contact the Court to obtain a date for the hearing of the application.
     2. File no later than 14 calendar days before the application hearing date:
        1. an [Application for leave to issue a subpoena](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bkeyword%5d=form%2032c)[[8]](#footnote-8)
        2. a brief outline of submissions in support of the application.

Serve no later than 14 calendar days before the hearing of the application:

* + - * 1. a copy of the application on each party to the proceeding
        2. the registered medical practitioner or counsellor
        3. the informant.

If the 14 calendar day notice period cannot be complied with, the party making the s 32C application must contact the Court to make an application to fix a period of notice shorter than 14 calendar days or waive the requirement to give notice.

* 1. Where an application for leave to issue a subpoena has been listed at the request of a party and that party no longer intends to pursue the application, the party must no later than five calendar days before the application hearing date:
     1. contact the Court to vacate the hearing date, and
     2. notify the:
        1. other party to the proceeding
        2. the registered medical practitioner or counsellor
        3. informant.
  2. Upon the hearing of the application, if leave to issue the subpoena is granted, the issuing party must:

File the subpoena together with a copy of the order granting leave to issue attached to the subpoena.

If not already ordered by the judicial officer granting leave to compel production, contact the Court after the date of production to confirm the document has been produced, before requesting a date to make an application for leave to inspect the document.

* 1. The judicial officer hearing the application for leave to issue the subpoena will specify the date on which the subpoena must be made returnable.
  2. The issuing party must attach the Declaration to the addressee to the front of the sealed subpoena and may then serve it.
  3. A subpoena is not required to be filed or served if:

for the purposes of determining an application for leave to issue a subpoena, an order is made pursuant to s 32C(6) of the *Evidence (Miscellaneous Provisions) Act 1958* for production of a document containing a confidential communication to the Court, and

the Court grants leave to issue a subpoena relating to a document containing confidential communication.

* 1. An application must be made for leave to inspect the document containing the confidential communication.

### Addressee

* 1. The intended recipient of the subpoena (the addressee) must contact the Court if they seek to be heard on the application for leave to issue a subpoena relating to a confidential communication.
  2. If leave has been granted to issue a subpoena relating to a confidential communication the addressee, upon being served with a subpoena, must:

complete the Declaration by addressee (Declaration)

attach a letter advising if the addressee seeks to make submissions on whether leave should be granted to inspect the document, or attach a written outline of the addressee’s submission

lodge the subpoena (or copy) with the completed Declaration and document(s) sought under the subpoena via eCase.

## Subpoena resources

* 1. Additional subpoena resources, including a [Guide to subpoenas, eCase: electronic subpoenas practice note and subpoena calculator](https://www.countycourt.vic.gov.au/going-court/subpoenas) are available on the County Court website.

# Application to adduce a confidential communication

* 1. A party who intends to adduce evidence which would disclose a confidential communication is required to make an application before the trial judge for leave to do so.

## Application requirements

* 1. The party who intends to adduce evidence which would disclose a confidential communication, must:

Contact the Court and advise of their intention to make an application to adduce a confidential communication.

File no later than 14 days before the trial date (or as directed by a judicial officer) an [Application for leave to adduce a confidential communication](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bkeyword%5d=form%2032c).

Serve no later than 14 days before the trial date (or as directed by a judicial officer) a copy of the application on:

* + - 1. each party to the proceeding
      2. the registered medical practitioner or counsellor
      3. the informant.
  1. The application must include:

the date, time and place of the hearing

that the person receiving the notice may attend and/or be represented at the hearing

advice that the person receiving the notice may provide to the Court a written outline of any objection

that if the person receiving the notice objects to material being adduced but does not seek to appear at the hearing of the application, they may send to the Court a brief outline of the reason(s) for their objection which the Court will provide to all parties.

# Interlocutory appeals

## Interlocutory appeals before empanelment

* 1. Where an interlocutory decision is made and a party proposes to apply for an interlocutory appeal against the decision, the party must advise the [judge’s associate](https://www.countycourt.vic.gov.au/contact-us/judicial-contacts) of the proposed application via email as soon as possible.
  2. A party requesting certification of an interlocutory decision must:

complete a [Request for certificate for interlocutory appeal](https://www.countycourt.vic.gov.au/forms-and-fees?filters%5bkeyword%5d=Form%202h)

* + - 1. the request must identify the interlocutory decision and the reason(s) why the decision should be certified (see s 295(3)(a) or (b) of the *Criminal Procedure Act 2009*)

file, and serve on the other party, the Request for certificate for interlocutory appeal.

## Interlocutory appeals after empanelment

* 1. If an interlocutory decision is made after empanelment of the jury and a party proposes to apply for an interlocutory appeal against the decision, the party must advise the Court immediately of that possibility so that the trial judge can give directions as to the conduct of the trial.
  2. A party requesting certification of an interlocutory decision must:

complete a [Request for certificate for interlocutory appeal](https://www.countycourt.vic.gov.au/forms-and-fees?filters%5bkeyword%5d=Form%202H)

* + - 1. the request must identify the interlocutory decision and the reason(s) why the decision should be certified (see s 295(3)(a) or (b) of the *Criminal Procedure Act 2009*)

file, and serve on the other party, the Request for certificate for interlocutory appeal immediately.

## Review of refusals to certify and interlocutory appeal processes

* 1. If the trial judge refuses to certify an interlocutory decision, a party may apply for review of that decision with the Court of Appeal.
  2. Practitioners should be aware of the time limits which apply to filing an application for review (see s 296 of the *Criminal Procedure Act 2009*).
  3. Parties are encouraged to refer to any relevant Court of Appeal practice notes or guides in relation to processes for interlocutory appeals.

# Discontinuances

## Obtaining a hearing date and filing requirements

* 1. Where the prosecution intends to discontinue a prosecution, they must:

Contact the Court to advise and obtain a date for a directions hearing if no immediate upcoming hearing date is listed for the matter.

File, and serve on the accused, no later than 24 hours before the directions hearing or next hearing date, a Notice of discontinuance signed by the Director of Public Prosecutions.

* 1. The discontinuance must be announced in open court.

## Notice of discontinuance before an indictment is filed

* 1. The Notice of discontinuance must:

include the details of the charge(s) on which the accused was committed for trial, including Magistrates’ Court reference numbers

attach the charge sheet(s) containing the charge(s) which are the subject of discontinuance.

* 1. The prosecution must ensure all indictable charges the accused was committed on, have been discontinued. This should be cross referenced with the notification of committal to ensure all indictable charges are dealt with.

## Notice of discontinuance after an indictment has been filed

* 1. The Notice of discontinuance must attach the relevant indictment.

## Related summary offences to be dealt with upon discontinuance of indictable charges

* 1. If the prosecution intends to discontinue a prosecution and there are related summary charge(s), a [Notice of application to transfer charges to the Magistrates’/Children’s Court](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bdivision%5d%5b0%5d=13&filter%5bkeyword%5d=application%20to%20transfer%20charges) must be filed, and served on defence, at the same time as filing the Notice of discontinuance.
  2. The Notice of application to transfer charges to the Magistrates’/Children’s Court must include:

the details of the summary charge(s) and whether they are sought to be:

* + - 1. withdrawn, or
      2. transferred to the Magistrates’ Court or Children’s Court for hearing and determination.

# Application to transfer a charge to the Magistrates’ Court or Children’s Court

* 1. Upon application by either party, the following may be transferred back to the Magistrates’ Court or Children’s Court for determination:

a related summary charge transferred to the County Court

an unrelated summary charge transferred to the County Court

an indictable offence triable summarily.

* 1. Where a party intends to apply to have a charge transferred back to the Magistrates’ Court or Children’s Court, they must:

Obtain the position of the other party to the application.

Contact the Court to obtain a date for the application and advise whether the application is opposed or not.

File, and serve on the other party, a [Notice of application to transfer charges to the Magistrates’/Children’s Court](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bdivision%5d%5b0%5d=13&filter%5bkeyword%5d=application%20to%20transfer%20charges) no later than three days before the application hearing date.

* 1. The application must:

Indicate whether the application is made pursuant to:

* + - 1. s 168(1) (indictable charges triable summarily) of the *Criminal Procedure Act 2009*, or
      2. s 242(5) (related summary charges) of the *Criminal Procedure Act 2009*.

For an indictable charge triable summarily under s 168 of the *Criminal Procedure Act 2009* include:

* + - 1. if an indictment has been filed – the indictment number and a copy of the indictment, or
      2. if no indictment has been filed – a copy of the charge sheet.

Parties are encouraged to cross reference the charge sheets with the notification of committal to ensure all charges have been dealt with appropriately.

For a related summary charge under s 242(5) of the *Criminal Procedure Act 2009*, include a copy of the charge sheets for those related summary charges sought to be transferred back.

Outline which charge is sought to be transferred and pursuant to which section of the *Criminal Procedure Act 2009*.

State whether the charge is sought to be transferred to the Magistrates’ Court or Children’s Court and at which location.

Provide the date to which the charge is to be adjourned to in the Magistrates’ Court or Children’s Court. This date can be obtained by contacting the County Court.

* 1. If the application is made pursuant to s 168(1) of the *Criminal Procedure Act 2009*, the prosecution must file a copy of the accused’s criminal record (if any) 24 hours before the hearing.
  2. The application must ensure all charges the subject of a committal or transfer order are dealt with. Any charge that is not sought to be transferred to the Magistrates’ Court or Children’s Court must then be dealt with in the County Court by way of:

indictment, or

notice of discontinuance (see [Chapter 15: Discontinuances](#_Discontinuances)).

# Application to transfer an unrelated summary charge to the County Court

* 1. Where a plea hearing is listed and an accused indicates an intention to plead guilty to an unrelated summary charge, the charge may upon application be transferred from the Magistrates’ Court and heard and determined in the County Court.

## Defence requirements

* 1. The defence must:

Contact the Court to obtain a date for the application to transfer and advise whether the prosecution oppose or do not oppose the application.

An application to transfer an unrelated summary charge must be listed no later than 21 days before the plea hearing.

File, and serve on the prosecution, an [Application to transfer unrelated summary charges (Form 2G)](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bdivision%5d%5b0%5d=13&filter%5bkeyword%5d=application%20to%20transfer%20unrelated%20summary%20charge) no later than seven days before the application hearing date.

* 1. The application must include:

a list of the unrelated summary charges including the Magistrates’ Court file number, venue and next hearing date of each charge

a statement about whether the accused is, or is not, on bail in relation to those charges

if the accused is on bail, a copy of the accused’s bail undertaking in relation to each of those charges.

## Prosecution requirements

* 1. The prosecution must file, and serve on defence, an agreed written summary of the factual basis for the charges no later than three days before the application hearing date.

# Expert reports

## Witness code of conduct

* 1. If a party to a proceeding intends to adduce expert evidence by way of a report, that party must provide the expert with a copy of the [Expert witness code of conduct (see Appendix 2)](#_Appendix_2:_Expert) at the time of engaging the expert.
  2. Any expert report tendered must contain an acknowledgment that the expert has read and complied with the code in preparation of the report.
  3. Practitioners must also be familiar with the [Expert evidence in criminal trials](https://www.countycourt.vic.gov.au/practice-notes?filter%5bdivision%5d%5b0%5d=13&filter%5bkeyword%5d=expert) and [Expert reports on mental functioning of offenders](https://www.countycourt.vic.gov.au/practice-notes?filter%5bdivision%5d%5b0%5d=13&filter%5bkeyword%5d=expert) practice notes.
  4. The practice notes comprehensively set out the requirements regarding expert evidence sought to be adduced in the County Court.

## Service requirements

* 1. Where the report is a primary expert report, the report must be filed, and served on the other party, as soon as reasonably practicable or no later than 60 days before the trial (or inquiry) date.
  2. Where the report is a responding expert report, the report must be filed, and served on the other party, as soon as reasonably practicable or no later than 14 days before the trial (or inquiry).
  3. A copy of any photograph, plan or other document referred to in the report must be provided with the report.
  4. A party may not introduce expert evidence if that party has not complied with the filing requirements, unless:

every other party agrees, or

the Court grants leave.

# Funding mentions

* 1. Practitioners must confirm with the Court at least 30 days before any trial, plea or appeal hearing that funding is in place.
  2. If a practitioner cannot confirm funding is in place, they must notify the Court of this.
  3. The Court may list the matter for a funding mention if there are any issues with funding.

# Child remanded in custody

* 1. In accordance with ss 12(4) and 12(5) of the *Bail Act 1977*, in matters involving a child remanded in custody to appear before the County Court, a hearing is required every 21 clear days. This hearing is referred to as a ‘21-day rollover’.
  2. Where a matter involves a child accused, appellant or respondent, the Court will list a directions hearing within 14 days of the matter being initiated in the County Court.

The directions hearing will be conducted irrespective of whether the child:

* + - 1. entered a plea of guilty or not guilty at a committal proceeding
      2. is on remand or on bail.
  1. The child is required to attend the directions hearing.
  2. Following the directions hearing, a 21-day rollover hearing will be listed every 21 days or less in relation to a child remanded in custody.
  3. The child is required to appear at each 21-day rollover hearing unless the child’s attendance has been waived by the Court.
  4. If a child seeks to be excused from attending a 21-day rollover hearing, the child’s legal representative must:

complete a [Waiver of child’s attendance request form](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bkeyword%5d=waiver%20of%20child%27s%20attendance&filter%5bdivision%5d%5b0%5d=13) which must be signed by the child

file the Waiver form no later than three days before the 21-day rollover hearing.

* 1. A judicial officer will consider the application to be excused from attending a 21-day rollover hearing administratively.
  2. Parties will be notified via email whether the application has been granted or refused before the 21-day rollover hearing.
  3. Where the application is granted and the child is excused from attending a 21-day rollover hearing, a legal representative (counsel or solicitor) for each party is required to appear at the 21-day rollover hearing.
  4. A child may seek to attend a 21-day rollover hearing after a Waiver form has been filed with the Court. The child’s legal representative must notify the Court of this immediately.
  5. A child may not be excused from attending a directions hearing or 21 day rollover hearing where:

a directions hearing is listed on the same day as a 21-day rollover hearing, or

where there are substantive issues to be discussed at a 21-day rollover hearing.

# Application for indemnity certificate pursuant to s 17 of the *Appeal Costs Act 1998*

* 1. Where a party seeks to make an application for an indemnity certificate pursuant to s 17 of the *Appeal Costs Act 1998,* the applicant must advise the Court of:

the County Court location at which the matter was to be heard

the type of hearing the matter was listed for (for example, trial, plea hearing, conviction and sentence appeal etc)

the period for which the indemnity certificate is sought

the reasons for the adjournment of the proceeding

confirm that counsel did not secure any other work for the period for which the indemnity certificate is sought.

* 1. The application may be determined by a judicial officer administratively or at an in-court hearing.
  2. Where a criminal proceeding is being heard by a judge and a party seeks to make an application for an indemnity certificate, the application is to be made before the presiding judge.

# Plea hearing

* 1. Where an accused is committed for trial and has entered a plea of guilty at the committal proceeding, the Magistrates’ Court will be provided a plea date by the Court’s Criminal Registry Services, and the accused will be remanded in custody or bailed to the plea hearing.
  2. Where a verdict of guilty has been returned following a trial, the trial judge at the conclusion of the trial will list the matter for a plea hearing on the next suitable date before the trial judge.
  3. Defence must contact the Court as soon as any issue in relation to funding, or otherwise, comes to the practitioner’s attention which may prevent the plea hearing from proceeding on the listed date. This is to ensure the matter can be appropriately case managed and Court resources utilised effectively.

## Prosecution filing requirements

* 1. In every case where a matter has been listed for a plea hearing the prosecution must file, and serve on defence:

No later than 28 days before the plea hearing date:

* + - 1. indictment (not required for a plea post-verdict)
      2. criminal record (if any)
      3. a chronology
      4. summary of prosecution opening for plea (not required for plea hearing post-verdict)
         1. the summary of prosecution opening for plea, in addition to setting out the factual circumstances of the offending, must include:

1. the amount of pre-sentence detention (if any) as at the date of the plea hearing
2. the status of any co-accused
3. whether it is submitted that the offender is to be sentenced as a serious offender or a continuing criminal enterprise offender
4. whether it is submitted that provisions imposing a minimum non-parole period, under Division 2 of Part 3 of the *Sentencing Act 1991*, are applicable (for example, intentionally or recklessly causing serious injury in circumstances of gross violence, certain offences against emergency workers, custodial officers and youth justice custodial workers on duty) and whether or not a special reason should be found to exist under s 10A of the *Sentencing Act 1991*
5. whether it is submitted that a custodial sentence other than a combination imprisonment and community correction order, must be imposed (unless a certain circumstance exists[[9]](#footnote-9)) because the accused has been found guilty of a category 2 offence pursuant to the *Sentencing Act 1991*
6. any ancillary orders which are sought by the prosecution in addition to sentence (for example, alcohol exclusion order, compensation order, serious offender registration application etc)
7. whether the accused is eligible for a registration exemption order pursuant to s 11A of the *Sex Offender’s Registration Act 2004*
8. whether any offence on the indictment is a standard sentence offence pursuant to s 5A of the *Sentencing Act 1991*
   * + - 1. where any of the matters set out above are applicable, the summary of prosecution opening for plea should include:
9. submissions regarding the matters said to support the application of the provisions
10. outline any evidence to be called in support of those matters
    * + - 1. where a charge relates to child abuse material (CAM), the summary of prosecution opening for plea should include:
11. a summary of the CAM
12. the classification level of the CAM
13. the volume of CAM associated with each classification level
    * + - 1. the Court will not require the prosecution to prepare and provide a sample of the CAM for sentencing purposes unless:
14. a party submits there is an error in the classification of the CAM and therefore the CAM must be examined by the Court
15. the presiding judge requests that a sample of the CAM be provided to the Court for the purpose of determining any issues with the classification of such material, or for any other sentencing purpose in the interests of justice, or
16. a party seeks leave from the presiding judge to provide a sample of the CAM due to a complex or unique circumstance in the matter, and the Court grants leave.

No later than 10 days before the plea hearing date (where applicable):

* + - 1. copies of any ancillary orders sought
      2. victim impact statement(s)
         1. the prosecution must attach to the victim impact statement:

1. a letter indicating whether the statement is to be

* tendered in written form
* read by the prosecutor
* read by the victim, or
* whether application will be made for them to be read by another person
  + - * 1. the prosecution must indicate if an application will be made for alternative arrangements for the reading of the victim impact statement
        2. where it is proposed that a victim impact statement or parts of a victim impact statement are to be read aloud, the prosecution must be mindful of the obligation to the Court under s 8Q(2) of the *Sentencing Act 1991* to ensure only admissible parts are read aloud
        3. the prosecution, in accordance with s 11 of the *Victims Charter Act 2006*, is to advise all victims about the process relating to the determination of an issue of admissibility in relation to their victim impact statement.

No later than two days before the plea hearing date:

* + - 1. prosecution response to defence submissions (if sought to be relied upon)
      2. where an application is made for a sex offender registration exemption order, advise whether the application is opposed or not.

## Defence filing requirements

* 1. In every case where a matter has been listed for a plea hearing the defence must file, and serve on the prosecution:

No later than 14 days before the plea hearing date:

* + - 1. expert report (if applicable)[[10]](#footnote-10)
      2. application for a sex offender registration exemption order and affidavit in support (if applicable).

No later than five days before the plea hearing date:

* + - 1. a chronology
      2. defence outline of submissions
         1. The defence outline of submissions must be brief, concise and clear on:

1. what matters are relied on in mitigation and the evidence that will be relied on in support
2. a brief personal history of the accused
3. the disposition sought, and the basis on which this submission is made
4. whether the amount of pre-sentence detention (if any) as at the date of the plea hearing, as calculated by the prosecution, is agreed
5. an updated estimate as to the expected duration of the plea hearing (for example, one hour, two hours, half a day or a full day).
   * + - 1. In every case where a matter has been listed for a plea hearing regardless of the offence charged, the defence outline of submissions must specify and address the following (if applicable):

**Minimum non-parole period**

1. Where the prosecution contends that a minimum non-parole period is applicable under Division 2 of Part 3 of the *Sentencing Act 1991*, the defence must address the following in its written submissions:

* whether it is conceded the relevant provisions apply, or the basis on which it is said the prosecution has failed to establish the application of the provisions
* whether, and if so on what basis, a special reason should be found to exist under s 10A of the *Sentencing Act 1991*.

**Imposition of a custodial sentence for category 1 and 2 offences**

1. Where the prosecution contends a custodial sentence (other than a combination imprisonment and community correction order), pursuant to Division 2 of Part 3 of the *Sentencing Act 1991*, must be imposed because the accused has been found guilty of a category 1 or category 2 offence (unless a certain circumstance exists), the defence must address the following in its written submissions:

* whether it is conceded the relevant provisions apply, or the basis on which it is said the prosecution has failed to establish the application of the provisions
* whether, and if so on what basis, an exception in s 5(2H)(a)–(e) of the *Sentencing Act 1991* is said to apply.
  1. As soon as reasonably practicable after receiving a victim impact statement, the defence must advise the prosecution of any objections to the admissibility of all or any part of it.

## Pre-sentence assessments

* 1. Where a pre-sentence assessment is ordered, the accused will be directed to the appropriate location by the presiding judge’s associate and the parties will receive a copy of the report when it is available.

# Application for a sex offender registration exemption order

* 1. An offender who was convicted of certain sexual offences and who was registered as a sex offender, pursuant to the *Sex Offenders Registration Act 2004*, may be eligible to apply for a registration exemption order.
  2. The offender may apply for exemption from registration as a sex offender if the criteria in s 11A of the *Sex Offenders Registration Act 2004* are met.

## Application requirements

* 1. Where a person who is currently a registrable offender pursuant to the *Sex Offenders Registration Act 2004* intends to apply for a registration exemption order, they or their legal representative must:

Contact the Court to obtain a date for the application and advise of:

* + - 1. any unsuitable dates for the hearing of the application
      2. whether any witnesses are intended to be called
      3. the estimated duration of the application.

File an application (Form 10A – see County Court Criminal Procedure Rules 2019), and serve the application on the respondent,[[11]](#footnote-11) no later than three days after obtaining the application date.

* + - 1. An application must include an affidavit in support of the application in accordance with Order 10 of the County Court Criminal Procedure Rules 2019.
  1. Where possible, the application will be listed before the judge who originally imposed the *Sex Offender Registration Act* order.

## Respondent requirements

* 1. The respondent must notify the Court and the applicant whether the application is opposed or not opposed, no later than seven days before the hearing of the application.
  2. If the respondent opposes the application the respondent must file, and serve on the applicant, written submissions no later than three days before the hearing of the application.

# Mental impairment and unfitness to stand trial

## Fitness to stand trial

### Where the issue of fitness to stand trial is raised at committal

* 1. Before the initial directions hearing:

the defence must indicate to the Court via the Case initiation notice that the issue of fitness to stand trial has been raised

if a psychiatric report addressing the accused’s fitness to stand trial has already been obtained, the report must be filed, and served on the prosecution.

* 1. At the initial directions hearing, the Court will, if appropriate:

set a date for the filing of the indictment

set a date for the filing of the defence psychiatric report (if any)

set a date for the filing of the prosecution psychiatric report (if any)

set a date for a directions hearing at a time when the relevant psychiatric reports will have been obtained and filed.

* 1. At the directions hearing and once the relevant psychiatric reports have been filed, if the Court is satisfied that there is a real and substantial question as to the accused’s fitness to stand trial, the matter will be listed for a fitness investigation.
  2. If the accused is found not fit to stand trial and is not likely to become fit within 12 months, the matter will proceed to a special hearing under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*.
  3. If the Court is not satisfied that there is a real and substantial question as to the accused’s fitness to stand trial or the accused is found fit to stand trial, the matter will be case managed in accordance with [Chapter 5: Case management](#_Case_management).

### Where the issue of fitness to stand trial is raised after the filing of an indictment

* 1. At any time after the filing of an indictment, where the issue of fitness to stand trial is raised, the Court may adjourn the matter so that psychiatric reports addressing the accused’s fitness to stand trial can be prepared.
  2. The Court may then:

set a date for the filing of the defence psychiatric report

set a date for the filing of the prosecution psychiatric report

set a date for a directions hearing at a time when the relevant psychiatric reports will have been obtained and filed.

* 1. At the directions hearing and once the relevant psychiatric reports have been filed, if the Court is satisfied that there is a real and substantial question as to the accused’s fitness to stand trial, the matter will be listed for a fitness investigation.
  2. If the accused is found not fit to stand trial and is not likely to become fit within 12 months, the matter will proceed to a special hearing under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*.
  3. If the Court is not satisfied that there is a real and substantial question as to the accused’s fitness to stand trial or the accused is found fit to stand trial, the matter will be case managed in accordance with [Chapter 5: Case management](#_Case_management).

## Mental impairment

* 1. If the issue of mental impairment has been identified before the initial directions hearing:

the defence must indicate to the Court via the Case initiation notice that the issue of mental impairment has been raised

if a psychiatric report addressing mental impairment has already been obtained, the report must be filed, and served on the prosecution, before the initial directions hearing.

* 1. At the initial directions hearing (or at any hearing thereafter), the Court will, if appropriate:

set a date for the filing of the defence psychiatric report

set a date for the filing of the prosecution psychiatric report

set a date for a further directions hearing at a time when the relevant psychiatric reports will have been obtained and filed.

* 1. If the issue of mental impairment is raised at any time after the initial directions hearing, the Court may make the orders in paragraph 24.12 at any subsequent hearing, as appropriate.
  2. If the prosecution and defence agree that the proposed evidence demonstrates the accused committed the conduct constituting the offence, and will also establish the defence of mental impairment, the matter may be listed before a judge to hear the evidence in accordance with s 21(4) of the *Crimes (Mental Impairment & Unfitness to be Tried) Act 1997.*
  3. If the prosecution and defence do not agree that the defence of mental impairment has been established, the matter will be listed for trial in accordance with this Practice note and trial documents ordered accordingly.

# Review hearings under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*

* 1. Where a date for a review hearing is sought, the Secretary to the Department of Health must contact the Court three months before the date sought for the review hearing.
  2. The Court will provide a date for the review hearing.
  3. Where possible, review hearings will be heard by the judge who imposed the supervision order.
  4. The presiding judge may set the following directions, at a directions hearing or administratively, for the filing of documents before the review hearing.

The Court orders that:

The matter is listed for hearing on [ ], with an estimate of [ ] day(s).

The Department of Health is to file and serve copies of any medical and/or psychiatric and/or psychological reports upon which it intends to rely on or before [ ] (21days before the hearing).

The applicant/reviewee is to notify the Attorney-General, the Department of Health and the Director of Public Prosecutions of their intention to obtain further medical and/or psychiatric reports on or before [ ] (14 days before the hearing).

The applicant/reviewee is to file and serve copies of any medical and/or psychiatric and/or psychological reports upon which they intend to rely on or before [ ] (seven days before the hearing).

Parties seeking orders by consent in chambers are to notify the Court and all other parties on or before [ ] (seven days before the hearing).

The Director of Public Prosecutions is to file an affidavit regarding service on the family member(s) and victim(s) on or before [ ] (two days before the hearing).

All parties are to file and serve an indication of their position, and advise if any witnesses are to be called or relied upon including the method by which witnesses will appear to give evidence, on or before 3pm on [ ] (five days before the hearing)

Liberty to apply.

The parties to be served are:

|  |  |
| --- | --- |
| Victorian Government Solicitor  Level 25, 121 Exhibition Street  Melbourne VIC 3000  Attention:  [litigation@vgso.vic.gov.au](mailto:litigation@vgso.vic.gov.au) | Office of Public Prosecutions  565 Lonsdale Street  Melbourne VIC 3000  Attention: Legal Prosecution Specialist Mental Impairment  [opp.mentalimpairment@opp.vic.gov.au](mailto:opp.mentalimpairment@opp.vic.gov.au) |
| Manager, Health Team,  Department of Health  Legal Branch OR  12/50 Lonsdale Street  Melbourne VIC 3000  (Where Forensicare Supervise)  [CMIAmentalhealth@dhhs.vic.gov.au](mailto:CMIAmentalhealth@dhhs.vic.gov.au) | Manager, Children, Youth, Disability Team,  Department of Health  Legal Services  24/50 Lonsdale Street  Melbourne VIC 3000  [general.counsel@dhhs.vic.gov.au](mailto:general.counsel@dhhs.vic.gov.au) |
| Solicitor for person subject to a supervision order  c/o |  |
|  |  |

MHDL

Civil Justice, Access and Equity

Victoria Legal Aid

570 Bourke Street

MELBOURNE VIC 3000

Attention: Sophie Delaney

[VLA\_CMI@vla.vic.gov.au](mailto:VLA_CMI@vla.vic.gov.au)

# Application to vary a non-custodial supervision order or revoke extended leave under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*

* 1. Where a person subject to a supervision order under the *Crimes (Mental Impairment and Unfitness to be Tried) Act* *1997*:

is arrested pursuant to the emergency power of apprehension under s 30 of *the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*

is arrested pursuant to a warrant issued under s 30A of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*, or

has their extended leave suspended by the Chief Psychiatrist or the Secretary to the Department of Health (the Secretary) pursuant to s 58(2) of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*

the Secretary or their delegate must:

* + 1. file an application form, and serve a copy on the other party, within 48 hours of the person’s apprehension or suspension of extended leave. The application must include details of the non-custodial supervision order such as:
       1. the date the non-custodial supervision order was made
       2. the nominal term of the non-custodial supervision order
       3. the conditions attached to the non-custodial supervision order
       4. the date when extended leave was granted (if applicable)
       5. the date when the person subject to the non-custodial supervision order:
          1. was arrested pursuant to s 30 of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*
          2. was arrested pursuant to a warrant issued under s 30A of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*, or
          3. had their extended leave suspended pursuant to s 58(2) of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*
       6. where applicable, the location where the person subject to the non-custodial supervision order is being detained
       7. any other details as required
    2. contact the Court as a matter of priority to obtain a date for a directions hearing. The Court will list a directions hearing within seven days.
  1. The person subject to the supervision order must attend the directions hearing unless the Court orders otherwise. Attendance may be in-person or via videolink, Zoom or Webex.
  2. At the directions hearing, the Secretary or delegate must inform the Court of the following:

a brief history of the supervision order, including any previous judge involved in the matter

a brief summary as to the circumstances of the application and the events leading up to the application being made

a preliminary view as to how the person subject to the supervision order is presenting clinically (noting that there may not have been an opportunity for a formal clinical assessment)

an estimation of time required to obtain clinical reports and the availability of witnesses to attend the hearing.

# Community correction orders

## Judicial monitoring

* 1. Where a judicial monitoring condition is attached to a community correction order, the Community Correction officer is required to attend any review hearing unless directed otherwise by the Court.
  2. Where a Community Correction officer seeks to attend the review hearing virtually, they must provide the Court with a [remote hearing application form](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bdivision%5d%5b0%5d=13&filter%5bkeyword%5d=remote%20hearing).
  3. Where an offender seeks to attend the review hearing virtually (whether at the Community Correction office at which the Community Correction officer also seeks to appear from or at another location), the Community Correction officer may assist the offender to make the application with the Court by including the details of the offender on a remote hearing application form and providing it to the Court.
  4. The prosecution is not required to attend a review hearing unless directed otherwise by the Court, or unless the prosecution choose to attend.
  5. Community Correction Services must provide an updated judicial monitoring report to the Court no later than five days before the review hearing.

# Contravention hearings

## Offender alleged to contravene a County Court order (s 83AG of the *Sentencing Act 1991*)

* 1. Where the prosecution intends to file a charge for contravention of a community correction order imposed by the County Court and there is no current proceeding before the Court, they must:
     1. Contact the Court to obtain a date for the return of the summons. The date for the return of the summons should be no later than six to eight weeks from the proposed issuing date.
     2. File the charge sheet and summons in the Magistrates’ Court.
     3. Serve the charge sheet and summons on the offender no later than 14 days before the contravention hearing.
  2. If the prosecution seek to obtain a new date for service because of delay in locating the offender, the prosecution must contact the Court to obtain a new date.

## Offender listed for plea hearing on offences committed during the operational period of a County Court order (s 83AL of the *Sentencing Act 1991*)

* 1. Where the accused is committed for trial by way of a plea of guilty in relation to an offence committed during the operational period of a community correction order imposed by the County Court, and the prosecution intend to file a charge in relation to that contravention, the prosecution must no later than 21 days of the accused being committed, contact the Court to obtain a date for the accused to be arraigned.
  2. Upon the accused being arraigned, the plea of guilty will be entered into the records of the Court, which constitutes a finding of guilt.
  3. Where necessary, the plea hearing date may be adjourned for the contravention package to be prepared.
  4. The plea hearing date will constitute the return date for the charge sheet and summons.
  5. Following the arraignment, the prosecution must (if not already completed):

file the charge sheet and summons in the Magistrates’ Court

serve the charge sheet and summons on the offender no later than 14 days before the plea hearing.

## Offender listed for plea hearing on offences committed during the operational period of a Magistrates’ Court order (s 83AM of the *Sentencing Act 1991*)

* 1. Where the accused is committed for trial by way of a plea of guilty in relation to an offence committed during the operational period of a community correction order imposed by the Magistrates’ Court, and the prosecution intend to file a charge in relation to that contravention, the prosecution must no later than 21 days of the accused being committed for trial:
     1. obtain the consent of the defence to transfer the contravention charge to the County Court
     2. obtain an indication from the defence that the offender intends to plead guilty to the contravention charge
     3. contact the Court to obtain a date for the accused to be arraigned.
  2. Upon the accused being arraigned, the plea of guilty will be entered into the records of the Court, which constitutes a finding of guilt.
  3. Where necessary, the plea hearing date may be adjourned for the charge to be filed and transferred to the County Court and contravention package prepared.
  4. The plea hearing date will constitute the return date for the charge sheet and summons.
  5. Following the arraignment, the prosecution must:

file the charge sheet and summons in the Magistrates’ Court

serve the charge sheet and summons on the offender no later than 14 days before the plea hearing.

## Filing requirements for contravention hearings under ss 83AG, 83AL & 83AM of the *Sentencing Act 1991*)

### Prosecution filing requirements

* 1. Once the offender has been served with the charge sheet and summons, the prosecution must file, and serve on the offender, no later than seven days before the contravention hearing date, a contravention package.
  2. The contravention package must include:

the charge sheet and summons

affidavit of service

section 83AJ transfer order made by the Magistrates’ Court

contravention report and any supporting material

an [Application to transfer an unrelated summary charge](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bdivision%5d%5b0%5d=13&filter%5bkeyword%5d=application%20to%20transfer%20unrelated%20summary%20charge) (if applicable) (see [Chapter 17: Application to transfer an unrelated summary charge to the County Court](#_Application_to_transfer) for requirements).

* 1. The prosecution must file, and serve on the offender, no later than three days before the contravention hearing:

brief written submissions stating that the recommendation in the contravention report is adopted, or

written submissions outlining that a different sentencing outcome is appropriate and the reason(s) why.

### Offender filing requirements

* 1. The offender must file, and serve on the prosecution, no later than one day before the contravention hearing:

any reports, references or other material relied upon by the accused/offender

where the contravention is disputed:

* + - 1. written submissions relied upon
      2. confirmation of whether the Community Correction officer is required to give evidence, or if an agreed statement of facts has been reached so the Community Correction officer is not required

where the contravention is not disputed:

* + - 1. brief written submissions stating the recommendation in the contravention report is accepted, or
      2. written submissions outlining that a different sentencing outcome to that submitted by the prosecution is appropriate and the reason(s) why.

## Attendance by Community Correction officer

* 1. Unless required by the Court, the Office of Public Prosecutions will determine whether the Community Correction officer is required to attend the contravention hearing, either in-person or via videolink or Webex.
  2. Where the Community Correction officer seeks to appear via Webex, the Community Correction officer should notify the Office of Public Prosecutions. The Office of Public Prosecutions should make the request, on behalf of the Community Correction officer, by filing a [remote hearing application form](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bdivision%5d%5b0%5d=13&filter%5bkeyword%5d=remote%20hearing) no later than three days before the hearing date.

Where such a request is granted, the associate to the presiding judge will provide the Webex link to the prosecution. It is the responsibility of the prosecution to provide the relevant link to the Community Correction officer.

# Appeals from the Magistrates’ or Children’s Court

## Conviction and sentence appeals

### First listing

* 1. All appeals against conviction and sentence from the Magistrates’ Court and Children’s Court will be given a first listing date approximately 21 days from the date the appeal is lodged. The first listing will be listed at 9am in the Appeals List.
  2. Witnesses are not required to attend the first listing.
  3. Appellants must attend the first listing:

Appellants in custody must attend the first listing via videolink, Zoom or Webex unless the Court orders otherwise or a party makes a request for the appellant to attend in-person.

Non-attendance by an appellant may result in the appeal being struck out.

* 1. At the first listing, both parties must be prepared to answer questions including:

how long did the hearing in the Magistrates’ Court or Children’s Court run?

did all required witnesses attend?

what are the factual issues in dispute?

what is not in dispute?

how can the appellant and respondent narrow the issues in dispute?

have any plea offers been made or will they be made?

are there any co-accused? If so, what is their status?

if the matter will proceed as a conviction appeal hearing:

* + - 1. how many witnesses will be called, including identifying the number of expert, interstate, overseas, child and/or cognitively impairment witnesses to be called?
      2. what is the hearing estimate and how was this arrived at?
      3. will any *Evidence Act* notices be filed, and served?
      4. will any subpoenas be sought?
      5. is funding in place?
  1. At the conclusion of the appeal first listing, the Court may list the matter for a substantive conviction and sentence appeal or adjourn the matter for further case management.

## Sentence only appeals

### Respondent filing requirements

* 1. The respondent must file no later than four days before the sentence appeal hearing:

police summary or summaries

criminal record (if any)

victim impact statement(s)

chart of offences (see below)

brief written submissions.

* 1. The documents specified in paragraph 29.6 are not to be filed in the case of a conviction and sentence appeal.

#### Chart of offences

* 1. The respondent must prepare a chart of offences where the appeal is a consolidated matter involving:

numerous charges and informants

numerous Notices of appeal

contraventions of previous orders, or

any other complicating characteristic.

* 1. The chart of offences must reference and outline the following for each charge:

charge number as per the Notice of appeal (not the charge sheets)

informant

offence and offence provision

sentence imposed

any concurrency or cumulation ordered

maximum penalty

any other orders made against each offence (for example, disposal order, forfeiture order, licence cancellation order)

any pre-sentence detention.

### Appellant filing requirements

* 1. The appellant must file, and serve on the respondent, no later than two days before the appeal hearing any reports or other material the appellant seeks to rely on.

## Abandoning an appeal

### Abandoning an appeal on a hearing date

* 1. If an appellant seeks to abandon an appeal (whether in whole or in part) on a hearing date, they must advise the judicial officer who is hearing the appeal first listing, or the substantive appeal, in-court.

### Abandoning an appeal in whole

* 1. If an appellant seeks to abandon an appeal in whole before the appeal hearing they must file, and serve on the respondent, a [Notice of abandonment](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bdivision%5d%5b0%5d=13&filter%5bkeyword%5d=Abandonment%20of%20appeal).
  2. Appellants must be aware that upon filing a Notice of abandonment, the order of the Magistrates’ Court immediately takes effect. This means if an appellant was sentenced to a term of imprisonment and was on bail pending appeal, a warrant will be issued for their imprisonment and they will be taken into custody to commence their sentence.

### Abandoning an appeal in part

* 1. If an appellant has filed a conviction and sentence appeal and seeks to proceed with an appeal against sentence only, before the appeal hearing they must file, and serve on the respondent, a [Notice of abandonment of conviction portion of an appeal](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bdivision%5d%5b0%5d=13&filter%5bkeyword%5d=abandonment%20of%20conviction%20portion%20of%20an%20appeal) specifying the appellant seeks to abandon the conviction portion of the appeal only
  2. Appellants must be aware that once an appeal is abandoned, it cannot be reinstated. If an appellant is representing themselves, they should obtain legal advice before filing a Notice of abandonment.

## Application to re-instate an appeal

* 1. Where an appeal is struck out because of the appellant failing to appear at the appeal hearing, the appellant may apply to the Court to have the appeal reinstated.
  2. An appellant applying to reinstate an appeal must:

contact the respondent to obtain their position to the application

contact the Court to obtain a date for the application

complete an [Application to set aside order striking out an appeal](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bdivision%5d%5b0%5d=13&filter%5bkeyword%5d=application%20to%20set%20aside%20an%20order%20striking%20out%20an%20appeal%20for%20failure%20to%20appear) due to non-appearance

file the application with the Court, and serve on the respondent.

* 1. An appellant must be aware that the order of the Magistrates’ Court continues even after the filing of an application to reinstate an appeal (unless the application is granted and the appeal is reinstated).

## Diversion orders

* 1. A diversion order pursuant to s 59 of the *Criminal Procedure Act 2009* or s 356D of the *Children, Youth and Families Act 2005* may be available in relation to some offences on an appeal from the Magistrates’ Court.[[12]](#footnote-12)
  2. An appellant seeking to apply for a diversion order must obtain the consent of the respondent to the making of a diversion order.
  3. Once the respondent’s consent to the making of a diversion order has been obtained, the respondent must email the Court to confirm that the making of a diversion order is consented to.
  4. Upon hearing the matter, if a judge considers a diversion order appropriate, the appellant will be directed to attend at the Diversion Coordinator located at the Magistrates’ Court. The matter may be stood down or adjourned to enable this to occur.
  5. The judge may make a diversion order upon a favourable diversion order assessment.

# Audio-visual arrangements

## Electronic evidence in the courtroom

* 1. Courtrooms are fitted with different levels of technology and may be referred to as either a digital court or a legacy/circuit court. Each level of technology has different capabilities for displaying material.
  2. Where a party seeks to rely on electronic evidence or audio-visual material contained on a CD, DVD, USB hard drive or flash-drive, the current standards must be followed to ensure that the evidence can be played on the in-court playback PC or DVD player (see paragraphs 30.5–30.8).
  3. All media submitted as evidence must be clearly labelled with an index of the data on the disc and information on play requirements.

## Playback of media

* 1. Media may be played in-court in one of two ways:

Option A Court-controlled: The practitioner can provide the media to the Court (via the presiding judge’s judicial support staff) for playback of electronic evidence using the playback PC or DVD players installed in each courtroom

Option B practitioner-controlled: The practitioner can play the media from their own device (PC, Mac, etc) that is plugged into the Bar table and displayed on a courtroom monitor.

* + - 1. All County Court courtrooms are equipped with the capacity to play evidence from the Bar table using a HDMI input. Apple Mac and any devices outside of the above standard will require the party presenting the evidence to provide a suitable adaptor to enable connectivity to a HDMI input.
      2. Where a practitioner is unable to locate an adapter for their device, the County Court Technology team, [ehearings.support@countycourt.vic.gov.au](mailto:ehearings.support@countycourt.vic.gov.au) or 03 8636 6472, has a limited number of adapters of various types that can be made available on request.
  1. Where media is sought to be played, the following standards must be adhered to, to ensure the evidence can be played on the Court’s playback PC or DVD players, both in-court and in the jury room.

### Physical media

* 1. The physical media supported by the Court’s in-court playback PC or DVD players include:

CD

DVD

USB thumb drive/hard drive.

### File formats

* 1. Audio standards and visual standards include:

Standard audio CD

DVD video

MP4

MP3

WMA

WMV.

* 1. Digital image standards include:

JPEG

PNG

GIF

TIF.

### Display of electronic or physical documents

* 1. While courtrooms have the capability to display physical evidence using a document camera, electronic documents are preferred.
  2. The format used by the in-court playback PC is the portable document format (PDF).
  3. Practitioners should notify the presiding judge’s chambers well in advance of the hearing date if they intend to display a physical document using a document camera. This will help to ensure a document camera is made available for the hearing.

### Unsupported formats

* 1. There are some commercially specific video and CCTV file types that may not be compatible with the in-court playback PC or DVD player.
  2. Incompatible evidence sought to be presented on the day of the hearing can cause delays and unnecessary adjournments. Practitioners must therefore ensure they test any media intended to be used at a hearing, particularly commercial video and CCTV files, well in advance of the hearing date, to ensure the evidence is in a compatible format (see paragraphs 30.5–30.8).
  3. Where testing indicates that the in-court playback PC or DVD player cannot read the file in its current format:

the file must be converted to a readable format, or

the party seeking to present the media will need to bring their own device, capable of reading and displaying the file, to the Court and display it using the provided inputs.

* + - 1. It is essential the user bringing their own device, and presenting the media, familiarise themselves with the operation of their device.

## Confirmation of media playback

* 1. One week before the hearing date, practitioners should contact the presiding judge’s chambers to arrange a suitable time to test the media.
  2. Where a judge has not yet been allocated to a matter, practitioners should contact the Court technology team, [ehearings.support@countycourt.vic.gov.au](mailto:ehearings.support@countycourt.vic.gov.au) or 03 8636 6472, to arrange to test the media.
  3. Media prepared and tested by the Office of Public Prosecutions audio-visual unit, and confirmed to be Court compatible, does not need to be tested in-court. However, prosecution solicitors are encouraged to test media in any circumstances where they are concerned that compatibility may be an issue.

## Contact

* 1. Any questions regarding the playback of audio-visual material should be directed to the County Court technology team:

Email: [ehearings.support@countycourt.vic.gov.au](mailto:ehearings.support@countycourt.vic.gov.au)

Telephone: 03 8636 6472

* 1. Any technical questions regarding audio-visual material, equipment or software should be directed to Court Services Victoria audio-visual communication technology team via phone on 03 9603 2410.

# Virtual and in-person attendance at hearings

## AVL Scheduler

* 1. The AVL Scheduler is currently being used to manage custody bookings with prisons only. This will remain in place for the County Court until the necessary updates to system functionality are finalised, tested and deployed.
  2. Practitioners should **not** use the AVL Scheduler Practitioner Portal to register their attendance for County Court hearings until further notice.

## Administrative-based hearings (List Courts)

* 1. All administrative-based hearings are conducted via Zoom Webinar.
  2. Parties must register their attendance online through the [Virtual hearings page](https://www.countycourt.vic.gov.au/going-court/virtual-hearings) on the Court’s website when seeking to appear virtually in any of the following List Courts.

9am General crime list

9am Sexual offences list

9am Conviction and sentence appeal first listing list, or

Final directions hearing list.

* 1. Any enquiries in relation to online registrations for the List Courts should be directed to [criminal.division.administrators@countycourt.vic.gov.au](mailto:criminal.division.administrators@countycourt.vic.gov.au).
  2. Parties must register their appearance at least two days before the hearing date.
  3. Practitioners can register for their client or counsel if they have a full name, current phone number and email address which will be used to access the hearing.
  4. Failure to register appearance by 4pm the day before the hearing could result in a non-appearance being recorded or the matter being called at the end of the List.

## Criminal trials

* 1. All accused (whether in custody or on bail) must appear in-person for their trial unless alternative arrangements are made with leave of the Court.
  2. Criminal trials are generally allocated to a judge at least one week before the trial commencement date. Wherever possible, parties should wait for the matter to be allocated before proceeding to request a videolink or Zoom link.
  3. Once a matter has been allocated to a judge, parties must make any videolink or Zoom link request to the presiding judge’s chambers.

## Witness arrangements

### Zoom or Webex

* 1. Where the Court grants leave for a witness to give evidence virtually and a Zoom or Webex link can be facilitated, the party who made the application for the witness to give evidence virtually must:

arrange a suitable location from which the witness is to appear

provide all details to the presiding judicial officer’s chambers for the Court to forward a Zoom or Webex link to the witness.

### Videolink

* 1. Where the Court grants leave for a witness to give evidence virtually and Zoom or Webex cannot be facilitated, the party who made the application for the witness to give evidence virtually must:

arrange a suitable location from which the witness is to appear

complete an [Application for a videolink](https://www.countycourt.vic.gov.au/forms-and-fees?filter%5bdivision%5d%5b0%5d=13&filter%5bkeyword%5d=videolink) and provide it to the Court [videolinks@countycourt.vic.gov.au](mailto:videolinks@countycourt.vic.gov.au)

# Interpreters

* 1. It is the prosecution, not the Court, who is responsible for arranging and paying for interpreters for accused or witnesses.
  2. Where an interpreter may be required for an accused or defence witness, the defence should advise the prosecution well before the hearing.
  3. Where an interpreter is required for the preparation of a pre-sentence report, Corrections Victoria will cover the cost of the interpreting services.

## Virtual hearings

* 1. Where an accused requires an interpreter and is attending the hearing virtually, the prosecution must ensure arrangements are made for the interpreter to be able to:

appear via videolink, Zoom or Webex

simultaneously interpret the proceedings to the accused via telephone.

### Requirements

* 1. To interpret a proceeding at a virtual hearing, an interpreter will require:

two devices (e.g., smart phone, iPad, computer with reliable internet access) – one to view the proceeding and one (ideally a smart phone) to contact the accused person

a reliable internet connection

an appropriate location to appear at a court hearing, such as a home office.

* 1. The prosecution must:

If the matter is in a List Court, [register](https://www.countycourt.vic.gov.au/going-court/virtual-hearings) the interpreter for a Zoom hearing. For all other matters, the contact details of the interpreter should be provided to the presiding judicial officer’s chambers.

* + - 1. The prosecution must only use the interpreter’s personal details and not those of an agency. Any registrations using details of a booking agency (for example, bookings@languageloop.com.au) will not be approved.

Prepare the interpreter for the virtual hearing.

Where an interpreter is interpreting for an accused in custody, the prosecution should advise the interpreter of the prison at which the accused is being held and instruct the interpreter to contact the Video conferencing coordination unit (VCCU) at Corrections Victoria on 1300 160 214 to connect with the accused.

Where an interpreter is interpreting for an accused on bail, the prosecution should provide the interpreter with the accused’s contact number and instruct the interpreter to call the accused before the hearing commences.

* 1. On the day of the hearing, the interpreter must:

Connect to the virtual hearing at least 15 minutes before the start of the hearing.

* + - 1. If the interpreter needs to contact the Court, they can do so through the Q&A or chat function on Zoom or Webex.
      2. Where the matter is in a List Court, the interpreter will be made a panellist shortly before the matter is called on. This will activate the camera and microphone and enable the interpreter to be seen and heard during the hearing.

Contact VCCU on 1300 160 214 (where the accused is in custody) or the accused (where the accused is on bail). The interpreter must then remain on the phone with the accused until the matter is called on.

* 1. The interpreter must interpret the virtual hearing while on the telephone with the accused but remain on mute unless interpreting the responses of the accused to questions from the Court.

# Transcripts

## Pre-trial hearings

* 1. Court transcripts are not automatically provided to parties.
  2. Permission must be obtained from the presiding judge allowing the production of transcript or the release of audio to legal representatives.
  3. Other than appeals, criminal matters are transcribed by the Victorian Government Reporting Service (VGRS). Visit the [VGRS website](https://www.courts.vic.gov.au/court-system/transcripts-and-judgments/criminal-transcripts) to find out how to request a copy of a transcript. Please note that fees apply for this service. The provision of transcript is still subject to permission from the presiding judge.

## Appeal hearings

* 1. VGRS does not transcribe criminal appeals.
  2. If you are a party to an appeal and seek to obtain a transcript, you can make a request by email or in writing to the presiding judge’s chambers. The request must be made to the Court within 14 days of the date of the judgment or order.
  3. If the presiding judge grants the request, the requesting party must engage an authorised transcription agency:

[Court Transcript Services](https://www.courttrans.com.au/services/)

[Epiq Global](https://www.epiqglobal.com/en-au/experience/court-reporting/services/transcription-services)

[Legal Transcripts](http://www.legaltranscripts.com.au/Order)

[VIQ Solutions](https://viqsolutions.com.au/transcription-services/).

* 1. Fees may apply to the requesting party when engaging an authorised transcription agency.
  2. The Court will then release the audio recording to the authorised transcription agency when contacted by them.
  3. Please direct any queries concerning the list of authorised transcribers to [information.services@countycourt.vic.gov.au](mailto:information.services@countycourt.vic.gov.au).

# Appendix 1: Visual representation of the case management system



# Appendix 2: Expert witness code of conduct

1. A person engaged as an expert witness has an overriding duty to assist the Court impartially on matters relevant to the area of expertise of the witness.
2. An expert witness is not an advocate for a party.
3. Every report prepared by an expert witness for the use of the Court shall state the opinion or opinions of the expert and shall state, specify or provide:
   1. the name and address of the expert
   2. an acknowledgement that the expert has read this code and agrees to be bound by it
   3. the qualifications of the expert to prepare the report
   4. the facts, matters and assumptions on which each opinion expressed in the report is based (a letter of instructions may be annexed)
   5. a summary of:
      1. the reasons for, and
      2. any literature or other materials utilised in support of.
   6. (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise
   7. any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications
   8. a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate, and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Court
   9. any qualification of an opinion expressed in the report without which the report is or may be incomplete or inaccurate, and
   10. whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason.
4. Where an expert witness has provided to a party (or that party's legal representative) a report for the use of the Court, and the expert thereafter changes his or her opinion on a material matter, the expert shall forthwith provide to the party (or that party's legal representative) a supplementary report which shall state, specify or provide the information referred to in paragraphs (a), (d), (e), (g), (h), (i) and (j) of clause 3 of this code and, if applicable, paragraph (f) of that clause.
5. If directed to do so by the Court, an expert witness shall:
   1. confer with any other expert witness, and
   2. provide the Court with a joint report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing.
6. Each expert witness shall exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the Court and in relation to each report thereafter provided and shall not act on any instruction or request to withhold or avoid agreement.

1. A signed indictment filed electronically via eLodgement satisfies the requirements under s 159 of the *Criminal Procedure Act 2009*. [↑](#footnote-ref-1)
2. See also s 204 of the *Criminal Procedure Act 2009*. [↑](#footnote-ref-2)
3. The Court may nominate a period of time for a matter that is earlier or later than its trial listing window in order for the Court to maintain maximum listing flexibility. [↑](#footnote-ref-3)
4. The Court may nominate a period of time for a matter that is earlier or later than its trial listing window in order for the Court to maintain maximum listing flexibility. [↑](#footnote-ref-4)
5. See s 18K of the *Bail Act 1977* for exceptions to three-day notice period. [↑](#footnote-ref-5)
6. See s 18K of the *Bail Act 1977* for exceptions to three-day notice period. [↑](#footnote-ref-6)
7. A copy of the draft subpoena must **not** be included in this email because the draft subpoena contains witness contact details which are not to be provided to the other party to the proceeding. [↑](#footnote-ref-7)
8. A draft subpoena is no longer required to be attached to the Application for leave to issue a subpoena. [↑](#footnote-ref-8)
9. See s 5(2H) of the *Sentencing Act 1991*. [↑](#footnote-ref-9)
10. Practitioners must refer to the joint jurisdictional *Practice Note: sentencing hearings: expert reports on mental functioning of offenders* (PNCR 1-2017). [↑](#footnote-ref-10)
11. The Chief Commissioner of Victoria Police is the respondent to applications for registration exemption orders. The physical address for service is 637 Flinders Street, Docklands, VIC 3008 and the email address for service is [ancor.registrar@police.vic.gov.au](mailto:ancor.registrar@police.vic.gov.au). [↑](#footnote-ref-11)
12. Refer to the *Criminal Procedure Act 2009* and the *Children, Youth and Families Act 2005* for full criteria. [↑](#footnote-ref-12)