

## Management of Proceedings under the Child Sexual Offence Evidence Program

1. This Practice Note replaces District Court Criminal Practice Note 28.

### Commencement

2. This Practice note commences on 24 March 2025.

### Application

3. This Practice Note applies to the case management of all proceedings falling within Division 1A of Part 5 of the *Criminal Procedure Act 1986* (NSW) (**CP Act**).
4. The Court expects the parties to familiarise themselves with the provisions contained within Division 1A of the CP Act but stated simply, they establish a process for the pre-recording of evidence given by witnesses under the age of 18. That process includes the use of a witness intermediary, a ground rules hearing and a pre-recorded evidence hearing.

### Appointment of Witness Intermediary

5. The Court will appoint a witness intermediary (**WI**) for all child witnesses under the age of 16.
6. The Court may, on the application of a party or on its own motion, appoint a WI to assess the communication needs for a witness who is aged 16 or 17 if the witness has difficulty communicating.
7. A WI is an officer of the Court and has a duty to impartially facilitate the communication of, and with, the witness so they can give their best evidence.
8. The WI prepares a report in relation to the witness which is provided to the Court at least one week before the commencement of the pre-recorded evidence hearing (**PRH**). The report is provided to the parties as soon as it becomes available.

## **Ground Rules Hearing**

9. A Ground Rules Hearing (**GRH**) is to be conducted not less than one week prior to the PRH.
10. It may be conducted in person or via AVL. The accused person is excused from appearing if legally represented.
11. The GRH is not adversarial in nature. It is conducted to assist the Court and the parties to understand the communication needs of the witness. It also provides the parties the opportunity to seek the assistance of the WI in preparing questions to be asked of the witness during the PRH.
12. At the conclusion of the GRH, the Court will make orders in relation to the questioning of a witness and the manner in which the witness is to give evidence that facilitates the witness giving their best evidence.
13. It is anticipated that at the conclusion of the GRH, orders in accordance with those set out in the attached GRH orders will be made (see **Annexure A**).

## **Pre-Recorded Evidence Hearing**

14. The CP Act requires that a PRH must be held as soon as practicable after the date listed for the accused person's first appearance in the District Court.
15. The PRH is the commencement of the trial and the accused is arraigned at the commencement of the PRH.
16. The evidence of any witness under the age of 18 must be given by way of PRH.
17. The parties are to follow the orders made at the GRH during the PRH.
18. A PRH is conducted where additional oral evidence in chief, cross-examination and re-examination is required in addition to the child interview(s) which were conducted by the police and which are to be played as the witness' evidence in chief. All evidence given during a PRH is recorded and is played in Court during the balance of the trial.
19. The child interview(s) which were conducted by the police are not played during the PRH. The parties and the Judge will watch such interview(s) before the PRH. The child will watch (and/or read) such interview transcript(s) before the PRH.

20. Any item to be shown to the witness during the PRH by either party is to be provided to the Court in marked envelopes the day before the PRH.
21. After the completion of a PRH, a witness may *only* be recalled to give further evidence during the balance of the trial *with leave* if:
- a party has become aware of a matter they could not reasonably have been aware at the time of the pre-recorded hearing; *or*
  - it is in the interest of justice.
22. Any further evidence must be by way of a PRH (unless ordered otherwise).
23. It is anticipated that at the conclusion of the PRH, orders in accordance with those set out in the attached PRH orders will be made (see **Annexure B**).
24. The Court expects that representatives for the Prosecution and Defence who appear at a PRH will continue to appear in the balance of the trial.

## **Legal Argument**

25. The parties are to advise the Court if there are any anticipated pre-trial issues or legal argument that needs to be resolved before the start of the trial, that being before the start of the PRH.
26. Parties should expect that the Judge presiding over the PRH will endeavour to resolve all outstanding pre-trial issues and/or legal argument during or around the time of the PRH. This will minimise the need for court time being required during the balance of the trial.

## **Applications and Pleas of Guilty**

27. In cases involving charges of child sexual assault, children who are required to give evidence are often anxious about giving evidence and being cross-examined.
28. Practitioners should notify the Court as soon as possible of an intention to apply to vacate the PRH or to enter a plea of guilty. This can be done by email to the CSOEP email address, District-Court-CSOEP@justice.nsw.gov.au (**CSOEP email address**). The prosecution should be notified before this intention is conveyed to the Court. An application to vacate a PRH must then be made by Notice of Motion and supporting affidavit.

## **Listing Procedures for CSOEP matters committed to the District Court at Sydney, Parramatta, Campbelltown and Penrith**

29. Matters committed for trial to the District Court at Sydney, Parramatta, Campbelltown and Penrith will be listed for case management callover at the District Court at Central (98 Liverpool St, Sydney) no later than 14 days after committal for trial. The list will be known as the **CSOEP list** and the case management callover will be known as the **CSOEP callover**.
30. The CSOEP list will be managed separately from the general arraignments list.
31. Practitioners are to ensure that applications for Legal Aid have been lodged and finalised immediately after committal for trial and that the representatives briefed for the Crown and for the Defence are available for a PRH which will usually be conducted within 2 to 3 months of committal and that thereafter, they are available to appear at the balance of the trial.
32. The CSOEP callover may be conducted in person or via AVL. The accused person is excused from appearing if legally represented.
33. The parties are to provide a notice of appearance with contact details including for the counsel or solicitor advocate briefed to appear to the CSOEP email address [District-Court-CSOEP@justice.nsw.gov.au](mailto:District-Court-CSOEP@justice.nsw.gov.au) (CSOEP email address) no later than 5 days before the CSOEP callover.
34. The Prosecution are to provide a copy of the proposed Indictment, the Crown Case Statement (or draft) and an Index to the full Brief to the CSOEP email address no later than 3 days before the CSOEP callover.
35. The Court expect the Prosecution to present an Indictment at the CSOEP callover with an expectation that the proposed Indictment will be filed in Court as soon as possible after committal.
36. Available dates for the GRH and PRH will be sent to the parties the week before the CSOEP callover.
37. It is anticipated that at the conclusion of the CSOEP callover, orders in accordance with those set out in **Annexure C** will be made.
38. Should the parties seek different orders to those contained in Annexure C, (including an application for a date for the PRH outside those provided to the parties), they must be in a position to provide reasons at the CSOEP callover. Otherwise, the parties are to provide draft proposed orders in accordance with

Annexure C to the CSOEP email address by 5pm Friday before the CSOEP callover.

39. The Court's CSOEP coordinator will book remote rooms once notified by the DPP (pursuant to the first orders) of the proposed witness location.
40. The Court will set dates for the GRH, PRH and for any legal argument at the CSOEP callover. The matter will also be listed before the list Judge at the applicable District Court to enable the list Judge to allocate a date for the balance of trial (and any other orders considered necessary).

**Listing Procedures for CSOEP matters committed to District Courts that sit on a circuit basis (i.e. without a resident Judge)**

41. At the CSOEP callover the list Judge will list the matter for PRH in an allocated CSOEP week (called a **Hub week**) at the nearest regional court with a resident Judge (called a **Hub Court**).
42. Matters committed for trial to the District Court at Albury, Armidale, Bega, Bourke, Broken Hill, Coonamble, Goulburn, Grafton, Griffith, Moree, Nowra, Parkes\*, Port Macquarie, Queanbeyan, Tamworth and Taree will be listed in the CSOEP callover at the District Court at Central.

\*Although Parkes District Court sits on a circuit basis, matters committed for trial to the District Court at Parkes will not be listed in the CSOEP callover list at the District Court at Central, but out of the Orange Hub Court (i.e. in accordance with paragraphs [47] and [48] of this Practice Note).

43. One week after the CSOEP callover, the matter will be listed in the Circuit Court Callover in Court 3.1 at the Downing Centre on the next Wednesday at 9am to allocate a date for the hearing of the balance of trial (and any other orders considered necessary).
44. A Readiness Hearing will be conducted via AVL at the District Court at Central at 9 am on the Monday 2 weeks before the commencement of the Hub week. The accused person is excused from appearing if legally represented.
45. The Judge allocated to the Hub week will hear the GRH in the week before the commencement of the Hub week. If the Judge is not available, a Judge sitting at the District Court at Central will hear the GRH.

46. Otherwise, paragraphs [31] to [39] of this Practice Note apply to these proceedings.

**Listing Procedures for CSOEP matters committed to the District Court at regional courts with resident Judges**

47. The resident Judges at Coffs Harbour, Dubbo, Gosford, Lismore, Orange/Bathurst\*, Wollongong, Wagga Wagga and Newcastle will manage their own CSOEP list and list the GRH and PRH in respect to all matters committed to those Courts in a Hub week. The resident Judge will also allocate a date for the hearing of the balance of trial (and any other orders considered necessary).

\*Although Bathurst District Court has a resident Judge, because that Judge is also the resident Judge at Orange District Court, all matters committed for trial to the District Court at Bathurst will be managed through Orange District Court.

48. The parties should expect the resident Judge will make orders in accordance with those set out in Annexure C when the matter is first listed before the Regional Court.

**Non-Compliance**

49. If it appears to the Court that a party has not complied with any part of this Practice Note or with any other Court direction, the Court may contact that party directly or list the matter for Mention, either on the Court's own initiative or at the request of another party.

50. Without limiting the Court's power otherwise to deal with an inexcusable failure to comply with a direction, the Court may order the non-compliant party to attend all future callovers unless excused by the Court.



The Hon. Justice S Huggett  
Chief Judge of the District Court of New South Wales

**DATE**

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## **ANNEXURE A**

### **IN THE DISTRICT COURT OF NEW SOUTH WALES AT CENTRAL CRIMINAL JURISDICTION**

***R v*** \_\_\_\_\_ ***No:*** \_\_\_\_\_.

**Date:** \_\_\_\_\_

**Coram:** \_\_\_\_\_

**Crown:** \_\_\_\_\_

**Defence:** \_\_\_\_\_

#### **Notes:**

- Complainant(s) (Name(s) and Age(s)):

\_\_\_\_\_  
\_\_\_\_\_

- Witness(es) (Name(s) and Age(s)):

\_\_\_\_\_  
\_\_\_\_\_

#### **Orders:**

1. The recommendations made by the Witness Intermediary be adhered to throughout the PRH.
2. A transcript of the GRH be provided to the parties.
3. The parties provide agreed topic headings to the Witness Intermediary for preparation of topic heading cards by 5pm on \_\_\_\_\_.
4. The parties provide an agreed timeline to the Witness Intermediary for preparation of a timeline document by 5pm on \_\_\_\_\_.
5. If the defence intend to use separate topic heading cards, they are to provide topic headings to the Witness Intermediary on a confidential basis for preparation of topic heading cards by 5pm on \_\_\_\_\_.
6. The parties are to conference, individually or together, with the Witness Intermediary by 5pm on \_\_\_\_\_.

## **ANNEXURE B**

### **IN THE DISTRICT COURT OF NEW SOUTH WALES AT THE SYDNEY DOWNING CENTRE CRIMINAL JURISDICTION**

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**MATTER:**

**FILE NO:**

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**Date:**

**Appearances:**

Crown:

Defence:

WI:

**Orders:**

1. Two copies of the recording of the pre-recorded evidence are to be made. One copy is to be provided to the ODPP, and one copy is to be placed on the Court file.
2. The transcript of the pre-recorded evidence be provided to the parties, and a copy placed onto the Court file.
3. The parties are to provide a word document of the transcript with suggested agreed edits to the PRH by \_\_\_\_\_ as follows:
  - Proposed deletions highlighted in yellow
  - Errata set out as tracked changes
4. If there are contested edits to the PRH the parties are to provide a word document of the transcript with the contested aspects highlighted together with brief written submissions by \_\_\_\_\_. The parties are also to provide a list of suitable dates for hearing of any argument by that same day.
5. The parties are to confirm whether there are any legal arguments and what those arguments are that need to be dealt with before the jury is empaneled by \_\_\_\_\_.



## **ANNEXURE C**

### **IN THE DISTRICT COURT OF NEW SOUTH WALES AT CENTRAL CRIMINAL JURISDICTION**

**R v** \_\_\_\_\_ **No:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Coram:** \_\_\_\_\_

**DPP Solicitor:** \_\_\_\_\_ **Crown:** \_\_\_\_\_

**Def Solicitor:** \_\_\_\_\_ **Counsel:** \_\_\_\_\_

#### **Notes:**

- Complainant(s) (Name(s) and Age(s)):

\_\_\_\_\_  
\_\_\_\_\_

- Witness(es) (Name(s) and Age(s)):

\_\_\_\_\_  
\_\_\_\_\_

#### **Orders**

##### Witness Intermediary, Ground Rules and Pre-recorded Hearing

1. *If the child is under 16 years:* I order that a witness intermediary is appointed for the Complainant(s)/Witness(es)
2. *If child is over 16 years:* I order a witness intermediary be appointed to prepare a report on the communication needs of the Complainant/Witness.
3. I direct that the witness intermediary reports be filed and served by 5pm on \_\_\_\_\_.
4. The matter is listed for GRH at 9:30am on \_\_\_\_\_.
5. I order that the evidence of the complainant(s) and witness(es) are/is to be given at a pre-recorded hearing.

6. The matter is listed for PRH on \_\_\_\_\_. The PRH has an estimate of \_\_\_\_\_.
7. The Crown are to notify the CSOEP Registry of the proposed arrangements, including from where they are to give their evidence, for all child witnesses by 5pm on \_\_\_\_\_.

## **Case Management**

### Brief service orders

1. The Crown is directed to serve any further evidence by 5pm on \_\_\_\_\_.
2. The Crown Prosecutor appearing is to have a conference with the Officer in Charge to ensure compliance with duty of disclosure by 5pm on \_\_\_\_\_.
3. The Crown are to file an affidavit from the Officer in Charge confirming compliance with duty of disclosure (s 15A) by 5pm on \_\_\_\_\_.
4. The Defence is directed to serve any expert report or notices on which they rely by 5pm on \_\_\_\_\_.

### Case management forms

5. Would the parties be assisted by a 140 conference? If so, the parties are to conduct a 140 conference by 5pm on \_\_\_\_\_.
6. The Crown is to file and serve the section 142 Notice by 5pm on \_\_\_\_\_.
7. The Defence is to file and serve the section 143 Notice by 5pm on \_\_\_\_\_.
8. The Crown is to file and serve the section 144 Notice, if any, by 5pm on \_\_\_\_\_.
9. The parties are to agree on facts not in issue by way of a statement of agreed facts (s 191 *Evidence Act*) 5pm on \_\_\_\_\_.

## Pre-Recorded Evidence Brief

10. The parties are to provide agreed edits to the child interviews by \_\_\_\_\_. The PRH bundle must contain the edited transcript.
11. If there are contested edits to the child interviews the parties are to provide a word document of the transcript with the contested aspects highlighted together with brief written submissions by \_\_\_\_\_. The parties are also to provide a list of suitable dates for hearing of any argument by that same day.
12. The Crown is to deliver one hard copy of the Pre-Recorded Hearing bundle to the Registry at Central District Court Liverpool Street by 5pm on\_\_\_\_\_.
13. The PRH Bundle should contain the Indictment, Crown Case Statement, child interviews (discs and transcripts), ERISP (disc and transcript), complaint witness statements and any other material relevant to the PRH such as but not limited to tendency notices and material to be referred to in the PRH.
14. The Crown is to file an electronic copy of this material (save for multimedia files) by the same date. The electronic PRH Bundle is to be a searchable, paginated and bookmarked PDF.
15. Counsel for the Crown and Defence are to make a short opening address at the start of the PRH to indicate to the presiding Judge the issues in the trial.

## **Legal Argument**

16. The Crown are to serve any notice on which they intend to rely, including but not limited to, Tendency/Coincidence Notices, applications under section 294CB of the CPA, applications in relation to sexual assault communications privilege, section 38 of the *Evidence Act* applications, and applications to amend the indictment by 5pm on \_\_\_\_\_.
17. The Defence are to notify the Crown of any objection to any evidence or application that needs to be resolved before the empanelment of the jury, including but not limited to, Separate Trial applications, applications to exclude evidence, edits or proposed exclusions to the child interview, applications under 294CB of the CPA, applications in relation to Sexual Assault Communication Privilege and objections to any application to be made by the Crown, by 5pm on \_\_\_\_\_.
18. Any subpoena and/or application to file subpoena is to be filed by 5pm on \_\_\_\_\_.

19. The Crown are to notify the Defence of their position in relation to any objection or application by 5pm on \_\_\_\_\_.
20. The parties are to notify the CSOEP Registry whether there are any legal matters unresolved or confirm that there no legal matters that need to be determined before empanelment of the jury by 5pm on \_\_\_\_\_.
21. If matters remained unresolved
- a. The Crown and Defence are to file a joint Voir Dire tender bundle (electronically by bookmarked, paginated and searchable PDF) with my associate 5pm on \_\_\_\_\_.
  - b. The Crown are to file and serve (electronically) written submissions by 5pm on \_\_\_\_\_.
  - c. The Defence are to file and serve (electronically) written submissions electronically by 5pm on \_\_\_\_\_.
  - d. Any legal argument arising out of the above is listed for hearing on \_\_\_\_\_.

### **Readiness Hearing (Circuit Courts)**

22. A readiness hearing is listed at 9am on Monday \_\_\_\_\_.  
The readiness hearing will be conducted via AVL. The parties must be connected by 8.50 AM and must mute their microphone until their matter is called. If the party is disconnected for any reason the party must notify the Court.

### **Balance of Trial**

23. The matter is listed at \_\_\_\_\_ on \_\_\_\_\_ to obtain a balance of trial date.

### **Interpreter**

24. Do any complainants/accused/witnesses require an interpreter for the GRH/PRH/Trial? If so:
25. A \_\_\_\_\_ interpreter is ordered for the \_\_\_\_\_ at the \_\_\_\_\_.

### **Filing**

26. Any electronic filing or notification is to be by way of email to District-Court-

CSOEP@justice.nsw.gov.au

### **Acknowledgment of Receipt**

27. Counsel appearing are to acknowledge receipt of these orders by way of email to District-Court-CSOEP@justice.nsw.gov.au

### **Resources**

28. Advocates for the Crown and Defence are directed to watch the following training videos:

- CSOEP role play video  
[https://jirs.judcom.nsw.gov.au/menus/videos.php?video=csoep\\_roleplay](https://jirs.judcom.nsw.gov.au/menus/videos.php?video=csoep_roleplay)
- “A Question of Practice”: Short training film released by the Advocate’s Gateway:  
<https://www.theadvocatesgateway.org/resources>
- Advocates for the Crown and Defence are directed to read the following resource:
- “The Advocate's Gateway Toolkits”: Toolkit resources released by the Advocate’s Gateway:  
<https://www.theadvocatesgateway.org/toolkits-1-1-1>