



**Children's Court
Victoria**

PRACTICE DIRECTION

No. 6 of 2018

**INTERMEDIARY PILOT PROGRAM AT MELBOURNE CHILDREN'S
COURT**

This Practice Direction is issued pursuant to section 592 of the *Children, Youth and Families Act 2005*.

Preamble

The introduction of an intermediary scheme, based on the English model, was recommended in the 2016 Victorian Law Reform Commission Report 'The Roles of Victims of Crime in the Criminal Trial Process'. It was endorsed in *R v Ward (a pseudonym)* [2017] VSCA 37.

This Practice Direction gives effect to the new Part 8.2A of the *Criminal Procedure Act 2009* (the Act) as it relates to the Intermediary Pilot Program at Melbourne Children's Court.

The Intermediary Pilot Program (the Pilot Program) commenced on 2 July 2018 and applies to criminal proceedings commenced on or after 28 February 2018 that relate to a sexual offence (as defined in s 4(1) *Criminal Procedure Act 2009*) or a homicide offence.

Intermediaries are trained professionals with specialist communication skills. They are officers of the court. Their expertise is utilised to facilitate vulnerable witnesses, being a person under the age of 18 years or a person with a cognitive impairment, to give their evidence.

The Pilot Program operates more narrowly than the scheme in the Act. Intermediaries will be utilised in the Pilot Program for vulnerable complainants in sexual offence proceedings and for vulnerable witnesses in homicide proceedings.

Directions

1. An application to appoint an Intermediary may be made orally or in writing by a party to the proceeding or the Court may appoint an Intermediary on its own motion.
2. An application to appoint an Intermediary shall be made using the attached form and is to be listed at the contest mention or committal mention.
3. If an Intermediary is appointed, a Ground Rules Hearing must be held.

4. The Ground Rules Hearing will be listed before the Magistrate who is to hear the contested hearing or committal no later than 7 days before the hearing or committal.
5. The Intermediary's assessment report regarding the witness's communication needs will be provided to the parties at least 7 days prior to the Ground Rules Hearing.
6. The prosecutor and defence practitioner who will appear at the hearing or committal must attend the Ground Rules Hearing.
7. The prosecutor and defence practitioner are expected to discuss their proposed questioning of the witness with the Intermediary prior to the Ground Rules Hearing.
8. At the Ground Rules Hearing, the Court may direct that the prosecution and defence provide their proposed questions in writing to the Intermediary to ensure that they are in a form that will be understood by the witness and complies with the directions made at the Ground Rules Hearing.
9. Directions which may be made at the Ground Rules Hearing include the matters detailed in s 389E(2) of the Act, namely:
 - a direction about the manner of questioning a witness;
 - a direction about the duration of questioning a witness;
 - a direction about the questions that may or may not be put to a witness;
 - if there is more than one accused, a direction regarding the allocation among the accused of the topics about which a witness may be asked;
 - a direction about the use of models, plans, body maps or similar aids to help communicate a question or answer;
 - a direction that if a party intends to lead evidence which contradicts the evidence of a witness or that otherwise discredits a witness, the party is not obliged to put that evidence in its entirety to the witness in cross-examination.
10. This Practice Direction should be read in conjunction with the *Multi-Jurisdictional Court Guide for the Intermediary Pilot Program: Intermediaries and Ground Rules Hearings*. Practitioners are expected to be familiar with the Guide.

This Practice Direction operates in conjunction with Practice Direction No. 4 of 2018.

This Practice Direction commences on 18th July 2018.



Judge Amanda Chambers
President
Children's Court of Victoria
18th July 2018



**Children's Court
Victoria**

APPLICATION FOR APPOINTMENT OF AN INTERMEDIARY

(Intermediary Pilot Program pursuant to Part 8.2A *Criminal Procedure Act 2009*)

IN THE CHILDREN'S COURT OF VICTORIA

CASE No.: _____

AT MELBOURNE

IN THE MATTER OF: _____

I wish to apply for the following order/s:

1. THAT the Court appoint an Intermediary for the witness [*name*] _____

This application is made on the grounds that:

(a) The witness is eligible for such assistance because:

- the witness is *a child / *was under the age of 18 years at the time the proceeding commenced / * is cognitively impaired; and
- the witness is to give evidence in a relevant criminal proceeding [*charge*] _____; and
- the criminal proceeding is in a participating venue of a Court [*give details*] _____.

(b) [*If relevant*] An appointment is recommended in the Intermediary assessment report of [*date*] _____.

(c) [*If relevant*] For the reasons outlined in the Intermediary assessment report, an Intermediary would be likely to improve the quality of the witness's evidence (see [*provide paragraph or page numbers*]) _____.

(d) [*If relevant*] The witness is aware of the right to make an application for an intermediary to be appointed and wishes to give evidence without the assistance of an Intermediary but it is submitted that the court should not be satisfied that the witness is able to give evidence without the assistance of an Intermediary for the following reasons [*give details*]

THIS FORM IS FILED ON BEHALF OF: _____

The Prosecution*: OPP* / Victoria Police Prosecutions Unit*

The Defence*

CONTACT DETAILS

Prosecution* / Legal practitioner*:

Name: _____

Firm: _____

Contact No.: _____ Email address: _____

Address for service: _____

CONTACT DETAILS

TO the Registrar of the Children’s Court at: Melbourne

AND TO the Respondent / Respondent’s solicitor:

Name: _____

Firm: _____

Contact No.: _____ Email address: _____

Address for service: _____

Dated: _____

Signed _____
Signature of Applicant / Applicant’s Legal Practitioner

Print name _____

LISTING OF APPLICATION

This application is listed for hearing before the Children’s Court of Melbourne at [time] am / pm on [date]

Dated: _____

Signed _____
*Registrar / *Deputy Registrar

Print name _____

*delete if not applicable