



**Children's Court
Victoria**

**PRACTICE DIRECTION
No. 2 of 2023**

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

1. This Practice Direction applies to all Criminal Division proceedings filed with the Children's Court of Victoria (the Court), other than CAYPINS matters, with effect from **31 July 2023**.
2. The following Practice Directions are revoked:
 - a) No. 1 of 2022;
 - b) No. 6 of 2018;
 - c) No. 5 of 2018;
 - d) No. 4 of 2018;
 - e) No. 1 of 2009;
 - f) No. 2 of 2007; and
 - g) No. 1 of 2007.

ALL CHILDREN'S COURTS - STATEWIDE

FILING

3. All initiating documents, Court Reports and other relevant documentation must be filed electronically with the relevant Children's Court Registry (see [local court registry](#)).

ONLINE HEARINGS

4. All online hearings must meet the relevant technical requirements for an audio visual link or audio link (if permitted) as set out in the *Evidence (Miscellaneous Provisions) Act 1958*.
5. To request that a matter be listed online, contact should be made at first instance with the Registry at which the matter is listed (see [local court registry](#)) by email **not later than 3 clear working days** prior to the current listing date.
6. The Court will confirm whether the matter will be listed online and if so, the hearing time. If the matter is listed online, it is preferable that the lawyer and the child be at the same location for the hearing.

FIRST REMAND HEARINGS

7. A child who is being held in custody is required to be brought physically before the Court¹, unless the Court directs otherwise.²
8. Where a child is physically brought before the Court, prosecution and lawyers are required to appear physically before the Court.
9. Informants and other witnesses may appear before the Court online, provided this does not cause delay or other interruption to Court business.

SECOND AND SUBSEQUENT REMAND HEARINGS

10. Following the first remand hearing, a case must not be adjourned for a further period longer than 21 clear days.³
11. If the child is remanded in custody, unless otherwise directed by the Court, the following timelines apply from the date of:
 - a) First remand to second mention – no longer than 21 days;
 - b) Second mention to either a plea of guilty or contest mention – no longer than 21 days;
 - c) Contest mention to plea of guilty – no longer than 21 days;
 - d) Contest mention to hearing, to the earliest date possible that can be accommodated by the Court.
12. The following set out the processes by which the Court will consider whether the attendance of the child in person (physically or online) at Court is required or whether a “waiver” will be approved:
 - a) The lawyer for the child must file a [Custody Attendance Form \(Form A\)](#) with the relevant registry of the Children’s Court no later than 3 working days prior to the further mention hearing;
 - b) The lawyer will be notified no later than one clear business day of the mention of the Form A being filed as to whether the request has been approved or not;
 - c) If the Court approves the request, the lawyer must arrange for the [Waiver Form \(Form B\)](#) to be signed by the child and filed with the Court no later than the working day prior to the further mention hearing; and
 - d) If the Court does not approve a request for waiver the Court may direct that the child and/or the lawyer appear.

¹ S. 42O *Evidence (Miscellaneous Provisions) Act 1958* - Appearance before court of accused who is a child

² S. 42P *Evidence (Miscellaneous Provisions) Act 1958* - Making of a direction for audio visual appearance by a child

³ S.12(5) *Bail Act 1977*

BAIL APPLICATIONS

13. After the first remand hearing date all bail applications, unless otherwise ordered, should be listed online, with the accused appearing online (with both audio and visual) from a youth justice facility. The child's lawyer must contact the Court coordinator at the [proper venue](#) of the Court to obtain a hearing date and to otherwise make appropriate arrangements.
14. Unless urgent, an application for bail must be served on the informant and prosecution within 3 clear business days of the scheduled hearing by the child's lawyer.

BAIL VARIATION(S)

15. Any application for a variation of bail conditions, whether opposed or unopposed, may be heard at Court or 'on the papers' pursuant to section 337A of the *Criminal Procedure Act 2009*.
16. An application for an unopposed variation of bail conditions may occur on the papers if all parties consent and the child is legally represented.
17. To list an unopposed application to vary bail 'on the papers' the following documents must be completed by the parties and filed by electronic communication as a single package to the relevant registry of the Children's Court at which the matter is listed:
 - a) [Form CV — Application for an Unopposed Bail Variation 'On the Papers'](#);
 - b) Copy of charge(s) with any agreed amendments;
 - c) Summary of alleged facts;
 - d) Agreed criminal history (if any);
 - e) An outline by the applicant of the reasons why variation is sought;
 - f) Consent (unopposed) to variation signed by or on behalf of the respondent; and
 - g) Supporting materials relied upon by the applicant and or respondent.
18. The parties will be advised of the date for listing of the application before a judicial officer.⁴ This will be a date that is at least 3 working days after the filing of the application unless the Court determines the application is urgent and the respondent consents to the application being treated as urgent.
19. On the listed date the judicial officer will hear and determine the application 'on the papers'.
20. The Court will provide the prosecutor and the lawyer for the child with a certified extract of the judicial officer's decision by electronic communication on the day of the decision.
22. If the application for variation is granted, the child, within 7 days of the variation being ordered, is required to attend at a Children's Court registry to sign and enter the new undertaking of bail or to enter the new undertaking pursuant to s17A of the *Bail Act 1977*. The variation will have no effect until the undertaking is entered.
23. If the application for variation is not granted 'on the papers', the judicial officer will list the application for hearing. The parties will be notified of the hearing time and date by email.
24. In the event the child has been granted bail by a bail justice or the Court and within 24 hours after the grant of bail, the child is unable to meet the conditions of bail an application to vary cannot occur on the papers.

⁴ Includes the President of the Children's Court, a Magistrate or a Children's Court Judicial Registrar

25. Further, the 'on the papers' procedure cannot occur if there is a surety or a deposit of money on the current bail or if a surety or a deposit of money is sought on the varied bail.

SUMMARY CASE CONFERENCING

26. The Court directs the parties to conduct a summary case conference pursuant to section 54(3) of the *Criminal Procedure Act 2009* prior to any mention date to avoid unnecessary adjournments.

DIVERSION HEARING(S)

27. At any time before taking a formal plea from a child in a criminal proceeding for an offence, the Court may adjourn the proceeding to allow the child to participate and complete a diversion program.⁵
28. A young person may be assessed for diversion or their matter may be referred to diversion at Court on the day of the hearing.
29. Diversion hearings 'on the papers' may occur pursuant to section 337A of the *Criminal Procedure Act 2009*.
30. To list a matter for diversion the following documents must be completed and filed with the relevant registry at which the matter is listed, as a single package:
- a) [Form CD - Application for diversion hearing on the papers](#);
 - b) Completed diversion notice signed by the lawyers for the prosecution and the child;
 - c) Copy of charge(s) with agreed amendments (if any);
 - d) Agreed summary facts;
 - e) CCYD Assessment report and proposed diversion plan;
 - f) Criminal history (if any); and
 - g) Victim impact statements (if any).
31. In addition to the mandatory materials outlined in the previous paragraph, parties may include the following materials in the single package:
- a) Any mitigatory materials sought to be relied upon by the child;
 - b) Outline of defence submissions, in dot point form;
 - c) Outline of prosecution submissions, in dot point form.
32. The parties will be advised by the court of the date set for the diversion application to be considered by the judicial officer on the papers. No attendance is required on that date.
33. If the Court considers diversion is appropriate, the judicial officer will adjourn the proceeding for a period not exceeding 4 months⁶ to enable the child to participate in and complete the diversion plan.

⁵ *Children, Youth and Families Act 2005*, Division 3A of Part 5.2 of Chapter 5

⁶ S.356D(1) *Children, Youth and Families Act 2005*

34. The Court may adjourn the proceeding for a further period not exceeding 2 months if it considers it to be appropriate to enable completion of the diversion program.⁷ The total adjournment period for a diversion program must not exceed 6 months.⁸
35. The prosecution and the child's lawyer will be notified of the result of the diversion hearing by email.
36. On the adjourned date, if the judicial officer is satisfied the diversion plan has been satisfactorily completed, the child will be discharged without any finding of guilt on the charge(s) on which diversion was granted without the need for an attendance by any party.
37. If the judicial officer considers that:
 - a) either diversion or the diversion plan is not appropriate to be determined on the papers; or
 - b) the diversion program has not been satisfactorily completed,the judicial officer will adjourn the case and the proceedings will be listed for further hearing (mention).
38. The parties will receive notice of the further hearing date from the Court by way of a Hearing Notice. Subject to any direction by the Court, only the prosecution and the lawyer for the child will be required to attend the online hearing for the purpose of making further submissions. The child's attendance at the online hearing is not required, however the child's lawyer must be able to contact the child during the hearing.

SEXUAL OFFENCE(S)

39. Criminal proceedings that relate wholly or in part to a charge for a sexual offence will be listed at the proper venue and in the Sexual Offences List at that venue, if available.
40. The [Sexual Offences Contest Form](#) must be filed with the Court either at the contest mention or at any other hearing where it is sought to fix the proceeding for a summary contested hearing.

INTERMEDIARIES

41. The availability of the Intermediary Program is set out in [the Multi-jurisdictional Court Guide for Ground Rules and the Intermediary Program](#) as varied from time to time.
42. The Court may appoint an Intermediary:
 - a) On the oral or written⁹ application of a party to the proceeding; or
 - b) On its own motion.

⁷ S.356H(1) *Children, Youth and Families Act 2005*

⁸ S.356H(2) *Children, Youth and Families Act 2005*

⁹ Written applications should be made using the Intermediary form [LINK]

GROUND RULES HEARINGS¹⁰

43. Section 389A(1) of the *Criminal Procedure Act* 2009 sets out when a ground rules hearing may be held. The court may direct that a ground rules hearing is to be held:
- a) On the oral or written application of a party to the proceeding; or
 - b) On its own motion.
44. A ground rules hearing must be held in criminal proceedings referred to in s. 389A(1) of the *Criminal Procedure Act*:
- a) If an Intermediary is appointed; or
 - b) If the witness is a complainant in relation to a charge for a sexual offence.¹¹
45. The Intermediary's assessment report must be filed and served no later than 7 days prior to the ground rules hearing.
46. The prosecutor and defence practitioner who will appear at the hearing or committal must attend the ground rules hearing and are expected to have discussed their proposed questioning of the witness with the Intermediary.

CONFIDENTIAL COMMUNICATIONS AND PROTECTED HEALTH INFORMATION¹²

47. A party who intends to make an application for leave to compel production of a document containing a confidential communication or protected health information must at the time of a contest mention
- a) inform the court and all other parties, and
 - b) have it noted on the [Sexual Offences Contest Form](#).
48. If leave is granted, unless the court otherwise orders, the subpoena must be made returnable at least 3 days before the special mention or ground rules hearing.
49. If a general subpoena¹³ is to be issued which might produce a confidential communication or protected health information the subpoena must specify that documents containing confidential communications or protected health information are excluded from the material sought under the subpoena.

CHILDREN'S COURT OF VICTORIA SITTING AT MELBOURNE

REMAND COURT

50. All matters filed at the Court at Melbourne where the child is remanded in custody will be listed in the Remand Court.
51. The child's lawyer must advise the Court of any other outstanding matters, and whether they are part heard before a judicial officer.

¹⁰ See also *Multi-jurisdictional Court Guide for Ground Rules and the Intermediary Program*

¹¹ S. 389B(3) *Criminal Procedure Act* 2009.

¹² Division 2A of Part II of the *Evidence (Miscellaneous Provisions) Act* 1958

¹³ That is not being issued specifically for the purposes of producing a confidential communication or protected health information.

52. If the child has any outstanding matter for mention, those matters will be abridged by the Court to join the remand hearing. Subject to a matter being part heard before another judicial officer, all matters will be case managed at the Court at Melbourne whilst listed for mention. Except for matters where the proper venue is either Moorabbin or Sunshine, to which paragraphs 55 to 58 apply, contest mentions and or hearings will be listed at the proper venue.
53. If the child is remanded in custody, unless otherwise directed by the Court, the following timelines apply from the date of:
- a) First remand to second mention – no longer than 21 days;
 - b) Second mention to either a plea of guilty or contest mention – no longer than 21 days;
 - c) Contest mention to plea of guilty – no longer than 21 days;
 - d) Contest mention to hearing, to the earliest date possible that can be accommodated by the Court.
54. Unless urgent, any application for bail must be served on the informant and prosecution within 3 clear business days of the scheduled hearing by the child's lawyer.

MOORABBIN AND SUNSHINE CUSTODY LISTINGS

55. Children who are arrested and held in custody on matters where either the Court sitting at Moorabbin or Sunshine is the proper venue, are to be remanded to appear in the Remand Court.
56. Where the Court sitting at Moorabbin is the proper venue, the Court sitting at Melbourne will maintain carriage of the matter until finalisation or the child is released from custody.
57. Where the Court sitting at Sunshine is the proper venue, the Court sitting at Melbourne will maintain carriage of the matter until finalisation apart from a matter being listed for contested hearing. In the circumstances of a hearing, the matter will be adjourned to the Court at Sunshine following a contest mention.
58. Subject to the discretion of the presiding judicial officer, if the child is bailed, the matter is to be listed for subsequent hearing at the proper venue.

This Practice Direction commences on 31 July 2023.



Judge Jack Vandersteen
President
Children's Court of Victoria
31 July 2023