

MAGISTRATES COURT OF SOUTH AUSTRALIA
CONSOLIDATED CRIMINAL PRACTICE DIRECTIONS

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I ANDREW JAMES CANNON, ACTING CHIEF MAGISTRATE in and for the State of South Australia, pursuant to rule 44.01 of the *Magistrates Court Rules 1992* issue these Practice Directions.

1.00 PRELIMINARY

- 1.01 These Practice Directions may be cited as the “*Magistrates Court Consolidated Criminal Practice Directions*”.
- 1.02 These Practice Directions commence on 27 September 2015.
- 1.03 All previous practice directions made under the *Magistrates Court Rules 1992* are revoked with effect on 27 September 2015.
- 1.04 There will be additional numbered Practice Directions issued in relation to court sitting dates, locations and registry opening hours as required by the Chief Magistrate. These will be titled “Court Sittings Directions” and will not cause amendment to this document.

2.00 DEFINITIONS

- 2.01 In all Practice Directions, unless the contrary intention appears-

"the Rules" means the *Magistrates Court Rules 1992*.

“clause” refers to a numbered item in a Practice Direction.

- 2.02 In these Practice Directions, unless the contrary intention appears, expressions defined in the Rules have the same meaning.

3.00 CASEFLOW MANAGEMENT

- 3.01 Lists of criminal proceedings for plea/mention must not exceed 60 matters (plus additions) per day.
- 3.02 Lists shall be prepared and time set aside for cases so as to permit the orderly conduct of the Court and the enhancement of caseflow management.
- 3.03 On the first return of a complaint/information the Court shall advise the defendant of his/her right to be legally represented and of such other information as may be necessary to satisfy the requirements of *Cooling v Steele* (1971) 2 SASR 249 in the defendant’s particular case.

- 3.04 If the defendant does not plead guilty on the first return of the complaint/information then the proceedings may be adjourned/remanded for a period not exceeding 6 weeks, to enable the defendant to seek and arrange legal aid and to be legally advised and represented.
- 3.05 On the second return of the complaint/information the defendant shall advise the Court whether he/she intends to plead guilty or not guilty.
- 3.06 If, on the second return of the complaint/information the defendant advises the Court that he/she intends to plead guilty but the matter is not immediately dealt with then the proceedings may be adjourned for such period as may be necessary to enable the defendant to obtain all such information, evidence and reports as may be required for submissions on penalty.
- 3.07 When a defendant has advised that he/she intends to plead guilty but the proceedings have not been finalised on the second return then the Court shall, if reasonably possible, finalise the proceedings and impose penalty upon the third return of the complaint/information.
- 3.08 If, on the second return of the complaint/information, the defendant advises the Court that he/she intends to plead not guilty, then the Court must adjourn/remand the proceeding for a further 8 weeks to enable the parties to comply with the provisions of Rules 11 and 26 of the Rules and to advise the Court of their compliance.
- 3.09 If on the third return of the complaint/information, the defendant wishes to plead not guilty then the Court must fix a date for:
- (a) the holding of a pre-trial conference - being a date not more than 20 weeks after the first return of the complaint/information;
 - (b) the commencement of the trial - being a date not more than 26 weeks from the date of the first return of the complaint/information.
- 3.10 When the Court sets a date for trial the proceedings shall be listed to continue as follows: -

Adelaide Magistrates Court

On successive days over the balance of the week in which it is listed and thereafter on successive days for the balance of the week to which it is adjourned/remanded until the sworn evidence is completed.

Regional Courts

On successive days until the sworn evidence is completed.

Circuit Courts

On such successive days as may be available during the circuit week.

- 3.11 The Court will expect counsel to make realistic and achievable estimates of the length of trials to be listed and to be available for the whole of the period for which the trial has been listed.
- 3.12 The Court may depart from these practice directions where it considers it is necessary to do so in the interests of the administration of justice but in doing so shall make orders designed to preserve the spirit and intention of these practice directions.
- 3.13 In all proceedings involving allegations of a sexual offence where the victim of the offence is a child, the Courts shall implement the effect of section 48B of the *Magistrates Court Act 1991* by-
- (a) ensuring that in matters dealt with summarily, priority is given to listing pre-trial proceedings and listing the trial and shall minimise adjournments;
 - (b) in major indictable matters, ensuring that priority is given to the listing of the answer the charge date and completion of the committal proceedings consistent with compliance with the requirements of the *Summary Procedures Act 1921*.

4.00 WITNESSES - *Magistrates Court Act 1991*

- 4.01 An order pursuant to section 20 of the *Magistrates Court Act 1991* for the issue of the summons to a witness or for the issue of a warrant for the arrest of a witness shall be made by a Magistrate.
- 4.02 The seal of the relevant registry of the Court shall be placed on a summons to a witness or warrant for the arrest of a witness.

5.00 INTERVENTION ORDERS, RESTRAINING ORDERS, FOREIGN RESTRAINING ORDERS AND CONSEQUENTIAL ORDERS UNDER THE *INTERVENTION ORDERS (PREVENTION OF ABUSE) ACT 2009*

- 5.01 The seal of the relevant registry of the Court shall be placed on orders/notices on the following forms-
- No. 29 - Interim Intervention Order Summons
 - No. 29A - Summons for Paedophile Restraining Order
 - No. 29B - Summons (Child Protection Restraining Order)
 - No. 30 - Intervention Order
 - No. 31A - Paedophile Restraining Order and Summons
 - No. 31B - Restraining Order (Child Protection) and Summons
 - No. 31C - Restraining Order (Paedophile)

- No. 31D - Restraining Order (Child Protection)
- No. 33 - Restraining Order as Varied
- No. 34 - Order for Revocation of Restraining Order
- No. 42 - Notice of Registration of Foreign Intervention Order
- No. 46 - Order for Variation or Revocation of Intervention Order

6.00 PRELIMINARY EXAMINATION

The following directions apply in relation to the hearing of matters listed in the Adelaide Magistrates Court for committal pursuant to section 107 of the *Summary Procedures Act 1921*:

- 6.01 Provided that both parties agree, a case conference may be requested by oral application of either the DPP or the accused on the date listed for the accused to answer the charge.
- 6.02 The case conference will be listed no sooner than 7 days after the application is heard.
- 6.03 Before the date fixed for the case conference, the DPP will file and serve a summary identifying the elements of each charge and the declarations that contain proof of each element.
- 6.04 Each case conference will be presided over by a magistrate.
- 6.05 There will be a maximum of 4 case conferences held in any week.
- 6.06 The proceedings at each case conference will be recorded.
- 6.07 The defendant will be present at the case conference.

7.00 CRIMINAL LAW CONSOLIDATION ACT 1935, DIVISION 8A – MENTAL IMPAIRMENT PROVISIONS

- 7.01 Notice that the Court has declared a person to be liable to supervision under Part 8A of the *Criminal Law Consolidation Act 1935* shall be given to the Minister of Health in the first form contained in Schedule 1.
- 7.02 Notice that the Court has made a supervision order pursuant to section 269O of the *Criminal Law Consolidation Act 1935* shall be given to the Minister of Health in the second form contained in Schedule 1.

8.00 PROTECTION OF IDENTITY OF ALLEGED VICTIMS OF SEXUAL OFFENCES IN COMMITTAL PROCEEDINGS

- 8.01 The following direction applies to committal proceedings for sexual offences. For the purposes of this clause, a sexual offence includes any offence involving a sexual act or an attempt to commit a sexual act.
- 8.02 The name of the alleged victim shall not be read aloud in Court. The alleged victim can be referred to as ‘another person’ or by other suitable non identifying language.

DATED this 1st day of October 2015



MAGISTRATE ANDREW JAMES CANNON
ACTING CHIEF MAGISTRATE

SCHEDULE 1



MAGISTRATES COURT OF SOUTH AUSTRALIA

**Notice that the Defendant has been Declared
to be Liable to Supervision**

Criminal Law Consolidation Act 1935 – Part 8A

Court File Number:

Sitting at:

Registry Address:

Phone Number:

Fax Number:

Particulars of Defendant

Name:

Address:

Date of Birth:

Particulars of Offence(s)

Date of Offence: .

Offence Location:

Offence:

Section and Act:

TO: Minister for Health
G.P.O. Box 2555
ADELAIDE SA 5001

TAKE NOTICE: that on theday of, 20.... the Court declared the abovenamed defendant to be liable to supervision under Part 8A of the *Criminal Law Consolidation Act 1935* after finding that:

Magistrates Court Consolidated Criminal Practice Directions

- (1) he/she was unfit to stand trial upon the above offence(s) pursuant to ss269M.B.(2)*
- (2) he/she was unfit to stand trial upon the above offence(s) pursuant to ss269N.B.(3) or (5)(b)*
- (3) he/she was mentally incompetent to commit the above offence(s) pursuant to ss269F.B.(3)*
- (4) he/she was mentally incompetent to commit the above offence(s) pursuant to ss269G.B.(3)(a)*or(5)(b).*

A limiting term has yet to be fixed.

This notice is given so that you may comply with ss269Q(1) of the *Criminal Law Consolidation Act 1935*, which requires that a report be sent to the Court within 30 days.

DATED this day of , 20...

Registrar

AND TO: Director of Public Prosecutions/Criminal Justice Unit of SAPOL
 Clinical Director, Forensic Mental Health Service
 Solicitor for the defendant

**(Delete those not applicable)*



MAGISTRATES COURT OF SOUTH AUSTRALIA

Notice of Disposition of a Person Declared to be Liable to Supervision

Criminal Law Consolidation Act 1935 – Section 269O

Court File Number:

Sitting at:

Registry Address:

Phone Number:

Fax Number:

Particulars of Defendant

Name:

Address:

Date of Birth:

Particulars of Offence(s)

Date of Offence:

Offence Location:

Offence:

Section and Act:

TO: Minister for Health
G.P.O. Box 2555
ADELAIDE SA 5001

TAKE NOTICE: that on theday of, 20.... the Court ordered:

* that the defendant be committed to detention and fixed a limiting term of

* that the defendant be released on licence on the following conditions:

and a fixed limiting term of

DATED this day of , 20...

Registrar

AND TO: Director of Public Prosecutions/Criminal Justice Unit of SAPOL
 Clinical Director, Forensic Mental Health Service
 Solicitor for the defendant

**Delete as appropriate*