

# SUPREME COURT OF TASMANIA

## PRACTICE DIRECTION

**No.2 of 2016**

**5 September 2016**

The following Practice Direction is published by direction of the Chief Justice, the Honourable Justice Blow.

This practice direction replaces Practice Direction 1 of 2013 following the recent repeal of the *Criminal Code* s185(2). Changes have been made to paragraph 6 as it is now no longer required that preliminary proceedings in relation to rape charges will always be dealt with by magistrates.

### **APPLICATIONS FOR PRELIMINARY PROCEEDINGS ORDERS:**

The Chief Justice and the Judges of the Supreme Court have determined that unless otherwise advised by a Judge:

1. Counsel intending to seek a preliminary proceedings order are to file and serve an application not less than 7 days prior to the directions hearing at which the order will be sought.
2. Such applications must be filed with the Supreme Court and delivered to the office of the Director of Public Prosecutions, or, where the DPP is the applicant, to the accused's legal representative.
3. Such applications must also be sent electronically to the relevant registry of the Supreme Court. The email addresses are:  
Hobart : "SupremeCourtHobart@supremecourt.tas.gov.au"  
Launceston : "SupremeCourtLaunceston@supremecourt.tas.gov.au"  
Burnie : "SupremeCourtBurnie@supremecourt.tas.gov.au"
4. Each application for a preliminary proceedings order must include the following information:
  - a) The name of the accused, the relevant complaint number or numbers and the date of the committal order.
  - b) The information required by section 331B of the *Criminal Code* 1924 including:
    - i. the names of the witnesses sought to be questioned;
    - ii. the matter or matters in respect of which each witness is to be questioned; and
    - iii. a brief statement of the reasons why the evidence of those witnesses is relevant to that matter and why cross examination or examination of those witnesses is justified;

- iv. in cases where the witness is an affected person within the meaning of the *Justices Act 1959*, a brief statement of the exceptional circumstances upon which the application will rely.
  - c) An estimate of the hearing time necessary for the preliminary proceeding.
  - d) A draft of the orders that the applicant wishes the court to make.
- 5. An example of a form of application can be found at the foot of this practice direction.
- 6. After delivery of the application and before the directions hearing, the accused's legal representative and Crown Counsel are to confer to identify areas of agreement or disagreement with respect to the request, an estimated hearing time for the preliminary proceedings and identify a tentative date upon which, and the place at which, the preliminary proceeding can be heard.

With regard to identifying a date and time when a preliminary proceeding can be heard, unless otherwise advised by the Court of Petty Sessions the following details apply to preliminary proceedings:

- a) In cases involving homicide, sexual matters, or Commonwealth offences, preliminary proceedings will be heard by justices of the peace if the parties agree to that course, or if the Court so orders. If the parties do not agree to that course, and the Court does not so order, then the preliminary proceedings in such cases will be dealt with by magistrates.
- b) In other cases the preliminary proceedings will be dealt with by justices of the peace.
- c) Information about possible hearing times will be available from the Court of Petty Sessions in the district where the order of committal was made. If the preliminary proceedings are to be dealt with by a magistrate, contact should be made with the clerk of the magistrate who made the committal order. As magistrates' diaries are subject to frequent change, it is recommended that tentative dates be obtained shortly before the directions hearing at which the preliminary proceedings order is sought.
- d) If the preliminary proceedings are to be conducted by a justice of the peace, information about available hearing times should be obtained from the Office of the Director of Public Prosecutions.

FORM FOR NOTICE OF REQUEST FOR PRELIMINARY PROCEEDINGS ORDERS.

(This form is an example only and should be amended as required by particular circumstances. It is based on a form drafted by the Legal Aid Commission of Tasmania.)

IN THE SUPREME COURT OF TASMANIA  
HOBART/LAUNCESTON/BURNIE REGISTRY

No                      of 20

IN THE MATTER OF:

**<applicant's name>**                      Applicant

AND

**<respondent's name>**                      Respondent

Pursuant to s331B of the *Criminal Code 1924*:

**<accused's name>**                      was committed to  
this jurisdiction on  
**Complaint number**                      on the                      day of                      20  
and is next before this jurisdiction on the                      day of                      20 .

**<applicant's name>**                      makes application  
**<for leave pursuant to s331B(2A) of the Criminal Code and>**  
for a Preliminary Proceedings Order in respect to the following:

I. Witness: <name of witness>

(a) *Matter/s in respect of which the witness will be questioned:*

**<details>**

(b) *It is submitted that the evidence of this witness is relevant and that cross examination / examination of the witness is justified for the following reasons:*

**<details>**

(c) *This witness is / is not an affected person within the meaning of the Justices Act 1959.*

**<Repeat details required at paragraph 1 as necessary for each witness>**

It is estimated that the taking of depositions will require a hearing time of **<estimated hearing time>**.

Attached and marked Annexure 'A' are the draft orders that the Applicant is seeking the Court make.

Dated this                      day of                      20

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**<name of legal practitioner> for and  
on behalf of <applicant's name>**

TO: The Registrar  
Supreme Court of Tasmania  
Salamanca Place  
HOBART TAS 7000

**AND TO: <address of office of the Director of Public Prosecutions, or, where the DPP is the applicant, to the accused's legal representative >**

Annexure "A"

Orders sought:

1. That the witness(es) below give evidence on oath in preliminary proceedings in the Magistrates Court in **<location of Court>** on the **<date>** at **<time>**.

**<list names of all witnesses>**

2. Examination / cross examination of **<name of witness>** is to be limited to the following matter(s):

(a)

(b)

(c)

**<repeat as necessary for each witness>**