

SUPREME COURT OF TASMANIA

PRACTICE DIRECTION

No 2 of 2015

27 October 2015

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

REMITTING OF CRIMINAL MATTERS TO THE MAGISTRATES COURT

- 1 The judges wish to make greater use of the power to remit criminal matters to the Magistrates Court pursuant to s308 of the *Criminal Code*. In future, when considered appropriate, the judges would like to make orders remitting matters to the Magistrates Court in two classes of proceedings:
 - Proceedings in which a defendant has been charged with multiple summary offences, and a relatively small number of indictable offences that are not of great seriousness.
 - Proceedings in which a defendant has been committed for trial on a charge or charges that are not so serious that it would be inappropriate for a magistrate to deal with them.
- 2 By virtue of s308(1) and (4), an order under s308 may not be made unless a judge is satisfied that a fine not exceeding 20 penalty units (currently \$3,080) or imprisonment for a term not exceeding one year will be adequate punishment for the circumstances of the particular case. Those subsections read as follows:

"(1) In any case in which it appears to a judge that the punishment provided in this section will be adequate for the circumstances of the particular case, he may order that the accused shall be tried summarily before a magistrate as hereinafter provided."

"(4) A magistrate to whom the trial of any person has been remitted under the provisions of this section shall, upon conviction of the accused person, have power to inflict a sentence of a fine not exceeding 20 penalty units or imprisonment for a term not exceeding one year."
- 3 By reason of s308(7), no order under the section will be made without the consent of, or an application by, the accused. That subsection reads as follows:

"(7) An order shall only be made under subsection (1) on an application made to a judge in chambers or in an open court, and no such application shall be made otherwise than by, or with the consent of, the accused person."

- 4 An order under s308 may only be made if it is sought by the State or the accused. That is because of s308(7), which is set out above. The Court will therefore invite the State and the accused, in cases where a s308 order may be appropriate, to consider whether to apply for one.
- 5 For that purpose, when an order committing an accused person for trial is made, the staff of the Court will make enquiries with a view to identifying cases in which it may be appropriate to make a s308 order. Prosecutors and defence counsel may be asked to provide information as to the level of seriousness of particular cases, with a view to the making of a s308 application being considered in the following sorts of cases:
- Cases in which a defendant has been charged with multiple summary offences, and a relatively small number of indictable offences.
 - Cannabis cases concerning 50 plants or fewer (trafficking or cultivating for sale).
 - Charges of sexual intercourse with a young person under the age of 17 years, contrary to s124(1) of the *Criminal Code*, where the accused is 25 years old or younger, and the complainant is at least 15 years old.
 - Charges of being found prepared for the commission of a crime, contrary to s248 of the *Criminal Code*.
 - Charges of unlawfully setting fire to vegetation, contrary to s268A of the *Criminal Code*.
 - Charges of unlawfully setting fire to chattels (including motor vehicles) contrary to s269 of the *Criminal Code*.
 - Charges of indecent assault, contrary to s127(1) of the *Criminal Code*, when the alleged assault appears to be relatively minor.