



## Magistrates' Court of Victoria

### Practice Direction

**No. 5 of 2023**

## GROUND RULES HEARINGS & INTERMEDIARIES

### Witnesses under the age of 18 years and adults who are cognitively impaired

This Practice Direction sets out the processes to give effect to Part 8.2A of the *Criminal Procedure Act 2009* (CPA) providing for ground rules hearings and intermediaries in eligible proceedings involving:

- a witness under the age of 18 years; or
- a witness who is cognitively impaired.

This Practice Direction revokes Practice Directions No. 2 of 2015, No. 6 of 2018 and No. 23 of 2020.

This Practice Direction commences on 30 July 2023.

#### A. Background

At a ground rules hearing, the Court considers the communication, support or other needs of a witness and decides how the proceeding is to be conducted to fairly and effectively meet those needs.<sup>1</sup>

The Court **may** hold a ground rules hearing for an eligible witness<sup>2</sup> in a criminal proceeding for:

- a sexual offence; or
- a family violence offence; or
- an indictable offence which involves an assault on, or injury or a threat of injury to, a person; or
- a related summary assault offence against s 23 or 24 of the *Summary Offences Act 1966*.<sup>3</sup>

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<sup>1</sup> s 389AB CPA.

<sup>2</sup> Eligible witnesses are: a person under the age of 18 years; a person who is cognitively impaired; or a complainant in a charge for a sexual offence: s 389A(3) CPA

<sup>3</sup> s 389A CPA.

A ground rules hearing **must** be held in criminal proceedings referred to in s389A(1):

- if an intermediary has been appointed; or
- the witness is a complainant in a proceeding for a sexual offence.<sup>4</sup>

Directions which may be made at a ground rules hearing include the matters detailed in s 389E(2) CPA, 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.

## **B. Ground rules hearings – with an Intermediary**

Intermediaries are trained professionals with specialist communication skills. They are officers of the Court and have a duty to act impartially.<sup>5</sup> Their expertise is used to facilitate witnesses under 18 years<sup>6</sup> and cognitively impaired adults in giving evidence in hearings under s389A(1) CPA.

The Intermediary Program (IP) operates more narrowly than the scheme in the Act. It is not currently available state-wide for all witnesses who would otherwise be eligible for assistance.

The IP is available at the following Magistrates' Court venues: Bendigo, Geelong, Melbourne and Warrnambool.

At those Court venues, an intermediary may be appointed to provide assistance to a person if that person is aged under 18 years, or is an adult with a cognitive impairment and that person is also:

- a **complainant** in a sexual offence matter: or
- a witness in a homicide matter

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<sup>4</sup> s 389B(3) CPA. Note that Practice Direction No. 4 of 2023 covers the procedure for ground rules hearings in sexual offence proceedings where the complainant is aged 18 years or over and is not cognitively impaired.

<sup>5</sup> s 389(1)(2) CPA

<sup>6</sup> s 389F(1)(a) applies the Intermediaries Division to a witness under the age of 18 years "at the time at which the proceeding commences."

The IP has a limited capacity to accept 'out of scope' referrals in exceptional priority cases, subject to workload and resourcing constraints. A request for an intermediary to assist a child or cognitively impaired witness who falls outside the current referral criteria in a proceeding under s 389A(1) must be referred to the Supervising Magistrate for Sexual Offences, or their nominee, for consideration before any order appointing an intermediary is made.

## Directions

1. The Court may direct that a ground rules hearing is to be held on the application of a party or on its own motion.<sup>7</sup>
2. An application to appoint an Intermediary is to be listed at the contest mention or committal mention.<sup>8</sup>
3. If an Intermediary is appointed, a ground rules hearing must be held.<sup>9</sup>
4. The ground rules hearing will be listed no later than 7 days before the contested hearing.
5. Wherever possible, the ground rules hearing will be listed before the Magistrate who is to hear the summary contest or committal.
6. The Intermediary's Assessment Report regarding the witness's communication needs must be filed with the Court and provided to the parties at least 7 days before the ground rules hearing.
7. The prosecutor and defence practitioner who will appear at the summary hearing or contested committal **must** attend the ground rules hearing. The accused **may** attend the ground rules hearings.<sup>10</sup>
8. The prosecutor and defence practitioner are expected to discuss their proposed questioning of the witness with the Intermediary prior to the ground rules hearing. If requested by the Intermediary, the parties are expected to provide the proposed topics and general form of questioning to the Intermediary to ensure that they are in a form that will be understood by the witness.
9. At the end of the ground rules hearing, the Magistrate may make directions (ground rules) for the questioning of the witness.
10. The parties are expected to be familiar with, and to adhere to, the [Multi-Jurisdictional Court Guide for the Intermediary Program: Ground Rules Hearings and Intermediaries](#).

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<sup>7</sup> s 337(1) CPA

<sup>8</sup> An order appointing an Intermediary for a committal hearing will only be relevant in homicide proceedings as contested committal proceedings have been abolished for sexual offence charges involving a complainant who is under the age of 18 years or who is an adult with a cognitive impairment – see s 123 CPA.

<sup>9</sup> s 389A(1) CPA

<sup>10</sup> s 389D(1)(b) CPA provides that an unrepresented accused must attend a ground rules hearing

### **C. Ground rules hearings – without an Intermediary**

#### **Directions**

11. The Court may direct that a ground rules hearing is to be held on the application of a party or on its own motion.<sup>11</sup>
12. An application made by a party for the Court to direct the holding of a ground rules hearing may be made orally or in writing and is to be listed at the contest mention or committal mention, or as otherwise directed by the Court.<sup>12</sup>
13. The Court may direct the informant or the prescribed person<sup>13</sup> to complete the [ground rules hearing questionnaire](#).
14. The completed ground rules hearing questionnaire must be served on the Parties and filed with the Court **no later than 7 days** before the ground rules hearing.
15. The ground rules hearing will be listed no later than 7 days before the contested hearing.
16. Wherever possible, the ground rules hearing will be listed before the Magistrate who is to hear the summary contest or committal.
17. The prosecutor and defence practitioner who will appear at the contested proceeding **must** attend the ground rules hearing. The accused **may** attend the ground rules hearing.<sup>14</sup>
18. At the end of the ground rules hearing, the Magistrate may make directions (ground rules) for the questioning of the witness.
19. This Practice direction should be read in conjunction with [Multi-Jurisdictional Court Guide for the Intermediary Program: Ground Rules Hearings and Intermediaries](#).

### **D. Transfer of suburban summary stream sexual offence contests involving child or cognitively impaired complainants into Melbourne**

#### **Directions**

20. In consultation with the Sexual Offences List (SOL) Coordinator at Melbourne Magistrates' Court, criminal prosecutions for a sexual offence initiated in a suburban venue of the Court in the summary stream may be transferred into the Court at Melbourne to be listed in the SOL if the following pre-conditions are met:

20.1. The charges involve a child or cognitively impaired complainant; and

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<sup>11</sup> s 337(1) CPA.

<sup>12</sup> s 389B(2) CPA

<sup>13</sup> Being the police member who conducted the Video Recording of Evidence for the witness.

<sup>14</sup> S 389D(1)(b) CPA provides that an unrepresented accused must attend a ground rules hearing.

- 20.2. The charges do not resolve to a plea of guilty following a summary case conference.<sup>15</sup>
21. Charges transferred into Melbourne under this Direction will be listed for contest mention at the next available listing in the Melbourne SOL.
22. Matters that are transferred to the Magistrates' Court sitting at Melbourne will remain listed at Melbourne following the contest mention, unless otherwise directed by the Court.



**Justice Lisa Hannan**  
**CHIEF MAGISTRATE**

Date: 17 July 2023

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<sup>15</sup> Conducted under s 54 CPA