

**PRACTICE DIRECTION NO. 4 OF 2009**

**ARRANGEMENTS FOR WITNESSES PURSUANT TO THE  
*EVIDENCE (MISCELLANEOUS PROVISIONS) ACT 1991***

This Practice Direction takes effect immediately.

**1. Application**

1.1. This Practice Direction applies to criminal proceedings in the ACT Magistrates Court. The purpose of this Practice Direction is to ensure that the need for any special arrangements for witnesses that arise pursuant to the provisions of Parts 2, 4 and 4A of the *Evidence (Miscellaneous Provisions) Act 1991* (the Act) are identified at an early stage in the proceedings to ensure compliance with the Act and to ensure appropriate court facilities are available.

1.2. The Act provides for the following special arrangements in relation to particular categories of witnesses:

- the evidence of prosecution witnesses who are children or intellectually impaired (and some other witnesses) may be given and recorded at a pre-trial hearing in sexual offence proceedings: Division 4.2B;
- audiovisual recordings of police interviews of child complainants are admissible as evidence in sexual and violent offence proceedings: Division 4.2A;
- evidence can be given from places other than the courtroom: Part 2 (children) and Division 4.3 (other witnesses) via an audiovisual link;
- the accused may be screened from certain witnesses in court: s 38C;
- a self represented accused will not be permitted to cross-examine complainants and certain other prosecution witnesses in certain proceedings: s 38D;
- certain witnesses may have a support person in court: ss 38E, 81C;

- the evidence of some witnesses may be given in a closed court: ss 39, 81D.

## 2. “*Special Arrangements for Witnesses*” form

2.1. In matters to which the provisions of the Act apply, no later than 14 days prior to the Case Management Hearing, the DPP will serve a *Special Arrangements for Witnesses* form, with a copy of the brief, on the defendant’s legal representative or the defendant. This form will list the name of each witness for which a special arrangement is required or will be sought, and the special arrangement to which they are entitled or which the DPP will seek. This form will indicate for each witness listed the following information:

- the type of proceeding, i.e. sexual offence, serious violent offence, less serious violent offence, or other offence;
- if the witness is a child, the date of birth;
- whether the witness is the complainant or other prosecution witness;
- whether the witness is a *relevant person* in relation to the accused as defined in section 38B of the Act;
- whether the witness is intellectually impaired, has a disability or is otherwise entitled under the Act.

The DPP will also serve the form on the defence electronically (where possible).

2.2. The defendant or his or her legal representative will be required to indicate on the *Special Arrangements for Witnesses* form if there is any objection to any of the special arrangements sought, and if so, the reasons for that objection.

2.3. No later than 48 hours before the Case Management Hearing, the defendant or his or her legal representative is to complete the form and return it to the DPP as provided for on the form. This may also be done electronically by emailing it to the following email address: [dppCMH@act.gov.au](mailto:dppCMH@act.gov.au) .

2.4. The DPP will provide to the Court a copy of the completed *Special Arrangements for Witnesses* form at least 24 hours before the Case

Management Hearing. An electronic copy of the form should also be provided at the same time to the Listing Co-ordinator at [mclistings@act.gov.au](mailto:mclistings@act.gov.au) .

### **3. Status of Witnesses**

- 3.1. Where a finding by the court is required in relation to certain witnesses before they are entitled to the various special arrangements under the Act pursuant to ss 38C(1)(c)(ii), 38D(1)(c)(ii), 38E(1)(c)(ii), 39(1)(c)(ii), 40P(1)(c), or 42(1)(c)(ii), it will be indicated by the DPP on the *Special Arrangements for Witnesses* form, and the DPP will bring the basis of such a requirement to the Court's attention at the Case Management Hearing. The DPP will provide the Court at that time with appropriate evidence by affidavit to support the making of the required finding.
- 3.2. Where such a finding may be made without challenge, the Court may make that finding and any consequential orders at the Case Management Hearing.
- 3.3. If the defence wishes to object to the making of such a finding in relation to the status of a witness, or any consequential orders the Court may make, the defendant or his or her legal representative shall indicate that on the *Special Arrangements for Witnesses* form that is returned to the DPP. The basis of the objection shall also be brought to the Court's attention by the defendant or his or her legal representative at the Case Management Hearing.
- 3.4. In the case of such a dispute the issue may be dealt with by the Court at the Case Management Hearing or adjourned for consideration to a later date.

### **4. Audiovisual recordings of police interviews – Division 4.2A**

- 4.1. The DPP shall serve on the defence a notice pursuant to s 40G of the Act in relation to any audiovisual recording of a police interview that the prosecution intends to tender as evidence in chief in a sexual and violent offence proceeding pursuant to Division 4.2A of the Act no later than 14 days prior to the Case Management Hearing.

- 4.2. The defendant or his or her legal representative shall serve any notice pursuant to s 40H of the Act as soon as practicable, but in any event at least 5 working days before access is required.
- 4.3. The DPP and the defence are to indicate to the Court at the Case Management Hearing if it is proposed to seek an order pursuant s 40E(3)(b) of the Act that the audiovisual recording be edited. The party seeking the order in relation to editing shall complete and provide to the Court at the Case Management hearing an Application to Edit Audiovisual Recording in the form of Annexure A.
- 4.4. If the DPP and the defence are in agreement in relation to those parts of the audiovisual recording for which an order for editing is sought, the DPP is to provide the Court with a copy of the transcript of the audiovisual recording with any editing for which an order is sought appropriately marked on the transcript. This marking is to be done in such a way as to permit the court to read the parts of the transcript sought to be deleted.
- 4.5. If there is no agreement the Court may adjourn the application to another date. Where practicable the application may be listed for determination before the Magistrate allocated to hear the proceedings. The Court may make those directions in relation to the conduct of the application as it sees fit.

## **5. Pre-Trial Hearing – Division 4.2B**

- 5.1. The DPP will indicate on the *Special Arrangements for Witnesses* form if a pre-trial hearing is to be applied for in relation to a witness within the meaning of s 40P of the Act and the basis for the application. The defendant or his or her legal representative shall indicate on the returned form if there is any objection to the witness's evidence being given at a pre-trial hearing and the basis for that objection.
- 5.2. The Court may hear and determine the application at the Case Management Hearing, or adjourn the hearing of the application to a later date. Where a pre-trial hearing is ordered the Court shall allocate the earliest available date for such a hearing.

- 5.3. The audiovisual recording of evidence taken at the pre-trial hearing will remain with the Court. No copies will be made available to the parties, however a transcript of the evidence may be ordered through the usual means. The DPP and the defendant and his or her legal representative may make arrangements to view the audiovisual recording at the court by contacting the Registrar.
- 5.4. Any application for editing of such an audiovisual recording prior to hearing shall be made in accordance with the procedures set out in paragraphs 4.3 to 4.5 of this Practice Direction, except that such application shall be made as soon as practicable, but at least within 28 days, after the pre-trial hearing. It is anticipated that editing of pre-trial hearing recordings should only be sought in limited circumstances, such as when evidence is taken from the witness in a voir dire and subsequently ruled inadmissible.

Dated            June 2009

By direction of the Chief Magistrate and Magistrates

R J Cahill

Chief Magistrate

*s 40E(3) Evidence (Miscellaneous Provisions) Act 1991*

**APPLICATION TO EDIT AUDIOVISUAL RECORDING**  
(A separate application is to be completed for each recording)

**SECTION A**

Charge numbers:

Defendant's name:

Defendant's Solicitor:

(if applicable)

Name of witness:

Name of party applying:

**SECTION B**

**Attach a copy of the transcript of the audiovisual recording the subject of the application clearly marking the deletions sought (but not so as to prevent the reading of the parts of the transcript sought to be deleted).**

**SECTION C**

**For each deletion sought, clearly indicate the basis for the requested editing.**

- 1.
- 2.
- 3.

This application is / is not made with the consent of the other party to the proceedings.

DATE: .....

.....

Counsel/ Solicitor/ Defendant / DPP