

# Children's Court of New South Wales

## Practice Note No. 12

### Criminal proceedings in the Children's Court

#### 1. Commencement

- 1.1 This Practice Note commences on 18 May 2018.

#### 2. Objective

- 2.1 This Practice Note sets out the procedure to be followed for criminal proceedings in the Children's Court.

#### 3. Application

- 3.1 This Practice Note applies to criminal proceedings commenced on or after 30 April 2018.

#### 4. Definitions

- 4.1 In this Practice Note

**Committal proceedings** means a hearing before a magistrate for the purpose of deciding whether a person charged with an indictable offence should be committed for trial or sentence under Division 3A of the *Children (Criminal Proceedings) Act 1987*.

**Case conference** means a conference held between the lawyer for the young person and the prosecutor under Division 5 of Part 2 of Chapter 3 of the *Criminal Procedure Act 1986*.

**Case conference certificate** means a document pursuant to s 75 of the *Criminal Procedure Act 1986* in the prescribed form.

**Charge certificate** means a document pursuant to s 66 (1) of the *Criminal Procedure Act 1986* in the prescribed form.

**Indictable offence** means an offence that may be prosecuted on indictment, as defined in s 3 of the *Criminal Procedure Act 1986*.

**Serious children's indictable offence (SCIO)** means an offence as defined in s 3 of the *Children (Criminal Proceedings) Act 1987*.

**Serious children's indictable offence committal proceedings** means proceedings before a magistrate for the purpose of committing a person charged with a serious children's indictable offence conducted under Part 2 of Chapter 3 of the *Criminal Procedure Act 1886*.

**Summary proceedings** means any criminal proceeding before the Children's Court other than committal proceeding or serious children's indictable offence committal proceeding.

## 5. Case management of criminal proceedings

- 5.1 Criminal proceedings in the Children's Court are to progress as expeditiously as possible.
- 5.2 The following timetables are to apply to all criminal proceedings in the Children's Court unless the Court is satisfied that it is in the interests of justice to depart from a timetable specified in this Practice Note.
- 5.3 In particular, where a young person is in custody the timeframes specified in this Practice Note should be shortened to the fullest extent possible.

## 6. Summary proceedings

- 6.1 Pursuant to s 31(1) of the *Children (Criminal Proceedings) Act 1987* an offence before the Children's Court will be dealt as a summary proceeding under Chapter 4 of the *Criminal Procedure Act 1986* unless;
  - a) it is a serious children's indictable offence or
  - b) unless and until it is to be dealt with as a committal proceeding under s 31(2), (3) or (5) of the *Children (Criminal Proceedings) Act 1987*.
- 6.2 If the young person pleads not guilty in a summary proceeding the Court will direct:
  - a) the prosecutor to serve the brief of evidence within **4 weeks**, and
  - b) the Court will adjourn the case for **7 weeks** to allow the young person to reply to the brief,unless;
  - a) it is an offence for which a brief is not required under clause 24 of the *Criminal Procedure Regulation 2017* or

- b) the offence is a domestic violence offence as defined in section 11 of the *Crimes (Domestic and Personal Violence) Act 2007* but is not a prescribed sexual offence as defined by section 3 of the *Criminal Procedure Act 1986* (see paragraph 7).
- 6.3 On the next court date if the young person maintains his or her plea of not guilty the case will be listed for hearing at the earliest opportunity.
- 6.4 If the young person pleads guilty or the Court finds the young person guilty the Court may sentence the young person on the same day or the case may be adjourned for sentence.
- 6.5 If the Court directs that a background report be prepared by Juvenile Justice the Court will adjourn the case:
  - a) for **6 weeks** in the case of a young person who is not in custody; and
  - b) **2 weeks** in the case of a young person who is in custody.

## **7. Summary proceedings for domestic violence offences**

- 7.1 Where a young person is charged with a domestic violence offence as defined in section 11 of the *Crimes (Domestic and Personal Violence) Act 2007*, the following procedure will apply instead of the procedure referred to in paragraph 6.2 and 6.3 except where the offence is a prescribed sexual offence as defined by section 3 of the *Criminal Procedure Act 1986*.
- 7.2 The prosecution shall serve on the young person at the first available opportunity and not later than the first mention date in court, a copy of the mini brief of evidence upon which the prosecution relies. The mini brief may be served upon the young person's lawyer.
- 7.3 The mini brief is to include:
  - a) the alleged facts;
  - b) a copy of the victim's statement; and
  - c) any photographs on which the prosecution will rely.
- 7.4 The Children's Court may require the young person to enter a plea at the first time the matter is mentioned in court.
- 7.5 If no plea can be entered at that time because the young person has not had a reasonable opportunity to view the recorded statement or obtain legal advice, the Court will allow an adjournment of not more than 14 days for a plea to be entered.
- 7.6 If the young person pleads not guilty the Court will:

- a) set a hearing date; and
- b) direct that the balance of the brief be served not less than 14 days before the date fixed for hearing, in accordance with s 183 of the *Criminal Procedure Act 1986*.

7.7 Where the defendant is legally represented, within 7 days of the service of the balance of the brief, the prosecutor should be advised of which witnesses are required for cross-examination and which, if any, witnesses statements can be tendered without the need to call them for cross-examination.

## **8. Committal proceedings under Division 3A of the *Children (Criminal Proceedings) Act 1987***

8.1 If a prosecutor intends to make a submission to the Children's Court that the Court should consider exercising its discretion under s 31(3) or (5) of the *Children (Criminal Proceedings) Act 1987* the prosecutor is to advise the young person and the Court at the earliest opportunity and no later than:

- a) in respect of a s 31(5) application: the time that a guilty plea is entered for the offence(s) for which the application relates and the matter is adjourned for a background report;
- b) in respect of a s 31(3) application: the time that the Court adjourns the matter for a summary hearing.

8.2 If the young person intends to inform the Children's Court that he or she wishes to have the case dealt with according to law under s 31(2) the young person is to notify the prosecutor and the Children's Court at the earliest opportunity.

## **9. Committal proceedings for serious children's indictable offences**

9.1 These clauses apply to proceedings that contain at least one SCIO offence, where all Court Attendance Notices/offences in the proceedings commenced on or after 30 April 2018.

9.2 On the first court appearance the Court will:

- a) direct the prosecutor to serve the brief of evidence within **8 weeks**; and
- b) the Court will adjourn the case for **8 weeks**.

9.3 On the second court appearance the Court will:

- a) confirm that the brief has been served by the prosecutor; and
  - b) will adjourn the case for **6 weeks** to allow for the filing of the charge certificate.
- 9.4 On the third court appearance:
- a) the prosecutor will file the charge certificate; and
  - b) unless a plea of guilty is entered the Court will adjourn the case for **8 weeks** to allow the case conference to occur within the first **6 weeks** of that period.
- 9.5 If the parties are unable to advise the Court the date set for the case conference at the time of the adjournment the proceedings are to be adjourned for **7 days** (or the sitting day closest to 7 days where the Court is not scheduled to sit in 7 days) to enable the setting of a date for the case conference.
- 9.6 Where an application is made for the examination of a prosecution witness the Court will appoint a hearing date for determination of the application **within 4 weeks** or as soon as practicable.
- 9.7 The Court will then direct the applicant to file and serve written submissions in support of the application within **2 weeks**.
- 9.8 The prosecution is to file and serve a reply to the written submissions no later than **48 hours** prior to the hearing date.
- 9.9 The application should not delay the case conference.
- 9.10 Following the case conference there will be a final court appearance at which the prosecutor is to file:
- a) a case conference certificate; and
  - b) any amended charge certificate;
- to enable the judicial officer to commit the young person for trial or sentence under Division 8 of Part 2 of Chapter 3 of the *Criminal Procedure Act 1986*.

Judge Peter Johnstone  
President, Children's Court of NSW  
Date: 11 May 2018