



# **MAGISTRATES COURT OF TASMANIA**

## **Practice Direction**

**I of 2021**

### **Preliminary Proceedings Application List**

Amendments to the *Justices Act 1959* effective from 1 July 2021 will transfer the hearing and determination of applications for preliminary proceedings orders from the Supreme Court to the Magistrates Court.

The Magistrates Court will have dedicated lists (preliminary proceedings application lists) to hear and determine applications for preliminary proceedings orders. There will be preliminary proceedings application lists in Hobart, Launceston and Burnie.

This practice direction sets out the process for dealing with indictable offences and filing applications for preliminary proceedings orders in the Magistrates Court.

Indictable offences will remain in each magistrate's general lists until the defendant enters a plea. If the defendant enters a plea of not guilty and indicates an intention to file an application for a preliminary proceedings order then the indictable offence will be adjourned into a preliminary proceedings application list.

If the defendant does not wish to apply for a preliminary proceedings order then the defendant will be committed to the Supreme Court for trial.

## Applications for Preliminary Proceedings Order

1. Counsel intending to seek a preliminary proceedings order are to file and serve an application not less than 7 days prior to the preliminary proceedings application listing.
2. A preliminary proceedings application must be filed with the Magistrates Court and delivered to the Office of the Director of Public Prosecutions (DPP), or, where the DPP is the applicant, to the defendant's legal representative.
3. Preliminary proceedings applications must also be sent electronically in word format to the relevant registry of the Magistrates Court. The email addresses are:
  - [registry.hobart@justice.tas.gov.au](mailto:registry.hobart@justice.tas.gov.au)
  - [registry.launceston@justice.tas.gov.au](mailto:registry.launceston@justice.tas.gov.au)
  - [registry.burnie@justice.tas.gov.au](mailto:registry.burnie@justice.tas.gov.au)
4. Each application for a preliminary proceedings order must include the following information:
  - a) The name of the defendant, the relevant complaint number or numbers and the date of the preliminary proceedings application listing.
  - b) The information required by section 62 of the *Justices Act 1959* 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;
    - iii. a 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 statement of the exceptional circumstances relied upon.
  - c) State whether the witness is, or may be, a person to whom section 71 of the *Evidence (Children and Special Witnesses) Act 2001* applies.

- c) An estimate of the hearing time for the hearing of the preliminary proceedings.
  - d) A draft of the orders sought.
5. The application form which must be used is attached to the practice direction.
6. After service of the application, and before the preliminary proceedings application listing, the defendant's legal representative and Crown Counsel are to confer to identify:
- a) areas of agreement or disagreement with respect to the application;
  - b) an estimated hearing time for the preliminary proceedings; and
  - c) whether section 7I *Evidence (Children and Special Witnesses) Act 2001* applies, or is likely to apply, to any proposed witness.
7. If a party opposes a preliminary proceedings order in relation to a witness or an aspect of a witness's evidence, the party opposing is to file that witness's statement with the Court one clear day prior to the preliminary proceedings application listing.
8. Preliminary proceedings will be heard by justices of the peace unless otherwise ordered by a magistrate.
9. If a preliminary proceedings order is made and section 7I of the *Evidence (Children and Special Witnesses) Act 2001* applies in relation to a witness, an assessment report may be ordered by the magistrate who made the preliminary proceedings order.
10. If paragraph 9 above applies, the magistrate who made the preliminary proceedings order will adjourn the matter to the original magistrate's list for a ground rules hearing pursuant to section 7K *Evidence (Children and Special Witnesses) Act 2001* and the preliminary proceedings hearing, at least in respect of the child or special witness, will be listed before that magistrate.

## **Other Related and Unrelated Summary Offences**

In addition to an indictable offence, a defendant may have other related and/or unrelated summary offences listed before a magistrate.

If a defendant pleads not guilty to an indictable offence, and indicates an intention to make an application for a preliminary proceedings order, the magistrate is to refer the indictable offence to the preliminary proceedings application list.

Related summary offences will be adjourned sine die and unrelated summary offences will remain in the original magistrate's list, unless the magistrate orders otherwise.

**C J Geason**

**Chief Magistrate**

21 June 2021

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

Complaint Number:

IN THE MATTER OF:

**<applicant's name>**

Applicant

AND

**<respondent's name>**

Respondent

### **APPLICATION FOR PRELIMINARY PROCEEDINGS ORDERS**

Pursuant to section 62 of the *Justices Act 1959*

**<defendant's name>** is next listed for preliminary proceedings application hearing on the  
day of            20

**<applicant's name>** makes application for a preliminary proceedings order in respect to the  
following:

I. Witness: **<name of witness>**

(a) *Matters 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.*

(d) *Section 71 Evidence (Children and Special Witnesses) Act 2001 applies, or is likely to apply,  
to this witness.*

**<Repeat details required at paragraph I 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 "A" are the draft orders that the Applicant is seeking.

Dated this                    day of                    20

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

TO: The Registrar  
Magistrates Court of Tasmania  
Hobart/Launceston/Burnie

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

**"A"**

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

Complaint Number:

IN THE MATTER OF:

**<applicant's name>**

Applicant

AND

**<respondent's name>**

Respondent

### **DRAFT ORDERS**

Orders sought:

- I. 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>**