**Contest Mention Guidelines**

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# Introduction

* 1. The Contest Mention system is intended to prevent wasted time and resources caused by unnecessary disputes and cases resolving on the day of the hearing.
  2. The Contest Mention Court has been operating since 1996. The Tasmanian arrangements are based upon the successful arrangements which operate in the Magistrates Court of Victoria.
  3. These guidelines were revised in 2022-23 prior to the proclamation of the *Magistrates Court (Criminal and General) Act 2019* and are intended to be as consistent with that Act as is reasonable and appropriate, given that the *Justices Act 1959* remains in force.

# Object of the Contest Mention System

* 1. The object of the system is the early identification of offences which are punishable on summary conviction (and ‘summary offences’ as that term is defined in the *Magistrates Court (Criminal and General) Act 2019*, s 4) where the defendant has pleaded not guilty:

1. which may not ultimately proceed to a contested hearing as a result of either:
2. (the prosecution being abandoned, or
3. a change of plea; and
4. which are defended solely as a result of an unjustified fear of the consequences of conviction.
   1. The *Magistrates Court (Criminal and General) Act 2019* s 86(4), provides that the purposes of a case management hearing in relation to a summary offence include –
5. to ascertain the precise issues in dispute in the hearing of the charge for the summary offence, whether or not the issues are of fact or law; and
6. to explore the possibility of disposing of any such charge other than by way of the hearing of the charge; and
7. to enable the duration of the hearing to be estimated as accurately as possible; and
8. to determine what evidence may be proved by affidavit or by agreement of the parties; and
9. to facilitate the course of the hearing of the charge.

# Advantages

* 1. Early identification of the categories of prosecutions referred to above has favourable implications for:
* the Court;
* the parties (including Tasmania Police and the Offices of the Tasmanian and Commonwealth Directors of Public Prosecutions);
* the legal profession including Tasmania Legal Aid; and
* the Tasmanian community generally

by virtue of the saving of resources and the earlier determination of pending prosecutions.

# Problems addressed

* 1. Effective case management will address:
* the abandonment of hearings and amendment of pleas too late to allow alternate use of judicial time.
* prosecutions proceeding to hearing as a result of misunderstandings and confusion as to the case of the opposing party
* hearings being unduly protracted as a result of inadequate definition of issues and the calling of evidence of matters which were not in dispute
* grossly inaccurate estimates of hearing time;
* hearings not ready to proceed when listed;
* pleas of not guilty based upon unjustified fears of the results of conviction.

# General principles

* 1. The contest mention magistrate will ensure that nothing is done which might possibly prejudice a fair trial.
  2. The magistrate will not do anything which might undermine the perception that the case is dealt with according to sentencing principle and that justice has been afforded to both the prosecution and defence.
  3. None of the material before the contest mention magistrate (including the magistrate’s own notes) will be available to the hearing magistrate unless the parties both consent.
  4. The parties must be prepared for the contest mention. The adjournment is to be used by the parties to ensure that disclosure is complete, advice given, instructions obtained and submissions prepared.
  5. It is essential that the prosecutor be both familiar with the file and have (or can readily obtain) instructions to give all necessary commitments on behalf of the complainant
  6. The defendant must attend the contest with their legal representative. The police prosecutor must have the authority to amend, discontinue or initiate complaints.

# Discretion of magistrate to conduct Contest Mention

* 1. A magistrate is not required to conduct a contest mention. However, the interests of justice are advanced by:
* the parties engaging in discussions about the issues for determination in order that they may be defined and narrowed; and
* the parties exploring whether any facts can be agreed and whether any witnesses might be excused from attendance at the hearing.

# Eligible matters

* 1. Subject to the categories of cases below, all offences which are punishable on summary conviction (indictable or not) may be dealt with in a contest mention list.
  2. A defendant who wants a contest mention hearing must be represented by a lawyer.
  3. The Director of Public Prosecutions has made it clear that the ODPP does not consent to certain matters being referred for sentence indication:
* cases of indecent assault under the *Criminal Code Act 1924* s 127; and
* matters remitted under s 308(3) of the *Criminal Code Act 1924*.
  1. In addition to those cases identified by the ODPP, the court may decline to give a sentence indication for other reasons, which may include that there is insufficient information available about the impact of the offence on any victim of the offence. Family violence offences may fall within this category.

# Listing of matters for Contest Mention

* 1. Generally, no more than 15 matters will be listed for any one contest mention list (morning session).
  2. The contest mention list is not to be treated as a general ‘mention’ list. If a party has requested contest mention, then they must be in a position to proceed to conduct the contest mention on the first date given. The parties must be confident that all the relevant material to be placed before the court at the contest mention will be available on that first contest mention date.
  3. Reasonable efforts will be made to accommodate the commitments of counsel as it is essential that counsel who has carriage of the matter should attend the contest mention hearing. However, once listed, the Court expects counsel will appear at the relevant time or arrange alternate counsel so that the contest mention can proceed.

# Operational arrangements

* 1. These arrangements operate in all Courts of Petty Sessions held in Tasmania - Hobart, Launceston, Burnie and Devonport.
  2. When a plea of not guilty is entered to an offence punishable on summary conviction/summary offence[[1]](#footnote-1) a magistrate will generally only give a sentence indication on the application of the defendant and with the consent of the prosecution. Case management may be ordered by a magistrate without the consent of the parties.
  3. After the plea of not guilty, once the defendant indicates that he or she is willing to adjourn to a contest mention list, the matter will then be adjourned to such a list - constituted by a different Magistrate - approximately 6 weeks thereafter.

# Procedure – sentence indication

* 1. The procedure for a sentence indication will usually take the following course:
* The prosecutor will state the facts to the Court and tender any record of offending.
* If appropriate to do so, the prosecutor will present:
* particulars of any injury, loss or damage suffered by a victim as a direct consequence of the offence; and
* a description of the effects on the victim of the commission of the offence.
* Defence counsel will make sentencing submissions and tender any material relied upon in mitigation of sentence.
* Prior to indicating a sentence, the magistrate may request Community Corrections to assess the defendant’s suitability for community-based orders:
* Community Correction Order - screening assessment for supervision and community service (including program conditions); and/or
* Home Detention.
  1. The proceedings may need to be stood down or adjourned to accommodate the usual turnaround times.
  2. The magistrate will indicate the sentence to be imposed should the defendant plead guilty. The magistrate will then ask the prosecutor whether they wish to make any submissions relating to the indicated sentence.
  3. Prosecutors will not be asked whether they ‘accept’ the indication:
     + It is not appropriate or necessary to ask the prosecution whether or not they agree to – or accept- the indicated sentence are as follows. Such a practice is contrary to the principle in *Barbaro v The Queen; Zirilli v The Queen* [[2014] HCA 2](http://www.austlii.edu.au/au/cases/cth/HCA/2014/2.html); (2014) 253 CLR 58, where the High Court held that it is neither the role nor the duty of the prosecution to proffer any statement of the bounds within which a sentence may be imposed. It is for the sentencing court alone to decide what sentence will be imposed.
     + Even though the prosecutor’s duty is to assist the court to avoid appealable error in sentencing, for the reasons set out in *Barbaro & Zirilli* a prosecutor is not required, and should not be permitted, to make a submission about the sentencing range or make a statement about the specific result in the particular case before the Court, see [7], [29]-[32], [38]-[39], [43] and [49].
  4. In light of the above, after the sentence is indicated, the magistrate may simply:
     + ask the prosecutor whether they wish to make any submissions; and thereafter
     + call upon the defendant to say whether they change their plea to guilty.
  5. A sentence indication should only be given once during a proceeding, unless the prosecution consents even so, subject to the magistrate deeming it appropriate to do so.
  6. Once the sentence indication is given, the defendant may require time to consider it before saying whether there will be a change of plea. The Court will ensure the defendant is given an adequate opportunity to consider the indication.
  7. If the defendant accepts the sentence indication and pleads guilty, the Court will then proceed to sentence the defendant according to the usual procedures and the indicated sentence will be imposed.
  8. If the defendant does not accept the indicated sentence, then the contest mention magistrate may then proceed to case management. A sample case management checklist is annexed to these guidelines. The parties should be in a position to address each of the relevant areas of enquiry.
  9. If the matter is to be listed for hearing, then it will be adjourned back into the list of the magistrate who originally referred it for either hearing or mention.

# Publication of proceedings

* 1. Contest mention list are conducted in open court. However, those who might publish reports of those proceedings should consider the following:
* cases in the contest mention list are the subject of pleas of not guilty. The prosecution file is commonly not yet fully complete in readiness for a hearing.
* the statement of facts which is read at the contest mention may not ultimately be the full factual position to be proved at the trial, given the incomplete state of the investigation/prosecution at the date of the contest mention. Therefore it may not be in the interests of the administration of justice to permit publication of a report of the contest mention – much in the same way that publication of a report of bail proceedings are prohibited.
* publication of a report of contest mention proceedings may unwittingly result in the publication of one witness’s evidence to another witness. That publication may adversely impact on the quality of the evidence led at the trial, resulting in the fairness of the trial being adversely impacted, in the event that the sentence indication is not accepted by the defendant. In this way, the publication of the report may ultimately place the prosecution at a disadvantage that would not be experienced if there was no publication of the proceedings.
* Publication of a report of contest mention proceedings may unwittingly result in the unfair disclosure of the defendant’s position to prosecution witnesses. The publication of the report may ultimately place the defendant at a disadvantage that would not be experienced if there was no publication of the proceedings.
  1. These considerations may, in particular cases, be proper justification for the Court to make a non-publication order in relation to contest mention proceedings during which a sentence is indicated unless the indication is accepted and there is a change of plea. The Court may take the view that the interests of the administration of justice are not advanced by prosecution having its case published

# Guidelines are discretionary

* 1. These provisions are guidelines only and should not be interpreted so as to deprive any party of any procedural or substantive right in relation to the particular case.
  2. The Guidelines reflect the philosophy that there must be no judicial inducement to plead guilty or to impose sanctions or undue pressure on parties.
  3. Although it is hoped that general acceptance of these Guidelines will result in consistency of approach, they do not purport to direct any magistrate how to conduct his or her court.
  4. These Guidelines are to be construed and applied - and the processes and procedures of the Court conducted - so as best to ensure the attainment of the above objects and the application of the above principles.

***Approved 07 / 02 / 2023***

**Contest Mention Check list for Magistrate ……………………………….**

**Estimated Hearing Time**

|  |  |
| --- | --- |
| **Factual Argument** yes/no | **Question of law** yes/no |
| **Self Defence** yes/no | **Alibi** yes/no |
| ***Voire Dire*** yes/no | **Identification** yes/no |
| **Record of interview** Duration…… | **To be viewed in court** yes/no  **Transcript available** yes / no |
| **Body Worn Camera**  Duration…… | **Transcript available** yes / no |
| **Video Link** yes/no |  |
| **Photographs** yes/ no  **Photographer required** yes/ no | **Oral Fluid/Breath/Blood Samples**  **Officer required** yes/ no  **Medical staff required** yes/ no  **FSST report served** yes/ no  **Analyst required** yes/ no |
| **Prosecution Witnesses:**  ……… | **Defence Witnesses:**  ……… |
| **Admissions/Concessions** | **Agreed facts *Evidence Act 2001* s.191:** |

1. See introduction, above. [↑](#footnote-ref-1)