

The Commencement of the *Justice Miscellaneous (Court Backlog and Related Matters) Bill 2020*: A Comment

Cameron Scott, Barrister - Edward Coke Chambers

As of 01 July 2021, the *Justice Miscellaneous (Court Backlog and Related Matters) Bill 2020*¹ (the Bill) comes into effect ahead of the *Magistrates Court (Criminal and General Division) Bill 2019*. The Bill is designed to improve efficiency within the justice system by enabling more matters to be heard in the Magistrates Court, along with the retention of indictable matters before and during the Preliminary Proceedings stage, so that indictable matters are better able to proceed to trial or sentencing in the Supreme Court.

The primary change relates to Preliminary Proceedings Applications. A Preliminary Proceedings Order allows a defendant, in an indictable case, to seek an order for the cross-examination of witnesses prior to trial. The previous requirement had been that any such application must be made by the filing of a written application within 7 days of the first Directions Hearing being held in the Supreme Court. However, because indictable cases are progressing to the Supreme Court without 1) completion of the police investigation or 2) provision of all the evidence to the defendant or their lawyers, cases were being routinely adjourned for weeks or months until this had occurred, thereby adding to the Supreme Court backlog.

The Tasmania Government has moved to fix the problem by allowing Magistrates to make an order for Preliminary Proceedings before a case is committed for trial or sentence. However, while this change does represent some progress, any progress will be stymied by the failure to introduce new laws to enable fulsome disclosure at an early stage. Inevitably the problems with disclosure will result in the same delays in the Magistrates Court hearing Preliminary Proceeding Applications. In effect, the problem of delay in indictable cases, will merely have been shifted to the Magistrates Court.

The new procedure will require defendants to inform the Court that a Preliminary Proceeding is required, and the proceedings will be adjourned to a Preliminary Proceedings list to enable the application to be filed. In addition, the Chief Magistrate has issued a Practice Direction (No.1 of 2021)², and a flowchart³ which illustrates how the new process will work. The filing requirement dictates that any Preliminary Proceedings Application must be filed 7 days prior to the appearance at the dedicated Preliminary Proceedings List, for allocation of a hearing date. However, the flowchart reveals that applications for adjournments may be entertained. Presumably, adjournments will be granted where the police investigation is incomplete, where disclosure has not occurred, or upon other grounds so long as it is in the interests of justice.

In addition, the Practice Direction requires preliminary proceeding applications to now state whether the witness is, or may be, a person to whom section 71 of the Evidence (Children and Special Witnesses) Act 2001 applies. This reflects the recent changes made to the Evidence (Children and Special Witnesses) Act 2001 to enable the Court to identify whether a case falls within the ambit of the Witness Intermediary Scheme, and then to make the necessary orders.

Ultimately, practitioners need to be familiar with the new amendments and procedures and will need to give more attention to the Preliminary Proceedings at an earlier stage in proceedings.

Dated: 01 July 2021.

¹ https://www.justice.tas.gov.au/__data/assets/pdf_file/0010/577180/Justice-Miscellaneous-Court-Backlog-And-Related-Matters-Bill-2020.pdf

² https://www.magistratescourt.tas.gov.au/__data/assets/pdf_file/0006/615642/No-1-of-2021-Practice-Direction-Preliminary-Proceedings-Application-List.pdf

³ https://www.magistratescourt.tas.gov.au/__data/assets/pdf_file/0006/615669/No-1-of-2021-Practice-Direction-Preliminary-Proceedings-Applications-Flowchart.pdf