



## **SUPREME COURT PRACTICE NOTE SC CL 12**

### **Supreme Court Common Law Division – Proceedings under the *Crimes (High Risk Offenders) Act 2006*, the *Terrorism (High Risk Offenders) Act 2017*, *Mental Health & Cognitive Impairment Forensic Provisions Act 2020* and Division 105A of the *Criminal Code Act 1995 (Cth)***

#### **Commencement and application**

1. This Practice Note was issued on 1 November 2023 and will commence on 3 November 2023.

#### **Application**

2. This Practice Note applies to proceedings brought pursuant to the *Crimes (High Risk Offenders) Act 2006*, the *Terrorism (High Risk Offenders) Act 2017* and Division 105A of the *Criminal Code Act 1995 (Cth)*, and Part 6 of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020 (MHCIFPA)*.

#### **Definitions**

3. In this Practice Note:
  - “CDO” means Continuing Detention Order;
  - “ESO” means Extended Supervision Order;
  - “EO” means extension order;
  - “IEO” means Interim Extension Order;
  - “ISO” means Interim Supervision Order;
  - “IDO” means Interim Detention Order;
  - “PSO” means Post-Sentence Order;
  - “Days” means working days;

“CHRO Act” means the *Crimes (High Risk Offenders) Act 2006* (NSW);

“THRO Act” means the *Terrorism (High Risk Offenders) Act 2017* (NSW);

“Commonwealth Criminal Code” means the *Criminal Code Act 1995* (Cth);

“MHCIFPA” means the *Mental Health & Cognitive Impairment Forensic Provisions Act 2020* (NSW).

### **Commencement of proceedings**

4. When a decision has been made to commence proceedings, the Plaintiff shall notify the Associate to the List Judge who will allocate a return date which will serve as the date for the first directions hearing.
5. Proceedings should be commenced at the earliest opportunity, and in any event should be commenced no later than 3 months prior to the expiration date of the defendant’s sentence or limiting term, or the expiration date of any existing ESO, CDO, EO or PSO as the case may be. In the event that the expiration date falls during the vacation period, the proceedings shall be commenced no later than 4 months prior to the expiration date.
6. At the time of commencing proceedings, and subject to any applicable statutory requirements as to the form of the application, the Plaintiff is to file and serve:
  - (i) the summons bearing the return date advised by the Associate to the List Judge;
  - (ii) an affidavit and accompanying Exhibit comprising the documentary material relied upon in support of the orders sought by the plaintiff (‘the Application Bundle’); and
  - (iii) a statement (no longer than 10 pages) setting out, in summary form, the plaintiff’s case and the order(s) sought, by reference to the contents of the Application Bundle.
7. The Plaintiff can seek leave to rely on any additional relevant expert reports and other affidavits upon which it relies at the first directions hearing.
8. In the event that the proceedings are not commenced within the period referred to in paragraph 5 above, the plaintiff shall, at the time of filing the summons, also file an affidavit explaining the delay in commencement.

### **First Directions Hearing**

9. Forty-eight hours prior to the first directions hearing, the Plaintiff shall notify the Associate to the List Judge of such of the following matters as may be applicable:

- (i) the expiration date of the defendant's non-parole period, sentence or limiting term, or the expiration date of any existing, EO, CDO, ESO or PSO;
  - (ii) the estimated length of the preliminary hearing, noting that if the parties become aware that the estimate is not sufficient, they are to notify the List Judge immediately and provide a revised estimate;
  - (iii) whether, in the event that the defendant is in custody, an order is sought pursuant to s 77 of the *Crimes (Administration of Sentences) Act 1999* (NSW) for the purposes of any preliminary hearing;
  - (iv) whether there are interlocutory applications or preliminary issues which require determination, including whether any public interest immunity claim is to be made, and whether any pseudonym, suppression or non-publication orders are sought and any application for material to be treated as "terrorism intelligence" pursuant to Part 5.3 of the THRO Act.
  - (v) whether any application is to be made pursuant to s 50 of the *Evidence Act 1995* (NSW).
10. The List Judge will allocate a date for the preliminary hearing according to judicial availability.

### **Preliminary Hearing**

11. Following the allocation of the date for the preliminary hearing, the parties will, within 3 business days, send agreed Short Minutes of Order to the Associate to the List Judge incorporating:
- (i) the allocated hearing date;
  - (ii) a timetable for the service of evidence;
  - (iii) a timetable for service of proposed statement of agreed facts;
  - (iv) a timetable for service of proposed section 50 summary;
  - (v) a timetable for the service of transcripts of electronic evidence that will be relied upon; and
  - (vi) a timetable for the service of so much of the material listed at paragraph 26 of this Practice Note as it relates to the preliminary hearing.
12. Subject to any contrary order made in accordance with, or by variation of, the timetable listed in paragraph 11(ii-v), no later than 7 days prior to the date of the preliminary hearing, the parties shall serve the material noted in paragraph 11(ii-v).
13. Subject to any contrary order, no later than 3 days prior to the preliminary hearing, the parties shall deliver to the Chambers of the Judge allocated to

hear the matter two copies of a paginated and indexed Court Book containing the originating process, the statement noted in paragraph 6(iii) above, any section 50 summary, the documents noted in paragraph 26, as far as is relevant to the preliminary hearing, and the evidence.

14. At the preliminary hearing the parties should be prepared to file in Court the originals of the affidavits upon which they rely, if so required.

### **Second Directions Hearing**

15. In the event that a final hearing date needs to be allocated following the outcome of the preliminary hearing, the parties shall, within 7 days, cause the proceedings to be listed for a second directions hearing before the List Judge. The parties are to contact the Associate to the List Judge to allocate a date for the second directions hearing.
16. Forty-eight hours prior to the second directions hearing, the parties shall notify the Associate to the List Judge of such of the following matters as may be applicable:
  - (i) the expiration date of the defendant's non-parole period or sentence or limiting term, or the expiration date of any existing, IEO, CDO, ESO or PSO or ISO or EO;
  - (ii) the estimated length of the final hearing, noting that if either party becomes aware that the estimate is insufficient, they are to notify the List Judge immediately and provide a revised estimate;
  - (iii) whether, in the event that the defendant is in custody, an order is sought pursuant to s 77 of the *Crimes (Administration of Sentences) Act 1999* (NSW) for the purposes of any final hearing;
  - (iv) whether there are any interlocutory applications or preliminary issues which require determination, including whether any public interest immunity claim is to be made, and whether pseudonym, suppression or non-publication orders are sought and any application for material to be treated as "terrorism intelligence" pursuant to Part 5.3 of the THRO Act;
  - (v) whether any application is to be made pursuant to s 50 of the *Evidence Act 1995* (NSW).
17. At the second directions hearing, the proceedings will be listed for a final hearing according to judicial availability.
18. Following the allocation of the date for the final hearing the parties will, within 3 business days, send agreed Short Minutes of Order to the Associate to the List Judge incorporating:
  - (i) the allocated hearing date;

- (ii) a timetable for the service of evidence;
- (iii) a timetable for the service of proposed statement of agreed facts;
- (iv) a timetable for the service of the proposed section 50 summary;
- (v) a timetable for the service of transcripts of electronic evidence that will be relied upon; and
- (vi) a timetable for the service and filing of so much of the material itemised in paragraph 22 of this Practice Note as relates to a final hearing.

### **Final Hearing**

19. Subject to any contrary order made in accordance with, or by variation of, the timetable listed in paragraph 18, no later than 7 days prior to the date of the final hearing, the parties shall serve the material referred to in paragraph 26 including submissions.
20. Subject to any contrary order, no later than 3 days prior to the final hearing, the parties shall deliver to the Chambers of the Judge allocated to hear the matter two copies of a paginated and indexed Court Book containing: the originating process, any judgment(s) given in relation to preliminary orders, the statement noted in paragraph 6(iii), any section 50 summary, the material referred to in paragraph 26 and the evidence. Including the transcripts of any electronic evidence relied upon.
21. At the final hearing the parties should be prepared to file in Court the originals of the affidavits upon which they rely if so required.

### **Renewal of interim orders**

22. No later than 7 days prior to the expiration of an ISO or IDO, the parties shall:
  - (i) in cases where the renewal is not opposed, provide the Associate to the List Judge with signed Short Minutes of Order;
  - (ii) in cases where renewal is opposed, advise the Associate to the List Judge accordingly, in which case the proceedings will be re-listed for the purposes of determining renewal of the ISO or IDO.

### **Amendment of Timetables**

23. The parties shall apply to the List Judge for a variation of the timetable for the service and filing of evidence and written submissions no later than 3 days prior to the expiration of existing orders.

24. In cases where the amendment to the timetable is not opposed, the parties are to provide the Associate to the List Judge with signed Short Minutes of Order.
25. In cases where a Judge has already been allocated to the preliminary or final hearing, and the amendment is opposed by a party, the parties are to apply for an amendment of the timetable directly to the allocated Judge.

### **Efficient preparation of proceedings**

26. Given the objectives of the legislation the subject of the practice note and the potential effect upon defendants of the orders which may be made, the Court affords high priority to the listing and completion of proceedings under these Acts. To facilitate the efficient management of proceedings, the Court expects the parties to take all available steps to reduce the volume of documentary material which the Court will be asked to consider. To that end:
  - (i) any joint statement of agreed facts, or supplementary joint statement of agreed facts, should, in addition to any other relevant matter(s), set out any agreement reached between the parties as to:
    1. the chronology of relevant events;
    2. whether the statutory preconditions to the making of any order(s) sought have been satisfied;
    3. the contents of any relevant Offender Information Management System (OIMS) notes;
    4. a summary of the conclusions of the expert reports.
  - (ii) except with the leave of the Court:
    - (a) written submissions of each party in respect of applications for preliminary orders under the THRO and CHRO should not exceed 20 pages and submissions in relation to applications for final orders under that legislation should not exceed 30 pages;
    - (b) in all other cases written submissions of each party in respect of applications for preliminary orders should not exceed 15 pages and submissions in relation to applications for final orders should not exceed 20 pages);
  - (iii) attached to the Plaintiff's submissions in support of an application for preliminary orders and the parties' submissions in relation to any application for final orders, will be a schedule in the form annexed to this practice note (Annexure A), setting out the page number or location of the following material as required by the relevant legislation:

- (a) Proceedings under the *Crimes (High Risk Offenders) Act 2006*, ss 9(3)(b), 9(3)(c), 9(3)(d), 9(3)(d1), 9(3)(e), 9(3)(h), 9(3)(h) 9(3)(h1) of the Act;
  - (b) Proceedings under the *Terrorism (High Risk Offenders) Act 2017*, ss 25(3)(a), (3)(b), (3)(c), (3)(d), (3)(e), (3)(f);
  - (c) Proceedings under the *Commonwealth Criminal Code Act 1995* ss 105A.6B (1)(b), (1)(c), (1)(d), (1)(e),(1)(g),(1)(h);
  - (d) Proceedings under the MHCIFPA 2020, ss 127(2)(b), (2)(c), (2)(d), (2)(e), (2)(f), 2(h).
- (iv) Except for applications under the MHCIFPA, the parties are to provide a schedule in the form annexed to this practice note (Annexure B) setting out a list of the conditions, the disputed conditions and any proposed alternative conditions.

**The Hon. A S Bell**

Chief Justice of New South Wales

1 November 2023

**Annexure A – Sample Schedule**

Reports under s 7(4) of the Act (s 9(3)(b))	Dr Jones: Pages 112 - 131 of Exhibit JC1 Ms Chen: Pages 145 - 156 of Exhibit JC1
Other Reports of a psychiatrist, psychologist or medical practitioner re likelihood of committing further offences etc (s9(3)(c))	Dr Smith: pages 87 - 100 of Exhibit JC2 Dr Kao: pages 211 - 224 of Exhibit JC2
Results of statistical or other assessment (S9(3)(d))	Static - 2000R: page 9 of Exhibit JC5 Other: page 11 of Exhibit JC6
Report prepared by Corrective Services NSW re management of offender in community (s 9(3)(d1))	Pages 111 to 124 of Exhibit JC2
Offenders Criminal History	See agreed chronology NSW Criminal history: pages 56 to 59 of Exhibit JC1 QLD Criminal history: pages 60 to 61 of Exhibit JC1
Views of Sentencing Court (s 9(3)(h1))	Index offence: Pages 23 to 27 of Exhibit JC1 Robbery offence in 2009: Pages 38 to 43 of Exhibit JC1

**Annexure B – Sample Conditions Attaching to ISO/ESO**

Proposed Condition	Short reason for condition	Defendant's position/Suggested Revision	Plaintiff's Reply