



LOCAL COURT PRACTICE NOTE NO 1 of 2011

Online Court Protocol for Committal Matters at Downing Centre

Commencement

1. This Practice Note commences on 15 February 2011 and continues for the time period authorised under the Order issued under Schedule 1 of the ETA gazetted on 11 February 2011.

Definitions

2. In this Practice Note:

Committal Proceeding means proceedings in respect of an indictable offence, either where:

- the offence is strictly indictable, or
- the offence is a table offence (that is, an offence listed in Table 1 or Table 2 of Schedule 1 to the CPA) and the prosecution or defence has elected to have the offence dealt with by indictment, but does not include proceedings in respect of a Commonwealth offence.

CPA means *Criminal Procedure Act 1986*.

ETA means the *Electronic Transactions Act 2000*

PDF means Portable Document Format, a file format that has captured all the elements of a printed document.

Registered user means a person who has applied for and received authorisation to use Online Court. A registered user gains access to Online Court by inputting a user identification code that has been assigned, and is unique, to that user, and a password. The application form is at Attachment A.

Application

3. This Practice Note is issued for the purposes of a pilot program for committal proceedings heard at Downing Centre Local Court in which the accused person is legally represented.
4. Online Court is available for committal proceedings where the first appearance date at the Downing Centre is on or after 15 February 2011.
5. This Practice Note is to be read in conjunction with Part A of Practice Note 1 of 2010, which outlines the procedure for committal proceedings at Downing Centre Local Court and Central Local Court, and/or such other practice note that applies in relation to committal proceedings at any given time.

Object

6. Many committal proceedings require numerous Court mentions before they are ready to proceed to committal hearing. The object of this pilot program is to minimise the number of in person Court appearances and provide flexibility to Court users and the Court to ensure matters are conducted as efficiently as possible.
7. It is envisaged that, subject to an order of the Court mandating an appearance, contested section 91/93 applications or other contested matters arising, committal matters may proceed from first appearance to committal without the necessity of an accused person or their legal representative having to physically appear before the Court.

Availability of Online Court

8. Online Court is available to:
 - Legal practitioners who are registered users and are invited to participate by a Magistrate in accordance with this Practice Note, and
 - Designated managing lawyers or employed support staff nominated by these legal practitioners to submit messages to the Online Court on behalf of the practitioner where the practitioner has been properly instructed by the accused person.
9. Online Court is **NOT AVAILABLE** to self-represented litigants or non-parties.
10. For the first 3 months of the pilot program, Online Court will be available to legal practitioners from the Office of the Director of Public Prosecutions, the Legal Aid Commission and the Aboriginal Legal Service only and will NOT be available to private legal practitioners. From 16 May 2011, Online Court will be available to all legal practitioners.

Initiating an Online Court

11. A Magistrate may order that an Online Court be initiated for a committal matter where the Prosecution and Defence agree that the matter be dealt with by Online Court.
12. If such an order is made, all legal practitioners involved must:
 - a) Complete a Referral to Online Court form (Attachment B) at the first appearance; and
 - b) Ensure that they are registered users within five working days. Practitioners yet to register as users are to complete and submit a New User Application Form (Attachment A).
13. An Online Court may be initiated only by a Magistrate or by a registry officer on behalf of a Magistrate, where that registry officer has been authorised to do so by the Chief Magistrate.

What may be dealt with in Online Court

14. At the discretion of a Magistrate, Online Court may be used for any interlocutory or procedural matter under Part 2 of Chapter 3 of the CPA or any matter under the *Criminal Case Conferencing Trial Act* 2008, including:
 - a) orders relating to service of briefs in accordance with Item 2 of Practice Note 1 of 2010.
 - b) case management of committal proceedings in accordance with Item 4 of Practice Note 1 of 2010, including the setting down of contested section 91/93 applications or committal proceedings for hearing.

15. At the discretion of a Magistrate, Online Court may be used for the following matters under the *Bail Act 1978*:
- a) to continue bail already granted pursuant to section 43 of the *Bail Act 1978*;
 - b) to determine bail variations concerning reporting conditions or residency conditions provided:
 - (i) notification of the proposed change has been given to the prosecutor,
 - (ii) there is no objection to the proposed variation,
 - (iii) the condition was not imposed by the Supreme Court pursuant to section 45 of the *Bail Act 1978*, and
 - (iv) there is no acceptable person OR the acceptable person provides a letter of consent to the variation which is uploaded to the Online Court as a PDF by the accused person's legal representative.

Where bail is continued by order made in an Online Court, the registrar will notify the accused person by post or electronic communication of the continuation of the bail.

16. Online Court may not be used to hear arguments regarding a contested matter. The Magistrate will list contested matters in Court to be determined. Upon the resolution of a contested matter in Court, the Magistrate may return the matter to the Online Court where the Prosecution and Defence agree.
17. After each Online Court date, the Magistrate is to adjourn the matter for further mention to a later date to be determined by the Magistrate in the Online Court. The matter will be adjourned:
- a) to be mentioned again in an Online Court, or
 - b) to have the matter listed for the personal appearance of the accused and his/her legal representative.

Conduct in an Online Court

18. As Online Court is a virtual courtroom, authorised by an Order issued under Schedule 1 of the ETA gazetted on 11 February 2011, it must only be used for issues requiring consideration and determination by a Magistrate. Online Court is not to be used for communications solely between the legal practitioners representing the parties.
19. It is expected that the legal practitioners representing the parties will have communicated between themselves prior to the listing date to come to an agreed position as to the orders sought on the listing date or, if a matter is contested and is to be listed in Court, to agree as to the issues in dispute. Each party is to post a message indicating their position, even where the orders sought are by consent.
20. A matter listed in Online Court will be dealt with by the Magistrate at any time on the listing date during ordinary business hours (8:30am to 5:30pm). Legal practitioners are to post any messages they wish the Magistrate to consider by 5:00pm on the preceding day to ensure that all messages are before the Magistrate by the morning of the listing date.
21. It is the responsibility of legal practitioners to ensure that they promptly log in to the Online Court to check the outcome of any online listing date.
22. The language used in Online Court must be the same as that used if the matter were being dealt with in an ordinary courtroom.
23. If a message is posted in an Online Court by a user who is not a legal practitioner, then the name of the authorising legal practitioner must be included in the last part of the message. A legal practitioner

who authorises someone else to post a message in the Online Court is taken to have affirmed to the Court that he or she has actual knowledge of the contents of the message.

24. Undertakings given in an Online Court by a party's representative either on behalf of the party or the representative are binding as if the undertaking were given in an ordinary courtroom.
25. The rules of contempt apply to proceedings conducted using Online Court.

Re-listing

26. If a legal representative seeks to have a matter re-listed in the Online Court or in Court, he or she is to complete and submit an Application to Re-List an Online Court Matter form (Attachment C). A message seeking that the matter be re-listed is NOT to be posted in the Online Court.

Terminating an Online Court

27. An Online Court may be terminated at any time and the proceedings listed for resolution at the absolute discretion of a Magistrate or upon the request of either party.
28. A legal practitioner must complete and submit an Application to Re-List an Online Court Matter form as soon as reasonably practicable:
 - a) If the legal practitioner ceases to be instructed by a party, in which case the Online Court will be terminated and the matter re-listed in Court; or
 - b) If a legal practitioner transfers carriage of a matter to another legal practitioner, in which case the Online Court will be terminated and the matter re-listed in Court unless the legal practitioners make arrangements with the Chief Magistrate's Office for the new legal representative to be substituted as a participant in the Online Court. A new legal representative in a continuing Online Court is expected to comply with any existing orders made in the Online Court.

User Identification Code and Password

29. Each party or participant to the Online Court has his or her own User Identification Code (known as a user-id) and password. It is important that these details are kept secure and remain confidential. The responsibility for maintaining security of the user-id lies with the relevant party to the Online Court.
30. When a user-id is used to send messages and documents to an Online Court, the person to whom that user-id was allocated will be deemed by the Magistrate presiding over the Online Court to be the person who sent the messages and documents and is responsible for their contents.

Online Court Messages

31. Messages posted in an Online Court and any attached documents must be:
 - relevant to the Online Court topic under discussion;
 - brief and to the point, and
 - timely.
32. A Magistrate may, from time to time, give instructions as to:
 - the acceptable length of messages in an Online Court; and
 - the time and date by which messages must be received.

Documents

33. Documents may be attached to messages sent to the Online Court. Documents cannot, however, be filed in the Court using the Online Court. Documents can only be filed in accordance with the Court Rules. In urgent matters, a document that is to be filed may be sent to the Online Court with an undertaking that it will be filed in the Court no later than the next business day.
34. Where a message refers to a document that has been filed, a copy of the filed document may be attached to the message for ease of reference. In these cases the message should indicate the date on which the document was filed.
35. Documents sent to the Online Court must be in PDF.

Entering orders

36. Orders made by a Magistrate in an Online Court must be recorded.

Obtaining record of proceedings

37. Any person may request a printed record of Online Court proceedings, subject to any suppression order or other restrictions that might apply to the proceedings.

A handwritten signature in black ink, consisting of a series of fluid, connected strokes. The signature is written in a cursive style, with the first letter being a large, prominent capital 'G'.

Judge Graeme Henson
Chief Magistrate

Attachment A



Local Court
of New South Wales

ONLINE COURT TRIAL - COMMITTAL MATTERS AT DOWNING CENTRE

NEW USER APPLICATION FORM

(PN 1 of 2011)

Important (please read):

- Complete this form and save it in MS Word format. Alternatively, send all the details required in this form in an email. Send the completed form (or the details) in an email to justicelinksupport@agd.nsw.gov.au
- The use of Online Court is limited to legal practitioners or a delegated representative of the practitioner (unless otherwise directed by a Magistrate).
- Each user is only required to register **once**. If you are required to join numerous Online Court forums, your one account can be attached (by the Magistrate or administrator) to all the forums and allow you to participate in each.

Nominate a User Name: (This is the name you login with)	
First Name of Applicant:	
Surname Of Applicant:	
<p>A Display Name will be assigned to you automatically when your account is created. It will consist of your first initial and surname. This is the name that appears against any messages posted in Online Court forums. It is your appearance name.</p> <p>You may choose to include a title (ie Mr, Ms, Miss) or job related suffix (QC, SC, LLB) as part of the makeup of the Display Name example Ms J Smith QC. Please indicate below the applicant's:</p>	
Title:	
Suffix:	
Email address of applicant:	
Contact number:	
Law Firm or if Barrister, Chambers:	
Is the Applicant a legal practitioner?	Yes / No
If No but you are required (via delegation) to use Online Court then include the name and contact number of the practitioner providing the authority for you to participate:	Name of practitioner: Contact number:
Date:	

Attachment B



Local Court
of New South Wales

REFERRAL TO ONLINE COURT

(PN 1 of 2011)

THIS FORM IS TO BE COMPLETED AND GIVEN TO THE COURT OFFICER
ON THE DATE OF REFERRAL

CASE DETAILS

Local Court at	
In the matter of	-v-
Reference/Case number	
Date of referral to online court	
Online court listing date	

LEGAL REPRESENTATIVES:

Please read the following information then complete your details (overleaf)

Your attention is drawn to Practice Note 1 of 2011, which regulates the operation of the Online Court. In particular, legal representatives are required to:

- Ensure you are a registered user within 5 working days of today's date. You can apply for registration by completing the application form that appears as Attachment A to Practice Note 1 of 2011 and submitting it as specified on the form. Once you are registered, please notify the Chief Magistrate's Office on (02) 9287 7588.
- Contact the Chief Magistrate's Office on (02) 9287 7588 or cmo@agd.nsw.gov.au in the event that you cease to act in a matter or if you transfer carriage of a matter to another legal practitioner. You may need to submit an Application to Re-list an Online Court Matter.
- Be aware that the usual rules of court, including the rules of contempt, apply. Parties are only to use the online court to communicate issues requiring determination by the Magistrate and are not to use the online court forum to communicate between themselves.
- Be aware that any message posted in an online court forms part of the court record. Subject to any suppression order or other restriction, any person may request a print-out of online court proceedings.

DEFENCE CONTACT DETAILS

Name of Legal Representative			
Registration status of Legal Representative (tick applicable)		<input type="checkbox"/> Registered Online Court user <input type="checkbox"/> To apply for registration as an Online Court user within 5 working days	
Name of: <input type="checkbox"/> Designated Managing Lawyer; or <input type="checkbox"/> Employed Support Staff (tick applicable)			
Registration status of Designated Lawyer or Employed Support Staff (tick applicable)		<input type="checkbox"/> Registered Online Court user <input type="checkbox"/> To apply for registration as an Online Court user within 5 working days	
Firm/Organisation (name and address)			
Telephone		Fax Number	
Email address			
Signature			

PROSECUTION CONTACT DETAILS

Name of Legal Representative			
Registration status of Legal Representative (tick applicable)		<input type="checkbox"/> Registered Online Court user <input type="checkbox"/> To apply for registration as an Online Court user within 5 working days	
Name of: <input type="checkbox"/> Designated Managing Lawyer; or <input type="checkbox"/> Employed Support Staff (tick applicable)			
Registration status of Designated Lawyer or Employed Support Staff (tick applicable)		<input type="checkbox"/> Registered Online Court user <input type="checkbox"/> To apply for registration as an Online Court user within 5 working days	
Firm/Organisation (name and address)			
Telephone		Fax Number	
Email address			
Signature			

GIVE THE COMPLETED FORM TO THE COURT OFFICER**CMO USE**

Online court matter created (date)	
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Attachment C



Local Court
of New South Wales

APPLICATION TO RE-LIST AN ONLINE COURT MATTER

(PN 1 of 2011)

Parts A & B must be completed in full prior to the application being lodged at the Chief Magistrate's Office by the applicant or the applicant's representative.

Applications may be lodged in person, by email in PDF format (to cmo@agd.nsw.gov.au) or facsimile (to (02) 9264 1617).

This application will be dealt with in Chambers. It should be submitted, together with all relevant information and supporting documentation, as soon as practicable before the online listing date.

You will be advised of the outcome of the application, the date on which it is next listed, and whether it is listed in the Online Court or in Court.

PART A (Applicant to complete)

Matter Number			
Matter Name			
Online Court date			
Name of Legal Representative			
Firm/Organisation (name and address)			
Telephone		Fax Number	
Email address			
Signature			
Date			

I apply to re-list this matter:

☐ In the Online Court

☐ In Court

for the following reasons:

PART B (Other party to complete)

Name of Legal Representative			
Firm/Organisation (name and address)			
Telephone		Fax Number	
Email address			
Signature			
Date			

- ☐ I agree with this application. Where the application is for the matter to be listed in Court, I have notified the applicant of my unavailable dates
- ☐ I do not agree to this application because:

PART C (CMO use only)

APPLICATION:	<input type="checkbox"/> GRANTED:	<input type="checkbox"/> REFUSED
	- Matter re-listed in:	
	<input type="checkbox"/> Court <input type="checkbox"/> Online Court - On / /	

.....
Magistrate

Date: / /

COPY TO: 1. List Office/Registry
 2. Other (specify)