INDUSTRIAL COURT CRIMINAL PRACTICE NOTE NO. 1

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Issued pursuant to section 185A of the *Industrial Relations Act 1996*

WORK HEALTH AND SAFETY ACT PROSECUTIONS

COMMENCEMENT

1. This Practice Note commenced on 1 July 2024. This amendment is effective from 5 December 2025.

APPLICATION

2. This Practice Note applies to all criminal proceedings commenced in the Court pursuant to s 229B(1)(b) the *Work Health and Safety Act 2011* (**the WHSA**) (**WHS prosecutions**).

INTRODUCTION

3. The purpose of this Practice Note is to explain the administrative and case management procedures followed in the Court for WHS prosecutions.

COMMENCEMENT OF SUMMARY PROCEEDINGS

4. Summary Proceedings are to be commenced pursuant to s 246 *Criminal Procedure Act* 1986 (**CPA**) and r 7C of the Industrial Relations Commission Rules 2022. Any 'Application to Commence Proceedings for a Summary Offence' filed after 4pm on any business day will not be considered by a Judge before the following business day.

5. The Summons will be made returnable on the Monday following 8 weeks from the date of issue.

6. The Summons and a copy of this practice note is to be served on the defendant within 7 days of the issue of the summons in accordance with r 7C.2(4) of the Industrial Relations Commission Rules 2022.

7. The defendant or the defendant's legal representative is to file with the Court and serve on the prosecutor a Notice of Appearance (in the approved form) within 7 days of the service of the Summons.

APPLICATIONS FOR LEAVE TO COMMENCE PROCEEDINGS OUTSIDE THE LIMITATION PERIOD

8. Pursuant to s 232(2)–(3) of the WHSA, a proceeding for an offence may be brought after the end of the limitation period with leave of the Court. The Court may only grant leave if it is satisfied that the granting of leave is in the interests of justice.

9. In order to seek leave to commence proceedings outside the limitation period, the prosecuting authority must file an Industrial Court Form 6 "Application for leave to commence proceedings for a summary offence outside the limitation period in the Industrial Court of New South Wales" and a Summons. The Form 6 must include the date of the expiration of the limitation period and reasons why leave should be granted.

10. The prosecuting authority must serve a filed copy of the Form 6 and Summons alongside a copy of this practice note on the defendant within 7 days of its filing date.

11. The defendant or the defendant's legal representative is to file with the Court and serve on the prosecutor a Notice of Appearance (in the approved form) within 7 days of the service of the Form 6.

12. Once the Court receives a filed Form 6, the President will allocate the matter to a judge who will list the application for a directions hearing within 3 weeks of its filing date.

13. At the directions hearing, the matter will be listed for hearing to determine the question of leave as a threshold question. The Court will make directions for the hearing of the application as it considers appropriate. Annexure C to this Practice Note are "Usual Directions for Applications for Leave to Commence out of Time" which in the ordinary course will be made by the Court.

14. If leave is granted, the summons will be made returnable on the Monday following 8 weeks from the date of judgment.

SERVICE OF THE BRIEF OF EVIDENCE

15. The prosecutor is to serve the brief of evidence and a statement of facts on the defendant or the defendant's legal representative within 2 weeks of service of the Notice of Appearance or within 28 days of the issuing of the Summons, whichever is the later.

BEFORE THE FIRST MENTION

16. The parties are to take the following steps before the first mention to assist with the efficient progress of the matter:

    a. Retain solicitors and/or counsel who will be appearing in the matter to allow for meaningful and binding forensic decisions to be made;

    b. The defendant is to consider the plea that it intends to enter to the charge;

    c. The defendant is to consider any representations that it might wish to make to the prosecutor regarding the particulars of the charge and the facts that will facilitate a plea of guilty. The defendant should be available on the first mention date to commit to a timetable for the submission of representations; and

    d. The defendant is to consider whether the defendant intends to make an application to the regulator for an Enforceable Undertaking.

AT THE FIRST MENTION

17. The prosecutor is to advise whether service of the brief and the statement of facts has been given in accordance with the requirements of this practice note.

18. The defendant is to advise the court of whether it is in a position to enter a plea, and if so, the nature of that plea, and the following procedure then applies:

    a. If the defendant enters a plea of guilty, the matter will be listed for a sentence hearing;

    b. If the defendant enters a plea of not guilty, the matter will be listed for defended hearing; or

    c. If the defendant needs further time to consider the brief of evidence and/or seek further particulars, the matter will be stood over for 9 weeks, with any request for particulars to be sent within 2 weeks and responded to within 3 weeks from the date that it was received.

19. Upon entry of the plea, the parties should be prepared to provide estimates for the length of any hearing (either interlocutory, sentence or defended) and any special requirements or directions required for such hearing (eg, service of expert evidence, requirement for an interpreter).

20. Where a plea of guilty is likely to be entered, subject to an agreement on the particulars of the charge and the facts alleged, the following procedure applies:

    a. A direction will be made for the defendant to make representations to the prosecutor relating to the particulars of the charge and the facts alleged;

    b. A direction will be made for the prosecutor to respond to the defendant's representations;

    c. The matter will be listed for mention, at which time the defendant is to enter a plea of guilty or not guilty to the charge; and

    d. In the event that there is still a dispute between the parties as to some of the facts and/or particulars alleged by the prosecutor, the defendant can enter a plea of guilty and the matter will be listed for sentence hearing on the basis that the disputed facts and/or particulars will be determined at the sentence hearing.

21. Where a plea is entered, and the parties identify the need for an interlocutory hearing, that hearing will be listed and a timetable imposed.

22. If the defendant intends to make an application to the regulator for an Enforceable Undertaking, the procedure at paragraphs 56–59 applies.

AT THE SECOND MENTION

23. The defendant is to advise the court of whether it is in a position to enter a plea, and if so, the nature of that plea, and the following procedure then applies:

    a. If the defendant enters a plea of guilty, the matter will be listed for a sentence hearing; or

    b. If the defendant enters a plea of not guilty, the matter will be listed for a defended hearing.

24. Upon entry of the plea, the parties should be prepared to provide estimates for the length of any hearing (either interlocutory, sentence or defended) and any special requirements or directions required for such hearing (eg, service of expert evidence, requirement for an interpreter).

25. Where a plea is entered, and the parties identify the need for an interlocutory hearing, that hearing will be listed and a timetable imposed.

26. Where a plea of guilty is likely to be entered, subject to an agreement on the particulars of the charge and the facts alleged, the procedure set out at paragraph 20 applies. The Court may have regard to a failure at the second mention to indicate that a plea of guilty is likely to be entered when assessing the utilitarian value of any plea of guilty entered at a later time.

27. If the defendant has made an application to the regulator for an Enforceable Undertaking, the procedure at paragraphs 58–59 applies.

28. Where no plea is entered the Court will allocate the matter for hearing on the basis of a not guilty plea unless the defendant or their legal representative satisfies the Court that the interests of justice dictate a further adjournment, in which case the matter will be listed for a third mention within 4 weeks.

AT THE THIRD MENTION

29. Where a plea of guilty is likely to be entered, subject to an agreement on the particulars of the charge and the facts alleged, the procedure set out at paragraph 20 applies.

30. Subject to any order being made by the Court, in the absence of a plea being entered, the matter will be allocated for hearing on the basis of a not guilty plea.

31. No further adjournments, other than by operation of paragraph 29, will be allowed except in exceptional circumstances and where the interests of justice dictate. Any such application should be made by notice of motion supported by evidence on affidavit.

REGISTRAR REFERRAL TO A JUDGE

32. When a Registrar is presiding over a list, the Registrar may refer a matter to a Judge to determine an interlocutory issue, including where:

    a. there is a question as to the admissibility of a piece of evidence that requires resolution before a defended hearing;

    b. there is an application to strike out or summarily dismiss the prosecution; or

    c. an interlocutory hearing is required which is not otherwise covered by the Delegations to the Registrar.

EXPERT EVIDENCE

33. Unless the Court otherwise orders, an expert witness' evidence in chief must be given by the tender of one or more reports.

34. The provisions of rules 31.23 and 31.27 of the *Uniform Civil Procedure Rules 2005* apply to the evidence of expert witnesses and any report of an expert witness.

PREPARATION FOR DEFENDED HEARINGS

35. The Court will make directions for the hearing of the matter as it considers appropriate. Annexure A to this Practice Note are "Usual Directions for WHS Defended Hearings" which in the ordinary course will be made by the Court. The date for compliance with Orders 2, 3 and 4 may be the same.

36. The parties will be required to conduct a preliminary conference pursuant to s 247H of the *Criminal Procedure Act 1986*, at least 8 weeks prior to the allocated hearing date, to give careful consideration to the matters that are genuinely in dispute and the evidence to be called to address those matters. Consistent with the proposed 'Usual Directions', to enable those discussions to be effective the parties are to have undertaken the following steps sufficiently in advance of the preliminary conference:

    a. The prosecutor will have provided the defendant with any revised Statement of Facts, a draft index to its proposed tender bundle, and a copy of any chart or explanatory material that the prosecutor proposes to adduce at the defended hearing;

    b. The defendant will have advised the prosecutor of any facts in the Statement of Facts or revised Statement of Facts that can be agreed;

    c. Each of the parties will have provided to each other a copy of the expert reports upon which they intend to rely at the defended hearing;

    d. The prosecutor will have provided a statement or outline of the evidence of each of the witnesses upon which it intends to rely at the defended hearing in light of the communication from the defendant as to the matters referred to above; and

    e. The defendant will have considered whether there are statements of witnesses that can be dealt with pursuant to s 190 of the *Evidence Act 1995* and/or matters which can be dealt with by way of a Statement of Agreed Facts pursuant to s 191 *of the Evidence Act 1995* and whether objection is taken to any of the documents listed in the draft index to the prosecutor's tender bundle.

37. The Court expects that the defendant will advise the prosecutor of its position in relation to the matters to be addressed at the preliminary conference at least 2 weeks before the preliminary conference and that parties will prepare and exchange documents in advance of the preliminary conference, and adjourn it and reconvene to the extent necessary, to ensure that by the end of the conference (which if adjourned must be completed no later than 6 weeks before the hearing)

    a. the parties have determined the scope of the matters that are in issue;

    b. the prosecutor has confirmed the witnesses it proposes to call at hearing;

    c. the parties have determined whether any statements of witnesses that the prosecutor proposes to adduce at hearing can be dealt with in whole or in part pursuant to s 190 the *Evidence Act 1995*;

    d. the parties have settled any Agreed Facts pursuant to s 191 of the *Evidence Act 1995*;

    e. the defence has confirmed which witnesses it requires for cross-examination;

    f. the defence has indicated whether objection is taken to any of the documents listed in the draft index to the prosecutor's tender bundle and the basis for the objection; and

g. the parties have indicated to each other whether they object to the admissibility of any of the expert evidence, and the basis of the objection(s).

38. Unless the Court otherwise orders, the prosecutor should file and serve no later than 4pm., 4 weeks before the first day on which the matter is listed for hearing an electronic tender bundle of documents to which no objection is taken and a second tender bundle of documents to which objection is taken. Documents other than statements and affidavits are to be formatted as follows:

a. It should be a single PDF document that is preferably text-searchable. Please ensure that to the extent possible they are created directly from the original source file (e.g., Microsoft Word) rather than scanned. If you are using a scanned document, before filing it run your PDF through OCR (Optical Character Recognition) software to detect text from scanned images. You can use Adobe's free online OCR tool. This tool has a limit of 100MB per PDF file.

b. Have every page of the PDF, starting with the cover page and index, sequentially numbered.

c. If possible, have each separate document within the PDF bookmarked with tab numbers that replicate the tab numbers in the hardcopy.

d. Commence with a cover page that records the matter number, names of the parties, date of the filing and states the name of the party filing the document.

e. If necessary to enable email filing, the document should be compressed to reduce the file size. You can use Adobe's free online PDF compression tool to reduce the file size below 300Mb.

f. There should be an index that lists each document and its page numbers.

39. The matter will be listed before the trial judge approximately 4 weeks prior to the allocated hearing date for a readiness hearing to confirm the trial dates and identify any preliminary issues that will need to be determined. Where counsel are briefed in the matter, they are expected to attend the readiness hearing.

40. Any outline of submissions addressing objections to the tender of evidence are to be filed no later than 1 week before the hearing.

PREPARATION FOR SENTENCE HEARINGS WHERE PROSECUTOR'S FACTS ARE NOT IN CONTEST

41. Unless the Court otherwise orders, paragraphs [42]–[49] apply in respect of sentence hearings. Sentence hearings where the prosecutor seeks to prove disputed particulars or facts will require bespoke directions on a case by case basis.

42. The Court will make directions for the hearing of the matter as it considers appropriate. Annexure B to this Practice Note are "Usual Directions for Sentencing Hearings" which in the ordinary course will be made by the Court.

43. Where a plea of guilty is entered, the prosecutor is to file and serve any sentence bundle on the defendant no later than 4 weeks before the date on which the matter is listed for sentence. The sentence bundle should not include documents that are wholly addressed by agreed facts.

44. If the prosecutor or the defendant seeks an order referred to in ss 236–241 WHSA, the prosecutor or the defendant is to notify the other party in writing of the terms of the order sought and is to file and serve any affidavit evidence in support of the order, by no later than 4 weeks before the date on which the matter is listed for sentence.

45. The defendant is to file and serve any affidavit and supporting documentation relevant to the issue of capacity to pay a fine (s 6 *Fines Act 1996*) no later than 4 weeks before the date on which the matter is listed for sentence.

46. The defendant is to file and serve any other affidavit and supporting documentation no later than 3 weeks before the date on which the matter is listed for sentence.

47. The prosecutor is to file and serve an outline of submissions and any evidence in reply no later than 2 weeks prior to the sentence date.

48. The defence is to file and serve an outline of submissions no later than 1 week prior to the sentence date.

49. If there is a change to the conduct or length of the sentence hearing, the parties are to notify the Registrar or, once allocated, the chambers of the Judge case managing the proceedings at the earliest possible stage.

BREACH OF THE COURT'S DIRECTIONS

50. If there is a breach of the Court's directions sufficient to cause slippage in the timetable that will impact upon the listing dates for the matter, the parties must, in accordance with paragraph 45 below, relist the matter in the next Monday list. The party in breach, or a legal practitioner with knowledge of the reasons for the breach, must send to the Registrar, and serve, a letter by no later than 4pm on the preceding Thursday, identifying the breach, explaining the reasons for the breach and outlining the proposed directions to be made in consequence of the breach.

LIBERTY TO RESTORE

51. Parties have general liberty to restore to the Monday list on 2 working days' notice. A party seeking to do so is to make prior arrangement with, or give appropriate notice to, any other party and notify the Registrar or, once allocated, the chambers of the Judge case managing the proceedings.

APPLICATIONS FOR ADJOURNMENTS OR TO VACATE HEARINGS

52. Applications for adjournments of matters in the Monday list should be received by midday on the preceding Thursday. Applications received after that time will not be considered and the matter will remain in the list.

53. Applications to vacate hearing dates by consent (other than as a consequence of a plea of guilty being entered by a defendant) are to be made by letter to the Registrar explaining the reasons for the application. Otherwise, applications to vacate hearing dates are to be by notice of motion with an affidavit in support explaining the circumstances giving rise to the application.

COURT TECHNOLOGY AND EVIDENCE

54. If a party intends to adduce electronic evidence during the sentence hearing, the party must consult the Associate to the Judge hearing the matter no later than 7 days before the sentence hearing or trial to confirm that the Court's technology resources are capable of playing the evidence.

55. Where the electronic evidence is not in a form that is compatible with the Court's technology resources, the evidence must either be converted to formats used by the Court or the party must bring their own devices to play the evidence.

APPLICATIONS FOR ENFORCEABLE UNDERTAKINGS

56. Applications to the regulator for an Enforceable Undertaking (**EU**) pursuant to Part 11 WHSA must be made by a defendant no later than 12 weeks after the service of the brief of evidence.

57. The Court will take into account an application for an EU made later than 12 weeks after the service of the brief of evidence which is unsuccessful, when assessing the utilitarian value of any plea of guilty entered at a later time.

58. Matters in which an application for an EU is made will be adjourned for a preliminary hearing on a date no later than the Monday following 2 weeks after the next meeting of the Enforceable Undertaking Panel or other convenient date in the EU process. The parties must, within 2 weeks of a decision by the regulator to reject an application for an EU, re-list a matter for mention.

59. The making of such an application will have the effect of pausing the timetable established by this practice note.

RECKONING OF TIME

60. The provisions of Part 1.11 of the *Uniform Civil Procedure Rules 2005* apply to criminal proceedings.

AFFIDAVITS

61. The provisions of Part 35 of the *Uniform Civil Procedure Rules 2005* apply to affidavits filed in criminal proceedings.

MOTIONS

62. The provisions of Part 18 of the *Uniform Civil Procedure Rules 2005* apply to motions filed in criminal proceedings.

SUMMONSES

63. The provisions of Part 33 of the *Uniform Civil Procedure Rules 2005* apply to the following summonses filed in criminal proceedings:

    a. summonses to give evidence under s 165(3)(b) of the *Industrial Relations Act 1986*; and

    b. summonses for production under s 165(3)(c) of the *Industrial Relations Act 1986*.

REQUIRED FORMAT FOR ELECTRONIC COURT BOOKS

64. The electronic version of the court book is to be in the following format:

a. A single PDF document that is preferably text-searchable. Please ensure that to the extent possible they are created directly from the original source file (e.g., Microsoft Word) rather than scanned. If you are using a scanned document, before filing it run your PDF through OCR (Optical Character Recognition) software to detect text from scanned images. You can use Adobe's free online OCR tool. This tool has a limit of 100MB per PDF file.

b. Have every page of the PDF, starting with the cover page and index, sequentially numbered.

c. If possible, have each separate document within the PDF bookmarked with tab numbers that replicate the tab numbers in the hardcopy.

d. Commence with a cover page that records the matter number, names of the parties, date of the filing and states the name of the part filing the court book.

e. If necessary to enable email filing, be compressed to reduce the file size. You can use Adobe's free online PDF compression tool to reduce the file size below 300Mb.

f. Contain an index that lists each document and its page numbers.

JUSTICE I TAYLOR
PRESIDENT
5 December 2025

Amendment History:

5 December 2025: This Practice Note replaced former Practice Note Industrial Court Criminal Practice Note No. 1 which was issued on 4 April 2025.

13 October 2025: This Practice Note replaced former Practice Note Industrial Court Criminal Practice Note No. 1 which was issued on 4 April 2025.

4 April 2025: This Practice Note replaced former Practice Note Industrial Court Criminal Practice Note No. 1 which was issued on 1 July 2024.

Annexure A – Usual Directions for WHS Defended Hearings

1. The matter is listed for Defended Hearing at 10am on _____ with an estimate of _____.

2. Prosecutor is to serve a revised Statement of Facts, if any, for the purpose of reaching agreement with the Defendant on agreed facts within the meaning of s191 *Evidence Act 1995* (NSW) by 4pm _____.

3. If any expert witness is proposed to be called by the Prosecutor at the defended hearing, a copy of each report by the expert witness must be filed and served by 4pm _____.

4. Prosecutor is to provide to the Defendant a copy of any chart or explanatory material to be relied upon by 4pm _____.

5. Defendant is to notify the Prosecutor of any facts in the Statement of Facts or revised Statement of Facts which are agreed by 4pm _____.

6. Prosecutor is to provide to the Defendant a statement or an outline of the evidence to be relied upon for each witness the Prosecutor intends to call (other than expert witnesses referred to in Order 3) by 4pm _____.

7. Defendant is to serve any expert evidence on which it intends to rely by 4pm _____.

8. Prosecutor is to serve any expert evidence in reply on which it intends to rely by 4pm _____.

9. Prosecutor is to serve on the defendant but not file a draft index to the prosecutor's tender bundle which will specify for each document the Volume, Tab and page number(s) where the document is to be found in the Brief of Evidence by 4pm _____ (*at least 12 weeks before the hearing)*.

10. By_____ *(at least 8 weeks before hearing*) the Parties are to hold a preliminary conference:

    a. to determine the scope of the matters that are in issue;

    b. for the prosecutor to confirm the witnesses it proposes to call at hearing;

    c. to determine whether any statements of witnesses that the prosecutor proposes to adduce at hearing can be dealt with in whole or in part pursuant to s190 the *Evidence Act 1995* (NSW);

    d. to settle any Agreed Facts pursuant to s191 of the *Evidence Act 1995* (NSW);

    e. for the defence to confirm which witnesses it requires for cross-examination;

    f. for the defence to indicate whether objection is taken to any of the documents listed in the draft index to the prosecutor's tender bundle and the basis for the objection(s); and

    g. to determine whether the either party disputes the admissibility of the expert evidence, and the basis of the objection(s).

11. At least two weeks before the preliminary conference, the defendant is to advise the prosecutor of its position in relation to each of the matters to be addressed at the case conference.

12. Prosecutor is to file and serve:

    a. an electronic copy of a paginated tender bundle comprising an index, any agreed facts, and those documents and statements of witnesses to which no objection is taken by 4pm _____; and

    b. a second electronic copy of a paginated bundle comprising an index and those documents that the prosecutor intends to tender to which objection is taken by 4pm _____ (*at least 4 weeks before hearing*).

13. The matter will be listed for a readiness hearing on _____(*4 weeks before hearing*)

14. Any outline of submissions addressing objections to the tender of evidence are to be filed by 4pm one week before the hearing.

Annexure B – Usual Directions for WHS Sentencing Hearings

1. The matter is listed for Sentence Hearing at 10am on _____ with an estimate of _____.

2. Prosecutor is to file and serve the sentence bundle by 4pm _____ *(4 weeks before hearing)*.

3. Defendant is to file and serve any affidavit evidence on which it relies relevant to the issue of capacity to pay by 4pm _____ *(4 weeks before hearing)*.

4. If either party seeks an order pursuant to ss 236-241 of the *Work Health and Safety Act 2011* in relation to sentence options, the party is to file and serve any affidavit evidence relevant to such an application by 4pm _____ *(4 weeks before hearing)*.

5. Defendant is to file and serve any other affidavit evidence on which it relies by 4pm _____ *(3 weeks before hearing)*.

6. Prosecutor is to file and serve an outline of submissions and any evidence in reply by 4pm _____ *(2 weeks before hearing)*.

7. Defendant is to file and serve an outline of submissions by 4pm _____ *(1 week before hearing)*.

Annexure C – Usual Directions for Applications for Leave to Commence out of Time

1. The prosecutor is to file and serve any evidence on which it relies by 4pm (*5 weeks before hearing)*.

2. The defendant is to file and serve any evidence on which it relies by 4pm (*4 weeks before hearing*).

3. The prosecutor is to file and serve an outline of submissions and any evidence in reply by 4pm (*3 weeks before hearing*).

4. The defendant is to file and serve an outline of submissions by 4pm (*2 weeks before hearing*).

5. The prosecutor is to file and serve an outline of submissions in reply by 4pm (*1 week before hearing*).

6. The parties are to confer on a court book which should be filed by the prosecutor by 4pm (*3 days before hearing*).