

Part 8.2A—Ground rules hearings and intermediaries

Division 1—Ground rules hearings

389A Application of Division

- (1) This Division applies to a criminal proceeding that relates (wholly or partly) to a charge for—
 - (a) a sexual offence; or
 - (b) an offence if the conduct constituting the offence consists of family violence within the meaning of the **Family Violence Protection Act 2008**; or
 - (c) an indictable offence which involves an assault on, or injury or a threat of injury to, a person; or
 - (d) any offences against section 23 or 24 of the **Summary Offences Act 1966** if the offences are related offences to an offence specified in paragraph (a) or (c), despite whether any such related offences are withdrawn or dismissed before an offence against section 23 or 24 of the **Summary Offences Act 1966** is heard and determined.
- (2) This Division applies at any stage of the criminal proceeding, including an appeal or rehearing.
- (3) This Division applies to a witness (including a complainant) other than the accused in a criminal proceeding referred to in subsection (1) if the witness is—
 - (a) a person under the age of 18 years; or
 - (b) a person with a cognitive impairment.
- (4) In this Division, *witness* means a witness referred to in subsection (3).

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389B Ground rules hearing to be held

- (1) The court may direct that a ground rules hearing under this Division is to be held.

Note

Section 337(1) enables this direction to be made by the court on the application of a party or on its own motion.

- (2) An application for the court to direct that a ground rules hearing is to be held may be made orally or in writing.

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- (3) A ground rules hearing must be held if an intermediary is appointed under Division 2.

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389C Time limits for ground rules hearing

- (1) If a ground rules hearing is to be held, it must be held before the commencement of any hearing at which a witness is to give evidence.
- (2) The court may extend the time for holding a ground rules hearing if the court considers that it is in the interests of justice to do so.
- (3) The court may extend time under subsection (2) before or after the time expires.
- (4) More than one extension of time may be granted under subsection (2).

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389D Attendance for ground rules hearings

- (1) The following persons must attend a ground rules hearing—
 - (a) a person acting for the prosecution;
 - (b) the legal practitioner representing the accused or, if the accused is unrepresented, the accused;
 - (c) the intermediary appointed for a witness, if any.
- (2) A witness is not required to attend a ground rules hearing.
- (3) The court may make an order that a witness for whom an intermediary is appointed not attend a ground rules hearing.

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389E Directions which may be given at ground rules hearings

- (1) At a ground rules hearing, the court may make or vary any direction for the fair and efficient conduct of the proceeding.
- (2) Without limiting subsection (1), the court may give one or more of the following directions—
 - (a) a direction about the manner of questioning a witness;
 - (b) a direction about the duration of questioning a witness;
 - (c) a direction about the questions that may or may not be put to a witness;
 - (d) if there is more than one accused, a direction about the allocation among the accused of the topics about which a witness may be asked;
 - (e) a direction about the use of models, plans, body maps or similar aids to help communicate a question or an answer;
 - (f) a direction that if a party intends to lead evidence that contradicts or challenges the evidence of a witness or that otherwise discredits a witness, the party is not obliged to put that evidence in its entirety to the witness in cross-examination.

Note

A direction referred to in paragraph (f) may exclude all or part of the operation of the rule attributed to *Browne v Dunn* (1893) 6 R 67 followed and applied in criminal proceedings in Victoria in *R v McDowell* [1997] 1 VR 473 (CA), *R v MG* (2006) 175 A Crim R 342, *R v SWC* (2007) 175 A Crim R 71 and *R v Ferguson* (2009) VR 531 in the circumstances in which, and in relation to witnesses to which, this Division applies.

Division 2—Intermediaries

389F Application of Division

- (1) This Division applies to a witness (other than the accused) in a criminal proceeding if—
 - (a) at the time at which the proceeding commences, the witness—
 - (i) is under the age of 18 years; or
 - (ii) has a cognitive impairment; and
 - (b) the criminal proceeding is in a participating venue of a court.
- (2) This Division applies at any stage of the criminal proceeding, including an appeal or rehearing.
- (3) In this Division (other than in section 389J(4)(c)), *witness* means a witness referred to in subsection (1).

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389G Participating venues of courts

The Minister may, by notice published in the Government Gazette, declare a venue of a court to be a participating venue for the purposes of this Division.

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389H Panel of intermediaries

- (1) The Secretary to the Department of Justice and Regulation must establish a panel of persons who the Secretary is satisfied are suitable persons to be appointed as intermediaries.
- (2) A person must not be on the panel unless the person—
 - (a) has a tertiary qualification in psychology, social work, speech pathology or occupational therapy; or
 - (b) has other prescribed qualifications, training, experience or skills.
- (3) The Secretary to the Department of Justice and Regulation must remove a person from the panel if the Secretary is no longer satisfied that the person is a suitable person to be appointed as an intermediary.

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389I Function of intermediaries

- (1) The function of an intermediary is—
 - (a) to communicate or explain to a witness for whom an intermediary is appointed, questions put to the witness to the extent necessary to enable them to be understood by the witness; and
 - (b) to communicate or explain to a person asking questions of a witness for whom an intermediary is appointed, the answers given by the witness in reply to the extent necessary to enable them to be understood by the person.
- (2) An intermediary is an officer of the court and has a duty to act impartially when assisting communication with the witness.

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389J Appointment of intermediaries

- (1) A court may appoint an intermediary for a witness from the panel established under this Division.

Notes

- 1 Section 337(1) enables this appointment to be made by the court on the application of a party or on its own motion.
 - 2 Section 337(2) provides that this appointment may be varied or revoked.
- (2) An application for a court to appoint an intermediary may be made orally or in writing.
 - (3) A court must not appoint an intermediary for a witness if the court is satisfied that the witness—
 - (a) is aware of the right of the witness to make an application for an intermediary to be appointed; and
 - (b) is able and wishes to give evidence in the criminal proceeding without the assistance of an intermediary.
 - (4) A court must not appoint a person as an intermediary for a witness if the person—
 - (a) is a relative, friend or acquaintance of the witness or the accused; or
 - (b) has assisted the witness (other than as an intermediary) or the accused in a professional capacity; or
 - (c) is a party or potential witness (other than by reason of the person's role as an intermediary) in the relevant proceeding.

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389K Witness to give evidence in presence of intermediary

- (1) In a proceeding in which an intermediary has been appointed, the evidence of the witness must be given in the presence of the intermediary.
- (2) Subject to any direction of the court and rules of court, the evidence of the witness given in the presence of the intermediary must be given in circumstances in which—

- (a) the court and any legal practitioner appearing in the proceeding are able to see and hear the witness giving evidence and to communicate with the intermediary; and
 - (b) the jury (if any) is able to see and hear the witness giving evidence (including any assistance given by the intermediary), other than evidence given in accordance with an arrangement made under section 360(a) as directed by the court.
- (3) The provisions of Division 2 (other than section 22(2)) of Part 2.1 of the **Evidence Act 2008** which apply to interpreters are taken to apply to an intermediary.

Note

Section 22(2) of the **Evidence Act 2008** requires interpreters to take an oath or make an affirmation in accordance with a form in Schedule 1 to that Act or a similar form.

- (4) A person must not act as an intermediary in a particular proceeding unless the person has taken an oath or made an affirmation in the prescribed form.

