

# Practice Direction 3 of 2024

## Sexual Violence Offence Case Management

Panel Discussion:  
Judge Byrne KC  
Alexis Oxley  
Lindsey Franklin-Browne  
Caroline Marco  
Julia Jasper





## Acknowledgement of Traditional Custodians

We acknowledge Aboriginal and Torres Strait Islander peoples as the First Peoples of Queensland and as the Traditional Custodians of Queensland's land and waters. We pay our respects to their Elders past and present.

We also acknowledge victim-survivors. We keep at the forefront of our minds all those who have experienced violence or abuse, and for whom we undertake this work.

# R v John SMITH

All names used and the circumstances of this scenario are entirely fictional and any resemblance to real persons, living or dead, is purely coincidental.



# Scenario

## Defendant

John Smith  
38 years old



## Mother

Samantha Black



## Complainant 1

Jane Black  
15 years old

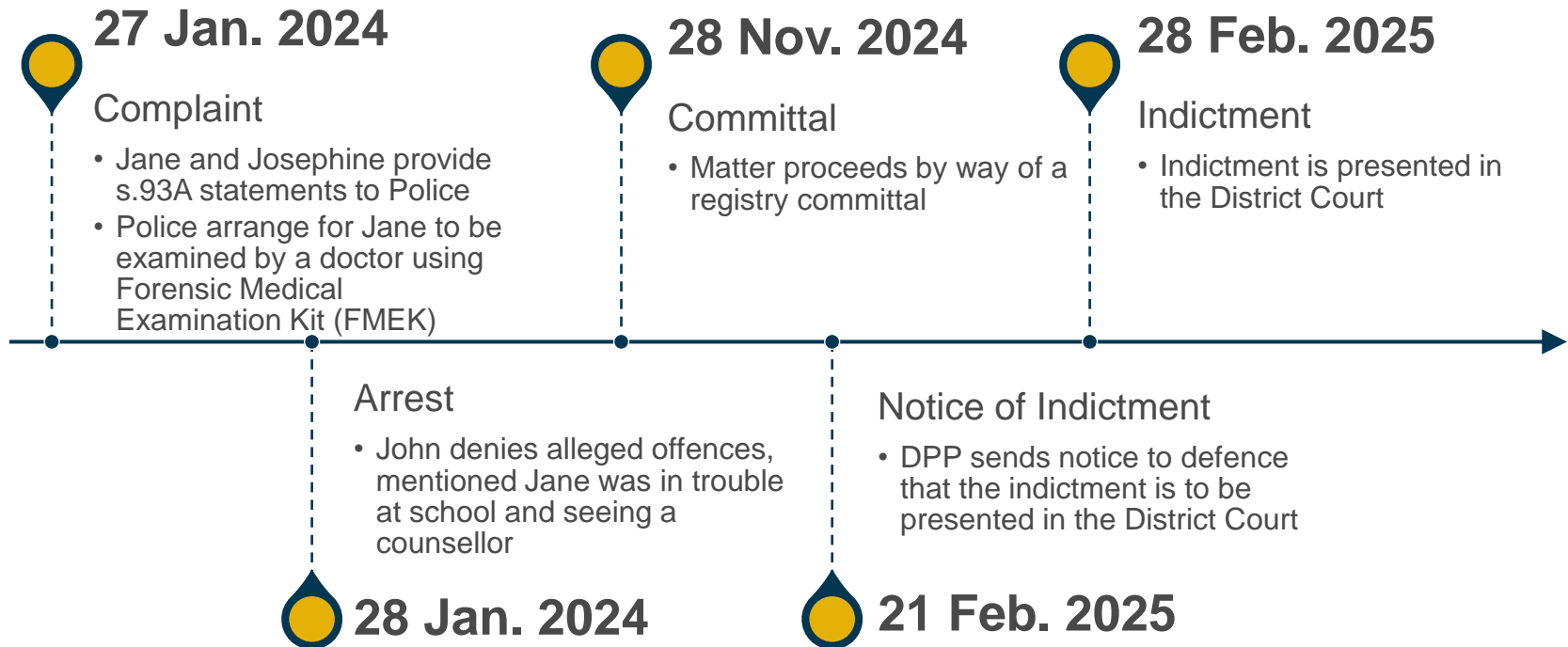


## Complainant 2

Josephine Black  
14 years old



# Timeline



# Indictment presentation

- Indictment of chapter 22 and 32 offence(s) presented during callover before Mentions Judge.
- Defence indicates the matter will be a trial.
- The Mentions Judge will order:
  - the matter be placed on the sexual violence (SV) list;
  - the matter be listed for a Case Review Hearing (CRH) four weeks from PRIN;
  - the Prosecution file particulars and the statement of facts prior to the CRH;
  - the Case Conference Registrar be permitted to inspect s93A transcripts filed by the Prosecution, (Prosecution to email s93A transcripts to the Case Conference Registrar [Conference.Registrar\\_DC@justice.qld.gov.au](mailto:Conference.Registrar_DC@justice.qld.gov.au)); and
  - disclosure by the Prosecution of material within its possession.

## How to prepare

- Visit <https://www.courts.qld.gov.au/courts/district-court/sexual-violence-case-management-district-court>
- Familiarise yourself with [Practice Direction 3 of 2024](#)

# Expert Evidence Panel (EEP)

- Brisbane and Townsville only; chapter 32 offences
- Relates to the defence available in s.348A (i.e. where the alleged act was done under an honest and reasonable but mistaken belief that the complainant consented)
- Section 348A(3) provides that a defendant's belief is not reasonable unless the defendant said or did something immediately before/at the time of the act, to ascertain whether the complainant consented
- Section 348A(4) provides that this additional requirement in s.348A(3) will not apply where a defendant had a cognitive or mental health impairment at the time of the sexual act, and the impairment was a substantial cause of the defendant not saying or doing anything (the **'affirmative consent safeguard'**)
- Defence must identify whether the affirmative consent safeguard provision is to be raised in the criminal trial by giving notice within 14 days of committal (s.590BA Criminal Code)
- Complete a referral form and email **SDLCS.EEP@justice.qld.gov.au**

# Protected Counselling Communications

- Defence seek to subpoena documents from the counsellor seen by the complainant, Jane Black, which may include 'protected counselling communications' (PCC).
- Where the name of the counsellor is unknown, defence should issue a Services Australia subpoena pre-indictment to avoid delay.
- Defence must notify the Crown and the counsellor for the counselled person of the application (the 's.14G notice').
- Defence must file and serve on the Crown at indictment presentation or by CRH:
  - An application for leave to issue the subpoena;
  - An outline of submissions; and
  - A draft subpoena.
- The court will set a date for the initial application and dates for the filing of material at the CRH (at least 14 days after the applicant gives notice under s.14G).
- If leave is granted for the subpoena to be issued:
  - Defence file the subpoena with the District Court registry; and
  - the court will list a 'use hearing' and issue directions for the filing of material.



# Prepare: Case Review Hearing (CRH)

## Practitioners

- Complete the 'Case Review Hearing form' 5 days prior to CRH.
- Communicate with other party to determine suitable court dates.
- Liaise with Case Managers via:

[SexualViolenceList.Brisbane@justice.qld.gov.au](mailto:SexualViolenceList.Brisbane@justice.qld.gov.au) OR  
[SexualViolenceList.Ipswich@justice.qld.gov.au](mailto:SexualViolenceList.Ipswich@justice.qld.gov.au)

Phone: 07 3738 7928

## Case Managers

- Review information provided by parties via CRH form.
- Liaise with parties to determine mutually agreeable dates with reference to the court calendar\*.
- Prepare a case summary for the SV List Judge which includes the history of proceedings and proposed dates for future court events.

## SV List Manager (Brisbane)

- Provides the SV List Judge with real time Court availability.

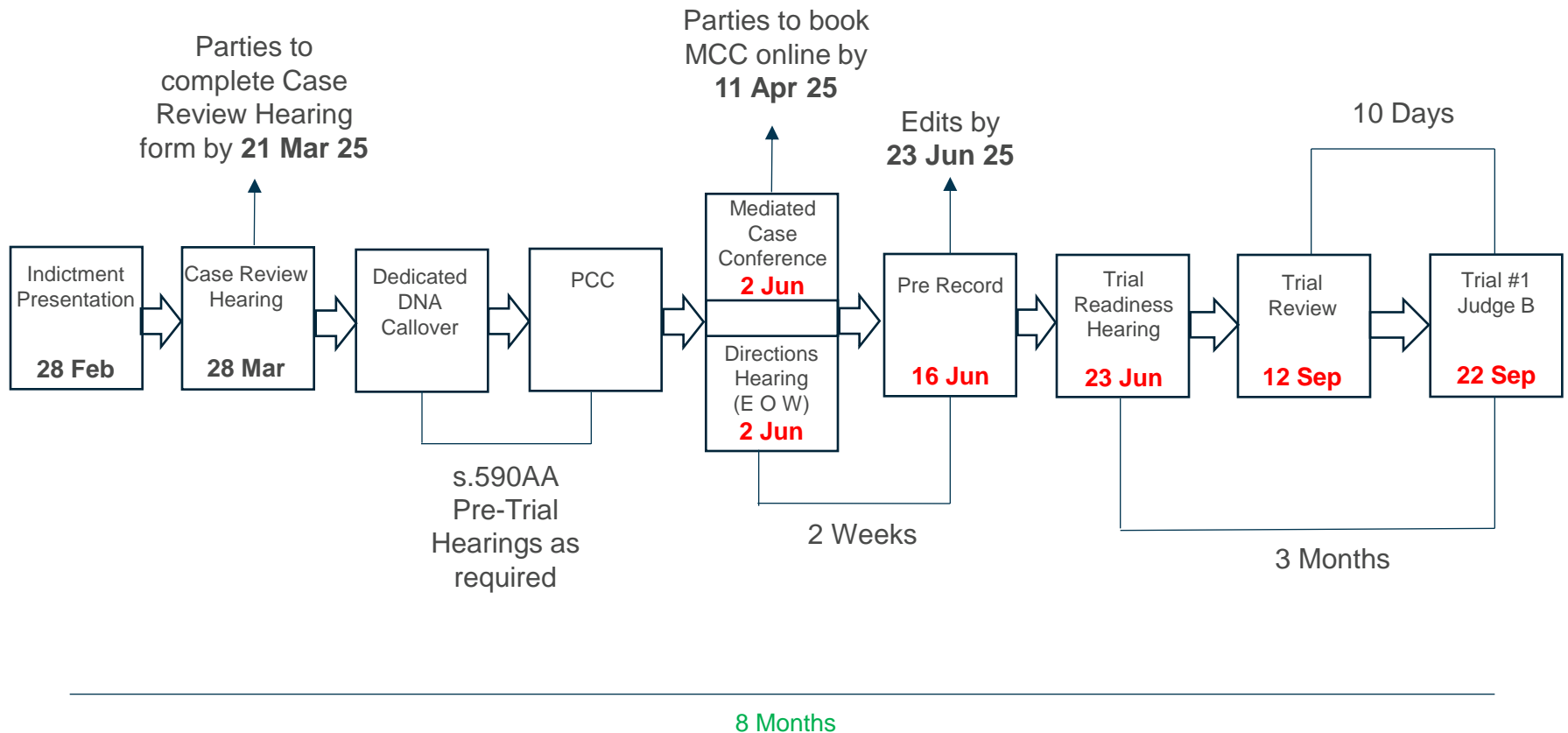
# During: Case Review Hearing

- Listed before the SV List Judge, separate to criminal call over (Brisbane).
- The parties attending must be able to speak to the following issues in the case:
  - any intermediary application (Brisbane);
  - any pre-trial issues (including PCC applications) and expected timeframes for resolution;
  - any pre-recordings for ACW/SW and time estimates;
  - estimated trial length; and
  - availability for future court events.
- The SV List Judge will allocate dates for the matter.

## Who is required to appear?

- A lawyer with carriage may appear if they are able to provide the court with the information sought about the future conduct of the matter.
- Defence Counsel and the Crown Prosecutor are encouraged to attend.

# Case schedule (pre-record route)



# Outstanding DNA Statement

- Brisbane District Court has introduced a **quarterly DNA callover** led by Judge Smith (last held 11 March 2025).
- DNA callover is part of the general crime list.
- Matters on the SV list may be listed for a **s.590AA hearing** in the DNA callover by request or by the courts own motion.
- Parties file an outline of submissions (not more than 2 pages in length) 2 days prior to the DNA call over outlining their position in relation to the following questions:
  1. Is the DNA evidence necessary?
  2. If yes to Q1, why is it necessary?
  3. Do all samples need to be tested and reported on?
  4. Can the case proceed with less samples being tested and reported on?
  5. Which samples are to be tested and reported on?
- Ipswich does not currently have a separate callover for DNA however parties are expected to case manage.

# Pre-trial Hearings (s590AA)

- Pre-trial Hearings are part of the general crime list.
- In the current scenario pre-trial hearings may be listed for admissibility of evidence, application for severance etc.
- Aim to list all pre-trial hearings before the pre-recording and Mediated Case Conference (though can be held any time before trial).

## Directions Hearing (case management)

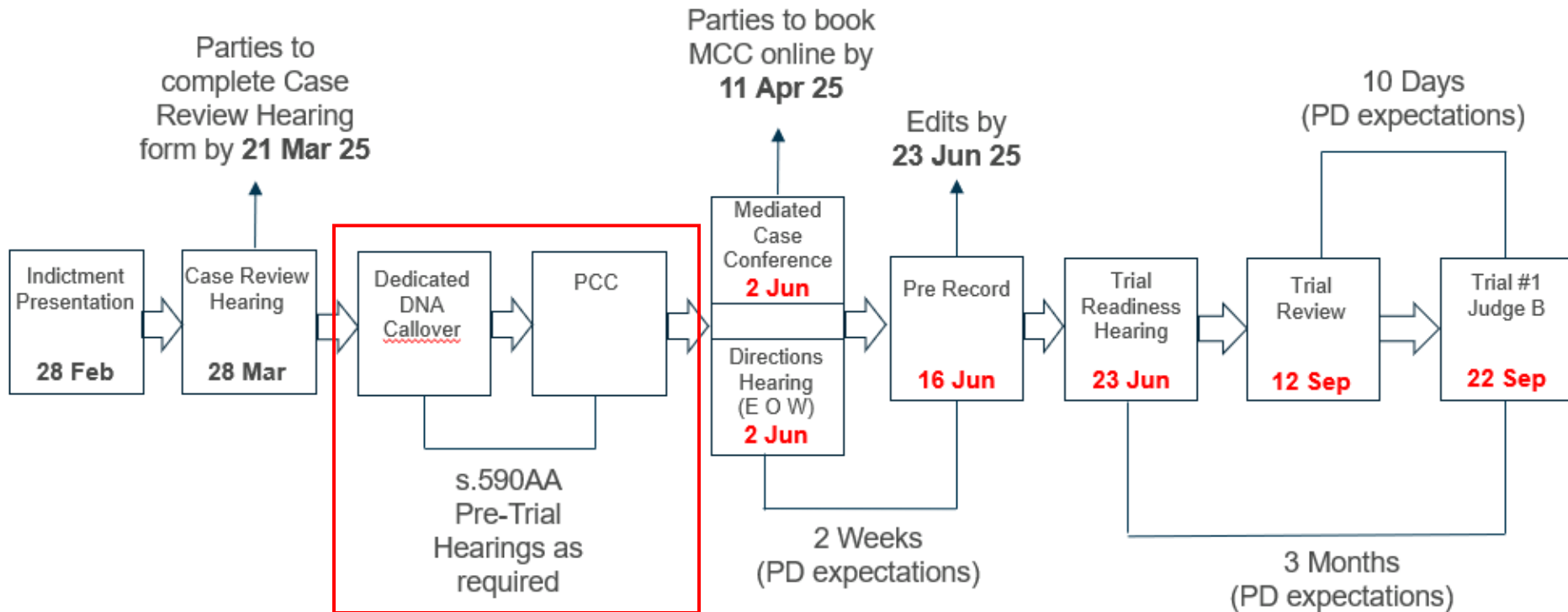
- Directions Hearings are a pre-trial hearing for matters on the SV list.
- Can be requested at any stage in proceedings to adjourn, reschedule, list or delist a court event.
- This may include changes required to the timeline set at CRH.
- Replaces a standard mention in the crime list.
- All Pre-trial Hearings including Directions Hearings can be requested by emailing the SV Case Managers at:



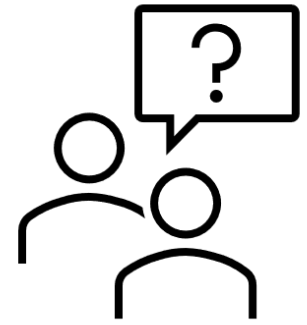
[SexualViolenceList.Brisbane@justice.qld.gov.au](mailto:SexualViolenceList.Brisbane@justice.qld.gov.au) or  
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Phone: 07 3738 7928

# Pre-trial Hearings (s590AA)



# Intermediaries



- Prosecutor determines that both complainants will require an intermediary and makes an application at indictment or the CRH (Brisbane).
- The application(s) details:
  - How the witness is eligible for assistance; and
  - Why an intermediary would be likely to improve the quality of the witness' evidence.
- If an order is made for appointment of an intermediary, the SV List Judge will list an intermediary directions hearing at the CRH and direct that report(s) be prepared.
- The SV List Manager will notify the Intermediary Program of the referral.
- The intermediary report will be given to the parties and placed on the court file by the Registry at least 1 week before the directions hearing.
- Counsel briefed to appear at the hearing and the intermediary must attend the directions hearing.



# Directions Hearings (Evidence of Witness)

- To obtain directions prescribing measures for the examination of an Affected Child Witness or Special Witness.
- Practice Direction 3/24 mirrors amendments to the Evidence Act under 21AAB brought by the *Criminal Justice Legislation (Sexual Violence and Other Matters) Amendment Act 2024* (to commence on proclamation or 19 September 2025)
- Ensures consideration has been given as to the communication and other needs of a SW (not just where an intermediary is indicated) including:
  - The manner and duration of questioning
  - The questions that may or may not be put
  - The allocation among the defendants of the topics about which the witness may be questioned
  - The use of models, plans, body maps or similar aids to assist communicate a question to be put to the witness
  - The use of an audio-visual link or another communication facility
  - The closing of the court and the presence of support persons



# Direction Hearing (EOW) logistics

## Pre-record route

- Listed at CRH (date only) with a direction for the Mediated Case Conference (MCC) to be scheduled first, followed by Directions Hearing Evidence of Witness (DH-EOW).
- MCC and DH-EOW can be listed on the same day with MCC scheduled in the morning and DH-EOW listed at 2:30pm before SV List Judge.

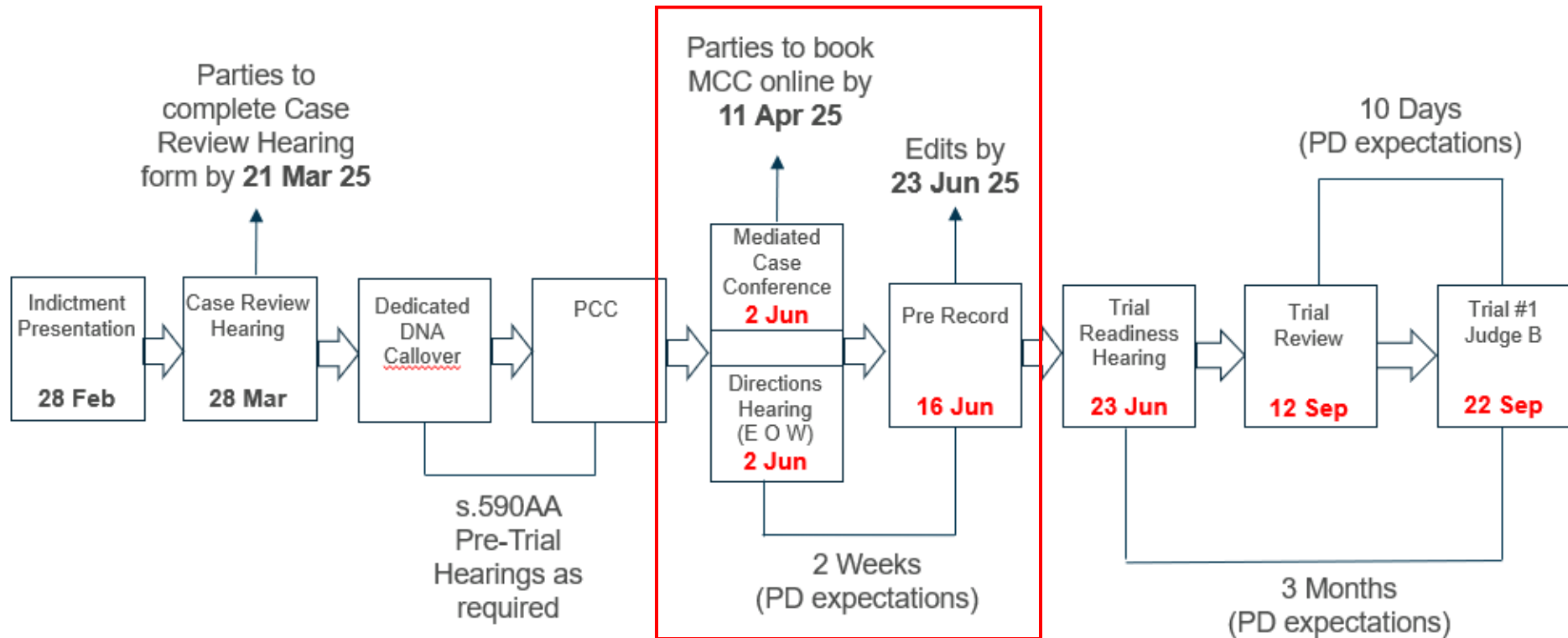
## Non pre-record route

- Listing set at CRH to be held at the same time as the Trial Review before the SV List Judge.

## General

- May be discussed at MCC and orders made by consent.
- DH-EOW may be de-listed on recommendation of Case Conference Registrar and at discretion of SV List Judge.
- A DH for an intermediary and DH-EOW may be the same court event

# Directions Hearings (Evidence of Witness)



# Mediated Case Conference

- ✓ Is not held if defendant is self-represented.
- ✓ Must be booked via the Queensland Courts Website.  
<https://www.courts.qld.gov.au/courts/district-court/sexual-violence-case-management-district-court>.
- ✓ Is to be held 2 weeks before the TRH or s21AK pre-record.
- ✓ CP and Defence Counsel are required to appear.
- ✓ May be held via telephone or video-link – seek leave 1 business day prior – [Conference.Registrar\\_DC@justice.qld.gov.au](mailto:Conference.Registrar_DC@justice.qld.gov.au) or phone 07 3033 6989.
- ✓ Held in a courtroom, confirmed by Case Conference Support Officer.
- ✓ Does not appear on the daily law list, held without prejudice, no transcript of proceedings.
- ✓ No requirement to reveal nature of defence before trial.
- ✓ Any agreement may be reduced to writing, certified by counsel, and filed as draft orders by consent to be signed in chambers by the SV List Judge.

# Mediated Case Conference

## How to prepare

- The CCR will also request the parties provide the following material (if not already filed):
  - Particulars;
  - Any statements of witnesses to be relied on at trial (including s.93A statements);
  - A copy of the trial plan (including exhibits and if these are recordings, the time estimates for the playing of any recordings);
  - The sentence indication from the Crown Prosecutor; and
  - Any agreed/proposed admissions.
- Defence counsel are expected to have conferred with the defendant and the Crown Prosecutor is expected to have conferred with the complainant prior to the MCC.

# Trial Readiness Hearing (TRH)

- Listed 3 months before the trial before SV List Judge.

## Practitioners

- Complete the 'Trial Readiness Hearing form' 5 days prior to TRH.
- Request to de-list (via directions hearing- case management) if ready to proceed to trial and no outstanding issues have been identified.
- Liaise with Case Managers via email:

[SexualViolenceList.Brisbane@justice.qld.gov.au](mailto:SexualViolenceList.Brisbane@justice.qld.gov.au) OR  
[SexualViolenceList.Ipswich@justice.qld.gov.au](mailto:SexualViolenceList.Ipswich@justice.qld.gov.au)

Phone: 07 3738 7928

## Case Managers

- Review information provided by parties via TRH form.
- Update the case summary for the SV List Judge to reflect the status of applications and outstanding matters.
- Will seek to de-list the TRH on request; the SV List Judge may retain the hearing or issue directions as required.

# Trial Review

- Listed 7-10 days prior to the trial before the SV List Judge.
- The Case Summary contains a Trial Review checklist in which the judge will confirm:
  - whether interpreters are required for any witness;
  - witness availability and readiness;
  - whether practical arrangements are required and coordinated for the witnesses in the trial;
  - whether arrangements been made to minimise contact between the complainant and the defendant at court;
  - whether there are there any security issues or issues with media interest; and
  - whether the parties can indicate what jury directions are required.
- Every effort should be made to ensure trial stability and readiness and for the trial to proceed within 8 months of indictment presentation.

# Questions?

Judge Byrne KC  
Alexis Oxley  
Lindsey Franklin-Browne  
Caroline Marco  
Julia Jasper

