

Magistrates Courts

Practice Direction No. 3 of 2014 (amended)

Issued 14 October 2014

Amended 27 July 2017

Management of controlled items in court precincts

1. This Practice Direction applies to proceedings in the civil and criminal jurisdictions.
2. In this Practice Direction, "controlled item" means:
 - (a) "weapon" or a "restricted item" as defined in the Weapons Act 1990 and the Weapons Categories Regulation 1997,
 - (b) "ammunition" or an "explosive" as defined in the Explosives Act 1999, and
 - (c) any other weapon including, but not limited to, a knife or an axe or similar implement.
3. In this Practice Direction:
 - (a) "initiated Sikh" means an Amritdhari Sikh, and
 - (b) "Kirpan" means a ceremonial sheathed knife worn by initiated Sikhs as one of Sikhism's five articles of faith.
 - (c) "Registrar" means a Registrar under the *Magistrates Courts Act 1921* which includes a clerk of the court under the *Justices Act 1886*.
4. Nothing in this Practice Direction is to be taken as removing or limiting the discretion of the Court in relation to the management of controlled items or Kirpans in the court precincts.
5. Controlled items must not be brought into the precincts of the court unless the conditions set out in this practice direction are satisfied.

Restricted items as evidence

6. Anyone who wishes to tender a controlled item should consider whether a photograph of the item may suffice.
7. But if it is appropriate for the proper conduct of the matter to tender the controlled item instead of, or as well as, a photograph, the party intending to

tender the item must make an ex parte application to the Chief Magistrate or Coordinating Magistrate or presiding Magistrate prior to the date for hearing.

8. The application should seek permission to bring the controlled item into the court precincts for the purpose of its being tendered in a proceeding. The application must provide full particulars of all controlled items and should give reasons for the request.
9. If permission is granted, then the Registrar is to issue the order and provide a copy to the applicant and, where applicable, courthouse security personnel.
10. A person seeking to bring the controlled item into the court precincts must, immediately upon entering the courthouse, show the order and the controlled item to courthouse security personnel. If no security personnel are in attendance, then the person seeking to bring the controlled item into the court precincts must advise the Registrar of the court.
11. A person granted permission under such an order must retain physical possession of the controlled item at all times within the court precincts unless the item is tendered and admitted as an exhibit.
12. Any projectiles (such as bullets, arrows etc) capable of being discharged from a weapon must be removed prior to entering the court precincts. If it is necessary for the projectiles also to be tendered as evidence, they must be produced separately.
13. Unless an order to the contrary is made, the party wishing to tender the controlled item must, at the time of tendering, provide a robust, transparent plastic bag of a size sufficient to contain the controlled item.
14. If the controlled item can only be possessed lawfully by an appropriately licensed person then such a person must retain possession of the item within the court precincts until the item is tendered and admitted into evidence.
15. At the conclusion of the proceeding, if the controlled item is not an exhibit in the proceedings, it will be returned to the applicant, unless the magistrate orders otherwise.
16. An applicant must show the controlled item to courthouse security personnel before leaving the courthouse. If no security personnel are in attendance, the Registrar of the court is to be advised. All items are to be fully accounted for.

State or Federal Police Officers - Evidence

17. If it is appropriate for the proper conduct of a matter to tender a controlled item, then any person who is exempted from the operation of the *Weapons Act 1990* (an "exempted person") may, in the exercise of the duties to which the exemption applies, bring a controlled item into the court precincts without the requirement for an order pursuant to paragraphs 6 and 7 of the Practice Direction.

18. The exempted person must show the controlled item to security personnel immediately upon entry to the courthouse. If no security personnel are in attendance, then the exempted person seeking to bring the controlled item into the court precincts must advise the Registrar of the court.
19. The exempted person must retain physical custody of the controlled item at all times unless it is admitted into evidence during the proceeding.
20. If the controlled item has not been admitted into evidence then the exempted person must remove it and show the controlled item to courthouse security personnel before leaving the courthouse. If no security personnel are in attendance, the Registrar of the court is to be advised. All items are to be fully accounted for.

State or Federal Police Officers - Safety

21. If, before or during the hearing of any matter before the Court, a State or Federal police officer forms the view that the presence of armed State or Federal police officers in or near the courtroom would assist in the protection of the public and those involved in the hearing then that police officer may seek permission for armed police to be present:
 - (a) from the presiding Magistrate, or
 - (b) if there is no presiding Magistrate at the time the police officer forms the view, from the Chief Magistrate, or the Coordinating Magistrate for the court location in which the matter has been listed for hearing.
22. A police officer may seek permission by:
 - (c) advising the presiding Magistrate's Court Service Officer or, the Registrar, of the matters referred to in 20, and
 - (d) asking that the Presiding Magistrate, or the Chief Magistrate, or the Coordinating Magistrate consider the request.
23. If the Chief Magistrate or Coordinating Magistrate or presiding Magistrate grants permission, then that Registrar or Court Service Officer will inform the police officer, the Registrar and courthouse security personnel in writing of:
 - (a) the name of the matter,
 - (b) when it is being heard,
 - (c) the nature of the arms to be carried, and
 - (d) the fact that permission has been given.
24. The term "Federal police officer" includes an Australian Federal Police Protective Service Officer.

Initiated Sikhs- Carriage of Kirpans

25. An initiated Sikh may, for religious purposes, carry one Kirpan within the precincts of a Magistrates Court provided he or she:
- (a) Where there is court security –
 - i. has, wherever practicable, notified court security at least 24 hours in advance of arrival,
 - ii. declares to court security, on arrival at the court precincts, that he or she is carrying a Kirpan,
 - iii. undergoes security screening as directed by court security, and
 - iv. ensures the Kirpan is sheathed and concealed at all times.
 - (b) Where there is no court security –
 - i. has, notified the Registrar at least 24 hours in advance of arrival
 - ii. declares to the Registrar, on arrival at the court precincts, that he or she is carrying a Kirpan,
 - iii. complies with the security requirements (if any) of the presiding magistrate, and
 - iv. ensures the Kirpan is sheathed and concealed at all times.
 - v. The Registrar must –
 - a. notify the Presiding Magistrate as soon as possible but not less than 1 hour in advance of arrival, that an initiated Sikh intends carrying a Kirpan within the precincts of the Magistrates Court, and
 - b. inform the initiated Sikh of the security requirements (if any) of the Presiding Magistrate.
26. Paragraph 25 does not:
- (a) exempt any person from undergoing security screening,
 - (b) apply to any person who is in custody, or
 - (c) permit the carriage of more than one Kirpan on a person.
27. Notwithstanding paragraph 25, special security measures may require the temporary exclusion of all Kirpans within precincts of a Magistrates Court. In those circumstances court security staff are to notify the Sikh Nishkam Society of Australia as soon as reasonably practicable.
28. To respect the Sikh faith, court security staff or the Registrar should not touch or handle a Kirpan unless necessary for security purposes. When necessary,

a Kirpan should be handed to the court security officer or the Registrar in a private room and wrapped in clean material or placed in a clean container.

Commencement

23. This Practice Direction takes effect from 27 July 2017



Judge Orazio Rinaudo AM
Chief Magistrate
27 July 2017