

PRACTICE DIRECTION CRIM 3 OF 2008

SENTENCING HEARINGS

1. Application

- 1.1 This Practice Direction applies to any hearing at which an offender is to be sentenced, listed in Perth or on circuit on or after 1 September 2008.
- 1.2 From the date of application of this Practice Direction, Practice Direction CRIM 2 of 2006 is repealed.

2. Sentencing Act s 32 requests

- 2.1 Pursuant to *Criminal Procedure (District Court) Rules 2008*, *Criminal Procedure Rules 2005* (CPR) rule 44(2) is varied so that the request by an offender under *Sentencing Act 1995* s32 must be lodged with the Court and served:
 - (a) where the accused has been committed for trial in Perth, not less than 28 days before the date on which the offender is to be sentenced by the Court;
 - (b) where the accused has been committed for sentence in Perth, at or before the Sentencing Mention in the District Court at which a date is allocated to sentence the offender; or
 - (c) where the accused has been committed for trial or sentence at a circuit location, not less than 28 days before the date on which the offender is to be sentenced by the Court.
- 2.2 Further to CPR rule 44(7), the DPP must lodge any Form 12 in relation to a particular Sentencing Hearing no later than 14 days prior to the date when the offender is to be sentenced by the Court.
- 2.3 The Court will not under any circumstances accept applications lodged later than the time frames set by this rule.

3. Consequential breaches

- 3.1 For the purposes of this rule a 'Consequential Breach Notice' is a notice filed pursuant to one or more of *Sentencing Act 1995* (SA) s79 (suspended sentence), s84 (conditional suspended sentence) or s129 (conditional release order or community order).

- 3.2 If the prosecution wishes the Court to deal with a Consequential Breach Notice at a particular sentencing hearing in relation to an offender, the prosecution is to lodge and serve the relevant notice:
- (a) where the accused has been committed for trial in Perth, not less than 14 days before the date on which the offender is to be sentenced by the Court;
 - (b) where the accused has been committed for sentence in Perth, at or before the first Sentencing Mention in the District Court; or
 - (c) where the accused has been committed for trial or sentence at a circuit location, not less than 14 days before the date on which the offender is to be sentenced by the Court.
- 3.3 If an offender wishes the prosecution to lodge and serve a Consequential Breach Notice to be dealt with at a particular sentencing hearing in relation to the accused, the offender can send a written request to this effect to the prosecution. The request is to be served on the prosecution not less than 28 days before the date of the Sentencing Hearing in question.
- 3.4 If the prosecution receives a written request pursuant to paragraph 3.3, it is to lodge and serve the notice requested not less than 14 days prior to the particular Sentencing Hearing.

4. Prosecution material for a Sentencing Hearing

- 4.1 Subject to paragraph 4.2, the prosecution is to lodge with the Court and serve the following documents not less than 7 days prior to the date on which the offender is to be sentenced by the Court:
- (a) submissions (if any);
 - (b) criminal history report;
 - (c) victim impact statements (if any);
 - (d) photographs (for example, samples of pornographic images);
 - (e) video material (for example, excerpts of pornographic videos);
 - (f) any other materials to be relied on at the sentencing pursuant to SA s45.
- 4.2 Where the accused has been committed for sentence, the prosecution is to lodge any criminal history report to be relied on with the Court at or before the initial mention in the District Court.

5. Offender's material for a Sentencing Hearing

- 5.1 The offender is to lodge with the Court and serve any materials to be relied on at the sentencing pursuant to SA s45 not less than 2 clear days prior to the date on which the offender is to be sentenced by the Court. This includes any written submissions to be relied on.

6. Victim impact statements

- 6.1 Victim impact statements may be delivered in writing, or, subject to any direction of the presiding Judge, orally by the victim, or by a person authorised under SA s24(2) to give a victim impact statement on the victim's behalf, reading a victim impact statement.
- 6.2 If the prosecution proposes that a victim, or a person authorised under SA s24(2) to give a victim impact statement on the victim's behalf, will deliver an oral victim impact statement, then the prosecution must give written notice to the Court and the offender not less than 7 days prior to the date on which the offender is to be sentenced by the Court.
- 6.3 The written notice referred to in paragraph 6.2 which is filed at the Court is to attach a copy of the written statement which the victim, or a person authorised under SA s24(2) to give a victim impact statement on the victim's behalf, proposes to read.
- 6.4 A victim impact statement made available to an offender or an offender's legal representative is, unless otherwise ordered, made available on the conditions set out in this Practice Direction which are conditions for the purpose of SA s26(1).
- 6.5 Where an offender is represented by a legal practitioner who has filed a notice of acting on behalf of the offender, a copy of the victim impact statement to be lodged under paragraph 4.1(c) or under paragraph 6.3 is to be served on that legal practitioner.
- 6.6 Where an offender is not represented by a legal practitioner, the prosecution is to make a copy of the victim impact statement to be lodged under paragraph 4.1(c) or under paragraph 6.3 available for inspection by the offender before the sentencing hearing.
- 6.7 A practitioner who receives a victim impact statement:
 - (a) is to take appropriate steps to ensure that the contents of the statement remain confidential;
 - (b) is not to disclose the contents of the statement to any person other than the offender; and
 - (c) is not to use the statement for any purpose other than the purpose of making submissions at the sentencing of the offender.
- 6.8 Where a legal practitioner ceases to act for an offender prior to a sentencing hearing, the practitioner is to:
 - (a) deliver to the Court the hard copy of the victim impact statement with the notice of ceasing to act; and
 - (b) delete any electronic copies of the statement.
- 6.9 At the conclusion of the sentencing hearing counsel appearing for the offender is to:
 - (a) deliver to the Court the hard copy of the victim impact statement; and
 - (b) delete any electronic copies of the statement.

7. Pre-sentence reports

- 7.1 In this part, a reference to a 'pre-sentence report' is a reference to a pre-sentence report prepared pursuant to SA Part 3, Division 3, and includes any specialist reports commissioned as part of the pre-sentence report, for example, as to the physical or mental state of the offender.
- 7.2 This part applies:
- (a) where pursuant to SA s22(5) the Court makes a copy of the pre-sentence report available to the prosecutor and/or a legal practitioner who has filed a notice of acting on behalf of the offender; and
 - (b) unless the Court orders to the contrary.
- 7.3 A pre-sentence report which is made available by the Court is, unless otherwise ordered, made available on the conditions set out in this Practice Direction, which are conditions for the purpose of SA s22(5).
- 7.4 Where the pre-sentence report is made available by email, only one copy of the pre-sentence report is to be printed out.
- 7.5 The pre-sentence report is to be retained in the possession of (relevantly):
- (a) the file manager or sentencing counsel of the prosecutor; or
 - (b) a legal practitioner who has filed a notice of acting on behalf of the offender,
- 7.6 A practitioner who retains possession of the pre-sentence report:
- (a) is to take appropriate steps to ensure that the contents of the pre-sentence report remain confidential;
 - (b) is not to disclose the contents of the pre-sentence report to any person other than the offender, if the practitioner is his or her lawyer, or, in the case of the prosecutor, another officer of the prosecutor engaged in the matter; and
 - (c) is not to use the pre-sentence report for any purpose other than the purpose of making submissions at the sentencing of the offender.
- 7.7 Where a legal practitioner ceases to act for an offender prior to a sentencing hearing, the practitioner is to:
- (a) return the hard copy of the pre-sentence report to the Court with the notice of ceasing to act; and
 - (b) delete any electronic copies of the pre-sentence report.

7.8 At the conclusion of the sentencing hearing counsel appearing for the prosecutor and the offender are each to:

- (a) hand their respective copies of the pre-sentence report to the Associate to the Judge who sentences the offender; and
- (b) delete any electronic copies of the pre-sentence report.

This rule applies even if the prosecutor or the offender wish to consider commencing an appeal in relation to the sentence.

8. Mediation reports

8.1 In this part, a reference to a 'mediation report' is a reference to a written report prepared by a mediator about any mediation or attempted mediation between an offender and a victim prepared pursuant to SA Part 3, Division 5.

8.2 This part applies:

- (a) where pursuant to SA s30 the Court makes a copy of a mediation report available to the prosecutor and/or a legal practitioner who has filed a notice of acting on behalf of the offender; and
- (b) unless the Court orders to the contrary.

8.3 A mediation report which is made available by the Court is, unless otherwise ordered, made available on the conditions set out in this Practice Direction, which are conditions for the purpose of SA s30 (1).

8.4 The restrictions set out in paragraphs 7.4 to 7.8 apply to the release of a mediation report.



PETER MARTINO
Chief Judge