

CIRCUIT HEARINGS – CRIMINAL

Summary: The District Court operates one of the largest geographic circuit programs in the world. This circular sets out the District Court’s practices for circuit trials and sentencing hearings, highlighting differences with Perth hearings.

1. Background

The Court undertakes about 110 weeks of circuit hearings each year in which around 100 trials and 250 sentencing hearings are conducted.

The Court endeavours to finalise most circuit matters within 12 months of committal. In order to achieve this outcome, the Court will endeavour to allocate trial dates at the first appearance in the District Court, or as soon thereafter as is practicable. This in turn requires the indictment to be filed and disclosure completed before the first appearance.

2. Committals for trial – documents to be filed

Criminal Procedure Act (“CPA”) s95, read with *Criminal Procedure Rules* (“CPR”) rule 20, provides that the prosecution must comply with its disclosure obligations by no later than 42 days after the date on which the accused is committed for trial.

Practice Direction CRIM 2 of 2008 directs that the indictment is to be lodged and served no later than 42 days after the date on which the accused is committed for trial or sentence. There is a power to extend this time limit. If the prosecution complies with this requirement and CPA s95, the accused should have ample time to consider his or her position prior to the first appearance in the District Court.

Practice Direction CRIM 2 of 2008 also provides that the prosecution must lodge and serve its Listing Certificate at the same time as it lodges and serves the indictment.

Practice Direction CRIM 2 of 2008 further directs that the accused is to lodge and serve his or her Listing Certificate no later than 28 days after the date on which the indictment is lodged. This allows the accused to have 21 days in which to consider the indictment (CPR rule 16) and then a further 7 days to consider trial issues if the intent is to proceed to trial.

3. Committals for trial - first appearance

Each matter committed for trial will be allocated a first appearance date at a trial listing hearing (“TLH”) in the District Court no earlier than 12 weeks after the date of committal.

Effective 1 January 2017 a circuit TLH will be by video link to the circuit location and will commence at 9:15 am.

The TLH will be conducted via videolink from a courtroom in the District Court Building in Perth to the circuit location. Counsel for the prosecution and the defence based in Perth are to participate in proceedings in person in a courtroom at Perth. Counsel for the defence based in the circuit location are to participate in proceedings in person in a courtroom at the circuit location.

The Court’s practice is that accused in custody and represented by Counsel will not have to appear by video link from the prison. Similarly, accused on bail and reporting at a location other than the circuit location courtroom and represented by Counsel will not have to appear in the proceedings. Accused on bail and not represented by Counsel will have to appear at the courtroom at the circuit location.

Defence counsel who wish to have their client brought up to Court personally to the circuit location (or to the District Court Building if the accused is in a metropolitan prison) should make a request in writing not less than 14 days prior to the date on which the circuit TLH is to occur. The application is to be marked to the attention of the Criminal Circuits Listings Co-ordinator, who will then refer it to the Judge presiding at the circuit TLH or the Chief Judge. If an accused in custody does not wish to be present at the circuit TLH, and the Court is informed of that request sufficiently prior to the hearing to make the necessary administrative arrangements, the circuit TLH can take place in the absence of the accused in accordance with CPA s88(4).

If the prosecution and the accused both comply with their obligations as set out in Part 2, the accused’s Listing Certificate should be filed about 2 weeks before the first TLH.

The Judge will endeavour to allocate trial dates at the first TLH. Trial dates will not be allocated prior to the prosecution filing an indictment.

If the matter cannot be allocated trial dates, it will be adjourned to a further TLH.

The Court will endeavour to allocate trial dates within 1 to 4 months of the TLH. The Court endeavours to accommodate the availability of counsel of choice for the accused. However, this may not always be possible.

In the event that there is an outstanding issue that needs to be resolved prior to trial, the Judge will allocate trial dates, and will also allocate a pre-trial hearing pursuant to CPR rule 34.

4. Committals for sentence - Circuit arrangements

The requirements of Practice Direction CRIM 3 of 2008, Sentencing Hearings, apply to circuit sentencing hearings.

The first day of a circuit is generally allocated to Sentencing Hearings. There is a limit on the number of matters that can be dealt with in a day. Accordingly, some circuit sentencing hearings may not be able to be listed in the next following circuit sitting.

Committals for sentence from circuit locations will be listed for a Sentencing Hearing a minimum of 8 weeks from the date of committal. This is to allow the DPP to prepare the indictment and sentencing materials. It also allows time for any pre sentence reports to be prepared. Where a psychological or psychiatric pre sentence report has been ordered, the Sentencing Hearing is listed a minimum of 12 weeks from the date of committal.

Where a pre sentence report is not ordered in the Magistrates Court, and the practitioner considers that a pre sentence report is required, the practitioner may request the Court to order the preparation of a report. The request should be made as soon as the need for a pre sentence report is identified. The request is to be in writing and may be faxed or emailed to the Court (districtcourt@justice.wa.gov.au Attention: Circuits Listing Coordinator). The request will be reviewed by a Judge or legally qualified Registrar. If a report is required, it will be ordered administratively without the need for a hearing. If the request is approved, and the timing of the request is such that the report ordered is not able to be provided prior to the scheduled Sentencing Hearing, the Court may indicate to the parties that the Sentencing Hearing will be a mention only.

The Court has requested Community and Youth Justice to prepare any pre sentence reports not less than 14 days prior to the date of the Sentencing Hearing. As set out in Practice Direction CRIM 3 of 2008, practitioners can receive copies of the pre sentence report prior to the day of the Sentencing Hearing. The Court encourages practitioners to include an email address in their Notice of Acting to facilitate this occurring.

Pleas of guilty in circuit TLHs are generally listed to a Sentencing Hearing in a circuit list.

Pleas of guilty for matters listed for trial are dealt with by the Judge undertaking the circuit at which the trial was listed.

5. Late case management conferences

Where a Judge at a circuit TLH is of the view that a matter listed for trial requires further case management prior to trial, the Judge may order the parties to attend a case management conference pursuant to *Criminal Procedure Act 2004* (WA) (“CPA”) s137. The conference will usually be before a legally qualified Registrar. It will usually take place about 3 weeks prior to trial. The usual orders for a late case

management conference are set out in Annexure A. The Judge will tailor these orders to the requirements of the particular case,

SHANE MELVILLE
Principal Registrar

Annexure A

Late Case Management Conference – Usual Orders

1. Counsel for the State and counsel for each accused attend a case management conference before a legally qualified Registrar on [*Date and time*] (“Conference”) at Level 1, District Court Building, 500 Hay Street, Perth.
2. Unless otherwise ordered by the legally qualified Registrar, the parties are to confer at the Conference on a “without prejudice” basis.
3. Each counsel is at liberty to attend the Conference by telephone.
4. Not less than 7 days prior to the Conference, trial counsel for the prosecution is to fax or email to the Court (districtcourt@justice.wa.gov.au Attention: Circuits Coordinator), with a copy to each defence counsel, a letter in which counsel confirms that:
 - (a) each prosecution witness has been served with a witness summons to give evidence at trial;
 - (b) counsel has personally spoken to each key prosecution witness within the 7 days preceding the date of the letter, specifying the names of each key witness;
 - (c) each key prosecution witness will give evidence at trial substantially in accordance with their proof of evidence;
 - (d) counsel has personally spoken to the investigating officer;
 - (e) there is no further disclosure to be made by the prosecution;
 - (f) all edits to video material and transcripts of video material have been made;
 - (g) the action is in all respects ready to proceed on the allocated trial dates; and
 - (h) counsel has full instructions for the Conference.
5. Not less than 7 days prior to the Conference, trial counsel for each accused is to fax or email to the Court (districtcourt@justice.wa.gov.au Attention: Circuits Coordinator), with a copy to the prosecution, a letter in which counsel confirms that:
 - (a) counsel has personally spoken to the accused in the 7 days preceding the letter;
 - (b) the accused intends to maintain his or her plea of not guilty;

- (c) each witness the defence intends to call at trial has been served with a witness summons to give evidence at trial;
 - (d) there are no outstanding requests to the prosecution for further information, particulars or disclosure;
 - (e) all edits to video material and transcripts of video material have been made;
 - (f) counsel has no instructions to seek that any matters be dealt with by way of directions at the commencement of the trial;
 - (g) the action is in all respects ready to proceed on the allocated trial dates; and
 - (h) counsel has full instructions for the Conference.
6. If trial counsel is unable to confirm any of the matters set out in paragraphs 4 or 5 (whichever is applicable), counsel is to set out in the letter the steps that have been taken in that regard and the reason why counsel is not then able to confirm the relevant matter.
7. The letter in paragraph 5 is also to advise whether or not the accused wishes to participate in the Conference and, if so, the telephone number or prison at which the accused can be contacted.
8. The letter in paragraph 4 or 5 (whichever is applicable) is to either:
- (a) advise that counsel will attend the Conference in person; or
 - (b) provide the most convenient contact telephone number for counsel for the Conference.
9. A reference in these orders to counsel, is a reference to the counsel then briefed to appear as lead counsel at the trial of the matter;
10. A reference in the orders in paragraph 4 or 5 to counsel personally speaking to a person, is satisfied where the conversation takes place by telephone.