

**PRACTICE DIRECTION CRIM 2 OF 2008**  
**CRIMINAL LISTINGS**

**1. Application**

- 1.1 This Practice Direction applies to all accused committed for trial or sentence with their first appearance in the Court on or after 1 September 2008.
- 1.2 Practice Directions No 2 of 1995 (Representation at longer criminal trials), No 3 of 2001 (Expedited trials) and No 2 of 2007 (Criminal Listings – Interim Arrangements) are repealed.

**2. Filing of the indictment**

- 2.1 From 1 October 2010, paragraphs 2.2 to 2.5 will apply to all committals to the District Court. Until that date, paragraphs 2.2 to 2.5 only apply to committals to the District Court sitting in Perth.
- 2.2 Unless otherwise ordered by the Court, the prosecution must lodge the indictment no later than 42 days after the date on which the accused is committed for trial or sentence.
- 2.3 An application to extend the time within which the indictment is to be filed may be:
- (a) made orally; and
  - (b) made after the date on which the indictment was required to have been lodged pursuant to paragraph 2.2.
- 2.4 The Court may order the prosecution to lodge and serve an affidavit setting out:
- (a) the reasons why an indictment has not yet been lodged; and
  - (b) the likely time by which an indictment will be lodged.
- 2.5 The Court may order that any second or subsequent application to extend the time within which the indictment is to be filed be supported by an affidavit as set out in paragraph 2.4.

### **3. Prosecution's Listing Certificate**

- 3.1 Where an accused is committed for trial, at the time of lodging an indictment, the prosecution must also lodge and serve a Listing Certificate in the form set out in Annexure A.
- 3.2 The prosecution is not required to lodge and serve any further Listing Certificate unless ordered by the Court.
- 3.3 In completing the Listing Certificate, the practitioner signing the certificate is to have regard to any Circular to Practitioners issued by the Court.
- 3.4 The prosecution's Listing Certificate should be on green paper.

### **4. Accused's Listing Certificate**

- 4.1 Where an accused is committed for trial, not later than 28 days after the indictment is lodged, the accused must lodge and serve a Listing Certificate in the form set out in Annexure B.
- 4.2 The accused is not required to lodge and serve any further Listing Certificate unless ordered by the Court.
- 4.3 In completing the Listing Certificate, the practitioner signing the certificate is to have regard to any Circular to Practitioners issued by the Court.
- 4.4 The accused's Listing Certificate should be on yellow paper.
- 4.5 Prior to signing the Listing Certificate the accused is to be advised by his legal representative of the following matters:
  - (a) The discount that may be available under s 9AA of the *Sentencing Act 1995* if a plea of guilty is entered at the first reasonable opportunity;
  - (b) The legal practitioner's estimate of the reduction in the head sentence (expressed in years or months) that may be available if a plea of guilty is entered at the first reasonable opportunity;
  - (c) The extent of the discount available under s 9AA of the *Sentencing Act 1995* will generally be reduced the longer the delay in entering a plea of guilty.

### **5. Material changes in the listings information**

- 5.1 Where a party becomes aware of changes in circumstances which render the information provided in the Listing Certificate incorrect, out of date or misleading, the party must immediately notify the Court and each other party of the relevant facts in writing. The advice may be by way of letter or facsimile.

## **6. Adjourment of listings hearings**

6.1 Unless otherwise ordered by the Court, neither the prosecution nor the accused is obliged to file a further or undated Listing Certificate.

6.2 Where a matter has not yet been listed for trial, at each subsequent appearance before the Court, counsel for the parties must be in a position to advise the Court of:

- (a) the current unavailable dates of the witnesses; and
- (b) whether the party has complied with paragraph 5.1 of this Practice Direction.

## **7. Editing of videos**

7.1 Where:

- (a) the prosecution brief includes a video record of interview (“ROI”) or a Visually Recorded Interview (“VRI”); and
- (b) the accused wishes to object to portions of the ROI or VRI,

counsel for the accused is to notify the prosecution in writing of the portions of the ROI or VRI objected to by no later than 14 days after the date on which the matter is allocated trial dates.

7.2 Where the prosecution receives notice of objections to a ROI or VRI, the prosecution and the accused must, in good faith, attempt to resolve the objections and agree to any edits required to the relevant video record.

7.3 In the event that the prosecution and the defence cannot agree on the edits required by 28 days prior to the date of commencement of the trial, the prosecution is to list the matter for a directions hearing for the purpose of resolving the disputed objections.

**KEVIN SLEIGHT**  
**Chief Judge**

## ANNEXURE A

### LISTING CERTIFICATE – PROSECUTION

	District Court of Western Australia At: Number:
<b>Parties</b>	THE STATE OF WESTERN AUSTRALIA / THE QUEEN -and- [ ]

#### 1. COMMUNICATION WITH THE ACCUSED

- (a) Have all the accused's requests for information, clarification or better disclosure concerning this prosecution been complied with?

Yes       No

If "no", specify why not:

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- (b) Has there been any discussion with the accused as to facts that might be agreed or evidence that might be admitted at trial by consent?

Yes       No

If the answer to either question is "no", specify why not:

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#### 2. DISCLOSURE

- (a) Has the State complied with *Criminal Procedure Act s95*?

Yes       No

- (b) Has the prosecution disclosed statements for each witness it currently intends to call at trial?

Yes       No

(c) Has the prosecution disclosed witness statements or reports for each expert it currently intends to call at trial?

Yes       No

(d) Has the prosecution disclosed all forensic evidence it intends to rely on at trial?

Yes       No

If the answer to any of questions 2(a) to (d) is “no”, specify what remains to be disclosed:

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### **3. RECORDS OF INTERVIEW**

In respect of any proposed records of interview:

(a) Does the disc / tape need editing?

Yes       No

(b) Has the prosecution provided the accused with any proposed edits?

Yes       No

(c) Has the editing been agreed?

Yes       No

Practitioners are reminded of the need to comply with Part 7 of Practice Direction CRIM 2 of 2008 “Criminal Listings” in relation to edits to video evidence.

### **4. OTHER VIDEO EVIDENCE**

In respect of any visually recorded evidence or other video evidence:

(a) Does the disc / tape need editing?

Yes       No

(b) Has the prosecution provided the accused with any proposed edits?

Yes       No

(c) Has the editing been agreed?

Yes       No

Practitioners are reminded of the need to comply with Part 7 of Practice Direction CRIM 2 of 2008 “Criminal Listings” in relation to edits to video evidence.

**5. TRIAL LISTING**

(a) Estimated trial length (in days)

(b) Number of counts

(c) Number of accused

(d) Number of lay prosecution witnesses  
(including complainant and police)

(e) Number of expert witnesses

(f) Will any witness be required to travel from interstate or overseas?

Yes       No

(g) Dates on which prosecution witnesses are not available (due to overseas travel or other specified reason):

## 6. TRIAL PREPARATION

- (a) Are there any disputes as to the admissibility of evidence?

If “yes”, specify the evidence in issue and nature of the dispute:

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- (b) Is a *Criminal Procedure Act* s98 directions hearing required?

Yes       No

If “yes”, specify the issues to be determined:

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- (c) Are there any other issues that need to be attended to prior to trial?

Yes       No

If “yes”, specify the issues:

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## 7. TRIAL ARRANGEMENTS

- (a) Is this a “serious sexual offence” matter under *Evidence Act s106A*?

Yes       No

- (b) Does the prosecution intend to seek orders that any witness be declared a “special witness” pursuant to *Evidence Act s106A*?

Yes       No

If “yes”, specify:

Witness' name	Date of birth	When application will be made

- (c) Does the prosecution intend to seek orders that any witness give evidence by audiolink or videolink?

Yes       No

If “yes”, specify:

Witness' name	Date of birth	When application will be made

- (d) Does any witness require an interpreter?

Yes       No

If an interpreter is required, the prosecution must advise the criminal registry not less than 14 days before the trial is due to commence.

- (e) Is the trial going to require audio visual or electronic arrangements beyond the use of a DVD player, CD player or VHS video player (eg presentation of documentary evidence on computer screens or digital photos)?

Yes       No

If “yes”, the prosecution must advise the criminal registry in writing of its requirements not less than 21 days prior to the commencement of the trial.

The Court’s capabilities as regards electronic evidentiary material are set out in the document entitled “Submission of Electronic Evidentiary Materials in Western Australian Courts” which is available on the Court’s website.

- (f) Does the offence relate to pornography or objectionable material under legislation such as the *Classification (Publications, Films & Computer Games) Enforcement Act 1996* and *Censorship Act 1996*?

Yes       No

If “yes”, the practitioners should comply with the directions in Circular to Practitioners CRIM 2007/1, “Management of Trials – Offence Relating to Pornography and Objectionable Material”.



## 8. CONTACT DETAILS

<b>Case manager</b>	
<b>Direct phone number</b>	
<b>Fax</b>	
<b>Email</b>	

## 9. CERTIFICATION

I am the case manager / solicitor with the conduct of this prosecution.

I certify that:

- (a) in all respects *or* in all respects other than those noted in this certificate (*delete inapplicable*) the prosecution is ready for the trial of this matter;
- (b) to the best of my belief the answers in this Certificate are correct; and
- (c) it is not anticipated that a notice discontinuing the prosecution will issue.

I undertake that I will inform the Court as soon as is reasonably practicable after I become aware of any change in circumstances which results in a change to any of my answers on this Listing Certificate.

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Signature

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Date

## ANNEXURE B

### LISTING CERTIFICATE – DEFENCE

	District Court of Western Australia  At:  Number:
<b>Parties</b>	THE STATE OF WESTERN AUSTRALIA / THE QUEEN -and- [ ]

#### 1. STATUS OF ACCUSED

(a) Is the accused:

On bail     Remanded in custody     Sentenced prisoner

(b) Has the accused been advised of:

- (i) The discount that may be available under s 9AA of the *Sentencing Act 1995* if a plea of guilty is entered at the first reasonable opportunity;
- (ii) The legal practitioner's estimate of the reduction in the head sentence (expressed in years or months) that may be available if a plea of guilty is entered at the first reasonable opportunity;
- (iii) The extent of the discount available under s 9AA of the *Sentencing Act 1995* will generally be reduced the longer the delay in entering a plea of guilty.

Yes     No

(c) In relation to the current charges, does the accused intend to:

Plead guilty?     Plead not guilty?  
 Enter another plea? (Please specify) \_\_\_\_\_

(d) Is there any possibility of the accused pleading guilty to any lesser charges?

Yes     No

(e) Have the accused's solicitor and counsel complied with CPR rule 10?

Yes     No

(f) Does the accused intend to apply for Legal Aid?

- Yes       No

If "yes", specify current status of any Legal Aid application:

*If a guilty plea, it is not necessary to complete Parts 2 to 7.*

**2. COMMUNICATION WITH THE PROSECUTION**

(a) Have all the accused's requests for information, clarification or better disclosure concerning this prosecution been complied with?

- Yes       No

If "no", specify the nature of the request and when it was made:

(b) Has there been any discussion with the prosecution as to facts that might be agreed or evidence that might be admitted at trial by consent?

- Yes       No

If "no", specify why not:

**3. RECORDS OF INTERVIEW**

In respect of any proposed records of interview:

(a) Does the disc / tape need editing?

- Yes       No

(b) Has the accused provided the prosecution with any proposed edits?

Yes       No

(c) Has the editing been agreed?

Yes       No

Practitioners are reminded of the need to comply with Part 7 of Practice Direction CRIM 2 of 2008 “Criminal Listings” in relation to edits to video evidence.

#### **4. OTHER VIDEO EVIDENCE**

In respect of any visually recorded evidence or other video evidence:

(a) Does the disc / tape need editing?

Yes       No

(b) Has the accused provided the prosecution with any proposed edits?

Yes       No

(c) Has the editing been agreed?

Yes       No

Practitioners are reminded of the need to comply with Part 7 of Practice Direction CRIM 2 of 2008 “Criminal Listings” in relation to edits to video evidence.

#### **5. TRIAL LISTING**

(a) Estimated trial length (in days)

(b) Number of defence witnesses

(c) Will any witness be required to travel from interstate or overseas?

Yes       No

- (d) Dates on which accused's witnesses are not available (due to overseas travel or other specified reason):

- (e) Does the accused intend to make any application that may affect whether the matter can be listed for trial (eg for separate trials)?

If "yes", specify the nature of the proposed application and when it will be made:

## 6. TRIAL PREPARATION

- (a) Are there any disputes as to the admissibility of evidence?

Yes       No

If "yes", specify the evidence in issue and nature of the dispute:

- (b) Is a *Criminal Procedure Act* s98 directions hearing required?

Yes       No

If "yes" specify the issues to be determined:

- (c) Does the accused intend to call expert evidence?

(See *Criminal Procedure Act* s96, *Criminal Procedure Rules* rule 21)

Yes       No

- (d) Does the accused intend to give or adduce alibi evidence?

(See *Criminal Procedure Act* s96, *Criminal Procedure Rules* rule 21)

Yes       No

(e) Are there any other issues that need to be attended to prior to trial?

Yes       No

If “yes”, specify the issues:

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## 7. TRIAL ARRANGEMENTS

(a) Does the accused intend to seek orders that any witness be declared a “special witness” pursuant to *Evidence Act* s106A?

Yes       No

If “yes”, specify:

Witness' name	Date of birth	When application will be made

(b) Does the accused intend to seek orders that any witness give evidence by audiolink or videolink?

Yes       No

If “yes”, specify:

Witness' name	Date of birth	When application will be made

(c) Does any witness to be called by the accused require an interpreter?

Yes       No

If an interpreter is required, the accused must advise the criminal registry not less than 14 days before the trial is due to commence.

(d) Is the trial going to require audio visual or electronic arrangements beyond the use of a DVD player, CD player or VHS video player (eg

presentation of documentary evidence on computer screens or digital photos)?

Yes       No

If “yes”, the accused must advise the criminal registry in writing of its requirements not less than 21 days prior to the commencement of the trial.

The Court’s capabilities as regards electronic evidentiary material are set out in the document entitled “Submission of Electronic Evidentiary Materials in Western Australian Courts” which is available on the Court’s website.

- (e) Does the offence relate to pornography or objectionable material under legislation such as the *Classification (Publications, Films & Computer Games) Enforcement Act 1996* and *Censorship Act 1996*?

Yes       No

If “yes”, the practitioners should comply with the directions in Circular to Practitioners CRIM 2007/1, “Management of Trials – Offence Relating to Pornography and Objectionable Material”.

## 8. CONTACT DETAILS

<b>Solicitor</b>	
<b>Direct phone number</b>	
<b>Fax</b>	
<b>Email</b>	

## 9. CERTIFICATION

I am the solicitor with the conduct of the defence in this matter.

I certify that:

- (a) in all respects *or* in all respects other than those noted in this certificate (*delete inapplicable*) the defence is ready for the trial of this matter; and
- (b) the answers in this certificate are correct to the best of my knowledge and instructions;

- (c) it is not anticipated that the accused will change his intention as set out in the answer to question 1(c).

I undertake that I will inform the Court as soon as is reasonably practicable after I become aware of any change in circumstances which results in a change to any of my answers on this Listing Certificate.

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Signature

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Date