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## **PDM 1 APPEARANCES BY ACCUSED AT ALTERNATIVE VENUES**

### **1.1 Procedure**

- 1.1.1 Ordinarily, an accused person on bail is required to answer their bail by appearing at the Court venue specified in their bail undertaking.
- 1.1.2 However, where an accused is required to appear at a mention hearing (not being an arraignment or sentencing hearing), and that appearance requires significant travel, the accused may apply for permission to answer bail at an alternative venue, as follows.
- 1.1.3 The alternative venue should be either the courthouse at one of the localities listed in 1.2 or, the nearest police station to where the accused lives or is working.
- 1.1.4 An application by an accused for permission to answer bail at an alternative venue should be made before 4.00pm, two business days prior to the mention hearing. Defence counsel (or their instructor) should inform the presiding judge's associate by email of the proposed venue and the phone and fax numbers and email address of the venue.
- 1.1.5 If permission is granted, the associate will contact the nominated venue and provide a form to be signed by the accused when they answer their bail, that will then be emailed or faxed to the Court.
- 1.1.6 The accused is to report at the venue by 9.00 am on the date of the mention hearing so that the signed form confirming that the accused has answered their bail can be emailed or faxed to the associate by 9.30 am that day.
- 1.1.7 Defence counsel (or their instructor) is to advise the accused in writing (i.e. by SMS or email) where, to whom, and by when they are to report in answering their bail.
- 1.1.8 Immediately before the mention hearing, defence counsel (or their instructor) is to telephone the venue to confirm that the accused has reported and that the confirmation email or fax has been sent.
- 1.1.9 In the event that written confirmation that the accused has answered their bail is not received by 10.00 am, a bench warrant may be issued.

### **1.2 Courthouse Localities for Alternative Venues**

#### **1.2.1 Metropolitan:**

Central Law Courts, Perth

Armadale

Fremantle

Joondalup

Mandurah

Midland

Rockingham

1.2.2 Regional:

Albany

Broome

Bunbury

Busselton

Carnarvon

Christmas Island

Cocos (Keeling) Islands

Collie

Derby

Esperance

Geraldton

Kalgoorlie

Karratha

Katanning

Kununurra

Mandurah

Manjimup

Merredin

Moora

Narrogin

Northam

South Hedland

## PDM 2 ORDERS AS TO DISCLOSURE REQUIREMENTS

### 2.1 Definitions

In this Practice Direction<sup>1</sup>:

**Application to proceed without notice** means an application made by a prosecutor without notice to an accused pursuant to the *Criminal Procedure Act 2004 (WA) (CPA)* s 138(4) and in accordance with *Criminal Procedure Rules 2005 (WA) (CPR)* r 22.

**Court officer** means the Associate to the Chief Judge, Manager Criminal Jurisdiction, Criminal Listing Coordinators and Criminal Case Management Coordinator, and any person acting in those positions from time to time.

**Disclosure requirement** has the definition prescribed in CPA s 138(1).

**Substantive application** means an application for an order under CPA s 138(3).

### 2.2 General

- 2.2.1 This Practice Direction applies to an application to proceed without notice and to a substantive application the subject of such an application.
- 2.2.2 This Practice Direction does not apply to a substantive application by an accused or by a prosecutor on notice to the accused.
- 2.2.3 In view of their nature, applications that include an application to proceed without notice will be processed promptly and with complete confidentiality.
- 2.2.4 Applications to which this Practice Direction applies will not be disclosed on the daily court list or in any other listings information published by the Court.

### 2.3 Commencement of Applications

- 2.3.1 An application to proceed without notice and a substantive application are each to be made in Form 1 CPR and are to be accompanied by an affidavit and a draft order.
- 2.3.2 Substantive applications and applications to proceed without notice may be made on the same Form 1 CPR and rely on the same supporting material.
- 2.3.3 The substantive application must specify whether the applicant opposes leave being given under CPA s 138(4) to disclose to the accused that an order under CPA s 138 has been made.
- 2.3.4 The affidavit may include facts and opinion in support of the application. This does not limit the power of a judge to receive further information or oral evidence at the hearing of the application.
- 2.3.5 Before presenting any documents in an application for leave to proceed without notice, an applicant must contact a court officer:

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<sup>1</sup> Formerly PD (Crim) 5

- a) to give notice of a pending substantive application;
- b) to advise that the substantive application will also be the subject of an application to proceed without notice, and that no notice of either application is to be given to the accused pending the outcome of the application to proceed without notice;
- c) to make arrangements for a judge to hear the application to proceed without notice;
- d) to inform the court officer of any prior or related applications and the details thereof, including the judge or judges who had or have the conduct of them;
- e) to inform the court officer whether the applicant proposes to exhibit video or other recordings to the affidavit so that (if necessary) arrangements can be made for the judge to view or hear the recordings before the application is heard; and
- f) to inform the court officer whether the applicant wishes any of the procedures set out in this practice direction to be varied.

2.3.6 The application, affidavit and draft order must be delivered to the Court in a sealed envelope.

2.3.7 The documents must be handed to the court officer who shall, without opening the envelope, list the application for hearing, and as soon as practicable, inform the applicant of the identity of the judge, and the time and the place nominated for the hearing.

## **2.4 Hearing of Applications and Subsequent Activity**

2.4.1 An application to which this Practice Direction applies will ordinarily be listed before the duty judge.

2.4.2 Where an application arises in the course of a trial, the applicant must (subject to this paragraph), in the first instance, forward the application to proceed without notice to the court officer, who will advise whether the application is to be listed before the trial judge or the duty judge. The affidavit in support of the application is to include a submission on whether or not it is appropriate for the trial judge to hear the application. In cases of urgency, or with the leave of the trial judge, the application to proceed without notice may be made before the trial judge.

2.4.3 An application to proceed without notice will ordinarily be heard by a judge in closed court, without notice to any person the subject of the application.

2.4.4 If the application is refused, any substantive application must be brought on notice and this Practice Direction has no further application.

2.4.5 If the application is granted, the substantive application will also be heard, by the same Judge, without notice being given to any person the subject of the application, in closed court, at the same sitting as the hearing of the application to proceed without notice.

2.4.6 No person other than the judge, the judge's personal staff, a representative of the applicant and a legal representative of the applicant may be present at the hearing unless the judge otherwise orders.

- 2.4.7 Where the hearing is recorded and transcribed, the transcript of the hearing will be kept by the Court and will not be made available to the prosecution, or any other party save with the leave of the judge who dealt with the application or the Chief Judge.
- 2.4.8 If the applicant does not wish the Court to make a transcript of the hearing, the court officer must be so informed prior to the hearing of the application and the grounds for the request must be addressed in the materials filed in support of the application. In the event that there is no transcript of the hearing, the associate to the judge hearing the application will ensure that a record is kept of the hearing, for example by digitally recording it and placing the audio file on a CD or USB on the file, or by making a full note of what was said at the hearing, which note will be kept by the Court with the documents filed in support of the application.
- 2.4.9 Any notes made by court staff of the hearing will be kept by the Court and will not be made available to the prosecution or any other party save with the leave of the judge who dealt with the application, or the Chief Judge.
- 2.4.10 At the conclusion of the hearing the judge will, if appropriate, hand the applicant a signed order. All other documents will be securely retained in a sealed envelope by the Court.
- 2.4.11 Unless the Court orders otherwise, an order made in the absence of the accused is not to be given or disclosed to the accused or their lawyer pursuant to CPA s 138(5).
- 2.4.12 The materials relating to an application to which this Practice Direction applies will be retained by the Court and stored in a confidential manner, not on the court file. The materials will not be made available for inspection by any person unless with the leave of a judge, or as required by law.

## **PDM 3 LODGEMENT OF BRIEFS**

### **3.1 Application**

3.1.1 This Practice Direction<sup>1</sup> applies to all prosecution materials lodged pursuant to *Criminal Procedure Act 2004* (WA) (CPA) s 95 (“the brief”). (CPA s 95 does not specify the number of briefs to be lodged with the Court.)

### **3.2 Lodgement of Briefs**

3.2.1 The Court requires the prosecutor to lodge one paginated printed copy of the brief within the time specified in *Criminal Procedure Rules 2005* (WA) r 20 (i.e. within 42 days of the committal date). The printed copy of the brief may be double sided.

### **3.3 Retention of Briefs**

3.3.1 The prosecutor is required to retain the original brief consisting of:

- a) the original of each signed witness statement;
- b) the original, or best available other version of the evidential material, which may be tendered at the trial; and
- c) a copy of each other document comprising the brief.

### **3.4 Production of Briefs**

3.4.1 The prosecutor must produce the original brief to the Court at the commencement of any:

- d) trial;
- e) sentencing hearing;
- f) hearing to pre-record evidence; and
- g) other hearing at which the Court directs the original brief to be produced.

### **3.5 Possession of Witness Statements**

3.5.1 Subject to being able to comply with the above paragraphs, the prosecutor may cause original witness statements and evidential material to remain in the possession of the investigating agency.

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<sup>1</sup> Formerly PD (Crim) 6



## PDM 4 DOCUMENTS FILED FOR IMMINENT HEARINGS

### 4.1 Application

- 4.1.1 This Practice Direction<sup>1</sup> applies to any correspondence to the Court and document lodged at the Court in relation to a criminal matter.
- 4.1.2 Correspondence and documents are to be emailed to [CriminalDC@justice.wa.gov.au](mailto:CriminalDC@justice.wa.gov.au) except prosecution briefs and brief incorporations which must be lodged at the front counter of the registry.

### 4.2 Correspondence

- 4.2.1 Correspondence to the court is to contain a subject description that includes the indictment number, the name of the matter (as intituled), and the date and type of the next hearing of the matter.

### 4.3 Court Documents

- 4.3.1 Court documents are to include the date and type of the next hearing of the matter in the document type box (top right-hand corner), as follows:

<i>Criminal Procedure Act 2004</i> <i>Criminal Procedure Rules 2005</i> Supreme Court/District Court At:            Number:	<b>Application</b>  <b>Initial mention hearing</b> <b>14 November 2008</b>
Case	<i>[Names of all parties]</i>
Applicant	<i>[Name of the party applying]</i>

and the subject line of the covering email is to contain the indictment number, the name of the matter (as intituled) and the date and type of the next hearing of the matter.

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<sup>1</sup> Formerly PD (Crim) 7

## **PDM 5 CRIMINAL TRIAL LISTINGS**

### **5.1 Application**

5.1.1 This Practice Direction<sup>1</sup> applies to committals for trial.

### **5.2 Lodgement of the Indictment (*Criminal Procedure (District Court) Rules 2008 (WA) r 6*)**

5.2.1 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.

5.2.2 An application to extend the time within which the indictment is to be lodged may be:

- a) made orally; and
- b) made after the date on which the indictment was required to have been lodged pursuant to 5.2.1.

5.2.3 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.

5.2.4 The Court may order that any second or subsequent application to extend the time within which the indictment is to be lodged be supported by an affidavit as set out in 5.2.3.

### **5.3 Prosecution Listing Certificate**

5.3.1 Where an accused is committed for trial, at the time of lodging an indictment, the prosecution is to also lodge and serve a listing certificate in the form of PDM-A1.

5.3.2 The prosecution is not required to lodge and serve any further listing certificate unless ordered by the Court.

### **5.4 Defence listing certificate**

5.4.1 Where an accused is committed for trial, no later than 28 days after the indictment is lodged, the accused's legal practitioner is to lodge and serve a listing certificate in the form of PDM-A2.

5.4.2 The accused is not required to lodge and serve any further listing certificate unless ordered by the Court.

### **5.5 Material changes in the trial listing information**

5.5.1 Where a change in circumstances renders the information provided in the listing certificate incorrect, out of date or misleading, the party concerned must immediately notify the Court and each other party in writing to that effect.

### **5.6 Adjournment of trial listing hearing**

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<sup>1</sup> Formerly PD (Crim) 9

- 5.6.1 At a trial listing hearing, both prosecution and defence counsel must be in a position to advise the Court of:
- a) the current unavailable dates of the witnesses; and
  - b) whether any amendment to the party's listing certificate is required.

## **PDM 6 OBJECTIONS TO VIDEO AND RECORDED EVIDENCE**

### **6.1 Video Evidence<sup>1</sup>**

- 6.1.1 Where the accused objects to the admissibility of any portion of a video record of interview or search video in the prosecution brief (video evidence), the accused's legal practitioner is to notify the prosecution in writing of the portions objected to no later than 14 days after the date of the hearing at which the trial dates are allocated.
- 6.1.2 Where notice of such objections is given, the parties are to confer with a view to resolving the objections. If edits to the video evidence are agreed, a consent order to that effect may be filed. A consent order for edits to video evidence will be dealt with in chambers by the duty judge.
- 6.1.3 If the objections are not resolved by 28 days prior to the date of commencement of the trial, the prosecution is to apply for the matter to be listed in the next general duties list.

### **6.2 Recorded Evidence of a Witness**

- 6.2.1 Where the evidence of a witness consists of a visually recorded interview to which s 106HB of the *Evidence Act 1906 (WA) (EA)* applies, or has been pre-recorded pursuant to s 106K, s 106N or s 106RA of EA, and the prosecution or the accused objects to the admissibility of any portion of the recorded evidence, the objecting party is to advise the other, in writing, of the portions of the recorded evidence objected to that are to be edited no later than 14 days after the date of the hearing at which the trial dates are allocated, in the case of a visually recorded interview, and otherwise within 14 days after the disc containing the recorded evidence was uplifted.
- 6.2.2 Where notice of such objections is given, the parties are to confer with a view to resolving the objections. If edits to the recorded evidence are agreed, a consent order to that effect may be filed.
- 6.2.3 A consent order for edits will be dealt with in chambers by the duty judge. If the edits are not approved, the matter will be listed in the next general duties list and the parties notified accordingly.
- 6.2.4 If the objections are not resolved by 28 days prior to the date of commencement of the trial, the prosecution is to apply to list the matter in the next general duties list.

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<sup>1</sup> Formerly PD (Crim) 9

## **PDM 7 SENTENCING HEARINGS**

### **7.1 Application**

7.1.1 This Practice Direction<sup>1</sup> applies to committals for sentence.

### **7.2 Lodgement of the Indictment (Criminal Procedure (District Court) Rules 2008, r 6)**

7.2.1 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.

7.2.2 An application to extend the time within which the indictment is to be lodged may be:

- a) made orally; and
- b) made after the date on which the indictment was required to have been lodged pursuant to 7.2.1.

7.2.3 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.

7.2.4 The Court may order that any second or subsequent application to extend the time within which the indictment is to be lodged be supported by an affidavit as set out in 7.2.3.

### **7.3 Sentencing Act s 32 Requests**

7.3.1 Pursuant to r 8 of the *Criminal Procedure (District Court) Rules 2008 (WA)*, r 44(2) of the *Criminal Procedure Rules 2005 (WA) (CPR)* is varied such that a request by an offender under *Sentencing Act 1995 (WA) (SA) s 32* must be lodged and served no later than 28 days before the date on which the offender is to be sentenced:

7.3.2 The DPP must lodge the list of pending charges (Form 12) no later than 14 days prior to the date when the offender is to be sentenced.

7.3.3 The Court will not accept a s 32 request application filed later than 28 days before the sentencing date.

### **7.4 Consequential Breaches**

7.4.1 For the purposes of this Practice Direction a consequential breach notice is a notice filed pursuant to one or more of SA s 79 (suspended sentence), s 84 (conditional suspended sentence) or s 129 (conditional release order or community order).

7.4.2 If the prosecution would have the Court deal with a Consequential Breach Notice at a sentencing hearing, the prosecution is to file and serve the notice:

- a) where the accused has been committed for trial in Perth or a circuit location, no later than 14 days before the date on which the offender is to be sentenced; or

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<sup>1</sup> Formerly PD (Crim) 10.

- b) where the accused has been committed for sentence in Perth or a circuit location, at or before the first Sentence Mention Hearing.

7.4.3 If an offender would have the prosecution lodge and serve a consequential breach notice to be dealt with at a particular sentencing hearing in relation to the accused, the offender is to make a written request to this effect to the prosecution no later than 28 days before the date of the sentencing hearing .

7.4.4 If the prosecution receives a written request pursuant to 7.4.3, it is to lodge and serve the notice requested no later than 14 days prior to the sentencing hearing.

## **7.5 Prosecution Sentencing Material**

7.5.1 Subject to 7.4.2, the prosecution is to lodge and serve the following documents no later than 5 days prior to the date on which the offender is to be sentenced:

- a) sentencing submissions (if any);
- b) victim impact statements (if any);
- c) any photographic or video material not included in the brief for sentence ;
- d) any other materials to be relied on at the sentencing pursuant to SA s 45;
- e) a minute of any violence restraining order or family violence restraining order that may be sought, or which is mandatory upon conviction;
- f) any materials relied upon in support of an application for a reparation order and a minute of the order sought; and
- g) any material relating to an application for a declaration pursuant to SA s124E (Serial Family Violence Offender Declarations) and a minute of the declaration sought.

7.5.2 The prosecution is to lodge any criminal history report at or before the sentence mention hearing.

## **7.6 Offender's Sentencing Material**

7.6.1 The offender is to lodge and serve any materials to be relied on at the sentencing hearing pursuant to SA s 45 not less than 2 clear days prior to the date on which the offender is to be sentenced.

## **7.7 Victim Impact Statements**

7.7.1 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 s 24(2) to give a victim impact statement on the victim's behalf, reading a victim impact statement.

7.7.2 If the prosecution proposes that a victim, or a person authorised under SA s 24(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 14 days prior to the date on which the offender is to be sentenced. 12.5.3 The notice is to attach

a copy of the written statement which the victim, or a person authorised under SA s 24(2) to give a victim impact statement on the victim's behalf, proposes to read.

7.7.3 For the purpose of SA s 26(1), unless otherwise ordered, a victim impact statement is made available to the prosecution and an offender on the conditions herein.

7.7.4 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 is to be served on that legal practitioner.

7.7.5 Where an offender is not represented by a legal practitioner, the prosecution is to make a copy of the victim impact statement available for inspection by the offender before the sentencing hearing.

7.7.6 A legal practitioner who is served with 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.

7.7.7 Where a legal practitioner ceases to act for an offender prior to a sentencing hearing, the practitioner is to:

- a) deliver up to the Court the hard copy of the victim impact statement with the notice of ceasing to act; and
- b) delete any electronic copy of the statement.

7.7.8 At the conclusion of the sentencing hearing, counsel for the offender is to:

- a) deliver up to the Court the hard copy of the victim impact statement; and
- b) delete any electronic copy of the statement.

## **7.8 Pre-sentence Reports**

7.8.1 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 report commissioned as part of the pre-sentence report, for example, as to the physical or mental state of the offender.

7.8.2 This part applies:

- a) Where, pursuant to SA s 22(5), the Court makes a 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.

- 7.8.3 For the purpose of SA s 22(5), unless otherwise ordered, a pre-sentence report is made available by the Court on the conditions set out herein.
- 7.8.4 Where the pre-sentence report is made available by email, only one copy of the pre-sentence report is to be printed.
- 7.8.5 The pre-sentence report is to be retained in the possession of (relevantly):
- a) the file manager or sentencing counsel of the prosecutor; and
  - b) a legal practitioner who has filed a notice of acting on behalf of the offender.
- 7.8.6 A legal 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 or counsel for the offender; 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.
- 7.8.7 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 copy of the pre-sentence report.
- 7.8.8 At the conclusion of the sentencing hearing, the prosecutor and counsel for the offender are each to:
- a) hand their respective copies of the pre-sentence report to the associate to the sentencing judge; and
  - b) delete any electronic copy of the pre-sentence report.

This rule applies even if the prosecution or the offender wishes to consider an appeal in relation to the sentence.

- 7.8.9 Self-represented offenders may read the pre-sentence report on the day of sentencing by arrangement with the associate to the sentencing judge.

## **7.9 Mediation Reports**

- 7.9.1 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.
- 7.9.2 This part applies:



- a) where, pursuant to SA s 30, 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.

7.9.3 For the purpose of SA s 30(1), unless otherwise ordered, a mediation report is made available on the conditions set out herein.

7.9.4 The restrictions set out in 7.8.4 to 7.8.8 apply to the release of a mediation report.

## **PDM 8 DEALING WITH SECURE AND SENSITIVE MATERIALS**

### **8.1 Application**

8.1.1 This Practice Direction<sup>1</sup> applies to all exhibits and other material tendered in criminal proceedings.

8.1.2 Section 170 of the *Criminal Procedure Act 2004 (WA) (CPA)* applies.

### **8.2 Normal Exhibits**

8.2.1 Items tendered as exhibits in a criminal trial are usually stored overnight in a safe in the Court. Following completion of the trial, the exhibits are dealt with in accordance with CPA s 170 and *Criminal Procedure Rules 2005 (WA) (CPR)* r 50.

8.2.2 Where a party wishes to tender a large or bulky item (not otherwise dealt with in this Practice Direction), the party is to notify the Court in writing (addressed to the Manager, Criminal Jurisdiction) and all other parties, no later than 21 days before the commencement of the trial so that appropriate arrangements can be made. The notification should describe the item and set out the arrangements proposed by the party for the tender.

### **8.3 Pornographic and Other Offensive or Disturbing Material**

8.3.1 Pornographic or other offensive or disturbing material is to be brought into the Court secured in a sealed envelope clearly marked as containing pornographic material (or other appropriate description) with a large distinctively coloured label. The envelope is to contain a second unused envelope that can be used to return the material.

8.3.2 Where the material is image files contained in an electronic storage device the same procedures are to be followed as if the images were printed.

8.3.3 Where appropriate, the parties should endeavour to agree the material which needs to be viewed by the Court as a representative sample: see generally, CPM 7 '*Management of Trials – Offences Relating to Pornography and Objectionable Material*'.

### **8.4 Drugs**

8.4.1 The Court's preference is that all evidence of prohibited drugs the subject of an indictment be tendered in photographic or digital image form.

8.4.2 If the subject prohibited drugs are required for inspection or tender, the party concerned is to notify the Court in writing (addressed to the Manager, Criminal Jurisdiction) and all other parties, no later than 21 days before the commencement of the trial so that appropriate arrangements can be made.

8.4.3 It is impracticable for the Court to store drugs tendered as an exhibit overnight or at the conclusion of a trial pursuant to CPA s 170. Accordingly, an order will be made releasing the exhibit to the person who is entitled to custody of it, usually the Commissioner of Police or the Australian Federal Police. The prosecutor will need to ensure that a police officer or a

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<sup>1</sup> Formerly PD (Crim) 11

member of the exhibits management team of the relevant investigating authority is present when the Court rises for the day to take custody of the exhibit.

## **8.5 Weapons and Dangerous Items**

- 8.5.1 The Court's preference is that evidence of firearms, ammunition, weapons and other dangerous items be tendered in photographic or digital image form.
- 8.5.2 If such an item is required for inspection or tender, the party concerned is to notify the Court in writing (addressed to the Manager, Criminal Jurisdiction) and all other parties, no later than 21 days before the commencement of the trial so that appropriate arrangements can be made.
- 8.5.3 It is impracticable for the Court to store firearms, ammunition, weapons and other dangerous items overnight or at the conclusion of a trial pursuant to s 170. Accordingly, an order will be made releasing the exhibit to the person who is entitled to custody of it, usually the Commissioner of Police or the Australian Federal Police. The prosecutor will need to ensure that a police officer or a member of the exhibits management team of the relevant investigating authority is present when the Court rises for the day to take custody of the exhibit.

## **8.6 Explosives and Hazardous Substances**

- 8.6.1 Under no circumstances are live or possibly live explosives to be brought into Court.
- 8.6.2 Under no circumstances are hazardous or potentially hazardous substances to be brought into Court.
- 8.6.3 In each case, evidence of such items should be by photographic or digital images, expert reports, or other means approved by the trial judge.

## **8.7 Money and Other Valuable Items**

- 8.7.1 The Court's preference is that evidence of money and other valuable items (e.g., gold or diamonds) be tendered in photographic or digital image form.
- 8.7.2 If such an item is required for inspection or tender, the party concerned is to notify the Court in writing (addressed to the Manager, Criminal Jurisdiction) and all other parties, no later than 21 days before the commencement of the trial so that appropriate arrangements can be made.
- 8.7.3 It is impracticable for the Court to store money and other valuable items overnight or at the conclusion of a trial pursuant to s 170. Accordingly, an order will be made releasing the exhibit to the person who is entitled to custody of it, usually the Commissioner of Police or the Australian Federal Police. The party tendering the items will need to ensure that a police officer or a member of the exhibits management team of the relevant investigating authority is present when the Court rises for the day to take custody of the exhibit.

## **PDM 9 LETTERS OF RECOGNITION**

### **9.1 Existing Protocols<sup>1</sup>**

- 9.1.1 The provision of letters of recognition is subject to the Joint Protocol between the Director of Public Prosecutions and Western Australia Police regarding the issuing and handling of letters of recognition.
- 9.1.2 The making available to defence counsel of letters of recognition is subject to the Joint Protocol between the Director of Public Prosecutions and the Law Society of Western Australia regarding the circumstances in which letters of recognition will be made available to defence counsel.
- 9.1.3 There is also an internal court protocol for dealing with letters of recognition.
- 9.1.4 Subject to the protocols mentioned above, defence counsel is to be made aware of a letter of recognition. Defence counsel may be informed of the contents of a letter of recognition if the offender authorises the DPP in writing to make the letter of recognition available to their counsel.

### **9.2 Delivery of Letters of Recognition**

- 9.2.1 A letter of recognition provided to the court for sentencing purposes should be accompanied by a letter from the DPP, enclosed in a sealed envelope, and delivered by hand to the sentencing judge's associate or usher as soon as practicable before the sentencing hearing.
- 9.2.2 The letter of recognition will be kept securely by the judge.

### **9.3 Submissions and Procedural Matters**

- 9.3.1 Oral submissions on sentence touching upon a letter of recognition should be avoided. If the prosecutor or defence counsel wishes to make a submission on the effect on sentence of the matters to which the letter relates, the submission should be made in writing and delivered in a sealed envelope marked 'confidential' to the sentencing judge's associate or usher as soon as practicable before the sentencing hearing. If a party intends to make supplementary oral submissions at the sentencing hearing a letter to that effect should be delivered with the confidential submissions.
- 9.3.2 If oral submissions are to be made at the sentencing hearing, counsel will be heard as to whether any directions should be made, in the interests of the offender's safety to close the court (including to secure the court), make a suppression order, and arrange for independent transcription of those oral submissions.
- 9.3.3 If the sentencing hearing is in open court, sentencing judge will acknowledge the letter of recognition indirectly by reference to having considered all relevant material pertaining to the sentencing of the offender. The judge will sign and date the letter of recognition and hand it to their associate who will then arrange for the DPP to collect it.

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<sup>1</sup> Formerly PD (Crim) 12

- 9.3.4 The sentencing judge will also prepare a confidential addendum to their sentencing remarks commenting upon the matters touching on the letter of recognition and indicating the extent of the mitigation of sentence that was allowed by virtue of such matters.
- 9.3.5 The judge's addendum and the parties' written submissions will be placed in a sealed envelope and secured in the court safe.
- 9.3.6 In the event of an appeal against sentence the sealed envelope containing the confidential submissions and the judge's confidential addendum will be forwarded to the Court of Appeal.

## **PDM 10 SECURE COURT HEARINGS**

### **10.1 Application**

10.1.1 This Practice Direction<sup>1</sup> outlines the conduct of proceedings in secure court.

### **10.2 Introduction**

10.2.1 The general requirement that proceedings be held in open court is subject to exceptions in the interests of justice. One type of order commonly used in qualifying the open justice principle is a closed court order.

10.2.2 In addition, the Court is able to make secure court orders through the 'Secure Court Mode' functionality as a result of the District Court Building (DCB) digital audio-visual upgrade. 'Secure Court Mode' enables a hearing to be conducted in a courtroom without the normal process of sending audio and visual images to the Court monitors and transcribers.

10.2.3 All courtrooms in the DCB are equipped with 'Secure Court Mode' functionality.

### **10.3 When a secure court order may be made**

10.3.1 Subject to a judge's discretion, a secure court order may be made for all non-disclosure hearings where leave is given for the application to be heard.<sup>2</sup> The order may also be made at other hearings, including when oral submissions are made in respect of Letters of Recognition in sentencing.<sup>3</sup>

### **10.4 Conduct of hearings in secure court**

10.4.1 Counsel is required to be robed at secure court hearings.

10.4.2 When a secure court order is made, the associate to the judge will contact the Court monitor who switches the Court to a secure mode. Once in 'Secure Court Mode', all feeds to the monitors and transcribers are turned off. Proceedings are recorded on a USB under the control of the judge's associate and also onto the hard drive of the Court computer as backup. When the hearing is completed, the associate will contact the Court monitor who will reinstate all feeds to the Court. Once the USB recording has been confirmed the associate will supervise the deletion of the file off the Court computer hard drive.

10.4.3 The USB recording will be kept in an appropriately secure place with the application papers.

10.4.4 Only the judge, the applicant and the associate to the judge will be present in secure court proceedings. Ushers will not be present in the courtroom unless the judge is persuaded otherwise by counsel. For highly sensitive matters the associate will be required to leave the courtroom once the judge enters the courtroom.

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<sup>1</sup> Formerly CP (Crim) 21.

<sup>2</sup> CPA s 138.

<sup>3</sup> See PDM 9.