



# Supreme Court of Victoria

## Practice Note SC CR 4 (Second Revision)

### Sentencing Hearings

#### 1. INTRODUCTION

- 1.1 The Chief Justice has authorised the issue of the following Practice Note.
- 1.2 The purpose of this Practice Note is to describe the procedures to be followed in sentencing hearings.

#### 2. COMMENCEMENT

- 2.1 This Practice Note was issued on 1 January 2017. The Practice Note, as revised, will apply to all sentencing hearings set down on or after 1 July 2018.
- 2.2 This Practice Note replaces Practice Note No. 11 of 2015, which was revoked on 1 January 2017.

#### 3. DEFINITIONS

- 3.1 In this Practice Note:  
*Judge* means a Judge of the Supreme Court of Victoria.

#### 4. PLEA OF GUILTY

##### *Listing and filing*

- 4.1 Where an accused pleads guilty to the charge or charges against them, the Court will set a date for a sentencing hearing (hearing of the plea in mitigation) and notify the parties.
- 4.2 Materials may be filed by email to [criminaldivision@supcourt.vic.gov.au](mailto:criminaldivision@supcourt.vic.gov.au) or to the email address of the associate to the Judge hearing the plea (where that is known).

##### *Openings*

- 4.3 The date by which the prosecution is to file and serve its opening for a plea will be set at the post-committal directions hearing. The date set will have regard to the expected availability of the committal transcript, if a witness or witnesses gave

evidence at the committal. If the committal proceeded on the basis of the hand-up brief, without any witness being cross-examined, the prosecution opening is to be filed and served not later than 21 days after the post-committal directions hearing, unless otherwise ordered.

4.4 In addition to the factual circumstances of the offending, the opening should include:

- whether it is submitted that the offender is to be sentenced as a serious offender<sup>1</sup> or a continuing criminal enterprise offender<sup>2</sup>;
- whether the offence is one to which the standard sentencing scheme applies<sup>3</sup>;
- whether it is submitted that provisions imposing a minimum non-parole period are applicable (for example: manslaughter in circumstances of gross violence<sup>4</sup>, intentionally or recklessly causing serious injury in circumstances of gross violence<sup>5</sup>, manslaughter by single punch or strike<sup>6</sup>, offences against emergency workers on duty<sup>7</sup>), and whether or not special reasons<sup>8</sup> relevant to imposing minimum non-parole periods should be found to exist; and
- any orders which are sought by the prosecution in addition to sentence (for example: alcohol exclusion orders<sup>9</sup> or disposal orders).

4.5 Where any of the above matters are applicable, the prosecution opening should include submissions regarding the matters said to support the application of the provisions and outline any evidence to be called in support of those matters.

#### *Victim impact statements*

4.6 The prosecution is to ensure that any victim impact statements together with any attached medical reports, are filed and served no later than five days prior to the sentencing hearing.

4.7 At the same time, the prosecution shall provide to the Court and the defence a letter indicating whether the statements are to be tendered in written form, read by the prosecutor, or by the victim, or whether an application will be made for them to be read by another person. The prosecution should also indicate if an application is to be made for alternative arrangements for the giving of evidence.

4.8 Where it is proposed that a victim impact statement or parts of a victim impact statement are to be read aloud, the prosecution is to be mindful of the obligation on

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<sup>1</sup> See Part 2A of the *Sentencing Act 1991* (Vic) encompassing provisions regarding serious sexual offenders, serious violent offenders, serious drug offenders and serious arson offenders.

<sup>2</sup> *Ibid*, Part 2B.

<sup>3</sup> See the *Sentencing Amendment (Sentencing Standards) Act 2017* (Vic).

<sup>4</sup> *Ibid*, s 9B.

<sup>5</sup> *Crimes Act 1958*, ss15A and 15B.

<sup>6</sup> *Sentencing Act 1991*, s 9C.

<sup>7</sup> *Ibid*, s 10AA.

<sup>8</sup> *Ibid*, s 10A.

<sup>9</sup> *Ibid*, Div 4, Part 4.

the Court under s 8Q(2) of the *Sentencing Act 1991* (Vic) to ensure that only admissible parts are read aloud.<sup>10</sup>

- 4.9 As soon as reasonably practicable after receiving a victim impact statement, the defence must inform the prosecution of any objections to the admissibility of all or any part of it.

***Expert reports on the mental functioning of offenders***

- 4.10 A party wishing to introduce expert evidence on mental functioning of the offender must<sup>11</sup>:

- where the report is a primary expert report, serve it on each other party as early as reasonably practicable and, in any event, no less than 14 days before the date fixed for the sentencing hearing; or
- where the report is a responding expert report, serve it on each other party as early as reasonably practicable and, in any event, no less than 48 hours before the hearing date.

***Other defence material***

- 4.10 Unless otherwise ordered, the defence is to file and serve no later than five days prior to the sentencing hearing the following materials:

- any expert reports, other than expert reports on mental functioning of offenders<sup>12</sup>, sought to be tendered;
- any other documentary exhibits sought to be tendered; and
- a list of any witnesses to be called.

***Defence submissions***

- 4.12 Where the prosecution contends that a minimum non-parole period is applicable, the defence is to address the following in its submissions:

- whether it is conceded that the relevant provisions apply or the basis on which it is said the prosecution has failed to establish the application of the provisions; and
- whether, and if so on what basis, special reason should be found to exist.

***Resolution of issues prior to hearing***

- 4.13 Where there are any points of contention with the material provided, counsel are expected to confer prior to the day of the sentencing hearing.

- 4.14 The defence is to notify the prosecution of any matters in dispute that would require the calling of evidence.

- 4.15 The parties may request, or the Judge may require, a preliminary hearing for the purpose of ruling on contested issues which may impact on the conduct of the plea.

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<sup>10</sup> *R v York* [2014] VSCA 224.

<sup>11</sup> See Practice Note SC CA 7, [8.1].

<sup>12</sup> *Ibid.*

4.16 The prosecution, in accordance with s 11 of the *Victims Charter Act 2006* (Vic), is to inform all victims about the process relating to the determination of an issue of admissibility of their victim impact statement.

## **5. GUILTY VERDICT FOLLOWING TRIAL**

5.1 Where an accused is found guilty of one or more charges at trial, the above procedure will apply with any necessary modification, subject to any order of the Trial Judge.

## **AMENDMENT HISTORY**

1 January 2017: This Practice Note was issued on 1 January 2017 and replaced former Practice Note No. 11 of 2015.

1 July 2017: This Practice Note was revised on 1 July 2017.

1 July 2018: This Practice Note was revised effective for sentencing hearings set down from 1 July 2018.

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1 July 2018