



# Supreme Court of Victoria

## Practice Note SC CR 4

### Sentencing Hearings

#### 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.<sup>1</sup>

#### COMMENCEMENT

- 1.1 This Practice Note was issued on 4 March 2024. The Practice Note as revised will apply to all sentencing hearings set down on or after 4 March 2024.
- 1.2 This Practice Note replaces the Practice Note issued on 1 July 2018.

#### DEFINITIONS

- 3.1 In this Practice Note:  
*Judge* means a Judge of the Supreme Court of Victoria.  
*Judicial Registrar* means a Judicial Registrar of the Supreme Court of Victoria attached to the Criminal Division.

#### 4. FILING OF MATERIAL FOR SENTENCING HEARINGS

- 4.1 All documents to be filed in accordance with the requirements of this Practice Note must be filed via RedCrest<sup>2</sup> and served on the other party as soon as reasonably practicable after filing.

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<sup>1</sup> The term 'sentencing hearing' is used in the *Criminal Procedure Act 2009*. For the purpose of this Practice Note, the terms 'sentencing hearing' refers to the hearing at which a plea in mitigation is made on behalf of an accused and at which the parties make submissions prior to the accused being sentenced by the Court.

<sup>2</sup> Order 1A of the *Supreme Court (Criminal Procedure) Rules 2017*

## 5. PLEA OF GUILTY AT COMMITTAL STAGE

- 5.1 Where an accused is committed for trial and has entered a plea of guilty to a charge or charges (or indicates an intention to plead guilty) at the time of committal, the Magistrates' Court will be provided with a date for a post-committal directions hearing (**PCDH**) in the Supreme Court. The PCDH will ordinarily be within 2 weeks from the date of committal and will proceed before a judicial registrar.
- 5.2 The purpose of the PCDH will be to fix the date of the sentencing hearing in the Supreme Court, and a timetable for the filing of material by the parties in preparation for the sentencing hearing.
- 5.3 At the PCDH, in the ordinary course, the Court will seek to arraign the accused. The prosecution should attend to the filing of the plea indictment no later than 2 business days prior to the PCDH. If the indictment cannot be filed prior to the PCDH, or the parties are otherwise not ready for the arraignment to proceed at the PCDH, the matter will be adjourned to the first available date for the arraignment to take place.

### *Plea of Guilty after committal*

- 5.4 Where a matter resolves to a plea of guilty by an accused after the date of the PCDH but prior to trial, the parties shall notify the Court as soon as practicable. If at the time of resolution the parties have already been notified of the allocation of a judge to the proceeding, the notification should be to the chambers of the allocated judge. In all other cases, the parties shall notify the Court of the resolution of the matter by email to both:
- [criminal.casemgmt@supcourt.vic.gov.au](mailto:criminal.casemgmt@supcourt.vic.gov.au)
  - [criminaldivision@supcourt.vic.gov.au](mailto:criminaldivision@supcourt.vic.gov.au)
- 5.5 If the prosecution intends to accept a plea of guilty to a charge or charges which are not reflected on the indictment filed with the Court (if any), then the agreed plea indictment should be filed over by the prosecution as soon as possible after notifying the Court of the resolution, and should be announced in Court by the prosecutor at the next hearing.
- 5.6 Upon receipt of notification by the parties that a matter has resolved, the Court will notify the parties of a hearing date for the arraignment of the accused (either before the allocated judge or a judicial registrar). At the arraignment hearing, the Court will also make orders fixing the date of the sentencing hearing and a timetable for the filing of material in accordance with this Practice Note.

## 6. FILING OF MATERIAL FOR SENTENCING HEARINGS

- 6.1 At the PCDH or arraignment hearing (as applicable), the Court will fix a date by which the parties are to file and serve material for the purpose of a sentencing hearing. Where no dates are fixed by the Court for the filing of material, the timeframes specified in this Practice Note are to be followed.

### **Prosecution filing requirements:**

#### ***Indictment and Prosecution Opening for Plea***

- 6.2 In the case of a plea of guilty by an accused at the time of committal to the Supreme Court, the date for filing and service of the indictment and opening will be fixed at the PCDH having regard to the expected availability of the committal transcript, (if a committal hearing was conducted). If the committal proceeded on the basis of the hand-up brief, without any witness being cross-examined, the indictment and prosecution opening is to be filed and served not later than **21 days** after the post-committal directions hearing, unless otherwise ordered.
- 6.3 In addition to the factual circumstances of the offending, the prosecution opening should include:
- whether it is submitted that the offender is to be sentenced as a serious offender<sup>3</sup> or a continuing criminal enterprise offender<sup>4</sup>;
  - whether the offence is one to which the standard sentencing scheme applies<sup>5</sup>;
  - whether it is submitted that provisions imposing a minimum non-parole period are applicable (for example: manslaughter in circumstances of gross violence<sup>6</sup>, intentionally or recklessly causing serious injury in circumstances of gross violence<sup>7</sup>, manslaughter by single punch or strike<sup>8</sup>, and certain offences against emergency workers, custodial officers and youth justice custodial workers on duty<sup>9</sup>), and whether or not special reasons<sup>10</sup> relevant to imposing minimum non-parole periods should be found to exist (if known);
  - whether it is submitted that a custodial sentence other than a combination imprisonment and community correction order must be imposed (unless a certain circumstance exists<sup>11</sup>) because the accused has been found guilty of a Category 2 offence under the *Sentencing Act 1991*;

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<sup>3</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>4</sup> *Ibid*, Part 2B.

<sup>5</sup> *Ibid*, s 5A.

<sup>6</sup> *Ibid*, s 9B.

<sup>7</sup> *Crimes Act 1958*, ss15A and 15B.

<sup>8</sup> *Sentencing Act 1991*, s 9C.

<sup>9</sup> *Ibid*, s 10AA.

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

<sup>11</sup> *Ibid*, s5(2H).

- the applicable period of pre-sentence detention (if any) as at the date of the sentencing hearing, and whether that period is agreed between the parties; and
- whether any ancillary orders are sought by the prosecution in addition to sentence (for example: alcohol exclusion orders<sup>12</sup> or disposal/forfeiture orders).

6.4 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.

#### *Criminal record*

6.5 Where the prosecution wishes to adduce evidence of any relevant criminal record of the accused, details of the criminal record should be filed and served at the same time as the prosecution opening.

#### *Victim impact statements*

6.6 The prosecution is to ensure that any victim impact statements together with any attached medical reports, are filed and served no later than **7 days** prior to the date of the sentencing hearing, unless otherwise ordered.

6.7 At the same time, the prosecution shall provide to the Court and the defence correspondence indicating whether the victim impact statements are to be tendered in written form, read by the prosecutor, 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 by any author of a victim impact statement.

6.8 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 the Court under s 8Q(2) of the *Sentencing Act 1991* (Vic) to ensure that only admissible parts are read aloud.<sup>13</sup>

6.9 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.

#### *Prosecution sentencing submissions*

6.10 The prosecution is to file and serve an outline of sentencing submissions in response to the defence material filed and served in accordance with this Practice Note (see paragraphs 6.12 – 6.21), no later than **2 days** prior to the sentencing hearing, unless otherwise ordered.

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<sup>12</sup> Ibid, Div 4, Part 4.

<sup>13</sup> *R v York* [2014] VSCA 224.

- 6.11 The prosecution outline of sentencing submissions should respond to the defence outline of submissions, including addressing any expert reports or any other evidence to be relied upon by the accused at the sentencing hearing. Additionally, the prosecution submissions may further address (as necessary) any of the matters set out in paragraph 6.3 above in response to the defence submissions and/or material.

**Defence filing requirements:**

***Outline of submissions on behalf of the accused***

- 6.12 The defence are to file an outline of submissions on behalf of the accused for no later than **7 days** prior to the sentencing hearing, unless otherwise ordered.
- 6.13 The defence outline of submissions should address:
- the matters relied upon in mitigation of the offending and the evidence relied upon;
  - the personal history and circumstances of the accused;
  - any relevant chronology;
  - the relevance of any expert reports or evidence to be relied upon by the accused;
  - whether the criminal record (if any) of the accused is admitted;
  - any applicable legislation or legal principles the defence will submit apply to the sentencing of the accused.
- 6.14 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.

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

- 6.15 A party wishing to introduce expert evidence on the mental functioning of the accused must have regard to Practice Note SC CR 7 '*Expert reports on mental functioning of offenders*' in relation to the contents of such reports to be relied upon at a sentencing hearing.
- 6.16 In accordance with Practice Note SC CR 7, parties seeking to rely upon such an expert report must:
- 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, unless

otherwise ordered<sup>14</sup>; or

- where the report is a responding expert report, serve it on each other party as early as is reasonably practicable and, in any event, no less than **48 hours** before the sentencing hearing date, unless otherwise ordered.<sup>15</sup>

### *Other defence material*

- 6.17 Unless otherwise ordered, the defence is to also file and serve no later than **7 days** prior to the sentencing hearing the following materials:
- any expert reports (other than expert reports on the mental functioning of offenders) sought to be tendered;
  - any other documentary exhibits sought to be tendered;
  - any character references/testimonials sought to be tendered; and
  - a list of any witnesses to be called to give evidence at the hearing.

### *Character references/testimonials*

- 6.18 If the accused seeks to rely on any written character references/testimonials at the sentencing hearing, the Court expects that, at a minimum, the content of such documents should:
- be addressed to the Court (eg. 'The Presiding Judge, Supreme Court');
  - be dated and include the full name, address and contact details of the author;
  - clearly demonstrate that the author of the reference/testimonial is aware of the specific offences, and the offending conduct, to which the accused has pleaded guilty (or of which the accused has been found guilty) for which the accused is to be sentenced;
  - expressly confirm that the author is aware that the reference/testimonial is to be relied upon by the accused in Court at the sentencing hearing; and
  - be signed by the author.
- 6.19 A character reference should not suggest or in any way address the question of the appropriate sentence to be imposed by the Court.
- 6.20 Organisational or business letterhead may be used for a character reference, but only in circumstances where the reference is being provided on behalf of that organisation or business (or an individual acting in accordance with their role at, and with the authority of, such organisation or business).
- 6.21 The author of a character reference should be advised that they may be called upon to give evidence at the sentencing hearing in relation to the contents of

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<sup>14</sup> At [8.1]

<sup>15</sup> Ibid.

the character reference, and they should be available for that purpose on the date of the sentencing hearing if required.

## **7. OTHER REQUIREMENTS**

### *Resolution of issues prior to sentencing hearing*

- 7.1 Where there are any points of contention with the material provided by either party, counsel are expected to confer a reasonable time prior to the date of the sentencing hearing.
- 7.2 The defence is to notify the prosecution of any matters in dispute that would require the calling of evidence from prosecution witnesses.
- 7.3 As soon as the parties become aware of any contested issues for the purpose of the sentencing hearing, the Court should be notified immediately. The parties may request, or the Court may require, a preliminary hearing for the purpose of ruling on contested issues which may impact the conduct of the sentencing hearing. Additionally, the Court may give directions to the parties to file additional submissions and/or material addressing any contested issues for the purpose of the sentencing hearing.

### *Notice requirements for victims*

- 7.4 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.

## **8. GUILTY VERDICT FOLLOWING TRIAL**

- 8.1 Where an accused is found guilty of one or more charges at trial, the above procedure will apply with any necessary modification, and 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.

4 March 2024: This Practice Note was revised effective for sentencing hearings set down from 4 March 2024

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4 March 2024