



## **Children's Court of Western Australia**

### **Practice Direction 4 of 2023**

#### **Criminal Proceedings**

#### **1. Application of Practice Direction**

- 1.1. This Practice Direction applies to the management and resolution of proceedings in the criminal jurisdiction of the Children's Court. For the avoidance of doubt, statutory requirements take precedence over this Practice Direction.
- 1.2. This Practice Direction has effect from 1 August 2023.
- 1.3. Practice Directions 5 of 2006, 1 of 2020 and 2 of 2020 are revoked.

#### **2. Management of criminal proceedings**

Criminal proceedings in the Court are managed in accordance with the principles of juvenile justice in Part 2 of the *Young Offenders Act 1994*. Having regard to the need to deal with a young person in a time frame that is appropriate to the young person's sense of time, criminal proceedings must be progressed as expeditiously as possible.

#### **3. Directions**

- 3.1. Where this Practice Direction does not provide for a particular circumstance, the Court may give such directions as it considers necessary and appropriate.
- 3.2. Regional Children's Courts can adapt paragraphs 7.8, 7.9 and 10 of this Practice Direction to best suit local listing practices.

## 4. Finalisation of proceedings

- 4.1. The Court aims to finalise 80% of criminal cases within 9 months of the lodging of a prosecution notice.
- 4.2. In the magistrates' jurisdiction all criminal cases should be finalised within 12 months of the lodging of a prosecution notice or 6 months if the accused is remanded in custody on that charge.
- 4.3. In the judges' jurisdiction all criminal cases should be finalised within 12 months of the accused's first court appearance before a judge of the Court or 6 months if the accused is remanded in custody on that charge.
- 4.4. If the prosecution fails to comply with an order for disclosure pursuant to s 35 of the *Criminal Procedure Act 2004* the Court may dismiss the charge for want of prosecution.
- 4.5. In determining whether a charge should be dismissed, the Court must have regard to:
  - (a) the principles of juvenile justice in Part 2 of the *Young Offenders Act*; and
  - (b) the reasons for the delay; and
  - (c) the accused's responsibility for the delay.

In the absence of adequate reasons for the delay in complying with an order for disclosure, the Court should exercise its discretion in favour of dismissing the charge.

- 4.6. For the purposes of this Practice Direction:
  - (a) in relation to a charge where a plea of not guilty is entered, 'finalised' is the date of delivery of verdict after trial and does not include adjournment for sentencing.

(b) in relation to all other charges, 'finalised' is the date of sentence (or referral to a juvenile justice team or court conferencing).

4.7. Where an accused is a participant in a specialty Court, the charges before the specialty Court are not subject to the finalisation time frame which applies to criminal cases generally.

## **5. First court appearance**

5.1. At the accused's first appearance in court, the prosecution is to comply with the disclosure requirements in the *Criminal Procedure Act* and if the accused has not been served with the required disclosure material the Court is to order service within a reasonable time, which will usually be no more than 7 days.

5.2. The prosecution must use their best endeavours to serve any confessional material that is relevant to the charge on the accused within 7 days of the first court appearance.

5.3. Any video or audio recording of the commission of the alleged offence must be served on the accused within 7 days of when it comes into the possession of the prosecution.

5.4. If the accused does not accept responsibility for the act or omission constituting the offence or enter a plea to a charge at the first court appearance, then the proceedings should be adjourned for no longer than 3 weeks, to enable the accused to obtain legal advice and representation.

## **6. Legal representation**

6.1. It is the Court's expectation that an accused who is under 18 years of age will be provided with, or obtain, legal representation within 14 days of the first court appearance.

- 6.2. On being instructed to act for an accused, a legal practitioner must appear at the accused's next court date or brief another legal practitioner to appear in their place with full instructions.

## **7. Second court appearance**

- 7.1. At the accused's second appearance in court, provided the accused is legally represented, the accused is expected to:
- (a) accept responsibility for the act or omission constituting the offence or plead to the charge in the prosecution notice; or
  - (b) indicate to the Court whether they intend to make an election pursuant to s 19B of the *Children's Court of Western Australia Act 1988*; or
  - (c) identify any issue preventing a plea.

### ***Second court appearance – acceptance of responsibility or plea of guilty***

- 7.2. If the accused accepts responsibility for the act or omission constituting the offence or pleads guilty to a charge, the Court will determine whether the charge should be referred to a juvenile justice team, adjourned for sentencing before a judge, adjourned to obtain information before sentencing (including for reports, court conferencing or victim mediation) or dealt with immediately. If the matter is adjourned to obtain information, sentencing may take place before a different judicial officer.

### ***Second court appearance – section 19B matters***

- 7.3. If, pursuant to s 19B(1), the accused elects to be tried on indictment, the charge will be adjourned and the committal procedures adopted in the Magistrates Court will then apply.
- 7.4. If, pursuant to s 19B(2), the accused is not entitled to elect to be tried on indictment, the accused should identify any issue preventing

a plea, accept responsibility for or plead to the charge in the prosecution notice.

7.5. If, pursuant to s 19B(4), the accused does not make an election to be tried on indictment, the charge will be adjourned for 6 weeks for the prosecution to lodge and serve the materials required to be disclosed under s 95 of the *Criminal Procedure Act* (**s 19B papers**).

7.6. Section 19B papers will **only** be ordered on a charge for a young person if the charge is one that must be dealt with on indictment for an adult or where the Court concludes that the circumstances of the alleged offence are such an adult would be tried on indictment.

7.7. For the avoidance of doubt, statutory disclosure requirements must be complied with and the pre-existing practice of ordering s 19B papers for a wide range of charges will not continue. Section 19B papers must not be ordered:

7.7.1. for a simple offence where prosecution disclosure requirements are governed by s 35(5) or (6) of the *Criminal Procedure Act*.

7.7.2. for an offence where the accused is not entitled to elect to be tried on indictment and where prosecution disclosure requirements are governed by s 60 and s 61 of the *Criminal Procedure Act* after a plea of not guilty.

### ***Second court appearance - plea of not guilty in the magistrates' jurisdiction***

7.8. If the accused pleads not guilty and the Court determines the trial will take no longer than one day, the matter is to be adjourned to trial and the Court must consider whether disclosure orders under s 60 or s 138 or case management orders under s 137 of the *Criminal Procedure Act* are required.

- 7.9. If the accused pleads not guilty and the Court determines the trial is likely to take longer than one day, the matter is to be adjourned to a trial allocation hearing and the Court must consider whether disclosure orders under s 60 or s 138 or case management orders under s 137 of the *Criminal Procedure Act* are required.
- 7.10. Disclosure timeframes in s 61 and s 62 of the *Criminal Procedure Act* must be complied with unless they are expressly varied by the Court.

### ***Second court appearance - plea of not guilty where there is an adult co-accused***

- 7.11. If the accused pleads not guilty, in circumstances where there is an adult co-accused and the prosecution is aware of how an adult co-accused is to proceed, the prosecution must inform the Court as to whether the prosecution may make an application for the transfer of the prosecution notice to the Magistrates Court. Any application for transfer should be made expeditiously.

## **8. Section 19B(4) hearing**

- 8.1. If s 19B papers are not served by the time of the first s 19B(4) hearing and the Court is satisfied there is a good reason to do so, the Court may:
- (a) extend the time by no more than 4 weeks for the prosecution to serve s 19B papers; or
  - (b) make case management orders; or
  - (c) make orders relating to disclosure.
- 8.2. Having received s 19B papers, the accused is expected to accept responsibility for the act or omission constituting the offence or plead to the charge.

- 8.3. If the accused pleads guilty, the Court will determine whether to adjourn the sentencing of the accused for hearing before a judge, to adjourn the sentencing to obtain information or to proceed to sentence immediately.
- 8.4. If the accused pleads not guilty, the Court will determine whether the charge should be adjourned for trial before a judge of the Court or to trial or trial allocation hearing before a magistrate.

## **9. Complex Matters List – Perth Children’s Court only**

- 9.1. Sentencing, bail or fitness to stand trial matters may be adjourned from the Criminal Combined List to the Complex Matters List at the discretion of the presiding magistrate. The Court will request any information and reports that must be prepared. A magistrate who adjourns a matter to the Complex Matters List is not seized of that matter.
- 9.2. All relevant material must be lodged with the registry prior to the hearing in the Complex Matters List as follows:
- (a) within 2 days of the matter being referred to the Complex Matters List, the prosecution must lodge the written statement of material facts of the charge, any video or audio recording of the commission of the alleged offence and any reports that are relied upon, as well as any confessional material of the accused.
  - (b) no later than 2 days before the Complex Matters List hearing:
    - i. Youth Justice Services must comply with paragraph 14.2;
    - ii. where the accused is subject to a protection and care order, the Department of Communities must lodge a report;
    - iii. the accused must lodge any reports, sentencing materials and references that are relied upon;

- (c) parties may lodge written submissions. Any written submissions must be lodged no later than 2 days before the Complex Matters List hearing.

## **10. Trial allocation hearing – multi day trial before a magistrate**

- 10.1. No later than 2 days before the trial allocation hearing, the parties must each lodge a Listing Certificate for Trial. Parties who do not comply may not have their unavailable counsel and witness dates for trial accommodated.
- 10.2. At the trial allocation hearing, the magistrate will list the matter for trial and make any necessary programming and further disclosure orders.

## **11. Trial jurisdiction of a judge**

- 11.1. In addition to matters which must be committed to a judge of the Court pursuant to s 21(2) of the *Children’s Court of Western Australia Act*, all sexual offence charges which:
  - (a) carry a maximum penalty of 14 or more years imprisonment;  
and
  - (b) where the complainant is currently under 13 years old or where a ground rules hearing is necessary,should be committed to a judge for trial.
- 11.2. A magistrate may seek an extension of power in an appropriate case to hear a trial pursuant to s 22 of the *Children’s Court of Western Australia Act*. The President may also extend power to a magistrate when no judge is available to hear an urgent trial.



## **12. Status conference - trial before a judge**

- 12.1. Perth matters meeting the criteria for committal to a judge for trial should be adjourned to the President's Status Conference List once s 19B papers have been served and the plea of not guilty recorded.
- 12.2. Metropolitan and regional matters should be adjourned to the Criminal Combined List in the Perth Children's Court at the time s 19B papers are ordered and a plea of not guilty is indicated as likely. This is to enable the office of the Director of Public Prosecutions to assume conduct of the prosecution.
- 12.3. No later than 5 days before the status conference, the prosecutor must lodge a brief of evidence.
- 12.4. No later than 2 days before the status conference, the parties must each lodge a Listing Certificate for Trial. Parties who do not comply may not have their unavailable counsel and witness dates for trial accommodated.
- 12.5. Perth matters will usually be listed for fixed trial dates. Young persons in custody will be given priority.
- 12.6. Regional circuit trials will usually be listed in the same manner as District Court criminal circuit trials, using a priority trial allocation system and a rolling list with a call over in the week before the circuit commences.

## **13. Sentencing hearing before a judge**

- 13.1. If a charge is adjourned for sentencing before a judge of the Court, the magistrate should order all necessary sentencing reports when the plea of guilty is entered. A conviction should not be recorded then. If an accused is in custody, a detention management report must be ordered.

- 13.2. Sentencing dates before a judge will be available electronically, in the Integrated Case Management System, to magistrates in Perth Children's Court. The previous system where legal practitioners obtained sentencing dates from the Perth registry will no longer be used.
- 13.3. Unless they are urgent, metropolitan and regional sentencing committals should be adjourned to the Criminal Combined List in the Perth Children's Court within 14 days of entry of the plea. This is to enable the office of the Director of Public Prosecutions to assume the conduct of the prosecution.
- 13.4. If a sentence hearing is urgent (for example because an offender is about to turn 18 years old) then the legal practitioner for the accused may liaise in advance of entry of the plea by email with the President's Associate (email to: [childrenscourt@justice.wa.gov.au](mailto:childrenscourt@justice.wa.gov.au)), copied to the Director of Public Prosecutions and Youth Justice Services, explaining the need for expedition. If an early date before a judge is provided, the practitioner will be authorised to advise the Court so the charge can be adjourned to that date and expedited reports ordered.
- 13.5. Written submissions are not required in sentencing matters before a judge unless ordered by the Court. Any written submissions must be lodged 2 days before the sentencing date and be no longer than 5 pages. Late submissions will not be accepted for lodgment.

## **14. Sentencing and other reports**

- 14.1. If a charge is adjourned for the preparation of a report, then by no later than 2 days before the Court return date, the person or agency responsible for preparing the report must lodge the report with the registry.
- 14.2. For all accused, Youth Justice Services must hand up to the Court any relevant court record on request by the presiding judicial officer.

If a charge is adjourned for sentencing, Youth Justice Services must lodge a copy of any relevant court record for the accused with the registry 2 days before the Court return date.

- 14.3. Unrepresented accused may obtain a copy of the report referred to in paragraph 14.1 from the registry on the day before the Court return date and upon signing an undertaking in the approved form ([www.childrenscourt.wa.gov.au](http://www.childrenscourt.wa.gov.au) - Forms).
- 14.4. Counsel can obtain a copy of the report referred to in paragraph 14.1 from the registry on the day before the Court return date by emailing their request to the Court ([childrenscourt@justice.wa.gov.au](mailto:childrenscourt@justice.wa.gov.au)). Upon receiving a request the Court will send the report by email, with the email specifying the conditions upon which the report is being provided.
- 14.5. Reports are confidential and must not be copied or provided to any other person without express approval from the presiding judicial officer.
- 14.6. Unless the presiding judicial officer directs otherwise, the hard copy of any report must be returned to the registry immediately after the Court appearance (or, in the case of reports produced for the purpose of sentencing, immediately after the sentencing decision) and any electronic copies are to be deleted.

## **15. Criminal trial**

- 15.1. Whether the trial is listed before a judge or magistrate, the accused **must** comply with the defence disclosure requirements in the *Criminal Procedure Act* within the statutory timeframe of 14 or 28 days as the case may be.
- 15.2. Except for witness proofing information and evidence obtained in response to defence disclosure, the prosecution may not, without leave of the Court, rely at trial on evidentiary material which is the

subject of a disclosure requirement and which is served on the accused less than 7 days before the date on which the trial is to commence in circumstances where it was in the prosecutor's possession more than 10 days out from trial.

## **16. Duties of legal practitioner acting for a party to notify Court**

- 16.1. A legal practitioner for an accused who is listed before the President or a judge of the Court must lodge and serve on the Director of Public Prosecutions a Notice of Acting form within 2 days of being instructed to act ([www.childrenscourt.wa.gov.au](http://www.childrenscourt.wa.gov.au) – Forms).
- 16.2. A legal practitioner who ceases to be instructed to act for an accused must lodge and serve a Notice of Ceasing to Act form ([www.childrenscourt.wa.gov.au](http://www.childrenscourt.wa.gov.au) – Forms) at least 14 days before the date when the next court proceedings involving the accused are listed.
- 16.3. A legal practitioner who has lodged a Notice of Acting form is to be taken as acting for the accused until:
  - (a) the legal practitioner lodges a Notice of Ceasing to Act form; or
  - (b) another legal practitioner, who acts in the same capacity, lodges a Notice of Acting form; or
  - (c) the Court gives leave for a legal practitioner to cease to act for a party.

## **17. Accused child facing multiple matters**

The Court may adjourn a charge to be joined with other charges faced by an accused, but each charge must be finalised in accordance with paragraph 4 of this Practice Direction.

## **18. Specialty courts**

- 18.1. Existing practices and procedures in Perth specialty Children's Courts, including the Perth Children's Court Drug Court and INROADS Court, will be the subject of a future Practice Direction. Until then existing practices and procedures in such courts are unaffected by this Practice Direction.
- 18.2. Existing practices and procedures in regional specialty Children's Courts are unaffected by this Practice Direction.



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Judge Hylton Quail

**President**

**Children's Court of Western Australia**

29 June 2023