

PRACTICE DIRECTION NO. 5 OF 2001

Supreme Court: Criminal jurisdiction

Submissions by representatives of community justice groups in the sentencing of Aboriginal or Torres Strait Islander persons

Section 9(2)(o) *Penalties and Sentences Act* 1992, section 109(1)(g) *Juvenile Justice Act* 1992

1. When taking instructions from an accused person the legal representative may consider enquiring whether he or she is a person to whom s9(2)(o) of the *Penalties and Sentences Act* 1992 or s109(1)(g) of the *Juvenile Justice Act* 1992 may apply and, if instructed to do so, shall take reasonable steps to notify an appropriate community justice group, if any, as may be identified by the client.
2. If a community justice group advises the legal representative of an accused person or the Director of Public Prosecutions that the community justice group wishes to make a submission pursuant to s9(2)(o) of the *Penalties and Sentences Act* or s109(1)(g) of the *Juvenile Justice Act* at the hearing of a sentence of an accused person, the legal representative or the Director, as the case may be, shall thereupon notify in writing the Registrar of the court at the centre where the indictment has been or is to be presented that the community justice group wishes to make a submission to the court at the hearing of the sentence of the accused person.
3. Such notification shall be given at least seven days before the date appointed for the hearing subject to abridgement of such time as the court sees fit.
4. The notification in writing shall also advise the Registrar of the manner in which it is proposed that a representative of the community justice group will make the submission (eg by written statement, orally, by telephone link, or by some other means).
5. Where such notification has been given:
 - (a) when an accused person intends to plead not guilty, the Director of Public Prosecutions or the legal representative of the accused person, as the case may be, shall inform the community justice group which wishes to make a submission to the court on sentence of:
 - the expected date of the trial
 - any information concerning its anticipated duration and,
 - where necessary shall keep the community justice group informed of any changes in the date or that information.
 - (b) when the accused intends to plead guilty, the Director of Public Prosecutions or the legal representative of the accused as the case may be, shall inform the community justice group of the date for hearing the sentence.

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6. The following rules apply when a community justice group representative wishes to make submissions at the sentence of an accused person
- (a) When the representative of the community justice group intends to attend Court personally to make the submission:
- when the accused person intends to plead not guilty, the representative of the community justice group shall ensure that he or she is present in person when the verdict is returned so that the sentence may proceed immediately in the event of conviction.
 - when the accused intends to plead guilty, the representative of the community justice group shall ensure that he or she is present in person at the time appointed for the hearing of the sentence.
- (b) When the representative of the community justice group intends to make the submission in writing:
- when the accused person intends to plead not guilty, such submission must be delivered by mail, facsimile or other means to the Registrar of the Court at which the trial is to be conducted no later than noon of the day prior to the date appointed for the commencement of the trial.
 - when the accused intends to plead guilty, such submission must be delivered by mail, facsimile or other means to the Registrar of the Court at which the sentence is to proceed no later than noon of the day prior to the date appointed for the hearing of the sentence.
- (c) If the Director of Public Prosecutions and the legal representative of the accused person agree that a submission may be made by video or telephone link, or if the Court so directs:
- when the accused person intends to plead not guilty, the representative of the community justice group shall ensure that he or she is available by video or telephone link when the verdict is returned so that the sentence may proceed immediately in the event of conviction.
 - when the accused intends to plead guilty, the representative of the community justice group shall ensure that he or she is available by video or telephone link at the time appointed for the hearing of the sentence.

(Paul de Jersey)

Chief Justice

8 May 2001