

PRACTICE DIRECTION 4 of 2014
SUPREME COURT OF QUEENSLAND

CRIMINAL JURISDICTION: SUPREME COURT

Object

This document incorporates all relevant practice directions which have been made previously and which are specifically applicable to the criminal jurisdiction of the Supreme Court. Additional directions applicable to Brisbane sittings are contained in PD 5 of 2014.

Where appropriate, and for the assistance of practitioners, notes are provided which:

- (a) contain information in addition to the direction, or
- (b) refer to practice directions which are of general application and should be observed.

Part 1 – Before a trial or hearing

Notes

The following practice directions of general application should be observed:

Case Management in Complex Criminal Trials	PD 6 of 2013
Direct Access Briefing	PD 20 of 2012
Written submissions	PD 3 of 2008
Evidence by telephone or video-link	PD 1 of 2008
Digitally recorded proceedings	PD 7 of 2014

Directions

Pre-trial applications

1. When an application is made under s 590AA of the *Criminal Code Act 1899* the application must include, in addition to the matters specified in r 42 of the *Criminal Practice Rules 1999*, an estimate of the likely length of any oral hearing. This is to be done by inserting the following in the application:
“The applicant estimates the hearing should be allocatedhours/minutes.”
2. For matters being heard in Brisbane the Criminal Listing Procedures – Brisbane Practice Direction 5 of 2014 also applies.

Interpreters

3. (a) Unless the court otherwise orders, a party to a criminal proceeding, who needs an interpreter to assist his or her comprehension of the proceeding

or to interpret between the court and a witness (including an accused person giving evidence) must file and serve on the other party or parties to the proceeding an application for the appointment of an interpreter and supporting affidavit material.

- (b) The application should be filed no later than seven days after the proceeding is set down for hearing or 28 days prior to the hearing date, whichever is the earlier.
- (c) The affidavit should –
 - (i) specify the language and the dialect (if applicable) of the non-English speaking witness and any special requirements;
 - (ii) identify the source through which the engagement of an appropriately qualified and accredited interpreter might be arranged; and
 - (iii) state by whom the interpreter’s fees and expenses would be borne.
- (d) On the hearing of the application, the court may –
 - (i) direct the registrar to locate and retain an interpreter;
 - (ii) direct the registrar to seek directions from a judge should the registrar encounter difficulty; and
 - (iii) make further or other orders as appropriate.
- (e) The court will bear the cost of interpreting the proceeding to an accused person where the interests of justice require the appointment of an interpreter for that purpose.
- (f) Unless the court orders otherwise, the costs of interpreting between the court and a witness will be borne by the party calling the witness or giving evidence.
- (g) When the interests of justice require, the costs of interpreting between the court and an accused person giving evidence will be borne by the court.
- (h) Where an interpreter has been retained by the Registrar, and it becomes apparent prior to the hearing that his or her services will no longer be required, the Registrar must be advised forthwith, so that the retainer may be terminated and costs not unnecessarily incurred.
- (i) A Registry officer will be designated to facilitate communications between the profession and the court, and between the interpreter and the court. That officer may be contacted at:
courtinterpreters@courts.qld.gov.au.
- (j) This Practice Direction does not affect the capacity of a party otherwise to engage, at that party’s expense, an interpreter to assist a party’s comprehension of a proceeding in court.
- (k) For applications which relate to proceedings under the *Bail Act 1980* or the *Dangerous Prisoners (Sexual Offenders) Act 2003* see Practice Direction 6 of 2014: Interpreters – Applications under the *Bail Act 1980* or the *Dangerous Prisoners (Sexual Offenders) Act 2003*

Affected children

Notes

A video-taped recording (under the *Evidence Act 1977* this means a recording, including the accompanying sound track, on any medium from which a moving image may be produced by any means) of an affected child's evidence recorded pursuant to the provisions of Part 2, Division 4A of the Evidence Act, whether pre-recorded or recorded during a trial, must be securely stored by the court. The court must also control the copying, editing, delivery, recovery, storage and destruction of any videotape of the evidence of an affected child recorded in Queensland.

To this end, the Principal Registrar will take special responsibility for these matters. All videotapes whether recorded in Brisbane or at any of the court's regional or circuit centres will be stored, copied and edited in Brisbane. Thus the registrars of the court at places outside Brisbane must ensure, as soon as is practical after recording, that videotapes are delivered, by secure means, to the Principal Registrar in Brisbane. Further, registrars outside Brisbane must also ensure that copies of orders made under the Act in respect of these videotapes are transmitted to the Principal Registrar as soon as possible, and that all videotapes are returned to the Principal Registrar at the conclusion of a trial, irrespective of the verdict.

Accordingly:

- All videotapes, no matter where originally recorded, must be in the safe keeping of the Principal Registrar in Brisbane.
- The Principal Registrar must ensure the delivery of videotapes to the place where the trial is to be held, that is, by causing the original videotape, or an edited tape, to be delivered to the associate to the Judge who is to preside over the trial of the matter.
- The Principal Registrar will also cause any copies, editing or delivery of copies to any person to be effected pursuant to the order of a Judge.
- The original videotape must not be delivered or provided to any party.
- The original videotape, and any copies or edited videotapes, must be returned to the Principal Registrar for safe keeping.

Draft orders for:

- (a) the pre-recording of evidence,
 - (b) the editing of pre-recorded evidence, and
 - (c) the supply of copies of pre-recorded evidence
- are in the schedule.
4. The Director of Public Prosecutions must inform the court at the time of presentation of an indictment of the need to pre-record evidence of an affected child. At that time all parties must be prepared to indicate readiness to proceed with the pre-recording of evidence and supply a realistic estimate of time for the proposed hearing.
 5. The Principal Registrar must undertake the copying, editing, delivery, recovery, storage and destruction of any videotape of the evidence of an affected child pre-recorded or recorded in Queensland pursuant to the Act ("the original videotape") as ordered by the court.

6. The Principal Registrar must keep in safe custody and cause a register to be kept of:
 - (a) all original videotapes;
 - (b) any copy of an original videotape made pursuant to the Act ("the copy videotape");
 - (c) any videotape edited pursuant to the Act ("the edited videotape");
 - (d) receipt or movements of any such videotapes.

7. At the conclusion of the recording of the pre-recorded evidence of an affected child:
 - (a) The recorder carrying out the recording service is directed to provide a transcript of the evidence of the affected child which has been recorded on the original videotape to the Director of Public Prosecutions and to the legal representatives of the accused and, where an accused is not represented, to that accused; and
 - (b) the original videotape must be delivered to the Principal Registrar in Brisbane.

8. No copy of the original videotape may be made by the Principal Registrar until:
 - (a) a party applies to the court for an order that the original videotape be copied and/or edited for the trial of the matter; and
 - (b) a Judge orders that the videotape be copied or that the videotape be edited. Any editing order made must specify the parts of the transcript to be edited.

9. The application referred to in 8(a) must be made in accordance with Form 1 of the Criminal Practice Rules, filed in the registry of the place where the indictment was presented and served on the other party/parties no later than 5 days before the hearing of the application.

10. Upon an order being made for the copying, editing or collection of a videotape, the Principal Registrar will:
 - (a) cause a copy/copies of the videotape to be made; and
 - (b) if so ordered, arrange for the collection by the parties specified in the order of:
 - (i) a copy videotape;
 - (ii) a copy videotape edited in accordance with the order.

11. At least four (4) working days prior to the day appointed for the pre-recording of the evidence or, in respect of indictments presented prior to 5 January 2004, of the trial, the Director of Public Prosecutions must cause to be delivered to the associate to the Judge presiding over the pre-recording of

the evidence or the trial as the case may be, a transcript of the child's statement made pursuant to s. 93A of the Evidence Act.

12. The Principal Registrar or officers designated by the Principal Registrar must ensure that any equipment used to videotape evidence for the purpose of the Act is in good working order prior to the taking of evidence.
13. At the conclusion of the proceedings (including any appeal) the Principal Registrar
 - (a) must retain the original videotape, and
 - (b) unless the Court makes an order to the contrary, may, no earlier than 30 days after the conclusion of the proceedings, destroy all copy videotapes and edited videotapes.

Summary Charges

Notes

Section 651 of the *Criminal Code* empowers the Supreme Court to hear and decide summarily a charge of a summary offence, subject to s 652(2) to (4) and s 651(2). The purpose of these directions is to specify administrative requirements designed to streamline the transmission of such charges to the Supreme Court.

14. Before filing an application pursuant to section 652(2) of the *Criminal Code* the applicant must lodge with the Director of Public Prosecutions an application for the consent of the Crown under section 651(2)(c). The application must set out the text of the summary charges the applicant seeks to have transmitted, and the text of the charge of the indictable offence with which the summary charges would be heard. In the case of lengthy charges, a copy of the charges/counts may, alternatively, be attached to the application.
15. The Director of Public Prosecutions will consider the application and within 14 days of receipt of the application notify the applicant in writing of the result.
16. An application pursuant to section 652(2) must be made to the Registrar of the relevant court of summary jurisdiction not later than 14 days prior to the date set for the hearing of the indictable offence in the Supreme Court.
17. In addition to the matters prescribed by section 652(3), the application must state that as at the time it is being made, an indictment has been presented or is to be presented in the Supreme Court at a specified centre.
18. The defendant or the defendant's legal representative must, at least 24 hours prior to the day on which the matter is to be heard in the Supreme Court,

contact the Registrar of the relevant criminal registry to confirm that the relevant documents have been received.

19. If the original documents from the court of summary jurisdiction or true copies of those documents are not before the Supreme Court at the time the Court deals with the indictable offences, the Court will not deal with the summary offences.
20. If the Supreme Court declines to deal with a charge of a summary offence brought before it, the Supreme Court will order that the transmitted charge be remitted to the originating court of summary jurisdiction. Where the originating court is the Magistrates Court at Brisbane then, unless the Supreme Court orders otherwise, the defendant will by order be required to appear at the next ex-officio call-over of that court.

Remittal to the District Court

21. The following direction applies:
 - (a) where a person has been committed for trial or sentence to the Supreme Court, and
 - (b) where that person has been indicted in the Supreme Court, but
 - (c) the only charges awaiting trial or sentence fall within the jurisdiction of the District Court.
22. In all such cases:
 - (a) the Director of Public Prosecutions must notify the Criminal List Manager or other relevant officer outside Brisbane of those matters, and
 - (b) the Chief Justice is to be taken to have requested a Judge of the District Court to try or sentence the accused person, as the case may require. This request is to be taken as made under s.64(1) of the *District Court Act 1967*.
23. There is reserved to the Judge in charge of the Criminal List of the Supreme Court in Brisbane, and to each judge hearing such a matter outside Brisbane, a discretion to retain any particular matter in this Court, should reasons of manifest convenience or other considerations warrant taking that course.

Part 2 – During a trial or hearing

Notes

The following practice direction of general application should be observed:

Electronic devices in Courtrooms

PD 8 of 2014

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

Notes

When taking instructions from a defendant the legal representative may consider enquiring whether he or she is a person to whom s 9(2)(p) of the *Penalties and Sentences Act 1992* or s150(1)(g) of the *Youth 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.

24. If a community justice group advises the legal representative of a defendant or the Director of Public Prosecutions that the community justice group wishes to make a submission pursuant to s 9(2)(p) of the *Penalties and Sentences Act* or s150(1)(g) of the *Juvenile Justice Act* at the hearing of a sentence of a defendant, the legal representative or the Director, as the case may be, must 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 a defendant.
25. Such notification must be given at least seven days before the date appointed for the hearing subject to abridgement of such time as the court sees fit.
26. The notification in writing must 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).
27. Where such notification has been given:
 - (a) when a defendant intends to plead not guilty, the Director of Public Prosecutions or the legal representative of the defendant, as the case may be, must inform the community justice group which wishes to make a submission to the court on sentence of:
 - (i) the expected date of the trial;
 - (ii) any information concerning its anticipated duration and;
 - (iii) where necessary must keep the community justice group informed of any changes in the date or that information.
 - (b) when a defendant intends to plead guilty, the Director of Public Prosecutions or the legal representative of the defendant as the case may be, must inform the community justice group of the date for hearing the sentence.
28. The following rules apply when a community justice group representative wishes to make submissions at the sentence of a defendant:

- (a) When the representative of the community justice group intends to attend Court personally to make the submission:
 - (i) when the defendant intends to plead not guilty, the representative of the community justice group must 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.
 - (ii) when the defendant intends to plead guilty, the representative of the community justice group must 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:
 - (i) when a defendant 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.
 - (ii) when a defendant 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 a defendant agree that a submission may be made by video or telephone link, or if the Court so directs:
 - (i) when a defendant intends to plead not guilty, the representative of the community justice group must 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.
 - (ii) when a defendant intends to plead guilty, the representative of the community justice group must ensure that he or she is available by video or telephone link at the time appointed for the hearing of the sentence.

Section 13A Penalties & Sentences Act 1992

29. If any party to sentencing proceedings wishes to proceed under s. 13A of the *Penalties & Sentences Act 1992*, that party must, prior to the hearing, advise the sentencing Judge's Associate accordingly.

30. The material establishing the matters referred to in s. 13A is to be placed in an unsealed envelope addressed to the sentencing Judge and handed up after the administration of the *allocutus*, in open court.
31. Any submissions relevant to s. 13A should be made in writing and handed up to the Judge during the hearing, although copies may if desired be provided in advance.
32. If any further oral submissions need be made, or evidence given, with relation to matters involved in s. 13A, that is to occur in closed court. Otherwise all proceedings are to take place in open court.
33. If, at the conclusion of submissions, the sentencing Judge is ready to pass sentence the Judge will do so and that sentence will be endorsed on the indictment.
34. Having imposed the sentence, the Judge will then close the court and comply with the requirements of s. 13A(7)(a), (b) and (c) by:
 - (a) stating that the sentence just passed was reduced under s. 13A; and
 - (b) stating the sentence which would otherwise have been imposed; and
 - (c) directing that written submissions handed up be placed in a sealed envelope with the other s. 13A material previously tendered, together with a revised copy of the transcript of the in-camera hearing, to be opened only by order of the Court.

Section 21E Crimes Act (Cth)

Notes

Section 21E of the *Crimes Act* 1914 provides for a comparable situation with respect to sentencing for Commonwealth offences, although section 21E does not make the detailed provision contained in section 13A(2) and (3) of the *Penalties and Sentences Act*.

35. The procedure followed with respect to s13A of the *Penalties and Sentences Act* will apply, with any necessary adaptation, with relation to section 21E, subject always however to the discretion of the Judge in any particular case.
36. Judges will, subject to that qualification, expect comparability of approach, whether the proceedings be State or Commonwealth.

Part 3 – After the trial or hearing

Notes

The following practice direction of general application should be observed:

Court of Appeal procedure

PD 3 of 2013

Exclusion of juror's names

Notes

The names of jurors in criminal trials are recorded on indictments pursuant to the Court's obligation under rule 61 of the *Criminal Practice Rules* and s.41(3) of the *Jury Act 1995*. Additionally, doing so is a convenient way of establishing a definitive record of aspects of the proceedings for managerial purposes. An indictment is necessarily included in the record for a criminal appeal. The names of the jurors at the trial will, however, almost invariably be irrelevant to the determination of the appeal.

37. Copies of any indictments included in appeal records must not include the names of jurors. Therefore, when copying an indictment for the purpose of the preparation of such a record, that part of the indictment which records the names of the jurors must be redacted.

Repealed Practice Directions

38. The following Practice Directions are repealed:

1999 – 5, 12, 28, 29, 31

2000 – 2

2001 – 5

2002 – 5

2004 – 3, 9

2010 – 3, 14

Commencement

39. This Practice Direction takes effect from 3 March 2014.



Paul de Jersey
Chief Justice
17 February 2014

SCHEDULE

ORDER FOR SUPPLY OF COPIES OF PRE-RECORDED EVIDENCE

Indictment Number

In the Supreme Court of Queensland

The Queen against *[name of accused]*

ORDER

Before J

Date of Order *[Insert date of Order]*

Document initiating this hearing Application dated [date]

IT IS ORDERED THAT:

1. [Insert number of copies to be made] copies be prepared of the original/edited video taped recording in relation to the evidence of *[name of affected child]*, pre-recorded pursuant to order dated *[insert date]*
2. A copy be available to each of:
 - the Office of the Director of Public Prosecutions, and
 - the legal representative for the accused/each of the accused*And who, by this order, are authorised to have possession of such recording for the purposes only of these proceedings.
3. No viewing of the copy of the recording is to take place except in the presence of those authorised persons.
4. No person may be permitted to view the tape who is not directly involved in the preparation for the trial at which the tape in question is to be presented as part of the evidence.
5. The copy of the recording be collected from the Principal Registrar by such person as is authorised by the Director of Public Prosecutions Office and by the legal representative for the accused/each of the accused*
6. All copies of the video taped recording in possession of the Office of the Director of Public Prosecutions and the legal representative for the accused/each of the accused* be returned to the Principal Registrar at the expiration of 21 days after the trial has been completed.
7. Further copies of the recording must not be made without the further order or direction of a judicial officer.

IT IS FURTHER ORDERED THAT

[set out such further orders or directions as made by the judicial officer]

[Signed]
Deputy Registrar

ORDER FOR EDITING OF PRE-RECORDED EVIDENCE

Indictment Number:

In the Supreme Court of Queensland
The Queen against *[name of accused]*

ORDER

Before J

Date of Order *[Insert date of Order]*

Document initiating this hearing Application dated *[date]*

IT IS ORDERED THAT:

1. The original video taped recording of the evidence of [name of affected child] taken on [date] be edited.
2. Such editing to be limited to, and in accordance with the attached transcript.
3. Parts of the evidence to be edited are as indicated in the said transcript [highlighted/marked] by my associate.
4. Such editing be carried out by a person nominated by the Principal Registrar to edit or make changes to the recording.

IT IS FURTHER ORDERED THAT:

[set out such further orders or directions as made by the judicial officer]

[Signed]
Deputy Registrar

ORDER FOR PRE-RECORDING OF EVIDENCE

Indictment Number:

In the Supreme Court of Queensland
The Queen against *[name of accused]*

ORDER

Before J

Date of Order *[Insert date of Order]*

Document initiating this hearing Indictment - presented *[date]*

IT IS ORDERED THAT

1. The evidence of *[name of affected child]* now aged [--] years be taken and *recorded on* video tape at *a.m./p.m.* on *[date]* at *[place]*.
2. That the original video taped recording of the affected child's evidence be forwarded to and retained in safe custody by the Principal Registrar at Brisbane until the trial of this matter or further order.

IT IS FURTHER ORDERED THAT:

[set out such other orders or directions as made by the judicial officer]

[Signed]
Deputy Register