
MEMO TO THE PROFESSION – IMPORTANT INFORMATION FOR CRIMINAL LAWYERS

Access to prisoners at the Launceston Reception Prison and Requests for Information in Relation to Time Spent in Custody

Requests for information in relation to custody from the prison

As a result of issues raised with the Society, the Society has successfully lobbied for changes to the procedure used by the prison when managing requests for information relating to the time spent by a prisoner in custody. Legal practitioners will **no longer be required to provide a written authority** in order to obtain this information.

The prison's reason for introducing this protocol were concerns over the release of *personal information* as defined within the *Personal Information Protection Act 2004*. The Society has persuaded the prison that by carrying instructions, a legal practitioner enjoys an exemption by virtue of the existence of the retainer. The prison has now been persuaded to agree to the following protocol:

- All requests for information from the Sentence Management Division of Risdon Prison are to be in writing and can be by way of **simple email** TPS.Warrants@justice.tas.gov.au
- Practitioners are to confirm in writing in the request that **they hold current instructions** with respect to the client in question.
- Requests should be made for this information **3 days** prior to the date the information will be required.
- Noting that there will be situations where that will not be possible, any **urgent requests** should be marked clearly as urgent and the unit will give that request priority but cannot guarantee that the request will be processed within the same business day due to the varying nature of workflow within the unit. The unit will make every effort to process those urgent requests with priority and quickly.

Practitioners are asked to only seek information on an urgent basis when it is truly urgent and not as a result of failing to seek the information in a timely way. The Sentence Management Division is particularly busy during days prior to any Supreme Court remand day or heavily committed directions hearing/plea day as they are required to process information for the assistance of the Court and it may pay to bear this in mind when requesting information and timing of those requests.

Given that we all have constant and immediate access to email through the various electronic devices at our disposal, this should afford practitioners with a great deal of flexibility in obtaining this information whilst providing the prison with reassurance that the information being

requested can be lawfully released with the creation also of a written record of the request and the response.

The prison accepted that the requirement to provide a written authority was creating delay and was of inconvenience to the profession given the difficulty of securing signed documents from clients in custody.

I take this opportunity to thank those who raised this issue with the Society, which we now consider to have been successfully resolved.

If the profession is experiencing any further issues in this area or other issues that you wish to raise with the Society, then please feel free to do so.

Access to prisoners at the Launceston Reception Prison

I wish also to advise practitioners of arrangements for access to prisoners while they are housed at the Launceston Reception Prison.

I convened a meeting between Northern District Prosecution, the Magistrates Court, the Launceston Reception Prison and Tasmania Police to work through possible solutions to the current issues and can report as follows.

General

- It is estimated that the renovations will take a further 3 ½ to 4 weeks until completion.
- In cell appointments with solicitors are not able to be conducted because they would require lawyers to be locked in the cell with the prisoner, which presents an unacceptable risk.
- The Police are unable to make arrangements for prisoners to be interviewed by practitioners in the main Police station as they would need to be supervised by Tasmania Police and if an urgent matter arose, those Police would be forced to terminate the appointment or fail to attend to facilitate the appointment, creating a great deal of uncertainty. It also raises issues whether clients would be willing to speak freely with uniformed police close at hand.
- There is no telephone that currently links through to the "watch house" where Police lock-up prisoners are held and it is not possible to place persons in police custody into the main prison yard as that would result in the mixing of remanded prisoners and police custody persons, which is prohibited.
- It is generally accepted by all parties concerned that making face to face contact with police lock-ups and remandees prior to court is the best outcome for all.

Arrangements for contact

- Contact with persons held at the Launceston Reception Prison can be arranged by **contacting the facility at any time of the day or night 7 days a week**. The facility is manned 24/7 and therefore contact can be arranged at any time.

- Until the completion of the rebuild, that contact will be facilitated **by communicating through the cell door** with the prisoner and the prison will provide furniture for lawyers to allow for that to happen.
- **Phone contact can still occur as usual** with remanded prisoners by contact to the "day yard".
- **The Supreme Court can facilitate contact** with clients by arrangement with the Registry and those arrangements should be made through the Supreme Court but can only occur from Monday to Friday between 9.00am and 5.00pm and subject to the Court's existing business. Contact at the Supreme Court can occur in the new interview room that was built as part of the redevelopment, or at the Supreme Court cells.
- **The Magistrates Court is still able to arrange contact** at the Courthouse by the use of a vacant court. This should be used as a last resort, however, given that in the experience of the Prison, remandees can be highly agitated before attending court if they believe they are not going to have an opportunity to speak to their practitioner before attending the court building. The availability of spare court space also is subject to the operational requirements of the Court.

Video-link

I am currently conducting testing between a number of facilities and the Remand Centre. An alternative to transporting a prisoner from the Launceston Reception Prison to the Supreme Court for instructions may be to request that the video-link be made available between the 2 facilities which could occur, for example, from the protected witness room at the Supreme Court to the video-link room at the Remand Centre. The Remand Centre is willing to use its video-link facility in this way and will generally supervise the link to ensure that prisoners do not cause damage to the electronic equipment.

If further options for video-link become available, then I will update you. It is my hope that the video-link from Staffordshire House to the Remand Centre will be fit for purpose, although it may be possible to even video-link through to the Remand Centre from an electronic device using the Polycom app from your desk.

Further useful information

During the meeting, the group worked constructively on several areas of interest in what was an extremely productive meeting. We have resolved to continue to meet once a month and to include within the group representatives of the DPP and the Supreme Court. Practitioners in the north may find the following information also of use:

- Prosecution have agreed to determine whether bail is opposed or not at the earliest opportunity to minimize the use of resources. We are informed that they are *generally* aware of whether bail will be opposed or not by 8.30 in the morning. This would not apply, of course, to people who are "picked up" during the day.
- Prosecution will endeavor to advise practitioners of the fact that one of their clients has been taken into custody to improve efficiency.

- Both the Court and Prosecution will advise the LRP of "problematic lock-ups" where defendants have appeared in out-of-hours courts, for example, and displayed violent behaviour. This will give practitioners a better understanding of who should be taking instructions from that client and what arrangements will need to be made for the purposes of securing those instructions. It would be best practice if lawyers could contact the LRP prior to attending for an appointment to find out the demeanour of the defendant and whether there are any matters they should be aware of prior to arranging that meeting.

In conclusion

It appears that there is at least an improvement in contact which should make doing our job a little easier. It is pleasing to see that the build is on track and may in fact finish earlier than first estimated. The redevelopment of the LRP will be to the benefit of clients, practitioners and the staff of the prison and the Society acknowledges the excellent work conducted by criminal practitioners across the state in very difficult circumstances.

Evan Hughes
PRESIDENT

6 June 2019