



Magistrates' Court of Victoria

PRACTICE DIRECTION

No 1 of 2016

Correcting Penalties Imposed Contrary to law

Background

Section 104B of the *Sentencing Act 1991* allows a court to reopen a proceeding to correct a sentence imposed contrary to law or which failed to impose a penalty that is required to be imposed by law.

The court may reopen the proceeding of its own motion or upon application by a party and, in so doing, must take into account the time that has elapsed since either the imposition of, or the failure to impose, the original penalty.

Section 104B is drafted in terms of "*the court may at any time, reopen the proceedings*" rather than the terminology in s104A that refers to "*the judge or magistrate*".

Direction:

Any application to the Court pursuant to section 104B of the *Sentencing Act 1991* is to be made, wherever reasonably practicable, to the Magistrate who made the original order or orders said to be contrary to law or which have failed to impose a penalty required by law.

This practice direction is to commence on 8 February 2016.

Peter Lauritsen
Chief Magistrate

Date: 5 February 2016