



**MAGISTRATES COURT
OF THE
AUSTRALIAN CAPITAL TERRITORY**

Practice Direction 1/2024

Practice Direction – Adult Criminal Matters

Introduction

1. This practice direction establishes new listing arrangements in the Magistrates Court, in particular it establishes the Registrar’s criminal list. That list and associated arrangements will commence on 11 January 2024.
2. Practice Direction 1 of 2020 – Adult Criminal Matters is revoked with effect that same day.

Common arrangements

First appearances

3. Summonses requiring a defendant to appear before the court are to require first appearances in the Registrar’s criminal list, the family violence list or the Industrial Court list, as appropriate. Similarly, defendants charged and released on police bail are to be bailed to appear in the appropriate list.
4. Defendants charged and not released on bail are to appear initially in the bail list.
5. Where it is intended that a matter will proceed to sentence at the first mention, parties are encouraged to contact the listing coordinator at mclistings@courts.act.gov.au to obtain a time for the sentencing hearing. Failure to do so may result in a further adjournment of the matter.

Notice of appearance by solicitors

6. Practitioners appearing in criminal matters are expected to comply with the *Court Procedure Rules 2006* as they relate to notices of solicitors acting.

Charging defendants at court

7. A charge before the court by way of a summons or where the charge sheet has been provided to the defendant will not ordinarily be read to the defendant at the first appearance: r 4302 of the *Court Procedures Rules 2006*.

Adjournment of initial appearances by email

8. Defendants (or their legal representative) may, before 12 noon the day before the first return date, adjourn that first return date for a summons by:
 - a. emailing the registry at mclistings@courts.act.gov.au; and the DPP at DPP.Partics@act.gov.au
 - b. identifying the defendant's name, the summons number and the original return date and
 - c. identifying the date they seek to adjourn the return date to (no later than 3 weeks).
9. This adjournment is available on the expectation that the defendant will enter a plea or otherwise progress the matter on the next return date.
10. The adjournment of initial appearances is not available to defendants remanded on bail or in custody.

Adjournments in the Registrars list

11. Adjournments of summons matters and matters where bail is to continue without amendment will be heard by the Registrar. The Registrar will make no directions in relation to bail. The court is taken to have continued bail pursuant to s 33(3) *Bail Act 1992* and the undertaking to appear continues to apply.
12. Where the defendant is remanded in custody and no application for bail is made, the Registrar will hear the adjournment application. The remand warrant will be signed by a magistrate.
13. Applications for bail or to vary bail will be heard by a magistrate.

Prosecution election

14. Any prosecution election for summary jurisdiction in accordance with s 374 of the *Crimes Act 1900* must be filed in court or emailed to the court at mclistings@courts.act.gov.au, and provided to the defendant or their legal representative.

Entering pleas

15. Defendants are expected to indicate pleas in a timely manner.
16. Pleas of not guilty will be accepted from practitioners on behalf of defendants.
17. Registrars will receive indications of a plea. If a defendant indicates their intention to plead guilty, the Registrar will transfer the matter to a magistrate to take the plea on the day if the matter is to proceed to sentence immediately.
18. Alternatively, the matter will be listed for sentence and the plea confirmed by the magistrate before proceeding to sentence on the adjourned date.
19. Defendants should enter pleas personally unless entered in writing in accordance with r 4303 of the *Court Procedures Rules 2006* and Form 4.16.

Ordering reports – Registrar

20. When listing a matter for sentence, the Registrar may order the following reports with the parties' agreement:
 - short-form pre-sentence reports (referred to as "court duty reports"),
 - full pre-sentence reports,
 - mandatory court alcohol and drug interlock assessment reports.
21. Where the parties propose that an intensive corrections order report or any form of mental health assessment report is appropriate, the matter will be referred to a magistrate to determine what report(s) are to be ordered and the sentence date.

Listing for hearing or committal

22. The usual orders for timings for listings are detailed in Annexure A.

Pre-Hearing Mentions

23. Pre-hearing mentions will ordinarily only be listed for indictable or summary/indictable matters.
24. At the pre-hearing mention the parties shall inform the court of the following:
 - a. whether the prosecution brief of evidence has been served;
 - b. what, if any, pleas are to be entered;
 - c. whether there is consent to the charges being finalised in the Magistrates Court;

- d. for charges proceeding to hearing in the Magistrates Court, any issues with availability of witnesses; and
 - e. an estimate of the time required for the hearing.
- 25. Unavailable dates for witnesses must be obtained prior to the Pre-Hearing Mention date. Where a date for hearing is proposed by the court and a witness is unavailable, parties are expected to advise the court of the nature of their unavailability and whether they are required to be called by either the prosecutor or defence. Parties are reminded of s 318 of the *Magistrates Court Act 1930* as it relates to taking evidence from witnesses who may be absent from the ACT on the date of the hearing. Generally, witnesses indicating that they are unavailable due to recreational leave or other arrangements will not be an acceptable reason to delay a hearing.
- 26. Where a brief of evidence has been served but material remains outstanding, the prosecution is expected to provide a detailed explanation to the court as to the reason for the delay, and the expected timeframe for the disclosure of the remaining material.
- 27. Where an informant has failed to provide the brief of evidence to the prosecution in accordance with this practice direction, or any other order of the court, the informant is to attend the pre-hearing mention to give evidence as to why the direction or order was not complied with.
- 28. Parties are expected to advise the court of the significance of the material and whether the matter may nonetheless be listed for hearing or committed for trial in the absence of the material.
- 29. Defendants are reminded about the reduction of sentences available under the *Crimes (Sentencing) Act 2005* at:
 - a. s 35 for a plea of guilty, including the timing of that plea; and
 - b. s 35A for assisting in the administration of justice, including the making of appropriate admissions and concessions

Committals

- 30. Where indictable charges are to be committed to the Supreme Court without a contested committal hearing, parties are expected to hand up a completed Annexure B form outlining the legislative basis for the committal and, if applicable, transfer of any related or back-up charges. The form must be signed by both the prosecutor and defence.
- 31. Where short-form committal is appropriate, that will be effected by the Registrar on the same day.
- 32. A contested committal hearing will be listed at a time to allow the prosecution to serve and file a copy of their brief of evidence as required by s 90 of the *Magistrates*

Court Act 1930 and r 4305 of the *Court Procedures Rules 2006*, (ordinarily 28 days before the listed hearing).

33. Any application to cross-examine a witness at a committal hearing pursuant to s 90AB of the *Magistrates Court Act 1930* must be made in writing, with supporting affidavit, filed with the court and served on the prosecution no later than 21 days after service of the brief of evidence. If the application is opposed, it will be heard at the time listed for the committal hearing, noting that this may necessitate a further listing if witnesses are to be called.

Hearings

34. Where possible, matters will be listed in block hearing periods. Block hearing periods will have the following features:
 - a. they will extend over one or more weeks
 - b. at least two magistrates will be allocated to separately hear matters within the list simultaneously
 - c. matters will be over-listed at an appropriate level
 - d. matters will be listed to commence on a particular day
 - e. a magistrate will conduct a call-over at 9:30am
 - f. at the call-over, time estimates and the availability of practitioners and witnesses will be considered when allocating matters to the various magistrates
 - g. defendants in custody will be given priority and
 - h. matters not reached will be listed for hearing on a future date and given priority.
35. Other hearing lists may also be scheduled. They will involve a single magistrate, commence at 10:00 am and ordinarily commence with a call-over.
36. Complex and part-heard matters will ordinarily be given a special fixture. Special fixtures are listed before a particular magistrate and are not over-listed.
37. Hearings will be listed with a time estimate. If the parties become aware that the estimate is no longer reasonable, they should contact the Listing Coordinator at mclistings@courts.act.gov.au to allow appropriate arrangements to be made.
38. Defendants are reminded that it will ordinarily be in their interest to notify the prosecution early about any change of plea, rather than waiting until the morning of a hearing. Doing so may save witnesses attending court, which may have an impact

upon any sentence imposed.

39. During the opening address at hearing, the prosecution is to hand up and share with the defence an aide memoire that includes the following:
 - a. elements of the offences
 - b. date, time and location of the alleged offences
 - c. names of witnesses and
 - d. any agreed facts.
40. In anticipation of a hearing and when appropriate, parties are encouraged to agree on the contents of a tender bundle.
41. Parties are encouraged to reduce to writing any directions they submit the court should give itself.
42. Defendants are reminded that r 4051 of the *Court Procedures Rules 2006* imposes requirements and limitations for any defence response to a prosecutor's opening. While optional, if conducted a defence response must identify what is in issue and the basis on which it is in issue, including what facts are conceded and what facts remain in contest. An opening is not the time to make submissions about the ultimate issue.
43. Self-represented defendants are expected to collect the brief of evidence from the prosecution upon notification by the DPP that it is available for collection. Self-represented defendants must provide their contact details to the DPP in order to facilitate arrangements for hearing.
44. Defendants ought not expect an adjournment of the hearing to obtain legal advice. The court will only grant such an adjournment where it is in the interests of justice to do so. Mere inertia is unlikely to be a proper basis for an adjournment.
45. Parties are reminded about the provisions of the *Magistrates Court Act 1930* as they relate to hearings proceeding in the absence of the defendant, should the defendant not appear at a hearing date.

Subpoenas in criminal matters

46. Subpoenas in criminal matters will be returnable in the Registrar's general list at 9:30am on Monday and Thursday.
47. Contested subpoenas will be referred to a magistrate.
48. Parties are reminded of the requirements relating to the disclosure of protected confidences in family violence offence and sexual offence proceedings. Parties must not seek to issue subpoenas which might reasonably disclose protected confidences unless leave of the court has been sought and granted in accordance with Division

4.4.3 of the *Evidence (Miscellaneous Provisions) Act 1991*.

49. Parties filing subpoenas for production in family violence offence and sexual offence proceedings must, at the time of filing the subpoena with the registry, also file a certification (Annexure C) that the practitioner has considered the requirements of Division 4.4.3 of the *Evidence (Miscellaneous Provisions) Act 1991*. Subpoenas will not be issued if filed without a completed certification.

Family violence list

50. All charges involving family violence offences, as defined at s 291H of the *Magistrates Court Act 1930*, will be listed in the family violence list. The informant or prosecutor must identify these charges to the court as soon as possible to ensure they are placed in the family violence list.
51. The family violence list will commence at 9:30 am each Tuesday and Friday before a magistrate. It will deal with adjournments, simple applications, simple sentences, pre-hearing mentions and uncontested committals to the Supreme Court. Individual matters in the family violence list are expected to take less than 15 minutes. If the parties anticipate a matter will take longer, they should contact the listing coordinator at mclistings@courts.act.gov.au to arrange an alternative time for the matter to be heard.
52. Brief service and listing arrangements for this list are detailed at Annexure A.
53. Defendants in family violence matters are reminded that pursuant to ss 43, 46 and 48 of the *Evidence (Miscellaneous Provisions) Act 1991* they cannot personally cross-examine the complainant and possibly other witnesses. If necessary, the court will appoint a person for the purpose of asking questions on behalf of the defendant. Defendants are referred to s 48 of that Act, which imposes restrictions in relation to this process.

Industrial Court

54. All industrial or work safety matter charges, as defined at s 291Q of the *Magistrates Court Act 1930*, will be listed before the Industrial Court Magistrate. The prosecutor should liaise with the listings co-ordinator at mclistings@courts.act.gov.au for first return dates. Thereafter, matters will be listed at the discretion of the Industrial Court Magistrate.
55. Pre-Hearing Mentions will be ordinarily listed before the Industrial Court Magistrate 10 weeks in the future unless the defendant is in custody in which case the period will be six weeks. The prosecution must disclose the brief of evidence to the defendant no later than two weeks before the Pre-Hearing Mention.

Bail list

56. An arrested person will appear before the court in the bail list. A magistrate will hear applications for bail, including by persons arrested on warrants issued by the court, the Sentence Administration Board or without a warrant. The magistrate will also hear bail variations, review of bail decisions and extradition applications.
57. The bail list will commence at 10:00 am each business day in Courtroom 2 before a magistrate.
58. Matters should not be listed in two lists on the same day. If a matter is in the bail list, the magistrate will deal with associated issues, unless the matter is lengthy and the magistrate does not have the capacity to do so, in which case the matter may be removed to the appropriate list on the same or a future day.
59. Other than when the defendant is first before the court following their arrest, defendants should provide the prosecution with 48 hours' notice of any applications for bail, bail variation or review of bail decisions, including details of the grounds and an outline of the evidence upon which the application is to be made. Matters may be listed before the bail list by contacting the Listing Coordinator at mclistings@courts.act.gov.au.
60. A defendant who is the subject of an outstanding arrest warrant and who has breached their bail and wishes to appear before the court, must present themselves to the Court's registry counter. The registry will notify the prosecution and list the matter in the bail list, subject to the business of the court.
61. Individual matters in the bail list are expected to take less than 30 minutes. If the parties anticipate a matter, other than a first appearance, taking longer they must contact the Listing Coordinator at mclistings@courts.act.gov.au to arrange an appropriate time for the matter to be heard.

Usual directions

62. When a matter is listed for a hearing of an application under s 334 of the *Crimes Act 1900* and by operation of this practice direction, the following usual direction is made:

The defendant is to file and serve all material to be relied upon at the hearing no later than 14 days before the hearing, and the prosecution is to provide the defendant with notice of any requirement for a witness to be available for cross-examination and whether that witness may appear by telephone no later than seven days before the hearing.

63. The usual directions for an informant to pay the costs of the defendant are:

The informant is to pay the defendant's costs of the proceedings in an amount agreed by the parties; or if an agreement is not filed within 28 days of the order, in an amount assessed by the Registrar in accordance with the scale of costs in accordance with reg 4 and 5 of the Magistrates Court Regulations 2009.

64. Parties are reminded that the 'usual order' for subpoenas is at r 6609 of the *Court Procedures Rules 2006*:

usual order, in relation to a document or thing, means an order that the party given 1st access to inspect and copy the document or thing has exclusive access to the document or thing for 5 days after the day the order is made, then any other party to the proceedings has access to inspect and copy the document or thing.

65. Leave to remove a document or thing from the registry is governed by rr 6608 and 6767 and may involve an application to the court or an application to the Registrar signed by a solicitor for a party.

By direction of the Chief Magistrate and Magistrates.



Helen Banks
Registrar
ACT Magistrates Court

14 December 2023