



## **MAGISTRATES COURT OF THE AUSTRALIAN CAPITAL TERRITORY**

### **PRACTICE DIRECTION 1 OF 2022**

#### **GALAMBANY COURT**

##### **Commencement**

1. This Practice Direction commences on 31 May 2022. Galambany Court Practice Direction No 1 of 2012 is revoked.

##### **Purpose**

2. The purpose of this Practice Direction is to set out the procedures for the Galambany Court.

##### **Authority**

This Practice Direction is made under section 291N of the *Magistrates Court Act 1930*.

3. This Practice Direction does not remove or limit the discretion of a magistrate to impose a lawful sentence on an Aboriginal or Torres Strait Islander defendant.

##### **Aims of the Galambany Court**

1. The Galambany Court aims to:
  - (a) involve Aboriginal and Torres Strait Islander communities in the sentencing of Aboriginal and Torres Strait Islander defendants
  - (b) increase the confidence of Aboriginal and Torres Strait Islander communities in the sentencing process
  - (c) reduce barriers between the ACT Magistrates Court and Aboriginal and Torres Strait Islander communities
  - (d) provide culturally appropriate, restorative and effective sentencing and bail options for Aboriginal and Torres Strait Islander defendants
  - (e) provide Aboriginal and Torres Strait Islander defendants with support services to assist them to overcome their offending behaviour
  - (f) provide support to victims of crime and enhance their rights and participation in the Galambany Circle Sentencing Court process and

- (g) reduce repeat offending by Aboriginal and Torres Strait Islander defendants.

### Referral for Assessment

2. An application for referral to the Galambany Court must be made in the Magistrates Court by either the Director of Public Prosecutions (**DPP**), the lawyer for the defendant or the defendant.
3. A defendant may only be referred to the Galambany Court if the magistrate (**referring magistrate**) is satisfied the following eligibility criteria are met:
  - (a) the defendant identifies as an Aboriginal or Torres Strait Islander person and has ties to an Aboriginal and Torres Strait Islander community, either in the ACT or elsewhere
  - (b) the offence can be finalised in the Magistrates Court
  - (c) the offence is not a sexual offence
  - (d) the defendant has pleaded guilty and
  - (e) the defendant consents to assessment as to his or her suitability for circle sentencing and agrees to participate fully in the processes of the Galambany Court.
4. Where the referring magistrate is satisfied the criteria in paragraph 7 are met, there is a presumption in favour of referring the defendant for assessment for suitability to their matter heard in the Galambany Court. However, where a defendant is considered ineligible for referral to the Galambany Court, the magistrate will provide reasons to the defendant with respect to their ineligibility.

### Procedure after referral

5. The referring magistrate will remand the defendant to appear before the Galambany Court for mention and allocate a date for an appearance before the panel of elders to conduct an assessment at the earliest opportunity.
6. The referring magistrate's associate will inform the Galambany Court co-ordinator (**co-ordinator**) and the Galambany Court associate of the referral and the defendant's name, date of birth, charge number/s and remand date.

### Reports and documentation

7. The referring magistrate or the Galambany Court magistrate may order a pre-sentence report pursuant to s 41 of the *Crimes (Sentencing) Act 2005* (**Crimes Sentencing Act**) and such other reports as the magistrate considers will be of assistance to the Galambany Court in sentencing the defendant.
8. Pursuant to section 40A of the Crimes Sentencing Act, a magistrate ordering a pre-sentence report may request that the report writer give particular attention to:

- (a) the offender's social history and background as an Aboriginal and/or Torres Strait Islander person and
  - (b) any culturally specific courses, programs, treatment, therapy or assistance that is available to the offender as an Aboriginal and/or Torres Strait Islander person.
- 9. Unless the Galambany Court magistrate orders otherwise, copies of reports and other information in relation to a defendant may be given directly to the Co-ordinator for distribution to the panel of elders. The Co-ordinator will also provide the information to the DPP and the defendant's lawyer.
- 10. At the conclusion of the proceedings all participants, other than the DPP, the defendant and the defendant's lawyer must return their copies of any reports to the Co-ordinator.

#### **Panels for Assessments and Hearings**

- 11. The Co-ordinator will arrange for a panel of elders to conduct assessments and attend a hearing.
- 12. There must be at least two and a maximum of four elders to conduct an assessment and participate in a hearing. The Co-ordinator will arrange an appropriate gender and age balance based on the individual referral.
- 13. Wherever possible the elders constituting the assessment panel will constitute the hearing panel sitting with the Galambany Court Magistrate at the time of sentence.
- 14. The elders must be notified of the defendant's identity before they are appointed to an assessment panel.
- 15. An elder may be asked at any time by the Co-ordinator or the Galambany Court Magistrate to cease participating in an assessment or sentencing hearing if involvement of the elder is considered detrimental to the aims of the Galambany Court.
- 16. An elder may excuse themselves from an assessment or hearing at any time if they consider their involvement may be detrimental to the aims of the Galambany Court or for any other reason.
- 17. Where an elder of the assessment panel is precluded from participating at the sentencing of a defendant for any reason, the co-ordinator will nominate another elder. If a replacement elder cannot be found, the magistrate may proceed with the sentencing hearing with the remaining elders, provided there are at least two remaining elders. In circumstances where there are not two remaining elders, the magistrate will adjourn the matter to another day and direct the constitution of a new panel of elders.
- 18. The defendant may object to an elder being a member of the assessment or hearing panel but must do so before the assessment or hearing commences, notifying the co-ordinator as soon as practicable. The defendant has the right to know who will participate in their



assessment and hearing. If the co-ordinator considers it necessary to replace an elder, the co-ordinator may nominate a replacement.

19. To determine whether the defendant is suitable to participate in a sentencing hearing before the Galambany Court, the panel of elders conducting an assessment must assess:
  - (a) whether the defendant is an Aboriginal or Torres Strait Islander person with a kinship or appropriate association with an Aboriginal or Torres Strait Islander community and
  - (b) whether the defendant is willing to fully participate in the Galambany Court's sentencing process.
20. In assessing the defendant's suitability to participate in a sentencing hearing before the Galambany Court, the panel of elders conducting the assessment will have regard to:
  - (a) whether the defendant accepts responsibility for committing the crime
  - (b) whether the defendant will be respectful of a victim
  - (c) whether the defendant will be respectful of the elders
  - (d) whether the defendant will listen to and understand what the elders are communicating to them
  - (e) whether the defendant wants to make amends for the crime they have committed
  - (f) the support the offender has within the community
  - (g) the impact of the offender's offending on the community
  - (h) the likely benefits of circle sentencing for the offender, the victim and the community
  - (i) any reports provided to them by the co-ordinator
  - (j) any submissions made to it by the defendant, or their lawyer and
  - (k) whether the defendant has unresolved alcohol and drug issues, or unresolved mental health issues to an extent that would limit their capacity to fully participate in the Galambany Court.
21. Where the defendant has been found suitable for participation in the Galambany Court, the Galambany Court Magistrate will remand the defendant to a suitable date for the sentencing hearing. A finding of suitability by the panel of elders does not prevent the Galambany Court Magistrate from deciding not to allow a defendant to participate in the Galambany Court. The Galambany Court Magistrate must provide reasons for their decision if the Magistrate decides not to allow the defendant to participate in the Galambany Court.
22. Where the defendant has been found unsuitable the Galambany Court Magistrate will relist the matter for mention or sentence in an appropriate list within the Magistrates Court.

#### **Participants in Galambany Court**

23. The following people will participate in the assessment for inclusion in the Galambany Court:
  - the defendant

- the Panel of Elders; and
- the co-ordinator.

24. The defendant's lawyer may also participate in the assessment.

25. The following people will participate in the Galambany Court when it is conducting a sentencing hearing:

- the Galambany Court Magistrate
- the defendant
- the panel of elders
- the defendant's lawyer
- the DPP and
- the co-ordinator.

26. The following persons may also participate in the sentencing hearing:

- any member of the defendant's family or a support person for the defendant
- any victim, or a person chosen by the victim as their representative
- any support person or persons for the victim and
- any person invited by the Galambany Court Magistrate, co-ordinator or panel of elders to participate in the sentencing hearing, either generally or for a specific purpose.

#### **Person may provide information**

27. Where a person is entitled to attend the sentencing hearing but is unable to do so, and they wish to have their views heard, the person may provide the Co-ordinator with the information the person wishes to have conveyed to the court. The Co-ordinator must convey that information to the Galambany Court Magistrate for purposes of the sentencing hearing.

#### **Conduct of the Galambany Court**

28. The Galambany Court is to be conducted in a way that:

- enables the Galambany Court to address the underlying issues causing the defendant's offending behaviour in determining an appropriate sentence
- encourages the full participation of the offender and
- provides all participants, including the victim and other members of the community, with an opportunity to address the Galambany Court about the defendant's offending behaviour.

29. If the defendant is not represented by a lawyer, the Galambany Court Magistrate must explain the sentencing process to the defendant at the commencement of the sentencing hearing.
30. The Galambany Court Magistrate will decide the order of proceedings, having regard to any information the victim or other participants wish to express.
31. The Galambany Court Magistrate may terminate or adjourn the proceedings at any time.
32. The defendant may withdraw from the circle sentencing process at any time. Where a defendant withdraws his or her consent to participate in circle sentencing the Galambany Magistrate will remand the defendant to an appropriate list in the Magistrates Court for mention or sentencing.
33. Members of the hearing panel may recommend an appropriate sentence for the defendant. Before recommending an appropriate sentence, the hearing panel must consider factors relevant to the sentencing process as prescribed by Part 4.1 Crimes Sentencing Act and sentencing purposes set out in section 7 of that Act. The hearing panel must consider culturally inclusive aspects to the sentence.
34. Where possible, any recommended sentence is to be achieved through the consensus of the panel of elders.
35. Sentencing may take place on the same day as the hearing or at a later date in accordance with the demands of the matter and procedural fairness.
36. Where the Galambany Court Magistrate is not satisfied that the recommended sentence is appropriate, the Galambany Court Magistrate will explain to the defendant and those present at the time of sentencing why the sentence imposed differs from that which was recommended by the elders.

#### **Non-Attendance at the Galambany Court**

37. If the defendant fails, without reasonable excuse, to attend the Galambany Court when required, the Galambany Court Magistrate, the process may be terminated and the matter referred to an appropriate list in Magistrates Court.

#### **Record of the proceedings**

38. The proceedings of the Galambany Court must be recorded but not transcribed or published except for the purposes of any appeal or as directed by the Galambany Court Magistrate.

## Breach of Sentence

39. Where Corrective Services are of the opinion that the offender has breached a condition of his or her sentence, Corrective Services must report the breach to the Magistrates Court in accordance with section 102 of *the Crimes (Sentence Administration) Act 2005* (**Sentence Administration Act**).
40. Where the Magistrates Court receives a report under section 102 of Sentence Administration Act of an alleged breach of good behaviour obligations imposed by the Galambany Court Magistrate, and that breach is admitted by the defendant, a magistrate may deal with the matter immediately or refer the matter to the Galambany Court for further action.

By direction of the Chief Magistrate and Magistrates.



Helen Banks

Registrar

ACT Magistrates Court

26 May 2022

