



Australian Capital Territory

Magistrates Court

Practice Direction Criminal 1
1 January 2020

Adult Criminal Matters

Introduction

1. This practice direction sets out the arrangements in the ACT Magistrates Court, including the Family Violence and Industrial Courts, in relation to adult criminal matters. It commences on 1 January 2020. The following practice directions are revoked with effect that same day:
 - a. Practice Direction 1 of 2014 – *Listing procedure for criminal matters*;
 - b. Practice Direction 2 of 2016 – *Bail applications by audio-visual link with the Alexander Maconochie Centre (AMC)*; and
 - c. Practice Direction 1 of 2018 – *Family Violence Court*

Overview

2. The following lists will remain:
 - a. Criminal General List (A1);
 - b. Family Violence List (FI) in the Family Violence Court;
 - c. Industrial Court List before the Industrial Court Magistrate; and
 - d. Bail List (A2).
3. Defendants charged with family violence offences or Industrial Court offences are to appear in the FI list and Industrial Court List respectively. Defendants charged only with other offences are to appear in the A1 list.
4. Summonses requiring a defendant to appear before the court are to require first appearances in the appropriate list. Similarly, defendants charged and released on police bail are to be bailed to appear in the appropriate list.
5. Defendants charged and not released on bail are to initially appear in the A2 list.

Common arrangements

Charging defendants at court

6. 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*.

Deferral of initial appearances by email

7. Defendants (or their legal representative) may, before 12 noon the day before the first return date, defer that first return date for a summons by:
 - a. emailing the registry at mclistings@courts.act.gov.au; and the DPP at MCadjournments@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 defer the return date to (no later than 3 weeks).
8. This deferral is available on the basis that the defendant will do their best to be able to enter a plea at the deferred return date.
9. Defendants who are legally represented on an ongoing basis may, by their legal representative and no later than 12 midday the day before the deferred date for the first return date of their summons or second scheduled appearance for a summons, defer the next appearance for up to 3 weeks by emailing the registry with the same information as described above. This deferral is available on the basis that the defendant with the assistance of their legal representative will do their best to be able to enter a plea at the next appearance.
10. In each case the registry will confirm the deferral with all parties. The deferral only takes effect upon the registry sending an email response.
11. The deferral of initial appearances is not available to defendants remanded on bail or in custody.

Prosecution election

12. Any prosecution election in accordance with s 374 of the *Crimes Act 1900* should be filed in court or emailed to the court at mclistings@courts.act.gov.au and provided to the defendant.

Entering pleas

13. Defendants are expected to enter pleas when they attend court on the first occasion after any deferral.
14. Pleas of not guilty will be accepted from practitioners on behalf of defendants. Pleas of guilty will ordinarily be accepted directly from defendants following the reading of the charge to the defendant.

15. Alternatively, pleas may be made in writing in accordance with r 4303 of the *Court Procedures Rules 2006* and Form 4.16.

Summary matters

16. If a plea of not guilty is entered to a charge within a series involving only summary offences, or charges to be dealt with summarily following prosecution election pursuant to s 374 of the *Crimes Act 1900*, then all charges will be listed for hearing on a future date, and ordinarily without a Pre-Hearing Mention.

Indictable matters

17. If a plea of not guilty is entered to a charge within a series involving an indictable offence, then all charges will be listed for a Pre-Hearing Mention at 12 midday on a future date.

Criminal Party Conference and Pre-Hearing Mention

18A. Paragraphs 18 – 21 commence on 1 March 2020.

18. Where the defendant has ongoing legal representation, and by operation of this practice direction, any matter listed for a Pre-Hearing Mention, which is not a strictly indictable offence or related charge, is also scheduled for a Criminal Party Conference ordinarily on the morning of the same day as the Pre-Hearing Mention. While a Criminal Party Conference will not be automatically scheduled for self-represented defendants, they remain at liberty to engage in negotiations directly with the prosecution.
19. The Criminal Party Conference involves the parties meeting, in the absence of the Court, and provides the parties with an opportunity to discuss the case between themselves, including:
 - a. reconsidering their positions;
 - b. negotiating the charges and facts;
 - c. narrowing the issues for any hearing; and
 - d. forming a reliable estimate of how much time will be required for that hearing.
20. The court will make an appropriate room available within the court building for the Criminal Party Conference. The time of the Criminal Party Conference will be determined by the prosecution and communicated to the defendant within 14 days of the listing of the Pre-Hearing Mention.
21. It is open to the defendant's legal representative and the prosecution to arrange to meet at an alternative time or place, or by a different means prior to the Pre-Hearing Mention.
22. 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.
23. At the Pre-Hearing Mention the parties will be expected to confirm:
- a. that the prosecution brief of evidence has been served on the defendant,
 - b. any resolution of the issues;
 - c. whether there is consent to the court finalising the proceedings; and
 - d. an estimate of the time required for any hearing.
24. Where an informant has failed to provide the brief of evidence to the prosecution in time for the brief to be disclosed to the defendant before the deadline imposed by this practice direction, the informant is to attend the Pre-Hearing Mention and be prepared to give evidence about why the brief has not been provided in time.
25. If any charges remain unresolved, the series of charges will be listed for hearing on a future date, or committed to the Supreme Court for trial pursuant to s 88B of the *Magistrates Court Act 1930*.

Hearings

26. Where possible, matters requiring hearings will be listed in block hearing periods.
27. Block hearing periods will have the following features:
- a. they will extend over one or more weeks, and ideally not coincide with a Supreme Court's central criminal listing period;
 - 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 9:30 am;
 - 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.
28. Other hearing lists will also be scheduled. They will involve a single magistrate, commence at 10:00 am and ordinarily commence with a call-over.
29. 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.

30. 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.
31. 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.
32. During the opening address at hearing, the prosecution is encouraged to hand up and share with the defence an aid memoire that includes the:
 - a. elements of the offences;
 - b. date, time and location of the alleged offences;
 - c. names of witnesses; and
 - d. any agreed facts.
33. In anticipation of a hearing and when appropriate, parties are encouraged to agree on the contents of a tender bundle.
34. Parties are encouraged to reduce to writing any directions they submit the court should give itself.
35. 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.

Contested committal hearing

36. If a contested committal hearing is required, the hearing will ordinarily 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).
37. Any application to cross-examine a witness at a committal hearing pursuant to s 90AB of the *Magistrates Court Act 1930* should be made in writing, with supporting affidavit, filed with the court and served on the prosecution well before any hearing. The court will allocate a time for the application to be heard.

Criminal general list (A1)

38. Most criminal matters will be returnable before, and managed within, the A1 list.
39. The A1 list will commence at 9:30 am each business day in Courtroom 1 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 A1 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.

40. Pre-Hearing Mentions will be ordinarily listed in the A1 list 10 weeks in the future, unless the defendant is in custody in which case the period will be six weeks. The prosecution should disclose the brief of evidence to the defendant no later than two weeks before the Pre-Hearing Mention.
41. Subpoenas in criminal matters will be returnable in the A1 list at 9:30 am.

Family violence list (FI)

42. All charges involving family violence offences, as defined at s 291H of the *Magistrates Court Act 1930*, will be listed in the FI list, rather than the A1 list. The informant or prosecutor should identify these charges to the court as soon as possible to ensure they are placed in the FI list.
43. The FI list will commence at 9:30 am in Courtroom 4 each Tuesday 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 FI 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.
44. Pre-Hearing Mentions will be ordinarily listed in the FI list six weeks in the future. The prosecution should disclose the brief of evidence to the defendant no later than two weeks before the Pre-Hearing Mention.
45. 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 example a deputy registrar, 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

46. 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, at a time convenient to that magistrate.
47. 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 should disclose the brief of evidence to the defendant no later than two weeks before the Pre-Hearing Mention.

Bail list (A2)

48. An arrested person will appear before the court in the A2 list. That list will hear applications for bail, bail variations, review of bail decisions and extraditions. It will

include persons arrested on warrants issued by the court or the Sentence Administration Board, and persons arrested without a warrant.

49. The A2 list will commence at 10:00 am each business day in Courtroom 2 before a magistrate.
50. 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 A2 list by contacting the Listing Coordinator at mclistings@courts.act.gov.au.
51. In accordance with s 72A of the *Magistrates Court Act 1930*, defendants at the AMC will appear by way of audio-video link from the AMC, unless the court directs otherwise. Those appearances will ordinarily be listed at 11:00 am. Requests for defendants to appear in person before the court should be made by contacting the Listing Coordinator at mclistings@courts.act.gov.au.
52. Similarly, a defendant in police custody while an inpatient in a hospital will also appear by way of audio-visual link from hospital, unless the court directs otherwise. The registry will arrange an audio-visual link from the hospital. Prior to that hearing, the prosecutor is to ensure that the defendant receives a copy of all material on which the prosecutor intends to rely.
53. A defendant, that is the subject of an outstanding arrest warrant or may have breached their bail and who wishes to appear before the court, should present themselves to the Court's registry counter. The Registry will notify the prosecution and, subject to the business of the court, list the matter in the A2 list.
54. Individual matters in the A2 list are expected to take less than 30 minutes. If the parties anticipate a matter, other than a first appearance, taking longer they should contact the Listing Coordinator at mclistings@courts.act.gov.au to arrange an appropriate time for the matter to be heard.

Sentencing lists

55. Sentencing lists will be scheduled behind the A1, FI and A2 lists usually commencing at 2:15 pm. Sentence matters and applications that are too long to be dealt with in the A1 or FI lists may be remanded or adjourned to these sentencing lists. When doing so those matters will be given a time estimate, often 30 minutes.
56. If the parties anticipate a matter will take longer than the time estimated, they should contact the Listing Coordinator at mclistings@courts.act.gov.au to arrange an appropriate time for the sentence hearing to be conducted.
57. Occasionally the sentencing list behind the A1 list will be replaced by specialist lists for regulatory matters. Those specialist lists will also commence at 2:15 pm.
58. Every third Wednesday, the sentencing list behind the A2 will be replaced with a list for matters involving breaches of good behaviour orders. This list will also commence at 2:15 pm.

59. Magistrates may also adjourn part-heard sentence matters before themselves, including at 9:30 am, 12:30 pm or 2:00 pm.

Usual directions

60. 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,

61. 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.

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

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.

and that 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 Acting Chief Magistrate and Magistrates.



Jayne Reece
Registrar
ACT Magistrates Court

13 December 2019