

**MAGISTRATES COURT**  
**OF**  
**THE AUSTRALIAN CAPITAL TERRITORY**  
**GALAMBANY COURT**  
**PRACTICE DIRECTION**

**No. 1 of 2012**

**Purpose**

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

**Authority**

- 2) This Practice Direction is made under section 291N of the *Magistrates Court Act 1930*.
- 3) Nothing in this Practice Direction is to be taken as removing or limiting the discretion of a magistrate to impose a lawful sentence on an Aboriginal or Torres Strait Islander defendant that is considered appropriate.
- 4) For the purpose of this Practice Direction the term Magistrates Court means the Childrens Court when dealing with a young offender.

**Application**

- 5) This Practice Direction applies to all matters before the Galambany Court after its commencement.

**Restriction on publication of matters concerning Young offenders**

- 6) Participants in the Galambany Court are reminded of the provisions of section 712A of the *Criminal Code 2002*, which prohibits the publication of any identifying information about a young offender's court proceedings by any individual. This includes assessments for suitability for the Galambany Court.
- 7) **Publish** for the purposes of section 712A means communicate or disseminate information in a way or to an extent that makes it available to, or likely to come to the notice of, the public or a section of the public or anyone else not lawfully entitled to the information.

**Aims of the Galambany Court**

- 8) The Galambany Court aims to:
  - (i) involve Aboriginal and Torres Strait Islander communities in the sentencing of Aboriginal and Torres Strait Islander defendants;
  - (ii) increase the confidence of Aboriginal and Torres Strait Islander communities in the sentencing process;
  - (iii) reduce barriers between the ACT Magistrates Court and Aboriginal and Torres Strait Islander communities;
  - (iv) provide culturally relevant and effective sentencing options for Aboriginal and Torres Strait Islander defendants;

- (v) provide Aboriginal and Torres Strait Islander defendants with support services that will assist them to overcome their offending behaviour;
- (vi) provide support to victims of crime and enhance their rights and participation in the Galambany Circle Sentencing Court process; and
- (vii) reduce repeat offending by Aboriginal and Torres Strait Islander defendants.

### **Commencement**

- 9) This Practice Direction commences on 1 September 2012 and replaces the Ngambra Circle Sentencing Court Practice Direction dated 20 April 2004.

### **Objects**

- 10) The objects of this Practice Direction are to:
  - i) provide effective and restorative processes for the criminal justice response to Aboriginal and Torres Strait Islander defendants, through community involvement in sentencing;
  - ii) maintain transparency, consistency and certainty in the practice of the Galambany Court; and
  - iii) provide an opportunity for enhanced involvement of victims in the Galambany Court.

### **Application for Referral for Assessment**

- 11) An application for referral to the Galambany Court must be made in the Magistrates Court by either the lawyer representing the Director of Public Prosecutions (DPP), the lawyer for the defendant or the defendant.
- 12) A defendant may only be referred to the Galambany Court if the Magistrate is satisfied the following eligibility criteria are met:
  - i) 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;
  - ii) the offence can be finalised in the Magistrates Court;
  - iii) the offence is not a sexual offence;
  - iv) the defendant has pleaded guilty; and
  - v) the defendant consents to be assessed as to his or her suitability for circle sentencing and agrees to participate fully in the processes of the Galambany Court.
- 13) Where the referring magistrate is satisfied the criteria in paragraph 12 are met, there is a presumption in favour of referring the defendant for assessment for suitability to have his or her 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 why the magistrate believes the defendant is ineligible.

### **Procedure after referral**

- 14) The magistrate referring a defendant to the Galambany Court shall remand the defendant to appear before the Galambany Court. Unless there are special circumstances the remand date will be between 7 and 8 weeks from the date of the referral.
- 15) The referring magistrate's associate shall inform the Galambany Court Coordinator of the referral and the defendant's name, date of birth, charge number/s and remand date.

### **Reports and documentation**

- 16) The magistrate referring a matter to the Galambany Court, may order a pre-sentence report pursuant to s 41 of the *Crimes (Sentencing) Act 2005* and such other reports as the magistrate considers will be of assistance to the Galambany Court in sentencing the defendant. The reports should be ordered to be ready at least one week prior to the remand date.
- 17) Unless the Galambany Court Magistrate orders otherwise copies of reports and other information in relation to defendants may be given directly to the Galambany Court Coordinator for distribution to the members of the assessment and hearing panel. The Galambany Court Coordinator will also provide the information to the DPP and the defendant's lawyer.
- 18) At the conclusion of the proceedings the participants, other than the DPP, the defendant and the defendant's lawyer must return their copies of any reports to the Galambany Court Coordinator.

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

- 19) The Galambany Court Coordinator will arrange for a panel of members to conduct assessments and attend a hearing.
- 20) The number of members conducting an assessment and participating in a hearing must be at least two with a maximum of four. The Galambany Court Coordinator will arrange an appropriate gender and age balance based on the individual referral.
- 21) Wherever possible the members constituting the assessment panel should constitute the hearing panel.
- 22) The members must be notified of the defendant's identity before they are appointed to an assessment panel.
- 23) A panel member may be asked at any time by the Galambany Court Coordinator or the Galambany Court Magistrate to cease participating in an assessment or sentencing hearing if involvement of the panel member is considered detrimental to the aims and objectives of the Galambany Court.
- 24) A panel member may excuse himself or herself from an assessment or hearing at anytime if they consider their involvement may be detrimental to the aims and objectives of the Galambany Court or for any other reason.
- 25) Where a member of the assessment panel is precluded from participating at the sentencing of a defendant for any reason, the Galambany Court Coordinator will nominate another panel member. If a replacement member cannot be found, the magistrate may proceed with the sentencing hearing with the remaining panel members,

provided there are at least two remaining members, otherwise the magistrate will adjourn the matter to another day and direct that a new panel be constituted.

- 26) The defendant has the right to know who will participate in their assessment and hearing. The defendant, the defendant's lawyer, the DPP, Community Youth Justice or ACT Corrective Services worker, will be notified by the Galambany Court Coordinator of the names of the panel members for the defendant's case and must notify the Galambany Court Coordinator of any objection they have to a panel member as soon as practicable. If the Galambany Court Coordinator considers it necessary to replace a panel member, the Galambany Court Coordinator shall nominate a replacement and advise the parties accordingly.
- 27) In order to determine whether the defendant is suitable to participate in a sentencing hearing before the Galambany Court the assessment panel must assess:
  - i) 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
  - ii) whether the defendant is willing to fully participate in the Galambany Court's sentencing process.
- 28) In assessing the defendant's suitability to participate in a sentencing hearing before the Galambany Court, the assessment panel shall have regard to:
  - i) whether the defendant accepts responsibility for committing the crime;
  - ii) whether the defendant will be respectful of a victim;
  - iii) whether the defendant will be respectful of the panel members and Elders;
  - iv) whether the defendant will listen to and understand what the panel members are communicating to him or her;
  - v) whether the defendant wants to make amends for the crime he or she has committed;
  - vi) the support the offender has within the community;
  - vii) the impact of the offender's offending on the community;
  - viii) the likely benefits of Circle Sentencing for the offender, the victim, and the community;
  - ix) any reports provided to them by the Galambany Court Coordinator;
  - x) any submissions made to it by the defendant, his or her lawyer and the DPP; and
  - xi) 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.
- 29) The Galambany Court Coordinator shall advise the Galambany Court Magistrate, the DPP and the defendant's lawyer of the assessment outcome within 48 hours of receiving the assessment panel's decision.
- 30) Where the defendant has been found suitable for participation in the Galambany Court, the Galambany Court Magistrate shall remand the defendant to a suitable date for the sentencing hearing. A finding of suitability by the assessment panel 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 his or her

decision if the Magistrate decides not to allow the defendant to participate in the Galambany Court.

- 31) Where the defendant has been found unsuitable the Galambany Court Magistrate will arrange for the defendant's matter to be listed on the next remand date for sentencing.

### **Participants in Galambany Circle Sentencing Court**

- 32) The following people shall participate in the assessment for inclusion in the Galambany Court:

- i) the defendant
- ii) the Parent or guardian of the defendant if the defendant is a young person;
- iii) the assessment panel; and
- iv) the Galambany Court Coordinator.

- 33) The following persons may also participate in the assessment:

- i) the defendant's lawyer.

- 34) The following people shall participate in the Galambany Court when it is conducting a sentencing hearing:

- i) the Galambany Court Magistrate;
- ii) the defendant;
- iii) the Panel;
- iv) the defendant's lawyer;
- v) the lawyer representing the DPP; and
- vi) the Galambany Court Coordinator.

- 35) The following persons may also participate in the sentencing hearing:

- i) any member of the defendant's family or a support person for the defendant;
- ii) any victim, or a person chosen by the victim as their representative;
- iii) any support person or persons for the victim; and
- iv) any person invited by the Galambany Court Magistrate or hearing or assessment panel to participate in the sentencing hearing, either generally or for a specific purpose.

### **Victim involvement and participation**

- 36) The Galambany Court recognises that victims have a right to participate in sentencing matters. To enable victims to be part of the sentencing process the Galambany Court Coordinator will provide Victim Support ACT (VSACT) with:

- i) the name of the defendant;
- ii) the charges and charge numbers; and
- iii) the name and contact details of the victim.

VSACT will advise the victim of his or her right to attend the sentencing hearing. Where a victim indicates to VSACT that he or she wishes to attend the sentence hearing, VSACT will assist the victim to attend the sentence hearing.

- 37) With respect to a young offender, it is the discretion of the Galambany Court Magistrate whether or not a victim can participate in the sentence hearing.
- 38) The Galambany Court Coordinator will provide VSACT with sufficient information to allow VSACT to provide the following information to the victim:
- i) an outline of the Galambany Court's processes;
  - ii) the date the sentencing hearing is to take place; and
  - iii) persons or agencies who can assist the victim prepare for participating in the sentencing hearing and provide support during the process.

### **Person may provide information**

- 39) 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 Galambany Court Coordinator with the information the person wishes to have conveyed to the court. The coordinator must convey that information to the Galambany Court Magistrate for purposes of the sentencing hearing.

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

- 40) The Galambany Court is to be conducted in a way that:
- i) enables the Galambany Court to address the underlying issues causing the defendant's offending behaviour in determining an appropriate sentence;
  - ii) encourages the full participation of the offender and the reaching of an agreement about the appropriate sentence; and
  - iii) provides all participants, including the victim and other members of the community, with an opportunity to address the court about the defendant's offending behaviour.
- 41) 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.
- 42) The Galambany Court Magistrate will decide the order of proceedings, having regard to any information the victim or other participants wish to express.
- 43) The Galambany Court Magistrate may terminate or adjourn the proceedings at anytime.
- 44) 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 shall remand the defendant to the Magistrates Court for sentencing.
- 45) Members of the hearing panel may recommend what they consider to be 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 sections 32 and 33 of the *Crimes (Sentencing) Act 2005*. The hearing panel must consider culturally inclusive aspects to the sentence.
- 46) Where possible, any recommended sentence should be achieved through the consensus of the hearing panel members.
- 47) In recommending a sentence, the hearing panel should recommend a sentence that:

- i) contains goals that are realistic and appropriate;
  - ii) sets out times for implementation and completion of goals; and
  - iii) provides for the monitoring and regular review of the measures specified in the recommended sentence.
- 48) Corrective Services and Community Youth Justice may provide advice to the court in determining an appropriate sentence.
- 49) When the sentencing hearing is completed, the Galambany Court Magistrate must remand the defendant to the Magistrates Court for sentencing. Sentencing in the Magistrates Court may take place on the same day at the conclusion of the Galambany Court proceedings.
- 50) Where the Galambany Court Magistrate is not satisfied that the recommended sentence is appropriate, the Galambany Court Magistrate will provide reasons why and will outline the sentence the Galambany Court Magistrate intends to impose. The Galambany Court Magistrate will inform participants of the reasons why the sentence is an appropriate sentence.

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

- 51) If the defendant fails, without reasonable excuse, to attend the Galambany Court when required, the Galambany Court Magistrate may refer the sentencing back to the Magistrates Court.

### **Record of the proceedings**

- 52) 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.
- 53) The Galambany Court Coordinator shall provide the registrar of the Magistrates Court with the record of the sentencing as soon as practicable following the hearing.
- 54) The Galambany Court Magistrate must cause a record to be made of any proceedings in the Galambany Court. The record must contain the following matters:
- i) name, address, gender and date of birth of the defendant;
  - ii) the offence;
  - iii) names of the participants and the capacity in which they participated;
  - iv) the date and place where the proceedings were held;
  - v) particulars of the sentence recommended;
  - vi) the date to which the proceedings were referred to the Magistrates Court; and
  - vii) any other matters the Galambany Court Magistrate considers relevant.

### **Breach of Sentence**

- 55) 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 Galambany Court Magistrate in accordance with section 102 of the *Crimes (Sentence Administration) Act 2005*.

56) Where the Galambany Court Magistrate receives a report under section 102 of the *Crimes (Sentence Administration) Act 2005*, the Galambany Court Magistrate may seek the advice of the members of the hearing panel who participated in the sentencing hearing in considering what action to take concerning the alleged breach.

57) On dealing with a breach of a sentence imposed following proceedings in the Galambany Court, the Galambany Court Magistrate, if satisfied that the defendant has breached the sentence, in addition to any other action available at law, direct that the Galambany Court be reconvened for the purpose of reconsidering the defendant's sentence.

### **Review Mechanism**

58) This Practice Direction will be reviewed within two years of coming into force.

### **Dictionary**

1) The following definitions apply in this Practice Direction unless otherwise stated:

- i) *assessment panel* means the members selected to assess the suitability of a defendant referred to the Galambany Court;
- ii) *hearing panel* means the members selected to sit on the Galambany Court for a particular matter;
- iii) *Galambany Court Magistrate* means the magistrate with responsibility for the Galambany Court;
- iv) *member* means a member of the Aboriginal and Torres Strait Islander Community approved to be a member of assessment and hearing panels for the Galambany Court.
- v) *young offender* means an offender under the age of 18 years.
- vi) *sentencing hearing* means the hearing before the Galambany Court where the Galambany Court Magistrate sits with the hearing panel to recommend an appropriate sentence for a defendant before the Galambany Court and includes any continuation of that hearing after an adjournment.

By direction of the Magistrates

Hugh Jorgensen

Registrar

Dated: August 2012