



Australian Capital Territory

Childrens Court

Practice Direction Childrens Court 2
1 October 2019

Warrumbul Court

Background

1. This practice direction sets out the procedures for the Warrumbul Court, in accordance with s 291GB of the *Magistrates Court Act 1930*, and commences on 1 October 2019. This document may be reviewed within the first 12 months of operation.
2. The Childrens Court is known as the Warrumbul Court when sitting to provide circle sentencing. Circle sentencing is an alternative method of sentencing Aboriginal or Torres Strait Islander young persons and involves a Panel of Elders participating in the sentencing process.
3. The Court aims to divert young people away from criminal behaviour by having the young person, where appropriate, engage with their culture and community, surrounded by their family and relevant support agencies to identify rehabilitation pathways or sentencing options.
4. The process is intended to identify any underlying issues that contributed to a young person's offending behaviour, facilitate appropriate rehabilitation, reduce the risk of reoffending, and promote Aboriginal and Torres Strait Islander communities' confidence in the court process.

Key Concepts

5. The key concepts of the Court are:
 - a. the young person participates voluntarily and may subsequently withdraw from the process;
 - b. the process is only open to Aboriginal or Torres Strait Islander young persons;
 - c. the process is not available to young persons charged with sex offences;
 - d. the young person must acknowledge their behaviour was wrong;
 - e. elders from the local community will be invited to constitute a Panel of Elders;
 - f. the Court will aim to facilitate appropriate and culturally relevant rehabilitation;
 - g. in appropriate matters, compliance with the rehabilitation pathway may result in the charges being dismissed; and

- h. in other matters, sentencing will involve the consideration of recommendations made by the Panel of Elders.
6. The court process may involve one or more of the following steps:
- a. referral;
 - b. Family Conference;
 - c. Rehabilitation Pathway Conferences (RPC); and
 - d. Circle Sentence Hearing.

Referral

7. A young person may be referred to the Court on application or upon the Court's own initiative provided the following prerequisites are met:
- a. the young person is a descendant of, identifies as, or is accepted as being, an Aboriginal or Torres Strait Islander person;
 - b. the charges can be finalised in the Childrens Court;
 - c. the charges do not involve a sexual offence;
 - d. the young person had pleaded guilty and additionally acknowledges that he or she did something wrong; and
 - e. the young person expresses his or her willingness to engage in the processes of the Court.
8. Upon referral, the matter will be listed for Family Conference. In the absence of a referral the young person's matter will remain in the Childrens Court.

Family Conference

9. The purpose of the Family Conference is to assess whether it would be appropriate for the young person to participate in the rehabilitation and or circle sentencing process. The Panel of Elders will make a recommendation to the Court in that regard.
10. The following persons are expected to attend the Family Conference:
- a. the magistrate or registrar;
 - b. the Court Coordinator;
 - c. the Panel of Elders;
 - d. the young person;
 - e. the young persons parents, caregiver or support person; and
 - f. if requested by the young person, the young person's lawyer.
11. The Family Conference will be held in the Childrens Court hearing rooms, when available, and will be initially opened by the magistrate or registrar who will then leave. The Family conference will then be chaired by the Court Coordinator.

12. At the end of the Family Conference the magistrate or registrar will return and receive the recommendation from the Panel of Elders. The magistrate or registrar will then list the matter either before a RPC, circle sentencing or back before the Childrens Court.

Rehabilitation Pathway Conferences

13. The purpose of the RPC is to determine, monitor, and if necessary, adjust the rehabilitation pathway developed for the young person for the purpose of addressing the factors contributing to the young person's offending.
14. The following persons are expected to attend the RPC (or Circle Sentence Hearing):
 - a. the magistrate;
 - b. the Court Coordinator;
 - c. the Panel of Elders;
 - d. the DPP;
 - e. the young person;
 - f. the young person's parents, caregiver or support person;
 - g. the young person's lawyer;
 - h. a member of the AFP; and
 - i. where relevant, representatives from Child and Youth Support Services, ACT Education, ACT Health Directorate and any other agency or person considered relevant by the Court.
15. The RPC will be held in a hearing room, chaired by the magistrate and may be adjourned from time to time.
16. In appropriate matters and upon the successful completion of the rehabilitation pathway, a charge may be dismissed. Where it is not appropriate to dismiss the charge, the young person will be sentenced at a Circle Sentence Hearing. Any completed rehabilitations pathway will be an important consideration at that sentencing hearing. A Circle Sentencing Hearing may follow directly on from a RPC.

Circle Sentence Hearing

17. The purpose of the Circle Sentencing Hearing is to finalise the matter by imposition of a sentence. The magistrate makes the decision after receiving a recommendation from the Panel of Elders. That recommendation follows a dialogue between the participants, including the provision of natural justice to the parties.
18. The persons expected to attend the Circle Sentencing Hearing are the same as those expected to attend the RPC.

Non-Attendance or failure to comply with rehabilitation pathway

19. If the young person fails, without reasonable excuse, to attend a Family Conference, RPC or Circle Sentencing Hearing the Court may refer the matter back to the Childrens Court.

20. A failure of a young person to comply with their rehabilitation pathway may result in the young person being directed to return to the Court for further consideration of the rehabilitation pathway, for circle sentencing or for sentencing in the Childrens Court.

Record of the proceedings and confidentiality

- 21. The proceedings at the RPC and Circle Sentencing are to be recorded by audio recording, but are not to be transcribed except for the purposes of any appeal or complaint, or as authorised by the Court.
- 22. The Court Coordinator is to provide the registrar with a written record of the RPC as soon as practicable.
- 23. Participants are reminded of the legal requirement not to disclose to the public or a section of the public information that may identify a young person who is or was before the court.

Panel of Elders

- 24. The Court Coordinator is responsible for arranging and administering the Panel of Elders.

By direction of the Acting Chief Magistrate and Magistrates.



Jayne Reece
Acting Registrar
ACT Magistrates Court

9 September 2019