

Magistrates Court of the Australian Capital Territory

Practice direction No: 1 of 2014

Listing procedure for criminal matters

This practice direction replaces practice directions No. 3 of 1998, No. 2 of 2007, No.5 of 2007 and No.1 of 2009.

From 8 January 2015, the Court's listing arrangements will change.

1. Objectives

- 1.1 The aim of this practice direction is to facilitate the efficient finalisation of criminal matters in this Court. People who have been taken in to custody will have an application for bail dealt with at the earliest possible opportunity in the Court's list. The Court will adopt the practice of block listing of criminal hearings, thereby increasing flexibility by having more than one Magistrate available in respect to hearing matters during those periods, whilst maintaining flexibility to list outside block periods as required. A newly created list will increase the time available daily for sentencing more significant matters sooner than occurs currently. The Court will maintain a policy of proactive case management of matters whilst encouraging legal representatives to act efficiently in their client's interests.
- 1.2 Parties should be aware that the Court will exercise its power of dismissal and to award costs in support of the objectives of this practice direction in appropriate cases.

2. The "A1" list

- 2.1 The "A1" list will be held each week day. This list will continue to be a first return list other than for defendants appearing for the first time in custody. Adjournments, short sentences, uncontested or simple applications, uncontested committals and case management will be dealt with in this list in the morning session. Longer sentences will be listed from 2.15 p.m. This list will be heard in Courtroom 1.
- 2.2 Summonses will continue to be returnable at 9 a.m. in this list. Appearances will be taken by court staff from 9 a.m. The Registrar will sit from 9.15 a.m. The Magistrate will sit not before 9.45 a.m. The order of business will be determined by the Magistrate in consultation with her or his associate.

2.3 Registrar's List

- 2.3.1 The purpose of the Registrar's daily list is to deal quickly with uncontested adjournments, including those in which the defendant is to be remanded on bail.
- 2.3.2 The practice of the Registrar providing time-markings for the Magistrate's list is discontinued.
- 2.3.3 Neither the defendant nor her or his legal representative need attend the first return date in relation to a summons if the legal representative emails the Registrar at MCCriminal.JACS@act.gov.au at least two clear working days before the matter is in court requesting an adjournment of not longer than four weeks. The correspondence should indicate the purpose of the adjournment and, if possible, the anticipated course of the matter at the next mention, for example, a plea of guilty or an application for dismissal pursuant to s.334 of the *Crimes Act 1900 ACT* to assist in future listing.
- 2.3.4 The Registrar may adjourn first return matters for a period not exceeding four weeks. If a longer adjournment is sought, and on the subsequent return date in all matters, the matter will be dealt with by a Magistrate.
- 2.3.5 The Registrar may continue or vary bail, with or without conditions, in cases in which the prosecution does not oppose bail or its variation.
- 2.3.6 When the defendant indicates a plea of guilty to a matter and applies for adjournment of the matter to another date, and it is indicated to the Registrar that it may be appropriate to order a pre-sentence report, a forensic mental health report or assessment or a Court Alcohol and Drug Assessment Service (CADAS) report (other than a mandatory interlock report), the Registrar will stand the matter over before the Magistrate at 9.45 a.m.

3. A2 list - Bail/Sentence list

- 3.1 A new daily list, to be referred to as the A2 list will commence on 8 January 2015. The list will be heard in Courtroom 2.
- 3.2 From 10.00 a.m., the following matters will be dealt with in this list:
 - a. first appearances from custody;
 - b. contested bail applications or variations and bail reviews;
 - c. issues related to matters within categories (a) and (b) which can be dealt with expeditiously, such as entry of a plea or ordering of reports unless the

Magistrate forms the view that they are more appropriately moved to another list;

- d. applications for extradition pursuant to the *Service and Execution of Process Act 1992 (C'th)*;
- e. Sentencing Administration Board warrants.

3.4 Practitioners are expected to have taken instructions from their clients and be in court by 10.00 a.m.

3.5 In respect to a bail review application, the Court requires a written application to be filed in court and served on the Director of Public Prosecutions at least two clear working days prior to the application being listed, unless the interests of justice require otherwise. An application in the form attached at Annexure A to this practice direction is acceptable. Filing and service to the email addresses on Annexure A is acceptable.

3.6 Following completion of the bail list, but not before 11.30 a.m., the Magistrate will deal with previously listed sentences which were adjourned for the preparation of reports and longer applications, such as s.334 applications or fitness to plead investigations pursuant to s.315A *Crimes Act 1900*. Matters will be listed at either 11.30 a.m. or 2:15 p.m. at the discretion of the Court.

3.7 Where there is capacity in either the A1 or A2 list, and subject to the availability of legal representatives, matters may be moved between the A1 and A2 lists at the discretion of the sitting Magistrates, in order to facilitate the efficient progress of matters through the lists.

4. Listing arrangements for hearing and committal

4.1 General procedure

4.1.1 The Case Management Hearing list currently held on Thursdays will be discontinued and the following procedure will commence on 8 January 2015.

4.1.2 The Court intends that the parties will take primary responsibility for progress of matters which are to proceed by way of committal or hearing, subject to Court supervision as detailed below.

4.1.3 At the time of listing a matter for hearing, the parties are expected, so far as is practicable, to assist the Court by completing the form attached at Annexure B to this practice direction.

- 4.1.4 The Court may vary the usual directions detailed below on application of the Director of Public Prosecutions, the defence or of its own volition where it is necessary to do so in the interests of justice, including where a defendant is remanded in custody or where the matter is of particular complexity.

4.2 *Summary matters*

- 4.2.1 This section deals with matters which are purely summary, or in which the prosecution has filed an election for the matter to be dealt with summarily in accordance with s374 of the *Crimes Act 1900*.
- 4.2.2 The Court expects that prosecutors will attend Court in all summary matters on the first return with a preliminary witness list and availability for Australian Federal Police (AFP) witnesses for the following four months.
- 4.2.3 The Court will list the matter for hearing on the first date suitable to the Court and parties no earlier than 10 weeks from the date of the plea. The AFP will provide the brief of evidence to the prosecution within six weeks from the date of entry of the plea. The prosecution will provide the brief to the defendant within eight weeks from the date of entry of the plea.
- 4.2.4 These matters will not be mentioned prior to hearing unless on application of one or both parties. Any application to vacate a hearing date must be made, where possible, in advance of the hearing. The application will be listed in the A1 list.

4.3 *Indictable only matters*

- 4.3.1 When a plea of not guilty is entered to an indictable only matter, the matter will be adjourned to a date for mention in the A1 list not earlier than 10 weeks after the plea is entered.
- 4.3.2 The AFP will provide the brief of evidence to the prosecution within six weeks from the date the plea is entered and the prosecution will provide the brief of evidence to the defendant within eight weeks from the date the plea is entered.
- 4.3.3 The Magistrate may vary the adjournment period and the usual direction as to service having regard to the nature of the matter.

- 4.3.4 The matter may proceed to committal at the next mention. If the matter is not ready for committal at that mention, it will be adjourned to allow the prosecution to comply with the provisions of Part 3.5 of the *Magistrates Court Act 1930* and Court Procedure Rule 4305 for no less than a further four weeks. In order to facilitate early committal, the attention of parties is directed to s88A of the *Magistrates Court Act 1930*.
- 4.3.5 Any application to cross-examine witnesses at committal pursuant to s90AB of the *Magistrates Court Act 1930* must be in writing in the form attached at Annexure C and served on the Director of Public Prosecutions and filed with the Court at least two clear working days in advance of the next mention date after the plea is entered. Filing and service to the email addresses on the form is acceptable.
- 4.3.6 If the application cannot be decided at that mention, the application will be adjourned to an A2 list for argument. If the application to cross-examine is successful, the committal will be adjourned to a future date.

4.4 *Indictable matters which may be disposed of summarily*

- 4.4.1 This section deals with indictable matters which may be disposed of summarily only with the consent of the defendant or, in some instances, also with the consent of the prosecution.
- 4.4.2 The matter will be allocated a date for mention in the A1 list not earlier than 10 weeks from the date the plea is entered. The AFP will provide the brief to the prosecution no later than six weeks from the date the plea is entered and the prosecution will provide the brief to the defence no later than eight weeks from the date the plea is entered.
- 4.4.3 The Magistrate may vary the adjournment period and the usual direction as to service having regard to the nature of the matter.
- 4.4.4 At the next mention, if the necessary consent(s) to summary disposal are given, the matter will be listed for hearing on the next available hearing date.
- 4.4.5 If the defendant or, where relevant, the prosecution do not consent to summary disposal, the matter may proceed to committal at that mention. If the matter is not ready for committal at that mention, it will be adjourned to allow the prosecution to comply with the provisions of Part 3.5 of the *Magistrates Court Act 1930* and Court Procedure rule 4305 for no less than a further four weeks. In order to facilitate early

committal, the attention of parties is directed to s88A of the *Magistrates Court Act 1930*.

- 4.4.6 Any application to cross-examine witnesses at committal pursuant to s90AB of the *Magistrates Court Act 1930* must be in writing in the form attached at Annexure C and filed at least two clear working days in advance of the mention date. If the application is opposed at that time, it will be adjourned to an A2 list for argument. If the application to cross-examine is granted, the committal will be adjourned to a future date.

5. Block listed hearings

- 5.1. In order to reduce lost court time as a result of adjournments, non-appearances and late change of pleas, the Court adopts a practice of block listing criminal hearings throughout the year. Such blocks may vary in length but at least two hearing courts will run simultaneously. Hearings will be listed with a fixed commencement day and listed for the estimated hearing time. However, if time becomes available in another hearing list, and the parties legal representatives are available and ready to proceed, a hearing may be transferred. Ad hoc hearing dates will continue to be utilised as required.

By Direction of the Chief Magistrate and Magistrates



Amanda Nuttall
Registrar
18 December 2014

Annexure A

BAIL REVIEW APPLICATION PURSUANT TO S42 BAIL ACT 1992

Defendant:
Legal Representative:
Charge Number(s):

1. Detail below the change in circumstances relevant to your bail being reviewed:

2. Detail below if any fresh evidence or information has become available since your last bail application/review:

3. Attach copies of any documentary evidence to be relied on in your application for review.

Date:

Signature and printed name:

Defendant (or legal representative)

The defendant is to complete this application and, at least two working days before the matter is to be listed:

- a. file it with the Court at mclistings@act.gov.au and
- b. serve it on the DPP at dppCMH@act.gov.au

Annexure B

MAGISTRATES COURT HEARING FORM

Defendant:

Legal Representative:

Charge Number(s):

This form is to be completed by the prosecution and defence in consultation with each other and is to be handed up in court when the matter is ready to be listed for hearing.

WITNESSES REQUIREMENTS

Name of witness (to be completed by prosecution)	To called by the prosecution	Required for cross- examination by the defence	Statement may be tendered by the prosecution without defence objection	Evidence not required by defence

ESTIMATED LENGTH OF HEARING - DEFENCE:

PROSECUTION:

SPECIAL ARRANGEMENTS REQUIRED:

Remote witness facility?

Person to question witness on behalf of unrepresented defendant?

Audio/visual playing facilities?

Telephone evidence?

Interpreter?

Date:

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Prosecutor

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Defence

Annexure C

**APPLICATION TO CROSS-EXAMINE A WITNESS IN COMMITTAL PROCEEDINGS
PURSUANT TO SECTION 90AB MAGISTRATES COURT ACT 1930**

(A separate application is to be completed for each witness)

Defendant:

Legal Representative:

Charge Number(s):

Applicant:

Name of witness required for cross-examination:

- A. Identify the issues to which the proposed questioning of the witness relates.

- B. Why is the evidence of the witness relevant to the issue?

- C. Explain why the evidence disclosed by the prosecution does not address the issue.

- D. Identify the purpose and general nature of the questions to be put to the witness to address the issue.

- E. Identify why the interests of justice cannot adequately be satisfied by leaving cross-examination of the witness about the issue to the trial.

Date:

Signature and printed name:

Defendant (or legal representative)

At least two working days before the mention, the applicant is file the completed application with the Court at mclistings@act.gov.au and serve it on the DPP at dppCMH@act.gov.au.