

PRACTICE DIRECTION NO. 1 OF 2009

CASE MANAGEMENT HEARINGS AND COMMITTAL PROCEEDINGS

This Practice Direction takes effect from 30 May 2009 and replaces Practice Direction No. 3 of 2007 from that date.

1. Application

This Practice Direction applies to all contested hearings in criminal proceedings, including committal proceedings, except:

- Proceedings identified by the court as Family Violence cases (governed by Practice Direction No. 2 of 2009); and
- Proceedings in the criminal jurisdiction of the Childrens Court (governed by Practice Direction No. 3 of 2009).

Where an order has been made under section 289 of the Magistrates Court Act 1930 for a joint hearing of charges against a young person and charges against an adult, the Case Management Hearing for adult and juvenile defendants will be heard together in the adult Case Management Hearing list.

1.1 Application to major cases

Major cases will be identified by the Court in consultation with the DPP and the defence. A major case is one that will require more than 3 days hearing, or involve significant pre-hearing arguments or rulings, or requires an extended timetable for the completion of the brief of evidence due to the nature and complexity of the case. Major cases may be identified at, or prior to, Case Management Hearings. Where major cases are identified prior to a Case Management Hearing the matter will still be allocated a Case Management Hearing date. Prior to the Case Management Hearing date the DPP will notify the List Coordinator of any likely major cases in the upcoming Case Management Hearing list. The Court will then be in a position at the Case Management Hearing to allocate a specific Magistrate and available dates to separately case manage and hear those matters.

1.2 Application to defendants in custody

This Practice Direction applies to proceedings where the defendant has pleaded not guilty and is in custody. “In custody” cases are distinguished in that the timetable for the listing of the Case Management Hearing and brief delivery do not apply, and instead an appropriate timetable for case management will be determined in light of the need to determine such cases expeditiously.

2. Enforcement of this Practice Direction

Practitioners should be aware of the powers available to Magistrates to award costs against parties in criminal matters and to order the payment of witness expenses. Magistrates may also dismiss informations. These powers may be employed to ensure that the requirements of this Practice Direction are adhered to.

3. Process following a not guilty plea

3.1 Allocation of a Case Management Hearing date

Following a plea of not guilty a Case Management Hearing date will be allocated no earlier than 70 days from the date the plea is entered. This period may be varied by the Court where the defendant is in custody or where the matter is identified as a major matter. The time frame may also be shortened where the Commonwealth DPP has prepared a brief of evidence before the plea of not guilty is entered.

3.2 Brief preparation

Within four weeks of the plea of not guilty being entered the AFP will prepare and deliver to the DPP a full brief of evidence. The brief is to comply with any agreement between the AFP and DPP about the preparation of briefs as well as any further agreed disclosure requirements. This timeline may be varied by the court upon application by the DPP or defence where the defendant is in custody, the matter is identified as a major matter or where there is otherwise good reason to do so.

3.3 Service of brief on defence

3.3.1 As soon as practicable after receipt of the brief, and in any event no later than 14 days before the Case Management Hearing, the DPP will serve a copy of the brief on the defendant's legal representative. Where a defendant is not legally represented the brief will be made available for collection by the defendant at the office of the DPP. Where the Commonwealth DPP has prepared a brief before the plea of not guilty is entered, it will be served on the defendant's legal representative, or made available to the defendant personally where the defendant is not legally represented, within 7 days of the entry of the plea.

3.3.2 The brief served on the defendant or his or her legal representative will be accompanied by a copy of the Magistrates Court Case Management Hearing Form which is Annexure C to this Practice Direction.

3.4 Early listing

Where a Case Management Hearing date has been set the DPP or defence may arrange with the Magistrates Court Listing Coordinator to bring the date for Case Management Hearing forward, particularly where it is clear at an early stage that the case will resolve by either a plea of guilty or the DPP offering no evidence, or where an adjournment is required. Where a plea of guilty is foreshadowed the Court may remove the matter from the Case Management Hearing List and allocate it to a plea list.

3.5 Documents required for the Case Management Hearing

The DPP will file with the Court before the Case Management Hearing copies of the statement of facts or other case summary and a witness list in respect of each matter.

4. The Case Management Hearing

4.1 Preparation for the Case Management Hearing

4.1.1 No later than 48 hours before the Case Management Hearing, the defendant or his or her legal representative is to complete the Magistrates Court Case Management Hearing Form (Annexure C) and return it to the DPP as provided for on the Form.

4.1.2 By the time of the Case Management Hearing, any legal representative of the defence must be fully instructed. The defendant must be present at the Case Management Hearing. If a defendant does not appear at the Case Management Hearing a warrant may issue for the defendant's arrest.

4.1.3 The representative of the DPP must have a sufficient understanding of the matter to provide information required by the Court and must have the authority necessary to effectively participate in the Case Management Hearing.

4.2 Discussion between the Defence and DPP

One of the purposes of the Case Management Hearing process is to ensure that appropriate and constructive negotiation take place between the defence and the DPP as to:

- the charges that will proceed at hearing;
- whether pleas will be entered to some or all of the charges;
- whether all the witnesses named in the brief will be required to give oral evidence;
- whether statements can be tendered by consent; and
- the issues actually in contest.

Discussion as to these matters is to take place between the parties **before** the Case Management Hearing. The Court will inquire of the parties as to these matters at the Case Management Hearing. It is recognised that discussion between the DPP and self represented defendants may only be of a limited nature.

4.3 The Case Management Hearing

4.3.1 At the Case Management Hearing the presiding magistrate may:

- invite the DPP to elaborate upon the case summary if required;
- require the DPP to briefly outline the nature of the evidence to be called in relation to the charges;
- invite the defence to indicate what the issues in the case are and what, if any, pleas are offered in respect of the charges or any replacement charges;
- invite the defence to indicate to what extent, if any, the prosecution brief can be tendered;
- canvass with the DPP the acceptability of the pleas offered;
- require the parties to identify witnesses required at hearing; and
- establish the time required for the hearing.

4.3.2 There may be cases where it is reasonable to adjourn the first Case Management Hearing in order to ensure that case management issues are properly addressed prior to a case being listed for hearing. Where the case has been prepared but the parties have been unable to confirm instructions or discuss the issues the Court may stand the matter over to a later time in the same Case Management Hearing list in order for the taking of instructions or for discussions to take place.

4.3.3 If a plea of guilty is entered at the Case Management Hearing the Court may deal with the matter immediately or adjourn the matter to another time or date. Where the sentence of the matter is adjourned the magistrate conducting the Case Management Hearing may consider the matter not to be part-heard in relation to the sentence.

4.3.4 Pleas of guilty entered at the Case Management Hearing will usually attract a lesser discount on sentence than a plea entered at an earlier time.

4.4 Identification of ‘transferable hearings’

4.4.1 If at the Case Management Hearing a hearing date is set, the Court will seek an indication from the prosecutor as to whether the particular case is a ‘transferable hearing’. A ‘transferable hearing’ is one that can be earmarked by the Court, following consultation with the DPP and the defence as being suitable to be moved from an existing hearing list to another list on short notice without significant disruption to the running of the case by either the

prosecution or the defence. The purpose of the transfer at late notice by the Court is to allow a more efficient use of Court resources allocated to particular hearing lists when matters in those lists collapse on or shortly before the allocated hearing day.

4.4.2 Upon attending the Case Management Hearing the prosecutor will have already identified the matter as ‘transferable’ based on:

- the less serious nature of the charge;
- an estimated length of hearing of 3 hours or less;
- the small number of witnesses who will not require proofing; and
- a straightforward factual dispute.

4.5 Recording of outcomes at Case Management Hearing

The outcomes of the Case Management Hearings are to be recorded and statistics kept for the purpose of measuring responsiveness to, and effectiveness of, the Case Management Hearing system.

5. Indictable charges

5.1 Consent

Where the charge against the defendant is indictable but may be heard summarily with the consent of the defendant, the defendant will be required to indicate his or her consent at the Case Management Hearing, including any adjourned Case Management Hearing. Where prosecution consent is required for a charge to be heard summarily the giving or withholding of that consent must be indicated at the Case Management Hearing.

5.2 Applications to examine/ cross-examine witnesses

5.2.1 Where the charge against the defendant is indictable and cannot be heard summarily, or where the defendant intends to not consent to the charge being heard summarily, and the defendant wishes to apply to cross-examine a witness at committal, the defendant or his or her legal representative is to complete, serve upon the DPP and lodge with the Court an Application to Cross-Examine a Witness in the form of Annexure B no later than 48 hours before the Case Management Hearing.

5.2.2 Where the prosecution wishes to cross-examine a witness in committal proceedings it will complete, serve upon the defendant or his or her legal representative, and lodge with the Court an Application to Cross-Examine a Witness in the form of Annexure B:

- in the case of a charge that cannot be heard summarily - not later than 48 hours before the Case Management Hearing; and
- in any other case - immediately following the defendant declining to consent to the charge being heard summarily.

This provision does not preclude the prosecution making an application under section 38 of the Evidence Act 1995 during the course of a committal hearing.

5.2.3 Where the prosecution wishes to apply for a prosecution witness to give evidence in person at a committal hearing it will complete an Application to Examine a Witness in the form of Annexure A to this Practice Direction:

- in the case of a charge that cannot be heard summarily - not later than 48 hours before the Case Management Hearing; and
- in any other case - at the Case Management Hearing, following the defendant declining to consent to the charge being heard summarily.

5.2.4 Wherever possible, applications under paragraphs 5.2.1, 5.2.2 and 5.2.3 will be heard and determined at the Case Management Hearing. If that is not possible, the application may be adjourned to another date. Where appropriate the matter may be referred to the Magistrate allocated to hear the committal proceedings.

6. Pre-hearing procedures

6.1 Following the Case Management Hearing and as soon as possible, the parties are to continue to endeavour to resolve matters before the hearing. If there is an occurrence that will significantly affect the hearing they must notify the Court as soon as is practicable and no later than 48 hours before the hearing. Failure to do so without reasonable excuse will be relevant to any application for costs or the awarding of witness expenses.

6.2 Any application to withdraw consent to summary disposal pursuant to

section 375A of the Crimes Act 1900 must be made not less than 14 days before the hearing. Unreasonable failure to comply with this provision may result in a costs order being made.

7. Hearing lists

7.1 Movement of ‘transferable hearings’

If shortly before, or on the listed hearing date, the Court determines there is a need to move a transferable hearing into a different list, the Listing Coordinator will consult with the DPP and defendant’s legal practitioner. Where a hearing is transferred to a new prosecutor on the day of the hearing the Court will allow some time to enable the prosecutor to prepare the matter. The Court will not move a hearing out of one list and into another where a defendant’s legal practitioner or a witness has other matters remaining in the original hearing list.

7.2 Hearings that are listed but not finalised

7.2.1 Hearings that are listed in a hearing list but not reached may be allocated a fresh date or may continue on the Court’s next sitting date at the convenience of the Court. Practitioners involved in hearings that commence but do not finish on the allocated hearing date should expect that the hearing will continue on the next date convenient to the Court which may be the following day, and should be in a position to make arrangements for that continuation.

7.2.2 Where it is necessary to adjourn to another date a hearing matter that does not commence on the date allocated, the Court will ordinarily adjourn the matter for hearing before the same Magistrate originally allocated to hear the matter.

Dated 15 May 2009

By direction of the Chief Magistrate and Magistrates

R J Cahill

Chief Magistrate

Section 90AA Magistrates Court Act 1930

APPLICATION TO TAKE EVIDENCE IN CHIEF IN PERSON

SECTION A

Charge numbers:

Defendant's name:

Defendant's Solicitor:
(if applicable)

Name of witness:

SECTION B

Why will the interests of justice not be satisfied if the witness's evidence in chief is not given at the hearing?

DATE:

On behalf of the DPP/Informant

Note: This Application may be lodged by emailing it to mclistings@act.gov.au or by fax to 02 6205 4857.

Annexure B

Section 90AB Magistrates Court Act 1930

**APPLICATION TO CROSS-EXAMINE A WITNESS IN
COMMITTAL PROCEEDINGS**

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

SECTION A

Charge numbers:

Defendant's name:

Defendant's Solicitor:
(if applicable)

Name of witness:

Name of party applying:

SECTION B

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

SECTION C

Why is the evidence of the witness relevant to the issue?

SECTION D

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

SECTION E

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

SECTION F

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

DATE:

.....
Counsel/ Solicitor/ Defendant / DPP

Note: This Application may be lodged by emailing it to mclistings@act.gov.au or by fax to 02 6205 4857.

**MAGISTRATES COURT CASE MANAGEMENT HEARING
FORM**

Defendant to return to DPP **48 hours before** the CMH (see address below).
DPP to provide to Court at CMH.

Name of Defendant	
Legal Representation	
Charge Numbers	
CMH Date	

**INDICTABLE MATTERS THAT CAN BE HEARD SUMMARILY WITH THE
CONSENT OF THE DEFENDANT**

The defendant intends to consent at the Case Management Hearing to the following charges being heard summarily:

Charge numbers:

**WITNESSES REQUIRED FOR SUMMARY HEARING (includes indictable
charges where the defendant intends to consent to summary hearing).**

Name of witness	Required to attend hearing	Not required to attend hearing – statement to be tendered

INDICTABLE CHARGES WHICH CANNOT BE HEARD SUMMARILY OR WHERE THE DEFENDANT DOES NOT INTEND TO CONSENT TO SUMMARY HEARING.

Any application to cross-examine a witness at committal proceedings must be made in the form of the Application to Cross-Examine Witness available on the Court's website at www.courts.act.gov.au/ (follow the links to the Magistrates Court) **at least 48 hours before** the CMH. Follow the directions on the form to lodge the application with the Court. See Practice Direction No. 1 of 2009.

Where the committal is to proceed on the basis of the tender of the prosecution brief of evidence, will there be submissions by the defence? Yes / No

Signed
Defendant/ defendant's legal representative

DEFENDANTS PLEASE NOTE

Once completed this document must be returned to the office of the DPP at least 48 hours before the Case Management Hearing.

It may be:

Hand delivered to the office of the DPP at Reserve Bank Building, Knowles Place Canberra; or

Faxed to ACT DPP on: **(02) 6207 5428**; or

Emailed to ACT DPP at the following address:
dppCMH@act.gov.au