

**MAGISTRATES COURT OF THE
AUSTRALIAN CAPITAL TERRITORY**

PRACTICE DIRECTION NO. 2 OF 2007

“A” LIST PROCEDURES

This Practice Direction takes effect from 1 August 2007.

1. Application

This Practice Direction sets out the initial listing procedures that are to be followed in relation to all criminal proceedings in the ACT Magistrates Court, and applies to:

The first return listing of criminal charges, whether commenced by charge, summons or other means.

The subsequent listing procedures for further mentions and pleas.

2. Objectives

The listing practices set out in this Practice Direction are aimed at achieving the following objectives:

2.1 To maximise the available time of the sitting A list Magistrate:

The A list will operate on a booking system, based on the philosophy that only those matters that require the attention of a judicial officer should come before one. This approach will involve the Deputy Registrar in the Listing Unit (the List Co-ordinator) assuming certain relatively simple functions previously performed in the A list by a Magistrate.

2.2 Reduce unnecessary waiting time:

Unnecessary legal costs are incurred as lawyers for defendants sit in the courtroom waiting for their client's matter to be called on. A booking system will reduce waiting time for practitioners and defendants by minimising the circumstances where practitioners, and unrepresented litigants, have no certainty of knowing when their matter will be heard after the initial commencement time of the list.

2.3 Reduce adjournments for grants of legal aid and initial advice:

A Duty Solicitor scheme, implemented by the Legal Aid Office will allow defendants to be provided with legal advice and assistance on the day of their appearance in Court. The Court will encourage litigants and their lawyers to proceed to finality with as many matters as possible on the first appearance date, only adjourning to another day those matters that truly require an adjournment.

2.4 Reduce part-heard sentence lists:

A Magistrate will not ordinarily be considered to be part-heard in a matter because a plea of guilty has been entered before that Magistrate and reports ordered for the purpose of sentencing. In consultation with the List Co-ordinator a suitable time and date will be allocated for the hearing of the plea. This will allow for more matters to be listed for sentence at a future date and time in the A list, and reduce the number of hearing lists that are interrupted in order to accommodate part-heard matters at 11.30 am before particular Magistrates.

3. The Call-over list

All summonses and other forms of commencement of criminal proceedings will be returnable at 9am each day.

At 9am each day the List Co-ordinator will conduct a call-over of all matters either in a hearing room or in a courtroom.

3.1 Legal Aid presence and assistance:

A representative of the Legal Aid Office will be present and available to mention matters in the call-over list in which the Legal Aid office are already instructed, and to consult with unrepresented persons wishing to apply for legal aid.

A representative of the Legal Aid Office will be available to consider an immediate grant of legal aid, take instructions and appear before the List Co-ordinator to arrange consent adjournments, book matters before a Magistrate, and arrange future interviews for defendants.

3.2 The DPP representative:

A DPP para-legal may represent the DPP in the call-over list, and the A list prosecutor will appear in matters before the Magistrate.

3.3 Listing options available to the List Co-ordinator:

The List Co-ordinator will have authority to refer self-represented litigants to the Legal Aid representative before returning the matter to the same call-over list.

If he or she decides it is necessary or otherwise appropriate the List Co-ordinator will have authority to stand any matter over before the A list Magistrate, or another Magistrate, at either 9.45am or a nominated time, on the same day or a later date allowed by this Practice Direction.

The List Co-ordinator will have authority to adjourn first return matters for a period not exceeding 3 weeks. Those adjournments may be to a future call-over list at 9am, or before a Magistrate in a future A list at a nominated time.

3.4 Adjourments for mention

Where the List Co-ordinator grants the first adjournment for the mention of a matter that second mention will be listed in a future call-over list at 9am. The Court will expect a plea to be indicated on that second mention. If a further adjournment is sought on the second mention the List Co-ordinator will stand the application for the adjournment over to the A list at 9.45am on the same day so that the application can be made before the Magistrate.

3.5 Pleas of guilty

Where a defendant who is pleading guilty to a matter seeks an adjournment of the matter to another date the List Co-ordinator and the representatives of the DPP and the defendant, if any, will attempt to identify cases where formal sentencing material such as Pre-Sentence Reports may be required. In such cases the List Co-ordinator will stand the application for adjournment over before the A list Magistrate at 9.45 am.

Where a plea of guilty is indicated at the call-over the defendant or his/her legal representative will be able to book a time before a Magistrate for the plea to be heard. Usually the time will be booked on the same date as the call-over, but it may also be booked at a later date if there is good reason why the matter cannot proceed on the call-over date. For example, if a defendant pleading guilty to a drink driving charge wishes to apply for a restricted licence, time may be booked in the A list in 3 weeks time for the hearing of the plea and the application for a restricted licence.

The List Co-ordinator, in consultation with the duty lawyer, will retain a block of time for duty lawyer pleas. That time may be reallocated to other pleas in consultation between the List Co-ordinator and the duty lawyer.

3.6 Pre Sentence Reports

Pre-Sentence Reports may only be ordered by a Magistrate. Where the List Co-ordinator, DPP and any representative of the defendant are of the view that a Pre-Sentence Report may be required the List Co-ordinator will stand the matter over before the A list Magistrate at 9.45am. The A list Magistrate will then consider whether to order the preparation of reports and adjourn the matter to a date and time for sentence.

3.7 Pleas of not guilty

If a plea of not guilty is entered in the call-over list the List Co-ordinator will adjourn the matter to a Case Management Hearing and, where necessary, extend bail. All pleas of not guilty are to be adjourned to a Case Management Hearing, including traffic matters. An exception may be made in the case of minor traffic offences, such as exceeding the speed limit, where in consultation with the representative of the Director of Public Prosecutions the matter may be allocated a date for hearing.

3.8 Extending and varying bail

The List Co-ordinator will be empowered to continue bail in the same terms or to vary bail upon terms agreed by the DPP prosecutor and defence.

For persons appearing in custody any bail application, even unopposed, will not be heard by the List Co-ordinator. All initial applications for bail, opposed or unopposed, will be put before the A list Magistrate at, or after, 9.45am. Opposed applications for bail will require a time to be booked before the Court in the same way as pleas of guilty. If the booking cannot be made at the call-over, for example because the Legal Aid solicitor was busy interviewing in custody defendants between 9am and 9.45am, then bookings may be made directly with the List Co-ordinator after 9.45am.

4. The A list

From 9.45 a.m. onward

4.1 Bail

All in-custody defendants will be brought before the A list Magistrate regardless of whether bail is opposed or not.

Where bail is not opposed the matter should be mentioned in the absence of the defendant in the call-over at 9am and that indication given. The List Co-ordinator will then stand the matter over to the A list at 9.45am for the consideration and granting of bail by the Magistrate.

Where bail is opposed the matter may be mentioned in the call-over at 9am, or where that is not possible as arranged with the List Co-ordinator, in order to set a specified time from 9.45am onward for the Magistrate to hear the bail application.

Priority will be given to matters where police officers are on nightshift and are required to give evidence in the bail application.

In addition to a Legal Aid representative being available for consultation for defendants while the call-over list is being conducted, a Legal Aid solicitor will also continue to be available during the morning to deal with bail applications for in-custody defendants in the A list.

4.2 Requests for Pre-Sentence Reports

The DPP and any representative of the defendant will be encouraged to identify in the call-over any cases proceeding by way of a plea of guilty where a Pre-Sentence Report may be required. These matters should be put before the A list Magistrate at

9.45am to determine whether a Report is required. If it is determined that a Report is not required then the matter will be allocated a time to proceed.

4.3 Additional mentions

Where legal representatives or self-represented litigants are seeking to adjourn a matter for mention in addition to the first adjournment previously granted by the List Co-ordinator, the application will be heard in the A list by a Magistrate. If the further adjournment for mention is granted the matter will be re-listed in a future call-over at 9.00am, and an indication of a plea will be expected on that occasion.

From 10 a.m. onward

4.4 Pleas of guilty and sentences

Where a plea of guilty is indicated at the call-over the matter will be allocated a time before the A list Magistrate. These listings will start at 10am, and in ordinary cases 5 pleas will be listed each half hour. Depending on the number of opposed bail applications listed from 9.45am onward the times slots for pleas of guilty may commence at times later in the morning. Practitioners, and litigants, will not be able to book a precise time, but they will know their plea will be heard not before the time allocated. This will allow practitioners, in particular, to plan their day and will avoid the present practice of practitioners sitting in the courtroom for hours waiting for their matter to be called on. It will be the responsibility of the List Co-ordinator at the call-over to identify likely lengthy pleas and to allocate time accordingly.

Where a plea of guilty is entered before a Magistrate in the A list and the Magistrate determines that a Pre-Sentence Report is needed the matter will ordinarily not be marked part-heard before that Magistrate. The matter will be allocated time in a future A list. Alternatively, in consultation with the parties, it may be allocated to a D list where that list is not full or a matter has fallen out on short notice.

From time to time an assessment for a particular sentencing option will be required because the sentencing Magistrate is considering imposing that option. It is appropriate that these matters remain part-heard before the sentencing Magistrate if an

assessment cannot be undertaken on the day the plea is entered. These matters will be addressed on a case-by-case basis as they are now.

It is inevitable that during the course of the day matters will arise that require an assessment by the Corrections Intake officer or the CADAS clinician. These matters will be addressed on a case-by-case basis as to whether the assessment can be dealt with on the day or whether an adjournment is required.

From 11a.m. onward

4.5 Pleas of guilty and sentences listed from earlier occasions

Where a plea of guilty has been indicated or entered before either the List Co-ordinator or the A list Magistrate on a previous day the matter will have been given an allocated time for the plea and sentence to occur before the A list Magistrate from 11am onward.

Future allowance for phone bookings

When the Court is satisfied that the new system is operating properly it is proposed that practitioners be able to telephone the List Co-ordinator between 3pm and 4pm daily to book time before the A list Magistrate for upcoming guilty pleas, thus avoiding the necessity to attend the 9am call-over. In such cases the defendant will not be called upon to answer his/her bail until the time the matter is booked before the Magistrate.

Dated the day of 2007.

By direction of the Chief Magistrate and Magistrates

R J Cahill

Chief Magistrate