

Criminal Trials

1. This Practice Note revises and consolidates District Court Criminal Practice Notes 1, 9 and 12.

Commencement

2. This Practice Note commences on 6 April 2020.

Application

3. This Practice Note applies to all proceedings on indictment committed to the District Court for trial on or after the commencement date, with the exception of committals to the Child Sexual Offence Evidence Program Scheme, to the Rolling List at Sydney and to the court at Bega, Bourke, Broken Hill, Coonamble, Goulburn, Grafton, Moree, Nowra, Port Macquarie, Queanbeyan and Taree. For these regional venues, the AVL call-over system will apply in accordance with District Court Criminal Practice Note 19.

Introduction

4. Following the implementation of the Early Appropriate Guilty Plea reforms in 2018, changes to the practice of pre-trial procedures have been identified to improve efficiencies and procedural fairness.
5. The prosecutor and the legal representatives for the accused person are expected to have attended a case conference that has been held in accordance with s 70 of the *Criminal Procedure Act 1986* (NSW) ("CP Act") before the accused person is committed to the court for trial. An objective of the case conference is "to facilitate the resolution of other issues relating to the proceedings against the accused person, including identifying key issues for the trial of the accused person and any agreed or disputed facts": CP Act s 70(3)(b).
6. As such, the prosecutor and the legal representative for the accused person who attend the arraignment are expected to have full knowledge of the state of the proceedings and to identify the key issues for the trial.

7. Accordingly, the purpose of this Practice Note is to:

- (a) ensure that matters are dealt with efficiently and in a manner consistent with the obligations of the prosecution and an accused person under Chapter 3, Part 3 of the CP Act;
- (b) establish case management procedures from the time an accused person is first arraigned;
- (c) refine the disclosure obligations of the prosecution and an accused person;
- (d) reduce avoidable delays; and
- (e) promote procedural fairness.

Definitions

8. In this Practice Note:

“accused person” includes an Australian legal practitioner representing an accused person;

“court” means the District Court of New South Wales;

“prosecutor” has the same meaning as in the *Criminal Procedure Act 1986*;

“Readiness Hearing” means a hearing to ascertain the readiness of the trial to proceed on the allocated trial date;

“service” of documents required under this Practice Note may be effected by service on the legal representatives for an accused person or by service personally on an accused who is not legally represented.

Listing for arraignment

9. When committing an accused person to the court at Sydney for trial, the magistrate will direct the accused person to appear for arraignment on the last sitting day of the week (usually a Friday) four weeks after the date of the committal.

10. A similar procedure is to apply to all other District Court venues but the arraignment day will vary from court to court. Practitioners should ascertain the relevant day which is nominated by the list judge or resident judge.

Arraignment Procedure

11. On the day fixed for the arraignment, the Director of Public Prosecutions shall, unless otherwise ordered, present an indictment to the court and provide copies of the indictment to each accused person.
12. The Director of Public Prosecutions is also to file and serve on each accused person, no later than 10 days prior to the date fixed for the arraignment, the Crown case statement, an index to brief material, and a copy of the indictment intended to be presented at the arraignment.
13. The legal representative for the accused person is to file and serve on the prosecution, no later than 5 days prior to the date fixed for the arraignment, a Notice of Appearance.

Entering a plea

14. The accused must be present on the day fixed for the arraignment either in person or by way of audio visual link.
15. Upon presentment of the indictment, the accused will be arraigned by the court and shall enter his or her plea.

Trial Management

16. The arraignment date will also serve as the first trial management listing. Where a plea of not guilty is entered to any of the charges, the court will fix a date for the trial and for a Readiness Hearing. The Readiness Hearing is to be listed at least eight weeks before the date fixed for trial or earlier at the discretion of the judge.
17. At the arraignment, the prosecutor and the legal representative for the accused person are to provide the court with:
 - (a) An outline of issues in dispute to the extent that it is possible and any agreement as to facts;
 - (b) An accurate estimate of the length of the trial as well as dates suitable for witnesses and counsel briefed to appear at trial. The estimate of the trial is to include allowance for pre-trial argument, counsels' addresses to the jury and the trial judge's summing up;
 - (c) Any requirement for remote witness facilities;

(d) Any requirement for interpreters, including the language and number; and

The legal representative for the accused person must advise whether a question may arise under Chapter 6, Part 5, Division 2 of the CP Act (sexual assault communications privilege) for determination by the court and whether leave may be required for the issue of subpoena or for evidence to be adduced with respect to protected confidences.

18. If the accused is not legally represented, a further purpose of the first trial management listing is to ensure that representation is provided for at the earliest opportunity.

Standard Directions

19. Unless the court otherwise orders, the standard directions that are to apply at the arraignment are:

(a) Where leave of the court is required for the production of a document or the giving of evidence under s 298 of the CP Act, the legal representative for the accused person must make an application for leave under s 299C of the CP Act no later than six weeks prior to the date fixed for the Readiness Hearing.

(b) The prosecution is to file and serve on the accused person, no later than six weeks prior to the date fixed for the Readiness Hearing, the notice of the prosecution case in accordance with s 142 of the CP Act. In addition to the requirements of s 142, the notice is to include a statement as to the basis upon which the prosecution will contend that the accused person is criminally responsible in respect of the alleged offence(s).

(c) In the case of State matters, the prosecution is to file and serve on the accused person, no later than eight weeks prior to the date fixed for the Readiness Hearing, an affidavit by the police officer or law enforcement officer in charge of the case which:

(i) confirms compliance with the duty of disclosure as set out in s 15A of the *Director of Public Prosecutions Act 1986* (NSW); and

(ii) details any further evidence the police are yet to obtain.

(d) In the case of Commonwealth matters, the prosecution is to file and serve on the accused person, no later than eight weeks prior to the date fixed for the Readiness Hearing, an affidavit by an appropriate officer of the relevant investigating agency which:

- (i) confirms compliance with the duty of disclosure as set out in paragraph 3 of the Commonwealth Director of Public Prosecutions “Statement on Disclosure in Prosecutions conducted by the Commonwealth”; and
 - (ii) details any further evidence the police are yet to obtain.
- (e) The defence is to file and serve on the prosecution, no later than three weeks prior to the date fixed for the Readiness Hearing, the notice of the defence response in accordance with s 143 of the CP Act.
- (f) The prosecution is to file and serve on the accused person, no later than one week prior to the date fixed for the Readiness Hearing, the notice of the prosecution response to the defence response in accordance with s 144 of the CP Act.
- (g) If the prosecution intends to adduce tendency and/or coincidence evidence pursuant to ss 97 or 98 of the *Evidence Act 1995* (NSW), notice in writing must be given to the defence no later than six weeks prior to the date fixed for the Readiness Hearing.
- (h) If the defence intends to adduce tendency and/or coincidence evidence pursuant to ss 97 or 98 of the *Evidence Act 1995* (NSW), notice in writing must be given to the prosecution no later than three weeks prior to the date fixed for the Readiness Hearing.
- (i) The defence is to provide notice of alibi within the period prescribed in s 150 of the CP Act.
- (j) The parties are to hold a pre-trial conference pursuant to s 140 of the CP Act no later than two weeks prior to the date fixed for the Readiness Hearing to determine whether the parties can reach agreement regarding the evidence to be admitted at trial. The parties are also to consider the issues in paras 27 and 28 of this Practice Note. This does not apply if the accused is not legally represented.
- (k) The prosecution must file the pre-trial conference form within the time frame stipulated in s 140(8) of the CP Act, but in any event no later than one week prior to the date fixed for the Readiness Hearing.

Expert Witnesses

20. The obligation of the prosecution to comply with the court’s directions includes the service by the prosecution in accordance with s 142(1)(h) of the CP Act of a copy of the report of any expert witness that the prosecution proposes to call at trial.

21. The obligation of the accused person to comply with the court's directions includes the service by the defence in accordance with s 143(1)(h) of the CP Act of a copy of the report of any expert witness that the defence proposes to call at trial.

Readiness Hearing

22. Each party must separately file and serve a statement identifying the key issues in the trial no later than one week prior to the date fixed for the Readiness Hearing. The prosecution's statement is to be signed by the prosecutor who is appearing at trial. The accused person's statement is to be signed by the legal representative who will be appearing for the accused person at trial. The Key Issues Statement is to be in the form annexed to this Practice Note.

23. The following persons must be present during the Readiness Hearing:

- (a) the prosecutor;
- (b) the legal representative for the accused person; and
- (c) the accused, if not legally represented and not in custody.

24. For the avoidance of doubt, the accused is not required nor expected to be present at the Readiness Hearing provided he or she is legally represented.

25. For Sydney matters, if the accused is not legally represented and is in custody, the Readiness Hearing will be vacated and the matter will be listed for directions in Court 3.1.

26. The prosecutor and the legal representative for the accused person who attend the Readiness Hearing are expected to have full knowledge of the state of the proceedings.

27. At the Readiness Hearing, the prosecutor and legal representative for the accused person must inform the court:

- (a) of the key issues in the trial;
- (b) of any intention by the accused person to make an application for severance of counts on the indictment;
- (c) of any intention by the accused person to make an application for a separate trial;
- (d) of any other issues that will involve pre-trial argument;
- (e) of any matters for the court's determination under s 299B of the CP Act (protected confidence);

- (f) of any facts that are agreed;
- (g) of any issues that may prevent the trial commencing on the trial date (or delay the empanelment of the jury);
- (h) of any intention to apply to the court for an order that the accused person be tried by a judge alone in accordance with s 132 of the CP Act;
- (i) of the availability of any expert witnesses that the parties intend to call at trial; and
- (j) of the accurate estimate of the length of the trial, which must include an allowance for the pre-trial argument that has been identified by the parties, counsels' addresses to the jury and the trial judge's summing up.

28. At the Readiness Hearing:

- (a) further matters about which the prosecutor must inform the court include:
 - (i) any intention to amend the indictment upon which the accused person was arraigned;
 - (ii) any evidence the prosecution intends to rely upon at trial that has not been served on the accused person;
 - (iii) any failure by the prosecution to comply with the directions of the court;
 - (iv) any requirement for interpreters for prosecution witnesses, including the language and number; and
 - (v) the need for remote witness facilities.
- (b) further matters about which the legal representative for the accused person must inform the court include:
 - (i) whether para 19(a) of this Practice Note has been complied with;
 - (ii) any expert evidence the defence intends to rely upon at trial that has not been served on the prosecution;
 - (iii) any failure by the accused person to comply with the directions of the court;
 - (iv) any requirement for interpreters for the accused or defence witnesses, including the language and number;
 - (v) any concerns held regarding the fitness of the accused to stand trial, so far as practicable; and

- (vi) any requirement for edits to ERISP, JIRT interviews and/or surveillance or intercept material.

29. At the Readiness Hearing, the court may make further orders, determinations or findings, or give further directions or rulings as it thinks appropriate for the efficient management and conduct of the trial.

Trial

30. By the date fixed for the trial, the matter must be ready to proceed. If there is an unavoidable problem or change to the conduct or the length of the trial the parties are to notify at the earliest possible stage the list judge or resident judge at venues other than Sydney, and for Sydney trials the Criminal Listing Director.

31. Any application to vacate a trial date:

- (a) is to be made by way of filing and serving a Notice of Motion with a supporting affidavit, setting out the grounds for the application;
- (b) For Sydney trials, the application is to be listed in Court 3.1; and
- (c) For venues other than Sydney, the application is to be made to the list judge or resident judge.

Non-compliance with the court's directions

32. If it appears to the court that a party has not complied with this Practice Note, or with any other direction made by the court, the court may contact the offending party directly or list the matter for mention, either on the court's own initiative or at the request of either party.

33. Without limiting the court's power otherwise to deal with a failure to comply with a direction, the court may order the offending party to file an affidavit, or give evidence in court, explaining the failure to comply.

The Honourable Justice D M Price AM
Chief Judge of the District Court
6 March 2020

Key Issues Statement

Case Number:

Name of the accused person:

Legal representative for the Crown/accused:

What are the key issues in the trial?

Signature

Signature of legal representative:

Capacity:

Date of signature: