

PRACTICE DIRECTION 5 of 2014

SUPREME COURT OF QUEENSLAND

CRIMINAL LISTING PROCEDURES – BRISBANE

Introduction

It is in the public interest that trials and sentences be dealt with efficiently. The arrangements put in place by this practice direction aim to finalise cases expeditiously with the minimum necessary use of resources by the court and the parties.

This practice direction only applies to the criminal list in the Supreme Court in Brisbane.

Definitions

- "Complex trial" is a trial that has an estimated duration of 15 sitting days or longer or otherwise has the potential to require significant court resources, whether because of the number of defendants, volume of documentary or electronic evidence, the requirement for interpreters, the complexity of issues or other reasons.
- "Hearing" includes a sentence following a plea of guilty, an application for a pre-trial ruling or a pre-recording of evidence under Division 4A of Part 2 of the *Evidence Act 1977*.
- "Trial" means a trial on indictment before a jury or a trial before a judge alone.
- Where the word "brief" or "briefed" is used in this document it means that a brief has been delivered to and been considered by counsel from the perspective of whether the matter is ready to proceed to trial or hearing and, if not, what steps should be taken to bring that about and that counsel is available for the prospective time or hearing date. An indication by counsel of availability for a particular trial or time without having considered a written brief **is not** a brief to or briefing of counsel.

Criminal List Judge and Criminal List Manager

- The Criminal List Judge has the responsibility for supervising the listing of matters in the criminal jurisdiction in Brisbane. The Criminal List Manager is responsible to the Criminal List Judge for the management of the criminal list including the listing of matters.
- The Criminal List Manager is the first point of contact for listing criminal matters and associated issues:
 - Contact by email is encouraged:
SC-CrimListManager@justice.qld.gov.au.

- The Criminal List Manager's phone number is: 3247 5847

Reviews of Criminal Matters

1. Reviews of criminal matters are held in the Supreme Court before the Criminal List Judge (or other Judge performing that role) each Friday at 9:15am except during the four weeks following Christmas Day. (Where a Friday is a public holiday the Reviews will be held on the preceding Thursday.)
2. The first occasion on which a matter is listed in the criminal jurisdiction is the date of presentation of the indictment. Unless arrangements are otherwise made with the Criminal List Manager, new indictments are presented at the weekly reviews. A criminal call-over is held on the last Friday of a criminal sittings and the other Fridays in a sittings which are designated in the court calendar as Supreme Court criminal call-over dates. The court calendar can be found at <http://www.courts.qld.gov.au/court-calendars>.
3. When an indictment is presented, the matter will be allocated a trial or hearing date (if it is possible to do so) or otherwise will be listed for review at a future date.
4. The purpose of the reviews of criminal matters is to monitor the progress of each matter and give directions to ensure the efficient and timely disposition of the matter and to allocate trial and hearing dates. At each review a criminal matter is given a fresh review date, unless the matter has been allocated a trial or hearing date.
5. On the presentation of the indictment, if it is likely that the matter will be resolved by a plea of guilty, but further time is required to obtain instructions, the matter will be listed for review on a later date. The matter will be de-listed from that review date by the Criminal List Manager if, before that review date, the practitioner for the defendant obtains a sentence date from the Criminal List Manager acceptable to the prosecution and the matter is listed by the Criminal List Manager for sentence on that date.
6. At any time after an indictment has been presented, but before the matter has been allocated a trial or hearing date, the practitioner for the defendant may obtain from the Criminal List Manager a date for sentence acceptable to the prosecution. If the matter is listed by the Criminal List Manager for sentence on that date, it will be de-listed from the next review date that had been given to the matter.
7. When a criminal matter is listed before the court and is not disposed of, but no future date for review, hearing or trial is fixed (such as may occur on the delivery of a pre-trial ruling without further orders), the matter will be listed for review the following Friday week, unless the prosecution and the defence make other arrangements with the Criminal List Manager. A criminal matter cannot be adjourned to a date to be fixed.

8. Where a matter has been listed for trial, there will be a final trial review at the criminal reviews on the Friday which is one clear week prior to the commencement of the sittings in which the trial is listed.
9. Apart from the final trial review, after a matter is set down for trial or sentence, it will not be listed for further review, unless there are unresolved issues affecting the trial or sentence or the prosecution or the defence seek a further review. The Criminal List Judge or a sittings Judge may list a matter for review at any time.
10. If a party seeks to have a matter listed for review then that party must, no later than two days before the matter is to be listed, inform the Criminal List Manager and the other party or parties of the purpose of the review and the orders or directions which will be sought.

Complex Trials

11. A complex trial may be referred by the Criminal List Judge to a Judge for supervision. The purpose of this supervision is to ensure the timely preparation of complex trials by both prosecution and defence and to minimise the waste of available trial dates due to late adjournments. The “Case Management in Complex Criminal Trials” Practice Direction 6 of 2013 will be used to deal with complex trials.
12. A complex trial may, if appropriate, be conducted as an “e-trial”. An application for a trial to be heard in that manner may be made by any party to the Criminal List Judge.

Trials

13. Before a trial date is allocated, the form in schedule 1 must be completed by each practitioner responsible for the conduct of the case for a defendant and the practitioner responsible for the conduct of the case for the prosecution. The same form can be completed by more than one party or a separate form may be used by each party. The form may be lodged with the Criminal List Manager by email, facsimile, post or delivery
14. Trial dates are allocated at the criminal reviews by the Criminal List Judge.
15. Trial dates may be allocated before all trial preparation has been completed. If this is done, the practitioners responsible for the conduct of the case must have concluded that the trial will be ready to proceed on the allocated trial dates, unless the Criminal List Judge dispenses with this requirement.

Pre-trial Hearings

16. An application for a pre-trial hearing may be listed when a matter is reviewed. In order to obtain a listing, the parties must estimate the time required for the pre-trial hearing and advise of the availability of counsel and any witnesses.
17. Unless the court otherwise directs, the standard directions will apply on the listing of a pre-trial hearing. The standard directions are:

- (a) within 5 business days of obtaining a listing the applicant must file and serve on the other party or parties an application that complies with r 42(2) of the *Criminal Practice Rules*.
- (b) no later than 14 days after the date on which the application was filed and served the applicant must file and serve on the other party or parties a written outline of submissions in support of the application.
- (c) where an applicant seeks an order that evidence be excluded from the trial of the applicant, the evidence sought to be excluded must be identified with particularity.
- (d) no later than 14 days after the date on which the applicant's written submissions were filed and served the other party or parties must file and serve on the applicant a written outline of submissions in response to the applicant's submissions.

Sentences

18. Listing of sentences is done by the Criminal List Judge and/or the Criminal List Manager on the basis that a standard sentence takes between 45 minutes and 1 hour. If it is not a standard sentence, a time estimate for a sentence must be given at the time of listing.
19. A sentence can be listed at the criminal reviews or by the practitioner for the defendant requesting the Criminal List Manager to list the sentence. Where it is proposed that summary offences will be disposed of at the sentence, the date requested for the sentence must allow sufficient time for compliance with Practice Direction 4 of 2014.
20. Unless otherwise approved by the Criminal List Judge, a practitioner for the defendant must not request a date for sentence, unless the practitioner considers the matter will be ready for sentence by that date and has ascertained from the prosecution that the date is acceptable.
Examples:
 - Where a psychiatric report is to be relied on by the defendant at sentence, the appointment for the defendant with the psychiatrist must have been made and sufficient time allowed for the preparation of the report before the listed date for sentence.
 - Where the defendant wishes to rely on the results of drug testing, those results must be available and provided to the prosecution before the listed date for sentence.
21. The identity of the Judge who will be listed to hear a sentence will ordinarily be known by 4pm on the day prior to the listed date for sentence and can be ascertained from the Criminal List Manager. It is the responsibility of practitioners to ensure that the sentencing Judge is provided prior to the sentence with any substantial reports or other materials to be tendered on the sentence. If an application is to be made under s 13A *Penalties and Sentences Act 1992* or s 21E *Crimes Act 1914* (Cth) then the Judge's Associate is to be advised prior to

the hearing and copies of any documents to be tendered are to be provided to the Judge prior to the hearing.

22. Before the hearing of a sentence, both the prosecution and the defendant must inform the other party of any evidence sought to be relied upon no later than three days before the sentence is listed for hearing. Where it is not possible to provide that information by that time then the party is to notify the other party of the evidence as soon as possible.

Ex Officio Indictments

23. No matter will be listed for sentence in Brisbane upon an ex officio indictment until the prosecution has delivered to the Criminal List Manager a document which contains:
 - (a) the charge or charges intended to be the subject of the indictment, and
 - (b) a certificate signed on behalf of the Director of Public Prosecutions, and by the legal representatives of the accused, confirming that the factual basis for an intended plea of guilty has been agreed upon.
24. If it is desired to have closely related District Court counts dealt with on the indictment, the counts should be included in the draft indictment. The matter will then be listed on a callover day before the Criminal List judge, so that the judge has an opportunity to decide whether it is appropriate to include the District Court counts in the Supreme Court indictment.
25. All statements on which the prosecution relies as the basis of an ex officio indictment must be delivered to the sentencing judge in sufficient time, and in no case later than two working days prior to the hearing date, by the responsible officer in the Office of the Director of Public Prosecutions.

After Listing for Trial or Hearing

26. Upon the allocation of a trial or hearing date the court will act on the basis that the matter will proceed on the allocated day for the estimated time.
27. The Criminal List Manager must be advised immediately by the practitioner responsible for the conduct of the case which has been allocated a trial or hearing date if:
 - (a) there is to be a change of plea;
 - (b) the time allocated may be inadequate or excessive;
 - (c) the case may not be ready to proceed on the allocated day

A copy of the notification is to be provided to the other parties.

28. The practitioner responsible for the conduct of the case on behalf of the party seeking to have the date vacated must notify the Criminal List Manager giving a succinct statement of:

- (a) why the case will not be ready to proceed;
- (b) when they became aware that it was necessary for the date to be vacated;
- (c) why the situation was not previously identified; and
- (d) when the matter will be ready to proceed.

A copy of the statement is to be provided to the other parties.

- 28. The Criminal List Manager will respond to the notification within three (3) business days of its receipt advising:
 - whether the date will be vacated;
 - whether the matter will be listed for review;
 - otherwise as the Criminal List Judge or sittings Judge directs.
- 29. It should not be assumed that where prosecution and defence consent to a date being vacated that it will automatically be vacated.
- 30. Where there has been a late adjournment of a trial or hearing, a practitioner may be directed to file an affidavit of justification and to appear before a judge.

Commencement

- 31. This Practice Direction takes effect from 3 March 2014.



Paul de Jersey
Chief Justice
17 February 2014

Schedule 1
Information for the Allocation of Trial Dates

Name of defendant(s):

Indictment number (or specify count 1):

Party/parties completing this form:

- Prosecution, name of firm, instructing solicitor and contact details.

- Defendant, name of firm, instructing solicitor and contact details.

- Defendant, name of firm, instructing solicitor and contact details.

- Defendant, name of firm, instructing solicitor and contact details.

- Counsel has been briefed

Name and contact details of Counsel, specify party represented and any dates that are unsuitable for Counsel:

- Pre-trial applications will NOT be made
- Pre-trial applications WILL be made. Pre-trial issue (if multiple defendants, please also specify which defendant(s) seeks a pre-trial application).
 - Admissibility of evidence _____
 - Admissibility of record of interview _____
 - Application of separate trial _____
 - Basha inquiry _____
 - Other (please specify) _____

- There are NO restrictions on the availability of witnesses
- There are restrictions on the availability of witnesses (please specify)

Estimate of the length of the trial:

Day(s) _____

Week (s) _____

- Consideration has been given to a reference to the Mental Health Court
- The Defendant does NOT intend adducing expert evidence
- The Defendant intends adducing expert evidence
 - Obligations under s 590B have been satisfied
 - Obligations under s 590B will be satisfied by: _____

- Special equipment is NOT required for the trial.
- Special equipment is required for the trial (please specify)

An application will NOT be made for the Court to appoint an interpreter

An application will be made for the Court to appoint an interpreter

What steps remain to be taken in the preparation for trial (e.g. transcription of tapes, etc):

Other relevant matters:

Name of person completing this form
