

**SUPREME COURT
OF THE
NORTHERN TERRITORY OF AUSTRALIA**

**PRACTICE DIRECTION
No 3 of 2016**

CRIMINAL CALL-OVERS

PREAMBLE:

This practice direction is being introduced for two purposes. The first is to promote efficiency by eliminating the duplication involved in having monthly arraignment days and pre-trial conferences by combining the two processes into a single criminal callover.

The second is to minimise the number of trials that are vacated at the last minute with a view to more efficiently utilising the court's processes. It is recognised that trials are vacated for a variety of reasons and that it will not be possible to totally eliminate trials being vacated at a late stage. However, it is hoped that the introduction of a more intensive case management system will ensure that, so far as is practicable, preparatory work is moved forward so that, in the usual case, it will be known at least four weeks before the trial date whether it will proceed. The objects are to give everyone concerned adequate notice if a matter is not to proceed so that judge time is not wasted, counsel are not having to prepare to run back-up trials with inadequate notice, and other matters can be heard if a judge becomes available.

1. The present pre-trial hearing and arraignment day system will be replaced by a single criminal call-over, to be held fortnightly, presided over by the Master or a Judge in Darwin and the criminal Registrar or a Judge in Alice Springs.

Note: Criminal call-overs will be held at 2.00 pm on Thursdays in Darwin and 8.45 am on Wednesdays in Alice Springs.

2. Where an accused has been committed for trial in the Supreme Court, the matter will ordinarily be listed in the first criminal call-over after 28 days from the date of committal.

Note: This is subject to the discretion of the committing magistrate to fix a different date for the first appearance in the Supreme Court in appropriate circumstances.

3. The criminal call-overs are to be held in Court but conducted informally (no robes) and the procedure to be followed is to approximate, as near as possible, the procedure currently followed in pre-hearing conferences.
4. Ordinarily, the defendant (if represented) will not be required to appear provided acceptable arrangements are in place for the signing of fresh bail, and the DPP consents. The procedure to be followed to excuse appearances of defendants will be as follows.
 - (a) The magistrate will commit the defendant to stand trial in the Supreme Court, and to appear at the relevant criminal call-over.
 - (b) The committing magistrate will either grant bail or remand the defendant in custody.¹
 - (c) In either case, if the defendant is represented, and the DPP consents, the magistrate will (normally) excuse the defendant from attendance at the criminal call-over.
 - (d) In the case of a defendant who has been granted bail, at the criminal call-over the Master or Registrar will (normally) grant Supreme Court bail and fix a time and place for the defendant to sign fresh bail (e.g., at the police station to which the defendant is ordered to report, within a specified number of days).
 - (e) Ordinarily, the Master/Registrar will bail the defendant to appear on the trial date or plea date.
5. Unrepresented defendants will be required to appear at the criminal call-over in person if on bail and by video link if remanded in custody, and will also likewise be required to appear at pre-trial hearings.

Criminal call-overs

6. At the criminal call-over it is expected that the following will occur.
 - (a) An indictment will have been filed.
 - (b) Schedule 2 documents will have been filed beforehand (unless the matter is to proceed by way of a plea).

¹ That is to say, the accused will be bailed to appear at the criminal call-over, but his or her attendance will be excused. This will require a slight modification to the standard bail undertaking to read: "I undertake to appear before the Supreme Court at on unless earlier excused by a magistrate."

- (c) The defendant will be expected to indicate whether the matter is to proceed to trial or a plea.
- (d) The matter will be allocated T1 and T2 trial dates, or a plea date, as the case may be.
- (e) If the matter is to proceed to trial, it will also be listed before the T1 trial Judge for the first pre-trial hearing.

Note: There will normally be two pre-trial hearings, one as soon as possible after the criminal call-over and one 4 weeks before the trial. The date for subsequent pre-trial hearings will be fixed by the trial Judge at the first pre-trial hearing.²

- (f) If the matter is not ready to be allocated a trial date, it may be adjourned to a later criminal call-over. If the matter is not ready to be allocated a trial date at the second criminal call-over, it will be referred to a Judge for case management.

The First Pre-Trial Hearing

Note: Pre-trial hearings will generally be listed at 9.00 am.

- 7. At the first pre-trial hearing before the trial Judge the following is expected to occur.
 - (a) The lawyers with carriage of the matter (either as solicitor or counsel) will be expected to appear.
 - (b) The parties should advise whether there are any evidentiary or other issues to be dealt with before the trial. If there are, a date for a *voir dire* or other hearing will be fixed and consequential directions given.
 - (c) If the parties are not in a position to advise whether there are any such issues, and what they are, the matter will normally be listed for a further pre-trial hearing.
 - (d) Private defence lawyers will be required to advise either that they have been fully briefed to appear at the trial, or that they have provided written advice to the defendant that their client must either:

² This is an interim measure. If it turns out that final pre-trial mentions begin to be held too close to the trial date to enable T2s to go ahead if the matter settles, consideration will be given to changing the procedure so that the final pre-trial hearing is fixed at the call-over on a date not less than 4 weeks before the trial.

- place their lawyers in funds to meet the anticipated costs of the trial before the final pre-trial hearing³;
 - obtain legal aid before the final pre-trial hearing; or
 - appear as an unrepresented litigant at the final pre-trial hearing and the trial.
- (e) Any applications by the parties will be heard.
- (f) The date for the final pre-trial hearing will be fixed.

Note: As counsel for the T2 listed for the trial dates are expected to appear at the final pre-trial hearing for the T1, the associate will advise them of the date for the T1 final pre-trial hearing.

The Final Pre-Trial Hearing

8. At the final pre-trial hearing before the trial Judge the following is expected to occur.

- (a) Counsel who are briefed to appear at the trial are expected to appear.
- (b) The parties should be in a position to advise whether the matter will definitely proceed and the trial dates will be confirmed, or vacated, or vacated and a plea date set.⁴

Note: It is understood that some matters will still fall over at the last moment. This is the expected, not the invariable, procedure.

- (c) The T2 (if any) for those trial dates will be confirmed, vacated or confirmed before an alternative Judge.

Note: Counsel for the T2 will also be expected to appear at the final pre-trial hearing for the T1, see above.

- (d) The DPP should:
- (i) provide a witness list and advise that all necessary witnesses have been contacted and are available for trial, and that, where

³ This is obviously subject to any pro bono or other similar arrangements.

⁴ There is a general reluctance to vacate trial dates until a plea has been actually taken. This may sometimes require another pre-trial hearing for the T2, perhaps immediately following the plea (which will normally be set down for the first available date), to confirm these matters. This will be a matter for the discretion of the trial judge.

appropriate, an interpreter has been engaged and appropriate steps are in place to brief the interpreter⁵;

- (ii) provide a brief outline of the Crown case for the Judge; and
- (iii) advise that the matter is ready to proceed.

Note: The need for some flexibility where there are witnesses from remote areas is recognised.

- (e) The parties should advise whether there are any further issues to be dealt with before trial and, if so, a date for a *voir dire* or other hearing will be allocated.
- (f) Private defence lawyers will be required to advise that they have been fully briefed to appear at the trial.⁶
- (g) Any further applications by the parties will be heard.
- (h) Any other directions for the trial will be given.

⁵ This is a reference to Part 9 of the Supreme Court Interpreter Protocols.

⁶ This is to avoid last minute changes of representation if privately represented defendants run out of money and matters are sent to Legal Aid with inadequate time to prepare. Private practitioners will be expected to ensure that funding arrangements have been put in place in adequate time to enable them to provide such a certificate at the first pre-trial conference.