

Criminal Trials at Circuit Sitings

1. This Practice Note revises and consolidates District Court Criminal Practice Notes 14 and 17.

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 at Bega, Bourke, Broken Hill, Coonamble, Goulburn, Grafton, Moree, Nowra, Port Macquarie, Queanbeyan and Taree.

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 AVL call-over are expected to have full knowledge of the state of the proceedings and to identify the key issues for the trial.
7. The use of Audio Visual Link ("AVL") is intended to facilitate the efficiency and effectiveness of call-overs and Readiness Hearings. At all times, AVL call-overs constitute formal Court hearings.
8. 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's trial is first mentioned in the District Court;
- (c) refine the disclosure obligations of the prosecution and an accused person;
- (d) reduce avoidable delays; and
- (e) promote procedural fairness.

Definitions

9. In this Practice Note:

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

“circuit sitting” means a scheduled sitting of the District Court at Bega, Bourke, Broken Hill, Coonamble, Goulburn, Grafton, Moree, Nowra, Port Macquarie, Queanbeyan and Taree;

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

“presiding judge” means the judge who will preside over the circuit sitting in question;

“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 AVL call-over

10. When committing an accused person to the court for trial, the magistrate will list the matter for an AVL call-over at 9:00am on the Wednesday four weeks after the date of the committal.

AVL call-over procedure

11. The following persons must be present during the AVL call-over:
 - (a) the prosecutor;
 - (b) the legal representative for the accused person; and
 - (c) the accused, if not legally represented.
12. For the avoidance of doubt, the accused is not required nor expected to be present at the AVL call-over provided he or she is legally represented.
13. Practitioners must be connected to the AVL call-over at 8:50am, to commence the list at 9:00am.
14. Practitioners must mute their microphone until their matter is called. Practitioners connecting through the telephone must not place the AVL call-over on hold. If a practitioner must disconnect for any reason, they are to notify the court.
15. Practitioners will be contacted prior to the AVL call-over with details on how to connect. Practitioners will have the following options for connecting:
 - (a) if the practitioner has access to hard coded video conferencing (AVL) facilities, he or she will be provided with the courtroom connection details;
 - (b) if the practitioner does not have access to hard coded video conferencing (AVL) facilities but has a PC or tablet with camera facilities, he or she will be provided with a Jabber Guest software link and technical details on how to use the link; or
 - (c) if the practitioner does not have access to hard coded video conferencing (AVL) facilities or a PC or tablet with camera facilities, he or she will be provided with an option for telephone connection.
16. If an accused is not legally represented, he or she will be provided with an option for telephone connection only.
17. The Director of Public Prosecutions is to file and serve on each accused person, no later than 10 days prior to the date fixed for the AVL call-over, the Crown case statement, an index to brief material and a copy of the indictment intended to be presented at the accused's trial in the appropriate circuit sitting.
18. 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 AVL call-over, a Notice of Appearance.

Trial Management

19. The AVL call-over date will also serve as the first trial management listing. Where a plea of not guilty is intended to be entered to any of the charges, the court will fix a date for the trial in the appropriate circuit sittings and for an AVL Readiness Hearing. The AVL Readiness Hearing is to be listed at 9:00am on the Thursday at least eight weeks before the date fixed for trial or earlier at the discretion of the judge.
20. At the AVL call-over, 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 for 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.

21. 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

22. Unless the court otherwise orders, the standard directions that are to apply at the AVL call-over 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 AVL 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 AVL 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 AVL 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 AVL 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 AVL 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 AVL 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 AVL 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 AVL 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 AVL 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 33 and 34 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 AVL Readiness Hearing.

Expert Witnesses

23. 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.
24. 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.

AVL Readiness Hearing

25. 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 AVL 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.
26. The following persons must be present during the AVL Readiness Hearing:
- (a) the prosecutor;
 - (b) the legal representative for the accused person; and
 - (c) the accused, if not legally represented.
27. For the avoidance of doubt, the accused is not required nor expected to be present at the AVL Readiness Hearing provided he or she is legally represented.

28. Practitioners must be connected to the AVL Readiness Hearing at 8:50am, to commence the list at 9:00am.
29. Practitioners must mute their microphone until their matter is called. Practitioners connecting through the telephone must not place the AVL Readiness Hearing on hold. If a practitioner must disconnect for any reason, they are to notify the court.
30. Practitioners will be contacted prior to the AVL Readiness Hearing with details on how to connect. Practitioners will have the following options for connecting:
 - (a) if the practitioner has access to hard coded video conferencing (AVL) facilities, he or she will be provided with the courtroom connection details;
 - (b) if the practitioner does not have access to hard coded video conferencing (AVL) facilities but has a PC or tablet with camera facilities, he or she will be provided with a Jabber Guest software link and technical details on how to use the link; or
 - (c) if the practitioner does not have access to hard coded video conferencing (AVL) facilities or a PC or tablet with camera facilities, he or she will be provided with an option for telephone connection.
31. If an accused is not legally represented, he or she will be provided with an option for telephone connection only.
32. The prosecutor and the legal representative for the accused person who attend the AVL Readiness Hearing are expected to have full knowledge of the state of the proceedings.
33. At the AVL 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.

34. At the AVL Readiness Hearing:

(a) further matters about which the prosecutor must inform the court include:

- (i) any intention to amend the indictment;
- (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 22(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.

35. At the AVL 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.

Call-overs for trials in circuit sittings

36. Call-overs for trials in circuit sittings will be conducted by the presiding judge in accordance with Practice Note 13.

Trial

37. 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 Chief Judge or the judge presiding over the circuit sittings.

38. 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) the application is to be listed before the judge presiding over the circuit sitting at the earliest possible date.

Non-compliance with the court's directions

39. 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.

40. 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: