

SUPREME COURT OF TASMANIA
CIRCULAR TO PRACTITIONERS

No 4 of 2018

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CRIMINAL CASE MANAGEMENT ARRANGEMENTS

The judges have decided that the following arrangements are to apply for the management of criminal cases in 2018 and until further notice.

Forward planning

At least 14 days before the start of each criminal sittings, the Crown should submit a draft trial grid showing trials and backstop trials proposed to be listed before each judge who will be sitting in Hobart, Launceston and Burnie. If considered appropriate, the Crown will be asked to add more matters to the grid.

At the same time, the Crown should submit a draft list of trials for the subsequent two or three sittings. That is to say, the Crown should provide a list showing the trials that it hopes to list during each sittings, but ordinarily not specifying hearing dates.

The draft trial grids will be sent to defence counsel by the Crown. If a defence lawyer considers that the proposed listing of any trial presents a problem, he or she should first approach the Crown and try to resolve the problem. If the problem is not resolved, he or she should then contact the associate of the judge before whom the matter is listed and request a directions hearing.

The practice of listing most pending matters on the first day of each sittings has been discontinued. Directions hearings will be listed at suitable times as considered necessary. In Hobart, as a general rule, directions hearings will be listed on each Friday of a sittings, and on the third Wednesday of the sittings.

In the March 2018 sittings, directions hearings will be listed on Wednesday, 14 March, on Friday, 23 March, and on Wednesday, 28 March.

Adjournment of listed trials and backstops

Only matters that are ready for trial are to be included in a trial grid.

Once a grid for a sittings has been finalised, there should be no adjournments of any listed trial or backstop out of the sittings without the approval of the judge before whom the case is listed. Such approval may be sought either at a directions hearing or by an email to the judge's associate.

Approval should not be given if there is any possibility that there might be time to bring the case on as a backstop later in the sittings, even before another judge.

When appropriate, consideration should be given to trials proceeding in Court 1 in Hobart or Court 2 in Launceston. If prosecuting counsel, defence counsel, a Court and a judge or acting judge are all available, trials should proceed in one of those courts rather than being adjourned to a later sittings. It will usually be possible for the Chief Justice to deploy acting judges when necessary so that cases can be disposed of.

Case management by judges

Case management of particular matters will be undertaken by judges with three different levels of intensity, as follows:

- Unless some step is taken for more intensive case management, individual matters will not be monitored by a judge or a Registry officer. However, each time the accused appears before a judge, a short directions hearing will be held. The judge will enquire as to the progress of the matter, and give directions as considered necessary for the purpose of the timely disposition of the case.
- At the other extreme, individual judges will take on and retain the case management of particular matters. In that situation, an individual judge will proceed as if a "docket" system applies, keeping the matter in his or her own lists for a series of directions hearings, at least until the matter is ready to be disposed of.
- Some matters will be in an intermediate category. No single judge will take continuing responsibility for such matters, but a member of the Registry staff will monitor the progress of the matter (or lack thereof) from time to time, report to whichever judge is to preside whenever the matter is listed for a directions hearing, and if necessary refer the matter to a judge for the listing of an unscheduled directions hearing.

Time limits

If either the Crown or the defence expects to be unable to comply with a time limit, an application should be made to the Court in advance for the extension of the time limit. This applies to time limits fixed by judges' directions, and to time limits contained in counsels' promises and undertakings. The party seeking an extension of time should first seek the consent of the opposite party, and then seek an extension from the appropriate judge. If the request is consented to, the extension should be sought by email. If the extension is not consented to, a directions hearing should be requested by email.

Basha inquiries and preliminary proceedings

Preliminary proceedings made at any appearance other than the first appearance may be ordered only with the leave of the Court: *Criminal Code*, s 332B(2A).

If a matter is listed in a trial grid and there is a late application for a preliminary proceedings order, the relevant judge should consider the possibility of conducting a Basha inquiry instead of ordering that there be preliminary proceedings.

If a trial is adjourned and there is an application for a Basha inquiry, the relevant judge should consider the possibility of ordering instead that evidence be taken in preliminary proceedings. At times it may be appropriate for preliminary proceedings to be conducted by the Associate

Judge. He can conduct preliminary proceedings because he may exercise the powers of a magistrate: *Supreme Court Act 1959*, s 5H.

Monitoring within the Registry

A member of the Registry staff will be required to monitor the progress of criminal cases. Initially that role will be undertaken by the Acting Assistant Deputy Registrar, Kate Brown. The steps taken will include the following:

- Checking on compliance with judges' directions and counsels' promises or undertakings for steps to be taken (eg, the filing of an indictment, the filing of Crown papers, or the filing of preliminary proceedings applications) by fixed dates and, where appropriate, making enquiries of the Crown and/or defence counsel by email or phone, and if necessary referring a matter to a judge for the listing of a directions hearing.
- Enquiring as to progress in relation to cases that have been adjourned by means of bail consent letters pursuant to s 7(3A) of the *Bail Act 1994*. This will include looking at the files, making enquiries of the Crown and/or defence counsel by email or phone, and if necessary referring a matter to a judge for the listing of a directions hearing.
- Identifying matters that are being case managed by a particular judge and marking the files accordingly.

From time to time judges will convene directions hearings in cases that have been pending for a long time, with a view to getting them finalised.

Directions hearings

If a matter has been adjourned for a directions hearing, the directions hearing will ordinarily proceed on the appointed date, even if the accused has been provided with a bail consent letter. However the judge before whom the directions hearing is listed may agree to dispense with the directions hearing if his or her associate is provided by email with satisfactory information as to the progress of the case.

When an accused person has been provided with a bail consent letter and therefore does not appear when his or her matter is listed, the judge may ask the Crown prosecutor what steps have been taken in the action, what steps have been agreed upon, and what steps are proposed. If the judge thinks fit, he or she may appoint a directions hearing in the matter, possibly earlier than the day when the accused is next required to appear. If a directions hearing is held on a day when the accused has not been remanded to appear, the accused need not attend that directions hearing unless ordered to attend.

After each directions hearing, either a transcript of that hearing or a record of proceedings sheet relating to it will be placed on the Court file. A copy of each such transcript or ROP sheet will be emailed to both the Crown and the defence.

Managing judges

These arrangements are to be overseen by Brett J in relation to Hobart matters, and by Pearce J in relation to Launceston and Burnie matters.

Criminal Case Management Committee

The management of the criminal business of the Court will be overseen by a committee that initially comprises the Chief Justice, Pearce J, Brett J, the Registrar, and the Acting Assistant Deputy Registrar. This committee will ordinarily meet quarterly, usually during term.

The Hon Alan Blow AO
Chief Justice