

**SUPREME COURT OF TASMANIA  
PRACTICE DIRECTION**

**No 2 of 2022**

**6 June 2022**

**JUDGE-ALONE CRIMINAL TRIALS**

This Practice Direction is published by the direction of the Chief Justice, the Honourable Justice Alan Blow AO.

The *Criminal Code* has been amended to provide for judge-alone criminal trials in certain situations. That is to say, it has been amended so as to provide for trials by single judges without juries.

The amendments have been proclaimed to commence on 8 June 2022. The amendments will apply in relation to crimes allegedly committed before, on and after that day: *Criminal Code*, s 464A.

**Legislation**

There are new provisions in the *Criminal Code* about judge-alone trials, to the following effect:

- Any party to proceedings in respect of an alleged crime may apply to the Court for an order for a trial by a judge without a jury: s 361AA(1).
- No such application may be made in respect of a charge under a law of the Commonwealth: s 361AA(2)(c).
- An accused person has a right to apply for a judge-alone trial within three months after an order is made in the Magistrates Court committing him or her for trial: s 361AA(2)(a).
- An application for a judge-alone trial may be made more than three months after the committal order, but it will then be necessary for the applicant to satisfy the Court that he or she has a reasonable explanation for the delay in the making of the application: s 361AA(3).
- If a number of charges are to be tried together, an order for a judge-alone trial may only be made in respect of all of the charges that are to be tried together: s 361AA(5)(c).
- If two or more accused persons are to be tried together, an order for a judge-alone trial may be made only in relation to all of the accused persons who are to be tried together: s 361AA(5)(d)(i).
- As a general rule, an order for a judge-alone trial may only be made if the Court is satisfied that it is in the interests of justice for the order to be made: s 361AA(5)(b). Some of the matters relevant to this requirement are specified in s 361AA(7).

- As a general rule, an order for a judge-alone trial may only be made if the accused person, or each accused person if there is more than one, has given "informed consent" (which is explained below): s 361AA(5)(a), and (d)(ii).

For the Court to be satisfied that an accused person has given "informed consent", a judge must be satisfied of each of the following things in respect of that person:

- That he or she understands the nature of the proposed order and its effect: s 361AA(6)(a).
- That the accused person either (a) has been provided with legal advice about the effect of the proposed order or (b) has been offered such advice, and has refused the offered advice, or (c) has been advised to obtain legal advice and has refused to obtain it: s 361AA(6)(b).

If an accused person has been provided with legal advice about the effect of the proposed order, the legal practitioner who provided the advice must certify in writing that the legal advice was provided, and whether he or she believes that the accused person has freely given informed consent to a judge-alone trial: s 361AA(6)(c).

## **Procedure**

An application for a judge-alone trial should be made in writing in a letter addressed to the Registrar. A copy of the letter should be served on each other party, including the Director of Public Prosecutions and any other accused.

There are no prescribed forms for applications or certificates.

A certificate as to informed consent, as provided for in s 361AA(6)(c) may form part of a letter to the Registrar.

Upon receipt of the application, the case will be listed before a judge selected on a random basis. The intention is that the selected judge will determine the application and, if an order is made for a judge-alone trial, will case manage and conduct the trial. The selection of the judge will not depend on the venue of the case or the registry in which the judge normally sits. Therefore, any judge might be selected to conduct the case, irrespective of where the trial will take place. The judge will make arrangements to conduct the trial in the registry to which the accused has been committed for trial, either during a sittings in which the judge is sitting in crime in that registry, or otherwise as circumstances may allow. If the order is refused, the judge will either retain carriage of the case or refer it back to the general list.

Dated 6 June 2022

**J A Connolly**  
**Registrar**