

**PRACTICE DIRECTION
No. 4 of 2014**

**SUMMARY PROCEEDINGS IN THE COURT OF SUMMARY
JURISDICTION AT DARWIN**

The following Practice Direction, issued pursuant to section 201A of the *Justices Act*, shall apply from the date of issue in relation to summary proceedings commenced in the Court of Summary Jurisdiction at Darwin on or after 11 March 2014 and replaces Practice Direction No 2 of 2014.

This Practice Direction relates to all proceedings in relation to simple offences and minor indictable offences that are capable of being dealt with summarily pursuant to sections 120, 121A and 131A of the *Justices Act*, and is to be read in conjunction with paragraphs 1.1-1.3 of the Practice Direction dated 4 April 2011 in relation to Procedures for Preliminary Examination.

The Practice Direction dated 4 October 2010 in relation to the Procedure for the Listing of Summary Offences Hearings (the “contest mention” system) will cease to apply to proceedings in the Darwin Court of Summary Jurisdiction except as provided for in paragraph 11 of this Practice Direction.¹

PURPOSE

This Practice Direction is intended to assist with case management of criminal matters in the Darwin Court of Summary Jurisdiction by setting out a set of procedures which are to be followed from the commencement of proceedings up until the time a matter is listed for hearing.

PROCEDURE

1. Where a defendant has been bailed, summonsed, or given a notice to appear in court more than 7 days after the laying of a complaint or information (“the first return date”) the prosecution must serve a preliminary brief in compliance with Schedule 1 on the defendant or his or her legal representative on or before the first return date.
2. If a defendant appears before the Court within 7 days of the laying of a complaint or information, the Court will adjourn the matter to a date as soon as practicable to allow for the service of the preliminary brief. This adjournment shall not exceed 7 days unless the Court is satisfied that additional time should be granted for a preliminary brief to be prepared and instructions taken in relation to it.
3. On the first or subsequent return date the Court may order the prosecution and the defendant or his or her legal representative to

¹ The Practice Direction dated 4 October 2010 will continue to apply to summary proceedings elsewhere in the Northern Territory.

engage in summary case conferencing within the following 14 days or such other period of time fixed by the Court, whether or not all the information that is required to be contained in a preliminary brief has been served², for the purposes set out in schedule 2. The court will not make a summary case conferencing order unless both the prosecution and the defendant's legal representative have identified the person who has carriage of the matter.

4. If the Court makes an order for summary case conferencing the Court will also give the following directions:
 - (a) if the matter resolves into a plea of guilty within the period fixed for summary case conferencing either party is to apply to have the matter relisted for plea in accordance with Practice Direction No 22 of 2012;
 - (b) if the matter does not resolve within the summary case conferencing period :
 - (i) the prosecution shall serve on the defendant or his or her legal representative a full brief of evidence in compliance with Schedule 3 within 28 days or such other period fixed by the Court, and
 - (ii) both parties shall attend a pre-hearing mention on a date fixed by the Court.
5. If the Court does not make an order for summary case conferencing the Court will give the following directions :
 - (a) the prosecution shall serve on the defendant or his or her legal representative a full brief of evidence in compliance with Schedule 3 within the following 28 days or such other period fixed by the Court, and
 - (b) both parties shall attend a pre-hearing mention on a date fixed by the Court
6. If at the pre-hearing mention the defendant indicates an intention to plead guilty the matter is to be dealt with as soon as practicable.
7. If at the pre-hearing mention the defendant does not indicate an intention to plead guilty:
 - (a) the prosecution and the defendant or his or her legal representative shall provide the information set out in Schedule 4, and

² It is anticipated that any information that is missing from the preliminary brief will be provided to the defendant or his or her lawyer during the process of case conferencing. It is also anticipated that during the case conferencing process much of the information that would be provided in a full brief of evidence will be disclosed.

- (b) the Court will list the matter for hearing as soon as practicable.
8. Nothing in this Practice Direction is intended to preclude the Court from adjourning a matter at any stage of the proceedings either on its own motion or on the application of the prosecution or the defendant or his or her legal representative, including adjournments for the purposes of paragraphs 1.1 – 1.3 of the Practice Direction dated 4 April 2011.
 9. Nothing in this Practice Direction is intended to prevent a defendant from entering a plea of guilty or seeking to have a matter listed for hearing at any stage of the proceedings without full disclosure of the prosecution case.
 10. Defendants and their legal representatives are reminded of the provisions of section 5(1) (j) of the Sentencing Act³, and the discounts attracted by an early plea.
 11. If a defendant already has matters in the “contest mention” system the Court may deal with proceedings commenced on or after 11 March 2014 in accordance with the “contest mention” system if it considers it expedient to do so.

Schedule 1

The purpose of the preliminary brief is to provide disclosure of the prosecution case and the evidence the prosecution intends to rely upon as early as possible in the criminal proceedings.

The preliminary brief must include –

- (a) a copy of the complaint or information or charge;
- (b) a copy of any statement relevant to the charge signed by the defendant, or a record of interview of the defendant;
- (c) a copy of any CCTV footage relevant to the charge that is available at the time the preliminary brief is served;
- (d) a complete and accurate statement signed by the complainant or informant as to the evidence available to the prosecution at the time the statement is made, including –

³ This section prescribes, as a sentencing guideline, whether an offender has pleaded guilty to the offence and, if so, the stage in the proceedings at which the offender did so or indicated an intention to do so.

- (i) a statement of the alleged facts on which the complaint or information is based, including reference to the evidence available to the prosecution to support the alleged facts;
 - (ii) a description of the background to and consequences of the alleged offence, if known;
 - (iii) a summary of any statements made by the defendant concerning the alleged offence, including any confession or admission;
 - (iv) a list of the names of all persons who, at the time the statement is signed, may be called by the prosecution as witnesses at the hearing of the complaint or information, indicating whether those persons have made statements; and
 - (v) a list of any things the prosecution may tender as exhibits, indicating whether they are in the possession of the prosecution at the time the statement is signed;
- (e) any evidentiary certificate issued under any Act that is likely to be relevant to the alleged offence and is available at the preliminary brief is served;
- (f) a copy of the criminal record of the defendant that is available at the time the preliminary brief is served;
- (g) any statements made by witnesses that are available at the time the preliminary brief is served; and
- (h) any other evidence likely to be relevant to the alleged offence that is available at the time the preliminary brief is served.

Schedule 2

The purpose of summary case conferencing is to allow the parties to:

- (a) openly discuss the matter on a completely without prejudice basis;
- (b) define the issues;
- (c) identify charges that cannot be proved;
- (d) identify and provide to the defendant any information, document or thing in the possession of the prosecution that may assist the defendant to understand the evidence available to the prosecution;

- (e) discuss any further evidence that should be made available to the defence;
- (f) reach an agreement as to any facts of the case; and
- (g) use their best endeavours to resolve the matter.

Summary case conferencing will be conducted between the parties in such manner as they see fit (including conferencing by telephone, video-conferencing or email).

Schedule 3

Unless earlier disclosed to the defendant or his or her legal representative, a full brief must contain any information, document or thing on which the prosecution intends to rely at the hearing including –

- (a) a copy of any statement relevant to the charge signed by the defendant, or a record of interview of the defendant, that is in the possession of the prosecution;
- (b) a copy of any CCTV footage relevant to the charge;
- (c) a copy or statement of any other evidentiary material that is in the possession of the informant relating to a confession or admission made by the defendant relevant to the charge;
- (d) a list of the persons the prosecution intends to call as witnesses at the hearing together with a copy of each of the statements, if any, made by those persons;
- (e) a legible copy of any document which the prosecution intends to produce as evidence;
- (f) a list of any things the prosecution intends to tender as exhibits;
- (g) a clear photograph, or a clear copy of such photograph, of any proposed exhibit that cannot be described in detail in the list;
- (h) a description of any forensic procedure, examination or test that has not yet been completed and on which the prosecution intends to rely as tending to establish the guilt of the defendant;
- (i) any evidentiary certificate issued under any Act that is likely to be relevant to alleged offence;

- (j) a list of the persons (including experts) who have made statements or given information relevant to the alleged offence but who the prosecution does not intend to call as witnesses at the hearing;
- (k) a copy of every statement referred to in subparagraph (j) made by each of those persons or, if the person has not made a statement, a written summary of the substance of any evidence likely to be given by that person or a list of those statements or written summaries;
- (l) a copy of every document relevant to the alleged offence that the prosecution does not intend to tender as a an exhibit at the hearing or a list of those documents;
- (m) a list containing descriptions of any things relevant to the alleged offence that the prosecution does not intend to tender as exhibits at the hearing;
- (n) a clear photograph, or a clear copy of such photograph, of anything relevant to the alleged offence that cannot be described in detail in the list; and
- (o) a copy of records of any medical examination of the defendant, reports of any forensic procedure or forensic examination conducted on the defendant and the results of any tests carried out on behalf of the prosecution and relevant to the alleged offence but on which the prosecution does not intend to rely.

The full brief is to be signed by the person who has the conduct of the matter on behalf of the prosecution.

Schedule 4

At the pre-hearing mention both the prosecution and the defendant or his or her legal representative shall be fully conversant with the matter and inform the Court as to following:

1. which charges remain contested;
2. the number of witnesses to be called by the prosecution and the defence, and

3. any issues that may affect the efficient conduct of the hearing, including the use of electronic equipment, video conferencing and/or interpreters, applications in respect of vulnerable witnesses, the need for a voir dire, and any preliminary argument on procedural or legal issues.



John Lowndes
Chief Magistrate
17 March 2014