



PRACTICE NOTE SC CL 2

Supreme Court Common Law Division - Criminal Proceedings

Commencement

1. This Practice Note was issued on 27 April 2021 and commences on 1 May 2021.

Application

2. This Practice Note applies to criminal proceedings in the Common Law Division.

Definitions

3. None applicable.

Introduction

4. The purpose of this Practice Note is:
 - (a) to ensure that criminal proceedings are dealt with in a timely and efficient way, consistent with the parties' obligations under Chapter 3, Part 3 of the *Criminal Procedure Act 1986* (NSW); and
 - (b) to assist an accused person to take advantage of legislation which provides for a discount in sentence where an early plea of guilty is entered.

Listing for arraignment

5. Arraignments are held in Sydney on the second Friday of February, the first Friday of March to November inclusive, and the second Friday of December. There is no arraignment day in January.
6. When committing an accused person for trial or sentence hearing to the Supreme Court, the magistrate will direct the person to appear at the next arraignment day, not less than four weeks after the date of the committal.
7. Ex-officio criminal prosecutions will be listed by the Registry in the same way.

Arraignment procedures

8. All accused persons who are in custody will appear by audio visual link (AVL) pursuant to s 5BB of the *Evidence (Audio and Audio Visual Links) Act 1998* (NSW). Accused persons who are on bail are excused from personal attendance and should appear instead by way of AVL. All practitioners should appear by way of AVL.
9. Appearance in person by practitioners or accused persons may be desirable in some circumstances. Application to appear in person should be made by way of email to the Associate to the Arraignments List judge at least one week in advance of the arraignment day. The judge may also direct there be physical appearances where considered necessary.
10. In advance of the arraignment day the Director of Public Prosecutions shall, unless otherwise ordered, file an indictment with the Court and serve copies of the indictment upon each accused person or the person's legal representative.
11. The Director of Public Prosecutions is also to file with the Court and serve upon each accused person or the person's legal representative:
 - (a) in the case of State matters, an affidavit by the law enforcement officer in charge of the case confirming the compliance by the relevant investigating agency as at arraignment with its duty of disclosure as set out in s 15A of the *Director of Public Prosecutions Act 1986* (NSW); or
 - (b) in the case of Commonwealth matters, an affidavit by an appropriate officer of the relevant investigating agency confirming compliance as at the date of arraignment with its duty of disclosure as set out in the Commonwealth Director of Public Prosecutions' "Statement on Disclosure".
12. The court expects matters to be ready to proceed at the arraignment so that a trial date can be given. Legal representatives are expected to identify the issues for trial and estimate the likely hearing time required. The arraignment judge may give directions and rulings as to the conduct of the trial.
13. Unless the court makes a specific direction pursuant to ss 141(3) or 148 of the *Criminal Procedure Act*, the standard directions that are to apply at the arraignment are:
 - (a) The prosecution is to file and serve on the accused notice of the prosecution case in accordance with s 142 no later than 14 weeks before the trial date. 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 is criminally responsible in respect to the alleged offence(s). Where the prosecution intends to rely upon post-offence conduct of the accused for an inference of consciousness of guilt, the notice is to include a statement to that effect which includes a precise identification of the conduct relied upon;

- (b) The defence is to file and serve on the prosecution a defence response in accordance with s 143 no later than 11 weeks before the trial date;
 - (c) The prosecution is to file and serve on the accused a prosecution response to the defence response in accordance with s 144 no later than 9 weeks before the trial date; and
 - (d) The defence is to provide notice of alibi within the period prescribed in s 150 of the *Criminal Procedure Act*.
14. In the event of non-compliance by a party 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 of its own motion or at the request of either party.

Entering a plea

15. Upon presentment of the indictment, the accused person will be arraigned by the Court and shall enter his or her plea. The Court may, if the indictment is not presented on the day fixed for the arraignment of the accused person, fix a further date for the arraignment of the accused and the presentment of the indictment.

Trial

16. By the date set for the trial, the matter must be ready to proceed. If there is an unavoidable problem or change to the conduct or length of the trial, legal practitioners are to notify the Criminal Registry or the Criminal List judge at the earliest possible stage to avoid inconvenience to jurors and witnesses.
17. An application to vacate a trial date:
- (a) is to be made by way of Notice of Motion with a supporting affidavit, setting out the grounds for the application;
 - (b) shall be made to the Criminal List judge, unless the application is made within two weeks of the date fixed for trial; and
 - (c) may be made to the Criminal List judge or to the trial judge, if made within two weeks of the date fixed for trial.

Direction under s 128 of the *Criminal Procedure Act 1986* (NSW)

18. Prosecuting authorities are directed to present all indictments in the District Court, rather than in the Supreme Court, except for indictments relating to offences under any of the following sections, subdivisions, parts or categories:
- ss 12 and 19A of the *Crimes Act 1900* (NSW);
 - ss 72.3, 80.1, 80.1AA and 80.1AC of the *Criminal Code* (Cth);

- offences against s 101.1(1) of the *Criminal Code* (Cth) where death, injury or property damage results;
 - s 8 of the *Crimes (Internationally Protected Persons) Act 1976* (Cth) where the maximum penalty for the offence is imprisonment for life; and
 - any other offence for which the maximum penalty is life imprisonment and where either the Director of Public Prosecutions (Cth) or the Director of Public Prosecutions of NSW has formed the opinion that the imposition of a life sentence may be appropriate.
19. Subject to the usual practice as to joinder of counts, an indictment charging an offence under any of the above sections may also contain counts charging other offences against the same accused.
20. Applications for exemption under s 128(2) of the *Criminal Procedure Act* should be made by letter addressed to the Chief Justice setting out a brief description of the nature of the case and identifying the basis upon which it is claimed that it is an appropriate case to be tried in the Supreme Court. Matters that involve particular difficulty, that are test cases or in which there is particular public significance, will ordinarily be given an exemption. Exemption applications must be accompanied by:
- (a) a copy of the charges that are likely to be the subject of the proposed committal order or which have been committed for trial or sentence in the District Court;
 - (b) either a draft of the indictment or indictments proposed to be presented at arraignment in the event of a committal order being made, or following a committal order, or a document containing a draft of the charges proposed to be included in such an indictment or indictments or an ex-officio indictment;
 - (c) details of any anticipated pre-trial applications; and
 - (d) an estimate as to the length of the trial(s) or sentence hearing.
21. Exemption applications must be served on the legal representative for the accused person, or if unrepresented, upon the accused person, within seven (7) days (unless otherwise ordered) after their submission to the Court.
22. The accused person or his/her legal representative must provide any response to the matters set out in an exemption application by letter addressed to the Chief Justice within 14 days (unless otherwise ordered) after a copy of the exemption application was served on the accused person or his/her legal representative.



T F Bathurst AC
Chief Justice of New South Wales

27 April 2021

Related information:

Crimes Act 1900 (NSW)

Criminal Procedure Act 1986 (NSW)

Crimes Act 1914 (Cth)

Crimes (Internationally Protected Persons) Act 1976 (Cth)

Criminal Code Act 1995 (Cth)

CDPP, *Statement on Disclosure in Prosecutions Conducted by the Commonwealth*, March 2017

Amendment History:

27 April 2021: This Practice Note replaces former Practice Note SC CL 2, which was issued on 21 September 2020 and commenced on 21 September 2020.

21 September 2020: This Practice Note replaces former Practice Note SC CL 2, which was issued on 15 December 2016 and commenced on 15 December 2016.

15 December 2016: This Practice Note replaces former Practice Note SC CL 2, which was issued on 17 December 2015 and apart from paragraph 9, commenced on 17 December 2015. Paragraph 9 took effect on 1 March 2016.

17 December 2015: This Practice Note replaces former Practice Note SC CL 2, which was issued on 29 September 2014 and commenced on 29 September 2014.

29 September 2014: This Practice Note replaces former Practice Note SC CL 2, which was issued on 27 June 2014 and commenced on 1 July 2014.

27 June 2014: This Practice Note replaces former Practice Note SC CL 2, which was issued on 20 September 2013 and commenced on 1 October 2013.

20 September 2013: This Practice Note replaces former Practice Note SC CL 2, which was issued on 13 August 2010 and commenced on 16 August 2010.

13 August 2010: This Practice Note replaces former Practice Note SC CL 2, which was issued and commenced on 21 December 2009.

21 December 2009: This Practice Note replaced former Practice Note SC CL 2, which was issued and commenced on 17 August 2005.

17 August 2005: Practice Note SC CL 2 was issued and commenced on 17 August 2005. It replaced former Practice Note Nos. 57, 98 and 112.

