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CHIEF JUDGE ADVOCATE

Australian Defence Force

BH284316

PRACTICE NOTE 5 — CASE MANAGEMENT MEETINGS AND PRE-TRIAL HEARINGS (VERSION 4)

1. **Purpose.** This Practice Note sets out the practice for case management meetings (CMM) and pre-trial hearings (PTH).
2. **Commencement.** This Practice Note commences forthwith.
3. **Conduct.** Counsel are to attend each CMM and PTH prepared to address all relevant matters.

Scheduling a CMM

4. **When.** A CMM may be scheduled:
 - a. by the Registrar of Military Justice (RMJ)
 - b. at the request of either counsel
 - c. at any time but generally prior to any PTH.
5. **Format.** A CMM is an administrative meeting between the RMJ and counsel and generally undertaken by telephone. The defendant is welcome, but not required, to attend. The CMM will follow the CMM checklist and is focussed on resolving administrative matters and setting timeframes for the resolution of matters in issue at a PTH.
6. The RMJ can make orders for the filing of submissions and responses to be determined at a PTH and the timing for the exchange of necessary information between the parties.
7. Matters requiring the RMJ's attention, such as locations, timings and Service related issues can be raised at a CMM.

Scheduling a PTH

8. **When.** A PTH may be scheduled:
 - a. at the request of either counsel
 - b. for a return of summons to produce documents that are required prior to the hearing date
 - c. for general case management, current RMJ practice is to set a PTH in each matter approximately five weeks after the referral.

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9. **Format.** A PTH may be either ‘in person’ (for both contested and uncontested rulings) or by telephone (only for uncontested rulings and general case management). The publication of the listing of a PTH conducted ‘in person’ will be managed in accordance with Practice Note 1 – *Publication (extant version)*. A PTH will always be open to the public in accordance with section 140 of the DFDA, unless an order is made to the contrary by the tribunal under section 140(2) of the DFDA.
- a. **Appearance by counsel.** For an ‘in person’ PTH, counsel may request to appear by way of audio visual link (AVL) from a Defence site remote from the hearing room. Any such request should be raised with the JA or DFM via the Registry at the earliest opportunity.
- b. **Attendance by accused.** Section 139(1) of the DFDA provides that hearings by Superior service tribunals shall, subject to the service tribunal ordering the accused’s removal due to disorderly behaviour, be held in the presence of the accused. Accordingly, an accused is required to attend a PTH.
- (1) Where the PTH is being held in person, the accused will be required to attend in person — noting this may also include attending via audio visual link if approval has been granted.
- (2) Where the PTH is being held by telephone, the accused can either be present with their counsel or be on a separate line. If the accused is on a separate line it is the responsibility of defence counsel to ensure the accused is available and has the dial in instructions.
10. To assist the JA or DFM and counsel, the Registry maintains and provides a PTH checklist, which is to be used at PTHs.
11. **Arraignment.** The parties should be prepared to assist the JA/DFM regarding the timing of arraignment of the accused.
12. **Requesting a PTH.** Counsel should notify the RMJ of the need for a PTH where, among other things there will be:
- a. an application or objection under section 141(1)-(4) of the DFDA
- b. an application by either party under section 148A of the DFDA to call a witness is contested
- c. an application under the *Evidence (Miscellaneous Provisions) Act 1991* (ACT) is contested
- d. a return of summons for the production of documents prior to the hearing, or an application for leave to issue a summons is required. See Practice Note 3 – *Summonses (extant version)*.

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13. **Scheduled PTH.** If requested by the JA or DFM, the RMJ will schedule a PTH (usually five weeks after receiving the referral from the Director of Military Prosecutions) to deal with, among other things:

- a. indication of the intended plea(s)
- b. whether either party requires the other side to call a witness (eg, an investigating officer or a character witness at sentencing)
- c. whether any witness to be called can appear by audio visual link
- d. whether there may be any classified evidence (testimony or exhibits) or other security issues
- e. confirmation of the expected duration of the proceedings, inclusive of an allowance for DFDA, Part IV action
- f. The format of the PTH shall follow the checklist that will be provided by the Registry.

14. **Defence witnesses.** The Defence remain under no obligation to notify the Prosecution or JA or DFM if they intend to call any witnesses; and if so, whom. However, where the Defence are in a position to foreshadow that there are witnesses who might conveniently be called by audio visual link (eg, a character witness if the matter proceeds to sentencing), a PTH is an opportunity to obtain a preliminary indication from the JA (noting the authority to make the order vests in the President of the CM) or a ruling from the DFM. The JA may give a preliminary indication in relation to witnesses either by name or by class of evidence (ie, the purpose for which the witness might be called) or a DFM may make such order as appropriate.

15. **Privilege against self incrimination.** The parties should anticipate the likelihood of a witness making a claim of privilege against self incrimination and be in a position to make relevant submissions on inter alia whether it is likely a witness will require separate legal advice.

Outline of submissions

16. For a contested PTH, a written outline of submissions regarding the intended applications and/or objections is required in all cases.

17. **Content.** The outline should:

- a. contain a brief outline of the nature of the application and/or objection
- b. include the relevant legal authority (legislation or cases)¹

¹ See Practice Note 2 — *Filing of material, and tendering and handing up documents (extant version)*, [11]–[14].

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- c. if required, and with consent of the other party, contain case exhibits or evidence to be relied upon (eg the evidence asserted to support a Tendency and intended to be tendered on the application) annexed to the outline
 - d. include the name, and if applicable rank and PMKeyS, of any witness to be called at the PTH — if defence counsel wish the prosecution to call a witness at the PTH, the outline should state so.
18. **Format.** The outline should be lodged in the following type of format: .doc or docx or .pdf.
19. **Date of lodgement.** Unless directed otherwise by the RMJ at a CMM, JA or DFM, a written outline of submissions is required to be filed and served as follows:
- a. outline of applications and/or objections by either party — **ten** working days before the PTH date
 - b. outline in reply — **five** working days before the PTH date.
20. **Filing and serving.** The outline should be filed via email to the Registry at registrarof.militaryjustice@defence.gov.au and served on each party in accordance with the guidance outlined in the Practice Note 2 – *Filing of material, and tendering and handing up documents (extant version)*.

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