

Special Call-overs in the District Court

The objective of a special call-over is to identify guilty pleas and no-bills in advance of the date that the matter has been set down for trial. The need for special call-overs arises because of the significant backlog of trials throughout the state. It is well-known that many trials resolve into guilty pleas, no-bills or combinations of both, when counsel appearing on both sides study their briefs closely, which often does not occur until days before the trial is set to commence.

Because of the delays from the trial backlog, it is sensible for all outstanding matters to be called over by the court and, beforehand, examined by the defence and DPP with the same degree of per-trial attention, so that accused, victims and witnesses are not needlessly delayed in those cases which would inevitably resolve into a short matter in any event.

The mechanism is that the District Court registry notifies the solicitor on the record of the date of a special call-over, some months before-hand. The call-over is set down for a full week. It is expected that solicitors, ideally with the assistance of counsel, make any appropriate submissions to the DPP in writing, with a suitable degree of detail for the DPP to quickly consider them. This should entail relevant references to statements, committal transcript and exhibits as well as relevant additional material such as reports.

Any matters that are identified in advance as pleas of guilty following negotiations, should be the subject of notification to the court. The call-over judge will be available for sentence hearings arising from the call-over, and will finalise those that are part-heard at a later time. If there is an exceptional circumstance in a matter, such as the accused being on bail working interstate so that their position would be jeopardised by attending, and as well there is no prospect at all of the matter being resolved without a trial, the solicitor should contact the court and the DPP to discuss how that matter should be dealt with in the special call-over.

Solicitors with a grant of aid will be notified by Legal Aid NSW as well. The solicitor will be required to instruct the Public Defenders to appear on the call-over, if private counsel has not already been briefed in the matter. In such a circumstance, the solicitor will be required to immediately contact the Public Defenders clerk; two or three Public Defenders are made available for each special call-over. If the matter is not resolved at the special call-over, the brief will be returned to the solicitor for re-briefing in the usual way.

The work-load for the Public Defenders is onerous. In a recent special call-over in Newcastle in July 2017, two Public Defenders assessed over a hundred briefs, resolving thirty-four trials. They assisted private counsel with another sixteen trials that became short matters.

For this reason, it is critical that Public Defenders are briefed with all relevant material no later than five weeks before the special call-over date. This allows the Public Defenders sufficient time to read the brief, discuss the matter with their solicitor, obtain instructions, confer with the client on the response from the DPP and, if appropriate, prepare any sentence hearing. As well, this timetable provides the client some time to consider their situation and the DPP time to consult with police and victims in a timely manner. It is unreasonable on the Public Defenders, solicitors and their clients, and unacceptable, to be negotiating in the week of the special call-over itself while conducting sentence hearings, in relation to so many matters.

If you have any queries about special call-overs, you are invited to contact the Public Defenders Clerk, Renee Spinks, on 9268 3111.

Mark Ierace SC
Senior Public Defender
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