



## **NEW SOUTH WALES**

**1 July 2020**

### **CHIEF MAGISTRATE'S MEMORANDUM NO. 13 COVID-19 ARRANGEMENTS**

**This Memorandum replaces all previously issued COVID-19 memoranda (1-12)**

After an extensive period of reorganisation of the listing arrangements in the Local Court to meet the realities of the COVID-19 effect on society and the various public health directions the time has arrived to take what is hopefully the final step towards normalisation of listing arrangements in the Local Court. Whilst the Local Court has continued to sit on a daily basis during the last 4 months it recognizes that the impact of social distancing requirements and concerns within the community has had an economic impact within the legal system particularly in relation to the engagement of legal practitioners. The patience and forbearance of all who have had to act within the period of restrictions to the operations of the Court is acknowledged with gratitude.

It is important to appreciate that despite an ongoing relaxation of restrictions the operations of the Court will still need to take into account the potential risk to those engaged in appearances before it and maintain the commitment to mitigating risks of infection. Against that background and its realities however it is the view of the Court that the time has come to return to normality in operations as best it can be achieved.

Initial steps towards relisting previously abandoned defended hearings involving firstly persons in custody; then part heard and domestic violence related proceedings and lastly the remaining general matters has been proceeding as well as can be expected. It is now time to address the remaining areas of operation of the Local Court.

**Set out hereunder are the arrangements that will take effect on and from 3<sup>rd</sup> August 2020.**

All current Practice Notes (as distinguished from COVID-19 memoranda) will apply to their intended extent. These Practice Notes include

- Consolidated Crim Practice Note 1
- Consolidated Committal Practice Notes 1 and 2
- Domestic Violence Practice Note 2 of 2012
- Civil Claims Practice Note Civ 1 and
- Online Court 1 of 2015

### **Appearances**

In part, arrangements put in place for the appearance of legal practitioners and parties will remain in place during the period of requirement for social distancing. Nothing in what follows prevents the physical appearance of a legal practitioner or a party to proceedings if they so wish.

1. In line with current arrangements to mitigate risk to persons in custody appearances from custody in interlocutory phases or bail proceedings are to be by Audio or Audio Visual Link. This may require a change of venue to a hub court with access to AVL facilities from time to time for case management as has been the arrangement for many years.
2. Wherever possible defended hearings involving persons in custody should be conducted by Audio or Audio Visual Link. Due to the ongoing limitations on access to such technology the arrangements set out in paragraph [7] of COVID-19 memorandum No 11 will continue to apply.
3. Subject to the effective application and intent of the Consolidated Crim Practice Note 1 a legal representative or unrepresented defendant may advise the court by email or in writing of a plea of guilty or a plea of not guilty. This will be taken to be a physical appearance. Where the defendant or legal practitioner communicates with the court in writing but not by email then wherever possible, an email address is to be provided at that time so that there is no delay in advising the author of the decision made by the Court. Legal practitioners are reminded that Section 182 of the Criminal Procedure Act 1986 continues to apply.
4. Where there is no communication with the court by a defendant or legal representative and it is in the interests of justice to do so the Court is to finalise the matter pursuant to Section 196 of the Criminal Procedure Act 1986.

## Defended Hearings Procedure

5. Where a plea of not guilty is entered the Court will make orders for service of a brief of evidence. At the return date for reply to service of the brief of evidence the court is to be provided with a Notice of Listing and an estimated length for the hearing. This is to occur irrespective of whether appearance at this stage of the proceedings is by electronic means or in person.
6. If there is a failure to serve a brief and no reasonable justification is given for such failure the court will list the matter for hearing. Defendants and/or their legal representatives are to approach the return date on the basis that unless it is in the interests of justice to do so the court will not adjourn a matter and extend the brief service orders.

## Matters in which a brief of evidence is not required

7. It should be noted that not all matters are subject to mandatory brief service orders (see paragraph 24 of Criminal Procedure Regulation 2017 No 437). Where no brief order is mandated the matter will be allocated a hearing date on entry of the plea of not guilty.
8. Where appearance in matters of this nature is by email or in writing the author is to provide information as to the estimated length of the hearing and any unavailable dates. If such information is not forthcoming the Court will nonetheless allocate a date for the hearing of the matter.
9. The court will not adjourn proceedings for the purpose of representations being made to the prosecution. If that course is contemplated it is to be done during the period between the return date to fix a hearing date and the subsequent hearing date allocated.

## Physical appearance

10. If a matter is not progressing satisfactorily or otherwise in accordance with the relevant Practice Note the court will require the attendance of the defendant or their legal representative in person.
11. Where a matter is before the court for finalisation and the defendant is legally represented the Court expects that both the legal practitioner and their client appear in person unless the offence is a fine only offence.
12. In relation to Domestic Violence application proceedings the attendance of the person in need of protection in any application brought by Police is **not required** at an interlocutory stage of proceedings but are free to attend if they so wish. Where such proceedings are to be defended police are expected to advise the court of the availability of the person in need of protection at the time the Court is fixing the matter for hearing.

13. Where the proceedings before the Court are Committal Proceedings and the defendant is legally represented physical appearance of the legal practitioner and the defendant is required when entering pleas at committal for trial or sentence in all strictly indictable offences or offences in which an election has been made to proceed before the District Court.

**1. Civil proceedings**

14. Notices of Motion may continue to be dealt with via teleconference where facilities allow for this to occur.

15. In Small Claims matters parties may continue to appear via telephone if facilities allow.

  
Judge Graeme Henson AM  
Chief Magistrate

