



## NEW SOUTH WALES

### CHIEF MAGISTRATE'S MEMORANDUM

24 March 2020

#### LISTING ADJUSTMENTS DURING COVID-19 PANDEMIC (No. 5)

In the changing environment brought about by evolving decisions within the Federal and State Government areas of responsibility the Local Court must necessarily adapt its arrangements to support the policy decisions taken in pursuit of limiting the impact of the pandemic. The following are the arrangements determined to address the current situation. **They will take effect from Monday 30 March 2020.** Previous arrangements are superseded. The following arrangements only apply to proceedings before the Local Court (which includes the coronial jurisdiction). It is expected the President of the Children's Court will issue a separate statement relating to the operations of that Court.

#### **Criminal Jurisdiction**

1. The decision to neither hear nor list any defended hearings until a review can be undertaken at the end of April 2020 is to remain in force. It is likely that these arrangements will be extended.
2. Police have been asked to list non bail matters such as Field Court Attendance notices or Future Court attendance notices 3 months into the future. It is not anticipated that the court will deal with these matters other than by way of adjournment unless they are relatively straight forward and amenable to disposition on the first return date.
3. Where a matter is listed and there is no appearance the matter will be adjourned for not less than 1 month. The Court will notify the person affected that if they do not appear on the next occasion or advise the court they wish the proceedings to be deferred, then the court will deal with the matter in their absence.

4. Where a matter before the Court appears to be a matter in which a custodial outcome is likely it will not proceed to sentence. Magistrates have been requested to defer the sentencing proceedings for not less than 8 weeks when the situation can be reviewed in light of current events.
5. Where a defendant is legally represented the lawyer may appear by way of email. A physical appearance will not be required. This includes a matter in which it appears a sentence of imprisonment is likely. In such matters the legal representative is requested to seek an adjournment for not less than 8 weeks. Such a request will be acceptable if provided to the Court in electronic form.

### **Custody matters**

6. All appearances by persons in custody are to be by Audio Visual Link (AVL). Corrective Services have been advised accordingly and requested not to bring any detained person before any court in person.
7. Regrettably, it will not be feasible to hear defended hearings where the defendant is in custody. These matters will require re-listing. **At such time the Court will entertain an application for release recognizing that a lengthy period of continuing custody in the Local Court may result in a period of incarceration that would exceed the ultimate penalty that would have otherwise applied should the defendant have been found guilty at an earlier time.** Matters in this category should be adjourned for not less than 8 weeks for mention only. Where the defendant is legally represented appearance may be by email.
8. From Monday 30 March 2020 the number of Courts dealing with persons in custody who are bail refused by police is to be centralised to certain city courts and regional courts. Arrangements with Police will result in persons refused bail appearing from certain police station by AVL to particular courts. In the Sydney Greater Metropolitan Area defendants will appear by AVL to Parramatta, Penrith, Campbelltown, Liverpool, or Central Court depending on the police station facilitating the appearance.
9. Matters in which bail is granted are to be adjourned to the Local Court where they would otherwise have been brought. Where appropriate brief orders may be made. Magistrates should excuse the defendant from appearing on the next occasion if they are legally represented. The legal representative may appear on the next occasion through the use of email setting out what orders are sought from the court.
10. Where a centralised court refuses bail the proceedings are to be adjourned to the court before which the matter would ordinarily appear. Subsequent appearances are to be by AVL. Where appropriate brief orders may be made. Legal practitioners may appear in the same manner set out in paragraph 8.

11. First appearances from a police station or correctional centre in the country are to be before the Local Courts at Wagga Wagga, Dubbo, Tamworth, Lismore, Port Macquarie, Newcastle and Wollongong irrespective of the court before which the proceedings would otherwise be brought. Ongoing supervision of matters involving the detention of a person remaining in custody after first appearance are to be case managed within the COVID-19 pandemic environment at the hub court.
12. Not every country court has access to AVL facilities. For this reason matters brought before a hub court and which there is a refusal of bail are to remain at the hub court and be case managed by AVL. Any application for a review of bail, including by or on behalf of persons in custody are to be lodged at the Hub Court **in writing or by email**. **Unless the application** is urgent, not less than 3 days' notice is to be given setting out the grounds on which the application is being made and the changes sought. No application which does not comply with the minimum 3 day period of notice period will be dealt with unless the change is by consent. All practitioners are reminded that the Registrar of a Court may deal with consent alterations to bail conditions.
13. **All applications for a review of bail** in respect of the Sydney Greater Metropolitan area are to be lodged with the Registrar at the Downing Centre irrespective of the Court at which they previously appeared. Wherever possible the application for review of bail is to be lodged **in writing or by email**. The prosecuting authority is to be given not less than 3 days' notice of the application, the grounds upon which it is being made and the changes contemplated. No application which does not comply with the minimum 3 day notice period will be dealt with unless the change is by consent.

#### **Early Appropriate Guilty Plea matters**

14. Contrary to the current Practice Note proceedings commenced as committal proceedings are to be adjourned to a hub court at which the DPP and Legal Aid appear irrespective of whether the accused is bail refused or released to bail.
15. Where an accused is legally represented their physical attendance, if on bail, is not required until the matter is before the Court for committal for Trial or Sentence. Where a party is unable to meet the purpose for which the matter is adjourned, whether for plea or committal for trial they are to notify the Court and the legal representative of the other side by email not less than 72hours prior to the date fixed for committal setting out the reasons why the matter is to be adjourned. The court will advise both parties by email of the new date.
16. If the matter is to be finalised in the Local Court and the defendant is legally represented then the defendant need not be physically present provided full instructions have been given to their legal representative. This advice may be communicated to the court and the DPP by email. Where that takes place the physical appearance by the legal practitioner will not be required. The court will consider finalisation of the matter in the context of the arrangements for sentencing proceedings set out immediately hereunder.

## Sentencing proceedings in the Local Court

17. The Local Court will accept a plea and sentencing submissions from a legally represented defendant that are in writing or by email. The physical appearance by the defendant or their legal representative will not be required unless the Court determines that it is necessary. This should only arise in matters where the court considers a conditional release order or community corrections order. Where that is the view of the Magistrate the proceedings will be adjourned for either a physical appearance by the defendant or an appearance by the defendant through AVL. Where it is intended to utilise AVL the defendant or their legal representative is make the appropriate arrangement.
18. Where the Court considers a sentence of imprisonment is the appropriate outcome, whether by full time detention or by an Intensive Correction Order the Court will adjourn the proceedings for a period of 8 weeks. On that date a physical appearance by the defendant will **not be necessary**. Subject to the situation regarding the pandemic the matter will be listed for sentence at a later date. If the current situation remains at that time, the proceedings should be adjourned for a further 8 weeks. In this situation the legal representative may appear by email.
19. Where the defendant is in custody bail refused sentencing proceedings may take place by AVL from within a correctional centre. Where possible the legal representative may also appear by AVL
20. In all proceedings involving a plea of guilty by email or in writing the submissions made on behalf of the defendant are not to be any longer than 3 A4 size pages. Where there is reference to an authority in the submissions the reference is sufficient. A copy of the relevant case will not be required however the attention of the Court is to be drawn to the relevant parts of the judgment upon which submissions rely.
21. The court acknowledges the difficulties in relation to engagement in the process preparatory to a Section 32 application under the Mental Health (Forensic Provisions) legislation created by the shutdown. In such matters appearance by the legal representative can by email flagging the likelihood of such an application. In this situation the court should be asked to adjourn the proceedings for at least 8 weeks.

## Urgent applications

22. The Court will continue to accept proceedings that are urgent. However, where that is thought to be the position the court should be contacted by email in the first instance outlining the nature of the application and why it is urgent.  
If the magistrate at the Court to which such application is intended to be made considers there is sufficient basis for urgency then advice to that effect together with the arrangements to be made to deal with the application will be provided by email.

## Defended Hearings

23. In the current environment it will not be appropriate to allocate hearing dates where a plea of not guilty is entered. In those matters the court will adjourn proceedings for a period of THREE MONTHS at which time the position in relation to the impact of the pandemic will be reassessed. It will not be necessary for a defendant or their legal representative to appear in person. Appearance will be accepted in writing or by email.



Judge Graeme Henson AM  
Chief Magistrate

