

Resumption of Jury Trials and in person appearances in Judge Alone Trials

1. This Practice Note revises District Court Criminal Practice Note 23, which commenced on 13 October 2021.

Commencement

2. This Practice Note commences on 21 October 2021.

Review

3. In view of the further easing of Public Health Orders, this Practice Note will be reviewed in mid-November 2021 or as otherwise may be necessary.

Introduction

4. The commencement of new jury trials at the Court venues identified in paragraph 11 were temporarily suspended due to COVID-19. With the easing of restrictions under Public Health Orders and increased vaccination rates, the temporary suspension of jury trials at these venues will be lifted on 25 October 2021.
5. The steps that the Court will take to enable the return of jury trials in a way that is in the interests of the health and wellbeing of all court participants will build on the measures implemented last year which included the enlargement of jury rooms, the hiring of external facilities for jury deliberation and empanelment, 4m² physical distancing, juries in the round, individualised meals for jurors and mandatory face mask wearing for all court participants.
6. The additional steps that the Court will take to facilitate the safe resumption of jury trials include:
 - a. all jurors being vaccinated against COVID-19; and
 - b. all court participants undergoing rapid antigen screening (RAS) at least twice-weekly or as otherwise required by the Sheriff of NSW.
7. In person appearances will only be allowed for new jury trials from 25 October 2021. All other matters in the Court will continue to be conducted by use of the virtual courtroom, subject to any leave granted by application to the trial Judge in judge alone trials. An application for leave must be made in accordance with paragraphs 54 and 55 below.

The Expectation of the Court

8. To enable the safe resumption of jury trials, the Court strongly encourages legal practitioners to be vaccinated. The Court encourages the Directors of Public Prosecutions (State and Commonwealth), the Senior Public Defender, and Legal Aid NSW to ensure that counsel and instructing solicitors are vaccinated.
9. The Court encourages the NSW Bar Association and the Law Society of New South Wales to support the vaccination of their members who appear in the Court.

Definitions

10. In this Practice Note:

“counsel” includes a solicitor advocate.

“Court” means the District Court of NSW sitting at the court venues identified in paragraph 11. Court venues may be added pursuant to paragraph 12.

“court participants” includes judges, associates, counsel representing the Crown (both State and Commonwealth), counsel representing an accused person, solicitors, an accused person, Sheriff’s officers, Corrective Services Officers, court officers, witnesses who appear in person (not by audio-visual link), interpreters, RSB court reporters, sound reporters and third party contractors, ODPP Witness Assistance Officers, other persons providing witness support and jurors.

“List Judge” includes the circuit Judge for a circuit sittings.

“Readiness Hearing” means a hearing to ascertain the readiness of the parties to proceed on the allocated trial date.

“pre-trial callover” includes a pre-trial callover conducted by a circuit Judge.

“vaccinated” means that a person:

- a. has either completed a two-dose schedule of Pfizer Australia Pty Ltd, AstraZeneca Pty Ltd or Moderna Australia Pty Ltd, or received a single dose of Janssen-Cilag Pty Ltd; and
- b. at least 14 days has elapsed since completing their vaccination schedule.

Application

11. This Practice Note applies to the resumption of jury trials at:

- a. The Downing Centre;
- b. John Maddison Tower;

- c. Campbelltown;
- d. Dubbo;
- e. Gosford;
- f. Katoomba;
- g. Newcastle;
- h. Nowra;
- i. Parramatta;
- j. Penrith;
- k. Wollongong; and
- l. Queanbeyan.

12. Risk assessments will be conducted by the Sheriff of NSW and the application of this Practice Note may be extended to other Court venues.

Readiness Hearings

13. This Practice Note supplements District Court Criminal [Practice Notes 18 and 19](#).
14. The parties must strictly comply with case management orders made at Readiness Hearings.

Jury Panels

15. The Sheriff of NSW will ensure that all members of the jury panels for trials in the Court are vaccinated, consent to undergoing RAS as required and have undergone RAS.

Pre-Trial Callovers

16. This Practice Note emphasises the importance of pre-trial callovers. For trials listed for hearing at the Downing Centre, a pre-trial callover is heard by the List Judge in Court 3.1 on the Thursday the week before the trial date. In other Courts, the pre-trial callover is heard at the time directed by the Senior Judge.

Obligation to Ensure Accuracy

17. The party calling a witness is obliged to ensure that the information provided to the Court in either Forms A, B or C is accurate. When a witness is stated to be vaccinated, the party calling the witness must sight his or her COVID-19 certificate provided by the Australian Government before the relevant form is completed.

Vaccination Status

18. The Court acknowledges that any court participant has the right to decline to provide his or her vaccination status.
19. The consequences of declining to provide a court participant's vaccination status may vary and will depend upon whether the court participant consents to RAS (see paragraphs 23-55 below).
20. The provision of vaccination status will assist the Court to manage the risk of COVID-19 and facilitate the safety of all court participants under the *Court Security Act 2005* (NSW), the *Work Health and Safety Act 2011* (NSW) and NSW Public Health Orders.
21. The trial Judge will direct that Forms A to G hereof are to be destroyed at the end of the trial.
22. The Court also brings to the attention of court participants the Department of Communities and Justice's "Collection Notice Health Records DC Trials" published on the Court's [website](#).

Prior to the Pre-Trial Callover

Prosecution Witnesses

23. The Crown is to file a list of witnesses that the Crown intends to call at trial, no later than two days prior to the pre-trial callover. A list of witnesses with their vaccination status, preferred mode of attendance, and whether they consent to RAS should be filed by Form A annexed. This form may be signed by the instructing solicitor.
24. Where a Crown witness declines to provide their vaccination status or evidence of such, or does not consent to RAS, an application may be made pursuant to s 5B(1) of the *Evidence (Audio and Audio Visual Links) Act 1998* (NSW) (the Act) seeking a direction that the witness give evidence to the Court by audio link or audio-visual link from any place within or outside New South Wales, including a place outside Australia, other than the court room in which the trial is proceeding.
25. Such application is to be made and determined by the trial Judge at the commencement of the trial and before a jury is empanelled.
26. Alternatively, pursuant to s 5B(1) of the Act, the Court, on its own motion, may direct that a witness give evidence to the Court by audio link or audio-visual link from any place within or outside New South Wales, including a place outside Australia, other than the court room in which the trial is proceeding.
27. Such a direction will be made by the trial Judge at the commencement of the trial and before empanelling the jury.

Defence Expert and Alibi Witnesses

28. The Defence is to file a list of expert and/or alibi witnesses that are to be called in the trial, no later than two days prior to the pre-trial callover. A list of witnesses with their vaccination status, preferred mode of attendance, and whether they consent to RAS should be filed by Form B annexed. This form may be signed by the instructing solicitor.
29. Where a Defence expert and/or alibi witness declines to provide their vaccination status or evidence of such, or does not consent to RAS, an application may be made pursuant to s 5B(1) of the Act seeking a direction that the witness give evidence to the Court by audio link or audio-visual link from any place within or outside New South Wales, including a place outside Australia, other than the court room in which the trial is proceeding.
30. Such application is to be made and determined by the trial Judge at the commencement of the trial and before a jury is empanelled.
31. Alternatively, pursuant to s 5B(1) of the Act, the Court, on its own motion, may direct that a witness give evidence to the Court by audio link or audio-visual link from any place within or outside New South Wales, including a place outside Australia, other than the court room in which the trial is proceeding.
32. Such a direction will be made by the trial Judge at the commencement of the trial and before empanelling the jury.

At the Pre-Trial Callover

33. Pre-trial callovers will continue to be conducted remotely until further order of the Court.
34. At the pre-trial callover, counsel appearing for the Crown and counsel appearing for the accused person must:
 - a. clearly identify all pre-trial issues;
 - b. inform the Court of all pre-trial issues that are to be determined and the estimated length of the pre-trial hearing;
 - c. provide either Forms D or E, as applicable, electronically to the List Judge or Senior Judge disclosing the vaccination status of counsel and instructing solicitors and whether counsel and instructing solicitors consent to undergo RAS, as required. This form may be signed by the instructing solicitor;
 - d. inform the Court whether there is any change to the information provided to the Court in accordance with paragraphs 23 and 28 of this

Practice Note and to provide the Court with any further information that may be required; and

- e. confirm that all proposed exhibits consented to be tendered have been prepared into a tender bundle with the appropriate number of copies ready to be brought into the Court on the trial date.

35. At the pre-trial callover, counsel appearing for the accused person must:
 - a. Where the accused person is not in custody: provide Form F electronically to the List Judge or Senior Judge disclosing the accused person's vaccination status and whether he or she consents to undergo RAS. This form may be signed by the instructing solicitor on advice received from the accused person; or
 - b. Where the accused person is in custody: provide Form G electronically to the List Judge or Senior Judge disclosing the accused person's vaccination status. This form may be signed by the instructing solicitor on advice received from the accused person.

Arrangements for RAS

Counsel and Solicitors

36. Counsel and solicitors must make themselves known to the Sheriff's officer or RAS clinic staff so that arrangements might be made for priority testing. Counsel and solicitors will be required to undergo RAS at least twice-weekly or as otherwise required by the Sheriff of NSW.

Witnesses

37. The party calling a witness whose evidence is to be given in person must arrange with the Sheriff's officer or RAS clinic staff a suitable time for the witness to undergo RAS. Parties must make allowance for RAS to be conducted within an appropriate time prior to the witness being called. Witnesses will be required to undergo RAS at least twice-weekly or as otherwise required by the Sheriff of NSW.

Accused Person not in Custody

38. An accused person who is not in custody is to be accompanied by his or her counsel or instructing solicitor for RAS at least twice-weekly or as otherwise required by the Sheriff of NSW.

Accused Person in Custody

39. The Chief Judge of the Court has made a direction in all jury trials that where an accused person is in custody, the accused person is to undergo RAS conducted

by Corrective Services NSW every two days during the trial prior to being transported to the Court.

Exemption from RAS or Vaccination

40. A court participant may be exempt from vaccination and/or testing. If a court participant is exempt, this must be in accordance with current NSW Health Public Health Orders. The period of exemption may vary under Public Health Orders.
41. A court participant may have a medical contraindication exempting him or her from being vaccinated even though he or she has not had COVID-19. A court participant who is exempt from being vaccinated but has not had COVID-19 is still required to undertake RAS.
42. Where an exemption applies, evidence is required to be carried at all times and must be presented to the Sheriff's officers and/or legal representatives complying with this Practice Note. This evidence is shown either by:
 - a. Medical Contraindication Certificate; and/or
 - b. Medical Clearance Notice.

Failure to Consent to RAS or Decline to Provide Vaccination Status

43. Where counsel and/or solicitors decline to provide their vaccination status or evidence of such, or do not consent to RAS, the trial may be vacated and relisted on a later date. In determining whether the trial will be vacated, the Court will have regard to:
 - a. the interests of justice;
 - b. whether RAS is consented to;
 - c. the vaccination status of counsel and/or solicitors who do not consent to RAS;
 - d. the public health risk posed by the COVID-19 pandemic;
 - e. the efficient use of available judicial and administrative resources;
 - f. whether counsel and/or solicitors may appear by the use of the virtual courtroom;
 - g. any relevant matter raised by a party to the proceedings; and
 - h. any other matter that the Court considers relevant.
44. Where an accused person declines to provide their vaccination status or evidence of such, or does not consent to RAS, the Court may vacate the trial or,

on its own motion or with the consent of the parties to the proceedings, may make a direction that the accused person appear before the Court by audio-visual link from any place within or outside New South Wales, subject to any bail arrangement. The parties will have an opportunity to make submissions to the Court as to whether such a direction should be made. In making such a determination, the Court will have regard to:

- a. the interests of justice;
- b. the accused person's vaccination status, where provided;
- c. whether RAS is consented to in respect of an accused person who is not in custody;
- d. ss 22C(6) and 22C(7) of the Act in respect of an accused person who is not in custody;
- e. ss 5BA(6) to (8) and 5BC of the Act in respect of an accused person who is in custody;
- f. the public health risk posed by the COVID-19 pandemic when determining the interests of justice in s 5BA(6) of the Act concerning an accused person in custody; and
- g. any other matter that the Court considers relevant.

Empanelment of Juries

45. To enhance COVID-19 safety, the empanelment of juries may be staggered and empanelment times allocated by the List Judge or Senior Judge.
46. The jury will not be empanelled until all pre-trial issues have been determined.
47. The trial Judge is to inform the jury manager of the relevant Court when all pre-trial issues are determined.

Trial

48. At trial, face mask wearing is mandatory for all court participants. This requirement is waived:
 - a. when a court participant is addressing the Court or giving evidence;
 - b. when any witness or court participant is required to remove his or her face mask for purposes of in-court identification and for purposes of briefly allowing the jury to see the witness's or court participant's face by way of introducing the person to the jury;
 - c. where a court participant is unable to wear a face mask for medical reasons which must be established by a medical certificate; or

d. where there is a reason that the Court considers relevant.

49. With respect to any witness/es to be called in the Defence case, other than witnesses required to be disclosed at the pre-trial callover pursuant to paragraph 28, the Defence is to notify the Court of their vaccination status, preferred mode of attendance, and whether they consent to RAS after the close of the Crown case and prior to the witness being called during the trial. This information should be handed to the trial Judge in Form C annexed. This form may be signed by the instructing solicitor.
50. Where a Defence witness does not consent to RAS, an application may be made pursuant to s 5B(1) of the Act seeking a direction that the witness give evidence to the Court by audio link or audio-visual link from any place within or outside New South Wales, including a place outside Australia, other than the court room in which the trial is proceeding.
51. Alternatively, pursuant to s 5B(1) of the Act, the Court, on its own motion, may direct that a witness give evidence to the Court by audio link or audio-visual link from any place within or outside New South Wales, including a place outside Australia, other than the court room in which the trial is proceeding.

Accused Person who is Self-Represented in Jury Trials

52. Where an accused person is self-represented, he or she should endeavour to comply with the provisions of this Practice Note.
53. Where a self-represented accused person is able to satisfy the trial Judge or List Judge that he or she is vaccinated and consents to RAS, the self-represented accused person should be permitted to appear in person. Paragraph 44 otherwise applies.

Applications for Leave – Judge Alone Trials

54. Leave will not be granted to any person to attend the Court in person unless the trial Judge is satisfied that he or she is vaccinated.
55. Solicitors for the parties must enquire as to the vaccination status of all their proposed court participants and provide that information to the trial Judge. When a witness is stated to be vaccinated, the obligation to ensure the accuracy of that statement applies in accordance with paragraph 17 above.

Open Justice

56. The Court remains committed to the principles of open justice. However, the risk of COVID-19 requires the Court to limit the persons who may attend a trial in person.

57. Members of the public may not attend court in person. Should a member of the public wish to view a trial, attendance will be permitted by use of the virtual courtroom. The link to the virtual courtroom may be provided on request made by email to the trial Judge's associate. All such requests will be subject to orders made by the trial Judge concerning the conduct of the trial. A list of associate contact details is available on the Court's [website](#).
58. A member of the media who wishes to attend a trial in person must provide evidence that he or she is vaccinated and consents to undergo RAS. Any attendance in person must not infringe the 4m² rule. Where a member of the media declines to provide his or her vaccination status or declines to undergo RAS, attendance will be permitted by use of the virtual courtroom. The link to the virtual courtroom may be provided on request made by email to the Court's media liaison officer. All such requests will be subject to orders made by the trial Judge concerning the conduct of the trial.

The Honourable Justice D Price AO
Chief Judge of the District Court
21 October 2021

Amendment History:

21 October 2021: This Practice Note revises former Practice Note 23, which commenced on 13 October 2021.



Form A – Crown witnesses

MATTER DETAILS

Case Name: Regina v

Case Number:

Crown legal representative:

Name	Vaccination Status (if disclosed)	Preferred Mode of Attendance		Consent to RAS	
		In Person	AVL	Yes	No

SIGNATURE

Signature of legal representative:

Capacity:

Date of signature:



Form B – Defence expert and/or alibi witnesses

MATTER DETAILS

Case Name: Regina v

Case Number:

Defence legal representative:

Name	Vaccination Status (if disclosed)	Preferred Mode of Attendance		Consent to RAS	
		In Person	AVL	Yes	No

SIGNATURE

Signature of legal representative:

Capacity:

Date of signature:



Form D – Crown counsel and solicitors

MATTER DETAILS

Case Name: Regina v

Case Number:

Name	Counsel / Solicitor	Vaccination Status (if disclosed)	Consent to RAS	
			Yes	No

SIGNATURE

Signature of legal representative:

Capacity:

Date of signature:



Form E – Defence counsel and solicitors

MATTER DETAILS

Case Name: Regina v

Case Number:

Name	Counsel / Solicitor	Vaccination Status (if disclosed)	Consent to RAS	
			Yes	No

SIGNATURE

Signature of legal representative:

Capacity:

Date of signature:



Form F – Accused person not in custody

MATTER DETAILS

Case Name: Regina v

Case Number:

Defence legal representative:

Barrister briefed to appear at trial:

Bail status of the accused
person:

UNDERTAKING

- 1 I, _____, am the instructing solicitor for
the accused person, _____.
- 2 I confirm that I am advised by the accused person that:
 - a HIS / HER vaccination status is _____; or
 - b HE / SHE declines to disclose their vaccination status.
- 3 HE / SHE DOES / DOES NOT consent to rapid antigen screening.

SIGNATURE

Signature of legal representative:

Capacity:

Date of signature:



Form G – Accused person in custody

MATTER DETAILS

Case Name: Regina v

Case Number:

Defence legal representative:

Barrister briefed to appear at trial:

Bail status of the accused
person:

UNDERTAKING

- 1 I, _____, am the instructing solicitor for
the accused person, _____.
- 2 I confirm that I am advised by the accused person that:
 - a HIS / HER vaccination status is _____; or
 - b HE / SHE declines to disclose their vaccination status.

SIGNATURE

Signature of legal representative:

Capacity:

Date of signature: