



NEW SOUTH WALES

1 November 2021

CHIEF MAGISTRATE'S MEMORANDUM NO. 24 - COVID-19

This Memorandum replaces all other previous COVID-19 memorandum.

Following recent announcements by the NSW Government in relation to the easing of COVID-19 Public Health Orders, I make the following directions which will apply **up until and including 24 January 2022.**

This direction applies to all Local Court sittings at locations in New South Wales.

This memorandum is to be read in conjunction with any current order made under section 7(1)(b) *Court Security Act 2005.*

Where reference to AVL is made in this document please note: The use of AVL is dependent on the availability of the technology and may not always be available, at all locations.

1. **COVID Safety Measures**

The following measures will be considered by each court location in order to ensure that matters may proceed safely. These principles may be adapted in a manner that is appropriate to the particular characteristics of the court location in question.

It is intended that wherever possible all matters should proceed in accordance with this memo and with the following COVID Safety Measures in mind.

Each court will take steps to limit the transmissibility of COVID-19. Those steps currently include:

- The compulsory wearing of fitted face coverings / masks
- COVID Safe check-in (as aligned with any current Public Health Order(s))
- Observance of physical distancing requirements
- Observance of density limits

The court will continue to work with DCJ to implement measures that accord with public health advice.

Where court users are unable to attend court for health reasons, the court may, on application, make available the use of Audio-Visual Link technology, to enable necessary participation (where such technology is available and approved by the court).

In certain limited circumstances, Rapid Antigen Screening ('RAS') or other forms of testing may be available, and considered a necessary measure, to mitigate any increased risk. This will be assessed on a case by case basis with consideration given to the length of the hearing, vaccination status of court participants, availability of testing and agreement of affected parties.

NOTE: When listing matters it may be preferable that measures are taken to limit the number of people in court buildings at any one time.

Examples of such measures include the following:

- **Conducting a “super call-over” of hearings listed between 1 November 2021 and 24 January 2022, to seek readiness advice**
- **Staggered listings (avoiding all court participants attending court at the same time)**
- **Specific markings (e.g. ‘Legal Aid sentence matters’)**
- **Any other actions that may limit the number of persons in our buildings at any given time**

2. Masks

Masks are required in all courts:

- To ensure the safety of all, court participants must wear a fitted face covering or mask as a condition of entry to Local Court premises. This rule applies to all attendees of the court, regardless of the nature of their attendance.
- Where a participant seeks an exemption to this direction, they must provide evidence of a physical or mental health illness or condition, or disability, that makes wearing a fitted face covering unsuitable. The simple assertion of such an exemption will not suffice. Where the exemption sought is based on medical grounds, written support from a medical or other relevant practitioner or the relevant statutory declaration specifying the physical or mental illness or condition, will be required.
- Children under the age of twelve are exempt from this direction.

A person may remove a fitted face covering in the following circumstances:

- The person is required, or asked, to speak in court
- The person is eating or drinking
- The person is working alone in an indoor area (a mask will become required if another person enters that space)

Any applicable exceptions are to be managed by the presiding judicial officer.

3. **Attendance of support persons**

The attendance of support persons should be in accordance with any limits imposed by any order made under s7(1)(b) of the *Court Security Act 2005*. For the avoidance of doubt, discretion in relation to the attendance of, or number of attending support persons, remains with the presiding judicial officer.

4. **Defended Hearings (including where a defendant is in custody)**

All defended hearings that require a witness to give evidence at a Local Court may now proceed at the discretion of the presiding judicial officer.

Wherever matters can proceed safely and in accordance with locally applied COVID Safety Measures, courts may list defended hearings, wherever parties are available.

Courts may arrange for remote witness evidence (where available) to accommodate individuals required to be present at defended hearings who are unable to appear in-person for health-related reasons. Due to high demand of court technology, all parties (apart from those in custody) are to physically attend for a defended hearing unless an application has been made to, and granted by, the court to allow such an appearance by alternate means.

It is at the discretion of each presiding judicial officer what restrictions might be imposed at a particular location, however any restrictions imposed must be aligned with this memo and any in-force Public Health Orders.

Definition: A *defended hearing* is a matter in which witnesses are required to give evidence.

5. **Small Claims Hearings**

Small claims hearings will remain listed and wherever possible will **proceed via telephone**. Parties must provide all statements via email no later than three days prior to the hearing. If parties object to the hearing being conducted via telephone, they should notify the court as soon as possible.

Small claims hearings unable to be conducted via telephone will be adjourned for mention and/or hearing on a date after **24 January 2022**, or a date to be determined by any future memorandum.

6. **Committal Proceedings**

Where there is consent by the prosecution, or unless otherwise directed by the Court, defendants on bail who are being committed for sentence or trial are **not required to physically attend the court**. **These appearances should be accommodated via AVL, where possible.**

7. Defendants in Custody / Custody matters

All applications by persons in custody (including release applications) and first appearances (police bail refused) are to be by **Audio Visual Link (AVL)** (where reasonably practicable), unless listed for hearing and an order has been made by the court to bring the defendant physically before the court.

8. List matters

No physical appearance is required. Written notices of pleadings will continue to be accepted electronically, including via email. Participants may seek to appear in writing (email), via telephone or AVL.

For all listings of a procedural nature, the court's preferred option is to accept appearances in writing, via e-mail. The email template (**Annexure A**) should be used by legal practitioners when communicating with the court.

For the sake of clarity: Defendants on bail are **NOT** required to physically attend the court for these proceedings.

Interlocutory or list matters (i.e. matters not listed for hearing or sentence) may be heard **without a physical appearance** where:

a. The defendant **IS** legally represented:

The defendant's legal representative may enter an appearance, make a request (including where seeking an adjournment) and/or indicate a plea to the court in writing via email.

For all listings of a procedural nature the court's preferred option is to accept appearances in writing (via e-mail). The email template (Annexure A**) should be used by legal practitioners when communicating with the court.**

Where a plea of not guilty is entered: the court will make orders for the service of the brief of evidence if required and advise the legal representative by email.

b. The defendant **IS NOT** represented:

First return date: an unrepresented defendant may contact the court by email with a request for an adjournment and the reason for the request. Where the defendant is seeking an adjournment to obtain legal advice and/or representation, the matter should be adjourned for a period of no less than 2 weeks.

NOTE: When seeking to enter a plea, an unrepresented defendant may enter a plea by email or by written notice of pleading (s182 of the *Criminal Procedure Act 1986*).

9. Sentence Proceedings (including fine only offences)

Matters listed for sentence (other than those for fine only offences) will proceed as normal, in-person and in accordance with this memo and the COVID Safety Measures. However, where there are compelling reasons for these matters to be heard via AVL or telephone, an application may be made to the court and considered on its merits by the presiding magistrate.

For fine only offences the physical appearance of the defendant and their legal representative **IS NOT** required at sentencing. However, an in-person appearance may be arranged on application by agreement with the parties.

Subject to the availability of appropriate facilities, application may be made by the defendant and their legal representative to appear via telephone or Audio-Visual Link for sentence proceedings for offences that only carry a monetary penalty.

There is nothing that prevents the court dealing with a matter by way of fine in the absence of the accused unless an application to the contrary is made by a party or representative.

10. Domestic and Personal Violence Proceedings

Wherever matters may proceed safely and in accordance with COVID Safety Measures, Domestic and Personal Violence Proceedings may continue to be listed.

The Court will **NOT REQUIRE** the attendance of the person in need of protection in respect of any application brought by police for an apprehended domestic violence order unless the proceedings are fixed for hearing.

NOTE: When listing matters Local Courts should consider the particular disadvantage and suffering that may be experienced by persons in domestic violence proceedings where hearings are delayed.

11. Guidance for appearance by email and AVL

An email appearance should be received by the court no later than 1.00pm the day before the matter is listed in court.

An email appearance should clearly and concisely set out what orders are being sought from the court and if a hearing date is required a notice of listing must accompany the email appearance.

An email appearance **must** contain contact details for the legal practitioner with carriage of the matter. The legal practitioner should be available to be contacted by the court if an appearance (to address any issues raised by the email appearance) is required.

All practitioners appearing by AVL must, at all times, dress and conduct themselves as though they were appearing in-person before the court.

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NOTE: In the event of travel restrictions or increased risk of infection, nothing in the memorandum prevents an application by a party or legal representative, for consideration of an appearance by audio or audio-visual link. However, any request will be subject to the availability of such technology and the suitability of the proceedings being dealt with in this manner.

Peter Johnstone
Judge Peter Johnstone
Chief Magistrate



Annexure A – Email Template

Dear Registrar,

Re [name of matter and court number]

I [insert your name] am the solicitor/barrister for [Inset name of accused/party] whose matter is listed for [Insert listing purpose [first Return/Reply to Brief etc] on [date] at [location] Local Court.

Appearance

Pursuant to **Chief Magistrate’s Memorandum 24**, I seek to appear by email and ask that this email could be placed on the Court file for the Magistrate’s attention, in lieu of a physical appearance from either me or my client. **NOTE:** If this is the second, or subsequent, adjournment application, please specify the grounds on which this adjournment is sought.

Orders sought (delete what is not applicable)

1. An adjournment of [] weeks is sought by the [prosecution/ applicant/ accused/ defendant/ respondent] because [state reason no more than 1 paragraph]. **OR**
2. I seek to enter **a plea of guilty** on behalf of my client and seek the matter be adjourned to [suggested date] to allow for the matter to proceed for sentence or further order of sentence assessment reports. **OR**
3. I seek to enter a **plea of not guilty** on behalf of my client:
 - a. The matter does not require brief service order and I ask the matter be listed for hearing. My unavailable dates are [insert dates] **OR**
 - b. The matter requires a brief to be served and seek the matter be adjourned for reply to a brief on [date] **OR**
4. The proceedings are listed for **reply to the brief** and I confirm the proceedings are still a plea of not guilty and ask the matter be listed for hearing. My unavailable dates are [insert dates]
5. This is a **Domestic Violence related offence** and I seek to enter a plea of not guilty on behalf of my client and see the matter be adjourned for hearing. The unavailable dates for the defence are [specify unavailability] and the matter listed for reply on [insert date]

I would be grateful if the matter could be adjourned until [date].

This application is [by consent/ not opposed]

I have copied the [other party(s)/Prosecutor and OIC] into this email.

Bail (where Applicable)

My client is/not on conditional bail and I ask that bail [continue/non contentious variation with attached application for variation].

Contact details

I may be contacted on [phone number] on the day of the mention and am available to appear by phone or AVL should that be necessary.