



## NEW SOUTH WALES

7 May 2020

### CHIEF MAGISTRATE'S MEMORANDUM (NO. 10) – COVID-19

#### PRELIMINARY ARRANGEMENTS FOR RETURN TO NORMAL SITTING ARRANGEMENTS

**(This memorandum should be read in conjunction with Chief Magistrate's Memorandum No. 9 – Updated and Consolidated Listing Arrangements)**

With the ongoing success of public health arrangements in mind and against a trend within Federal and State government of a staged return to community activity it becomes important to put in place arrangements to enable a return to full sittings of the Local Court.

Necessary preliminary arrangements will address two significant issues confronting the Local Court – sentencing of offenders where the issue of full time custody is a real prospect and the organisation of defended hearings in the criminal and special jurisdiction (which includes domestic and personal violence matters) of the Court.

In addition there are amendments to paragraphs 10 and 29 of Consolidated Memorandum No. 9, at paragraph 7 and 22 of this memorandum. The online version of Consolidated Memorandum No.9 will be updated to reflect these amendments.

#### **Arrangements for finalisation of sentencing in criminal matters involving custody considerations**

1. Suspension of the imposition of sentences of full time custody in relation to defendants at liberty on bail was introduced by the Court in recognition of the unanticipated need within the Corrective Services environment for arrangements to be made to reduce the risk of COVID-19 being introduced into prisons by sentenced prisoners. To enable sufficient time for the introduction of a safe environment for the receipt and detention of prisoners from outside the prison system earlier memoranda introduced an adjournment period of 8 weeks for bail matters likely to result in a full time custodial sentence. Where the defendant was appearing by AVL in custody those matters could proceed to finality. The latter arrangements have generally proceeded satisfactorily.
2. Corrective Services has advised it has introduced quarantine spaces and developed protocols to deal with the risk of the introduction of COVID-19 into the prison system. As presently advised there have been no cases of COVID-19 detected within the prison population. As a consequence there will be a staged return to sentencing in matters considered to involve the likelihood of a full time custodial outcome.
3. From **18 May 2020** matters involving defendants on bail may be dealt with to finality at a number of Local Court locations where there is a co-location with the District Court.

#### **City and Metropolitan Locations**

Campbelltown  
Downing Centre  
Parramatta  
Penrith

### **Regional Locations**

Coffs Harbour  
Dubbo  
Newcastle  
Port Macquarie  
Tamworth  
Wagga Wagga  
Wollongong

4. Quarantine capacity will be monitored by Corrective Services on a daily basis. If advised by Corrective Services that prisoner reception capacity is at its limit the court will advise all stakeholders of the arrangements to apply within the Local Court as a consequence.
5. As a general practice matters *should not* be transferred from other courts to one of the identified locations set out in paragraph 3 simply to accommodate the objective of finalisation *unless* the defendant has pending matters for sentence at that location.
6. Community Corrections have advised their Sentence Assessment Reports will be considered as current on sentence. Wherever possible they should be used by the court without the need to order an updated report. If after sentencing it is clear that a variation to orders may be necessary Community Corrections will make application for a variation in preference to producing updated reports.
7. In order to avoid further lengthy adjournments of sentence matters where a full time custodial sentence is likely for a defendant on bail, the arrangements for the adjournment of matters which are previously set out in paragraph 29 of Consolidated Memorandum No.9 are suspended. The following arrangements apply instead:
  - a. At the locations listed above in paragraph 3, matters listed during the week commencing 11 May 2020 should be adjourned to a date in June for finalisation.
  - b. At locations which are not listed above, matters listed during the period 11 May to 29 May 2020 should be adjourned to a date in June for finalisation.
8. Current advice from Corrective Services is that temporarily redeployed staff will return to their work locations on and from 1 June 2020. Subject to a change in the health situation within correctional centres sentences of imprisonment may then be imposed where appropriate from all Local Courts throughout the state.
9. Given the above, subject to advice from Corrective Services as to capacity to resume sentenced prisoners and place them in isolation prior to introduction to the general prison population, from 1 June 2020 all matters pending in the criminal jurisdiction of the Local Court may be dealt with to finality.

### **Relisting of defended hearings**

10. The positive news is that from the beginning of August for the rest of the year there is considerable time available for the listing of defended hearings should that opportunity arise. Years of constant attention to Time Standards and the success of the Court in meeting them with the assistance of the legal profession, police and other stakeholders has left the Local Court in a sound position to soften the impact of the effects of the pandemic arrangements.

11. At this point only 4 metropolitan Courts are a source of concern in relation to the period 3 August-31 December 2020. In the country regions 7 locations will require assistance beyond normal arrangements.
12. A significant number of matters listed for hearing before the Local Court are in the position of having the allocated hearing dates abandoned. There are 2 cohorts pending before the Court. One group “de listed” for the period 23 March 2020 to 4 May 2020 have been adjourned until August 2020. The second group for the period 4 May – 31 July 2020 at this stage will be adjourned to September 2020. This represents an endeavour to preserve the priority of the first group although depending on the availability of parties and witnesses that may not always be possible.
13. **If there is a return to normal activity sooner than these two months alternate arrangements will be made and published.**
14. To meet the foregoing the Court has consulted with its largest litigant, the Police with a view to ensuring that on return to the hearing of defended matters only those matters which genuinely require the calling of witnesses and evidence occupy the court’s defended hearing lists. Police have agreed to consult with the legal profession and where possible, defendants to ascertain whether proceedings are still to be defended. Police have also agreed to engage in negotiations with a view to narrowing issues or resolving proceedings without the need for a hearing and to deal with representations in relation to pending defended proceedings.
15. Many years of experience inform the court that a significant proportion of defended hearings turn out to be pleas of guilty on the day of hearing. When this occurs the defendant may be deprived of a significant degree of discount for the utilitarian value of a plea which could have been entered at an earlier stage in proceedings. With this in mind practitioners are encouraged to ensure defendants are made fully aware of the relevant principles. Similarly where matters are withdrawn on the day of hearing valuable court time is lost.
16. Attached to this memorandum is a pro forma document identified as a Notice of Readiness that will need to be completed by the prosecution and by the defendant (through their legal representative where appropriate) where the pending proceedings are to remain as defended proceedings.
17. **It should be noted that the Notice of Readiness for the Prosecution is not identical to the Notice of Readiness for the defendant. The completed Notice of Readiness is to be filed not less than 28 days prior to the date to which the pending defended proceedings have been adjourned.**
18. The document will not need to be completed where there are instructions to change the plea however the Court is to be notified not less than 28 days of the date to which the proceedings are adjourned for call over in August and September if this is to be the position.
19. Nothing in this memorandum precludes a legal representative from having liberty to restore a current matter to the list on 3 days’ notice to the opposing party and the court if instructions are received to resolve the matter by plea at an earlier date.
20. Where a prosecution or proceedings pending for allocation of a hearing date are to be withdrawn the Court will re list such matters for formal withdrawal between the date of this memorandum and the projected call over date on not less than 3 days’ notice being provided to the opposing party and the Court.

## Amendment to arrangements for no appearance in Chief Magistrate's Memorandum No. 9

21. Paragraph 10 of the Consolidated Memorandum No. 9 required the court to adjourn proceedings for 1 month where there was no appearance of the defendant and no explanation before the court explaining the reason for non-attendance. The regular adjournment of these matters and the burden cast on registry staff to notify the defendant is rising on a compounding basis and is no longer reasonably sustainable.
22. Paragraph 10 of Memorandum No. 9 is deleted as to its current terms. Paragraph 10 of the Memorandum is amended to read:

*"Where a matter is listed and there is no appearance the Court, in the exercise of its discretion, may proceed to deal with the matter pursuant to Section 196 of the Criminal Procedure Act 1986."*

Memorandum No.9 will be amended as it appears on the Local Court website to reflect the foregoing.

  
Judge Graeme Henson AM  
Chief Magistrate

