



**NEW SOUTH WALES**

## **CHIEF MAGISTRATE'S MEMORANDUM (No. 9)**

**9 April 2020**

### **UPDATED AND CONSOLIDATED LISTING ADJUSTMENTS DURING COVID-19 PANDEMIC**

There appears to be little doubt that the duration of arrangements put in place by Commonwealth and State Governments to manage the impact of the COVID-19 pandemic will remain for the foreseeable period. In recognition of this reality the arrangements put in place by the Local Court in recent weeks will continue. However, within the criminal jurisdiction, for ease of reference, existing arrangements published in the following separate memoranda have been consolidated into a single document:

- *Chief Magistrate's Memorandum (No. 2) – Arrangements by the Local Court of NSW regarding court proceedings during the pandemic declaration period (dated 16 March 2020)*
- *Chief Magistrate's Memorandum (No. 6) – Listing Adjustments during COVID-19 Pandemic (dated 24 March)*
- *Chief Magistrate's Memorandum – Addendum to operational arrangements during COVID-19 pandemic (No.6) (dated 26 March 2020)*
- *Chief Magistrate's Memorandum (No.8) – COVID-19 Arrangements: Reviews of bail (dated 2 April)*

I note arrangements in relation to Early Appropriate Guilty Plea committal matters have now also been consolidated in *Chief Magistrate's Memorandum (No. 4) – Further Clarification of Arrangements for EAGP Matters During the Pandemic Period* (originally dated 20 March 2020 and reissued 9 April 2020).

This Memorandum also clarifies some areas of intended operation to introduce a greater degree of clarity. Attention is particularly drawn to new paragraphs 28 and 29. So far as paragraph 29 is concerned in relation to persons in custody attention should be given by defendants and legal representatives to potential consequences of persistent adjournments. It should not be assumed the current provisions of the *Bail Act 2013* are secondary to the existence of the pandemic. Applications for review of bail will be dealt with in accordance with settled principle and the statutory requirements of the Act. Against that background careful consideration should be given to finalising matters where the defendant is in custody bail refused. Because of the need to manage the volume of people who physically attend court it should be understood that at this time contested hearings involving defendants in custody will not be able to be heard. Sentencing

proceedings however can go forward in accordance with the arrangements set out below and be dealt with to finality through the use of AVL technology.

The following arrangements **only apply to proceedings before the Local Court** (which includes the coronial jurisdiction). The President of the Children's Court will continue to provide separate statements relating to the operations of that Court.

**NOTE: Nothing in the arrangements set out below prevents a physical appearance before the court, except by a defendant in custody.**

## **CRIMINAL JURISDICTION**

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1. **Defended hearings (defendant NOT in custody):** The decision to neither hear nor list any defended hearings is to remain in force.
2. All defended hearings where the defendant is **NOT** in custody and which have been allocated a hearing date that falls between 4 May and 31 July 2020 are to be vacated. Such matters are to be listed for mention on a date in September 2020.
3. All defended hearings during the period 23 March to 1 May 2020 which were vacated and adjourned for mention in accordance with *Chief Magistrate's Memorandum (No.4) – COVID-19 Pandemic (Further Arrangements)* (dated 18 March 2020) should now be adjourned for mention on a date in August 2020.
4. The purpose of the differing mention periods is to meet the challenge, where possible, of avoiding a loss of priority for matters which have generally been before the Court for a longer period.
5. The above arrangements **do not include** matters listed for the determination of section 32 applications, annulment applications or part-heard matters for submissions and decision only.
6. For arrangements in relation to defended hearings where the defendant is in custody see [12].
7. **Listing of non-bail CANs:** Police have advised they will 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.
8. **Listing of bail CANs:** From 31 March 2020, where practical, Police have advised will list bail CANs 8 weeks into the future.
9. **List matters:** List matters which are currently pending before the Court but which are not listed for hearing or sentence may be dealt with without a physical appearance as follows:
  - a. Where a 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/ by email.

*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.

*Where a plea of guilty is entered:* the defendant and their legal representative will not be required to attend for sentence unless the presiding magistrate considers it necessary to do so. In matters in which it appears a sentence of imprisonment is likely the matter is to be adjourned for no less than 8 weeks. See further arrangements for sentencing below from [26].

b. Where defendant is unrepresented:

*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 4 weeks.

*Where seeking to enter a plea:* an unrepresented defendant may enter a plea by email or by written notice of pleading.

**NOTE:** Wherever possible, defendants should provide an email address, residential address or mobile telephone number to facilitate communication of the court's response.

*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 defendant in writing/ by email.

*Where a guilty plea is entered:* the defendant will not be required to attend for sentence unless the presiding magistrate considers it necessary to do so. Should this be the position the court will adjourn the matter and advise the defendant in writing. See further arrangements for sentencing below from [26].

c. At return date for brief of evidence (represented and unrepresented):

The legal representative or the defendant may advise the court by email/in writing as to whether plea of not guilty is maintained. 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.

10. **No appearance:** 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 (subject to the requirements of section 25(1) of the *Crimes (Sentencing Procedure) Act 1999*).

## CUSTODY MATTERS

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11. **Appearance by defendants in custody:** All appearances by defendants 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.

**NOTE:** If a legal representative has instructions to proceed to deal with a matter in the absence of the defendant appearing by AVL (e.g. following issues with AVL technology), then the court may proceed to do so.

12. **Defended hearings (in custody):** The decision not to hear or list defended hearings where the defendant is in custody remains in force. All such hearings listed in the period 30 March to 1 May 2020 have been vacated to remain listed on the current date for mention.
13. Arrangements for any application for release to be made at this mention remain in force, 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 then be adjourned for not less than 8 weeks for mention only, at which time, where the defendant is legally represented, appearance may be by email.
14. As was foreshadowed in earlier memorandums, the above arrangements have been reviewed and are extended as follows:
- a. All defended hearings listed during the period 30 March to 1 May 2020 which were vacated and adjourned for a period of 8 weeks in accordance with the arrangements under *Chief Magistrate's Memorandum (No. 6) – Listing Adjustments during COVID-19 Pandemic (dated 24 March)* should now be adjourned for a further period of 8 weeks.
  - b. Defended hearings listed in the period 4 May to 31 July 2020 where the defendant is in custody are to be vacated to remain listed for mention on the previously allocated hearing date, at which time an application for release may be made. Matters in this category should then be adjourned for not less than 8 weeks for mention only, at which time, where the defendant is legally represented, appearance may be by email.

## FRESH CUSTODIES

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15. Centralised arrangements for dealing with persons in custody who are bail refused by police remain in place and persons refused bail will continue to appear from certain police station by AVL to particular courts.
16. **Sydney Greater Metropolitan Area:** First appearances for persons in custody police bail refused will continue via AVL to the following centralised bail courts: *Parramatta, Penrith, Campbelltown, Liverpool, or Central Local Court.*

a. Where bail is granted:

Matters in which bail is granted are to be adjourned to the court where the defendant would ordinarily appear. Where appropriate brief orders may be made.

*Where defendant is legally represented:* 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 (see above at [9.a]).

*Where defendant is unrepresented:* An unrepresented defendant may seek an adjournment in writing/by email on the next occasion and may indicate a plea by email or written notice of pleading (see above at [9.b]).

b. Where bail is refused:

Where a centralised court refuses bail the proceedings are to be adjourned to the court before which the defendant would ordinarily appear. Where appropriate brief orders may be made.

*Where defendant is legally represented:* Magistrates should excuse the defendant from appearing on the next occasion if legally represented, unless an appearance is sought by their representative. The legal representative may appear on the next occasion through the use of email setting out what orders are sought from the court (see above at [9.a]).

*Where defendant unrepresented:* Subsequent appearances by defendant from custody are to be by AVL.

17. **Country/ regional areas:** First appearances for persons police bail refused in custody will continue via AVL to the following centralised bail courts: *Wagga Wagga, Dubbo, Tamworth, Lismore, Port Macquarie, Newcastle and Wollongong Local Court.*

a. Where bail is refused: Not every country court has access to AVL facilities. For this reason matters brought before centralised bail court for which there is a refusal of bail are to be adjourned to the AVL court on the circuit where the matter would otherwise have been

brought (the 'circuit AVL court') for ongoing case management by AVL. Where appropriate, brief orders may be made by the centralised court.

With the exception of the above, all other arrangements under [16.b] will apply.

- b. Where bail is granted: The same arrangements apply as under [16.a] above.

## **BAIL REVIEW APPLICATIONS**

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18. **Filing applications:** All applications for review of bail, including by or on behalf of a defendant in custody, are to be filed in writing/ by email at the court at which the proceedings are currently pending. A copy of the application is to be served by email or in writing on the relevant prosecutor for the court at the same time as it is lodged with the registrar.
19. **Review applications in Sydney Greater Metropolitan Area** Where an accused is in custody, all bail review applications in the Sydney Greater Metro Area which necessitate a break in the remand will be heard at the Downing Centre Local Court.
- NOTE:** As stated above at [18], where the substantive proceedings are pending before a court other than the Downing Centre the application for review is to be filed at that court. Once the application is filed the registrar of the court before which the substantive proceedings are pending must email the application and court papers to the Registrar of the Downing Centre.
20. Where the application for review relates to a defendant who is not in custody or does not involve a break in the remand, it is to be heard by AVL at the court before which the proceedings are pending.
21. **Review applications in country/ regional areas:** Where the defendant is not in custody or the application does not necessitate a break in the remand, the application is to be determined at the court at which the proceedings are pending.
22. Where the defendant is in custody and the application requires a break in the remand, the application must be determined the centralised bail court.
- NOTE:** As stated above at [18], where the substantive proceedings are pending before a court other than the centralised bail court the application for review is to be filed at that court. Once the application is filed the registrar of the court before which the substantive proceedings are pending must email the application and court papers to the registrar at the centralised bail court.
23. **Notice and default listing:** Unless the application is urgent or to be made by consent, not less than 3 working days' notice is to be given setting out the grounds on which the application is being made and the changes sought.
24. The default listing for all review applications will be 3 working days after the lodging of the application. The 3 day period does not include the date of written or electronic lodgement.
25. **Alterations by consent:** All practitioners are reminded that the registrar of a court may deal with consent alterations to bail conditions.

## SENTENCING PROCEEDINGS

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26. **Pleas and sentencing submissions in writing:** As indicated above at [9], the Court will accept a plea in writing or by email. Sentencing submissions from a legally represented defendant may also be made in writing.
27. 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.
28. **Mode of appearance at sentence:** A 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 is considering the imposition of a conditional release order, community correction order **or intensive correction order, consistent with the requirements of section 25(1) of the Crimes (Sentencing Procedure) Act 1999**. 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 via AVL, where the necessary AVL facilities are available or can reasonably be made available. Where it is intended to utilise AVL the defendant or their legal representative is to make the appropriate arrangement.
29. **Where the Court considers a sentence of full-time imprisonment is the appropriate outcome and the defendant is on bail/ not in custody:** The Court will adjourn the proceedings for a period of 8 weeks. If the current situation remains at that time, the proceedings should be adjourned for a further 8 weeks to a sentence list day in accordance with the sitting and listing arrangements for that court. In this situation the legal representative may appear by email. **Nothing in this paragraph is intended to prevent all other sentencing options (including intensive correction orders) from being applied.**
30. **Where the defendant is in custody bail refused:** Sentencing proceedings may take place by AVL from within a correctional centre. The legal representative may also appear by AVL, where the necessary AVL facilities are available or can reasonably be made available.

**NOTE:** Nothing in the preceding paragraphs is intended to prevent a sentence of full-time imprisonment being imposed on a defendant who is already in custody bail refused.

## SECTION 32 APPLICATIONS

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31. The court acknowledges the difficulties in relation to engagement in the process preparatory to an application under section 32 application of the *Mental Health (Forensic Provisions) Act 1990* created by the current environment. 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 to facilitate the preparation of the application. Where the defendant is legally represented and the application is ready to proceed, there is no reason not to do so.

**NOTE:** Where the defendant is legally represented and the application is ready to proceed, there is no reason not to do so.

## CONDUCT OF PROCEEDINGS WITHIN THE COURT

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32. Occasions may arise where a person or persons present in the courtroom, including a legal practitioner show symptoms, such as coughing or respiratory difficulty suggestive of illness. Magistrates of their own motion or if the possible illness is brought to their attention should act in the interest of the potential health impact on all persons within the courtroom.
33. In the current climate mitigating the risk of infection is to take priority over the continuation of proceedings. It should be accepted by Magistrates that as far as is reasonable during the pandemic they have a social duty to consider the health and wellbeing of all persons appearing before the Local Court.
34. Should such a situation arise Magistrates should adjourn the court as soon as practicable so that arrangements can be commenced by the person who appears to be ill to attend to the management of their circumstances.
35. If the situation arises in a multi court complex and there is an alternate courtroom available, remaining proceedings should be moved from that court. The Registrar should be contacted to arrange for the former courtroom to be professionally cleaned.
36. Where such an alternative is not available it may be necessary to abandon continuation of proceedings before the Court on that day so that arrangements can be made to have the courtroom professionally cleaned.

## URGENT APPLICATIONS

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37. 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.
38. 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.

## EARLY APPROPRIATE GUILTY PLEA MATTERS

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39. For arrangements in relation to the management of Early Appropriate Guilty Plea matters, see *Chief Magistrate's Memorandum (No. 4) – Further Clarification of Arrangements for EAGP Matters During the Pandemic Period* (originally dated 20 March 2020 and reissued 9 April 2020).

## DOMESTIC AND PERSONAL VIOLENCE PROCEEDINGS

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40. 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.
41. For arrangements in relation to the management of domestic and personal violence proceedings during the pandemic, see *Chief Magistrate's Memorandum COVID-19 Arrangements (No.7): Management of Domestic and Personal Violence Proceedings During Pandemic Period* (dated 31 March 2020).



## **TRAFFIC MATTERS**

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42. The State Debt Recovery Office has advised it will not list any further traffic matters in the Local Court until 1 October 2020.

## **SMALL CLAIMS DIVISION**


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43. The hearing of matters before an assessor in the Small Claims Division of the Local Court is to take place by teleconference. The physical appearance of a party will not be required.

## **FUTURE ARRANGEMENTS**

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44. The listing and logistical difficulties caused by the foregoing arrangements are of ongoing concern to the Local Court. At present, the Court has set aside the month of October 2020 to endeavour to catch up on backlogs. It is the present intention not to list any defendant hearings during this month.



Judge Graeme Henson AM  
Chief Magistrate

