



NEW SOUTH WALES

CHIEF MAGISTRATE'S MEMORANDUM

31 March 2020

MEMORANDUM – COVID-19 ARRANGEMENTS (NO. 7)

MANAGEMENT OF DOMESTIC AND PERSONAL VIOLENCE PROCEEDINGS  
DURING PANDEMIC PERIOD

1. This memorandum outlines arrangements applicable to the management of applications for Apprehended Violence Orders (AVOs) in the Local Court during the pandemic period, including:
  - The management of existing AVO hearings and mentions
  - Changes to the listing of provisional orders
  - Management of urgent AVO applications
  - Arrangements for private AVO applications
2. The arrangements outlined below apply from **Wednesday, 1 April 2020** and will remain in place until magistrates are advised otherwise by the Chief Magistrate's Office.

**AVO hearings and upcoming mentions in period to 1 May 2020**

3. Consistent with Memorandum No.6 dated 24 March 2020, AVO hearings listed to 1 May 2020 will not proceed (per [1]), nor will any new AVO hearings be listed (per [23]).
4. The following arrangements apply in relation to the adjournment of AVO hearings listed during the period to 1 May 2020:
  - a) **Where ADVO proceedings with related CAN:** proceedings will be adjourned to the same date as the CAN and continue to travel together as per usual practice.

- b) **Where ADVO without CAN:** proceedings will be adjourned for mention for no less than 3 months.
5. Where the matter has been listed for mention (i.e. to facilitate the defendant obtaining legal advice or to check compliance with a timetable for evidence) parties are permitted to appear in writing or by email at such a mention, including where seeking orders by consent. Any consent orders may be made in the absence of the parties. Where the application for a final order remains contested, the matter should be adjourned in accordance with the timeframes above at [4].

### **Arrangements for listing provisional orders**

6. The *COVID-19 Legislation Amendment (Emergency Measures) Act 2020* amended the *Crimes (Domestic and Personal Violence) Act 2007* (the Act) to facilitate changes to the listing of provisional orders during the pandemic period.
7. Pursuant to section 29(2), a provisional order must contain a direction for the defendant to attend court on a specified date. In normal circumstances, the specified date would be the next date on which the matter can be listed on a domestic violence list day at the appropriate court, and no later than 28 days after the order is made.
8. However, to facilitate alternative arrangements during the pandemic period section 29(4) has been introduced to provide for provisional orders to be listed **up to 6 months** from the date the order is made. This amendment commenced on assent on 25 March 2020.
9. Following the above amendments, NSW Police have advised the following in relation to the listing of fresh provisional orders:
- a) **Where provisional order with no charge:** The order will be listed on a DV list day 3 months from the date the provisional order is made.
  - b) **Where provisional order with related charge(s):** The order will be listed on the same date the charge(s) is first listed, as per normal practices. In accordance with [5] of Memorandum No. 6 dated 24 March 2020, at the first return date the criminal charge(s) will be adjourned for a period of 8 weeks. As per usual practices, the provisional order must be adjourned to the same date and will continue to travel with the criminal charge.
  - c) **Where is it known that the application is contested:** Magistrates should set a timetable in accordance with *Local Court Practice Note 2 of 2012: Domestic and Personal Violence Proceedings*, with the following alterations. Wherever possible, Police may serve their evidence by email or post on the defendant. The defendant may lodge his or her evidence with the court by email by the date the matter is adjourned to for mention.

## **Duration of provisional orders**

10. As per existing requirements under section 29, a provisional order remains in force until it is revoked, the court makes an interim order, or the application for the final order is withdrawn or dismissed.
11. The above provision ensures protections in place under provisional orders managed in accordance with the arrangements outlined above will continue during the pandemic period, even where a provisional order does not come before the court for an extended period.

## **Where fresh incident prior to determination of provisional order**

12. Further to the listing arrangements for provisional orders above at [9], NSW Police advise where a fresh incident occurs prior to the determination of the provisional order and an increase in protection is required, Police will apply for a fresh provisional order for the same parties.
13. The fresh provisional order application will:
  - Refer to the incident that gave rise to the original provisional order;
  - Include details of the fresh incident; and
  - Be listed on the same court date as the original provisional order.

## **Urgent AVO applications**

14. As stated at [22] of Memorandum No.6 dated 24 March 2020, the Court will continue to accept applications which are considered by the court to be urgent, including:
  - Urgent applications to vary or revoke a final Apprehended Violence Order (AVO) pursuant to Part 10 of the Act
  - Urgent applications by a defendant to vary or revoke a provisional order pursuant to section 33A of the Act
  - Private applications for AVOs (see further arrangements below at [17]).
15. Where an application is thought to be urgent the court should be contacted by email in the first instance outlining the nature of the application and reasons why it is urgent.
16. Where a magistrate determines such an application is urgent, advice will be provided to the parties by email regarding arrangements for the court to deal with the application. The application may be dealt with by way of written submissions where the parties consent to doing so.

## Private applications for AVOs

17. Persons seeking assistance with a private AVO application should be encouraged to seek remedies from Police. Where this is not possible, such persons should continue to be assisted by the registry.
18. Once the application has been completed to the satisfaction of the registrar and the registrar has determined whether to issue process:
  - a) **Where issue process:** Any application accepted for filing should be put before a magistrate in chambers immediately to determine whether it is necessary and appropriate to make an interim order in accordance with section 22. Regardless of whether an order is made, the matter should be listed for final determination on a date in no less than 3 months' time.
  - b) **Where refuse to issue process:** Any reasons for refusal should be prepared and any application seeking review of the refusal should be made as per usual procedures. Any application for review is to be put to the magistrate in chambers.



Judge Graeme Henson AM  
Chief Magistrate

