



NEW SOUTH WALES

22 May 2020

CHIEF MAGISTRATE'S MEMORANDUM NO. 11 COVID-19 ARRANGEMENTS

LISTING OF *DEFENDED* HEARINGS WITH PERSONS IN CUSTODY WHERE THE HEARING HAS BEEN PREVIOUSLY ABANDONED AND CHANGES TO ARRANGEMENTS SET OUT IN PREVIOUS MEMORANDA.

Since the publication of Memorandum No. 10 the Local Court has been deeply engaged with Corrective Services to explore ways in which persons in custody on remand awaiting the hearing of defended hearings can be managed within the Local Court. It should be understood by all involved that the logistical complexities surrounding the restoration of defended hearings where an offender is in custody are not simple.

There is daily “competition” between the 3 principal jurisdictions for AVL access to defendants/accused in custody. Against this background there is also the experience during the pandemic arrangements of regular problems with access to AVL appearances from some locations, failures within the technology where vision and/or audio drop out which creates frustration for all.

Acknowledging the difficulties the Local Court remains of the view that those defended hearings involving a defendant in custody which have been abandoned should be finalised. Previous memoranda highlighted the distinct possibility that a defendant in custody may ultimately receive a full time custodial sentence or a sentence of custody that is less than the period of remand so far endured if found guilty. It is because of these concerns that the Court has been asking for cooperation from prosecution bodies and legal representatives to ensure that as far as practicable the interests of justice do not become a casualty to delay caused by the Local Court's accommodation of decisions by Federal and State Governments.

Against this background, the Court will list those matters involving a defendant in custody where the previously allocated hearing date was abandoned due to the urgency of necessary COVID-19 arrangements. The easing of restrictions on the number of people who may be present at the one location, arrangements taken by the Court to identify the courtroom capacity remaining after social distancing measurements have been made will assist in limiting risks to health for those attending courts.

Advice from Corrective Services is to the effect that current AVL capacity will only allow a maximum of 15 suites at Prisons to be utilised for defended hearings throughout the state. To its great credit and through its diligence in assisting the Local Court in its objectives it has been agreed that defended hearings will take place within a hybrid of AVL hearings and the physical appearance of an accused before the Court. I have been advised additional AVL suites are due to open in July and onwards. This will assist in reducing the need for physical appearance. In light of the foregoing therefore the following arrangements will apply. Some of those arrangements reflect change to previous memoranda.

Arrangements for the listing of defended hearings previously abandoned where the accused is in custody.

1. Individual Local Courts are to identify those matters pending before their Court that involve a defendant in custody where the hearing date originally allocated was abandoned. They are to be listed for a Status Mention on a day within the individual Court's diary **that is not a list day**. The current backlog of criminal cases within the Local Court exceeds 80,000 matters. It is inappropriate to add to the burden of list courts by including these matters within List day sittings.
2. Once identified these matters **and only these matters** are to be listed to fix a hearing date. Status Mentions for these types of matters can begin to be listed in the week commencing 9 June 2020. Where possible hearing dates should be given in July –August 2020.
3. With the exception of the following courts only 1 Status Mention should be required. Due to the number of persons in custody awaiting hearing at the following courts additional Status Mentions will be required. The number of additional Status Mentions is reflected in the bracketed numbers following the name of the relevant court location - Burwood (3) Wollongong (3) Blacktown (2) Central (2) Dubbo (2) Mt. Druitt (2) Parramatta (2) Penrith (2) Sutherland (2).
4. As these matters are being brought forward from the adjourned dates in August and September Magistrates are to ensure that Section 77 Orders issue to the relevant Correctional Facility. Such orders should be endorsed **"to appear by AVL"**. Mindful of the provisions of Section 22C of the Evidence (Audio and Audio Visual) Act the court **will not direct** that a defendant in custody appear in person at a Status Mention. At this point it should be noted that the appearance of a defendant at the subsequent hearing is subject to the realities identified at paragraph 7 of this memorandum.
5. Matters not dealt with at the first Status Mention should be promptly listed for mention at subsequent Status Mentions to be conducted not more than 7 days after the initial Status Mention.
6. Circuit Courts where the defendant in custody was due to appear before a Court on that circuit are to list the Status Mention before a hub court with access to AVL technology. This will mean the matter will be dealt with to finality at the hub court. The current environment is such that inconvenience to parties must be regarded as secondary to the capacity of the Court and Corrective Services.

7. Where the magistrate allocates a fresh hearing date the papers should be marked “**to appear by AVL if possible**”. The limited availability of technology for use by the Local Court means that Corrective Services will be deciding at which Courts a defendant is to appear by AVL.
8. In an endeavour to resume the hearing of these matters in the shortest reasonable time the Notice of Readiness **in these matters only** is to be furnished to the Court **at the Status Mention** so an accurate estimate of the hearing time can be assessed by the Court.
9. Legal Practitioners are expected to be ready to proceed without undue delay. If counsel previously instructed is not available then every effort is to be made to secure alternate representation. In this regard practitioners should reflect on the impact on their client of asking the Court to allocate a hearing date too far into the future simply to accommodate the non-availability of counsel for an earlier hearing.
10. If a defendant in custody wishes to enter a plea of guilty at a Status Mention the Court will proceed to finalise the matter unless the interests of justice otherwise dictate.
11. Unless adequate arrangements can be made by the legal practitioner to appear remotely the Court expects the legal practitioner to physically appear before the Court. All Local Courts have been measured as to their individual capacity to ensure the maintenance of social distancing arrangements. Legal Practitioners should contact the Court before which they are to appear for advice as to the maximum number of persons who may be present in the courtroom at any one time. The possibility of the physical appearance of the defendant and Corrective Services staff should be factored into this assessment.

Future hearing arrangements

12. Assuming the loosening of community restrictions continues the next step to be taken by the Court will involve the relisting of defended hearings of Domestic Violence matters where the defendant is on bail or otherwise at liberty. Further advice on these matters will issue at an appropriate time.
13. Contested proceedings not involving the calling of witnesses may be brought before the court and be listed for hearing.

Application Proceedings

14. In recognition of the lifting of some of the previous restrictions that limited application proceedings to the need for urgency paragraphs 36 and 37 of Memorandum No. 9 are withdrawn.

Centralised Bail Hearings

15. Gradual return to hearings will reduce the capacity of the Court to continue operation of the centralised bail model. From close of business on 19 June 2020 the Centralised Bail arrangements will cease. From 22nd June 2020 all bail applications, including **Release applications and applications for Review of Bail are to be made to the Court before which the proceedings are pending.**
16. Applications to break remand and bring a release application before the Downing Centre Court Complex and Regional Hub Courts are to cease from the close of business on 19 June 2020.


Judge Graeme Henson AM
Chief Magistrate

