



NEW SOUTH WALES

5 June 2020

CHIEF MAGISTRATE'S MEMORANDUM NO. 12 COVID-19 ARRANGEMENTS

RE-LISTING OF *NON CUSTODY* DEFENDED HEARINGS IN

- DOMESTIC VIOLENCE RELATED MATTERS

- GENERAL MATTERS WHERE HEARINGS HAVE BEEN ABANDONED AT COUNTRY LOCATIONS

- ARRANGEMENTS APPLICABLE TO LARGER COURT COMPLEXES

- FUTURE LISTING ARRANGEMENTS

Memorandum No. 11 set out the arrangements to be made in relation to the hearing of defended hearings involving a defendant in custody. This memorandum addresses the arrangements to be implemented for other defended proceedings. It also reflects the opportunity provided through the degree of relaxation in public health arrangements so far as it affects the caseload of the Local Court.

The arrangements will operate in relation to 3 categories of defended proceedings and the finalisation of general list work within specified Metropolitan Courts and the two largest regional locations. It will also address the approach of the court in relation to freshly instituted proceedings. The relisting of currently abandoned defended proceedings is the first group to be addressed.

- i. Priority in the allocation of hearing dates will be given to the resolution of matters identified as **domestic violence proceedings**. As far as practicable hearing days at all courts in July where the hearings were previously abandoned through the application of Memorandum No. 9 should be utilised to finalise matters within this class of proceedings if at all possible.
- ii. Secondly matters that already have hearing dates allocated to take place after 31 July 2020 *will remain* for hearing on dates allocated on and from 3rd August 2020.

It is unfortunate that those matters in which the hearing has been abandoned will be affected by listed hearings already in place however from an administrative perspective it is the view of the Court there is little to be gained by ousting already listed matters simply to re-establish an artificial priority of listings.

So far as the currently listed matters are concerned, the Court expects the parties involved will already be in a position to resolve these matters on the allocated date of hearing. This expectation will apply to metropolitan and country courts across the State. In simple terms the Local Court cannot return to its previously established position without a significant level of positive approach to matters being exhibited by the legal profession.

iii. The Court recognizes the impact of allocating hearing dates to previously abandoned hearings and acknowledges the risk that becomes elevated with the return of witnesses to Court premises. The view has been taken that the risk factors are related to the volume of caseload and apply to a greater extent in the greater metropolitan area than in regional and country areas. Listing arrangements will be tailored to address this reality.

iv. Domestic or general defended matters involving a defendant who is not in custody will be given a date for a Status Mention. This is to ensure that only those matters which are realistically to proceed as a contested hearing occupy the diary of individual courts. Again, it is important to state that failure by a party to proceedings to engage with their opposing party to either resolve the matter or reduce matters in issue only results in elevating the risk of bringing people onto court premises who may not ultimately be required.

The overwhelming majority of defended proceedings before the Local Court involve prosecutions brought by the Police/DPP. Each of those organisations is aware of the concerns held by the Court. Each has indicated support for engagement with the defendant/ legal representative with a view to such matters as are amenable to resolution.

Where an appearance by a legal practitioner fully instructed by their client can be facilitated by Audio or Audio Visual a personal appearance will not at this stage be required. Where that cannot be arranged the Court requires the physical appearance of the legal practitioner or the defendant. If there is to be a plea of guilty both the legal practitioner and their client should appear in person

Listing arrangements for defended hearings – Domestic Violence matters

1. Individual courts are to identify those matters before their court previously listed as a defended hearing during the period 23 March-31 July 2020 that involve a defendant at liberty who is subject to charges that are Domestic Violence proceedings in nature together with applications for Domestic Orders which had the hearing abandoned due to COVID-19 arrangements.

2. These matters are to be listed for a Status Mention during the week commencing 22nd June 2020. The purpose of the Status Mention is to identify those matters that are no longer defended proceedings, are to be withdrawn or remain as defended proceedings. Those that remain as defended proceedings will be listed for hearing.
3. So far as is appropriate, paragraphs 8, 9 and 11 of Memorandum 11 continue to apply.
4. If there is to be a change of plea at the Status Mention the matter is to proceed to sentence unless the interests of justice or sentencing legislation option requirements otherwise dictate.
5. The Status Mention is to be set for a day in the diary of the individual court that is not a List Day unless the volume of pending matters before a smaller court, in the view of the presiding magistrate, justifies combining the Status Mention with the General List caseload for that day. Magistrates should be careful not to overload the re listing of matters on the date fixed for a Status Mention.,
6. The defendant may only be excused from attendance at the Status Mention if they are legally represented and the legal representative has up to date full and complete instructions to maintain the plea of not guilty. If the matter is to be resolved as a plea of guilty the defendant should appear in person with their legal representative.
7. Unrepresented defendants are expected to appear in person.
8. Where there is no appearance of an unrepresented defendant the court may proceed to determine the matter in their absence unless the interests of justice otherwise dictate.
9. A Notice of Readiness is to be completed as far as is able and be furnished to the Court at the Status Mention. As noted in previous memoranda it is this document the Court will rely on to assess the time needed for the hearing. In addition all Local Courts have been assessed as to the numbers that can be present in the courtroom to enable compliance with social distancing precautions. The Notice of Readiness is of fundamental importance not just in relation to the time required for the hearing but also to ensure hearings are only fixed in circumstances where the individual court premises and court room can adequately manage the number of persons within the building.

Re-listing of remaining defended proceedings abandoned due to COVID-19 arrangements

General list work remains the largest component of the caseload of the Local Court. Without emphasis on reducing this portion of the caseload the Local Court will succumb to the consequences of accumulation. Police activity has not stopped and the inputs of other agencies, such as the Roads and Maritime Services organisation will increase the current caseload. There is a real need to reduce the burden on the court and all stakeholders as soon as practicable.

As at the end of May 2020 the state wide pending caseload was 82,600 matters. 47,743 matters or 58% of the total are pending before the 17 courts identified below. The view has been taken that the volume of pending defended hearings before the Metropolitan Courts requires a different approach to the remainder of the State.

In anticipation of the likely build-up of a backlog in cases due to the pandemic arrangements the decision was taken in March 2020 to rule out October 2020 as a month within which defended matters could be heard. So far as the 17 nominated courts are concerned this will remain the approach. At those locations the month of October is to be used for the finalisation of matters for sentence and list work. **No defended hearings are to be listed at those locations during October 2020 without the approval of the Chief Magistrate.**

The courts at which **only list work** is to be scheduled during October 2020 are as follows:

Metropolitan Locations: Sutherland, Campbelltown, Penrith, Mt. Druitt, Blacktown, Parramatta, Hornsby, Manly, Waverley, Bankstown, Newtown, Burwood, Fairfield, Central Court, Downing Centre.

Regional locations – Wollongong, Newcastle

10. Magistrates at the locations in question are, as far as practicable, to adjourn uncompleted matters that arise during the months of August and September 2020 no later than into the month of October on days other than scheduled List days and Domestic Violence List days. This is to avoid overloading List Courts. It should be remembered the listing of fresh matters before the Local Court has not stopped during the pandemic period.
11. Those matters falling close to the month of October 2020 and which are considered to require the preparation of a Sentence Assessment Report that would take them beyond October are to be dealt with procedurally as would be the case in the normal arrangements of the Court.
12. Because of the large number of matters, which include many matters adjourned to suit the convenience and concerns of the legal profession and unrepresented parties the Court expects every effort to be made by those who have taken advantage of a relaxed approach to the granting of adjournments to bring outstanding matters to finality with proper expedition and with due regard to Practice Note No. 1 relating to the conduct of summary matters before the Local Court.
13. The profession is reminded that the court will not use adjournment periods to enable parties or their legal representatives to make representations to police or other litigants. If that approach is to be taken it is to be done expeditiously within the periods allowed for the steps towards finalisation in the Practice Note. It will not be sanctioned by the Court outside the intended application of Practice Note 1.

Listing of previously adjourned defended proceedings at country and regional courts

14. These arrangements will apply to all **country and non-metropolitan** courts *other than* Wollongong and Newcastle.
15. The process outlined above in paragraphs 1-8 inclusive will apply to the relisting of the remaining defended hearings previously listed for the period 24 March-31st July 2020.
16. These matters are to be re listed for a status mention in the week commencing 6 July 2020 on a day or days other than a list day. The gap between the relisting of defended domestic violence hearings and matters in this category is to allow registries sufficient time to contact the parties with the Status Mention date given that this cohort of hearings is likely to exceed those within the two other categories.
17. The approach identified in paragraph 5 of this memorandum should be applied in relation to these matters. As the number of matters falling into the general category of abandoned hearings is likely to be significantly greater than those related to custody or domestic violence hearings Magistrates again should be careful in not over listing the number of matters before a Status Mention.
18. If the parties can accommodate a hearing on the dates between 13 July 2020 and 31 July 2020 that was originally allocated then the abandoned hearings may be listed back into those days where the plea of not guilty is maintained. This should only occur if hearings of abandoned custody and domestic violence matters have been suitably accommodated.
19. Unless the interests of justice otherwise dictate matters in which there is a change of plea are to be finalised on the date of the Status Mention.

Re listing of defended matters at the courts referred to in the introduction to paragraph 10.

20. In the **week commencing 3rd August 2020** those matters in which hearings listed between 23 March 2020 and 31 July 2020 have been previously abandoned before the Local Courts at Sutherland, Campbelltown, Penrith, Mt. Druitt, Blacktown, Parramatta, Hornsby, Manly, Waverley, Bankstown, Newtown, Burwood, Fairfield, Central Court, Downing Centre as well as Wollongong and Newcastle will be listed for a Status Mention.
21. The Status Mention listings will need to take place over a number of days on days that are not a list day because of the volume of matters involved.
22. The approach to the Status Hearing in these matters is to be the same as set out above in relation to the relisting of Domestic Violence matters and those that will come before country and regional courts. Against that background legal practitioners are once again urged to approach their representation of defendants with proper despatch. Practice Note 1 in relation to Summary Prosecutions is still in force and Courts will be using its terms as strictly as the interests of justice allow

23. It must be emphasised that both Police and the DPP have indicated support for engagement with the defendant and/or the legal representative with a view to resolving defended proceedings or narrowing issues. It would be disappointing if the legal profession ignored the positive approach taken by these organisations.
24. **Practitioners should note that conversations between my Office and the Police Prosecuting Branch reveal there will be no negotiations conducted by Prosecutors with legal practitioners on the *new date* fixed for the hearing of the previously abandoned defended matters. The Police Prosecuting service take the view there has been ample time leading up to the date originally fixed and the period between the status mention and the new hearing date for matters in issue to be discussed.**

Listing Arrangements post 3rd August 2020

25. The Courts listed immediately prior to paragraph 10 will begin listing defended matters for hearing beginning on 3rd August 2020. Practice Note 1 will apply as currently drafted will apply.
26. Because of the restrictions on the number of persons who may be present in a courtroom parties to proceedings need to inform themselves of the social distancing arrangements at the court before which they appear.
27. In order to ensure the maximum number of matters can be dealt with both parties are to ensure only those witnesses who are necessary are to be called. In particular this will require a more careful approach on the part of legal practitioners. The Court is more than passingly familiar with the approach taken by some in providing a list of witnesses that simply defaults to all who are identified as potential witnesses in the police brief. The Court expects a better approach, one which, in criminal proceedings, also includes a greater level of compliance with the Court's orders for service of a brief.
28. In accordance with the Practice Note matters are not to be adjourned because of non-compliance with brief service orders unless the interests of justice otherwise dictate. As hearing dates are likely to be at a much later time than in pre pandemic times any interaction between the parties involving non service of the entire brief are to take place during the period between the return date to fix a date for hearing and the hearing date itself.
29. Parties are reminded that failure to serve the complete brief not less than 14 days prior to the allocated hearing date is likely to be met with an application to exclude evidence in accordance with Section 188 of the Criminal Procedure Act 1986.


Judge Graeme Henson AM
Chief Magistrate



