

Jury Trials and Judge Alone Trials

1. This Practice Note replaces District Court Criminal Practice Note 23.

Commencement

2. This Practice Note commences on 2 May 2022.

Review

3. This Practice Note will continue to be reviewed as may be necessary.

Definitions

4. In this Practice Note:

“counsel” includes a solicitor advocate.

“Court” means the District Court of NSW.

“court participants” includes judges, associates, counsel representing the Crown (both State and Commonwealth), counsel representing an accused person, solicitors, an accused person, Sheriff’s officers, Corrective Services Officers, court officers, witnesses who appear in person (not by audio-visual link), interpreters, RSB court reporters, sound reporters and third party contractors, ODPP Witness Assistance Officers, other persons providing support and jurors.

“List Judge” includes the circuit Judge for a circuit sittings.

“RAT” means Rapid Antigen Self-Test.

“Readiness Hearing” means a hearing to ascertain the readiness of the parties to proceed on the allocated trial date.

“pre-trial callover” includes a pre-trial callover conducted by a circuit Judge.

Application

5. This Practice Note applies to all jury trials and judge alone trials in the District Court.

Readiness Hearing

6. This Practice Note supplements District Court Criminal [Practice Notes 18 and 19](#).
7. The parties must strictly comply with case management orders made at Readiness Hearings.

Jury Panels

8. The Sheriff of NSW will ensure that all members of the jury panels for trials in the Court consent to undergoing a RAT as required and have undergone a RAT.

Pre-Trial Callovers

9. This Practice Note emphasises the importance of pre-trial callovers. For trials listed for hearing at the Downing Centre, a pre-trial callover is heard by the List Judge in Court 3.1 on the Thursday the week before the trial date. In other Courts, the pre-trial callover is heard at the time directed by the Senior Judge.
10. The parties are obliged to ensure that the information provided to the Court in the form annexed is accurate.

Prior to the Pre-Trial Callover

Prosecution

11. The Crown is to file the form annexed electronically to the List Judge or Senior Judge advising whether counsel and instructing solicitors consent to undergo a RAT, no later than two days prior to the pre-trial callover. This form may be signed by the instructing solicitor.
12. The Crown is to file a list of witnesses that the Crown intends to call at trial, no later than two days prior to the pre-trial callover. A list of witnesses advising whether they consent to a RAT should be filed by the form annexed. This form may be signed by the instructing solicitor.

Defence

13. The Defence is to file the form annexed electronically to the List Judge or Senior Judge advising whether counsel and instructing solicitors consent to undergo a RAT, no later than two days prior to the pre-trial callover. This form may be signed by the instructing solicitor.
14. The Defence is to file a list of expert and/or alibi witnesses that are to be called in the trial, no later than two days prior to the pre-trial callover. A list of witnesses advising whether they consent to a RAT should be filed by the form annexed. This form may be signed by the instructing solicitor.
15. Where an accused person is not in custody, the Defence is to file the form annexed electronically to the List Judge or Senior Judge advising whether the accused person consents to a RAT, no later than two days prior to the pre-trial callover. This form may be signed by the instructing solicitor on advice received from the accused person.

At the Pre-Trial Callover

16. Pre-trial callovers will continue to be conducted remotely unless the Court directs otherwise.
17. At the pre-trial callover, counsel appearing for the Crown and counsel appearing for the accused person must:
 - a. clearly identify all pre-trial issues;
 - b. inform the Court of all pre-trial issues that are to be determined and the estimated length of the pre-trial hearing;
 - c. inform the Court whether there is any change to the information provided to the Court in accordance with paragraphs 11-15 of this Practice Note and to provide the Court with any further information that may be required; and
 - d. confirm that all proposed exhibits consented to be tendered have been prepared into a tender bundle with the appropriate number of copies ready to be brought into the Court on the trial date.

RAT Regime

18. All court participants in jury trials and judge alone trials are required to undergo a RAT prior to the commencement of the trial and on every second day of the trial or as otherwise required by the Sheriff of NSW.

19. The Sheriff of NSW's current testing regime is provided in the "Court Users (Frequently Asked Questions – FAQ)" document, which is available on the [District Court's website](#).
20. Parties must make allowance for a RAT to be conducted within an appropriate time prior to attending court. This includes accompanying witnesses who are giving evidence in person.
21. An accused person who is not in custody is to be accompanied by his or her counsel or instructing solicitor for a RAT in accordance with paragraphs 18-19.
22. The Chief Judge of the Court has made a direction in all jury trials and judge alone trials that where an accused person is in custody, the accused person is to undergo a RAT conducted by Corrective Services NSW every two days during the trial prior to being transported to the Court.

Failure to Consent to RAT

Counsel and Solicitors

23. Where counsel and/or solicitors do not consent to a RAT, the trial may be vacated and relisted on a later date. In determining whether the trial will be vacated, the Court will have regard to:
 - a. the interests of justice;
 - b. the public health risk posed by the COVID-19 pandemic;
 - c. the efficient use of available judicial and administrative resources;
 - d. whether counsel and/or solicitors may appear by the use of the virtual courtroom;
 - e. any relevant matter raised by a party to the proceedings; and
 - f. any other matter that the Court considers relevant.

Witnesses

24. Where a Crown witness or a Defence expert or alibi witness does not consent to a RAT, an application may be made pursuant to s 5B(1) of the *Evidence (Audio and Audio Visual Links) Act 1998* (NSW) (the Act) seeking a direction that the witness give evidence to the Court by audio link or audio-visual link from any place within or outside New South Wales, including a place outside Australia, other than the court room in which the trial is proceeding. Such application is to

be made and determined by the Trial Judge at the commencement of the trial and in jury trials, before empanelling the jury.

25. Alternatively, pursuant to s 5B(1) of the Act, the Court may on its own motion direct that a witness give evidence to the Court by audio link or audio-visual link from any place within or outside New South Wales, including a place outside Australia, other than the court room in which the trial is proceeding. Such a direction will be made by the Trial Judge at the commencement of the trial and in jury trials, before empanelling the jury.

Accused Person not in Custody

26. Where an accused person who is not in custody does not consent to a RAT, the Court may make orders as to the conduct of the trial, having regard to:
- a. the interests of justice; and
 - b. any other matter that the Court considers relevant.

The parties will have an opportunity to make submissions to the Court as to the orders that may be made.

Empanelment in Jury Trials

27. To enhance COVID-19 safety, the empanelment of juries may be staggered and empanelment times allocated by the List Judge or Senior Judge.
28. The jury will not be empanelled until all pre-trial issues have been determined.
29. The Trial Judge is to inform the jury manager of the relevant Court when all pre-trial issues are determined.

Trial

30. At trial, face mask wearing is mandatory for all court participants. This requirement is waived:
- a. when a court participant is addressing the Court or giving evidence;
 - b. when any court participant is required to remove his or her face mask for purposes of in-court identification and for purposes of briefly allowing the jury or judge to see the court participant's face by way of introducing the person to the court;

- c. where a court participant is unable to wear a face mask for medical reasons, which must be established by a medical certificate; or
 - d. where there is a reason that the Court considers relevant.
31. With respect to any witnesses to be called in the Defence case, other than witnesses required to be disclosed at the pre-trial callover pursuant to paragraph 14, the Defence is to notify the Court of whether they consent to RAT after the close of the Crown case and prior to the witness being called during the trial. This information should be handed to the Trial Judge in the form annexed. This form may be signed by the instructing solicitor.
32. Where a Defence witness does not consent to a RAT, an application may be made pursuant to s 5B(1) of the Act seeking a direction that the witness give evidence to the Court by audio link or audio-visual link from any place within or outside New South Wales, including a place outside Australia, other than the court room in which the trial is proceeding.
33. Alternatively, pursuant to s 5B(1) of the Act, the Court may on its own motion direct that a witness give evidence to the Court by audio link or audio-visual link from any place within or outside New South Wales, including a place outside Australia, other than the court room in which the trial is proceeding. Such a direction will be made by the Trial Judge at the commencement of the trial and in jury trials, before empanelling the jury.

Accused Person who is Self-Represented

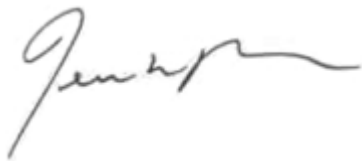
34. Where an accused person is self-represented, he or she should endeavour to comply with the provisions of this Practice Note.
35. Where a self-represented accused person is able to satisfy the Trial Judge or List Judge that he or she consents to RAT, the self-represented accused person should be permitted to appear in person. Paragraph 26 otherwise applies.

Open Justice

36. The Court remains committed to the principles of open justice. However, the risk of COVID-19 requires the Court to limit the persons who may attend a trial in person.
37. Members of the public may not attend court in person. Should a member of the public wish to view a trial, attendance will be permitted by use of the virtual courtroom. The link to the virtual courtroom may be provided on request made by email to the Trial Judge's associate. All such requests will be subject to

orders made by the Trial Judge concerning the conduct of the trial. A list of associate contact details is available on the Court's [website](#).

38. A member of the media may attend Court in person. As is the case with all court participants, a member of the media is required to undergo a RAT prior to attending the Court and must wear a face mask while on the court premises.
39. Should a member of the media prefer to view a trial by use of the virtual courtroom, the link to the virtual courtroom may be provided on request made by email to the Court's media liaison officer (mediadistrictcourt@justice.nsw.gov.au).
40. All such attendances at Court or requests for use of the virtual courtroom will be subject to orders made by the Trial Judge concerning the conduct of the trial.



The Honourable Justice D Price AO
Chief Judge
22 April 2022



In Person Appearance Request Form

MATTER DETAILS

Case Name: Regina v
Case Number:
Filing on behalf of: Regina **OR** Accused Person
Legal representative:
Barrister briefed to appear at trial:
Bail status of the accused:

Name	Role of Court Participant (i.e. counsel, instructing solicitor, accused person, expert witness, support person)	Consent to RAT	
		Yes	No

SIGNATURE

Signature of legal representative:

Capacity:

Date of signature: