



NEW SOUTH WALES

6 October 2021

CHIEF MAGISTRATE'S MEMORANDUM NO. 23 - COVID-19

This Memorandum replaces all other previous COVID-19 memorandum.

Following announcement by Government in relation to the lifting of lockdown requirements in some New South Wales locations I make the following directions which will apply **until and including 31 October 2021.**

Direction 1 relating to masks applies to Local Courts in all locations

Directions 2 - 8 apply to all Local Courts identified in Schedule 1.

Directions 9 - 14 apply to all other Local Courts not listed in Schedule 1.

1. **Masks**

Masks are now required in all courts.

- To ensure the safety of all, court participants must wear a fitted face covering or mask as a condition of entry to Local Court premises. Any participant relying on an exemption pursuant to Clause 17(2) of the Public Health order must provide evidence of such physical or mental health illness or condition, or disability, that makes wearing a fitted face covering unsuitable. The simple assertion of an exemption will not suffice. Where the exemption sought is based on medical grounds written support from a medical or other relevant practitioner or the relevant statutory declaration specifying the physical or mental illness or condition, will be required.

Please note the public health order does allow for the following exceptions (amongst others):

- A person may remove a fitted face covering in the following circumstance, the person is at work and the nature of the person's work means clear enunciation or visibility of the person's mouth is essential.
- A person working alone in an indoor area like an office (or chambers) a mask is not required, until another person enters the area.

Any applicable exceptions are to be managed by the presiding magistrate.

2. Defended Hearings (ie matters requiring witnesses to give evidence and Defendant/accused is not in Custody)

All defended hearings in which the defendant/accused is NOT in custody that require a witness to give evidence at the above Local Courts listed from Monday 11 October 2021 until 31 October 2021 will **no longer proceed, unless parties make prior application to the court to hear the matter and relevant administrative arrangements can accommodate hearing of the proceedings**. Participants in vacated proceedings are not required to attend court. Those matters will remain listed for mention on the date they are currently set for the hearing to allow a new hearing date to be arranged.

As noted above upon application to the Court of listing and with the consent of all parties and where administrative arrangements allow, hearings that do not require the physical attendance of any witness (other than the accused) may proceed.

Parties in vacated proceedings are not required to attend in person, however must notify the court via email of the status of the proceedings prior to **3.00pm on the day prior to the listing and provide all unavailable dates**.

Definition: A *defended hearing* is a matter in which witnesses are required to give evidence. **Please Note:** Matters listed for applications, interlocutory proceedings, submissions and/or decision may remain listed and proceed wherever possible.

3. Defended Hearings (Where defendant/accused is in custody)

In an attempt to reduce the time an accused person may be in custody awaiting a hearing before the Local Court. Hearings where the defendant/accused is in custody may proceed to hearing on the following basis:

Proceedings that meet **criteria 1** below are to be listed and proceed to hearing.

Criteria 1 - To Proceed

The Detainee/Defendant to appear via AVL from Corrective Services Facility;

- All witness are available and are able to give evidence remotely (confirmation of this will be required);
- Only the Prosecutor and Legal Representative to be in person in the Court Room

- Note consideration may be given to practitioners appearing via AVL if it is deemed reasonably practical for the matter to proceed on that basis. In these circumstances the Practitioner is to be directed to make arrangements for the delivery of any exhibits to the court prior to the hearing.

Proceedings that meet **criteria 2**, below are to be listed and proceed to hearing if **by consent** only:

Criteria 2 - To Proceed (only by consent of all parties)

- The Detainee/Defendant to appear via AVL from Corrective Services Facility;
- All or some witnesses area available can appear in person or via AVL

- The Prosecutor and Legal Representative to be in person in the Court Room

Proceedings that meet **criteria 3**, below are to be listed and proceed to hearing if **by consent** only and only on advice from Corrective Services that transport can be facilitated on the date of listing:

Criteria 3 - To Proceed (only by consent of all parties and on the advice from Corrective Services that Transportation to court can be facilitated.)

- Detainee/Defendant to appear in person (eg these matters may be those requiring an interpreter)
- All or some witnesses area available and appear in person.
- The Prosecutor and Legal Representative to be in person in the Court Room

4. Small Claims Hearings

Small claims hearings will remain listed and wherever possible will proceed via telephone. Parties must provide all statements via email no later than three days prior to the hearing. If parties object to the hearing being conducted via telephone they should notify the court as soon as possible.

Those small claims hearing that are unable to be conducted via telephone will be adjourned for mention and/or hearing on date after 31 October 2021.

5. Matters Listed for Sentence

All matters (where the accused is not currently in custody) that are likely to result in a custodial sentence are to be adjourned to a date after the current public health order.

Wherever possible these matters that are not likely to result in a custodial sentence will proceed.

If a participant is prevented from attending court contact must be made with the court to seek:

1. an appearance in writing;
2. attendance by alternate means (Telephone or AVL); or
3. to have the proceedings adjourned

Contact must be made with the court no later than 3.00pm the day prior to the listing.

6. Matters Listed for Mention

No physical appearance is required. Written notices of pleadings will continue to be accepted electronically, including via email. Participants may seek to appear in writing (email), via telephone or AVL.

For all listings of a procedural nature only the court's preferred option is to accept appearances in writing (e-mail). The attached email template should be used by legal practitioners when communicating with the court.

7. Committal Proceedings

Where there is consent by the prosecution, defendants on bail **are not required to physically attend the court** for proceedings that are being committed for sentence or trial. These appearances are to be accommodated via AVL.

8. Defendants in Custody

Wherever possible all defendants in custody should appear via Audio Visual Link.

9. List matters

In interlocutory or list matters (i.e. matters 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. For all listings of a procedural nature only the court's preferred option is to accept appearances in writing (e-mail). The attached email template should be used by legal practitioners when communicating with the court.**

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.

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 2 weeks.

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 2 weeks.

When seeking to enter a plea: an unrepresented defendant may enter a plea by email or by written notice of pleading. See s182 of the Criminal Procedure Act, 1986.

10. Hearings

Due to the demand on the Courts technology all parties (not in custody) are to physically attend for the defendant hearing of proceedings unless an application has been made to attend and granted by the court to allow an appearance by alternate means.

11. Custody Matters

All appearances by persons in custody are to be by Audio Visual Link (AVL), unless listed for hearing **and** an order has been made by the court to bring the defendant physically before the court.

12. Sentence Proceedings

Except for fine only offences the physical appearance of the defendant and his or her legal representative is required at sentencing.

13. Fine Only Offences

Subject to the availability of appropriate facilities, application may be made by the defendant and his or her legal representative to appear via Audio or Audio Visual Link for sentence proceedings for offences that only carry a monetary penalty. There is nothing that prevents the court dealing with a matter by way of fine in the absence of the accused.

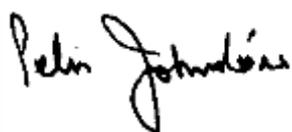
14. Domestic and Personal Violence Proceedings

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.

Note:

In the event of travel restrictions or the increased risk of infection, nothing in the memorandum prevents an application by a party or legal representative, for consideration of an appearance by audio or audio visual link. However any request will be subject the availability of such technology and suitability of the proceedings being dealt with in this manner.

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



Judge Johnstone
Chief Magistrate

Annexure – Email Appearance Template

Dear Registrar,

Re [name of matter and court number]

I [insert your name] am the solicitor/barrister for [Inset name of accused/party] whose matter is listed for [Insert listing purpose [first Return/Reply to Brief etc] on [date] at [location] Local Court.

Appearance

Pursuant to Chief Magistrate’s Memorandum 19, I seek to appear by email and ask that this email could be placed on the Court file for the Magistrate’s attention, in lieu of a physical appearance from either me or my client.

Orders sought (delete what is not applicable)

1. An adjournment of [] weeks is sought by the [prosecution/ applicant/ accused/ defendant/ respondent] because [state reason no more than 1 paragraph]. **OR**
2. I seek to enter **a plea of guilty** on behalf of my client and seek the matter be adjourned to [suggested date] to allow for the matter to proceed for sentence or further order of sentence assessment reports. **OR**
3. I seek to enter a **plea of not guilty** on behalf of my client:
 - a. The matter does not require brief service order and I ask the matter be listed for hearing. My unavailable dates are [insert dates] **OR**
 - b. The matter requires a brief to be served and seek the matter be adjourned for reply to a brief on [date] **OR**
4. The proceedings are listed for **reply to the brief** and I confirm the proceedings are still a plea of not guilty and ask the matter be listed for hearing. My unavailable dates are [insert dates]
5. This is a **Domestic Violence related offence** and I seek to enter a plea of not guilty on behalf of my client and see the matter be adjourned for hearing. The unavailable dates for the defence are [specify unavailability] and the matter listed for reply on [insert date]

I would be grateful if the matter could be adjourned until [date].

This application is [by consent/ not opposed]

I have copied the [other party(s)/Prosecutor and OIC] into this email.

Bail (where Applicable)

My client is/not on conditional bail and I ask that bail [continue/non contentious variation with attached application for variation].

Contact details

I may be contacted on [phone number] on the day of the mention and am available to appear by phone or AVL should that be necessary.

Schedule 1

Metropolitan

Bankstown
Blacktown
Belmont
Burwood
Campbelltown
Fairfield
Hornsby

Gosford
Katoomba
Liverpool
Manly
Mount Druitt
Newtown
Newcastle

Parramatta
Penrith
Picton
Port Kembla
Sutherland
Sydney, Central
Sydney, Downing

Centre
Toronto
Waverley
Windsor
Wollongong
Wyong

Regional

Dubbo
Wellington
Bourke
Brewarrina
Broken Hill
Narromine
Wilcannia
Walgett
Lightning Ridge