



## NEW SOUTH WALES

28 March 2022

### CHIEF MAGISTRATE'S MEMORANDUM NO. 27B - COVID-19

**This Memorandum replaces all other previous COVID-19 memoranda**

The Court makes the following directions in order to balance the safety of those working within courts and the community in general, while also maintaining accessibility to justice.

These directions commence on and from 28 March 2022 and apply until replaced by any subsequent memorandum.

These directions apply to all Local Court sittings at locations in New South Wales. For the avoidance of doubt, this includes both civil and criminal sittings.

This Memorandum does not apply to the Children's Court or the Coroner's Court, which are subject to separate public notices.

This Memorandum is to be read in conjunction with any in-force order made under s 7 of the *Court Security Act 2005* (NSW).

Where reference to Audio Visual Link technology (AVL) is made in this document, the use of AVL is dependent on the availability of the technology which may not always be available at all locations.

#### **1. COVID Safety Measures for in-person appearances**

- 1.1. Pursuant to the current Chief Magistrate's Order, made under s 7 of the *Court Security Act 2005* (NSW), all persons attending the Local Court must:
  - 1.1.1. Wear a fitted face covering / mask. Any exceptions to the wearing of masks will be managed by the presiding judicial officer; and
  - 1.1.2. Observe density limits
- 1.2. Where court users are required, but unable to attend Court in-person for health reasons, the Court may, on application or of its own motion, adjourn proceedings or make available the use of AVL to enable participation.
- 1.3. Subsequent Court Security Act Orders may be made as and when necessary, as determined by the Chief Magistrate. The requirements of any in-force Order must be observed by all parties attending any Local Court location in New South Wales. Orders will be published on the Local Court website and circulated amongst stakeholders when made.

## **2. Criminal and civil (general division) defended hearings**

- 2.1. Defended hearings shall proceed in-person if they can be carried out safely and in accordance with any current Public Health Orders.
- 2.2. Courts may arrange for remote witness evidence (where available) to accommodate individuals required to be present at defended hearings who are unable to appear in-person for health-related reasons, or where practical reasons make remote appearance necessary. The decision to allow evidence to be given remotely is at the discretion of the presiding magistrate.
- 2.3. Due to high demand of court technology, all parties (apart from those in custody) are to physically attend for a defended hearing unless an application has been made to, and granted by, the Court to allow such an appearance by alternate means.

## **3. Small claims hearings**

- 3.1. Small claims hearings will continue to proceed via telephone or AVL, unless otherwise ordered by the presiding judicial officer.

## **4. Matters other than defended hearings and finalisation of sentencing**

- 4.1. An in-person appearance may be required by a defendant and/or their legal representative(s) where directed by the Court.
- 4.2. If a court has not ordered in-person appearance (in matters other than defended hearings and finalisation of sentencing) an in-person appearance is NOT required. Parties and their legal representatives may appear via AVL, by telephone (where approved by the Court) or by email using the attached form headed **Annexure A**. This does not apply to police prosecutors. Defendants on bail are excused from appearing if legally represented and their legal representatives appear on their behalf.
- 4.3. It is the expectation of the Court that parties will appear in-person only in limited circumstances. This does not apply to matters listed for hearing or for finalisation of a sentence where a custodial sentence is possible. A person in need of protection (PINOP), or a complainant in domestic violence proceedings may attend Court in-person if they can do so safely and in accordance with COVID safety measures.
- 4.4. Self-represented parties who receive a Court Attendance Notice should look at the FAQs at the following web address, as in-person attendance may not be required - <https://www.localcourt.nsw.gov.au/local-court/arrangements-for-covid-19--coronavirus-/contacting-and--or-attending-court.html#Entering3>

## **5. Guidance for appearance by email or AVL (where permitted)**

- 5.1. Email appearances should be received by the Court **no later than 1.00 p.m. the day before** the matter is listed in Court. The email appearance should be made using the attached form headed **Annexure A**.
- 5.2. An email appearance should clearly and concisely set out what orders are being sought from the Court and a Listing Advice Notice must accompany the email if a hearing date is sought.

- 5.3. An email appearance must contain contact details for the legal practitioner with carriage of the matter. The legal practitioner should be available to be contacted by the Court if an appearance (to address any issues raised by the email appearance) is required.
- 5.4. All practitioners appearing by AVL must, at all times, dress and conduct themselves as though they were appearing in-person before the Court.

## 6. Committal proceedings

- 6.1. Where a matter is listed for the purpose of committal for sentence or trial, to the District or Supreme Court, such committal may occur without an in-person appearance (either on the papers or by AVL appearance) or otherwise as directed by the Court upon application by a party.

## 7. Defendants in custody / custody matters

- 7.1. All applications by persons in custody (including release applications) are to be conducted by AVL (where reasonably practicable), unless listed for hearing and an order has been made by the Court to bring the defendant before the Court in-person.

Note: Physical appearance proceedings, including proceedings relating to bail and first appearances (police bail refused) are to be held in-person unless an order to the contrary is made by the presiding magistrate: *s5BA Evidence (Audio and Audio Visual Links) Act 1998*. The section provides a number of instances that s5BA(1) does not apply, including where bail proceedings relate to an accused detainee who is being held in custody at certain places prescribed by regulation. For a list of those locations, see cl 4 Evidence (Audio and Audio Visual Links) Regulation 2015.

## 8. General

- 8.1. In the event of travel restrictions or increased risk of transmission and infection of COVID- 19, nothing in this Memorandum prevents an application by a party or legal representative for consideration of an appearance by telephone or AVL. However, any request will be subject to the availability of such technology and the suitability of the proceedings being dealt with in this manner.
- 8.2. Any direction contained in this Memorandum does not preclude a party making an application to the Court to make alternate arrangements.

  
Judge Peter Johnstone  
Chief Magistrate



**Annexure A - Template email to Local Court from solicitor / barrister for Defendant**

(To be received by the Court no later than 1.00 p.m. the day before the matter is next listed)

Date: \_\_\_\_\_

Dear Registrar,

Case Name: \_\_\_\_\_

Case No(s): \_\_\_\_\_

I appear for the abovenamed.

**Listing**

The matter is listed as follows:

Date: \_\_\_\_\_

Court: \_\_\_\_\_

Purpose: [Mention / Reply / Bail app / Bail variation app / Other: \_\_\_\_\_]

**Appearance**

Pursuant to the Chief Magistrate’s Memorandum 27B, I seek to appear by email in lieu of a physical appearance from either me or my client. Please place this email on the Court file for the Magistrate’s attention.

**Orders and notations sought**

- [Enter / Confirm] plea of **Guilty** to Sequence(s): \_\_\_\_\_
- [Enter / Confirm] plea of **Not guilty** to Sequence(s): \_\_\_\_\_
- [Brief / Balance of brief] to be served by \_\_\_\_\_ [ \_\_\_\_\_ weeks].
- Adjourned to \_\_\_\_\_ for \_\_\_\_\_ [ \_\_\_\_\_ weeks].
- Adjourned for hearing on a date to be fixed by the Court (Unavailable dates below).
- Bail to continue.
- Bail be varied as follows: \_\_\_\_\_
- Bail not applied for and refused.
- Defendant to appear via AVL on the next occasion(s).
- Order interpreter - Language: \_\_\_\_\_
- Other: \_\_\_\_\_

**Other matters**

- The adjournment referred to above is sought by the [Prosecution / Defendant] because: \_\_\_\_\_
- I have copied into this email the [Other party(s) / Prosecution / OIC].
- The adjournment application is [Opposed / Not opposed] by the [Prosecution / Defence].
- The Prosecution’s view to the defence bail variation application is: [Opposed / Not opposed].
- The surety’s letter consenting to the defence bail variation application is attached.\*
- A Listing Advice Notice is attached.\*
- My unavailable dates are: \_\_\_\_\_

**Contact details**

In the event required, the solicitor / barrister with carriage of this matter may be contacted on the day of the mention, and is available to appear by phone or AVL, on the following number / details:

Name of solicitor / barrister: \_\_\_\_\_

Email: \_\_\_\_\_

Contact number: \_\_\_\_\_