



## NEW SOUTH WALES

9 August 2021 Amended 26 August 2021

### CHIEF MAGISTRATE'S MEMORANDUM NO. 20 - COVID-19

**The memo is in force in the Greater Sydney Local courts (listed below) until and including Friday 1 October 2021, and will apply to all other Regional Local Courts until and including Friday 10 September 2021:**

Bankstown	Katoomba	Penrith	Centre
Blacktown	Liverpool	Picton	Waverley
Burwood	Manly	Port Kembla	Windsor
Campbelltown	Mount Druitt	Sutherland	Wollongong
Fairfield	Newtown	Sydney, Central	
Hornsby	Parramatta	Sydney, Downing	

### **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 between Monday 28 June 2021 and Friday 1 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.

### **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;
- 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 facilitate 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

## **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 1 October 2021.

## **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.

### **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.**

### **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.

### **Defendants in Custody**

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

### **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.

**Note:** 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, written appearances would assist the court in better managing the large court volume. **Where AVL demand is too great matters may need to be adjourned to alternative dates to facilitate appearances.** The Courts AVL connection is best supported by a device on robust WIFI and not with the use of a device over the mobile network (4G).

Nothing in the arrangements set out above prevents a physical appearance before the court, except by a defendant in custody, however appearances via alternative means are the Court's preferred option given the heightened risks of COVID19 currently being experienced.



Judge Graeme Henson AM  
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.