



## Protocol for Supreme Court Criminal Jury Trials

Commences on Monday 2 May 2022

### 1. GENERAL

#### 1.1. Health and wellbeing

The health and wellbeing of all court users remains the paramount consideration. The court will continue to follow and observe government health advice and may vary court procedures at short notice to respond to changing conditions. The court will continue to take all reasonable steps and precautions to minimise the risk of transmission of COVID-19. This applies to the courtroom and jury deliberation rooms.

If a court participant feels unwell, they should immediately notify a court officer, obtain a COVID-19 test and isolate until they receive a result.

#### 1.2. Cleaning and hygiene

Additional cleaning services are operating at King Street and Darlinghurst court facilities. The cleaning of 'high touch' surfaces is provided by Nanyaburra Cleaning. Cleaning staff will respond to any new incidents that arise. Please inform the court officer if you see something that requires attention.

#### 1.3. Trial 'bubble'

The Court will establish a trial 'bubble' for each criminal trial. Each person attending the trial in person will be at least double vaccinated – this requirement does not apply to jurors, the accused and any person specifically authorised by the Trial Judge.

All court participants will complete regular rapid antigen screening, arranged by the Office of the Sheriff or Justice Health.

Legal representatives and any interested parties unable to attend in person for COVID or related health reasons may apply to participate in the hearing via AVL by email to the Associate to the Trial Judge.

#### 1.4. Additional jurors – Jury Regulation

Amendments to the *Jury Regulation 2015* allow the court to order up to three additional jurors in criminal trials where the trial duration is likely to be 2 or more weeks. The regulation is intended to address any potential discharge of jurors due to COVID or related reasons as a trial progresses.

Additional jurors should be considered on a case-by-case basis. Before ordering additional jurors the Trial Judge should consider the size of the proposed courtroom and jury deliberation room and whether it can accommodate additional jurors.

#### 1.5. Regional Trials

Similar arrangements will apply for all Supreme Court trials in regional locations, subject to local variations.

## **2. PRE-TRIAL CONSIDERATIONS**

### **2.1. Pre-trial**

The presiding judge may consider it appropriate to convene an informal pre-trial meeting with legal representatives (at the trial venue – if that is available – 1 or 2 weeks before the trial) to discuss practical matters concerning the trial. Discussion may include the following matters:

- The capacity and layout of the proposed courtroom and jury deliberation room.
- The number and location of legal representatives in the court. Consideration will need to be given to the available spaces and their suitability for larger legal teams. Discussion should include materials, folders, trolleys etc.
- The location of the jury throughout the courtroom. Confirm sightlines of all members of the jury.
- The location of all other court participants (witnesses, CSNSW officers etc.).
- Judicial staff may be located on the bench in some courtrooms to foster appropriate physical distancing.
- The possibility of remote appearance (AVL) by accused, lawyers and witnesses.
- The revised jury empanelment procedure.
- The physical handling of items in court, including exhibits.

### **2.2. Open justice**

Fully vaccinated members of the media and the public will be able to attend in person, subject to courtroom limits. Alternatively, AVL links can be provided, subject to the discretion of the Trial Judge.

Media and members of the public may be required to complete rapid antigen screening before entering the courtroom.

### **2.3. Vaccination status**

Each person attending the trial in person will be at least double vaccinated – this requirement does not apply to jurors, the accused and any person specifically authorised by the Trial Judge.

The onus will be on the solicitors for the parties to make enquiries of all their participants, including witnesses and others who they are aware will be attending, and confirm their vaccination status to the court.

The Court will not be collecting or storing this information, other than on the transcript of proceedings.

### **2.4. Masks**

Masks will be required by everyone in the courtroom with the exception of the judge and those speaking. This will be reviewed regularly. Any exceptions to the wearing of a mask will be subject to the discretion of the Trial Judge.

### 3. JURORS AND EMPANELMENT

#### 3.1. Jury Panel

The Office of the Sheriff will ensure all potential jurors have completed rapid antigen screening (RAS) before the empanelment process commences.

#### 3.2. Empanelment

Physical distancing will be strictly maintained.

For Sydney trials, jury panels will gather at the Downing Centre and the empanelment process will usually occur at the Darlinghurst Courthouse. Parties will be notified in advance of the courtroom to be used for empanelment. For some trials the empanelment court will not be the trial court. Some trials may have to adjourn for a period to accommodate empanelments of other cases.

#### 3.3. The jury

The jury's role is to focus on the trial. The Trial Judge can assist the jury to remain focussed on the trial by providing regular reassurance – from the very beginning and throughout the trial – that the judge is there to ensure their comfort, safety and security. The jury should feel comfortable to raise any concerns.

There is no need for the foreperson to sit in any particular seat. The judge can ask the foreperson to identify themselves by putting their hand up. The jury should discuss whether they wish to select their seat in the courtroom on a daily basis or use the same seat each day. All seats will have been reviewed for their suitability; however, any issues that do arise should be raised immediately with the court officer.

Consider if any members of the jury have particular accessibility requirements. Some seats are better suited to those with accessibility issues.

### 4. RAPID ANTIGEN SCREENING (RAS)

#### 4.1. General information

RAS uses oral or nasal swabs which are tested with a chemical solution. RAS returns a result in approximately 15 minutes.

Testing is arranged by the Office of the Sheriff and may be performed at home, or other location, or under the supervision of a health practitioner trained in the correct use and interpretation of the tests. RAS will be completed in accordance with the NSW Health Guidelines and the Framework for the Provision of Rapid Antigen Screening for COVID-19 in Clinical and Non-Clinical Settings.

RAS testing clinics will be established at:

- The Sydney Congress Hall (Salvation Army, 140 Elizabeth Street) from 8:00am to 4:00pm;
- King Street Courthouse, Alexander Dawson Room, entry from Elizabeth Street, from 8:30am – 12:30pm;
- Darlinghurst Courthouse, jury assembly room from 8:30am – 12:30pm; and

- King Street and Darlinghurst operating subject to trial schedule/demand.

Vaccination and RAS supports other measures – such as mask wearing, hand hygiene and physical distancing.

#### 4.2. Initial Rapid Antigen Screening – Prospective Jurors/Prior to empanelment

RAS will be conducted prior to empanelment under the supervision of the Office of the Sheriff. The test returns a result in 15 minutes:

- **Negative** – prospective juror proceeds to empanelment.
- **Positive** – Juror will be excused from the summons and advised to go home and isolate for seven days and report the positive test to Service NSW.

#### 4.3. Day 1 RAS for trial participants

- Judge and judicial staff – RAS will be completed in chambers.
- Defendant (in custody) – tested at correctional facilities, prior to coming to Court.
- Corrective Services Officers – tested at correctional facilities every two/three days. Covid-19 vaccination is compulsory for all Corrective Services employees.
- All other trial participants – attend the testing centre at the empanelment location.

#### 4.4. Regular RAS

Having established the trial bubble all participants will complete RAS every two days, or more frequently, if required.

The King Street RAS clinic will be established in the Alexander Dawson Room, entry from Elizabeth Street.

The Darlinghurst RAS clinic will be located near the jury assembly room, entry from courtyard adjacent to the entrance to Court 7.

**If there is a positive RAS result** – the person will not be permitted to re-enter the trial bubble and will be advised to go home and isolate for seven days and report the positive test to Service NSW. All other members of the trial bubble will be advised to continue to monitor for symptoms. The frequency of RAS for the trial bubble may be increased to daily for a short period. The Trial Judge will manage re-entry to the trial bubble following the seven-day isolation period and the resolution of symptoms.

#### 4.5. Entering the trial bubble – interpreters, court reporters, witnesses

Each person attending the trial in person will be at least double vaccinated – this requirement does not apply to jurors, the accused and any person specifically authorised by the Trial Judge.

Anyone needing to attend court or access the courtroom will need to complete initial and ongoing RAS for the duration that they are required to attend the trial.

Where a witness or interpreter is not fully vaccinated, they may be required to appear remotely, via AVL.

**The Honourable A S Bell**

Chief Justice  
29 April 2022