



# Protocol for Criminal Proceedings

January 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, including jurors, will be double vaccinated – with the possible exception of 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.

### 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 4 or more weeks. The regulation is intended to address any potential increases in juror absences.

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 courtroom.
- 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**

To minimise transmission risks media and members of the public will not be able to attend in person. AVL links can be provided, subject to the discretion of the trial judge.

Any application for a member of the accused or victim's family to attend in person should be made in writing to the trial judge and which, if approved, may be subject to conditions.

### **2.3. Vaccination status**

With the possible exception of the accused, all persons in court will need to be double vaccinated. 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 the court 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.

### **3. JURORS AND EMPANELMENT**

#### **3.1. Jury Panel**

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

#### **3.2. Empanelment**

Physical distancing will be strictly maintained.

For Sydney trials, the empanelment process will occur at the Downing Centre in LG3 and LG4 and will use AVL technology to provide links between the courtrooms. For larger panels a link may be established with the jury assembly room or another courtroom and the trial courtroom.

#### **3.3. Jury Empanelment from a Remote Courtroom or Jury Assembly Room**

The following procedures may require modification for particular locations or particular trials.

- (a) The jury panel will be within a nearby courtroom or in the Jury Assembly Room ("the remote room"). In either case, there will be an AVL connection with the courtroom. Vision, but not sound, will be conveyed from the remote room to the courtroom.
- (b) The judge, staff and trial participants will be in the courtroom. Vision of the judge, the bar table and the witness box as well as sound will be conveyed to the remote room.
- (c) If arraigning the accused while in the dock is impractical, the accused (or each accused in turn) will be taken to the witness box, or some other appropriate location, to enable a clear view on screens in the remote room.
- (d) The associate will arraign the accused. In order to appear on screens in the remote room it may be necessary for the associate to stand somewhere in camera range. Where there are multiple accused, if not arraigned from the dock, each will be arraigned separately.
- (e) Corrective Services NSW officers who may accompany an accused to and from another location in the courtroom for arraignment should not be visible to the panel in the remote room.
- (f) The judge will speak to the panel and then invite the Crown to address for the purposes of s 38(7) of the *Jury Act*. If the judge prefers, written lists of witnesses and other persons may be distributed to jury panel members. (This might occur before the empanelment process commences.)
- (g) The judge will invite applications to be excused. Applications could be made by the prospective juror attending the courtroom. Alternatively, they could be made in writing. If the judge requires further information, this could be done by written request/reply, or by having the prospective juror brought to the courtroom.

- (h) The associate will proceed with the ballot, standing within camera range. Prospective jurors who are called will be brought to the courtroom (individually or in groups as the circumstances permit) and seated in the jury box or at other marked seating.
- (i) After the prospective jurors have arrived in the courtroom, the judge will invite them to look around the room and consider whether they know any of the trial participants. If prospective jurors are excused, the ballot will continue until there are 12 (or the enlarged number as the judge may have determined).
- (j) Before the prospective jurors' numbers are called a second time, counsel may be permitted to attend the remote room to view the remaining panel upon request.
- (k) Challenged panel members will return to the remote room and the ballot will continue until a jury has been selected.
- (l) The jury will be sworn or affirmed. (The use of religious texts should be avoided.)
- (m) Where the empanelment is not in the trial court: the judge will provide such instruction as may be necessary and the matter will be adjourned so as to reconvene at the actual venue for the trial.

*Notes:*

This process will take longer. Although modifications from the usual procedure are necessary, it is important to ensure no key steps and safeguards are overlooked.

Section 72A(5) of the *Jury Act* provides that it is not necessary that a religious text be used by a juror taking an oath.

### **3.4. 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 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 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 performed 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:

- 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.
- 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 nasal swab 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 day chambers at the Downing Centre.
- 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 – Will attend the Sydney Congress Hall (Salvation Army), 140 Elizabeth Street. Testing will commence from 8:30am – 11:00am depending upon the time the trial is listed to commence.

### 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.

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

Anyone needing to attend court or access the courtroom will need to be double vaccinated and 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.