



MEMORANDUM

TO: Arraignments List Practitioners
FROM: Fullerton J (Criminal List Judge)
DATE: 15 April 2020
RE: Arraignments List – Procedural Directions

- 1 Consistent with the announcement of the Chief Justice on 23 March 2020 published on the Supreme Court website, there will be no appearances, in person, in the arraignments list either by practitioners or an accused until further notice.
- 2 In accordance with the procedures in ss 22C(3) and (4) of the *Evidence (Audio and Audio Visual Links) Act 1998* (NSW), introduced following the passage of the *COVID-19 Legislation Amendment (Emergency Measures) Act 2020* (NSW), it is intended that the appearance of practitioners and the accused will be via AVL.
- 3 Section 22C(5) of the *Evidence (Audio and Audio Visual Links) Act* operates in the context of the arraignments list by providing that the Court may direct that an accused and their legal representative, and a legal representative for the Crown, are to appear by audio visual link “but only after the parties have had an opportunity to be heard”.
- 4 Any practitioner who wishes to be heard on that question should furnish a written submission to the Criminal List Judge’s chambers (and copied to the Crown) no later than midday the day before the arraignments list is to be called over setting out the basis upon which an order under s 22C is resisted. The submission will be considered in chambers and the parties advised by email whether a direction under s 22C will be made or not.
- 5 An accused who is in custody will continue to appear via the established AVL system which connects the Court to NSW Correctional Centres.

- 6 Where an accused in custody does not wish to appear via the established AVL system or where an accused is on bail and does not wish to appear via the Virtual Courtroom, the accused's legal representatives are to send an email to the Criminal List Judge's chambers (and copied to the Crown) no later than midday the day before the list is to be called over. The request will be considered in chambers and the parties advised by email whether there will be a direction that the accused appear via AVL or via the Virtual Courtroom as the case may be.
- 7 Legal practitioners appearing in the arraignments list are to advise the Criminal List Judge's chambers by email of their intended appearance (first initial and surname) no later than midday on the day before the arraignments list is to be convened. Details to connect to the Virtual Courtroom will be provided in a reply email.
- 8 Until further notice the arraignments list will convene at 11:00am on the first and third Friday of each month.
- 9 The matters in the arraignments list will be called over by the Criminal List Judge at the time allocated and in the order in which they appear on the Court List on the Supreme Court website. Please note the times allocated are an estimate only. However, practitioners (and an accused not in custody) should ensure they have joined the Virtual Courtroom in advance of the time allocated to ensure that when their matter is called the practitioner (and the accused) are available to appear.
- 10 When connecting to the Virtual Courtroom, a practitioner should provide the following details:
 - number in the list;
 - party represented (Crown or accused);
 - first initial of practitioner's given name;
 - practitioner's surname.
- 11 Practitioners using a web browser to connect to the Virtual Courtroom are encouraged to use either the latest version of Google Chrome or Firefox.
- 12 To minimise the risk of disconnection, practitioners are encouraged to use a hard-wired Internet connection (by plugging their device directly into a router or modem) in preference to use of a wireless connection.

- 13 If a practitioner is disconnected from the Virtual Courtroom during the proceedings, they should re-join using the link provided.
- 14 For further information a fact sheet, published by the Court to assist participants in navigating the Virtual Courtroom environment, is available at:
http://www.supremecourt.justice.nsw.gov.au/Documents/Home%20Page/Announcements/Fact%20Sheet%20-%20Practitioners_20200323.pdf.
- 15 To minimise noise and feedback during the proceedings, practitioners should ensure their devices are on mute and cameras off until their matter is called. Devices will need to be unmuted and cameras activated when practitioners address the Court.
- 16 Where solicitors instructing counsel appear, both the video and audio to their device should remain off at all times.

Note – Judge alone trials

- 17 Attention is also drawn to the *COVID-19 Legislation Amendment Act* and the consequential amendment to s 365 of the *Criminal Procedure Act 1986* (NSW) relating to Judge alone trials (“JAT”) utilising the facility of the Virtual Courtroom. The parties are encouraged to consider whether a JAT is feasible in the circumstances of the particular trial
- 18 If the consent of the accused to a JAT is forthcoming, then the Crown should advise the accused and the Court of its position without delay.