



Government Gazette

of the State of

New South Wales

**Number 385—Parliament, Ministerial, Courts and Police
Friday, 18 December 2020**

The New South Wales Government Gazette is the permanent public record of official NSW Government notices. It also contains local council, non-government and other notices.

Each notice in the Government Gazette has a unique reference number that appears in parentheses at the end of the notice and can be used as a reference for that notice (for example, (n2019-14)).

The Gazette is compiled by the Parliamentary Counsel's Office and published on the NSW legislation website (www.legislation.nsw.gov.au) under the authority of the NSW Government. The website contains a permanent archive of past Gazettes.

To submit a notice for gazettal, see the Gazette page.



LOCAL COURT PRACTICE NOTE CRIM 1

ISSUED: 24 April 2012
COMMENCES: 1 May 2012
AMENDED: 16 September 2013, 8 August 2014, 1 December 2014, 15 June 2015, 22 January 2016, 26 June 2017, 23 October 2020, 18 December 2020

Case management of criminal proceedings in the Local Court

PART A - INTRODUCTION	1
1. APPLICATION.....	1
2. OBJECTS.....	1
3. COMMENCEMENT.....	1
4. REVOCATION OF PRACTICE NOTES	1
PART B – PROCEDURE	2
5. SUMMARY CRIMINAL TRIALS.....	2
6. VACATING HEARING DATES.....	6
7. AUDIO VISUAL LINK (AVL) FACILITIES	7
8. DEFENDANTS WITH A MENTAL ILLNESS.....	8
9. MEDIA RECORDING OF PROCEEDINGS.....	9
PART C – SPECIFIC PROCEEDINGS	11
10. SUMMARY HEARINGS FOR DOMESTIC VIOLENCE OFFENCES	11
11. PENALTY NOTICE ENFORCEMENT ORDER ANNULMENT APPLICATIONS.....	13
PART D – DIVERSIONARY PROGRAMS.....	14
12. MERIT.....	14
APPLICATION FOR WITNESS TO GIVE EVIDENCE VIA AUDIO VISUAL LINK OR TELEPHONE	14
Evidence (Audio and Audio Visual Links) Act 1998	14
ATTACHMENT A	Notice of appearance in summary criminal trials
ATTACHMENT B	Local Court Listing Advice
ATTACHMENT C	Application to Vacate a Hearing Date
ATTACHMENT D	Application for Witness to Give Evidence via Audio Visual Link or Telephone

PART A - INTRODUCTION

1. APPLICATION

This Practice Note applies in relation to matters in the Local Court's criminal jurisdiction, including summary proceedings and proceedings for indictable offences being dealt with summarily.

2. OBJECTS

The objects of this Practice note are to ensure that matters in the Local Court's criminal jurisdiction are finalised in a timely and proper fashion in accordance with the Local Court's published time standards, and to set out practices in relation to other procedural or ancillary aspects of such proceedings.

3. COMMENCEMENT

This Practice Note, as amended, commences on 18 December 2020.

4. REVOCATION OF PRACTICE NOTES

The following Practice Notes remain repealed on the commencement of this Practice Note:

- (i) 1 of 2001 Vacating hearing dates and applications for adjournment (insofar as it applies to criminal proceedings only)
- (ii) 5 of 2002 Magistrates Early Referral Into Treatment (MERIT) programme
- (iii) 3 of 2004 Criminal proceedings involving child witnesses
- (iv) 4 of 2005 Media access to sexual assault proceedings heard in camera
- (v) 4 of 2007 Provision of Psychiatric Reports to Correctional Facilities
- (vi) 5 of 2007 Procedures for persons in custody at Courts / Circuits with no AVL facilities
- (vii) 7 of 2007 Listing Procedure for Summary Criminal Trials
- (viii) 7 of 2008 Use of Audio Visual Link in criminal and civil proceedings (insofar as it applies to criminal proceedings only)
- (ix) 2 of 2010 State Debt Recovery Office Annulment Applications
- (x) 2 of 2011 Forum Sentencing Program
- (xi) 1 of 2012 Procedures to be adopted for Domestic Violence matters

PART B – PROCEDURE

5. SUMMARY CRIMINAL TRIALS

5.1 Application

- (a) Subject to Chapter 10 (Summary hearings for domestic violence offences), this Chapter applies to:
- Proceedings for summary offences,
 - Proceedings for offences listed in Table 1 or 2 of Schedule 1 to the *Criminal Procedure Act 1986* ('CPA') where no election to proceed on indictment has been made ('Table matters'), and
 - Proceedings for offences against a law of the Commonwealth that are punishable by imprisonment for a period not exceeding 10 years and **in respect of which the consent of BOTH the prosecution and the defence is required for summary disposition** ('Commonwealth optional indictable matters').

5.2 Objects

- (a) In addition to the objects specified in Part A, this Chapter has the objects of ensuring that:
- summary criminal trials are heard within the Local Court's published time standards;
 - the unnecessary attendance at Court of prosecution witnesses who are not required for cross-examination is avoided; and
 - the legislative purpose in s 260 CPA in respect of Table matters is applied.
- (b) To achieve these objects, paragraphs 5.3 - 5.8 apply.

5.3 Table matters and Commonwealth optional indictable matters

- (a) On the first mention, if there is no decision as to whether or not an election is to be made in a Table matter:
- (i) If the accused enters a plea of not guilty – orders will be made for the service of the brief in accordance with paragraph 5.4;
- (ii) If the accused enters a plea of guilty –
- the prosecution will be entitled to an adjournment for 2 weeks to consider whether or not to make an election; and
 - the facts are not to be tendered.
- (b) Pursuant to s 263(1) CPA, an election in relation to a Table matter must be made on or by the first return date after an order is made for service of the

brief of evidence (ordinarily, the second mention). The proceedings are to be dealt with summarily in accordance with this Chapter unless an election is made.

- (c) In proceedings involving a Commonwealth optional indictable matter, the prosecution and the defence must each indicate to the court whether or not they consent to the summary hearing of the charge/s no later than the time at which a plea is entered.
- (d) If an election is made in relation to a Table matter, or **a party DOES NOT consent to a summary hearing** in relation to a Commonwealth optional indictable matter, the proceedings are to continue in accordance with Practice Note Comm 2.

5.4 First mention

- (a) On the first mention, if the accused enters a plea of not guilty, a Magistrate or the Registrar is to:
 - (i) Make orders for service of the prosecution brief of evidence upon the accused in 4 weeks; and
 - (ii) Adjourn the proceedings for mention for reply in 7 weeks.

in all matters other than those mentioned in clause 24 of the Criminal Procedure Regulation 2017, which do not require a brief of evidence.

- (b) Where a plea of not guilty is entered in relation to a matter mentioned in clause 24 of the Criminal Procedure Regulation 2017 as a matter for which a brief of evidence is not required, the matter is to be listed for hearing without requiring the prosecution to serve a brief.
- (c) A brief of evidence must include a Court Listing Advice that:
 - (i) Lists the statements contained within the brief, and
 - (ii) Indicates any witness who is identified by the prosecution as a member of the NSW Police Force who the prosecution intends to call to give evidence in proceedings to corroborate evidence in chief given by another member of the NSW Police Force ('corroborative witness')

in the form set out in Attachment B.

- (d) Service is to be effected upon the accused in accordance with the provisions of Part 5 of the Local Court Rules 2009.

5.5 Second mention

On the second mention, unless the accused enters a plea of guilty, the Court will list the matter for hearing at the earliest available opportunity.

5.6 Adjournments

- (a) Adjournments or other variations to the above timetable will not be granted unless the Court is satisfied that departure from the timetable is in the interests of justice.
- (b) Failure to finalise a brief in accordance with the above timetable will not, of itself, provide the basis for an adjournment for further time for service of the brief. Unless a plea of guilty is entered or the interests of justice require otherwise, the Court will:
 - (i) List the matter for hearing; and
 - (ii) Order that the balance of the brief be served not less than 14 days prior to the allocated hearing date.
- (c) In the event the Court is informed of a failure to finalise a brief in accordance with the above timetable due to delays in forensic analysis of material, the Court will consider whether to grant an adjournment only if:
 - (i) The party seeking the forensic analysis informs the Court of the date the material was sent for forensic analysis, and
 - (ii) The Court is satisfied the results of the forensic analysis are likely to assist in the determination of the proceedings.

5.7 Matters where accused is legally represented

- (a) This paragraph applies only where the accused is represented by a barrister or a solicitor.
- (b) To assist in the prompt and effective service of the brief, the legal representative of the accused at the time of the making of the brief service order is to complete, sign and hand to both the prosecutor and the Court a Notice of Appearance (Attachment A).
- (c) Upon the adjourned date, in the event that a plea of not guilty is adhered to:
 - (i) the legal representative of the accused is to hand to the Court and to the prosecutor a completed Court Listing Advice (Attachment B);
 - (ii) the prosecution is to indicate whether it seeks that any witness identified to the defence as a corroborative witness in accordance with paragraph 5.4(c)(ii) give evidence by audio link or audio visual link in accordance with s 5BAA, *Evidence (Audio and Audio Visual Links) Act 1998*.

- (d) When listing the matter for hearing, notwithstanding sub-paragraph (c)(ii) and without limiting the Court's discretion under s 5BAA, the Court may direct that a witness is to attend to give evidence in person if:
- (i) The written statement of the witness and/or a list of corroborative witnesses has not been served upon the defence in accordance with paragraph 5.4, such that the Court cannot be satisfied that the witness is a corroborative witness;
 - (ii) The necessary audio link or audio visual link facilities are not available and cannot reasonably be made available on the first available date for listing the matter for hearing.
- (e) Any audio link or audio visual link proposed to be used must be capable of enabling the witness' evidence to be recorded by the court's recording system, in accordance with the constitution of the Local Court as a court of record under s 7, *Local Court Act 2007*.
- (f) Nothing in this paragraph precludes the defence from making an application that the court direct a witness to attend to give evidence in person under s 5BAA(3).
- (g) The prosecution is required only to call at the hearing those witnesses nominated for cross-examination on the Court Listing Advice. A notation on the Court Listing Advice by the legal representative of the accused that a witness is not required to be called for cross-examination does not prevent the prosecution calling that witness in the prosecution case if the prosecutor is of the opinion the witness is required. The remainder of the brief of evidence must be tendered by the prosecution in its case.

5.8 Costs

Pursuant to s 216 CPA, the court may order that a party to pay such costs as it may determine where it is satisfied that the other party has incurred additional costs because of the unreasonable conduct or delays of the first party.

6. VACATING HEARING DATES

6.1 General

- (a) When a hearing date has been allocated, it will not be vacated unless the party seeking to vacate shows cogent and compelling reasons.
- (b) Any application to vacate a hearing date must be in writing in the form of Attachment C and must be made not less than 21 days prior to the allocated hearing date, or such other period (whether longer or shorter) as in the opinion of the presiding magistrate will allow time to list other matters for hearing on the date(s) to be vacated.
- (c) In the first instance the application shall be dealt with by a Magistrate in Chambers and shall only be listed in court at the direction of the Magistrate.
- (d) The party bringing the application must give notice to the opposing party or parties of the application.

6.2 Urgent applications

- (a) Where urgent and unforeseen circumstances arise within the 21 days of the allocated hearing date, an application to vacate a hearing date should be made as soon as practicable after a party has become aware of grounds for such application and, in any event, not later than the next working day.
- (b) Upon an application to vacate a hearing date on the grounds of illness, the party making the application will be required to produce a medical certificate within a period specified by the court.

6.3 Change of plea

When instructions are received to enter a plea of guilty in a matter fixed for defended hearing, the prosecution and the court should be advised at the earliest opportunity.

7. AUDIO VISUAL LINK (AVL) FACILITIES

7.1 Procedures to be adopted for persons in custody at Courts/ Circuits with no AVL facilities

- (a) **Courts without AVL facilities:** Presiding magistrates at the Local Court locations without AVL facilities ('original courts') will adjourn all matters (other than matters for hearing) where accused persons are in custody, to the nearest or appropriate allocated courthouse with AVL facilities in accordance with the Listing and Sitting Arrangements published on the Local Court website (<http://www.localcourt.justice.nsw.gov.au/>) from time to time.
- (b) **Courts with AVL facilities:** Presiding Magistrates at Local Court locations with AVL facilities will manage all matters involving persons in custody from surrounding courts including:
 - (i) Hearing of bail applications;
 - (ii) Making of brief orders;
 - (iii) Making of further brief orders;
 - (iv) Listing matters for hearing or sentence at the original Court;
 - (v) Adjournments.
- (c) When a matter from a surrounding court is ready to be listed for hearing or sentence, it will be necessary for the parties through the registrar at the Court with the AVL facility to ascertain a suitable date for the adjournment of the matter to the original court for hearing or sentence.
- (d) This Chapter does not affect arrangements currently in place for Centralised Committals nor the courts at which committal proceedings are dealt with.

7.2 Applications for witnesses to give evidence via AVL or telephone

- (a) An application for a witness to give evidence via AVL or telephone in a summary hearing is to be made in the form set out at Attachment D, no less than 10 days prior to the hearing date.
- (b) An application is to be determined by a magistrate in chambers, unless:
 - (i) At the time of lodgment of the application, a party indicates that they do not consent to the application being determined in chambers; and
 - (ii) The magistrate considers it is in the interests of justice that the application be heard and determined in court.

8. DEFENDANTS WITH A MENTAL ILLNESS

8.1 Provision of Psychiatric Reports to Correctional Facilities

- (a) In many cases coming before the Court, psychiatric reports (including those from Justice Health prepared by Court Nurse Clinicians) are tendered during the proceedings. Often it would be of assistance to the Department of Corrective Services and prisoners if these reports were transported back to the prison with the prisoner. The Department of Corrective Services has agreed to facilitate this.
- (b) In cases where it is requested that a report accompany the prisoner, a separate copy of the report should be placed in a sealed envelope and addressed to the Nursing Unit Manager of the correctional centre or a nominated person within Justice Health.

8.2 Section 33(1)(a) applications

When making an order for a defendant to be taken to hospital for assessment and possible admission for treatment under section 33(1)(a) of the *Mental Health (Forensic Provisions) Act 1990*, no bail determination is required. A bail determination is not to be made unless and until the person is brought back before the Court after not being admitted for treatment.

9. MEDIA RECORDING OF PROCEEDINGS

9.1 Object

- (a) This Chapter sets out the procedure for making arrangements pursuant to section 9(2)(a) of the *Court Security Act 2005* for the recording and dissemination of court proceedings by media representatives.
- (b) The object of this Chapter is to facilitate the fair and accurate reporting of proceedings having regard to the principle of open justice.

9.2 Definitions

In this Chapter:

- **media representative** means a person with appropriate professional identification who is engaged in preparing a report of court proceedings for a recognised media organisation;
- **publication** means the publishing, broadcasting, transmitting, printing or disseminating by other means of all or part of a recording, whether on the Internet or otherwise;
- **recording** means the capturing on a medium of audio and/or visual content.

9.3 Application

- (a) A media representative seeking to use a recording device in court at the hearing of a proceeding must apply to the presiding Magistrate through the registrar of the court where the proceeding is to be held.
- (b) Wherever possible, the application is to be made prior to the date of hearing and will be dealt with in chambers. This is to ensure that, where an application is approved, suitable arrangements for the placement of recording devices can be made where required prior to the proceeding being held.

9.4 Determination

- (a) Determination of whether or not to approve an application to use a recording device in court is at the discretion of, and subject to any reasonable conditions imposed by, the presiding Magistrate.
- (b) In making a determination referred to in sub-paragraph (a), the presiding Magistrate may consider whether it is in the interests of justice to allow the application, having regard to:
 - (i) The principle of open justice;
 - (ii) The purpose for which the approval to use a recording device in the courtroom is sought;

- (iii) Any disruption or other adverse effect that use of a recording device in the courtroom may have upon the conduct of the proceeding, or any party or other participant in the proceeding;
- (iv) Any other matter the Magistrate considers relevant.

9.5 Conditions upon approved use of recording device

- (a) Without limiting sub-paragraph 9.4(a), the following standard conditions will apply to the use of a recording device in court unless varied by the presiding Magistrate:
 - (i) The use of a recording device must not cause any disruption to the proceeding. The presiding Magistrate may direct a media representative to cease using a recording device in the event that the Magistrate is of the view that a disruption is being caused.
 - (ii) A recording device must not be used to record the private conversations of any person in the courtroom before, during or after the proceeding.
 - (iii) Only one recording device will be permitted in the courtroom. It is a condition of approval that access to any recording made in court is to be shared amongst media organisations if media representatives from more than one media organisation wish to access the recording.
 - (iv) Only sound or images of the presiding Magistrate may be recorded, unless the prior approval of the Magistrate to record sound or images of another person in the courtroom is sought and obtained prior to the hearing.

9.6 Costs

Any additional costs incurred in making arrangements for media recording pursuant to this Chapter are to be met by the media representative. The presiding Magistrate may require an undertaking to be given by the media representative when making an application to pay any additional costs.

PART C – SPECIFIC PROCEEDINGS

10. SUMMARY HEARINGS FOR DOMESTIC VIOLENCE OFFENCES

10.1 Application

This Chapter applies to all summary proceedings in respect of domestic violence offences, as defined in section 11 of the *Crimes (Domestic and Personal Violence) Act 2007*, that are listed for mention or hearing in the Local Court of New South Wales.

10.2 Object

- (a) The object of this Chapter is to ensure that, where appropriate, pleas of guilty are entered at the first available opportunity and if a plea of not guilty is entered that a hearing occurs with expedition.
- (b) The time standard applying to such matters is that the matter will be listed for hearing within 6 months of the charges being laid.

10.3 Procedure

To achieve the object set out in paragraph 10.2, the following practice directions apply:

- (a) Where a person is charged with a domestic violence offence, the prosecution shall serve on the defendant at the first available opportunity, and not later than the first mention date in court a copy of the mini brief of evidence upon which the prosecution relies. The mini brief may be served upon the defendant's representative. The mini brief is to include:
 - (i) The alleged facts;
 - (ii) A copy of the victim's statement; and
 - (iii) Any photographs on which the prosecution will rely.
- (b) At the first mention, the prosecution must provide the court with a completed Notice: Evidence of Domestic Violence Complainant (Attachment E) indicating whether the complainant:
 - (i) wishes to exercise their entitlement to give evidence by audio visual link or by use of alternate arrangements which restrict contact with the accused; or
 - (ii) chooses not to exercise either entitlement, pursuant to section 289V of the *Criminal Procedure Act 1986*.
- (c) The court may require the defendant to enter a plea at the first time the matter is mentioned in court. If no plea can be entered at that time, or the defendant has not had a reasonable opportunity to view the recorded statement, the court will allow an adjournment of not more than 14 days for a plea to be entered, or for the recorded statement to be viewed.

- (d) Unless a plea of guilty is entered, that matter shall be adjourned to a hearing date, with a direction that the balance of the brief be served not less than 14 days before the date fixed for hearing, in accordance with s 183 of the *Criminal Procedure Act 1986*.
- (e) Where the defendant is legally represented, within 7 days of the service of the balance of the brief, the prosecutor should be advised of which witnesses are required for cross examination and which if any witnesses statements can be tendered without the need to call them for cross-examination.
- (f) In the event that representations are sought to be made to Police, the making of representation will not delay the listing of a hearing or any other part of these standard directions.

10.4 Interpretation

This Chapter does not operate to make any statement admissible in a proceeding for a domestic violence matter if it is not otherwise admissible.

11. PENALTY NOTICE ENFORCEMENT ORDER ANNULMENT APPLICATIONS

11.1 Application

The procedures outlined in this Chapter set out the manner in which an appeal against a refusal by the Commissioner of Fines Administration (*the Commissioner*) to withdraw a penalty notice enforcement order pursuant to section 50 of the *Fines Act 1996* (*an appeal*) and, if the appeal is granted, subsequent proceedings for the offence are to proceed.

11.2 Lodging an appeal

An appeal may be lodged at *any* Local Court Registry.

11.3 Appearances by the Commissioner

- (b) The Commissioner may make written submissions on the appeal instead of being legally represented.
- (c) The Commissioner's submissions must include a copy of the penalty notice enforcement order, and:
 - (i) The name and address for service of the prosecuting authority, and
 - (ii) The driver licence number, if known, of the person allegedly responsible for the offence.

11.4 Annulment granted – Plea of Guilty

If the Court grants the annulment, and the defendant pleads guilty to the offence, the Court will, where appropriate, proceed to determine the offence.

11.5 Annulment granted – Plea of Not Guilty

- (a) If the Court grants an annulment, and the defendant pleads not guilty to the offence, the Court will adjourn the matter to for hearing at a Court proximate to where the offence took place.
- (b) Where possible, the matter will be listed for hearing *no less than* two months after the annulment is granted.
- (c) The prosecuting authority may make an application to vacate the hearing if any witnesses will be unavailable on the adjourned date in accordance with Chapter 6 (Vacating Hearing Dates).

11.6 Costs

The Court will not consider an order in relation to costs in the appeal proceedings unless the other party has been notified that such an application is to be made.

PART D – DIVERSIONARY PROGRAMS

12. MERIT

12.1 Description, objects and availability

- (a) The MERIT program is a pre plea diversion program for defendants with drug problems conducted in the Local Court of NSW. At selected locations the MERIT program includes Alcohol MERIT for persons charged with offences before the Local Court who have alcohol problems.
- (b) The program provides for the early referral for assessment of arrested persons who are eligible for bail (or do not require bail consideration) and who are motivated and volunteer to engage in treatment and rehabilitation for their drug use problem.
- (c) The program brings together the health, justice and law enforcement systems with the focus on the reduction of criminally offending behaviour associated with drug use.
- (d) The successful engagement in the MERIT program can be taken into account in sentence proceedings.
- (e) The MERIT program is available at over 50 Local Court locations across New South Wales. Additional locations may be added from time to time. Those wishing to make a referral to the program should contact their nearest Local Court registry for information as to whether the MERIT program is available at a particular location.

12.2 Referrals to the MERIT program

- (a) Referrals for assessment into the program may come from one of the following sources:
 - (i) on apprehension by the Police who may refer a defendant for assessment into the program;
 - (ii) at the commencement of proceedings, by:
 - the defendant;
 - the defendant's lawyer;
 - the presiding Magistrate; or
 - any other person (such as family/friend, health professional, probation and parole officer).

12.3 Preliminary considerations for entry into the MERIT program

- (a) The MERIT program is designed as a pre-plea scheme to encourage referral for assessment at an early stage of the court process and entry into the program is not dependant on the person's guilt or innocence.
- (b) Notwithstanding paragraph 12.3(a) above, a plea may be entered at any time from the person's first appearance before the court until the conclusion of the program.

12.4 Criteria for eligibility to participate in the MERIT program

- (a) To be eligible to participate in the MERIT program the defendant must meet the following criteria:
 - (i) The defendant must be an adult;
 - (ii) The offences should not involve strictly indictable offences or sexual offences and the defendant should not have like offences pending before a Court.
 - (iii) The defendant must be suspected of using drugs or have a history of drug use
 - (iv) The defendant must be eligible for bail and suitable for release on bail or not require bail consideration
 - (v) The defendant must voluntarily agree to participate

12.5 General procedure

- (a) If considered eligible to participate, the defendant should be referred to the MERIT assessment team attached to the Court for the relevant assessment to be undertaken to ensure that the defendant is suitable for the program. The Court proceedings should be adjourned for a short period to allow that assessment to occur.
- (b) As part of the assessment, the MERIT case worker will assess the nature of the defendant's drug use and other associated problems.
- (c) The case worker is to assess the defendant against the criteria for suitability for entry to the program and then formulate a proposed treatment plan for the defendant to undertake and prepare a report for the Court.
- (d) If the defendant is considered suitable for the MERIT program, the Magistrate may approve placement of the defendant onto the program.
- (e) If the defendant is considered not suitable for the program, the defendant will be asked to enter a plea and the matter will proceed in the usual way.

12.6 Treatment

- (a) Once the Magistrate formally approves the placement of the defendant on the MERIT program, the treatment plan as devised by the MERIT case worker, if it has not already commenced, will be commenced.
- (b) The determination of an appropriate treatment module is a matter solely within the discretion of the MERIT case worker. Their trained role is to identify the needs, risks, long and short term goals of the participant and then to oversee the provision of available treatment services in the best interests of that participant. Examples of the drug treatment programs available include:
 - (i) medically supervised and home based detoxification;
 - (ii) methadone and other pharmacotherapies such as naltrexone and buprenorphine;
 - (iii) residential rehabilitation;
 - (iv) individual and group counselling and psychiatric treatment.
- (c) The MERIT program is generally planned as a 12 week intensive program. It may be extended in special circumstances with the agreement of the Magistrate, the MERIT case worker and the defendant.
- (d) During the treatment phase the Court effectively case manages the process. Once accepted into the MERIT Program, the defendant is required to return to Court at such intervals as determined by the Magistrate usually on the recommendation of the MERIT Team. At each adjournment, an update report is provided and the defendant required to attend unless excused by the Court with the concurrence of the MERIT Team. At the conclusion of the program a final report is provided by the MERIT team.


12.7 Breaches

- (a) Should the defendant fail the program despite sufficient opportunities to comply with the directions of the MERIT Team, the MERIT Team must, as soon as possible, notify the Court. The defendant's continuation on the program is a matter for Magisterial discretion. If the defendant is removed from the program by the Magistrate, or withdraws voluntarily at any time, the matter should be relisted as soon as possible for normal judicial management.
- (b) While minor issues of non-compliance with the agreed treatment plan need not necessarily be actioned, reference to such conduct should appear in the interim or final reports.

12.8 Conclusion of MERIT program

- (a) At the conclusion of the program, the final report will set out the achievements or otherwise of the participant under the program. At that time, the defendant will be asked (if it has not already happened) to enter a plea. The case will then proceed through the normal justice process.

- (b) On sentence, the successful completion of the MERIT program is a matter of some weight to be taken into account in the defendant's favour. At the same time, as the MERIT program is a voluntary opt in program, its unsuccessful completion should not, on sentence, attract any additional penalty.
- (c) The final sentencing outcome should be formally communicated by the Court to the MERIT Team for their recording purposes.



Judge Graeme Henson AM
Chief Magistrate



NOTICE OF APPEARANCE IN SUMMARY CRIMINAL TRIALS

In the Local Court at:

I advise I appear on behalf of (name)

In the matter of Police v

Police "H" Number reference

Listed on

NAME of Legal Representative

FIRM OF SOLICITORS

.....

Telephone Fax Number

Email

NOTE: Service by DX, facsimile or email is permitted if legal representative specifies DX address, fax number or email address in this Notice (Local Court Rules 2009 r 5.10(2)).

.....
(Signature of Legal Representative)

LOCAL COURT LISTING ADVICE

(IMPORTANT – Where the defendant is represented by a barrister or solicitor a completed and signed copy of this document must be given to the Court and the prosecutor on the return date)

CASE:	POLICE v				
CHARGE/SUMMONS REFERENCE NUMBER:					
FOR MENTION:	LOCAL COURT / /				
PNG:	CONFIRMED			WITHDRAWN	
STATEMENT IN POLICE BRIEF	Corroborative witness*?		If yes, corroborative of which other witness?	Required for cross-examination**?	
1.	YES	NO		YES	NO
2.	YES	NO		YES	NO
3.	YES	NO		YES	NO
4.	YES	NO		YES	NO
5.	YES	NO		YES	NO
6.	YES	NO		YES	NO
7.	YES	NO		YES	NO
8.	YES	NO		YES	NO
9.	YES	NO		YES	NO
10.	YES	NO		YES	NO
11.	YES	NO		YES	NO
12.	YES	NO		YES	NO
13.	YES	NO		YES	NO
14.	YES	NO		YES	NO
15.	YES	NO		YES	NO
ESTIMATED DURATION OF HEARING			HOURS		
NUMBER OF DEFENCE WITNESSES					
IS AN INTERPRETER REQUIRED?			YES	NO	
WHAT LANGUAGE?					
TECHNOLOGY REQUIRED?					
• AUDIO VISUAL LINK			YES	NO	
• REMOTE WITNESS (CHILD/VULNERABLE PERSON/DV COMPLAINANT)			YES	AGE:	SEX: M / F NO
• CCTV FOOTAGE/ELECTRONIC EVIDENCE TO BE PLAYED			YES	NO	
NOTICE, cl 27 CRIMINAL PROCEDURE REGULATION 2017 GIVEN?			YES	NO	
DEFENDANT'S SOLICITOR / COUNSEL SIGNATURE AND NAME					
CONTACT PHONE NUMBER					

* A member of the NSW Police Force called to give evidence in proceedings to corroborate evidence in chief given by another member of the NSW Police Force for the prosecution: s 5BAA, *Evidence (Audio and Audio Visual Links) Act 1998*

** Where a witness is not required for cross-examination it will prima facie be assumed that the tender of the statement is consented to subject to the *Evidence Act 1995*.



**Form 1 –
APPLICATION TO VACATE A HEARING DATE**

PARTS A & B MUST BE COMPLETED IN FULL PRIOR TO THE APPLICATION BEING LODGED IN PERSON BY THE APPLICANT OR THE APPLICANT'S REPRESENTATIVE

Note: This application will be dealt with in Chambers unless there is good reason for it to be listed before a Court. This application, together with all relevant information should be submitted in writing not less than **21 days** before the hearing date **OR**, in the case of urgent circumstances arising after that time, as soon as practicable before the date of hearing.

You will be advised of the outcome of the application and the date on which it is next listed (where applicable).

You must lodge all relevant supporting documentation with this application.

PART A (Applicant to complete)

Name of the matter:.....

Date listed for hearing.....Time estimate.....

Place listed for hearing.....Local Court

Offence(s).....

Application lodged on behalf of the.....(Prosecution/defence)

Name of applicant: Signature:

(Informant/Defendant/Representative) Address:

Date:...../...../..... Phone: Fax:

I apply to vacate the hearing date for the following reasons:

(Please provide as much information as possible in support of the application - attach additional pages if more space required)

.....
.....
.....
.....
.....
.....

Attachment C

If the application has arisen because of the non-availability of any relevant person in the matter, including witnesses, legal representatives or a defendant you must provide answers to the following questions:

1. When was this person first notified of the hearing date?.....(date)

2. Was the event which has caused this person to be unavailable arranged before or after the person became aware of the hearing date?
.....

3. If before, why was the court advised that this date was a suitable date for hearing?
.....
.....

4. If after, why did this person arrange another commitment for the day of hearing?
.....
.....

5. Why is it essential for this person to be present at the hearing?
.....

Contact address (include telephone number/e-mail)

Applicant.....	Respondent.....
.....
.....

PART B (Other party to complete - a faxed copy is sufficient)

(Note: Adjournments will not be granted simply because both parties consent to an adjournment)

I agree with this application. I have notified the applicant of my unavailable dates

I do not agree to this application because:

.....
.....

I do/do not wish to be present if the application is heard in court

Name of other party:

(Informant/Defendant/Representative) Signed:

(Delete where not applicable) Address:

Date: Phone: Fax:

Attachment C

PART C (Court/office use only)

APPLICATION:

GRANTED - NEW HEARING DATE IS.....

REFUSED - WILL BE HEARD IN COURT (NO:) ON...../...../.....

.....

Magistrate

Date:...../...../.....

- COPY TO:
1. List Office/Registry
 2. Police Prosecutors
 3. Other (specify)

Application for Witness to Give Evidence via Audio Visual Link or Telephone

Evidence (Audio and Audio Visual Links) Act 1998

Note: This application will be dealt with in Chambers unless there is good reason for it to be listed before a Court, which must be indicated at the time of lodgment. This application, together with all relevant information, should be submitted in writing not less than 10 days before the hearing date.

You will be advised of the outcome of the application.

Part A (Applicant to complete)

In the matter of:

Hearing date:

Court location:

Offence(s):

Application lodged on behalf of:

Prosecution / Defence

I consent to this application being dealt with in Chambers: Yes / No

(If 'No') I submit it is in the interests of justice for this application to be determined in court because:

Method of giving evidence: Audio Visual Link (AVL) (*preferred*) / Telephone

Name of witness:

Interpreter required: Yes / No

If yes - language required:

- The witness is:
- a Government Agency Witness (*pursuant to s 5BAA*)
 - an expert in relation to (*specify, if applicable*):
 - required to give corroborative evidence
 - otherwise required for (*specify, if applicable*):

Estimated time of witness evidence:

Minutes / Hours / Days

Confirmation: AVL facilities are available at the following location from which the witness is able to appear to give evidence:

- Nature of facilities:
- Jabber (*preferred*)
 - Skype
 - Facetime
 - Commercial videoconferencing facilities
 - Telephone
 - Other (*specify, if applicable*):

I submit it is in the interests of the administration of justice for the court to grant the application for the following reason/s:

Name of applicant:

Signature:

Date:

(Informant / Government Agency Witness / Representative)

Address:

Email:

Phone:

Fax:

Attachment D

Part B (Other party to complete – a faxed or emailed copy is sufficient)

I **agree** to this application: Yes / No

I **do not agree** to this application for the following reason/s (s 5B(2)):

The evidence can more conveniently be given in the courtroom, because:

The direction would be unfair to a party to the proceeding, because:

The person in respect of whom the direction is sought will not give evidence, because:

Other:

I consent to this application being dealt with in Chambers: Yes / No

(If 'No') I submit it is in the interests of justice for this application to be determined in court because:

Name of other party:

Signature:

Date:

(Informant / Defendant / Representative)

Address:

Email:

Phone:

Fax:

Part C (Magistrate/Office use only)

AVL facilities are available: Yes / No

Registrar / List Clerk of the Local Court at:

Signature:

Date:

Magistrate decision: Application Granted / Refused

Magistrate:

Date:

Copy to: Registry / Prosecution



NOTICE: EVIDENCE OF DOMESTIC VIOLENCE COMPLAINANT IN CRIMINAL PROCEEDINGS

NOTE: This notice must be completed by the prosecution and provided to the magistrate at first mention in ALL criminal proceedings for a domestic violence offence.

The prosecution should discuss the complainant’s entitlements under section 289V of the *Criminal Procedure Act 1986* with the complainant prior to completing this notice.

CASE:	POLICE v
H NUMBER:	
CASE NUMBER:	

The prosecution has discussed the complainants’ entitlements under section 289V of the *Criminal Procedure Act 1986* with the complainant in the above matter. The complainant has indicated if the above matter proceeds to hearing following a plea of not guilty, he/she: *(please select **ONE** option below)*

A: Seeks to exercise their entitlement to give evidence from a place other than the court room by Audio Visual Link under section 289V of the <i>Criminal Procedure Act 1986</i>	<input type="checkbox"/>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------

OR

B: Seeks to exercise their entitlement to give evidence by use of arrangements made to restrict contact with the accused (including screens, planned seating arrangements) under section 289V of the <i>Criminal Procedure Act 1986</i>	<input type="checkbox"/>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------

OR

C: Chooses not to exercise either of the above entitlements and will attend to give evidence in person without any arrangements in place under section 289V of the <i>Criminal Procedure Act 1986</i>	<input type="checkbox"/>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------

PROSECUTOR/ OIC NAME :			
SIGNATURE:		DATE:	/ /

CONSTITUTION ACT 1902

Ministerial arrangements for the Premier

Pursuant to section 36 of the *Constitution Act 1902*, Her Excellency the Governor, with the advice of the Executive Council, has authorised the Honourable (John) Giovanni Domenic Barilaro MP to act for and on behalf of the Premier for the period from 29 December 2020 to 10 January 2021, inclusive.

Dated: 16 December 2020

GLADYS BEREJIKLIAN, MP
Premier

CONSTITUTION ACT 1902

Ministerial arrangements for the Minister for Counter Terrorism and Corrections

Pursuant to section 36 of the *Constitution Act 1902*, Her Excellency the Governor, with the advice of the Executive Council, has authorised the Honourable David Elliott MP to act for and on behalf of the Minister for Counter Terrorism and Corrections on and from 30 December 2020 to 7 January 2021, and on and from 12 to 15 January 2021, inclusive; and the Honourable Gareth Ward MP to act for and on behalf of the Minister for Counter Terrorism and Corrections on and from 8 to 11 January 2021, inclusive.

Dated: 16 December 2020

GLADYS BEREJIKLIAN, MP
Premier

CONSTITUTION ACT 1902

Ministerial arrangements for the Minister for Regional Transport and Roads

Pursuant to section 36 of the *Constitution Act 1902*, Her Excellency the Governor, with the advice of the Executive Council, has authorised the Honourable Andrew Constance MP to act for and on behalf of the Minister for Regional Transport and Roads on and from 24 December 2020 to 17 January 2021, inclusive.

Dated: 16 December 2020

GLADYS BEREJIKLIAN, MP
Premier



**Land and Environment
Court**
of New South Wales

PRACTICE NOTE

CLASS 5 PROCEEDINGS

Name and commencement of Practice Note

1. This practice note is to be known as Practice Note - Class 5 Proceedings. It commences on 10 December 2020. It replaces the Practice Note – Class 5 Proceedings made on 3 April 2018.

Application of Practice Note

2. This practice note applies to all criminal proceedings in Class 5 of the Court's jurisdiction referred to in s 21 of the *Land and Environment Court Act 1979*.

Purpose of Practice Note

3. The purpose of this practice note is to:
 - (a) reduce delays in criminal proceedings before the Court by implementing the preliminary disclosure and case management provisions in Chapter 4, Part 5, Division 2A of the *Criminal Procedure Act 1986*;
 - (b) set out the case management procedures and the process for the preparation for, and conduct of, trials and sentencing hearings to ensure that criminal proceedings are dealt with in a just and timely way; and
 - (c) assist the defendant to take advantage of legislation which provides for a discount in sentence for an early plea of guilty.

Statutory Context

4. Case management provisions and other provisions to reduce delays in criminal proceedings are set out in Division 2A (ss 247A – 247Y) of Part 5 of Chapter 4 of the *Criminal Procedure Act*. Part 5 of Chapter 4 also applies generally to Class 5 proceedings (s 41 of the *Land and Environment Court Act*) as does Part 5 of the *Land and Environment Court Rules 2007*, which adopts certain provisions of the *Supreme Court Rules 1970* and the *Uniform Civil Procedure Rules 2005*.



**Land and Environment
Court**
of New South Wales

5. Case management measures available to the Court include the ordering of preliminary hearings, preliminary conferences and further preliminary disclosure. The Court has a discretion in determining which (if any) of those measures are suitable in the criminal proceedings concerned.

Responsibility of parties, legal practitioners and agents

6. It is the responsibility of each party, its legal representatives and agents (as applicable) to consider the directions appropriate to be made in the particular case to ensure that criminal proceedings are dealt with in a timely way.
7. If a party reasonably considers that compliance with this practice note will not be possible, or will not be conducive to timely dealing with proceedings, the party should apply to be relieved from compliance on the basis that an alternative proposed regime will be more conducive to such resolution. In that event, the party is to notify other parties of the proposed alternative regime as soon as practicable and is to provide the Court with short minutes of proposed directions reflecting that alternative regime.

Legal practitioners and agents of parties to be prepared

8. Each party not appearing in person shall be represented before the Court by a legal practitioner familiar with the subject matter of the proceedings and with instructions sufficient to enable all appropriate orders and directions to be made.
9. Parties are to confer prior to any attendance before the Court with a view to reaching agreement on directions to propose to the Court and preparation of agreed or competing short minutes recording the proposed directions.

Commencing a Class 5 proceeding

10. *Form to commence proceedings:* Proceedings for an offence in Class 5 of the Court's jurisdiction are to be commenced by summons. The summons is to claim an order under s 246(1) of the Criminal Procedure Act in respect of the offence and claim that the defendant be dealt with according to law for commission of the offence (Pt 5 r 5.3(1) of the Land and Environment Court



**Land and Environment
Court**
of New South Wales

Rules). An order under s 246(1) of the Criminal Procedure Act is that the defendant appear before the Court at a specified date, time and place to answer to the offence charged in the order, or for the apprehension of the defendant for the purpose of being brought before a judge of the Court to answer to the offence charged in the order.

11. *Minute of order in summons:* When filing the summons, the prosecutor is to lodge copies of a minute of the order under s 246(1) of the Criminal Procedure Act claimed by the prosecutor.
12. *Affidavits accompanying summons:* A summons seeking an order under s 246 of the Criminal Procedure Act is to be accompanied by the affidavits intended to be relied on by the prosecutor as establishing prima facie proof of the offence charged (Pt 5 r 5.3(2) of the Land and Environment Court Rules).
13. *Procedure for obtaining an order:* Before filing the summons, the prosecutor is to apply to the Court's registrar for the prosecutor's summons claiming an order under s 246(1) of the Criminal Procedure Act to be heard before a judge, usually the duty judge. A date, time and place will be organised. The application may be dealt with in person in a courtroom or the judge's chambers, with the legal representatives of the prosecutor in attendance, or remotely by telephone, AVL or MS Teams. The Court will advise of the method by which the application will be dealt with by the judge.
14. The prosecutor needs to establish that it is appropriate for the judge to exercise the coercive power for which s 246(1) provides. If so satisfied, the judge will make an order under s 246(1), either that the defendant appear before the Court at the date, time and place specified or that the defendant be apprehended for the purpose of being brought before a judge to answer to the offence charged in the order.
15. If the application was heard in person in court or chambers, and the judge makes the order sought, the prosecutor will proceed immediately to the Court's registry at level 4, 225 Macquarie Street, Sydney for the purpose of formally filing the summons and affidavits and paying the filing fee and having the order made by the judge entered. The prosecutor needs three copies of each of the summons, order and affidavits, if there is one defendant, and an additional copy for each additional defendant.



**Land and Environment
Court**
of New South Wales

16. If the application was heard remotely by telephone, AVL or MS Teams, as soon as practicable after the judge has made the order, the prosecutor is to file the summons and affidavits and pay the filing fee and have the order made by the judge entered.
17. *Processing the summons and order.* The Court will process the summons and order at the Court's registry. The summons will be recorded in the Court's record system and stamped as having been filed with the Court. The order under s 246(1) of the *Criminal Procedure Act* made by the judge will be entered. The date, time and place for the defendant to answer to the offence charged in the order will be specified in the order and the copies.
18. The Court's registry will keep one copy of the summons, order and affidavits for the Court's file and return the other copies to the prosecutor. One of the returned copies is for the prosecutor to keep and the other sets of copies are to be served on each defendant.

Service

19. The sealed order and stamped copy of the summons and affidavits are to be served on the defendant within 7 days of commencement of the proceedings.

The date, time and place for the defendant to answer the offence charged

20. The order under s 246(1) of the *Criminal Procedure Act* will usually specify the date, time and place for the defendant to answer the offence charged in the order. Usually this will be the first mention of the proceeding. It will be about 6 weeks after the proceedings were commenced and the order was made. The first mention will occur before the List Judge.

Class 5 List

21. There is a Class 5 List which will be managed by the List Judge, usually each Friday.
22. In the Class 5 List the Court:



**Land and Environment
Court**
of New South Wales

- (a) gives directions and conducts the first mention as a preliminary hearing;
and
 - (b) hears or manages any notice of motion or other interlocutory application.
23. Matters in the Class 5 List will be listed in blocks on a “not before” a specified time basis. Parties should check the daily court lists as published prior to attendance at Court in order to determine the “not before” time that their matter is listed.

Number of pre-trial or pre-sentencing hearing attendances

24. Unless there are interlocutory applications or more than one preliminary hearing is required, a Class 5 proceeding should normally appear in Court before the trial or sentencing hearing on no more than two occasions as follows:
- (a) at the first mention in the Friday list when the defendant may enter a plea and the Court gives directions;
 - (b) at a preliminary hearing in the Friday list when a date for the trial or sentencing hearing will be fixed and the Court gives directions.

Before the first mention

25. In preparation for the first mention and to enable the Court to make appropriate directions, the parties are to take the following steps before the first mention:
- (a) they should endeavour to identify their counsel or their solicitor who will be appearing for them, in order to allow meaningful and binding decisions to be taken about evidence and other matters;
 - (b) the defendant is to consider the plea the defendant intends to make in answer to the offence charged in the order. Usually, the pleas are either guilty or not guilty of the offence charged. A defendant may be given a discount on the penalties imposed for an offence if a defendant enters an early plea of guilty, which may be at the first mention;



**Land and Environment
Court**
of New South Wales

- (c) the prosecutor is to consider the time by which notice of the prosecution case could be given by the prosecutor under s 247E of the Criminal Procedure Act;
- (d) the defendant is to consider the time by which notice of the defence response could be given by the defendant under s 247F of the Criminal Procedure Act;
- (e) the prosecutor and the defendant are to consider whether the Court at the first mention should order one or more preliminary hearings before the Court under s 247G of the Criminal Procedure Act. At preliminary hearings, the Court may make directions for the efficient management and conduct of the proceedings, and hear and determine and make rulings or findings on objections, submissions and questions of law (see s 247G(2) and s 247G(3));
- (f) the prosecutor and the defendant are to consider whether the Court at the first mention should order that a preliminary conference be held under s 247H of the Criminal Procedure Act. The purpose of a preliminary conference is to determine whether the defendant and the prosecutor are able to reach agreement regarding the evidence to be admitted at the trial or sentencing hearing (see s 247H(4));
- (g) the prosecutor and the defendant are to consider whether the Court at the first mention should order preliminary disclosure by the prosecutor under s 247J of the Criminal Procedure Act, by the defendant under s 247K of the Criminal Procedure Act, and by the prosecutor in response to the defence response under s 247L of the Criminal Procedure Act; and
- (h) the prosecutor and the defendant are to discuss and endeavour to agree on the directions that the Court should make at the first mention. If the parties do not agree, each party should prepare their own version of the directions they propose.

At the first mention

26. *Date, time and place:* The first mention will usually be on a Friday about 6 weeks after commencement of the proceedings. It will be conducted by the List



**Land and Environment
Court**
of New South Wales

Judge, in a courtroom in the Court's building at 225 Macquarie Street, Sydney. The location of the courtroom and the precise time of the day first mention will occur will be shown on the Court Lists posted on a notice board in the foyer of the building and on the Court's website under Court Lists in the afternoon of the day before the directions hearing. The Sydney Morning Herald may also (but does not always) publish the Court Lists on the morning of the date set for the first mention.

27. *Defendant's plea:* The defendant should advise the Court whether the defendant is in a position and is willing to enter a plea of not guilty or guilty to the offence charged and, if so, enter the plea.
28. *Restorative justice:* If the defendant enters a plea of guilty, the prosecutor and defendant are to advise the Court of any proposal for, and timing of, any restorative justice process in which the defendant and victims (people and the environment) of the offence committed by the defendant are willing to participate and any proposed order for a restorative justice activity that the defendant has agreed to carry out.
29. *Time for notices of prosecution case and defence response:* The prosecutor and the defendant are to advise the Court of the time by which notice of the prosecution case is to be given under s 247E and notice of the defence response is to be given under s 247F of the Criminal Procedure Act.
30. *Short minutes of proposed directions:* The prosecutor and the defendant are to hand to the Court an agreed or their own versions of short minutes of the directions they propose the Court should make, including:
 - (a) the time by which notice of the prosecution case and notice of the defence response under s 247E and s 247F of the Criminal Procedure Act should be given;
 - (b) ordering a preliminary hearing under s 247G of the Criminal Procedure Act;
 - (c) ordering a preliminary conference under s 247H of the Criminal Procedure Act;
 - (d) ordering the prosecutor to give to the defendant notice in accordance with s 247J of the Criminal Procedure Act (if appropriate);



**Land and Environment
Court**
of New South Wales

- (e) ordering the defendant to give to the prosecutor notice of the defence response to the prosecution's notice in accordance with s 247K of the Criminal Procedure Act (if appropriate);
 - (f) ordering the prosecutor to give to the defendant notice of the prosecution's response to the defence response in accordance with s 247L of the Criminal Procedure Act (if appropriate);
 - (g) whether the Court should waive any of the requirements of Division 2A, Part 5, Chapter 4 of the Criminal Procedure Act under s 247P of the Act;
 - (h) if the defendant enters a plea of guilty, directing the preparation of an agreed statement of facts and bundle of documents;
 - (i) if the defendant enters a plea of guilty, directing the prosecutor to give to the defendant notice and details of any orders in connection with the offence that the prosecutor will be seeking for the Court to make (such as orders under Part 8.3 of the *Protection of the Environment Operations Act 1997*) if the Court finds the offence proved; and
 - (j) other directions for the efficient management and conduct of the proceedings.
31. *Making and recording directions:* The List Judge will make directions, usually orally, including fixing times for various notices to be given and dates for any preliminary hearings or preliminary conferences or agreed statement of facts and bundle of documents that might be ordered as well as a date for the second directions hearing. It is important that the parties record the directions the List Judge makes. A written copy of the directions made is not usually sent to the parties.

Before the first preliminary hearing

32. In preparing for the first preliminary hearing and to enable the Court to make appropriate directions, the prosecutor and the defendant need to take certain steps before the first preliminary hearing:



**Land and Environment
Court**
of New South Wales

- (a) if the defendant has not already entered a plea at the first mention of the proceedings, the defendant should consider the plea the defendant intends to make at the first preliminary hearing in answer to the offence charged in the order;
- (b) the prosecutor and the defendant should consider whether, in light of the matters raised in the notices of the prosecution case and defence response and any notices for preliminary disclosure by the prosecutor and the defendant ordered by the Court, which have been given, a further preliminary hearing under s 247G or a further preliminary conference under s 247H of the Criminal Procedure Act should be ordered;
- (c) the prosecutor and the defendant are to consider whether they wish to apply for directions under s 247M of the Criminal Procedure Act, including dispensing with formal proof of a fact, matter or circumstance, dispensing with the application of certain provisions of the *Evidence Act 1995*, and permitting evidence of two or more witnesses in the form of a summary;
- (d) the prosecutor and the defendant are to discuss and endeavour to agree on the estimated hearing time for the trial or sentencing hearing, broken down into the elements of the trial or sentencing hearing. If the parties are unable to agree, each party should prepare their own version of the estimated hearing time; and
- (e) the prosecutor and the defendant are to discuss and endeavour to agree on the directions the Court should make at the first preliminary hearing. If the parties do not agree, each party should prepare their own version of the directions they propose. Each party should find out the available dates of themselves and their witnesses, including experts, for the trial or sentencing hearing.

At the first preliminary hearing

33. *Date, time and place:* The first preliminary hearing will again be conducted on a Friday by the List Judge on the date fixed at the first directions hearing, in a courtroom in the Court's building at 225 Macquarie Street, Sydney. The location of the court and the precise time of the day will be published on the Court Lists on a notice board in the foyer of the Court's building and on the Court's website in the afternoon of the day before the first preliminary hearing.



**Land and Environment
Court**
of New South Wales

The Sydney Morning Herald may also (but does not always) publish the Court Lists on the morning of the date set for the preliminary hearing.

34. *Defendant's plea*: If the defendant has not already entered a plea at the first mention of the proceedings, the defendant should enter a plea at the first preliminary hearing of not guilty or guilty to the offence charged.
35. *Estimate of hearing time*: The prosecutor and the defendant are to hand to the Court a realistic agreed estimate or their own versions of an estimate of the hearing time, broken down into the elements of the trial or sentencing hearing.
36. *Completed minute of proposed directions*: The prosecutor and the defendant are to hand to the Court an agreed or their own versions of a minute of the directions they propose the Court should make, which may include:
 - (a) ordering a further preliminary hearing under s 247G of the Criminal Procedure Act (if appropriate);
 - (b) ordering a further preliminary conference under s 247H of the Criminal Procedure Act (if appropriate);
 - (c) making any directions under s 247M of the Criminal Procedure Act (if appropriate);
 - (d) whether the Court should waive any of the requirements of Division 2A, Part 5, Chapter 4 of the Criminal Procedure Act under s 247P of the Act;
 - (e) if the defendant enters a plea of guilty, directing the preparation of an agreed statement of facts and bundle of documents;
 - (f) if the defendant enters a plea of guilty, directing the prosecutor to give to the defendant notice and details of any orders in connection with the offence that the prosecutor will be seeking for the Court to make (such as orders under Part 8.3 of the *Protection of the Environment Operations Act 1997*) if the Court finds the offence proved; and
 - (g) other directions for the efficient management and conduct of the proceedings.



Land and Environment Court of New South Wales

37. *Making and recording directions:* The List Judge will make directions, usually orally, including fixing a date for the trial or sentencing hearing. The parties should record the directions made, including importantly the date, time and venue of the trial or sentencing hearing. A written copy of the directions made is not usually sent to the parties.

Expert evidence

38. An expert called to give evidence at a trial or sentencing hearing and the expert's evidentiary statement are to comply with the requirements of Division 2 of Pt 31 and the Expert Witness Code of Conduct in Schedule 7 of the Uniform Civil Procedure Rules.

The trial or sentencing hearing

39. The trial or sentencing hearing of the proceedings will take place in a courtroom in the Court's building at 225 Macquarie Street, Sydney or possibly, for country matters, in a court in regional New South Wales. The Court's direction fixing the trial or sentencing hearing will state the venue. The venue will also be stated on the Court Lists posted on the notice board in the foyer of the Court's building and on the Court's website on the afternoon of the day before the trial or sentencing hearing is to occur. The Online Registry also publishes the Court Lists up to three weeks prior to the listing.
40. The usual commencing time is 10.00 am. A judge will conduct the trial or sentencing hearing.

Hearing of all issues

41. Evidence and submissions at the trial or sentencing hearing are to address all issues the subject of the proceedings. No issue will be separately determined unless the Court so orders. Any application for separate determination of an issue should be made prior to the trial or sentencing hearing and be determined at a preliminary hearing ordered under s 247G(3) of the Criminal Procedure Act.



**Land and Environment
Court**
of New South Wales

Submissions

42. The Court is assisted by parties providing skeleton opening submissions before the trial (where appropriate) or sentencing hearing. Skeleton opening submissions are to be provided by the third working day prior to the date of the trial or sentencing hearing.
43. Skeleton opening submissions generally are not a substitute for a written outline of closing submissions. The Court will usually be assisted by a written outline of closing submissions, provided at the trial or sentencing hearing, which includes references to the evidence.
44. The skeleton opening submissions and outline of closing submissions should be provided to the hearing judge in hard copy (with an extra working copy) and electronically to the hearing judge's associate.

Authorities and legislation

45. Each party is to provide a list of authorities and legislation to be relied on to the hearing judge's associate one working day before the trial or sentencing hearing is to commence.
46. If any unreported authorities or superseded legislation are to be relied on, copies are to be provided to the hearing judge at the trial or sentencing hearing.

Notices of motion returnable in the Class 5 list

47. Any notice of motion is to be returnable in the Class 5 List unless the circumstances are so urgent as to justify an earlier listing. Parties and legal practitioners should endeavour to arrange evidence and outline of submissions so that, if practicable, the motion may be heard on the return date. Any outline of submissions is to be emailed to the List Judge's Associate two working days before the notice of motion is returnable.



Land and Environment Court of New South Wales

Breach of the Court's directions

48. If there is any significant breach of the Court's directions sufficient to cause slippage in a timetable, the parties must promptly, by e-Court communication or fax to the Registrar, restore the matter to the next Friday list before the List Judge. The party in breach or a legal practitioner with knowledge of the reasons for the breach must serve an affidavit no later than 4:00pm on the preceding day (Thursday) which identifies the breach, explains the reasons for the breach and proposes directions to be made in consequence of the breach.

Variation of timetables

49. If proposed directions vary an existing timetable, they must include a direction to vacate any previous directions that can no longer be maintained, including for dates for directions hearings or the hearing of motions.

Liberty to restore

50. Parties have general liberty to restore to the Friday list on three working days' notice, or less if urgency requires it. A party seeking to do so is to make prior arrangement with, or give appropriate notice to, any other party, and send an eCourt communication or fax to the Registrar.

Adjournments

51. Proceedings will not be adjourned generally. They will only be adjourned to a specific date.

Applications to vacate hearings

52. Dates for trials or sentencing hearings will not be vacated merely because the parties consent. Applications to vacate hearing dates are to be by notice of



**Land and Environment
Court**
of New South Wales

motion with an affidavit in support explaining the circumstances of the application and the reasons the hearing date should be vacated.

Co-operation

53. The Court expects parties, legal practitioners and experts to work together to implement this practice note in a practical and sensible way which ensures that it achieves its intended purpose.

Compliance

54. Parties and legal practitioners should note s 247N of the Criminal Procedure Act which provides for procedural sanctions against parties for non-compliance with the requirements of Division 2A, Part 5, Chapter 4 of the Criminal Procedure Act.
55. Any failure by one party to comply with the Court's directions will not normally be considered an adequate excuse for any failure to comply by the other party. Both parties are responsible for ensuring that they comply with directions.

***The Honourable Justice Brian J Preston
Chief Judge***

10 December 2020

VEXATIOUS PROCEEDINGS ACT 2008

Notification of Orders Concerning Vexatious Litigant

Nader Nabil Sedra Mohareb

On 11 December 2020, the Court of Appeal made the following orders in Mohareb v Palmer (No 2) [2020] NSWCA 324:

1. Leave granted to appeal against the orders of 7 August 2019.
2. Appeal allowed in part.
3. Order 2 be set aside.
4. Appeal otherwise dismissed.
5. No order as to costs.

** The consequence of Order 3 made above is that Order 2 made by HH Justice Fagan on 7 August 2019 no longer applies:

(2) The defendant, Nader Nabil Sedra Mohareb, is prohibited from instituting any new proceeding against any person in New South Wales, this order not to affect the filing of any interlocutory process in proceedings that have been commenced at the date of this order or any appeal or application for leave appeal from a decision in any such proceeding.