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“Her Excellency the Governor has been pleased to approve retention of the title ‘The Honourable’ by Justice Rowan James Darke as a Judge of the Supreme Court of New South Wales.”



**Local Court of New South Wales  
Specialist Family Violence List Pilot Practice Note**

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<b>Issued by</b>	Judge Johnstone, Chief Magistrate
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## 1. Purpose

- 1.1 This Practice Note establishes the Specialist Family Violence List Pilot (**'the List'**) and the procedural measures to be applied by the Court and court users.

## 2. Interpretation

2.1 In this Practice Note,

- (a) **The Act** refers to the *Crimes (Domestic and Personal Violence) Act 2007*.
- (b) **Ancillary applications** refers to applications for variation or revocation of an apprehended domestic violence order or a property recovery order.
- (c) **Apprehended domestic violence order ('ADVO')** refers to a provisional, interim or final apprehended domestic violence order.
- (d) **In camera** means closed to the general public.
- (e) **Complainant** refers to the person/s in need of protection in ADVO proceedings and/or the complainant/s in domestic violence criminal proceedings
- (f) **Standalone ADVO proceedings** refers to an application for an apprehended domestic violence order that does not involve any criminal charges

## 3. Objective(s)

3.1 The aim of the Specialist Family Violence List is to:

- (a) Improve the court experience for complainants in family violence proceedings
- (b) Improve the efficiency of the court process in family violence proceedings
- (c) Improve communication between the court, law enforcement, the legal profession and support services
- (d) Ensure that matters are treated in a trauma-informed and culturally respectful manner
- (e) Ensure ADVO's are consistent with other court orders such as bail conditions and Children's Court orders, and consider consistency with any existing family law orders

3.2 The Specialist Family Violence List seeks to achieve these aims by:

- (a) Implementing trauma-informed practice in the courtroom
- (b) Implementing specialised case management processes
- (c) Encouraging ongoing collaboration between key stakeholders

## 4. Trauma-Informed Practice

4.1 The Local Court recognises that:

- (a) Many court participants are trauma survivors and may continue to experience trauma to varying degrees, including as a result of legal proceedings
- (b) Acknowledging and understanding the impact of trauma on court participants may lead to more successful interactions and outcomes
- (c) A failure to apply trauma-informed practice may adversely impact participation and increase the level of trauma that court participants experience

4.2 Trauma informed judicial practice requires an awareness of the nature of trauma, its effects on behaviour and

wellbeing and how judicial processes can be conducted sensitive to the needs of those affected by trauma.

4.3 In proceedings before the List, the presiding magistrate should:

- (a) Adopt clear, simple language instead of unnecessary legal jargon
- (b) Provide clear explanations about what will happen to participants in the court room
- (c) Adapt their language and tone when communicating with vulnerable witnesses such as complainants or children
- (d) Give complainants as much agency and choice as possible
- (e) Monitor whether the complainant and/or the defendant understands the court process and feels included
- (f) Accommodate regular breaks for vulnerable witnesses
- (g) Where the complainant is in attendance at the first mention or other interlocutory proceedings, explain the court process and what will be expected of them
- (h) Avoid informal/familiar exchanges with legal representatives or the defendant
- (i) Explain actions that may give the impression of disinterest, for example, looking away from the complainant in order to take notes
- (j) Avoid use of language that minimises the impact on complainants.

## 5. Application

5.1 This Practice Note applies to all family violence related proceedings (**'eligible matters'**) listed at the pilot locations contained in paragraph 6.1, including:

- (a) All domestic violence offences, including breaches of ADVO's,
- (b) All police-initiated and privately initiated applications for an ADVO and ancillary applications;
- (c) Family law applications (such as parenting/recovery orders) if ancillary to an application for an ADVO.

5.2 This Practice Note does not apply to:

- (a) Apprehended personal violence orders instituted under to [Part 5](#) of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW); or
- (b) Personal violence offences that are not domestic violence offences within the meaning of [s 11\(1\)](#) of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW).

5.3 This Practice Note is to be read in conjunction with [Local Court Practice Note Crim 1](#) and [Local Court Practice Note No 2 \(Domestic Violence Matters\)](#).

## 6. Sittings

6.1 The List will sit at the following Local Court locations:

- (a) Sydney Downing Centre;
- (b) Blacktown;
- (c) Newcastle;
- (d) Gunnedah circuit (excluding Tamworth); and
- (e) Moree circuit.

6.2 The List may sit at such other courts as directed by the Chief Magistrate.

- 6.3 The List commences operation on a date after the commencement of this Practice Note, to be determined by the presiding magistrate in consultation with local stakeholders.
- 6.4 The List replaces existing 'DV lists' at each of these locations. For those locations without an existing DV list, suitable listing arrangements are to be determined by the presiding magistrate in consultation with local stakeholders.

## 7. Court-User Forums

- 7.1 To facilitate collaboration between key stakeholders and to ensure that the aims of the List are being achieved, court-user forums should be held no less than once every eight weeks.
- 7.2 The frequency of court-user forums remains at the discretion of the presiding magistrate, who may call a court-user forum at any time. The presiding magistrate retains the discretion to invite any stakeholder to attend court-user forums.
- 7.3 Participants in the court-user forum may provide recommendations to the presiding magistrate regarding local arrangements, efficiency, practices and procedures.
- 7.4 The presiding magistrate may, after consultation with local stakeholders during court-user forums, issue local practice directions or standard operating procedures to supplement this Practice Note.

## 8. Practice and Procedure

### First mention

- 8.1 The defendant must attend court in person on the first mention date unless legally represented.
- 8.2 In police applications, the complainant is encouraged to attend court in person on the first mention date but is not required to do so. Where the complainant does not attend on the first mention date, police are to ensure they have up to date instructions.
- 8.3 All eligible matters are to be listed for first mention in the List before the presiding magistrate. Charges and related AVO proceedings are to be listed on the same first return date.
- 8.4 Bail decisions (including first appearance and variations) may be considered by the Specialist Family Violence List.
- 8.5 AVO proceedings are to remain listed concurrently with related criminal charges in all circumstances.
- 8.6 At the first mention date for standalone ADVO proceedings, the Court will ascertain:
  - (a) Whether parties are present and whether the defendant has been served with the application notice;
  - (b) Whether the parties, including the complainant, have sought legal advice and/or representation;
  - (c) Whether a provisional order is in place, and if so, in what terms;
  - (d) Whether a property recovery order is sought;
  - (e) Where no provisional order is in place, whether an interim order is warranted based on the risk to complainant safety, and –
    - (i) If contested, an interim hearing is to take place;
    - (ii) If the interim hearing cannot take place on the first mention date, a further date will be allocated;
  - (f) Whether the parties have children and, if so, whether there are family law orders, parenting plans or Children's Court orders currently in place;
  - (g) Whether the matter is appropriate to be dealt with by way of a lapsing interim order in accordance with

paragraph 8.14; and

(h) Whether the defendant consents to final orders.

8.7 If a standalone AVO application is contested, and the presiding magistrate considers it inappropriate to be dealt with by way of a lapsing interim order, the Court will:

(a) make such directions for the filing and service of evidence as considered necessary;

(b) fix a compliance mention; and

(c) fix a date for final hearing.

8.8 The Court will ordinarily convert a provisional order to an interim order before adjourning proceedings.

8.9 The Court shall ensure that any interim orders are consistent with current bail conditions.

8.10 Where there are related criminal charges, the first mention is to be case managed in accordance with Part C, paragraph 10.3 of the [“Local Court Practice Note Crim 1”](#).

### **Lapsing interim orders**

8.11 A lapsing interim order may be granted in standalone AVO proceedings.

8.12 Each party is to be given an opportunity to make submissions as to the suitability of a lapsing interim order.

8.13 In determining whether to impose a lapsing interim order, the Court may have regard to the following:

(a) Whether such an order is by consent of the prosecutor and defendant;

(b) The views of the complainant, including whether the complainant has indicated they do not want a final order;

(c) Whether the complainant has received independent legal advice or engaged with support services;

(d) The nature of the relationship between the complainant and defendant;

(e) Any reconciliation between the complainant and defendant;

(f) The seriousness of the allegations contained in the grounds of the application and the conditions being sought;

(g) Whether lapsing interim orders have been sought in the past;

(h) Any impacts associated with imposing an interim order instead of a final order;

(i) Whether the defendant is seeking treatment and/or counselling; and

(j) Any other matter which the Court considers appropriate.

8.14 If the Court considers it appropriate to impose a lapsing interim order, proceedings will be adjourned for a period to be determined by the Court.

8.15 If there are no breaches of the lapsing interim order during the adjournment period, the AVO may be withdrawn by the prosecution and dismissed by the Court.

8.16 If the defendant agrees to engage with an appropriate counselling or intervention service, the Court will record this on the court file and may take this into account when the proceedings return to court.

8.17 At any stage during the adjournment period, the complainant, defendant or police may request that proceedings be relisted for the purpose of fixing a date for a defended hearing.

8.18 If there is a breach of the lapsing interim order and charges are laid, the Court may relist the ADVO proceedings and either impose a final order or fix a hearing date.

## Case management – standalone ADVO proceedings

- 8.19 This part applies to standalone ADVO proceedings which are not dealt with by way of a lapsing interim order.
- 8.20 Contested standalone ADVO's shall be listed for compliance mention at the time the matter is fixed for hearing. The compliance mention is to be listed not less than 8 weeks prior to the allocated hearing date or such other period as determined by the Court to allow the listing of other matters in the event that the hearing is vacated.
- 8.21 If filing directions have not been complied with, any of the following may occur:
- (a) the application may be struck out;
  - (b) a final ADVO may be made; or
  - (c) in exceptional circumstances, leave may be granted for evidence to be filed out of time.
- 8.22 Where leave is granted for evidence to be filed out of time, the Court may list the matter for a second compliance mention.

## Case management – criminal proceedings with related AVO

- 8.23 Where a defendant enters a plea of not guilty, the matter will be fixed for hearing and a readiness mention shall be allocated at least 14 days prior to the allocated hearing date.
- 8.24 Subject to this clause, a Notice of Readiness is to be filed with the Court and served no later than 48 hours before the matter is listed for readiness mention.
- (a) A Notice of Readiness must be filed and served by the prosecution in all cases (Annexure 1)
  - (b) A Notice of Readiness is only required to be filed and served by the defendant if legally represented (Annexure 2)
- 8.25 The Court may:
- (a) Enquire from the prosecution whether they have recent instructions from the complainant
  - (b) list the matter for further case management if considered appropriate to do so; or
  - (c) dispense with the need for a readiness mention if considered appropriate to do so.
- 8.26 Pursuant to [s 289U](#) of the *Criminal Procedure Act 1986*, the following parts of criminal proceedings must be held in camera:
- (a) Evidence given by a complainant, whether evidence in chief or cross examination, and
  - (b) Parts in which a recording of evidence of the complainant is heard by the court.
- 8.27 Pursuant to [s 289V](#) of the *Criminal Procedure Act 1986*, a complainant may give evidence in criminal proceedings:
- (a) via audio-visual link, including through the use of the court's remote witness room; or
  - (b) by use of arrangements made to restrict contact with the accused, such as through the use of screens or planned seating arrangements; or
  - (c) in person, without the use of alternative arrangements.

## Case management – general

- 8.28 Where possible, matters will be heard by the same magistrate from first mention to finality.
- 8.29 The Court recognises the importance of continuity of legal representation and, where possible, consistent police prosecutors and duty lawyers should be made available to appear in the List each week.



- 8.30 To ensure efficiency, a police officer with sufficient authority to negotiate ADVO conditions should be made available to attend court each week.
- 8.31 Domestic Violence Liaison Officers (DVLO), or support-workers from the Women's Domestic Violence Court Advocacy Service, should endeavour to remain in consistent communications with the complainant throughout the entire court process. This is to ensure that complainants remain informed and that prosecutors possess up to date instructions at all times.
- (a) Preferred methods of communication may be determined at the local level.
- 8.32 At the compliance or readiness mention, the Court shall inquire as to whether the complainant has had an opportunity to seek independent legal advice.
- 8.33 Nothing in this Practice Note should be read as limiting the presiding magistrate's general discretion to conduct proceedings or make any such orders available to them under any law of the State or the Commonwealth as they see fit.

### **Ancillary applications**

- 8.34 When an application to vary or revoke an interim ADVO is filed and listed, the substantive proceedings are to remain listed concurrently with any related charges.
- 8.35 Before finalising any application to vary or revoke an ADVO, the Court shall inquire as to whether both parties have had an opportunity to seek independent legal advice.
- 8.36 When an application to vary an ADVO is before the Court, the parties must bring to the attention of the magistrate any relevant Family Law Act orders that conflict with proposed variations.
- 8.37 Before finalising any application to vary or revoke an ADVO lodged by NSW Police or the defendant, the Court shall give the complainant the opportunity to address the Court to communicate their views in relation to the application.
- 8.38 When making an interim, lapsing or final ADVO, the Court will ascertain whether a property recovery order is sought from either of the parties.

### **Defended hearing**

- 8.39 Where possible, the same magistrate who case managed proceedings will preside over the final hearing.
- 8.40 NSW Police should, as a matter of practice, subpoena witnesses to attend court no later than 9:00am to minimise delays. Subpoenas to attend court should be issued no less than five weeks prior to the date the matter is listed for hearing.
- 8.41 Where possible, discussions with witnesses should take place prior to the commencement of court.
- 8.42 Where a complainant does not attend court on the final hearing date, the Court will not hear an application for an arrest warrant unless satisfied that Police have taken all reasonable steps to contact the complainant, including by asking the WDVCAS support worker to speak to the complainant.
- 8.43 Where a party to standalone ADVO proceedings is not present on the date the matter is listed for hearing, the matter will proceed in accordance with [s 57A](#) of the Act.
- 8.44 Where related criminal proceedings are finalised without a guilty plea or a finding of guilt, then unless the defendant consents to the making of a final order, the parties may elect to proceed on the AVO application by:
- (a) Relying on the evidence adduced in the criminal proceedings, or
- (b) Relying on the evidence adduced in criminal proceedings together with additional evidence, or
- (c) Relying on new evidence.
- 8.45 Where the parties elect to proceed in accordance with paragraph 8.44(a), the Court will proceed to determine

the application on the basis of the evidence in the criminal proceedings, together with any further submissions on the application.

- 8.46 Where the parties elect to proceed in accordance with paragraphs 8.44(b)-(c), the matter will be adjourned for final hearing.

## **Final Orders**

- 8.47 Final orders may be made by consent and without admissions.
- 8.48 Before making a final ADVO, the Court shall give the complainant the opportunity to address the Court to communicate their views in relation to the conditions sought to be imposed.
- 8.49 When making a final ADVO, the Court shall ensure that the proposed conditions are not contradictory or duplicative.
- 8.50 The prosecution should ascertain whether there are any other AVO's or parenting plans in place for the same parties and provide copies of any such orders to the court. The Court may then accept an oral application to vary or revoke a previously made ADVO to ensure consistency.
- 8.51 If the Court decides to make a final ADVO or is required to make a final ADVO under s 39 of the Act, and the complainant or defendant is the parent of a child, parties to proceedings must bring to the attention of the magistrate any Family Law Act orders in force in relation to that child and, if possible, provide copies of such orders to the court.

## **Sentencing**

- 8.52 Where possible, sentence proceedings are to be heard by the same magistrate who case managed proceedings.
- 8.53 Defendants must attend court in person on the sentence date.
- 8.54 Complainants may attend court in person on the sentence date if they wish to do so.
- 8.55 Where a plea of guilty has been entered, and the offence is one to which [Part 3, Div 2](#) of the *Crimes (Sentencing Procedure) Act 1999* applies, the prosecution should advise the Court as soon as practicable whether a victim impact statement is sought to be read to the court during sentence proceedings.
- 8.56 Complex or lengthy sentence proceedings may be listed on a suitable defended day.
- 8.57 Where consent is provided by the defendant, the Court may make a 'voluntary intervention order', requiring the defendant to engage with a specified program or support service as part of their bail conditions or as a condition of a sentencing order.
- 8.58 Completion of a program is a matter that may be taken into account on sentence. However, as participation is voluntary, unsuccessful completion should not attract any additional penalty.



## LEGISLATIVE ASSEMBLY

Office of the Clerk

### ACTS OF PARLIAMENT ASSENTED TO Legislative Assembly Office, Sydney 4 September 2023

It is hereby notified, for general information, that Her Excellency the Governor, has, in the name and on behalf of His Majesty, this day assented to the under mentioned Acts passed by the Legislative Assembly and Legislative Council of New South Wales in Parliament assembled, viz.:

Act No. 18 — An Act to make miscellaneous amendments to certain revenue and fines legislation; and for other purposes. **[Revenue, Fines and Other Legislation Amendment Bill]**

Act No. 19 — An Act to amend the *Drug Misuse and Trafficking Act 1985* to provide for matters in relation to certificate evidence. **[Drug Misuse and Trafficking Amendment (Appointed Persons) Bill]**

Helen Minnican  
Clerk of the Legislative Assembly