



## CONTENTS

1. INTRODUCTION
2. CRIMINAL DIVISION
3. COMMON LAW DIVISION
4. APPEALS & POST SENTENCE APPLICATIONS (APSA) LIST
5. COMMERCIAL DIVISION
6. CRIMINAL CIRCUITS
7. KOORI COURT
8. LONG TRIALS LIST
9. OTHER MATTERS

### 1. INTRODUCTION

The COVID-19 pandemic represents an unprecedented challenge to the County Court in the conduct of its operations.

The Court is committed to ensuring that, as far as possible, its work continues with the least amount of disruption to all Court users. At the same time, the Court must operate in a manner consistent with Government directives and advice from Court Services Victoria regarding minimising any risks to the health and wellbeing of all Court users, Court staff and Judicial Officers.

The situation is dynamic. As Government directives or expert advice changes, the practices outlined in this document will likely change. The information in this document is current as at 19 March 2020, however the procedures in each Division will be regularly reviewed as the situation develops, and further updates will be provided. Court users should consult the County Court website to determine if a more recent version of this document has been issued.

### 2. CRIMINAL DIVISION

#### General List

The 9.00am General List will continue. From Monday 23 March 2020, the List will be conducted in the larger Ceremonial Court 3.3. The Court will attempt to restrict the number of persons in the courtroom at any one time. Once parties have lodged their appearance, they will be expected to leave the courtroom but remain in the vicinity of the courtroom until their matter is called. Current medical advice that persons should remain at least 1.5 metres away from each other should be observed. Matters will be announced in such a way as to permit social distancing.

The Court is actively exploring suspension of the 9:00am General List and instead managing that List administratively. That will involve Registry and Division Lawyers case managing matters on the papers with a tentative Directions Hearing date 28 days post-committal. It is anticipated that parties will also be able to request a Directions Hearing where necessary. This approach would be intended to minimise the number of court users required to attend in person. Any Directions Hearing will be managed in such a way that appearances are staggered across the morning.

Matters currently in the 9:00am List (previously committed) will also be managed administratively as much as possible. Where a Directions Hearing is required, the matter will be heard on the day allocated or will be administratively adjourned to another date. Practitioners will receive a separate practice note with respect to this procedure prior to its commencement.

Further information will be provided as this process is developed and implemented.

### **Reserve List**

The 10:30am Reserve List will continue to be a List requiring in-person appearance however the appearances will be staggered throughout the morning. From Monday 23 March 2020, the Reserve List will also be conducted in the larger Ceremonial Court 3.3.

The Court will similarly attempt to restrict the number of persons in the Reserve List court at any one time. Once parties have lodged their appearance, they will be expected to leave the courtroom but remain in the vicinity of the courtroom until their matter is called. Current medical advice that persons should remain at least 1.5 metres away from each other should be observed. Matters will be announced in such a way as to permit social distancing.

### **Arrangements for Trials**

All jury trials have been suspended until further notice. Existing jury trials will continue at the direction of the presiding judge.

Based on current information, it is anticipated that jury empanelments are unlikely to resume until the last quarter of 2020 or the first quarter of 2021. Should the courts be in a position to resume jury empanelments before that time, the Court will relist matters to facilitate this.

### **Cases ready for jury trial**

Cases ready for jury trial will be adjourned off for further direction to a Special Directions List. The first such List will be conducted on Wednesday 1 April and thereafter on a fortnightly basis. This List will be conducted adopting the same social distancing measures described above, wherever possible.

Bail will be extended for those on bail.

Those in custody will be remanded to the date of the next available Special Directions List. No bail applications, based upon the suspension of jury trials, will be entertained before, or at, the special directions hearing. As presently advised, attendance in the usual course will be required at a Special Directions hearing but the times will be staggered across the day to minimise numbers. Parties will be advised of their times in due course.

**Administrative Adjournment of Reserve List matters**

Parties may seek an administrative adjournment of matters in the Reserve List to the next available Special Directions List on the basis that the following conditions apply:

- there is to be no pre-trial argument, and there are no outstanding issues for resolution;
- there is no need for any case management activities; and
- both parties agree to an administrative adjournment.

For the purposes of such adjournment, no distinction will be drawn between matters in which the accused is on bail or on remand.

To seek administrative adjournment in these circumstances, parties should contact the Senior Associate to the Criminal Reserve List, Josh Harris on 0438 705 650 or by email to:

[Josh.Harris@countycourt.vic.gov.au](mailto:Josh.Harris@countycourt.vic.gov.au)

**Cases ready for pre-trial argument**

Pre-trial argument will be conducted and completed where possible. Where appropriate, this will include the delivery of any required rulings by the presiding judge.

Where a case has been pre-allocated to a judge that judge will conduct the pre-trial argument hearing.

For cases in the Reserve List, every effort will be made to allocate the pre-trial argument to a judge. Once pre-trial argument is complete, the trial will be adjourned to date of the earliest available Special Directions List.

Pre-trial argument will be conducted upon the basis that there is no certainty that the same judge will preside over the jury trial. The *Criminal Procedure Act 2009* provisions allow for a different judge to take the trial. The unprecedented circumstances demand that these provisions may need to be engaged to the full.

**Allocation of New Trial Dates for cases in the Special Directions List**

A new trial date will be provided for each case at the special directions hearing. Such dates will be determined on a priority basis.

The parties appearing at such hearings should be in a position to provide the Court with all relevant information to assist that process, including, but not limited to, an accurate current trial estimate, any reason(s) for the matter having priority, and any unsuitable dates. It is the Court's expectation, that each party will convey this information to the Court as much in advance of the special directions hearing date as possible.

For trials with a high priority, the Court will make every effort to provide a new trial date that is earlier than would otherwise have been the case if the matter was re-listed using normal listing protocols. Given current advice around the possibility of a substantial period before resuming jury empanelments, at this stage (and subject to ongoing advice) the Court intends to re-fix trials for the last quarter of 2020 and into the first quarter of 2021. The trials with the highest level of priority will be given the earliest of the available dates.

Should the courts be in a position to resume jury empanelments before that time, the Court will re-list matters to facilitate this.

In order to provide earlier dates to those high priority trials, the Court will need to vacate and re-list a number of lower priority trials currently listed to commence in the last quarter of 2020. To assist that process, the Court will conduct an audit of all trials listed in the last quarter of 2020, in order to gauge their relative level of priority. Before the Court vacates the trial date of any trial considered to be of a lower priority, the parties will be afforded an opportunity to address the Court, either in writing or in person (subject to any required restrictions), as to why that should not occur. Whether, in any given case, an order to vacate and re-list a trial is made administratively or at a court hearing will depend on the circumstances of that case.

### **Bringing forward other work**

In light of the suspension of all new jury trials for the foreseeable future, the Criminal Division now has a capacity to take on additional work from other areas in the Division, in particular, pleas and sentence-only appeals.

To that end, the Court will conduct an audit of such matters which have a current listing date in the next few months, so that matters of high priority that are ready to proceed can be identified and given an earlier hearing date.

It may well be that in time, additional types of hearings will be necessary, including but not limited to bail applications/variations.

Whatever it be, it is important for the profession to understand that the Court will, to the extent possible, try and accommodate these matters on a priority basis.

That said, it should be noted that it is not easy to try and predict how much of this work the Court will be able to accommodate, given the rapidly changing circumstances surrounding the COVID-19 situation. That uncertainty makes the already difficult Listings task of addressing and balancing the tension between listing the maximum possible number of cases and the consequent risk of having 'not reached' matters, even harder.

The process for bringing this additional work forward is still under consideration. It seems clear, however, that both parties would need to be ready and willing to abridge a hearing date. It is equally clear that in order to provide as much confidence in these new dates as possible, the Court will need to have considerable flexibility in its Listing practices. The likely reality is that the Court could only be able to provide a week's notice to the parties of the proposed new abridged date. If that date were unsuitable to one or both of the parties, then an alternative date could be considered.

### **Written Preparation of Cases and Manner of Appearances**

All pleas and sentence-only appeals will be conducted as much as is possible on the papers/electronically. Full written submissions will be required from the profession. Judges will have the opportunity to seek further written submissions and information electronically and in advance of any hearing.

There will often be strong justice or practical / technical reasons why a plea and sentence cannot be heard electronically / digitally in its entirety especially serious criminal matters (e.g. where the liberty of the accused is at risk). This raises questions of the requirement that an accused person be able to follow the entirety of the proceedings, the requirement to take immediate instructions from an accused person during the running of a case, the giving and testing of evidence, and the accused potentially being taken into custody.

That said, the Court will explore ways in which certain cases can be fully conducted digitally or remotely. The viability of this will depend upon the availability of reliable, effective and quality audio-visual technology for multi-party connections, including for accused persons (possibly in custody) and witnesses potentially from diverse locations. Experience shows that the current technical capacity of the Court to conduct such multiple hearings in this manner consistently and reliably are very limited.

Every effort will be made to limit the duration of in-court hearings involving physical attendance of practitioners or other persons – this should be assisted by provision of full submissions.

Every effort will be made to limit the number of non-practitioner persons in Court:

- Remanded prisoners will, where possible, appear on video link for the duration of the proceeding including sentence.
- Where possible, provision will be made for family and friends, and victims and support persons, to follow the hearing remotely.
- Where possible witnesses – including professional witnesses - can give evidence remotely by video, or where appropriate, by telephone.

There will only be a need for one practitioner per party to appear. Where counsel is briefed, the Court will provide every indulgence to counsel to obtain instructions or to otherwise consult with the solicitor who is located remotely.

Current experience already shows there will be no lines for practitioners to enter the Court facility. In any event, alternative arrangements can be explored to avoid this arising.

### **Conviction appeals**

Conviction appeals will be vacated and at this stage not listed for hearing in the short term as these involve multiple witnesses, sometimes multiple parties, and present less scope for out of court work.

### **Active Case Management System**

The Active Case Management System ('ACMS') that is currently being piloted in the Criminal Division is designed to allow for more court work traditionally conducted through an in-court event to be conducted either administratively or remotely. Even substantive hearings such as Case Conferences can, in appropriate circumstances, be conducted remotely. At this stage, the Court will continue with ACMS pilot.

### 3. COMMON LAW DIVISION

#### Arrangements for Trials

For the next 4 weeks the following arrangements will apply to Common Law matters currently listed.

Cases will be allocated a Judge, where possible.

For matters in the reserve list, on the afternoon before a matter is listed for hearing, the parties will be contacted by an Associate or a member of Registry to arrange a designated time for a video link or telephone conference for the following day.

Commencing at 10am, a Judge or Judicial Registrar will contact the parties via video link or telephone conference to enquire as to whether the case is able to be heard as a cause within 2 days. If the parties agree the case can be heard within 2 days, it will then be allocated a Judge.

As the majority of cases listed in the Common Law Division have an estimate of 1-2 days, the Court considers that as an interim measure, the focus of work should be on cases of this duration. In the current environment, the risk of disruption to the running of a case is significantly greater than usual. Cases of the duration of 1-2 days face a much greater certainty of completion without disruption, and they are of sufficient volume to justify this interim approach.

Where the Trial is listed as a Jury Trial, or a Cause which cannot conclude within 2 days, the parties must provide information relevant to the number of counsel and witnesses likely to be present in the courtroom for the purpose of the court determining whether the scheduled listing should be maintained.

If the scheduled listing cannot be maintained the parties are to consider engaging in a Judicial mediation. If so, the Court will seek to arrange such a mediation to occur that day.

For matters that do not settle and cannot proceed due to COVID-19, the case will be listed for an Administrative Mention in the week commencing 1 May 2020.

Parties that have a Trial listed that will take longer than two days and would not benefit from a Judicial mediation, are invited to assist the Court by submitting consent orders on the papers adjourning the trial to an Administrative Mention in the week commencing 1 May 2020.

The court will shortly pilot conducting some hearings via video link. Serious injury cases, of 1-2 days, and in which the plaintiff is usually the only witness, and there is an electronic court book, will be considered for this method of hearing. If successful, it may then be considered for longer causes. Whether a remote video hearing is practicable will be determined on a case-by-case basis.

The above approach is an interim measure to enable the work to continue as efficiently, and with as much certainty, as possible, over the next 4 weeks until Easter. It will be monitored on an ongoing basis but in particular at the conclusion of this 4-week period.

#### Arrangements for Circuits

Presently, circuits will proceed as planned. As an interim measure, however, any Jury Trials or causes of 3 days or more will be adjourned and given an Administrative Mention of 1 June 2020.

**Arrangements for Directions Hearings**

From Monday 23 March 2020, Directions Hearings will be conducted via a video conferencing software, to avoid the need for parties to attend Court.

This will cover all Directions Hearings, save for the Confiscation List, Adoptions List, and Appeals and Post Sentence Applications (APSA) List (see below). Separate arrangements will be made for each of those Lists and further advice will be provided in due course.

Parties are encouraged to forward consent orders to the Court. These should be submitted via email, by midday, on the day prior to the Directions Hearing.

In the event that consent orders are not received, on the afternoon prior to the Directions Hearing, an Associate of the court will send an invitation to a video conferencing software meeting, via email. The video conferencing software meeting will be at an allocated time, as close as possible to the listed time for the Directions Hearing.

Practitioners will need to install the video conferencing software to enable an appearance in this way.

If a video link via the video conferencing software is not possible, then a telephone conference call will be arranged instead. To prepare for this, please ensure that you provide the Associate with your best contact telephone number.

Whilst these arrangements are in place, as this procedure is done on the Court's own initiative, it will not be necessary for any party to make an application for a video link. It will occur for every Directions Hearing until otherwise advised.

**Arrangements for Mediations**

The Court will permit Court-ordered mediations to be conducted via video. Any mediation conducted in this manner, will satisfy the Court order regarding mediation.

**4. APPEALS AND POST SENTENCE APPLICATIONS (APSA) LIST****Proceedings which have a current listing date**

Until otherwise advised, any matter which has a current hearing date will proceed. The parties are expected to make every effort to ensure matters are heard and determined within 2 days and that witnesses give evidence remotely using technology, including by telephone, or appropriate video conferencing software. Cases which are listed for longer than 2 days may be adjourned to a future date.

**Directions Hearings**

Save for Applications for, Reviews of, and Breaches of Supervision Orders pursuant to the *Serious Offenders Act 2018* and for Applications for compensation pursuant to s85B of the *Sentencing Act 1991*, no further Directions hearings will be conducted.

This means appeals against decisions under the *Family Violence Intervention Act*, the *Personal Safety Intervention Orders Act* and the *Children Youth and Families Act* will not be listed for directions and will not be listed for hearing.

These matters will be listed for a Directions Hearing at a future date. Parties will be notified when this will occur.

Supervision Order and s85B matters will proceed for a Directions Hearing on allocated dates. Investigations are in train for these Directions Hearings to be heard using technology.

## 5. COMMERCIAL DIVISION

### Arrangements for Trials

At present, trials of 5 days or less will proceed on the listed trial date unless vacated by consent or Court Order. As the majority of cases listed in the Commercial Division have an estimate of 5 days or less, the Court considers that as an interim measure, the focus of work should be on cases of this duration. In the current environment, the risk of disruption to the running of longer cases is significant. Cases of 5 days or less face a much greater certainty of completion without disruption, and they are of sufficient volume to justify this interim approach.

The Court nevertheless understands that there will be practitioners, parties and witnesses who are unable or unwilling to attend Court at this time. The Court is continuing to explore ways to limit interactions between court users and between court users and front-line staff (including Associates).

The Court will be receptive to requests to modify its usual procedures to deal with any specific concerns.

To this end, the following arrangements will apply to forthcoming trials:

- Parties with a listed trial in the following two weeks will be contacted by email by the Commercial Registry Manager and required to respond in relation to the completion of pre-trial steps; the readiness of the proceeding for trial; the estimate of trial and any impact of COVID-19 on the conduct of the trial, including any requirements for video-link or other remote attendance.
- Trials of longer than 5 days' duration will be referred to Judicial Registrars for vacation of the trial date and re-timetabling on the papers. In appropriate circumstances, the parties may be offered a Judicial Resolution Conference or Non-binding Neutral Evaluation by video conferencing software on or shortly after the listed trial date.
- Trials of 5 days or less duration will be listed for a directions hearing before the Judicial Registrars by video conferencing software or telephone conference, to determine whether the trial can realistically proceed, including by discussing measures required to ensure physical distancing, avoid passing of physical documents and otherwise minimise the risk of the spread of COVID-19. The Judicial Registrars will determine, in consultation with the Head of Division, whether the trial should:
  - proceed on its listed date;
  - be vacated and the parties offered a Judicial Resolution Conference or Non-binding Neutral Evaluation via video conferencing software; or
  - be vacated and re-timetabled.
- In considering whether the proceeding is suitable for a Judicial Resolution Conference or Non-binding Neutral Evaluation, parties should be aware that, in the current environment, it is not possible to predict when a vacated trial will re-listed for hearing and whether it will be reached on the re-listed date, given the backlog of cases likely to be ready for trial by that time. Parties should

assume that, if they are unable to reach agreement on an alternative process for resolving their dispute, the period of delay for the trial could be 12 months or more.

### **Duty Judge Summonses**

At present, all summonses listed for hearing before Duty Judge will proceed unless vacated by consent or Court order.

However, the parties are encouraged to co-operate with Duty Judge chambers:

- for the determination of Duty Judge applications on the papers, with appropriate directions for the submission of affidavits and submissions; or
- for determination remotely by video conferencing software or telephone conference.

Hearings conducted via video conferencing software will be recorded. Any party wishing to request access to the recording for the purposes of obtaining transcript should email the Associate to the relevant Judge, copied to all parties.

### **Judicial Registrar directions hearings, summonses, trial assessments and other hearings**

From Thursday 19 March 2020, almost all interlocutory determinations by Judicial Registrar will be made on the papers.

Parties with a listed hearing before Judicial Registrar will be notified via email of the vacation of the listed hearing date and provided a timetable for submission of material and determination by Judicial Registrar on the papers.

Parties seeking an interlocutory determination by Judicial Registrar should submit the Request for Interlocutory Determination form which is available on the County Court website. Parties will then be informed via email of the timetable for submission of material and determination.

A hearing will only be held if a Judge or Judicial Registrar determines that the matter is not appropriate for determination on the papers. Any hearing by Judicial Registrar will be conducted via video conferencing software or telephone conference. The Associate to the Commercial Judicial Registrars will contact practitioners before the listed hearing to make arrangements for the conduct of the hearing and ensure all parties have access to devices with appropriate software.

### **Building Cases List (“BCL”)**

BCL directions hearings, interlocutory applications and applications pursuant to the *Building and Construction Industry (Security of Payment) Act 2002* (Vic) or s57(4) of the *Domestic Building Contracts Act 1995* (Vic) will, wherever possible, be determined on the papers. If a hearing is required, this will be conducted via video conferencing software or by telephone conference. Hearings in person will occur only in exceptional circumstances.

To this end, parties with a listed hearing before the Judge in Charge of the BCL (“JIC”) will be contacted by email by the Associates to the JIC before the hearing and required to respond in relation to:

- whether the parties are content for the application to be determined on the papers, and a proposed timetable for the provision of any affidavits or submissions necessary to facilitate that determination;

- whether the parties request a hearing, including the type of hearing sought (by video conferencing software or in person), the provision of brief reasons explaining the need for a hearing;
- where the application is to be determined at a hearing, an estimate of the duration of the hearing, the logistics of the hearing (including the access of the parties to appropriate software and devices), measures to ensure physical distancing for any hearing in person and a proposed timetable for the provision of any affidavits or submissions necessary to facilitate that determination.

A hearing will only be held if the JIC determines that the matter is not appropriate for determination on the papers. Hearings conducted via video conferencing software will be recorded. Any party wishing to request access to the recording for the purposes of obtaining transcript should email the Associate to the relevant Judge, copied to all parties.

### **Judicial Resolution Conferences**

All Judicial Resolution Conferences will be conducted via video conferencing software, unless video conferencing software is inappropriate for some reason (e.g.: a self-represented litigant who does not have access to an appropriate device). If video conferencing software is inappropriate, the Judicial Resolution Conference will either be conducted by telephone conference or adjourned.

### **Non-binding Neutral Evaluation**

Parties with listed trial dates which are vacated due to measures to minimise the spread of COVID-19 may be offered a Non-binding Neutral Evaluation via video conferencing software. These will be conducted by either a Judge or Judicial Registrar. An information sheet on Non-binding Neutral Evaluations is available on request to [CommercialJR.Chambers@courts.vic.gov.au](mailto:CommercialJR.Chambers@courts.vic.gov.au), and should shortly also be available on the County Court website.

## **6. CRIMINAL CIRCUITS**

Arrangements for criminal circuits are currently being reviewed.

## **7. KOORI COURT**

In the short term, the County Koori Court (CKC) will continue to sit on a case-by-case basis. In consultation with the Elders and Respected Persons, urgent matters may be heard if, for example, it is necessary and appropriate to ensure vulnerable Indigenous accused are diverted from custody with appropriate community supports. Appropriate social distancing arrangements will be adopted for the sentencing conversation.

The Koori Programs and Initiatives Unit of Court Services Victoria, in consultation with the Acting County Koori Court coordinator, will continue to engage with all Elders and Respected Persons across the County Court to provide information and support on COVID-19.

For information on the operation of the Koori Court please contact the Acting County Koori Court coordinator Shirley Annesley on 8636 6584 or by email to [Shirley.A.Annesley@countycourt.vic.gov.au](mailto:Shirley.A.Annesley@countycourt.vic.gov.au).

## 8. LONG TRIALS LIST

The long trial case management list pilot (“the LTL”) has reviewed and assessed all LTL cases that will be affected by any delay. The LTL is well placed to quickly re-allocate matters to potential new listing dates when jury trials resume.

In the interim, cases can be brought forward for pre-trial argument where appropriate and the LTL case manager will be seeking information from relevant parties and stakeholders to facilitate this process.

Cases listed in the weekly directions list are also being considered to determine whether listings can be minimised or proceed through alternative arrangements. The LTL will await further developments as to the re-listing of cases and will adapt to these as necessary.

## 9. OTHER MATTERS

### Video Conferencing Software

Presently, in most instances, the Court is employing Zoom as the video conferencing software for use as the video conferencing software described above.

Information on Zoom is available at: [www.zoom.us](http://www.zoom.us)

The court is also be preparing information sheets on the use of Zoom which should soon be available on the County Court website and, in the interim, on request to Registry or the Associate to the Judge or Judicial Registrar managing the relevant proceeding.

Should the Court adopt the use of different video conferencing software for the hearings described above further information and instructions will be available on the County Court website.

Hearings conducted via video conferencing software will be recorded, where possible. Any party wishing to request access to the recording for the purposes of obtaining transcript should email the relevant Associate, copied to all parties.

### Robing

During the period of suspension of jury trials, judges in the Criminal Division of the County Court may continue to robe in some hearings. However, legal practitioners will not be required to robe for any Criminal Division hearings during that period.

### Document handling

To minimise document handling, wherever possible, parties are strongly encouraged to email to the Judge’s Associate any documents to be handed up.

### Lecterns

Subject to availability and some limitations to facilitate audio recording, the Court is installing separate lecterns on the bar table in the most frequently used courtrooms.