

# Criminal Division Update

19 November 2020



## Pre-COVID January to July 2021 trial dates

- 1 Any trial with a trial date provided before 16 March 2020 has been, or will be, vacated and relisted in accordance with the Court's Emergency Protocols.
  - (a) All trials with a trial date between 18 January to 16 April 2021, where the trial date was provided before 16 March 2020, will be vacated and adjourned to a holding date of 17 January 2022.
  - (b) All trials with a trial date between 19 April to 9 July 2021, where the trial date was provided before 16 March 2020, will be vacated and adjourned to a holding date of 18 April 2022.
  - (c) All parties should therefore assume that any trial date provided prior to 16 March 2020 will be vacated and should update their diaries accordingly.

## Case management of Term 1, 2021 trials

### Trial readiness conference

- 2 Re-listing of trials for Term 1, 2021 is proceeding on the basis that social distancing requirements will still be in place. On expert health advice, this means the Court can empanel only two juries on one day. The Court has a maximum of 10 courtrooms that can operate with jury trials at any one time using the two courtroom approach (one for the trial; one as the jury room).
- 3 Trials listed to commence in the first sitting week of 2021 will have staggered start dates, with two empanelments each day until all 10 courtrooms are operational.
- 4 Prior to the pandemic, trials were scheduled to commence on a Monday with a reserve list operating if a trial judge was unavailable. This model will not be used in the relisting of trials in Melbourne, rather the trials will be listed in one of the 10 paired courtrooms to follow immediately after another trial. It is therefore imperative that the trial estimates are as accurate as possible to prevent matters running over.
- 5 The Court therefore needs certainty of empanelment date, and that can only be achieved if the uncertainty arising from pre-trial issues still to be determined is removed. The Court has a goal of empanelment on day 1 of the re-listed trial date for each trial.
- 6 To facilitate this, a trial readiness conference ('TRC') will be scheduled approximately eight weeks before the proposed trial date and will be heard by the trial judge.

- 7 The objectives of the TRC are to:
  - (a) identify any pre-trial work and ensure it is completed before the trial date;
  - (b) discuss and confirm all aspects of the trial to ensure complete trial readiness;
  - (c) enable an accurate estimate of trial duration from empanelment to deliberation; and
  - (d) promote the efficient use of Court resources (courtrooms and judge time) as the Court tackles the COVID-19 backlog.
- 8 Trial counsel is expected to be 'trial ready' at the TRC, so that all issues pertaining to the running of the trial can be fully explored by the trial judge. It may be that some pre-trial litigation will occur during the TRC.
- 9 Any issues are expected to be dealt with in the time between TRC and trial, to ensure empanelment can take place on day 1.
- 10 For trials to be listed in the early part of Term 1 (from 11 January 2021), the pre-trial work will need to be completed in 2020. To that end, those early trials will soon be allocated to trial judges for TRCs to be held.

### **Trial readiness certificate and floating list**

- 11 An audit of the proposed trials for Term 1, 2021 confirmed that there are a small number of cases identified by the Criminal Division ('Division') and the parties as jury ready.
- 12 For these cases, counsel will be asked to complete and sign a trial readiness certificate ('TR certificate') confirming trial readiness. In that event, there will be no TRC and the matter will proceed directly to a day 1 empanelment listing.
- 13 In some instances, a final directions hearing may be held on an as needs basis. Where a final directions hearing is conducted, consideration will then be given to whether a TRC or a TR certificate are then required.
- 14 By signing the TR certificate, counsel acknowledge that the Court will be informed if empanelment on day 1 becomes an issue, and if necessary, the trial will be taken out of the list, and a trial from a 'floating' list will be brought on.
- 15 The 'floating' list will be comprised of short trials with no pre-trial issues.
- 16 Parties with trials in the 'floating' list will be notified that their trial may be listed at short notice.
- 17 It is hoped that the adjourned trial can be re-listed towards the end of the same term. This will be dependent on the issue(s) that prevented empanelment on the original trial date and is subject to the Court's capacity.

- 18 If parties believe a matter may be suitable to be a floating trial, they are encouraged to notify the Criminal Division lawyer. A matter would likely be suitable if it has any, or all, of the below criteria:
- a. Short duration (5 to 7 days)
  - b. Single issue matters
  - c. Pre-recorded evidence
  - d. Small number of witnesses
  - e. Witnesses who may be available at short notice (e.g. professional witnesses)

## **Management of cases that did not apply for Emergency Case Management**

- 19 Some matters that may be considered for a trial listing in 2021 may not have participated in the Emergency Case Management process.
- 20 The Court proposes to pro-actively re-consider those matters and identify cases that could benefit from Emergency Case Management.
- 21 It is the Court's experience that where the parties are invited to take up Emergency Case Management on a particular basis, more often than not, the invitation is accepted.

## Staggered Court sitting times for non-trial work

22 In light of the Government's gradual easing of COVID restrictions, and the recommencement of jury trials, the Court will stagger sitting times for non-trial hearings.

23 Staggered court sitting times will commence from Monday 9 November 2020 and in accordance with the below Table A.

**Table A – Staggered Court sitting times**

9:30am	10:30am	12:00pm	1:30pm	2:30pm
Multiple accused pleas	Further plea and sentence	Administrative Hearings	Further plea and sentence	Administrative Hearings
Single pleas	Further plea	Sentences	Further plea	Sentences
Conviction appeals	Case conferences		Case conferences	
CMIA matters	Bail applications		Bail applications	
Supervision order matters ( <i>Serious Offenders Act 2018</i> )	CCO contraventions		CCO contraventions	
	Sentence appeals		Sentence appeals	
	Supervision order matters ( <i>Serious Offenders Act 2018</i> )			

24 The objectives of the staggered Court sitting times are to:

- (a) reduce the congregation of court users at start times; and
- (b) reduce the number of court users attending the court building at any one given time.

## Remote hearings - Zoom and Webex

25 While the Criminal Division has been using the Webex Meetings or Events platform for remote hearings, the Division must now transition some types of hearings (conducted remotely) to the Zoom Meetings or Webinar platform.

26 Annexure A outlines the types of hearings the Division will conduct using Zoom, and the types of hearings that will remain utilising Webex.

27 This transition, for particular types of remote hearings, will assist the Division to hear and conduct as many hearings as the Court's capacity and resources allow during COVID-19 restrictions.

28 Zoom allows, inter alia, the Court to:

- (a) Record a witness' evidence in 'witness only view';
- (b) Prevent complainants from viewing, or having contact with, the accused in a special hearing under the *Criminal Procedure Act 2009*;
- (c) Create a remote court hearing environment as close as possible to an in-court hearing environment; and
- (d) Facilitate a 'breakout room' which enables confidential meetings between counsel and their client (including where an accused is in custody and appearing remotely).

29 New notification forms for remote hearings, and a Zoom Information Guide, will be distributed in the near future.

## **Confirmation of media playback**

30 In response to COVID-19 and the Court's courtroom capacity to conduct hearings, the Media Test Court will not operate until further notice.

31 As cases during COVID-19 restrictions are being allocated to judges in advance, practitioners must at least one week before the hearing date, contact the chambers of the judge assigned to hear the case, to arrange a time to test any media sought to be played in the courtroom.

32 A party must ensure the media is court compatible for it to be played on the Court's systems.

33 The associate and tipstaff's role are not to diagnose any media or software issues, but to confirm whether or not the media will play on the Court's systems.

34 If a party seeks to play media (evidence) in court via electronic means, the party should supply their own laptop, to be connected to the Court's systems, for the media to be played in court.

## Annexure A

Hearing Type		
Plea	✓	✗
County Koori Court plea hearing	✓	✗
Sentence	✓	✗
Application for bail (including application for variation or revocation)	✓	✗
Judicial monitoring hearing	✓	✗
Contravention of CCO (including application to vary or cancel a CCO)	✓	✗
Sentence appeal	✓	✗
Case conference	✓	✗
Post-sentence supervision order matters under the <i>Serious Offenders Act 2018</i>	✓	✗
Hearings under the <i>Crimes (Mental Impairment and Unfitness to be Tried) Act 1997</i> (' <i>CMIA</i> ') (other than fitness investigations and special hearings under the <i>CMIA</i> )	✓	✗
List Courts (including General Crime List, Circuit Directions Hearing List, Sexual Offences List, Long Trials List and County Koori Court Directions Hearing List)	✗	✓
Special hearing under the <i>Criminal Procedure Act 2009</i> (' <i>CPA</i> ')	✗	✓
Pre-recorded evidence (including s 198A and s 198B <i>CPA</i> hearings)	✗	✓
Jury trial	✗	✓
Trial by judge alone	✗	✓
Fitness investigation under the <i>CMIA</i>	✗	✓
Special hearing under the <i>CMIA</i>	✗	✓
Conviction appeal	✗	✓