

Resumption of defended hearings in the Local Court of NSW – information for solicitors

1. The Law Society is working with the NSW Local Court to assist the profession to return to work in defended matters as soon as possible. It is in the interests of the Court and solicitors for this to occur. Solicitors should familiarise themselves with the Chief Magistrate's Memoranda 9, 10 and 11 in this regard.
2. The first batch of hearings will be for defendants in custody whose matters were previously set down for a defended hearing that was subsequently vacated due to the pandemic.
3. There are two cohorts of those matters: matters that were listed for hearing from 23 March 2020 to 4 May 2020 and those listed for 4 May – 31 July 2020 (as per paragraph 12 of Memorandum 10).
4. As the matters were previously set down for hearing there is an understandable expectation from the Court that they were ready to proceed.
5. The Court is endeavouring to ensure that as far as possible these defended hearings proceed as defended hearings and are not the subject of pleas of guilty on the day of hearing or of adjournments or delay.
6. The Courts will hold a call over of these matters to set the earliest available hearing dates and it is strongly recommended that solicitors acting in the matter attend. If agents are used they must be fully briefed on the matters and able to make binding decisions. The Court will hopefully be advised that the matter is ready to proceed or of any issues that may affect the hearing.
7. Solicitors will note paragraph 4 of Memorandum 11 in relation to section 77 orders. The appearance of a defendant will depend on the availability or otherwise of AVL facilities. In the event that a client wants to attend court, this matter should be raised at the call over.
8. The Chief Magistrate requires that a Notice of Readiness (NOR) is to be provided to the court at the status mention by both the prosecution and defence.
9. It is strongly recommended that defence solicitors be aware of the NOR to be prepared and filed by the prosecution, as it will assist the defence in understanding the totality of the prosecution case.
10. When preparing the defence NOR it is strongly recommended that solicitors not answer with a simple yes/no if there are relevant circumstances that may affect the matter's readiness for hearing. In such circumstances, any issues should be set out in the 'details' column as accurately as is possible at the time. The issues can, if necessary, be dealt with at the call over.
11. When preparing the defence NOR, solicitors should carefully consider their ability to answer the first, fourth and final two boxes of the notice.
12. Paragraph 14 of Memorandum 10 states that police prosecutors are to consult and negotiate with solicitors. NSW Police has advised that police prosecutors have been instructed to make contact with defence solicitors (by phone or email). At a very basic level prosecutors will be confirming:
 - The status of the pleas and consideration of representations.
 - If the issues can be narrowed.

- Which witness statements can be tendered and which witnesses are required for cross examination.

Solicitors should make contact with the police prosecutors if contact has not yet been made.