

Magistrates' Court of Victoria (MCV) COVID-19 Response

All 51 courts across the state have remained open and operating throughout the COVID-19 pandemic.

Throughout the pandemic, we prioritised the health and safety of our judiciary, staff and court users. We retained community confidence in courts as safe spaces and the confidence of our staff in the safety of our workplace.

MCV response and recovery are facilitated by innovative approaches to justice delivery, with a focus on enabling people to engage with the court in new ways.

However, the lower operating capacity has seen a considerable growth in pending cases, particularly in crime and family violence.

MCV has a multi-layered strategy to address pending matters, both in the transition to COVID Normal and in the period after COVID Normal. We have prioritised operational and process changes, including through use of triaging and active case management and the early delivery of the e-portal as part of the Case Management System (CMS) project to facilitate electronic filing. The centrepiece of our response and recovery has seen us move from a paper and court-building based model to a court that hears matters in its newly established Online Magistrates Court, with all participants appearing remotely.

MCV planned and innovated to ensure we remained operational during the pandemic

Phase 1: Emergency response

During MCV's initial response to the pandemic, we put in place a range of measures to protect court users, judiciary and staff, and ensure that the essential work of the Court was able to continue.

- Issued Practice Directions 1 to 7 of 2020, which were designed to reduce the numbers of people in our buildings by limiting, suspending or modifying non-urgent hearings.
- Divided our workforce into 'teams' with planned rosters to isolate the two teams from each other, with one team working from home and the other, onsite.
- In the **criminal jurisdiction**, we prioritised the hearing of cases related to custody and bail: liaised with other jurisdictions and with Corrections Victoria to ensure where possible, prisoners appeared via audio-visual link and that we had increased access to accused in custody via AVL: suspended contested committals; extended the first return date of matters proceeding by summons to 20+ weeks and all matters where an accused is on bail, to 12+ weeks : adjourned all other non-urgent hearings to a date later in the year.
- In the **family violence jurisdiction**, we prioritised the hearing of all applications for interim Family Violence Intervention Orders and Personal Safety Intervention Orders as well as urgent hearings across the jurisdiction; transferred all FV Practitioner support to telephone; extended the capacity of our Family Violence Contact Centre; fast-tracked rollout of our online applications for Family Violence Intervention Orders.

- In the **civil jurisdiction**, we prioritised the hearing of urgent civil applications, where practicable via use of telephone and other online platforms: transferred all civil prehearings to telephone and encouraged resolution of matters on the papers.
- In the **specialist courts**, Koori Court was immediately suspended to protect our Koori Elders and Respected Persons with an option for any participant to transfer to mainstream; Drug Court introduced staggered hearings and appointments to reduce face-to-face interactions, reduced non-essential attendances at Drug Court House and maximised contact opportunities using telephone and Skype: made alternate arrangements for all group programs; the Assessment and Referral Court (ARC) List reduced face-to-face interactions and where appropriate, moved reviews and hearings to telephone or online platform. Court Integrated Service Program (CISP) pivoted to provide services, assessments and case management remotely.
- In VOCAT (Victims of Assistance Tribunal) transferred all directions hearings to telephone: prioritised urgent hearings to be heard on the papers. Used working from home teams to process full range of interim and final decisions on the papers
- MCV limited access to court buildings, cancelled bench welcome ceremonies, school visits, work experience and non-essential meetings. Induction and training were moved online to the extent possible.
- Promoted education and transmission prevention measures, including the provision of hand sanitisers and cleaning products at all workstations.
- Facilitated and complied with density quotient expert advice.
- Ensured availability of flu vaccinations for all judiciary and staff.

Phase 2: Increasing volume

In our initial response we prioritised the hearing of the most urgent and essential matters. To support recovery of our operations, our focus turned to increasing the volume of hearings conducted across jurisdictions, in addition to accelerating establishment of an Online Magistrates' Court.

- In April, established an Online Magistrates' Court project team.
- In May, commenced an eight-week Online Magistrates' Court pilot at Melbourne and Sunshine Magistrates Courts.

- Developed and delivered Online Magistrates' Court training to all Magistrates, Judicial Registrars and staff state-wide, across 51 courts.
- In July, launched statewide our Online Magistrates' Court.
- Continued to prioritise hearing urgent matters across jurisdictions.
- Issued Practice Directions 8 to 11, which facilitated the hearing of a range of criminal matters 'on the papers'.
- In the **criminal jurisdiction**, commenced hearing summary pleas, sentence indications, unopposed bail variations and diversions on the papers.
- Increased the use of audio and video technology for more and new types of hearings, subject to the interests of justice.
- In the **family violence jurisdiction**, we published advice and guidance to court users that detailed how services had been modified during COVID-19 and how services could be accessed.
- In the **civil jurisdiction**, we continued to support use of alternate dispute resolution where appropriate and reallocated judiciary and staff to facilitate increased Alternate Dispute Resolution.
- Deployed new IT equipment to judicial officers to enable them to work flexibly from home.
- Installed protective screens and other physical modifications in our existing court buildings to strengthen transmission prevention for staff members.
- Introduced compulsory face mask wearing for all onsite staff, judiciary and court users.

Phase 3: Maximising use of Online Magistrates' Court to minimise risk

The third phase of our response was focussed on reducing all physical attendances at court buildings, including the transportation of prisoners between police stations and court by maximising use of our newly established Online Magistrates' Court.

- Issued Practice Direction 20 and a Modified Access and Procedure (MAP) Order to expand the nature and number of hearings in the Online Magistrates' Court across all jurisdictions.

- Limited access to court buildings unless related to urgent family violence interim applications or with the agreement of Senior Registrar.
- In the **family violence jurisdiction**, we commenced hearing intervention order applications in the Online Magistrates' Court and commenced hearing interim intervention order applications on the papers with declaration of truth where appropriate.
- In the **civil jurisdiction**, we issued Practice Directions 12, 13 and 19 which transitioned the jurisdiction into an entirely online platform hearing contested matters as well as urgent and interlocutory matters; continued to support the use of appropriate dispute resolution; and issued Division guidelines and advice to practitioners.
- In the **criminal jurisdiction**, we commenced hearing all first remand hearings remotely; issued Practice Direction 17, which introduced case management and triage of all summary matters where an accused person is represented; opened a second Online Bail and Remand Court. Commenced hearing priority contested committals remotely; commenced hearing priority summary contests remotely; increased plea hearings heard remotely; engaged with all stakeholders to ensure OMC was default position for hearing
- In **specialist courts**, we resumed Koori Court hearings in consultation with Elders and Respected Persons by transferring proceedings online and prioritised hearing urgent matters, including matters where the accused was in custody; Training provided to all Koori Court Elders and Respected Persons in relation to online hearings; transferred Drug Court and ARC hearings online, subject to discretion by the Magistrate on a case-by-case basis; Drug Court testing continued at a reduced frequency; Court Integrated Service Program (CISP) continued to provide services, assessments and case management remotely.
- As restrictions eased in regional areas, we took a bespoke approach which facilitated regions progressing their recovery in light of reduced restrictions.
- Issued Practice Directions 21 (Regional) and 22(Melbourne/metro) as restrictions started to ease. These Practice Directions establish a road to recovery and a full resumption of hearings, as and where appropriate, via use of the Online Magistrates' Court.
- The court fast tracked the roll out of the e-docs portal, allowing parties to file electronically and facilitate fully remote hearings.
- Engaged in a comprehensive communications strategy to support our return to a resumption of hearings. This included a revamp of the MCV website including a new landing page; Text messaging; and the establishment of an online plea form, which provides the opportunity for accused in criminal matters to elect to have their matter finalised in their absence after providing detailed and relevant information to the court.

- Established a Triage Recovery Team to contact parties with matters listed to proactively facilitate the transferral of listed matters to the Online Magistrates' Court and encourage pre-Court engagement with legal services and providers. The collation of information ensures the court can direct matters to proper venue. While the approach is resource and time intensive, parties are engaging, and this ensures that each court event is meaningful in progressing matters.
- The court introduced a process in relation to council matters listed before Judicial registrars. Firstly, the accused is notified of the date upon which the matter is listed and given 28 days to respond. Where there is no response, the matter is heard and the accused is notified of the result, noting the availability of an application for rehearing.

The task ahead

As at 1 October 2020, case pending matters in crime have increased by approximately 50 per cent and in family violence, by approximately 45 per cent. This increase has primarily been driven by a decrease in finalisations, and more recently initiations. It should be noted, however, that even prior to the COVID-19 pandemic, case pending matters had been growing steadily and in crime alone, were expected to increase by at least 10 per cent in 2020/2021.

While pending matters are a feature of all jurisdictions within the court, the Civil Jurisdiction, including WorkCover, is well on the way to recovery and at Melbourne we expect to have dealt with any increase to pending matters in both these jurisdictions by the end of this year, primarily due to the use of Alternative Dispute Resolutions procedures. In metropolitan and regional Victoria these matters form part of our triaging and listing recovery processes, and we expect to have made substantial gains by early 2021.

Our regional courts are also well placed for recovery, having experienced lower case pending levels as a result of applicable restrictions during the pandemic, and through the ability of regional courts to facilitate recovery pathways at a local level.

The Criminal and Family Violence Jurisdictions will take longer to recover. Both jurisdictions were heavily reliant upon large lists and in-person appearances to facilitate efficiency. Duty Lawyer services were provided at court and on the date of hearing.

The reality is that we cannot return to pre-COVID-19 operations, with crowded court buildings and court users remaining onsite for the purposes of legal advice, negotiation, service engagement and hearings. This has necessitated the whole sector pivoting their models of service to accommodate the new reality, and we are working closely with our stakeholders to ensure that services are both available and fit for purpose in our current environment.

While pending matters remain an issue, there have also been opportunities for positive reform during the COVID-19 pandemic. We are engaging with the community in new ways and we are offering real options to court users in terms of how they engage with the court, especially in the family violence space.

We have made enormous gains in our technology capability and we have, of necessity, reviewed our practices and procedures to ensure that every court listing progresses a matter and that issues

which do not require judicial decision making are dealt with between hearings and without the necessity for listing.

Throughout the pandemic, MCV has prioritised clear leadership to the sector through publication of Practice Directions in three distinct phases (respond, innovate, recover).

The Online Magistrates' Court and our Triage Recovery Team are the centrepieces of our recovery and have allowed the court to move from being entirely paper-based to a largely online court, with an outward reaching triage focus that has enabled us to serve our community throughout the pandemic. There are features of our reforms which will better serve the community into the future.

We have advanced our strategic planning to enable alternative forms of access to justice. When community could not come to us, we have taken the court to them, this has included the Online Magistrates' Court; expansion of the Family Violence Contact Centre; establishment of a triaging process in respect of family violence matters to ensure necessary safety assessments occur prior to matters being listed online. In planning and execution, we have at all times prioritised safety and we have worked cooperatively across the justice sector.

We have mobilised and modernised court practice and reach through use of technology, which enables us to list, hear and resource our work in ways previously unimagined. We are agile and seeking to leverage the benefits to facilitate innovative, accessible, fair, transparent and efficient justice.

We are very grateful for the support we have received from Government, Court Service Victoria and our stakeholders, which makes us confident about our ability to recover and excited about our future.
