



Magistrates' Court Victoria
Practice Direction
No. 1 of 2021
COVID-19 PANDEMIC RESPONSE
All Magistrates' Courts

Purpose

Ongoing social distancing requirements mean that the Court must continue to limit and monitor the number of people in our court buildings. To facilitate compliance with our maximum density quotients, the Court needs to continue to hear a significant part of its work remotely via WebEx/Online Magistrates' Court (OMC).

In order to advance recovery of our substantial pending case load and ensure accessibility for court users who cannot participate remotely, it is **necessary for the Court to return some of our work to our court buildings**. This means some court users will be able to return, but this process will be strictly managed, with health and safety our overriding considerations. The process will be staged. Over coming months, the types of matters and number of persons attending our court buildings will be increased when possible.

From 26 April 2021, the *Justice Legislation Amendment (System Enhancements and Other Matters) Act 2021* (Vic) returns first remand hearings to court unless the accused consents to their hearing proceeding via WebEx/OMC. To coincide with this change, paragraphs 12–16 of this Practice Direction, commence **26 April 2021**. All other paragraphs of this Practice Direction, including those relevant to unrepresented accused, commence **3 May 2021**.

This Practice Direction revokes Practice Direction [18 of 2020](#), effective 26 April 2021.

This Practice Direction revokes Practice Directions [21 of 2020](#) and [22 of 2020](#), effective 3 May 2021.

Represented accused on bail or summons in criminal matters

All criminal matters involving represented accused to continue to proceed via WebEx/OMC

1. All matters where an accused is represented by a legal practitioner must continue to be listed via WebEx/OMC, rather than at a physical court venue. This is the default position for all hearings in the Magistrates' Court of Victoria where an accused is represented.

2. To list a matter via WebEx/OMC, contact should be made at first instance with the Registry at which the matter is listed (see [local court registry](#)).
3. All practitioners with criminal matters must contact the Registry at which the matter is listed (see [local court registry](#)) by EFAS or eDocs not later than **3 clear working days** prior to the current listing date for the purpose of obtaining a hearing date and time via WebEx/OMC (unless the matter is listed in an open hearing list and the practitioner knows of how to participate in this type of listing).
 - 3.1 The Court will confirm whether it will proceed remotely via WebEx/OMC.
 - 3.2 Where the matter is listed in a 'WebEx/OMC open link', it is the responsibility of the practitioner to log in at the allocated time, remaining on mute until the matter is called.

Permission to be sought and obtained prior to any in-person attendances

4. Permission may be sought from any court venue or the Court may direct in any matter or category of matters, in person attendance by a represented accused, a legal practitioner, witness or other participant in the court proceeding. Requests for in person attendance should be directed to the Registrar in Charge at the relevant [local court registry](#) not later than **3 days prior** to the proposed date of attendance, unless the matter is urgent. Requests will be determined having regard to all relevant matters, including social distancing density limits at all court venues and accessibility needs of court users.

Unrepresented accused on bail or summons in criminal matters

What to do prior to the hearing date

5. An accused who is not legally represented, must as soon as possible, and prior to the hearing date, visit the Magistrates' Court of Victoria [website](#) for information about going to court.
 - 5.1. Where the Court has an accused's current telephone number or email address, the Court will have sent to an accused a text message or email three weeks prior to the listed hearing, directing an accused to visit the MCV website.
 - 5.2. If an accused who is not legally represented cannot access the website or make a telephone call, they may attend at the local court to make an enquiry.
6. An accused who is not legally represented and would like legal advice, must as soon as possible, and prior to the hearing date:
 - 6.1. Contact [Victoria Legal Aid](#) to obtain free legal advice by requesting [Help Before Court](#) online, using the Legal Help [online chat service](#) or by calling Legal Help on 1300 792 387 from 8am to 5pm weekdays; or
 - 6.2. Contact a lawyer of their choice for advice in relation to the matter (<https://www.liv.asn.au/referral> or <https://vicbar.com.au/>); or
 - 6.3. Contact the Victorian Aboriginal Legal Service for legal advice and representation on 1800 064 865.

Having a criminal case heard via WebEx/OMC

7. Most criminal cases continue to be heard online via WebEx/OMC. To request a criminal case is listed via WebEx/OMC, an unrepresented accused must contact the Registry at which the criminal case is listed (see [local court registry](#)), no later than **3 clear working days** prior to the hearing date.
8. An accused who is not legally represented, may contact the local court by:
 - 8.1. Emailing the [local court registry](#); or
 - 8.2. Telephoning the [local court registry](#); or
 - 8.3. When an accused is unable to do any of 8.1–8.2, attend at a local court to make an enquiry.
9. After the request is made, the Court will confirm with the unrepresented accused whether the case is suitable for hearing via WebEx/OMC, and if so, confirm the date and time of the hearing and provide the WebEx link before the hearing (which may not be the current listing date).
10. If a criminal case is listed in a 'WebEx/OMC open link',¹ with a list of other cases, the accused is responsible for:
 - 10.1. Ensuring they have the correct link address
 - 10.2. Logging in to the link at the allocated time
 - 10.3. Remaining on mute until the matter is called on for hearing.
11. Where an unrepresented accused has not arranged for the criminal case to be heard via WebEx/OMC, the accused must attend the court at which the criminal case is listed on the listed date and at the listed time, to answer bail or summons. **If the accused does not attend at the court at which the criminal case is listed (at the listed date and time) the matter may be heard and determined in the accused's absence or a warrant may be issued for the accused's arrest.**

Accused in custody

First remand hearings

12. From **26 April 2021**, all accused in custody are required to be physically brought before the Court for a first remand hearing, unless they consent to a remote hearing via WebEx/OMC.² Accused are to be transported to the closest MCV venue.
13. Where an accused is physically brought before the Court, Prosecution and Defence practitioners are required to appear physically before the Court unless otherwise ordered by the Court.

¹ 'Open links' involve multiple matters being heard via a single WebEx link. Each open link is used for a specified time period (e.g. 10-11AM). Parties log onto the link five minutes before the start time and wait on mute until their matter is called.

² *Evidence (Miscellaneous Provisions) Act 1958* s 42JA(3). Note that *Bail Act 1977* (Vic) s 34C is to be repealed on 26 April 2021.

14. Informants and other witnesses may appear before the Court remotely via WebEx/OMC, provided this does not cause delay or other interruption to court business.
15. Bail support provided through the Court Integrated Services Program (CISP) will continue to provide services and all CISP assessments and case management will be conducted remotely via WebEx, telephone or in person, as determined by the Court.
16. Where an accused consents to appearing via WebEx/OMC the following will apply:
 - 16.1. Accused arrested and held at police station
 - 16.2. Defence practitioner notified by police that accused is in custody
 - 16.3. Police enable private conferences by telephone or by WebEx for practitioner to obtain instructions
 - 16.4. Assessments relevant to any application for bail enabled by telephone or by WebEx
 - 16.5. Informant contacts closest MCV venue and advises of intention to file charges and obtains appropriate email address
 - 16.6. Police file charges via email to court
 - 16.7. Defence practitioner contacts the court and provides completed appearance sheet
 - 16.8. The Court lists the matter and notifies the parties of the time of the hearing
 - 16.9. Accused appears via WebEx/OMC from the relevant police station
 - 16.10. Informant appears via WebEx/OMC
 - 16.11. Defence practitioners appear via WebEx/OMC unless other arrangements are made
 - 16.12. Prosecutors appear from the courtroom unless other arrangements are made.

Bail applications

17. After the first remand hearing date and subject to paragraph 19, all bail applications should be listed in the WebEx/OMC (with the accused appearing via AVL from a prison location) by contacting the Court coordinator at the [proper venue](#) of the Court to obtain a hearing date.
18. CISP will continue to provide services and all CISP assessments and case management will be conducted remotely via WebEx, telephone or in person, as determined by the Court.

All other hearings with an accused in custody

19. All persons in custody, save for accused in police custody appearing for a first remand hearing, will appear remotely via AVL with practitioners appearing via WebEx/OMC, unless otherwise ordered by the Court, upon application of a party not later than **3 clear working days** prior to the current listing date, or at the Court's own motion.
20. To order an accused in custody to physically appear in any matter other than a first remand hearing, the Court must be satisfied that:

- 20.1. Physical appearance is required in the interests of justice; or
 - 20.2. It is not reasonably practicable for the accused to appear via audio visual link.³
21. Additionally, the Court must consider:
- 21.1. The impact of requiring a physical appearance on the Court's case management generally; and
 - 21.2. Any risk to public health (including risks involved in transporting the accused).⁴

Committal mentions

22. Practitioners must file a [case direction notice](#) pursuant to section 118 of the *Criminal Procedure Act 2009* at least **7 days prior** to hearing.

Family Violence applications

FV Interim Intervention Order applications

23. **Applicants at immediate risk should call 000.**
24. Applicants should use the online form, wherever possible [[Application for a Family Violence Intervention Order](#)].
25. If an applicant is unable to use the online form or it is unsafe to do so, they should call the [nearest court](#) for assistance.
26. Applications will proceed via the WebEx/OMC, unless otherwise directed. Applications may be heard on the papers where supported by an affidavit or declaration of truth.
27. Applicants who cannot use the online form or who do not have access to a telephone, or have a language barrier or disability, or for whom it is unsafe to use the online form, may attend Court for urgent matters and will be assisted by a Registrar.

Return of VICPOL Safety Notices

28. If an applicant, respondent or protected person has a matter currently listed for hearing, they should contact the [relevant court](#) by telephone or complete the [Notice of Address for Contact and Service](#) form and forward it to the relevant court by email/fax **no later than 10am on the day prior to the listed hearing date**. Parties will be advised of the time and mode of appearance by the Court.
29. Where an applicant, protected person or respondent seeks legal advice, they must as soon as possible and prior to the hearing date either:

³ *Evidence (Miscellaneous Provisions) Act 1958* (Vic) s 42L(1)(a) (as amended by *Justice Legislation Amendment (System Enhancements and Other Matters) Act 2021* (Vic), commencement date 26 April 2021).

⁴ *Evidence (Miscellaneous Provisions) Act 1958* (Vic) s 42L(1)(b) (as amended by *Justice Legislation Amendment (System Enhancements and Other Matters) Act 2021* (Vic), commencement date 26 April 2021).

- 29.1. Contact [Victoria Legal Aid](#) to obtain free legal advice by requesting [Help Before Court](#) online, using the Legal Help [online chat service](#) or by calling Legal Help on 1300 792 387 from 8am to 5pm weekdays; or
 - 29.2. Contact a lawyer of their choice for advice in relation to the application (<https://www.liv.asn.au/referral> or <https://www.vicbar.com.au/>).
30. Physical attendances at a court building should only be by prior arrangement with the Court. In order to physically attend a court to make an application or in relation to a listed hearing, a party should contact the Court and only attend at the time appointed by the Registrar, where the Registrar has assessed it is necessary for a party to physically attend Court. Where safety requires personal attendance without appointment, a Registrar will assess urgency and determine process having regard to that assessment.

Family violence matters listed for future dates

31. All parties with family violence matters listed for future dates must contact the Court and arrange to have the matter listed via WebEx/OMC not later than **3 clear working days** prior to the hearing date.
32. If a party does not contact the Court the matter may be determined in the party's absence or struck out as determined by the presiding judicial officer.
33. Physical attendances at a court building should only be by prior arrangement with the Court. In order to physically attend a court to make an application or in relation to a listed hearing, a party should contact the Court and only attend at the time appointed by the Registrar, where the Registrar has assessed it is necessary for a party to physically attend Court. Where safety requires personal attendance without appointment, a Registrar will assess urgency and determine process having regard to that assessment.

Personal Safety Intervention Order applications

34. PSIO applications will proceed via WebEx/OMC, unless otherwise directed.
35. All parties with PSIO matters listed must contact the Court and arrange to have the matter listed via WebEx/OMC not later than **3 clear working days** prior to the hearing date, where that is possible.
36. If a party does not contact the Court the matter may be determined in the party's absence or struck out as determined by the presiding judicial officer.
37. Physical attendances at a court building should only be by prior arrangement with the Court. In order to physically attend a court to make an application or in relation to a listed hearing, a party should contact the Family Violence Registrar and only attend at the time appointed by the Registrar, where the Registrar has assessed it is necessary for a party to physically attend Court. Where safety requires personal attendance without appointment, a Registrar will assess urgency and determine process having regard to that assessment.

Civil

38. All civil matters currently listed will proceed via WebEx/OMC pursuant to Practice Direction [19 of 2020](#) and applicable arrangements and expectations directions.
39. All WorkCover matters listed for hearing via WebEx/OMC will proceed pursuant to Practice Direction [13 of 2020](#) and applicable arrangements and expectations directions.
40. All WorkCover matters currently listed for early neutral evaluation will proceed via WebEx/OMC. Practitioners must contact nmcworkcoverindustrialcourts@justice.vic.gov.au to confirm arrangements for listing via WebEx/OMC.

Victims of Crime Assistance Tribunal (VoCAT)

41. The Victims of Crime Assistance Tribunal will hear applications on the papers, via WebEx/OMC, via telephone or in person as directed by the Tribunal.

Koori Court

42. Koori Court hearings will be conducted in accordance with Koori Court Safe Online Operating Guidelines, pending advice that Koori Court Elders and Respected Persons can safely return to our court buildings.

Assessment and Referral Court and Drug Court

43. Assessment and Referral Court and Drug Court hearings may be conducted by way of physical appearance, WebEx/OMC or telephone as determined by the Court.
44. Participant appointments with CISP or Specialist Court staff may be face to face or remote (via WebEx or telephone) as determined by the Court.

Counter services

45. Any person attending for counter service must first contact [the Court](#) by telephone for a Registrar to allocate a time for attendance. This includes prosecution agencies and informants attending for routine matters. Wherever possible, [email](#) is to be utilised.

Public health precautions

46. All persons who attend court buildings in any circumstance must:
 - 46.1. Have a mask with them;
 - 46.2. Wear a mask where social distancing cannot be maintained (e.g. at court counters, in interview rooms, and in lifts);
 - 46.3. Wear a mask at the request of court staff;
 - 46.4. Comply with social distancing;

46.5. Follow the Chief Health Officer's directions; and

46.6. Follow any direction under the Court Security Act 1980.

A handwritten signature in black ink, appearing to read 'Lisa Hannan', with a long horizontal line extending to the right.

JUDGE LISA HANNAN
CHIEF MAGISTRATE

Date: 29 March 2021