GILSHENAN & LUTON
LEGAL PRACTICE



COVID-19 and the operation of the criminal law courts in Queensland

Date: Monday April 6, 2020

The work of courts in Queensland has changed rapidly to adapt to the need to reduce physical contact and contain the spread of COVID-19. Physical attendance is being minimised through re-organising the court calendar and using technology to conduct court hearings remotely.

While, like most other aspects of life right now, there will be some disruption, the basic work of the courts and criminal justice system is continuing.

It is important that those facing criminal charges are aware of the effects COVID-19 is likely to have on the conduct of their proceedings.

Arrests and bail

As restrictions continue to be implemented, the work of police will be considered an essential service that will continue nonetheless. Police will continue to arrest and charge people suspected of committing criminal offences.

Prisons and remand centres are concerned that holding defendants in custody while they await trial will increase the risk of COVID-19 spreading through the prison population. In response to this concern, the courts are considering COVID-19 as a factor supporting the granting of bail to people charged with offences.

The Supreme Court has cleared much of its current caseload (while arrangements are put in place), meaning that applications for bail in the Supreme Court may be able to be brought on very short notice. In some cases, this could be on the same day as an unsuccessful application for bail in the Magistrates Court may have been heard.

Where a criminal proceeding is commenced by a Notice to Appear (where a person is given a notice attend court on a certain date, rather than being arrested and brought to court) the court appearance date is to be adjourned for two months without an attendance being required.

The two-month adjournment commences on the date the person was supposed to have originally appeared. A Notice of Adjournment will be posted or sent by email to the parties and legal representatives. It is important that legal representatives write to the court to be placed on the record and receive the Notice of Adjournment.

Persons awaiting sentence or trial

Supreme and District Courts

Jury trials in the Supreme and District Courts have been suspended for the immediate future.

Judge-alone trials

Parties are being encouraged to consider whether a judge-alone trial (which is ordinarily rare), would be appropriate. While some matters will be suitable for a judge-alone trial, many will not. It remains likely that there will be extended delays beyond the foreseeable future for anyone awaiting a jury trial.

The Superior Courts are encouraging legal practitioners to avoid listing matters for sentence hearings where their clients may receive a penalty of imprisonment. This will largely be determined via out-of-court discussions between prosecutors and defence lawyers.

In a recent video seminar for the Legal Profession involving a panel of judges and senior practitioners, some judges suggested that where the prosecution and defence disagree whether there is a risk of imprisonment, the defendant’s lawyers could provide written submissions via the judge’s associate about the appropriate sentence. The judge will consider the submission to determine whether it is appropriate to adjourn the matter or proceed to a sentencing hearing.

In custody awaiting trial or sentencing

The courts have advised that where a person is in custody awaiting trial (i.e. they were refused or did not apply for bail when they were charged), their lawyer should consider whether a further application for bail should be made.

Where the person is awaiting sentence, lawyers should consider whether that sentence could be heard urgently to avoid the person spending any more time in custody than they would be sentenced to serve.

Magistrates Court

The Magistrates Court is not proceeding with any summary hearings or committal hearings at present. It is generally limited to hearing:

- bail applications;
- urgent domestic violence and child protection matters;
- sentences where a person is likely to be released from custody; and
- other urgent matters that can be dealt with in writing or do not involve witnesses coming to court.

The Magistrates Court has indicated it will continue to accept applications to hear matters where delay would cause substantial prejudice to a party.

The use of technology

Telephone appearances

In all courts, physical attendance is being discouraged. For most matters, telephone appearance will become standard, with telephone conferencing being hosted by the provider ‘Chorus Call’.

Parties need to advise the list manager that they will be appearing by telephone 24 hours in advance. The courts will provide a PIN code for the conference, which the lawyer enters after calling the nominated telephone number at the time of the court listing. A person connected to the courtroom via ‘Chorus Call’ will be able to hear the court proceedings and be heard via the court’s speakerphone.

Video-conference appearances

For contentious matters and/or where there is a need for video communication, court video-conferencing is available using an application called ‘Cisco Webex Teams’.

This facility can only be utilised upon application to the court, with the presiding judge ultimately deciding whether telephone or video is appropriate.

While physical attendance is still permitted in the Supreme and District Courts (albeit discouraged), there is to be no physical appearance in the Magistrates Court except:

- for the aggrieved in urgent non-police domestic violence applications;
- if the person attending court is a member of the media; or
- if the court grants a person leave to attend.

Further information about the audio-visual applications being used by the courts can be found on the Queensland Courts website.

Court processes are being updated regularly

The COVID-19 situation has been changing rapidly and the practice of courts may change on short notice. Gilshenan and Luton has been closely involved in stakeholder discussions about the work of courts and is following these changes closely.

Legal advice and assistance during COVID-19

We are delighted to advise that we returned to normal operations from our CBD premises on Monday 29 June 2020.

We continue to provide the best criminal law services during the coronavirus pandemic.

You can contact us by phone or email to arrange a consultation.

Phone: 07 3361 0222 (24/7)

Email: gnl@gnl.com.au

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.