



UPDATE TO THE PROFESSION
COVID-19 MEASURES AND LISTING ARRANGEMENTS
19 MARCH 2020

The Family Court of Australia and the Federal Circuit Court of Australia (the Courts), the profession and the community are facing unprecedented challenges. COVID-19 is having a direct impact on the way the Courts are able to administer justice for Australian families. The Courts must adhere to the restrictive requirements which are necessarily imposed by the Government. As a result, they cannot administer justice in the usual way, and significant changes have had to be made. In doing this, the Courts are required to balance the health and safety of the community, the profession, Judges and staff with the need to continue this essential service. It is of paramount importance that the Courts ensure that they are not putting parties at risk when conducting court hearings.

The Courts will continue to conduct court work within current parameters based on the advice of the Commonwealth Government Department of Health and the Chief Medical Officer.

This document contains an update as to the measures and listing arrangements that are being implemented by the Courts to address these challenges.

The principle basis upon which work will be conducted in the Courts in the near future will be by telephone, and when it becomes possible, by videoconferencing. Only urgent matters will be dealt with by in court face-to-face hearings, which will be conducted pursuant to the **face-to-face in-court protocol** (below).

1. First instance family law proceedings

Whilst variances may be adopted to suit the operational requirements of each Registry, the arrangements below are generally being implemented for first instance proceedings.

A. For First Return Duty Lists, Abridgements, Mentions, Directions, and Interim Hearings the following telephone appearance procedure will generally be followed:

- Parties in each matter currently listed for one of the above hearings will be contacted by the Court indicating that the matter will be heard by telephone;
- After being notified, a party may approach the court seeking that the matter not proceed by telephone hearing on the basis that:
 - i. it is not practicable to do so; or
 - ii. the matter is urgent and requires a face-to-face hearing in court.
- Parties who request a face-to-face hearing should contact the Chambers of the presiding Judge or the case-coordinator as appropriate by email and provide a brief outline as to why the matter is urgent and should remain listed for a face-to-face hearing. If the Court directs the parties to proceed by face-to-face hearing, the face-to-face in-court protocol will apply;
- If it is not practicable for the matter to proceed by telephone, and the matter is not urgent, the Judge may administratively adjourn the matter to a date to be advised, and if appropriate, send it to an ADR event;
- Otherwise, in response to the Court's correspondence, parties should provide their direct telephone contact details to the Court no later than 4:00pm two business days prior to the



listing. Parties will be allocated an estimated time when they will be contacted on the day of their listing. Parties must ensure they are available by telephone until they receive the Court's call.

- In the event parties are in agreement as to the future conduct of the matter, proposed interim consent minutes may be submitted by email to the Court for consideration.
- Matters in a duty list where no Notice of Address for Service or Response has been filed are to remain listed to be dealt with face-to-face in Court:
 - i. the Applicant should appear by telephone;
 - ii. procedurally, the Respondent will be called outside the courtroom.

B. For final hearings, the following procedure will generally be followed:

- The presiding Judge will conduct a telephone callover of all matters listed in their docket for a defended hearing in the next 2 months.
- During the telephone callover, parties should inform the Judge of the urgency and status of the case, whether it may be susceptible to hearing by telephone either partly or fully, and whether it should be given priority over other cases listed for trial in that period.
- Cases that are assessed to be of a lower priority, may be sent to an ADR event, either to a private mediation or a conference with a Registrar and/or Family Consultant, and the matter will otherwise be adjourned for trial on a date to be advised.
- Practitioners are encouraged to consider how they can effectively facilitate ADR within the parameters of appropriate social distancing, including using videoconferencing or shuttle mediations.
- Cases that are assessed to be of a high priority, and remain listed for hearing, should follow the face-to-face in-court protocol, including giving consideration to conducting parts of the hearing by telephone or written submissions after the 1.5 hour time period has elapsed.
- Subject to any further developments or Government restrictions, this process may then be repeated for matters listed for final hearing in 3 and 4 months' time.

2. Appellate family law proceedings

The following arrangements apply to the Appeal Division of the Family Court of Australia until the end of May 2020. For listings after May 2020, further advice will be provided when available.

- Appeals in Sydney commencing the week of Monday, 20 April 2020 and Monday, 18 May 2020 will each be conducted for no longer than 1.5 hours face to face in court with a judge or judges appearing by video or telephone where necessary.
- Appeals in Adelaide commencing the week of Monday, 4 May 2020 will each be conducted with the presiding judge in the courtroom for no more than 1.5 hours face to face in court and the other two judges otherwise appearing by video (or telephone if necessary).
- Appeals in Melbourne commencing the week of Monday, 4 May 2020 will each be conducted in a courtroom with all three judges appearing by video (or telephone if necessary).
- It may not be possible to list all appeals that are currently or will shortly be ready for hearing, and if necessary priority will be given to matters that are deemed urgent. There will also only be one appeal listed each day.



- Counsel (and their instructing solicitors where necessary), solicitor advocates, and self-represented litigants will be expected to attend the Court where the appeal is being heard, but requests can be made to attend by telephone depending on the circumstances and the nature of the appeal.
- It is not necessary for the parties who are legally represented to attend in person at the hearing, and through their legal representatives they are able to request to listen in by telephone.
- All documents to be provided to the bench must be sent electronically to the Appeal Registrar no later than 24 hours prior to the commencement of the hearing. A chambers order to that effect will be made by each Appeal Registrar in all appeals where a directions hearing has already been held. In addition, such an order will be included in the orders made at each future directions hearing.
- All directions hearings before Appeal Registrars will be conducted by telephone.
- In relation to single judge appeals and Applications in an Appeal, they will be conducted as directed by the judicial officer hearing them however, any hearing will not exceed 1.5 hours face-to-face in court and may be continued by telephone or by written submissions.
- In relation to all Applications in an Appeal, all parties will be asked whether those applications can be determined on the papers.

Telephone hearings

- Parties will be provided with a listing time and operational instructions for the telephone hearing by the Court.
- Only the Judge and Chambers staff should be in the courtroom. Interpreters will also appear by telephone if possible.
- If a telephone hearing is not practicable, and the matter *is not* urgent, then it may be adjourned to a date to be advised.
- If a telephone hearing is not practicable and the matter *is* urgent, it will remain listed for a face-to-face hearing at the discretion of the Judge.
- Reserved judgments will be delivered in an empty courtroom, and reasons for judgment emailed to the parties in the usual way, nothing that no appearance is required.

Face-to-face hearings

- Any urgent matter which requires a face-to-face hearing, should adhere to the **face-to-face in-court protocol** (below).

Hearings on the papers

- Judges are encouraged to consider any matter on the papers where possible in accordance with the usual Rules of Court.



Filing and Documents

- All applications must be e-filed on the Commonwealth Courts Portal.
- Applications that are unable to be e-filed must be emailed to the Registry for filing and should not be posted or delivered to the Registry.
- In the Family Court, documents referred to in affidavits should be attached to the affidavit when it is electronically filed, or emailed to the Registry.
- For telephone hearings, any other document that would usually be handed up in Court during a hearing, including any minute of proposed consent orders, must be emailed to Chambers or the case co-ordinator in a timely way before the hearing. Proposed consent orders should be furnished in Microsoft Word format.
- If parties are attending a face-to-face hearing, the handing up of hard copy documents should be avoided.
- Practice Directions have been issued to facilitate these changes.

CDS events

- Child Inclusive Conferences under section 11F will only be ordered where the judge considers there is an urgent requirement for a family consultant to see the children. This will primarily relate to urgent matters in duty lists. Otherwise Child Dispute Conferences will be ordered.
- All Child Dispute Conferences will be conducted by telephone. Parties will be sent dial-in details with relevant AAPT account numbers or, alternatively, will be asked to provide their contact details. There will be no requirement to attend Court in-person.
- Family report interviews scheduled will proceed as arranged, unless the parties are advised otherwise by CDS, but will be conducted consistent with social distancing principles as far as possible.

GFL

- The Federal Circuit Court will conduct GFL hearings where necessary, including in urgent cases, via face-to-face hearings, however these will be kept to an absolute minimum.
- Wherever possible, hearings will be conducted by telephone, and only in urgent circumstances will be conducted face-to-face and adhere to the face-to-face in court protocol.
- For migration work, if the matter can be conducted by video or telephone, it is appropriate to proceed with these matters. For face-to-face migration hearings, until further notice, only urgent matters, such as detention cases and cases involving a minor, are to be heard.



FACE-TO-FACE IN COURT PROTOCOL

This protocol is designed to reduce the risk of infection for judges, staff and court users when conducting face-to-face court hearings. This is the most appropriate way, at present, for the court to balance important health and safety considerations with the need to continue its vital work for Australian families.

The salient features of the face-to-face in court protocol are set out below for the information of the profession.

1) Listings

Priority will be given to urgent matters that the judge considers cannot be dealt with over the telephone.

The Court will stagger listings to reduce the number of people waiting in the foyer/registry building.

Short matters for mention or directions hearings will be listed at 30 minute intervals.

Longer contested matters will not be listed for more than 1.5 hours, and with sufficient time in between listings to allow cleaning to occur.

To reduce the length of any face-to-face hearing, where possible, it may be complemented with written submissions or telephone hearings if necessary.

2) Courtrooms and courtroom procedure

No party is to enter the courtroom before their matter is called.

No more than 8 people (excluding the Judge and Associate) may be in the courtroom at any one time.

Counsel, solicitors and parties are to adhere to social distancing by sitting in designated seats as indicated in the diagram on the door of the courtroom (reproduced below) and in the seats marked in each courtroom (i.e. at least 1.5 to 2 metres apart).

Appearances will not be required until the hearing commences, and then they should be provided from the Bar table orally.

Parties are to refrain from approaching the Associates' desk, and should not expect to be able to hand up any hard copy documents.

Parties are to leave the courtroom immediately after their hearing has concluded, and then make their way promptly to the Registry exit.

3) Cleaning

Additional cleaning of courtrooms that are used for face-to-face hearings will occur as often as practicable between hearings and when the court is adjourned during the day.

Hearings will be conducted for not more than 1.5 hours in the same matter. After that period, the courtroom will be closed and appropriate surface cleaning will take place.



To ensure the safety of staff, lawyers, litigants and witnesses, the same matter will not continue after the first 1.5 hour period.

4) Security

Security screening should be staggered appropriately. Security will be instructed to ensure social distancing is observed whilst court attendees are queuing for security.

The Court is currently investigating the availability of contactless thermometers to allow for non-invasive temperature measurements prior to parties/practitioners entering the Registry buildings.

5) Court attendees displaying symptoms

In the event that any court attendees becomes ill or display any symptoms of COVID-19, they should immediately notify the Court and proceed to leave the Registry. The Court will be adjourned and appropriate steps taken, including any deep cleaning required.

