NEW SOUTH WALES

BAR ASSOCIATION

COVID-19: INFORMATION FOR ATTENDING COURT

Latest news as at Thurs 12 November

ATTENDING COURT

Courts and Tribunals have measures in place to conduct proceedings without the need for attending where possible, to respond to the developing COVID-19 pandemic. The Association is in constant contact with the Courts and Tribunals. Click on the links below to jump to the latest information received about:

- The Supreme Court of New South Wales
- The Land and Environment Court of New South Wales
- The District Court of New South Wales
- The Local Court of New South Wales
- The Children's Court of NSW
- NSW Coroners Court
- NCAT
- NSW Industrial Relations Commission
- Workers Compensation Commission
- High Court of Australia
- Federal Court of Australia
- Family Court of Australia & Federal Circuit Court of Australia
- Administrative Appeals Tribunal
- Fair Work Commission
- Copyright Tribunal of Australia
- Alternative Dispute Resolution
- COVID-19 legislation, orders, directions & regulations

In accordance with NSW Health advice, DO NOT ATTEND A COURT/TRIBUNAL unless you:

- are a party to a court or tribunal matter and no other arrangements are in place to conduct proceedings remotely;
- require face to face services of the registry and no other arrangements are in place to enable this remotely; or
- are a representative of a news-media organisation with a legitimate reason for attending.

Despite the above, DO NOT ATTEND A COURT/TRIBUNAL if:

- you have had close contact with someone diagnosed with or suspected or confirmed as having coronavirus (COVID-19) in the last 14 days;
- you are feeling unwell and experiencing any of the following symptoms - fever, cough, sore throat or shortness of breath; or
- you have travelled and returned from overseas in the past 14 days.

Registrars or Sheriff's officers may deny entry or request any person to leave a building.

SUPPORTING MEMBERS & CLIENTS

The Bar Association continues to actively monitor COVID-19 developments and impacts on the Courts. Protecting the health, safety and interests of members, while continuing to promote the administration of justice and serve the public good, is our priority at this difficult time.

We are consistently updating our website and this point-in-time resource as information comes to hand. **However, please always double-check the latest Court resources directly as developments are changing quickly at this time and do not make any assumptions regarding your case without first doing so.**

Key contacts

For the latest health information, please visit:

- Australian Government, Department of Health – COVID-19 Resources: https://www.health.gov.au/resources/collections/novel-coronavirus-2019-ncov-resources

- NSW Department of Health: https://www.health.nsw.gov.au/Pages/default.aspx

Wellbeing

Be mindful of your resilience and wellbeing during this challenging time. If you're concerned about yourself or a colleague, visit barcare.org

SUPREME COURT OF NEW SOUTH WALES

For further info & practitioners guidelines, visit http://www.supremecourt.justice.nsw.gov.au/Pages/coronavirus_covid19_announcement.aspx

On 9 November the Supreme Court of New South Wales advised that:

All Court of Criminal Appeal matters are now being conducted as live hearings in either the Banco Court or Court 13A. Please check the daily court list for staggered start times.

On 28 October the Court of Appeal provided the following advice in relation to the partial resumption of live hearings:

https://nswbar.asn.au/the-bar-association/publications/inbrief/view/08b347d11316f1372f3414b4c438e80d

COURT OF APPEAL HEARINGS – PARTIAL RESUMPTION OF LIVE HEARINGS

From next week, at least one Court of Appeal matter listed for each day will be a live hearing in either the Banco Court or Court 13A. If more than one Court of Appeal hearing is occurring on the same day, the other matter(s) will continue to be heard by AVL.

The Registrar of the Court of Appeal will notify parties in advance if their hearings are to be live hearings.

The President of the Court of Appeal will continue to entertain any applications in relation to a listed AVL hearing if a strong case can be made for a live hearing. There remains, however, a practical limitation on the number of live hearings that can take place in the Law Courts Building because of COVID-19 requirements and social distancing concerns.

The President of the Court of Appeal issued the following note to practitioners on 2 September:

COURT OF APPEAL HEARINGS – NOTE TO PRACTITIONERS

Although some limited hearings of trials are now occurring in the Supreme Court in person, the President of the Court of Appeal has indicated that, absent exceptional circumstances, appeals in the Court of Appeal will continue to be heard remotely for the time being. Counsel engaged in appeals listed for the rest of this year should proceed on that basis.

On 9 June the Supreme Court published an updated version of its *Protocol – Court Operations – COVID-19*, which is available here:

http://www.supremecourt.justice.nsw.gov.au/Documents/Home%20Page/Announcements/Protocol_v4_09_June_2020.pdf

The changes relate in particular to paragraphs 3.15 and 5.3.

On 29 May the Chief Justice provided advice regarding the staggered resumption of face-to-face hearings in the Supreme Court from 1 June:

The Chief Justice has confirmed that the Supreme Court will be resuming a limited number of face-to-face hearings from Monday 1 June 2020. Parties with face-to-face hearings next week have been notified directly, including the start, finish and break times. These have been staggered to reduce the possibility of congestion in lift lobbies and other locations and to promote physical distancing.

All other matters will continue to be conducted via the virtual courtroom and parties in those matters will have received the courtroom login / dial-in details.

In order to comply with physical distancing guidelines, the public lifts at Queens Square and Hospital Road are limited to two people at a time. It is recommended that legal practitioners arrive 15 minutes before their start time in case there are short delays.

https://nswbar.asn.au/the-bar-association/publications/inbrief/view/08b347d11316f1372f3414b4c4163169

On 22 May the Supreme Court published four Re-Issued CL Practice Notes 1, 3, 4 and 6, which are available here:

http://www.practicenotes.justice.nsw.gov.au/practice_notes/nswsc_pc.nsf/Web%20Version%20Notes?OpenView&Start=1&Count=50&Expand=2.1#2.1

On 20 May the Supreme Court published the following media release:

NSW SUPREME COURT MOVES TOWARDS RESUMING FACE-TO-FACE HEARINGS

http://www.supremecourt.justice.nsw.gov.au/Pages/coronavirus_covid19_announcement.aspx

The NSW Supreme Court today announced its first steps towards reopening to parties and the public, as government restrictions ease around the COVID-19 pandemic.

NSW Chief Justice Tom Bathurst said some face-to-face civil hearings would resume on 1 June 2020, followed by criminal jury trials from 29 June 2020.

“For the first time in living memory, personal appearances were essentially banned in our courtrooms two months ago to help minimise the spread of the virus,” Chief Justice Bathurst said.

“I am pleased to outline a return to in-court hearings, in a measured and staged approach that protects the health and wellbeing of all court users.”

Some civil hearings with limited parties, witnesses and legal representatives will be able to return to the courtroom in a fortnight’s time. Those involving multiple parties and witnesses will follow in stage two, with directions hearings, judges’ and registrars’ lists and court-annexed mediations to return in the final stage. It is envisaged that because of the improved technology, some of the lists will continue to be dealt with online.

Criminal jury trials will resume at the end of June but will require at least two courtrooms each to accommodate social distancing requirements.

Chief Justice Bathurst thanked the legal profession and court staff for their extraordinary efforts in keeping the Court almost fully operational during recent months.

“The move to virtual courtrooms, seemingly overnight, created unprecedented disruption to our usual processes,” he said.

“The shift to a remote system of justice was not without its technical challenges, yet I am confident we are getting better each day, and I see an innovative and flexible future ahead.”

“Remarkably, the Court has continued to operate essentially at its normal capacity, with Judges hearing close to 20 matters per day, including contested interlocutory applications. Judges and Registrars, dealing with case-management, are hearing over 500 matters per week.”

“To have continued listing cases at such a high level is a credit to everyone involved.”

The Chief Justice said of the civil hearings and special fixtures listed in the Common Law Division for 19 months between March 2020 and October 2021, only seven have been vacated due to COVID-19.

During the shutdown, the Equity Judges have, on average, been hearing 12 contested interlocutory and final hearings per day and providing case-management to over 200 cases per week.

Both the Court of Appeal and the Court of Criminal Appeal have heard all appeals that were scheduled for hearing in March, April and May, and no appeals have been vacated because of the shutdown. In that same period, the Court of Appeal has delivered 68 judgments and the Court of Criminal Appeal 70 judgments.

Thirteen criminal trials were delayed due to the pandemic, and five accused (in a further four trials) have taken the option for trial by judge-alone.

An average of 40 bail applications are being heard and determined by Judges per week.

As the NSW Supreme Court slowly and safely reopens its courtrooms, all reasonable steps and precautions will be taken to minimise the risk of transmission of COVID-19 including:

- staggered courtroom start and finish times, commencing at 9am and sitting up to 5pm
- new jury selection procedures
- temperature checks for court users
- visual guidance in courtrooms to follow physical distancing requirements
- hand sanitiser stations
- increased cleaning and disinfecting, focusing on high traffic areas.

On 1 May the Supreme Court published an *Updated factsheet for the Virtual Courtroom,* that updates an earlier version published in March. The updated fact sheet is extracted below and available here:

FACT SHEET: THE VIRTUAL COURTROOM

What is a Virtual Courtroom?

A Virtual Courtroom brings the physical courtroom to a virtual space. It is a digital method for court cases to be progressed without the need for participants to attend in person.

Parties to proceedings can access the Virtual Courtroom using video and telephone conferencing applications (see below).

Virtual courtrooms are still formal courtrooms. All usual court etiquette, protocols, procedures and restrictions apply.

How to connect to a Virtual Courtroom

Parties can connect to a Virtual Courtroom in the following ways:

1. **Video conference** – via a dedicated Weblink or by using a dedicated video conferencing service or device. Weblinks can be used from any device (e.g. smartphone, tablet, laptop) with an unrestricted internet connection and a web browser with audio and video capability (a List of Compatible Browsers is provided below).

2. **Telephone conference** – dialling into via a dedicated Virtual Courtroom number.

Contact details for the Virtual Courtroom will be provided by the Court prior to your appearance date.

List of Compatible Browsers

To connect using a Weblink, copy and paste the address provided into the following browsers (with minimum browser versions in brackets):

- Firefox (Version 74)
- Google Chrome (Version 80)
- Chromium-based Microsoft Edge (Version 80)
- Apple Safari for macOS (Version 12 and 13)
- Apple Safari for iOS (Version 12.4 or 13.3)
- Yandex for Windows (Version 20)

Testing your connection

Parties are advised to test the connectivity of their devices prior to appearing before a Virtual Courtroom using one of the following test links:

1. Weblink: https://avl.justice.nsw.gov.au/invited.sf?id=10091500&secret=Tla.N04VLX3odSANh wXrSA

2. SIP Address: 10091500@justice.nsw.gov.au (for dedicated AVL suites)

In addition, participants may be contacted in advance of an appearance and asked to complete a test link with all participants.

Your connection instructions

Video conferencing using a 'Weblink'

1. Ensure your device has a working camera. Video conferencing requires a camera to be enabled.

2. It is recommended that participants use a headset + external microphone with their device to minimise audio interference issues.

3. Ensure that your device has reliable connectivity and coverage.

4. Please ensure that you are following the recommended browser requirements (set out above).

5. Click the Weblink provided immediately prior to your listed appearance time.

6. You will be asked to enter your name and details. Please use the following naming convention: Surname – Party description (Example: Doe – Plaintiff = representative John Doe – plaintiff's representative)

7. Click "Join Meeting".

8. Whilst waiting for your matter to be called, please ensure that the audio on your device is muted so that any background noise does not interfere with court proceedings.

9. End the Weblink when your matter is finalised.

Video conferencing using a dedicated video conferencing service or facility

(This facility is available to practitioners using dedicated video conferencing equipment that typically are available in many offices suites or facilities).

1. Use the SIP address provided to connect your video conferencing equipment to the Virtual Courtroom prior to your listed appearance time.

Telephone conferencing

1. Dial the phone number provided to you immediately prior to your listed appearance time.

2. You will be greeted by the following audio message: *"Welcome to NSW Courts"*

3. You will then be asked to enter a 'Meeting ID' followed by a hash (#) - the Meeting ID will be provided by the Court in advance.

4. Once you have entered the Meeting ID, you are 'live' in the Virtual Courtroom, all parties, including the Judge/Registrar can hear you, so please remain silent until your matter is called.

5. Whilst waiting for your matter to be called, please ensure that the audio on your device is muted so that no background noise can interfere with court proceedings.

6. End the call when your matter is finalised.

Protocols for the Virtual Courtroom

• Be in a quiet and private location to limit interference from background noise.

• Ensure that there is sufficient internet coverage and connection on your device.

• Ensure all relevant materials to be relied upon have been made available to the Court beforehand.

• Observe all normal court etiquette and protocols in the Virtual Courtroom environment.

• Once you are connected to the Virtual Courtroom, please mute the audio settings on your device to prevent any unintended interruptions to court proceedings.

• Refrain from speaking over each other as much as practical to accommodate the reduced social cues available, and to assist with the court's transcription process

Frequently Asked Questions

I am using the Weblink and am being prompted to enter a 'meeting ID' and 'passcode', what should I do?

More than likely you are attempting to connect using an unsupported browser (e.g. Internet Explorer) or an out-of-date version of an approved browser. Please see the section above for recommended browsers and versions.

Can I still attend court in-person?

No. In line with the current health advice of Tuesday, 24 March 2020 there shall be no personal appearances in any matters save in exceptional circumstances with the leave of the Chief Justice or head of jurisdiction. This also applies to unrepresented litigants. The Court

will contact parties in relation to future listings to advise of the video and teleconference facilities available for their specific matter. Listings may alter at short notice and practitioners should refer to the Court's website for updates and review the daily listing notices.

Can non-related parties (e.g. junior clerks) join the telephone/video conference to observe?

The usual concept of open justice is applicable to the Virtual Courtrooms. However, the Court discourages the wide sharing of Virtual Courtroom contact information in order to minimise interruptions in the Virtual Courtroom environment.

In all cases, normal court protocols, etiquettes, procedures and restrictions apply. The public must put their calls on mute and silently observe so no background noise can interfere with court proceedings.

On 16 April the Supreme Court published a memo to Arraignments List Practitioners from the Criminal List Judge titled *Arraignments List – Procedural Directions* and dated 15 April. From 1 June 2020 the Criminal List Judge is Hulme J. The memo is extracted below:

ARRAIGNMENTS LIST – PROCEDURAL DIRECTIONS

1. Consistent with the announcement of the Chief Justice on 23 March 2020 published on the Supreme Court website, there will be no appearances, in person, in the arraignments list either by practitioners or an accused until further notice.
2. In accordance with the procedures in ss 22C(3) and (4) of the Evidence (Audio and Audio Visual Links) Act 1998 (NSW), introduced following the passage of the COVID-19 Legislation Amendment (Emergency Measures) Act 2020 (NSW), it is intended that the appearance of practitioners and the accused will be via AVL.
3. Section 22C(5) of the Evidence (Audio and Audio Visual Links) Act operates in the context of the arraignments list by providing that the Court may direct that an accused and their legal representative, and a legal representative for the Crown, are to appear by audio visual link "but only after the parties have had an opportunity to be heard".
4. Any practitioner who wishes to be heard on that question should furnish a written submission to the Criminal List Judge's chambers (and copied to the Crown) no later than midday the day before the arraignments list is to be called over setting out the basis upon which an order under s 22C is resisted. The submission will be considered in chambers and the parties advised by email whether a direction under s 22C will be made or not.
5. An accused who is in custody will continue to appear via the established AVL system which connects the Court to NSW Correctional Centres.
6. Where an accused in custody does not wish to appear via the established AVL system or where an accused is on bail and does not wish to appear via the Virtual Courtroom, the accused's legal representatives are to send an email to the Criminal List Judge's chambers (and

copied to the Crown) no later than midday the day before the list is to be called over. The request will be considered in chambers and the parties advised by email whether there will be a direction that the accused appear via AVL or via the Virtual Courtroom as the case may be.

7. Legal practitioners appearing in the arraignments list are to advise the Criminal List Judge's chambers by email of their intended appearance (first initial and surname) no later than midday on the day before the arraignments list is to be convened. Details to connect to the Virtual Courtroom will be provided in a reply email.
8. Until further notice the arraignments list will convene at 11:00am on the first and third Friday of each month.
9. The matters in the arraignments list will be called over by the Criminal List Judge at the time allocated and in the order in which they appear on the Court List on the Supreme Court website. Please note the times allocated are an estimate only. However, practitioners (and an accused not in custody) should ensure they have joined the Virtual Courtroom in advance of the time allocated to ensure that when their matter is called the practitioner (and the accused) are available to appear.
10. When connecting to the Virtual Courtroom, a practitioner should provide the following details: • number in the list; • party represented (Crown or accused); • first initial of practitioner's given name; • practitioner's surname.
11. Practitioners using a web browser to connect to the Virtual Courtroom are encouraged to use either the latest version of Google Chrome or Firefox.
12. To minimise the risk of disconnection, practitioners are encouraged to use a hardwired Internet connection (by plugging their device directly into a router or modem) in preference to use of a wireless connection.
13. If a practitioner is disconnected from the Virtual Courtroom during the proceedings, they should re-join using the link provided.
14. For further information a fact sheet, published by the Court to assist participants in navigating the Virtual Courtroom environment, is available at: http://www.supremecourt.justice.nsw.gov.au/Documents/Home%20Page/Announcements/Fact%20Sheet%20-%20Practitioners_20200323.pdf .
15. To minimise noise and feedback during the proceedings, practitioners should ensure their devices are on mute and cameras off until their matter is called. Devices will need to be unmuted and cameras activated when practitioners address the Court.
16. Where solicitors instructing counsel appear, both the video and audio to their device should remain off at all times.

Note – Judge alone trials

17. Attention is also drawn to the *COVID-19 Legislation Amendment Act* and the consequential amendment to s 365 of the *Criminal Procedure Act 1986* (NSW) relating to Judge alone trials ("JAT") utilising the facility of the Virtual Courtroom. The parties are encouraged to consider whether a JAT is feasible in the circumstances of the particular trial.

18. If the consent of the accused to a JAT is forthcoming, then the Crown should advise the accused and the Court of its position without delay.

On 15 April the Supreme Court issued a *Microsoft Teams Virtual Hearing Practitioner's Fact Sheet*, which is available here:

https://inbrief.nswbar.asn.au/posts/08b347d11316f1372f3414b4c40c6ecb/attachment/15.4.20%20Microsoft%20Teams%20External%20Guide%2015%20April%202020.pdf

The Association received notice on 9 April 2020 of Variations to Procedures in the Supreme Court, as outlined in a notice by the President of the Association:

> The Bar Association has this morning received a communication from the Chief Justice of NSW, the Hon T F Bathurst AC, regarding variations to procedures in the Supreme Court.
>
> The Chief Justice has advised that although difficulties still remain with the use of the Court's audio visual technology, ongoing improvements are being made to the system, including an increase in server capacity for remote matters.
>
> To ease pressure on the system the Chief Justice has proposed that from next week, cases will be listed on a staggered basis, from an earliest start time of 8:00 AM and the latest finishing time of 6:00 PM. In setting down these matters the Court will of course take into account the personal circumstances of the practitioner. This arrangement is expected to further alleviate pressure on the Court's system, particularly on days on which List Judges are calling-over matters. The Chief Justice urges practitioners appearing in those lists to use a telephone facility rather than the audio visual link.
>
> The Chief Justice advises that all Judges of the Supreme Court now have the capacity to hear cases using Microsoft Teams as an alternative to the Court's audio visual link. The Court is taking steps to ensure that judges and their associates are fully familiar with the operation of that system, and it is intended that the Court will provide a specific protocol as to its operation. The Court's intention is to use the Microsoft Teams facility when it is requested by the parties, although the existing Court system will remain the default position for remote matters.
>
> The Chief Justice has also indicated that the Court has no objection to parties using external technology providers if they wish to do so, however that in such cases the Court is not in a position to bear the financial cost associated with the use of such alternative providers. Members will be kept informed of further developments.

The Supreme Court provided the following two notices on 9 April 2020 that:

> ***Amendment to the Uniform Civil Procedure Rules - Amendment to Rule 36.11 and Part 1 of Schedule 8***

On 7 April 2020, the Uniform Rules Committee approved Amendment No 93 to the *Uniform Civil Procedure Rules*.

The amendments include:

1. Rule 36.11 – a judgment or order that is to be entered forthwith is deemed entered if signed and sealed by a judicial officer.
2. Part 1 of Schedule 8 – matters commenced pursuant to the 176D, 176E and 176F of the *Public Works and Procurement Act 1912* are to be assigned to the Commercial List in the Equity Division of the Supreme Court.

The amendment was published on the NSW Legislation Website today and commences today.

Amendment to the Supreme Court Rules 1970 – Part 1 rule 9C and Part 71A rule 8

On 7 April 2020, the Supreme Court Rules Committee approved Amendment No 433 to the *Supreme Court Rules*.

The amendments include:

1. Part 1 rule 9C – sets out how a bail application may be filed in the Supreme Court.
2. Part 71A rule 8 – corrects the email address that an application under the Service and Execution of Process Act may be sent to.

The amendment was published on the NSW Legislation Website today and commences today.

The Supreme Court released the following notice on 8 April 2020:

SUCCESSION NOTICE

From 23 March 2020, all Probate List cases and family provision applications will be case managed by Justice P Hallen as the Succession Judge.

There will be no changes to the current listings of Probate List case or family provision applications unless the parties are notified of any change.

There is no change to the lodgement of new cases: They should be lodged in the Probate List or Equity General (Family Provision) List as appropriate.

Future directions hearings in both Probate List cases and family provision applications will be listed on Fridays before Justice Hallen. Matters so listed, that are likely to be of more than 15 minutes duration, will be removed from the Friday list, and will be listed on the following Monday before his Honour.

If the legal practitioners in a matter, or associated matters, jointly request his Honour, no later than 9:00 a.m. two working days before the Friday on which the matter is listed, to have the matter removed from the Friday list and placed into the Monday list the matter will be removed in advance of the Friday list.

If that request is not made in a timely manner, the matter, or associated matters, will remain in the Friday list but be adjourned to a Monday convenient to the Court.

The Supreme Court released a Protocol for the Arraignments List on 31 March 2020, which has now been superseded by the directions enclosed above.

The President of the Court of Appeal issued the following statement on 31 March 2020:

COURT OF APPEAL ADDITIONAL REQUIREMENTS FOR THE FILING OF APPEAL BOOKS AND WHITE FOLDERS

Until further notice, parties should, in addition to the current requirements for the filing of physical copies of Red, Orange, Blue and Black Books, and White Folders in the case of Summonses for leave to appeal, also provide an electronic copy of those books to the Court. The Registrar will accept USBs, CDs, and DVDs. Emails with links to documents may be accepted by prior arrangement with the Registrar.

The delivering of physical copies or USB electronic copies of appeal books or White Folders can be made to the foyer of the Registry by prior arrangement with the Registry.

Uplifting of books and folders for updating, and the uplifting of lower court files can also occur by prior arrangement with the Registry.

Enquiries should be made by email addressed to courtofappeal@justice.nsw.gov.au

The Supreme Court published Guidelines for Common Law Duty List matters and Equity Duty List matters on 26 on 27 March respectively, which are available here:

http://www.supremecourt.justice.nsw.gov.au/Documents/Home%20Page/Announcements/CL_Duty_Judge_procedure_20200327.pdf

http://www.supremecourt.justice.nsw.gov.au/Documents/Home%20Page/Announcements/Duty%20List%20Guidelines_20200326.pdf

The President of the Court of Appeal made the following announcement on 24 March 2020:

Court of Appeal Authorities – New Procedure

In response to COVID-19, changes have been made to the process by which the Court of Appeal receives authorities from practitioners ahead of hearings.

Until further notice, practitioners should no longer provide hard copies of authorities to the Level 12 authorities' box. Practitioners should continue to provide electronic copies of their lists of authorities to the President's Researcher by email at coa.researcher@courts.nsw.gov.au. Those lists should now be provided by 10am **three business days** before the hearing. Where lists of authorities contain references to secondary materials (for example, extracts from textbooks or second reading speeches), electronic copies of those materials in PDF format should also be provided to the President's Researcher by email at the same time as provision of the lists.

Any questions relating to the above instructions may be directed to the President's Researcher.

The Supreme Court made the following announcement on 24 March 2020 regarding changes to procedures relating to the Commercial List, Technology & Construction List and Commercial Arbitration List

Henceforth and until further notice, the usual Friday Commercial List, Technology and Construction List and Commercial Arbitration List will not be conducted in open Court.

Matters not disposed of by consent will be dealt with as follows:

The time for consent directions to be sent to his Honour Justice Hammerschlag will be extended to 4.00pm on Thursday 19th March 2020. Where there is no consent the parties are to forward to his Honour by 12.00 noon on Friday 20th March 2020 a brief position paper, (not exceeding one page for directions and two pages for motions) identifying what is in dispute and their respective positions on it.

If a hearing date is requested a range of mutual hearing dates should be provided.

His Honour will then determine matters in dispute on the papers unless a hearing is necessary and appropriate. If a party considers a hearing to be necessary and appropriate, it should state this and give reasons why. If a hearing is to be held it is likely to be by audio link or video link. The parties will be notified and arrangements made.

Matters which are not the subject of consent provided to the Associate by 12.00 noon on Thursday will appear in the list, notwithstanding that consent orders may be made later.

Enquiries are to be directed to his Honour's Associate, Colleen Sutton by email.

The Supreme Court released the following update on 22 March 2020:

COVID-19 – Changes to Court Operations

It is essential for the wellbeing of the community and the maintenance of the rule of law that the Court continues to operate to the extent possible in the current challenging environment. The Court is responding to the developing COVID-19 pandemic by reviewing all operations to ensure all essential services are maintained and non-essential services continue for as long as practicable, consistent with health advice.

The Court is equipped to utilise online court, audio visual equipment and digital technology to allow matters to continue remotely. The Court's paramount consideration remains the wellbeing of all court users. Everyone must adhere to health advice in relation to social distancing, self-isolation, hygiene and the management of symptoms.

No personal appearances

In line with the current health advice, on and from Tuesday, 24 March 2020 there shall be no personal appearances in any matters save in exceptional circumstances with the leave of the Chief Justice or head of jurisdiction. This also applies to unrepresented litigants.

The Court will contact parties in relation to future listings to advise of the video and teleconference facilities available for their specific matter. Listings may alter at short notice and practitioners should refer to the Court's website for updates and review the daily listing notices.

Electronic delivery of documents

The Court will require all Court documents to be provided by electronic means through

- Online Court;
- E-subpoena;
- Online registry

Only where facilities do not presently exist for documentation to be provided electronically will those documents will be received by email. Details regarding email contacts for documentation will be provided shortly via the Court's website.

Public Registry and Duty Registrar

The public registry will remain open on Monday, 23 March 2020 until 4:00pm. The public registry will be closed on and from Tuesday, 24 March 2020. Contact details for the Court Registry are on the Court's website. Face-to-face duty registrar services will also be suspended. Telephone appointments will continue.

Current jury trials

Current jury trials will continue. Current trials already adhere to health advice in relation to social distancing. New jury trials are temporarily suspended.

Court annexed mediation

Face-to-face Court annexed mediations will be temporarily suspended from [Monday, 23 March 2020]. Further information relating to Court annexed mediations will follow shortly. Mediations can proceed by way of teleconference.

Open justice

The Court will be reviewing all operations with a view to maintaining open justice, consistent with the current constraints and health advice.

Health Advice

Further information can be found at: NSW Health, www.health.nsw.gov.au Health Direct, telephone 1800 022 222

The Court has previously issued the following advice:

Changes to trials now in force

- Jury trials commencing across NSW from Monday, 16 March 2020, are temporarily suspended.
- Current trials, where a jury has already been selected and empanelled, will continue.
- Judge alone trials, bail applications and civil trials are not affected.

Changes to arrangements for Registrar Lists

- **Registrars' Lists will be conducted as much as possible either by the online court, where available, or by telephone link and, in the case of contentious matters, by videolink.**

- **The parties ARE NOT required to inform the court in advance whether they will be using video or teleconference facilities. All parties with an email address in JusticeLink will be contacted by email with information regarding connecting to the specific court for their listing via video and teleconference.** General information regarding the conduct of video and teleconference lists is available here.
- **All parties are strongly encouraged to use the Online Court, where available, telephone or video conference facilities for Registrars' lists and to not attend in person.**

Guidelines and Fact Sheet for participants in Supreme Court Lists:

The Court has published the following Guidelines to assist participants in the following Court Lists:

1. The Expedition, Adoption and Defamation Lists
2. The Real Property List [REVISED on 23 March 2020]: view the updated Guidelines here
3. The Family Provision List
4. The Corporations List [REVISED on 23 March 2020]: view the updated Guideline here

In addition, the Court has published a Fact Sheet to assist participants in the Virtual Courtroom environment.

There will be no changes to the way the Criminal Lists, such as Bails and Arraignments, and current Supreme Court Jury trials are currently being heard.

NSW LAND AND ENVIRONMENT COURT

For further information, visit http://www.lec.justice.nsw.gov.au/

ON 14 OCTOBER THE LAND AND ENVIRONMENT COURT PUBLISHED A NEW CRIMINAL FILINGS EMAIL ADDRESS:

14 October 2020

The Court has a new dedicated email address for criminal proceedings: LEC_criminalfilings@justice.nsw.gov.au.

Parties in Class 5, 6 and 7 criminal proceedings and appeals can now file summons, appeals, notices of motion and subpoenas and seek directions and access orders for subpoenas and notices to produce using the LEC_criminalfilings@justice.nsw.gov.au email address instead of LECourt@justice.com.au.

ON 7 OCTOBER THE LAND AND ENVIRONMENT COURT PUBLISHED NEW INFORMATION REGARDING NOTICES OF MOTION BEFORE THE REGISTRAR:

http://www.lec.justice.nsw.gov.au/

The Court's use of Online Court is expanding to include the adjudication of Notices of Motion that are listed for return before the Registrar.

The default mode of listing of a Notice of Motion in Classes 1 and 2 will remain by telephone before the Registrar. However, parties can request to have a Notice of Motion listed for adjudication using Online Court or other means (by Teams or in person) if considered appropriate and in accordance with the Court's COVID-19 Pandemic Arrangements Policy.

Parties can request an alternative mode for the listing of Notice of Motion by:

1. indicating the preferred mode of listing on the Notice of Motion (if not the default);
2. submitting an Online Court request; or
3. requesting an adjournment to an alternative mode of listing at the return of the Notice of Motion before the Registrar.

ON 28 SEPTEMBER THE LAND AND ENVIRONMENT COURT PUBLISHED NEW INFORMATION FOR MEMBERS OF THE PUBLIC THAT WISH TO OBSERVE COURT PROCEEDINGS CONDUCTED BY MICROSOFT TEAMS:

http://www.lec.justice.nsw.gov.au/Pages/coming_to_the_court/public_visitors.aspx#ObservingproceedingsbyMicrosoftTeams

ON 1 JULY 2020 THE COURT RELEASED A COVID-19 PANDEMIC ARRANGEMENTS POLICY, WHICH IS AVAILABLE HERE:

http://www.lec.justice.nsw.gov.au/Documents/Policies/COVID-19%20Pandemic%20Arrangements%20Policy%20July%202020.pdf

ON 27 MAY THE COURT ISSUED A MICROSOFT TEAMS FACT SHEET, WHICH IS AVAILABLE HERE:

http://www.lec.justice.nsw.gov.au/Documents/Other/MS%20Teams%20External%20Fact%20Sheet%202020.pdf

THE COURT'S DELEGATION TO REGISTRARS UNDER S 13 OF THE *CIVIL PROCEDURE ACT 2005* WAS UPDATED ON 7 MAY AND IS AVAILABLE HERE:

http://www.lec.justice.nsw.gov.au/Documents/Delegation%20to%20Registrar%207.5.20%20(2).pdf

THE COURT RELEASED THE FOLLOWING UPDATE ON 21 APRIL 2020:

EARLY LISTING DATES FOR CONCILIATION CONFERENCES AND HEARINGS

21 April 2020

Due to the vacation of listings as a result of the COVID-19 pandemic, the Court has dates available between now and 30 June 2020 for conciliation conferences and hearings to be conducted by telephone. Available dates will be shown on the daily court lists. All parties to proceedings that have listings after 30 June 2020 or have new proceedings before the Court are encouraged to confer with each other and try to reach agreement on taking one of these early dates. If the parties agree that an early listing date can be taken, then they can apply for an early date through Online Court.

http://www.lec.justice.nsw.gov.au/

THE COURT RELEASED THE FOLLOWING PROTOCOL ON 3 APRIL 2020:

PROTOCOL FOR THE ISSUING OF CLASS 5 PROCEEDINGS

http://www.lec.justice.nsw.gov.au/Documents/Other/LEC%20Interim%20Procedure%20for%20Issuing%20of%20Class%205%20Proceedings%20Protocol.pdf

In any application to a Duty Judge relating to the commencement of Class 5 proceedings the following protocol is to be adopted:

1. The legal representative for the Prosecutor is to contact the Duty Judge's Chambers to arrange a time for the consideration of the issue of proceedings.

2. No less than one hour before the appointment time the Prosecutor's legal representative is to have delivered to the Duty Judge's Chambers:

a) A folder containing the evidence upon which the Prosecutor relies;

b) The draft form of Order and Summons for each charge – in sufficient quantity to permit the proceedings to be commenced; and

c) A completed credit card authorisation form for the amount of the filing fees. The form is to be located on the Court Website in "Administrative Forms" or follow this link: Credit Card Authorisation Form. [access the form here: http://www.lec.justice.nsw.gov.au/Documents/Other/LEC%20Interim%20Procedure%20for%20Issuing%20of%20Class%205%20Proceedings%20Protocol.pdf]

3. At the nominated time the legal representative is to telephone the Duty Judge's Chambers for the purposes of determination of whether the Order will be issued.

4. If it is determined that the Order is to be made, the Duty Judge will provide to the Registrar the Summons and Orders to be issued. The Order and Summons will be issued and the credit card will be debited on the same day as the telephone appearance.

5. Upon the making of the Order and the issuing of the Summons the documents be forwarded to the Prosecutor's legal representative by the nominated Mail or DX address.

Note to Practitioners

1. The Court appreciates the assistance of legal practitioners in ensuring that this process can operate efficiently. To that end the Court requests that the Prosecutor attempt to commence proceedings on a date that is not the final date for the commencement of proceedings. If the day of the appointment is the last day for the commencement of proceedings this should be brought to the Duty Judge's attention and a time sought prior 10am that day.

2. Due to the inability to utilise the online registry for the filing of documents without a Court File Number, the Summons and Order will need to be provided in hard copies. The Duty Judge's Chambers will advise if the evidence folder can be provided electronically or if a hard copy is required.

THE COURT HAS ISSUED A PROTOCOL FOR USING AUDIO LINK AND AUDIO VISUAL LINK, WHICH IS AVAILABLE HERE:

http://www.lec.justice.nsw.gov.au/Documents/Other/LEC%20AVL%20conferencing%20protocol.pdf

TELEPHONE AND AUDIO VISUAL LINK CONFERENCING PROTOCOL

General Information

The protocols referred to in this announcement apply equally to all Court proceedings including mediations, listings and conciliations as well as hearings, other than the Monday regional call over which will continue to operate as usual by Telstra Telephone Conference.

1. Conferencing will comprise the Court Hearing

All alternative arrangements for the conduct of hearings (either by Audio Link (Telephone Conferencing) or Audio Visual Link (AVL)) constitute a hearing of the Court. Parties and all participants are reminded that the usual Court etiquette and procedure will apply in these hearing methods. The usual standards of behaviour, respect and dress will apply.

2. Telephone Conferencing

In most cases Telephone Conferencing can be arranged where a hearing is suited to the use of this form of communication.

Practitioners must consider whether the hearing is amenable to this form of communication. When the matter is called over the parties will be required to advise the Court whether the entire hearing is amenable to this form of hearing. If some other form (such as AVL or proceedings on the papers) is proposed the parties must be in a position to address the Court on these alternatives.

3. AVL

At present the Court has one AVL available.

The Court will prioritise the use of the AVL to matters that are urgent and AVL is essential to the disposal of those proceedings.

If a party requires AVL to complete a hearing the parties will be required to advise the Court at call over whether the whole or only part of the hearing will require the use of AVL.

Where AVL is utilised the parties will be allocated a time period for AVL usage. This will facilitate the greatest availability of this facility to all Court users. A party will be allocated a fixed time period for the use of AVL and will be required to manage their case such that the AVL component is concluded within that time period. Extensions of time beyond that allocated are unlikely to be granted except in exceptional circumstances.

Due to the scarce availability of the AVL facility practitioners are requested to carefully consider whether AVL is in fact required or whether the hearing can be accommodated by other procedures.

4. Where the proceedings are unsuited to telephone or AVL conferencing

The Court will use its best endeavours to continue to hear matters by the alternative measure outlined above. To accommodate these alternative measures the parties and the Court may have to adopt different approaches to conduct the hearings such as: the manner in which evidence is adduced; the use of alternative means of giving evidence (such as the use of photographs instead of physical inspections and the like); the use of detailed written submissions. The parties should consider whether the case is amenable to any alternative procedures.

The Court is also aware that the parties are entitled to conduct their case in a manner which is fair, and only adopting alternative hearing measures where it is in the interests of justice to do so. Should the parties consider that their case is not amenable to a hearing other than the usual face-to-face hearing this should be brought to the Court's attention and an application made to vacate any current hearing dates or to adjourn the proceedings.

Procedures for conferencing

Telephone Conferencing

1. Dial the phone number and Meeting ID provided to you immediately prior to your listed appearance time.

2. You will be greeted by the following audio message: "*Welcome to NSW Communities and Justice".*

3. You may be requested to enter a PIN, disregard and you will be connected shortly.

4. Please note that at this point, you are 'live' in the Conference, all parties, including the Judge/Registrar/Commissioner can hear you, so please remain silent until your matter is called.

5. Whilst waiting for your matter to be called, please ensure that the audio on your device is muted so that no background noise can interfere with Court proceedings.

6. End the call when your matter is finalised.

NOTE: If you are listed before the Registrar, the Court will call the parties. Prior to the listing you will be required to message the Court with the Court case number, case name, contact name, party they are representing and direct number of the person appearing. Details can be forwarded via Online Court or email to leclistings@justice.nsw.gov.au

Video Conferencing using a '*Web Link*'

(When this facility is available to practitioners it can be utilised with laptop devices, iPads or mobile phones).

1. Ensure your device has a working camera. Video conferencing requires a camera to be enabled.

2. Ensure that your device has reliable connectivity and coverage.

3. If you are using a web browser to connect via the Web Link, please ensure your browser meets the following standards: Google Chrome (min. v.73), Mozilla Firefox (min. v.66). Please note it is NOT recommended to use either Internet Explorer (IE) or Microsoft Edge as these browsers do not support this particular software.

4. Click the Web Link provided immediately prior to your listed appearance time.

5. You will be asked to enter your name and details. Please use the following naming convention: *Surname – Party description* (Example: Doe – Plaintiff = representative John Doe – plaintiff's representative).

6. Click "Join Meeting".

Tips/ General Rules/ Troubleshooting for Conference Courtroom experience

- Be in a quiet and private location to limit interference from background noise.
- Ensure that there is sufficient internet coverage and connection on your device.
- Ensure all relevant materials to be relied upon have been made available to the Court beforehand.
- Ensure you have capacity to obtain instructions privately – as this will be unable to be accommodated on the telephone or AVL conferencing facility.
- Observe all normal Court etiquette and protocols in the Conferenced Courtroom environment.
- Refrain from speaking over each other as much as practical to assist with the court's transcribing process (further tips provided below to assist the transcription service).
- If you experience difficulties accessing the telephone or video conferencing facility, please note that the Court does not provide a technical support service.

Assistance with the transcription service

- Court participants must announce and spell their appearances.
- Court participants must speak into microphones and speak one at a time so that they can be understood.
- If Court participants are appearing via video or telephone link, they must announce their appearance each time they speak.
- Competing noises in courtrooms increases difficulty for monitors to hear and will impact the quality of the transcript such as typing near microphones or shuffling of papers and coughing into microphones. Try to keep those types of noises to a minimum.
- If you can't hear what is being said in Court, the court monitor cannot hear it either.

Frequently Asked Questions

Can several participants use the same device to attend a Conferenced Courtroom (e.g. witnesses in the legal representative's office)?

No. Legal representatives and supporting witnesses must use separate devices, and be in a different physical space when attending Conference Courtroom. If multiple participants want to connect to the Conference Courtroom at the same time, consider the use of a dedicated video conferencing suite.

Can non-related parties (e.g. junior clerks) join the telephone/video conference to observe?

The usual concept of open justice is applicable to the Conference Courtrooms. However, the Court discourages the wide sharing of Conference Courtroom contact information in order to minimise interruptions in the Conference Courtroom environment.

In all cases, normal court protocols, etiquettes, procedures and restrictions apply. Any person participating in the conferencing who does not have leave to speak must put their calls on mute and silently observe so no background noise can interfere with court proceedings.

THE COURT MADE THE FOLLOWING ANNOUNCEMENT ON 24 MARCH 2020:

Changes in Registry filing procedures

From Tuesday 24 March 2020, the counter of the LEC Registry will not be personally attended by Registry staff. All documents should be filed by Online Registry, DX, post or courier, as previously advised. If filing of hard copy documents is necessary, a box has been provided in the public foyer near the counter for filing documents. The box will be regularly cleared and the documents processed by Registry staff and the processed documents returned to the parties.

THE ACTING CHIEF JUDGE RELEASED THE FOLLOWING UDPATE ON 24 MARCH 2020:

COVID-19 Further Restrictions

In the COVID-19 Pandemic Arrangements Policy issued on 23 March 2020 the Court reviewed the then current health advice regarding social distancing with the aim of minimising personal attendances at Court listings (including hearings, conciliations, mediations and onsite views). The situation is changing rapidly. **In the light of current health advice the Court now directs that all listings proceed by telephone or AV.**

The Court is equipped to utilise Online Court, Online Registry and telephone conferencing.

The unique circumstances of the Court's jurisdiction require a specific approach on a case by case basis to determine if it is feasible to deal with the matter via telephone or AV. If not, it is likely to be postponed.

The Court will implement a review of all matters listed from 30 March 2020 to 30 June 2020. Each matter will be listed for a telephone directions hearing to consider whether the listing can be conducted via telephone or other suitable arrangements are able to be made.

If it is determined that the matter cannot proceed, the listing date will be vacated and the matter will be listed for further directions.

In relation to the matters listed from Tuesday 24 March 2020 to 27 March 2020 the parties will be contacted by the Court on Monday 23 March 2020 to discuss the management of the particular listing.

The COVID-19 Pandemic Arrangements Policy will be amended in the near future to reflect the need to consider whether matters can proceed by telephone or AV.

NEW COVID-19 PANDEMIC ARRANGEMENT POLICY IN FORCE FROM 23 MARCH 2020

The Acting Chief Judge published ***a COVID-19 Pandemic Arrangements Policy*** on 20 March 2020. The policy is extracted below and available here: http://www.lec.justice.nsw.gov.au/Documents/Policies/COVID-19%20Pandemic%20Arrangements%20Policy%20March%202020.pdf

COVID-19 PANDEMIC ARRANGEMENTS POLICY

Commencement

1. This Policy commences on 23 March 2020.

Purpose

2. The purpose of this Policy is to guide the conduct of hearings, conciliation conferences, and mediations in all classes of the Court's jurisdiction in response to the COVID-19 pandemic.

Application

3. The Policy applies to:

   - Court hearings, including:

- On-site hearings under s 34B of the *Land and Environment Court Act 1979* (the Court Act); o Court hearings under s 34D of the Court Act;
- Hearings of notices of motion and other interlocutory applications;

- Conciliation conferences (including on-site inspections and any subsequent hearings) under s 34 of the Court Act;
- Conciliation conferences (including on-site inspections and any subsequent hearings) for small-scale residential developments dealt with under s 34AA of the Court Act;
- Hearings of matters under the *Trees (Disputes Between Neighbours) Act 2006* (tree disputes);
- Mediations under s 26 of the *Civil Procedure Act 2005*; and
- Delivery of judgments.

Filing documents and applications to the Court

4. The parties and their representatives are to comply with the following procedures for filing documents:

- Parties in matters in Class 1, 2 (excluding tree dispute applications), 3, 4 or 8 are required to use Online Registry and Online Court where they are entitled and registered to do so.
- Both Online Court and Online Registry operate 24 hours a day so that parties can use them at any time.
- Originating process, including an application, summons or notice of appeal commencing proceedings, notices of motion, notices to produce and applications for the issue of subpoenas must be filed by Online Registry.
- Online Court is to be used to seek directions in proceedings (including listing matters for conciliation conferences, mediations and hearings) and access orders for subpoenas and notices to produce.
- Parties in Class 2 tree disputes are, whenever practicable, to file with the Court, and send a copy to the other party, or parties, their written statements of evidence, expert reports, photographs, plans, and submissions by email to the Court using the lecourt@justice.nsw.gov.au email or by post to the Court Registry, at least 14 days prior to the hearing.
- Parties in Class 2 tree disputes and Class 5, 6 and 7 criminal proceedings and appeals must seek directions and access orders for subpoenas and notices to produce by email to the Court using the lecourt@justice.nsw.gov.au email address, sending a copy of their email to the Court to the other party or parties in the proceeding at the same time. A party may likewise email the Court with their response to the applying party's application to the Court, but should do so within 24 hours of receiving the applying party's email.

Directions hearings and Lists

5. For applications not able to be determined by the Court through means of Online Court or email, the Court will continue to conduct the Registrar's list and the Friday Judge lists, but these will be conducted by telephone. Parties and practitioners are to notify the Court in advance of the name and telephone number of their representatives who will be attending. The Court will telephone the parties' representatives when the matter is called in the list or parties will be advised to use the Telstra dial-in number.

6. Parties should advise the Court, when filing and responding to notices of motion and applications, whether the parties agree that the matter can be dealt with by the Court on the written material, without the parties being further heard.

Site inspections for hearings

7. At least seven days prior to any scheduled site inspection, the parties are to advise the Court whether the site inspection is necessary or appropriate and if the location can accommodate social distancing requirements. The Court will advise the parties if it determines that a site inspection should not proceed.

8. Any site inspection will require compliance with social distancing practices, including maintaining a distance of 1.5 metres between people on site.

9. Site inspections will be limited to essential participants only, being as few representatives of the parties, their legal representatives and required expert witnesses as practicable.

10. If it is necessary to enter a building, the Judge or Commissioner will control the number of people allowed in the building at the same time and enforce the social distancing practices required.

11. The Court's *Site Inspections Policy*, stating that a maximum of six persons objecting to a development proposal should provide oral evidence on site, is temporarily suspended. Instead of giving oral evidence at the commencement of the hearing, objectors' evidence is to be reduced to writing and supplemented with any photographic evidence that would assist the Court to understand their concerns. In proceedings concerning an appeal against a Council, the Council is to provide the objectors' written material to the other party in advance of the hearing and tender it at the hearing.

12. In the event that a site inspection does not proceed, photographs and video presentations of the site, or relevant matters, that might have been seen or heard on-site may be admitted into evidence upon application to the presiding Judge or Commissioner.

Hearings in courtrooms

13. A Judge or Commissioner may direct any person in a courtroom, including parties, practitioners or witnesses in the proceedings, to practice social distancing and sit at least 1.5 metres apart. This may require that only the advocates sit at the bar table and restricting the number of

people in the courtroom at any one time. Seating in the public gallery of the courtroom may be required to be left vacant, such as leaving a spare seat or seats between people.

14. The Court may exclude non-essential participants from the courtroom. Only Court staff and legal representatives essential to the hearing of the matter should attend the courtroom.

15. Witnesses may be directed to attend the Court hearing at a nominated time to limit the number of people within the courtroom at any time.

16. To minimise the need for oral evidence at the hearing, parties should ensure that lay and expert witness evidence that can be reduced to writing is reduced to writing. The Court may direct that this be done.

17. Parties should consider whether cross-examination of any witness called by the other party is necessary, or whether the object of cross-examination could be achieved by other means, such as by providing further written evidence of another witness called by the party.

18. Parties should consider whether any cross-examination that is necessary can be conducted by telephone and, if so, advise the Court in advance so that appropriate arrangements can be made.

Concurrent evidence

19. If expert evidence is to be given concurrently, the Court will direct that the witnesses practice social distancing and sit at least 1.5 metres apart. Where the space available in the witness box is insufficient, the Court may direct the witnesses to sit at the bar table for the purposes of concurrent evidence. This may require the temporary movement of advocates to other areas within the courtroom proximate to a microphone for recording purposes.

20. Witnesses may be placed on call to reduce the number of people in the courtroom at any time.

21. The number of witnesses giving concurrent evidence may be limited if social distancing cannot be achieved.

Submissions

22. Parties may be directed to provide final submissions in writing to reduce hearing time in open court.

Section 34 conciliation conferences

23. At least seven days prior to any scheduled site inspection for a conciliation conference, the parties are to advise the Court whether the site inspection is necessary or appropriate and if the location can accommodate social distancing requirements. The Court will advise the parties if it determines that the site inspection should not proceed and, in that event, the alternative venue for holding the conciliation conference, such as a courtroom.

24. Any site inspection will require compliance with social distancing practices, including maintaining a distance of 1.5 metres between all individuals present.

25. On-site inspections will be limited to essential participants only, being as few representatives of the parties, their legal representatives and required expert witnesses as practicable.

26. If it is necessary to enter a building, the Commissioner will control the number of people allowed in the building at the same time and the social distancing practices required.

27. In the event that a site inspection does not proceed, photographs and video presentations of the site or relevant matters that might have been seen or heard on site may be shown at the conciliation conference or hearing with leave of the presiding Commissioner.

28. For a conciliation conference held in a courtroom, the Commissioner will sit on the bench within the courtroom and the representatives of the parties will separate along the bar table in order to comply with social distancing requirements.

29. The Court's *Site Inspections Policy*, stating that a maximum of six persons objecting to a development proposal should provide oral evidence on site, is temporarily suspended. Instead of giving oral evidence at the commencement of the conciliation conferences, objectors' evidence is to be reduced to writing and supplemented with any photographic evidence that would assist to understand their concerns. The Council is to provide the objectors' written material to the other party and the Commissioner at the conciliation conference.

Section 34AA conciliation conferences

30. The practices outlined in this Policy in relation to conciliation conferences under s 34 of the Court Act will apply to conciliations held under s 34AA of the Court Act. The practices outlined in this Policy in relation to hearings will apply to any hearings held under s 34AA.

Tree dispute hearings

31. At least seven days prior to any scheduled site inspection for a tree dispute, the parties are to advise the Court whether the site inspection is necessary or appropriate and if the location can accommodate social distancing requirements. The Court will advise the parties if it determines that the site inspection should not proceed and, in that event, the alternative venue for holding the hearing of the tree dispute, such as a courtroom.

32. In the event that the scheduled hearing of a tree dispute cannot proceed onsite, the hearing may be conducted in a courtroom with the parties present or by telephone where appropriate.

Mediations

33. The practices outlined in this Policy in relation to conciliation conferences under s 34 of the Court Act will apply to mediations under s 26 of the *Civil Procedure Act 2005*.

34. At least seven days before the scheduled mediation, the parties are to advise the Court if they agree that the mediation can be conducted by telephone and, if so, the names and telephone numbers of the representatives of the parties who will attend the mediation by telephone.

35. If an agreement is reached between the parties at the mediation, the presiding Commissioner will refer the matter to the Registrar to be dealt with by the Duty Judge.

Regional matters

36. The Court will continue to conduct regional hearings, conciliations (including site inspections), and mediations in accordance with the procedures outlined in this Policy and, subject to the Judge or Commissioner being able to travel to the location of the hearing, conciliation or mediation.

37. If travel to the location is no longer feasible, the Court will make, in consultation with the parties, alternative arrangements for conducting the hearing, conciliation or mediation, such as by telephone, or listing the hearing, conciliation, mediation on another date.

Delivery of judgments

38. Reserved judgments will continue to be handed down in Court by the presiding Judge, Commissioner or Registrar, or the Registrar on behalf of the presiding Commissioner.

39. The Court will make arrangements to have judgments delivered in court by telephone.

40. Upon being notified that judgment will be delivered, parties and practitioners are to provide the Court with the names and telephone contact details of the relevant representatives who will receive judgment or, if they do not wish to receive the judgment via telephone, they are to so advise the Court.

41. After delivery of judgment, a written copy of the judgment will be sent to the parties in accordance with the Court's usual practice.

Self-isolation and vacation of listings

42. Any practitioner, party, expert, or person involved in court proceedings who is required to self-isolate, or who has been in contact with a person who is required to self-isolate, or who is sick, must not attend the Court premises, including the Registry, a courtroom or any other room in the Court building, or any conciliation, mediation, hearing or directions hearing in the proceedings.

43. If, by reason of the need to self-isolate or sickness, there is a need to vacate any listing, the party or practitioner should immediately apply to vacate the listing, providing reasons, and suggest alternative dates to reschedule the listing.

44. The following procedure applies for notifying the Court and vacating a listing:

(a) The party or practitioner is to send a request by Online Court (or email Listings if not an Online Court user) advising of the issue that has arisen and provide the telephone number and the name of the party or practitioner who should be contacted in the event of a telephone conference with the Judge or Commissioner allocated to hear the matter.

(b) Listings will forward the online communication to the Judge or Commissioner allocated to hear the matter.

(c) If possible, the Judge or Commissioner will respond to the online communication and resolve the issue online.

(d) Alternatively, the Judge or Commissioner will arrange for a telephone conference with the parties and practitioners to discuss the best way to resolve the issue (such as arranging for the person to give evidence by telephone or cancelling the on-site start and instead convening the matter in Court with social distancing measures in place).

(e) The outcome of the telephone conference will be confirmed in an online communication by the Court through Online Court.

(f) In the event that the issue is not resolved before close of business (4.30pm) on the day before the allocated hearing, conciliation or mediation, the listing will be vacated by the Court and the matter will be listed for an online communication for further directions, including listing the matter at another date.

The Court previously published the following updated guidance on 19 March 2020.

Application to the Court where self-isolation necessary

The Australian and NSW government require self-isolation to limit the spread of COVID-19 in various circumstances. Anyone required to self-isolate must not attend the Court building or any Court proceedings wherever conducted. **The Court will consider any application to vacate hearing or conciliation dates or other listings where a legal representative or other person involved in Court proceedings or a party is obliged to self-isolate.** Application should be made by Online Court and must include reasons and propose dates for a rescheduled listing.

Minimising the spread of coronavirus (COVID-19) update 18 March 2020

The WHO has declared the spread of COVID-19 a pandemic. The Court continues to monitor NSW Health announcements and health advice relating to (COVID-19) on a daily basis and make changes to minimise risk to the court members, staff and court users. The Court has implemented measures to reduce the need for personal attendance by parties and keep the Court operational as far as possible.

Effective immediately:

- Parties in Classes 1, 2 (excluding tree dispute applications), 3, 4 and 8 are **required** to use Online Registry and Online Court whenever available.
- Both Online Court and Online Registry will be operating 24 hours a day as normal and **parties must avail themselves of these resources.**
- Applications, appeals, notices of motion and subpoenas **must be filed by Online Registry where access is available**.

- **Online Court is to be used to seek directions** (including listing matters for conciliation conferences, mediations and hearings) and also access orders for subpoenas and notices to produce.
- Parties in Class 2 tree dispute applications and Class 5, 6 and 7 criminal proceedings and appeals must seek directions and access orders for subpoenas and notices to produce using the lecourt@justice.nsw.gov.au email address.

As the Court has telephone link services available, the Court requires listing of matters for directions or other orders by telephone whenever possible. The Court will continue to run a daily Registrar's list and the Friday Judge lists. These should be conducted remotely. Matters including procedural and contested matters must be dealt with on the papers and by telephone as far as possible.

The Court is reviewing all matters including: conciliation conferences on a case by case basis to maximise the use of telephone facilities and AVL including for regional matters.

DISTRICT COURT OF NEW SOUTH WALES

For non-attendances or enquiries, contact the Courts Service Centre on 1300 679 272 or email the court (see www.courts.justice.nsw.gov.au for email addresses).

For further information, visit https://coronavirus.dcj.nsw.gov.au/services/courts-tribunals-and-legal-services

On 15 October the following information was received by the Association from the Chief Judge regarding border entry permits from Victoria:

It has come to my attention that although residents of Victoria are required to self-isolate for 14 days upon arrival in New South Wales, a border entry permit (NSW) may exempt them from self-isolation when they are required to attend court. Recently this occurred in the Parramatta District Court when a person from Victoria attended with counsel. The 14 day self-isolation period had not expired, however, the person had an exemption certificate.

The Court's COVID safe policy requires any person from Victoria to contact the District Court before a border permit is requested or they attend court in person, to ascertain whether their physical attendance is required. The Court will usually be able to make suitable alternative arrangements in such cases.

I am informed that in the recent case at Parramatta, no such enquiries had been made.

The Court has worked closely with the legal profession to reduce the risk around COVID-19 and I appreciate the Bar Association's continuing support.

I would be grateful if you could inform your members that enquiries should be made to the appropriate District Court to ascertain whether an appearance in person of a Victorian is necessary.

The administration of justice and the health of all participants in the justice system remain the Court's priority.

On 23 July the following information was received by the Association regarding District Court jury trials at Grafton, Nowra and Parkes:

The Chief Judge of the District Court of NSW, The Honourable Justice Derek Price AO, has today advised the Association that the District Court will not be resuming jury trials at Grafton, Nowra and Parkes for the time being. The Chief Judge has indicated that problems associated with these court precincts not complying with strict social distancing requirements have not presently been overcome.

The recommencement and continuation of jury trials remains subject to any change in advice from NSW Health.

Members will be kept informed of developments.

On 21 July the following information was received by the Association regarding Sutherland Local Court:

On 20 July the Department of Communities and Justice issued a media statement advising that an individual who attended Sutherland Local Court last Wednesday had since tested positive to COVID-19.

The statement indicated that as a precaution measures were taken to close the Court yesterday to allow for the premises to be forensically cleaned.

The Association has been in contact with the Chief Magistrate's Office this morning, who have advised that the individual has now been excluded as a COVID-19 case by NSW Health.

The Chief Magistrate's Office has advised that Sutherland Local Court reopened on 21 July.

On 16 July the Chief Judge of the District Court of NSW, the Hon Justice Derek Price AO, has written to the President to advise that jury trials will not re-commence in the Albury and Campbelltown District Courts on 27 July 2020 as previously scheduled due to the recent increase in community transmission in these areas.

Both Courts will continue to operate in the current way until further notice.

The Court will continue to consult with NSW Health and will closely monitor how the risk evolves over the coming weeks.

Members will be kept informed of developments.

On 7 July the District Court released its *Guidance to lawyers appearing at District Court Readiness Hearings for criminal trials* in Sydney (Downing Centre) and in circuit sittings, which includes Crown and Defence Readiness Hearing Case Management Forms. The Readiness Hearing Guidance is extracted below:

READINESS HEARING GUIDANCE

Guidance to lawyers appearing at District Court Readiness Hearings for criminal trials at the District Court in Sydney (Downing Centre) and in Circuit sittings.

District Court Practice Notes 18 and 19 provide that a Readiness Hearing will be held for all criminal trials.

In order to avoid the time and expense involved in appearances by use of the Virtual Courtroom or by appearances in person, the Court may, where the parties have fully complied with this Guidance, dispense with the need for appearances and deal with the case by making orders in chambers.

Compliance with this guidance means:

1) The prosecutor must complete and sign the Crown Case Management Form (see below) so that the Court is fully informed of those matters referred to in paragraphs 27 and 28(a)(i)-(v) inclusive of Practice Note 18. For those cases to which Practice Note 19 applies (Criminal Trials at Circuit Sittings), the relevant paragraphs are 33 and 34(a)(i)-(v).

2) The legal representative for the accused person must complete and sign the Defence Case Management Form (see below) so that the Court is fully informed of those matters referred to in paragraphs 27 and 28(b)(i)-(vi) inclusive of Practice Note 18. For those cases to which Practice Note 19 applies, the relevant paragraphs are 33 and 34(b)(i)-(vi).

3) The Parties are to forward their respective forms to the Chief Judge's tipstaff by no later than 2 clear days prior to the Readiness Hearing. At present, for matters in the Thursday list (circuit trials), they should be forwarded to Ms Emma Watt (emma.watt@courts.nsw.gov.au) and for matters in the Friday list (Sydney trials), they should be forwarded to Mr Tavin Elliott (tavin.elliott@courts.nsw.gov.au).

4) Where the prosecutor and legal representative for the accused person have complied with this guidance, the Court may inform the parties that the case has been dealt with in chambers, of the orders that have been made and that the Readiness Hearing has been vacated.

If either party has not fully complied with this Guidance, both parties will be required to appear at the Readiness Hearing.

On 1 June the District Court released *Empanelment Guidance for Practitioners,* which is extracted below:

DISTRICT COURT COVID-19 JURY TRIALS

Empanelment Guidance for Practitioners

Introduction

1. The purpose of this document is to provide guidance to lawyers appearing in jury trials at the Downing Centre when the temporary suspension of jury trials is lifted by the District Court of NSW. It is the Court's present intention to recommence jury trials on a limited basis on and from 15 June 2020.

2. This document is supplementary and is to be read in conjunction with the General Protocol dated 26 May 2020.

Procedure for Jury Empanelment

3. Empanelment in the Downing Centre will use two adjacent courts with specialised AVL facilities to maintain social distancing. It is expected that court rooms LG3 & LG4 will be used.

4. The court officers and jury panel will be in LG3. The AVL cameras have been adjusted to show the entirety of the assembled panel in the body of the court room in LG4. Sound will not be projected into LG4 from LG3.

5. The Judge, associate, accused, and practitioners will be in LG4. The AVL cameras will show the Judge, bar table, and witness box. Sound will be projected into LG3 from LG4.

6. The procedure is as follows:

    (a) The accused will be taken from the dock or the general area of the court room into the witness box to provide a clear view of the accused to the assembled panel. The associate will stand at the bar table and arraign the accused. The accused will then return to the dock or the general area as appropriate. If there is more than one accused, each accused will be arraigned separately. Should it be necessary for an accused to be accompanied by a correctives officer to the witness box, the correctives officer will not be visible from LG3. This procedure of arraigning an accused in the witness box has been adopted as the view of an accused in the dock to the jury panel in LG3 is not ideal.

    (b) The Judge will then introduce the usual procedure to the panel via AVL.

    (c) The Judge will then invite the Crown to address the panel with an outline of the case and the witnesses via AVL. The places for Crown and Defence Counsel will be indicated with signs so that they are able to be viewed clearly by the jury panel in LG3.

    (d) The Judge will then ask the panel for requests to be excused. Applicants will be physically walked into LG4 by the court officer for determination. If they are not excused they will be walked back to LG3. If they are excused they may wait behind the glass partition at the back of LG4.

    (e) The associate will then stand in the witness box and call numbers from the ballot so as to ensure the panel has a clear view. After prospective jurors' numbers are called they will be brought into LG4 and seated in the jury box or marked seating. The process continues until there are 12 potential jurors. The Judge will then invite the prospective jurors to consider whether they know anyone in LG4 now that they are physically in the court room. Counsel may be in invited to view the remaining panel in LG3 by physically walking into the court room.

    (f) The Judge will then consider challenges. Any successfully challenged jurors may return to LG3 or wait behind the glass partition. The process then repeats with three more prospective jurors' numbers being called until there is a complete jury.

(g) The jurors are then sworn in LG4.

(h) The Judge, parties, and jury then proceed separately to the allocated trial court room and the trial commences.

(i) The remaining panel members return with the court officers and the court rooms are cleaned prior to the next empanelment.

Disruptions

7. It is expected that some adjournments and delay will occur as a result of COVID-19. The trial is therefore likely to progress at a slower pace than usual, and as a consequence flexibility and patience will be required from all participants.

8. Communication is key to the trial progressing. Practitioners should advise the Court as soon as possible if they begin to develop symptoms of COVID-19.

9. The Sheriff's officers will be screening all court participants, including jurors and counsel on entry into the building. In the event a decision is made to exclude a participant on health concern grounds, the trial Judge or registry will be advised immediately. Where COVID-19 appears to be a possible issue and it is likely to disrupt the proceedings in a significant way, priority testing may be arranged by the Sheriff of NSW or in accordance with the Protocol established by the Chief Judge with the Department of Health. All requests for priority testing must be made to the trial Judge.

On 26 May the Court issued a *COVID-19 Jury Trials General Protocol*, which is extracted below and available here:

http://www.districtcourt.justice.nsw.gov.au/Documents/COVID-19/district-court-covid-19-jury-trials-general-protocol.pdf

DISTRICT COURT COVID-19 JURY TRIALS

General Protocol

Introduction

10. The District Court of New South Wales intends to lift the temporary suspension of jury trials in some, but not all, District Court venues on and from 15 June 2020. The recommencement of jury trials in mid-June will be confined to a limited number of court rooms in the Sydney District Court (Downing Centre), Parramatta District Court and Newcastle District Court.

11. The intention to recommence jury trials in these venues is subject to any change in advice from NSW Health. The administration of justice and the health of all participants in the justice system remain the Court's priority.

12. The purpose of this document is to outline the procedures in place within the District Court which aim to protect court participants involved in jury trials during the COVID-19 pandemic.

13. The Court will continue to take all reasonable steps to:

    (a) ensure that the accused receives a fair trial;

    (b) ensure the health and safety of court participants;

    (c) constrain the spread of COVID-19;

    (d) safeguard the public interest in open justice; and

    (e) assist court participants to exercise self-responsibility by complying with NSW Health endorsed social distancing measures, and communicating any health concerns they may have to security officers and court staff.

Ensuring that the Accused receives a Fair Trial

14. Pre-trial directions, readiness hearings and case management procedures have been put in place to ensure that all trials are ready to commence as close to the listed day as possible. Parties will be required to certify that all pre-trial issues have been identified and ruled upon before a jury is empanelled.

15. All court participants are required to comply with NSW Health advice on social distancing in order to ensure that there are no distractions and as few disruptions as possible during the course of the trial.

16. Where a jury is seated other than in the jury box, arrangements will be made to ensure they are able to properly view the proceedings and participate in the usual way.

17. Parties should be aware that in order to ensure a fair trial, some procedures may take longer than usual.

Ensuring the safety and wellbeing of Jurors and other Court Participants

18. A COVID-19 Factsheet will be sent to all prospective jurors advising them of the precautionary measures and guidelines in place to ensure their safety.

19. To maintain health requirements the following will be instituted:

    (a) the number of jury trials listed at a particular location will be limited;

(b) practitioners should consider whether their personal appearance or any personal appearance by a witness or accused is appropriate. If it is sought that the appearance be by way of AVL, practitioners are encouraged to make the required application and arrangements well before the trial's commencement date;

(c) the summoning of jury panels will be staggered over different days and times;

(d) pre-emptive screenings for health concerns as endorsed by NSW Health may occur prior to and on the day prospective jurors are required to attend. In some locations prospective jurors may be contacted in the days preceding empanelment;

(e) all court participants may be provided a health screening for the common symptoms of COVID-19 upon entry to court premises. Such health screenings may involve the use of non-contact temperature checks and thermal scanning, as well as questions endorsed by NSW Health. Individuals who exhibit or report common symptoms of COVID-19 and who have not received a negative test result may be denied entry to court premises;

(f) where appropriate in a jury trial, priority testing may be arranged for court participants by the Sheriff of NSW or in accordance with the Protocol established by the Chief Judge with the Department of Health. All requests for priority testing must be made to the trial judge.

(g) at all times, social distancing is to be maintained at court entry points. Hand sanitiser will be available for court participants near lifts and in court rooms;

(h) the transport of jurors via lifts will be in accordance with NSW Health and Work Safe Australia guidelines;

(i) additional cleaning of court rooms, bathrooms, and other spaces used by court participants will be carried out regularly;

(j) sufficient copies of exhibits must be made available for the Court and each juror; and

(k) where hard copy documents are to be used, an arrangement for the safe handling of documents should, if possible, be agreed by the parties and provided to the trial judge for consideration.

Additional Requirements

20. The Court will continue to observe advice from NSW Health. The Court may vary or add to any of its procedures at short notice to respond to further advice or changing conditions.

Assisting Court participants to maintain compliance with NSW Health requirements

21. It is intended to stagger the commencement of trials to minimise the congregation of large numbers of people. Court participants are advised to check the time and location of any trial they are attending personally. It is likely that delays may occur notwithstanding the staggering of commencement times and participants are requested to ensure they allow for that potential.

22. Court participants are encouraged to make use of approved stairways where possible and to take personal responsibility for social distancing in public areas.

23. Strict social distancing measures will be observed within, assembly and deliberation rooms.

Pre-trial Case Management

24. In addition to existing readiness hearings, at the Downing Centre an AVL pre-trial call over will be held on Thursday the week before the trial's commencement. The purpose of the call over is to:

    (a) confirm that the trial is ready to proceed;
    (b) ensure that if there is any pre-trial argument, the exchange of submissions has occurred;
    (c) make directions regarding the mode of attendance of the accused, practitioners and witnesses; and
    (d) set a date and time for commencement of the trial in the following week.

25. It is expected at the call over that a trial which is ready to proceed will be allocated to a trial judge. Commencements of trials will be staggered to allow social distancing in public and jury areas. Listing notifications will be provided by the registry and available online.

Empanelment Process

26. At the Downing Centre, Parramatta and Newcastle empanelment will take place in two different court rooms. AVL cameras will be adjusted to enable court participants to view the entire jury panel and the panel to view the participants.

27. The procedure for empanelment of jurors at the Downing Centre is anticipated to be as follows:

    I. Two court rooms will be used which will be adjacent to each other to allow ease of movement. It is likely that court rooms LG3 and LG4 will be used.

    II. The jury panel will be seated in LG3 and will observe social distancing. All members of the jury panel will be able to see and hear by way of AVL the usual empanelment process which will take place in LG4.

    III. The judge, associate, counsel and the accused will be in LG4. They will be able to see by way of AVL all members of the jury panel.

    IV. Once 12 jurors have been selected, the court will adjourn from LG4 and reconvene in the court that has been allocated for the trial.

28. The empanelment process will necessarily differ when jury trials recommence at other District Court venues.

Social Distancing and Access to the Court Room

29. A review has been conducted for each court room. Those large enough for jury trials to occur in compliance with the NSW Health endorsed $4m^2$ social distancing rule have been identified.

30. The number of people permitted under this rule will be advised by signage on both the judicial and general entrances. This represents an upper limit which should not be exceeded.

31. Some court room configurations will not permit jurors to maintain social distancing while seated in the jury box. In those cases, jurors will be seated throughout the general area of the court room and signage will indicate the seating to be used by jurors in the general area. This area will represent an extension of the jury box. This allocation has been made with consideration to social distancing requirements, in-court sightlines and the confidentiality needs of parties. The public will not be permitted in this area.

32. If there is difficulty in maintaining social distancing while the jury is entering the court room, participants other than counsel and the accused may be asked to exit the court room until the jury members have been seated.

Safeguarding the Public Interest in Open Justice

33. Provided the social distancing requirements for a court room are complied with, members of the media or public who wish to view the proceedings in-person may be permitted to do so subject to the direction of the presiding judge.

34. If it is not possible to facilitate personal attendances, the Virtual Court Room may be utilised to allow remote viewing. Any viewers should be aware of ss 9 and 9A of the *Court Security Act 2005*.

On 18 May the Court issued a notice concerning personal appearances in the District Court from 1 June 2020. The notice is extracted below and available here:

http://www.districtcourt.justice.nsw.gov.au/Documents/COVID-19/personal-appearances-in-the-district-court-from-1-june-2020.pdf

18 May 2020

On and from 1 June 2020, there will be some changes to the general policy that there are to be no personal appearances in the District Court of NSW. These changes are in addition to the announcement on 11 May 2020 of the intention to resume jury trials on a limited basis in the Sydney District Court, Parramatta District Court and the Newcastle District Court.

Where the Court's policy permits a personal appearance in court, this does not mean that lawyers are obliged to attend court in person. The Court continues to encourage lawyers to use the virtual courtroom.

In proceedings where lawyers attend in-person, the Court asks lawyers to consider whether some of the participants in the proceedings could participate by remote means. This may include some witnesses and members of a legal team.

Criminal jurisdiction (other than jury trials)

In-person appearances will be permitted in:

a) Appeals from the Local Court;

b) Matters for sentence;

c) Judge alone trials;

d) Pre-trial argument;

e) Pre-recorded evidence hearings pursuant to either Chapter 7 Part 5 Division 2 or Schedule 2 Part 29 of the Criminal Procedure Act 1986; and

f) Contested applications for bail or contested changes in bail conditions.

This easing in the Court's general policy so as to allow in-person court appearances is subject to ss 5BA and 22C of the *Evidence (Audio and Audio Visual Links) Act 1998* and the discretion of a judge to limit the number of persons in a courtroom to ensure strict adherence to government endorsed social distancing restrictions in operation at the time (1.5m spacing and 4m² principles).

In order to avoid congestion in court premises and courtrooms, there will be **no change** to the Court's policy that **all lists** in the Court's criminal jurisdiction including arraignments and readiness hearings are to be conducted by use of a virtual courtroom. **The Court's policy remains that there are to be no personal appearances in these lists.**

All uncontested bail applications are to be conducted by email in accordance with the COVID-19 – Bail Application Procedures published on the Court's website.

Civil jurisdiction

In contested hearings where there are parties and witnesses to be called to give evidence, it will no longer be the Court's general policy that the hearing proceed by the use of a virtual courtroom.

This easing in the Court's general policy so as to allow in-person court appearances is subject to the discretion of a judge to limit the number of persons in a courtroom to ensure strict adherence to government endorsed social distancing restrictions in operation at the present time (1.5m spacing and 4m² principles).

Where contested hearings are to proceed by the use of a virtual courtroom, the parties must notify the Manager, Civil Case Management and Listings by email jane.dunn@justice.nsw.gov.au at least seven days prior to the date fixed for hearing.

In all other matters, the Interim Protocol for the Court's Civil Jurisdiction as at 21 April 2020 will continue to apply.

In order to ensure that there is no misunderstanding, **the Court's policy remains that there are to be no personal appearances in all lists in the Court's civil jurisdiction conducted by Judges, the judicial registrar and assistant registrars.**

In-person appearances in the District Court

In those proceedings where in-person appearances are permitted, all persons attending court premises must comply with the requirements of a security officer under Division 1A COVID-19 Pandemic – Special Provisions of the *Court Security Act 2005*.

No person should attend or remain in court if the person is suffering from a sign of illness (including fever, cough, runny nose, sore throat, shortness of breath, loss of taste or smell) unless the person has first taken a COVID-19 test because of that sign of illness and been informed of a negative result.

If a person who has been attending court develops a sign of illness, the person should immediately report this to the Court.

In criminal proceedings, where hard copy documents are to be used, an arrangement for the safe handling of documents should, if possible, be agreed by the parties and provided to the Court for consideration. This requirement applies whether the parties are appearing in-person or by use of the virtual courtroom.

In civil proceedings, the parties must agree upon a Joint Court Book in accordance with paragraph 5(f) of the Interim Protocol.

Limits to the number of persons in a courtroom

As a general rule, the number of persons in a courtroom (including the judge, associate and court staff) **should not exceed 10 persons.** Where the interests of justice require that there be more than 10 persons (e.g. where there are a number of parties to the proceedings), the number of persons in the courtroom must not exceed the maximum court capacity under 1.5m spacing and 4m² principles as determined by the Sheriff of NSW.

On 12 May the Court released a Direction from the Chief Judge regarding criminal sittings in January 2021, which is extracted below and available here:

https://inbrief.nswbar.asn.au/posts/08b347d11316f1372f3414b4c412a120/attachment/12.5.20%20DC%20Direction.pdf

DISTRICT COURT ACT 1973

District Court of New South Wales

Direction

Pursuant to section 173 of the District Court Act 1973,1 direct that the District Court shall sit in its criminal jurisdiction at the place and time shown as follows:

Albury	10.00am 18 January 2021 (2 weeks)
Bathurst	10.00am 18 January 2021 (2 weeks)
Campbelltown	10.00am 18 January 2021 (2 weeks)
Coffs Harbour	10.00am 18 January 2021 (2 weeks)
Gosford	10.00am 18 January 2021 (2 weeks)
Lismore	10.00am 18 January 2021 (2 weeks)
Newcastle	10.00am 18 January 2021 (2 weeks)
Nowra	10.00am 18 January 2021 (2 weeks)
Parramatta	10.00am 18 January 2021 (2 weeks)
Penrith	10.00am 18 January 2021 (2 weeks)
Port Macquarie	10.00am 18 January 2021 (2 weeks)
Sydney	6 January 2021 (4 weeks)
Wagga Wagga	10.00am 18 January 2021 (2 weeks)
Wollongong	10.00am 18 January 2021 (2 weeks)

On 11 May the NSW Attorney General announced that the Chief Judge of the District Court had determined to resume some jury trials at selected locations from Monday June 15. The Attorney's media release is available here:

https://www.dcj.nsw.gov.au/news-and-media/media-releases/covid-19-safety-paramount-as-district-court-jury-trials-resume

The Chief Judge released the following statement on 11 May 2020:

http://www.districtcourt.justice.nsw.gov.au/Documents/CJ%20Media%20release/announcement-regarding-jury-trials-in-the-district-court.pdf

11 May 2020

The District Court of NSW intends to lift the temporary suspension of jury trials in some, but not all, District Court venues on and from 15 June 2020.

The District Court has worked closely with the Sheriff of NSW, the Department of Communities and Justice and NSW Health identifying court venues and courtrooms which comply with social distancing requirements. Some of the measures taken by the Sheriff to reduce the risk around COVID-19 and to ensure jury service is a safe experience will include temperature testing, social distancing, individualised jury meals, additional commercial cleaning and limiting public access in courtrooms.

Unconventional methods will be adopted in courtrooms to ensure that jurors will be able to safely socially distance. The Chief Judge of the District Court Justice Derek Price said:

> "All jurors will not be required to sit in the jury box but will be able to spread out across the courtroom. The empanelment of jurors will be conducted by audio visual link to avoid large numbers of persons in courtrooms at any one time. The maximum number of persons who can be in each courtroom in accordance with social distancing requirements has been carefully identified."

These stringent requirements mean that the re-commencement of jury trials in midJune will be confined to a limited number of courtrooms in the Sydney District Court, Parramatta District Court and the Newcastle District Court.

The intention to re-commence jury trials in these venues is subject to any change in advice from the Department of Health. The administration of justice and the health of all participants in the justice system remain the Court's priority.

The Court released on 30 April the *District Court Criminal Practice Note 20: Sentence Matters*, which commences on 1 June:

District Court Criminal Practice Note 20: Sentence Matters

1. This Practice Note revises and consolidates District Court Criminal Practice Notes 1 and 15.

Commencement

2. This Practice Note commences on 1 June 2020.

Application

3. This Practice Note applies to all proceedings committed to the District Court for sentence on or after the commencement date.

Definitions

4. In this Practice Note:

"court" means the District Court of New South Wales

"Crown Sentence Bundle" includes the Crown Coversheet, statement of facts, and evidentiary material in the Crown case

"offender" includes an Australian legal practitioner representing an offender

"service" of documents required under this Practice Note may be effected by service on the legal representatives for an offender or by service personally on an offender who is not legally represented.

Listing for entering a plea

5. When committing an offender to the court at Sydney for sentence, the magistrate will direct the person to appear for arraignment on the last sitting day of the week (usually a Friday) four weeks after the date of the committal.

6. A similar procedure is to apply to all other District Court venues but the arraignment day will vary from venue to venue. Practitioners should ascertain the relevant day which is nominated by the list judge or resident judge.

7. The magistrate may order a sentencing assessment report where appropriate. Practitioners should address this issue in the Local Court where possible as this allows the report to be prepared at an earlier date.

Entering a plea

8. The offender must be present on the day fixed for the arraignment either in person or by way of audio visual link.

9. Upon presentment of the indictment, the offender will be arraigned by the court and shall enter his or her plea.

10. If there is a traversal of plea at any stage of the proceedings, the provisions of Practice Note 18 are to apply.

Listing for sentence

11. Upon a guilty plea being entered to some or all of the charges on the indictment and a signed statement of agreed facts being tendered, the matter will be listed for sentence hearing. The matter will not be listed for sentence hearing without a signed statement of agreed facts.

12. If the facts are not agreed, the matter will be listed for further mention in three weeks and, unless the court otherwise orders, the standard directions that are to apply are:

(a) The prosecution is to serve on the offender, within one week, a statement of proposed facts;

(b) The offender is to serve on the prosecution, within one week of receiving the statement of proposed facts, a response noting areas of dispute and a list of any witnesses required for cross examination; and

(c) The prosecution is to serve on the offender, within one week of receiving the response, a final version of proposed facts and witness availability.

At the subsequent mention the matter will be listed for sentence hearing. The disputed facts will be determined in the single hearing, unless the court otherwise orders.

13.When the matter is listed for sentence hearing, the prosecutor and the legal representatives for the offender are to provide the court with:

(a) an accurate estimate of the length of the sentencing hearing as well as the dates suitable for the parties to appear;

(b) any requirement for a sentencing assessment report;

(c) the address of the nearest corrective services office to the offender; and

(d) any requirement for interpreters, including the language and number.

Standard directions

14. Unless the court otherwise orders, the standard directions that are to apply at the arraignment are:

(a) The prosecution is to file and serve the Crown Sentence Bundle no later than two weeks prior to the sentence date.

(b) The offender is to file and serve any documentary material, including expert reports, to be relied upon on at sentence no later than seven days prior to the sentence date.

(c) The prosecution and the offender are to file and serve any further documents they rely on and an outline of submissions no later than three days prior to the sentence date.

Sentence

15. By the date fixed for the sentence hearing, the matter must be ready to proceed. If there is an unavoidable problem or change to the conduct or the length of the sentence hearing, the parties are to notify at the earliest possible stage the list judge or resident judge at venues other than Sydney, and for Sydney sentences the Criminal Listing Director.

Non-compliance with the court's directions

16. If it appears to the court that a party has not complied with this Practice Note or with any other direction made by the court, the court may contact the offending party directly or list the matter for mention, either on the court's own initiative or at the request of either party.

17. Without limiting the court's power otherwise to deal with a failure to comply with a direction, the court may order the offending party to file an affidavit, or give evidence in court, explaining the failure to comply.

The Court issued on 24 April a notice concerning *Satisfactory Arrangements for a Defendant to appear remotely*, which can be accessed here:

http://www.districtcourt.justice.nsw.gov.au/Documents/COVID-19/satisfactory-arrangements-for-defendant-not-in-custody-to-appear-remotely.pdf

The Chief Judge issued on 21 April the *Update on Interim Protocol for Civil Jurisdiction at the Sydney District Court*, which can be accessed here:

http://www.districtcourt.justice.nsw.gov.au/Documents/COVID-19/update-on-interim-protocol-for-civil-jurisdiction-of-sydney-district-court.pdf

The Chief Judge issued the following updated notice on 20 April 2020:

http://www.districtcourt.justice.nsw.gov.au/Documents/COVID-19/covid-19-update-district-court-of-nsw-20-04-2020.pdf

Jury Trials

The temporary suspension of jury trials is being reviewed each month and will continue until at least 31 May 2020. However, the District Court is hopeful that jury trials will resume in some locations earlier than previously anticipated.

Where the hearing of a jury trial is temporarily suspended as a result of the Coronavirus Pandemic and the evidence of a complainant cannot be taken or pretrial issues determined, the Court's policy is to provide a new trial date to the parties at the time the trial is vacated. The trial is not to be stood over to some future date for mention.

Trials which have dates for hearing on and from 1 June 2020 will not be vacated because of the Coronavirus Pandemic earlier than two weeks before the date fixed for trial.

New dates for vacated trials and new trials are to be allocated the first suitable available date after 5 September 2020.

Defendants in Custody

The District Court will continue to hear all criminal matters, with the exception of new criminal jury trials, where the defendant is in custody in accordance with the Coronavirus update dated 30 March 2020. This update is published on the District Court NSW website.

Defendants not in Custody

Due to a gradual improvement in the Court's audio visual technology, the temporary suspension of hearing criminal matters where a defendant is not in custody will be lifted on and from 4 May 2020 for those matters where **the defendant's lawyers are able to make satisfactory arrangements for the defendant to appear remotely** so as to enable the hearing to proceed by use of a virtual courtroom.

The lifting of the temporary suspension will also apply to a self-represented defendant who is not in custody **and is able to make satisfactory arrangements to appear remotely** for the hearing to proceed by use of a virtual courtroom.

These requirements will not apply to arraignments or readiness hearings where the defendant is legally represented and there is an appearance by a lawyer on the defendant's behalf or a self-represented defendant makes satisfactory arrangements to appear remotely. In such a case, the physical appearance of the defendant is not required and dates for trial or sentence will be fixed or the readiness for trial ascertained. The defendant's bail will be continued.

How are Satisfactory Arrangements made for a Defendant to Appear Remotely?

Lawyers and self-represented persons should familiarise themselves with the virtual courtroom by reading the virtual courtroom guide published on the District Court NSW website. The Court will shortly publish further procedures to be followed for the making of satisfactory arrangements.

Re-Listing

Where a non-custodial defendant is represented by a lawyer and satisfactory arrangements are unable to be made for the defendant to appear remotely, the defendant's lawyer and the prosecutor are to appear on the date fixed for hearing by use of the virtual courtroom to obtain a new hearing date.

Where a non-custodial defendant is self-represented and is unable to make satisfactory arrangements to appear remotely, the matter will be re-listed for mention in June 2020. Registrars of the District Court will notify the parties of the mention date.

Personal Appearances

The general policy of the Court is that, for the time being, there will be no personal appearances and that hearings are to proceed by use of a virtual courtroom. However, the Court is aware that in some cases, particularly in Judge alone trials, that the interests of justice are best served by allowing parties to be physically present in the courtroom. In such a case the prosecutor and defendant's lawyers should apply to the Trial Judge, List Judge, Resident Judge or Circuit Judge for the Court's general policy to be dispensed with.

Any agreement to dispense with the Court's general policy must be consistent with health advice and social distancing rules which apply to Essential Gatherings referred to in Schedule 2 of the Public Health (Covid-19 Restrictions on Gathering and Movement) Order 2020 (NSW).

In Judge alone trials, the personal physical appearance of the defendant in the Court is required unless the defendant consents to his appearance taking place by way of audio visual link.

The Court provided notice on 3 April 2020 of the following new and revised Practice Notes, with changes commencing on 6 April:

District Court Practice Criminal Practice Notes 18 and 19 commence on Monday 6 April 2020:

http://www.districtcourt.justice.nsw.gov.au/Documents/Practice%20Notes/District%20Court%20Criminal%20Practice%20Note%2018%20Gazette.pdf

http://www.districtcourt.justice.nsw.gov.au/Documents/Practice%20Notes/District%20Court%20Criminal%20Practice%20Note%2019%20Gazette.pdf

District Court Practice Civil Practice Note 1 is revised, commencing Monday 6 April 2020:

http://www.districtcourt.justice.nsw.gov.au/Documents/Practice%20Notes/Practice%20Note%201%20Civil%20Amended%206%20April%202020%20(2).pdf

The Court issued the following *Virtual Court Media User Guide* on 3 April 2020:

What is a Virtual Courtroom?

A Virtual Courtroom brings the physical courtroom to a virtual space. It is a digital method for court cases to be progressed without the need for participants to attend in person.

Virtual courtrooms are still formal courtrooms. All usual court etiquette, protocols, procedures and restrictions apply.

How to use a Virtual Courtroom?

Media can observe the virtual courtroom via a dedicated *Web Link*.

Contact details for the Virtual Courtroom will be provided, on request, by the District Court Media Coordinator prior to a hearing date. The online NSW Court List is a resource for forward planning.

Requests for Virtual Courtroom details should include case numbers and names and be sent to the following address: mediadistrictcourt@justice.nsw.gov.au

Instructions

1. If the request is approved you will be provided instructions on how to connect to the court room.

2. Ensure that your device has reliable connectivity and coverage.

3. If you are using a web browser to connect via the Web Link, please ensure your browser meets the following standards: Google Chrome (min. v.73), Mozilla Firefox (min. v.66). Please note it is NOT recommended to use either Internet Explorer (IE) or Microsoft Edge as these browsers do not support this particular software.

4. If you are asked to enter your name and details. Please use the following naming convention to clearly identify as media: "***MEDIA – full name and organisation***" For example: "MEDIA – John Smith – Herald Express"

5. When the Court adjourns the case for the day or otherwise directs the media representatives to leave the Court room the media representatives must exit the courtroom by terminating their connection.

General Rules for the Virtual Courtroom experience

- Access details to Court rooms are to be used only by accredited media observing and reporting on open court proceedings and are not to be circulated or published for any other purpose. Persons accessing the system for inappropriate purposes or in a way that interferes with the proper administration of justice will be referred to be dealt with for contempt of court.

- Media should join the Virtual Court at the commencement of a hearing; media can exit any time but must not interrupt proceedings to enter or re-enter during proceedings.

- Media should observe hearings from a private location and with microphones on devices muted to limit interference from background noise.

- Observe all normal court etiquette and protocols in the Virtual Courtroom environment including vacating when a court is closed.

- There must be no electronic recording of proceedings.

If you experience difficulties accessing the Virtual Courtroom using the conferencing facility, please note that the Court does not provide a technical support service.

The Court issued the following notice on 2 April 2020:

UPDATE ON CONTACT DETAILS FOR BAIL VARIATIONS

Current contact details of associates to List Judges and Resident Judges for bail variations are as follows:

Region:	List/Resident Judge	Associate	Associate's email
Sydney	Her Honour Judge Hock	Mr A Fischhof	andrew.fischhof@courts.nsw.gov.au
Albury / Griffith	His Honour Judge Grant	Ms L Cohen	Lucia.Cohen@courts.nsw.gov.au
Armidale	His Honour Judge Hunt	Ms J Howard / Ms G James	jennifer.howard@courts.nsw.gov.au geraldine.james@courts.nsw.gov.au
Bathurst / Orange	His Honour Judge Turnbull SC	Mr T Primrose	thomas.primrose@courts.nsw.gov.au
Bourke	Her Honour Judge Culver	Mr N Lynch	nicholas.lynch@courts.nsw.gov.au
Broken Hill	Her Honour Judge Culver	Mr N Lynch	nicholas.lynch@courts.nsw.gov.au
Campbelltown	His Honour Judge Colefax SC	Ms A Arthur	ashlee.arthur@courts.nsw.gov.au
Coffs Harbour/ Grafton	His Honour Judge Priestley SC	Mr L Pedlow	Luke.Pedlow@courts.nsw.gov.au
Coonamble	Her Honour Judge Culver	Mr N Lynch	nicholas.lynch@courts.nsw.gov.au
Dubbo	Her Honour Judge N Williams	Ms C Edstein-Boyes	Courtney.Edstein-Boyes@courts.nsw.gov.au
Gosford	Her Honour Judge Bright	Ms R Jessop	rinelda.jessop@courts.nsw.gov.au
Lismore	His Honour Judge McLennan SC	Ms K Rogan	kylie.rogan@courts.nsw.gov.au

Moree	Her Honour Judge Culver	Mr N Lynch	nicholas.lynch@courts.nsw.gov.au
Newcastle	His Honour Judge Ellis	Mr J Carpenter	Joel.Carpenter@courts.nsw.gov.au
Parramatta	His Honour Judge Hanley SC	Ms C Philippe	charlotte.philippe@courts.nsw.gov.au
Penrith	His Honour Judge Buscombe	Ms E Adeyinka	esther.adeyinka@courts.nsw.gov.au
Port Macquarie	Her Honour Judge Culver	Mr N Lynch	nicholas.lynch@courts.nsw.gov.au
Tamworth	Her Honour Judge Payne	Ms J Cowley	janaya.cowley@courts.nsw.gov.au
Wagga Wagga	His Honour Judge Lerve	Ms L Cross	Lynne.Cross@courts.nsw.gov.au
Wollongong	His Honour Judge Haesler SC	Ms D Letich	dollores.letich@justice.nsw.gov.au

The Chief Judge issued the following notice on 31 March 2020:

COVID-19 BAIL APPLICATION PROCEDURES

Application to Vary Bail

On and **from 1 April 2020**, all applications to vary bail will be dealt with by a Judge in chambers except in compelling cases. Personal appearances will not be permitted at any time.

In a compelling case where a hearing is required, the application will be heard electronically by using the Virtual Court Room.

Before making an application to vary bail, the defendant must notify the prosecution of the bail condition(s) that is sought to be varied and the prosecution must notify the defendant whether it consents to the application.

All emails to an associate of a Judge concerning a bail application must be copied to the other party in the proceedings.

Consent Application to Vary Bail

An application to vary bail made by a defendant to which the prosecution consents must comply with the following:

1. The defendant is to email the associate of the List Judge or the Resident Judge of the relevant District Court:

   (a) a copy of the current bail condition(s);
   (b) the bail condition(s) that are to be varied by consent;
   (c) the agreed terms of the bail condition(s) that have been consented to by the prosecution; and
   (d) the reasons the defendant seeks the bail variation.

2. Where there is a surety to the defendant's bail, a separate email from the surety must be sent to the associate of the Judge in which the surety details the bail condition(s) that are to be varied and the surety agrees to the proposed variation of bail.

3. The prosecution is to email the associate of the Judge:

   (a) the bail condition(s) that are to be varied by consent; and
   (b) the agreed terms of the bail condition(s) that have been consented to by the prosecution.

4. The Judge may require further information from the parties before making a bail decision.

5. The associate of the Judge will notify the parties if and when the orders varying bail have been made.

These orders will be entered into JusticeLink by the associate immediately.

Opposed Application to Vary Bail

1. An application to vary bail condition(s) made by a defendant to which the prosecution does not consent must comply with the following:

2. The defendant is to email the associate of the List Judge or the Resident Judge of the relevant District Court:

   (a) a copy of the current bail condition(s);
   (b) the bail condition(s) that the defendant seeks to vary;
   (c) the proposed terms of the bail condition(s) that is to be varied; and
   (d) the reasons the defendant seeks the bail variation.

3. Where there is a surety to the defendant's bail, a separate email from the surety must be sent to the associate of the Judge in which the surety details the bail condition(s) that the defendant seeks to vary and the surety agrees to the proposed variation of bail.

4. The prosecution is to email the associate of the Judge:

   (a) the bail condition(s) the defendant seeks to vary that is not consented to by the prosecution; and
   (b) the reasons the prosecution opposes the bail variation.

5. The Judge may require further information from the parties before making a bail decision.

6. Where the Judge is unable to reach a bail decision on the information that has been provided by the parties, the Judge may decide that the application is a compelling case and must be heard electronically by the use of the Virtual Courtroom. The associate to the Judge will provide directions to the parties as to how and when the Virtual Courtroom hearing is to take place.

Virtual Courtroom Practitioner Guide

Practitioners are asked to familiarise themselves with the Virtual Courtroom by reading the Virtual Courtroom Guide which can be located on the District Court website.

Contact details

Current contact details of associates to List Judges and Resident Judges are as follows:

Region:	List/Resident Judge	Associate	Associate's email
Sydney	His Honour Judge O'Brien AM	Ms A Parkin	annie.parkin@courts.nsw.gov.au
Albury / Griffith	His Honour Judge Grant	Ms L Cohen	Lucia.Cohen@courts.nsw.gov.au
Armidale	His Honour Judge Hunt	Ms J Howard / Ms G James	jennifer.howard@courts.nsw.gov.au geraldine.james@courts.nsw.gov.au
Bathurst / Orange	His Honour Judge Turnbull SC	Mr T Primrose	thomas.primrose@courts.nsw.gov.au
Campbelltown	His Honour Judge Colefax SC	Ms A Arthur	ashlee.arthur@courts.nsw.gov.au
Coffs Harbour	His Honour Judge Priestley SC	Mr L Pedlow	Luke.Pedlow@courts.nsw.gov.au
Dubbo	Her Honour Judge N Williams	Ms C Edstein-Boyes	Courtney.Edstein-Boyes@courts.nsw.gov.au
Gosford	Her Honour Judge Bright	Ms R Jessop	rinelda.jessop@courts.nsw.gov.au
Lismore	His Honour Judge McLennan SC	Ms K Rogan	kylie.rogan@courts.nsw.gov.au
Newcastle	His Honour Judge Ellis	Mr J Carpenter	Joel.Carpenter@courts.nsw.gov.au
Parramatta	His Honour Judge Hanley SC	Ms C Philippe	charlotte.philippe@courts.nsw.gov.au

Penrith	His Honour Judge Buscombe	Ms E Adeyinka	esther.adeyinka@courts.nsw.gov.au
Tamworth	Her Honour Judge Payne	Ms J Cowley	janaya.cowley@courts.nsw.gov.au
Wagga Wagga	His Honour Judge Lerve	Ms L Cross	Lynne.Cross@courts.nsw.gov.au
Wollongong	His Honour Judge Haesler SC	Ms D Letich	dollores.letich@justice.nsw.gov.au

The Chief Judge released the following updated notice on 30 March 2020:

On and from 1 April 2020, the District Court of NSW will temporarily suspend **New** Judge alone trials, sentence hearings, Local Court Appeals, arraignments and readiness hearings, **where the defendant is not in custody.** This temporary suspension will be reviewed on 1 May 2020.

The Court will continue to hear to the extent and for as long as possible, consistent with health advice, all criminal matters **where the defendant is in custody,** with the exception of new jury trials which remain temporarily suspended.

Re-Listing

Registrars of the District Court will notify the parties of the date that suspended matters have been re-listed for mention. These re-listing dates for mention will not be before 1 May 2020. Present bail orders will continue for all matters that have been temporarily suspended.

Applications to vary bail

On and from 1 April 2020 all applications to vary bail will be dealt with by a judge in chambers. Personal appearances will not be permitted. The Court will shortly publish procedures to be followed for these applications.

Prioritising hearings – bringing criminal matters forward where the defendant is in custody

Practitioners are encouraged to notify the Court of:

1. Sentence hearings requiring priority, particularly those defendants whose time on remand is approaching the period likely to be served on sentence, and
2. Local Court appeals where the appellant has been sentenced to a full-time custodial sentence.

Where both the prosecution and defendant are ready to take an earlier hearing date and the hearing may proceed by use of a Virtual Court room, the Court may prioritise the hearing.

Virtual Courtroom Practitioner Guide

Practitioners are asked to familiarise themselves with the Virtual Courtroom by reading the Virtual Courtroom Guide, published on the District Court NSW website.

The District Court published on 26 March 2020 a *Virtual Court Practitioner Guide*, which is available here:

http://www.districtcourt.justice.nsw.gov.au/Documents/Virtual%20Court%20User%20Guide%20-%20FOR%20PRACTITIONERS.pdf

The Chief Judge released the following updated notice of Procedural Changes on 25 March 2020:

Procedural Changes in the District Court- Covid-19

In view of the continuing development of the Covid-19 pandemic, the District Court is making major changes to the operation of its criminal and civil jurisdictions. The Court is being progressively equipped with technology to enable the Court to continue its important role in the administration of justice by virtual means.

These changes are designed to assist in the prevention of the spread of Covid-19 in New South Wales.

On and from Monday 30 March 2020, the Court will endeavour to limit, as much as possible, personal appearances in court rooms by the technological enhancement of its current AVL system (the virtual court room).

Legal practitioners will be expected to appear by use of the virtual court room. The Court will shortly publish details on how the virtual court room can be accessed in the various locations that the Court is sitting.

Current Jury Trials

Social distancing is being maintained in accordance with health advice in current jury trials and special arrangements have been made by the Sheriff of NSW for the wellbeing of jurors. These jury trials will continue. New jury trials remain temporarily suspended.

The notice is available here: http://www.districtcourt.justice.nsw.gov.au/Documents/Procedural%20Changes%20-%20Covid-19.pdf

The following information concerning revised arrangements for the Arraignment List for the Downing Centre for Friday 27 March 2020 was also released by the Department of Communities and Justice:

GUIDELINE FOR FRIDAY ARRAINGMENT

This is information relating to important changes to the conduct of the Friday Arraignment list in the Downing Centre, Court 3.1.

In response to COVID-19, the Honourable Justice Price AM has directed that the list be heard in court 3.1 via Audio Visual Link (AVL) **commencing this week**.

To assist in efforts to contain the spread of COVID-19, Practitioners are invited to connect to their relevant appearance(s) through AVL. Instructions for connecting to the AVL system are to be provided by contacting the Arraignments List manager (email below).

In addition, to assist in running this list, matters will be allocated time slots within 15 minute windows. We ask that Practitioners connect to the AVL system 5 minutes prior to the allocated timeslot for your matter(s). The time slots for Friday's list will be available on the District Court

website at the following link by COB Wednesday 24th March 2020. **It is requested that you advise of any difficulties with the listed arrangement at the earliest possible time via email** (Jackie.Junkovic@justice.nsw.gov.au).

- Please note that the proceedings will be recorded consistent with ordinary court practice and it is prohibited for any attendant to make a prohibited recording.
- It is critical that parties understand that these appearances are scheduled and rely on practitioners appearing on time as advised.
- It is expected that court etiquette be adhered to consistent with appearing in person.
- Materials that are expected to be handed up in court will instead be emailed to the associate on the day (or earlier), following, if necessary, agreement between the parties.
- **There is an expectation that the prosecution and defence engage outside the virtual court as much as possible, to narrow down please, amend indictments, consider by consent bail reviews and follow any case management directions so that documents can be prepared and communicated earlier in a timely fashion.**

Please contact the above email in order to ensure that you are given the appropriate login details

The Arraignment List with time frames is available here:
http://www.districtcourt.justice.nsw.gov.au/Documents/Arraignment%20List%20with%20time%20frames%20-%2027.03.2020.pdf

The Chief Judge released the following update on 23 March 2020:

Covid-19 update on the District Court's Operations

The Court is urgently reviewing its operations in response to the developing Covid-19 pandemic. In carrying out the review, the Court is working closely with the Attorney General, the Department of Communities and Justice and NSW Health.

Current jury trials and Judge alone trials are to continue. No new cases in either the Court's criminal or civil jurisdiction are to commence today, other than new sentence matters or appeal matters in which the offender/appellant is appearing by way of AVL, unless otherwise authorised by the Chief Judge in consultation with the relevant List Judge or resident Judge.

Unless otherwise authorised, all criminal trials which may proceed by way of Judge alone or in which there are pre-trial issues to be determined are to be identified and stood over until Wednesday 25 March 2020.

All other criminal trials are to be vacated and given dates after October 2020.

The Court's priority remains the health of all court users. Parties not essential to proceedings must not attend court houses and will be excluded from courtrooms. Social distancing is to be maintained at all times and all persons must comply with health advice.

The Court will utilise online court, audio visual equipment and digital technology to enable as many matters as possible to continue.

An update will be provided as soon as possible.

The Court had previously advised the following.

Changes to trials now in force

- Jury trials commencing across NSW from Monday, 16 March 2020, are temporarily suspended.
- Current trials, where a jury has already been selected and empanelled, will continue.
- Judge alone trials, bail applications and civil trials are not affected.

Procedural Changes to Criminal & Civil Lists at the Sydney District Court, commencing on 18 March 2020

Criminal Lists at the Sydney District Court

- Arraignment lists conducted in Court 3.1 on Fridays will be divided into matters for arraignment and matters for sentence. Matters for arraignment will commence at 9:30am. Matters for sentence will not commence until 11:00am. Lawyers and their clients must not enter the courtroom until their matter is called. Lawyers should check the court list to determine when their matter is to be heard.
- For the trial call-over conducted at 9:30am Mondays in Court 3.1, lawyers and their clients must remain outside the courtroom until their matter is called.
- The Readiness Hearings presently conducted in Court 21A John Maddison Tower will be re-arranged and conducted to enable lawyers to appear by AVL (where possible) or to attend the Readiness Hearing by telephone. Precise arrangements will be notified to lawyers with matters in the list in the near future.

Civil Lists at the Sydney District Court

Judge's List, Defamation List, Professional Negligence List, Care List and the Approval List

All lists and directions hearings conducted by Judges in the District Court in John Maddison Tower will be managed by interval sittings as follows:

- Parties must only attend John Maddison Tower for their listing at the allocated time;
- Parties must not enter the courtroom allocated for the listing until the matter is called;
- Parties must depart the courtroom when their matter is completed.

General List

The General List managed by the Judicial Registrar in Court 7D of John Maddison Tower will be conducted as follows:

- In the Online Court;
- Where the matter is not eligible for the Online Court, by telephone directions.

To attend a listing by telephone, dial the following number and use the following PIN at the time allocated for the listing: DIAL: 1800 062 923 PIN: 7762 8770 9768

Motions List

The Motions List managed by the Assistant Registrars in Court 4A on Fridays will be conducted as follows:

- In the Online Court;
- Where the matter is not eligible for the Online Court, by attending the listing in Court 4A at the allocated time.

Parties must not enter Court 4A for the listing until the matter is called.

Parties must conduct management of the motion in accordance with the requirements of Civil Practice Note 1B, including:

- Commencing an Online Court request by 2pm and completing it by 6pm the Wednesday before the listing;
- Requesting any case management orders for the motion;
- Indicating if the motion is ready to be heard on the Friday listing and if so, an accurate estimate of the hearing;
- If a special fixture is required, to request a hearing date to be allocated in the Online Court.

Criminal Lists in the District Court at venues other than the Sydney District Court

Lawyers will be notified of any procedural changes by the List Judge or the resident Judge.

NSW LOCAL COURT

For non-attendances or enquiries, contact the Courts Service Centre 1300 679 272 or email the court (see www.courts.justice.nsw.gov.au)

For further information, visit http://www.localcourt.justice.nsw.gov.au/Pages/coronavirus.aspx

On 21 September the Association released the following update to members regarding new Local Court sittings arrangements from 1 Feburary 2021:

The Chief Magistrate has written to advise the Association and its members of new sitting arrangements for Bankstown, Hornsby, Manly and Burwood Local Courts to commence on and from 1 February 2021.

The Chief Magistrate has advised that after consideration of all feedback provided and reviewing the current considerable workloads at Burwood, Hornsby, Bankstown and Manly Courts, it has been concluded that the workloads at these courts would be better facilitated by:

1. Redirecting all charges and associated Apprehended Violence proceedings from Ryde Police Area Command to Hornsby Local Court; and
2. Redirecting all charges and associated Apprehended Violence proceedings from Campsie Police Area Command to Bankstown Local Court.

This will require the movement of resources within the metropolitan area to sit 2.5 magistrates at Bankstown and 3 magistrates across Manly and Hornsby Local Courts. This arrangement can only be achieved within current resources at the expense of sittings at the Downing Centre Local Court. This reallocation of resources increases the capacity of Hornsby Local Court for defended hearings and domestic violence applications.

The Chief Magistrate has also advised that in reducing the current workload at Burwood the splitting of Apprehended Violence List at Burwood will not be necessary at this time. In addition to reduce impacts of resources such as interpreters Bankstown Apprehended Violence List will be moved to a Wednesday.

The attached document sets out the new sitting arrangements for Bankstown, Hornsby, Manly and Burwood to commence on and from 1 February 2021.

On 17 August the Association released the following update to members regarding Parramatta Local Court:

Media reports overnight have indicated that a security contractor working at Parramatta Local Court on Tuesday 11th and Wednesday 12th August has tested positive to COVID-19.

The Association has this morning been in contact with the Chief Magistrate's office, which has advised that the contractor who has tested positive had little contact with people attending the Court on those days.

However, NSW Health has suggested that, as a precaution, anyone who was in attendance at Parramatta Local Court between 8:30am and 12:30pm on either Tuesday 11th August or Wednesday 12th August 2020 should watch for symptoms. Should even mild symptoms occur they must self-isolate and seek urgent testing for COVID-19.

On 17 July the Chief Magistrate issued the *Chief Magistrate's Memorandum No. 14*, which is extracted below:

CHIEF MAGISTRATE'S MEMORANDUM NO. 14 COVID-19 ARRANGEMENTS

It has come to the attention of the Court that there appears to be a misunderstanding in relation to the need to physically appear before a Local Court during the Covid-19 pandemic arrangements. The purpose of this memorandum is to re state the expectations of the Court in relation to remote appearances and physical appearances so that overcrowding on court premises can be reduced. This has been a particular problem affecting the operations of the Court at Burwood.

Memorandum No. 13 made it clear that a physical appearance by a defendant or a legal representative is not required in circumstances where at first return of a matter an adjournment is sought for the purpose of obtaining legal representation or legal advice. This can be communicated to the court by email or in writing.

On the second date a physical appearance will not be required if the court is advised by email or in writing of the plea to be entered. If it is to be a plea of not guilty the court will make the appropriate orders for service of a brief in those matters which require the preparation and service of a brief.

On each of these occasions communication by email or in writing will be taken to be a physical appearance, as stated in previous memorandum and reiterated at paragraph 3 of Memorandum 13.

Legal Practitioners are requested to re-familiarise themselves with the physical appearance requirements set out in paragraphs 10-13 of Memorandum 13.

The design and architecture of some court premises do not lend themselves to accommodating large volumes of people, particularly at a time where social distancing requirements impact directly on capacity. This being so the cooperation of all persons having business before the Local Court, and in particular the legal profession would be greatly appreciated.

On 1 July the Chief Magistrate issued the *Chief Magistrate's Memorandum No.* 13, which is extracted below:

1 July 2020

CHIEF MAGISTRATE'S MEMORANDUM NO. 13 COVID-19 ARRANGEMENTS

This Memorandum replaces all previously issued COVID-19 memoranda (1-12)

After an extensive period of reorganisation of the listing arrangements in the Local Court to meet the realities of the COVID-19 effect on society and the various public health directions the time has arrived to take what is hopefully the final step towards normalisation of listing arrangements in the Local Court. Whilst the Local Court has continued to sit on a daily basis during the last 4 months it recognizes that the impact of social distancing requirements and concerns within the community has had an economic impact within the legal system particularly in relation to the engagement of legal practitioners. The patience and forbearance of all who have had to act within the period of restrictions to the operations of the Court is acknowledged with gratitude.

It is important to appreciate that despite an ongoing relaxation of restrictions the operations of the Court will still need to take into account the potential risk to those engaged in appearances before it and maintain the commitment to mitigating risks of infection. Against that background and its realities however it is the view of the Court that the time has come to return to normality in operations as best it can be achieved.

Initial steps towards relisting previously abandoned defended hearings involving firstly persons in custody; then part heard and domestic violence related proceedings and lastly the remaining general matters has been proceeding as well as can be expected. It is now time to address the remaining areas of operation of the Local Court.

Set out hereunder are the arrangements that will take effect on and from 3rd August 2020.

All current Practice Notes (as distinguished from COVID-19 memoranda) will apply to their intended extent. These Practice Notes include:

- Consolidated Crim Practice Note 1

- Consolidated Committal Practice Notes 1 and 2

- Domestic Violence Practice Note 2 of 2012

- Civil Claims Practice Note Civ 1 and

- Online Court 1 of 2015

Appearances

In part, arrangements put in place for the appearance of legal practitioners and parties will remain in place during the period of requirement for social distancing. Nothing in what follows prevents the physical appearance of a legal practitioner or a party to proceedings if they so wish.

1. In line with current arrangements to mitigate risk to persons in custody appearances from custody in interlocutory phases or bail proceedings are to be by Audio or Audio Visual Link. This may require a change of venue to a hub court with access to AVL facilities from time to time for case management as has been the arrangement for many years.

2. Wherever possible defended hearings involving persons in custody should be conducted by Audio or Audio Visual Link. Due to the ongoing limitations on access to such technology the arrangements set out in paragraph [7] of COVID-19 memorandum No 11 will continue to apply.

3. Subject to the effective application and intent of the Consolidated Crim Practice Note 1 a legal representative or unrepresented defendant may advise the court by email or in writing of a plea of guilty or a plea of not guilty. This will be taken to be a physical appearance. Where the defendant or legal practitioner communicates with the court in writing but not by email then wherever possible, an email address is to be provided at that time so that there is no delay in advising the author of the decision made by the Court. Legal practitioners are reminded that Section 182 of the Criminal Procedure Act 1986 continues to apply.

4. Where there is no communication with the court by a defendant or legal representative and it is in the interests of justice to do so the Court is to finalise the matter pursuant to Section 196 of the Criminal Procedure Act 1986.

Defended Hearings Procedure

5. Where a plea of not guilty is entered the Court will make orders for service of a brief of evidence. At the return date for reply to service of the brief of evidence the court is to be provided with a Notice of Listing and an estimated length for the hearing. This is to occur irrespective of whether appearance at this stage of the proceedings is by electronic means or in person.

6. If there is a failure to serve a brief and no reasonable justification is given for such failure the court will list the matter for hearing. Defendants and/or their legal representatives are to approach the return date on the basis that unless it is in the interests of justice to do so the court will not adjourn a matter and extend the brief service orders.

Matters in which a brief of evidence is not required

7. It should be noted that not all matters are subject to mandatory brief service orders (see paragraph 24 of Criminal Procedure Regulation 2017 No 437). Where no brief order is mandated the matter will be allocated a hearing date on entry of the plea of not guilty.

8. Where appearance in matters of this nature is by email or in writing the author is to provide information as to the estimated length of the hearing and any unavailable dates. If such information is not forthcoming the Court will nonetheless allocate a date for the hearing of the matter.

9. The court will not adjourn proceedings for the purpose of representations being made to the prosecution. If that course is contemplated it is to be done during the period between the return date to fix a hearing date and the subsequent hearing date allocated.

Physical appearance

10. If a matter is not progressing satisfactorily or otherwise in accordance with the relevant Practice Note the court will require the attendance of the defendant or their legal representative in person.

11. Where a matter is before the court for finalisation and the defendant is legally represented the Court expects that both the legal practitioner and their client appear in person unless the offence is a fine only offence.

12. In relation to Domestic Violence application proceedings the attendance of the person in need of protection in any application brought by Police is not required at an interlocutory stage of proceedings but are free to attend if they so wish. Where such proceedings are to be defended police are expected to advise the court of the availability of the person in need of protection at the time the Court is fixing the matter for hearing.

13. Where the proceedings before the Court are Committal Proceedings and the defendant is legally represented physical appearance of the legal practitioner and the defendant is required when entering pleas at committal for trial or sentence in all strictly indictable offences or offences in which an election has been made to proceed before the District Court.

1. Civil proceedings

14. Notices of Motion may continue to be dealt with via teleconference where facilities allow for this to occur.

15. In Small Claims matters parties may continue to appear via telephone if facilities allow.

On 5 June the Chief Magistrate issued the *Memorandum No. 12 – COVID-19 arrangements*, which is extracted below:

http://www.localcourt.justice.nsw.gov.au/Documents/COVID19/chief-magistrate-s-memorandum-12-covid-19-arrangements-for-re-listing-of-non-custody-defended-hearings.pdf

CHIEF MAGISTRATE'S MEMORANDUM NO. 12 COVID-19 ARRANGEMENTS

RE-LISTING OF *NON CUSTODY* DEFENDED HEARINGS IN

- DOMESTIC VIOLENCE RELATED MATTERS

- GENERAL MATTERS WHERE HEARINGS HAVE BEEN ABANDONED AT COUNTRY LOCATIONS –

ARRANGEMENTS APPLICABLE TO LARGER COURT COMPLEXES

- FUTURE LISTING ARRANGEMENTS

Memorandum No. 11 set out the arrangements to be made in relation to the hearing of defended hearings involving a defendant in custody. This memorandum addresses the arrangements to be implemented for other defended proceedings. It also reflects the opportunity provided through the degree of relaxation in public health arrangements so far as it affects the caseload of the Local Court.

The arrangements will operate in relation to 3 categories of defended proceedings and the finalisation of general list work within specified Metropolitan Courts and the two largest regional locations. It will also address the approach of the court in relation to freshly instituted proceedings. The relisting of currently abandoned defended proceedings is the first group to be addressed.

i. Priority in the allocation of hearing dates will be given to the resolution of matters identified as **domestic violence proceedings.** As far as practicable hearing days at all courts in July where the hearings were previously abandoned through the application of Memorandum No. 9 should be utilised to finalise matters within this class of proceedings if at all possible.

ii. Secondly matters that already have hearing dates allocated to take place after 31 July 2020 *will remain* for hearing on dates allocated on and from 3rd August 2020.

It is unfortunate that those matters in which the hearing has been abandoned will be affected by listed hearings already in place however from an administrative perspective it is the view of the Court there is little to be gained by ousting already listed matters simply to re-establish an artificial priority of listings.

So far as the currently listed matters are concerned, the Court expects the parties involved will already be in a position to resolve these matters on the allocated date of hearing. This expectation will apply to metropolitan and country courts across the State. In simple terms the Local Court cannot return to its previously established position without a significant level of positive approach to matters being exhibited by the legal profession.

iii. The Court recognizes the impact of allocating hearing dates to previously abandoned hearings and acknowledges the risk that becomes elevated with the return of witnesses to Court premises. The view has been taken that the risk factors are related to the volume of caseload and apply to a greater extent in the greater metropolitan area than in regional and country areas. Listing arrangements will be tailored to address this reality.

iv. Domestic or general defended matters involving a defendant who is not in custody will be given a date for a Status Mention. This is to ensure that only those matters which are realistically to proceed as a contested hearing occupy the diary of individual courts. Again, it is important to state that failure by a party to proceedings to engage with their opposing party to either resolve the matter or reduce matters in issue only results in elevating the risk of bringing people onto court premises who may not ultimately be required.

The overwhelming majority of defended proceedings before the Local Court involve prosecutions brought by the Police/DPP. Each of those organisations is aware of the concerns held by the Court. Each has indicated support for engagement with the defendant/ legal representative with a view to such matters as are amenable to resolution.

Where an appearance by a legal practitioner fully instructed by their client can be facilitated by Audio or Audio Visual a personal appearance will not at this stage be required. Where that cannot be arranged the Court requires the physical appearance of the legal practitioner or the defendant. If there is to be a plea of guilty both the legal practitioner and their client should appear in person.

Listing arrangements for defended hearings – Domestic Violence matters

1. Individual courts are to identify those matters before their court previously listed as a defended hearing during the period 23 March-31 July 2020 that involve a defendant at liberty who is subject to charges that are Domestic Violence proceedings in nature together with applications for Domestic Orders which had the hearing abandoned due to COVID-19 arrangements.

2. These matters are to be listed for a Status Mention during the week commencing 22nd June 2020. The purpose of the Status Mention is to identify those matters that are no longer defended proceedings, are to be withdrawn or remain as defended proceedings. Those that remain as defended proceedings will be listed for hearing.

3. So far as is appropriate, paragraphs 8, 9 and 11 of Memorandum 11 continue to apply.

4. If there is to be a change of plea at the Status Mention the matter is to proceed to sentence unless the interests of justice or sentencing legislation option requirements otherwise dictate.

5. The Status Mention is to be set for a day in the diary of the individual court that is not a List Day unless the volume of pending matters before a smaller court, in the view of the presiding magistrate, justifies combining the Status Mention with the General List caseload for that day. Magistrates should be careful not to overload the re listing of matters on the date fixed for a Status Mention.

6. The defendant may only be excused from attendance at the Status Mention if they are legally represented and the legal representative has up to date full and complete instructions to maintain the plea of not guilty. If the matter is to be resolved as a plea of guilty the defendant should appear in person with their legal representative.

7. Unrepresented defendants are expected to appear in person.

8. Where there is no appearance of an unrepresented defendant the court may proceed to determine the matter in their absence unless the interests of justice otherwise dictate.

9. A Notice of Readiness is to be completed as far as is able and be furnished to the Court at the Status Mention. As noted in previous memoranda it is this document the Court will rely on to assess the time needed for the hearing. In addition all Local Courts have been assessed as to the numbers that can be present in the courtroom to enable compliance with social distancing precautions. The Notice of Readiness is of fundamental importance not just in relation to the time required for the hearing but also to ensure hearings are only fixed in circumstances where the individual court premises and court room can adequately manage the number of persons within the building.

Re-listing of remaining defended proceedings abandoned due to COVID-19 arrangements

General list work remains the largest component of the caseload of the Local Court. Without emphasis on reducing this portion of the caseload the Local Court will succumb to the consequences of accumulation. Police activity has not stopped and the inputs of other agencies, such as the Roads and Maritime Services organisation will increase the current caseload. There is a real need to reduce the burden on the court and all stakeholders as soon as practicable.

As at the end of May 2020 the state wide pending caseload was 82,600 matters. 47,743 matters or 58% of the total are pending before the 17 courts identified below. The view has been taken that the volume of pending defended hearings before the Metropolitan Courts requires a different approach to the remainder of the State. In anticipation of the likely build-up of a backlog in cases due to the pandemic arrangements the decision was taken in March 2020 to rule out October 2020 as a month within which defended matters could be heard. So far as the 17 nominated courts are concerned this will remain the approach. At those locations the month of October is to be used for the finalisation of matters for sentence and list work. **No defended hearings are to be listed at those locations during October 2020 without the approval of the Chief Magistrate.**

The courts at which **only list work** is to be scheduled during October 2020 are as follows:

Metropolitan Locations: Sutherland, Campbelltown, Penrith, Mt. Druitt, Blacktown, Parramatta, Hornsby, Manly, Waverley, Bankstown, Newtown, Burwood, Fairfield, Central Court, Downing Centre.

Regional locations – Wollongong, Newcastle

10.Magistrates at the locations in question are, as far as practicable, to adjourn uncompleted matters that arise during the months of August and September 2020 no later than into the month of October on days other than scheduled List days and Domestic Violence List days. This is to avoid overloading List Courts. It should be remembered the listing of fresh matters before the Local Court has not stopped during the pandemic period.

11.Those matters falling close to the month of October 2020 and which are considered to require the preparation of a Sentence Assessment Report that would take them beyond October are to be dealt with procedurally as would be the case in the normal arrangements of the Court.

12.Because of the large number of matters, which include many matters adjourned to suit the convenience and concerns of the legal profession and unrepresented parties the Court expects every effort to be made by those who have taken advantage of a relaxed approach to the granting of adjournments to bring outstanding matters to finality with proper expedition and with due regard to Practice Note No. 1 relating to the conduct of summary matters before the Local Court.

13.The profession is reminded that the court will not use adjournment periods to enable parties or their legal representatives to make representations to police or other litigants. If that approach is to be taken it is to be done expeditiously within the periods allowed for the steps towards finalisation in the Practice Note. It will not be sanctioned by the Court outside the intended application of Practice Note 1.

Listing of previously adjourned defended proceedings at country and regional courts

14.These arrangements will apply to all **country and non-metropolitan** courts *other than* Wollongong and Newcastle.

15.The process outlined above in paragraphs 1-8 inclusive will apply to the relisting of the remaining defended hearings previously listed for the period 24 March-31st July 2020.

16.These matters are to be re listed for a status mention in the week commencing 6 July 2020 on a day or days other than a list day. The gap between the relisting of defended domestic violence hearings and matters in this category is to allow registries sufficient time to contact the parties with the Status Mention date given that this cohort of hearings is likely to exceed those within the two other categories.

17.The approach identified in paragraph 5 of this memorandum should be applied in relation to these matters. As the number of matters falling into the general category of abandoned hearings is likely to be significantly greater than those related to custody or domestic violence hearings Magistrates again should be careful in not over listing the number of matters before a Status Mention.

18.If the parties can accommodate a hearing on the dates between 13 July 2020 and 31 July 2020 that was originally allocated then the abandoned hearings may be listed back into those days where the plea of not guilty is maintained. This should only occur of hearings of abandoned custody and domestic violence matters have been suitably accommodated.

19.Unless the interests of justice otherwise dictate matters in which there is a change of plea are to be finalised on the date of the Status Mention.

Re listing of defended matters at the courts referred to in the introduction to paragraph 10.

20.In the week commencing 3rd August 2020 those matters in which hearings listed between 23 March 2020 and 31 July 2020 have been previously abandoned before the Local Courts at Sutherland, Campbelltown, Penrith, Mt. Druitt, Blacktown, Parramatta, Hornsby, Manly, Waverley, Bankstown, Newtown, Burwood, Fairfield, Central Court, Downing Centre as well as Wollongong and Newcastle will be listed for a Status Mention.

21.The Status Mention listings will need to take place over a number of days on days that are not a list day because of the volume of matters involved.

22.The approach to the Status Hearing in these matters is to be the same as set out above in relation to the relisting of Domestic Violence matters and those that will come before country and regional courts. Against that background legal practitioners are once again urged to approach their representation of defendants with proper despatch. Practice Note 1 in relation to Summary Prosecutions is still in force and Courts will be using its terms as strictly as the interests of justice allow.

23.It must be emphasised that both Police and the DPP have indicated support for engagement with the defendant and/or the legal representative with a view to resolving defended proceedings or narrowing issues. It would be disappointing if the legal profession ignored the positive approach taken by these organisations.

24.Practitioners should note that conversations between my Office and the Police Prosecuting Branch reveal there will be no negotiations conducted by Prosecutors with legal practitioners on the *new date* fixed for the hearing of the previously abandoned defended matters. The Police Prosecuting service take the view there has been ample time leading up to the date originally fixed and the period between the status mention and the new hearing date for matters in issue to be discussed.

Listing Arrangements post 3rd August 2020

25.The Courts listed immediately prior to paragraph 10 will begin listing defended matters for hearing beginning on 3rd August 2020. Practice Note 1 will apply as currently drafted will apply.

26.Because of the restrictions on the number of persons who may be present in a courtroom parties to proceedings need to inform themselves of the social distancing arrangements at the court before which they appear.

27.In order to ensure the maximum number of matters can be dealt with both parties are to ensure only those witnesses who are necessary are to be called. In particular this will require a more careful approach on the part of legal practitioners. The Court is more than passingly familiar with the approach taken by some in providing a list of witnesses that simply defaults to all who are identified as potential witnesses in the police brief. The Court expects a better approach, one which, in criminal proceedings, also includes a greater level of compliance with the Court's orders for service of a brief.

28.In accordance with the Practice Note matters are not to be adjourned because of noncompliance with brief service orders unless the interests of justice otherwise dictate. As hearing dates are likely to be at a much later time than in pre pandemic times any interaction between the parties involving non service of the entire brief are to take place during the period between the return date to fix a date for hearing and the hearing date itself.

29. Parties are reminded that failure to serve the complete brief not less than 14 days prior to the allocated hearing date is likely to be met with an application to exclude evidence in accordance with Section 188 of the Criminal Procedure Act 1986.

On 22 May the Chief Magistrate issued the *Memorandum No. 11 – COVID-19 arrangements*, which is extracted below:

CHIEF MAGISTRATE'S MEMORANDUM NO. 11 COVID-19 ARRANGEMENTS

LISTING OF *DEFENDED* HEARINGS WITH PERSONS IN CUSTODY WHERE THE HEARING HAS BEEN PREVIOUSLY ABANDONED AND CHANGES TO ARRANGEMENTS SET OUT IN PREVIOUS MEMORANDA.

Since the publication of Memorandum No. 10 the Local Court has been deeply engaged with Corrective Services to explore ways in which persons in custody on remand awaiting the hearing of defended hearings can be managed within the Local Court. It should be understood by all involved that the logistical complexities surrounding the restoration of defended hearings where an offender is in custody are not simple.

There is daily "competition" between the 3 principal jurisdictions for AVL access to defendants/ accused in custody. Against this background there is also the experience during the pandemic arrangements of regular problems with access to AVL appearances from some locations, failures within the technology where vision and/or audio drop out which creates frustration for all.

Acknowledging the difficulties the Local Court remains of the view that those defended hearings involving a defendant in custody which have been abandoned should be finalised. Previous memoranda highlighted the distinct possibility that a defendant in custody may ultimately receive a full time custodial sentence or a sentence of custody that is less than the period of remand so far endured if found guilty. It is because of these concerns that the Court has been asking for cooperation from prosecution bodies and legal representatives to ensure that as far as practicable the interests of justice do not become a casualty to delay caused by the Local Court's accommodation of decisions by Federal and State Governments.

Against this background, the Court will list those matters involving a defendant in custody where the previously allocated hearing date was abandoned due to the urgency of necessary COVID-19 arrangements. The easing of restrictions on the number of people who may be present at the one location, arrangements taken by the Court to identify the courtroom capacity remaining after social distancing measurements have been made will assist in limiting risks to health for those attending courts.

Advice from Corrective Services is to the effect that current AVL capacity will only allow a maximum of 15 suites at Prisons to be utilised for defended hearings throughout the state. To its great credit and through its diligence in assisting the Local Court in its objectives it has been agreed that defended hearings will take place within a hybrid of AVL hearings and the physical appearance of an accused before the Court. I have been advised additional AVL suites are due to open in July and onwards. This will assist in reducing the need for physical appearance. In light of the foregoing therefore the following arrangements will apply. Some of those arrangements reflect change to previous memoranda.

Arrangements for the listing of defended hearings previously abandoned where the accused is in custody.

1. Individual Local Courts are to identify those matters pending before their Court that involve a defendant in custody where the hearing date originally allocated was abandoned. They are to be listed for a Status Mention on a day within the individual Court's diary **that is not a list day.** The current backlog of criminal cases within the Local Court exceeds 80,000 matters. It is inappropriate to add to the burden of list courts by including these matters within List day sittings.

2. Once identified these matters **and only these matters** are to be listed to fix a hearing date. Status Mentions for these types of matters can begin to be listed in the week commencing 9 June 2020. Where possible hearing dates should be given in July –August 2020.

3. With the exception of the following courts only 1 Status Mention should be required. Due to the number of persons in custody awaiting hearing at the following courts additional Status Mentions will be required. The number of additional Status Mentions is reflected in the bracketed numbers following the name of the relevant court location - Burwood (3) Wollongong (3) Blacktown (2) Central (2) Dubbo (2) Mt. Druitt (2) Parramatta (2) Penrith (2) Sutherland (2).

4. As these matters are being brought forward from the adjourned dates in August and September Magistrates are to ensure that Section 77 Orders issue to the relevant Correctional Facility. Such orders should be endorsed "**to appear by AVL**". Mindful of the provisions of Section 22C of the Evidence (Audio and Audio Visual) Act the court **will not direct** that a defendant in custody appear in person at a Status Mention. At this point it should be noted that the appearance of a defendant at the subsequent hearing is subject to the realities identified at paragraph 7 of this memorandum.

5. Matters not dealt with at the first Status Mention should be promptly listed for mention at subsequent Status Mentions to be conducted not more than 7 days after the initial Status Mention.

6. Circuit Courts where the defendant in custody was due to appear before a Court on that circuit are to list the Status Mention before a hub court with access to AVL technology. This will mean the matter will be dealt with to finality at the hub court. The current environment is such that inconvenience to parties must be regarded as secondary to the capacity of the Court and Corrective Services.

7. Where the magistrate allocates a fresh hearing date the papers should be marked "**to appear by AVL if possible**". The limited availability of technology for use by the Local Court means that Corrective Services will be deciding at which Courts a defendant is to appear by AVL.

8. In an endeavour to resume the hearing of these matters in the shortest reasonable time the Notice of Readiness **in these matters only** is to be furnished to the Court **at the Status Mention** so an accurate estimate of the hearing time can be assessed by the Court.

9. Legal Practitioners are expected to be ready to proceed without undue delay. If counsel previously instructed is not available then every effort is to be made to secure alternate representation. In this regard practitioners should reflect on the impact on their client of asking the Court to allocate a hearing date too far into the future simply to accommodate the non-availability of counsel for an earlier hearing.

10. If a defendant in custody wishes to enter a plea of guilty at a Status Mention the Court will proceed to finalise the matter unless the interests of justice otherwise dictate.

11. Unless adequate arrangements can be made by the legal practitioner to appear remotely the Court expects the legal practitioner to physically appear before the Court. All Local Courts have been measured as to their individual capacity to ensure the maintenance of social distancing arrangements. Legal Practitioners should contact the Court before which they are to appear for advice as to the maximum number of persons who may be present in the courtroom at any one time. The possibility of the physical appearance of the defendant and Corrective Services staff should be factored into this assessment.

Future hearing arrangements

12. Assuming the loosening of community restrictions continues the next step to be taken by the Court will involve the relisting of defended hearings of Domestic Violence matters where the defendant is on bail or otherwise at liberty. Further advice on these matters will issue at an appropriate time.

13. Contested proceedings not involving the calling of witnesses may be brought before the court and be listed for hearing.

Application Proceedings

14. In recognition of the lifting of some of the previous restrictions that limited application proceedings to the need for urgency paragraphs 36 and 37 of Memorandum No. 9 are withdrawn.

Centralised Bail Hearings

15. Gradual return to hearings will reduce the capacity of the Court to continue operation of the centralised bail model. From close of business on 19 June 2020 the Centralised Bail arrangements will cease. From 22nd June 2020 all bail applications, **including Release applications and applications for Review of Bail are to be made to the Court before which the proceedings are pending.**

16. Applications to break remand and bring a release application before the Downing Centre Court Complex and Regional Hub Courts are to cease from the close of business on 19 June 2020.

On 8 May the Chief Magistrate advised the Association of a necessary clarification regarding the *Memorandum No. 10* issued on 7 May:

The heading immediately preceding paragraphs 1-9 of the memorandum has been amended to read "Arrangements for finalisation of **sentencing in** criminal matters involving custody considerations".

On 7 May the Chief Magistrate issued the *Memorandum No. 10 – COVID-19 Preliminary Arrangements for return to Normal Sitting Arrangements*:

CHIEF MAGISTRATE'S MEMORANDUM (NO. 10) – COVID-19

PRELIMINARY ARRANGEMENTS FOR RETURN TO NORMAL SITTING ARRANGEMENTS

(This memorandum should be read in conjunction with Chief Magistrate's Memorandum No. 9 – Updated and Consolidated Listing Arrangements)

With the ongoing success of public health arrangements in mind and against a trend within Federal and State government of a staged return to community activity it becomes important to put in place arrangements to enable a return to full sittings of the Local Court.

Necessary preliminary arrangements will address two significant issues confronting the Local Court – sentencing of offenders where the issue of full time custody is a real prospect and the organisation of defended hearings in the criminal and special jurisdiction (which includes domestic and personal violence matters) of the Court.

In addition there are amendments to paragraphs 10 and 29 of Consolidated Memorandum No. 9, at paragraph 7 and 22 of this memorandum. The online version of Consolidated Memorandum No.9 will be updated to reflect these amendments.

Arrangements for finalisation of sentencing in criminal matters involving custody considerations

1. Suspension of the imposition of sentences of full time custody in relation to defendants at liberty on bail was introduced by the Court in recognition of the unanticipated need within the Corrective Services environment for arrangements to be made to reduce the risk of COVID-19 being introduced into prisons by sentenced prisoners. To enable sufficient time for the introduction of a safe environment for the receipt and detention of prisoners from outside the prison system earlier memoranda introduced an adjournment period of 8 weeks for bail matters likely to result in a full time custodial sentence. Where the defendant was appearing by AVL in custody those matters could proceed to finality. The latter arrangements have generally proceeded satisfactorily.

2. Corrective Services has advised it has introduced quarantine spaces and developed protocols to deal with the risk of the introduction of COVID-19 into the prison system. As presently advised there have been no cases of COVID-19 detected within the prison population. As a consequence there will be a staged return to sentencing in matters considered to involve the likelihood of a full time custodial outcome.

3. From **18 May 2020** matters involving defendants on bail may be dealt with to finality at a number of Local Court locations where there is a co-location with the District Court.

City and Metropolitan Locations

Campbelltown
Downing Centre

Parramatta
Penrith

Regional Locations

Coffs Harbour
Dubbo
Newcastle
Port Macquarie
Tamworth
Wagga Wagga
Wollongong

4. Quarantine capacity will be monitored by Corrective Services on a daily basis. If advised by Corrective Services that prisoner reception capacity is at its limit the court will advise all stakeholders of the arrangements to apply within the Local Court as a consequence.

5. As a general practice matters should not be transferred from other courts to one of the identified locations set out in paragraph 3 simply to accommodate the objective of finalisation unless the defendant has pending matters for sentence at that location.

6. Community Corrections have advised their Sentence Assessment Reports will be considered as current on sentence. Wherever possible they should be used by the court without the need to order an updated report. If after sentencing it is clear that a variation to orders may be necessary Community Corrections will make application for a variation in preference to producing updated reports.

7. In order to avoid further lengthy adjournments of sentence matters where a full time custodial sentence is likely for a defendant on bail, the arrangements for the adjournment of matters which are previously set out in paragraph 29 of Consolidated Memorandum No.9 are suspended. The following arrangements apply instead:

a. At the locations listed above in paragraph 3, matters listed during the week commencing 11 May 2020 should be adjourned to a date in June for finalisation.

b. At locations which are not listed above, matters listed during the period 11 May to 29 May 2020 should be adjourned to a date in June for finalisation.

8. Current advice from Corrective Services is that temporarily redeployed staff will return to their work locations on and from 1 June 2020. Subject to a change in the health situation within correctional centres sentences of imprisonment may then be imposed where appropriate from all Local Courts throughout the state.

9. Given the above, subject to advice from Corrective Services as to capacity to resume sentenced prisoners and place them in isolation prior to introduction to the general prison population, from 1 June 2020 all matters pending in the criminal jurisdiction of the Local Court may be dealt with to finality.

Relisting of defended hearings

10. The positive news is that from the beginning of August for the rest of the year there is considerable time available for the listing of defended hearings should that opportunity arise. Years of constant attention to Time Standards and the success of the Court in meeting them with the assistance of the legal profession, police and other stakeholders has left the Local Court in a sound position to soften the impact of the effects of the pandemic arrangements.

11. At this point only 4 metropolitan Courts are a source of concern in relation to the period 3 August-31 December 2020. In the country regions 7 locations will require assistance beyond normal arrangements.

12. A significant number of matters listed for hearing before the Local Court are in the position of having the allocated hearing dates abandoned. There are 2 cohorts pending before the Court. One group "de listed" for the period 23 March 2020 to 4 May 2020 have been adjourned until August 2020. The second group for the period 4 May – 31 July 2020 at this stage will be adjourned to September 2020. This represents an endeavour to preserve the priority of the first group although depending on the availability of parties and witnesses that may not always be possible.

13. If there is a return to normal activity sooner than these two months alternate arrangements will be made and published.

14. To meet the foregoing the Court has consulted with its largest litigant, the Police with a view to ensuring that on return to the hearing of defended matters only those matters which genuinely require the calling of witnesses and evidence occupy the court's defended hearing lists. Police have agreed to consult with the legal profession and where possible, defendants to ascertain whether proceedings are still to be defended. Police have also agreed to engage in negotiations with a view to narrowing issues or resolving proceedings without the need for a hearing and to deal with representations in relation to pending defended proceedings.

15. Many years of experience inform the court that a significant proportion of defended hearings turn out to be pleas of guilty on the day of hearing. When this occurs the defendant may be deprived of a significant degree of discount for the utilitarian value of a plea which could have been entered at an earlier stage in proceedings. With this in mind practitioners are encouraged to ensure defendants are made fully aware of the relevant principles. Similarly where matters are withdrawn on the day of hearing valuable court time is lost.

16. Attached to this memorandum is a pro forma document identified as a Notice of Readiness that will need to be completed by the prosecution and by the defendant (through their legal representative where appropriate) where the pending proceedings are to remain as defended proceedings.

17. It should be noted that the Notice of Readiness for the Prosecution is not identical to the Notice of Readiness for the defendant. The completed Notice of Readiness is to be filed not less than 28 days prior to the date to which the pending defended proceedings have been adjourned.

18. The document will not need to be completed where there are instructions to change the plea however the Court is to be notified not less than 28 days of the date to which the proceedings are adjourned for call over in August and September if this is to be the position.

19. Nothing in this memorandum precludes a legal representative from having liberty to restore a current matter to the list on 3 days' notice to the opposing party and the court if instructions are received to resolve the matter by plea at an earlier date.

20. Where a prosecution or proceedings pending for allocation of a hearing date are to be withdrawn the Court will re list such matters for formal withdrawal between the date of this memorandum and the projected call over date on not less than 3 days' notice being provided to the opposing party and the Court.

Amendment to arrangements for no appearance in Chief Magistrate's Memorandum No. 9

21. Paragraph 10 of the Consolidated Memorandum No. 9 required the court to adjourn proceedings for 1 month where there was no appearance of the defendant and no explanation before the court explaining the reason for non-attendance. The regular adjournment of these matters and the burden cast on registry staff to notify the defendant is rising on a compounding basis and is no longer reasonably sustainable.

22. Paragraph 10 of Memorandum No. 9 is deleted as to its current terms. Paragraph 10 of the Memorandum is amended to read:

"Where a matter is listed and there is no appearance the Court, in the exercise of its discretion, may proceed to deal with the matter pursuant to Section 196 of the Criminal Procedure Act 1986."

Memorandum No.9 will be amended as it appears on the Local Court website to reflect the foregoing.

NOTICES OF READINESS ARE AVAILABLE HERE:

http://www.localcourt.justice.nsw.gov.au/Documents/COVID19/notice-of-readiness-for-the-prosecution.pdf

http://www.localcourt.justice.nsw.gov.au/Documents/COVID19/notice-of-readiness-for-the-defence.pdf

The Chief Magistrate updated and reissued the following notice on 9 April 2020:

CHIEF MAGISTRATE'S MEMORANDUM (No.4)

FURTHER CLARIFICATION OF LOCAL COURT ARRANGEMENTS FOR EAGP MATTERS DURING PANDEMIC PERIOD

UPDATED AND REISSUED 9 APRIL 2020

1. The following memorandum was originally issued on 20 March 2020 to clarify arrangements in relation to EAGP committal matters. For ease of reference, it has now been updated to include subsequent arrangements set out in *Chief Magistrate's Memorandum (No.6) – Listing Arrangements During the COVID-19 Pandemic* (dated 24 March 2020).

2. I also draw attention to the addition of paragraph [5] in relation to the filing of documents in committal matters.

Appearance of legally represented defendant

3. Where a defendant is legally represented, their physical attendance, if on bail, is not required until the matter is before the court for committal for trial or sentence in accordance with the arrangements below from [23].

Where unable to meet purpose for which matter is adjourned

4. Where a party is unable to meet the purpose for which a matter is adjourned, they are to notify the court and the legal representative for the other side by email not less than 72 hours prior to the date fixed setting out the reasons why the matter is to be adjourned. The court will advise both parties by email of the new date.

Filing of documents

5. All necessary documents are to be delivered in hard copy to the court no later than 24 hours prior to the date the matter is to be mentioned. The registry will not be responsible for printing material on behalf of the DPP. Any charge certificate or case conference certificate must be in a separate envelope with the defendant's name and case number clearly marked.

First return date/ brief service mention:

6. **If defendant legally represented**, no physical appearance is required and matter may be dealt with electronically. The legal representative should communicate the fact of their representation in writing.

7. **If defendant unrepresented (not in custody)**, no physical appearance is required and defendant may email the court a request for adjournment in writing.

8. **If defendant unrepresented (in custody)**, the matter will proceed via AVL.

9. In all scenarios above, the magistrate will make necessary orders/ adjourn matter as per timetable in Local Court Practice Note Comm 2.

Brief confirmation:

10. **If defendant legally represented**, no physical appearance is required and matter may be dealt with electronically. The legal representative should communicate the fact of their representation in writing.

11. **If defendant unrepresented (not in custody)**, no physical appearance is required and defendant may email the court a request for adjournment in writing.

12. **If defendant unrepresented (in custody),** the matter will proceed via AVL.

13. In all scenarios above, the magistrate will make necessary orders/ adjourn matter as per timetable in Local Court Practice Note Comm 2.

14. NOTE: Contrary to existing arrangements, proceedings commenced as committal proceedings are to be adjourned to a hub court at which the DPP and Legal Aid appear irrespective of whether the accused is bail refused or released to bail.

Charge certification/ case conference adjournment:

15. **If defendant legally represented,** no physical appearance is required and matter may be dealt with electronically. The legal representative should communicate the fact of their representation and make any applications in writing.

16. The defendant is not required to be present for the purposes of providing an explanation pursuant to section 59 of the *Criminal Procedure Act* and matters should not be adjourned to facilitate this.

17. See below for arrangements where entering a plea of guilty.

18. **If defendant unrepresented (not in custody),** no physical appearance is required and defendant may email the court a request for adjournment in writing.

19. NOTE: The defendant is not required to be present for the purposes of providing an explanation pursuant to section 59 of the Criminal Procedure Act and matters should not be adjourned to facilitate this.

20. If defendant unrepresented (in custody), the matter will proceed via AVL. 21. In all scenarios above, magistrate will make necessary orders/ adjourn matter as per timetable in Local Court Practice Note Comm 2.

22. NOTE: Pursuant to section 71(3) of the Criminal Procedure Act, I provide my **approval for case conferences to be held by telephone** where necessary and at the discretion of the parties.

Where entering pleas/ at committal

23. **If defendant legally represented (not in custody)**, physical appearance of legal representative and defendant is required when entering pleas/ at committal for all strictly indictable offences and all matters which are to be committed for sentence.

24. Otherwise, where no election is being made, no physical appearance is required by either legal representative or defendant. Legal representative may enter plea in writing.

25**. If defendant legally represented (in custody)**, physical appearance of legal representative is required and defendant is to appear from custody via AVL when entering pleas/ at committal for all strictly indictable offences and all matters which are to be committed for sentence.

26. Otherwise, where no election is being made, no physical appearance is required by legal representative and defendant is not required to appear by AVL. Legal representative may enter plea in writing.

27. **If defendant unrepresented (not in custody)**, physical appearance is required when entering pleas/ at committal for all strictly indictable offences and all matters which are to be committed for sentence.

28. Otherwise, where no election is being made, no physical appearance is required and defendant may enter plea in writing.

29. **If defendant unrepresented (in custody)**, the matter will proceed via AVL.

Where the matter is to be finalised summarily in the Local Court

30. **If the defendant is legally represented**, no physical appearance is required by the defendant, provided full instructions have been given to their legal representative. This advice may be communicated to the court and the DPP by email. The physical appearance by the legal representative will not be required. The court will consider finalisation of the matter in the context of the arrangements for sentencing proceedings set out in *Chief Magistrate's Memorandum (No.9) - Updated and Consolidated Listing Adjustments During Covid-19 Pandemic* (dated 9 April 2020).

The Chief Magistrate issued the following notice on 9 April 2020:

CHIEF MAGISTRATE'S MEMORANDUM (No. 9) - UPDATED AND CONSOLIDATED LISTING ADJUSTMENTS DURING COVID-19 PANDEMIC

There appears to be little doubt that the duration of arrangements put in place by Commonwealth and State Governments to manage the impact of the COVID-19 pandemic will remain for the foreseeable period. In recognition of this reality the arrangements put in place by the Local Court in recent weeks will continue. However, within the criminal jurisdiction, for ease of reference, existing arrangements published in the following separate memoranda have been consolidated into a single document:

- *Chief Magistrate's Memorandum (No. 2) – Arrangements by the Local Court of NSW regarding court proceedings during the pandemic declaration period (dated 16 March 2020)*
- *Chief Magistrate's Memorandum (No. 6) – Listing Adjustments during COVID-19 Pandemic (dated 24 March)*
- *Chief Magistrate's Memorandum – Addendum to operational arrangements during COVID-19 pandemic (No.6) (dated 26 March 2020)*
- *Chief Magistrate's Memorandum (No.8) – COVID-19 Arrangements: Reviews of bail (dated 2 April)*

I note arrangements in relation to Early Appropriate Guilty Plea committal matters have now also been consolidated in *Chief Magistrate's Memorandum (No. 4) – Further Clarification of Arrangements for EAGP Matters During the Pandemic Period* (originally dated 20 March 2020 and reissued 9 April 2020).

This Memorandum also clarifies some areas of intended operation to introduce a greater degree of clarity. Attention is particularly drawn to new paragraphs 28 and 29. So far as paragraph 29 is concerned in relation to persons in custody attention should be given by defendants and legal representatives to potential consequences of persistent adjournments. It should not be assumed the current provisions of the *Bail Act 2013* are secondary to the existence of the pandemic. Applications for review of bail will be dealt with in accordance with settled principle and the statutory requirements of the Act. Against that background careful consideration should be given to finalising matters where the defendant is in custody bail refused. Because of the need to manage the volume of people who physically attend court it should be understood that at this time contested

hearings involving defendants in custody will not be able to be heard. Sentencing proceedings however can go forward in accordance with the arrangements set out below and be dealt with to finality through the use of AVL technology.

The following arrangements **only apply to proceedings before the Local Court** (which includes the coronial jurisdiction). The President of the Children's Court will continue to provide separate statements relating to the operations of that Court.

NOTE: Nothing in the arrangements set out below prevents a physical appearance before the court, except by a defendant in custody.

CRIMINAL JURISDICTION

1. **Defended hearings (defendant NOT in custody):** The decision to neither hear nor list any defended hearings is to remain in force.

2. All defended hearings where the defendant is NOT in custody and which have been allocated a hearing date that falls between 4 May and 31 July 2020 are to be vacated. Such matters are to be listed for mention on a date in September 2020.

3. All defended hearings during the period 23 March to 1 May 2020 which were vacated and adjourned for mention in accordance *with Chief Magistrate's Memorandum (No.4) – COVID-19 Pandemic (Further) Arrangements* (dated 18 March 2020) should now be adjourned for mention on a date in August 2020.

4. The purpose of the differing mention periods is to meet the challenge, where possible, of avoiding a loss of priority for matters which have generally been before the Court for a longer period.

5. The above arrangements do not include matters listed for the determination of section 32 applications, annulment applications or part-heard matters for submissions and decision only.

6. For arrangements in relation to defended hearings where the defendant is in custody see [12].

7. **Listing of non-bail CANs**: Police have advised they will list non-bail matters such as Field Court Attendance Notices or Future Court Attendance Notices 3 months into the future. It is not anticipated that the court will deal with these matters other than by way of adjournment unless they are relatively straight forward and amenable to disposition on the first return date.

8. **Listing of bail CANs**: From 31 March 2020, where practical, Police have advised will list bail CANs 8 weeks into the future.

9. **List matters:** List matters which are currently pending before the Court but which are not listed for hearing or sentence may be dealt with without a physical appearance as follows:

a. Where a defendant is legally represented:

The defendant's legal representative may enter an appearance, make a request (including where seeking an adjournment) and/or indicate a plea to the court in writing/ by email.

Where a plea of not guilty is entered: the court will make orders for the service of the brief of evidence if required and advise the legal representative by email.

Where a plea of guilty is entered: the defendant and their legal representative will not be required to attend for sentence unless the presiding magistrate considers it necessary to do so. In matters in which it appears a sentence of imprisonment is likely the matter is to be adjourned for no less than 8 weeks. See further arrangements for sentencing below from [26].

b. Where defendant is unrepresented:

First return date: an unrepresented defendant may contact the court by email with a request for an adjournment and the reason for the request. Where the defendant is seeking an adjournment to obtain legal advice and/or representation, the matter should be adjourned for a period of no less than 4 weeks.

Where seeking to enter a plea: an unrepresented defendant may enter a plea by email or by written notice of pleading.

NOTE: Wherever possible, defendants should provide an email address, residential address or mobile telephone number to facilitate communication of the court's response.

Where a plea of not guilty is entered: the court will make orders for the service of the brief of evidence if required and advise the defendant in writing/ by email.

Where a guilty plea is entered: the defendant will not be required to attend for sentence unless the presiding magistrate considers it necessary to do so. Should this be the position the court will adjourn the matter and advise the defendant in writing. See further arrangements for sentencing below from [26].

c. At return date for brief of evidence (represented and unrepresented):

The legal representative or the defendant may advise the court by email/in writing as to whether plea of not guilty is maintained. In the current environment it will not be appropriate to allocate hearing dates where a plea of not guilty is entered. In those matters the court will adjourn proceedings for a period of THREE MONTHS at which time the position in relation to the impact of the pandemic will be reassessed. It will not be necessary for a defendant or their legal representative to appear in person. Appearance will be accepted in writing or by email.

10**. No appearance:** Where a matter is listed and there is no appearance the matter will be adjourned for not less than 1 month. The court will notify the person affected that if they do not appear on the next occasion or advise the court they wish the proceedings to be deferred, then the court will deal with the matter in their absence (subject to the requirements of section 25(1) of the *Crimes (Sentencing Procedure) Act 1999)*.

CUSTODY MATTERS

11. **Appearance by defendants in custody**: All appearances by defendants in custody are to be by Audio Visual Link (AVL). Corrective Services have been advised accordingly and requested not to bring any detained person before any court in person.

NOTE: If a legal representative has instructions to proceed to deal with a matter in the absence of the defendant appearing by AVL (e.g. following issues with AVL technology), then the court may proceed to do so.

12. **Defended hearings (in custody):** The decision not to hear or list defended hearings where the defendant is in custody remains in force. All such hearings listed in the period 30 March to 1 May 2020 have been vacated to remain listed on the current date for mention.

13. Arrangements for any application for release to be made at this mention remain in force, recognizing that a lengthy period of continuing custody in the Local Court may result in a period of incarceration that would exceed the ultimate penalty that would have otherwise applied should the defendant have been found guilty at an earlier time. Matters in this category should then be adjourned for not less than 8 weeks for mention only, at which time, where the defendant is legally represented, appearance may be by email.

14. As was foreshadowed in earlier memorandums, the above arrangements have been reviewed and are extended as follows:

a. All defended hearings listed during the period 30 March to 1 May 2020 which were vacated and adjourned for a period of 8 weeks in accordance with the arrangements under *Chief Magistrate's Memorandum (No. 6) – Listing Adjustments during COVID-19 Pandemic (dated 24 March)* should now be adjourned for a further period of 8 weeks.

b. Defended hearings listed in the period 4 May to 31 July 2020 where the defendant is in custody are to be vacated to remain listed for mention on the previously allocated hearing date, at which time an application for release may be made. Matters in this category should then be adjourned for not less than 8 weeks for mention only, at which time, where the defendant is legally represented, appearance may be by email.

FRESH CUSTODIES

15. Centralised arrangements for dealing with persons in custody who are bail refused by police remain in place and persons refused bail will continue to appear from certain police station by AVL to particular courts.

16. **Sydney Greater Metropolitan Area:** First appearances for persons in custody police bail refused will continue via AVL to the following centralised bail courts: Parramatta, Penrith, Campbelltown, Liverpool, or Central Local Court.

a. Where bail is granted:

Matters in which bail is granted are to be adjourned to the court where the defendant would ordinarily appear. Where appropriate brief orders may be made.

Where defendant is legally represented: Magistrates should excuse the defendant from appearing on the next occasion if they are legally represented. The legal representative may appear on the next occasion through the use of email setting out what orders are sought from the court (see above at [9.a]).

Where defendant is unrepresented: An unrepresented defendant may seek an adjournment in writing/by email on the next occasion and may indicate a plea by email or written notice of pleading (see above at [9.b]).

b. Where bail is refused:

Where a centralised court refuses bail the proceedings are to be adjourned to the court before which the defendant would ordinarily appear. Where appropriate brief orders may be made.

Where defendant is legally represented: Magistrates should excuse the defendant from appearing on the next occasion if legally represented, unless an appearance is sought by their representative. The legal representative may appear on the next occasion through the use of email setting out what orders are sought from the court (see above at [9.a]).

Where defendant unrepresented: Subsequent appearances by defendant from custody are to be by AVL.

17. **Country/ regional areas:** First appearances for persons police bail refused in custody will continue via AVL to the following centralised bail courts: *Wagga Wagga, Dubbo, Tamworth, Lismore, Port Macquarie, Newcastle and Wollongong Local Court*.

a. Where bail is refused: Not every country court has access to AVL facilities. For this reason matters brought before centralised bail court for which there is a refusal of bail are to be adjourned to the AVL court on the circuit where the matter would otherwise have been brought (the 'circuit AVL court') for ongoing case management by AVL. Where appropriate, brief orders may be made by the centralised court.

With the exception of the above, all other arrangements under [16.b] will apply.

b. Where bail is granted: The same arrangements apply as under [16.a] above.

BAIL REVIEW APPLICATIONS

18. **Filing applications**: All applications for review of bail, including by or on behalf of a defendant in custody, are to be filed in writing/ by email **at the court at which the proceedings are currently pending**. A copy of the application is to be served by email or in writing on the relevant prosecutor for the court at the same time as it is lodged with the registrar.

19. **Review applications in Sydney Greater Metropolitan Area** Where an accused is in custody, all bail review applications in the Sydney Greater Metro Area which necessitate a break in the remand will be heard at the Downing Centre Local Court.

NOTE: As stated above at [18], where the substantive proceedings are pending before a court other than the Downing Centre the application for review is to be filed at that court. Once the application is filed the registrar of the court before which the substantive proceedings are pending must email the application and court papers to the Registrar of the Downing Centre.

20. Where the application for review relates to a defendant who is not in custody or does not involve a break in the remand, it is to be heard by AVL at the court before which the proceedings are pending.

21. **Review applications in country/ regional areas:** Where the defendant is not in custody or the application does not necessitate a break in the remand, the application is to be determined at the court at which the proceedings are pending.

22. Where the defendant is in custody and the application requires a break in the remand, the application must be determined the centralised bail court.

NOTE: As stated above at [18], where the substantive proceedings are pending before a court other than the centralised bail court the application for review is to be filed at that court. Once the application is filed the registrar of the court before which the substantive proceedings are pending must email the application and court papers to the registrar at the centralised bail court.

23. **Notice and default listing:** Unless the application is urgent or to be made by consent, not less than 3 working days' notice is to be given setting out the grounds on which the application is being made and the changes sought.

24. The default listing for all review applications will be 3 working days after the lodging of the application. The 3 day period does not include the date of written or electronic lodgement.

25. **Alterations by consent**: All practitioners are reminded that the registrar of a court may deal with consent alterations to bail conditions.

SENTENCING PROCEEDINGS

26. **Pleas and sentencing submissions in writing**: As indicated above at [9], the Court will accept a plea in writing or by email. Sentencing submissions from a legally represented defendant may also be made in writing.

27. In all proceedings involving a plea of guilty by email or in writing the submissions made on behalf of the defendant are not to be any longer than 3 A4 size pages. Where there is reference to an authority in the submissions the reference is sufficient. A copy of the relevant case will not be required however the attention of the court is to be drawn to the relevant parts of the judgment upon which submissions rely.

28. **Mode of appearance at sentence**: A physical appearance by the defendant or their legal representative will not be required unless the Court determines that it is necessary. This should only arise in matters where the court is considering the imposition of a conditional release order, community correction order or intensive correction order, consistent with the requirements of section 25(1) of the *Crimes (Sentencing Procedure) Act 1999*. Where that is the view of the Magistrate the proceedings will be adjourned for either a physical appearance by the defendant or an

appearance by the defendant via AVL, where the necessary AVL facilities are available or can reasonably be made available. Where it is intended to utilise AVL the defendant or their legal representative is to make the appropriate arrangement.

29. **Where the Court considers a sentence of full-time imprisonment is the appropriate outcome and the defendant is on bail/ not in custody:** The Court will adjourn the proceedings for a period of 8 weeks. If the current situation remains at that time, the proceedings should be adjourned for a further 8 weeks to a sentence list day in accordance with the sitting and listing arrangements for that court. In this situation the legal representative may appear by email. Nothing in this paragraph is intended to prevent all other sentencing options (including intensive correction orders) from being applied.

30. **Where the defendant is in custody bail refused**: Sentencing proceedings may take place by AVL from within a correctional centre. The legal representative may also appear by AVL, where the necessary AVL facilities are available or can reasonably be made available.

> NOTE: Nothing in the preceding paragraphs is intended to prevent a sentence of full-time imprisonment being imposed on a defendant who is already in custody bail refused.

SECTION 32 APPLICATIONS

31. The court acknowledges the difficulties in relation to engagement in the process preparatory to an application under section 32 application of the *Mental Health (Forensic Provisions) Act 1990* created by the current environment. In such matters appearance by the legal representative can by email flagging the likelihood of such an application. In this situation the court should be asked to adjourn the proceedings for at least 8 weeks to facilitate the preparation of the application. Where the defendant is legally represented and the application is ready to proceed, there is no reason not to do so.

> NOTE: Where the defendant is legally represented and the application is ready to proceed, there is no reason not to do so.

CONDUCT OF PROCEEDINGS WITHIN THE COURT

32. Occasions may arise where a person or persons present in the courtroom, including a legal practitioner show symptoms, such as coughing or respiratory difficulty suggestive of illness. Magistrates of their own motion or if the possible illness is brought to their attention should act in the interest of the potential health impact on all persons within the courtroom.

33. In the current climate mitigating the risk of infection is to take priority over the continuation of proceedings. It should be accepted by Magistrates that as far as is reasonable during the pandemic they have a social duty to consider the health and wellbeing of all persons appearing before the Local Court.

34. Should such a situation arise Magistrates should adjourn the court as soon as practicable so that arrangements can be commenced by the person who appears to be ill to attend to the management of their circumstances.

35. If the situation arises in a multi court complex and there is an alternate courtroom available, remaining proceedings should be moved from that court. The Registrar should be contacted to arrange for the former courtroom to be professionally cleaned.

36. Where such an alternative is not available it may be necessary to abandon continuation of proceedings before the Court on that day so that arrangements can be made to have the courtroom professionally cleaned.

URGENT APPLICATIONS

37. The Court will continue to accept proceedings that are urgent. However, where that is thought to be the position the court should be contacted by email in the first instance outlining the nature of the application and why it is urgent.

38. If the magistrate at the Court to which such application is intended to be made considers there is sufficient basis for urgency then advice to that effect together with the arrangements to be made to deal with the application will be provided by email.

EARLY APPROPRIATE GUILTY PLEA MATTERS

39. For arrangements in relation to the management of Early Appropriate Guilty Plea matters, *see Chief Magistrate's Memorandum (No. 4) – Further Clarification of Arrangements for EAGP Matters During the Pandemic Period* (originally dated 20 March 2020 and reissued 9 April 2020).

DOMESTIC AND PERSONAL VIOLENCE PROCEEDINGS

40. The Court will **NOT REQUIRE** the attendance of the person in need of protection in respect of any application brought by police for an apprehended domestic violence order unless the proceedings are fixed for hearing.

41. For arrangements in relation to the management of domestic and personal violence proceedings during the pandemic, see *Chief Magistrate's Memorandum COVID-19 Arrangements (No.7): Management of Domestic and Personal Violence Proceedings During Pandemic Period* (dated 31 March 2020).

TRAFFIC MATTERS

42. The State Debt Recovery Office has advised it will not list any further traffic matters in the Local Court until 1 October 2020.

SMALL CLAIMS DIVISION

43. The hearing of matters before an assessor in the Small Claims Division of the Local Court is to take place by teleconference. The physical appearance of a party will not be required.

FUTURE ARRANGEMENTS

44. The listing and logistical difficulties caused by the foregoing arrangements are of ongoing concern to the Local Court. At present, the Court has set aside the month of October 2020 to endeavour to catch up on backlogs. It is the present intention not to list any defendant hearings during this month.

The Chief Magistrate issued the following notice on 2 April 2020:

CHIEF MAGISTRATE'S MEMORANDUM NO. 8 – COVID-19 ARRANGEMENTS

REVIEWS OF BAIL

There has been some confusion regarding paragraph 13 of the memorandum dated 24 March 2020 in relation requests for review of bail. Although there are those of us who are familiar with the way in which the systems of the Local Court interact it is accepted there is insufficient clarity in the relevant paragraph.

It is the intention of the Local Court to centralise all applications for a review of bail to the Downing Centre where the accused is in custody and it is necessary to break the remand for the purpose of the application for review. For practical reasons this is because the ability for parties to appear by Audio Visual Link, whether for the prosecution or for the defendant exceeds that available at other Courts. The Downing Centre currently has 9 AVL courts.

In deciding to centralise applications for review of bail it is still necessary for the Downing Centre to be provided with the Court papers in relation to a defendant who is bailed to appear at a Court other than the Downing Centre. It is the review of bail which is being centralised not the substantive proceedings.

With the foregoing in mind paragraph 13 is reformulated as follows:

> 13. **Where an accused is in custody and an application is to be made for a review of bail necessitating a break in the remand such** application in respect of the Sydney Greater Metropolitan area are to be heard at the Downing Centre Local Court. Where the substantive proceedings are pending before a Court other than the Downing Centre the application for review is to be lodged at that Court. Wherever possible it is to be lodged in writing or by email. A copy of the application is to be served by email or in writing on the Police Prosecutor at that Court at the same time as it is lodged with the Registrar.
>
> Once the application is lodged the Registrar of the Court before which the substantive proceedings are pending is, by electronic means, to send a copy of the Court papers and the application to the Registrar of the Downing Centre. The default listing of the application for review of bail will be 3 working days after the lodging of the application. The 3 day period does not include the date of written or electronic lodgement. If the application for review does not involve a break in the remand they are to be heard by AVL at the court before which the proceedings are pending.

In light of the occasional amendment to the arrangements published on 24 March 2020 it is intended to incorporate amendments made thus far in a consolidated memorandum to be issued next week. This is to allow the Court to consider any practical issues arising out of the centralisation of first appearances at a number of courts in the metropolitan area and in country regions.

The Chief Magistrate issued the following notice on 31 March 2020:

MEMORANDUM – COVID-19 ARRANGEMENTS (NO. 7)

MANAGEMENT OF DOMESTIC AND PERSONAL VIOLENCE PROCEEDINGS DURING PANDEMIC PERIOD

1. This memorandum outlines arrangements applicable to the management of applications for Apprehended Violence Orders (AVOs) in the Local Court during the pandemic period, including:

- The management of existing AVO hearings and mentions
- Changes to the listing of provisional orders
- Management of urgent AVO applications
- Arrangements for private AVO applications

2. The arrangements outlined below apply from **Wednesday, 1 April 2020** and will remain in place until magistrates are advised otherwise by the Chief Magistrate's Office.

AVO hearings and upcoming mentions in period to 1 May 2020

3. Consistent with Memorandum No.6 dated 24 March 2020, AVO hearings listed to 1 May 2020 will not proceed (per [1]), nor will any new AVO hearings be listed (per [23]).

4. The following arrangements apply in relation to the adjournment of AVO hearings listed during the period to 1 May 2020:

a) **Where ADVO proceedings with related CAN**: proceedings will be adjourned to the same date as the CAN and continue to travel together as per usual practice.

b) **Where ADVO without CAN:** proceedings will be adjourned for mention for no less than 3 months.

5. Where the matter has been listed for mention (i.e. to facilitate the defendant obtaining legal advice or to check compliance with a timetable for evidence) parties are permitted to appear in writing or by email at such a mention, including where seeking orders by consent. Any consent orders may be made in the absence of the parties. Where the application for a final order remains contested, the matter should be adjourned in accordance with the timeframes above at [4].

Arrangements for listing provisional orders

6. The COVID-19 Legislation Amendment (Emergency Measures) Act 2020 amended the Crimes (Domestic and Personal Violence) Act 2007 (the Act) to facilitate changes to the listing of provisional orders during the pandemic period.

7. Pursuant to section 29(2), a provisional order must contain a direction for the defendant to attend court on a specified date. In normal circumstances, the specified date would be the next date on which the matter can be listed on a domestic violence list day at the appropriate court, and no later than 28 days after the order is made.

8. However, to facilitate alternative arrangements during the pandemic period section 29(4) has been introduced to provide for provisional orders to be listed up to 6 months from the date the order is made. This amendment commenced on assent on 25 March 2020.

9. Following the above amendments, NSW Police have advised the following in relation to the listing of fresh provisional orders:

a) **Where provisional order with no charge:** The order will be listed on a DV list day 3 months from the date the provisional order is made.

b) **Where provisional order with related charge(s):** The order will be listed on the same date the charge(s) is first listed, as per normal practices. In accordance with [5] of Memorandum No. 6 dated 24 March 2020, at the first return date the criminal charge(s) will be adjourned for a period of 8 weeks. As per usual practices, the provisional order must be adjourned to the same date and will continue to travel with the criminal charge.

c) **Where is it known that the application is contested:** Magistrates should set a timetable in accordance with Local Court Practice Note 2 of 2012: Domestic and Personal Violence Proceedings, with the following alterations. Wherever possible, Police may serve their evidence by email or post on the defendant. The defendant may lodge his or her evidence with the court by email by the date the matter is adjourned to for mention.

Duration of provisional orders

10. As per existing requirements under section 29, a provisional order remains in force until it is revoked, the court makes an interim order, or the application for the final order is withdrawn or dismissed.

11. The above provision ensures protections in place under provisional orders managed in accordance with the arrangements outlined above will continue during the pandemic period, even where a provisional order does not come before the court for an extended period.

Where fresh incident prior to determination of provisional order

12. Further to the listing arrangements for provisional orders above at [9], NSW Police advise where a fresh incident occurs prior to the determination of the provisional order and an increase in protection is required, Police will apply for a fresh provisional order for the same parties.

13. The fresh provisional order application will:

- Refer to the incident that gave rise to the original provisional order;
- Include details of the fresh incident; and
- Be listed on the same court date as the original provisional order.

Urgent AVO applications

14. As stated at [22] of Memorandum No.6 dated 24 March 2020, the Court will continue to accept applications which are considered by the court to be urgent, including:

- Urgent applications to vary or revoke a final Apprehended Violence Order (AVO) pursuant to Part 10 of the Act
- Urgent applications by a defendant to vary or revoke a provisional order pursuant to section 33A of the Act
- Private applications for AVOs (see further arrangements below at [17].

15. Where an application is thought to be urgent the court should be contacted by email in the first instance outlining the nature of the application and reasons why it is urgent.

16. Where a magistrate determines such an application is urgent, advice will be provided to the parties by email regarding arrangements for the court to deal with the application. The application may be dealt with by way of written submissions where the parties consent to doing so.

Private applications for AVOs

17. Persons seeking assistance with a private AVO application should be encouraged to seek remedies from Police. Where this is not possible, such persons should continue to be assisted by the registry.

18. Once the application has been completed to the satisfaction of the registrar and the registrar has determined whether to issue process:

a) **Where issue process**: Any application accepted for filing should be put before a magistrate in chambers immediately to determine whether it is necessary and appropriate to make an interim order in accordance with section 22. Regardless of whether an order is made, the matter should be listed for final determination on a date in no less than 3 months' time.

b) **Where refuse to issue process:** Any reasons for refusal should be prepared and any application seeking review of the refusal should be made as per usual procedures. Any application for review is to be put to the magistrate in chambers.

The Chief Magistrate issued the following notice on 27 March 2020:

DOWNING CENTRE CIVIL LISTING ARRANGEMENTS DURING THE COVID-19 PANDEMIC

It has become increasingly apparent that the capacity for Local Courts to continue to operate effectively across the breadth of their jurisdiction is being systematically compromised by progressive restrictions announced by governments. A review of the position in the civil jurisdiction at the Downing Centre leads me to conclude that **all listed hearings between 30 March and 30 September 2020 are abandoned.**

The Court understands that taking this action may disappoint parties to proceedings, however it believes there is little alternate choice in the current environment. Fortunately the delays in hearing matters in the Local Court are relatively short compared with other jurisdictions. In addition, steps have been taken in forward planning to allow for an intensive resumption of civil hearings should the current pandemic dissipate to the point where normal activities can be resumed.

As a consequence of the decision to abandon listed hearings as indicated above the following arrangements will be made:

1. All matters currently listed for hearing will be returned to the online court forthwith for case management
2. Any future listings in Court 7B of the John Maddison Tower (whether for mention/review/further direction) in relation to these hearings is hereby vacated
3. Subject to a return to normal activity the month of October 2020 will be allocated to review and re allocation of hearing dates.
4. Should it not be possible to re allocate hearing dates the matters will remain in the online court.

In due course Parties will be contacted online or via telephone as to any new listing date.

5. Any matter currently listed for review or directions in Court 7B is hereby vacated. Those matters will be returned to the online court for case management

6. Parties should contact the Sydney Civil Registry as to future listing of part heard matters or matters reserved for decision only as to future listings of such matters.

7. Where **absolutely necessary** hearings of notices of motion will be by teleconference before a magistrate. Any evidentiary material to be relied on should be filed by electronic means not less than 48 hours prior to the hearing. Submissions via teleconference will be restricted to 10 minutes per party.

New Claims

8. Filing/Service of Statements of Claim and defences to proceed according to normal time-lines if possible. They will be entirely managed by the Sydney Civil Registry on-line.

9. Any applications for leave to amend pleadings/extensions of time will be dealt with on line and will be determined by a Magistrate if necessary, in chambers, with orders made available to parties on-line.

10. Once pleadings are closed, at on-line call-over, parties will be directed to exchange evidence in 8 weeks' time. They will be given a further on-line call- over date 4 weeks after that exchange date.

11. These on-line procedures will replace the review and directions lists in Court 7B for **new** matters.

CONTACT DETAILS

Sydney Civil Registry: sydneycivilregistry@justice.nsw.gov.au

Phone: 1300 679 272

PARTIES SHOULD CONFIRM THEIR OWN EMAIL AND PHONE DETAILS ARE WITH THE SYDNEY REGISTRY AND PROVIDE/UPDATE AS NECESSARY.

The Court encourages all parties to proceedings to engage in constructive discussion with a view to reaching an out of court settlement. Parties will be excused from attending any future in person or on-line listings where Terms of Settlement finalising the proceedings are filed prior to the relevant listing date.

The Chief Magistrate released the following memorandum on 26 March 2020:

ADDENDUM TO OPERATIONAL ARRANGEMENTS DURING COVID-19 PANDEMIC (NO. 6)

Following discussions with the Bar Association regarding the recent memorandum of 24 March 2020 the following information is provided to ensure greater clarity.

Paragraph 5 states that a physical appearance will not be required when the defendant or party is legally represented. It is implicit in that statement that there will be no need for the defendant or party to be physically present.

Where an unrepresented defendant or party to proceedings has the ability to communicate with the court by email or in writing then the arrangements that apply to legal representatives and their clients apply equally to unrepresented persons.

Paragraph 7 is amended to read:

"Regrettably it will not be feasible to hear defended hearings where the defendant is in custody. **Subject to the requirement for notice of 3 days the Local Court will entertain an application for release of a defendant who is bail refused recognizing that a lengthy period of continuing incarceration may exceed the ultimate penalty that would have otherwise applied should the defendant have been found guilty at an earlier time**. Irrespective of whether the release application is successful the proceedings should be adjourned for not less than 8 weeks for mention only. Where the defendant is legally represented appearance on the release application may be by email.

Paragraph 18 is amended only **in the first sentence** to read "Where the defendant is on bail whether legally represented or unrepresented and the Court considers a sentence of imprisonment by way of full time custody or an Intensive Correction Order is the appropriate outcome the court will adjourn the proceedings for a period of 8 weeks". The remainder of Paragraph 18 remains unaffected save to point out that where a defendant on bail appears through his legal representative then they are taken to have been excused from attendance.

Conduct of Proceedings within the Court

Occasions may arise where a person or persons present in the courtroom, including a legal practitioner show symptoms, such as coughing or respiratory difficulty suggestive of illness. Magistrates of their own motion or if the possible illness is brought to their attention should act in the interest of the potential health impact on all persons within the courtroom.

In the current climate mitigating the risk of infection is to take priority over the continuation of proceedings. It should be accepted by Magistrates that as far as is reasonable during the pandemic they have a social duty to consider the health and wellbeing of all persons appearing before the Local Court.

Should such a situation arise Magistrates should adjourn the court as soon as practicable so that arrangements can be commenced by the person who appears to be ill to attend to the management of their circumstances.

If the situation arises in a multi court complex and there is an alternate courtroom available remaining proceedings should be moved from that court. The Registrar should be contacted to arrange for the former courtroom to be professionally cleaned.

Where such an alternative is not available it may be necessary to abandon continuation of proceedings before the Court on that day so that arrangements can be made to have the courtroom professionally cleaned.

The memo is available here: https://inbrief.nswbar.asn.au/posts/08b347d11316f1372f3414b4c407d738/attachment/MEMORANDUM%206%20addenda.pdf

The Chief Magistrate released the following memorandum on 24 March 2020:

LISTING ADJUSTMENTS DURING COVID-19 PANDEMIC (No. 5)

In the changing environment brought about by evolving decisions within the Federal and State Government areas of responsibility the Local Court must necessarily adapt its arrangements to support the policy decisions taken in pursuit of limiting the impact of the pandemic. The following are the arrangements determined to address the current situation. They will take effect from Monday 30 March 2020. Previous arrangements are superseded. The following arrangements only apply to proceedings before the Local Court (which includes the coronial jurisdiction). It is expected the President of the Children's Court will issue a separate statement relating to the operations of that Court.

Criminal Jurisdiction

1. The decision to neither hear nor list any defended hearings until a review can be undertaken at the end of April 2020 is to remain in force. It is likely that these arrangements will be extended.

2. Police have been asked to list non bail matters such as Field Court Attendance notices or Future Court attendance notices 3 months into the future. It is not anticipated that the court will deal with these matters other than by way of adjournment unless they are relatively straight forward and amenable to disposition on the first return date.

3. Where a matter is listed and there is no appearance the matter will be adjourned for not less than 1 month. The Court will notify the person affected that if they do not appear on the next occasion or advise the court they wish the proceedings to be deferred, then the court will deal with the matter in their absence.

4. Where a matter before the Court appears to be a matter in which a custodial outcome is likely it will not proceed to sentence. Magistrates have been requested to defer the sentencing proceedings for not less than 8 weeks when the situation can be reviewed in light of current events.

5. Where a defendant is legally represented the lawyer may appear by way of email. A physical appearance will not be required. This includes a matter in which it appears a sentence of imprisonment is likely. In such matters the legal representative is requested to seek an adjournment for not less than 8 weeks. Such a request will be acceptable if provided to the Court in electronic form.

Custody matters

6. All appearances by persons in custody are to be by Audio Visual Link (AVL). Corrective Services have been advised accordingly and requested not to bring any detained person before any court in person.

7. Regrettably, it will not be feasible to hear defended hearings where the defendant is in custody. These matters will require re-listing. At such time the Court will entertain an application for release recognizing that a lengthy period of continuing custody in the Local Court may result in a period of incarceration that would exceed the ultimate penalty that would have otherwise applied should the defendant have been found guilty at an earlier time. Matters in this category should be adjourned for not less than 8 weeks for mention only. Where the defendant is legally represented appearance may be by email.

8. From Monday 30 March 2020 the number of Courts dealing with persons in custody who are bail refused by police is to be centralised to certain city courts and regional courts. Arrangements with Police will result in persons refused bail appearing from certain police station by AVL to particular courts. In the Sydney Greater Metropolitan Area defendants will appear by AVL to Parramatta, Penrith, Campbelltown, Liverpool, or Central Court depending on the police station facilitating the appearance.

9. Matters in which bail is granted are to be adjourned to the Local Court where they would otherwise have been brought. Where appropriate brief orders may be made. Magistrates should excuse the defendant from appearing on the next occasion if they are legally represented. The legal representative may appear on the next occasion through the use of email setting out what orders are sought from the court.

10. Where a centralised court refuses bail the proceedings are to be adjourned to the court before which the matter would ordinarily appear. Subsequent appearances are to be by AVL. Where appropriate brief orders may be made. Legal practitioners may appear in the same manner set out in paragraph 8.

11. First appearances from a police station or correctional centre in the country are to be before the Local Courts at Wagga Wagga, Dubbo, Tamworth, Lismore, Port Macquarie, Newcastle and Wollongong irrespective of the court before which the proceedings would otherwise be brought. Ongoing supervision of matters involving the detention of a person remaining in custody after first appearance are to be case managed within the COVID-19 pandemic environment at the hub court.

12. Not every country court has access to AVL facilities. For this reason matters brought before a hub court and which there is a refusal of bail are to remain at the hub court and be case managed by AVL. Any application for a review of bail, including by or on behalf of persons in custody are to be lodged at the Hub Court in writing or by email. Unless the application is urgent, not less than 3 days' notice is to be given setting out the grounds on which the application is being made and the changes sought. No application which does not comply with the minimum 3 day period of notice period will be dealt with unless the change is by consent. All practitioners are reminded that the Registrar of a Court may deal with consent alterations to bail conditions.

13. All applications for a review of bail in respect of the Sydney Greater Metropolitan area are to be lodged with the Registrar at the Downing Centre irrespective of the Court at which they previously appeared. Wherever possible the application for review of bail is to be lodged in writing or by email. The prosecuting authority is to be given not less than 3 days' notice of the application, the grounds upon which it is being made and the changes contemplated. No application which does not comply with the minimum 3 day notice period will be dealt with unless the change is by consent.

Early Appropriate Guilty Plea matters

14. Contrary to the current Practice Note proceedings commenced as committal proceedings are to be adjourned to a hub court at which the DPP and Legal Aid appear irrespective of whether the accused is bail refused or released to bail.

15. Where an accused is legally represented their physical attendance, if on bail, is not required until the matter is before the Court for committal for Trial or Sentence. Where a party is unable to meet the purpose for which the matter is adjourned, whether for plea or committal for trial they are to notify the Court and the legal representative of the other side by email not less than 72hours prior to the date fixed for committal setting out the reasons why the matter is to be adjourned. The court will advise both parties by email of the new date.

16. If the matter is to be finalised in the Local Court and the defendant is legally represented then the defendant need not be physically present provided full instructions have been given to their legal representative. This advice may be communicated to the court and the DPP by email. Where that takes place the physical appearance by the legal practitioner will not be required. The court will consider finalisation of the matter in the context of the arrangements for sentencing proceedings set out immediately hereunder.

Sentencing proceedings in the Local Court

17. The Local Court will accept a plea and sentencing submissions from a legally represented defendant that are in writing or by email. The physical appearance by the defendant or their legal representative will not be required unless the Court determines that it is necessary. This should only arise in matters where the court considers a conditional release order or community corrections order. Where that is the view of the Magistrate the

proceedings will be adjourned for either a physical appearance by the defendant or an appearance by the defendant through AVL. Where it is intended to utilise AVL the defendant or their legal representative is make the appropriate arrangement.

18. Where the Court considers a sentence of imprisonment is the appropriate outcome, whether by full time detention or by an Intensive Correction Order the Court will adjourn the proceedings for a period of 8 weeks. On that date a physical appearance by the defendant will not be necessary. Subject to the situation regarding the pandemic the matter will be listed for sentence at a later date. If the current situation remains at that time, the proceedings should be adjourned for a further 8 weeks. In this situation the legal representative may appear by email.

19. Where the defendant is in custody bail refused sentencing proceedings may take place by AVL from within a correctional centre. Where possible the legal representative may also appear by AVL

20. In all proceedings involving a plea of guilty by email or in writing the submissions made on behalf of the defendant are not to be any longer than 3 A4 size pages. Where there is reference to an authority in the submissions the reference is sufficient. A copy of the relevant case will not be required however the attention of the Court is to be drawn to the relevant parts of the judgment upon which submissions rely.

21. The court acknowledges the difficulties in relation to engagement in the process preparatory to a Section 32 application under the Mental Health (Forensic Provisions) legislation created by the shutdown. In such matters appearance by the legal representative can by email flagging the likelihood of such an application. In this situation the court should be asked to adjourn the proceedings for at least 8 weeks.

Urgent applications

22. The Court will continue to accept proceedings that are urgent. However, where that is thought to be the position the court should be contacted by email in the first instance outlining the nature of the application and why it is urgent. If the magistrate at the Court to which such application is intended to be made considers there is sufficient basis for urgency then advice to that effect together with the arrangements to be made to deal with the application will be provided by email.

Defended Hearings

23. In the current environment it will not be appropriate to allocate hearing dates where a plea of not guilty is entered. In those matters the court will adjourn proceedings for a period of THREE MONTHS at which time the position in relation to the impact of the pandemic will be reassessed. It will not be necessary for a defendant or their legal representative to appear in person. Appearance will be accepted in writing or by email.

The Chief Magistrate previously released the following memorandum on 20 March 2020 by way of update.

FURTHER CLARIFICATION OF LOCAL COURT ARRANGEMENTS FOR EAGP MATTERS DURING PANDEMIC PERIOD

Following my memorandum of 16 March 2020 setting out arrangements for the Local Court proceedings during the pandemic period, the following clarification applies in relation to EAGP committal matters.

First return date/ brief service mention:

If defendant legally represented, no physical appearance is required and matter may be dealt with electronically. The legal representative should communicate the fact of their representation in writing.

If defendant unrepresented (not in custody), no physical appearance is required and defendant may email the court a request for adjournment in writing.

If defendant unrepresented (in custody), the matter will proceed via AVL.

In all scenarios above, the magistrate will make necessary orders/ adjourn matter as per timetable in Local Court Practice Note Comm 2.

Brief confirmation:

If defendant legally represented, no physical appearance is required and matter may be dealt with electronically. The legal representative should communicate the fact of their representation in writing.

If defendant unrepresented (not in custody), no physical appearance is required and defendant may email the court a request for adjournment in writing.

If defendant unrepresented (in custody), the matter will proceed via AVL.

In all scenarios above, the magistrate will make necessary orders/ adjourn matter as per timetable in Local Court Practice Note Comm 2.

Charge certification/ case conference adjournment:

If defendant legally represented, no physical appearance is required and matter may be dealt with electronically. The legal representative should communicate the fact of their representation and make any applications in writing.

The defendant is not required to be present for the purposes of providing an explanation pursuant to section 59 of the *Criminal Procedure Act* and matters should not be adjourned to facilitate this.

See below for arrangements where entering a plea of guilty.

If defendant unrepresented (not in custody), no physical appearance is required and defendant may email the court a request for adjournment in writing.

The defendant is not required to be present for the purposes of providing an explanation pursuant to section 59 of the *Criminal Procedure Act* and matters should not be adjourned to facilitate this.

If defendant unrepresented (in custody), the matter will proceed via AVL.

In all scenarios above, magistrate will make necessary orders/ adjourn matter as per timetable in Local Court Practice Note Comm 2.

NOTE: Pursuant to section 71(3) of the *Criminal Procedure Act,* I provide my **approval for case conferences to be held by telephone** where necessary and at the discretion of the parties.

Where entering pleas/ at committal

If defendant legally represented (not in custody), physical appearance of legal representative and defendant is required when entering pleas/ at committal for all strictly indictable offences and all matters which are to be committed for sentence.

Otherwise, where no election is being made, no physical appearance is required by either legal representative or defendant. Legal representative may enter plea in writing.

If defendant legally represented (in custody), physical appearance of legal representative is required and defendant is to appear from custody via AVL when entering pleas/ at committal for all strictly indictable offences and all matters which are to be committed for sentence.

Otherwise, where no election is being made, no physical appearance is required by legal representative and defendant is not required to appear by AVL. Legal representative may enter plea in writing.

If defendant unrepresented (not in custody), physical appearance is required when entering pleas/ at committal for all strictly indictable offences and all matters which are to be committed for sentence.

Otherwise, where no election is being made, no physical appearance is required and defendant may enter plea in writing.

If defendant unrepresented (in custody), the matter will proceed via AVL.

The Chief Magistrate announced on 18 March that:

> Consistent with the objective of limiting the number of people presenting at court I have taken the decision to defer the hearing of all defended hearings that do not involve a defendant in custody and are scheduled to take place between Monday 23 March 2020 and Friday 1 May 2020. Hearings involving people in custody should continue as listed however wherever practical the appearance of the defendant should be facilitated by AVL.

Magistrates on country circuits should review the pending court lists at non AVL courts. Hearings scheduled for the period 23 March 2020 to 1st May 2020 should be relisted to a Court on their circuit which has access to AVL for the purpose of allocating a fresh hearing date. Corrective Services are to be notified when and if this occurs. Best practice would be to do so by the issue of a Section 77 Order requiring appearance by AVL. In these circumstances magistrates may need to turn their mind to the position in relation to bail.

The position will be reviewed by my office in the week commencing 27 April 2020 in light of further decisions of government and the status of the pandemic. It may be necessary to extend the deferral of the listing of defended hearings again.

In light of the publication of arrangements on Tuesday of this week and perhaps in response to this memorandum, which will be brought to the attention of stakeholders, there may be some defended matters that will become pleas of guilty. If that is the position they should be finalised on the day originally allocated for the hearing or at such later date the court considers appropriate.

The Directions by the Chief Magistrate in relation to Local Court procedures:

Suspension of Hearings

Hearings (Both Criminal and Civil) – Defended Not in custody: **Any listed from 23 March 2020 to 1 May 2020 to be vacated** and listed for mention in the week of the 4 May 2020. If a change of plea is indicated, may be listed earlier to be dealt with.

Hearings – Defendant In Custody – to remain listed and to be dealt with Via AVL.

Hearings ***do not include:*** Section 32 Matters, Annulment Applications or Part-heard matters for submission and decision only.

Method of Appearance

In Corrective Services Custody - No prisoner will be taken to a Court (This includes First appearance, hearings, sentence matters and mentions). This is to reduce the risk of the virus being introduced to a vulnerable community within a correctional facility.

In Police Custody – Wherever possible first appearances should be dealt with via AVL from Police Stations regardless of the legislative requirements.

Matters not listed for hearing:

If **Legally represented** allow to enter appearance and request adjournment or indicate plea in writing (Ie letter, email etc);

If **unrepresented** (not in Custody) on first occasion only (either when non-bail CAN or bail CAN) are allowed to email the court a request for adjournment or indicate plea via email or written notice of pleading.

If ***Plea of Guilty*** indicated will only need to attend court for sentence if magistrate believes serious enough to require attendance**. The only finalising orders in the absence of the offender are s10(1), s10A and fine.**

if plea of ***not guilty*** indicated, brief service orders to be made and adjourned and notified.

Civil Claims

Practitioners will be allowed to appear via telephone for small claims hearings, review lists, directions lists and motions list.

Domestic Violence Proceedings

Victims should only be required to attendance there is a need to have to give evidence.

THE CHILDREN'S COURT OF NSW

For further information, visit: http://www.childrenscourt.justice.nsw.gov.au/Pages/coronavirus.aspx

On 27 AUGUST THE PRESIDENT OF THE CHILDREN'S COURT ISSUED THE FOLLOWING UPDATE:

PUBLIC NOTICE OF RESPONSE TO COVID-19 PANDEMIC No. 7

2 August 2020

Amended 27 August 2020

The Children's Court recognises that there is an increased risk of spreading the COVID-19 virus within custodial settings. It is also noted that with only six Youth Detention Centres across NSW the transport of young people to and from a large number of Children's Courts across the state increases the risk of the virus entering a custodial setting.

In light of the increase in the number of locally acquired COVID-19 cases within NSW the Children's Court has again reviewed practices in response to the advice of health authorities and Youth Justice. As a result, the following changes to practice will apply until further notice.

1. Any young person who is in custody in a Youth Detention Centre is to appear before the Children's Court by audio visual link (AVL) unless;

a) the case is listed for hearing **and**

b) the hearing cannot proceed without the young person's attendance in person **and**

c) the hearing can be heard at one of the following locations;

i) Parramatta Children's Court

ii) Surry Hills Children's Court

iii) Campbelltown Children's Court

iv) Woy Woy Children's Court or

v) Broadmeadow Children Court

2. Hearings at other locations where the young person is in custody may be adjourned to one of the five courts specified in paragraph 1(c) to enable the hearing to proceed if it is appropriate to do so having regard to the interests of any other person involved in the hearing.

3. Where a case is listed for hearing and the young person is in custody the case is to be re-listed for a further readiness hearing as soon as possible unless a readiness hearing date is already listed in the future.

4. If, at the readiness hearing it is determined that the hearing cannot proceed with the young person appearing by AVL or by listing the hearing at a court specified in 1(c), the hearing is to be vacated and adjourned for further hearing in approximately three months. A further readiness hearing is to be listed approximately two to four weeks prior to the hearing.

5. All other arrangements specified in earlier Public Notices issued in response to the COVID-19 pandemic will continue to operate.

6. Please note that these arrangements are subject to change at short notice.

Judge Peter Johnstone President of the Children's Court of NSW

ON 3 AUGUST THE PRESIDENT OF THE CHILDREN'S COURT ISSUED THE FOLLOWING UPDATE:

PUBLIC NOTICE OF RESPONSE TO COVID-19 PANDEMIC No. 7

2 August 2020

The Children's Court recognises that there is an increased risk of spreading the COVID-19 virus within custodial settings. It is also noted that with only six Youth Detention Centres across NSW the transport of young people to and from a large number of Children's Courts across the state increases the risk of the virus entering a custodial setting.

In light of the increase in the number of locally acquired COVID-19 cases within NSW the Children's Court has again reviewed practices in response to the advice of health authorities and Youth Justice. As a result, the following changes to practice will apply on and from Monday 3 August 2020.

1. Any young person who is in custody in a Youth Detention Centre is to appear before the Children's Court by audio visual link (AVL).

2. Where a case is listed for hearing and the young person is in custody the case is to be re-listed for a further readiness hearing as soon as possible unless a readiness hearing date is already listed in the future.

3. If, at the readiness hearing it is determined that the hearing cannot proceed with the young person appearing by AVL, the hearing is to be vacated and adjourned for further hearing in approximately three months. A further readiness hearing is to be listed approximately two weeks prior to the hearing.

4. All other arrangements specified in earlier Public Notices issued in response to the COVID-19 pandemic will continue to operate.

5. Please note that these arrangements are subject to change at short notice.

ON 9 JULY THE CHILDREN'S COURT PROVIDED THE FOLLOWING UPDATE:

PUBLIC NOTICE OF RESPONSE TO COVID-19 PANDEMIC No. 6

9 July 2020

The Children's Court continues to monitor the advice of health authorities in response to the COVID-19 pandemic. While the pandemic is currently well managed in NSW it is clear that the risk of further outbreaks remains. Therefore, it continues to be in the general public interest to reduce the number of people who would ordinarily physically attend court on any given day as much as possible. The Children's Court must also ensure that court proceedings are conducted fairly and that those involved in court processes have a genuine opportunity to participate in proceedings that affect them. Transparency and delay are also key considerations in ensuring fairness of the process.

With these considerations in mind the Children's Court will transition to the following arrangements over the coming weeks with an expectation that all agencies will be in a position to comply with these arrangements by 3 August 2020.

Criminal jurisdiction

1. Defendants and their lawyers are to attend court in person for sentences and hearings unless a direction is obtained to appear by some other means.

2. Lawyers and police prosecutors are generally expected to appear in person for all other listings but appearance by video conference will be permitted in appropriate circumstances.

3. The presumption that defendants are excused from attending if legally represented will continue to apply to listings where case management directions are expected to be made and/or applications in relation to bail are to be made.

4. Non-custodial court attendance notices are, in the usual course, to be listed 3 weeks in advance in lieu of the current 6-week time frame. Domestic Violence related matters will continue to be listed within approximately 14 days.

5. Readiness hearings will continue to be conducted in accordance with the processes set out in Public Notice no. 4 to ensure that hearings can proceed in a manner that takes into consideration the current heath advice.

6. The Youth Koori Court will accept new referrals and one Community Panel Member will be rostered to sit from the week commencing 13 July 2020. Defendants and their lawyers are expected to attend in person and other participants are expected to attend by video conference or phone.

Care jurisdiction

7. Parties who have provided full instructions to a lawyer will continue to be excused from attending in person for directions hearings unless the Court otherwise directs.

8. The arrangements set out in Public Notice no. 3 will continue to apply and video conference appearances by lawyers will continue to be available for directions hearings and hearings on the papers except as provided in the following paragraph.

9. Lawyers for the parents are expected to attend in person on the first return date for an application for an Emergency Care and Protection order (ECPO) or an application for a care order where the child has been removed or assumed into care. Parents are excused from attending if legally represented.

10.Parties and their lawyers are expected to attend in person for hearings except where hearings are conducted by submissions only or where a judgment is being delivered.

11.A Children's Magistrate will continue to sit at Parramatta Children's Court in relation to matters on the Riverina Children's Court circuit with participants appearing by video conference.

12.A Children's Magistrate will resume travel on the Western Children's Court circuit from the week commencing 27 July 2020.

13.A special hearing week at Dubbo Children's Court has been allocated for the week commencing 6 October 2020. All hearings are to be listed on Tuesday 6 October 2020 with hearings being conducted on the basis of a rolling list.

14.Hearings at other locations on the Riverina and Western Children's Courts will be allocated as special fixtures.

15.Readiness hearings will continue to be conducted in accordance with the processes set out in Public Notice no. 4 to ensure that hearings can proceed in a manner that takes into consideration the current heath advice.

16.Dispute Resolution Conferences will continue to be conducted in a manner as determined by the relevant Children's Registrar having regard to the available facilities and any other considerations that the Children's Registrar considers relevant in the circumstances. The use of shuttle conferences, telephone and video conference will be considered.

Education jurisdiction

17.The Children's Court will receive new applications filed by the Department of Education.

18.Referrals for Compulsory Schooling Conferences to be conducted by Children's Registrars will be accepted by arrangement between the Department of Education and the Senior Children's Registrar.

19.Compulsory Schooling Conferences conducted by Children's Registrars will be conducted in person unless the Children's Registrar considers that suitable arrangements cannot be made having regard to the facilities available at a particular location.

General

20.Any person who is required to come to court should only bring a maximum of 2 support persons. Parents or carers of children and young people involved in court proceedings should come to court.

21.All other arrangements specified in earlier Public Notices issued in response to the COVID-19 pandemic will continue to operate.

22.Please note that these arrangements are subject to change at short notice.

Judge Peter Johnstone

President of the Children's Court of NSW

ON 15 JUNE THE CHILDREN'S COURT PROVIDED THE FOLLOWING UPDATE:

PUBLIC NOTICE OF RESPONSE TO COVID-19 PANDEMIC No. 5

15 June 2020

In view of the further announcements by government in relation to relaxation of restrictions, particularly in relation to the resumption of travel within New South Wales, it is appropriate to review the strategies that have been put in place for the Children's Court during the COVID-19 pandemic.

Changes to Children's Court circuit arrangements

1. Travel for judicial officers is no longer suspended.

2. Judicial officers will resume travel on the Northern Rivers Children's Court circuit and the mid-North Coast Children's Court circuit from June 2020.

3. Judicial officers will resume travel for the Illawarra, Hunter, Broadmeadow and the Central Coast Children's Court circuits from 6 July 2020.

4. Current arrangements for the Riverina and Western Children's Courts circuits will continue to apply. Further advice in relation to travel on those circuits will be provided at a later date.

Changes to listing arrangements for first appearance bail proceedings

5. First appearance bail proceedings will no longer be conducted in hub locations from Monday 22 June 2020.

6. The centralised listing arrangements for the COVID-19 pandemic period as published on the Children's Court website are revoked from 22 June 2020.

7. Any first appearance bail proceeding listed on and from 22 June is to be listed in accordance with the arrangements that were in place prior to the release of Public Notice in Response to COVID-19 pandemic no. 2.

Changes to listing arrangements for urgent care applications

8. Applications for emergency care and protection orders and care applications where a child has been removed or care assumed will no longer be conducted in hub locations from 6 July 2020.

9. The centralised listing arrangements for the COVID-19 pandemic period as published on the Children's Court website are revoked from Monday 6 July 2020.

10.Any application that is listed on or after 6 July 2020 is to be listed in accordance with the listing arrangements in place prior to the release of Public Notice in response to COVID-19 pandemic no. 2.

General

11.All other arrangements specified in earlier Public Notices issued in response to the COVID-19 pandemic will continue to operate.

Judge Peter Johnstone

President of the Children's Court of NSW

ON 5 MAY THE CHILDREN'S COURT PROVIDED THE FOLLOWING UPDATE:

On 21 April 2020, the President of the Children's Court issued Public Notice no. 4 outlining a plan to de-centralise the listing arrangements for urgent applications. The new listing arrangements for urgent care applications and first appearance bail proceedings have been published on the Children's Court website and commenced on 4 May 2020. These are available here:

http://www.childrenscourt.justice.nsw.gov.au/Documents/Listing%20arrangement%20for%20urgent%20care%20appliations.pdf

http://www.childrenscourt.justice.nsw.gov.au/Documents/Listing%20arrangement%20for%20weekday%20bail%20applications%20(2).pdf

The Court has also commenced conducting Readiness Hearings to assess whether cases can be heard safely during the COVID-19 pandemic having regard to the criteria set out in Public Notice no. 4. To assist the Court to make the assessment, legal practitioners and prosecutors are expected to jointly prepare a Readiness Hearing checklist in preparation for the Readiness Hearing. Copies of the checklist in for both the Crime jurisdiction and Care jurisdiction are now available on the Court's website here:

http://www.childrenscourt.justice.nsw.gov.au/Documents/Crime%20Readiness%20Hearing%20Checklist.pdf?_sm_byp=iVVpr5ND7S4WqSD7

http://www.childrenscourt.justice.nsw.gov.au/Documents/Care%20Readiness%20Hearing%20Checklist%20(final).pdf

THE CHILDREN'S COURT ISSUED THE FOLLOWING UPDATE ON 21 APRIL REGARDING THE COVID-19 PANDEMIC:

The President of the Children's Court has now issued Public Notice 4 and a practitioners guide to Courtroom Meeting Space (CMS). It is anticipated that these operational changes will provide a more sustainable approach over the coming months that will, in time, support a transition to normal operations.

The content of the Public Notice is also extracted below:

PUBLIC NOTICE OF RESPONSE TO COVID-19 PANDEMIC No. 4

21 April 2020

Since mid-March 2020 the Children's Court has made significant operational changes to reduce the risk to court participants and court personnel of contracting or spreading the COVID-19 virus. These changes have significantly reduced the number of persons attending Children's Court premises on a daily basis. This has been achieved through a combination of changes to practice as detailed in Public Notices no. 1 to 3 and an increased use of audio and video conference technology.

Now that the crisis has stabilised it is appropriate to review the current arrangements with a view to developing a more nuanced response intended to improve processes that have been introduced during the past month and increase the capacity of the Court to finalise cases where it can be assessed that it is safe to do so. It is anticipated that this will provide a more sustainable approach over the coming months that will, in time, support a transition to normal operations.

Changes to listing arrangements for first appearance bail proceedings

1. First appearance bail proceedings are to be decentralised from Parramatta Children's Court to hub locations with a view to distributing the work more evenly across available resources and to enable local knowledge and local services to better support young people.

2. Details of the changes, including the date of commencement, will be specified in a separate document published on the Children's Court website.

Changes to listing arrangements for urgent care applications

3. Applications for emergency care and protection orders and care applications where a child has been removed or care assumed will be decentralised from Parramatta Children's Court to hub locations to provide greater continuity of legal representation for parents and children.

4. The changes will take effect in relation to applications listed on and from Monday 4 May 2020.

5. Further information regarding listing instructions will be provided in a separate document published on the Children's Court website.

Conduct of hearings

6. Hearings that are currently listed from Monday 4 May 2020 are to be listed for a Readiness Hearing to ascertain whether appropriate arrangements can be made to enable the hearing to proceed in a safe manner.

7. Hearings currently listed in the week commencing 4 May and 11 May 2020 are to be listed for a Readiness Hearing at least 7 days prior to the hearing.

8. Hearings listed on and from Monday 18 May 2020 should be listed for a Readiness Hearing at least 14 days and not more than 28 days prior to the hearing.

9. Hearings that have been vacated between Tuesday 24 March and Friday 1 May 2020 in accordance with Public Notice no. 2 are to be relisted for a Readiness Hearing to ascertain whether appropriate arrangements can be made to enable the hearing to be re-scheduled and conducted in a safe manner.

10.Where a case currently listed for hearing is vacated following a Readiness Hearing the hearing time can be utilised for a case previously vacated but now assessed as suitable to proceed.

11.Parties are expected to have conferred prior to the Readiness Hearing with a view to identifying potential arrangements that will enable the hearing to proceed safely.

12.In determining whether the hearing can proceed the Court will have regard to the following;

- The impact of further delaying a hearing on any persons involved in the case
- The number of parties involved in a case and whether it is appropriate or possible for one or more parties to appear in the hearing by video conference from another room within the court premises or from an appropriate external location
- Whether witnesses are required for cross examination
- The number of witnesses required for cross examination

- The type of witnesses required for cross examination and whether the evidence can appropriately be given by video conference from another room within the court premises or from an appropriate external location
- Whether interpreters are required for any person involved in the hearing and whether suitable arrangements can be made to enable an interpreter to properly assist the conduct of the hearing
- Whether there is a dispute as to the admissibility of any evidence which, once determined, may shorten the hearing
- The type and quantity of evidence that is likely to be tendered during the hearing and whether suitable arrangements can be made for the tender of documents or other material
- The length of the hearing
- In the case of a criminal hearing, whether the defendant is in custody and whether suitable arrangements can be made for the defendant to attend either in person or by video conference from a detention centre and if so, whether suitable adjustments can be made during the hearing to allow the young person to give instructions to their lawyer
- The size and configuration of the court room and logistics of adopting appropriate social distancing practices during the hearing
- The availability of video conference technology in other rooms within the court building
- The availability of registry staff to support the proposed altered arrangements
- Whether any party is likely to be prejudiced by conducting the hearing in the manner proposed.

13.Where it is assessed that the hearing cannot proceed at this time the hearing should be scheduled on a date during or after September 2020 or an earlier date, but only if earlier dates are available and there is further advice from government that indicates that it would be safe to conduct the hearing at that time.

14.In such cases a further Readiness Hearing should be scheduled at least 14 days and not more than 28 days prior to the scheduled hearing to confirm whether the hearing can proceed on the scheduled date.

General

15.All other arrangements specified in earlier Public Notices issued in response to the COVID-19 pandemic will continue to operate.

Judge Peter Johnstone

President of the Children's Court of NSW

COURTROOM MEETING SPACE FACTSHEET

The Court has released a *Courtroom Meeting Space Factsheet* which outlines further information for using the Courtroom meeting space technology in Children's Court proceedings. The Factsheet is available here:

http://www.childrenscourt.justice.nsw.gov.au/Documents/Courtroom%20Meeting%20Space%20Factsheet%20-%20Children%27s%20Court.pdf

THE COURT RELEASED THE FOLLOWING UPDATE ON 3 APRIL 2020:

The President of the Children's Court has now issued Public Notice no. 3 specifically dealing the management of care proceedings during the COVID-19 pandemic with a view to limiting the need for legal practitioners to appear in care proceedings as much as possible. More information relating to the operation of the Children's Court during the pandemic can now be found in one location on our website.

PUBLIC NOTICE OF RESPONSE TO COVID-19 PANDEMIC No. 3

2 APRIL 2020

Information for parties in the care and protection jurisdiction

The Children's Court is continuing to streamline processes to enable the Court to operate as effectively as possible during the COVID-19 pandemic.

To that end the following instructions have been developed for parties involved in cases in the care and protection jurisdiction of the Court.

Please note that these instructions supplement the general directions provided in Public Notices no. 1 and 2.

To avoid any doubt, the conduct of care hearings are suspended until at least 1 May 2020 unless a hearing can be conducted on the papers or a part-heard case can be concluded in circumstances where appropriate arrangements can be put in place to ensure the safety of all participants. Urgent care applications where a child has been removed or assumed into care will continue to be heard at Parramatta Children's Court until further notice. Directions lists will continue.

Pre-court communications

1. At least 2 days before the list day, the lawyer for the applicant is to contact all other parties, propose directions or orders to be made and attempt by further communication to arrive at a consent position. In most but not all cases, this will be the responsibility of the lawyer for the Department of Communities and Justice (the Department). The lawyer for the applicant is to email the relevant Children's Court, by 2pm on the day before the date of court, advising the following:

- Name of matter
- Names of legal representatives for all parties
- Has communication occurred with all parties? If not, why not?
- What directions or orders are sought?
- Is there a consent position? If so a proposed Minute of order should be included in the email.
- If there is not a consent position of all parties, which parties do not consent?
- Phone number for any party who wishes to be heard on the disputed directions or orders.

Emails should not deal with multiple cases. Emails will be placed on the court file and will form part of the court record for a particular case. The above information should be included in one email per case.

In providing the summary information to the Court, the chain of email correspondence between the parties should not be attached.

2. Where any party is unrepresented, the Department should make every attempt to include the party in the communications with a view to obtaining a consent position.

3. If a party disputes the directions or orders proposed by the applicant, it may do so either in writing (by email) or orally on the date of court. If the dispute is in writing, the Court will determine the dispute on all written submissions, provided all parties have had the opportunity to make submissions. If the dispute is to be argued orally, this should be done by video conference where ever this is available.

Conduct of Directions lists

4. The Court will commence an electronic directions list at 9:30am unless otherwise advised by the relevant Children's Court. The proceedings will be recorded. At most Children's Courts parties will be advised of a marking prior to the date of court indicating the approximate earliest time the case will be dealt on a particular day (for example, not before 12 noon).

5. Where a consent position has been reached all parties are excused from appearing on the date of court, whether in person or by video conference.

6. In relation to all matters where there is a consent position, the Court will make consent directions or orders as sought, **provided that the Court agrees the proposed consent directions or orders are in the best interests of the child or young person.**

7. If the Court declines to make the consent directions or orders, the Court will direct the Registrar to notify the parties of the directions made by the Court. It should otherwise be presumed that the Court has made the directions or orders as sought.

8. Copies of orders will be prepared by the court registry in due course.

9. Where a consent position in relation to further directions has not been reached prior to the date of court the lawyers for the parties should appear by video conference at the time nominated by the Court. The Court will dial any unrepresented party into the Court by phone, or video conference if this is available.

10. Where time permits the Court will hear oral arguments on the date of court. However, where the Court assesses that the arguments may be extensive it will allocate a further date to hear submissions. In most cases the Court will make directions for written submissions to be filed.

Filing of affidavits and other documents

11. Subject to any amendment that may be made to the Oaths Act 1900 by way of regulation in response to the COVID-19 pandemic the Children's Court will accept unsworn affidavits for filing.

12. The Court will also accept an unsigned document for filing if it is not possible to obtain an electronic signature.

13. Notwithstanding this, parties should be aware that if the party subsequently seeks to rely on the document as evidence at a late time the relevant document will need to signed and/or attested at, or prior to the hearing.

14. Any document filed by email is to be received by the registry no later than 2pm on the day before the date of court.

15. Documents received will be placed on the court file. Notwithstanding this, annexures to affidavits will not be printed by the court registry. Voluminous documents will need to be posted to the court registry.

General

16. It is expected that lawyers will start to adhere to this notice from Monday 6 April 2020.

THE PRESIDENT OF THE CHILDREN'S COURT RELEASED THE FOLLOWING UPDATE ON 24 MARCH 2020:

PUBLIC NOTICE OF RESPONSE TO COVID-19 PANDEMIC No. 2

24 March 2020

In view of the further government announcements in relation to the continued spread of COVID-19 within New South Wales together with advice from the Chief Executive Officer, of Legal Aid NSW in relation to the reduced capacity of Legal Aid to continue to provide legal representation in the Children's Court during the pandemic I have made the difficult decision to make further changes to the sitting arrangements in the Children's Court.

Information relevant to all cases in the Children's Court

1. Subject to information contained below in relation to criminal proceedings all hearings in the care or criminal jurisdictions of the Children's Court which have been listed between Tuesday 24 March 2020 and Friday 1 May 2020 will be vacated.
2. Vacated cases will be listed for call-over on a date after 1 May 2020 to set a new hearing date. Part-heard matters may continue at the discretion of the relevant judicial officer in consultation with the parties. The judicial officer will need to consider whether arrangements can be put in place to ensure the safety of all persons involved in the hearing.
3. This direction does not prevent a party from seeking to re-list the matter for bail variation, release application, variation of court orders, an application for hearing on the papers or further directions that will assist the progress of the matter. Any such application should be made by email to the relevant court registry.

Crime jurisdiction

4. Notwithstanding the decision to vacate hearings between 24 March and 1 May 2020 a judicial officer may hear a case where the defendant is in custody as long as the young person is legally represented and appropriate arrangements can be put in place to ensure the safety of all persons involved in the hearing.
5. Crime lists will continue to operate. The young person's legal practitioner will be excused if they have submitted proposed orders by email prior to the date of court. The young person's legal practitioner must be available by phone or AVL on the date of court.
6. If a young person does not have legal representation the case will be adjourned for approximately 4 weeks.
7. At some locations the magistrate may appear by audio visual link (AVL) from another court (please see below)
8. From Wednesday 25 March 2020 and until Friday 3 April 2020 young persons appearing in custody on the first appearance of the relevant matter are to be listed at Parramatta Children's Court. Court vacation standard operating procedures will apply.
9. Police in regional areas may make an application under s 5BA(4) of the *Evidence (Audio and Audio Visual Links) Act 1998* for the young person to appear by AVL due to safety and welfare considerations but only where it is not practicable for the young person to be detained in a detention centre during the period between being charged with the relevant offence and the first appearance before the court (s 9 (3) of the *Children (Detention Centres) Act 1987*).
10. If the young person is granted bail the case is to be adjourned to the Children's Court where they would otherwise have been brought and young person is to be excused if legally represented on the next occasion. Young people are to be provided with information about contacting Legal Aid and in appropriate cases, the Aboriginal Legal Service upon release.
11. If the young person is refused bail the next court appearance is to be by AVL. The case is to be adjourned to the Children's Court where they would otherwise have been brought provided that court has AVL facilities. If not, the case should be adjourned Parramatta Children's Court

12. Where appropriate, brief orders or other case management directions should be made on the first appearance.
13. Discussions with key legal stakeholders will continue during this period and this arrangement may be continued.

Care jurisdiction

14. Lists scheduled in the care jurisdiction of the Children's Court will continue to operate. Wherever possible parties and legal practitioners should not attend the court premises. Further advice to legal practitioners will be provided to support the attendance of legal practitioners by means other than personal attendance.
15. Where an application for an emergency care and protection order is made under s 46 of the *Children and Young Persons (Care and Protection) Act 1998* (the Care Act) or a care application is made following the removal or assumption into care of a child or young person under s45 of the Care Act the application is to be listed in the first instance at Parramatta Children's Court from Thursday 26 March 2020.

Children's Court circuits

16. All travel of judicial officers as part of Children's Court circuits is suspended from Wednesday 25 March 2020. Children's Magistrates will continue to sit at Parramatta, Surry Hills, Campbelltown, Port Kembla, Woy Woy, Broadmeadow and Lismore. Children's Magistrates will continue to deal with cases by AVL from other courts on their respective circuits.
17. Parties should contact the court registry where they are due to appear for further information.

General

18. The Children's Court will continue to work closely with key stakeholders to develop arrangements that will allow the Court to continue to operate during the pandemic without the need for physical attendance at Court.
19. Please note that arrangements are subject to change at short notice.

The President's previous notice of changes is extracted below and has been published here:
http://www.childrenscourt.justice.nsw.gov.au/Documents/Coronavirus%20Public%20Notice.pdf

PUBLIC NOTICE OF RESPONSE TO COVID-19 PANDEMIC 19 March 2020

Like all court jurisdictions across Australia the Children's Court of New South Wales is facing unprecedented challenges in the face of the COVID-19 pandemic. Notwithstanding this, the justice system is critical to maintaining social cohesion in times of crisis and the Court will continue to operate to the extent that it is feasible to do so, including the conduct of hearings.

However, the safety and wellbeing of everyone involved in court proceedings is of the utmost importance and for this reason the Court is adjusting its processes.

Court participants should continue to monitor the website for the Department of Communities and Justice for updated information and instructions on what to do if you are required to attend the Children's Court. The advice on that website overrides the advice in this document.

General information relevant to all cases in the Children's Court

- If you are represented by a lawyer you do not need to attend court unless your lawyer tells you that you need to.
- If you want to attend court regardless, you may, but you should also talk to your lawyer about whether they can make arrangements to allow you to listen to the court proceeding by phone when your case is dealt with.
- If you are required to come to court you should only bring a maximum of 2 support persons with you. If you are a child or young person, your parents or carers should come to court.

Children's Court criminal jurisdiction

1. To ease current pressure on the court system police are directed to **list non-custodial matters approximately 6 weeks in advance** in lieu of the usual 3 weeks with the exception of domestic violence related offences and provisional orders.

2. Domestic violence related offences and provisional orders are to be **listed within 14 days** where the Children's Court sits daily and **not more than 28 days** in other instances to ensure that the terms of a provisional order remain appropriate in the current circumstances.

3. However, parties can ask to re-list matters before the first court date. Contact the local registry where your case is listed or contact the Court Services Centre by phone on **1300 679 272** to ask how to do this.

4. All defendants should contact either Legal Aid or the Aboriginal Legal Service as soon as you have been issued a court attendance notice by police to get legal advice.

   Legal Aid youth hotline - 1800 10 18 10

   Aboriginal Legal Service - **1800 765 767**

5. If you are the family member of a young person in custody you should contact **Youth Justice on 1300 135 330.**

6. Young people in custody will mostly appear before Court by Audio Visual Link (AVL) from a detention centre including the first court date and, if and when the Court sentences the young person.

7. Judicial Officers will be looking at bail conditions on the first date of court. Make sure you talk to your lawyer about whether these conditions are workable.

8. Some cases may be delayed.

9. Where a Youth Justice Conference is ordered by the Court the case should be adjourned for 3 months instead of 2 months.

10. Parties will be required to contact the Court in writing 7 days prior to the date of the hearing to advise if the hearing can still go ahead.

Children's Court care and protection jurisdiction

1. Directions lists and hearings will continue.

2. Parties are excused from attendance at directions lists if represented by a lawyer and lawyer has received the parties' instructions.

3. Parties should be available to speak to their lawyer by phone on the day of court.

4. Where all the parties are in agreement in relation to what directions or interim orders might be appropriate for the Court to consider only one legal representative needs to attend court.

5. Parties will be required to contact the Court in writing 7 days prior to the date of hearing to advise if the hearing can still go ahead.

6. Dispute Resolution Conferences will continue to be conducted but will be adjusted as determined by the relevant Children's Registrar having regard to available facilities. The use of shuttle conferences, AVL and telephone will be considered.

Children's Court education jurisdiction

1. Applications for compulsory schooling orders currently listed before the Children's Court will continue to be dealt with.

2. No further applications will be filed by the Department of Education until June 2020.

3. Education conferences conducted by Children's Registrars that are currently listed will be conducted, subject to the discretion of the Children's Registrar.

4. No further education conferences are to be referred to Children's Registrars.

The Court will continue to work with stakeholders to refine these arrangements, including developing arrangements for legal practitioners to attend court by alternative means.

Please note that arrangements are subject to change at short notice.

CORONERS COURT

For further information, visit: http://www.coroners.justice.nsw.gov.au/

ON 20 MAY THE STATE CORONER PUBLISHED THE FOLLOWING UPDATE:

STATE CORONER'S MEMORANDUM NO2.

Management of court listings at Lidcombe during the COVID-19 pandemic

The NSW State Coroner, Teresa O'Sullivan, has advised the following procedures will apply in relation to the conduct of coronial proceedings at the Lidcombe Forensic Medicine and Coroners Court Complex (FMCCC), for matters listed from 1 June 2020.

The aim of these directions is to ensure compliance with COVID-19 physical distancing protocols in order to reduce the risk of infection at the FMCCC and in the community.

The operation of the Forensic Medicine and Coroners Court Complex at Lidcombe is essential and business continuity regarding the admission, examination and release of deceased persons is paramount.

1. From 1 June 2020 physical attendance at courts at the FMCCC will be permitted.

2. Court proceedings may continue to be heard using technology to enable remote appearance by any witness, legal representative, party or family member, where it can be arranged.

3. Everyone entering the FMCCC foyer will be asked three screening questions regarding their COVID-19 risk and asked to have their temperature taken.

4. Entry will be denied to anyone refusing to answer the screening questions or have their temperature taken.

5. Entry will be denied to anyone with a temperature of 38 degrees or above or to anyone answering positively to one of the screening questions.

6. There will be strict limits on the number of people allowed in each court, depending on the size of the court.

7. There will be strict limits on the number of chairs at the Bar Tables and the distance between them.

8. The court officers and Sheriffs will be able to provide advice on seating arrangements and limits. There will also be signs on each court clearly stating the number of people permitted in each court.

9. In some cases it may be necessary to use two courts in order to comply with the limits.

10. The media will be able to use the multipurpose rooms on Level 1 if available. There will be limits on the number of people allowed in the multipurpose rooms and physical distancing must be complied with. Please contact the Department of Communities and Justice Media Unit for further information.

11. Members of the public wanting to attend an inquest should contact the Coroners Court Registry on (02) 8584-7777 or by email to make arrangements for remote access.

These procedures will continue to be reviewed and modified if needed. The State Coroner will review the procedures at the end of July 2020.

20 May 2020

THE CORONERS COURT RELEASED THE FOLLOWING NOTICE ON 24 MARCH 2020:

COVID-19 – CHANGES TO COURT OPERATIONS

The NSW Coroners Court recognises its responsibilities in reducing the risks associated with the spread of COVID-19.

It is essential the functions of the Forensic Medicine and Coroners Court Complex at Lidcombe are able to continue during the period of the pandemic. For this reason, precautions are in place to reduce the number of people attending the facility and to help ensure the safety of the broader community.

The NSW State Coroner Teresa O'Sullivan has implemented a number of changes to court proceedings to ensure the safe running of the entire facility and that all essential functions continue.

Only Coroners Court matters that can be conducted using technology to enable the appearance of parties, witnesses and family will proceed in the period up to 30 June 2020. Any inquests that need to be adjourned will be given a new inquest date. Families are being notified individually about the adjournment and new date.

All inquests that had been listed at country locations up until 30 June 2020 will be given new dates in due course.

We appreciate these changes may be distressing for families. Most of the families contacted have been very understanding and many are relieved they are not required to travel to attend court during the COVID-19 pandemic.

One of the key roles of the Coroners Court is determining how public safety can be improved and how future deaths can be prevented. With that responsibility, it is incumbent on the NSW Coroners Court to do what it can to ensure the safety, health and wellbeing of the whole community.

As the COVID-19 situation continues to evolve rapidly, these changes will be reviewed and modified as required. A detailed assessment of these changes will take place in early June.

NCAT

For further information, visit https://ncat.nsw.gov.au/ncat/coronavirus-covid-19.html

NCAT has issued the following update, dated 12 August:

Current hearing arrangements to continue at NCAT until December 2020

To minimise the need for parties to physically attend NCAT premises, the President introduced updated hearing and filing arrangements in response to the Coronavirus (COVID-19) pandemic.

NCAT has been conducting all stages of its hearings by phone, audio visual link or on the papers since 30 March 2020. These current arrangements will continue until **December 2020**.

https://app.getresponse.com/view.html?x=a62b&m=nlPmV&mc=Cm&s=NlMHHx&u=Iv02&z=EVnuM6G&

Any further changes to NCAT services will be announced on the NCAT Coronavirus (COVID-19) web page.

NCAT has issued the following update on 10 July 2020:

Coronavirus (COVID-19)

NCAT has made changes to reduce the risk of the spread of Coronavirus (COVID-19).

Temporary changes to NCAT operations

Currently, all NCAT hearings will be held online or by phone. Priority will be given to urgent cases. Please avoid attending an NCAT Registry.

You can lodge your application and documents:

- online for most Consumer and Commercial Division applications
- by post
- via Service NSW

If you are unable to access these services please follow the instructions for lodging by email.

Please read the President's Message to find out more about the temporary changes to NCAT's operations.

Find general information about measures in place and restrictions on accessing courts and tribunals during the COVID-19 (coronavirus) pandemic.

President's Message

10 July 2020

The Tribunal is monitoring the Commonwealth and State Governments' announcements and health advice relating to Coronavirus (COVID-19).

- Hearings
- Filing documents
- Adjournments due to illness
- Attending NCAT Registries
- Previous messages from the President

Hearings

In an endeavour to contain the effects of COVID-19 and keep the Tribunal operational as much as possible, the following temporary procedures are being implemented. The primary aim is to remove the need for parties to physically come to the Tribunal.

From 30 March 2020, the Tribunal (all Divisions and the Appeal Panel) has been conducting all stages of its hearings by phone, audio visual link or on the papers. This arrangement will continue until at least the end of August 2020.

Where a matter is decided "on the papers", this means the matter is decided without a hearing. This involves the Tribunal considering the documents that are lodged by all the parties and then making a decision about the case.

No face-to-face hearings will be conducted without prior approval of the President.

Whilst the Tribunal is currently listing most cases it is not possible for the Tribunal to continue hearing cases within its usual time standards. Priority will be given to urgent cases.

At this stage NCAT will be prioritising cases as follows:

- **Guardianship Division** – matters where the risk to the person who the hearing is about is assessed as high, urgent or serious based on the information available to the Tribunal.
- **Administrative and Equal Opportunity and Occupational Divisions** – any matters that can be heard on the telephone or on the papers.
- **Consumer and Commercial Division** –

- Tenancy matters
- Other urgent matters that arise in the following circumstances:
  - to address an imminent danger to a person's health or welfare;
  - to prevent unauthorised work being carried out;
  - to prevent property being damaged; or
  - where a lessee may be locked out of a retail shop or residential premises.

- **Appeal Panel** – any matters that can be heard on the telephone or the papers.

Filing documents

In order to further minimise the need to personally attend NCAT registries, the Tribunal will allow filing by email where a party is unable to post an application or other documentation. The requirements in relation to this are attached here.

Adjournments due to illness

If you are scheduled to attend by phone and you are too unwell to participate, for a reason related to the Coronavirus for:

- **Guardianship Division** matters, please contact the Registry by email or phone in the usual way;
- **Other Divisions and NCAT Appeal Panel** matters, you can use this email template to contact NCAT and apply for an adjournment. In considering the application for adjournment, the Tribunal will take into account the current exceptional circumstances and any inability to obtain a medical certificate.

Please note that these measures are current at the date of this notice.

Attending NCAT registries

Please try to avoid attending the NCAT registry in person. Do not attend if:

- If you have had close contact with **someone diagnosed with or suspected or confirmed as having Coronavirus (COVID-19)** in the last 14 days **DO NOT ATTEND NCAT**
- If you are feeling unwell and experiencing any of the following symptoms - fever, cough, sore throat or shortness of breath **DO NOT ATTEND NCAT**

Registrars/Sheriff officers may deny entry or request any person to leave a building.

NSW Health advise that people should **stay at home if they are feeling unwell.**

For the latest updates from NSW Health visit their website.

The Hon Justice Lea Armstrong

President

10 July 2020

NCAT has issued the following update on 15 May 2020:

FURTHER TENANCY LAW CHANGES FOR COVID-19 IMPACTED TENANTS

The NSW Government has announced further changes for residential tenants facing financial hardship due to COVID-19.

From 14 May 2020, tenants who are unable to negotiate a rent reduction with their landlord can seek to terminate their lease through NCAT. If a termination order is made under the relevant law, compensation (break fee) may be payable to the landlord of not more than two weeks rent.

Download and complete the tenancy application form clearly identifying you are making an urgent application under section 228C of the *Residential Tenancies Act 2010*. You should lodge this by post or email to NCAT or in person at Service NSW. You will need to provide evidence to NCAT and the other party that you are a COVID-19 impacted tenant facing financial hardship. Urgent applications cannot be lodged online.

For further details on the changes see sections 228A-C of the *Residential Tenancies Act 2010.*

More information is also available on the NSW Fair Trading website or by calling 13 32 20.

NCAT has issued the following update on 30 March 2020:

Consumer and Commercial Division matters to be notified via email

Parties in NCAT's Consumer Commercial Division may have noticed that email has been set as the preferred address for communication from the Tribunal. This is so that the Division can communicate with parties in the quickest way possible in the event of changes to their matter.

How can I update my email address?

Parties can update edit or update an email address previously provided to NCAT using eServices.

To access eServices you must first log in using your NCAT file number and Customer eNumber. This information can be found at the top right corner of your notice of hearing or on other NCAT correspondence.

If you are unable to use eServices, please contact the NCAT Registry on 1300 006 228.

The following update has been issued by NCAT on 27 March 2020:

Coronavirus (COVID-19): Updated changes to NCAT operations

To minimise the need for parties to physically attend NCAT premises, the President has updated NCAT's hearing and filing arrangements in response to the evolving Coronavirus (COVID-19) pandemic. These changes are effective today, 27 March 2020.

Temporary arrangements to lodging documentation

If you are unable to lodge your application or documentation online, by post or at Service NSW, NCAT is temporarily allowing parties to lodge documents by email. A new Procedural Direction, Procedural Direction 6 - Filing of Documents, has been issued by the President in relation to this change.

For more information on what's required when lodging documents by email, refer to our guideline on Temporary arrangements to lodging documentation.

Any further changes to NCAT services will be announced on the Coronavirus (COVID-19) web page.

PRESIDENT'S MESSAGE: TEMPORARY CHANGES TO NCAT OPERATIONS - 27 MARCH 2020:

Hearings

In an endeavour to contain the effects of COVID-19 and keep the Tribunal operational as much as possible, the following temporary procedures are being implemented. The primary aim is to remove the need for parties to physically come to the Tribunal.

From 30 March 2020, The Tribunal (all Divisions and the Appeal Panel) will be conducting all stages of its hearings by phone, audio visual link or on the papers.

Where a matter is decided "on the papers", this means the matter is decided without a hearing. This involves the Tribunal considering the documents that are lodged by all the parties and then making a decision about the case.

No face-to-face hearings will be conducted without prior approval of the President.

It is not possible for the Tribunal to continue hearing cases within its usual time standards. Priority will be given to urgent cases and less urgent cases will be listed in the last quarter of 2020.

At this stage NCAT will be prioritising cases as follows:

- Guardianship Division – matters where the risk to the person who the hearing is about is assessed as high, urgent or serious based on the information available to the Tribunal.
- Administrative and Equal Opportunity and Occupational Divisions – any matters that can be heard on the telephone or on the papers.
- Consumer and Commercial Division –
    - Tenancy matters
    - Other urgent matters that arise in the following circumstances:
        - to address an imminent danger to a person's health or welfare;
        - to prevent unauthorised work being carried out;
        - to prevent property being damaged; or
        - where a lessee may be locked out of a retail shop or residential premises.
- Appeal Panel – any matters that can be heard on the telephone or the papers.

Filing Documents

In order to further minimise the need to personally attend NCAT registries, the Tribunal will allow filing by email where a party is unable to post an application or other documentation. The requirements in relation to this are attached here.

Adjournments due to illness

If you are scheduled to attend by phone and you are too unwell to participate, for a reason related to the Coronavirus for:

- Guardianship Division matters, please contact the Registry by email or phone in the usual way;
- other Divisions and NCAT Appeal Panel matters, you can use this email template to contact NCAT and apply for an adjournment. In considering the application for adjournment, the Tribunal will take into account the current exceptional circumstances and any inability to obtain a medical certificate.

Please note that these measures are current at the date of this notice.

Attending NCAT registries

Please try to avoid attending the NCAT registry in person. Do not attend if:

- If you have had close contact with **someone diagnosed with or suspected or confirmed as having Coronavirus (COVID-19)** in the last 14 days **DO NOT ATTEND NCAT**
- If you are feeling unwell and experiencing any of the following symptoms - fever, cough, sore throat or shortness of breath **DO NOT ATTEND NCAT**
- If you have travelled and returned from overseas in the past 14 days **DO NOT ATTEND NCAT**

Registrars/Sheriff officers may deny entry or request any person to leave a building.

NSW Health advise that people should **stay at home if they are feeling unwell or have been to a country considered at a higher risk of Coronavirus in the past 14 days.**

For the latest updates from NSW Health visit their website.

The President of NCAT issued the following update on 18 March 2020:

In an endeavour to contain its effects and keep the Tribunal operational as much as possible, the Tribunal is implementing the following temporary procedures. The primary aim is to minimise the need for parties to physically come to the Tribunal in the near future and to develop methods of dealing with cases that do not require face-to-face contact.

Listings other than substantive hearings

- Directions hearings, callovers, conciliation conferences and some other interlocutory hearings will be conducted where possible by telephone or audio visual link, rather than in person.

- Return of Summons lists will be conducted by telephone.
- Precise arrangements regarding telephone or audio visual link hearings will be provided separately.

Specific arrangements for substantive hearings in Divisions and for appeals

- A 'substantive hearing' is a hearing, the outcome of which will determine the proceedings.

Administrative and Equal Opportunity Division and Occupational Division:

- Substantive hearings may be conducted, with the consent of both parties, by telephone or audio visual link, where appropriate, at the discretion of the Tribunal Member presiding and depending upon the availability of the necessary technology.
- Mediations and substantive hearings will not be conducted in regional areas where the Tribunal Member presiding would need to fly to the regional location. If both parties agree, such mediations and substantive hearings may be able to be conducted by telephone or audio visual link, at the discretion of the Tribunal Member or mediator.

Consumer and Commercial Division:

- Substantive hearings will continue to be conducted in regional areas at the current time.
- Consumer and Commercial Division Group lists with multiple parties will be re-organised to reduce the need for attendance by parties and to stagger hearing times. Effective Monday 23 March 2020, all Group lists are suspended until further notice. Group List matters already listed at various venues across New South Wales will be adjourned to a further date to be fixed. Further information will be made available on the NCAT website and parties will be advised directly about when the Tribunal will deal with their applications. Future hearings will be by telephone wherever possible.
- Substantive hearings (whether listed for Greater Sydney or regional areas) may be conducted by telephone or audio visual link, where appropriate, at the discretion of the Member presiding and depending upon the availability of the necessary technology.

Guardianship Division:

- All hearings will be conducted by telephone or audio visual link. After careful consideration of the welfare and interests of the people who are the subject of applications in the Division, and the demographics of our hearing participants, we have decided that in person hearings should not occur at this time in this Division.
- The Division will be deferring all but urgent reviews of existing guardianship and financial management orders which would otherwise be listed for hearing in May and June 2020. To extend the operation of those orders until a hearing can be held, a notice of hearing will shortly be issued to parties in relation to each of these matters, to advise of a hearing date later this year.

Appeal Panel:

- Substantive hearings in appeals emanating from the Guardianship Division will be conducted by telephone or audio visual link.
- Substantive hearings in appeals emanating from the other three Divisions (Administrative and Equal Opportunity Division, Consumer and Commercial Division and Occupational Division) will be conducted by telephone or audio visual link, wherever possible. Where an 'in person' hearing is required, it is unlikely this would be conducted before October 2020, except in emergency or other exceptional circumstances.

Hearing rooms

Where you attend NCAT in person, you should bring your own plastic water bottles. Water jugs and water glasses have been removed from hearing rooms.

Non-attendance at NCAT and request for adjournments

If you are scheduled to attend NCAT in person but you are unable to do so, or you are scheduled to attend by phone and you are too unwell to participate, for a reason related to the Coronavirus:

- for Guardianship Division matters, please contact the Registry by email or phone in the usual way;
- for other Divisions and NCAT Appeal Panel matters, you can use this email template to contact NCAT and apply for an adjournment. In considering the application for adjournment, the Tribunal (including the Appeal Panel, where relevant) will take into account the current unusual circumstances and any inability to obtain a medical certificate.

Please note that these measures are current at the date of this notice. It is expected that the position may change as the situation develops and you should confirm the position seven days prior, and then on the day prior, to any hearing you are involved in.

Where hearing schedules are disrupted, priority will be given to the most urgent matters across the Tribunal.

Attending NCAT premises

NCAT remains open for business. In order to adhere to NSW Health advice the following measures apply:

- **DO NOT ATTEND A TRIBUNAL unless you:**
  - **are a party to a tribunal matter or a party's legal representative;**
  - **require face-to-face services of the registry; or**
  - **are a bona fide representative of an established news-media organisation.**

- **Despite the above,** if you have had close contact with **someone diagnosed with or suspected or confirmed as having coronavirus (COVID-19)** in the last 14 days **DO NOT ATTEND NCAT**
- If you are feeling unwell and experiencing any of the following symptoms - fever, cough, sore throat or shortness of breath **DO NOT ATTEND NCAT**
- If you have travelled and returned from overseas in the past 14 days **DO NOT ATTEND NCAT**

Registrars/Sheriff officers may deny entry or request any person to leave a building

NSW Health advise that people should **stay at home if they are feeling unwell or have been to a country considered at a higher risk of Coronavirus in the past 14 days.**

If you consider that this advice applies to you please **DO NOT ATTEND**. If you are a party to proceedings, you should contact NCAT or your legal representative.

NSW INDUSTRIAL RELATIONS COMMISSION

For further information, visit: http://www.irc.justice.nsw.gov.au/

The Commission released the following update on 19 May 2020:

http://www.irc.justice.nsw.gov.au/Pages/IRC_research_information/IRC_research_information_announcements/IRC_research_information_announcements_2016_69.aspx

UPDATED ANNOUNCEMENT – reopening of the Commission's premises

19 May 2020

Over the past few weeks the number of COVID-19 cases in New South Wales has decreased rapidly and the Commonwealth and New South Wales Governments have turned their attention to a staged return to community and commercial activity.

Since 17 March 2020, the Industrial Relations Commission, like courts and other tribunals, has been able to continue to undertake its statutory functions using teleconference and videoconference facilities. The Commission is grateful for the speed with which parties adapted to these changed circumstances.

The Commission continues to follow the advice of the Commonwealth and New South Wales Departments of Health as it embarks on a staged reopening of the Commission's premises. Social distancing requirements will have an impact on the Commission's ability to return to pre-COVID-19 operations.

Registry services

The Registry counter will reopen on **9 June 2020**. Any person seeking access to the Registry in person prior to that date must obtain the leave of the Chief Commissioner.

Until **30 June 2020**, the Commission will continue to accept the filing of applications and evidence as set out below by email to: irc_client_services@justice.nsw.gov.au or in person. However, from **1 July 2020** email filing will only be accepted for dispute notifications and where specific directions have been made by the Commission; filing by email of other applications and evidence will not be available from that date. Parties who are unable to attend the Registry may file by post to PO Box 927 Parramatta NSW 2124. Parties should anticipate how long it will take for mailed documents to be received by the Registry.

When filing new applications, including notifying new disputes, parties must provide all contact telephone numbers for themselves and their representatives for the purpose of telephone conciliations and compulsory conferences. Parties should also provide phone numbers for the other party/ies where known.

When filing evidence such as statements and affidavits where the total number of pages is below 50 (for the matter, not per document) the Registry will accept filing by email. If the total number of pages is greater than 50, parties must file by post to PO Box 927 Parramatta NSW 2124.

The Commission will acknowledge receipt of emailed documents by return email. Parties will not receive a stamped copy of documents filed by email. The Commission will not send a copy of the documents to the other party/ies. It will remain for the party filing the documents to serve them on any other interested party.

In-person appearances at Commission Hearings

The Commission is working through options to enable in-person appearances in the Commission while social distancing requirements remain in place. The administration of justice and the health of all participants in the justice system remain the Commission's priorities.

The requirement that each person in an enclosed area has four square metres of space does not apply to the Commission. However, the Commission is guided by the principle that persons at the Commission be able to maintain a distance of 1.5 metres from all other persons. The Commission has applied this principle when determining the maximum number of persons at the bar table and in the gallery space in each of the Commission's Hearing Rooms. Space in front of the bar table allows for the Commissioner, monitor and a witness.

The square meterage and design of the Commission's Newcastle Hearing Room allow for a total of six people at the bar table and in the gallery space.

The square meterage and design of Hearing Rooms 2-5 in Parramatta allow for a maximum of four people at the bar table and in the gallery space.

The square meterage and design of Sydney Hearing Room 1 in Parramatta allow for a total of six people at the bar table and in the gallery space.

The Commission must also consider the limited space available for parties to confer outside of the Hearing Rooms, particularly if multiple matters are listed on the same day at the Commission, and take into account the co-location of the Commission with the Fair Work Commission in Newcastle.

The Sheriff of NSW has been given powers to undertake additional safety–related tasks at the Commission including temperature testing. Parties may be required to submit to a non-contact temperature test or answer questions from the Sheriff before entering the Commission's premises.

Arbitrations

The Commission has been using **Virtual Courtroom (VCR)** from the **Parramatta Hearing Rooms** in this period. This technology is not available in the Newcastle Hearing Room.

Given social distancing limitations are likely to remain in place for some time and the impact these have on the ability to undertake in-person hearings, the Commission continues to encourage, and may require, parties to use VCR for arbitrations.

The Commission requires parties with a matter listed or programmed for arbitration to confer as to whether their arbitration is unable to proceed by way of VCR.

If the parties consider that for particular reasons their matter is not suitable for VCR, they should request that the matter be listed for mention for the Commission to consider listing the matter for an in-person hearing. Parties should be mindful that the decision as to whether to proceed with VCR or an in-person hearing is the is the Commission's. Due to the social distancing limitations, if the Commission is satisfied that a hearing should take place in-person, parties should be aware that there may be a significant delay until this can occur.

Parties must confer prior to all in-person appearances as to the number of persons appearing for each party to ensure the total number of people attending a hearing does not exceed the maximum for the relevant Hearing Room. The names of each person who will attend must be provided to the Commission in advance. The Commission will not allow persons in excess of the maximum number into the Hearing Rooms. Parties should consider whether some of the participants in an arbitration, in particular witnesses, could participate in in-person hearings by remote means.

The Commission requires that parties with a matter listed for arbitration by VCR confer as to arrangements which will facilitate a successful arbitration by VCR. Parties should confine the issues in dispute as much as possible, confer with respect to whether an agreed statement of facts can be filed and clearly define the remaining issues for determination by the Commission. The parties may consider approaching the Commission for a further conciliation to assist the parties in taking these steps.

Parties must confer with respect to the number of witnesses required for cross-examination; the location(s) from which witnesses and parties will participate; and, steps to ensure that the Commission and witnesses have conveniently available to them all documents to which they will be referred. In most circumstances a Court Book would be required. The Commission may make directions in relation to these matters.

The Commission may list matters for mention prior to the date the matter is listed for arbitration by VCR to ensure the parties' technology is suitable for a successful video conference hearing. The Commission's User Guide for VCR during the COVID-19 pandemic is **attached**. Parties must ensure they and their witnesses are familiar with this Guide and the use of this technology.

Conciliations and Compulsory conferences

The Commission will continue to list **conciliation** and **compulsory conferences** by **teleconference**.

The Commission uses various teleconferencing facilities. Parties should check each listing notice carefully to ensure they are aware of the dial-in details, or other arrangements, for each matter as these details may change from time to time.

When matters are listed for conciliation or compulsory conference parties must provide or confirm their contact phone numbers to irc_Commissioner_support@justice.nsw.gov.au **2 full business days before** the listing to ensure the Commission can make the necessary arrangements. Where matters are listed urgently then phone numbers must be provided as soon as possible. Due to the constraints of some of the teleconference facilities used by the Commission, failure to provide contact details in accordance with this requirement could result in a listing being vacated at short notice.

If parties intend to refer to documents in a compulsory conference, report back or conciliation then these documents must be sent to the other party and the Commission at irc_Commissioner_support@justice.nsw.gov.au no later than **3:00pm** on the **day before the matter is listed**. Parties should be conscious that the Commission has limited resourcing to print and collate these documents, and send only those sections of the documents that are necessary. These documents will not be taken to have been filed in the Commission but will be made available to the Commissioner to assist with conciliation.

After hours' assistance

Parties needing to notify a serious industrial dispute that involves industrial action or otherwise requires urgent intervention of the Commission, should continue to contact **0401 142 429**.

N. J. Constant
Chief Commissioner

The Chief Commissioner released the following update on 1 April 2020:

http://www.irc.justice.nsw.gov.au/Pages/IRC_research_information/IRC_research_information_announcements/irc-operations-during-covid-19-announcement-1-april.aspx

UPDATED ANNOUNCEMENT – IRC OPERATIONS DURING COVID-19

The Industrial Relations Commission continues to follow the advice of the Australian and New South Wales Departments of Health regarding operations during the current pandemic. We provide the following updates since our most recent communication on 23 March 2020.

No personal attendances at the Commission without leave

Until **further notice**, there will be no in-person attendances at the Commission without the leave of the Chief Commissioner.

Registry services

The Registry counter will remain closed to the public until **further notice**. Any person seeking access to the Commission in person must obtain the leave of the Chief Commissioner.

The Commission will continue to provide registry services during this time and will continue to accept the filing of applications by email to: irc_client_services@justice.nsw.gov.au

The Commission will acknowledge receipt of the documents by return email. Parties will not receive a stamped copy of the document filed by email.

When filing **new matters**, including notifying new disputes, **parties must provide all contact phone numbers** for themselves and their representatives for the purpose of telephone conciliations and compulsory conferences. Parties should also provide phone numbers for the other party where known.

When **filing evidence** such as statements and affidavits where the total number of pages is below 50 (for the case, not per document) the registry will accept filing by email, and you will receive an email acknowledgement of the filing. If the total number of pages is greater than 50, parties must file by post to PO Box 927 Parramatta NSW 2124. Parties should anticipate how long it will take for mailed documents to be received by the registry.

Filing of new matters and evidence by email is a temporary arrangement to assist with prevention of the transmission of COVID-19.

Arbitrations listed for hearing

Where a matter is listed for **hearing** between 1 April and 17 April the Commission urges parties to confer as to whether the matter is suitable to be heard on the papers, is suitable for video/teleconference or needs to be deferred until a later date and to notify the Registry of their preference.

Conciliations and Compulsory conferences

When matters are listed for **conciliation** or **compulsory conference** parties should provide or confirm their contact phone numbers to irc_commissioner_support@justice.nsw.gov.au **2 full business days before** the listing to ensure the Commission can make the necessary arrangements. Where matters are listed urgently then phone numbers must be provided as soon as possible.

Virtual Courtroom

The Commission is continuing to implement technology to assist parties to access the Commission during these unprecedented times, including the use of **Virtual Courtroom** (VCR).

If a Commissioner determines that a case is suitable for video conference then the Commission requires parties to ensure they are familiar with the use of this technology. Please read the Commission's User Guide for VCR during the COVID-19 pandemic .

After hours' assistance

Should a party wish to notify a serious industrial dispute that cannot wait until the next business day or where a party or parties have initiated strike action and this requires urgent intervention of the Commission, parties should contact 0401 142 429.

The Commission released the following update on 23 March 2020:

http://www.irc.justice.nsw.gov.au/Pages/IRC_research_information/IRC_research_information_announcements/IRC_research_information_announcements_2016_68.aspx

ANNOUNCEMENT - CHANGE IN IRC PROCEDURES DURING COVID-19

COVID-19 – Changes to Court Operations

In line with the medical advice from the Department of Health, the Industrial Relations Commission will be altering its service delivery. It is essential for the wellbeing of the community and the maintenance of the rule of law that the Courts and the Commission continue to operate, to the extent possible, in the current challenging environment. The Commission is responding to the developing COVID-19 pandemic by reviewing all operations to ensure all essential services are maintained and non-essential services continue for as long as practicable, consistent with health advice.

The Commission is equipped to utilise teleconferencing and in some circumstances, audio visual equipment to allow matters to continue remotely. The Commission's paramount consideration remains the wellbeing of all Commission users. Everyone must adhere to health advice in relation to social distancing, self-isolation, hygiene and the management of symptoms.

Registry closure

From Tuesday 24 March 2020 the IRC registry will close to the public for a period of 2 weeks.

Parties are required to comply with current directions for their matters unless advised otherwise, or an application is made to the Registrar with supporting reasons as soon as the parties become aware they are unable to comply.

The registry will continue to function and provide service regarding lodgement of applications, supporting documents, industrial organisations and awards and industrial gazette.

No personal appearances

In line with the current health advice, on and from Tuesday, 24 March 2020 there will be no personal appearances in any matters save in exceptional circumstances with the leave of the Chief Commissioner. This also applies to unrepresented litigants.

The Commission will contact parties about the conduct of currently listed arbitrations, including about possible use of video and teleconference facilities which may be available for their matter.

Conciliations, directions and report backs will proceed by way of teleconference.

Listings and/or remote arrangements may alter at short notice. The Commission will endeavour to contact parties and representatives as soon as practicable in these circumstances. Parties should also refer to the Commission's website for updates and review the daily listing notices.

Electronic delivery of documents

The Commission will allow the filing of applications by email to:

irc_client_services@justice.nsw.gov.au

The Commission will acknowledge receipt of the documents by return email. Parties will not receive a stamped copy of the document filed by email.

When filing evidence such as statements and affidavits where the total number of pages is below 50 (for the case, not per document) the registry will accept filing by email, and you will receive an email acknowledgement of the filing. If the total number of pages is greater than 50, parties will be required to file by post to PO Box 927 Parramatta NSW 2124. Parties should anticipate how long it will take for mailed documents to be received by the registry.

This is a temporary arrangement as a result of advice from the Department of Health.

Health Advice

Further information can be found at: NSW Health, www.health.nsw.gov.au

Health Direct, telephone 1800 022 222.

Industrial Registrar

The Chief Commissioner released the following update on 20 March 2020:

Updated Announcement - Listings during COVID-19

The Commission continues to monitor the Commonwealth and State Governments' announcements and health advice relating to Coronavirus (COVID-19).

In an endeavour to contain the effects of the virus and to keep the Commission operational as much as possible, the Commission has implemented temporary procedures which were set out on the Commission's website on 16 March 2020 at http://www.irc.justice.nsw.gov.au/Pages/IRC_research_information/IRC_research_information_announcements/IRC_research_information_announcements_2016_66.aspx.

The primary aim is to minimise the need for parties and representatives to attend the Commission in person in the near future and to develop methods of dealing with cases that do not require face-to-face contact so that the Commission can continue to operate in the current environment.

To assist with this aim, the Commission requires parties and representatives to observe the following protocols in addition to those set out on 16 March 2020.

Arbitration hearings

1. Only those people necessary for the conduct of a hearing may attend the Commission for the hearing. The Commission will not allow any person to attend a hearing solely to observe proceedings. The Commission may inquire as to the reason why any individual is in attendance, and may ask persons to leave the Commission if they are not required for the hearing.
2. To the extent possible, parties must continue to maintain social distancing when in court or waiting to appear.
3. The Commission expects that all parties will have conferred as to which witnesses will be required for cross-examination and whether those witnesses could give evidence other than in-person and in what order witnesses will be called.
4. Only those witnesses who are genuinely required for cross-examination in-person should attend the hearing.

5. To the extent possible, witnesses should be required to attend the Commission as close as possible to the time at which it is estimated that they will be required to give evidence. The Commission will not be perturbed by reasonable delays caused by a witness being required earlier than anticipated.
6. Witnesses must leave the Commission once they are excused and they are not required otherwise in the matter. Consistent with point 1, they must not remain simply to observe proceedings.
7. To minimise the hearing time, the parties are asked to consider whether there are aspects of the proceedings, such as submissions, which might be conducted other than in person.
8. The Commission takes all care to ensure the cleanliness of its precincts, and aims to have some means available to the parties to maintain a safe working environment. In the current environment, the Commission expects that all persons attending the Commission take responsibility to ensure ongoing cleanliness, particularly at the bar table and the witness box. Parties are encouraged to bring items such as disinfectant wipes and hand sanitiser that they consider may be required. The Commission cannot guarantee that these items will be available to the parties and/or witnesses.
9. All water jugs and glasses have been removed from hearing rooms for the protection of people appearing before the Commission in the current environment. Parties will be allowed to use their own personal water containers in the hearing room.
10. If parties intend to provide documents to witnesses or to the Commission during the arbitration then it is expected that the copies provided to witnesses and the Commission will be kept in an environment and manner with the least likelihood of contamination by the COVID-19 virus.

Report Backs and Conciliations

1. If parties intend to refer to documents in a report back or conciliation then these documents must be sent to the other party and the Commission at **irc_Commissioner_support@justice.nsw.gov.au** no later than 3:00pm on the day before the matter is listed. When determining the documents to which you intend to refer, be conscious that that the Commission has limited resourcing to print and collate these documents, and send only those sections of the documents that will be necessary for the report back or conciliation. These documents will not be taken to have been filed in the Commission but will be made available to the Commissioner to assist with conciliations and report backs.

NB: If this creates an administrative burden then further varied arrangements will be considered and parties should note that this practice only applies while measures are implemented to assist the Commission to operate during COVID-19.

Sittings outside Parramatta and Newcastle

1. From Monday 23 March 2020 until Friday 29 May 2020 the Commission will only hear matters requiring in-person attendance at a hearing at the Commission's premises in Parramatta and Newcastle.
2. Commissioners will initiate contact with parties and/or representatives impacted by this measure to make alternative arrangements.

PREVIOUS ANNOUNCEMENT OF 16 MARCH 2020

The Industrial Relations Commission is carefully monitoring the updated Commonwealth and State Governments' advice regarding COVID-19.

Directions hearings, conciliation hearings and report backs

In an effort to mitigate the risks of exposure of Commission staff, parties and Commissioners to COVID-19 and to keep the Commission operational at this time, the Commission expects most conciliation hearings and all directions hearings and report backs to take place via teleconference, commencing from **Tuesday 17 March 2020**.

If you consider that the circumstances of your matter require in-person attendance at a conciliation or directions hearing then you should inform the other party of the reasons for this in writing as soon as possible, and provide your request and the other party's position to the Commission no later than **midday** on the **day prior to your listing**, and the Commission will consider the request. The Commission may also determine that the matter requires conciliation or directions to take place face-to-face and parties will be informed where this is the case.

In all other circumstances, please provide your telephone contact information to the Industrial Registry at irc_client_services@justice.nsw.gov.au or 02 8688 3516 as soon as possible, and no later than 3:00pm on the day prior to your listing.

Arbitration hearings

At this time, matters listed for arbitration will proceed in-person unless parties make an application for alternative arrangements. If you have a matter listed for arbitration, you should confer with the other party or its representative/s as soon as possible about any arrangements that can be made to limit persons required to attend the hearing, such as witnesses not required for cross-examination. If you consider that the circumstances of your matter are such that an adjournment is necessary then please contact the other party to obtain its position before making any request to the Commission.

Self-isolation

If you have received medical advice to self-isolate, or you meet the criteria set by NSW Health for self-isolation, you should not attend the Commission, and you will not be expected to do so. You should contact the Industrial Registry as soon as reasonably practicable at

irc_client_services@justice.nsw.gov.au or 02 8688 3516 to inform the Commission of your circumstances. Prior to making contact with the Registry, and where practicable, the Commission expects that you will contact the other party or parties to the matter, advise your circumstances to them, and discuss any alternative arrangements that may be necessary for your matter.

Water Jugs and glasses

Effective immediately, all water jugs and glasses will be removed from hearing rooms for the protection of people appearing before the Commission in the current environment. Parties will be allowed to use their own personal water containers during a hearing.

WORKERS COMPENSATION COMMISSION

For further information, visit: https://www.wcc.nsw.gov.au/publications/e-bulletin/2020-e-bulletins

THE PRESIDENT HAS ISSUED THE FOLLOWING UPDATE ON 6 NOVEMBER 2020:

e-bulletin No. 110 - November 2020

***MODRON SPACES* PILOT UPDATE AND WORKING WITH SERVICE NSW**

This section deals with increasing access to the pilot, the need for legal practitioners to have adequate Internet supply and equipment, emerging practice and procedure, and working with Service NSW.

The Online Dispute Resolution Pilot - increasing access and giving us feedback

The second online dispute resolution pilot, using the *Modron Spaces* video platform (**Platform**), commenced on 3 September 2020 and will cease on 18 December 2020. Over 86 online events have been conducted to date, and the Commission is increasing the available sessions from 90 to about 130.

After you participate in an event conducted on *Modron Spaces*, you will receive an online survey. Please respond to the survey, as we genuinely want your feedback.

The need for adequate Internet supply and equipment

Feedback has been *almost* exclusively positive about the Platform, and increasingly so, as people conduct second and further online events. To date, the Platform has performed well from a technical perspective and *Modron Space's* concierge service has received universal praise as the service has not only assisted participants navigate the Platform, it has helped them rectify Internet supply issues, provided advice on web browser selection, and rectified equipment and related issues.

Modron Spaces collects technical data for each event conducted on the Platform (**Data Analytics**). The Data Analytics identify each participant's Internet supply strength and the browser being used. It also identifies whether the participant has participated in some or all the onboarding events, such as device compatibility checking and Platform familiarisation. The Data Analytics helps the Commission to target its assistance to participants, resulting in:

• *The resolution of complaints about Platform failure during several online events* – the Data Analytics showed that in each of those matters, Counsel (both) and the Commission's Arbitrator did not have adequate Internet bandwidth and speed to support the online venue and they were not using the preferred web browser (which further eroded the Internet supply).

• *Several Chambers poor Internet services* – the Commission has written to 125 barristers who frequently appear in this jurisdiction, advising that Data Analytics show that many Chambers have poor Internet bandwidth and speed and until that can be resolved, they should keep handy a mobile Internet supply so that the online matters do not need to be abandoned when their Internet service fails. I have also written to the President of the NSW Bar Association to discuss the phenomenon of online dispute resolution and how the Bar is responding.

• *Some law firms (small and not so small) have poor Internet service and/or do not have basic equipment such as cameras and speakers* – I have written to the President of the Law Society of NSW and asked him to work with law firms about upgrading technology and equipment to respond to the phenomenon of online dispute resolution.

Emerging practice and procedure issues – for matters conducted on *Modron Spaces*

A simple but different process applies when a summons to attend is issued in a matter being conducted on *Modron Spaces*. Details are set out at the Commission's ***Virtual Venue Centre***. In summary, the Commission will advise the filing party in writing about the required actions:

1. Prepare a witness schedule that shows when each witness will be called to give evidence (**Witness Schedule**).
2. Email the Witness Schedule to the Commission within 2 business days of the Commission writing to the filing party.
3. Serve the summons in compliance with **Practice Direction No 7B – Summon to attend** and do so with a covering letter which includes specific details (in that regard, please refer to the ***Virtual Venue Centre***).

Working with Service NSW

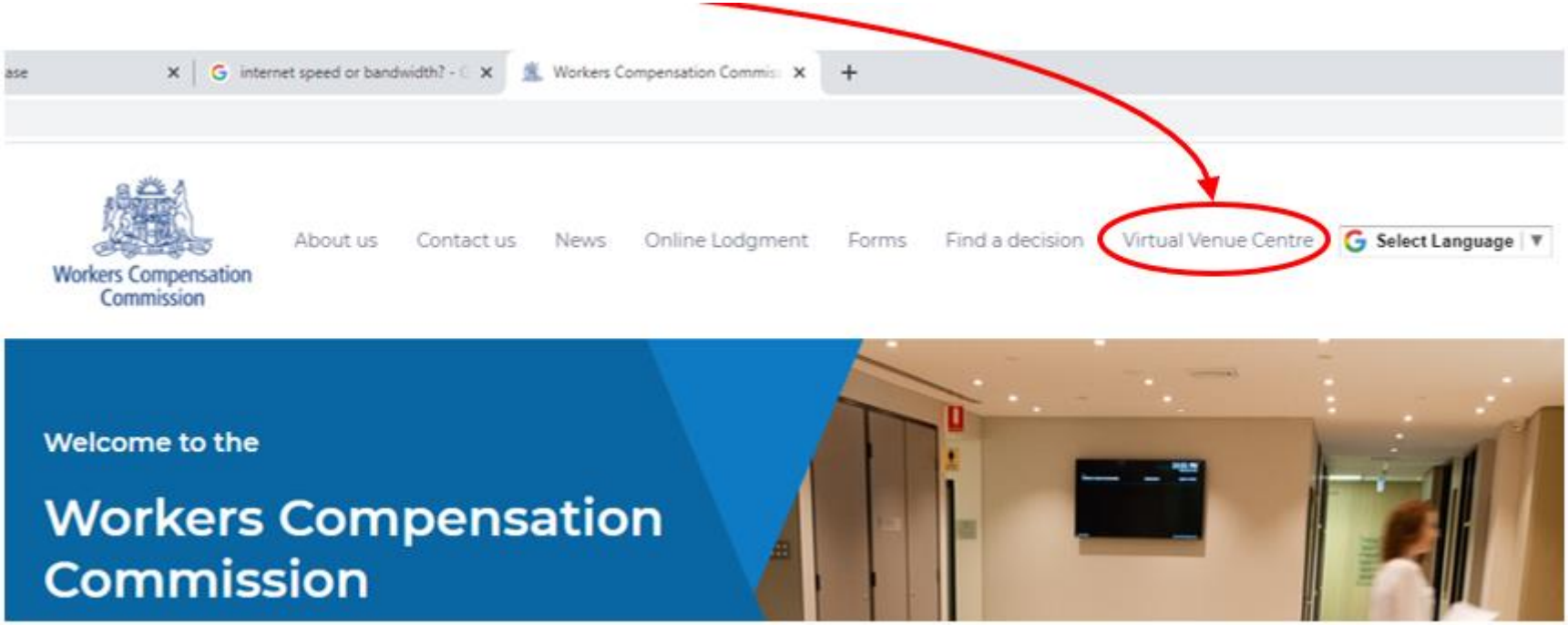
Some regional workers cannot or do not want to travel to their solicitors' offices to participate in conciliation/arbitrations, however, they also do not or cannot participate in online dispute resolution (using *Modron Spaces*) from home – this might be due to Internet/equipment issues.

The Commission is working with Service NSW to help workers manage this issue by piloting access to online dispute resolution from three Service NSW sites - Ulladulla, Tuncurry and Bathurst**.** Several stars need to be in alignment to identify appropriate candidates for the Service NSW pilot including that the worker resides in a pilot postcode, the matter does not settle at teleconference, the matter is listed for video con/arb and the worker is comfortable participating solo in the con/arb from a Service NSW location. Arbitrators will discuss these issues with parties and legal representatives in relevant circumstances.

The ***Virtual Venue Centre*** will be updated next week to include details of the Commission's work with Service NSW.

Virtual Venue Centre

The **Virtual Venue Centre** is a valuable resource for stakeholders and users of the Commission's dispute resolution services. It has a dedicated section on the Commission's website landing page.



The ***Virtual Venue Centre*** is updated regularly with information about the *Modron Spaces* pilot, including how to use *Modron Spaces*, how to list a matter on *Modron Spaces* and a recording of a mock con/arb.

Contacting the Commission

On 23 March 2020, I made the decision to close the Commission's Oxford Street premises for work health and safety concerns due to the pandemic. Practitioners are reminded that the Commission's premises remain closed to the public.

The Commission operates in a fully digital environment and has been able to maintain services by members, mediators and staff working remotely. Even though our office has remained closed since March, dispute lodgments have remained at pre-pandemic levels using the Commission's online portal, while timeliness and high dispute resolution rates are still being maintained.

There are limited mail services and the Commission is relying on correspondence and documents being lodged through the online portal (i.e. not by email, DX or post). Practitioners are requested to encourage producers of documents under Directions for Production to produce those documents in soft copy, where possible.

The Commission is also unable to directly receive telephone calls through our general inquiry number, 1300 368 040. The parties in matters lodged with the Commission are provided with the direct contact number of the Commission's case manager in each case.

Persons who attempt to contact the Commission on 1300 368 040 receive a recorded message to email the Commission at **registry@wcc.nsw.gov.au**. All emails are responded to within 24 hours. A Commission staff member will either telephone the emailer or send them their direct telephone number.

The restricted access to contact the Commission using the 1300-number for general inquiries is an interim measure only. The Commission will resume normal telephone services once the current pandemic restrictions are eased. We appreciate your understanding in these unusual times.

Christmas-New Year arrangements

The following arrangements will apply over the coming Christmas-New Year period:

Christmas timetable

Last day for teleconferences in 2020:	Friday, 18 December 2020
First day for teleconferences in 2021:	Wednesday, 6 January 2021
Last day for con/arbs in 2020:	Friday, 18 December 2020
First day for con/arbs in 2021:	Monday, 4 January 2021

Urgent matters may be listed in the period from 21 December 2020 to 31 December 2020 at the request of parties.

Issuing of decisions and medical assessment certificates

The usual appeal periods will apply during the Christmas-New Year period. Certificates of Determination, Medical Assessment Certificates or Medical Appeal Panel decisions will therefore not be issued from Monday, 21 December 2020 to Thursday, 31 December 2020. Consent orders lodged by parties will be issued.

Judge Gerard Phillips
President

THE PRESIDENT ISSUED A FURTHER UDPATE ON 18 SEPTEMBER 2020:

e-bulletin No. 109 - September 2020

In e-Bulletin No 106, I advised of my decision to recommence in-person medical assessments from 20 July 2020 due to the low incidence of new COVID-19 cases by community transmission. Despite the recommencement of in-person assessments, the Commission has continued the interim procedure of referring all medical disputes to an Arbitrator for teleconference, to explore settlement prospects or whether the assessment may proceed by video.

Given the continued low incidence of community transmission and the positive feedback about the in-person assessment process, I have decided to dispense with the requirement for medical disputes to first be referred for teleconference. Medical disputes lodged in the Commission from 21 September 2020 (where liability is not in issue) will be referred direct to an AMS for in-person assessment, except for psychiatric and psychological disorders (discussed later in this bulletin). In the interests of health and safety, the Commission will continue to provide all workers attending in-person medical assessments with a protective face mask and hand sanitiser.

The two-part process for in-person assessments still applies, namely, a pre-examination conference followed by an in-person physical examination. A medical assessment may be exempt from the pre-examination conference if it is necessary for the AMS to conduct the full assessment with the worker in-person. This may arise in cases where the worker would have difficulty participating in the pre-examination conference by telephone or video, such as in the case of a worker with a traumatic brain injury.

In medical disputes involving psychiatric or psychological disorders, the Commission will arrange for assessments to be conducted by video unless advised by the worker or legal representative that the worker is unable to participate by video. The inability to participate by video will

usually be due to the worker not having access to a smartphone or other adequate device (laptop or desktop computer) or being unable to use the device.

The protocol document (*Protocols for Medical Assessments During Coronavirus Pandemic*) has been updated to reflect the above changes to practice and procedure.

The Commission continues to monitor the COVID-19 risk profile in NSW and will take appropriate steps as required. These revised arrangements are subject to change at short notice.

Judge Gerard Phillips
President

THE PRESIDENT HAS ISSUED A FURTHER UDPATE ON 2 SEPTEMBER 2020:

e-bulletin No. 108 - September 2020

This e-Bulletin tells you about the outcomes of the Commission's first pilot to conduct dispute resolution online using the platform *Modron Spaces* (**First Modron Pilot**) and announces a second pilot (**Second Modron Pilot**). If you act for parties in Commission matters, you need to read this e-Bulletin closely.

Please also regularly consult the Commission's **Virtual Venue Centre** on our websiteat **https://www.wcc.nsw.gov.au/virtual-venue-centre** (discussed below).

Outcomes of first *Modron Spaces* pilot

e-Bulletin No. 104 described the Commission's physical and virtual venue strategy and outlined the First Modron Pilot. During the First Modron Pilot, the Commission also used
MS Teams and investigated other online platforms, including *Immediate* and *Zoom*.

The First Modron Pilot points to the following:

- The need to further test *Modron Spaces* and investigate *Zoom*. (More information about *Zoom* and potentially other platforms, will follow.)

- Arbitrators, mediators, legal representatives and insurers (**Users**) need training, strong concierge support and experience in online dispute resolution, before they are comfortable and able to fully participate in a hearing or conference by audio visual link (AVL).
- Users' attitudes to online dispute resolution and their technical competence are critical to successful online dispute resolution.
- Most Users quickly move from being resistant or ambivalent about online dispute resolution to supporting it. The keys to that journey are:
    - **Receiving Support** – Training and access to a strong concierge service.
    - **Acceptance that online skills are the new literacy** – Some Users declined to acquire online skills, preferring to wait until "things get back to normal". As noted in **e-Bulletin No 104**, the Commission will maintain some online dispute resolution after COVID-19 recedes and it will provide competency accreditation to Users who train in its preferred online platform (once the platform is selected).
    - **Attitude** – Willingness to learn and accept that mastery will not be immediate.
- **Internet** – Access to an Internet connection that offers adequate speed and is reliable during video conferences and hearings (some barristers' chambers provide poor access and the Commission will work with the Bar on this issue).
- **Equipment** – Access to a device with a good quality speaker, microphone (preferably through a headset to eliminate background noise) and a camera

Commencement of second Modron Spaces pilot

Purpose

The purpose of Second Modron Pilot is to increase the number of Users who experience the platform. This will assist the Commission to decide which AVL platform will most likely deliver a successful virtual venue for online dispute resolution. A successful virtual venue will produce the following outcomes relatively quickly after adequate training and concierge support:

- Users will confidently conduct their events without being distracted by managing the technology associated with a virtual venue.
- Arbitrators and mediators will confidently guide participants in the use of the platform and 'normalise' the conduct of events on a virtual platform for participants.
- Legal practitioners will confidently guide their clients and 'normalise' participation in conciliations/arbitrations (con/arbs) or mediations on a virtual venue for their clients.

Duration and the number of matters

The Second Modron Pilot will formally run from **3 September 2020** to **18 December 2020**.

The Second Modron Pilot is scheduled to conduct 90 matters, and this will be increased if demand warrants it. Users are increasingly seeking online dispute resolution where cross-examination of witnesses is required.

Events and participants on the pilot

Con/arbs will be conducted in the pilot where agreed by the arbitrator and the parties. Typically, this issue will be discussed at the teleconference stage. It will be essential to ensure the worker is able to participate by AVL.

Mediations will be conducted in the pilot after consultation between the Commission, the mediator and the parties. Again, it is essential that the worker can participate by AVL.

Training is available for all Users

Modron Spaces will deliver the following training sessions, all of which will be recorded and will be accessible on-demand by the target group:

Training	Session length	Date and time
Modron in the Commission 101 - Legal Practitioners	1 hour	9 September 2020 at 5:00PM
Modron in the Commission 101 - Insurance Representatives	1 hour	30 September 2020 at 5:00PM (TBC)
Modron in the Commission 101 - WCC Mediators	1 hour	16 September 2020 at 5:00PM
Modron in the Commission 101 - WCC Arbitrators	1 hour	23 September 2020 at 5.00PM
Mock con/Arb - WCC Arbitrators	1 hour	9 September 2020 at 5:00PM

Invitations will be issued shortly.

Setting participants up for success

If your matter is listed to be conducted using *Modron Spaces*:

- You will receive an email from the Commission advising you that the matter will be conducted using *Modron Spaces*. The email will give you some important information and it will seek specific contact details about you and the participants for your client; and

- Each participant for your client will receive an email from *Modron Spaces*, not less than 5 business days before the event, which firstly will provide a link that will allow them to test if their device is appropriate and secondly establish an appointment for the familiarisation process.
- *Modron Spaces* will also send each participant a calendar invitation for the scheduled event.

Concierge support: standard and enhanced

Standard Concierge: *Modron Spaces* will email each participant as discussed above and will conduct a familiarisation session with each participant. *Modron Spaces* will also assist participants when they are connecting to an event and participants will be able to contact *Modron Spaces* for assistance during any matter being conducted on the platform.

Enhanced Concierge: If a matter is particularly complex, *Modron Spaces* will not only provide all the features of *Standard Concierge*, it will also sit through the entire event, to assist the parties. Access to *Enhanced Concierge* will be determined by the Commission in consultation with the arbitrator or mediator.

We want your feedback, please!

After you participate in an event conducted on *Modron Spaces*, you will receive an online survey. Please respond to the survey, as we genuinely want your feedback which will be critical to the success of the pilot and final selection of the AVL platform.

Do you have questions or want more information?

Please go to the Commission's **Virtual Venue Centre** on our websiteat **https://www.wcc.nsw.gov.au/virtual-venue-centre** (discussed below)

Establishment of Commission's Virtual Venue Centre

The ***Virtual Venue Centre*** will be a valuable resource for stakeholders and users of the Commission's dispute resolution services. It will have a dedicated section on the Commission's website landing page.

The ***Virtual Venue Centre*** will be updated regularly with information about the Second Modron Pilot, including training in the use of *Modron Spaces*, email templates that you can expect to receive, survey questions, links to recorded training sessions, FAQs, peer support champions for the pilot in the legal profession and contacts at the Commission.

The link to the ***Virtual Venue Centre*** is **https://www.wcc.nsw.gov.au/virtual-venue-centre**.

Judge Gerard Phillips
President

THE PRESIDENT HAS ISSUED A FURTHER UDPATE ON 3 AUGUST 2020:

Practice Direction No 18 – Hearing of proceedings during COVID-19 pandemic

The Commission's priority is to continue to deliver its services during the COVID-19 pandemic while ensuring the safety and wellbeing of staff, members, service partners and those who use the Commission's services.

A new practice direction, **Practice Direction No 18 –** ***Hearing of proceedings during COVID-19 pandemic***, sets out the procedure for deciding whether a hearing may be conducted in-person, by audio link (AL), by audio visual link (AVL) or other means.

Practice Direction No 18 commences on 4 August 2020.

Digital production of documents and minimising DX, Australia Post and courier

Digital Production of Documents: The Commission requires persons who produce documents (in compliance with a Direction for Production) to produce them by email to **registry@wcc.nsw.gov.au** or to contact the Registry by telephone (1300 368 040) to organise other arrangements. In support of this policy:

1. When the Commission sends a sealed Direction for Production to a filing party, the Commission will advise that when the filing party writes to the producer, their letter should state that production should be by email to **registry@wcc.nsw.gov.au** and if that is not possible, the producer must contact the Registry to organise other arrangements.
2. The approved form (Direction for Production, Form 8) for directing a person to produce documents to the Commission has been amended to provide that during COVID -19, and until further notice, production should be by email to **registry@wcc.nsw.gov.au** and, if that is not possible, the producer must contact the Registry to organise other arrangements.

Email preferred: Where possible, please do not send hardcopy documents to the Commission by *any* method, including DX or Australia Post or courier. The Commission's staff are working remotely and accordingly, email is preferred over hard copy documents for those documents not required to be lodged through the online portal.

Preparation for con/arb and mediation

Some complacency has crept back into preparation for con/arbs and mediations.

Conducting con/arbs and mediations by AL or AVL requires extra preparation, particularly consulting with clients early and discussing the case with the other party prior to the listing.

I again remind legal practitioners of the importance of thorough preparation for con/arbs and mediations including:

- Early notification to the Commission of the names and contact numbers of those attending on behalf of a party;
- Insurer representative attendance at con/arbs and mediations;
- Properly instructing counsel;
- Consulting with clients and holding client conferences well in advance of the listing; and
- Discussing the case with the other party prior to the telephone con/arb or mediation to narrow issues and to allow the best opportunity to resolve the dispute

Adjournment of proceedings

Practice Direction No 2 – ***Adjournment of proceedings*** sets out the Commission's policy on adjournments. It is in the interests of all parties that matters are heard and resolved as quickly as possible. This ensures that workers who have an entitlement under the workers compensation legislation are paid promptly, that costs are kept to a minimum, and that any inconvenience and uncertainty associated with the dispute is minimised.

The Commission will aim to proceed as scheduled in all matters. This means that all parties and their representatives must be ready to proceed at the time and place fixed by the Commission.

The following matters are not sufficient reasons for granting an adjournment:

- The consent of the parties to the adjournment;
- The convenience of the parties, including the unavailability of counsel or legal representatives, and
- The failure to properly prepare for the matter.

An application for adjournment must be soundly based and made in accordance with this Practice Direction.

Updated protocols for AMS Assessments

In **e-Bulletin No 106**, I announced the recommencement of in-person medical assessments from 20 July 2020.

The Disputes Services team continues to work through the backlog of cases from the 'medical assessment pending list'.

Foremost is ensuring, to the extent possible, that the risk of transmission of the coronavirus is minimised when attending a medical assessment.

The Commission is contacting workers prior to their appointment to assess whether the worker is well enough to attend the appointment.

The Commission has also requested that AMSs conduct the assessment in two stages. The first stage requires the AMS to conduct a telephone or video consultation with the worker prior to the physical examination. The telephone or video consultation allows the AMS to take a history and address any other relevant issues. The second stage is conducting the in-person examination. Conducting the assessment in two stages minimises the amount of time the AMS and worker are physically present together.

The wearing of masks is at the discretion of the AMS. It is recommended that workers wear a mask to/from the appointment and during the assessment where it is practical to do so.

The protocol, **Protocols for Medical Assessments During Coronavirus Pandemic**, has been updated (updated 30 July 2020). The main updates to the protocol have been enclosed in a circle with an exclamation mark (**!**) for easy identification

Personal Injury Commission Bill

The **Personal Injury Commission Bill 2020** was introduced into NSW Parliament and passed the Legislative Assembly on 17 June 2020. The Bill is currently before the Legislative Council.

Article published in *Workplace Review*

An article, ***Legal Practice after the Pandemic***, was published in Volume 10, No 1 edition of *Workplace Review*.

Judge Gerard Phillips

President

THE PRESIDENT ISSUED A FURTHER UPDATE ON 23 JUNE 2020:

e-bulletin No. 106 - June 2020

Recommencement of in-person medical assessments

The Commission ceased in-person medical assessments on 25 March 2020, except in urgent cases. The Commission has since that time explored the resolution of medical disputes by telephone conferences and video conferences. However, many medical disputes can only be resolved by an in-person (hands-on) examination. Those matters have been placed in a 'medical assessment pending list' awaiting resumption of in-person assessments.

Given the low incidence of new cases of COVID-19 by community transmission, I have determined that in-person assessments may recommence from 20 July 2020.

I am mindful that the pandemic continues and, regardless of safety measures imposed, there remains a risk to the health of individuals to attend examinations. I reserve the right to once again suspend in-person examinations, or to increase conditions on their use, should the situation with the pandemic deteriorate.

Matters in the 'medical assessment pending list' will be listed for in-person assessment only if requested by the parties. Commission staff will contact parties whose matters have been referred to the 'medical assessment pending list' to ascertain whether the matter can proceed to an in-person assessment. Scheduling of examinations will be staggered over the coming weeks as we work through the backlog of cases.

A comprehensive protocol document has been prepared (*Protocols for Medical Assessments During Coronavirus Pandemic*), in consultation with Approved Medical Specialists, Government experts and stakeholders. The protocol document sets out the Commission's expectations and protocols for conducting and participating in medical assessments, both in-person and by video.

The main points to note about medical assessments for Commission matters during the coronavirus pandemic are:

- All medical disputes will continue to be referred for teleconference with an Arbitrator before referral for medical assessment;
- Video assessments will be preferred to in-person assessments wherever possible;
- In-person assessments will only be conducted where other options are not appropriate;

- In-person assessments will only be arranged on request;
- A pre-examination assessment will be undertaken on the day prior to the in-person assessment, to minimise the time at the in-person assessment;
- Any worker who has flu-like symptoms will not be examined.

The continuation of in-person medical assessments will remain subject to the advice received, the ongoing incidence of COVID-19 cases, and the deemed risk to workers, doctors and their staff.

The past few months have posed many challenges for the Commission, the parties and legal representatives. I wish to express my sincere thanks for the professional manner in which all stakeholders have acted to ensure the Commission continues to deliver its services in an effective and timely manner

Judge Gerard Phillips
President

THE PRESIDENT ISSUED A FURTHER UPDATE ON 12 JUNE 2020:

e-bulletin No. 105 - June 2020

On 20 March 2020, the President advised that, until further notice, in-person hearings would be held by exception and only on successful application to the President. That policy continues.

Commencing 12 June 2020 and until further notice, the following protocols will apply to any in-person hearings.

Any updates to these protocols will be communicated in future e-Bulletins.

Entry to the Commission and Requirements to Exit

1. Persons attending the Commission must comply with these protocols and the reasonable requirements of the Commission's Security Officers.
2. No-one should attend or remain at the Commission if they suffer from any COVID-19 or flu-like symptoms.

3. COVID -19 screening will be conducted by a Security Officer every time a person exits a lift on Level 21 - the screening procedure is set out on the last page of this protocol including:

   (a) Persons giving their name and contact details.

   (b) Temperature testing – entry will be declined if a person tests above 37.5 C.

   (c) If a person satisfactorily passes the temperature test, the requirement to participate in a COVID-19 symptoms questionnaire. Entry will be declined if a person has one or more COVID-19 or flu-like symptoms.

   (d) Access will be denied if temperature testing or questionnaire participation is refused.

   (e) Enforcement of social distancing guidelines in the hearing room and outside the hearing room – that is; each person must be at least 1.5 metres apart.

   (f) Entry into and out of the hearing room will be strictly controlled.

   (g) Persons who pass the temperature test and the COVID-19 questionnaire, must ask staff for antiseptic wipes and clean their phone and bags before being granted entry.

Attendees Displaying Symptoms

4. If any attendee at the Commission becomes ill or displays any symptoms of COVID-19 or flu-like symptoms (including fever, cough, runny nose, sore throat, shortness of breath, loss of taste or smell), they must immediately notify the Security Guard (and give their name and contact details) and leave the premises.
5. The Commission proceedings will be adjourned and appropriate steps taken, including any deep cleaning required. The Commission will also alert appropriate authorities.

Hearing Rooms and Hearing Room Procedures

6. No party is to enter the hearing room before their matter is called.
7. No more than 8 people (including the Arbitrator and Security Guard) may be in the hearing room.

8. All participants must sit in designated seats as indicated in the diagram on the door of the hearing room and in the seats marked in each hearing room (i.e. at least 1.5 to 2 metres apart).
9. Appearances will not be required until the hearing commences, and then they should be provided from the bar table orally. Submissions may be made while seated so that sneeze guards are effective.
10. Parties must *not* approach the bench and should not expect to be able to hand up documents.
11. Parties should not use hard copy documents at all**.**
12. Oaths and Affirmations - physical copies of holy books will not be available.
13. Parties must leave the Commission immediately after their hearing has concluded.

Cleaning

14. Courtroom cleaning will occur as often as practicable between hearings and when the Commission is adjourned during the day.
15. Each time a witness is excused, the area from which they gave evidence will be surface cleaned.
16. Hearings will pause every 1.5 hours and the hearing room will closed for surface cleaning.

Kitchen and Photocopying Facilities

17. Kitchen facilities will not be open, and food is not allowed in the Commission.
18. Water and glasses will not be available - water bottles must not be left at the Commission.
19. Photocopying facilities will not be available.

Sanitiser and Related Items

20. Sanitiser is available; however, it is recommended that participants bring their own sanitiser/wipes.
21. Participants must wash their hands frequently, sanitise as frequently as required, cough and sneeze into their elbows/tissues, and carefully dispose of wrapped tissues in a waste basket.

The Protocols for In-person Hearings and Entry to Commission Premises can be found here.

Contact 1300 368 040 if you have any inquiries.

Judge Gerard Phillips
President

THE PRESIDENT ISSUED AN UPDATE ON 10 JUNE 2020:

e-bulletin No. 104 - June 2020

Commission Venue Strategy – Physical and Virtual

COVID-19 prompted the use of virtual venues and informed the decision to conduct some events virtually, even *after* COVID-19 ceases to be an issue. The Commission currently uses MS Teams as its virtual venue however, it does not replicate the functionality of the Commission's physical venues.

Pilot and Partnering with the Australian Disputes Centre (ADC)

From 22 June until 21 August 2020, the Commission will pilot the use of the online platform *Modron Spaces,* to conduct some arbitrations. The Commission is partnering with ADC to deliver the pilot and so, the ADC brand will be displayed throughout.

Importantly, ADC will deliver a concierge service to participants, including pre-event familiarisation, connecting participants and support during the event – this will smooth out the learning curve and maximise participant satisfaction.

Pilot Goals and Test Group

The Commission selected *Modron Spaces* because it is easy to use, and it closely replicates the physical spaces that are traditionally used when conducting conciliation/arbitrations and mediations.

The pilot is designed to:

- Give participants confidence that help is there when they need it; and
- Allow the Commission to gather feedback from all those who participate in an event conducted on the platform.
- Give participants deep experience with the platform, that is; the arbitrator participant pool will be small with about 13-15 participants - they will be drawn from all levels of technical proficiency.

Setting up for success

Arbitrator participants will attend a training session and they will receive the support provided to all participants in any matter that is conducted on the pilot.

All pilot participants will attend a familiarisation session before each event and receive facilitated connections for their event, together with readily accessible support during the event.

After the Pilot

The Commission will share the results of the pilot, and if it decides to continue with Modron Spaces, it will maintain the status quo while it draws up a transition plan to take the Commission from a temporary pilot to an ongoing program.

Next Steps and Further Communications

Arbitrators will be consulted shortly about their individual participation. Legal representatives and insurers will be consulted if their matters are scheduled to be conducted on Modron Spaces. The Commission is excited by the opportunities presented by the pilot and if you have any queries, please contact Siobhan Flores-Walsh on 8281 6489 or Siobhan.Flores-Walsh@wcc.nsw.gov.au

Judge Gerard Phillips
President

THE PRESIDENT ISSUED A FURTHER UPDATE ON 14 MAY 2020:

e-bulletin No. 103 - May 2020

Procedural requirements on arbitral appeals

Practitioners are reminded that arbitral appeals must comply with the procedural requirements of s 352 of the *Workplace Injury Management and Workers Compensation Act 1998* (the 1998 Act) as set out in Practice Direction No 6 – Appeal against a Decision of an Arbitrator (Practice Direction No 6).

Appeal Applications and Notices of Opposition that do not comply with Practice Direction No 6 will be rejected (see *Jeld-wen Australia Pty Ltd v Quilao* [2019] NSWWCCPD 10, at [32]). If an Appeal Application cannot be re-submitted within the time required by s 352(4) of the 1998 Act, parties must make an application to extend time for the making of the appeal under r 16.2(5) of the Workers Compensation

Commission Rules 2011. Practitioners are reminded that such applications will be considered having regard to whether exceptional circumstances exist.

Practitioners are encouraged to familiarise themselves with Practice Direction No 6, found on the Commission's website here.

It is inappropriate for practitioners to contact Presidential Unit staff or the Registrar's delegate by telephone to seek to cavil with a decision to reject an Appeal Application, a Notice of Opposition or a decision to issue a Direction. Minor procedural matters may be dealt with over the phone via the Commission's Registry.

Grounds of appeal

The Appeal Application must state briefly, but specifically, the grounds relied on in support of the appeal. It is not acceptable merely to allege that the Arbitrator erred in law, fact or discretion, or that the decision is against the evidence or the weight of the evidence. The grounds of appeal must identify:

1. the nature of the alleged error to have occurred, being either an error of law, fact or discretion;
2. any material findings it is said the Arbitrator should or should not have made; and
3. any material facts it is said the Arbitrator should or should not have found.

Submissions

Submissions must be divided into paragraphs and numbered consecutively. They must contain appropriate subheadings for each separate ground. All submissions must deal clearly and succinctly with each ground of appeal.

Filing of supplementary submissions following receipt of the Commission's Official Transcript

It is not appropriate that parties file an appeal without grounds, or with no submissions in support, on the basis that submissions will be filed on receipt of the Commission's official transcript.

An appellant is permitted to supplement their submissions on receipt of the official transcript. However, this is not an invitation to provide submissions or grounds of appeal, or to extend time to provide submissions, at a later point in time.

The Commission operates in a front-end loaded system. As such, parties are not permitted to "reserve their right" to file further submissions outside the standard timetable without leave.

Practitioners are required to keep notes of the essentials of what occurs in arbitration hearings, including the terms of orders and the elements of arguments put to Arbitrators.

A copy of the audio recording of an arbitration hearing and a transcript of an oral decision of an Arbitrator can be obtained by writing to the Commission at audio@wcc.nsw.gov.au .

Online lodgment portal

Practitioners are further reminded that from 1 January 2020, the Commission no longer accepts hard copy or email lodgment for forms and other documents. Lodgments will be limited to the online portal, except for matters lodged by self-represented parties. Paper forms should not be uploaded onto the online portal.

Follow the links on the Commission's website to use the portal

Judge Gerard Phillips
President

THE PRESIDENT ISSUED A FURTHER UPDATE ON 5 MAY 2020:

e-bulletin No. 102 - May 2020

This e-Bulletin has been formulated having regard to Public Health (COVID-19 Restrictions on Gathering and Movement) Order 2020, as amended, the object of which is to deal with the public health risk of COVID-19 and its possible consequences.

Updated protocols and checklist for conducting telephone con/arbs and mediations

The *Protocols for Telephone Conciliations, Arbitrations and Mediations*, issued with e-Bulletin No 98 on 20 March 2020, has been updated to address the following:

- Attendance of insurer representatives at con/arbs and mediations;
- Attendance of interpreters at con/arbs and mediations;
- Attendance of witnesses at con/arbs;
- Providing accurate and direct telephone numbers for con/arbs and mediations;
- Late notifications of changes to telephone contact numbers.

The Commission has also prepared a *Guide for Legal Practitioners – How to Conduct Telephone Conciliations/Arbitrations and Mediations*, which provides a checklist and guide for practitioners and parties.

I again remind legal practitioners of the importance of thorough preparation for telephone con/arbs and mediations including:

- Early notification to the Commission of the names and contact numbers of those attending on behalf of a party;
- Insurer representative attendance at con/arbs and mediations;
- Properly instructing counsel;
- Consulting with clients and holding client conferences well in advance of the listing; and
- Discussing the case with the other party prior to the telephone con/arb or mediation to narrow issues and to give the best opportunity to resolve the dispute

The Commission will conduct con/arbs and mediations by video conference in appropriate cases. If you are seeking a video conference, you should raise this with the arbitrator at the initial teleconference or with the Registrar. Video conferences will only be conducted where the parties and legal representatives have access to relevant equipment, are able to use the equipment, and each participant has access to adequate Internet connectivity.

I also draw your attention to the fees set by the Workers Compensation Independent Review Officer in support of the changes to the Commission's practice and procedure, as outlined in Part 3 of *WIRO Wire to Approved Lawyers – Covid-19 Operations Changes*.

Dispute lodgments in the Commission continue to be steady and listings remain strong. It requires all of us to continue to put significant effort into preparation and participation to resolve disputes, particularly given the restrictions. While we have had some problems with our telephone conference provider, as they adjust to an increased workload, parties have been patient and understanding. That consideration, ongoing support and commitment are appreciated.

Judge Gerard Phillips
President

THE PRESIDENT ISSUED A FURTHER UPDATE ON 2 APRIL 2020:

e-bulletin No. 101 - April 2020

The Commission's operations

Since 24 March 2020 and the suspension of in-person hearings, the Workers Compensation Commission has continued its important role of facilitating settlement of disputes between parties, and hearing and determining entitlements to benefits. It is the Commission's intention to continue hearing cases by telephone and using its online portal throughout the COVID-19 crisis, no matter how long it lasts.

I again stress to lawyers the importance of thorough preparation for telephone con/arbs and mediations including:

- Early notification to the Commission of the names and contact numbers of those attending on behalf of a party;
- Insurers attending the telephone event;
- Properly instructing counsel;
- Consulting with clients and holding client conferences well in advance of the listing event; and
- Parties discussing the case with each other prior to the telephone event to narrow issues and to give the best opportunity to resolve the dispute.

Case management and resolution of medical disputes

In e-Bulletin No 99, issued on 24 March 2020, I announced the suspension of in-person medical examinations by Approved Medical Specialists (AMSs) due to concerns for the safety and wellbeing of workers, doctors and their staffs. Since that time, Commission staff have been consulting with stakeholders with a view to resolving medical disputes, including recommencing AMS examinations under some changed conditions.

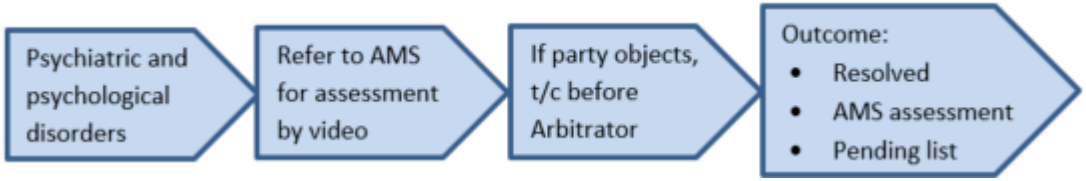
Bear in mind the COVID-19 situation is rapidly changing and we are following the advice and directions of the National Cabinet, Chief Medical Officer and Ministerial directions, as released from time to time. The Commission will vary any arrangements made if any new advice requires a further change in process.

Commission staff have undertaken a detailed review of every medical assessment matter we have suspended. We are confident that the approach outlined in this e-Bulletin will enable many of these assessments to be finalised.

Set out below are various strategies for dealing with medical disputes. This approach is designed to explore the early resolution of the dispute and AMS assessment by a modality which does not require an in-person examination. Some assessments simply may not be capable of being accommodated by another means during the current public health crisis. If an alternative to an in-person assessment cannot be accommodated, the dispute will be placed in a 'medical assessment pending list', with a view to prioritising these matters for assessment when the restrictions due to the pandemic ends. A medical dispute will only proceed to an in-person assessment in exceptional circumstances and under strict controls.

Procedure for resolving medical disputes involving psychiatric and psychological disorders

Consultation by video is an option open to AMSs and is suited to psychiatric assessments in circumstances where an in-person assessment is unable to be conducted.



If a medical dispute is in relation to a psychiatric and psychological disorder, the matter will be listed for assessment by an AMS psychiatric specialist in the usual way. The parties will be notified of the assessment and that it will be conducted by video. The worker's legal representative must ensure their client is able to participate by video, including that they have access to and the ability to operate necessary equipment. Modern mobile phones (smartphones) with high resolution cameras are adequate and easily accessible. These are preferable to laptops and desktop computers as the picture quality is generally superior.

If, on review of the file, the AMS is of the opinion that the medical dispute is not suitable for assessment by video, the AMS will remit the matter to the Registrar for the matter to be held in the 'medical assessment pending list'.

If either party opposes assessment by video, the matter will be listed for teleconference before an Arbitrator. The Arbitrator may:

- Attempt to resolve the opposition to video assessment and refer the matter to an AMS for assessment by video;
- Attempt to bring the parties to an acceptable resolution of the medical dispute; or
- Remit the matter to the Registrar to be held in the 'medical assessment pending list'.

The parties may, by consent, apply to restore a matter from the 'medical assessment pending list' at any time, for either AMS assessment or Arbitrator teleconference.

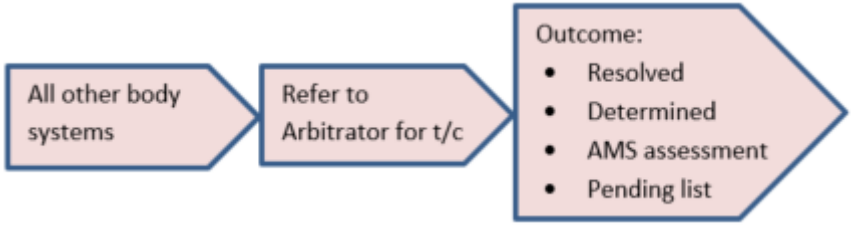
The worker must undertake the following measures in preparation for a video consultation:

- The worker should be in a quiet room, where the door can be closed. This will ensure that no children, pets or others will interrupt the assessment.
- Before commencing the assessment, the worker must inform other persons in the premises that they must not interrupt the consultation or enter the room for any other purpose unless it is an emergency.
- The room lighting must be adequate, and the light source should face the worker.
- The mobile phone (or laptop or desktop computer) should be placed on a stable surface and not held. Movement requires more bandwidth and reduces both video and audio quality.

- The device should be plugged into an AC adapter (power point). Battery operation should be avoided as videoconferencing equipment can quickly deplete batteries. This is particularly relevant in psychiatric interviews, which can extend over 1.5 – 2 hours.
- Where possible, the worker should practise videoconferencing with another person beforehand to familiarise themselves with the process.
- The worker should be dressed as if he or she was going to see the doctor in person. It is not acceptable to wear pyjamas or unsuitable attire.

The worker should ensure the camera and microphone are switched on and working prior to the video consultation.

Procedure for resolving medical disputes involving other body systems

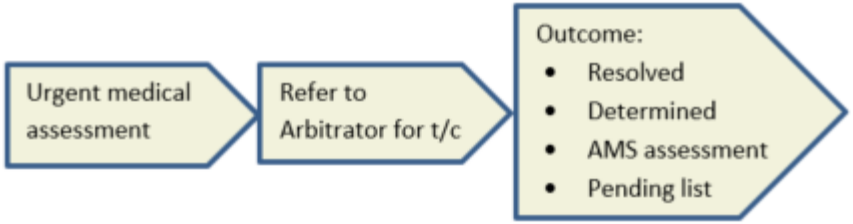


Medical disputes for all other body systems will be initially listed for teleconference before an Arbitrator. The Arbitrator may:

- Attempt to bring the parties to an acceptable resolution of the medical dispute;
- Determine the medical dispute, where appropriate;
- Attempt to narrow the evidence and issues between the parties and refer the dispute to an AMS for assessment by video; or
- Remit the matter to the Registrar to be held in the 'medical assessment pending list'.

The parties may, by consent, apply to restore a matter from the 'medical assessment pending list' at any time, for either AMS assessment or Arbitrator teleconference.

Medical disputes requiring urgent in-person medical assessments



If the legal representative identifies the case as being urgent and requiring an in-person medical assessment, the dispute will be fast-tracked to an Arbitrator for teleconference. The Arbitrator may:

- Attempt to bring the parties to an acceptable resolution of the medical dispute;
- Determine the medical dispute, where appropriate;
- Attempt to narrow the evidence and issues between the parties and refer the dispute to an AMS for assessment by either video or in-person assessment; or
- Remit the matter to the Registrar to be held in the 'medical assessment pending list'.

If the Arbitrator determines that an in-person assessment is required and the matter is urgent, the following procedure will apply to the assessment:

- The assessment will only be conducted if it can take place near the worker's place of residence.
- The day before the physical assessment, the AMS will conduct a video consultation with the worker to take a history and address any relevant issues.
- Attendance at the in-person assessment by private vehicle or by hire car or other similar transport is strongly encouraged. If travel is by hire car or similar, the Commission will ensure the vehicle is properly cleansed before use and the cost of the transport will be met. Where at all possible, the worker should attend an in-person appointment alone.
- The AMS will conduct the in-person assessment in the shortest time possible and will take all necessary precautions to minimise the risk of infection to the worker, staff and themselves.
- Given that gatherings are currently restricted to two people, interpreters will be required to attend by telephone.

Medical disputes assessed 'on the papers'

The requirement for the worker to submit to an examination by an AMS not mandatory (see section 324(1)(c) of the *Workplace Injury Management and Workers Compensation Act* 1998). The majority of medical disputes lodged with the Commission will require examination

by an AMS, either in-person or by video. Only in rare cases, for example, where a worker has passed away, would an AMS make the assessment based solely on medical and other evidence provided by the parties.

Comment

I understand that this approach will not see that every matter is dealt with in the timely and efficient way that these claims usually enjoy. Some matters will be able to be completed while others due to their nature or complexity must wait. Uppermost in my mind is the ongoing need to keep workers, AMSs and staff safe from possible COVID-19 infection. The advice from the National Cabinet on 29 March 2020 was for Australians to stay in their homes unless it is absolutely necessary to go out. Certain groups – those over the age of 70, people over 60 with health problems, or Indigenous people over the age of 50 - are advised to stay home wherever possible. In-person assessments will therefore not be recommended for those groups.

In formulating these intended approaches to AMS examinations, the Commission will continue to be guided by National Cabinet advice and Ministerial directions.

This is a time where each of us is being called upon to be creative and to adapt to the extraordinary circumstances we all face. With patience and goodwill, we can adapt our usual way of doing business to keep in operation the processes that deliver justice.

THE PRESIDENT ISSUED A FURTHER UPDATE ON 27 MARCH 2020:

Week 1 of telephone conciliations, arbitrations and mediations

In e-Bulletins 97 to 99, I announced changes to the Commission's operations in response to the escalating situation with the coronavirus pandemic. Since the start of this week, all staff have been working remotely (from home) and all listings (conciliations/arbitrations and mediations) have been conducted by telephone. The Commission also suspended in-person medical assessments to ensure the health and wellbeing of workers, doctors and staff. We hope to reach a position on the management of medical disputes within the coming days where a number can be recommenced safely.

The significant changes and our response to the evolving situation has only been possible because of the great team at the Commission and our progressive use of technology. Our staff have done a fantastic job to transition the entire Commission list to telephone while not missing a beat with business as usual tasks. My sincere thanks also to the valuable contributions of our arbitrator, mediator and approved medical specialist cohorts. We have had some technical glitches with our telephone service provider but on the whole things have run smoothly and we are confident these problems, mainly due to the sudden increase in traffic, will be ironed out for next week.

This week, the Commission successfully conducted 144 listings, namely, 73 initial teleconferences, 39 con/arbs and 32 mediations. A fantastic outcome.

I wish to express my appreciation to those who participated in telephone con/arbs and mediations this week, in particular arbitrators, mediators and lawyers, for their professionalism and patience in this new process. The feedback I have received has been extremely positive and encouraging. I also wish to also express my sincere thanks to SIRA, icare, WIRO, Bar Association, Law Society and members of our User Group, who have all made tremendous contributions in what have been rapidly changing circumstances.

For those who haven't already, I implore you to read the Commission protocol for participating in telephone con/arbs and mediations. The protocol is an evolving document, which will be periodically updated as we receive feedback and as things change.

I stress to lawyers the importance of thorough preparation for telephone con/arbs and mediations including:

- Early notification to the Commission of the names and contact numbers of attendees for their party;
- Insurers actual attendance at the telephone event;
- Properly instructing counsel;
- Consulting with clients and holding client conferences well in advance of the listing event; and
- Parties discussing the case with each other prior to the telephone event to narrow issues and give the best opportunity to resolve the dispute.

Together we will get through this. My best wishes to you, your colleagues and your families for their health and safety through this challenging period.

THE PRESIDENT ISSUED AN E-BULLETIN UPDATE, AS OF 24 MARCH 2020:

Suspension of face-to-face medical assessments

Since the Commission's last e-Bulletin, the situation with the coronavirus pandemic has intensified significantly. In response, the Commission has escalated changes to its operations by transitioning all staff to work from home and the conduct of all hearings and conferences by telephone.

The remaining issue of concern for the Commission, and for me personally, is the conduct of face-to-face medical assessments by the AMS cohort. I am concerned about the safety of workers, doctors and their staffs. I am particularly concerned about workers having to travel

distances to AMS assessments and then travel home. Already some workers and doctors have made their own decisions not to proceed with assessments. These feelings are all completely understandable.

I have consulted medical and legal experts and cannot be given any guarantees for the health and safety of workers, medical specialists and staff. I am not satisfied that our pre-screening measures will be enough to prevent the possible transmission of the virus.

In those circumstances, I have made the difficult decision to cease all face-to-face medical consultations from tomorrow, 25 March 2020, until further notice. I did not make this decision lightly and am well aware of the significant impact it will have but my primary consideration must be the welfare of all.

We will continue to explore every possible alternative to face-to-face assessments, and we are in discussions with SIRA, icare, WIRO and medical experts regarding this.

Commission staff will commence today to inform workers and legal representatives of the cancellations. You will appreciate this has been a very difficult and demanding time for staff.
I would greatly appreciate your consideration for them and their task. Any pre-warning legal representatives are able to give their clients would be helpful

Suspension of mail by DX and post

Given all Commission staff are working remotely, correspondence lodged by document exchange and post will not be attended to. All documents in proceedings should be lodged via the online portal. Any other general written communications should be by email at registry@wcc.nsw.gov.au.

We will continue to update you by e-Bulletin. Please take care of yourselves and your loved ones.

The Workers Compensation Commission had previously announced that commencing 23 March 2020 and until further notice, conciliations, arbitrations and mediations will be conducted by telephone. Given the current national health emergency, face-to-face conciliation, arbitration and mediation will only be held if approved by the President of the Workers Compensation Commission.

The President of the Workers Compensation Commission has issued a new ***Protocols for Telephone Conciliations, Arbitrations and Mediations*** document, which is available here: https://www.wcc.nsw.gov.au/__data/assets/pdf_file/0015/613131/WCC-Protocols-for-Telephone-Con-Arbs-and-Mediations-20.03.20-.pdf

The President also issued the following statement on 20 March 2020:

Protocols for telephone conciliations, arbitrations and mediations

Yesterday, I announced in response to the escalation of the COVID-19 epidemic that the Workers Compensation Commission would implement procedural changes to our operations, namely, conducting conciliation/arbitrations (con/arbs) and mediations by telephone. The reasons for this are obvious – it allows the Commission to continue to deliver our important work but ensures, to the extent that we can, the health and wellbeing of our staff, arbitrators, mediators, parties, legal representatives and others who use our services.

While I expect that conducting con/arbs and mediations by telephone will pose new challenges not experienced in face-to-face conferences, these are extraordinary times which call for extraordinary measures. It is clearly in the interests of injured works and legal representatives that the Commission remains open for business and I expect cooperation, respect and genuine participation from all involved.

For a number of legal practitioners, particularly counsel, conducting proceedings by telephone will be something new. I ask that you persevere; the Commission has been doing a large part of its business by telephone since it first opened its doors, with outstanding results.

To assist you during this period, we have prepared the following **protocol document**, which provides a guide to participating in telephone con/arbs and mediations. I implore you to review and understand the document.

With patience and good will we will get through this together. As I said in my message yesterday, when the crisis is over we will return to the normal practices of the Commission.

The President of the Workers Compensation Commission issued the following message on 19 March 2020:

Commission operations – procedural changes

Further to **e-Bulletin No. 97**, and in view of the emerging situation with COVID-19, the following procedural changes will be implemented to the Commission's operations. These changes will be implemented during the currency of the COVID-19 crisis. Once the crisis is over, the Commission will return to standard operations. Section 354 of the *Workplace Injury Management and Workers Compensation Act 1998 (NSW)* supports these changes.

I am fully committed to the principle of in-person hearings and justice being conducted in the open. Such processes have integrity and enjoy widespread public support. They also afford the citizen the right to have their case heard and dealt with in a suitably formal process.

However, this long-held process must change due to the current coronavirus crisis. In this regard, I am balancing the competing demands of open justice against the prospect of justice being delayed. If the Commission's decision-makers or the staff who support them become unwell with this virus, we will be unable to deliver justice and thus justice would be denied. Furthermore, I do not wish to add any further risk to the health and well-being of the lawyers and litigants who come here every day in large numbers.

I reiterate that once this crisis is over, the Commission will return to in-person hearings. When this occurs will depend upon the best medical advice available.

From Monday 23 March 2020, I will be ceasing all in-person hearings and closing the Commission's hearing rooms. Decisions during this period will continue to be published on the Commission's website.

I will confer with stakeholders during the currency of the revised procedures to ensure their optimal operation and will implement any further changes or enhancements that may be required.

From Monday 23 March 2020, conciliation/arbitration proceedings, mediation conferences and presidential hearings will be conducted by telephone. In some circumstances, for example where a witness needs to give evidence, the proceedings may be conducted by audio-visual link. All arbitration proceedings and presidential proceedings conducted by telephone or audio-visual link will be recorded.

To make this system work optimally, parties, and in particular applicant's lawyers, should confer with their client regarding settlement well prior to the telephone conference. Parties will be contacted by the Commission Registry with the relevant details for the hearing.

In exceptional circumstances proceedings may be conducted in-person. If a party seeks that proceedings be conducted in-person, an application must be made in writing to the Commission's Registry setting out the reasons why. Parties will also be required to justify the persons who they seek to have present during the in-person proceeding. Parties should operate to minimise the persons who are present during the in-person proceeding. Their presence must be absolutely necessary for the proceedings at hand. I will determine each application for in-person proceedings on a case-by-case basis.

If I grant approval for proceedings to be conducted in-person, the following procedures will apply:

(a) parties must only attend the venue for the proceedings at the allocated time;

(b) parties must not enter the room for which the proceedings are conducted until the matter is called;

(c) parties must depart the room and the venue at which the proceedings are conducted when their matter is completed, and

(d) parties must within 24 hours of the commencement of proceedings confirm that no person attending is unwell or a carrier of the COVID-19 virus.

Please note that we will continue to utilise our **online lodgment portal** for electronic lodgment of forms and documents in respect of Commission proceedings.

I have discussed these proposed measures with The Law Society of New South Wales and the Bar Association. I have also consulted with the Commission's User Group. All three groups are very supportive of these proposed changes to practices in order to help the Commission and those who use its services contend with the current coronavirus crisis. I am indeed grateful to these groups for their sensible and pragmatic approach as well as some very practical and helpful suggestions they have made in order to enhance this change of process.

I cannot stress the point too highly that practitioners and their clients must comply with any directions that the Commission makes or any conditions that I might impose on any particular hearings. This is done with your well-being and the well-being of the Commission's members and staff in mind. I have every confidence that if everybody acts sensibly and does their duty in accordance with directions regarding public health and any information put out by the Commission, we will be able to maintain the Commission's operations throughout this challenging period. The Commission is very fortunate that the expenditure was made to develop the online portal and paper-lite approach to cases; this will serve us very well during this crisis.

Finally, I would also ask for your patience and understanding at this time. The Commission's staff are working very hard to enable these changes to be implemented from next Monday. I am confident that with the goodwill and co-operation of all involved, we can make this work for the benefit of the citizens of New South Wales.

Keeping you updated

We will continue to review our protocols and inform you as we receive advice. Please ensure you carefully read the e-Bulletins and monitor news alerts as we issue them.

HIGH COURT OF AUSTRALIA

For further information, visit https://www.hcourt.gov.au/

On 15 April the High Court published a *Video Connections Hearings Protocol*, which is extracted below and available here:

https://www.hcourt.gov.au/assets/registry/information/VC_Hearings_Protocol.pdf

HCA Video Connection Hearings – PROTOCOL

The following notes are provided as a guide to practitioners participating in High Court Video Connection ("VC") Hearings

Technical arrangements

The Court is using video conference technologies to conduct VC Hearings routed through Courtroom 2 in the High Court Building in Canberra, which will act as the VC hearing hub.

Participants will be expected to connect to the hearing from a device (laptop, iPad, tablet, smartphone) with a suitable camera and microphone.

4G connections are not reliable and broadband connectivity is preferred. If video quality is not satisfactory participants may need to join the hearing by telephone (landline preferred).

Participants will be provided, in advance, with connection instructions for each hearing.

VC hearings will be recorded by the High Court Reporting officers and transcripts will be produced and published in the usual way. Recording of a VC hearing other than by High Court staff is not permitted.

Participants should remain alert to any deterioration in picture and sound quality and inform the Justice/s immediately if this is impacting on their ability to participate fully in the hearing.

When a matter is listed for VC hearing, the Court will identify the HCA contact person for that hearing and provide their contact details. Participants with questions about the procedures to be adopted for the VC hearing *or* experiencing technical difficulties during a VC hearing, should first contact the nominated officer for their hearing.

Testing

In advance of a VC hearing, the Court will test the connections to be used by the participants to ensure compatibility of equipment and facilities at all proposed sites. A test may require the participants to be present and connected for a significant period of time.

The typical things that will be covered are:

- clarity of the video feed and audio quality;
- confirming the name, location and method of connection of each participant;
- confirming that users have a familiarity with the system;
- confirming that users have the protocol, have read it and understand it;
- confirming the procedures to be followed and any directions issued by the presiding justice;
- all parties have provided and have access to all necessary materials;
- whether counsel need to be robed.

Hearing protocol

All participants should be at their respective sites at least 15 minutes prior to the commencement of the VC hearing so that appearances and details of other participants can be obtained and exchanged.

The hearing will, as closely as possible, be conducted in accordance with the usual practice of the Court. However, some variations may be necessary to cater for limitations introduced by the technology that is being used, the changed environment created by that technology and the geographic separation of participants. The Justice/s will not normally enter the VC hearing until all participating sites have been connected, participants at each site are ready to proceed and participants have confirmed that they are able to see and hear all other sites.

When the Justice(s) is (are) online, the matter will be called for hearing.

Unless appearing remotely from a remote court room, practitioners should remain seated for the entry and exit of the Justices and when addressing the Court. Practitioners appearing remotely from a remote court room should rise when the Justice(s) enters or enter and leave their respective court room(s) and when addressing the Court, in the usual manner.

For the benefit of the Court Reporters, participants should announce their name and the party for whom they appear before commencing their submissions.

Practical tips

Participants should speak directly into the microphone when addressing the court. Participants should mute their microphone when they are not speaking.

Participants should also try to reduce their body movements as much as possible.

When positioning the camera on their device, participants should be mindful of camera angle, glare from windows, and the background image.

Participants should attempt to find a remote site that is free from as much background noise as possible.

PRACTICE DIRECTIONS 1 AND 2

On 22 March 2020 the Justices of the High Court issued Practice Directions Nos 1 and 2 of 2020, **which take effect on 23 March 2020,** "in relation to some of the measures the Court has implemented to ensure that the High Court Registry can continue to offer its full range of services to litigants, practitioners and members of the public during the current period". The High Court advised as follows:

Practice Direction No 1 of 2020 Electronic Filing of Documents

One measure is to move to a form of electronic filing for cases filed prior to the implementation of the Digital Lodgement System on 1 January 2020. For pending cases filed prior to 1 January 2020 documents should be filed as attachments to an email where possible. This will remove the need for litigants and practitioners to attend the Registry counter to file their documents in pre-2020 cases.

Practice Direction No 2 of 2020 Opening of the Registry

The filing of most if not all material electronically (either by email or through the new Digital Lodgement System) will reduce the need for the Registry to remain open for six hours each working day as is provided by Practice Direction No 2 of 2017. Registry opening hours will from 23 March 2020 be reduced to 10:00am to 1:00pm.

The Practice Directions are extracted below and available on the High Court website at https://www.hcourt.gov.au/registry/filing-documents/practice-directions

HIGH COURT OF AUSTRALIA - PRACTICE DIRECTION NO 1 OF 2020 - ELECTRONIC FILING OF DOCUMENTS - CASES COMMENCED BEFORE 1 JANUARY 2020

1. Commencement

This Practice Direction takes effect on Monday, 23 March 2020.

2. Filing documents

For the purposes of Rule 1.07.1 of the *High Court Rules 2004* documents to be filed in cases commenced before 1 January 2020 should, where possible, be forwarded as a PDF attachment to an email sent to the managing Registry:

Canberra: Canberra.Registry@hcourt.gov.au;
Melbourne: Melbourne.Registry@hcourt.gov.au; or
Sydney: Sydney.Registry@hcourt.gov.au.

3. Copies of documents lodged by email

The person who sends the document must:

(a) keep a paper or electronic copy of the document; and
(b) if directed to do so by the Court, a Justice or the Registrar, produce a hard copy of the document.

20 March 2020

HIGH COURT OF AUSTRALIA - PRACTICE DIRECTION NO 2 OF 2020 - OPENING OF THE REGISTRY

1. This Practice Direction takes effect on 23 March 2020.

2. Practice Direction No 2 of 2017 is revoked.

3. The office hours of the Registry shall be from 10.00 am to 1.00 pm.

4. Each office of the Registry shall be open during office hours on each day except:

(a) Saturdays and Sundays;
(b) any day observed as a holiday by the Australian Public Service or observed as a public holiday in the State or Territory of that office;
(c) the days between Christmas Day and New Years Day inclusive; and
(d) any day on which the building in which the office of the Registry is located is closed to the public.

20 March 2020

The High Court previously advised that:

- **The High Court of Australia will not be sitting in Canberra or on circuit in the months of April, May and June.**
- The Court will continue to deliver judgments and deal with special leave applications including hearings as necessary at individual registries and will hear any urgent matters that may arise by video link between registries and Canberra.
- Any enquiries should be directed to enquiries@hcourt.gov.au
- The question of future sittings will be reviewed in June.

FEDERAL COURT OF AUSTRALIA

For further information, visit: https://www.fedcourt.gov.au/covid19

ON 19 JUNE THE COURT ISSUED THE FOLLOWING UPDATE:

Court Attendance

Due to the COVID-19 pandemic, the Federal Court has modified its practices to minimise in-person attendance on Court premises, with the Court's priority being the health and safety of the community, parties, practitioners, judges and staff, and the families of all of these groups.

As infection rates and government restrictions ease, the opportunities for a limited return to in-person attendance in Court will increase for matters that are essential to be heard in person.

Limits on the number of people within the Court precinct are in place and all of the Court's buildings have been assessed and prepared to ensure appropriate physical distancing can be maintained.

SPECIAL MEASURES IN RESPONSE TO COVID-19 (SMIN-4)

Court Attendance

1. INTRODUCTION

1.1 This Special Measures Information Note (SMIN-4) sets out arrangements for Court attendance at the Federal Court during the COVID-19 outbreak in Australia.

1.2 Due to the COVID-19 pandemic, where appropriate and necessary, the Federal Court is modifying its practices in order to minimise in person attendance on Court premises, with the Court's priority being the health and safety of the community, and in particular, parties, practitioners, judges and staff, and the families of all of these groups.

1.3 The cooperation of all court users and court staff is required in this regard.

1.4 This special measures information note takes effect from the date it is issued and, to the extent practicable, applies to all proceedings filed before, or after, the date of issuing.

1.5 This special measures information note remains in effect until and unless superseded or revoked.

2. IN-PERSON ATTENDANCE

2.1 The health and safety of the community, judges and court staff is our priority.

2.2 As infection rates and government restrictions ease the opportunities for a limited return to inperson attendance in Court will increase.

2.3 The Court will continue to limit the number of people within the Court precinct to limit the spread of COVID-19. In addition, there will be physical distancing requirements and limits on the size of gatherings for all persons who are in attendance.

2.4 Do not come to court if you are unwell.

2.5 All those attending the Courts for hearings are encouraged to download the Australian Government Department of Health COVIDSafe app.

3. PHYSICAL DISTANCING AND PERSONAL HYGIENE

3.1 All of the Court's buildings have been assessed to ensure appropriate physical distancing can be maintained and limits placed on the numbers of people who can gather in Courtrooms and other areas.

3.2 Decals, stickers and floor markings throughout the Court's buildings indicate appropriate physical distancing and gathering limits.

3.3 All persons attending Court buildings must obey appropriate physical distancing and gathering limits.

3.4 All persons attending Court buildings must also practice good hygiene.

3.5 Hand sanitiser is available at the entry of each building, on each floor and at bar tables.

3.6 Public bathrooms on each floor provide access to soap and water.

4. CLEANING

4.1 All Court facilities are being cleaned to ensure compliance with COVID-19 cleaning and disinfecting measures outlined by Safe Work Australia.

4.2 Please inform a member of Court staff or Court Security if you become aware of anything that requires prompt attention from cleaning staff.

J L B ALLSOP Chief Justice 16 June 2020

Water jugs, bubblers and fountains in the Court

As part of the Court's CovidSafe measures, water fountains, bubblers and water jugs have been temporarily removed from court buildings. Practitioners and litigants who have in person hearings are asked to bring their own water bottles.

Current proceedings

If practitioners are involved in current proceedings before the Court that are impacted by COVID-19, they are encouraged to direct enquiries for assistance, such as necessary adjournments, variations to timetables or preparation for hearings, to:

Tuan Van Le, National Judicial Registrar
Phone: (03) 8600 3343

Urgent circumstances

In urgent circumstances, face-to-face Registry services may be provided after initial assessment via telephone. You can contact us on 1300 720 980.

On 17 April the Chief Justice has drawn to the profession's attention the Hague Conference's *Guide to Good Practice on the Use of Video-link under the Evidence Convention* to assist members. The guide is available here:

https://www.hcch.net/en/publications-and-studies/details4/?pid=6744&dtid=3

The Court released the following notice on 7 April 2020:

https://www.fedcourt.gov.au/law-and-practice/practice-documents/practice-notes/smin-3.pdf

SPECIAL MEASURES IN RESPONSE TO COVID-19

Special Measures Information Note: Appeals and Full Court Hearings (SMIN-3)

1. INTRODUCTION

1.1 This Special Measures Information Note: Appeals and Full Court Hearings ("**SMIN-3**") sets out arrangements for the conduct and management of appeals and Full Court hearings during the COVID-19 outbreak in Australia.

1.2 Due to the COVID-19 pandemic, where appropriate and necessary, the Federal Court is modifying its practices in order to minimise in person attendance on Court premises, with the Court's priority being the health and safety of the community, and in particular, parties, practitioners, judges and staff, and the families of all of these groups.

1.3 The cooperation of all court users and court staff is required in this regard.

1.4 This special measures information note is to be read in conjunction with the Federal Court's Content of Appeal Books and Preparation for Hearing Practice Note (APP2) and Lists of Authorities and Citations Practice Note (GPN-AUTH). Where inconsistent, this special measures information note is to take precedence over APP2 and GPN-AUTH.

1.5 This special measures information note takes effect from the date it is issued and applies to all appeals and Full Court matters listed in the May 2020 Full Court and Appellate sitting period, and any subsequent sitting periods.

1.6 This special measures information note remains in effect until and unless superseded or revoked. 1.7 Any reference to an ("appellant") includes an ("applicant"), where applicable.

2. REMOTE TECHNOLOGY HEARINGS

2.1 All matters before the Full Court shall be conducted as electronic appeals, and approval in accordance with paragraph 11 of APP2 is no longer required.

2.2 All hearings will proceed with the use of video conferencing technology (such as Microsoft Teams), or by telephone conferencing. Some matters may be considered appropriate to be determined on the papers, with the possibility of the Full Court giving leave to the parties to provide short oral addresses by video-conference, at a later date to be fixed.

2.3 There will be no 'in person' hearings, unless exceptional circumstances apply and prior approval is given by the Chief Justice.

3. ELECTRONIC APPEAL BOOKS AND LIST OF AUTHORITIES

3.1 Appeal Books (Parts A, B and C) and all documents connected with the matter must be filed electronically and should not be reproduced in hard-copy, unless the Court specifically requires otherwise.

3.2 The parties must also provide electronically an agreed List of Authorities and Legislation (not separate lists as provided for by APP2).

3.3 The electronic version of the Appeal Books and List of Authorities must:

(a) include an index which contains an individual hyperlink to each document included in the index;

(b) comprise only PDF documents which:

(i) are in native format, or, where impracticable to be provided in that form, scanned and in PDF text searchable (OCR) format;

(ii) include appropriate bookmarks;

(iii) include as the file name the corresponding tab number in the index followed by sufficient descriptor of the document or authority. For example "*01. Notice of Appeal.pdf*" or "*02. Décor v Dart [1991] FCA 844.pdf*";

(c) be provided to the Court in the manner prescribed by the Associate to the Presiding Judge.

3.4 If any uncertainty arises as to compliance with the electronic document requirements set out above, the parties may jointly approach the chambers of the judges of the Full Court.

3.5 In the ordinary course, parties will be informed of the judges hearing the appeal approximately two weeks before the Full Court sittings, or the hearing of the appeal if the appeal is being listed outside the usual Full Court sittings. If the bench changes after the parties have provided the documents electronically the Court will attend to the distribution of the documents.

3.6 In accordance with APP2, Part C of the Appeal Book is required to be filed no later than 5 business days prior to the hearing. The associate to the presiding judge will contact the parties shortly before that time to make arrangements for the provision and delivery of the electronic Appeal Books to the Full Court.

4. OUTLINE OF SUBMISSIONS AND CHRONOLOGY

4.1 All submissions and chronologies filed by the parties should where possible include hyperlinks to the relevant document in the electronic version of the Appeal Book and List of Authorities.

5. ADDITIONAL MATERIAL

5.1 Where a party wishes to refer to additional material not included in the Appeal Book, the party must seek leave of the Court. 5.2 If leave is granted, the Full Court may direct the party to tender the document via a particular electronic method, such as: (a) The sharing function on Microsoft Teams; (b) a nominated file sharing service; or (c) by email.

6. CONFIDENTIAL MATERIAL

6.1 Parties should be aware that hearings conducted by remote technology may still be observed by members of the public and other interested persons.

6.2 Any concerns regarding the need to refer to confidential material during the hearing should be raised with the chambers of the judges of the Full Court at the earliest opportunity.

7. CONDUCT OF HEARING

7.1 The Court requires the co-operation of all parties and their legal representatives to conduct themselves in the remote hearings in a way that is consistent with the overarching purpose of the Act: see s 37M *Federal Court of Australia Act 1976* (Cth).

7.2 Litigants, instructing lawyers and counsel are not required to be physically located in the same place during the course of the hearing. Ordinarily, arrangements are made for litigants, their instructing lawyers and counsel (if any) to attend the remote hearing via separate connections.

7.3 Parties should have regard to the National Practitioners and Litigants Guide and be available to participate in any test calls with the Court prior to the hearing.

8. ENQUIRIES AND CONTACT INFORMATION

8.1 If an appellate or original jurisdiction matter has been allocated to a Full Court and parties have been made aware of the bench, ordinarily any communication regarding the conduct of the matter should be made to their chambers. However, if the matter has yet to be allocated to a Full Court bench, or parties have not been made aware of the bench, then any specific concerns should be raised with the Appeals Registrars, whose contact details are as follows (noting that enquiries about migration appeals should be directed to Registrar Haag, below):

- Tuan Van Le, Judicial Registrar, Appeals (Tuan.VanLe@fedcourt.gov.au);

- Caitlin Wu, National Registrar, Appeals (Caitlin.Wu@fedcourt.gov.au); or
- Simon Haag, Judicial Registrar, Migration (Simon.Haag@fedcourt.gov.au).

8.2 General questions regarding electronic hearings should be directed to Jessica Der Matossian, Registrar, Digital Practice (Jessica.dermatossian@fedcourt.gov.au).

The Court issued a new *National Practitioners/Litigants Guide to Virtual Hearings and Microsoft Teams* on 2 April. The guide is available here:

https://www.fedcourt.gov.au/__data/assets/pdf_file/0019/62416/National-Practitioners-and-Litigants-Guide.pdf

The Court released the following notice on 2 April 2020:

SPECIAL MEASURES IN RESPONSE TO COVID-19 ADMIRALTY AND MARITIME (SMIN-2)

Warrants for the arrest of ships

1. INTRODUCTION

1.1 This Special Measures Information Note (SMIN-2) sets out arrangements for the issue of warrants for the arrest of a ship during the COVID-19 outbreak in Australia.

1.2 Due to the COVID-19 pandemic, where appropriate and necessary, the Federal Court is modifying its practices in order to mitigate the risks associated with COVID-19 pandemic, with the Court's priority being the health and safety of the community, and in particular, parties, practitioners, judges, marshals and staff, and the families of all of these groups.

1.3 The cooperation of all court users and court staff is required in this regard.

1.4 A person who wishes to apply for the issue of a warrant for the arrest of a ship must give consideration to the matters raised in this special measures information note.

1.5 This special measures information note is to be read in conjunction with the Federal Court's Admiralty and Maritime Practice Note (A&M-1). Where inconsistent, this special measures information note is to take precedence over A&M-1 in respect of the arrangements for the issue of a warrant for the arrest of a ship during the COVID-19 outbreak in Australia.

1.6 This special measures information note takes effect from the date it is issued and, to the extent practicable, applies to all proceedings filed before, or after, the date of issuing.

1.7 This special measures information note remains in effect until and unless superseded or revoked.

2. MARSHALS – ISSUES OF AVAILABILITY AND ACCESS

2.1 Due to the COVID-19 pandemic, it may be that the marshal or marshals charged with effecting an arrest will not be able to do so in the usual way because of public health, logistical or legislative restrictions. By way of example, where the ship is in a remote area and, ordinarily a Border Force officer would act as a marshal, Border Force may not have anyone available to carry out the arrest. Further, in some States there may be restrictions on a marshal boarding a ship during the COVID-19 outbreak.

2.2 If a marshal is not available to effect an arrest in the usual way, consideration may need to be given to whether it would be appropriate to seek an order from a judge that the Court waive compliance with r 43 of the Admiralty Rules 1988, under r 6A, and direct that service or execution of the warrant be effected by electronic communication to the master of the ship using email, text message or other means. The deemed time of arrest should be addressed if such relief is sought.

3. ARRESTED SHIPS, QUARANTINE ARRANGEMENTS AND ATTENDANT COSTS

3.1 Practitioners should give consideration to the possibility that vessels to be arrested may harbour the COVID-19 virus because a person suffering from COVID-19, or a person with symptoms of COVID-19, is, or was, on board, or because the vessel, or a person on the vessel, left a site of contamination.

3.2 In such circumstances, ships may, for public health and other legitimate reasons, have to remain under arrest for a protracted period of time for the purposes of quarantine and or disinfection.

3.3 An applicant for an arrest warrant, being the plaintiff or (as is ordinarily the case) the plaintiff's Australian legal practitioner or other agent, may potentially be liable for a significantly larger sum than might ordinarily be the case, in consequence of the undertaking given for the issue of a warrant pursuant to r 41 of the Admiralty Rules 1988.

3.4 The marshal has power to demand payment up front under r 41(2) of the Admiralty Rules. In light of the present economic situation, a plaintiff seeking arrest will be required to pay a deposit in advance, and if necessary from time to time, to enable the marshal to undertake the arrest and ongoing custody of the ship.

The Court released the following notice on 1 April 2020:

CHANGE TO PUBLIC ACCESS TO FEDERAL LAW SERACH

Access to Federal Law Search is now only available to registered users via the secure portal.

This change may interfere with the ability of some persons to conduct other Federal Law searches, such as those relating to Admiralty, Bankruptcy and Native Title. It is anticipated that this will be a short term change.

The Court is, as a matter of urgency, examining how it can move registers such as those related to Admiralty, so that they are not blocked, or otherwise provide equivalent search services to specific files to avoid inconvenience to litigants in those areas.

Persons interested in searching the registers, or other non-migration areas, such as Admiralty, Bankruptcy and Native Title, who are unable to do so through the secure portal, should call 1300 720 980.

The Chief Justice released an update to the Court's *Special Measures in Response to COVID-19 (SMIN-1) Special Measures Information and Practice Note*, dated 31 March 2020. The update is extracted below and available here:
https://www.fedcourt.gov.au/__data/assets/pdf_file/0004/62374/Special-Measures-Information-Note-SMIN-31-March-2020.pdf

SPECIAL MEASURES IN RESPONSE TO COVID-19 (SMIN-1)

Special Measures Information and Practice Note

Updated 31 March 2020

1. INTRODUCTION

1.1 This Special Measures Information Note (SMIN-1) sets out arrangements for the continued operation of the Federal Court during the COVID-19 outbreak in Australia.

1.2 Due to the COVID-19 pandemic, where appropriate and necessary, the Federal Court is modifying its practices in order to minimise in person attendance on Court premises, with the Court's priority being the health and safety of the community, and in particular, parties, practitioners, judges and staff, and the families of all of these groups.

1.3 The cooperation of all court users and court staff is required in this regard.

1.4 This special measures information note takes effect from the date it is issued and, to the extent practicable, applies to all proceedings filed before, or after, the date of issuing.

1.5 This special measures information note remains in effect until and unless superseded or revoked.

2. REGISTRY OPERATIONS

2.1 The health and safety of the community, judges and court staff is our priority, and therefore changes have been made to our registry operations. Registry services will be provided remotely, by telephone and through other online services. In urgent circumstance, face-to-face services in a registry may be provided, but only after initial assessment via telephone.

3. ELECTRONIC FILING OF ALL DOCUMENTS

3.1 To the extent possible, all documents must be lodged for filing using the Court's electronic filing facility, eLodgment.

3.2 Documents that are not able to be lodged through eLodgment may be faxed or emailed to the relevant registry (at the registry email address available on the Court's website) for filing.

3.3 Court users who do not have access to the necessary electronic equipment, including selfrepresented litigants, should contact the registry by telephone for assistance. Public scanning facilities can be made available in each registry to facilitate the electronic filing of all documents.

3.4 Registry staff have been asked to minimise hard copy document handling. To the extent possible, hard copy documents should not be posted or hand delivered to registries.

4. SIGNATURES ON DOCUMENTS AND AFFIDAVITS

4.1 To facilitate the electronic filing of all documents, if access to scanning technology is limited, the Court will temporarily allow documents to be signed electronically, including by having the person signing the document type their name in the relevant space in the signature block in lieu of physically signing the relevant document.

4.2 The Court also acknowledges that remote working arrangements may pose significant challenges to having affidavits sworn or affirmed. The Court will accept the filing of unsworn affidavits on the understanding that, if required, these will later be sworn or affirmed when circumstances allow.

5. SUBPOENAS AND INSPECTION OF DOCUMENTS

5.1 Inspection of documents at all registries of the Court is to be by appointment only. Requests for an appointment should be made by emailing the relevant registry.

5.2 Legal practitioners and parties should only request an appointment to view subpoenaed materials if this is truly necessary for the conduct of the proceeding at the time. As a general guide, the Court will consider whether an appointment is necessary by reference to whether a matter is scheduled for hearing in the subsequent 4 weeks, or is otherwise urgent.

6. TRIAGE PROCESS FOR NEWLY FILED JUDGE MATTERS

6.1 A triage process has been introduced for newly filed judge matters. Newly filed judge matters, other than urgent duty matters and Full Court and appellate matters, will first be provisionally allocated to the docket of the National Operations Registrar to be considered for allocation and a first return date.

6.2 As the Court has successfully begun to operate using remote means, allocations will now be made with a view to moving the Court to operating at about 50-60% of normal capacity. The success of this will of course depend upon the continued functionality and reliability of IT systems.

6.3 To assist in this process of triaging, parties will be contacted by the Court and asked to answer a number of questions relating to the proposed management of the matter.

7. ALL COURT LISTINGS AND EVENTS, INCLUDING HEARINGS AND MEDIATIONS

7.1 In order to remain open and operational, whilst protecting health, safety and wellbeing, the Court must work to limit in person attendance on Court premises.

7.2 To the extent possible, alternative arrangements will be put in place for all listings and events that would ordinarily require in person attendance. In particular, the Court will contact legal practitioners and parties to determine whether listings and events may be able to be conducted on the papers, by telephone or by other remote access technology.

7.3 If alternative arrangements are not able to be put in place for listings and events that would ordinarily require in person attendance, such listings and events will need to be vacated or adjourned other than in exceptional circumstances and with the express authorisation of the Chief Justice.

7.4 If you have an upcoming listing or event, wherever possible the Court will endeavour to contact you at least two weeks prior in relation to any alternative arrangements. If you have not been contacted by the Court or if you remain unsure of what is happening in relation to a particular listing or event please contact NORTeam@fedcourt.gov.au by email, with the matter number and title in the subject line.

8. COMMUNICATIONS WITH THE COURT AND AMONG PARTIES

8.1 The Court is continuing to conduct its business on the docket system so communications with the specific docket judge remain important as always

8.2 In these extraordinary times it is necessary to remember certain fundamental aspects of court communication etiquette. There should no ex-parte communication with chambers unless of course the matter concerns an ex-parte application. Practitioners and parties should continue to maintain all usual communication practices with the Court.

8.3 The Court expects that practitioners and the parties will exhibit real co-operation in dealing with each other and with the Court in order to avoid any unnecessary delay or misunderstanding in how matters are being dealt with.

9. SHORT LISTINGS AND EVENTS, HALF A DAY OR LESS

9.1 The Court will seek to accommodate any listings or events that would ordinarily require in person attendance for half a day or less without requiring in person attendance, either: (a) on the papers; (b) by telephone; or (c) by a combination of both of the above.

9.2 In some circumstances, short listings may also be able to be accommodated by other remote access technology, including video conferencing' technology such as Microsoft Teams.

9.3 The preferred means of accommodating any short listings and events will be determined by the relevant judge or registrar, in consultation with legal practitioners and parties where appropriate.

9.4 Ahead of being contacted by the Court, legal practitioners and parties are encouraged to consider which aspects of their listings may be able to be dealt with by consent and/or on the papers, and to communicate with each other to seek to reach agreement on such matters.

10. LONGER LISTINGS AND EVENTS, OVER HALF A DAY

10.1 Longer listings and events that would ordinarily require in person attendance for half a day or more will undergo a triage and prioritisation process. Legal practitioners and parties should work cooperatively with the Court, and with each other, to identify how and when longer listings and events may be able to proceed.

10.2 The Court has already been able to accommodate some longer listings and events, including contested hearings, through the use of remote access and file sharing technology, including Microsoft Teams.

10.3 Issues requiring consideration include reliability of the proposed technology, document security, availability and timing of transcripts, and the ability to live stream hearings so as to facilitate open and accessible courts.

11. REMOTE TECHNOLOGY

11.1 All hearings before the Court (other than in truly exceptional circumstances) are currently proceeding using remote access technology.

11.2 Currently, the Court is using Microsoft Teams and telephone conferencing in order to hear matters. It is anticipated that the number of available court rooms will shortly be adequate to enable wide spread access to remote technology for hearing purposes.

11.3 A National Practitioners/Litigants Guide to virtual hearings and Microsoft Teams will be available on the Court's website at: https://www.fedcourt.gov.au/online-services/virtualhearings.

11.4 The Court is also considering streaming and other methods of ensuring the requisite degree of public access to hearings conformable with the open justice and open court principles.

11.5 The Court will amend this note of special measures when other methods and functions become operational.

12. SELF-REPRESENTED LITIGANTS

12.1 The Court acknowledges the impact these special measures and the conduct of electronic hearings may have on self-represented litigants, and persons unfamiliar with the Court process.

12.2 Where appropriate, the Court will consider the needs of unrepresented litigants and other persons who may not have access to suitable technology to conduct or participate in hearings conducted by the Court using remote access technology.

13. URGENT MATTERS

13.1 Duty judge and registrar contacts for urgent matters are available on the Court's website and will continue to be updated daily. Any requisite modifications to the published application process for urgent duty matters will be notified by the relevant duty judge or registrar.

13.2 If a matter has been allocated to a judge's docket, ordinarily any communication or application regarding carriage or conduct of the matter (including urgent communications or applications) should be made to him or her. However, if it is a new matter not yet allocated, or if for some reason it is not practicable or appropriate to approach the docket judge or if the inquiry specifically concerns the Court's response to the COVID-19 outbreak in Australia, queries should be addressed by email to the National Operations Registry at NORTeam@fedcourt.gov.au, or you can contact the NOR Team duty contact for the day, as published on the Court's website. Such queries will be prioritised, allocated to a senior member of the NOR Team and attended to as a matter of urgency.

The Federal Court has released the following information for practitioners on 30 March 2020:

> Information for Court Users
>
> - In **urgent circumstances**, face-to-face services may be provided after initial assessment via telephone. You can contact us on 1300 720 980.
> - If practitioners are involved in current proceedings before the Court that are impacted by COVID-19, they are encouraged to direct enquiries for assistance, such as necessary adjournments, variations to timetables or preparation for hearings, to:
>   Tuan Van Le, National Judicial Registrar
>   Phone: (03) 8600 334.

The Chief Justice of the Federal Court of Australia released on 23 March 2020 the original practice measure put in place on 23 March concerning the operation of the Federal Court and a guide for the use of the application presently being used by judges in the Court: Microsoft Teams.

The Court also announced on 23 March 2020 that:

> Following the developments in the COVID-19 situation, and the need to protect our staff and all visitors to our buildings, we have decided to close our public facing counters and cease face-to face services from Tuesday 24 March 2020.
>
> While the counters are closed, we are still working in registries and remotely to provide services and support practitioners and litigants via phone and other online services.
>
> In urgent circumstances, face-to-face services may be provided after initial assessment via telephone.
>
> You can contact us on the following number: 1300 720 980
>
> This has been a difficult decision but one that is 100% focussed on the safety and wellbeing of our staff, court users and the community.

The Chief Justice of the Federal Court of Australia advised on 20 March 2020 that:

> We are making good progress in the establishment of the court to external and external to external video facilities. A number of matters will be proceeding next week in this regard.
>
> It is perhaps unnecessary to say that this is all moving quite rapidly. We are now making good progress in developing the video-conferencing facilities and we are now increasing priority in developing our capacity to work remotely. A number of cases will be proceeding in the next few weeks using the video-conferencing facility.
>
> Once again I would like to thank the profession for their continued co-operation. Court is of the view that the delivery of justice is an essential service and we are working as quickly as we can in the most co-ordinated way that we can to ensure that the ability of the court to deal with matters brought to it will be uninterrupted and effective.

The Federal Court of Australia made the following announcement on Wednesday 18 March 2020:

> Further to the update posted yesterday, the Federal Court of Australia has now commenced communicating with all parties with matters listed for hearing in the upcoming months.
>
> **Parties have been requested to identify (with the assistance of the Court) opportunities by which listings may proceed either by way of telephone conference or other remote access technology. The Court is working to ensure that as many listings as possible are able to proceed. Matters may be able to keep the same date; they may not. They may be able to be done on the papers. These decisions will be based on information from litigants and considerations of workload and judicial availability.**
>
> To the extent that matters listed in the 4 – 29 May 2020 Full Court and Appellate sitting period are impacted by this approach, the Court will be in contact with the relevant parties over the next week.
>
> **The Court is not shutting down or vacating cases simpliciter. It is adjourning hearings in court so that the Court's workload can be managed safely and without interruption. The Court is trying to remain consistently operational by minimising the risk of closures, with all the attendant cost and inconvenience that would cause, in particular to parties and practitioners.**
>
> The first priority of the Court is the safety of litigants, practitioners and its judges and staff. The measures being adopted are intended to ensure that the Court remains open and functioning Court for litigants in this challenging period. This includes ensuring the necessary technology is in place to enable as many matters as possible to progress in a timely and effective way.
>
> There will no doubt be some inconvenience for hearings that were scheduled in the coming weeks. The Court is seeking the co-operation of all parties and their representatives in working collaboratively to ensure the Court continues to be able to provide a safe, efficient and flexible service for parties over the coming months.

This follows, and supplements, the Court's announcement on 17 March 2020:

This information supersedes all previous updates provided by the Court.

In light of the recent developments that led to the closure of the Lionel Bowen building in Sydney, the Federal Court of Australia is taking steps to reduce the risk to court users and court staff from in person attendance in court buildings, commencing Wednesday, 18 March 2020.

Unless specifically and individually excepted by the Court, all Federal Court of Australia listings that require in person attendance, including mediations and listings relying on video link from court premises listed up to 30 June 2020, are vacated. The Court is examining, as a matter of urgency, its capability to facilitate listings by remote access technology, without requiring in person attendance. Further information will be provided as soon as possible of alternative arrangements that may be able to be put in place.

In the meantime, parties with listed hearings up to 30 June 2020 will be contacted by the Court directly about the need for the matter to proceed and possible options for achieving that where appropriate.

The decision as to whether the listing will proceed in the short term and, if so, when and in what manner, will be made by the relevant judge or registrar in consultation with the Chief Justice.

Court users should closely monitor the Daily Court Lists to check which listings are proposed to proceed.

Family Court of Australia & Federal Circuit Court of Australia

For further information, visit: http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/online-services/covid/covid-news-hp or http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/online-services/covid/covid-news-hp

Urgent enquiries regarding specific matters should be directed to the Chambers of the relevant Judge. Assistance, including necessary adjournments, should be directed at first instance, to Michael Raine via michael.raine@familycourt.gov.au or (08) 8219 1641.

General court-related enquiries can be directed to the National Enquiry Centre by email: enquiries@familylawcourts.gov.au or 1300 352 000.

On 9 September the Family Court and Federal Circuit Court updated their ADR stakeholder information:

http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/news/adr-covid-info

On 3 September the Family Court and Federal Circuit Court released *Technological tips to optimise your virtual hearing/electronic ADR experience*, which are available here:

http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/news/tech-tips

On 24 August the Family Court and Federal Circuit Court released a *Special Measures Information Notice (SMIN-2) – Subpoena Inspection in the Melbourne and Dandenong Registries*, which is available here:

http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/rules-and-legislation/information-notices/subpoena/notification-smin2

On 7 August the Family Court and Federal Circuit Court updated their ADR stakeholder information:

http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/covid/covid-news-all

On 5 August the Chief Justice of the Family Court and Chief Judge of the Federal Circuit Court issued the following Notice to the Profession, in response to the Victorian COVID-19 Stage 4 restrictions:

https://nswbar.asn.au/the-bar-association/publications/inbrief/view/08b347d11316f1372f3414b4c4252401

On 4 August the Family Court and Federal Circuit Court released the following:

Joint Practice Direction 2: JPD 2 of 2020 - Special Measures in response to COVID-19
Electronic filing, Viewing of Subpoenas, Annexures to Affidavits, Signatures on Documents and Affidavits, and Fees

---

A. This Joint Practice Direction applies to all family law applications, including appeals, filed in the Family Court of Australia or the Federal Circuit Court of Australia ("the Courts"), and all general federal law applications filed in the Federal Circuit Court of Australia.

B. Due to the coronavirus (COVID-19) pandemic, where appropriate and necessary, the Courts are modifying practices in order to minimise the attendance by legal practitioners and parties at registries, with the Courts' priority being the health and safety of the community, Judges and staff.

C. This Joint Practice Direction takes effect from the date it is issued and supersedes the following Practice Directions:

   a. **Family Court of Australia Practice Direction 2 of 2020 Electronic – Filing, Annexures to Affidavits and Viewing of Subpoenas**; and

   b. **Federal Circuit Court of Australia Practice Direction 3 of 2020 – Electronic Filing and Viewing of Subpoenas**.

D. To the extent practicable, this Joint Practice Direction applies to proceedings whether filed before, or after, the date of issuing.

E. This Joint Practice Direction remains in effect until and unless superseded or revoked. Given the COVID-19 situation is rapidly evolving, further updates are possible.

Filing of all documents

1. To facilitate matters being dealt with electronically, legal practitioners and lawyers must efile or elodge all documents.

2. If documents are unable to be efiled or elodged, then they should be emailed to the registry for electronic filing. Court users who do not have access to the necessary electronic equipment, including self-represented litigants, should contact the Registry by telephone for assistance.

3. Hard copies of documents are not to be posted or delivered to the registry.

Subpoenas and Inspection of documents

4. Subpoena viewing at all registries of the Courts is by appointment only. Requests for an appointment should be made by emailing the relevant registry.

5. Access to subpoenaed material that has 'photocopy access' may be provided at the discretion of the registry. Registry staff will email approved documents. Photocopy access will not be made to documents including a child welfare record, criminal record, medical record or police record, in accordance with sub-rule 15.30(2) of the *Family Law Rules 2004* and sub-rule 15A.13(2) of the *Federal Circuit Court Rules 2001*.

6. Legal practitioners and parties should only make appointments to view subpoenaed material if the matter is critically urgent.

7. Wherever possible, material being produced under subpoena is to be provided to the Courts electronically by email. Hard copies of documents are not to be posted or delivered to the registry unless they are not able to be provided electronically.

Annexures to affidavits

8. For matters filed in the Family Court of Australia, unless total annexures exceed more than two centimetres in width, documents referred to in affidavits should be attached to the affidavit when it is electronically filed or emailed to the registry.

9. Applications to file documents in the Family Court of Australia in excess of two centimetres in width should be made to the registry case co-ordinator who may liaise with the duty registrar or docket judge as the case requires. If the application is acceded to, parties will be required to email those documents (or if email or other electronic means is not possible, to provide a USB stick containing those documents) to the registry.

Signatures on Documents and Affidavits

10. Documents, including affidavits, financial statements and consent orders, required to be signed under the *Family Law Rules 2004* or the *Federal Circuit Court Rules 2001* may be signed electronically by the deponent and/or the lawyer on the record for that party, including by having the person signing the document type their name in the relevant space in the signature block in lieu of physically signing the document.

11. The Courts acknowledge that the COVID-19 environment may pose significant challenges to having affidavits and financial statements sworn or affirmed.

12. The Courts will accept for filing affidavits (other than where part of a divorce application) and financial statements that have been signed without a qualified witness also signing the document, subject to, if the judicial officer requires it, the deponent of the document being made available by telephone or videoconference or in person, at a subsequent court event, to swear or affirm that the contents of the document are true and correct to the best of their knowledge, information and belief.

Deferral of fee payments

13. Registry staff may be unable to process fee payments where they are working from home and are unable to access an eftpos terminal. In those circumstances, the registry staff member may 'defer' a fee payment for a scanned form or document that has been emailed to the Courts.

14. Where registry staff are able to come into the physical Court premises they will continue to process payments for forms that have been scanned and emailed to the Courts.

15. The process for online payments, including when eFiling, will remain unchanged.

[signed in hard copy]

THE HONOURABLE JUSTICE WILLIAM ALSTERGREN

CHIEF JUSTICE

FAMILY COURT OF AUSTRALIA

CHIEF JUDGE

FEDERAL CIRCUIT COURT OF AUSTRALIA

DATE: 31 MARCH 2020

UPDATED: 3 AUGUST 2020

On 20 July the Courts provided an update to their list of ADR services:

http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/news/adr-covid-info

On 8 July the Family Court and Federal Circuit Court released the following statement concerning Victorian COVID-19 restrictions:

COVID-19 UPDATE: VICTORIAN RESTRICTIONS

The Victorian Premier, Daniel Andrews, has announced that all Metropolitan Melbourne Local Government Areas and the Mitchell Shire will be returning to Stage 3 restrictions.

These restrictions are coming into effect from 8 July 2020 at 11:59pm and will be in effect for the next six weeks.

Importantly, the Courts remain open by conducting trials and other hearings electronically via telephone or Microsoft Teams. However, all face-to-face hearings in the Melbourne and Dandenong registries are suspended (as notified on 30 June 2020).

This notification is to remind the legal profession and all court users that there will be no face-to-face hearings in the Melbourne and Dandenong registries for at least the next six weeks unless expressly authorised by the Chief Justice and only in urgent circumstances.

Chief Justice Alstergren has previously raised the expectation that during these exceptional times, parties should cooperate and ensure that the best interests of the child are addressed by complying with court orders. If strict adherence to parenting orders is not possible, it is imperative that any revised arrangements reflect the spirit of the orders.

“Our Courts understand the very difficult situation that many Victorian residents now face following the announcement of further restrictions and border closures. However, families can be reassured to know that they are not alone and if they cannot resolve their disputes

independently, they should seek help from the many support services that are available, or contact the Courts which are open and here to assist through the National COVID-19 List for example," Chief Justice Alstergren said.

The Courts have previously issued information in relation to parenting issues that may be of assistance:

National COVID-19 List – National court list dedicated to dealing exclusively with urgent family law disputes that have arisen as a direct result of the COVID-19 pandemic.

Border restrictions and parenting orders – Guidance in relation to border restrictions and shared parenting.

Parenting orders - Statement from Chief Justice, the Hon Will Alstergren

Further information is available from the Courts' websites: Family Court of Australia and the Federal Circuit Court of Australia.

More information about the Victorian Government's restrictions is available from the website of the Victorian Government.

On 30 June the Courts released an updated list of ADR, settlement and mediation services – stakeholder information:

http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/news/adr-covid-info

On 25 June the Courts released the following updates:

a. **Update to the Profession – COVID-19 Registrar and Child Dispute Services listing measures arrangements,** which is available here: http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/news/covid-notice-cds-registrars-june

b. **Child Dispute Services – In-person interview protocol (updated),** which is available here: http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/news/covid-notice-cds-inperson

On 15 June the Federal Circuit Court issued the following update:

COVID-19: Important information for migration applicants - Updated

Federal Circuit Court of Australia Applications Only

Next steps after you lodge your application

You must serve these documents on the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, which can currently be done by email. Email the documents to litigation.applications@homeaffairs.gov.au.

Role of the Court

The Court has limited power in reviewing the decision of the Administrative Appeals Tribunal, the Immigration Assessment Authority or another body.

The Registry cannot make decisions as to whether you should receive a visa before your case is decided. If you have questions about your visa status while your case is pending, please contact the Department of Immigration.

Directions Hearing

On the front page of your stamped documents will be details about the directions hearing. A directions hearing is about when parties need to file documents in the case and is procedural.

During the COVID-19 closures, there will be no required attendance at court.

You will be contacted by the legal representative for the Minister with proposed consent orders for you to sign and return.

If you need the orders interpreted, let the Minister's lawyers know and they will arrange an interpreter.

If your application relates to a protection visa, you will be provided the details to contact a representative from Legal Aid.

If you do not agree to the Minister's proposed consent orders, on the day of your directions hearing, the Court will make orders on the papers. These orders will be emailed to you or, if you do not have an email, posted to you.

You will be advised when in-person lists recommence.

Applicant's Contact Details

It is important that the Court be able to contact you. If you change your address, phone number or email address, you are required to let the court know by completing a new Notice of Address for Service form.

You can then file the Notice of Address for Service:

- Via eLodgment, at www.elodgment.fedcourt.gov.au (please note to use eLodgment you will need to create an account)
- By email, to your local registry. Please note filing by email is **temporarily** in place, due to the registry door's closing. The email address to file is at the end of this document.
- By fax

- By post

The fax and postal details for each registry can be found on the Federal Court website.

You will be required to serve a sealed copy of this form on the legal representative for the Minister.

Recording of Tribunal Hearing

You can obtain from the Administrative Appeals Tribunal a recording of the hearing at the Tribunal. If you do not have a copy, speak to the Minister's solicitor to request a copy. If you intend to use the recording as part of your application to the Court, a written transcript of the hearing should be obtained and verified by way of affidavit.

Court Fees

When you are given a final hearing date you will receive an invoice for payment of a "setting down" fee (as required by the *Federal Court and Federal Circuit Court Regulation 2012* (Cth)). This fee must be paid no later than 28 days before the hearing day. The fee is currently $805. If you wish to make an application for financial hardship, please complete an exemption application form which is available on the Federal Court's website. This form should be forwarded to the Registry for consideration as soon as possible. Please note that if you discontinue your proceeding after it has been set down for hearing the setting down fee will still be payable.

Hearing

Once the matter is given a date for final hearing, if you do not have a lawyer to represent you, you will need to be ready to tell the Court about your case (with an interpreter if required).

The Court will contact you, in writing, to make arrangements for your hearing in light of the COVID-19 outbreak. Please check your contact details with the Court are up to date, then wait to be contacted.

Costs

At the conclusion of the proceeding in the Court, the court will usually order that the unsuccessful party pay the legal costs and expenses incurred by the successful party. These costs are different from Court fees that are payable to the Court Registry for filing your application and for the setting down of the hearing. If you are unsuccessful or discontinue your proceeding in this Court, you may still be required to pay the Minister's legal costs. If you wish to organise a payment plan or otherwise discuss these costs, please email debtors@border.gov.au .

Registry Contact Details

For all communication with the Court, please **only** email the proper registry for your matter.

State	Email for filing	Email for enquiries
Australian Capital Territory	ACT.Filing@fedcourt.gov.au	actman@fedcourt.gov.au
New South Wales	NSW.Filing@fedcourt.gov.au	nswdr@fedcourt.gov.au
Northern Territory	NT.Filing@fedcourt.gov.au	ntreg@fedcourt.gov.au
Queensland	QLD.Filing@fedcourt.gov.au	qldreg@fedcourt.gov.au
South Australia	SA.Filing@fedcourt.gov.au	sareg@fedcourt.gov.au
Tasmania	TAS.Filing@fedcourt.gov.au	tasreg@fedcourt.gov.au
Victoria	VIC.Filing@fedcourt.gov.au	VIC.Migration@fedcourt.gov.au VIC.Fees@fedcourt.gov.au (for fees enquiries only)
Western Australia	WA.Filing@fedcourt.gov.au	waregistry@fedcourt.gov.au

On 12 June the Courts issued an updated face-to-face in court protocol, which is enclosed below:

UPDATED FACE-TO-FACE IN COURT PROTOCOL 12 JUNE 2020

The Family Court of Australia (**FCoA**) and the Federal Circuit Court of Australia (**FCC**) are increasing face-to-face hearings in a staggered way over the coming months commencing Monday, 15 June 2020. This is the most appropriate way, at present, for the Courts to balance important health and safety considerations of judges, staff and the community with the need to continue providing an essential service for Australian families. This protocol is designed to reduce the risk of being in close contact with a court user who may be infectious and replaces the previous Face-to-Face in Court Protocol dated 23 March 2020.

Following detailed risk assessments, the Courts have developed coronavirus safety controls. By applying these controls, the Courts can best ensure the safety of judges, staff and anyone coming into our buildings.

As government advice on community restrictions changes, the Courts will permit a greater number of litigants and their legal representatives to return to court registries in person.

The Federal Court Entity has engaged Amtec Disaster Recovery to undertake a full assessment of all permanent registries. The assessment methodology has been replicated across the buildings of all permanent registries.

We have put in place arrangements in all public areas to help people maintain 1.5 metre distance. As well as floor and seat markings, we have introduced a series of posters throughout our court buildings to remind court users of the requirement to maintain a 1.5 metre distance and to wash hands thoroughly and regularly. We have introduced additional cleaning measures to ensure our buildings are clean.

1) Listings

Any face-to-face hearings from Monday, 15 June 2020 need to be approved by the relevant case management judge (in consultation with the Chief Justice/Chief Judge).

Priority will be given to urgent trials and urgent hearings of applications that the judge considers cannot be dealt with via Microsoft Teams or over the telephone.

The Courts will stagger listings to reduce the number of people waiting in the foyer/registry building. A list will be collated each day by the Judicial Services Team Leader to ensure that hearing times are sufficiently staggered to allow for cleaning. This will include recess and adjournment times.

The start times of hearings must be listed at 30 minute intervals.

e.g. Judge A –9:30am to 12:30pm; 1:30pm to 4:00pm

Judge B – 10:00am to 1:00pm; 2:00pm to 4:30pm

To reduce the length of any face-to-face hearing, where possible, parties should provide written submissions or consider holding electronic hearings if necessary.

2) Courtrooms and courtroom procedure

Separated and designated courtrooms will be used for face-to-face hearings if possible, to reduce the number of people waiting in the same area in the foyer/registry building.

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

Practitioners and parties will not be able to go to other floors in the court registry save for the entrance and the floor their courtroom is located on. Practitioners and parties are to leave the courtroom immediately after their hearing has concluded, and then make their way promptly to the registry exit.

No more than 8 people (excluding the judge and associates) should be in the courtroom at any one time. Witnesses who are not parties will be required to leave the courtroom after giving evidence.

Counsel, solicitors and parties are to adhere to social distancing by sitting in appropriately distanced seats as labelled in each courtroom and indicated in the example courtroom diagram below (i.e. at least 1.5 metres apart).

All those attending the Courts for hearings are encouraged to download the Australian Government Department of Health COVIDSafe app. Alternatively, the Courts ask (but do not require) that the names and contact details of the attendees be provided to the associate for contact tracing purposes. These details will only be disclosed to health authorities if required by them.

During hearings, appearances are to be provided orally or by email, not by written appearance slips.

Court books for trials are to be provided electronically and a copy is to be provided for each witness and party prior to the hearing. No hardcopy documents should be handed up in court. The Courts will not be providing jugs, glasses or water in the courtrooms. Water is available on each floor to fill personal water containers.

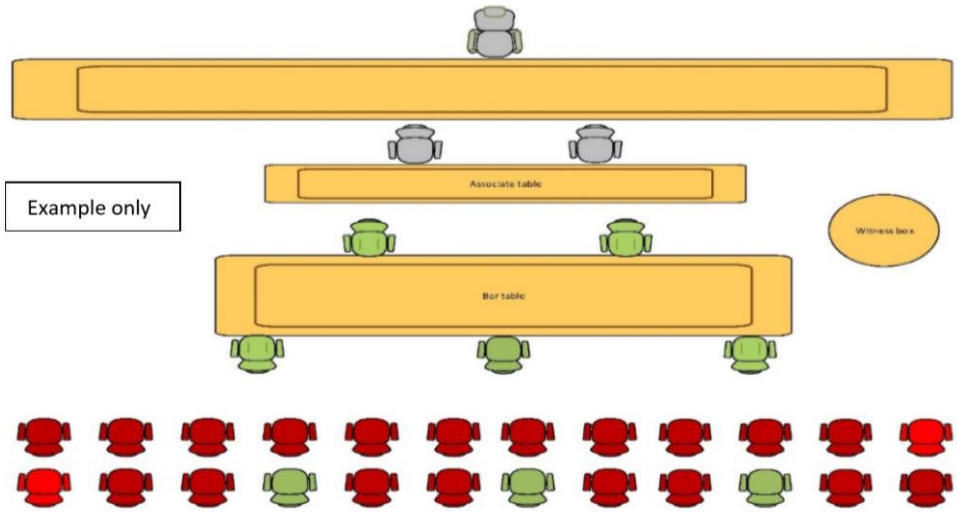
3) Cleaning

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

After a hearing, the courtroom will be closed and appropriate surface cleaning will take place. A cleaning protocol has been provided to cleaning staff.

4) Security

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



On 7 May the Chief Justice advised the Association that the Federal Circuit Court will resume the "Summer Campaign" in the Sydney Registry on 15 June and will continue until 26 June 2020. Hearings will be conducted remotely via Microsoft Teams and telephone, unless restrictions are otherwise lifted.

On 1 May the Family Court and Federal Circuit Court released updated *Alternative dispute resolution, settlement and mediation services – stakeholder information*. This is available here:

http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/news/adr-covid-info

http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/news/adr-covid-info

On 30 April the Family Court and Federal Circuit Court released a *Virtual hearing and electronic ADR feedback form*, seeking feedback from litigants, the profession and the public about their experience of participating court hearings and ADR events by electronic means. The form can be accessed here:

http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/covid/covid-feedback

On 28 April the Family Court and Federal Circuit Court released a *Joint Practice Direction 3: JPD 3 of 2020 – The COVID-19 List*, with the lists to commence operation from 29 April 2020. The Joint Practice Direction is extracted below:

JOINT PRACTICE DIRECTION 3: JPD 3 OF 2020 – THE COVID-19 LIST

A. This Joint Practice Direction applies to urgent family law applications filed in the Family Court of Australia and the Federal Circuit Court of Australia ("the Courts") which are filed as a direct result of the impact of coronavirus (COVID-19).
B. This Joint Practice Direction establishes a fast-tracked, national list in each Court ("the COVID-19 List") to allow the Courts to swiftly deal with urgent COVID-19 applications on a national basis.
C. This Joint Practice Direction takes effect from the date it is issued and remains in effect until and unless superseded or revoked. Given the COVID-19 situation is still evolving, amended versions may be issued.

Criteria for COVID-19 list

1. In order to be considered for the COVID-19 List, the application must satisfy the following criteria:
    a. the application has been filed as **a direct result of the COVID-19 pandemic**;
    b. the matter is **urgent**;
    c. the application is accompanied by an Affidavit (using the COVID-19 template affidavit for the FCoA or FCC) that addresses the criteria set out in paragraph 13 below;
    d. if safe to do so, reasonable attempts have been made to resolve the issue, but were unsuccessful; and
    e. the matter is capable of being dealt with by electronic means.

Operation of the COVID-19 List

2. The COVID-19 List is an initiative of the Chief Justice/Chief Judge, and is at all times managed and overseen by the Chief Justice/Chief Judge.
3. The COVID-19 List will operate in each Court and be administered by the National COVID-19 List Registrars. The National Registrars will, under arrangements set in place by the Chief Justice, consider the urgency of the applications filed and triage them to Judges in each Court who have been assigned to the COVID-19 List.
4. In triaging an application, the National Registrar will consider whether the matter is suitable for an urgent electronic mediation or conciliation and may make orders to facilitate this.
5. Applications that meet the COVID-19 criteria will be given a first return date before a National Registrar or a Judge within 3 business days of being considered by the National Registrar, or less if assessed as critically urgent.
6. If the application does not meet the relevant criteria for inclusion in the COVID-19 List, it will be listed into a duty list or referred to the relevant docket Judge, if applicable, for hearing in the ordinary course.
7. Judges will hear matters in the COVID-19 List on national basis as allocated by the Chief Justice/Chief Judge through the National Registrars based on demand and available judicial resources.
8. If the matter involves significant risk to the parties and/or the children, it will be referred directly to a Judge by the National Registrar.
9. If the application is part of an existing proceeding and has already been docketed to a Judge, that Judge will be consulted in the listing process and invited to mention the application within the required time period if possible.
10. The COVID-19 List will operate electronically, meaning that the application may be heard by a Judge from any Registry.
11. The COVID-19 List Judge will only hear the discrete COVID-19 application, or put interim arrangements in place to deal with the circumstances of urgency. Once that issue is dealt with, the remainder of the matter will be case managed by the docket Judge or a Registrar as appropriate.

Filing an application in the COVID-19 List

12. Applications to be placed in the COVID-19 List are to be filed **by email** to:

a. COVID19List@familycourt.gov.au; or

b. COVID19List@federalcircuitcourt.gov.au .

13. To file an application in the COVID-19 List, the Applicant must file:

    a. The application;

    b. A supporting affidavit of no more than 6 pages using the COVID-19 template affidavit;

    c. A cover letter for urgency – see Annexure;

    d. In the Federal Circuit Court, a Notice of Risk or, in the Family Court, a Notice of Child Abuse, Family Violence or Risk of Family Violence (if applicable).

14. In accordance with JPD2 of 2020 *Special Measures in response to COVID-19*, the Application and Affidavit may be signed electronically. The Affidavit may be filed without a qualifying witness also signing the document.

15. The Affidavit **must** address the following criteria:

    a. why the matter is urgent;

    b. how the dispute has arisen as a direct result of COVID-19;

    c. details of any current allegations of risk to children or parties, such as a risk of child abuse or family violence;

    d. details of the parties' reasonable attempts to resolve the dispute through negotiation, or details of why it was not safe to attempt to resolve the dispute by negotiation; and

    e. details of how it is proposed the Respondent can be provided with a copy of the court documents, including information about the Respondent's current email address; and

    f. if applicable, annexing (or attaching a copy or photo of) any current family law orders, parenting plans, or family violence orders, e.g. an intervention order or domestic violence order.

16. Unless it is not safe to do so, the Applicant must copy the Respondent into the email when emailing the documents to the Court to put them on notice of the proceedings.

17. The Registrar may require the Respondent to file answering material on short notice on the urgent issue only. If the Registrar or Judge requires further material to be filed to be able to deal with the urgent application, that will be conveyed at the first return date.

Examples of applications that may be suitable for filing in the COVID-19 List

18. The following are examples of applications that may be suitable for filing in the COVID-19 List:

    a. **Supervised contact:** the current parenting arrangements involve supervised contact, and the contact centre is closed or the supervisor is unable to perform their role, and the parties cannot agree on an alternative arrangement.

    b. **Border restrictions:** the parties live in different States or Territories and the child cannot travel between the parties' residences due to border restrictions.

    c. **Medical:** The parties and/or child have tested positive for COVID-19 and cannot fulfil the parenting obligations due to sickness or concerns of infection.

    d. **Family violence:** There has been an increase in risk due to family violence resulting from the restrictions imposed on families during the COVID-19 pandemic.

Annexure: Template COVID-19 cover letter for urgency

Dear Registrar

Re: Urgent COVID-19 Application [include existing file number and matter name if applicable]

I/we request that this Application is given an urgent listing and allocated to the National COVID-19 List.

I/my client seek/s that the matter be filed in the [insert location] registry of the [Family Court of Australia/Federal Circuit Court of Australia].

I/we enclose the following required documents:

1. Application;
2. Affidavit of [insert name] [using the COVID-19 template affidavit]; and
3. [If a parenting matter] Notice of Risk [FCC] or Notice of Child Abuse, Family Violence or Risk of Family Violence [FCoA if applicable].

In filing this application, the Affidavit addresses the required criteria:

a) why the matter is urgent;
b) how the dispute has arisen as a direct result of COVID-19;
c) details of any current allegations of risk to children or parties, such as a risk of child abuse or family violence;
d) details of the parties' reasonable attempts to resolve the dispute through negotiation, or details of why it was not safe to attempt to resolve the dispute by negotiation;
e) details of how it is proposed to provide a copy of these court documents to the Respondent today, including information about the Respondent's current email address; and
f) If applicable, annexes (or attaches a photo or copy of) any current family violence order, e.g. an intervention order or domestic violence order.

Regards,

On 27 April the Family Court and Federal Circuit Court issued a *Practitioner Guide to Electronic ADR*, which is available here:

https://inbrief.nswbar.asn.au/posts/08b347d11316f1372f3414b4c40ee949/attachment/27.4.20%20Practitioners%20guide%20to%20electronic%20ADR.pdf

On 25 April 2020 the Family Court and Federal Circuit Court announced the launch of a COVID-19 List to deal with urgent parenting disputes. The media release issued on 26 April is enclosed below:

Media Release - The courts launch COVID-19 List to deal with urgent parenting disputes

http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/reports-and-publications/media-releases/2020/mr260420

The Family Court of Australia and the Federal Circuit Court of Australia (the Courts) are establishing a court list dedicated to deal exclusively with urgent parenting-related disputes that have arisen due to the COVID-19 pandemic. The list will commence on 29 April 2020.

The introduction of this list is in response to an increase in the number of urgent applications filed in the Courts over a four-week period in March and April, with a 39 per cent increase in the Family Court of Australia and a 23 per cent per cent increase in the Federal Circuit Court.

In addition, the Courts have been advised by Women's Legal Services of an increase in the number of enquiries that they have received that relate to COVID-19 and parenting matters.

The Chief Justice of the Family Court of Australia and Chief Judge of the Federal Circuit Court of Australia, the Hon Will Alstergren said that the new list is designed to quickly identify and deal with the cases that need urgent attention due to the COVID-19 crisis. It will also support the work already being conducted by the judges.

"Applications that are eligible to be dealt with through the COVID-19 List, especially those involving issues of risk and family violence, will receive immediate attention and will be triaged by a dedicated Registrar who will assess the needs of the case and allocate it to be heard by a judge within 72 hours of being assessed.

"It is important that these urgent COVID-19 applications are closely managed on a national basis so that they can be heard as swiftly as possible given the unprecedented circumstances we are facing.

"I would also like the public to know that if they need to file an urgent application because they have been directly impacted by COVID-19, it will be heard electronically as quickly as possible by a Judge from any Registry of the Courts.

"Court staff and judges are working tirelessly to ensure that work can continue and Australian families are supported. The COVID-19 List is another example of the Courts responding to the needs of the community during these difficult and stressful times," Chief Justice Alstergren said.

The following are examples of applications that may be suitable for filing in the COVID-19 List:

- **Family violence:** There has been an increase in risk due to family violence resulting from the restrictions imposed on families during the COVID-19 pandemic.
- **Supervised contact:** the current parenting arrangements involve supervised contact, and the contact centre is closed or the supervisor is unable to perform their role, and the parties cannot agree on an alternative arrangement.
- **Border restrictions:** the parties live in different States or Territories and the child cannot travel between the parties' residences due to border restrictions.
- **Medical:** The parties and/or child have tested positive for COVID-19 and cannot fulfil the parenting obligations due to sickness or concerns of infection.

To expedite the urgent application, and to provide convenience to the parties, the process has been simplified and matters will be dealt with completely through electronic means—from filing via email through to conducting the hearing via Microsoft Teams. Details of the process will be available from the Court websites.

It is proposed that the COVID-19 List will operate initially for approximately three months, but this will be assessed.

Parties will still be expected to adhere with requirements to attend Alternative Dispute Resolution prior to filing an application with the Courts, if safe and appropriate to do so. The National COVID-19 Registrar may also make orders for parties to attend electronic mediation, if appropriate.

Further instructions and a Practice Direction will be available on the Court websites.

Please note: This information relates to matters filed in the Family Court of Australia and the Federal Circuit Court of Australia. It does not relate to matters that are within the jurisdiction of the Family Court of Western Australia.

On 22 April the Family Court and Federal Circuit Court issued a *Practitioner and Litigant Guide to Virtual Hearings and Microsoft Teams*, which is available here and extracted below:

PRACTITIONER AND LITIGANT GUIDE TO VIRTUAL HEARINGS AND MICROSOFT TEAMS

The term 'virtual hearing' is used throughout this guide to refer to court hearings conducted via electronic means, either videoconferencing or teleconferencing.

A virtual hearing is a proper and formal court hearing. The only difference is that it is conducted via electronic means rather than in-person with all parties in a courtroom. The usual Rules of Court, court procedures, courtesies and formalities are still applicable and are expected to be complied with.

This Guide is for proceedings conducted in the Family Court of Australia and the Federal Circuit Court of Australia.

1. Technological options the Courts are using to conduct hearings

The Family Court and Federal Circuit Court are conducting court hearings using two main platforms:

- Microsoft Teams (videoconferencing and/or teleconferencing)
- AAPT Teleconferencing

Microsoft Teams allows participants to join the hearing using video or audio from a desktop, laptop, tablet or smartphone, or to dial-in to a hearing from a telephone.

AAPT allows participants to join the hearing by telephone only.

The decision as to how a hearing is conducted is a matter for each judicial officer. In considering the suitability of videoconferencing or teleconferencing, the Court may consider issues such as the nature of the case, the technological facilities available to parties, their lawyers and any witnesses to be called, their ability to effectively participate in the hearing, and how best to uphold the interests of justice.

Practitioners and self-represented litigants will receive correspondence from the Court in relation to the technology that will be used to facilitate their hearing, and whether it is by videoconference or teleconference.

Practitioners and litigants are expected to be proactive and inform the Court promptly if they foresee any difficulty with participating in a virtual hearing, and to propose jointly agreed solutions where possible.

If there is a dispute about whether a trial should proceed via videoconferencing, the presiding Judge will determine that dispute. Practitioners should not assume that resistance to a video trial will automatically be successful.

1.1 Microsoft Teams

1.1.1 *Establishing the hearing*

Virtual hearings via Microsoft Teams are set up using email addresses.

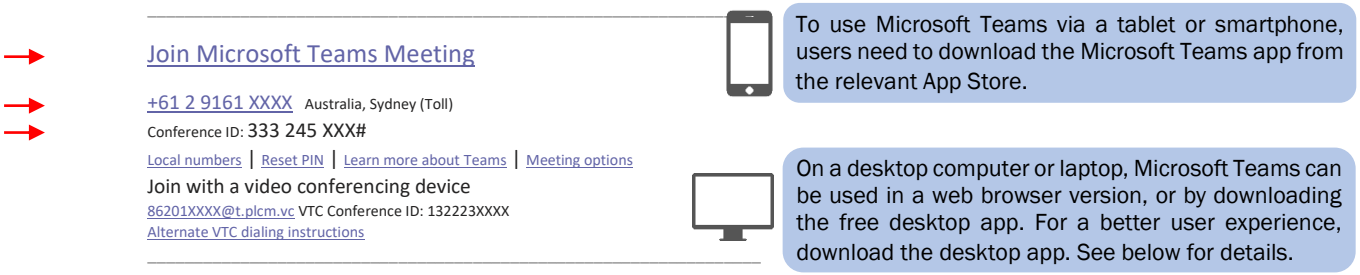
Upon request from the Court, solicitors and self-represented parties are to provide their direct email addresses to the Court so that a hearing invitation can be sent.

To assist the Court, please ensure that a current Notice of Address for Service, including an email address, is on the court file. The form can be downloaded from the FCoA website or the FCC website, and uploaded to the Commonwealth Courts Portal. This email address will be used by the Court in the first instance to communicate regarding the hearing. However, a direct email address will then be needed to forward the hearing invitation.

For represented parties, it is the responsibility of each solicitor to forward the meeting details and Microsoft Teams join meeting link to their client and any counsel appearing.

1.1.2 *Joining the hearing*

Participants can join a Microsoft Teams hearing from a desktop, laptop, tablet or smartphone via the purple 'Join Microsoft Teams Meeting' link included in the hearing invitation.



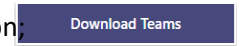
Alternatively, participants can join a Microsoft Teams hearing by telephone, by dialling the conference number (including 02 area code), conference ID and #, and following the prompts.

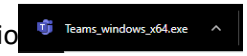
If joining a Microsoft Teams hearing from a desktop computer or laptop, it is recommended that participants download the Microsoft Teams desktop app prior to the hearing.

The desktop app can be downloaded for free from the Microsoft website here.

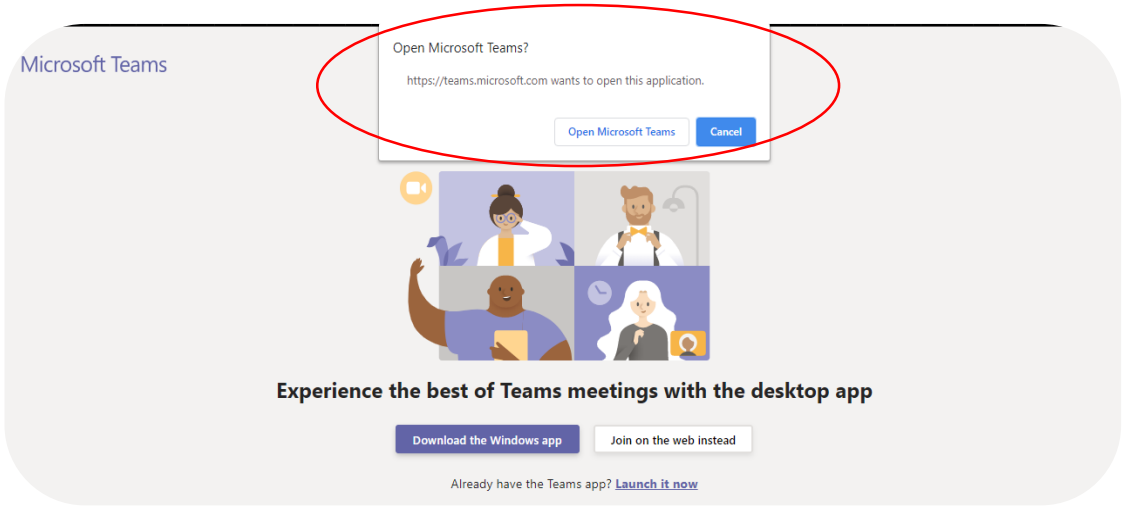
The Microsoft Teams webpage and web version work better in the Google Chrome web browser. All links should be copied and pasted into Chrome, rather than Internet Explorer, Mozilla Firefox or Safari.

To download the desktop app and join the hearing through the app:

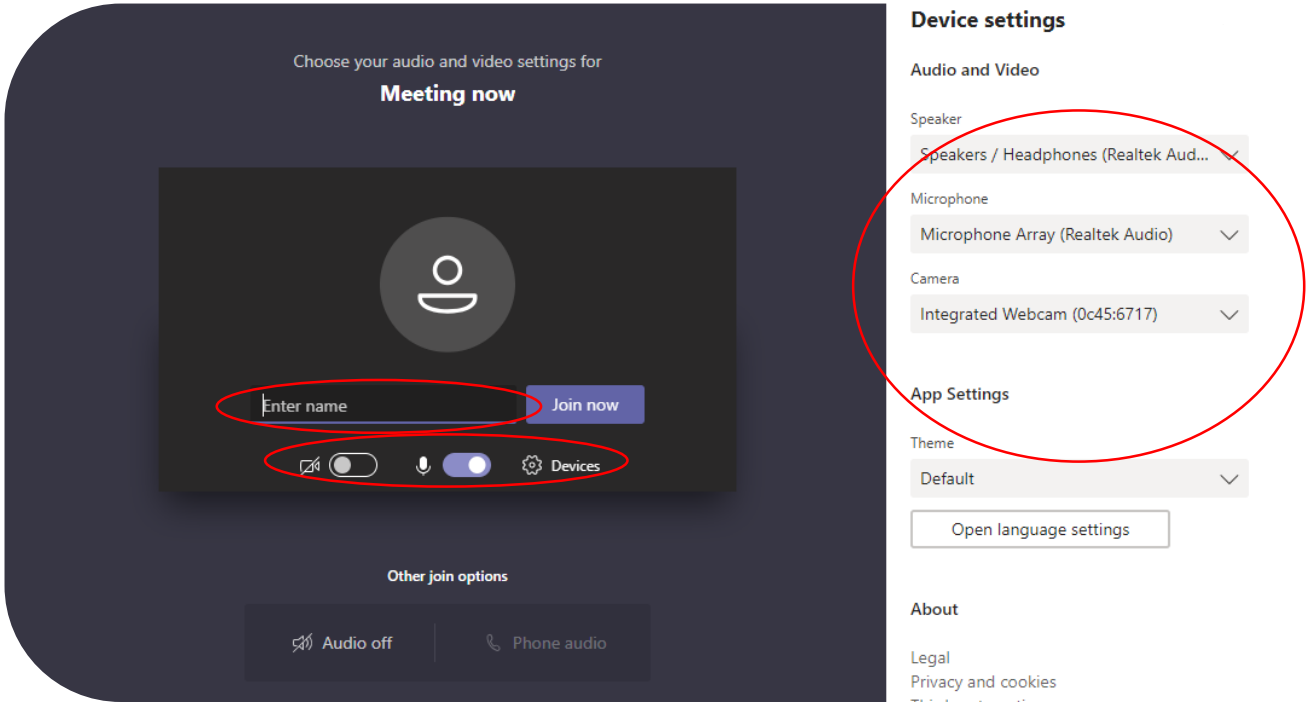
1. Visit https://products.office.com/en-au/microsoft-teams/download-app;
2. Click on the purple download button; 

3. A download will begin. Once completed, click on the file to begin installatio 

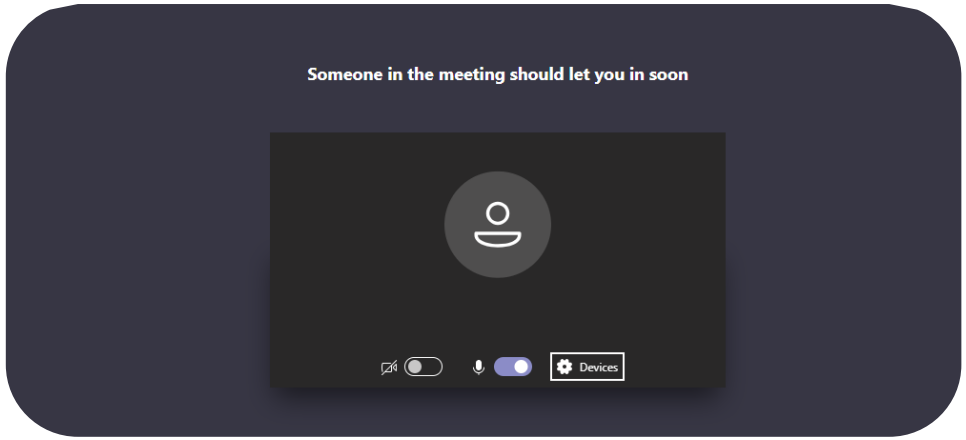
4. Once installation is complete, press Continue to check that Microsoft Teams will open. If it opens, no further action is required until the day of the hearing.
5. *On the next screen (which will read "You're not on Teams yet, but you can set it up for your organization"), participants do not need to sign up for a Teams account – it is sufficient to have the desktop app downloaded onto the computer;*
6. On the day of the hearing, at least 15 minutes before the listing time, click on the 'Join Microsoft Teams Meeting' link. It will open in the web browser, but a dialogue box will pop up that says 'Open Microsoft Teams?' or 'Launch Microsoft Teams now'. Click open or launch so that the meeting opens in the app.



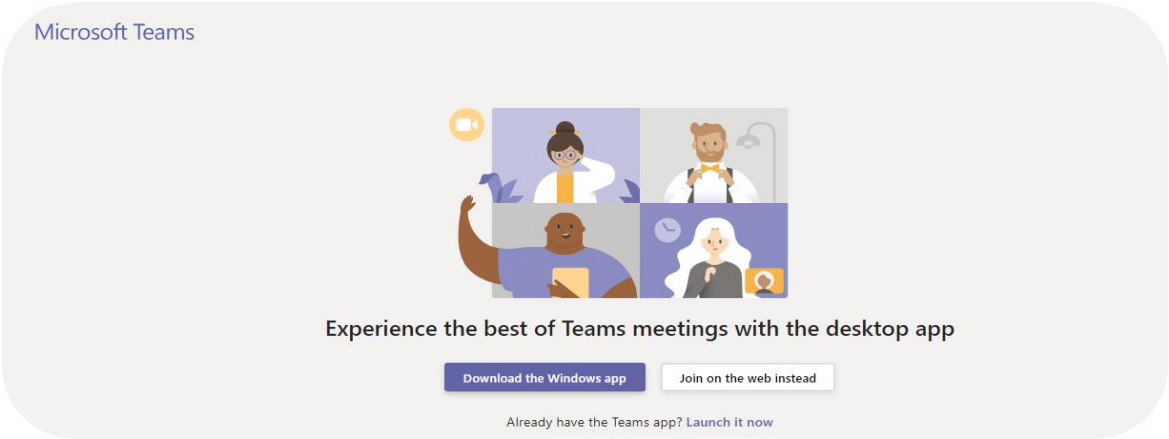
7. The Microsoft Teams app should launch the meeting and show the following screen:



8. Fill in the ‘Enter name’ field with name and party description, such as ‘Mr Surname (AppSoli)’ or ‘Ms Surname (RespCounsel)’ if the participant is a legal practitioner, or ‘Ms Surname’ / ‘Mr Surname’ if the participant is a litigant.
9. Use the sliders next to the camera icon and microphone icon to turn camera or microphone on and off.
10. Clicking on the ‘Devices’ cog will open the Device Settings menu, which allows the user to select the correct microphone, speakers and webcam that they are using, and to make a test call.
11. When ready to join the hearing, click on ‘Join Now’.
12. All participants will wait separately in a virtual lobby. The below screen will be displayed. The Associate or Court Officer running the hearing can see when participants are waiting in the lobby, and will accept each participant into the hearing when ready to do so. Please wait patiently, do not exit the lobby if you are not immediately admitted. If you have joined the meeting early, or the Court is delayed, the lobby may time out. If this occurs, please re-join the meeting.

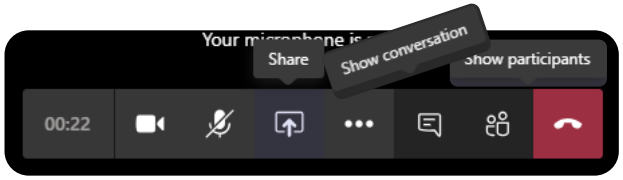


If a participant clicks on ‘Join Microsoft Teams Meeting’ from an email or calendar invite and does not have the desktop app installed, the below webpage will open. Select ‘Join on the web instead’, and then follow steps 8 to 12 above.



In respect of step 5 above, if users wish to sign up for a Microsoft Teams account, they may do so. There is a trial option and paid options. An account may be useful for legal practitioners as it allows for greater functionality in Microsoft Teams, such as access to the calendar function and the ability to pin selected participants' video feeds to the screen during a hearing. However, it is a matter for each user and an account is not required to effectively use Microsoft Teams.

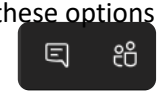
1.1.3 Options in the Microsoft Teams desktop app during a hearing



During a Microsoft Teams hearing, moving the mouse brings up a ribbon of meeting options across the screen. Participants can take the following actions:

- Click on the **camera icon** to turn the video on and off;
- Click on the **microphone icon** to turn the microphone on and off (mute and unmute);
- Click on the **share icon** to share a document on the screen for all participants to see – this option may only be available if the Associate/Court Officer gives permission for participants to share;
- Click on the **ellipsis** (…) for more options, including to check device settings, blur background, turn off incoming video;
- Click on the **show conversation icon** to see the chat window on the right hand side of the screen;
- Click on the **show participants icon** to see a list of all the participants in the hearing;
- Click on the **red phone** icon to end the meeting when the hearing is finished.

- In the desktop app, participants can right click on up to four participants' videos to **pin** them to the screen so that they are always visible.
- If using the web browser version, by default, Microsoft Teams will display the video of the person speaking. One participant's video can be pinned by either:
  - clicking on 'show participants' to bring up the people menu, clicking on the ellipsis next to the participant you want to pin, and selecting 'Pin'; or
  - right click on the circled initials of the participant you wan
  - if you have Participant A pinned, to pin Participant B, you must first 'unpin' Participant A.

Please note, on different devices, these options may appear in a different location. For example on an iPad, the show conversation/chat function, and the show participants/people function  are in the top right hand corner.

1.1.4 Options on the telephone during a Microsoft Teams hearing

If a participant joins the hearing by dialling the conference number and conference ID, it is a standard telephone call. Participants only have the options presented to them on their phone screen, such as to mute, place the phone on speaker and hang up the call.

Participants should not place the Court on hold, or put the phone on loudspeaker, as this will decrease audio quality. The Court has the ability to mute participants who have joined the hearing by telephone. If you are muted, a voiceover will inform you of this, and how to unmute. To unmute, press *6. A voiceover will inform you when you are unmuted.

If a participant is experiencing poor video quality during a hearing, or cannot maintain a connection through the desktop app or web version, they can join via the teleconferencing option. The details are included in every meeting invite.
If practitioners or litigants do not have a strong internet connection, or do not have access to the technology to appear by video, communicate with the Court prior to the hearing about participating by telephone.

1.1.5 Preparation and testing

Participants should download the Microsoft Teams desktop app well in advance of the hearing, and ensure they are familiar with the microphone, webcam and speakers on their device, and that any external hardware is installed and working properly.

Once you have received a link to a Microsoft Teams hearing from the Court, the link may be accessed at any time prior to the hearing to check that the correct microphone, webcam and speakers are being recognised by Microsoft Teams, make a test call and to see what your video will look like.

Depending on the case, the Court may schedule a test between the parties prior to the hearing. This is of benefit to all parties, and the Court expects that practitioners and litgants will make themselves available to participate to reduce the need for an adjourment or any delay on the day of the hearing.

Prior to any hearing, practitioners should agree with their clients on a method of confidential communication and how they will obtain any urgent instructions during the hearing. Otherwise, instructions must be obtained **prior to** the commencement of the hearing.

Please note that matters may not be given the opportunity to be stood down. It is expected that practitioners and parties will have engaged in serious negotiations prior to the commencement of the matter to attempt to resolve or limit the issues.

1.2 AAPT Teleconferencing

AAPT teleconferencing is a teleconferencing set up that allows multiple participants to dial-in from any telephone. If a hearing is being conducted using the AAPT teleconferencing facility, participants will be provided with the conference phone number and guest passcode.

- Dial the conference phone number;
- follow the prompts and enter the teleconference guest passcode: ***** # ;
- hold music will play until the "chairperson" (i.e. the Court) joins the call.

2. Conduct of a virtual hearing

Similar to an in-person Court hearing, an Associate or Court Officer will run the Microsoft Teams hearing.

The Associate will:

- admit participants into the hearing through the virtual lobby;
- record participants' names and appearances before the commencement of the hearing;
- inform the participants when the judge will join the hearing, open and close the virtual courtroom, and call the name of the matter for hearing;
- provide documents to the judge that have been virtually handed up by email, or share documents on the screen for all parties to see; and
- administer oaths or affirmations when necessary.

In relation to proceedings by videolink or audiolink, see the following provisions:
Division 2 of Part XI of the *Family Law Act 1975* (Cth) – Use of video link, audio link or other appropriate means to give testimony, make appearances and give submissions etc.
Division 5 of Part 6 of the *Federal Circuit Court of Australia Act 1999* (Cth) – Use of video links or audio links

2.1 Guidelines for Witnesses

For the purpose of this guidance, a witness includes a party.

The below information is provided as guidance. The conduct of the hearing remains a matter for the presiding judicial officer. Witnesses, parties and lawyers should follow any direction given by the judicial officer in relation to the conduct of the proceedings and manner in which the witness is to give evidence.

- The behaviour, manner and presentation of a witness should be the same as if they were attending the Court hearing in person. This includes addressing the Judge correctly as "Your Honour" and addressing Counsel politely and courteously.

- A witness is to be alone, in a secure room with doors closed.
- The witness is to ensure that there will be no interruptions or distractions for the duration of the video appearance at the hearing.
- If witnesses are unable to give uninterrupted evidence, they should advise their legal representatives as soon as practicable.
- A witness may have a glass of water with them but a witness is not permitted to eat or to drink anything else during the course of the hearing, without permission to do so.
- The witness may take notes and have pen and blank paper for doing so but the taking of note will not be permitted where it impedes the flow of the evidence.
- A witness should have recently re-read all affidavits or statements made by him or her in these proceedings and have a clean copy of those documents with them. Copy affidavits should be placed face down on the surface in front of the witness and not turned over or read by the witness unless or until the witness is directed to do so.
    - If the witness only has electronic copies, the files should be placed on the desktop of the witness' computer, and not opened or read by the witness unless or until directed to do so.
- The witness will be sworn or affirmed by the Associate prior to commencement of their evidence.
    - It is expected that the witness has had explained to them the distinction between an oath and an affirmation and be able to say whether they wish to make an oath or an affirmation.
- The party cross-examining the witness is to ensure that the witness has all documents to which they may be referred. This means that a cross-examiner must know in advance what documents will be shown to the witness and ensure that those documents are available to the witness in a timely manner.
- Witnesses cannot communicate with anyone about their evidence whilst under cross-examination:
    - Witnesses are not permitted to use or access their phones whilst giving evidence. They may use them to communicate with their practitioner at all other times;
    - Witnesses may be asked to show the Court their location for giving evidence, to confirm that they are alone.
- Where an objection is made and discussions are required in the absence of the witness, the witness may be asked to mute their computer or otherwise be virtually ejected from the meeting space and invited to re-join when the objection has been dealt with.

3. Documents to be relied upon during virtual hearings

In accordance with Joint Practice Direction 2 of 2020, all documents relied upon by parties must be e-filed or e-lodged, or if this is not possible, emailed to the registry.

Documents should only be emailed to Chambers if ordered or directed to do so. Practitioners and litigants should continue to adhere to the Protocol for Communicating with Judges' Chambers, including the requirement to ensure that all parties are copied into any correspondence with the Court.

Any proposed minute of consent orders should be emailed to Chambers or the relevant case co-ordinator in Microsoft Word format by no later than 4pm one business day prior to the hearing, or as otherwise directed by the Judge or their Chambers staff.

At the start of the hearing, practitioners must ensure that they have ready access to electronic copies of all filed documents and material in order to be able to email them to Chambers at short notice during the hearing if required.

When required, the Associate or Court Officer in control of the Microsoft Teams hearing will be able to share a document on the screen for all participants can see. This is one way of facilitating the electronic 'handing up' of documents.

3.1 Court Books

Court books/electronic tender bundles are to be provided in the time and manner directed by each Judge.

Court books must be provided in PDF format and be indexed and paginated. A page limit may be imposed.

In the event medical, child protection or police records obtained under subpoena are required to show a witness, tender to the court or be included in a Court Book, practitioners are at liberty to contact Chambers to seek leave to copy same or seek other orders and directions to facilitate this process. Where the Judge deems it appropriate, orders may be made for those documents to be copied or scanned subject to strict conditions imposed on the practitioners seeking same

PDF files can be combined, paginated and bookmarked using a number of different programs.
Adobe Scan is a free and useful mobile app that can be used to 'scan' any hardcopy document using a smartphone and convert it into a PDF.

4. Recording and transcription

Virtual hearings are being recorded by the Courts' recording and transcription services provider, Auscript, or through the Microsoft Teams recording function. Participation in a Virtual Hearing indicates a participant's consent to being recorded.

All participants are prohibited from recording, by any means, any court hearing or other court event.
See rule 1.19 of the *Family Law Rules 2004* for family law proceedings, and Division 6.2 of the *Federal Court Rules 2011* for general federal law and migration proceedings.
Section 121 of the *Family Law Act 1975* (Cth) prohibits the publication or dissemination of an account of any part of any proceedings that identifies a party, a witness, or any person associated with the proceedings.

Transcript will be available through Auscript in accordance with the usual ordering processes. Some delays may be experienced during this time of transition to virtual hearings.

5. Virtual hearing court procedure and etiquette

As stated above, a virtual hearing is a proper and formal court hearing. The only difference is that it is conducted via electronic means rather than in-person with all parties in a courtroom. The usual Rules of Court, court procedures, courtesies and formalities are still applicable and are expected to be complied with.

Counsel are expected to robe as per usual, unless otherwise indicated by the judge.

Solicitors, litigants and witnesses should dress professionally as if they were attending an in-person hearing in a courtroom.

Participants are not expected to stand when the Judge joins the hearing electronically, and should remain seated when addressing the Court.

Aside from water, participants should not eat or drink during the hearing.

Participants should ensure that their mobile phones are switched off or on silent. However, as participants will likely be in separate locations to maintain social distancing, discreet mobile phone or tablet usage is permitted for communicating or obtaining instructions, provided the devices are on silent, and that practitioners and parties mute their microphones in Microsoft Teams when they are communicating.

6. Technology tips

Use a headset, or headphones that have a microphone (such as most headphones that come with smartphones), to avoid echo and increase audio quality. Ensure you select the headphones in the settings for 'Devices' as the microphone and speaker. If you have the volume turned up and audio coming through the speakers of your device, it may be picked up by your microphone and echo. If other participants are complaining of echo and you cannot hear any echo, it is likely that you are the cause.

Ensure you are located in a quiet, distraction free location with good lighting and minimal background noise. Use an appropriate camera angle and background to your video.

If litigants are participating from their home, as far as is possible, ensure that they are out of earshot of any children present in the household to which the proceedings relate.

Participants should have their microphone muted and cameras switched off when they are not speaking or not required to be seen, as the Judge directs.

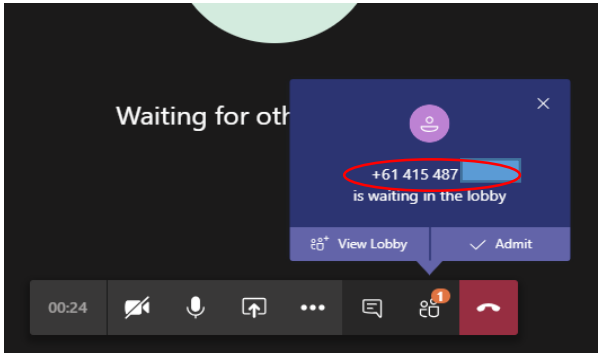
If appearing by telephone, do not place the Court on hold. Speak directly into the phone. Do not place the phone on loudspeaker, as it will decrease audio quality.

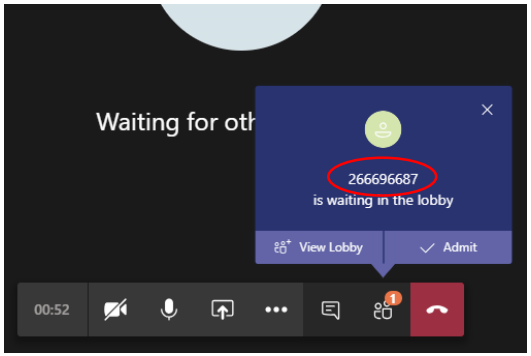
Ensure devices are fully charged before the hearing, and have the charger handy nearby. Videoconferencing can drain the battery of devices quickly.

7. Safety in virtual hearings

Litigants should be mindful of their personal safety when participating in virtual hearings, including by considering the following:

- If joining the hearing using video, consider turning on background blur, or sitting in front of a neutral background such as a blank wall, blind or door;
- If there are safety concerns about appearing with video turned on, the Judge may permit litigants to participate in the hearing using only audio;
- If joining a Microsoft Teams hearing by telephone, switch caller ID off before dialling the conference number. Otherwise, if caller ID is switched on, litigants should be aware that their phone number will be displayed in the Microsoft Teams meeting to others participating using the desktop app, web browser version or smartphone app (but will not be visible to other participants also dialling in on the telephone). Switching caller ID off means that only a random 9 digit number will be shown.





- If possible, set aside time to participate in the hearing distraction free and without children present.
- Maintain social distancing at remote locations.
- Visit https://www.cyber.gov.au/publications/web-conferencing-security for tips on video-conferencing security.

8. Open Justice

Hearings can be observed by any member of the public. This is subject to a Judge's usual discretion to determine that in particular cases, only certain people should be present during the hearing, or that certain people are not to be present during the hearing.

In the Family Court, if a member of the public wishes to observe a hearing, or listen in to a hearing, they should contact the relevant Registry by email as early as possible and by no later than 8.30am local time on the morning of the hearing:

Appeals:

- Eastern Appeals Registry (Sydney): easternappeals@familycourt.gov.au

- Northern Appeals Registry (Brisbane): northernappeals@familycourt.gov.au
- Southern Appeals Registry (Adelaide and Melbourne): southernappeals@familycourt.gov.au
- Western Appeals Registry (Perth): appeals.familycourt@justice.wa.gov.au

Trial division/first instance work:

- Adelaide.Case.Coordinators@familycourt.gov.au
- Brisbane.CaseCoordinator@familycourt.gov.au
- Cairns@familycourt.gov.au
- Canberra.Case.Coordinator@familycourt.gov.au
- Darwin@familycourt.gov.au
- Hobart@familycourt.gov.au
- Melbourne.Case.coordinators@familycourt.gov.au
- Newcastle@familycourt.gov.au
- Parramatta.Case.Coordinators@familycourt.gov.au
- Sydney.Case.coordinators@familycourt.gov.au
- Townsville@familycourt.gov.au

In the Federal Circuit Court, if a member of the public wishes to observe a hearing, or listen in to a hearing, they should contact the Chambers of the presiding Judge via email as early as possible and by no later than 8.30am local time on the morning of the hearing.

The daily court lists are published on each Court's website at approximately 4pm the day before the hearings. Members of the public should submit their request to observe or listen in to proceedings as soon as possible after this time, and no later than 8:30am local time on the morning of the hearing. The Court will endeavour to respond to all requests in a timely way, noting that if members of the public email the Court shortly before a hearing is scheduled to start, the request may not be able to be accommodated.

Current as at 22 April 2020. Errors or queries in relation to this document should be forwarded to Jordan Di Carlo, Executive Legal and Policy Adviser to the Chief Justice via jordan.dicarlo@familycourt.gov.au

On 22 April the Federal Circuit Court issued the following update:

COVID-19: IMPORTANT INFORMATION FOR MIGRATION APPLICANTS

Federal Circuit Court of Australia Applications Only

Next steps after you lodge your application

You must serve these documents on the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, which can currently be done by email. Email the documents to litigation.applications@homeaffairs.gov.au.

Role of the Court

The Court has limited power in reviewing the decision of the Administrative Appeals Tribunal, the Immigration Assessment Authority or another body.

The Registry cannot make decisions as to whether you should receive a visa before your case is decided. If you have questions about your visa status while your case is pending, please contact the Department of Immigration.

Directions Hearing

On the front page of your stamped documents will be details about the directions hearing. A directions hearing is about when parties need to file documents in the case and is procedural.

It is important that you record the date as the court will not send out reminders about hearing dates. **It is important you attend Court on this date as failure to attend may result in your matter being dismissed.** If you have requested an interpreter, the Court will arrange for one to be available to you.

Listed before 30 June 2020

During the COVID-19 closures, there will be no required attendance at court. At this point, this will continue to 30 June 2020.

If your matter is listed **before** 30 June 2020, you will be contacted by the legal representative for the Minister with proposed consent orders for you to sign and return.

If you need the orders interpreted, let the Minister's lawyers know and they will arrange an interpreter.

If your application relates to a protection visa, you will be provided the details to contact a representative from Legal Aid.

If you do not agree to the Minister's proposed consent orders, on the day of your directions hearing, the Court will make orders on the papers. These orders will be emailed to you or, if you do not have an email, posted to you.

Listed after 1 July 2020

If you matter is listed **after 1 July 2020** it is anticipated your matter will proceed in person. The location of the directions hearing will be on the front page of your stamped application. **You will be advised in writing if alternative arrangements are put into place.** Please enter the Courtroom and report to the Court Officer on arrival.

At the directions hearing you will meet with the legal representative for the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, a representative from Legal Aid (if your application relates to a protection visa) and an interpreter, if you have requested one. The Minister's legal representative will have consent orders for you to sign to set a timetable for the filing of documents prior to your hearing.

Note: It is open to the parties to complete consent orders and submit them to the Court for approval **before** the directions hearing. If the consent orders are approved by the Court prior to your directions hearing, you will not need to attend the directions hearing. If you are unsure about whether or not the orders have been approved, you should attend the directions hearing.

Applicant's Contact Details

It is important that the Court be able to contact you. If you change your address, phone number or email address, you are required to let the court know by completing a new Notice of Address for Service form.

You can then file the Notice of Address for Service:

- Via eLodgment, at www.elodgment.fedcourt.gov.au (please note to use eLodgment you will need to create an account)
- By email, to your local registry. Please note filing by email is **temporarily** in place, due to the registry door's closing. The email address to file is at the end of this document.
- By fax
- By post

The fax and postal details for each registry can be found on the Federal Court website.

You will be required to serve a sealed copy of this form on the legal representative for the Minister.

Recording of Tribunal Hearing

You can obtain from the Administrative Appeals Tribunal a recording of the hearing at the Tribunal. If you do not have a copy, speak to the Minister's solicitor to request a copy. If you intend to use the recording as part of your application to the Court, a written transcript of the hearing should be obtained and verified by way of affidavit.

Court Fees

When you are given a final hearing date you will receive an invoice for payment of a "setting down" fee (as required by the *Federal Court and Federal Circuit Court Regulation 2012* (Cth)). This fee must be paid no later than 28 days before the hearing day. The fee is currently $805. If you wish to make an application for financial hardship, please complete an exemption application form which is available on the Federal Court's website. This form should be forwarded to the Registry for consideration as soon as possible. Please note that if you discontinue your proceeding after it has been set down for hearing the setting down fee will still be payable.

Hearing

Once the matter is given a date for final hearing, if you do not have a lawyer to represent you, you will need to be ready to tell the Court about your case (with an interpreter if required).

Listed before 30 June 2020

The Court will contact you, in writing, to make arrangements for your hearing in light of the COVID-19 outbreak. Please check your contact details with the Court are up to date, then wait to be contacted.

Listed after 1 July 2020

It is currently anticipated your hearing will be person. You will be advised, in writing, closer to your hearing date if this changes. Please refer to the electronic list boards on the ground floor when you arrive or approach the registry counter if you require assistance locating your court room. It is recommended you arrive early to find your courtroom.

Costs

At the conclusion of the proceeding in the Court, the court will usually order that the unsuccessful party pay the legal costs and expenses incurred by the successful party. These costs are different from Court fees that are payable to the Court Registry for filing your application and for the setting down of the hearing. If you are unsuccessful or discontinue your proceeding in this Court, you may still be required to pay the Minister's legal costs. If you wish to organise a payment plan or otherwise discuss these costs, please email debtors@border.gov.au .

Registry Contact Details

For all communication with the Court, please only email the proper registry for your matter.

State	Email for filing	Email for enquiries
Australian Capital Territory	ACT.Filing@fedcourt.gov.au	actman@fedcourt.gov.au
New South Wales	NSW.Filing@fedcourt.gov.au	nswdr@fedcourt.gov.au
Northern Territory	NT.Filing@fedcourt.gov.au	ntreg@fedcourt.gov.au
Queensland	QLD.Filing@fedcourt.gov.au	qldreg@fedcourt.gov.au
South Australia	SA.Filing@fedcourt.gov.au	sareg@fedcourt.gov.au
Tasmania	TAS.Filing@fedcourt.gov.au	tasreg@fedcourt.gov.au
Victoria	VIC.Filing@fedcourt.gov.au	VIC.Migration@fedcourt.gov.au VIC.Fees@fedcourt.gov.au (for fees enquiries only)
Western Australia	WA.Filing@fedcourt.gov.au	waregistry@fedcourt.gov.au

On 20 April the Federal Circuit Court issued the following notice concerning *Coronavirus and changes to bankruptcy laws – temporary debt relief measures,* which is available here and extracted below:

Temporary debt relief measures

Please note that on 25 March 2020, temporary changes came into effect to support individuals and businesses. The temporary debt relief measures include:

- Debt threshold for creditors to apply for a Bankruptcy Notice against a debtor will increase from $5,000 to $20,000.
- Timeframe for a debtor to respond to a Bankruptcy Notice before a creditor can commence bankruptcy proceedings will be increased from 21 days to up to six months.
- Temporary protection period procedure available for debtors to prevent recovery action by unsecured creditors will increase from 21 days to six months.

These temporary measures will be available for six months. The temporary changes do not impact on Bankruptcy Notices issued before 25 March 2020.

Visit the Australian Financial Security Authority website for further information on the temporary measures.

On 15 April the Family Court and Federal Circuit Court published *Alternative Dispute Resolution, settlement and mediation services – stakeholder information*, which is available here:

http://www.familycourt.gov.au/wps/wcm/connect/fcoawaeb/about/news/adr-covid-info

http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/news/adr-covid-info

The Appellate Division of the Family Court issued the following notice on 14 April:

SPECIAL MEASURES IN RESPONSE TO COVID-19

(SMIN-1 FCoA Appeals)

Special Measures Information Note

Appellate Division of the Family Court of Australia

1. **INTRODUCTION**

1.1 This Special Measures Information Note (SMIN-1) sets out arrangements for the continued operation of the Appellate Division of the Family Court of Australia during the COVID-19 outbreak in Australia.

1.2 Due to the COVID-19 pandemic, where appropriate and necessary, the Appellate Division of the Family Court of Australia is modifying its practices in order to minimise in person attendance on Court premises, with the Court's priority being the health and safety of the community, and in particular, parties, practitioners, judges and staff, and the families of all of these groups.

1.3 The cooperation of all court users and court staff is required in this regard.

1.4 This Special Measures Information Note takes effect from the date it is issued and, to the extent practicable, applies to all proceedings filed before, or after, the date of issuing.

1.5 This Special Measures Information Note remains in effect until and unless superseded or revoked.

2. REGISTRY OPERATIONS

2.1 The Appellate Division of the Family Court of Australia will keep registries open and operational, by way of email filing only.

2.2 As the situation remains fluid, all court users should email the registry ahead of any proposed in-person attendance to verify whether the physical registry is open and to discuss with registry staff any possible alternatives to an in-person attendance.

3. ELECTRONIC FILING OF DOCUMENTS

3.1 All documents must be lodged for filing using the current email address for each Regional Appeal Registry, which are set out below.

3.2 Documents that are not able to be lodged through email may be faxed to the relevant registry for filing. Court users who do not have access to the necessary electronic equipment, including self-represented litigants, should contact the registry by telephone for assistance.

3.3 Please note that you will not be able to tender or file documents for a listing unless they are emailed to the relevant Regional Appeal Registry no later than 24 hours prior to the next listing of the matter.

4. SIGNATURES ON DOCUMENTS AND AFFIDAVITS

4.1 To facilitate the electronic filing of all documents, if access to scanning technology is limited, the Appellate Division of the Family Court of Australia will temporarily allow documents to be signed electronically, including by having the person signing the document type their name in the relevant space in the signature block in lieu of physically signing the relevant document.

4.2 The Appellate Division of the Family Court of Australia also acknowledges that remote working arrangements may pose significant challenges to having affidavits sworn or affirmed. The Court will accept the filing of unsworn affidavits on the understanding that, if required, these will

later be sworn or affirmed when circumstances allow. The Appellate Division of the Family Court of Australia may also permit the witnessing of affidavits via Skype by an authorised witness, where the document is promptly filed after the witnessing and signing of the document.

5. INSPECTION OF DOCUMENTS

5.1 Inspection of documents at all registries of the Court is to be by appointment only. Requests for an appointment should be made by emailing the relevant Regional Appeal Registry.

6. ALL COURT LISTINGS AND EVENTS, INCLUDING HEARINGS

6.1 In order to remain open and operational, whilst protecting health, safety and wellbeing, the Court must work to limit in-person attendance on Court premises.

6.2 To the extent possible, alternative arrangements will be put in place for all listings and events that would ordinarily require in-person attendance. In particular, the Court will contact legal practitioners and parties to determine whether listings and events may able to be conducted on the papers, by telephone or by other remote access technology (including video).

6.3 If alternative arrangements are not able to be put in place for listings and events that would ordinarily require in-person attendance, such listings and events may need to be vacated or adjourned.

6.4 If you have an upcoming listing or event, wherever possible the Appellate Division of the Family Court of Australia will endeavour to contact you at least two weeks prior in relation to any alternative arrangements. If you have not been contacted by the Appellate Division of the Family Court of Australia or if you remain unsure of what is happening in relation to a particular listing or event please contact the relevant registry by email, with the appeal file number and name in the subject line.

7. CONTACT DETAILS FOR APPELLATE DIVISION

7.1 In all appeal matters you should contact the relevant Regional Appeal Registry by email as a first preference. The relevant email addresses are:

7.1.1 Eastern Appeals Registry (Sydney): easternappeals@familycourt.gov.au

7.1.2 Northern Appeals Registry (Brisbane): northernappeals@familycourt.gov.au

7.1.3 Southern Appeals Registry (Adelaide/Melbourne): southernappeals@familycourt.gov.au

7.1.4 Western Appeals Registry (Perth) appeals.familycourt@justice.wa.gov.au

8. OBSERVING APPELLATE PROCEEDINGS

8.1 In accordance with principles of open justice, hearings can be observed by any member of the public. This is subject to the usual discretion of a single Judge or the Full Court, to determine that in particular cases, only certain people should be present during the hearing, or that certain people are not to be present during the hearing, as the case may be.

8.2 If a member of the public wishes to observe a hearing, or listen in to a hearing, they should contact the relevant Regional Appeal Registry using the contact details set out above, by no later than 8:30am AEST on the morning of the hearing.

THE HONOURABLE JUSTICE WILLIAM ALSTERGREN
CHIEF JUSTICE
FAMILY COURT OF AUSTRALIA
DATE: 14 APRIL 2020

The Family Court and Federal Circuit Court issued the following notice on 9 April:

UPDATE TO THE PROFESSION

The purpose of this update is to inform the profession of the continued operations of the Family Court of Australia and Federal Circuit Court of Australia ('the Courts') during the COVID-19 pandemic. This update also provides some suggestions to members of the profession about how to actively and proactively engage with the Courts in these challenging times.

Court Operations

Much has occurred since the Courts' previous update on 19 March 2020. The Courts' operations have had to be substantially adjusted since the beginning of March this year. Like many institutions and large organisations, the Courts have had to engage in a long term digital transformation. Microsoft Teams has been rolled out to each Judge, Registrar and Family Consultant. Each Judge and Registrar is now able to conduct hearings electronically from each Registry. Whilst urgent matters will be given priority, Judges now have the ability to continue to hear defended applications, trials and appeals.

This technology was rolled out at great speed to 101 judges, 35 Registrars and servicing up to 40 different locations. It is a great credit to all involved including the IT department, the Judges, Registrars, court staff and the profession for their cooperation.

A number of interim and final matters have been heard in the Courts over last two weeks using Microsoft Teams across the Nation. These were both family law and general federal law cases. The rapid implementation of new technologies has not been without issues, however, the problems have been dealt with as they unfolded and generally speaking, the hearings went well. There were also a number of appeals heard via Microsoft Teams last week in Sydney. To assist the profession, the Courts will be uploading some general guidance to the websites for participating in virtual hearings and other Court events, and using Microsoft Teams.

The Courts will also be moving to a Digital Court File (DCF) by 14 April 2020. The ability to conduct hearings remotely and the DCF will not only assist the Courts during the COVID-19 pandemic, but will also greatly enhance the Courts' flexibility to hear trials and appeals electronically in the long term. It allows Judges to hear cases from any registry or even in remote locations. It also provides an extremely safe and less stressful forum for vulnerable parties to attend hearings and give evidence.

Practitioners should also note that most interviews conducted by Family Consultants will now take place by telephone or video. However, in very limited circumstances, Family Consultants may also need to conduct face-to-face interviews.

Joint Practice Direction (JPD 2 of 2020)

The Courts issued a Joint Practice Direction on 31 March which deals with the following issues:

- Filing of documents electronically;
- Subpoenas and inspection of documents;
- The filing of Annexures to Affidavits;
- Signatures on documents and affidavits; and
- Deferral of fee payments.

Further Joint Practice Directions may have to be issued to assist the practitioners and the Courts resolve difficulties caused by COVID-19.

Duty Lists

All Duty Lists are being conducted by Microsoft Teams or by telephone. These hearing times may have to be staggered to alleviate congestion. Practitioners will be provided with updated hearing times prior to the date of the hearing. There may also be a call over before or on the morning of the Duty List by a Judge or Registrar to ascertain which cases are urgent, which matters have consent orders and which need other non-urgent hearings.

There may be a very small number of exceptional matters that need to be dealt with face-to-face, however these will be only with leave, and in accordance with the Courts' Face-to-Face In-Court Protocol.

Over the last month some non-urgent matters have had to be vacated due to technical issues. The Courts will be endeavouring to mention those matters in the next 12 weeks and ensure they are case managed appropriately.

For Duty Lists, please note that the Courts require practitioners engaged to act in these matters to consider the following:

1. Are there serious risk factors in this matter?
2. What are the major issues in dispute in the case?

3. If related to parenting, are the parties able to agree on an interim arrangement?
4. Would the parties benefit from a conference with a Registrar, and if parenting, including a Family Consultant?
5. Can disclosure be limited to particular topics?
6. Can it be heard on a preliminary point which might then lead to the whole proceeding being settled?
7. Is the case appropriate to be sent to mediation or another form of ADR?
8. If the matter is a property case, should it be sent to arbitration?
9. What other orders could the Court make by consent to progress the matter?

If any of the above is relevant, practitioners should raise these issues with the Duty Judge and seek orders, preferably by consent if possible.

Directions Hearings and Trials

Now that the Courts have greater capacity for electronic hearings, the Courts will be attempting to conduct as many hearings as possible in the current circumstances. The Courts will be relying on the profession to assist by cooperating with the use of technology, adapt to new practice directions and be progressive.

Any matter that is currently listed will proceed electronically where possible. Where a case has to be vacated or requires a face-to-face hearing (especially if it is not urgent and requires a face-to-face hearing of more than 1.5 hours), it will be placed in a national pool and be listed as soon as the operations of the Courts allow.

For matters that either have a trial date or are seeking one, practitioners have the opportunity of approaching the Courts to seek orders that may assist in facilitating an electronic hearing. They could include:

- written opening and closing submissions,
- the provision of objections to evidence and a ruling before the hearing,
- narrowing of issues,
- a statement of agreed facts,
- limiting time for cross examination,
- the provision of an electronic court book and tender bundle, or
- a suggested trial timetable.

Practitioners should consider carefully whether there is any reason why trials of particular matters cannot properly be heard via Microsoft Teams. While it is new for us all, when a proper analysis is undertaken of the real issues in an upcoming trial that require factual determination, very often those can be dealt with entirely appropriately in a video hearing. If there is a dispute about whether a trial should proceed via video, the docketed Judge will determine that dispute. Practitioners should not assume that resistance to a video trial will automatically be successful.

The Summer Campaign

Due to the roll-out of new technology, the Courts will, if possible, recommence the Summer Campaign electronically. More information will be provided in due course.

Child Dispute Services

As with all areas of the Court, CDS is endeavouring to find ways of conducting its work that ensures that assessments retain their value for litigants and the Court, while also minimising the risks to families and staff in the context of COVID-19.

Interviews with adults are now being conducted by telephone or video. For assessments that have a child inclusive element, Family Consultants will consider whether this can also be done remotely. Where a remote interview is not possible or appropriate, and the assessment of children is considered to be critical and urgent, an in-person child interview and observation will still be conducted if the family is in a position to attend the Registry in accordance with our updated In-Person Interview Protocol, which was sent to the profession on 3 April 2020.

Open Court

In these times of restricted hearings it is not possible to physically have an open courtroom however, the daily court list published on the Courts websites will include a statement advising those who wish to apply to listen to, or view, a Court hearing, to email the presiding Judge's Chambers or Case Coordinator. A link or dial-in may be provided (subject to the Judge having ordered a closed Court). This will be accompanied by a reminder of the necessity of strict compliance with section 121 of the *Family Law Act 1975* (Cth) and not to record the proceedings by any means.

Mediation

The Courts will be ordering any appropriate case that may have to be vacated or is being prepared for trial to electronic mediation. The Courts will also be making details of the Bar Associations', Law Societies', and other appropriate mediation services available on our websites.

Please ensure that you are aware of the software that can facilitate electronic mediation, including Microsoft Teams, Immediation, Zoom etc. and ensure that you make yourself available for the opportunity of participating in or conducting mediations where possible.

The Courts are finding that in these new and challenging times, a large number of parties are much more interested in settling their differences and are welcoming orders for mediation or are having fruitful discussions before mentions. It is also work that practitioners can engage in whilst working from home or chambers.

Please note that the Registrars are also being trained to conduct conferences by Microsoft Teams and Immediation. They are also conducting conferences by telephone.

Arbitration

To assist parties and the profession to engage in arbitration, a specialist national list judge will be appointed in each Court to hear and manage applications and directions for cases that have been referred to arbitration. The further details will be placed on each Court's websites.

Appeals

Last week, the Appeal Division successfully conducted a number of appeal hearings using Microsoft Teams. This is very promising for the future. The Appeal Division has also produced a Special Measures Information Note that will be been uploaded to the Family Court of Australia website.

Shared Parenting Arrangements and State and Territory Restrictions

The Courts have sought urgent clarification from the Commonwealth Attorney-General about the State and Territory border and movement restrictions. There remains a great deal of concern amongst parents and practitioners that restrictions imposed may make compliance with Court orders and shared parenting arrangements impossible or unsafe. An examination of the measures put in place by each State and Territory makes it readily apparent that there are a number of inconsistencies and more information is required.

The Courts will update the profession as soon as any clarification is received.

In the meanwhile, the Courts have published general information on the websites.

http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/news/covid-info-borders

http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/news/covid-info-borders

Communication with each State and Territory Attorney-General

The Courts have written to each of the State and Territory Attorneys-General advising each of them about the Courts' operations and specifically reminding them of the important role the profession plays in the administration of justice. This includes providing members of

the profession with some flexibility in movement to and from chambers and offices in the preparation of electronic Court hearings and mediations.

Court communication to the public

On 26 March 2020, the Courts released a statement indicating what is expected of parents during these troubling times. The statement sought to remind parents of their obligations to act in the child's best interest. It also sought to remind parents that the Courts remain open.

The statement can be accessed here. The Courts have also established an Information for Parents page that should answer a number of common questions.

Judge Judy Small AM Retirement

Judge Judy Small AM is retiring from the Federal Circuit Court of Australia. Her Honour was appointed as a Judge of the Court on 15 April 2013. A farewell ceremony will be held electronically at 4.30pm on 20 April 2020. A link will be provided on the Court website.

The Courts are keen to continue to work with the profession. We thank you for the support you provide to the Courts and the families of Australia in these challenging times.

Please stay safe and take care of each other and your loved ones.

All my very best wishes

Will Alstergren

Chief Justice, Family Court of Australia

Chief Judge, Federal Circuit Court of Australia

The Family Court and Federal Circuit Court issued a notice on 8 April 2020 titled *COVID-19: Border restrictions and shared parenting orders*:

http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/news/covid-info-borders

http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/news/covid-info-borders

COVID-19: BORDER RESTRICTIONS AND SHARED PARENTING ORDERS

Some Australian States and Territories have applied restrictions on residents who are travelling across State and Territory borders in response to the Government's protocols for non-essential travel. Some of the restrictions also involve strict quarantine requirements.

These border restrictions may affect families that have court orders in place that involve shared-parenting arrangements that require children to move from one household to another, across State borders.

Parents and carers are naturally deeply concerned about the safety of their children and how the COVID-19 virus will affect their lives. Part of that concern may extend to their ability to comply with court orders.

These border arrangements are primarily a matter for each State or Territory government, and there is currently no national approach to how parents should deal with this situation.

The Courts strongly advise that families seek advice from the relevant State and Territory authorities about how the border restrictions and quarantine requirements may impact them and their circumstances. For example, there may be exemptions that enable families with court orders in place, to travel across State or Territory borders. Links to each State and Territory website have been provided below.

When crossing State or Territory borders you may be required to provide the appropriate court order, as evidence of essential movement, to border control personnel. Please ensure that you also carry current photo identification.

Ideally, you should have a hardcopy of the appropriate court order, or at least, an electronic copy or photo of the court orders.

If you are a registered user of the Commonwealth Courts Portal, you can access a copy of your Family Court or Federal Circuit Court order from the following link www.comcourts.gov.au. For more information see the page How do I access orders.

If you are not a registrered user see How do I register for the Commonwealth Courts Portal.

If your orders were made prior to June 2017 or you cannot access the Commonwealth Courts Portal, please email the National Enquiry Centre at enquiries@familylawcourts.gov.au.

New South Wales	https://preview.nsw.gov.au/covid-19
Victoria	https://www.vic.gov.au/coronavirusresponse
Queensland	https://www.covid19.qld.gov.au
Western Australia	https://www.wa.gov.au/government/covid-19-coronavirus
South Australia	https://www.covid-19.sa.gov.au

Tasmania	https://www.coronavirus.tas.gov.au
Australian Capital Territory	https://www.covid19.act.gov.au
Northern Territory	https://coronavirus.nt.gov.au

The Courts strongly urge everyone to seek guidance and a great starting point is through the **Family Relationships Advice Line** on **1800 050 321** or visit the website.

The Courts have previously published guidance for parents on what is expected of them in these challenging times. For more information, refer to Chief Justice Alstergren's statement. http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/news/mr260320

More information on the Courts and COVID-19 are available from the Courts' websites:
http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/covid/covid-news-hp
http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/covid/covid-news-hp

Please note that the circumstances for every family are different and this is only to be used as general information.

The Federal Circuit Court issued the *Important information for migration applicants* notice on 6 April 2020. The note is extracted below and available here:

http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/news/covid-info-migration

COVID-19: IMPORTANT INFORMATION FOR MIGRATION APPLICATIONS

Next steps after you lodge your application

You must serve these documents on the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, which can currently be done by email. Email the documents to litigation.applications@homeaffairs.gov.au.

Role of the Court

The Court has limited power in reviewing the decision of the Administrative Appeals Tribunal, the Immigration Assessment Authority or another body.

The Registry cannot make decisions as to whether you should receive a visa before your case is decided. If you have questions about your visa status while your case is pending, please contact the Department of Immigration.

Directions Hearing

On the front page of your stamped documents will be details about the directions hearing. A directions hearing is about when parties need to file documents in the case and is procedural.

It is important that you record the date as the court will not send out reminders about hearing dates. **It is important you attend Court on this date as failure to attend may result in your matter being dismissed.** If you have requested an interpreter, the Court will arrange for one to be available to you.

Listed before 30 June 2020

During the COVID-19 closures, there will be no required attendance at court. At this point, this will continue to 30 June 2020.

If your matter is listed **before** 30 June 2020, you will be contacted by the legal representative for the Minister with proposed consent orders for you to sign and return.

If you need the orders interpreted, let the Minister's lawyers know and they will arrange an interpreter.

If your application relates to a protection visa, you will be provided the details to contact a representative from Legal Aid.

If you do not agree to the Minister's proposed consent orders, on the day of your directions hearing, the Court will make orders on the papers. These orders will be emailed to you or, if you do not have an email, posted to you.

Listed after 1 July 2020

If you matter is listed **after 1 July 2020** it is anticipated your matter will proceed in person. The location of the directions hearing will be on the front page of your stamped application. **You will be advised in writing if alternative arrangements are put into place**. Please enter the Courtroom and report to the Court Officer on arrival.

At the directions hearing you will meet with the legal representative for the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, a representative from Legal Aid (if your application relates to a protection visa) and an interpreter, if you have requested one. The Minister's legal representative will have consent orders for you to sign to set a timetable for the filing of documents prior to your hearing.

Note: It is open to the parties to complete consent orders and submit them to the Court for approval **before** the directions hearing. If the consent orders are approved by the Court prior to your directions hearing, you will not need to attend the directions hearing. If you are unsure about whether or not the orders have been approved, you should attend the directions hearing.

Applicant's Contact Details

It is important that the Court be able to contact you. If you change your address, phone number or email address, you are required to let the court know by completing a new Notice of Address for Service form.

You can then file the Notice of Address for Service:

- Via eLodgment, at www.elodgment.fedcourt.gov.au (please note to use eLodgment you will need to create an account)
- By email, to your local registry. Please note filing by email is temporarily in place, due to the registry door's closing. The email address to file is at the end of this document.
- By fax
- By post

The fax and postal details for each registry can be found on the Federal Court website.

You will be required to serve a sealed copy of this form on the legal representative for the Minister.

Recording of Tribunal Hearing

You can obtain from the Administrative Appeals Tribunal a recording of the hearing at the Tribunal. If you do not have a copy, speak to the Minister's solicitor to request a copy. If you intend to use the recording as part of your application to the Court, a written transcript of the hearing should be obtained and verified by way of affidavit.

Court Fees

When you are given a final hearing date you will receive an invoice for payment of a "setting down" fee (as required by the *Federal Court and Federal Circuit Court Regulation 2012* (Cth)). This fee must be paid no later than 28 days before the hearing day. The fee is currently $805. If you wish to make an application for financial hardship, please complete an exemption application form which is available on the Federal Court's website. This form should be forwarded to the Registry for consideration as soon as possible. Please note that if you discontinue your proceeding after it has been set down for hearing the setting down fee will still be payable.

Hearing

Once the matter is given a date for final hearing, if you do not have a lawyer to represent you, you will need to be ready to tell the Court about your case (with an interpreter if required).

Listed before 30 June 2020

The Court will contact you, in writing, to make arrangements for your hearing in light of the COVID-19 outbreak. Please check your contact details with the Court are up to date, then wait to be contacted.

Listed after 1 July 2020

It is currently anticipated your hearing will be person. You will be advised, in writing, closer to your hearing date if this changes. Please refer to the electronic list boards on the ground floor when you arrive or approach the registry counter if you require assistance locating your court room. It is recommended you arrive early to find your courtroom.

Costs

At the conclusion of the proceeding in the Court, the court will usually order that the unsuccessful party pay the legal costs and expenses incurred by the successful party. These costs are different from Court fees that are payable to the Court Registry for filing your application and for the setting down of the hearing. If you are unsuccessful or discontinue your proceeding in this Court, you may still be required to pay the Minister's legal costs. If you wish to organise a payment plan or otherwise discuss these costs, please email debtors@border.gov.au .

Registry Contact Details

For all communication with the Court, please only email the proper registry for your matter.

State	Email for filing	Email for enquiries
Australian Capital Territory	ACT.Filing@fedcourt.gov.au	actman@fedcourt.gov.au
New South Wales	NSW.Filing@fedcourt.gov.au	nswdr@fedcourt.gov.au NSW.Fees@fedcourt.gov.au (for fees enquiries only)
Northern Territory	NT.Filing@fedcourt.gov.au	ntreg@fedcourt.gov.au
Queensland	QLD.Filing@fedcourt.gov.au	qldreg@fedcourt.gov.au
South Australia	SA.Filing@fedcourt.gov.au	sareg@fedcourt.gov.au

State	Email for filing	Email for enquiries
Tasmania	TAS.Filing@fedcourt.gov.au	tasreg@fedcourt.gov.au
Victoria	VIC.Filing@fedcourt.gov.au	VIC.Migration@fedcourt.gov.au VIC.Fees@fedcourt.gov.au (for fees enquiries only)
Western Australia	WA.Filing@fedcourt.gov.au	waregistry@fedcourt.gov.au

The Family Court and Federal Circuit Court issued the *Child Dispute Services – In-person Interview Protocol* on 3 April 2020. The Protocol is extracted below and available here:

http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/news/covid-notice-cds-inperson

http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/news/covid-notice-cds-inperson

CHILD DISPUTE SERVICES – IN-PERSON INTERVIEW PROTOCOL

This protocol is designed to reduce the risk of being in close contact[1] with a Court user who may be infectious with COVID-19 by limiting the extent to which Court users have close contact (based on medical advice) with staff and other Court users. This is the most appropriate way, at present, for the Court to balance important health and safety considerations with the need to continue this essential for Australian families. This protocol is to be used in addition to the usual COVID-19 hygiene practices of regular washing of hands and not touching one's face.

Footnote:

[1] **A close contact** is typically someone who has been face-to-face for at least 15 minutes, or been in the same closed space for at least 2 hours, with a person that was infectious (World Health Organisation definition).

Use of technology

Wherever possible, face-to-face interviews should not take place, and should instead be conducted electronically in accordance with the CDS Guidelines for Conducting Assessments.

Scheduling interviews/observations

CDS should arrange interviews in such a way so as to minimise the number of people coming into the court at any one time. Remote interviews with adult parties will generally occur on a separate day. Care should be taken to ensure that larger numbers of people do not gather in a waiting area at any one time.

Duration of interviews/observations

In adhering to the principles of social distancing, which must take place in face-to-face interviews with children and parent/child observations, interviews must be limited to a maximum of 1.5 hours with the same individual(s). Observations should occur in a separate room to that used for the interviews with children. Subject to the factors above, Family Consultants will conduct interviews with, and observations of, the children from one family per day.

Interview/observation rooms

CDS should ensure where interviews are being conducted, they are adhering to the '4 square metres' rule. This means that there must be 4 square metres per person available in each room. For example, for an interview room measuring approximately 4 metres by 5 metres (20 square metres total) there should be no more than 5 people in the room. For an interview room measuring approximately 3 metres by 4 metres (12 square metres total), there should be no more than 3 people in the interview room. Depending on the number of participants, CDS may need to make special arrangements for the use of larger rooms where possible.

Distance from parents/children

During interviews or observations, taking into account the age of the child, Family Consultants are, to the extent possible, to keep an appropriate distance (i.e. at least 1.5 to 2 metres apart) from parents and children.

Note:

Additional cleaning of interview rooms is being arranged and additional hand sanitiser is being sourced. This includes cleaning inside the interview rooms and the placement of hand sanitisers outside interview rooms.

The Family Court and Federal Circuit Court issued the *Joint Practice Direction 2 of 2020 – Special Measures in Response to COVID-19*, dated 31 March 2020, on 1 April 2020. The Joint Practice Direction is extracted below and available here:

http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/rules-and-legislation/practice-directions/2020/jpd022020

JOINT PRACTICE DIRECTION 2 OF 2020 – SPECIAL MEASURES IN RESPONSE TO COVID-19

A. This Joint Practice Direction applies to all family law applications, including appeals, filed in the Family Court of Australia or the Federal Circuit Court of Australia ("the Courts"), and all general federal law applications filed in the Federal Circuit Court of Australia.

B. Due to the coronavirus (COVID-19) pandemic, where appropriate and necessary, the Courts are modifying practices in order to minimise the attendance by legal practitioners and parties at registries, with the Courts' priority being the health and safety of the community, Judges and staff.

C. This Joint Practice Direction takes effect from the date it is issued and supersedes the following Practice Directions:

   a. Family Court of Australia Practice Direction 2 of 2020 Electronic – Filing, Annexures to Affidavits and Viewing of Subpoenas; and

   b. Federal Circuit Court of Australia Practice Direction 3 of 2020 – Electronic Filing and Viewing of Subpoenas.

D. To the extent practicable, this Joint Practice Direction applies to proceedings whether filed before, or after, the date of issuing.

E. This Joint Practice Direction remains in effect until and unless superseded or revoked. Given the COVID-19 situation is rapidly evolving, further updates are possible.

Filing of all documents

1. To facilitate matters being dealt with electronically, legal practitioners and lawyers must efile or elodge all documents.
2. If documents are unable to be efiled or elodged, then they should be emailed to the registry for electronic filing. Court users who do not have access to the necessary electronic equipment, including self-represented litigants, should contact the Registry by telephone for assistance.
3. Hard copies of documents are not to be posted or delivered to the registry.

Subpoenas and Inspection of documents

4. Subpoena viewing at all registries of the Courts is by appointment only. Requests for an appointment should be made by emailing the relevant registry.

5. Access to subpoenaed material that has 'photocopy access' may be provided at the discretion of the registry. Registry staff will email approved documents. Photocopy access will not be made to documents including a child welfare record, criminal record, medical record or police record, in accordance with sub-rule 15.30(2) of the *Family Law Rules 2004* and sub-rule 15A.13(2) of the *Federal Circuit Court Rules 2001*.
6. Legal practitioners and parties should only make appointments to view subpoenaed material if the matter is critically urgent.

Annexures to affidavits

7. For matters filed in the Family Court of Australia, unless total annexures exceed more than two centimetres in width, documents referred to in affidavits should be attached to the affidavit when it is electronically filed or emailed to the registry.
8. Applications to file documents in the Family Court of Australia in excess of two centimetres in width should be made to the registry case co-ordinator who may liaise with the duty registrar or docket judge as the case requires. If the application is acceded to, parties will be required to email those documents (or if email or other electronic means is not possible, to provide a USB stick containing those documents) to the registry.

Signatures on Documents and Affidavits

9. Documents, including affidavits, financial statements and consent orders, required to be signed under the *Family Law Rules 2004* or the *Federal Circuit Court Rules 2001* may be signed electronically by the deponent and/or the lawyer on the record for that party, including by having the person signing the document type their name in the relevant space in the signature block in lieu of physically signing the document.
10. The Courts acknowledge that the COVID-19 environment may pose significant challenges to having affidavits and financial statements sworn or affirmed.
11. The Courts will accept for filing affidavits (other than where part of a divorce application) and financial statements that have been signed without a qualified witness also signing the document, subject to, if the judicial officer requires it, the deponent of the document being made available by telephone or videoconference or in person, at a subsequent court event, to swear or affirm that the contents of the document are true and correct to the best of their knowledge, information and belief.

Deferral of fee payments

12. Registry staff may be unable to process fee payments where they are working from home and are unable to access an eftpos terminal. In those circumstances, the registry staff member may 'defer' a fee payment for a scanned form or document that has been emailed to the Courts.
13. Where registry staff are able to come into the physical Court premises they will continue to process payments for forms that have been scanned and emailed to the Courts.

14. The process for online payments, including when eFiling, will remain unchanged.

[Signed in hard copy]
THE HONOURABLE JUSTICE WILLIAM ALSTERGREN
CHIEF JUSTICE
FAMILY COURT OF AUSTRALIA
CHIEF JUDGE
FEDERAL CIRCUIT COURT OF AUSTRALIA
DATE: 31 MARCH 2020

The Family Court and Federal Circuit Court released a series of Questions and Answers on 31 March 2020 regarding parenting arrangements during the COVID-19 pandemic – these are available here:

http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/covid/covid-faq/

http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/covid/covid-faq/

The Chief Justice of the Family Court and Chief Judge of the Federal Circuit Court released the following statement concerning parenting orders on 26 March 2020:

The Family Court of Australia and the Federal Circuit Court of Australia (the Courts) are acutely aware that the current pandemic is having an enormous impact on families and the Australian community.

Parents are naturally deeply concerned about the safety of their children and how the COVID-19 virus will affect their lives. Part of that concern in family law proceedings can extend to a parent's or carer's ability to comply with parenting orders and what should be properly expected of them by the Courts in these unprecedented times.

The purpose of this statement is to clarify that the Courts remain open to assist parties, and to provide parents with some general guidance. However, it is understood that every family's circumstances are different.

1. It is imperative that parents and carers act in the best interests of their children. This includes ensuring their children's safety and wellbeing. Whilst the Courts make orders that are determined to be in the best interests of a child, caring for and determining the practical day-to-day best interests of a child is primarily the responsibility of parents and carers.

2. Consistent with their responsibilities to act in the children's best interests, parents and carers are expected to comply with Court orders in relation to parenting arrangements. This includes facilitating time being spent by the children with each parent or carer pursuant to parenting orders.

3. In the highly unusual circumstances now faced by Australian parents and carers, there may be situations that arise that make strict compliance with current court orders very difficult, if not, impossible. This may be caused, for instance, where orders stipulate that contact with a parent occurs at a designated contact centre, which may not currently be operating. Or, the "pick up" arrangements of a child may nominate a particular school, and that school is now closed. Many state borders are also closed. In addition, there may be genuine safety issues that have arisen whereby one parent, or someone in close contact with that parent, has been exposed to COVID-19, and this may restrict the safe movement of a child from one house to another.

4. As a first step, and only if it is safe to do so, parties should communicate with each other about their ability to comply with current orders and they should attempt to find a practical solution to these difficulties. These should be considered sensibly and reasonably. Each parent should always consider the safety and best interests of the child, but also appreciate the concerns of the other parent when attempting to reach new or revised arrangements. This includes understanding that family members are important to children and the risk of infection to vulnerable members of the child's family and household should also be considered.

5. If an agreement can be reached about new parenting arrangements, even if they are to be adjusted for a short period of time, this agreement should ideally be in writing, even if by way of email, text message or WhatsApp between each other. This will be particularly important if there are later family law hearings and will assist all concerned, including the Court, to understand what agreement may have been reached.

6. If you feel that you need further guidance, the Family Relationships Advice Line can provide information, advice and telephone-based Family Dispute Resolution services to assist parents and carers to discuss any issues that arise and help them come to an agreement. The Family Relationships Advice Line can be contacted on 1800 050 321 or visit the website.

7. Parents and carers can also mediate their differences through lawyers. Electronic mediation services are available from the Courts and through local Bar Associations and Law Societies during these restricted times. Visit their websites for more information.

8. If an agreement has been reached and consent orders have been developed to outline new or varied parenting orders, consent order applications can be filed electronically with the Court. This process is quick and usually conducted without a hearing.

9. If the parties are unable to agree to vary the arrangement, or if it is unsafe to do so, and one or both parents continue to have real concerns, the parties are at liberty to approach the Court electronically and seek a variation of the orders.

10. Where there is no agreement parents should keep the children safe until the dispute can be resolved. Also during this period of dispute, parents should ensure that each parent or carer continues to have some contact with the children consistent with the parenting arrangements such as by videoconferencing, social media, or if that is not possible, by telephone.

11. At all times, parents or carers must act reasonably. To act reasonably, or to have a reasonable excuse for not complying with Court orders, is a matter that is considered by the Court (pursuant to s70NAE of the *Family Law Act 1975* (Cth)).

12. It is imperative that, even if the orders cannot be strictly adhered to and are varied by the parties, the parties ensure that the purpose or spirit of the orders are respected when considering altering arrangements, and that they act in the best interest of the children.

13. The Courts appreciate that agreement by mutual consent may not be reached, particularly if one party has concern for their physical safety. Therefore, the Courts advise that if you or your child is in immediate danger, please contact your local police and seek medical advice if required.

In the meantime, the community should be assured that the Courts will continue to perform their duties during this time of crisis. Whilst changes to the Courts' operations have been implemented in accordance with the necessary restrictions placed on our community by the Commonwealth Government, the Courts remain open to assist Australian families in these challenging times.

Judges, Registrars and staff are committed to providing access to justice when called upon to do so. This includes conducting hearings both via videoconferencing through the use of Microsoft Teams or other platforms, or by telephone. The Courts are also conducting mediations electronically and through other safe means.

There will be, in exceptional circumstances, a small number of face-to-face in-court hearings. For the safety of all concerned, these will only be granted when absolutely necessary. Those hearings will be conducted in strict accordance with the Face-to-Face in-Court Protocol issued by the Courts. As in any other interaction, social distancing requirements will be strictly be followed. Similarly, face to face interviews by family consultants will only take place in exceptional circumstances.

The Registries are still open for telephone appointments, electronic filing and the listing of urgent cases. Family Consultants will also continue their vital work through these electronic mediums as best they can.

Family Dispute Resolution

The law requires separating families who have a dispute about children to make a genuine effort to try to sort it out through family dispute resolution (FDR) before filing an application for parenting orders in court.

This requirement applies to anyone wanting to file an application with a family law court. It also includes those seeking changes to an existing parenting order. There are a few exceptions to this requirement, such as cases involving family violence, child abuse or urgency.

Unless an exemption applies, parties seeking to have a parenting matter determined by a family law court will need to electronically file a certificate from an accredited FDR practitioner. The certificate is issued under Section 60I of the *Family Law Act 1975* and is commonly known as a Section 60I Certificate.

You can visit Family Relationships Online for more information about the services and advice available for families, including seeking services from an FDR practitioner.

An FDR practitioner is an independent person who can help people discuss issues, look at options and work out how best to reach agreement in disputes about children. You can search for an accredited FDR practitioner who has consented to be on the Family Dispute Resolution Register website.

For general information about parenting orders, the following pages may be visited:

- Complying with orders about children;
- Parenting orders – obligations, consequences and who can help;

- How do I apply to the court when parenting orders have been breached or not complied with?

More information on these measures are available from the Courts' websites:

http://www.federalcircuitcourt.gov.au
http://www.familycourt.gov.au

More information about how to self-assess for your personal risk for coronavirus (COVID-19) is available from the website of the Commonwealth Government.

In addition, the Family Court and Federal Circuit Court each issued a *COVID-19 Update: Information for parents* on 26 March 2020. These documents are extracted below:

FAMILY COURT OF AUSTRALIA: COVID-19 UPDATE: INFORMATION FOR PARENTS

http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/about/news/covid-info-parents

The Family Court of Australia (the Court) has responded to the evolving impact of the COVID-19 pandemic and has made immediate and significant changes to court operations.

The aim of the new arrangements is to ensure that urgent and priority matters are able to be dealt with safely by the Court, whilst at the same time, ensuring appropriate social distancing requirement are adhered to.

The Court is acutely aware that the current pandemic is having an enormous impact on families and the Australian community but the Court will continue to provide an essential service to the community, especially in this time of crisis when people are under enormous stress.

The impact on the Court and how it can continue to deliver its services is constantly evolving and therefore the information provided is subject to change.

The following points outline some of the key arrangements currently in place:

- If you or your child is in immediate danger, please contact your local police.
- If you need advice on separation, family conflict or parenting disputes, as a starting point, you can contact the Family Relationship Advice Line on 1800 050 321.

If you have current proceedings before the Court, there are changes in the way your matter may be dealt with. The following points provide a general overview of those changes.

- Most court hearings and events will be done by telephone, and if possible, through video-conferencing options. For more details see the COVID-19 updates and information.
- Some non-urgent matters may be postponed (adjourned to a future date) but this is at the discretion of the judicial officer.
- Court users will be notified prior to their court date whether their court event has been adjourned or will be facilitated by telephone.
- Only a very limited number and type of matter will be dealt with by face-to-face hearings or interviews.
- There have been changes to the way in which services provided though the Court's Child Dispute Services and Registrars will be conducted.
- It is unlikely that parties and lawyers will at this stage be required to physically attend court, however, if that is required, the hearing or interview will be conducted pursuant to the Court's face-to-face in-court protocol and face-to-face interview protocol**.**
- New instructions have been developed in relation to divorce lists, Family Court of Australia Registrar lists, property lists, PPP500 lists and contravention lists, as well as Registrar conferences and Alternative Dispute Resolution (ADR) events.
- All new applications and other documents will need to be filed electronically through the Commonwealth Courts Portal.
- A Practice Direction has been developed, which applies to all family law applications, including appeals, filed in the Court. This Practice Direction relates to Electronic Filing, Annexures to Affidavits and Viewing of Subpoenas.
- More information and instructions are available on how to eFile via the Portal.
- The Court's registry services will be provided remotely, by telephone and through other online services. In urgent circumstances, face-to-face services in a registry may be provided, but only after initial assessment.
- If assistance is required, please contact us through Live Chat or email enquiries@familylawcourts.gov.au
- All information relating to court operations and COVID-19 can be accessed from the COVID-19 updates and information page.

FEDERAL CIRCUIT COURT: COVID-19 UPDATE: INFORMATION FOR PARENTS

http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/news/covid-info-parents

The Federal Circuit of Australia (the Court) has responded to the evolving impact of the COVID-19 pandemic and has made immediate and significant changes to court operations.

The aim of the new arrangements is to ensure that urgent and priority matters are able to be dealt with safely by the court, whilst at the same time, ensuring appropriate social distancing requirement are adhered to.

The Court is acutely aware that the current pandemic is having an enormous impact on families and the Australian community but the Courts will continue to provide an essential service to the community, especially in this time of crisis when people are under enormous stress.

The impact on the Court and how it can continue to deliver its services is constantly evolving and therefore the information provided is subject to change.

The following points outline some of the key arrangements currently in place:

- If you or your child is in immediate danger, please contact your local police.
- If you need advice on separation, family conflict or parenting disputes, as a starting point, you can contact the Family Relationship Advice Line on 1800 050 321.

If you have current proceedings before the Court, there are changes in the way your matter may be dealt with. The following points provide a general overview of those changes.

- Most court hearings and events will be done by telephone, and if possible, through video-conferencing options. For more details see the COVID-19 updates and information
- Some non-urgent matters may be postponed (adjourned to a future date) but this is at the discretion of the judicial officer.
- Court users will be notified prior to their court date whether their court event has been adjourned or will be facilitated by telephone.
- Only a very limited number and type of matter will be dealt with by face-to-face hearings or interviews.
- There have been changes to the way in which services provided through the Court's Child Dispute Services and Registrars will be conducted.
- It is unlikely that parties and lawyers will at this stage be required to physically attend court, however, if that is required the hearing or interview will be conducted pursuant to the Courts' face-to-face in-court protocol and face-to-face interview protocol.
- New instructions have been developed in relation to divorce lists, Family Court of Australia Registrar lists, property lists, PPP500 lists and contravention lists, as well as Registrar conferences and Alternative Dispute Resolution (ADR) events.
- All new applications and other documents will need to be filed electronically through the Commonwealth Courts Portal.
- A Practice Direction has been developed, which applies to all family law and general federal law applications filed in the Court. This Practice Direction relates to Electronic Filing and Viewing of Subpoenas.
- More information and instructions are available on how to eFile via the Portal.

- The Court's registry services will be provided remotely, by telephone and through other online services. In urgent circumstances, face-to-face services in a registry may be provided, but only after initial assessment.
- If assistance is required, please contact us through Live Chat or email enquiries@familylawcourts.gov.au
- Regional circuits that are conducted by the Federal Circuit Court are under review and some matters may be adjourned or conducted by telephone.
- Migration matters currently listed in the Federal Circuit Court which can be conducted appropriately by telephone or videoconference may proceed.
- The conduct of other General Federal Law matters (such as industrial law, human rights and consumer law) may proceed by telephone or video-conferencing options, at the judge's discretion.
- Please note that Registrar migration lists have been suspended until July 2020 by the Federal Court.
- All information relating to court operations and COVID-19 can be accessed from the COVID-19 updates and information page.

The Courts released the following on 23 March 2020:

- An Update to the Profession – COVID-19 Measures and listing arrangements for registrars and Child Dispute Services (CDS);
- CDS Face-to-face Interview Protocol;
- Face-to-face in Court Protocol - Registrar Work; and
- Court diagram.

These documents are available on the Association's website and **extracted below.** The Courts also announced on 23 March 2020 that:

> The Family Court of Australia and the Federal Circuit Court of Australia provide an important duty for the Australian community, especially during a time of crisis. The health and safety of the community, Judges and court staff is our priority, and therefore we have made further changes to our operations. **As of Tuesday 24 March, the Courts' registry services will be provided remotely, by telephone and through other online services. In urgent circumstances, face-to-face services in a registry may be provided, but only after initial assessment via telephone.** Members of the public and legal practitioners who have an enquiry can contact us on the following numbers:
>
> Family law enquiries: 1300 352 000
> General Federal Law enquiries: 1300 720 980

UPDATE TO THE PROFESSION

COVID-19 MEASURES AND LISTING ARRANGEMENTS FOR REGISTRARS AND CHILD DISPUTE SERVICES (CDS)

23 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 that 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 minimise risk to all 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 for Registrars and CDS 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 face-to-face hearings or interviews, which will be conducted pursuant to the face-to-face in- court protocol and face-to-face interview protocol (below).

The protocols set out and this notice and attached replace all previous communication relating to Court operations involving Registrars and CDS. Key difference include the inclusion of guiding principles and In-Court and Face-to-face Interview protocols.

PRINCIPLES

The key overarching principles relating to the work of Registrars and CDS during the period of the special arrangements for COVID-19 are as follows:

I. Prioritising the safety of the community, Judges, Registrars, CDS and staff minimising the number of people in Court and implementing social distancing practices.

II. The principle basis upon which work will be conducted by Registrars and CDS in the near future will be by telephone, and to the extent possible, by video technology. All work that can be shifted to telephone/video should be transitioned immediately.

III. Only urgent or priority matters will be dealt with by in-court face-to-face hearings or interviews.

IV. Any face-to-face hearings or interviews will be conducted in accordance with the relevant **face-to-face protocol,** including in relation to social distancing requirements.

REGISTRARS

1. DIVORCE LISTS

In the case of Divorce Lists the following telephone appearance procedure is to apply:

a) ***Joint applications*** – will be done on the papers and parties are not required to attend Court.

b) ***Sole applications*** –

i. will be done on the papers if there are no children to the marriage and parties are not required to attend Court.

ii. will require attendance via telephone by parties and lawyers if there are children under the age of 18 years.

c) Where Court attendance is required, each matter currently listed will be sent an email advising that parties are to attend a virtual courtroom and will be provided a number to dial-in to the virtual courtroom. Parties and lawyers will also be requested to provide their direct contact details to each Registrar no later than 4:00pm two business days prior to the listing

d) Respondents who request to appear in court personally should be advised to attend via telephone.

e) If the applicant is seeking orders for dispensation of service, these will also be dealt with by telephone.

f) If parties or lawyers still appear personally, rather than by telephone, the face-to-face in-court protocol will apply.

g) Divorce lists will be staggered into 3 time slots per day. Each time slot will have a maximum of 10-12 matters listed.

h) Rather than a single Registrar, the divorce list will be split between two Registrars who will conduct staggered telephone attendances.

2. FCoA REGISTRAR DIRECTIONS LISTS

In the case of FCoA Registrar Directions Lists the following telephone appearance procedure is to apply:

a) All FCoA Registrar Directions Lists will be conducted by telephone where limited to a procedural issue.

b) Where a matter is contested, written submissions are to be filed at the direction of the Registrar with orders to be made in chambers.

c) Parties with a matter currently listed will be sent an email by Registry staff advising of the above. In response to the email, parties and lawyers should provide their direct contact details to each Registrar no later than 4:00pm two business days prior to the listing. Parties must ensure they are available by telephone until they receive the Court's call.

d) In the event that parties are in agreement as to the future conduct of the matter, proposed interim consent minutes should be submitted as soon as possible by email to the Registrar for consideration.

3. DISCRETE PROPERTY LISTS, PPP500 LISTS AND CONTRAVENTION LISTS

In the case of Discrete Property Lists, PPP500 Lists and Contravention Lists the following telephone appearance procedure is to apply:

a) All Discrete Property Lists, PPP500 Lists and Contravention Lists will be conducted via telephone.

b) Parties with a matter currently listed will be sent an email by Registry staff advising of the above. In response to the email, parties and lawyers are requested to provide their direct contact details to each Registrar no later than 4:00pm two business days prior to the listing. Parties must ensure they are available by telephone until they receive the Court's call.

c) In the event that parties are in agreement as to the future conduct of the matter, proposed interim consent minutes should be submitted by email to the Registrar for consideration as soon as possible.

d) In relation to matters in the Contravention Lists, where a matter needs to be listed before a judge for a contested hearing, the prioritisation of the matter will be at the discretion of the Judge. Any future listings will be subject to judicial capacity.

4. CONFERENCES AND ADR EVENTS

In the case of Conferences the following telephone or video procedure is to apply:

a) Final defended cases that are assessed to be of a lower priority, may be sent to an ADR event, and the trial otherwise adjourned to a date to be advised. All Case Assessment Conferences and Conciliation Conferences will be conducted via telephone or via video.

b) Where Conferences are to be conducted via telephone/video, parties will be sent an email which will include dial-in details. Parties will also be requested to provide their direct contact details to each Registrar no later than 4:00pm two business days prior to the listing.

c) Where Conferences are to be conducted using Microsoft Teams or other platform, parties will be sent participation details.

d) Lawyers and parties are still required to provide/exchange the usual documents in advance of the Conciliation Conference (as ordered by the Judge/Registrar) and proposed orders to both the Court and to the other party prior to the conference.

5. FCoA SENIOR REGISTRAR LISTS

In the case of FCoA Senior Registrar Lists the following procedure is to apply:

a) Parties and lawyers should attend interim hearings by telephone to the greatest extent possible.

b) The parties and lawyers are still required to provide a short case outline, identifying the evidence they wish to rely upon together with a minute of proposed orders.

c) Parties with a matter currently listed will be sent an email by Registry staff advising of the above. In response to the email, parties and lawyers are requested to provide their direct contact details to each Senior Registrar's chambers no later than 4:00pm two business days prior to the listing. Parties must ensure they are available by telephone until they receive the Court's call. d) Parties who request to appear in Court personally should contact the Senior Registrar's chambers by email and provide a brief outline as to why the matter is urgent and should remain listed for a face-to-face hearing.

e) Matters in a Senior Registrar Magellan Lists will be treated as urgent.

f) If the Senior Registrar directs the parties and lawyers to appear personally, a face-to-face hearing should strictly adhere to **the Face-to-face In-court Protocol.**

CDS

1. CHILD DISPUTE CONFERENCES

In the case of Child Dispute Conferences, the following procedure is to apply:

a) All Child Dispute Conferences (CDCs) will be conducted by telephone or videoconferencing.

b) Family Consultants will contact the parties directly.

2. CHILD INCLUSIVE CONFERENCES

In the case of Child Inclusive Conferences, the following procedure is to apply:

a) For all new orders, Judges have been strongly encouraged by the Chief Justice to order CDCs (which will be conducted via telephone), rather than CICs, given the difficulty of having face-to-face contact. Therefore it is expected that CICs will be ordered only where there is an urgent requirement for a Family Consultant to see the children.

b) Existing orders for Child Inclusive Conferences (CICs) will, subject to the views of the Judge or Senior Registrar, be serviced as CDCs.

c) Where a CIC has been ordered, it will be conducted consistent with the Face-to-face Protocol as far as possible.

3. CHILD RESPONSIVE PROGRAM (FCoA)

In the case of Child Responsive Program, the following procedure is to apply:

a) Meetings with the adult parties (MIA) will be conducted by telephone.

b) Necessary meetings with children (MCF) will proceed in-person as arranged at the Registry decided by the individual Family Consultant, in conjunction with their manager, and a Judge with necessary.

c) Meetings with children will be conducted consistent with the Face-to-face Protocol as far as possible.

4. FAMILY REPORTS

In the case of Family Reports, the following procedure is to apply:

a) Interviews with adult parties will be conducted via telephone (or video). Adult parties will be contacted by CDS staff or, where interviews are to be conducted using Microsoft, parties will be sent participation details.

b) Meetings with children will be conducted consistent with the Face-to-face Protocol as far as possible.

23 March 2020

FACE-TO-FACE INTERVIEW PROTOCOL

CDS

This protocol is designed to reduce the risk of being in **close contact**[1] with a Court user who may be infectious. This is the most appropriate way, at present, for the Court to balance important health and safety considerations of Judges, staff and the community with the need to continue this vital work for Australian families.

1) Interviews

Interviews with adult parties will generally occur on a separate day via telephone and will be staggered.

In adhering to the principles of social distancing, interviews with children and parent/child observations must be limited to a maximum of 1.5 hours with the same individual(s). Observations will likely occur in a separate room to that used for the interviews with children.

To the extent possible, taking into account the age of the child, Family Consultants are to adhere to the principles of social distancing by keeping an appropriate distance (i.e. at least 1.5 to 2 metres apart). There should never more than eight people in the room other than the Family Consultant at one time.

2) Cleaning

Additional cleaning of interview rooms is being arranged.

[1] **A close contact** is typically someone who has been face-to-face for at least 15 minutes, or been in the same closed space for at least 2 hours, with a person that was infectious (World Health Organisation definition).

FACE-TO-FACE IN COURT PROTOCOL

REGISTRAR WORK

This protocol is designed to reduce the risk of being in **close contact**[1] with a court user who may be infectious. This is the most appropriate way, at present, for the court to balance important health and safety considerations of judges, staff and the community with the need to continue this vital work for Australian families.

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

[1] **A close contact** is typically someone who has been face-to-face for at least 15 minutes, or been in the same closed space for at least 2 hours, with a person that was infectious (World Health Organisation definition).

1) Listings

FCoA Interim Hearings

Priority should be given to urgent matters (e.g. matters involving risks of family violence) that the Senior Registrar considers cannot be dealt with over the telephone.

Listings will be staggered to reduce the number of people waiting in the foyer/registry building. A list will be collated each day by the Judicial Services Team Leader to ensure that hearing times are sufficiently staggered to allow for cleaning.

Matter(s) will not be listed for more than 1.5 hours, and with sufficient space in between to allow cleaning to occur.

To reduce the length of any face-to-face hearing, where possible, it should 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 Registrar and Court Officer) should be in the courtroom at any one time.

Counsel, solicitors and parties are to adhere to social distancing by sitting in appropriately distanced seats as indicated in the courtroom diagram attached (i.e. at least 1.5 to 2 metres apart).

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 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 should not continue after the first 1.5 hour period.

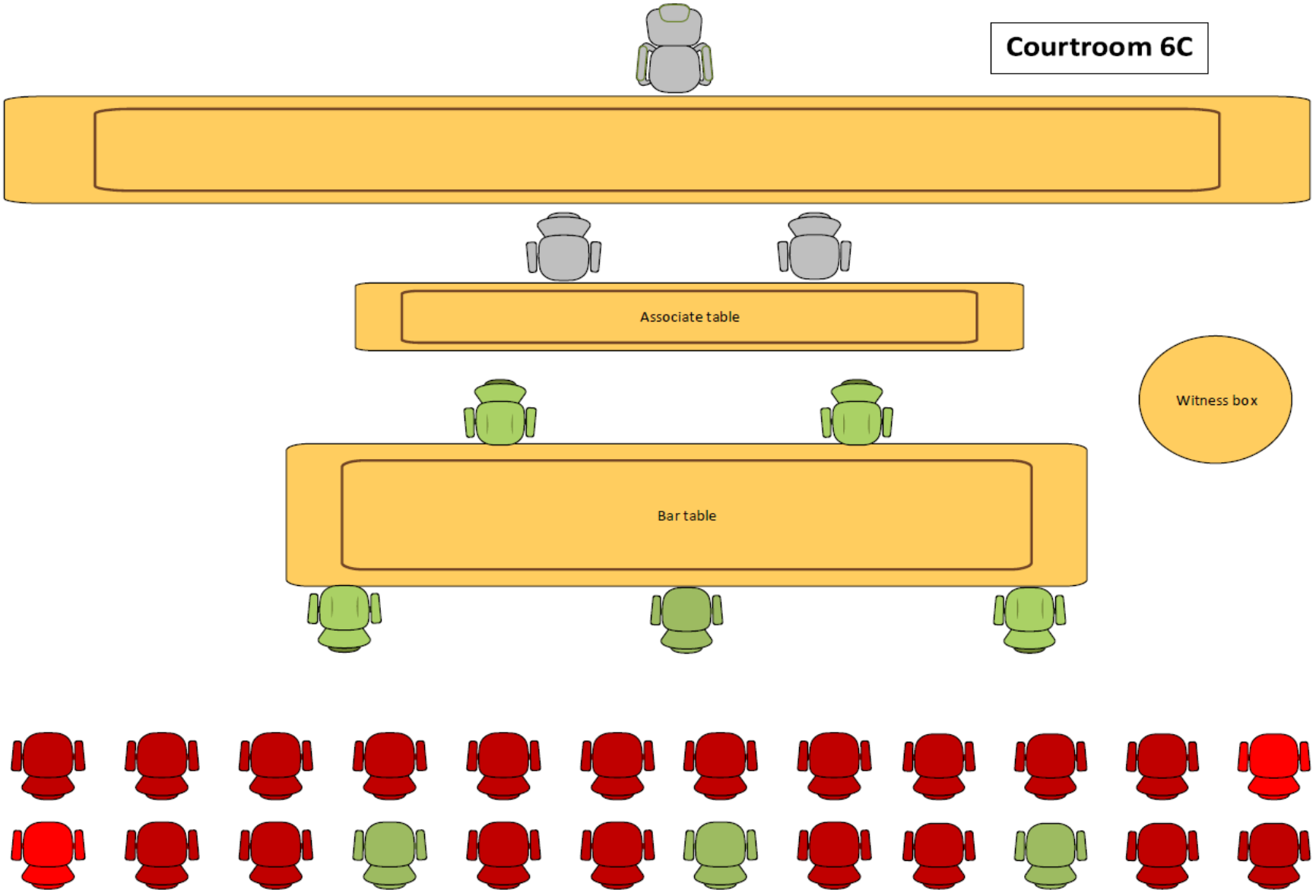
4) Security

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 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.


Courtroom 6C
Associate table
Witness box
Bar table

The Courts previously released the following on 19 March 2020:

c. An "**Update to the legal profession"**, which is extracted below and available here: https://inbrief.nswbar.asn.au/posts/08b347d11316f1372f3414b4c40536a7/attachment/FCoA%20FCC%20Notice%20to%20the%20Profession%20-%20COVID%20measures%20and%20listing%20arrangements%2019%20March%202020.pdf ;

d. **Family Court of Australia, *Practice Direction 2 of 2020 - Electronic Filing, Annexures to Affidavits and Viewing of Subpoenas*,** which is available here: http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/rules-and-legislation/practice-directions/

e. **Federal Circuit Court of Australia, *Practice Direction 3 of 2020 – Electronic Filing and Viewing of Subpoenas*,** which is available here: http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/rules-and-legislation/practice-directions .

Please note that these Practice Directions have been superseded by the *Joint Practice Direction 2 Of 2020 – Special Measures In Response To COVID-19*, which is extracted above.

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).

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.

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 selfrepresented 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 incourt 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.

ADMINISTRATIVE APPEALS TRIBUNAL

For further information, visit: https://www.aat.gov.au/impact-of-coronavirus-covid-19-on-our-services

ON 8 JULY THE PRESIDENT PROVIDED THE FOLLOWING UDPATE:

I am writing to let you know that the AAT is taking steps to resume some in-person hearings, at all AAT registries except for Melbourne.

The AAT has, to date, been able to minimise the impact on our services through the provision of online registry support and by hearing matters remotely.

However, we are mindful that there are some circumstances in which a remote hearing may not be practicable and where the matter may not be deferred. We will consider the listing of in-person hearings on a case by case basis in accordance with the AAT's practice directions. In appropriate matters, in-person hearings are expected to commence within the next few weeks. Parties will be contacted by the Tribunal as to hearing arrangements.

Whilst we will keep the matter under careful review, we expect that, for some time, most AAT hearings and all AAT conferences will continue to be conducted remotely by video conference or telephone. We are taking a staged approach to recommencing in-person hearings because a priority continues to be the health and wellbeing of our members, staff, visitors and the wider community.

I would be grateful if you would distribute this update to your membership. Detailed information about how to contact the AAT and how to access services at this time is available on our website: https://www.aat.gov.au/impact-of-coronavirus-covid-19-on-our-services

ON 12 JUNE THE AAT ISSUED THE FOLLOWING UPDATE:

COVID-19: Safety remains a priority in our workplaces

Like a number of Australian courts and tribunals, the AAT has not yet announced a date when in-person hearings will resume.

We are, however, well advanced in our planning at a national level to make all AAT workplaces 'COVID-safe'. This is a key priority for the Tribunal at the moment because it means we can minimise the risk of spreading the coronavirus as more people progressively return to work in, and visit, our registries. Some of the actions we have already taken include:

- installing relevant signage

- deep cleaning our public areas and common work spaces
- making hygiene equipment and sanitising products readily available for members and staff working onsite, and for the few users who need to visit us in-person (this is currently only happening in rare circumstances by prior arrangement, for example, tradespeople).

We have also engaged an occupational hygienist to inspect our largest registries and audit our processes in all locations. This will mean any measures we implement to be COVID-safe are informed by expert advice on infection control and social distancing.

While in-person hearings have not yet resumed, there has been little impact on the services we have been able to provide online and by hearing matters remotely. Find out more about how to access our services at this time.

Please continue to monitor this website for further updates.

ON 28 APRIL THE AAT ISSUED FIVE SPECIAL MEASURES PRACTICE DIRECTIONS, TAKING EFFECT FROM 29 APRIL:

The President of the Administrative Appeals Tribunal, the Hon Justice David Thomas, has issued five Special Measures Practice Directions which set out how the AAT will operate whilst COVID-19 restrictions continue to impact upon the way in which the Tribunal interacts with parties and representatives and other aspects of the review process.

The new Special Measures Practice Directions take effect from 29 April 2020 for the following divisions:

- General, Freedom of Information and Veterans' Appeals
- Migration & Refugee
- National Disability Insurance Scheme
- Small Business Taxation and Taxation & Commercial
- Social Services & Child Support.

THE AAT MADE THE FOLLOWNG ANNOUNCEMENT ON 25 MARCH 2020:

TEMPORARY CLOSURE OF AAT REGISTRIES TO VISITORS

To help slow the spread of COVID-19 across our community, the AAT is closed to all visitors from Thursday 26 March 2020 until further notice.

You can do most of what you need to do with the AAT from your home or office:

- Lodge a new application (preferred method of lodgement)

- Submit a document for any case that has already been lodged with the AAT
- Email us about your new or existing application
- Send a general enquiry
- Provide feedback including compliments, complaints and suggestions

We have put a range of temporary measures in place, including to conduct hearings and conferences by video or telephone, or to postpone them where this is not possible. We have also temporarily suspended the issuing of non-urgent summonses.

Our staff remain available to answer your telephone and email enquiries, process applications and deliver other services in support of AAT members and Tribunal users.

Please continue to monitor this website for further updates.

General information about COVID-19 is available from the Department of Health.

THE PRESIDENT OF THE AAT ALSO RELEASED THE FOLLOWING MESSAGE ON 25 MARCH 2020:

Below is an extract of a message sent recently by the Hon Justice David Thomas, President of the AAT, to people who subscribe to our newsletters.

'…The AAT will temporarily cease 'in person' hearings, conferences and other events at our registries and instead aim, where possible, to deal with the cases by telephone or video link. We will contact impacted parties to discuss alternative arrangements.

…Like all courts and tribunals, indeed all of Australia, our response to the unprecedented challenge of the pandemic is designed to manage health risks and to slow the spread of disease, while continuing to operate as effectively as possible. We are guided by Australian and State/Territory Government protocols, and the advice of health experts.

I am conscious of the number of messages about COVID-19 you are all receiving from numerous sources and do not want to add to that burden with broad information. Please monitor our website for further updates on the inevitable changes we will need to make to our operations as the situation evolves...'

The message is also available here: https://www.aat.gov.au/news/covid-19-message-from-justice-thomas

The AAT previously advised the following on 19 March 2020:

The AAT has introduced temporary changes to its operations to limit the number of people visiting our registries in an effort to help slow the spread of the COVID-19 disease across our community.

We ask all AAT users to make use of our online services or, where this is not possible, contact us in another way without visiting a registry.

Our staff are available to answer phone and email enquiries, process applications and deliver other services to support AAT members and Tribunal users.

People who have 'in person' hearings, conferences and other events scheduled are being contacted directly to discuss alternative arrangements for their AAT case.

You can do most of what you need to do with the AAT without visiting a registry:

- Lodge a new application (preferred method of lodgement)
- Submit a document for any case that has already been lodged with the AAT
- Email us about your new or existing application
- Send a general enquiry
- Provide feedback including compliments, complaints and suggestions

If it is absolutely necessary to visit us in person, you should call ahead on 1800 228 333 to discuss arrangements.

FAIR WORK COMMISSION

For further information, visit: https://www.fwc.gov.au/about-us/news-and-events/coronavirus-covid-19-advice-visitors

THE FAIR WORK COMMISSION PROVIDED AN UPDATE BY WAY OF A PRESIDENT'S STATEMENT "THE FAIR WORK COMMISSION'S CORONAVIRUS (COVID-19) RESPONSE" ON 7 AUGUST 2020.

THE FAIR WORK COMMISSION PROVIDED THE FOLLOWING UPDATE ON 26 MARCH 2020:

Coronavirus (COVID-19) updates & advice

Keeping everyone safe

The Fair Work Commission's ongoing focus is to ensure a safe environment for our clients and staff so we can continue to deliver services to the community.

Our counters are closed, but we're still operating.

Please do not attend our offices unless a Commission Member specifically requests you to.

We continue to closely monitor the Australian Department of Health advice and will provide updates as new information emerges.

Workplace entitlements & COVID-19

For information on your workplace entitlements and obligations if you are affected by COVID-19 go to the Fair Work Ombudsman's website:

- Coronavirus and Australian workplace laws and
- Pay during stand down

You can still make an application

For everyone's safety, we have closed our counters. **We are no longer accepting applications in-person or by post.**

We ask that you:

- make your application using our online lodgment service or

- download and complete the right form and send it by email or fax to your nearest Commission office.

If you're having trouble lodging an application, please call us on 1300 799 675.

All the same time limits and requirements still apply.

Urgent applications

Urgent applications, such as applications to vary enterprise agreements or other instruments to deal with the consequences of COVID-19, can be sent to COVID19Applications@fwc.gov.au.

Processing & dealing with cases

Your case may take longer than normal to process

We are doing our best to deal with all cases as quickly as possible.

Like most businesses and organisations, we have also been affected by the current situation.

This means that things are likely to take longer than normal. You may need to wait longer on the phone to speak to us than normal and it may take longer for us to reply to emails.

Conciliation & mediation to be held by phone

Some cases, such as unfair dismissal and workplace bullying cases, start with a conciliation or mediation with a Fair Work Commission staff member.

All staff conciliations and mediations will now be held by phone conference until further notice.

This means you can take part from home. You don't need to come to our offices. If you have a representative, they can join the conference call from their office or home too.

Hearings & conferences to be held by phone or videoconference

We will now hold all hearings and conferences by phone or videoconference where possible.

This change applies to cases that are already scheduled as well as to future proceedings.

If we have already scheduled a hearing or conference at our offices for your case, we will contact you about changes to your proceeding.

Some cases will be dealt with on the papers

We may decide to deal with your case 'on the papers'. This means a Commission Member will deal with your case using the written materials you and the other parties have lodged. If this happens, we will not need verbal submissions or evidence.

If we decide to deal with your case in this way, the Commission Member will give you Directions. Directions are instructions that set out what submissions and evidence you need to lodge in order that the Commission Member can make a decision about your case.

We will contact you if we decide to deal with your case on the papers.

Some cases will be postponed

We are working to ensure that as many cases as possible can proceed.

However, some cases are not suitable to be held by phone, videoconference or on the papers. These cases will be postponed until it is safe to hold proceedings in person.

Find out how COVID-19 impacts specific case types

- Annual Wage Review 2019-20
- Anti-bullying
- 4 yearly review of modern awards
- General protections (dismissal)
- General protections (unlawful actions)
- Protected action ballots
- Unfair dismissal

COPYRIGHT TRIBUNAL OF AUSTRALIA

For further information, visit: https://www.copyrighttribunal.gov.au/

The Tribunal released the following COVID-19 Notice on 18 March 2020:

Filing of documents

At a registry

The Copyright Tribunal relies upon the registries of the Federal Court of Australia in relation to the over the counter filing of documents. Persons wishing to file documents in this manner should therefore look to notices or advice on the Federal Court of Australia website in relation to when a registry in a particular State is open.

Electronic filing

In the event of any registry closure, and for those who wish in any event to file electronically, a document may be filed via the following email address: query@fedcourt.gov.au. This email address will be monitored for any filings (with an updated email address to be provided in due course).

General Inquiries

General inquiries concerning the Tribunal should continue to be directed to the telephone numbers for the Federal Court of Australia Registry in the State or Territory concerned, according to any advice on the court's website.

ALTERNATIVE DISPUTE RESOLUTION

During the COVID-19 pandemic, alternative dispute resolution continues to serve an important role in promptly resolving matters and assisting the Courts to manage the disruption to case management caused by the pandemic.

ACICA GUIDE – MANAGING THE IMPACT OF COVID-19: USE OF ARBITRATION TO MITIGATE RISK

On 29 April ACICA released a guide for the business and legal community titled *Managing the Impact of COVID-19: Use of Arbitration to Mitigate Risk*. A copy of the Guide is available here:

https://nswbar.asn.au/the-bar-association/publications/inbrief/view/08b347d11316f1372f3414b4c40f971f

ONLINE PLATFORMS AND VIDEOCONFERENCING

Online platforms and videoconferencing technologies are crucial to ensure ADR can continue at this time. These include:

NSW Bar Dispute Resolution Centre

As of 1 April 2020, the Bar Dispute Resolution Centre has been open and available. The centre can provide video-conferencing services at no additional charge, as well as virtual courtroom arrangements using WebEx technology. Contact Margaret James on (02) 9231-3644 or email bookings@nswbardrc.com.au for further information.

Australian Disputes Centre

ADC Sydney is currently providing an online concierge service, ADC Virtual, which is currently available for online dispute resolution that can be accessed from home or the office. Contact info@disputescentre.com.au for bookings or information.

MODRON

MODRON Spaces is a software platform that helps facilitate online dispute resolution and they currently offer a 14-day free trial. Visit their website for more information.

Zoom

Zoom is an online platform that facilitates online meetings and video conferences. The free package allows you to host a meeting of up to 100 participants for 40 minutes. There are also a variety of other packages determined by the features the tier includes at a cost.

Microsoft Teams

Microsoft Teams is a group chat program that allows you to work remotely while staying connected with members of your team. This is increasingly being used by the Courts.

COVID-19 LEGISLATION, ORDERS, DIRECTIONS & REGULATIONS

NSW COVID-19 LEGISLATION

The NSW Government's *NSW Legislation COVID-19* website contains up to date information concerning COVID-19 related Acts, Regulations, public health orders and environment and planning orders which are currently in force. This is available here:

https://www.legislation.nsw.gov.au/#/#covid-19-legislation

CROSS-JURISDICTIONAL TABLE OF COVID-19 ACTS AND INSTRUMENTS

The Federal Court of Australia has prepared and maintained a comprehensive table of COVID-19 Orders, Directions, Regulations and Related Resources across all Commonwealth, State and Territory Jurisdictions.

The table of Commonwealth legislation is available here:

https://www.fedcourt.gov.au/covid19/legislation/commonwealth

The table of New South Wales legislation is available here:

https://www.fedcourt.gov.au/covid19/legislation/nsw

COVID-19 JURISPRUDENCE & VICTORIAN RESOURCES

The Judicial College of Victoria is maintaining a useful resource titled *Coronavirus: Jurisprudence, Emergency Laws and the Courts*:

https://www.judicialcollege.vic.edu.au/news/new-coronavirus-jurisprudence-emergency-laws-and-courts