



FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

HEARING PROTOCOL (SMIN-HEARINGS)

FCFCOA Special Measures Information Notice

1. INTRODUCTION

- 1.1 This protocol will apply to all hearings and other court events in the Federal Circuit and Family Court of Australia (Division 1) and (Division 2) (**the Courts**) from 7 November 2022.
- 1.2 This protocol applies equally to the Courts' family law, migration law, and general federal law jurisdictions.
- 1.3 This protocol replaces the COVID-19 Hearing Protocol (SMIN-COVID-HEARINGS).

2. COVIDSAFE MEASURES

Attendance at a court registry for a court event when COVID-19 positive

- 2.1 If a court user (including a party, their legal representative, a witness, an expert or an interpreter) has tested positive to COVID-19 within seven days of a court event scheduled to take place in-person, they must notify the presiding judicial officer or the court as soon as possible, copied to the other parties, and await direction as to the conduct of the matter. Electronic attendance will ordinarily be required unless an application for adjournment is granted. The presiding judicial officer may require proof of a positive COVID-19 test result.
- 2.2 Applications for adjournment based on a party or practitioner testing positive for COVID-19 will be considered in the usual course by the court.

Social distancing

- 2.3 All court users are required to adhere to social distancing measures and keep at least 1.5 metres away from other court users.
- 2.4 Court users must adhere to the functional density limits for each courtroom, interview room, mediation room and common areas indicated by the relevant signage, or as otherwise directed by the Court.

Face masks

- 2.5 Face masks are optional to be worn by court users when in a court registry.
- 2.6 Face masks are strongly recommended to be worn where social distancing cannot be maintained.

Documents

- 2.7 It is the Court's preference that all documents and tender bundles to be tendered during an in-person hearing are provided electronically prior to the hearing, rather than in hard copy.

3. HEARINGS AND COURT EVENTS GENERALLY

- 3.1 Where a matter is listed for a hearing or court event to proceed in-person, a party seeking to appear electronically by video or telephone must make an application to appear by video or telephone (see e.g. section 202 of the *Federal Circuit and Family Court of Australia Act 2021* (Cth)).
- 3.2 In family law proceedings, such a request is made by filing a [Request to attend by electronic communication](#) in the approved form (see rule 15.16 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*).
- 3.3 The request must be made (except in the circumstance 2.1 applies):
 - (a) For a final hearing – no later than 28 days before the final hearing; or
 - (b) for any other court event – no later than 5 business days before the court event.
- 3.4 It is a matter for each Judge to consider the individual circumstances of the case and decide how best to conduct a fair hearing.

4. FINAL HEARINGS (I.E. TRIALS)

Final hearings heard by a local Judge

- 4.1 Where a matter is listed for final hearing before a local Judge, the final hearing will be conducted in-person unless directed otherwise by the presiding Judge.

Final hearings heard by non-local Judge

- 4.2 Where a matter is listed for final hearing before an interstate or non-local Judge, the final hearing will be conducted electronically unless otherwise approved by the Chief Justice/Chief Judge. Consideration may be given to Judges from single judge registries travelling to larger registries to sit.

5. INTERIM OR INTERLOCUTORY HEARINGS

- 5.1 Where a matter is listed for interim hearing before a local Judge, the interim hearing will be conducted in-person unless directed otherwise by the presiding Judge.
- 5.2 Where a matter is listed for interim hearing before a local Senior Judicial Registrar in family law, or a local Judicial Registrar in general federal law, the interim hearing will be conducted in-person where the presiding judicial officer considers it appropriate to do so.

6. OTHER SHORT HEARINGS E.G. FIRST RETURN HEARINGS, DIRECTIONS AND DIVORCES

- 6.1 Short hearings and procedural hearings listed before a Judge may be heard in-person or electronically, as directed by the Judge.
- 6.2 Short hearings and procedural hearings listed before a Senior Judicial Registrar, Judicial Registrar or Deputy Registrar will be heard electronically, including first return hearings, mentions, directions, judgment delivery, and divorce hearings, unless there are exceptional circumstances.
- 6.3 In general federal law, bankruptcy lists will be conducted in-person.

7. DISPUTE RESOLUTION EVENTS

- 7.1 In family law, Conciliation Conferences and Dispute Resolution Conferences will be conducted electronically unless the registrar considers that the matter requires an in-person conference to be effectively mediated.
- 7.2 In general federal law, mediations will be conducted electronically unless the registrar considers that the matter requires an in-person conference to be effectively mediated.

8. COURT CHILDREN'S SERVICE EVENTS

- 8.1 Interviews and observations conducted for the preparation of a Court Children's Service report may be conducted in-person or electronically, depending on the type of report and the nature of the assessment. In general, assessments of children will be done in-person. Parties will be advised as to how each element of the assessment will be conducted either through the order for the report or by the Court Children's Service/report writer.

The Honourable Justice William Alstergren AO
Chief Justice (Division 1) | Chief Judge (Division 2)
Federal Circuit and Family Court of Australia
Date: 4 November 2022