

21 August 2020

The Hon James Allsop AO
Chief Justice, Federal Court of Australia
Level 17, Law Courts Building
184 Phillip St
Queens Square, Sydney
NSW 2000

By email: [REDACTED]

Dear Chief Justice,

COVID-19 Measures in the Federal Court

The Queensland Law Society (**QLS**) acknowledges the considerable work undertaken by the Federal Court to quickly adapt processes in response to the COVID-19 pandemic. The Court has been understanding and pro-active in implementing measures and there is significant utility in many of those measures enduring.

To that end, we have sought feedback from our members, including members of our legal policy committees about outstanding issues or problems they face in using the Court at this time, as well as measures they would like to see remain once the effects of the pandemic ease.

Federal Court Hearings

Federal Court hearings, including interlocutory and case management hearings, were previously conducted in-person, as well as via video-link from other interstate Federal Court registries, as necessary.

All Federal Court hearings can now be conducted by video-link using Microsoft Teams software, to allow practitioners and parties to appear from their home or office. This process has enabled both practitioners and clients who do not reside in a city where Federal Courts are located to attend hearings.

Members have provided positive feedback on this newly implemented process. In their experience, documents are able to be referred to easily during hearings by the use of shared screens. Instructions can be provided to practitioners or counsel during hearings via email and text message.

COVID-19 Measures in the Federal Court

By way of example, in Federal Court matters listed in Sydney, this change to practice has enabled case management hearings (which occur reasonably regularly) to be conducted with:

- counsel appearing in Sydney;
- solicitors instructing from Brisbane; and
- clients attending from Canberra,

all working from home or office.

In comparison, the pre-COVID interstate video-link appearances using Federal Court facilities did not easily enable persons from multiple states to participate in hearings, as described above.

The benefits of this change to practice include:

- enabling clients to observe and participate in proceedings, who may not have been able to do so previously because travel for interlocutory processes was not practical or convenient;
- obtaining client participation in interlocutory processes to enable matters to be progressed more expeditiously, for example, more effectively reducing issues in dispute at an early stage in the proceedings;
- saving time and cost associated with travel for practitioners and clients not located in the same city as a Federal Court registry;
- reducing other legal costs, such as time recorded, because hearings are able to be scheduled so standby or waiting times for practitioners are reduced or eliminated.

On this basis, QLS supports the retention of this change to court processes, particularly for case management hearings and interim matters.

Some members have expressed concern about final hearings conducted via video-link, particularly in relation to the ability to properly and effectively cross-examine witnesses. Self-represented parties may also experience greater difficulty navigating a technology-facilitated final hearing. QLS suggests some criteria be developed to assist in determining whether a matter is suitable for a final hearing via video-link.

Finally, it is noted that to give effect to Federal Court hearings being conducted in open court, pursuant to s 17(4) of the *Federal Court of Australia Act 1976* (Cth), standard orders usually apply to enable members of the public to access hearings on Microsoft Teams on the basis they are prevented from making any audio or video recordings or interrupting the hearing. Any contravention may constitute contempt of court.

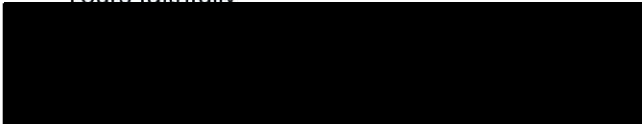
Witnessing documents

The ability to have documents witnessed electronically, rather than in person, has been a significant improvement from our perspective. Members have found that this is a considerably more efficient way to have documents witnessed, and has had associated cost benefits for clients.

This process overcomes any inconvenience and delays associated with coordinating multiple witnesses in a range of different locations. The mechanics of facilitating a video call to witness the signing of documents are also relatively easy to implement.

QLS would welcome the opportunity to work with the Court in the ongoing development of and changes to court processes in response to the COVID pandemic. If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully



Elizabeth Shearer
Deputy President