

3 February 2022

Our ref: LP-MC

Ms Margery Nicoll  
Acting Chief Executive Officer  
Law Council of Australia  
19 Torrens Street  
Braddon ACT 2612

By email: [REDACTED]

Dear Ms Nicoll

**Fair Work Commission consultation: Future of online proceedings**

Thank you for the opportunity to provide comments for inclusion in the Law Council's submission to the Fair Work Commission's consultation on the future of online proceedings.

We commend the Commission for its consideration of these issues and the detail contained in the Discussion Paper.

We have consulted with members of our Industrial Law Committee and provide the following brief comments.

First, our members are generally supportive of the proposed default position contained in the paper. We consider the types of hearings and circumstances identified on page 15 to be those where online appearances will not only be appropriate, but allowing matters to proceed in this way will provide a number of benefits to those appearing before the Commission.

There are significant benefits to remote appearances, particularly for mentions and similar matters, and particularly if the client/represented party is directed to appear in addition to the legal representative. In these circumstances, there will be costs and time savings and ultimately, better access to justice.

Online appearances also have positive impacts for those practitioners who work remotely or for individuals whose work and/or carer commitments, location or disability or other health needs would prevent or make it difficult for them to attend a hearing room in person.

While the paper notes:

"Online proceedings may not be appropriate where the attributes of a person involved in the proceedings means that they cannot effectively participate electronically (for example,

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where the person has difficulty accessing or communicating online because of their age or disability).

there are circumstances where an online hearing or conference will be more appropriate for a party's particular needs, for example, the mental health impacts discussed at page 12 of the paper.

Our members have identified that some issues can arise in online proceedings where there is a contest about the facts and cross-examination is necessary. However, we note the paper has not identified these matters as necessarily being suitable for online appearances. There is also the possibility that in some instances, a party or witness will not respect the nature of the proceedings. However, we consider these issues can be addressed on a case-by-case basis by the Commission.

The Commission has a number of educative resources about appearances at conferences and hearings. Specific resources for online appearances would be useful and can be provided to the witness or party by the legal representative or the Commission.

In some matters, remote appearances at conciliations may be problematic, particularly if one party is not taking the matter seriously. However, we understand conciliators now have more flexibility to order the parties to take certain steps, such as attending a further conciliation conference, which may be able to resolve these issues.

As a final comment, while flexibility to accommodate the parties' and the Commission's needs is key, this should be balanced against the need to provide some certainty for parties. In this respect, would be pleased if types of matters which are identified on page 15 of the paper were ones where the Commission would permit online appearances as the default position without any particular application being required.

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](mailto:policy@qls.com.au) or by phone on (07) 3842 5930.

Yours faithfully



Kara Thomson  
**President**