

24 July 2020

Our ref: MC-LP

Ms Margery Nicoll
Acting Chief Executive Officer
Law Council of Australia
GPO Box 1989
Canberra ACT 1601

By email: [REDACTED]

Dear Ms Nicoll

Federal Court procedural reforms in response to COVID-19 pandemic

Thank you for the opportunity to provide feedback on Federal Court procedural reforms in response to COVID-19 pandemic. The Queensland Law Society (QLS) appreciates being consulted on this important topic.

QLS is undertaking a review of the efficacy and impact that measures taken by the courts in response to the COVID-19 emergency have had. We have sought feedback from our members, including members of our legal policy committees about outstanding issues or problems they face in using the courts at this time, as well as measures they would like to see remain once the effects of the pandemic ease.

We are undertaking further formal consultation with our members in the coming weeks to understand the impacts of the pandemic on the legal profession more broadly. This will include consideration of the measures implemented by the courts and tribunals, our members' experiences and any suggested ideas for improvement. We will forward a copy of our submission prepared as a result of this consultation.

In the interim, below are some comments which take into account the views of members of our Litigation Rules, Industrial Law and Family Law legal policy committees.

Use of technology in legal proceedings

We strongly agree with the first point under this heading in your memorandum. In addition to these comments, we note that the reduction in the costs of appearing remotely not only benefits the client, but also the law firm. In Queensland, a large number of solicitors practise in small or micro firms and thus, these efficiencies have a substantial impact on the operation of these businesses.

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However, as many of these firms are located in regional Queensland, the ability to use technology is often limited by the lack of upgraded infrastructure in a regional courthouse. Addressing this issue should be a priority for all jurisdictions to enable the measures to be truly effective.

We would also add that ability to appear by teleconference or videoconference enables members of the profession who have flexible work hours or who work remotely to appear in court on behalf of their clients which may not have otherwise been possible. Retaining these measures will increase workforce participation and lead to increased professional development and career progression for these practitioners.

In respect of the second point, our members have signalled a preference for videoconference mediations over those conducted via teleconference, though we note this is dependent on available technology and infrastructure in each matter.

The other issue raised by our members in respect of this relates to giving evidence via telephone and video. Members of our legal policy committees who practise in civil jurisdictions have generally found this process to work very well and to be cost effective, including for the witness. However, we are aware that in some matters and in some jurisdictions there may be a preference for giving evidence in-person. There have also been matters where the process of giving evidence remotely can cause delays in proceedings.

We agree with the other points from the memo regarding the use of technology. In respect of the fourth point, we note that it is important for a platform to have the capability to provide break out rooms for mediations or other forms of ADR as well as for use by vulnerable parties/witnesses.

It would be beneficial if there was uniformity between the technology used in State and Federal jurisdictions. We appreciate this may not always be possible, however, we would be pleased if there could be engagement between the courts/jurisdictions on this issue. There may be benefit in learning from shared or varied experiences.

Court listing practices

As stated above, listing practices which do not require a lawyer or party to be physically present in a court or to wait for their matter to be heard after a callover process, have been welcomed by the profession and have led to significant improvement in efficiencies.

Our members are reluctant to revert to the previous practice of parties gathering in a courtroom and possibly waiting for considerable time before their matter is mentioned. Such a practice remains difficult in light of health directives more importantly and increases the cost and burden on lawyers (particularly sole practitioners or those who need to travel, for example into the Brisbane CBD), their staff and their clients.

QLS supports the introduction of a special COVID-19 List which gives priority to any matter filed in relation to parenting where COVID-19 has had an impact.

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Use of technology for documentation and case management

Again, we agree with the feedback outlined in your memo with respect to document and case management. Parties to a proceeding need to be able to interact with the court files in an efficient and effective way. This involves accessing documents electronically once filed. Of course the courts, and in particularly the judiciary, similarly need to be able to work effectively with the filed documents.

Any improvements to this process will be welcomed by the profession and we are seeking similar improvements in state jurisdictions as a priority.

Funding and access to justice issues

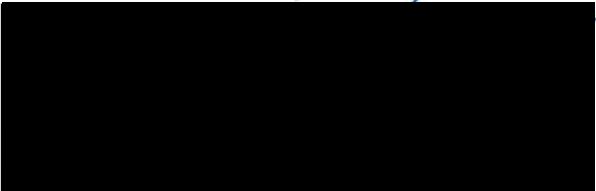
We strongly agree with the comments made in respect of this issue. It is critical from both an access to justice perspective and for the effective and efficient operation of the courts that judges, registries and courthouses, the profession and parties/the community have the requisite resources to enable interaction with the courts and justice system in the most appropriate way.

In addition to better resourcing regional and remote areas, community legal centres, whose lawyers either act for clients, or assist self-represented litigants, require appropriate funding to ensure they are able to utilise the same technology and adopt the same practices as other parties.

We will provide the Law Council with further feedback on these and related issues once collated.

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



Luke Murphy
President