



FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

COVID-19 HEARING PROTOCOL (SMIN-COVID-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 17 January 2022 in the ACT, NSW, NT, QLD, SA, TAS and VIC until further notice.
- 1.2 If there is community transmission of COVID-19 in other States or Territories, this protocol will be amended to apply to those locations as appropriate.
- 1.3 This protocol applies equally to the Courts' family law, migration law, and general federal law jurisdictions.

2. COVIDSAFE MEASURES

Attendance at a court registry

- 2.1 Court users should only attend a Court registry where a judicial officer or the Court has directed that the hearing or court event is to proceed in-person. **Court users** may include a party, their legal representative, a witness, an expert or an interpreter.
- 2.2 Only the required number of participants necessary for each matter should attend the Court registry in-person.
- 2.3 Court users are required to check-in using the QR code at the entrance to a registry building.

COVID-19 vaccination status

- 2.4 All court users must be at least double-vaccinated before attending a Court registry, unless exceptional circumstances apply.

- 2.5 Where a matter is proposed to be listed for an in-person hearing or court event, the Court will seek confirmation from each party that they are at least double-vaccinated.
- 2.6 Where a party is represented, the party's legal representative must provide written confirmation to the Court by email that each person necessary to attend the hearing or court event in-person for that party is at least double-vaccinated.
- 2.7 Where a party is unrepresented, the party must provide written confirmation to the Court by email that they are at least double-vaccinated, as well as any other necessary person or witness who will be in attendance for that party.
- 2.8 Confirmation must be provided no later than 5 days prior to the hearing or court event, or as otherwise directed by the Court.

Face masks

- 2.9 All court users are required to wear a face mask whilst in a Court registry, including in a courtroom, interview room or mediation room.
- 2.10 Judicial officers are not required to wear face masks when conducting court proceedings.
- 2.11 In a courtroom, masks may be removed by parties and legal practitioners when they are addressing a judicial officer.
- 2.12 Any court user relying on an exemption from wearing a face mask must carry and provide written evidence of the basis for the exemption.

Social distancing

- 2.13 All court users are required to adhere to social distancing measures and keep at least 1.5 metres away from other court users.
- 2.14 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.

Documents

- 2.15 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.

Courtroom hygiene

2.16 Court users should bring their own water bottles as the Court will not provide water jugs or cups.

2.17 High-touch areas in courtrooms, interview rooms and mediation rooms will be cleaned between matters whenever possible and at the end of each day.

COVID-19 symptoms or awaiting test results

2.18 Court users should not attend a court registry if they:

- (a) have tested positive to COVID-19 in the last 14 days;
- (b) are experiencing any COVID-19 symptoms;
- (c) are awaiting the results of a COVID-19 test;
- (d) have been directed to self-isolate; or
- (e) have come into close contact with a person who has tested positive to COVID-19 in the last 14 days.

2.19 Where a party has a matter listed for an in-person hearing or other court event (such as an interview with a Court Child Expert) and any one of the scenarios in paragraph 2.18 applies or becomes applicable:

- (a) If represented, the party should, through their legal representative, seek:
 - (i) to be excused from attendance in-person; or
 - (ii) to attend electronically; or
 - (iii) where not possible for the matter to proceed with the party in attendance electronically, an adjournment
by email correspondence, copying in all parties, to the Chambers/support staff of the presiding judicial officer or to the Court Children's Service as relevant;
- (b) If unrepresented, the party should seek:
 - (i) to attend electronically; or
 - (ii) where not possible for the matter to proceed with the party in attendance electronically, an adjournment

by email correspondence, copying in all parties, to the Chambers/support staff of the presiding judicial officer or to the Court Children's Service as relevant.

3. FINAL HEARINGS (I.E. TRIALS)

In-person final hearings

- 3.1 Where a matter is listed for final hearing before a local Judge, the final hearing will be conducted in-person where the presiding Judge considers it appropriate to do so and approval has been granted by the Chief Justice/Chief Judge.
- 3.2 It is a matter for each Judge to consider the individual circumstances of the case and decide how best to conduct a fair hearing.
- 3.3 Where the presiding Judge considers that a matter should proceed to an in-person final hearing, the Judge's Associate will send correspondence to the parties or their legal practitioners to ascertain their vaccination status as outlined above.
- 3.4 If a party or necessary participant is not vaccinated, or confirmation is not provided, the hearing may proceed with that party or participant attending electronically, one party or participant attending electronically and the others in person, all parties and necessary participants attending electronically, or as a last resort, the matter being adjourned.
- 3.5 In certain exceptional circumstances, including cases of urgency, matters may proceed to final hearing in-person notwithstanding that a party is not double-vaccinated. These matters will be dealt with on a case by case basis to minimise the risk to all relevant court staff and court users. In the event that COVID-19 rapid antigen tests become available in the applicable Court registry, unvaccinated court users may be asked to undergo a rapid antigen test.

Final hearings heard by interstate Judge

- 3.6 Where a matter is listed for final hearing before an interstate Judge, the final hearing will be conducted electronically unless otherwise approved by the Chief Justice/Chief Judge.

4. INTERIM OR INTERLOCUTORY HEARINGS

- 4.1 Where a matter is listed for interim hearing before a local Judge, the interim hearing will be conducted in-person where the presiding Judge considers it appropriate to do so and approval has been granted by the Chief Justice/Chief Judge.
- 4.2 Where a matter is listed for interim hearing before a Senior Judicial Registrar, the interim hearing will be conducted electronically unless the presiding judicial officer forms the view that it would be unfair or cause injustice to a party for the matter to be heard electronically, and approval has been granted by the Chief Justice/Chief Judge or Principal Registrar.
- 4.3 It is a matter for each judicial officer to consider the individual circumstances of the case and decide how best to conduct a fair hearing.
- 4.4 Where the presiding judicial officer considers that a matter should proceed to an in-person interim hearing, correspondence will be sent to the parties or their legal practitioners to ascertain their vaccination status as outlined above.
- 4.5 If a party or necessary participant is not vaccinated, or confirmation is not provided, the hearing may proceed with that party or participant attending electronically, one party or participant attending electronically and the others in person, all parties and necessary participants attending electronically, or as a last resort, the matter being adjourned. In the event that COVID-19 rapid antigen tests become available in the applicable Court registry, unvaccinated court users may be asked to undergo a rapid antigen test.

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

- 5.1 All short hearings and procedural hearings, including those heard by a Judge, Senior Judicial Registrar, Judicial Registrar or Deputy Registrar, will be heard electronically, including first return hearings, duty lists, mentions, directions, judgment delivery, bankruptcy lists and divorce hearings.

6. FAMILY LAW DISPUTE RESOLUTION EVENTS

- 6.1 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, and approval has been granted by the Principal Registrar.
- 6.2 Where the registrar considers a matter requires an in-person conference, correspondence will be sent to the parties or their legal practitioners to ascertain their vaccination status as outlined above.
- 6.3 If a party or necessary participant is not vaccinated, or confirmation is not provided, the conference will proceed with all parties and necessary participants attending electronically, or as otherwise directed by the registrar.

7. COURT CHILD EXPERT EVENTS

- 7.1 Interviews of parents by Court Child Experts will be conducted electronically, unless it is assessed by the Court that there are specific reasons why the interview needs to be conducted in-person, and approval has been granted by the Principal Registrar or Delegate.
- 7.2 Observations and interviews of a child/children will be conducted electronically, unless it is assessed by the Court that there are specific reasons why the interview or observation needs to be conducted in-person, and approval has been granted by the Principal Registrar or Delegate.
- 7.3 Where an observation or interview is proceeding in-person, a party or their legal representative must confirm the vaccination status of the party or carer bringing a child/children to the court for interviews, or participating in interviews, as outlined above, as well as the vaccination status of any child/children over 12 years of age.
- 7.4 In certain exceptional circumstances, including cases of urgency, interviews or observations may take place in-person notwithstanding that a party, carer or child is not double-vaccinated. These matters will be dealt with on a case by case basis to minimise the risk to all relevant court staff and court users.

The Honourable Justice William Alstergren
Chief Justice (Division 1) | Chief Judge (Division 2)

Federal Circuit and Family Court of Australia

Date: 29 October 2021

Updated: 15 December 2021, 17 January 2022