



SPECIAL MEASURES IN RESPONSE TO COVID-19

(SMIN-1)

Special Measures Information Note

Updated 31 March 2020

1. INTRODUCTION

- 1.1 This Special Measures Information Note (SMIN-1) sets out arrangements for the continued operation of the Federal Court during the COVID-19 outbreak in Australia.
- 1.2 Due to the COVID-19 pandemic, where appropriate and necessary, the Federal Court is modifying its practices in order to minimise in person attendance on Court premises, with the Court's priority being the health and safety of the community, and in particular, parties, practitioners, judges and staff, and the families of all of these groups.
- 1.3 The cooperation of all court users and court staff is required in this regard.
- 1.4 This special measures information note takes effect from the date it is issued and, to the extent practicable, applies to all proceedings filed before, or after, the date of issuing.
- 1.5 This special measures information note remains in effect until and unless superseded or revoked.

2. REGISTRY OPERATIONS

- 2.1 The health and safety of the community, judges and court staff is our priority, and therefore changes have been made to our registry operations. Registry services will be provided remotely, by telephone and through other online services. In urgent circumstance, face-to-face services in a registry may be provided, but only after initial assessment via telephone.

3. ELECTRONIC FILING OF ALL DOCUMENTS

- 3.1 To the extent possible, all documents must be lodged for filing using the Court's electronic filing facility, eLodgment.
- 3.2 Documents that are not able to be lodged through eLodgment may be faxed or emailed to the relevant registry (at the registry email address available on the Court's website) for filing.
- 3.3 Court users who do not have access to the necessary electronic equipment, including self-represented litigants, should contact the registry by telephone for assistance. Public scanning facilities can be made available in each registry to facilitate the electronic filing of all documents.

3.4 Registry staff have been asked to minimise hard copy document handling. To the extent possible, hard copy documents should not be posted or hand delivered to registries.

4. SIGNATURES ON DOCUMENTS AND AFFIDAVITS

4.1 To facilitate the electronic filing of all documents, if access to scanning technology is limited, the Court will temporarily allow documents to be signed electronically, including by having the person signing the document type their name in the relevant space in the signature block in lieu of physically signing the relevant document.

4.2 The Court also acknowledges that remote working arrangements may pose significant challenges to having affidavits sworn or affirmed. The Court will accept the filing of unsworn affidavits on the understanding that, if required, these will later be sworn or affirmed when circumstances allow.

5. SUBPOENAS AND INSPECTION OF DOCUMENTS

5.1 Inspection of documents at all registries of the Court is to be by appointment only. Requests for an appointment should be made by emailing the relevant registry.

5.2 Legal practitioners and parties should only request an appointment to view subpoenaed materials if this is truly necessary for the conduct of the proceeding at the time. As a general guide, the Court will consider whether an appointment is necessary by reference to whether a matter is scheduled for hearing in the subsequent 4 weeks, or is otherwise urgent.

6. TRIAGE PROCESS FOR NEWLY FILED JUDGE MATTERS

6.1 A triage process has been introduced for newly filed judge matters. Newly filed judge matters, other than urgent duty matters and Full Court and appellate matters, will first be provisionally allocated to the docket of the National Operations Registrar to be considered for allocation and a first return date.

6.2 As the Court has successfully begun to operate using remote means, allocations will now be made with a view to moving the Court to operating at about 50-60% of normal capacity. The success of this will of course depend upon the continued functionality and reliability of IT systems.

6.3 To assist in this process of triaging, parties will be contacted by the Court and asked to answer a number of questions relating to the proposed management of the matter.

7. ALL COURT LISTINGS AND EVENTS, INCLUDING HEARINGS AND MEDIATIONS

7.1 In order to remain open and operational, whilst protecting health, safety and wellbeing, the Court must work to limit in person attendance on Court premises.

7.2 To the extent possible, alternative arrangements will be put in place for all listings and events that would ordinarily require in person attendance. In particular, the Court will contact legal

practitioners and parties to determine whether listings and events may be able to be conducted on the papers, by telephone or by other remote access technology.

- 7.3 If alternative arrangements are not able to be put in place for listings and events that would ordinarily require in person attendance, such listings and events will need to be vacated or adjourned other than in exceptional circumstances and with the express authorisation of the Chief Justice.
- 7.4 If you have an upcoming listing or event, wherever possible the Court will endeavour to contact you at least two weeks prior in relation to any alternative arrangements. If you have not been contacted by the Court or if you remain unsure of what is happening in relation to a particular listing or event please contact NORTeam@fedcourt.gov.au by email, with the matter number and title in the subject line.

8. COMMUNICATIONS WITH THE COURT AND AMONG PARTIES

- 8.1 The Court is continuing to conduct its business on the docket system so communications with the specific docket judge remain important as always
- 8.2 In these extraordinary times it is necessary to remember certain fundamental aspects of court communication etiquette. There should be no ex-parte communication with chambers unless of course the matter concerns an ex-parte application. Practitioners and parties should continue to maintain all usual communication practices with the Court.
- 8.3 The Court expects that practitioners and the parties will exhibit real co-operation in dealing with each other and with the Court in order to avoid any unnecessary delay or misunderstanding in how matters are being dealt with.

9. SHORT LISTINGS AND EVENTS, HALF A DAY OR LESS

- 9.1 The Court will seek to accommodate any listings or events that would ordinarily require in person attendance for half a day or less without requiring in person attendance, either:
- (a) on the papers;
 - (b) by telephone; or
 - (c) by a combination of both of the above.
- 9.2 In some circumstances, short listings may also be able to be accommodated by other remote access technology, including video conferencing' technology such as Microsoft Teams.
- 9.3 The preferred means of accommodating any short listings and events will be determined by the relevant judge or registrar, in consultation with legal practitioners and parties where appropriate.
- 9.4 Ahead of being contacted by the Court, legal practitioners and parties are encouraged to consider which aspects of their listings may be able to be dealt with by consent and/or on the papers, and to communicate with each other to seek to reach agreement on such matters.

10. LONGER LISTINGS AND EVENTS, OVER HALF A DAY

- 10.1 Longer listings and events that would ordinarily require in person attendance for half a day or more will undergo a triage and prioritisation process. Legal practitioners and parties should work cooperatively with the Court, and with each other, to identify how and when longer listings and events may be able to proceed.
- 10.2 The Court has already been able to accommodate some longer listings and events, including contested hearings, through the use of remote access and file sharing technology, including Microsoft Teams.
- 10.3 Issues requiring consideration include reliability of the proposed technology, document security, availability and timing of transcripts, and the ability to live stream hearings so as to facilitate open and accessible courts.

11. REMOTE TECHNOLOGY

- 11.1 All hearings before the Court (other than in truly exceptional circumstances) are currently proceeding using remote access technology.
- 11.2 Currently, the Court is using Microsoft Teams and telephone conferencing in order to hear matters. It is anticipated that the number of available court rooms will shortly be adequate to enable wide spread access to remote technology for hearing purposes.
- 11.3 A National Practitioners/Litigants Guide to virtual hearings and Microsoft Teams will be available on the Court's website at: <https://www.fedcourt.gov.au/online-services/virtual-hearings>.
- 11.4 The Court is also considering streaming and other methods of ensuring the requisite degree of public access to hearings conformable with the open justice and open court principles.
- 11.5 The Court will amend this note of special measures when other methods and functions become operational.

12. SELF-REPRESENTED LITIGANTS

- 12.1 The Court acknowledges the impact these special measures and the conduct of electronic hearings may have on self-represented litigants, and persons unfamiliar with the Court process.
- 12.2 Where appropriate, the Court will consider the needs of unrepresented litigants and other persons who may not have access to suitable technology to conduct or participate in hearings conducted by the Court using remote access technology.

13. URGENT MATTERS

- 13.1 Duty judge and registrar contacts for urgent matters are available on the Court's website and will continue to be updated daily. Any requisite modifications to the published application process for urgent duty matters will be notified by the relevant duty judge or registrar.

13.2 If a matter has been allocated to a judge's docket, ordinarily any communication or application regarding carriage or conduct of the matter (including urgent communications or applications) should be made to him or her. However, if it is a new matter not yet allocated, or if for some reason it is not practicable or appropriate to approach the docket judge or if the inquiry specifically concerns the Court's response to the COVID-19 outbreak in Australia, queries should be addressed by email to the National Operations Registry at NORTeam@fedcourt.gov.au, or you can contact the NOR Team duty contact for the day, as published on the Court's website. Such queries will be prioritised, allocated to a senior member of the NOR Team and attended to as a matter of urgency.

J L B ALLSOP
Chief Justice
31 March 2020