



SPECIAL MEASURES IN RESPONSE TO COVID-19

Special Measures Information Note: Appeals and Full Court hearings (SMIN-5)

1. INTRODUCTION

- 1.1 This Special Measures Information Note (SMIN-5) sets out arrangements for the conduct and management of appeals and Full Court hearings during the ongoing 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 and manage 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 is to be read in conjunction with [Special Measures in Response to COVID-19](#) (SMIN-4), the Federal Court's [Content of Appeal Books and Preparation for Hearing Practice Note](#) (APP2) and [Lists of Authorities and Citations Practice Note](#) (GPN-AUTH). Where inconsistent, this special measures information note is to take precedence over APP2 and GPN-AUTH.
- 1.5 This special measures information note takes effect from the date it is issued and applies to all appeals and Full Court matters listed in the May 2021 Full Court and Appellate sitting period, and any subsequent sitting periods.
- 1.6 This special measures information note supersedes SMIN-3 and remains in effect until and unless superseded or revoked.
- 1.7 Any reference to an "appellant" includes an "applicant", where applicable.

2. REMOTE TECHNOLOGY HEARINGS

The Chief Justice, in consultation with the members of the Full Court bench, will determine whether an appeal or Full Court hearing will be conducted in person, electronically (such as by way of Microsoft Teams or Cisco, the Court's videoconferencing facility) or by some combination of the two. In making this decision, the Chief Justice and judges of the Court have regard to the health and safety of members of the public, the Court and its staff, any government directions as to border arrangements or lockdowns, the unique circumstances of any matter,

court resources and any other relevant factor that may impact upon the appropriateness of conducting a hearing in person or electronically. Approval in accordance with paragraph 11 of APP2 is no longer required.

- 2.1 Some matters may be considered appropriate to be determined on the papers, with the possibility of the Full Court giving leave to the parties to provide short oral addresses by video-conference, at a later date to be fixed.

3. ELECTRONIC APPEAL BOOKS AND LIST OF AUTHORITIES

- 3.1 The Appeal Books (Parts A, B and C) and all documents connected with the matter must be filed electronically and should not be reproduced in hard-copy, unless the Court specifically requires otherwise. This applies regardless of whether the appeal is being conducted in person or electronically.

- 3.2 The parties must also provide electronically an agreed List of Authorities and Legislation (not separate lists as provided for by APP 2).

- 3.3 The electronic version of the Appeal Books and List of Authorities must:

(a) include an index which contains an individual hyperlink to each document included in the index;

(b) comprise only PDF documents which:

(i) are in native format, or, where impracticable to be provided in that form, scanned and in PDF text searchable (OCR) format;

(ii) include appropriate bookmarks;

(iii) include as the file name the corresponding tab number in the index followed by a sufficient descriptor of the document or authority. For example '*01. Notice of Appeal.pdf*' or '*02. Décor v Dart [1991] FCA 844.pdf*'; and

(c) be provided to the Court in the manner prescribed by the Associate to the Presiding Judge.

- 3.4 If any uncertainty arises as to compliance with the electronic document requirements set out above, the parties may jointly approach the chambers of the judges of the Full Court.

- 3.5 In the ordinary course, parties will be informed of the judges hearing the appeal approximately two weeks before the Full Court sittings, or the hearing of the appeal if the appeal is being listed outside the usual Full Court sittings. If the bench changes

after the parties have provided the documents electronically the Court will attend to the distribution of the documents.

- 3.6 In accordance with APP2, Part C of the Appeal Book is required to be filed no later than 5 business days prior to the hearing. The associate to the presiding judge will contact the parties shortly before that time to make arrangements for the provision and delivery of the Appeal Books to the Full Court.

4. OUTLINE OF SUBMISSIONS AND CHRONOLOGY

- 4.1 All submissions and chronologies filed by the parties should where possible include hyperlinks to the relevant document in the electronic version of the Appeal Book and List of Authorities.

5. ADDITIONAL MATERIAL

- 5.1 Where a party wishes to refer to additional material not included in the Appeal Book, the party must seek leave of the Court.
- 5.2 If leave is granted, the Full Court may direct the party to tender the document via a particular electronic method, such as:
- (a) the sharing function on Microsoft Teams;
 - (b) a nominated file sharing service; or
 - (c) by email.

6. CONFIDENTIAL MATERIAL

- 6.1 Parties should be aware that hearings conducted by remote technology may still be observed by members of the public and other interested persons.
- 6.2 Any concerns regarding the need to refer to confidential material during the hearing should be raised with the chambers of the judges of the Full Court at the earliest opportunity.

7. CONDUCT OF HEARING

- 7.1 The Court requires the co-operation of all parties and their legal representatives to conduct themselves in all hearings, whether conducted in person, electronically or by some hybrid combination, in a way that is consistent with the overarching purpose of the Act: see s 37M [Federal Court of Australia Act 1976 \(Cth\)](#).
- 7.2 Litigants, instructing lawyers and counsel are not required to be physically located in the same place during the course of the hearing. Arrangements may be made for litigants, their instructing lawyers and counsel (if any) to attend the remote hearing via separate connections or for some persons to attend in person whilst others

participate online. Parties are to raise any proposed arrangements or concerns regarding the conduct of the hearing with the National Listings Coordinator or, if known, with the chambers of the judges of the Full Court at the earliest opportunity, in order that a safe and workable solution may be reached.

- 7.3 Parties should have regard to the [National Practitioners and Litigants Guide](#) and be available to participate in any test calls with the Court prior to the hearing.

8. ENQUIRIES AND CONTACT INFORMATION

- 8.1 If an appellate or original jurisdiction matter has been allocated to a Full Court and parties have been made aware of the bench, ordinarily any communication regarding the conduct of the matter should be made to their chambers. However, if the matter has yet to be allocated to a Full Court bench, or parties have not been made aware of the bench, then any specific concerns should be raised with the Appeals Registrars, whose contact details are as follows (noting that enquiries about migration appeals should be directed to Registrar Haag, below):

Tuan Van Le, Judicial Registrar, Appeals (Tuan.VanLe@fedcourt.gov.au)

Caitlin Wu, National Registrar, Appeals (Caitlin.Wu@fedcourt.gov.au)

Simon Haag, Judicial Registrar, Migration (Simon.Haag@fedcourt.gov.au)

- 8.2 General questions regarding electronic hearings should be directed to Jessica Der Matossian, Registrar, Digital Practice (Jessica.dermatossian@fedcourt.gov.au).

- 8.3 Any questions regarding the logistical arrangements that can be made for a Full Court hearing, or restrictions that currently apply, should be directed to Erin Murphy, National Listings Coordinator (Erin.Murphy@fedcourt.gov.au).

J L B ALLSOP
Chief Justice
29 April 2021