



# REMOTE COURT PROCEEDINGS TOOLKIT

December 2020





The information in this publication may be reproduced with suitable acknowledgement.

Toolkits are evolving and changes may be made in future versions. For the latest version of the Toolkits refer to the website - <http://www.fedcourt.gov.au/pjsi/resources/toolkits>

Note: While every effort has been made to produce informative and educative tools, the applicability of these may vary depending on country and regional circumstances.

Published in November 2020. © New Zealand Ministry of Foreign Affairs and Trade.

Prepared by Ms. Jennifer Akers and Mr. Tony Lansdell for the Federal Court of Australia.

The contributions are acknowledged of:

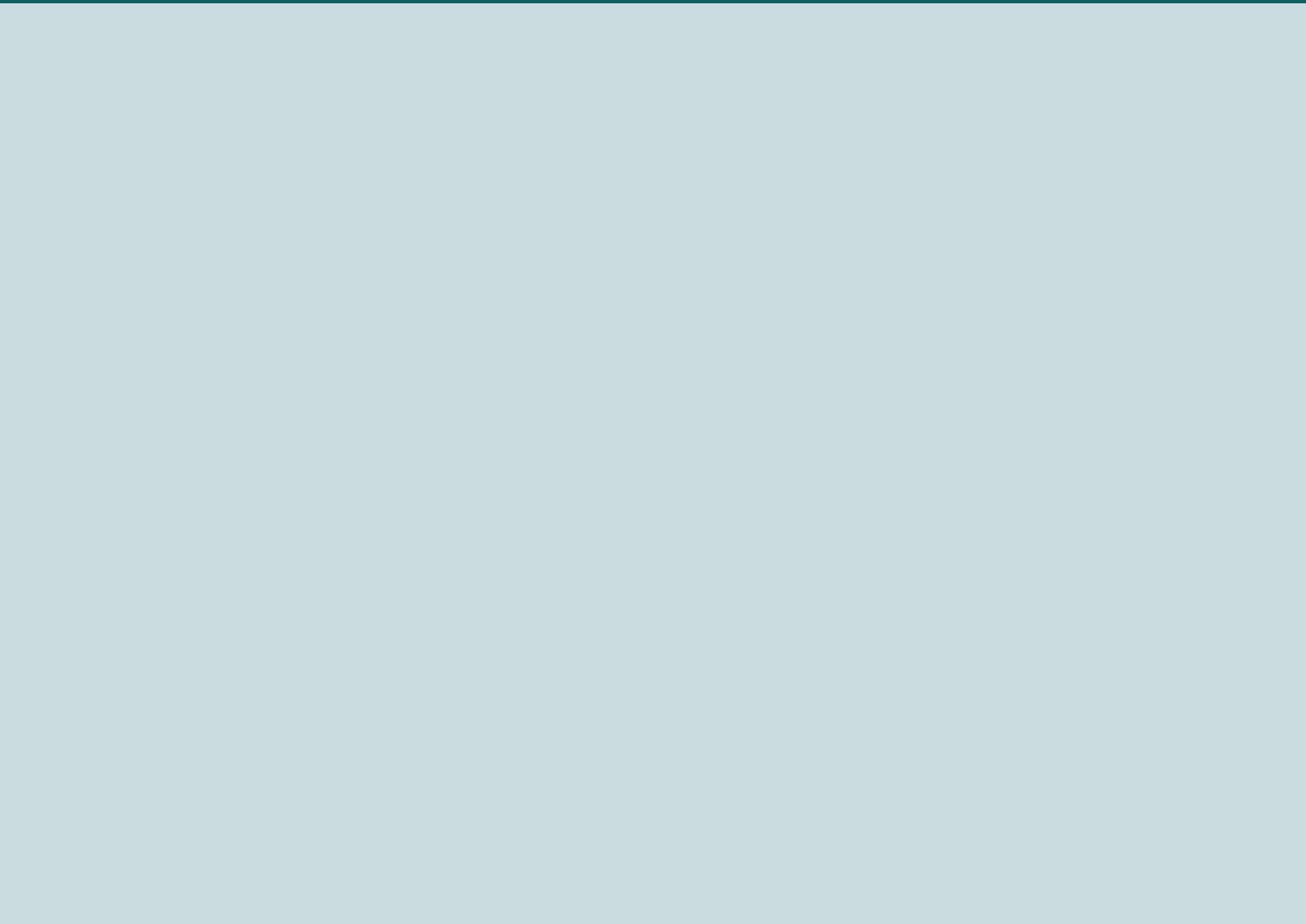
- Dr Livingston Armytage, PJSI Technical Director;
- Mr Lorenz Metzner, PJSI Team Leader;
- Justice Debbie Mortimer, Federal Court of Australia;
- Magistrate Greg Benn, Magistrates Court of Western Australia;
- Dr Anne Wallace, Adjunct Professor at Latrobe University, Melbourne, Australia; and
- The Chief Justices, Judges, Magistrates and Court Personnel of partner courts who participated in 2 Regional Webinars.

**Enquiries:**

Federal Court of Australia  
Locked Bag A6000, Sydney  
Australia, NSW 1235

**Email:** [pjsi@fedcourt.gov.au](mailto:pjsi@fedcourt.gov.au)

**Web:** <http://www.fedcourt.gov.au/pjsi>



# PJSI Toolkits

## Introduction

The Pacific Judicial Strengthening Initiative (PJSI) was launched in June 2016 in support of developing more accessible, just, efficient and responsive court services in Pacific Island Countries (PICs). These activities follow on from the Pacific Judicial Development Program (PJDP) and endeavour to build fairer societies across the Pacific.

## Toolkits

PJSI aims to continue ongoing development of courts in the region beyond the toolkits already launched under PJDP. These toolkits provide support to partner courts to help aid implementation of their development activities at a local level, by providing information and practical guidance.

Toolkits produced to date include:

- Access to Justice Assessment Toolkit
- Annual Court Reporting Toolkit
- Efficiency Toolkit
- Enabling Rights and Unrepresented Litigants Toolkit
- Family Violence/Youth Justice Workshops Toolkit
- Gender and Family Violence Toolkit
- Human Rights Toolkit
- Judges' Orientation Toolkit
- Judicial Complaints Handling Toolkit
- Judicial Conduct Toolkit
- Judicial Decision-making Toolkit
- Judicial Mentoring Toolkit
- Judicial Orientation Session Planning Toolkit
- National Judicial Development Committees Toolkit
- Project Management Toolkit
- Public Information Toolkit
- Reducing Backlog and Delay Toolkit
- Training-of-Trainers Toolkit
- Time Goals Toolkit
- **Remote Court Proceedings Toolkit**

These toolkits are designed to support change by promoting the local use, management, ownership and sustainability of judicial development in PICs across the region. By developing and making available these resources, PJSI aims to build local capacity to enable partner courts to address local needs and reduce reliance on external donor and adviser support.

In response to evolving priorities of partner courts, particularly in light of the COVID-19 pandemic, the PJSI has expanded its areas of activities to include a focus on the delivery of remote court proceedings. The addition of this new toolkit, **Remote Court Proceedings Toolkit**, aims to capture the legal, procedural, practical and technical aspects of remote court proceedings (RCP). It includes guidance on maintaining open justice, procedural fairness and upholding the right to confront doctrine, with recognition that local conditions and capabilities are varied. Accordingly, this toolkit aims to support courts as they develop systems suited to their unique needs and circumstances.

## Use and Support

These toolkits are available online for the use of partner courts. We hope that partner courts will use these toolkits as/when required. Should you need any additional assistance, please contact us at: [pjsi@fedcourt.gov.au](mailto:pjsi@fedcourt.gov.au)

## Your feedback

We also invite partner courts to provide feedback and suggestions for continual improvement.

**Dr. Livingston Armytage**

Technical Director, Pacific Judicial Strengthening Initiative, December 2020

# Table of Contents

|  |    |
|--|----|
| 1. Preface .....                                       | v  |
| 2. Abbreviations and Terminologies.....                | vi |
| 3. Introduction.....                                   | 1  |
| 3.1 About this Toolkit .....                           | 1  |
| 3.2 Purpose of this Toolkit .....                      | 1  |
| 4. About Remote Court Proceedings .....                | 2  |
| 4.1 What is RCP? .....                                 | 2  |
| 4.2 Varieties of Remote Court Proceedings .....        | 2  |
| 4.2.1 Paper Advocacy.....                              | 2  |
| 4.3 Advantages of Remote Court Proceedings .....       | 3  |
| 4.4 Other Considerations .....                         | 3  |
| 4.5 Change and Adjustment.....                         | 3  |
| 5. The Remote Proceeding .....                         | 5  |
| 5.1 Preparation.....                                   | 5  |
| 5.1.1 Information about RCP .....                      | 5  |
| 5.1.2 Deciding when to use audio only or video.....    | 5  |
| 5.1.3 Scheduling the RCP .....                         | 5  |
| 5.1.4 Logistics.....                                   | 6  |
| 5.1.5 Translation .....                                | 6  |
| 5.1.6 Arrangements for prisons .....                   | 6  |
| 5.1.7 Other tips .....                                 | 6  |
| 5.2 Conduct of the RCP .....                           | 7  |
| 5.2.1 Technical Issues .....                           | 7  |
| 5.2.2 Protocols.....                                   | 7  |
| 5.2.3 Outset of proceedings .....                      | 8  |
| 5.2.4 During the RCP.....                              | 9  |
| 5.2.5 Managing the Proceedings .....                   | 9  |
| 5.3 Audio Proceedings.....                             | 10 |
| 5.3.1 Practical Matters.....                           | 10 |
| 5.3.2 Technology Requirements .....                    | 10 |
| 5.4 RCP for Vulnerable Witnesses.....                  | 11 |
| 5.5 Managing the Files, Documents and Exhibits .....   | 12 |
| 5.5.1 How do we transfer files? .....                  | 12 |
| 5.5.2 Lawyers .....                                    | 13 |
| 5.5.3 Managing files and documents during the RCP..... | 13 |
| 5.5.4 Documents and RCP equipment .....                | 14 |
| 5.6 E-Filing & Signatures.....                         | 14 |
| 6. Technical Solutions .....                           | 15 |
| 6.1 Video Conference Applications .....                | 15 |
| 6.2 Technical Support.....                             | 15 |

|  |  |    |
|--|--|----|
| 6.3                                      | Bandwidth .....  | 15 |
| 6.3.1                                    | Testing bandwidth .....  | 16 |
| 6.3.2                                    | Connectivity snapshot .....  | 17 |
| 6.4                                      | Components .....   | 17 |
| Table 1: RCP Technology Components ..... |  | 17 |
| 6.5                                      | Technical Levels .....   | 17 |
| 6.5.1                                    | Cameras .....  | 18 |
| 6.6                                      | No Available Power or Internet .....                                   | 18 |
| 6.7                                      | Recording Proceedings .....  | 19 |
| 6.8                                      | Tracking the Use of RCP .....  | 19 |
| 7.                                       | Costs  | 20 |
| 8.                                       | Case Study: Lessons Learnt in the Federated States of Micronesia ..... | 21 |
| 9.                                       | Legal Considerations .....   | 22 |
| 9.1                                      | Which Proceedings can be Conducted Remotely? .....                     | 22 |
| 9.2                                      | Procedural Fairness .....  | 22 |
| 9.3                                      | Open Justice and Right to a Public Hearing .....                       | 23 |
| 9.3.1                                    | Ways of ensuring a public hearing .....                                | 23 |
| 9.3.2                                    | Recording, terms of access & security of streamed proceedings .....    | 23 |
| 9.4                                      | Privacy .....  | 24 |
| 9.5                                      | The Right to Confront .....  | 24 |
| 9.6                                      | Access to Justice .....  | 25 |
| 9.7                                      | Cross International Border Witness Testimony .....                     | 25 |
| 9.7.1                                    | Can RCPs be held in a foreign country? .....                           | 25 |
| 9.7.2                                    | Can video or audio technology be used in the foreign country? .....    | 26 |
| 9.7.3                                    | Oaths, perjury and contempt .....                                      | 27 |
| 9.8                                      | Use of RCP Domestically .....  | 27 |
| 9.9                                      | Judicial Directions and Orders .....                                   | 27 |
| 9.10                                     | Duties of Legal Representatives .....                                  | 28 |
| 9.11                                     | Admissibility of Evidence .....  | 28 |
| 10.                                      | Additional Sources of Information about RCP .....                      | 29 |
| 11.                                      | End Notes .....  | 30 |

## Additional Materials

|          |  |
|----------|--|
| Annex 1  | Additional Advantages of RCP   |
| Annex 2  | Additional Disadvantages of RCP  |
| Annex 3  | Federal Court of Australia National Practitioners / Litigants Guide to Online Hearings and Microsoft Teams |
| Annex 4  | Federal Court of Australia Example of Daily Listings   |
| Annex 5  | New South Wales Bar Association Court Protocols on Remote Hearings   |
| Annex 6  | Special Measures Information Note – Federal Court of Australia   |
| Annex 7  | Video Conference Applications: Comparison  |
| Annex 8  | Connectivity Snapshot  |
| Annex 9  | How to Set up an RCP Room  |
| Annex 10 | Cost Estimate Template   |
| Annex 11 | Examples of Court Responses to COVID-19 Health Restrictions  |
| Annex 12 | NCSC Bench Guide for Judges  |
| Annex 13 | Federal Court of Australia Draft Video Link Order  |
| Annex 14 | Supreme Court of Victoria Terms of Use of Footage of Judicial Proceedings                                  |
| Annex 15 | Federal Court of Australia Overseas Service and Evidence Practice Note                                     |
| Annex 16 | Chief Justice of Vanuatu Guidance Note   |
| Annex 17 | Additional Sources of Information  |

# 1. Preface

COVID-19 was declared a global pandemic by the World Health Organisation on 12 March, 2020, resulting in restrictions being imposed within Pacific Island Countries (PICs), for example: states of emergency, social distancing and border closures.

PJSI partner courts were faced with the challenge of complying with health regulations and requirements to ensure a safe workplace for Judicial Officers, Court Officers and court users whilst at the same time fulfilling their role as essential services. This resulted in Judicial and Court Officers working from home or remotely, and not necessarily physically present in the traditional court room or court precinct. In this way, the pandemic has emerged as a catalyst for dramatic and rapid change away from traditional court proceedings held in a court room, and towards the more widespread use of Remote Court Proceedings (RCP). Until this time the use of RCP was optional. Now, it is a necessity.

The requirement for such a rapid transition in court organisations, which are typically slow to make change, presents many challenges and some obvious advantages. The central challenges have been to maintain the character and respect for the court and to find the right balance in continuing to protect the rights and interest of parties and the public, in addition to accessing and successfully using RCP technology.

Whilst there are challenges, normalising the use of RCP across the Pacific in a post-pandemic environment is expected to bring advantages. Long-lasting positive changes could see the courts save serious amounts of time and money and at the same time, potentially increase access to justice, particularly for citizens of remote islands.

Recognising the increased priority and importance of partner courts to successfully hold and manage remote court proceedings, PJSI is publishing this toolkit. The approach is holistic as opposed to proposing a one-size-fits-all model. We share and provide guidance on what we have gathered from around the region and the world, on a range of technical, procedural, legal and logistical topics associated with RCP. Consequently, this approach provides the flexibility for partner courts to consider and adopt RCP to suit local needs, technical capabilities and preferences across case types, jurisdictions and locations.

We thank everyone who has supported and contributed to the development of the toolkit and the PJSI team who, as always, provided excellent support.

We hope this RCP Toolkit is of enduring benefit to the courts of the Pacific region and beyond.

**Ms. Jennifer Akers**  
PJSI Efficiency Adviser

**Mr. Tony Lansdell**  
PJSI ICT Adviser



## 2. Abbreviations and Terminologies

|          |   |
|----------|---|
| CTS/CTM  | - Case Tracking System/Case Tracking Management   |
| FCA      | - Federal Court of Australia  |
| FSM      | - Federated States of Micronesia  |
| HCTEACCM | - The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters  |
| HD       | - High Definition   |
| ICT      | - Information Communications and Technology   |
| ID       | - Identity Document   |
| IP       | - Internet Protocol   |
| IT       | - Information Technology  |
| LAN      | - Local Area Network  |
| MFAT     | - New Zealand Ministry of Foreign Affairs and Trade   |
| NCSC     | - National Centre for State Courts  |
| OGCIO    | - Office of the Government Chief Information Office   |
| PICs     | - Pacific Island Countries  |
| PJSI     | - Pacific Judicial Strengthening Initiative   |
| RCP      | - Remote Court Proceedings: refers to the hearings, appearances and taking of evidence before a Judicial Officer involving two or more locations interacting simultaneously by two-way video and/or audio transmissions. Other terms commonly used to describe RCP are 'video and audio conferencing', 'remote appearance', 'distributed proceeding', or 'video presence' or 'virtual court'. |
| RCPA     | - Remote Court Proceeding Application: the technology to conduct a remote court proceeding (for example, Zoom).   |
| VL       | - Video Link: refers to the transmission technology which facilitates the Remote Court Proceeding.  |

## 3. Introduction

### 3.1 About this Toolkit

This Toolkit concerns court proceedings and communications which are conducted over electronic networks that permit interactive data, voice and visual transmissions. For the purpose of this toolkit, these remote court events are called Remote Court Proceedings (RCP) and we limit the means to audio visual and telephone communications.

At the outset of this toolkit we expand upon the varieties of RCP and present the advantages and other matters to consider when contemplating the use of RCP. In chapter five, the requirements in preparing and conducting both video and telephone proceedings are presented, along with the practicalities of managing files and documents in the virtual setting.

In chapter six the technical solutions for hardware, applications, set-up and recording are addressed to assist courts in navigating and choosing an option suitable to local requirements and the range of technical options available. The estimated costs of the technology is discussed in chapter seven, followed by chapter eight which shares lessons learnt from experiences in the Supreme Court of the Federates States of Micronesia (FSM). Lastly, in chapter nine, the legal considerations around RCP are presented, including how PICs can address concerns about maintaining a public hearing and upholding the right to confront.

With the information and guidance provided in this toolkit, the intention is that PICs will be empowered with the knowledge and confidence to set-up, conduct, manage and administer RCP in a way that ensures quality justice continues during and after the COVID-19 period.

### 3.2 Purpose of this Toolkit

The purposes of this toolkit are to:

- Assist PJSI partner courts to maintain and extend access to justice, particularly in times of restrictions on being physically present in the court precinct due to the COVID-19 pandemic;
- Assist judicial leaders, Judicial Officers, Court Officers and technical Court Officers transition to and increase use of remote judicial services, through the promotion of information and knowledge exchange;
- Assist in the selection and use of video and audio technologies;
- Explain some of the policies, procedures and legal considerations required to introduce such technologies; and
- Help and assist partner courts to leverage the advantages of RCP and to overcome some of the challenges that can be experienced in the use of these technologies.

## 4. About Remote Court Proceedings

### 4.1 What is RCP?

A RCP is a proceeding before a Judicial Officer(s) which extends beyond the traditional, physical court room. It utilises video and/or audio technology to link two or more locations simultaneously. RCP allows for parties, their representatives and/or witnesses to appear and/or testify before a court from another location. These locations are not bound by traditional territorial, state or national borders, meaning that appearances can even be made from persons abroad.

### 4.2 Varieties of Remote Court Proceedings

There are several contexts in which court rooms are extended beyond the traditional physical court room. Some of the relevant contexts are:

- **The Remote Judge Context:** The first is where a Judicial Officer is physically and geographically remote from the court room: in chambers, overseas, on circuit or even at home.
- **The Remote Party Context:** This scenario includes where the Judicial Officer is in the court room and the parties and /or witnesses are appearing remotely from a public or private video-conferencing facility, a video-conferencing suite in a law firm, in a correctional facility or even at home.
- **Separate Room Context:** This context is where all parties are in one physical location or but are not all in the one court room together. This constellation is often used for the testimony of children, as a means of protecting them from the formalities and intimidation of the court room where the defendant is present.
- **Remote Mobile Court Context:** This context covers the scenario where a court is on circuit and where there is no court complex to use, for example in remote outer islands where there is no electricity or internet. This scenario is discussed specifically in **Chapter 6.6**.
- **Streaming:** This context is where the court proceedings in the court room are video or audio recorded and replayed in a remote location. For example, a case in Port Vila, Vanuatu, where the judge and parties are present in the court room, is streamed to a courtroom in the island of Santo so that the community can attend. Maintaining open justice in this way is discussed later in this toolkit.

#### 4.2.1 Paper Advocacy

One of the measures used by courts to reduce in person attendance at court is for Judicial Officers to make decisions on the basis of written submissions in chambers. This means the Judicial Officer makes a judicial decision on the basis of written submissions of the parties, without verbal evidence, oral submissions and attendance of any of the parties. This scenario is often called an “*on the papers decision*” and its use is particularly effective for consent orders, interlocutory matters, directions hearings and case management matters.<sup>i</sup> “*On the paper decisions*” are not video or audio recorded.

Ex-parte proceedings are differentiated from “*on the papers*” decision making in that ex-parte proceedings are usually conducted in the court room and are brought by one party in the absence of, or notification to the other party.

### 4.3 Advantages of Remote Court Proceedings

RCP offers many advantages, some of which are:

- The risk of spreading COVID-19 is minimised;
- Court users are more likely to feel less intimidated or marginalised, compared to being present in the physical formalities of a courtroom;
- Greater visibility and public access to justice available world-wide through video access to the court room;
- All cases are given a specific time to connect which eliminates waiting times often experienced at the physical courthouse;
- Reduction of travel cost associated with travelling from remote locations to the physical court;
- Outreach is improved and people can remain within the community to deal with legal matters; and
- Travel time for Judicial Officers, court staff, lawyers, litigants and witnesses is substantially reduced.

For more advantages of RCP, please see **Annex One** in the additional materials to this Toolkit.

### 4.4 Other Considerations

Whilst there are clear advantages in using RCP, there is some commentary in the research around other considerations to be aware of when contemplating the use of RCP. These include concerns about how to retain judicial authority, uphold the right to confront and how to maintain the open court principle. Throughout this Toolkit we identify and address these considerations.

### 4.5 Change and Adjustment

The technology and use of RCP is a significant change from the traditional and tested way of conducting proceedings in the physical court room. These changes uproot existing routines, which may pose a threat to the sense of identity, security, stability and purpose of Officers, and can lead to a resistance to change. For example, some Officers may feel insecure and distrust unfamiliar video technologies or feel frustrated as they conduct proceedings from home where the internet frequently drops out, dogs may be barking, or children interrupting.

Leaders and managers should understand that these changes may have a negative impact on individuals. To encourage early adaptation to RCP, leaders and managers should:

- Keep the technology as simple and effective as possible;
- Ensure sufficient funding, which includes the engagement of appropriately qualified IT technicians to monitor the ongoing use and update of the RCP technology;
- Communicate, train and keep personnel informed about RCP, including how it can actually improve workflow and productivity;
- Work RCP into the everyday rhythms as quickly as possible to set it as a new standard of operating;
- Encourage the continuance of the formality of the traditional court environment as much as possible, including the use of robes for judges and counsel;
- Encourage RCP users to share suggestions for improvement; and
- Be particularly patient, understanding and supportive.

It should also be noted that working via video link requires increased levels of concentration leading to increased levels of fatigue. This should be factored into RCP scheduling which should allow for an increased number of breaks and shorter session times.

## 5. The Remote Proceeding

### 5.1 Preparation

#### 5.1.1 Information about RCP

The court should maximise the use of its website to provide clear, simple instructional materials about RCP procedures. The webpage should provide unrepresented parties with guides on how RCP are conducted and possibly even provide a mock RCP video, in addition to instructions for how to prepare for and access a RCP. A 'help' and/or contact person for queries should also be provided.

The example of the Federal Court of Australia's *National Practitioners/Litigants Guide to Online Hearings and Microsoft Teams* is provided in **Annex Three** of the additional materials to this Toolkit, for guidance.

#### 5.1.2 Deciding when to use audio only or video

The court or the parties can initiate a video or telephone proceeding. The overarching consideration in making a decision to use audio or video is whether it is beneficial to the overall *fair and efficient administration of justice*. Other factors which may also need to be considered include:

- The nature and importance of the case. For example, an audio RCP is usually reserved for case management conferences, interlocutory hearings and judicial review applications. These conferences are preceded by written submissions filed and served in advance;
- Whether testimony is to be taken. In such cases, audio RCP is generally considered inadequate as the witness's demeanour cannot be fully observed and assessed;
- The quality of picture and sound depending on the available equipment and transmission speed or bandwidth;
- The extent of documentation which might need to be viewed; and
- The limited access to video technology and greater access to mobile telephone technologies in remote locations.

*The higher the stakes of the hearing or case,  
the better the technology needs to be.<sup>ii</sup>*

#### 5.1.3 Scheduling the RCP

Procedures for the booking and conduct of RCP will require all applicants to submit their request in writing via email to the court, well in advance of the scheduled proceedings.

If the court initiates the RCP, the court will forward out details and instructions in sufficient time to permit the parties to make technology arrangements.

Due to the additional concentration required for a RCP, which can make participants become more easily fatigued, the times allotted for sessions should not be more than two hours (approximately). Short breaks should also be scheduled in the session, for 10 minutes (approximately) each hour.

Once scheduled, a Court Officer will need to amend the proceeding information and court list to reflect that it will be heard by RCP. For example, the case will appear in the Court List as "*Barkie versus Kuku (via RCP)*". An example of an RCP court list is provided in **Annex Four** of the additional materials of this Toolkit.

#### 5.1.4 Logistics

The court can require legal representatives to submit a joint document outlining the relevant logistical issues that have been agreed, for example:

- The technical platform to be utilised;
- The method to be used for handling documents electronically;
- The identity and location of all:
  - Legal practitioners;
  - Parties; and
  - Witnesses.
- Arrangements to protect integrity of witness evidence (for instance, ensuring that they have access to relevant documents, and ensuring no other person is present while they give their evidence remotely); and
- A proposed hearing schedule (opening, witness schedule, closing submissions).

Based on this joint submission, the court should provide participants with clear instructions on how documents, evidence and exhibits are to be submitted and managed in the RCP. This can include that relevant materials to be relied upon have been made available to the court beforehand.

See **Chapter 5.5** for more in relation to files, documents and exhibits.

#### 5.1.5 Translation

If the RCP is to involve an interpreter, consideration may also need to be given to:

- The qualifications, training and experience of the interpreter in the context of the added difficulties and complexity of the RCP;
- The impact of any interpreting on the need and operation of video recording equipment; and
- The best location at which the interpreting can be provided.

#### 5.1.6 Arrangements for prisons

At the prison, a remote Point Coordinator is responsible for ensuring access to the RCP room and that the equipment is operational prior to the scheduled time for the video conference.

The Coordinator should ensure that the inmate is seated and ready in the RCP room approximately 15 minutes prior to the scheduled time for the RCP.

Even if the video and audio unit is not activated at the remote point, inmates should assume that they will be visible to the court at all times while in the RCP Room.

#### 5.1.7 Other tips

- **Time:** The court and the parties should build anticipated technical difficulty time into the allotted time for each hearing to avoid running over into other hearings.
- **Dress:** Consider visibility when preparing what you will wear, for example: dress in a solid colour (e.g., black robe for judges) and, if a tie is worn, use a solid colour, not one with a pattern.
- **Background:** Choose a solid coloured wall, such as a green, neutral, or white wall, or use one of the videoconferencing platforms generated backgrounds. Keep in mind though, the virtual background will require more bandwidth to support. It is not recommended for remote witness testimony as other persons present cannot be seen.

- **Lighting:** Light from behind might make a participant appear dark and hard to see, while light from the centre of the room might cast a shadow too. Light that points down from in front and above the speaker is recommended.
- **Screens:** Be careful where screens are placed on the bench as they may block the image of the judge from the cameras used for recording the proceedings.
- **Noise:** Find a space where there is little or no background noise, such as traffic, roosters crowing or dogs barking.
- **Distractions or interruptions:** Find a space or room where you cannot be interrupted by children, pets, telephone calls etc.
- **Test:** Set-up equipment well in advance of the hearing and ensure you test the software in advance, including: the videoconferencing software, the Internet connection and equipment.

**Important Tip:** Do a practice run well in advance of the hearing.

## 5.2 Conduct of the RCP

It is necessary to adapt traditional protocols in a way that maintains the formality and legal legitimacy of the in-person proceeding in a court room. Here are some suggestions:

### 5.2.1 Technical Issues

- At the commencement of a videoconference, the Judicial Officer/staff attorney/video co-ordinator must check and establish the link and ensure that it is functioning satisfactorily;
- When adjusting cameras, try to fill the screen as much as possible with people rather than the furniture;
- Once connected to the RCP, parties must mute the audio settings on their device to prevent any unintended interruptions to court proceedings;
- Position the camera to be at eye-level or slightly above eye-level;
- Judicial Officers and the participants should speak to the computer camera, not the screen;
- When participants use videoconferencing software via a phone, their phone number might be displayed. This should be changed to their name; and
- If there is audio echo or feedback during the RCP meeting, troubleshoot by checking that there are not more than one device (phone, computer or tablet) with active "audio".

### 5.2.2 Protocols

- Reflect formality by including in the video frame legal symbols such as a coat of arms, flag or local symbols of justice which can be easily setup in such applications as ZOOM and Microsoft's TEAMS;
- Retain robes for Judicial Officers and counsel;
- Keep the normal court etiquette and protocols where practicable, for example: opening the court by the clerk or associate, and use of "your Honour";
- Everyone should understand that there are fewer social cues to regulate behaviour. This means more articulation of procedure is required;
- Parties must refrain from speaking over each other, as much as practical;



- Parties when not speaking should be on MUTE, and this typically can also be controlled centrally;
- Judicial Officers should command clearly who and when participants are to talk;
- Parties can “raise a hand”, an “objection” sign or other agreed prompt in lieu of standing and interjecting;
- Before speaking, announce who is speaking;
- Say “over” or indicate clearly when you have finished speaking; and
- Self-represented parties should be expected to conduct themselves to same standard as required in a physical court room.

### 5.2.3 Outset of proceedings

The Judicial Officer, at the outset of the proceedings should assess the RCP quality by asking key questions and stating clear instructions, such as:

- “Are you able to hear me and can you understand what I am saying?”
- “Are you able to see me and is the picture quality sufficient?”
- “If, at any time, you are not able to see or hear what is happening in court today, you must immediately inform me of the issue.”
- “Please remain in the same place and turn on your mobile phone if the internet drops out. Someone will contact you by phone if this happens. Alternatively, you can phone this number: XXXXXXXX.”
- “Please wait to speak until requested.”
- “When you speak, please do so slowly and please do not interrupt others when they are speaking.”

#### Important Tips:

- **Speak in a normal voice without shouting. The microphones used are sensitive and are designed for normal speech;**
- **Avoid the tapping of pens on tables and rustling of paper near microphones, as this will disrupt the sound levels and affect court recording equipment;**
- **Use natural gestures when you speak; and**
- **Mute the microphones at your end when you are not speaking for an extended period.**

The Judicial Officer, at the outset of the proceedings, should also address on the record:

- That the parties waive any rights they may have to be present in the courtroom for the proceeding;
- That the parties consent to the proceeding being conducted via videoconference technology;
- That all court rules of evidence and procedure apply during remote hearings or conferences;
- If there are any unmet disability or accessibility needs;
- If there is a need for an interpreter or not;
- If the participants have caretaker responsibilities (e.g. for a baby) or privacy issues (especially for domestic violence matters) at the location where they are participating in the remote hearing;
- What they need to do if they wish to speak; and
- Generally, how the RCP hearing will proceed.

At the outset of proceedings legal counsel should provide the court a general assurance such as: “I confirm that X will be appearing from Y and will not have access to the hearing before giving evidence.”

## 5.2.4 During the RCP

### 5.2.4.1 Administering the Oath and Warning Witnesses

Judicial Officers should:

- Swear in witnesses by oath/affirmations in the usual fashion;
- Advise the witness of the operational logistics of the RCP;
- Warn the witness that, although this is a RCP, it is an offence to commit perjury or contempt of court;
- Ask the witness to turn off all electronic devices except for the device enabling participation;
- Warn the witness to refrain from exchanging any electronic messages with anyone while testifying or from recording the event;
- Ask witnesses not use a virtual background as the Judicial Officer needs to be assured that there is no one prompting or interfering in the proceeding;
- Ask the witness to confirm that they are alone in the room from which they are giving evidence; and
- Ask the witness to confirm that they have documents in front of them.

## 5.2.5 Managing the Proceedings

In managing the proceedings, the Judicial Officer and/or counsel should:

- Keep within view of the video camera and refrain from turning away from the camera too often as this can be unsettling for those making submissions or for a vulnerable witness undergoing sensitive cross examination;
- Judges may wish to have a separate means of communicating directly with their clerk/associate, outside of the video application, and this can easily be achieved through such tools as SMS, Messenger or another video application in parallel;
- Use “waiting room” functions to allow individuals into the “virtual courtroom”;
- Place disruptive participants into the “waiting room” if necessary;
- Use “break-out” rooms or “chat” functions for sidebar conversations that others should not hear (such as bench discussions, attorney-client discussions or where confidentiality is required);<sup>1</sup>
- Ensure the means for confidential counsel/client discussions is managed by counsel, not the court;
- Prevent any person, other than those already introduced to the court, from entering the videoconference room whilst a videoconference hearing is in progress; and
- Confirm email addresses, mobile telephone numbers or the preferred means of communication with parties.

### 5.2.5.1 Maintaining the security and integrity of witness testimony

In the course of managing the proceedings, the court should to the best of its ability, be satisfied that witness testimony is not influenced or prompted by persons physically or virtually present during the process of giving evidence. Some strategies to maintain the integrity of witness testimony being used are:

<sup>1</sup> These discussions are considered private and not be audio- or video-recorded.

- directions that a witness must be alone in the room in which the evidence is given (save for a technical support person);
- directions that the evidence not be recorded;
- have the witness testify on oath that there are no other persons present;
- have the witness testify that they are not using any unauthorised mobile devices;
- simply ask the witness scan to scan the room to check that no unauthorised persons are in the room and/or that there are no additional mobile devices present which could be used to record or transmit messages;
- closely monitor where the eyes and head of the witness are tracking. If for example, a witness is continually turning their eyes downward, they may be being coached by via messaging on a device;
- observe the light levels around the witness. This is because it might indicate that messaging is happening, as many devices light up when a message comes are received; and
- have any support or technical persons present state the purpose for being present on the court record.

#### 5.2.5.2 Microphones

Microphones used in RPC can be very sensitive. Persons appearing before a RPC should assume from the time the video link is activated until the time the link is disconnected that microphones are "live" and that all remarks are audible to the court. The exception here is where, for any reason, the court or the remote site "mute" their microphones.

Where for any reason it is necessary to mute the microphone at the remote site (for example, if counsel need to speak confidentially with client), the court must be advised before the microphones are switched to mute.

### 5.3 Audio Proceedings

The following paragraphs present practical and technological considerations around the conduct of audio RCP.

#### 5.3.1 Practical Matters

The practical process requires that both the court and the party use a unique, direct telephone number. There must be no call centre or receptionist receiving the call. To ensure security, the court should call the party, not the party call the court.

Any person appearing before a court by audio conference must adhere to normal court protocols, for example, as if they were personally in the courtroom, so far as possible. They must be available at the appointed time and must remain available until the court contacts them.

A failure to answer when the court calls the nominated number may be considered a failure to appear before the court, in which case the matter may proceed ex-parte.

When using a mobile phone, the caller must ensure that they are in an area with good reception with no background noise that may affect the audio quality, such as wind, traffic, machinery.

#### 5.3.2 Technology Requirements

Care and consideration must be given to the court installing and testing a phone (system) with sufficient speaker capacity to ensure all those in the court can hear the remote party. If the court already has a speaker system, the phone can be placed next to existing microphones which can

amplify the voice. Similarly, microphones need to be dispersed throughout the courtroom to ensure the remote party can hear all those speaking within the proceeding.

Equipment necessary for conducting an audio call within the courtroom is significantly less expensive than when using videoconference technologies, as there is no requirement for cameras and screens. Costs for audio conferencing equipment ranges from AUD \$200 to AUD \$2,000, depending on the facilities required.

## 5.4 RCP for Vulnerable Witnesses

Safeguarding accessibility and fairness for vulnerable groups is essential for creating an inclusive justice system which operates remotely. Vulnerable groups include amongst others, persons who: have a disability, experience mental illness, are elderly, children and minority or marginalised groups. A vulnerable witness may also be a victim of crime.

Where a vulnerable witness is required to testify, it may be appropriate for the witness to give evidence from a location remote from the witness box in the court room. This location is usually in a room within the court precinct that is set up with RCP technology.

In such cases the procedure is:

- Arrange for an officer of the court to go to the vulnerable witness room and make sure the computer is ready to connect (via the court's Wi-Fi or Internet);
- Login to the court network, and access the video conferencing application;
- Demonstrate to the witness how the process will work;
- Mute the vulnerable witness room and make sure that they cannot hear the courtroom and vice versa;
- Show a document on the document viewer to see if this can be clearly seen in the vulnerable witness room;
- When ready, instruct the witness to join the proceeding.

It is emerging that RCP increases stress for vulnerable persons because of:

- A lack of familiarity with technology;
- Decreased eye contact and non-verbal cues;
- Technical glitches; and
- Legal counsel being in a separate location, leaving them feel unsupported.

This stress may be reduced through:

- Judicial Officers providing additional support such as explaining the process and introducing more 'sign posting';
- Introducing more breaks;
- Allowing a support person to be present. The decision whether court staff or an appropriately qualified independent support person are to remain physically present with the witness whilst giving evidence is decided by the judge and dependent on such factors as security and the vulnerability of the witness<sup>2</sup>;

<sup>2</sup> For example, the Evidence Act s106R(4) specifically provides for the court to make orders regarding an appropriately qualified independent support person to remain in the remote witness room with the vulnerable witness.

- Using the closed captioning, automatic transcripts and screen reader support (all available on Zoom) for those with hearing impairments or language comprehension difficulties;
- Using an electronic virtual background to alleviate potential embarrassment or discomfort of having participants seeing their home;
- Being aware that for some people RCP causes nausea and feelings of being ill; and
- For the court to provide other support and information as appropriate.

## 5.5 Managing the Files, Documents and Exhibits

There are a wide range of scenarios to be considered for document handling in RCP depending on where the parties and Judicial Officers are located. The setup for each scenario requires careful consideration, planning and testing, before the start of any RCP.

If we look at a scenario where a Court of Appeal judge(s) may be located remotely in New Zealand, but all parties are based in the courtroom in Tonga, we need to consider the factors set out in the following sections.

### 5.5.1 How do we transfer files?

#### 5.5.1.1 Judicial Officers and the electronic file

Typically, the Judicial Officer would have had the physical material as filed at court prior to the hearing and would have been able to peruse the file in physical format. In this scenario the material file needs to be both scanned and sent electronically, or the physical file(s) transported to New Zealand.

Sending the file electronically though, is a more expedient and cost-effective solution for a court. However, the receiving Judicial Officer needs to be comfortable to work with an electronic file and have the tools available to easily navigate and prepare from an electronic file.

#### 5.5.1.2 Electronic transfer of large files

##### Via the court server

The preferred mechanism is for the judge in New Zealand to access the court's main repository/server (for example, the Case Management System) by logging in securely. The Judicial Officer can then access one, any or all documents on the file, electronically. This method is predicated on the fact that a country/court has a well-established Case Management System that can manage documents electronically (similar to those in Palau, Vanuatu, Papua New Guinea and Solomon Islands). Even a Case Tracking System that stores documents, like in the Federated States of Micronesia and the Republic of the Marshall Islands, can provide access to the documents in electronic form. It is not appropriate for parties to be granted access to files via this method.

##### Via 'Cloud' services

If the above option is not available and documents are large, either singularly (greater than 10 megabytes) or collectively (many documents totalling 50 megabytes or more), then serious consideration should be given to using Cloud services such as Dropbox, Google Drive or similar, to load the documents into and to provide remote access for the judge(s).

Whilst these mechanisms allow secure access, it must be recognised that these documents are in the 'cloud'. For many jurisdictions this presents more challenges, such as: the technical operational issues, questions about security and questions about the confidentiality of the file.

##### Via e-mail

Transferring files via email is possible however, the size will typically exceed file size limits, so the above options should be considered.

### 5.5.2 Lawyers

RCP places more onus on lawyers to agree upon documents to be distributed electronically in advance of the proceeding. For an example of how lawyers should prepare for an RCP see the *New South Wales Bar Association Court Protocols on Remote Hearings* in **Annex Five** of the additional materials to this Toolkit.

Lawyers also need even access to files and documents. This can be done by dispatching documents via email or sharing via a Cloud type service (as explored above). Lawyers typically would not have access to any files located on the court's repository server.

### 5.5.3 Managing files and documents during the RCP

With the growing use of RCP where parties are spread across multiple locations, the management of documents 'inside the courtroom' takes on a whole new dimension, priority and importance. Some of the considerations are:

#### 5.5.3.1 Ensuring everyone works off the same copy

It is important that the parties and the Judicial Officer have certainty that they are operating 'off the same copy'. Operating 'off the same copy' is when the document is shared across the courtroom. Here the Judges' Associate or Court Officer plays a key role in 'turning to the page in question' and ensuring everyone is able to see the document on a large screen that is the 'same page'.

#### 5.5.3.2 Updating the court file

When it comes to a matter where members of a Judicial Panel of an Appellate Court are located in separate locations, we now have to ensure that all Judicial Officers are working from the same version of the electronic file, and that it matches with counsel - whether it be in physical or electronic form for them. Where a document is tendered in court, the document should be scanned in court and quickly added to an electronic file.

#### 5.5.3.3 How to tender a document from a remote location

The simplest for handing up documents is for the remote party/counsel to simply scan and email the document to the courtroom. Once received it can be shared via the videoconferencing application and/or made available through the court's CMS/CTS.

#### 5.5.3.4 How to distribute a tendered document to a party in a remote location

If the document is tendered locally in physical form, the court clerk needs to scan and make it available via email and through screen-sharing. A document display projector may also be used to project the image locally, which can also be seen remotely.

#### 5.5.3.5 What happens in RCP using a smart-phone

If the matter is simply a directions or conference, then simple audio facilities are generally enough to progress the matter. If, however, the proceeding requires documents to be viewed or handed up, the court or counsel may need to take action to provide access to a computer or tablet device, or the court may make a suitable order for service of the document.

#### 5.5.4 Documents and RCP equipment

The judge, witnesses and all parties must be able to ‘see’ the material being presented in court. This can be done via sharing the screen features in the videoconferencing applications. If the witness and exhibit is in the courtroom, then the usual procedures apply, in addition to the exhibit being clearly shown to the video camera.

Experience shows that larger monitors are better for viewing documents, such as a 23 inch monitor. These monitors need careful placement, especially on the Bench where they should not block the Judicial Officer from being seen by the video camera.

### 5.6 E-Filing & Signatures

As courts move towards RCP many are also considering ‘e-filing’.<sup>iii</sup> Partner courts should note that there are very few courts around the world today operating totally electronically and paperless. What we do see in many instances is the physical and electronic file being used in parallel, for reasons such as personal preference or necessity.

What we are also witnessing in the response to COVID-19, is an increased use of email to file documents. Given the difficulties in obtaining original signatures and sworn affidavits, some courts are accepting electronic signatures and unsworn affidavits, on the understanding that these documents can be sworn or affirmed at a later time. For an example of these special measures, see the Federal Court of Australia’s *Information Note* at **Annex Six** in the additional materials to this Toolkit.



## 6. Technical Solutions

### 6.1 Video Conference Applications

There are many products now on the market, from the well-known applications like Zoom, Microsoft Teams and GoTo Meeting, to less well-known applications such as WhereBy. When considering what Remote Court Proceeding Applications (RCPA) to use, the court should consider such aspects as:

- Starting cost
- Ease of set-up and use
- Participant numbers
- Meeting numbers
- Meeting duration
- Screen share
- File sharing
- Messaging
- Audio calls
- Video calls
- Break-out rooms
- Application and browser
- Recording
- Registration required by participants
- Security
- Bandwidth

**Annex Seven** in the additional materials to this Toolkit, provides a comparative assessment of five major video conferencing applications.<sup>iv</sup> It is crucial that each country assesses the market and makes the choice specific to their needs, facilities, geographic and budgetary contexts.

It is recommended that the court decide on only one application and equipment for its RCP. This ensures continued familiarity for Judicial and Court Officers and those accessing remotely, especially the legal community. Generally, it is not practical for individual Judicial Officers to decide and use their own preferences.

### 6.2 Technical Support

Adequate technical support must be in place to help prepare and support RCP, because things do go wrong given the many factors at play, such as equipment within the court room, internet connectivity, remote user setup and the need for general 'how to use and operate' support.

Fortunately, most courts within the Pacific have dedicated IT officers within their complement of staff, but some courts rely on private IT companies and others on government wide IT offices. Regardless of where IT personnel are positioned, their presence in the setup, testing, and operation of any session is vital. While not necessarily having to be 'in-court' for the entire proceeding (for example, a full day trial), their availability to respond within 10 minutes should be assured.

In addition, the technologies involved, from the applications like Zoom or Microsoft Teams, to the physical equipment (for example, Logitech camera bundles or high-end video cameras/spitters), now requires the IT officers to be well versed in quite a range of different aspects. IT personnel need to have good training, and communication skills and patience, in addition to technical skills, because it is their responsibility to ensure that Judicial and Court Officers are comfortable and confident in the use of RCP technologies.

### 6.3 Bandwidth

One of the most important aspects of any videoconference proceeding will be the quality of the bandwidth, or Internet connectivity between the various locations. For many countries in the Pacific, the country is now served by undersea fibre optic cables connecting to main communication lines between United States of America (USA), Asia and Australia. For those countries not yet connected



to a submarine cable, they are using satellite technology and all (bar one), have plans to be connected to a submarine cable in 2020-2021.

The advantages of submarine cables versus satellite are generally price, performance and reliability. However, just because the country may be connected to a submarine cable, that does not mean the court or those attending, will be guaranteed 'A1' connections. For some countries, the courts are served by government technology providers (for example, the Vanuatu Courts are served and supported by the Office of the Government Chief Information Office (OGCIO), who provides the internet connectivity through their own network). In other countries, specific packages need to be obtained from telco providers such as Vodafone or Digicel.

Generally, government provided connectivity will be of higher performance and less cost than accessing the Internet through a private provider, but it does depend on the 'package' of service paid for. This also means consideration to both upload and download speeds and any data restrictions (volumes) per month. On the other hand, if accessing through a government network, the country's IT policies may restrict access to certain video applications (for example, Skype or Zoom), and stipulate that any videoconferencing must be through the authorised product of the country (for instance, True Conference in Vanuatu). Regardless of the means of connectivity, a court should monitor the speed and connection times from their end, as well as requesting those participating in the RCP to do similar.

**Important Tip:** Regardless of the means of connectivity, a court should monitor the speed and connection times from their end, as well as requesting those participating in the RCP, to do similar.

### 6.3.1 Testing bandwidth

One of the easiest tests to undertake is via <http://www.speedtest.net>. Using 'Speedtest' there are three important performance aspects to check and monitor, namely:

1. **The 'ping' time:** which reflects the time between two sites to 'connect' and is measured in milliseconds (mS). The lower the number, the better, and ideally, less than 20 mS is needed for a good quality video session.
2. **The 'upload' speed:** which reflects the data transfer speed from the host, to those who will be receiving/seeing the conference. It is measured in megabits per second (MBPS) and the greater the number, the better for the conference. Ideally, anything over 2 mpbs will ensure a reasonable video conference session.
3. **The 'download' speed:** which reflects the data transfer speed from the internet to the host and is typically greater than the 'upload' speed. Again, this is measured in MBPS, and the greater the number, the better-quality session that will be held. Ideally anything over 5 mpbs will ensure a reasonable videoconference session.

Without all three components, the quality of the session will be at risk, and potentially make the session difficult for all those attending (with participants experiencing jolting, delay, and frozen screens).

In addition, the challenge of bandwidth to the Internet is amplified when considering locations away from the capital or main towns in each country. There may be a fibre optic cabling between major centres (for instance, between Port Vila and Santo in Vanuatu), but often communication is either

over the traditional telephone tower arrangements (in 2.5G or 3G) or again, via satellite. This has a direct impact on the three performance aspects mentioned above.

### 6.3.2 Connectivity snapshot

It is vital that the Internet connectivity in each location is well understood and, where videoconference is likely to be used, that all efforts are made to increase to the minimum standards recommended, at least on a temporary basis. Therefore, it is recommended that each Court/IT Officer undertake a snapshot of the connectivity arrangements within their respective country to ensure the judiciary are aware of the potential performance degradation. For an example of a connectivity snapshot, see **Annex Eight** in the additional materials to this Toolkit, which presents the work of the IT Manager in the Federated States of Micronesia (FSM).

Through this type of analysis, IT Managers can see which locations are well or not well serviced. Where possible, improving connectivity through private telco providers should be undertaken if unsatisfactory performance is identified, however this may have significant cost implications.

## 6.4 Components

The conduct of a proceeding via videoconference requires the following components/technology:

| Component                | In the courtroom  | For those attending remotely  |
|--------------------------|---|---|
| <b>Software</b>          | Product such as Zoom, Microsoft Teams, controlled by the Clerk  | Will be provided a URL link to the virtual courtroom in the videoconferencing application<br><br>There is no cost, and no requirement to sign-in or have an account |
| <b>Security</b>          | Controlled by the Clerk   | Those appearing before the Court will be required to login and upon visual identification be allowed to enter the 'VC Room'   |
| <b>Recording</b>         | Clerk will control digital recording as per normal, but may also wish to record for the video application for later use/streaming | Will be captured within the courtroom   |
| <b>Camera/microphone</b> | Two cameras will be enabled in the courtroom, along with speakerphone   | Via laptop, or desktop computer with audio/video capability   |
| <b>Tablet/Smartphone</b> | Not applicable  | Most video application can be activated via an app on either Android or Apple devices   |

**Table 1: RCP Technology Components**

## 6.5 Technical Levels

Courts generally have a three-level RCP setup:

- **Level 1:** Basic arrangement including camera, projector/screen, laptop and desktop;
- **Level 2:** As per Level 1, but projector replaced with Plasma screen (and on a mobile stand), and higher quality camera/microphone equipment; or
- **Level 3:** As per Level 2, but Plasma screen(s) now mounted within room and professional grade cameras installed.

Where there are minimal time or funds available, Level 1 can be easily achieved with relatively low-cost equipment.

It is expected that the main courtrooms each have a Level 2 setup, as with any Conference Room or vulnerable witness room.

It is expected that Level 3 be established for the main Supreme Court courtrooms and main Magistrate Court. This might include two plasma screens (minimum size 48 inches), strategically located to allow for an integrated view of the gallery and bar table, and for the witness and the Judicial Officer(s) to be able to see the remote person(s). In addition, Level 3 would have professional grade video cameras (at least three) connected to the videoconferencing application, which is a significantly better image for all to see on a Plasma screen.

As many courtrooms already have digital recording, the current microphones and audio facilities should not need any modification.

### 6.5.1 Cameras

In Level 3, there are three high end cameras (for instance, PTZOptics PT12X-SDI-GY-G2) strategically located within the courtroom, allowing the person appearing before the court to see the Judicial Officer and Clerk, and secondly, the bar table and those persons in the gallery of the court. Courts will at all times have the ability to control the camera view within the courtroom.

Those attending remotely will need to ensure that the camera is focused clearly on themselves, and able to show the room in entirety if needed.

For more guidance on how to set up a RCP room see **Annex Nine** of the additional materials to this Toolkit.

## 6.6 No Available Power or Internet

In many parts of the Pacific, courts need to conduct hearings where there is no power, no infrastructure and no apparent Internet connectivity.

With some planning and infrastructure investment however, there are ways to conduct hearings in remote venues with the support of mobile RCP technologies which include voice, data and video transmission capabilities.

For this to happen, several key pieces of equipment are needed:

1. Portable power generator (AUD \$200-\$400);
2. Portable solar panels (AUD \$200-\$400);
3. Laptop(s) (AUD \$1,000 per unit);
4. Satellite phone (AUD \$500, plus data costs);
5. Additional web cameras (AUD \$400);
6. Portable projector and screen (AUD \$500); and
7. Microphones (AUD \$200).

The total cost of such a package would be in the vicinity of AUD \$5,000.

While this may seem burdensome to setup and transport, the benefits are significant in that it provides connectivity to locations that were once thought to be inaccessible to the modern facilities experienced elsewhere.

Mobile RCP technology is now used in such places such as the remote parts of the Australian outback, where courts like the Federal Court of Australia and Northern Territory Courts travel

thousands of kilometres to remote settlements to conduct hearings. Often the court sits successfully out in the open, or under a make-shift shelter, and conducts the proceedings connected to the 'outside' world using the equipment described above.

In the context of the Pacific, mobile RCP technology could be used in a variety of scenarios, such as where the court clerk travels to outer islands whilst the Judicial Officer and counsel remain in a national or regional court room.

## 6.7 Recording Proceedings

Most, if not all, videoconferencing applications can record the proceedings in both audio and video. This is of particular value if wishing to subsequently replay or post on the court website or, to provide a streaming/replay service via facilities such as YouTube. However, consideration should also be given to video recording in parallel with existing digital court recording that most courts in the Pacific do have (for example, the For The Record (FTR) product).

While many videoconferencing applications have the capacity to record the session (both audio and video), careful consideration should be undertaken to not end up with the recording of proceedings in multiple locations. If a court is using Polycom as well as Zoom, the videoconferencing technology can feed directly into the court's recording system, such that when the court calls into the Zoom virtual courtroom, the court's recording system will record just like any other use of Polycom. Where a direct feed into the recording system is not possible due to equipment limitations, a microphone should be placed near the speaker.

## 6.8 Tracking the Use of RCP

The use of RCP to assist with the delivery of justice should be tracked and monitored regularly. This ensures that recordings can be easily located and helps provide data that helps managers monitor usage and trends. It is the responsibility of the Video Coordinator to register all proceedings using RCP, noting the following information:

- Proceeding type (for example, Trial/taking evidence, etc);
- Case type (for example, Criminal or Civil);
- Division (for example, Trial Division);
- Date, time and location;
- Length of proceeding;
- Judge; and
- Reason for videoconferencing (for example, vulnerable witnesses).

Reports should be tabled monthly to the Chief Justice summarising the above information collected and used to guide investment decisions in technology.

## 7. Costs

The estimated costs for the setup of the various items necessary to conduct RCP can be as little or as much as a court wishes. Costs of high-quality cameras, Plasma screens, etc continue to drop worldwide, and while a Level 3 courtroom may be expensive, over time with improving technology, costs will continue to drop.

Equally important, is that with a minimum of technology, RCP can be done simply with a projector, laptop, desktop computer and additional webcam (if needed for the desktop computer).

The template in **Annex Ten** in the additional materials to this Toolkit may be of use for courts when considering costs, and how many courtrooms are needed and to what level. In addition to the indicative hardware costs,<sup>3</sup> based on Australian Dollars (AUD), there would be transportation, delivery costs and possibly import duties. Therefore, an allowance of 10% should be added to the overall estimate.

---

<sup>3</sup> As at August 2020.

## 8. Case Study: Lessons Learnt in the Federated States of Micronesia

In 2018, the FSM installed and commenced use of RCP. Some important lessons learnt from running RCP and experiencing what can go wrong, may be of assistance to PICs using this toolkit.

These lessons include:

- When running RCP, advise those within the court facility to limit their Internet access as much possible (for example, refrain from using Skype, or streaming services during the RCP);
- When establishing Wi-Fi access within a courtroom, endeavour to run a fixed cable from the network server into the courtroom, and then run a Wi-Fi router from that point, rather than relying on accessing a remote Wi-Fi device and/or a Wi-Fi repeater;
- Discuss with the Judicial Officer prior to the RCP session whether exhibits are likely to be called up during the proceeding, and ensure easy access is available for them to be presented on the screen;
- Before commencing the videoconferencing session, provide the opportunity for the Judicial Officer to see the setup and be assured that performance of the Internet and placement of screens is as the Judicial Officer thinks best;
- When the 'remote witness' is being streamed into the courtroom, be sure to sound test the volume not only for those in the courtroom, but also so that the court recording devices can adequately pick up the voice(s); and
- Where there is significant natural light coming into the courtroom, be sure to test how the court looks from the 'eyes' of the person/party not present (for example, the expert witness in Hawaii).

## 9. Legal Considerations

### 9.1 Which Proceedings can be Conducted Remotely?

Realising that COVID-19 imposes restrictions on the conduct of in-person court proceedings, courts around the world have generally gravitated toward a default position that all matters, except jury trials can or should, be conducted remotely provided that the fairness of the proceeding is not unduly compromised.

The emerging standards of proof for the decision to use RCP, appears to be if the RCP is on balance, beneficial to the overall fair and efficient administration of justice or, if good cause is demonstrated. To assist in making this decision a 'Justice Test' can be applied.

The Justice Test<sup>v</sup> is made up of seven elements, requiring that courts should secure and deliver:

1. Substantive justice (fair decisions);
2. Procedural justice (fair process);
3. Open justice (transparency);
4. Distributive justice (accessibility);
5. Proportionate justice (appropriate balance);
6. Enforceable justice (backing by the state); and
7. Sustainable justice (sufficient resources).

Due to COVID-19, an additional new standard has emerged. This is that the courts' primary consideration must be the health risk posed to practitioners, witnesses, Judicial and Court Officers of contracting the Coronavirus and of spreading it. This view suggests that the orders of the court must not result in a situation where the risks of the virus are increased.<sup>vi</sup>

Other defining considerations are if the matter relates to essential areas of life, then they should proceed as a priority using RCP. These cases include domestic and family violence, emergency child custody matters and proceedings related to the health and care of persons with the virus.<sup>vii</sup> Routine matters that allow people to continue their lives, such as uncontested divorce and probate proceedings, are another category of cases considered suitable for RCP.<sup>viii</sup>

At the same time, partner courts should examine local statutory schemes of evidence for provisions which permit or prohibit RCP being conducted.

For some more guidance on how to identify, triage and manage cases using RCP during the pandemic, see **Annex Eleven** in the additional materials to this Toolkit: *How courts in Australia have responded to COVID-19 health restrictions*.

### 9.2 Procedural Fairness

Procedural fairness lies at the heart of the right to a fair trial and constitutes the second of the seven elements of the "Justice Test" mentioned above. Central to the procedural fairness doctrine is that parties are given the opportunity to present their arguments in court and to test through cross-examination the truthfulness, demeanour and credibility of a witness.

Crucial to considerations is the quality of the virtual hearing and if that quality compromises procedural fairness. Emerging case law from Australia acknowledges that whilst RCP may not be ideal due to the reduction in formality and diminished chemistry between counsel and witnesses, ultimately this would not result in an unfair trial.<sup>ix</sup> Indeed, some Judicial Officers have noted that RCP technology enhances the quality of the trial as it allows the Judicial Officer to better focus on the facial expressions of the witness.<sup>x</sup>



Judicial Officers might find the *Core Elements of Procedural Fairness* checklist developed by the National Centre for State Courts in the USA, as presented in full in **Annex Twelve** of the additional materials to this Toolkit, useful in their deliberations. The PJSI **Enabling Rights Toolkit** also provides more guidance around the principles of natural justice, procedural fairness and the duty to ensure a fair hearing to both parties.

### 9.3 Open Justice and Right to a Public Hearing

The concept of an open court is anchored in the principle that *'justice should not only be done but should manifestly and undoubtedly be seen to be done'*.<sup>xi</sup> Open justice often has constitutional underpinnings which dictate practical rules, including that judicial proceedings should be conducted in public.

In the context of COVID-19 and the restrictions placed on public and press attendance at hearings, there are concerns over whether or not RCP are sufficiently transparent and possibly unfair. The concern is that the vital protections associated with open justice may be unnecessarily denied, and that a practice to exclude the press and the public from virtual proceedings may be difficult to wind back after COVID-19.

In practice however, these concerns are dissipating as courts innovate and adapt and realise that broadcasting or streaming proceedings can ultimately, strengthen the principles of open justice by providing access to court proceedings publicly online. Indeed, some courts such as the High Court of Australia have been doing this prior to the pandemic.

In the following paragraphs we present some of the techniques being used by courts in the region to provide open justice whilst at the same time, maintaining the security and privacy of information.

#### 9.3.1 Ways of ensuring a public hearing

Courts around the world are using a variety of means to ensure an open court and public hearing. These include:

- Providing access to information on the court website, about how the court is providing access to proceedings and listing the proceedings, times and manner of joining the proceedings;
- Providing on the court list information on how to access the proceeding (See **Annex Four** of the additional materials for an example from the *Daily List* of the Federal Court of Australia);
- Streaming proceedings on YouTube (for example, in the Supreme Court of Victoria);
- Making audio-visual recordings of hearings available on the court website (for example, in the High Court of Australia);
- Putting a screen in an open space in the court precinct for the public to view proceedings being streamed from a court room;
- Using iPads or screens in separate rooms, streaming from different court rooms;
- Publication of written transcripts on websites; and
- Providing access to the link of the live proceedings for persons who requests it from the Judges' Associate.

#### 9.3.2 Recording, terms of access & security of streamed proceedings

Whilst courts should make every effort to prevent court proceedings from being recorded and replayed, it is very difficult to police. One deterrent is for the court to make a *Video Link Order* at the commencement of the proceedings, prohibiting the making of audio or video, such as used by the



Federal Court of Australia (available in **Annex Thirteen** of the additional materials to this Toolkit). Another approach is to place warnings prior to viewing and to have the viewer agree to the terms of viewing. One example is the *Terms of Use of Webcast Proceedings* used by the [Supreme Court of Victoria](#) in **Annex Fourteen** of the additional materials to this Toolkit. Another example is the [Supreme Court of New South Wales, Australia](#).

## 9.4 Privacy

The privacy and personal data of court users' needs to be protected as courts move online. To do so, privacy policies and processes should be reviewed and adapted to apply to the RCP environment. This includes where documents are stored on servers.

To avoid the broadcasting of 'in camera' evidence, streaming should not be done in real time. Rather courts should delay transmission by approximately half an hour to avoid the inadvertent broadcasting of non-public proceedings.

## 9.5 The Right to Confront

The right to confront an accuser or witness to cross-examine them, is a requirement of a fair trial and in some partner courts across the Pacific, this right is enshrined in the Constitution. Therefore, the right cannot simply be ignored in the context of COVID-19 and RCP.

How each jurisdiction preserves and ensures the right to confront is a matter to be considered and decided by the presiding Judicial Officer in each individual case, informed by the legislation, quality of technological options available to conduct hearings remotely and, the directions of the Chief Justice.

For example, in the Republic of the Marshall Islands, proposed amendments to the Marshall Islands Rules of Criminal Procedure (2005), maintains the right to confront by stating at Rule 26(d):

***"Witnesses Appearing by Contemporaneous Transmission.***

***(1) For good cause and consistent with the confrontation cause, the court may permit testimony in open court by contemporaneous transmission from a different location.***

***(2) Witnesses appearing by contemporaneous transmission shall be deemed to be "present" in court.***

***(3) The court may make any proceeding accessible to the public by contemporaneous transmission, which proceeding shall be deemed to be held in "public" and in "open court."***

and at Rule 53 (b) about Courtroom Photographing and Broadcasting:

***"The court may make any proceeding accessible to the public by contemporaneous transmission, which proceeding shall be deemed to be held in "public" and in "open court."***

For an example of emerging caselaw from the Pacific about remote witness testimony, the right to confront and the use of video link in the absence of explicit provisions, see the ruling from the Supreme Court of Tonga in [Rex v. Satini \[2020\] TOSC 62; CR 227 of 2019 \(26 August 2020\)](#) available on Paclii.

## 9.6 Access to Justice

RCP may pose barriers for access to justice and equality before the law for partner courts in the Pacific. The principal concern is digital exclusion, where court users may not have access to adequate technology or Internet services to support RCP, or they lack the knowledge about how to use it. At the same time, it is observed that mobile telephone technologies are widely and successfully used throughout the Pacific Region.

Self-represented litigants are reported to be particularly vulnerable to digital exclusion. In this regard, the National Centre for State Courts (NCSC) suggests to:

***“Offer alternatives for litigants who lack devices or internet access to participate remotely: Courts should suggest community resources (e.g., public schools, libraries, community centers) where litigants can use computers or get access to a stable internet connection, including, if possible, dedicated computer kiosks or Zoom pods at the courthouse”.***<sup>xii</sup>

For more suggestions from the NCSC see **Annex Eleven** in the additional materials to this Toolkit for advice on the *Conduct Fair and Just Remote Hearings: A Bench Guide for Judges*.

Cost to users may also be a barrier to access. To mitigate costs to users, some courts are providing iPads or RCP facilities in isolated rooms in the court precinct to avoid court users using their personal devices and personal Internet data.

For first-time RCP participants, the court should provide support and information with instructions on ‘how to’ participate and use the technology prior to the proceeding.

## 9.7 Cross International Border Witness Testimony

Partner courts should consider a complex range of issues when contemplating the taking of evidence in a foreign country using remote video or audio technologies. Some of these issues are discussed below.

### 9.7.1 Can RCPs be held in a foreign country?

In both criminal and civil matters, it is particularly important for partner courts to thoroughly consider relevant legislation, case law, regulations and treaties in both the home jurisdiction and the foreign country, or states within the foreign country, in which the party or witness is located. This is because there is no uniform approach internationally to the taking of evidence across international borders, and because there is a very wide variance in stances with respect to issues such as sovereignty and the legal requirements and processes to be followed. In fact, some States may even have ‘blocking statutes’ which might prevent evidence being taken at all.

In every case it is important that proper procedure be followed and that the parties and the court knows what is required. Here a Practice Note of the Chief Justice is helpful. [\*The Practice Note on Overseas Service and Evidence of the Federal Court of Australia\*](#) is provided in the additional materials to this Toolkit in **Annex Fifteen** as an example.

#### 9.7.1.1 Civil Matters Generally

In civil matters, some countries prioritise *The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters 1970* (The Hague Evidence Convention). The Hague Evidence Convention best covers situations where witnesses are reluctant to voluntarily give evidence in civil and commercial matters, however it also provides for the taking of evidence without compulsion.

The Hague Evidence Convention firstly provides for the taking of evidence abroad by allowing transmission of [Letters of Request](#) from one signatory state to another. This is done through judicial authorities. The second avenue is for the taking of evidence by diplomatic offices, consular agents and commissioners. For more detail on the Hague Evidence Convention and for access to useful explanatory documents go to [The Hague Evidence Convention website](#).

Whilst many countries are signatories to The Hague Evidence Convention, including Australia and New Zealand, according to [The Hague Evidence Convention website](#) no PJSI PIC is a signatory. For PICs that are not a signatory to The Hague Evidence Convention, the procedure may still be applied and a [Letter of Request](#) may still be used, although the country receiving a Request is under no obligation to comply with the request. Otherwise, States may rely upon the principles of reciprocity and the comity of courts toward one another, noting though that the rules of procedure in the country of origin may prevail.<sup>xiii</sup>

In Europe, the [European Judicial Network in Civil and Commercial Matters](#) facilitates the networking of judicial authorities in European Union (EU) countries, and provides country specific resources to help should evidence be taken in a European country.

In civil matters where a witness is willing to give evidence, private arrangements may be able to be made for the taking of evidence. When taken, parties should ensure that evidence is taken in a manner which is consistent with the rules of both the foreign State and local PIC jurisdiction for which the evidence is required. This includes requirements for the taking of testimony using video or audio technologies.

#### 9.7.1.2 Criminal Matters Generally

The taking of evidence abroad in criminal matters is often regulated by bilateral or multilateral judicial cooperation treaties which articulate how States agree to cooperate to provide mutual assistance in criminal matters. Therefore, partner courts should, as a first step, check if there is a current treaty with the foreign State regulating cross-international border testimony.

At the same time, partner courts should become familiar with any relevant domestic legislation to be complied with. This might be a specific Foreign Evidence Act that regulates the taking of evidence abroad or laws setting out Mutual Assistance in Criminal Matters. Here, the [Commonwealth Secretariate](#) and the [United Nations Office on Drugs and Crime](#)<sup>xiv</sup> in recent years have been helping strengthen international cooperation in the administration of criminal justice by focusing on the domestic legislative basis for international cooperation, including the taking of evidence across international borders. To this end, PICs may find the [Model Law on Mutual Assistance in Criminal Matters](#) of assistance.

#### 9.7.2 Can video or audio technology be used in the foreign country?

Among countries that use RCP for cross international border witness testimony, the legal basis for such use can vary substantially between States and states within a foreign country. Generally, the taking of RCP evidence must comply with the procedural and evidentiary rules of both the relevant partner court and the foreign State and, state within that country. This requires the Judicial Officer(s) to consider the legal bases for RCP on a case-by-case and country-by-country basis.

### 9.7.3 Oaths, perjury and contempt

The administration and enforceability of the oath or affirmation of a witness requires particular consideration by the presiding Judicial Officer in RPC, because the proper administration of the oath is foundational to the establishment of the crimes of perjury<sup>4</sup> and contempt.

The oath may be administered to a remote witness:

- By the presiding Judicial Officer;
- By a Court Officer present with the witness at the remote end; or
- By a Court Officer remote from the witness.

When administering an oath to a witness in another country, prior permission may be required, because the swearing of a witness may be seen by some countries as sovereign right. Therefore, the giving of an oath and taking of evidence without permission may be a violation of sovereignty.

Unless privilege or other legal justifications apply, contempt committed in a RCP constitutes direct contempt as it has taken place in the presence of the court, even though the witness is ‘virtually present’. However, as with perjury, finding an effective means to actually prosecute the witness for contempt is of significant practical and legal complexity.

## 9.8 Use of RCP Domestically

There may be many reasons to use RCP for a trial where the witnesses are in-country. The COVID-19 pandemic is one of them. Another example would be where a child victim witness in criminal proceedings gives testimony remotely to avoid facing the accused.

In considering the use of RCP, the court should consider firstly if the domestic rules include “the provision for a judge or registrar to make directions for the taking of evidence and receipt of submissions by video link, audio link, electronic communication or other means that the Court considers appropriate”,<sup>5</sup> in addition to the over-arching interests of justice. Where a jurisdiction does not have legislation which provides for, or is broad enough to encompass RCP, they should consider drafting appropriate legislation or amendments, to address the conduct of RCP.

## 9.9 Judicial Directions and Orders

All RCP participants in each hearing are to be advised that the RCP is a court of law and that evidentiary laws and rules still apply. Additionally, by order of the court, participants should also be reminded that:

- The proceeding is live and that anything said is recorded;
- That unless the court otherwise orders, no person may make any audio or video recording, or photograph of the hearing or any part of it;
- Members of the public may not participate in, or interrupt, the hearing or make an audio or video recording of the proceeding in part or full; and
- Penalties may apply if there is non-compliance with the RCP order.

An example of the RCP *Court Order* used by the Federal Court of Australia is attached in the additional materials to this Toolkit as **Annex Twelve**.

<sup>4</sup> Establishing perjury in transnational court proceedings is a complex area of law where there is great variation in perjury statutes from country to country. From the point of view of the country where the evidence is received, there are two main issues to consider: (1) whether a statement made in another country can amount to perjury at all; and (2) whether it is justified for an extra-territorial exercise of the criminal jurisdiction.

<sup>5</sup> Federal Court of Australia. 2020. Videoconferencing: *Videoconferencing in the Federal Court*. <https://www.fedcourt.gov.au/going-to-court/videoconferencing-guide>

## 9.10 Duties of Legal Representatives

The court should issue a Practice Direction to enable practitioners to know RCP expectations. An example of the *Practice Direction*, issued by the Chief Justice of Vanuatu, is attached as **Annex Sixteen** in the additional materials to this Toolkit.

The duties of the legal profession should also be articulated in a protocol of Bar Associations and Law Societies. A protocol for RCP provides guidance to practitioners and can set out a minimum standard for court hearings, conduct and technical aspects, such as in the protocol of the *New South Wales of Australia Law Society* presented in **Annex Five** of the additional materials to this Toolkit.

## 9.11 Admissibility of Evidence

Evidence taken following an RCP order may be admitted on any terms the trial judge thinks fit. This may include rendering the evidence inadmissible in its entirety or in part, if it is in the interests of justice to do so. Consideration should also be given to whether the evidence should be rejected if the evidence was unlawfully or improperly obtained.

No adverse implications are drawn from a person's appearance by way of a video link and as such, the evidence does not have any greater or lesser weight.

## 10. Additional Sources of Information about RCP

Information about RCP is continually emerging as justice systems around the world adapt and publish their experiences, policies and user guides.

For leading sources of further information see **Annex Eighteen** in the additional materials to this Toolkit.

## 11. End Notes

<sup>i</sup> If a court intends to make a decision on written submissions the court usually makes orders for the parties to file written evidence or submission in relation to the decision. Notifications are usually made in writing of the outcome of the decision by order forwarded by email and/or mail.

<sup>ii</sup> National Centre for State Courts, Civil Justice Initiative. (2020) *Findings and Recommendations on Remote Conferencing*. NCSC Civil Justice Initiative.

<https://www.ncsc.org/~media/Microsites/Files/Civil-Justice/NCSC-CJI-Appendices-G.ashx>

<sup>iii</sup> Material in electronic form such as applications, affidavits, exhibits, displayed in electronic files and evidence.

<sup>iv</sup> As at August 2020.

<sup>v</sup> Susskind, R, *The Future of Courts*, The Practice, Volume 6, Issue 5, July/August 2020, Harvard University, USA, <https://thepractice.law.harvard.edu/article/the-future-of-courts/>

<sup>vi</sup> *Capic v Ford Motor Company of Australia* [2020] FCA 486; *McDougall v Nominal Defendant* [2020] NSWDC 194

<sup>vii</sup> National Centre for State Courts, Civil Justice Initiative. (2020) *Findings and Recommendations on Remote Conferencing*, NCSC Civil Justice Initiative.

<https://www.ncsc.org/~media/Microsites/Files/Civil-Justice/NCSC-CJI-Appendices-G.ashx>

<sup>viii</sup> Ibid.

<sup>ix</sup> *Capic v Ford Motor Company of Australia Limited* (Adjournment) (2020) FCA 486 (Perram J)

<sup>x</sup> Ibid.

<sup>xi</sup> *R v Sussex Justices; Ex parte McCarthy* [1924] KB 256

<sup>xii</sup> National Centre for State Courts. 2020. Conducting Fair and Just Remote Hearings: *A Bench Guide for Judges*. <https://www.ncsc.org/newsroom/public-health-emergency>

<sup>xiii</sup> *Soci te  Nationale Industrielle Aerospatiale v. United States District Court*, 482 US 522, 107 S. Ct. 2542 (1987)

<sup>xiv</sup> [https://www.unodc.org/res/cld/bibliography/model-law-on-mutual-assistance-in-criminal-matters\\_html/Model\\_Law\\_on\\_MLA\\_20071.pdf](https://www.unodc.org/res/cld/bibliography/model-law-on-mutual-assistance-in-criminal-matters_html/Model_Law_on_MLA_20071.pdf)



# **REMOTE COURT PROCEEDINGS Toolkit Additional Materials**





## Additional Materials

|           |  |    |
|-----------|--|----|
| Annex 1.  | Additional Advantages of RCP .....   | 2  |
| Annex 2.  | National Practitioners / Litigants Guide to Online Hearings and Microsoft Teams (Federal Court of Australia) ..... | 3  |
| Annex 3.  | Example of Daily Listings (Federal Court of Australia) .....   | 9  |
| Annex 4.  | Court Protocols on Remote Hearings (New South Wales Bar Association) .....   | 10 |
| Annex 5.  | Special Measures Information Note (Federal Court of Australia) .....   | 17 |
| Annex 6.  | Video Conference Applications: Comparison .....  | 21 |
| Annex 7.  | Connectivity Snapshot.....   | 23 |
| Annex 8.  | How to Set up an RCP Room .....  | 24 |
| Annex 9.  | Cost Estimate Template .....   | 25 |
| Annex 10. | Examples of Court Responses to COVID-19 Health Restrictions.....   | 26 |
| Annex 11. | NCSC Bench Guide for Judges .....  | 27 |
| Annex 12. | Draft Video Link Order (Federal Court of Australia) .....  | 30 |
| Annex 13. | Terms of Use of Footage of Judicial Proceedings (Supreme Court of Victoria).....                                   | 31 |
| Annex 14. | Overseas Service and Evidence Practice Note (Federal Court of Australia).....                                      | 32 |
| Annex 15. | Guidance Note (Chief Justice of Vanuatu).....  | 36 |
| Annex 16. | Additional Sources of Information .....  | 42 |

## Annex 1. Additional Advantages of RCP

RCP offers many advantages, some of which are:

- Increased availability of expert witnesses as their travel times are decreased, which can also decrease delay;
- Increased flexibility in the scheduling of proceedings and accommodation of witnesses;
- A reduced need to transport files;
- Increased thoroughness and preparation by Judicial Officers and lawyers;
- Increased efficiency and cost effectiveness for other justice agencies (for example, Legal Aid, Corrective Services and Public Prosecutions) due to reduced travel and waiting time;
- The technology can be used to educate the broader community on important issues such as domestic and family violence;
- Technology is advancing rapidly which will continually offset some of the disadvantages of RCP; and
- Carbon emissions of cars and aircraft are reduced due to reduced travel, benefiting the environment.

## Annex 2. National Practitioners / Litigants Guide to Online Hearings and Microsoft Teams (Federal Court of Australia)

### 1. Introduction

- 1.1. As per the Federal Court's Special Measures in Response to COVID-19 (SMIN-1) Information Note, to the extent possible, proceedings identified as being suitable will be listed for hearing using remote access technology known as Microsoft Teams (**Teams**).
- 1.2. Proceedings conducted in this manner will be referred to as **Online Hearings**.
- 1.3. Participants are reminded that Online Hearings are real hearings conducted by remote access technology. The expectations of courtroom behaviour and decorum still apply.
- 1.4. This Guide is intended to provide guidance for the legal profession and litigants-in-person appearing in Online Hearings. **Annexure A** contains illustrative instructions on how to use Teams.

### 2. Initial Steps

- 2.1. The success of an Online Hearing will depend on the facilities available to parties and their willingness to coordinate with each other and adapt quickly.
- 2.2. The Court is currently reviewing all upcoming hearings to determine their suitability for an Online Hearing.
- 2.3. Parties are asked to consider and liaise with the Court whether an Online Hearing is suitable giving consideration to:
  - the appropriate facilities available to relevant participants including practitioners, litigants-in-person, the parties themselves and any witnesses that the parties intend to call;
  - locations and time zones of witnesses;
  - firewall and security issues.
- 2.4. Parties should also consider and liaise with the Court whether a teleconference, in lieu of an Online Hearing, may be suitable.
- 2.5. Parties are expected to seek orders to facilitate an Online Hearing. See **Annexure B** for sample orders.
- 2.6. The Court will identify the manner in which a test run is to be conducted and advise parties accordingly.

### 3. Establishing an Online Hearing

- 3.1. Online Hearing Invitations
  - 3.1.1. Upon request, parties are to provide the Court with the individual email addresses for each of the Online Hearing participants.
  - 3.1.2. Where the Online Hearing is for a full day duration, parties will receive two Online Hearing invites – one for the morning session and another for the afternoon session. This is to allow the recording time to process over the luncheon adjournment.
  - 3.1.3. Teams invites include a link to join the meeting (see 3.2.1 below). This link is able to be passed on to witnesses or other practitioners who did not receive an invitation.

Note, however, that persons who join an Online Hearing via that Teams link are subject to being admitted or declined by the Court.

### 3.2. Applications Required

- 3.2.1 Parties can open up the Online Hearing from the [Join Microsoft Teams Meeting](#) link in the Online Hearing invite.
- 3.2.2 The Court recommends using a web browser other than Internet Explorer due to compatibility issues that may arise. The web browser may have limited features but the Court does not believe this is an issue.
- 3.2.3 Participants may also wish to download the Teams Application from the Microsoft product website [here](#) free of charge.
- 3.2.4 The Teams Application for iOS and Android are also available and free of charge however, features are limited. The Court does not believe this is an issue and encourages this option for parties who may not have the facilities, but do have access to a smartphone or tablet.
- 3.2.5 Participants also have the ability to 'dial-in' to Teams using a standard telephone connection. The dial-in details, including the unique conference ID number, can be found in the Online Hearing invite under the Join Microsoft Teams Meeting link.
- 3.2.6 A list of hardware requirements for Teams can be accessed [here](#).

## 4. Joining an Online Hearing

### 4.1. What participants can expect

- 4.1.1. When joining the Online Hearing, participants will be asked to enter their name. Be mindful that this name will be displayed for all participants to see. First Name and Surname are to be entered.
- 4.1.2. Parties should give consideration as to whether a participant's name (and/or face) should not be displayed (for example, for their safety) and liaise with the Court accordingly in advance of the Online Hearing.
- 4.1.3. After 'joining' the Online Hearing, participants will enter a virtual lobby and will remain there until admitted into the Online Hearing.
- 4.1.4. Participants are to join the Online Hearing **at least 15 minutes prior to the listing time** to allow sufficient time to address any technical issues.
- 4.1.5. Participants are encouraged to wear headsets during the Online Hearing as this greatly improves the audio quality for the other participants and for the recording made for the purpose of producing the transcript.
- 4.1.6. Online Hearings are being recorded by the Court's recording and transcription services contractor, Auscript, and through Teams directly. Participation in an Online Hearing indicates your consent to being recorded.
- 4.1.7. Transcript will be produced and available through Auscript, in accordance with the usual ordering processes. Some delays may be experienced during this time of transition to Online Hearings.
- 4.1.8. The use of communication and recording devices for the purpose of recording or making a transcript or otherwise is prohibited. Division 6.2 of the *Federal Court Rules 2011* (Cth) still applies.
- 4.1.9. In the event of unforeseen and unavoidable technological issues, the Court will temporarily adjourn to address those issues.
- 4.1.10. Provided [here](#) is a ten-minute portion of an Online Hearing conducted by Teams. That portion shows the end of dealing with objections to evidence, the respondents

calling their first witness, the swearing in of a witness (by the judge), and the beginning of examination and cross-examination.

#### 4.2. What is expected of participants

- 4.2.1. The same formal etiquette and protocol of a physical Court is expected in the Online Court.
- 4.2.2. The matter will be called and the Court will ask for appearances.
- 4.2.3. Judges are to be addressed as 'Your Honour', and registrars are to be addressed as 'Registrar'.
- 4.2.4. Where a judge has elected to robe, counsel must also robe.
- 4.2.5. The Court may elect to dispense with any of the usual formalities, and the parties are expected to act accordingly.
- 4.2.6. Participants are to join an Online Hearing from a quiet, secure location.
- 4.2.7. Participants are expected to ensure that there is sufficient internet coverage in their location and all devices are fully charged.
- 4.2.8. Microphones and cameras are to be tested and working prior to joining an Online Hearing. This can be managed through the Teams Device Settings.
- 4.2.9. Other than practitioners/litigants-in-person appearing, all other participants are to keep their microphones muted and cameras turned off.
- 4.2.10. Where possible, identify and resolve any firewall and security restrictions before the Online Hearing commences.

#### 4.3. Witnesses

- 4.3.1. The same expectations for participants above at 4.2. also applies to witnesses in an Online Hearing.
- 4.3.2. The Court will administer the oath or affirmation of each witness.
- 4.3.3. Where a witness would like to take an oath, note that s 24(1) of the *Evidence Act 1995* (Cth) provides that it is not necessary that a religious text be used in taking an oath: *BZAAG v Minister for Immigration and Citizenship* [2011] FCA 217. However, the party calling the witness should ensure that the relevant religious text is available to that witness in advance of the Online Hearing where the witness prefers to use the religious text in taking an oath.
- 4.3.4. A witness is to be provided in advance with all documents to which they may be referred to. See more below at 6. Document Management.

## 5. Open Justice

- 5.1. The Court continues to consider its options for preserving the principles of open justice.
- 5.2. Until further notice, Court buildings remain open to the general public. However, all parties and practitioners are required to appear remotely for any Online Hearing that proceeds other than in exceptional circumstances and with the express authorisation of the Chief Justice.
- 5.3. The daily court list for each registry will provide advice for members of the public seeking to view an Online Hearing remotely.
- 5.4. Any member of the public who is permitted by the Court to join an Online Hearing undertakes to:
  - Remain silent (mute their microphone) and hidden (keep their camera turned off); and
  - Not record the proceedings (see 4.1.8. above).

- 5.5. The Court may require a member of the public who wishes to view an Online Hearing to provide an email address. The Court use this information solely for the purpose of providing that member of the public with a link to the Online Hearing, and it is not retained thereafter.

## 6. Document Management

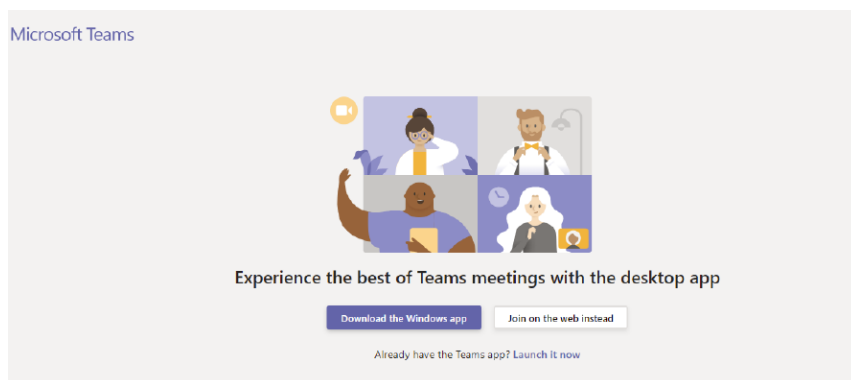
- 6.1. Where possible, a Digital Court Book is to be created for an Online Hearing.
- 6.2. The Digital Court Book is to be provided in accordance with the time and manner as directed by the Court
- 6.3. Arrangements are to be made, in consultation with the Court, regarding the ability to facilitate the 'handing up' of documents. Options may include:
  - by email to the Court;
  - by way of a secure, online file sharing platform, such as OneDrive;
  - by utilising the 'sharing screen' functionality within Teams (parties should liaise with the Court whether this may be appropriate intermittently by counsel or their instructing solicitors, or whether a Digital Court Book may be navigated by Court staff during the course of the Online Hearing).

## 7. Assistance

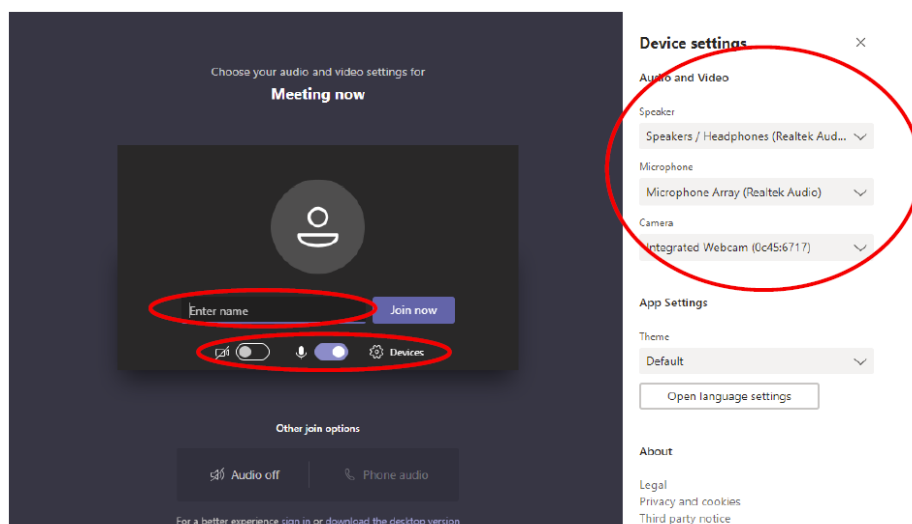
- 7.1. Please direct all questions relating to a specific matter to the chambers of the docket judge or relevant registrar.
- 7.2. Please direct all general questions to Registrar, Digital Practice via email.
- 7.3. The Microsoft Teams website and 'Help' section of the Teams application provides additional tips and advice about how to use the program.

## Annexure A: Simple Instructions on using Teams<sup>1</sup>

- To join an Online Hearing, click on the [Join Microsoft Teams Meeting](#) link at least 15 minutes prior to the Online Hearing commencing.
- For participants who already have Teams installed on their device, the link above should automatically redirect to the Teams App.
- However, the participant may be redirected to this screen in a web browser.

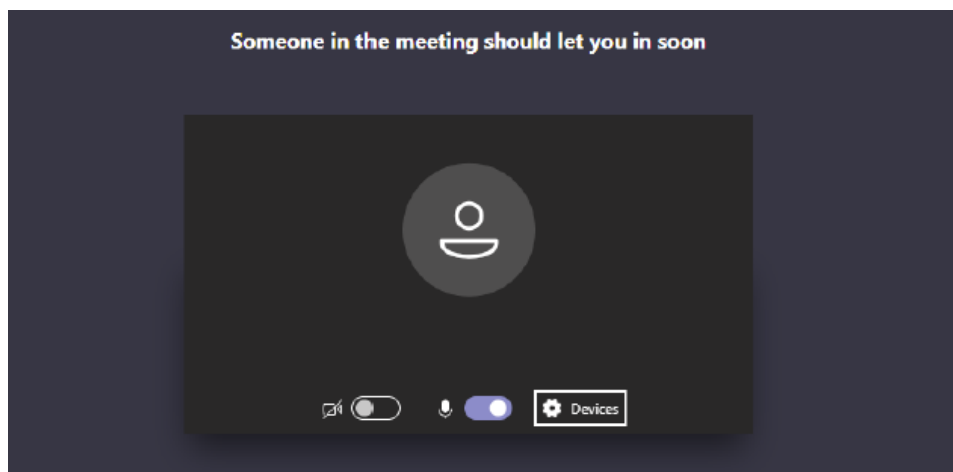


- If so, the participant may elect to Download the Windows App – which is free of charge.
- Alternatively, by selecting Join on the web instead, the participant will be redirected to another webpage. The participant may be asked to give permission for Microsoft to access their device's microphone and camera – select Allow.
- On the next screen, enter your First Name and Surname in the relevant field
- Manage your microphone and camera settings, if required, through the Device Settings Panel
- Select 'Join Now'

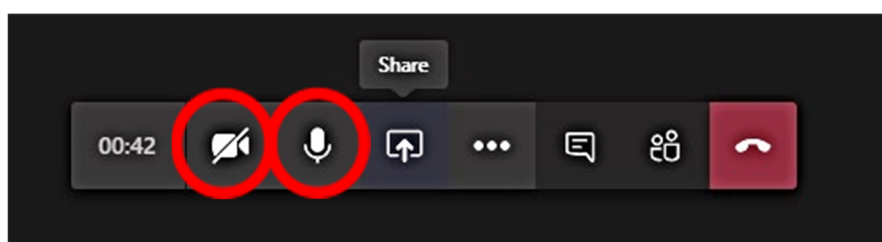


<sup>1</sup> Federal Court of Australia. 2020. Federal Court of Australia National Practitioners Guide to Online Hearings and Microsoft Teams. Federal Court of Australia. <https://www.fedcourt.gov.au/online-services/online-hearings>

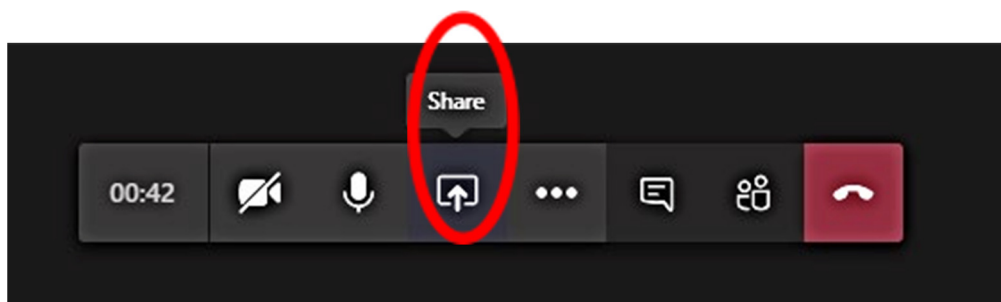
- Patiently wait in the virtual lobby until you have been admitted in to the Online Hearing.



- To mute and unmute your microphone, select the microphone icon on the Teams menu ribbon.
- To turn your camera on and off, select the camera icon on the Teams menu ribbon.



- **Only if directed by the Court**, the 'sharing screen' functionality may be used during an Online Hearing to display and navigate through documents.
- To do this, select the 'Share' button on the Teams menu ribbon.
- Then, choose to present either Desktop or Window (i.e. a particular program). The latter option is strongly recommended.





## Annex 3. Example of Daily Listings (Federal Court of Australia)

### Examples of “open justice” notifications on the Federal Court Daily Listings page:

Justice Moshinsky

By Web Conference COURT 8G (Level 8)

9:30 AM Part Heard

- |   |  |  |
|---|--|--|
| 1 | VID339/2020<br>By Video-conference<br>(Victoria Registry time) | IN THE MATTER OF SIENNA CANCER DIAGNOSTICS LIMITED --- This hearing is for the approval of a scheme of arrangement in respect of the plaintiff company and will be conducted via remote access technology. If a member of the public wishes to observe the hearing through Microsoft Teams they must contact the Associate to Moshinsky J by telephone or by email at least one hour before the scheduled start time. If a member of the public wishes to dial in and hear these proceedings – call (number) and enter the Conference ID #. Members of the public are not to provide their name or phone number when connecting, and are to remain muted. Members of the plaintiff company who wish to object to the scheme of arrangement can join the hearing remotely by one of the mechanisms outlined above. If the person objecting wishes to appear remotely, they must either contact the Associate to Moshinsky J at least one hour before the scheduled start time, or dial in to the proceedings at least 20 minutes before the scheduled start time. Persons who are objecting to the scheme of the arrangement and wish to appear will be asked to provide their name to the Court. |
|---|--|--|

Justice Middleton, Justice McKerracher, Justice Jackson

**COURT ONE (Level 8) By Web Conference**

Western Australia Registry, Court 1, Level 7

Western Australia Registry, By Web Conference

11:00 AM Full Court Hearing

- |   |  |   |
|---|--|---|
| 1 | VID150/2020<br>by Video-conference<br>(Victoria Registry time) | TRIVAGO N.V. V AUSTRALIAN COMPETITION AND CONSUMER COMMISSION --- This proceeding will be conducted by remote access technology and is open to the public subject to the judges’ discretion or any order by the Court that may be made pursuant to s 17(4) of the Federal Court of Australia Act 1976 (Cth). If a member of the public wishes to observe the hearing they must contact the Associate to Middleton J via email at least one hour before the scheduled start time |
| 2 | VID149/2020<br>by Video-conference<br>(Victoria Registry time) | TRIVAGO N.V. V AUSTRALIAN COMPETITION AND CONSUMER COMMISSION   |

## Annex 4. Court Protocols on Remote Hearings (New South Wales Bar Association)

### New South Wales Bar Association Court Protocols

#### Protocol for Remote Hearings

##### Introduction

1. The purpose of this protocol is to provide guidance to practitioners, particularly counsel, appearing at remote hearings - described in various publications and practice notes as a 'virtual hearing' and described herein as a 'remote hearing'.
2. The protocol addresses minimum standards for such remote hearings, divided into three categories: General aspects of court hearings, Conduct and Technical. Practitioners should have regard in addition to this protocol to relevant court websites, practice directions and guidelines.
3. This document is likely to evolve over time as required and to take account of recent developments. The protocol has particular relevance to the current COVID-19 pandemic, while social distancing requirements are in force. However, the Protocol may well remain relevant beyond the current pandemic, in circumstances where it is considered necessary or appropriate in the interests of justice for a hearing to be held remotely.
4. It is not the purpose of this protocol to address the functional aspects of particular online platforms which might be utilised to conduct remote hearings (eg, Microsoft Teams, WebEx, Zoom) by the different jurisdictions, nor the particular procedural circumstances of each jurisdiction. Rather, the protocol is aimed at providing guidance for the standards to be adopted and applied, whichever platform is being utilised, or whatever jurisdiction counsel is appearing in.
5. The use of remote hearings has the potential to aid in the provision of access to justice. It may also improve efficiency in the delivery of justice in limited circumstances. At the same time, it is necessary to ensure that the features of the Australian judicial system, which embrace the rule of law and open justice, are not unreasonably compromised. In this context, the use of remote hearings might form part of various additional procedural innovations in the context of courts and tribunals to gradually adapt their processes.
6. It is not to be suggested by this protocol that it is anticipated or expected that criminal jury trials will be conducted by audio visual link or other than with the presence of the accused in person.

##### Court hearings: general

##### Judicial Authority

7. In Wallace and Rowden 'Remote Judging: the impact of videolinks on the image and role of the judge', *International Journal of Law in Context* (2018), 14, 504-524, the authors observe that the work undertaken by a judge in a courtroom is the most publicly visible aspect of their role. Furthermore, the place of justice, 'the court', has traditionally been synonymous with the location of the judge. The presence of the judge reinforces their role, emphasising their authority and neutrality, thus supporting the legitimacy of the court as an institution.
8. For these reasons, fundamental judicial tasks such as monitoring participant behaviour, exercising control of proceedings, ensuring a fair trial, and facilitating witness testimony are

affected when performed via video-link. Accordingly, in an online hearing, there are a number of aspects of the conduct of participants (addressed below) that bear upon the extent to which judicial authority is promoted and maintained. The judicial officer will also be alert to the factors affecting judicial authority in an online hearing.

9. A court hearing is ordinarily conducted with all participants attending in person, although over the last two decades there has been increasing use of audio-visual technology to conduct directions hearings, call-overs, bail hearings, and to take evidence from vulnerable or physically remote witnesses.
10. With the onset of the COVID-19 pandemic, the legislature has empowered courts to order that all participants (including parties, legal practitioners and witnesses) attend using online/virtual technology (see eg s.22C of the *Evidence (Audio and Audio Visual Links) Act 1998 (NSW)*). In keeping with these powers, practice directions emanating from courts and tribunals of NSW have for the most part directed that only in exceptional circumstances are proceedings to be conducted in person.
11. All practitioners persons who work within the court system are encouraged to be alive to the limitations that may arise with online hearings and that can affect the interests of justice. Such limitations may include:
  - a) the capability and capacity of participants to utilise technology;
  - b) equal access to technology - including the remote appearance of an accused/witness;
  - c) adducing of oral and documentary evidence;
  - d) cross-examination of certain witnesses, such as vulnerable witnesses; complex and lengthy cross examinations; and cross examination on credit.

These limitations may give rise to the need for counsel to apply to vacate/adjourn the online hearing, and counsel should not hesitate to make such an application where the interests of justice require it.

12. Practitioners are reminded that a matter which has been identified as being of particular concern is the appearance of an accused or offender via remote means for any final hearing, as studies have shown they may frame the individual in the context of their detention, intruding on legal process, and affecting their comprehension and participation (see McKay C “Video links from prison: Permeability and the carceral world”, *International Journal for Crime, Justice and Social Democracy*, 2016, 5(1): 21- 37. DOI: 10.5204/ijcsd.v5i1.283). Similar considerations may apply to individual litigants.
13. The following general considerations may be apposite to a court’s determination as to whether or not it should conduct an online hearing:
  - a) the reason(s) to depart from in-person hearing (eg social-distancing restrictions);
  - b) the implications of (further) delay in the matter;
  - c) open justice principles;
  - d) procedural fairness;
  - e) suitable arrangements for witnesses and the testing of evidence.
14. There may also be considerations which are applicable to particular types of proceedings, such as
  - a) in a criminal trial, the overarching consideration that the accused receives a fair trial;
  - b) in Family Law proceedings, the interests of any child or children;
  - c) in civil proceedings more generally, a just determination of the issues in dispute in the most efficient, timely and cost-effective manner.
15. A number of these considerations are addressed in further detail below.

## Open Justice

16. Safeguarding the public interest in open justice is a primary objective of the administration of justice (see eg *Court Suppression and Non-Publication Orders Act 2010* (NSW), s 6).
17. Accordingly, and subject to the *Court Security Act 2005* (NSW) (referred to below), appropriate steps may be taken to permit members of the public and the media to attend remote hearings (subject to cases which would, in any event, be the subject of suppression orders). If this cannot occur, it may constitute a powerful consideration weighing against the remote hearing proceeding.
18. However, there may be circumstances where the interests of justice favour limiting remote non-party attendance if there are capability or capacity issues in relation to the technology - particularly in criminal matters where the accused is in custody. This may mean that no, or limited, access is available for those not directly concerned in the litigation, for example, one member of the media nominated to act as the 'in court' hub for others and similarly for family members or support persons.
19. Practitioners are reminded that members of the media or public who attend a remote hearing separately need to comply with all directions by the court to ensure they are not audible and their presence is not distracting (eg using the mute function and turning off their video).

### **Procedural Fairness**

20. Issues of procedural fairness can arise in all hearings and remote hearings are no different. However, the ability to perceive and manage fairness issues in a remote hearing may not always be possible. One reason for this is the loss of the traditional physical proximity of parties and the limited way in which all parties might participate in a remote hearing.
21. Appropriate arrangements should be in place for practitioners to take instructions, and to convey instructions and comments to counsel. This is likely to require both a separate online method of communicating (eg virtual private rooms, Whatsapp or email) and sufficient breaks in proceedings to allow counsel to confirm instructions. Particular considerations arise in relation to taking instructions from an accused in custody, and persons with limited technological access.
22. Appropriate arrangements should also be in place for each participant (in particular the parties, their legal representatives and the witnesses), to have access to reliable internet access and appropriate technology (eg computer and/or tablet to access the remote hearing), and (without limiting this requirement), access to documents.
23. Practitioners should make inquiries as to whether their clients and witnesses have appropriate facilities available to enable them to participate remotely in the hearing and provide instructions. If a party or a witness does not have sufficient technical (or cognitive), ability to fully participate using the appropriate technology, and alternate arrangements/assistance cannot be achieved, the case may not be able to proceed as a remote hearing.

### **Witnesses**

24. Particular difficulties may obtain to the taking of evidence from lay witnesses who may be unfamiliar with the court environment and may not appreciate the need for formality, respect to the court and court procedure. Many of these issues can be overcome when a witness is required to appear in-person. Furthermore, when a witness appears in-person the court can exercise its authority to require the attendance of the witness and protect the integrity of the witness's evidence while in the witness box.

25. Practitioners need to be aware of the risks that attend remote hearings using online technology, in particular involving assessment of witness evidence, such as evaluating witness credit and perception of their demeanour. Matters of concern in that regard may include a decreased ability to detect non-verbal cues during video-conferencing; the difficulty of picking up nuances and emotions; and the potential for eye contact to feel artificial across technology (which can make a witness appear evasive or dishonest).
26. Having regard to the limitations with remote hearings, in a case which turns on the evidence of a critical witness (eg the plaintiff in a common law dispute giving oral evidence in chief), this may be a strong factor against that part (or all) of the hearing being conducted as a remote hearing. An AVL link may not capture the subtlety of human discourse and will always carry the risk of misunderstanding or a failure by a participant to be able to communicate normally. That will be particularly so for parties who are not familiar with technology.
27. When a witness is to appear in a remote hearing from their home or other external premises, a number of challenges may arise. For example, the witness:
  - a) may have difficulties with the technology;
  - b) may not appreciate or follow the relevant procedure;
  - c) may struggle with managing electronic documents;
  - d) may be influenced by others who are present (affecting the integrity of their evidence); may present poorly on camera, for example not looking at the camera, or being poorly placed on the screen etc., if adequate training is not provided to them.

Accordingly, practitioners should, as far as possible, ensure that the witness

- a) is familiar and capable with the technology;
  - b) is informed about and will follow the procedure;
  - c) gives his or her evidence from a location that is quiet and not subject to interruptions;
  - d) does not give his or her evidence in the presence of persons who may unduly influence the witness;
  - e) is provided with access to appropriate support persons, eg, a parent, guardian or support person who is not also a witness in the proceedings; an interpreter; and where feasible a person to assist handling documents; and
  - f) is given an opportunity to test the online platform in conference beforehand.
28. It may be appropriate for a practitioner to request the court to seek confirmation from the witness as to who else is present in the room with them, and to remind witnesses that even though they are appearing remotely:
    - a) they are required to comply with the court's directions, answer questions unless there is a proper basis for them not to do so and not leave unless and until they are permitted to do so;
    - b) they may not speak with any person about their evidence while court is adjourned and they remain under cross-examination;
    - c) they understand the provisions of sections 9 and 9A of the *Court Security Act 2005*.
  29. In this context, it is noted that:
    - a) when a witness is giving evidence, no communication is to occur between the witness and persons external to the proceedings (unless it is with an approved support person or witness intermediary); and
    - b) no person (including witnesses, party, media or members of the public) is to record the evidence by capturing an audio or video recording of proceedings - ss 9 and 9A of the *Court Security Act 2005* (NSW), respectively refer to the 'Use of recording devices in court premises' and the 'Prohibition on unauthorised transmission of court proceedings from courtroom'.

## Conduct

30. Court etiquette and procedure must be adhered to as far as reasonably practicable, at all times. This is necessary for ensuring that the authority and gravitas of the court is preserved, and includes:
  - a) bowing to the judicial officer at the commencement and conclusion of proceedings (whether standing or seated, as the Court may direct);
  - b) addressing the court and court staff with the same level of professionalism and courtesy as if appearing in-person;
  - c) not interrupting the judicial officer or opponent;
  - d) signalling an objection to evidence appropriately (this may also include non- verbal means, eg the word 'OBJECTION' on a white piece of paper).
31. Experience suggests that remote hearings can often take longer and be more taxing than in-person hearings because of technical connectivity problems, difficulties communicating with an instructing solicitor, leading or junior counsel, taking instructions from clients, all the while appearing remotely and with interruptions that would not otherwise be experienced if the matter were being heard in-person. These difficulties are exacerbated when the client is remote from his/her/their legal representatives and even further exacerbated when an accused is appearing by AVL from custody.
32. Practitioners should be prepared for these eventualities, consider those issues when matters are listed for hearing, and raise them with the court as necessary. As a general matter, flexibility will be required to accommodate the interest of justice and the needs of those involved. Participants (including counsel), may be grappling with competing priorities as a result of social-distancing restrictions (eg home schooling).
33. Prior to the commencement of the hearing, and having regard to any applicable court procedure or practice direction, practitioners should consider preparing a summary of the relevant arrangements, which is reduced to writing and provided to the court as a joint document, suggesting:
  - a) the technical platform to be utilised;
  - b. the method to be used for handling documents electronically;
  - b) the identity and location of:
    - a. all legal practitioners; ii. parties; and iii. witnesses;
  - c) arrangements to protect integrity of witness evidence (eg ensuring that they
    - a. have access to relevant documents, ensuring no other person is present while
    - b. they give their evidence remotely); and
  - d) a proposed hearing schedule (opening, witness schedule, closing submissions).

## Practical observations

34. The chosen technical platform to conduct the online hearing ought be tested to ensure it has sufficient functionality, is functioning smoothly, and that all participants can access, and develop familiarity with its functionality (in particular the 'mute' button, see below).
35. The parties should, in conjunction with the court's own procedures, identify the appropriate method to be adopted for handling documents:
  - a) if an online document portal is to be utilised, this should be appropriately arranged into folders, eg court documents (ie pleadings and motions), submissions, and evidence (ie affidavits, exhibits), and 'access' permission managed appropriately (ie limiting the access provided to witnesses).
  - b) if documents are to be made available through more ad hoc means (eg email) there ought be appropriate adherence to protocol regarding court communications.



36. The legal representatives and witnesses should ensure that for the duration of the hearing, they utilise a quiet, well-illuminated space.
37. If counsel are concerned about interruptions when appearing from home, they should consider appearing from chambers. If this is not possible, it would be prudent to advise the court and the other participants about the potential for interruptions.
38. In chambers, counsel should put in place arrangements to ensure no interruptions (eg telephone diverted, closed door with a sign indicating hearing in progress).
39. Participants should ensure that when not speaking, their microphone is muted – this prevents background noise which is distracting and renders it harder for all participants to hear the person speaking.
40. All participants with a 'speaking role' ought have their video 'on' and be visible at all times, ie:
  - a. the court; b. counsel; c. witness.
41. Parties should liaise with the court as to whether participants without a speaking role ought have their video 'off' such that they are not visible. The court's position may differ depending on the participant eg:
  - a) parties;
  - b) solicitors;
  - c) transcript providers;
  - d) members of the public;
  - e) members of the media.

## Technical

42. Technology must adapt to and serve the interests of justice rather than the interests of justice be limited by the functionality of technology. The variety of technological solutions cannot be used to trump the basic requirements of a hearing, which recognise the expectation of participants in relation to:
  - a) consistency and appropriateness of the technology;
  - b) continuous improvement of the use of technology;
  - c) feedback by all participants.
43. As far as possible, hearings should be held by way of audio-visual facility rather than telephone. This is because the limitations of audio-visual hearings which are set out in this document are exacerbated when visual cues are not present.

## Practical observations

44. Participants attending a remote hearing using an audio-visual facility will require a computer/laptop which is connected to the internet with a working internal camera and microphone. Other mechanisms which may be helpful, albeit not essential, include:
  - a) a second screen set up to look at documents etc.;
  - b) a portable tablet or other device which can be held while looking at the camera; and
  - c) a second device linked to the mobile network and not connected by Wi-Fi can assist when a connection disappears.
45. Participants should expect that connectivity will not always be available and plans should be made to protect against that possibility. Participants should also make contingencies as to the means by which to communicate with the relevant court or tribunal, with their clients and with their opponents in the event of technical or other failures.
46. The *Evidence (Audio and Audio Visual Links) Act 1998* (NSW) enables the giving of evidence by audio and audio visual links (including, for instance, that the oath or affirmation be administered by means of audio-visual link: s 5D(1)(a)). Where a witness is located overseas,

- it is necessary to confirm that the laws of the witnesses' own jurisdiction do not prevent an oath or affirmation being administered.
47. Witnesses ought not be able to view the evidence given by other witnesses before they give their evidence.
  48. If the court does not have a pre-existing protocol as to how documents should be shown to witnesses, then the parties should liaise with the court about an appropriate mechanism which ensures the integrity of cross examination is not undermined, and appropriate confidentiality in documents is maintained.
  49. Notwithstanding test run(s) and the best of intentions, technical issues during the course of a remote hearing are almost inevitable. In those instances, the court may need to adjourn so that the issue can be attended to. The sensible cooperation of all participants is necessary.



## **Annex 5. Special Measures Information Note (Federal Court of Australia)**

### **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 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 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:
  - i. on the papers;
  - ii. by telephone; or
  - iii. 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](mailto: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

## Annex 6. Video Conference Applications: Comparison

The following assessment considers software platforms that can be used to host audio-visual meetings and enable remote conferencing proceedings. Of those platforms compared (*Footnote 1* outlines additional platforms found unsuitable for PJSI's purposes), where users are already utilising Microsoft Office 365 platforms (through email accounts, SharePoint and cloud storage), the recommendation would be to utilise the free video/audio conferencing software associated with Microsoft Teams for internal communications, meetings and trainings. Where recording of content is required, or extensive engagement of external participants is expected, either Zoom or WebEx (depending on the available bandwidth and ability to download software, with WebEx requiring pre-download and registration) would be suitable.

This research was undertaken to assist PJSI's programmatic activities. It was conducted internally and is not a comprehensive assessment. PJSI recommends that you use this information as a guide only, and undertake further research to determine which program/s best suits your individual needs.

| Platform                            | Microsoft Teams   |   | Zoom  |   | WebEx   |   | Google Meet <sup>2</sup>  | Skype <sup>3</sup>  |
|-------------------------------------|---|---|---|---|---|---|---|---|
| Link                                | <a href="https://www.microsoft.com/en-au/microsoft-365/microsoft-teams/group-chat-software">https://www.microsoft.com/en-au/microsoft-365/microsoft-teams/group-chat-software</a> |   | <a href="https://zoom.us/signup">https://zoom.us/signup</a>                       |   | <a href="https://cart.webex.com/sign-up">https://cart.webex.com/sign-up</a>         |   | <a href="https://gsuite.google.com.au/intl/en_au/pricing.html">https://gsuite.google.com.au/intl/en_au/pricing.html</a> | <a href="https://www.skype.com/">https://www.skype.com/</a>                         |
| Starting Cost <sup>4</sup>          | Free <sup>5</sup>   | \$6.90  | Free  | \$20.99   | Free  | \$18.95   | \$8.40 <sup>6</sup>   | Free <sup>7</sup>   |
| Ease of Set-up and Use <sup>8</sup> |    |  |  |  |  |  |                                      |  |
| Participant Numbers                 | Up to 250   | 250+  | Up to 100   | Up to 100   | Up to 100   | Up to 100   | 100+  | Up to 50  |
| Meeting Numbers                     | Unlimited   | Unlimited   | Unlimited   | Unlimited   | Unlimited   | Unlimited   | Unlimited   | Unlimited   |

<sup>2</sup> Note: this is formerly Google Hangout. Google Hangout is being phased out, but is still [currently available online](#) for immediate, free video calls with up to 10 people.

<sup>3</sup> Please note: [Skype for Business](#) will be retired and replaced by Microsoft Teams by July 31, 2021. Other platforms considered and determined unsuitable for PJSI's purpose include: [Whereby](#); [True Conference](#); [GoToMeeting](#); [ClickMeeting](#); [UMeeting](#); and [BigBlueButton](#).

<sup>4</sup> All costs are in Australian Dollars (AUD), are calculated monthly, and are per subscription/user.

<sup>5</sup> For any organisation already using Microsoft Office 365 emails and platforms.

<sup>6</sup> This price includes the full suite of GSuite products, including: video conferencing, web chat, email address, online cloud storage and website builders.

<sup>7</sup> When calling another Skype account.

<sup>8</sup> These ratings have been applied by the PJSI team based upon PJSI's experience with set-up and use of these platforms.

| Platform                              | Microsoft Teams   |           | Zoom       |          | WebEx      |          | Google Meet | Skype    |
|---------------------------------------|---|-----------|------------|----------|------------|----------|-------------|----------|
| Meeting duration                      | Unlimited   | Unlimited | 40 minutes | 24 hours | 50 minutes | 24 hours | 24 hours    | 24 hours |
| Screen Share                          | ✓   | ✓         | ✓          | ✓        | ✓          | ✓        | ✓           | ✓        |
| File Sharing                          | ✓   | ✓         | ✓          | ✓        | ✓          | ✓        | ✓           | ✓        |
| Messaging                             | ✓   | ✓         | ✓          | ✓        | ✓          | ✓        | ✓           | ✓        |
| Audio Calls                           | ✓   | ✓         | ✓          | ✓        | ✓          | ✓        | ✓           | ✓        |
| Video Calls                           | ✓   | ✓         | ✓          | ✓        | ✓          | ✓        | ✓           | ✓        |
| Break-out Rooms                       | ✓   | ✓         | ✓          | ✓        | ✓          | ✓        | ✗           | ✗        |
| Application and Browser               | ✓   | ✓         | ✓          | ✓        | ✓          | ✓        | ✓           | ✓        |
| Recording                             | ✗   | ✓         | ✓          | ✓        | ✓          | ✓        | ✓           | ✗        |
| Registration required by participants | ✗   | ✗         | ✗          | ✗        | ✓          | ✓        | ✗           | ✓        |
| Security                              | It is recommended that Partner Courts explore the various security considerations of each platform, in order to identify which is most suitable to their needs. This may include considerations of: encryption; manual security settings; two-factor authentication for access to accounts; level of security and protection from accidental and deliberate security breaches; and security of data stored on the platform, among others. |           |            |          |            |          |             |          |
| Bandwidth <sup>9</sup>                | 1.2 mbps  | 1.2 mbps  | 600 kbps   | 600 kbps | 500 kbps   | 500 kbps | 1.5 mbps    | 128 kbps |

<sup>9</sup> The bandwidths listed are the minimum required in order to run the software effectively for audio/video calls. Bandwidth is the range of frequencies required to transmit a signal (the amount of data that can flow in a given time). *Mbps* stands for megabits per second, and *kbps* stands for kilobits per second. 1,000 kbps equals 1 mbps.

## Annex 7. Connectivity Snapshot

Below is an example of a connectivity snapshot as produced by the IT Manager for Pohnpei, FSM.

| LOCATION | BUILDING ROOM              | COURT                  | USERS SHARING CONNECTION | CURRENT PLAN    | ACTUAL PERFORMANCE (Ping, download & upload speed) |
|----------|----------------------------|------------------------|--------------------------|-----------------|--|
| Pohnpei  | Separate to State – 1 room | National Supreme Court | 20                       | 8mb Fibre Optic | Ping – 25mS<br>Download – 3mB<br>Upload – 1mB      |

## Annex 8. How to Set up an RCP Room

The basic steps to set up a RCP Room is:

1. Bring into the courtroom:
  - a) Laptop;
  - b) Projector;
  - c) Drop-screen ;
  - d) Logitech camera/speakerphone; and
  - e) Logitech mini web-cam.
2. Connect laptop to Wi-Fi;
3. Connect projector to laptop, and ensure display maximises on the screen;
4. Connect Logitech Camera/speakerphone to laptop:
  - a) Test to make sure audio/video is working clearly; and
  - b) Ensure camera is pointing/focussed on the Judicial Officer/clerk.
5. Connect Logitech mini web-cam to clerk's desktop:
  - a) Test to make sure video is clear;
  - b) Ensure camera is pointing towards bar tables and gallery;
  - c) Ensure desktop audio is on mute.
6. Connect from laptop to VCA;
7. Connect from desktop VCA;
8. Check on the big screen – two active windows – one showing the Judicial Officer/clerk and the other showing the bar tables/gallery:
  - a) Check the sharing of an exhibit on the big screen.
9. Depending on where the person is attending via VC, await them joining;
10. Ensure digital recording – if available - is ready – and prior to proceeding – do a sound check to ensure all audio is recorded clearly;
11. Other considerations:
  - a) Depending on the size of the 'second room', additional audio/video facilities maybe required, e.g. a large audience. In this case it may be necessary to supplement the 'second room' with additional speakers, monitors, and microphones.

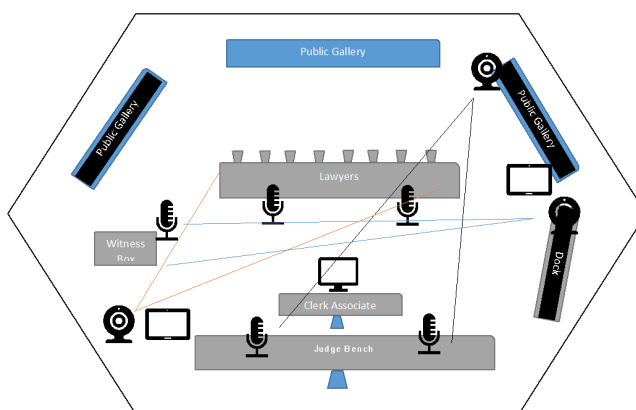


Diagram 1 RCP Setup



## Annex 9. Cost Estimate Template

**Table 1 Cost Estimate Table**

| Item                                  | Cost<br>AUD | Level 3 | Level 2 | Level 1 | TOTAL | TOTAL<br>Cost |
|---------------------------------------|-------------|---------|---------|---------|-------|---------------|
|                                       |             | #s      | #s      | #s      | #s    |               |
| <b>Setups</b>                         |             |         |         |         |       |               |
| Plasma Screen                         | \$1,000     |         |         |         |       |               |
| Portable/mobile stand                 | \$500       |         |         |         |       |               |
| Projector                             | \$500       |         |         |         |       |               |
| Screen                                | \$200       |         |         |         |       |               |
| Cabling equipment                     | \$100       |         |         |         |       |               |
| PTZ Optic camera (or similar)         | \$4,000     |         |         |         |       |               |
| Logitech Group camera (or similar)    | \$2,000     |         |         |         |       |               |
| Logitech c920 for laptop (or similar) | \$100       |         |         |         |       |               |
| Laptop                                | \$1,000     |         |         |         |       |               |
| Desktop                               | \$800       |         |         |         |       |               |
| <b>TOTAL per setup</b>                |             |         |         |         |       |               |
| <b>TOTAL COST</b>                     |             |         |         |         |       |               |

## Annex 10. Examples of Court Responses to COVID-19 Health Restrictions<sup>10</sup>

EXAMPLES OF COURT RESPONSES TO COVID-19 HEALTH RESTRICTIONS

|                                       | Federal Court of Australia   | Family Court and Federal Circuit Court  | Supreme Court of NSW  | District Court of NSW   | NSW Local Court  | NSW Civil and Administrative Tribunal  |
|---------------------------------------|--|---|---|---|--|--|
| <b>New Matters and Filing</b>         | New matters undergo triage process.<br><br>Filing by eLodgment or otherwise email.   | Assigned first available date.<br><br>Filing by eLodgment or otherwise email.   | By Online Registry, Online Court, or otherwise email/post.  | By Online Registry, Online Court, or otherwise email/post.  | By Online Registry, Online Court, or otherwise email.  | Consumer and Commercial applications lodged online. Other applications by post/ Service NSW, or otherwise email.   |
| <b>Lists – Directions and Motions</b> | By AVL or phone, depending on Judge and party availability.  | By AVL or phone.  | Registrars' and Judges' Lists by Online Court, phone, or AVL on staggered basis. Some Judges' lists on the papers.  | General and Motions List moved to Online Court.<br><br>Certain lists managed by interval sittings.  | Online Court/ phone, or otherwise vacated.   | Interlocutory hearings by phone or AVL. Most group Lists suspended, some Lists by phone.   |
| <b>Urgent Applications</b>            | Initial assessment by phone for applicability of in person services.   | If urgent/ remotely impracticable, in person services provided at Registry's discretion.  | Urgent/ remotely impracticable matters by phone. Only cases of compelling urgency in person.  | Parties to email application for arrangements.  | Email Magistrate. Conducted by phone, submissions restricted to 10 minutes.  | No in person hearings without prior approval of the President.   |
| <b>Trials</b>                         | By Microsoft Teams, phone or on the papers. In person only in exceptional circumstances or with prior approval of Chief Justice.<br><br>Some chambers dispense with formalities, knocking in, robes, etc.<br><br>Dropbox used as virtual court-book. | By Microsoft Teams, phone or on the papers. In-person hearings at discretion of Judge based on urgency.<br><br>Low priority Family Matters sent to ADR, Registrar Conference or Family Consultant.<br><br>Tendered documents to be emailed. | By Virtual Courtroom as default. External tech providers such as Microsoft Teams allowed if funded by parties.<br><br>New jury trials suspended, current trials continue. | No new trials. Existing trials proceeding by Virtual Courtroom.<br><br>Parties seeking to vacate hearing still require application to List Judge by way of notice of motion and supporting affidavit. | No new trials. Existing trials until 30 September 2020 vacated.<br><br>New hearing dates to be allocated and reviewed in October 2020.<br><br>Small claims by phone. | All hearings by phone, AVL, or on the papers.<br><br>Capacity reduced, priority given to urgent cases e.g. Guardianship, Tenancy, Administrative and Equal Opportunity and Occupational. |
| <b>Appeals</b>                        | By Microsoft Teams.  | By Microsoft Teams or where necessary in person.  | By Virtual Court. Authorities received over email.  | By Virtual Court or phone.  | By AVL for Annulment Applications.   | By AVL, phone, on the papers or adjourned.   |

<sup>10</sup> Legg, M., Song, A. (2020) The Courts and the Pandemic: *the role and limits of technology*. Law Society of New South Wales Journal. <https://lsj.com.au/articles/the-courts-and-the-pandemic-the-role-and-limits-of-technology/>

## Annex 11. NCSC Bench Guide for Judges

### CONDUCTING FAIR AND JUST REMOTE HEARINGS:<sup>11</sup>

#### A BENCH GUIDE FOR JUDGES

Many courts have embraced innovative communication technologies, especially videoconferencing platforms, to conduct routine hearings during the COVID-19 pandemic. Although these technologies provide an effective solution for managing cases until the pandemic abates, interpersonal communication in a remote platform differs considerably from the in-person experience. These differences can affect whether litigants and other hearing participants believe they have been treated fairly. Courts must make procedural fairness (also called procedural justice) for litigants the highest priority, regardless of where proceedings take place, as litigant perceptions of how they are treated have a greater impact on their acceptance of and compliance with court orders than the actual outcome of hearings. This bench guide offers practical tips for adapting judicial techniques to ensure procedural fairness in remote hearings.

#### CORE ELEMENTS OF PROCEDURAL FAIRNESS

- **VOICE:** the ability of litigants to participate in the case by expressing their own viewpoints;
- **NEUTRALITY:** the consistent application of legal principles by unbiased decision makers who are transparent about how decisions are made;
- **RESPECT:** individuals are treated with courtesy and respect, including respect for people's rights;
- **TRUST:** decision makers are perceived as sincere and caring, trying to do the right thing;
- **HELPFULNESS:** litigants perceive court actors as interested in their personal situation to the extent that the law allows.

#### PREHEARING PREPARATION

##### **Adjust calendaring practices to ensure sufficient time to give each case your full attention.**

Preliminary reports suggest that remote hearings take longer than in-person hearings. Litigants who are unfamiliar with the technology platform or who have poor internet connectivity may need extra time to logon, present evidence, or make arguments. Litigant appearance rates also tend to be higher for hearings conducted remotely, eliminating the cushion of time that judges have come to expect by entering default judgments or orders to dismiss for failure to prosecute. "Zoom fatigue" is real; do not schedule more cases than you can realistically manage.

##### **Review case files before hearings.**

Making direct eye contact shows litigants that you are attentive and engaged, but this is difficult to do this while simultaneously reviewing motions, briefs, and other documents during the hearing. Advance preparation shows respect by demonstrating your familiarity with litigants' individual circumstances.

##### **Ensure that litigants have access to information and resources to participate effectively in the hearing.**

Providing a URL to the videoconferencing platform does not necessarily ensure that litigants can participate effectively. Hearing notifications should be written in plain language and include information not only about how to connect and participate on the platform, but also how to access additional information to prepare for the hearing (e.g., gathering documents to present as evidence, potential claims and defenses, etc.).

The notification should also communicate the court's expectations about litigant preparation for the hearing (e.g., timeliness, formality of the hearing). Finally, some litigants may require a foreign language interpreter or an accommodation under the Americans with Disabilities Act to participate in a remote hearing. Ensure that the hearing notification includes information on how to request such assistance.

<sup>11</sup> National Centre for State Courts. 2020. Conducting Fair and Just Remote Hearings: A Bench Guide for Judges. <https://www.ncsc.org/newsroom/public-health-emergency>

**Offer alternatives for litigants who lack devices or internet access to participate remotely.**

Courts should suggest community resources (e.g., public schools, libraries, community centers) where litigants can use computers or get access to a stable internet connection, including, if possible, dedicated computer kiosks or Zoom pods at the courthouse.

**FAIR AND EFFECTIVE USE OF VIDEOCONFERENCING PLATFORMS**
**Use a “technical bailiff” to help litigants logon and troubleshoot on technical problems.**

The bailiff should rename litigants to indicate their full name, especially litigants using devices with default names (e.g., “Mom’s iPad”) or litigants who have called in on a telephone connection. The bailiff can also move litigants to waiting areas or breakout rooms staffed by ADR professionals, pro bono attorneys, or court staff who can provide legal information or assistance while waiting for hearings to begin.

**Pay close attention to videoconference dashboards.**

Many default platform settings require participants to raise hands virtually or require the host to permit entrance from a virtual waiting room. Also be alert for hackers (Zoom bombing) disrupting the hearing.

**Unmute litigants and check that they can hear and be heard.**

Before starting the hearing, identify all participants to ensure that everyone is present on the record. Provide a brief explanation to litigants on how to participate, including raising hands for permission to speak. If litigants are represented by counsel, explain how they can communicate privately using breakout rooms or separate text communications. Before entering a final judgment, check that all participants are still present on the platform, have heard everything that was said, and had an opportunity to express their viewpoint.

**Be careful not to overlook litigants who appear on the screen as black boxes due to lack of webcams or unstable connectivity or who have called into the hearing on a telephone line.**

It is easier to engage with people whose faces you can see. Similarly, some viewing options on videoconference platforms do not permit users to see all participants simultaneously. Make it practice to call on each person to ensure that they are still present on the platform, have heard everything that was said, and ask them if they have anything else to add before closing the hearing.

**Speak to the camera, not to the screen, and wait for litigants to finish speaking before responding.**

Looking directly at the webcam makes it appear that you are looking directly at the trial participants, rather than off to the side. In addition, looking through multiple screens or databases during the hearing can make judges look distracted or disengaged. Finally, the delay in audio transmission sometimes causes people to speak over each other. Wait for litigants to finish speaking before responding.

**Ensure that litigants participating by telephone are fully informed and have the opportunity to speak during hearings.**

Litigants participating by telephone lack the visual cues on which other participants rely to understand what is happening during the hearing. For example, they may not know who is present for the hearing and they will not be able to view documents or other evidence displayed on a shared screen. Litigants participating by telephone also do not have access to platform dashboard tools (e.g., to raise hands to indicate their interest in speaking).

**Take time to explain the hearing’s purpose and procedures, and the basis for any decisions.**

Judges should avoid the urge to rush through cases by cutting off litigants or skipping explanations about the basis for their decisions in an effort to clear calendars. Consider using a form or checklist judgment to explain the legal reasoning for decisions. Use status conferences as an opportunity to advise litigants about

upcoming procedures and to connect them to other community resources. Always ask whether litigants have had an opportunity to get legal assistance before entering final judgments.

**Ask litigants about the location from which they are participating.**

Not all litigants have a private, quiet place in which to participate in the hearing. If they are participating from a public area, they may not have the confidence or ability to provide candid information. In addition, background conversations or activities, including some that should be private, may be audible during the hearing and might even be captured on the videoconference recording.

If this occurs, alert the litigant that you can hear the background conversations and ask them to move to a more private location, if possible, or to tell the other group that they can be overheard. Also ask whether litigants have had an opportunity to get legal assistance before entering final judgments.

**JUDGES' CONDUCT DURING HEARINGS**

**Take time to explain the hearing's purpose and procedures, and the basis for any decisions.**

Judges should avoid the urge to rush through cases by cutting off litigants or skipping explanations about the basis for their decisions in an effort to clear calendars. Consider using a form or checklist judgment to explain the legal reasoning for decisions. Use status conferences as an opportunity to advise litigants about upcoming procedures and to connect them to other community resources. Always ask whether litigants have had an opportunity to get legal assistance before entering final judgments.

**Ask litigants about the location from which they are participating.**

Not all litigants have a private, quiet place in which to participate in the hearing. If they are participating from a public area, they may not have the confidence or ability to provide candid information. In addition, background conversations or activities, including some that should be private, may be audible during the hearing and might even be captured on the videoconference recording.

If this occurs, alert the litigant that you can hear the background conversations and ask them to move to a more private location, if possible, or to tell the other group that they can be overheard. Also ask whether litigants have had an opportunity to get legal assistance before entering final judgments.

## Annex 12. Draft Video Link Order (Federal Court of Australia)

Appeal from:

File number(s): <FileNo>

Judge(s): JUDGE

Date of judgment:

Catchwords:

Legislation:

Cases Cited:

### ORDERS:

<FileNo>

**BETWEEN:**

**AND:**

**JUDGE:** JUDGE

**DATE OF ORDER:**

### THE COURT ORDERS THAT:

1. Pursuant to s 17(4) of the *Federal Court of Australia Act 1976* (Cth), to the extent and for so long as public health regulations and statutes operate to limit or exclude members of the public from being able to attend the court during the hearing of the proceeding, the sitting of the Court continue, notwithstanding the inability of members of the public to be present who have not applied to the Registry or an associate to observe the hearing by video or audio link, while submissions are being given pursuant to ss 47A, 47B, 47D and 47E of the *Federal Court of Australia Act 1976* (Cth).
2. Unless the Court otherwise orders, no person, being a member of the public, who is observing the hearing of the proceeding by accessing any audio or video link including by link to the platform Microsoft Teams may:
  - (a) Make any audio or video recording or photograph of the hearing or any part of it; and
  - (b) Participate in, or interrupt, the hearing,
3. Provided that nothing in this order shall prevent any person, based on what he or she has seen or heard during the hearing:
  - (c) Making his or her own notes or record of the proceeding; or
  - (d) Publishing a fair report of the proceeding.
4. The Court notes that a contravention of Order 2 may constitute a contempt of court which is punishable by imprisonment, fine and/or sequestration of property.

**Note:** Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

## Annex 13. Terms of Use of Footage of Judicial Proceedings (Supreme Court of Victoria)

**Sentence – R v XXXX – 10.30am, Friday,  
10 July – Court 11 – Justice XXX**

### TERMS OF USE

- The Supreme Court of Victoria retains copyright in this footage.
- This footage is provided for the following reasons:
  - To enable litigants and interested persons to view the proceedings.
  - To assist media who are unable to personally attend judicial proceedings to fairly and accurately report on those proceedings.
  - To allow schools, universities and legal training bodies to show judicial proceedings for educational purposes.
- By watching this footage you are agreeing:
  - That you are not a prospective witness giving evidence in this trial.
  - That if you are a witness giving evidence in this trial, your evidence is completed.
  - Not to copy, store, edit, modify, broadcast, post or redistribute this footage without the prior written approval of the Supreme Court of Victoria.
  - To include the attribution 'Supreme Court of Victoria with any link to this footage.
  - To abide by any orders or directions made relating to the confidentiality and/or non-publication of the proceedings shown in this footage. If you do not, you should be aware that you may be subject to a legal action including for breach of copyright, or defamation or, potentially, contempt of court.



# Annex 14. Overseas Service and Evidence Practice Note (Federal Court of Australia)

J L B Allsop, Chief Justice  
25 October 2016<sup>12</sup>

## General Practice Note

### 1. Introduction

- 1.1. This practice note provides guidance on service of originating process and other documents outside Australia, as well as on evidence taken abroad. Subject to paragraph 2.3 below, this practice note applies to all proceedings in the Federal Court.
- 1.2. This practice note takes effect from the date it is issued and, to the extent practicable, applies to proceedings whether filed before, or after, the date of issuing.

### 2. Service of Process Overseas

- 2.1. The kinds of proceedings in which an originating application may be served outside Australia are described in r 10.42 of the Federal Court Rules 2011 (Cth) ("Federal Court Rules"), and include proceedings that are based on a cause of action arising in Australia and proceedings in which the person to be served has submitted to the jurisdiction of the Court.
- 2.2. Leave of the Court should ordinarily be obtained prior to serving an originating application or other court document outside Australia, although if there is a sufficient explanation for the failure to seek leave beforehand, the Court can subsequently confirm service made without leave (see rr 10.43 and 10.44 of the Federal Court Rules). Leave to serve an originating application outside Australia will only be granted if the Court has jurisdiction in the proceeding and the party has a *prima facie* case for the relief that is claimed (see r 10.43(4) of the Federal Court Rules).
- 2.3. The Trans-Tasman Proceedings Act 2010 (Cth) provides for service in New Zealand of initiating documents in civil proceedings started in Australian courts. An applicant in a proceeding in this Court may proceed under that Act rather than under Division 10.4 of the Federal Court Rules.
- 2.4. A party applying for leave to serve an originating process or other court documents on a person in a country other than Australia under Division 10.4 of the Federal Court Rules, or for an order confirming service already undertaken, should support the application with an affidavit (as required by rr 10.43(3) and 10.44(2) of the Federal Court Rules) and include information obtained from the Australian Government Attorney-General's Department in relation to the appropriate method of transmitting documents for service in that country, including whether documents:
  - (a) should be transmitted in accordance with an international agreement or arrangement, and the details of that agreement or arrangement (see Division 10.6 of the Federal Court Rules with respect to service under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters;

<sup>12</sup> J L B Allsop, Chief Justice. 2016. Overseas Service and Evidence Practice Note (GPN-OSE). Federal Court of Australia, 25 October 2016. <https://www.fedcourt.gov.au/law-and-practice/practice-documents/practice-notes/gpn-ose>



(b) should be transmitted for service via the diplomatic channel (see Division 10.5 of the Federal Court Rules); or

(c) may be transmitted for service by a private agent within the territory of that country.

Such information may be obtained from the Private International Law Section of the website of the Attorney-General's Department.

### 3. Taking of Evidence Overseas

- 3.1. Parties and their legal representatives should be aware of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. There are two fundamental methods of taking evidence abroad under the Convention: Chapter 1 – Letters of Request; and Chapter 2 – Taking of evidence by Diplomatic Officers, Consular Agents and Commissioners. The Convention and useful working and explanatory documents can be found on the website of the Hague Conference on Private International Law.

#### *Applying for an Order to Examine a Witness outside Australia*

- 3.2 A party may apply under Division 29.2 of the Federal Court Rules for an order for the examination of a witness before a Judge outside Australia. A draft of the order sought must be lodged with the application (see r 29.11(2) of the Federal Court Rules). The application should also be accompanied by an affidavit or other evidence relied on in support.
- 3.3 In deciding whether to make the order, the Court will consider whether the examinee is willing or able to come to Australia to give evidence, whether the evidence is expected to be material and whether, having regard to the interests of the parties to the proceeding, justice will be better served by granting or refusing the order.<sup>[3]</sup>
- 3.4 If an order is made parties should expect that, in the ordinary course, the order will:
- (a) provide that the examination will be conducted before a Judge in a specified place outside Australia;
  - (b) provide for witnesses (usually named) to be examined on oath or affirmation; and
  - (c) be expressly conditional upon the payment into Court of an amount, to be subsequently determined, as provision for expenses of the Judge and Court staff in relation to the examination.
- 3.5 The parties (if appropriate) should arrange suitable accommodation for the conduct of each examination and for transcription facilities.
- 3.6 The costs and expenses of, and incidental to, the examinations will be borne in the first instance equally by the parties to the proceedings and, subject to any order to the contrary, be treated as part of the general costs of the proceeding.
- 3.7 Evidence should be adduced of whether or not each witness proposed to be examined is an Australian citizen and whether or not each witness is expected to give evidence voluntarily.
- 3.8 Under Government policy, all official overseas travel by judges of the Court must be approved by the Chief Justice. The hearing of any application should be timed to allow the judge hearing it to consult with the Chief Justice and ascertain whether, should an order to appoint a judge to take evidence outside Australia be made in the proceeding, approval to travel will be given.

#### *Notification*

3.9 Following the making of any order appointing a judge to take evidence outside Australia, the following letters are sent by the Court. Further letters may be necessary to confirm dates and other arrangements.

| Sender                                  | Recipient  | Reason   |
|---|--|--|
|   |  | To obtain permission for the judicial officer to examine witnesses in that jurisdiction  |
| Chief Justice                           | Counterpart in overseas jurisdiction<br>Attorney-General | To comply with Government policy requiring notification, at least three weeks in advance, of any proposed official overseas travel by federal judges                   |
| District Registrar of relevant registry | Department of Foreign Affairs and Trade                  | To ensure that the relevant government authorities are informed and all approvals are sought, including approval for the examiner to administer an oath or affirmation |
| District Registrar of relevant registry | Relevant court administrator in overseas jurisdiction    | To obtain courtroom or chambers accommodation, if required.  |

#### *Calculation of Travel Expenses*

- 3.10 Travel expenses of a judge are determined according to the determination in force from time to time of the Remuneration Tribunal under the Remuneration Tribunal Act 1973 (Cth). Further information is available on the Remuneration Tribunal website.
- 3.11 Travel expenses for Court staff are determined by the Chief Executive Officer and Principal Registrar of the Court or delegate. This normally includes accommodation at a standard reasonably equivalent to that provided to Court staff in Australia and meal and incidental allowances at the rates determined annually by the Australian Taxation Office in its taxation ruling dealing with reasonable travelling allowance amounts. Further information is available from the District Registrar of the relevant registry.

#### *Travel Proposal and Projection of Costs*

- 3.12 As soon as possible after any order is made for the taking of evidence outside Australia, the parties should prepare and lodge with the District Registrar of the relevant registry a travel proposal for the Judge and any Court staff, together with a projection of costs including:
- (a) proposed dates, route, flights, class, carrier and ticketing (fully flexible return tickets must be provided) for travel;
  - (b) proposed arrangements for ground travel;
  - (c) three options (if possible) for hotel accommodation;
  - (d) daily allowance for meals and incidentals; and
  - (e) any other anticipated expenses.
- 3.13 The parties will also provide to the District Registrar details of what arrangements are proposed for accommodation for the conduct of each examination and for transcription.

#### *Payment into Court*

- 3.14 On receiving the travel proposal and the projection of costs, the District Registrar will liaise with the Judge to identify whether the proposal is satisfactory and consider whether

the cost projection made is sufficient to provide for the likely expenses of the examination. The District Registrar will, if necessary, liaise with the parties about any possible modifications. If required the District Registrar may seek directions from a judge. Once the amount for the provision for the Court's expenses of the examination is determined and before the commencement of the examination, the parties will pay that amount in equal shares into Court.

### *Reconciling Expenses*

- 3.15 As soon as possible after the examination, the District Registrar will reconcile and account to the parties for the costs actually incurred by the Court of and incidental to the examination. If the amount paid as a provision for those expenses exceeds those costs, the excess will be refunded to the parties in equal shares. If there is a shortfall in the amount paid as a provision for those expenses against those costs, the parties will pay the amount of the shortfall into Court in equal shares within 7 days of receiving written notification.

### *Evidence from Overseas by Video Link*

- 3.16 Refer to the Technology and the Court Practice Note (GPN-TECH) and the Court's website for further information on arrangements for the use of a video link in a hearing.

**JLB ALLSOP**  
**Chief Justice**  
**25 October 2016**

<sup>[1]</sup> See: [www.hcch.net/en/home](http://www.hcch.net/en/home). A Practice Handbook on the operation of the Convention can be purchased from this website.

<sup>[2]</sup> Although the examiner will usually be a judge, a registrar of the Court or other person may also be appointed for the purpose of an examination (see r 29.11 and the definition of "Examiner" in Schedule 1 of the Federal Court Rules).

<sup>[3]</sup> See s 7(2) of the Foreign Evidence Act 1994 (Cth).

## Annex 15. Guidance Note (Chief Justice of Vanuatu)

### REPUBLIC OF VANUATU



### CHIEF JUSTICE'S CHAMBERS

#### **GUIDANCE NOTE FOR REMOTE HEARINGS - VANUATU COURT OF APPEAL – SECOND SESSION MAY 2020 (VIDEO-CONFERENCING FACILITIES) DUE TO COVID – 19. ADDITIONAL TO COURT ARRANGEMENTS PROTOCOL ISSUED ON 9 APRIL 2020**

#### **INTRODUCTION**

1. This Guidance Note for Remote Hearing for the Court of Appeal of Vanuatu is an additional part to the Court Arrangements, the Chief Justice has issued on 9<sup>th</sup> of April 2020.
2. Because of the Covid-19 pandemic, two (2) Oversees Panel Members of the Vanuatu Court of Appeal Judges could not participate in the May 2020 session as they normally do due to the closing of International Borders in Vanuatu and in their own respective countries (Australia and New Zealand).
3. The unprecedented challenge to the operation of the court in the current Covid-19 pandemic, with serious public health concerns, does not allow the court to operate in the usual manner. This requires the use of alternative modes of hearing so as to maximize the continued and safe operation of the justice system while maintaining social distancing and reducing the risk of Covid-19 spreading in the community as far as possible. It is of paramount importance that

*Chief Justice Chambers, Supreme Court Office, PMB 9041, Port-Vila, Efate, Vanuatu  
Tel: (678) 26715, (678) 24970; Fax: (678) 22692*



justice is duly administered continuously and effectively without compromising public health and safety.

### **COURT OF APPEAL REMOTE HEARINGS: RATIONALES**

4. In the exceptional circumstances of the current public health crisis, the Vanuatu Court of Appeal shall conduct its proceedings and hearings by way of remote hearings through Video Conferencing Facilities ("VCF") in its 2020 Second Session in May so that the two (2) overseas Appeal Panel members could participate actively and fully.
5. This Guidance Note is issued to set out the practice for remote hearings by electronic means by Videoconferencing of appeal cases during this session.
6. The Vanuatu Court of Appeal's VCF installed for the purpose uses the Government's technology arrangement that is set up by the Office of the Government Chief Information Officer (OGCIO) within the Government networks; it is logistically feasible and appropriately secure and it will allow applicable court rules and procedures. The OGCIO will technically assist the Court of Appeal during its remote hearings in this session.
7. Whatever technology is employed for remote hearings will require the flexible application of the guidance.
8. The essence is to replicate as closely as practically possible the core requirements of court hearings. The ultimate question is one of fairness, it being understood that standards of fairness are not immutable and the requirements of fairness are flexible and closely conditioned by the legal and administrative context.
9. Remote hearings using video technology preserve most of the benefits of an oral hearing, allowing parties and their legal representatives and

the court to interact with each other on a real-time basis. Parties and their legal representatives will be expected to focus their submissions (and evidence, if applicable) so as to promote the efficient use of the technology within the shortest possible appropriate time. As even remote hearings may require some persons to be physically present in the same place, the duration of hearings should be limited to reduce public health risk to those present. All participants should keep in mind the wider public interest of maintaining social distancing as a strategy to combat the pandemic spreading.

10. Insofar as the conduct of remote hearings might impact the open justice principle, it is settled law that different balances may be struck with regard to different aspects of open justice being subject to restrictions when other competing fundamental rights are engaged. The court will be astute to ensure the appropriate balance is struck, for example by the continued public dissemination of reasoned decisions as it is always the practice of the Vanuatu Court of Appeal.
11. All participants in remote hearings will need to be sympathetic to the technological and other difficulties which might be experienced by other participants, in the setting up of and in the conduct of remote hearings.
12. As the hearing will be listed to be heard in open court, even though conducted as a remote hearing, robes should be worn by the barristers and/or solicitor advocates appearing, as well as by the Judges. All court rules and practice on court etiquette will continue to apply (save that standing at the beginning and end of hearings will not be necessary or standing when making submissions not required except if the microphones at the Bar Table are set for standing only).
13. Subject to the direction of the Judges, a remote hearing will be conducted openly where public and media can attend physically. However, in the exceptional circumstances of the threat to public health caused by the current pandemic, the impossibility of public or media access to a hearing should not ordinarily prevent the remote



hearing taking place. The decision whether, how, and to what extent, to permit public or media access to a remote hearing rests with the Judges conducting the hearing.

14. The costs of the use of VCF and any other services and/or materials used in conjunction with them will form part of the costs of the proceedings (if any), and will be subject to such costs orders as the court thinks fit.

## **PRACTICAL CONSIDERATIONS**

### **BEFORE STARTING A VIDEO CONFERENCE, PLEASE NOTE THE FOLLOWING:**

- The parties and their representatives shall attend the remote hearing by way of the Court's video-conferencing facilities.
- No person may take any form of recording of the remote hearing, other than the Court if required (through the TrueConf Feature).
- The remote hearing shall take place at [time] on [date] with a time estimate of [length].
- The remote hearing shall be conducted by the Court from Supreme Court Room No.1 at Dumbea, Port Vila, Vanuatu.
- The Court of Appeal usually begins proceedings at 9:00 a.m. in the morning and again 2.00p.m in the afternoon. A call over of appeal cases is to be on Monday 4 May 2020 at 9.00 am. However, there is a need to adapt or adjust the starting time of hearing considering the time difference between South Australia (Adelaide) and New Zealand. Technical staff at the court of appeal room must be available to assist at this hour.

- If there is a real time difference, it has to be considered and taken into account for the starting time of the hearings of the Court of Appeal in this session.
- The court generally requires at least time in advance for videoconferencing for testing purposes before a hearing begins.
- The test must be conducted in the Court room and with the system that will be used for the scheduled hearing and checked with the remote judges' location sites in Adelaide and Auckland if everything is alright. It is recommended that technical staff and someone from the court be present for the test.
- To ensure a seamless experience on each day of court sitting, it is important that the court room and judges' rooms or locations in Adelaide and Auckland are free of clutter and noise.

**ON THE DAY(S) OF THE VIDEOCONFERENCE, PLEASE NOTE THE FOLLOWING:**

- The court will connect the videoconference at least 15 minutes before the start of the scheduled hearing to allow time to work through any unexpected connection problems. The court will also test all microphones and camera angles. It is important that technical staff at the court room site be present at this time.
- While the proceeding is in progress, technical staff at the court room site must remain available by telephone in case of a problem.
- As the Court of Appeal session is scheduled for 2 weeks (multiples days), the court will connect at least 15 minutes early each day or each time required.



### FINAL NOTE

- A telephone conference link is also set up as a stand-by or backup system in the Courtroom (if necessary).
- Another video conference link is set up in the Supreme Court conference room at the Supreme Court Registry Office with a telephone conference link set up as its backup for the judges' communications and discussions during the appeal period.

15. This Guidance Note will take effect on 4 May 2020. It may be subject to amendment and will continue until further notice.

Dated this 28<sup>th</sup> of April 2020.

  
**Vincent Lunabek**  
Chief Justice of the Supreme Court of Vanuatu



## Annex 16. Additional Sources of Information

**The American Bar Association** has put together resources from the Standing Committee on Legal Aid and Indigent Defense against the COVID-19<sup>13</sup>:

[https://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defense/?\\_cpx\\_camp\\_rule\\_id=3565](https://www.americanbar.org/groups/legal_aid_indigent_defense/?_cpx_camp_rule_id=3565)

**National Center for State Courts** has a site, Coronavirus and the courts<sup>14</sup> at

<https://www.ncsc.org/pandemic>

**The Courts of the State of Michigan**<sup>15</sup> at <https://courts.michigan.gov/news-events/covid19-resources/pages/default.aspx>

**The Texas Judicial Branch** maintains a site on Zoom Information and YouTube Support<sup>16</sup> at

<https://www.txcourts.net/electronic-hearings-zoom>

**Law Society of New South Wales Journal**<sup>17</sup> at <https://lsj.com.au/articles/the-courts-and-the-pandemic-the-role-and-limits-of-technology/>

**Remote Hearings Guide**; Californian Commission on Access to Justice as adapted for Conference of Chief Justices, Conference of State Court Administrators, National Centre for State Courts<sup>18</sup> at

[https://www.ncsc.org/\\_\\_data/assets/pdf\\_file/0018/40365/RRT-Technology-ATJ-Remote-Hearings-Guide.pdf](https://www.ncsc.org/__data/assets/pdf_file/0018/40365/RRT-Technology-ATJ-Remote-Hearings-Guide.pdf)

**Coronavirus & the Courts. National Centre for State Courts.** (2020) Coronavirus and the Courts: Links to State Courts COVID-19 Websites<sup>19</sup>

<https://public.tableau.com/profile/ncscviz#!/vizhome/StateCourtResponsestoCOVID-19/CovidTheCourts>

**Remote Courts Worldwide** website, hosted by the Society for Computers and Law, funded by the UK LawTech Delivery Panel, and supported by Her Majesty's Courts & Tribunals Service, United Kingdom. The site was developed in response to the Covid-19 pandemic to provide the court community internationally with a systematic way to exchange and deposit news of operational systems, plans, ideas, policies, protocols, techniques, and safeguards around RCP's. <https://remotecourts.org>

<sup>13</sup> American Bar Association. (2020) Standing Committee on Legal Aid and Indigent Defense. (American Bar Association) [https://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defense/?\\_cpx\\_camp\\_rule\\_id=3565](https://www.americanbar.org/groups/legal_aid_indigent_defense/?_cpx_camp_rule_id=3565)

<sup>14</sup> National Center for State Courts. (2020) Coronavirus and the Courts. NCSC and Thomson Reuters. <https://www.ncsc.org/pandemic>

<sup>15</sup> Courts of the State of Michigan. 2020. COVID-19 News and Resources. Michigan Judiciary. <https://courts.michigan.gov/news-events/covid19-resources/pages/default.aspx>

<sup>16</sup> The Texas Judicial Branch. 2020. Court Coronavirus Information: Zoom Information and Youtube Support. <https://www.txcourts.net/electronic-hearings-zoom>

<sup>17</sup> Legg, M., and Song, A. 2020. The Courts and the Pandemic: *the role and limits of technology*. LSJ Online, Law Society of New South Wales Journal. <https://lsj.com.au/articles/the-courts-and-the-pandemic-the-role-and-limits-of-technology/>

<sup>18</sup> California Access to Justice Commission. 2020. Remote Hearings and Access to Justice: *During COVID-19 and Beyond*. National Center for State Courts. [https://www.ncsc.org/\\_\\_data/assets/pdf\\_file/0018/40365/RRT-Technology-ATJ-Remote-Hearings-Guide.pdf](https://www.ncsc.org/__data/assets/pdf_file/0018/40365/RRT-Technology-ATJ-Remote-Hearings-Guide.pdf)

<sup>19</sup> National Centre for State Courts. 2020. Coronavirus and the Courts: *National Centre for State Courts Data Visualisations*. <https://public.tableau.com/profile/ncscviz#!/vizhome/StateCourtResponsestoCOVID-19/CovidTheCourts>