



Virtual Courtroom Protocols

During the COVID-19 pandemic, courts and tribunals across Australia have quickly embraced virtual proceedings. For many practitioners, this is a new and largely uncharted way of conducting litigation. Judges are increasingly directing that parties either propose or agree a protocol for virtual hearings. To be effective, that protocol should address at least the following matters clearly and succinctly.

Parties

1. Each party to the proceeding should be clearly identified, including their capacity (such as plaintiff / defendant / cross-claimant, etc).

Legal representatives

2. Counsel and any instructing solicitors (not just their firm) appearing for each party at the virtual hearing should be identified—each with a *direct* contact number (not just a central or reception line) and email.
3. It should be kept in mind that having too many people appearing for a party in a virtual hearing may put pressure on the court's server and so put at risk the stability of the virtual platform. The number of instructors should therefore be kept to as efficient a minimum number as possible.

Hearing dates and platform

4. The date and time for the hearing should be stated (including any applicable notes, such as "not before" a certain time). The platform for the hearing (phone or video weblink) should also be specified.

Hearing plan

5. Plans are important for any hearing, but for virtual hearings this is especially so.

6. If the hearing is listed for multiple days then a detailed trial schedule should set out a timetable (and not just the estimated length of time) for opening submissions, objections, lay witnesses, expert witnesses, and closing submissions.
7. For shorter hearings, you should provide a list of witnesses and the estimated time for any oral evidence.
8. Remember that there is an increased risk of interruption and delay with virtual hearings, so the hearing plan should factor this into consideration and be conservative. For the same reason, each party should give serious thought to what is relevant and essential to the oral presentation of their case so as to avoid wasting valuable time.

Witnesses

9. For each witness, the parties should specify the manner in which it is proposed that evidence will be given at the virtual hearing. Each party should ensure that the court has direct contact details for each of their witnesses.
10. If oral evidence is to be given in chief, or if a witness is required for cross-examination, then the protocol should address the following:
 - a. Whether the evidence will be given by video-link or telephone.
 - b. Where the witness will be located (eg, counsel's chambers, solicitors' conference room, or the witness' residence).
 - c. Whether the assistance of an interpreter is required, and if so where the interpreter will be. Parties should also state the details of the interpreter, including their accreditation.
 - d. Who will be present with the witness in the room during the giving of oral evidence.
 - e. If there will be expert witnesses, whether there will be concurrent evidence, and how that will be achieved (for example, whether the witnesses will be in the same location or not).

11. Parties should also keep in mind that, if it is proposed to take witnesses to hard copy documents (whether in a Court Book or otherwise), then those documents should be available at the location where the witness is giving evidence.
12. If it is proposed that documents will (or may) be displayed or sent to the witness electronically during the hearing, then the means of so doing should be agreed (eg, by using any "shared screen" facility, or by sending the documents to the court, parties, and witness electronically). If a party considers it may face issues concerning the showing of documents to a witness in accordance with the *Evidence Act 1995* (NSW), then consideration should be given in advance to how the party will comply with the Act.
13. Witnesses and parties should be aware that a virtual court room is and remains a *court*, and so they should appear and conduct themselves accordingly. Each witness should confirm, in advance of the hearing that no person (other than a legal representative or interpreter, as necessary) will be present in the room while the witness is giving evidence (other than a party in the proceeding – and in that case that party should be within view on the video screen). The oath or affirmation will be administered by the court officer at the physical courtroom, and all those present (whether physically or virtually) should obey the usual rule of remaining silent and ceasing any work while this occurs.

Compliance with public health and safety requirements

14. All participants in the virtual courtroom hearing must comply with guidelines and directives published by the Australian Government Department of Health and NSW Health (as revised from time to time) and applicable court protocols (such as in relation to social distancing) and practice notes.

Transcripts and testing

15. Unless the parties arrange (at their own expense) for a private transcription service, the transcription of the virtual hearing will usually be undertaken by the court through the facilities in the physical court room. The parties should check with the court in advance what the arrangements are for the transcript, and should be mindful that some web facilities may not be suitable for transcript

purposes. Parties should also be aware of the increased possibility of delays in obtaining transcripts during or following a hearing.

16. Particularly for telephone hearings, practitioners should identify themselves by their surname before speaking in order to assist court reporters accurately to transcribe the proceeding.
17. Practitioners should refer to the court's website for details as to the steps to be taken for connection to the virtual court room. Parties should also allow time in advance of the hearing to establish and test the connection to the virtual court room. At times, the volume of traffic on the court's servers may mean that there is delay in establishing a connection.

Further information

18. Members of 7 Wentworth Selborne continue to appear in virtual hearings in all settings (directions, mediations, interlocutory hearings, final hearings, and appeals) across a range of jurisdictions, and are familiar with all virtual hearing platforms, including telephone, Microsoft Teams, Cisco Webex, and Zoom.
19. We can assist in all necessary arrangements for virtual hearings and conferences, and are familiar with the many changes that have been made to court practices and protocols. We are also familiar with, and can advise upon, the many changes in law enacted across a range of practice areas in response to the COVID-19 pandemic.
20. For further information please contact our Clerk, Simon Walker on (02) 8224 3001 or swalker@7thfloor.com.au.