

**Supreme Court of the Australian Capital Territory
Practice Direction 2 of 2020
Special Arrangements in response to COVID 19**

General

1. This Practice Direction replaces practice direction 1 of 2020 dated 28 May 2020 and applies until further notice.
2. Where, in relation to a proceeding, any of the following arrangements would otherwise conflict with a provision of the Court Procedures Rules 2006 (CPR) and subject to any other order of the Court, the presiding judge will make any order necessary under rule 6 of the Court Procedure Rules to ensure that the following arrangements apply.

Attendance at the Court

3. All persons entering the courthouse must:
 - observe social distancing (1.5 m) and hygiene practices (frequent hand washing/sanitising); and comply with the order made by Acting Chief Justice Elkaim and Chief Magistrate Walker on 6 August 2020 (excluding certain categories of persons from the courthouse). The Order may be accessed at https://www.courts.act.gov.au/_data/assets/pdf_file/0011/1507970/200331-ORDER-s-50-Court-Procedures-Act-2004.pdf.
4. If a person is excluded from the courthouse but has also been required to attend Court by compulsory process (e.g. on bail, in response to a subpoena or summons), the person must not attend and must contact the Registry on sclisting@courts.act.gov.au or telephone 6205 0000 in advance of the required attendance. The person must then comply with any Registry direction concerning the conflicting requirements.

Persons on bail

5. Generally, persons on bail should attend court only for substantive hearings. If bail conditions require attendance other than for substantive hearings, the practitioner representing the person on bail should seek the DPP's consent to the person's non-attendance and notify the Court of any agreement about non-attendance. Unless the parties are advised otherwise, they may assume that the Court has varied the bail conditions in accordance with the notified agreement.
6. Any applications for bail or bail variations, where the parties' consent to the proposed orders, will be attended to in Chambers. The application is to be filed electronically to sclisting@courts.act.gov.au and copied to the other party. The other party is to advise the Court within 1 business day of the service of the application whether there is consent to the application.

Filing

7. Documents are to be filed only by the e-lodgement portal (where available for civil matters only) or at the public counter at the courthouse. Practitioners are required to register for the e-lodgement portal and file all available documents through that platform (see <https://www.courts.act.gov.au/forms/elodgment>). Documents are no

longer to be lodged by email unless leave is granted by the Registrar pursuant to Rule 6121.).

Service

8. If a person filing a document is required under the CPR to personally serve the document and for reasons related to the COVID 19 emergency the document cannot be served personally the filing party must:
 - file an affidavit supporting substituted service in accordance with Rule 6460 of the CPR and set out in the affidavit how service is sought to be affected;
 - if the affidavit is unable to be lodged at the same time as e-lodgement, file the affidavit at sclisting@courts.act.gov.au and clearly mark the affidavit with the file number and name and the words 'affidavit supporting substituted service';
 - the filing party will not be required to file an application in proceeding (form 6.2).
9. The Registrar will attend to the application in chambers; it will not be placed into the applications list unless the Registrar deems it necessary.

Information to facilitate remote contact with the Court

Mediations

10. All civil mediations will proceed as usual. If required because a practitioner or party is ill, isolated or for another good reason, AV facilities are available in mediation suites. The number of participants safely accommodated in the mediation suites are limited. Attendance is to be limited to legal representative and those with the necessary authority to provide instructions to the representative. Others wishing to participate may do so by the AV facilities.

Criminal Case Conferencing

11. All criminal case conferencing will proceed as usual. Persons in custody will attend. In the event the transportation becomes unavailable, they will participate from a remote room at the AMC.

Magistrates Court appeals

12. Unless otherwise ordered, appeals from the Magistrates Court will be conducted in person. Parties seeking another order must apply to the Registrar by email to sclisting@courts.act.gov.au and simultaneously advise the other party by email of the application.

Registrar's Lists

13. The Registrar and Deputy Registrar's lists will continue to be conducted in person. If a person is unable to attend in person because they are ill or for another good reason, they may attend by video link or by phone. Legal representatives and self-represented parties who are seeking to appear by telephone or by video link are to send an email to sclisting@courts.act.gov.au no later than 1pm on the business day before the listing

The email is to contain, the matter number and name, and the name, telephone number and email address of the representative. See paragraph 16 above for details that are required to appear by video link.

Civil and Criminal applications before a Judge or Associate Judge

14. Unless otherwise ordered, all pre-trial criminal applications and civil applications heard by a Judge or the Associate Judge will be in person. Parties seeking to attend by video link or telephone must apply to the Registrar by email to sclisting@courts.act.gov.au and simultaneously advise the other party by email of the application.

Civil and criminal trials

15. Jury trials have recommenced as at 15 June 2020. Jury trials will be limited by the ability to ensure a safe environment and the nature of the matter.
16. Civil hearings will continue as listed.
17. No later than 4pm on the day prior to the commencement of a trial or hearing, the parties are to exchange by email any documents that they may seek to tender at the hearing and provide a copy of such documents to the associate of the presiding judge. If the practitioner does not know the identity of the presiding judge, they should contact the Registrar by email at SCRegistrar@courts.act.gov.au. In circumstances where written submission are sought by the Court, they are to be filed electronically in the above manner and copied to the Judge's Associate.

Sentencing Hearings

18. Unless otherwise advised by the Court, a sentencing hearing will be conducted in person (or by video link from the AMC). If an offender is unable to attend in person because of COVID 19 reasons, they or their legal representative must at least 48 hours prior to the sentencing hearing advise the Court by email to sclisting@courts.act.gov.au and propose alternative arrangements. Unless the Court advises otherwise, the offender is required to attend in person.
19. No later than 4pm on the day prior to the commencement of the hearing, the parties are to exchange by email any documents that they may seek to tender at the hearing and provide a copy of such documents to the associate of the presiding judge. If the practitioner does not know the identity of the presiding judge, they may contact the Registrar by email at SCRegistrar@courts.act.gov.au

Court of Appeal

20. Court of Appeal sittings will be heard in Courts 3 and 7 to take advantage of their greater dimensions. Legal representatives and litigants in person may address the Court from the bar table or remotely. The default position is that submissions made remotely will be by telephone over a 'land line'. Audio visual appearances will only

occur if the Court is satisfied the connection is reliable. Appearance by mobile phone will be considered only where a land line is unavailable.

21. All documents, including authorities, upon which the parties intend to rely must be filed electronically at least 3 days before the hearing to sclisting@courts.act.gov.au . No documents are to be handed up in court.
22. Unless otherwise ordered, where a party is in custody, the party will view the proceedings remotely from the Alexander Maconachie Centre.
23. In civil matters and criminal appeals where the party is not in custody, the parties may be present in court, regardless of whether their legal representative is appearing remotely.
24. Prior to the commencement of the appeal, the Court may provide the parties with dot point guidance on the matters that the Court considers are likely to be of most assistance.
25. Following the appeal hearing, the Court may allow the parties to address matters raised by further short written submissions. If so, submissions will usually need to be provided within 24 hours, by email to the associate to the presiding judge.

Communicating while in a Courtroom

26. To enable the maintenance of social distancing, mobile telephones may be used by counsel, instructing solicitors and clients to give and receive instructions confidentially during proceedings, provided that the telephones are muted.

Subpoena material

27. Subpoena viewing is by appointment only. Two people will be permitted into the subpoena viewing room at a time. If a self-represented party seeks to view material, one person plus a supervising court staff member will be permitted into the subpoena room at a time.
28. Requests for an appointment should be made by phone to the Registry on 6205 0000. Practitioners and parties should make appointments to view subpoenaed material only if the matter is scheduled for hearing in the subsequent 4 weeks or is urgent.

Practitioners, litigants and witnesses who are isolated

29. Generally, proceedings will not be adjourned because a practitioner, litigant or witness is isolated (rather than ill). If the nature of the proceeding precludes electronic participation by the practitioner, the practitioner should arrange for another practitioner to represent the litigant. Where a litigant is isolated, the Court will accommodate their need to communicate with their practitioner. Witness evidence can be taken remotely, via the witness's smart device.

30. Generally, if the accused is in custody and cannot be transported to Court, the trial will be adjourned. However, practitioners should consider whether the trial can proceed while the accused participates from a remote room at the AMC.
31. For sentence proceedings and Magistrates Court appeals involving a person in custody, if the person in custody cannot or does not wish to be transported to Court, the prisoner may participate from a remote room at the AMC.

Practitioners, litigants and witnesses who are ill

32. Where reasonably possible, ill practitioners should arrange for another practitioner to represent the litigant.
33. Where it is undesirable to proceed in the absence of a litigant or witness who is ill, an adjournment application should be made by email to sclisting@courts.act.gov.au or, in the case of an urgent application (hearing scheduled to commence within 2 working days), by telephone to the Registrar on 6205 0000.

Appearing by Video link

36. In circumstances where a legal representative is appearing by video link, they are required to announce their appearance in the usual way. There is no need to stand when the judicial officer 'comes onto the bench' legal practitioners may acknowledge the judicial officer by a short nod of their head. There is no need for practitioners to robe.
37. Information on how to join a webex meeting can be accessed at:

<https://www.courts.act.gov.au/supreme/about-the-courts/news/response-to-the-covid-19-virus/connecting-to-a-court-video-call>

By directions of the Chief Justice and Judges



Jayne Reece
A/g Registrar
10 September 2020