

COVID-19: Appearing in Courts and Tribunals for legal practitioners

FACTSHEET

Updated 19 April 2020

Each Court and Tribunal is providing regular updates about the process for appearing in proceedings. The best sources for those updates are the Court websites. Updates specifically about the impact of Covid-19 for practitioners is also updated at the following [Law Society of New South Wales](#) and [NSW Bar Association](#) links.

Local Court arrangements are also detailed in a [Memorandum](#) from the Chief Magistrate and the Court has also released further [guidelines](#) about the conduct of matters and its virtual courtroom.

The [Children's Court](#) website has published guidelines regarding the management of matters by way of Public Notices.

The **District Court** has released the following [guidelines](#) to for appearances.

Supreme Court [guidelines](#) can be found here and include a link to virtual courtroom appearances.

The [Family Court](#) and Federal Circuit [Court](#) have published guidelines for practitioners which are regularly updated on the Court websites.

Annexures

Annexure "A" – Information about appearances in the Children's Court

Annexure "B" – Information about appearances in the Federal Circuit and Family Courts

Annexure "C" – Information about using process servers

Annexure "D" – Virtual Courtroom Meeting Spaces Information Sheets for the Children's Court of NSW.

Annexure "E" – Uplifting Subpoenaed Documents (Summary of Legal Aid Bulletin 19 April 2020)

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This fact sheet provides some practical tips to assist you to manage litigation when appearing remotely.

When appearing by phone

- Announce your appearance and let the Court know if your client is also on-line.
- Assist the Court by alerting to Court if self-represented party is on-line but has not announced their appearance.
- Ensure the Court has your direct number and email and that you have a number and email for the person you need to contact if the line drops out.
- Ensure the Court has your client's contact details.
- If your client is on-line, make sure you both have a method of contacting each other if a line drops out, such as email or a backup phone number.
- Know in advance if you are dialling in to a central number or if the Court telephoning you.

The following applies to you and your client:

1. Ensure you have sufficient charge on your devices as hearings can go for several hours.
2. Attend from a place where you will not be interrupted.
3. Set up so you can work hands free with your phone and maintain good reception.
4. Do not put your phone on speaker.
5. When you dial in, keep your phone on 'mute' until such time as you are asked to speak.
6. Do not put the phone on hold under any circumstances. For example, if your matter is stood in the list for 30 minutes, do not put the phone on hold for 30 minutes.
7. If the line is congested and you cannot hear anything or get through to the Court, email the person managing the appearance advising of your difficulties. Do not keep trying to dial into the Court.
8. Please remain patient, you will receive specific instructions from the Court about when to dial in.
9. Be aware that as in an open Court, people who are not parties may also be on-line.
10. Ensure the Court and other parties have all of the documents you will refer to or rely on before proceedings commence.
11. Have the details of other parties and an agreed electronic means of sending documents that have not been received or which may arise during proceedings.

The following applies if you are using a translator or are calling a witness:

- In advance of the appearance, discuss with the translator/witness the technology they will require to attend remotely
- Ensure the translator/witness knows how they will be invited to the proceeding and as far as possible, when this will happen
- Provide the translator/witness with the information in this Factsheet about appearing remotely, such as to mute their phone and not to leave their phone on hold

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- Ensure the translator/witness has any documents they require prior to the hearing
- Ensure the translator/witness is aware of the protocol if the line drops out
- Ensure the Court is aware if your party or an unrepresented party is using a translator
- Provide the court and your client with the necessary contact details for the translator, including how documents can be provided to them.

Tips for appearing using AVL

Courts and Tribunals are managing matters using a combination of phone and various AVL technologies. Court updates should tell you what technology you need. The Federal Circuit Court is currently using Microsoft Teams for appearances.

The following are some things to consider when appearing using AVL:

- Announce your appearance and let the Court know how your client will be participating.
- Communicate with your client in advance about the kind of AVL technology they will need to download.
- Have your devices on charge as hearings can run over several hours.
- Have a place in your home where you will not be disturbed, and the proceedings will not be interrupted.
- Check your technology extends to the space you are intending to use in your home.
- Set up so you can work hands free with your phone/AVL and maintain good reception.
- Ensure the Court and other parties have all of the documents you will refer to or rely on before proceedings commence.
- Have the details of other parties and an agreed electronic means of sending documents that have not been received or which may arise during proceedings.

Tips for sharing documents

- Make sure the pages of all documents, including annexures, are numbered in numerical order and that the Court and each party has a copy with the same numbering.
- Clearly tab/mark the material you intend to rely on and make sure you know the packet number and the tab (for example F1.3 (Father packet number 1, document 3) so that the document can be given to the Magistrate/Judge by the Associate/Court Officer.
- Proceedings will run more smoothly if there is an agreed tender bundle of all documents that parties want the Court to read. This bundle needs to be numbered and emailed to the Court who can print it. If you can't reach agreement for any reason, send your own numbered bundle to each of the other parties and to the Court.

Witnessing and signing legal documents

If you do not have access to scanning technology the Court will temporarily allow names to be typed in the signature space on a document or form.

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Court will also temporarily accept the filing of unsworn affidavits on the understanding that they may need to be sworn or affirmed when circumstances allow. It is recommended that you file with a comment in the JURAT “unable to be witnessed due to the current restrictions”.

Please note that affidavits which form part of divorce applications are still required to be witnessed in the usual way.

JPs at places like post offices and banks may be prepared to witness signatures if documents can be sent to clients.

If you are filing an unsworn legal document as an added precaution, you might ask your client to send a written statement to the effect:

My affidavit dated X, consisting of X number of pages and X number of annexures marked A – Z, was prepared by me and prior to filing has been read/shown to me and I have instructed my solicitor to file an unsworn copy. I understand that I may be required to formally swear/affirm the affidavit at some time in the future and agree to do so.

If your client is using the services of a translator, discuss with the interpreter an amendment to their statement to include; a) that they have explained the document to the client, b) the document could not be witnessed due to the current restrictions, c) they were satisfied that the client understood the document at the time the client instructed their solicitor to file the document unsworn/affirmed.

ANNEXURE "A" Children's Court of NSW

Electronic filing of documents

The Children's Court is encouraging parties to file documents electronically but if approved by the Registrar, you may be able to post documents to the Registry for filing.

The Public Notice No. 3 released by the Children's Court indicates that the Court will accept unsworn affidavits and unsigned documents if it is not possible to obtain an electronic signature. Children's Court arrangements - new care applications

Appearances in the Children's Court

The Court has now indicated that Dispute Resolution Conferences in Surry Hills and Parramatta will commence at either 9:00am and 1:00pm. Dispute Resolution Conferences are being conducted via video.audio conference.

Legal Aid NSW had made a number of changes to the way it is delivering services at the Children's Court in order to respond to the centralisation of all new care matters.

The Children's Court now intends to de-centralise the listing of new care matters so that they are dealt with at Local Hubs, being the Broadmeadow, Campbelltown, Lismore, Parramatta, Port Kembla, Surry Hills and Woy Woy Children's Court. More information will be provided as to the new processes as it comes to light.

Courtroom meeting spaces (CMS) have now been set up in all locations where Children's Magistrates continue to sit. ie. Parramatta, Surry Hills, Campbelltown, Port Kembla, Woy Woy, Broadmeadow and Lismore.

The technology allows prosecutors and legal practitioners to appear by video conference from any device with an unrestricted internet connection provided they comply with the conditions set out in the attached Courtroom meeting space Factsheet. At this stage this technology is not available to parties whether represented or not. Registry staff will continue to dial in parties by phone as required.

Practitioners can obtain blanket approval to appear via these Meeting Spaces. More information about this technology can be found at Annexure "D".

Inspecting subpoenaed material

There have been no new Practice Notes or directions given about the inspection of subpoena material in the Children's Court. However [Practice Note 5](#) provides that the standard orders issued by the Children's Court in relation to subpoenas include an order for uplifting and photocopy access.

The Court has advised that practitioners who wish to view or uplift subpoenaed documents will need to make an appointment and the Registrar will need to make sure that suitable arrangements can be made to facilitate this.

ANNEXURE "B" Federal Circuit and Family Court of Australia

Electronic filing of documents

The Federal Circuit and Family Courts are now requiring that all documents be filed electronically. Contact the Court regarding the filing of new matters, which should only be filed if urgent or there are exceptional circumstances.

In the Family and Federal Circuit Courts to facilitate matters being dealt with electronically, legal practitioners and parties must efile all documents on the [Commonwealth Courts Portal](#)

If documents are unable to be efiled, then they should be emailed to the relevant registry (at the registry email address available on the Court's website) for filing.

Hard copies of documents should not be posted or delivered to the registry, except in the limited circumstance where a party is unrepresented and unable to email documents.

Annexures to affidavits - Family Court

In the Family Court, unless total annexures exceed more than two centimetres in width, documents referred to in affidavits should be attached to the affidavit when it is electronically filed or emailed to the registry.

Applications to file documents in excess of two centimetres in width should be made to the registry case co-ordinator who may liaise with the duty registrar or docket judge as the case requires. If the application is acceded to, parties will be required to email those documents (or if email or other electronic means is not possible, to provide a USB stick containing those documents) to the registry.

Inspecting subpoenaed material

If you need to inspect subpoenaed material, you will need to phone the Registry where the documents are held and make an appointment.

In the **Family and Federal Circuit Courts**, access to subpoenaed material is being limited to matters that have a date for defended hearing in the next four (4) weeks or are otherwise urgent so when you phone the Court:

1. have to hand the orders giving access/leave and
2. know the next court date and what the matter is listed for on that date.

Some solicitors have obtained an order granting leave to inspect outside that time frame to get around this restriction. The Court seems willing to do this for the purpose of the preparation of an agreed tender bundle.

At the time of this Factsheet update, the Sydney Registry has made orders for documents to be uplifted and removed from the Registry for the purpose of copying, in some circumstances. To support a request to uplift, the Court may require an Undertaking as to the documents to be uplifted, for how long, how and by who they will be kept safe and that they will be returned in the same condition as when uplifted.

At this time, as a general rule the Parramatta and Newcastle Registries are not making orders to uplift documents however if you are wanting an order to uplift documents an Undertaking to the same effect, may be of assistance to the Court.

Seek uplift orders where possible so that material can be taken back to your office to copy. The Court may require a specific order similar to: “*Leave be granted to the ICL to uplift and **remove from the Court Registry for a period of X days** subpoena material for the purposes of copying.*”

Court listings, hearings and mediations

If your matter cannot be managed other than by parties appearing in person or using an alternative, the court may adjourn your matter, unless there are exceptional circumstances.

Short listings – half day or less

If you have a matter listed for half a day or less the Court will try and hear your matter either by dealing with it on the papers, by phone appearance or by AVL – or a combination of these.

Urgent matters

Duty Judge and Registrar contact details for urgent matters are available on the Court website and are updated daily.

Any urgent requests for adjournments or other urgent queries in the Federal Circuit Court can be addressed to NORTeam@federal.gov.au or you can contact the NOR Team duty contact for the day as published on the Courts website.

ANNEXURE "C" Process Server Information

<p>DocServ</p> <p>LOCATION: SYDNEY</p> <p>STATUS: OPEN</p>	<p>Correspondence received 24 March 2020:</p> <p>“We would like to advise you that Docserv while observing all government requirements is fully operational.</p> <p>For those of you working from home you can continue to email instructions or upload instructions including drag and drop via our online portal. Instruct via Portal and other Portal features are at the base of this email.</p> <p>Services we are providing which may be of benefit to you during this time:</p> <ol style="list-style-type: none">1. Cheque drawing services (Conditions apply)2. Print and post service3. Posting service4. Mail collection service along with scanning and emailing the documents to the addressee. <p>Please contact our office for further information in relation to the above and if there are any other services that may assist with your businesses needs, please do not hesitate to reach out.</p> <p>The Team @ Docserv 02 9212 4420 service@docservers.com.au Lvl 13, 82 Elizabeth Street, Sydney, NSW, 2000”</p>
<p>Rapid Process Service</p> <p>LOCATION: SYDNEY</p> <p>STATUS: OPEN</p>	<ul style="list-style-type: none">• Still operating.• Agents will try and hand docs to people and attempt service normally if possible.• If people won't physically take documents, the agent will say “I'm placing the docs in your presence - you've been served”.• In regard to leaving documents somewhere, they need to confirm the person still resides/operates from there – e.g. business search to verify that a person actually works at this place or it is registered business before they leave documents there.

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Rapid Process Service

LOCATION: NEWCASTLE

STATUS: OPEN

- Still operating.
- Agent will try and hand documents to people and attempt service normally if possible. If they will not physically take the documents, then agent will say “I’m placing the documents in your presence - you’ve been served”.
- Court can/will specify whether rules/guidelines have been implemented. Accordingly, we provide our instructions or convey what the Court’s rules/guidelines are.
- In regard to leaving documents somewhere, they would need to confirm person still resides/operates from there – e.g. business search to verify that a person actually works at this place or it is registered business before they leave documents there.

ANNEXURE "D" Virtual courtroom meeting spaces

[Department of Communities and Justice - Courtroom meeting space \(Quick reference guide\)](#)

[District Court - Virtual court practitioner user guide](#)

ANNEXURE "E" Uplifting Subpoenaed Documents (Summary of Legal Aid Bulletin 19 April 2020)

[Uplifting Subpoenaed Documents \(Summary of Legal Aid Bulletin 19 April 2020\)](#)