



Land and Environment Court

of New South Wales

COVID-19 PANDEMIC ARRANGEMENTS POLICY

Commencement

1. This Policy commences on 10 December 2020. It replaces the COVID-19 Pandemic Arrangements Policy made on 8 July 2020.

Purpose

2. The purpose of this Policy is to provide guidance about court attendances in response to the COVID-19 pandemic. The Policy also identifies known risks to users of the Court and outlines the Court's strategies to mitigate those risks.

Application

3. The Policy applies to all attendances at the Court.

Filing documents and applications to the Court

4. The parties and their representatives are to comply with the following procedures for filing documents and applications in civil proceedings, tree disputes and criminal proceedings.

Civil proceedings (excluding tree disputes)

5. Parties in matters in Class 1, 2 (excluding tree dispute applications), 3, 4 or 8 are required to use Online Registry and Online Court where they are entitled and registered to do so. Both Online Court and Online Registry operate 24 hours a day so that parties can use them at any time.
6. Parties are encouraged to file originating process, including an application, summons or notice of appeal commencing proceedings, notices of motion, notices to produce and applications for the issue of subpoenas by Online Registry.

7. Online Court is to be used to seek directions in proceedings (including listing matters for conciliation conferences, mediations and hearings) and access orders for subpoenas and notices to produce.

Tree disputes

8. Parties in Class 2 tree disputes are, whenever practicable, to file the application commencing the proceedings and supporting documents by Online Registry, by email to the Court using the specific email address for tree disputes (treedisputefilings@justice.nsw.gov.au), or by post to the Court Registry.
9. Parties in Class 2 tree disputes are, whenever practicable, to file with the Court their written statements of evidence, expert reports, photographs, plans, and submissions by email to the Court using the treedisputefilings@justice.nsw.gov.au email address or by post to the Court Registry, and to serve these documents on the other party, at least 14 days prior to the hearing.
10. Parties can seek directions and access orders for subpoenas and notices to produce by email to the Court using the lecourt@justice.nsw.gov.au email address, sending a copy of their email to the Court to the other party in the proceeding at the same time. A party may likewise email the Court with their response to the applying party's application to the Court, but should do so within 24 hours of receiving the applying party's email.

Criminal proceedings

11. Class 5 proceedings are to be commenced in accordance with the amended Practice Note Class 5 Proceedings dated 10 December 2020. The Interim Protocol for Commencing Class 5 proceedings is revoked.
12. Class 6 and 7 criminal appeals are to be commenced by filing the relevant summons commencing the appeal either by delivering it to the Court Registry or via email to LEC_criminalfilings@justice.nsw.gov.au.
13. Parties to Class 5, 6 and 7 criminal proceedings and appeals can seek directions and access orders for subpoenas and notices to produce by email to the Court using the LEC_criminalfilings@justice.nsw.gov.au email address, sending a copy of their email to the Court to the other party in the proceeding at the same time. A party may likewise email the Court with their response to the applying party's application to the Court, but should do so within 24 hours of receiving the applying party's email.

Attending the Court Registry

14. Physical attendance at the Court Registry should not be necessary in most instances if the above requirements for filing documents and applications with the Court are observed.

15. If, however, it is necessary to attend the Registry to file hard copy documents or to provide without prejudice material for a conciliation or mediation, the Court will continue to provide a drop off/pick up service at the Registry for those documents. The desk will be regularly cleared and the documents processed by Registry staff and the parties contacted once their documents are processed.
16. All other matters requiring attendance at the Registry on Level 4 (such as viewing or uplifting subpoena and notice to produce documents) will be by appointment only. If you require an appointment at the Registry you are to call the court on 9113 8200 and you will be provided with a time when you are to attend. If you attend the Registry without an appointment or the Registry has reached the maximum amount of people that allows for social distancing, you will be scheduled for an appointment for another time.

Staged return to face-to-face attendances

17. As government restrictions continue to ease, the Court will implement a staged return to face-to-face hearings, conciliation conferences and mediations. The first stage will allow in-court and on-site hearings, conciliation conferences and mediations that can comply with current social distancing and public gathering requirements and are requested by the parties. The second stage allowing listings with multiple parties, witnesses and public attendance will occur only after social distancing and public gathering requirements are removed.
18. The Court will continue to case manage each matter filed in the Court to determine the appropriate mode of conduct of the hearing, conciliation conference and mediation. The mode by which the listing will be conducted will be determined on a case-by-case basis by the Registrar, List Judge or the presiding judge or commissioner.
19. Some matters, at the request of the parties or by reason of not being able to comply with social distancing and public gathering requirements, will be conducted in the virtual courtroom environment. Other matters will be conducted using a hybrid model, where part of the attendance may occur face-to-face in the courtroom or on site and other parts are conducted by virtual courtroom methods. For example, a hybrid model for hearings, conciliation conferences and mediations could be used to allow site inspections to be conducted and the balance of the listing to be conducted by telephone, AVL or MS Teams. Finally, some matters will be suitable to be conducted wholly as face-to-face attendances in a courtroom.
20. Case management of each matter will also continue to ensure that the number of people in the courtroom and in the Court's building is minimised so as to comply with social distancing and public gathering requirements.

Attending the Land and Environment Court building

21. In order to reduce congestion within the building and minimise groups of people gathering and waiting for lifts, the start and finish times of court matters will vary from the standard court hours. This includes the timing of court breaks during the day. The start and finish time will be communicated three business days ahead of the listing by the court registry. Matters will be staggered at 20 minute intervals, commencing from 9:00am. Matters that commence later in the day may continue to sit until 5:00pm.
22. The Court will attempt to accommodate any practitioner who has difficulties with proposed start times, although it cannot guarantee that it will be able to do so. Practitioners who have difficulty with particular start times should notify the Registrar by Online Court or by email using lecourt@justice.nsw.gov.au.
23. It is important to remember that the Court is a tenant in a building from which other businesses operate. As such, the Court does not have the ability to control or restrict the number of people in the building, lifts or in the ground floor foyer. It is important that you consider this in respect of any listing time you are allocated for your attendance at the Court as there may be queues to the lifts due to social distancing requirements.
24. An assessment of the entire court premises has been carried out, including an assessment of foot traffic, pathways, lifts, seating within the building and the size of the courtrooms. The maximum capacity of a courtroom is the area of the courtroom divided by 4 (as the social distancing requirement is 1 person per 4sqm). The functional capacity allows for the loss of space by the functional location of the presiding judge or commissioner, court staff and court reporter. The functional capacity is the limiting criterion for the maximum number of people in the courtroom. The capacity of each courtroom is set out in the table below.

Court room	Maximum capacity	Functional capacity	AVL/teleconference line (TC)/MS Teams (Teams)
1A	16	13	TC/Teams
3A	14	12	AVL/TC/Teams
3B	6	6	TC/Teams
3C	16	13	AVL/TC/Teams
5A	14	12	TC/Teams
5B	15	12	TC/Teams
10A	14	13	TC/Teams
10B	15	13	TC/Teams
11A	17	13	TC/Teams
11B	16	14	TC/Teams
12A	17	14	AVL/TC/Teams
13A	17	14	TC/Teams
13B	16	14	AVL/TC/Teams

25. The reduced functional capacity will necessitate limiting the number of legal representatives for each party, the number of witnesses attending at the same time, the number of representatives of the parties, and the number of members of the public or media in the gallery. Additional members of legal teams and parties may attend via telephone or AVL where the court is equipped to do so.
26. There are signs throughout the building specifying the maximum number of people allowed in each courtroom or meeting room at any time.

Thermal scanning before entering courtrooms

27. If you are attending court to participate or watch a matter listed in one of the Land and Environment Court's courtrooms, thermal scanning will be conducted with a contactless thermometer before you enter the courtroom.
28. Thermal scanning will be carried out by the Office of the Sheriff of NSW. Sheriffs will ask individuals who are entering the court questions relating to whether they are experiencing symptoms of COVID-19. Sheriffs will be able to refuse entry to court premises if a person refuses a temperature check or refuses to answer questions about their health or if they exhibit or report signs of illness that are common symptoms of COVID-19. Sheriffs will notify the Court if a person has been refused entry.
29. Thermal scanning will be conducted by the sheriffs before all listings in the Court commence, so please arrive with enough time to allow this to occur before the listing's published commencement time.

Hearings in courtrooms

30. There are signs on each courtroom advising of the maximum numbers of people allowed in the courtroom. Decals have been placed on each bar table indicating the placement of seats to allow the maximum number of people permitted at the bar table. Gallery seating has also been marked with decals to indicate the seating in use which has the appropriate spacing between each person.
31. The presiding judge or commissioner and the court officer will monitor the number of persons in the courtroom at any time to ensure that the number of persons does not exceed the functional capacity of the courtroom. The presiding judge or commissioner may direct any person to leave the courtroom to reduce the number of persons to the functional capacity of the courtroom.
32. The presiding judge or commissioner may direct any person in a courtroom, including parties, practitioners, witnesses or people in the gallery, to practise social distancing and sit at least 1.5 metres apart.
33. Witnesses may be directed to attend the court hearing at a nominated time to limit the number of people within the courtroom at any time.

34. All courts have hand sanitiser available outside the courtroom and on the bench and bar table. Please use the hand sanitiser before and after handing up or exchanging a document, refrain from touching your face and wash hands with soap and water when convenient to do so.

The giving of evidence

35. To minimise the time spent in face-to-face hearings, measures should be taken to reduce the length of the hearing.
36. To minimise the need for oral evidence at the hearing, parties should ensure that lay and expert witness evidence that can be reduced to writing is reduced to writing. The Court may direct that this be done.
37. Parties should consider whether cross-examination of any witness called by the other party is necessary, or whether the object of cross-examination could be achieved by other means, such as by providing further written evidence of another witness called by the party.
38. Parties should consider whether the evidence of any witness and any cross-examination that is necessary can be given or conducted by telephone, AVL or MS Teams and, if so, advise the Court in advance so that appropriate arrangements can be made.
39. If expert evidence is to be given concurrently, the Court will direct that the witnesses practise social distancing and sit at least 1.5 metres apart. Where the space available in the witness box is insufficient, the Court may direct the witnesses to sit at the bar table for the purposes of concurrent evidence. This may require the temporary movement of advocates to other areas within the courtroom proximate to a microphone for recording purposes.
40. The number of witnesses giving concurrent evidence may be limited if social distancing cannot be achieved or it will be directed to be conducted by telephone, Teams or AVL.

Written submissions

41. Parties may be directed to provide final submissions in writing to reduce hearing time in open court.

Site inspections for hearings and conciliation conferences

42. Site inspections for hearings and conciliation conferences within the Greater Sydney area may recommence on 8 July 2020.

43. At least 3 working days prior to any scheduled site inspection, the parties are to advise the Court whether the site inspection is necessary or appropriate and if the location can accommodate the current social distancing and public gathering requirements. The Court will advise the parties if it determines that a site inspection should not proceed.
44. Any site inspection will require compliance with social distancing practices, including maintaining a distance of 1.5 metres between people on site, and public gathering requirements, including limiting the number of people in attendance at any time. People attending a site inspection should be limited to the presiding judge or commissioner and court staff, and as few representatives of the parties, their legal representatives and required expert witnesses as practicable.
45. If the presiding judge or commissioner considers it is necessary to enter a building, he or she will control the number of people allowed in the building at the same time and enforce the social distancing and public gathering requirements.
46. The Court's Site Inspections Policy, stating that a maximum of six persons objecting to a development proposal should provide oral evidence on site, is temporarily suspended. Instead of giving oral evidence at the commencement of the hearing, objectors' evidence can either be reduced to writing and supplemented with any photographic evidence that would assist the Court to understand their concerns or be given orally by telephone, AVL or MS Teams.
47. If a party nevertheless wishes to call evidence of an objector on site, application must be made to the presiding judge or commissioner to do so. The presiding judge or commissioner will decide whether the objector's evidence can be given on-site in compliance with social distancing and public gathering requirements and it is otherwise necessary and appropriate to do so.
48. In Class 1 and 2 appeals, the Council is to provide the objectors' written material to the other party 3 days before the hearing or conciliation conference and tender it at the hearing or conciliation conference.
49. In the event that a site inspection does not proceed, photographs and video presentations of the site, or relevant matters, that might have been seen or heard on-site may be admitted into evidence upon application to the presiding judge or commissioner.

Tree dispute hearings

50. The Court will advise the parties if it determines that an onsite hearing should not proceed and, in that event, the alternative means for conducting the hearing

of the tree dispute. In the event that the scheduled hearing of a tree dispute cannot proceed onsite, the hearing may be conducted by AVL, telephone or MS Teams.

Mediations

51. The practices outlined in this Policy in relation to conciliation conferences under s 34 and s 34AA of the Court Act will apply to mediations under s 26 of the *Civil Procedure Act 2005*.
52. At least seven days before the scheduled mediation, the parties are to advise the Court if they agree that the mediation can be conducted by telephone, AVL or MS Teams and, if so, the names, telephone numbers or email addresses of the representatives of the parties who will attend the mediation so arrangements can be made.
53. If an agreement is reached between the parties at the mediation, the presiding commissioner will refer the matter to the Registrar to be dealt with by the Duty Judge.

Regional matters

54. The Court will conduct regional hearings, conciliations (including site inspections) and mediations in accordance with the procedures outlined in this Policy, subject to the judge or commissioner being able to travel to the location of the hearing, conciliation or mediation and the venue, such as a country courthouse, being available.
55. If travel to the location is not feasible or the venue is not available, the Court will make, in consultation with the parties, alternative arrangements for conducting the hearing, conciliation or mediation, such as by telephone AVL or MS Teams, or listing the hearing, conciliation, mediation on another date.

Directions hearings and lists

56. For applications not able to be determined by the Court through means of Online Court or email, the Court will conduct the Registrar's list and the Friday Judge lists by a hybrid model. Most matters can continue being conducted by telephone, AVL or MS Teams, as is appropriate and requested by the parties. Some matters can be conducted face-to-face in a courtroom, where the parties request and it is appropriate to do so. Parties and practitioners are to consult the daily court list for the mode of conduct and the time of the listing.

Delivery of judgments

57. Reserved judgments will continue to be handed down in Court by the presiding judge, commissioner or registrar, or the registrar on behalf of the presiding commissioner, by telephone.
58. Upon being notified that judgment will be delivered, parties and practitioners are to consult the daily court list for the time and relevant telephone number.
59. After delivery of judgment, the judgment will be published on Caselaw and a written copy of the judgment will be sent to the parties in accordance with the Court's usual practice.

Self-isolation and vacation of listings

60. Any practitioner, party, expert or person involved in court proceedings who is required to self-isolate, or who has been in contact with a person who is required to self-isolate, or who is sick, must not attend the Court premises, including the Registry, a courtroom or any other room in the Court building, or any conciliation, mediation, hearing or directions hearing in the proceedings.
61. If, by reason of the need to self-isolate or sickness, there is a need to vacate any listing, the party or practitioner should immediately apply to vacate the listing, providing reasons, and suggest alternative dates to reschedule the listing.
62. The following procedure applies for notifying the Court and vacating a listing:
 - (a) The party or practitioner is to send a request by Online Court (or email leclistings@justice.nsw.gov.au if not an Online Court user) advising of the issue that has arisen and provide the telephone number and the name of the party or practitioner who should be contacted in the event of a telephone conference with the judge or commissioner allocated to hear the matter.
 - (b) The Court will forward the online communication to the judge or commissioner allocated to hear the matter.
 - (c) If possible, the judge or commissioner will respond to the online communication and resolve the issue online.
 - (d) Alternatively, the judge or commissioner will arrange for a telephone conference with the parties and practitioners to discuss the best way to resolve the issue (such as arranging for the person to give evidence by telephone or cancelling the on-site start and instead convening the matter in Court with social distancing measures in place).
 - (e) The outcome of the telephone conference will be confirmed in an online communication by the Court through Online Court.

- (f) In the event that the issue is not resolved before close of business (4.30pm) on the day before the allocated hearing, conciliation or mediation, the listing will be vacated by the Court and the matter will be listed for an online communication for further directions, including listing the matter at another date.

Recording proceedings and the *Court Security Act 2005*

- 63. The *Court Security Act 2005* (NSW) continues to apply to all hearings, including those conducted using by telephone, AVL or MS Teams.
- 64. In particular, s 9 and s 9A prohibit recording sound images or using a device to transmit sound or images, without approval. Everyone participating in a hearing conducted by telephone, AVL or MS Teams should observe all normal court protocols and standards.

Hygiene measures taken by the Court

- 65. Hand sanitiser is available at the lifts on the ground floor and on each floor as you exit the lift. It is available on the bar table in each courtroom. Hand sanitiser should be used before and after touching documents and hands should be washed with soap and water when convenient to do so.
- 66. Hand sanitiser is also available on exiting the lift on Level 4 and within the public registry space. Screens will be placed on the public counter.
- 67. There are public bathrooms for men and women on alternate floors of the court providing access to soap and water.
- 68. Additional cleaning staff have been employed to undertake additional cleaning and disinfecting of 'high traffic' surfaces in the Court, such as lift buttons and handrails, door handles, bathrooms, bench and bar tables in courtrooms, and meeting rooms in public areas.
- 69. The additional cleaning staff are onsite throughout the day moving continuously throughout the building. The cleaning teams operate throughout normal business hours and in the evening. Their work is monitored to ensure cleaning standards are maintained and that there is coverage throughout the building.

Issued by

The Hon. Justice B J Preston
Chief Judge
Land and Environment Court of New South Wales
On 10 December 2020