

## Magistrates' Court of Victoria

### WorkCover Division Arrangements and Expectations during COVID-19 Restrictions

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#### CONTENTS

1. Overview
2. Remote Online Hearings
3. Judgement Arrangements
4. Updates

#### 1. OVERVIEW

- 1.1 This document has been prepared to assist parties understand the updated arrangements and expectations of the WorkCover Division of the Magistrates' Court of Victoria.
- 1.2 The Court is striving to deliver justice in a timely manner notwithstanding the current circumstances due to COVID-19.

#### ***Civil Procedure Act 2010***

- 1.3 We all face considerable difficulties in progressing civil litigation proceedings in the current circumstances, which require physical distancing rules and many people working remotely. Now, more than ever, there is a need to comply with the overarching obligations in Part 2.3 of the *Civil Procedure Act 2010* ("the CPA").
- 1.4 Practitioners and parties should in particular be aware of their paramount duty to further the administration of justice in relation to any civil proceeding; and the obligations to cooperate with the parties to a civil proceeding and the Court in connection with the conduct of that proceeding, use reasonable endeavours to resolve the dispute, and narrow the issues in dispute.
- 1.5 The CPA and the *Magistrates' Court General Civil Procedure Rules 2010* ("the Rules") give the Court great flexibility to do what is necessary to facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute, including, where appropriate, dispensing with compliance with the Rules as they would ordinarily apply, and giving any direction or imposing any term or condition for the conduct of the proceeding which it thinks conducive to its effective, complete, prompt and economical determination.

## 2. REMOTE ONLINE HEARINGS

- 2.1 The WorkCover Division uses Cisco to conduct WebEx hearings.
- 2.2 Parties should familiarise themselves with WebEx. There are instructional videos and guide on the WebEx website.
- 2.3 The Court will generally direct that WorkCover Hearings proceed in the Online Magistrates' Court.
- 2.4 If a party considers that a matter is not suitable to proceed as an Online Magistrates Court hearing, that party must, upon receipt of Notice of Hearing give notice of this issue to the Court.
- 2.5 In such circumstances, that party shall provide a brief outline of reasons why the matter is not suitable to proceed via remote hearing. This communication should be emailed to the Court at the following email address: [mmcworkcoverindustrialcourts@justice.vic.gov.au](mailto:mmcworkcoverindustrialcourts@justice.vic.gov.au) It must also be emailed to all other relevant parties.
- 2.6 Each other party to the proceeding may file and serve a brief outline in response.
- 2.7 This issue will be determined by a Magistrate in chambers, on the basis of the written submissions. If it is determined that the matter is not suitable to proceed by remote hearing in the Online Magistrates Court the Court will adjourn the proceeding.

If a matter is fixed in the Online Magistrates Court already, or the parties seek to do so, then the WorkCover Registrar should be notified as soon as possible by email to the address set out in para. 2.5:-

- a. Email addresses of all participants, including parties, legal representatives and any other proposed witnesses;
  - b. Estimated duration and suitable dates or 'not before' date;
  - c. Number of witnesses expected to be called; and
  - d. Listing type (i.e. Hearing, Early Neutral Evaluation (ENE) or Mention, etc.)
- 2.8 Participants appearing in the Online Magistrates' Court are taken to be appearing as though they were present at Court. This means that laws that would apply in court, including laws relating to evidence, procedure, contempt of court and perjury, will continue to apply.

### **The expectations for remote online hearings are as follows:**

#### **Device Capability**

- 2.9 It is the Court's recommendation that participants in the Online Magistrates' Court use a smart device no smaller than an iPad (9.7"). iPhones and Android Phones should not be used for Hearings
- 2.10 The quality of the connection to the Online Magistrates Court depends on the quality of the internet connection. The Court encourages participants to access hearings through a device from a location that has a reasonable internet speed.
- 2.11 Participants may wish to wear a headset during the Online Magistrates Court hearing to improve audio quality and reduce any audio feedback; however, mobile phone in-ear headphones do not generally provide reliable audio.
- 2.12 Participants should join the Online Magistrates Court from a quiet, private location.

## **Court Books**

2.13 To ensure the efficient running of an Online Magistrates' Court Hearing (except ENE or Mention), it is essential that at least seven days prior to the Hearing the parties forward to the Court a joint or separate paginated court books in hard copy or searchable PDF to a maximum of 20mb with hyperlinks to the individual documents. Separate emails with court book 20mb attachments may be sent. Court books should include :-

- a. Index;
- b. All pleadings;
- c. Chronology;
- d. Any documents (including medical reports and any extracted subpoenaed records) which may be relied upon; and
- e. A relevant list of case law authorities and relevant extracts to be relied upon in submissions.

Any material not included in the Court Book and sought to be considered by the Online Magistrates Court should be provided to the WorkCover Registrar at least two days prior to the OMC Hearing date

## **Visual Background**

2.14 Participants should ensure that a neutral background is utilized.

## **Online Hearing Protocol**

2.15 Immediately prior to the hearing, the Registrar will check with all participants that they are able to see and hear each other, and that they are ready to proceed.

2.16 Whilst the Court has endeavoured to conduct hearings as closely as possible to the usual practice of the Court, some variations have been made given the hearings are being held remotely. The Magistrate will enter the on-line hearing at the allocated time. Once the Magistrate has entered the hearing, the Registrar will call on the matter, following which the parties are to enter their appearances.

2.17 Parties should remain seated when the Magistrate enters and exits the Online Magistrates Court, and when addressing the Court.

## **Recording of Hearing**

2.18 A recording of the matter will be made by the Registrar. No other participant is permitted to record the on-line hearing. Practitioners should ensure that their clients are aware of this prohibition.

## **Giving Evidence**

2.19 The solicitor must ensure that witnesses, including expert witnesses, give evidence from a room free from other occupants.

2.20 Before the commencement of their evidence, witnesses will be asked by the Registrar whether they are alone in the room and will be told that if anyone enters the room, they must notify the Court.

2.21 The witness must have a device as recommended above, and access to copies of the court book (if this will expedite the hearing). The witness's mobile phone must be switched off and

they must not have any other documents with them in the room from which they are giving their evidence, unless arrangements have been made for this to occur prior to the hearing.

- 2.22 Where an interpreter is required, it is not necessary for the interpreter to be in the same room as the witness. An interpreter may appear remotely in the on-line hearing or, if this is not possible, then they may interpret via telephone, linked into the on-line hearing.
- 2.23 As usual, the witness will be sworn or affirmed by the Registrar. Witnesses can choose to take an oath or make an affirmation via Online Magistrates' Court. Witnesses choosing to take an oath are not required to hold a religious text.
- 2.24 Where a party wishes to show surveillance during a video hearing, the practitioner must contact the WorkCover Registry prior to the commencement of the hearing to make suitable arrangements for the film to be shared during the video hearing. If the surveillance film is tendered during the video hearing a DVD of the film should be forwarded to the WorkCover Registrar as soon as possible.

## Hearing Arrangements

- 2.25 To ensure hearings run efficiently, the Court anticipates pre-hearing case management timetables will be agreed so as to minimise, as far as reasonable, the length of the hearing.

## 3. JUDGMENT ARRANGEMENTS

- 3.1 When judgment is not delivered at the hearing, unless the Magistrate otherwise directs, parties will be advised via email as to when judgment is to be delivered. Judgments will be delivered in the Online Magistrates' Court. The Registrar will contact the parties in the normal course and send a link to appear for judgment, at the designated date and time.
- 3.2 The Registrar will email the parties with a copy of any published judgment. Parties will then be invited to make submissions concerning what consequential orders ought to be made.

## 4. UPDATES

- 4.1 The Court appreciates that practitioners desire regular information as to what is expected due to restrictions imposed by COVID-19. The Court will update this document as necessary.