



CountyCourt  
VICTORIA

# **Commercial Division response to coronavirus (COVID-19)**

**Version 2.3**

# DOCUMENT CONTROL

## Details

<b>Document type</b>	Notice to practitioners
<b>Division</b>	Commercial Division
<b>Reviewed by</b>	Judge Woodward, Judicial Registrars Bennett and Muller
<b>Authorised by</b>	Judge Woodward

## Release history

Version	Date	Author	Summary of changes
1.0	16/4/2020	Judge Woodward, Judicial Registrar Tran and Judicial Registrar Burchell	Document created.
1.1	1/5/2020	Judge Woodward, Judicial Registrar Tran and Judicial Registrar Burchell	Content changes for '2.3 Witnessing affidavits', '2.4 Subpoenas', '6.2 Pre-trial directions hearings', and '7. Remote eHearings (including remote eTrials)'.
1.2	6/8/2020	Judge Woodward, Judicial Registrar Tran and Judicial Registrar Burchell	Content changes for '1.2 Impact of Stage 4 Restrictions', '2.1 Personal service', '2.3 Witnessing affidavits, 2.4 Subpoenas', '3.2 Applications by summons', '3.4 Other requests for interlocutory determinations', '6.1 Trials to be conducted by remote eTrial', '6.2 Pre-trial directions hearing', '7 Remote eHearings (including remote eTrials', '7.1 Device capability and internet connection', '7.7 Giving evidence'.
1.3	16/11/2020	Judge Woodward, Judicial Registrar Burchell and Judicial Registrar Muller	Content changes for '2.4 Subpoenas', '3.2 Applications by summons', '4 Judicial resolution conferences', '6 Trials', '6.3 In Court trials', '7.7 Giving evidence', and deletion of '1.2 Impact of Stage 4 Restrictions'.
1.4	8/4/2021	Judge Woodward, Judicial Registrar Burchell and Judicial Registrar Muller	Content changes to reflect the resumption of in-person trials and easing of public health restrictions, at '1.1 General', '1.2 Key principles in relation to onsite attendance', '2.4 Subpoenas', '2.6 Electronic court books', '3.2 Applications by summons', '3.3 Building Cases List', '4 Judicial Resolution

			Conferences', '5 Non-binding Neutral Evaluations', '6 Trials', '7 Remote eHearings', '8 Future updates' and deletion of '2.5 Witness statements and written submissions'.
1.5	2/7/2021	Judge Woodward	Content changes to reflect the return to in-person appearances in more circumstances at '4 Judicial Resolution Conferences', '6 Trials', '7.7 Circuits'.
1.6	28/7/2021	Judge Woodward and Judicial Registrar Muller	Content changes for '3.2 Applications by summons', '6 Trials'.
1.7	4/11/2021	Judge Woodward, Judicial Registrar Bennett and Judicial Registrar Muller	Content changes for '1.1 General', '1.2 Key principles in relation to onsite attendance', '4. Judicial Resolution Conferences ("JRCs")', '6. Trials', deletion of '2.1 Personal service', '2.3 Witnessing affidavits'.
1.8	18/2/2022	Judge Woodward, Judicial Registrar Bennett and Judicial Registrar Muller	Content changes for '1.1 General', '1.2 Key principles in relation to onsite attendance', '1.3 Rapid antigen testing protocol', '4. Judicial Resolution Conferences ("JRCs")'
2.0	5/7/2022	Judge Woodward, Judicial Registrar Bennett and Judicial Registrar Muller	Re-release in conjunction with the release of PNCO-2 of 2022 (Commercial Division Omnibus Practice Note)
2.1	9/9/2022	Judge Woodward	Amendments aligned with the removal of the <i>Vaccination and Personal Protective Equipment (PPE) Protocol</i> .
2.2	14/10/2022	Judge Woodward	Content changes for '1.1 Introduction', removal of '3. Rapid Antigen Testing protocol'.
2.3	6/2/2023	Judge Woodward	Content change to align with Courtwide CovidSafe settings

## Related documents

Document title	Version
<a href="#">Commercial Division Omnibus Practice Note (PNCO-2 of 2022)</a>	1.0
<a href="#">COVID-19 response – In-person Hearings Protocol</a>	2.0

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## 1. Introduction

- 1.1 This document contains the arrangements and expectations of the Commercial Division for the period from 6 February 2022 until further notice.
- 1.2 This document should be read in conjunction with the *COVID-19 response – In-person Hearings Protocol*.
- 1.3 The Court has in place two COVIDSafe settings, with associated measures: a ‘Surge’ Setting and a ‘Standard’ Setting.
- 1.4 The Court will determine and communicate to all stakeholders any movement between these settings, including if and when the COVIDSafe Surge Setting is to come into effect.
- 1.5 From 6 February 2022, the Court is operating under the COVIDSafe Standard Setting.

## 2. In person and remote attendance from 6 February 2023

- 2.1 From 6 February 2023:
  - (a) trials and any hearing involving contested oral evidence, irrespective of duration and judicial resolution conferences will be held in-person unless otherwise ordered (“Category A matters”).
  - (b) directions hearings (including pre-trial directions hearings), applications (summonses and requests for interlocutory determination), trial assessments and enforcement proceedings will be held remotely unless otherwise ordered (“Category B matters”).
- 2.2 Judgments will continue to be listed in the daily list but delivered by email unless parties are otherwise notified.
- 2.3 If a party considers that it is appropriate and in the interests of justice for a Category A matter to proceed remotely or for a Category B matter to proceed in-person, that party must, as soon as possible, give notice of that request to the Court and the other parties by email to the Commercial Registry ([Commercial.Registry@countycourt.vic.gov.au](mailto:Commercial.Registry@countycourt.vic.gov.au)), stating brief reasons for

the request. Each other party to the proceeding may provide brief reasons in response.

2.4 Factors that will be considered include:

- (a) the length of the trial or hearing;
- (b) whether a party is self-represented;
- (c) whether a party to the proceeding requires an interpreter to give their evidence;
- (d) the particular considerations and practices set out below for requests for interlocutory determinations, summonses and Building Cases List matters.

### **3. COVIDSafe Standard Setting**

3.1 While the COVIDSafe Standard Setting is in place, the following measures, will apply:

- (a) voluntary mask-wearing in all public areas and within courtrooms;
- (b) availability of hand sanitiser throughout the Court;
- (c) availability of sanitising wipes throughout the Court;
- (d) provision of masks on request; and
- (e) provision of tests upon request.

### **4. COVIDSafe Surge Setting**

- 4.1 During any period in which the COVIDSafe Surge Setting applies, all participants in trials and multi-day matters will be offered Rapid Antigen Tests (RATs) for the purpose of voluntary surveillance testing every second day of attendance for the duration of the hearing (excluding the first day of attendance).
- 4.2 This will include jurors who attend the Court for more than one day, including those in the jury pool who are not selected on a panel or a jury, but are required to attend for a second day as members of a jury pool. Those who are selected to be on a jury and attend for a second or subsequent days will be offered RATs from the second day of attendance on every second day thereafter.
- 4.3 Testing will be voluntary and proof of having taken a test will not be required in order for a participant to attend Court.
- 4.4 Further, testing will not be required for attendance:
  - (a) at a single-day matter
  - (b) on the first day of a multi-day matter (including a trial)
  - (c) for single-day attendees in a multi-day matter (including a trial).
- 4.5 RATs will be provided to multi-day participants by the judicial support staff.

### **5. Mutual obligations to health and safety**

- 5.1 All hearing participants including judicial officers, court staff, counsel, practitioners, witnesses, or any other persons with business at the Court are not to attend the Court if they:

- (a) have any signs or symptoms of COVID-19 and have not tested negative on a RAT on the same day;
  - (b) have tested positive to COVID-19 and have not yet returned a negative RAT result;
  - (c) are required by public health authorities to stay at home in quarantine or isolation.
- 5.2 Parties should contact the chambers of the presiding judicial officer if a hearing participant is unable to attend due to any of the reason(s) outlined above. The judicial officer will then decide the future conduct of the matter which may include alternative remote appearance arrangements or an adjournment.

## 6. Masks

- 6.1 KN95 and surgical masks are available upon entry, and throughout the Court building.
- 6.2 Mask requirements will be determined by the prevailing COVIDSafe Setting as follows:
- (a) **Surge Setting:** mask wearing is required in all public areas, and by persons in a non-speaking role within courtrooms (Mask Setting 2).
  - (b) **Standard Setting:** mask wearing is voluntary in all public areas and within courtrooms (Mask Setting 4).

## 7. Symptomatic testing

- 7.1 Persons should not enter the Court if they are experiencing symptoms of COVID-19 and have not tested negative on a RAT.
- 7.2 If a court entrant feels they need to undertake a test, and do not have access to their own, they will be directed to the nearest testing station.

## 8. Consequences of certain results

### Hearing participant returns a positive result

- 8.1 If any hearing participant returns a positive result, they must inform the presiding judicial officer's chambers (for all other participants) as soon as possible.
- 8.2 Hearing participants who test positive must test negative on a RAT before returning onsite.
- 8.3 Subject to the determination of the presiding judicial officer, (informed by advice from the Court Services Victoria 'CSV' COVID-19 Response Team), all other hearing participants may continue their involvement in the hearing provided they are not symptomatic. Participants will be advised of any other measures they should adopt, if required.

### Hearing participant has COVID-19 symptoms

- 8.4 If any hearing participant develops COVID-19 symptoms, they should undertake a test.
- 8.5 They must inform the presiding judicial officer's chambers as soon as possible that they are symptomatic and the results of their test.
- 8.6 The judicial officer will then decide the future conduct of the matter, including if any additional testing is required (informed by advice from the CSV COVID-19 Response Team).

- 8.7 Subject to the determination of the presiding judicial officer, a hearing participant can attend the Court if they have returned a negative RAT.

### **Hearing participant becomes a household contact**

- 8.8 If any hearing participant becomes a household contact<sup>1</sup>, they must inform the presiding judicial officer's chambers as soon as possible.
- 8.9 The participant may attend Court with permission of the presiding judicial officer.
- 8.10 The presiding judicial officer may also exercise their discretion to require the participant to:
- (a) return a negative RAT result each day before attending the Court;
  - (b) wear a KN95 mask at all times while in the Court building (except by direction of the presiding judge);
  - (c) notify the Court if symptoms develop.
- 8.11 The Court may seek health advice from the CSV COVID-19 Response Team on the suitability of a hearing participant who is a household contact to attend the Court.

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<sup>1</sup> For the purpose of this Protocol, 'household contact' means a person who has spent more than four hours with someone who has COVID-19 inside a house, accommodation or care facility.