



# SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



## Australian Court Procedures for COVID-19

Courts and tribunals across Australia are actively changing the way they operate in response to COVID-19. All Australian courts are continuing to operate, principally with the use of technology and there remains limited in person appearances in particular jurisdictions.

On March 25, 2020, an interesting decision was handed down in the Western Australian Court of Appeal in *JKC Australia LNG Pty Ltd v CH2M Hill Companies Ltd* [2020] WASCA 38. This case concerned whether a hearing by teleconference would be 'manifestly inadequate'.

The respondents applied for an adjournment on the grounds that an appeal hearing by telephone or video-link would be manifestly inadequate (as to telephone) or inadequate (as to video-link). The Court of Appeal (WA) rejected those submissions.

The Court explained that in the "extraordinary circumstances presented by the COVID-19 pandemic" the arrangements put in place as outlined in the March 18, 2020 public notice were "a necessary but proportionate alteration to the normal practice and procedure of the court". Further, while it acknowledged there may be potential inconvenience to Counsel, the Court further expressed the view that those obstacles were not insurmountable. The Court finally observed that if the applicant's submissions had been accepted then the Court would be unable to conduct hearings for an indeterminate time and that would be "antithetical" to the administration of justice in the State of Western Australia.



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A summary of the Federal Court and some of the state court procedures are explained below.

### **Federal Court**

Federal Court has migrated counter services to telephone and online only, and, along with the Federal Circuit Court, has moved to virtual courtrooms using Microsoft Teams.

### **Federal Court Admiralty and Maritime**

On April 1, 2020, the Chief Justice of the Federal Court of Australia issued a Special Measures Information Note to deal with ship arrests in Australia during COVID-19. The Court is modifying its practices in order to mitigate risks associated with COVID-19 when arresting a ship. The special measures apply to all proceedings filed before and after the date of issuing.

The key points are:

1. if a marshal is not available to effect an arrest warrant in the usual way (i.e. by boarding the ship), consideration may need to be given to seeking orders for service to be effected by electronic communication to the master of the ship
2. the deemed time of arrest should be addressed if special orders for service are sought. This is important to determine when the cargo operations of the ship cease and when the arrest costs begin
3. a ship arrest could potentially be protracted because a person on board or the ship itself is contaminated or potentially contaminated with COVID-19
4. the costs of arrest could be significantly higher in consequence of COVID-19
5. the arresting party will be required to make a deposit of funds in advance, and if necessary from time to time, to enable the marshal to undertake the arrest and maintain custody of the ship

See the link to the Federal Court's Admiralty and Maritime Special Measures Information Note (SMIN-2): <https://www.fedcourt.gov.au/law-and-practice/practice-documents/practice-notes/smin-2.pdf>.

### **NSW State Courts**

Supreme Court of NSW is continuing to operate with the use of virtual and online technology and electronic document submission, with some changes to procedures to ensure efficiencies.

NSW District Court will continue current jury trials and Judge alone trials with social distancing in place but has suspended future jury trials for the time being. As a result to upgrades in technology, from 30 March 2020, in person appearances will be limited as much as possible through the use of the virtual courtrooms.

NCAT will be conducting hearings in the Consumer and Commercial division via telephone if leave has been granted, and in the Occupational Division parties are being asked to defer final hearings until after the end of September 2020.

### **Victorian Courts**

Supreme Court of Victoria has implemented changes to its procedures so that matters will be dealt with using written submissions and hearings via telephone, videoconferencing and Webex.

County Court is implementing a range of measures including suspension of new jury trials, limiting trials to those capable of completion in one to two days, social distancing where in-person matters are required and using video and telephone technology.

VCAT is closed to the public. Critical hearings are being heard by via telephone and they are working on expanding the number of matters that can be heard this way.

### **Queensland Courts**

Queensland Supreme and District Courts are subject to the general protocol that practitioners should assume that all cases in the trial division requiring any form of substantive hearing will now take place by teleconference or videoconference. A guide to their videoconferencing software, Cisco Webex, can be viewed [here](#). A guide to Chorus Call can be found [here](#). A guide to filing documents can be viewed [here](#). The Applications protocol can be viewed in full [here](#).

Magistrates Court Practice Direction 3 of 2020 explains that from March 30, 2020 there will be no physical appearances except with leave of the court.

Queensland Civil and Administrative Tribunal Practice Direction No 4. Of 2020 explains that almost all hearings will be heard by telephone or adjourned.

**AMSA Advice**

The Australian Maritime Safety Authority (AMSA) provides the following advice on the extension of standards of training certification and watchkeeping (STCW) certificates.

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