



# Land and Environment Court

of New South Wales

## COVID-19 PANDEMIC ARRANGEMENTS POLICY

### Commencement

1. This Policy commences on 1 December 2021. It replaces the COVID-19 Pandemic Arrangements Policy made on 6 April 2021.

### 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.

### Fully vaccinated status

4. All staff working for the Court are required to be fully vaccinated by 17 January 2022.
5. Only people who are fully vaccinated or have a medical exemption are permitted to enter the Court's premises or attend a hearing, conciliation, mediation, site inspection or other attendance conducted by the Court at the Court's premises or elsewhere.
6. People can show proof of their vaccination status by:
  - i. a COVID-19 digital certificate which shows proof of only your COVID-19 vaccinations in a digital wallet; or
  - ii. an immunisation history statement which lists your COVID-19 vaccinations and all other vaccinations; or
  - iii. documentation from the Department of Home Affairs that confirms you have completed an Australia Travel Declaration and you have been vaccinated against COVID-19 overseas; or
  - iv. a COVID-19 digital certificate in the Service NSW App.

7. People can show proof of their medical exemption by:
  - i. a NSW Health medical contraindication form completed by a registered medical practitioner; or
  - ii. a medical clearance notice issued by NSW Health.
8. Proof of vaccination status or medical exemption must be provided when requested by an officer of the Court.
9. People attending a hearing at the Court's premises should arrive 10 minutes before the scheduled commencement time to allow the court officer to check people's vaccination status or medical exemption.

### **QR Code check-in**

10. QR code check-in will continue to be required both for the building and when you enter the court's floors.
11. The COVID Safe QR Check-in system is now integrated with the Service NSW App.
12. People attending a courtroom will need to check in to the court floor using either the COVID Safe QR Check-in code or recording their name and details on the register provided. Once you check into one of the court floors, there is no need to check in again if you move to another court floor.

### **Masks**

13. Masks are required to be worn over the nose and mouth whilst inside the Court's premises. This includes the foyers and lift areas on court floors. Masks may be removed when addressing a judge, commissioner or registrar in court or if exempted from wearing one.
14. All attendees at site inspections (even if outside) are encouraged to wear a mask.

### **Filing documents and applications to the Court**

15. 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)*

16. Parties in matters in Class 1, 2 (excluding tree dispute applications), 3, 4 or 8 are encouraged 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.
17. 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.

18. 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, unless the proceedings are otherwise listed for a directions hearing.

#### *Tree disputes*

19. 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](mailto:treedisputefilings@justice.nsw.gov.au)), or by post to the Court Registry.
20. 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](mailto: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.
21. 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](mailto: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*

22. Class 5 proceedings are to be commenced in accordance with the amended Practice Note Class 5 Proceedings dated 10 December 2020.
23. 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](mailto:LEC_criminalfilings@justice.nsw.gov.au).
24. 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](mailto: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**

25. 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.

26. If, however, it is necessary to attend the Registry to file hard copy documents or to provide in hard copy without prejudice material for a conciliation or mediation, the Registry counter is open from 8:30am to 4:30pm Monday to Friday.

### **Return to face-to-face attendances**

27. 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 or 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, after hearing from the parties as to their preferred mode of conduct of the case.
28. 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 or 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.
29. 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 the social distancing and public gathering requirements current at the time.

### **Attending the Land and Environment Court building**

30. 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 may need to be varied from the standard court hours. This includes the timing of court breaks during the day. The start and finish times will be notified in the daily court list, available by 4pm on the previous day.
31. 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](mailto:lecourt@justice.nsw.gov.au).
32. It is important to remember that the Court is an occupier of 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.

33. 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. Under current government requirements the maximum capacity of a courtroom is the area of the courtroom divided by 2 (as the social distancing requirement is 1 person per 2 sqm). The capacity of each courtroom is set out in the table below.

<b>Court room</b>	<b>Maximum capacity</b>	<b>Functional capacity</b>	<b>AVL/teleconference line (TC)/MS Teams (Teams)</b>
1A	32	25	AVL/TC/Teams
3A	29	25	AVL/TC/Teams
3B	25	13	TC/Teams
3C	33	25	AVL/TC/Teams
5A	28	25	AVL/TC/Teams
5B	31	25	TC/Teams
10A	28	25	AVL/TC/Teams
10B	31	25	AVL/TC/Teams
11A	34	25	TC/Teams
11B	34	25	TC/Teams
12A	35	25	AVL/TC/Teams
13A	34	25	TC/Teams
13B	33	25	AVL/TC/Teams

34. Where the functional capacity of a courtroom is less than the maximum capacity, there may need to be a limiting of the number of legal representatives for each party, the number of witnesses attending at the same time, the number of representatives of the parties, or the number of members of the public or media in the gallery. Additional persons may attend via telephone or AVL where the court is equipped to do so.
35. There are signs throughout the building specifying the maximum number of people allowed in each courtroom or meeting room at any time.

### **Hearings, conciliations and mediations in courtrooms**

36. The presiding judge or commissioner has the responsibility to ensure compliance with the arrangements in this Policy and give such directions as they think appropriate to discharge this responsibility, including the following directions.
37. The presiding judge or commissioner may direct any person to leave the Court's premises, including the courtroom or other room in which a hearing, conciliation or mediation is being conducted, if the person does not show proof of their vaccination status or medical exemption.
38. 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.

39. 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.
40. The presiding judge or commissioner may direct witnesses to attend the court hearing at a nominated time to limit the number of people within the courtroom at any time.

### **The giving of evidence**

41. To minimise the need for oral evidence to be given in person in a courtroom, 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.
42. 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.
43. If expert evidence is to be given concurrently, the Court will direct that the witnesses comply with the social distancing requirements current at the time. 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.
44. The number of witnesses giving concurrent evidence may be limited if social distancing cannot be achieved or concurrent evidence may be directed to be conducted, in part or whole, by telephone, Teams or AVL.

### **Written submissions**

45. Parties may be directed to provide final submissions in writing to reduce the time taken for an in-person hearing in open court.

### **Site inspections for hearings and on-site conciliation conferences**

46. Site inspections for hearings and conciliation conferences may be carried out.
47. All people attending a site inspection are required to be fully vaccinated or have a medical exemption and to comply with the social distancing practices and public gathering requirements current at the time. These practices may require 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, required expert witnesses and members of the public wishing to speak at the site inspection as practicable.

48. 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 current at the time.
49. At a site inspection where a QR code check-in is required by the venue, all attendees must do so, or otherwise record their attendance as directed by the occupier of those premises.
50. The Court's Site Inspections Policy otherwise applies.
51. 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**

52. The Court will advise the parties if it determines that an on-site 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 on-site, the hearing may be conducted by AVL, telephone or MS Teams.

### **Mediations**

53. The practices outlined in this Policy in relation to conciliation conferences under s 34 and s 34AA of the *Land and Environment Court Act 1979* will apply to mediations under s 26 of the *Civil Procedure Act 2005*.
54. 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**

55. 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.
56. 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.

## **Directions hearings and lists**

57. 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**

58. 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 AVL, MS Teams or telephone.
59. Upon being notified that judgment will be delivered, parties and practitioners are to consult the daily court list for the time and mode of appearance.
60. After delivery of judgment, the judgment will be published on Caselaw and a written copy of the judgment will be sent by email and post to the parties in accordance with the Court's usual practice.

## **Self-isolation and vacation of listings**

61. 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.
62. 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.
63. The following procedure applies for notifying the Court and vacating a listing:
  - i. The party or practitioner is to send a request by Online Court (or email [leclistings@justice.nsw.gov.au](mailto: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.
  - ii. The Court will forward the online communication to the judge or commissioner allocated to hear the matter.
  - iii. If possible, the judge or commissioner will respond to the online



communication and resolve the issue online.

- iv. 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).
- v. The outcome of the telephone conference will be confirmed in an online communication by the Court through Online Court.
- vi. 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***

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

### **Hygiene measures taken by the Court**

66. 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.
67. Hand sanitiser is also available on exiting the lift on Level 4 and within the public registry space. The public counter has screens in place.
68. There are public bathrooms for men and women on alternate floors of the court providing access to soap and water.
69. 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.
70. The additional cleaning staff are on-site 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 1 December 2021