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| Commercial Division response to coronavirus  (COVID-19) |
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**DOCUMENT CONTROL**

**Details**

|  |  |
| --- | --- |
| Document type | Notice to practitioner |
| Division | Commercial Division |
| Reviewed by | Judge Woodward, Judicial Registrar Burchell and Judicial Registrar Muller |
| Authorised by | Judge Woodward |
| Notes |  |

**Release history**

|  |  |  |  |
| --- | --- | --- | --- |
| Version | Date | Author | Summary of changes |
| 1.0 | 16/04/20 | Judge Woodward,  Judicial Registrar Tran and Judicial Registrar Burchell | Document created |
| 1.1 | 01/05/20 | 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 | 06/08/20 | 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 | 16/11/20 | 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’ |

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# Introduction

## General

This document has been prepared to explain to parties the current arrangements and expectations of the Commercial Division in response to measures necessary to minimise the spread of COVID-19 for the period commencing on 23 November 2020.

We all face difficulties in progressing civil proceedings while adapting to the changes in procedures necessitated by physical distancing rules and many people working remotely. The Court is continuing to deliver justice in a timely manner, notwithstanding the current circumstances, and practitioners and parties need to do their part by continuing to comply with the overarching obligations in Part 2.3 of the *Civil Procedure Act* 2010 (“**CPA**”).

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 other parties to a civil proceeding and the Court in connection with the conduct of that proceeding, to use reasonable endeavours to resolve the dispute, and to narrow the issues in dispute.

The CPA and the *County Court Civil Procedure Rules*2018 (“**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.

# Pre-trial procedures

## Personal service

Personal service may pose difficulties in the current circumstances. Parties are reminded that the Rules provide means for avoiding physical contact by:

* allowing a person not to accept a copy and for the copy to be put down in the person’s presence and telling them the nature of the document (r6.03(1)(b));
* acceptance of service by a solicitor with authority (r6.09), which can be done by the solicitor noting acceptance on a document copy — or by the server sending electronically — where the recipient solicitor with authority provides consent to this form of service;[[1]](#footnote-1)
* deemed service when a document comes to the notice of the person served (r6.11); and
* applying for substituted service where it is impracticable to serve a document in the manner required by the rules (r6.10).

Having regard to the duty to cooperate imposed by the CPA, the Court expects that acceptance of service electronically would be adopted in almost all cases.

If necessary, an application for substituted service may be made. This must be done via email to the Commercial Registry: [commercial.registry@countycourt.vic.gov.au](mailto:commercial.registry@countycourt.vic.gov.au).

## Filing of documents

Electronic filing of documents has been the accepted manner of lodging documents for filing with the Court for many years. Parties are requested to maximise the use of the Court’s electronic filing facilities, CITEC Confirm, at this time.

If access to scanning technology is limited, the Court will temporarily allow documents to be signed electronically, including by having the person signing the document type their name in the relevant space in the signature block in lieu of physically signing the relevant document.[[2]](#footnote-2)

The procedure for submitting correspondence (such as consent minutes) via email also remains the same:

* To submit correspondence and consent orders relating to cases in the General and Banking and Finance Lists, please email: [Commercial.Registry@countycourt.vic.gov.au](mailto:Commercial.Registry@countycourt.vic.gov.au).
* To submit correspondence and consent orders relating to cases in the Expedited List, please email: [CommercialJR.Chambers@countycourt.vic.gov.au](mailto:CommercialJR.Chambers@countycourt.vic.gov.au).
* To submit correspondence and consent orders relating to cases in the Building Cases List, please email: [bcl@countycourt.vic.gov.au](mailto:bcl@countycourt.vic.gov.au).

Please ensure you clearly and briefly state, in the body of your email, what action or outcome you are seeking, and adhere to practices contained within the [Commercial Registry Guidelines](https://www.countycourt.vic.gov.au/going-court/commercial-division/commercial-division-registry).

## Witnessing affidavits

Parties are referred to Part 5A of the *Oaths Affirmations* Act 2018 (Vic) (“**OAA**”) (Temporary measures in response to COVID-19 pandemic) and in particular:

* s49B, which permits a deponent or authorised affidavit taker to sign or initial an affidavit, jurat or other document by electronic means;
* s49C, which permits a requirement that a thing be done in the presence of another person to be satisfied by doing the thing by audio link or audio-visual link; and
* s49D, which permits an authorised affidavit taker to sign or initial a scanned hardcopy or electronic copy of the affidavit, jurat, or other document in lieu of the original.

If any of the above steps are taken in relation to an affidavit, then under s49E the authorised affidavit taker must state, in addition to the matters in s27(1)(a), the following in the jurat –

(a) that the affidavit, as signed and notated by the authorised affidavit taker, was signed or initialled by the deponent by electronic means;

(b) that specified things in respect of the affidavit were done by means of audio link or audio-visual link; and

(c) that the affidavit, jurat or other document is a scanned hard copy or an electronic copy, not an original.

It is anticipated that these provisions will resolve the difficulties experienced in having affidavits sworn or affirmed. However, if in any particular case an affidavit cannot be sworn or affirmed due to measures to minimise the spread of COVID-19, the Court may accept the filing of an affidavit which has not been sworn or affirmed,[[3]](#footnote-3) provided:

* parties take responsibility for ensuring the affidavit is formally sworn or affirmed when circumstances allow and thereafter filed with the Court;
* the affidavit is signed by the deponent and a paragraph is included in the body of the affidavit stating that it cannot be sworn or affirmed at this stage due to measures to minimise the spread of COVID-19;
* the practitioner arranging the affidavit has clearly advised the deponent that this relaxation of formality does not diminish the need for them to satisfy themselves that the content of the affidavit is true and correct; and
* the party or their lawyer has satisfied themselves that the deponent is prepared to swear or affirm the affidavit in the form provided.

## Subpoenas

*Encouraging electronic filing*

The Court has implemented a new electronic platform (eCase) for the digitisation of the subpoena process. eCase is the Court’s preferred method for the submission of subpoena responses, objections, objection withdrawal, inspection requests and inspection itself. Parties, practitioners and addressees should use eCase in all civil proceedings, unless it is impractical to do so. Practitioners should familiarise themselves with the [eCase: electronic subpoenas](https://www.countycourt.vic.gov.au/practice-notes?filters%5bkeyword%5d=eCase:%20electronic%20subpoenas&filters%5bdivision%5d=0) practice note.

To encourage the electronic filing of subpoenaed material, when serving a subpoena, practitioners should ensure that they also serve the addressee with a copy of the [eCase electronic subpoenas: notice to addressees](https://www.countycourt.vic.gov.au/practice-notes?filters%5bkeyword%5d=eCase%20electronic%20subpoenas:%20notice%20to%20addressees&filters%5bdivision%5d=0).

Where possible, all subpoenaed material should now be submitted electronically via eCase. However, if that is not practicable then documents produced in response to a subpoena may be lodged in hardcopy at the Registry.

A party wishing to inspect subpoenaed material which has been produced in hardcopy must make an appointment with the Registry. Subpoena appointments are currently scheduled at a reduced level. Appointments are only available for matters that are listed to be heard or are deemed urgent by the Registry or a judicial officer.

Parties wanting to make appointments to inspect and copy hardcopy subpoenaed material should read the information below.

* The preferred way to make an appointment for inspection is to do so via email. Please contact the Registry at [subpoenas@countycourt.vic.gov.au](mailto:subpoenas@countycourt.vic.gov.au). For urgent matters only, please telephone 8636 6525. Please leave a message with your name, number and case number and we will call you back.
* On arrival, parties inspecting material will need to use a mobile phone to call the registry on 8636 6566 before gaining access to the Registry office.
* Fees for inspection appointments - electronic modes of payment are preferred. Payments will either be taken over the phone the day before the appointment or by card (PayWave/Tap and Go) at the Registry counter.
* Material required for the appointment can then be collected from a Registry staff member at the Registry counter at the time of the appointment.
* Hand sanitiser and gloves are provided for people with appointments.
* Access to subpoenaed material located at Circuit Registries will be inspected by appointment with the Registrar in Melbourne.

## Witness statements and written submissions

In order to minimise hearing time, the Commercial Division will be encouraging greater use of witness statements and written submissions in appropriate cases.

All witness statements and submissions should be in pdf document format and must strictly comply with any page limits, including any footnotes, endnotes, annexures or schedules. A minimum of 1.5 spacing should be used, with no less than 11pt font for the body of the document and 10pt font for footnotes.

Submissions must be emailed to the Commercial Registry ([commercial.registry@countycourt.vic.gov.au](mailto:commercial.registry@countycourt.vic.gov.au)) or the associate to the judge or judicial registrar, copied to all parties, well in advance of any listed hearing.

## Electronic Court Books

The Commercial Division Court Book Guidelines which are available in the [Practice notes section](https://www.countycourt.vic.gov.au/practice-notes) of the County Court website, continue to apply. Compliance with these guidelines, and accurate compilation and pagination of the Court Book, is particularly important to ensure the efficient running of an eTrial. Hardcopy documents cannot be “handed up” during the course of an eHearing or eTrial. The judge or judicial registrar presiding may give leave for documents to be provided by email during an eHearing in appropriate circumstances and for them to be added to the end of the electronic Court Book. Such circumstances are likely to include a sufficient explanation for the omission of the document from the Court Book.

# Interlocutory Disputes

## Urgent applications

For all urgent applications during business hours, please contact the Commercial Registry by email to obtain a listing date and time. This will immediately be referred to the associate to the Commercial Division Duty Judge. Examples of urgent applications include interlocutory injunctions, freezing orders and search orders.

For all urgent applications after the Court has risen for the day or during any vacation, please contact the associate to the Duty Judge on [0419 384 312](tel:+61419384312).

## 3.2 Applications by summons

Parties should continue to follow the guidance on when a summons is required which is contained in Part 24 of the Commercial Division Practice Note. Any application by summons will be listed for an e-hearing via Zoom, however there are some circumstances where a party may apply for leave for their application to be heard in person. Such circumstances include:

* where a party is self-represented and does not have access to the necessary technology and internet access; and
* where a party to the proceeding requires an interpreter to give their evidence, in which case the Court may grant leave for that party and the interpreter to give evidence/interpret in person if satisfactory remote arrangements cannot be made (with the balance of the hearing being conducted as an eHearing).

A revised form for a summons (oral hearing by Zoom) are available on the [County Court website](https://www.countycourt.vic.gov.au/going-court/commercial-division/request-hearing).

The following revised procedures for issuing summonses now apply:

* In order to obtain a date for a remote eHearing, parties must email a draft summons and any supporting material to the Commercial Registry, copied to all parties (unless ex parte).
* In your email, please include the estimated duration of the eHearing and any unavailable dates.
* If you require a return date within 4 weeks, please state in your email that the application is urgent and provide brief reasons.

Once your email has been processed by the Commercial Registry, you will be advised by email of the next steps to determine the application.

## Building Cases list

Applications under the *Building and Construction Industry Security of Payment Act* 2002 (Vic) or s57 of the *Domestic Building Contracts Act* 1995 (Vic) will, wherever possible, be determined “on the papers”. If a hearing is required, this will be conducted by remote eHearing or by telephone conference.

To this end, parties with a listed eHearing before the Judge in Charge of the BCL (“**JIC**”) will be contacted by email by the Associates to the JIC before the eHearing and required to respond in relation to:

* whether the parties are content for the application to be determined “on the papers”, and a proposed timetable for the provision of any affidavits or submissions necessary to facilitate that determination;
* whether the parties request a hearing and the provision of brief reasons explaining the need for a hearing;
* where the application is to be determined at a hearing, an estimate of the duration of the hearing, the logistics of the hearing (including the access of the parties to appropriate software and devices) and a proposed timetable for the provision of any affidavits or submissions necessary to facilitate that determination.

A hearing will be held only if the JIC determines that the matter is not appropriate for determination “on the papers”.

## 3.4 Other requests for interlocutory determinations

Where parties would previously have requested a Directions Hearing, they should now complete a “Request for Interlocutory Determination” form (available on the [County Court website](https://www.countycourt.vic.gov.au/going-court/commercial-division/request-hearing)) and email it to the Commercial Registry copied to all parties. The Court will then decide whether the dispute can be listed for remote eHearing or should be determined “on the papers” and will notify the parties accordingly. Most disputes will be listed for remote eHearing, unless it is a dispute where reserved written reasons are likely to be required and the parties can reasonably be expected to deal adequately with the issues in dispute in writing.

The Commercial Division will be receptive to requests to modify its procedures to deal with any specific concerns. This includes urgent requests resulting from unexpected disruptions from COVID-19, for instance, as a result of the unexpected unavailability of any party, practitioner or witness who is involved in a proceeding. Any urgent requests should be emailed to [commercial.registry@countycourt.vic.gov.au](mailto:commercial.registry@countycourt.vic.gov.au) copied to all parties and marked “Urgent COVID-19 Request”.

# Judicial Resolution Conferences

All judicial resolution conferences will be conducted remotely via Zoom, unless conducting the judicial resolution conference by Zoom is inappropriate for some reason (e.g. a self-represented litigant who does not have access to an appropriate device) in which case the judicial registrar will determine how to proceed with the judicial resolution conference.

For more information on attending a judicial resolution conference by Zoom, please see the Commercial Division [Judicial Resolution Conferences (JRC) Zoom information sheet](https://www.countycourt.vic.gov.au/practice-notes?filters%5bkeyword%5d=Judicial%20Resolution%20Conference&filters%5bdivision%5d=0).

A judicial resolution conference may be offered as an alternative to, or before, a listed trial where COVID-19 may impact on the running of the trial.

# Non-binding Neutral Evaluations

Parties with listed trials which are impacted by measures to minimise the spread of COVID-19 may be offered a Non-binding Neutral Evaluation (“**NNE**”) via remote eHearing in lieu of the trial. NNEs are based on the existing procedure for early neutral evaluations (“**ENE**”) in the Building Cases List, with the significant difference being that it is anticipated that NNE will be utilised shortly before a listed trial date.

NNEs will be conducted by a judge or judicial registrar and will typically not require more than one day of eHearing.

The Court appreciates that ENE (and the NNE derivative) is unfamiliar to many practitioners, who may therefore be less inclined to recommend it to a party. However, practitioners should consider that:

* ENE has been used successfully for many years in overseas jurisdictions (particularly in the US and the United Kingdom);
* ENE has also been successfully adopted in the Magistrates’ Court since the ENE pilot program in 2010;
* Queensland has adopted a comprehensive set of rules and procedures for ENE (but using the description “case appraisal” – see *Civil Proceedings Act* 2011 (Qld) s45 and *Uniform Civil Procedure Rules* 1999 (Qld) Chapter 9, Division 4 [r334-345]);
* the NNE process will be confidential (unless the Court otherwise orders – see *Civil Procedure Act* 2010 (Vic) s67) and non-binding, but ordinarily will not be confidential on the question of costs of the proceeding;
* NNE can be ordered for part of a proceeding; and
* orders will ordinarily be made that the outcome of an NNE will be taken into account on the question of costs if the NNE is unsuccessful and a party fails to improve on the NNE at trial, so as to encourage parties to achieve settlement via NNE.

An information sheet on NNEs is available in the [Practice notes section](https://www.countycourt.vic.gov.au/practice-notes) of the County Court website (for ease of location, sort by “Commercial” and filter by “Updated”).

# Trials

## Majority of trials to be conducted by remote eTrial

Most Commercial Division trials will continue to be conducted via remote eTrial until further notice.

The aim of the Court is to facilitate the resolution of the majority of proceedings on or before their listed trial date. Trials will only be vacated and re-timetabled on the basis of COVID-19 restrictions if no reasonable alternative exists. The responsibilities of all parties and their legal representatives to comply with the provisions of the CPA continue to apply.

Further guidance in relation to remote eHearings, including eTrials, is contained below in [Section 7 – Remote eHearings (including remote eTrials)](#_7_Remote_eHearings).

## Pre-trial directions hearing

To ensure remote eTrials run efficiently, all proceedings will be listed for a pre-trial directions hearing by Zoom before a judicial registrar approximately 1-2 weeks before the listed trial date. The counsel who will be conducting the eTrial should be briefed to appear at the directions hearing.

The pre-trial directions hearing will:

* give participants an opportunity to become familiar with the use of the video-conferencing software to be used for the eTrial;
* ensure parties are ready for the eTrial and, in particular, that:
  + all participants in the eTrial (including witnesses) have access to an appropriate device and are capable of attending Court remotely; and
  + all documents required for the conduct of the eTrial are provided electronically well in advance of the eTrial; and
* provide the Court an opportunity to consider whether:
  + a mediation or judicial resolution conference (before the trial) or NNE (in lieu of the trial on the listed trial date) might be appropriate (noting that when an NNE is ordered, the trial date will be adjourned to a later date in case the NNE does not resolve the proceeding); or
  + whether any additional case management orders are required (such as orders for witness statements).

## In-court trials

The Court may be able to accommodate a trial in the court building in the following circumstances:

* trials with an estimate of four days or more;
* any civil trial where a party is self-represented, a party may apply for leave for all or any part of the trial to take place in person; or
* where a party to the proceeding requires an interpreter to give their evidence, the Court may grant leave for that party and the interpreter to give evidence/interpret in person if satisfactory remote arrangements cannot be made.

Where a proceeding is being heard in court, each party is permitted to have two legal representatives in court at any given time - for example, one instructing solicitor and one counsel or both counsel. In a situation where two counsel are briefed, the party has the discretion as to whether it is the instructing solicitor or counsel who will appear remotely, whilst the other practitioners for that party are in court. Where a practitioner wishes to appear remotely, arrangements will be made for such practitioners to appear, or view the proceedings via Zoom.

Where the trial judge considers that the onsite attendance of a party is essential for the operation of justice, such party can attend court.

Where the trial judge considers that the onsite attendance of a witness is essential for the operation of justice, such witness can attend court to give evidence. This will be considered on a case by case basis by the trial judge, having regard to:

* the overarching approach that all witnesses should participate remotely wherever possible;
* the logistical considerations of facilitating the evidence remotely; and
* while each case must be considered on its own merits, the starting point is that evidence can generally be given remotely in an effective and fair manner including where credibility and reliability are in issue.

Public and other Court users will continue to be able to view the proceedings by remote virtual hearing.

## Delivery of Judgment

Parties will be advised by the associate to the trial judge as to when Judgment is to be delivered. Judgments will usually be delivered by email, but may also be delivered by eHearing. Where Judgment is to be delivered by eHearing, the associate to the trial judge will contact the parties in the normal course and arrange an eHearing for the delivery of the Judgment. The eHearing will be listed in the daily list. Judgments will also ordinarily be published on the AustLII website shortly after being delivered.[[4]](#footnote-4)

# Remote eHearings (including remote eTrials)

Other than in the circumstances listed above or other exceptional circumstances (within the discretion of the trial Judge), all Commercial Division hearings (including trials) will be conducted via remote eHearing until further notice.

Participants appearing remotely at an eHearing 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 and contempt of court and perjury, will continue to apply.[[5]](#footnote-5)

Unless the parties otherwise advise the associates to the allocated trial judicial officer (or the Commercial Registry if no judicial officer has yet been allocated) at least 2 business days before a listed hearing date, where all technical requirements are met, the parties will be taken to consent to the making of a direction by the Court pursuant to section 42E(1) of the *Evidence (Miscellaneous Provisions) Act* 1958, that all persons shall appear, give evidence and make submissions in this proceeding this day by audio visual link, and that direction shall be taken to have been made at the commencement of the hearing.

## Device capability and internet connection

The Court recommends that participants to an eHearing (particularly an eTrial) use a smart device no smaller than an iPad (9.7”). This is to ensure participants are able to read documents presented to them as evidence on screen, and to ensure participants can properly observe what is occurring during the proceeding. For these reasons, iPhones and Android phones should not be used for eTrials. Where a directions hearing does not require participants to view documents online, a participant may use an iPhone or Android where they have no other device available to them.

The quality of the connection to an eHearing depends on the quality of the internet connection. The Court encourages participants to access eHearings through a device from a location that has a reasonable internet speed, whether via Wi-Fi or a cellular network such as 4G.

Participants may wish to wear a headset during the video hearing to improve audio quality and reduce any audio feedback. However, participants should note that mobile phone in-ear headphones do not generally provide reliable audio.

Participants should join the eHearing from a quiet private location.

## Before the hearing

The Commercial Division is currently using Zoom to conduct remote eHearings.

The associate to the Judge or Judicial Registrar conducting the eHearing must be provided with the email address and telephone number of all participants in the eHearing (including witnesses). Where a participant (such as a witness) will not attend for the duration of the eHearing, the associate should also be provided with the approximate time when that participant will be joining the eHearing. Emails to the Court for the purposes of eHearings which contain no substantive information other than personal contact details need not be copied to all parties.

The associate will then email participants with a link or meeting ID and password to attend the eHearing at the allocated time. Participants will generally be invited to join an eHearing approximately 15 minutes before the listed time, to allow for testing of the connections and to ensure that the video and audio of each participant are working.

Before the eHearing, all participants (including counsel, instructing solicitors and any observers) should:

* familiarise themselves with Zoom and ensure the video and audio are set up correctly;
* ensure that they are appropriately identified (for example by their first and last name, or by a title and surname);
* ensure that they are appropriately attired, well lit from the front, their display is set up so they are speaking into the camera and free of background noise and distractions; and
* upload a neutral background for use during the eHearing. This is particularly desirable when working from home. Sample backgrounds are available from the VicBar website or from the associate to the Commercial Judicial Registrars (commercialjr.chambers@countycourt.vic.gov.au).

There are instructional videos and guides on the Zoom website. Further useful information sheets on how to use Zoom can be located in the [Practice notes section](https://www.countycourt.vic.gov.au/practice-notes) of the County Court website (for ease of location, filter by “Commercial” and sort by “updated”).

## Robing

Counsel are expected to be robed when appearing at an eTrial (including for Judgment).

Robes are not required to be worn for directions hearings or applications by summons.

Where counsel do not own their own robes and therefore share robes with other counsel, they may be excused from robing. Please inform the Judge’s Associate of this before the hearing.

Solicitors and other participants are expected to be attired in a manner appropriate to attendance at court.

## Hearing protocol

Immediately before the eHearing, the associate will check with all participants that they are able to see and hear each other, and that they are ready to proceed.

While the Court has endeavoured to conduct the eHearings as closely as possible to the usual practice of the court, some variations have been made given the eHearings are being held remotely. The Judge or Judicial Registrar hearing the matter will not enter the eHearing until the parties have confirmed they are ready to proceed. Once the judge has been added to the eHearing, the Associate will call on the matter, following which the parties are to enter their appearances.

The associate or tipstaff will formally open the Court in accordance with the judge or judicial registrar’s preference. Parties may remain seated when the judge or judicial registrar enters and exits the eHearing, and when addressing the Court.

In order to prevent any background noise, it is recommended that counsel place their microphones into ‘mute’ and only ‘unmute’ when they are delivering a submission, or seek to interject. The mute button is located at the bottom of the screen. For comfort, the associate can unmute a member of counsel remotely if they cannot easily quickly access this option themselves and they are called on to speak. There is also an option under “Audio Settings” in the “Mute/Unmute” icon to check the option “Press and hold the SPACE key to temporarily unmute yourself”. If this option is checked, you can press and hold the SPACE bar on your keyboard to make a brief comment or response**.**

When counsel are speaking, it would assist for the preparation of the transcript if they identify themselves by name (‘eg. Your Honour, it is Ms Smith speaking…’). This is only useful where counsel is beginning their submissions on a particular issue and where another member of counsel had been speaking previously. It is not necessary to note your name every time you speak (eg. where there might be a back-and-forth discussion with the judicial officer).

Zoom supports screen sharing during an eHearing. This can allow for participants to view the same document during a hearing (eg. an electronic court book being used during an eHearing, or a draft form of order being amended by an associate to incorporate comments made by counsel and the judicial officer during an eHearing). Counsel should orally request permission to share their screen from the judge or judicial registrar before using this function.

## Recording of hearing

A recording of the eHearing will be made by the associate. Parties are still required to organise transcript for remote eTrials. If transcript has been arranged, then the transcribers in the eHearing are permitted to record the proceedings, in order to prepare transcript. No other participant is permitted to record the eHearing. Practitioners should ensure that their clients are aware of this prohibition.

Any person wishing to request a copy of the transcript of a remote eHearing should email the request to the associate to the judge or judicial registrar who conducted the hearing.

## Giving evidence

Lay witnesses are expected to give evidence from the offices of the solicitor who arranged the calling of that witness. The solicitor is to ensure that there is a room available for the lay witness to give evidence from their offices and such room must be free of any other occupants at the time the lay witness is to give evidence. Expert witnesses may give evidence from their professional rooms, but should also be alone in their rooms when giving evidence. If a lay witness desires to give evidence from a neutral venue, please inform the Judge’s Associate in advance of the eTrial and arrangements can be made for the witness to give evidence from a meeting room in the Court.

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

The witness must have a device as recommended in paragraph 7.1 above, and access to copies of the court book (if the parties wish for this to occur). The witness’ 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 before the hearing.

Where an interpreter is required, it is not necessary for the interpreter to be in the same room as the witness and this should not occur where it would breach the current social distancing requirements. An interpreter may appear via video in the eHearing, or if this is not possible, then they may interpret via telephone, linked into the eHearing.

As usual, the witness will be sworn or affirmed by the associate or tipstaff. Witnesses can choose to take an oath or make an affirmation via audio-visual link.[[6]](#footnote-6) Witnesses choosing to take an oath are not required to hold a religious text.[[7]](#footnote-7)

## Circuits

These will continue, where possible, as remote eTrials.

# Future updates

The Court appreciates that practitioners desire regular information as to what is expected in these current times as a result of the restrictions imposed by COVID 19. The Court will update this document as needed.

1. *Electronic Transactions (Victoria) Act* 2000 (“**ETVA**”), ss8-10; *Interpretation of Legislation Act* 1984, s38.

   [↑](#footnote-ref-1)
2. ETVA s9. [↑](#footnote-ref-2)
3. See OAA s49F. [↑](#footnote-ref-3)
4. See *Open Courts Act* 2013 (“**OCA**”), s33K(1)(b), (3). [↑](#footnote-ref-4)
5. See OCA, s33(1)(a); *Evidence (Miscellaneous Provisions) Act* 1958, ss42E, 42U–42W. [↑](#footnote-ref-5)
6. *Oaths and Affirmations Act* 2018, s16. [↑](#footnote-ref-6)
7. *Oaths and Affirmations Act* 2018, s10(1). [↑](#footnote-ref-7)