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| Remote Hearing and Vaccination Protocol |
| Notice to practitioners |

**DOCUMENT CONTROL**

**Details**

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# Preamble

1. The County Court has developed this *Remote Hearing and Vaccination Protocol* to communicate arrangements for the orderly and safe conduct of matters heard at the Court over the forthcoming period.
2. This period will involve a measured transition in the operations of the Court, in recognition of the phases for progressive opening up to the vaccinated population in the State Government’s ‘roadmap’ (“Roadmap”).
3. The operations of the Court also recognise that during this transition period, Government health advice and modelling predicts a surge in COVID-19 cases in the community throughout November and December. Case numbers are then predicted to decline and stabilise, as full vaccination levels continue to rise.
4. During this transition period, the Court will endeavour to provide a range of options for the manner in which a particular matter may be heard (or a participant may appear), taking into account the vaccination status of the legal practitioners and other Court users, and any other relevant circumstances.
5. The Court is committed to ensuring continued access to justice during this period while providing a safe working environment for judicial officers, Court staff, legal practitioners, and all Court users. The Court seeks the assistance and cooperation of legal practitioners (as officers of the Court) in fulfilling this commitment.
6. This protocol applies to the Court in Melbourne. The procedures to be adopted in the regions will be developed in consultation with all relevant stakeholders. In the meantime, those procedures will be subject to direction from the presiding judicial officer, guided by the principles of this protocol.
7. This protocol does not relate to the circumstances in which jury trials will resume at Melbourne. The conduct of jury trials will be the subject of separate communication from the Court, following which these protocols will be updated.

# Duration

1. This protocol will commence on 1 November 2021 and will expire at 11.59pm on 31 January 2022 unless extended or revoked.
2. The protocol will be reviewed regularly and may be amended, revoked or extended based on any changes to the Directions (defined below) and any other directions pursuant to the *Public Health and Wellbeing Act* *2008* (Vic).

# Remote hearings

1. Subject to the exceptions below, all trials and other hearings (“hearings”) listed in Melbourne will continue to proceed as remote hearings until Phase C of the Roadmap (80% fully vaccinated) anticipated to be on or about 5 November 2021.
2. It is expected that the Court will then permit an increased number of in-person hearings, at the discretion of the judicial officer conducting a pre-trial directions or other hearing, determined on a case-by-case basis. Revised procedures for in-person attendance will be notified in advance of that date. These are likely to include directions (consistent with this protocol), requiring parties to disclose the vaccination status of proposed hearing participants.
3. However, the Court’s position in relation to the requirements for onsite attendance, outlined below, will be unaffected by the phases of the Roadmap. Indeed, any increase in the number of in-person hearings after 5 November 2021 will reinforce the need for appropriate management of the risks to judicial officers, court staff and other court users.

## Criminal Division

1. At least until 8 November 2021, Criminal Division matters listed in Melbourne will proceed as remote hearings unless the Chief Judge approves in-court attendance for the following matters:
   * 1. judge alone trials;
     2. plea hearings and sentences;
     3. conviction appeals involving contested evidence; and
     4. any matter involving the liberty of the accused.
2. If a party considers it necessary and in the interests of justice for a matter to proceed in person, that party must, as soon as possible, provide notice of that request to the chambers of the presiding judicial officer.

## Common Law and Commercial Divisions

1. At least until 8 November 2021, if a party considers that it is necessary and in the interests of justice for the matter to proceed in person, that party must, as soon as possible, give notice of that request to the Court and the other parties and must provide brief submissions (no more than two pages) detailing the reasons that the matter is not suitable for remote hearing. Each other party to the proceeding may file and serve brief submissions (no more than two pages) in response.
2. Submissions should be emailed to the Common Law Duty Judge ([CommonLawDutyJudge@countycourt.vic.gov.au](mailto:CommonLawDutyJudge@countycourt.vic.gov.au)) or the Commercial division registry ([Commercial.Registry@countycourt.vic.gov.au](mailto:Commercial.Registry@countycourt.vic.gov.au)) (as the case may be) and all the other parties.
3. Determination of the issue will be made by the Head of Division in chambers, on the basis of the written submissions, and subject to securing the approval of the Chief Judge for any in person attendance. If the Head of Division considers it necessary to hear oral submissions in respect of whether the trial should proceed remotely or in person, the matter will be listed for a directions hearing.

# Vaccination status

## Background

1. The Acting Chief Health Officer has published the *COVID-19 Mandatory Vaccination (Workers) Directions (No 3)* (‘the Directions’) under the *Public Health and Wellbeing Act 2008* in relation to the vaccination of authorised workers.
2. The Directions provide vaccination mandates for a range of workers across different industries and occupations, where the employer seeks to permit those workers to attend ‘onsite’. The Directions provide that:

*The purpose of these directions is to impose obligations upon employers in relation to the vaccination of workers, in order to limit the spread of Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) within the population of those workers.*

1. The Directions exclude a person who works in connection with proceedings in a court. However, the Court assumes that this exclusion is a recognition of (among other things) the independence of courts and does not represent any assessment or conclusion by the Acting Chief Health Officer as to the level of risk associated with proceedings in a court.
2. Accordingly, the Court has independently assessed the risks associated with the conduct of court proceedings having regard to the health and safety policy underlying the Directions.
3. The Court acts upon the basis that vaccination is the best means of protection from serious illness or death if a person becomes infected with COVID-19, and vaccination also reduces the risk of both transmission and infection of COVID-19.
4. Consistent with that advice:
   * 1. all court staff who attend onsite at the Court will be vaccinated on the same basis as other authorised workers covered by the Directions;
     2. staff of third-party contractors attending onsite (such as security and IT staff) will likewise be vaccinated on that basis; and
     3. all judicial officers of the Court have voluntarily disclosed to the Chief Judge that they are fully vaccinated.
5. The Court considers that legal practitioners, as officers of the Court, enter into the Court to conduct their work, and that the Court building is an integral part of their workplace. The Court assumes that legal practitioners will take all reasonable steps to assist the Court to provide as safe a workplace as possible.
6. By contrast, non-professional court users who must attend court are generally not attending their workplace, at least some are in attendance by compulsion, and the Court’s capacity to regulate their behaviour through professional arrangements and practices is more limited.

## Attendance onsite or alternative arrangements

1. Against that background, and to provide an environment that is as safe as possible for those who attend onsite at the Court, this protocol provides for a range of options for the appearance of legal practitioners and other participants. In particular:
   * 1. if approval has been given for a hearing to proceed wholly or partly in person, the Court expects that all legal practitioners wishing to attend onsite at Court will disclose their vaccination status in advance of any trial or hearing and meet the Court’s vaccination requirements. This is subject to the alternative arrangements or options referred to in in paragraphs 36 and 37 below;
     2. while other hearing participants are not obliged to be fully or partially vaccinated in order to attend onsite, the parties should expect that the Court will make directions concerning the management of any hearing participant who is either unvaccinated or who refuses to disclose their vaccination status;
     3. those directions may include requiring them to appear remotely, the wearing of additional/appropriate personal protective equipment (“PPE”), and other additional control measures, including minimising their movement in and around the Court building and in courtrooms;
     4. subject to such directions and the PPE and Movement Protocol discussed below, after 1 November 2021 hearing participants with a speaking role will not be required to wear masks during a hearing while speaking, but should wear a mask at all other times.
2. For the purposes of this protocol:
   * 1. terms used in this protocol that are defined in the Directions, have the meanings given in the Directions;
     2. any person who is unwilling or unable to establish their vaccination status in the manner contemplated by this protocol, will be taken to be unvaccinated;
     3. the “Court” is the County Court sitting at Melbourne;
     4. “legal practitioner” means an Australian legal practitioner (including counsel and solicitors) who is attending court in their capacity as a legal practitioner acting in a criminal or civil proceeding in the Court, and not as a party in a proceeding or otherwise in a personal capacity;
     5. the “PPE and Movement Protocol” means the protocol for the management of unvaccinated hearing participants in Melbourne attached; and
     6. “unvaccinated hearing participants” means hearing participants who are unvaccinated or unwilling or unable to establish their vaccination status in the manner contemplated by this protocol.

## Email to the Court as to vaccination status

1. If approval has been given for a hearing to proceed wholly or partly in person, parties must confirm the vaccination status of each participant that is proposed to attend onsite at the Court for the hearing (“hearing participant”) including:
   * 1. counsel;
     2. instructing solicitors;
     3. the accused;
     4. parties;
     5. all witnesses proposed to give evidence in person; and
     6. any other person seeking to attend in person (including victims and family of the accused).
2. As soon as practicable and, in any event, by no later than 4.00pm on the day before a hearing participant is expected to attend onsite at the Court, the solicitor with conduct of the matter on behalf of each party (or the party themselves if they are self-represented), must email the presiding judicial officer’s chambers advising of the vaccination status of all such hearing participants and the manner in which each hearing participant is expected to establish their vaccination status upon arrival at the Court. This email should be sent to the presiding judicial officer’s chambers only and should not be copied to the registry or division lawyers.
3. If any hearing participant is unwilling or unable to disclose their vaccination status to the solicitor or party for the purposes of the email sent in accordance with this protocol, the vaccination status of that hearing participant should be stated as: “unwilling or unable to disclose vaccination status – unvaccinated”.
4. Notwithstanding the Court’s ordinary requirement that emails are to be copied to all parties to the proceeding, an email which solely discloses the vaccination status of hearing participants need not be copied to other parties.
5. If there is any change to counsel appearing, instructing solicitors or other hearing participants during an in-person hearing, the solicitor with the conduct of the matter (or the party themselves if they are self-represented), must provide updated details of such additional person’s vaccination status by 4.00pm on the day before their attendance at Court.
6. Any information concerning vaccination status supplied to the Court under this protocol will be kept confidential to the presiding judge and his or her staff and, unless the presiding judicial officer otherwise orders, will deleted or destroyed at the conclusion of the hearing.

# Attendance onsite at the Court

## Legal practitioners

1. Subject to the alternative arrangements or options referred to in in paragraphs 36 and 37 below, the Court’s expectation is that all legal practitioners wishing to attend onsite at the Court will have a vaccination status equivalent to that required for a worker under the Directions, namely:
   * 1. unless they are an excepted person, by receiving one dose of a COVID-19 vaccine on or before 22 October 2021;
     2. unless they are an excepted person, by receiving two doses of a COVID-19 vaccine on or before 26 November 2021; or
     3. by being an excepted person.
2. Upon arrival at the Court, and before proceeding through the express check-in line for legal practitioners, the following procedures will apply to legal practitioners:
   * 1. regardless of vaccination status, and to assist the efficient passage of all court users through Court security, all legal practitioners are expected to check in using the County Court’s QR code and the Services Victoria application, and to request that their attendance be manually recorded only as a last resort;
     2. those who are fully vaccinated and have their vaccination certificate uploaded to their Services Victoria application, must check in using the County Court’s QR code and the Services Victoria application and may then show their vaccination certificate to security staff and then proceed through the express check-in line;
     3. those who are fully vaccinated but do not have their vaccination certificate uploaded to their Services Victoria application, must proceed to the designated counter and produce a valid vaccination certificate or other evidence of their vaccination status satisfactory to the security officer and then proceed through the express check-in line;
     4. in the period up to 26 November 2021, those who are partially vaccinated must proceed to the designated counter and produce evidence of such partial vaccination, before proceeding through the express check-in line; and
     5. those who are excepted persons must proceed to the designated counter and produce evidence of their excepted person status, before proceeding through the express check-in line.
3. Any legal practitioner who does not meet the Court’s vaccination requirements as set out in this protocol may be afforded the following options, subject to the discretion of the presiding judicial officer:
   * 1. they appear at the hearing remotely by video link, either at a designated location within the Court or at a location away from the Court;
     2. if the legal practitioner has undergone a COVID-19 test(s) as required[[1]](#footnote-1) and agrees to comply with the *PPE and Movement Protocol*, that legal practitioner may be permitted to attend the hearing in person; and
     3. in exceptional circumstances (such as where the legal practitioner is appearing for an accused person and the presiding judicial officer is satisfied that there is no reasonable alternative course open) and the legal practitioner agrees to comply with the *PPE and Movement Protocol*, that legal practitioner may be permitted to attend the hearing in person.
4. If the presiding judicial officer considers that none of the options listed above is appropriate, he or she may make orders or directions for the future conduct of the proceeding including, for example, an order that the hearing should proceed with all parties appearing remotely or an order that a hearing be adjourned to enable the affected party to retain a legal practitioner who meets the Court’s vaccination requirements.

## Other court users

1. Upon arrival at the Court and before proceeding through the security check-in, the following procedures will apply to any person attending onsite at the Court who is not a legal practitioner:
   * 1. those who are fully vaccinated and who have their vaccination certificate uploaded to their QR code check-in application with Services Victoria, must check in using the County Court’s QR code and the Services Victoria application and may then show their vaccination certificate to security staff and proceed through the security check-in;
     2. those who are fully vaccinated but do not have their vaccination certificate uploaded to their Services Victoria application, must proceed to the designated counter and produce a valid vaccination certificate or other evidence of their vaccination status satisfactory to the security officer and then proceed through security check-in;
     3. those who are partially vaccinated must proceed to the designated counter and produce evidence of partial vaccination satisfactory to the security officer, before proceeding through the security check-in; and
     4. those who are unvaccinated hearing participants, must proceed to the designated counter for further instructions.
2. Subject to the overriding discretion of the presiding judicial officer and the interests of justice, the instructions to be given to an unvaccinated hearing participant may include:
   * 1. that they appear at the hearing remotely by video link, either at a location away from the Court or at a designated location within the Court; or
     2. that they comply with the PPE and Movement Protocol.

1. The appropriate testing options available will vary and develop over time. The practitioners will be provided notice of the testing requirements as they are settled by the Court. [↑](#footnote-ref-1)