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Online Proceedings: Participant Guide

Fair Work Commission

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Online Proceedings: Participant Guide

The Online Proceedings Participant Guide provides information and guidance for participants about proceedings held before the Fair Work Commission that are to be conducted online.

When will the Commission hold a hearing or conference online?

The Commission may hold a hearing or conference online for a number of reasons. These include:

- To better support accessibility requirements of participants
- To reduce travel cost and time for participants
- To hear the case, or a specific part of the case, quicker
- Where any of the participants involved have concerns about meeting in-person
- Where government health restrictions prevent participants meeting in person

It will be up to the Member hearing the case to decide whether the proceeding will be in person, partly online, or fully online. There are a number of considerations a Member may take into account when deciding if a proceeding should be online or in person. The Commission must ensure that access to justice and procedural fairness are achieved in all circumstances, including in online proceedings.

The Notice of Listing sent by the Associate to the Member will set out if the hearing is to be online or in person.

If a hearing is not scheduled to be held online, parties can request an online hearing by emailing the Chambers of the Member dealing with the case. The Chambers email address will be in the Notice of Listing.

Parties should tell the Member in the email why the hearing should be held online.

Some proceedings or particular circumstances are better dealt with online than others. Some proceedings will be conducted in a 'hybrid' manner, where some participants are in person and some online.



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Online proceedings resources

The Commission's website has information about online proceedings to assist parties, and information about conferences and hearings:

- [Hearings and conferences](#)

The Commission has also prepared two technical guides:

1. [Proceedings by Microsoft Teams which may assist participants in using software and preparing for the online hearing](#)
2. [A technical information guide for witnesses](#)

The 'proceedings by Microsoft Teams' guide may assist participants in using the MS Teams software and preparing for the online hearing.

The 'technical information guide for witnesses' describes what witnesses can expect:

- in the weeks and days leading up to the proceeding
- on the day of the proceeding
- before you join in the proceeding
- during the proceeding itself.

Parties to an online hearing should contact the Associate of the Member who is hearing the matter if they need further information.

Procedures and rules for online proceedings

An online hearing is a legal proceeding. The rules and procedures are the same as in person hearings. Information on preparing for a conference or hearing is available on the Commission's website:

- [Prepare for a conference or hearing](#)

As with an in person hearing, the Commission Member will direct the order of events, including who speaks and when. All parties will be given an opportunity to respond and ask questions. Information on procedures and standards of behavior during proceedings is available on the Commission's website:

- [What happens during a hearing](#)

This information may be relevant whether the hearing is online or in person.

During an in person hearing, parties generally stand when speaking to the Commission Member, and parties will bow to the Commission Member when they enter or leave the room. This is not required during an online hearing.

Online proceedings require additional rules than an in person proceeding. These mainly relate to technology and are:



- All participants (including the Commission Member, applicant, respondent, representatives and witnesses) should generally have their video turned on at all times, unless:
 - the Member has made a direction to turn the camera off
 - the proceeding is adjourned for a short time
 - The proceeding is listed for a telephone or audio conference.

If any participant does not have video capability they must inform the Associate to the Member prior to the proceedings.

- All participants must have their microphone muted until it is their turn to speak.
- A witness must not be in a room with someone else, coached, or passed notes (see section on Witnesses for more information). If a witness wishes to have a support person in the room with them while they are giving evidence, they will need to make a specific request to the Member hearing their case.
- All participants must turn off any device that is not being used for the hearing, or have any other devices on silent mode. Mobile phones may need to be used (i.e. the Commission may need to contact parties via mobile phone) if technical problems arise during the online proceeding.
- Parties are not permitted to record or transmit the hearing in any way (see the 'recording online hearings' section of this guide for further information).
- There will be short breaks in online proceedings, offered at least every 2-2.5 hours. If parties need more frequent breaks a request can be made to the Member during the proceedings.

Recording online hearings

Most online hearings are recorded. The Commission Member will decide if a recording is to be made. Private conciliation conferences are generally not recorded.

Parties may request access to an audio recording of the hearing or written transcript. If the Commission has not ordered or requested a transcript, parties may need to pay for the transcript to be created.

If the Commission Member has ordered a transcript for an online hearing a copy will be provided (via email) to all parties. In some major case matters a copy of the transcript will be made available on the Commission's website.

Further information about transcript of proceedings is available on the Commission's website: [Transcript and Recordings](#)

Preparing for an online hearing

Filing documents and the 'digital hearing book'

As with in person proceedings, the Commission will set a deadline for filing documents related to the case. This will generally be set out in Directions issued by the Commission. For online proceedings the Commission will generally require electronic versions of documents.



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It is important to note that documents sent after the timeline set out in the Directions issued by the Commission may not be included unless the Member hearing the case gives permission.

The ‘digital hearing book’

In most cases, the Commission will create a ‘digital hearing book’.

The digital hearing book will contain all of the material filed in the case to assist parties and the Commission in hearing the matter. The digital hearing book will contain numbered pages, a table of contents and bookmarks to allow parties to easily navigate the document.

The digital hearing book will be sent to all parties in the matter as soon as practicable after receipt of the last material to be filed in the matter.

If parties would prefer to prepare the digital hearing book themselves, this should be communicated to the appropriate Chambers.

Tendering documents during proceedings

Where documents might need to be ‘handed up’ during a proceeding, have these ready to send to Chambers and the other party. Participants will be required to send these documents via email to the Chambers and the other party during the proceeding.

The Commission Member may stand the matter down to allow time participants time to receive the document via email and read it.

Microsoft Teams used for online hearings

The Commission uses Microsoft Teams (MS Teams) for online hearings.

All parties will need a device (computer or smart phone) that supports MS Teams to participate in an online hearing. Devices will need a camera and microphone for participation in the hearing.

The Associate of the Member hearing the matter will generally offer to conduct a technology test of MS Teams with all parties prior to the proceeding. It is recommended all parties participate in this test if they have not participated in an online proceeding via Teams before.

Parties who have participated in proceedings via MS Teams previously may opt out of this test.

The use of headphones or a microphone is highly recommended to avoid feedback issues, and to produce higher quality sound.

It is the responsibility of all parties to ensure devices are set up correctly, charged, and have stable internet connection.



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Parties and their representatives are encouraged to have neutral backgrounds during online hearings. This can be done by selecting a blurred or alternate background in MS Teams. Parties should also consider how they are framed on screen.

Technical support

In addition to the technology test of MS Teams, the Commission will provide basic technical support where possible. If parties require technical assistance (outside of the technology test provided by the Commission) they should contact the relevant Chambers at the earliest opportunity prior to the hearing. Examples of issues the Commission may be able to assist with include audio issues such as low volume or background noise, video issues such as setting up backgrounds or enabling/disabling videos, and assistance with Teams audio/video settings.

An Associate will be present during proceedings to assist with technological issues relating to the operation of the Teams platform that may arise. If participants require assistance throughout the duration of the proceedings they should separately email the Chambers of the Member.

Additional participants - support person, representatives, witnesses and interpreters

Support people (non-speaking), representatives, witnesses and interpreters are able to be present, represent or participate when necessary during online proceedings, similar to an in person proceeding.

Participants must advise the Commission in advance the role, name and contact details (email and direct phone line) of any additional participants. Additional participants must also be set up correctly to participate in the hearing (see the 'Microsoft Teams used for online hearings section' above).

Representatives

Permission is required to be represented by a lawyer or paid agent, regardless of whether the proceeding is to be held online or in person.

See the Commission's [Practice Note: Lawyers and Paid Agents](#) for further information.

Witnesses

Witnesses are not to listen to each other's evidence and will be asked to leave the Teams proceeding when other witnesses are giving evidence. Witnesses may be asked to give evidence at any point during the online hearing.

As with an in person proceeding, it is the responsibility of the relevant party to make sure witnesses are available at all times during the online proceeding until they are excused by the Commission Member.

It is the responsibility of the relevant party to contact witnesses (generally by SMS message or telephone) and ask that they join the hearing when required.



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Before giving evidence in any proceeding (in person or online) witnesses will be required to give an oath or an affirmation confirming:

1. Their evidence before the Commission is the truth; and
2. That they are giving their evidence independently and without the assistance of any other person.

The witnesses will be taken through this process by the Associate assisting with the hearing.

Before giving evidence in an online proceeding, witnesses may be required to give an additional affirmation confirming that they will give their evidence independently, without reliance on third parties and without accessing unauthorised material. An example additional affirmation is set out in the Interim Framework for Online Proceedings.

Interpreters

Interpreters are available for online proceedings, in the same way they are available for in person proceedings.

The requirement for an interpreter may be taken into consideration when deciding if a hearing should be online or in person.

Additional time may be allocated in proceedings where an interpreter is involved. This is up to the Member hearing the case. In some instances, it may be suitable to have a 'hybrid' proceeding where an interpreter is present with the party requiring interpretation present in the same room as the interpreter (usually a Commission hearing or conference room), particularly in circumstances where the interpreted language utilizes non-verbal or physical cues.

Attendance at online hearings

Quiet and private location

Participants should attend an online hearing from a location that is quiet and private, with limited background noise.

Participants must ensure they are in a place where they will not be interrupted during the proceeding.

If participants do not have access to a quiet and private location for the duration of their proceeding, they may request access to Commission facilities. Providing access to Commission facilities will be at the Member's discretion and will be considered on a case-by-case basis.



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Dress

Commission proceedings conducted online are formal and should be taken as seriously as an in-person hearing. Participants should dress appropriately for the proceedings and conduct themselves as if they were in court (or a conference).

Joining the hearing and the virtual lobby

All participants must join the hearing 10 minutes before it is scheduled to start (or earlier if directed by the Member or Associate). The start time for the hearing can be found on the Notice of Listing.

Participants will be held in a virtual lobby until the Member's Associate admits everyone to the proceeding. While in the virtual lobby, participants will not be able to hear or see any other participants.

Participants are not permitted to admit any other participant to the meeting.

The Associate will keep a record of everyone who joins the proceeding.

Observers to hearings

Most Commission hearings are open to the public. The way in which parties observe online proceedings will be a matter for the Commission Member presiding over the proceeding.

Members of the public wishing to observe an online proceeding must contact the relevant Chambers by 8:30am on the day of the hearing to request access to the Microsoft Teams link. In some limited instances, the Member hearing the matter may not permit observers for all or part of a proceeding. A list of Chambers' email addresses can be found on the Commission's website: [Contact a Commission Member](#).

Links to hearings will not be published on the Commission's website due to privacy related issues and disruptions that can occur with parties joining after the online proceeding has commenced.

The Commission Member presiding over the proceeding (or their associate) will provide verbal instructions to observers at the commencement of the proceeding regarding conduct. All members of the public wishing to observe an online proceeding must be muted at all times and keep their camera off.

Observers to online proceedings are prohibited from recording or transmitting the proceeding in any way.