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Commission

# Statement: Interim Online Proceedings Framework

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The Fair Work Commission is today releasing its interim online proceedings framework and a participant guide for consultation.

On 17 December 2021 the President of the Fair Work Commission (the Commission) published a discussion paper titled [‘The Future of Online Proceedings’](#) (Discussion Paper).

The Discussion Paper examined how the Commission delivers online hearings and conferences (online proceedings) and sought feedback from Commission users about their experiences with, and perceptions of, online proceedings at the Commission. Users were invited to address 10 separate discussion topics, including issues relating to the Commission’s statutory framework; procedural fairness and open justice; technological considerations; the participation of witnesses and interpreters, and users’ and observers’ positive and negative experiences of online proceedings.

This feedback has informed the development of an Interim Framework for Online Proceedings (the Interim Framework). The Interim Framework sets out how the Commission proposes to utilise online proceedings into the future to ensure a consistent approach, and sets out additional resources the Commission will deliver under the Framework, including a participants guide to online proceedings.

The Interim Framework should be read in conjunction with the Commission’s [Fair Hearing Practice Note](#).

The Commission is inviting all interested users to provide feedback on the Interim Framework by **6 July 2022**. All feedback can be emailed to [consultation@fwc.gov.au](mailto:consultation@fwc.gov.au). The framework will be finalised and published after considering all feedback received.

As noted in the Discussion Paper, the Commission will review the online proceedings framework once it has been in operation for six (6) months.

## Submissions received in response to the Discussion Paper

A total of 32 submissions were received in response to the Discussion Paper from a range of different stakeholders and users.



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A full list of submissions received is set out at **Attachment A** to this Statement. It is acknowledged that a number of different, and occasionally conflicting, views were expressed in relation to the discussion topics in the Discussion Paper.

Some general observations, or key themes that are apparent from the submissions are:

- Online proceedings are appropriate where there are not disputed facts and no witness evidence
- Most stakeholders took the view that if there is witness evidence or testing of credit, in person should be the default, although a minority submitted that witness credit could be more easily determined online as witnesses were closer to the camera and facial expressions could be more easily read
- There are limitations to technology and these should be taken into account when deciding whether to schedule an online proceeding
- Parties' views should be sought as to whether a matter is listed as an online proceeding, and should have the option to request an in-person proceeding or accommodations to online hearings
- Self-represented parties including small-business employers generally appreciated the flexibility and accessibility online proceedings provided as they were low-cost, did not require travel, and did not disrupt responsibilities such as caring responsibilities.
- Some stakeholders felt that online proceedings were less formal and serious than in person proceedings while others considered there was no difference in formality or seriousness
- Stakeholders appreciated the Commission's current practice of preparing and distributing digital court books, but several commented that digital court books should be provided to parties earlier
- The Commission's general practice of conducting test calls prior to formal proceedings should continue
- The Commission should publish further guidance materials to assist parties to participate in online proceedings, particularly self-represented parties, small business employers, and inexperienced/first-time participants in the Commission
- The Commission should consider developing witness instructions and expanded affirmations addressing key concerns regarding witness coaching or outside interference if witness evidence is to be given during online proceedings

A number of issues raised in the submissions are outside the scope of the online proceedings interim framework, which provides guidance as to when online proceedings may be held rather than in-person proceedings. For example, some submissions addressed the Commission's unfair dismissal conciliation process, noting that these should be conducted via video link or in person rather than over the telephone. Others addressed areas such as the general use of interpreters in all proceedings (not just in the online format), and the Commission's support and processes for parties who may be in domestic or family violence situations. While these submissions fall outside of the scope of this framework, they raise important issues and will be referred (where possible) or will be taken into account when developing further Commission policies and practices.



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In addition, a number of submissions suggest technological improvements that may not currently be available to the Commission, or were not available at the point in time in which some users were participants to online proceedings. New features have become available to the Microsoft Teams environment over the past 12 to 18 months and by investing Microsoft's flagship communications product we will continue to see enhancements and developments that improve and enrich user experiences.

The Commission has an ongoing commitment to improve our digital services for conducting online proceedings wherever possible, our product selection and user experience is at the forefront of our service delivery planning.

## **Surveying parties**

In addition to seeking feedback on the Interim Framework, the Commission will also survey applicants and respondents who have participated in proceedings conducted online or in-person.

Survey questions will focus on issues such as:

- perceptions of the overall fairness of how the matter was conducted
- whether participants felt they had a chance to put their case to the Commission
- whether the process was easy to follow
- whether the matter was dealt with in a timely way
- any challenges they faced during the proceedings, and
- the positive and negative aspects of their experience.

The results of this survey will be considered as part of the Commission's review of the interim online proceedings framework.



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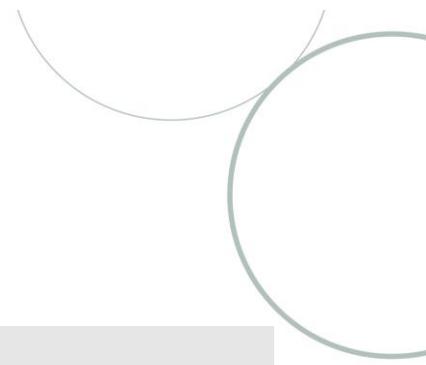
# Attachment A – list of submissions received

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Date received	Name of individual or organisation
20/12/2021	An individual
20/12/2021	An individual
21/12/2021	An individual
10/01/2022	An individual
13/01/2022	An individual
14/01/2022	An individual
17/01/2022	An individual
12/01/2022	An individual
24/01/2022	EMA Consulting
28/01/2022	Australian Small Business and Family Enterprise Ombudsman
31/01/2022	A Whole New Approach



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03/02/2022	Australian Unity
08/02/2022	Just Relations
10/02/2022	Department of Defence
10/02/2022	Law Council of Australia
10/02/2022	Australian Public Transport Industrial Association
11/02/2022	MSS Security
11/02/2022	An individual
11/02/2022	Law Institute of Victoria
11/02/2022	Community and Public Sector Union
16/02/2022	An individual
17/02/2022	The Police Association of Victoria
18/02/2022	Health Services Union
18/02/2022	Migrant Justice Institute
18/02/2022	Australian Council of Trade Unions
18/02/2022	National Electrical and Communications Association
18/02/2022	Industrial Bar Association



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18/02/2022	Australian Chamber of Commerce and Industry
18/02/2022	Employsure Law
18/02/2022	United Firefighters Union
19/02/2022	Australian Business Lawyers and Australian Business Industrial
21/02/2022	The Australian Industry Group