

Conducting hearings using Microsoft Teams

Version 1.0
20 March 2020

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Introduction

This handbook has been compiled to assist practitioners in preparing for and participating in hearings using a combination of Microsoft Teams and a file-sharing service, such as Dropbox.

Initial steps

The success of a Teams hearing depends on the facilities the parties have available, as well as their willingness to adapt. Before settling on using Teams on a given matter, chambers are likely to take some or all of the following steps:

1. arrange an informal phone call between the Judge and counsel to see whether the parties would be receptive to the idea, and any issues they foresee (for example, issues to do with witnesses, timezone differences, or firewall problems in their place of residence);
2. send an explanatory email to the parties which might include a clip of a video hearing featuring more complex aspects of the hearing, such as swearing a witness and navigating between documents in the electronic court book;
3. offer to establish a test-run Teams meeting held a day or two before the hearing so that the parties might familiarise themselves with the software; and
4. seek or make orders allowing for the delivery of testimony and submissions by video link, audio link or other appropriate means.

Explanatory email

After the call with counsel, parties can expect to receive a version of the following email to parties:

Dear Practitioners

I refer to the above matter and the phone call between the Judge and counsel yesterday.

Below, I have laid out some information about our current process for electronic hearings, as well as a link to a portion of hearing video to illustrate how the matter might proceed with an electronic hearing.

Microsoft Teams

Perram J has recently successfully conducted a hearing with his Honour, the Associates and Auscript in open Court and counsel, instructing solicitors and witnesses participating by video link. This has worked surprisingly well. We have been using Microsoft Teams, to which the Federal Court has a subscription. This does not require any other participants to download the software, as it can be launched from an internet browser.

Prior to the hearing, chambers sends a calendar invite to all necessary parties. The invite has a link attached to it, which may be forwarded on as necessary to other participants. At the relevant time, parties are able to click 'join' to enter the virtual meeting space. When that happens, parties are admitted to a 'lobby' and subject to approval by either the Judge or Associate to enter.

When the call is ongoing, participants may individually pin and unpin different camera views. It is also possible for participants who are not needed to be seen to turn off their videos and microphones so as to not crowd the screen.

Example video

A link to a ten-minute portion of a hearing conducted by Microsoft Teams is [here](#). That portion shows the end of dealing objections to evidence, the Respondents calling their first witness, the Judge swearing the witness, and the beginning of examination and cross-examination. The link will likely work better in a browser other than Internet Explorer.

I note that the computer which was recording the video did not have certain views pinned as discussed above, such that the configuration of the video changes based on who is speaking. I understand that some users have preferred that view, but the Judge's computer has Judge, counsel and the witness pinned to avoid the screen changing.

Document distribution

For contested hearings, chambers are using two Dropboxes: one for an electronic court file (comprising the court book and exhibits) and another for 'new documents', which effectively allows parties to 'hand up' documents electronically during the hearing without any file size limits attendant with emails. When documents are tendered, they are moved across from the new documents Dropbox to the electronic court file Dropbox.

Chambers are currently contemplating options other than Dropbox so as to avoid security risks. One example is Sigbox. In any case, chambers will be in contact about how best to provide the electronic court book and how the handing up process will work in due course. These considerations are naturally less pressing in the context of a case management hearing.

Please let me know if you have any questions on the above.

Kind regards

Test run

A good deal of the anxiety surrounding electronic hearings can be dealt with by conducting a test run. The Court will ask the parties for necessary email addresses (NB the invite link can be forwarded on as necessary). A test run may require parties to be present on the line for between 10 and 40 minutes depending on the number of participants.

The typical things that will be covered are:

- clarity of the video feed and audio quality on their end and the Court's end;
- confirming that the users have a base level of familiarity with the software, and how the screens will change based on who is speaking if they are using the web browser version;
- showing participants the 'chat' function, if necessary;
- explaining that the Judge will ask at the commencement of the hearing that non-speaking parties will be asked to turn off their camera and microphone functionalities; and

- explaining that Auscript will be patched into the call (and the courtroom, if relevant), and that the video itself will be recorded via Teams in case the parties have any issues with the transcription.

In short, hopefully at this stage parties go from this:



To this:



Video link orders

Chambers might also consider or request short minutes of orders allowing for testimony and submissions to be delivered by video link or other software. Below is an example of those orders.

THE COURT ORDERS THAT:

1. Testimony be permitted to be given by video link, audio link or other appropriate means pursuant to s 47A of the *Federal Court of Australia Act 1976* (Cth) 'the Act'.
2. Pursuant to s 47E of the Act, a person who is to give testimony by video link, audio link or other appropriate means be permitted to swear an oath or make an affirmation either:
 - a. by video link, audio link or other appropriate means, or
 - b. through the oath or affirmation being administered by another person who is present at the place the person giving the testimony is located.
3. Counsel be permitted to deliver oral submissions by way of video link, audio link or other appropriate means pursuant to s 47B of the Act.

4. If, in the course of examination or the appearance of a person by video link, audio link or other appropriate means it is necessary to put a document to that person, a copy of the physical document be transmitted to the Court or that person as relevant, pursuant to s 47D of the Act.

Setting up

Courtroom set-up

The courtroom set-up will ordinarily include a media laptop attached to a projector, such that the video can be projected to the public gallery.

Teams invites

The parties will receive new invites for each morning and afternoon session of the hearing. This allows Teams to process the recording (if relevant) in the break between sessions with greater speed, rather than ending up with a 10.15am-4.15pm recording where 90 minutes are the lunch break.

Parties are able to share the link that attaches itself to the meeting invitation.

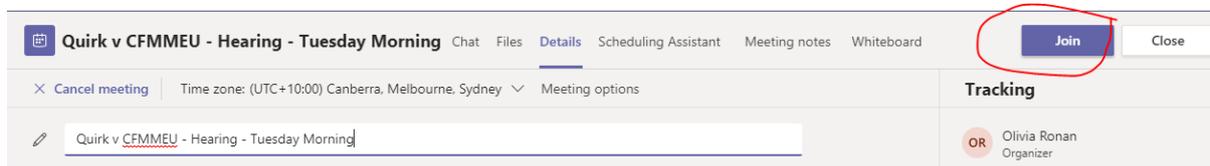
Participation by phone, iPhone or iPad

Ordinarily, parties will be expected to join from a device with a suitable camera and microphone. The Microsoft Teams application for iOS and Android is very user-friendly, and just requires users to sign up for free.

If a party is likely to be unable to join via an internet connection (for example, by reason of limited access to wifi or data), practitioners should contact chambers ahead of time to request that an Audio Conferencing facility be set up. This enables people to dial in to a Microsoft Teams meeting with a phone.

Joining the meeting

Once participants have accepted the invite, they are able to press 'Join' on the meeting:



Sound and video quality issues

If particular parties are not likely to be speaking at any point during the hearing, the Judge will ask at the beginning of the hearing that they turn off their video cameras and microphones, particularly to avoid any reverb issues with their speakers feeding back into the microphone and causing lag reverb, ad infinitum. Practitioners should give consideration to this issue in preparation for any test run or hearing.

At various times, participants' (and the Court's) internet capacity might impact the quality of sound and video. That has not been a significant issue at this stage.

Self-isolation and issues with hearings from home

Some practitioners have raised the possibility that appearing via Teams from home would be virtually (pun intended) impossible due to, for example, self-isolation or childcare requirements. In such cases, and depending on the circumstances in the Law Courts building, it might be possible in some instances to offer counsel individual and sanitised meeting rooms on the public side of the Courts building as a space away from home that would still meet social distancing and isolation requirements. Practitioners should raise such requests at an early stage.

Security issues

Some practitioners, and particularly government parties, have various firewall and security restrictions on their systems which might prevent initial access to software such as Teams and Dropbox. Even when they are given access, there might be more fundamental issues such as the system not allowing for access to non-secure programs. However, the Court has generally had success with parties' systems being able to adapt, and is yet to come across a party which is irreparably unable to access the system, particularly when there is a Microsoft Teams app for iPad and iPhone.

During the hearing

Formalities

Some chambers may opt to dispense with several formalities, including knocking in, robes, formal adjournment with a court officer or associate, and may (for example) opt to allow tea or coffee during the hearing. These matters should be raised in advance of the hearing (and possibly even the test run). Practitioners should give consideration to the hardware set up they will use (for example, allowing for standing room if necessary), and be mindful that, where the Judge is opting to robe, counsel may need to take robes home as necessary.

Witnesses

Even before getting to the hearing, some witnesses may just not be as technically savvy. Where possible, counsel or instructing solicitors should talk with the witnesses beforehand and ensure they are comfortable in navigating the Dropboxes. Ideally, someone familiar with the relevant technology will be with the witness (or counsel) as necessary to help navigate the Dropboxes. Where necessary, the Judge may adjourn for a short amount of time, so that the witness can get their bearings. Typically, some of the initial shock of the system has been already overcome by counsel or instructing solicitors talking with the witnesses beforehand to get them comfortable.

Where witnesses are appearing remotely, the Judge may administer the oath or the affirmation. If that is the case, and the witness intends to take an oath, parties will need to ensure that the relevant religious text is available and with the witness.

Where objections to questions require some deliberation and would ideally occur out of earshot of the witness, there are two options: *first*, asking the witness to mute their computer or walk out of the room, both of which require a level of trust; and *secondly*, the Court is able to virtually eject the

witness from the meeting space and ask counsel or an instructor to call the witness when they are able to re-join the meeting. Neither are perfect, but ultimately have not wasted too much time.

Technical issues

Despite the general success of the test run in avoiding major technical issues during the course of the hearing, it is obviously going to be the case that issues will arise that could not have been foreseen. In those instances, the Judge has adjourned so that the issue can be attended to. That might take some trouble-shooting, such as asking various participants to mute or unmute their microphones, or for junior counsel to disconnect from the meeting when they are placed too close to senior counsel's computer, which is also joined to the meeting. In general, this has not taken longer than five minutes or so to fix.

Auscript and open Court considerations

Auscript has worked out various ways in which they are able to partake in the Teams call and transcribe as usual.

Of course, should the Courts building be shut down entirely or at least to the public, open Court considerations will need to be revisited.

Document distribution

Sharing documents via Dropbox, OneDrive or Sigbox

Some chambers as a matter of course ask for the parties to prepare an electronic court book. Where an electronic hearing must be arranged on short notice, this is particularly helpful, as PDF versions of every document in the court book are already available.

For an electronic hearing, the parties should liaise with chambers to arrange for an electronic court book and copy of exhibits and MFIs to a Dropbox or similar service, access to which was shared with each of the parties (restricted to viewing capacity only, rather than editing rights):

Dropbox > Quirk v CFMMEU - Electronic File

Overview

[Click here to describe this folder and turn it into a Space](#) [Show examples](#)

<input type="checkbox"/>	Name ▾	Modified ↓
<input type="checkbox"/>	 Quirk v CFMMEU - Court Book Index.pdf	15/3/2020 7:59 pm
<input type="checkbox"/>	 Exhibits, MFIs, Video Files	--
<input type="checkbox"/>	 Court Book - Part C	--
<input type="checkbox"/>	 Court Book - Part B	--
<input type="checkbox"/>	 Court Book - Part A	--

A second Dropbox can then be arranged, to which instructing solicitors are given editing access, to take the place of 'handing up' documents in Court:

Dropbox > Quirk v CFMMEU - New Documents

Overview Hide

Click here to describe this folder and turn it into a Space Show examples

<input type="checkbox"/>	Name ▾	Modified ↓	⋮ ▾
<input type="checkbox"/>	 respondents errata filed.pdf ★	17/3/2020 12:53 pm by Tim McCauley	
<input type="checkbox"/>	 applicants errata document.pdf ★	17/3/2020 12:53 pm by Tim McCauley	

As with the meeting invite, links to these Dropboxes can be shared with other participants as necessary. When documents from this folder are tendered, the Court will then copy them across to the Exhibits and MFIs folder in the 'Electronic Court File' Dropbox. This avoids any size issues attendant with sending documents by email, and has the added benefit (unlike rogue piles of paper physically handed up during a hearing) of being time-stamped and named according to its creator.

Dropbox is by no means the only way of operating a similar system. OneDrive and Sigbox are two other examples of more secure file-sharing, which require log-in details, and links to the folders cannot be forwarded to other users without the owner's permission.

Additional issues

The Microsoft Teams website and 'Help' section of the app provide a good deal of additional tips and advice about conducting meetings via Teams, including the video tutorial '[Meetings in Microsoft Teams](#)'.

Parties should contact chambers to work out any arrangements for using Microsoft Teams, rather than contacting the Registry.