

Second Study Commission
Civil Law and Procedure
65th Annual Reunion of the IAJ – Tel Aviv, Israel
Questionnaire 2022

AUSTRALIA'S RESPONSE

VIRTUAL TRIALS IN CIVIL PROCEEDINGS

1. Did your jurisdiction offer complete or partial virtual civil trials or hearings before the Pandemic? If yes, please describe what was offered and how often the offer was exercised.

Prior to the pandemic, there was no option for virtual participation in civil trials, this extended to observation. All hearings and any observation took place on site in a Court room.

2. Did your jurisdiction offer civil virtual trials or hearings during the Pandemic? If yes, was there a change in how, what and when it was offered? Were protocols published? Also, if yes, when were the virtual trials/hearings offered and what was the uptake?

During the pandemic, new systems and software were deployed to facilitate virtual trials and these changes were implemented around the time that lockdowns commenced. All software was not used pre-pandemic and the concept of a new virtual Court room was very new. Protocols were published (in the form of a practice note) and pertained more to document provision and expectations in “virtual court” (eg not recording the proceedings). The actual administrating and running of the hearings was essentially left up to each individual Chambers, depending on their preferences and needs for each matter.

Being a jurisdiction in which almost all parties are represented, law firms and barristers quickly adapted to the changes and were willing to appear via virtual court to facilitate hearings. At first, there was some reluctance while new systems were being implemented and as a result, many cases were adjourned in the infancy of the pandemic. Over time, appearances in virtual Court rooms became widely accepted and utilised, even during periods in which people were able to return on site.

3. Presuming that civil virtual trials were offered, was there any improvements made in the technology/software that the government provided? How were documents and exhibits managed?

The software used for running virtual hearings had never previously been used by the Court in the past. Once the program (Microsoft Teams) was rolled out, no changes were made for some time. At later stages in the pandemic (1 to 1.5 years in), alternative software was explored and began being

implemented (WebEx), as it was better suited to managing trials in which there were many members of the public observing.

Pre-pandemic, documents were managed via e-Filing and this continued throughout the pandemic. As many judges prefer paper, working electronically was a large shift in how material was handled. As a result, requirements for bookmarking and hyperlinking ect became imperative to ensure there was a simple way to navigate lengthy documents. In some circumstances, hard copy documents were still required and it was requested that parties mail them to the Court in advance of the hearing.

Exhibits (or other documents to be “handed up”) during trials were often requested by the associate prior to the hearing, or documents were sent to the associate during the hearing, to make available to the presiding judge at an appropriate time.

4. What does the future hold in your jurisdiction with respect to the continuation of virtual trials? What are the issues and or benefits that have arisen?

The judges overwhelmingly prefer people to be present at Court, particularly for hearings/trials, however for smaller hearings or hearings with less complexity (eg case management hearings and some interlocutory hearings) there are clear benefits of conducting remotely and for some short straight forward matters this is likely to continue.

Benefits	Issues
<ul style="list-style-type: none">• Cost effective• Convenience• Beneficial for circuit matters as parties (and judges) do not need to travel interstate• Accessibility• Members of the public able to watch proceedings from anywhere• Capacity for hybrid models• Can alleviate some delay	<ul style="list-style-type: none">• Less formality• Environmental factors – depends where people choose to appear from and there may be distractions• Endless IT issues• Difficulties in “handing up” documents• Witnesses may be compromised• Extremely difficult to facilitate interpreters• Inability to see body language• Difficulty in obtaining instructions• Difficulty in managing documentary material• Exhibit management is difficult• No original documentation

5. Has or is research being done in your jurisdiction to help ameliorate some of the concerns that have arisen with virtual trials?

Different software has been explored and a special IT committee was developed to gain insights and feedback pertaining to the running of virtual trials. Consultation was being made with Chambers’ regarding the benefits and limitations arising and determining how best to support virtual trials.

Beyond that, there is much academic discourse, however no further research in the Federal jurisdiction that I am aware of that is formally focusing on researching limitations of virtual trials.

6. How did the digitally excluded people in your jurisdictions have access to justice and specifically to virtual trials during the Pandemic?

In the Federal jurisdiction, there were quite limited self-represented litigants and most Court users had access to hardware that would provide for participation in virtual trials with ease. For those who did not have access to a computer/laptop with camera facilities, there was also the option to dial into hearings via phone or on many occasions, litigants would go to the office's of their legal representatives and participate in the hearing from there and use their barrister or solicitor's hardware in order to participate. There is also scope to dial people into calls.