



# **A solicitor's guide to a virtual hearing using Microsoft Teams**

A step by step guide to get started

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Many courts in Australia have moved to virtual hearings in order to continue the administration of justice despite national lockdown laws. Although online court might seem daunting, Microsoft Teams is easy to use and remarkably effective.

I was part of a four day hearing held using Microsoft Teams and I was impressed at how well it worked. Everyone was new to the process but all were able to participate effectively. The witnesses and participants were located across four states but no one needed to travel - a huge reduction in cost and disruption. There were some intermittent connectivity issues but they were manageable.

If you have a virtual hearing coming up I have gathered some useful resources to help you prepare. I also have some tips on essential things to check beforehand

### How do I use Teams?

Watch this [90 second video](#) from Microsoft which shows you how to join a Teams meeting. And if you want to have a practice run beforehand, have a look at this [step by step explanation](#) on how to set up a Microsoft Teams meeting to meet with people outside your firm.

If your business has Office 365 you already have Microsoft Teams. For everyone else, Microsoft is currently offering a free [Office 365 E1 offer](#) for six months. It is a great opportunity to try out a platform that can help your team to stay connected and collaborate securely and effectively while working remotely.

### How do virtual Court hearings work using Microsoft Teams?

The Courts have put together some very helpful guides on how a virtual hearing will work using Microsoft Teams. The Federal Court guide includes a video clip of an actual hearing in progress (although counsel are working in chambers and not from home).

- [Federal Court of Australia "Guide to virtual hearings"](#)
- [Family court of Australia](#)
- [Federal Circuit Court](#)
- [NSW Supreme Court "Practitioners Fact Sheet"](#)

## Will all trials be heard virtually during lockdown?

Courts have quickly moved civil proceedings online to enable essential Court services to continue. One of the champions of online hearings, Perram J of the Federal Court declined to adjourn a 6 week hearing involving 50 witnesses and the [judgment](#) sets out detailed responses to seven difficulties likely to be encountered. At paragraph 23 he said:

*It is not feasible nor consistent with the overarching concerns of the administration of justice to stop the work of the courts for such a period. Nor is it healthy for the economy. A prolonged cessation of business will be very poor outcome. Those who can carry on should, in my view, do their best to carry on as inconvenient and tedious as this is going to be.*

Other judges and other courts may take a different approach. The Dick Smith class action was started as a virtual hearing in the NSW Supreme Court but was adjourned because it was found not feasible to continue. Each case will be assessed on a case by case basis and attitudes can be different in different lists in the same court. A useful summary of recent adjournment applications due to lockdown restrictions is [here](#).

## What do I need to do before the hearing?

- A computer in a place with good, reliable internet connection, built-in video camera and microphone.
- Download the free Microsoft Teams desktop application. You do not need to have a Teams account, it is sufficient to have the desktop application on your computer.
- You can test your camera and microphone in the Teams application by clicking Settings, then Devices and then “Make a test call”.
- Check that your web browser is up to date and your computer has the latest updates.
- Exchange with the other side and provide to the court a court book with all documents needed during the trial.
- Agree a protocol for providing additional documents during the hearing in a secure way that all parties can access (see some options below).
- Ensure you have access to a working printer and scanner just in case.

I recommend having either a second screen or a tablet to access the electronic court book. You may also want to use a separate device (phone or your tablet) to communicate with your client, counsel and other witnesses.

It is a good idea to have headphones with a microphone available because it can help improve sound quality. If you are using headphones go into Settings, Devices and select the headphones as audio source so that you don't cause an annoying echo.

You do not need to have Teams installed to be able to join a meeting in Teams. If your organisation does not allow you to download software, you can access Microsoft teams in the Chrome web browser. Right click on the link “Join Microsoft Teams Meeting”, select Copy Hyperlink and paste the link into the Chrome browser.

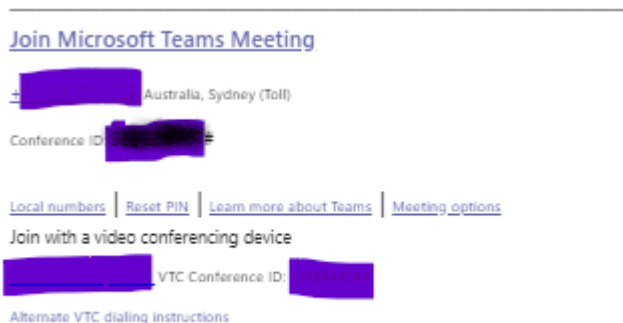
You can connect using a device like a phone or tablet but the connection may be less stable. You will need to download the Microsoft Teams app from the app store on your phone.

***What do I need to do on the day of the hearing?***

- Check your laptop is charged and plugged into power - video consumes battery power quickly.
- Turn off all sound notifications on your computer including email alerts in Outlook
- Arrive 10 -15 minutes early and put your mobile phone on silent.

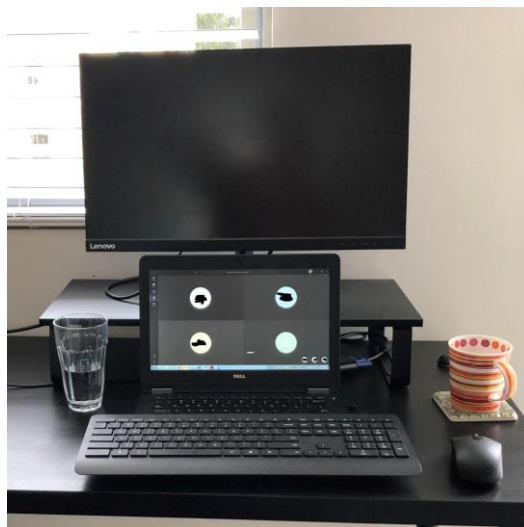
**How do I join the court hearing?**

You will receive an email from the Court with a link to join the Microsoft Teams meeting.



When you click on the link you will wait in a virtual lobby. A court officer will let you into the virtual courtroom. You can choose to enter the courtroom with or without audio and video. If you are the instructing solicitor, put yourself on mute.

In the virtual courtroom the screen is divided into four quadrants – one for each of the judge, plaintiff/ applicant's legal representative and defendant/respondent's legal representative. The fourth quarter is for a witness. The picture shows the what the screen will look like before the participants turn on their video.



By default Microsoft Teams will show video of the people who have most recently spoken. In the desktop application you can pin individual participants. Move your mouse until a bar appears at the bottom of the screen. Click on the people icon to display a list of participants. If you select a participant you will see three dots next to their name. Click on the three dots to get the option to pin their video.

### How do I work with documents?

Check the requirements of the relevant Court as they have different preferences. Before the hearing, agree with the opposing legal team on a protocol for providing access to documents to all parties during the trial. There are a few options.

1. the witness has a hard copy of their affidavit with them and is asked to look at a particular page
2. the witness can be referred to a page in an electronic court book that they have access to, preferably on a second device, so that they are still able to see the judge and counsel in the meeting.
3. a participant can share their screen so that everyone in the meeting looks at an electronic version of a document at the same time. While this is being done, smaller images of the participants will appear at the bottom of the screen. Ideally an instructing solicitor or a Court officer will share their screen and scroll through the shared document as counsel asks the witness questions about the document.
4. a low-tech (and slow) method is for a witness to be emailed a copy of the document (while at the same time it is emailed to the opposing party and the judges associate).

A handy tool for preparing an electronic court book is [Bundledocs](#). It is simple to use and you can add documents straight from your document management system. It will paginate and index the bundle. You can securely share with counsel, clients and the opposing party. I actually prefer it to preparing paper bundles because it is so much easier to add to or rearrange the bundle and automatically renumber and update the index.

### Tips for a witness on how to give evidence in a virtual hearing

You won't be with the witness before they take the stand so you need to run through how the hearing will operate beforehand. It is a good idea to use a checklist so that you don't forget anything. The Federal Circuit Court guideline has a good list and I have also made a [checklist](#) you can use as a start.

You will need to be able to contact the witness by phone to let them know when to join the meeting. The witness may be asked to leave the meeting so that the court can hear legal objections during questioning. You will need to be able to contact the witness to ask them to come back into the meeting once an objection has been determined.

### How to work with your legal team

You will need an independent way to communicate within your legal team to prevent any unintended disclosure of privileged communications from "hot mic" incidents. Relying on mobile phone to call or text people is too slow when you need to pass the same message to several people at the same time.

Using an instant messaging platform like Slack or Whats app is one way to pass virtual notes. You can have one channel for solicitor/client chat and one channel for solicitor/counsel chat. Another option is to run an all day Zoom meeting (muted and video off during court sessions) to be able to speak immediately during court breaks and use Zoom chat while court is in session. Whichever system you use, have it on a separate device and test that it works beforehand.

It is important to double check you are on mute in the Teams meeting before participating in any private conversation. Where possible leave the Teams meeting first to avoid inadvertent disclosure.

It may be harder to prepare additional evidence during the course of a virtual trial. New provisions in some jurisdictions allow for virtual witnessing of affidavits which will relieve some logistical problems. Have a plan about how you will be able to swear any additional affidavits needed during the trial.

While transcript will be recorded, technical glitches can occur. Keep a careful note of any connectivity issues and make sure to notify the Court and other parties immediately if a member of the team has dropped out of the meeting.

### Could virtual hearings stay when lockdown ends?

There has been much discussion about whether virtual hearings could reduce the cost of litigation and make access to justice more affordable. Richard Susskind puts forward a moral case for online courts as "...the most promising way of radically increasing access to justice around the world".

Chief Justice Allsop AC of the Federal Court of Australia has said:

*"To have the capacity to facilitate video links makes the courtroom more accessible, financially and geographically, and can make the process of accessing the court more cognisant of the human element. In turn, this feeds into creating and maintaining public trust and confidence in the courts."*

The lockdown has brought an unexpected opportunity for an often change-resistant profession to try online courts. It requires patience to apply a whole new way of communicating but I believe the experience will show that anticipated difficulties can be overcome. It is worth persisting because the overall benefits to be gained from a more accessible court system outweigh some of the inconveniences. I look forward to seeing what progress comes out of this experience.

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# Virtual hearing checklist for witnesses

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## Before giving evidence

- Dress in business attire as if you were attending court in person.
- Please have a glass of water and a box of tissues available but no other food or drink.
- Please put your phone on silent and turn off all sound notifications on your mobile and the device you are using for the meeting. Make sure your devices are charged and plugged in.
- Do not have any documents with you, apart from any affidavits you made in the proceedings and a court book (if you have been provided with one).
- You can have a pen and paper with you to take notes.
- You must be on your own while giving evidence. Check the door is closed and if necessary, use a sign on the door to avoid being disturbed.

## When you enter the Teams meeting

- Refer to the Judge as “Your Honour”
- You will be asked to take an oath or affirmation. Choose consistent with your affidavit.
- Do not look at your affidavits until requested to do so.
- You cannot look at your calendar or any other notes on the device you are using to give evidence.
- When you are asked a question, pause before answering to check you have understood the question and to give time for any objection to the question to be made before you answer.
- Look directly at the camera when answering, not at the screen. Speak slowly and clearly.

## Court hours

- Court usually sits from 10 am to 1 pm (with a short adjournment about 11) and from 2 – 4 pm. These hours can change and you will be told when court will resume.
- If there is a break while you are being cross examined, you can not discuss your evidence with anyone during the break (even if it is overnight).