



CHIEF JUSTICE'S CHAMBERS
FEDERAL COURT OF AUSTRALIA
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4 May 2020

Dear Presidents

Federal Court of Australia – Coronavirus (COVID-19) – Update 22

I have not written to you since 20 April 2020. This is largely a reflection of the fact that the Court's operations have assumed a largely 'business as usual in the circumstances' status.

There are, however, a number of things to raise. First, as to the issue of s. 91X of the *Migration Act*, the Court has announced that there will be an independent review by Mr John McMillan AO. This announcement was made last week. A copy of the announcement on the Federal Court website is attached.

Further as to this issue, a list of possibly affected individuals is being finalised and they will be notified shortly.

The Court has had provided to it a statement of work by one of its contractors as to the reinstatement of Federal Law Search in respect of Bankruptcy, Admiralty and Native Title. We are hoping to begin testing of those reinstated searches in the coming weeks.

The Court is still triaging all incoming work. Filings have declined a little, but not dramatically; mostly in Registrars' lists for insolvency. There is still a significant body of work being filed and this work is being allocated. I have also reviewed my paring back of the May Full Court list. Matters that had been removed from the May Full Court list have been re-examined, the parties contacted and arrangements are in place to have as many listed in June, July and August as possible.

As to the August Full Court list, subject to matters of the kind that are thought to be unsuitable for hearing by remote technology, we will attempt to have a normal Full Court list (though heard by remote technology).

I have also asked that migration matters where the parties are not in detention begin to be allocated into judges' dockets.

The upshot of these measures is that, although there is a slight falling off in the number of filings, the Court is seeking to bring itself back to close to regular operation. The only matters which are difficult to allocate at the moment are matters where the litigant is likely to be unable to have any relevant facility with the equipment required for hearings by remote technology. This group is a proportion of the migration work where the person is not in detention and some other cases involving litigants in person who have demonstrated that lack of ability.

The Court is considering the removal of some of the restrictions which prevents this type of work being heard under current arrangements. At some point the Court will begin to permit hearings where litigants are able to come to Court. I do not propose to discuss my present thinking on this with you at the moment, other than to say that once there are clear health guidelines and a broad unanimity of view as to relaxing restrictions the Court will consider the listing of some matters to be heard wholly or partly by persons in court. For the moment the remote technology hearings are working tolerably efficiently. The profession and the Court seem to be getting used to the use of this technology. It is not a complete substitute for in person hearings, far from it. However, until it is plain that the Court is not placing litigants, the profession, or its staff, judges and the general public at risk the Court intends to take an approach consistent with having as many hearings as possible through the remote technology.

One aspect of the Court's work, particularly the public law and migration work which this crisis has revealed is that many, if not most, of the short single judge appeals and indeed many Full Court appeals can be done wholly or partly remotely. One consequence of this is that counsel from one State can easily appear in a matter in another Registry, in particular where all parties (profession and judge) are appearing via this technology. This means that the profession nationally can participate in work, in particular where pro bono assistance is required. This reflects in national areas, such as Commonwealth public law the opportunity for a national profession to flourish. In this context, I reiterate the Court's gratitude on behalf of the public as well as the litigants for the profession's willingness to assist in pro bono work.

Yours sincerely



The Hon James Allsop

Chief Justice