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# CHIEF JUDGE ADVOCATE

Australian Defence Force

BN1441198

## **PRACTICE NOTE 8 — COVID-19 PANDEMIC: MEASURES IN RESPONSE (VERSION 7)**

### **Purpose**

1. This Practice Note sets out the practice and measures to be adopted in response to the COVID-19 pandemic in compliance with extant State and Territory government COVID-19 health directives and Defence policy and directives aimed at reducing the risk of transmission of COVID-19.
2. To the extent of any inconsistency between this Practice Note and any other Practice Note, this Practice Note prevails.
3. The RMJ, a JA or DFM may require or direct a different practice or measure on a case-by-case basis.
4. **Commencement.** This Practice Note commences forthwith and will remain in force, as amended from time to time, until withdrawn.

### **Travel reduction measures**

5. In accordance with extant Defence policy, counsel are to consider all reasonable measures to reduce travel and the risk of exposure, including but not limited to:
  - a. early identification of issues not in dispute and of agreed facts
  - b. consideration to the calling of any witnesses and/or counsel making appearances be by way of audio or video link (see sections 148A and 148B of the DFDA).<sup>1</sup>

### **Conduct of superior service tribunal proceedings compliant with extant State and Territory COVID-19 government health directions and Defence policy**

6. Superior service tribunals will be conducted in compliance with the extant State and Territory COVID-19 government health directions and Defence policy applicable in the relevant State or Territory where the proceedings are being conducted.
7. Counsel, witnesses and all attendees are responsible for complying with the relevant health directions in force at the time and in their location.

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<sup>1</sup> As well as considering whether to make applications under sections 148A and 148B of the DFDA, counsel should be prepared to address the tribunal with regard to making directions under those sections. For example, in appropriate cases counsel may apply or be directed to appear remotely. This may occur in all forms of proceedings including a contested trial. However, defence counsel can expect that for other than pre-trial hearings, the tribunal would expect defence counsel to be physically co-located with the accused — noting that in some cases the accused may also be attending remotely.

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2

8. Compliance includes, but is not limited to:
  - a. mask wearing
  - b. quarantine or isolation
  - c. domestic travel and return from overseas
  - d. check-in or registration
  - e. social distancing
9. The Director of Military Prosecutions and the Director of Defence Counsel Services are responsible for ensuring that any person who appears before the Tribunal in their respective cases including, but not limited to, counsel, someone aiding counsel or as a witness, complies with:
  - a. this Practice Note
  - b. Commonwealth legislation, health directions and requirements
  - c. applicable State and Territory legislation, health directions and requirements
  - d. Defence policy and directives including, but not limited to, the authority to travel.
10. The RMJ may take such other reasonable steps to reduce the risk of transmission and spread of COVID-19, such as limiting the number of seats available in the public gallery to ensure appropriate social distancing.<sup>2</sup>

**Logistical and other compliance issues**

11. Noting that audio/video link and document/exhibit management may present challenges with remote witnesses, counsel should take guidance from Practice Note 2 and proactively manage:
  - a. becoming familiar with the required technology and what is and is not available at various venues<sup>3</sup>
  - b. where relevant, having access to a stable internet connection with appropriate bandwidth
  - c. how they will manage participating remotely from the hearing room and from each other
  - d. all participants being able to refer to the same document/exhibit at the same time.

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<sup>2</sup> Counsel are requested to clearly communicate to the accused and witnesses that access to and numbers permitted in the public gallery will be significantly limited, particularly at hearing venues outside of the CMF.

<sup>3</sup> Counsel are encouraged to familiarise themselves prior to the hearing with the venue or venues to be used by the tribunal, counsel and witnesses, and what technology is available and its operation/capabilities. For example, counsel are to test to see if a particular video file will play on the IT equipment.

12. Where in a particular case difficulties arise or a party is of the view that the case has unique challenges, parties must seek the tribunal's direction, through the RMJ, at the earliest possible opportunity. It will be for the relevant JA or DFM to determine whether, and if so, how, the matter can proceed, based on the impact of the COVID-19 pandemic on the conduct of superior service tribunals and Defence operations.

**M Cowen, QC**  
Brigadier  
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