

Quick Reference Guide

Modifying Tribunal Craft for Virtual Hearings

This guide should be read in conjunction with the [Quick Reference Guide: Self-Represented Litigants - Skills and Strategies for VCAT and Quick Reference Guide: High Conflict Thinking](#).

BEFORE THE HEARING

The Setup

1. **Shut down all applications** other than those necessary for the hearing.
2. **Raise your computer:** The most professional angle for the camera to capture your face is from the same level or slightly above your face.
3. **Use a background:** Use a Tribunal provided background screen, standard screen or have a plain background with no features.
4. **Consider lighting:** The light source should be in front of you rather than behind or beside you which will produce a silhouette.
5. **Consider sound:** Consider a test run with a colleague to test the clarity of video and audio and try both with and without a headset to identify which works best for you.
6. **Communicate key expectations to parties:** For example, how and when to join the hearing, timing, remaining seated, protocols and etiquette including dress for all participants including witnesses, provision of documents and whether virtual breakout rooms will be made available etc. Some jurisdictions and divisions have created a template email that can be sent prior to the hearing covering all these issues.
7. **Consult VCAT specific technical guide** to provide clarity around document management and recording as well as the availability of virtual breakout rooms.
8. **Prevent unanticipated interruptions:** Turn off mobile phone and/or place chambers phone on silent. If sitting from chambers, place a sign on the door stating the Tribunal is in session.

AT THE START OF THE HEARING

Setting Expectations

Setting clear expectations will save time

1. **Start with eye contact:** Try to look directly at the camera at the top of your screen so that the participants feel like you are looking at them.
2. **Avoid reading from a script:** Although you may need to glance at notes, try to regularly come back to looking into the camera for this part of the hearing.
3. **Pay additional attention to your body language and facial expressions:** Focus on relaxing your face – multitasking and a lack of familiarity with technology or the online process may lead to a look of worry or concern. Relax your forehead and jaw and remember that your facial expressions, gestures and movements are amplified. **Avoid:** Slouching, spinning in a chair, touching your face or clothing.
4. **Establish the environment and how to interact**

Consider:

 - confirming who is present for the benefit of parties and any observers;
 - advising the parties as to whether any media is present;
 - confirming that the hearing is being recorded by the Tribunal and reminding parties they should not record the hearing;
 - confirming all parties can see and hear clearly – you might ask each party to introduce themselves;
 - if relying on audio without video, suggesting each speaker identifies themselves before speaking throughout the course of the hearing;
 - reminding parties how to get in contact or signal that they are experiencing technical difficulties (email, phone, raising a hand if they cannot hear etc.);
 - inviting non-speaking parties to turn off their camera and microphone;

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- inviting the parties to switch to gallery view and to 'pin' the Tribunal to the top left corner of the screen;
- reiterating any instructions about how and when to use the chat function and how to hand up additional documents;
- acknowledging the additional stress the pandemic has caused in the community and/or the profession;
- acknowledging that appearing online can be more tiring than appearing in person;
- signposting opportunities for clarification and breaks;
- providing reassurance about the successful conduct of previous online hearings;
- thanking the parties for their flexibility and professionalism.
- summarising key issues in dispute by reference to written materials;
- acknowledging areas of agreement;
- confirming time allocations for submissions, examination and cross-examination of witnesses;
- checking preparedness to engage and any preliminary concerns.

DURING THE HEARING - ENGAGEMENT

5. Include an outline of the proceedings

Consider:

- confirming the purpose and nature of the hearing – you might explicitly state that it is not a conference call or a mediation or a meeting, explain that a decision will be made according to law and on the evidence presented at the hearing and that the decision will be final and binding;
- setting the rules at the start of the proceeding. For example, explain that no party may interrupt the other party or any witness. Explain that they will have an opportunity to put questions to the other party's witness at the end of their examination and will have a right of reply to the party's submissions;
- confirming receipt of electronic documents provided prior to the hearing;
- foreshadowing the decision of the Member may or may not be delivered at the end of the hearing;

- 1. Check in with eye contact:** You will not be able to look down the barrel of the camera for the duration of the hearing however it is important to check in from time to time, to give participants the feeling of eye contact.
- 2. Explain any pauses:** You may need to take a few moments to think or read over material. Explain this to participants so they are not concerned about technical glitches or the internet connection. Similarly, you might remind participants to flag any pauses with the Tribunal.
- 3. Introduce yourself to new participants:** When entering a hearing room, the witness can immediately identify the roles of participants based on their physical location. These cues are lost in the virtual hearing room. When a witness joins the hearing, take a moment to introduce yourself, check that they can see and hear you and the other participants clearly and relay any important information set out at the beginning of the hearing including that anyone else listening in is also bound by the rules of the Tribunal and they must not tell the person speaking what to say.

Consider:

- reminding parties not to interrupt when a witness is giving evidence;
- suggesting that parties make notes about any issues relating to the other party's submissions or evidence given by a witness to assist them in their cross-examination.

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4. Check understandings and invite clarification:

Check your understanding as the hearing proceeds. This will assist you to identify whether any further steps need to be taken to achieve procedural fairness in the online context including whether parties, and in particular self-represented parties, have any concerns about the manner in which the hearing is proceeding. For example, you may consider feel you need to extend the time allowed for oral submissions.

CLOSING THE HEARING

- 1. Avoid reading from a script:** Once again, try to mimic eye contact by looking directly at the camera at the top of the screen.
- 2. Thank all participants:** Acknowledge the benefits of the hearing proceeding and thank participants for their contributions.
- 3. Procedural fairness question:** Consider explicitly asking the parties whether they have any concerns about the manner in which the proceeding was conducted and whether they feel that they have been deprived, to any degree, of the opportunity to present their case. You will need to be prepared to take steps to respond to any concerns raised. This may include allowing for further oral submissions or an opportunity for written submissions.
- 4. Outline next steps:** Confirm the next steps for the parties and whether they will be required to appear again whether that be at a further hearing or to receive the decision.

ACKNOWLEDGEMENTS OF COUNTRY

It is important to acknowledge country where it would have been appropriate to do so in a face to face context. A suggested acknowledgement for online gatherings is included below.

I would like to acknowledge the traditional custodians of the land on which I am situated, the Wurundjeri People of the Kulin Nation. I also acknowledge the traditional custodians of the lands on which each of you are working remotely from today. I pay my respects to their Elders – past, present and emerging.

