



FAMILY COURT FEDERAL CIRCUIT
OF AUSTRALIA COURT OF AUSTRALIA

SPECIAL MEASURES IN RESPONSE TO COVID-19

(SMIN-2 Melbourne and Dandenong subpoena inspection)

Special Measures Information Note

Subpoena Inspection in the Melbourne and Dandenong Registries

1. INTRODUCTION

- 1.1 This Special Measures Information Note (SMIN-2) sets out arrangements for the continued operation of subpoena inspections in the Melbourne and Dandenong registries.
- 1.2 Due to the COVID-19 pandemic and declaration of a 'State of Disaster' in Victoria, the Family Court and Federal Circuit Court (the **Courts**) have modified their practices in order to limit travel into the Registry buildings and minimise in person attendance in Registries.
- 1.3 The cooperation of all court users and court staff is required in this regard.
- 1.4 This Special Measures Information Note takes effect from the date it is issued and, to the extent practicable, applies to all proceedings filed before, or after, the date of issuing.
- 1.5 This Special Measures Information Note remains in effect until and unless superseded or revoked.

2. REGISTRY OPERATIONS

- 2.1 In order to reduce the amount of staff, practitioners and litigants travelling to the Melbourne and Dandenong Registries, the Courts have put in place a modified structure to facilitate the inspection of subpoenaed material for parties and practitioners with a trial between August and the beginning of October, and may be extended or reviewed.
- 2.2 This process will apply to parties and practitioners who are seeking the inspection of information which is of an urgent or priority nature.

3. REQUESTING ACCESS TO MATERIAL

- 3.1 When requesting access to material which is of an urgent or priority nature, parties and practitioners must provide the following information in their request:
 - (a) file number;
 - (b) date and type of court hearing;
 - (c) specific material requesting access to, and whether it is 'inspect only' material (as defined in rule 15.30(2)(b) of the *Family Law Rules 2004* or rule 15A.13(2)(b) of the *Federal Circuit Court Rules 2001*);
 - (d) confirmation that a Notice of Request to Inspect has been filed;
 - (e) a clarification of how the request is of an urgent or priority nature, and why; and
 - (f) a copy of photo identification (such as a current driver's licence or passport) or confirmation that you are a lawyer acting on behalf of a party, and the law firm at which you work.

3.2 Requests should be made by email to melbourne@familycourt.gov.au for Melbourne requests, or dandenong@familycourt.gov.au for Dandenong requests.

4. 'PHOTOCOPY ACCESS' MATERIAL

4.1 If the information is not 'inspection only', and 'photocopy access' is permitted, it will be emailed directly to the party or practitioner requesting the material, where onsite staff have the capacity to email these documents.

4.2 Consideration will be given to the volume of the material relevant to such requests and whether any practical or technical difficulties arise for large volume requests.

5. 'INSPECTION ONLY' MATERIAL

5.1 If all parties are legally represented, the following procedure will apply:

5.1.1 Upon receipt of a request to inspect material, a Registry officer will refer the request to a Judge or Registrar who will confirm release and require that an appropriate undertaking be given by the legal representative to the Court that the material will be destroyed once inspected.

5.1.2 Once the undertaking is received, the material will be scanned and emailed to the requesting practitioner with 'limited security' settings applied.

5.1.3 The practitioner must promptly confirm with the Court by return email that the material has been not been disseminated and has been destroyed.

5.1.4 The suggested form of the undertaking is as follows:

I, [Full Name], Australian Legal Practitioner at [name and address of firm], undertake to the Court that:

- (a) I will not provide, disseminate or otherwise distribute electronic copies of the subpoenaed documents produced by [INSERT SOURCE] (either electronically, in printed format, or otherwise) to my client or any other person, save for my agent INSERT NAME or such other person INSERT NAME directed by me to complete the inspection on my behalf; and*
- (b) Upon inspecting the subpoena documents, I will ensure that they are destroyed and permanently deleted from any storage or retrieval system (whether held by email, cloud storage or otherwise) within 7 days.*
- (c) In the event I fail to comply (or reasonably suspect that I have failed to comply) with this undertaking (even as a result of circumstances entirely beyond my control), I will immediately notify the Registrar of the Court in writing.*

I acknowledge that this undertaking has the same effect as an order of the Court. I acknowledge that if I breach this undertaking I may be guilty of contempt of court and punished by a fine or imprisonment.

5.2 Practitioners must refrain from taking photos of, or otherwise disseminating, 'inspection only' material.

5.3 If at least one party is not legally represented:

5.3.1 The request will be referred to the chambers of the presiding Judge for consideration.

5.3.2 The judge will then consider whether it is essential that the hearing proceed as listed, or if it can be adjourned for a period until the current COVID-19 restrictions are eased.

5.3.3 If it is essential that the hearing proceed, a Registry officer will be in contact with the requesting party to discuss arrangements for inspection at the Melbourne or Dandenong registry building.

THE HONOURABLE JUSTICE WILLIAM ALSTERGREN
CHIEF JUSTICE
FAMILY COURT OF AUSTRALIA
CHIEF JUDGE
FEDERAL CIRCUIT COURT OF AUSTRALIA

DATE: 21 AUGUST 2020