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Dear Presidents

Federal Court of Australia – Coronavirus (COVID-19) – Update 21

The court is continuing to list and hear matters using principally the Microsoft Teams technology. By and large the court is working on a modified business as usual method.

Where all parties are represented we are finding that the methodology is suited to continuing with almost all types of hearings. Some of the more complex and longer cases may prove to be more difficult. However, decisions about whether or not to proceed are being made by docket judges in the ordinary conduct of their work. I refer to a helpful case of Justice Perram last week on a question of adjournment. The matter is

Capic v Ford Motor Company of Australia Limited (Adjournment) [2020] FCA 486;
<https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2020/2020fca0486>.

There is also the helpful decision of the Western Australian Court of Appeal which is *JKC Australia LNG Pty Ltd v CH2M Hill Companies Ltd* [2020] WASCA 38; <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/wa/WASCA/2020/38.html>.

More difficulty is being experienced in relation to matters where the litigants are unrepresented. Some of those litigants require interpreters and some do not have facility with computers and Microsoft Teams. We are attempting to resolve these problems with the co-operation of interpreters and to the extent it is possible co-operation of the litigants themselves. We are also working with the Bars, to maximise the number of pro bono referrals. Once again, I would like to thank the profession for their contribution.

I have previously indicated that the court was “parking” less urgent migration matters where the litigant was not in detention. I propose to change that course of action from this week. From this week not only will migration matters proceed where the party is in detention but I will begin to allocate to judges migration appeals, in particular single judge appeals, where the person is not in detention. This will help bring the allocations towards a full capacity. I do not think it will be possible to have the throughput of a normal environment. However, the court will attempt to put as many cases through the system as it can to ensure that the backlog of the work at the end of this crisis is not crippling and also to ensure that there is as much work for the profession in the administration of justice as can reasonably be accommodated by the Court under the current circumstances.

To this end I intend to attempt to resuscitate some of the appeals from May which were put to one side in the original clearance of the May list last month. These matters will probably not be able to be heard in May but we will attempt to list them in June and July prior to the August Full Court sittings.

The Court is in the process of finalizing an independent review in relation to access to the Commonwealth Courts Portal and the issue of s. 91X of the *Migration Act*. I should be able to inform you of the details of that in the next few days, once the appointment is finalized.

Feel free to circulate this memorandum to your members.

Once again, if any of you have any comment or request to make in relation to how the Court is conducting its work please feel free to contact me.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'JA', is positioned above the typed name of the Chief Justice.

The Hon James Allsop
Chief Justice