

# Commercial Court



## NOTICE TO THE PROFESSION 9/2009

### CASE MANAGEMENT CONFERENCE

The Judicial Officers of the Commercial Court with the approval of the Chief Justice advise the profession as follows:

1. A direction may be made for a Case Management Conference in any proceeding in the Commercial Court.
2. A conference is a very significant stage in the preparation of a proceeding for trial and will normally be held on the first available date within four weeks following the close of pleadings.
3. A conference is not merely another directions hearing. The leading counsel for each party who will have the conduct of the proceeding at trial is required to attend.
4. The purpose of a conference is:
  - (a) to identify, define and refine the issues requiring judicial resolution;
  - (b) to determine the requirements necessary for the preparation of a case; and
  - (c) to determine the requirements necessary for the hearing and determination of the case.

### **Pre-conference arrangements**

5. Within two weeks after the close of pleadings, the solicitors for the plaintiff shall provide the list judge with the Case Management Bundle.
6. Following delivery of the Case Management Bundle the parties will be given a fixed appointment time for the conference. The associate to the list judge may provide a range of alternate appointment times.

## **Case Management Bundle**

7. A Case Management Bundle shall be prepared by the solicitors for the plaintiff for the purpose of the conference and must contain:
  - (a) all pleadings;
  - (b) the Case Memorandum;
  - (c) the draft list of issues;
  - (d) the completed Case Management Information Sheets;
  - (e) the principle orders in the case;
  - (f) any other document which a party may consider necessary and relevant to conference.

## **Case Memorandum**

8. The practitioners for the plaintiff shall be responsible (unless otherwise ordered) for producing and filing an agreed Case Memorandum for the use of the list judge at the conference. The Case Memorandum must contain:
  - (a) a short and uncontroversial description of what the case is about; and
  - (b) a very short and uncontroversial summary of the material procedural history of the case.
9. The failure of the parties to agree a Case Memorandum may be taken into account by the Court when dealing with the costs of the conference.

## **Draft list of issues**

10. The legal practitioners will produce an agreed draft list of the important issues in the case which the Court will be required to determine at trial.
11. The purpose of the list of issues to be settled at the conference is not to supplant or override the pleadings but, rather, to identify precisely what issues remain in dispute having regard to the pleadings. It is expected that the list of issues will (subject to the pleadings) form the basis of the further procedural steps to be undertaken in the expeditious management of the proceeding.
12. The draft list should include both issues of fact and law.
13. A separate section of the document should list those matters in which there is common ground between the parties.
14. The draft list of issues may be settled at the conference in consultation with the list judge.

## Case Management Information Sheet

15. All parties required to attend a conference must have completed a Case Management Information Sheet which is to be included within the Case Management Bundle. The standard form of Case Management Information Sheet is **Annexure A** to this notice.

### Pre-trial timetable and direction

16. At the conference, directions may be made in relation to the following matters:
- (a) a date for trial;
  - (b) mediation;
  - (c) the manner in which evidence will be given;
  - (d) the time for preparation of any witness statements and statements of the substance of the evidence proposed to be given by a witness;
  - (e) the preparation of any expert reports and the manner in which evidence will be given by experts;
  - (f) discovery including any limitation upon its scope, timing, inspection, copying and the resolution of discovery disputes;
  - (g) the preparation of a court book which in the ordinary course will contain a copy of the pleadings and particulars, all witness statements and statements of evidence to be given by a witness and documents referred to in witness statements, to be tendered by any party or to which reference may be made in the course of cross-examination;
  - (h) notice of objection to evidence;
  - (i) preparation of a chronology;
  - (j) preparation of opening submissions;
  - (k) a statement of the issues for trial;
  - (l) any order for the trial of a preliminary question;
  - (m) the date and time of any further directions hearing;
  - (n) what, if any, applications should be heard and determined by an associate justice;
  - (o) any special orders in relation to evidence to be given by video link;
  - (p) return of any subpoenas;

- (q) the judicial determination of any other interlocutory disputes such as security for costs, provision of particulars and disputes in relation to the production and inspection of documents.
17. The pre-trial timetable will also include the fixing of a progress review date by which each of the parties must send to the list judge a statement indicating:
- (a) whether that party has complied with the pre-trial timetable in all respects;
  - (b) what respect, if any, that party has not complied with the pre-trial timetable;
  - (c) whether that party will be ready for trial commencing on the fixed date; and
  - (d) if that party is not ready for trial on the fixed date, a statement of why that is so.
18. Not later than three weeks before the date fixed for trial, each party must send to the associate to the list judge (with a copy to all other parties) a completed Pre Trial Checklist confirming the final details for trial in the form attached as **Annexure B**.

4 August 2009

Byrne J

Hargrave

Pagone J

Robson J

Judd J

Davies J

Efthim AsJ

Daly AsJ

Gardiner AsJ

Kings AsJ

# Commercial Court



## NOTICE TO THE PROFESSION 9/2009 CASE MANAGEMENT CONFERENCE

### ANNEXURE A

#### CASE MANAGEMENT INFORMATION SHEET

*The information supplied should be printed in bold characters and provided to the list judge with the Case Management Bundle*

Party lodging information sheet:

Name of solicitors:

Name(s) of advocates for trial:

1. By what date can you give discovery of the following:
  - (i) the documents on which you will rely;
  - (ii) documents which:
    - adversely affect your case;
    - adversely affect another party's case;
    - support another party's case; and
2. Do you contend that discovery of any category or class of document would be unreasonable? If so, what is the category or class and on what grounds do you so contend?
3. Is specific discovery required on any issue? If so, please specify.
4. By what dates can you –
  - (a) give general inspection; and
  - (b) any and if so what preliminary inspection?
6. Do you propose amendments to a pleading or a request for particulars? Are any request for particulars outstanding? Please give brief details of what is proposed, required and outstanding?

7. Can you make any additional admissions? If yes, please give brief details of the additional admissions.
8. Are any of the issues in the case suitable for trial as preliminary issues?
9. Witnesses and evidence
  - (a) How many witnesses of fact do you propose to call to give evidence at trial? Please give their names and topics of evidence.
  - (b) Will an interpreter be required for any witness?
  - (c) Do you wish any witness to give oral evidence by video link? Please give his or her name, or explain why the name is not given. Please state the country and city from which the witness will be asked to give such evidence.
  - (d) Do you intend to apply at the Case Management Conference that the evidence of any witness of fact be given by a signed witness statement and if so:
    - (i) give the name of each such witness;
    - (ii) state briefly the issues which the witness statement is expected to cover;
    - (iii) state why the evidence is sought to be given by witness statement and how it will facilitate the management of the trial.
  - (e) What documents can be tendered in evidence at trial as an agreed common bundle without the need for formal proof?
10. Expert evidence
  - (a) On what issues may expert evidence be required?
  - (b) Is this a case in which the use of a joint expert might be suitable?
  - (c) On the evidence of how many expert witnesses do you propose to rely at trial? Please give their names, or explain why the name is not given.. Please identify each expert's field of expertise.
  - (d) By what date can you serve signed expert reports?
  - (e) When will your experts be available for a meeting or meetings of experts?
  - (f) How many of your expert witnesses do you propose should give oral evidence in chief at trial? Please explain why?
  - (h) Do you wish any expert witness to give evidence by video link? Please give his or her name, or explain why this is not being done. Please state the country and city from which the witness will be asked to give evidence by video link.

11. What are the advocates' present provisional estimates of the minimum and maximum lengths of the trial?
12. What is the earliest date by which you believe you can be ready for trial?
13. Is this a case in which a pre-trial review is likely to be useful?
14. Is there any way in which the Court can assist the parties to resolve their dispute or particular issues without the need for a trial or a full trial?
15. Alternative Dispute Resolution
  - (a) Might some form of Alternative Dispute Resolution procedure assist to resolve or narrow the dispute or particular issues?
  - (b) Has your client been informed of the range of available ADR options?
  - (c) Have you discussed ADR options with the other parties in the case?
  - (d) Do you request that the case be adjourned while the parties try to settle the case by means of one or other ADR option?
  - (e) Would an ADR order in the form of the attached draft be appropriate?
  - (f) Are any other special directions needed to allow for ADR?
16. What interlocutory applications do you anticipate might be made before trial?
17. Does provision need to be made in the pre-trial timetable for any other procedural step not otherwise dealt with above? If yes, please specify the application or procedural step.
18. Are there, or are there likely in due course to be, any related proceedings? Please give brief details.

[Signature of solicitors]

**BETWEEN:**

[Plaintiff's name]

Plaintiff

and

[Defendant's name]

Defendant

**GENERAL FORM OF ORDER (DRAFT)**

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JUDGE: The Honourable Justice [Name of Judge]

DATE MADE: [Date]

ORIGINATING PROCESS: [Insert origin]

HOW OBTAINED: [To be completed]

ATTENDANCE: [To be completed]

OTHER MATTERS: [To be completed]

THE COURT ORDERS THAT:

1. The proceeding be referred to a Mediator to be agreed between the parties or in default of agreement to be appointed by the Court, such mediation to take place (by/not to take place) before [Insert date].
2. Subject to the terms of this order, the solicitor for the Plaintiff shall, after consultation with all parties, deliver to the Mediator a copy of this order, all pleadings (including requests for and further particulars) and a copy of any other relevant information, and take all steps necessary to ensure that the mediation commences as soon as practicable.
3. The mediation shall be attended by those persons who have the ultimate responsibility for deciding whether to settle the dispute and the terms of any settlement and the lawyers who have ultimate responsibility to advise the parties in relation to the dispute and its settlement.
4. The Mediator not later than [Insert date] report back to the Court whether the mediation is finished.
5. Subject to any further order, the costs of the mediation be paid in the first instance by the parties in equal shares.

# Commercial Court



**NOTICE TO THE PROFESSION 9/2009**  
**CASE MANAGEMENT CONFERENCE**

**ANNEXURE B**

**PRE TRIAL CHECKLIST**

*(Information supplied should be in bold characters)*

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[Short title of case and folio number]

- (a) Trial date:
- (b) Party lodging checklist:
- (c) Name of solicitors:
- (d) Name of barristers:

[Note: this checklist should normally be completed with the involvement of counsel instructed for trial.]

1. Have you completed preparation of a court book in accordance with all relevant directions?
2. If not, when will the preparation be completed?
3. Which witnesses of fact do you intend to call?
4. Which expert witnesses do you intend to call?
5. Will an interpreter be required for any witnesses and if so, have any necessary directions already been given?
6. Have directions been given for any witnesses to give evidence by video link? If so, have all necessary arrangements been made?
7. What are counsel's confirmed estimates of the length and minimum lengths of the trial? You are required to attach a confirmed estimate of the length signed by counsel

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Solicitors for the Plaintiff/s

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Solicitors for the Defendant/s