

# E-Trials

**E-Trials and the Supreme Court**

**Presented by:** Justice John Dixon

**Date:** November 2018



# Jury Trials

- No proposals at present
- Pilot program being trialled in criminal courts

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# Does the proceeding involve/concern

- a) Large scale litigation with a large amount of documentary evidence; and
- b) The trial is anticipated to extend over a period of ten or more sitting days?



If so, para 9.16 of the Practice Note states that it is proportionate for a third party provider to be engaged.

# If the parties have agreed to engage a third party provider

1. The parties are to confer and endeavour to agree to a third party electronic provider and notify the Court by **[date – ideally at least 2-3 months before the trial]** as to the identity of the e-trial provider.
2. The costs incurred of the electronic trial are to be shared equally between all parties [or any other such costs orders as appropriate, such as a right to recover those costs at the conclusion of the trial].
3. The parties are to, in consultation with the e-trial provider, agree to and file with the Court a draft electronic trial protocol by **[date – ideally 1 month before trial]**. The protocol should incorporate the matters set out in Annexure 2 of Practice Note SC GEN 5 ‘Technology in Civil Litigation’.



# Does the proceeding involve/concern

Neither large scale litigation, nor does the matter have three or fewer parties.



If so, the court does not presently have the capacity to accommodate an internally run e-trial if there are multiple parties.  
If the court was of the view that the matter was appropriate to be run as an e-trial, third party e-trial orders would be made.

# Does the proceeding involve/concern

- a) Two separately represented parties; and
- b) A relatively small number of (200 or fewer) documents to go into the court book.



If so, the proceeding is amenable to either an internally or externally run e-trial. The parties should agree to the form of the e-trial early in the proceeding so that appropriate orders can be made about court book preparation.



# Orders made at time trial is set down

1. The trial of the proceeding be conducted as an electronic trial.
2. The parties are to confer and endeavour to agree upon the most appropriate and cost effective manner in which to conduct the electronic trial.
3. The parties to notify the Court by **[date – ideally at least 2-3 months before the trial]** as to the agreed method conducting the electronic trial.
4. [If appropriate], the proceeding be listed for a case management conference on **[date]** before [Judge/AsJ/Registrar] regarding the conduct of the electronic trial.



# Orders made at case management conference

1. The electronic court book is to include the following, in chronological order:
  - [Pleadings]
  - [Affidavits]
  - [Expert reports]
2. Orders are made for the content of the court book to be agreed and for the agreed court book index be filed with the Court.
3. The electronic court book be filed by USB with the Court by **[date]**.
4. The parties are to, by [date], prepare and file a draft electronic protocol, having regard to Annexure 2 of Practice Notice SC GEN 5 'Technology in Civil Litigation'.





# Sample letter to parties

When the court proposes to run a proceeding as an internally supported e-trial, meaning that the relevant infrastructure and mechanisms for electronic evidence projection would be provided by the court at no additional cost to the parties and the court has directed that the parties prepare and file the Court Book in electronic format.

We seek the following from the parties:

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1. Index to the Court Book in electronic format (excel spreadsheet) containing the following columns:
  - a) Unique document ID in numeric or alpha-numeric format applied to each document (a unique identifier for the item of evidence or witness statement such as an exhibit number or barcode. For cases involving many items, the SCV prefers a sequential numbering system such as barcodes);
  - b) Date (date and/or time on the face of the witness statement or item of evidence, date of any affidavit sworn);
  - c) Title of document;
  - d) Description (a short description of the document);
  - e) Document type (the item type, such as Witness Statement, Bank record or email. The applicable types will depend on nature of the material in the brief)
  - f) Hyperlink (relative hyperlink to an electronic copy of the item. The hyperlink may be contained in the ID column by hyperlinking the item ID.)

The court can provide an Excel template to parties.



# Sample letter to parties

2. USB stick containing all of the relevant material outlined in the Court Book in the following format:
  - a) An individual electronic document for each record indexed in the Court Book;
  - b) Each document in text searchable PDF format (OCR format);
  - c) The file name of each document being the ID/Barcode applied to each document in the Court Book.

