



# Notice to the Profession

## Applications to Set Aside Statutory Demands

### 1. INTRODUCTION

- 1.1 The Chief Justice has authorised the issue of the following notice.

### 2. COMMENCEMENT

- 2.1 This notice applies to any Originating Process filed on or after 21 July 2025 which seek orders under ss 459G, 459H and 459J of the *Corporations Act 2001* (Cth) setting aside a statutory demand ('Set Aside Application').

### 3. PURPOSE OF THIS NOTICE

- 3.1 The purpose of this notice is to give effect to the Overarching Purpose of the *Civil Procedure Act 2010* (Vic) ('CPA') by facilitating the just, efficient, timely and cost-efficient resolution of Set Aside Applications.

### 4. SERVICE OF A COPY OF THIS NOTICE

- 4.1 The plaintiff must serve a copy of this notice on the defendant at the time of service of the Set Aside Application.

### 5. TIMETABLING ORDERS

- 5.1 The Originating Process will initially be listed on a date to be fixed.
- 5.2 As soon as practicable after a Set Aside Application has been filed, the Court will make a timetabling order in the form in **Annexure A** to this notice of its own motion.
- 5.3 If the parties seek to amend the timetable, they may do so via the means set out in paragraph 8 of the timetabling order. Any amendments are to maintain the final hearing date and ensure that the last document is filed no later than 72 hours before the final hearing.
- 5.4 In the event of non-compliance with the timetable, the Court may, of its own motion, make a self-executing or 'unless' order disposing of the Set Aside Application. For example, an order that unless a timetabling order is complied

with by a particular date, the proceeding will be dismissed or relief sought granted.

- 5.5 In the event that the Court is notified of a jurisdictional challenge in the manner contemplated by paragraph 3(b) of the timetabling order, the Court may list the proceeding for hearing at short notice to determine this issue.

## **6. EVIDENCE**

- 6.1 Affidavit evidence filed in respect of a Set Aside Application should be concise and exhibits limited to those documents which are critical to the grounds relied upon by the plaintiff and the real issues in dispute.

## **7. RESOLUTION BY AGREEMENT**

- 7.1 Parties are encouraged to mediate their dispute or otherwise engage in settlement negotiations. The Court will consider orders sought by consent to refer the proceeding to judicial mediation. However, the fact of ongoing or anticipated settlement negotiations will not ordinarily provide proper foundation for an application to vary the timetabling orders or adjourn the final hearing.
- 7.2 The parties must advise the Court as soon as practicable in the event that a Set Aside Application has resolved, so that the final hearing date may be re-allocated to other litigants.

## **8. FINAL HEARING**

- 8.1 As far as is possible, the Court will list Set Aside Applications for final hearing before an Associate Judge or Judicial Registrar within 6 weeks of filing. The final hearing will be listed for no more than half a day. In the event it appears that the costs of the proceeding will exceed the debt the subject of the demand, the Court may make orders limiting the hearing time with the intention of limiting costs.
- 8.2 The Court expects there will be strict compliance with the directions and the parties will be ready to proceed on the day appointed for the final hearing.
- 8.3 Evidence or submissions filed out of time will not be considered at the final hearing without a summons for leave supported by an affidavit explaining non-compliance.
- 8.4 Wherever possible, the Court's reasons for decision will be delivered *ex tempore*, or orally shortly after the hearing has concluded. Generally, the Court's reasons will address dispositive issues only.

## **9. COSTS**

- 9.1 Parties are reminded of their overarching obligation under s 24 of the CPA to ensure costs are reasonable and proportionate. The Court may exercise its

discretion to refuse to award costs in respect of unnecessarily lengthy evidence or where issues or grounds were unnecessarily or unsuccessfully pursued.

- 9.2 Parties should be prepared to argue costs at the time the Court's decision is handed down, without filing additional evidence or submissions. Correspondence between the parties relied upon on the question of costs may be handed up to the Court. Affidavits solely addressing the question of costs are discouraged, and the Court may exercise its discretion not to allow costs for unnecessary affidavits.

Vivienne Mahy

Executive Associate to the Chief Justice

11 July 2025

## ANNEXURE

### IN THE SUPREME COURT OF VICTORIA AT MELBOURNE

DIVISION (Choose an item.)

SUBDIVISION (Choose an item.)

S ECI (Choose an item.)

« IN THE MATTER (Choose an item.) IN THE MATTER »

#### **BETWEEN:**

[#]

PLAINTIFF/S (Choose an item.)

- and -

[#]

DEFENDANT/S (Choose an item.)

### **TEMPLATE TIMETABLING ORDERS** **Application to Set Aside a Statutory Demand**

#### JUDGE:

#### DATE MADE:

DATE MADE (Click or tap to enter a date.)

#### ORIGINATING PROCESS:

ORIGINATING PROCESS (Choose an item.)

#### HOW OBTAINED:

HOW OBTAINED (Choose an item.)

#### APPEARANCES:

COUNSEL APPEARANCES (Choose an item.)

APPEARING WITH (Choose an item.) APPEARING FOR (Choose an item.)

#### OTHER MATTERS:

- A. This Order is made of the Court's own motion as provided for in the Notice to Profession dated **XX**.
- B. Evidence or submissions filed out of time will not be considered at the final hearing without a summons for leave supported by an affidavit explaining non-compliance.
- C. In the event of non-compliance with this Order, the Court may, of its own motion, make a self-executing or 'unless' order disposing of the proceeding. For example, an order that unless a timetabling order is complied with by a particular date, the proceeding will be dismissed or relief sought granted.

- D. In the event that the Court is notified of a jurisdictional challenge as contemplated by paragraph 3(b) of this Order, the Court may list the proceeding for hearing at short notice to determine this issue.
- E. This Order is authenticated by the Judicial Registrar pursuant to r 60.02(1)(b) of the *Supreme Court (General Civil Procedure) Rules 2015* (Vic) ('Rules').

**THE COURT ORDERS THAT:**

1. The proceeding is listed for final hearing on **[date]** at **10 am** before [Judicial Officer] in a courtroom to be advised (subject to courtroom availability) or alternatively, via audio-visual link.
2. By **4 pm on [date seven days after filing of the Originating Process]**, the plaintiff file an affidavit of service of the Originating Process, supporting affidavit, and a copy of the Notice to Profession dated [XX] regarding applications to set aside statutory demands.
3. By **4 pm on [date 14 days after filing of the Originating Process]** the defendant:
  - (a) file and serve:
    - (i) an affidavit of service of the statutory demand; and
    - (ii) any affidavit on which it intends to rely in opposition to the application; and
  - (b) in the event the defendant disputes that the Court has jurisdiction to determine the application, advise the chambers of the judicial officer before whom the final hearing is listed by email of the nature of the dispute.
4. By **4 pm on [date 21 days after filing the Originating Process]** the plaintiff:
  - (a) file and serve any affidavit on which it intends to rely upon in reply;
  - (b) file and serve an outline of submissions not exceeding 6 pages and a list of authorities identifying pin-point references; and
  - (c) email the Chambers of the judicial officer before whom the final hearing is listed a bundle of authorities that the plaintiff relies upon. The bundle shall be in pdf text-searchable format, arrange the cases in alphabetical order and include an electronic bookmark for each case.
5. By **4 pm on [28 days after filing of the Originating Process]**, the defendant:
  - (a) file and serve an outline of submissions not exceeding 6 pages and a list of authorities identifying pin-point references; and
  - (b) email the Chambers of the judicial officer before whom the final hearing is listed a bundle of authorities that the defendant relies upon which are not already included in the plaintiff's bundle. The bundle shall be in in pdf text-searchable format, arrange the cases in alphabetical order and include an electronic bookmark for each case.
6. The parties' submissions are to identify by reference to the affidavit evidence, why or why not, as is relevant to the case, there is [a genuine dispute and/or an offsetting claim in respect of the debt claimed in the demand and/or "some other reason" that the demand should be set aside under s 459J of the Act]. [*delete any that are not relied upon in the Originating Process*]

7. The legal practitioners briefed to appear confer in person, by telephone or by audio-visual link with a view to resolving the dispute or narrowing the issues in dispute and by **[3 days before the hearing]** the plaintiff is to email the Court on behalf of the parties a joint statement of the remaining issues in dispute.
8. In advance of any anticipated non-compliance with the timetable set by this Order, or any exercise of liberty to apply to vary this Order, the parties are to:
  - (a) confer with respect to amendments to the timetable; and
  - (b) email the Chambers of the judicial officer before whom the final hearing is listed to explain the reason that a variation is sought and provide consent or competing draft minutes of order addressing a revised timetable which maintain the final hearing date and ensures that the last document is filed no later than 72 hours before the final hearing.
9. The plaintiff serve a copy of this order on the defendant as soon as practicable [*if no notice of appearance, include – by email and post to the notice of address for service set out in the statutory demand*].
10. Subject to paragraph 8 above, there is liberty to apply.