

Supreme Court of Victoria

Practice Note No. 3 of 1998

Long Cases List

The Chief Justice has approved the issue of the following Practice Note to be substituted for Practice Note No. 5 of 1993.

In accordance with the Court's determination to manage its business as efficiently as possible, and to that end to keep its practice and procedure under review, the Court has made some adjustments to the operation of the Long Cases List. As a further consequence, it is necessary that this Practice Note be substituted for Practice Note No. 5 of 1993.

The Long Cases List will continue to include civil proceedings, whether for trial before a Judge and jury or before a Judge alone, which are expected to occupy more than 10 sitting days. Its primary purpose remains that of providing a fixed date of trial for every case in the list. This cannot be achieved without judicial management and the benefits which flow from that management. It was not and is not intended that, by the establishment of the Long Cases List, long causes and jury trials will otherwise be placed in a position of relative advantage as against other civil business. For example, it will not follow that cases in the Long Cases List will necessarily be heard at an earlier date than that which would have obtained had the case not been entered in that list. Accordingly, a proceeding will not be entered or retained in the list merely because the convenience of the parties would thereby be best suited.

The Court may of its own motion enter a proceeding in the Long Cases List or remove it from the list.

A party to any civil cause (whether jury or otherwise) not already entered in the Commercial List or other special list of the Court may at any time after the delivery of defence, apply for an order that the case be entered in the Long Cases List. The application must be made by summons issued by the Prothonotary's Office, and returnable before the Listing Master. The Listing Master will generally hear such applications on Mondays, but may appoint such other day or days as may be convenient. The summons by which an application to enter the list is made should also seek such further orders, and such directions, as may be required

The Judge in charge of the list will generally hear any appeal from a Master in a case already entered in the Long Cases List. Directions hearings generally will be held by the Listing Master, although the Judge in charge of the list may also hear directions when appropriate.

It is intended that the Rules of Court and the general practice of the Court should continue to apply to a proceeding in the Long Cases List. Accordingly, an application should not be made to the Judge when the Rules require it to be made to a Master. If (as will commonly be the case where an application to enter the list is successful) the summons before the Judge or the Listing Master is adjourned, this will be for the purpose of the Judge or the Listing Master retaining a supervisory control over the proceeding as a whole, and for the more ready enforcement of directions concerning such matters as the preparation of statements of issues, witness' statements and the like.

All proceedings in the Long Cases List will be managed by the Court. If guaranteed trial dates are to be given, litigation must proceed to trial with the least possible delay, at the lowest reasonable cost, and so as to be in a position from which the trial may be conducted as efficiently as possible and without avoidable interruptions. This will necessitate the earliest possible elucidation of the issues. It is upon such elucidation that the efficient conduct of the trial depends; and it is likewise upon such elucidation that the most accurate estimates of the likely duration of the trial will be based.

When all interlocutory steps are complete and the proceeding is ready for trial, it will be given a fixed date on or within a few days of which the trial will begin. A fixed trial date is, however, difficult to guarantee unless the parties and their practitioners co-operate in preparing accurate estimates of the likely duration of the hearing. Because gross underestimates tie up the Court's resources in a

particular trial for much longer than scheduled, it may be very difficult to make a Judge available when the next long case is due to begin. This may be very unfair to other litigants, quite apart from its significantly adverse effect on the proper operation of the Court. Accordingly, no earlier trial (save in exceptional cases and at the discretion of the trial Judge) will be permitted to interfere with the commencement of a later trial on the day fixed for the commencement of that later trial or within a short time thereafter. This may result in the earlier trial being adjourned part heard so as to accommodate the next case.

Practitioners are therefore warned that carelessness in estimating the length of time of trial may result in the trial being adjourned part heard. Orders might then be made that the costs, or part of the costs, occasioned by the adjournment be paid personally by the practitioners or one or more of them. Costs may also be awarded personally against practitioners who, by act or omission in breach of the rules or the provisions of this Practice Note, improperly disadvantage other practitioners or litigants (whether in that or some other proceeding).

Practitioners are referred to the second edition of the booklet entitled *A Guide to Long Cases List Practice* for further information about the operation of the list.

DATED this 12th day of June, 1998.

Signed A.R. Traves, Senior Associate to the Chief Justice.