

Supreme Court of Victoria

Practice Note No. 1 of 1996

Civil case management

The Chief Justice has approved the issue of the following Practice Note:

The Judges have decided to introduce, with effect from 1 November 1996 new arrangements for the management of civil cases in the Court that are not managed in one of the specialist lists.

The purpose of managing the cases in the way proposed is to bring them to a conclusion (whether by trial or settlement) more quickly and efficiently than now is the case. Hitherto, cases outside the specialist lists have not been subjected to management and parties have been left to bring them to a conclusion as the parties have seen fit. It is now generally accepted in Australia and in other common law systems that such an approach does not always lead to the most efficient and economical disposition of individual matters or the most efficient application of the necessarily scarce resources of the judicial system.

All litigation is expensive. All proceedings should be brought to an end as soon as that can be done, consistently with the need for each party to have a reasonable opportunity for considering its position and preparing and presenting its case. The new proposals are framed with those considerations in mind.

The general scheme is to provide for the Court to give directions for the conduct of the proceeding twice - first, soon after it has started and secondly, when the case is ready for trial. The first directions given in the proceeding will ordinarily fix the date for the second directions hearing (the "Trial Directions Date"). At the second directions hearing, a trial date will be fixed not more than 12 weeks from the Trial Directions Date. Thus, parties will know, very early in the proceedings, the time by which they must be ready for trial. Wherever possible, directions, other than directions for the trial of the proceeding, will be given "on the papers" without the need for any attendance of parties.

It is inevitable that there will be cases where the dates that are fixed at the start of the proceeding have to be adjusted and that will be done. But the parties and their practitioners will be expected to take all reasonable steps to ensure that the momentum of the case is maintained. It follows that if a party (or the practitioner for a party) is responsible for delaying the progress of the case to trial, that party, or that party's practitioner will be penalised in costs.

No doubt any case in which it is alleged there has been delay by a party will have to be judged on its own merits but it will be important for parties to bear in mind that the determination of such questions is seldom assisted by a minute examination of every step in the proceeding. Ordinarily, the question whether a party is responsible for a case being delayed in its progress to trial will depend upon broad considerations of impression and degree, not upon showing that there has been some technical default in compliance at some earlier and remote stage of the proceeding. It will always be necessary to focus upon the real and substantial merits of the matter.

The general scheme of the proposals is as follows:

Scope

The arrangements described in this Practice Note will apply to all new civil proceedings commenced by writ issued on or after 1 November 1996 except cases entered in any of the following lists - Commercial List, Major Torts List, Long Cases List, Building Cases List, Valuation and Compensation List, Intellectual Property List, Taxation Appeals List, Admiralty List.

The new arrangements will not apply to -

- cases commenced by Originating Motion;
- cases to which Chapter V of the Rules apply; or
- single judge appeals.\

Management

Management of cases to which this Practice Note applies will be undertaken by a group comprising The Chief Justice, Beach, J. (the Judge in charge of the Civil List) and Teague, J., (Judge Administrator of the Litigation Support Group) together with Masters Evans and Kings and Messrs A. R. Traves and J. Saltalamacchia. This group will be known as the "Litigation Support Group".

Initial Directions

At an appropriate time, usually 42 days after the first filing of appearance by a defendant in a proceeding to which this Practice Note applies, the file will be referred to the Judge Administrator for consideration of what directions should be given for the future conduct of the proceeding. By that time, the first defendant to file appearance should have filed its defence and any counterclaim.

Proceedings Not Stayed Pending Initial Directions

None of the management steps proposed is to operate as a stay of proceedings. Thus, times fixed by the rules will continue to run pending the giving of directions.

Application For Summary Judgment

If a party has made application for summary judgment before first directions have been given and that application has not been determined within 42 days of the first filing of appearance, directions will generally not be given in the matter until after the determination of that application and will then be given in accordance with this Practice Note.

Initial Directions Will Generally Be Given On The Papers

It is intended that, in most cases, directions will be given without hearing the parties or receiving any written submission. In some cases the Court may require the parties to make some written submissions on particular aspects of the matter or, in cases of unusual complexity, may require the parties to attend a directions hearing. Such directions hearings may, in appropriate cases, be conducted by conference telephone call.

If a party reasonably concludes that directions in a case should not be given on the papers but that a directions hearing is appropriate, that party may issue a summons returnable before the Judge Administrator and should do so before the expiration of 42 days after the first filing of appearance in the matter. The costs of an unnecessary directions hearing will ordinarily fall on the party who requires the hearing or, in appropriate cases, on that party's practitioner.

In any case, any party may, without leave, file and serve within 42 days of the first filing of appearance, on all other parties that have appeared, a proposed timetable setting out all steps that are to be taken in the proceeding before the case is given a date for trial.

Initial Directions - All Interlocutory Steps Before Fixing For Trial

The initial directions will fix times for all interlocutory steps that are to be undertaken before the case is given a date for trial. The directions will fix the date on which a further directions hearing will be held to fix the date for trial ("the Trial Directions Date").

Third Party Proceedings

Initial directions will ordinarily require any defendant desiring to institute third party proceedings to do so before a date specified in the directions or such other time as may be allowed by a Judge or Master.

Every case in which third party proceedings are instituted will be referred again to a judicial officer in the management group. Directions will then be given for the conduct of the third party proceedings and for any adjustment that may be necessary to the timetable originally fixed in the initial directions. Again, these directions will generally be given on the papers, without submissions by the parties, and again, the directions will fix times for all interlocutory steps that are to be undertaken in the third party proceedings before the case is given a date for trial. Any party that has appeared in the proceeding may, without leave, file and serve within 14 days of the first filing of appearance by a Third Party, on all other parties that have appeared in the proceeding, its proposed timetable setting out all steps that are to be taken in the proceeding before the case is given a date for trial, and setting out what, if any, amendments it proposes to the timetable fixed by the initial directions.

Failure To Comply With Timetable

If a party fails to comply with the timetable fixed in the directions, opposite parties may take any step that is open to them under the rules when a party defaults in taking a step. If still in default after the expiration of seven days from the day fixed for the taking of the step the party in default may not take that step without first obtaining the consent in writing of ALL opposite parties or the leave of a Judge or Master. Any application for leave is to be made on summons returnable in the first instance before the Judge Administrator, accompanied by an affidavit explaining the cause for the default, and stating any reason advanced against the making of an order that the costs occasioned by the default and the application for leave, taxed as between solicitor and client, be borne by the party applying for leave. Ordinarily, such applications will be heard and determined on the papers unless one or other party, for good cause requires an oral hearing. Again, such hearings may, in appropriate cases, be conducted by conference telephone call.

Trial Directions Date

The Trial Directions Date will be fixed in the initial directions and on that date (or such other date as may be fixed) directions will be given in accordance with the arrangements described in Practice Note No 3 of 1995 concerning the Arrangements for Fixing Civil Cases for Trial.

Trial Directions Date Not To Be Varied Without Order

In no case may the parties vacate or vary the Trial Directions Date except by discontinuance of the proceeding or by order made by a Judge or Master. No order will be made vacating or varying the Trial Directions Date except for good cause. If parties agree that the Trial Directions Date should be varied or vacated, an order to that effect will generally not be made without there being evidence before the Court that explains why an adjournment is necessary as well as evidence that each of the parties consenting to the making of the order has been informed by the practitioner for that party, in writing, that the case is to be adjourned and that this will prevent the case being fixed for hearing at the time determined by the Court.

Party Not Ready For Trial By Trial Directions Date

If a party has not completed all steps required by earlier directions before the Trial Directions Date or if, through a failure of a party to comply with those directions, a Trial Date cannot be fixed at the Trial Directions Date in the fixing period specified at the time of appointing that Trial Directions Date, the costs of the Trial Directions Hearing (taxed as between solicitor and client) and any other costs occasioned by that failure, will ordinarily fall upon that party or, in appropriate cases, upon that party's practitioner.

As has been said earlier, questions of responsibility for delay at this, or any other, stage of the proceeding will fall to be determined according to the substantial merits of the question.

Mediation

The Court will continue to encourage the use of mediation. If mediation has not been attempted earlier, then in suitable cases, orders for mediation will be made on the Trial Directions Date.

Targets And Draft Directions

A document giving target dates and a draft form of order is annexed.

Dated this 30th day of October 1996.

A. R. TRAVES
Senior Associate to
the Chief Justice

Annexure To Practice Note No 1 Of 1996 Civil Case Management - Targets And Draft Directions

Introduction

In managing civil cases, the Court proposes to work to certain target dates for the completion of interlocutory steps. Those target dates have been set after consultation with the profession. The target dates are the latest time by which interlocutory steps should be complete in all except very complex cases. In many cases, interlocutory steps should be complete well before the target dates, and in such a case any party may apply to the Judge Administrator to bring the case on for trial directions before the Trial Directions Date originally fixed.

In giving directions, the Court will usually direct that interlocutory steps are taken at the times fixed by the Rules of Court. If the case is urgent, times may be abridged. Only in exceptional cases will times longer than those fixed by the rules be allowed.

It is the parties who will be primarily responsible for monitoring compliance with the directions that are given. If steps are not taken by the times that are fixed, any party may take any step that is open to it under the rules as a consequence of that default. If, because a party has not taken a step within time, the time for taking that or later steps has to be refixed, that party should expect that times will generally be fixed that will require it to take the remaining steps which it has to take sufficiently quickly to permit the overall target dates still to be met. If a party has to apply to be relieved of the consequences of its default in taking a step within time, that application will be determined in accordance with well established principles.

Pleadings And Particulars

TARGET- All pleadings and particulars should be complete within 18 weeks of first directions.

In most cases, times for the delivery of pleadings will be fixed in accordance with the rules. However, directions will also be given for the filing and service of any requests for particulars of a pleading at about the same time as the pleading in answer is to be filed and served.

Because first directions will ordinarily not be given until 42 days after the first entry of appearance defendants should have filed their defences and any counterclaims before the first directions are given. If they have not, the time fixed for the defendants to do so will ordinarily be the time limited by the rules or, if that time has already expired, a very short time after the first directions.

Thus, in all except very complex cases, each defendant's defence and any counterclaim and all requests for particulars of the Statement of Claim should be complete no later than 1 or at most 2 weeks after first directions.

All particulars of the Statement of Claim, any further particulars of the Statement of Claim, any request for particulars of the Defences and Counterclaims and any Reply or Defence to Counterclaim should be complete 9 weeks after first directions

Any further particulars of the Defences and Counterclaims should be complete by 12 weeks after first directions.

It follows that, allowing for the possibility of there being some dispute about the sufficiency of particulars or of the pleadings themselves, all pleadings and particulars should have been filed and served within 18 weeks of the first directions.

Third Party Proceedings

TARGET - If Third Party proceedings are to be issued, they should be issued within 28 days of close of pleadings.

If there are to be third party proceedings issued, they must be issued promptly, lest the progress of the case to trial be interrupted later than necessary. It follows that there will usually be a direction that any defendant wishing to institute third party proceedings do so no later than 28 days after the close of pleadings. As is said in the Practice Note, if third party proceedings are commenced, the file will be automatically referred to the Judge Administrator for the fixing of a timetable for the third party proceedings and any necessary adjustment of the timetable for the principal proceeding

Discovery And Interrogation

TARGET - DISCOVERY - The whole process of discovery of documents should be complete no later than 10 weeks after close of pleadings.

Within that time,

- affidavits of documents should have been prepared, filed and served;
- inspection of documents should be complete; and
- any dispute about the sufficiency of discovery should have been determined.

Ordinarily, inspection of documents that have been discovered should take place no more than 21 days after service of the affidavit of documents

TARGET - INTERROGATION - If there is to be interrogation, and the unnecessary use of interrogatories will be discouraged, that process should be complete no later than 15 weeks after discovery of documents is complete.

Again, within that time

- any interrogatories should have been prepared, filed and served;
- answers to those interrogatories should have been prepared, filed and served; and
- any dispute about the sufficiency of the answers should have been determined.

Trial Directions Date

TARGET - Most cases should be ready for fixing for trial within 10 to 11 months of the first appearance by a defendant.

By then the pleadings should have been reviewed several times and any applications for amendment of pleadings should have been made and determined.

The processes of discovery and interrogation should be complete and, again, any dispute about those steps should have been identified and resolved.

If third parties are to be joined, they should have been joined at an early stage of the proceeding.

Common Form Order

The orders made in any particular case will depend upon the nature of the case. However, in many cases orders will be to the following general effect:

Pleadings And Particulars

1. On or before 4 p.m. on [First Directions date plus 7 to 14 days] the defendant [each defendant which has appeared] shall file and serve its defence and any counterclaim.
2. 2.On or before 4 p.m. on [First Directions date plus 7 to 14 days] the defendant [each defendant which has appeared] shall file and serve any request for further and better particulars of the plaintiff's statement of claim.
3. On or before 4 p.m. on [Time for Defences or First Directions Date, whichever is the later, plus 28 to 35 days] the plaintiff shall file and serve further and better particulars of its statement of claim in response to the request or requests referred to in the preceding paragraph of this order.
4. On or before 4 p.m. on [Time for Defences or First Directions date, whichever is the later, plus 30 days] the plaintiff shall file and serve any reply or defence to counterclaim.
5. On or before 4 p.m. on [Time for Defences or First Directions date, whichever is the later, plus 30 days] the plaintiff shall file and serve any request for further and better particulars of defence and counterclaim.
6. On or before 4 p.m. on [Time for Defences or First Directions date, whichever is the later, plus 49 days] the defendant [each defendant] file and serve further and better particulars of its defence and counterclaim in response to the request or requests referred to in the preceding paragraph of this order.

Commencement Of Third Party Proceedings

7. Any defendant that wishes to institute third party proceedings shall file and serve on the third party its Third Party Notice on or before [Close of Pleadings plus 28 days] or such other time as may hereafter be fixed by order of a Judge or Master.

Discovery And Interrogation

8. On or before 4 p.m. on [42 days after close of pleadings] each party shall make discovery of documents as if in response to a Notice for Discovery.
9. On or before 4 p.m. on [42 days after the date fixed in paragraph 8] a party may serve interrogatories for the examination of an opposite party.
10. Where interrogatories are served, the party interrogated shall within 42 days after service answer by affidavit and serve a copy on the interrogating party.

Trial Directions Date

11. Unless the proceeding has been discontinued, or final orders have been made disposing of the proceeding, it will be called on before the Listing Master in the Court Lonsdale Street Melbourne, on [..... date] at [..... o'clock] for directions for trial.
12. Each practitioner having the carriage of the matter on behalf of a party shall attend the directions hearing referred to in the last preceding paragraph of this order

General

13. No party may take any of the steps provided for by this order more than 7 days after the time fixed by this order without the consent in writing of all other parties to the proceeding or the leave of a Judge or Master.
14. No order varying any of the times fixed by this order may be made pursuant to rule 59.06.

15. Any application to vary the time fixed by this order for the calling on of the proceeding for the giving of directions for trial shall be made in the first instance to the Judge Administrator.

Example -

PROCEEDING ISSUED AND SERVED 1 November 1996
FIRST APPEARANCE 5 November 1996
FIRST DIRECTIONS not before 17 December 1996 (1st app'ce + 42 days)

(The period between 24 December and 9 January does not count - r.3.04)

Pleadings And Particulars

1. On or before 4 p.m. on 13 January 1997 [First Directions date + 7 to 14 days + r. 3.04 period] the defendant [each defendant which has appeared] shall file and serve its defence and any counterclaim.
2. On or before 4 p.m. on 13 January 1997 the defendant [each defendant which has appeared] shall file and serve any request for further and better particulars of the plaintiff's statement of claim.
3. On or before 4 p.m. on 12 February 1997 [Time for Defences or First Directions Date, whichever is the later, plus 28 to 35 days] the plaintiff shall file and serve further and better particulars of its statement of claim in response to the request or requests referred to in the preceding paragraph of this order.
4. On or before 4 p.m. on 12 February 1997 [Time for Defences plus 30 days] the plaintiff shall file and serve any reply or defence to counterclaim.
5. On or before 4 p.m. on 12 February 1997 the plaintiff shall file and serve any request for further and better particulars of defence and counterclaim.
6. On or before 4 p.m. on 5 March 1997 [Time for Defences or First Directions date, whichever is the later, plus 49 days] the defendant [each defendant] file and serve further and better particulars of its defence and counterclaim in response to the request or requests referred to in the preceding paragraph of this order.

Commencement Of Third Party Proceedings

7. Any defendant that wishes to institute third party proceedings shall file and serve on the third party its Third Party Notice on or before 12 March 1997 [Close of Pleadings plus 28 days] or such other time as may hereafter be fixed by order of a Judge or Master.

Discovery And Interrogation

8. On or before 4 p.m. on 26 March 1997 [42 days after close of pleadings] each party shall make discovery of documents as if in response to a Notice for Discovery.
9. On or before 4 p.m. on 7 May 1997 [42 days after the date fixed in paragraph 8] a party may serve interrogatories for the examination of an opposite party.
10. Where interrogatories are served, the party interrogated shall within 42 days after service answer by affidavit and serve a copy on the interrogating party

Trial Directions Date

11. Unless the proceeding has been discontinued, or final orders have been made disposing of the proceeding, it will be called on before the Listing Master in the Court Lonsdale Street Melbourne, on 8 August 1997 at 11 o'clock for directions for trial.
12. Each practitioner having the carriage of the matter on behalf of a party shall attend the directions hearing referred to in the last preceding paragraph of this order.

General

13. No party may take any of the steps provided for by this order more than 7 days after the time fixed by this order without the consent in writing of all other parties to the proceeding or the leave of a Judge or Master.
14. No order varying any of the times fixed by this order may be made pursuant to rule 59.06.
15. Any application to vary the time fixed by this order for the calling on of the proceeding for the giving of directions for trial shall be made in the first instance to the Judge Administrator.]