

PRACTICE NOTE NO. 2 OF 2009

The Technology, Engineering and Construction List (TEC List)

The Chief Justice has authorised the issue of the following Practice Note.

The TEC List, Rules and Practice Notes

1. The TEC List shall commence on 19 June 2009.
2. The TEC List is governed by amended rules. The new rules are called the “TEC Rules” and are comprised in Order 3 Chapter II Supreme Court (Miscellaneous Civil Proceedings) Rules 2008 (TECHNOLOGY, ENGINEERING AND CONSTRUCTION CASES).¹
3. The following Practice Notes apply to the TEC List, and should any discrepancy or inconsistency arise, the following order of precedence shall apply to resolve the issue:
 - a. This Practice Note;
 - b. Practice Note No. 4 of 1999 ([1999] 2 VR 293) (Divisions of the Supreme Court) as amended in accordance with Schedule A;
 - c. Practice Note No. 2 of 2001 ([2001] 5 VR 102) (Building Cases) as amended in accordance with Schedule A;
 - d. Practice Note No. 3 of 2001 ([2001] 5 VR 106) (Building Cases Arbitrations) as amended in accordance with Schedule A;
 - e. Practice Note No. 7 of 2006 (Arbitration Business) as amended in accordance with Schedule A;
 - f. Practice Note No. 1 of 2007 (Guidelines for the Use of Technology in a Civil Litigation Matter) applies to proceedings conducted in the TEC List;
 - g. The Practice Notes, with any necessary adaptations, as may be applicable from time to time to the Commercial Court.
4. Practice Note No. 1 of 2008 – (Building Cases – a New Approach) is revoked.

The Objective of the TEC List

5. The objective of the TEC List is to provide for the just and efficient determination of TEC cases, by the early identification of the substantial questions in controversy and the flexible adoption of appropriate and timely procedures for the future conduct of the proceeding which are best suited to the particular case.

¹ The TEC Rules replace the former rules which governed building cases being those set out in Order 3 Chapter II *Supreme Court (Miscellaneous Civil Proceedings) Rules 2008* (BUILDING CASES).

The Judge in charge of the TEC List

6. The Judge appointed as Judge in charge of the TEC List is the Honourable Justice Vickery. The contact details for his Honour's Associate, who will act as the TEC List Co-ordinator, are:
Mr Russell Maclean
Tel: (03) 9 603 6344
Email: russell.macleam@supremecourt.vic.gov.au
7. The Associate Judge attached to the TEC List is the Hon. Associate Justice Daly.
8. Any changes to these appointments and contact details will be posted on the Supreme Court website - <http://www.supremecourt.vic.gov.au>. The TEC List webpage may be found by selecting from the Court Home Page, Lists and Sittings and then, Specialist Lists and then TEC List.

Subject Matter of Proceedings in the TEC List

9. Matters which may be entered into the TEC List are defined in the TEC Rules.²
10. For the avoidance of doubt, a proceeding which may be entered into the TEC List includes a proceeding involving TEC works³ arising from an arbitration conducted under the *Commercial Arbitration Act 1984* or an arbitration conducted otherwise and in respect of which the Court has jurisdiction. The Judge in charge of the TEC List, the Honourable Justice Vickery, is added to the panel of judges who are responsible for arbitration business in the Court pursuant to Practice Note No 7 of 2006 (Arbitration Business).
11. A case, such as an intellectual property case, which is more suitable to be entered into one of the other specialist lists in the Trial Division, will not be admitted to the TEC List, or if admitted may be removed from the List.

Entry into the TEC List

12. All cases in the Building Cases List as at 19 June 2009 will be automatically entered in the TEC List without further entry fee or order.⁴
13. Proceedings may be entered into the TEC List at the option of the plaintiff by endorsing the heading to the originating process in accordance with the TEC Rules and filing the process so marked.⁵ Upon payment of the prescribed entry fee,⁶ the matter shall be entered into the List.
14. Any other party in a TEC case may, within 14 days after appearance, apply to the Judge in charge of the TEC List for an order entering the proceeding in the List. The Judge shall then make an order entering the case in the List unless the Judge is satisfied that there is good reason for not making such an order.⁷ Upon payment of the prescribed entry fee,⁸ the matter shall be entered into the List.

² TEC Rules R. 3.01.

³ TEC works are defined in TEC Rules R. 3.01.

⁴ TEC Rules R. 3.03 (4).

⁵ TEC Rules R. 3.03(1).

⁶ *Supreme Court (Fees) Regulations 2001*, Schedule 2 Clauses 1.1 and 1.8 (as amended)

⁷ TEC Rules R. 3.03 (2).

⁸ *Supreme Court (Fees) Regulations 2001*, Schedule 2 Clauses 1.1 and 1.8 (as amended)

15. A proceeding may also be entered into the TEC List by leave of the Judge in charge of the TEC List upon a reference from another Judge or an Associate Judge.⁹

Features of the TEC List

16. The features of practice in the TEC List are:
- a. A TEC case should be approached like any technical, engineering or construction project, with time and cost budgeting;
 - b. Parties will be expected to have engaged in serious settlement discussions before the commencement of the proceeding;
 - c. At an early stage a Judge will be assigned to assume responsibility for the management of the case;
 - d. The practices in the TEC list will be moulded to suit the features of the case so as to achieve as far as possible the objective of the TEC List;
 - e. Judges will be more active and pro-active in exercising their powers to achieve a just resolution of TEC cases in a speedy and efficient manner;
 - f. Judges will be mindful of the need not to apply the resources of the parties or the Court needlessly or in a manner which is out of proportion to the matters in issue;
 - g. Legal practitioners will be expected to approach their cases co-operatively and with the objective of not using the resources of the Court and of the parties needlessly or in a manner out of proportion to the matters in issue;
 - h. Legal practitioners will be encouraged to focus on the central issues in the case;
 - i. Judges will keep the number of directions hearings to a minimum;
 - j. Where possible, interlocutory applications should be determined on the papers;
 - k. Opposed interlocutory applications will, where appropriate, be referred to an Associate Judge; and
 - l. Where costs of a directions hearing are ordered to be paid, they will, if possible, be fixed.

Control of Proceedings

17. The Judge in charge of the TEC List shall have control of proceedings in the List.¹⁰
18. The Judge in charge of the TEC List may at any time in the course of a proceeding in the TEC List, allocate the proceeding to a Judge to be the trial Judge (the “TEC trial Judge”) and in that case will, pursuant to Rule 3.02(3) of the TEC Rules, request the appointed trial Judge to exercise the powers of the Judge in charge of the TEC List in relation to the proceeding.
19. The Associate Judge assigned to the TEC List and the other Associate Judges of the Commercial and Equity Division may assist the Judge in charge of the TEC List and the TEC trial Judge in the management of TEC cases in the List.
20. The Judge in charge of the TEC List or the TEC trial Judge may direct that the proceeding or a matter arising in the proceeding shall be determined by the Associate Judge assigned to the TEC List or by any other Associate Judge pursuant to the general jurisdiction of an Associate Judge or by specific referral under Rule 77.05.
21. The Judge in charge of the TEC List or the TEC trial Judge will determine what matters arising in a proceeding are to be determined by an Associate Judge as appears best to

⁹ TEC Rules R. 3.03 (3).

¹⁰ TEC Rules R. 3.02.

achieve the efficient, expeditious and economical management of a proceeding having regard to its nature, the availability of resources, and the preferences of the Judge about its management with a view to achieving the expeditious hearing and determination of the trial of the proceeding and the disposition of the issues between the parties.

22. The parties in a TEC proceeding are expected to assist in the management of the proceeding to ensure efficiency, expedition and economy. To that end they should assist by identifying matters to be determined by an Associate Judge.
23. The following matters will be determined by an Associate Judge unless the Judge in charge of the TEC List or the TEC trial Judge orders otherwise:
 - a. discovery disputes;
 - b. disputes concerning the giving or adequacy of particulars;
 - c. applications for security of costs;
 - d. assessment of damages;
 - e. disputes concerning subpoenas;
 - f. applications referred to in Rule 77.01(2).

The Judge in charge of the TEC List or the TEC trial Judge may also direct that an Associate Judge mediate any matter (including any of the matters in (a) to (f) above) arising in a proceeding.

24. Any appeal from a decision of an Associate Judge on any TEC matter shall be to the Judge in charge of the TEC List or the appointed trial Judge unless the rules require an appeal to be heard by the Court of Appeal.

Resources Conference

25. For the purpose of achieving the objective of the TEC List a resources conference will be convened at an early stage after the pleadings are closed by the Judge in charge of the TEC List and chaired by an Associate Judge. The resources conference will establish a resources budget for the litigation for the use of both the Court and the parties. The outcome will assist the Court in appointing the TEC trial Judge and allocating a trial date. The conference will also identify issues for mediation and the information and investigation required to enable effective settlement discussions to take place at the earliest possible opportunity.
26. At the resources conference the parties should be represented by a legal practitioner who is sufficiently instructed to deal with the matters to be considered at the conference.
27. The conference will be relatively informal and the Associate Judge may, in appropriate cases, conduct part of the conference on a without prejudice basis and speak separately with the parties.
28. The Judge in charge of the TEC List or the TEC trial Judge or an Associate Judge may at any time after the pleadings are closed give directions:
 - a. ordering the convening of a resources conference;
 - b. directing that the solicitor for each party or group of parties be required to complete an information sheet in the form annexed and exchange a copy with each other party and to file a copy by email with the associate to the Associate Judge convening the resources conference. It will be the responsibility of the solicitor to ensure that the information is accurate and promptly to bring to the attention of the Court and the

other parties any respect in which the information contained in the sheet is no longer accurate;

- c. directing that the person responsible for the litigation within the organisation of each of the parties will be required to attend the resources conference; and
 - d. ordering that a resources conference be dispensed with, for example in proceedings where a trial is not contemplated such as an injunction application or an application for judicial review of an award under the *Commercial Arbitration Act 1984*.
29. Matters for consideration at the resources conference will include:
- a. The resources which each of the parties might apply to the litigation;
 - b. The resources in terms of trial time which the Court is expected to apply to the litigation;
 - c. Whether any limit should be placed upon these resources or costs or upon discovery or other interlocutory step;
 - d. The number of directions hearings which should be required;
 - e. The range of possible outcomes of the proceeding for each party including for each, the best result including costs recovered and its own costs incurred and the worst result including costs which it might be ordered to pay and its own costs incurred;
 - f. Whether there should be an order for the electronic trial of the proceeding and the likely costs of this;¹¹
 - g. Whether any and if so what experts have been or are expected to be retained for the purposes of the proceeding, the field or fields expertise to be addressed by expert evidence and whether a common expert might be jointly retained; and
 - h. Whether any other procedures might be adopted in order to use these resources or costs to greatest effect.
30. At the conclusion of the resources conference the Associate Judge will prepare a report of matters agreed and those discussed at the conference, other than those matters discussed during any without prejudice part of the conference and those discussed with a party separately from other parties. The report will be placed on the Court file and a copy will be sent to the lawyers for each of the parties with a request that it be forwarded to the person responsible for the litigation within the organisation of each of the parties. The copy on the Court file will not be available for inspection by any person other than the parties without an order of the Court.
31. The trial Judge may have regard to the content of the report of the resources conference in managing the proceeding, in conducting the trial and in determining costs issues.

Directions Hearings

- 32. Directions hearings in the TEC List will be held on pre-appointed directions days during the year. The dates and times of directions days are listed on the Court website, and will be published in the Court's daily list.
- 33. The purpose of directions hearings is to provide the opportunity for directions to be made by the Court which are conducive to the achievement of the objective of the TEC List.
- 34. The Judge in charge of the List or the TEC trial Judge may at any time in the course of a proceeding convene a directions hearing and may direct that the person or persons responsible for the litigation within the organisation of each of the parties or specified parties will be required to attend the directions hearing.

¹¹ See Practice Note No. 1 of 2007 "Guidelines for the Use of Technology in any Civil Litigation Matter".

35. In cases of urgency or in cases where it is necessary to convene a directions hearing on days other than a pre-appointed directions day, a special directions hearing may be convened at the direction of the Judge in charge of the TEC List, a Judge or an Associate Judge upon a request being made, orally or in writing, to the relevant Associate.
36. Where an application is of such urgency that it must be heard outside normal Court hours and the applicant is unable to contact the associate of the Judge in charge of the List or the TEC trial Judge, the application may be made to the Practice Court judge whose after hours contact number is published in the daily list.

First Directions Hearing

37. The first directions hearing will be conducted by the Judge in charge of the List or by the TEC trial Judge, pursuant to the summons for directions issued in accordance with r.3.04 of the TEC Rules.¹²
38. At the first directions hearing the legal practitioners for the parties will explain to the Court what the proceeding is about and what interlocutory steps they would like to be taken including:
- a. Whether each of the parties has given to each other party sufficient information regarding its position to enable the other to understand what are the principal questions in issue between them;
 - b. Whether the parties have attempted to resolve the dispute by mediation or otherwise and whether an immediate mediation is appropriate;
 - c. What are the substantial questions in issue;
 - d. Whether any other parties are expected to be joined;
 - e. Whether apportionment is sought against any party or other person;
 - f. Whether there are any questions which might be appropriately determined pursuant to R47.04;
 - g. Whether there are any questions which might be referred to a special referee or to arbitration pursuant to O 50;
 - h. Whether there should be an electronic trial of the proceeding; and
 - i. Whether any and if so what experts have been or are expected to be retained for the purposes of the proceeding, the field or fields of expertise to be addressed by expert evidence and whether a common expert might be jointly retained.
39. At the first directions hearing the Court may make an order directing the convening of a resources conference and may make such other orders and give such other directions as are determined to be necessary.

Further Directions Hearings

40. The Judge in charge of the List or the TEC trial Judge will from time to time address the future progress of the proceeding with the co-operation of the legal practitioners for the parties and may give directions which are conducive to the achievement of the objective of the TEC List including:
- a. Fixing milestone dates for the preparation of the case for trial, including the issuing and return of subpoenas;
 - b. Directions for the preparation of the proceeding for trial;

¹² TEC Rules R. 3.04.

- c. Fixing a time after which no further party may be joined;
- d. That the parties provide an estimate of the likely duration of the trial and a timetable for the conduct of the trial;
- e. Fixing the date for the commencement of the trial of some or all of the questions in issue;
- f. Directions for the conduct of the trial, including directions for the delivery of witness statements, either by way of exchange or in sequence or in stages by reference to issues, and the provision of summaries of evidence in lieu of or in addition to witness statements;¹³
- g. Directions that that some or all of the issues raised in the pleadings be reduced to a Statement of Issues which may be settled by the Judge in consultation with the parties, and directions that the proceeding or part of the proceeding be conducted thereafter in accordance with and by reference to the Statement of Issues;
- h. Directions that the trial or part of the trial be conducted by a trial of a sample or samples of alleged defects or a sample or samples of other appropriate subject matter (e.g. trial of selected samples of multiple welding defects);
- i. That certain questions be determined in a preliminary way by trial in the Court or by reference to a special referee or otherwise;
- j. That the trial be conducted in stages;
- k. With the consent of the parties, that the case or any questions in issue be referred for non-binding evaluation;
- l. That there an electronic trial of the proceeding;¹⁴
- m. That there be time limits for the trial or part of the trial;¹⁵
- n. That a question be referred to an Associate Judge;
- o. Direct the appointment of an assessor or assessors in accordance with s. 77 *Supreme Court Act 1986* and this Practice Note; and
- p. Direct that the person responsible for the litigation within the organisation of any of the parties attend the directions hearing.

Final Directions Hearing

- 41. Not less than one month before the date fixed for the commencement of the trial the TEC trial Judge shall convene a final directions hearing.
- 42. At the final directions hearing the parties must attend by a legal practitioner who is able to deal with the following matters:
 - a. Whether the case is ready for trial;
 - b. Whether the timetable is still considered appropriate;
 - c. Whether a mediation or a further mediation would be likely to achieve a settlement of some or all of the questions in issue; and
 - d. Whether the trial might be conducted using any of the special trial procedures mentioned in the following paragraph.
- 43. The TEC trial Judge may, with the co-operation of the legal practitioners for the parties, give consideration to the making of special orders for the efficient conduct of the trial which are

¹³ See: *Downer EDI Mining Ltd v Iluka Resources Ltd* [2008] VSC 622.

¹⁴ See Practice Note No. 1 of 2007 (Guidelines for the Use of Technology in any Civil Litigation Matter).

¹⁵ In accordance with TEC Rules R. 3.05.

conducive to the achievement of the objective of the TEC List and may give directions to that end including any of the following additional directions:

- a. that the evidence of all parties upon a particular question be given before the evidence upon other questions;
- b. that the evidence and submissions of the parties upon a particular question be heard in a preliminary way;
- c. that a particular question be heard and determined in a preliminary way;
- d. that time limits for the trial or part of the trial be imposed including limits upon the examination or cross-examination of witnesses by reference to topic or time;¹⁶
- e. as to the order in which witnesses shall be called;
- f. that expert or other witnesses meet in conclave and report on the points of agreement and disagreement;
- g. that expert or other witnesses give concurrent evidence;
- h. that rulings on the admissibility of written evidence in witness statements or affidavits be provided electronically either prior to the commencement of the trial or during the trial;¹⁷ and
- i. other directions which may be given at the first or at any subsequent directions hearing.

Assessors Appointed Under s. 77 *Supreme Court Act 1986*

44. In a TEC case, an assessor or assessors may be appointed pursuant to s. 77 *Supreme Court Act 1986* in accordance with this Practice Note, or otherwise as may be ordered by the Judge in charge of the List or the TEC trial Judge in a particular case.
45. The Judge in charge of the List or the TEC trial Judge, in any TEC case in which it is considered expedient to do so, may appoint a suitably qualified assessor or assessors (the “assessor”) to enable the trial of the case to be conducted wholly or partially with the assistance of the assessor. For this purpose, one or more assessors may be appointed by the Court. The assessor shall assist the trial Judge in dealing with the matter in which the assessor has skill and experience, but the Court shall not be bound by an assessor’s opinion or findings. The judgment is that of the trial Judge who remains responsible for it.
46. The practice for the appointment of an assessor will be as follows:
 - a. Under the direction of and subject to any order of the Court, the nomination of the assessor shall be undertaken as follows:
 - (i) The parties may agree to nominate a person of appropriate skill and experience to serve as an assessor (the “nomination”);
 - (ii) If the parties do not reach agreement on the choice of the assessor, the assessor shall be nominated by an appropriate organisation representing the relevant discipline (the “nominating organisation”) agreed upon by the parties;
 - (iii) If no nominating organisation has been agreed upon by the parties or if the nominating organisation agreed upon fails to nominate the assessor, the Court may designate an or another nominating organisation or the Court may itself nominate the assessor; and

¹⁶ In accordance with TEC Rules R. 3.05.

¹⁷ See: *Nicholson v Knaggs* [2009] VSC 64 at [29] – [34].

- (iv) Following the nomination of the assessor other than by the agreement of the parties under sub-paragraph (i), the following steps shall be taken:
 - 1. Upon the Court notifying each party of the name of the proposed assessor and the qualifications of the proposed assessor, any party may take objection to the appointment of the assessor, either on personal grounds or in respect of the qualifications of the proposed assessor;
 - 2. The Court will take into account any such objection in deciding whether or not to appoint the assessor.
 - b. When the nomination of the assessor has been approved by the Court an order appointing the assessor may be made.
 - c. Following the Court's order of appointment, but prior to commencing his or her duties, the assessor shall:
 - (i) be directed by a Judge in open Court in the presence of the parties or their representatives to the effect of the direction in Schedule B; and
 - (ii) swear an oath or make an affirmation in the form of Schedule C.
47. An assessor shall take such part in the proceeding as the TEC trial Judge may direct including:
- a. advising the TEC trial Judge on any matter within the skill and experience of the assessor;
 - b. attending the whole or any part of the trial and reading any document or documents; and
 - c. providing his or her opinion or advice (whether in a written or oral form) to the TEC trial Judge in relation to any issue arising in the proceeding.
48. The TEC trial Judge:
- a. shall direct the assessor to prepare a report or reports on any opinion or advice (whether written or oral) given by the assessor to the trial Judge in relation to any issue arising in the proceeding and direct that the same be delivered to the parties;
 - b. may direct the assessor to prepare a report or reports on any other matter or thing in relation to any issue arising in the proceeding within the skill and experience of the assessor and direct that the same be delivered to the parties;
 - c. upon a copy of any report or reports prepared by the assessor being delivered to the parties, each party may have a reasonable opportunity to comment upon the assessor's report or reports and may, subject to the direction of the TEC trial Judge, adduce evidence, or further evidence, or recall a witness for further cross-examination in relation to an issue raised in the assessor's report or reports.
49. The appointed assessor will not give evidence in the proceeding and no party shall examine or cross-examine the assessor.
50. A party must not communicate, directly or indirectly, with the assessor about any issue arising in the proceeding, without the leave of the Court or a Judge.
51. The appointment of an assessor may be discharged by the Court or a Judge at any time.

52. The Court may determine the remuneration of an assessor¹⁸ and may from time to time make an order the parties pay or give security for the remuneration of an assessor.

Limited Time Trials

53. The TEC Rules provide the power to give directions for the imposition of time limits for the trial or part of the trial including the examination or cross-examination of witnesses by reference to topic or time.¹⁹
54. Any such direction is subject to the TEC Rules which provide for the factors to be considered in making directions for limited time trials.²⁰

Form of Evidence

55. If it appears that the material would be likely to aid in the comprehension of other evidence that has been given or is to be given, evidence in a TEC case may be given in the form of diagrams, visual images, charts, models, schedules, summaries or such other explanatory material, either in hard copy or in electronic form, as the Judge in charge of the List or the TEC trial Judge may direct.²¹
56. If the Court is satisfied that particular evidence that is to be given in a TEC case by a party is so voluminous or complex that it would not be possible conveniently to assess the evidence in narrative form, the Judge in charge of the List or the TEC trial Judge may direct the party to give the evidence in a form, specified in the direction, that would aid its assessment by the Court.
57. The Court may, on the application of a party, direct that the party may adduce evidence of the contents of 2 or more documents in question in the form of a summary if the Court is satisfied that it would not otherwise be possible conveniently to examine the evidence because of the volume or complexity of the documents in question.²²
58. The Judge in charge of the List or the TEC trial Judge may, on application, order that a demonstration, experiment or inspection be held.²³

Protocol for e-Disclosure

59. In any TEC case in which the disclosure of documents in electronic form (“e-disclosure”) is likely, any party at any time in the proceeding may make application to the Judge in charge of the List or the TEC trial Judge for an order for the preservation of electronically stored documents.
60. Any such application for an order for the preservation of electronically stored documents is in addition to and does not derogate from the obligation under the general law to preserve evidence. It is to be emphasised that the obligation not to destroy evidence is sanctioned by criminal penalty pursuant to ss. 253 – 255 *Crimes Act 1958*.
61. The Judge in charge of the List or the TEC trial Judge may at any time in a TEC case make such orders as are necessary or desirable for e-disclosure, in addition to any other orders for discovery which may be made.

¹⁸ *Supreme Court Act 1986* s. 77(2).

¹⁹ TEC Rules R. 3.05.

²⁰ TEC Rules R. 3.05.

²¹ See: *Butera v DPP* (1987) 164 CLR 180 at 190 per Mason CJ, Brennan and Deane JJ.

²² *Evidence Act 2008* s. 50.

²³ *Evidence Act 2008* ss. 53, 54.

Costs and Fees

62. Without limiting the power and discretion of the Court as to costs, the Judge in charge of the List or the TEC trial Judge may, if the occasion warrants, make orders that costs be awarded on an issues basis, or that the costs of an unsuccessful issue, of unnecessary discovery, of the unnecessary inclusion of documents in the court book or the unnecessary use of resources may not be allowed to the successful party or that these costs be awarded against a successful party.
63. Court fees payable on entry into the TEC List are payable by the party which has issued a proceeding in the List or by the party moving for the admission of a matter into the List or as the Judge in charge of the List or the TEC trial Judge may direct.

SCHEDULE A
Practice Note Amendments

The following Practice Notes shall apply to the TEC List with the amendments noted below:

Practice Note No. 4 of 1999 [1999] 2 VR 293 (Divisions of the Supreme Court)

“Building Cases List” where it appears shall be replaced with “Technology, Engineering and Construction List”;

Practice Note No. 2 of 2001 [2001] 5 VR 102 (Building Cases)

“Building Cases” where it appears shall be replaced with “Technology, Engineering and Construction Cases”, “Building Cases List” where it appears shall be replaced with “Technology, Engineering and Construction List” and “Building Cases List Users Group” shall be replaced with “TEC List Users Group”;

Practice Note No. 3 of 2001 [2001] 5 VR 106 (Building Cases Arbitrations)

“building dispute” where it appears shall be replaced with “TEC case” and “Building Cases List” where it appears shall be replaced with “Technology, Engineering and Construction List”;

Practice Note No. 7 of 2006 (Arbitration Business)

“building cases” where it appears shall be replaced with “TEC cases” and the Judge in charge of the TEC List, the Honourable Justice Vickery (Associate (03) 9 603 6344), is added to the panel of judges under paragraph 2 who are responsible for arbitration business in the Court.

SCHEDULE B
Court Direction to Assessor Prior to Assuming Duties

You are appointed by the Court to assist the trial Judge in discharging his or her judicial role and remain under the direction of the trial Judge for the duration of the proceeding. As such, you are independent of the parties, their legal advisers, their witnesses and expert consultants and all other persons connected with the proceeding.

Unless otherwise directed by the trial Judge, for the duration of the proceeding, you will not communicate directly or indirectly with the parties, their legal advisers, witnesses, consultants or any other person directly or indirectly connected with the proceeding, in relation to any matter arising out of, touching upon or concerning the proceeding, other than the trial Judge and staff of the Court.

Any report prepared by you, at the direction of the trial Judge and which is to be provided to the parties, will be a full, fair and honest account of any opinion or advice (whether written or oral) given by you to the trial Judge in relation to any issue arising in the proceeding.

SCHEDULE C
Assessor Oath / Affirmation of Office

OATH OF ASESSOR

I swear by almighty God that I will impartially and honestly conduct myself as an Assessor of this Honourable Court in this proceeding and will perform the duties entrusted to me to the best of my knowledge and ability.

AFFIRMATION OF ASSESSOR

I do solemnly sincerely and truly declare and affirm that I will impartially and honestly conduct myself as an Assessor of this Honourable Court in this proceeding and will perform the duties entrusted to me to the best of my knowledge and ability.

**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
TECHNOLOGY ENGINEERING &
CONSTRUCTION LIST**

Proceeding No.

TEC Practice Note No. 2 of 2009 (Paragraph 28 b.)

[Printable version available on the TEC List webpage of the Supreme Court website - <http://www.supremecourt.vic.gov.au>. The TEC List webpage may be found by selecting from the Court Home Page, Lists and Sittings and then, Specialist Lists and then TEC List.]

CASE MANAGEMENT INFORMATION SHEET TO BE COMPLETED BY OR ON BEHALF OF

Who is [1st] [2nd] [3rd]
[Plaintiff] [Defendant] [Third party] in this proceeding

A. Settlement

Do you wish there to be a one month stay to attempt to settle the claim either by informal discussion or by alternative dispute resolution?

Yes No

B. Pre-proceeding activity

1. Has there been any attempt by the parties to resolve the dispute?

Yes No

If Yes, please provide details of the dates of these attempts and the level of representation of the negotiating parties.

Note: *You should not include any privileged communications which may have been made in the course of these attempts*

2. Have the other parties been provided with details of your claim/defence prior to the commencement of the proceeding?

Yes No

If Yes, specify below what details have been provided and when and to which party.

3. Is there any additional information you require (in advance of discovery) from any other party in order to evaluate that other party's claim or defence?

Yes No

If Yes, please provide details below.

C Your Case

1. The Claims

- (a) What is the amount of the claim made by you or against you \$ _____
- (b) If there is a counterclaim, what is the amount of the counterclaim made by you or against you \$ _____
- (c) Describe briefly the nature of your case on a separate sheet and attach it to this form.

Note: *The description should be set out briefly in point form and in no case should exceed one page.*

2. The Parties

- (a) Is it proposed to join any other parties to the proceeding? Yes No

If Yes, identify the prospective parties below.

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- (b) Are the prospective parties aware of the proceeding? Yes No
- (c) Have the prospective parties been involved in any settlement negotiations? Yes No

3. Witnesses

What witnesses of fact do you intend to call at the trial or final hearing? Yes No

Witness name	Issue

4. Experts

- (a) Do you wish to call expert evidence at the trial or final hearing? Yes No
- (b) Have you provided any experts' reports(s) to the other party or parties? Yes No None yet obtained

- (c) Do you consider the case suitable for a single joint expert in any field? Yes No
- (d) Please list the experts you propose to call. Identifying any proposed single joint experts with the initials "SJE" after their name(s). Yes No
- (e) Is any aspect of the case suitable for the appointment of an expert assessor pursuant to s. 77 Supreme Court Act 1986 and this Practice Note? If so, specify the field of expertise. Yes No

Expert's name	Field of expertise
	<i>e.g. telecommunications engineer, circuit designer, metallurgist, industrial chemist, construction programmer etc.</i>

5. Discovery

- (a) Are there any special considerations concerning the discovery documents that should be brought to the attention of the Court? Yes No
- (b) Is it appropriate to limit or stage discovery of documents in this case? Yes No

If Yes, in either case give details on a separate sheet and attach it to this form.

6. Preliminary Questions

Yes No

Are there any questions in this case which are appropriate for preliminary trial and determination pursuant to R 47.04?

If yes give details.

7. Reference Out

Yes No

Are there any questions which are suitable for reference to a special referee pursuant to R 50.01?

If yes give details.

8. Transfer

Yes No

(a) Is the case suitable for transfer to another court or tribunal?

If yes say which court or tribunal:

VCAT/County Court/other State or Territory Court

Please give brief reasons for your preference:

(b) Is the case suitable for arbitration?

Yes No

D. Trial or final hearing

(a) How long do you estimate the trial or final hearing will take? _____ sitting days

(b) Is there any particular urgency for the determination of this case or any question arising in the case? Yes No

If yes, please give details:

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(c) If a trial date commencing within 18 months of this date can be given are there any days or period of time when a witness will not be able to attend court for the trial? Yes No

If yes give details below:

Name	Dates not available

E. Costs

Do **not** complete this section if you have suggested your case is suitable for another Court or you do not have a solicitor acting for you.

- (a) What is the estimate of your costs on a solicitor/client basis incurred to date? \$ _____
- (b) What do you estimate your overall costs on a solicitor/client basis are likely to be at the conclusion of the case? \$ _____
- (c) What do you estimate your recoverable costs are likely to be in the event that you should be successful? \$ _____
- (d) In the event that you are successful and recover an order for costs on a party/party basis and those costs are paid, what do you estimate you will be out of pocket as a consequence of the costs incurred in prosecuting or defending this case? \$ _____
- (e) In the event that you are not successful and an order for party/party costs is made against you and those costs are paid, what do you estimate you will be out of pocket as a consequence of the costs incurred in prosecuting or defending this case? \$ _____

F. Other information

- (a) Have you attached documents to this form? Yes No
- (b) Have you sent these documents to the other party(ies)? Yes No
If Yes, when did they receive them?
- (d) Do you intend to make any applications in the immediate future? Yes No
If Yes, what for?

- (e) In the space below, set out any other information you consider will help the Court to manage the proceeding, including any details about IT to be used before or at trial.

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G. Certificate

I certify that the above information is accurate and complete. I shall bring to the attention of the Court any circumstances which might cause this information in the future to be other than accurate and complete.

Signed: _____
 [Solicitor] for the [1st] [2nd] [3rd] []
 [Plaintiff] [Defendant] [Third party]

Please enter contact details for the purposes of the management of this case.

Counsel retained, if any:
Solicitor's Firm name and ref:
Telephone No:
Fax No:
DX No:
E-mail:

MEMBERS OF THE TEC LIST USERS' GROUP
(formerly the Building Cases List Users' Group)

WHO HAVE CONTRIBUTED TO THE DEVELOPMENT OF THE TEC LIST

Hon. Justice Peter Vickery (Chairman)
Hon. Associate Justice Melissa Daly
Dr. Claudio Bozzi (Senior Associate)
Russell Maclean (Associate / TEC List Co-ordinator)

Stephen Adorjan (Master Builders Association of Victoria)
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David Levin QC (Barrister)
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The TEC List has built upon what has gone before, and in particular the ground breaking work of Justice David Byrne in the development of Practice Note No 1 of 2008, '*Building Cases – a New Approach*'. The contribution is gratefully acknowledged.
