



Valuation, Compensation & Planning

1. INTRODUCTION

- 1.1 This Practice Note replaces the *Notice to Practitioners of 2002* and the *Notice to Practitioners of 1999*. The practices and procedures set out in this Practice Note will apply from 1 January 2007
- 1.2 The Judge-in-Charge of the Valuation, Compensation & Planning List ("the List") is the Honourable Justice Osborn. Contact details for his Honour's associate can be found on the List webpage on the Supreme Court website: www.supremecourt.vic.gov.au. The List webpage may be found by selecting from the Court Home Page, *Lists and Sittings* and then, *Specialist Lists* and then, *Valuation, Compensation and Planning*.
- 1.3 References in this Practice Note to the Chapter I Rules are references to the *Supreme Court (General Civil Procedure) Rules 2005* as amended from time to time. References to the List Rules are references to the *Supreme Court (Miscellaneous Civil Proceedings) Rules 1998* as amended from time to time, and in particular to Order 8 of those Rules.

2. ENTRY INTO THE LIST

- 2.1 Entry to the List is appropriate for certain disputes relating to land. In particular:
 - valuation of land under the *Valuation of Land Act 1960*;
 - compensation for resumption of land under the *Land Acquisition and Compensation Act 1986*;
 - appeals (including the applications for leave to appeal) from the Victorian Civil and Administrative Tribunal; and
 - referral on a question of law from the Victorian Civil and Administrative Tribunal.

- 2.2 The Court will seek to ensure that the Judge-in-Charge of the List is the Trial Judge of proceedings in the List. However pressures upon the Court may be such that this is not always possible.
- 2.3 Fees are payable for proceeding commencement and entry into the Valuation, Compensation and Planning List. Practitioners should refer to the website for current fees.

3. GENERAL CONDUCT OF PROCEEDINGS

- 3.1 Proceedings in the List are managed by the Judge-in-Charge. Management includes the adoption of one or more of the following procedures where appropriate:
- a. encouraging the parties to cooperate with each other in the conduct of the proceeding;
 - b. fixing timetables or otherwise controlling the progress of the proceeding;
 - c. managing the proceeding by making interlocutory orders on the papers, that is, upon written application and material without the necessity of appearance before the Court;
 - d. encouraging the parties to use alternative dispute resolution procedures;
 - e. encouraging and helping the parties to settle all or part of the dispute; and
 - f. giving directions to ensure that the trial proceeds quickly and efficiently.
- 3.2 Where appropriate, practitioners should adopt the procedures set out in the Practice Note No. 1 of 2002, *Guidelines for the Use of Technology in Litigation in any Civil Matter*. If difficulties arise between the parties in the implementation of that Practice Note, practitioners should bring the matter before the Court for a prompt resolution.
- 3.3 Communications with the Court should be directed to the Associate of the Judge-in-Charge of the List preferably via email. All communications with the Court should be disclosed to all parties.

4. HEARINGS

- 4.1 Directions hearings in the List will generally be held on the last Friday of each month. Dates and times of directions days are listed on the List website.

- 4.2 At the first directions hearing each party should be ready, if requested by the Court, to explain, by brief oral outline, the nature of the dispute and the substantial questions in controversy, and to assist the Court to determine the course to be followed.
- 4.3 At the first directions hearing parties will be requested to complete a transcript request form. Transcript is essential for efficient management of proceedings. Therefore, unless there is good reason for parties to refuse to authorise transcript provision, the proceeding will not be further dealt with until transcript provision is authorised.
- 4.4 At the first directions hearing, or otherwise as the Court considers appropriate, orders will be made and directions given with a view to ensuring the just and efficient determination of the dispute. All parties are expected to have considered whether orders or directions should be made (if appropriate) with respect to:
- a. the filing and service of pleadings;
 - b. the joinder of any further parties and/or claims between parties;
 - c. the filing and service of a statement of agreed facts and/or issues;
 - d. the filing and service of lists of documents generally or in relation to specific categories of documents;
 - e. the appropriateness of an expert's report;
 - f. the early delivery or exchange of experts' reports and the holding of any conferences between experts;
 - g. the filing and service of any affidavits or witness statements by specified dates;
 - h. whether an order should be made for the separate trial of any question;
 - i. whether the proceeding is appropriate to be conducted in accordance with the procedures set out in the Practice Note No. 1 of 2002, *Guidelines for the Use of Technology in Litigation in any Civil Matter* and, if so, to what extent; and
 - j. whether the matter should be referred to mediation and, if so, when.
- 4.5 The proceeding will ordinarily be set down and fixed for trial only by order of the Court. This may be before mediation and before all interlocutory steps have been completed provided that this does not jeopardise the readiness of the proceeding for trial on the scheduled trial date.

- 4.6 When the trial date is to be fixed, the Court will require practitioners to provide an accurate estimate of the duration of the trial, as best as can be assessed at the time the estimate is given. Practitioners will also be expected to inform the Court at this time that their respective clients are ready for trial, that all witnesses are available and where it is known, how many witnesses may be called. When, for any reason, a practitioner later considers that the estimate given is incorrect and should be changed, the Associate of the Judge-in-Charge must be notified without delay. The Court will not tolerate parties or practitioners changing the estimate on the first day of the trial.
- 4.7 Subject to any specific directions made by the Judge-in-Charge or the Trial Judge, the trial procedures set out in Order 49 of the Chapter I Rules will be observed.
- 4.8 Before production to the Court in any case in the Valuation, Compensation & Planning List:
- a) Any document more than one page which is not paginated must have page numbers added legibly;
 - b) An unlabelled photograph must be endorsed with a numbered or lettered code, and must be accompanied by a brief description enabling it to be distinguished from other photographs in the proceeding;
 - c) Any plan on which land is said to be defined by reference to colour must be appropriately coloured; and
 - d) Any map or plan must display:
 - (i) a north line; and
 - (ii) either a scale or an indication that the map or plan is not to scale.

5. APPLICATIONS

- 5.1 Interlocutory applications will ordinarily be managed, heard and determined by the Judge-in-Charge of the List at the next directions hearing. Where this is not appropriate, particularly if the application is estimated to run for more than 2 hours, a date will be fixed for the determination of the application.
- 5.2 Section 148(1) of the *Victorian Civil and Administrative Tribunal Act 1998* ("the Act") provides that a party to a proceeding may appeal, on a question of law, from an order of the

Victorian Civil and Administrative Tribunal in the proceeding, to the Trial Division of the Supreme Court (except where the Tribunal was constituted for the purpose of making the order by the President or a Vice President, whether with or without others) if the Trial Division gives leave to appeal.

- 5.3 The effect of section 148(2)(b) of the Act and Rules 8.02 and 8.04 of Chapter II of the *Supreme Court (Miscellaneous Civil Proceedings) Rules* 1998 is that applications for leave to appeal to the Trial Division from the Land Valuation List or the Planning List of the Administrative Division of the Tribunal are to be made to the Judge-in-Charge of the List. The appropriate initiating procedure is an originating motion in either Form 5B or 5C.
- 5.4 The outlines of argument, affidavits and exhibits are to be provided to the Associate of the Judge-in-Charge of the list in the following form:
- a) **Documents provided to the Associate are to be copies.** In particular, original exhibits are to be retained by the parties and brought to the Court on the day of hearing.
 - b) Each party should provide the **submissions**, any **relevant copy affidavit material**, **copy exhibits** and **authorities** in a **folder appropriately indexed and divided** for ease of navigation by the Judge-in-Charge. **Documents not provided in this form may not be accepted.**
- 5.5 The Applicant is to deliver their materials to the Associate two clear days before the date on which the application is listed for hearing. The outline and list of authorities should also be served upon the Respondent.
- 5.6 The Respondent/s are to deliver their materials to the Associate one clear day before the date on which the application is listed for hearing. The outline and list of authorities should also be served upon the Applicant.

6. ORDERS

- 6.1 Practitioners are encouraged to prepare draft orders for all relevant hearings in the List.
- 6.2 As a general rule, interlocutory orders will be authenticated pursuant to Rule 60.04 of the Chapter I Rules whereby the Judge signs the order.

- 6.3 Consent orders may be submitted to the Court and may be made on the papers. Where parties consider orders should be made on the papers, without the necessity of attendance by the parties, they should follow the following steps:
- a. They should agree the form of the proposed orders.
 - b. The proposed orders signed by or on behalf of all parties should preferably be emailed to the Associate of the Judge-in-Charge of the List a reasonable time in advance of the directions hearing. The emailed orders should also be provided in Word format to expedite the authentication process.
 - c. Notwithstanding that the parties have agreed and submitted proposed orders, the Court may require the attendance of practitioners and may not make the proposed orders. Attendance is usually required if the final disposition of the matter is sought.

7. EXPERT EVIDENCE

- 7.1 The requirements of Order 44 of the Chapter I Rules and Form 44A entitled "Expert Witness Code of Conduct" apply to a proceeding in the List.
- 7.2 The Court expects expert witnesses to express an opinion arrived at independently from any pressure brought to bear by or on behalf of the party engaging the expert.
- 7.3 The expert's evidence in chief shall be given by an expert report in writing. The expert's report must include:
- a. the expert's relevant qualifications and experience;
 - b. the questions for opinion;
 - c. the facts and assumptions underlying the expert opinion(s); and
 - d. the reason for the expert opinion(s).
- 7.4 In cases in which contentious expert evidence is to be adduced, the Court may direct pursuant to Rule 44.06 that experts confer before trial.
- 7.5 With respect to conferences of experts subject to any such direction as the Court may give:
- a. the procedure to be adopted at the conference is a matter for the experts themselves, and not for the parties or their legal representatives;

- b. neither the parties nor their legal representatives should seek to restrict the freedom of the experts at the conference to identify and acknowledge the matters upon which they agree;
- c. following any conference, the experts will prepare a joint memorandum for the Court recording:
 - i. the fact that they have met and discussed the matters upon which they have been directed to confer;
 - ii. the matters on which they agree;
 - iii. the matters on which they disagree; and
 - iv. a brief summary of the reasons for their disagreement.

8. MEDIATION

- 8.1 All proceedings other than appeals on questions of law will be referred to mediation unless there is a good reason to the contrary.
- 8.2 From the first directions hearing, practitioners are expected to consider when mediation would be most appropriate. In addition, practitioners are expected to have discussed the desirability of mediation with each other and where possible, agree on when a mediation ought to take place.
- 8.3 An order for mediation will be based on the standard form, a copy of which is set out as Schedule 1 to this Practice Note.

9. DISCOVERY

- 9.1 Discovery is only to be made pursuant to an order of the Court; not in response to notice for discovery.
- 9.2 Subject to the provisions of this Practice Note, discovery will otherwise comply with the requirements of Order 29 of the Chapter I Rules. Parties are encouraged where appropriate to agree upon orders for discovery and to consider whether limited categories of discovery should be exchanged.
- 9.3 Practitioners are expected to comply with the following procedures:

- (b) Discovery is normally made by the filing and delivery of an unsworn list of discoverable documents.
- (c) Where appropriate, discovery should be made in electronic form in compliance with Practice Note No 1 of 2002, *Guidelines for the Use of Technology in Litigation in any Civil Matter*.
- (d) The list of discoverable documents should include the following descriptive identifying fields:
 - (i) **document discovery number**, parties should use numeric, not alphabetical numbering (for example, 001, 002, 003 etc and where extra documents are to be inserted in a list, the numeric numbering should read, for example, 010.1, 010.2, 010.3 etc);
 - (ii) **document date**;
 - (iii) **document description** (for example, "original contract between X and Y");
 - (iv) **document source or provenance** (for example, the particular file and from which party a document was discovered or from what person the document was obtained under subpoena).

11. COURT BOOKS

- 11.1 If appropriate, the Judge-in-Charge will order that documents for use at trial be included in a court book.
- 11.2 The purpose of the court book is to provide to the Court, the parties and witnesses an accessible bundle of documents which will be deployed at trial.
- 11.3 Practitioners will be expected to agree upon the contents of the court book. The usual trial order will require that practitioners consult between themselves in order to settle the contents of the court book.
- 11.4 As a general principle, the court book will include all relevant documents in date order which a party intends to tender in evidence in chief and which that party reasonably expects will be referred to in cross-examination (the relevance test). Practitioners must ensure that, as far as possible, all such documents are included in the court book and that unnecessary documents not

be included. If it appears that a necessary document has been omitted from the court book, the acceptance of that document into evidence will not be refused for that reason.

- 11.5 The contents of the court book will be inclusive; practitioners have an entitlement to add documents into the book provided each document satisfies the relevance test, but not to insist that another party excludes documents from the court book.
- 11.6 A document in the court book may be tendered as authentic without formal proof unless a party objects. If a party intends to object to the authenticity of a document, they should notify the other party or parties as soon as practicable.
- 11.7 There should be no unnecessary duplication of documents.
- 11.8 The application of the relevance test in settling the contents of the court book will be subject to review by the Court should the need arise for a different approach to be adopted in particular cases, consistent with the just and efficient conduct of the trial. Practitioners should expect that, where unnecessary or irrelevant documents are included in the court book, an order may be made that the costs associated with the inclusion of such documents not be recoverable by the party which included those documents or that they be paid by that party in any event.
- 11.9 The order setting down the proceeding for trial may make provision for the form, the content and the timetable for the preparation and delivery of the court book. Generally-
 - a. the court book should contain an index of its contents and each page of the court book should be paginated;
 - b. the index should list the documents in chronological order;
 - c. the index should include at least the following descriptive fields or categories:
 - i. court book number (which must run sequentially from beginning to end);
 - ii. document date (being the date attributed to the document in the list of discoverable documents if the document was discovered);
 - iii. document description (being the description attributed to the document in the list of discoverable documents if the document has been discovered);
 - iv. document source or provenance (being the source or provenance attributed to the document in the list of discoverable documents if the document has been discovered);

- v. court book page number at which the document commences; and
- vi. court book page number at which the document ends.

Schedule 1

STANDARD MEDIATION ORDER

THE COURT ORDERS AND DIRECTS THAT:

1. The proceeding be referred to a mediator to be agreed between the parties or in default of agreement to be appointed by the Court.
2. Such mediation to take place by/not to take place before.....
3. Subject to the terms of this order, the solicitor for the plaintiff shall, after consultation with all parties, deliver to the mediator a copy of all relevant documents together with a copy of this order, and take all steps necessary to ensure that the mediation commences as soon as practicable.
4. The mediation shall be attended by those persons who have the ultimate responsibility for deciding whether to settle the dispute and the terms of any settlement and the lawyers who have ultimate responsibility to advise the parties in relation to the dispute and its settlement.
5. The mediator shall report back to the Court not later than
6. Subject to any further order, the costs of the mediation be borne equally by the parties in the first instance.

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