

Supreme Court of Victoria

Practice Note No. 2 of 2001

Building Cases

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

1. At the time of publication of this Practice Note the Judge-in-Charge of the Building Cases List is the Honourable Justice Byrne. His Honour's associate may be contacted at Tel 9603 6358; Fax 9670 8408. The e-mail address for the Building Cases List is buildingcases@supremecourt.vic.gov.au. The name of the current Judge-in-Charge and the contact details for the associate to the Judge-in-Charge can be obtained from the Supreme Court website www.supremecourt.vic.gov.au.
2. The practice of holding monthly Building Cases List directions days for the disposition of interlocutory matters will continue. Generally speaking, these will be held on the last Friday of the month. The dates may be obtained from his Honour's associate or from the Court website.

Directions Days

3. The directions days will commence at 10.00 am unless advice to the contrary is advertised in the Law List. Generally, cases will proceed in order of their entry into the Building Cases List. Practitioners may advise his Honour's associate of the expected duration of a hearing so that the court may list the matter at a particular time.
4. The fee prescribed by item 8 in Schedule 1 to the Supreme Court (Fees) Regulations 1991 is payable upon entry of a proceeding into the List. Where an order is made for entry into the List pursuant to Ch II r 3.03(2), the court will accept an undertaking for payment of this fee within seven days.
5. Subject to paragraph 6, an application made or returnable on a directions day will be treated as having been brought pursuant to liberty to apply under the summons for directions, filed pursuant to Ch II r 3.04; it need not be commenced by a fresh summons. Notice of orders sought on any directions day should be served and delivered to his Honour's associate two clear days prior to the directions day. Any exhibit to an affidavit should also be delivered to his Honour's associate (not filed with the Prothonotary) two clear days before the affidavit is proposed to be read.
6. Subject to his Honour's direction, an application seeking orders other than directions should be brought by separate summons. For example, applications for security for costs, for injunctive relief and for dismissal for want of prosecution.
7. An application by a defendant to join a further defendant for the purposes of obtaining the benefit of s 131 of the Building Act 1993 should comply with the procedural recommendations set out in *Wimmera-Mallee Rural Water Authority v FCH Consulting Pty Ltd* [2000] VSC 102. Such applications must be made upon summons and must be brought promptly.
8. Parties seeking to issue a summons returnable before the Judge-in-Charge of the Building Cases List on a date other than a directions day must first consult with his Honour's associate to establish a return date for such summons. The Prothonotary will not accept a summons without a return date which has been authorised by his Honour's associate.
9. Parties in the Building Cases List always have a general liberty to apply. Practitioners are urged to avail themselves of this liberty if difficulties arise between directions days. They may do so by addressing themselves to his Honour's associate.

10. Practitioners are reminded that Ch II r.3.02(2) requires that all interlocutory applications brought in proceedings in the List, including those which would otherwise be returnable before a master pursuant to Ch I r.77, be brought before the Judge-in-Charge of the List.
11. Notwithstanding Ch I rr.21.02, 21.03 and 21.04, where a proceeding has been entered in the Building Cases List or where a party has applied under Ch II r 3.03 to enter a proceeding in the List no judgment in default of defence may be entered without leave of the Judge-in-Charge of the List.
12. Where it is appropriate to do so his Honour will himself hear and determine questions set down for preliminary trial pursuant to Ch I r 47.04 provided that they can be disposed of shortly. For this purpose he may set aside such other days as may be available. Practitioners should always consider whether it is appropriate to have such a preliminary question determined in their proceeding.
13. The Supreme Court (Fees) Regulations 1991 item 9 provides for payment of a hearing fee for every day or part of a day of a trial. Excepting the rare case where the application is for final relief, matters before the judge on directions days are not considered to be 'a trial'.
14. For the purposes of Practice Note No. 6 of 1985, applications to the Judge-in-Charge of the List are treated as directions hearings in the Commercial List; robes need not be worn.

Consent Orders

15. Practitioners in a managed list must expect that their proceeding will be managed. Nevertheless, they are encouraged to agree upon directions which they consider appropriate. Where consent directions or a consent adjournment for good reason are sought, practitioners should submit by fax or by automatically receipted e-mail to his Honour's associate one clear day before the directions day a note of the proposed order and, where appropriate, the reason for it. The associate will advise them whether his Honour will make the proposed order or whether an appearance will be required. Practitioners are reminded that such consent orders may not be made by the Prothonotary (see Ch I r.59.06(8)). Parties attending court in circumstances when a consent order on the papers ought to have been sought may be denied costs of the attendance.

"Truth in pleading"

16. It is particularly important in a managed list that the real issues between the parties be exposed in the pleadings. For this reason the requirements of Ch I rr 13.02(1)(a), 13.03 and 13.07(1) will be strictly enforced. The attention of pleaders is also drawn to r 13.06. Where standard form contracts are pleaded it is sufficient that the term of the contract be identified by number. These terms should not be set out in full unless the precise words are of significance.
17. Evasive pleading will not be tolerated.
18. The requirements of r 13.10 will be strictly enforced. It is the responsibility of the pleader to include in the pleading all necessary particulars. Unless good cause is shown, the costs of providing further particulars, including any request for these, will be borne in any event by the party in default.

Trial

19. When all interlocutory steps are complete and the proceeding is ready for trial his Honour will make an order fixing a trial date or referring the proceeding to the Listing Master for this purpose. The order fixing a date for trial will normally dispense with compliance with r 48.02 (Notice of Trial and Certificate of Readiness). The order will also recite that the proceeding is ready for trial and the estimated duration of the trial.
20. Practitioners should ensure that the pleadings and particulars are in order before an order for trial is sought. Estimates of likely duration must be realistic outside estimates. As the proper

dispatch of business depends upon the accuracy of time estimates, parties and their practitioners should be aware that amendments or other interlocutory applications may be refused where they may have the consequence of causing an adjournment of the trial date or an extension of the trial beyond the estimated time. Counsel at trial will be expected to adhere to the time estimate.

21. Where the estimate is less than 12 sitting days, his Honour will, if possible, fix a trial date after consultation with the Listing Master. The plaintiff should ensure that a copy of the order is delivered forthwith to the Listing Master so that she may give effect to it. Note that, even when a date is fixed, practitioners must attend the relevant callover or the date will be lost.
22. Where the estimate is 12 sitting days or greater, the proceeding may be referred to the Listing Master who will assume responsibility for allocating a date and subsequently a trial judge.
23. The order setting down a proceeding for trial may also include an order pursuant to Ch II r 3.02(4) empowering the Listing Master to exercise the powers of the Court in relation to the proceeding.

Building Cases List Users Group

24. His Honour meets from time to time with a users group representing legal and other practitioners concerned with building disputes. The purpose of these meetings is to provide an avenue for considering criticisms and any suggestions as to the improvement of the management and disposition of building cases in the Court. Practitioners wishing to offer criticisms or suggestions may address themselves on a confidential basis to any member of this group. Present members of the Users Group are:

John Digby QC
Owen Dixon Chambers
List G
Tel 9225 7498
Fax 9225 8729
Johndigbyqc@vicbar.com.au

David Levin QC
Owen Dixon Chambers
List B
Tel 9225 7043
Fax 9225 8186
dlevin@vicbar.com.au

Richard Manly SC
Own Dixon Chambers
List A
Tel 9225 7725
Fax 9642 1777
manly@chancery.com.au

Tim Garood
Baker & McKenzie
Tel 9617 4200
Fax 9614 2103
tim.garood@bakernet.com

John Sharkey
Deacons
Tel 8686 6589
Fax 8686 6505
john.sharkey@deacons.com.au

John Permewan
Architect
Tel 9866 4566
Fax 9866 4580
mca@hotmail.net.au

Dr George Deutsch
Engineer
Tel 9817 5555
Fax 9816 9599
gdeutsch@bigpond.net.au

Brian Gallagher
Building Consultant
Tel 9801 9814
Fax 9887 0584
Galbrian@mira.net

Contact details for current members of the Users Group may be found on the Supreme Court website.

This Practice Note is in substitution for Notices to Practitioners No. 1 and No 2 of 1996 each dated 1 January 1996.

DATED this second day of November, 2001.

Signed: A. R. TRAVES
Senior Associate to the Chief Justice