

# Supreme Court of Victoria

## Practice Note No. 3 of 1995

### New arrangements for fixing civil cases for trial

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

#### Introduction

Based on what was done in the course of the Spring and Autumn Offensives and on other developments in this and other Courts, it is proposed that with effect from Term 4 1995, new arrangements will be made in relation to the fixing of civil cases for trial.

Experience has shown that many civil cases can benefit from reference to mediation: either because the proceeding is settled before trial or the issues that are to be tried are reduced. The arrangements that are now proposed will complement the "**Portals**" initiatives announced by the Chief Justice under which mediation is made available to parties from the time of the institution of proceedings.

Experience has also shown that many cases that have been certified ready for trial and entered in the list of cases waiting trial are not in fact ready at all, or require further significant interlocutory steps before trial can begin.

These considerations require the Court to alter the arrangements that are made for the fixing for trial of cases other than those in the specialist lists. (Existing arrangements will continue in the specialist lists.)

#### FIXING CASES

Cases, other than appeals and urgent cases, will be fixed further in advance than they are now and orders will then be made for the mediation of suitable cases. If cases are not ready for trial, they may be taken out of the list or orders made for making the case ready for trial.

Because fixtures will be set as long as 12 weeks in advance of trial, fixtures will be confirmed at a call-over held 2 to 4 weeks before the date fixed for trial.

Cases in the List of Civil Business will be given notice in writing by the Court when the case is to be called on for a Directions Hearing at which the case will be fixed for hearing. In all cases, it is essential that the practitioner having the carriage of the matter attends the Directions Hearing. In some cases, parties (or in the case of incorporated parties, their duly authorised representatives) may be required to attend the Directions Hearing in person. (In such cases the notice calling the case on for a Directions Hearing will state that parties are required to attend in person.)

In Term 4, 1995, the call-overs to confirm fixtures that have been given at such Directions Hearings will take place on the dates that have been previously announced for call-overs.

Practitioners will not be required to attend the call-over confirming the date fixed for trial IF, not later than 2 working days before the call-over, there is filed with the Secretary to the Listing Master a certificate signed on behalf of all of the parties to the proceeding either

- stating that the whole proceeding has been compromised and attaching a draft consent order of judgment pursuant to r.59.06

or

- stating that the matter has not been wholly compromised;

- stating that all steps directed to be taken before the date of the call-over have been completed;
- giving the name of counsel retained for each party (if that is known); and
- giving an accurate revised estimate of the duration of the case.

Such certificates may be filed by facsimile transmission sent to the Secretary to the Listing Master on (03) 9603-6187.

No application to vary or vacate a trial date may be made at the call-over. Any such application must be made prior to the call-over and will be granted only in exceptional circumstances. It is essential that at the call-over parties are able to give an accurate revised estimate of the expected duration of the matter.

These measures are intended to enable the Court to send more cases for mediation than now is the case and deal with some specific problems that have been identified.

### **Witness Statement, Outlines Of Evidence, and Court Books**

While the preparation of witness statements and court books of documents that are to be tendered in evidence is expensive it is clear that in appropriate cases their filing and exchange promotes the earlier settlement of cases, and saves a great deal of time at trial.

If witness statements and court books are to be filed and exchanged, directions fixing times for these steps will be given at the time of the fixing of the case for trial.

#### **Witness Statements**

If witness statements are ordered, then subject to any contrary order of the trial Judge, each witness statement will stand as the whole of that witness's evidence-in-chief. Further, without the leave of the trial Judge, no evidence may be adduced from any witness (except in cross-examination) other than evidence contained in a statement of the evidence of that witness.

If, as will usually be the case where witness statements have been ordered, an order has been made for the preparation and filing of a Court Book, NO documents are to be annexed to witness statements. Any document referred to in a witness statement is to be referred to by its page number in the Court Book.

#### **Outlines of Evidence**

In other cases, it may be appropriate to order parties to file and exchange outlines of evidence, i.e. documents signed by the practitioner concerned which set out the substance of the evidence which it is expected that witnesses will give at trial. The outline must state separately the substance of the evidence which each witness will give and must not simply identify subjects that the witness (or witnesses generally) will speak about. If an order is made for outlines of evidence, as opposed to witness statements, then subject to any contrary order of the trial judge, each witness will give his or her evidence-in-chief in the ordinary way.

In some cases, where it may assist mediation, orders may be made for the filing and exchange of outlines of evidence before the mediation begins.

#### **Court Books**

If an order is made for preparation and filing of Court Books (an order which will be made in some, by no means all, cases), directions will be given about what the Court Book is to contain. Generally, directions will be given that the book contain

- (a) an index of its contents;

- (b) only the latest version of the pleadings and particulars; and
- (c) ONE copy only of any document that a party intends to tender in evidence.

Thus, ordinarily the Court Book will NOT contain any witness statements, outlines of evidence or expert witness statements.

Except pursuant to express direction the Court Book will NOT contain superseded pleadings, it will NOT contain affidavits of documents and it will NOT contain any document except for ONE copy of those documents which the parties intend to tender in evidence.

The Court Book should be prepared in A4 format, with each page numbered separately and sequentially. The documents are to be arranged in chronological order and the copies should be wholly legible. The documents should be contained in a ring binder or lever arch file.

Any departure from the directions that has led to the incurring of unnecessary costs (whether by the unnecessary copying of documents or incompetent arrangement of the book) will invite consideration of by whom those costs are to be borne and may well require consideration of whether the costs should be borne by the practitioner concerned.

### **Outlines of Argument**

In some cases orders will be made for the preparation and provision of outlines of argument before trial. Such orders (together with an order for the filing of a List of Authorities) will generally be made in appeals from Magistrates Courts or other appeals to the Court on questions of law, but may be made in any other case in which such an order will assist the efficient disposition of the matter.

### **TIMETABLE**

The effect of these proposals is that cases will follow a timetable -

#### **In ALL cases (other than appeals and urgent cases)**

Directions Hearing fixing Trial date (T) T minus 12 weeks

#### **If mediation is ordered**

Mediation (and if appropriate, outlines of evidence) T minus 8 to 4 weeks

If Court Books are ordered

Court Book preparation T minus 4 to 2 weeks

Plaintiff's List T minus 4 weeks

Defendant's List T minus 3 weeks

File and serve Court Book T minus 2 weeks

#### **In ALL cases (Including appeals and urgent cases)**

Call-over T minus 4 to 2 weeks

#### **If witness statements or outlines of evidence are ordered**

Lists of witnesses and witness statements or outlines T minus 1 week

#### **If outlines of argument are ordered**

Outlines of argument T minus 3 days

(A standard form of order is annexed.)

**Annexure**

1. The proceeding is fixed for hearing on (date) [T] on an estimate of duration of [ ] days.

**If mediation is ordered**

2. Pursuant to rule 50.07 of the rules the whole proceeding is referred to (name) for mediation.
3. On or before (date) [Call-over minus 2 days] the mediator shall file with the Prothonotary a report in writing stating whether the mediation is finished.
4. The costs of the mediation shall be paid in the first instance by [ ] in the following proportions [ ] but the costs of the mediation shall otherwise be reserved to the trial Judge.

**If Court Books are ordered**

5. On or before (date) [T minus 4 weeks] the plaintiff's solicitor shall serve on the solicitors for each other party a list of the documents that the plaintiff intends to tender in evidence.
6. On or before (date) [T minus 3 weeks] each solicitor for each other party shall serve on the solicitor for the plaintiff a list of the documents other than those specified in the list referred to in the preceding paragraph of this order which those other parties intend to tender in evidence.
7. On or before (date) [T minus 2 weeks] the solicitor for the plaintiff shall serve on each other party and file for the use of the Judge a Court Book of documents containing
  - (a) an index of the court book
  - (b) the current pleadings and particulars
  - (c) one copy only of each of the proposed exhibits arranged in chronological order the book being paginated sequentially from and including its index.
8. The plaintiff's solicitor shall have available at the hearing a copy of the court book of documents for the exclusive use of witnesses during their examination.

**If witness statements are ordered**

9. On or before (date) [T minus 1 week] each party shall file and exchange with each other party
  - (a) a list of the witnesses that party intends to call at the hearing;
  - (b) a statement in the form of a proof of the evidence to be given as evidence in chief by each witness with references (where appropriate) to the Court book of documents, or
  - (c) in the case of any witness who is not willing to provide a proof of evidence a statement of the substance of the evidence which the party calling the witness expects that witness to give.
10. The unsigned original of each statement in the form of a proof of evidence (in this order referred to as "witness statements") shall be produced at the hearing.
11. Subject to any contrary order of the Trial Judge,
  - (a) every witness statement shall stand as the evidence-in-chief of the witness concerned;

- (b) no party shall, except in cross-examination, adduce from any witness at the trial any evidence other than evidence contained in a statement of the evidence of that witness that has been served pursuant to this order.

**If outlines of evidence are ordered**

- 12. On or before (date) [T minus 1 week OR before mediation] each party shall file and exchange with each other party an outline of all of the oral evidence which that party intends to adduce at trial which states
  - (a) the name, address and occupation of each witness which that party intends to call at trial; and
  - (b) the substance of the evidence which that party expects each of those witnesses to give.

**If outlines of argument are ordered**

- 13. On or before (date) [T minus 3 days] each party shall file and exchange with each other party an outline of argument
  - (a) which concisely summarizes that party's submissions in relation to each of the issues in the proceeding;
  - (b) which cites the main authorities upon which that party will rely; and
  - (c) which, save with the prior leave of a Judge or Master, does not exceed [10] pages of double spaced A4 paper.

**In all cases**

- 14. The proceeding will be called-over at the call-over to be held on [date] for the purpose of confirming the date fixed for the trial of the proceeding.

Dated this 31st day of August, 1995.

A. R. TRAVES Senior Associate to the Chief Justice