



Federal Court of Australia

Notice to Practitioners – Directions for the Fast Track List

There will be a panel of three judges in the Victoria District Registry to manage and hear cases in a “Fast Track List”.

1. Preliminary

1.1 These Directions may be cited as the “Fast Track List Directions”.

1.2 These Directions shall operate concomitantly with the Federal Court Rules. That is, the judges will administer cases in the Fast Track List in accordance with these Directions.

2. Eligible Proceedings

2.1 The proceedings that can be entered on the Fast Track List are proceedings arising out of or relating to:

- (a) commercial transactions;
- (b) an issue that has importance in trade or commerce;
- (c) the construction of commercial documents;
- (d) an issue that has importance in personal insolvency;
- (e) intellectual property rights apart from patents;
- (f) such other commercial matters as the presiding judge may direct;

but excluding proceedings –

- (x) that would otherwise be allocated to the -
 - i. admiralty panel;
 - ii. corporations panel;
 - iii. taxation panel.
- (y) the trial of which is likely to exceed eight (8) days.

3. Time

3.1 *Reckoning* - In calculating the time provided for by these Directions or by the Federal Court Rules or by any order fixing, extending or abridging time, the

period from 24 December to 2 January next following is excluded. The period from 3 January to 14 January shall, unless otherwise ordered, be included.

4. Commencement of Fast Track Proceedings

4.1 *Commencement by Application* – Except as otherwise provided in these Directions, proceedings shall be commenced in the Fast Track List by the filing of an application clearly marked “FAST TRACK LIST APPLICATION” in the upper right-hand corner of the first page of the application.

4.2 *Commencement by Agreement* – If all parties to an existing case agree that the case would be appropriate for the Fast Track List and the case is eligible for entry, the parties may, by agreement, move the case to the Fast Track List.

4.3 *Commencement by Judicial Referral* – If, either on his or her own motion or at the request of one of the parties, a judge forms the view that a case could be fairly and adequately resolved on the Fast Track List, the judge may, after consultation with a judge who is a member of the Fast Track List panel, order that the case be transferred to the Fast Track List.

4.4 *Removal* – If, either on the judge’s own motion or at the request of the respondent, a judge who is a member of the panel forms the view that a case in the Fast Track List would be more appropriately dealt with otherwise than in the list, the judge may order that the case be removed from the list.

5. Case Summaries

5.1 *Pleadings* – There will be no pleadings. Instead, there will be statements of a party’s claim or cross-claim, points of defence and points in reply (collectively referred to as “case summaries”).

5.2 *Case summaries* – All case summaries shall, avoiding undue formality, state in summary form:

- (a) the basic elements of the party’s claim or defence, as the case may be;
- (b) where applicable, the relief sought;
- (c) the issues which the party believes are likely to arise;
- (d) the principal matters of fact upon which the party intends to rely; and

- (e) the party's contentions (including the legal grounds for any relief claimed) and the leading authorities supporting those contentions.

5.3 Times for Filing and Service of Fast Track case summaries –

- (a) *Application and statement of the applicant's claim* – The application and a statement of the applicant's claim shall be served upon the respondent within seven (7) days of filing the application.
- (b) *Points of Defence and Cross-claim* – Points of defence and any statement of cross-claim against the applicant shall be filed and served within thirty (30) days after service of the statement of the claim.
- (c) *Cross-Claim against third party* – Any statement of cross-claim against a third party shall be filed and served within five (5) days after service of points of defence.
- (d) *Defence to Cross-Claim* – Where a statement of cross-claim is served and the cross-respondent is already a party to the action the cross-respondent shall file and serve points of defence to the cross-claim within ten (10) days after the service of the cross-claim. Where the cross-respondent is not already a party to the action the cross-respondent shall file and serve points of defence to the cross-claim within twenty-one (21) days after the service of the cross-claim.
- (e) *Reply* - Where a respondent or cross-respondent serves points of defence to which a reply is needed, the applicant or cross-claimant, as the case may be, must file and serve points in reply within five (5) days after service of points of defence.

5.4 Non-compliance – Failure to adhere to the foregoing requirements may result in removal of the case from the Fast Track List, adverse costs orders or, in an extreme case, dismissal of the claim or rejection of the defence.

6. Initial Directions Hearing / Scheduling Conference

6.1 Date for Scheduling Conference – An initial directions hearing, which shall be known as the "Scheduling Conference", shall be set down not less than forty-five (45) days from the date of the filing of the application. In urgent cases the Scheduling Conference may be set down earlier.

6.2 Endorsement – The date for the Scheduling Conference shall be obtained from the Registry, and shall be stated on the application.

6.3 *Attendance* – The lawyers acting for each party are expected to attend the Scheduling Conference.

6.4 *Initial Witness List* – Each party must bring to the Scheduling Conference an initial witness list with the name of each witness the party intends to call at trial. The list is to include a very brief summary of each witness's expected testimony and, unless it is otherwise obvious, state the relevance of the witness's evidence. Each party will provide a copy of the initial witness list to the presiding judge and to all other parties. The initial witness lists will be combined to create the "Preliminary Witness List". The parties shall have an ongoing obligation to update the Preliminary Witness List by adding any new witnesses that they expect to call, or removing witnesses that they no longer expect to call. The parties must, in a timely manner, notify both the Court and all other parties of any updates to the Preliminary Witness List.

6.5 *Narrowing of Issues* – At the Scheduling Conference the parties will be asked to outline the issues and facts that appear to be in dispute.

6.6 *Fixed Trial Date* – At the Scheduling Conference the presiding judge will set a trial date for the case which, except in urgent cases, shall be between two (2) and five (5) months from the date of the Scheduling Conference, depending on the relative complexity of the case. Urgent cases will be heard on shorter notice. The judge will also determine whether the trial will be a "trial by affidavit" or whether it will be a "trial by witnesses" with summaries of the expected evidence of each witness.

6.7 *Pre-trial Schedule* – With the assistance of the lawyers, the presiding judge will establish a pre-trial schedule for all interlocutory steps needed to bring the proceeding to trial to which the parties shall strictly adhere, including (when appropriate) a time by which the parties shall submit to and attempt mediation. Failure to adhere to the timetable may result in sanctions, including adverse costs orders, rejection of late filings, removal from the Fast Track List and, in exceptional cases, dismissal of the claim or rejection of the defence.

6.8 *Pre-trial Exchange of Affidavits* – For the purposes of pre-trial scheduling, the applicant shall be responsible for first providing copies of all witness affidavits or summaries of evidence to the respondent. The respondent shall have time to

review the affidavits or summaries of evidence and then shall provide copies of any witness affidavits or summaries to the applicant. Exact dates will be set by the presiding judge in the Pre-trial Scheduling Order.

6.9 Notification of Opposition – If a party decides not to call or is unable to call a witness whose affidavit or summary of evidence has been delivered, the party must forthwith notify all other parties, so as not to surprise those parties or otherwise deprive the parties of an expected opportunity to cross-examine.

6.10 Alteration of Dates – Applications for adjournment of a trial or other hearing date shall not be granted on the mere agreement of the lawyers. No adjournment will be granted other than for good cause and upon such terms as the Court may impose.

7. Discovery

7.1 Limited Discovery – Except where expanded or limited by the presiding judge, discovery in cases in the Fast Track List will, as regards liability, be confined to documents in the following categories:

- (a) documents on which a party intends to rely; and
- (b) documents that have significant probative value adverse to a party's case.

7.2 Reasonable Search Effort –

- (a) Parties are required to provide discovery of any document within the Limited Discovery categories that a party knows of at the time of the Scheduling Conference, or that the party becomes aware of at a later point in the pre-trial or trial process, or that the party discovers in the course of a good-faith, proportional search of its documents and records.
- (b) A "good-faith proportionate search" is a search undertaken by a party in which the party makes a good-faith effort to locate discoverable documents, while bearing in mind that the cost of the search should not be excessive having regard to the nature and complexity of issues raised by the case, including the type of relief sought and the quantum of the claim.
- (c) If requested by any party, a party must describe briefly the kind of good faith proportionate search it has undertaken to locate discoverable documents.

7.3 Additional Discovery – A party may require additional discovery in relation to discrete issues, such as the quantification of damages. In that event the judge

will make a separate order for that purpose. The order may include a requirement that discovery be by inspection alone.

7.4 Discovery Disputes – Before filing any application relating to a discovery dispute, the parties shall meet and confer and attempt to resolve the dispute in good faith. If the parties are unable to resolve the dispute, any application about the issue must contain a certificate by the moving party’s lawyer that the “meet and confer” requirement was completed, though unsuccessful. Failure to so certify will result in the application being immediately refused.

8. Interrogatories

8.1 Elimination of Interrogatories – Interrogatories will not be permitted in cases in the Fast Track List except in exceptional circumstances.

9. Interlocutory Applications / Motions

9.1(a) Briefs Required – Interlocutory applications, whether or not made by motion shall, unless otherwise directed, be in writing and shall be accompanied by a written brief (not exceeding five (5) pages) setting forth a concise statement of the facts (if necessary verified by affidavit) and supporting arguments, with a citation of the authorities upon which the moving party relies. The opposing party shall file a responsive brief (not exceeding five (5) pages) and such supporting documents as are appropriate within five (5) days after service of the moving party’s brief. The moving party may file a short rebuttal brief within two (2) days after service of the opposing party’s response brief.

9.1(b) Exceptions to Brief Requirement - Briefs need not accompany applications for simple directions.

9.2 Determination of Applications Without Oral Hearing - If a party would like to be heard orally on any interlocutory application, the party may request an oral hearing. The request will be granted in applications for injunctions or the appointment of receivers. Otherwise, oral hearings will only be granted where the judge determines that an oral hearing would specifically add to, or further clarify or explain, the issues and arguments in a way that the written briefs cannot. An oral hearing will probably be unnecessary in most instances.

9.3 *Extensions of Time* - A request for an extension of time relating to an interlocutory application must be in writing and, in general, will be looked upon with disfavour.

10. Pre-trial Conference

10.1 *Time of Pre-trial Conference* - A pre-trial conference shall be held approximately three (3) weeks prior to the scheduled trial date with the presiding judge, the lawyers involved in the case and all parties attending. The pre-trial conference is an opportunity for the parties and the judge to deal with any outstanding matters or applications before the start of the trial.

10.2 *Agreed Facts* - At the pre-trial conference the parties will be required to identify the material facts that are agreed and the material facts in dispute.

10.3 *Final Witness List* - At the pre-trial conference, the parties will, with the assistance of the presiding judge, finalize the list of witnesses to be called at trial. The judge may refuse permission to a party to call a potential witness. The judge reserves the authority to revisit the final witness list at any time to discuss any issues or concerns arising during the trial. Witnesses that are not on the final witness list will not, save in exceptional circumstances, be permitted to give evidence.

10.4 *Objections to evidence* - At the pre-trial conference the parties should be ready to deal with any objections to the evidence proposed to be tendered. The judge will rule on those objections, unless they are more conveniently dealt with at the trial.

10.5 *Joint Exhibit List* - At the pre-trial conference, the parties will jointly submit a numbered list of the exhibits the parties intend to use at trial. The list will include a copy of the exhibit and, where not obvious, a short description of the exhibit and a statement of its relevance. The judge will examine the list with the parties and discuss any perceived issues or concerns with the proposed exhibits. The judge reserves the authority to revisit the joint exhibit list at any time to discuss any issues or concerns arising during the trial. Exhibits that are not on the joint exhibit list will not, save in exceptional circumstances, be permitted to be tendered at trial.

10.6 *Trial Length* – At the pre-trial conference, based on the legal and factual issues raised by the case and based on the number of witnesses to be called, the judge will determine the total time that each party will be allocated at trial to present its case, with due allowance being made for questions from the presiding judge. Each party shall receive a fixed block of time for its oral submissions; a fixed block of time to present its case-in-chief, cross-examination, and any re-examination; and a small amount of flexible time to be used as needed. It shall be counsels' responsibility to determine how to allocate and best use each party's available time. When a party's allocated time has expired, the party will not, except in exceptional circumstances, be permitted to present further evidence and/or make further submissions, as the case may be.

11. Trial

11.1 *Trial Timing* – The trial of a case on the Fast Track List will be conducted in so-called "chess clock" style. Cases will be heard from 10.00am until 4.30pm daily, with a one hour break for lunch and a morning and afternoon recess of fifteen (15) minutes each. The judge's associate will be responsible for keeping track of each party's time used and time available. At the conclusion of each day of the hearing, the parties and the judge will confirm how much time each party has used and how much time each party has remaining.

11.2 *Judicial Time* – Time taken by the judge in questioning a witness at the end of the witnesses' evidence will be divided equally between the parties, as will time taken during the hearing to deal with procedural matters. Time taken by the judge in questioning a witness during their evidence will be treated as time taken by the party who was questioning the witness immediately prior to the judge's question.

11.3 *Objections* – Incidental objections during trial will be handled by debiting the time taken to deal with the objection from the party who is unsuccessful in either making or resisting the objection. Any outstanding major objections (see 10.4) will be dealt with at the beginning or the end of the day's hearing.

11.4 *Closing Statements* – A party may in substitution for or supplementary to its closing submission, file a written submission. The written submission shall not exceed 15 pages. It shall include each finding of fact that the party contends should be made and, where appropriate, references to the evidence that supports

that finding. The submission shall be filed with the Court and served on all other parties in a short case within two (2) days and in a long case within four (4) days of the conclusion of the trial. For the purposes of this rule only, trials concluding on Thursday or Friday will have any further submissions due on the Tuesday immediately following. In an exceptional case a party may be given permission to file an answering submission.

12. Judgment

In urgent matters the Court will deliver judgments quickly, if necessary with reasons to follow. In all other cases, the Court will endeavour to deliver judgment within six (6) weeks.