



Magistrates' Court
Of Victoria

PRACTICE DIRECTION

No. 4 of 2010

EARLY NEUTRAL EVALUATION PILOT PROGRAMME

Background

The purpose of this Practice Direction is to commence a pilot programme of early neutral evaluation at the Magistrates' Court of Victoria at Melbourne.

In the context of this Court, early neutral evaluation is a process in which a Magistrate investigates the dispute and provides a non-binding opinion on the likely outcome. The Magistrate will have expertise in civil litigation.

Non-binding means that there will be no consequences flowing from the failure of the parties to adopt the evaluation.

This programme will be available to parties as another form of appropriate dispute resolution.

The pilot programme will continue until 31 October 2011.

Directions

1. From 1 November 2010, the Court will commence this programme at Melbourne.
2. The pilot programme will apply to those defended civil disputes which are:
 - (a) selected as suitable by the Court on its own motion; or
 - (b) found suitable by the Court after considering the written submissions of one or more of the parties.

In either case, the Court would not allow a review of its decision, and it will not provide reasons for that decision.

3. It will apply to the disputes referred to in clause 2 where a notice of defence is filed on or after 1 November 2010.
4. Where a dispute has had an early neutral evaluation, the parties will not be required by the Court to undertake any other form of appropriate dispute resolution except a trial. However, this does not prevent the parties from engaging in mediation or any other form of dispute resolution outside the Court.
5. The early neutral evaluation will occur within eight (8) weeks of the filing of a notice of defence. It will take place before a Magistrate in a Courtroom.

6. The parties must be prepared to explain the factual and legal issues to the Magistrate. Unless the Magistrate directs otherwise, no oral evidence will be given.
7. It is the duty of each party to the Court to co-operate in the conduct of the early neutral evaluation to further the administration of justice.
8. (1) All parties must attend the early neutral evaluation-
 - (i) personally; and
 - (ii) if a party has appointed a legal practitioner or other person empowered by law to appear for the party, together with that legal practitioner or other person.

(2) If a party referred to in subclause (1) is a corporation-

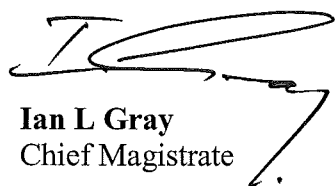
 - (iii) a legal practitioner; and
 - (iv) a person in the exclusive employment of the corporation who is authorised in writing to attend the early neutral evaluation on behalf of the corporation-

must attend the early neutral evaluation

(3) In addition to the requirements of subclauses (1) and (2), all parties must have present at the early neutral evaluation a person who has the authority to decide whether or not to settle the proceeding or settle the part of the proceeding that has been referred to early neutral evaluation.

(4) If an insurer is indemnifying a party, the person referred to in subclause (1) may be an officer or employee of the insurer.
9. The process and conduct of an evaluation will be in the discretion of the Magistrate but, unless otherwise directed, the programme will be as follows:
 - (1) The parties must bring to the evaluation all documents in the possession of the parties which supports or is injurious to that party's claim, defence or counterclaim;
 - (2) The hearing with the evaluator will be held in private. It will not exceed three (3) hours. Each party will be given up to 60 minutes to explain their case, both factually and legally. Some of this time may be spent answering questions of the evaluator. The remaining time will be devoted to the evaluation. Usually, the evaluator will give his or her evaluation orally at the end of the parties' submissions. However, the evaluator may give the evaluation in writing;
 - (3) The early neutral evaluation will not be sound recorded. Practice Direction No 1 of 1999 does not apply to early neutral evaluation.

10. Upon completion of the early neutral evaluation, the magistrate will advise the parties of a hearing date should that be required. The hearing will be given such priority as the Court's list of cases will permit.
11. The costs of an evaluation will be included in the costs of the proceeding. The items in Appendix A to the Rules relating to mediation will apply.
12. The Magistrate who conducts the early neutral evaluation will not conduct the trial.



Ian L Gray
Chief Magistrate

12 October 2010