



Magistrates' Court
Victoria

PRACTICE NOTE

No: 3 of 2001

**PROCEEDINGS COMMENCED IN THE MAGISTRATES' COURT UNDER THE
CORPORATIONS LAW OF VICTORIA**

1. This Practice Note applies to all proceedings commenced in the Magistrates' Court under the Corporations Law of Victoria ("the Corporations Law") on or after 1 November 2001 .
2. Practitioners are reminded that, by section 51(1A) of the **Corporations (Victoria) Act** 1990, the Rules of the Supreme Court of Victoria, made under section 51(1) of that Act, apply to all proceedings commenced in the Magistrates' Court under the Corporations Law, with such alterations as are necessary. Therefore by virtue of Rule 2.2. of the Supreme Court (Corporations Law) Rules 1999, all applications for relief required or permitted by the Corporations Law in the Magistrates' Court, must be made by originating process.
3. An originating process in the Magistrates' Court must be commenced by a complaint in accordance with Rule 4.04 of the Magistrates' Court Civil Procedure Rules 1999.
4. **Unless the Court otherwise orders**, a complaint must not be filed or allocated a court number by a registrar unless accompanied by a supporting affidavit as required by Rule 2.4 of the Corporations Law Rules. Such affidavit must comply with the requirements of Rule 2.4(2) of the Corporations Law Rules but otherwise comply with the Magistrates' Court Rules.
5. **Unless the Court otherwise orders**, a complaint, which was filed prior to this Practice Note, must not proceed to final determination in any proceeding in which the plaintiff's claim includes an application, required or permitted to be made to the Magistrates' Court by the Corporations Law unless there has been filed and served an affidavit in support as required by Rule 2.4 of the Corporations Law Rules.

6. The plaintiff is to prepare a notice to defendant(s) in the form of the notice set out hereunder:
7. Upon accepting the complaint, notices of defence, affidavit and the notice to defendant(s) the registrar must:
 - (a) endorse sufficient copies for service and proof of service;
 - (b) if the proceeding is filed at Broadmeadows, Dandenong, Frankston, Heidelberg, Melbourne, Ringwood or Sunshine list the proceeding for mention, not less than 28 days after filing, before the Applications Court at Melbourne and endorse the mention date on the notice to defendant(s);
 - (c) if the proceeding is filed at any other venue list the proceeding for mention, not less than 28 days after filing, before the Court and endorse the mention date on the notice to defendant(s).
8. Service of the complaint, notices of defence, affidavit and the notice to the defendant must be effected upon the defendant no less than 7 days prior to the mention date.
9. On the mention date the Court may:
 - (a) make a final order;
 - (b) give directions for the future conduct of the proceeding; or
 - (c) hear any application.
10. No application for an order in default of defence may be made prior to the mention day.

Date: 17th September, 2001.

IAN L. GRAY
Chief Magistrate

Court No:

NOTICE TO DEFENDANT(S)

TO: *[name and address of each defendant (if any)]*:

This complaint will be mentioned at *[address of Court]* at **am/*pm*
on .

If you intend to defend the complaint you must attend:

- (a) in person or instruct a legal practitioner to attend on your behalf on the
mention date; and
- (b) give a notice of defence in accordance with Order 9.

If you or your legal practitioner do not attend on the mention date the Court may :

- (a) make a final order ;
- (b) give directions as to the future conduct of the proceeding; or
- (c) hear any application.