



Magistrates' Court  
Victoria

## ***Practice Direction***

### ***No. 3 of 2004***

## ***Occupational Health and Safety Act 1985***

### **Background**

Section 46(1) of the Occupational Health and Safety Act 1985 confers jurisdiction on the Industrial Division of the Magistrates' Court to hear and determine an appeal against an improvement or prohibition notice. This practice direction regulates proceedings in those appeals pending the making of Rules of Court.

### **Direction**

1. All appeals under s 46(1) must be made in Form 1, annexing a copy of the improvement or prohibition notice.
2. Form 1 must be filed with the court within seven days of the notice being issued and served upon the Victorian WorkCover Authority as soon as practicable thereafter. The filing of Form 1 shall be by any method permitted by the Magistrates' (Civil Proceedings) Rules 1999 (i.e. in person, by letter, facsimile or electronically).
3. No fee will be payable upon the filing of Form 1.
4. Service of Form 1 upon the Victorian WorkCover Authority shall be effected by:
  - (a) delivering a copy of Form 1 and any affidavit in support to WorkSafe Victoria Compliance Co-ordination Officer, Victorian WorkCover Authority, Level 23, 222 Exhibition Street, Melbourne; or
  - (b) forwarding a copy of Form 1 and any affidavit in support by facsimile transmission addressed to WorkSafe Victoria Compliance Co-ordination Officer, Victorian WorkCover Authority, facsimile number (03) 96411713.

5. Where an appeal against a prohibition notice requires an urgent hearing or where pending the hearing of an appeal application is made pursuant to section 46(3)(b) for the operation of the notice to be suspended, Form 1 should set out the reasons for requiring an urgent hearing.
6. Where the appellant requests an urgent hearing in accordance with direction (5), a registrar or deputy registrar shall, upon being satisfied that there are reasonable grounds for an urgent hearing, list the appeal for hearing within two days thereof.
7. The registrar or deputy registrar must endorse sufficient number of copies of Form 1 with the date of hearing for the purposes of service and proof thereof.
8. In any other case, the registrar or deputy registrar shall list the proceeding for a directions hearing not more than 21 days after the lodging of Form 1.
9. An urgent hearing shall be permitted to proceed on the basis of viva voce evidence.
10. At the directions hearing the Court may:
  - (a) make a final order;
  - (b) give directions for the future conduct of the appeal including the filing of any affidavit in support or opposition;
  - (c) hear and determine any application of which reasonable notice has been given.
11. Representatives of the parties at the directions hearing must be familiar with the matter and be able to assist the Court with the following information”
  - (a) the facts or issues in dispute;
  - (b) the witnesses likely to be required at the hearing;
  - (c) the need for any expert witnesses to be called;
  - (d) the estimated length of hearing;
  - (e) the date for the filing of any affidavits or submissions; and
  - (f) the suitability of proposed hearing dates.
12. Reasonable notice to the other party and the Court must be given by a party seeking to make an application at a directions hearing.
13. This practice direction takes effect on 3 May 2004.

**IAN L GRAY**

Chief Magistrate

Date: 7<sup>th</sup> April 2004

# FORM 1

**In the Magistrates' Court  
Of Victoria at  
INDUSTRIAL DIVISION**

Court Reference:

## **BETWEEN**

**[insert name of person to whom notice was issued]**

Appellant

-v-

**[insert name of issuing inspector]**

Respondent

## **NOTICE OF AN APPEAL AGAINST IMPROVEMENT/PROHIBITION NOTICE**

To: The Registrar, Magistrates' Court of Victoria, Industrial Division  
And: The WorkSafe Victoria Compliance Coordination Officer  
Of: The Victorian WorkCover Authority

The appellant appeals against Improvement/Prohibition Notice No **[insert notice number]** issued by the respondent **[insert date of issue]** on the following grounds:

**[specify the grounds of the appeal]**

### **\*OPTION 1**

The appeal will be listed for Directions Hearing at **[location of court]** Magistrates' Court **[\*\*]** am/pm **[insert date 21 days from filing]**.

At the Directions Hearing the parties or their legal practitioners must attend and be able to assist the court with:

- (a) the facts or issues in dispute;
- (b) the witnesses likely to be required at the hearing;
- (c) the need for any expert witnesses to be called;
- (d) the estimated length of hearing;
- (e) the dates for filing any affidavits or submissions; and
- (e) the suitability of hearing dates.

If either of the parties or their legal practitioners or representatives do not attend the Court may:

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

**\*OPTION 2**  
**(Applies only in relation to appeal against a prohibition notice)**

The appellant has requested an urgent hearing of the \*appeal/\*application to the Industrial Division of the Magistrates' Court, pursuant to section 46(3) for the operation of the notice to be suspended.

The reasons for requiring an urgent hearing are as follows:

**[state reasons for urgent hearing]**

The \*appeal/\*application to the Industrial Division of the Magistrates' Court, pursuant to section 46(3) for the operation of the notice to be suspended will be heard at **[location of court]** Magistrates' Court at **[\*\*]** am/pm on **[insert date within 48 hours of filing]**.

If either of the parties or their legal practitioner or representatives do not attend the Court may:

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

**[NOTE:** A hearing of an \*appeal/\*application to the Industrial Division of the Magistrates' Court, pursuant to section 46(3) for the operation of the notice to be suspended will require all relevant witnesses and expert witnesses (if any) to attend court to give evidence. The parties will be required to be ready to proceed with the hearing on this date.]

Date:

**[Registrar]**

\*delete whichever is inapplicable