

Magistrates' Court Victoria

Practice Direction

No. 19 of 2020

COVID-19 MAGISTRATES' COURT OF VICTORIA CIVIL JURISDICTION

The Magistrates Court of Victoria is committed to continue to serve our Community as we continue to face COVID-19 restrictions. **All our Courts across the State remain open.** After hearing from health experts, it has however, been necessary to reduce the number of people in our Court buildings and this has required us to change some aspects of our practice and procedures to ensure the health and safety of our judiciary, staff and all court users.

In accordance with Section 136 of the *Magistrates Court Act 1989* and the overarching purpose and obligations of the Civil Procedure Act 2010 ("**CivilPA**") the Court has reviewed its practices and procedures in its Civil Jurisdiction.

This Practice Direction applies to Civil proceedings, except:

- Workcover proceedings
- Family Law proceedings
- Victims of Crime Assistance Tribunal proceedings
- Family Violence or Personal Safety Intervention Order proceedings.

This Practice Direction revokes Practice Direction 12 of 2020.

Commencement of proceedings

1. All arrangements for the filing and initiation of Complaints by EDI remain unchanged.
2. The Court will no longer accept filing of proceedings or applications via the email address civilcoordinator@courts.vic.gov.au.
3. The Court will not accept any document filed in person at any Registry, except where a litigant is self-represented.
4. Initiating process ("Complaint") is to be mailed or scanned and emailed to the Proper Venue of the Court ("**Proper Venue**"). Proper Venue emails are available at: <https://mcv.vic.gov.au/going-court/find-court>. All Documents filed with the Court must

include an email address and telephone and/or mobile telephone number of the person responsible for carriage of the matter.

5. Where a fee is required to be paid, the Registrar at the Proper Venue will contact the lodging Party by telephone to facilitate payment via a credit card. Alternatively, payment can be forwarded by cheque or money order.
6. Upon payment of the prescribed fee the document will be accepted as filed, then issued and returned.

Applications and Directions Hearings

7. All Courts will continue to hear Applications which would ordinarily be listed in a Practice Court and determine any unresolved Applications “on the papers”. For such matters the Parties shall make, file and serve any application as set out in paragraphs 1-6 of this Practice Direction.
8. 1 day prior to the return date of the Application, the Parties must exchange written submissions (limited to 2 A4 pages). The Court will consider the submissions and make Orders “on the papers” or make further directions, including to direct the Party’s attendance at Online Magistrates Court or in person hearing.
9. In the event that the Court determines that further submissions are required, the Parties will be contacted by the Registry and directions given, including directions if necessary for appearance via Online Magistrates’ Court or in person hearing.
10. Urgent injunctions will be referred immediately to a Magistrate in chambers for direction in its listing management.

Alternative Dispute Resolution

11. Subject to any other direction by the Court, upon the filing of a Defence:

11.1 Matters where the monetary amount claimed is \$10,000.00 or less will be referred to Prehearing Conference (“**PHC**”) in accordance with Part 1 of Order 50 of the Magistrates’ Court General Civil Procedure Rules 2010 (“**Rules**”) or listed for hearing.

11.2 Matters where the monetary amount claimed is greater than \$10,000.00 but less than \$40,000.00 (or any matter arising out of a motor vehicle accident where damages exceed \$10,000) will:

- a. be referred to PHC; or
- b. be referred to Early Neutral Evaluation (ENE) as provided in Practice Direction 4 of 2010; or
- c. listed for hearing.

11.3 Matters where the monetary amount claimed is \$40,000.00 or more, or where any unliquidated damages or non-monetary relief is claimed will be referred to Mediation in accordance with Part 2 of Order 50 of the Rules (“**Mediation**”).

- 12 Where Counsel is intended to be retained for the contested hearing, the same Counsel should be retained for the Prehearing Conference, or ENE, or Mediation wherever practicable. Where Counsel is not briefed, the practitioner with responsibility or carriage of the matter is expected to attend.
- 13 The following shall apply where the proceeding is referred to a **PHC**:
- 13.1 All Matters will be conducted by a PHC Registrar or a Judicial Registrar by telephone, audio visual link or via Online Magistrates' Court.
 - 13.2 All documents to be relied upon by the Parties (including any expert reports) must be exchanged 14 days prior to the PHC.
 - 13.3 7 days prior to the PHC, Parties are to exchange any offers of Compromise or *Calderbank* offers and a statement disclosing on the applicable scale: -
 - a. costs incurred by each Party up to and including the PHC; and
 - b. the anticipated subsequent costs incurred up to the date of a hearing; and
 - c. the estimated daily costs of a hearing including solicitors fees, Counsel fees, witness expenses and other disbursements incurred.
 - 13.4 Upon a proceeding not being resolved at PHC, Parties must give accurate hearing time estimates, the number of witnesses expected to be called, and clearly identify issues which remain in dispute.
- 14 The following shall apply where the proceeding is referred to an **ENE**.
- 14.1 All ENE's will be conducted, via Online Magistrates' Court, by audio-visual link or at the direction of the Court, in person.
 - 14.2 Attendance before the Court shall be limited to Counsel, instructing solicitor and client together with any expert (if any).
 - 14.3 All documents to be relied upon by the Parties (including any expert reports) shall be exchanged 14 days prior to the ENE.
 - 14.4 7 days prior to the ENE, Parties are to exchange any offers of Compromise or *Calderbank* offers, any Notices to Admit, and a statement disclosing on the applicable scale: -
 - a. costs incurred by each Party up to and including the ENE; and
 - b. the anticipated subsequent costs incurred up to the date of a hearing; and
 - c. the estimated daily costs of a hearing including solicitors fees, Counsel fees and witness expenses and other disbursements incurred
 - 14.5 Unless otherwise directed by the Court, in any matter where expert evidence is to be relied upon, 7 days prior to the ENE, experts are required to confer and file with the Court a statement of agreed facts and disputed facts signed by both experts.

- 14.6 Upon a proceeding not being resolved at ENE, Parties must give accurate hearing time estimates, the number of witnesses expected to be called, and identify issues which remain in dispute.
- 15 The following shall apply where the proceeding is referred to **Mediation**.
- 15.1 All Mediations will be conducted before an acceptable Mediator as defined by Order 50.05 of the Rules.
- 15.2 Mediation costs will be shared equally between the Parties, and costs of the Mediation will be costs in the cause.
- 15.3 All documents to be relied upon by the Parties (including any expert reports) shall be exchanged 14 days prior to the Mediation date.
- 15.4 7 days prior to the Mediation, Parties are to exchange any offers of Compromise or *Calderbank* offers, any Notices to Admit, and a statement disclosing on the applicable scale: -
- a. costs incurred by each Party up to and including the Mediation; and
 - b. the anticipated subsequent costs incurred up to the date of a hearing; and
 - c. the estimated daily costs of a hearing including solicitors fees, Counsel fees and witness expenses and other disbursements incurred.
- 15.5 Upon a proceeding not being resolved at Mediation: -
- a. Parties must provide the Mediator with an accurate hearing time estimates, the number of witnesses expected to be called, and identify all issues which remain in dispute.
 - b. Upon receipt of a duly completed Form 50A Mediators Report the Court shall list the matter for Directions Hearing.

Contested Hearings

- 16 Subject to any direction of the Court, 7 days prior to the hearing date the Parties must file with the Court a joint paginated Court book containing in hardcopy and searchable PDF:
- a. index;
 - b. all pleadings;
 - c. a chronology;
 - d. a statement of agreed facts or opinion;
 - e. a 1-page statement detailing the key matters in dispute;
 - f. witness statements of the Parties' evidence in chief;
 - g. any documents to be relied upon; and
 - h. a list of case law authorities to be relied upon in submissions together with relevant extracts.

- 16.1 Paragraph 16 is not intended to apply to self-represented litigants. Where there is a represented Party and self-represented Party, the represented Party will prepare a paginated Court book for use by the Court and the Parties.
17. Witness statement, once adopted under oath, shall constitute evidence-in-chief for a witness.
- 18.1 Paragraph 16 and 17 of this Practice Direction will not apply to matters where damages arise out of motor vehicle collisions or where monetary relief sought in the Complaint (and any Counterclaim) is less than \$40,000.
- 18.2 Subject to any direction, in such cases the Plaintiff, if represented, must file a book of pleadings no less than 7 days prior to the hearing date. Where there is a represented party and a self-represented party, the represented party must file the book of pleadings
- 18.3 The parties must 7 days prior to the hearing date file by way of email to proper venue <https://mcv.vic.gov.au/going-court/find-court> a paginated PDF containing all documents to be relied upon and serve by email a copy upon the other party.

Inspection of subpoenaed documents

- 19 Subpoenaed documents may only be inspected by making an appointment with the relevant Court Registry.
- 19.1 Appointment requests at the Melbourne Magistrates' Court are to be made via email to subpoenamanager@courts.vic.gov.au.
- 19.2 All other requests are to be made at the Proper Venue.
- 20 Parties who are inspecting subpoenaed documents are required to follow the directions of the relevant Court Registry with respect to the use of personal protective equipment and the handling of documents.

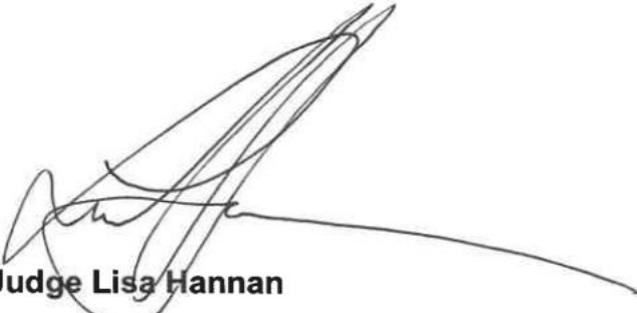
Attendance at Court

- 21 Unless directed otherwise, no Practitioners or Parties are to attend Court for the purpose of any civil hearing. Civil hearings will be conducted via Online Magistrates' Court, by audio-visual link or in person.
- 22 Should a matter be listed before a Court, other than an Online Magistrates' Court, at any stage, the Practitioners, Parties and any witnesses must proceed to the nominated Courtroom at the appointed time.
- 23 Practitioners must announce their appearances to the relevant Court co-ordinator and only proceed into a Courtroom when the matter is called.

Post Judgment Procedures

24 All post judgement applications: -

- a. must be filed by mailing same to the Proper Venue with the prescribed fee; and
- b. will be conducted by a Court Registrar by phone conference, or personal attendance, or otherwise as the Court directs.



Judge Lisa Hannan
Chief Magistrate

Date: 4 August 2020