



## Magistrates' Court of Victoria

### Practice Direction

**No. 3 of 2023**

### Procedure in the Industrial Division (Civil Jurisdiction)

#### All Magistrates' Courts

#### Purpose

1. The purpose of this Practice Direction is to provide guidance on the procedures to be followed for civil matters in the Industrial Division of the Magistrates' Court of Victoria including proceedings concerning a civil penalty or civil remedy.
2. This Practice Direction revokes Practice Direction No.4 of 2022 and applies from 1 July 2023.
3. The Industrial Division also has criminal jurisdiction to hear offences prescribed by statute. This Practice Direction does not apply to such proceedings.

#### Jurisdiction of the Industrial Division

4. The Industrial Division hears civil proceedings arising under the following legislation insofar as civil jurisdiction is conferred upon the Industrial Division of the Court:
  - (a) *Workplace Injury Rehabilitation and Compensation Act 2013*;
  - (b) *Occupational Health and Safety Act 2004*;
  - (c) *Outworkers (Improved Protection) Act 2003*; and
  - (d) *Long Service Leave Act 2018*.
5. In addition, civil proceedings initiated in the Court arising under the following legislation are assigned to the Industrial Division by this Practice Direction:
  - (a) *Fair Work Act 2009* (Cth) (**Fair Work Act**);
  - (b) *Public Holidays Act 1993*;
  - (c) *Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Act 2015*;
  - (d) *Labour Hire Licensing Act 2018* Part 6; and
  - (e) *Construction Industry Long Service Leave Act 1997*.

6. Other civil proceedings that have a significant connection with an employment or labour relationship will be heard in the Industrial Division unless otherwise ordered. A proceeding may be transferred into or out of the Industrial Division on application of the parties or on the Court's own motion.
7. For the avoidance of doubt, proceedings arising from personal injuries sustained in the course of employment will be heard in the WorkCover Division of the Court.

### **Self-represented litigants**

8. A person who represents themselves in a proceeding is known as a 'self-represented litigant.' A self-represented litigant is responsible for completing the necessary tasks in a proceeding that a lawyer would normally undertake.
9. Information on self-representation and preparing for Court may be accessed on the Court's website: <https://www.mcv.vic.gov.au/going-court/representing-yourself>.

### **Self-Represented Litigant Coordinators**

10. The Court has Self-Represented Litigant Coordinators whose role is to assist people representing themselves. They can assist with:
  - (a) procedural advice;
  - (b) information about Court forms and fees, including assistance with form-filling and filing of documents; and
  - (c) information about organisations which provide low-cost or free legal services.
11. Self-Represented Litigant Coordinators do not provide legal advice.
12. The Self-Represented Litigant Coordinators may be contacted by emailing [srlcoordinator@courts.vic.gov.au](mailto:srlcoordinator@courts.vic.gov.au).

### **Filing of documents**

#### **Commencement of proceedings**

13. A complaint initiated in the Industrial Division must be issued using **Form 13A**.
14. Unless otherwise directed, an initiating process ("complaint") is to be lodged with the Court using the Case Management System (**CMS portal**).
15. Legal practitioners must utilise the CMS portal to file and manage case documents electronically and lodge payments for filing fees.
16. Registration to use the CMS portal may be effected by contacting [cms.support@courts.vic.gov.au](mailto:cms.support@courts.vic.gov.au).
17. Where a litigant is self-represented, the Court will accept documents lodged in person or via email.
18. 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.
19. Before a document can be accepted, the filing fee must be paid. A list of civil and general fees can be found at: <https://www.mcv.vic.gov.au/news-and-resources/publications/civil-and-general-costs-ready-reckoner>.

20. Parties may apply for the prescribed filing fee to be waived on the basis of financial hardship. Self-represented litigants may receive assistance from the Self-Represented Litigant Coordinator to complete the relevant form and provide the necessary documentation to make a fee waiver application.
21. Upon payment of the prescribed fee or confirmation of fee waiver the document will be accepted as filed, then issued and returned.
22. Upon receipt of a 'notice of hearing' for a proceeding, a party must as soon as practicable thereafter notify each of the other parties to the proceeding of the time, date and place of hearing. A party may notify the other party or parties by email correspondence.

### **Filing of response**

23. A defendant's response to a **Form 13A** must be filed using **Form 13B**.
24. Unless the Court otherwise orders, a response must be filed within 14 days of service of the complaint.

### **Order in default of response**

25. If a defendant does not file a response within 14 days of receipt of the complaint, the plaintiff may apply for an order in default of response using **Form 13C** which must be filed together with an Affidavit in Support using **Form 13D**.
26. For an application to be validly made, a plaintiff must have filed with the Court:
  - (a) an affidavit or declaration of service of the complaint;
  - (b) an Overarching Obligations Certificate and a Proper Basis Certificate pursuant to ss 41 and 42 of the *Civil Procedure Act 2010*; and
  - (c) at the time of filing the Form 13C, an affidavit of support using **Form 13D**.
27. If the plaintiff seeks a specified sum against the defendant, that sum must be specified in the Form 13D. In any other case, the plaintiff must otherwise verify the matters underlying the complaint and relief sought.
28. Affidavits filed in support of an application in default must be confined to facts which the deponent<sup>1</sup> is able to state of the deponent's own knowledge.

### **Attendance at the Court**

29. Any person attending a court venue must comply with all published directions of the Court.
30. Applications including directions hearings and pre-hearing conferences will be conducted remotely via WebEx, unless otherwise directed by the Court.
31. Final hearings will be conducted in-person where one or both of the parties to the proceeding are self-represented. In all other instances, matters may proceed in person or online as directed by the Court.
32. Where a party cannot appear in person on receipt of a notice of hearing they must ask to attend remotely by emailing the relevant court registry and provide a brief written outline of the reasons why the matter should not proceed in person.

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<sup>1</sup> The person who is swearing or affirming the affidavit.

- (a) A copy of this email must also be provided to all other parties.
- (b) Other parties to the proceedings may email the court and the other parties a brief response to the request for remote attendance.

### **Pre-hearing process**

#### **Pre-hearing conference (PHC)**

- 33. A PHC is conducted to assist in resolution and/or narrow the issues in dispute in the proceeding at an early stage.
- 34. Subject to any direction of the Court, within 14 days upon the filing of a response:
  - (a) proceedings in the Industrial Division will be referred to a PHC to be conducted by a Judicial Registrar. A PHC may be conducted in person, by telephone, or online.
  - (b) all documents to be relied upon by the parties at the PHC must be exchanged 2 business days prior to the PHC. The documents may be exchanged via email.
  - (c) where a proceeding is not resolved at PHC, parties must provide to the presiding Judicial Registrar:
    - (i) an accurate hearing estimate;
    - (ii) the number of witnesses expected to be called; and
    - (iii) a list of issues which remain in dispute.

### **Contested Matters**

#### **Directions Hearings**

- 35. A directions hearing will be held within 14 days of the PHC unless otherwise ordered.
- 36. Prior to the directions hearing parties must have:
  - (a) provided the Court with any agreed proposed form of directions order; or
  - (b) if a proposed form of order has not been agreed, informed the opposing parties of the matters not agreed.

#### **Contested hearings**

- 37. Unless otherwise ordered, evidence at a hearing shall be given orally, consistent with the practice in Order 40 of the *Magistrates' Court General Civil Procedure Rules 2020*. Any application by a party to have evidence proceed by witness statements should be made at the directions hearing.

#### **Court books**

- 38. A court book is required for all proceedings unless both parties are unrepresented.
- 39. Parties are expected to confer and agree on the contents of the court book.
- 40. A court book **must** be filed with the Court in electronic searchable PDF format. The Court may order hardcopy formats to be filed if required.

41. A court book must include:
- (a) all pleadings;
  - (b) a chronology where relevant;
  - (c) a statement of agreed facts;
  - (d) witness statements (if ordered by the Court); and
  - (e) documentary evidence.
42. A court book must follow the proceeding format:
- (a) the court book must contain copies of documents only and not original documents;
  - (b) the court book must contain an index of contents and each page of the court book should be paginated;
  - (c) the index must be searchable, such that documents listed in the index link to the commencing page number of that document;
  - (d) the index must list the documents in chronological order;
  - (e) the index must include at least the following descriptive fields or categories:
    - (i) document date;
    - (ii) document description;
    - (iii) document source; and
    - (iv) court book page number at which the document begins and ends.
  - (f) a list of relevant case law authorities must also be included. The authorities listed in the index should also be hyperlinked.

### **Self-represented litigants and court books**

43. A court book is not required to be filed where both parties are unrepresented.
44. Where there is a represented party and a self-represented party, the represented party must prepare the court book in accordance with the above formatting requirements.

### **Inspection of subpoenaed documents**

45. Subpoenaed documents may only be inspected by making an appointment with the relevant Court Registry.
46. Appointment requests at the Melbourne Magistrates' Court are to be made via email to [subpoenamangement@courts.vic.gov.au](mailto:subpoenamangement@courts.vic.gov.au).
47. 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.

### **Hearing Readiness Certificate**

48. A Hearing Readiness Certificate is in **Form 13E**.
49. All parties must review, sign and file with the Court a Hearing Readiness Certificate on the date specified in the orders made at the directions hearing.

50. The filing of the Hearing Readiness Certificate informs the Court that the proceeding is ready to be listed for final hearing by the Court.
51. If a Hearing Readiness Certificate is not filed (or is unable to be filed) by the required date, the proceeding will be listed for special mention at which time parties must explain any non-compliance with any order of the Court or this Practice Direction.

### **Special Mentions**

52. Should any party require a matter to be raised before the Court after the directions hearing and before the final hearing, the party may request a special mention by emailing [srlcoordinator@courts.vic.gov.au](mailto:srlcoordinator@courts.vic.gov.au).
53. No prescribed application form or supporting affidavit is required to list a special mention.
54. Any correspondence to the Industrial Division Registry seeking a special mention should copy in the opposing party, and should specify the reason a special mention is sought (i.e. non-compliance with any order made at any directions hearing, inability to comply with Court timetable etc.)
55. Where possible a special mention, before a Magistrate sitting in the Industrial Division, will be listed no later than 14 days after any request.
56. At the special mention, the Court may make such orders, and give such further directions as are necessary to facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute.

### **Costs**

57. The applicable costs provisions for proceedings in the Industrial Division are determined by whether or not the proceedings are in relation to a matter arising under the *Fair Work Act*.<sup>2</sup>
58. Section 570 of the *Fair Work Act* applies to Industrial Division proceedings in relation to a matter arising under the *Fair Work Act*.
59. Section 570(2) of the *Fair Work Act* provides that a party may be ordered to pay costs incurred by another party to the proceedings only if:
  - (a) the court is satisfied that the party instituted the proceedings vexatiously or without reasonable cause; or
  - (b) the court is satisfied that the party's unreasonable act or omission caused the other party to incur the costs; or
  - (c) the court is satisfied of both of the following:
    - (i) the party unreasonably refused to participate in a matter before the Fair Work Commission;
    - (ii) the matter arose from the same facts as the proceedings.
60. The costs provisions in the *Magistrates' Court Act 1989* and the *Magistrates' Court General Civil Procedure Rules 2020* apply only to proceedings in the Industrial Division which are not in relation to a matter arising under the *Fair Work Act*.

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<sup>2</sup> 'In relation to a matter' requires a relevant relationship between the proceeding and a matter arising under the *Fair Work Act*. See further: *Tucker v State of Victoria* [2021] VSCA 120.

## **Special Procedures for Small Claims under the *Fair Work Act 2009 (Cth)***

61. This section outlines procedural matters for compliance in small claims proceedings under the *Fair Work Act*. The Court may not award more than \$100,000 in a small claim proceeding.
62. A small claim proceeding is that in which:
  - (a) the Plaintiff has applied for an order (other than a pecuniary penalty order) under Part 4-1 Division 2 of the *Fair Work Act*; and
  - (b) the order relates to an amount that an employer was required to pay to or on behalf of an employee under the *Fair Work Act*, a fair work instrument or because of a safety net contractual entitlement; and
  - (c) the Plaintiff elects to conduct the proceeding using the small claims procedure.
63. A party to a small claim proceeding may, with leave of the Court, be represented in the proceedings by an official of an industrial association.

### **Procedure**

64. In small claims proceedings, the Court is not bound by any rules of evidence and procedure and may act in an informal manner and without regard to legal forms and technicalities.

### **Legal representation**

65. A party to small claims proceedings may be represented in the proceedings by a lawyer only with the leave of the Court.
66. If the Court grants leave for a party to the proceedings to be represented by a lawyer or other representative the Court may, if it considers appropriate, do so subject to conditions designed to ensure that no other party is unfairly disadvantaged.
67. An application for leave to appear at the PHC should be made at the commencement of the PHC.
68. An application for leave to appear in the proceeding beyond the PHC should be made at the directions hearing.

### **Costs**

69. If the Court makes an order against a defendant in a small claims proceeding, the Court may make an order as to costs against the defendant for any filing fees paid to the Court by the plaintiff.
70. Costs other than the filing fee in a small claims proceeding are recoverable only where the Court is satisfied on the grounds set out in s 570 of the *Fair Work Act* as set out above at [57]-[59].



**Justice Lisa Hannan**  
**CHIEF MAGISTRATE**

Date: 19 June 2023

## STANDARD DIRECTIONS

The Court has produced these standard directions to assist parties to civil matters in the Industrial Division of the Court agree on the conduct of matters to facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute.

Parties should note that Order 13.05 of the *Magistrates' Court (Miscellaneous Civil Proceedings) Rules 2020* provides that unless the court otherwise orders, no party in a proceeding in the Industrial Division of the Court may:

- (a) File and serve any counterclaim; or
- (b) File and serve any reply; or
- (c) File and serve a request for further and better particulars of claim, counter claim or defence; or
- (d) Serve a notice to admit any fact or the authenticity of any document; or
- (e) Serve a notice for discovery; or
- (f) Serve interrogatories, or
- (g) Serve an expert witness statement.

### THE COURT ORDERS BY CONSENT THAT:

1. **[If not already filed]** The Plaintiff file and serve an Overarching Obligations Certificate and a Proper Basis Certificate pursuant to ss 41 and 42 of the *Civil Procedure Act 2010*, on or before [insert date].
2. **[If pleadings are ordered]** By [date] at 4.00 pm the Plaintiff file and serve a statement of claim;
3. **[If pleadings are ordered]** By [date] at 4.00 pm the Defendant file and serve a defence;
4. **[If pleadings are ordered]** By [date] at 4.00 pm the Plaintiff file and serve any reply;
5. By **[specified x date]**, each party must have served on any other party any notice for discovery requiring the party served to make discovery of all documents in accordance with r 29.02 of the *Magistrates' Court General Civil Procedure Rules 2020*.

### **[OR limited discovery for wage recovery proceeding]**

5. By **[date]** the Defendant make discovery of the following categories of documents:
  - (a) The Plaintiff's contract of employment and any documents recording any variations made to that contract;
  - (b) The Plaintiff's wage records; and
  - (c) The Plaintiff's rosters.



6. Evidence in the proceeding shall be given orally. By **[date]** the Plaintiff shall provide the Defendant a list of witnesses it proposes to call. By **[date]** the Defendant shall provide the Plaintiff a list of witnesses it proposes to call.

**[OR – witness statements]**

6. By **[specified x date]** *[number of] days before the hearing date*, parties must file and serve all witness statements upon which they intend to rely. Any party receiving a witness statement may, not less than [xx] working days before the witness is due to give evidence, give notice to the party proposing to call the witness stating:
  - (a) that a specified part of the witness statement is objected to as being inadmissible; and/or
  - (b) that the witness is required to give oral evidence as to any part of the content of the witness statement.
7. If no such notice is given the witness statement will stand as the witness's evidence-in-chief if adopted by the witness, by oath or affirmation, at the final hearing.
8. Further \*PHC/\*mediation/\*specify other alternative dispute resolution by **[date]**.
9. By **[date]**, the parties must:
  - (a) File with the Court a hardcopy and electronic court book; and
  - (b) File a Hearing Readiness Certificate (**Form 13E**).
10. The Plaintiff have available at the hearing a further copy of the court book for the exclusive use of witnesses during their examination.