**COMMERCIAL DIVISION**

**ORDERS BOOKLET 2018/2019**

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### **Timetabling Orders**

**Commercial Division Trial Melbourne – All lists except expedited**

***Note: In general, orders for interrogatories will not be made in this Division. Interrogatories will not be permitted without a specific further order after the submission of draft interrogatories to the Court.***

1. The proceeding is set down for trial on  as a Cause before a Judge sitting alone (estimate       sitting days).

**OR**

1. The trial listed for is vacated and the proceeding is refixed for trial on as a Cause before a Judge sitting alone (estimate sittingdays).
2. The setting down fee must be paid by the Plaintiff by . If the Plaintiff defaults the Defendant may pay the fee within 21 days. If the fee is not paid the trial date will be vacated.

**OR**

1. The setting down for trial fee has been paid in this proceeding.
2. **[Only if trials are 10 days or longer]** The proceeding is listed for a pre-trial directions hearing on [1 week before trial] at 10.30 am before a Judicial Registrar.
3. Any application to vacate the trial date or revise the estimation of trial duration must be made at least 30 days before the trial date.
4. The parties shall cooperate in completing the interlocutory processes so that the action is brought to trial as quickly as is reasonably practicable.
5. By 4pm on , the Defendant is to file and serve a Defence and any Counterclaim.
6. By 4pm on , the Plaintiff is to file and serve any Reply and Defence to Counterclaim.
7. By 4pm on , the parties must deliver any request for Further and Better Particulars of a pleading. Any request must be answered within 30 days.
8. By 4pm on , each party must make discovery (including full inspection) of the following documents:
   1. each document referred to in the party's pleadings or the particulars of the pleadings;
   2. any document which may be produced by the party at the trial during examination-in-chief, cross-examination or re-examination;
   3. any document which may harm the party's case;
   4. any document or class of documents which any other party reasonably requests the party to discover.
9. By 4pm on      , all parties are to file and serve all expert reports as to damages and liability upon which they intend to rely together with all supporting documentation. All expert reports are to comply with the requirements of Clause 3 of the Expert Witness Code of Conduct.
10. By , the parties must have completed the mediation of the dispute. The parties must notify the Court if the action settles.
11. By , each party must have issued any subpoenas under Order 42A.
12. By 4pm on [3 weeks prior to trial], the Plaintiff must serve a proposed Court Book Index on the Defendant.
13. By 4pm on [2 weeks prior to trial], the Defendant must respond with any requested additions to the Court Book.
14. The Plaintiff must, by 4pm on [1 week prior to trial], file and serve an electronic pdf copy of the Court Book and a separate electronic pdf copy of the Court Book Index. The Plaintiff is required to have paper copies of the Court Book and Court Book Index available for use by any witness and for provision to the trial judge upon request.
15. The parties must cooperate to prepare the following documents, in consultation with trial counsel (if any), and file them with the Court by 4pm two business days before trial:
    1. a chronology identifying agreed and disputed facts and documents, with Court Book references;
    2. a summary of the key issues in the case; and
    3. a trial running sheet [if estimate is longer than 3 days].
16. All other interlocutory processes will be conducted in accordance with the Rules of Court.
17. Reserve liberty to the parties to apply by email to the Commercial Registry (commercial.registry@countycourt.vic.gov.au) for further directions upon giving reasonable notice to all other parties.
18. Costs reserved.

**Commercial Division Trial Circuit - All lists except expedited**

***Note: In general, orders for interrogatories will not be made in this Division. Interrogatories will not be permitted without a specific further order after the submission of draft interrogatories to the Court.***

1. The proceeding is set down for trial at      , not before the circuit commencement date of      , to be heard as a Cause before a Judge sitting alone (estimate       sitting days).

**OR**

1. The trial listed at       not before the circuit commencement date of       is vacated and refixed for trial not before the circuit commencement date of       as a Cause before a Judge sitting alone (estimate       sitting days).

**OR if trial is listed in the following year**

1. The proceeding will be set down for trial at      , not before the first circuit commencement date of **[following year]**, to be heard as a Cause before a Judge sitting alone (estimate       sitting days).
2. By      , the parties will be advised by the Registrar at       of the date of the first circuit commencement date of **[following year]**.
3. Alternatively, the parties (or a party) may apply by email to the Commercial Division Registry (commercial.registry@countycourt.vic.gov.au) to have the proceeding fixed for trial in Melbourne or as a special fixture before a Commercial Judge at the circuit court or an available court in the vicinity.
4. The setting down fee must be paid by the Plaintiff by . If the Plaintiff defaults the Defendant may pay the fee within 21 days. If the fee is not paid the trial date will be vacated.

**OR**

1. The setting down for trial fee has been paid in this proceeding.
2. **[Only if trials are 10 days or longer]** The proceeding is listed for a pre-trial directions hearing on [1 week before trial] at 10.30 am before a Judicial Registrar.
3. Any application to vacate the trial date or revise the estimation of trial duration must be made at least 30 days before the trial date.
4. The parties shall cooperate in completing the interlocutory processes so that the action is brought to trial as quickly as is reasonably practicable.
5. By 4pm on , the Defendant is to file and serve a Defence and any Counterclaim.
6. By 4pm on , the Plaintiff is to file and serve any Reply and Defence to Counterclaim.
7. By 4pm on , the parties must deliver any request for Further and Better Particulars of a pleading. Any request must be answered within 30 days.
8. By 4pm on , each party must make discovery (including full inspection) of the following documents:
   1. each document referred to in the party's pleadings or the Particulars of the pleadings;
   2. any document which may be produced by the party at the trial during examination-in-chief, cross-examination or re-examination;
   3. any document which may harm the party's case;
   4. any document or class of documents which any other party reasonably requests the party to discover.
9. By 4pm on      , all parties are to file and serve all expert reports as to damages and liability upon which they intend to rely together with all supporting documentation. All expert reports are to comply with the requirements of Clause 3 of the Expert Witness Code of Conduct.
10. By , the parties must have completed the mediation of the dispute. The parties must notify the Court if the action settles.
11. By , each party must have issued any subpoenas under Order 42A.
12. By 4pm on [3 weeks prior to trial], the Plaintiff must serve a proposed Court Book Index on the Defendant.
13. By 4pm on [2 weeks prior to trial], the Defendant must respond with any requested additions to the Court Book.
14. The Plaintiff must, by 4pm on [1 week prior to trial], file and serve an electronic pdf copy of the Court Book and a separate electronic pdf copy of the Court Book Index. The Plaintiff is required to have paper copies of the Court Book and Court Book Index available for use by any witness and for provision to the trial judge upon request.
15. The parties must cooperate to prepare the following documents, in consultation with trial counsel (if any), and file them with the Court by 4pm two business days before trial:
    1. a chronology identifying agreed and disputed facts and documents, with Court Book references;
    2. a summary of the key issues in the case; and
    3. a trial running sheet [if estimate is longer than 3 days].
16. All other interlocutory processes will be conducted in accordance with the Rules of Court.
17. Reserve liberty to the parties to apply by email to the Commercial Registry (commercial.registry@countycourt.vic.gov.au) for further directions upon giving reasonable notice to all other parties.
18. Costs reserved.

**Commercial Division Expedited Cases List**

***Note: In general, orders for interrogatories will not be made in this Division. Interrogatories will not be permitted without a specific further order after the submission of draft interrogatories to the Court.***

1. The proceeding is set down for trial on  as a Cause before a Judge sitting alone (estimate       sitting days).
2. **OR**
3. The trial listed for is vacated and the proceeding is refixed for trial on as a Cause before a Judge sitting alone (estimate sittingdays).
4. The setting down fee must be paid by the Plaintiff by . If the Plaintiff defaults the Defendant may pay the fee within 21 days. If the fee is not paid the trial date will be vacated.
5. **OR**
6. The setting down for trial fee has been paid in this proceeding.
7. **[Only if trials are 10 days or longer]** The proceeding is listed for a pre-trial directions hearing on [1 week before trial] at 10.30 am before a Judicial Registrar.
8. Any application to vacate the trial date or revise the estimation of trial duration must be made at least 30 days before the trial date.
9. The parties shall cooperate in completing the interlocutory processes so that the action is brought to trial as quickly as is reasonably practicable.
10. By 4pm on , the Defendant is to file and serve a Defence and any Counterclaim.
11. By 4pm on , the Plaintiff is to file and serve any Reply and Defence to Counterclaim.
12. By 4pm on , the parties must deliver any request for Further and Better Particulars of a pleading. Any request must be answered within 30 days.
13. By 4pm on , each party must make discovery (including full inspection) of the following documents:
    1. each document referred to in the party's pleadings or the Particulars of the pleadings;
    2. any document which may be produced by the party at the trial during examination-in-chief, cross-examination or re-examination;
    3. any document which may harm the party's case;
    4. any document or class of documents which any other party reasonably requests the party to discover.
14. By 4pm on      , all parties are to file and serve all expert reports as to damages and liability upon which they intend to rely together with all supporting documentation. All expert reports are to comply with the requirements of Clause 3 of the Expert Witness Code of Conduct.
15. By , the parties must have completed the mediation of the dispute. The parties must notify the Court if the action settles.
16. By , each party must have issued any subpoenas under Order 42A.
17. By 4pm on [3 weeks prior to trial], the Plaintiff must serve a proposed Court Book Index on the Defendant.
18. By 4pm on [2 weeks prior to trial], the Defendant must respond with any requested additions to the Court Book.
19. The Plaintiff must, by 4pm on [1 week prior to trial], file and serve an electronic pdf copy of the Court Book and a separate electronic pdf copy of the Court Book Index. The Plaintiff is required to have paper copies of the Court Book and Court Book Index available for use by any witness and for provision to the trial judge upon request.
20. The parties must cooperate to prepare the following documents, in consultation with trial counsel (if any), and file them with the Court by 4pm two business days before trial:
    1. a chronology identifying agreed and disputed facts and documents, with Court Book references;
    2. a summary of the key issues in the case; and
    3. a trial running sheet [if estimate is longer than 3 days].
21. All other interlocutory processes will be conducted in accordance with the Rules of Court.
22. Reserve liberty to the parties to apply by email to the Associates to the Commercial Division Judicial Registrars ([commercialjr.chambers@countycourt.vic.gov.au](mailto:commercialjr.chambers@countycourt.vic.gov.au)) for further directions upon giving reasonable notice to all other parties.
23. Costs reserved.

### **Subsequent Administrative Mention**

**Commercial Division – All lists except expedited**

1. The proceeding is listed for a subsequent Administrative Mention on      , by which time the parties are to advise the Court in writing whether they are ready to proceed and if so whether any orders are sought by consent on the papers for the listing of the proceeding for trial.
2. Failure to comply with the Administrative Mention by the date specified may result in the proceeding being dismissed without further notice.
3. Reserve liberty to the parties to apply by email to the Commercial Registry (commercial.registry@countycourt.vic.gov.au) for further directions upon giving reasonable notice to all other parties.
4. Costs reserved.

**OR**

1. No Order as to costs.

**Commercial Division - Expedited List**

1. The proceeding is listed for a subsequent Administrative Mention on      , by which time the parties are to advise the Court in writing whether they are ready to proceed and if so whether any orders are sought by consent on the papers for the listing of the proceeding for trial.
2. Failure to comply with the Administrative Mention by the date specified may result in the proceeding being dismissed without further notice.
3. Reserve liberty to the parties to apply by email to the Associates to the Commercial Division Judicial Registrars (commercialjr.chambers@countycourt.vic.gov.au) for further directions upon giving reasonable notice to all other parties.
4. Costs reserved.

**OR**

1. No Order as to costs.

### **Vacating/Adjourning Directions Hearings/Summons**

**Adjourn Directions Hearing**

1. The Directions Hearing listed on       is adjourned to      am on      .

**Vacate Directions Hearing**

1. The Directions Hearing listed for       is vacated.

**Adjourn Summons**

1. The Summons listed for       is adjourned to      am on      .

**Vacate Summons**

1. The Summons listed for       is vacated.

### **Extensions of time**

**Extension of time – General**

1. The time for the       to       is extended to      .

**Extension of time to pay the setting down fee**

1. The time for the Plaintiff to pay the setting down fee is extended to      .

**Extension of time all orders Commercial Division**

1. The trial listed for       is confirmed.
2. The time for the Plaintiff to pay the setting down for trial fee is extended to      .
3. The time for the Defendant to file and serve a Defence and any Counterclaim is extended to 4pm on      .
4. The time for the parties to deliver any request for Further and Better Particulars of a pleading is extended to 4pm on      . Any request must be answered within 30 days.
5. The time for each party to make discovery (including full inspection) of the following documents:
   1. each document referred to in the party's pleadings or the Particulars of the pleadings;
   2. any document which may be produced by the party at the trial during examination-in-chief, cross-examination or re-examination;
   3. any document which may harm the party's case;
   4. any document or class of documents which any other party reasonably requests the party to discover.

is extended to 4pm on      .

1. The time for all parties to file and serve all expert reports as to damages and liability upon which they intend to rely together with all supporting documentation is extended to 4pm on      . All expert reports are to comply with the requirements of Clause 3 of the Expert Witness Code of Conduct.
2. The time by which the parties must have completed the mediation of the dispute is extended to      . The parties must notify the Court if the action settles.
3. The time for each party to have issued any subpoenas under Order 42A is extended to      .
4. The Orders of       dated       are otherwise confirmed.

### 

### **Pleadings**

**Addition of Defendant/s**

1. The Plaintiff has leave to amend the Writ and Statement of Claim by adding       as       Defendant/s to this proceeding.
2. By 4pm on      , the Plaintiff is to file and serve an Amended Writ and Statement of Claim, in the form attached to the correspondence dated/exhibited to the affidavit sworn/affirmed      .

**Substitution of Parties**

1. The Plaintiff has leave to amend the Writ and Statement of Claim by substituting       for       as       to this proceeding.
2. By 4pm on      , the Plaintiff is to file and serve an Amended Writ and Statement of Claim, in the form attached to the correspondence dated/ exhibited to the affidavit sworn/affirmed      .
3. As of the date of this Order,       ceases to be a party to this proceeding.

**Amend Description of Defendant**

1. The Plaintiff has leave to amend the description of the       Defendant from       to      .
2. By 4pm on      , the Plaintiff is to file and serve an Amended Writ and Statement of Claim, in the form attached to the correspondence dated/ exhibited to the affidavit sworn/affirmed      .

**Joinder of Third Party**

1. The       Defendant has leave to join       as a Third Party to this proceeding.
2. By 4pm on      , the       Defendant is to file and serve Third Party Notice/s together with a copy of this Order on      .

**Application to join another party**

1. By 4pm on      , any application by       to join       as       to this proceeding is to be made by email to the Commercial Registry/Associates to the Commercial Judicial Registrars.

**Amend the Writ and Statement of Claim**

1. The Plaintiff has leave to file and serve an Amended Writ and Statement of Claim, in the form attached to the correspondence dated//exhibited to the affidavit sworn/affirmed      , by 4pm on      .

**Amend the Statement of Claim**

1. The Plaintiff has leave to file and serve an Amended Statement of Claim, in the form attached to the correspondence dated//exhibited to the affidavit sworn/affirmed     , by 4pm on      .
2. By 4pm on      , the Defendant is to file and serve a Defence to the Amended Statement of Claim.

**Defence and Counterclaim**

1. By 4pm on      , the Defendant is to file and serve a Defence and any Counterclaim.

**Defence to Counterclaim**

1. By 4pm on      , the Plaintiff is to file and serve a Defence to Counterclaim.

**Reply**

1. By 4pm on      , the Plaintiff is to file and serve any Reply.

**Reply and Defence to Counterclaim**

1. By 4pm on      , the Plaintiff is to file and serve any Reply and Defence to Counterclaim.

**Defence**

1. By 4pm on      , the Defendant is to file and serve a Defence.

### **Further and Better Particulars**

**File and serve FBP**

1. By 4pm on      , the       is to file and serve any request for Further and Better Particulars [of the      ].
2. By 4pm on      , the       is to file and serve Further and Better Particulars [of the ] in response to any such request.

**File and serve FBP pursuant to a Request**

1. By 4pm on      , the       is to file and serve Further and Better Particulars of the       in response to the       request dated      .

### **Discovery**

**Make Discovery**

1. By 4pm on      , each party must make discovery (including full inspection) of the following documents:
   1. each document referred to in the party's pleadings or the Particulars of the pleadings;
   2. any document which may be produced by the party at the trial during examination-in-chief, cross-examination or re-examination;
   3. any document which may harm the party's case;
   4. any document or class of documents which any other party reasonably requests the party to discover.

### **Mediation**

**General Mediation Order**

1. By      , the parties must have completed the mediation of the dispute. The parties must notify the Court if the action settles.

### **Subpoenas**

**General subpoena order**

1. By      , each party must have issued any subpoenas under Order 42A.

**Inspection of Subpoenas**

1. The parties have leave to inspect and photocopy documents, the subject of the subpoenas of       dated      .

### **Trial dates**

**List a Trial Date - Melbourne**

1. The proceeding is set down for trial on       as a Cause before a Judge sitting alone (estimate       sitting days).

**List a Trial Date – Circuit**

1. The proceeding is to be fixed for trial at       not before the circuit commencement date of      , to be heard as a Cause before a Judge sitting alone (estimate       sitting days).

**First Circuit next year**

1. The proceeding will be set down for trial at      , not before the first circuit commencement date of 2018, to be heard as a Cause before a Judge sitting alone (estimate       sitting days).
2. By 4pm on      , the parties will be advised by the Registrar at       of the date of the first circuit commencement date of 2018.

**Reinstate a Trial Date**

1. The trial date for this proceeding is reinstated on       as a Cause before a Judge sitting alone (estimate       sitting days).

**Confirm a Trial Date**

1. The trial listed for       is confirmed.

**Vacate a Trial Date – Melbourne**

1. The trial listed for hearing on       is vacated.

**Vacate a Trial Date – Circuit**

1. The trial listed at       not before the circuit commencement date of       is vacated.

**Vacate a Trial Date & Refix - Melbourne**

1. The trial listed for       is vacated and the proceeding is refixed for trial on       as a Cause before a Judge sitting alone (estimate       sitting days).

**Vacate a Trial Date & Refix – Circuit**

1. The trial listed at       not before the circuit commencement date of       is vacated and refixed for trial not before the circuit commencement date of       as a Cause before a Judge sitting alone (estimate       sitting day/s).

**Reinstate Proceeding**

1. The trial date for this proceeding is reinstated on       as a Cause before a Judge sitting alone (estimate       sitting days)
2. The Order of       dated       is otherwise confirmed.

### **Payment of Fees**

**Setting down for trial fee - payment**

1. The setting down fee must be paid by the Plaintiff by . If the Plaintiff defaults the Defendant may pay the fee within 21 days. If the fee is not paid the trial date will be vacated.

**Setting down for trial fee – to stand**

1. The setting down for trial fee has been paid in this proceeding.

**Jury Fee – payment**

1. By 4pm on       the       is to pay the jury fee. In default, any other party may pay the fee within a further 14 days. If the fee is not paid, the trial will proceed as a cause.

**Jury Fee – to stand**

1. The first day’s jury fee is to stand as paid in this proceeding.

### **Miscellaneous Orders**

**Failure to comply with Civil Procedure Act 2010**

1. Unless the Plaintiff/Defendant files an Overarching Obligations/Proper Basis Certificate by 4pm on      , the Plaintiff’s proceeding/Defendant’s Defence will be struck out.
2. Any application to set aside this order must be made by summons and supported by affidavit evidence explaining the relevant party’s failure to comply with the provisions of the *Civil Procedure Act 2010*.

**Transfer between lists**

1. The proceeding is transferred to the       List of the Commercial Division forthwith.

**Proceedings to be listed together**

1. The trial of this proceeding is listed to be heard together with proceeding number     , subject to any Order to the contrary by the Trial Judge.

**Consolidation order example**

Proceeding A

1. This proceeding is consolidated with proceeding No. CI-BB-BBBBB.
2. The pleadings/documents served in proceeding no CI- CI-BB-BBBBB stand as the pleadings/documents filed and served in proceeding no CI-AA-AAAAA.
3. The parties in proceeding no CI-BB-BBBBB stand as parties in proceeding no CI- AA-AAAAA.

Proceeding B

1. This proceeding is consolidated with proceeding No. CI-AA-AAAAA.
2. This proceeding is otherwise struck out.

**Witness statements**

1. No order for witness statements will be made without leave. Any application for leave should be made by email to the Commercial Registry/Associates to the Commercial Judicial Registrars, copied to all parties, and provide reasons for making such an order.
2. Witness statements are not ordinarily permitted where the credit of a witness is likely to be in issue.

**Garnishee Summons**

1. The Judgment Creditor has leave to file and serve a garnishee summons on the Garnishee substantially in the form of the draft marked "     " exhibited to the affidavit of       sworn on      , and made returnable before the Commercial Division Judicial Registrar on      .
2. The Judgment Creditor must serve a copy of this Order, the Affidavit in support of application and the Garnishee Summons on the Judgment Debtor and the Garnishee not less than 7 days before the return date of the Garnishee Summons.
3. Reserve liberty to the parties to apply by email to the Commercial Registry (commercial.registry@countycourt.vic.gov.au) for further directions upon giving reasonable notice to all other parties.
4. Costs reserved.

**Liberty to apply**

1. Reserve liberty to the parties to apply by email to the Commercial Registry (commercial.registry@countycourt.vic.gov.au) for further directions upon giving reasonable notice to all other parties.

**Liberty to apply – Expedited List**

1. Reserve liberty to the parties to apply by email to the Associates to the Commercial Division Judicial Registrars ([commercialjr.chambers@countycourt.vic.gov.au](mailto:commercialjr.chambers@countycourt.vic.gov.au)) for further directions upon giving reasonable notice to all other parties.

### **Litigation Guardian**

**Any Application to appoint Litigation Guardian**

1. Any application by the Plaintiff to have a Litigation Guardian appointed to act on the Plaintiff's behalf be made by 4pm on      .

**Appointing Litigation Guardian**

1. is appointed as Litigation Guardian of the Plaintiff       who is a person under disability.
2. The Plaintiff is to amend the Originating Motion / Writ and Statement of Claim by amending the description of the Plaintiff/Defendant from       to       (a person under disability who sues by his Litigation Guardian) by 4pm on       *(date).*

**Removal of Litigation Guardian**

1. The Plaintiff has leave to remove [name of Litigation Guardian] as Litigation Guardian of [name of person under Litigation Guardianship] in this proceeding.
2. The Plaintiff has leave to amend the Writ and Statement of Claim by removing [name of Litigation Guardian] as Litigation Guardian of [name of person under Litigation Guardianship].
3. By 4pm on,       the Plaintiff is to file and serve the Amended Statement of Claim and Amended Writ, together with a copy of this order, on all other parties to this proceeding.
4. No order as to costs.

### **Finalisation of Proceedings**

**Struck out (so)**

1. The proceeding is struck out.

**Struck out with right of reinstatement**

1. The proceeding is struck out with a right of reinstatement.

**Struck out with specific right of reinstatement**

1. The proceeding is struck out with a right of reinstatement reserved to the      .

**Dismissed**

1. The proceeding is dismissed.

**Dismissed without adjudication on the merits**

1. The proceeding is dismissed without adjudication on the merits.