

Practice Note: Commercial Division Practice
**A Practice Note on the Operation and Management of the Commercial Division**

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| **Contents** |
| [INTRODUCTION 4](#_Toc3542181)Appropriate cases for the Commercial Division……………………………………………….. 4Structure of the Commercial Division…………………………………………………………….5Obligations on the parties and their practitioners……………………………………………….6Contacting the Court……………………………………………………………………………….7Dictionary…………………………………………………………………………………………..10Other sources of information…………………………………………………………………….11[INTERLOCUTORY STEPS 12](#_Toc3542182)Electronic filing…………………………………………………………………………………….12Primary contact by email………………………………………………………………………...12Originating Process……………………………………………………………………………….12Certification requirements under the *Civil Procedure Act*…………………………………….13Payment of fees…………………………………………………………………………………..15The Administrative Mention procedure…………………………………………………………15Pleadings…………………………………………………………………………………………..16Interrogatories……………………………………………………………………………………..16Discovery of Documents…………………………………………………………………………17Witness Statements………………………………………………………………………………18Expert Reports…………………………………………………………………………………….18Mediation…………………………………………………………………………………………..18Judicial Resolution Conferences………………………………………………………………..19Applications for leave to cease to act…………………………………………………………..20[ORDERS ON THE PAPERS 20](#_Toc3542183)Consent orders…………………………………………………………………………………....20Ex parte applications……………………………………………………………………………..21Other applications…………………………………………………………………………………21[INTERLOCUTORY DISPUTES 22](#_Toc3542184)Overview……………………………………………………………………………………………22Applications by email……………………………………………………………………………..23Applications by Summons……………………………………………………………………….23Transcript…………………………………………………………………………………………..24Division of responsibilities between Duty Judge and Judicial Registrar…………………....25Review from decision of Judicial Registrar…………………………………………………….26Injunctions…………………………………………………………………………………………26Judgment on breach of settlement terms………………………………………………………27[TRIAL 27](#_Toc3542185)Estimates of trial duration….…………………………………………………………………….27Vacation of trial dates…………………………………………………………………………….28Interpreters and translators……………………………………………………………………...28Video Link Evidence………………………………………………………………………………28Transcript…………………………………………………………………………………………..28Subpoenas…………………………………………………………………………………………29Court Books……………………………………………………………………………………….29Trial running sheets, agreed chronology and summary of key issues in dispute………….30Allocation of trials…………………………………………………………………………………30Requirements of Trial Judge…………………………………………………………………….30Course of trial……………………………………………………………………………………..31[SELF-REPRESENTED LITIGANTS (SRL) 32](#_Toc3542186)Self-represented litigants - special procedures………………………………………………..32SRL Case Managers……………………………………………………………………………..32Filing documents………………………………………………………………………………….32SRL Program………………………………………………………………………………….......33[EXPEDITED CASES LIST – SPECIAL PROCEDURES 34](#_Toc3542187)Overview……………………………………………………………………………………………34[BUILDING CASES LIST – SPECIAL PROCEDURES 35](#_Toc3542188)Overview……………………………………………………………………………………………35Mandatory Stay Applications…………………………………………………………………….36Applications pursuant to the *Building and Construction (Security of Payment) Act*……….37[LONG CASES 38](#_Toc3542189)Special procedures……………………………………………………………………………….38[CIRCUIT TRIALS – SPECIAL PROCEDURES 38](#_Toc3542190)Introduction………………………………………………………………………………………..38Fixing trial dates…………………………………………………………………………………..39 |

INTRODUCTION

1. **Appropriate cases for the Commercial Division**
	1. In broad terms, the Commercial Division hears civil claims other than claims for injury or death of a person or for breach of duty such as negligence. The Commercial Division is particularly suited to disputes between commercial parties who want a fast, cost-effective and just resolution of their dispute, where the quantum in dispute clearly exceeds $100,000.00.
	2. There is no monetary limit on the jurisdiction of the Commercial Division. The jurisdiction of the Commercial Division is thus effectively concurrent with the Supreme Court, although there are some categories of claim for which the County Court lacks jurisdiction (for example: powers granted to a “*Capital C*” Court under the *Corporations Act 2001* (Cth)).
	3. The Judges, Judicial Registrars and staff of the Commercial Division are committed to furthering the overarching purpose in the *Civil Procedure Act* “…*to facilitate the just, efficient, timely and cost‑effective resolution of the real issues in dispute*”.
	4. The Commercial Division is also committed to working together with parties in the use of technology to enhance access to justice, assist in the proportionate resolution of disputes and further the overarching purpose. Most documents are now e-filed, electronic court books are encouraged and paperless or semi-paperless trials are possible in appropriate cases.

**What are the key features of the Commercial Division?**

**Trial dates within six months of first administrative mention**

Trial dates within six months of first administrative mention are offered in the General List, the Banking & Finance List and the Building Cases List (unless the estimate of trial duration is 10 days or more). If your dispute is in the Expedited Cases List, even earlier trial dates may be available.

**Fair and efficient management of interlocutory steps**

Interlocutory steps are managed by specialist commercial Judicial Registrars and a dedicated Commercial Registry. There is a focus both on reducing the need for costly appearances and encouraging orders to be made on the papers and by consent.

**Trial date certainty**

The Commercial Division pro-actively manages its listings to keep “not reached” cases to a minimum. It is very unlikely that a Judge will not be available to hear your case on the listed trial date. In the event that your case is not reached, it will be transferred to the Expedited Cases List (without fee) and listed on the next occasion with priority.

**Trials presided over by a Judge with experience in Commercial Law**

Currently six Judges with experience in Commercial Law are rostered to sit in the Commercial Division. Each month, one of these Judges is nominated as the Duty Judge and five Judges are available to hear trials.

**Fast turnaround of judgments**

Average time from trial to judgment is consistently below 3 months. The actual time to judgment in your case will depend upon a number of factors including the nature and complexity of your dispute.

1. **Structure of the Commercial Division**
	1. Head of the Commercial Division: The Chief Judge appoints a Head of the Commercial Division, who is ultimately responsible for decisions concerning listings, rostering and Commercial Division practice and procedure. The name and contact details of the current Head of the Commercial Division are available on the County Court website.
	2. There are five permanent specialist Judges sitting in the Commercial Division. In addition, each year two Judges with experience in commercial law sit in the Division for a period of six months each.
	3. Duty Judge: Each month, one of the Judges of the Division is rostered on to act as Duty Judge. The Duty Judge is principally responsible for hearing applications for injunction, security for costs, summary judgment and other significant applications.
	4. Commercial Division Judicial Registrars: The Duty Judge is assisted by the Commercial Division Judicial Registrars, who are principally responsible for:
		1. managing interlocutory steps to trial;
		2. conducting directions hearings;
		3. applications for discovery;
		4. enforcement applications;
		5. reviewing requests for orders on the papers; and
		6. conducting Judicial Resolution Conferences.
	5. Commercial Registry: The Commercial Division is also assisted by a dedicated Commercial Registry and a Commercial Division Manager. The Commercial Registry:
		1. is the principal point of contact between litigants and the Court; and
		2. is responsible for managing document filings, listings, ex parte applications and emailed consent orders (other than in the Expedited Cases List), along with the management of post-determination and enforcement processes.
	6. The Division is divided into four lists:
		1. Building Cases List: cases concerning building or construction;
		2. Banking & Finance List: cases concerning banking & finance, or to enforce a loan or guarantee;
		3. General List: all other cases unless the proceeding is suitable for entry into the Expedited Cases List; and
		4. Expedited Cases List: cases requiring a faster trial date or more intensive case management.
	7. A detailed list of the types of proceedings which may be commenced in the Commercial Division and their appropriate list, can be found when e-filing your pleadings electronically via CITEC using the links provided. These can also be viewed on the [Request to Enter a List Form](https://www.countycourt.vic.gov.au/files/documents/2018-08/cifrequest-enter-list-divisions-amended-2-oct-2015.doc), which is available on the County Court website.
	8. Unless an order is made transferring the proceeding to a different list or division, the proceeding will be managed in the division and list in which it is entered by the plaintiff(s) until resolved.
2. **Obligations on the parties and their practitioners**

The overarching purpose described in section 7(1) of the *Civil Procedure Act* is “to facilitate the just, efficient, timely and cost‑effective resolution of the real issues in dispute”. The Court must seek to give effect to the overarching purpose in every exercise of its powers. The overarching purpose is thus fundamental to the procedures described in this Practice Note, and to the implementation of those procedures.

* 1. Resolving interlocutory issues on the papers wherever possible reduces expense and delay and ultimately enhances the just, efficient, timely and cost-effective resolution of the real issues in dispute for all parties. An aggressive and pedantic approach to interlocutory issues is not only a potential breach of the *Civil Procedure Act*, it is also unlikely to be in the best interests of the party.
	2. Parties and their representatives are required:
		1. to communicate and cooperate throughout the interlocutory stages in a manner that complies with their obligations under the *Civil Procedure Act*;
		2. to seek to resolve interlocutory issues on the papers and by consent wherever possible;
		3. to carefully consider whether the expense and potential delay of interlocutory disputation is genuinely in the party’s interests and proportionate to the issues in dispute;
		4. except in extreme urgency, to not make interlocutory applications without first endeavouring to resolve any issues by correspondence or a phone call; and
		5. once an application has been made, to continue efforts to resolve the dispute.
	3. Orders may be made against parties or practitioners who fail to comply with these requirements, including adverse costs orders and the giving of judgment.
1. **Contacting the Court**

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| **Title** | **Email** | **Phone** | **When to Contact** |
| Commercial Registry | Commercial.Registry@countycourt.vic.gov.au | 8636 6690 | * To submit consent orders;
* To request a directions hearing;
* To request orders on papers;
* To request a date for a Summons;
* To request ex parte orders on papers;
* Any enquiries relating to the transfer of Commercial proceedings to or from the County Court;
* Any other general enquiries relating to proceedings in the General Cases List, Building Cases List, and/or Banking & Finance List;
* To apply for post-determination processes including default judgments, warrants, garnishee summonses, transfer of land or sale, oral examinations and instalment orders.
 |
| Service Delivery Team | Civil.Counter@countycourt.vic.gov.au | 8636 6508 | * To file pleadings and amended pleadings with the Court;
* To file other documents with the Court;
* Any enquiries relating to CITEC and the efiling of documents;
* Any enquiries dealt with over the counter in person at the Registry;
* Any enquiries relating to payment of Court fees.
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| Subpoenas | Subpoenas@countycourt.vic.gov.au | 8636 6525 | * To make an appointment to inspect subpoena documents;
* To lodge an objection to a subpoena;
* Any other subpoena related enquiries.
 |
| Self-Represented Litigants Case Managers | SRL@countycourt.vic.gov.au | 8636 65288636 6522 | * To obtain assistance with Court procedures when you do not have a lawyer (**Litigants in Person**);
* Any general enquiries relating to Litigants in Person.
 |
| Commercial Division Manager | Christy.Giardina@countycourt.vic.gov.au | 8636 6552 | * Where a trial is listed in the next two weeks;
* To provide general feedback in relation to the Commercial Registry.
 |
| Associates to the Commercial Division Judicial Registrars | CommercialJR.Chambers@countycourt.vic.gov.au | 8636 6630 | * Any enquiries relating to proceedings in the Expedited Cases List;
* Where a hearing is listed before a Judicial Registrar or Duty Judge;
* Where a Court Order requires or permits an email to be sent to the Associates to the Commercial Judicial Registrars.
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| Associates to Commercial Division Judges | Available on County Court website [here](https://www.countycourt.vic.gov.au/contact-us/judicial-contacts). | Available [here](https://www.countycourt.vic.gov.au/contact-us/judicial-contacts). | * If a trial is listed before a Commercial Division Judge;
* Duty Judge matters, if the Judge is the Duty Judge.
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| Fees | Commercial.Registry@countycourt.vic.gov.au receivables@countycourt.vic.gov.au | 8636 66908636 6529 | * The Registry can guide practitioners on how to pay Court fees;
* Details of how to make costs payments to the Court, or the release of funds from the Court back to the parties are directed by Finance.
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1. **Dictionary**

***Business day*** means a day which is neither a public holiday in Melbourne nor a weekend.

***CITEC*** means CITEC Confirm, the current authorised provider of civil electronic filing services.

***Civil Procedure Act*** means the Civil Procedure Act 2010 (Vic).

***County Court website*** means the various webpages hosted at the domain

[www.countycourt.vic.gov.au](http://www.countycourt.vic.gov.au) .

***CourtConnect*** means the service available at the following website: <http://cjep.justice.vic.gov.au> .

***Division*** means the Commercial Division of the County Court (unless the context requires otherwise).

***Duty Judge*** means the County CourtJudge allocatedto sit as Duty Judge at the relevant time.

***Judicial Registrar*** meansa Judicial Registrar of the County Court allocated to sit in the Commercial Division.

***Litigant in person, Self-Represented Litigant, LIP or SRL*** means a person who wishes to take steps in a proceeding without a lawyer.

***On the papers*** means a decision of a Judge or Judicial Registrar made in chambers on the basis of material filed with the Court, without the requirement of an appearance in Court.

***Overarching Purpose*** meansto facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute having regard to the objects specified in section 9 of the *Civil Procedure Act*.

***Over the counter*** means the filing of a hard copy document by physically attending the County Court Registry at 250 William St, Melbourne or a circuit registry.

***Rules*** means the *County Court Civil Procedure Rules 2018* (Vic).

***Trial Judge*** means the Judge hearing the trial or to whom the trial is or is likely to be allocated for trial.

1. **Other sources of information**

[**The County Court Website**](http://www.countycourt.vic.gov.au)

The County Court website is the first source of information about the Division and the Court more generally. The website contains links to guidelines, orders booklets, forms, fact sheets and other documents applicable in the Commercial Division.

[**The Daily List**](https://www.countycourt.vic.gov.au/court-schedule)

The Civil Daily List of the next day’s hearings is published on the County Court website at 5.30 pm each day.

[**Court Connect**](http://cjep.justice.vic.gov.au)

Orders made by the Court (with the exception of some ex parte orders) are made available online on [CourtConnect](http://cjep.justice.vic.gov.au/pls/p100/ck_public_qry_main.cp_main_idx) shortly after they are made. CourtConnect also provides a useful chronological list of the filings and other events in a proceeding.

**Legislation and Rules**

Provisions governing County Court procedure are contained in the *County Court Act 1958* (Vic), the *Civil Procedure Act 2010* (Vic), the *County Court Civil Procedure Rules 2018* (Vic) (particularly Order 34A) and the *Evidence Act 1995* (Cth).

**Further questions?**

If you are unable to find the answer to a question about County Court procedure after reading this Practice Note and consulting the above documents, you should contact the Commercial Registry or, if you are a Self Represented Litigant, the SRL Case Managers (contact details above).

INTERLOCUTORY STEPS

1. **Electronic Filing**
	1. The Commercial Division maintains wholly electronic files for all proceedings commenced after 1 January 2017.
	2. For parties represented by lawyers, almost all Court documents must be e-filed through the Court’s authorised electronic filing provider, CITEC. Litigants in Person cannot currently e-file documents through CITEC. Special procedures for Litigants in Person are explained [below](#_Litigants_in_Person).
	3. [Guidelines](https://www.countycourt.vic.gov.au/going-court/lodging-court-document/civil-efiling) for registering and filing documents via CITEC, and a current list of documents which are not accepted via e-filing, are available on the County Court website.
	4. Where a party hands a hard copy document up in Court, that party must subsequently e-file the document via CITEC unless the document is not capable of being e-filed. Hard copy documents filed over the counter or handed up in Court will be destroyed once e-filed unless specifically requested to be returned.
	5. Parties must retain the original paper versions of documents filed with the Court until the expiry of any period for applying for leave to appeal or bringing an appeal or the determination of any such application or appeal.
2. **Primary contact by email**
	1. The Court’s primary method of communication with parties is by email. Parties must provide the Court with a current email address at the time proceedings are commenced or an appearance is entered. Parties must ensure that this address remains current and is monitored on a daily basis throughout the course of the proceeding. Any change to email addresses must be notified to the Court by email to the Commercial Registry, copied to all parties.
	2. All emails to the Court must be copied to all parties. The only exceptions to this are:
		1. Ex parte applications;
		2. Applications for leave to cease to act;
		3. Issues of confidentiality; and
		4. Emails by a Litigant in Person to the SRL Case Manager seeking guidance in relation to Court procedure.
3. **Originating Process**
	1. Proceedings must be commenced by writ or originating motion (as appropriate).
	2. For writs, CITEC utilises a mandatory template form which, once completed, will automatically generate a writ. This ensures the writ is properly formatted and compliant with the Rules. As part of the completion of the form, practitioners must specify the List, attach a statement of claim or general indorsement and pay the appropriate fee. Detailed guidelines for filing documents through CITEC are available [here](https://www.countycourt.vic.gov.au/going-court/lodging-court-document/civil-efiling).
4. **Certification requirements under the *Civil Procedure Act***
	1. The *Civil Procedure Act* requires certification in two circumstances:
		1. Overarching obligations certification: personal certification by parties at or following the commencement of a proceeding that they have “read and understood the overarching obligations and the paramount duty” set out in the Act (section 41);
		2. Proper basis certification: certification by a party’s legal practitioner, or by a litigant in person, that in relation to “the first substantive document” in a proceeding and “any document that contains significant amendments”, each allegation of fact, denial or non-admission “has a proper basis” (section 42).
	2. A proceeding may be issued in urgent cases without the necessary certifications. In those circumstances, the appropriate certificate must be filed “as soon as practicable” thereafter (section 44).
	3. Parties are required to file an **overarching obligation certificate** with the following documents:
		1. in a proceeding commenced by writ:
			1. by a plaintiff, when the writ is issued;
			2. by a defendant, when the defence is filed.
		2. in a proceeding commenced by originating motion:
			1. by a plaintiff, when the originating motion is issued;
			2. by a defendant, when a response to the originating motion is filed where that response is a document other than an affidavit.
		3. in a proceeding commenced by counterclaim:
			1. by a plaintiff to counterclaim, who has not previously filed a certificate in the action, when the counterclaim is filed;
			2. by a defendant to counterclaim, who has not previously filed a certificate in the action, when the defence to counterclaim is filed.
		4. in a third (or subsequent) party proceeding:
			1. by an initiating party, who has not previously filed a certificate in the action, when the third party (or similar) proceeding is filed;
			2. by a responding party, when the defence to the third party (or similar) proceeding is filed.
	4. A practitioner (or a litigant in person) is required to file a **proper basis certificate** with the following documents:
		1. in a proceeding commenced by writ:
			1. by a plaintiff, with the statement of claim or particulars of claim filed with a writ;
			2. by a defendant, with the defence;
			3. by either party, with an amended statement of claim, defence or reply that contains “significant amendments”.
		2. in a proceeding commenced by originating motion:
			1. by a plaintiff, when the originating motion is issued;
			2. by a defendant, when a response to the originating motion is filed where that response is a document other than an affidavit;
			3. by either party, with an amended document (other than an affidavit) that contains “significant amendments”.
		3. in a proceeding commenced by counterclaim:
			1. by a plaintiff to counterclaim, when the counterclaim is filed;
			2. by a defendant to counterclaim, when the defence to counterclaim is filed;
			3. by either party, with an amended statement of claim, defence or reply that contains “significant amendments”;
		4. in a third (or subsequent) party proceeding:
			1. by an initiating party, when the third party (or similar proceeding) is filed;
			2. by a responding party, when the defence to the third party (or similar proceeding) is filed;
			3. by either party, with an amended statement of claim, defence or reply that contains “significant amendments”.
	5. The following amendments are considered to be “significant amendments” and must be accompanied by proper basis certification:
		1. the addition, deletion or substitution of a party;
		2. the addition, deletion or substitution of a cause of action or a substantive defence;
		3. a substantive matter by way of reply; or
		4. the addition of a material allegation of fact.
	6. Unless otherwise ordered, the Court will accept documents for filing without certifications. However, if a party requests a default judgment, the request may be rejected until the appropriate certifications have been filed. The opposing party may also bring an application for appropriate orders by email to the Commercial Registry (or, in the case of the Expedited Cases List, the Associates to the Commercial Judicial Registrars).
5. **Payment of fees**
	1. The fees payable to the Court are fixed by regulation. The Judges and Judicial Registrars of the Court cannot waive or reduce these fees. An application for fee waiver or reduction must be made to the Service Delivery Team (Civil.Counter@countycourt.vic.gov.au).
	2. The failure to pay a fee by the due date may result in the trial date being vacated. Other than in exceptional circumstances, a Trial Judge will not commence a trial when fees are due but have not been paid.
6. **The Administrative Mention procedure**

**What is an Administrative Mention?**

An Administrative Mention is a process by which the parties are prompted to submit proposed consent orders for the conduct of the proceeding. It is not a Court hearing and no appearance at Court is required. However, a failure to respond to an Administrative Mention may lead to a proceeding being dismissed.

* 1. In the General, Banking & Finance, and Building Cases Lists, the filing of a Notice of Appearance by a defendant will trigger the Administrative Mention procedure.
	2. An Administrative Mention may also be listed during the course of a proceeding where for some reason it is appropriate for the parties be prompted to submit proposed consent orders (for example, where there are active settlement negotiations which are likely to resolve the proceeding).
	3. When an Administrative Mention is listed, the Court will send a notice to the parties requiring them to submit proposed consent orders to the Court by the date of the Administrative Mention.
	4. Standard orders are contained in the Commercial Division - [Orders Booklet](https://www.countycourt.vic.gov.au/going-court/commercial-division/commercial-division-registry), which is available on the County Court website.
	5. The parties are required to communicate in accordance with their obligations under the *Civil Procedure Act* with a view to reaching consent on an appropriate timetable to trial. Once agreement is reached, signed minutes of proposed consent orders must be emailed:
		1. for the General List, Banking & Finance List and Building Cases List, to the Commercial Registry (Commercial.Registry@countycourt.vic.gov.au) copied to all parties; and
		2. for the Expedited Cases List, to the Associates to the Commercial Judicial Registrars (CommercialJR.Chambers@countycourt.vic.gov.au) copied to all parties.
	6. When negotiating consent orders, the parties must have regard to the following matters:
		1. prolonged delays in setting a matter down for trial may increase expense and lead to injustice. If the Court forms the view that the delay in setting a matter down for trial is not in the interests of justice, it will require a trial date to be fixed;
		2. parties should use the standard orders. The standard orders are designed to efficiently manage the interlocutory processes and to allow the Court to nominate a trial date;
		3. departures from the standard orders must be explained. A brief explanation in the email attaching the consent orders is sufficient. In the absence of explanation, proposed consent orders may be converted to the standard orders;
		4. all proposed consent orders are reviewed by a Judicial Registrar, who will make appropriate orders having considered the proposed consent orders and any accompanying correspondence; and
		5. if the parties cannot agree upon appropriate directions to trial, a request must be made to the Commercial Registry (or, in the Expedited Cases List, to the Associates to the Commercial Judicial Registrars) for a Directions Hearing (see Interlocutory Disputes, below).
1. **Pleadings**

**Purpose of pleadings**

The purpose of pleadings is to inform the other parties of the case to be met at trial and to clearly define the issues in dispute for the benefit of both the parties and the Trial Judge.

* 1. Pleadings must include all material facts upon which the party relies and provide appropriate particulars of those facts. Pleadings must be both concise and precise. All necessary material facts to establish a cause of action must be pleaded. Facts which are not necessary or relevant to a cause of action or defence must not be pleaded.
	2. The Court may strike out the whole or part of a pleading if it is confusing; lacks the necessary material facts to establish a cause of action; or fails to assist in the identification of the real issues in dispute. The Trial Judge may also refuse to permit a party to rely upon material facts at trial which have not been pleaded. On the other hand, lengthy and overly technical pleadings disputes may not further the overarching purpose. An application may be dismissed where it is apparent that the conduct of one party is not assisting the timely resolution of the real issues in dispute.
	3. The Court may also make an order for a statement of issues under section 50 of the *Civil Procedure Act* in lieu of, or in addition to, pleadings where this will enhance the resolution of the real issues in dispute.
1. **Interrogatories**

**Interrogatories are not permitted without leave**

Leave will only be granted in exceptional circumstances and if the Court is satisfied that the administration of interrogatories will facilitate the expeditious resolution of the dispute.

* 1. Before making an application for leave to administer interrogatories, parties must consider carefully whether the time and expense taken to administer interrogatories (including any resultant disputes as to whether they have been adequately answered) are likely to facilitate the expeditious resolution of the dispute.
	2. An application for leave to administer interrogatories:
		1. must be made by email to the Commercial Registry (or, in the Expedited Cases List, to the Associates to the Commercial Judicial Registrars) copied to all parties;
		2. must state whether it is by consent or opposed;
		3. must be accompanied by draft interrogatories and brief reasons explaining why administration of these particular interrogatories will facilitate the expeditious resolution of the dispute; and
		4. will typically be determined on the papers (even if opposed). However it may, in appropriate cases, be listed for determination at a directions hearing.
1. **Discovery of Documents**

**Discovery is limited**

The purpose of discovery is to allow each party access to the documents necessary to enable justice to be done between the parties. Discovery can be a lengthy and costly process and the level of discovery appropriate in a case must be measured against the quantum in dispute and the relevance of the documents to the issues in dispute. There is no “right” to access all possibly relevant documents prior to trial.

* 1. The standard orders limit discovery to the following categories of 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.
	2. The standard orders include a ‘catch-all’ category of those documents which are reasonably requested. Initially, it is for the parties to determine the question of reasonableness.
	3. Generally, the Court will not participate in the process of approving lists of discoverable documents in advance. Initially, the parties bear the responsibility of sorting out these issues between themselves, whether by preparing agreed discovery lists or in some other manner.
	4. In relation to the reasonable costs of copying discovered documents, parties are referred to the Supreme Court Practice Note, SC GEN 11 COSTS COURT (SECOND REVISION) October 2018, which currently provides as a guide that the Costs Court may allow costs of 0.25 cents per page, lower if bulk copied.
1. **Witness statements**

**Witness statements not ordinarily required**

Witness statements are not ordinarily required in the Commercial Division and will only be ordered where the Court is satisfied that the provision of witness statements will further the overarching purpose.

* 1. Any application for an order requiring witness statements must explain the necessity for the witness statements with reference to the criteria of the furtherance of the overarching purpose of the *Civil Procedure Act*. Witness statements are unlikely to be required where the determination of factual matters in dispute will depend on an assessment of the credibility of a witness.
1. **Expert reports**
	1. An expert report may be rejected for filing if it fails to comply with Clause 3 of the Expert Witness Code of Conduct.
	2. Expert reports must be filed via CITEC unless:
		1. the party filing is a Self-Represented Litigant;
		2. the expert report is too large to be filed via CITEC (in which case it should be filed via USB or email), or
		3. for some reason (for example, the inclusion of large format plans or diagrams) it would be preferable for the Judge to be provided with a hard copy of the expert report.
	3. Jointly appointed experts, expert conclaves, joint expert reports and concurrent expert evidence are often highly effective in achieving a proportionate resolution of the real issues in dispute. Their use is actively encouraged in the Commercial Division and in appropriate cases may be required by Court Order. Parties should actively consider whether they are appropriate for their proceedings. The Court has standard orders for these procedures which can be provided upon request.
2. **Mediation**

**All disputes must be mediated prior to trial.**

The standard orders include an order for mediation. This requirement cannot be excluded or waived, even by consent. If at the time of trial, the Court becomes aware that a proceeding has not yet been mediated, the trial date may be vacated or the parties ordered to immediately attend mediation.

* 1. The parties must communicate with each other well prior to the date for mediation and agree on the mediator, time and place for the mediation.
	2. If the parties are unable to reach agreement on these matters after making reasonable attempts to do so, the parties must request a Directions Hearing. The Court will make appropriate orders, including the appointment of a mediator and the nomination of an appropriate date for the mediation. Where there is a dispute about who will conduct the mediation, each party must provide the Court with the names and availability of two preferred mediators.
	3. The following guidelines apply to the conduct of the mediation, unless otherwise ordered by the Court:
		1. the plaintiff must deliver a copy of all pleadings to the mediator;
		2. the mediator and venue hire fees in the first instance are to be equally shared between the parties;
		3. the parties themselves, or a representative of a corporate party with full authority to make all decisions relating to the conduct of the proceeding, including to settle the proceeding, must attend the mediation in person;
		4. other interested parties, such as insurers or litigation funders, must also attend or be available by telephone; and
		5. the costs of the mediation are the parties’ costs in the cause.
	4. Within 7 days from the date of mediation, the mediator is to complete the "[Mediation Decision Sheet](https://www.countycourt.vic.gov.au/forms-and-fees?filters%5bkeyword%5d=mediation)”, which is available on the County Court website, and file it with the Court by email to the Commercial Registry (Commercial.Registry@countycourt.vic.gov.au).
1. **Judicial Resolution Conferences**

**What is a Judicial Resolution Conference?**

A Judicial Resolution Conference is a judicial mediation conducted by a Judicial Registrar or Judge of the County Court who is also a trained mediator. Judicial Resolution Conferences are only available in exceptional circumstances.

* 1. In the Commercial Division, the usual expectation is that the parties will engage a private mediator and share the cost of that mediation in the first instance. However, in exceptional circumstances it may be appropriate for the proceeding to be listed for a Judicial Resolution Conference, in lieu of, or in addition to, a private mediation.
	2. Judicial Resolution Conferences are generally conducted by a Commercial Judicial Registrar but in appropriate cases may also be conducted by a Judge.
	3. Judicial Resolution Conferences are most likely to be appropriate where:
		1. there is a Self-Represented Litigant in the proceeding;
		2. there are issues of insolvency or one or more parties have limited means;
		3. the costs, duration or complexity of any trial are likely to be disproportionate to the amounts in dispute;
		4. there is a benefit in immediate mediation (for example: during the course of trial) and a suitable private mediator is not immediately available;
		5. a proceeding listed for trial is on the reserve list; or
		6. for some other reason, the parties would benefit from a mediation conducted by a Judicial Officer with specific Commercial Division experience.
	4. A Judicial Resolution Conference may be requested by the parties by email to the Commercial Registry (or, in the Expedited Cases List, to the Associates to the Commercial Judicial Registrars) with the subject heading “Request for Judicial Resolution Conference”. The email must briefly explain why a Judicial Resolution Conference is appropriate in the circumstances.
	5. The parties themselves, or a representative of a corporate party with full authority to settle the proceeding at any amount, must personally attend a Judicial Resolution Conference. Orders may be made against any party who fails to personally attend a Judicial Resolution Conference without prior leave. Those orders may include the making of adverse costs orders or the giving of judgment. The failure of a party to attend a Judicial Resolution Conference leads to significant wasted expense and time for both the Court and the other parties to the proceeding. This will be taken into account in determining the appropriate orders to be made.
	6. An Information Sheet on Judicial Resolution Conferences has been prepared by the Court and is available on the County Court website. Practitioners are required to provide this Information Sheet to their clients at least seven days prior to the date scheduled for the Judicial Resolution Conference.
	7. Judicial Resolution Conferences will ordinarily be listed to commence at 10.30am. Appropriate arrangements must be made to ensure that parties are able to remain at the Judicial Resolution Conference until at least 4.15pm.
	8. The Judicial Officer who conducts a Judicial Resolution Conference will not hear the trial of the proceeding or any future interlocutory disputes and will not disclose anything discussed at the Judicial Resolution Conference to any other Judicial Officer.
1. **Applications for leave to cease to act**
	1. Guidelines for the making of [applications for leave to cease to act](https://www.countycourt.vic.gov.au/going-court/commercial-division/commercial-division-registry) are available on the County Court website. Applications must be made as soon as practicable. An application made within 30 days of a trial is likely to require an appearance and may not be granted.

ORDERS ON THE PAPERS

1. **Consent orders**
	1. Parties are encouraged to agree on interlocutory orders which can be made on the papers wherever possible.
	2. Where orders have been agreed, signed minutes of the proposed consent orders must be emailed to the Commercial Registry (or, in the Expedited Cases List, to the Associates to the Commercial Judicial Registrars) copied to all parties. The Commercial Registry will manage the referral of the orders and any relevant supporting material to a Commercial Judicial Registrar for consideration and approval.
	3. The Commercial Judicial Registrar will make an appropriate Order in light of the material submitted. The Order will then be published on [CourtConnect](http://cjep.justice.vic.gov.au/pls/p100/ck_public_qry_main.cp_main_idx). Orders will only be emailed to the parties if the proceeding was commenced on or after 1 January 2017.
2. **Ex parte applications**
	1. The following ex parte applications are generally determined on the papers:
		1. substituted service;
		2. extensions of writs;
		3. reinstatement of proceedings;
		4. judgment under section 28R of the *Building and Construction Industry Security of Payment Act 2002* (Vic);
		5. leave to file and serve a garnishee summons;
		6. an extension of a warrant;
		7. dispensation with the requirement under Rule 69.06(4) of the Rules to personally serve an advertisement on the judgment debtor not less than 14 days before the auction;
		8. leave to appear in *Instruments Act 1958* (Vic) proceedings; and
		9. leave to cease to act.
	2. Guidelines for the making of these applications are available on the County Court [website](https://www.countycourt.vic.gov.au/files/documents/2018-11/ex-parte-guidelines-solicitors-261018.docx).
3. **Other applications**

There may be other circumstances in which it is appropriate for an interlocutory issue to be resolved on the papers, even where it is not by consent. The Division will be flexible with its procedures where it is proportionate and fair to do so.

* 1. Issues which may be appropriate for determination on the papers include applications for leave to file and serve interrogatories, notifications of bankruptcy or liquidation, applications to give evidence by video link and applications to give evidence by witness statement.
	2. If you wish to have an issue determined on the papers, you must:
		1. email the Commercial Registry (or, in the Expedited Cases List, to the Associates to the Commercial Judicial Registrars), copied to all parties, with the subject “[Urgent] Request for Orders on the Papers”;
		2. clearly explain in your email the nature of the interlocutory issue and the reasons why it is proportionate or otherwise appropriate that it be determined on the papers.
	3. The Court will advise the procedures for resolution of the issue by return email. Typically either:
		1. proposed orders will be provided, with time for objection by either side;
		2. time will be provided for affidavits and submissions by either side, with a determination shortly afterwards; or
		3. the proceeding will be listed for a directions hearing.

INTERLOCUTORY DISPUTES

**Summons generally not required**

In most interlocutory disputes, an application in relation to an interlocutory dispute may be made by emailing a completed “Request for Directions Hearing” form to the Commercial Registry (or, in the Expedited Cases List, to the Associates to the Commercial Judicial Registrars), copied to all parties.

No additional fee is payable for these applications.

1. **Overview**
	1. The parties must cooperate in the resolution of interlocutory matters so as to minimise the need for the Court’s intervention prior to trial. Except in cases of exceptional urgency, an interlocutory application must not be brought without first attempting to resolve the dispute by communicating with the other parties to the proceeding.
	2. A summons is required in the following situations:
		1. an application for judgment (for example: summary judgment, judgment for non-compliance with a Court Order);
		2. an application to permanently stay a proceeding (including domestic building proceedings);
		3. an application to add or remove a party;
		4. an application to file and serve an amended pleading;
		5. an application to strike-out the whole or part of a pleading;
		6. an application on notice for injunctive relief (including freezing orders);
		7. an application for orders against a non-party (for example: non-party discovery);
		8. an application for security for costs;
		9. a summons on originating motion; or
		10. any other applications where the Rules or a Court Order specifically require a summons.
	3. All other interlocutory applications must be made by email.
2. **Applications by email**
	1. Applications in the Building Cases List, the Banking and Finance List and the General List are emailed to the Commercial Registry (Commercial.Registry@countycourt.vic.gov.au). Applications in the Expedited Cases List are emailed to the Associates to the Commercial Judicial Registrars (CommercialJR.Chambers@countycourt.vic.gov.au).
	2. The subject line of the email must read ‘Request for Directions Hearing’ and must attach a completed [Request for Directions Hearing Form](https://www.countycourt.vic.gov.au/going-court/commercial-division/request-hearing) (available on the County Court website) and any supporting material. If a Directions Hearing is required within the next 3 weeks, the subject line must include “Urgent”.
	3. If reliance is placed on correspondence between solicitors, it can be emailed to the Court or produced as a bundle at the hearing of the application without a supporting affidavit.
	4. If the application requires evidence of facts which are likely to be contentious, the application must be supported by affidavit. Any affidavits must be served on all relevant parties as soon as practicable and a sufficient time before the application is heard to allow all parties the opportunity to respond to the application. This is generally at least 5 business days before the hearing in the case of the applicant and 2 business days before the hearing in the case of the respondent. Late service of an affidavit without good reason may lead to adverse costs orders if the application is adjourned as a result.
	5. Where evidence is voluminous, it must be paginated with a number in the bottom right corner.
	6. The application will generally be listed to be heard at the next available directions hearing before a Duty Judge or Judicial Registrar. The parties will be notified by return email of the listing date.
3. **Applications by Summons**
	1. Prior to filing a summons, parties are required to ring the Commercial Registry ((03) 8636 6690) and obtain a return date and time for insertion in the summons. Parties must be prepared to state the nature of the summons and provide an estimate of the duration of the hearing.
	2. The summons, with approved date and time inserted, may then be filed and served.
	3. A summons and any supporting affidavits must be served as soon as practicable and a reasonable time before the hearing date. There are specific times for service in the Rules in relation to some applications (for example: summary judgment applications). If a summons is not able to be served within the required time, a request to adjourn it may be made by email to the Commercial Registry (or, in the Expedited Cases List, to the Associates to the Commercial Judicial Registrars), which must be marked “Urgent”.
	4. Where there is no specific timetable for affidavit material in the Rules, the applicant must generally file and serve their affidavits at least 5 business days prior to the hearing and the respondent at least 2 business days prior to the hearing.
	5. Voluminous exhibits must be paginated in the bottom right corner.
	6. Parties must prepare brief written outlines of submissions (generally no more than 5 pages) and file them with the Court, or email them to the Judge or Judicial Registrar’s associate by no later than 12 noon on the business day prior to the hearing.
	7. A failure to comply with these timeframes without good reason may lead to adverse orders against the defaulting party (including costs orders).
4. **Transcript**
	1. Transcript is not ordinarily required for interlocutory hearings. Transcript may be arranged in advance by a party by contacting an authorised transcription agency.
	2. Where no transcript has been prepared, a person may apply to the Judge or Judicial Registrar who presided over the hearing for the release of the recording made by the Court to an authorised transcription agency for the purpose of a transcript being prepared.
	3. The request must be in writing, addressed to the Associate to the presiding Judge or Judicial Registrar. Ordinarily the request must be made within 14 days of the date of the hearing. Recordings made by the Court are only kept for a limited period. Requests made at a later time may not be able to be accommodated.
	4. The request must contain reasons for requiring transcript. It must also include an undertaking in writing, or, if the presiding Judge or Judicial Registrar so requires, in person in Court, by the requesting party, an authorised representative of the requesting party or the solicitor for the party that:
		1. the transcript will be used solely for the reasons outlined in the request;
		2. the transcript will not be used for the purposes of broadcast or other publication;
		3. the party will take reasonable steps to ensure the recording will be returned to the Court within 28 days of its release by the Court to the transcription agency; and
		4. if a transcript is required for the purposes of an appeal, such transcript will be produced only from a copy of the recording sent directly by the Court to an authorised transcription agency and not from any other source.
	5. It is solely within the discretion of the presiding Judge or Judicial Registrar whether to grant the request.
	6. If the presiding Judge or Judicial Registrar grants the request, the requesting party must engage a suitable transcription agency to whom the tape recordings will be released. Upon notice to the Associate to the presiding Judge or Judicial Registrar of such engagement, a copy of the tape recording will be provided in accordance with the above undertakings.
	7. The original recording made by the Court will not be released directly to the requesting party.
5. **Division of Responsibilities between Duty Judge and Judicial Registrar**
	1. The following matters will ordinarily be listed before a Judicial Registrar:
		1. ex parte applications for orders on the papers including applications for substituted service and for extensions of writs;
		2. applications for orders to be made “on the papers” to the Commercial Registry (or, in the Expedited Cases List, to the Associates to the Commercial Judicial Registrars);
		3. directions hearings listed for non-payment of a setting down fee;
		4. directions hearings listed because of timetable issues or “slippage”;
		5. first directions hearings;
		6. applications for reinstatement and/or judgment pursuant to terms of settlement (where the settlement occurred as a result of a Judicial Resolution Conference/mediation the hearing will be listed before a differently constituted Court);
		7. the hearing of notices of objections to a subpoena or to a judgment debt instalment order;
		8. discovery disputes;
		9. disputes over expert reports;
		10. applications to vacate hearing dates and trial dates;
		11. applications to amend pleadings;
		12. assessments of damages;
		13. the taking of an account or the making of an inquiry;
		14. applications for, or incidental to, the enforcement of judgments and orders including:
			1. applications for the attachment of debts and/or the attachment of earnings; and
			2. applications for leave to issue a warrant of execution pursuant to Rule 68.02 of the Rules, but excluding applications to stay a warrant;
		15. Judicial Resolution Conferences;
		16. the conduct of the trial of unopposed proceedings with an estimate of duration of no more than 1 day;
		17. the conduct of the trial of a proceeding if the Judge in charge of the Division has ordered that the trial be conducted by a Judicial Registrar;
		18. applications for judgment pursuant to section 28R of the *Building and Construction Industry Security of Payment Act 2002*; and
		19. any other matter referred to the Judicial Registrar by the Duty Judge and/or the Judge in charge of the Commercial Division.
	2. The following matters cannot be listed before a Judicial Registrar:
		1. any application which by the Rules or any Act is required to be heard only by a Judge (for example: any application for preliminary or non-party discovery);
		2. any application for an injunction;
		3. any proceeding relating to the liberty of the subject;
		4. any criminal proceeding;
		5. any application under section 28 or 54 of the *Vexatious Proceedings Act 2014*;
		6. any application or proceeding under Part 2 or Part 2A of the *Confiscation Act 1997*.
6. **Review from decision of Judicial Registrar**
	1. An application for review of a decision of a Judicial Registrar may be made under Rule 84.02(3) by completing the relevant [notice](https://www.countycourt.vic.gov.au/files/documents/2018-10/notice-seeking-review-judicial-registrar.docx) which is available on the County Court website.
	2. The notice must be filed and served within 14 days after the date of the decision.
	3. The hearing of the application will be listed before the Duty Judge at the next available date.
7. **Injunctions**
	1. Notice must be given of any application for an injunction unless there is good reason for it to be made without notice.
	2. An application for an urgent injunction may be brought by contacting the Commercial Registry (03 8636 6690) or, outside business hours, by calling the Duty Judge phone (0419 384 312). The Duty Judge phone number must only be used in cases of exceptional urgency where the Court is unable to be contacted through other means.
	3. An applicant for an injunction without notice is under a duty to make full and frank disclosure of all material facts to the Court. This includes disclosure of possible defences known to the applicant and of any information which may cast doubt on the applicant's ability to meet the usual undertaking as to damages from assets within Australia.
	4. Any acceptance of an urgent application for an injunction may be made subject to an undertaking to file and serve an appropriate originating process and summons as soon as practicable.
	5. Practice notes specifically addressing freezing orders and search orders are available on the County Court [website](https://www.countycourt.vic.gov.au/practice-notes?filters%5bdivision%5d=0).
8. **Judgment on breach of settlement terms**
	1. Ordinarily, the granting of judgment for breach of terms of settlement requires a hearing before a Judicial Registrar.
	2. Judgment for breach of terms of settlement will only be granted on the papers where the factual circumstances entitling the applicant to judgment are established by affidavit and it is clear that the giving of judgment is not presently opposed. Requests for judgment must be made by email to the Commercial Registry (or Associate to the Commercial Judicial Registrars in the case of the Expedited Cases List), copied to the party against whom judgment is sought and attaching the supporting affidavit and exhibits. The Court will then allow a time for making objections. If an objection is received, the application for judgment will be listed before the Commercial Division Judicial Registrar for hearing. If no objection is received, a Commercial Judicial Registrar will consider whether it is appropriate to grant the application on the papers.
	3. This is to ensure that the party against whom judgment is sought has notice of the application and is given an opportunity to respond. It will occur despite anything in the terms of settlement to the contrary.
	4. The Court is aware that some terms of settlement require signed minutes of consent to judgment to be held in escrow pending performance of terms of settlement. Where such minutes of consent are submitted to the Court upon breach of terms of settlement, the party submitting the minutes of consent must fully inform the Court of the circumstances in which those minutes were obtained. The above procedure may then be applied.

TRIAL

1. **Estimates of Trial Duration**
	1. In the Commercial Division, a trial date is provided at first administrative mention or first directions hearing, generally within 6 months. The parties’ best estimate of trial duration is required when a proceeding is first listed for trial. **It is the parties’ obligation to re-assess the accuracy of the estimate provided at appropriate times and inform the Court of any revision to the estimate as soon as possible.**
	2. Where Counsel are to be briefed at trial they must confirm the accuracy of the estimate well in advance of the trial.
	3. A trial may be vacated or adjourned part heard if:
		1. the Court is informed of a revision to the estimate less than 30 days prior to the date of trial; or
		2. the estimate of trial duration is increased to 10 days or more (see Long Cases);
		3. Counsel briefed at trial do not provide written confirmation of the accuracy of the estimate; or
		4. the Court forms the view that the estimate of trial duration is unrealistic.
2. **Vacation of Trial Dates**
	1. Applications to vacate trial dates must be made at the earliest opportunity. Only in exceptional cases should this be within 30 days of the trial. If the application is by consent, proposed minutes of consent orders must be signed by all active parties to the proceeding and emailed to the Commercial Registry (or, in the Expedited Cases List, to the Associates to the Commercial Judicial Registrars). An application for vacation of the trial date which is not by consent must be made by email in accordance with the procedures for interlocutory disputes above.
	2. Extended delays in resolving a proceeding may not be in the interests of justice. Repeated or prolonged adjournments of the trial date may not be granted, even if by consent.
3. **Interpreters and Translators**
	1. If an interpreter is required for a Court hearing or Judicial Resolution Confrerence, the interpreter must be arranged by the party who requires the interpreter, or, in the case of a witness, the party calling the witness. The provision of an interpreter is not the function of a Court. Unless otherwise ordered, the costs of an interpreter will be the party’s costs in the proceeding.
	2. The interpreter must be accredited by NAATI and have experience in interpreting for Court hearings, unless otherwise ordered by the Court. The parties must ensure the presence of an interpreter at the commencement of and throughout the proceedings until further attendance is excused by the presiding officer.
4. **Video Link Evidence**
	1. Applications for leave for a witness to appear by video or telephone link must be made by email to the Commercial Registry (or, in the Expedited Cases List, to the Associates to the Commercial Judicial Registrars), copied to all other parties. The application must be accompanied by an explanation of the need for an attendance by video link. If the application is opposed, an opportunity will be given for material to be put on in opposition before any decision is made as to whether leave should be granted or a directions hearing is required. If appropriate, a directions hearing may be listed.
	2. Once leave has been obtained the party or their solicitors must complete an ‘[Application For Video Link](https://www.countycourt.vic.gov.au/files/documents/2018-08/application-videolink.doc)’ form located on the County Court website and email it to the Video Link Coordinator at videolinks@countycourt.vic.gov.au. This procedure is explained further on the County Court [website](https://www.countycourt.vic.gov.au/going-court/criminal-division/videolinks).
	3. The requesting party must pay for the associated video link booking fee and the applicable line rental charges.
5. **Transcript**
	1. The parties are required to organise (and share the costs of) transcript for all trials. Except in exceptional circumstances, a Trial Judge will not commence sitting unless satisfied that transcript is being prepared.
6. **Subpoenas**
	1. Whenever possible, parties must use the procedure in Order 42A (Form 42AA) to obtain access to subpoenaed material well prior to trial and (if it is to be tendered at trial) include that material in the Court Book. In the absence of exceptional circumstances, the commencement of trial will not be delayed in order to permit inspection of subpoenaed material.
	2. Where a subpoena to give evidence has been issued, the issuing party, as a matter of courtesy, should liaise with the subpoenaed witness in relation to the likely time at which they will be called to give evidence.
7. **Court Books**

The standard orders require the preparation of electronic Court Books, with paper copies to be made available for any witnesses and for the Trial Judge on request.

* 1. The following guidelines apply for the preparation of Court Books:
		1. a single Court Book must be prepared unless prior leave for separate Court Books has been granted. Leave will only be granted in exceptional circumstances;
		2. the Court Book must include all current pleadings and particulars and all documents that any party intends to tender or put to a witness. Inclusion of a document in a Court Book does not constitute a concession by the opposing party that the document is relevant or admissible in evidence. The Trial Judge may refuse leave to tender a document which has not been included in the Court Book;
		3. the Court Book must be divided into two sections. The first section is to contain current pleadings and particulars. The second section is to contain all documents to be put to a witness or tendered at trial, sorted in chronological order;
		4. the Court Book must be saved in a single pdf file. Each page must be clearly numbered, commencing on the first page. DO NOT restart the numbering for each section; and
		5. the Court Book index must be saved in a separate pdf file. The Court Book index must be separately paginated. DO NOT include the Court Book index in the pagination for the Court Book.
	2. Generally, the plaintiff is required to provide a hard copy of the Court Book for the witnesses. In addition, the plaintiff must be able to provide the Trial Judge with a hard copy of the Court Book upon request at short notice.
	3. In appropriate circumstances, leave may be given for a completely “paperless” trial, including the use of an electronic Court Book for witnesses. A completely paperless trial will only be offered:
		1. where both parties have access to appropriate expertise and equipment;
		2. where leave has been sought well in advance of the trial date in order to enable protocols to be agreed and the necessary equipment set up for witnesses to taken to the electronic Court Book; and
		3. where it is proportionate to do so (for example, where the Court Book is very voluminous).
	4. Parties are encouraged to agree on the tender of non-contentious documents in the Court Book wherever possible.
1. **Trial running sheets, agreed chronology and summary of key issues in dispute**
	1. The standard directions orders require a chronology identifying agreed and disputed facts and documents (with Court Book references); a summary of the key issues in the case; and a trial running sheet to be filed with the Court at least 2 business days before trial. Preparation of these documents must commence well in advance of the date that they are due. These documents must be prepared or settled by any Counsel briefed for trial.
	2. The trial running sheet must provide a reasonable pre-estimate of running times. If the trial running sheet is not complied with or proves to be inaccurate, the trial may be adjourned part heard or vacated.
2. **Allocation of trials**
	1. Every effort is made to ensure that cases in the Commercial Division are listed before a Judge with commercial experience.
	2. The Commercial Division Manager, in consultation with the Head of the Division, is responsible for allocating the trials listed in the Commercial Division to a specific Commercial Judge in the week prior to trial.
	3. The Commercial Registry contacts parties approximately two weeks prior to the trial date with any relevant enquiries on behalf of the Court. Parties must respond promptly to any such enquiry.
	4. In the event that a Judge is not immediately available to hear a listed trial, it will be placed on the reserve list before a Judicial Registrar. The Judicial Registrar may:
		1. upon a Judge becoming available, refer the trial for hearing by that Judge;
		2. in appropriate cases, obtain an order from the Head of the Commercial Division that the trial be heard by a Judicial Registrar;
		3. refer the proceeding to a Judicial Resolution Conference; or
		4. in the unusual circumstance that the proceeding is not able to be resolved in any other manner and the proceeding is “not reached”, transfer the proceeding to the Expedited Cases List (without payment of a fee) and list it before a specific Commercial Judge with priority.
3. **Requirements of Trial Judge**
	1. Shortly prior to trial an Associate to the Trial Judge may contact the parties’ representatives specifying further requirements of the Judge such as outlines, authorities or a hard copy of the Court Book.
	2. Save in exceptional circumstances, the Trial Judge will refuse to sit unless:
		1. confirmation that transcript has been arranged has been provided; and
		2. all outstanding Court fees have been paid.
4. **Course of trial**
	1. The procedure applied at trial will be adapted to the particular proceeding and the individual approach of the Trial Judge. However, unless otherwise directed, parties can expect the following general procedure to be followed:
		1. Brief oral openings by each party identifying key issues in dispute and documents (written submissions must not be repeated in oral submissions).
		2. Factual witnesses called by plaintiff(s).
		3. Factual witnesses called by defendant(s).
		4. Expert evidence, which may be given concurrently by topic.
		5. Written closing submissions, supplemented by oral submissions where appropriate.

SELF-REPRESENTED LITIGANTS (SRL)

1. **Self-Represented Litigants – Special Procedures**

Where a proceeding includes a Self-Represented Litigants (SRL, otherwise known as a Litigant in Person), the following special procedures apply:

- SRL Case Managers are available to provide information and assistance

- Documents may be filed over the Counter or by email

- A proceeding may be placed in the “SRL Program”

- A Judicial Resolution Conference may be offered

More information for Litigants in Person is available on the County Court [website](https://www.countycourt.vic.gov.au/going-court/self-represented-litigants).

* 1. The Court recognises the difficulties which may be faced by litigants who are not represented by lawyers (“**Self-Represented Litigants**” or “**SRLs**”) in navigating the Court system. The Court is conscious of the need to ensure access to justice for SRLs and where appropriate, to adapt the procedures adopted in order to facilitate that access to justice. The Court is also conscious of the need to deal with proceedings involving a SRL in a fair and impartial manner, and the extra costs and delay which represented parties may face when dealing with a SRL.
1. **SRL Case Managers**
	1. The Court has dedicated “SRL Case Managers” who can provide information and assistance with Court Procedures to help you understand what you need to do at each stage of the case. The SRL Case Managers cannot provide legal advice. The SRL Case Managers may be able to provide SRLs with a list of possible sources of pro bono (free) legal advice. However, unfortunately pro bono legal advice is only available in very limited circumstances.
	2. The SRL Case Managers can be contacted by email on SRL@countycourt.vic.gov.au and phone on 8636 6528.
	3. It is not necessary for an SRL to copy communications with the SRL Case Managers in to the other parties to the proceeding. Communications with the SRL Case Managers will not be placed on the Court file. However, they are not considered to be confidential or privileged from disclosure and may in some circumstances be required to be disclosed.
2. **Filing documents**
	1. SRLs cannot currently e-file documents using the Court’s authorised provider, CITEC. SRLs may file documents:
		1. Over the Counter: SRLs may file documents over the counter at the Registry front desk located on the Ground Floor of the County Court, 250 William St, Melbourne, between the hours of 9am and 4pm.
		2. By email to the SRL Case Managers: Where attending Court to file a document over the counter is difficult or inconvenient, an email should be sent to the SRL Case Managers, attaching the document and requesting them to assist in arranging the document to be filed. The SRL Case Manager will then confirm by return email if the document has been accepted for filing. Any document filed in this manner must still be served on the other parties to the proceeding.
3. **SRL Program**
	1. An “SRL Program” has been established to facilitate the active case management of proceedings involving an SRL. Any proceeding in which a party is an SRL may be entered into the SRL Program, if the proceeding would benefit from active case management. The Court may enter a proceeding into the SRL Program:
		1. upon the recommendation of the SRL Case Managers;
		2. upon the application of any party; or
		3. of its own motion, having reviewed the Court file.
	2. Once a proceeding has been entered into the SRL Program:
		1. it will be assigned to a single Judicial Registrar for ongoing case management;
		2. it will ordinarily be listed for a directions hearing at which appropriate directions can be given for the conduct of the proceeding. Whilst this directions hearing may be vacated by consent, it is recommended that this only be done when all parties are confident that the SRL sufficiently understands the steps necessary to bring the proceeding to trial;
		3. any requests for a directions hearing, requests for consent orders or other correspondence with the Court may be sent to the Associates to the Commercial Judicial Registrars, copied to all parties;
		4. a Judicial Resolution Conference (see below) may be offered in appropriate cases instead of a private mediation; and
		5. a pre-trial directions hearing will ordinarily be listed two to six weeks prior to trial to ensure interlocutory steps have been completed and that the proceeding is ready for trial.

EXPEDITED CASES LIST – SPECIAL PROCEDURES

1. **Overview**

**What is the Expedited Cases List?**

The Expedited Cases List is a special service offered by the Commercial Division which provides appropriate cases with more intensive case management, faster turnaround of interlocutory correspondence and earlier trial dates.

* 1. The Expedited Cases List has the following key differences to the other lists of the Commercial Division:
		1. parties may email the Associates to the Commercial Judicial Registrars (CommercialJR.Chambers@countycourt.vic.gov.au) directly with any request for consent orders or for directions hearings, or any other correspondence. Correspondence with the Associates to the Commercial Judicial Registrars is typically responded to in less than 2 business days.
		2. trial dates are typically available within 4 months of the first directions hearing. Even faster trial dates may be available where good reason exists for a speedy resolution of the dispute;
		3. cases in the Expedited Cases List are listed for an initial directions hearing to obtain directions to trial, rather than an administrative mention. This directions hearing may be vacated on the papers if appropriate consent minutes are submitted (by email to the Associates to the Commercial Judicial Registrars); and
		4. each case in the Expedited Cases List is allocated to a single Judicial Registrar, who, where possible, will be responsible for ongoing case management to trial.
	2. Parties should consider entering, or applying to enter, a proceeding into the Expedited Cases List where:
		1. there are circumstances particular to the proceeding or the parties to the proceeding requiring a speedy resolution of the dispute;
		2. the proceeding is a business dispute and all parties have the resources and commitment necessary to adequately prepare for a speedy but fair resolution of the dispute; or
		3. the proceeding requires ongoing active case management by a single judicial officer.
	3. There are three methods of entry into the Expedited Cases List:
		1. the plaintiff(s) may select the Expedited Cases List upon filing the writ. There may be an additional filing fee payable for entry into the Expedited Cases List;
		2. any party may apply by email to the Commercial Registry for the proceeding to be transferred into the Expedited Cases List. The applicant will pay any fee payable for entry into the Expedited Cases List; or
		3. a Judge or Judicial Registrar may transfer a case into the Expedited Cases List of their own motion where it is considered that the case requires more intensive case management or an expedited hearing date (no extra fee payable).
	4. The Court may order that a proceeding be removed from the Expedited Cases List if it considers that the proceeding, or the manner in which it is being conducted, is not appropriate for the List. Any fee for entry into the Expedited Cases List will not be refunded if a proceeding is removed from the List.

BUILDING CASES LIST – SPECIAL PROCEDURES

1. **Overview**
	1. The Building Cases List aims to resolve disputes in a speedy, efficient, just and cost-effective manner through procedures which are intended to meet the aim of determining proceedings by settlement, mediation or judgment within 12 months of initiation.
	2. Building cases are inherently complex, often involving:
		1. significant technical issues that require expert evidence from more than one discipline,
		2. numerous parties and multiple claims,
		3. cross claims and notices of contribution and indemnity,
		4. apportionment between concurrent wrongdoers pursuant to the *Wrongs Act 1958* (Vic).
	3. The resolution of these disputes generally involves more substantial interlocutory processes and longer trial durations than most other Commercial Division disputes. Therefore, these cases may be subject to intensive case management by the Judicial Registrars of the Commercial Division leading up to the trial.
	4. Building Cases are managed tightly. The list offers “up front” trials within 6 months of initiation. This has an immediate effect of focusing all parties to the task at hand, and at the same time, reduces the time available for interlocutory disputes. The Building List strives to ensure that disputes are resolved justly, speedily and as cost efficiently as possible.
	5. This is achieved by:
		1. Listing trial dates early – 6 months from initiation for under 10 day trials, 9 months for longer trials;
		2. Ensuring trial certainty – in 2017-2018 no building case trials were “not reached”;
		3. Managing expert witnesses – standard orders provide that experts meet before trial and prepare a joint report for the Court, setting out common ground and providing reasons for any areas of dispute. At trial, experts give evidence concurrently.
		4. Making use of directions hearings – the Judicial Registrars hear the Building Cases List. Where possible, interlocutory steps are conducted “on the papers” and by consent. Practitioners are required to file a running sheet prior to trial with each Counsel’s best estimate of duration.
	6. All proceedings must be mediated. Practitioners should consider the appropriateness of the appointment of a special referee to determine technical issues and judicial resolution conferences. Where there are two or more defendants to a claim or counterclaim, within three days prior to the date fixed for the mediation, practitioners for those defendants shall attend a conference (“the pre-mediation conference”) for the purpose of addressing the issue of the contribution of their respective clients towards resolution of the plaintiff’s claim. There is no requirement for the pre-mediation conference to be conducted by a mediator or facilitator. An insurer for any of the defendants shall be present at the pre-mediation conference or available to confer by telephone. The purpose of the pre-mediation conference is to ensure time is not wasted at the mediation while the defendants confer as to contribution.
2. **Mandatory Stay Applications**
	1. The question for determination on an application by a party made under section 57(4) of the *Domestic Building Contracts Act 1995* (Vic) is whether the dispute currently before the Court is a “*domestic building dispute*” within the meaning of section 54 of the *Domestic Building Contracts Act*. If the dispute is a “*domestic building dispute*”, then by section 57(2) of the Act if the action could be heard by the Victorian Civil and Administrative Tribunal (**VCAT**), and the Court has not heard any oral evidence concerning the dispute itself, the proceeding must be stayed and the dispute can only be litigated in VCAT.
	2. An example of the standard Court orders for a disputed stay application is set out below:
		1. The proceeding be stayed pursuant to section 57(2) of the *Domestic Building Contracts Act 1995* (Vic).
		2. The Plaintiff pay the Defendant’s costs of and incidental to the application for stay of the proceedings under section 57(2) of the *Domestic Building Contracts Act 1995* (Vic) on a standard basis, to be taxed in default of agreement.
		3. Costs of the proceeding be reserved for determination by the Victorian Civil and Administrative Tribunal (**VCAT**) upon hearing of any proceeding issued by the Plaintiff, further or alternatively by the Defendant, in relation to the dispute in this proceeding, or, if no such proceeding is issued within a reasonable period, upon application to the County Court.
		4. In the event that VCAT is unable to, or refuses to, determine the costs of the proceeding in the County Court, the County Court will determine those costs on application.
	3. Standard orders where the stay is made by consent are as follows:
		1. The proceeding be stayed pursuant to section 57(2) of the *Domestic Building Contracts Act 1995* (Vic).
		2. Costs of the proceeding be reserved for determination by the Victorian Civil and Administrative Tribunal (**VCAT**) upon hearing of any proceeding issued by the Plaintiff, further or alternatively by the Defendant, in relation to the dispute in this proceeding, or, if no such proceeding is issued within a reasonable period, upon application to the County Court.
		3. In the event that VCAT is unable to, or refuses to, determine the costs of the proceeding in the County Court, the County Court will determine those costs on application.
3. **Applications pursuant to the *Building and Construction (Security of Payment) Act***

**Summary judgment applications**

* 1. The *Building and Construction Industry (Security of Payment) Act 2002* (Vic) (**SOP Act**) is designed to reduce payment delays for subcontractors by providing a procedure for the speedy recovery of progress payments. The benefits of falling within the scope of the legislation are significant, and disputes concerning its appropriate interpretation and application frequently arise.
	2. The optimal method for bringing applications under the SOP Act is by summons on originating motion and supported by affidavit, and not by application for summary judgment (*3D Flow Solutions Pty Ltd v Armstrong Creek Pty Ltd* [2018] VCC 674 at [41]-[46]).
	3. Applications made under the SOP Act for judgment are made returnable to the Commercial Division Duty Judge in the first instance. Depending on the work load of the Court, such applications may be referred to a Judicial Registrar or a Judge of the Division.
	4. Most of the applications are disposed of within weeks of their initiation. With disputed application for judgment, written reasons are usually provided.

**Section 28R Judgment on Adjudication Certificates**

* 1. Application for judgment pursuant to section 28R is by Originating Motion ex parte – Form 5D – supported by affidavit/s as required by section 29R(2) exhibiting the original adjudication certificate, specifying the amount, date and method of any payment/s made, or, if no payments have been made, stating that fact and stating that no review application has been made or any review application has been completed (as applicable).
	2. Section 28R judgments are ordinarily made by the Judicial Registrars of the Commercial Division of the County Court on the papers. In special circumstances, an appearance may be required.
	3. The standard orders for the entry of judgment are as follows:
		1. Judgment for the Plaintiff against the Defendant that the Defendant must pay the Plaintiff the following amounts:
			1. Adjudicated amount: $
			2. Fees: $
			3. Interest from [date] to [date]: $
			4. Further interest from [date] to [date of judgment]: $
			5. TOTAL: $
		2. The Defendant must pay the Plaintiff’s costs of the proceeding fixed in the amount of $2,000.00.

LONG CASES

1. **Special Procedures**
	1. Any trial with an estimate of 10 days or more is considered to be a “long case”.
	2. Trial dates for long cases are typically available within 10 months of first administrative mention. Long cases are generally allocated to a Judge who will set aside the necessary time for the listed trial. The parties must actively consider the accuracy of the listed estimate and notify the Court as soon as possible if that estimate is inaccurate or if the parties are unlikely to be ready for trial on the listed date.
	3. All long cases are listed for a pre-trial directions hearing approximately one week prior to trial at which the parties will be required to demonstrate that the proceeding will be ready for trial.

CIRCUIT TRIALS – SPECIAL PROCEDURES

1. **Introduction**
	1. The Court recognises that the services offered to litigants in the Commercial Division’s specialist divisions may not presently be fully available for cases issued in circuit court registries, rather than in the Melbourne Registry.
	2. In light of this, the Commercial Division, so far as its limited judicial resources permit, offers flexible arrangements in relation to circuit matters to ensure that litigants issuing in those courts are not disadvantaged.
	3. All interlocutory applications must be made in accordance with the procedures set out in this Practice Note.
	4. If an application cannot be resolved by an order made “on the papers”, and a hearing is required, the hearing may be conducted:
		1. in Melbourne, with the parties appearing at a date and time fixed by the Commercial Registry;
		2. in Melbourne, with the parties appearing via video link from the circuit court at a date and time to be fixed by the Commercial Registry or, in special circumstances, by telephone, provided the hook-up is previously arranged with the associate to the Commercial Division Duty Judge or Judicial Registrar and the circuit court;
		3. at the circuit court, by a Judge conducting a scheduled civil circuit at the court where the Judge, through the associate, has indicated a preparedness to hear the application and has fixed a date and time for the hearing; or
		4. at the circuit court by way of special hearing, if the application cannot be heard by the circuit Judge and the matters in dispute justify a Judge travelling to the circuit court to hear the application (see below).
	5. Any application for a special hearing must be made to the Associate to the Head of the Commercial Division. The application must be made by email and must be copied to all other parties. The application must state:
		1. the name and proceeding number of the proceeding;
		2. the proposed application;
		3. the estimated time for the hearing of the application; and
		4. the attitude of all other parties to the application and to the hearing of the application at a special hearing.
	6. Examples of applications which may justify a special interlocutory hearing include:
		1. a summary judgment or similar application, if such application would determine the proceeding;
		2. a judicial resolution conference where mediation is not appropriate; and
		3. a directions hearing where the proceeding requires significant judicial intervention to ensure that the matter can proceed expeditiously to trial.
2. **Fixing trial dates**
	1. At present, the overwhelming majority of civil cases requiring to be tried before a Judge at a circuit court are cases in the Common Law Division.
	2. Litigants and practitioners in Commercial Division cases can continue to have their cases fixed for hearing at the next appropriate circuit sitting. The timing of the trial will generally be determined by the parties’ estimate of when the case will be ready for trial and the number of earlier issued civil cases awaiting trial.
	3. Cases will generally be called over by the Judge who will be conducting the circuit sitting, and any Commercial Division case will be fixed at a time considered by the Judge to be appropriate having regard to the other matters in the list ready to be tried.
	4. Alternatively, litigants or practitioners may seek a special trial listing as follows:
		1. by transferring the case for hearing in Melbourne, in which case the trial will be fixed by a Judicial Registrar. If the transfer is opposed, the application to have the trial fixed in Melbourne would be heard by a Judicial Registrar as an interlocutory application. The applicant would ordinarily need to show that justice for all parties would be better served by the trial being conducted in Melbourne; or
		2. by a special fixture at the circuit court, or a circuit court in the vicinity (see paragraph 3.1).
	5. Any application for a special trial fixture must be made to the Associate to the Head of the Commercial Division. The application must be made by email and must be copied to all other parties. The application must state:
		1. the identification of the proceeding;
		2. the date the proceeding was commenced;
		3. a brief summary of the issues in dispute including the claim, defence and counterclaim and any third party proceeding;
		4. the estimate of the length of the trial;
		5. the suggested circuit court at which the trial might be conducted;
		6. the proposed range of dates when the parties wish to conduct the trial and whether a courtroom is available; and
		7. the attitude of all other parties to the application for a special trial fixture.