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| COMMERCIAL DIVISION |
| **Orders Booklet 2020** |

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# Standard timetabling order – general list

THE COURT ORDERS THAT:

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

OR

The trial listed on \_\_\_\_\_\_\_\_\_\_ is vacated and the proceeding is refixed for trial on as a cause before a Judge sitting alone (estimate \_-\_ days).

1. By [date] at 4.00pm, the defendant is to file and serve a defence and any counterclaim.
2. By [date] at 4.00pm, the plaintiff is to file and serve any reply and defence to counterclaim.
3. By [date] at 4.00pm, the parties must deliver any request for further and better particulars of a pleading. Any request must be answered within 30 days.
4. By [date] at 4.00pm, 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.
5. By [date] at 4.00pm, 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.
6. By [date], the parties must have completed the mediation of the dispute. The parties must notify the Court if the action settles.
7. By [date], each party must have issued any subpoenas under Order 42A.
8. The parties shall cooperate in completing the interlocutory processes so that the action is brought to trial as quickly as is reasonably practicable.
9. All other interlocutory processes will be conducted in accordance with the Rules of Court.
10. The plaintiff is to pay the setting down for trial fee on or before [9 weeks prior to trial date]. In default, any party may pay the fee within a further 21 days. If the fee is not paid the trial date will be vacated.

OR

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

1. 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.
2. By [3 weeks prior to trial] at 4.00pm, the plaintiff must serve a proposed court book index on the defendant.
3. By [2 weeks prior to trial] at 4.00pm, the defendant must respond with any requested additions to the court book.
4. The court book must comply with the Commercial Division Guidelines which are available on the court website (<https://www.countycourt.vic.gov.au/files/documents/2019-02/commercial-division-court-book-guidelines.pdf>)
5. By [1 week prior to trial] at 4.00pm, the plaintiff must file by email to the Commercial Division Registry and serve an electronic pdf copy of the court book and a separate electronic pdf copy of the court book index be filed on CITEC. 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.
6. [Only if trials are 10 days or longer] On [1 week before trial] at 10.30am, the proceeding is listed for a pre-trial directions hearing before a Judicial Registrar.
7. By [5 days prior to trial date], the plaintiff is to pay the first day hearing fee.

OR

The first day hearing fee has been paid in this proceeding

1. By [2 business days before trial] at 4.00pm, the parties must cooperate to prepare the following documents, in consultation with trial counsel (if any), and file them with the Court:
   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 setting out:

i. time in opening submissions of each party;

ii. the name of each witness in the order in which they will likely be called, with an estimate for examination-in-chief, cross-examination and re-examination for each witness;

iii. the expertise of any expert witness;

iv. time in closing submissions of each party;

v. the impact of any special requests (for example, interpreters, videolinks, applications for evidence to be heard concurrently).

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

# Standard timetabling order – banking and finance list

THE COURT ORDERS THAT:

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

OR

The trial listed on \_\_\_\_\_\_\_\_\_\_ is vacated and the proceeding is refixed for trial on as a cause before a Judge sitting alone (estimate \_-\_ days).

1. By [date] at 4.00pm, the defendant is to file and serve a defence and any counterclaim.
2. By [date] at 4.00pm, the plaintiff is to file and serve any reply and defence to counterclaim.
3. By [date] at 4.00pm, the parties must deliver any request for further and better particulars of a pleading. Any request must be answered within 30 days.
4. By [date] at 4.00pm, 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.
5. By [date] at 4.00pm, 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.
6. By [date], the parties must have completed the mediation of the dispute. The parties must notify the Court if the action settles.
7. By [date], each party must have issued any subpoenas under Order 42A.
8. The parties shall cooperate in completing the interlocutory processes so that the action is brought to trial as quickly as is reasonably practicable.
9. All other interlocutory processes will be conducted in accordance with the Rules of Court.
10. The plaintiff is to pay the setting down for trial fee on or before [9 weeks prior to trial date]. In default, any party may pay the fee within a further 21 days. If the fee is not paid the trial date will be vacated.

OR

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

1. 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.
2. By [3 weeks prior to trial] at 4.00pm, the plaintiff must serve a proposed court book index on the defendant.
3. By [2 weeks prior to trial] at 4.00pm, the defendant must respond with any requested additions to the court book.
4. The court book must comply with the Commercial Division Guidelines which are available on the court website (<https://www.countycourt.vic.gov.au/files/documents/2019-02/commercial-division-court-book-guidelines.pdf>)
5. By [1 week prior to trial] at 4.00pm, the plaintiff must file by email to the Commercial Division Registry and serve an electronic pdf copy of the court book and a separate electronic pdf copy of the court book index be filed on CITEC. 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.
6. [Only if trials are 10 days or longer] On [1 week before trial] at 10.30am, the proceeding is listed for a pre-trial directions hearing before a Judicial Registrar.
7. By [5 days prior to trial date], the plaintiff is to pay the first day hearing fee.

OR

The first day hearing fee has been paid in this proceeding

1. By [2 business days before trial] at 4.00pm, the parties must cooperate to prepare the following documents, in consultation with trial counsel (if any), and file them with the Court:
   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 setting out:

i. time in opening submissions of each party;

ii. the name of each witness in the order in which they will likely be called, with an estimate for examination-in-chief, cross-examination and re-examination for each witness;

iii. the expertise of any expert witness;

iv. time in closing submissions of each party;

v. the impact of any special requests (for example, interpreters, videolinks, applications for evidence to be heard concurrently).

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

# Standard timetabling order – building cases list

THE COURT ORDERS THAT:

1. The proceeding is set down for trial on [DATE] as a cause before a Judge sitting alone (estimate [DAYS] sitting days).

OR

1. The trial listed for [DATE]is vacated and the proceeding is refixed for trial on [DATE]as a cause before a Judge sitting alone (estimate [DAYS]sittingdays).
2. By [DATE] at 4.00pm, the defendant is to file and serve a defence and any counterclaim.
3. By [DATE] at 4.00pm, the plaintiff is to file and serve any reply and defence to counterclaim.
4. By [DATE] at 4.00pm, the parties must deliver any request for further and better particulars of a pleading. Any request must be answered within 30 days.
5. By [DATE] at 4.00pm, 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.
6. [ADR – see Schedule C].
7. [Expert evidence – see Schedules D and E].
8. By [DATE], each party must have issued any subpoenas under Order 42A.
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. All other interlocutory processes will be conducted in accordance with the Rules of Court.
11. The plaintiff is to pay the setting down for trial fee on or before [9 WEEKS PRIOR TO TRIAL DATE]. In default, any party may pay the fee within a further 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. By [4 WEEKS BEFORE TRIAL] at 4.00pm, the plaintiff must serve a proposed Court Book Index on the defendant.
3. By [3 WEEKS BEFORE TRIAL] at 4.00pm, the defendant must respond with any requested additions to the Court Book.
4. The Court Book must comply with the Commercial Division Guidelines which are available on the court website (<https://www.countycourt.vic.gov.au/files/documents/2019-02/commercial-division-court-book-guidelines.pdf>).
5. By [2 WEEKS BEFORE TRIAL] at 4.00pm, the plaintiff must file by email to the Associates to the JIC and serve an electronic pdf copy of the Court Book and a separate electronic pdf copy of the Court Book Index be filed through CITEC. The plaintiff is required to have one hard copy of the Court Book and Court Book Index available for use by any witness.
6. [Witness Statements or Witness Outlines [1 WEEK BEFORE TRIAL] – see Schedule F].
7. The proceeding is listed for a pre-trial directions hearing on [1 WEEK BEFORE TRIAL] at 9:30am before the Judge in Charge of the Building Cases List (“JIC”).
8. The plaintiff is to pay the first day hearing fee on or before [5 DAYS PRIOR TO TRIAL DATE].

OR

1. The first day hearing fee has been paid in this proceeding.
2. By [2 BUSINESS DAYS PRIOR TO TRIAL] at 4.00pm, the parties must cooperate to prepare the following documents, in consultation with trial counsel (if any), and file them by email with the Associates to the JIC:
   1. a chronology identifying agreed and disputed facts and documents, with Court Book references;
   2. a summary of the key issues of fact and law in the case; and
   3. a trial running sheet setting out:
      1. time in opening submissions of each party;
      2. the name of each witness in the order in which they will likely be called, with an estimate for examination-in-chief, cross-examination and re-examination for each witness;
      3. the expertise of any expert witness;
      4. time in closing submissions of each party;
      5. the impact of any special requests (for example, interpreters, videolinks, applications for evidence to be heard concurrently).
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. Reserve liberty to the parties to apply by email to the Associates to the JIC (bcl@countycourt.vic.gov.au) for further directions upon giving reasonable notice to all other parties.
5. Reserve costs.

**Schedule B: Mediation, Early Neutral Evaluation and JRC**

**Mediation**

1. By [DATE] at 4.00pm, the parties must have participated in a mediation of the proceeding.
2. Unless otherwise ordered, the costs of the mediator and of the mediation venue will in the first instance be shared equally between the parties.
3. The mediator must be a legal practitioner with experience in building disputes appointed by agreement between the parties, or failing agreement, appointed by the JIC. If co-mediators are appointed, at least one of the mediators must be such a legal practitioner.
4. The plaintiff must provide to the mediator or mediators as soon as practicable after appointment, a copy of this order and the current pleadings and particulars in the proceeding.
5. By [NO LESS THAN 2 WEEKS BEFORE THE MEDIATION] at 4.00pm, the parties must have participated in a pre-mediation conference with the mediator for the purposes of (to the extent these matters have not already been agreed):
   1. discussing and (if possible) agreeing a summary of the issues to be resolved at mediation;
   2. identifying if there are any potential impediments to a resolution of the proceeding at mediation (for example, incomplete discovery, the need for valuations or other expert reports, the need for up-to-date financial information, the potential unavailability of a decision maker, the possible need for approval for settlement over a particular sum from a board of directors, re-insurer or other body or third party who will not be present at the mediation);
   3. agreeing what additional documents should be provided to the mediator to assist the mediator in facilitating a resolution of the proceeding (for example, affidavits filed in the proceeding, key contractual documents and expert reports);
   4. identifying the names and positions of each person who will be present at the mediation;
   5. agreeing on the form of the mediation agreement to be executed by the parties in advance of the mediation;
   6. confirming the venue and time for the mediation; and
   7. confirming that the parties will participate in the mediation in good faith and will engage in genuine negotiations aimed at settling the proceeding, including by making reasonable offers or proposals for settlement and giving due consideration to any such offers or proposals made by another party or by the mediator.
6. The pre-mediation conference must be attended by the legal practitioners for the parties with primary responsibility for the conduct of the proceeding (including trial counsel, if retained) and may be attended by other representatives of the parties as agreed in advance of the pre-mediation conference.
7. While it is desirable that the pre-mediation conference by held in person, the mediator and the parties may agree to hold the pre-mediation conference by telephone.
8. By [NO LESS THAN 1 WEEK BEFORE THE MEDIATION] at 4.00pm, the plaintiff must provide to the mediator:
   1. the settled summary of issues to be resolved at mediation; and
   2. any other documents which will assist the mediator in facilitating a resolution of the proceeding as agreed by the parties at the pre-mediation conference.
9. By [NO LESS THAN 2 BUSINESS DAYS BEFORE THE MEDIATION] at 4.00pm, the parties will exchange Position Papers headed, “Confidential and Without Prejudice – For the Purposes of Mediation Only”, setting out their respective positions on the settled summary of issues and any other matters that may assist the discussion at the mediation, including their arguments on the legal principles relevant to the dispute.
10. Subject to the next order, the mediation must be attended in person by the people who have the ultimate responsibility and authority for deciding whether to settle the dispute and relevant legal practitioners, being (where applicable):
    1. 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;
    2. the legal practitioners for the parties with primary responsibility for the conduct of the proceeding and advising the parties in relation to the proceeding and its settlement (including trial counsel, if retained); and
    3. any other person who is likely to be required to approve the settlement (such as insurers or litigation funders).
11. If attendance in person by any person referred to in the previous order is impracticable, the parties and mediator may agree that the person may attend or be available by telephone, audio-visual link or otherwise as may be agreed or, failing agreement, as the JIC directs. Otherwise, failure to comply with the above order may lead to adverse costs orders being made against the defaulting party.
12. At the commencement of the mediation, the mediator must ask those present in person or by telephone or audio-visual link, to indicate their agreement to participate in the mediation in good faith and engage in genuine negotiations aimed at settling the proceeding, including by making reasonable offers or proposals for settlement and giving due consideration to any such offers or proposals made by another party or by the mediator.
13. The Position Papers and anything said or done by any person in the course of the mediation are confidential and without prejudice and no evidence shall be admitted at the hearing of any proceeding concerning these matters, unless the Court otherwise orders having regard to the interests of justice and fairness.
14. 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 email it to the Associates to the JIC at ([bcl@countycourt.vic.gov.au](mailto:bcl@countycourt.vic.gov.au)).

**Early Neutral Evaluation**

1. The proceeding is fixed for an early neutral evaluation (“ENE”) hearing by [the Judge in Charge of the Building Cases List (“JIC”)] at [TIME] on [DATE] on and estimate of [HOURS] hours.
2. All documents required to be provided to the Court under this order must be sent by email to the Associates to the JIC at [bcl@countycourt.vic.gov.au](mailto:bcl@countycourt.vic.gov.au).
3. By [7 BUSINESS DAYS BEFORE THE ENE] at 4.00pm, the parties in consultation with trial counsel (if any), must cooperate to prepare and send to the Associates to the JIC the ENE Book of Documents comprising a single paginated pdf file containing (in the order indicated):
   1. a statement of the factual and legal issues in dispute in the proceeding;
   2. a chronology identifying agreed and disputed facts and documents, with page references if possible;
   3. the statement of the factual and legal issues in dispute in the proceeding; and
   4. in chronological order, the key documents (including any expert reports) that the parties expect to rely on for the purposes of the ENE.
4. By [5 BUSINESS DAYS BEFORE THE ENE] at 4.00pm, the plaintiff must provide to the Associates to the JIC and serve, a written outline of evidence and argument on facts and law, prepared by reference to the statement of factual and legal issues, with page references to the ENE Book of Documents, together with a pdf copy of each authority referred to in the outline or which the party otherwise expects to refer to in the course of the ENE hearing.
5. By [3 BUSINESS DAYS BEFORE THE ENE] at 4.00pm, the defendant must provide to the Associates to the JIC and serve, a written outline of evidence and argument on facts and law in reply, prepared by reference to the statement of factual and legal issues, with page references to the ENE Book of Documents, together with a pdf copy of each authority referred to in the outline or which the party otherwise expects to refer to in the course of the ENE hearing, that has not been provided already by the plaintiff.
6. The written outlines of evidence and argument on facts and law referred to above must be limited to 15 A4 pages, including footnotes, endnotes, annexures or schedules, with 1.5 spacing and no less than 11pt font for the body of the document and 8pt font for footnotes.
7. The pdf copies of each authority referred to above should have as its file name, the full medium neutral or other citation (omitting any characters which are invalid for file names).
8. The ENE hearing should be attended by:
   1. 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; and
   2. the legal practitioners for the parties with primary responsibility for the conduct of the proceeding and advising the parties in relation to the proceeding and its settlement.
9. At the ENE hearing:
   1. the parties should assume (unless informed otherwise) that the JIC has read the statement of the factual and legal issues in dispute in the proceeding, the chronology identifying agreed and disputed facts and documents, the current pleadings and particulars and the outlines of evidence and argument on facts and law and is generally familiar with the key documents in the ENE Book of Documents;
   2. proceedings will be more informal than a trial, and may involve the JIC asking questions and testing submissions of the legal practitioners involved, inviting parties or others present on behalf of a party to answer questions of contribute directly to the discussion of issues and encouraging those present to speak more frankly than might be appropriate for a trial;
   3. subject to b. above, the ENE hearing will commence with submissions on behalf of the plaintiff, followed by submissions on behalf of the defendant and conclude with brief reply submissions on behalf of the plaintiff, with times allowed for such submissions allocated at the commencement of the ENE;
   4. the JIC is not bound by the rules of evidence; and
   5. proceedings will not be recorded or transcribed.
10. The JIC will provide the JIC’s decision at the conclusion of, or as soon as practicable after, the ENE hearing. The JIC’s decision will be in writing and may (in the JIC’s discretion) include brief reasons.
11. [Subject to the orders below] The written outlines of evidence and argument on facts and law, the JIC’s decision and anything said or done by any person in the course of the ENE hearing are confidential and without prejudice and no evidence shall be admitted at the hearing of any proceeding concerning these matters, unless the Court otherwise orders having regard to the interests of justice and fairness.
12. The parties must notify the JIC within 14 days of the JIC’s decision whether the proceeding has been resolved and (in any case) what orders are sought for the disposal or continuation of the proceeding (as the case may be).

[ALTERNATIVE APPROACH – noting that the same outcome as contemplated by the orders below may be achieved by a party serving and offer of compromise or *Calderbank* offer in the terms of the JIC’s decision]

1. [A party who is dissatisfied with the JIC’s decision may elect to have the proceeding go to trial by serving and providing to the JIC within 14 days of the date of delivery of the JIC’s decision a notice in writing rejecting the JIC’s decision (“Rejection Notice”).]
2. [If no Rejection Notice is given in accordance with these orders, the JIC’s decision will bind the parties and will thereafter operate as a judgment and order of this Court.]
3. [If a Rejection Notice is given in accordance with these orders, that decision has no effect other than as provided by these orders and the proceeding must be decided by the Court as if it had never been referred for ENE.]
4. [Unless having regard to the interests of justice and fairness the Court order otherwise, if the Court’s decision in the proceeding is not more favourable overall to the party that gave the Rejection Notice than the JIC’s decision, the costs of the proceeding and the ENE must be awarded against that party.]

**OR Judicial Resolution Conference**

1. The proceeding is listed for a Judicial Resolution Conference (“JRC”) before a Commercial Judicial Registrar [Judge in Charge of the Building Cases List/other Judge] at 10:30am on [DATE].
2. By [NO LESS THAN 4 BUSINESS DAYS BEFORE THE JRC] at 4.00pm, the parties must cooperate to prepare and send to by email to the [JUDICIAL OFFICER CONDUCTING THE JRC] at [##]@countycourt.vic.gov.au]:
   1. a summary of issues to be resolved at the JRC; and
   2. any other documents (not being the pleadings) which will assist the judicial officer conducting the JRC in facilitating a resolution of the proceeding.
3. By [NO LESS THAN 2 BUSINESS DAYS BEFORE THE JRC] at 4.00pm, the parties will exchange and send by email to the [JUDICIAL OFFICER CONDUCTING THE JRC] at [##]@countycourt.vic.gov.au, Position Papers headed, “Confidential and Without Prejudice – For the Purposes of Mediation Only”, setting out their respective positions on the issues in the proceeding any other matters that may assist the discussion at the mediation, including their arguments on the legal principles relevant to the dispute.
4. Subject to the next order, the JRC must be attended in person by the people who have the ultimate responsibility and authority for deciding whether to settle the dispute and relevant legal practitioners, being (where applicable):
   1. 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;
   2. the legal practitioners for the parties with primary responsibility for the conduct of the proceeding and advising the parties in relation to the proceeding and its settlement (including trial counsel, if retained); and
   3. any other person or third party who is likely to be required to approve the settlement (such as insurers or litigation funders).
5. If attendance in person by any person referred to in the previous order is impracticable, the parties may agree that the person may attend or be available by telephone, audio-visual link or otherwise as may be agreed or, failing agreement, as the [JUDICIAL OFFICER CONDUCTING THE JRC] directs. Otherwise, failure to comply with the above order may lead to adverse costs orders being made against the defaulting party.
6. The Position Papers and anything said or done by any person in the course of the JRC are confidential and without prejudice and no evidence shall be admitted at the hearing of any proceeding concerning these matters, unless the Court otherwise orders having regard to the interests of justice and fairness.
7. The parties [are to be provided with and] read the JRC Information Sheet, attached to this order, before the JRC.

# Standard timetabling order – expedited list

THE COURT ORDERS THAT:

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

OR

The trial listed on \_\_\_\_\_\_\_\_\_\_ is vacated and the proceeding is refixed for trial on as a cause before a Judge sitting alone (estimate \_-\_ days).

1. By [date] at 4.00pm, the defendant is to file and serve a defence and any counterclaim.
2. By [date] at 4.00pm, the plaintiff is to file and serve any reply and defence to counterclaim.
3. By [date] at 4.00pm, the parties must deliver any request for further and better particulars of a pleading. Any request must be answered within 30 days.
4. By [date] at 4.00pm, 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.
5. By [date] at 4.00pm, 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.
6. By [date], the parties must have completed the mediation of the dispute. The parties must notify the Court if the action settles.
7. By [date], each party must have issued any subpoenas under Order 42A.
8. The parties shall cooperate in completing the interlocutory processes so that the action is brought to trial as quickly as is reasonably practicable.
9. All other interlocutory processes will be conducted in accordance with the Rules of Court.
10. The plaintiff is to pay the setting down for trial fee on or before [9 weeks prior to trial date]. In default, any party may pay the fee within a further 21 days. If the fee is not paid the trial date will be vacated.

OR

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

1. 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.
2. By [3 weeks prior to trial] at 4.00pm, the plaintiff must serve a proposed court book index on the defendant.
3. By [2 weeks prior to trial] at 4.00pm, the defendant must respond with any requested additions to the court book.
4. The court book must comply with the Commercial Division Guidelines which are available on the court website (<https://www.countycourt.vic.gov.au/files/documents/2019-02/commercial-division-court-book-guidelines.pdf>)
5. By [1 week prior to trial] at 4.00pm, the plaintiff must file by email to the Commercial Division Registry and serve an electronic pdf copy of the court book and a separate electronic pdf copy of the court book index be filed on CITEC. 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.
6. [Only if trials are 10 days or longer] On [1 week before trial] at 10.30am, the proceeding is listed for a pre-trial directions hearing before a Judicial Registrar.
7. By [5 days prior to trial date], the plaintiff is to pay the first day hearing fee.

OR

The first day hearing fee has been paid in this proceeding

1. By [2 business days before trial] at 4.00pm, the parties must cooperate to prepare the following documents, in consultation with trial counsel (if any), and file them with the Court:
   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 setting out:

i. time in opening submissions of each party;

ii. the name of each witness in the order in which they will likely be called, with an estimate for examination-in-chief, cross-examination and re-examination for each witness;

iii. the expertise of any expert witness;

iv. time in closing submissions of each party;

v. the impact of any special requests (for example, interpreters, videolinks, applications for evidence to be heard concurrently).

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) for further directions upon giving reasonable notice to all other parties.
2. Reserve costs.

# Subsequent administrative mention

#### Commercial Division SAM – all but expedited

1. The proceeding is listed for a subsequent administrative mention on [date], 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 struck out 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 SAM

1. The proceeding is listed for a subsequent administrative mention on [date], 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 struck out 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 [date] is adjourned to [date] am on [time].

#### Vacate Directions Hearing

1. The directions hearing listed for [date] is vacated.

#### Adjourn Summons

1. The summons filed [date] and listed for hearing on [date] is adjourned to [time]am on [date] .

#### Vacate Summons

1. The summons filed [date] and listed for hearing on [date] is vacated.

# Extensions of time

#### Extension of time – General

1. The time for the       to       is extended to [date] .

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

* 1. The time for the plaintiff to pay the setting down fee is extended to [date].

#### Extension of time all orders Commercial Division

1. The trial listed for [date] is confirmed.
2. The time for the plaintiff to pay the setting down for trial fee is extended to [date].
3. The time for the defendant to file and serve a defence and any counterclaim is extended to [date]at4.00pm.
4. The time for the parties to deliver any request for further and better particulars of a pleading is extended to [date]at4.00pm.
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 [date]at4.00pm.

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 [date]at4.00pm. 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 [date].
3. The time for each party to have issued any subpoenas under order 42A is extended to [date].
4. The orders of       (or My order) dated [date] are otherwise confirmed.
5. 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.
6. Costs reserved.

# 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 [date] the plaintiff is to file and serve an amended writ and statement of claim, in the form attached to the correspondence dated [date].

#### Substitution of Parties

1. The plaintiff has leave to amend the writ and statement of claim by substituting       [New Party Name] for       [Old Party Name] as       to this proceeding.
2. By       the plaintiff is to file and serve an amended writ and statement of claim, in the form attached to the correspondence dated      .
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      at4.00pm the plaintiff is to file and serve an amended writ and statement of claim, in the form attached to the correspondence dated      ..

#### Joinder of Third Party

1. The       defendant has leave to join       as a third party to this proceeding.
2. By [date]at4.00pm, 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 [date]at4.00pm, any application by       to join       as       to this proceeding is to be made by       to the Judge in Charge of the       Division.

#### Amend the Writ and Statement of Claim

1. By [date]at4.00pm, the plaintiff is to file and serve an amended writ and statement of claim, in the form attached to the correspondence dated [date].

#### Amend the Statement of Claim

1. By [date]at4.00pm, the plaintiff is to file and serve an amended statement of claim, in the form attached to the correspondence dated [date].
2. By [date]at4.00pm the defendant is to file and serve any defence to the amended statement of claim.

#### Defence and Counterclaim

1. By [date]at4.00pm, the defendant is to file and serve a defence and any counterclaim.

#### Defence to Counterclaim

1. By [date], the plaintiff is to file and serve a defence to counterclaim.

#### Reply

1. By [date]at4.00pm the plaintiff is to file and serve any reply.

#### Reply and Defence to Counterclaim

1. By [date]at4.00pm the plaintiff is to file and serve any reply and defence to counterclaim.

#### Defence

1. By [date]at4.00pm, the defendant is to file and serve a defence.

# Further and better particulars

#### File and serve further and better particulars

1. By [date] the       is to file and serve a request for further and better particulars of the      .
2. By [date] the       is to file and serve further and better particulars of       pursuant to any such request.

#### File and serve further and better particulars pursuant to a request

1. By [date]at4.00pm the       is to file and serve further and better particulars of the       in response to the       request dated [date].

# Discovery

#### Make Discovery

1. By [date]at4.00pm, 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.

# Interrogatories

#### Standard interrogatories order application

1. By [date]at4.00pm, the parties must make any application to administer interrogatories by email to the Commercial Registry ([commercial.registry@countycourt.vic.gov.au](mailto:commercial.registry@countycourt.vic.gov.au)) copied to all parties. Any such application must attach draft interrogatories and provide brief reasons explaining why administration of these particular interrogatories will facilitate the expeditious resolution of the dispute.
2. Subject to further order of the Court, any application for leave to administer interrogatories will be determined on the papers.

# Mediation

1. By [date], 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 [date], each party must have issued any subpoenas under order 42A.

#### Release of subpoenaed documents

Upon receiving the undertaking of      , counsel for the       to return subpoenaed documents to my associate upon request.

I DO ORDER AS FOLLOWS

1. The Court releases the subpoenaed documents described in the attached document to       for the      .

#### Standard order permitting inspection of subpoenaed documents

1. The parties have leave to inspect the documents produced by [xxx] in response to the subpoena dated [date] and to make copies on the understanding that the documents are not removed from the office of the Registrar and are returned in the same condition in which they now appear.
2. If documents were produced in electronic format, then at the discretion of the Registrar, [the objecting party] may be sent electronic copies of the documents produced without the need to attend the Registry.

#### Objection related orders

1. By [date]at4.00pm the plaintiff / defendant have leave to view and copy the subpoenaed records of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and file any objection.
2. If no objection is filed by [date] the defendant / plaintiff is permitted to inspect and photocopy the subpoenaed records referred to in paragraph 1.

OR

The documents of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ which are the subject of the objections hearing, be placed in a sealed envelope by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(addressee / solicitor) on or before the \_\_ / \_\_ / \_\_ .

OR

The documents of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ which are the subject of the objections hearing, be redacted by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(addressee / solicitor) and be given to the subpoena manager on or before [date] who will seal the original material produced to the court and make the redacted material available to the parties for inspection/copying.

# Trial dates

#### List a Trial Date - Melbourne

1. The proceeding is set down for trial on       as a       (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       (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 20XX, to be heard as a       (estimate       sitting days).
2. By      , the parties will be advised by the Registrar at       of the date of the first circuit commencement date of 20XX.

#### Reinstate a Trial Date

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

#### Confirm a Trial Date

1. The trial listed for [date] is confirmed.

#### Vacate a Trial Date – Melbourne

1. The trial listed for hearing on [date] is vacated.

#### Vacate a Trial Date – Circuit

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

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

1. The trial listed for [date] is vacated and the proceeding is refixed for trial on       as a (estimate       sitting day/s).

#### 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 (estimate       sitting day/s).

#### Reinstate Proceeding

1. The trial date for this proceeding is reinstated on       as a       (estimate sitting days)
2. My order dated [date] be otherwise confirmed.

# Payment of fees

#### Setting down for trial fee - payment

1. The plaintiff is to pay the setting down for trial fee on or before [date]. In default, any party may pay the fee within a further 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.

#### First day hearing fee – payment

1. The plaintiff is to pay the first day hearing fee on or before [date].

#### First day hearing fee – to stand

1. The first day hearing fee has been 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 [date].at4.00pm 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       Division.

#### Proceedings to be listed together

1. The trial of this proceeding is to be listed 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.

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 unless application is made to the Commercial Division Duty Judge which provides a reason for making such an order.

OR

1. 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.
2. Any application to file and serve witness statements must be made by email to the Commercial Registry (commercial.registry@countycourt.vic.gov.au) and include brief written submissions addressing the reasons why the proposed witness statements are appropriate. Such submissions should take into account the matters referred to in Clause 16.1 of the Practice Note on the Operation and Management of the General List of the Commercial Division PNCO 1-2019.
3. The application will be considered on the papers.

#### Garnishee Summons

1. By      at4.00pm (+5BD), the judgment creditor has leave to file and serve a garnishee summons on the garnishee substantially in the form annexed to the correspondence dated XX.
2. By      at4.00pm (+5BD), the judgment creditor must serve:
   1. a copy of this order;
   2. the affidavit in support of application;
   3. the garnishee summons; and
   4. a copy of the garnishee summons information sheet (attached)

on the judgment debtor and the garnishee.

1. Upon service of the documents specified in Order 2 [no less than 7 days before the hearing], the garnishee is to email the Commercial Registry ([commercial.registry@countycourt.vic.gov.au](mailto:commercial.registry@countycourt.vic.gov.au)) informing the Court of:
   1. the balance of the judgment debtor’s account [or the amount of the debt owed to the judgment debtor];
   2. that the judgment debtor’s account [or debt] has been frozen to the extent of the amount set out in the garnishee summons; and
   3. whether they intend to appear at the hearing.
2. By      at4.00pm (+5BD), the garnishee must file and serve any affidavits in response.
3. **[For CR Asset Confiscation Operations matters only, where leave was sought in their Affidavit to release partial funds]:** The garnishee release to the judgment debtor a total maximum amount of $1,000 from so much of the funds standing to the credit of the account number XXXXXX.
4. Reserve Liberty to the parties to apply by email to the Commercial Registry ([commercial.registry@countycourt.vic.gov.au](mailto:commercial.registry@countycourt.vic.gov.au)) upon giving reasonable notice to all other parties.
5. 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.

# Litigation guardians

#### Any Application to appoint Litigation Guardian

1. Any application by the plaintiff to appoint a litigation guardian must be made 7 days before the directions hearing, supported by medical evidence in relation to any issues affecting the party’s capacity to give instructions relating to the conduct of the proceeding and/or their ability to participate in the proceeding (if any).  Any medical report must address the following matters if required:
   1. a definitive diagnosis of the plaintiff’s condition;
   2. the prognosis of the plaintiff’s condition;
   3. an opinion as to whether the plaintiff can comply with any orders of the Court; attend mediation and/or trial in particular;
      1. their capacity to give instructions relating to the conduct of the proceeding and the impact of doing so on their health;
      2. their capacity to participate in mediation and/or the trial fixed, in particular, the giving of evidence at trial and being subject to cross-examination;
   4. if the plaintiff is incapable of any of the matters set out in the preceding subparagraphs, an estimate of when the plaintiff will be capable of undertaking the matters set out in the subparagraphs above;
   5. particulars of the treatment plan and/or the proposed treatment plan for the plaintiff.

#### 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 [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 [date] 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.

# McKenzie Friend

1. Any application by the plaintiff to be represented by a McKenzie Friend must be made 7 days before the directions hearing, supported by affidavit evidence in relation to any issues affecting the party’s capacity to give instructions relating to the conduct of the proceeding and/or their ability to participate in the proceeding (if any).  If the application is by for a non-lawyer to conduct a case on behalf of another, then the affidavit must depose to the “exceptional or unusual circumstances” in which the discretion of the Court ought to be granted: *Skrijel v Mengler & Ors* [2003] VSC 128 at [11].  Any affidavit must address the following matters if required:
   1. the complexity of the case;
   2. genuine difficulties such as expected language difficulties and emergencies;
   3. the public interest in the attainment of the ends of justice.

# Finalisation of proceedings

#### Struck out with right of reinstatement

1. The proceeding is dismissed without adjudication on the merits, with a right of reinstatement.

#### Struck out with specific right of reinstatement

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