

# **FEDERAL COURT OF AUSTRALIA**

## **Practice Note 17**

### **The use of technology in the management of discovery and the conduct of litigation**

#### **1. Introduction**

- 1.1 This Practice Note replaces Practice Note No 17 issued on 20 April 2000.
- 1.2 Unless the Court otherwise orders, this Practice Note applies to any proceeding in which the Court has ordered that:
  - (a) discovery be given of documents in an electronic format; or
  - (b) a hearing be conducted using documents in an electronic format.
- 1.3 It may be expected that an order of the nature mentioned in paragraph 1.2 will be made in any proceeding in which:
  - (a) a significant number (in most cases, 200 or more) of the documents relevant to the proceeding have been created or are stored in an electronic format; and
  - (b) the use of technology in the management of documents and conduct of the proceeding will help facilitate the quick, inexpensive and efficient resolution of the matter.
- 1.4 Existing Court rules and Practice Notes governing discovery and other litigation processes continue to apply unless the Court or a Judge otherwise orders.
- 1.5 Technical expressions used in this Practice Note and Related Materials are defined in the Glossary.
- 1.6 This Practice Note and the Related Materials mentioned in paragraph 11.1 below are available from the Court's web site at <http://www.fedcourt.gov.au>.

#### **2. Purpose**

- 2.1 The purpose of this Practice Note and Related Materials is to encourage and facilitate the effective use of technology in proceedings before the Court by:
  - (a) setting out the Court's expectations of how technology should be used in the conduct of proceedings before it; and
  - (b) recommending a framework for the management of documents electronically in the discovery process and the conduct of trials.

### **3. Principles**

- 3.1 This Practice Note is to be applied in a manner that gives effect to the overarching purpose of the Federal Court's Individual Docket System, which is: the just resolution of disputes as quickly, inexpensively and efficiently as possible.
- 3.2 The Court expects the parties and their representatives to cooperate with and assist the Court in fulfilling the overarching purpose and, in particular, in identifying documents relevant to the dispute as early as possible and dealing with those documents in the most efficient way practicable.

### **4. Application of these Principles**

- 4.1 The Court expects the parties to a proceeding and their legal representatives to consider, at as early a stage in the proceeding as practicable, the use of technology in the management of documents and conduct of the proceeding. In particular, it is expected that consideration will be given to the use of technology for:
  - (a) creating lists of discoverable documents;
  - (b) giving discovery by exchanging electronically stored information;
  - (c) inspecting discovered documents and other material;
  - (d) lodging documents with the Court;
  - (e) delivering Court documents to, and otherwise communicating with, each party; and
  - (f) presenting documents and other material to the Court during a trial.

### **5. Efficient Document Management**

- 5.1 This Practice Note and the Related Materials are based upon the following observations concerning efficient document management:
  - (a) Electronic documents, including email, form an increasing proportion of Documents in proceedings before the Court.
  - (b) Electronic documents must be managed efficiently to minimise the cost of discovery and the cost of the trial.
  - (c) Printing electronic documents for the purpose of discovery will generally be a waste of time and money.
  - (d) Photocopying paper documents multiple times for the purpose of discovery will generally be a waste of time and money.
  - (e) Wherever possible, parties should exchange documents in a usable, searchable format or in the format in which the documents are ordinarily maintained. The exchange format should allow the party receiving the documents the same ability to access, search, review and display the documents as the party producing the documents.
  - (f) Lawyers should endeavour to use technology to ensure that document management is undertaken efficiently and effectively.

- (g) Parties should plan for appropriate discovery as early as possible in the proceedings.

## **6. Discovery plans**

- 6.1 Before the Court makes an order that discovery be given using documents in an electronic format, it will expect the parties to have discussed and agreed upon a practical and cost-effective discovery plan having regard to the issues in dispute and the likely number, nature and significance of the documents that might be discoverable in relation to them.

## **7. Document management**

- 7.1 The Court expects the parties to meet and confer for the purpose of reaching an agreement about the protocols to be used for the electronic exchange of documents and other issues relating to efficient document management in a proceeding.
- 7.2 The Court may require the parties to address these issues at a Directions Hearing or a case management conference.
- 7.3 A checklist identifying issues that the parties are expected to consider is included in the Related Materials.

## **8. Document Management Protocols**

- 8.1 The Default Document Management Protocol is to be used in all proceedings to which this Practice Note applies and in which the number of Discoverable Documents is reasonably anticipated to be between 200 and 5,000, unless an alternative Document Management Protocol is agreed by the parties and accepted by the Court.
- 8.2 Where the number of Discoverable Documents is reasonably anticipated to exceed 5,000 Documents, the parties should agree to an Advanced Document Management Protocol in consultation with the Court.
- 8.3 An example of an Advanced Document Management Protocol is included in the Related Materials.

## **9. Use of technology in a hearing**

- 9.1 In a proceeding to which this Practice Note applies, the Court will expect the parties to use technology efficiently and effectively in preparation for, and in the conduct of, the trial.
- 9.2 A checklist identifying issues that the parties are expected to consider is included in the Related Materials.

## **10. eRegistrars**

- 10.1 In each registry one or more registrars have been nominated to provide advice and assistance in relation to the implementation of the Practice Note. These registrars are referred to as 'eRegistrars'. Lawyers or parties requiring information or assistance

about the application of the Practice Note or the use of technology in litigation in the Court are encouraged to contact an eRegistrar. Contact details for the eRegistrars can be found at <http://www.fedcourt.gov.au> .

## **11. Related materials**

11.1 The following Related Materials are released with this Practice Note:

- (a) Pre-Discovery Conference Checklist
- (b) Default Document Management Protocol
- (c) An example of an Advanced Document Management Protocol
- (d) Pre-Trial Checklist.

11.2 The Related Materials will be reviewed and updated by the Court from time to time in light of feedback from interested parties and changes in technology.

M E J BLACK

Chief Justice

29 January 2009