

FEDERAL COURT OF AUSTRALIA

Practice Note No 30

Fast Track Directions

Part 1 Preliminary

- 1.1 This Practice Note may be cited as the ‘Fast Track Directions’.
- 1.2 This Practice Note sets out the arrangements for the management of proceedings which are to be conducted in accordance with the Fast Track Directions.

Part 2 Application of the Fast Track Directions

Proceedings to which the Fast Track Directions apply

2.1 The Fast Track Directions will apply to the following proceedings:

- (a) A new proceeding that arises out of or relates to:
 - (i) commercial transactions;
 - (ii) an issue that has importance in trade or commerce;
 - (iii) the construction of commercial documents;
 - (iv) an issue that has importance in personal insolvency; or
 - (v) intellectual property rights apart from patents

and which is commenced by filing an application clearly marked ‘FAST TRACK APPLICATION’ in the upper right-hand corner of the first page of the application. Such an application will generally be accompanied by a Fast Track Statement in accordance with Part 4 below instead of an affidavit or statement of claim.

- (b) An existing proceeding of a type mentioned in paragraph 2.1(a) in which the parties agree that the proceeding should be conducted in accordance with the Fast Track Directions and provide the Court with a written notice of their agreement.

- (c) A proceeding in which a Judge, either on his or her own motion or at the request of one of the parties, makes an order that the proceeding be conducted in accordance with the Fast Track Directions.

Estimate of length of trial to be provided in application or request

- 2.2 An application mentioned in paragraph 2.1(a) or a notice mentioned in paragraph 2.1(b) must include an estimate of the length of the trial.

Proceedings to which the Fast Track Directions is not expected to apply

- 2.3 The Court expects that the Fast Track Directions will not apply to a proceeding:
- (a) the trial of which is likely to exceed 5 days; or
 - (b) if filed in a registry of the Court which has a Corporations Panel – would otherwise be allocated to the Corporations Panel; or
 - (c) which is subject to:
 - (i) the Notice to Practitioners – Conduct of Admiralty and Maritime Work in the Federal Court of Australia; or
 - (ii) the Notice to Practitioners and Litigants (Taxation) – Tax List Directions; or
 - (iii) the Notice to Practitioners and Litigants – Proceedings under the *Patents Act 1990* (Cth).

Objection to Fast Track Directions

- 2.4 A respondent who is served with an application marked in accordance with paragraph 2.1(a) and who objects to the proceeding being conducted in accordance with the Fast Track Directions should give the Court and the applicant written notice of the objection within 14 days of being served with the application. The notice must include a brief statement of the reasons for the respondent's objection.

Cessation of the Fast Track Directions

- 2.5 A Judge, either on his or her own motion or at the request of one of the parties, may make an order that a proceeding no longer be conducted in accordance with the Fast Track Directions.

Part 3 Reckoning time

3.1 In calculating the time provided by the Fast Track Directions or by any order fixing, extending or abridging time:

- (a) the period from 24 December to 2 January next following is excluded; and
- (b) the period from 3 January to 14 January will, unless otherwise ordered, be included.

Part 4 Fast Track Statements, Responses and Cross-Claims

No pleadings unless Court otherwise orders

4.1 Unless the Court otherwise orders, there will be no pleadings in a proceeding to be conducted in accordance with the Fast Track Directions. Instead, the parties will use Fast Track Statements, Fast Track Responses, Fast Track Cross-Claims and Fast Track Replies.

Fast Track Statement

4.2 The applicant in a proceeding to be conducted in accordance with the Fast Track Directions must file and serve a 'Fast Track Statement' in accordance with the form set out in the annexure to this Practice Note. The document must, avoiding undue formality, state in summary form:

- (a) the nature of the dispute;
- (b) the issues which the applicant believes are likely to arise in the proceeding;
- (c) the applicant's contentions, including the material facts upon which the applicant intends to rely (which must be stated with adequate particulars), the relief claimed and the legal grounds for that relief.

Fast Track Response

4.3 The respondent in a proceeding to be conducted in accordance with the Fast Track Directions must file and serve a 'Fast Track Response' in accordance with the form set out in the annexure to this Practice Note. The document must, avoiding undue formality, state in summary form:

- (a) the nature of the dispute;
- (b) the issues which are likely to arise in the proceeding;

- (c) the respondent's response to each of the applicant's contentions including:
 - (i) the material facts upon which the respondent intends to rely, insofar as they are not included in the 'Fast Track Statement';
 - (ii) a reference to whether the respondent admits, does not admit or denies each allegation made by the applicant; and
 - (iii) the legal grounds for opposing the relief claimed by the applicant.

Fast Track Cross-Claim

4.4 Any cross-claim must be made in the form prescribed by the Federal Court Rules be accompanied by a 'Fast Track Cross-Claim'. The form and content of a 'Fast Track Cross-Claim' should, with appropriate modifications, be in accordance with the form and content of a 'Fast Track Statement' as set out in paragraph 4.2 above.

Fast Track Response to Cross-Claim

4.5 A cross-respondent must file and serve a 'Fast Track Response to Cross-Claim'. The form and content of a 'Fast Track Response to Cross-Claim' should, with appropriate modifications, be in accordance with the form and content of a 'Fast Track Response' as set out in paragraph 4.3 above.

Fast Track Reply

4.6 An applicant or a cross-claimant may, if served with a 'Fast Track Response' or a 'Fast Track Response to Cross-Claim' to which a reply is needed, file and serve a 'Fast Track Reply'. The form and content of a 'Fast Track Reply' should, with appropriate modifications, be in accordance with the form and content of a 'Fast Track Response' as set out in paragraph 4.3 above.

Time for filing and service of Fast Track Statements, Responses, Cross-Claims and Replies

4.7 The Fast Track Statements, Responses, Cross-Claims and Replies must be filed and served in accordance with the following timetable:

- (a) The application and accompanying 'Fast Track Statement' must be served upon each respondent within 7 days of filing the application and the 'Fast Track Statement'.

- (b) The 'Fast Track Response' and any cross-claim and 'Fast Track Cross-Claim' against the applicant must be filed and served within 30 days after service of the application and the 'Fast Track Statement'.
- (c) Any cross-claim and 'Fast Track Cross-Claim' against a third party must be filed and served within 5 days after service of the 'Fast Track Response'.
- (d) Where a cross-claim and 'Fast Track Cross-Claim' is served and the cross-respondent is already a party to the action, the cross-respondent must file and serve a 'Fast Track Response to Cross-Claim' within 10 days after the service of the cross-claim and the 'Fast Track Cross-Claim'.
- (e) Where the cross-respondent is not already a party to the action, the cross-respondent must file and serve a 'Fast Track Response to Cross-Claim' within 21 days after the service of the cross-claim and the 'Fast Track Cross-Claim'.
- (f) Where a respondent or cross-respondent serves a 'Fast Track Response' or a 'Fast Track Response to Cross-Claim' to which a reply is needed, the applicant or cross-claimant, as the case may be, must file and serve a 'Fast Track Reply' within 5 days after service of the 'Fast Track Response' or 'Fast Track Response to Cross-Claim'.

Part 5 Parties to cooperate and act in good faith

Parties to cooperate

5.1 The Court expects the parties and their representatives to cooperate with, and assist, the Court in ensuring the proceeding is conducted in accordance with the Fast Track Directions so that the real issues in dispute are identified as early as possible and are dealt with in the most efficient way possible.

Resolution of disputes

5.2 Before making any application relating to an interlocutory dispute (including disputes in relation to discovery), the parties must meet and confer and attempt to resolve the dispute in good faith. If the parties are unable to resolve the dispute, any application about the issue must contain a certificate by the moving party's lawyer that the 'meet and confer' requirement was completed, though unsuccessful. Failure to so certify will result in the application being immediately refused.

Part 6 Initial Directions Hearing / Scheduling Conference

Date for Scheduling Conference

6.1 An initial directions hearing (the 'Scheduling Conference') will be set down not less than 45 days from the date of the filing of the application. In urgent cases the Scheduling Conference may be set down earlier and the times specified in paragraph 4.7 modified accordingly.

Endorsement on application

6.2 The date for the Scheduling Conference must be obtained from the Registry and must be stated on the application.

Attendance

6.3 The lawyers acting for each party are expected to attend the Scheduling Conference.

Initial witness list

6.4 Each party must bring to the Scheduling Conference an initial witness list with the name of each witness the party intends to call at trial. The list is to include a very brief summary of the expected testimony of each witness and, unless it is otherwise obvious, state the relevance of the evidence of each witness. Each party will provide a copy of the party's initial witness list to the presiding judge and to each other party.

Evidence by affidavit or oral testimony

6.5 At the Scheduling Conference the presiding judge will determine whether, and to what extent, the trial will be a 'trial by affidavit' or will be a 'trial by witnesses' with summaries of the expected evidence of each witness.

Preliminary witness list

6.6 The initial witness lists will be combined to create the 'Preliminary Witness List'. Each party has an ongoing obligation to update the Preliminary Witness List by adding any new witnesses that the party expects to call, or removing witnesses that the party no longer expects to call. Each party must, in a timely manner, notify both the Court and all other parties of any updates the party makes to the Preliminary Witness List.

Narrowing of issues

6.7 At the Scheduling Conference the parties will be asked to outline the issues and facts that appear to be in dispute. The parties will also be asked to indicate whether the matter should be referred for mediation and, if so, a timetable within which the mediation might be completed.

Fixed trial date

6.8 At the Scheduling Conference the presiding judge will set a trial date for the case which, except in urgent cases, will be between 2 and 5 months from the date of the Scheduling Conference, depending on the relative complexity of the case. Urgent cases will be heard on shorter notice.

Pre-trial schedule

6.9 With the assistance of the lawyers for each party, the presiding judge will establish a pre-trial schedule for all interlocutory steps needed to bring the proceeding to trial to which the parties must strictly adhere, including (when appropriate) a time by which the parties must submit to and attempt mediation and the date for a Pre-trial Conference mentioned in Part 10 below ('the Pre-Trial Conference'). Failure to adhere to the timetable may result in sanctions, including adverse costs orders, rejection of late filings, the proceeding no longer being conducted in accordance with the Fast Track Directions and, in exceptional cases, dismissal of the claim or rejection of the defence.

Pre-trial exchange of affidavits

6.10 For the purposes of the Pre-trial Conference:

- (a) the applicant must provide copies of all witness affidavits or summaries of evidence to the respondent;

- (b) the respondent must, after a reasonable time to review the affidavits or summaries of evidence, provide copies of any witness affidavits or summaries to the applicant. Exact dates will be set by the presiding judge at the Pre-trial Conference.

Notification of opposition

6.11 If a party decides not to call or is unable to call a witness whose affidavit or summary of evidence has been delivered to the other parties, the party must forthwith notify the other parties so as not to surprise those parties or otherwise deprive those parties of an expected opportunity to cross-examine the witness.

Alteration of dates

6.12 Applications for adjournment of a trial or other hearing date will not be granted on the mere agreement of the lawyers. No adjournment will be granted other than for good cause and upon such terms as the Court may impose.

Part 7 Discovery

Limited discovery

7.1 Except where expanded or limited by the presiding judge, discovery if ordered in proceedings to which the Fast Track Directions apply will be confined to documents in the following categories:

- (a) documents on which a party intends to rely; and
- (b) documents that have significant probative value adverse to a party's case.

Reasonable search effort

7.2 Discovery must be provided in accordance with the following:

- (a) Parties must provide discovery of any document within the limited discovery categories mentioned in paragraph 7.1 that a party knows of at the time of the Scheduling Conference, or that the party becomes aware of at a later point in the pre-trial or trial process, or that the party discovers in the course of a good-faith proportionate search of the party's documents and records.
- (b) A 'good-faith proportionate search' is a search undertaken by a party in which the party makes a good-faith effort to locate discoverable documents, while bearing

in mind that the cost of the search should not be excessive having regard to the nature and complexity of issues raised by the case, including the type of relief sought and the quantum of the claim.

- (c) A party giving discovery must, if requested to do so by another party, provide a brief description of the steps the party has taken to conduct a good faith proportionate search to locate discoverable documents.

Additional discovery

- 7.3 A party may require additional discovery in relation to discrete issues, such as the quantification of damages. In that event the judge may make a separate order for that purpose. The order may include a requirement that discovery be given by inspection alone.

Part 8 Interrogatories

- 8.1 Interrogatories will not be permitted in proceedings to which the Fast Track Directions apply unless there are exceptional circumstances.

Part 9 Interlocutory applications

Requirement for briefs to accompany interlocutory applications

- 9.1 Interlocutory applications, whether or not made by motion must, unless otherwise directed, be in writing and must be accompanied by a written brief (not exceeding 5 pages) setting out a concise statement of the facts (if necessary verified by affidavit) and supporting arguments, with a citation of the authorities upon which the moving party relies. The opposing party must file a brief in response (not exceeding 5 pages) and such supporting documents as are appropriate within 5 days after service of the moving party's interlocutory application and brief. The moving party may file a short rebuttal brief within 2 days after service of the opposing party's brief in response.

Exception to requirement for briefs

- 9.2 Briefs need not accompany applications for simple directions.

Determination of applications without an oral hearing

9.3 If a party wishes to be heard orally on any interlocutory application, the party may request an oral hearing. The request will be granted in applications for injunctions or the appointment of receivers. Otherwise, oral hearings will be granted where the judge determines that an oral hearing would specifically add to, or further clarify or explain, the issues and arguments in a way that the written briefs cannot. An oral hearing will probably be unnecessary in most instances.

Extensions of time

9.4 A request for an extension of time relating to the determination of an interlocutory application must be in writing and, in general, will be looked upon with disfavour.

Part 10 Pre-trial Conference

Time of Pre-Trial Conference

10.1 A Pre-Trial Conference will, unless the Court orders otherwise, be held approximately 3 weeks prior to the scheduled trial date with the presiding judge, the lawyers involved in the case and all parties attending. The Pre-Trial Conference is an opportunity for the parties and the judge to deal with any outstanding matters or applications before the start of the trial.

Agreed facts

10.2 At the Pre-Trial Conference the parties will be required to identify the material facts that are agreed and the material facts in dispute.

Final witness list

10.3 At the Pre-Trial Conference the parties will, with the assistance of the presiding judge, finalise the list of witnesses to be called at trial. The judge may, where appropriate to do so, refuse permission to a party to call a potential witness. The judge reserves the authority to revisit the final witness list at any time to discuss any issues or concerns arising during the trial. Witnesses that are not on the final witness list will not, save in exceptional circumstances, be permitted to give evidence.

Objections to evidence

10.4 At the Pre-Trial Conference the parties should be ready to deal with any objections to the evidence proposed to be tendered. The judge may rule on those objections, unless they are more conveniently dealt with at the trial.

Joint exhibit list

10.5 At the Pre-Trial Conference, the parties must jointly submit a numbered list of the exhibits the parties intend to use at trial. The list will include a copy of the exhibit and, where not obvious, a short description of the exhibit and a statement of its relevance. The judge will examine the list with the parties and discuss any perceived issues or concerns with the proposed exhibits. The judge reserves the authority to revisit the joint exhibit list at any time to discuss any issues or concerns arising during the trial. Exhibits that are not on the joint exhibit list will not, save in exceptional circumstances, be permitted to be tendered at trial.

Trial length

10.6 At the Pre-Trial Conference, having regard to the legal and factual issues raised by the case and to the number of witnesses to be called, the judge will determine the total time that each party will be allocated at trial to present its case, with due allowance being made for questions from the presiding judge. Each party will receive a fixed block of time for oral submissions; a fixed block of time to present its case-in-chief, cross-examination, and any re-examination; and a small amount of flexible time to be used as needed. It will be the responsibility of each party's Counsel to determine how to allocate and best use the party's available time. When a party's allocated time has expired, the party will not, except in exceptional circumstances, be permitted to present further evidence and/or make further submissions, as the case may be.

Part 11 Closing submissions

11.1 A party may make a written submission in substitution for, or supplementary to, the party's closing oral submission. The written submission must:

- (a) not exceed 15 pages;
- (b) include each finding of fact that the party contends should be made and, where appropriate, references to the evidence that supports that finding;

(c) be provided to the Court and to all other parties before the party makes any closing oral submission or, if no closing oral submission is to be made, before the conclusion of the trial.

In an exceptional case a party may be given permission to provide a short supplementary written submission after the conclusion of the trial.

Part 12 Judgment

12.1 The Court will endeavour to deliver judgment within 6 weeks of the conclusion of the trial or the receipt of the final submissions (whichever is the later), but in urgent cases will endeavour to do so more quickly.

M E J BLACK

Chief Justice

24 April 2009

ANNEXURE

FAST TRACK

**IN THE FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY**

No. of 20 .

BETWEEN

AB and Others

Applicants

and

CD

**Respondent
and Cross-Claimants***

FAST TRACK STATEMENT*/RESPONSE*/CROSS-CLAIM*/RESPONSE TO CROSS-CLAIM*/REPLY*

Nature of the dispute

Issues Likely to Arise

Applicant's [or Cross-Claimant's] Contentions*

(which should include the material facts upon which the applicant intends to rely (which must be stated with adequate particulars) and the relief claimed and the legal grounds for that relief)

Respondent's [or Cross-Respondent's] Responses to Contentions*

(which should include the material facts upon which the respondent intends to rely, insofar as they are not included in the 'Fast Track Statement'; a reference to each allegation that the respondent or cross-respondent admits, does not admit or denies; and the legal grounds for opposing the relief claimed by the applicant)

* Omit if inapplicable

Filed by (or on behalf of):

Name:
Address for service:
Facsimile:

DX:
Telephone:
Ref: