



SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY

NOTICE TO PRACTITIONERS COMPLIANCE ISSUES – CIVIL PROCEEDINGS

1. The purpose of this notice to practitioners is to remind practitioners of some of the key requirements of Practice Direction 2 of 2014 and the *Court Procedures Rules 2006*, and to confirm that the Registrars will expect compliance with these key requirements in all Registrar's civil lists. It covers the following topics:
 - a. email filing of documents;
 - b. parties conferring prior to listings;
 - c. providing short minutes of order to the Court;
 - d. taking out orders;
 - e. attendance at listings;
 - f. adequate instructions;
 - g. listing hearings;
 - h. late filing of documents.

EMAIL FILING OF DOCUMENTS

2. In accordance with rule 6121(e) of the *Court Procedures Rules 2006*, the filing of documents by email may only take place with the leave of the Registrar, Senior Deputy Registrars, or Deputy Registrars. Leave to file documents by email will only be granted in **exceptional circumstances**.
3. In the absence of leave being granted, documents filed by email will not be accepted for filing and will be rejected under rule 6140 of the Rules. Solicitor firms that are interstate will be expected to:
 - a. Use the e-lodgment system where available;
 - b. File documents by post in accordance with rule 6123; or
 - c. Engage a local town agent to file the documents on their behalf.
4. The fact of being located interstate alone will not be accepted as a sufficient reason for the granting of leave to file documents by email.

CONFERRING PRIOR TO A LISTING

5. There is a clear requirement in paragraph 18 of Practice Direction 2 of 2014 that, prior to any listing before the Court, the representatives of the parties are to communicate with each other in advance with a view to reaching agreement on directions to propose to the Court. Parties are also expected to reduce to writing agreed or competing short minutes of order.
6. The Court expects this practice to take place in matters that do not fall within Practice Direction 2 of 2014, unless there are compelling reasons as to why this communication could not occur or is otherwise not appropriate.
7. If it is clear to the Court that parties have not conferred prior to a listing, the Court may either:
 - a. stand down or adjourn the matter and direct the parties to confer; or
 - b. where appropriate, make directions to progress the matter, including giving consideration as to whether an adverse costs order should be made against a party who has not taken steps to facilitate communication between the parties prior to the listing.

PROVIDING SHORT MINUTES OF ORDER TO THE COURT

8. The Registrars are greatly assisted by the provision of short minutes of order, agreed or otherwise, either by email (by 4pm on the business day before the listing) if appearing by AVL, or in hard copy at the listing. In particular, this practice reduces the amount of time required for each listing which benefits both the Court and the practitioners who appear.
9. The Court will expect any short minutes to comply with any timeframes set out in the Rules or Practice Direction 2 of 2014, and any proposed deviation from those timeframes will need to be explained in detail.
10. The Court expects parties to bring copies of their short minutes of order, agreed or otherwise, to each appearance.

ATTENDANCE AT LISTINGS

11. Paragraph 19 of Practice Direction 2 of 2014 states that proceedings should not be mentioned by consent, other than in circumstances where the proceedings have settled.
12. The Registrar and Senior Deputy Registrars have identified two compliance issues in this respect:
 - a. In circumstances where the parties may have reached a consent position as to the orders to be made but the listing has not been adjourned, it is commonplace for one party to mention the appearance of other parties. This practice can present difficulties for the Court, particularly in circumstances where the Court may:
 - i. not agree with the orders proposed by the parties or may require further explanation as to their content;
 - ii. wish for the parties to update the Court as to the progress of the matter; or
 - iii. seek to identify areas in the timetable or orders that could be expedited.

- b. If parties have requested an adjournment by email prior to the listing, but the Court has not had an opportunity to respond, it is not uncommon for parties to assume that the adjournment has been made and not attend the listing. This results in Court time and resources being wasted and contravenes paragraph 20 of Practice Direction 2 of 2014.
- 13. The Court expects the attendance of all parties at listings for each matter, unless they have been expressly advised that they are not required to attend or that the listing has been vacated.

ADEQUATE INSTRUCTIONS

- 14. Practitioners appearing before the court are expected to both have an adequate understanding of the proceedings and hold adequate instructions to assist the Court. The Court expects that practitioners will be able to update the Court as to the way the proceedings have progressed, what the next steps for the proceedings are, and to respond to queries in relation to both the subject matter and the proposed timetable for the proceedings.
- 15. Practitioners appearing with inadequate instructions should expect the matter to be adjourned and directions may be made to compel the attendance of the solicitor with carriage of the matter on the next occasion.

LISTING HEARINGS

- 16. The Registrar and Senior Deputy Registrars have identified that parties are regularly advising the Court at listing hearings that the parties are not ready to take a hearing date and are instead seeking to revise the timetable for the proceedings.
- 17. A Listing Hearing is **not** a directions hearing. The Court expects that a matter that is listed for a Listing Hearing is ready for a mediation and hearing date to be allocated.
- 18. If there is non-compliance with the existing timetable and an extension of previous orders is sought, the Court may direct the non-compliant party to file an:
 - a. affidavit providing full disclosure of the facts relating to the non-compliance; and/or
 - b. application in proceeding in support of the amendments sought.
- 19. In accordance with rule 1325, at the listing hearing the Court may also make orders in relation to the following matters to ensure the matter is ready to proceed to hearing on the date allocated:
 - a. simplifying the issues in dispute; and
 - b. limiting the number of witnesses or the issues to be covered by witness evidence; and
 - c. the filing and serving of expert reports; and
 - d. the filing and serving of affidavit evidence; and
 - e. the admission of facts or documents to avoid unnecessary proof; and
 - f. written submissions to the court on issues of law or issues of law and fact; and
 - g. the estimated length of the trial; and

- h. the possibility of the proceeding being settled before the trial; and
- i. anything else that may assist the early resolution of the proceeding.

That is, the need for orders of the kind set out above to be made in a proceeding is not a barrier to the proceedings being allocated a hearing date.

- 20. Parties are required to comply with any directions made, or the timeframes set out in Practice Direction 2 of 2014, in relation to the filing of listing hearing questionnaires and payment of the setting down fee.
- 21. Listing hearing questionnaires will not be accepted for filing in Court.
- 22. The Court expects that parties will attend a mediation, either private or court-ordered, within approximately 4-6 weeks of the listing hearing.
- 23. If the parties wish to engage in a private mediation, the parties will need to attend the listing hearing in a position to advise the Court of the confirmed mediation date and name of the mediator.

LATE FILING OF DOCUMENTS

- 24. Registry staff have identified that there has been an increase in parties filing documents at the Registry counter moments prior to a listing commencing and requesting that the document be processed immediately. The ability of Registry staff to process documents immediately depends on the nature of the document filed and staff availability at the time.
- 25. Accordingly, if parties are seeking to file a document shortly prior to the commencement of a listing, they should not expect that the Registry will be able to process it immediately. Instead, the parties should ensure that they have made extra copies to hand up at the listing so the document can be brought to the attention of the Registrar, as appropriate.



Jayne Reece
Registrar
24 November 2023