



Australian Capital Territory

Magistrates Court

Practice Direction Civil 2
1 July 2019

Procedures under the *Leases (Commercial and Retail) Act 2001*

Introduction

1. This practice direction takes effect on 1 July 2019 and applies to proceedings under the *Leases (Commercial and Retail) Act 2001* (the Act). *Practice Direction No. 4 of 2007* is revoked.
2. Consistent with s 5A of the *Court Procedures Act 2004* litigation should be resolved according to law as quickly, inexpensively and efficiently as possible, with legal costs proportionate to the importance and complexity of the matters in dispute.
3. The Act provides that the Magistrates Court may decide its own procedures. This practice direction details those procedures and includes:
 - a. a simplified originating process;
 - b. the statutory mandated case management meetings; and
 - c. the establishment of two alternative litigation pathways.
4. In this practice direction the term ‘registrar’ includes the Registrar of the Court and any deputy registrar appointed by the Registrar who is authorised by the Chief Magistrate to exercise the jurisdiction of the Court and make directions in accordance with r 6251 of the *Court Procedures Rules 2006* (CPRs).

Application of the *Court Procedures Rules 2006*

5. The applicable procedures provided within the CPRs apply to proceedings under the Act, subject to this practice direction and any direction made by the Court.

Commencement of proceedings

Application

6. The applicant is to commence proceedings by filing and serving on the respondent the approved form issued for the purpose of the *Leases (Commercial and Retail) Act 2001* – form 1 (Originating application) [AF2019-30](#) and a copy of the lease.
7. The registry will endorse that form with a return date being at least 5 weeks from the date of filing.
8. The applicant is to arrange personal service of the application, a copy of the lease and a copy of this practice direction on the respondent as soon as practicable and at least 21 days before the return date.

Response

9. The respondent is to file and serve a form 2 (Response to originating application) [AF2019-31](#) no later than 7 days before the first return date, with service being on the applicant at the applicant's address for service.
10. The application and response need not be complete pleadings as contemplated by the CPRs. Rather they are to provide sufficient detail for the other party and the Court to understand the nature and basis of the application and response.

Expedited return date

11. An applicant may apply to the registrar for an expedited return date. That application should be included within the orders sought in the originating application and be accompanied by a supporting affidavit. If the application is to be served outside the ACT, the affidavit should also address s 17(2) of the *Service and Execution of Process Act 1992* (Cth). If the registrar grants an expedited return date, the registrar should endorse the originating application with dates for service of the application and response.

Originating claim by agreement

12. Instead of filing an originating application a plaintiff may, with the agreement of all parties, commence proceedings by filing an originating claim with a notation as to that agreement. The ordinary requirements and processes for originating claims and pleadings then apply.

Case management meetings

13. The first return of the application will be at a case management meeting before the registrar in the civil applications list. The purpose of this meeting is for the Court to:
 - a. assess the likelihood of the matter resolving;
 - b. determine the appropriate pathway;
 - c. if appropriate, conduct conciliation;
 - d. list the matter for conciliation;
 - e. make appropriate directions; and
 - f. if following the simplified pathway, list the matter for an issues hearing and final hearing.
14. Parties will be expected to address those issues, and are encouraged to discuss and agree on those matters before the meeting. A list of usual directions are provided in the Annexure.
15. The registrar may adjourn a meeting for an appropriate reason. A failure to prepare for the meeting will not ordinarily be accepted as an appropriate reason.

16. The registrar may refer the matter immediately to a magistrate in the civil applications list. The registrar will record on the Court file the reasons for that referral.

No appearance of respondent

17. If the respondent fails to file a response to the originating application and fails to appear at the case management meeting, and evidence is available in support of the application and in relation to service of the application on the respondent, the registrar may refer the matter that same day to a magistrate for hearing in the civil applications list. Subject to any other business of the Court, the magistrate may determine the application in that list. For the purpose of that determination evidence may be put before the Court by way of affidavit. The Court will expect the applicant to address issues of jurisdiction, evidence and natural justice at that hearing.

Litigation pathways

18. At the case management meeting, the registrar will refer the matter for conciliation and direct that the matter follow one of two litigation pathways, namely the simplified or comprehensive pathway.

Conciliation

19. Both pathways will ordinarily involve the parties being referred to conciliation before one of the following:
 - a. an authorised deputy registrar;
 - b. a conciliator from the Court's external mediation panel; or
 - c. a private conciliator of the parties' choosing.
20. The conciliator has an advisory, but not determinative, role and may advise parties about terms of settlement and encourage them to reach agreement.
21. Directions may be made for appropriate disclosure and any other preliminary steps that will assist in the resolution of the dispute at conciliation.
22. If the matter is resolved at conciliation before a registrar, the registrar may make final orders by consent. If the dispute is not resolved, the registrar will conduct a further case management meeting immediately following the conciliation.
23. If the conciliation is to be conducted later before an external panel or private conciliator, the matter will be listed for a further case management meeting.

Simplified pathway with issues hearing

24. The simplified pathway involves the identification of the issues in dispute without formal pleadings, and is appropriate if justice can be done between the parties in the absence of pleadings. In most matters few procedural steps will occur between the identification of the issues in dispute and the hearing. However the various interlocutory processes provided within the CPRs remain available.

25. At the case management meeting, directions will ordinarily be made listing the matter for an issues hearing before a magistrate in a civil applications list. The purpose of the issues hearing is to settle a list of issues in dispute. If appropriate the issues hearing may be conducted that same day.
26. At the issues hearing, parties will be expected to identify with precision what issues need to be determined by the Court, including what facts are agreed and are not agreed. Parties are encouraged to provide to the Court at the issues hearing an agreed written proposal about what issues need to be determined by the Court.
27. At the case management meeting, and in addition to listing the matter for final hearing, directions will also ordinarily be made setting out a timetable for the disclosure of evidence with the first deadline to occur after the issues hearing.
28. The matter will also be listed for conciliation.

Comprehensive pathway

29. The comprehensive pathway involves following the ordinary processes within the CPRs. This pathway is appropriate if the simplified pathway is not suitable because justice cannot be done between the parties without the filing of formal pleadings.
30. At the case management meeting, directions will be given for the applicant/plaintiff to file and serve an originating claim, which will replace the originating application. The ordinary requirements and processes for originating claims, statements of claim and pleadings then apply, except that the claim may be served on the respondent/defendant at the respondent's address for service.
31. The matter will also be listed for conciliation.

Compliance and costs

32. Parties and their representatives are reminded that the Court may award costs against a party or a representative for failure to comply with this practice direction, the CPRs or a direction of the Court, notwithstanding s 154 of the Act.

By direction of the Chief Magistrate and Magistrates.



Jayne Reece
Acting Registrar
ACT Magistrates Court

21 June 2019

**Usual Directions at Case Management Meeting
*Leases (Commercial and Retail) Act 2001***

..... Case number:

Litigation pathway

1. In accordance with *Practice Direction Civil 2*, the matter is to proceed along the:
- simplified pathway.
 - comprehensive pathway.

Further particulars and disclosure

- 2. The applicant is to serve on the respondent by /..... /..... , a more complete written description of their claim with respect to:
.....
.....
- 3. The respondent is to serve on the applicant by /..... /..... , a more complete written description of their claim with respect to:
.....
.....
- 4. The applicant is to request any further particulars by /..... /..... , and the respondent is to file and serve a response to that request by /..... /..... .
- 5. The respondent is to request any further particulars by /..... /..... , and the applicant is to file and serve a response to that request by /..... /..... .
- 6. Unless already provided or agreed, each party is to serve (but not file) along with their more complete written description of their claim or response to further particulars, each document referred to in that description or response.

- 7. Unless already provided or agreed, each party is to serve on the other party (but not file) by /..... /..... a copy of each key documents they intend to rely upon at hearing.

Conciliation

- 8. The matter is adjourned to a further case management meeting on /..... /..... at am/pm.

- 9. The matter is referred to conciliation on /..... /..... at am/pm before:

- an authorised deputy registrar in the court building.
- in the court building, and no later than 4 weeks before the scheduled conciliation, the applicant and respondent are to pay the conciliation fee of \$1500 / (including GST) directly to the conciliator, in the proportions of

Information about payment methods is available from the Registry. As soon as a party has paid their share of the conciliation fee, they are to complete the Confirmation of Payment of Mediator’s Fees form and email the same to the conciliator and to the registry at mediation@courts.act.gov.au. That form is available at www.courts.act.gov.au/magistrates/forms_and_applications.

- 10. The parties are to arrange and participate in conciliation as arranged between themselves before the next case management meeting.

Simplified pathway

- 11. The matter is adjourned to an issues hearing on /..... /..... at 10 am.
- 12. The *Usual Directions when Listing a Civil Hearing, other than Personal Injury Proceedings* apply.

Timetable:

- a. Hearing listed (in the week commencing) /..... /..... at am for day/s
- b. Applicant to serve witness statements by /..... /.....
- c. Respondent to serve witness statements by /..... /.....
- d. Applicant to serve witness statements in reply by /..... /.....
- e. to serve statements in reply by /..... /.....

f. to serve statements in reply by /..... /.....

g. to serve statements in reply by /..... /.....

Comprehensive pathway

- 13. The applicant is to file and serve on the respondent an originating claim and statement of claim by /..... /..... .

..... /..... /.....

Magistrate / Registrar