



# Supreme Court of Victoria

## Practice Note SC Gen 5

### Technology in Civil Litigation

#### 1. INTRODUCTION

- 1.1 The Chief Justice has authorised the issue of the following Practice Note.
- 1.2 The purpose of this Practice Note is to promote the effective use of technology in the conduct of civil litigation to reduce time and costs.
- 1.3 This Practice Note sets out the Court's expectations in relation to the use of technology, the facilities which the court is able to provide, and protocols which may be employed.
- 1.4 Specific guidance regarding the use of technology in a particular List or Division of the Court may be found in other Practice Notes.

#### 2. COMMENCEMENT

- 2.1 This Practice Note was issued on 30 January 2017 and commences on 30 January 2017.

#### 3. DEFINITIONS

- 3.1 In this Practice Note:

*Common Format* includes Word, Excel, and PDF.

*Electronic Documents* includes word processed documents, emails, text messages, other electronic messages, spreadsheets, data bases, graphs, images, sound recordings, video files and other electronically stored information.

*Joint Operator* means a person, organisation or firm experienced in the use of technology assisted review and with access to the necessary software to manage electronic discovery for the parties.

*Metadata* in relation to an Electronic Document means data or information that describes and gives information about that document (e.g. the document properties such as the author, date and time of creation) and which is typically embedded in the Electronic Document.

*Native Format* in relation to a document means the format the document was created in or the form in which it is retained by the relevant party.

**Party Operator** means a person, authorised and experienced in the use of, and with access to, the necessary software to manage electronic discovery for a party.

**PDF** means portable document format.

**Rules of Court** means Rule made under s 25 of the *Supreme Court Act 1986* (Vic) and any other enabling enactments

## **PART A - GENERAL**

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### **4. GENERAL PRINCIPLES**

- 4.1 The use of technology in civil litigation facilitates the just, efficient, timely and cost-effective resolution of the real issues in dispute. The Court expects parties to acquit their obligation to ensure costs are reasonable and proportionate by employing technology to save time and costs wherever possible. The Court also expects parties to cooperate in the use of technology in civil litigation consistent with their obligations under the *Civil Procedure Act 2010* (Vic).
- 4.2 Across the broad spectrum of proceedings before the Court, different uses of technology will be appropriate. This will change over time as technologies develop and evolve. It is therefore incumbent on the parties to consider which use of technology will best serve the needs of an individual proceeding in terms of efficiency and cost.
- 4.3 For that reason this Practice Note does not seek to mandate a single approach to the use of technology in every civil proceeding, however, the court is guided by the following general principles which reflect the following assumptions:

<b>Principle</b>	<b>Assumptions</b>
Dealings in hard copy are to be the exception rather than the rule in all aspects of civil litigation in the Court. Converting Electronic Documents into hard copy requires justification.	Communications and dealings in modern society are predominantly conducted electronically. A large number of discoverable documents are stored by parties electronically.
The inability or reluctance of a lawyer to use common technologies should not occasion additional costs for other parties. Sourcing technology services through a third party provider is accepted practice.	The use of common technologies is a core skill for lawyers and a basic component of all legal practice, whether provided in house or through a third party provider.

Wherever possible, parties are to exchange documents in a useable, 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.	A document in electronic form offers greater functionality and efficiency in dealing with information.
An unreasonable failure to cooperate in the use of technology which occasions additional costs will constitute a breach of the overarching obligations of the parties.	Cooperation between the parties in the use of technology reduces costs.
Parties should be prepared to address the court on the use of technology at an early stage of a proceeding.	The early and consistent use of technology in a proceeding may produce efficiencies for both the parties and the Court.
The increased capability to store, search and access a large volume of documents through the use of technology does not relieve parties of the obligation to limit the presentation of documentary evidence to that which is necessary and proportionate to the conduct of the case.	Parties will refine the documents to be presented to the court to those which are necessary for the conduct of the proceeding.

## 5. SERVICE AND CORRESPONDENCE

- 5.1 Under the Rules of Court, lawyers are required to provide an email contact address on all court documents. Lawyers are expected to monitor the email addresses provided and advise of any change of address in the same way as they would a mailing address. Ordinary service may be effected by email by consent pursuant to the *Electronic Transactions (Victoria) Act 2000* (Vic). Service by email is the form of ordinary service most consistent with the overarching obligations in relation to time and cost.
- 5.2 Correspondence by email is expected to be utilised as standard practice.

## 6. COMMUNICATIONS WITH THE COURT

- 6.1 Email is the preferred form of communication with the court, but the following protocols must be followed:

- Emails are to be sent to the appropriate addresses. Practice Notes relating to particular lists will indicate the appropriate email addresses. In the event of uncertainty, practitioners should review the Supreme Court website or contact the court by phone to confirm the correct address.
- Emails should maintain the same level of formality expected of all communications with the Court.
- Unless the communication concerns an application to be made without notice, emails are to be copied to all parties to the proceeding.
- Emails, like any other correspondence with the Court, are not the appropriate forum for raising contentious issues, unless the Court has invited written submissions via email.

## **PART B - E-FILING**

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### **7. ELECTRONIC-FILING**

- 7.1 Documents may be filed electronically across most areas of the Court. Electronic filing is also mandated in most Judge-managed lists of the Commercial Court by the Rules of the Court. The Court continues to develop its electronic-filing options.
- 7.2 Where documents are filed in hard copy or an electronic format which does not permit text to be searched and copied, the Court may request documents also be provided in a format which will enable text to be searched and copied electronically.

## **PART C - DISCOVERY**

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### **8. DISCOVERY**

- 8.1 Where discovery is required in a proceeding, the parties should consider how technology can improve the efficiency of the process and reduce costs. The Court expects parties to be in a position to address this question at the point at which discovery is sought in the case management process and to have conferred with other parties for this purpose.
- 8.2 The Court operates on the following assumptions in case management and cost decisions regarding discovery, unless the contrary is established by a party:
- Converting electronic files to hard copy requires exceptional justification.
  - Reviewing documents in their Native Format or the form in which they are currently held will generally be the most cost-effective option.
  - Inspection/exchange of documents in Native Format will generally be the most appropriate and cost effective method.
  - Converting hard copy documents into electronic format may be appropriate where the documents held in hard copy represent a small

proportion of the documents overall, or where the costs of conversion will be outweighed by cost savings in the review and exchange process or the general conduct of the matter.

- All legal practitioners will be competent and equipped to deal with Electronic Documents in Common Formats during the discovery process.
- Parties will endeavour to remove repeated or duplicate electronic documents where possible.
- Parties will facilitate access to Electronic Documents in uncommon formats, either through conversion to a Common Format or cooperation to provide access for inspection in Native Format.
- Where an individual has a personal preference for dealing with documents in hard copy, conversion to that format and the costs of doing so are the responsibility of that individual.
- Parties will seek out and utilise the most cost-effective means of dealing with documents electronically, including the use of external providers.

### *Discovery plan*

8.3 In any matter where the discovery exercise is likely to be significant (more than 500 documents), parties are expected to agree upon a practical and cost effective discovery plan incorporating the use of technology, encompassing:

- The scope of discovery.
- The extent to which the body of discoverable documents comprises Electronic Documents.
- The search/review process and the use of procedures to remove repeated or duplicate content.
- Whether an affidavit of documents or a verified schedule will be required.
- A format protocol for:
  - (a) producing the lists of documents discovered;
  - (b) exchanging documents (having regard to the importance of preserving original Metadata when exchanging Electronic Documents); and
  - (c) treatment of privileged documents (including any clawback arrangement).

8.4 This plan should be agreed at an early stage, bearing in mind the common obligations of all parties to cooperate and ensure costs are proportionate.

8.5 A template format protocol is included as **Annexure 1**.

### *Discovery conference*

8.6 Where parties cannot agree on the contents of a discovery plan, the Court may order a discovery conference. This will entail a meeting or conference of the parties or their legal representatives to consider and attempt to reach agreement regarding the form of a discovery plan. The Court may, in an appropriate case, direct that a discovery conference be facilitated by an

Associate Judge, Judicial Registrar, court appointed assessor, expert or other suitably qualified person.

### *Technology assisted review*

- 8.7 In larger cases, technology assisted review will ordinarily be an accepted method of conducting a reasonable search in accordance with the Rules of Court.<sup>1</sup> It will often be an effective method of conducting discovery where there are a large number of Electronic Documents to be searched and the costs of manually searching the documents may not be reasonable and proportionate. In such cases, the Court may order discovery by technology assisted review, whether or not it is consented to by the parties.
- 8.8 As part of cooperating in the conduct of the proceeding, and to avoid later disputation, parties may agree on a protocol for technology assisted review as part of the discovery process and inclusion in a discovery plan.
- 8.9 The protocol may include:
- The appointment of a Joint Operator; or
  - The appointment by each party of a Party Operator;
  - A general description of the system to be used, either by a Joint Operator or a Party Operator, in undertaking the technology assisted review process, including, but not limited to:
    - A continuous active learning protocol (using a constantly changing body of documents which are used to train the technology assisted review algorithm);
    - A simple active learning protocol (using statistical samples, including control sets, or random samples and the like);
    - A simple passive learning protocol (using other recognised statistical methods); and
    - Any other appropriate system.
  - A general description of the method to be used, including where relevant:
    - An outline of the steps to be undertaken as part of the protocol;
    - Where statistical measures are adopted for quality assurance purposes, details of the statistical measures;
    - Proposed members of the review team;
    - The management of non-text based documents;
    - The treatment of foreign language documents;
    - Any procedures proposed for high level culling and the elimination of repeated or duplicate content;
    - The method for determining the scale of relevance;
    - Any necessary manual review of the results produced by the system;
    - Any document or groups of documents a party proposes to exclude from the process; and
    - Any other matters relevant to the method adopted.

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<sup>1</sup> Technology assisted review is discussed in *Pyrrho Investments Ltd v MWB Business Exchange Ltd* [2016] EWHC 256 (Ch), [17], [19]-[24].

- Arrangements for the clawback of privileged or confidential information which may have been inadvertently exchanged or disclosed as part of the technology assisted review process; and
- Provision for the exchange of relevant documents that have not been disclosed as part of the technology assisted review process.

### *Exchange/inspection*

- 8.10 Lists/schedules of discovered documents are to be provided by the discovering party to each other party in electronic format, regardless of whether the discovered documents are held electronically or whether discovery is made by affidavit or otherwise. Where discovered documents have been compiled electronically, the exchange/inspection of documents between parties should be provided in the same format.
- 8.11 Where particular hardware, software or other supporting resources are required to access Electronic Documents discovered by another party, the parties and their lawyers should work together to ensure access is made available.
- 8.12 Where discovery has been compiled by a party in hard copy, another party who is managing documents electronically may request copies of discovered documents in electronic format, rather than hard copy, to avoid needless duplication of costs.
- 8.13 A party will need to justify refusal of a request by another party for use of a third party service provider to facilitate the exchange of documents in electronic format if this would avoid duplication of costs.

## **PART D - E-TRIALS**

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### **9. TECHNOLOGY ASSISTED TRIALS**

- 9.1 Ordinarily, the use of technology is an integral part of the efficient conduct of a trial. The conduct of a trial using hard copy documents is not to be considered the default position. All parties are expected to consider the means of conducting the trial which will be most efficient. Whether or not the trial is to be conducted electronically, with respect to evidentiary documents, the parties must only include in the court book documents any party intends to tender in evidence or reasonably expects to refer to in cross-examination.

#### *Cooperation and Planning*

- 9.2 The presentation of evidence at trial requires cooperation between the parties and the Court to devise an appropriate process, regardless of the format in which that evidence is presented.
- 9.3 There are a number of different options for the conduct of a technology assisted trial, and the Court expects parties to cooperate in selecting the most appropriate option having regard to the nature of the case.
- 9.4 In-court technology requirements should be raised with the Court in the course of case management and preferably, at the first directions hearing. Where the

arrangements between the parties are uncontentious, this may be done through correspondence or other informal means rather than a hearing

### *In-Court technology*

- 9.5 All Melbourne courtrooms are equipped with the following technology:
- Laptops and internet access for the Judge and court staff.
  - Wi-Fi access for practitioners.
- 9.6 A number of Melbourne courtrooms have video link facilities for taking remote evidence and display screens for witnesses. The Court will make arrangements for computer or display screen access for witnesses and jurors where required.
- 9.7 All regional courtrooms have computer and internet access for the Judge and court staff. They are also equipped with videolink facilities for taking remote evidence.
- 9.8 In appropriate cases, the court will facilitate installation of practitioner provided or third party provided equipment.

### *Presentation of evidence*

- 9.9 The presentation of documentary evidence at trial in a text searchable electronic format is the preferred position of the Court. It increases the efficiency with which the evidence is presented and the process of delivering judgment in a timely manner.
- 9.10 The Court will not insist upon this course in cases where the presentation of evidence in this manner is beyond the capacity of the parties, or where the cost of presenting evidence in that format would exceed the costs saved through reduced trial time.
- 9.11 Where a trial will involve the presentation of a large amount of documentary evidence, parties will need to satisfy the Court that the presentation of documentary evidence in electronic format is not appropriate.
- 9.12 Certain kinds of Electronic Documents can only be accurately presented in their Native Format (e.g. a complex spreadsheet). The Court expects documents of this nature to be presented in this way.

### *Modes of presentation of evidence in technology assisted trial*

- 9.13 The following are the basic requirements which must be satisfied in relation to the presentation of evidence in any trial:
- The ability for the Court, the witnesses and the parties to view one (or multiple) documents at the same time
  - Unique identification of documents, usually consistent with discovery identification
  - The ability to record which documents have been tendered in evidence
  - The ability for the court to annotate documents with notes
  - Efficiency in locating and calling up documents.
- 9.14 These requirements can be met, for example, by producing an agreed set of documents compiled into a single PDF file, made available to all participants on portable data storage devices and using page numbers as unique identifiers. Each participant can quickly call up the relevant page number and arrangements can be made for court staff or an operator engaged by the parties

to operate a system to call up the page number for witnesses during the course of oral evidence. Documents tendered in evidence can be recorded by reference to the PDF page number.

- 9.15 The following are enhanced means of case presentation which can only be achieved through the electronic presentation of evidence and which the Court would expect to be adopted in matters involving a large amount of documentary evidence, unless good reason is shown otherwise:
- Searchable text (whether via Native Format, converted format or imaged documents which have been subject to an optical character recognition process)
  - Hyperlinked cross referencing to documentary evidence in submissions and transcript.
- 9.16 In large scale litigation with a large amount of documentary evidence and where the trial is anticipated to extend over a period of ten or more sitting days, engagement of a third party provider to operate a coordinated system is considered proportionate. In such cases, parties should be engaging at an early stage with each other, the Court and the agreed third party provider to develop a protocol for the conduct of the trial and the use of technology.
- 9.17 There are other intermediate options which parties may wish to adopt. The Court will seek to facilitate options within its resource capabilities.
- 9.18 A checklist of issues that should be addressed in relation to the conduct of a technology assisted trial is at **Annexure 2**.
- 9.19 In the event parties are unable to reach agreement the Court may give directions determining how the trial is to be conducted in the ordinary course of case management for that matter.
- 9.20 Example protocols for different forms of technology assisted trials are at **Annexures 3-5**.

### *Authorities*

- 9.21 Technology may be used to present relevant authorities to the Court. This can be done either through the provision of a hyperlinked list of authorities or electronic copies of authorities. All authorities produced in this manner must comply with Practice Note SC Gen 3.

## **10. TECHNOLOGY ASSISTED PROCEEDINGS IN THE COURT OF APPEAL**

- 10.1 The Court of Appeal expects all parties to consider the use of technology to ensure that appeals are conducted efficiently. Where the trial has been conducted electronically and/or where it is intended that a party will take the Court to substantial amounts of documentary evidence parties should assume in-court technology will be used in the conduct of the appeal.

### *In-Court technology*

- 10.2 All Melbourne courtrooms of the Court of Appeal are equipped with the following technology:
- Laptops and internet access for the Judges and court staff.
  - Videolink facilities.

- Display screens for witnesses and Judges.
  - Wi-Fi access for practitioners.
- 10.3 In exceptional cases involving appeals from large scale litigation the Court will facilitate installation of practitioner provided or third party provided equipment.
- Presentation of submissions, evidence, legislation, transcript and authorities*
- 10.4 Paragraphs 9.8 to 9.11 and paragraph 9.19 of this practice note apply to the presentation of submissions, evidence, legislation, transcript and authorities in appeal proceedings.
- Modes of presentation of documents in technology assisted appeals*
- 10.5 The following are the basic requirements which must be satisfied in relation to the electronic presentation of documents in appeal proceedings:
- The ability for the Court and the parties to view one (or multiple) documents at the same time.
  - Unique identification of documents, usually with their application or appeal book identification.
  - The ability to record which documents have been referred to in parties' oral submissions.
  - The ability for the Court to annotate documents with notes.
  - Efficiency in locating and calling up documents.
  - Searchable text (whether via Native Format, converted format or imaged documents which have been subject to an optical character recognition process).
  - Hyperlinked cross referencing to documentary evidence and transcript in submissions.
- 10.6 In most cases the documentary evidence relevant to an appeal will be a substantially refined set of the documents referred to at trial. In appeal proceedings from large scale litigation, the Court of Appeal expects parties to engage with each other at an early stage to develop a protocol for the conduct of the appeal and the use of technology. In this regard the principles articulated in paragraphs 9.15 to 9.18 of this practice note apply to the extent appropriate to the conduct of appeals.

## **AMENDMENT HISTORY**

30 January 2017: This Practice Note was issued on 30 January 2017 and replaced Practice Note No 1 of 2007.

Vivienne Macgillivray  
Executive Associate to the Chief Justice  
30 January 2017

## ANNEXURE 1<sup>2</sup>

### Discovery List Format Protocol

Field	Data type	Notes
Document ID	Text and numbers	<p>This must be a unique identifier. Systems of letters and numbers can be used to organise documents or indicate where they come from e.g. PLA.013.1234 (3 letter party code.3 digit number indicating a location sourced from or a batch processed.4 digit number identifying the particular document)</p> <p>If a document ID label is applied to the document visibly it should appear on the top right hand corner of the page</p>
Document Date	Date	<p>Suggested format is DD-MMM-YYYY, e.g. 05-Jul-2016. This is to avoid any confusion that may arise from differences in date formats used internationally</p> <p>Documents without discernible dates should be coded as undated</p> <p>If necessary, incomplete dates can be coded to the first day of the known period e.g. 01-Jan-2015 for year only and 01-Jul-2016 for month only</p>
Estimated	Yes or blank	Where the date entered above is estimated from an incomplete date this field should reflect the fact
Document type	Text	Documents should be coded from a standard list of document types (e.g. letter, email, prospectus, report, spreadsheet etc.)
Author	Text (optional)	<p>This may be done using one or more of:</p> <ul style="list-style-type: none"> <li>• an email address;</li> <li>• surname and initial;</li> </ul>

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<sup>2</sup> See [8.5] above.

		<ul style="list-style-type: none"> <li>• position title</li> </ul>
Author Organisation	Text (optional)	
Addressee	Text (optional)	<p>This may be done using one or more of:</p> <ul style="list-style-type: none"> <li>• an email address;</li> <li>• surname and initial; or</li> <li>• position title</li> </ul> <p>Where there are multiple recipients these should be listed separated by a semi colon</p>
Addressee Organisation	Text (optional)	
Title used	Text (optional)	Ordinarily this should be apparent from the face of the document
Host document ID	Text and numbers	If the document is an attachment to another document this field will contain the host document ID
Document Group	Text/number coded (optional)	
Privilege	Yes or blank	Indicating whether privilege is claimed
Grounds of Privilege	Text	A concise statement of the grounds
Redacted	Yes or Blank	
Basis of Redaction	Text	A concise statement of the basis of redaction e.g. irrelevant, privilege

## ANNEXURE 2<sup>3</sup>

### Checklist of issues to be addressed in planning for a technology assisted trial

#### Preliminary questions

- What volume of documents are likely to be presented in evidence?
- What is the predominant format of the documents?
- What will be the most efficient means of presenting and dealing with documents?

#### Agreed mode of document collation

- Single PDF file
- Multiple files in agreed folder structure
- Practitioner compiled database
- Third party compiled database

#### Timetable for collation

- Exchange of index
- Removing duplication
- Settling

#### Document format

- Native Format
- PDF
- Predominantly PDF with the exception of documents which require Native Format to be understood

#### Naming/numbering conventions

- Numbering systems
- Tabs and numbers
- Numbering by category
- Cross referencing in submissions/witness statements or outlines of evidence

#### Mode of exchange/access

- Online/cloud based access
- Portable data storage device
- Protocol for additions

#### In court technology and hardware requirements

- Court
- Parties
- Witnesses
- Public/private streaming
- Wi-Fi

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<sup>3</sup> See [9.18] above.

#### Agreed mode of document presentation

- Practitioner operated document call up
- Court operated document call up
- Third party provider call up

#### Protocol for tendered evidence

- Default tender of referenced documents unless objections raised
- Process for updating the Electronic Document resource or court book
- Running list provided daily
- List compiled by associate/third party provider

#### Transcript

- Standard or real time
- Hyperlinked referencing to documents

## ANNEXURE 3<sup>4</sup>

### Example of basic technology assisted trial protocol

#### 1. Compilation of Electronic Document resource

The Plaintiff will compile an Electronic Document resource for the trial (“the Court Book”).

The Plaintiff will provide all parties with an initial draft index for the Court Book by [date].

Each party will provide the Plaintiff with proposed additions to the draft index by [date].

The parties will meet to settle the index on [date] if necessary.

The Plaintiff will compile the electronic Court Book in the format of a single text searchable PDF file containing all documents in the index.

Each party will provide documents to the Plaintiff as necessary for compilation of the Court Book in text searchable PDF format, either converted from Native Format or created from a scanned hard copy made searchable through optical character recognition.

The page numbers at which the documents appear within the Court Book will be used as their unique identifier.

Once compiled, copies of the PDF file will be made available to all parties and the court together with an index in the following format

Pages	Document date	Document description
1-15	1-Jan-2015	Contract of sale between ABC and DLF
16-18	5-Dec-2015	Email from J Smith to H Lin

#### 2. Conduct of Trial

Each party will be responsible for bringing the hardware they require to access their copy of the Court Book.

The Court will provide the hardware necessary for the judge and witnesses to view the Court Book.

Counsel are to call the page number of the Court Book they wish the witness to be taken to and the associate or operator will call up that page for the witness to view.

The associate will maintain a list of documents tendered from the online Court Book. Exhibits will be given the number of the page on which the first page of the document appears in the Court Book. The list will be circulated to the parties on a daily basis.

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<sup>4</sup> See [9.20] above.

## ANNEXURE 4<sup>5</sup>

### Example of intermediate technology assisted trial protocol

#### 1. Compilation of Electronic Document resource.

The Plaintiff will compile an Electronic Document resource for the trial (“the Court Book”).

The Plaintiff will provide all parties with an initial draft index for the Court Book by [date].

Each party will provide the Plaintiff with proposed additions to the draft index by [date].

The parties will meet to settle the index on [date] if necessary.

The Plaintiff will compile the electronic Court Book in the format of a [provider] database.

Each party will provide documents to the Plaintiff as necessary for compilation of the Court Book in text searchable PDF format, either converted from Native Format or created from a scanned hard copy made searchable through optical character recognition, together with Metadata for each document in the attached format [generally a subset of the fields used in discovery].

Once compiled the database will be made available to all parties and the Court via [cloud based sharing platform].

#### 2. Conduct of Trial

Each party will be responsible for bringing the hardware they require to access the Court Book.

The Court will provide the hardware necessary for the judge and witnesses to view the Court Book.

Counsel are to call documents by reference to the document ID they wish the witness to be taken to and the associate or operator will call up that document for the witness.

The associate will maintain a list of documents tendered from the Court Book. Tendered documents will not be given a separate exhibit number but will maintain their unique identifier within the Court Book. The list will be circulated to the parties.

Documents may be added to the Court Book at the direction of the court or by agreement between the parties.

Transcript will be uploaded in Word format daily.

All submissions will refer to documents by their document ID with hyperlinks to the Court Book.

All authorities will be cited with hyperlinks.

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<sup>5</sup> See [9.20] above.

## ANNEXURE 5<sup>6</sup>

### Example of sophisticated technology assisted trial protocol with third party provider

The parties engage [provider] to provide the following services in relation to the trial.

#### 1. Creation and Management of the Online Resource

The provider will create and manage an online resource to contain:

- All documents provided by the parties in accordance with the agreed index; including documentary evidence and pleadings;
- Witness statements and expert reports;
- Transcript;
- Submissions;
- Authorities; and
- Legislation.

#### *Compilation of the Online Resource*

The Plaintiff will provide an initial draft index by [date].

The index will be in the format of the attached template [generally a subset of the fields used in discovery].

Each other party will provide a list of additional documents to be added to the index by [date].

The parties will meet to agree and settle upon an index on [date] in the event there is any dispute.

The index will be provided to the provider by [date].

The parties will provide documents to the provider in the following format (by order of preference):

- PDF converted directly from an electronic format;
- Native Format where files are not conducive to PDF conversion; e.g. a spreadsheet; or
- Text searchable PDF from a scanned document.

The parties will provide documents via:

- CD/DVD;
- USB stick;
- USB hard drive;
- Email;
- SFTP;
- Web browser based file sharing platform.

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<sup>6</sup> See [9.20] above.

The first transfer of documents is to take place by [date].

### ***Document identification***

Where document IDs have been assigned during the discovery process these will be retained for documents to be included in the online resource.

Other documents will be given unique identifiers in accordance with the attached numbering protocol.

### ***Preparation***

The first tranche of documents will be uploaded to the online resource by the provider by [date].

All party created documents that refer to other documents in the online resource should include a hyperlink to the relevant document.

### ***Addition of documents***

Documents can be added to the online resource by email copied to all other parties. The provider will notify all parties of the document ID for any additional documents in accordance with the convention established above.

### ***Access and private documents***

Parties are to supply a list of users to have access to the online resource. The Court will provide a list of users to have access. The online resource will be accessible 24 hours a day 7 days a week.

Users will be supplied with a login ID and password.

A party may provide documents to be included in a private section of the online resource accessible only to that party's users.

## **2. Conduct of trial**

### ***Courtroom setup***

The provider will install the hardware in the courtroom described in the attached schedule.

Parties, the court operator and the Court will have Wi-Fi access in the courtroom.

### ***Calling documents***

Counsel are to call documents by their document ID, followed by the pinpoint reference to the relevant page. Counsel may wish to provide a list of document IDs to the operator likely to be called that day to assist the process.

The provider will provide a court operator who will bring up documents from the online resource as they are called. The court operator can be asked to provide the following views:

- Enlarging the page;
- Scrolling down;
- Highlighting or enlarging a section or paragraph; and

- Side by side display of multiple pages.

### *Cross-referencing and hyperlinking*

Documents will be recorded in the transcript by the document ID and those references will be hyperlinked to the online resource. The online resource will also enable parties and the court to link from a document to all references to the document in the transcript.

The provider will maintain a list of documents shown to a witness or displayed in court with the context in which this was done.

### *Exhibit management*

The provider will maintain an exhibit list by tagging documents tendered in the online resource. A cumulative exhibit list will be provided to parties at the end of each day.

Tendered documents will not be given a separate exhibit number but will maintain their document ID within the online resource.

The following documents will be assumed to be tendered and marked as exhibits in the online resource subject to any objections

- Documents displayed during opening submissions, examination in chief, cross examination or re-examination of a witness
- Documents tendered in bulk.

The following will not be marked as exhibits

- Documents marked for identification only;
- Submissions;
- Pleadings;
- Legislation;
- Authorities; and
- Transcript.