

FINAL DRAFT

**(as approved by the Rules Committee following consideration of the recommendations from the
NTSC Judges' conference)**

EXPLANATORY DOCUMENT FOR PRACTICE DIRECTION NO.# OF 2009

TRIAL CIVIL PROCEDURE REFORMS

1. Alongside and following the Woolf civil justice reforms in England and Wales in the late 1990s, major civil procedure reforms have been underway in common law jurisdictions around the world. In 1999, Queensland brought in its new Uniform Civil Procedure Rules. The next decade saw the Court Procedures Act 2004 in the Australian Capital Territory, the Civil Procedure Act 2005 and the Uniform Civil Procedure Rules 2005 in New South Wales, the new Supreme Court Rules 2006 in South Australia, the experimental "Rocket Docket" system in the Federal Court in 2007 and, this year, the implementation of the Hong Kong Civil Justice Reforms. The radical proposals of British Columbia's Civil Justice Reform Working Group including for the establishment of "information/assistance hubs" still remain under consideration. The report of Sir Rupert Jackson's committee on the costs of civil litigation in England and Wales is awaited with interest.
2. Given that our rules are modelled on the Victorian Supreme Court rules, of significance for the Northern Territory is the recent Victorian Law Reform Commission's report on Civil Justice Reform (Report 14, July 2008). Following its wide ranging review of the Victorian civil justice system the committee made 177 recommendations.
3. The motivating force behind these reforms is the universal acceptance of the fact that traditional common law civil litigation can take too long and may be too expensive. From the cases which went to trial last year, it appears that the "normal" civil dispute in the Supreme Court is taking about four years to get to trial. In more than half of these cases, the trials were adjourned part-heard often for several months. Inevitably, these delays and inefficiencies impose substantial, avoidable costs and other pressures on litigants.
4. In 2008, the Judges appointed Mildren J to chair a committee comprised also of Riley J and representatives of the Northern Territory Bar Association and the Law Society of the Northern Territory to consider and make recommendations on civil procedure reform to the annual Judge's Conference in May this year.
5. That committee recommended the introduction of the following as a first step in the reform of civil procedure in the Northern Territory Supreme Court:
 - 5.1. All parties are to be under a general obligation to disclose the nature of their respective cases and to attempt to settle the dispute prior to commencing litigation;
 - 5.2. Litigation, once commenced, is to be the subject of active and effective judicial case-management such that the real issues of substance which are in dispute between the parties, and only those issues, are resolved by the court justly, promptly, economically, and

in proportion to the nature of the dispute. This will include the fixing of trial dates or trial windows at the earliest opportunity;

- 5.3. The parties and their representatives are to be under a duty to assist the court in managing cases to achieve this end;
 - 5.4. The ambit of discovery is to be subject to review in every case, with the presumption being in favour of limiting or excluding discovery wherever appropriate;
 - 5.5. The role of offers made “without prejudice save as to costs” is to be enhanced to encourage parties to make and accept reasonable offers of settlement, including offers made prior to the commencement of court proceedings;
 - 5.6. Greater weight is to be placed on a party’s conduct in these respects both during and before the commencement of litigation when awarding costs and interest.
6. The purpose of these reforms is to maximise the prospect of settling a dispute without incurring the costs of court proceedings. However, if the dispute is not settled and resort to court process is necessary, these reforms should also ensure that each party has a sufficient understanding of its own case and the case against it:
 - 6.1. to make a reasonably accurate assessment of its prospects of success in securing or resisting a remedy at trial;
 - 6.2. to make a reasonably accurate assessment of the likely time and cost involved in getting to trial;
 - 6.3. to make a reasonably accurate assessment of the most appropriate offer (if any) to make “without prejudice save as to costs”;
 - 6.4. to discharge its duty to assist the court manage the case such that the real issues of substance which are in dispute between the parties, and only those issues, are resolved by the court justly, promptly, economically, and in proportion to the nature of the dispute.
 7. Further, by active case management with the support of better informed parties under a duty to assist the court, the committee and the judges believe that the costs of and the delays in litigation will be significantly reduced.
 8. Finally, the court is expressly empowered to take into account a party’s compliance with these reforms in the conduct of litigation when awarding costs and interest.
 9. The judges have accepted the committee’s recommendations and the draft practice direction produced it to give effect to their recommendations.
 10. These reforms have been identified by the committee and adopted by the judges now on the basis that (a) their implementation is likely to result in immediate improvements in the administration of civil justice and (b) they are likely to be part of the new system once the reform process has been concluded. It is in this sense that this practice direction is described as a “trial”. It would be wrong to assume that these particular reforms themselves are necessarily provisional.
 11. Alongside monitoring these reforms, the Judges have asked Mildren J and his committee to continue their inquiry into civil procedure reform with a view to making further recommendations in relation to the Supreme Court rules next year when more should be known about the position in Victoria.

Chief Justice

May 2009