

IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COMMON LAW DIVISION  
MAJOR TORTS LIST

S ECI 2020 01535

BETWEEN:

NERITA SOMERS & ORS  
(according to the attached Schedule)

Plaintiffs

-and-

BOX HILL INSTITUTE & ANOR  
(according to the attached Schedule)

Defendants

**ORDER**

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JUDGE: The Honourable Justice John Dixon  
DATE MADE: 12 July 2021  
ORIGINATING PROCESS: Writ filed 26 March 2020  
HOW OBTAINED: At case management conference  
ATTENDANCE: Mr J T Rush QC RFD with Mr M Guo, for the plaintiff  
Mr M Hooper of counsel, for the first defendant  
OTHER MATTERS: Nil.

**THE COURT ORDERS BY CONSENT THAT:**

**Trial**

1. The proceeding is listed for trial commencing on 26 September 2022, on an estimate of 25 sitting days.
2. By 17 February 2022, the parties shall:
  - (a) jointly engage an e-trial provider to conduct an electronic trial; and
  - (b) adopt an electronic trial protocol, in conjunction with the e-trial provider, in substantially the form of Annexures A and B of this order.
3. By 19 May 2022, the plaintiffs shall:
  - (a) serve a list of documents on which they intend to rely; and
  - (b) provide electronic copies of those documents to the e-trial provider to be uploaded to the Online Review Book, in accordance with the electronic trial



protocol.

4. By 26 May 2022, the first defendant shall:
  - (a) serve a list of documents on which they intend to rely; and
  - (b) provide electronic copies of those documents to the e-trial provider to be uploaded to the Online Review Book, in accordance with the electronic trial protocol.

#### **Witnesses**

5. By 10 March 2022, the plaintiffs shall file and serve a list of witnesses they currently propose to call at trial.
6. By 24 March 2022, the first defendant shall file and serve a list of witnesses it currently proposes to call at trial.
7. By 7 April 2022, the plaintiffs shall file and serve outlines of evidence for the witnesses they propose to call at trial.
8. By 21 April 2022, the first defendant shall file and serve outlines of evidence for the witnesses it currently proposes to call at trial.

#### **Subpoenas**

9. By 28 April 2022, the parties shall issue any subpoenas under Order 42A of the Rules.

#### **Outline of opening submissions**

10. By 2 June 2022, each party shall file, serve and cause to be uploaded to the Online Review Book an outline of submissions:
  - (a) summarising concisely that party's submissions in relation to each of the issues in the proceeding;
  - (b) citing the main authorities upon which that party will rely; and
  - (c) not exceeding 20 pages of 1.5 spaced 12 point font A4 paper.

#### **Common issues and agreed facts**

11. By 10 February 2022, the parties shall file and cause to be uploaded to the Online Review Book a jointly-prepared statement of agreed common issues to be answered at trial, and statement of agreed facts.



**Other matters**

12. The case management conference is adjourned for further hearing on 29 July 2021 at 9:30am.
13. Costs reserved.

DATE AUTHENTICATED: 19 July 2021



  
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The Honourable Justice John Dixon

## ANNEXURE A ELECTRONIC TRIAL PROTOCOL

### Definitions

**document ID** means the alpha-numeric code<sup>1</sup> stamped to the corner of each page in a document uploaded to the Online Review Book.

**duplicate document** means a document that has the identical text and metadata of another document uploaded to the Online Review Book.

**e-trial provider** means [provider].

**observer** means any person who is not involved with the conduct of the proceeding and would ordinarily be seated in the public gallery during an in-person hearing.

**Online Review Book** means the online electronic court book maintained by the e-trial provider that is accessible by the Court and the parties to the proceeding.

**operator** means the e-trial provider employee responsible for projecting documents to participants.

**page identifier** means the last four digits of the document ID stamped to a specific page of a document.

**participant** means any person who is involved with the conduct of the trial and would ordinarily be seated in a place other than the public gallery during an in-person hearing, including the trial judge, court staff, counsel, instructing solicitors and witnesses.

**Rules** means the *Supreme Court (General Civil Procedure) Rules 2015*.

### The protocol

1. The protocol shall apply to the trial of the proceeding.

To the extent that any part of the protocol is inconsistent with a direction given by the trial judge, the latter shall apply to the extent of the inconsistency.

### Electronic trial service provider

2. The e-trial provider shall:
  - (a) provide participants, as nominated by the parties and the Court, with access to the Online Review Book;
  - (b) project any document referred to during the hearing to participants;
  - (c) provide a transcript to participants nominated by the parties and the Court;
  - (d) manage, together with any third-party provider, any live stream implemented for the proceeding;
  - (e) provide any training or further technology to participants as required; and

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<sup>1</sup> e.g. ABC.123.123.1234.



- (f) conduct testing with any participant appearing or giving evidence virtually prior to the trial.

### **Online Review Book**

3. The parties shall exchange tender lists in compliance with the orders of the Court and electronic versions of those documents shall be provided to the e-trial provider and uploaded to the Online Review Book.
4. Further documents that are agreed, ordered or required to be made available to the parties or Court will be provided to the e-trial provider in accordance with the standard and format set out in the protocol.
5. The parties must otherwise adhere to any requirement to file a document via RedCrest as required under the Rules or as directed by the Court.

#### *Uploading documents*

6. The e-trial provider will upload documents as instructed by the submitting party. The submitting party must provide express instructions regarding whether the documents should be tagged or added to a document set on the Online Review Book.
7. The parties shall provide the documents for upload and the required instructions to [e-trial provider's email].
8. The parties shall provide the documents to the e-trial provider via email attachment or a secure file sharing link. In the event of file size constraints, alternative arrangements may be made on a case by case basis.
9. The e-trial provider shall upload the documents to the Online Review Book as quickly as possible, with the time necessary to complete the upload varying depending on the upload in question, including file type(s), volume, size, whether a load file has been provided and the time that the documents were provided to the e-trial provider to be uploaded.
10. Each participant with access to the Online Review Book shall receive an email notification when a document has been uploaded to and is available on the Online Review Book.

#### *Document IDs for uploaded documents*

11. Save for any documents or categories of documents determined by the Court, documents already assigned document IDs and have been exchanged between the parties shall be uploaded to the Online Review Book with their existing document ID.



12. Documents not already assigned a document ID shall be assigned a document ID by the e-trial provider in accordance with the following table:

Document Type	Prefix	Example
Aides Memoire	AID	AID.XXX.001.0001
Authorities	ATH	ATH.XXX.001.0001
Court Documents	CRT	CRT.XXX.001.0001
Expert Evidence	EXP	EXP.XXX.001.0001
Joint Expert Evidence	EXP.900	EXP.900.001.0001
Lay Evidence	LAY	LAY.XXX.001.0001
Legislation	LAW	LAW.XXX.001.0001
Indices	IDX	IDX.XXX.001.0001
Miscellaneous Documents	MSC	MSC.XXX.001.0001
Particulars	PAR	PAR.XXX.001.001
Pleadings	PLE	PLE.XXX.001.0001
Submissions	SBM	SBM.XXX.001.0001
Tender Lists	TDL	TDL.XXX.001.0001

13. The e-trial provider shall assign the following 'box number'<sup>2</sup> to any documents uploaded in accordance with the following table:

Party	Box Number
###	010
###	020
###	030
###	040
###	050

14. Unless a direction to the contrary is provided by the Court, the parties shall provide the following mandatory metadata fields with each document or set of documents for upload to the Online Review Book:

- (a) document ID;
- (b) host reference ID;
- (c) document date;

<sup>2</sup> Being the number sequence immediately after the prefix in the document ID that is represented as XXX in the examples in the table at paragraph 12 above (e.g. PLE.XXX.001.0001 - emphasis added).



- (d) document title;
- (e) document type; and
- (f) correspondence fields (From, To, CC, BCC, Between and Attendees).

*References to other documents*

15. Where a document that has been prepared for and is proposed to be referred to or tendered in the trial (**primary document**)<sup>3</sup> refers to other documents that are intended to be referred to or tendered in the trial (**referenced documents**), the referenced documents:
  - (a) must be uploaded to the Online Review Book as individual documents, in accordance with the protocol; and
  - (b) must be referred to in the primary document by their document ID.
16. Where a primary document has been previously prepared and does not refer to referenced documents in accordance with the above paragraph:<sup>4</sup>
  - (a) a revised version of that document must be prepared that refers to referenced documents in accordance with the above paragraph;
  - (b) the previous version and the revised version must both be uploaded to the Online Review Book; and
  - (c) the previous version should not be referred to during the trial, unless its existence or contents, as distinct from the revised version, becomes relevant to a fact or issue in the proceeding.
17. When referring to a referenced document in a primary document:
  - (a) document IDs and/or page identifiers should be in bold text and enclosed in square brackets; and  
eg. [LAW.700.007.0001]
  - (b) pinpoint references should be in the form of the document ID, followed by the page identifier.<sup>5</sup>  
eg. [LAW.700.007.0001 at 0002]
18. Where a referenced document is an authority:
  - (a) a copy should be uploaded to the Online Review Book as a separate document and referred to by document ID each time it is referenced; and

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<sup>3</sup> Examples include pleadings, affidavits, submissions, chronologies and expert reports. A primary document is not a document that has been discovered or produced pursuant to a subpoena.

<sup>4</sup> Examples include affidavits that refer to exhibited documents (rather than identify the document by its document ID) or pleadings that identify the particulars of a document.

<sup>5</sup> Reference to specific pages of a document should not be made by including the bates number stamped on a specific page (e.g. LAW.700.007.0002), as this will not be recognised by the automated hyperlinking technology used by the Online Review Book.



eg. *Blairgowrie Trading Ltd v Allco Finance Group Ltd (in liq) (No 3)* (2017) 343 ALR 476 (*Blairgowrie*) [ATH.600.101.0001].

eg. *Blairgowrie* [ATH.600.019.0001].

- (b) pinpoint references should include the document ID, followed by the page identifier for the pinpoint reference. Where multiple pinpoint references are included in a single reference/footnote, the page identifier can be included without subsequent references to the document ID.

eg. *Blairgowrie Trading Ltd v Allco Finance Group Ltd (in liq) (No 3)* (2017) 343 ALR 476, 491 [47] (*Blairgowrie*) [ATH.600.101.0001 at 0016].

eg. *Blairgowrie*, 491 [47] [ATH.600.019.0001 at 0016].

eg. *Blairgowrie*, 491 [47] [ATH.600.019.0001 at 0016], 495 [58] [0020], 508 [121] [0033].

19. Where a referenced document is transcript:

- (a) references should commence with the usual transcript page and line number reference, followed by the document ID and the page identifier; and

eg. T497:23 [TRA.500.005.0001 at 0084].

- (b) where multiple sections of transcript are referred to in a single reference/footnote, any subsequent references to the same day of transcript in that footnote/reference should refer to the page identifier without also referring to the document ID.

eg. T498:2 [TRA.500.005.0001 at 0085], T499:7 [0086]; T595:22 [TRA.500.006.0001\_2 at 0057], T599:25 [0061].

#### *Updating documents*

20. With the exception of paragraph 24 below, a document in the 'public book' section of the Online Review Book must not be altered, updated or replaced after it is uploaded, unless directed or permitted by the Court.
21. In the event that a document needs to be amended or replaced (including as a result of an upload or conversion error), a further version of the documents shall be uploaded to the Online Review Book as a new and unique document.
22. The further version shall be allocated the same document ID as the original document, followed by a suffix to indicate the version of original document that it represents (e.g. \_2, \_3, \_4).
23. The e-trial provider shall populate the initial and further version of documents with hyperlinked to ensure that the relationship between the versions is evident.
24. Where a duplicate document is identified in the Online Review Book and its existence is not relevant to a fact or issue in the proceeding, the parties should confer and, if agreed, request that the e-trial provider remove the duplicate document from the Online Review Book.





## Documents in a hearing

### *Referring to documents*

25. The e-trial provider shall project documents to participants as directed by active participants.
26. An active participant may request that a document be projected by the operator by referring to its document ID.
27. A summary of common commands for the projection of documents is contained in the table appended to the protocol as Annexure B.
28. When a document is being referred to in court or put to a witness for the first time, counsel must request that the first page of the document be projected before requesting a specific page/section of the document be projected, so that the document can properly identified.
29. Counsel should refrain from referring to a duplicate document that has already been tendered, unless the existence of a different version of that document is relevant to a fact or issue in the proceeding.

### *Tendering of documents*

30. All documents intended to be tendered or referred to in the proceeding are to be uploaded to the 'public book' section of the Online Review Book and available to all participants who have access to the Online Review Book before they are referred to in Court.
31. A document must not be referred to from a source other than the 'public book' section of the Online Review Book, including a party's 'private book' or a document sent to the Court by email, without leave being granted by the trial judge.
32. Any documents referred to in oral opening submissions, the affidavit or expert report of a witness, or in cross-examination of a witness, will be taken to have been intended to be tendered and admitted into evidence, irrespective of whether the document is expressly referred to as being tendered.
33. If a document is not the subject of an objection by the conclusion of the opening submissions by a party, or the completion of evidence by a witness that it was tendered through, it will be taken to have been tendered absolutely.
34. Any document that is the subject of an objection will be marked for identification, pending the ruling on the objection.
35. The e-trial provider shall manage and circulate 'evidence management lists' at the close of each sitting day identifying the documents admitted into evidence.



**ANNEXURE B**  
**DOCUMENT PROJECTION - COMMON FEATURES AND COMMANDS**

Feature	Description	Example command
Project document <span style="float: right;">a</span>	Will project a document. The first page of the document will be projected in a full-page view.	'Can we please bring up document ABC.123.123.1234?'
Project multiple documents side by side	<p>Will project two documents at the same time. The first page of each document will be projected in a full-page view.</p> <p><i>Note: The below features can be used on either or both of two documents when projected side by side, so long as the specific document is identified (e.g. 'the first document, the document on the left', 'the document ending 1234').</i></p>	<p>'Can you please bring up documents ABC.123.123.1234 and DEF.456.456.4567 side by side?'</p> <p>'Operator, can we have up documents ABC.123.123.1234 and DEF.456.456.4567?'</p>
Zoom in on part of a document	Will zoom in on a specific part of a document that has already been projected.	<p>'Can you please zoom in on the top third of the document?'</p> <p>'Operator, can you please zoom in on paragraph 3?'</p> <p>'Please zoom in on the second email in the chain.'</p>
Project a specific page of a document	Will project the specific page of a document. The page will be projected in a full-page view. A specific page can be projected by referring to the last four digits of its document ID (recommended) or an internal page number/paragraph in the document (possible, but may take longer to identify and project).	<p>'Can we please go to ABC.123.123.1234 at 1237?'</p> <p>'Please bring up document ABC.123.123.1234 and then go to page 4 of that document.'</p>
Enlarge a specific section of a document	Will emphasise a certain section of a document (e.g. a key sentence or paragraph) by enlarging that section in the foreground of the projection, with the full page of the document appearing darkened in the background.	<p>'Please enlarge paragraph 3 of the page.'</p> <p>'Can we please enlarge up the last sentence of the second paragraph?'</p> <p>'Operator, can you please focus on the email subject and the time it was sent.'</p>
Project document native format <span style="float: right;">a in</span>	By default, most documents will be projected as an image. If it is necessary to see an electronic document as it would normally be	<p>'Operator, can we please open ABC.123.123.1234 in native form?'</p> <p>'Can we please open</p>



	<p>opened on a computer (e.g. an Excel spreadsheet containing formulas), the document can be projected in its 'native' format. Once open, the operator can bring up relevant parts of the document in its native form (e.g. formulas).</p>	<p>ABC.123.123.1234 as a spreadsheet so we can see the formulas?'  'Can you please open up cell D4 and display the formula behind that cell?'</p>
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## SCHEDULE OF PARTIES

S ECI 2020 01535

### BETWEEN:

NERITA SOMERS

First Plaintiff

ADEL HASSANEIN

Second Plaintiff

MATTHEW LAMONT

Third Plaintiff

FELIX OULDANOV

Fourth Plaintiff

**-and-**

BOX HILL INSTITUTE

First Defendant

GOBEL AVIATION PTY LTD

Second Defendant

