

Federal Court of Australia

Practice Note No 17: Pre-Trial Checklist

This is the Pre-Trial Checklist mentioned in paragraphs 9.2 and 11.1 of Practice Note No 17. It is current as at 29 January 2009.

At the earliest available opportunity after an electronic trial has been proposed, the following issues should be canvassed during a pre-trial conference involving the Judge or the Judge's delegate and the parties.

1. Have the parties adequately addressed the issues in the Pre-Discovery Conference Checklist?

The following issues are of particular importance:

- Scope of Discovery
- Timetable for Discovery (*relevant timeframes and responsibilities for discovery activities*)
- Preservation of Discoverable Information (*strategy to ensure that all original evidence is preserved*)
- Document Management Protocol (*whether the parties have agreed to use the Default Document Management Protocol or another Document Management Protocol*).

2. Have the parties adhered to their agreed strategies in relation to the issues in the Pre-Discovery Conference Checklist?

The following issues are of particular importance:

- has discovery occurred in accordance with the scope, reasonable search strategy and timetable agreed by the parties?
- have the parties complied with the agreed Document Management Protocol?

Have the following elements of the Document Management Protocol been implemented:

- Are all the Imaged Documents that are to be included in the Court Book in searchable Portable Document Format (PDF) format, other than documents that are images in their original format (such as TIFF, GIFF and similar image files)? The Court must be able to adequately search the collection of Electronic Documents.
- Will any Documents, in addition to being provided to the Court in searchable PDF format, also be provided to the Court as Native Electronic Documents on the basis that they contain information relevant to the issues that is not accessible from PDF files and which will be referred to by a party during the trial? For example, excel spreadsheets may contain information relevant to the issues that is not accessible from PDF files such as formula calculations.

- Has the Document ID methodology been completely implemented by all parties? Complete implementation will ensure that each Document is uniquely identified to avoid confusion during the hearing and to speed up the time involved in retrieving a document for display in the courtroom.
- Have all the Documents in the Court Book that are ‘attachments’ to ‘host’ Documents been included with their Host Documents? No Unattached Documents are to be included in the Court Book.
- Does each Submission refer to Documents by their Document ID and, if a Searchable Image of the Document is available, include a hyperlink to that Searchable Image via the Document ID?
- Have people and organisations been referenced in a consistent way throughout the database containing the Court Book (this facilitates searching for the Judge, the Judge’s staff and the parties)?

3. Have the parties engaged suitably qualified service provider/s to facilitate the electronic trial on terms acceptable to the court?

A detailed description of the skills and experience of any third party engaged by the parties and of the services to be provided by that third party should be submitted to the Court so that the following may be confirmed:

- **Support** – the extent to which adequate help desk and technical support will be available to the Judge and his or her staff both during the trial and following the conclusion of the trial when the judgment is being written. For example, hours of availability, capabilities of the persons providing support and the phone and email contact details for obtaining support.
- **Training** – the availability of training for the Judge and his or her staff, and the availability of user manuals or other documentation.
- **Communication** – proposed arrangements for the Court’s Technology Services to liaise with the service provider etc.
- **Capability** – the experience of the proposed service provider in delivering eTrial services.
- **Technology Compatibility** – the extent to which the proposed technology solution is generally acceptable to the Court’s Technology Services.

4. Is the proposed software for the eTrial acceptable to the Judge and Court IT staff?

The parties need to confirm that the proposed software to support the eTrial is acceptable to the Judge and the Court’s Technology Services. It is particularly important that the Judge and his or her staff are comfortable with the functionality of the software, and a comprehensive demonstration to the Judge may be required before the parties commit to any particular software application.

5. Have adequate arrangements been made to ensure that the Court Book contents are properly managed and maintained throughout the trial?

The parties must be aware of how and when documents are to be provided to the service provider for inclusion in the Court Book. The parties will need to adhere to these requirements so that material is available during the trial and any disruption and delays associated with document availability may be avoided.

6. Have the parties addressed the provision of transcript, including such options as real time transcript?

The parties or their service provider should liaise with the Court's Technology Services to ensure that the Judge is fully appraised in relation to the availability of transcript analysis software, real time transcript etc.

7. Have the parties addressed the hardware and software requirements for the courtroom?

The parties will need to liaise with the Court's Technology Services to ascertain the equipment that will be available from the Court so that they may make arrangements for the provision of any additional equipment (e.g. from their service providers).

8. Have the parties adequately addressed the need to provide courtroom operator services?

The parties must ascertain whether they will need to provide a suitably skilled courtroom operator to retrieve Imaged Documents as they are referenced by Counsel during the trial. This will ensure that the relevant Document is visible on all 'court view' screens so that it is available for all parties, witnesses, the Judge and his or her staff. In some circumstances the Judge may agree that the Judge's staff or staff of the Court will provide courtroom operator services.

9. Have counsel been appraised of the need to refer to Document IDs?

Counsel must use the full Document ID of a Document when referring to the Document during the trial. This will facilitate the smooth operation of the electronic trial because Documents referred to in this manner can be recalled quickly by the court operator and may also be cross-referenced within the transcript to facilitate automated hyper-linking between the electronic transcript and Electronic Documents. This will, in turn, facilitate more efficient access to relevant documents during judgment writing.