

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
GROUP PROCEEDINGS LIST

S ECI 2020 03402

BETWEEN:

5 BOROUGHS NY PTY LTD (ACN 632 508 304)

Plaintiff

- and -

STATE OF VICTORIA & ORS

Defendants

ORDER

JUDGE	The Honourable Justice Keogh
DATE MADE:	21 July 2025
ORIGINATING PROCESS:	Amended Writ filed 28 April 2022
HOW OBTAINED:	By consent pursuant to Rule 59.07 of the <i>Supreme Court (General Civil Procedure) Rules 2015</i> .
ATTENDANCE:	N/A
OTHER MATTERS:	Nil.

THE COURT ORDERS THAT:

Vacation of orders

1. Orders 6 to 62 of the orders made by the Court on 19 June 2025 and order 1 of the further set of orders made by the Court on 19 June 2025 are vacated.



Pleadings

2. By **25 July 2025**, the plaintiff file and serve its Further Amended Statement of Claim in the same form as that provided to the defendants on 8 July 2025.
3. The plaintiff pay the defendants' costs thrown away by reason of the amendments made in the plaintiff's Further Amended Statement of Claim.
4. The plaintiff pay the defendants' costs of and incidental to the plaintiff's summons dated 23 June 2025, including the defendants' appearance at the hearing held on 3 July 2025.
5. By **29 August 2025**, the defendants file and serve their Amended Defence.

Lay evidence

6. Subject to any further order of the Court, lay evidence in the initial trial be given orally with the parties providing a witness outline for each witness they intend to call.
7. The plaintiff is not permitted, without leave of the Court, to adduce evidence from any lay witness whose witness outline was not filed and served by **6 June 2025**.
8. By **30 September 2025**, the defendants file and serve all lay witness outlines for each witness which the defendants intend to call to give evidence.
9. Each lay witness outline satisfy the following requirements:
 - (a) it should be set out in numbered paragraphs;
 - (b) it should be a brief outline of the evidence the witness will give;
 - (c) it must identify the topics in respect of which evidence will be given and the substance of that evidence.
10. The content of a witness outline served pursuant to an order of the Court is subject to the same implied undertaking as to confidentiality as applies to a document produced upon discovery.



11. No person may use any part of the contents of a witness outline for the purposes of cross-examination of the person providing the witness outline or any other person without leave of the Trial Judge.

Expert evidence

12. By **24 October 2025**, the defendants file and serve the expert reports of each expert they intend to call at trial.
13. By **5 December 2025**, the plaintiff file and serve any expert reports in reply.

Conclaves

14. By **7 November 2025**, the parties exchange their proposals for:
 - (a) what conclaves are to be convened, and the experts to attend each conclave;
 - (b) topics for each conclave; and
 - (c) a conclave protocol.
15. By **21 November 2025**, the parties confer concerning the proposed conclaves, topics and protocol.
16. If the parties are unable to agree, the parties file and serve their respective proposals together with reasons for their proposals by **3 December 2025**.
17. Conferences between experts pursuant to s 65I of the *Civil Procedure Act 2010* (Vic) be arranged with the parties and a conclave facilitator (“**conclaves**”) to occur in the period **13 January to 30 January 2026**. The conclaves:



- (a) are to be facilitated and subject to any further direction by the conclave facilitator; and
 - (b) except as directed by the conclave facilitator, are not to be attended by parties or their legal representatives; and
 - (c) are to be held in person or by audiovisual means.
18. As soon as practicable after each conclave, the experts produce and send to the parties a joint report signed by each expert (**'joint report'**). The joint report must state:
- (a) the matters upon which the experts agree;
 - (b) the matters upon which the experts disagree, together with the reasons and basis for their disagreement; and
 - (c) whether any issue cannot be resolved without further facts or investigation.
19. If the experts are unable to express a joint opinion on any matter, the joint report must describe the difference(s) between the opinions and set out their respective reasons for disagreeing.
20. By **16 February 2026**, the parties file with the Court the joint reports signed by each expert.
21. Subject to order 17:
- (a) the conclaves and all further communications between experts in relation to the preparation of the joint report must be conducted in the absence of the



parties, their employees or agents, or any practitioner for or associated with any party;

- (b) none of the experts may in the preparation of the joint report consult with any party, their employees or agents, or any practitioner for or associated with any party; and
- (c) notwithstanding (a) and (b), the experts may jointly request further information or direction by letter signed by them directed to the practitioner for each of the parties and may receive such further information.

- 22. Save as contained in the joint report, unless the parties agree in writing, no evidence be admitted of anything said or done by any person at the conclave between the experts.
- 23. Subject to the direction of the Trial Judge, the experts attending each conclave give evidence concurrently.
- 24. Subject to any further order, the costs of the conclaves, including any administrative expenses incurred, be borne equally by the parties.

Objections to expert evidence

- 25. By **15 December 2025**, the parties exchange objections to the admissibility at trial of any part of an expert report served on them (**'expert evidence objections'**).
- 26. By **19 December 2025**, lead counsel for each of the parties confer with a view to resolving the expert evidence objections.
- 27. In the event there are any remaining expert evidence objections, by **6 February 2026** each party file and serve a schedule of the expert evidence objections together with the reasons for those expert evidence objections.



Trial date

28. The proceeding is fixed for trial commencing on **10 March 2026** in respect of the common questions and the personal damages claim of the plaintiff only on an estimate of **10 - 12 weeks**.

Other

29. The proceeding is listed for a further case management conference on **12 December 2025**.

List of common issues

30. By **28 November 2025**, the parties provide to the Trial Judge's Chambers a list of common issues to be determined at the initial trial of the proceeding, indicating whether they are agreed between the parties, or not agreed (**'List of Issues'**).

Document tender lists and identification of Confidential Material

31. By **13 October 2025**, the plaintiff file and serve a list of any documents that it presently intends to tender or otherwise put to a witness at the trial.
32. By **31 October 2025**, the defendants file and serve a list of any documents that they presently intend to tender or otherwise put to a witness at the trial.
33. By **14 November 2025**, the defendants provide the plaintiff with a list of any documents in the parties' respective proposed tender lists and the parties' respective outlines and expert reports containing information in respect of which the defendants make a confidentiality claim (**'Confidential Material'**).

Objections to proposed tender lists and anticipated lay evidence

34. By **28 November 2025**, the parties give notice to each other of any objections to documents in the proposed tender lists, and any anticipated objections to lay evidence.
35. By **12 December 2025**, the parties serve any response to the objections to documents in the proposed tender lists, and any anticipated objections to lay evidence.



36. By **19 December 2025**, lead counsel for each of the parties confer regarding the objections to documents in the proposed tender lists, and any anticipated objections to lay evidence with a view to:
- (a) resolving all outstanding objections to documents in the proposed tender lists;
and
 - (b) minimising the issues in dispute concerning the admissibility of lay evidence that will arise during the trial.
37. By **6 February 2026**, the plaintiff file and serve a consolidated list of outstanding objections to documents in the proposed tender lists.

Confidentiality Protocol

38. By **3 November 2025**, the defendants confer with the e-trial Provider to determine a proposed protocol by which the Confidential Material is to be managed in the conduct of the e-trial ('**Confidentiality Protocol**').
39. By **10 November 2025**, the defendants provide to the plaintiff the proposed Confidentiality Protocol referred to in order 38 above.
40. By **17 November 2025**, the plaintiff provide any proposed changes to the Confidentiality Protocol for the management of Confidential Material in the conduct of the e-trial.
41. By **24 November 2025**, the plaintiff and defendants are to have conferred as to the content of the Confidentiality Protocol for the management of Confidential Material in the conduct of the e-trial.
42. By **1 December 2025**, the defendants provide to the e-trial Provider a copy of the Confidentiality Protocol including any changes made as a result of the conferral in order 41 above.
43. The parties have liberty to apply on 72 hours' notice regarding the Confidentiality Protocol.



Electronic Court Book

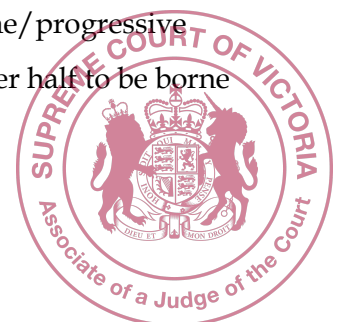
44. The plaintiff prepare an Electronic Court Book comprised of the following:
- (a) Part A: Current operative versions of all pleadings, particulars (insofar as they are not contained in the pleadings), List of Issues and the parties' written opening submissions;
 - (b) Part B: Affidavits, outlines of evidence and expert reports on which the parties intend to rely at the trial including all documents annexed or exhibited to those documents;
 - (c) Part C: In chronological order, all documents annexed or referred to in documents included in Part A; and a copy of any additional documents, on which the parties intend to rely (by tender or in cross-examination) at the trial (using reasonable endeavours to limit the number of identical duplicate documents).
45. Subject to further order, leave is granted to the defendants to mark as confidential any documents, or parts of documents, containing Confidential Material that a party proposes be included in the Electronic Court Book.
46. By **21 November 2025**, the plaintiff prepare and serve on the defendants and the e-trial Provider a draft index for the proposed Electronic Court Book containing, to the extent that the documents are available, the plaintiff's Part A, B, and C documents.
47. By **5 December 2025**, the defendants serve on the plaintiff and the e-trial Provider an electronic index indicating any additional documents proposed to be included in Part A, B, and C of the Electronic Court Book, annotated to indicate if a document contains Confidential Material.
48. By **12 December 2025**, the parties consult as to and agree upon the contents of the Electronic Court Book, and notify the e-trial Provider in relation to the same.



49. By **17 December 2025**, the e-trial Provider provide the parties with a consolidated electronic index to the Electronic Court Book, identifying all documents as set out in order 44.
50. By **19 December 2025**, the defendants provide to the e-trial Provider the copies of the versions of any documents which contain Confidential Material which are to be included in the Electronic Court Book.
51. By **23 December 2025**, the Electronic Court Book be made available to the parties and to the Court by the e-trial Provider.

E-trial and real time transcript

52. The trial of this proceeding be conducted as an electronic trial (**'e-trial'**) using documents in an electronic format in accordance with an Electronic Hearing Protocol (**'Protocol'**) to be agreed by the parties.
53. By **29 September 2025**, the parties confer and appoint an e-trial service provider to facilitate the e-trial (**'e-trial Provider'**), or in default of agreement, as ordered by the Court.
54. By **7 November 2025**, the parties confer and agree on the Protocol, which should have regard to the matters set out in the Technology in Civil Litigation Practice Note (Practice Note SC Gen 5) or in default of agreement, as ordered by the Court.
55. Leave be granted for a real-time live transcript service to be used by any party on each day of the hearing.
56. The costs of the e-trial Provider are to be costs in the cause, but borne in the first instance as follows:
 - (a) half of the shared costs, being the costs of providing the e-trial facilities and the e-trial Provider's support staff (including Court operator, live stream and/or broadband facilities and in-Court connection to a real-time/progressive transcript service), be borne by the defendants, with the other half to be borne by the plaintiff; and



- (b) individual costs be borne by the parties on the basis of each party's use of the services, including the cost of:
- i. supplying computers, screens and standard software;
 - ii. subscribing to a hardcopy transcript or electronic transcript service;
 - iii. any additional licences for an in-Court connection to a realtime/ progressive transcript service;
 - iv. remote access to the electronic Courtroom; and
 - v. technical support for the individual benefit of a party.

Trial Plan

57. By **6 February 2026**, counsel briefed to appear at the trial of the proceeding confer and jointly prepare a document ("**Trial Plan**") which sets out:
- (a) the proposed order and structure of lay and expert evidence;
 - (b) each witness to be called by each party to the proceeding;
 - (c) the estimated time allocated to each witness for examination in chief, cross examination and re-examination;
 - (d) the estimated time allocated for opening and closing submissions; and
 - (e) any time allocated for other issues or matters which it is proposed should be dealt with during the trial of the proceeding.
58. By **11 February 2026**, the plaintiff provide the Trial Plan to the Chambers of the Trial Judge by email. If there is any disagreement between counsel, this should be stated in the Trial Plan, and the respective positions or estimates set out.



Pre-trial case management hearing

59. The proceeding is listed for a pre-trial case management hearing on **16 February 2026**.

Submissions

60. By **23 February 2026**, the plaintiff file and serve its written outline of opening submissions.

61. By **2 March 2026**, the defendants file and serve their written outline of opening submissions.

DATE AUTHENTICATED:

21 July 2025



THE HONOURABLE JUSTICE KEOGH

